

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Aug 22 2025

SC Court of Appeals

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KARSEEM NICHOLAS HARDAWAY,

APPELLANT

APPELLATE CASE NO. 2024-001245

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT 8-D (AUDIO), 8-F (VIDEO), 8-G (VIDEO), 8-H (AUDIO), 52 (TEN
VIDEOS), 54 (THREE VIDEOS), STATE’S EXHIBIT 69 (PHOTO STILL OF GUN
10MM)**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	Warrant No(s): 2021A1010900367~68,
	)	Case No(s): 2024 GS 10-00589, 2024 GS 10 00590
STATE OF SOUTH CAROLINA	)	Charge(s): Murder, Possession of Weapon during
	)	a Violent Crime
	)	
-versus-	)	
	)	
KARSEEM N. HARDAWAY,	)	MOTION TO SUPPRESS IPHONE
	)	PHONE EVIDENCE
Defendant.	)	
_____	)	

FACTS

According to discovery materials provided by the State, on July 20, 2021 a search warrant was drafted by Detective Quick to seize Mr. Hardaway's cell phone. (See Attachment 1). The search warrant was executed on July 28, 2021 and an Apple iPhone contained within a purple rubberized case belonging to Karseem Hardaway was seized. Subsequently on July 30, 2021, Detective Wilson drafted a search warrant for all electronically stored digital information, communications, or files on that Apple iPhone. That search warrant was executed on July 30, 2021. (See Attachment 2).

ARGUMENT

The affidavit for Mr. Hardaway's cell phone seizure does not establish probable cause, and therefore, the search warrant is insufficient on its face. As a result, the seizure of the cell phone violated the Fourth Amendment of the United States Constitution, Article 1 § 10 of the South Carolina Constitution, and S.C. Code Ann § 17-13-140. Mr. Hardaway hereby moves to

suppress pursuant to any search warrants the cell phone as evidence at trial and all evidence seized from the cell phone.

Mr. Hardaway also believes the results of all subsequent search warrant for the electronically stored digital information, communications or files on that Apple iPhone should be suppressed under the fruits of the poisonous tree theory.

LACK OF PROBABLE CAUSE

A search warrant may be issued only upon a finding of probable cause. *State v. Owen*, 274 S.E. 2d 510 (1981). Our legislature has likewise mandated that search warrants may be issued "only upon affidavit sworn before the magistrate...establishing grounds for the warrant." S.C. Code Ann. § 17-13-140. Our Supreme Court, following the United States Supreme Court, has characterized the standard used in establishing grounds for a search warrant as a "totality of the circumstances" test. *Id.*

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

State v. Bellamy, 519 S.E. 2d 347, at 348 (1999) (citing *Illinois v. Gates*, 462 U.S. 213 (1983)).

The reviewing court must also ensure that the magistrate had a "substantial basis" for finding probable cause. *Id.* at 349.

In the instant case, the affidavit makes it clear that the seizure of the cell phone was based upon the observations made by the officers, an unrelated arrest and the unwarranted assumptions

that followed. Consequently, the only issues are whether those observations and the unrelated arrest constitute probable cause.

According to the affidavit in this case the Detectives learned that Mr. Hardaway was present at apartment [REDACTED] at 1704 (5:04pm) on the day of the incident through the Ring camera footage provided by his sister, Tiffany Hardaway. Detectives state they are familiar with Mr. Hardaway due to other investigations and a previous arrest by the Charleston County Sheriff's Office on May 21, 2021. Detective Crockett stated during a follow up investigation he watched Tiffany Hardaway appear to delete at least one video on the Ring camera. Detectives then learned that a vehicle consistent with Mr. Hardaway's red car was seen traveling away from the incident location at approximately 5:35pm. They believed this gave a 30-minute timeframe where Mr. Hardaway was in the area of the incident location at the time of the murder. Through further investigation into Tiffany Hardaway's cell phone and Karseem Hardaway's O2 fitness records, they discovered a text message in which Mr. Hardaway instructed her children to lock the apartment door because he had forgotten to do so after he left. This message was sent at 5:36pm.

Detective Quick, who drafted the search warrant, stated that "The affiant believes, based on these established facts, a seizure of Karseem's cellular telephone will provide CPD Detectives the opportunity to further this criminal investigation."

The affidavit has failed to set forth any facts as to why police believe Karseem Hardaway committed the crime. While the Detectives set forth information that shows Mr. Hardaway could have been at the incident location, like many others who actually resided at the complex, there is nothing offered to show as to why he could or would have committed this crime. The Detectives relied on information that Mr. Hardaway was arrested in May 2021 for a weapons charge. They

fail to show how an unrelated arrest for an unrelated weapon relates to the present case or establishes probable cause.

Further, Detectives failed to state which evidence the seizure of the cell phone would provide detectives. Detectives simply offered they believed that the phone will give them the opportunity to further their investigation.

The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct. *State v. Copeland*, 321 S.C. 318 (citing *State v. Cox*, 287 S.C. 260 (Ct. App. 1985)).

Here, the seizure of the cell phone would not have been obtained but for the search warrant, therefore the seizure and subsequent search warrant for the electronic information on that cell phone should be excluded.

GOOD FAITH EXCEPTION INAPPLICABLE

"The good faith exception is inapplicable where the affidavit fails to provide the magistrate with a substantial basis for probable cause." *State v. Robinson*, 518 S.E. 2d 269, 276 fn3 (1999 S.C. App.) (citing *Weston* at 804)). In this case, because the affidavit fails to establish probable cause for the seizure of Mr. Hardaway's phone it is substantively rather than technically defective and therefore the good faith exception is not implicated.

CONCLUSION

For the foregoing reasons and pursuant to the Fourth Amendment to the United States Constitution, Article I, § 10 of the South Carolina Constitution, and S.C. Code Ann. § 17-13-140,

Mr. Hardaway hereby moves to suppress the seizure of the Apple iPhone and subsequently all the digital extractions from that Apple iPhone.

Respectfully Submitted,



Rachael C. Arora
Senior Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 3/13/2024

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

ATTACHMENT 1

STATE OF SOUTH CAROLINA

County of Charleston

SEARCH WARRANT

Date: July 20, 2021

Officer: Det. Quick

Case#: 21-10360 / K. Hardaway cell seizure

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

The person and area under the immediate control of Karseem Nicholas Hardaway (B/M, [REDACTED], SCDL:

[REDACTED].

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

Cellular telephone belonging to Karseem Nicholas Hardaway (B/M, [REDACTED] SCDL: [REDACTED]

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 20, 2021

STATE OF SOUTH CAROLINA }

COUNTY OF Charleston }

AFFIDAVIT

Personally appeared before me, one Det. Quick
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Please refer to previous page for description of property sought

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

REASON FOR AFFIANT'S BELIEF THAT THE
 PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to [REDACTED] Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

Continued on the Following Page

Sworn to and Subscribed before me
 this 20th day of July, 2021

Signature of Judge

(L.S.)

Affiant

Address Charleston Police Department 180 Lockwood Blvd

Charleston, SC 29403

Phone 843-577-7434

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment 1013, which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag UJI776) which he knew from research to be registered to Karseem Hardaway.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me
this 20th day of July 2021

(L.S.)
Signature of Issuing Judge
CPD Case # 21-10360

M. Quick
Signature of Affiant
Det. Quick
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - UJI776) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me
this 20th day of July 2021

Signature of Issuing Judge
CPD Case # 21-10360

(L.S.)

M. Quick
Signature of Affiant
Det. Quick
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on July 14, 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 5916 [REDACTED] and his email address is karseemhardaway30@gmail.com. Detectives also observed Karseem to be in possession of and manipulating/operating a working cell phone at the time of their interaction.

On July 16, 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. After her arrest, Ms. Hardaway provided a post Miranda statement in which she confirmed that Karseem regularly stays at her apartment and had done so the night before and throughout the day of the murder. This statement matched that as provided by Karseem as well. Ms. Hardaway also conceded that she could not account for his whereabouts starting around 2:30pm the day of the murder because she departed the apartment to go to Goose Creek and had not returned until later in the evening when police were already on scene.

A lawful search warrant was executed upon her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Ms. Hardaway regularly communicates with Karseem via the phone number provided on the O2 Fitness application, 5916 [REDACTED]. Detectives also noticed that Ms. Hardaway and Karseem were in frequent contact with each other after each were spoken to during their respective encounters with CPD Detectives on July 14, 2021. Finally, Detectives discovered a text message and phone call received by Ms. Hardaway from Karseem at approximately 5:36pm in which he instructed Ms. Hardaway to tell her children to lock the apartment door because he had forgotten to do so after he left. This is minutes after Detectives believe the homicide to have occurred.

The affiant is aware, through over ten years of law enforcement training and experience, that cell phones are nearly ubiquitous in today's society. During contact with CPD Detectives on July 14, 2021, Karseem was observed to be in possession of an operational smart phone which Detectives believe he regularly uses for communication. This communication is reflected in Ms. Hardaway's cellular phone data and the affiant believes, based on these established facts, a seizure of Karseem's cellular telephone will provide CPD Detectives the opportunity to further this criminal investigation

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 20th day of July 2021

Signature of Issuing Judge
 CPD Case # 21-10360

(L.S.)



Signature of Affiant
 Det. Quick
 Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

RETURN

I received the attached Search Warrant July 20, 20 21 and have executed it as follows:
 On July 28 **2021** at 2:25pm o'clock M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Karseem Hardaway

Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Apple iPhone contained within a purple rubberized case belonging to
 Karseem Hardaway.

This inventory was made in the presence of Det. Wilson, Ofc. Mallett

AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

day of July **2021**

Signature of Issuing Judge

(L.S.)

(Signature of Officer Executing Warrant)

ATTACHMENT 2

STATE OF SOUTH CAROLINA

County of Charleston

SEARCH WARRANT

Date: July 30, 2021

Officer: Det. Wilson

Case#: 21-10360 / K. Hardaway cell dump

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1916

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

Apple iPhone contained within a purple rubberized case belonging to Karseem Hardaway. The device is
currently housed in CPD evidence under CPD Case # 21-10360 and tagged as Bag 74, Item 1.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

All electronically stored digital information, communications, or files including incoming and outgoing calls,
call logs, owner information, digital images, video recordings, voice recordings, incoming and outgoing texts,
contact names, user profile information, phone numbers, downloaded applications and any other digital
information stored on the devices or stored on electronic storage media associated with the device both current
and historical, a physical examination of the phone and the ability to make a phone call using the device

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

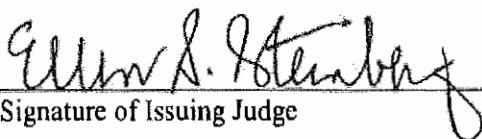
ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 30, 2021

 (L.S.) 2
Signature of Issuing Judge

STATE OF SOUTH CAROLINA }
COUNTY OF Charleston }

AFFIDAVIT

Personally appeared before me, one Det. Wilson
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Please refer to previous page for description of property sought

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to █████ Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

Continued on the Following Page

Sworn to and Subscribed before me

this 30th day of July, 2021

Signature of Issuing Judge

(L.S.)

10:30 am

[Signature]
Affiant

Address Charleston Police Department 180 Lockwood Blvd
Charleston, SC 29403

Phone 843-577-7434

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment 1013, which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

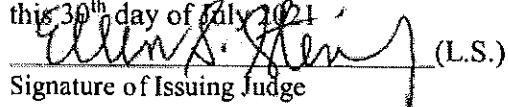
On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag UJI776) which he knew from research to be registered to Karseem Hardaway.

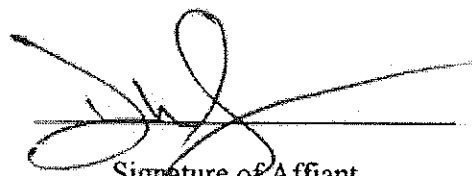
Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 30th day of July 2021

 (L.S.)
Signature of Issuing Judge
CPD Case # 21-10360

10:30 AM


Signature of Affiant
Det. Wilson
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

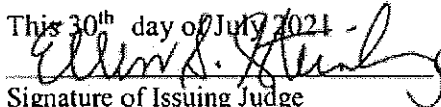
Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - UJI776) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

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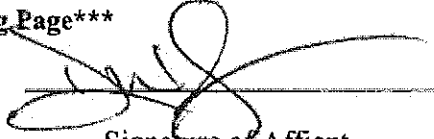
SWORN TO AND SUBSCRIBED before me

This 30th day of July 2021

 (L.S.)
Signature of Issuing Judge

CPD Case # 21-10360

10:30 am


Signature of Affiant
Det. Wilson
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on July 14, 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 5916 [REDACTED] and the email address is karseemhardaway30@gmail.com. Detectives also observed Karseem to be in possession of and manipulating/operating a working cell phone/smart phone at the time of their interaction.

On July 16, 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. After her arrest, Ms. Hardaway provided a post Miranda statement in which she confirmed that Karseem regularly stays at her apartment and had done so the night before and throughout the day of the murder. This statement matched that as provided by Karseem as well. Ms. Hardaway also conceded that she could not account for his whereabouts starting around 2:30pm the day of the murder because she had left to go to Goose Creek and had not returned until later in the evening when police were already on scene.

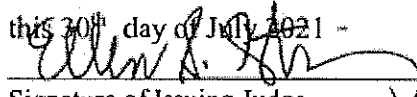
At the same time, a lawful search warrant was executed upon her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Tiffany regularly communicates with Karseem via the phone number provided on the O2 Fitness application, 5916 [REDACTED]. Detectives also noticed that Ms. Hardaway and Karseem were in frequent contact with each other they were spoken to during their respective encounters with CPD Detectives on July 14, 2021. Finally, Detectives discovered a text message and phone call received by Ms. Hardaway from Karseem at approximately 5:36pm in which he instructed Ms. Hardaway to tell her children to lock the apartment door because he had forgotten to do so after he left. This is minutes after Detectives believe the homicide to have occurred.

Based on the established facts of the investigation thus far, a search warrant for the seizure of Karseem's cellular telephone was issued on July 20, 2021. On July 28, 2021 CPD officers made contact with Karseem during a traffic stop which occurred at the intersection of Glenn McConnell Parkway and West Wildcat Blvd, within the City and County of Charleston, SC. Detectives executed the aforementioned search warrant by seizing an Apple iPhone contained within a purple rubberized case belonging to Karseem pursuant to the warrant. The device was subsequently entered into CPD evidence pending further examination. Finally, during a post Miranda statement, Karseem confirmed that this cell phone belonged to him, confirmed his phone number as being 5916 [REDACTED] and that no one else uses this device. Finally, he confirmed he was in possession of the device during the timeframe of the murder.

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SWORN TO AND SUBSCRIBED before me

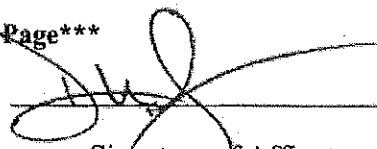
this 30th day of July 2021 -

 (L.S.))

Signature of Issuing Judge

CPD Case # 21-10360

10:30 AM


Signature of Affiant
Det. Wilson
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

At this point in the investigation, the affiant has established that Karseem Hardaway is a part time resident at [REDACTED] Bantry Circle and present at the apartment on Monday, July 12, 2021 and Tuesday, July 13, 2021 during the hours in which Detectives believe the murder to have occurred. Furthermore, it has been confirmed that the aforementioned device belongs to Karseem and that it was active and operational during this time frame as well.

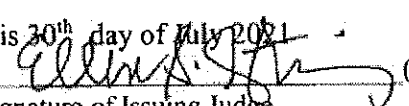
During contact with CPD Detectives on July 14, 2021, Karseem Hardaway possessed a cellular telephone which was operational at the time. It was also learned after the execution of a search warrant on Tiffany Hardaway's cellular phone that Tiffany Hardaway and Karseem had frequent contact (phone calls and texts) in the hours after their respective contact with CPD on that date.

The affiant is aware, through over ten years of law enforcement training and experience, that cell phones are nearly ubiquitous in today's society. Based on the aforementioned facts, the affiant believes that communication and data will be located through a digital forensic examination and extraction of this device. Furthermore, the affiant believes that the requested examination may (1) positively identify the device's owner or user, (2) confirm the device was active during the time frame of the homicide (3) may contain GPS data or location history contained on the device, (4) show communications, to include calls, texts, MMS messages, and application data between the device and any other associates before, during and after the incident, (5) identify the phone numbers stored on the device, (6) show any photographs taken by or stored by the user associated with the device, (7) provide a search history of the user associated with the device, and (8) any other pertinent data, documents, or device interactions associated with the target account during the time before, during, and after the incident under investigation.

Finally, the affiant is aware that CPD's Digital Evidence Unit is commonly tasked with and can recover the requested data from cell phones and other similar type electronic devices. This extraction will further the investigation and yield additional evidence of this incident which may assist with the ultimate prosecution of the crime.

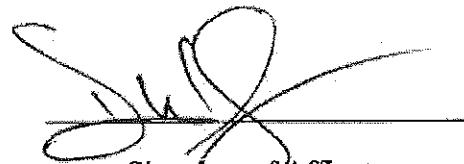
SWORN TO AND SUBSCRIBED before me

this 30th day of July 2021

 (L.S.)

Signature of Issuing Judge
CPD Case # 21-10360

10:30 am



Signature of Affiant
Det. Wilson
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

RETURN

I received the attached Search Warrant July 30, 20 21 and have executed it as follows:

On July 30 **2021** at 11:04pm o'clock M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with CPD Digital Evidence Unit

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

All electronically stored digital information, communications, or files including incoming and outgoing calls, call logs, owner information, digital images, video recordings, voice recordings, incoming and outgoing texts, contact names, user profile information, phone numbers, downloaded applications and any other digital information stored on the devices or stored on electronic storage media associated with the device both current and historical, a physical examination of the phone and the ability to make a phone call using the device

This inventory was made in the presence of Det. Wilson

AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

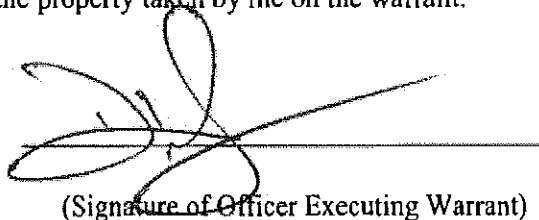
SWORN to before me this 3

day of September

2021

Ellen L. Stenberg
Signature of Circuit Court Judge

(L.S.)


(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	Warrant No(s): 2021A1010900367~68,
	)	Case No(s): 2024 GS 10 00589, 2024 GS 10 00590
STATE OF SOUTH CAROLINA	)	Charge(s): Murder, Possession of Weapon during
	)	a Violent Crime
-versus-	)	
	)	
	)	
KARSEEM N. HARDAWAY,	)	MOTION TO SUPPRESS VERIZON
	)	SEARCH WARRANT EVIDENCE
Defendant.	)	
_____	)	

FACTS

According to discovery materials provided by the State, on July 26, 2021, a search warrant was drafted by Detective Wilson for Celco Partnership dba Verizon Wireless for all related info for a target number of "5916 [REDACTED]" for the dates of July 1, 2021 – July 26, 2021. The search warrant was executed on July 27, 2021. (See Attachment 1)

ARGUMENT

The affidavit for the search warrant does not establish probable cause for the target number "5916 [REDACTED]" therefore, the search warrant is insufficient on its face. The seizure of the associated account information, therefore, violated the Fourth Amendment of the United States Constitution, Article 1 § 10 of the South Carolina Constitution, and S.C. Code Ann § 17-13-140. As a result, Mr. Hardaway hereby moves to suppress all evidence seized from Verizon wireless associated with the phone number "5916 [REDACTED]"

LACK OF PROBABLE CAUSE

A search warrant may be issued only upon a finding of probable cause. *State v. Owen*, 274 S.E. 2d 510 (1981). Our legislature has likewise mandated that search warrants may be issued

"only upon affidavit sworn before the magistrate...establishing grounds for the warrant." S.C. Code Ann. § 17-13-140. Our Supreme Court, following the United States Supreme Court, has characterized the standard used in establishing grounds for a search warrant as a "totality of the circumstances" test. *Id.*

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

State v. Bellamy, 519 S.E. 2d 347, at 348 (1999) (citing *Illinois v. Gates*, 462 U.S. 213 (1983)).

The reviewing court must also ensure that the magistrate had a "substantial basis" for finding probable cause. *Id.* at 349.

In Mr. Hardaway's case, the affidavit makes it clear that the seizure of the Verizon account information was based upon the observations made by the officers, an unrelated arrest and the unwarranted assumptions that followed. Consequently, the only issues are whether those observations and the unrelated arrest constitute probable cause.

According to the affidavit in this case the Detectives learned that Mr. Hardaway was present at apartment [REDACTED] at 1704 (5:04pm) on the day of the incident through the Ring camera footage provided by his sister, Tiffany Hardaway. Detectives state they are familiar with Mr. Hardaway due to other investigations and a previous arrest by the Charleston County Sheriff's Office on May 21, 2021. Detective Crockett stated during a follow up investigation he watched Tiffany Hardaway appear to delete at least one video on the Ring camera. Detectives then learned that a vehicle consistent with Mr. Hardaway's red car was seen traveling away from the incident location at approximately 5:35pm. They believed this gave a 30-minute timeframe where Mr. Hardaway was in the area of the incident location at the time of the murder. Through

further investigation into Tiffany Hardaway's cell phone and Karseem Hardaway's O2 fitness records, they discovered a text message in which Mr. Hardaway instructed her children to lock the apartment door because he had forgotten to do so after he left. This message was sent at 5:36pm. Detectives obtained Mr. Hardaway's cell phone number through his gym membership at O2 Fitness. This number is 5916 [REDACTED]

Detective Wilson (who drafted the search warrant) states that:

"Based on these established facts, the affiant believes that a search of this target number provider may potentially yield evidence of any communication (including text communication) Ms. Hardaway may have had prior to the incident and after her contact with police. This information, in conjunction with the fact that Ms. Hardaway appeared to delete selected videos which CPD sought, may provide additional insight into the events surrounding the shooting and Ms. Hardaway's communications. Finally the affiant is aware that cellular providers, such as T-Mobile, maintain detailed records relating to the property sought."

The affidavit specifically indicated that police were looking for communication that Ms. Hardaway (Karseem's sister) has had prior to the incident and after her contact with police. It does not state that is looking for the target number's communications.

The affidavit failed to set forth any facts as to why police believe Karseem Hardaway committed the crime. While the Detectives set forth information that shows he could have been at the incident location as were many others who resided at the apartment complex, there is nothing offered to show as to why Mr. Hardaway could have or would have committed this crime or how he is considered a suspect. Nothing beyond mere presence is alleged.

The Detectives improperly relied on information that Mr. Hardaway was arrested in May 2021 for a weapons charge. They failed to show how this unrelated arrest for an unrelated weapons charge relates to the present case.

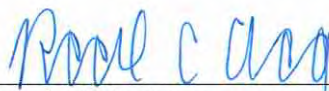
GOOD FAITH EXCEPTION INAPPLICABLE

"The good faith exception is inapplicable where the affidavit fails to provide the magistrate with a substantial basis for probable cause." *State v. Robinson*, 518 S.E. 2d 269, 276 fn3 (1999 S.C. App.) (citing *Weston* at 804)). In this case, because the affidavit fails to establish probable cause for the seizure of Mr. Hardaway's phone, it is substantively rather than technically defective and therefore the good faith exception is not implicated.

CONCLUSION

For the foregoing reasons and in light of the mandates of the Fourth Amendment to the United States Constitution, Article I, § 10 of the South Carolina Constitution, and S.C. Code Ann. § 17-13-140, Mr. Hardaway hereby moves to suppress the evidence seized from the Verizon Account information for number 5916 [REDACTED]

Respectfully Submitted,



Rachael C. Arora
Senior Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 3/13/2024

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

ATTACHMENT 1

STATE OF SOUTH CAROLINA

28

County of Charleston

SEARCH WARRANT

Date: July 26, 2021

Officer: Det. D. Wilson

Case#: 21-10360

5916 (Karseem CDR)

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

Cellco Partnership dba Verizon Wireless

180 Washington Valley Rd

Bedminster, NJ 07921

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

All related info for target number 5916 to include any and all incoming and outgoing historical call data, Internet data and Application Data to include cell sites, text messages to include content, identifying cell site information (the location of the tower and geographical sub-sector of the tower being used), per call measurement data (i.e. RTT report, NELOS Report, PCMD), main number, account status, subscriber information, published status, service address, billing address, any other numbers associated, former service number, changed number request from listed target number 5916 IMEI and/or IMSI number for each call from July 1, 2021 – July 26, 2021 A signed certified copy Certificate of Business Record from Verizon as it relates to this Target Phone.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

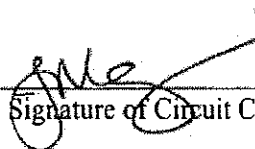
ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 26, 2021


Signature of Circuit Court Judge

(L.S.) 2

STATE OF SOUTH CAROLINA }

COUNTY OF Charleston

AFFIDAVIT

Personally appeared before me, one Det. D. Wilson
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

DESCRIPTION OF PROPERTY SOUGHT

(Please refer to previous page for description of premises to be searched)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to 1012 Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

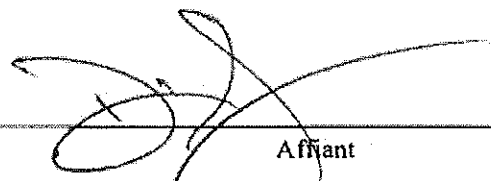
Continued on the Following Page

Sworn to and Subscribed before me

this 26 day of July, 2021

Signature of Circuit Court Judge

(L.S.) }


 Affiant
 Address Charleston Police Department 180 Lockwood Blvd
Charleston, SC 29403

Phone 843-577-7434

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment 1013, which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

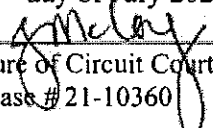
On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag [REDACTED]) which he knew from research to be registered to Karseem Hardaway.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 26 day of July 2021

 (L.S.)
Signature of Circuit Court Judge
CPD Case # 21-10360


Signature of Affiant
Det. D. Wilson
Charleston Police Department

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

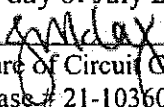
Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - [REDACTED]) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

Continued on the Following Page

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Signature of Affiant
Det. D. Wilson
Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on 14 July 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 5916 [REDACTED]. Detectives also observed Karseem to be in possession of an operational cell phone at the time of their interaction.

On 16 July 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. At the same time, a lawful search warrant was executed on her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Tiffany regularly communicates with Karseem via the target number.

Through additional online research, Detectives learned that the target number is serviced and maintained by Verizon Wireless.

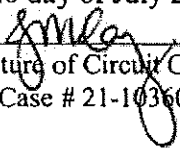
The affiant is aware, through over ten years of law enforcement experience, that cell phones are nearly ubiquitous in today's society. Based on these established facts, the affiant believes that a search of this target number provider may potentially yield evidence of any communication (including text communication) Ms. Hardaway may have had prior to the incident and after her contact with police. This information, in conjunction with the fact that Ms. Hardaway appeared to delete selected videos which CPD sought, may provide additional insight into the events surrounding the shooting and Ms. Hardaway's communications. Finally, the affiant is aware that cellular service providers, such as T-Mobile, maintain detailed records relating to the property sought.

Accordingly, and based on the aforementioned, the affiant believes the records sought will (1) identify or confirm the subscriber of the target number, (2) show phone numbers in communication with the registrant, (3) show text message content sent to and from the registrant, (3) show what communications are logged leading up to the shooting, and (4) provide other data to be used to further the investigation.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 26 day of July 2021

 (L.S.)
 Signature of Circuit Court Judge
 CPD Case # 21-10360


 Signature of Affiant
 Det. D. Wilson
 Charleston Police Department

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

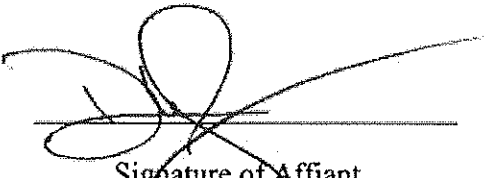
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This search warrant is made pursuant to: 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), 2703(c)(1)(A), 2703(c)(2), 2703(h)(5)(B), and ORS 136. That this Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" (In the Circuit Court of the State of South Carolina) as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & 28(c)(1)(A). Specifically, a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants, 18 U.S.C. § 2711(3)(B). A Superior Court of the United States that has jurisdiction over the offenses listed above. 18 U.S.C. § 2711(3)(A)(i). Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

SWORN TO AND SUBSCRIBED before me

this 26 day of July 2021

 (L.S.)
Signature of Circuit Court Judge
CPD Case # 21-10360


Signature of Affiant
Det. D. Wilson
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

RETURN

I received the attached Search Warrant July 26, 20 21 and have executed it as follows:
 On July 27 **2021** at 857am o'clock M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Verizon legal compliance

Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

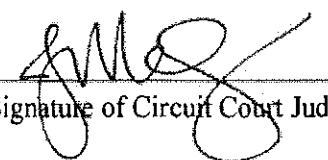
All related info for target number **5916** to include any and all incoming and outgoing historical call data, Internet data and Application Data to include cell sites, text messages to include content, identifying cell site information (the location of the tower and geographical sub-sector of the tower being used), per call measurement data (i.e. RTT report, NELOS Report, PCMD), main number, account status, subscriber information, published status, service address, billing address, any other numbers associated, former service number, changed number request from listed target number **5916** IMEI and/or IMSI number for each call from July 1, 2021 – July 26, 2021 A signed certified copy Certificate of Business Record from Verizon as it relates to this Target Phone.

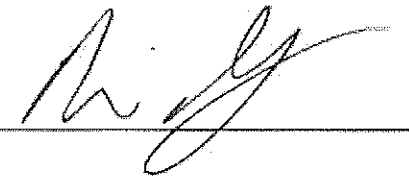
This inventory was made in the presence of Det. Wilson, Det. Galka

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 28th
 day of July **2021**

 (L.S.)
 Signature of Circuit Court Judge


 (Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	Warrant No(s): 2021A1010900367~68,
	)	Case No(s):2024 GS 10 00589, 2024 GS 10 00590
STATE OF SOUTH CAROLINA	)	Charge(s): Murder, Possession of Weapon during
	)	a Violent Crime
-versus-	)	
	)	
	)	
KARSEEM N. HARDAWAY,	)	MOTION TO SUPPRESS GOOGLE
	)	ACCOUNT EVIDENCE
Defendant.	)	
_____	)	

FACTS

According to discovery materials provided by the State, on July 19, 2021 a search warrant was drafted for the Google, Inc. account associated with “karseemhardaway30@gmail.com.” The search warrant was executed on July 19, 2021. (See Attachment 1).

ARGUMENT

The affidavit in the search warrant fails to establish probable cause for Mr. Hardaway’s google account data; Therefore, the search warrant is insufficient on its face. As a result the seizure of the google account information violated the Fourth Amendment of the United States Constitution, Article 1 § 10 of the South Carolina Constitution, and S.C. Code Ann § 17-13-140. Mr. Hardaway hereby moves to suppress all evidence seized from the google account associated with “karseemhardaway30@gmail.com.”

LACK OF PROBABLE CAUSE

A search warrant may be issued only upon a finding of probable cause. *State v. Owen*, 274 S.E. 2d 510 (1981). Our legislature has likewise mandated that search warrants may be issued

"only upon affidavit sworn before the magistrate...establishing grounds for the warrant." S.C. Code Ann. § 17-13-140. Our Supreme Court, following the United States Supreme Court, has characterized the standard used in establishing grounds for a search warrant as a "totality of the circumstances" test. *Id.*

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

State v. Bellamy, 519 S.E. 2d 347, at 348 (1999) (citing *Illinois v. Gates*, 462 U.S. 213 (1983)).

The reviewing court must also ensure that the magistrate had a "substantial basis" for finding probable cause. *Id.* at 349.

In Mr. Hardaway's case, the affidavit makes it clear that the seizure of the Google account information was based upon the observations made by the officers, an unrelated arrest and the unwarranted assumptions that followed. Consequently, the only issues are whether those observations and the unrelated arrest constitute probable cause.

According to the affidavit in this case the Detectives learned that Mr. Hardaway was present at apartment [REDACTED] at 1704 (5:04pm) on the day of the incident through the Ring camera footage provided by his sister, Tiffany Hardaway. Detectives state they are familiar with Mr. Hardaway due to other investigations and a previous arrest by the Charleston County Sheriff's Office on May 21, 2021. Detective Crockett stated during a follow up investigation he watched Tiffany Hardaway appear to delete at least one video on the Ring camera. Detectives then learned that a vehicle consistent with Mr. Hardaway's red car was seen traveling away from the incident location at approximately 5:35pm. They believed this gave a 30-minute timeframe where Mr. Hardaway was in the area of the incident location at the time of the murder. Through

further investigation into Tiffany Hardaway's cell phone and Karseem Hardaway's O2 fitness records, they discovered a text message in which Mr. Hardaway instructed her children to lock the apartment door because he had forgotten to do so after he left. This message was sent at 5:36pm. Detectives obtained Mr. Hardaway's email information through his gym membership at O2 Fitness.

Detective Crockett (who drafted the search warrant) states that:

"This data will aid in determining the location of Karseem during the unaccounted for 30 minutes between 1704 hours and 1735 hours on the date of the incident and whether Hardaway was present during the reported interaction with the victim on 12 July 2021. Additionally, the affiant is aware that those involved in the commission of violent crimes frequently communicate with their associates, co-conspirators, relatives, and others before, during and after their crimes. Karseem appeared to be utilizing an Android based device for communication, making it likely that Google, Inc. maintains the requested data associated with this device. A search of the target account for the requested data is both reasonable and necessary and will aid in the investigation and ultimate prosecution of this criminal offense."

The affidavit has failed to set forth any facts as to why police believe Mr. Hardaway committed the crime. While the Detectives set forth information that shows he could have been at the incident location, there is nothing offered to show as to why Karseem could have or would have committed this crime. Nothing beyond mere presence at the complex that day is presented.

The Detectives relied on information that Mr. Hardaway was arrested in May 2021 for a weapons charge. They fail to show how an unrelated arrest for an unrelated weapon relates to the present case or establishes probable cause.

GOOD FAITH EXCEPTION INAPPLICABLE

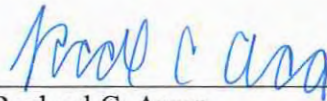
"The good faith exception is inapplicable where the affidavit fails to provide the magistrate with a substantial basis for probable cause." *State v. Robinson*, 518 S.E. 2d 269, 276 fn3 (1999 S.C. App.) (citing *Weston* at 804)). In this case, because the affidavit fails to establish probable

cause for the seizure of Mr. Hardaway's phone it is substantively rather than technically defective and the good faith exception is not implicated.

CONCLUSION

For the foregoing reasons and in light of the mandates of the Fourth Amendment to the United States Constitution, Article I, § 10 of the South Carolina Constitution, and S.C. Code Ann. § 17-13-140, Mr. Hardaway hereby moves to suppress the seizure of information for Google, Inc. account associated with "karseemhardaway30@gmail.com."

Respectfully Submitted,



Rachael C. Arora
Senior Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 3/13/2024

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

ATTACHMENT 1

STATE OF SOUTH CAROLINA

County of Charleston

SEARCH WARRANT

Date: July 19, 2021

Officer: Det. William Crockett

Case#: 21-10360

karseemhardaway30@gmail.com

STATE OF SOUTH CAROLINA }

COUNTY OF Charleston }

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1918

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

Google, Inc. Google Legal Investigations Support

1600 Amphitheater Parkway

Mountain View, CA 94043

lers.google.com

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

See Attachment A.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

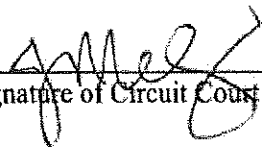
ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 19th, 2021


Signature of Circuit Court Judge

(L.S.) 2

STATE OF SOUTH CAROLINA }
COUNTY OF Charleston }

AFFIDAVIT

Personally appeared before me, one Det. William Crockett
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

DESCRIPTION OF PROPERTY SOUGHT

(See Attachment A)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

Continued on the Following Page

Sworn to and Subscribed before me

this 19th day of July, 2021

[Signature]
Signature of Circuit Court Judge

(L.S.)

[Signature]
Affiant
Address Charleston Police Department 180 Lockwood Blvd
Charleston, SC 29403

Phone 843-577-7434

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment [REDACTED] which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag UJI776) which he knew from research to be registered to Karseem Hardaway.

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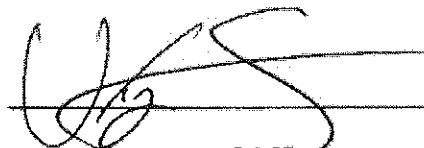
SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021

Signature of Issuing Judge

CPD Case # 21-10360

(L.S.)



Signature of Affiant

Det. William Crockett

Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - UJI776) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

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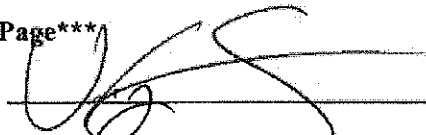
SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021

Signature of Issuing Judge

CPD Case # 21-10360

(L.S.)


Signature of Affiant
Det. William Crockett
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on 14 July 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 5916 [REDACTED] and the email address is karseemhardaway30@gmail.com. Detectives also observed Karseem to be in possession of a cell phone at the time of their interaction. The affiant is familiar with the general appearance of modern mobile communication devices and utilizes an iPhone as a personal and workplace device. Based on this experience, the affiant determined that the device Karseem was utilizing was not consistent in appearance with that of an iPhone and is therefore likely a device utilizing the Android operating system.

On 16 July 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. At the same time, a lawful search warrant was executed on her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Tiffany regularly communicates with Karseem via the phone number provided on the O2 Fitness application, 5916 [REDACTED]. This communication corroborates the information obtained from the O2 Fitness records, which leads the affiant to the conclusion that the Gmail account listed on the application is likely correct as well.

The affiant is aware, through over ten years of law enforcement training and experience, that cell phones are nearly ubiquitous in today's society. Furthermore, the affiant is aware that not only is data stored on the devices, but also in cloud based systems connected to these devices. Additionally, the affiant is aware that Google, Inc collects a tremendous amount of user data from user web activity, application activity, location history, device information, and search history. They amalgamate user data in order to sell advertising aimed at the specific user and to improve the user experience. Google, Inc also facilitates the cloud based storage of images and videos in Google Photos, maintains a record of associated accounts and payment methods, stores documents created by the user, offers a service called Google Voice in which is a free voice over internet protocol (VOIP) communication system, and an application called Android Auto which is a mobile device application that allows users to interact with their device via a connected vehicle. Google identifies accounts in a variety of ways, primarily by a user created Gmail account. The affiant is aware that Karseem Hardaway provided a Gmail account of karseemhardaway30@gmail.com when registering for his gym membership.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021

[Signature] (L.S.)
Signature of Issuing Judge
CPD Case # 21-10360

[Signature]
Signature of Affiant
Det. William Crockett
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

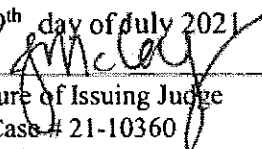
Continued from the Previous Page

Accordingly, and based on these established facts, it is the affiant's belief that a search of the requested data will yield information necessary for the furtherance of this criminal investigation. Specifically, the affiant believes that this data will show (1) the device associated with the Gmail account of **karseemhardaway30@gmail.com**, (2) location history of the associated device, (3) communications involving the target account and any associated devices, (4) user attribution data which will confirm ownership and dominion of the target account, (5) photographs taken by or stored by the user associated with the target account, (6) search history of the user associated with the target account, and (7) any other pertinent data, documents, or device interactions associated with the target account during the time before, during, and after the incident under investigation. This data will aid in determining the location of Karseem during the unaccounted for 30 minutes between 1704 hours and 1735 hours on the date of the incident and whether Hardaway was present during the reported interaction with the victim on 12 July 2021. Additionally, the affiant is aware that those involved in the commission of violent crimes frequently communicate with their associates, co-conspirators, relatives, and others before, during and after their crimes. Karseem appeared to be utilizing an Android based device for communication, making it likely that Google, Inc maintains the requested data associated with this device. A search of the target account for the requested data is both reasonable and necessary and will aid in the investigation and ultimate prosecution of this criminal offense.

This search warrant is made pursuant to: 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), 2703(c)(1)(A), 2703(c)(2), 2703(h)(5)(B), and ORS 136. That this Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" (In the Circuit Court of the State of South Carolina) as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & 28(c)(1)(A). Specifically, a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants, 18 U.S.C. § 2711(3)(B). A Superior Court of the United States that has jurisdiction over the offenses listed above. 18 U.S.C. § 2711(3)(A)(i). Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021

 (L.S.)
Signature of Issuing Judge
CPD Case # 21-10360


Signature of Affiant
Det. William Crockett
Charleston Police Department

FILED 03/13/2024 Julie J. Armstrong Clerk of Court

ATTACHMENT A

**Property Sought:
Records and Other Information to Be Disclosed**

In reference to Google, Inc. for the following accounts:

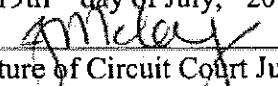
1. **karseemhardaway30@gmail.com**

This Search Warrant is requesting Google, Inc. to disclose the following records and other information, if available, to the affiant, for the time period **from July 12, 2021 through July 14, 2021 in Eastern Standard Time** if possible:

1. **Account Information** – User name, primary email address, secondary email addresses, connected applications and sites, and account activity, including account sign in locations, browser information, platform information, and internet protocol (IP) addresses;
2. **Android Information** - Device make, model, and International Mobile Equipment Identifier (IMEI) or Mobile Equipment Identifier (MEID) of all associated devices linked to the Google accounts of the target device;
3. **User attribution** – accounts, email accounts, passwords, PIN codes, account names, user names, screen names, remote data storage accounts, credit card number or other payment methods, contact lists, calendar entries, text messages, voice mail messages, pictures, videos, telephone numbers, mobile devices, physical addresses, historical GPS locations, two-step verification information, or any other data that may demonstrate attribution to a particular user or users of the account;
4. **Calendar** - All calendars, including shared calendars and the identities of those with whom they are shared, calendar entries, notes, alerts, invites, and invitees;
5. **Contacts** – All contacts stored by Google including name, all contact phone numbers, e-mails, social network links, and images;
6. **Documents** – All user created documents stored by Google;
7. **Gmail** – All e-mail messages, including by way of example and not limitation, such as inbox messages whether read or unread, sent mail, saved drafts, chat histories, and emails in the trash folder. Such messages will include all information such as the date, time, internet protocol (IP) address routing information, sender, receiver, subject line, any other parties sent the same electronic mail through the 'cc' (carbon copy) or the 'bcc' (blind carbon copy), the message content or body, and all attached files;
8. **Google Photos** – All images, graphic files, video files, and other media files stored in the Google Photos service;

SWORN TO AND SUBSCRIBED before me

this 19th day of July, 2021

 (L.S.)
Signature of Circuit Court Judge
CPD Case # 21-10360

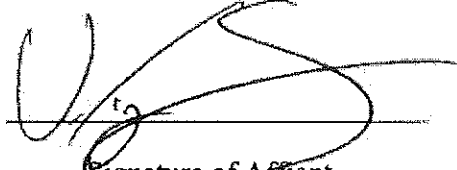

Signature of Affiant
Detective William Crockett
Charleston Police Department

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9. **Location History** – All location data whether derived from Global Positioning System (GPS) data, cell site/cell tower triangulation/trilateration, precision measurement information such as timing advance or per call measurement data, Wi-Fi locations, and Bluetooth beacons. Semantic Location History (SLH) data including activity, start and end location, latitude and longitude for each, duration (epoch time), distance, activity type, confidence level and probability, waypoints including latitude and longitude, places visited including latitude and longitude, place ID, address, name, source info, location confidence, duration, and other candidate locations. Such data shall include the date and timestamps of the activity (with identified time zone), the latitude and longitude GPS coordinates, the accuracy display radius (in meters), the source of the activity (e.g. Wi-Fi, cell sites, Bluetooth or GPS, etc.), the specific Device Tag number, the device Platform information, of all location recordings;
10. **Search History** – All search history and queries, including by way of example and not limitation, such as World Wide Web (web), images, news, shopping, ads, videos, maps, travel, and finance;
11. **Voice** – All call detail records, connection records, short message system (SMS) or multimedia messages system (MMS) messages, and voice-mail messages sent by or from the Google Voice account associated with the target account
12. **Android Auto** – All information related to Android Auto including device names, serial numbers and identification numbers, device names, maps and map data, communications including call logs, text messages (SMS), voice actions, and all location data;
13. **Google Drive or Goolge One** – All stored files and associated metadata

SWORN TO AND SUBSCRIBED before me

this 19th day of July, 2021)
 (L.S.)
 Signature of Circuit Court Judge
 CPD Case # 21-10360


 Signature of Affiant
 Detective William Crockett
 Charleston Police Department

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
))
State of South Carolina,)
))
Active Criminal Investigation (Homicide))
CPD Case # 21-10360)
)

IN THE CIRCUIT COURT
NINTH JUDICIAL CIRCUIT

Filed Under Seal

ORDER

1. The Court finds that the State of South Carolina has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation, to disclose certain records and other information, as set forth in the attached **Search Warrant for the Google, Inc account associated with karseemhardaway30@gmail.com.**
2. The Court determines that there is reason to believe that notification of the existence of this Order will seriously jeopardize the ongoing investigation, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or notify confederates. *See* S.C. Code 17-30-25.
3. IT IS THEREFORE ORDERED, pursuant to S.C. Code Ann. §§ 17-30-10 *et seq* that Google, Inc. shall, within an appropriate time period of the date of this Order, disclose to the South Carolina the records and other information described in Attachment A to this Order. South Carolina law authorizes Courts to order the installation and use of pen registers or trap and trace devices. *See* S.C Code Ann. §§ 17-30-10 *et seq.*; §§ 17-29-10 *et seq.*
4. IT IS FURTHER ORDERED under S.C. Code 17-30-25 (C) that Google, Inc. **shall not disclose the existence of the application of the State of South Carolina, or the existence of this Order of the Court, to the subscribers of the account(s) listed in Attachment A, or to any other person, [[unless and until otherwise authorized to do so by the Court OR identify length of period acceptable to the court, i.e. for 1 year]],** except that Google, Inc. may disclose this Order to an attorney for **Google, Inc** for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court.

7/19/21
Date

The Honorable McLOY
South Carolina Ninth Judicial Circuit

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RETURN

I received the attached Search Warrant _____, 20 21 and have executed it as follows:

On _____ **2021** at _____ o'clock _____ M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

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This inventory was made in the presence of _____

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____

day of _____ **2021**

(L.S.)

Signature of Circuit Court Judge

(Signature of Officer Executing Warrant)

State of South Carolina	)	Court of General Sessions
County of Charleston	)	Ninth Judicial Circuit
	)	
STATE OF SOUTH CAROLINA,	)	Case Numbers:
	)	2024-GS-10-00589
Plaintiff,	)	2024-GS-10-00590
	)	
vs.	)	
	)	
KARSEEM N. HARDAWAY,	)	PRETRIAL MOTIONS
	)	
Defendant.	)	TRANSCRIPT OF RECORD
	)	

March 20, 2024
Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson

A P P E A R A N C E S:

MR. B. CHAD SIMPSON
and MS. KELLY E.M. BARBER,
Assistant Solicitors,
for the Plaintiff;

MS. RACHAEL C. ARORA,
Assistant Public Defender,
for the Defendant.

Jamie Bickett
Official Court Reporter

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1 (The following proceedings were had in open court.)

2 THE COURT: This is the State versus Karseem

3 K-A-R-S-E-E-M, Nicholas Hardaway.

4 MS. ARORA: Yes, your Honor.

5 THE COURT: Warrant -- Indictment 2024-GS-10-589 and
6 590.

7 What is Mr. Hardaway charged with?

8 MS. ARORA: He is charged with murder and possession of
9 a weapon during a violent crime.

10 THE COURT: Which one is the murder, 589 or 590?

11 MS. ARORA: I have that as 589.

12 THE COURT: And then the possession of a weapon is 590?

13 MS. ARORA: Yes, your Honor.

14 THE COURT: Did you all receive a copy of Mr. Simpson's
15 motion to authenticate business records?

16 MS. ARORA: We did, your Honor. And we don't intend
17 to --

18 THE COURT: So that's resolved?

19 MS. ARORA: Yes, your Honor.

20 THE COURT: Okay.

21 MR. SIMPSON: Your Honor, on that note, if you'd like, I
22 think we've also resolved some defense motions.

23 THE COURT: I'm going to go through every motion --

24 MR. SIMPSON: Okay.

25 THE COURT: -- so let me handle it. Appreciate it.

1 Thank you.

2 MR. SIMPSON: Okay.

3 THE COURT: I got them all right here in front of me.

4 MR. SIMPSON: Okay. I've made use of the jury box.

5 THE COURT: No worries. So you're like me. I'm
6 tactile. I've got to have it all. Yeah, I understand. No
7 worries at all.

8 And the State listed -- well, it's the combination State
9 and the defense witnesses, I think. No. Did you submit any
10 witnesses, Ms. Arora?

11 MS. ARORA: Your Honor --

12 THE COURT: No.

13 MS. ARORA: -- as we said, possibly my client.

14 THE COURT: Just your client? That's what I thought. I
15 just wanted to make sure I was accurate.

16 Of the 46 witnesses you have listed, Mr. Simpson, how
17 many of these witnesses are you actually going to be calling?

18 MR. SIMPSON: I think at last count it was 15.

19 THE COURT: Okay.

20 MR. SIMPSON: But I would ask for a little grace.
21 That's an estimate. Fifteen to 17, I think.

22 THE COURT: Okay.

23 MR. SIMPSON: Many of them will be --

24 THE COURT: Chain?

25 MR. SIMPSON: -- brief. Not a lot of chain, your Honor,

1 in this case.

2 THE COURT: Okay.

3 MR. SIMPSON: But --

4 THE COURT: Like I said, just keep in mind that we won't
5 be starting until Tuesday and we'll have a half a day on
6 Thursday.

7 MR. SIMPSON: We are going to make -- pursuant to our
8 conversation yesterday, we're going to have some -- make
9 plans to have a lot of people here and ready to go next
10 Tuesday and Wednesday.

11 THE COURT: I think that's a good idea.

12 MR. SIMPSON: We'll take care of them.

13 THE COURT: Yeah, because we'll --

14 MR. SIMPSON: Yeah.

15 THE COURT: -- do first appearances. Depending on --
16 second appearances, I'm sorry. Depending on how many people
17 I have, it's been running between 12:00 and 12:30. I think
18 one week we finished at 11:30, but that's an anomaly because
19 I think we only had 150-some people. I can't remember. It's
20 all starting to run together. I apologize. But I think that
21 one time, though, we didn't finish till almost like
22 1:00-something. But I think I was just getting my sea legs.

23 But now that I have a little better handle on it, I
24 think we've been --

25 What have we been averaging? About 12:00, 12:30?

1 One week we finished at like 11:30, which shocked me.
2 It was like 11:30, quarter to 12:00, but it was a smaller
3 number of people than we usually have. And I don't know --

4 How many people do we have for second appearances on
5 Monday? Do you know offhand?

6 CLERK OF THE COURT: No.

7 MR. SIMPSON: We'll be ready for openings and our first
8 witness on Monday.

9 THE COURT: That works. And I'm going to -- and because
10 we won't be able to qualify the jury until the afternoon, I
11 will do a very abbreviated qualification, which may only take
12 15 minutes, as long as I don't have a whole lot of people
13 asking me to be transferred or excused.

14 And if we can't -- well, we won't be able to pick the
15 jury downstairs because Mr. Hardaway is in custody. So we'll
16 have to --

17 Am I going to be in this courtroom again?

18 CLERK OF THE COURT: I have to look and see who your
19 court reporter is next week.

20 THE COURT: I think I have a digital court reporter.

21 CLERK OF THE COURT: Then you'll be --

22 THE COURT: We're going to have to change it.

23 CLERK OF THE COURT: Okay.

24 THE COURT: That's not your fault. That's not -- I'll
25 get Chanda to take it.

1 We may be in this courtroom. If we are, we can have a
2 larger number of people than if we're in one of the smaller
3 courtrooms. But right now I'm assigned a digital court
4 reporter, which means we're in a smaller courtroom. But I'm
5 going to see if I can maybe --

6 MS. ARORA: And your Honor, just for my clarification,
7 jury selection would be at 2:00?

8 THE COURT: It will be right after I qualify the jury.

9 MS. ARORA: Okay.

10 THE COURT: Roll call will take -- depending on how many
11 people we have coming in, if everybody's on time, roll call
12 should take 30 minutes. Qualification should probably take
13 about 20 minutes. And then we'll go right into jury
14 selection. But because your client's in custody, I can't do
15 it downstairs. So I'm going to have to bring a group of folk
16 upstairs, which will take a few minutes.

17 Now, will the State be seeking to introduce any prior
18 convictions to impeach -- I know it's a little premature --
19 to impeach Mr. Hardaway's credibility?

20 MR. SIMPSON: Yes, your Honor.

21 THE COURT: What convictions does he have?

22 MR. SIMPSON: February 24 of 2016, a burglary second
23 violent; July 19 of 2017, breaking and entering a motor
24 vehicle, financial transaction card theft.

25 THE COURT: And what would be the basis of seeking to

1 introduce these convictions to impeach his credibility?

2 MR. SIMPSON: I'd point the Court to *State versus*
3 *Robinson*, which is a 2019 opinion by Justice James. That's
4 at 426 S.C. 529. I was unfamiliar with this case, your
5 Honor. And like Justice James explains in the opinion, I'd
6 really come to the point in my career where it's almost
7 assumed that nearly every case, unless it directly concerns a
8 lie, did not go to credibility. I think --

9 THE COURT: Well, no. All of the precedent says
10 anything directly involving a theft is subject to a person
11 being -- their credibility being impugned. The only things
12 that are really off-limits are drug offenses because they
13 have absolutely no bearing on a person's credibility.

14 MR. SIMPSON: Correct, your Honor. And my understanding
15 was wrong. Yours is correct, obviously. And Justice James,
16 I think in that case, which dealt specifically with
17 burglaries and thefts and breaking into motor vehicles --

18 THE COURT: The only thing the State has to prove beyond
19 a reasonable doubt is that the offense actually involved a
20 theft because, as we know, all burglaries don't necessarily
21 involve thefts. We have burglaries that people are charged
22 with in conjunction with domestic violence cases. And any
23 sort of -- any -- and I forget the exact verbiage, but what
24 it in essence says is that thefts bear directly on a person's
25 credibility --

1 MR. SIMPSON: Okay.

2 THE COURT: -- their honesty, because it involves a
3 theft.

4 MR. SIMPSON: Okay.

5 THE COURT: But you still have to engage in the
6 balancing to see if it's more probative than prejudicial on
7 the issue of credibility.

8 MR. SIMPSON: Right, your Honor. And I think the nature
9 of that judging its probative worth, etc., probably has to be
10 taken up prior to any testimony by the defendant.

11 THE COURT: I would. Like I said, it was premature.
12 But I think for them to have a meaningful conversation with
13 him ahead of time, I would want to know what you would be
14 seeking to introduce to impugn his credibility so that
15 Ms. Arora can have a discussion with him. And it gives me
16 time to think about it ahead of time --

17 MR. SIMPSON: Okay.

18 THE COURT: -- in the event that he decides to testify.

19 MR. SIMPSON: Thank you, your Honor.

20 THE COURT: You're welcome.

21 MR. SIMPSON: I appreciate that.

22 Those are the only convictions we would seek to impeach
23 with, and they're almost incredibly similar to those
24 discussed by Justice James in the case cited.

25 THE COURT: Okay. So I'll take that under advisement.

1 And when -- and if it becomes ripe, then I'll make a
2 decision.

3 MR. SIMPSON: I have one printed copy of that case.

4 THE COURT: I don't need it. Don't kill no more trees.
5 I've transitioned almost completely to electronic. I don't
6 -- yeah.

7 MS. ARORA: Your Honor, I just want to clarify for the
8 Court's record that the burglary conviction was also 2017.
9 It was not 2016.

10 THE COURT: Okay. Thank you.

11 MR. SIMPSON: I was giving the dates, I think, of the
12 underlying incident.

13 MS. ARORA: We have the sentencing sheets on both of
14 them.

15 THE COURT: So both were in '17?

16 MS. ARORA: Yes, your Honor.

17 THE COURT: And when was he released? Was he confined
18 for any of them?

19 MS. ARORA: Ms. Erlich represented him on those issues.

20 THE COURT: Thank you, Ms. Erlich.

21 MS. MEGAN ERLICH: Thank you, Judge.

22 THE COURT: You're welcome.

23 MS. ERLICH: I actually represented Karseem on those
24 cases. He received an active YOA --

25 THE COURT: Mm-hmm.

1 MS. ERLICH: -- and received a three-year YOA because
2 originally the burg second was a burg first. And the
3 original incident date for that was 2015 --

4 THE COURT: Mm-hmm.

5 MS. ERLICH: -- when he was 16 years old.

6 THE COURT: But he got an active Y?

7 MS. ERLICH: He got an active Y. All -- he pled to all
8 of those at the same time in 2017 and received the three-year
9 active Y.

10 THE COURT: He got a YOA not to exceed three years?

11 MS. ERLICH: So it was a YOA not to exceed six on the
12 burglary --

13 THE COURT: Okay.

14 MS. ERLICH: -- and not to exceed five on the other. I
15 believe because it was a burg second violent at that time, he
16 had to serve three years.

17 THE COURT. Yeah, the statute says -- I thought the
18 statute said you had to serve five. Maybe it's three.

19 MS. ERLICH: It's three.

20 MS. ARORA: And your Honor, Christina Bigelow did email
21 these from the State, but I did not bring that. But I can
22 always --

23 THE COURT: Well, the only reason I ask is because you
24 have to calculate it from the release of confinement, which
25 would include when his parole ended, for the calculation

1 under Rule 609.

2 Okay. Are there going to be any photographs,
3 Mr. Simpson?

4 MR. SIMPSON: Yes, your Honor. At this point in time, I
5 believe with the defense's consent, the State would seek to
6 admit State's 1 through 10 as Court's exhibits for the
7 purposes of this hearing only.

8 THE COURT: Well, why would we need to admit them for
9 this hearing?

10 MR. SIMPSON: Oh, I just thought it's always good to
11 have Court's exhibits in the record.

12 THE COURT: If I -- I'll make them Court's exhibits at
13 the time I actually rule on them.

14 MR. SIMPSON: Okay.

15 THE COURT: But let me see them, please.

16 MR. SIMPSON: I'm handing you what's been marked for ID
17 only as State's 1 -- I'm sorry, 5, 6, 7, 9, 10, and one is
18 unmarked.

19 THE COURT: You said one is unmarked?

20 MR. SIMPSON: Yeah. We're going to make it 11.

21 Oh, I'm sorry. That's 8. My bad. So 5, 6, 7, 8, 9,
22 and 10.

23 THE COURT: Thank you.

24 MR. SIMPSON: And it would be our intention -- our
25 intention in trial to admit them in the form you see them

1 there, meaning --

2 THE COURT: In black and white.

3 MR. SIMPSON: -- in the black-and-white copies and with
4 the redactions that you're going to see on one photo.

5 THE COURT: For what purpose would you need Number 7?

6 MR. SIMPSON: Forgive me. Could I --

7 THE COURT: It's the back of his head.

8 MR. SIMPSON: Your Honor, when the EMS and the first --
9 when the victim's roommate found him and EMS first responded
10 and for quite a long time, they believed that this was a
11 medical event -- in other words, some kind of, like, brain
12 hemorrhage or something to that regard -- because of the fact
13 that the -- and acted accordingly because of the fact that
14 the gunshot wound was so hard to locate.

15 I'm going to believe that the two photographs that you
16 see there are illustrating just in one how you can't see the
17 bullet wound at all and how it would be very reasonable for
18 first responders to not consider this to be a murder because
19 of how difficult it is to see that bullet wound. And then in
20 the other, you can see sort of the hair being manipulated and
21 pulled back to where you can see it.

22 I think that's probative not only to explain and put
23 into context the manner in which this response took place --
24 i.e., things like the preservation of the crime scene or lack
25 thereof -- and the opinions of those that reacted to it, that

1 they would never think this guy would be the victim of a
2 murder because there was simply no reason for him to be.

3 And I think that rather than having a jury sit there and
4 think that these kinds of responses resulted in some form of
5 incompetence or ignorance or inability to do one's job, I
6 think their conclusions were very reasonable, and that's
7 illustrated by those photographs that show you cannot see a
8 bullet wound until you manipulate the back of the head and
9 really get looking at that specific spot for one, your Honor.

10 THE COURT: What's the purpose of Number 9? Looks like
11 there's blood all over the floor.

12 MR. SIMPSON: Yes, your Honor. The time of the death is
13 going to be a probative part of this case. The
14 black-and-white blood depicted in that image is used to show
15 what's obviously the coagulation of the blood, suggesting
16 that a period of time -- I mean, you can't time it like a
17 stopwatch, but certainly that amount of coagulation would
18 support the State's case that some period of time had taken
19 place between the murder and the point in time where --

20 THE COURT: Is that an issue?

21 MR. SIMPSON: -- the body was discovered.

22 Yeah. I think it's a very -- it will be a very --

23 THE COURT: No. I mean is this -- is that an issue?

24 MS. ARORA: I mean, your Honor, we know there is a
25 20-minute window between when Mr. David Conner, the victim,

1 got home and there's about 20, 25 minutes till when EMS gets
2 called. I don't -- and I can go into this more, but I don't
3 believe what is being presented is at issue in the case. We
4 agree that the victim was shot. We agree that he was shot in
5 that exact area behind his head.

6 THE COURT: Coagulation is a determiner of time.

7 MS. ARORA: Right.

8 THE COURT: The body has different stages. Blood has
9 different stages, some chemical sort of a -- I don't want to
10 say "reaction," but when time elapses, blood does certain
11 things. The body does certain things.

12 I'm concerned about the capacity this would have to
13 arouse a passion or -- I'm concerned about it.

14 And I'm also concerned about Number 10, why that would
15 be necessary. Isn't the medical examiner going to testify?

16 MR. SIMPSON: Yes, your Honor.

17 THE COURT: So why do we need it? If he can draw a
18 diagram, why do we need a picture?

19 MR. SIMPSON: Your Honor, so I thought it was a better
20 illustration to corroborate her testimony, but if you find it
21 doesn't meet the --

22 THE COURT: I think the Supreme Court has determined
23 that pictures are almost out --

24 MR. SIMPSON: Okay.

25 THE COURT: -- unless they're absolutely necessary. And

1 where you have a medical examiner that can draw a diagram and
2 show you what happened and show you where the wounds are.
3 And I've heard enough medical examiner testimony from those
4 at MUSC. They're very detailed. They have great diagrams.
5 They show you where -- you know, they tell you everything you
6 need to know about the cause, mode, and manner of death.

7 And based on the last case that just came out from the
8 Supreme Court, they pretty much -- you couldn't use pictures
9 in the guilt phase of a death penalty case.

10 MR. SIMPSON: Understood.

11 THE COURT: That's a good barometer. I mean, I think
12 you can see that there's been a trajectory over the last ten
13 years from pictures showing malice, to black-and-white
14 pictures showing malice, to no pictures and diagrams, to now
15 maybe you can use them in the penalty portion to show
16 aggravation. I just think that it creates an unforced issue
17 in trials that are unnecessary.

18 I don't think you need Number 10 to explain the medical
19 examiner's testimony. Of course, all these rulings would be
20 preliminary until I actually hear the testimony, but I don't
21 really think you need a picture showing where the bullet
22 entered because I think he can draw that on a diagram. And I
23 think people are astute enough about anatomy to know what
24 he's talking about.

25 MR. SIMPSON: Understood. And for our recordkeeping --

1 THE COURT: But I'm concerned about Number 9. I don't
2 know that -- and that's under advisement as well.

3 But if they raise the issue, Ms. Arora, you need to be
4 aware you may open the door to him because he has to prove
5 his case beyond a reasonable doubt, and you can't hamstring
6 him in proving that. You know, it cuts both ways. If you're
7 going to question what they did, they have the ability to
8 rehabilitate that issue.

9 So 9 and 10 are ID only at this time.

10 And I'm also concerned along those same lines about 7
11 and 8. I think that witnesses can testify that "When we came
12 to the scene, this is what we encountered and this was our
13 initial impression. We thought this was a medical issue. We
14 thought he could have" -- "and my words, not yours -- "We
15 thought he could have had a seizure. We thought he could
16 have had an aneurysm. We thought that, you know, that
17 something -- we didn't know what happened until we began to,
18 you know, examine the body and to render the aid. And 10 and
19 behold, we pulled his hair back and we saw a bullet wound."

20 I don't think you need pictures for that. And I don't
21 think you need pictures to demonstrate the reasonableness of
22 a medical professional's following what would be protocol to
23 corroborate that.

24 MR. SIMPSON: Understood.

25 THE COURT: I think that pictures like that tend to

1 arouse the passions of a jury. And it just -- you know, like
2 I said, they just create unforced errors you don't need.

3 Now, I would think there's no issue with Number 5.
4 That's just showing -- for what purpose are you offering
5 that? To show his shirt? I assume this is the deceased's
6 shirt.

7 MR. SIMPSON: The fact that the defendant knew the
8 precise company that the victim worked for is going to be a
9 very important part of this trial, so --

10 THE COURT: I'm assuming there's no issue with that
11 picture. I mean, what objection could you have to a picture
12 of a shirt?

13 MS. ARORA: Your Honor, I think if it's in black and
14 white, I --

15 THE COURT: It is in black and white.

16 MS. ARORA: Then that should be fine.

17 THE COURT: And then there's a picture -- I would assume
18 Number 6 is of the scene as it was found, and the defendant's
19 body is covered, redacted. I don't have any problem with
20 that picture. I would imagine the defense does not either.

21 MS. ARORA: Your Honor, I would just object, you know --

22 THE COURT: Based on -- ooh, I see the blood on the
23 wall.

24 MS. ARORA: The blood on the wall. I think that --

25 THE COURT: Can you redact that part too?

1 MR. SIMPSON: I can, your Honor. If that's your ruling,
2 I'd be happy to. I would just note for your consideration
3 that that --

4 THE COURT: What's that prove?

5 MR. SIMPSON: That blood on the wall becomes an
6 important marker for the positioning of the body as it's
7 found. The testimony from more than one witness should be --

8 THE COURT: You going to have a spatter somebody to talk
9 about it?

10 MR. SIMPSON: No, no, no. It's just that the
11 defendant's head was -- his feet were blocking the door. His
12 head was at the spot where the blood is on the wall.

13 THE COURT: Is there a question about that?

14 MR. SIMPSON: I didn't -- "

15 THE COURT: Are you going to question how the body was
16 found?

17 MS. ARORA: No, your Honor. We have no issues with how
18 the body was found.

19 MR. SIMPSON: We will submit that same photograph with
20 the blood redacted.

21 THE COURT: Okay. That works. But that may -- maybe
22 y'all may want to work on a stipulation about where the body
23 was found.

24 MR. SIMPSON: Okay. I still -- there's -- enough is
25 going to be talked about at the scene. My issue is I need a

1 picture of the scene.

2 THE COURT: I'm going to tell you ---

3 MR. SIMPSON: So I decided to use one.

4 THE COURT: -- I've been trying a lot of murder cases
5 back to back, and jurors are not -- they don't like --

6 MR. SIMPSON: Right. That's why I'm just using one.

7 THE COURT: They have visceral reactions. I've had
8 people, even during jury selection and during jury
9 qualification, say to me, "I don't want to see any blood."

10 MR. SIMPSON: I can redact it.

11 THE COURT: Yeah.

12 MR. SIMPSON: I'll just do a --

13 THE COURT: Which has been -- it's been a whole new
14 experience qualifying jurors here since COVID. People have
15 been very vocal about what they want to do and what they
16 don't want to do, what they want to see and what they don't
17 want to experience, which has been very interesting.

18 But I don't think -- I think if you all work out a
19 stipulation or if there's no contest about where the body was
20 found, then I think -- unless you have a splatter expert,
21 then I think it becomes sort of gratuitous.

22 MR. SIMPSON: We'll --

23 THE COURT: Yeah.

24 MR. SIMPSON: We'll redact it. Agreed.

25 THE COURT: So I think 5 would come in without

1 objection. And then 6, once the spatter is removed, without
2 objection.

3 And then 7 and 8 would be marked for ID only. And
4 that's subject, however, to the door not being opened and me
5 changing my mind about something that comes up that may make
6 it germane and necessary.

7 As well -- and Number 9 will be ID only. I haven't made
8 a decision on that.

9 And Number 10 will be ID only, unless, again, subject to
10 something being raised that makes it necessary for the
11 medical examiner to have to testify about that.

12 MR. SIMPSON: Thank you.

13 THE COURT: You're welcome.

14 MR. SIMPSON: May I keep these so I can better compare
15 them for the ruling until --

16 THE COURT: I'm going to need you to --

17 MR. SIMPSON: I'll leave them with the reporter. I'll
18 just write --

19 THE COURT: For now, yeah. And then during a break,
20 when I'm dealing with Mr. Lewis's client, you can go ahead
21 and -- or you can have somebody go ahead and make those
22 changes for you.

23 MR. SIMPSON: I'll have Kelly --

24 THE COURT: And then you can switch them out.

25 MR. SIMPSON: I'll have Kelly do it.

1 THE COURT: And actually, though, I'm going to need that
2 original with the splatter to be marked as a Court's exhibit.

3 MR. SIMPSON: Okay.

4 THE COURT: So I'm going to need that original package,
5 because 10 will be marked for ID only. 9 will be ID only at
6 this time. I have not made a complete ruling on that. 7 and
7 8 will be ID only, but I'll need those for the record, as
8 well as 10 and 9. And then 6, this blood spatter will be a
9 Court's exhibit, and the redacted one will come in as State's
10 6. And 5 will come in without objection -- both 5 and 6 come
11 in without objection.

12 (Court's Exhibit Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, and
13 10 marked for the record.)

14 MS. ARORA: And your Honor, just for the record, my
15 argument is based off of *State versus Nelson*, which you're
16 very familiar with since you just --

17 THE COURT: I'm sorry?

18 MR. SIMPSON: -- that you're familiar with since you
19 just took her plea again.

20 THE COURT: Oh. Yeah, that's the one I'm talking about
21 when they -- but there's another case that preceded that one
22 that's a death penalty case. And what they said was that
23 even in the guilt portion, that it shouldn't have pictures
24 that would invoke sympathy, passion, or prejudice. Anything
25 that would invoke the emotions of a jury versus them making a

1 decision that is factually based. But they did allow -- you
2 know, of course death penalty cases are different. They did
3 allow it in the penalty portion because it would go to
4 aggravation -- an aggravating circumstance.

5 All righty. That takes us then to statements of the
6 defendant. Are there any statements the State would be
7 seeking to introduce against Mr. Hardaway?

8 MR. SIMPSON: Yes, your Honor.

9 THE COURT: What would those statements be and where
10 would they -- who was -- let's start from square one. What
11 date would they have been made? Who did he make them to?
12 And what format? Were they recorded? Were they body-worn
13 camera? Were they written? You know what I'm trying to get
14 at.

15 MR. SIMPSON: Sure. Your Honor, on July 14, which is
16 the day following the murder --

17 THE COURT: Mm-hmm. July 14 of what year?

18 MR. SIMPSON: 2021.

19 THE COURT: Yes, sir.

20 MR. SIMPSON: Investigators Crocket and Jarrell from CPD
21 were going --

22 THE COURT: Spell Jarrell for me.

23 MR. SIMPSON: J-A-R-R-E-L-L. I'm pretty sure it's
24 double R and double L.

25 THE COURT: That's fine. I just need that for the court

1 reporter.

2 MR. SIMPSON: -- go to the location I think to do some
3 more canvassing and also talk to the defendant's sister
4 Tiffany Hardaway. As they pull up --

5 And again, I think all of this is uncontested. And if
6 I'm wrong, I'm sure Rachael will correct me.

7 As they walk up, they see Karseem Hardaway in the
8 driver's seat of a red Acura. Detective Crocket approaches
9 the passenger -- I mean the driver's side window to speak
10 with Karseem. Shortly after he begins this conversation with
11 Karseem, Detective Jarrell approaches at the passenger side
12 window and just stands there. He doesn't say much, but he is
13 just -- I'm sure they're going to point out -- standing at
14 the passenger side window.

15 Karseem says -- lets them know after some questioning
16 that he's on the way to the gym. They have a 9-minute -- a
17 9- to 10-minute conversation with Karseem, after which they
18 let him leave and go to the gym.

19 THE COURT: Mm-hmm.

20 MR. SIMPSON: So I don't think -- well, I'll --

21 THE COURT: Wait a minute. Say that for me one more
22 time. Start back and when he pulls up in the car.

23 MR. SIMPSON: Well, he's seated in his car, parked. He
24 has not pulled out yet.

25 THE COURT: Okay.

1 MR. SIMPSON: Detective Crocket walks up to his window.
2 He rolls down the window and they have a conversation.
3 Shortly after that conversation begins, a second detective
4 walks and stands next to the passenger window. They have
5 what we would --

6 I should note, right now we -- right as you came out,
7 your Honor, we emailed a link to this video. It's only about
8 9 and a half minutes long. But it was emailed to Chanda and
9 your --

10 THE COURT: It might be too large. We'll see.

11 MR. SIMPSON: It's a link to the online body cam --

12 THE COURT: Oh, okay.

13 MR. SIMPSON: -- so it should be able to do it.

14 THE COURT: Yeah, we'll see if they -- yeah.

15 MR. SIMPSON: Karseem says he's going to the gym. After
16 about a 9-and-a-half-minute conversation, he leaves and goes
17 to the gym. Our argument should be fairly predictable at
18 this point, that that sort of encounter is not one that
19 triggers a constitutional need for Miranda warnings. It was
20 a --

21 THE COURT: What did they ask him?

22 MR. SIMPSON: I have a transcript of the entire
23 interview.

24 THE COURT: Tell me in a nutshell what they asked him.

25 MR. SIMPSON: "Were you at" --

1 THE COURT: And how does he inculcate himself?

2 MR. SIMPSON: Oh. It's --

3 THE COURT: And why is the conversation relevant?

4 MR. SIMPSON: Okay. That's asking a lot.

5 THE COURT: I know.

6 MR. SIMPSON: He's asked --

7 THE COURT: Want to take it a step at a time?

8 MR. SIMPSON: Yeah. Sure.

9 THE COURT: What did they ask him?

10 MR. SIMPSON: "Why are you in the area? Who do you know
11 in the area? Were you here last night when the murder
12 occurred? What time did you leave yesterday? What are you
13 up to now?"

14 It becomes to be some of our most probative evidence,
15 your Honor, because he's then shown a still photograph taken
16 from the Ring cam of his sister's apartment that had been
17 obtained earlier that morning that shows him leaving his
18 sister's apartment at 5:04. When he's shown that, he says
19 essentially that he left after -- you know, that's a video of
20 him leaving and that's when he left the area; that's why he
21 didn't see anything, didn't hear anything.

22 THE COURT: What led them to talk to him?

23 MR. SIMPSON: Your Honor, the night before -- they had
24 already obtained a voicemail message the night before the
25 murder. So what we're talking about here is Monday, Tuesday,

1 Wednesday.

2 THE COURT: Mm-hmm.

3 MR. SIMPSON: This conversation is happening on
4 Wednesday. The murder happened on Tuesday.

5 Monday night, the night before the murder, the victim
6 calls the front office of the property management company and
7 says, "I just had a -- I'm calling because I really need some
8 help over" -- I'm paraphrasing, but "I'm calling because I
9 need some help. I just had a confrontation with a neighbor
10 outside my door on the phone who was talking too loudly. I
11 told him to quiet down or move to another area, and he told
12 me to" -- pardon my language -- "go fuck myself." And then
13 the victim says on this message, "I'm worried about how this
14 conversation ended. I really need somebody to address this."

15 THE COURT: And what did they do?

16 MR. SIMPSON: End of conversation.

17 The property management company did not receive that
18 message. No one heard it until after his death. But what
19 happened is this person who left this complaint showed up to
20 his apartment the next day after work and was shot in the
21 back of the head as he entered his apartment.

22 THE COURT: So that's how -- so we're back to my
23 original question.

24 MR. SIMPSON: Right.

25 THE COURT: How did the police decide to talk to him on

1 that particular day at that particular time?

2 MR. SIMPSON: They were actually going to -- well, for
3 one, I should say that in the three days that followed this,
4 they were talking to every single human being they could find
5 anywhere --

6 THE COURT: Yeah. They were canvassing.

7 MR. SIMPSON: -- near there. He was one. And as you'll
8 see when you watch the video of this encounter, he was one of
9 a lot of people that they were speaking to.

10 THE COURT: Well, I've had them --

11 MR. SIMPSON: But --

12 THE COURT: I've had them come to my house and ask
13 me some --

14 MR. SIMPSON: Right.

15 THE COURT: You know, to go through the whole
16 neighborhood and say, "Does anybody have any camera footage?
17 And can we look at your camera footage?"

18 MR. SIMPSON: And that's a great segue because I don't
19 want to miss -- you know, not be transparent with the Court.
20 They had seen a Ring camera. You know, in other words, the
21 last person that they knew was at the scene of this murder
22 was Karseem Hardaway. They already knew that from the Ring
23 camera of him leaving his sister's apartment.

24 THE COURT: Okay.

25 MR. SIMPSON: And the layout of this is there's a

1 breezeway with three apartments in it, three apartments right
2 next to each other.

3 THE COURT: Mm-hmm.

4 MR. SIMPSON: One of those three apartments is -- I'll
5 call it Karseem's, although it's actually his sister's
6 apartment. Karseem's -- it's his sister's where he stays
7 pretty frequently, it seems.

8 THE COURT: Mm-hmm.

9 MR. SIMPSON: The other apartment in the short breezeway
10 is the victim's.

11 THE COURT: So within that timeframe --

12 MR. SIMPSON: So within that timeframe --

13 THE COURT: -- they saw him on the camera.

14 MR. SIMPSON: -- they knew he was the last person to
15 walk by this camera --

16 THE COURT: Mm-hmm.

17 MR. SIMPSON: -- until the murder.

18 THE COURT: Was her house the only house that had a Ring
19 camera in those three apartments --

20 MR. SIMPSON: Yes.

21 THE COURT: -- or did anybody else have a Ring camera?

22 MR. SIMPSON: Yes, her house was the only one with a
23 Ring camera.

24 THE COURT: Okay. So pretty much they suspected that he
25 was the last person to see -- potentially to have seen the

1 deceased.

2 MR. SIMPSON: Potentially. So they're very interested,
3 and so --

4 THE COURT: And they want to see if he saw something.

5 MR. SIMPSON: Yes. That's the -- at this point in the
6 early stage of the case, that is basically where they're at.

7 But they have him leaving at 5:04, and this crime, which
8 we -- again, is what we were discussing with the pictures --
9 we can pinpoint this crime, we believe, to right at about
10 5:32, to that -- almost within the minute. And so you've got
11 this weird gap of him leaving at 5:04 and the murder not
12 occurring until 5:32. So the police are talking to him
13 because they're very interested about that gap and if Karseem
14 did, in fact, as he said, leave at 5:04 or if there's more to
15 the story than that, which was later proved to be the case,
16 your Honor.

17 THE COURT: And so what does he say that inculcates
18 himself?

19 MR. SIMPSON: He says he left at 5:04. He says he never
20 heard anything, he never saw anything. He says he's going to
21 the gym and gives a specific gym, which would come later to
22 -- into the collection of later evidence against him.
23 Essentially in a nutshell, your Honor, we believe -- as is
24 always relevant in a crime, we believe that he was untruthful
25 to the police, and later evidence is going to show that he

1 was. That conversation is probably one of our most
2 probative.

3 THE COURT: Had they already identified him as a
4 suspect?

5 MR. SIMPSON: I think a "suspect" would be stating it
6 strongly, but I think certainly a person of interest would be
7 accurate because he was the last person they knew was in the
8 area at that time.

9 THE COURT: And exactly what statements would you be
10 seeking to introduce?

11 MR. SIMPSON: The entirety of the video, your Honor,
12 that we emailed to you.

13 THE COURT: So they have him on body-worn camera?

14 MR. SIMPSON: Yes, your Honor. Everything that -- the
15 entirety of this interaction that we're discussing was on --
16 9 and a half minutes on body-worn camera. And a link to that
17 footage has been sent to your clerk and Chanda.

18 THE COURT: And so in this communication, he basically
19 outlines what he did from the time he was last seen on the
20 Ring camera throughout the rest of this evening, is what
21 you're saying in a nutshell, and that he saw nothing, heard
22 nothing.

23 MR. SIMPSON: He said he saw nothing, heard nothing,
24 there was nothing unusual that he perceived. He left at --
25 you know, the video of him leaving the apartment at 5:04 is

1 him leaving the area. He leaves the area at 5:04.

2 THE COURT: a.m. or p.m.? I have a.m.

3 MR. SIMPSON: p.m.

4 THE COURT: p.m.

5 MR. SIMPSON: And as will come later in the trial --

6 THE COURT: And what time is it alleged that this
7 individual was --

8 MR. SIMPSON: 5:32.

9 THE COURT: 5:32 p.m.?

10 MR. SIMPSON: Yes.

11 And evidence that -- well, sources of evidence we have
12 to --

13 THE COURT: So the deceased's apartment was here --

14 MR. SIMPSON: Mm-hmm.

15 THE COURT: -- the apartment in the middle.

16 Mr. Hardaway's sister's apartment?

17 MR. SIMPSON: It's two apartments right across the hall
18 from each other. That's --

19 THE COURT: Like this?

20 MR. SIMPSON: Yeah. That's Mr. Hardaway's sister and
21 then just a person.

22 THE COURT: Mm-hmm.

23 MR. SIMPSON: The victim's apartment is down the
24 breezeway.

25 THE COURT: So the camera would not have caught --

1 MR. SIMPSON: Yeah, the camera's view would be across
2 the hallway.

3 THE COURT: But it wouldn't be down --

4 MR. SIMPSON: So it's anybody that comes in and out,
5 yeah.

6 THE COURT: But you wouldn't have caught what happened
7 down the --

8 MR. SIMPSON: No. No.

9 THE COURT: And it wouldn't have -- since no human being
10 would have triggered it, you would not have caught any --
11 well, on the live recording it wouldn't have caught sound?

12 MR. SIMPSON: No. Unless it was deleted.

13 THE COURT: This was in 2020. Those cameras have
14 advanced quite a bit.

15 All right. Is there an objection to the use of this
16 footage?

17 MS. ARORA: Your Honor, we would object.

18 THE COURT: What would be the basis of the objection?

19 MS. ARORA: My reasoning is, you know, Miranda wasn't
20 given, so we're just looking at, Was the statement given
21 voluntarily?

22 I'm concerned about the placement of the officers.
23 Detective Crocket walks up to my client as he's sitting in
24 the driver's seat, kind of leaning over and peering down.
25 Detective Jarrell is on the other side of the passenger seat

1 over here, standing here. My client is young. He's in his
2 early 20s. I don't know if he would have felt free to leave
3 at that point.

4 THE COURT: Does your client -- yeah, he has a -- but
5 this would not have been his first encounter with police, was
6 it?

7 MS. ARORA: No. As you heard, he was arrested before.
8 It's not his first encounter.

9 THE COURT: I'm sorry. Say that one more time.

10 MS. ARORA: As you heard, he was arrested before. So it
11 was not his first encounter.

12 THE COURT: It wasn't his -- is his only record the
13 burglary second and the B and E motor vehicle and financial
14 transaction card theft? Or does he have more record than
15 that?

16 MS. ARORA: Your Honor, that's my understanding of his
17 convictions.

18 THE COURT: That's the extent of his record? But how
19 many other interactions had he had with police?

20 MS. ARORA: Your Honor, prior to this, he was arrested
21 in May of 2021, and that just --

22 THE COURT: So this wouldn't have been his first time
23 interacting with the police then.

24 MS. ARORA: Right. You know, I would still contend that
25 you would have to prove that it was made voluntarily. I

1 think at this point --

2 THE COURT: You would have to prove that he was in
3 custody. You have to prove he was subject to Miranda. You
4 have to prove that his ability to leave was restricted.
5 Everybody that gets talked to by the police is not entitled
6 to be Mirandized, even if you're a person of interest. So
7 you have to prove that this was a custodial interrogation.
8 And it is your burden, not theirs.

9 MS. ARORA: Okay. I understand, your Honor.

10 THE COURT: So he had a voluntary -- I haven't watched
11 the video. And I'm going to watch it, but I'm trying to
12 figure out -- I guess I'm -- and until -- I plead ignorance
13 to some extent because y'all know this case; I don't, so I
14 don't know how all the puzzle pieces fit together yet. So I
15 really don't know -- even if I were to rule that the
16 statement was admissible, Ms. Arora still could object to it
17 on relevance. You know, there are other grounds, and I
18 wouldn't know that until I hear it in its context.

19 MR. SIMPSON: Understood.

20 THE COURT: Yeah.

21 MR. SIMPSON: And it's for you to think about until that
22 point. Our --

23 THE COURT: Well, I'm going to watch the video. I mean,
24 do we need to have testimony on that, or is the video
25 dispositive?

1 MS. ARORA: Your Honor, I believe if you watch the
2 video, that will show the interaction.

3 THE COURT: So we don't need to have witnesses on that
4 then?

5 MR. SIMPSON: Agreed.

6 THE COURT: And y'all both stipulate to me watching the
7 video and making a decision based on that?

8 MR. SIMPSON: Yes.

9 MS. ARORA: Yes.

10 THE COURT: Okay.

11 MR. SIMPSON: And as to relevance, your Honor, the
12 thrust of the State's argument -- I mean, well, just to mull
13 over before we get there --

14 THE COURT: Yeah, absolutely.

15 MR. SIMPSON: -- to that point in trial -- is we think
16 the evidence is really going to show that he is lying about
17 his whereabouts at the time of the murder because we're going
18 to -- I believe, anyway -- prove pretty extensively that he
19 did not leave at 5:04; he waited for the victim in the back
20 parking lot and left at 5:35, according to --

21 THE COURT: You got cell phone records?

22 MR. SIMPSON: -- phone location, tower records, video of
23 a car leaving. You know, that's subject to other motions,
24 obviously.

25 THE COURT: The only reason I made that observation is

1 because even though I'm making a threshold determination by a
2 preponderance of the evidence, whether -- this is several --
3 it's an inquiry that has several stages. The first part of
4 that inquiry is whether Miranda was required. But once I
5 make that analysis, if you can establish by a preponderance
6 of the evidence that it comes in, that's just one level of an
7 inquiry. That's all I'm saying. I'm not saying that she's
8 precluded from making other objections.

9 MR. SIMPSON: Understood, your Honor. Thank you.

10 THE COURT: Yeah. Okay. So I will watch the video, and
11 then I will be ready to --

12 I will tell you, however, based on what you all have
13 been saying to me up to this point, that what would be
14 controlling would be Miranda and whether he was in fact in a
15 custodial interrogation. The United States Supreme Court has
16 been very clear, as cited by our Supreme Court, that to
17 determine if someone was in custody -- which is what would
18 trigger Miranda -- that I have to look at the surrounding
19 circumstances. And then given those circumstances, would a
20 reasonable person have felt he or she was not at liberty to
21 terminate the interrogation and leave?

22 And there is no single factor that the Court looks at.
23 But our Supreme Court and the United States Supreme Court has
24 been very clear that just because you are a person of
25 interest, even if the police have identified you as a

1 suspect, that doesn't trigger Miranda.

2 So I'll just give that to you as food for thought. But
3 I'm going to watch the video.

4 Okay. Now, we've already dealt with the photographs.

5 Okay. I would imagine you all can agree to sequester
6 the witnesses, with the exception of the victims and the case
7 agent. Is that a reasonable assumption on my part?

8 MR. SIMPSON: It is, your Honor. And the case agent is
9 Detective Daniel Wilson, and the only victim we think falls
10 within the statutory definition is Vicki Conner, who is the
11 deceased's spouse.

12 THE COURT: Okay.

13 MS. ARORA: And your Honor, we consent to that.

14 THE COURT: Okay. So then I will mark that motion
15 resolved.

16 MS. ARORA: Your Honor, I just want to clarify if our
17 investigator, Samantha Fallon, needs to be sequestered or if
18 she can sit in.

19 THE COURT: I don't know. If y'all agree to it, it
20 doesn't matter to me.

21 MR. SIMPSON: We agree that she can remain.

22 THE COURT: Okay.

23 Now, are you still moving to suppress the Ring video?

24 MS. ARORA: Your Honor, there's two different motions.
25 One is Ring video on Tiffany Hardaway's phone and another is

1 just Ring video that was provided through a search warrant.

2 MR. SIMPSON: And for ease --

3 THE COURT: I only have one motion. It says "Motion to
4 Suppress Ring Video." It was filed 3/13/24. And as you
5 know, videos are self-authenticating. So unless you have
6 some indication to me that this video has been hypothecated
7 in some way -- and we know Ring, you pay for it. It goes to
8 the Cloud, they say, unless you delete it.

9 MS. ARORA: Your Honor --

10 THE COURT: Yeah.

11 MS. ARORA: -- my argument is not so much as to the
12 video authentication. My argument falls under there's two
13 videos that the State alleges were used to see what appears
14 to be my client walking out of his sister's apartment --

15 THE COURT: Okay.

16 MS. ARORA: -- with what appears to be a gun in his
17 pants pocket.

18 THE COURT: Well, isn't that something for y'all to
19 argue? That doesn't have anything to do with the
20 admissibility of video, does it?

21 MS. ARORA: Well, I just would not like those two videos
22 to come in. I think they would be -- I think the State would
23 try to bring them in under prior bad acts --

24 MR. SIMPSON: No.

25 MS. ARORA: -- to show that --

1 THE COURT: No. It would be res gestae. It would be --
2 well, let me take that back. What date -- let's start at the
3 beginning. I jumped in traffic when I started.

4 So what videos are you seeking to introduce from the
5 Ring camera?

6 MR. SIMPSON: Thank you, your Honor. We would be -- in
7 dispute, I believe -- so there's --

8 THE COURT: What videos would you be seeking to use from
9 the Ring camera?

10 MR. SIMPSON: Karseem arriving home at --

11 THE COURT: I need to know the date and time.

12 MR. SIMPSON: I will.

13 THE COURT: Yeah.

14 MR. SIMPSON: Starting from July 12 -- this is the
15 evening before the murder --

16 THE COURT: Mm-hmm.

17 MR. SIMPSON: -- Karseem arriving to his sister's house.

18 THE COURT: Is that '21?

19 MR. SIMPSON: '21, your Honor, yes.

20 THE COURT: Mm-hmm. Time?

21 MR. SIMPSON: 6:16 p.m. I believe this video is
22 uncontested.

23 THE COURT: Do you have an objection to that video?

24 MS. ARORA: No objection to this video.

25 THE COURT: Okay. So then that video is without

1 objection.

2 And what's the next one you'd be seeking to use?

3 MR. SIMPSON: 8:00 p.m.

4 THE COURT: Same date?

5 MR. SIMPSON: The same date.

6 THE COURT: 7/12/21. At what time?

7 MR. SIMPSON: 8:00 p.m.

8 THE COURT: And what does that purport to show?

9 MR. SIMPSON: Karseem leaving the apartment wearing dark
10 sweat pants with a gun in his left pocket.

11 THE COURT: That's your contention.

12 MR. SIMPSON: Yes.

13 THE COURT: What's -- is there any objection to that
14 video?

15 MS. ARORA: Yes, your Honor.

16 THE COURT: What's the basis?

17 MS. ARORA: I am objecting on 404(b) South Carolina
18 Rules of Evidence, and then subsequently 403 of it as well as
19 under 404(b).

20 THE COURT: How is that a prior bad act?

21 MS. ARORA: Your Honor, I'm believing they're trying to
22 show that my client has access to guns and --

23 THE COURT: This is alleged to have taken place on what
24 date?

25 MR. SIMPSON: The 13th.

1 THE COURT: The next day, right?

2 MR. SIMPSON: Yes, your Honor.

3 THE COURT: At 5:32 p.m.?

4 MR. SIMPSON: Yes, your Honor.

5 THE COURT: This is within 12 hours or less.

6 MS. ARORA: It's my contention that it would be used
7 under 404(b) to show --

8 THE COURT: Is it obvious it's a gun?

9 MR. SIMPSON: The State believes so.

10 MS. ARORA: The State believes so, that it looks like a
11 gun.

12 THE COURT: I'm asking you. Is it obvious it's a gun?

13 MS. ARORA: Your Honor, looking at it, I believe it
14 looks like a gun to me.

15 THE COURT: Okay. So just because it's inculpatory --
16 all evidence the State is going to offer against your client
17 is prejudicial.

18 MS. ARORA: Right.

19 THE COURT: I would take that one under advisement until
20 they seek to introduce it so I can know the -- how -- what
21 the theory of the case is. But I can tell you it's probably
22 going to come in. There's no good-faith basis. You're not
23 objecting to the authenticity. You can argue it's not a gun.
24 It happened within 12 hours of this incident. It really
25 arguably is within the res gestae of this incident, a

1 continuum of events. And it's access to a weapon within 12
2 hours of this individual being killed. It's probably going
3 to come in. But I'm going to take it under advisement.

4 I mean, it is not a prior bad act under the -- and even
5 if it were, it could go to motive, intent, absence of
6 mistake. It could come under almost every category of that.

7 MS. ARORA: Your Honor --

8 THE COURT: Yeah.

9 MS. ARORA: Your Honor, I would argue it's within 24
10 hours for the one at 8:00 p.m. And then I would just say
11 it's --

12 THE COURT: That's still close enough in timeframe for
13 me. I'm not good at math. Y'all know that. That's why I
14 got a law degree.

15 This happened at 8:00 p.m. on -- we're talking about
16 7/12 at 8:00 p.m. This happened at 5:32. So 24 hours would
17 be 8:32, so it's shy of 24. Twelve hours would be 8:00 a.m.
18 the next morning. This happened at 5:32. It's close enough.

19 MS. ARORA: Your Honor, just for the record I would
20 say --

21 THE COURT: Mm-hmm.

22 MS. ARORA: -- if it's allowed in under 404(b) that it
23 would not be allowed in under 403. I would say it's
24 prejudicial. I think it's --

25 THE COURT: It's probative. It makes an issue of

1 consequence more or less probable. And its probative value
2 is not outweighed by its potential prejudice.

3 But I'll take it up when they actually seek to introduce
4 it. But I'm just giving you a heads up it's probably going
5 to come in.

6 MS. ARORA: Thank you, your Honor.

7 MR. SIMPSON: Um --

8 THE COURT: Yeah.

9 MR. SIMPSON: Just to give a complete record, at 8:03
10 p.m., there's another video that's not in contention.

11 THE COURT: And which one is -- tell me the date again.

12 MR. SIMPSON: This is July 12 at 8:03 p.m., and it's
13 just Karseem returning from his car.

14 THE COURT: Wait just a second. My pen ran out of ink.
15 7/12/21. At what time?

16 MR. SIMPSON: 8:03:17 p.m.

17 THE COURT: And that is?

18 MR. SIMPSON: Karseem returning with his clothes and a
19 toothbrush. I don't think it's in controversy.

20 THE COURT: Back to the sister's apartment?

21 MR. SIMPSON: Yeah.

22 THE COURT: And there's no exception to that?

23 MS. ARORA: No, your Honor.

24 MR. SIMPSON: And then at 6:07 --

25 THE COURT: What are these marked as? I need to know

1 the numbers.

2 But go ahead and finish that, and then we'll go back and
3 see what the numbers of these are.

4 MR. SIMPSON: Okay. And then Karseem leaving the
5 apartment --

6 THE COURT: What date is that?

7 MR. SIMPSON: July 13, the day of the murder, at
8 6:07 a.m. I would describe --

9 THE COURT: Is there an objection to that?

10 MS. ARORA: Yes, your Honor.

11 THE COURT: What does it describe?

12 MS. ARORA: Raising the same --

13 THE COURT: What does it purport to show?

14 MS. ARORA: -- as before. It shows what appears to be
15 my client leaving with what appears to be a gun on his
16 waistband.

17 THE COURT: Is that correct?

18 MR. SIMPSON: It is.

19 THE COURT: Is it visible?

20 MR. SIMPSON: I -- it -- I would -- just in order to be
21 transparent with the Court, I think it's less clear than the
22 previous one. But we would also be arguing that he has what
23 appears to be a gun in his left pocket when he leaves the
24 morning of the murder in that video.

25 THE COURT: And that's a little over 12 hours after.

1 What type of gun is it supposedly that he --

2 MR. SIMPSON: Well, that's relevant to some of our other
3 cases. This firearm -- the shell casing collected on
4 scene --

5 THE COURT: Uh-huh.

6 MR. SIMPSON: -- is a 10-millimeter handgun.

7 THE COURT: Mm-hmm.

8 MR. SIMPSON: And I'm sort of jumping to an objection
9 argument in a few minutes.

10 The 10-millimeter handgun, we're going to have
11 representatives of the ATF come testify that that is a very
12 uncommon firearm to be used in a street crime. They've run
13 the numbers for the previous year, the previous three years,
14 and the previous five years. And in that data set of guns
15 the ATF has traced in Charleston -- in the Lowcountry; not
16 just Charleston -- in the entire Lowcountry, the use of a
17 10-millimeter in tracing is about 1 percent.

18 THE COURT: Is that the gun -- is that case -- is that
19 what killed this gentleman?

20 MR. SIMPSON: Yes. And --

21 THE COURT: And did y'all ever find a gun on
22 Mr. Hardaway?

23 MR. SIMPSON: We did not, but we will be arguing in a
24 few moments that there are two videos from his phone and
25 various social media accounts that show him displaying a gun

1 where it's very clearly going to be identified as a
2 10-millimeter handgun. I believe the defense is also asking
3 that we -- you suppress that.

4 THE COURT: Well, I'll have to see what timeframe that
5 is that he posted those pictures.

6 MR. SIMPSON: Okay. And we'll share that with you.

7 On both points --

8 THE COURT: But I need to stick with these videos right
9 now.

10 MR. SIMPSON: Okay. On --

11 THE COURT: So 7/13/21, you say it's less clear.

12 And is your basis of the objection the same thing,
13 Ms. Arora?

14 MS. ARORA: It's the same as what I just argued.

15 THE COURT: Yeah. I think I'm -- even if it were to be
16 considered live, it would come in under one of the
17 exceptions. And it's clearly probative.

18 So I'll take it under advisement until they seek to
19 introduce it and the foundation is laid and then we'll go
20 from there. But just as a heads up, it's probably going to
21 come in.

22 MS. ARORA: Thank you, your Honor.

23 THE COURT: So does that deal with all the Ring camera
24 videos?

25 MR. SIMPSON: That deals with that portion, yes.

1 MS. ARORA: Yes, your Honor.

2 THE COURT: So does that --

3 MR. SIMPSON: Oh, um --

4 THE COURT: Does that deal with --

5 MR. SIMPSON: No.

6 THE COURT: -- the entirety of your Ring camera motion?

7 MS. ARORA: Yes, your Honor.

8 MR. SIMPSON: I want to point out, Ms. Arora noted two
9 motions, and you said you didn't have a copy of one of them.

10 THE COURT: Actually --

11 MR. SIMPSON: That's not an issue because we are
12 consenting -- this -- her other motion, which is titled
13 "Motion to Suppress Ring Video from Tiffany Hardaway's
14 Phone" --

15 THE COURT: Wait. Let me see if I have that.

16 Yeah, I have that one.

17 That's been resolved?

18 MR. SIMPSON: With the slight caveat that always exists,
19 which is that if something happens in trial that opens some
20 door that we don't foresee, I may bring it up. But as it
21 stands today, I am not seeking at all to admit this video.
22 So I don't think it would be a real good use of our time to
23 argue the point.

24 THE COURT: Is that correct?

25 MS. ARORA: Yes, your Honor. That's correct.

1 THE COURT: I'll mark that one resolved.

2 So we've dealt with both of the Ring cameras then,
3 correct?

4 MS. ARORA: Yes, your Honor.

5 THE COURT: Okay.

6 Motion -- you don't plan to introduce prior arrests of
7 the --

8 MR. SIMPSON: Oh, that's also been resolved. No, we do
9 not.

10 THE COURT: Okay. I will mark this resolved.

11 MR. SIMPSON: There is a -- of note, just to be
12 thorough, in one arrest he actually gets pulled over because
13 they have a search warrant to seize his phone, and they find
14 some things and arrest him for it during that. I will, of
15 course, be talking about the seizure of the phone, but I'm
16 not going to mention --

17 THE COURT: Yeah. I would think --

18 MR. SIMPSON: -- any of the other stuff.

19 THE COURT: Now, that would be prior bad acts not the
20 subject of --

21 MR. SIMPSON: Or that he was arrested.

22 THE COURT: All right. That then takes us to -- okay.
23 According to -- okay. According to my stack of what I have
24 left, I have a motion to suppress Google account evidence, I
25 have a motion to suppress iPhone phone evidence, and I have a

1 motion to suppress Verizon search warrant evidence. Which
2 one -- what order do y'all want to take them?

3 MS. ARORA: Your Honor, did you mention the motion to
4 suppress the gun videos on the phone as well?

5 THE COURT: I don't have that.

6 MS. ARORA: I have an extra --

7 THE COURT: Is there a motion for that?

8 MS. ARORA: I have --

9 THE COURT: Bear with me. You got an extra copy?

10 MS. ARORA: Mm-hmm. And this goes specifically to
11 what's on the --

12 THE COURT: Thank you. I'm sorry. My arms are short.
13 I'm sorry.

14 Okay. This was filed 3/13, a motion to suppress videos
15 from phone. Let's deal with that before we deal with these
16 others. And then what we'll do is we'll deal with the search
17 warrant, then the iPhone phone evidence, and then the Google
18 account evidence.

19 All right. So what's the basis of the -- well, first
20 let's ask this question. Is there something from his phone
21 that you're going to be seeking to introduce?

22 MR. SIMPSON: Yes, your Honor.

23 THE COURT: Uh-huh. I'm sorry. I didn't hear your
24 answer.

25 MR. SIMPSON: Yes, your Honor.

1 THE COURT: And what is it that you would be seeking to
2 introduce?

3 MR. SIMPSON: The Court's indulgence. I want to have
4 the dates ready for you.

5 THE COURT: You want to put it up on the screen and show
6 it to me?

7 MR. SIMPSON: I think I can do that.

8 THE COURT: You know, come to think of it, we could have
9 watched that other video together too. I forget all this
10 technology we got in here that we could be using. We could
11 watch the -- we could watch that 9-and-a-half-minute
12 body-worn camera video together. Are you tapped into the --

13 MR. SIMPSON: I have the connection. I may need some
14 assistance here.

15 THE COURT: Yeah, you went into my virtual courtroom, I
16 think.

17 Oh, that's for -- oh, do we need a witness we were going
18 to have to take -- is there a witness we're going to have to
19 take virtually?

20 MR. SIMPSON: We can -- yes.

21 THE COURT: Who is that?

22 MR. SIMPSON: Well, his testimony just got culled down
23 considerably.

24 THE COURT: Is that the --

25 MR. SIMPSON: We might excuse him. I don't know.

1 Detective Crocket gave the interview, but it's all on video.
2 We've already resolved that matter.

3 THE COURT: Okay.

4 MR. SIMPSON: He also -- what you're going to hear from
5 Detective Wilson -- this is the lead case agent --

6 THE COURT: Mm-hmm.

7 MR. SIMPSON: -- is that he and several detectives were
8 working on this case and working up the warrants. Detective
9 Wilson was probably the primary party in the drafting of the
10 warrants.

11 THE COURT: Mm-hmm.

12 MR. SIMPSON: But some of his people assisting him, who
13 are familiar with the facts and can swear to them --

14 THE COURT: Mm-h m.

15 MR. SIMPSON: -- took the warrant to a magistrate,
16 presented it, and had the magistrate sign it.

17 THE COURT: Mm-hmm.

18 MR. SIMPSON: I think -- I don't want to put --

19 THE COURT: Well, Judge McCoy would have had to sign it
20 because if it deals with records, it's the Federal Closed
21 Storage Act. Only a court of record can sign those.

22 MR. SIMPSON: There are a couple she did. She did --

23 THE COURT: Mm-hmm. I saw those.

24 MR. SIMPSON: And I don't want to put words in
25 Ms. Arora's mouth, but I think the real concern with this

1 online witness is that he would just say that "I didn't
2 supplement those warrants in any way verbally to the
3 magistrate."

4 THE COURT: Do we need a --

5 MR. SIMPSON: And I'll stipulate to that, that there was
6 no stipulation -- I mean there was no verbal augmentation of
7 the warrant.

8 MS. ARORA: I think if we would stipulate as to the
9 warrant testimony provided --

10 THE COURT: I mean, though, do you need the witness?
11 Because he's waiting.

12 MS. ARORA: No. If we can stipulate to --

13 MR. SIMPSON: Yeah. And I --

14 THE COURT: So we can let him go on about his day?

15 MR. SIMPSON: We can. I'm happy to stipulate to that.

16 THE COURT: What's the witness's name again?

17 MR. SIMPSON: Detective Crocket.

18 THE COURT: I'm having my clerk send a message to him in
19 the chat that he's released, that we appreciate his patience,
20 and have a good day.

21 MR. SIMPSON: Similarly, we have in the courtroom with
22 us Detective Nicole Quick with the Charleston Police
23 Department.

24 THE COURT: Do we need her?

25 MS. ARORA: Your Honor, if they're stipulating no oral

1 testimony, I think she can leave.

2 MR. SIMPSON: She didn't say --

3 THE COURT: Have a wonderful day.

4 MR. SIMPSON: And I think --

5 THE COURT: We appreciate your patience. We were
6 delayed a little bit this morning. Apparently when the
7 clerk's office sent the email for transport, it bounced back
8 last night sometime and they didn't get it. So they had to
9 go back and get Mr. Hardaway, and that threw us behind this
10 morning. So we appreciate your patience.

11 So we can release her?

12 MR. SIMPSON: Yes, from the State's point of view.

13 Your Honor asked me what part of --

14 THE COURT: If you need a break, let me know, Jamie.

15 Pardon me?

16 MR. SIMPSON: -- seeking to admit.

17 THE COURT: I want to -- yeah, I want to see what you
18 want to get in.

19 MR. SIMPSON: Okay. Okay.

20 THE COURT: We can all watch it together.

21 MR. SIMPSON: We're going to hear testimony from the
22 digital evidence unit that this video was created on
23 Karseem's phone by Karseem -- I mean on Karseem's phone on
24 July 3. This video is very -- it's very short, your Honor.

25 THE COURT: Yeah, play it.

1 MR. SIMPSON: But I -- this is not exactly clear, your
2 Honor.

3 THE COURT: According to the motion, it says there's one
4 on July 3 and one July 19, 2021.

5 MR. SIMPSON: Yes. And so our purpose of admitting
6 these videos is, again, the gun in both of these videos.

7 THE COURT: Let me watch them and then I'll hear
8 argument.

9 MR. SIMPSON: Okay.

10 THE COURT: Yeah.

11 MR. SIMPSON: I am not sure how to --

12 THE COURT: You need help? Or you got it?

13 MR. SIMPSON: I am certain this is user error, but I
14 can't get the video screen to come up.

15 (Clerk of the Court assisted with technology.)

16 MR. SIMPSON: Oh, thank you.

17 And it's very short, your Honor.

18 THE COURT: Okay.

19 (Video played in open court.)

20 THE COURT: And what date was that again? That's the
21 one from July 3?

22 MR. SIMPSON: July 3. Here's another from --

23 THE COURT: And is that supposed to be the 10-millimeter
24 gun that the ATF is going to identify?

25 MR. SIMPSON: You -- if paused, you can read the serial

1 number on that gun.

2 THE COURT: But is that what the witness is going -- is
3 that what you're calling the witness --

4 MR. SIMPSON: Yes. The witness -- two witnesses are
5 going to testify that a trace was run on the serial -- not
6 only does it say "10 millimeter" on the side of it --

7 THE COURT: Mm-hmm.

8 MR. SIMPSON: -- but they also ran the serial number and
9 confirmed that this is, in fact, a 10-millimeter handgun. I
10 would also note that you have some very distinctive jeans
11 worn by the person who's taking this image.

12 THE COURT: Mm-hmm.

13 MR. SIMPSON: Those are the jeans identical to those
14 Karseem was both arrested in and that we are going to present
15 Facebook pictures from his Facebook account with Karseem
16 wearing the same pair of jeans, again just supporting that
17 not only was this taken from his phone, but was taken on
18 the --

19 THE COURT: What kind of phone was it? An iPhone?

20 MR. SIMPSON: Yes.

21 THE COURT: Okay. And what's the next one?

22 (Video played in open court.)

23 MR. SIMPSON: So again, it's very quick, but you're able
24 to pause it and get quite a lot of detail.

25 THE COURT: Yeah, I just need you to play it. I need to

1 see exactly what it is you'd be submitting.

2 MR. SIMPSON: That -- it's just -- it's one second.

3 (Video played in open court.)

4 MR. SIMPSON: There it was again.

5 THE COURT: Okay. So basically, it's the same thing.

6 MR. SIMPSON: It is.

7 THE COURT: Just one's close up and one's full length.

8 MR. SIMPSON: In the same day.

9 Here we have --

10 THE COURT: Well, I have one from July -- she says she's
11 objecting to the video stamped July 3 and the one stamped
12 July 19.

13 MR. SIMPSON: And if you look --

14 THE COURT: So I need to know which one is which.

15 MR. SIMPSON: Okay. And then moving on to July 19 --

16 THE COURT: And then we still need to go back to what we
17 were just dealing with, which was the -- we're going to need
18 to have those -- the Ring camera stuff, I need to know what
19 numbers those are.

20 MR. SIMPSON: Okay.

21 THE COURT: What item numbers those are.

22 But what number are these videos? Did you premark these
23 already?

24 MR. SIMPSON: Your Honor, I'll probably just have -- no.

25 THE COURT: Okay. So we're going -- yeah.

1 MR. SIMPSON: I'm at about item 55.

2 THE COURT: That's all right.

3 So Ms. Aurora in her motion says there's a video marked
4 July 3, 2021, and one July 19, 2021. And I need to know what
5 videos are you seeking? Are there two or more than two
6 videos?

7 MR. SIMPSON: There are two from July 3.

8 THE COURT: Okay.

9 MR. SIMPSON: And here we have --

10 THE COURT: So you've already shown me those two,
11 correct?

12 MR. SIMPSON: I have. And here's the video from
13 July 19.

14 (Video played in open court.)

15 MR. SIMPSON: And I can play that again if you'd like,
16 your Honor.

17 THE COURT: No, I saw it. I'm good.

18 All right. So what's the basis of the objection,
19 Ms. Arora?

20 MS. ARORA: Your Honor, this is very similar to the
21 motion I made before.

22 First I'm going to argue that it's not relevant under
23 401 and 402.

24 THE COURT: How is it not relevant?

25 MS. ARORA: I'm saying having a gun, it does not show

1 that he shot someone.

2 THE COURT: But it's not just "a gun." It's a rare
3 gun --

4 MS. ARORA: Right.

5 THE COURT: -- that ATF is going to testify they rarely
6 see. The shell casings were from a 10-millimeter -- isn't
7 this a 10-millimeter? -- in your client's possession. Right?

8 MS. ARORA: Well, your Honor --

9 THE COURT: Within close proximity to this event. I'm
10 not so certain about the one on the 19th because that --
11 there's a little lag in time between the date of this
12 incident when this gentleman was killed, which was the 13th,
13 and the 19th. A lot can happen in six days.

14 MR. SIMPSON: Your Honor --

15 THE COURT: But the day before --

16 MS. ARORA: Well, July 3 would be ten days before.

17 THE COURT: Well -- oh, I'm sorry. I thought it was the
18 12th. I apologize. The 13th. I'm sorry. The 3rd.

19 I think somebody having a gun before is more germane
20 than them having it after.

21 MR. SIMPSON: To that point, your Honor --

22 THE COURT: Mm-hmm.

23 MR. SIMPSON: -- you have no way of knowing this, but
24 this video of the 19th is going to correspond with the
25 defendant trying on several social media platforms to sell --

1 THE COURT: Oh.

2 MR. SIMPSON: -- a 10-millimeter handgun and get rid of
3 it, which corresponds with this image you just watched.

4 Also, I am fortunate today to believe what I have is
5 that this on-all-fours issue has been decided by three
6 different South Carolina cases in a way that supports me.
7 The first is *State versus Gillian*. That's 373 S.C. 601. The
8 second is *State versus Holland*.

9 And I emailed this to your clerk and assistant
10 earlier as we were starting today.

11 *State versus Holland* is 385 S.C. 159.

12 And I believe I cc'd Rachael on it as well.

13 MS. ARORA: He did, your Honor.

14 MR. SIMPSON: These are pdf's of these cases.

15 And *State versus Braxton*, 343 S.C. 629.

16 All of those deal with the weighing of the probative
17 value of a handgun in a case involving a death by a handgun.

18 THE COURT: Mm-hmm.

19 MR. SIMPSON: And I think ours is -- this 10-millimeter
20 aspect of ours even makes these arguments stronger, not
21 weaker. And one of those cases is a 9-millimeter, which is
22 about the most prolific handgun you can have out there.

23 And another case is a -- it involves the defendant is
24 alleged to have committed a burglary. And I don't have the
25 timeframe right on the top of my mind, but the burglary --

1 the evidence that the State has was that the defendant stole
2 a handgun in January -- I mean in July of 2000. And it's a
3 handgun murder in January of 2001. The Supreme Court said --
4 had some issues with how the State presented that evidence
5 but said, "Of course they get to present that evidence
6 because that puts a type of handgun in the person's hands."

7 And that was -- in that case there was a specific
8 revolver alleged to be the type of murder weapon, and there
9 was evidence that this defendant committed a burglary and
10 stole that type of revolver six months prior to the murder.
11 And the Supreme Court -- that's in *Gillian*. If you read
12 *Gillian*, the Supreme Court said -- again, didn't like some of
13 the things the State did with it, that I'm not going to do,
14 but said, "Obviously you get to present that evidence because
15 that gives that defendant access to that type of weapon."
16 And that's an incredibly probative thing for the State to
17 prove.

18 And so a similar analysis is done both in *Holland* and
19 *Braxton*, but it's really *Gillian*, which is a Supreme Court
20 case from 2007, that really gets to a case like ours where
21 you've got a specific type of handgun and a period of time
22 that takes place between the acquisition of that handgun and
23 the murder. Here we're talking 10, 12 days in both
24 directions, I think. In that case they're talking six months
25 and approved of that type of evidence.

1 So those cases articulate my position better than --

2 THE COURT: Yeah, until I hear the evidence, I don't
3 know what I'm going to do. But I suspect it will come in.
4 It's an unusual gun. It's not random; it's not like they're
5 saying he just had a gun. And it is probative on the issue
6 of whether he was in possession of the weapon, a very unusual
7 weapon, within a close proximity timeframe of when this took
8 place.

9 And if your argument is *Lyle*, it falls into almost every
10 category of *Lyle* as an exception.

11 But again, I'm going to have to hear it in its context,
12 and I'll make a contemporaneous ruling. But as a heads up
13 and for you to have the benefit of having any coaching
14 conversations with your client, to the extent that that's
15 helpful, I offer it.

16 MS. ARORA: Thank you, your Honor.

17 THE COURT: You're welcome.

18 All right. That then takes us to the motion to suppress
19 the Verizon search warrant evidence. What's the basis of
20 that motion?

21 MS. ARORA: Thank you, your Honor.

22 THE COURT: You're welcome.

23 MS. ARORA: Let me pull that search warrant.

24 THE COURT: And I assume 5916 is your client's
25 phone number?

1 MS. ARORA: Your Honor, that's what they're alleging,
2 yes.

3 THE COURT: Mm-hmm. Are you saying it's not your
4 client's phone number? We don't have the subscriber records?

5 MS. ARORA: I have the records.

6 THE COURT: And he was arrested with this phone on his
7 person?

8 MS. ARORA: It was, your Honor.

9 THE COURT: Yeah. Then it's his phone, right?

10 Go ahead.

11 MS. ARORA: Thank you, your Honor.

12 In regards to going through search warrants, we're
13 challenging this based on a lack of probable cause.
14 Obviously the State law is clear under 17-13-140 that search
15 warrants can only be issued establishing grounds for the
16 warrant would be probable cause. I rely on *State versus*
17 *Smith*, where they say that the affidavit sets forth no facts
18 as to why they believed in that case that the defendant
19 robbed the Master Inn. Specifically -- and I looked at *State*
20 *versus Weston* as well and *State versus Gentile* as well.

21 In regards to the Verizon search warrant evidence, you
22 have a copy of that search warrant. My concern lies in they
23 lay out evidence that they believe exists. They lay out the
24 timeline of when Mr. Conner gets home. They lay out the
25 timeline of when they believe my client leaves the apartment.

1 And then they lay out some evidence in regards to they
2 believe Ms. Hardaway is deleting Ring camera footage. But
3 they get to the end of the search warrant, and they
4 specifically say that they want the telephone information to
5 further just investigate. I don't know if there's actually
6 been a causal connection as to why they believe my client
7 might have been involved in this murder other than his mere
8 presence.

9 I'm also concerned about how the detectives used the
10 May 21 arrest. I believe that May 21 gun arrest is unrelated
11 to this charge. And I believe they might have been profiling
12 my client just based off of prior knowledge of him.

13 So specifically, I don't know what probable cause they
14 would show that my client might have evidence of a crime on
15 his phone.

16 THE COURT: Mr. Simpson, you want to reply?

17 MR. SIMPSON: Thank you, your Honor.

18 Just for clarification, we're talking -- we've got four
19 search warrants that are incredibly similar in nature. I
20 believe right now we're talking about the Verizon records
21 search warrant; is that correct?

22 THE COURT: Yes, sir.

23 MR. SIMPSON: To Ms. Arora's point about not drawing a
24 link to the information on the phone that would be relevant
25 to a crime, I would direct you to page 5 -- I'm sorry, page 6

1 of what is a very thorough, lengthy search warrant. I know
2 word count doesn't exactly equate to a good warrant, but I
3 think it is indicative of a very thorough job done by
4 Detective Wilson.

5 And you see where he lays out in the second half of
6 page 6 the affiant's experience on the type of information
7 that you can get from search warrant records and why they're
8 often relevant to cases such as this. And in fact, you know,
9 as you've already heard, at this point in time in the
10 investigation they have this 30-minute discrepancy between
11 when they think Karseem left -- believe Karseem left the
12 Bolton's Landing Apartments and when the actual -- he said he
13 left Bolton's Landing Apartments.

14 I think they do more than a thorough job in the -- in
15 drafting a search warrant. And I'll certainly have one with
16 what I think is more than probable cause for you.

17 I want to bring up the point that Detective Wilson is
18 here and is going to remain here. He would likewise testify
19 to Ms. Arora's point that there was no oral supplementation
20 of any of these warrants. So I don't know -- since we're
21 analyzing the probable cause as it stands within the four
22 corners of the search warrant, I don't know that testimony is
23 necessary. But certainly if Ms. Arora has any questions of
24 him, he's here and available for that.

25 In all of these search warrants, including the Verizon

1 warrant, your Honor, if I could just -- they're lengthy
2 warrants, and I think the bullet point of what I think --

3 THE COURT: I've read every one of them. You can hit
4 the bullet points if you'd like.

5 MR. SIMPSON: Sure. Thank you, your Honor.

6 THE COURT: You're welcome.

7 MR. SIMPSON: First, within the four corners of the
8 warrant, you have the assertion that a body is found in the
9 entryway of an apartment and facts to establish the fact that
10 this does not appear to be a crime motivated by property
11 gain. In other words, there's no property of the victim's
12 missing. There's no property of the roommate's missing. It
13 looks like a personal crime where a person is shot while
14 walking into their apartment in the back of the head. And
15 that's noted in the first part of the warrant.

16 A little farther down in the warrant -- and I think it
17 makes more chronological sense to sort of move it up -- is
18 this idea that they already have evidence -- and they have
19 again outlined this within the four corners of the warrant --
20 that the victim of this crime left a voicemail describing a
21 conflict with the neighbor. Now, they don't know who the
22 person this conflict is with, but it's very rational to take
23 from this fact that it was someone standing outside of his
24 door. So the universe of suspects is neighbors. Karseem is,
25 in fact, a neighbor, at least when he stays with his sister

1 Tiffany.

2 You've got information within the four corners of the
3 warrant that the victim arrived home around 5:32. That
4 becomes relevant to probable cause because you've got video
5 of Karseem leaving at 5:04 -- again, as we've discussed, the
6 last person seen in proximity of the location and time of
7 this murder.

8 The relevance of the prior conviction, your Honor, is
9 merely to say, "We can look at this Ring camera and identify
10 Karseem because we've had interactions with him in the past,"
11 again putting on more probable cause to believe that it is
12 Karseem's phone that might have relevant -- probably has
13 relevant information. They know it's Karseem because they
14 can identify him from past contact.

15 The prior interactions with Karseem also do show that
16 this is a person who has access to handguns.

17 And the prohibition on that kind of evidence involves
18 the people that sit here; not you, your Honor, or a
19 magistrate determining probable cause. Assertions like that
20 that deal with prior records are permissible when presenting
21 a search warrant and are also permissible in presenting
22 arguments to a judge. The only reason they're banned is that
23 they can create improper influences from a jury. We don't
24 apply that kind of standard to a judge who knows how to
25 properly weigh that kind of evidence.

1 So we've identified Karseem. We know he's had access to
2 handguns in the past. We know that in an interview -- in the
3 warrant, it says that in an interview he said he's leaving
4 the apartment at 5:04, but there's also evidence already,
5 when they obtained this warrant, to show that Karseem was
6 lying because they had video of his car leaving at 5:34 --
7 5:35 -- or what looks like 5:35, what looks like his car at
8 5:37, and then what definitely is his car, due to an ALPR
9 reading, at 5:42.

10 So we've got the fact that Karseem is lying about his
11 whereabouts during the murder. He's the last seen on video
12 in close proximity of time and location to the murder. We've
13 got that he has access to handguns. We've got that this
14 crime was probably committed by a neighbor because it arose
15 -- they believe it arose during a confrontation described by
16 the victim in that voicemail. Karseem is a neighbor, at
17 least when he stays with the sister. And we've got evidence
18 that this isn't a robbery or some other motivated thing.
19 This is motivated by some personal conflict -- you know,
20 again, the subject of the voicemail the night before.

21 We've also got a connection specifically to Karseem's
22 phone through Tiffany's phone.

23 And as to the nexus to the criminal evidence, I think
24 we've got more than enough in the search warrant here for the
25 Verizon records at the end outlined through Detective

1 Wilson's experience and the type of information that he
2 thinks he can receive from those.

3 We're going to have similar arguments, your Honor.
4 They're different somewhat in semantics. But all of these
5 warrants that are being challenged are very similar in their
6 assertions of probable cause.

7 And I would just point out a few things that, you know,
8 go back to one of our first days in law school when we talk
9 about what probable cause means and what it doesn't. I'm
10 citing *Maryland versus Pringle*, which is a United States
11 Supreme Court case -- and I believe that's a part of the
12 packet I submitted to your clerk and the defense -- which
13 stated that:

14 "Probable cause,' according to its usual
15 acceptance, means less than evidence that would
16 justify condemnation. It just imports a seizure
17 made under circumstances which warrant
18 suspicion. Finely tuned standards such as proof
19 beyond a reasonable doubt or by a preponderance
20 of the evidence, useful in formal trials, have
21 no place in the decision of whether probable
22 cause exists. Probable cause simply exists
23 where the facts and circumstances within the
24 officer's knowledge and of which they have
25 reasonably trustworthy information are

1 sufficient in themselves to warrant a man of
2 reasonable caution in the belief that an offense
3 has been or is being committed and that evidence
4 can be found in a certain location."

5 We are not to apply technical, but factual and practical
6 considerations. These are not technical applications.
7 They're factual and practical considerations of everyday life
8 on which reasonable and prudent men can base their decision.

9 We're talking again about -- the defense seems to be
10 applying some standard that there's not enough evidence to
11 prove Karseem committed this crime. That's not the standard
12 that we're looking at when we're looking at probable cause to
13 seize evidence. It's a much lower standard. If you look at
14 the circumstances that I've bullet-pointed for you, the most
15 important are outlined way more thoroughly in the warrants
16 that you have before you. And I think the probable cause
17 standard has more than been met in each of these warrants.

18 I'm happy to address any specific matters of the
19 warrants particularly.

20 Which reminds me, there is a mistake in one warrant.
21 And I can call Detective Wilson to testify to that, but I
22 think we're in agreement of what that mistake is. But I
23 don't know if you'd like Detective Wilson to testify to that
24 point.

25 MS. ARORA: And your Honor, in regards to that mistake,

1 it's this warrant on page 6.

2 THE COURT: Which warrant are you referring to?

3 MS. ARORA: The Verizon search warrant, the one we're
4 discussing right now.

5 THE COURT: You said page 6?

6 MS. ARORA: Page 6 of the warrant, and then it is in the
7 second to last paragraph. And in that paragraph they state,
8 "Based on the established facts, the affiant believes that a
9 search of this target number provided may potentially yield
10 evidence of any communication, including text communication,
11 Ms. Hardaway may have had prior to the incident and after her
12 contact with police."

13 THE COURT: That's a scrivener's error.

14 MS. ARORA: Your Honor, my argument would be that in
15 this paragraph they're referring to Tiffany, which is
16 Karseem's sister.

17 THE COURT: I think when you read it in its totality,
18 that would be an unfair reading of the document. I think it
19 would be a stretch. I think it's a scrivener's error,
20 clearly, on the face of it. Like I said, I read all these
21 before court. I had a little time yesterday, so I took
22 advantage of it.

23 MS. ARORA: Thank you, your Honor.

24 THE COURT: Which is unusual for me to have a little
25 time. But I welcomed it and I took advantage of it so I

1 could be prepared for our hearings today.

2 Any further argument on your motion regarding the
3 Verizon records, Ms. Arora?

4 MS. ARORA: And your Honor, just in regards to what the
5 State contended in regards to this voicemail that they
6 believe is motive, you know, listening to that voicemail,
7 there's no identifying features. It says that "There's a guy
8 outside my apartment. I think things are going to get really
9 heated." I don't know -- they believe that to be connected,
10 but there's nothing that's saying my client was that one
11 getting in a fight with Mr. Conner.

12 Even if my client was, I don't know if there's anything
13 to show that this had any influence over why he was murdered.

14 THE COURT: I don't think I have to make that decision.
15 I think those are factual arguments you make to a jury.

16 But like Mark Twain always said, "History might not
17 repeat, but it certainly rhymes." And in this circumstance,
18 there's a rhyme. You can connect the dots. You know, people
19 just don't -- it would be really odd for him to say that out
20 of the -- out of some serendipity he calls and said he had an
21 interaction with someone and then less than 12 hours later
22 he's found shot in his apartment.

23 But I'm not the finder of fact.

24 MS. ARORA: Right.

25 THE COURT: The jury is. It's for the State to

1 determine whether they can connect those circumstantial dots,
2 and it's up to you to argue that they can't. But you have no
3 burden of proof. You don't have to do anything. You can
4 just sit at counsel table and be quiet the entire time.

5 But that's clearly a factual issue. It's not one of
6 proof, which really doesn't have any appreciable bearing on
7 whether there's probable cause for the warrant. Although it
8 does, in terms of the totality of it, create a scenario
9 circumstantially and inferentially that would be important to
10 a judge's determination, although I'm not sure dispositive of
11 the judge's determination of issuing a warrant.

12 All right. Is that the totality of the argument on the
13 motion to suppress the Verizon warrant?

14 MS. ARORA: It is.

15 THE COURT: In essence, the defendant's argument is that
16 there did not exist probable cause.

17 MS. ARORA: Yes, your Honor.

18 THE COURT: As we all know, every case is factually
19 driven. It's rare to find a case on point, but you do find
20 case law that is of guidance where facts are similar. But
21 the Court is required to make a case-by-case determination of
22 every issue that is before it. And as we all know, probable
23 cause is a defined concept and in light of when a search
24 warrant may issue upon a finding of probable cause.

25 And of course, that's the only way you can issue a

1 search warrant, upon a finding of probable cause, either by a
2 magistrate or, in this instance, the circuit court as
3 required by the Federal Closed Storage Act because a court of
4 record -- they require a court of record to execute search
5 warrants for certain types of electronically stored records
6 that impact interstate commerce; in other words, that are
7 maintained in a centralized location in one state but are
8 utilized by every other state.

9 Whenever a search warrant is to be issued, the Court
10 must make -- and most of the cases talk in terms of
11 magistrate, but I think I can use that term interchangeably
12 when I say "the Court" -- must make a practical, commonsense
13 decision concerning whether under the totality of the
14 circumstances set forth in the affidavit there is a fair
15 probability that evidence of a crime will be found in the
16 particular place to be searched.

17 A review in court is required to give great deference to
18 the judge who made the determination of probable cause to
19 support a search warrant. And even if an affidavit of the
20 police officer were insufficient to establish probable cause,
21 any error -- usually the Court looks at it in a deferential
22 standard in terms of whether it was harmlessly admitted or
23 not, in light of whether there is abundant evidence
24 throughout the record establishing the individual's guilt.

25 Clearly, under these circumstances this search warrant

1 was issued pursuant to a finding of probable cause by Judge
2 McCoy. She -- her task was to determine whether -- her role
3 was to make a practical, commonsense decision whether under
4 the totality of the circumstances set forth in the affidavit
5 there was a fair probability that evidence of a crime would
6 be found in the particular place to be searched.

7 And clearly, when reading these -- these affidavits are
8 very detailed. They are thorough. They clearly establish
9 probable cause when looking at making a practical,
10 commonsense determination under the totality of the
11 circumstances as set forth in the affidavit. And clearly,
12 Judge McCoy issued these warrants under a finding of probable
13 cause.

14 And noting on page 6, it is clear when you read the
15 totality of this affidavit that there was a scrivener's error
16 where it says "Ms." instead of "Mr." And I don't think that
17 the case law requires that people be perfect. We're human.
18 We make scrivener's errors, especially when you're cutting
19 and pasting a document. It happens, but that does not
20 invalidate the fact that, clearly, probable cause existed for
21 the issuance of the warrant.

22 So the motion is heard and denied. And that is based on
23 *State versus Weston*, *State versus Philpot*, and *State versus*
24 *Tench*, which is 2000- -- and that's T-E-N-C-H -- 353 S.C.
25 531, a 2003 Supreme Court decision.

1 All right. Are we ready to move on to the next one,
2 which is a motion to suppress the iPhone phone evidence? Is
3 that the same argument?

4 MS. ARORA: Yes, your Honor. It's the same argument,
5 just added with the caveat that I move to suppress the actual
6 DEU evidence along with that under the "fruits of the
7 poisonous tree" argument.

8 THE COURT: And what would there be to support that?

9 MS. ARORA: Your Honor, my argument is that there was a
10 lack of probable cause for the actual cell seizure. So there
11 was first a search warrant for the actual seizure of the
12 iPhone. And then subsequent to the --

13 THE COURT: So do I need to take that one before I take
14 -- you didn't have a motion to suppress the seizure of his
15 phone, did you?

16 MS. ARORA: I did.

17 THE COURT: And when was that filed?

18 MS. ARORA: That is on the 13th.

19 THE COURT: Was that filed at the same time as to
20 suppress the iPhone phone evidence?

21 MS. ARORA: Yes. So that's the whole entire warrant.
22 First it would be the actual seizure.

23 THE COURT: So it's one motion, but your basis is to
24 suppress the seizure of the phone and what was contained in
25 the phone.

1 MS. ARORA: And subsequently --

2 THE COURT: So how was his phone seized?

3 MS. ARORA: Your Honor --

4 THE COURT: Was it on him when he was arrested?

5 MS. ARORA: Yes. On July 28 --

6 THE COURT: So why would they have needed a warrant to
7 get it when he was arrested?

8 MS. ARORA: Your Honor, they actually pulled him over as
9 he was leaving on Glenn McConnell. They followed him and
10 then he was pulled over --

11 THE COURT: Uh-huh.

12 MS. ARORA: -- and taken out of the car --

13 THE COURT: Uh-huh.

14 MS. ARORA: -- to execute the search warrant.

15 THE COURT: To execute the search warrant or an arrest
16 warrant? I'm confused.

17 MS. ARORA: The search warrant on the phone.

18 THE COURT: You lost me.

19 MR. SIMPSON: He was pulled over to execute a valid
20 search warrant. In the course of --

21 THE COURT: On his phone.

22 MR. SIMPSON: -- executing that search warrant, they
23 found materials that led to his arrest.

24 THE COURT: Okay. I'm confused. We need to start over.

25 MR. SIMPSON: Okay.

1 THE COURT: Because Ms. Arora's motion is to seize -- is
2 to suppress them taking the phone.

3 MR. SIMPSON: Correct. They obtained --

4 THE COURT: But for them to execute a search warrant to
5 take the information off the phone, ergo the Court's already
6 given them permission to get the phone.

7 MR. SIMPSON: Right.

8 THE COURT: Because you can't get the information
9 without the phone.

10 MS. ARORA: Right.

11 THE COURT: So they're one and the same. So if I sign a
12 warrant that says the police can extract information from a
13 phone, ergo that means I told them they can go take the
14 phone. Right?

15 MS. ARORA: Your Honor, they -- I'm just going off
16 based --

17 THE COURT: So I'm trying to figure out, like, where did
18 this continuum start? Like --

19 MR. SIMPSON: So --

20 THE COURT: -- they got a search warrant from a judge to
21 get the information off the phone.

22 MR. SIMPSON: Yeah. I --

23 THE COURT: And that was by Judge Steinberg, right?

24 MR. SIMPSON: That happened second.

25 THE COURT: Or am I looking at the wrong --

1 MR. SIMPSON: So here's the chronology, your Honor.

2 THE COURT: I don't know whose handwriting this is.

3 MR. SIMPSON: I really -- it's Bligen. Judge Bligen.

4 THE COURT: That's why I put my judge code on
5 everything, just in case -- because my handwriting is quickly
6 turning to be illegible -- so that people know who signed
7 things.

8 So Judge Bligen signed a warrant to extract the
9 information from his phone.

10 MR. SIMPSON: Well, I really appreciate how CPD does it.
11 They're very thorough, and I think that supports my position
12 today. They --

13 THE COURT: So what's the chronology?

14 MR. SIMPSON: They always do two --

15 THE COURT: Mm-hmm.

16 MR. SIMPSON: -- two separate warrants. First they do a
17 warrant to seize the phone. And that's a warrant that on
18 July 20 was obtained from Judge Bligen.

19 THE COURT: And that's the one I'm looking at right now
20 from Detective Quick, right?

21 MR. SIMPSON: Yes, your Honor.

22 THE COURT: And then they had a separate warrant to
23 download the phone.

24 MR. SIMPSON: And then after they seize the phone, they
25 decide out of caution to go do a separate warrant which lays

1 out more -- in more detail the types of things they think
2 they can find within the phone --

3 THE COURT: Which is the search warrant from --

4 MR. SIMPSON: -- and seeking further permission -- yes.

5 THE COURT: -- the July 30 warrant from Detective
6 Wilson.

7 MR. SIMPSON: That was September 3, '21, from Steinberg.

8 THE COURT: Well, I have two warrants here. I have
9 July 20, Detective Quick. I have July 30, Detective Wilson,
10 an electronically --

11 MR. SIMPSON: You're correct.

12 THE COURT: -- stored digital information.

13 MR. SIMPSON: You're correct, and I am wrong.

14 THE COURT: I think Judge Steinberg just did the return,
15 didn't she?

16 MR. SIMPSON: Yes. I'm sorry. Yes.

17 THE COURT: Okay. So now we're all on the same page.

18 MR. SIMPSON: Yes.

19 THE COURT: So on July 20, they got a search warrant
20 from Judge Bligen to take the phone.

21 MR. SIMPSON: And they went and they saw Karseem. They
22 did a traffic stop of Karseem to get his phone.

23 THE COURT: Okay.

24 MR. SIMPSON: And then this is not -- this is regarding
25 a gun. I'm not getting into this at all. But in going to

1 get the phone, there was a gun. He got arrested for the gun.

2 THE COURT: Mm-hmm.

3 MR. SIMPSON: That's not something that I'm going to
4 admit in front of this jury, but they did --

5 THE COURT: And then July 30, they get a warrant to
6 download the phone.

7 MR. SIMPSON: Correct. And my -- as to the adequacy of
8 these warrants, I have nothing to add that wasn't already
9 argued in the previous motion.

10 THE COURT: So was it that they -- so I'm trying to --
11 see, you lost me when you said "poisonous tree." If they had
12 a right to go get the phone, they had a right to stop him
13 even if it was surreptitious. He didn't even have to commit
14 a traffic infraction for them to stop him. He had an active
15 warrant for them to go take something from him.

16 MS. ARORA: Your Honor, my issue would be the warrant
17 for the cell seizure is essentially the same as before. It
18 lacked probable cause based on what was in the argument. And
19 then subsequently, because they then went and got another
20 search warrant for the digital extraction, that that would
21 have been the fruit of the previous cell seizure search
22 warrant. And therefore, would not be valid under the "fruits
23 of the poisonous tree" argument.

24 THE COURT: And what argument is there that there was no
25 probable cause to get his phone?

1 MS. ARORA: Your Honor, my argument is essentially that
2 they are laying out very circumstantial facts, and I don't
3 believe they prove anything in the search warrant beyond my
4 client being merely present at an apartment.

5 THE COURT: They don't have to prove anything more than
6 that. It's basically a scintilla standard.

7 MS. ARORA: Right.

8 THE COURT: It's what you might find, could find, maybe
9 find. It doesn't even have to be admissible. Isn't that
10 about what the standard is? It just has to be a reasonable
11 and articulable suspicion that criminal activity is afoot,
12 which actually inures to the benefit -- because it can
13 exculpate people the same way it can inculpate people.

14 MS. ARORA: Your Honor, I would just argue criminal
15 activity -- I'm not sure if they can pinpoint what
16 specifically would tie Mr. Hardaway other than just living at
17 that apartment and --

18 THE COURT: I don't think they have to prove anything
19 more than that. He's on a Ring camera. He's in proximity.
20 That's enough to establish probable cause to get his phone.
21 That's enough to get his phone and track his movements.
22 That's enough to get his phone and download his text
23 messages. That's enough to get his WhatsApp. That's enough
24 to find out what he was saying on Facebook Messenger. It's
25 enough to do whatever they -- yeah.

1 It's not -- "mere presence" in terms of proving beyond a
2 reasonable doubt that he did this is a wholly different
3 standard for a jury. It is not the standard for a warrant.
4 Warrants fall short of -- beyond a reasonable doubt is not
5 the standard for a warrant. It's only reasonable and
6 articulable suspicion.

7 And I think these affidavits, after having read them,
8 are thorough. And frankly, to CPD's credit, they got a
9 warrant before they downloaded it. Really to their credit,
10 they got a warrant to seize it because normally they just
11 would have pulled him over for a traffic stop, arrested him,
12 searched him incident to arrest, and downloaded the phone.
13 That's usually how the continuum works out, even if the stop
14 were pretext. Yeah.

15 So I'll let you make your full argument on -- was that
16 your full argument on probable cause?

17 MS. ARORA: Yes, your Honor.

18 THE COURT: Okay. Mr. Simpson, you may respond.

19 MR. SIMPSON: I would just rely on the arguments
20 previously made. I think the language -- the outline of
21 probable cause in all of these warrants is very similar, so I
22 won't waste the Court's time.

23 THE COURT: The Court would deny the motion based on its
24 previous ruling, which is based on *State versus Weston*, *State*
25 *versus Philpot*, *P-H-I-L-P-O-T*, and *State versus Tench*. There

1 clearly exists probable cause for the issuance both -- not
2 only for the warrant to seize the phone, but to download the
3 phone. The affidavits are detailed and thorough, and they
4 more than adequately meet the element of probable cause,
5 which is based on a fair probability that evidence of a crime
6 will be found in the particular place to be searched. It is
7 a commonsense, practical decision under the totality of the
8 circumstances set forth in what the Court has already found
9 are very detailed and thorough affidavits.

10 That then takes us to the motion to suppress the Google
11 account evidence, which I assume that was -- no, that was a
12 geofence, was it not? Or was this the GPS to track his
13 movements?

14 Let me look at the search warrant. I apologize. Bear
15 with me one second.

16 MR. SIMPSON: I can say the only evidence we're going to
17 seek to admit from this search warrant is there is a search
18 history that was revealed through this Google account.

19 THE COURT: And what's the search history reflect?

20 MR. SIMPSON: On the day of the murder wherein a
21 10-millimeter handgun was used, the defendant searches a
22 YouTube video on using a 10-millimeter handgun with a clip.

23 THE COURT: What day was this?

24 MR. SIMPSON: This is -- forgive me, your Honor. It's
25 on a phone.

1 THE COURT: That's okay.

2 MR. SIMPSON: There is a search on the day of the
3 murder. On July 13 of 2021, at approximately 2:12 p.m., it's
4 listed on the records as 6:12 p.m. UTC.

5 THE COURT: With the difference in time, yeah.

6 MR. SIMPSON: Yeah. It's where --

7 THE COURT: So that's the only thing you would be
8 seeking to use from this Google search warrant?

9 MR. SIMPSON: Yes. He watched -- according to the
10 Google record, watched a video titled "Testing the SGM
11 tactical 30-round 10-millimeter mags," exclamation point,
12 posted by a user called "predawndeath." We'll redact the
13 "predawndeath."

14 THE COURT: And I have a search warrant dated July 19,
15 2021, Detective William Crocket. And that was signed by
16 Judge McCoy on that same date allowing for the search of --
17 it was Google Inc., Google Legal Investigations Support.

18 And is there any exception or objection to the use of --
19 and I'd like to -- oh, well, you're not going to play the
20 video; you just want to introduce the search and the name of
21 the search?

22 MR. SIMPSON: Just the name of the title, yeah.

23 THE COURT: Okay.

24 MR. SIMPSON: I think the record may reveal that it was
25 watched or -- no. Yeah, the record says "watched" and the

1 title. But I'm not going to play the video. No, your Honor.

2 THE COURT: Okay.

3 MR. SIMPSON: I also don't want to mislead the defense.

4 There's a lot of other things in the Google records that
5 we're going to admit through other sources. You know,
6 whenever you're talking about --

7 THE COURT: Well, I need to know everything --

8 MR. SIMPSON: Oh.

9 THE COURT: -- so that she can make a full argument.

10 MR. SIMPSON: Yes. Well, what I mean is we're admitting
11 them through other records, not the Google records.

12 THE COURT: Okay. So is your objection solely to this
13 search he would be seeking to introduce, Ms. Arora? Or is
14 your -- or does your objection encompass more than that?

15 MS. ARORA: Your Honor, it would be specifically to this
16 search. I believe there was other searches --

17 MR. SIMPSON: Yeah, let me clarify.

18 There's a whole series of searches that we think are
19 highly probative and relevant. We get those --

20 THE COURT: Then you need to tell me what those are.

21 MR. SIMPSON: We get those off of the phone. So that
22 would apply to the phone record. I'm not going to even say
23 that we got them off of Google as well.

24 THE COURT: But if you accessed them through Google and
25 that's the scope of her argument, you need to tell me.

1 MR. SIMPSON: Okay.

2 THE COURT: Yeah.

3 MR. SIMPSON: Certainly. And --

4 THE COURT: I need to know what they are. Yeah.

5 MR. SIMPSON: Absolutely. We have from, again, stating
6 that 9:51 p.m.

7 THE COURT: On what date?

8 MR. SIMPSON: July 12 at 9:51 p.m. is when the voicemail
9 message is left by the victim with the property management
10 office.

11 THE COURT: But that's not through Google.

12 MR. SIMPSON: I know, but it's -- I'm making time as to
13 the series of Google searches to give you the timeline, your
14 Honor.

15 THE COURT: Mm-hmm.

16 MR. SIMPSON: That's at 9:51 p.m. on July 12. At
17 11:32 p.m. --

18 THE COURT: On what date?

19 MR. SIMPSON: The same date. Karseem searches Star
20 Inc., and that begins a series of searches --

21 THE COURT: What is Star Inc.?

22 MR. SIMPSON: Well, I'll tell you, your Honor, it's a
23 series of searches we think are relevant, and you kind of
24 have to see the progression of them to fully understand.

25 THE COURT: What is Star Inc., though? What is that?

1 MR. SIMPSON: The defendant -- I'll tell you. It's
2 "Star Inc.," "Star Inc. company truck," "Star Inc. company
3 vehicle," --

4 THE COURT: Oh, now it's --

5 MR. SIMPSON: -- "Star Inc. vehicle," "Sack Inc.," "Sack
6 truck" --

7 THE COURT: Okay. I need you to start all over again.

8 MR. SIMPSON: Sure.

9 THE COURT: Just because I caught it once you started
10 talking.

11 MR. SIMPSON: All right. It's a --

12 THE COURT: All right. So "Star Inc." is the first one.

13 MR. SIMPSON: Yes.

14 THE COURT: "Star Inc. company truck," is that what you
15 told me the second one is?

16 MR. SIMPSON: Yeah, at 11:35.

17 THE COURT: 11:35. And what's the next?

18 MR. SIMPSON: "Star Inc. company vehicle" at 11:36;
19 "Star Inc. vehicle," also at 11:36.

20 THE COURT: What time was that?

21 MR. SIMPSON: Also 11:36, July 12.

22 THE COURT: Okay.

23 MR. SIMPSON: Moving on to the next afternoon, July 13,
24 2021, 3:48 p.m., "Sack Inc."

25 THE COURT: Is that S-A-C-K?

1 MR. SIMPSON: Yes, your Honor.

2 THE COURT: Mm-hmm.

3 MR. SIMPSON: 3:49, "Sack truck logo"; "Sack truck" at
4 3:49 as well; "Sack Company," 3:49 p.m. Skipping ahead to
5 5:24 p.m., "Sack Company." Also at 5:24, a Google Maps
6 search for "Sack Company" and accessing of an address in
7 Springdale, South Carolina, which is the location of a
8 business called the Sack Company. These searches are on both
9 the phone -- and that was going to be the main --

10 THE COURT: And that's the name of the company on the
11 gentleman's shirt, correct?

12 MR. SIMPSON: Correct. And his truck.

13 THE COURT: Okay. And so for what purpose would you be
14 seeking to introduce this information?

15 MR. SIMPSON: David Conner has an interaction with a
16 stranger at 9:51 p.m. on July 12. Karseem Hardaway, who does
17 not know David Conner at all, begins searching his employer's
18 company and logo beginning pretty soon after this
19 confrontation. In other words, this series of Google
20 searches that pertains to the victim's employer and truck and
21 locations arguably begins at the moment of this voicemail and
22 ends with the death of David Conner.

23 THE COURT: Mm-hmm.

24 MR. SIMPSON: There's not another search of the Sack
25 Company or the Sack Construction Company that survives David

1 Conner is the purpose of those coming in.

2 THE COURT: And is there an objection, Ms. Arora?

3 MS. ARORA: Your Honor, yes, we would object to having
4 those Google search warrants. Obviously --

5 THE COURT: And what's the basis of the objection?

6 MS. ARORA: Under relevance. And I just want to confirm
7 to those specifically, they're brought in through the phone
8 or under the Google search warrant?

9 THE COURT: I'm sorry. Say that one more time.

10 MS. ARORA: Do you want me to address the Google account
11 search warrant or the --

12 THE COURT: That's the only search warrant that's left.

13 MS. ARORA: Okay.

14 THE COURT: Yeah, I've already addressed the other two.

15 MS. ARORA: Okay. So my objection, to start off with,
16 would be the lack of probable cause that we discussed before
17 with the search warrant. Once again, I believe that there's
18 nothing set forth that would substantially tie Mr. Hardaway
19 to the crime other than mere presence. And the search
20 warrant lacks probable cause in laying down the facts in the
21 affidavit.

22 THE COURT: Would you like --

23 MS. ARORA: In regards to --

24 THE COURT: Oh, I'm sorry. I didn't mean to interrupt
25 you. I apologize.

1 MS. ARORA: And then in regards -- and this is probably
2 something we can address at trial when I would probably
3 object to relevance if these were admitted -- these searches
4 were admitted at trial.

5 THE COURT: Okay. Would you like to respond to the
6 objection, Mr. Simpson?

7 MR. SIMPSON: No, your Honor. As to the sufficiency of
8 probable cause, I think all arguments have already been made
9 and I would stand by the earlier arguments on that point.

10 And I agree with Ms. Arora that even though we've
11 outlined it pretty well for you, your Honor, the relevance of
12 the information is probably a determination you'd prefer
13 there.

14 THE COURT: I think I -- yeah, I think I'd have to, you
15 know. But the only thing that's before me right now is a
16 motion to suppress based on the lack -- based on the warrant
17 and the lack of probable cause.

18 I have reviewed the affidavits that Judge McCoy reviewed
19 when she issued the search warrants in this case regarding
20 the Google account evidence, which were issued on July 19 of
21 2021. And I would make the same finding, that there existed
22 probable cause to support the issuance of these warrants.

23 Substantial deference is given to the officer who issued
24 the warrant. It's not for me to second guess the officer who
25 read the affidavit and made a determination -- a practical,

1 commonsense decision based upon the totality of the
2 circumstance set forth in the affidavit that a fair
3 probability -- there was a fair probability that evidence of
4 a crime would be found pursuant to the search warrant. And
5 clearly, the affidavits in this case they, again, are
6 thorough, very detailed.

7 Probable cause clearly exists considering the totality
8 of the circumstances based on a practical, commonsense
9 decision. And the motion is denied.

10 Clearly factually and circumstantially and
11 inferentially, these searches are relevant. They are
12 probative. But I'll -- you know, I'll wait for you all to
13 make a contemporaneous objection and I'll rule on it at that
14 time.

15 So now, according to my notes, that covers -- and we'll
16 go back through them.

17 I ruled on the motion to suppress Google account
18 evidence, the motion to suppress the iPhone phone evidence,
19 the motion to suppress the Verizon search warrant evidence,
20 the motion to suppress the videos from the iPhone which deal
21 with the 10-millimeter gun. We've gone over the photos.
22 We've talked about the admissibility of prior convictions,
23 which is premature and I would address at the time that he
24 actually makes a decision regarding his right to testify.

25 The motion to authenticate business records is resolved.

1 The motion to sequester witnesses is resolved. The motion to
2 suppress the Ring video from Tiffany Hardaway's phone is
3 resolved subject to any doors being opened. The defendant's
4 statement, I'll deal with that in one moment. And we have
5 dealt with the motion to suppress the Ring video, which two
6 of those came in without objection and two I've taken under
7 advisement subject to their introduction. But I've given you
8 all an indication of where I think that is headed.

9 And as it regards the pictures, 5 and 6 came in without
10 objection.

11 Were y'all able to redact that spatter on Number 6?

12 MR. SIMPSON: I can do that.

13 THE COURT: Okay. And then Numbers 7 and 8 are marked
14 for ID only. 9 is ID only. And 10 is ID only.

15 And then I'm going to need you to mark those other --
16 the Ring videos and the other information that we have been
17 talking about.

18 Now, can we watch the video from the body-worn camera,
19 which is --

20 MR. SIMPSON: Certainly, Judge.

21 THE COURT: -- the one that we've been talking about
22 with his statements?

23 MR. SIMPSON: Yes, your Honor. If I could --

24 THE COURT: And the motion to suppress the prior arrest
25 is resolved as well.

1 And according to my notes, that covers everything. We
2 good? Did I miss anything? If I am, keep me accountable.

3 MS. ARORA: Your Honor --

4 THE COURT: Because it's a lot of paper. .

5 MS. ARORA: Just, the State raised the issue of
6 third-party guilt in their --

7 THE COURT: I'm sorry.

8 MS. ARORA: The State raised the issue of pretrial --
9 er, third-party guilt in their pretrial motion. And I don't
10 know if --

11 MR. SIMPSON: Oh, I --

12 MS. ARORA: -- Mr. Simpson would like to go into that.
13 But we don't intend to bring in any evidence of third-party
14 guilt. But I believe we might be trying to interview -- er
15 introduce evidence that the State -- or the police failed to
16 investigate possible other witnesses.

17 THE COURT: I'm sorry. Say that for me one more time.

18 MS. ARORA: We don't intend to go into third-party guilt
19 and pinning this murder on someone else. But we do intend to
20 introduce evidence that the police possibly didn't
21 investigate other leads or sources.

22 THE COURT: Yeah, I'd have to take that up
23 contemporaneously. And I think we all know very clearly what
24 the elements of third-party guilt are. It has to be
25 inconsistent with the theory of your client's guilt. It's

1 very hard to get around the theory of third-party guilt. You
2 don't get to just say somebody else did it or that it's
3 possible somebody else did it. It just doesn't -- yeah.
4 Third-party guilt is very -- it's not complex; it's just
5 sometimes a little hard to -- it has a lot of negatives in
6 it, so sometimes it's hard to sort of grapple with.

7 MR. SIMPSON: And the reason I bring it up is just to
8 have the conversation we just had and to ask that if anything
9 -- and I certainly trust Ms. Arora that if anything's getting
10 close to that, that maybe we --

11 THE COURT: Then we take it --

12 MR. SIMPSON: -- discuss it outside --

13 THE COURT: Yeah. What I would suggest is if there's
14 anything that involves -- because I'm a "great fan of
15 proffers. I think they serve a lot of purposes. They
16 preserve things contemporaneously. If you all come across
17 anything that I have not ruled on, that's under advisement,
18 that you suspect will include a matter of law, just say "We
19 have a matter of law." I'll send the jury out, create a
20 proffer. If I need argument, I'll hear it. I'll rule on it.

21 It just keeps a clean record. Sometimes things -- you
22 know, testimony develops differently than you think it will.
23 That's why I don't spend a whole lot of time hearing the
24 testimony in limine, because people say one thing and they
25 get on the stand and say something totally different than

1 what they said in an in-camera hearing. And so I think it's
2 better to deal with it contemporaneously as the issues
3 develop. I think it's far more fruitful for y'all, and it
4 just makes for a better record.

5 All right. Y'all ready to watch the video?

6 MR. SIMPSON: Yes, your Honor. Go ahead with it, your
7 Honor?

8 THE COURT: Yeah.

9 Can you enlarge it a little?

10 Thank you.

11 Madam Clerk, can you dim the lights, please?

12 Thank you.

13 MR. SIMPSON: The timestamp, your Honor, is 5:30 on
14 July 14, 2021.

15 (Video played in open court.)

16 MR. SIMPSON: Your Honor, just recapping previous
17 arguments.

18 Karseem Hardaway said he was on his way to the gym. He
19 was allowed to leave and go to the gym. I don't think there
20 was anything particularly unpleasant, threatening, coercive,
21 whatever adjective you'd like to use about that encounter
22 that would trigger any sort of constitutional rights
23 requiring the issuing of Miranda warnings. It begins at his
24 car, ends at his car, and he's allowed to leave after the
25 conversation occurs. I believe that's ample evidence.

1 And the relevance of it we can discuss at the
2 appropriate time in trial.

3 THE COURT: Well, why don't you go ahead and address the
4 relevance so she can address it as well.

5 MR. SIMPSON: Sure.

6 So Karseem, during that conversation, seems pretty
7 innocuous, makes some incredibly probative points for the
8 State's case.

9 The first being there -- we have two appropriate -- we
10 have two very relevant times that apply to this case: the
11 confrontation the night before and the time of the murder.
12 In both of -- in the course of that statement, he admits to
13 being there the night -- at Tiffany's house the night before,
14 when this occurrence had happened. And he admits to being
15 there close to the time of the murder, around 5:04. Now,
16 later evidence is going to say he was in fact there right at
17 the time of the murder.

18 Which brings the next relevant point is that he claims
19 that this -- any sort of untruthfulness towards the police I
20 believe is relevant in any sort of criminal activity. And he
21 says several times over the course of this interview "I was
22 here yesterday afternoon, but I left, didn't see anything.
23 It was all quiet. This is a quiet place. I didn't see or
24 hear anything unusual." We believe we are going to prove
25 that that's not the truth over the course of this trail.

1 He implies very strongly, and I would even say he flat
2 out said that when he's shown the thing, "This is you leaving
3 at 5:04," "Yeah, that's me. I got out of there at 5:04." We
4 think we're going to disprove that. So we have false
5 statements to the police.

6 He also tells the police that he's headed to his gym and
7 that he attends that gym at O2 Fitness in Daniel Island.
8 Police would later collect -- take that lead from this to
9 collect other relevant evidence towards his Google account
10 from the gym at O2 Fitness. He then again says he wasn't
11 there at the time. So we've got un- -- we've got un- --
12 we've got admissions.

13 Oh, and I forgot another crucial admission, that he
14 looked at a video still of himself in the Ring camera and
15 says, "Hey, that's me," and admits that that's him on the
16 Ring camera. You've already heard how relevant we believe
17 this Ring camera's going to be to certainly his admission
18 that it's him in the camera. We believe it's a pretty
19 important issue for this.

20 So I think really in a -- what appears to be a pretty
21 innocuous conversation, certainly a conversation taken under
22 innocuous circumstances, nevertheless reveals throughout that
23 interview several cogent points to our prosecution here. And
24 we think it was taken and recorded in a way that was lawful,
25 appropriate, and did not run afoul of his constitutional

1 rights.

2 THE COURT: Ms. Arora?

3 MS. ARORA: Your Honor, I would renew what I have stated
4 before as to the voluntariness and just ask that you take
5 note of where the detectives were standing, the totality of
6 the circumstances, the characteristics of my client, and his
7 age with that. And I'm concerned about his ability to just
8 back away and leave if he wanted to.

9 I believe the police are trying to get him to talk about
10 things that would place him at the time of the murder. You
11 know, Mr. Simpson states that he admits to leaving at 5:04.
12 I don't know if my client locked in and says he leaves right
13 at 5:04. He just continually "Yeah, around this time" to the
14 detective. He's not locking into a point in time that he
15 left. He just states "around this time." So, you know, I
16 don't know if that goes against his interest to state his
17 leaving the apartment.

18 But I'd ask that you consider, 1, the voluntariness, and
19 then going into statements against interest, that it was
20 against his interest really to just say he was leaving around
21 this time.

22 THE COURT: Anything further from the State?

23 MR. SIMPSON: No, your Honor.

24 THE COURT: All right. The Miranda precedent mandates
25 that the prosecution may not use statements, whether

1 exculpatory or inculpatory, that stem from custodial
2 interrogations of a defendant unless it demonstrates use of
3 procedural safeguards effective to secure the privilege
4 against self-incrimination, citing both the United States
5 Constitution Amendment 5 and the South Carolina Constitution,
6 as well as *State versus Daniels* from June 22 of 2023.

7 Prior to any questioning, a person taken into custody or
8 otherwise deprived of their freedom of action in any
9 significant way must be warned that he has a right to remain
10 silent, that any statement he does make may be used as
11 evidence against him, and that he has a right to the presence
12 of an attorney, either retained or appointed; again citing
13 the United States Constitution Amendments 5 and 6 and *State*
14 *versus Daniels*.

15 There are two discreet inquiries that are essential for
16 this Court to determine ultimately if somebody was in custody
17 for the purposes of Miranda. First, the Court has to look
18 at, What were the circumstances surrounding the
19 interrogation? And second, given those circumstance, would a
20 reasonable person have felt he or she was not at liberty to
21 terminate the interrogation and leave?

22 There is no single factor that dictates whether a
23 seizure has occurred. Our courts have identified certain
24 probative factors, including the time and place of the
25 encounter; the number of officers present; whether they were

1 uniformed or un-uniformed; the length of the detention;
2 whether the officer or officers moved the person to a
3 different location or isolated them from others; the use or
4 absence of physical restraints; statements made by the
5 police; whether the officer informed the person he was free
6 to leave; whether the officer indicated to the person that he
7 was suspected of a crime; whether the officer retained the
8 person's documents, exhibited threatening behavior or
9 physical contact; and whether the suspect was released at the
10 end of the encounter, citing *State versus Spears*, which is a
11 2020 Supreme Court decision, as well as *State versus Hill*,
12 which is a 2018 court of appeals decision.

13 A suspect's belief that he was not free to leave is
14 entitled to -- whether the suspect believed he was not free
15 to leave during an interrogation was entitled to minimal
16 weight when determining whether a suspect is in custody for
17 Miranda purposes. The inquiry is an objective one, and it
18 centers on whether one in the suspect's position would have
19 believed he was free to stop the questioning and depart,
20 again citing *State versus Hill*.

21 Our Supreme Court has been very clear that not every
22 questioning at a police station or otherwise is custodial for
23 Miranda purposes, even if the police view the person
24 questioned as a suspect, again citing *State versus Hill*.

25 Police officers are not required to administer Miranda

1 warnings to everyone whom they question, nor is a requirement
2 of warnings to be imposed simply because the questioning
3 takes place in a station house or because the person
4 questioned is one whom the police suspect, citing *Oregon*
5 *versus Mathiason*, M-A-T-H-I-A-S-O-N, which is 429 U.S. 429,
6 which is a 1977 Supreme Court decision that has been cited in
7 other cases subsequent, and it is still valid precedent.

8 When looking at these particular circumstances
9 objectively, Mr. Hardaway's way was not obstructed in any
10 way. He was of his own volition in his own vehicle, where he
11 had complete control whether he could stay or leave. The
12 vehicle ingress and egress were not obstructed.

13 He is clearly aware of his rights. He is assertive, and
14 he asserted them when he felt appropriate. He only disclosed
15 to the officers what he chose to disclose and was quite vocal
16 in telling them what he felt was not necessary and what he
17 did not intend to tell them, including his phone number and
18 that he didn't feel the need for them to know that or
19 otherwise, and other ways in which he asserted himself during
20 the course of the conversation.

21 It is clear that while they may suspect him or may even
22 have identified him as one whom they suspected or whether he
23 was a person of interest, the conversation with him was
24 couched in a way of them canvassing the area. The officer
25 indicated that he was sitting in his car and he was

1 questioning those who were coming and going from the parking
2 lot during the relevant time period who may or may not have
3 seen something in conjunction with this incident.

4 And contrary to what has been represented, while there
5 are two officers, they are plain clothes, and the officer on
6 the other side, that being the passenger side of
7 Mr. Hardaway's vehicle, is at a distance. He is in no way
8 obstructing the opening or closing of that door. In fact, he
9 rarely speaks, and he's preoccupied using his telephone. So
10 any representation that somehow he was obstructing
11 Mr. Hardaway's view is without merit and not persuasive as an
12 argument to the Court.

13 Again, there's no single factor which dictates whether a
14 seizure occurred, but it is clear from this video that
15 Mr. Hardaway was in no way seized. His freedom to leave was
16 in no way prohibited or precluded. He was never taken into
17 custody. This was never a custodial interrogation. And
18 therefore, Miranda was not triggered, and the motion to
19 exclude his statements are denied.

20 Now, I don't know if they're relevant. I haven't heard
21 them in their context yet, so I'll have to cross that bridge
22 when I come to it if somebody makes an objection. But
23 clearly that body cam is admissible. It's not subject to
24 Miranda protections.

25 All right. Is there anything else we need to take up

1 other than what I've already said is under advisement?

2 MR. SIMPSON: Nothing from the State, your Honor.

3 THE COURT: Anything from the defense?

4 MS. ARORA: Nothing, your Honor.

5 THE COURT: Now, have any offers been extended to young
6 Mr. Hardaway? How old is he?

7 MS. ARORA: He's 24 right now, your Honor.

8 THE COURT: Mm-hmm. How long has he been in custody?

9 MS. ARORA: He's been in custody since September 7 of
10 2021.

11 THE COURT: How many days is that? I don't know. My
12 clerk will calculate it for me. Give me one second.

13 So he's been in jail 926 days as of today.

14 What offer did y'all present to him, Mr. Simpson?

15 MR. SIMPSON: Your Honor, we made some informal outreach
16 to the defense and quickly determined, sort of like it was at
17 the bench yesterday, that we were so --

18 THE COURT: I think that things can change once clarity
19 comes to a situation.

20 MR. SIMPSON: Sure. I don't believe in this case -- you
21 know, if this is error, then it's on me. But I don't believe
22 in this case that anything less than murder is appropriate,
23 and I don't think that -- I think that's a nonstarter for the
24 defense. I'll let her speak to that.

25 THE COURT: Ms. Arora?

1 MS. ARORA: Your Honor, in discussions with my client, I
2 do not believe an offer, if it were to be murder, would not
3 be something he would take or entertain.

4 THE COURT: Is there a conversation y'all need to have
5 about anything regarding any resolution of this case prior to
6 us selecting a jury and moving forward?

7 Go ahead. I'm listening.

8 MS. ARORA: Your Honor, it's my understanding that no as
9 of right now.

10 THE COURT: That works for me. We'll be ready to pick a
11 jury. Have a good day.

12 MR. SIMPSON: Thank you, your Honor.

13 MS. ARORA: Thank you, your Honor.

14 THE COURT: Try to premark all the exhibits, please.
15 See what you can agree on --

16 MR. SIMPSON: I'm almost there.

17 THE COURT: Yeah, see what you can agree on and what you
18 can't agree on so that we can move forward without much --
19 what's the word I'm looking for? -- delay on Monday.

20 (End of proceedings.)
21
22
23
24
25

STATE OF SOUTH CAROLINA

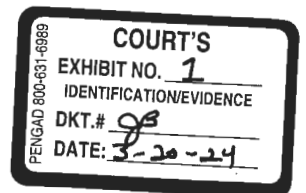
County of Charleston

SEARCH WARRANT

Date: July 20, 2021

Officer: Det. Quick

Case#: 21-10360 / K. Hardaway cell seizure



STATE OF SOUTH CAROLINA

COUNTY OF Charleston

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 16, 1918

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

The person and area under the immediate control of Karseem Nicholas Hardaway (B/M, [REDACTED] SCDL:

[REDACTED]

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

Cellular telephone belonging to Karseem Nicholas Hardaway (B/M, [REDACTED] SCDL: [REDACTED])

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 20, 2021

Signature of Circuit Court Judge

(L.S.)

STATE OF SOUTH CAROLINA }

COUNTY OF Charleston }

AFFIDAVIT

Personally appeared before me, one Det. Quick
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Please refer to previous page for description of property sought

 DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

 REASON FOR AFFIANT'S BELIEF THAT THE
 PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to █████ Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

Continued on the Following Page

Sworn to and Subscribed before me
 this 20th day of July, 2021

Signature of Judge [Signature]

(L.S.) }

[Signature]

Affiant

Address Charleston Police Department 180 Lockwood Blvd

Charleston, SC 29403

Phone 843-577-7434

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment 1013, which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag [REDACTED]) which he knew from research to be registered to Karseem Hardaway.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me
 this 20th day of July 2021
 _____ (L.S.)
 Signature of Issuing Judge
 CPD Case # 21-10360



 Signature of Affiant
 Det. Quick
 Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - [REDACTED]) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

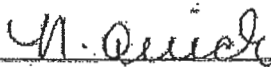
Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 20th day of July 2021

Signature of Issuing Judge
 CPD Case # 21-10360

(L.S.)


 Signature of Affiant
 Det. Quick
 Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on July 14, 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 5916 [REDACTED] and his email address is karseemhardaway30@gmail.com. Detectives also observed Karseem to be in possession of and manipulating/operating a working cell phone at the time of their interaction.

On July 16, 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. After her arrest, Ms. Hardaway provided a post Miranda statement in which she confirmed that Karseem regularly stays at her apartment and had done so the night before and throughout the day of the murder. This statement matched that as provided by Karseem as well. Ms. Hardaway also conceded that she could not account for his whereabouts starting around 2:30pm the day of the murder because she departed the apartment to go to Goose Creek and had not returned until later in the evening when police were already on scene.

A lawful search warrant was executed upon her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Ms. Hardaway regularly communicates with Karseem via the phone number provided on the O2 Fitness application, 5916 [REDACTED]. Detectives also noticed that Ms. Hardaway and Karseem were in frequent contact with each other after each were spoken to during their respective encounters with CPD Detectives on July 14, 2021. Finally, Detectives discovered a text message and phone call received by Ms. Hardaway from Karseem at approximately 5:36pm in which he instructed Ms. Hardaway to tell her children to lock the apartment door because he had forgotten to do so after he left. This is minutes after Detectives believe the homicide to have occurred.

The affiant is aware, through over ten years of law enforcement training and experience, that cell phones are nearly ubiquitous in today's society. During contact with CPD Detectives on July 14, 2021, Karseem was observed to be in possession of an operational smart phone which Detectives believe he regularly uses for communication. This communication is reflected in Ms. Hardaway's cellular phone data and the affiant believes, based on these established facts, a seizure of Karseem's cellular telephone will provide CPD Detectives the opportunity to further this criminal investigation

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 20th day of July 2021

Signature of Issuing Judge
 CPD Case # 21-10360

(L.S.)



Signature of Affiant,
 Det. Quick
 Charleston Police Department

RETURN

I received the attached Search Warrant July 20, 20 21 and have executed it as follows:
 On July 28 **2021** at 2:25pm o'clock M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Karseem Hardaway

Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Apple iPhone contained within a purple rubberized case belonging to
 Karseem Hardaway.

This inventory was made in the presence of Det. Wilson, Ofc. Mallett

AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

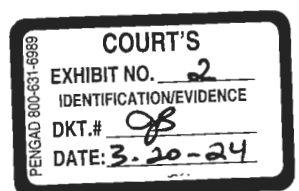
SWORN to before me this 29th
 day of July **2021**

Signature of Issuing Judge

(L.S.)

(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

County of CharlestonSEARCH WARRANTDate: July 30, 2021Officer: Det. WilsonCase#: 21-10360 / K. Hardaway cell dump

STATE OF SOUTH CAROLINA }
 COUNTY OF Charleston }

SEARCH WARRANT

Form Approved by
 S.C. Attorney General
 Section 17-13-160
 March 15, 1916

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
 OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Apple iPhone contained within a purple rubberized case belonging to Karseem Hardaway. The device is currently housed in CPD evidence under CPD Case # 21-10360 and tagged as Bag 74, Item 1.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

All electronically stored digital information, communications, or files including incoming and outgoing calls, call logs, owner information, digital images, video recordings, voice recordings, incoming and outgoing texts, contact names, user profile information, phone numbers, downloaded applications and any other digital information stored on the devices or stored on electronic storage media associated with the device both current and historical, a physical examination of the phone and the ability to make a phone call using the device

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

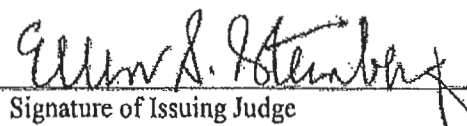
ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 30, 2021

 (L.S.) 2
 Signature of Issuing Judge

STATE OF SOUTH CAROLINA }

COUNTY OF Charleston

AFFIDAVIT

Personally appeared before me, one Det. Wilson
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Please refer to previous page for description of property sought

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

REASON FOR AFFIANT'S BELIEF THAT THE
 PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to 1012 Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

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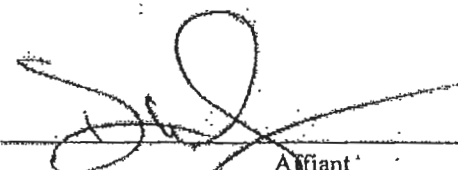
Sworn to and Subscribed before me

this 30th day of July, 2021

Signature of Issuing Judge

(L.S.)

10:30 am


 Affiant

Address Charleston Police Department 180 Lockwood Blvd

Charleston, SC 29403

Phone 843-577-7434

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment 1013, which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

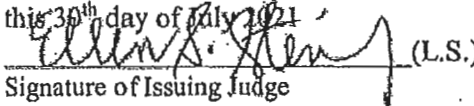
On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag [REDACTED]) which he knew from research to be registered to Karseem Hardaway.

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SWORN TO AND SUBSCRIBED before me

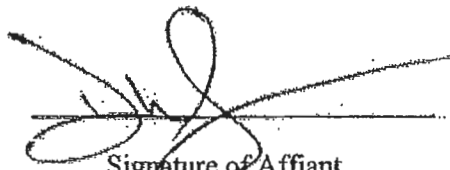
this 30th day of July 2021

 (L.S.)

Signature of Issuing Judge

CPD Case # 21-10360

10:30 AM



Signature of Affiant

Det. Wilson

Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

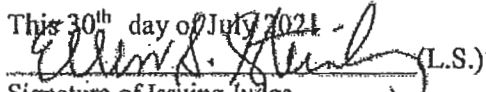
Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

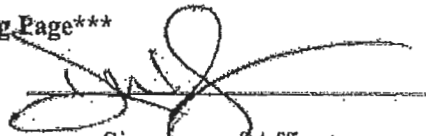
Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - UJI776) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

This 30th day of July 2021
 (L.S.)
 Signature of Issuing Judge
 CPD Case # 21-10360

10:30 am


 Signature of Affiant
 Det. Wilson
 Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on July 14, 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 5916 [REDACTED] and the email address is karseemhardaway30@gmail.com. Detectives also observed Karseem to be in possession of and manipulating/operating a working cell phone/smart phone at the time of their interaction.

On July 16, 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. After her arrest, Ms. Hardaway provided a post Miranda statement in which she confirmed that Karseem regularly stays at her apartment and had done so the night before and throughout the day of the murder. This statement matched that as provided by Karseem as well. Ms. Hardaway also conceded that she could not account for his whereabouts starting around 2:30pm the day of the murder because she had left to go to Goose Creek and had not returned until later in the evening when police were already on scene.

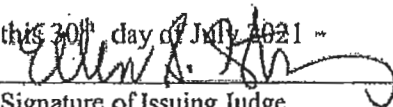
At the same time, a lawful search warrant was executed upon her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Tiffany regularly communicates with Karseem via the phone number provided on the O2 Fitness application, 5916 [REDACTED]. Detectives also noticed that Ms. Hardaway and Karseem were in frequent contact with each other they were spoken to during their respective encounters with CPD Detectives on July 14, 2021. Finally, Detectives discovered a text message and phone call received by Ms. Hardaway from Karseem at approximately 5:36pm in which he instructed Ms. Hardaway to tell her children to lock the apartment door because he had forgotten to do so after he left. This is minutes after Detectives believe the homicide to have occurred.

Based on the established facts of the investigation thus far, a search warrant for the seizure of Karseem's cellular telephone was issued on July 20, 2021. On July 28, 2021 CPD officers made contact with Karseem during a traffic stop which occurred at the intersection of Glenn McConnell Parkway and West Wildcat Blvd, within the City and County of Charleston, SC. Detectives executed the aforementioned search warrant by seizing an Apple iPhone contained within a purple rubberized case belonging to Karseem pursuant to the warrant. The device was subsequently entered into CPD evidence pending further examination. Finally, during a post Miranda statement, Karseem confirmed that this cell phone belonged to him, confirmed his phone number as being 5916 [REDACTED] and that no one else uses this device. Finally, he confirmed he was in possession of the device during the timeframe of the murder.

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SWORN TO AND SUBSCRIBED before me

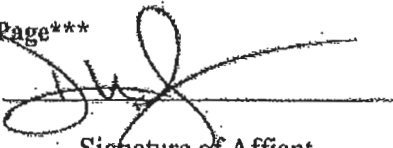
this 30th day of July 2021 ~

 (L.S.)

Signature of Issuing Judge

CPD Case # 21-10360

10:30 AM


 Signature of Affiant
 Det. Wilson
 Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

At this point in the investigation, the affiant has established that Karseem Hardaway is a part time resident at [REDACTED] Bantry Circle and present at the apartment on Monday, July 12, 2021 and Tuesday, July 13, 2021 during the hours in which Detectives believe the murder to have occurred. Furthermore, it has been confirmed that the aforementioned device belongs to Karseem and that it was active and operational during this time frame as well.

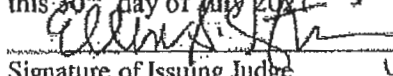
During contact with CPD Detectives on July 14, 2021, Karseem Hardaway possessed a cellular telephone which was operational at the time. It was also learned after the execution of a search warrant on Tiffany Hardaway's cellular phone that Tiffany Hardaway and Karseem had frequent contact (phone calls and texts) in the hours after their respective contact with CPD on that date.

The affiant is aware, through over ten years of law enforcement training and experience, that cell phones are nearly ubiquitous in today's society. Based on the aforementioned facts, the affiant believes that communication and data will be located through a digital forensic examination and extraction of this device. Furthermore, the affiant believes that the requested examination may (1) positively identify the device's owner or user, (2) confirm the device was active during the time frame of the homicide (3) may contain GPS data or location history contained on the device, (4) show communications, to include calls, texts, MMS messages, and application data between the device and any other associates before, during and after the incident, (5) identify the phone numbers stored on the device, (6) show any photographs taken by or stored by the user associated with the device, (7) provide a search history of the user associated with the device, and (8) any other pertinent data, documents, or device interactions associated with the target account during the time before, during, and after the incident under investigation.

Finally, the affiant is aware that CPD's Digital Evidence Unit is commonly tasked with and can recover the requested data from cell phones and other similar type electronic devices. This extraction will further the investigation and yield additional evidence of this incident which may assist with the ultimate prosecution of the crime.

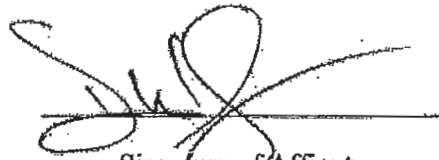
SWORN TO AND SUBSCRIBED before me

this 30th day of July 2021

 (L.S.)
 Signature of Issuing Judge

CPD Case # 21-10360

10:30 AM



Signature of Affiant

Det. Wilson

Charleston Police Department

RETURN

I received the attached Search Warrant July 30, 20 21, and have executed it as follows:
 On July 30 **2021** at 11:04pm o'clock M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with CPD Digital Evidence Unit

Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

All electronically stored digital information, communications, or files including incoming and outgoing calls, call logs, owner information, digital images, video recordings, voice recordings, incoming and outgoing texts, contact names, user profile information, phone numbers, downloaded applications and any other digital information stored on the devices or stored on electronic storage media associated with the device both current and historical, a physical examination of the phone and the ability to make a phone call using the device

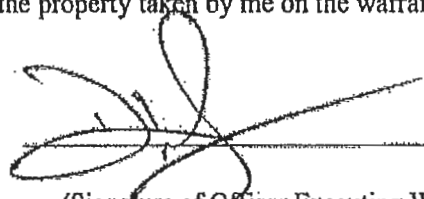
This inventory was made in the presence of Det. Wilson

AND

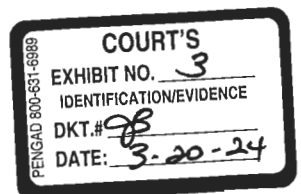
I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 3
 day of September **2021**

Ellen L. Stenberg (L.S.)
 Signature of Circuit Court Judge


 (Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

County of CharlestonSEARCH WARRANTDate: July 26, 2021Officer: Det. D. WilsonCase#: 21-103605916 (Karseem CDR)

STATE OF SOUTH CAROLINA }
COUNTY OF Charleston

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 57-13-160
March 16, 1918

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Cellco Partnership dba Verizon Wireless

180 Washington Valley Rd

Bedminster, NJ 07921

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

All related info for target number 5916 to include any and all incoming and outgoing historical call data, Internet data and Application Data to include cell sites, text messages to include content, identifying cell site information (the location of the tower and geographical sub-sector of the tower being used), per call measurement data (i.e. RTT report, NELOS Report, PCMD), main number, account status, subscriber information, published status, service address, billing address, any other numbers associated, former service number, changed number request from listed target number 5916 IMEI and/or IMSI number for each call from July 1, 2021 – July 26, 2021 A signed certified copy Certificate of Business Record from Verizon as it relates to this Target Phone.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 26, 2021

Signature of Circuit Court Judge

(L.S.) 2

STATE OF SOUTH CAROLINA }

COUNTY OF Charleston

AFFIDAVIT

Personally appeared before me, one Det. D. Wilson
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

DESCRIPTION OF PROPERTY SOUGHT

(Please refer to previous page for description of premises to be searched)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to [REDACTED] Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

Continued on the Following Page

Sworn to and Subscribed before me

this 26 day of July, 2021

Signature of Circuit Court Judge

(L.S.) }

Affiant

Address Charleston Police Department 180 Lockwood Blvd
Charleston, SC 29403

Phone 843-577-7434

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment 1013, which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

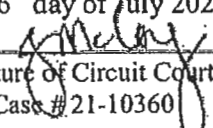
On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

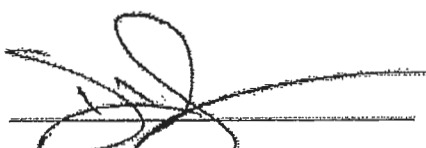
After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag [REDACTED]) which he knew from research to be registered to Karseem Hardaway.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 26 day of July 2021

 (L.S.)
 Signature of Circuit Court Judge
 CPD Case # 21-10360


 Signature of Affiant
 Det. D. Wilson
 Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

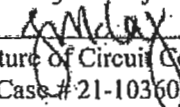
Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

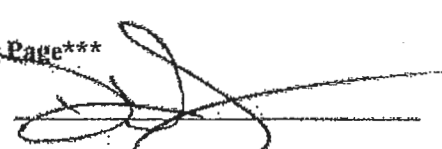
Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - [REDACTED]) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 26 day of July 2021

 (L.S.)
 Signature of Circuit Court Judge
 CPD Case # 21-10360


 Signature of Affiant
 Det. D. Wilson
 Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on 14 July 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 843-259-5916. Detectives also observed Karseem to be in possession of an operational cell phone at the time of their interaction.

On 16 July 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. At the same time, a lawful search warrant was executed on her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Tiffany regularly communicates with Karseem via the target number.

Through additional online research, Detectives learned that the target number is serviced and maintained by Verizon Wireless.

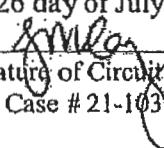
The affiant is aware, through over ten years of law enforcement experience, that cell phones are nearly ubiquitous in today's society. Based on these established facts, the affiant believes that a search of this target number provider may potentially yield evidence of any communication (including text communication) Ms. Hardaway may have had prior to the incident and after her contact with police. This information, in conjunction with the fact that Ms. Hardaway appeared to delete selected videos which CPD sought, may provide additional insight into the events surrounding the shooting and Ms. Hardaway's communications. Finally, the affiant is aware that cellular service providers, such as T-Mobile, maintain detailed records relating to the property sought.

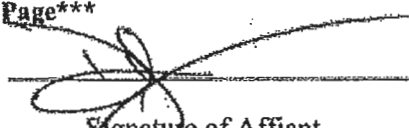
Accordingly, and based on the aforementioned, the affiant believes the records sought will (1) identify or confirm the subscriber of the target number, (2) show phone numbers in communication with the registrant, (3) show text message content sent to and from the registrant, (3) show what communications are logged leading up to the shooting, and (4) provide other data to be used to further the investigation.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 26 day of July 2021

 (L.S.)
 Signature of Circuit Court Judge
 CPD Case # 21-10360


 Signature of Affiant
 Det. D. Wilson
 Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

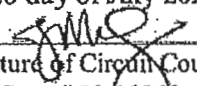
AFFIDAVIT

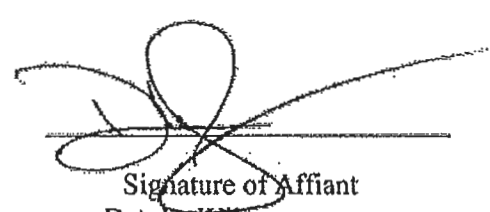
Continued from the Previous Page

This search warrant is made pursuant to: 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), 2703(c)(1)(A), 2703(c)(2), 2703(h)(5)(B), and ORS 136. That this Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" (In the Circuit Court of the State of South Carolina) as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & 28(c)(1)(A). Specifically, a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants, 18 U.S.C. § 2711(3)(B). A Superior Court of the United States that has jurisdiction over the offenses listed above. 18 U.S.C. § 2711(3)(A)(i). Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

SWORN TO AND SUBSCRIBED before me

this 26 day of July 2021

 (L.S.)
 Signature of Circuit Court Judge
 CPD Case # 21-10360


 Signature of Affiant
 Det. D. Wilson
 Charleston Police Department

RETURN

I received the attached Search Warrant July 26, 20 21, and have executed it as follows:
 On July 27 **2021** at 857am o'clock M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Verizon legal compliance

Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

All related info for target number 843-259-5916 to include any and all incoming and outgoing historical call data, Internet data and Application Data to include cell sites, text messages to include content, identifying cell site information (the location of the tower and geographical sub-sector of the tower being used), per call measurement data (i.e. RTT report, NELOS Report, PCMD), main number, account status, subscriber information, published status, service address, billing address, any other numbers associated, former service number, changed number request from listed target number **5916** IMEI and/or IMSI number for each call from July 1, 2021 – July 26, 2021 A signed certified copy Certificate of Business Record from Verizon as it relates to this Target Phone.

This inventory was made in the presence of Det. Wilson, Det. Galka

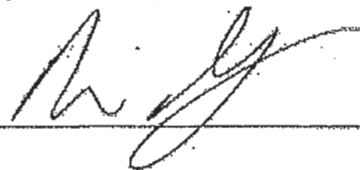
AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 28th
 day of July **2021**


 Signature of Circuit Court Judge

(L.S.)


 (Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA

County of CharlestonSEARCH WARRANTDate: July 19, 2021Officer: Det. William CrockettCase#: 21-10360karseemhardaway30@gmail.com

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>4</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>98</u>
DATE: <u>3-20-24</u>	

STATE OF SOUTH CAROLINA }
 COUNTY OF Charleston }

SEARCH WARRANT

Form Approved by
 S.C. Attorney General
 Section 17-13-160
 March 16, 1918

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
 OF Charleston

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

Google, Inc. Google Legal Investigations Support

1600 Amphitheater Parkway

Mountain View, CA 94043

lers.google.com

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

See Attachment A.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

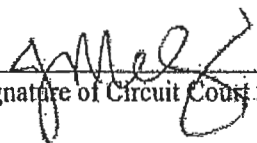
ISSUING JUDGE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

CHARLESTON, S. C.

July 19th, 2021


 Signature of Circuit Court Judge

(L.S.) 2

STATE OF SOUTH CAROLINA }
 COUNTY OF Charleston }

AFFIDAVIT

Personally appeared before me, one Det. William Crockett
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of the Stored Communications Act and 18 U.S.C. Section 2703, as amended, is located on the following premises:

DESCRIPTION OF PROPERTY SOUGHT

(See Attachment A)

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

(Please refer to previous page for description of premises to be searched)

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On Tuesday, July 13, 2021 at approximately 6:00pm, officers with the City of Charleston Police Department responded to [REDACTED] Bantry Circle, which is located in the City and County of Charleston, SC in reference to an unresponsive party. Upon arrival, officers located the victim, David Conner, inside the front entry way lying in a large pool of blood. The victim was subsequently pronounced deceased on scene by Charleston County EMS. During the course of the investigation, Detectives discovered that the victim had sustained a single gunshot wound to his head. Detectives also noted that nothing inside the apartment appeared to be disturbed and the Victim was still in possession of all of his property. Also, the Victim's roommate confirmed that none of their personal property was missing from inside the apartment as well.

During the course of the investigation, Detectives learned that the victim left work at approximately 1700 hours and was speaking with his wife on the telephone during the entire 30-minute-long trip home. Upon arriving at the apartment complex, the victim parked his vehicle in the rear parking lot, ended the call with his wife and entered the apartment. During a canvass of the incident location, the victim's vehicle (white-in-color Chevy Silverado, GA: PLJ3395) was located in the parking lot located behind building 1000 of the Bolton's Landing Apartments. Furthermore, Detectives discovered the Victim's license tag was captured on ALPR camera along I-526 at approximately 1717hrs as the Victim traveled home to his apartment.

Continued on the Following Page

Sworn to and Subscribed before me

this 19th day of July, 2021

Signature of Circuit Court Judge

(L.S.)

[Signature]
 Affiant
 Address Charleston Police Department 180 Lockwood Blvd
Charleston, SC 29403

Phone 843-577-7434

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

During a canvass the night of the incident, Detectives located a motion-activated Ring brand doorbell camera affixed to apartment [REDACTED] which is one door from the incident location toward the front breezeway entrance to the 1000 building. Detectives made contact with the resident, Tiffany Hardaway, who confirmed the device belonged to her and that the camera captured both audio and video. In this initial contact with Ms. Hardaway, she provided two videos from the time frame immediately following the homicide. The next morning, Detectives conducted a follow up with Ms. Hardaway for the purpose of obtaining additional video from the afternoon leading up to the homicide. During this interaction, Ms. Hardaway provided the requested footage and in reviewing it, Detectives observed a black male in his late teens to early 20's walking from Ms. Hardaway's apartment toward the incident location at 1704 hours. This observation immediately caught Detectives' attention because thus far, Ms. Hardaway had contended that she lived at the apartment alone and had not disclosed that anyone else was at the apartment on the incident date.

Detectives conducted research into Ms. Hardaway and her relatives/associates and learned that she has a brother named Karseem Hardaway. Detectives are familiar with Karseem Hardaway from prior investigations to include firearms related offenses and learned that he had been arrested by the Charleston County Sheriff's Office in May of 2021 for several criminal charges to include being a felon in possession of a firearm. Karseem Hardaway has a unique physical appearance in that he only has one eye. Detectives reviewed the Ring video from Tiffany Hardaway and found that the subject observed exiting the apartment at 5:04 PM on the date of the incident is consistent in appearance with Karseem Hardaway.

On July 14, 2021 Detectives learned from the management of the apartment complex that the Victim had contacted the leasing office on Monday, July 12, around 9:00pm, (a day before the homicide), to report that he had just had a confrontation with "a guy" who was causing a disturbance outside of his apartment by talking too loudly on his telephone. In this instance, the Victim relayed that he had asked the unknown male to quiet down to which the male responded "go fuck yourself!" The Victim then relayed to management he was "worried that it was not a good situation" and requested the male be "removed from the area". This gave Detectives further cause for concern that the Victim may have encountered someone from within the complex with whom he might have had a problem.

After learning this, Detectives responded back to the incident location to follow up with residents regarding the altercation the previous day. As Det. Crockett was arriving, he observed a black male enter a red Honda Accord (SC Tag [REDACTED]) which he knew from research to be registered to Karseem Hardaway.

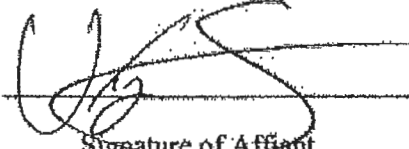
Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021.

Signature of Issuing Judge
 CPD Case # 21-10360

(L.S.)


 Signature of Affiant
 Det. William Crockett
 Charleston Police Department

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Det. Crockett made contact with the subject and identified him as Karseem Hardaway based on his unique physical appearance. Det. Crockett inquired as to whether he had been at Ms. Hardaway's apartment the night of July 12, 2021. Hardaway not only confirmed that he had been there and stayed over the night of the 12th but also positively identified himself as the subject captured on Ring video departing the apartment at 5:04 PM on July 13th 2021 from a still photograph obtained from the aforementioned footage. Hardaway stated that upon exiting the apartment at that time, he left the complex in his vehicle and drove to an address on Johns Island. He stated that he was unaware of a dispute nor did he witness a shooting or any other type of altercation.

Detectives then made contact with Ms. Hardaway to inquire about the individual they had witnessed on her Ring camera. Detectives showed her an image of the male captured on her camera departing her residence at 5:04pm the night of the homicide and she identified him as her brother, Karseem Hardaway. Detectives then asked to review her Ring camera to see if it captured the interaction with the Victim and the unknown male on the night of July 12, 2021. At this request, Ms. Hardaway's demeanor noticeably appeared to change and she reluctantly began to review her video. As Det. Crockett watched her scroll through her video feed, she appeared to delete at least one video by pressing several buttons on the screen of her device which resulted in a pop up screen with a red bar at the bottom being generated. Ms. Hardaway then pressed on the red bar on the screen before voluntarily handing Det. Crockett her device. Det. Crockett then repeated the actions he had just witnessed by selecting a video and pressing the delete button just as Ms. Hardaway had done. This action resulted in the same pop up screen with a red bar being generated. Detective Crockett inquired if Ms. Hardaway had deleted any videos from the dates requested and she replied "no".

Through further investigation, Detectives learned that a vehicle consistent in appearance with Karseem Hardaway's 2004 Honda Accord (SC - [REDACTED]) was captured on camera traveling on Bluewater Way towards Bees Ferry Road, passing the management office for Bolton's Landing Apartments at 5:35 PM the night of the homicide. Next, the same vehicle appears on video at the Blue Water gas station (1195 Bees Ferry Rd., Charleston, SC) at the intersection of Bees Ferry Rd. and Main Road at 5:37pm traveling on Main Road towards US 17. Hardaway's vehicle is then captured on ALPR camera at approximately 5:42pm traveling onto John's Island, SC. This direction of travel is not only away from the incident location but in the immediate time frame of the incident and in the appropriate direction Karseem states he traveled upon leaving the apartment complex. It should be noted, however, that Karseem exits the apartment at 5:04 PM but is not observed traveling past the management office of the complex until 5:35 PM. This timeframe leaves nearly 30 minutes unaccounted for which potentially places Karseem in the area of the incident location at the time of the murder.

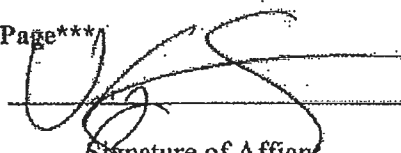
Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021.

Signature of Issuing Judge
CPD Case # 21-10360

(L.S.)


Signature of Affiant
Det. William Crockett
Charleston Police Department

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

When Detectives interacted with Karseem on 14 July 2021, he stated that he would be driving from the apartment complex to the O2 Fitness location on Daniel Island to go to the gym. Based on this statement, Detectives made contact with staff at O2 Fitness who stated that Karseem has a trial membership and provided contact information associated with the account, to include telephone number and email address. The phone number associated with the account is 5916 [REDACTED] and the email address is karseemhardaway30@gmail.com. Detectives also observed Karseem to be in possession of a cell phone at the time of their interaction. The affiant is familiar with the general appearance of modern mobile communication devices and utilizes an iPhone as a personal and workplace device. Based on this experience, the affiant determined that the device Karseem was utilizing was not consistent in appearance with that of an iPhone and is therefore likely a device utilizing the Android operating system.

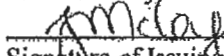
On 16 July 2021, Tiffany Hardaway was taken into custody on an arrest warrant for Obstruction of Justice relating to the deletion of the aforementioned videos. At the same time, a lawful search warrant was executed on her residence for the seizure of her cell phone. The device, an Apple iPhone, was subsequently located, seized, and placed into evidence. A lawful search warrant for the forensic extraction of this device was then obtained and executed. An examination of the data obtained from this extraction revealed that Tiffany regularly communicates with Karseem via the phone number provided on the O2 Fitness application, 5916 [REDACTED]. This communication corroborates the information obtained from the O2 Fitness records, which leads the affiant to the conclusion that the Gmail account listed on the application is likely correct as well.

The affiant is aware, through over ten years of law enforcement training and experience, that cell phones are nearly ubiquitous in today's society. Furthermore, the affiant is aware that not only is data stored on the devices, but also in cloud based systems connected to these devices. Additionally, the affiant is aware that Google, Inc collects a tremendous amount of user data from user web activity, application activity, location history, device information, and search history. They amalgamate user data in order to sell advertising aimed at the specific user and to improve the user experience. Google, Inc also facilitates the cloud based storage of images and videos in Google Photos, maintains a record of associated accounts and payment methods, stores documents created by the user, offers a service called Google Voice in which is a free voice over internet protocol (VOIP) communication system, and an application called Android Auto which is a mobile device application that allows users to interact with their device via a connected vehicle. Google identifies accounts in a variety of ways, primarily by a user created Gmail account. The affiant is aware that Karseem Hardaway provided a Gmail account of karseemhardaway30@gmail.com when registering for his gym membership.

Continued on the Following Page

SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021

 (L.S.)
 Signature of Issuing Judge
 CPD Case # 21-10360


 Signature of Affiant
 Det. William Crockett
 Charleston Police Department

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Continued from the Previous Page

Accordingly, and based on these established facts, it is the affiant's belief that a search of the requested data will yield information necessary for the furtherance of this criminal investigation. Specifically, the affiant believes that this data will show (1) the device associated with the Gmail account of karseemhardaway30@gmail.com, (2) location history of the associated device, (3) communications involving the target account and any associated devices, (4) user attribution data which will confirm ownership and dominion of the target account, (5) photographs taken by or stored by the user associated with the target account, (6) search history of the user associated with the target account, and (7) any other pertinent data, documents, or device interactions associated with the target account during the time before, during, and after the incident under investigation. This data will aid in determining the location of Karseem during the unaccounted for 30 minutes between 1704 hours and 1735 hours on the date of the incident and whether Hardaway was present during the reported interaction with the victim on 12 July 2021. Additionally, the affiant is aware that those involved in the commission of violent crimes frequently communicate with their associates, co-conspirators, relatives, and others before, during and after their crimes. Karseem appeared to be utilizing an Android based device for communication, making it likely that Google, Inc maintains the requested data associated with this device. A search of the target account for the requested data is both reasonable and necessary and will aid in the investigation and ultimate prosecution of this criminal offense.

This search warrant is made pursuant to: 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), 2703(c)(1)(A), 2703(c)(2), 2703(h)(5)(B), and ORS 136. That this Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" (In the Circuit Court of the State of South Carolina) as defined by 18 U.S.C. § 2711.18 U.S.C. §§ 2703(a), (b)(1)(A) & 28(c)(1)(A). Specifically, a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants, 18 U.S.C. § 2711(3)(B). A Superior Court of the United States that has jurisdiction over the offenses listed above. 18 U.S.C. § 2711(3)(A)(i). Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

SWORN TO AND SUBSCRIBED before me

this 19th day of July 2021

Signature of Issuing Judge
CPD Case # 21-10360

(L.S.)


Signature of Affiant
Det. William Crockett
Charleston Police Department

ATTACHMENT A

**Property Sought:
Records and Other Information to Be Disclosed**

In reference to Google, Inc. for the following accounts:

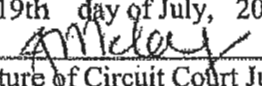
1. karseemhardaway30@gmail.com

This Search Warrant is requesting Google, Inc. to disclose the following records and other information, if available, to the affiant, for the time period **from July 12, 2021 through July 14, 2021 in Eastern Standard Time** if possible:

1. **Account Information** -- User name, primary email address, secondary email addresses, connected applications and sites, and account activity, including account sign in locations, browser information, platform information, and internet protocol (IP) addresses;
2. **Android Information** - Device make, model, and International Mobile Equipment Identifier (IMEI) or Mobile Equipment Identifier (MEID) of all associated devices linked to the Google accounts of the target device;
3. **User attribution** -- accounts, email accounts, passwords, PIN codes, account names, user names, screen names, remote data storage accounts, credit card number or other payment methods, contact lists, calendar entries, text messages, voice mail messages, pictures, videos, telephone numbers, mobile devices, physical addresses, historical GPS locations, two-step verification information, or any other data that may demonstrate attribution to a particular user or users of the account;
4. **Calendar** - All calendars, including shared calendars and the identities of those with whom they are shared, calendar entries, notes, alerts, invites, and invitees;
5. **Contacts** -- All contacts stored by Google including name, all contact phone numbers, e-mails, social network links, and images;
6. **Documents** -- All user created documents stored by Google;
7. **Gmail** -- All e-mail messages, including by way of example and not limitation, such as inbox messages whether read or unread, sent mail, saved drafts, chat histories, and emails in the trash folder. Such messages will include all information such as the date, time, internet protocol (IP) address routing information, sender, receiver, subject line, any other parties sent the same electronic mail through the 'cc' (carbon copy) or the 'bcc' (blind carbon copy), the message content or body, and all attached files;
8. **Google Photos** -- All images, graphic files, video files, and other media files stored in the Google Photos service;

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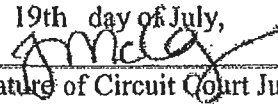
this 19th day of July, 2021

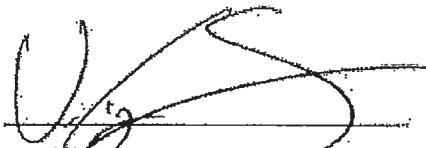
 (L.S.)
Signature of Circuit Court Judge
CPD Case # 21-10360


Signature of Affiant
Detective William Crockett
Charleston Police Department

9. **Location History** – All location data whether derived from Global Positioning System (GPS) data, cell site/cell tower triangulation/trilateration, precision measurement information such as timing advance or per call measurement data, Wi-Fi locations, and Bluetooth beacons. Semantic Location History (SLH) data including activity, start and end location, latitude and longitude for each, duration (epoch time), distance, activity type, confidence level and probability, waypoints including latitude and longitude, places visited including latitude and longitude, place ID, address, name, source info, location confidence, duration, and other candidate locations. Such data shall include the date and timestamps of the activity (with identified time zone), the latitude and longitude GPS coordinates, the accuracy display radius (in meters), the source of the activity (e.g. Wi-Fi, cell sites, Bluetooth or GPS, etc.), the specific Device Tag number, the device Platform information, of all location recordings;
10. **Search History** – All search history and queries, including by way of example and not limitation, such as World Wide Web (web), images, news, shopping, ads, videos, maps, travel, and finance;
11. **Voice** – All call detail records, connection records, short message system (SMS) or multimedia messages system (MMS) messages, and voice-mail messages sent by or from the Google Voice account associated with the target account
12. **Android Auto** – All information related to Android Auto including device names, serial numbers and identification numbers, device names, maps and map data, communications including call logs, text messages (SMS), voice actions, and all location data;
13. **Google Drive or Goolge One** – All stored files and associated metadata

SWORN TO AND SUBSCRIBED before me

this 19th day of July, 2021
 (L.S.)
 Signature of Circuit Court Judge
 CPD Case # 21-10360


 Signature of Affiant
 Detective William Crockett
 Charleston Police Department

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
State of South Carolina,	)	
Active Criminal Investigation (Homicide)	)	
CPD Case # 21-10360	)	<u>Filed Under Seal</u>
	)	

ORDER

1. The Court finds that the State of South Carolina has offered specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation, to disclose certain records and other information, as set forth in the attached **Search Warrant for the Google, Inc account associated with karseemhardaway30@gmail.com.**
2. The Court determines that there is reason to believe that notification of the existence of this Order will seriously jeopardize the ongoing investigation, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or notify confederates. *See* S.C. Code 17-30-25.
3. IT IS THEREFORE ORDERED, pursuant to S.C. Code Ann. §§ 17-30-10 *et seq* that Google, Inc. shall, within an appropriate time period of the date of this Order, disclose to the South Carolina the records and other information described in Attachment A to this Order. South Carolina law authorizes Courts to order the installation and use of pen registers or trap and trace devices. *See* S.C Code Ann. §§ 17-30-10 *et seq.*; §§ 17-29-10 *et seq.*
4. IT IS FURTHER ORDERED under S.C. Code 17-30-25 (C) that Google, Inc. **shall not disclose the existence of the application of the State of South Carolina, or the existence of this Order of the Court, to the subscribers of the account(s) listed in Attachment A, or to any other person, [[unless and until otherwise authorized to do so by the Court OR identify length of period acceptable to the court, i.e. for 1 year]], except that Google, Inc. may disclose this Order to an attorney for Google, Inc for the purpose of receiving legal advice.**

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court.

Date

7/19/21

The Honorable McGOWAN
South Carolina Ninth Judicial Circuit

RETURN

I received the attached Search Warrant _____, 20 21, and have executed it as follows:

On _____ **2021** at _____ o'clock _____ M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of _____

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____

day of _____ **2021**

} *

(L.S.)

Signature of Circuit Court Judge

(Signature of Officer Executing Warrant)

1 **NOTE:** Pursuant to Rule 607 (h)(1)(B), SCACR "A
2 COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER
3 PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED
4 TRANSCRIPT." All requests for a copy of the
5 enclosed transcript shall be sent to: Natalie
6 Dahl, RPR, P.O. Box 762, Conway, SC 29526

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DEFENDANT'S EXHIBITS

(NONE)

Transcript Legend

22	Dash (--)	Indicates an interruption in speech
23	Ellipses (...)	Indicates trailing off in speech
	Phonetic (ph)	Indicates a phonetic word
24	(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
25		

JURY SELECTION

P R O C E E D I N G S

1

2

THE COURT: Okay. Yes.

3

MR. SIMPSON: We did have them premarked.

4

And, Your Honor, there is an updated witness list.

5

6

THE COURT: My clerk should have had this already. Were you all supposed to have any further discussions with your client about whether he wanted to enter a plea or not? I can't remember.

7

8

MS. ARORA: My client does not wish to plead guilty.

9

10

11

THE COURT: Works for me. I just wanted that on the record for post-conviction relief.

12

13

Sir, is that accurate? You have no desire to enter a plea in this case?

14

15

MR. HARDAWAY: Yes, ma'am.

16

17

THE COURT: Okay. We needed that for PCR purposes.

18

19

Now, does he wish to have a formal arraignment?

20

21

MS. ARORA: We didn't discuss it, but I think that would be appropriate.

22

(A brief pause in the proceedings.)

23

24

THE COURT: How many witnesses does the State plan to call in their case in chief?

25

MR. SIMPSON: Your Honor, I believe 20.

JURY SELECTION

1 THE COURT: So it's gone from 17 to 20? I'm
2 clear with you, this case is going to the jury on
3 Friday morning.

4 MR. SIMPSON: Yes, ma'am. We're ready.
5 We're going to pack our days.

6 THE COURT: And we're not going beyond 5
7 o'clock.

8 MR. SIMPSON: Thank you, Your Honor.

9 THE COURT: Is two alternates sufficient,
10 from the State?

11 MR. SIMPSON: I believe so.

12 THE COURT: From the defense?

13 MS. ARORA: Yes, Your Honor.

14 THE COURT: Is Mr. Hardaway's sister on this
15 witness list?

16 MR. SIMPSON: She is, Your Honor.

17 THE COURT: What is her name?

18 MR. SIMPSON: Tiffany Hardaway.

19 THE COURT: Does she have a lawyer?

20 MR. SIMPSON: She does.

21 THE COURT: Who is representing her?

22 MR. SIMPSON: Scott Bischoff.

23 THE COURT: Has he been notified?

24 MR. SIMPSON: He has been, but he's been
25 notified that we don't (inaudible) in our case in

JURY SELECTION

1 chief.

2 THE COURT: What number is she on this?

3 MR. SIMPSON: She's No. 11.

4 THE COURT: She's represented by

5 Mr. Bischoff?

6 MR. SIMPSON: Yes, Your Honor.

7 THE COURT: She's charged in this case?

8 MR. SIMPSON: She is.

9 THE COURT: What is she charged with?

10 MR. SIMPSON: Accessory.

11 THE COURT: After the fact or --

12 MR. SIMPSON: Obstruction of justice, yes.

13 THE COURT: But you've notified him that you
14 don't plan to call her in your case in chief?

15 MR. SIMPSON: Correct, Your Honor.

16 THE COURT: I was asking, because if she was
17 going to be called, her lawyer needs to be notified
18 sufficient to be here.

19 MR. SIMPSON: Your Honor, if I may, this is
20 not me adding someone after the fact. This is just
21 purely a mistake. It just came to my notice. That
22 is a witness that we do intend to call.

23 THE COURT: Who is?

24 MR. SIMPSON: Maria Heffron with the City of
25 Charleston.

JURY SELECTION

1 THE COURT: How's the last name spelled?

2 MR. SIMPSON: H-E-F-F-R-O-N.

3 THE COURT: You said she's with the City?

4 MR. SIMPSON: City of Charleston Police

5 Department, digital evidence.

6 (A break in the proceedings. The
7 perspective jurors enter the courtroom.)

8 THE COURT: Thank you.

9 Ladies and gentlemen, we're going to pick a
10 jury for the case of the State of South Carolina
11 versus Karseem Nicholas Hardaway.

12 We're going to go through a process called
13 voir dire, which is simply a legal term meaning
14 that I'm going to ask you some questions so that
15 the attorneys can more effectively exercise their
16 preemptory challenges and jury selection.

17 Does the defendant wish to have a formal
18 arraignment?

19 MS. ARORA: Yes, Your Honor.

20 THE COURT: Please proceed, Madam Clerk.

21 THE CLERK: Case No. 2024-GS-10-00589, the
22 State of South Carolina versus Karseem Nicholas
23 Hardaway. If you answer to that name, please raise
24 your right hand.

25 You may put it down.

JURY SELECTION

1 You stand indicted by the name of Karseem
2 Nicholas Hardaway, indictment for murder, that in
3 Charleston, South Carolina, on or about July 13,
4 2021, the defendant, Karseem Nicholas Hardaway,
5 (inaudible) did kill and murder David Conner by
6 means of shooting him and that David Conner did die
7 in Charleston County as a proximate result thereof
8 on or about July 13, 2021 in violation of 16-3-10
9 of the South Carolina Code of Laws as amended.

10 How say you, are you guilty or not guilty?

11 MR. HARDAWAY: Not guilty.

12 THE CLERK: How will you be tried?

13 MR. HARDAWAY: By God and my country.

14 THE CLERK: May you (inaudible).

15 THE COURT: Thank you, ma'am.

16 Before voir dire, if the State would stand
17 and introduce themselves and any lawyers assisting
18 him, and tell us the names of the lawyers in your
19 office, and if counsel for the defense will provide
20 us with the same information.

21 You may proceed, Mr. Simpson.

22 MR. SIMPSON: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MR. SIMPSON: Good afternoon. My name is
25 Chad Simpson. I am hired through the State of

OPENING STATEMENT BY MR. SIMPSON

1 It is your added responsibility, Mr. Foreman,
2 to fill out the verdict form and to write out any
3 questions the jury may have during deliberations,
4 but I will give you further instructions regarding
5 that at conclusion of the case.

6 Ladies and gentlemen, the foreperson is a
7 purely random selection. That person does not have
8 any greater vote or voice than you do. It is
9 merely that the jury, as a body, needs a scrivener
10 when it is time for filling out the verdict form
11 and if you might have questions during the
12 deliberation process.

13 In order to preserve everyone's rights, I'll
14 give the parties the ability to take exception to
15 anything the Court has said by way of opening
16 instructions.

17 Any exceptions from the State?

18 MR. SIMPSON: None, Your Honor.

19 THE COURT: From the defense?

20 MS. ARORA: No, Your Honor.

21 THE COURT: Ladies and gentlemen, I ask that
22 you give counsel your undivided attention.

23 MR. SIMPSON: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 MR. SIMPSON: Ladies and gentlemen, good

OPENING STATEMENT BY MR. SIMPSON

1 morning. I want to start and reintroduce myself.
2 I'm Chad Simpson, and I represent the State of
3 South Carolina in this matter. We carry the burden
4 of proof for the State of South Carolina versus
5 Karseem Hardaway. Assisting me will be Ms. Barber
6 this week. You'll be hearing a lot from us this
7 week.

8 I want to start also by thanking you. We are
9 incredibly mindful that this is probably not where
10 you wanted to be this week and that you have lives
11 and families to support and jobs to maintain, and
12 we are really thankful. We understand that you're
13 putting those to the side this week, and it is
14 often a financial and personal inconvenience. With
15 that in mind, I'll be very brief in my remarks to
16 you this morning. Once you've heard the evidence
17 (inaudible). You heard the evidence and before
18 (inaudible), so I'll lay out the basic outline of
19 what you'll hear about this week.

20 David Conner, age 59 in 2021, husband,
21 father, supporter of a family, a working-class guy
22 who through his own blood, sweat, and tears worked
23 his way up in his occupation that he took very
24 seriously and loved a whole lot. That occupation
25 was he was a construction worker. By the time he

OPENING STATEMENT BY MR. SIMPSON

1 was 59, he had become a foreman for a construction
2 company, and that construction company is called
3 Sack Construction, S-A-C-K. The name of that
4 company and its logo is somewhat relevant in our
5 case this week.

6 He lived in Georgia. He didn't live here in
7 Charleston. Sack Construction is a pretty
8 well-regarded company, and so it was often hired to
9 do jobs outside of the state of Georgia, and it did
10 a lot of jobs throughout the years here in
11 Charleston.

12 And so in July of 2021, this is where David
13 Conner temporarily resided. For financial reasons,
14 Sack Construction deemed it better to take
15 short-term rentals at apartment complexes, rather
16 than pay for hotel rooms for their construction
17 crews when they are doing these out-of-state jobs.

18 And so Mr. Conner found himself temporarily
19 residing in an apartment complex called Bolton's
20 Landing. And Bolton's Landing is an apartment
21 complex off of Bees Ferry, so it would have been
22 the outer West Ashley area of Charleston. It's a
23 pretty nice apartment complex really, and it was
24 even nicer for Mr. Conner who, as a foreman,
25 sometimes they really kind of pack in roommates

OPENING STATEMENT BY MR. SIMPSON

1 with some of these crews to save money. But
2 because Mr. Conner was a foreman, he had just one
3 roommate in a two-bedroom apartment, and that
4 roommate was Mark Mosier. You'll hear from Mark
5 Mosier.

6 Mark Mosier was a foreman on a different job.
7 David Conner was working a job off of Rivers Avenue
8 in that area, and Mark Mosier was working a job at
9 the James Island High School; so different parts of
10 town, but, nonetheless, they were roommates. They
11 had just moved in a couple of weeks as roommates.
12 But you'll hear from Mark, and he knew David
13 through some prior jobs.

14 Like with any sort of roommates or family
15 unit, somewhat of a routine had developed between
16 David and Mark. You know, you all have routines in
17 our days where we find ourselves going through it
18 the same way. Their routine was Mark was the
19 early-to-bed guy. You know, David was sort of --
20 would stay up late, maybe have a (inaudible) a
21 beer, socialize with some of the other workers in
22 the apartment complex. But Mark was the
23 early-to-bed-early-to-rise guy.

24 David would typically get home earlier than
25 Mark, stay up a little later than Mark, and Mark

OPENING STATEMENT BY MR. SIMPSON

1 would leave before David got up in the morning.
2 And that was their routine, and such was the
3 routine on the night of July 12, 2021, which was a
4 Monday night, a normal work night.

5 Mark had gone to bed. David was up alone.
6 Around 9:45 that night, he had an encounter with
7 someone. Someone you'll hear we can assume to be a
8 neighbor, because this encounter happened right
9 outside of his door. You're going to see pictures
10 and described in some detail the layout of this
11 apartment complex. They lived on the first floor
12 in the larger apartment complex building. The
13 first floor, ground level breezeway, that was the
14 location of just three apartments that are very
15 close in proximity of each other.

16 So at 9:45 p.m. on July 12th, there was a
17 verbal confrontation of sorts between David Conner
18 and an individual outside of his door. We know
19 this because David Conner, just following
20 simultaneous to this confrontation, called the
21 property management office. He said, I'm in
22 Apartment [REDACTED], and there's a guy standing outside
23 of the door talking on the phone. I asked him to
24 leave the area, and he told me to go fuck myself.
25 So I need someone to come over here to take care of

OPENING STATEMENT BY MR. SIMPSON

1 this guy, get him out of my area, because he's
2 outside of my door, and I'm worried it is not a
3 good situation. Thank you. A message not found
4 until David -- until after David Conner was
5 deceased.

6 David Conner woke up the next day, the next
7 morning after leaving that message, spent a normal
8 day at work, got off of work, no doubt excited
9 about coming home on a Tuesday evening. He got
10 home, took a couple steps in the front door of his
11 apartment, and was shot in the back of the head. A
12 single shot to the right back of the head.
13 Thankfully, if there is any small solace we can
14 take from this, probably killed him instantly. It
15 is a good chance he wasn't even aware of it.

16 As I've already stated, Mark Mosier would
17 come home always a little later than David. I
18 don't know how familiar you are with your town, but
19 James Island High School, driving to this area of
20 town is quite a commute. Mark Mosier arrived
21 approximately 30 minutes later to find that the
22 door was unlocked, which was pretty typical because
23 David knew he was coming behind him, that it could
24 not be opened. It was blocked by the body of his
25 roommate.

OPENING STATEMENT BY MR. SIMPSON

1 He found his roommate, instantly calls 911,
2 and begins performing, sadly, useless CPR on the
3 deceased Mr. Conner. Police, fire, EMS responded,
4 and an investigation ensues.

5 I'm reluctant to use this analogy because I
6 think it is kind of overused because I try to avoid
7 it, but I've got to use it in this case because
8 it's so applicable to what you will hear this week
9 on this stand and the evidence we'll present to
10 you.

11 This case will pretty much unfold like a
12 puzzle. And you'll hear piece after piece after
13 piece. And like a puzzle, an individual piece,
14 while interesting, might not show you the whole
15 picture. But I'll stand before you today with
16 confidence knowing that at the end of the week,
17 when you've heard a little piece after a little
18 piece, you will have before you an incredibly clear
19 picture, and that picture is going to leave you
20 firmly convinced -- and that's my burden, that's my
21 job -- to leave you firmly convinced that Karseem
22 Hardaway was the man that shot David Conner that
23 afternoon when he got home from work.

24 All I ask for you this week is what any
25 jury's job is. There's a lot of flowing legal

OPENING STATEMENT BY MR. SIMPSON

1 language regarding it. You'll hear instructions
2 from the judge later about it. But all I'm asking
3 from you this week is common sense. You are such a
4 great example of what is meant by common sense in
5 that we just pick random people by gender, age,
6 occupation, race to sit here and represent the
7 common sense of the community.

8 There is no special legalese to apply here.
9 You are to hear the evidence and use your common
10 sense and draw conclusions from the testimony and
11 the evidence you hear. If you do so, that will
12 leave you firmly convinced that Karseem Hardaway is
13 guilty of what he's charged with: Murder, and
14 possession of a weapon during the commission of a
15 violent crime. Each little piece may not alone
16 give you the entire picture, but all the pieces
17 together by the end of the week certainly will.

18 So I thank you greatly for your time this
19 week and for your attention, and we'll (inaudible).

20 One other quick matter, speaking of puzzle
21 pieces, just as we've disrupted your life this
22 week, so have we disrupted the lives of several
23 witnesses and people involved. So, particularly,
24 my witness is going to seem very strange because
25 he's going way out of order in the narrative way I

OPENING STATEMENT BY MS. ARORA

1 would like to present the case. I'll explain
2 through this witness why we do that.

3 But listen to each witness, even though
4 sometimes it may seem that it is not in the
5 narrative order that you would like it to be, and
6 remember that piece of the puzzle when we get done.

7 Thank you very much for your time and
8 attention.

9 THE COURT: Ms. Arora.

10 MS. ARORA: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MS. ARORA: Good morning.

13 Sometimes the pieces of the puzzle just don't
14 fit together. That's exactly how I felt this fall.
15 I'm a lifelong Eagles fan, and I've been counting
16 down the day until August when the Eagles can start
17 playing again. (inaudible), but I thought this was
18 going to be our year. We arguably had the best
19 center, Jason Kelce, which I'm sure you all have
20 heard of. And we also have one of the fastest wide
21 receivers, A.J. Brown, and then an up and
22 quarterback. We were for sure Super Bowl bound. I
23 think a lot of people would agree. Late into the
24 season, the Eagles were 10 and 1. I think everyone
25 had us predicted as going to the Super Bowl. But

OPENING STATEMENT BY MS. ARORA

1 just in a blink of an eye, because that is how it
2 felt to me, the Eagles started to collapse. We
3 lost the last five games of the season, barely made
4 the playoffs, and then tanked against the
5 Buccaneers.

6 I think for me, as well as the coaches and
7 the players, realized something wasn't connecting.
8 Those strong pieces of the puzzle that they thought
9 they had in their players, something wasn't right,
10 and it just wasn't working.

11 You know, this trial is not about football,
12 but, to me, I think that is a great way to describe
13 how the State will present their case today. As
14 you heard, the State is going to try to present
15 puzzle pieces, pieces that are circumstantial.
16 They are going to want you to add up all of those
17 pieces and believe that at the end of the trial,
18 that beyond a reasonable doubt, that my client is
19 guilty.

20 But if you take a step back from all of the
21 puzzle pieces that the State is giving you, I ask
22 you to look at them one by one, side by side. Try
23 to put them together. Do you see those cracks in
24 the puzzle? And if you do, I think you will find
25 that my client is not guilty of murder.

OPENING STATEMENT BY MS. ARORA

1 We agree with the State, David Conner was
2 here from Georgia, and he was working. He was
3 working for a construction company, as you heard.
4 On July 13, when he gets home from work, he gets
5 shot. That's tragic. But my client, Karseem
6 Hardaway, is not the one that shot David Conner.
7 He did not kill David.

8 You're going to hear that my client was
9 staying with his sister at the apartment close to
10 where Mr. Conner lived. The State is going to tell
11 you that my client left around the same time of the
12 murder of David Conner. What the State has done is
13 they are looking at one person that they believe
14 that fits their narrative, and they are focusing on
15 that person. After the death of David, the State
16 focused on my client, Karseem Hardaway, and they
17 started to try to build their puzzle. They tried
18 to build a puzzle that fit the narrative that they
19 wanted.

20 The State today, as you heard, will try to
21 introduce evidence through witnesses. I ask that
22 as you listen to each witness, look for what bias
23 they may have. Do they have a reason to be
24 testifying? I ask that you look for what they are
25 telling you, but also ask questions about what they

OPENING STATEMENT BY MS. ARORA

1 aren't telling you today.

2 You are going to be presented with exhibits,
3 evidence, pictures, and videos today. I ask that
4 you look at those pictures and look at that
5 evidence, but take a step back from that puzzle and
6 look at the whole picture. Do those pictures go
7 together? Can you see cracks in the puzzle? Are
8 there pieces missing? Do these pieces that the
9 State presented you, do they even go to this
10 puzzle? You guys remember, just because you think
11 something looks (inaudible) something that looks
12 good on paper. In fact, you may even think it was
13 a Super Bowl (inaudible). But, eventually, there's
14 cracks in the foundation on what they are going to
15 show. It doesn't matter how hard you try, you
16 can't put that puzzle together if there's cracks.

17 This is one of the most important things in
18 Karseem's life. You all have an incredibly
19 important duty: To think critically about what you
20 say, think critically about what you don't see
21 today. At the end of this trial you are going to
22 go back into that jury room, and you are going to
23 discuss what you've heard this week. Each of your
24 opinions matter. We chose you because we felt that
25 each of you could put your feelings aside and look

OPENING STATEMENT BY MS. ARORA

1 critically at the evidence.

2 The State has to prove their case to you
3 beyond a reasonable doubt. That is the highest
4 standard in law. That means that the State has to
5 put into evidence that leaves you firmly convinced
6 that Karseem did something to meet each and every
7 element of the crime.

8 At the end of the trial, you will go back and
9 you are going to vote, and you are going to
10 determine Karseem's fate. I ask you to look at
11 those pieces. See if you can put them together.
12 Take a step back. Does that puzzle actually make a
13 picture, or do you see the cracks in the
14 foundation?

15 At the end of this trial, you are going to
16 find that my client, Karseem, is not guilty of
17 murder and not guilty of possession of a weapon
18 during the commission of a violent crime.

19 Thank you.

20 THE COURT: Call your first witness.

21 MR. SIMPSON: Thank you, Your Honor. The
22 State calls Paul Kelly with the Charleston Police
23 Department.

24 (PAUL KELLY, having been duly sworn,
25 testified as follows:)

PAUL KELLY - DIRECT EXAMINATION

1 THE CLERK: Please state your full name,
2 spell your last name directly into the microphone.

3 THE WITNESS: Paul James Kelly, IV,
4 K-E-L-L-Y.

5 THE COURT: You may proceed.

6 MR. SIMPSON: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 **DIRECT EXAMINATION**

9 **BY MR. SIMPSON:**

10 Q Mr. Kelly, you just took an oath to tell the
11 truth, correct?

12 A Yes, sir.

13 Q Exciting week this week?

14 A Yes, sir.

15 Q What's going on in your life?

16 A My wife is expecting to deliver twins
17 tomorrow morning.

18 Q Thank you so much for being here.

19 (Inaudible), and congratulations.

20 A Thank you.

21 Q Mr. Kelly, if you could -- and we'll go as
22 quickly as possible to get you out, but if you
23 could, explain to the jury what it is you do.

24 A I'm a crime scene investigator for the City
25 of Charleston Police Department.

PAUL KELLY - DIRECT EXAMINATION

1 **Q** And what kind of education and training is
2 required to be a crime scene investigator?

3 **A** For starters, I had a bachelor's in criminal
4 justice coming out of the Citadel. From there, I
5 rolled into the Marine Corp as an active duty
6 military police officer. Upon my completion of my
7 active duty obligation, I rolled to CPD as a
8 patrolman. I did that for about five years, and
9 been in crime scene almost five years.

10 **Q** So five years patrolman followed by five
11 years --

12 **A** Yes.

13 **Q** Does the occupation of being a member of the
14 crime scene unit also involve continual training
15 and education?

16 **A** Yes, sir.

17 **Q** Tell us a little bit about that.

18 **A** We do -- we do monthly in-service training at
19 Forensic Service Division through CPD. There is a
20 professional organization, the International
21 Association for Identification. They do training
22 seminars on an annual basis, and there are also
23 private contractor-type training teams that travel
24 and do classes.

25 **Q** Speaking generally, can you describe to this

PAUL KELLY - DIRECT EXAMINATION

1 jury what sort of jobs and roles a crime scene
2 investigator are?

3 **A** Jobs of the crime scene investigator are to
4 document scenes, process evidence, and route it for
5 follow-on processing. Documenting the scene is
6 primarily photography. The evidence is often
7 photographed on scene prior to collection, and then
8 again in detail at the forensic service division,
9 in packaging, and then it's sent on to other
10 technical specialists within the Forensic Service
11 Division.

12 **Q** And in that regard, do you recall -- let me
13 ask you this. Approximating -- I know it is
14 hard -- but in five years, how many crime scenes do
15 you think you have responded to?

16 **A** Five years? That's about a thousand work
17 days. Has to be over a thousand crime scenes.

18 **Q** And did you have an occasion on July 13, 2021
19 to respond to a crime scene?

20 **A** Yes, sir.

21 **Q** Where was the crime scene?

22 **A** In Bolton's Landing Apartments, Apartment

23 [REDACTED].

24 **Q** And would you give the jury a description of
25 that apartment?

PAUL KELLY - DIRECT EXAMINATION

1 **A** It's a two-bedroom apartment. As you open
2 the front door, to your left side is a kitchen with
3 a low wall separating it from a living area. Right
4 side is your living room, and directly ahead as you
5 are looking in the front door is a short hallway
6 with two bedrooms, two bathrooms.

7 **Q** And I'm showing you what is entered without
8 objection as State's 34.

9 (State's Exhibit 34 admitted.)

10 **Q** Once we get to the projector, I would like
11 you to describe what you observed. When you
12 responded, what did you observe?

13 **A** When I responded, I opened the door. Under
14 that black mark was the victim with a large amount
15 of blood-like fluid coming out of his head. His
16 head was towards the short wall right there, and
17 his feet were towards the camera.

18 **Q** And, again, you said you've responded to
19 hundreds of crime screens, at least?

20 **A** Yes, sir.

21 **Q** Are you able to tell which medical treatment
22 has been given?

23 **A** Often. In this case the victim still had
24 medical hardware in place on his remains.

25 **Q** And so does that lead you to conclude that

PAUL KELLY - DIRECT EXAMINATION

1 the body had been altered in some way?

2 **A** Yes, sir. In addition to that, I noted in
3 the report that one of the responding officers
4 advised he had been moved for medical treatment.

5 **Q** Okay. And you spent a long time in law
6 enforcement as a first responder. Is the first
7 priority to help typically somebody?

8 **A** Absolutely. If there is any chance that the
9 victim could be saved, the priority of rendering
10 medical assistance takes over preserving a crime
11 scene.

12 **Q** Now, observing, sort of, the area of the
13 body, did you notice anything of evidentiary value?

14 **A** Yes, sir. It wouldn't be in this photo. It
15 would be approximately underneath where you would
16 be standing to take this picture.

17 **Q** I apologize for not telling you this. I'll
18 point out you can mark on the screen before you.

19 **A** Yes, sir. So off my recollection of the
20 crime scene, standing approximately here to take
21 the photo you are looking at, around where you'd be
22 standing behind the camera, there's an armchair or
23 a recliner, and directly in front of that I noticed
24 an object, which when I got up on it, it was a
25 fired cartridge casing.

PAUL KELLY - DIRECT EXAMINATION

1 **Q** I'll show you what is marked and entered into
2 evidence as State's 27. Is this in any way
3 describing --

4 **A** Yes, sir. So, like I said, the red dot is
5 still there. That's a fair approximation where I
6 would have been standing to take the last photo,
7 and you can see the yellow Placard 1. The small
8 round object that looks like a cylinder is Item
9 101, which turned out to be a 10-millimeter fired
10 cartridge casing.

11 **Q** I'll show you State's 28. What are we
12 looking at there?

13 **A** It's a closeup of that same Item 101 making
14 it a little more clear it is a fired cartridge
15 casing.

16 **Q** And State's 29?

17 **A** And that is that same casing, close up from
18 the bottom, which shows a headstamp for
19 Starline 10-millimeter auto.

20 **Q** Are you referencing some markings on State's
21 29?

22 **A** Yes, sir. When I was the writing the report,
23 I went online and looked up what those markings
24 represented, because more often they are letters
25 for a manufacturer, but the star is joined by a

PAUL KELLY - DIRECT EXAMINATION

1 line is the company Starline.

2 Q Now, did you also notice the caliber of the
3 shell casing?

4 A Yes sir.

5 Q And what was that?

6 A 10-millimeter automatic.

7 Q Anything notable, vis-a-vis, your history of
8 responding to crime scenes about a 10-millimeter?

9 A They are very uncommon.

10 Q Okay. And you process hundreds of crime
11 scenes you have responded to. Do you have any
12 personal recollection of any other scenes you have
13 responded to where the shell casings were of that
14 caliber?

15 A I know that at least one came through IDIS
16 for test fire, but I'm not sure that I have
17 collected another 10-mill.

18 Q So it seems like -- and I don't want to
19 testify for you -- but you do have a vague
20 recollection of a 10-millimeter coming through at
21 some other case, and that's the only one?

22 A Yes, sir.

23 Q In hundreds of crime scenes you've done?

24 A Yes, sir.

25 Q Did you do any documentation and analysis of

PAUL KELLY - DIRECT EXAMINATION

1 the victim during your response?

2 **A** Yes, sir. When I first arrived, this was
3 still being treated as a death investigation. So
4 there was a deputy coroner from Charleston County
5 Coroner's Office, Mr. Tyreke (ph) Falks, was
6 already on scene. And in death investigations,
7 when we have the coroner present, we usually go
8 directly to the victim because that is the part the
9 coroner is really involved in. So, usually, the
10 coroner directly examines the victim, and I'm kind
11 of shooting over his shoulder, noting what he says,
12 photographing what he sees.

13 **Q** So when you know even by the time you get
14 there it is still just a death investigation, is
15 the cause of death obvious to you when you walk in
16 there?

17 **A** No, sir.

18 **Q** Did it become obvious to you later?

19 **A** Yes, sir. As Mr. Falks was examining the
20 victim, we noticed that there wasn't anything
21 obvious going on with his head. So he started
22 feeling around physically examining the victim, at
23 which point he noticed that there was something
24 crunchy approximately here on his face (indicates),
25 at which point we started more closely examining

PAUL KELLY - DIRECT EXAMINATION

1 around his head and located a round wound on the
2 backside of his neck, left side, above the
3 hairline.

4 Q What did you locate on the left side of the
5 neck above the hairline?

6 A A round wound, sir.

7 Q And is that consistent, in your experience,
8 with a gunshot wound?

9 A Yes, sir.

10 Q You noticed there was clearly some bleeding?

11 A Yes, sir.

12 Q Are fatal wounds often obvious?

13 A Fatal gunshot wounds to the head, especially
14 pistol gunshot wounds to the head are not often as
15 obvious as you would think.

16 Q Do you recall anything about the shirt that
17 the victim was wearing at the time?

18 A It was a Dayglo green Sack Construction
19 Company shirt.

20 Q I'll show you what is marked as State's 33
21 entered without objection. Does that look familiar
22 to you?

23 A Yes, sir.

24 Q Is that the shirt you just described?

25 A Yes, sir.

PAUL KELLY - DIRECT EXAMINATION

1 **Q** Along with the logo of Sack Construction
2 Company?

3 **A** Yes, sir.

4 MR. SIMPSON: Court's indulgence.

5 (A brief pause in the proceedings.)

6 **Q** **(BY MR. SIMPSON)** I'll show you what has been
7 marked and admitted without objection State's 30.
8 Take a moment and sort of analyze the marking on it
9 if you need to.

10 **A** Okay. I wasn't allowed to bring a knife in
11 here, sir.

12 **Q** Did you get it?

13 **A** Yeah, I got it.

14 **Q** And after -- take as much time as you need,
15 but after reviewing the packaging and the item
16 presented to you as State's 30, is that an item you
17 recognize?

18 **A** Yes. It is Item 101 that I took off this
19 crime scene.

20 **Q** What is it?

21 **A** It is a 10-millimeter fired cartridge casing
22 bearing the Starline markings on the bottom as
23 photographed.

24 **Q** And is that the same 10-millimeter shell
25 casing we observed in those photographs?

PAUL KELLY - CROSS EXAMINATION

1 **A** Yes, sir.

2 **Q** Mr. Kelly, I get another opportunity to speak
3 to you, but if don't, congratulations.

4 **A** Thank you, sir.

5 MR. SIMPSON: Answer any questions that Ms.
6 Arora may have.

7 THE COURT: Any questions of the witness?

8 MS. ARORA: Yes, Your Honor.

9 THE COURT: You may proceed.

10 **CROSS EXAMINATION**

11 **BY MS. ARORA:**

12 **Q** Good morning.

13 **A** Good morning, ma'am.

14 **Q** Congratulations.

15 **A** Thank you.

16 **Q** Just a couple of questions. You testified
17 that you specifically (inaudible)?

18 **A** Yes, ma'am.

19 **Q** When you got there you were waiting for
20 (inaudible) to show up?

21 **A** Yes, ma'am.

22 **Q** So you waiting outside of the apartment?

23 **A** Yes, ma'am.

24 **Q** And when you were outside of the apartment,
25 you decided to take pictures?

PAUL KELLY - CROSS EXAMINATION

1 **A** Yes, ma'am.

2 **Q** And you noticed that there was no signs of
3 (inaudible)?

4 **A** That's correct.

5 **Q** You stated a little bit before, but when you
6 walk into the apartment, your job is to,
7 essentially, document?

8 **A** Yes, ma'am.

9 **Q** Document everything that's at the crime scene
10 (inaudible)?

11 **A** Yes, ma'am.

12 **Q** So you put markers down?

13 **A** Yes, ma'am.

14 **Q** And you observed (inaudible)?

15 **A** Yes, ma'am.

16 **Q** You can test for prints?

17 **A** Yes, ma'am.

18 **Q** (inaudible) you can test blood spots?

19 **A** Yes, ma'am.

20 **Q** You are essentially looking for what is
21 evidence?

22 **A** Yes, ma'am.

23 **Q** Any clue to help you solve the case?

24 **A** That's correct.

25 **Q** And so, here, you tested blood on the entry

PAUL KELLY - CROSS EXAMINATION

1 door?

2 A Yes, ma'am.

3 Q And I believe you also tested blood that
4 might have been on the door?

5 A That is correct.

6 Q You see certain items, one of these items is
7 a wireless router?

8 A Yes, ma'am.

9 Q You also observed work items in that
10 apartment?

11 A Yes.

12 Q One of those was a radio?

13 A Yes, ma'am.

14 Q And a food container?

15 A Yes, ma'am.

16 Q And you decided not to collect those items?

17 A Yes, ma'am.

18 Q Or test them for gunshot residue?

19 A We get our gunshot residue testing kits from
20 SLED. In general, they are applied to people.

21 Q You didn't test them for blood?

22 A No, ma'am.

23 Q And you assumed that those items had been
24 accounted for?

25 A Yes, ma'am.

PAUL KELLY - CROSS EXAMINATION

1 **Q** On July 14, I think you were also asked to
2 execute a search warrant?

3 **A** Correct.

4 **Q** And this was specifically for a Chevrolet
5 Silverado?

6 **A** Yes. His vehicle was towed to the Forensic
7 Services Division.

8 **Q** And this was a white vehicle, correct?

9 **A** Correct.

10 **Q** And it had what was labeled Sack Company on
11 the outside of the vehicle?

12 **A** Yes, ma'am.

13 **Q** When you executed the search warrant, you
14 took pictures of this?

15 **A** Yes, ma'am.

16 **Q** And the decal (inaudible), one was on the
17 back of the truck?

18 **A** I've got my written report with me. I don't
19 have my photographs, so.

20 **Q** If I showed you a picture, would that refresh
21 your memory?

22 **A** Yes, ma'am.

23 MS. ARORA: Your Honor, may I approach?

24 THE COURT: You may.

25 **A** Yes, ma'am.

PAUL KELLY - CROSS EXAMINATION

1 Q (BY MS. ARORA) Did that refresh your memory?

2 A Yes, ma'am.

3 Q So let me ask my question again. So the Sack
4 logo is on the back of his truck?

5 A Yes, ma'am.

6 Q You also took photos of the side of the
7 truck?

8 A Yes, sir.

9 Q And that logo was -- you were able to view
10 the logo there as well?

11 A Yes, ma'am.

12 Q And just so I can be sure, the logo was
13 visible from standing far back from the truck?

14 A Yes, ma'am.

15 Q When you took these photos, you were a couple
16 feet back?

17 A Yes, ma'am.

18 Q This may be obvious that this was (inaudible)
19 to a passerby that this (inaudible)?

20 A Would you show me the picture, please, ma'am?
21 It is up there on the driver door.

22 Q So it was obvious that there was a logo --

23 A Yes, ma'am.

24 MS. ARORA: Beg the Court's indulgence -- no
25 further questions, Your Honor.

PAUL KELLY - REDIRECT EXAMINATION

1 THE COURT: Any redirect?

2 MR. SIMPSON: Briefly Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SIMPSON:

5 Q Mr. Kelly, you were asked on cross about
6 blood. You mentioned you came into the apartment
7 and there's a body, right?

8 A Yes, sir.

9 Q And there was a large amount of blood around?

10 A Yes, sir.

11 Q And you also located a hole in the body's
12 head?

13 A Yes, sir.

14 Q Did you make any conclusions about the source
15 of the pool of blood around the body?

16 A Most likely it came out of the hole in his
17 head. Would you like me to continue, sir?

18 Q And you mentioned -- you were cross examined
19 about gunshot residue; is that correct?

20 A Yes, sir.

21 Q What is gunshot residue?

22 A It's a combination of three elements, which
23 when found together under a scanning electron
24 microscope, would say that they came from a primary
25 proponent that the person had been in the presence

PAUL KELLY - REDIRECT EXAMINATION

1 of a firearm's discharge.

2 Q So it could be a person who is firing a
3 weapon?

4 A Yes, sir.

5 Q Or a person who was close to being shot by
6 the weapon?

7 A Yes, sir. For that reason, SLED won't even
8 process kits from victims because they will say
9 he's been shot, there will be residue on him.

10 Q And it can also be present on a person who
11 contact --

12 MS. ARORA: Objection.

13 THE COURT: Basis?

14 MS. ARORA: Leading.

15 THE COURT: Sustained; leading. Also, lack
16 of foundation.

17 Q (BY MR. SIMPSON) When a person has physical
18 contact, such as an EMS worker with a gunshot
19 victim, could that person also have --

20 MS. ARORA: Objection; leading again.

21 THE COURT: Sustained; leading. And he's not
22 an expert; lack of foundation. He can't answer a
23 hypothetical.

24 Q (BY MR. SIMPSON) You were asked about gunshot
25 residue and the decisions you made regarding

PAUL KELLY - REDIRECT EXAMINATION

1 gunshot residue by the defense; is that correct?

2 **A** Yes, sir.

3 **Q** You decided (inaudible) that you made a
4 decision not to test some items for gunshot residue
5 that were in the area where you found this gunshot
6 victim; is that correct?

7 **A** Yes, sir.

8 **Q** Why did you make the decision not to test the
9 gunshot victim and the area around the gunshot
10 victim for gunshot residue?

11 **A** Because it appears and was apparent that a
12 gunshot had been fired in that room between the
13 fired casings being in the room and the probable
14 gunshot victim.

15 **Q** Why did you make a decision not to test EMS
16 workers who had treated the victim for gunshot
17 residue?

18 **A** They were already on scene when I arrived,
19 but that wouldn't have made sense, sir.

20 **Q** Okay. And why is that?

21 **A** Because there is no reason to believe that
22 the EMS workers would have been firing at the
23 victim.

24 **Q** Would the gunshot residue present on the EMS
25 worker prove otherwise?

PAUL KELLY - REDIRECT EXAMINATION

1 **A** No, sir.

2 **Q** And why is that?

3 **A** Because, depending on the distance at which
4 the victim had been shot, it could -- GSR could
5 have deposited on the victim from the initial
6 discharge and then be transferred to the EMS
7 worker.

8 **Q** And, Mr. Kelly, we looked at a small sampling
9 of photographs that you took. You reviewed those?

10 **A** Yes, sir.

11 **Q** Are those the only photographs you took of
12 the crime scene?

13 **A** No, sir.

14 **Q** To approximate, how many photos do you
15 typically take of a crime scene?

16 **A** Homicide scene? If it was under a hundred,
17 that would be odd.

18 **Q** So it's many -- you want to document the
19 scene very thoroughly?

20 **A** Yes, sir.

21 **Q** Are those photographs provided to both the
22 State and the defense in this matter?

23 **A** Yes, sir.

24 **Q** In their entirety?

25 **A** Yes, sir.

VICKI CONNER - DIRECT EXAMINATION

1 Q Last question: Boys or girls?

2 A I've got a boy, there's two girls coming.

3 Q Father of two girls. Buckle up. It's a lot.

4 MR. SIMPSON: Thank you so much for being
5 here today.

6 THE COURT: Any objection to the witness
7 being excused from the State?

8 MR. SIMPSON: No, Your Honor.

9 THE COURT: From the defense?

10 MS. ARORA: No, Your Honor.

11 THE COURT: Sir, you are executed.

12 Call your next witness.

13 MR. SIMPSON: Thank you, Your Honor. State
14 calls Vicki Conner.

15 (VICKI CONNER, having been duly sworn,
16 testified as follows:)

17 THE CLERK: State your full name spelling
18 your last name into the microphone.

19 THE WITNESS: Vicki Conner, C-O-N-N-E-R.

20 THE COURT: You may proceed.

21 There's a telephone that needs to be turned
22 off, or it will be taken and not returned to you.

23 DIRECT EXAMINATION

24 BY MR. SIMPSON:

25 Q Good morning.

VICKI CONNER - DIRECT EXAMINATION

- 1 **A** Good morning.
- 2 **Q** Your name is Vicki Conner?
- 3 **A** Yes.
- 4 **Q** How old are you?
- 5 **A** 53.
- 6 **Q** Where do you live?
- 7 **A** Statesboro, Georgia.
- 8 **Q** And who do you live with currently?
- 9 **A** My daughter, her son, my grandson, and then
- 10 my grandson that we're raising.
- 11 **Q** Ms. Conner, what was your relationship to
- 12 David Lee Conner?
- 13 **A** He was my husband.
- 14 **Q** And how long were you two married?
- 15 **A** When this happened, about 20 years.
- 16 **Q** And he is the supporter of your family?
- 17 **A** Sole supporter for my daughter and both of my
- 18 grandchildren and me.
- 19 **Q** And were there any other children in the
- 20 family?
- 21 **A** We had five children together.
- 22 **Q** All biological?
- 23 **A** No. We had a blended family.
- 24 **Q** You have been married about 20 years?
- 25 **A** Yeah.

VICKI CONNER - DIRECT EXAMINATION

1 **Q** And do you remember David's date of birth?

2 **A** 11/12/61.

3 **Q** And could you tell the jury a little bit
4 about David's professional work here, work history,
5 what he did?

6 **A** At the time, he was a superintendent, slash,
7 foreman of -- with construction. He did new
8 installation of HVAC, air conditioning. He started
9 out as a roofer when he was 16, so.

10 **Q** How long had he been with Sack,
11 approximately?

12 **A** In October of that year it would have been 11
13 years.

14 **Q** Where did you all live together when you got
15 married?

16 **A** West Palm Beach, Florida.

17 **Q** You came to Georgia at some point?

18 **A** Yes. In 2010.

19 **Q** What brought you from West Palm Beach to
20 Georgia?

21 **A** Our son was in the Army at the time, and he
22 went to Afghanistan and got hit by an IED. We
23 moved up here to help with the recovery with all of
24 the surgeries and help with his children, because
25 he had two children. So we moved up here just to

VICKI CONNER - DIRECT EXAMINATION

1 help the family.

2 Q Did David have any trouble, whatsoever,
3 finding work in Georgia?

4 A Oh, heavens, no. No.

5 Q Was he a good worker?

6 A He put a lot of pride in his job, a lot. He
7 was a workaholic, and he loved what he did.

8 Q And when did he come to work -- did he have
9 any construction experience prior to Sack?

10 A He's been in construction his whole life,
11 yes.

12 Q When did he come to work for Sack?

13 A When did he come for Sack?

14 Q Yes.

15 A It would have been October of 2011, I
16 believe. It was '10 or '11. I'm not sure of the
17 year.

18 Q So he had been with that construction company
19 for some time?

20 A Yes.

21 Q And explain to the jury a little bit about
22 his rise and history with that construction
23 company.

24 A When he started there, it was -- we were in
25 Fort Benning in Columbus, Georgia. And he worked

VICKI CONNER - DIRECT EXAMINATION

1 for one company, and they were all telling him to
2 go to Sack Company, that it is a family owned and
3 operated, and they are very family oriented, you'll
4 love it there. He applied.

5 He started out at the bottom because they
6 didn't know him. It did not take long for him to
7 work up and start running jobs, training new guys
8 coming in. If he felt they had potential, he would
9 just put anyone under his wing and train them to do
10 the job, and to do it properly. It was his pride.
11 He had a couple of guys that in a few years worked
12 up to be superintendents just like him. He had a
13 lot of pride in it. And he worked up, and he was
14 very happy there. He loved it.

15 Q So as superintendent/foreman, he was like a
16 supervisor of a job?

17 A Yeah. He was over on top of everybody in --
18 because he did HVAC. They might have different
19 departments, plumbing and electrical, but he was in
20 charge of the HVAC on that job.

21 Q Were these jobs always in Georgia or local?

22 A No. No.

23 Q So explain a little bit to the jury about how
24 that worked when he would have a remote job.

25 THE COURT: Counsel, approach.

VICKI CONNER - DIRECT EXAMINATION

1 (Whereupon, a bench conference was had.)

2 THE COURT: You may proceed.

3 Q (BY MR. SIMPSON) We left off speaking about a
4 remote job. Was he on a remote job in July of
5 2021?

6 A Yes.

7 Q Would he come home for weekends?

8 A He would come home usually Thursday evening
9 after work. If he did overtime, he would come home
10 Friday or Saturday, whichever.

11 Q Did he talk a lot with you about his work?

12 A Yes. We talked every day, all the time.

13 Q Did he talk about the people he worked with?

14 A Yes.

15 Q Were you personally aware of any bad blood or
16 serious disagreements he had with any other people
17 in the workplace?

18 A Oh, no. There was none.

19 Q Did you know personally people that he worked
20 with?

21 A Yes.

22 Q And so would it have been normal for those
23 people to communicate with you (inaudible)?

24 A My husband made sure on every job he was on
25 that somebody -- if there was somebody there that

VICKI CONNER - DIRECT EXAMINATION

1 didn't normally work with him, he would find
2 somebody he felt comfortable with knowing who I was
3 in his phone and how to reach me if there was ever
4 an emergency.

5 Q And who was, sort of, the closest guy he had
6 at this job?

7 A On this job, it was Chris Merritt.

8 Q Chris Merritt?

9 A Yes.

10 Q And how long had he been on this particular
11 job?

12 A I don't know when it started, because he went
13 from one job to another constantly. But he had
14 been there a couple of months on this job site, but
15 I don't know how long.

16 Q (inaudible) I'll bring you to July 13, 2021
17 (inaudible).

18 A Yeah.

19 Q Would it be normal on any given day if your
20 husband was working remotely for him to have
21 contact with you throughout the day?

22 A Yeah. I would call him. He would call me.
23 In the morning, I called him first because he
24 didn't want to wake me up. And then he would
25 usually call me on his lunch break, and I would

VICKI CONNER - DIRECT EXAMINATION

1 call him every afternoon around 5 o'clock. When
2 the news came on, I knew it was time for him to get
3 off. It was like my alarm clock, so I would call
4 him at 5 o'clock every afternoon.

5 Q So it was normal for you to have a
6 conversation with him when he was leaving work on
7 the way home?

8 A Every day, unless something -- an appointment
9 or something. But, yeah, every day unless there
10 was something I had to take care of.

11 Q And I want to talk about a particular phone
12 call. Do you remember talking to him on
13 July 13th?

14 A I will never forget that phone call.

15 Q Why is that?

16 A Because it's the last time I heard my
17 husband's voice. When we hung up at 5:31, it was
18 the last time I heard my husband tell me, I love
19 you, baby. I will call you in a little bit when I
20 go to cook dinner. And I'll never hear that again.

21 Q You mention a specific time -- sorry to draw
22 your attention --

23 A It's okay.

24 Q You mentioned a specific time. What time was
25 that?

VICKI CONNER - DIRECT EXAMINATION

1 **A** 5:31.

2 **Q** Why does that very specific time ring out in
3 your mind?

4 **A** That is when we hung up the phone. When I
5 called my husband, like I said, it is always around
6 5 o'clock. But we were talking, and I told him --
7 I said, Aren't you home yet? You should be there
8 by now. And he said, Baby, I'm just sitting in the
9 truck talking, enjoying our conversation. I've
10 been home. And I said, Okay, honey. How about you
11 go do your bathroom thing and all of that, and call
12 me when you go to fix dinner. Just call me back.
13 And he said, Okay, baby. I love you. I told him I
14 loved him. We hung up the phone. I looked at the
15 time so I would know approximately when to listen
16 for my phone to ring, because I knew how long it
17 would approximately take him before he was in the
18 kitchen to start doing -- to call me back. So I
19 looked at the time, so I knew it.

20 **Q** Did he have any pet names for you?

21 MS. ARORA: Objection; relevance?

22 THE COURT: Basis?

23 MR. SIMPSON: (Inaudible).

24 THE COURT: Sustained; irrelevant. Move on.

25 **A** Binky.

VICKI CONNER - DIRECT EXAMINATION

1 THE COURT: Ladies and gentlemen, you are to
2 disregard the last question and response in its
3 entirety. You are to give it absolutely no
4 consideration in your deliberations.

5 Be very careful, Mr. Simpson.

6 MR. SIMPSON: I will rephrase, Your Honor.

7 THE COURT: None of this is relevant to
8 anything out of the offense.

9 Q (BY MR. SIMPSON) If you were to review a call
10 log about a specific call from your husband's
11 phone, without saying what it is, do you know how
12 to recognize yourself in his phone as the person he
13 is on the phone with in the phone records?

14 A Yes.

15 Q Without soliciting any specific -- I'm
16 showing you what is State's 1 for ID only. Have
17 you seen it?

18 A Yeah. I see the phone call.

19 Q Is there a particular call highlighted?

20 A Yes.

21 Q Without saying how, are you able to look at
22 it and say, That is the phone call I was just
23 discussing in my testimony relevant to the present
24 case?

25 A Yes. Without a doubt.

VICKI CONNER - DIRECT EXAMINATION

1 **Q** And not saying what it is, can you look at
2 the contact name in that phone and the phone call?

3 **A** Yes.

4 **Q** And say, Yes, that's me?

5 **A** Yes, that's me.

6 **Q** That's in State's Exhibit 1 for ID only?

7 **A** Yes. Yes.

8 **Q** I'm showing you, again, State's Exhibit 1 for
9 ID only. Do you see later phone calls to the same
10 contact being you?

11 **A** Yes.

12 MS. ARORA: Objection.

13 THE COURT: Basis?

14 MS. ARORA: Relevance.

15 THE COURT: I don't know that it's
16 irrelevant, but it's a complete lack of foundation.
17 You can establish if a witness is competent to
18 testify.

19 **Q** **(BY MR. SIMPSON)** After -- when did you learn
20 of your husband's death?

21 **A** There were several phone calls. I got a
22 phone call after 6:00. I thought it was my husband
23 calling me, because it was his phone, but when I
24 answered it, I heard Chris Merritt's voice, and I
25 knew instantly something was wrong. He called me

VICKI CONNER - DIRECT EXAMINATION

1 from my husband's phone.

2 Q Did you receive other phone calls from your
3 husband's phone not from your husband?

4 A Yes.

5 Q And who were they from?

6 A Everyone I spoke to after 5:31 from my
7 husband's phone was either Chris or an officer.

8 Q So if one were to look at phone records
9 relevant to this case and see phone calls taking
10 place to you from your husband after his death,
11 those would be explainable?

12 A Yes.

13 MR. SIMPSON: May I approach?

14 THE COURT: Uh-huh.

15 Q (BY MR. SIMPSON) Again, State's Exhibit 1 for
16 ID only. The highlighted phone call, did you
17 review the times of that call?

18 A On there? I didn't look at it. I just
19 looked at the phone number and the name.

20 Q Reviewing the time of the call and the
21 duration of the call --

22 A It was at 5:01 and --

23 Q Without any specific details, can you testify
24 confidently that the highlighted column in that
25 exhibit is the last time you spoke to your husband?

VICKI CONNER - CROSS EXAMINATION

1 **A** Yes. Yes.

2 **Q** I'm very sorry.

3 MR. SIMPSON: Answer any questions Ms. Arora
4 may have for you.

5 **CROSS EXAMINATION**

6 **BY MS. ARORA:**

7 **Q** Ms. Conner, briefly, I just want to establish
8 and make sure I understand. You and David were
9 living together permanently in Georgia?

10 **A** Yes.

11 **Q** But he was here during the week?

12 **A** He would come Sunday afternoon and usually
13 leave Thursday afternoon.

14 **Q** And you just previously testified that you
15 were on the phone with David?

16 **A** Yes.

17 **Q** Around 5:00 p.m.?

18 **A** That's when I called him, yes.

19 **Q** And you got off the phone maybe 30 minutes
20 later?

21 **A** 5:31.

22 **Q** And you testified that he sat in his truck
23 talking to you?

24 **A** Yes.

25 **Q** That that was (inaudible) unusual to you?

MARK MOSIER - DIRECT EXAMINATION

1 be sworn.

2 (MARK MOSIER, having been duly sworn,
3 testified as follows:)

4 THE CLERK: State your name and spell your
5 last into the microphone.

6 THE WITNESS: Mark Donald Mosier,
7 M-O-S-I-E-R.

8 THE COURT: If you can pull the mic down.
9 They adjust a little. Pull that down. Thank you.

10 You may proceed.

11 MR. SIMPSON: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 **DIRECT EXAMINATION**

14 **BY MR. SIMPSON:**

15 **Q** Mr. Mosier, how old are you?

16 **A** I'm 58.

17 **Q** Where are you from?

18 **A** From South Carolina. From -- I've lived most
19 of my life in and around the Columbia area.

20 **Q** And do you live in the area now?

21 **A** Yes.

22 **Q** And what do you do for a living?

23 **A** I'm a superintendent for a mechanical
24 contractor. I do HVAC work.

25 **Q** Is that Sack Construction now?

MARK MOSIER - DIRECT EXAMINATION

1 **A** Yes.

2 **Q** How long have you been with Sack?

3 **A** Almost six years now.

4 **Q** When did you start?

5 **A** I started with Sack June 5 of 2018.

6 **Q** So you were working with Sack in 2021?

7 **A** Yes.

8 **Q** And what position did you initially get with
9 Sack when you were hired?

10 **A** Superintendent.

11 **Q** So you came on as a superintendent?

12 **A** Yes, sir.

13 **Q** Do you have a lot of work history in that
14 field, construction and HVAC?

15 **A** Yes. I've been a supervisor in HVAC since
16 1994.

17 **Q** And did you travel here today for your
18 testimony?

19 **A** Yes.

20 **Q** Thank you for that.

21 What kind of work does Sack Construction do?

22 **A** Sack Construction does several different --
23 has several different divisions. They have
24 plumbing, electrical, HVAC, they have a sprinkler
25 division, and a millwright and rigging division.

MARK MOSIER - DIRECT EXAMINATION

1 Q Are all of the jobs that Sack construction
2 handles, are they all located locally in Columbia?

3 A No. They are based out of Statesboro,
4 Georgia. They have an office in -- satellite
5 office in Lexington, South Carolina. They mostly
6 do work in the Georgia/South Carolina/North
7 Carolina area.

8 Q And how is housing handled when you have to
9 go somewhere remotely?

10 A If we have to travel more than an hour,
11 hour-and-a-half from our home, they usually will
12 put us in a motel or an apartment, whichever is
13 going to be more feasible by the terms of the job.

14 Q And did you have that same job in the summer
15 of 2021?

16 A Yes.

17 Q And in July of 2021, were you so employed on
18 these remote jobs?

19 A Yes.

20 Q And where was that job?

21 A The job I was on at that time was James
22 Island Charter High School.

23 Q Okay. James Island Charter over on Fort
24 Johnson?

25 A On Fort Johnson Road, yes, sir.

MARK MOSIER - DIRECT EXAMINATION

1 Q Okay. So that -- where were you living
2 temporarily?

3 A Well, when I started the job, we were in a
4 motel over in North Charleston, Quality Inn, but
5 they decided to save money -- since we were going
6 to be here for a year or so -- to try to get
7 apartments, and they found apartments at Bolton's
8 Landing.

9 Q Nice apartments?

10 A They were very nice apartments.

11 Q And who was your roommate?

12 A David Conner was my roommate.

13 Q Did you know David Conner prior to him
14 becoming your roommate on this job?

15 A Yes. He was a superintendent also. And
16 three to four times a year we had superintendent
17 meetings where we all would get together, go over
18 the state of the company, and just learn about each
19 other.

20 Q So you had -- how long had you known him?

21 A I probably knew him a little over two years.

22 Q Okay. Through company meetings and such?

23 A Through company meetings. And prior to that,
24 we had both worked on other jobs in the Charleston
25 area. And we would have deliveries come down, and

MARK MOSIER - DIRECT EXAMINATION

1 instead of the truck having to go to two separate
2 job sites, they would drop the materials at one job
3 site, and either of us would go to the other job
4 site and pick up the materials.

5 Q Typically speaking, you were (inaudible) as
6 both superintendents close on two separate jobs?

7 A Yes.

8 Q Did you get along with David?

9 A Oh, very well.

10 Q Did you like him?

11 A I liked him a lot.

12 Q Did you know his family?

13 A Not until the funeral.

14 Q And how long had you lived at Bolton's
15 Landing with David prior to --

16 A It was two-and-a-half weeks.

17 Q About two-and-a-half weeks.

18 During that two-and-a-half-weeks, any big
19 arguments between you two?

20 A Oh, no. You know, David was the kind of
21 person, you know, that you talked to, you would
22 have a good feeling about.

23 MS. ARORA: Objection.

24 THE COURT: Basis?

25 MR. SIMPSON: I'll move on, Your Honor.

MARK MOSIER - DIRECT EXAMINATION

1 **Q** **(BY MR. SIMPSON)** In the course of
2 two-and-a-half weeks, did a routine or pattern kind
3 of come into play between you and David and work
4 and leaving, waking up, going to bed, things of
5 that nature, the dull details of life?

6 **A** Yes. I would usually get up before he would
7 and leave the apartment, because my job site was
8 further away than his, as far as the driving route.
9 It was quicker for him to get to his job site. And
10 then he would normally get back to the apartment
11 before I would in the afternoons.

12 **Q** So you typically would be gone before him?

13 **A** Before him. And he would be there when I
14 pulled back up in the afternoons, yes.

15 **Q** Would he lock the door or (inaudible)?

16 **A** If he was in there, no, he wouldn't lock the
17 door. But a lot of times -- we had people at two
18 other apartments, and he would stop and talk to
19 them when he arrived back at the apartments, so
20 sometimes he didn't go immediately back to the
21 apartment.

22 **Q** Okay. Let's talk about driving a little bit.
23 I want to show you something entered into evidence
24 as 2, 3, and 4. I'll show you State's Exhibit 2,
25 3, and 4.

MARK MOSIER - DIRECT EXAMINATION

1 MR. SIMPSON: May I approach?

2 THE COURT: You may.

3 Q (BY MR. SIMPSON) Take a minute and review
4 those photographs. And whenever you are ready, do
5 you recognize those exhibits?

6 A Yes. This was the company vehicle that I was
7 driving at that time.

8 Q So 2, 3, 4 is your vehicle?

9 A Yes.

10 MR. SIMPSON: May I approach the witness?

11 THE COURT: You may.

12 Q (BY MR. SIMPSON) I'll show you what is marked
13 as 5, 6, and 7. Take a moment; do you recognize
14 those?

15 A Yes. That was the vehicle that David was
16 driving at the time because his vehicle had been
17 put in the shop to be worked on.

18 Q Okay.

19 A It was a loaner vehicle.

20 Q A loaner vehicle, okay.

21 A Yes.

22 Q But can you personally testify about his
23 vehicle he was driving?

24 A Yes. That was the vehicle he was driving,
25 yes.

MARK MOSIER - DIRECT EXAMINATION

1 Q I would like to use you, Mr. Mosier, if you
2 don't mind, to sort of introduce us to the layout
3 of Bolton's Landing.

4 A Okay.

5 Q I'll show you what is entered into evidence
6 as 9, 10, 11, 12, 13, 14, 15, 16, 17. Mr. Mosier,
7 if you need to -- you don't have to -- but the
8 screen in front of you is a touch screen --

9 A Okay.

10 Q -- that we often see, and when you want to
11 erase, say so (inaudible).

12 A Okay.

13 Q I'll show you what is entered into evidence
14 as State's 9.

15 A Yes.

16 Q What is it?

17 A That's the apartment building we were staying
18 in at that time. That is....

19 Q Do you remember the apartment number?

20 A Yes. [REDACTED].

21 Q Okay. And do we see the number here?

22 A Sir?

23 Q Is there a building number?

24 A Yes. That's 1000. That is building we were
25 staying in.

MARK MOSIER - DIRECT EXAMINATION

1 Q So this is the building, but everyone was
2 staying in more than one unit?

3 A Yes.

4 Q Can you mark on the screen where we would --
5 is this from the front or the back?

6 A This is from the back.

7 Q Okay. Are you sure about that?

8 A Well....

9 Q Let's compare it to State's Exhibit 13 and 9.
10 I'm not trying to trick you. I'll show you State's
11 13. This is State's 9. If you can't tell --

12 A Oh, yes. This is from the front of the
13 building, because of the parking spaces.

14 Q Looks similar?

15 A Yes.

16 Q How did you tell if it's the back?

17 A Because the parking lot was in the back, but
18 that's where I would always park, in the back
19 parking lot. I didn't go to the front.

20 Q Okay. So you would park in the rear parking
21 lot?

22 A Yes.

23 Q Where would David park?

24 A In the rear parking lot.

25 Q Okay. Starting from the front, State's 9.

MARK MOSIER - DIRECT EXAMINATION

1 Would you indicate on the screen where is David and
2 your apartment?

3 A From this view, our apartment is straight
4 through in the back, to the left.

5 Q The ground floor apartment?

6 A Ground floor apartment, yes.

7 Q State's 10, recognize this?

8 A Yes. That's the hallway.

9 Q Okay. And, again, if you can mark on that
10 screen where you and David's apartment would be.

11 A Our apartment would be right back here.

12 Q So virtually walking through here, State's
13 11, same question: Where is David and your's
14 apartment?

15 A It's here, just around the corner from that
16 storage door you see there.

17 Q The door you circled is the storage area?

18 A A storage area under the stairs, yes.

19 Q Are these two doors we see across the hall
20 from each other, are they apartments as well?

21 A Yes.

22 Q Are they the only other apartments --

23 A Well, there's an apartment across from ours.

24 Q Finally, State's 12.

25 A Yes. That is our apartment door.

MARK MOSIER - DIRECT EXAMINATION

1 Q Is this the door you were talking about
2 (inaudible)?

3 A Yes. Yes.

4 Q State's 14. What are we looking at there?

5 A That's from the rear of the building, parking
6 lot where we would park every day.

7 Q Was parking more extensive in the rear?

8 A Yes. Yes. There were only a few parking
9 spaces in the front, and by the time we got there
10 every day, those were all full. There was very
11 limited parking on the driveway around the
12 apartment complex.

13 Q Okay. Could you circle where you and David
14 and your apartment would be?

15 A Yes. Right here (indicates).

16 Q I'll show you State's 15. Again, some people
17 are good with the overhead views, some people are
18 bad. If you can, can you indicate the building
19 where you would walk through?

20 A Yes. This one here (indicates).

21 Q The back right of the complex?

22 A Yes.

23 Q And State's 16, same question.

24 A Yes. This building here (indicates).

25 Q And State's 17?

MARK MOSIER - DIRECT EXAMINATION

1 **A** Yes. This is the building here.

2 **Q** It's a little tedious (inaudible).

3 I would like to get now to the night before
4 the incident.

5 **A** Yes.

6 **Q** Did you precede -- you testified earlier that
7 you typically preceded Mr. Conner to bed. Did you
8 do so on that night?

9 **A** Yes.

10 **Q** Did you have any knowledge on that night of
11 any disagreement Mr. Conner had with someone
12 outside of the apartment?

13 **A** No. No. I didn't hear anything.

14 **Q** The next day would you have left without
15 speaking to Mr. Conner?

16 **A** Yes. I usually left before he came out of
17 his room.

18 **Q** Okay. So there was no opportunity to discuss
19 anything about the night before?

20 **A** No.

21 **Q** I would like to talk to you about your day.
22 How did you spend your day on July 13, 2021?

23 **A** It was a normal day. I went to the job site
24 at James Island, did my normal thing, supervised
25 the crew putting in the heating and air

MARK MOSIER - DIRECT EXAMINATION

1 conditioning. In the two new buildings they were
2 building at James Island Charter High School. I
3 would normally coordinate with other contractors
4 and had paperwork that I had to do at the end of
5 each day before I would lock up the office trailer
6 and leave.

7 Q And to the best of your abilities,
8 approximately, what time did you leave work on July
9 the 13th?

10 A We worked up until 5 o'clock. Normally, I
11 would be there 10 to 15 minutes later finishing up
12 paperwork and locking everything up.

13 Q Have you had an opportunity to view any video
14 related to your job site?

15 A Yes.

16 Q Did that video contain a timestamp?

17 A Yes. It had me getting in any truck at 5:14.

18 Q With your previous testimony, that is
19 consistent with your recollection?

20 A Yes.

21 MR. SIMPSON: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 Q I'll show you what is marked for ID only as
25 State's Exhibit 8.

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1 **A** Yes.

2 **Q** Does that exhibit -- do you recognize that
3 exhibit?

4 **A** Yes.

5 **Q** Have you seen it?

6 **A** Yes.

7 **Q** We discussed a video clip of you leaving your
8 work site. Is that video clip contained on State's
9 Exhibit 8?

10 **A** Yes.

11 **Q** You reviewed it?

12 **A** Yes.

13 **Q** That's you in the video, correct?

14 **A** Yes.

15 **Q** Are you one hundred percent confident of
16 that?

17 **A** One hundred percent confident, because I park
18 my truck in front of the office complex every day,
19 same spot.

20 **Q** That was my next question. You see your
21 truck in that video?

22 **A** Yes.

23 **Q** And you exited that truck?

24 **A** Yes. I was the only one on that job site
25 with a company truck with our logo on it.

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1 Q Okay.

2 MR. SIMPSON: Your Honor, at this point in
3 time I note for the record that State's 8 is a
4 flashdrive that has several digital files on it.
5 I'm seeking to admit only the file contained on
6 State's Exhibit 8 labeled as "State's Exhibit 8C."

7 THE COURT: Any objection?

8 MR. SIMPSON: Which is a video of --

9 THE COURT: Any objection?

10 Do not publish what it is until I determine
11 if there is an objection.

12 MS. ARORA: Only to that specific video.

13 THE COURT: 8C is marked and admitted without
14 objection.

15 (State's Exhibit 8c admitted and published
16 to the jury.)

17 MR. SIMPSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 Q (BY MR. SIMPSON) The best you can recall,
20 approximately -- I know Charleston traffic is
21 inconsistent, but how long did it take you to get
22 from Fort Johnson Road to James Island Charter High
23 School (inaudible) to Bees Ferry?

24 A Without stops, depending on the traffic, 25
25 to 30 minutes.

MARK MOSIER - DIRECT EXAMINATION

1 **Q** Okay. And on the day in question, you
2 testified you left about 5:15?

3 **A** Yes.

4 **Q** What time, approximately speaking, would you
5 have arrived home, would you say?

6 **A** Anywhere from 5:45 to 6 o'clock, depending on
7 traffic. And that day I made a stop at a
8 convenience store before I got back to the
9 apartment.

10 **Q** Okay. So that would -- would that push you
11 closer --

12 **A** Closer to 6 o'clock, yeah.

13 **Q** And, again, I would like to spend some time
14 with the details. I know it's difficult. I think
15 it is important that the jury hears, and I may
16 interrupt you from time to time with questions.
17 But if you can describe in detail to the jury what
18 happened when you get home close to 6:00, and how
19 do you proceed, and what happens?

20 **A** Okay. So I pulled up and parked in the rear
21 parking lot. I got out of my truck, went straight
22 to the apartment door. The door was unlocked. I
23 tried to open it. It wouldn't open. There was
24 something behind the door. So I had to push it a
25 little harder, and that is when I saw David was

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1 laying on the floor behind the door. So I pushed
2 it enough that I could get in, found him laying on
3 the floor in a large pool of blood.

4 Q I'll show you what is previously entered into
5 evidence, again, noting that you can mark on the
6 screen there.

7 A Okay.

8 Q Do you recognize this room?

9 A Yes.

10 Q And what room is that?

11 A That is the living room of the apartment we
12 stayed in.

13 Q And where is your entrance? Where would you
14 come in and out of this?

15 A This is the entry door here (indicates).

16 Q And you already testified that opening -- did
17 the door open to the inside?

18 A Yes.

19 Q And you testified that that was blocked?

20 A Yes. His legs were up against the door. His
21 feet and all were against the door, so I had to
22 push a little hard to make a wide enough opening
23 that I could squeeze in there and check to see what
24 was wrong with him.

25 Q And to just ask you some details. His feet

Q Mr. Eikenberg, who are you currently employed with?

Q And let the jury know a little bit about what the ATF, what your agency does.

Q And if you could, specific to you, could you let the jury know, sort of, what kind of educational background in law enforcement background you had prior to and continuing to this?

A Of course. I'm a graduate from the University of Maryland. I went into the ATF Academy in March of 2016. I've been an ATF agent for eight years. I started my career in the Denver

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1 field office. I did a little over four years
2 there, and transferred to Charleston in 2020.

3 As an ATF agent, I've gone to schools to
4 investigate violent crime. I've also attended
5 schools to help -- it's call Interstate Nexus
6 Determination School. It's where we research the
7 markings of firearms to find where they are
8 manufactured. And then I have assisted on numerous
9 state and local police investigations, as well as
10 large federal investigations --

11 Q Do you maintain any sort of -- and you may
12 have touched on this a little already -- but do you
13 maintain any sort of continuing education and
14 training while in the ATF?

15 A So with ATF -- I mean, we go through regular
16 firearms training. We're qualified in pistols
17 every quarter. We also have continuing education
18 training as a nexus expert or -- to make interstate
19 nexus determinations for firearms related to
20 federal investigations. We continually read new
21 material that is released, and consult with other
22 people in the program.

23 Q Okay. And to be direct and up front with
24 this jury, were you involved in the investigation
25 of the crimes that brings us here today?

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1 **A** No, sir.

2 **Q** And one thing -- if you're asked (inaudible),
3 and we'll get to that later. Do you know anything
4 about who is being accused or anything of the
5 details of this investigation?

6 **A** No, sir. The first time I saw the name of
7 the defendant was on a subpoena that I received on,
8 like, March 18.

9 **Q** Nevertheless, were you asked by my office to
10 do some research for the purposes of this case?

11 **A** No, sir.

12 **Q** Were you asked to provide us some data
13 related to this case?

14 **A** Yes, sir.

15 **Q** Okay. And let's -- what is the NTC?

16 **A** The NTC is the National Tracing Center. It
17 is ATF's tracing center relating in Martinsburg,
18 West Virginia. Any time law enforcement agent
19 enters a tracing report, it goes through
20 Martinsburg, West Virginia, and they start that
21 process.

22 **Q** Okay. And do you have access to that
23 database?

24 **A** Yes, sir. So the way firearms tracing works
25 is once a firearm is encountered or recovered by a

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1 law enforcement agent, they'll take the markings
2 that are required by the federal law on the
3 firearm -- that would be the make, model, caliber,
4 serial number -- and put it -- enter into our
5 Internet-based tracing system, called E-trace.

6 The request then goes to the national tracing
7 center in Martinsburg, West Virginia. They then
8 contact the manufacturers, which follow the retail
9 chain of distribution to find out which store sold
10 that firearms, and we will be able to identify a
11 first retail purchaser. All of this data is
12 maintained within E-trace. And that is the system
13 I have access to where I can query serial numbers,
14 submit traces, or pull statistical data at that
15 time.

16 Q Okay. And what -- before we get into the
17 statistical data, what would lead a law enforcement
18 agency to enter a firearm into the trace database?

19 A So as ATF agents, we prefer if every firearm
20 recovered or encountered by law enforcement is
21 traced.

22 Q Stop there. You report every single one?

23 A Correct.

24 Q Are you aware that some agencies have
25 (inaudible)?

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1 **A** Some agencies do, and they will trace every
2 firearm that goes into evidence. And other
3 agencies will only trace certain high profile or
4 high profile crime guns.

5 **Q** What type of agencies typically enter every
6 single firearm?

7 **A** Larger agencies, especially in the big city
8 agencies will enter every firearm they encounter.
9 I believe CPD enters -- Charleston Police
10 Department enters every firearm, North Charleston,
11 Police Department, Charleston County. As you
12 branch out to smaller police departments that may
13 only have a couple of officers. Those likely would
14 not trace every firearm.

15 **Q** So if I understand your testimony, an agency
16 like the Charleston Police Department -- or even
17 some other larger agencies in this area -- would
18 have a policy of entering every firearm?

19 **A** Correct. Yes, sir.

20 **Q** You referred in an earlier answer to
21 statistical data. What sort of statistical data do
22 you have access to?

23 **A** We have a dashboard where we would be able to
24 research firearms that were traced by law
25 enforcement. So contrary to popular belief, there

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1 is no firearm registry or gun database that ATF
2 knows about every firearm out there. The only
3 firearm data we have is what has been recovered by
4 law enforcement and is kept as a statistical note.

5 Q Okay. And are you able to run statistical
6 data based on caliber?

7 A We are.

8 Q So beginning with that universe of traced
9 weapons, you can see how many -- what percentage of
10 those traced weapons are under a certain caliber?

11 A Correct.

12 Q Did we ask you to do that in this case?

13 A Yes, sir.

14 Q Was that relevant to a particular caliber?

15 A Yes, sir. I was asked to see the prevalence
16 of 10-millimeter caliber and how it compares to
17 other calibers that are recovered by law
18 enforcement.

19 Q And how did you decide to break down that?

20 A I looked -- I received this request -- I
21 believe it was in around March 7 of 2024. So I
22 went back and looked at one-year data from March 7
23 2023 to --

24 Q I'm sorry, may I interrupt?

25 A Yes sir.

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1 **Q** On that first data step of one year, what was
2 the number of firearms that had been traced?

3 **A** I looked at just the ATF Charleston field
4 office recovered data. I think that is the nine
5 eastern-most counties of South Carolina. Within
6 there, the police departments traced over 15,000
7 firearms.

8 **Q** In the one-year period?

9 **A** In the one-year period.

10 **Q** And, I'm sorry, you are ahead of me here. Is
11 this just in the region that would include
12 Charleston County?

13 **A** Correct.

14 **Q** What other counties?

15 **A** It would be nine counties: Jasper, Hampton,
16 Colleton, Charleston, Dorchester, Georgetown,
17 Clarendon, Beaufort. I believe -- the nine
18 counties on the east.

19 **Q** And in the one year and nine counties, what
20 was the total firearms traced through this system?

21 **A** A little over 15,000.

22 **Q** And what percentage of those were
23 10-millimeter?

24 **A** There were 197, 10-millimeter handguns
25 recovered. So a little over 1 percent were

BRYCE EIKENBERG - DIRECT EXAMINATION

1 10-millimeter firearms.

2 Q And could you give us the exact percentage if
3 you were able to refresh your recollection?

4 A Yes, sir.

5 MR. SIMPSON: May I approach?

6 THE COURT: You may.

7 Q (BY MR. SIMPSON) I'm showing you what is
8 marked for ID only as State's 100. Do you
9 recognize that?

10 A I do.

11 Q What is that?

12 A This is the report I drafted looking at
13 10-millimeter caliber firearm recoveries within the
14 ATF Charleston field office.

15 Q So for the period of one year, what is the
16 percentage of all of the guns for 10-millimeter?

17 A 1.28 percent.

18 Q Did you sort of break it down (inaudible)?

19 A Yes, sir.

20 Q What was the next status?

21 A The next status that I went to was three
22 years, so March 7, 2021 through March 7, 2024.

23 Q And if you need to refer to your report to
24 refresh your recollection, let me know.

25 What was the total number of firearms traced

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1 in that span?

2 **A** I believe it was just over 43,000 firearms
3 were traced by law enforcement agencies in that
4 three-year span.

5 **Q** And over those 43,000 firearms that were
6 traced, what percentage of those were 10-millimeter
7 caliber?

8 **A** I remember there was only 468, 10-millimeter
9 caliber firearms, but I don't remember the percent.

10 **Q** Would this refresh your recollection?

11 **A** It would.

12 **Q** I'll show you State's 100.

13 **A** 1.08 percent.

14 **Q** 1.08 percent?

15 **A** Yes, sir.

16 **Q** And was there a third data set?

17 **A** Then I went back to a five-year span, so
18 March of 2019 through March of 2024. I believe
19 there was about 60,000 firearms traced during that
20 five-year span.

21 **Q** And what percentage of the 60,000 firearms in
22 that span were 10-millimeter handguns?

23 **A** For this span it was .92 percent?

24 **Q** So less than 1 percent?

25 **A** Yes, sir.

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1 **Q** Did you also -- did you do any comparative
2 analysis to other commonly used firearms in the
3 traces?

4 **A** I went through the data and made a little
5 chart on this report that listed the most
6 frequently traced firearms, such as 9-millimeter,
7 .40 caliber, .45 caliber, et cetera.

8 **Q** I'm showing you again what is marked for ID
9 only as State's 100. Could you review a little bit
10 from top to bottom for this jury the most common
11 handguns and the percentage which they are used or
12 traced to crime-related death?

13 **A** Yes, sir. For this data I looked at just the
14 one-year frame, which was the March of 2023 through
15 March of 2024. There was 15,280 firearms
16 recovered. Of that, the most popular one was a
17 9-millimeter caliber, which accounted for
18 58.08 percent.

19 **Q** 58 percent?

20 **A** Yes, sir. The next most frequently traced
21 firearm was a .40 caliber handgun, which accounted
22 for 12 percent of the firearm recoveries.

23 **Q** And next?

24 **A** It went to .380 caliber handguns or firearms,
25 and that would be 6.63 percent.

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1 Q And the next?

2 A The next one went to .45 caliber firearms,
3 which accounted for 5.74 percent.

4 Q Next?

5 A The next was .22 or .22 caliber firearms,
6 which accounted for 3.35 percent.

7 Q And the next?

8 A The next is .556 caliber firearms, and that
9 accounted for 3.4 percent.

10 Q Next?

11 A The next is 7.62 caliber firearms and that
12 accounted for 2.22 percent.

13 Q What kind of firearms is that (inaudible)?

14 A 7.62 --

15 MS. ARORA: Objection; relevance.

16 THE COURT: I really didn't hear what he
17 said. Please repeat.

18 Q (BY MR. SIMPSON) (inaudible). The next
19 firearm?

20 A The next is the 10-millimeter firearm or
21 caliber firearm that we discussed, and that
22 accounted for 1.28 percent within that year.

23 Q Agent Eikenberg, how long have you been with
24 the ATF personally?

25 A I've been with the ATF for eight years.

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1 **Q** Eight years. And, again, any focus of the
2 ATF is firearm-related; is that correct?

3 **A** Yes. Yes, sir.

4 **Q** How many times in your career, has your
5 career led you to cross or come into contact with a
6 10-millimeter handgun?

7 **A** So, for this question, I can't remember all
8 of the cases I've prosecuted, but I was able to
9 query reports that I compared back that followed
10 the interstate nexus of firearms and ammunition,
11 and that was since 2021, is when I went to the
12 class to do this board for ATF, and I was not able
13 to find any 10-millimeter caliber that I researched
14 or looked into for those reports.

15 **Q** So since 2021, in your career with the agency
16 of Alcohol, Tobacco, and Firearms, you couldn't
17 recall a time you have come across a 10-millimeter
18 handgun?

19 **A** Not since 2021.

20 **Q** Agent Eikenberg, we also asked you to take a
21 look at a specific handgun?

22 **A** You did.

23 **Q** And, I'm sorry, was that actually the handgun
24 (inaudible)?

25 **A** I was provided videos -- video files of a

BRYCE EIKENBERG - DIRECT EXAMINATION

1 handgun that I looked at.

2 MR. SIMPSON: Your Honor -- Court's
3 indulgence.

4 (A brief pause in the proceedings.)

5 Q (BY MR. SIMPSON) I'll show you what is marked
6 for ID only as State's 69. Do you recognize that
7 image?

8 A I do.

9 Q Is that an image from the video still you
10 were referring to?

11 A Yes, sir.

12 Q And what did we ask you about that firearm?

13 A You asked me to look at the firearm and see
14 if I could identify what type of firearm it was. I
15 read the markings that are engraved on the slide,
16 and I could see it had a Glock manufacturing
17 marking. Its model is a Model 20, Gen 4, and that
18 the caliber listed was 10-millimeter auto.

19 Q And that's a still image, but you are
20 referencing videos.

21 A Yes, sir.

22 Q Were you able to see any other markings in
23 the video you were shown?

24 A Yes, sir. You could pause the video and you
25 were able to observe the serial number, which was

BRYCE EIKENBERG - CROSS EXAMINATION

1 listed on the slide of the firearm.

2 Q Any research that you did regarding that
3 serial number?

4 A Yes, sir. I believe that serial number was
5 BNNR372, and I queried that within our
6 Internet-based system, E-trace, and I saw that this
7 firearm had previously been traced by another agent
8 in our office.

9 Q What was the caliber of that firearm?

10 A It was traced to a 10-millimeter caliber
11 Glock 20 pistol.

12 MR. SIMPSON: Court's indulgence.

13 (A brief pause in the proceedings.)

14 MR. SIMPSON: Thank you so much for your
15 time. Answer any questions that Mr. Arora may
16 have.

17 THE COURT: You may proceed.

18 CROSS EXAMINATION

19 BY MS. ARORA:

20 Q Good afternoon, Agent Eikenberg.

21 A Good afternoon.

22 Q Are you okay?

23 A I'm okay.

24 Q I just want to make sure I'm clearly
25 understanding the tracing data that you just

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1 (inaudible).

2 A Okay.

3 Q So you reviewed firearms data regarding
4 10-millimeter handguns?

5 A Correct.

6 Q And in order to (inaudible) on what you
7 called the National Tracing Center?

8 A It's the -- National Tracing Center compiles
9 all of this data, which is able to be queried
10 within our E-trace system.

11 Q Okay. And this E-trace system, this traces
12 firearms just associated with crimes?

13 A Yes. Yes, ma'am.

14 Q And it provides investigative leads for law
15 enforcement?

16 A Yes, ma'am. It would provide us -- a
17 firearms trace would take you to that first
18 purchaser of the firearm, which could be an
19 investigative step for detectives or federal
20 agents.

21 Q So how this process works is law enforcement
22 recovers a firearm, correct?

23 A It can either be recovered or identified.
24 Like if it's a photograph or someone, you know,
25 called it in and said this pistol was stolen, or I

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1 saw this serial number.

2 Q And then at that point, that law enforcement
3 agency will request the firearms be traced?

4 A Yes, ma'am. They submit that to ATF, to the
5 National Tracing Center. It would take all of
6 those markings and contact the manufacturer and
7 follow the retail distribution steps to that first
8 retailer, the gun store that sells it.

9 Q So when you say "markings," you are referring
10 to the make?

11 A Yes, ma'am. The make, model, caliber, gauge,
12 serial number, sometimes there's proof markings on
13 the firearm.

14 Q And this helps determine where a gun might
15 have come from?

16 A Yes, ma'am.

17 Q Were it connected to another place?

18 A Yes, ma'am. You can see if another firearm
19 was traced before or requested before. Sometimes a
20 firearm is recovered that is stolen, and it is
21 provided back to that individual, and it can
22 eventually be recovered again.

23 Q And you specifically looked at data for the
24 last year?

25 A Yes, ma'am.

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- 1 Q Three years?
- 2 A Yes, ma'am.
- 3 Q And then five years?
- 4 A Yes, ma'am.
- 5 Q And the data you looked at is only in regards
6 to traced firearms?
- 7 A Yes, ma'am. Only the firearms that were
8 traced.
- 9 Q That is the only firearms (inaudible)?
- 10 A Yes.
- 11 Q So a law enforcement agency, that could be
12 the FBI?
- 13 A Correct.
- 14 Q It could be ATF?
- 15 A Correct.
- 16 Q It could be City of Charleston?
- 17 A Correct.
- 18 Q North Charleston?
- 19 A Correct.
- 20 Q Even more rural counties?
- 21 A Yes, ma'am.
- 22 Q Agencies don't have to request tracing?
- 23 A No, ma'am.
- 24 Q And, for example, rural, small towns, they
25 don't usually request tracing?

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1 **A** No, ma'am. We prefer that they do, but that
2 is not always the likelihood.

3 **Q** So they can recover a firearm and just hold
4 onto it?

5 **A** Correct.

6 **Q** And just keep it in their database?

7 **A** Correct. Until they are done with their
8 trials or whatnot, and the firearms are destroyed
9 or sold back.

10 **Q** So, for example, probation, they don't trace
11 firearms?

12 **A** Not that I know of.

13 **Q** They take the firearm and put it into a
14 vault?

15 **A** Correct.

16 **Q** So you are not aware of all firearms that
17 probation has recovered?

18 **A** Yeah, I'm not familiar with every agency that
19 has a MLU that traces all of the firearms, but I
20 know that there are firearms that are not traced.

21 **Q** And you testified earlier that there is no
22 national gun registry?

23 **A** No, ma'am.

24 **Q** So there is no way to track how many guns are
25 sold?

BRYCE EIKENBERG - CROSS EXAMINATION

1 **A** No.

2 **Q** And you can't tell how many certain calibers
3 of guns are sold?

4 **A** No, ma'am.

5 **Q** And so you can't specifically tell us how
6 many 10-millimeters were sold in the United States?

7 **A** No, ma'am.

8 **Q** Or South Carolina?

9 **A** No, ma'am.

10 **Q** You just stated you are aware of what types
11 of guns are sold?

12 **A** Say that one more time.

13 **Q** You are aware of what types of guns are
14 usually sold?

15 **A** Like different calibers and whatnot?

16 **Q** Yeah.

17 **A** Yes, ma'am.

18 **Q** Different calibers?

19 **A** Correct.

20 **Q** So it is not hard to walk into a gun store
21 and purchase a gun?

22 **A** No. If it's available on their shelves or if
23 they can order you one, perhaps, if it is not
24 available.

25 **Q** So if you said available, it could be readily

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1 available (inaudible)?

2 A Correct.

3 Q And so 10-millimeters are not rare guns?

4 A I would say they are not like

5 an-impossible-to-find gun, no.

6 Q They are not uncommon?

7 A No.

8 Q In going back to the data that Mr. Simpson
9 just had you go over, you created a table with the
10 caliber of the gun?

11 A Yes, ma'am.

12 Q And that table shows other calibers
13 (inaudible)?

14 A Other calibers that were also in that dataset
15 of recovered firearms, yes, ma'am.

16 Q Different calibers listed, a 9-millimeter?

17 A Yes, sir.

18 Q .45?

19 A Yes.

20 Q And these aren't the only caliber guns that
21 exist?

22 A No, ma'am.

23 Q So there is 34 different calibers of a gun?

24 A In the world?

25 Q In the world.

BRYCE EIKENBERG - REDIRECT EXAMINATION

1 **A** I believe there is probably hundreds of
2 calibers, I guess, in the world. But the ones that
3 are traced and recovered, we probably have a list
4 of about 30 to 40, maybe.

5 **Q** Okay. And the data that you researched, the
6 10-millimeter (inaudible)?

7 **A** Yes, ma'am.

8 **Q** So you said about (inaudible)?

9 **A** Yes. It was the eighth most traced firearm
10 at 1 percent, which is significantly different than
11 9-millimeter and .40, but it was the eighth most
12 traced.

13 MS. ARORA: Beg the Court's indulgence.

14 (A brief pause in the proceedings.)

15 MS. ARORA: Your Honor, no further questions.

16 THE COURT: Any redirect?

17 MR. SIMPSON: Briefly, Your Honor.

18 THE COURT: You may proceed.

19 **REDIRECT EXAMINATION**

20 **BY MR. SIMPSON:**

21 **Q** Agent, you testified that the Charleston
22 Police Department has a policy to run every gun
23 they encounter?

24 **A** That is my belief, yes, sir.

25 **Q** You believe that is the policy of the North

BRYCE EIKENBERG - REDIRECT EXAMINATION

1 Charleston Police Department as well?

2 A I do, yes, sir.

3 Q And the Charleston County Sheriff's Office?

4 A Yes, sir.

5 Q And you ran numbers for just nine counties of
6 the Lowcountry?

7 A Yes, sir.

8 Q How many -- and these are guns that come
9 across due to some suspicion of criminal activity;
10 is that a fair assumption?

11 A Yes, sir.

12 Q And in a five-year dataset, what was the
13 total number of traces?

14 A In five years, I believe it was -- it was
15 over 60,000.

16 Q Over 60,000?

17 A Yes, sir.

18 Q And what percentage of those were
19 10-millimeter?

20 A 0.92 percent.

21 Q Less than 1 percent?

22 A Yes, sir.

23 MR. SIMPSON: No further questions.

24 THE COURT: Any objection to the witness
25 being excused from the State?

JURY OUT - ATTORNEYS AND THE COURT

1 MR. SIMPSON: No, Your Honor.

2 THE COURT: From the defense?

3 MS. ARORA: No, Your Honor.

4 THE COURT: Sir, you are excused.

5 THE WITNESS: Thank you.

6 THE COURT: You're welcome.

7 Call your next witness.

8 MR. SIMPSON: May I approach, Your Honor?

9 (Whereupon, a bench conference was had.)

10 THE COURT: Mr. Foreman, ladies and
11 gentlemen, we're going to take a brief comfort
12 break. During the break, please do not discuss the
13 case, and please leave your notepads in your seats.

14 (The jury exits at 3:04 p.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: What is the State's next witness?

17 MR. SIMPSON: William Crockett formerly with
18 the Charleston Police Department.

19 THE COURT: For the record, when Counsel
20 approached the bench, the defense had some concern
21 about a witness -- I mean a juror they perceived to
22 be sleeping. I know exactly which juror they are
23 referring to, and I've reassured them that I'm
24 constantly watching and observing the jury, and she
25 is not sleeping. She closes her eyes, and I do

JURY OUT - ATTORNEYS AND THE COURT

1 that sometimes myself. The fluorescent lights in
2 these buildings are very difficult on you when you
3 wear glasses, and especially when there is no
4 natural, or what the contractors call "a sealed
5 environment," and I won't go on about how unhealthy
6 they say that is. But, nonetheless, it is what we
7 have here. So she is not be sleeping, but out of
8 an abundance of caution, I had them stand up and
9 move around. After lunch, it can be hard to
10 maintain.

11 With that observation having been made, we'll
12 be out for 10 minutes for the restroom.

13 MR. SIMPSON: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 (A recess was taken.)

16 THE COURT: State ready to proceed?

17 MR. SIMPSON: We're ready, Your Honor.

18 THE COURT: Defense ready?

19 Who is your next witness?

20 THE BAILIFF: Detective Crockett. He's in
21 the hallway.

22 THE COURT: Please get the witness.

23 Please get the jury.

24 (The jury enters at 3:23 p.m., and the
25 following is heard in the presence of the jury.)

WILLIAM CROCKETT - DIRECT EXAMINATION

1 THE BAILIFF: All jurors are present.

2 THE COURT: You may be seated.

3 Ladies and gentlemen, I hope you enjoyed your
4 break. We'll now resume testimony.

5 Call your next witness.

6 MR. SIMPSON: Thank you, Your Honor. The
7 State calls Detective William Crockett.

8 THE COURT: Please swear the witness.

9 (WILLIAM CROCKETT, having been duly sworn,
10 testified as follows:)

11 THE CLERK: State your name and spell your
12 last directly into the microphone.

13 THE WITNESS: William Tyler Crockett,
14 C-R-O-C-K-E-T-T.

15 THE COURT: You may proceed.

16 MR. SIMPSON: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 **DIRECT EXAMINATION**

19 **BY MR. SIMPSON:**

20 **Q** Who is your current employer?

21 **A** I'm currently employed as an investigator
22 with the York-Poquoson Office in Virginia.

23 **Q** Did you travel here today for your testimony?

24 **A** Yes, I did.

25 **Q** Thank you.

WILLIAM CROCKETT - DIRECT EXAMINATION

1 If you could, explain to the jury a little
2 bit about your educational background and your
3 career in law.

4 **A** Yes, sir. I graduated the Virginia Military
5 Institute where I majored in history. I'm a
6 graduate there of class 2008. I had my law
7 enforcement career in Virginia in 2010 with the
8 York-Poquoson Sheriff's Office. I spent that time
9 on patrol, and then moved down here in 2016 and
10 started working for the City of Charleston Police
11 Department. I did a couple of years on patrol
12 before I moved into investigations. At the time of
13 this incident, I was a detective assigned to the
14 Violent Crimes Unit. I left employment here and
15 moved back to Virginia in early 2023.

16 **Q** So in the summer of 2021, where does that
17 fall in your employment history?

18 **A** I was employed with the City of Charleston
19 Police Department. I was a detective with the
20 Violent Crimes Unit.

21 **Q** What sort of incidents does the Violent
22 Crimes Unit investigate?

23 **A** So they handles any and all aggravated
24 assaults, homicides, any suspicious death
25 investigations.

WILLIAM CROCKETT - DIRECT EXAMINATION

1 **Q** And I'm sure it changes, but approximately
2 how many detectives did you have in violent crimes
3 (inaudible)?

4 **A** At the time, it was five detectives and a
5 sergeant.

6 **Q** Did you often take on cases as a team?

7 **A** Typically, especially for homicide
8 investigation, the first couple of days of that is
9 usually all-hands-on-deck kind of atmosphere, and
10 then the follow-up falls to the assigned case
11 agent.

12 **Q** Okay. So described teamwork there. You
13 mentioned assigned to a case agent, what is that?

14 **A** It is the lead detective that is assigned to
15 be responsible for the overall direction and,
16 basically, all of the housekeeping associated with
17 the case as it progresses forward, outside of the
18 initial parts of the investigation.

19 **Q** And were you the assigned case agent in the
20 present matter?

21 **A** I was not, no, sir.

22 **Q** Do you recall who was?

23 **A** Detective Daniel Wilson.

24 **Q** Did you then in that situation report to the
25 assigned case agent?

WILLIAM CROCKETT - DIRECT EXAMINATION

1 **A** Kind of working in conjunction with each
2 other. Detective Wilson, as the case agent, would
3 kind of amalgamate everyone's information and help
4 steer the direction of the investigation.

5 **Q** And in that capacity, did you have occasion
6 to become involved in a homicide investigation
7 taking place at Bolton's Landing Apartments on
8 July 13 of 2021?

9 **A** Yes, sir. I was not called out to the
10 initial mic. Upon reporting into work the next
11 day, July 14th, I was assigned to assist
12 Detective Wilson and other detectives as we were
13 gathering information, researching the incident,
14 and conducting a canvass in the area of the
15 incident of the location.

16 **Q** And specifically where did your canvass on
17 the morning of July 14th begin?

18 **A** It began at Bolton's Landing Apartment
19 Complex.

20 **Q** Any specific apartment or person you were
21 seeking to speak with?

22 **A** We were seeking to speak to Ms. Tiffany
23 Hardaway that resided in that area. Overnight, the
24 detectives had come out and the responding officers
25 learned that she had a video doorbell affixed to

WILLIAM CROCKETT - DIRECT EXAMINATION

1 the outside of her door, which was in close
2 proximity for our incident location, kind of
3 catty-corner in the same breezeway.

4 Q Okay. And, again, you sort of hinted to
5 this, but can you describe the location of the
6 apartments? Are they in close proximity to this
7 murder?

8 A Yes, sir. The apartment -- this building, I
9 believe, is two-, three-story multi-apartment
10 dwellings. There are breezeways, and there is, I
11 believe, four apartments on each level. So you
12 have a doorway -- two doorways on the left and
13 right, four apartments. This one would be the,
14 say, the front left is Ms. Hardaway's -- I'm sorry,
15 if you look at front right, and the incident
16 location is back left in this breezeway.

17 Q So just to repeat, if you are looking from
18 the front of the apartment, you have -- this is a
19 breezeway you're referring to on the ground floor?

20 A It is on the ground floor.

21 Q And Ms. Hardaway's is on the right?

22 A Yes.

23 Q And the victim's apartment is back --

24 A Correct.

25 Q And say again what was so (inaudible) about

WILLIAM CROCKETT - DIRECT EXAMINATION

1 Ms. Hardaway's apartment?

2 **A** She had a Ring video doorbell affixed to the
3 outside of her doorway, and that was the only video
4 system that we are able to locate that was in the
5 immediate area of the incident location.

6 **Q** Okay. And at this point, relevant to that
7 Ring camera, is there a particular point in time
8 you were interested in seeing the video that might
9 be on that?

10 **A** So we're looking at the time that we believed
11 the incident occurred happened, which we have
12 established to be, approximately, 5:32 p.m. So
13 we're looking at the time in and around that
14 incident time.

15 **Q** Okay. And on the morning of July 14th, was
16 Ms. Hardaway's cooperative with you in your search
17 for any video footage on that Ring video?

18 **A** She was. I believe another detective,
19 Detective Jarrell, was out there speaking with her,
20 and he sent me videos that he got from her.

21 **Q** Were you speaking with Ms. Hardaway with
22 Detective Jarrell?

23 **A** I was not present with Detective Jarrell that
24 morning.

25 **Q** And she was cooperative and voluntarily

WILLIAM CROCKETT - DIRECT EXAMINATION

1 provided law enforcement those videos?

2 A Yes, sir, she was.

3 Q And they were ultimately sent to you; is that
4 correct?

5 A I think Detective Jarrell e-mailed them to
6 himself, and then he forwarded them to me back at
7 headquarters to review.

8 Q And how many videos were there?

9 A I don't recall the exact number. Maybe ten.

10 Q Okay. And what approximate time periods do
11 they cover?

12 A I believe it went from early afternoon,
13 possibly 2:00, until after the incident where we
14 were capturing the arrival of first responders.

15 Q So you got video preceding the time of the
16 murder and post?

17 A Yes, sir.

18 Q And, again, what was believed to be the time
19 of this killing?

20 A Approximately, 5:32 p.m.

21 Q Does the Ring cam contain timestamps?

22 A Yes, sir. The videos do contain timestamps,
23 and they are labeled by their time.

24 Q And were they accurate?

25 A Yes. The Ring system is usually Web-based.

WILLIAM CROCKETT - DIRECT EXAMINATION

1 It gets its time from the Internet, as it is
2 connected to the Internet.

3 Q Okay. I'll show you what is marked as
4 State's 52.

5 MR. SIMPSON: Permission to approach?

6 THE COURT: You may.

7 Q (BY MR. SIMPSON) Do you recognize that?

8 A Yes, sir, I do.

9 Q What is that?

10 A A thumb drive containing the Ring videos
11 obtained from Ms. Hardaway.

12 Q Does it contain all of the videos?

13 A I don't remember the exact number, but it
14 contains the videos she provided.

15 Q Did you review the contents of State's
16 Exhibit --

17 A Yes, I did.

18 Q How do you know you reviewed them?

19 A I remember watching the videos and their
20 content.

21 Q Were those also reviewed by other detectives,
22 to your knowledge?

23 A Yes, sir.

24 MR. SIMPSON: Your Honor, at this point in
25 time we seek to admit and publish State's Exhibit

WILLIAM CROCKETT - DIRECT EXAMINATION

1 52.

2 THE COURT: Any objection?

3 MS. ARORA: I would just raise my previous
4 objection.

5 THE COURT: Mr. Foreman, ladies and
6 gentleman, we have a matter of law to take up.
7 during the break, please do not discuss the case,
8 and please leave your notepads in your seats.

9 (The jury exits at 3:32 p.m., and the
10 following is heard out of the presence of the jury.)

11 THE COURT: You may be seated.

12 Now, on (inaudible) request, you heard this
13 pretrial. I'm worried about four videos, and now
14 we have a USB with ten videos. We discussed four
15 videos. It is my recollection, and according to my
16 notes, the defense has no objection to the video of
17 7-12-21 at 6:16 p.m.; is that accurate?

18 MS. ARORA: Yes, Your Honor.

19 THE COURT: She has an objection to 7/12/21
20 8:00 p.m., and one based on Lyle, which I've
21 already -- and, actually, I was supposed to be
22 provided with these, and I wasn't, so I have not
23 had the ability to watch them. So I really don't
24 know whether they fall under Lyle or not, but my
25 initial impression is that they were not, because

WILLIAM CROCKETT - DIRECT EXAMINATION

1 it would go to motive, intent, and absence of
2 mistake, and they would be relevant if the
3 (inaudible). But I've not seen the video to know
4 whether that is accurate assessment.

5 7/12/21, 8:03:17, the defense has no
6 objection to, and the last video I was made aware
7 of was 7/13/21 at 6:01 a.m. where it was
8 represented that the gun was in his waistband as
9 well. But there was a statement that it was less
10 clear on that video than the one at 8:00 p.m. So
11 those are the only videos -- and I asked, and I
12 specifically asked what portions of the Ring videos
13 would you be seeking to admit, and that is what I
14 was told at that time.

15 What additional videos are you referring to
16 that there are ten on this flashdrive?

17 MR. SIMPSON: We were just trying to give a
18 complete view. They are innocuous and --

19 THE COURT: Have you shown them to Ms. Arora?

20 MR. SIMPSON: Ms. Arora was provided them as
21 evidence.

22 THE COURT: Which of the videos -- so that's
23 four. So there are apparently six additional
24 clips, correct?

25 MR. SIMPSON: I believe it was (inaudible).

WILLIAM CROCKETT - DIRECT EXAMINATION

1 THE COURT: It is not a matter of what I
2 prefer. It is the matter of the fact that we had
3 extensive pretrials, and what I was told is there
4 was four, and that is what I ruled on. If there
5 are additional ones, I need to watch them. Because
6 it is unfair for the Court to be asked to make an
7 assessment without having seen them.

8 Now, do you have any exception to these six
9 additional clips that Mr. Simpson is referring to?

10 MS. ARORA: Your Honor, I'm not aware of
11 which specific ones.

12 THE COURT: So let's watch them.

13 MR. SIMPSON: Sure. They are all very short.
14 I will note, Your Honor -- and Ms. Arora and I
15 discussed this -- our time -- I think she uses the
16 time that the videos are over, and I use the time
17 they start, so --

18 THE COURT: It would be appropriate to use
19 the time when they start, not when they end.

20 MR. SIMPSON: Okay. Starting with clip one,
21 7/13/21, 2:20 p.m.

22 (Video played.)

23 THE COURT: So what number is that that
24 corresponds to this list I've been given?

25 MR. SIMPSON: State's 54-A.

WILLIAM CROCKETT - DIRECT EXAMINATION

1 THE COURT: I have 52.

2 MR. SIMPSON: I'm sorry, 52.

3 THE COURT: 52-A through J. So that would be
4 52-A?

5 MR. SIMPSON: Correct, Your Honor.

6 THE COURT: Is there any exception?

7 MS. ARORA: Your Honor, I'm not sure of the
8 relevance of what that shows.

9 THE COURT: It shows that he frequents that
10 residence. It shows him going in and out of the
11 residence -- in the residence and in close
12 proximity to the incident.

13 Did I hear you say 7/13/21? At what time?

14 MR. SIMPSON: And that is not the defendant.
15 It's a cousin.

16 THE COURT: A juvenile?

17 MR. SIMPSON: Yes.

18 THE COURT: So why is it -- one more thing.
19 52-A is 7/13/21, at what time?

20 MR. SIMPSON: 2:20 p.m.

21 THE COURT: Why is it relevant?

22 MR. SIMPSON: I think it's relevant to show
23 all the entire times of the video because, you
24 know, there could be a case in closing that we did
25 not -- police did not do a thorough enough job in

WILLIAM CROCKETT - DIRECT EXAMINATION

1 covering an adequate time frame. But like I
2 offered Your Honor, if you would like me to stick
3 to the four videos that --

4 THE COURT: I'm past that point. I've got to
5 go through each one of these videos and deal with
6 it.

7 MR. SIMPSON: Okay.

8 THE COURT: Are you going to raise that
9 issue, Ms. Arora?

10 MS. ARORA: I beg the Court's indulgence.

11 (A brief pause in the proceedings.)

12 MR. SIMPSON: I think a lot of their case,
13 you know, will be --

14 THE COURT: I need Ms. Arora to answer my
15 question before you respond.

16 Yes, ma'am.

17 MS. ARORA: Your Honor, we'll be raising --
18 and I think you can tell -- that they didn't
19 properly investigate their case in regards to this
20 specific Ring video. I don't believe so at this
21 point, but is that --

22 THE COURT: I don't think they have to wait
23 for you to assert that. I think they can
24 anticipate your defense. So the objection is
25 overruled.

WILLIAM CROCKETT - DIRECT EXAMINATION

1 What is the next clip, please? That would be
2 52-B? What time is that and what date?

3 MR. SIMPSON: 52-B, 7/13/21, 3:54 p.m., the
4 defendant arrives.

5 (Video played.)

6 THE COURT: Is there an exception to 52-C --
7 I mean B, I apologize.

8 MS. ARORA: We don't object to 52-B.

9 THE COURT: So that is without objection.
10 52-C.

11 MR. SIMPSON: 7/13/21, 4:32 p.m., Karseem
12 Hardaway leaves and goes towards the rear.

13 (Video played.)

14 THE COURT: Any exception?

15 MS. ARORA: Your Honor, can you play that one
16 more time?

17 THE COURT: Sure.

18 (Video played.)

19 MS. ARORA: Your Honor, there is no
20 objection.

21 THE COURT: Without objection.

22 52-D?

23 MR. SIMPSON: 52-D, 7/13/21, 4:39 p.m.,
24 Mr. Hardaway returning to the apartment.

25 THE COURT: Tell me the date again?

WILLIAM CROCKETT - DIRECT EXAMINATION

1 MR. SIMPSON: 7/13/21, 4:39 p.m., Karseem
2 returning.

3 (Video played.)

4 THE COURT: Any exception?

5 MS. ARORA: No, Your Honor.

6 THE COURT: Without objection, 52-D.

7 52-E?

8 MR. SIMPSON: 7/13/21, 4:51 p.m., neighbor
9 across the hall walking dog.

10 (Video played.)

11 THE COURT: Any objection?

12 MS. ARORA: No, Your Honor.

13 THE COURT: Without objection.

14 52-F? What date?

15 MR. SIMPSON: 7/13/21, 5:04 p.m. Karseem
16 leaving the apartment.

17 THE COURT: Any objection.

18 MS. ARORA: Your Honor, I don't think we
19 played it all the way through. Can you start over?

20 MR. SIMPSON: Sure.

21 (Video played.)

22 THE COURT: Any objection?

23 MS. ARORA: No, Your Honor.

24 THE COURT: Without objection.

25 52-G.

WILLIAM CROCKETT - DIRECT EXAMINATION

1 MR. SIMPSON: 52-G, 7/13/21. 6:01 p.m.,
2 Mosier with EMS/fire.

3 (Video played.)

4 THE COURT: Any objection?

5 MS. ARORA: No objection.

6 THE COURT: Without objection.

7 52-H.

8 MR. SIMPSON: 7/13/21, 6:02 p.m., neighbor
9 across the hall leaving.

10 (Video played.)

11 THE COURT: Any exception?

12 MS. ARORA: No, Your Honor.

13 THE COURT: Without objection, 52-H.

14 52-I?

15 MR. SIMPSON: 6:09 p.m., same day, 7/13/21,
16 fire department walking by.

17 (Video played.)

18 THE COURT: Any exception?

19 MS. ARORA: No, Your Honor.

20 THE COURT: Without objection, 52-I.

21 J?

22 MR. SIMPSON: 7/13/21, 6:24 p.m., Tiffany
23 Hardaway arriving home.

24 (Video played.)

25 THE COURT: Any exception?

WILLIAM CROCKETT - DIRECT EXAMINATION

1 MS. ARORA: Your Honor, I beg the Court's
2 indulgence.

3 THE COURT: That's okay.

4 (A brief pause in the proceedings.)

5 MR. SIMPSON: Your Honor, while they consult,
6 I just wanted to point out an issue so that I'm not
7 confusing the Court. There is another witness that
8 obtained Ring cameras off of the defendant's phone
9 that were not voluntarily given to the police that
10 we'll have testimony about later. Those were the
11 subjects of some pretrial hearings. I don't think
12 these were objected to pretrial, so that is why the
13 timing -- the timing --

14 THE COURT: The timing isn't matching up, but
15 it says they are Tiffany Hardaway. These are her
16 Ring cameras, so apparently you weren't all clear
17 about which -- you never let me know there was
18 another set of videos.

19 MR. SIMPSON: You're correct, Your Honor.
20 For that, I apologize. They weren't objected to
21 pretrial.

22 THE COURT: So then Ms. Arora was confused as
23 well?

24 MR. SIMPSON: I think so, yeah.

25 THE COURT: So you have no objection then to

WILLIAM CROCKETT - DIRECT EXAMINATION

1 52-A through J?

2 MS. ARORA: Your Honor, just to clarify I
3 believe that 52-J might be misleading.

4 THE COURT: How?

5 MS. ARORA: They are saying this is Tiffany.
6 She's not here to identify herself in that video.

7 MR. SIMPSON: I can change the title. They
8 took the picture of that and showed it to Tiffany
9 Hardaway, and she identified herself in that video,
10 if you can call it that, but I'll just call it --

11 THE COURT: Does it make a significant
12 difference?

13 MS. ARORA: She's just not here to identify
14 herself.

15 THE COURT: The video is self-authenticating.
16 Does it really matter the identity of the person
17 who is going to the apartment? Which begs the
18 other question: Why are you offering it? Why does
19 it make --

20 MR. SIMPSON: Your Honor, I'm going to offer
21 all of these into evidence to reflect the
22 thoroughness of the investigation throughout this
23 time period. I'm only going to publish to the jury
24 I think --

25 THE COURT: So you are saying that he went to

WILLIAM CROCKETT - DIRECT EXAMINATION

1 the apartment doesn't really matter. You are only
2 offering it to show that the police department
3 investigated the applicable time period to see who
4 was going in and out of the apartment?

5 MR. SIMPSON: Let me articulate that better.
6 I think the absence of other people in these videos
7 is what is important. It allows the defense -- and
8 I might be jumping ahead --

9 THE COURT: That's an argument. I don't know
10 that that is relevant to this Court's analysis.
11 What is relevant is for what purposes are you
12 offering it?

13 MR. SIMPSON: To show that there is no
14 stranger on these videos that walks by at any point
15 in time that could be the killer. I have to
16 exclude the --

17 THE COURT: So who is identifying that Ms.
18 Hardaway as being the individual that is entering
19 the apartment in 52-J?

20 MR. SIMPSON: That is about an hour after the
21 murder.

22 THE COURT: Who will identify her, is my
23 question?

24 MR. SIMPSON: Well, she's asserting the Fifth
25 Amendment in this case.

WILLIAM CROCKETT - DIRECT EXAMINATION

1 THE COURT: That is not my question. Who is
2 it that will be able to identify her.

3 MR. SIMPSON: Detective Wilson will say that
4 he had interactions with Tiffany Hardaway.

5 THE COURT: And that that's her?

6 MR. SIMPSON: He said the best he can tell --
7 there is no face shots in that, but, I mean, he
8 shows she was wearing the black dress that she was
9 wearing that day, and he's aware -- and, again, I
10 don't know to the extent he can say this because of
11 hearsay rules, but he's aware that she has seen it
12 and said that's me in that picture right there.

13 THE COURT: He's not going to be able to say
14 that. That is hearsay.

15 MR. SIMPSON: Right. But he can say that he
16 knew what she was wearing that day, that's her
17 apartment, the individual that enters the door
18 clearly has access to that same apartment, and is
19 wearing the same clothing that Tiffany Hardaway is
20 wearing.

21 THE COURT: I think he can say what he saw
22 that day.

23 MR. SIMPSON: Right.

24 THE COURT: And the rest of it speaks for
25 itself. If he's offering it for the purpose of the

WILLIAM CROCKETT - DIRECT EXAMINATION

1 thorough nature of their investigation, it is
2 admissible. Really doesn't matter who is going in
3 or out of the apartment. The point is that they
4 researched the applicable time period that would
5 have been within the nexus of this incident, and
6 for that purpose, I'll allow it.

7 And you'll have to make a contemporaneous
8 objection prior to anything else he may elicit from
9 Officer Wilson. I have no idea how that testimony
10 will develop.

11 MS. ARORA: Your Honor, I am objecting to the
12 meaning of the video.

13 THE COURT: I can't hear you.

14 MS. ARORA: I'm objecting to the meaning of
15 the video. I don't know if it can be renamed
16 something else.

17 THE COURT: I imagine they can.

18 MR. SIMPSON: I'll rename it as -- I'll just
19 say "individual arriving at apartment."

20 THE COURT: Is that acceptable?

21 MS. ARORA: Yes, Your Honor.

22 THE COURT: So 52 is marked and admitted
23 subject to any of the objections that the Court has
24 already ruled on contemporaneously.

25 (State's Exhibits 52A-J admitted.)

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 THE COURT: Are we ready to resume testimony?

2 MR. SIMPSON: Yes, Your Honor.

3 THE COURT: From the defense?

4 MS. ARORA: (No verbal response.)

5 THE COURT: Get the jury, please.

6 (The jury enters at 3L51 p.m., and the
7 following is heard in the presence of the jury.)

8 THE BAILIFF: All jurors are present.

9 THE COURT: Thank you. You may be seated.
10 You may proceed with testimony.

11 Ladies and gentlemen, we appreciate your
12 patience.

13 MR. SIMPSON: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 Q (BY MR. SIMPSON) Detective Crockett, when we
16 left off we were discussing State's 52, some Ring
17 videos provided to your agency?

18 A Yes, sir.

19 Q Do you recall that?

20 A Yes, sir.

21 Q Would you have had an opportunity to review
22 those videos?

23 A Yes, I did.

24 MR. SIMPSON: For the record, I move State's
25 52 into evidence.

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 THE COURT: They have been marked and
2 admitted.

3 Q (BY MR. SIMPSON) You mentioned these videos
4 contain a timestamp?

5 A Yes, sir, they do.

6 Q And I know you testified to your belief of
7 the accuracy of the timestamp. Can you explain
8 that again?

9 A Yes, sir. The Ring system is connected
10 through the Cloud and WiFi, through all of that,
11 and it obtains its time settings from being
12 connected to the Internet. We also know what time
13 officers arrive on scene, and we can correlate that
14 time and make sure that the times are appropriate.

15 Q And I asked you previously, at this point in
16 time, you had a suspected time when the murder
17 occurred. What time was that again?

18 A Approximately, 5:32 p.m.

19 Q Playing this briefly, just looking in the
20 time frame here -- we've labeled these State's 52-A
21 through J?

22 A Yes, sir.

23 Q Starting with A.

24 (Published to the jury.)

25 Q (BY MR. SIMPSON) Are you able to see the

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 timestamp on that?

2 A Yes, sir. 13th of July 2021, at 2:20 p.m.

3 Q And another. I won't want to accuse you --
4 see the time down here, it's not (inaudible). Look
5 to the bottom, right?

6 A Yes, sir.

7 Q I just wanted to make sure you got it right.

8 A Yes, sir.

9 Q So we started at 2:20 p.m.?

10 A Yes, sir.

11 Q And skipping ahead, we have a Video C, a
12 Video B. And do you know who that individual is?

13 A That would be the defendant, Karseem
14 Hardaway.

15 Q And you know that from later interaction with
16 the defendant?

17 A Yes, sir.

18 Q And related to this case, right?

19 A Yes, sir.

20 Q And what is the time of this?

21 A This is also July 13, 2021, at 3:54 p.m.

22 (Published to the jury.)

23 Q (BY MR. SIMPSON) What time is this video?

24 A Same date, July 13, 2021, at 4:32 p.m.

25 Q I want to orient ourselves. When you are at

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 this location, and you go in the direction that
2 individual is going, are you heading away from or
3 towards the victim's apartment?

4 **A** Towards the victim's apartment. As that
5 individual goes down towards his right there, the
6 victim's door is immediately to the left once he
7 gets out of camera view.

8 **Q** And continuing walking past the victim's
9 apartment, are you aware of where we are at?

10 **A** It's a rear parking area immediately behind
11 the breezeway. The front side is the main street
12 going through there, and you enter in from there to
13 the breezeway, and then the parking area is behind
14 the building in the direction that he's walking.

15 (Published to the jury.)

16 **Q** (BY MR. SIMPSON) 52-D, what is the time here?

17 **A** Yes, sir. July 13, 2021 at 4:39 p.m.

18 **Q** Do you recognize any of the individuals in
19 that?

20 **A** Yes, sir. That is the defendant.

21 (Published to the jury.)

22 **Q** Jumping ahead to this video to 7-13-2021,
23 what time is this video?

24 **A** It says July 13, 2021, and this is at
25 5:04 p.m.

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

- 1 Q Can you identify the person there?
- 2 A Yes, sir. That is the defendant.
- 3 Q Again, is this going towards or away from the
- 4 victim's apartment?
- 5 A This is going towards the victim's apartment.
- 6 Q There is at 5:04 p.m.?
- 7 A Yes, sir, that's correct.
- 8 Q Jumping to the next video chronologically,
- 9 what is the timestamp on this video?
- 10 A July 3, 2021, we're looking at 6:01 p.m.
- 11 Q Again, you said there was a time of the
- 12 murder you were working with?
- 13 A Yes, sir. Approximately, 5:32 p.m.
- 14 Q So 5:04 precedes that time?
- 15 A Yes, sir. Correct.
- 16 Q This video is 6:01 you said?
- 17 A Yes, sir, 6:01 p.m.
- 18 Q So after?
- 19 A Correct.
- 20 Q Do you know who the individual is there?
- 21 A I believe that is Mr. Mark Mosier.
- 22 Q And at the end you see another individual?
- 23 A Yes, sir. That appears to be Charleston
- 24 County EMS or Charleston Fire.
- 25 Q Would that be a first responder?

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 **A** Yes, sir.

2 **Q** We didn't go through every video, and I just
3 want to backtrack and note that all of these videos
4 have been entered into evidence. There are some
5 videos intermingled, such as this one?

6 **A** Yes, sir.

7 **Q** Did you find this particularly relevant to
8 your investigation?

9 **A** No, sir.

10 **Q** Similarly, post-incident, further videos of
11 what appears to be?

12 **A** Additional first responders.

13 **Q** And so we watched the video, Detective, of
14 the defendant, Karseem Hardaway, at 5:04 leaving
15 the apartment (inaudible); is that accurate?

16 **A** Yes, sir. That's correct.

17 **Q** In this chronological stream of videos that
18 is provided to you, do we ever see him coming back?

19 **A** No, sir.

20 **Q** Between 5:04 and 5:32, are there any videos
21 of any other individual walking through this
22 breezeway in that direction?

23 **A** No, sir, there are not.

24 **Q** So the next video chronologically, in the
25 sequence of videos you get, is 6:01 p.m.?

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 **A** Yes, sir.

2 **Q** Who is that again?

3 **A** First responders and Mark Mosier.

4 **Q** These videos were voluntarily e-mailed to
5 you, as you testified?

6 **A** Yes, sir.

7 **Q** When did that occur?

8 **A** That would have been the morning of the
9 14th, July 14th.

10 **Q** The morning following the incident?

11 **A** Yes, sir.

12 **Q** At any point in time in this investigation,
13 did there become, sort of, another time period that
14 interested you?

15 **A** Yes, sir. We wanted to expand focus --
16 expand what we were looking at in terms of the day
17 that it occurred and also the day prior.

18 **Q** Why were you interested in the day prior?

19 **A** We had learned that there was an altercation
20 the day prior that was recorded by the victim to
21 the management at the apartment complex.

22 **Q** Okay. So I want to be accurate.

23 "Altercation," you mean like physical altercation?

24 **A** I believe it was a verbal altercation.

25 **Q** (Inaudible)?

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 **A** Yes, sir.

2 **Q** So did that draw your interest to another
3 period of time relevant to this evening?

4 **A** Yes, sir, to the evening of the 12th.

5 **Q** And so where are you obtaining this 3:00
6 p.m.?

7 **A** Tiffany Hardaway.

8 **Q** And the morning of the 14th she voluntarily
9 provided those you, the first set that is?

10 **A** Yes, sir.

11 **Q** Did there become an occasion to return to Ms.
12 Hardaway's home?

13 **A** Yes, sir. Once we had these videos, we
14 wanted to go back out and confirm who we were
15 looking at in the video and speak to Ms. Hardaway
16 about some additional time frames. So that evening
17 Detective Jarrell and I went back to the apartment
18 complex.

19 **Q** And we'll get to that -- you did have a
20 conversation with Ms. Hardaway, correct?

21 **A** Yes, sir.

22 **Q** And were you aware at the time of Ms.
23 Hardaway's relationship with the defendant?

24 **A** We knew she had a brother, and we were
25 looking into who these people could be because of

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 the location. You know, the proximity of the
2 incident location, we were trying to figure it out
3 who it was on the Ring camera footage.

4 Q So you returned to the location of this
5 breezeway?

6 A Yes, sir.

7 Q You said the next, sort of, evening. Did
8 there come a time during the course of that that
9 you came into contact with Mr. Hardaway?

10 A Yes, sir. So Jarrell and I went back out
11 there to speak with Ms. Tiffany Hardaway. We had
12 done some research into who Ms. Tiffany Hardaway
13 would be associated with, her family members, to
14 attempt to figure out who this person on the Ring
15 camera would be.

16 We learned that she had a brother and learned
17 the vehicle and such was associated with her, as
18 well as her brother, and other family members that
19 could be associated with this apartment.

20 So when I arrived on scene, I see a vehicle I
21 knew to be associated with Karseem Hardaway. It's
22 a red Honda Accord. So I get out of my vehicle and
23 go to approach Mr. Hardaway as he's sitting in the
24 red Honda Accord.

25 Q And any other officer go with you?

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 **A** Detective Jason Jarrell.

2 **Q** And I want to ask you real quick about body
3 cameras. Does CPD have body cameras?

4 **A** Yes, we do.

5 **Q** Even for detectives?

6 **A** Yes, sir. We have gotten in the habit of
7 using them for detectives as well for contacts and
8 to further document our endeavors.

9 **Q** And in this interaction that you had with
10 Karseem Hardaway, were you wearing a body camera?

11 **A** Yes, sir, I was.

12 **Q** Did you initiate it?

13 **A** Yes, sir.

14 **Q** Was it able to capture the interaction you
15 had with him?

16 **A** Yes, sir, it did.

17 **Q** Was there anything -- captured the whole
18 entire thing?

19 **A** Yes, sir.

20 **Q** Anything that preceded you cutting on the
21 body camera or any interaction that is not on the
22 body camera with Karseem?

23 **A** No, sir. So the camera buffers, so when you
24 hit the button to turn it on, it has a 30-second
25 buffer so it goes back to, you know, whatever you

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 were doing before you hit the button. So it has no
2 audio for that first 30 seconds. So it just
3 captures me in my vehicle getting at.

4 Q Did you have a conversation with Mr. Hardaway
5 at his vehicle on this day?

6 A Yes, sir, I did.

7 Q And, again, there is -- I didn't mention the
8 day, but you said later in the afternoon. What day
9 is that?

10 A July 14th, the next day after the murder.

11 Q Okay. Did you threaten Hardaway?

12 A No, sir.

13 Q Was it a voluntary conversation you had?

14 A Yes, sir, it was.

15 Q Any promises of leniency or threats to get
16 him to talk to you?

17 A No, sir.

18 Q And, again, the entirety of the intersection
19 is captured on your body cam?

20 A That's correct, sir.

21 Q Was Mr. Hardaway detained in any way?

22 A No, sir.

23 MS. ARORA: Objection; leading.

24 THE COURT: Sustained; leading.

25 Q (BY MR. SIMPSON) Was Mr. Hardaway -- what

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 happened after?

2 **A** We bid each other farewell, and he departed
3 and went on his way.

4 **Q** Had he told you he didn't want to talk to
5 you?

6 **A** No, sir. The conversation was congenially.
7 I provided him with my business card and phone
8 number. He told me he would call me if he got any
9 information.

10 **Q** And you said the entirety of this interview
11 took place on your body cam?

12 **A** Yes, sir. That's correct.

13 **Q** Okay.

14 MR. SIMPSON: May I approach the witness?

15 THE COURT: You may.

16 **Q** **(BY MR. SIMPSON)** I'll show what is marked as
17 State's Exhibit 8. Have you reviewed your body cam
18 on this?

19 **A** Yes, sir, I have.

20 **Q** Is that body camera interaction captured on
21 State's Exhibit 8?

22 **A** Yes, sir, I believe it is.

23 MS. ARORA: Just for verification --

24 MR. SIMPSON: 8-F.

25 At this time the State seeks to admit and

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 publish 8-F.

2 THE COURT: Any objection?

3 MS. ARORA: Your Honor, I would just raise my
4 previous objection.

5 THE COURT: Court has ruled on that
6 objection. Admitted, subject to the objection, and
7 overruled. Court's contemporaneous rulings are
8 incorporated in this portion of the record.

9 You may proceed.

10 MR. SIMPSON: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 (State's 8F admitted and published to the
13 jury.)

14 Q (BY MR. SIMPSON) That was your interaction
15 with Karseem Hardaway that day.

16 A Yes, sir, it was.

17 (Published to the jury.)

18 Q (BY MR. SIMPSON) Are you able to view the
19 license plate of that vehicle?

20 A Yes, sir. It's South Carolina license plate
21 [REDACTED].

22 Q Do you know the make and model? Are you a
23 car guy?

24 A I'm not a car guy, but I know it is a Honda
25 Accord.

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 **Q** So during the course of that interview, did
2 Mr. Hardaway confirm or deny that he spent the
3 night -- the night before the murder?

4 **A** He confirmed that he stayed the night
5 prior -- the night prior, which would be the night
6 of the 12th into the 13th.

7 **Q** And did he confirm or deny that that was him
8 in the -- in relation to the video at 5:04?

9 **A** He confirmed that is him.

10 **Q** And what did he say he did after the 5:04
11 p.m. video?

12 **A** He left and went to the Brownswood area of
13 Johns Island.

14 **Q** Did he tell you that he saw or heard anything
15 suspicious related to (inaudible)?

16 **A** No, sir, he did not.

17 **Q** He left after 5:04 --

18 MS. ARORA: Objection.

19 THE COURT: Basis?

20 MS. ARORA: Leading.

21 THE COURT: Sustained; leading.

22 **Q** **(BY MR. SIMPSON)** Following the interview
23 there with Mr. Hardaway, where did you and
24 Detective Jarrell go?

25 **A** Almost immediately we reactivated our body

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 cameras and walked towards Tiffany's apartment,
2 which is, again, just through the breezeway there.

3 Q And I believe you already testified to this,
4 but what was your goal in going to Ms. Hardaway's
5 apartment?

6 A To expand the scope of the video collection
7 from her Ring video system.

8 Q And tell the jury a little bit how that
9 interaction went with Ms. Hardaway?

10 A So we go to the doorway. We encounter
11 Ms. Tiffany Hardaway there at her residence. We
12 asked to see additional video footage, this time
13 we're looking at the 12th. I also show her the
14 same two photos there that I showed Karseem.

15 Q And we know the first that you showed
16 Karseem. What was the second?

17 A So the first one is him there at 5:04 p.m.
18 walking out and going to the right that we watched
19 earlier, that he identified himself as. The second
20 photo I showed was the second --

21 Q Just to remind you, don't say anything anyone
22 told you.

23 A Correct. Yes, sir.

24 Q Go on.

25 A The second photo was the same second photo

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 that I showed to Karseem there. It's an unknown
2 individual entering Ms. Hardaway's apartment at
3 6:24 p.m.

4 Q What was the expected time of the murder
5 again?

6 A 5:32.

7 Q So the second person entering Tiffany's
8 apartment nearly an hour afterwards?

9 A Yes, sir.

10 Q Without saying anything particularly that
11 Tiffany Hardaway said to you, was she surprised
12 when you showed her that second video?

13 A There was not a question with her as to who
14 that was.

15 Q So, again -- continue telling the jury how
16 that interaction with Ms. Hardaway went.

17 A So we showed the two photos, and I explained
18 to her that we would like to look at more Ring
19 video footage. I asked to see the -- some of the
20 additional videos on her phone.

21 If you are not familiar Ring system or the
22 videos, you put an app on your phone. You can
23 scroll through and look at activations and
24 different times of the cameras, that there are
25 recordings. I asked her to look at additional

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 footage. She opened up the Ring app on her phone,
2 and I began to look through some footage.

3 Q Pause right there. Were you in close
4 proximity when she has her phone out?

5 A I am. Just outside of arm's reach, but
6 within close proximity. Detective Jarrell is to my
7 left. We are standing at her doorway, outside of
8 her apartment.

9 Q Okay. And continue.

10 A I can see on her phone that she's opened up
11 the Ring app. She's scrolling through. I can see
12 then that she selects several recordings, presses
13 one of the recordings. A window pops up. There is
14 a red button on that window. I see that she
15 selects that red button. She then hands me that
16 phone and allows me to go through the recordings.
17 Curious as to what that window was that popped up,
18 I pressed in the same area that I saw her press to
19 make that window appear. The question that popped
20 up was, "Are you sure" -- something to the effect
21 of, "Are you sure you want to delete this video?"
22 And the red button was confirmation to delete that
23 video.

24 Q So what did you derive from that?

25 A I concluded that she deleted a video from the

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 time period I was asking about.

2 Q And what time period were you asking about?

3 A We're looking at the overnight on the 12th.

4 Q Okay. I want to speak now generally to your
5 knowledge as a detective. Are you a phone expert?

6 A Far from it.

7 Q Okay. But are phones sometimes utilized in
8 investigation of criminal matters?

9 A Almost every investigation from shoplifting
10 to homicide has a phone involved in it these days.
11 A suspect or someone has a phone, there's a
12 recording on a phone, phone records. I mean,
13 almost every case has at least a phone, if not
14 more.

15 Q Are there phone experts that if you find it
16 relevant, you can seize someone's phone legally?

17 A Yes, sir.

18 Q And, of course, that (inaudible)?

19 A Yes, sir.

20 Q Do you have any personal knowledge if Ms.
21 Hardaway's phone was ever seized in this case?

22 A Yes, sir. Based on my interaction with her,
23 we determined that it was possible that she had
24 deleted something of value to the investigation,
25 and we sought to see what that may have been, see

WILLIAM CROCKETT - DIRECT EXAMINATION (CONT.)

1 if it could be located.

2 Q Are those questions directed towards the
3 phone experts?

4 A In terms of how the analysis and extraction
5 would go, yes.

6 Q Okay.

7 MR. SIMPSON: Court's indulgence.

8 Q (BY MR. SIMPSON) Again, that second video to
9 go talk to Tiffany, that occurs later in -- the
10 late afternoon, early evening on the 14th?

11 A Yes. So the interaction with Karseem starts
12 at, I believe, 5:30 p.m. And my interaction with
13 Tiffany is 5:40 p.m., so ten minutes apart.

14 Q So the interaction with Tiffany where she
15 gives over the ten videos you are looking for is
16 when?

17 A That's in the morning.

18 Q And then we see who leaving her apartment?

19 A This is Karseem Hardaway, the defendant.

20 Q And the second interaction is when you
21 suspected --

22 MS. ARORA: Objection; leading.

23 THE COURT: Sustained; leading.

24 Q (BY MR. SIMPSON) What did you observe in the
25 second interaction with Ms. Hardee?

WILLIAM CROCKETT - CROSS EXAMINATION

1 **A** The second interaction is when I described
2 when the window popped up with a red button and
3 that when I reproduced it, it was an option to
4 delete the video.

5 **Q** And who was leaving the apartment just before
6 that?

7 **A** The defendant.

8 MR. SIMPSON: Thank you. Answer any
9 questions for the defense.

10 THE COURT: Any questions?

11 MS. ARORA: Yes, Your Honor.

12 THE COURT: You may proceed.

13 **CROSS EXAMINATION**

14 **BY MS. ARORA:**

15 **Q** Good afternoon, Detective Crockett.

16 **A** Good afternoon.

17 **Q** How are you?

18 **A** Well. And you?

19 **Q** Good. Just quickly about the Ring data that
20 you showed the jury. You observed that video?

21 **A** Yes, ma'am.

22 **Q** And it just showed the perspective across the
23 apartment?

24 **A** Yes, ma'am. It's basically a fisheye view
25 from the doorway at a wide angle.

WILLIAM CROCKETT - CROSS EXAMINATION

1 **Q** It is not possible to observe anything that
2 happened out in the breezeway?

3 **A** No, ma'am. The incident location is outside
4 of the view of the camera.

5 **Q** So on July 2021, you were working as a
6 detective with the City of Charleston Police
7 Department?

8 **A** Yes, ma'am, that's correct.

9 **Q** And prior to that you worked in Virginia?

10 **A** Yes, ma'am.

11 **Q** And you are now back in Virginia?

12 **A** Yes, ma'am.

13 **Q** So you have been in law enforcement for over
14 ten years?

15 **A** Yes, ma'am.

16 **Q** That's a long time.

17 And you first started working on this case
18 July 14th?

19 **A** Yes, ma'am.

20 **Q** You testified that it was a team analysis
21 (inaudible) a bunch of detectives were dispatched
22 out (inaudible)?

23 **A** Not at once. I mean, there would be a couple
24 that went out the night of, and then the next
25 morning, whoever didn't go out the night of is

WILLIAM CROCKETT - CROSS EXAMINATION

1 fresh, and goes and picks up where they left off.

2 Q So there's not one detective (inaudible)?

3 A Yes, ma'am.

4 Q Before you were a detective, you had to go
5 through certain training?

6 A Yes, ma'am.

7 Q You were a police officer before you were a
8 detective.

9 A Yes, ma'am.

10 Q And, in fact, you went to the academy?

11 A Yes, ma'am.

12 Q You've learned, essentially, how to become a
13 police officer?

14 A Yes, ma'am.

15 Q And part of that is creating incident
16 reports?

17 A Correct.

18 Q And the purpose of writing reports is to
19 document cases?

20 A Yes, ma'am.

21 Q Report details?

22 A Correct.

23 Q Who witnesses are?

24 A Yes, ma'am.

25 Q Who (inaudible)?

WILLIAM CROCKETT - CROSS EXAMINATION

1 **A** Correct.

2 **Q** And it helps you remember when you come to
3 court?

4 **A** Yes, ma'am.

5 **Q** And it helps assist other detectives in
6 investigating a case?

7 **A** Correct.

8 **Q** (Inaudible)?

9 **A** Correct.

10 **Q** And you rely on these reports. Like today,
11 you rely on the reports?

12 **A** Yes, ma'am.

13 **Q** And it's helpful so you know what you did?

14 **A** Correct.

15 **Q** So the Solicitor knows what you did?

16 **A** Correct.

17 **Q** And so I know what you did --

18 **A** Yes, ma'am.

19 **Q** -- prior to this? And then (inaudible) done
20 a good job at the department?

21 **A** Yes, ma'am.

22 **Q** So in July 2021 you start investigating this
23 case?

24 **A** Correct.

25 **Q** And you didn't write a report?

WILLIAM CROCKETT - CROSS EXAMINATION

- 1 **A** No, ma'am, I did not.
- 2 **Q** You spoke with witnesses?
- 3 **A** Yes, ma'am.
- 4 **Q** You spoke with Karseem?
- 5 **A** Correct.
- 6 **Q** You spoke with Tiffany Hardaway?
- 7 **A** Yes, ma'am.
- 8 **Q** But you didn't write any notes on those
- 9 interactions?
- 10 **A** No, ma'am. That was a complete oversight on
- 11 my part.
- 12 **Q** And you reviewed the Ring camera?
- 13 **A** Yes, ma'am.
- 14 **Q** And you testified to that today. And you
- 15 didn't write a report on that?
- 16 **A** Correct.
- 17 **Q** And you drafted search warrants in this case?
- 18 **A** Yes, ma'am.
- 19 **Q** You didn't write a report on those?
- 20 **A** Correct.
- 21 **Q** So on July 14 you testified that you were
- 22 tasked with trying to obtain more Ring video?
- 23 **A** Yes, ma'am.
- 24 **Q** And the purpose of this was to investigate
- 25 certain time frames?

WILLIAM CROCKETT - CROSS EXAMINATION

1 **A** Correct.

2 **Q** So you were able to refer to time frames of
3 Monday July 12th?

4 **A** Yes, ma'am.

5 **Q** And that is in addition to time frames of
6 July 13th?

7 **A** Correct.

8 **Q** So you were looking specifically looking to
9 see if Tiffany's camera captured anything on that
10 July 12th?

11 **A** Yes, ma'am.

12 **Q** And so you go to her apartment. You
13 testified that you went with Detective Jarrell?

14 **A** Yes, ma'am.

15 **Q** She comes out of the apartment and
16 (inaudible)?

17 **A** Correct.

18 **Q** And you ask to look at the Ring app?

19 **A** Yes, ma'am.

20 **Q** And you tell her what time frames you were
21 looking for?

22 **A** Correct.

23 **Q** So you testified that you saw her delete
24 footage from her phone.

25 **A** I saw her do what I observed to be deleting

WILLIAM CROCKETT - CROSS EXAMINATION

1 video, yes.

2 Q So you eventually took the phone and clicked
3 on the video?

4 A She gave me the phone.

5 Q She gave you the phone. And you clicked on a
6 video and tried to repeat those same steps?

7 A Correct.

8 Q And so you just testified that you
9 (inaudible)?

10 A Yes.

11 Q And in that moment, you know, you don't tell
12 her, Hey, you are deleting things?

13 A No, ma'am.

14 Q This is significant that she could have
15 deleted a video?

16 A Correct.

17 Q It would be considered a crime?

18 A Correct.

19 Q You think it was suspicious?

20 A Yes, ma'am.

21 Q You thought she had something?

22 A Yes.

23 Q You believe it could lead to a suspect in
24 this case?

25 A Yes, ma'am.

WILLIAM CROCKETT - CROSS EXAMINATION

1 Q And you didn't document that in a report?

2 A No, ma'am.

3 Q You didn't make sure what you saw

4 (inaudible)?

5 A It was recorded on my body-worn camera.

6 Q But not in a written report?

7 A Correct.

8 Q And you rely on this information and your
9 interaction with Tiffany?

10 A Yes.

11 Q And you arrest her?

12 A Yes, ma'am.

13 Q And this is for obstruction of justice?

14 A Correct.

15 Q And you do that on July 16?

16 A Yes, ma'am.

17 Q And it was around 8:00 in the morning?

18 A Yes, ma'am.

19 MS. ARORA: Beg the Court's indulgence.

20 (A brief pause in the proceedings.)

21 Q (BY MS. ARORA) I have one question.

22 A Yes, ma'am.

23 Q Just to go over again, when Tiffany handed
24 you her phone, you went through the steps of
25 scrolling through and selected it?

WILLIAM CROCKETT - CROSS EXAMINATION

- 1 **A** Yes.
- 2 **Q** And you said a red button appeared?
- 3 **A** There's a screen, a window pops up, and then
- 4 there is a red button, that window.
- 5 **Q** And you didn't delete any of them?
- 6 **A** No. No, ma'am.
- 7 **Q** You previously had interaction with Karseem
- 8 outside of the apartment?
- 9 **A** Yes, ma'am.
- 10 **Q** Was anyone (inaudible) physical appearance?
- 11 **A** Yes, ma'am.
- 12 **Q** And you did that to compare with the Ring
- 13 footage?
- 14 **A** Correct.
- 15 **Q** That was found at Tiffany's apartment?
- 16 **A** Yes, ma'am.
- 17 **Q** And you noticed it was a black male?
- 18 **A** Yes, ma'am.
- 19 **Q** Somewhat tall?
- 20 **A** Yes, ma'am.
- 21 **Q** Skinny build?
- 22 **A** Yes, ma'am.
- 23 **Q** And one eye?
- 24 **A** Yes, ma'am. That was apparent.
- 25 MS. ARORA: No further questions.

WILLIAM CROCKETT - REDIRECT EXAMINATION

1 THE COURT: Any redirect?

2 MR. SIMPSON: Briefly, Your Honor. Thank
3 you.

4 THE COURT: You're welcome.

5 **REDIRECT EXAMINATION**

6 **BY MR. SIMPSON:**

7 Q You were asked questions about documentation.
8 We already viewed some of the Ring (sic) camera.
9 Did you have a similar Ring (sic) camera for all of
10 your interactions in this case?

11 A By body-worn camera?

12 Q Body-worn camera, sorry. Yes.

13 A Yes, sir. Unless it was in an interview
14 room, which is recorded as well.

15 Q I said "all of your interactions," but I
16 should clarify all of your interactions with
17 non-law enforcement?

18 A Yes, sir.

19 Q So they are videotaped?

20 A Yes, sir.

21 Q In their entirety, just like the one we just
22 saw?

23 A Yes, ma'am.

24 MS. ARORA: Objection.

25 THE COURT: Basis?

WILLIAM CROCKETT - REDIRECT EXAMINATION

1 MS. ARORA: Leading.

2 THE COURT: Sustained; leading.

3 Q (BY MR. SIMPSON) So, Detective, what happens
4 to the body cam after you take it (inaudible)?

5 A So these cameras, you dock them, plug them
6 into the computer, and then you have a menu you can
7 go through and you can label your body cam videos
8 with the case number, type of case, and there is
9 different retention periods for the type of case
10 you have. This one, for a homicide investigation,
11 is an indefinite retention period.

12 Q And what is the purpose of the indefinite
13 retention of all of these videos?

14 A For court proceedings such as today.

15 Q Okay. And we viewed an interaction you had
16 with Mr. Hardaway; is that correct?

17 A Yes.

18 Q And are there videotaped interactions for
19 everyone else that you had --

20 A Non-law enforcement interaction, yes, sir.
21 It's not sitting on my desk, you know, while doing
22 a search warrant with the body cam on, but if I'm
23 out in public interacting with someone, it would be
24 on body camera.

25 Q Is that a pretty thorough documentation of

JAMES JACKSON - DIRECT EXAMINATION

1 what occurred?

2 **A** Yes, sir.

3 MR. SIMPSON: Nothing further.

4 THE COURT: Any exception to the witness
5 being excused from the State?

6 MR. SIMPSON: None.

7 THE COURT: From the defense?

8 MS. ARORA: No, Your Honor.

9 THE COURT: Sir, you are excused.

10 Call your next witness.

11 MS. BARBER: State calls Detective James
12 Jackson.

13 (JAMES JACKSON, having been duly sworn,
14 testified as follows:)

15 THE CLERK: Please be seated. Please state
16 your full name spelling your last name directly
17 into the microphone.

18 THE WITNESS: Okay. Thank you. Detective
19 James Jackson, J-A-C-K-S-O-N.

20 THE COURT: You may proceed.

21 MS. BARBER: Thank you.

22 **DIRECT EXAMINATION**

23 **BY MS. BARBER:**

24 **Q** Where do you work currently?

25 **A** I'm currently employed at the City of

JAMES JACKSON - DIRECT EXAMINATION

1 Charleston Police Department.

2 Q How long have you been with the City of
3 Charleston?

4 A I've been employed there for, approximately,
5 15 years.

6 Q Sorry?

7 A 15 years.

8 Q What is your current job title with them?

9 A Currently, I'm a detective in the Central
10 Investigations Division. I primarily work
11 financial-related matters, and I'm also a task
12 force officer with the United States Secret
13 Service.

14 Q And was that your job title in July of 2021?

15 A It was.

16 Q Are you familiar with the case we are here
17 for today?

18 A I am.

19 Q How so?

20 A I was notified of the incident and requested
21 to obtain video surveillance by other detectives
22 and command supervisors pertaining to this
23 incident.

24 Q And where did you retrieve that?

25 A From the Circle-K located at 1195 Bees Ferry

JAMES JACKSON - DIRECT EXAMINATION

1 Road, which is at the corner of Bees Ferry Road and
2 Main Road.

3 Q And if I showed you a picture of that area,
4 would you recognize it?

5 A I would.

6 Q I'm showing you what is marked for
7 identification purposes as State's Exhibit 49 and
8 50. Do you recognize those?

9 A Yes, I do.

10 Q And how so?

11 A Based on location at the corner of Bees Ferry
12 and Main Road and the street -- the street view by
13 riding by the gas station.

14 MS. BARBER: Your Honor, the State moves to
15 admit State's 49 and 50 into evidence and to
16 publish.

17 THE COURT: Any objection?

18 MS. ARORA: No objection.

19 THE COURT: Marked and admitted without
20 objection.

21 (State's Exhibits 49-50 admitted and
22 published.)

23 Q (BY MS. BARBER) Detective Jackson, you
24 mentioned you retrieved video at the gas station.
25 Is this the gas station you are referring to?

JAMES JACKSON - DIRECT EXAMINATION

1 **A** Yes, ma'am.

2 **Q** And it is hard to see, but can you circle the
3 location?

4 **A** Right here.

5 **Q** And now I'm showing you State's Exhibit 50.
6 (inaudible) actually, can you (inaudible). And
7 what is this a view of?

8 **A** Kind of an aerial view of the same area.

9 **Q** And can you identify for the jury what that
10 main road is running --

11 **A** This is Main Road right here, and then this
12 is Bees Ferry Road right here (indicates), and the
13 gas station is right here.

14 **Q** And so you said you went to the gas station
15 to retrieve (inaudible). What was the first thing
16 you did?

17 **A** Made contact with the manager who gave me
18 access to the video surveillance system of the
19 store.

20 **Q** And when she gave you access, how did you
21 retrieve that information?

22 **A** She gave me access. I went to the back
23 storeroom and downloaded a certain time frame from
24 July 13th onto an external thumb drive.

25 **Q** And so once you retrieved that information,

JAMES JACKSON - DIRECT EXAMINATION

1 what did you do with it?

2 **A** Downloaded it, returned to the station, made
3 a copy, and provided that to the case agent, and
4 placed the original into evidence.

5 **Q** You can explain to the jury what (inaudible)?

6 **A** The process is coming back to the station,
7 getting into our workers management system, and
8 creating a log, for lack of a better term, of
9 putting that into evidence, and then putting it in
10 an envelope, sealing it, signing it, and submitting
11 it to our evidence custodian.

12 **Q** And if I were to show you that envelope,
13 would you recognize it?

14 **A** I would.

15 MS. BARBER: Permission to approach?

16 **Q** (BY MS. BARBER) I'm showing you now what is
17 premarked for identification purposes as State's
18 Exhibit 56. What is that?

19 **A** This is the video surveillance that I
20 ultimately transferred onto a CD drive after using
21 the thumb drive. That was small enough to fit the
22 CD drive versus the external hard drive.

23 **Q** And how do you recognize it?

24 **A** Based on my lettering and initials on the
25 back.

JAMES JACKSON - DIRECT EXAMINATION

1 (A brief pause in the proceedings.)

2 MS. BARBER: Your Honor, I apologize.

3 Q Detective, again, how do you recognize that?

4 A By my writing on the front and my initials on
5 the back.

6 MS. BARBER: Your Honor, at this time State
7 seeks to admit Exhibit 50 into evidence.

8 THE COURT: That's 56.

9 MS. BARBER: I apologize, State's 56.

10 THE COURT: Any exception?

11 MS. ARORA: No, Your Honor.

12 THE COURT: Marked and admitted as State's 56
13 without objection.

14 (State's Exhibit 56 admitted.)

15 Q (BY MS. BARBER) And, Detective Jackson, you
16 mentioned that you retrieved this video from
17 Circle-K. How many times did you go to that gas
18 station?

19 A I went there twice.

20 Q And each time what did you do?

21 A Same process. The manager gave me access the
22 first time. I downloaded footage from 17:40 to
23 18:00, so 5:40 to 6:00. And then the next day I
24 went back and got earlier footage from 17:00 to
25 17:40 to get that full hour block.

JAMES JACKSON - DIRECT EXAMINATION

1 **Q** And just to be clear, why did you return the
2 next day?

3 **A** New information was obtained, and they wanted
4 earlier footage. Since I already had contact with
5 the manager, they asked me to go back and get the
6 second segment of the video.

7 **Q** And you (inaudible). Did you get the
8 timestamp in military time?

9 **A** Correct. So the first timestamp I got was
10 from 5:40 to 6:00. On the 13th, the second time,
11 was from 5 o'clock to 5:40. So, basically, two
12 times. It covered that entire hour of time.

13 MS. BARBER: I have nothing further for you
14 at this time, Detective Jackson. Answer any
15 questions the defense may have. Thank you.

16 THE COURT: Any questions for this witness?

17 MS. ARORA: No questions.

18 THE COURT: Any objection to the witness
19 being excused from the State?

20 MS. BARBER: No, ma'am.

21 THE COURT: From the defense?

22 MS. ARORA: No, Your Honor.

23 THE COURT: Sir, you are excused.

24 THE WITNESS: Thank you.

25 THE COURT: You're welcome.

JASON JARRELL - DIRECT EXAMINATION.

1 Counsel, approach for a moment.

2 (Whereupon, a bench conference was had.)

3 THE COURT: Call your next witness.

4 MR. SIMPSONN: The State calls Detective

5 Jason Jarell.

6 (JASON JARRELL, having been duly sworn,

7 testified as follows:)

8 THE CLERK: State and spell your last name

9 into the microphone.

10 THE WITNESS: Jason Jarell, J-A-R-R-E-L-L.

11 THE COURT: You may proceed.

12 **DIRECT EXAMINATION**

13 **BY MR. SIMPSON:**

14 **Q** Good afternoon, Detective Jarrell.

15 **A** How are you?

16 **Q** Good. Thank you for being here.

17 If you could, introduce yourself to the jury

18 a little bit and tell us what you do.

19 **A** I'm an investigator with the Charleston

20 Police Department.

21 **Q** How long have you been with the city police

22 department?

23 **A** Since August of 2007.

24 **Q** And tell us what educational background you

25 have, continuing on through your work history with

JASON JARRELL - DIRECT EXAMINATION.

1 the department.

2 **A** I have a history degree from West Virginia
3 University, as well as -- it's an investigations
4 degree. Sorry.

5 **Q** Is that a college degree?

6 **A** Yes, sir.

7 **Q** And after college, what did you do?

8 **A** I came to work for the Charleston Police
9 Department.

10 **Q** And what kind of training is involved in
11 becoming a police officer for the Charleston Police
12 Department?

13 **A** You go to the South Carolina Criminal Justice
14 Academy, several weeks there. And then at the
15 Charleston Police Department you go through a field
16 training session, which is also several weeks, a
17 couple months. I've also had several classes,
18 training, in interviewing, interrogation, basic
19 investigations, advanced investigations, and also
20 several other classes dealing with what I currently
21 do, which is narcotics.

22 **Q** So there is any sort of a continuing
23 education program -- training and education program
24 training?

25 **A** Yes, there is. Absolutely.

JASON JARRELL - DIRECT EXAMINATION.

1 **Q** And what was your role within the Charleston
2 Police Department in the summer of 2021?

3 **A** I was a homicide investigator.

4 **Q** How long were you in that?

5 **A** About a year-and-a-half, two years.

6 **Q** And were you working that role on July 13 of
7 2021?

8 **A** Yes, sir, I was.

9 **Q** Did you have occasion through that work to
10 become involved in a homicide investigation
11 (inaudible)?

12 **A** Yes.

13 **Q** And explain how your involvement in that
14 began.

15 **A** As a homicide investigator -- typically, when
16 a homicide occurs in the city, several of us will
17 go out that are in the homicide unit. We will go
18 out and begin investigating, follow up typically
19 with a lot of canvassing --

20 **Q** What do you mean by "canvassing"?

21 **A** So we'll knock on doors. Like, in this case,
22 it was at an apartment complex. So we'll knock on
23 doors and walk around and look for anyone who may
24 want to talk to us.

25 **Q** Did you do that in this case?

JASON JARRELL - DIRECT EXAMINATION.

1 **A** I did.

2 **Q** Were you equipped with a body-worn camera?

3 **A** Yes, sir.

4 **Q** Would you have made a note to record any
5 interaction you had?

6 **A** Yes.

7 **Q** What happens with those recordings after your
8 investigation?

9 **A** Those recordings get uploaded and saved into
10 a cloud.

11 **Q** Are they provided to the State?

12 **A** Yes.

13 **Q** Are they provided to the defense?

14 **A** Yes.

15 **Q** You said you canvassed the area of the
16 apartment on July 13th; is that correct?

17 **A** That is correct?

18 **Q** And that's the actual evening of the
19 homicide?

20 **A** Yes.

21 **Q** Did your investigation continue onto
22 the 14th?

23 **A** It did.

24 **Q** And in what way?

25 **A** I went back over to the apartment complex and

JASON JARRELL - DIRECT EXAMINATION.

1 re-canvassing. Since it was -- we started a little
2 earlier in the morning, tried to catch people maybe
3 before going to work, and also spoke with the
4 management there at the apartment complex.

5 Q Okay. And in so doing, did you have an
6 occasion to speak to a Ms. Hardaway that morning?

7 A I did.

8 Q What was your purpose of your discussions
9 with Ms. Hardaway?

10 A Ms. Hardaway lived a couple doors down from
11 where the crime scene was, and we noticed she had a
12 Ring doorbell camera on her apartment.

13 Q Let me show you what previously has been
14 entered as State's 11. Are you familiar with that?

15 A Okay. Yes, sir.

16 Q Does that look familiar to you?

17 A It does.

18 Q Are you able to identify Ms. Hardaway's
19 apartment?

20 A Yes, sir.

21 Q And the victim's apartment?

22 A Yes.

23 Q Disregard the markings on there.

24 And where is Ms. Hardaway's apartment?

25 A If I'm looking at this correctly, I believe

JASON JARRELL - DIRECT EXAMINATION.

1 it would be here (indicates).

2 Q And where is the victim's apartment?

3 A The victim's apartment would be down here in
4 this corner, down in this area.

5 Q Did Ms. Hardaway cooperate with you
6 (inaudible)?

7 A Yes, she has.

8 Q Did they provide you some cameras from her
9 doorbell --

10 MS. ARORA: Objection; leading.

11 THE COURT: Sustained; leading. Rephrase.

12 Q (BY MR. SIMPSONN) Were you provided anything
13 by Ms. Hardaway?

14 A Yes. One of the main reasons we wanted to
15 talk to Ms. Hardaway was because we had observed
16 the doorbell camera. In speaking with
17 Ms. Hardaway, she was very cooperative that
18 morning, and she actually allowed me to hold her
19 phone and e-mail clips from the camera to myself so
20 that they could be reviewed and placed in evidence.

21 Q And were you interested in any sort of time
22 period during this initial conversation?

23 A Yes. We were particularly interested in the
24 time frame of around 5:00 to 6 o'clock.

25 Q Would that be the relative time frame that

JASON JARRELL - DIRECT EXAMINATION.

1 you requested from her?

2 **A** Yes, it was.

3 **Q** And did she, in fact, provide some of those
4 videos from that time period?

5 **A** Yes.

6 MR. SIMPSON: Court's indulgence.

7 (A brief pause in the proceedings.)

8 **Q** (BY MR. SIMPSONN) Did you review the videos
9 that were provided to you by Ms. Hardaway?

10 **A** Yes, sir, I did.

11 **Q** Was one of those -- were any of those videos
12 captured close in time to the suspected time of the
13 killing in this case?

14 **A** There were videos that were maybe a half hour
15 or so before -- when we believed that the homicide
16 occurred.

17 **Q** And referring to the video, do you remember
18 the time of the video -- do you remember the time
19 of the video (inaudible)?

20 **A** I believe it was about 5:04.

21 **Q** Was there an individual in that video you
22 were able to identify?

23 **A** Yes, sir, there was.

24 **Q** Who was that?

25 **A** Karseem Hardaway.

JASON JARRELL - DIRECT EXAMINATION.

1 **Q** And, again, you have a time period where you
2 suspected the murder to occur in this case?

3 **A** Yes. We believed at that time that the
4 homicide most likely occurred around 5:30.

5 **Q** So from 5:04 to 5:30, were there any
6 additional videos of someone coming in and out of
7 (inaudible)?

8 **A** No. If I'm recalling correctly, the next
9 people that were captured on that would have been
10 first responders.

11 **Q** You testified earlier that another item on
12 your to-do list that day was a visit to the
13 property management office of the apartment
14 complex?

15 **A** Yes, sir.

16 **Q** Were you able to do that that day?

17 **A** I was.

18 **Q** And what was your purpose of visiting
19 property management?

20 **A** We wanted to speak with the property managers
21 about people in the building, and also about
22 cameras that were located on the property.

23 **Q** Were they cooperative with you, sharing with
24 you that video capability?

25 **A** Yes, they were.

JASON JARRELL - DIRECT EXAMINATION.

1 **Q** And did they assist your department and you
2 in obtaining copies of that tape?

3 **A** Yes, sir.

4 **Q** Were any observations (inaudible) regarding
5 the accuracy of the timing?

6 **A** Yes. The video surveillance that the
7 property managers had on the property was,
8 approximately, 28 minutes slow.

9 **Q** 28 minutes slow. And is checking the time
10 accuracy of surveillance videos something you try
11 to do in every investigation?

12 **A** Absolutely. An accurate timestamp is very
13 important for any investigation.

14 MR. SIMPSON: May I approach?

15 THE COURT: You may.

16 **Q** **(BY MR. SIMPSONN)** I'll show you what is
17 marked as 22-A and B for ID at this point in time.
18 Do you recognize those exhibits?

19 **A** Yes, sir, I do.

20 **Q** And what are they?

21 **A** This is the camera view from the office there
22 at the property. In the video angle, it's pointing
23 out toward Blue Waterway, the main entrance there.

24 **Q** I'll show you what is already entered into
25 evidence as State's 20. Do you recognize that?

JASON JARRELL - DIRECT EXAMINATION.

- 1 **A** Yes, sir, I do.
- 2 **Q** And what is that?
- 3 **A** This is an overhead look at the apartment
4 complex.
- 5 **Q** And I'm reminding you, you can mark on the
6 screen in front of you. I'm publishing, again,
7 State's 20. Can you note where the office is for
8 Bolton's Landing?
- 9 **A** The office is there (indicates).
- 10 **Q** Okay. And can you sort of approximate -- the
11 cone-shape or U that you are seeing in State's 22-A
12 and B?
- 13 **A** Sure. (Indicates)
- 14 **Q** Are you able to see the main road out -- in
15 State's 22-A and B, is one able to see the road
16 that leads out, as you just illustrated, to Bees
17 Ferry?
- 18 **A** Yes, sir.
- 19 **Q** After obtaining the surveillance video from
20 the property management office, were you the one
21 tasked with reviewing it?
- 22 **A** Yes.
- 23 **Q** I'm going to jump ahead a little bit, and
24 we'll come back to that. Did you have occasion
25 later that day to speak with the defendant, Karseem

JASON JARRELL - DIRECT EXAMINATION.

1 Hardaway?

2 **A** Yes, sir.

3 **Q** And who was with you when you spoke with

4 Karseem Hardaway?

5 **A** Detective Crockett.

6 **Q** Was that interaction captured on body cam

7 video?

8 **A** Yes, it was.

9 **Q** Were you able to observe Mr. Hardaway driving
10 a specific vehicle?

11 **A** Yes.

12 **Q** Were you able to note the license plate of
13 that vehicle?

14 **A** I believe so.

15 **Q** Were you using your issued body camera?

16 **A** Yes, sir, I was.

17 MR. SIMPSON: Court's indulgence, Your Honor.

18 (A brief pause in the proceedings.)

19 **Q** (BY MR. SIMPSONN) I'll show you what is
20 marked for ID only, State's Exhibit 37. Do you
21 recognize that exhibit?

22 **A** Yes, sir, I do.

23 **Q** Is -- what is it?

24 **A** This is a still photo taken from my body cam
25 of Detective Crockett speaking with Mr. Hardaway.

JASON JARRELL - DIRECT EXAMINATION.

1 Q Does that show the vehicle?

2 A Yes, it does.

3 Q What vehicle?

4 A That is a burgundy Honda.

5 Q And is that the vehicle that was driven by
6 Karseem that day?

7 A Yes, it was.

8 Q Did you observe that?

9 A Yes, I did.

10 MR. SIMPSON: Your Honor, at this time the
11 State seeks to admit State's 37.

12 THE COURT: Any objection?

13 MS. ARORA: No objection.

14 THE COURT: 37 marked and admitted without
15 objection.

16 (State's Exhibit 37 admitted.)

17 Q (BY MR. SIMPSONN) In the course of your
18 discussion you had with Mr. Hardaway, was he shown
19 any stills from the Ring videos?

20 A Yes, he was.

21 Q You referred earlier to a Ring video at 5:04.
22 Was he shown a still from that?

23 A Yes.

24 Q Did he indicate what he did after leaving
25 that apartment?

JASON JARRELL - DIRECT EXAMINATION.

1 **A** I believe he stated to Detective Crockett --
2 with me close by -- that he drove to the Brownswood
3 area of Johns Island.

4 **Q** After leaving at 5:04?

5 **A** Yes, sir.

6 **Q** And what time, again, was the suspected time
7 of the murder?

8 **A** At about 5:30.

9 **Q** And you were tasked with reviewing this
10 video, correct?

11 **A** Yes, sir.

12 **Q** I'll show you what is marked as State's
13 Exhibit 8. Do you recognize State's 8?

14 **A** Yes, sir, I do.

15 MS. ARORA: Can I verify 8?

16 MR. SIMPSON: Yes. Sorry. Flash drive.

17 **Q** **(BY MR. SIMPSONN)** And you recognize State's
18 Exhibit 8 as a flash drive? You, personally,
19 recognize?

20 **A** Yes, sir.

21 **Q** Did you view a clip from that?

22 **A** Yes.

23 **Q** Is that clip determined to be 8-E?

24 **A** Yes, sir.

25 **Q** What does 8-E depict?

JASON JARRELL - DIRECT EXAMINATION.

1 **A** That video is a burgundy Honda vehicle
2 traveling past the view of the camera there at the
3 office of the apartment complex.

4 **Q** Did it appear to you to match the vehicle
5 driven by Mr. Hardaway during your interview?

6 **A** Yes, it did.

7 **Q** I'm showing you what is marked and entered as
8 State's 37. And I'm also showing you State's 22-A
9 and B, and State's 36.

10 22-A and B and 36, what are those exhibits?

11 **A** These are still photos taken from the video
12 that depicted the burgundy Honda traveling past the
13 office.

14 **Q** Okay. And, correct me, from the time
15 differential you observed and noted, what is the
16 time that the burgundy Accord is leaving Bolton's
17 Landing?

18 **A** At 5:35.

19 **Q** 5:35?

20 **A** Wait, let me do some math. Yes, sir, 5:35.

21 **Q** And the differential again?

22 **A** 28 minutes.

23 **Q** What is State's 37 again?

24 **A** That is Detective Crockett talking to Mr.
25 Hardaway while Mr. Hardaway was seated in that

JASON JARRELL - DIRECT EXAMINATION.

1 vehicle.

2 MR. SIMPSON: At this time the State's seeks
3 to admit 22-A and B and 36?

4 THE COURT: Any exception 22-A?

5 MS. ARORA: No, Your Honor.

6 THE COURT: 22-B?

7 MS. ARORA: No, Your Honor.

8 THE COURT: Or 36?

9 MS. ARORA: No, Your Honor.

10 THE COURT: Marked and admitted without
11 objection.

12 (State's Exhibits 22A-B and 36 admitted.)

13 Q (BY MR. SIMPSONN) I'm showing you State's 37
14 along with State's 36. State's 36, the timestamp
15 is corrected for the time differential?

16 A 5:35.

17 Q Detective Jarrell, did you also have occasion
18 to work on a search warrant in this case?

19 A Yes, sir.

20 Q And what was the subject of that search
21 warrant?

22 A The search warrant was for Ms. Hardaway's
23 apartment.

24 Q I was speaking about a different search
25 warrant. Did you execute a search warrant for

JASON JARRELL - DIRECT EXAMINATION.

1 online-based records?

2 **A** Yes, sir. I also worked on a search warrant
3 for -- a Facebook search warrant.

4 **Q** What kind of records were you seeking?

5 **A** I was seeking the records for Karseem
6 Hardaway.

7 **Q** And that's from -- from what source again?

8 **A** Facebook.

9 **Q** Without going into any of the details,
10 Facebook responded to that search warrant?

11 **A** Yes, they did.

12 **Q** And did you also execute a search warrant
13 related to Tiffany Hardaway's possessions?

14 **A** Yes, sir.

15 **Q** And, specifically, what possessions were
16 those?

17 **A** Her cell phone.

18 **Q** And was her cell phone seized?

19 **A** It was.

20 **Q** Was it submitted -- where did you submit that
21 after it was seized?

22 **A** Into evidence at the police department, and
23 then it was forwarded to the Digital Evidence Unit.

24 **Q** I'll show you what is marked as ID only at
25 this time as State's 35. Do you recognize that

JASON JARRELL - DIRECT EXAMINATION.

1 exhibit?

2 **A** Yes, sir, I do.

3 **Q** Does it contain any markings on the packages
4 made by you?

5 **A** Yes, sir.

6 **Q** Are you confident in identifying that
7 exhibit?

8 **A** Yes, sir.

9 **Q** What is that?

10 **A** This is Ms. Hardaway's cell phone.

11 MR. SIMPSON: At this time we seek to admit
12 State's 35.

13 MS. ARORA: No objection.

14 THE COURT: Marked and admitted, State's 35
15 without objection.

16 (State's Exhibit 35 admitted.)

17 **Q** **(BY MR. SIMPSONN)** Detective Jarrell, were you
18 also present during a second conversation with
19 Tiffany Hardaway?

20 **A** Yes, sir, I was.

21 **Q** And who accompanied you during that
22 conversation?

23 **A** Detective Crockett.

24 **Q** And were you or Detective Crockett closer in
25 proximity to Tiffany Hardaway when that

JASON JARRELL - DIRECT EXAMINATION.

1 conversation was occurring?

2 **A** We were both pretty close to her. I would
3 say Detective Crockett was closer.

4 **Q** Did you personally have a view of her phone
5 screen (inaudible)?

6 **A** No, sir.

7 **Q** So you would not be able to see from your
8 vantage point what was going on?

9 MS. ARORA: Objection; leading.

10 THE COURT: Sustained; leading.

11 **Q** (BY MR. SIMPSONN) Would you be able to see
12 from your vantage point the screen?

13 **A** No, sir. From where I was standing, more
14 facing her, I would not be able to see her screen.

15 **Q** You mentioned that you did review the video
16 surveillance, State's 8-E?

17 **A** Yes, sir.

18 MR. SIMPSON: Your Honor, State seeks to
19 admit State's 8-E.

20 THE COURT: Any objection to 8-E?

21 MS. ARORA: Court's indulgence.

22 (A brief pause in the proceedings.)

23 MS. ARORA: No objection.

24 THE COURT: Marked and admitted without
25 objection.

JASON JARRELL - CROSS EXAMINATION

1 (State's Exhibit 8-E admitted.)

2 Q (BY MR. SIMPSONN) Detective Jarrell, this
3 video -- is that an accurate, sort of, pausing of
4 the previous clips that we entered into evidence?

5 A Yes, sir, it is.

6 Q And if you are traveling in the direction of
7 that red Accord -- you are pretty familiar with the
8 area?

9 A I am.

10 Q Do you know where Bees Ferry Road is?

11 A Yes, sir.

12 Q What road are you going to get to if this car
13 keeps traveling on this direction?

14 A The road that it's on right there will travel
15 directly to Bees Ferry.

16 MR. SIMPSON: No further questions. Please
17 answer any questions defense may have.

18 THE COURT: Cross examination of the witness?

19 MS. ARORA: Yes, Your Honor.

20 CROSS EXAMINATION

21 BY MS. ARORA:

22 Q Good afternoon, Detective Jarrell.

23 A Good afternoon.

24 Q You stated on direct (inaudible) you were
25 employed with the city?

JASON JARRELL - CROSS EXAMINATION

1 **A** Yes, ma'am.

2 **Q** You were asked to assist in this
3 investigation?

4 **A** Yes, ma'am.

5 **Q** And part of that was to go to the property
6 manager's office?

7 **A** Yes.

8 **Q** Not apartment, but the office?

9 **A** Yes.

10 **Q** You know Kristi Jones?

11 **A** I do.

12 **Q** And she introduced you to other employees at
13 that time?

14 **A** Yes.

15 **Q** And you met someone named (inaudible)?

16 **A** I believe so.

17 **Q** Who was the maintenance worker at that time?

18 **A** Yes.

19 **Q** And the purpose of you meeting with the
20 employees was to find information?

21 **A** Yes, ma'am.

22 **Q** You wanted to know about surveillance?

23 **A** Yes, ma'am.

24 **Q** You also wanted to know if there was other
25 witnesses that were available that were there on

JASON JARRELL - CROSS EXAMINATION

1 July 13th?

2 A Yes, ma'am.

3 Q And you did this because you wanted to fully
4 investigate the case?

5 A Yes, ma'am.

6 Q Go through any means you could?

7 A Yes.

8 Q And during the course of your investigation,
9 you noticed there was a motorcycle leaving the
10 scene?

11 A Yes, ma'am.

12 Q And this was specifically on July 13th?

13 A Yes. I believe so.

14 Q Before the first responders arrived?

15 A Yes.

16 Q So while you were on the property, you also
17 walked physically around the property?

18 A I did.

19 Q I believe you did this with Detective
20 Jackson?

21 A I couldn't recall who I was with.

22 Q There was another officer?

23 A Yes, most likely.

24 Q And you did this, once again, to find leads?

25 A Yes.

JASON JARRELL - CROSS EXAMINATION

1 Q Investigate the case?

2 A Yes, ma'am.

3 Q On this date, on July 14th, you located a
4 motorcycle?

5 A I do recall finding a motorcycle on the
6 property, yes.

7 Q And this was specifically in the parking lot
8 of Bolton's Landing?

9 A It was in a parking lot there in the complex.
10 I don't believe it was in the same parking lot as
11 the crime scene, but a couple buildings over maybe.

12 Q But in that apartment complex?

13 A Yes, ma'am.

14 Q And you made note of this?

15 A I did.

16 Q You kept good records and wrote a report?

17 A I believe so.

18 Q And you saw that a license plate was on the
19 motorcycle?

20 A Yes, ma'am.

21 Q So it was registered?

22 A Yes, ma'am.

23 Q You were able to see who that was registered
24 to?

25 A Yes, ma'am.

JASON JARRELL - CROSS EXAMINATION

- 1 Q And it was a resident (inaudible)?
- 2 A I believe so.
- 3 Q And after that, you recorded your
- 4 investigation.
- 5 A Sorry.
- 6 Q You recorded your investigation.
- 7 A Recorded doing --
- 8 Q Doing an incident report?
- 9 A Yes, ma'am.
- 10 Q And uploaded to the case file?
- 11 A Yes.
- 12 Q And you never went to interview the owner of
- 13 that motorcycle?
- 14 A I don't believe so.
- 15 Q And you stated earlier today that on
- 16 July 14th, that same day, you met with Tiffany
- 17 Hardaway?
- 18 A Yes, I did.
- 19 Q She lived at Apartment [REDACTED]
- 20 A I believe so.
- 21 Q You learned from other detectives she had a
- 22 Ring camera?
- 23 A Yes.
- 24 Q And you went to her, and she let you go
- 25 through her phone?

JASON JARRELL - CROSS EXAMINATION

- 1 **A** She did.
- 2 **Q** You scrolled through her Ring app?
- 3 **A** I did, yeah. She let me do that.
- 4 **Q** She let you hold it?
- 5 **A** She did.
- 6 **Q** There was no issues?
- 7 **A** No. She was very cooperative in the
- 8 beginning.
- 9 **Q** You e-mailed clips?
- 10 **A** I did.
- 11 **Q** I think it was about ten clips?
- 12 **A** I'm not sure of the exact number.
- 13 **Q** And there what no issues with that, and you
- 14 documented that in your incident report?
- 15 **A** Yes, ma'am.
- 16 **Q** On the same day you just testified to, you
- 17 met with Kristi Jones (inaudible)?
- 18 **A** Yes, ma'am, I did.
- 19 **Q** And you learned from her there was a
- 20 voicemail that had been left for the apartment
- 21 complex?
- 22 **A** That was much later when I learned that, much
- 23 later in the evening.
- 24 **Q** When you say "much later," in the evening?
- 25 **A** Yes, ma'am.

JASON JARRELL - CROSS EXAMINATION

- 1 Q Around what time?
- 2 A I don't recall what time. It was a very long
3 day.
- 4 Q I understand.
- 5 And as far as your investigation, did you
6 listen to that voicemail?
- 7 A Yes, ma'am.
- 8 Q And you learned that there was a situation
9 outside of Apartment [REDACTED]?
- 10 A Yes.
- 11 Q There was no description of who that person
12 was outside of the apartment?
- 13 A No, ma'am, I don't believe so.
- 14 Q The person didn't say a black person?
- 15 A No.
- 16 Q A white person?
- 17 A No.
- 18 Q Did they mention any motives?
- 19 A No.
- 20 Q Did it mention if that person had one eye?
- 21 A No, ma'am.
- 22 Q Didn't mention anything about their hair?
- 23 A No, ma'am.
- 24 Q Another part of your investigation was you
25 wanted to learn the whereabouts of David Conner?

JASON JARRELL - CROSS EXAMINATION

1 **A** I believe so.

2 **Q** So you wanted to know his routine?

3 **A** Yes, ma'am.

4 **Q** Where he worked?

5 **A** I believe.

6 **Q** If I showed you your incident report, would
7 that help?

8 **A** Yes, ma'am, it would. Thank you.

9 (A brief pause in the proceedings.)

10 **A** Okay. Yes, ma'am. I'm tracking here. Thank
11 you.

12 **Q** I'll take that back.

13 So you learned how he got to work?

14 **A** If you are referring to his vehicle --

15 **Q** Yes.

16 **A** Yes, ma'am.

17 **Q** (Inaudible) his vehicle. And you did learn
18 that David took a lunch break on July 13th?

19 **A** I believe so, yes.

20 **Q** You learned that he went back to his
21 apartment?

22 MR. SIMPSON: Objection; hearsay.

23 THE COURT: Restate the question. I didn't
24 hear the question.

25 **Q** **(BY MS. ARORA)** You learned that he left work

JASON JARRELL - CROSS EXAMINATION

1 that day?

2 THE COURT: I'm sorry, I don't understand the
3 question.

4 MS. ARORA: He learned during his
5 investigation that David left work that day.

6 THE COURT: Same objection?

7 MR. SIMPSON: Dodging hearsay rules, Your
8 Honor.

9 THE COURT: What is the objection?

10 MR. SIMPSON: Hearsay.

11 THE COURT: Sustained. Rephrase the
12 question.

13 MS. ARORA: Your Honor, I'll move on.

14 **Q (BY MS. ARORA)** You stated earlier that you
15 went with Detective Crockett to speak with Karseem
16 Hardaway?

17 **A** Yes, ma'am, I did.

18 **Q** And at this point you were in plain clothes,
19 and by that, you weren't in an officer uniform?

20 **A** Correct. Dressed sort of like how I am now.

21 **Q** And you stated you have written reports in an
22 investigation?

23 **A** Yes, ma'am, I've written reports.

24 **Q** And you do that normally in your job as a
25 police officer?

JASON JARRELL - CROSS EXAMINATION

1 **A** Yes, ma'am.

2 **Q** And that is to record what you learned during
3 the course your investigation -- during the course
4 of an investigation?

5 **A** Yes, ma'am.

6 **Q** Helps you remember witnesses?

7 **A** Yes, ma'am.

8 **Q** To help other detectives learn about what you
9 witnessed?

10 **A** Yes, ma'am.

11 **Q** And so you went back on July 14th and met
12 with Tiffany?

13 **A** Yes, ma'am.

14 **Q** And after that you didn't write a report of
15 your interaction?

16 **A** I don't believe I did.

17 MS. ARORA: Beg the Court's indulgence.

18 (A brief pause in the proceedings.)

19 **Q** **(BY MS. ARORA)** Earlier today you testified
20 you watched surveillance video from the apartment?

21 **A** Yes, I did.

22 **Q** And you watched about an hour's worth of
23 surveillance video?

24 **A** Probably captured at least an hour.

25 **Q** And during that time, other cars passed by

JASON JARRELL - REDIRECT EXAMINATION

1 the apartment complex?

2 **A** They do.

3 MS. ARORA: No further questions.

4 THE COURT: Any redirect of the witness?

5 MR. SIMPSON: Yes, Your Honor.

6 THE COURT: You may proceed.

7 **REDIRECT EXAMINATION**

8 **BY MR. SIMPSON:**

9 **Q** During the time that the cars passed by, was
10 the question you were just asked?

11 **A** That other cars do pass by?

12 **Q** Is that correct?

13 **A** Yes.

14 **Q** Around the minutes of 5:25 to 5:35, how about
15 a motorcycle?

16 **A** No, sir. I don't recall that.

17 **Q** Do you recall any other motorcycle going by
18 that same --

19 **A** No, sir.

20 MR. SIMPSON: Nothing further.

21 THE COURT: Any objection to the witness
22 being excused from the State?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: From the defense?

25 MS. ARORA: No, Your Honor.

JASON JARRELL - REDIRECT EXAMINATION

1 THE COURT: Sir, you are excused.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 Mr. Foreman, ladies and gentlemen, we're
5 going to take advantage of this break in testimony
6 to take our evening recess. During the break,
7 please do not discuss the case in any manner,
8 whatsoever. Please leave your notepads in your
9 seats, and please do not read, watch, or listen to
10 any media accounts about this case, if there are
11 any.

12 We'll resume in the morning at 9:30. As soon
13 as everyone has arrived, we'll resume testimony.
14 You will follow the same procedure by coming
15 directly to your jury room. And, again, please
16 eliminate or avoid any contact with anyone in or
17 about the courthouse that you do recognize to be a
18 fellow juror.

19 We appreciate your indulgence in allowing us
20 to go beyond 5 o'clock to complete the witnesses.
21 Have a good evening. See you in the morning.

22 (The jury exits at 5:18 p.m., and the
23 following is heard out of the presence of the jury.)

24 THE COURT: You may be seated, I'm sorry.

25 Is there anything we need to take up before

THE COURT AND THE ATTORNEYS

1 we adjourn for the evening from the state?

2 MR. SIMPSON: No, Your Honor.

3 THE COURT: From the defense?

4 MS. ARORA: No, Your Honor.

5 THE COURT: I need to know when the other
6 videos -- these other Ring videos are coming up and
7 through what witness so I'm clear about what
8 (inaudible).

9 MR. SIMPSON: Tomorrow we're going to call
10 witness Marie Heffron from the Digital Evidence
11 Unit. One of her tasks was phone extraction from
12 the phone.

13 THE COURT: So these are the videos that you
14 purport were deleted?

15 MR. SIMPSON: No, Your Honor. These were
16 still very much present on the phone.

17 THE COURT: Okay. So Ms. Heffron -- what is
18 her first name?

19 MR. SIMPSON: Maria.

20 THE COURT: How did I get -- it's been a long
21 day. So Maria, M-A-R-I-A?

22 MR. SIMPSON: Yes, sir.

23 THE COURT: H-E-F-F-R-O-N?

24 MR. SIMPSON: Yes, ma'am.

25 THE COURT: All right. And those are -- so

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1 those are the ones that I was referring to, meaning
2 the one at 7/12/21, 6:16 p.m. that the defense has
3 no objection to. 7/12/21 at 8 o'clock where it is
4 contended the gun was visible on Mr. Hardaway, and
5 the defense has argued it is a 404(b), as well as
6 403, but I took it under advisement subject to how
7 this is introduced?

8 MR. SIMPSONN: Correct, Your Honor.

9 THE COURT: And then 7/12/21, which is
10 8:03:17 p.m., that is without objection. And the
11 7/13/21 at 6:07 a.m. where it is contended that the
12 gun is on the defendant, but it is less visible?
13 Is that an accurate? Is my recollection accurate?

14 MR. SIMPSON: Yes, Your Honor.

15 THE COURT: And that one I said the same
16 thing (inaudible). Ms. Arora objected to that, but
17 I took it under advisement subject to how you all
18 seek to introduce it, and I'll have to make a
19 contemporaneous objection -- I'll have to hear a
20 contemporaneous objection at that time.

21 So those are the ones that we dealt with
22 pretrial, correct?

23 MR. SIMPSON: Correct, Your Honor.

24 THE COURT: Is there anything else we need to
25 take up that you all are anticipating is going to

THE COURT AND THE ATTORNEYS

1 come up with any of these witnesses that will save
2 us time sending the jury in and out?

3 MR. SIMPSON: No, Your Honor.

4 THE COURT: Sir? Anything that is going to
5 come up with any of the witnesses that you are
6 calling tomorrow that we can deal with now so we
7 don't have to send the jury in and out?

8 MR. SIMPSON: Yes, I believe so. We had a
9 pretrial matter dealing with some videos on
10 Karseem's phone.

11 THE COURT: The 10-millimeter?

12 MR. SIMPSON: One step --

13 THE COURT: Let me get to that motion, I
14 apologize. As I recall, those were the Facebook
15 videos, and there were two of them. We all watched
16 them together last week. One has a video of a
17 still picture of him with the 10-millimeter on his
18 -- situated on his leg -- I wouldn't say lap, but
19 with the clothing you all contend he was wearing on
20 the same date of the purported incident, and then a
21 video subsequent that shows the gun where you all
22 are contending he was seeking to offer the gun for
23 sale. Is that -- is my recollection accurate?

24 MR. SIMPSON: It is miraculously close, Your
25 Honor.

THE COURT AND THE ATTORNEYS

1 THE COURT: Is it close?

2 MR. SIMPSON: We have a video from 7/3
3 preceding the crime, as well as -- and that is the
4 video you are referring to. And the video from
5 7/18 post-dating the crime, which is the one we
6 intend to match with the interior of his vehicle.
7 And the reason I raised those now is upon --

8 THE COURT: Which witness were those -- are
9 you going to seek to introduce those?

10 MR. SIMPSON: This would be through Maria as
11 well.

12 THE COURT: Ms. Heffron?

13 MR. SIMPSON: Ms. Heffron. And for whatever
14 reason the relevance hasn't been established
15 through her, we can further seek to admit it
16 through Wilson after.

17 I bring that up because in preparing
18 Ms. Heffron's testimony, she just noted that there
19 are, in fact -- these are additional videos of a
20 near identical source. So the objection and the
21 analysis, in my opinion, would be the same. But I
22 think it's actually not one, but two from 7/3
23 depicting the same thing.

24 THE COURT: So are they still pictures or
25 videos?

THE COURT AND THE ATTORNEYS

1 MR. SIMPSON: The iPhone -- they call them a
2 photograph, but they are actually a very, very
3 short video. That is what they are. I mean, they
4 might be five seconds long. You can pause them,
5 but I think technically they are videos.

6 The longer one -- and by "longer" I mean
7 maybe 10 seconds, it's not very long -- comes
8 later. And I think those are actually five videos
9 that are on 7/18 and 7/19. All of them are nearly
10 identical in their content that we've already
11 discussed. I think we just discussed them as one
12 video of 7/3.

13 THE COURT: I'm just trying to remember if
14 there was a written objection -- motion to suppress
15 videos.

16 MR. SIMPSON: I think the analysis of all of
17 them would be the same, but there are more than I
18 thought.

19 THE COURT: And Ms. Arora was watching -- can
20 we watch them?

21 According to my notes, her objection was
22 based on Lyle. And I took it under advisement, but
23 I did note the unusual nature of the gun and the
24 fact that it was close in proximity to the
25 incident, as well as if her argument was truly

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1 under Lyle, it truly the argument pursuant to Lyle
2 it (inaudible). Her argument pursuant to Lyle
3 certainly -- any ruling the Court would make would
4 arguably come within the exceptions, which is:
5 Intent, motive, absence in terms of ownership of
6 the weapon.

7 So -- because it was -- if it was a different
8 kind of a gun, I think the assessment might be
9 different. But because of the very unique nature
10 of this gun, and according to her motion, which was
11 filed 3/13 of 2024, there are two -- there are two
12 -- well, two bases for her objection; one is for
13 404(b), the other is 403. Clearly, it would be
14 relevant. It would make a fact of consequence more
15 or less plausible; that being the ownership of this
16 unique weapon where the projectiles were recovered
17 from the residence.

18 The other objection was based on Lyle, which
19 is 404(b), which would somehow implicate prior bad
20 acts not subject to the conviction. But I would
21 not interpret those videos in that nature, at least
22 not the ones I saw last week.

23 According to my notes, July 3rd there were
24 two videos -- or snippets. I did not have a number
25 for July. And her motion was July 3 and

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1 July 19th. It doesn't list July 18th. But I
2 think it would be helpful if I saw all of them so I
3 could make sure that my memory is accurate.

4 MR. SIMPSON: To be complete, one of the
5 videos was retrieved from the Facebook records
6 interspersed with a Facebook Messenger
7 conversation. That one is coming through Dana
8 Wilson.

9 THE COURT: Which date is that? Is that one
10 from 7/19?

11 MR. SIMPSON: That is one.

12 THE COURT: And is that encompassed by
13 Ms. Arora's motion?

14 MR. SIMPSON: I believe it is. It has same
15 videos going through different sources.

16 THE COURT: Tell me what day that is.

17 MR. SIMPSON: On the Facebook, it was sent on
18 July the 18th at about 1:46 p.m. July 18th of
19 2021 at 1:46 p.m. It was sent through Facebook
20 Messenger.

21 THE COURT: To?

22 MR. SIMPSON: To another Facebook account
23 identified by Shoreslyfemann.

24 THE COURT: Is that the one where you all
25 contend there was an attempt to sell the weapon?

THE COURT AND THE ATTORNEYS

1 MR. SIMPSON: Yes, Your Honor. We believe
2 that the context -- it was sent over Messenger
3 during a conversation about the sale of the gun.

4 THE COURT: Now, are you seeking to just
5 introduce a picture of this weapon or the context
6 of this conversation?

7 MR. SIMPSON: We want to give it to Mr. Arora
8 overnight. We want to admit this exhibit --

9 THE COURT: Well, I need to see it as well.
10 And you did not have these marked when we heard the
11 motions, so I need to know which exhibits -- what
12 numbers we're referring to.

13 MR. SIMPSON: This is, typically, un-objected
14 to at pretrial, but this is --

15 THE COURT: I think, you know, pretrial is
16 different, because I'm not the finder of fact. And
17 if she would have admitted it, I would think that
18 the ability of the Court to see it and have it
19 marked for pretrial purposes for appellant review.

20 MR. SIMPSON: This is State's 68.

21 THE COURT: That is Facebook one?

22 MR. SIMPSON: For ID, right. This is a
23 conversation that takes place on Facebook Messenger
24 after I redacted what's not relevant.

25 THE COURT: How do you get around hearsay

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1 with this other person's part of the conversation?

2 MR. SIMPSON: I think I have redacted
3 everything that is hearsay, everything I have from
4 the other person, questions that do not assert
5 fact. For instance, Karseem said, Do you know
6 who's looking for a glizzy. Shoreslyfeman says,
7 Me.

8 THE COURT: I think that anything that would
9 be someone else's response is not subject to cross
10 examination is problematic. The only reason his
11 statements would come in is if they are, in fact,
12 admissions against interest; otherwise, they are
13 hearsay as well.

14 MR. SIMPSONN: So mostly asking who is
15 looking to buy a gun would be a statement
16 (inaudible). The second statement is (inaudible),
17 I can't even think like that. I think they are
18 discussing details for the sale of the gun.
19 Shoreslyfemann (inaudible) merely requested -- and
20 I think this is a great example of a statement that
21 doesn't assert the facts, so it's not hearsay -- he
22 asks, Send me a pict; to which, Karseem sends a
23 video file.

24 You see this here -- he's indicating that it
25 was sent a video file -- you can match this video

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1 number to another part of the Facebook records
2 where all of the video files are contained, and
3 that is the video of the 10-millimeter handgun.

4 THE COURT: But if it is your contention that
5 the purpose of admitting this evidence is to prove
6 ownership of the weapon by Mr. Hardaway, in close
7 proximity or within the nexus of this event, it
8 doesn't matter what this other man said. It is not
9 admissible, and it is hearsay. It is a catalyst to
10 the conversation. It is problematic. And if he
11 sent a video file, and if it is really your
12 objective to correlate the messages he sent and the
13 sending of the file -- well, where it shows the
14 sending of the file, then that's all that would be
15 relevant.

16 MR. SIMPSON: Relevance of his possession of
17 the gun, and his attempt to sell it.

18 THE COURT: Then all you would need is his
19 statements, because they should be sufficient in
20 and of itself to establish admission against him.

21 MR. SIMPSON: I would -- I will redact all
22 the statements by the other individual.

23 I will bring up one more statement by an
24 individual that I think is relevant and subject to
25 at least a different analysis, if I may?

THE COURT AND THE ATTORNEYS

1 THE COURT: Sure.

2 MR. SIMPSON: The other individual says -- in
3 response to receiving the video of the gun, he
4 says, That's a 40. To which Karseem Hardaway sends
5 him a video recorded voice message that says,
6 10 milly. I don't think --

7 THE COURT: I think the context is clear
8 without any conversation from Shoreslyfe.

9 MR. SIMPSON: I'll further redact all
10 statements of Shoreslyfemann.

11 One more statement that I'll ask that we be
12 allowed to introduce from the an individual, is
13 merely a question and it asserts no facts. I think
14 it is relevant because it shows why Karseem does
15 not have this gun on him. Shoreslyfe asks the
16 question: "Do you still got the glizzy?" Karseem
17 responds: "Been gone the same day." Meaning the
18 gun has been sold (inaudible).

19 THE COURT: I have to think about that.

20 I need to know what the other videos are
21 marked as; that being the two from 7/3/21.

22 MR. SIMPSON: So how I intend to do this,
23 Your Honor, is I have State's 54 on my evidence
24 list. This is a blank flashdrive. What
25 Ms. Heffron is going to do on the stand, during her

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1 testimony, is move these videos onto the blank
2 flashdrive from her digital extraction.

3 THE COURT: Okay. So I need to see all of
4 them that you are seeking to admit from 7/3/21 to
5 7/18 and 7/19/21.

6 MR. SIMPSON: Okay, Your Honor. That is
7 contained under "extraction."

8 THE COURT: So you don't have them for me to
9 look at?

10 MR. SIMPSON: I will have to get them. I can
11 -- they will not send. I'll certainly have them
12 and ready to present them first thing in the
13 morning.

14 THE COURT: I need them before then. Our
15 jury gets here when I get here. When I get here at
16 8:30, they're here. So I'm going to be ready to
17 start at 8:30.

18 MR. SIMPSON: I can run and get them right
19 now.

20 THE COURT: That will be fine.

21 And while we're on that topic, can you find
22 out why the jail was late this morning? If you
23 could find out for me, that would be helpful.

24 MR. SIMPSON: Your Honor, I know exactly
25 where it is.

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1 (A recess was taken.)

2 MR. SIMPSON: Your Honor, the program is
3 loading. Once it is opened, it reverts very
4 quickly, but it takes some time.

5 (A brief pause in the proceedings.)

6 THE COURT: Do you have copies of these
7 videos, Ms. Arora?

8 MS. ARORA: Your Honor, I have the Cellebrite
9 reader.

10 THE COURT: I was just trying to make sure
11 you had the opportunity to review these.

12 MS. ARORA: I just don't know what specific
13 videos he's talking about, so.

14 THE COURT: We're only talking about the ones
15 we discussed in pretrial, correct -- well, no,
16 because there is five, so never mind.

17 MR. SIMPSON: If Your Honor can see?

18 THE COURT: I need to see the videos that you
19 will be referring to from 7/3/2021.

20 MR. SIMPSON: We'll begin with 7/3/2021,
21 3:53:48.

22 MS. ARORA: Can I just ask if this is ETC
23 time?

24 MR. SIMPSON: This is local time.

25 THE COURT: So the first one that you are

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1 showing us from 7/3 of 2021 is at what time?

2 MR. SIMPSON: 3:53:48.

3 THE COURT: These are the Facebook videos,
4 correct?

5 MR. SIMPSON: There are the videos from the
6 phone extraction.

7 MS. ARORA: And it says UTC time.

8 MR. SIMPSON: UTC times minus four. This is
9 the correction.

10 THE COURT: And what time is the second one?
11 Go ahead and play it.

12 MR. SIMPSON: Two seconds.

13 (Published to the Court.)

14 THE COURT: What will be the exception to
15 this video?

16 MS. ARORA: Your Honor, I would raise my same
17 objections in pretrial.

18 THE COURT: Which are?

19 MS. ARORA: That it would fall under
20 prejudicial, and it would go under Lyle.

21 THE COURT: And this is from 7/3/21 at
22 3:53:48. This incident is to have occurred on the
23 13th, which would have been approximately ten
24 days. I think there is an appropriate nexus. I do
25 think it is relevant. It makes a fact of

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1 consequence more or less probable; that being the
2 ownership of a 10-millimeter weapon that was
3 referred to by the FTA -- the firearms expert --
4 not expert, but witness.

5 In addition to that, these were extracted
6 from the defendant's telephone.

7 MR. SIMPSON: Your Honor, correct. They were
8 distracted from the defendant's phone.

9 THE COURT: Yes, for clarity, because we've
10 been talking about a lot of different
11 instrumentalities. There is clearly a nexus
12 between -- it is within ten days of this incident.

13 What is hurtful, however, to the Court's
14 analysis is the unique nature of this firearm.
15 It's not one that is generally used or attainable.
16 Most people carry -- more particularly the Court
17 hears about Smith and Wessons or 9-millimeter
18 weapons. It is very unusual for there to be a
19 10-millimeter weapon. So the unique nature of this
20 weapon is relevant. It is probative. It makes an
21 initial consequence more or less probable, and any
22 prejudicial effect it would have is outweighed by
23 its probative nature.

24 It does not implicate Lyle, but even if it
25 were, if I were to accept the defense's argument,

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1 (indicates) it would go to intent and motive, as
2 well as absence of mistake, that being the absence
3 of the mistake of this particular type of firearm.

4 What is the next?

5 MR. SIMPSON: 7/3/2021, 3:53:57.

6 (Published to the Court.)

7 THE COURT: Now, tell me something. Why do
8 you need both of these? Because this one really
9 doesn't show him in the video. However, it was
10 taken from his phone. But the markings are more
11 visible in the other video than this one, so I'm
12 trying to figure out why do you need both?

13 MR. SIMPSON: There are different markings on
14 both sides, Your Honor.

15 THE COURT: Show me the first one again.

16 MR. SIMPSON: (inaudible) serial number that
17 we heard testimony about.

18 THE COURT: Show me the second one again,
19 please.

20 (Published to the Court.)

21 THE COURT: So it is your proposition that
22 these are two different sides of the same weapon,
23 and they each have different identifying marks?

24 MR. SIMPSON: Yes, Your Honor.

25 THE COURT: So what is on this side that is

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1 not on the other?

2 MR. SIMPSON: One side says the make and
3 model, the 24th generation, 10-millimeter. And the
4 other side contains the serial number that they ran
5 the E-trace on.

6 THE COURT: Is there any objection to the
7 admission of this photograph which was extracted
8 from your client's phone pursuant to the search
9 warrant?

10 MS. ARORA: Your Honor, I would just say it
11 is duplicated (inaudible).

12 THE COURT: I was inclined to agree with
13 that, but one side shows one particular identifying
14 information, and the other side shows something
15 different, so they are not accumulative, and the
16 Court would base the admissibility of the ruling on
17 the same criteria, that it already is articulated
18 regarding the video 3:53:48.

19 Now, are we moving to -- what date are we
20 moving to now?

21 MR. SIMPSON: We're now moving to 7/18.

22 THE COURT: At what time?

23 MR. SIMPSON: 7/18/21 at 11:36 a.m.

24 (A brief pause in the proceedings.)

25 (Published to the Court.)

THE COURT AND THE ATTORNEYS

1 THE COURT: 11:36?

2 MR. SIMPSON: Yes, Your Honor.

3 THE COURT: What is this supposed to show,
4 and for what purpose are you seeking to admit it?

5 MR. SIMPSON: The same handgun after the
6 murder showing both sides of the handgun. This was
7 found on the phone extraction, but it is the same
8 video that's found in the Facebook records, sent in
9 conjunction with the attempted sale.

10 THE COURT: Is there any objection?

11 MS. ARORA: Your Honor, my previous
12 objection. I would say it is duplicative.

13 THE COURT: I can't hear you. I just want to
14 make sure the recording is picking up what you are
15 saying.

16 MS. ARORA: I apologize. My same objections
17 that I made pretrial. I also think it is
18 accumulative.

19 MR. SIMPSON: Your Honor, I think I can save
20 the Court some time. This looks, to me, to be the
21 five that I'm talking about. They are five
22 separate videos, five different locations of the
23 phone.

24 THE COURT: But they are all the same?

25 MR. SIMPSON: If I'm allowed to note that the

THE COURT AND THE ATTORNEYS

1 same video -- you know, I would not --

2 THE COURT: I think it would be accumulative
3 to show the exact same video. If what you are
4 seeking to prove is that he had this on five
5 different locations of his phone where it was
6 downloaded, I think showing one is more than
7 sufficient.

8 MR. SIMPSON: I agree, Your Honor. That's
9 why I think I can save some time this afternoon.

10 THE COURT: So in dealing with the video of
11 7/18/21, the Court finds there is an appropriate
12 nexus established by the State; that being six days
13 after this incident, the incident having occurred
14 on 7/13 -- actually it is less than six days.
15 Let's see. 7/13, and this is 7/18 -- so five days
16 after this incident. That being, again, noting in
17 the Court's analysis is the unique nature of the
18 weapon being a 10-millimeter, as well as the unique
19 markings that serve to identify the firearm. It is
20 relevant. It does tend to prove initial
21 consequence in this case. I think the ownership of
22 the 10-millimeter, which correlates to the shell
23 casings found at the scene of the incident, and
24 having caused the demise of the victim in this
25 case.

THE COURT AND THE ATTORNEYS

1 Its probative value is outweighed by any
2 prejudicial effect to the defendant, and it is
3 relevant, and it does fit within the Lyle
4 exceptions; that being: Motive, intent, and
5 identity. It would fall within the following
6 exceptions: Motive, identity, and intent.

7 (A brief pause in the proceedings.)

8 THE COURT: In addition, the ownership or
9 having a weapon within your possession is not
10 evidence of a prior bad act and not the subject of
11 a conviction. I have no evidence in this record
12 that he did not have a CWP, that he could not have
13 validly owned a firearm. So, in and of itself,
14 having a firearm on your person is not a prior bad
15 act and not a subject of a conviction, at least not
16 at this stage of the proceedings. The record is
17 simply void of this having -- of it being
18 established that this was some criminal act on his
19 part.

20 So there would be exceptions to 404(b), which
21 would be motive, intent, and identity of the
22 person; that being possession of the firearm
23 consistent with circumstantially a person who
24 committed this offense with the unique nature of
25 the firearm, and the shell casings that were found

THE COURT AND THE ATTORNEYS

1 at the scene.

2 All right. Are there any other issues that
3 are going to come up prior to any of the witnesses
4 that we need to deal with before we adjourn for the
5 day?

6 MR. SIMPSON: I don't believe so, Your Honor.

7 THE COURT: I don't believe so, or you don't
8 know?

9 MR. SIMPSON: I don't believe so.

10 THE COURT: Can you think of anything, Ms.
11 Arora? I don't know which other witnesses you're
12 calling. Are you calling any other witnesses that
13 will have some issue or contention in the
14 admissibility of evidence?

15 MR. SIMPSON: I think we have other witnesses
16 that are subject to pretrial.

17 THE COURT: Is there anything else that is
18 going to come up that I didn't hear pretrial?

19 MR. SIMPSON: Nothing should come up. I'll
20 be transparent. We have the Facebook records,
21 Google records, one exhibit.

22 THE COURT: Yeah. I think we dealt with
23 Facebook. We dealt with Google. We dealt with all
24 of the search warrant suppression motions last
25 week.

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1 MR. SIMPSON: I can't think of any further
2 objections.

3 THE COURT: Okay. Have a good evening. See
4 you in the morning. You can leave everything in
5 the courtroom; it will be locked.

6 Mr. Hardaway, I'm going to say this and
7 (inaudible). Please don't take this personally,
8 but any delay this morning -- as I understand it
9 from the detention center -- is attributable to you
10 being slow and getting ready. I need you to be
11 ready to start on time, okay?

12 MR. HARDAWAY: Yes, ma'am.

13 THE COURT: Thank you. Have a good evening.

14 (WHEREUPON, THE PROCEEDINGS FOR MARCH 26,
15 2024 CONCLUDED.

16 (THE FOLLOWING WAS HAD ON MARCH 27, 2024 OUT
17 OF THE PRESENCE OF THE JURY.)

18 THE COURT: State ready to proceed?

19 MR. SIMPSON: We are, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MS. ARORA: Yes, Your Honor.

22 THE COURT: Please bring in the jury.

23 Who is your first witness, Mr. Simpson?

24 MS. BARBER: Dr. Virginia Richards.

25 THE COURT: Is she in the courtroom?

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1 MS. BARBER: She's not. She's in the hall.

2 THE COURT: Go ahead and get her for us.

3 (The jury enters at 9:45 a.m., and the
4 following was had in the presence of the jury.)

5 THE BAILIFF: All jurors are present.

6 THE COURT: Good morning, ladies and
7 gentlemen. I hope everyone had a pleasant evening.
8 I'm glad everyone made it, especially with the
9 challenges of the weather and traffic today.

10 We'll now resume the State's case.

11 Mr. Simpson, call your next witness.

12 MS. BARBER: Thank you.

13 THE COURT: I'm sorry, Ms. Barber.

14 MS. BARBER: That's okay. We call

15 Dr. Virginia Richards.

16 THE COURT: Please swear the witness.

17 (VIRGINIA RICHARDS, having been duly sworn,
18 testified as follows:)

19 THE CLERK: Please state your full name
20 spelling your last.

21 THE WITNESS: Virginia Livesay Richards,
22 R-I-C-H-A-R-D-S.

23 THE COURT: And your middle name?

24 THE WITNESS: Livesay, L-I-V-E-S-A-Y.

25 THE COURT: You may proceed.

DR. RICHARDS - DIRECT EXAMINATION

DIRECT EXAMINATION

BY MS. BARBER:

Q Good morning, Dr. Richards.

A Good morning.

Q Can you tell the jury where you work?

A Medical University of South Carolina.

THE COURT: If you could, speak directly into the microphone and adjust as necessary.

Q (BY MS. BARBER) How long have you worked with MUSC?

A Over three years.

Q And what is your current position?

A Forensic pathologist.

Q And did you work in the medical field prior to working at MUSC?

A Yes.

Q And where was that?

A In New York state.

Q So how long have you worked in medical, in general?

A Since 2010.

Q Can you describe to the jury what your current job entails?

A Yes. So I'm a medical doctor, and as such, at the Medical University I'm also on faculty

DR. RICHARDS - DIRECT EXAMINATION

1 teaching medical students and residents. My
2 specialty is the field of pathology, which is
3 disease. So, as you can imagine,
4 first-year-medical students, no matter what they
5 are going into, everybody has to learn about
6 disease in order to be a doctor. So I teach both
7 in the classroom, and also in the autopsy room.

8 My subspecialty is forensic pathology. So
9 that is the application of interpretation of
10 disease and separating out what is not disease but
11 actually injury, as it might have legal
12 complications. So that is -- the nature of the
13 majority of my work is to do physical examinations
14 on dead patients.

15 Q What medical training have you received to
16 lead you to this point?

17 A So after four years of college, I did four
18 years of medical school at the Medical School of
19 South Carolina. Then I did four years of pathology
20 residency at NYU in New York City. I did a
21 one-year forensic pathology fellowship training at
22 the Office of the Chief Medical Examiner of
23 Virginia.

24 Q You mentioned that your job is performing
25 autopsies. Can you tell the jury what an autopsy

DR. RICHARDS - DIRECT EXAMINATION

1 is?

2 **A** An autopsy is a physical examination of a
3 dead body.

4 **Q** About how many would you say you have
5 performed a year?

6 **A** Between 200 and 250.

7 **Q** And with your training and specialty, are you
8 board certified in forensic pathology?

9 **A** Yes. I'm certified through the American
10 Board of Pathology in anatomic pathology, clinical
11 pathology, and forensic pathology.

12 **Q** And in getting those certifications, what
13 does it require in order to be certified?

14 **A** So it requires that I complete an accredited
15 residency program. It requires that -- I took
16 several days of long, extensive board examinations,
17 and it requires that I maintain my certification by
18 every two years reporting 70 hours of continuing
19 medical education credits, whether it is attending
20 conferences or online classes. I have to keep
21 track of that and report that. Every ten years, I
22 have to recertify with an actual examination.

23 **Q** Have you previously been qualified in
24 forensic pathologist before?

25 **A** Yes.

DR. RICHARDS - DIRECT EXAMINATION

1 **Q** About how many times?

2 **A** More than 30.

3 MS. BARBER: Your Honor, at this time the
4 State would like to offer Dr. Richards as an expert
5 in forensic pathology.

6 THE COURT: Any questions or exceptions?

7 MS. ARORA: No, Your Honor.

8 THE COURT: So admitted without objection.
9 You may proceed.

10 **Q** I'm going to turn your attention to July 16,
11 2021. Did you have the occasion to perform an
12 autopsy on David Conner?

13 **A** Yes.

14 **Q** And what were your findings?

15 **A** Mr. Conner had sustained a gunshot wound to
16 the back of his neck.

17 **Q** And was that the only wound you observed?

18 **A** It was the only lethal wound.

19 **Q** What kind of damage would you expect a
20 gunshot like that to do to a human body?

21 **A** Depends what structures it hits.

22 **Q** And what structures were hit in this case?

23 **A** In the case of Mr. Conner, it tore some of
24 his spinal cord where it connects at the top to the
25 brainstem. It tore muscle and skin also. And then

DR. RICHARDS - DIRECT EXAMINATION

1 it also fractured some of the bones in the front of
2 his face, the base of his skull, and as a result,
3 it caused bruising on the base of his brain.

4 Q And after suffering a wound like that, how
5 would you (inaudible)?

6 A Usually, it's fatal.

7 Q When inspecting a body in doing an autopsy,
8 do you use body diagrams?

9 A Yes.

10 Q Did you use one in this particular case?

11 A Yes. I use a body diagram in all cases.

12 Q If I showed you one today, would you be able
13 to show the jury where Mr. Conner's injury was?

14 A Yes.

15 MS. BARBER: This is State's Exhibit 46.

16 THE COURT: State's 46 for ID.

17 Q (BY MS. BARBER) Dr. Richards, can you show
18 the jury on this diagram where you found that
19 gunshot wound?

20 A Show --

21 Q Oh, you can write on the monitor, I
22 apologize.

23 A So it was -- let me refer to my body diagram.
24 It was right -- I can move that?

25 Q Yes. Sure.

DR. RICHARDS - DIRECT EXAMINATION

1 THE COURT: With that arrow, you can hit that
2 and clear it.

3 A All right. I'll do a better job this time.

4 There. I didn't know if you can tell a
5 difference. So it was almost in the midline of the
6 back of his neck, but very slightly to the right,
7 if you can appreciate that.

8 Q (BY MS. BARBER) And you placed a small, red
9 dot there. Can you tell the jury the actual size
10 of the hole that you observed?

11 A At autopsy it measured three-eighths of an
12 inch in diameter.

13 Q And when performing the autopsy, what other
14 characteristics do you look for when inspecting a
15 gunshot wound?

16 A With any examination, we start with the
17 external features. So just looking at the skin
18 surfaces, I was looking for things such as soot or
19 stippling. Those are things that come out from the
20 gun or cause injuries to the skin around the
21 entrance wound if the gun or the end of the muzzle
22 of the gun was close enough to the skin at the time
23 it was fired.

24 I did not see those characteristics, so
25 either I didn't see them because they weren't

DR. RICHARDS - DIRECT EXAMINATION

1 there, or something interfered with them being
2 placed there, maybe some clothing or something like
3 that. But I use those characteristics to help me
4 in establishing the distance, like I said, of the
5 muzzle when it was fired from the skin contact, if
6 it's there.

7 Q Do you find injuries like these, Dr.
8 Richards, do you classify them as an entrance or
9 exit wound?

10 A Sometimes it is hard. In this case, there
11 was only one wound. There was no exit wound, so
12 that made my job easy. But, yes, generally
13 entrance wounds are more rounded.

14 Q So in finding that entrance wound, did you
15 inspect the victim's body to determine whether a
16 bullet was still inside?

17 A Yes.

18 Q And did you find one?

19 A Yes.

20 Q And in finding it, did you remove it?

21 A Yes.

22 Q If I showed you a picture of what you removed
23 here today, would you recognize it?

24 A Yes.

25 MS. BARBER: Permission to approach?

DR. RICHARDS - DIRECT EXAMINATION

1 THE COURT: Yes, ma'am.

2 Q (BY MS. BARBER) I'm showing you what is
3 marked as State's Exhibit 47 and 48 for
4 identification purposes. What is that I just
5 handed you?

6 A 47 is labeled "bullet fragments from head."
7 It looks like a very deformed piece of bullet
8 jacketing with metallic irregular fragments.

9 And 48 is said to be bullet fragment from
10 head, and it is a closed envelope.

11 Q And in inspecting that photograph, does it
12 appear be to altered in any way?

13 A The 47 exhibit does not appear to be altered
14 in any way.

15 MS. BARBER: Your Honor, at this time the
16 State moves to admit 47 and 48 into evidence.

17 THE COURT: Any exception?

18 MS. ARORA: No, Your Honor.

19 THE COURT: 47 and 48, marked and admitted
20 without objection.

21 (State's Exhibits 47-48 admitted.)

22 MS. BARBER: Permission to approach?

23 THE COURT: Yes, ma'am.

24 Q (BY MS. BARBER) Dr. Richards, you explained a
25 moment ago what this picture is. (inaudible) can

DR. RICHARDS - DIRECT EXAMINATION

1 you explain to the jury?

2 **A** So the top fragment there is some metal kind
3 of a thin metal that got bent and distorted, but
4 most likely represents what was the jacket around
5 the bullet. The four irregular gray metal
6 fragments were parts of the inside of the core of
7 the bullet.

8 **Q** And can you explain to the jury what causes a
9 bullet to fragment?

10 **A** Many things can, but in this case it was
11 clear it had struck the skull bone. Bones will
12 definitely distort and disrupt bullets.

13 **Q** Earlier in your testimony you mentioned that
14 you have done hundreds of autopsies. How many of
15 those would you predict were as a result of gunshot
16 wounds?

17 **A** So thousands of autopsies, of which 15 to
18 20 percent were related to gunshot wounds,
19 depending on the jurisdiction where I work.

20 **Q** In looking at these gunshot wounds, have you
21 been able to determine that different guns cause
22 different injuries?

23 **A** A general sense. You know, I'm only
24 analyzing or looking at the material I recover from
25 the body, which is the projectile. If there are

DR. RICHARDS - DIRECT EXAMINATION

1 things that look like a bullet, it typically rolls
2 out something like a shotgun. I'm not really sure
3 what other questions you had related to that.

4 Q Okay. Thank you. That answers my questions.

5 Did you find any underlying diseases or
6 illnesses in Mr. Conner's body?

7 A He did have an enlarged heart, which would
8 suggest long-standing hypertension. I believe he
9 was on medication for that.

10 Q Would you predict that that would lead to his
11 death in any way?

12 A No.

13 Q When performing autopsies, are you able to
14 identify signs of a struggle or altercations?

15 A If they are present.

16 Q Were they present in this case?

17 A No.

18 Q Aside from the one bullet hole to the back of
19 Mr. Conner, did you observe any other wounds?

20 A Injuries. So there was an old bruise on his
21 left arm, and there was a mark inside the eyelid on
22 the right side that was more consistent with the
23 way blood can drain when there are skull fractures
24 in that area, in that proximity.

25 Q Dr. Richards, can you tell the jury briefly

DR. RICHARDS - CROSS EXAMINATION

1 what was your overall conclusion in this case?

2 A So Mr. Conner died from a gunshot wound of
3 the neck.

4 Q Okay.

5 MS. BARBER: Thank you, Dr. Richards. I
6 don't have anything further. Answer any questions
7 from defense.

8 THE COURT: You may proceed.

9 MS. ARORA: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 **CROSS EXAMINATION**

12 **BY MS. ARORA:**

13 Q Good morning, Dr. Richards.

14 A Good morning.

15 Q How are you?

16 A Good.

17 Q I just have a couple brief questions for you,
18 and if you can't hear me, tell me. I'm losing my
19 voice.

20 You previously mentioned what is called
21 "soot" and "stippling"?

22 A Uh-huh.

23 Q And I just want to flesh that out. And so
24 soot and stippling are associated with possible
25 powder or burning from a gun?

DR. RICHARDS - CROSS EXAMINATION

- 1 **A** Powder or carbon gasses, uh-huh.
- 2 **Q** And you did not observe any of that?
- 3 **A** I did not.
- 4 **Q** And soot and stippling can indicate a body
- 5 has been in close proximity to a gun?
- 6 **A** Right. So could be the muzzle up against the
- 7 skin or within a few inches up to a couple of feet,
- 8 depending on what kind of firearm and ammunition
- 9 was used.
- 10 **Q** So when you see that, you make note of it
- 11 because it may be relevant?
- 12 **A** Correct.
- 13 **Q** And it gives an estimation of a range where
- 14 the wound or body was to the gun?
- 15 **A** The distance, yes.
- 16 **Q** And just to clarify, there was no soot or
- 17 stippling on Mr. Conner?
- 18 **A** At autopsy.
- 19 **Q** So you weren't able to tell if there was a
- 20 close-range fire?
- 21 **A** I cannot say that.
- 22 MS. ARORA: Beg the Court's indulgence.
- 23 (A brief pause in the proceedings.)
- 24 MS. ARORA: No further questions.
- 25 THE COURT: Any redirect?

DR. RICHARDS - REDIRECT EXAMINATION

1 MS. BARBER: Briefly, Your Honor.

2 THE COURT: You may proceed.

3 **REDIRECT EXAMINATION**

4 **BY MS. BARBER:**

5 **Q** Dr. Richards, you briefly mentioned things
6 that could interfere with the soot or the
7 stippling. Could you elaborate on that a little
8 more?

9 **A** Sure. So sometimes clothing -- I don't know
10 if Mr. Conner had a hoody-type sweatshirt or
11 something bunched up near his neck or on the skin
12 there, or perhaps how he was positioned, something
13 blocking or interfering with any of those gasses or
14 unburned powder leaving the gun and striking the
15 skin, sometimes hair. This particular part of his
16 neck did not have a lot of hair, but sometimes hair
17 can.

18 **Q** Thank you.

19 MS. BARBER: Nothing further, Your Honor.

20 THE COURT: Any objection to the witness
21 being excused from the State?

22 MS. BARBER: No, ma'am.

23 THE COURT: Defense?

24 MS. ARORA: No, ma'am.

25 THE COURT: You may be excused.

DIRECT EXAMINATION

Q What do you mean by vendors?

MARIA HEFFRON - DIRECT EXAMINATION

1 **A** Our vendors, they are actually the ones that
2 created the projects that we use in our lab.

3 **Q** So they create some of the software --

4 **A** Software and hardware, yes, sir.

5 **Q** And you mentioned your lab. What does it
6 mean to be an accredited?

7 **A** To be an accredited laboratory that means
8 that the laboratory is fully compliant with all of
9 the requirements and standards that are set by the
10 accredited body, and that is to include ISOP
11 accreditation.

12 We have a quality system in place in our
13 laboratory that we implement in our daily work. We
14 validate the methods that we use, the tools that we
15 actually use in our lab. Prior to doing casework,
16 we are proficiency tested once a year to ensure
17 that we stay proficient in our field. We are --
18 our cases -- all of our cases are actually peer
19 reviewed. So our peers review our cases prior to
20 releasing our lab report. And we are -- we follow
21 best practices. We provide accurate results in
22 that we are committed to continue to improve in
23 forensic science.

24 **Q** And there is a lot to break down there. It
25 sounds like a pretty extensive accreditation

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1 process.

2 A It is.

3 Q Does the accreditation process includes
4 inspection of the actual lab?

5 A Yes, sir. We are inspected once a year. It
6 goes in a four-year cycle, and they come back and
7 actually inspect once a year.

8 Q And who is the "they" in that?

9 A We're accredited -- NC, National
10 Accreditation Board. They are one of the largest
11 multi-disciplinary accrediting body.

12 Q So if I understand you, the actual physical
13 lab is inspected as part of the accreditation, but
14 it is also the tools and the equipment you are
15 using that is also accredited?

16 A Yes, sir.

17 Q And what about the individuals working there
18 and their work, that is also certified?

19 A Yes, sir. They go through all of our files.

20 Q Okay. And explain a little more, if you
21 don't mind, about what is meant by "peer review"?

22 A When we work on our cases, we record all of
23 our observations and data in a laboratory
24 information management system. So once we're done
25 with our case, that whole case record goes to the

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1 other analyst, which is authorized to do the same
2 work that I do, and he actually reviews the entire
3 case and the entire case record.

4 Q And what is the purpose of that peer review
5 (inaudible)?

6 A To make sure that we are providing accurate
7 results to our customers.

8 Q And how long have you been employed in your
9 current capacity by the unit?

10 A I've been with the City of Charleston for 22
11 years, but I've doing this job for the last seven
12 years.

13 Q In the seven years, have you -- you probably
14 already answered this -- but how many hours of
15 training and continuing training have you received?

16 A I would say close to a thousand hours.

17 Q And in that time, during the seven years,
18 approximately -- understanding these numbers are
19 always approximate -- how many digital devices do
20 you think you analyzed or did extractions on?

21 A About 2500 digital media.

22 Q Are cell phones a common item that are
23 submitted to you for extraction?

24 A Yes, sir.

25 Q And what sort of information can you get from

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1 a cell phone?

2 **A** We can typically recover from a cell phone
3 call logs, contacts, messages, Web history, photos,
4 videos, user accounts, device events, and more.

5 **Q** And tell us -- in a more general question,
6 what are we talking about from your knowledge and
7 training -- what is digital -- what is digital
8 evidence?

9 **A** Digital evidence is any information or data
10 that is stored on a digital media, such as
11 computers, cell phones, surveillance systems, that
12 has evidentiary value to an investigation and can
13 be used in court.

14 **Q** And you used a word a couple of times:
15 Extraction. What is an extraction?

16 **A** Extraction is basically a copy of the data
17 that resides on the phone. It's the process of
18 copying or pulling the data from the cell phone to
19 our tool.

20 **Q** And once the data is exacted from a digital
21 storage device, how is it compiled by you?

22 **A** We provide the results that -- the actual
23 extraction in UFED readable report and also in a
24 pdf report, if it's requested.

25 **Q** And what is a report -- what kind of format

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1 is that in?

2 **A** So both the UFED reader report and pdf
3 reports are "read only" reports so no one can alter
4 the reports. No one can add to it or delete from
5 it. It contains, basically, the device
6 information, and also the data types that we
7 recover from the cell phone, such as call logs,
8 contacts, and more.

9 **Q** So for a person of my age (inaudible)?

10 **A** It's in digital form.

11 **Q** And when we talk about digital format, such
12 as audio, video, photographs, are those included in
13 the report?

14 **A** Yes, sir.

15 **Q** Ms. Heffron, how did you become involved in
16 this case?

17 **A** I was called out the night of the incident to
18 perform an extraction.

19 **Q** And over the course of your time, did you
20 perform more than one extraction?

21 **A** Yes, sir.

22 **Q** And, again, explain to the jury, a phone
23 comes to you, what is that extraction process?
24 What happens to the actual phone?

25 **A** The very first thing we do when we have a

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1 cell phone for extraction is we ensure that we
2 place it in airplane mode to prevent remote wiping.
3 Then, we assess the condition of the device. We
4 check to see if it needs to be charged, if it's
5 locked or unlocked, if it's in a power-on state or
6 up-state, and we record these observations in our
7 case records.

8 Once that's done, we prepare the device for
9 extraction. There are a couple of settings that we
10 need to change in order for our tool to communicate
11 with the device without any interruptions.

12 Then, once that's done, we extract the device
13 and save it to a thumb drive, and that extraction
14 gets ingested or loaded into a forensic software
15 that decodes the data and converts it into readable
16 format, and that is what we provide to our
17 customer.

18 **Q** And who would be the customer?

19 **A** The detective or investigator.

20 **Q** And so are these reports -- extraction
21 reports, once completed, are they everything -- do
22 they put everything you are able to extract?

23 **A** Yes, it is a full extraction.

24 **Q** And a report, including everything we talked
25 about, is called -- that is a full extraction?

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1 **A** I'm sorry. Let me -- yes, everything --
2 well, we have different types of extractions, but,
3 yes, we provided everything that we got from the
4 cell phone itself.

5 **Q** And I want to make a couple more general
6 points. Typically, when you are performing an
7 extraction, do you know a whole lot about the
8 investigation or what is alleged to have occurred
9 or anything like that?

10 **A** No, sir. We don't know the specifics of the
11 case.

12 **Q** So are there controls in place to prevent
13 someone in your position for adding, altering, or
14 changing?

15 **A** There is no way to alter the extraction
16 because it is a binary file that has to be
17 ingested, and there is no way to enter data or
18 delete data from it.

19 MR. SIMPSON: At this point in time the State
20 would offer Maria Hefferon as an expert in digital
21 evidence and digital forensics.

22 THE COURT: Any questions or objections?

23 MS. ARORA: No, Your Honor.

24 THE COURT: Admitted without objection.

25 You may proceed.

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1 MR. SIMPSON: Thank you, Your Honor.

2 THE COURT: You do need to supplement the
3 record about the time she (inaudible).

4 MR. SIMPSON: May I approach?

5 THE COURT: Uh-huh.

6 (Whereupon, a bench conference was had.)

7 THE COURT: What was the area?

8 MR. SIMPSON: Digital evidence and digital
9 forensics.

10 THE COURT: So admitted without objection.

11 Q (BY MR. SIMPSON) I would like to show you a
12 cell phone. Would you be able to look at it and
13 recognize if it is, in fact, the phone you
14 performed an extraction?

15 A Yes, sir.

16 Q This is admitted as State's 35. If you
17 could, take a moment to review that.

18 A Yes, sir.

19 Q Do you recognize that exhibit?

20 A Yes.

21 Q And what is that?

22 A It is a cell phone that was admitted through
23 our laboratory for extraction.

24 Q Is it possible when -- after an extraction
25 and in reviewing the digital data to see, sort of,

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1 the interaction that phone may have had with any
2 apps on the phone?

3 A Can you repeat the question?

4 Q Yeah. As part of your extraction, does it
5 typically include information about third-party
6 apps that are on it?

7 A Yes, sir.

8 Q And are you familiar with the (inaudible)
9 system?

10 A Yes, sir.

11 Q Does that typically have an application on
12 the phone?

13 A Yes, sir.

14 Q Did that exhibit before you contain the Ring
15 application?

16 A Yes, sir.

17 Q Does the Ring app store all of its data on
18 the physical phone or elsewhere?

19 A The data is generally stored on the cloud
20 server.

21 Q When you say "cloud server" --

22 A It is storage that is not resident on the
23 phone. It is somewhere else.

24 Q Can the user of the Ring app, if they so
25 choose, download files to the actual phone?

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1 **A** Yes. They can download a video footage from
2 the Ring app from the server down to their cell
3 phone, but it will require a user interaction. It
4 is not automatically downloaded.

5 **Q** If a Ring user has not downloaded footage
6 from the Ring server to the phone, would you be
7 able to find it?

8 **A** If they have --

9 **Q** If have not?

10 **A** No.

11 **Q** If a person deletes videos from the Ring
12 server, can you confirm that action on that phone?

13 **A** No, sir. The delete action actually is on
14 itself server site. So the video is on the server,
15 so when you delete the video from the server, there
16 is no indication on the phone. It gets deleted
17 directly from the server.

18 **Q** Nevertheless, can you tell in your extraction
19 of the data if that phone accessed the Ring?

20 **A** Yes. Accessing Ring app can be found on the
21 extraction.

22 **Q** So you may not know what is done?

23 **A** Yeah. So Apple or the device actually
24 records those kinds of events. When you click on
25 Facebook or your Instagram, it records when you

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1 accessed or watched that particular application.

2 Q And your data extraction from the device
3 before you, on July 14 of 2021, approximately how
4 many times did that phone go to the Ring
5 application?

6 MS. ARORA: Your Honor, I'm just --
7 objection, renewing my previous objections made at
8 pretrial.

9 THE COURT: We'll revisit it. (inaudible)
10 Contemporaneous objection, because I don't recall
11 this being encompassed in that. Since this is a
12 phone that you would not have standing to object
13 to -- this is Ms. Hardaway's phone, not your
14 client's phone, so I need a contemporaneous
15 objection.

16 MS. ARORA: Beg the Court's indulgence.

17 (A brief pause in the proceedings.)

18 MS. ARORA: Your Honor, I'll withdraw my
19 objection, but raise it if necessary.

20 THE COURT: Objection withdrawn. You may
21 proceed. Now do you need to have him reask the
22 question?

23 MS. ARORA: Yes, ma'am.

24 THE COURT: Reask the question.

25 Q (BY MR. SIMPSON) On July 14 of 2021,

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1 approximately how many times did that phone access
2 the Ring application?

3 **A** There were 54 instances of the Ring
4 application recorded by the device.

5 **Q** Did you also complete an extraction on a cell
6 phone, Item No. 1-20?

7 **A** Yes, sir.

8 **Q** Forgive me for repeating. Did you complete
9 an extraction of the phone of Items 1-20?

10 **A** Yes, sir.

11 **Q** Would your final extraction report we've been
12 talking about include something about the device
13 information?

14 **A** Yes, sir.

15 **Q** What is the device information?

16 **A** The device information is basically
17 information about the device; such as, make, model,
18 and serial number. And there are also other unique
19 identifiers associated with the device; such as,
20 the IMEI, which is the number that identifies your
21 device to the network. It also contains MSISDN,
22 which is the phone number associated with the
23 device, and also the Apple ID that is associated
24 with the device.

25 **MR. SIMPSON:** May I approach, Your Honor?

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1 THE COURT: Uh-huh.

2 Q I'll show you what is marked as ID only as
3 State's 57. Do you recognize that exhibit?

4 A Yes, sir.

5 Q And what is it?

6 A This is the device information from the
7 victim's phone taken from my original report.

8 MR. SIMPSON: Your Honor, the State seeks to
9 admit 57.

10 MS. ARORA: No objection.

11 THE COURT: Marked and admitted without
12 objection, State's 57.

13 You may proceed.

14 (State's Exhibit 57 admitted.)

15 Q (BY MR. SIMPSON) Is this information that
16 someone might find on device information?

17 A Yes.

18 Q Do -- we have a device name, what is that?

19 A That is the device name that was -- that was
20 set when it was first set up.

21 Q What is the device name?

22 A Super Dave.

23 Q What is this the last category?

24 A That is the last cell phone that is
25 associated with the device.

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1 Q Is that the number attached to that device?

2 A Yes. That's correct.

3 Q Can you read that for us?

4 A 19125363749.

5 Q Thank you.

6 What type of information can you include in
7 your extraction report? Does that include call
8 logs?

9 A Yes, sir.

10 Q I'm showing you what is marked as State's
11 Exhibit 1 for ID only. Do you recognize that?

12 A Yes, sir.

13 Q What is it?

14 A It is a screen shot of call logs taken from
15 the victim's phone.

16 Q Is there a particular call highlighted in
17 that?

18 A Yes, sir.

19 MR. SIMPSON: Your Honor, State seeks to
20 admit State's 1.

21 THE COURT: Any objection?

22 MS. ARORA: No, Your Honor.

23 THE COURT: Marked and admitted without
24 objection, State's 1.

25 (State's Exhibit 1 admitted.)

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1 THE COURT: You made proceed.

2 Q (BY MR. SIMPSON) I'll show you what is marked
3 as State's 61 for ID only. Do you recognize that?

4 A Yes, sir.

5 Q Now, what is that?

6 A It's another screen shoot of call logs from
7 the victim's phone.

8 Q How many phone calls does that include?

9 A Two.

10 Q And were you asked to only include those two?

11 A Yes, sir.

12 Q By whom?

13 A The prosecution.

14 Q Is that me?

15 MR. SIMPSON: At this point in time the State
16 seeks to admit State's 61.

17 THE COURT: Any objection?

18 MS. ARORA: None, Your Honor.

19 THE COURT: Marked and admitted without
20 objection, State's 61.

21 You may proceed.

22 (State's Exhibit 61 admitted.)

23 Q (BY MR. SIMPSON) Can you tell if these are
24 incoming or outgoing?

25 A Yes, sir.

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1 Q How can you tell that?

2 A You can see this green arrow; it is an
3 outgoing direction.

4 Q That is touch screen there.

5 A Okay. So this one right here (indicates).

6 Q Okay. Does it include the number or incoming
7 call?

8 A Yes, sir.

9 Q Does it include the contact name of the
10 person as entered in that phone?

11 A Yes, sir.

12 Q Would it also include the time, the date the
13 phone calls were made?

14 A Yes, sir.

15 Q And would it include the length or duration
16 of the call?

17 A Yes, sir.

18 Q I'm handing you what is marked as 53 for ID.
19 You performed an extraction on a certain cell
20 phone. Are you able to look at the markings on
21 that cell phone and tell (inaudible)?

22 A Yes, sir. This is our evidence label that
23 has our lab number and item number.

24 Q We discussed earlier -- is that a phone you,
25 in fact, performed an extraction?

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1 **A** Yes, sir.

2 MR. SIMPSON: This is marked as State's 53.

3 **Q** We talked earlier about what a full
4 extraction report is. What is a mini extraction
5 report?

6 **A** The mini report only contains a specific set
7 of data that is relevant to a case and was
8 requested by the prosecution.

9 **Q** A full extraction report, does it contain
10 what a layperson might call "just a ton of stuff"?

11 **A** Yes.

12 **Q** And can that be hard and difficult to
13 navigate through a full extraction?

14 **A** Yes.

15 **Q** The software like Cellebrite makes that a
16 little easier?

17 **A** Yes. It categorizes the data.

18 **Q** When you do a mini report, is that deciding
19 what you want to take from a full extraction report
20 and putting it in digitally on a smaller --

21 **A** Yes.

22 **Q** Is that similar to maybe having a CD with a
23 lot of songs on it, and then deciding you are just
24 going to have another CD?

25 **A** Yes.

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1 Q One question. All of the content on the mini
2 report is also on the full report; is that correct?

3 A That is correct.

4 Q Did you compile a mini report associated with
5 State's 53?

6 A Yes.

7 Q And, again, the purpose of a mini report is
8 what?

9 A Just a smaller -- much smaller data set, and
10 the data -- the specific data that is relevant to
11 the case.

12 Q And this mini report you prepared for your
13 testimony today?

14 A Yes.

15 Q Is it easier for you to navigate through a
16 mini report than a full Cellebrite?

17 A Yes. Because it's much easier to open the
18 report.

19 Q I see you brought your laptop with you; is
20 that correct?

21 A Yes.

22 Q Is that the tool you would use to open and
23 access a mini report?

24 A Yes.

25 Q Would that assist you in your testimony

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1 regarding State's 53?

2 **A** Yes, sir.

3 **Q** And would you like a moment to access the
4 report?

5 **A** Yes.

6 MS. ARORA: Your Honor, I think this is an
7 appropriate place to renew my previous objections
8 regarding the extraction.

9 THE COURT: I think it is premature until the
10 State seeks to admit them.

11 **Q** (BY MR. SIMPSON) Just indicate when you are
12 ready.

13 (A brief pause in the proceedings.)

14 **A** I's up and running.

15 **Q** (BY MR. SIMPSON) We previously talked about
16 the device information on the phone; is that
17 correct?

18 **A** That's correct.

19 **Q** And your report related to this phone, would
20 that contain device information?

21 **A** Yes.

22 MR. SIMPSON: May I approach?

23 THE COURT: You may.

24 **Q** (BY MR. SIMPSON) I'll show you what is marked
25 as State's 55? Do you recognize that?

THE COURT AND ATTORNEYS - JURY OUT

1 **A** Yes, sir.

2 **Q** What is it?

3 **A** It's a device information from the
4 defendant's phone.

5 **Q** Is that related to the phone that's been
6 marked as State's 53?

7 **A** Yes, sir.

8 MR. SIMPSON: We seek to admits State's 55
9 into evidence and publish.

10 THE COURT: Please approach -- well, let me
11 ask do you have any objection?

12 MS. ARORA: I'll renew from pretrial.

13 THE COURT: Ladies and gentlemen, I have a
14 brief matter of law to take up with the counsel.
15 Do not discuss the case, and please leave your
16 notepads in your seats.

17 (The jury exits at 11:02 a.m., and the
18 following is heard out of the presence of the jury.)

19 THE COURT: I needed clarity because I'm not
20 clear what you are trying to admit. Yesterday, we
21 talked about Ms. Arora's objection to the
22 extraction of the videos from the phone that show
23 the -- dated July 12th -- July 3rd.

24 MR. SIMPSON: That's what will be coming,
25 Your Honor.

THE COURT AND ATTORNEYS - JURY OUT

1 THE COURT: July 18 and July 19. So is that
2 the drive you were referring to?

3 MR. SIMPSON: May I approach to assist the
4 Court?

5 THE COURT: Sure.

6 MR. SIMPSON: We are getting there.

7 THE COURT: That's just the phone
8 information?

9 MR. SIMPSON: Yeah.

10 THE COURT: What is your objection to the
11 phone?

12 MS. ARORA: I was renewing my objection to
13 the seizure and subsequent search of the phone.

14 THE COURT: Well, that is overruled. I heard
15 that in pretrial. I made specific findings of fact
16 at that time and conclusions based on the current
17 prevailing law. The Court stands by its original
18 ruling, and it will incorporate those findings into
19 this portion of the record. So that is overruled.

20 So 55, which is the screen shot of the
21 information regarding his phone are marked admitted
22 subject to the defense's objection.

23 (State's Exhibit 55 admitted.)

24 THE COURT: Where are you going next?

25 MR. SIMPSON: Well, Your Honor, thank you. I

THE COURT AND ATTORNEYS - JURY OUT

1 think now is a great time to take up something that
2 we discussed at the end of the day yesterday. We
3 do have the videos that we discussed, and I believe
4 you deemed those to be admissible yesterday, if I'm
5 not mistaken.

6 THE COURT: I did.

7 MR. SIMPSON: But there is a conversation
8 that takes place. Mr. -- Detective Wilson will be
9 testifying to it, as well as Ms. Heffron, because
10 it is found on the phone as well. If we have
11 hearsay issues -- may we approach together?

12 THE COURT: Uh-huh.

13 MR. SIMPSON: I have marker to make
14 redactions if needed. This is a conversation --

15 THE COURT: But I never saw it, so I need to
16 read it.

17 MR. SIMPSON: The green is the defendant's --

18 THE COURT: You all can stand back now.

19 Thank you.

20 (A brief pause in the proceedings.)

21 THE COURT: You're referring to State's 63,
22 which is ID only at this time, which purports to be
23 screen shots from the extraction from Cellebrite
24 from his telephone. The way it was represented to
25 me yesterday is that this was a clearcut

THE COURT AND ATTORNEYS - JURY OUT

1 conversation about the sale of the gun. In reading
2 this, I'm -- I really don't have that same
3 interpretation. It makes reference to new and
4 Reggie (ph) G20. I have no idea --

5 MR. SIMPSON: It is a firearm. It's a G20
6 Glock handgun. Reggie is slang -- as we'll hear
7 from Mr. Wilson for "registered" --

8 THE COURT: Who is Mr. Wilson you are
9 referring to?

10 MR. SIMPSON: Detective Danny Wilson.

11 Slang is used throughout Karseem's Facebook
12 to refer to the sale of multiple weapons, which I'm
13 not getting into, but I can certainly establish
14 that --

15 THE COURT: Yeah, but in and of itself,
16 without someone interpreting this, I have no idea
17 what this means, and I'm not certain the officer is
18 qualified to interpret. You know, conversations
19 should be plain on their face. You shouldn't have
20 to have an interpreter for it.

21 MR. SIMPSON: Your Honor, may I approach with
22 State's 62?

23 THE COURT: Uh-huh.

24 MR. SIMPSON: This is another exchange that I
25 think -- well, actually, Your Honor, in Rule 901 in

THE COURT AND ATTORNEYS - JURY OUT

1 the context of the same exchange, particularly in
2 the Facebook --

3 THE COURT: I need to look at these text
4 messages, because I didn't get to read them
5 yesterday, and that's part of the problem. I had
6 you tell me what you thought they all said, but I
7 need to read them for myself.

8 MR. SIMPSON: This is a snapshot. Keep in
9 mind, this is the model weapon in this case is a
10 Glock 20, 10-millimeter.

11 THE COURT: So who is speaking in the blue?

12 MR. SIMPSON: The blue is an unknown person.

13 THE COURT: And the green is purported to be
14 Mr. Hardaway?

15 MR. SIMPSON: Yes.

16 THE COURT: How are you going to establish
17 that this is Mr. Hardaway?

18 MR. SIMPSON: Ms. Heffron is going to
19 establish that that Snapshot --

20 THE COURT: Was downloaded on his --

21 MR. SIMPSON: -- from his phone.

22 MS. ARORA: Your Honor, and I would object.

23 THE COURT: I need to see all of the
24 statements you are seeking to introduce so I can
25 read them for myself.

THE COURT AND ATTORNEYS - JURY OUT

1 MR. SIMPSON: Your Honor, these statements
2 are purported to be the same conversation you
3 reviewed. These came from Facebook (inaudible).
4 This is where I think that the State's theory --

5 THE COURT: I didn't ask for argument. I
6 need to read them. That is how we got to this
7 place we are right now, because you all told me
8 what you thought they said, and I need to read it
9 for myself.

10 MR. SIMPSON: May I point out two things that
11 are not clear?

12 THE COURT: I'm going to read them first, and
13 then if I need clarity, I'll ask. Thank you.

14 (A brief pause in the proceedings.)

15 THE COURT: Why are Mr. Hardaway's responses
16 blacked out? Did you all agree to that?

17 MR. SIMPSON: There was some preceding
18 conversations that don't relate to the sale of the
19 gun.

20 THE COURT: I got you, okay.

21 MR. SIMPSON: When Your Honor is ready, I
22 would like to explain the second part of it.

23 THE COURT: Now, Ms. Arora, do you have the
24 tablet to review State's 63 -- sorry, 62, 63 and
25 68?

THE COURT AND ATTORNEYS - JURY OUT

1 MS. ARORA: Your Honor, I was given a copy of
2 those this morning, and I briefly reviewed them,
3 but I would not say that it was an in-depth review.

4 THE COURT: Do you need more time?

5 MS. ARORA: That would be great.

6 THE COURT: How much time do you need?

7 MS. ARORA: Probably five minutes.

8 THE COURT: Take a seat and go ahead.

9 MS. ARORA: Thank you.

10 THE COURT: You're welcome.

11 MS. ARORA: And for clarification, 63, 64,
12 65, and 68?

13 THE COURT: I have 62, 63, and 68. I don't
14 have anything else. Does she have the numbers --
15 are there other numberings I should be reviewing?

16 MS. ARORA: I'm just looking at 63, 62, 64,
17 68 -- so 62, 64, and 68.

18 MR. SIMPSON: I have 64 here.

19 Your Honor, if we can have a moment.

20 THE COURT: I'm not ready for you yet.

21 MR. SIMPSON: I was going to tell

22 Ms. Arora --

23 THE COURT: Then tell her.

24 (Ms. Arora and Mr. Simpson confer.)

25 MR. SIMPSON: He's asking about the gun, so

THE COURT AND ATTORNEYS - JURY OUT

1 he sent a video of a gun for sale, and the other
2 person responds, Is that a 40? He responds with a
3 video clip that says milly in the Facebook record,
4 Rachel. That is just -- he is just referencing a
5 media clip.

6 MS. ARORA: Right.

7 Your Honor, I'm on the second to the last
8 page of 68.

9 THE COURT: That's fine. I just didn't want
10 to rush you. I don't want you sitting there
11 waiting on me. I didn't say it the way I intended
12 it, but I think you know what I mean.

13 MS. ARORA: I never feel like I'm waiting on
14 you.

15 (A brief pause in the proceedings.)

16 MS. ARORA: Your Honor, I have reviewed the
17 documents whenever you are ready.

18 THE COURT: Start with No. 62. Is there any
19 exception?

20 MS. ARORA: Your Honor, I would make an
21 objection to -- it looks like it says "SMN
22 general," that statement. It is hearsay, but I
23 don't know who that is.

24 THE COURT: I agree. But is there any
25 exception to the remaining portion of the exhibit?

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1 MS. ARORA: Other than my previous
2 objections, no.

3 THE COURT: Well, I think you need to be
4 specific in this portion of the record. I need to
5 know what the exceptions are so that Mr. Simpson
6 can respond so that I can make a contemporaneous
7 ruling.

8 MS. ARORA: Your Honor, there is slang in
9 this statement. I believe it says thro prixy (ph).
10 I don't know what that means. I think that's
11 confusing to the jury. I don't know who will
12 testify as to what that means. I would object to
13 that being prejudicial and also confusing.

14 THE COURT: But you do not contend this did
15 not come from your client's phone, that it's not an
16 accurate extraction from what he posted on
17 Snapchat?

18 MS. ARORA: Your Honor, I can't argue with
19 it. It was extracted.

20 THE COURT: And I previously ruled regarding
21 the search warrant for your client's phone, so I
22 need to revisit that. But I need you to respond to
23 her objection regarding the slang -- well, first, I
24 agree with her on the "SCM general." It is
25 hearsay. You would say it's not offered for its

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1 truth. It's to give context to the conversation,
2 but that's not accurate. You want a jury to rely
3 on it. It is an out-of-court statement made for
4 its truth, which she doesn't have the ability to
5 cross examine on. So if it were to come in, I
6 would redact that.

7 But I need you to address her objection to
8 the slang containing this message and her assertion
9 that it would be confusing to the jury.

10 MR. SIMPSON: Certainly. Words have meaning,
11 and slang is something that in this line of work we
12 encounter constantly. An objection which asserts
13 that because a word might have multiple meanings or
14 slang meanings renders that inadmissible is not a
15 concept that you are going to find supported in
16 law.

17 What you will find is that disputes about the
18 meaning and what things are intended to be are
19 issues of weight that are argued in front of a
20 jury. I would point the Court to -- I don't have
21 the cites memorized, but I think Your Honor is
22 probably familiar, and I know at least three or
23 four cases where the supreme court of our state has
24 looked to Urban dictionary to define terms in the
25 record; in other words, to see that there is, you

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1 know -- to show in their own opinions that words
2 have various different meanings.

3 We're not dealing here with inscribbled (sic)
4 inscribed Sanskrit. We're dealing with something
5 particularly in the context it is given. I respect
6 Your Honor's ruling about hearsay. I respectfully
7 disagree. I think it is in the context that it is
8 given where these words -- like any word -- glean
9 its meaning.

10 What we have in the Snapchat exchange, and
11 what is deemed as hearsay, is simply the question:
12 What kind? How much?

13 In a case with what you are dealing with is a
14 disposal of a Glock 20, 10-millimeter in that
15 context, the response is -- I believe it is "Glock
16 20, 10 milly pro prixe" is quite clear in the
17 context of what he says. He is selling a very
18 specific model of gun relative to this case, and
19 he's selling it for a throw-away price.

20 Now, would the defense like to assert a
21 different meaning to that? They are absolutely
22 free to do that. But these are classic issues that
23 we determine in weight with sensible arguments to a
24 jury. If we are going to say standard words with
25 arguable meaning are inadmissible, let's pack up

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1 shop because we're going to deal with this issue
2 all the time.

3 These jurors live in this world. They can
4 interpret meaning. And particularly to dovetail
5 into the other issue, that is why some of the other
6 statements are important.

7 As to hearsay, Your Honor, I do always
8 respect your decisions. I was just thinking about
9 this overnight, and I wanted to offer you an
10 example, because I think it is a good analogy for
11 this case. If I'm accused of killing my spouse,
12 and my best friend calls me, and the phone
13 conversation that is recorded is, Chad Simpson, did
14 you kill your spouse, and all I say is, yes, we
15 don't come to court and then admit that question as
16 hearsay and only admit my "yes" --

17 THE COURT: I don't know if it is excited
18 utterance. I don't know if it comes within the res
19 gestae. I don't know. That is not a good analogy.

20 MR. SIMPSON: I think the analogy is apropos
21 because a question is not an assertion of fact; it
22 is a question.

23 THE COURT: (inaudible) Asserting that he was
24 selling the gun, so the inquiry of the person is
25 heightened -- it is hearsay. I like clean records.

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1 MR. SIMPSON: I respect that ruling, Your
2 Honor. I'll say no more about it.

3 THE COURT: But I do think, Ms. Arora, that
4 this statement is admissible. It is relevant. It
5 is probative. And what it makes reference to is
6 the 10-millimeter Glock. The rest of it might be
7 subject to some common (inaudible) that may be
8 subject to how young people -- not just young
9 people, but I can't even read text messages anymore
10 because there is too many of these short acronyms
11 and things. You need a decoder. I don't even
12 know -- half the time when people send me a text, I
13 don't know what that means. I have to resort to
14 the Internet to see what half of these little
15 shortened initials mean.

16 So I don't know that that is really a basis
17 for excluding the statement. In its essence, it is
18 an admission against interest, which he made on
19 Snapchat, which is the possession of a rare weapon,
20 which is a 10-millimeter Glock.

21 So really what is the most probative in this
22 statement is 10-millimeter Glock, 20, Pro
23 P-R-I-X-E. I don't know. The jury might know what
24 it means, but I don't think it is a compelling
25 argument that it is confusing in some way. I can't

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1 judge what a jury knows to my knowledge. I live a
2 fairly insulated life, so I really probably don't
3 know what half of these things mean, but that
4 doesn't mean the jury doesn't know. And I think
5 you all can argue what that language and how it is
6 interpreted or what inference there is to be drawn
7 from it.

8 But, clearly, it came from his phone because
9 it was subject to a valid and lawful search
10 warrant. It is probative on initial consequence in
11 this case, which is the ownership of the weapon,
12 which is associated with this criminal act, which
13 is the death of Mr. Conner. It is within
14 proximity -- has a close nexus to when this
15 incident is alleged to have occurred. And any
16 probative value is outweighed by its potential
17 prejudice.

18 So I'll note your exceptions. Overruled. 62
19 is marked and admitted subject to the redactions.
20 But I want those redactions done differently.
21 There is a way you can black them out so it doesn't
22 look like a Sharpie has gone through them. Because
23 the question I'm going to get is, What is marked
24 out?

25 I have jurors now that tell the bailiffs they

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1 want to hear the in-camera hearings because they
2 need to hear what I'm hearing. They are not slow
3 at all, and they have a different interpretation of
4 what fact-finding providence means. They think
5 they are entitled to hear everything.

6 So what I need you to do is -- you can put a
7 little black box or something on it on a
8 computer somehow --

9 MR. SIMPSON: I can omit everything. It will
10 just take the lunch break to do it.

11 THE COURT: That's fine. And you can put a
12 piece of paper, really.

13 MR. SIMPSON: For our purpose today, I'll do
14 that.

15 THE COURT: But when you do a Sharpie,
16 they'll be holding it up to the light. They'll be
17 trying to figure out what is under it. And I'm
18 quite serious, in my last three trials I have had
19 three jurors tap the bailiffs and say, We need to
20 be in there while she's talking about matters of
21 law because we need to hear everything she's
22 hearing. And they don't stutter when they say it.
23 They are very serious about it. They are not
24 saying it comically. They were making like a mini
25 demand.

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1 So I just share that with you so you can know
2 really -- the questions that I anticipate going to
3 come in a note that I'm not going to be able to
4 answer, and the best way I think to clip that
5 before it happens.

6 That takes us to 64. Is there any exception
7 to that? And that is only a statement from your
8 client. There is no statements from anyone else.
9 And I assume it is offered for the same basis,
10 which is the sale of the weapon.

11 MS. ARORA: Your Honor, what I'm concerned
12 with is at the top it says "participants were
13 ripped" --

14 MR. SIMPSON: I'll omit that.

15 MS. ARORA: I think that needs to be
16 redacted.

17 And my same argument, again, with the slang.
18 I just don't know if they have someone coming in to
19 testify to that.

20 THE COURT: I don't have an Urban dictionary,
21 but these terms may well be in the Urban
22 dictionary. I'm not certain. Again, like I said,
23 I live fairly insulated -- whatever comes up in my
24 news feed that says, A new word has been added
25 today -- like if you are reading news online and it

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1 says, This new word has been added to the Urban
2 dictionary. That is the extent of my knowledge.
3 Because I'm not sure -- again, I don't know the
4 extent of the jury's common sense knowledge of
5 slang, but I think that is an issue for you all to
6 argue.

7 I would have to have the same findings on 64,
8 which is it is probative. It is an indication of
9 your client within the proximity of this offense.
10 It was dated within five days of this incident,
11 having a weapon which he is trying to dispose of,
12 which could also be argued it is consciousness of
13 guilt. So the objection is noted and overruled,
14 and 64 comes in subject to the objection.

15 That then takes us to 63, which is -- which
16 would clearly be statements against interest that
17 your client is making regarding this weapon. We
18 don't know who Shoreslyfe Mann is. I would think
19 it is privy to redact any of his comments within
20 the context of this conversation.

21 MR. SIMPSON: I will do so --

22 THE COURT: Because I think it is obvious --
23 if you look at the context of this, which is S-new
24 (ph) and Reggie G20. If I hit other people, so if
25 I sling, I'm going to let you know. Then the last

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1 comment is, Be gone same day.

2 MR. SIMPSON: I'll create that over lunch.

3 THE COURT: If you make reference to it
4 during the testimony you just need to -- I think a
5 white piece of paper will serve the same purpose.

6 MR. SIMPSON: I will do that.

7 THE COURT: I assume your objection is the
8 same basis, Ms. Arora?

9 MS. ARORA: Yes, Your Honor. And,
10 specifically, I have an issue with that first --
11 the first page, "that shit knew and Reggie G20."

12 THE COURT: Your client (inaudible) to the
13 officers. And, frankly, I cast dispersions on
14 anybody that uses cuss words -- I mean, that is
15 what this whole -- nobody in this building hasn't
16 cussed.

17 MS. ARORA: My issue isn't with the cuss
18 words. I know we all clearly heard that earlier,
19 but my issue is with the "Reggie G20." You know,
20 Reggie G20, once again, I think it is confusing.
21 It is not clearly laid out. Is that a gun?

22 THE COURT: I think it has to be. Within the
23 context of this conversation, clearly he is trying
24 to sell something, and it is something within five
25 days of this incident. I'll note your exception.

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1 Overruled. 63 admitted, subject to objection and
2 the redactions.

3 That takes us to 68 Facebook conversation
4 with Shoreslyfe Mann. Consistent with the
5 conversation we had on yesterday, it appears that
6 Mr. Simpson has already redacted all of the
7 comments for Shoreslyfe Mann, and only reflects the
8 statements or transmissions that were made from the
9 phone, and that being Mr. Hardaway's phone, which
10 would be coming down on the first page.

11 MS. ARORA: Your Honor, on the first page
12 there is just one portion from Shoreslyfe Mann that
13 is not redacted.

14 MR. SIMPSON: I'll do it.

15 THE COURT: I think even -- the whole thing,
16 even showing the person's name.

17 MR. SIMPSON: I'll recreate this exhibit to
18 just to contain the statements. What I was going
19 to note, Your Honor, is there is two points in that
20 conversation that show that multimedia was
21 exchanged, and we'll be seeking to admit those, one
22 of them being --

23 THE COURT: But that is from --

24 MR. SIMPSON: Mr. Hardaway.

25 THE COURT: And this also says that a video

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1 was sent by Shoreslyfe, and that (inaudible).

2 Because we don't know what that was, and he's not
3 subject to being questioned about what it was.

4 MR. SIMPSON: Understood. And I'll recreate
5 that exhibit pursuant to your ruling. Thank you.

6 THE COURT: But the rest of the comments --
7 and I think we talked about this at length on
8 yesterday. Some of them are merely repetition of
9 what he already said in other mediums, but it also
10 -- I'm referring to Page -- and I assume the ones
11 that you redacted from Mr. Hardaway are unrelated
12 conversations?

13 MR. SIMPSON: Yes. Some would be prejudicial
14 obviously.

15 THE COURT: I just made that assumption when
16 I saw they were redacted.

17 The first page, I'm looking for glizzy, you
18 know, I go high with them. Remember, I can even
19 think like that. And then that Shoreslyfe Mann
20 needs to be taken out.

21 And then it says that Mr. Hardaway sent a
22 video, which correlates with one of the videos that
23 was extracted from the phone. And then it looks
24 like he sent a voice message.

25 MR. SIMPSON: That is simply him saying, 10

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1 mil.

2 THE COURT: On the voice message?

3 MR. SIMPSON: On the voice message.

4 THE COURT: Send me a pick -- the next page.

5 He says, That Sknew and Reggie G20. I then hit

6 other people so if I sling, I'll let you know.

7 Which one needs -- no, that needs to come out.

8 The next page, Be gone same day. And that's

9 it for the rest of it.

10 Like I said, I prefer the blacked out because

11 they would be in there trying to....

12 MR. SIMPSON: I'll cut Mr. Hardaway's out and

13 just have --

14 THE COURT: So 68 will come in subject to the

15 objection, which is overruled, and with the

16 redactions, which you will need to look at before

17 it goes into the record.

18 (State's Exhibits 62-64 and 68 admitted.)

19 THE COURT: All right. Yes.

20 MR. SIMPSON: I think just since we're

21 spending this time out of the presence of the jury,

22 I think that Ms. Arora has an objection to

23 something I'm doing later this afternoon. I'm

24 happy to address it then, just wanted to --

25 THE COURT: We'll address it then.

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1 MR. SIMPSON: I figured.

2 THE COURT: I need to focus on what we're
3 doing right now, which is this.

4 MR. SIMPSON: I have completed a short clip
5 of a jail --

6 THE COURT: But if there is something -- I
7 need it -- let me ask preliminarily: What is it
8 you are referring to?

9 MR. SIMPSON: The jail clip I sent your
10 office and Ms. Arora this morning.

11 THE COURT: Okay. I'll listen to it and hear
12 argument. What is it's going to be? Is it going
13 to be relevance?

14 MS. ARORA: Well, Your Honor, I made a
15 pretrial motion -- which we did not address because
16 I think we thought it was resolved -- asking that
17 any information related to prior arrests not come
18 in. This jail phone call --

19 THE COURT: Does it make reference to prior
20 arrests?

21 MS. ARORA: Well, specifically made during
22 his prior arrest.

23 THE COURT: (inaudible) He's making
24 statements on that phone while they are telling him
25 it is being recorded. It is an admission against

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1 interest, but I'll listen to it and see.

2 MR. SIMPSON: So you know our intention, Your
3 Honor. I think the best way to not be prejudicial,
4 I'm never going to reference -- let me tell you --
5 if I could tell you what happened?

6 THE COURT: I'm listening.

7 MR. SIMPSON: They had a search warrant for
8 Mr. Hardaway's gun -- they -- phone, sorry. They
9 pulled him over to obtain that phone, as you have
10 already heard, and found an additional gun in the
11 car, and he was arrested for unlawful carry. Not
12 going to say anything like that.

13 He was questioned that day about the unlawful
14 carry, and also questioned about this murder that
15 day. Not admitting anything about that.

16 He was then booked on the unlawful carry for
17 a couple of days, and this conversation happens
18 during this.

19 THE COURT: What does he say during the
20 conversation?

21 MR. SIMPSON: He calls someone and very
22 specifically identifies his Facebook accounts and
23 the password, his gmail account and the password,
24 his Snapchat account, and asks the person to delete
25 them and get rid of them.

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1 THE COURT: That is consciousness of guilt if
2 it plays out the way you are saying.

3 MR. SIMPSON: How I propose to handle that
4 is to never mention that that jail tape came from
5 --

6 THE COURT: What day is this conversation
7 supposedly to have taken place?

8 MR. SIMPSON: July 29th, but I'm never
9 going to mention that.

10 THE COURT: That is for my analysis. I need
11 to know when it happened.

12 MR. SIMPSON: I think -- the arrest was the
13 28th, and the phone call was the next day.

14 THE COURT: I think it is appropriate, and I
15 think that Ms. Arora is correct to make the
16 argument that any arrests that are not the subject
17 of the conviction are inadmissible. They are
18 highly prejudicial in this instance, especially
19 because we are talking about a shooting, and he was
20 arrested for an unlawful carry. So I think any
21 reference to that is off-limits, and I think if my
22 recollection is accurate, that is what you all
23 represented to me during pretrial in this case.

24 And then any reference to the date I think
25 would be -- now, if you want the date to be in

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1 there, that is up to you.

2 MS. ARORA: Well, Your Honor, my concern is
3 if it is entered without a date, that there is --

4 THE COURT: I'll give you the option. He
5 said he won't give the date, and you say it needs a
6 date because it needs context, so it's up to you.
7 I'll let you make the choice.

8 MS. ARORA: Right. I'm just talking out loud
9 with you. The implication is -- you know, if it's
10 admitted without the date, that it would be
11 misleading to the jury thinking that this happened
12 after his arrest in September. If it is admitted
13 with the date in July, is the jury going to start
14 to question why was he under arrest? Is that going
15 to be prejudicial?

16 THE COURT: Unless you all stipulate that it
17 not -- well, I don't know. Does the recording -- I
18 haven't listened to it because it was just sent to
19 us this morning. Does it have that recording in
20 the background that says you are being recorded?

21 MR. SIMPSON: I sent you a short clip.

22 THE COURT: I'm just asking.

23 MR. SIMPSON: Yes. At the beginning of the
24 complete phone call, it does.

25 THE COURT: Because, normally, it used to say

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1 it every so many --

2 MR. SIMPSON: There is nothing in the clip
3 that indicates a date.

4 THE COURT: Okay.

5 MR. SIMPSON: The date is documented in the
6 records, and the phone call (inaudible).

7 THE COURT: I mean, it is up to you. You
8 can -- you are welcome to make no references that
9 it is a jail call. I'll leave it to you all to
10 think over the time before you introduce it on how
11 you want to handle it that would be the least
12 prejudicial to your client. But he made the
13 statement. He was clearly aware he was being
14 recorded. When you tell someone to go destroy
15 accounts or delete them....

16 MR. SIMPSON: There is nothing in the clip
17 that indicates it is a jail recording.

18 THE COURT: I'll leave it to you all to try
19 to work it out to where it is the least prejudicial
20 to Mr. Hardaway. You all talk about.

21 MS. ARORA: We'll talk about it.

22 THE COURT: In the meantime, I'll listen to
23 it.

24 MR. SIMPSON: Finally, Your Honor, may I use
25 the restroom?

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 THE COURT: Yes. We'll be at ease.

2 (A recess was taken.)

3 THE COURT: You may be seated. State ready
4 to proceed?

5 MS. ARORA: Yes, Your Honor.

6 MR. SIMPSON: Yes, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MS. ARORA: Yes, Your Honor.

9 THE COURT: All right. Is there anything
10 else we need to take up before we proceed with the
11 witness, from the State?

12 MR. SIMPSON: No, Your Honor.

13 THE COURT: From the defense?

14 MS. ARORA: No, Your Honor.

15 THE COURT: Please bring in the jury.

16 (Whereupon, the jury enters at 11:28 a.m.,
17 and the following is had in the presence of the
18 jury.)

19 THE BAILIFF: All jurors are present, Your
20 Honor.

21 THE COURT: You may be seated.

22 Ladies and gentlemen, I appreciate your
23 patience. We will now resume with the witness'
24 testimony.

25 You may proceed.

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 MR. SIMPSON: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 DIRECT EXAMINATION (CONT.)

4 BY MR. SIMPSON:

5 Q Ms. Heffron, I believe we left off talking
6 about the phone, that is State's Exhibit 53 for ID?

7 A That's correct.

8 Q And we were discussing a previous -- some of
9 the information that you can extract is called
10 "device information"?

11 A That's correct.

12 Q And what is that again?

13 A Device information basically contains
14 information of the device, such as the make, model
15 and serial number, and also other identifiers, such
16 as Apple ID, IMEI, MSISDN.

17 MR. SIMPSON: May I approach?

18 THE COURT: You may.

19 Q (BY MR. SIMPSON) I'll show you what is marked
20 for ID as State's 55. Do you recognize that?

21 A Yes.

22 Q And what is it?

23 A It's a device information from the
24 defendant's phone taken from the media report.

25 Q Is that phone associated with the State's 53?

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 **A** Yes.

2 MR. SIMPSON: At this time State seeks to
3 admit State's 55.

4 THE COURT: It's already been admitted.
5 Subject to objection, you made proceed.

6 MR. SIMPSON: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 (State's Exhibit 55 admitted.)

9 **Q** **(BY MR. SIMPSON)** So this is the device of the
10 phone, State's 53?

11 **A** That's correct.

12 **Q** And what Apple ID is associated with that
13 phone?

14 **A** KarseemHardaway40@gmail.com.

15 **Q** You mentioned -- what is this last line here?

16 **A** MSISDN, the phone number associated with the
17 cell phone.

18 **Q** What is the phone number?

19 **A** 5916

20 **Q** When a person is performing Web searches on
21 their phone, is that the type of data that you can
22 extract from?

23 **A** Yes, sir.

24 **Q** So that would be included in the report --
25 extraction report done on the phone?

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 **A** Yes.

2 MR. SIMPSON: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 **Q** **(BY MR. SIMPSON)** I'll show you what is marked
5 as State's 59 and 58. Take a moment to review
6 that, please.

7 **A** Yes.

8 **Q** Are those fair -- is that a portion of the
9 Web search history for the phone marked as State's
10 53?

11 **A** Yes, sir.

12 **Q** And is that a fair and accurate
13 representation of a portion of your extraction of
14 the phone?

15 **A** Yes, sir.

16 MR. SIMPSON: May I approach?

17 THE COURT: Yes, sir.

18 MR. SIMPSON: State seeks to admit 59 and 58.

19 THE COURT: Any exception?

20 MS. ARORA: Your Honor, I would just renew my
21 pretrial objections.

22 THE COURT: Can I see those, please?

23 (A brief pause in the proceedings.)

24 THE COURT: The objection is marked,
25 overruled, and subject to the Court's pretrial

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 rulings on these matters and will be admitted
2 subject to the objection. The Court has already
3 made specific findings of fact and conclusions of
4 law, which will be incorporated into this section
5 of the record. 58 and 59.

6 MR. SIMPSON: Thank you.

7 (State's Exhibits 58-59 admitted.)

8 Q (BY MR. SIMPSON) Beginning with State's 59,
9 can you walk us through what sort of data is
10 contained on the reports?

11 A Yes, sir. This is a screen shot of Web
12 searches or Web history that was extracted from the
13 device. It contains the timestamp when it was
14 actually performed, and you can see that this was
15 the actual search, and to the right is the actual
16 Website that was accessed.

17 Q And a quick question about the time. What
18 does UTC stand for?

19 A It stands for Universal -- stands for
20 Universal Coordinating Time. Sorry, I got it.

21 Q So that is like the Greenwich time?

22 A Yes. That is basically Greenwich time.

23 Q So when we say the minus four, what does that
24 mean?

25 A It's basically -- we are the five hours away

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 from the medica, which is the Greenwich time. So
2 at this time, it is minus four because of the
3 Daylight Saving Time.

4 Q And if we wanted to know how a search was
5 entered into the phone, what Column would we look
6 at?

7 A It is the "title" column.

8 Q This column here?

9 A Yes.

10 Q And we can also check the times here?

11 A Yes, sir.

12 Q Is State's 58 merely a continuation of the
13 text of information we see in State's 59?

14 A Yes.

15 Q Ms. Heffron, I'm approaching you with what is
16 marked for ID only as State's 60. Do you recognize
17 State's 60?

18 A Yes.

19 Q Are those additional Web searches extracted
20 from that phone?

21 A Yes, sir.

22 Q Does this exhibit contain the same
23 information in 58 and 59?

24 A Yes.

25 Q Are you aware there are ways that you can

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 communicate among cell phones other than just
2 voice?

3 **A** Yes, sir. There are communications through
4 media messaging, such as your SMS, MMS, and for
5 iPhones it is the iMessages. And there is also
6 communications through third-party applications,
7 such as Facebook Messenger, Whats app, TextNow, and
8 more.

9 **Q** So -- are some of those text methods, sort
10 of, come with the hardware of the phone?

11 **A** It is installed on the phone as an
12 application, yeah.

13 **Q** They are app based?

14 **A** Yes.

15 **Q** And explain what that means.

16 **A** It is just a third-party applications that
17 you can download from either the app store or
18 Google Play, and you can use it for messaging other
19 people.

20 MR. SIMPSON: May I approach?

21 THE COURT: You may.

22 **Q** (BY MR. SIMPSON) I'm showing you what is
23 marked as ID only as State's 62. Do you recognize
24 that exhibit?

25 **A** Yes.

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 Q And you mentioned third-party text apps, is
2 that from one of those apps?

3 A Yes, sir.

4 Q What app is that?

5 A It's a Snapchat.

6 Q Does it contain the date and time of the
7 message?

8 A Yes, sir.

9 Q And the message is highlighted in what color?

10 A Green.

11 Q Is there any way that you, through your
12 analysis, can tell if that phone is associated with
13 that green message?

14 A Yes, sir.

15 Q Can you explain that for the jury real quick?

16 A So the actual message contains the user name
17 of the Snapchat account, and on the extraction
18 itself, we are able to recover the user account for
19 Snapchat. And I was able to create this particular
20 user name to the user account that was recovered.

21 MR. SIMPSON: May I approach, Your Honor?

22 THE COURT: You may.

23 MR. SIMPSON: At this time State seeks to
24 admit State's 62.

25 THE COURT: 62 is marked and admitted subject

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 to the objection, which the Court ruled on
2 contemporaneously and other instructions given by
3 the Court.

4 MR. SIMPSON: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 Q (BY MR. SIMPSON) And so is this a piece of
7 one portion of a -- of a text conversation?

8 A Yes.

9 Q And, again, can you tell that this green
10 message was sent from that phone -- from the user
11 of that phone?

12 A Yes.

13 MR. SIMPSON: Your Honor, the State would
14 backtrack, and we seek to admit State's Exhibit No.
15 60.

16 THE COURT: Any exception?

17 MS. ARORA: No, Your Honor.

18 THE COURT: Marked and admitted without
19 objection.

20 (State's Exhibit 60 admitted.)

21 Q (BY MR. SIMPSON) Ms. Heffron, is there -- you
22 talked about third-party apps that allow users to
23 text back and forth?

24 A Yes.

25 Q Is there a function similar to that

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 associated with Facebook?

2 **A** Yes. It's the Facebook Messenger.

3 **Q** And I'm slowing you what is marked as State's
4 63. That is two pages. State's 64 was a single
5 page.

6 **A** Okay.

7 **Q** When you worked on the extraction of this
8 phone, do you recognize those exhibits?

9 **A** Yes, sir.

10 **Q** And are they related to the app you just
11 described?

12 **A** Yes. This is a Cellebrite report that
13 contains chats from Facebook Messenger.

14 **Q** And, again, are you able to tell that the
15 messages engrained were sent by the user associated
16 with the phone?

17 **A** Yes, sir.

18 MR. SIMPSON: Your Honor, publishing State's
19 64.

20 **Q** (BY MR. SIMPSON) State's 63, Page 1. State's
21 63, Page 2.

22 MR. SIMPSON: May I approach, Your Honor?

23 THE COURT: You may.

24 **Q** (BY MR. SIMPSON) This is marked as State's 54
25 for identification only. Can you take a look at

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 that? Have you ever seen that before?

2 **A** No, sir.

3 **Q** What does it appear to you to be?

4 **A** It's a USB drive.

5 **Q** If I told you that that was a completely
6 empty USB drive, is that something you can confirm?

7 **A** Yes, sir. Would you like me to confirm it?

8 **Q** Yes.

9 (A brief pause in the proceedings.)

10 **A** It's blank.

11 **Q** (BY MR. SIMPSON) So State's 54 marked for ID
12 only, as an expert, you can confirm it is empty?

13 **A** It's empty.

14 **Q** Earlier, you testified concerning a report
15 you created taken from the phone, which is State's
16 53 for ID; is that correct?

17 **A** That is correct.

18 **Q** Are you able to directly transfer data files
19 from your report to that empty flash drive?

20 **A** Yes.

21 **Q** In preparing for your testimony today, did we
22 identify a set of videos that we wanted to discuss
23 today?

24 **A** Yes.

25 **Q** Did you include those videos in your

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 miniature digital report?

2 A Yes.

3 Q And how many videos did we discuss relating
4 to your testimony?

5 A Seven.

6 Q And were all taken and examined during the
7 extraction of that same phone we've been
8 discussing?

9 A Yes, sir.

10 Q I would like to begin -- take these
11 chronologically, and I'll let you know we'll focus
12 on three.

13 A Okay.

14 Q I would like to start with the one that was
15 found earliest in time in the extraction report.
16 What is that day? What would be that day?

17 A I believe it was July 3, 2021.

18 Q How many videos are there associated with
19 July 3 of 2021?

20 A I believe it is two.

21 Q And what device created those two?

22 A These were captured by the device that we're
23 discussing.

24 Q How do you know that that phone created those
25 videos?

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 **A** There is a meta-data, which is basically data
2 about a video or about a phone. It shows that it
3 was captured by an iPhone XR with IUS version of
4 14.1. Additionally, that specific video file was
5 stored in a temporary storage that belongs to a
6 camera messaging app.

7 **Q** If I could ask you to take those two videos
8 that we're discussing and move them to the -- copy
9 them onto the empty flash drive.

10 **A** Yes, I can do that.

11 **Q** And could you label them with the date
12 7/3/21?

13 **A** Okay.

14 **Q** No. 1 and No. 2.

15 **A** Sure.

16 (A brief pause in the proceedings.)

17 **A** Mr. Simpson, do you have the mini report?

18 **Q** **(BY MR. SIMPSON)** I'm sorry?

19 **A** You have the copy of the media report. Do
20 you have it?

21 **Q** I do not with me.

22 **A** Oh, you don't.

23 MR. SIMPSON: Your Honor, may I ask for a few
24 minutes to retrieve that?

25 THE COURT: Actually, I need you to approach

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 the bench.

2 (Whereupon, a bench conference was had.)

3 THE COURT: You may proceed. Why don't you
4 use what you have already, and we'll do that later.

5 Q (BY MR. SIMPSON) Ms. Heffron, I would play
6 the videos that you have identified from 7/3/21 as
7 No. 1 and No. 2. Would you be able to confirm that
8 what we are watching are the videos?

9 A Yes, sir.

10 MR. SIMPSON: Your Honor, at this time the
11 State seeks to admit what the witness has ID'd as
12 Videos 1 and 2 from 7/3/21.

13 THE COURT: Why don't you admit all of them?
14 Wouldn't that be -- or are we dealing --

15 MR. SIMPSON: Sure.

16 THE COURT: Approach, please -- do you
17 understand?

18 MR. SIMPSON: Yes.

19 Q Was there also a grouping of videos from
20 another time period?

21 A Yes, sir.

22 Q And what time period was that?

23 A July 18th and July 19 of 2021.

24 Q Do they appear similar in nature?

25 A Yes.

MARIA HEFFRON - DIRECT EXAMINATION (CONT.)

1 **Q** Does the first one in time from July 18
2 contain the entire video?

3 **A** I believe so.

4 MR. SIMPSON: Your Honor, at this point in
5 time the State seeks to admit State's 54, which
6 will contain Videos 1 and 2 from 7/3/21, and the
7 video from 7/18.

8 THE COURT: Marked and admitted subject to
9 the defense's objection, which the Court has
10 already ruled on.

11 MS. ARORA: And, Your Honor, Court's
12 indulgence.

13 (A brief pause in the proceedings and
14 State's Exhibit 54 was admitted.)

15 **Q** **(BY MR. SIMPSON)** And, Ms. Heffron, as to the
16 7/3 videos, you said those were created on those
17 phones?

18 **A** Yes.

19 **Q** And as to the multiple videos of the 18th and
20 19th, were those associated with any sort of
21 applications on the phone?

22 **A** Yes, sir.

23 **Q** And what applications were they associated
24 with?

25 **A** Facebook Messenger.

MARIA HEFFRON - CROSS EXAMINATION

1 **Q** And the act of someone moving those videos
2 from your report to a flash drive, would that alter
3 or change the nature of the videos in any way?

4 **A** No, sir.

5 MR. SIMPSON: Ms. Heffron, I appreciate your
6 time today. Answer any questions that Ms. Arora
7 has.

8 THE COURT: Ms. Arora.

9 MS. ARORA: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 **CROSS EXAMINATION**

12 **BY MS. ARORA:**

13 **Q** Good afternoon.

14 **A** Good afternoon.

15 **Q** I just wanted to clarify the actual report
16 that you (inaudible). On direct, you testified
17 that what you have is somewhat of a mini report?

18 **A** Yes.

19 **Q** And so you get the physical cell phone and
20 you hook it up to your machine, that downloads or
21 extracts all of that data? That extracts
22 everything?

23 **A** Yes.

24 **Q** And so that could be text files?

25 **A** That's correct.

MARIA HEFFRON - CROSS EXAMINATION

- 1 Q Video files?
- 2 A That's correct.
- 3 Q Pictures?
- 4 A That's correct.
- 5 Q You said Facebook data?
- 6 A Yes, ma'am.
- 7 Q Snapchat data?
- 8 A Yes, ma'am.
- 9 Q Or, really, any app that would be downloaded
10 to a phone?
- 11 A That's correct.
- 12 Q So that could be over thousands of different
13 files?
- 14 A Yes, ma'am.
- 15 Q And what you present to us today is just,
16 essentially, a mini report?
- 17 A That's correct.
- 18 Q And the best way to describe that mini report
19 is just a snapshot of a period of time?
- 20 A That's correct.
- 21 Q And you can only tell us today what is on the
22 phone or what was extracted?
- 23 A Yes.
- 24 Q You can't tell us exactly about what was
25 handed to someone else?

MARIA HEFFRON - CROSS EXAMINATION

1 **A** That's correct.

2 **Q** I want to refer to what has been admitted and
3 marked as State's 60. If I can find it up here.
4 Can you tell the time is 2:05, what search was
5 made?

6 **A** 7/16/21, 2:05:04 p.m.

7 **Q** Thank you.

8 MS. ARORA: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (A brief pause in the proceedings.)

11 **Q** **(BY MS. ARORA)** Just to clarify, we talked
12 about media report, and I said Snapchat -- or snap
13 shot of a time frame. The extractions can be
14 filtered by other different subsets?

15 **A** Yes.

16 **Q** And so you can filter an extraction based off
17 of certain conversations?

18 **A** That's correct.

19 **Q** Or pictures?

20 **A** Or by phone number. Any specific key words
21 you want to search, it can be filtered that way,
22 too.

23 **Q** So you filtered a number of different ways?

24 **A** Yes.

25 **Q** It doesn't just need a time frame. It can be

MARIA HEFFRON - REDIRECT EXAMINATION.

1 a time frame with X, Y, and Z?

2 **A** That's correct.

3 **Q** Or a time frame of A, B, C number?

4 **A** Yes.

5 **Q** So lots of different ways to --

6 **A** There are multiple ways to do filtering and
7 sorting as well.

8 MS. ARORA: No further questions, Your Honor.

9 THE COURT: Any redirect?

10 MR. SIMPSON: Briefly.

11 **REDIRECT EXAMINATION**

12 **BY MR. SIMPSON:**

13 **Q** To clarify one point, Ms. Heffron, the full
14 report, full extraction, you provided that to the
15 State?

16 **A** Yes. The full extraction has been provided
17 to the customer.

18 **Q** And it's also been provided to the defense?

19 **A** That's correct.

20 **Q** And Ms. Arora referenced, sort of, this giant
21 universe of everything that has ever been done. Is
22 that -- I don't want to mischaracterize what you
23 said. If I delete something on a phone, is it
24 guaranteed to be extracted?

25 **A** Not always. It depends, for example, the

MARIA HEFFRON - REDIRECT EXAMINATION.

1 text messages, if the text messages have been
2 deleted, and it's marked for deletion, we can still
3 recover this data. If it is permanently deleted or
4 removed from the database, we can no longer recover
5 them; same goes with photos. It stays for 30 days,
6 we can recover it. So if you delete your photos
7 from iPhone, it goes into a "recently deleted"
8 container, but once it goes away from there, it's
9 not recoverable.

10 Q Okay. Thank you.

11 THE COURT: Any exception to the witness
12 being excused from the State?

13 MR. SIMPSON: No, Your Honor.

14 THE COURT: From the defense?

15 MS. ARORA: No, Your Honor.

16 THE COURT: Ma'am, you are executed.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Counsel, approach for a moment.

19 (Whereupon, a bench conference was had.)

20 THE COURT: Mr. Foreman, ladies and
21 gentlemen, we're going to take advantage of this
22 break in testimony to take our lunch recess. I
23 have another proceeding unrelated to this case that
24 I need to dispose of before me and the clerk staff
25 goes to lunch. So we'll break until 2 o'clock. So

MARIA HEFFRON - REDIRECT EXAMINATION.

1 I need you all to return to your jury room at 2:00,
2 at which time we'll resume testimony.

3 Leave your notepads in your seats. Please
4 don't discuss this case or allow any media access,
5 and have no contact with anyone in or about the
6 courthouse. Have a good lunch. Try to stay dry.

7 (The jury exits at 12:41 p.m., and the
8 following is heard out of the presence of the jury.)

9 THE COURT: Is there anything -- you can take
10 a seat.

11 Anything we need to take before we all break
12 for lunch?

13 MR. SIMPSON: Your Honor, I am removing some
14 of the exhibits we discussed to recast them
15 pursuant to your ruling.

16 THE COURT: I don't have copies, because I
17 need the un-redacted ones as Court's exhibits so we
18 can see what was redacted. So you will have to
19 renumber the ones that are redacted for the numbers
20 you have there.

21 MR. SIMPSON: Understood, Your Honor.

22 THE COURT: Do you need to some take notes to
23 make sure?

24 MR. SIMPSON: I think I'm good.

25 For the record, State's 62, 63, State's 64,

MARIA HEFFRON - REDIRECT EXAMINATION.

1 which is two pages, and....

2 THE COURT: 60 has already been marked and
3 admitted.

4 MR. SIMPSON: 60 is not subject to --

5 THE COURT: Yeah.

6 MR. SIMPSON: 62, two pages of 63, page 64
7 (sic) are un-redacted. And I'll be bringing --

8 THE COURT: I thought there were four of them
9 exhibits that needed --

10 MR. SIMPSON: There is, but we have not
11 gotten to the testimony regarding this exhibit.

12 THE COURT: I would go ahead and redact it
13 ahead of time.

14 MR. SIMPSON: Oh, I am. I am.

15 THE COURT: What number is that?

16 MR. SIMPSON: 68. Would you like me to keep
17 68?

18 THE COURT: I need all of those. So do you
19 have other copies from your office that you can
20 work from?

21 MR. SIMPSON: I'm familiar enough with the
22 exhibits, yes.

23 THE COURT: Okay. Because I have to keep
24 those since they are marked, and they have to be
25 Court's exhibits once you bring them back.

MARIA HEFFRON - REDIRECT EXAMINATION.

1 Anything else before you go to lunch?

2 MS. ARORA: Ms. Erlich has brought to my
3 attention that I failed to object to a question to
4 the last witness.

5 THE COURT: It's a little late to make an
6 objection. You have to make a contemptuous
7 objection. I can't rule after the fact. The
8 witness is gone. There is no way to correct it.

9 MS. ARORA: I understand, Your Honor.

10 THE COURT: Objections have to be made
11 contemporaneously. I can't go back and figure out
12 what they said and rule on it. It is not fair to
13 the State and not fair to the Court. In addition
14 to that, even if I were to sustain your objection,
15 the State has the ability to rehabilitate their
16 witness, which they would not be able to do because
17 the objection was not made contemporaneously.

18 Anything else before we break for lunch from
19 the State?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: From the defense?

22 MS. ARORA: No, Your Honor.

23 THE COURT: You all have a good lunch. See
24 you at 2 o'clock.

25 (A lunch recess was taken.)

MARIA HEFFRON - REDIRECT EXAMINATION.

1 THE COURT: I appreciate you all being so
2 patient and indulgent with us as me and my staff
3 raided the bailiff's closet to get some lunch. And
4 they are so accommodating. I appreciate them.

5 We broke with you all about 12:35, and we did
6 not finish until 2:05. So I needed to give my
7 staff a little break. I needed to give the court
8 reporter a break from the computer, and I need to
9 give myself a little break. So I appreciate you
10 all indulging us and being so very patient. That
11 took a whole lot longer than we expected, but, you
12 know, it is what it is. So I appreciate it.

13 So who is your next witness, Mr. Simpson?

14 MR. SIMPSON: My next witness, Your Honor,
15 will be Melissa Hodge from the Charleston County
16 Detention Center.

17 THE COURT: Is she in the courtroom, or do
18 you need to go find her?

19 MR. SIMPSON: She's right outside. And I
20 have a couple quick housekeeping matters, if I may?
21 You asked me to do some redactions --

22 THE COURT: Redactions. Let me see. Did you
23 show them to Ms. Arora?

24 MR. SIMPSON: I did. I did. This was
25 previously -- un-redacted is marked as State's 62,

MARIA HEFFRON - REDIRECT EXAMINATION.

1 and I can put it as a new exhibit.

2 THE COURT: Actually, I prefer -- it will
3 become a Court exhibit. So you need to keep your
4 62, and I'll have this marked as Court's exhibit
5 that correlates with 62. Does that make sense what
6 I'm saying?

7 MR. SIMPSON: Yes.

8 THE COURT: You have a sticker on it already.
9 So this is the un-redacted?

10 MR. SIMPSON: It's redacted -- you are
11 correct.

12 THE COURT: Oh, I see what you are saying. I
13 got you. Let's deal with them in chronological --
14 so that's not original State's 62.

15 MR. SIMPSON: No. No. It is the new.

16 THE COURT: Where is the original 62? I will
17 do them one at a time. So this is State's 62
18 original?

19 MR. SIMPSON: Original, Your Honor.

20 THE COURT: Let me see the redacted 62.

21 MS. ARORA: May I approach, Your Honor?

22 THE COURT: Sure.

23 So this was the original 62. Let me see the
24 redacted. So that will become 62, and this will
25 become a Court's exhibit. Leave 62 on there, but

MARIA HEFFRON - REDIRECT EXAMINATION.

1 put a Court's exhibit sticker next to it so we know
2 which one correlates with which one.

3 MR. SIMPSON: 63 is extracted from Facebook
4 Messenger. This it is the new 63.

5 THE COURT: Okay. So this would be -- what
6 was this original number?

7 MR. SIMPSON: This is the original 63.

8 THE COURT: So write 63 on there, and this
9 will become Court's exhibit.

10 Do the same thing, madam court reporter. Put
11 the original number next to the Court's exhibit so
12 we know which correlates.

13 MR. SIMPSON: This is the original State's
14 64. All I had to do is cut the top off, so I'll
15 continue using it as State's 64.

16 THE COURT: Yeah, that takes off --

17 MR. SIMPSON: Just a name from the top, so
18 same exhibit, and we cut the top off.

19 THE COURT: What number will that be?

20 MR. SIMPSON: This will be 64. And, I'm
21 sorry, that's the second page --

22 THE COURT: So we don't have the un-redacted
23 64?

24 MR. SIMPSON: Like a kindergartner, I cut it
25 in half.

MARIA HEFFRON - REDIRECT EXAMINATION.

1 THE COURT: Oh, that is different. I need
2 the original of 64, un-redacted, to mark it as a
3 Court's exhibit. So you can bring it back.

4 MR. SIMPSON: I'll have to print another one.

5 THE COURT: That's fine. So I'll need to
6 mark that when you bring it.

7 MR. SIMPSON: The other exhibit we have
8 discussed, I have redacted in compliance with the
9 Court's instructions --

10 THE COURT: What number is that?

11 MR. SIMPSON: 68. Here is the original.

12 THE COURT: That will be marked as a Court's
13 exhibit, and then 68 will be marked.

14 MR. SIMPSON: And 68 has not been moved into
15 evidence.

16 THE COURT: Okay. We'll deal with that at
17 the appropriate time. That will be marked as a
18 Court's exhibit.

19 So which one is this one?

20 MR. SIMPSON: That is the second page of Page
21 63. One exhibit had two pages, State's 63.

22 THE COURT: So where is the original?

23 MR. SIMPSON: That is the original.

24 THE COURT: I mean where is the redacted?

25 MR. SIMPSON: The new one is now one page

MARIA HEFFRON - REDIRECT EXAMINATION.

1 because I took so much off of it. This used to be
2 two pages.

3 THE COURT: Oh, I see what you did. So this
4 needs to be marked as a Court's exhibit.

5 MR. SIMPSON: It is --

6 THE COURT: Oh, I see now. I see. That was
7 the second page of the two pages, but when you
8 redacted it, it became one page?

9 MR. SIMPSON: It became one page, yes.

10 THE COURT: Okay.

11 MR. SIMPSON: As a second matter, I discussed
12 the issue with Ms. Arora, and I believe she's
13 preserving all pretrial issues, but we're okay with
14 not mentioning the date of the jail call.

15 THE COURT: So you all worked out -- I need
16 to hear it right quick.

17 MR. SIMPSON: Oh, certainly.

18 THE COURT: What number would that be?

19 MR. SIMPSON: That will be a file on State's
20 79.

21 THE COURT: Is that all there is on there?

22 MR. SIMPSON: No. There is Ring videos that
23 we discussed pretrial on yesterday. But 79-A is
24 the jail call.

25 THE COURT: And 79-B is the Ring videos.

MARIA HEFFRON - REDIRECT EXAMINATION.

1 MR. SIMPSON: 79-B, C, D and E are the four
2 Ring videos.

3 THE COURT: Are they coming in through a
4 different witness?

5 MR. SIMPSON: They are coming in through the
6 same witness.

7 THE COURT: Through who? So who is 79-B, C,
8 D, and E --

9 MR. SIMPSON: Sorry, that is not right.
10 79-A, B, C, D, and E are all coming in through
11 Detective Wilson.

12 THE COURT: The phone call?

13 MR. SIMPSON: The jail call, yes. We're
14 going to lay down some testimony through the jail,
15 and then we're going to actually publish it and
16 enter it through Detective Wilson, who can just add
17 some context to the call. There is going to be
18 some testimony about the voice recognition software
19 at the jail and the number associated with Karseem
20 Hardaway.

21 THE COURT: I thought you were just going to
22 play it and not make any reference to the jail or
23 the date?

24 MR. SIMPSON: Ms. Arora preferred to take a
25 different route.

MARIA HEFFRON - REDIRECT EXAMINATION.

1 THE COURT: So tell me what you all agreed
2 to.

3 MS. ARORA: Your Honor, my pretrial motion
4 was that no mention of prior arrests. We agreed
5 that there be no mention of prior arrests. Now, I,
6 obviously, would object to this phone call coming
7 in.

8 THE COURT: But I need to hear it so I can
9 make a decision about that and hear argument.
10 Because what I instructed you all to do is assume
11 it is coming in and figure out how you wanted it to
12 come in.

13 MS. ARORA: And no mention of the date of
14 this phone call.

15 THE COURT: So why does he need to testify
16 about him being in jail and all of that stuff? And
17 why do we need this?

18 MR. SIMPSON: If there is no objection to not
19 having her --

20 THE COURT: I don't know. Let's see how this
21 goes.

22 MR. SIMPSON: I'm playing 79-A, Your Honor.

23 (Published to the Court.)

24 MR. SIMPSON: There's some silent moments of
25 redaction.

MARIA HEFFRON - REDIRECT EXAMINATION.

1 (Published to the Court.)

2 MR. SIMPSON: That's all, Your Honor.

3 THE COURT: So what is the purpose of the
4 first two calls?

5 MR. SIMPSON: Your Honor, that is one call.
6 The moments of silence are when I just redacted
7 things.

8 THE COURT: So what purposes are you seeking
9 to introduce it?

10 MR. SIMPSON: As you've seen, Your Honor, and
11 we discussed the conversation on Facebook, that was
12 Detective Wilson pulled those Facebook records from
13 there because he heard -- as we can hear -- and let
14 me know -- I e-mailed this to the Court this
15 morning because in this room, with the AC, it is
16 difficult to hear. It could not be more clear if
17 you listen to it in a closed, confined space. But
18 Karseem says, I need you to log in my Facebook
19 account. She said, What is your Facebook account?
20 He says, Islandboy4. She says, what's your
21 password? He then --

22 THE COURT: He said that on the first two
23 phone calls?

24 MR. SIMPSON: There is only one phone call,
25 Your Honor.

MARIA HEFFRON - REDIRECT EXAMINATION.

1 THE COURT: The first two clips. I got that,
2 but what does the first clip say?

3 MR. SIMPSON: The first clip he describes his
4 Facebook page, islandboy4, and gives his Facebook
5 password number. Detective Wilson served a search
6 warrant for that Facebook account, which returned
7 all of the Facebook records that had been used in
8 this case, which has his pictures on it and under
9 the name of islandboy4, and it has his real name,
10 Karseem Hardaway, and photographs of him, and the
11 Facebook Messenger records that we previously
12 discussed.

13 There is a gap there where Tiffany Hardaway,
14 who he is talking to, talks a lot. And I know Your
15 Honor's position on that, so that is why there is a
16 gap there. I excluded that. They then moved on
17 from Facebook to the suggestion that -- what his
18 Apple ID is to delete his Apple ID. He gives his
19 Apple ID. It is first name, last name, number 30.
20 She said, Your real first name?

21 THE COURT: I heard that part. I'm talking
22 about the very first two.

23 MR. SIMPSON: It talks about the Facebook,
24 and then the second section talks about the Apple
25 ID, which is also the source of the search warrant,

MARIA HEFFRON - REDIRECT EXAMINATION.

1 and also the search of the incriminating evidence.

2 THE COURT: It is your contention that the
3 record is that clear? Because he can't say what he
4 thinks he said.

5 MR. SIMPSON: I'll let it speak for itself.

6 THE COURT: They are self-authenticating.
7 They speak for themselves. They say what they say.

8 MR. SIMPSON: That's right. And in closing
9 I'm intending to offer my take on that, but I'll
10 leave it to the jury to listen to that in their
11 confined space.

12 And I should say, just to be transparent, I
13 don't want to run afoul, Your Honor. I think I
14 will say to Detective Wilson, Why did you serve a
15 search warrant on Facebook for this particular
16 account? And I believe his answer will be, Because
17 I heard the defendant describe that account on a
18 phone call. The idea that that would just be a
19 random hit would be unlikely.

20 THE COURT: I'm confused why you are seeking
21 to introduce through instead of Ms. High, who is
22 the person that keeps the record?

23 MR. SIMPSON: Happy to produce it through Ms.
24 High, Your Honor.

25 THE COURT: No. I'm just curious, for what

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1 purposes have you called Ms. High as a witness?

2 MR. SIMPSON: To introduce the phone call,
3 Your Honor.

4 THE COURT: To authenticate them as a
5 business record?

6 MR. SIMPSON: Yes, Your Honor. And to
7 describe a little -- to describe to the jury about
8 how --

9 THE COURT: How they record calls and all of
10 that?

11 MR. SIMPSON: Yes, ma'am.

12 THE COURT: So what is your objection, Ms.
13 Arora?

14 MS. ARORA: Your Honor, first objection is to
15 some of the hearsay statements made by the female
16 and --

17 THE COURT: What does she say that is hearsay
18 other than repeating what he's saying back to her?

19 MS. ARORA: The one I specifically have a
20 problem is, Your shit says the same shit mine says,
21 two factor authentication. And that is near the
22 last clip.

23 THE COURT: But is there something after --
24 don't they say something after that?

25 MR. SIMPSON: She says it won't delete for 30

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1 days, and he says, Oh, shit.

2 THE COURT: And what other objection do you
3 have?

4 MS. ARORA: Your Honor --

5 THE COURT: Are they offering it for the
6 truth, or just as part of the res gestae of the
7 conversation where he is making statements against
8 interest?

9 MS. ARORA: I mean, I would say they are
10 trying to offer it for the truth of the matter
11 asserted.

12 THE COURT: Being?

13 MS. ARORA: Being the two factor --

14 THE COURT: Phone or Facebook -- although, I
15 don't entertain social media, so I have no
16 independent knowledge of it. I see no use of it,
17 but it is probably a reflection of my age.
18 Nonetheless, I think anybody with any device these
19 days -- for example, my computer. I have to have a
20 phone with me in the courtroom because I have to
21 have two fact authentication. It kicks me out
22 after 40 minutes, and I have to do it again. I
23 hate having that phone with me, but for security
24 purposes it is the only way we can access our
25 devices.

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1 So I think anybody that has any sort of
2 electronic device -- whether it is an iPhone,
3 android phone, computer, tablet -- now has to have
4 some -- if you are working in any structured
5 environment or who have elected, you can have a two
6 factor authentication to get into anything. I
7 don't know that is beyond the ordinary knowledge,
8 and I don't know anyone -- except my daddy -- that
9 still has a flip phone that doesn't have that level
10 of electronic involvement that knows they need two
11 factor authentication to access most of their
12 devices.

13 So I'm trying to figure out how is that
14 prejudicial to your client? I mean, it is within
15 the common knowledge of everybody that uses --
16 don't i-Phones require two factor authentication?
17 I don't really know. I mean, I don't know. You
18 can enlighten me. I think you have to have two
19 factor authentication using your face and a code or
20 something else. Like I said, if you forget, you
21 have to do a hard reset.

22 MS. ARORA: I understand the --

23 THE COURT: I guess I'm trying to figure out
24 what the basis of the objection is?

25 MS. ARORA: And also these people weren't

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1 here -- unidentified as male and female -- are not
2 here for me to cross about this conversation.

3 THE COURT: Well, your client is here, and
4 that is clearly him on the telephone. He wouldn't
5 be able to use the authentication system at the
6 jail. Pin numbers are highly guarded and
7 protected. I don't see him giving his pin to
8 someone else, and I assume Ms. High is going to
9 testify about the authentication system at the
10 jail. So your client is not going to authenticate
11 it's him. It's an admission against interest.

12 Now, his sister -- and I assume that's his
13 sister he's talking to -- the issue becomes, one,
14 it is clearly out-of-court statements, but are they
15 really being offered for their truth or providing
16 continuity and context of this conversation? And
17 most of what is being said, your client is saying.
18 She's merely repeating what he's saying to her. So
19 I don't know that that is really, in that sense,
20 being offered for its truth.

21 Now, if they were having some independent
22 conversation where she said, Listen, give me your
23 -- I need all of your electronic accounts, I need
24 all of your passwords because I'm going to delete
25 them, that is -- probably not the best analogy, but

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1 that is a little different then -- or even if he
2 was charged with a separate and independent crime
3 and they had a phone conversation where she says --
4 that indicates on some level of cooperation, some
5 level of agreement, conspiracy, and common
6 providence, and you weren't able to cross examine
7 her, that would clearly be offered for its truth,
8 and it would be inculcating him in some independent
9 criminal enterprises. But I don't think that is
10 what we're dealing with.

11 But I'll listen to the calls again, because I
12 don't hear them as clearly as you all hear them,
13 apparently. I'm going to listen to them again, but
14 I wanted to hear argument before I did that.

15 MS. ARORA: Your Honor, there is also a
16 problem about the 30 days that it takes for it to
17 be deleted as being offered to prove --

18 THE COURT: She's doing whatever she's doing
19 at his instruction, and she's merely relaying it to
20 him.

21 Do you all plan to call Ms. Hardaway as a
22 witness?

23 MR. SIMPSON: No, Your Honor. We've been
24 told that she's just going to assert a blanket
25 Fifth Amendment.

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1 THE COURT: Yeah, you can't call her for that
2 purpose. You know, she's charged with a crime,
3 that is her prerogative. But you have to assume
4 that she would be forthcoming anyway, even if she
5 wouldn't assert a Fifth Amendment privilege.

6 MR. SIMPSON: On this point, I would add --

7 THE COURT: Remember (inaudible) I don't have
8 any independent recollection, but I assume it would
9 be something similar.

10 MR. SIMPSON: I was just going to add that
11 there is long gaps of silence in this clip because
12 I have done my best to remove anything remotely
13 that could be considered a statement by her, that's
14 why there is so many gaps of silence.

15 THE COURT: So you are saying this is one
16 phone conversation?

17 MR. SIMPSON: One continual phone
18 conversation.

19 THE COURT: (inaudible) Irrelevant parts of
20 that conversation?

21 MR. SIMPSON: I thought them to be relevant,
22 but I was going to err on the side of redacting as
23 much --

24 THE COURT: (Inaudible).

25 MR. SIMPSON: Ms. Hardaway maintained -- just

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1 like Your Honor said, just allow the listener to
2 understand that it wasn't just gibberish when he
3 said numbers and iPhone and code words and stuff
4 like that that they're talking about, social media
5 account.

6 To your point, Your Honor, I also had a
7 really hard time hearing it in it. I had no
8 difficulty at all hearing it in my office.

9 MS. ARORA: Your Honor, I have headphones.

10 MR. SIMPSON: I also e-mailed your staff the
11 identical clip this morning.

12 THE COURT: You can take a seat, I'm sorry.
13 I should have told you that earlier.

14 Did you finish making your objections, Ms.
15 Arora?

16 MS. ARORA: Yes, Your Honor.

17 THE COURT: And tell me again what the basis
18 of the objection is for the jail call?

19 MS. ARORA: Your Honor, obviously, my first
20 objection is under hearsay.

21 THE COURT: Your client -- it's his
22 statement, so it's not hearsay. It is a statement
23 made by opponent, and in addition to that, it is
24 clearly admissions against interest. Even if it
25 were to be considered hearsay, it's an exception.

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1 MS. ARORA: My second objection was hearsay
2 for the other individuals, which you've addressed.

3 THE COURT: Yeah, I listened very intently to
4 comments, and they really are -- they give context
5 to the conversation they are having. Without those
6 comments, the conversation wouldn't make sense.
7 And I do not perceive that they are being offered
8 for the truth. They are not inculpatory in any
9 way, and they are not prejudicial to your client.

10 In 99.9 percent of what she's said, she's
11 merely repeating what he is saying or asking him to
12 repeat what he said.

13 There is a statement where she said -- the
14 same as his, which you could imply she was deleting
15 hers as well. But I think we've already had
16 testimony about that, that in the presence of the
17 officer, she was attempting to delete Ring videos.
18 Again, it is not being offered for its truth, but
19 it gives context to the comments that he's making,
20 which are clearly against his interest.

21 All right. Is there any other objection to
22 the admission of the phone conversation, the
23 redacted phone conversation, from the defense?

24 MS. ARORA: No, Your Honor. Just for the
25 record, the State and I stipulated that no mention

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1 of --

2 THE COURT: Now that we are on that subject,
3 just to make the record clear, for what purpose are
4 you offering the statements, Mr. Simpson.

5 MR. SIMPSON: Thank you, Your Honor. To both
6 add authentication to the fact that the social
7 media accounts do, in fact, belong to Karseem
8 Hardaway, and to furthermore make the inculpatory
9 inferences for his desire to delete them.

10 THE COURT: Okay. And have you all talked
11 about -- as I instructed at lunch -- as to how and
12 what context they would be presented? In other
13 words --

14 MR. SIMPSON: Yes, Your Honor.

15 THE COURT: -- a reference when he was in
16 jail when he made them, the date, or otherwise?
17 You all worked that out?

18 MR. SIMPSON: Yes, Your Honor. On those
19 points, without withdrawing her pretrial
20 objections --

21 THE COURT: That goes without saying. They
22 are ruled on and preserved, but I'll give her an
23 opportunity to structure how it comes in. It's
24 only fair to the defendant.

25 MR. SIMPSON: My thoughts, and I believe Ms.

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1 Arora agrees, is that the jury will have a clear
2 indication that he was arrested and went to jail.
3 So the fact that they are jail calls are not going
4 to be confusing to them.

5 What we're going to do is just not mention
6 the date of the calls, whatsoever. The witness has
7 been so instructed, and that way there will be no
8 implication of any arrest that is different than
9 what he stands in trial for today. We mentioned on
10 the record the circumstances of when these calls
11 were taken, but the jury won't know that, and has
12 no reason to make that inference.

13 THE COURT: And so that I'm -- and that is
14 your understanding, Ms. Arora?

15 MS. ARORA: Yes, Your Honor.

16 THE COURT: And so that I'm clear, this is
17 State's 79-B, C, D, and E?

18 MR. SIMPSON: State's 79-A.

19 THE COURT: I'm sorry. The others are the
20 Ring. I couldn't read my own notes.

21 So these are the statements, and they will
22 come in through the witness, Ms. High, who is the
23 records custodian at the jail for this purpose.

24 So that we are all on the same page, the
25 recordings will say what they say. There will be