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Aug 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN COLE CARROLL,

APPELLANT.

APPELLATE CASE NO. 2024-000722

RECORD ON APPEAL

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INDEX

INDEX	i
MOTION IN LIMINE TO SUPPRESS CELL TOWER RECORDS	1
AMENDED MOTION IN LIMINE TO SUPPRESS DEFENDANT AND VICTIM PHONE RECORDS	14
MOTION IN LIMINE TO SUPPRESS PHONE RECORDS FROM VICTIM	41
MOTION IN LIMINE TO SUPPRESS GSR	55
MOTION IN LIMINE TO SUPPRESS REFERENCES TO ALLEGATIONS OF PRIOR BAD ACTS OF ANY OTHER OFFENSES.....	56
MOTION IN LIMINE TO SUPPRESS PHONE RECORDS.....	58
TRIAL TRANSCRIPT DATED APRIL 22, 2024	72
DEFENSE MOTION TO SUPPRESS DEFENDANT AND VICTIM PHONE RECORDS....	74
STATE’S REBUTTAL REGARDING VICTIM’S CELL PHONE RECORD ADMISSIBILITY	76
COURT DEFERS RULING	79
<i>IN-CAMERA</i> TESTIMONY	
CHARLES SHIPP	
Direct Examination by Ms. Swanson	84
Cross-Examination by Mr. Mathews.....	89
Court’s Examination.....	94
DEFENSE MOTION TO SUPPRESS CELL TOWER RECORDS.....	97
<i>IN-CAMERA</i> TESTIMONY	
CHARLES SHIPP	
Direct Examination by Ms. Swanson	100
STATE’S ARGUMENT UNDER GOOD-FAITH EXCEPTION	102
COURT DEFERS RULING	103
COURT’S RULING REGARDING ADMISSIBILITY OF A PRIOR BAD ACT	104

COURT’S RULING DENYING DEFENSE MOTION TO SUPPRESS DEFENDANT AND VICTIM PHONE RECORD.....	106
COURT’S RULING DENYING DEFENSE MOTION TO SUPPRESS CELL TOWER RECORDS	109
TRIAL TRANSCRIPT DATED APRIL 23, 2024	110
OPENING STATEMENT BY MS. SWANSON	111
OPENING STATEMENT BY MR. MATHEWS	113
TESTIMONY	
ANGELA STALLINGS	
Direct Examination by Ms. Swanson	117
Cross-Examination by Mr. Mathews.....	121
COURT’S RULING REGARDING PINGING	138
TESTIMONY	
KEVIN BAKER	
Direct Examination by Ms. Swanson	142
Cross-Examination by Mr. Mathews.....	144
SHAMEKA HOLLOWAY	
Direct Examination by Ms. Swanson	148
BRIAN ACKERMAN	
Direct Examination by Ms. Swanson	157
ROSS HANTZ	
Direct Examination by Ms. Swanson	160
Cross-Examination by Mr. Mathews.....	174
Redirect Examination by Ms. Swanson	182
CARMAN HARTLEY	
Direct Examination by Ms. Swanson	183
Cross-Examination by Mr. Mathews.....	193
JULIE SWANK	
Direct Examination by Ms. Swanson	195
Cross-Examination by Mr. Mathews.....	200

ALFRED LEWIS	
Direct Examination by Ms. Swanson	201
Cross-Examination by Mr. Mathews.....	205
WHITLEE FISK	
Direct Examination by Ms. Swanson	207
DEFENSE MOTION TO SUPPRESS CELL PHONE EVIDENCE	209
COURT’S RULING DENYING DEFENSE MOTION.....	215
TESTIMONY	
WHITLEE FISK	
Continued Direct Examination by Ms. Swanson	218
KYLE BEALER	
Direct Examination by Ms. Swanson	221
<i>Voir Dire</i> Examination by Mr. Mathews.....	226
Continued Direct Examination by Ms. Swanson	230
Cross-Examination by Mr. Mathews.....	233
Redirect Examination by Mr. Mathews	242
CHARLES SHIPP	
Direct Examination by Ms. Swanson	244
Cross-Examination by Mr. Mathews.....	267
Redirect Examination by Ms. Swanson	281
Recross-Examination by Mr. Mathews	282
COURTNEY DANIELS	
Direct Examination by Ms. Swanson	284
Cross-Examination by Mr. Mathews.....	286
Redirect Examination by Ms. Swanson	288
DYLAN HIGHTOWER	
Direct Examination by Ms. Swanson	289
Cross-Examination by Mr. Mathews.....	301
Redirect Examination by Ms. Swanson	307
TRIAL TRANSCRIPT DATED APRIL 24, 2024	309
TESTIMONY	
SHAMEKA HOLLOWAY	
Direct Examination by Ms. Swanson	310

PAUL GREER	
Direct Examination by Ms. Swanson	311
<i>Voir Dire</i> Examination by Mr. Mathews.....	313
Continued Direct Examination by Ms. Swanson	314
Cross-Examination by Mr. Mathews.....	325
DOCTOR NICK BATALIS	
Direct Examination by Mr. Swanson	333
<i>Voir Dire</i> Examination by Mr. Mathews.....	336
Continued Direct Examination by Ms. Swanson	336
Cross-Examination by Ms. Anderson	341
SAMUEL STEWART	
Direct Examination by Mr. Mathews	344
Cross-Examination by Ms. Swanson.....	359
Redirect Examination by Mr. Mathews	361
DEFENSE RESTS	362
CLOSING ARGUMENT BY MS. SWANSON	363
CLOSING ARGUMENT BY MR. MATHEWS.....	373
CLOSING ARGUMENT IN REPLY BY MS. SWANSON.....	378
JURY CHARGE ON THE LAW	379
VERDICT	397
SENTENCING	509
INDICTMENT AND SENTENCE SHEET	402
CERTIFICATE OF COUNSEL	406

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT 8 (PARKING LOT FOOTAGE), STATE’S EXHIBIT 17 (SNAPCHAT VIDEO FOOTAGE), STATE’S EXHIBIT 23 & 24 (TEXT MESSAGES), STATE’S EXHIBIT 25 & 26 (HISTORICAL CELL SITE ANALYSIS).

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

STATE

Vs.

JUSTIN CARROLL,

Defendant.

IN THE COURT OF GENERAL SESSIONS

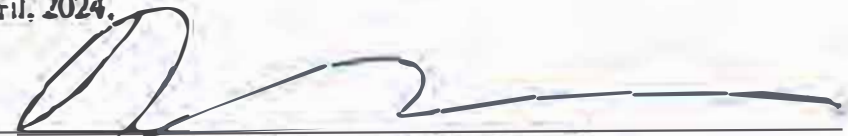
INDICTMENT No.: 2021GS1500472

Motion in Limine to Suppress Cell Tower Records

FILED
APR 22 2024
CLERK OF COURT
PATRICIA GRANT

COMES NOW the Defendant, and Moves for an Order in Limine to Suppress Cell Tower Phone Records, and as grounds therefore alleges that the affidavit in support of the Search Warrant (Exhibit "A") is unsigned by the affiant in violation of Section 17-13-140, S.C. Code (Exhibit "B"), and is therefore an "unfinished paper" not effective as a warrant, and as the fruit of an illegally seized phone in violation of the U.S. and South Carolina Constitutions.. In State v. Covert, (Exhibit "C") the South Carolina Supreme court held that the omission of a judge's signature rendered a search warrant null as an "unfinished paper" 382 S.C. 205, 675 S.E.2d 740 (2009). You can't have an affidavit without both the signature of the affiant, and the certification of the judge or notary, so the "warrant" would remain an unfinished paper, ineffective as a search warrant.

Respectfully Submitted the 22nd Day of April, 2024.



David S. Mathews, Assistant Public Defender
Colleton County Division
14th Circuit Public Defender's Office
319 North Lucas Street
Walterboro, SC 29488
(843)549-1633

Exhibit "A"

STATE OF SOUTH CAROLINA

County of COLLETON

SEARCH WARRANT

Date 6/2/2021
CASE# 2100743
Officer: Det. Charles Shipp

This Search Warrant shall not be valid for more than ten days from 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 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 prominent place on such premises.

W. B. Stubbins S.C.
6-3 2021.

Deborah B. Kane O'Jura (U.S.)
 Signature of Judge

STATE OF SOUTH CAROLINA COUNTY OF COLLETON

SEARCH WARRANT AFFIDAVIT:

Personally appeared before me, the affiant, Detective Charles Shipp 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 and is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all text messages, incoming and outgoing call logs, and tower information from 0000 hrs on May 22, 2021 to 0500 hrs on November 23, 2019, that have been saved/secured on the Verizon cellular phones with the phone numbers [REDACTED] as well as the following information; 1) Names (including subscriber names, user names, and screen names); 2) Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses); 3) Local and long distance telephone connection records; 4) Records of session times and durations; 5) Length of service (including start date) and types of service utilized; 6) Telephone or instrument numbers (including MAC addresses, Electronic Serial Numbers ("ESN"), Mobile Electronic Identity Numbers ("MEIN"), Mobile Equipment Identifier ("MEID"), Mobile Identification Numbers ("MIN"), Subscriber Identity Modules ("SIM"), MSISDN, International Mobile Subscriber Identifiers ("IMSI"), or International Mobile Station Equipment Identities ("IMEI")); 7) Other subscriber numbers or identities (including temporarily assigned network addresses and registration Internet Protocol ("IP") addresses); 8) Means and source of payment for such service (including any credit card or bank account number) and billing records. Records of user activity for each connection made to or from the Account(s),

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT

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

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**

Custodian of Records, Celco Partnership Verizon, 180 Washington Valley Road, 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

Any and all incoming and outgoing text messages, incoming and outgoing call logs, real time tool report (RTTR), cell towers and tower site listings from 0000 hrs on May 22, 2021 to 0500 hrs on May 23, 2021, that have been saved/secured on the Verizon cellular phones with the phone number [REDACTED] as well as the following information; 1) Names (including subscriber names, user names, and screen names); 2) Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses); 3) Local and long distance telephone connection records; 4) Records of session times and durations; 5) Length of service (including start date) and types of service utilized; 6) Telephone or instrument numbers (including MAC addresses, Electronic Serial Numbers ("ESN"), Mobile Electronic Identity Numbers ("MEIN"), Mobile Equipment Identifier ("MEID"), Mobile Identification Numbers ("MIN"), Subscriber Identity Modules ("SIM"), MSISDN, International Mobile Subscriber Identifiers ("IMSI"), or International Mobile Station Equipment Identities ("IMEI")); 7) Other subscriber numbers or identities (including temporarily assigned network addresses and registration Internet Protocol ("IP") addresses); 8) Means and source of payment for such service (including any credit card or bank account number) and billing records. Records of user activity for each connection made to or from the Account(s), including log files; messaging logs; the date, time, length, and method of connections; data transfer volume; user names; and source and destination Internet Protocol addresses; 9) Information about each communication sent or received by the Account(s), including the date and time of the communication, the method of communication, and the source and destination of the communication (such as source and destination email addresses, IP addresses, and telephone numbers); 10) All data about which "cell towers" (i.e., antenna towers covering specific geographic areas) and "sectors" (i.e., 120-degree face of the towers) received a radio signal from each cellular telephone or device assigned to the Account(s) and any related data which can assist in identification of servicing cell site or other information that would aid in establishing location or approximate location of specified cellular account(s) for the time frames listed; 11) All Per Call Measurement (PCMD), historical cell tower data, E-911 locate data, and location services related information from each/all cellular telephone(s) or device(s) assigned to the Account(s); and 12) All Network Event Locating System Data

including log files, messaging logs; the date, time, length, and method of connections; data transfer volume; user names; and source and destination Internet Protocol addresses; 9) Information about each communication sent or received by the Account(s), including the date and time of the communication, the method of communication, and the source and destination of the communication (such as source and destination email addresses, IP addresses, and telephone numbers); 10)

All data about which "cell towers" (i.e., antenna towers covering specific geographic areas) and "sectors" (i.e., 120-degree face of the towers) received a radio signal from each cellular telephone or device assigned to the Account(s) and any related data which can assist in identification of servicing cell site or other information that would aid in establishing location or approximate location of specified cellular account(s) for the time frames listed; 11) All Per Call Measurement (PCMD), historical cell tower data, E-911 locate data, and location services related information from each/all cellular telephone(s) or device(s) assigned to the Account(s); and 12) All Network Event Locating System Data

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

**Custodian of Records, Celco Partnership Verizon, 180 Washington Valley Road,
Bedminster, NJ 07921**

Case # 2100743

Search Warrant Affidavit

Pg. 5

**REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES
(continued)**

**REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

On May 22, 2021 at approximately 2214 PM, officers with the Walterboro Police Department responded to a report of shots fired at the Forest Pointe Apts. Officers arrived on scene to find the victim deceased in her vehicle. Further investigation revealed that the victim had a recent report (2100034) with the Walterboro Police Department in reference to domestic violence. The offender in that case is also the offender in this case and was identified through video footage during the time of the incident. The offender was the only individual seen in the area near the victim's vehicle.

Sworn to and Subscribed before me

this 3rd day of June 2021.

Deborah L. B. O'Leary (L.S.)
Signature of Judge

Affiant Signature

Address 242 Hampton St.

WALTERBORO, SC 29488

Phone (843) 549-1811

Case # 2100743

RETURN

I received the attached Search Warrant June 14, 2021, and have executed it as follows:

On June 14, 2021 at 10:00 a'clock AM I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with at the place of search (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:

Data and records from phone number [REDACTED] as described in the body of the search 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 the 14th day of June, 2021

[Signature]
(Signature of Officer Executing Warrant)

Deborah Blake O'Leary

Case # 2100743



**SC Code 17-13-140 Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized
(South Carolina Code of Laws (2021 Edition))**

§ 17-13-140. Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized

Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by Section 44-53-520.

The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed to any peace officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division, and shall be returnable to the issuing magistrate. In case of a warrant issued by a judge of a court of record, it shall be returnable to a magistrate having jurisdiction of the area where the property is located or the person to be searched is found. If any warrant is issued by any municipal judicial officer to municipal police officers, the return shall be made to the issuing municipal judicial officer. Any warrant issued shall command the officer to whom it is directed to forthwith search the person or place named for the property specified.

Any warrant issued hereunder shall be executed and return made only within ten days after it is dated. The officer executing the warrant shall make and deliver a signed inventory of any articles seized by virtue of the warrant, which shall be delivered to the judicial officer to whom the return is to be made, and if a copy of the inventory is demanded by the person from whose person or premises the property is taken, a copy of the inventory shall be delivered to him.

This section is not intended to and does not either modify or limit any statute or other law regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

History:

1969 (56) 217; 1966 (54) 2268; 1963 (53) 1821; 1962 Code Section 17-271.

Exhibit "C"



State v. Covert, 675 S.E.2d 740, 382 S.C. 208 (S.C. 2009)

675 S.E.2d 740

The STATE, Petitioner/Respondent,
v.
Kevin COVERT, Respondent/Petitioner.
No. 26632.

Supreme Court of South Carolina

Heard January 21, 2009.

Decided April 13, 2009.

[675 S.E.2d 741]

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Sally W. Elliott and Senior Assistant Attorney General Norman Mark Rapoport, all of Columbia, and Robert Mills Adair, of Greenville, for Petitioner/Respondent.

Katherine Carruth Link, of West Columbia, for Respondent/Petitioner.

Justice PLEICONES:

We granted certiorari to review the Court of Appeals decision in *State v. Covert*, 368 S.C. 188, 628 S.E.2d 481 (Ct.App.2006) and now affirm, as modified, that court's decision to grant respondent a new trial. In a split decision, Judges Short and Anderson found reversible error in the jury's possession of a statute during deliberations, in addition, Judge Short found that evidence should have been suppressed, and Judge Anderson found reversible error in the verdict form.

We hold, as did Judge Short, that an unsigned search warrant is invalid, and agree with Judge Anderson that when a verdict form is submitted to a jury in a criminal case, it must affirmatively offer a "not guilty" option. Finally, while we agree with Judges Short and Anderson that it was error to permit this jury to have a written version of the trafficking statute with it during deliberations, we would not find sufficient prejudice from that error alone to warrant reversal.

ISSUES

- 1) Did Judge Short err in holding that an unsigned search warrant is invalid?
- 2) Did Judge Anderson err in finding the verdict form here was so prejudicial as to require reversal?
- 3) Did permitting the jury to have a written version of the trafficking statute with it during deliberations require reversal?

ANALYSIS

1. Warrant

The search warrant in this case is signed by the magistrate, and dated September 26, 2002; the accompanying two-page affidavit is signed by her on each page, and both these signatures are dated September 26, 2002. The return is signed and dated September 27, 2002. It is undisputed that the warrant was obtained and served on September 26, 2002.

[675 S.E.2d 742]

At trial, respondent contended that the warrant was unsigned when it was served, that it was therefore invalid, and that accordingly the evidence seized pursuant to the search should be suppressed. Respondent argued that, without the magistrate's signature, the warrant was not issued within the meaning of South Carolina's search warrant statute, S.C.Code Ann. § 17-13-140 (1985). The trial judge refused to suppress the evidence even though he found the warrant had not been signed before it was served, holding that the search warrant statute was subject to a "good faith" exception, and that such an exception was applicable here.

On appeal, Judge Short held that the search warrant was not issued within the meaning of the statute because it lacked a timely signature. Judge Short also held there was a good faith exception to the statutory warrant procedures, but that it was inapplicable here. We agree that the absence of the magistrate's signature at the time the warrant was served invalidates it, but do not reach the issue whether there exists a "good faith" exception to the statutory warrant requirements since we find, as explained below, that no warrant was ever issued.

We have held, in the context of an arrest warrant, that such a warrant is not lawful where the issuing judicial officer failed to sign the warrant on the space provided on the warrant form. *Davis v. Sanders*, 40 S.C. 507, 19 S.E. 138 (1894). Although the State would characterize such an omission as merely procedural or ministerial, we disagree. The *Davis* Court gave a persuasive explanation of the signature requirement, albeit in the context of an arrest warrant:

[W]hen it is remembered that a sheriff or other officer, who undertakes to arrest a citizen under a warrant, is bound to show his warrant, if demanded, to the person proposed to be arrested, and if he refuses to do so the arrest may be lawfully resisted [internal citation omitted], we think it would be very dangerous to the peace of society for the court to hold that a paper, which shows on its face that it is an unfinished paper ... would be a sufficient justification for an arrest.

The same policy considerations apply to a search warrant,² and thus the lack of the issuing officer's signature is not excusable as merely procedural or ministerial, but rather negates the existence of a warrant, creating instead "an unfinished paper." As the *Davis* Court went on to hold, the fact that the issuing officer intended to sign the warrant and had in fact signed the back was not sufficient to validate it, nor was the arrest legal despite the fact the officers who executed the arrest pursuant to the "warrant" were "entirely innocent of any intentional wrong."

The *Davis* requirement that a warrant must be signed by the issuing judicial officer in order to be complete is a common law decision predicated on public policy considerations. The signature is the assurance that a judicial officer has found that law enforcement has made the requisite probable cause showing, and serves as notice to the citizen upon whom the warrant is served that it is a validly issued warrant. Without the signature, it is merely an "unfinished paper." *Davis*, *supra*, see also *DuBois v. DuBois*, 30 S.C. 47, 73 S.E. 645 (1911) ("But it has been decided [in *Davis*] that, when an officer is performing the ministerial duty of issuing a paper in compliance with certain conditions prescribed by law, his signature at the foot of the paper he intended to sign is necessary to its validity").

We consider also whether the unsigned warrant can be upheld in the face of § 17-13-140, the general search warrant statute. The statute contains requirements different from those mandated by the Fourth Amendment, and is in some ways "more strict" than the federal constitution. *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471 (1987). While we have recognized a "good faith" exception to the statute's requirements where the officers make a good faith attempt to comply with the statute's affidavit procedures, *McKnight*, *supra*, explaining *State v. Smith*, 264 S.C. 541, 216 S.E.2d 501 (1975), we have left open the question whether a

[675 S.E.2d 743]

good faith exception would be applied where "the officers reasonably believe the warrant is valid when the search is made, but is subsequently determined to be invalid." *McKnight*, *supra*. Here, we do not reach the question whether there exists a good faith exception to the statute where a defective warrant is issued, since under South Carolina law

an unsigned warrant is not a warrant and is not capable of being issued within the meaning of § 17-13-140. *See also Davis, supra* (officers' good faith irrelevant where warrant is not signed).

The circuit court erred in refusing to suppress the evidence seized pursuant to the unsigned "warrant." Respondent is therefore entitled to a new trial.

2. Verdict Form

In this case, the jury was given a verdict form which tracked the provisions of the trafficking statute, but did not specifically allow the jury to return a "not guilty" verdict. We agree with Judge Anderson that this was error and hold that henceforth, any verdict form given to a jury for use in a criminal case must specifically include as an option "not guilty." We therefore overrule *State v. Myers*, 344 S.C. 532, 544 S.E.2d 851 (Cl.App.2001) to the extent it holds that a jury charge can negate prejudice from the lack of a "not guilty" choice on a verdict form.

3. Trafficking Statute

Judge Short and Judge Anderson found reversible error in the trial court's submission to the jury of the trafficking statute, while Judge Goolsby found no error. Since this case was tried and the appeal decided by the Court of Appeals, we have held that it is within the trial judge's discretion to "submit its instructions on the law to the jury in writing." *State v. Turner*, 373 S.C. 121, 644 S.E.2d 693 (2007). We caution the bench again, as we did in *Turner*, that this practice should be used sparingly, and only where it will aid the jury and where it will not prejudice the defendant. It is never appropriate, however, to give only part of the charge to the jury as was done in this case.

CONCLUSION

The Court of Appeals decision reversing respondent's convictions and sentences is

AFFIRMED AS MODIFIED.

WALLER, BEATTY, JJ., and Acting Justice JAMES F. MOORE, concur.

TOAL, C.J., concurring in a separate opinion.

Notes:

1. The facts are fully reported in this opinion, and the verdict form is reproduced in Judge Anderson's concurring opinion.

2. See S.C. Code Ann. § 17-13-150 (2003) (copy of warrant and affidavit shall be furnished to person arrested).

Chief Justice TOAL:

Although I concur in the decision to affirm the court of appeals' decision reversing Cover's conviction, I write separately because I would reach this decision on different grounds.

As a primary matter, I do not find that *Davis v. Sanders*, 40 S.C. 507, 19 S.E. 138 (1894) controls this case. *Davis* was decided over one hundred years ago, prior to the passage of § 17-13-140. Moreover, the *Davis* Court, in the absence of any statutory authority, relied on prior case law in declaring that a warrant must be signed.¹ *See State v. Vaughn*, 16 S.C.L. (Harp.) 313 (1824) (holding that a warrant that was signed but not sealed was nevertheless a valid warrant). Moreover, I find it significant that the parties in *Davis* conceded that a warrant had to be signed, thereby leaving only the issue of whether the magistrate's notation on the warrant constituted a signature for the Court's determination. Accordingly, I believe that *Davis* is somewhat irrelevant to the facts of this case and that we must solely look to § 17-13-140 to determine the validity of this warrant.

Section 17-13-140 does not specifically require the magistrate to sign the warrant, but rather, merely requires that a magistrate "issue" the warrant. Nonetheless, a magistrate's signature indicates that she has made the necessary probable cause finding required before issuing the warrant. Even assuming that an unsigned warrant is defective, I do not believe that this alone necessarily renders the warrant void *ab initio*.

This Court has held that the good faith exception to the exclusionary rule applies in cases where officers make a good faith attempt to comply with the statute's affidavit requirements. *See State v. McKnight*, 291 S.C. 110, 112-13, 352 S.E.2d 471, 472 (1987) (refusing to apply the good faith exception where the officers failed to attempt to comply in good faith to the affidavit requirements); *State v. Sachs*, 264 S.C. 541, 559, 216 S.E.2d 501, 510 (1975) (allowing evidence to be admitted pursuant to the good faith exception where officers attempted in good faith to comply with the statutory requirements). In my view, the policy reasons for applying the good faith exception to the exclusionary rule in other cases are applicable in this case. *See State v. Harris*, 345 S.C. 190, 194, 547 S.E.2d 497, 500 (2001) (recognizing that the main purpose of the exclusionary rule is the deterrence of police misconduct). Covert does not allege that the officers knew the warrant was unsigned or deliberately obtained the warrant without a signature, and the record contains no evidence that he was prejudiced by the statutory violation. Therefore, I would hold that the officers attempted in good faith to comply with § 17-13-140's requirements and the exclusionary rule should not render the evidence inadmissible.

In my view, the fatal flaw in the State's case is its failure to present any evidence at trial that the magistrate made a probable cause finding. As the majority observes, the signature on the warrant indicates that a judicial officer found that law enforcement made the requisite probable cause showing, a finding clearly required before a warrant may be issued. The State bore the burden of proving the validity of the warrant and, in my view, while the absence of a magistrate's signature may be a factor in determining whether the warrant was issued upon probable cause, it is not dispositive of the determination. However, by failing to call the magistrate to testify that she issued the warrant upon finding probable cause, the State failed to present any evidence to show the warrant was valid and therefore did not carry its burden. *See Sachs*, 264 S.C. at 555, 216 S.E.2d at 508 (recognizing that "all that is necessary to justify the issuance of a warrant is probable cause"); *see also* U.S. Const. amend. IV and S.C. Const. art. I (mandating that a warrant must be supported by probable cause).

For these reasons, I would hold that the good faith exception is applicable under these circumstances, but that the State failed to carry its burden of proving the magistrate issued the warrant upon finding probable cause. Accordingly, I concur with the majority's decision to affirm as modified the court of appeals' opinion.

Notes

3. Specifically, the Court found that the lower court properly charged the jury that "a warrant need not be under seal, yet it must be in writing, and signed by the officer issuing." *Id.* at 509, 195 S.E.2d 110.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF COLLETON	)	INDICTMENT No.: 2021GS1500472
STATE	)	
Vs.	)	Amended Motion in Limine to Suppress Defendant
JUSTIN CARROLL,	)	and Victim Phone Records
Defendant.	)	

Patricia Grant

COMES NOW the Defendant, and Moves for an Order in Limine to Suppress Phone Records from the Defendant and the Victim in this case, and that both search warrants Constitutionally and Statutorily defective, in violation of the Fourth Amendment of the U.S. Constitution, Article I, Section 10 of the South Carolina Constitution, and Section 17-13-140, S.C. Code of Laws, 1976, as Amended, and State v. Warner, (Exhibit "E") which affirms that all search warrants, whether for cell towers or otherwise, must alleged probable cause 436 S.C.395, 872 S.E.2d 638 (2022). The Search Warrants for phones of both the Defendant (attached as Exhibit "A") and Victim (attached as Exhibit "B") phones were apparently each obtained on May 24th, 2021. The Affidavit in support of each Search Warrant provides:

On May 22, 2021 officers with the Walterboro Police Department responded to [REDACTED] Forest Circle (Forest Pointe Apts.) Walterboro SC 29488 in reference to multiple shots fired in the area. Upon initial response a silver lexus ([REDACTED]) was observed to have what appeared to be bullet damage to the driver side window, furthermore a black female was observed in the driver seat and appeared to be nonresponsive. A review of the camera footage in the area revealed a vehicle that followed the victim into the complex then turning into the parking area of the 100 building. Shortly after a white male is seen walking from this area to the area that the victim parked (300 building). After the incident occurs the white male is seen running back in the direction of the 100 building and a late model pickup truck can be seen leaving the area. The phone was seized for further investigation".

Which white male? Whose truck? Probable cause is not a high standard, but this is not close.

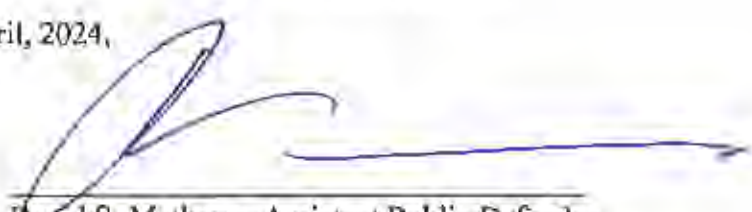
In addition to not alleging probable cause, the warrants have other defects: Municipal Court judge's name is not legible, the judge has not indicated the date by which the return must be made, and the judge has not signed the return. Evidently Det. Cpl Kyle Beaker of the Berkeley County Sheriff's Office processed the Defendant and Victim's phones, and returned the data to WPD Officer Shipp on 5/28/2021 as provided in an evidence receipt (attached as Exhibit "C"); however, the return on the Search Warrant was not presented to the judge, as Section 17-13-140, SC Code (Exhibit "D") requires. If the point of a search warrant is proof of judicial oversight, then these warrants fail miserably.

As to the victim's phone contents, the Defendant relies on S.C. Code section 17-13-140, and St. v. McKnight, which provides that, unlike Constitutional rights which require standing, the search warrant requirements of the statute "are not dependent upon a showing of an expectation of privacy in the searched premises", and the "primary benefit of the statute "is to the person arrested..."", 291 S.C. 110, 352 S.E.2d 471 (1987) at page 474 (Exhibit "F").

Additionally, the Defendant's cell phone was seized while the Defendant was being interrogated. There is no indication that the Defendant consented to the seizure of his phone, and during the interview, the Defendant invoked his right to an attorney.

The phone records of both the Defendant and the Victim must be suppressed.

Respectfully Submitted the 22nd Day of April, 2024,



David S. Mathews, Assistant Public Defender
Colleton County Division
14th Circuit Public Defender's Office
319 North Lucas Street
Walterboro, SC 29488
(843)549-1633

STATE OF SOUTH CAROLINA

County of **COLLETON**

SEARCH WARRANT

Date: 5/24/2021 _____

CASE# 2100743 _____

Officer: Cpl. Charles Shipp

RETURN

I received the attached Search Warrant 5-26, 2021, and have executed it as follows:

On 5-26, 2021 at 1600 o'clock P M, I searched (the person and/or premises) described in the warrant.

I left a copy of the warrant with At The Place Of Search (name of person or "at the place of search") together with a receipt for the items seized. (For electronic storage devices: Due to the intense nature and exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of this(ese) device(s), the results of the forensic analysis will be maintained by law law enforcement for any subsequent legal proceedings.)

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

1) Data only extracted from the Target Device as described in the body of the Search Warrant

This inventory was made in the presence of: Det Sgt Kyle Becker

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

SWORN to before me this 2 day
of June, 2021.

[Signature]

Signature of Judge

(L.S.)

[Signature]

(Signature of Officer Executing Warrant)

Case # 2100743

RETURN

I received the attached Search Warrant May 26, 2021, and have executed it as follows:

On May 26, 2021 at 11:00 o'clock PM, I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with at the place of search (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:

Data extracted from device as described in search 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 the _____ day of _____, 2021

(Signature of Officer Executing Warrant)

(L.S.)

Case # 2100743

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT

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

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**

One cell phone retrieved from suspect, Justin Carroll at the time he was detained for an interview. The cell phone is described as one black LG Trac phone.

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

Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, incoming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

This Search Warrant shall not be valid for more than ten days from 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 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 prominent place on such premises.

_____, S. C.
_____, 2014.


_____, (L.S.)
Signature of Judge

Case # 2100743

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT AFFIDAVIT:

Personally appeared before me, the affiant, Cpl. Charles Shipp 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 and is located on the following premises in this County:

I have been a sworn and certified South Carolina Police Officer since 2014. I am currently assigned to the Criminal Investigations Unit with the Walterboro Police Department.

I am authorized to make searches and seizures in the city of Walterboro in the State of South Carolina.

The information provided herein is based upon my own investigation, as well as the investigations of officers of the Walterboro Police Department and other law enforcement officers, whose results have been provided to me.

DESCRIPTION OF PROPERTY SOUGHT

Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, in coming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

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

One cell phone retrieved from suspect, Justin Carroll at the time he was detained for an interview. The cell phone is described as one black LG Trac phone.

Case # 2100743

Search Warrant Affidavit
Pg 5

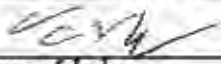
**REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

(continued)

**REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

On May 22, 2021 officers with the Walterboro Police Department responded to [REDACTED] Forest Circle (Forest Pointe Apts.) Walterboro SC 29488 in reference to multiple shots fired in the area. Upon initial response a silver lexus ([REDACTED]) was observed to have what appeared to be bullet damage to the driver side window, furthermore a black female was observed in the driver seat and appeared to be nonresponsive. A review of the camera footage in the area revealed a vehicle that followed the victim into the complex then turning into the parking area of the 100 building. Shortly after a white male is seen walking from this area to the area that the victim parked (300 building). After the incident occurs the white male is seen running back in the direction of the 100 building and a late model pickup truck can be seen leaving the area. The phone was seized for further investigation.

Sworn to and Subscribed before me

this 24th day of May, 2021.
_____(L.S.)
Signature of Judge

Affiant SignatureAddress 241 Hampton St.WALTERBORO, SC 29488Phone (843) 549-1811

STATE OF SOUTH CAROLINA

County of COLLETON

SEARCH WARRANT

Date: 5/24/2021

CASE# 2100743

Officer: Cpl. Charles Shipp

Case # 2100743

RETURN

I received the attached Search Warrant _____, 2021, and have executed it as follows:

On May 26, 2021 at 1600 o'clock PM, I searched
(the person) described in the warrant and
(the premises)

I left a copy of the warrant with at place of search
(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:

Data extracted from device as described in search warrant
- Video of Jaxin Cole Carroll right outside of victim's vehicle (driver side)
which is timestamped at 2207 hrs.

This inventory was made in the presence of Det. Kyle Boaler 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 the _____ day of _____, 2021

(Signature of Officer Executing Warrant)

(L.S.)

Case # 2100743

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT

**TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF Walterboro.**

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**

One cell phone retrieved from the victim, Donasia Holloway, at the time her vehicle was being processed at the crime scene. The phone is described as an Iphone with a light blue case with black trim and has T-Mobile as a service provider.

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

Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, in coming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

This Search Warrant shall not be valid for more than ten days from 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 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 prominent place on such premises.

_____, S. C.
_____, 2014.


_____, (L.S.)
Signature of Judge

Case # 2100743

REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES
(continued)

REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On May 22, 2021 officers with the Walterboro Police Department responded to [REDACTED] Forest Circle (Forest Pointe Apts.) Walterboro SC 29488 in reference to multiple shots fired in the area. Upon initial response a silver lexus ([REDACTED]) was observed to have what appeared to be bullet damage to the driver side window, furthermore a black female was observed in the driver seat and appeared to be nonresponsive. A review of the camera footage in the area revealed a vehicle that followed the victim into the complex then turning into the parking area of the 100 building. Shortly after a white male is seen walking from this area to the area that the victim parked (300 building). After the incident occurs the white male is seen running back in the direction of the 100 building and a late model pickup truck can be seen leaving the area. The phone was seized for further investigation.

Sworn to and Subscribed before me

this 24th day of May, 2021.

[Signature] (L.S.)
Signature of Judge

[Signature]
Affiant Signature

Address 242 Hampton St.

WALTERBORO, SC 29488

Phone (843) 549-1811

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT AFFIDAVIT:

Personally appeared before me, the affiant, Col. Charles Shipp 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 and is located on the following premises in this County:

I have been a sworn and certified South Carolina Police Officer since 2014. I am currently assigned to the Criminal Investigations Unit with the Walterboro Police Department.
I am authorized to make searches and seizures in the city of Walterboro in the State of South Carolina.

The information provided herein is based upon my own investigation, as well as the investigations of officers of the Walterboro Police Department and other law enforcement officers, whose results have been provided to me.

DESCRIPTION OF PROPERTY SOUGHT

Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, in coming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

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

One cell phone retrieved from the victim, Donasia Holloway, at the time her vehicle was being processed at the crime scene. The phone is described as an Iphone with a light blue case with black trim and has T-mobile as a service provider.

Case # 2100743

RETURN

I received the attached Search Warrant 5-26, 2021, and have executed it as follows:

On 5-27, 2021 at 1600 o'clock P M, I searched (the person and/or premises) described in the warrant.

I left a copy of the warrant with At The Place Of Search (name of person or "at the place of search") together with a receipt for the items seized. (For electronic storage devices: Due to the intense nature and exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of this(ese) device(s), the results of the forensic analysis will be maintained by law law enforcement for any subsequent legal proceedings.)

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

1) Data only extracted from the Target Device as described in the body of the Search Warrant.

This inventory was made in the presence of: Det Sgt Kyle Bealer

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

SWORN to before me this 1 day
of June, 2021.

[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)



3C Code 17-13-140 Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized
(South Carolina Code of Laws (2021 Edition))

§ 17-13-140. Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized

Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States. Narcotics, barbiturates or other drugs seized hereunder shall be disposed of as provided by Section 44-53-520.

The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant. If the magistrate, municipal judge, or other judicial officer abovementioned is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed to any peace officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division, and shall be returnable to the issuing magistrate. In case of a warrant issued by a judge of a court of record, it shall be returnable to a magistrate having jurisdiction of the area where the property is located or the person to be searched is found. If any warrant is issued by any municipal judicial officer to municipal police officers, the return shall be made to the issuing municipal judicial officer. Any warrant issued shall command the officer to whom it is directed to forthwith search the person or place named for the property specified.

Any warrant issued hereunder shall be executed and return made only within ten days after it is dated. The officer executing the warrant shall make and deliver a signed inventory of any articles seized by virtue of the warrant, which shall be delivered to the judicial officer to whom the return is to be made, and if a copy of the inventory is demanded by the person from whose person or premises the property is taken, a copy of the inventory shall be delivered to him.

This section is not intended to and does not either nullify or limit any statute or other law regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

History:

State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (S.C. 2022)

436 S.C. 395
872 S.E.2d 638

The STATE, Respondent,

v.

Justin Jamal WARNER, Petitioner

Appellate Case No. 2020-000930

Opinion No. 28094

Supreme Court of South Carolina

Heard November 8, 2021

Filed April 13, 2022

Rehearing Denied June 7, 2022

Summary:

Source: Justia

Justin Jamal Warner was convicted by jury of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. The court of appeals affirmed. The South Carolina Supreme Court granted Warner's petition for a writ of certiorari to address: (1) whether the trial court was correct to deny Warner's motion to suppress cell-site location information (CSLI) seized from his cell phone service provider; and (2) whether an out-of-court viewing by Warner's probation officer of a crime-scene video and the officer's identification of Warner as the man in the video required a hearing under *Neil v. Biggers*, 409 U.S. 188 (1972). The Supreme Court found the trial court correctly ruled the identification made from the video did not require a *Biggers* hearing. As to the CSLI, the Court held the warrant the trial court found invalid because the warrant sought information stored in another state was not - at least for that reason - invalid. The Supreme Court affirmed the court of appeals as to the *Biggers* issue and remanded to the trial court for further proceedings as to Warner's motion to suppress CSLI.

Chief Appellate Defender Robert Michael Dudek and Appellate Defender Adam Sinclair Ruffin, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, and Senior Assistant Attorney General W. Edgar Salzer III, of Columbia, for Respondent.

JUSTICE FEW:

A jury convicted Justin Jamal Warner of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. The court of appeals affirmed. We granted Warner's petition for a writ of certiorari to address: (1) whether the trial court was correct to deny Warner's motion to suppress cell-site location information (CSLI) seized from his cell phone service provider; and (2) whether an out-of-court viewing by Warner's probation officer of a crime-scene video and the officer's identification of Warner as the man in the video

correctly ruled the identification from the video did not require a *Biggers* hearing. As CSLI, we hold the warrant (the trial court found invalid because the warrant sought information stored in another state is not—at least for that reason—invalid. We affirm the court of appeals as to the *Biggers* issue and remand to the trial court for further proceedings as to Warner's motion to suppress CSLI.

I. Facts and History

On April 30, 2015, Warner entered the BP store at the intersection of I-85 and S.C. 153 in Anderson County. Warner showed his identification to the cashier for the purpose of purchasing cigars. The cashier—Mridulaben Patel—entered Warner's date of birth into the computerized cash register and opened it. Warner then pulled out a gun, pointed it at Patel, and attempted to reach into the cash drawer. When Patel resisted, Warner shot her. Warner then left the store without completing the robbery. Patel died several days after the shooting.

Officers from the Anderson County Sheriff's Office obtained video of the incident from security cameras installed at the store. On May 4, 2015, officers received an anonymous Crimestoppers tip alleging Warner was the person who committed the crime. After reviewing the tip, officers realized Warner's date of birth matched the date Patel entered into the register. A detective then contacted Nathan Goolsby—Warner's probation officer

[872 S.E.2d 640]

in Georgia—and sent him the crime-scene video. The detective asked Goolsby whether he could identify the person in the video as Warner. Goolsby then identified Warner as the person in the video.

Also on May 4, an Anderson County magistrate issued a warrant to "T-Mobile" authorizing the seizure of "subscriber information ... from [Warner's cell number] starting on April 26, 2015 and continuing through May 4, 2015. Also tower locations to include physical addresses and or GPS coordinates." The warrant indicated it sought "records located at [an address in] New Jersey." A detective sent the warrant by facsimile to T-Mobile at the offices of its "Law Enforcement Relations Group" in New Jersey. Three days later, the Law Enforcement Relations Group responded—also by facsimile—stating, "This is in response to the Search Warrant, dated May 04, 2015, and served upon T-Mobile USA, Inc. on May 7, 2015." The facsimile response attached the requested records and indicated, "Original materials follow via US Mail."

An FBI expert testified the records showed Warner's cell phone communicating with cell towers near the location of the crime—indicating his presence near the BP store—at the general time the crime occurred. The FBI expert's testimony was important to proving Warner committed the crimes because the State also proved Warner lived in a suburb of Atlanta, Georgia, over 130 miles from the BP store. The FBI expert's testimony indicated Warner drove along I-85 from the Atlanta area past S.C. 153 into Greenville County, and then returned to Anderson County in the general vicinity of the BP store at approximately the time of the crimes.

Warner moved to suppress the CSLI. During the suppression hearing, the State explained that cell phone providers like T-Mobile require a warrant to be sent to their offices in another state. The trial court summarily ruled the warrant was invalid because the requested records were stored in New Jersey, and it was "beyond the scope of authority of a [South Carolina] magistrate to obtain these records" in New Jersey. The trial court nevertheless denied the motion to suppress, finding the law at that time did not require a warrant. Warner also requested a *Biggers* hearing, contending Goolsby identified him in an unnecessarily suggestive identification procedure. The trial court ruled *Biggers* was not applicable because Goolsby was not an eyewitness and refused to conduct a hearing.

Warner's trial took place from May 22 to May 25, 2017. After the jury convicted him, the trial court sentenced Warner to life in prison for murder and concurrent prison terms of twenty years for attempted armed robbery and five years for possession of a weapon during the commission of a violent crime. Warner appealed, and the court of appeals affirmed the trial court on all issues. *State v. Warner*, 430 S.C. 76, 842 S.E.2d 361 (Cr. App. 2020). We granted Warner's petition for a writ of certiorari only on the two questions explained above.

II. Motion to Suppress CSLI

Before 2014, courts generally did not even discuss whether the Fourth Amendment requires a warrant for digital information generated by or stored on a cell phone. See generally *United States v. Czubak*, 824 F.3d 421, 428-29, 428-29 n.6, 429 n.7 (4th Cir. 2016) (en banc) (explaining the scant authority whether the Fourth Amendment protects

Power to Track Prospective, Real Time, Historical Position of Possessor of Phone Under State Law, 138 R. 579 (2014). The Supreme Court's 2014 decision in *Riley v. California*, 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014), made clear the Fourth Amendment does protect digital information stored on a cell phone. See *State v. Brown*, 423 S.C. 519, 523-24, 815 S.E.2d 761, 763-64 (2018) (discussing *Riley*). When Warner murdered [872 S.E.2d 641]

Barel in 2015, however, no South Carolina court—nor any federal court whose precedent binds our courts—had addressed whether the Fourth Amendment protects digital information derived from a cell phone but not stored on it, such as CSLI. In 2016, the Fourth Circuit found that it does not. *Graham*, 824 F.3d at 427.³ According to the Fourth Circuit, "This holding accords with that of every other federal appellate court that has considered the Fourth Amendment question before us. Not one has adopted the Defendants' theory." 824 F.3d at 428.

In 2017, therefore, at the time of Warner's trial, it appeared that a person had no reasonable expectation of privacy in their CSLI held by a cell phone service provider and the Fourth Amendment did not require a warrant for the seizure of CSLI. The trial court in this case relied on *Graham* in finding the Fourth Amendment did not apply, stating "the search warrant under the *Graham* case was not needed." Based on *Graham*, the trial court found Warner's voluntary use of his cell phone and the consequent provision of CSLI to the cell phone service provider resulted in the loss of any expectation of privacy Warner may have otherwise had in the information.

In 2018, however—after Warner's trial and while his appeal was pending at the court of appeals—the Supreme Court held CSLI is subject to the warrant requirement of the Fourth Amendment. *Carpenter*, 585 U.S. at —, 138 S. Ct. at 2217, 201 L. Ed. 2d at 525. The State had not challenged the trial court's ruling that the warrant was invalid, *Warner*, 430 S.C. at 92, 842 S.E.2d at 369, which left for the court of appeals only the question of whether the exclusionary rule should be applied. The court of appeals found the exclusionary rule should not apply and affirmed. 430 S.C. at 94, 842 S.E.2d at 370.

At oral argument before this Court, justices raised difficult questions as to how—if South Carolina courts do not have authority to issue warrants for the seizure of records kept in another state—law enforcement may reasonably carry out its investigative responsibilities in this modern digital age. The answers, though sincere and realistic, were unsatisfactory. Therefore, and in light of our concerns that the trial court mistakenly found the warrant invalid, we find it necessary to analyze the validity of the May 4, 2015 warrant. As our Rules acknowledge, and as this Court has held many times, we may affirm on any ground appearing in the record. See Rule 220(c), SCACR ("The appellate court may affirm any ruling ... upon any ground[] appearing in the Record on Appeal."); *State v. King*, 422 S.C. 47, 64 n.5, 810 S.E.2d 18, 27 n.5 (2017) (same); *State v. Johnson*, 278 S.C. 668, 669-70, 301 S.E.2d 138, 139 (1983) (same).⁴

The primary focus of the dispute before the trial court over the validity of this warrant was whether an Anderson County magistrate had the authority to issue the warrant to an out-of-state entity for records that are not physically located in this State. The applicable statute, section 17-13-140 of the South Carolina Code (2014), provides,

Any magistrate ... [s] may issue a search warrant to search for and seize ... property

[872 S.E.2d 642]

constituting evidence of crime or tending to show that a particular person committed a criminal offense ... The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

This warrant was issued to T-Mobile. While we assume for purposes of our analysis T-Mobile stores the applicable records in New Jersey,⁵ the important fact is T-Mobile clearly does business in South Carolina, in particular, in Anderson County. T-Mobile, therefore, is subject to the jurisdiction of an Anderson County magistrate. The warrant sought records reflecting information generated in South Carolina through the interaction of Warner's cell phone and cell towers in Anderson County. While the T-Mobile office to which officers were told to send the warrant is located in New Jersey, section 17-13-140 specifically provides, "The property described in this section ... may be seized ... from the person, possession or control of any person who shall be found to have such property in

his possession or under his control. Mobile is in possession and control of property that is subject to seizure under 17, 13, 140 permits to be seized. T-Mobile is a "person" doing business in Anderson County. Thus, T-Mobile is subject to the jurisdiction of our courts, and we find it was not beyond the power of the magistrate to issue the warrant.

Our determination that the warrant was not invalid for the reason relied on by the trial court raises other questions. Warner argued in his suppression motion, for example, the affidavit supporting the warrant did not set forth probable cause. We agree. The affidavit states only, "Information was received through crime stoppers indicating that Justin Warner is a possible suspect. The informant's information was corroborated and a record search revealed that Warner has this listed number to him." While we have recognized—recently—that "[p]robable cause ... is not a high bar," *State v. Janner*, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (quoting *Kalish v. United States*, 571 U.S. 320, 338, 134 S. Ct. 1090, 1103, 188 L. Ed. 2d 46, 62 (2014)), it is by no means a toothless standard. See *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S. Ct. 1302, 1310-11, 93 L. Ed. 1879, 1890 (1949) (stating probable cause "has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within ... [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed"). The affidavit attached to this warrant provided the magistrate no facts or circumstances whatsoever, only the conclusory statement that some unnamed person considered Warner as a suspect based on unprovided information.² It is inconceivable to us that the

[872 S.E.2d 643]

magistrate did not require the experienced detective to supplement the affidavit with sworn testimony, or if the magistrate did not require it, that the detective did not provide it on his own. It is unclear, however, whether the information in the affidavit was supplemented before the magistrate issued the warrant. Because the record on this issue—and perhaps other issues—was never fully developed during the suppression hearing, we remand (i) the trial court for a ruling on any unresolved issues related to Warner's motion to suppress. See *State v. Johnson*, 302 S.C. 243, 249, 395 S.E.2d 167, 170 (1990) (finding the affidavit attached to the search warrant lacked probable cause, but remanding to develop the record as to whether the affidavit was supplemented; explaining possible results on remand). If the trial court determines the affidavit was not supplemented, and thus the warrant lacked probable cause, the trial court should also consider whether the exclusionary rule should apply.

III. *Nail v. Biggers* Hearing

Warner also argues the trial court erred by refusing to conduct a hearing to determine whether Goolsby's identification of Warner in the crime-scene video violated his due process rights under *Biggers*. Warner relies on a line of cases decided by the Supreme Court of the United States in which the Court held that unnecessarily suggestive police-arranged eyewitness identification procedures violate due process and, thus, are inadmissible, unless the trial court determines in a hearing that the identification was nevertheless so reliable that no substantial likelihood of misidentification exists. See *Perry v. New Hampshire*, 565 U.S. 228, 237-39, 132 S. Ct. 716, 723-25, 181 L. Ed. 2d 694, 706-07 (2012) (discussing the line of cases and explaining the Supreme Court "[s]ynthesize[d]" them into a two-part test in *Biggers*): *State v. Lierman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012) (reciting *Biggers* test). Under *Biggers*, the trial court must first determine whether the police used an "unnecessarily suggestive" ... identification procedure[]." *State v. Wyatt*, 421 S.C. 306, 310, 806 S.E.2d 708, 710 (2017) (citing *Biggers*, 409 U.S. at 198-99, 93 S. Ct. at 381-82, 34 L. Ed. 2d at 410-11), and second, if so, "whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed," 421 S.C. at 311, 806 S.E.2d at 710 (quoting *Lierman*, 398 S.C. at 138, 727 S.E.2d at 426).

The trial court in this case refused to conduct a *Biggers* hearing because Goolsby was not an eyewitness. The court stated, "I don't believe ... this is a *Biggers* situation. You don't have an out-of-court identification [by] an eyewitness." We agree with the trial court. In every case decided by the Supreme Court or by this Court under *Biggers* and the line of cases that led to it, the witness who made the identification was an eyewitness to the crime itself, a witness who observed the crime take place in real time. The Supreme Court has given no reason to believe it would extend the *Biggers* analysis beyond eyewitnesses, nor has this Court. In *Perry*, the

[872 S.E.2d 644]

Supreme Court prefaced its discussion of the line of cases leading to *Biggers* by stating, "Even when evidence is so extremely unfair that its admission violates fundamental conceptions of justice, have we imposed a constraint tied to the Due Process Clause?" 565 U.S. at 237, 132 S. Ct. at 723, 181 L. Ed. 2d at 706 (citations omitted). The dangers of misidentification associated with eyewitness identification that threaten "fundamental conceptions of justice" are simply not present in a situation like the one in this case. While we agree with Warner the detective's question suggested to Goolsby that Warner is the man in the video, we nevertheless find Warner's due process rights do not require a hearing because Goolsby was not an eyewitness to the crime, and thus, *Biggers* does not apply.³

The trial court did not err in denying Warner a hearing as to Goolsby's identification.

IV. Conclusion

We affirm the trial court's refusal to conduct a hearing under *Biggers* because Goolsby was not an eyewitness. As to Warner's motion to suppress CSLI, we find the warrant was not invalid for the reasons the trial court recited. We remand to the trial court for further proceedings.

AFFIRMED IN PART AND REMANDED.

BEATTY, C.J., KITTRIDGE and JAMES, JJ., concur. HEARN, J., dissenting in a separate opinion.

JUSTICE HEARN.

Because I agree with the decision and analysis of the court of appeals, I respectfully dissent. The court of appeals analyzed this pre-*Carpenter* Fourth Amendment violation under the standard set forth in *Davis* and concluded the exclusionary rule does not apply, which I believe was the correct approach. See *Davis v. United States*, 564 U.S. 229, 241, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011) (holding searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule). I would end the matter there and not remand for a hearing. While I concede that probable cause was raised before the circuit court, the primary focus of the hearing was the privacy interests impacted by release of cell-site location data, and the circuit court denied the motion to suppress on that basis alone. I would not resurrect the probable cause issue now because the exclusionary rule would not serve any deterrent purpose and even assuming error in the denial of the motion to suppress, I would hold any error harmless.

The court of appeals found that the purposes of the exclusionary rule would not be honored in this case, and I agree completely with that determination. Here, the search warrant was issued under existing law that has since been changed. Compare *Carpenter v. United States*, — U.S. —, 138 S.Ct. 2206, 2217, 201 L.Ed.2d 507 (2018) (holding that a person has an expectation of privacy in cell phone records held by a third party, thereby abrogating *Graham*'s extension of *Miller* to cell-site location information or "CSLI"), with *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (finding no expectation of privacy in cell phone records held by a third party because of the third party doctrine of *Miller*); *United States v. Miller*, 425 U.S. 435, 440, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) (holding bank depositor had no Fourth Amendment interest in bank records). While there is no dispute *Carpenter* applies retroactively, as the court of appeals correctly reasoned, applying the exclusionary

[872 S.E.2d 645]

rule is not called for when the behavior of the officers was made in either good faith or isolated simple negligence. Here, the officers were operating under the belief that Warner had no expectation of privacy in his cell phone records, and at the time, under the persuasive authority of *Graham* and the binding authority of *Miller*, that was true.

As an appellate court, we are required to balance the interests of the exclusionary rule with the "heavy toll on both the judicial system and society at large." *Davis v. United States*, 564 U.S. 229, 237, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). The rule was designed to serve as a last resort to deter officer misconduct and error. *Id.* at 236, 131 S.Ct. 2419 and *Elkins v. United States*, 364 U.S. 206, 217, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960) (holding the exclusionary rule is "calculated to prevent, not to repair"). Here, there would be no deterrence of officer misconduct or error in excluding the evidence because, at the time of the search, officers acted in compliance with current law. We can neither expect officers to predict future decisions of appellate courts nor take them to task for their failure to do so. Therefore, because the deterrent effect of the exclusionary rule would not be served here, I would not apply it. See

White v. Weston, 329 S.C. 287, 293, 4 E.2d 801, 804 (1997) (stating "[s]uppression is appropriate in only a few situations"); *Shurtz v. Sachs*, 264 S.C. 541, 566, 216 S.E.2d 501, 514 (1975) (stating "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where [the purpose of] deterrence is clearly subverted").

Moreover, even assuming *arguendo* the circuit court erred in denying the motion to suppress, any error was harmless. When improper evidence is "merely cumulative" its admission is harmless beyond a reasonable doubt, and the conviction should not be reversed. *See State v. Haselden*, 353 S.C. 190, 197, 577 S.E.2d 445, 449 (2003) and *State v. Burrell*, 367 S.C. 41, 55-56, 625 S.E.2d 216, 224 (2006). Here, the CSLI data was clearly cumulative to a myriad of evidence which tied Warner to this crime: he was identified on the store's security footage by his probation officer, his birthday was entered into the store's computer during the fatal check-out, and his palm print matched one taken from the store's counter.² Further, the store's security video also captured the robber's vehicle at the scene, which closely resembled the same car Warner drove immediately before his arrest. Once investigators impounded Warner's vehicle, they found cigar wrappers similar to those purchased during the robbery and Warner's wallet, which resembled the one in the video of the robbery. In short, the use of his CSLI data was merely cumulative to other ample evidence, rendering any error harmless.

For the foregoing reasons, I respectfully dissent.

Notes:

¹ "Most modern devices, such as smartphones, tap into the wireless network several times a minute whenever their signal is on, even if the owner is not using one of the phone's features. Each time the phone connects to a cell site, it generates a time-stamped record known as cell-site location information (CSLI). The precision of this information depends on the size of the geographic area covered by the cell-site. The greater the concentration of cell sites, the smaller the coverage area." *Carpenter v. United States*, 585 U.S. —, —, 138 S.Ct. 2206, 2211, 2013, 138 L.Ed.2d 507, 515 (2018).

² The FBI expert was Special Agent David Church. The court of appeals extensively analyzed Special Agent Church's qualifications as an expert in CSLI as part of its analysis of the admissibility of his opinions. *State v. Weston*, 430 S.C. 76, 81-89, 244 S.E.3d 361, 364-67 (Ct. App. 2020).

³ This opinion was issued by the Fourth Circuit sitting en banc. 324 F.3d at 424. In the panel decision—issued August 5, 2015—the Fourth Circuit held "the government conducts a search under the Fourth Amendment when it obtains and inspects a cell phone user's historical CSLI for an extended period of time." *United States v. Grubbs*, 296 F.3d 332, 344-45 (4th Cir. 2015). The court granted the government's petition for rehearing en banc on October 28, 2015. *United States v. Grubbs*, 624 F. App'x 75 (4th Cir. 2015), which vacated the panel decision. *Grubbs*, 324 F.3d at 424; *see also* 4th Cir. R. 35(c) (en banc proceedings) ("Granting of rehearing en banc vacates the previous panel judgment and opinion").

⁴ Technically, we are not affirming the denial of the motion to suppress. However, we are deciding the trial court's ruling will not be reversed on the basis that the warrant sought information stored in another state. If no other basis for reversing the denial of the motion to suppress arises on remand, then the result of our analysis of the validity of the warrant in this respect will be that we affirm.

⁵ The omitted text contains as many as three additional items in a series, followed by the limiting language "... having jurisdiction over the area where the property sought is located." § 17-13-140. We find the limiting language applies only to the last item in the series, not to "Any magistrate," which is the first item in the series. *See Comm'r of Dep. Works of the City of Lawrence v. City of Lawrence*, 428 S.Ct. 207, 219-20, 63 L.Ed.2d 834, 839 (2015) (Ker, J., concurring) (explaining that under the last antecedent doctrine, the absence of a comma after the last item in a series indicates the modifying clause following the series applies only to the last item in the series). In addition, to read the limiting language as applying to all items in the series would contradict—and render superfluous—the language enabling the seizure of property within the "control of any person," because if all seizures are limited to property inside the jurisdiction of the individual judge, it would not have been necessary to alternatively authorize the seizure of property "under a person's control."

⁶ There is no evidence in the record to support this assumption other than the fact law enforcement officers were required to submit the warrant to the T-Mobile Law Enforcement Retention Group, which is located in New Jersey. In fact, the FBI Special Agent who testified as the State's expert on CSLI—when asked where the records were stored—did not testify where the records are stored. He stated only that the records are "generated" in New Jersey. "[New Jersey is] where T-Mobile's compliance people are, where they generate -- where all the requests go to and they generate those [records]. The actual records are pulled from the different switches, but [New Jersey is] where the record is generated from." —

⁷ The Supreme Court's statement in *Katz*, which we quoted in *Jonas*, was made to support the Supreme Court's continued refusal "to require the use of adversarial procedures to make probable cause determinations" in grand jury proceedings. *Katz*, 339 U.S. at 339, 134 S.Ct. at 3103, 130 L.Ed.2d at 62. The Supreme Court's statement in *Brinegar* was made in explaining probable cause existed to support a search incident to a warrantless arrest. *Brinegar*, 338 U.S. at 170-71, 60 S.Ct. at 1398, 93 L.Ed. at 1889. In *Illinois v. Lopez*, 507 U.S. 213, 119 S.Ct. 2317, 76 L.Ed.2d 527 (1993), even after abandoning the "total pronged test" (the Supreme Court previously applied), 362 U.S. at 238, 103 S.Ct. at 2432, 76 L.Ed.2d at 548, the Court addressed a hypothetical basis for a search warrant much like the one presented by the affidavit in this case:

Our earlier cases illustrate the limits by which a magistrate may not venture in issuing a warrant. A magistrate or an affiant that he has cause to suspect and does believe that a crime has been committed will not do. An affiant must provide the magistrate with a substantial basis for determining the existence of probable cause, and [a] wholly conclusory statement... [f]ails to meet this requirement. An officer's statement that affiants have received reliable information from a credible person and do believe that heroin is stored in a home, is likewise inadequate... [T]his is a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others. In order to ensure that such an abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued.

462 U.S. at 239, 103 S. Ct. at 2332-33, 76 L. Ed. 2d at 548-49.

³ The court of appeals reached the same conclusion in *Spivey v. Miller*, 408 S.Ct. 278, 758 S.E.2d 730 (Ga. App. 2014). There, the court found the identification was not subject to a *Biggers* analysis because the witness who made the identification "was not an eyewitness to the crime." 408 S.Ct. at 286, 758 S.E.2d at 735. In a recent decision by the Court of Appeals of Maryland on almost identical facts, the court held the "identification is not governed by the due process analysis in *Biggers*." *Gentry v. State*, 409 Md. 156, 229 A.3d 181, 193 (2020). Before reaching that conclusion, the Court of Appeals of Maryland conducted a thorough analysis of the same line of Supreme Court cases discussed above, 229 A.3d at 192-93. After our own thorough review of decisions on this point nationwide, we are aware of no court that has held the *Biggers* analysis extends to witnesses who are not "eyewitnesses."

⁴ The record reflects that the counter was cleaned approximately forty five minutes before the crime. Seven individuals, including Warner, were in the store between the wiping of the counter and the robbery—five or six of whom approached the counter. However, it is clear no one besides Warner was involved in the robbery or murder.

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Patricia C. Grant

State v. McKnight, 352 S.E.2d 471, 291 S.C. 110 (S.C. 1986)

Page 471

352 S.E.2d 471

291 S.C. 110

The STATE, Appellant,

v.

Clifton McKNIGHT, Levan McKnight, Charles Montgomery, Jessie
Doughty, Roscoe Pressley, and Edward Pressley, of whom
Clifton McKnight, Levan McKnight, Charles Montgomery and
Roscoe Pressley are Respondents.

No. 22651.

Supreme Court of South Carolina.

Heard Nov. 18, 1986.

Decided Jan. 12, 1987.

Page 472

[291 S.C. 111] Atty. Gen. T. Travis Medlock, Chief Deputy Atty. Gen. Donald J. Zelenka, Columbia, and Snl. Wade S. Kolb, Jr., Sumter, for appellant.

Robert B. Nance, Columbia, for respondent Levan McKnight.

[291 S.C. 112] M. Duane Shuler, Kingstree, for respondent Clifton McKnight.

G.B. Jenkinson, Kingstree, for respondent Charles Montgomery.

W.E. Jenkinson, III, Kingstree, for respondent Roscoe Pressley and defendant Edward Pressley.

NESS, Chief Justice:

This is an appeal by the State from an order of the circuit court granting respondents' motion to suppress. We affirm.

On the basis of information supplied by informants, Deputy Sheriff Russell Cox appeared before Magistrate Johnny Ard to obtain a search warrant of a mobile home in Williamsburg County. Cox related to Ard his belief that drugs and stolen goods would be found in the mobile home. Ard filled out a form for the search warrant and Cox signed it. Cox and Officer Wayne Lambert questioned Ard about the absence of an affidavit. Ard placed Cox under oath, and Cox orally recited the facts upon which the warrant was based. No affidavit was ever executed.

Upon a search of the mobile home, officers discovered numerous items of drug paraphernalia and substances believed to be cocaine and marijuana. Six persons were arrested. At a pretrial suppression hearing, the State contended the defendants lacked standing to challenge the warrant. The trial judge ruled that all defendants except Edward Pressley had standing to challenge the warrant. He granted the motion to suppress as to the other five defendants.

The Constitutions of the United States and the State of South Carolina require that "[a] warrant be supported by oath or affirmation." U.S. Const. Amend. IV; S.C. Const. Art. I, Section 10.

[291 S.C. 113] This is a minimum standard, and state legislatures are free to enact stricter requirements for the issuance of search warrants. See *State v. York*, 250 S.C. 30, 156 S.E.2d 326 (1967). The South Carolina General Assembly has enacted a requirement that search warrants may be issued "only upon affidavit sworn to before the magistrate ... establishing the grounds for the warrant." S.C. Code Ann. Section 17-13-140 (1985). A search warrant that would survive constitutional scrutiny may still be defective under the statute.

The State argues the warrant was not defective, since it was supported by Cox's sworn oral testimony. An affidavit is a voluntary ex parte statement reduced to writing and sworn to or affirmed before some person legally authorized to administer an oath or affirmation. 3 Am.Jur.2d, Affidavits, Section 1. It differs from an oath in that an affidavit consists of a statement of fact which is sworn to as the truth, while an oath is a pledge. Id. Section 2; 58 Am.Jur.2d, Oath and Affirmation, Section 3. While a sworn oral statement may be sufficient to satisfy the constitutional requirement for oath or affirmation, it does not satisfy the statutory requirement of an affidavit.

A search warrant affidavit which itself is insufficient to establish probable cause may be supplemented before the magistrate by sworn oral testimony. *State v. Sachs*, 264 S.C. 541, 216 S.E.2d 501

Page 473

(1975). See also, *State v. White*, 275 S.C. 500, 272 S.E.2d 800 (1980). However, sworn oral testimony, standing alone, does not satisfy the statute. The mandate of the statute is clear. The Court cannot, under the guise of statutory interpretation, overlook plain meaning of the statute to imply instead a wholly different meaning than was intended by the legislature. *Davis v. Doe*, 285 S.C. 538, 331 S.E.2d 352 (1985). We agree with the trial judge's ruling that the search warrant was defective under Section 17-13-140.

Exclusion of evidence is not the only means available to insure that warrants are properly issued. *State v. Sachs*, supra. When, however, the State is unable to demonstrate a good faith attempt to comply with the statute, exclusion is the proper remedy. Id.

The record in this case clearly shows there was no good faith effort to comply with the statute. Officers Cox and Lambert were aware of the requirement for [291 S.C. 114] an affidavit to support the search warrant, but made no effort to comply with the statute. Exclusion was appropriate.

The State argues the seized items should be admitted despite the defective warrant, under the good faith exception to the exclusionary rule adopted by the United States Supreme Court in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). However, the evidence in this case was not excluded on constitutional grounds, but on the basis of a statutory violation. The Leon rule applies only when a search warrant is defective on Fourth Amendment grounds.

The State has not argued, and we do not decide, whether evidence seized pursuant to a search warrant which is defective under Section 17-13-140 may be admitted when the officers who execute the search act with objectively reasonable reliance on a warrant ultimately found to be invalid. Even if this Court were inclined to adopt a good faith exception akin to Leon for violations of Section 17-13-140, the exception would not apply here. Both officers were aware of the defect in the warrant when they executed the search, negating any argument of good faith. ² The trial judge properly ruled that Leon did not apply in this case.

STANDING

The Fourth Amendment to the United States Constitution guarantees to individuals the right to be free from unreasonable searches and seizures. One who seeks to have evidence suppressed on this basis must establish that his own Fourth Amendment rights were violated. *United States v. Salvucci*, 448 U.S. 83, 100 S.Ct. 2547, 63 L.Ed.2d 619 (1980). These are personal rights which may not be asserted vicariously. *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978). See also, *United States v. [291 S.C. 115] Nabors*, 761 F.2d 465 (C.A. 8th 1985) cert. den., --- U.S. ---, 106 S.Ct. 148, 88 L.Ed.2d 123. The defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search. *United States v. Salvucci*, supra; *Rawlings v. Kentucky*,

308 (1972). See, e.g., *State v. Dant*, 32 S.C. 591, 167 S.E.2d 621 (1969). The federal courts have promulgated a sizeable body of law developing and refining the concept of standing. See, 90 West's Federal Practice Digest 3d, Searches and Seizures, Key Nos. 161-165; Annot. 4 ALR 4th 1050.

Page 474

On the other hand, the rights afforded by Section 17-13-140 are not dependent upon a showing of an expectation of privacy in the searched premises. The primary purpose of the statute is to insure the timely recording of the testimony upon which the judicial officer relied in issuing the warrant. *State v. Sachs*, supra. However, the primary benefit of the statute "is to the person arrested or searched." 216 S.E.2d at 510. Therefore, one contesting the legality of a search because of a defect under Section 17-13-140 need only show that the State is attempting to introduce the evidence against him.

The State argues that all of the respondents lack standing to challenge the legality of the search, asserting none of the respondents had a legitimate expectation of privacy in the searched premises. Had this case been decided on constitutional grounds, this would be the appropriate inquiry. Since the trial judge's ruling was based on the stricter, statutory grounds, each of the respondents against whom the evidence was offered had standing to object to the validity of the search.

The ruling of the trial judge is

AFFIRMED.

GREGORY, HARWELL, CHANDLER and FINNEY, JJ., concur.

1 Respondent's motion to dismiss the State's appeal was denied. *State v. McKnight*, 287 S.C. 167, 337 S.E.2d 208 (1985).

2 The Sachs good faith rule permits the introduction of evidence seized pursuant to a warrant which is defective under Section 17-13-140 if the officers have made a good faith attempt to comply with the affidavit requirement. A state counterpart to *Leon*, if adopted, would apply when the officers reasonably believe the search warrant is valid when the search is made, but is subsequently determined to be invalid. The two good faith standards focus on the officers' conduct and state of mind at different points in the execution process.

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

STATE)

Vs.)

JUSTIN CARROLL,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT No.: 2021GS1500472

Motion in Limine to Suppress Phone Records
From Victim

COMES NOW the Defendant, and Moves for an Order in Limine to Suppress Phone Records from the Victim, and as grounds therefore alleges that the Affidavit in support of the Search Warrant (attached as Exhibit "A") does not allege probable cause, as required by the Constitution and arrant. The Defendant's name is not even mentioned in the affidavit. The South Carolina Supreme Court reversed an order denying the Defendant's motion to suppress cell-site location information in State v. Warner (attached) finding the information in the affidavit in support of the search warrant there was insufficient to establish probable cause (436 S.C. 395, 872 S.E.2d 638 (2022)). The information provided in the instant case is even more sparse than what was provided in the Warner case.

Respectfully Submitted the 22nd Day of April, 2024,



David S. Mathews, Assistant Public Defender
Colleton County Division
14th Circuit Public Defender's Office
319 North Lucas Street
Walterboro, SC 29488
(843)549-1633

APR 11 2024 PM 1:17
COLLETON CO CLERK, GS
Patricia C. Grant

STATE OF SOUTH CAROLINA

County of COLLETON

SEARCH WARRANT

Date: 5/24/2021

CASE# 2100743

Officer: Cpl. Charles Shipp

Case # 2100743

2

RETURN

I received the attached Search Warrant _____, 2021, and have executed it as follows:

On May 26, 2021 at 1600 o'clock PM, I searched
(the person) described in the warrant and
(the premises)

I left a copy of the warrant with at place of search
(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:

Data extracted from device as described in search warrant
- Video of Austin Cole Carroll right outside of victim's vehicle (driver side)
which is timestamped at 1207 hrs.

This inventory was made in the presence of Det. Kyle Becker 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 the _____ day of _____, 2021

(Signature of Officer Executing Warrant)

(L.S.)

Case # 2100743

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT

**TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF Walterboro.**

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**

One cell phone retrieved from the victim, Donasia Holloway, at the time her vehicle was being processed at the crime scene. The phone is described as an Iphone with a light blue case with black trim and has T-mobile as a service provider.

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

Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, incoming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

This Search Warrant shall not be valid for more than ten days from 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 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 prominent place on such premises.

_____, S. C.
_____, 2014.


_____, (L.S.)
Signature of Judge

Case # 2100743

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT AFFIDAVIT:

Personally appeared before me, the affiant, Col. Charles Shinn 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 and is located on the following premises in this County:

I have been a sworn and certified South Carolina Police Officer since 2014. I am currently assigned to the Criminal Investigations Unit with the Walterboro Police Department.

I am authorized to make searches and seizures in the city of Walterboro in the State of South Carolina.

The information provided herein is based upon my own investigation, as well as the investigations of officers of the Walterboro Police Department and other law enforcement officers, whose results have been provided to me.

DESCRIPTION OF PROPERTY SOUGHT

Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, in coming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

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

One cell phone retrieved from the victim, Donasia Holloway, at the time her vehicle was being processed at the crime scene. The phone is described as an Iphone with a light blue case with black trim and has T-mobile as a service provider.

Case # 2100743

REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES
(continued)

REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On May 22, 2021 officers with the Walterboro Police Department responded to [REDACTED] Forest Circle (Forest Pointe Apts.) Walterboro SC 29488 in reference to multiple shots fired in the area. Upon initial response a silver lexus ([REDACTED]) was observed to have what appeared to be bullet damage to the driver side window, furthermore a black female was observed in the driver seat and appeared to be nonresponsive. A review of the camera footage in the area revealed a vehicle that followed the victim into the complex then turning into the parking area of the 100 building. Shortly after a white male is seen walking from this area to the area that the victim parked (300 building). After the incident occurs the white male is seen running back in the direction of the 100 building and a late model pickup truck can be seen leaving the area. The phone was seized for further investigation.

Sworn to and Subscribed before me

this 24th day of May, 2021.

[Signature] (L.S.)
Signature of Judge

[Signature]
Affiant Signature

Address 242 Hampton St.

WALTERBORO, SC 29488

Phone (843) 549-1811

RETURN

I received the attached Search Warrant 5-26, 2021, and have executed it as follows:

On 5-26, 2021 at 1600 o'clock P M, I searched (the person and/or premises) described in the warrant.

I left a copy of the warrant with At The Place Of Search (name of person or "at the place of search") together with a receipt for the items seized. (For electronic storage devices: Due to the intense nature and exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of this(ese) device(s), the results of the forensic analysis will be maintained by law enforcement for any subsequent legal proceedings.)

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

1) Data only extracted from the Target Device as described in the body of the Search Warrant.

This inventory was made in the presence of: Det Gyl Kyle Bealer

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

SWORN to before me this 1 day
of June, 2021.

[Signature]
Signature of Judge

(L.S.)

[Signature]
(Signature of Officer Executing Warrant)

State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (S.C. 2022)

436 S.C. 395

872 S.E.2d 638

The STATE, Respondent,

v.

Justin Jamal WARNER, Petitioner.

Appellate Case No. 2020-000930

Opinion No. 28094

Supreme Court of South Carolina

Heard November 8, 2021

Filed April 13, 2022

Rehearing Denied June 7, 2022

Summaries:

Source: Justia

Justin Jamal Warner was convicted by jury of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. The court of appeals affirmed. The South Carolina Supreme Court granted Warner's petition for a writ of certiorari to address: (1) whether the trial court was correct to deny Warner's motion to suppress cell-site location information (CSLI) seized from his cell phone service provider; and (2) whether an out-of-court viewing by Warner's probation officer of a crime-scene video and the officer's identification of Warner as the man in the video required a hearing under *Neil v. Biggers*, 409 U.S. 188 (1972). The Supreme Court found the trial court correctly ruled the identification made from the video did not require a *Biggers* hearing. As to the CSLI, the Court held the warrant the trial court found invalid because the warrant sought information stored in another state was not - at least for that reason - invalid. The Supreme Court affirmed the court of appeals as to the *Biggers* issue and remanded to the trial court for further proceedings as to Warner's motion to suppress CSLI.

Chief Appellate Defender Robert Michael Dudek and Appellate Defender Adam Sinclair Ruffin, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, and Senior Assistant Attorney General W. Edgar Salter III, of Columbia, for Respondent.

JUSTICE FLEW :

A jury convicted Justin Jamal Warner of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. The court of appeals affirmed. We granted Warner's petition for a writ of certiorari to address: (1) whether the trial court was correct to deny Warner's motion to suppress cell-site location information (CSLI)¹ seized from his cell phone service provider; and (2) whether an out-of-court viewing by Warner's probation officer of a crime-scene video and the officer's identification of Warner as the man in the video

correctly ruled the identical *C* made from the video did not require a *Bigger* hearing *C* in the CSLJ, we hold the warrant the trial court found invalid because the warrant sought information stored in another state is not—at least for that reason—invalid. We affirm the court of appeals as to the *Bigger* issue and remand to the trial court for further proceedings as to Warner's motion to suppress CSLJ.

I. Facts and History

On April 30, 2015, Warner entered the BP store at the intersection of I-85 and S.C. 153 in Anderson County. Warner showed his identification to the cashier for the purpose of purchasing cigars. The cashier—Madulaben Patel—entered Warner's date of birth into the computerized cash register and opened it. Warner then pulled out a gun, pointed it at Patel, and attempted to reach into the cash drawer. When Patel resisted, Warner shot her. Warner then left the store without completing the robbery. Patel died several days after the shooting.

Officers from the Anderson County Sheriff's Office obtained video of the incident from security cameras installed at the store. On May 4, 2015, officers received an anonymous *CrimeStoppers* tip alleging Warner was the person who committed the crimes. After reviewing the tip, officers realized Warner's date of birth matched the date Patel entered into the register. A detective then contacted Nathan Goolsby—Warner's probation officer

[872 S.E.2d 640]

in Georgia—and sent him the crime-scene video. The detective asked Goolsby whether he could identify the person in the video as Warner. Goolsby then identified Warner as the person in the video.

Also on May 4, an Anderson County magistrate issued a warrant to "T-Mobile" authorizing the seizure of "subscriber information ... from [Warner's cell number] starting on April 26, 2015 and continuing through May 4, 2015. Also tower locations to include physical addresses and or GPS coordinates." The warrant indicated it sought "records located at [an address in] New Jersey." A detective sent the warrant by facsimile to T-Mobile at the offices of its "Law Enforcement Relations Group" in New Jersey. Three days later, the Law Enforcement Relations Group responded—also by facsimile—stating, "This is in response to the Search Warrant, dated May 04, 2015, and served upon T-Mobile USA, Inc. on May 7, 2015." The facsimile response attached the requested records and indicated, "Original materials follow via US Mail."

An FBI expert testified the records showed Warner's cell phone communicating with cell towers near the location of the crime—indicating his presence near the BP store—at the general time the crime occurred.² The FBI expert's testimony was important to proving Warner committed the crimes because the State also proved Warner lived in a suburb of Atlanta, Georgia, over 130 miles from the BP store. The FBI expert's testimony indicated Warner drove along I-85 from the Atlanta area past S.C. 153 into Greenville County, and then returned to Anderson County in the general vicinity of the BP store at approximately the time of the crimes.

Warner moved to suppress the CSLJ. During the suppression hearing, the State explained that cell phone providers like T-Mobile require a warrant to be sent to their offices in another state. The trial court summarily ruled the warrant was invalid because the requested records were stored in New Jersey, and it was "beyond the scope of authority of a [South Carolina] magistrate to obtain these records" in New Jersey. The trial court nevertheless denied the motion to suppress, finding the law at that time did not require a warrant. Warner also requested a *Bigger* hearing, contending Goolsby identified him in an unnecessarily suggestive identification procedure. The trial court ruled *Bigger* was not applicable because Goolsby was not an eyewitness and refused to conduct a hearing.

Warner's trial took place from May 22 to May 25, 2017. After the jury convicted him, the trial court sentenced Warner to life in prison for murder and concurrent prison terms of twenty years for attempted armed robbery and five years for possession of a weapon during the commission of a violent crime. Warner appealed, and the court of appeals affirmed the trial court on all issues. *State v. Warner*, 430 S.C. 76, 842 S.E.2d 361 (Cr. App. 2020). We granted Warner's petition for a writ of certiorari only on the two questions explained above.

II. Motion to Suppress CSLJ

Before 2014, courts generally did not even discuss whether the Fourth Amendment requires a warrant for digital information generated by or stored on a cell phone. *See generally United States v. Grubbs*, 534 F.3d 421, 428-29, 428-29 n.6, 429 n.7 (4th Cir. 2016) (*en banc*) (explaining the scant authority whether the Fourth Amendment protects

Tower to Track Perspective, Real or Historical Position of Possession of Phone Under State, 94 A.L.R. 6th 579 (2014). The Supreme Court's 2014 decision in *Riley v. California*, 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014), made clear the Fourth Amendment does protect digital information stored on a cell phone. *See State v. Brown*, 423 S.C. 519, 523-24, 815 S.E.2d 761, 763-64 (2018) (discussing *Riley*). When Warner murdered [872 S.E.2d 641]

Patel in 2015, however, no South Carolina court—nor any federal court whose precedent binds our court—had addressed whether the Fourth Amendment protects digital information derived from a cell phone but not stored on it, such as CSLI. In 2016, the Fourth Circuit found that it does not. *Graham*, 824 F.3d at 427.⁴ According to the Fourth Circuit, "This holding accords with that of every other federal appellate court that has considered the Fourth Amendment question before us. Not one has adopted the Defendants' theory." 824 F.3d at 428.

In 2017, therefore, at the time of Warner's trial, it appeared that a person had no reasonable expectation of privacy in their CSLI held by a cell phone service provider and the Fourth Amendment did not require a warrant for the seizure of CSLI. The trial court in this case relied on *Graham* in finding the Fourth Amendment did not apply, stating "the search warrant under the *Graham* case was not needed." Based on *Graham*, the trial court found Warner's voluntary use of his cell phone and the consequent provision of CSLI to the cell phone service provider resulted in the loss of any expectation of privacy Warner may have otherwise had in the information.

In 2018, however—after Warner's trial and while his appeal was pending at the court of appeals—the Supreme Court held CSLI is subject to the warrant requirement of the Fourth Amendment. *Carpenter*, 585 U.S. at —, 138 S. Ct. at 2217, 201 L. Ed. 2d at 525. The State had not challenged the trial court's ruling that the warrant was invalid. *Warner*, 430 S.C. at 92, 842 S.E.2d at 369, which left for the court of appeals only the question of whether the exclusionary rule should be applied. The court of appeals found the exclusionary rule should not apply and affirmed. 430 S.C. at 94, 842 S.E.2d at 370.

At oral argument before this Court, justices raised difficult questions as to how—if South Carolina courts do not have authority to issue warrants for the seizure of records kept in another state—law enforcement may reasonably carry out its investigative responsibilities in this modern digital age. The answers, though sincere and realistic, were unsatisfactory. Therefore, and in light of our concerns that the trial court mistakenly found the warrant invalid, we find it necessary to analyze the validity of the May 4, 2015 warrant. As our Rules acknowledge, and as this Court has held many times, we may affirm on any ground appearing in the record. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling ... upon any ground[] appearing in the Record on Appeal."); *State v. King*, 422 S.C. 47, 64 n.5, 810 S.E.2d 18, 27 n.5 (2017) (same); *State v. Johnson*, 278 S.C. 668, 669-70, 301 S.E.2d 138, 139 (1983) (same).⁵

The primary focus of the dispute before the trial court over the validity of this warrant was whether an Anderson County magistrate had the authority to issue the warrant to an out-of-state entity for records that are not physically located in this State. The applicable statute, section 17-13-140 of the South Carolina Code (2014), provides:

Any magistrate ...⁶ may issue a search warrant to search for and seize ... property

[872 S.E.2d 642]

constituting evidence of crime or tending to show that a particular person committed a criminal offense The property described in this section, (or any part thereof), may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

This warrant was issued by T-Mobile. While we assume for purposes of our analysis T-Mobile stores the applicable records in New Jersey,⁷ the important fact is T-Mobile clearly does business in South Carolina, in particular, in Anderson County. T-Mobile, therefore, is subject to the jurisdiction of an Anderson County magistrate. The warrant sought records reflecting information generated in South Carolina through the interaction of Warner's cell phone and cell towers in Anderson County. While the T-Mobile office to which officers were told to send the warrant is located in New Jersey, section 17-13-140 specifically provides, "The property described in this section ... may be seized ... from the person, possession or control of any person who shall be found to have such property in

his possession or under his control." T-Mobile is in possession and control of property that Section 17-13-140 permits to be seized. T-Mobile is a "person" doing business in Anderson County. Thus, T-Mobile is subject to the jurisdiction of our courts, and we find it was not beyond the power of the magistrate to issue the warrant.

Our determination that the warrant was not invalid for the reason relied on by the trial court raises other questions. Warner argued in his suppression motion, for example, the affidavit supporting the warrant did not set forth probable cause. We agree. The affidavit states only, "information was received through crime stoppers indicating that Justin Warner is a possible suspect. The informant's information was corroborated and a record search revealed that Warner has this listed number to him." While we have recognized—recently—that "[p]robable cause ... is not a high bar," *State v. Jones*, 435 S.C. 138, 145, 866 S.E.2d 358, 562 (2021) (quoting *Katze v. United States*, 571 U.S. 320, 338, 134 S. Ct. 1090, 1103, 188 L. Ed. 2d 46, 62 (2014)), it is by no means a toothless standard. *See Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S. Ct. 1302, 1310-11, 91 L. Ed. 1879, 1890 (1949) (stating probable cause "has come to mean more than bare suspicion. Probable cause exists where 'the facts and circumstances within ... [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed"). The affidavit attached to this warrant provided the magistrate no facts or circumstances whatsoever; only the conclusory statement that some unnamed person considered Warner as a suspect based on unprovided information.² It is inconceivable to us that the

[872 S.E.2d 643]

magistrate did not require the experienced detective to supplement the affidavit with sworn testimony, or if the magistrate did not require it, that the detective did not provide it on his own. It is unclear, however, whether the information in the affidavit was supplemented before the magistrate issued the warrant. Because the record on this issue—and perhaps other issues—was never fully developed during the suppression hearing, we remand to the trial court for a ruling on any unresolved issues related to Warner's motion to suppress. *See State v. Johnson*, 302 S.C. 243, 249, 395 S.E.2d 167, 170 (1990) (finding the affidavit attached to the search warrant lacked probable cause, but remanding to develop the record as to whether the affidavit was supplemented; explaining possible results on remand). If the trial court determines the affidavit was not supplemented, and thus the warrant lacked probable cause, the trial court should also consider whether the exclusionary rule should apply.

III. *Neil v. Biggers* Hearing

Warner also argues the trial court erred by refusing to conduct a hearing to determine whether Goolsby's identification of Warner in the crime-scene video violated his due process rights under *Biggers*. Warner relies on a line of cases decided by the Supreme Court of the United States in which the Court held that unnecessarily suggestive police-arranged eyewitness identification procedures violate due process and, thus, are inadmissible, unless the trial court determines in a hearing that the identification was nevertheless so reliable that no substantial likelihood of misidentification exists. *See Perry v. New Hampshire*, 565 U.S. 228, 237-39, 132 S. Ct. 716, 723-25, 181 L. Ed. 2d 694, 706-07 (2012) (discussing the line of cases and explaining the Supreme Court "[s]ynthesiz[ed]" them into a two-part test in *Biggers*); *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012) (reciting *Biggers* test). Under *Biggers*, the trial court must first determine whether the police used an "unnecessarily suggestive" ... identification procedure[.]" *State v. Watt*, 421 S.C. 306, 310, 806 S.E.2d 708, 710 (2017) (citing *Biggers*, 409 U.S. at 198-99, 93 S. Ct. at 381-82, 34 L. Ed. 2d at 410-11), and second, if so, "whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed," 421 S.C. at 311, 806 S.E.2d at 710 (quoting *Liverman*, 398 S.C. at 138, 727 S.E.2d at 426).

The trial court in this case refused to conduct a *Biggers* hearing because Goolsby was not an eyewitness. The court stated, "I don't believe ... this is a *Biggers* situation. You don't have an out-of-court identification [by] an eyewitness." We agree with the trial court. In every case decided by the Supreme Court or by this Court under *Biggers* and the line of cases that led to it, the witness who made the identification was an eyewitness to the crime itself, a witness who observed the crime take place in real time. The Supreme Court has given no reason to believe it would extend the *Biggers* analysis beyond eyewitnesses, nor has this Court. In *Perry*, the

[872 S.E.2d 644]

Supreme Court preface its criticism of the line of cases leading to *Biggers* by stating, "Only when evidence is so extremely unfair that its admission violates fundamental conceptions of justice, have we imposed a constraint tied to the Due Process Clause." 563 U.S. at 237, 132 S. Ct. at 723, 181 L. Ed. 2d at 706 (citations omitted). The dangers of misidentification associated with eyewitness identification that threaten "fundamental conceptions of justice" are simply not present in a situation like the one in this case. While we agree with Warner the detective's question suggested to Goolsby that Warner is the man in the video, we nevertheless find Warner's due process rights do not require a hearing because Goolsby was not an eyewitness to the crime, and thus, *Biggers* does not apply.²

The trial court did not err in denying Warner a hearing as to Goolsby's identification.

IV. Conclusion

We affirm the trial court's refusal to conduct a hearing under *Biggers* because Goolsby was not an eyewitness. As to Warner's motion to suppress CSLI, we find the warrant was not invalid for the reasons the trial court recited. We remand to the trial court for further proceedings.

AFFIRMED IN PART AND REMANDED.

BEATTY, C.J., KITTREDGE and JAMES, JJ., concur. HEARN, J., dissenting in a separate opinion.

JUSTICE HEARN:

Because I agree with the decision and analysis of the court of appeals, I respectfully dissent. The court of appeals analyzed this pre-*Carpenter* Fourth Amendment violation under the standard set forth in *Davis* and concluded the exclusionary rule does not apply, which I believe was the correct approach. See *Davis v. United States*, 564 U.S. 229, 241, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011) (holding searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule). I would end the matter there and not remand for a hearing. While I concede that probable cause was raised before the circuit court, the primary focus of the hearing was the privacy interests impacted by release of cell-site location data, and the circuit court denied the motion to suppress on that basis alone. I would not resurrect the probable cause issue now because the exclusionary rule would not serve any deterrent purpose and even assuming error in the denial of the motion to suppress, I would hold any error harmless.

The court of appeals found that the purposes of the exclusionary rule would not be honored in this case, and I agree completely with that determination. Here, the search warrant was issued under existing law that has since been changed. Compare *Carpenter v. United States*, — U.S. —, 138 S.Ct. 2206 (2017), 201 L.Ed.2d 507 (2018) (holding that a person has an expectation of privacy in cell phone records held by a third party, thereby abrogating *Graham*'s extension of *Miller* to cell-site location information or "CSLI"), with *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (finding no expectation of privacy in cell phone records held by a third party because of the third-party doctrine of *Miller*); *United States v. Miller*, 425 U.S. 435, 440, 96 S.Ct. 1619, 48 L.Ed.2d 247 (1976) (holding bank depositor had no Fourth Amendment interest in bank records). While there is no dispute *Carpenter* applies retroactively, as the court of appeals correctly reasoned, applying the exclusionary

[872 S.P.2d 643]

rule is not called for when the behavior of the officers was made in either good faith or isolated simple negligence. Here, the officers were operating under the belief that Warner had no expectation of privacy in his cell phone records, and at the time, under the persuasive authority of *Graham* and the binding authority of *Miller*, that was true.

As an appellate court, we are required to balance the interests of the exclusionary rule with the "heavy toll on both the judicial system and society at large." *Davis v. United States*, 564 U.S. 229, 237, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). The rule was designed to serve as a last resort to deter officer misconduct and error. *Id.* at 236, 131 S.Ct. 2419 and *Elkins v. United States*, 364 U.S. 206, 217, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960) (holding the exclusionary rule is "calculated to prevent, not to repair"). Here, there would be no deterrence of officer misconduct or error in excluding the evidence because, at the time of the search, officers acted in compliance with current law. We can neither expect officers to predict future decisions of appellate courts nor take them to task for their failure to do so. Therefore, because the deterrent effect of the exclusionary rule would not be served here, I would not apply it. See

State v. Warner, 329 S.C. 287, 494 S.E.2d 801, 804 (1997) (stating "[s]uppression is appropriate in only a few situations"); *State v. Smith*, 264 S.C. 541, 586, 216 S.E.2d 501, 514 (1975) (stating "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where [the purpose of] deterrence is clearly subverted").

Moreover, even assuming *arguendo* the circuit court erred in denying the motion to suppress, any error was harmless. When improper evidence is "merely cumulative" its admission is harmless beyond a reasonable doubt, and the conviction should not be reversed. See *State v. Hazelden*, 353 S.C. 190, 197, 577 S.E.2d 443, 449 (2003) and *State v. Brown*, 367 S.C. 41, 55-56, 625 S.E.2d 216, 224 (2006). Here, the CSI data was clearly cumulative to a myriad of evidence which tied Warner to this crime: he was identified on the store's security footage by his probation officer, his birthday was entered into the store's computer during the fatal check-out, and his palm print matched one taken from the store's counter.² Further, the store's security video also captured the robber's vehicle at the scene, which closely resembled the same car Warner drove immediately before his arrest. Once investigators impounded Warner's vehicle, they found cigar wrappers similar to those purchased during the robbery and Warner's wallet, which resembled the one in the video of the robbery. In short, the use of his CSI data was merely cumulative to other ample evidence, rendering any error harmless.

For the foregoing reasons, I respectfully dissent.

Notes

¹ "Most modern devices, such as smartphones, tap into the wireless network several times a minute whenever their signal is on, even if the owner is not using one of the phone's features. Each time the phone connects to a cell site, it generates a time-stamped record known as cell-site location information (CSI). The precision of this information depends on the size of the geographic area covered by the cell site. The greater the concentration of cell sites, the smaller the coverage area." *Computer v. United States*, 585 U.S. —, —, 138 S.Ct. 2296, 2311, 201 L. Ed. 2d 587, 515 (2018).

² The FBI expert was Special Agent David Church. The court of appeals extensively analyzed Special Agent Church's qualifications as an expert in CSI as part of its analysis of the admissibility of his opinions. *State v. Warner*, 430 S.C. 70, 83-89, 812 S.E.2d 361, 364-67 (Ct. App. 2020).

³ This opinion was issued by the Fourth Circuit sitting en banc. 824 F.3d at 424. In the panel decision—issued August 5, 2015—the Fourth Circuit held "the government conducts a search under the Fourth Amendment when it obtains and inspects a cell phone user's historical CSI for an extended period of time." *United States v. Graham*, 76 F.3d 332, 344-45 (4th Cir. 2015). The court granted the government's petition for rehearing en banc on October 28, 2015, *United States v. Graham*, 624 F. App'x 75 (4th Cir. 2015), which vacated the panel decision. *Graham*, 824 F.3d at 424. *Id.* at 4th Cir. R. 35(c) (en banc proceedings) ("Granting of rehearing en banc vacates the previous panel judgment and opinion.")

⁴ Technically, we are not affirming the denial of the motion to suppress. However, we are deciding the trial court's ruling will not be reversed on the basis that the warrant sought information stored in another state. If, on other basis for reversing the denial of the motion to suppress arises on remand, then the result of our analysis of the validity of the warrant in this respect will be that we affirm.

⁵ The omitted text contains as many as three additional items in a series, followed by the limiting language "... having jurisdiction over the area where the property sought is located." § 17-1.1, 140. We find the limiting language applies only to the last item in the series, not to "Any magistrate," which is the first item in the series. See *Committee of Public Works of the City of Lawrence v. City of Lawrence, Inc.*, 428 S.C. 209, 219-20, 831 S.E.2d 834, 839 (2019) (Feltz, J., concurring) (explaining that under the last antecedent doctrine, the absence of a comma after the last item in a series indicates the modifying clause following the series applies only to the last item in the series). In addition, to read the limiting language as applying to all items in the series would contradict—and render superfluous—the language enabling the seizure of property within the "control" of any person, because if all seizures are limited to property inside the jurisdiction of the individual judge, it would not have been necessary to alternately authorize the seizure of property not under a person's control.

⁶ There is no evidence in the record to support this assumption other than the fact law enforcement officers were required to submit the warrant to the T-Mobile Law Enforcement Relations Group, which is located in New Jersey. In fact, the FBI Special Agent who testified as the State's expert on CSI—when asked where the records were stored—did not testify where the records are stored. He stated only that the records are "generated" in New Jersey. "[New Jersey is] where T-Mobile's compliance people are; where they generate — where all the requests go to and they generate abuse [records]. The actual records are pulled from the different switches, but [New Jersey is] where the record is generated from...."

⁷ The Supreme Court's statement in *Katz*, which we quoted in *Jeter*, was made to support the Supreme Court's continued refusal "to require the use of adversarial procedures to make probable cause determinations" in grand jury proceedings. *Katz*, 339 U.S. at 338, 143 S.Ct. at 1103. *Id.* at 341, 143 S.Ct. at 62. The Supreme Court's statement in *Brinegar* was made in explaining probable cause existed to support a search incident to a warrantless arrest. *Brinegar*, 338 U.S. at 170-71, 69 S.Ct. at 1368, 93 L. Ed. at 1888. In *Minerva v. Gray*, 462 U.S. 213, 143 S.Ct. 2317, 76 L. Ed. 2d 327 (1983), even after abandoning the "two-pronged test" the Supreme Court previously applied, 462 U.S. at 236, 143 S.Ct. at 2432, 76 L. Ed. 2d 413-14, the Court addressed a hypothetical basis for a search warrant much like the situation presented by the affidavits in this case.

For earlier cases illustrate the facts beyond which a magistrate may not venture in issuing a warrant. A sworn statement of an affiant that 'he has cause to suspect and does believe that' [a crime has been committed] will not do. An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause, and [a] wholly conclusory statement ... fail[s] or meet this requirement. An officer's statement that 'affiants have received reliable information from a credible person and do believe' that heroin is stored in a home, is likewise inadequate.... [I]his is a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others. In order to ensure that such an abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued.

462 U.S. at 239, 103 S.Ct. at 2332-33, 76 L.Ed. 2d at 548-49.

¹ Our court of appeals reached the same conclusion in *State v. McGee*, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014). There, the court found the identification was not subject to a *Riggins* analysis because the witness who made the identification "was not an eyewitness to the crime." 408 S.C. at 286, 758 S.E.2d at 735. In a recent decision by the Court of Appeals of Maryland on almost identical facts, the court held the "identification is not governed by the due process analysis in *Riggins*." *Greene v. State*, 469 Md. 156, 229 A.3d 183, 193 (2020). Before reaching that conclusion, the Court of Appeals of Maryland conducted a thorough analysis of the same line of Supreme Court cases discussed above. 229 A.3d at 192-94. After our own thorough review of decisions on this point nationwide, we are aware of no court that has held the *Riggins* analysis extends to witnesses who are not "eyewitnesses."

² The record reflects that the counter was cleaned approximately forty five minutes before the crime. Seven individuals, including Warner, were in the store between the wiping of the counter and the robbery—five or six of whom approached the counter. However, it is clear no one besides Warner was involved in the robbery or murder.

APR 11 2024 PM 1:17
COLLETON CO CLERK, GS
Patricia C. Grant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF COLLETON	)	INDICTMENT No.: 2021GS1500472
STATE	)	
Vs.	)	Motion in Limine to Suppress GSR
JUSTIN CARROLL,	)	
Defendant.	)	

COMES NOW the Defendant, and Moves for an Order in Limine to Suppress GSR and the resulting Report and as grounds therefore alleges that the sample and corresponding questions were taken after the Defendant invoked his right to an attorney under Miranda.

Respectfully Submitted the 22nd Day of April, 2024.


 David S. Mathews, Assistant Public Defender
 Colleton County Division
 14th Circuit Public Defender's Office
 319 North Lucas Street
 Walterboro, SC 29488
 (843)549-1633

APR 10 2024 10:44
 COLLETON CO CLERK, GS
 Patricia C. Grant

2021A1520300127

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

STATE

Vs.

JUSTIN CARROLL,

Defendant.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT No. 2021GS1500472

**Motion in Limine to Suppress References
to Allegations of Prior Bad Acts or Any Other
Offenses**

COMES NOW the Defendant, and Moves for an Order in Limine under Rule 404, South Carolina Rules of Evidence, suppressing any reference by the State or any State's witness to any other charges or accusations against the Defendant, including but not limited to, other currently pending charge in Colleton County.

Respectfully Submitted the 22nd Day of April, 2024.

David S. Mathews, Assistant Public Defender
Colleton County Division
14th Circuit Public Defender's Office
319 North Lucas Street
Walterboro, SC 29488
(843)549-1633

APR 10 2024 AM 10:45
COLLETON CO CLERK: GS
Patricia C. Grant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF COLLETON	)	INDICTMENT No.: 2021GS1500472
STATE	)	
Vs.	)	Motion to Sequester Witnesses
JUSTIN CARROLL,	)	
Defendant.	)	

COMES NOW the Defendant, Justin Carroll, by and through his undersigned attorney of record below, and moves for an Order under Rule 615, SCRE, to sequester witnesses.

Respectfully Submitted the 22nd Day of April, 2024,



David S. Mathews, Assistant Public Defender
 Colleton County Division
 14th Circuit Public Defender's Office
 319 North Lucas Street
 Walterboro, SC 29488
 (843)549-1633

APR 10 2024 PM 10:46
 COLLETON CO CLERK, GS
 Patricia C. Grant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF COLLETON	)	INDICTMENT No.: 2021GS1500472
STATE	)	
Vs.	)	Motion in Limine to Suppress Phone Records
JUSTIN CARROLL,	)	
Defendant.	)	

COMES NOW the Defendant, and Moves for an Order in Limine to Suppress Phone Records from the Defendant, and as grounds therefore alleges that the Defendant's phone was seized without the Defendant's consent after he had invoked his right to counsel, and without a search warrant. The search warrant for the records from the phone (attached as Exhibit "A") provides that the Defendant's cell phone was taken during a custodial interview, and that a white male was seen in the area. The Defendant's name is not even mentioned in the affidavit. The South Carolina Supreme Court reversed an order denying the Defendant's motion to suppress cell-site location information in State v. Warner (attached) finding the information in the affidavit in support of the search warrant there was insufficient to establish probable cause (436 S.C. 395, 872 S.E.2d 638 (2022)). The information provided in the instant case is even more sparse than what was provided in the Warner case.

Respectfully Submitted the 22nd Day of April, 2024.



David S. Mathews, Assistant Public Defender
 Colleton County Division
 14th Circuit Public Defender's Office
 319 North Lucas Street
 Walterboro, SC 29488
 (843)549-1633

APR 10 2024 AM 10:47
 COLLETON CO CLERK, GS
 Adreia C. Grant

STATE OF SOUTH CAROLINA**County of COLLETON**

SEARCH WARRANT

Date: 5/24/2021**CASE# 2100743****Officer: Cpl. Charles Shipp**

Case # 2100743

RETURN

I received the attached Search Warrant May 26, 2021, and have executed it as follows:

On May 26, 2021 at 1100 o'clock PM, I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with at the place of search (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:

data extracted from device as described in search 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 the _____ day of _____, 2021

(Signature of Officer Executing Warrant)

(L.S.)

Case # 2100743

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT

**TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF Walterboro,**

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**

One cell phone retrieved from suspect, Justin Carroll at the time he was detained for an interview. The cell phone is described as one black LG Trac phone.

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

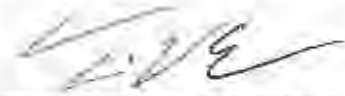
Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, incoming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

This Search Warrant shall not be valid for more than ten days from 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 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 prominent place on such premises.

_____, S. C.
_____, 2014.


_____, (L.S.)
Signature of Judge

Case # 2100743

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

SEARCH WARRANT AFFIDAVIT:

Personally appeared before me, the affiant, Cpl. Charles Shipp 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 and is located on the following premises in this County:

I have been a sworn and certified South Carolina Police Officer since 2014. I am currently assigned to the Criminal Investigations Unit with the Walterboro Police Department.

I am authorized to make searches and seizures in the city of Walterboro in the State of South Carolina.

The information provided herein is based upon my own investigation, as well as the investigations of officers of the Walterboro Police Department and other law enforcement officers, whose results have been provided to me.

DESCRIPTION OF PROPERTY SOUGHT

Any and all pictures, photographs, images, videos, text messages sent and received, voice messages, in coming and outgoing call logs, social media posts or messages, tower information and any other information stored on the devices pertaining to this investigation.

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

One cell phone retrieved from suspect, Justin Carroll at the time he was detained for an interview. The cell phone is described as one black LG Trac phone.

Case # 2100743

Search Warrant Affidavit
Pg. 5

**REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

(continued)

**REASON FOR AFFIANTS BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

On May 22, 2021 officers with the Walterboro Police Department responded to [REDACTED] Forest Circle (Forest Pointe Apts.) Walterboro SC 29488 in reference to multiple shots fired in the area. Upon initial response a silver lexus ([REDACTED]) was observed to have what appeared to be bullet damage to the driver side window, furthermore a black female was observed in the driver seat and appeared to be nonresponsive. A review of the camera footage in the area revealed a vehicle that followed the victim into the complex then turning into the parking area of the 100 building. Shortly after a white male is seen walking from this area to the area that the victim parked (300 building). After the incident occurs the white male is seen running back in the direction of the 100 building and a late model pickup truck can be seen leaving the area. The phone was seized for further investigation.

Sworn to and Subscribed before me:

this 24th day of May, 2021.

[Signature] (L.S.)
Signature of Judge

[Signature]
Affiant Signature

Address 241 Hampton St.WALTERBORO, SC 29488Phone (843) 549-1811

RETURN

I received the attached Search Warrant 5-24, 2021, and have executed it as follows:

On 5-24, 2021 at 1620 o'clock 8 M, I searched (the person and/or premises) described in the warrant.

I left a copy of the warrant with At The Place Of Search (name of person or "at the place of search") together with a receipt for the items seized. (For electronic storage devices: Due to the intense nature and exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of this(ese) device(s), the results of the forensic analysis will be maintained by law law enforcement for any subsequent legal proceedings.)

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

1) Data only extracted from the Target Device as described in the body of the Search Warrant.

This inventory was made in the presence of: Det/Cpl Kyle Bealer

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

SWORN to before me this 1 day of June, 2021.

[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)



State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (S.C. 2022)

436 S.C. 395

872 S.E.2d 638

The STATE, Respondent,

v.

Justin Jamal WARNER, Petitioner.

Appellate Case No. 2020-000930

Opinion No. 28094

Supreme Court of South Carolina

Heard November 8, 2021

Filed April 13, 2022

Rehearing Denied June 7, 2022

Summary:

Source: Jusia

Justin Jamal Warner was convicted by jury of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. The court of appeals affirmed. The South Carolina Supreme Court granted Warner's petition for a writ of certiorari to address: (1) whether the trial court was correct to deny Warner's motion to suppress cell-site location information (CSLI) seized from his cell phone service provider; and (2) whether an out-of-court viewing by Warner's probation officer of a crime-scene video and the officer's identification of Warner as the man in the video required a hearing under *Neil v. Biggers*, 409 U.S. 188 (1972). The Supreme Court found the trial court correctly ruled the identification made from the video did not require a *Biggers* hearing. As to the CSLI, the Court held the warrant the trial court found invalid because the warrant sought information stored in another state was not - at least for that reason - invalid. The Supreme Court affirmed the court of appeals as to the *Biggers* issue and remanded to the trial court for further proceedings as to Warner's motion to suppress CSLI.

Chief Appellate Defender Robert Michael Dudek and Appellate Defender Adams Sinclair Rufin, of Columbia, for Petitioner.

Attorney General Alzo McGraw Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Malady Jane Brown, and Senior Assistant Attorney General W. Edgar Salter III, of Columbia, for Respondent.

JUSTICE FEW:

A jury convicted Justin Jamal Warner of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. The court of appeals affirmed. We granted Warner's petition for a writ of certiorari to address: (1) whether the trial court was correct to deny Warner's motion to suppress cell-site location information (CSLI) seized from his cell phone service provider; and (2) whether an out-of-court viewing by Warner's probation officer of a crime-scene video and the officer's identification of Warner as the man in the video required a hearing under *Neil v. Biggers*, 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972). We find the trial court

correctly ruled the identification made from the video did not require a *Higgen* hearing. As to the CSLJ, we hold the warrant the trial court found invalid because the warrant sought information stored in another state is not—at least for that reason—invalid. We affirm the court of appeals as to the *Higgen* issue and remand to the trial court for further proceedings as to Warner's motion to suppress CSLJ.

I. Facts and History

On April 30, 2015, Warner entered the BP store at the intersection of I-85 and S.C. 153 in Anderson County. Warner showed his identification to the cashier for the purpose of purchasing cigars. The cashier—Mradulaben Patel—entered Warner's date of birth into the computerized cash register and opened it. Warner then pulled out a gun, pointed it at Patel, and attempted to reach into the cash drawer. When Patel resisted, Warner shot her. Warner then left the store without completing the robbery. Patel died several days after the shooting.

Officers from the Anderson County Sheriff's Office obtained video of the incident from security cameras installed at the store. On May 4, 2015, officers received an anonymous Crimestoppers tip alleging Warner was the person who committed the crimes. After reviewing the tip, officers realized Warner's date of birth matched the date Patel entered into the register. A detective then contacted Nathan Goolsby—Warner's probation officer

[872 S.E.2d 644]

in Georgia—and sent him the crime-scene video. The detective asked Goolsby whether he could identify the person in the video as Warner. Goolsby then identified Warner as the person in the video.

Also on May 4, an Anderson County magistrate issued a warrant to "T-Mobile" authorizing the seizure of "subscriber information ... from [Warner's cell number] starting on April 26, 2015 and continuing through May 4, 2015. Also tower locations to include physical addresses and/or GPS coordinates." The warrant indicated it sought "records located at [an address in] New Jersey." A detective sent the warrant by facsimile to T-Mobile at the offices of its "Law Enforcement Relations Group" in New Jersey. Three days later, the Law Enforcement Relations Group responded—also by facsimile—stating, "This is in response to the Search Warrant, dated May 04, 2015, and served upon T-Mobile USA, Inc. on May 7, 2015." The facsimile response attached the requested records and indicated, "Original materials follow via US Mail."

An FBI expert testified the records showed Warner's cell phone communicating with cell towers near the location of the crime—indicating his presence near the BP store—at the general time the crime occurred.⁴ The FBI expert's testimony was important to proving Warner committed the crimes because the State also proved Warner lived in a suburb of Atlanta, Georgia, over 130 miles from the BP store. The FBI expert's testimony indicated Warner drove along I-85 from the Atlanta area past S.C. 153 into Greenville County, and then returned to Anderson County in the general vicinity of the BP store at approximately the time of the crimes.

Warner moved to suppress the CSLJ. During the suppression hearing, the State explained that cell phone providers like T-Mobile require a warrant to be sent to their offices in another state. The trial court summarily ruled the warrant was invalid because the requested records were stored in New Jersey, and it was "beyond the scope of authority of a [South Carolina] magistrate to obtain these records" in New Jersey. The trial court nevertheless denied the motion to suppress, finding the law at that time did not require a warrant. Warner also requested a *Higgen* hearing, contending Goolsby identified him in an unnecessarily suggestive identification procedure. The trial court ruled *Higgen* was not applicable because Goolsby was not an eyewitness and refused to conduct a hearing.

Warner's trial took place from May 22 to May 25, 2017. After the jury convicted him, the trial court sentenced Warner to life in prison for murder and concurrent prison terms of twenty years for attempted armed robbery and five years for possession of a weapon during the commission of a violent crime. Warner appealed, and the court of appeals affirmed the trial court on all issues. *State v. Warner*, 434 S.C. 71, 812 S.E.2d 361 (Ct. App. 2020). We granted Warner's petition for a writ of certiorari only on the two questions explained above.

II. Motion to Suppress CSLJ

Before 2014, courts generally did not even discuss whether the Fourth Amendment requires a warrant for digital information generated by or stored on a cell phone. See generally *United States v. Carabino*, 824 F.3d 471, 428-29, 428-29 n.6, 429 n.7 (4th Cir. 2016) (en banc) (explaining the scant authority whether the Fourth Amendment protects CSLJ and online federal and state case authorities); *Rainey v. American Association of Individual Telephone*, 2015 WL 1111111 (S.D. Cal. 2015) (explaining the scant authority whether the Fourth Amendment protects CSLJ and online federal and state case authorities).

Turner to Trade Properties, Real Estate, or Historical Position of Possessor of Phone Under State Law, 94 A.L.R. 6th 379 (2014). The Supreme Court's 2014 decision in *Riley v. California*, 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 420 (2014), made clear the Fourth Amendment does protect digital information stored on a cell phone. See *State v. Brown*, 421 S.C. 519, 523-24, 815 S.E.2d 761, 763-64 (2018) (discussing *Riley*). When Warner murdered [872 S.E.2d 641].

Patel in 2015, however, no South Carolina court—not any federal court whose precedent binds our courts—had addressed whether the Fourth Amendment protects digital information derived from a cell phone but not stored on it, such as CSLI. In 2016, the Fourth Circuit found that it does not. *Graham*, 824 F.3d at 427.³ According to the Fourth Circuit, “This holding accords with that of every other federal appellate court that has considered the Fourth Amendment question before us. Not one has adopted the Defendants’ theory.” 824 F.3d at 428.

In 2017, therefore, at the time of Warner’s trial, it appeared that a person had no reasonable expectation of privacy in their CSLI held by a cell phone service provider and the Fourth Amendment did not require a warrant for the seizure of CSLI. The trial court in this case relied on *Graham* in finding the Fourth Amendment did not apply, stating “the search warrant under the *Graham* case was not needed.” Based on *Graham*, the trial court found Warner’s voluntary use of his cell phone and the consequent provision of CSLI to the cell phone service provider resulted in the loss of any expectation of privacy Warner may have otherwise had in the information.

In 2018, however—after Warner’s trial and while his appeal was pending at the court of appeals—the Supreme Court held CSLI is subject to the warrant requirement of the Fourth Amendment. *Carpenter*, 585 U.S. at —, 138 S. Ct. at 2217, 201 L. Ed. 2d at 525. The State had not challenged the trial court’s ruling that the warrant was invalid, *Warner*, 430 S.C. at 92, 842 S.E.2d at 369, which left for the court of appeals only the question of whether the exclusionary rule should be applied. The court of appeals found the exclusionary rule should not apply and affirmed. 430 S.C. at 94, 842 S.E.2d at 370.

At oral argument before this Court, Justices raised difficult questions as to how—if South Carolina courts do not have authority to issue warrants for the seizure of records kept in another state—law enforcement may reasonably carry out its investigative responsibilities in this modern digital age. The answers, though sincere and realistic, were unsatisfactory. Therefore, and in light of our concerns that the trial court mistakenly found the warrant invalid, we find it necessary to analyze the validity of the May 4, 2015 warrant. As our Rules acknowledge, and as this Court has held many times, we may affirm on any ground appearing in the record. See Rule 220(c), SCACR (“The appellate court may affirm any ruling . . . upon any ground[] appearing in the Record on Appeal.”); *State v. King*, 422 S.C. 47, 64 n.5, 810 S.E.2d 18, 27 n.5 (2017) (same); *State v. Johnson*, 278 S.C. 668, 669-70, 301 S.E.2d 138, 139 (1983) (same).⁴

The primary focus of the dispute before the trial court over the validity of this warrant was whether an Anderson County magistrate had the authority to issue the warrant to an out-of-state entity for records that are not physically located in this State. The applicable statute, section 17-13-140 of the South Carolina Code (2014), provides,

Any magistrate . . . [a] may issue a search warrant to search for and seize . . . property

[872 S.E.2d 642]

constituting evidence of crime or tending to show that a particular person committed a criminal offense . . . The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

This warrant was issued to T-Mobile. While we assume for purposes of our analysis T-Mobile stores the applicable records in New Jersey,⁵ the important fact is T-Mobile clearly does business in South Carolina, in particular, in Anderson County. T-Mobile, therefore, is subject to the jurisdiction of an Anderson County magistrate. The warrant sought records reflecting information generated in South Carolina through the interaction of Warner’s cell phone and cell towers in Anderson County. While the T-Mobile office to which officers were told to send the warrant is located in New Jersey, section 17-13-140 specifically provides, “The property described in this section . . . may be seized . . . from the person, possession or control of any person who shall be found to have such property in

his possession or under his control." T-Mobile is in possession and control of property under section 17-13-140, which permits to be seized. T-Mobile is a "person" doing business in Anderson County. Thus, T-Mobile is subject to the jurisdiction of our courts, and we find it was not beyond the power of the magistrate to issue the warrant.

Our determination that the warrant was not invalid for the reason relied on by the trial court raises other questions. Warner argued in his suppression motion, for example, the affidavit supporting the warrant did not set forth probable cause. We agree. The affidavit states only, "Information was received through crime stoppers indicating that Justin Warner is a possible suspect. The informant's information was corroborated and a record search revealed that Warner has this listed number to him." While we have recognized—recently—that "[p]robable cause . . . is not a high bar," *State v. Jones*, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (quoting *Kylre v. United States*, 571 U.S. 320, 338, 134 S.Ct. 1090 1103, 188 L. Ed. 2d 40, 62 (2014)), it is by no means a toothless standard. See *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 1310-11, 93 L. Ed. 1879, 1890 (1949) (stating probable cause "has come to mean more than bare suspicion. Probable cause exists where 'the facts and circumstances within . . . [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed"). The affidavit attached to this warrant provided the magistrate no facts or circumstances whatsoever; only the conclusory statement that some unnamed person considered Warner as a suspect based on unprovided information.³ It is inconceivable to us that the

[872 S.E.2d 643]

magistrate did not require the experienced detective to supplement the affidavit with sworn testimony, or if the magistrate did not require it, that the detective did not provide it on his own. It is unclear, however, whether the information in the affidavit was supplemented before the magistrate issued the warrant. Because the record on this issue—and perhaps other issues—was never fully developed during the suppression hearing, we remand to the trial court for a ruling on any unresolved issues related to Warner's motion to suppress. See *State v. Johnson*, 302 S.C. 243, 249, 395 S.E.2d 167, 170 (1990) (finding the affidavit attached to the search warrant lacked probable cause, but remanding to develop the record as to whether the affidavit was supplemented; explaining possible results on remand). If the trial court determines the affidavit was not supplemented, and thus the warrant lacked probable cause, the trial court should also consider whether the exclusionary rule should apply.

III. *Neil v. Biggers* Hearing

Warner also argues the trial court erred by refusing to conduct a hearing to determine whether Goolsby's identification of Warner in the crime-scene video violated his due process rights under *Biggers*. Warner relies on a line of cases decided by the Supreme Court of the United States in which the Court held that unnecessarily suggestive police-arranged eyewitness identification procedures violate due process and, thus, are inadmissible, unless the trial court determines in a hearing that the identification was nevertheless so reliable that no substantial likelihood of misidentification exists. See *Perry v. New Hampshire*, 565 U.S. 228, 237-39, 132 S.Ct. 716, 723-25, 181 L. Ed. 2d 694, 706-07 (2012) (discussing the line of cases and explaining the Supreme Court "[s]ynthesize[d]" them into a two-part test in *Biggers*); *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012) (reciting *Biggers* test). Under *Biggers*, the trial court must first determine whether the police used an "unnecessarily suggestive" . . . identification procedure[]." *State v. Keith*, 421 S.C. 306, 310, 806 S.E.2d 708, 710 (2017) (citing *Biggers*, 409 U.S. at 198-99, 93 S.Ct. at 381-82, 34 L. Ed. 2d at 410-11), and second, if so, "whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed," 421 S.C. at 311, 806 S.E.2d at 710 (quoting *Liverman*, 398 S.C. at 138, 727 S.E.2d at 426).

The trial court in this case refused to conduct a *Biggers* hearing because Goolsby was not an eyewitness. The court stated, "I don't believe . . . this is a *Biggers* situation. You don't have an out-of-court identification [by] an eyewitness." We agree with the trial court. In every case decided by the Supreme Court or by this Court under *Biggers* and the line of cases that led to it, the witness who made the identification was an eyewitness to the crime itself, a witness who observed the crime take place in real time. The Supreme Court has given no reason to believe it would extend the *Biggers* analysis beyond eyewitnesses, nor has this Court. In *Perry*, the

[872 S.E.2d 644]

Supreme Court prefaced its *Biggers* by stating: "Only when evidence 'is so extremely unfair that its admission violates fundamental conceptions of justice,' have we imposed a constraint tied to the Due Process Clause." 565 U.S. at 237, 132 S.Ct. at 723, 181 L.Ed.2d at 706 (citations omitted). "The dangers of misidentification associated with eyewitness identification that threaten 'fundamental conceptions of justice' are simply not present in a situation like the one in this case. While we agree with Warner the detective's question suggested to Goolsby that Warner is the man in the video, we nevertheless find Warner's due process rights do not require a hearing because Goolsby was not an eyewitness to the crime, and thus, *Biggers* does not apply."

The trial court did not err in denying Warner a hearing as to Goolsby's identification.

IV. Conclusion

We affirm the trial court's refusal to conduct a hearing under *Biggers* because Goolsby was not an eyewitness. As to Warner's motion to suppress CSLI, we find the warrant was not invalid for the reasons the trial court recited. We remand to the trial court for further proceedings.

AFFIRMED IN PART AND REMANDED.

BEATTY, C.J., KITTREDGE and JAMES, JJ., concur. HEARN, J., dissenting in a separate opinion.

JUSTICE HEARN:

Because I agree with the decision and analysis of the court of appeals, I respectfully dissent. The court of appeals analyzed this pre-*Carpenter* Fourth Amendment violation under the standard set forth in *Davis* and concluded the exclusionary rule does not apply, which I believe was the correct approach. See *Davis v. United States*, 564 U.S. 229, 241, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011) (holding searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule). I would end the matter there and not remand for a hearing. While I concede that probable cause was raised before the circuit court, the primary focus of the hearing was the privacy interests impacted by release of cell-site location data, and the circuit court denied the motion to suppress on that basis alone. I would not resurrect the probable cause issue now because the exclusionary rule would not serve any deterrent purpose and even assuming error in the denial of the motion to suppress, I would hold any error harmless.

The court of appeals found that the purposes of the exclusionary rule would not be honored in this case, and I agree completely with that determination. Here, the search warrant was issued under existing law that has since been changed. Compare *Carpenter v. United States*, — U.S. —, 138 S.Ct. 2206 2217, 201 L.Ed.2d 507 (2018) (holding that a person has an expectation of privacy in cell phone records held by a third party, thereby abrogating *Graham*'s extension of *Miller* to cell site location information or "CSLI"), with *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (finding no expectation of privacy in cell phone records held by a third party because of the third-party doctrine of *Miller*); *United States v. Miller*, 425 U.S. 435, 440, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) (holding bank depositor had no Fourth Amendment interest in bank records). While there is no dispute *Carpenter* applies retroactively, as the court of appeals correctly reasoned, applying the exclusionary

[872 S.E.2d 645]

rule is not called for when the behavior of the officers was made in either good faith or isolated simple negligence. Here, the officers were operating under the belief that Warner had no expectation of privacy in his cell phone records, and at the time, under the persuasive authority of *Graham* and the binding authority of *Miller*, that was true.

As an appellate court, we are required to balance the interests of the exclusionary rule with the "heavy toll on both the judicial system and society at large." *Davis v. United States*, 564 U.S. 229, 237, 131 S.Ct. 2419, 180 L.Ed.2d 383 (2011). The rule was designed to serve as a last resort to deter officer misconduct and error. *Id.* at 236, 131 S.Ct. 2419 and *Elkins v. United States*, 364 U.S. 206, 217, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960) (holding the exclusionary rule is "calculated to prevent, not to repair"). Here, there would be no deterrence of officer misconduct or error in excluding the evidence because, at the time of the search, officers acted in compliance with current law. We can neither expect officers to predict future decisions of appellate courts nor take them to task for their failure to do so. Therefore, because the deterrent effect of the exclusionary rule would not be served here, I would not apply it. See

State v. Warner, 329 S.C. 287, 494 S.E.2d 801, 804 (1997) (stating "[s]uppression is appropriate in only a few situations"); *State v. Smith*, 264 S.C. 541, 566, 216 S.E.2d 501, 514 (1975) (stating "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where [the purpose of] deterrence is clearly subserved").

Moreover, even assuming *arguendo* the circuit court erred in denying the motion to suppress, any error was harmless. When improper evidence is "merely cumulative" its admission is harmless beyond a reasonable doubt, and the conviction should not be reversed. See *State v. Hazelden*, 353 S.C. 190, 197, 577 S.E.2d 445, 449 (2003) and *State v. Bacon*, 367 S.C. 41, 55-56, 625 S.E.2d 216, 224 (2006). Here, the CSLI data was clearly cumulative to a myriad of evidence which tied Warner to this crime: he was identified on the store's security footage by his probation officer, his birthday was entered into the store's computer during the fatal check-out, and his palm print matched one taken from the store's counter.³ Further, the store's security video also captured the robber's vehicle at the scene, which closely resembled the same car Warner drove immediately before his arrest. Once investigators impounded Warner's vehicle, they found cigar wrappers similar to those purchased during the robbery and Warner's wallet, which resembled the one in the video of the robbery. In short, the use of his CSLI data was merely cumulative to other ample evidence, rendering any error harmless.

For the foregoing reasons, I respectfully dissent.

(Notes)

¹ "Most modern devices, such as smartphones, tap into the wireless network several times a minute whenever their signal is on, even if the owner is not using one of the phone's features. Each time the phone connects to a cell site, it generates a time-stamped record known as cell-site location information (CSLI). The precision of this information depends on the size of the geographic area covered by the cell site. The greater the concentration of cell sites, the smaller the coverage area." *Carpenter v. United States*, 585 U.S. —, —, 138 S.Ct. 2206, 2211, 201 L.Ed.2d 320, 325 (2018).

² The FBI expert was Special Agent David Church. The court of appeals extensively analyzed Special Agent Church's qualifications as an expert in CSLI as part of its analysis of the admissibility of his opinions. *State v. Warner*, 401 S.C. 83-89, 842 S.E.2d 361, 364-67 (Ct. App. 2020).

³ This opinion was issued by the Fourth Circuit sitting en banc. 824 F.3d at 424. In the panel decision—issued August 5, 2015—the Fourth Circuit held "the government conducts a search under the Fourth Amendment when it obtains and inspects a cell phone user's historical CSLI for an extended period of time." *United States v. Graham*, 795 F.3d 332, 344-45 (4th Cir. 2015). The court granted the government's petition for rehearing en banc on October 28, 2015, *United States v. Graham*, 624 F.App'x 75 (4th Cir. 2015), which vacated the panel decision, *Graham*, 824 F.3d at 424; see also 4th Cir. R. 35(c) (en banc proceedings) ("Granting of rehearing en banc vacates the previous panel judgment and opinion").

⁴ Technically, we are not affirming the denial of the motion to suppress. However, we are deciding the trial court's ruling will not be reversed on the basis that the warrant sought information stored in another state. If no other basis for reversing the denial of the motion to suppress arises on remand, then the result of our analysis of the validity of the warrant in this respect will be that we affirm.

⁵ The omitted text contains as many as three additional items in a series, followed by the limiting language "... having jurisdiction over the area where the property sought is located," § 17-13-140. We find the limiting language applies only to the last item in the series, not to "Any magistrate," which is the first item in the series. See *Committee of Pub. Works of the City of Lawrence v. City of Lawrence Inc.*, 428 S.Ct. 709, 219-20, 81 L.Ed.2d 834, 839 (2019) (Feltz, J., concurring) (explaining that under the last antecedent doctrine, the absence of a comma after the last item in a series indicates the modifying clause following the series applies only to the last item in the series). In addition, to read the limiting language as applying to all items in the series would contradict—and render superfluous—the language enabling the seizure of property within the "control of any person," because if all seizures are limited to property inside the jurisdiction of the individual judge, it would not have been necessary to alternately authorize the seizure of property not under a person's control.

⁶ There is no evidence in the record to support this assumption other than the fact law enforcement officers were required to submit the warrant to the T-Mobile Law Enforcement Relations Group, which is located in New Jersey. In fact, the FBI Special Agent who testified as the State's expert on CSLI—when asked where the records were stored—did not testify where the records are stored. He stated only that the records are "generated" in New Jersey. "[New Jersey is] where T-Mobile's compliance people are, where they generate ... where all the requests go to and they generate those [records]. The actual records are pulled from the different switches, but [New Jersey is] where the record is generated from"

⁷ The Supreme Court's statement in *Katze*, which we quoted in *Jones*, was made to support the Supreme Court's continued refusal "to require the use of adversarial procedures to make probable cause determinations" in grand jury proceedings. *Katze*, 571 U.S. at 358, 134 S.Ct. at 1103, 180 L.Ed.2d at 62. The Supreme Court's statement in *Brunner* was made in explaining probable cause existed to support a search incident to a warrantless arrest. *Brunner*, 338 U.S. at 170-71, 69 S.Ct. at 1506, 73 L.Ed. at 1888. In *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 75 L.Ed.2d 527 (1983), even after abandoning the "two-pronged test" the Supreme Court previously applied, 462 U.S. at 238, 103 S.Ct. at 2337, 75 L.Ed.2d at 548, the Court addressed a hypothetical basis for a search warrant much like the situation presented by the affidavit in this case:

Our earlier cases illustrate that [a]ffidavit is beyond which a magistrate may not venture in issuing a warrant. [A]ffidavit statement of an officer that 'he has cause to suspect and does believe that' [a crime has been committed] will not do. An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause, and [a] wholly conclusory statement ... fail[s] to meet this requirement. An officer's statement that 'affiants have received reliable information from a credible person and do believe' that heroin is stored in a home, is likewise inadequate... [T]his is a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others. In order to ensure that such an abdication of the magistrate's duty does not occur, courts must continue to contemporaneously review the sufficiency of affidavits on which warrants are issued.

462 U.S. at 238, 103 S. Ct. at 2332-33, 76 L. Ed. 2d at 548-49.

³ Our court of appeals reached the same conclusion in State v. McCree, 408 S.C. 278, 758 S.E.2d 730 (Cl. App. 2014). There, the court found the identification was not subject to a *Bigger* analysis because the witness who made the identification "was not an eyewitness to the crime." 408 S.C. at 286, 758 S.E.2d at 735. In a recent decision by the Court of Appeals of Maryland on almost identical facts, the court held the "identification is not governed by the due process analysis in *Bigger*." Crumm v. State, 369 Md. 156, 279 A.3d 183, 193 (2020). Before reaching that conclusion, the Court of Appeals of Maryland conducted a thorough analysis of the same line of Supreme Court cases discussed above, 228 A.3d at 192-94. After our own thorough review of decisions on this point nationwide, we are aware of no court that has held the *Bigger* analysis extends to witnesses who are not "eyewitnesses."

⁴ The record reflects that the counter was cleaned approximately forty-five minutes before the crime. Seven individuals, including Warner, were in the store between the wiping of the counter and the robbery—five or six of whom approached the counter. However, it is clear no one besides Warner was involved in the robbery or murder.

APR 10 2024 AM 10:47
COLLETON CO CLERK, GS
Patricia C. Grant

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF COLLETON

4 State of South Carolina,

5 vs. Transcript of Record
6 202-GS-15-0472

7 Justin Carroll,
8 Defendant.

9
10 April 22, 2024
11 Walterboro, South Carolina
12 Volume I

13 B E F O R E:

14 The HONORABLE ROBERT J. BONDS

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

16 Hunter Swanson, Solicitor

17 David Mathews, Representing the defendant

18

19

20

21

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

22

23

24

25

1 MR. MATHEWS: Okay. A motion to --

2 MS. SWANSON: Just -- I'm sorry, just one
3 thing on the sequestration of witnesses, Shameka
4 Holloway, the victim's mother, will remain in the
5 courtroom under the Victim's Bill of Rights, but
6 she's the only one that's on the witness list that
7 would remain in the courtroom. Besides Charles
8 Shipp, my lead investigator.

9 THE COURT: Absolutely.

10 MR. MATHEWS: I think that's fair.

11 MS. SWANSON: Thank you.

12 MR. MATHEWS: What will happen, I think
13 it was amazingly prescient of the State to
14 indicate what will happen as opposed to what they
15 intend to do.

16 As to the amended motion -- okay, this is
17 suppress the phone dumps, there are two. The
18 victim's phone and the defendant's phone, were
19 taken in this. And search warrants were
20 applied -- were done by both of them. I've got
21 tabs on this. That should be in the Court's file.
22 I've made most of the arguments that I need to
23 make in this. I just filed this on Friday.

24 But, basically, as to the victim's phone
25 records, we're appealing not -- we are citing not

1 just the Fourth Amendment in the State
2 Constitution, but more particularly South Carolina
3 Code Section 17-13-140 and *State vs. McKnight*.

4 One of the hurdles that you got to get
5 over in a Fourth Amendment unreasonable search and
6 seizure argument under the Constitution of South
7 Carolina and the United States is you have to get
8 over standing, but you don't in terms of that code
9 section. And that's what *State vs. McKnight* says.
10 It's not dependent of any showing of expectation
11 of privacy and they search the premises, and the
12 primary benefit of the statute is to the person or
13 resident.

14 So, in this case, the search warrants are
15 woefully defective. I don't think they -- search
16 warrants are still required to set aside to allege
17 probable cause. It's not a high standard, but
18 it's still a standard. In *State vs. Warner*, which
19 I included in there, affirms that all search
20 warrants whether for cell towers or otherwise must
21 allege probable cause. This does not -- and
22 they're are also -- in both of those search
23 warrants there are some other problems.

24 The return is not signed by the judge.
25 The judge's signature is not legible. The time

1 for return of that --

2 THE COURT: Well, hold on. It's not
3 signed by a judge or it's not legible?

4 MR. MATHEWS: It's not legible. What is
5 not signed is the return.

6 THE COURT: Oh, the return is not
7 signed.

8 MR. MATHEWS: The return is not signed.
9 And the search warrant itself is signed. The
10 judge's signature is not legible. It doesn't
11 allege probable cause. It doesn't look like it
12 alleges probable cause at all. It says, "A white
13 male is seen running back in the direction of the
14 100 building in a late-model pickup and seen
15 leaving the area."

16 What white male? I mean, they are -- the
17 State is now talking about things that would give
18 them probable cause, but they don't have it in the
19 search warrant. They're talking about the prior
20 incident, which is how they say they knew to come
21 looking for him but they don't allege it in the
22 warrant.

23 If this is -- as far as when the return
24 is to be made, the form on that says 2014, which
25 obviously is -- there is not any sort of judicial

1 oversight on this. That's the problem; it doesn't
2 do what a search warrant is supposed to do which
3 is provide some limits.

4 Had they done this correctly, they
5 probably could have alleged probable cause but
6 they didn't and this judge signed off on this and
7 shouldn't have and they never got the return. So
8 that's on both the defendant's phone and on the
9 victim's phone.

10 Like I said, I set forth the authorities
11 in that along with the warrants.

12 THE COURT: All right. Solicitor?

13 MS. SWANSON: Thank you. I think to
14 avoid confusion we need to take each search
15 warrant separately because factually they're all
16 different. They are not all the same.

17 I'm going to start with the argument to
18 suppress the victim's phone records. If I may
19 hand up the case that Mr. Mathews stated, *State v.*
20 *McKnight*.

21 THE COURT: Yes, ma'am.

22 MS. SWANSON: If Your Honor looks at the
23 last paragraph of that opinion, it states that
24 they're only deciding if the trial judge's ruling
25 was okay because he based his ruling on statutory

1 grounds. But had the case been decided on
2 constitutional grounds, whether or not the
3 respondents have a legitimate expectation of
4 privacy in the searched premise would have been
5 the appropriate inquiry, so I believe we start
6 there.

7 And I will also say that *State vs.*
8 *McKnight* is in reference to a search of a mobile
9 home where more than one person can have a
10 legitimate right to privacy or expectation of
11 privacy. Here we are talking about Donasia
12 Holloway's cell phone that is on her person that
13 Mr. Carroll does not pay for, does not use, does
14 not have possession of. Why would he ever have a
15 right or expectation to privacy on an
16 ex-girlfriend's phone? We didn't even need a
17 search warrant. So the search warrant doesn't
18 even matter.

19 The phone was actually gotten into
20 because a new boyfriend gave law enforcement the
21 passcode. I mean, Donasia and her family are not
22 going to object to law enforcement --

23 THE COURT: I'm going to allow -- the
24 decedent's phone, I'm allowing that. I mean, I
25 don't see where, quite frankly, he's got any

1 standing to raise that issue, Mr. Mathews. I
2 don't know if standing is the wrong words, but I
3 mean, it's the decedent's cell phone. She's the
4 one with the interest in the cell phone.

5 You know, he's -- unless it's his phone,
6 he's a co-owner of the phone, or he's on the
7 account, which I'm assuming he is not -- is he on
8 the phone? Does he have an interest in that
9 phone? I mean an interest like he owns the phone,
10 or he's on the bill?

11 MR. MATHEWS: He doesn't, Your Honor
12 that's why I state *State vs. McKnight* and that's
13 why an expectation of privacy doesn't -- South
14 Carolina actually has a more strict rule than the
15 federal government does on that.

16 THE COURT: All right.

17 MR. MATHEWS: And under *State vs.*
18 *McKnight*, I cited the language in there that it's
19 not within the expectation of privacy. It's
20 depending on the benefit of the statute to person
21 or resident. So that's why I cite that.

22 If I were relying just on the
23 Fourth Amendment and the State of South Carolina, then
24 I would agree there is no standing. But standing is
25 not required. I understand the Court's ruling but I

1 want to make that clear when Miss Swanson says that.
2 She says, we didn't even need a search warrant. The
3 problem is they got one. And when you put a stamp on
4 something, the judge's name is on the line and the
5 people are. What is a search for if it can say
6 anything and it doesn't matter.

7 In any event, I understand the Court's
8 ruling. I won't belabor the point, but that is the
9 difference and that's why I cited *McKnight*.

10 THE COURT: Thank you. Now, let's go on
11 to his phone. The defendant, Mr. Carroll's,
12 phone.

13 MS. SWANSON: To Mr. Carroll's phone,
14 this is the language that Mr. Mathews cites in his
15 memo which mentions a white male. And while it is
16 not a very detailed description of PC, Charles
17 Shipp, the detective on the case, is here and
18 confirmed to me that he did supplement the PC, the
19 written PC with sworn oral testimony, which also,
20 according to *State v. McKnight* is allowed. That
21 case acknowledges that a sworn affidavit --

22 THE COURT: What judge's signature is
23 this?

24 MS. SWANSON: Detective Shipp is not
25 sure.

1 THE COURT: So the detective who
2 basically gave supplemental information to the
3 judge that's not included in the typewritten and
4 signed affidavit does not even know the judge's
5 name who signed this search warrant?

6 MS. SWANSON: I mean, obviously, no, sir.
7 It was an magistrate, but he does not recall
8 which.

9 THE COURT: Well, is it a magistrate
10 because everyone now goes to the circuit judges
11 now to get these things signed.

12 MS. SWANSON: No, he did not go to a
13 circuit judge.

14 THE COURT: Okay. Well, I mean, I -- so
15 is it a magistrate judge or a municipal judge?

16 MS. SWANSON: Detective Shipp tells me it
17 was a magistrate judge.

18 THE COURT: All right. Go ahead,
19 Solicitor.

20 MS. SWANSON: Anyway, at any rate, he did
21 supplement the PC verbally. I'm not really even
22 exactly sure what Mr. Mathews is seeking to
23 suppress on the information that came from the
24 defendant's phone because it had kind of been
25 wiped clean. It had been -- it had just recently

1 been turned on, but, I mean, he had clearly erased
2 text messages and things of that nature.

3 So, anyway, I mean, I think it's a fine
4 search warrant considering that it was
5 supplemented with sworn testimony regarding the --

6 THE COURT: Isn't the judge supposed to
7 write down what that is, or have somebody write
8 down what the supplement is? I mean, what's the
9 rule on that? So basically you just go and they
10 just supplement, nothing gets written down, and
11 away we go.

12 MS. SWANSON: And you explain to them
13 with your hand in the air and your other hand on
14 the Bible that -- I'm sorry?

15 THE COURT: Used a Bible? I don't know
16 about that. Appearing before the judge on that.

17 Hold on. Hold on. Let me get her to
18 finish. I'll get to you.

19 Go ahead, Solicitor.

20 MS. SWANSON: Well, they are explaining
21 to the judge from which they are seeking the
22 warrant, exactly what their investigation has led
23 them to at this point and why they need the
24 information that they have requested.

25 THE COURT: Well, what I will say is

1 this: If we're looking at the reasons or a
2 client's belief that the property sought is on the
3 subject premises and it starts with "on," is that
4 what we're reading?

5 MS. SWANSON: Yes, Your Honor.

6 THE COURT: And it ends with
7 "investigation."

8 MS. SWANSON: Yes.

9 THE COURT: All right. I don't see any
10 probable cause in that statement. Show me where
11 the probable cause is in that statement as it's
12 written.

13 MS. SWANSON: It's just that -- let's
14 see. So he explains that the victim was shot,
15 non-responsive, they reviewed camera footage from
16 the apartment that showed a vehicle that followed
17 her, they seen a white male walking from the area,
18 and then running back in the direction where the
19 pickup truck is located, and Detective Shipp tells
20 me that he did -- because, of course, in this --
21 in this search warrant, the description of
22 premises to be searched does say, "One cell phone
23 retrieved from suspect Justin Carroll. At the
24 time he was detained for interview, the cell phone
25 is described as one black LG Tracphone. So we are

1 talking about the suspect, a white male that was
2 seen there.

3 And so oral supplementation, Detective
4 Shipp says that he did indicate who -- that Justin
5 Carroll was the suspect that they believed to have
6 seen in the surveillance, and this is his phone
7 which is listed under his name for the item to be
8 searched.

9 THE COURT: Hold on one second. Are you
10 reading under where it says -- I don't see that in
11 what I've got. You're reading right there where
12 it says, "Description of property" -- no. Under
13 description of premises or things to be searched?

14 MS. SWANSON: Correct.

15 THE COURT: All right. I see this where
16 it says Donasia Holloway was the victim. Let's
17 see. One cell phone retrieved from the victim. I
18 was looking for the -- hold on.

19 All right. Let's put the witness on the
20 stand and hear what he has to say.

21 MS. SWANSON: Okay. The State calls
22 Detective Shipp to the stand, please.

23 THE CLERK: Good morning. Raise your
24 right hand, left hand on the Bible. Do you affirm
25 the testimony you're about to give the Court shall

1 be the truth so help you God?

2 JUROR 103: Yes, ma'am.

3 THE CLERK: Take a seat in the witness
4 stand. State your name again for the record,
5 please. Spell your last name.

6 JUROR 103: My name is Charles Shipp.
7 Last name is spelled, S-h-i-p-p.

8 WHEREUPON:

9 DT. CHARLES SHIPP,
10 after having been sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SWANSON:

13 Q Detective Shipp, were you the lead investigator on
14 this murder case?

15 A Yes.

16 Q And did you obtain several search warrants for a
17 variety of phone information?

18 A I did.

19 Q Okay. One of those search warrants, is that in
20 reference to content from the defendant's cell
21 phone?

22 A Yes.

23 Q I'm going to have you -- I apologize. I'm using
24 -- I would like to make this a part of the Court's
25 record, the search warrant that came from

1 Mr. Mathews's motion that's listed as Exhibit A so
2 that we can make sure that we're are all talking about
3 the same thing?

4 MR. MATHEWS: Why don't we just make my
5 motion an exhibit and just refer to that?

6 MS. SWANSON: That's fine too.

7 THE COURT: That's fine.

8 MS. SWANSON: I may just hand up this up
9 to my witness.

10 THE COURT: Yes, ma'am.

11 MS. SWANSON: I was whiting out any notes
12 I have.

13 (STATE EXH. 1, Motion to Suppress; Mathews,
14 was marked for identification only.)

15 BY MS. SWANSON:

16 Q I'm going to hand you what has been marked as
17 State's Exhibit 1. Can you identify what this item
18 is?

19 A It's a black LG Tracphone.

20 Q Okay. And is that what you believe to be the
21 defendant's phone?

22 A Yes.

23 Q Okay. So this is the phone that we're talking
24 about you got the search warrant to get the contents
25 off of?

1 A I did.

2 Q Okay. I'm going to hand you your search warrant
3 on this phone, okay? When did you obtain that search
4 warrant, Detective Shipp?

5 A On May 24, 2021.

6 Q All right. What was the probable cause that you
7 listed? Did you write in there a paragraph regarding
8 probable cause?

9 A The -- excuse me. In the narrative portion,
10 I did indicate that there is camera footage
11 available on scene that depicted a late-model
12 truck in the area and a white male in the area of
13 the incident when it occurred.

14 Q Can you speak up a little bit?

15 THE COURT: I don't know if that's on.

16 BY MS. SWANSON:

17 Q Get closer to the microphone.

18 A I don't think it's on.

19 THE COURT: Just speak up.

20 THE CLERK: You're good.

21 BY MS. SWANSON:

22 Q Just speak up.

23 A I did indicate that there was a white male
24 seen during the time of the incident that had left
25 the area of the 100 building walking towards the

1 victim's vehicle. This white male is seen in the
2 breezeway of her apartment building prior to
3 making contact with her at her vehicle. A short
4 time later, he's seen running from her victim back
5 toward the area where the truck was parked.

6 Q Okay. And was there a reason you believed that to
7 be Justin Carroll?

8 A While on scene, it was brought to my
9 knowledge that we had a prior report with the
10 victim. And we took the information from that
11 report and saw that the offender in that case was
12 Justin Carroll. Take a look at his DMV, compared
13 it to video footage we were looking at on scene.

14 Q Okay. Did you have any reason to believe he drove
15 a pickup truck?

16 A There is one registered to his father, I
17 believe it was.

18 Q All right.

19 MR. MATHEWS: Your Honor, this is
20 leading. But more importantly, there is no
21 indication that he told this to the magistrate.

22 THE COURT: Hold on, Mr. Mathews. I
23 understand. Let her finish her examination.

24 I'm going to overrule your objection.

25 Go ahead.

1 MS. SWANSON: Of course, this is outside
2 the jurors's presence.

3 THE COURT: Go ahead.

4 BY MS. SWANSON:

5 Q What was he pulled over in later that night?

6 A What vehicle he was pulled over in?

7 Q Yes, sir.

8 A In a white GMC pickup.

9 Q Okay. And on your search warrant, does it mention
10 that the area to be searched is Justin Carroll's LG
11 phone?

12 A It does.

13 Q Did you tell the magistrate or municipal judge
14 under oath anything in addition to what you have
15 written in that paragraph?

16 A Yes.

17 Q Okay. And did you tell them why Justin Carroll
18 was a suspect?

19 A He became my lead suspect because of the
20 prior incident at that location involving the two
21 parties, along with the DMV info and matching his
22 height and weight and his DMV photo too to the
23 video footage on scene.

24 Q Did you tell the judge that you believe it to be
25 Justin Carroll in that video footage that you

1 mentioned in the PC affidavit?

2 A I did.

3 Q Okay.

4 THE COURT: Hold on. You did?

5 JUROR 103: I did, sir, relay that to the
6 judge.

7 MS. SWANSON: I have no further
8 questions.

9 MR. MATHEWS: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. MATHEWS:

13 Q Let's turn this around so it actually does us some
14 good.

15 MR. MATHEWS: May I approach the witness?

16 THE COURT: Yes, sir.

17 BY MR. MATHEWS:

18 Q Where did you do this? Where did you do this
19 affidavit?

20 A Where?

21 Q Physically where? What place?

22 A I was in the judge's office.

23 Q Which judge's office?

24 A I don't recall the specific judge.

25 Q What building?

1 A I don't recall.

2 Q Was it in Walterboro?

3 A It was in Walterboro.

4 Q It was in Walterboro?

5 A Outside the city limits.

6 Q It was outside the city limits where you went.

7 A Correct.

8 Q Okay. So you're saying then that 22 Klein Street,
9 the jail, that's not in Walterboro?

10 A That is in Walterboro.

11 Q And the magistrate's offices, they are or they are
12 not in Walterboro?

13 A It wasn't his office at 22 Klein Street.

14 Q Okay.

15 A It's a second office.

16 Q A second office, all right. How far away from
17 Walterboro was it?

18 A I don't recall.

19 Q You got to be pretty specific in a murder
20 investigation. Was it 10 miles away?

21 A I don't recall.

22 Q Was it in Ruffin?

23 A It was not in Ruffin.

24 Q Was it in Smoaks?

25 A No.

1 Q Edisto Beach?

2 A No.

3 Q All right. Man or a woman?

4 A It was a man.

5 Q Okay. Black man or white man?

6 A White man.

7 Q Okay. Was it at his house?

8 A No.

9 Q Was it at a government building?

10 A No, sir.

11 Q Not at a government building, okay.

12 Dairy Land?

13 A No, sir.

14 Q Okay. Was anything reported when you were talking

15 to this white man somewhere in Colleton County but not

16 in Walterboro?

17 A Not that I'm aware of.

18 Q What did he look like?

19 A Older white male.

20 Q Okay. Older than me?

21 A I couldn't say accurately.

22 Q Okay. How was he dressed?

23 A Button down shirt. That's all I can

24 remember.

25 Q You have at least two municipal court judges,

1 right?

2 A I believe so.

3 Q Morrison Payne I think is one, right? Why didn't
4 you go see her?

5 A I was informed to get the search warrant
6 signed by a magistrate.

7 Q Who told you to do that?

8 A My supervisor.

9 Q Who? What's his name?

10 A My supervisor.

11 Q What's your supervisor name?

12 A My supervisors were Sergeant Fisk and
13 Lieutenant Kinard.

14 Q So either -- and they said go to a magistrate --
15 why didn't you go to a municipal court judge?

16 A Because the vehicles -- I had search warrants
17 are for vehicles that were located outside the
18 city limits, so, to save some time, I just had the
19 magistrate sign the cell phone search warrants.

20 Q Okay. So that's for both of them, both his and
21 hers, right?

22 A Yes.

23 Q The affidavits are the same on that, correct?

24 A Correct.

25 Q Okay. Did the magistrate ask you who in the heck

1 you were and what you were doing there?

2 A I believe he was notified that I was on my
3 way to have some search warrants signed.

4 Q Who called him?

5 A I don't know.

6 Q Okay. So you're saying he had some information
7 before you got there?

8 A That I was there to have some sort of search
9 warrant signed.

10 Q Okay. And you showed up and he answered the door
11 or how did you come to face-to-face?

12 A I believe there was a secretary that met me
13 at the door.

14 Q What time was this?

15 A I don't recall.

16 Q Was it in the afternoon, was it in the evening?

17 A Probably noon-ish. Prior to noon.

18 Q Around noon, okay.

19 And the secretary that let you in, what did
20 she look like, or he?

21 A I honestly don't remember.

22 Q All right. Did he say I've been expecting you,
23 come on in?

24 A Not that I remember.

25 Q Okay. How much information did he have before you

1 talked to him?

2 A I couldn't tell you.

3 Q Okay.

4 All right. You are aware that you're
5 supposed to get returns with the issuing magistrate or
6 municipal judge, right?

7 A Right.

8 Q Now, why was Judge Kane not available?

9 A Well, as I stated, I had some search warrants
10 that required the signature of a magistrate. So
11 rather than going back and forth between two
12 judges, I just had one judge sign.

13 Q It's easier.

14 A Yes.

15 Q And you went in there and, because you want to
16 keep track of everything, you recorded on your phone
17 your conversation with this magistrate?

18 A I didn't record anything.

19 Q What did you say exactly?

20 A I don't recall verbatim what I said.

21 Q All right. What did the judge say to you?

22 A I don't recall.

23 Q Okay. You don't have any further questions, but I
24 don't think that's much of a supplement.

25 THE COURT: I got some questions.

1 JUROR 103: Yes, sir.

2 THE COURT: Sir, you went to a Colleton
3 County magistrate?

4 JUROR 103: Correct.

5 THE COURT: You're employed with
6 Walterboro Police Department?

7 JUROR 103: Correct.

8 THE COURT: So you went to a -- well, do
9 you know who Bert Duffie is?

10 JUROR 103: I'm aware.

11 THE COURT: Would you recognize him?

12 JUROR 103: More than likely, I probably
13 would.

14 THE COURT: All right. Do you know who
15 Casey Campbell is?

16 JUROR 103: Yes.

17 THE COURT: Okay. Those -- I think those
18 are only two white magistrates in Colleton County,
19 male magistrates, that there are.

20 MS. SWANSON: Your --

21 THE COURT: Hold on. I'm asking
22 questions.

23 MS. SWANSON: Sure.

24 THE COURT: So was it one of those two
25 guys?

1 JUROR 103: Your Honor, it could be Casey
2 Campbell, but I can't say for sure. I can't make
3 out the signature.

4 THE COURT: Right. So, you provided him
5 with an affidavit, correct?

6 JUROR 103: Yes, sir.

7 THE COURT: And that affidavit is in
8 front of you and has been marked as an exhibit; is
9 that right?

10 JUROR 103: Yes, sir.

11 THE COURT: And you were sworn in?

12 JUROR 103: Correct.

13 THE COURT: So my question is: You
14 provided to the judge additional sworn information
15 that is not contained in that affidavit; is that
16 correct?

17 JUROR 103: That is correct, sir.

18 THE COURT: And what additional sworn
19 information did you provide the judge?

20 JUROR 103: The information I provided
21 was that I believe Mr. Carroll to be a possible
22 suspect due to the previous incident between the
23 two parties that took place at the same location.
24 Looking through that report, I got Mr. Carroll's
25 information to include his DMV photo.

1 THE COURT: This is all what you told the
2 judge.

3 JUROR 103: Yes.

4 THE COURT: Go ahead.

5 JUROR 103: With that DMV information to
6 include height, weight, and comparing it to the
7 video footage of the incident location is why
8 Mr. Carroll was the suspect.

9 THE COURT: Solicitor, do you have
10 anything else following up on the questions that
11 Mr. Mathews asked or the questions that the Court
12 asked?

13 MS. SWANSON: No, Your Honor.

14 THE COURT: Mr. Mathews, do you have any
15 questions to follow up on the questions that the
16 Court asked?

17 MR. MATHEWS: No, sir.

18 THE COURT: Thank you, sir. You can step
19 down.

20 Anything else, Mr. Mathews?

21 MR. MATHEWS: I do. I have a motion to
22 suppress the cell tower records.

23 THE COURT: No, as it relates to this
24 matter.

25 MR. MATHEWS: No, sir.

1 THE COURT: Okay. Go ahead. I'm ready
2 to hear your next one.

3 MR. MATHEWS: All right. Your Honor,
4 this search warrant is better and worse on the
5 cell tower records. It is signed by Judge
6 Kane-O'Quinn, so there's that. But the affidavit,
7 it's sworn, but there's no affiant. It's on page
8 6 of that. It sets forth the reason, which is,
9 frankly, a whole lot better than the last one.
10 This one says, "On May 22, 2021, approximately
11 2214 p.m. officers with the Waltherboro Police
12 Department responded to reported shots fired at
13 Forest Point Apartments. Officers arrived on
14 scene to find victim deceased in the vehicle.
15 Further investigation revealed the victim . . ."

16 THE COURT: Whoa, whoa. You got to slow
17 down.

18 MR. MATHEWS: Oh, sorry.

19 MS. SWANSON: It may be helpful if we
20 provide the judge with that because I did not see
21 that in your motion.

22 MR. MATHEWS: That is the --

23 MS. SWANSON: I have a copy.

24 MR. MATHEWS: That's fine. May I look at
25 that?

1 THE COURT: Let him take a look at
2 that.

3 Mr. Mathews.

4 MR. MATHEWS: It does reference the prior
5 DV report and it says that does allege probable
6 cause. The defendant in that case also the
7 offender in this case. This was done on June 3rd,
8 apparently, but there's no affiant in it. So it
9 is a warrant issued with no affidavit. It's
10 sworn, but what is sworn?

11 Certainly, if it were -- if the judge had
12 not signed it, it would be an incomplete paper.
13 But by the definition of an affidavit, you need a
14 sworn statement and you need a signed statement.

15 In this case the -- this is as in *State*
16 *vs. Covert*, although, in that case, the judge had
17 not signed and the affiant had. In this case, the
18 affidavit has not signed it, although the judge
19 had. In some ways, that's more concerning because
20 if you're issuing affidavits without affiants,
21 that's not too good. I mean, as a notary, you're
22 not allowed to do that. As a judge, it's hard to
23 imagine. I don't know that this is a bad-faith
24 thing, but it is clearly an unfinished paper as in
25 *State vs. Covert*. Also alleged in there -- so

1 it's not a warrant. If it were an affidavit, it
2 would allege probable cause, but it's not signed
3 by the affiant. And this is what they got the
4 cell tower records on. I mean, to me that's
5 pretty clear. They argued everything, so I
6 imagine they'll argue this too.

7 THE COURT: All right. Solicitor, I'm
8 happy to hear your argument.

9 MS. SWANSON: Yes, sir. Again, this is
10 Detective Shipp and he did neglect to sign the
11 affiant's signature. But if I may call him to the
12 stand at this time. Detective Shipp.

13 THE COURT: Sure.

14 Go ahead. Sir, you're still under oath.

15 Your witness. Yes, ma'am.

16 (Previously sworn.)

17 DIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q Detective Shipp, are you familiar with the search
20 warrant that you obtained for the Verizon GPS
21 coordinates on the defendant's phone?

22 A Yes, ma'am.

23 Q All right. Have you reviewed that recently?

24 A Yes, ma'am.

25 Q All right. Do you -- what matters for the

1 municipal judge did you go to get a signature for this
2 certain warrant?

3 A If I remember correctly, Judge Kane-O'Quinn
4 signed that particular search warrant.

5 Q Okay. And the PC for your search is a little bit
6 different in this one. Did you also verbally
7 supplement that?

8 A Yes, ma'am.

9 Q Okay. Did you physically appear in front of
10 Judge Kane-O'Quinn?

11 A I did.

12 Q All right. And why did you not sign where the
13 affiant's signature should be?

14 A It's an oversight on my part.

15 Q All right. But you present in sworn testimony and
16 in the affiant this search warrant to that judge?

17 A Yes.

18 Q All right.

19 MS. SWANSON: Nothing further at this
20 time. Thank you.

21 THE COURT: Mr. Mathews?

22 MR. MATHEWS: No questions, Your Honor.

23 THE COURT: So, Solicitor, what's the
24 law? Is there any law on this? Basically, I got
25 an unsigned affidavit upon which a search warrant

1 was sent to Google, or whoever it was sent to.

2 MS. SWANSON: Right.

3 THE COURT: Is there any law on this?

4 MS. SWANSON: It was a mistake. It's
5 under the good-faith exception. I mean, it's not
6 as if it wasn't presented to a judge. It was.
7 And it was honored by Verizon.

8 THE COURT: In this case, we did have the
9 return signed.

10 MR. MATHEWS: Everything is right except
11 there's no affiant.

12 MS. SWANSON: But he was there physically
13 in person. It's not like there wasn't an
14 affidavit. It's a scrivener's error. He just
15 neglected to sign where that blank is.

16 THE COURT: All right.

17 MS. SWANSON: Can Detective Shipp come
18 off the stand?

19 THE COURT: Thank you, sir.

20 MS. SWANSON: Thank you.

21 THE COURT: All right. Mr. Mathews, what
22 else?

23 MR. MATHEWS: I think that's it at this
24 time, Your Honor.

25 THE COURT: Solicitor, do you have

1 anything? Are there any matters that we need to
2 take up?

3 MS. SWANSON: No, Your Honor. The
4 defendant did make some statements but they're
5 self-serving in nature, so the State will not be
6 seeking to get those in.

7 Of course, I would object to any
8 eliciting of his statements through the
9 investigator since that would be an inadmissible
10 hearsay, but that's it.

11 THE COURT: All right. What I'm going to
12 do is, I'm going to stand down until twelve
13 o'clock. We will back in here -- we'll be back in
14 here at one o'clock and I'll give you my rulings
15 as it relates to these matters and then that will
16 give us an opportunity to finish any touches we
17 need to take up via pretrial, and then we'll be
18 ready for the jury to come in at 1:45 and then
19 we'll go from there. Thank you.

20 MS. SWANSON: Thank you, Your Honor.

21 THE COURT: Madame Clerk, I'm going to
22 take the file with me to the chambers.

23 THE BAILIFF: All rise.

24 (A break was taken from 12:02 p.m. to 1:10 p.m.)

25 THE BAILIFF: All rise.

1 THE COURT: All right. You can be
2 seated.

3 Mr. Mathews, on your motion concerning
4 the bad act, admissibility of a bad act, what I am
5 going to say is this: We did have a brief
6 conversation in chambers, and, at one point, it
7 was my recollection that you indicated that your
8 primary concern was going into, quite frankly, the
9 sordid detailed, and she wasn't to go into -- if
10 the solicitor wasn't going to go into those
11 details, you didn't necessarily have an objection.
12 I think that's what you told me in chambers.

13 Is that generally what you told me in
14 chambers?

15 MR. MATHEWS: Yes, sir.

16 THE COURT: Okay.

17 MR. MATHEWS: My only thing, to say we
18 developed him as a suspect because we had to go
19 out there, I don't have any problem with that.

20 THE COURT: Right. So what happens is --
21 you know, I think it's relevant. I think it would
22 come in under 403. I mean, I think it's fair
23 game. I think the *Clinkscales* case talks about
24 basically it's well-settled in assault and battery
25 in homicide cases that evidence that the accused

1 or prosecuting witness or the deceased had a
2 previous difficulty is admissible, but the details
3 of such difficulty are inadmissible.

4 So what happens is, one of the things
5 that came up, I think it was your concern, is
6 maybe what the solicitor is going to do, and quite
7 frankly, sir, I think that's just going to have to
8 be a game-time decision. I don't think that's a
9 decision that I can sit here now and make a ruling
10 on as the testimony develops.

11 What I will say is, I'm going to give the
12 solicitor a very short leash on that. Okay?
13 There will be a short leash on that. But clearly,
14 I think the case law -- I mean, that dates back to
15 the 50's. I think that clearly is permissible.

16 So I would watch that, and if you need to
17 object, then you need to do so at the appropriate
18 time, sir.

19 As it relates to the warrants, again, the
20 phone dump -- well, there was a gunshot residue.
21 I already made a ruling on that. I adopted the
22 State's argument there.

23 There was a motion concerning the phone
24 dumps, and to that extent I said that I agreed and
25 adopted solicitor's argument as it relates to the

1 phone dump of the decedent in this matter.

2 Mr. Mathews, as it relates to the phone
3 dump of the suspect, that was the case where
4 the -- where there was, what I call, the oral -- I
5 think oral supplementation of the testimony. And
6 what I will say is that -- certainly, Mr. Mathews,
7 I believe that the better -- hold on.

8 I want to make sure we don't have any
9 jurors. No jurors.

10 Certainly, the better approach would be
11 to have, well, A, sign the return. I believe the
12 return, quite frankly, is more administerial in
13 duty, so I'm not going to dismiss that or prohibit
14 that information based on the term.

15 I think it's also a better practice to
16 know who the judge is who's signing a warrant,
17 particularly when you have illegible writing. But
18 I think that it was signed by a judge. I don't
19 think there's any doubt about that. His testimony
20 was clear there. And I think the better practice,
21 certainly, is to have the officer go and print out
22 a new document or hand write or have the judge
23 hand write in and have him or her initial, the
24 affiant, these changes.

25 Because in this case what I would say is,

1 as the warrant stands without supplementation, it
2 fails. That warrant fails, and it is terribly
3 vague.

4 However, "The supplementation and oral
5 testimony may be used to supplement search warrant
6 affidavits which are facially insufficient to
7 establish probable cause." However, it goes on,
8 "But sworn oral standing alone does not
9 satisfactory." So I think that basically --
10 that's the *State v. Jones* case. I believe that,
11 as a result of the that case, it's permissible for
12 there to be oral supplementation. I believe the
13 officer -- he testified under oath as to the
14 supplementation and what he told the magistrate he
15 supplemented. And if, in fact, that's what he
16 did -- I have no reason to doubt him. But if, in
17 fact, that's what he did, clearly at that point
18 there was more than adequate probable cause based
19 on the supplementation. I don't see anywhere
20 where they're required to write anything down.

21 And so, again, I'm not harping you on best
22 use practices, but, certainly, if there had been
23 something in writing, we wouldn't have to worry about
24 this and spend our time researching these matters.

25 I'm going to respectfully deny your

1 motion, sir.

2 As it relates to the cell phone tower,
3 sir, Mr. Mathews, that's the case where the
4 officer apparently didn't sign the search warrant,
5 but the judge did. And, in fact, the judge signed
6 on the very piece of paper where the signature of
7 the officer was to be recorded, and clearly
8 indicates Judge Deborah O'Quinn's signature. I do
9 believe that that was a scrivener's error. I
10 believe he testified that he did produce that for
11 her, she signed it. He took an oath and just
12 forgot to sign it. Ironically, the return was
13 signed in that case. But I do not believe that --
14 under the circumstances that are presented me, I
15 just don't believe that -- I believe that all the
16 evidence and inferences here point to Judge
17 O'Quinn swearing this witness in. I think he
18 indicated that, and then signed the warrant. I
19 just -- I mean, for the life of me, I can't think
20 that Judge O'Quinn would just sign a piece of
21 paper and hand it back to him not have sworn him
22 in, which is what he testified to, he was put
23 under oath and he prepared the document.

24 So, sir, I think that ends up being, at
25 best, a scrivener's error. I think it complies

1 with law, and so I'm going to respectfully deny
2 your motion as it relates to the cell phone
3 dump -- excuse me. I mean the cell tower dump
4 because I think that's the warrant that that
5 applied to.

6 Are there other matters, Mr. Mathews?
7 Have I covered them all?

8 MR. MATHEWS: I think so, Your Honor. I
9 think you got it.

10 THE COURT: All right. Is there anything
11 else we need to take up pretrial?

12 MS. SWANSON: None from the State.

13 THE COURT: Okay. So then the jury will
14 be coming in at 1:45, and so -- all right. I
15 have -- do I have voir dire from Mr. Mathews?

16 MR. MATHEWS: Your standard voir dire is
17 fine.

18 THE COURT: Okay. Solicitor?

19 MS. SWANSON: I don't have any specific,
20 Your Honor.

21 THE COURT: All right. Well, I will ask
22 them voir dire questions. If there are additional
23 questions that you-all see fit or think I need to
24 ask, remind me, and I will, in fact -- I'll try to
25 ask you-all about that, but if not, you-all remind

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF COLLETON

4 State of South Carolina,

5 vs. Transcript of Record
202-GS-15-0472

6 Justin Carroll,
7 Defendant.

8
9
10 April 23, 2024
11 Walterboro, South Carolina
Volume II

12 B E F O R E:

13 The HONORABLE ROBERT J. BONDS

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

15 Hunter Swanson, Assistant Solicitor
16 Julie Kate Keeney, Assistant Solicitor
17 David Mathews, Representing the defendant
18 Carlese Anderson, Representing the defendant

19

20

21 SHARON G. HARDOON, CSR
22 Official Circuit Court Reporter, III

23

24

25

1 MS. SWANSON: Thank you. May it please
2 the Court?

3 THE COURT: Yes, ma'am.

4 OPENING STATEMENT

5 MS. SWANSON: In May of 2021, Donasia
6 Holloway had moved on. Her ex-boyfriend, Justin
7 Carroll, who goes by Cole had not. 22-year-old
8 Donasia had her entire life to live, but this man
9 took it from her.

10 Shortly after 10:00 p.m. on Saturday, May
11 22nd, Cole followed Donasia into the Forest Point
12 Apartments. In an effort to feel safe Donasia had
13 driven in a different car. She parked next to
14 resident's patrol vehicle, but those efforts were
15 futile because Cole had it in his mind that if
16 nobody -- if he couldn't have her, nobody would.
17 Things rapidly became deadly. As she sat helpless
18 in her vehicle with the doors locked, he shot her
19 several times through the driver's side window.
20 By the time police arrived, she was dead on
21 arrival. She didn't stand a chance.

22 I'm not going to spend a lot of time
23 talking about the facts of this case, because
24 we're about to get right into it. And, as the
25 judge said, you're going to determine the facts of

1 the case through the witnesses that testified and
2 through the exhibits that are presented through
3 the witnesses.

4 Nothing that I say or Mr. Mathews says
5 are things that you can consider as evidence while
6 you're in the jury room, just as Judge Bonds just
7 told you. It is my job as the prosecutor to
8 present the evidence that law enforcement
9 collected through the presentation of the
10 witnesses on the stand and through the exhibits
11 that you can view in the courtroom. And then once
12 you begin your deliberations, you can review them
13 back in your jury room.

14 As the State, we do bear the burden in
15 this case, and we must be able to convince you
16 beyond a reasonable doubt of Justin Carroll's
17 guilt. That means that you need to be firmly
18 convinced that he committed this murder at the end
19 of this case.

20 Once all of the evidence is in and you
21 consider it and you uphold your oath as jurors, I
22 believe you will find him guilty and I will be
23 asking you to do so.

24 Thank you.

25 THE COURT: Mr. Mathews.

1 MR. MATHEWS: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 OPENING STATEMENT

4 MR. MATHEWS: Mr. Foreman, ladies and
5 gentlemen of the jury, as you heard earlier, I'm
6 Dave Mathews. I live here in Walterboro. I
7 represent Justin Carroll.

8 You know, I know a picture is worth a
9 thousands words, and I won't get too much in
10 argument. That's more appropriate at the end.
11 But I will say that DNA is worth a million.

12 This is a piece of candy that Officer
13 Hantz took from the scene in an area where a white
14 male was seen smoking a cigarette around the time
15 that the victim in this case was killed.

16 And in that area where this male was, a
17 piece of candy was found. This piece of candy, a
18 red piece of candy. And it was taken in, and it,
19 along with several other things, were sent to the
20 South Carolina Law Enforcement also known as SLED.
21 Our eyes deceive us sometimes, but the science
22 usually does not.

23 The six, I think, rounds of spent shell
24 casings were found on the scene. At least four
25 bullets holes in the window. The pathologist is

1 going to get into the details of it. And when the
2 Walterboro police -- this happened outside
3 Officer Hantz's building where he lived, and he
4 called in and reported what had happened, what he
5 heard. He heard some shots. He went down to the
6 scene. The Walterboro Police Department was on
7 the scene.

8 Inexplicitly, they had been there 10
9 minutes before EMS was called. EMS was ultimately
10 called. The coroner ultimately was called. Any
11 chance that Miss Holloway had was gone probably
12 after 5 or 6 or 10, or even 20 minutes, and she
13 died.

14 I believe that the State is going to show
15 videos taken in the general area. I think they
16 developed a white male as a suspect.

17 And there are certain things you talk
18 about, motivation and stuff. You will have a
19 chance to hear some of that, I believe. But in
20 addition there was trace evidence. There was
21 fingerprint evidence. There was DNA, and there
22 was weapons analysis from the shells there and
23 from the slugs that were removed from
24 Miss Holloway.

25 All of those things, those four different

1 sets of things, latent prints from the car, trace
2 evidence, DNA, and firearms evidence were sent to
3 the SLED. And on a case where the State is really
4 sure what happened, you would hear an awful lot
5 about that. I don't know whether you will or you
6 won't. The evidence that was collected on the
7 scene was given to Jamie Bloodworth, who is the
8 evidence custodian for the Walterboro Police
9 Department. And they do that so things can't be
10 messed with. All right?

11 If you handle something incorrectly, then
12 it can be transferred. And I think the evidence
13 will show that they tried to take great pains to
14 do that and that Officer Bloodworth does his level
15 best to make sure that nobody handles something.
16 If you sent something for touch DNA, for example,
17 and somebody else handles it, then you're going to
18 see DNA of different people. Let's see if the
19 State presents that. Okay?

20 There's also an evidence custodian from
21 SLED. When they receive things, they take special
22 care to make sure that the evidence that their
23 technicians examine is not tainted.

24 In the end, I don't think you will hear
25 any evidence, any significant evidence that ties

1 Mr. Carroll to this. Maybe you will see things.
2 Maybe you will hear some testimony, but the
3 science doesn't lie.

4 In the end, take a look at what the State
5 presents, but also consider what the State does
6 not present. And when you do, after listening
7 carefully to all the evidence, I feel confident
8 that you will find that the State has not met
9 their burden of proof.

10 THE COURT: Solicitor.

11 MS. SWANSON: Thank you. The State calls
12 Angela Stallings.

13 THE CLERK: Good morning. Do you swear
14 the testimony you're about to give the Court shall
15 be the truth so help you God?

16 THE WITNESS: Yes, ma'am.

17 THE CLERK: Have a seat in the witness
18 stand. State your name again for the record.

19 THE COURT: Good morning.

20 THE WITNESS: How are you?

21 THE COURT: Great.

22 THE CLERK: Spell your last name.

23 THE WITNESS: Good morning. Angela
24 Stallings, S-t-a-l-l-I-n-g-s.

25 WHEREUPON:

1 ANGELA STALLINGS,
2 after having been sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SWANSON:

5 Q Good morning, Angela.

6 A Good morning.

7 Q Remind me of what your rank is currently.

8 A Captain.

9 Q Captain Stallings where do you work?

10 A The Colleton County Sheriff's Office.

11 Q And what do you do there?

12 A Currently, I'm over a couple different
13 divisions. I'm over the 911 communications
14 center, court security, civil process, our school
15 resource division, training and records
16 division.

17 Q Okay. And as part of your duties, do you keep 911
18 recordings?

19 A Yes, ma'am, we do.

20 Q Okay. And recordings to dispatch?

21 A Yes, ma'am.

22 Q All right. And are those recordings kept in the
23 ordinary course of business?

24 A They are.

25 Q All right. Did we ask you to pull some recordings

1 from May 22nd of 2021?

2 A Yes, ma'am, you did.

3 (STATE EXH. 3, 911 Call, was marked for
4 identification.)

5 BY MS. SWANSON:

6 Q Let me show you state Exhibit 3 and ask if you
7 recognize this exhibit.

8 MR. MATHEWS: No objection.

9 THE WITNESS: Yes, ma'am, I do.

10 BY MS. SWANSON:

11 Q Okay. And what is it?

12 A This is 911 calls and an administrative
13 call.

14 Q Okay. This might just be the 911 call.

15 A Okay. Yes, ma'am.

16 Q Did you review that?

17 A I did.

18 Q All right. And is it a fair and accurate
19 depiction of the 911 call that was receive May 22nd of
20 2021?

21 A It is.

22 Q All right.

23 MS. SWANSON: State would move 3 into
24 evidence and request to publish.

25 THE COURT: Any objection?

1 MR. MATHEWS: No objection.

2 THE COURT: State's -- hold on one
3 second, plea. State's Exhibit 3 admitted without
4 objection. Yes, ma'am, you may publish.

5 (STATE EXH. 3, 911 Call, was entered into
6 evidence.)

7 MS. SWANSON: Thank you. Beg the Court's
8 indulgence.

9 THE COURT: Yes, ma'am. Take your time,
10 Solicitor.

11 MS. SWANSON: Of course we test these
12 things in the morning, and then five minutes
13 later . . .

14 THE COURT: Folks, it's like taking a car
15 to a mechanic because you got a problem, but when
16 you show up there it's working fine. So bear with
17 us for one second.

18 Madame Clerk, while we've got a break in
19 action, could you have the foreperson write his
20 name and juror number on that piece of paper for
21 me?

22 Thank you.

23 THE CLERK: You're welcome.

24 THE COURT: To my lawyers, during this
25 break, I had the clerk provide our foreperson,

1 Mr. Lyons, a piece of paper. Mr. Lyons has
2 written his name and his juror number for us. I'm
3 going to mark this as Court's Exhibit 1.

4 Any objection?

5 MS. SWANSON: No objection.

6 MR. MATHEWS: No, sir.

7 THE COURT: All right. Thank you, Madame
8 Clerk.

9 Madame Court Reporter, thank you.

10 (COURT EXH. 1, Foreperson, was marked for
11 identification.)

12 (911 call played.)

13 (STATE EXH. 4, Call to Dispatch; Hantz, was
14 marked for identification.)

15 BY MS. SWANSON:

16 Q All right. Captain Stallings, I'm going to hand
17 you what's been marked as State's Exhibit 4 and ask if
18 you recognize this disk.

19 A Yes, ma'am. It has my initials and date on
20 it when I reviewed it.

21 Q Okay. So is that a fair and accurate depiction of
22 the call to dispatch by Officer Hantz?

23 A Yes, ma'am.

24 MS. SWANSON: State would move 4 into
25 evidence at this time and request to publish.

1 MR. MATHEWS: Without objection.

2 THE COURT: All right. 4 is admitted
3 without objection and you may publish. Yes,
4 ma'am.

5 (Disk played.)

6 Q Thank you. Captain Stallings, please answer any
7 questions the defense may have.

8 A Yes, ma'am.

9 MR. MATHEWS: May it please the Court?

10 THE COURT: Yes, sir, Mr. Mathews.

11 CROSS-EXAMINATION

12 BY MR. MATHEWS:

13 Q Captain Stallings, you've dealt with about
14 everything, haven't you?

15 A Almost.

16 Q Are you ready to be sheriff yet?

17 A No, sir.

18 Q How many times do you think I probably
19 cross-examined you?

20 A A lot.

21 Q A lot of times when you talk about a 911 thing,
22 it's shown on the DVD up there on that screen, isn't
23 it?

24 A Yes, sir.

25 Q Okay. And, in addition to hearing that, when it's

1 done that way, we get to see time stamps, correct?

2 A Correct.

3 Q The time stamp, I think, on Ross's call to --

4 Officer Hantz's call to dispatch, I think, would --

5 21-05-22-22-13-07, if that's the correct time stamp,

6 would that mean -- what would that mean?

7 A Are you going off of the call for service or

8 are you going off the CAD report, or are you going

9 off of the 911 call?

10 Q I'm going off of Ross's call to dispatch. Officer

11 Hantz's call to dispatch on my DVD as I'm looking at

12 it.

13 A Okay. Yes. So on the DVD at the beginning

14 of the call, you will hear it ring and you will be

15 given a time stamp and that is the time the call

16 hits our system.

17 Q Okay. So, in that particular case, if it is

18 indeed, 21-05-22-22-13-07, what would that mean? What

19 is that information?

20 A That's the time. So give me the numbers

21 again. 21, so that 9:00.

22 Q Okay. 05.

23 A 9:05.

24 Q 22.

25 A 22 seconds, and that's p.m. 21 is military

1 time for 9:00 p.m.

2 Q Okay. And that 13-07?

3 A That's how it comes down to the seconds.

4 Q All right.

5 A Milliseconds, I guess.

6 Q All right. And that would be the same with the
7 911 call? Those would also be time stamped on the
8 DVD?

9 A That's correct.

10 Q All right. In addition to doing 911, do you also
11 do CAD or does somebody else do CAD?

12 A I do CAD as well.

13 Q Okay. So CAD, what is that, if you'll tell the
14 jury?

15 A So CAD is our computer-aided dispatch
16 software. That's how we enter all of our calls
17 into the computer to keep track of all of the
18 calls that are actively going on at the moment,
19 and it stores old calls as well that we previously
20 had.

21 Q Does it also show -- does it show when an officer
22 arrives on the scene?

23 A It does.

24 Q Okay.

25 MR. MATHEWS: This has my notes. Any

1 objection to handing that to the witness? This is
2 part of the same.

3 MS. SWANSON: No.

4 MR. MATHEWS: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes, sir.

7 MR. MATHEWS: Madame Court Reporter, may
8 I have this marked for identification only at this
9 time?

10 THE COURT: Yes, sir.

11 (DFT. 1, Call For Service; Hantz, was marked
12 for identification.)

13 BY MR. MATHEWS:

14 Q Captain Stallings, I'm handing you what's been
15 marked as Defendant's Exhibit Number 1 and ask if you
16 can identify that? I ask you to ignore my yellow
17 markings.

18 MR. MATHEWS: Your Honor, if I ask to put
19 that into evidence, I would probably want to
20 substitute a plain copy, but that's what I have.

21 THE WITNESS: This is the law enforcement
22 call for service where we entered the call-in
23 based off of Sergeant Hantz's call -- additional
24 call to dispatch.

25 BY MR. MATHEWS:

1 Q Okay.

2 A For -- it's put in as a shooting. I don't
3 know if it was updated. I do recognize it. I'm
4 sorry. It hasn't been published. I apologize.

5 THE COURT: It's all right.

6 Q That's okay. It was one of the things I was going
7 ask you.

8 A Yes.

9 Q Does it tell you what officers were on scene?

10 A It does.

11 Q Who were the officers that you can discern were on
12 scene?

13 A There are several that were actually
14 dispatched. But on scene we have Charlie 3, who
15 at that time was Deron Grant. India 64, who is
16 Investigator Shipp. Papa 71 is Justin Pinkney.
17 Sierra 10 who is Sergeant Lewis. We had some
18 other officers that were dispatched as well. I
19 don't actually see an on-scene time. Some of them
20 are marked in the area. So they were assigned to
21 the call, but may have been in the area doing
22 different duties, I guess.

23 Q So there are some officers involved in the case
24 that are not on the dispatch?

25 A That's not marked on scene.

1 Q Not marked as being there?

2 A Yes.

3 Q Who prepares the CAD for you? Do you prepare it,
4 or who does that?

5 A So, it's -- it's the dispatcher or
6 dispatchers that are putting information into the
7 call. So you can have one dispatcher that is one
8 solely involved with CAD report, or you could have
9 multiple dispatchers. So if it's a call that
10 comes in from a caller, you got call taker.
11 That's the dispatcher.

12 So your call taker initiates that call
13 and they put that call in. Once the call taker
14 puts the call in, it then goes to the dispatcher
15 that is handling the type of call that it is.
16 Whether it's law enforcement for Cottageville --
17 we dispatch for seven agencies whether it's
18 fire/rescue, Walterboro police, Walterboro fire,
19 Edisto police, Edisto fire. So it goes to that
20 dispatcher that's dispatching for that specific
21 request at that time. And then they, basically,
22 are the primary dispatcher on that call.

23 If you have additional calls that come in
24 with additional information, then, whoever takes
25 those calls, that dispatcher puts the information

1 in the call. So you can have multiple dispatchers
2 involved in one specific CAD report.

3 Q Thank you, Captain, that's very informative.

4 What time, according to the CAD, did Sergeant
5 Lewis arrive on scene?

6 A Sergeant Lewis was on scene, there is not an
7 on-scene time for the initial incident for
8 Sergeant Lewis. He was dispatched at 2215.

9 Q Okay.

10 A And he requested an ambulance at 2225.

11 Q So after he was dispatched to be on scene -- and,
12 obviously, with Officer Hantz's call coming in, it was
13 at least ten minutes before an ambulance was called?

14 A According to this report. Now, if someone
15 else -- I'd have to look at the fire/rescue CAD
16 report. He specifically requested one 10 minutes
17 later.

18 Q Okay. Do you have any indication that anyone else
19 asked for an ambulance to be called other than
20 Sergeant Lewis?

21 A It looks like it's around the same time of
22 Sergeant Lewis's request, but we've got in the
23 narrative where Sergeant Hantz advised that there
24 was a GSW, which is a gunshot wound --

25 Q Right.

1 A -- in the front seat of a silver Lexus, and
2 that was at 2225 as well.

3 Q Okay. So at least 10 minutes after Lewis got on
4 the scene.

5 A Yes.

6 Q And that's the only indication that an ambulance
7 was called?

8 A Correct.

9 Q All right.

10 MR. MATHEWS: May I approach to get my
11 stuff back?

12 THE COURT: Sure.

13 Q Thank you, Captain Stallings. Nothing further.

14 A Yes, sir.

15 THE COURT: Anything else, Solicitor?

16 MS. SWANSON: Yes, sir.

17 MR. MATHEWS: It seems to be the same as
18 mine, so no objection.

19 MS. SWANSON: Thank you.

20 (STATE EXH. 18, CAD Report, was marked for
21 identification.)

22 BY MS. SWANSON:

23 Q Captain Stallings, I'm going to hand you what has
24 been marked as State's Exhibit 18.

25 A Yes, ma'am.

1 Q Is this the same CAD report that you were just
2 referring to?

3 A Yes, ma'am.

4 Q And is that a record that's kept in the ordinary
5 course of business?

6 A Yes, ma'am, it is.

7 MS. SWANSON: I would move State's 18
8 into evidence at this time.

9 MR. MATHEWS: No objection. I'll return
10 that also, since I made it a court exhibit.

11 THE COURT: All right. Thank you.

12 Admitted without objection. Yes, ma'am.

13 MS. SWANSON: Okay, thank you.

14 (STATE EXH. 18, CAD Report, was entered into
15 evidence.)

16 BY MS. SWANSON:

17 Q Captain Stallings, does this contain times in
18 which calls come in?

19 A Yes.

20 Q And notes regarding those calls?

21 A Correct.

22 Q And can you tell us when the first call came in
23 regarding the shots?

24 A 2214 was the initial call time of the CAD
25 entry, and that would have come from

1 Sergeant Hantz.

2 Q Okay. And 2214 is what in normal-people time?

3 A That's 10:14 p.m.

4 Q Okay. And then the second call came in?

5 A The second caller was at 2219.

6 Q All right. So that's 10:19?

7 A Yes.

8 Q All right. And can you read the 1:56 note and a
9 explain what that means. 1:56 a.m. on May 23rd.

10 MR. MATHEWS: Excuse me, Your Honor. I
11 have a matter of law.

12 THE COURT: All right. Ladies and
13 gentlemen, I'm going to send you back to the jury
14 room. I'll get you back in here as soon as I can.
15 Please don't talk about the case. Thank you.

16 (Jury exits the courtroom at 10:18 a.m.)

17 THE COURT: Mr. Mathews, yes, sir.

18 MR. MATHEWS: Your Honor, I just noticed,
19 and I apologize for this, I asked -- there was,
20 obviously, particular information I was looking
21 at, and some of the stuff in here is admissible,
22 but I think some of the stuff in here is not. And
23 one of the things that concerns me some -- one of
24 the things that --

25 THE COURT: Hold on a second. Were you

1 communicating with the witness?

2 MS. SWANSON: No, sir.

3 THE COURT: Was she communicating with
4 you just a second ago?

5 THE WITNESS: No.

6 THE COURT: Were you-all acknowledging
7 each other?

8 THE WITNESS: Unh-uh.

9 THE COURT: No?

10 MS. SWANSON: I mean, I was --

11 THE WITNESS: We were looking at each other.

12 MS. SWANSON: I looked at her.

13 THE WITNESS: But, I mean, nothing was
14 said.

15 THE COURT: Well, obviously, nothing was
16 said. All right, thank you.

17 THE WITNESS: You want to look at this?

18 THE COURT: Yes, ma'am.

19 MR. MATHEWS: One of the things that is
20 in here, it reports ping-pong on what is the
21 defendant's phone, or they believe to be the
22 defendant's phone. They got this information
23 from --

24 THE COURT: Where are you referring, Mr.
25 Mathews?

1 MR. MATHEWS: Page 2 of 4.

2 THE COURT: It's a five-page document.

3 MR. MATHEWS: On the non-unit specific
4 times.

5 THE COURT: Yes, sir.

6 MR. MATHEWS: They say at 1:21 a.m.,
7 suspect possess white GMC single cab per S-242.
8 And then per S-10 ping suspect phone number. What
9 they did is they circumvented search warrant
10 rules. They claimed it was an emergency. They
11 contacted the cell phone provider and the cell
12 phone provider gave them location -- cell tower
13 location in real time, and they arrested Justin as
14 a result of that in Waltherboro.

15 They followed his movements, again,
16 without a search warrant, claiming an emergency.
17 They questioned him and let him go. And they
18 asked him to come in the next day, which he did.
19 He came in and they let him go again. And then
20 arrested him at his work at Pizza Hut the
21 following -- I think on the 24th.

22 So I wanted to ask about who was present
23 and give some recollection to Captain Stallings,
24 but I didn't -- I don't and did not intend and do
25 not intend to get this -- you know, it's all

1 hearsay to a point. But as far as what exactly is
2 being, you know, done in regard to the cell phone
3 pinging and all that sort of stuff, I think that
4 is a -- I think more -- if they intend to present
5 evidence that he was arrested as a result of that,
6 they need to go through the right channels. They
7 need to call a phone company representative and
8 say how this came to be.

9 There's a lot of information in here,
10 some of which -- obviously, I was using this to
11 show that they didn't call an ambulance, and
12 that's pretty clear. I could ask Sergeant Lewis
13 and they still -- and he's got his camera.

14 But in terms of the people that involved,
15 it's a record that's kept in the ordinary course
16 of business, but it contains hearsay and it
17 contains information that is probably not
18 admissible at this point without a proper
19 foundation, including the pinging and the
20 description of the -- I don't know that the
21 description of the truck is necessarily a problem,
22 but the pinging and following him in real time, I
23 think that is -- I think more foundation has to be
24 laid down if they want to present that. Along
25 with, ultimately, sort of storm trooping and then

1 arresting him, I think it's prejudicial too. I'm
2 getting a little bit ahead of myself, but I
3 anticipate that's what they're going for.

4 THE COURT: Solicitor?

5 MS. SWANSON: Well, Your Honor, it's
6 already been admitted into evidence under the
7 business records exception. Mr. Mathews
8 questioned the witness thoroughly about this
9 document. I let him see it beforehand. He had
10 obviously reviewed it.

11 I do intend to call Verizon and the cell
12 tower expert, so, I mean, that's going to be done
13 in this case.

14 THE COURT: Well, and I think his -- I
15 figured that. But I think his concern is that, at
16 least for right now, that that potentially is
17 premature, because I think he's asking, *Judge,*
18 *let's let the Verizon expert come in, lay the*
19 *foundation,* and then assuming that's that laid,
20 then almost all of this can then come into
21 evidence. Is that what you're asking?

22 MR. MATHEWS: Yes, sir. And if they need
23 to see it now -- they haven't seen it yet, so
24 there's no damage yet to anybody because they
25 haven't seen this. But there is some language in

1 here that, per S-10, which is Sergeant Lewis,
2 notified AC referring to coming to pick up a
3 rabbit. You know, that's a characterization, I
4 think, of somebody who is running, I would
5 suspect. And I think it's prejudicial.

6 If we could just redact it. I mean, I
7 don't have any problem with redacting the
8 information in here if that's the way -- maybe
9 that's the better way to go. Just take a black
10 magic marker to the sections that appear to be
11 prejudicial.

12 THE COURT: Well, you know, Mr.
13 Mathews -- well, you don't have to sit down. I'm
14 not going to be long. What do you want to tell
15 me.

16 MS. SWANSON: I mean, the jury wouldn't
17 see it until the facts of the case are finished
18 and they go into deliberations. I'm not going to
19 question about the pings.

20 There is a statement that says, *Suspect*
21 *is threatening to kill himself*, which I believe is
22 an admission by a party opponent and relevant and
23 is something that I was trying to get into through
24 Captain Stallings. That's a note in there.

25 MR. MATHEWS: An admission to whom, and I

1 don't know the circumstances around that. I
2 haven't seen the video. I see a summary of it.
3 I'm just using it for the limited purpose of who
4 was present and who they called.

5 THE COURT: Mr. Mathews, I mean, you
6 marked it as an exhibit. You thoroughly
7 questioned her, in my opinion, on this document.
8 The State handed you -- handed you the document to
9 look at. You, in fact, looked at it. I saw you
10 look at it.

11 MR. MATHEWS: I did.

12 THE COURT: And then, now, after the
13 document is admitted into evidence, there's all
14 sorts of stuff you don't want. She's not going to
15 ask about the pinging, and I don't think getting
16 into anything about the phone and pinging and
17 where he was in real time and emergency, I don't
18 think -- I'm not going to allow you to get into
19 any of that, Solicitor. That's not -- that's not
20 -- I'm not. Because you can get that in --
21 assuming you lay the foundation, you can get that
22 in later in the trial.

23 MS. SWANSON: Yes, sir.

24 THE COURT: But for right now, I agree
25 with Mr. Mathews.

1 And, Mr. Mathews, she tells me she's not
2 going to ask anything about that.

3 Now, concerning what she does want to ask
4 about, apparently what she wants to ask about is
5 an entry that's on here from Mr. Lewis -- from
6 Sergeant -- what was that, Solicitor?

7 MS. SWANSON: I'm not sure. I would have
8 to have Captain Stallings explain it, but it's a
9 reference that the suspect told someone that he
10 was threatening to kill himself. Oh, Raymond
11 Davis.

12 MR. MATHEWS: Who I don't think is on the
13 witness list.

14 MS. SWANSON: No. It was just a business
15 record and it falls under the hearsay exception,
16 and it's an admission by a party opponent.

17 THE COURT: I'm going to keep that out.
18 I'm not going to allow you to go into that. As it
19 relates to the ping-pong, though, that's going to
20 come up later, but I'm not going to let this --
21 even though it's contained in this document, even
22 though Mr. Mathews has admitted it -- or
23 stipulated or admitted it without objection, I
24 don't think it's appropriate.

25 MR. MATHEWS: Thank you, Your Honor.

1 THE COURT: I think there's too many
2 issues surrounding what was said as to what it
3 might mean and I think it's damaging. I think
4 under 403, any type of -- I think that the
5 prejudicial effect and jury confusion -- I mean, I
6 think we're asking the jury to speculate as what
7 that may be. So I'm not going to allow that. I'm
8 not going to allow you to go into that. We're
9 going to keep that out. I think that the
10 prejudicial effect and the speculative effect in
11 this case is substantially -- the prejudicial
12 effect is substantially outweighed by any
13 probative value, and I also think that it could
14 cause jury confusion in this matter. So I'm not
15 going to allow that.

16 What else, if anything, do you want to
17 ask her about the document?

18 MS. SWANSON: Nothing, Your Honor.

19 THE COURT: All right. So what will
20 happen is this, if the ping information
21 ultimately ends up being admitted, then I don't
22 necessarily have a problem, Mr. Mathews, with this
23 document then going back, except for the one edit,
24 Mr. Mathews, as it relates to the committing
25 suicide.

1 MR. MATHEWS: Yes, sir.

2 THE COURT: Is that right, Mr. Mathews?

3 MR. MATHEWS: Yes, Judge.

4 THE COURT: Is that it for this document?
5 I don't want to have to come back to this document
6 later, sir, is what I'm saying.

7 MR. MATHEWS: No. I agree, Your Honor.
8 Thank you. And if we could just maybe take a
9 magic marker right now to that while we're
10 thinking about it --

11 THE COURT: Well, we're going to take a
12 break right now. May as well take a minute or two
13 break for us, and then if you-all could do that
14 and agree to that and then we'll have that taken
15 care of.

16 Let me ask you, Solicitor, anything else
17 about this document that we need to take up at
18 this time?

19 MS. SWANSON: I don't believe so. I
20 wasn't planning on using it to begin with.

21 THE COURT: All right. Thank you.

22 Let me hand this back to the court
23 reporter. Thank you.

24 We'll be at ease for about five or ten
25 minutes.

1 You certainly can step down, Miss Stallings.
2 You just can't talk with anybody or communicate in any
3 fashion with anybody, verbal or nonverbal as it
4 relates to this matter.

5 THE WITNESS: I was just smiling. I
6 apologize.

7 THE COURT: Well, it was just the way the
8 smiles came together. I don't know what it was.
9 Feel free to step down. Okay, thank you.

10 (A break was taken from 10:30 a.m. to 10:36 a.m.)

11 THE BAILIFF: All rise.

12 THE COURT: Thank you. You may be
13 seated. Thank you.

14 MR. MATHEWS: Your Honor, we made a
15 couple of redactions there. We also have the
16 reference to a rabbit. And afterwards, after we
17 had taken the black magic marker to it, we found
18 that it was an actual rabbit. So, I don't know
19 what it means. I don't know what it is, but
20 apparently in the victim's car, there was a
21 rabbit.

22 THE COURT: All right.

23 MR. MATHEWS: An actual bunny rabbit.

24 THE COURT: Okay.

25 MR. MATHEWS: This is something that is

1 not particularly relevant. I can't find a way to
2 make it relevant and we inked it out anyway and we
3 think with the other matter and the rest of it,
4 the document should be ready to go at this point.

5 THE COURT: Solicitor, does that sound
6 correct?

7 MS. SWANSON: That is correct.

8 THE COURT: All right. Thank you.

9 Anything from the State before we bring the
10 jury in?

11 MS. SWANSON: No, Your Honor.

12 THE COURT: Anything from the defense?

13 MR. MATHEWS: All set, Your Honor.

14 THE COURT: All right. So you, at this
15 point, are you finished with your
16 cross-examination of this witness?

17 MS. SWANSON: Yes, sir.

18 THE COURT: All right. Do you have any
19 redirect -- any recross? Excuse me.

20 MR. MATHEWS: No, sir.

21 THE COURT: All right, great. Let's go
22 ahead and get the jury in please.

23 (Jury enters the courtroom at 10:37 a.m.)

24 THE COURT: All right. Mr. Foreman,
25 ladies and gentlemen, we are ready to proceed.

1 Kevin Baker, B-a-k-e-r.

2 THE COURT: Your witness, yes, ma'am.

3 MS. SWANSON: Thank you.

4 WHEREUPON:

5 KEVIN BAKER,

6 after having been sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. SWANSON:

9 Q Good morning, Mr. Baker. Who do you work for?

10 A Colleton County Fire Rescue.

11 Q All right. And what do you do there?

12 A I'm a firefighter/paramedic.

13 Q Did you respond to a call on May 22nd of 2021?

14 A Yes, ma'am.

15 Q That night?

16 A Yes, ma'am.

17 Q All right. I see you don't have your report in
18 front of you. Would it help you to refresh your
19 memory to refer to that?

20 A I can.

21 Q I'm going to pass up your report. Just take a
22 look at it and make sure that's the report that you
23 recall preparing.

24 A That is correct.

25 Q Okay.

1 THE COURT: All right. Mr. Baker, can
2 you pull that mic a little bit closer to you and
3 speak up just a little bit for me. Thank you very
4 much.

5 BY MS. SWANSON:

6 Q Where did you respond the night of May 22, 2021?

7 A We responded to [REDACTED] Forest Circle, an
8 apartment complex.

9 Q Is that within the city of Walterboro?

10 A Yes, ma'am.

11 Q Within Colleton County?

12 A Yes, ma'am.

13 Q All right. What time did you respond or arrive on
14 scene?

15 A We arrived on scene at 10:34.

16 Q Okay. And did you come in contact with the
17 patient?

18 A Yes, ma'am.

19 Q Who was that patient?

20 A That would be Miss Donasia Lexus Holloway
21 Lewis.

22 Q All right. How did you find her?

23 A I found her sitting in the driver's seat
24 slumped over with multiple gunshot wounds with no
25 signs of life.

1 Q All right. And as a paramedic, does that enable
2 you to provide life-saving measures?

3 A No, ma'am.

4 Q No?

5 Okay. Did you attempt any sort of CPR, or
6 anything like that?

7 A No, ma'am.

8 Q Why is that?

9 A She had a wound to her head. Apparent
10 gunshot wound to the head.

11 Q Right. When you put the leads on her, did she
12 display any signs of life?

13 A We placed the four leads on the patient, she
14 had -- it was asystole on the monitor and no
15 further manipulation was done.

16 Q Okay. And, for the jury, asystole on the monitor,
17 does that flat line?

18 A Flat line, no electrical activity in the
19 heart.

20 Q Thank you. That's all I have for you.

21 MR. MATHEWS: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. MATHEWS:

25 Q So what's your rank or grade? What do you want to

1 be called?

2 A I'm just a firefighter/paramedic.

3 Q My son did that for a little while. I think he's
4 doing something else. But anyway, he did it for a
5 while. Thank you for your service.

6 A Thank you.

7 Q What time were you-all originally dispatched?

8 A We were dispatched at 10:26.

9 Q Okay. When you were -- okay. And it took you, I
10 guess, eight minutes to get there?

11 A Yes, sir.

12 Q Okay. And I think if the shooting was first
13 reported at 10:15, how much after the incident then
14 would you have arrived? I guess, 10, 15, 34 minus 15,
15 I guess 19 minutes, or something like that later?

16 A Yes, sir.

17 Q How long have you been a firefighter/paramedic?

18 A I've only been a -- 14 -- well, I've only
19 been a firefighter/paramedic for three years.
20 I've been a fireman for 30-plus years.

21 Q Did they put some new requirements on you or got
22 you some more money?

23 A I went -- I wanted a challenge when I got
24 older, so I went to medical school.

25 Q What kind of things do you normally do when --

1 have you worked other gun shootings either as a first
2 responder firefighter or as EMS, EMT?

3 A I haven't.

4 Q Not a bunch?

5 A Not a bunch.

6 Q All right. But as a first responder, you try to
7 triage stuff and try to get things under control the
8 best you can?

9 A Right.

10 Q Okay. And, obviously, if somebody is already dead
11 when get there there's nothing you can do.

12 A Correct.

13 Q But the first thing you do when you get there is
14 determine if there are signs of life?

15 A Right.

16 Q To your knowledge, was there anybody with any
17 medical training on scene before you guys got there?

18 A As far as I know, the only -- law enforcement
19 was on scene when we got there.

20 Q Okay. Do you have any indication that anybody had
21 tried to help Miss Holloway prior to your arrival?

22 A No, sir, I don't.

23 Q Okay.

24 MR. MATHEWS: All right. No further
25 questions, Your Honor.

1 THE COURT: All right. Anything else,
2 Solicitor?

3 MS. SWANSON: Nothing further, and I
4 would ask that Mr. Baker be released from his
5 subpoena.

6 THE COURT: All right. You're good,
7 Mr. Baker. Thanks. Have a great day.

8 THE WITNESS: You too.

9 THE COURT: Appreciate it.

10 MS. SWANSON: Thank you.

11 The State calls Shameka Holloway.

12 THE CLERK: Raise your right hand, left
13 hand on the Bible. Do you affirm the testimony
14 you're about to give shall be the truth so help
15 you God?

16 THE WITNESS: Yes.

17 THE CLERK: Take a seat in the witness
18 stand. State your name again for the record,
19 spell your last name.

20 THE WITNESS: My name is Shameka
21 Holloway, H-o-l-l-o-w-a-y.

22 WHEREUPON:

23 SHAMEKA HOLLOWAY,
24 after having been sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. SWANSON:

2 Q Thank you, Miss Holloway. Who is Donasia Holloway
3 to you?

4 A My daughter.

5 Q How old was she?

6 A Twenty-two.

7 Q When was the last time you saw your daughter?

8 A The night before she got killed.

9 Q The night before she got killed?

10 A Uh-huh.

11 Q So that would be May 22nd of 2021?

12 A Yes, ma'am.

13 Q About what time was that?

14 A The time she left my house was afternoon of
15 that night.

16 Q So she was at your house about nine o'clock on
17 May 22nd of 2021?

18 A Yes.

19 Q What was she doing at your house?

20 A She was talking with family, and the Joiner
21 family because we had company at our house.

22 Q Okay. Where had she been?

23 A She was in Florida for a week on vacation.

24 Q And what car was she was driving when she arrived
25 at your house?

1 A She was driving my vehicle, which was a
2 Lacrosse. It was a blue Lacrosse that she was
3 driving. When she left to go home, she was
4 driving the Lexus.

5 Q Okay. I'm going to show you a couple pictures.

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

8 (STATE EXH. 6, Photo, was marked for
9 identification.)

10 BY MS. SWANSON:

11 Q I'm going to hand you what has been marked as
12 State's Exhibit 5 and 6 and ask if you can identify
13 what is contained in these pictures?

14 A That's the car she was driving.

15 Q Okay. So that's a fair and accurate depiction of
16 the Lexus that she was driving that night?

17 A Yes.

18 MS. SWANSON: State would move 5 and 6
19 into evidence at this time.

20 THE COURT: Any objections?

21 MR. MATHEWS: No, Your Honor.

22 THE COURT: All right. Admitted without
23 objection.

24 (STATE EXH. 5, Photo, was entered into
25 evidence.)

1 (STATE EXH. 6, Photo, was entered into
2 evidence.)

3 MS. SWANSON: Move to publish.

4 THE COURT: Yes, ma'am.

5 MS. SWANSON: All right. The State is
6 publishing Exhibit 5 and Exhibit 6.

7 BY MS. SWANSON:

8 Q Are you familiar with Justin Carroll?

9 A Yes.

10 Q How do you know him? Does he have a nickname?

11 A He goes by Cole.

12 Q All right. How did you become familiar with
13 him?

14 A Him and my daughter used to date.

15 Q How long did Donasia and Cole date?

16 A About two years.

17 Q Can you identify Cole in the courtroom today?

18 A Yes.

19 Q Can you point him out for me?

20 A (Indicating).

21 Q Seated with the shaved head next to Mr. Mathews?

22 A Yes.

23 Q Did Donasia and Cole ever live together?

24 A Yes.

25 Q Where did they live?

- 1 A Forest Point.
- 2 Q At Forest Point Apartments?
- 3 A Yes, Forest Point.
- 4 Q Just describe for the jury what kind of
5 relationship you had with Donasia?
- 6 A We had a great relationship, mother and
7 daughter relationship.
- 8 Q Were you-all close?
- 9 A Very close.
- 10 Q She talked to you about most anything?
- 11 A Anything and everything.
- 12 Q Did you ever witness any controlling or obsessive
13 behavior by Cole?
- 14 A He would text message, phone calls.
- 15 Q Tell me about that.
- 16 A He would call constantly, numerous times,
17 texting numerous times. That's not normal.
- 18 Q And he would call Donasia. Did he ever call
19 you?
- 20 A Yes.
- 21 Q And why did he call you?
- 22 A Trying to get in contact with her.
- 23 Q Did you ever give her any advice about this
24 relationship?
- 25 A Yes.

1 Q What did you tell her?

2 A I told her to leave because this type of
3 relationship isn't normal.

4 Q When did Cole and Donasia break up?

5 A It had to have been in January --

6 MR. MATHEWS: Your Honor?

7 THE COURT: Yes, sir. Hold on. Yes,
8 sir.

9 MR. MATHEWS: I believe this comes in the
10 category of information that we discussed prior to
11 trial.

12 THE COURT: Well, the question was when
13 did they break up. I think she can give
14 testimony --

15 MR. MATHEWS: She said when, and I think
16 she's about to refer to a prior bad act.

17 THE COURT: Well, I don't know anything
18 about that.

19 MS. SWANSON: Well, within --

20 THE COURT: Approach.

21 (Bench Conference.)

22 THE COURT: Are you asking for a date, or
23 what are you asking?

24 MS. SWANSON: No. I was asking when they
25 broke up and then I was going to ask her did she

1 remember January 7th and getting a phone call and
2 what she did as a result of that phone call,
3 which --

4 THE COURT: All right. So when --

5 MS. SWANSON: -- is within the confines
6 of your ruling.

7 MR. MATHEWS: As long as, I guess, she
8 doesn't reference a charge or anything --

9 THE COURT: She's not getting into any of
10 that.

11 MS. SWANSON: Right.

12 MR. MATHEWS: Okay.

13 THE COURT: I mean, she's really --

14 MR. MATHEWS: And then details --

15 THE COURT: She's really --

16 MR. MATHEWS: Okay.

17 THE COURT: -- tempered that, I think.

18 So, I think, you're going to ask her if she
19 remembers --

20 MS. SWANSON: Getting a phone call.

21 THE COURT: Why don't you just rephrase,
22 Do you remember -- Did they break up, and if she
23 remembers that. Are you asking for a date? What
24 is the purpose behind the question that you just
25 asked, which was, "Do you remember when they broke

1 up?"

2 MS. SWANSON: Because it was the day of
3 the incident.

4 THE COURT: Oh, okay.

5 MR. MATHEWS: Prior bad act.

6 THE COURT: That day of what incident?

7 MS. SWANSON: The prior incident between
8 the two, which is allowed --

9 THE COURT: But you're not --

10 MS. SWANSON: But we're not getting into
11 details.

12 THE COURT: You're not getting into any
13 details. I'm going to overrule that. Go ahead.

14 MS. SWANSON: And I have discussed that
15 with my witness.

16 (End of bench conference.)

17 THE COURT: I'm going to overrule your
18 objection. Solicitor, continue, please.

19 MS. SWANSON: Okay, thank you.

20 BY MS. SWANSON:

21 Q So you stated that they broke up in January of
22 2021?

23 A Yes.

24 Q And did you receive a call from Donasia that
25 day?

1 A Yes.

2 Q What did you do as a result of that phone call?

3 A I called 911.

4 Q All right. And what did you do after you called
5 911?

6 A I left where I was and came straight to
7 Walterboro.

8 Q Where did you go?

9 A To Forest Point Apartments.

10 Q To her apartment?

11 A Yes.

12 Q Was she there when you got there?

13 A Yes.

14 Q And what did you guys do?

15 A We packed all his belongings.

16 Q Justin Carroll's belongings?

17 A Yes.

18 Q Was he present when you got there?

19 A No, ma'am.

20 Q All right. What did you do with his belongings
21 once you guys packed them?

22 A We took them to his grandmother's house.

23 Q All right. To your knowledge, did he ever move
24 back in after that?

25 A No, ma'am.

1 Q All right. Back to the night of her death, after
2 she left your house about 9:00 p.m. in the Lexus, do
3 you know when she got home?

4 A Yes.

5 Q How do you know that?

6 A Because I have trackers on my children's
7 phone. And I know she lives almost an hour from
8 me, so I always check the location just to make
9 sure she made it home.

10 Q And did you check?

11 A Yes, I checked her location. And her
12 location stated that she made it home at
13 10:02 p.m.

14 Q And is that Life 360 that you're referring to?

15 A Yes.

16 Q All right. And then when did you learn of her
17 death, Miss Holloway?

18 A At 2:38, May 23rd.

19 Q May 23rd?

20 A Yes, May 23rd.

21 Q And is that when police came knocking on your
22 door?

23 A Yes.

24 Q Thank you, Miss Holloway. Please take your time
25 and answer any questions that the defense may have for

1 you.

2 MR. MATHEWS: No questions.

3 THE COURT: Mr. Mathews? No questions,
4 okay.

5 Thank you, Miss Holloway.

6 MS. SWANSON: Thank you.

7 THE COURT: You can call your next
8 witness. Yes, ma'am.

9 MS. SWANSON: The State calls Brian
10 Ackerman.

11 THE COURT: Okay.

12 THE CLERK: Good morning, sir.

13 THE WITNESS: Good morning.

14 THE CLERK: Raise your right hand, left
15 hand on the Bible. Do you affirm the testimony
16 you're about to give the Court in this trial shall
17 be the truth, so help you God?

18 THE WITNESS: Yes, ma'am, I do.

19 THE CLERK: Take a seat in the witness
20 stand. State your name, again, for the record.
21 Spell your last name.

22 THE WITNESS: My name is Brian Ackerman,
23 A-c-k-e-r-m-a-n.

24 WHEREUPON:

25 BRIAN ACKERMAN,

1 after having been sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. SWANSON:

4 Q All right. And remind me of your rank, please,
5 sir.

6 A I'm a corporal.

7 Q Okay. Corporal Ackerman, who do you work for?

8 A The Waltherboro Police Department.

9 Q And how long have you been working there?

10 A On and off four years total. Twenty years in
11 law enforcement.

12 Q Okay. And were you on duty the night of January
13 7th of 2021?

14 A I was.

15 Q Were you dispatched to an incident at Forest Point
16 Apartments?

17 A Yes, I was.

18 Q And what apartment was that?

19 A [REDACTED].

20 Q All right. Whose residence is Apartment [REDACTED], or
21 was at the time?

22 A Mr. Carroll and Miss Holloway.

23 Q Mr. Carroll and Miss Holloway?

24 A That's correct.

25 Q All right. Can you identify Mr. Carroll?

1 A I can.

2 Q All right. Can you point him out for me, please?

3 A The gentleman in the white shirt.

4 Q All right.

5 MS. SWANSON: Beg the Court's

6 indulgence.

7 BY MS. SWANSON:

8 Q All right. So did you take a report on that
9 incident?

10 A I was the assisting officer, but officer --
11 Sergeant O'Quinn actual took the incident
12 report.

13 Q Okay, thank you.

14 MS. SWANSON: That's all I have.

15 MR. MATHEWS: No questions, Your Honor.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Yes, sir. Have a great day,
19 Mr. Ackerman. Corporal Ackerman, I apologize.

20 THE WITNESS: Thank you.

21 MS. SWANSON: And may he be released from
22 his subpoena?

23 THE COURT: Absolutely. Have a great
24 day.

25 MS. SWANSON: Thank you.

1 The State calls Ross Hantz.

2 THE CLERK: Raise your right hand, sir.
3 Left hand on the Bible. Do you affirm that the
4 testimony you're about to give the Court in this
5 trial will be truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Take a seat in the witness
8 stand. State your name again for the record,
9 spell your last name.

10 THE WITNESS: Ross Hantz, last name
11 H-a-n-t-z.

12 WHEREUPON:

13 ROSS HANTZ,
14 after having been sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Ross, remind me of your rank, please, sir.

18 A Sergeant.

19 Q Okay. Sergeant Hantz, where were you living in
20 May of 2021?

21 A Forest Point Apartments, which is [REDACTED] Forest
22 Circle located in the city of Walterboro.

23 Q Thank you. And how long have you been living
24 there?

25 A Living there now 11 years. Eight years at

1 the time of the incident.

2 Q All right. And about how many apartments are in
3 that complex?

4 A We have 120 apartments on the property.

5 Q Okay. Were you home the night of May 22, 2021?

6 A Yes, ma'am.

7 Q And what do you recall that about that night?

8 A I was off work, sitting at home with my
9 family watching TV. And between 10:00 and 10:30,
10 while we were watching TV, I ended up hearing
11 several -- what appeared to be several gunshots
12 from outside my building.

13 Q What did you do after you heard those gunshots?

14 A I went ahead and threw some clothes on and
15 got some of my gear, and, at the same time while I
16 was doing that, I got on my cell phone and called
17 911 to report what I heard outside.

18 Q All right. And so after you called dispatch,
19 where did you go?

20 A After I called dispatch, I went outside in
21 around the apartment building.

22 THE COURT: Hold on one second.

23 (Interruption in proceeding; sirens.)

24 THE COURT: Yes, ma'am.

25 BY MS. SWANSON:

1 Q So after you called dispatch, where did you go or
2 what did you do?

3 A After I called dispatch, I went outside and
4 started checking the area for -- to locate where
5 the possible gunshots may have come from. As I
6 was walking around the building, I didn't find
7 anything around the back side of the building.
8 The flashlight that I had was one that I had in
9 the house. It wasn't working too well. So, at
10 that point, I proceeded to go out into the parking
11 lot to go to my patrol car to get my flashlight
12 that had been on the charger in my patrol
13 vehicle.

14 Q All right. I'm going to hand you what has been
15 entered as State's Exhibit 5 and ask if this is your
16 patrol care in this photo?

17 A Yes, it is.

18 Q Okay. And what was parked next to your patrol
19 car?

20 A A silver Lexus.

21 Q Did you notice anything about that silver Lexus?

22 A Not at the time. I went to my patrol car to
23 get the flashlight out, and as I did, there was
24 some people standing on one of the balconies
25 outside facing the parking lot that asked me if I

1 heard shots which I informed them that I did.
2 They said that there was a car that was parked
3 next to my patrol car that I might need to check.

4 So, at that time, instead of going on the
5 driver's side of my patrol car, I went to the
6 passenger's side of my patrol car, entered through
7 the front door of the patrol car and went to get
8 my flashlight. As I did that, I could see across
9 out the driver's side window of my patrol car and
10 saw the car sitting next to mine, the silver
11 Lexus, and observed what appeared to be several
12 bullet holes in the driver's side front window.

13 Q Okay. And did you observe anyone in that car?

14 A It appeared like there was somebody that was
15 slouched over to the right side of the vehicle.
16 Once I retrieved my flashlight, I went ahead and
17 proceeded to check the Lexus when I noticed that
18 it was a female, Miss Holloway, that appeared to
19 be slumped over to the right-hand side. I did
20 observe the bullet holes in the window.

21 At that time, there were other officers who
22 were on the property that were also trying to locate
23 where shots came from. I did notify them on my radio
24 and they proceed to arrive and set up a crime scene.

25 Q Okay. Do you know if the car doors were locked?

1 A The car doors were locked. One of the
2 officers, Sergeant Lewis and myself, were able to
3 gain entry through the front passenger side door
4 of the Lexus with a locked-out kit that was able
5 to unlock the door from the outside.

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

8 BY MS. SWANSON:

9 Q I'm going to show you what has been marked as
10 State's Exhibit 7 and ask if you recognize what's
11 contained in this picture?

12 A Yes. This is the silver Lexus, the driver's
13 side door open, several bullet holes in the
14 window, with my patrol car parked next to the
15 Lexus.

16 Q Okay. And is that a fair and accurate depiction
17 of how it appeared that night?

18 A Yes.

19 MS. SWANSON: State would move 7 into
20 evidence and request to publish.

21 MR. MATHEWS: Without objection.

22 THE COURT: 7 admitted without objection.
23 Yes, ma'am, you may.

24 MS. SWANSON: Thank you.

25 (STATE EXH. 7, Photo, was entered into

1 evidence.)

2 BY MS. SWANSON:

3 Q All right. So, Sergeant, this is your patrol
4 car?

5 A Yes, ma'am.

6 Q All right. And then this is the Lexus that you
7 came across?

8 A Yes, ma'am.

9 Q And the driver?

10 A Yes, ma'am.

11 Q Is Forest Point Apartments equipped with
12 surveillance cameras?

13 A Yes, ma'am, it is.

14 Q All right. Are you familiar with viewing
15 surveillance cameras from your line of work?

16 A Yes, ma'am.

17 Q All right. Did you call anyone to view those
18 surveillance from that night?

19 A What I did was, I ended up calling the
20 department manager. He was able to contact the
21 maintenance supervisor. The supervisor came and
22 met me at the front office building. At that
23 time, I was able to gain access into the main
24 building from the maintenance supervisor where I
25 could get into the apartment manager's office to

1 be able to review any video footage.

2 Q And you did that yourself?

3 A Yes, ma'am.

4 Q All right. And so did you view -- approximately
5 what times did you review the surveillance for that
6 night?

7 A We were able to locate where Miss Holloway's
8 Lexus did come into the property. That was at
9 approximately 10:05 p.m. I could observe, as her
10 vehicle came into the property, there was another
11 vehicle that entered the property behind hers.
12 Miss Holloway's vehicle drove past the front
13 office to the Forest Point Apartment complex. The
14 vehicle that followed in behind hers pulled into a
15 parking space next to the 100 building across from
16 where the mailboxes are at. I couldn't identify
17 what make or model vehicle it was, but according
18 to the distance between the headlights and the
19 tail lights on the vehicle it appeared to be a
20 pickup truck.

21 MS. SWANSON: Beg the Court's indulgence.

22 BY MS. SWANSON:

23 Q All right. Sergeant --

24 MS. SWANSON: If I may request that
25 Sergeant Hantz come down off the stand.

1 THE COURT: Yes, ma'am.

2 BY MS. SWANSON:

3 Q This is just for demonstrative purposes, but do
4 you recognize what's contained within this board?

5 THE COURT: Hold on one second. Anytime
6 any lawyer needs to move to see anything during
7 the course of the trial, you don't have to ask.
8 Feel free to move.

9 MR. MATHEWS: Thank you.

10 THE COURT: Okay.

11 THE WITNESS: What were you asking?

12 BY MS. SWANSON:

13 Q Do you recognize what's contained on this board?

14 A Yes. This is the front portion of the Forest
15 Point Apartments.

16 Q Can you tell us on this map -- I'm sorry. If you
17 can stand a little further that way so the jury can
18 see it.

19 MS. SWANSON: Can everyone see?

20 BY MS. SWANSON:

21 Q Can you show us where the Lexus was, where the
22 Lexus was located?

23 A Yes. There are some garages here and the
24 Lexus was in the third parking space from the
25 garages. So there's a number of parking spaces

1 here where the 300 building is at. This is the
2 200 building here. And from where the garages
3 are, that Lexus was parked in the third parking
4 space from the garages.

5 Q Okay. And the office, is that where you were able
6 to view the surveillance?

7 A Correct. This is the office here. This here
8 is the mailbox area of the apartment complex. And
9 the vehicle that came in which appeared to be a
10 pickup turned and parked in one of these parking
11 spaces. Again, it was dark, couldn't tell where
12 it was at, but it did pull in across from here.

13 Q So not over by the 300 building?

14 A No.

15 Q All right. We'll put this down for now. You can
16 retake the stand, please, sir.

17 (STATE EXH. 8, Video Surveillance; Disk, was
18 marked for identification.)

19 BY MS. SWANSON:

20 Q I'm going to hand you what's been marked as
21 State's Exhibit 8. If you can, identify what's on
22 this disk.

23 A Yes. This is a disk of the video
24 surveillance footage that was obtained from Forest
25 Point. It does have my signature on it with the

1 date.

2 Q Does that mean that you reviewed this to make sure
3 it was a fair and accurate depiction of what you
4 viewed that night?

5 A Yes, ma'am.

6 Q Okay.

7 MS. SWANSON: State would move Exhibit 8 into
8 evidence.

9 THE COURT: Any objection?

10 MR. MATHEWS: No, sir.

11 THE COURT: All right. State's 8
12 admitted without objection. Yes, ma'am.

13 (STATE EXH. 8, Video Surveillance; Disk, was
14 entered into evidence.)

15 BY MS. SWANSON:

16 Q Okay. And are there several different camera
17 angles?

18 A There are. There's a camera angle that is
19 facing towards the entrance which is where the
20 vehicles came through at when they first entered
21 the property. And there was another angle that
22 faces towards the back of the 200 building as well
23 as the front of the 300 building that catches just
24 part of the building and the garage area.

25 Q Thank you.

1 MS. SWANSON: Beg the Court's indulgence
2 while we get the TV turned around.

3 THE COURT: Yes, ma'am.

4 MS. SWANSON: Thank you.

5 BY MS. SWANSON:

6 Q Sergeant Hantz, once we get the video surveillance
7 going, I'm going to ask you to just tell us what we're
8 looking at, okay?

9 A Yes, ma'am.

10 Q Like what building and thing of that nature.

11 A Will you need me to go ahead and get up and
12 point anything out, or would you prefer me to --

13 Q Whichever is easiest for you. You may want to
14 probably -- once we get it up, I'll ask to come off
15 the stand. And then just make sure you're not
16 blocking the jury. But if there's something you want
17 to point out, I think that would be helpful to them.

18 A Yes, ma'am.

19 MS. SWANSON: Can everyone see that?

20 JURY PANEL: (Nods heads in the affirmative.)

21 BY MS. SWANSON:

22 Q All right. Sergeant, you want to stand probably
23 about right here, if that's not blocking anyone. And
24 just let Investigator Phillips know if we need to
25 pause.

1 A Okay.

2 Q And, if you can, just state the time and the date
3 on this.

4 A The date is going to be May 22, 2021, at
5 approximately 2205 hours, which is 10:05 p.m.
6 This view here is from the office building facing
7 back down towards where the mailboxes are at where
8 the driveway is into Forest Point.

9 Q Just make sure you speak up since you don't have a
10 microphone.

11 A Yes, ma'am. This vehicle coming in is going
12 to Miss Holloway's Lexus. There's another set of
13 headlights that pulls in down towards the 100
14 building, across from the mailboxes. In just a
15 moment, there's going to be what appears to be a
16 male walking up the sidewalk here coming towards
17 the front of the apartment building office.

18 Okay. The second camera footage is going
19 to be from the office building. This here is part
20 of the front of the 300 building. These are the
21 garages right here that sit next to this building.
22 There is one car parked in the very first parking
23 spot here. There's an empty spot here. And
24 Miss Holloway is going to go ahead and pull in
25 front of my patrol car which is by the tree here

1 and she's going to back into this parking spot
2 from the end next to my patrol car.

3 At this time, she backs into that spot
4 and she sits there, headlights on.

5 Now, we have what appears to be the male
6 individual that walks from where that other
7 vehicle pulls up, comes up here and begins to walk
8 up the sidewalk here that approaches the back of
9 the 200 building, right here. Apartment 201 is
10 going to be right here. Apartment 203 is going to
11 be right here. And this is the breezeway right
12 here with the stairwell that leads up to the
13 second and third floors of the 200 building.

14 It appears the individual stands in the
15 breezeway, looks out towards the parking lot where
16 Miss Holloway's vehicle was at, comes back down
17 the sidewalk and stands behind apartment 201 to
18 where he's able to look around the corner and look
19 out towards the parking lot towards where
20 Miss Holloway's vehicle was at. It appeared while
21 he was back there, it looked like he had lit up a
22 cigarette. And as she leaves her vehicle, it
23 looks like to the mail, proceeds to walk towards
24 her vehicle towards her vehicle through the
25 parking lot in this area. Right here, he's going

1 to go ahead and come in the parking lot and he'll
2 proceed to walk to her vehicle where she's parked
3 at. That's going to be at 2207 hours.

4 Q So that's 10:07?

5 A 10:07 p.m.

6 At this point, she's still in her vehicle and
7 the headlights are still on. I don't know if we want
8 to play the entirety of that, but there's
9 approximately a seven-minute time frame in reference
10 to whoever the individual is that was standing by her
11 vehicle.

12 Q And that's partially obstructed.

13 A Right. And with the headlights being on --
14 you can see movement in that area on the driver's
15 side of her vehicle, which is, I believe, right in
16 this area here.

17 Q Can you see the actual shooting?

18 A I didn't. According to what we saw in here,
19 we couldn't see any muzzle flash due to the
20 headlights being on.

21 Q Okay. We're going to try to skim over some of
22 this dead time. That's just another resident
23 entering?

24 A Correct. This is just vehicles that are
25 coming into the apartment complex that was in the

1 camera's angle while the individual is at her car.

2 And right here at 2215 hours, it appears the
3 same individual that we had on camera earlier that
4 walked passed here into her building and to her car.
5 Now, he runs from her car and across the front of the
6 apartment building office. Proceeds to run back down
7 towards the mailbox area of the 100 building and the
8 lights will come on on the vehicle there and the
9 vehicle will exit out of the parking lot back down
10 towards Forest Circle.

11 Q And that's 10:15, 10:16 p.m.?

12 A Correct.

13 Q And is that the vehicle that you referenced?

14 A Yes, that's the vehicle that backs out and
15 then leaves.

16 Q All right. Thank you, Sergeant.

17 All right. Sergeant, that's all the
18 questions I have for you at this time. Please answer
19 any questions Mr. Mathews may have.

20 THE COURT: Mr. Mathews.

21 MR. MATHEWS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MATHEWS:

24 Q Officer Hantz, how are you today?

25 A Doing good, sir.

1 Q You had mentioned a point where it appeared that
2 the male that you were looking at there had started to
3 smoke a cigarette or lit up a cigarette?

4 A It appeared that he was standing at the back
5 of the 200 building -- behind the 201 building.
6 It appeared like a cigarette was being lit
7 there.

8 Q Okay. And as a result of that, did you walk over
9 and examine that area?

10 A I did. That was after we had cleared up --
11 after all camera video footage was viewed and
12 officers were leaving the scene and making sure
13 the office was closed, yes.

14 Q Did you find anything of note in that area?

15 A The only thing that I did find, I happened to
16 observe a piece of candy that was laying on the
17 ground in the grass. At that point, I was able to
18 go and retrieve a plastic sandwich bag from my
19 residence. I went ahead and I collected it. And
20 the next morning when I came into work, I went
21 ahead and turned that in as evidence for any sort
22 of DNA.

23 Q Okay. What's the procedure when you receive
24 evidence? What do you do?

25 A What I did was, I went ahead and I collected

1 it. And the next day I came in and filled out the
2 evidence section in the computer in reference to
3 that, and I went ahead and I placed it into the
4 evidence locker.

5 Q Who was in charge of the evidence locker?

6 A That would be Jamie Bloodworth, Office
7 Bloodworth.

8 Q Why do you have a locker for evidence?

9 A We keep evidence in a locker so that once we
10 place it in there, the only person that would have
11 access to that would be the evidence custodian
12 once it's entered in.

13 Q Is that to make sure that it is unaltered, nobody
14 gets to it to pollute it or whatever?

15 A Yes.

16 Q Okay. And you used a sandwich bag to try to keep
17 your DNA off of it?

18 A Yes, sir.

19 Q Okay. Is that the piece of candy you retrieved?

20 MR. MATHEWS: May I approach the witness,
21 Your Honor?

22 THE COURT: Sure. Have you seen that,
23 Solicitor?

24 MS. SWANSON: Thank you.

25 THE WITNESS: That looks like the candy

1 that I retrieved from the grass, yes, sir.

2 BY MR. MATHEWS:

3 Q Okay.

4 MR. MATHEWS: Your Honor, may I have this
5 marked at this point?

6 THE COURT: Yes, sir.

7 MR. MATHEWS: Defendant's 2.

8 (DFT. EXH. 2, Photo; Candy, was marked for
9 identification.)

10 MR. MATHEWS: Judge, I seek to enter this
11 into evidence at this time.

12 THE COURT: I'm sorry. You do?

13 MR. MATHEWS: I'd like to introduce this
14 into evidence.

15 THE COURT: Sure. Any objection?

16 MS. SWANSON: No objection.

17 THE COURT: All right. Admitted without
18 objection. So that is Defendant's 2. Thank you.

19 (DFT. EXH. 2, Photo; Candy, was entered into
20 evidence.)

21 MR. MATHEWS: I'll take it back at the
22 appropriate time.

23 BY MR. MATHEWS:

24 Q What's the point of DNA?

25 A DNA is if somebody has touched something,

1 maybe their saliva is on it, hair, things like
2 that, that that can be matched to an individual,
3 whoever may have -- the evidence may have come
4 from.

5 Q Okay. How -- compared to eyewitness
6 identification, is DNA evidence typically more
7 reliable or less reliable?

8 MS. SWANSON: Objection, Your Honor.
9 This is calling for opinion testimony and
10 Sergeant Hantz is not an expert.

11 THE COURT: I would have to sustain
12 that.

13 MR. MATHEWS: Okay.

14 BY MR. MATHEWS:

15 Q Do you use DNA in the course of your law
16 enforcement career?

17 A We have, yes, sir.

18 Q Okay. And did you collect anything else while you
19 were on the scene?

20 A I did not collect anything else. I observed
21 things that were at the scene. Those were
22 collected by other officers.

23 Q All right. Such as?

24 A There were shell casings that were at the
25 scene.

1 Q Six, something like that?

2 A Five to six. I can't be quite certain.

3 Q And I think fingerprints were also collected?

4 A If they were, that would have been done by
5 the investigators. The only thing that I
6 collected was the candy.

7 Q The candy?

8 A Yes, sir.

9 Q You said the candy was where -- that was in the
10 proximity of where the fellow in the film was lighting
11 up?

12 A Correct. That was in area in the grass
13 behind the apartment 201.

14 Q And typically when people start a cigarette they
15 spit out their candy.

16 A Well, I can't say whether he did that.

17 MS. SWANSON: Calling for conjecture.

18 THE COURT: I'll have to sustain that
19 objection, Mr. Mathews.

20 MR. MATHEWS: Thank you, Your Honor.

21 BY MR. MATHEWS:

22 Q Do you know what happens with evidence once you
23 put it into the box?

24 A The evidence custodian will go ahead and get
25 it, send it off to wherever it needs to be sent to

1 as far as any -- whether it's DNA fingerprints,
2 anything like that. And then it will be held for
3 any court purposes.

4 Q All right. So how long was Miss Holloway sitting
5 in that Lexus before you saw the white male leave?

6 A She pulled in at 10:05 p.m. and ran from the
7 vehicle at approximately 10:17, so --

8 Q Twelve minutes?

9 A Twelve minutes.

10 Q How far was her apartment from that car?

11 A She lives in the 200 building.

12 Q Okay. And how far is that?

13 A It's right across the parking lot from where
14 her vehicle is parked at.

15 Q Okay. And the Lexus, that's not the car she
16 normally drove?

17 A I don't know. I'm not familiar with her, in
18 general. I see people come and go. I see
19 vehicles come and go, and I wouldn't be able to
20 give an answer as to whether that was the vehicle
21 that she would typically drive.

22 Q You called in to dispatch once you discovered the
23 Lexus, I guess.

24 A I called in to dispatch when I originally
25 heard the gunshots. There were other officer that

1 were patrolling the parking lot at Forest Point.

2 Q Okay.

3 A And once I discovered the Lexus, I went ahead
4 and notified those officers. Those officers who
5 were on duty arrived there and established the
6 crime scene.

7 Q And I think at some point you and Sergeant Lewis
8 used a Slim Jim, or whatever, to get into the
9 passenger side of the Lexus; is that correct?

10 A Correct. It's a locked-out kit. It's able
11 to gain us access through either the door or an
12 opened window to be able to unlock a vehicle from
13 the inside.

14 Q How long did that take, five minutes?

15 A I don't know.

16 Q Okay. That would be on Sergeant Lewis's body cam,
17 perhaps?

18 A It might be, yes, sir.

19 Q Okay. And since you called it in, I guess you
20 relied on other folks to call 911 -- I mean, to call
21 fire/rescue?

22 A Once I discovered Miss Holloway, I went ahead
23 and notified the officers that were on duty.
24 Again, I was off duty so I didn't have all the
25 equipment available to me. And whichever officers

1 those were, that were able to go ahead and notify
2 fire/rescue were able to do so.

3 Q You did your job. You notified the people above
4 and the people that were there and it's up to them to
5 contact the ambulance, correct?

6 A Correct, yes, sir.

7 Q All right.

8 MR. MATHEWS: I don't have anything
9 further, Your Honor.

10 THE COURT: Anything else, Solicitor?

11 MS. SWANSON: Just briefly.

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY MS. SWANSON:

15 Q Do you know if the shooter was eating a red piece
16 of candy?

17 A No, I do not.

18 Q Do you know who, out of the 120 apartments in the
19 complex, if one out of those was eating a red piece of
20 candy?

21 A No, I do not.

22 Q That's all I have. Thank you, Sergeant.

23 THE COURT: Anything else?

24 MR. MATHEWS: No, sir.

25 THE COURT: Thank you so much, Sergeant

1 Hantz.

2 Is he here pursuant to subpoena?

3 MS. SWANSON: Yes.

4 THE COURT: Can he be released?

5 MS. SWANSON: He can be released.

6 THE COURT: Mr. Mathews?

7 MR. MATHEWS: No objection.

8 THE COURT: All right. Great. Have a
9 good say, sir.

10 MS. SWANSON: Thank you.

11 THE COURT: You can call your next witness.

12 MS. SWANSON: The State calls Carmen
13 Hartley.

14 THE CLERK: Raise your right hand, left
15 hand on the Bible. Do you affirm the testimony
16 you're about to give the Court shall be the truth
17 so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Have a seat. State your name
20 again for the record.

21 THE WITNESS: Carmen Hartley.

22 THE CLERK: Spell your last name.

23 THE WITNESS: Hartley, H-a-r-t-l-e-y.

24 MS. SWANSON: Beg the Court's
25 indulgence.

1 THE COURT: Yes, ma'am.

2 MR. MATHEWS: Your Honor, as long as this
3 is later -- as long as Officer Bloodworth
4 testifies later, then I don't have any objection
5 to officer Hartley looking at this. This is stuff
6 that's been in the evidence custodian's care, so
7 as long as the proper chain is laid, I have no
8 objection to this.

9 THE COURT: I'm assuming she's going to
10 be able to do that, Mr. Mathews. I don't know.

11 Counsel, approach. Counsel, approach.

12 (Bench conference.)

13 THE COURT: You're asking me -- you don't
14 object to her looking at that if the proper
15 foundation is laid at a later time.

16 MR. MATHEWS: I don't want to tell her
17 how to try her case, but --

18 THE COURT: Well --

19 MR. MATHEWS: But I think probably Jamie
20 ought to be before that.

21 THE COURT: Oh.

22 MS. SWANSON: Your Honor, this is
23 nonfungible evidence.

24 THE COURT: What is it?

25 MS. SWANSON: It's cartridge cases that

1 were collected at the scene by Officer Hartley.

2 And so I'm entering through Officer Hartley.

3 THE COURT: All right.

4 MR. MATHEWS: It was sampled for DNA,
5 though, Your Honor.

6 THE COURT: She's not getting into that.

7 MS. SWANSON: I'm not entering the DNA.

8 MR. MATHEWS: I am. I am.

9 THE COURT: Well, that's your business.

10 MR. MATHEWS: And I want to make sure
11 it's unadulterated before it went to SLED, and so
12 Jamie --

13 THE COURT: You can call whoever you need
14 to in your case.

15 MR. MATHEWS: Okay.

16 THE COURT: If you want to do that.

17 MR. MATHEWS: Okay.

18 THE COURT: Okay?

19 MS. SWANSON: Thank you.

20 THE COURT: Yes, ma'am.

21 All right. Solicitor, you can proceed.

22 MS. SWANSON: Thank you, Your Honor. I
23 just need to open this other bag that I'm going to
24 show Mr. Mathews.

25 WHEREUPON:

1 CARMEN HARTLEY,
2 after having been sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SWANSON:

5 Q Officer Hartley -- I'm sorry. Now it's Miss
6 Hartley, right?

7 A Yes, ma'am.

8 Q Did you used to work for Waltherboro PD?

9 A Yes, ma'am.

10 Q All right. And were you working for Waltherboro PD
11 in May of 2021?

12 A Yes, ma'am.

13 Q All right. Were you on duty the night of May 22,
14 2021?

15 A Yes, ma'am.

16 Q And did you respond out to the Forest Point
17 Apartments?

18 A Yes, ma'am.

19 Q Can you tell us what kind of call you responded to
20 and what you found when you got there?

21 A There was a call for shot fired in the area.
22 Whenever I pulled up, I saw a silver Lexus that
23 the lights were still on at the time. And
24 whenever I walked up to the car, you could see a
25 female slumped over and the car had been shot.

1 (STATE EXH. 7, Photo; Lexus, was marked and
2 entered into evidence.)

3 BY MS. SWANSON:

4 Q Okay. I'm going to show you what has been entered
5 as State's Exhibit 7 and ask if you recognize the
6 vehicle in this picture.

7 A Yes.

8 Q Is that the car that you're referring to?

9 A Yes, ma'am.

10 Q All right. Who was already on scene when you got
11 there?

12 A I think Sergeant Hantz, maybe Officer
13 Ulmer.

14 Q All right. And just let me know if you need to
15 refer to a report. I can hand it up to you.

16 A Okay.

17 Q Did you collect anything from the scene?

18 A I did. I collected shell casings and I also
19 photographed some stuff and maybe fragments in the
20 car.

21 Q From the vehicle?

22 A Uh-huh.

23 Q Was the -- let me show you actually --

24 (STATE EXH. 9, Photo, was marked for
25 identification.)

1 BY MS. SWANSON:

2 Q Let me show you State's Exhibit 9 and ask if you
3 recognize what's contained within this picture?

4 A Yes, ma'am.

5 Q What is it a picture of?

6 A This is the vehicle right here. That might
7 be an officer's vehicle. This, I think might be
8 Sergeant Fisk's vehicle. That's the vehicle right
9 there.

10 Q Okay. And so is the scene the way it appeared
11 that night?

12 A Yes. Well, you pull in this way, but yes.

13 MS. SWANSON: State would move Exhibit 9
14 into evidence.

15 MR. MATHEWS: Without objection.

16 THE COURT: All right. Admitted without
17 objection.

18 MS. SWANSON: May I publish?

19 THE COURT: Yes, ma'am.

20 (STATE EXH. 9, Photo, was entered into
21 evidence.)

22 MS. SWANSON: It just takes a minute to
23 warm up.

24 THE COURT: Yes, ma'am.

25 BY MS. SWANSON:

1 Q All right. Miss Hartley, this is looking -- what
2 building is this looking towards?

3 A So if you see the garage over to the right,
4 that's the entrance. That's the entrance coming
5 in.

6 Q Okay. And then this car is which car?

7 A That's her car.

8 Q The Lexus?

9 A Yes, ma'am.

10 Q All right. And which one is this?

11 A That may be Officer Hantz's vehicle. I don't
12 recall.

13 Q Okay.

14 (STATE EXH. 10, Evidence Bag, was marked for
15 identification.)

16 (STATE EXH. 11, Shell Casings, was marked
17 for identification.)

18 (STATE EXH. 12, Shell Casings, was marked
19 for identification.)

20 (STATE EXH. 13, Shell Casings, was marked
21 for identification.)

22 (STATE EXH. 14, Shell Casings, was marked
23 for identification.)

24 (STATE EXH. 15, Shell Casings, was marked
25 for identification.)

1 (STATE EXH. 16, Shell Casings, was marked
2 for identification.)

3 BY MS. SWANSON:

4 Q I'm going to hand you what has been marked as
5 State's Exhibit 10. And I realize this is not your
6 bag, but contained within Exhibit 10 are State's
7 Exhibits 11, 12, 13, 14, 15, and 16. I'm going to
8 hand these to you and ask if you recognize the items.

9 A Yes, ma'am.

10 Q All right. What are they?

11 A Shell casings.

12 Q Are these shell casings that you collected from
13 the roadway?

14 A Yes, ma'am.

15 Q All right.

16 A And that's my handwriting.

17 Q Okay. So it's your handing on those bags?

18 A Yes, ma'am.

19 Q And you sealed them up?

20 A Yes, ma'am.

21 MS. SWANSON: The State would move items
22 1 through 16 into evidence at this time.

23 MR. MATHEWS: Your Honor, if they could
24 be kept all in the same bag, then no objection, as
25 they are.

1 THE COURT: Yes, sir. They will be. I
2 think that's appropriate. So then admitted
3 without objection. So 10 contains 11, 12, 13, 14,
4 15, and 16, correct?

5 MS. SWANSON: That's correct.

6 THE COURT: Mr. Mathews?

7 MR. MATHEWS: Yes, sir. That's fine.

8 MS. SWANSON: Exhibit 10 is the bag, the
9 SLED bag.

10 THE COURT: Okay.

11 (STATE EXH. 10, Evidence Bag, was entered
12 into evidence.)

13 (STATE EXH. 11, Shell Casings, was entered
14 into evidence.)

15 (STATE EXH. 12, Shell Casings, was entered
16 into evidence.)

17 (STATE EXH. 13, Shell Casings, was entered
18 into evidence.)

19 (STATE EXH. 14, Shell Casings, was entered
20 into evidence.)

21 (STATE EXH. 15, Shell Casings, was entered
22 into evidence.)

23 (STATE EXH. 16, Shell Casings, was entered
24 into evidence.)

25 BY MS. SWANSON:

1 Q All right. And you stated that you recovered a
2 fragment or a projectile from the vehicle?

3 A Yes, ma'am.

4 (STATE EXH. 19, Projectiles, was marked for
5 identification.)

6 (STATE EXH. 20, Projectiles, was marked for
7 identification.)

8 BY MS. SWANSON:

9 Q All right. I'm going to hand you what has been
10 marked as State's 19 that came out of State's Exhibit
11 20, which is a bag. So this was a bag within a bag.

12 A Yes, sir.

13 Q But can you identify State's 19?

14 A Oh, you're asking. Yes, ma'am. Yes, ma'am.
15 I'm sorry. Yes.

16 Q Are those the projectiles that you recovered from
17 the Lexus?

18 A Yes, ma'am.

19 Q All right. And is that your writing on the bag?

20 A Yes, ma'am. That's my writing.

21 Q All right. That's the bag you sealed?

22 A Yes, ma'am.

23 Q All right.

24 MS. SWANSON: State would move 19, the
25 fragments into evidence along with the bag which

1 is labeled as 20.

2 MR. MATHEWS: As long as it stays in the
3 bag, I'm fine, Your Honor.

4 THE COURT: All right. And it will
5 remain a bag in the bag. That will be great.
6 Thank you very much. Admitted without objection.

7 (STATE EXH. 19, Projectiles, was
8 entered into evidence.)

9 (STATE EXH. 20, Projectiles, was entered
10 into evidence.)

11 BY MS. SWANSON:

12 Q All right. Miss Hartley, I think that's all I
13 have for you at this time. Please answer any
14 questions from the defense.

15 THE COURT: Mr. Mathews.

16 MR. MATHEWS: Just a couple, Your
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. MATHEWS:

20 Q I still want to call you officer because the way
21 I'm used to seeing you.

22 A I know.

23 Q What are you doing these days?

24 A I work for Stonewall Development.

25 Q Okay. The money better? You got to miss law

1 enforcement?

2 A I'm not going to answer that.

3 Q All right.

4 MR. MATHEWS: No questions, Your Honor.

5 THE COURT: Thank you so much. Anything
6 else, Solicitor?

7 MS. SWANSON: No.

8 THE COURT: Is she here pursuant to subpoena?

9 MS. SWANSON: She is.

10 THE COURT: Does she need to be released,
11 Mr. Mathews, or is it possible -- do you need her,
12 sir, given what we talked about at the bench, sir?

13 MR. MATHEWS: She can go on about her
14 business, but maybe provide her contact
15 information.

16 THE COURT: All right. So, Officer,
17 you're here pursuant to a subpoena. I'm not going
18 to formally release you from that subpoena. If
19 you could provide Mr. Mathews contact information
20 so that in the event that he needs you to be back,
21 he'll give you as much notice and warning as he
22 can.

23 THE WITNESS: Okay.

24 THE COURT: Thank you very much. If you
25 can provide him with that. He will keep that

1 confidential.

2 THE WITNESS: Okay.

3 THE COURT: All right. Yes, ma'am. You
4 can call your next witness.

5 MS. SWANSON: The State calls Julie
6 Swank.

7 THE CLERK: Raise your right hand, left
8 hand on the Bible. Do you affirm the testimony
9 you're about to give the Court shall be the truth
10 so help you God?

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Take a seat in the witness
13 stand. State your name again for the record,
14 spell your last name.

15 THE WITNESS: My name is Julie Swank. My
16 last name is spelled S-w-a-n-k.

17 WHEREUPON:

18 JULIE SWANK,
19 after having been sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SWANSON:

22 Q All right. What is your title now?

23 A Special agent.

24 Q Okay. Special Agent Swank, were you working for
25 Colleton County Sheriff's Office in May of 2021?

1 A Yes, I was.

2 Q All right. And in what capacity?

3 A I'm sorry. What was that?

4 Q In what capacity?

5 A I was a deputy.

6 Q Were you working the road the night of May 23,
7 2021?

8 A Yes.

9 Q Okay.

10 MS. SWANSON: Beg the Court's
11 indulgence.

12 THE COURT: Yes, ma'am.

13 MR. MATHEWS: May we approach, Your Honor?

14 THE COURT: Yes.

15 MS. SWANSON: These are pictures from the
16 body cam from the traffic stop.

17 MR. MATHEWS: This is the late-night
18 traffic stop with the pings and all that sort of
19 stuff.

20 MS. SWANSON: What's your objection?

21 MR. MATHEWS: It's from her body cam.

22 THE COURT: Yes.

23 MR. MATHEWS: So I don't know if she's
24 reviewed that or she hasn't. If she's reviewed
25 it -- that's better than the whole thing, I

1 suppose. So I guess I don't have an objection.

2 THE COURT: All right. I don't think --
3 you don't have any objection to that.

4 MR. MATHEWS: I do not.

5 THE COURT: I understand. Yes, sir.

6 All right. You can proceed, Solicitor.

7 MS. SWANSON: Thank you, Your Honor.

8 BY MS. SWANSON:

9 Q All right. Do you recall a BOLO that came out
10 that night?

11 A Yes, I do.

12 Q All right. And what did you do as a result?

13 A As a result of the BOLO, we staged up
14 1603 Hampton Street, which is a H&D Market located
15 in Colleton County. We were looking for a white
16 GMC single-cab pickup truck that was traveling on
17 Savannah Highway coming towards Colleton to be a
18 suspect's vehicle to Walterboro City's
19 investigation.

20 Q All right. So you were looking for a white
21 single-cab pickup?

22 A Yes.

23 Q And, eventually, did you perform a traffic stop on
24 that pickup?

25 A Yes.

1 Q All right. Did you perform the tag on that
2 pickup?

3 A I did.

4 Q And who occupied that pickup?

5 A A single occupant by the name of Justin
6 Carroll.

7 (STATE EXH. 21, Photo; Swank Body Cam, was
8 marked for identification.)

9 (STATE EXH. 22, Photo; Swank Body Cam, was
10 marked for identification.)

11 BY MS. SWANSON:

12 Q All right. I'm going to hand you State's 21 and
13 22 and ask if you recognize who is in these
14 pictures?

15 A That was the driver Justin Carroll.

16 Q All right. Are these from body cam from your
17 traffic stop?

18 A Yes.

19 MS. SWANSON: State would move 21 and 22
20 into evidence at this time.

21 THE COURT: Any objection?

22 MR. MATHEWS: No objection.

23 MS. SWANSON: Request to publish.

24 THE COURT: Yes, ma'am.

25 MS. SWANSON: Thank you.

1 (STATE EXH. 21, Photo; Swank Body Cam, was
2 entered into evidence.)

3 (STATE EXH. 22, Photo; Swank Body Cam, was
4 entered into evidence.)

5 BY MS. SWANSON:

6 Q Do you recall anything about Mr. Carroll's
7 appearance that night?

8 A He looked clean.

9 Q Do you recall anything about the appearance of the
10 truck that evening?

11 A Also clean.

12 Q Clean?

13 A Yes.

14 Q As in?

15 A As far as the interior appeared to be clean,
16 not even, like, drinks or anything like that like
17 you would see normal people would have from fast
18 food restaurants. It was kind of empty.

19 Q Okay.

20 MS. SWANSON: State is publishing Exhibit
21 21 and Exhibit 22.

22 BY MS. SWANSON:

23 Q All right. Once Mr. Carroll was detained, that
24 whole situation, was that turned over to Walterboro
25 PD?

1 A Yes, it was.

2 Q Okay. So no more involvement with Colleton County
3 Sheriff's Office?

4 A Correct.

5 Q Thank you.

6 MS. SWANSON: That's all I have at this
7 time.

8 THE COURT: Mr. Mathews, do you have any
9 questions of the officer -- or agent?

10 CROSS-EXAMINATION

11 BY MR. MATHEWS:

12 Q Agent, are you with SLED now?

13 A SCDC.

14 Q SCDC, okay. I keep thinking that's a Hard Rock
15 group, but it's not.

16 Was time was it that those pictures were
17 taken?

18 A The ones that --

19 Q The ones that you just identified. Those are from
20 your body camera, correct?

21 A Correct. Somewhere around 2:00 a.m.

22 Q 2:00 a.m. on May the 23rd?

23 A Yes.

24 Q Okay, thank you.

25 MR. MATHEWS: Nothing further.

1 THE COURT: Anything else, Solicitor.

2 MS. SWANSON: No, Your Honor. And I
3 would ask that she be allowed to be released from
4 her subpoena.

5 MR. MATHEWS: No objection.

6 THE COURT: All right. Great. Have a
7 great day, Agent.

8 MS. SWANSON: The State calls Al Lewis.

9 THE CLERK: Raise your right hand. Left
10 hand on the Bible. Do you affirm the testimony
11 you're about to give the Court shall be the truth
12 so help you God?

13 THE WITNESS: So help me God.

14 THE CLERK: Take a seat in the witness
15 stand. State your name again for the record,
16 spell your last name.

17 THE WITNESS: My name is Alfred Lewis.
18 Last name is spelled L-e-w-i-s.

19 WHEREUPON:

20 ALFRED LEWIS,
21 after having been sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SWANSON:

24 Q Good afternoon, Sergeant Lewis?

25 A Good afternoon.

1 Q Where do you work?

2 A I work for the Waltherboro Police Department,
3 City of Waltherboro.

4 Q Okay. Were you on duty the evening of May 22,
5 2021?

6 A Yes, ma'am, I was.

7 Q And where did you respond?

8 A I responded -- on the 21st, initially, I
9 responded to Forest Point Apartments at [REDACTED] Forest
10 Circle.

11 Q On the 22nd?

12 A On the 22nd, I responded to the intersection
13 of Robertson Boulevard and Jeffries Boulevard.

14 Q I'm sorry. I think you got those dates mixed up.
15 22nd and then it blended into the 23rd?

16 A 23rd. Yes, I'm sorry.

17 Q Just to clarify.

18 All right. When you got to the Forest Point
19 Apartments, what did you do when you got there?

20 A We received a call regarding shots fired.
21 And we came there looking for possibly the source
22 of that call. And, subsequently, we located the
23 victim that was deceased in the vehicle at Forest
24 Point Apartments.

25 Q Okay. At some point did you call for an

1 ambulance, do you recall?

2 A Yes, ma'am. We did call for an ambulance.

3 Q Okay. And did you help Sergeant Hantz get into
4 the Lexus that was there?

5 A Yes, ma'am, I did.

6 Q All right. And you mentioned that you later
7 responded where on the 23rd?

8 A At the intersection of Robertson and Jeffries
9 Boulevard.

10 Q Okay. And what was going on there?

11 A We had information that -- a bulletin was put
12 out of the suspect's vehicle, and Colleton County
13 Sheriff's Department also received that bulletin
14 and they made a traffic stop of that vehicle and I
15 responded up there to assist them at that time.

16 Q And was that truck towed?

17 A Yes, ma'am, it was.

18 Q And did you do an inventory search of that
19 truck?

20 A Yes, ma'am, I did.

21 Q Did you find anything?

22 A There was a cell phone, an LG black cell
23 phone that was collected from the scene.

24 (STATE EXH. 1, Black LG Cell Phone, was
25 marked for identification.)

1 BY MS. SWANSON:

2 Q All right. I'm going to hand you what's been
3 marked as State's Exhibit 1 and ask if this is the
4 phone that you retrieved from that pickup truck.

5 A Yes, ma'am, it was -- it is.

6 Q All right. Thank you.

7 MS. SWANSON: I would enter Exhibit 1 at
8 this time.

9 MR. MATHEWS: Without objection, Your
10 Honor.

11 THE COURT: Exhibit 1. And that's the
12 cell phone that was found in the truck.

13 MS. SWANSON: That's correct, Your
14 Honor.

15 THE COURT: Hold on one second. And
16 that's admitted without objection, correct?

17 MR. MATHEWS: Yes, sir.

18 THE COURT: Thank you, Mr. Mathews.

19 (STATE EXH. 1, Black LG Cell Phone, was
20 entered into evidence.)

21 THE COURT: Yes, ma'am. Go ahead.

22 BY MS. SWANSON:

23 Q Thank you. That's all I have, Sergeant Lewis.

24 THE COURT: All right. Anything else,
25 Mr. Mathews, for Mr. Lewis?

1 MR. MATHEWS: I have a couple.

2 CROSS-EXAMINATION

3 BY MR. MATHEWS:

4 Q Sergeant Lewis, how long have you been with the
5 City?

6 A Twenty-seven years, sir.

7 Q Congratulations.

8 A Thank you.

9 Q I can't imagine doing much of anything for 27
10 years. I got kids that are older than that. I guess
11 that's okay.

12 A Yes.

13 Q When did you have anything -- you helped Sergeant
14 Hantz to get into the Lexus, correct?

15 A Yes, sir.

16 Q And what did you find -- other than, obviously,
17 Miss Holloway you later determined to be, did you find
18 any evidence in the Lexus?

19 A I don't recall any evidence that we would be
20 looking for at that point in time.

21 Q All right. Did you have anything to do with
22 any -- that phone is the only evidence you
23 collected?

24 A Yes, sir.

25 Q Okay. And you were there maybe --

1 MR. MATHEWS: Okay. No further
2 questions, Your Honor. Anything else, Solicitor?

3 MS. SWANSON: No, Your Honor. I would
4 just asked that Sergeant Lewis be released from
5 his subpoena.

6 MR. MATHEWS: No objection.

7 THE COURT: All right. He's so released.
8 Have a great day.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Good seeing you. Yes, sir.

11 MS. SWANSON: The State calls Whitlee
12 Fisk.

13 THE CLERK: Raise your right hand, place
14 your left hand on the Bible. Do you affirm the
15 testimony you're about to give the Court in this
16 trial shall be the truth so help you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Take a seat in the witness
19 stand. State your name again for the record,
20 spell your last name, please.

21 THE WITNESS: Whitlee Fisk, F-i-s-k.

22 WHEREUPON:

23 WHITLEE FISK,

24 after having been sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. SWANSON:

2 Q Good afternoon, Sergeant Fisk.

3 A Good afternoon.

4 Q Who do you work for?

5 A Walterboro Police Department.

6 Q And in what capacity do you work for WPD?

7 A I'm an investigator.

8 Q And how did you become involved in the Holloway
9 murder investigation?

10 A I was assisting Corporal Shipp during his
11 investigation.

12 Q When did you become involved?

13 A Monday morning, so the 24th of May.

14 Q May 24th. And did you execute a search warrant on
15 the defendant's truck?

16 A I did.

17 Q All right. And what kind of truck was that?

18 A It was a white pickup truck.

19 Q Did you find anything in that white pickup
20 truck?

21 A No, ma'am. Nothing.

22 Q Nothing as in literally nothing?

23 A Nothing. Not one piece of paper.

24 Q Nothing in the glove box?

25 A No, ma'am.

1 Q Okay. At some point, Detective Shipp was able to
2 get a hold of the victim's phone. Do you recall
3 that?

4 A Yes, I remember him having it.

5 Q All right. Did you help track down someone that
6 had tried to get into that phone?

7 A I did.

8 Q All right. Tell us about that.

9 A So we were able to find out who Donasia had
10 been dating at the time. Myself and Captain Grant
11 went to his residence, asked if he knew her
12 passcode, and he happened to know her passcode.

13 Q So you located her current boyfriend --

14 A Yes.

15 Q -- and retrieved the passcode?

16 A Yes, ma'am.

17 Q And did you look through that phone at all?

18 A I did.

19 Q All right. And did you find anything?

20 A Yes, ma'am.

21 Q All right. Can you describe what you found?

22 A Yes, ma'am. When I opened the phone, I went
23 to camera roll in the phone.

24 MR. MATHEWS: Objection, Your Honor.

25 THE COURT: All right. Let me send

1 you-all out for one minute. And, ladies and
2 gentlemen, do not talk about the case. I'll get
3 you back in here as soon as I can. Okay? Thank
4 you.

5 (Jury exits the courtroom at 12:40 p.m.)

6 THE COURT: All right. Mr. Mathews, yes,
7 sir, tell me about your objection.

8 MR. MATHEWS: Yes, sir. During pretrial
9 or during -- not pretrial, but in the -- before
10 the jury got here, I moved to suppress the search
11 warrant of both the victim's phone and the
12 defendant's phone. The police department did get
13 a warrant for that phone, for Miss Holloway's
14 phone. If she is testifying to the contents of
15 Miss Holloway's phone, which I believe she is, she
16 got the victim's current boyfriend's passcode for
17 that and she's going to testify about what went
18 into that. They got a search warrant for this
19 information.

20 THE COURT: Right.

21 MR. MATHEWS: And Your Honor has ruled
22 that the search warrant was not defective, but
23 this is a pre-search-warrant search. Obviously,
24 they understood that they needed to get a search
25 warrant because they got one. And this is -- this

1 information, this search into the phone was before
2 the search warrant was sought or served, and so
3 she's testifying to information that the
4 Walterboro Police Department later sought in a
5 search warrant to get.

6 If she's going to testify to what was in
7 the phone, that's what, supposedly, the search
8 warrant for the phone was for.

9 And so it's -- you know, I guess you sort
10 of got to maybe pick your poison on that. If they
11 think the search warrant is not -- I don't know.

12 THE COURT: Well, if the search
13 warrant -- I mean -- I guess what I'm asking you,
14 is there law that says in this case the search
15 warrant is necessary? Because if it's not, and
16 they just go and it's her phone, and they go to a
17 boyfriend and say, *Hey, man, give me her number*
18 *because we want to get in her phone*, and they
19 okay, I mean, it would seem to me -- honestly, I
20 don't know that a search warrant is -- I'm not
21 talking his phone. I'm not talking about your
22 client's phone. But I don't know that a search
23 warrant is necessary for her phone. And perhaps
24 they go later -- out of an abundance of caution,
25 they go and put this search together.

1 So I guess what I'm asking is, do you
2 have something -- you understand where I'm coming
3 from?

4 MR. MATHEWS: I do.

5 THE COURT: I'm assuming you do.

6 MR. MATHEWS: I do.

7 THE COURT: So let me ask you: Do you
8 have any law that would indicate that they cannot
9 go and do what they did?

10 MR. MATHEWS: Well, certainly --

11 THE COURT: Do they have to have a search
12 warrant?

13 MR. MATHEWS: Certainly, it's not an
14 exigent circumstance. They had the phone. They
15 had the phone. The phone is not going anywhere,
16 so they don't have an emergency at that point.
17 They have the phone.

18 Certainly, the evidence of the fact that
19 they are able to easily get a search warrant is
20 they did get the search warrant.

21 And so they have seized the phone. Fine.
22 You got exigent circumstance. Maybe something
23 happens to it. But once they have the phone,
24 then, yeah, they need to get a search warrant, and
25 the search warrant has to meet the criteria of

1 17-14-140. I think that's the statute for the
2 search warrant.

3 You know, she's making a warrantless
4 search where they also had determined they needed
5 a search warrant because they got one.

6 THE COURT: Well, I disagree with that
7 premise. I disagree with that premises. I
8 disagree with that.

9 But with that having been said --

10 MR. MATHEWS: I believe they do need a
11 search warrant, and the exigent circumstances are
12 gone once they have seized the phone. It's not
13 hard to get. They got one. The warrantless
14 search at this point --

15 THE COURT: Let me ask you this one
16 thing. Okay, if I were to agree with you, I mean,
17 somebody else is going to be able to testify to
18 the same thing, right?

19 MR. MATHEWS: Presumably, they got
20 someone, Detective Kyle Bealer formerly with the
21 Berkeley County Sheriff's Office. He's on the
22 witness list. And he did do a phone dump on that
23 and went through everything on that and got all
24 the stuff out of it.

25 THE COURT: But, of course, your

1 objection would still be that it was an invalid
2 warrant.

3 MR. MATHEWS: Search warrant.

4 THE COURT: A search warrant, but I've
5 ruled on that. Would that be your position?

6 MR. MATHEWS: So whatever the Court
7 decides, I'm going to live with it.

8 THE COURT: Sure, I understand that.

9 MR. MATHEWS: Obviously. But my -- you
10 know, I believe the search warrant was necessary.
11 It was no longer an exigent circumstance. And as
12 far as Sergeant Fisk testifying to it, I think
13 that this is a -- I think that -- I'm moving to
14 suppress that.

15 THE COURT: I understand.

16 Solicitor, let me hear from you on
17 that.

18 MS. SWANSON: Yes, sir. We litigated
19 this all yesterday. A search warrant was not
20 necessary. The defendant has no standing to
21 challenge a search warrant at all because he has
22 no expectation of privacy in the victim's phone.
23 Nobody is infringing on the victim's rights.
24 That's why a search warrant would be necessary,
25 because -- if there was an expectation of privacy.

1 She's been murdered. We're looking for clues in
2 her phone. And Sergeant Fisk, once she got the
3 passcode, did a cursory review of her phone and
4 I'm having her describe what she found.

5 I'm still going to put Mr. Bealer up --

6 THE COURT: Sure.

7 MR. MATHEWS: -- to testify to the date
8 and time stamp and all of that.

9 THE COURT: The phone wasn't found in his
10 truck.

11 MS. SWANSON: No.

12 THE COURT: All right.

13 MS. SWANSON: It was not in his
14 possession, not in his name. He had nothing to do
15 with that phone.

16 MR. MATHEWS: I still want to know, who
17 found her phone?

18 MS. SWANSON: Detective Shipp. And I'm
19 not entering the phone at this time. I'm simply
20 going to have Sergeant Fisk identify it. I'm
21 going to enter it through Detective Shipp.

22 MR. MATHEWS: And, as far as an
23 expectation of privacy, we explained that *McKnight*
24 makes clear that there is not a need for an
25 expectation of privacy under the South Carolina

1 search warrant statute, but we have already talked
2 about all that.

3 THE COURT: Remind me about the *McKnight*,
4 why you say it doesn't apply, Solicitor, or his
5 reading of *McKnight*. I'm just trying to remember.
6 And we did talk about this yesterday, but this is
7 an important matter and I want to spend a minute
8 on it.

9 MS. SWANSON: Right. Well, *McKnight* was
10 a totally different circumstance. It was a mobile
11 home with multiple people in it. Also, the trial
12 court did not examine the constitutionality of it.
13 All they did was examine it under this statute.
14 And so the Supreme Court said the proper inquiry
15 would be whether or not this -- you know, someone
16 had standing or a reasonable expectation of
17 privacy, but because the trial court did not
18 examine that issue, we're not either.

19 THE COURT: All right. Mr. -- something
20 else, Miss Keeney, you want to tell me?

21 MS. KEENEY: No.

22 THE COURT: What I'm going to do is this:
23 Mr. Mathews, I note your objection for the record.
24 With all due respect, sir, I'm going to overrule
25 your objection. I think the solicitor has put

1 forth, I think, rationale and logical reasoning as
2 to why the *McKnight* case can be distinguished
3 here.

4 And also, sir, I don't think that the
5 evidence is going to show that the phone was found
6 in his truck. In fact, we know that nothing was
7 found in the truck. I just don't see how he has
8 any type of expectation of privacy in her phone,
9 and -- I mean, it's a fluid situation. I know you
10 say it wasn't exigent, but, to that extent, I just
11 think that there's no expectation of privacy.
12 They're investigating this matter. The phone
13 wasn't found. He didn't have any interest in the
14 phone. We talked about this yesterday.

15 So, with all due respect, sir, I'm going
16 to overrule your objection. I'm going to allow
17 her to testify as to what she found in the phone,
18 or whatever it is you were going to talk about.

19 MS. SWANSON: Yes, sir.

20 THE COURT: The video or some camera
21 feature.

22 MS. SWANSON: Yes, sir.

23 THE COURT: I'm going to allow that.

24 Anything else you need to put on the
25 record, Mr. Mathews? Anything else?

1 MR. MATHEWS: I'm just wondering when
2 we're going to break for lunch.

3 THE COURT: Well, I was planning on
4 breaking for lunch probably when we finish with
5 this witness, and then go from there. Okay?

6 MR. MATHEWS: That's sounds good.

7 THE COURT: Let's just take five minutes
8 so people can run wherever they might need to run
9 and then we'll back on and complete this witness's
10 testimony. Okay?

11 MS. SWANSON: Thank you, Your Honor.

12 (A break was taken from 12:13 p.m. to 12:21 p.m.)

13 THE BAILIFF: All rise.

14 THE COURT: Thank you. Be seated.

15 Solicitor, are we ready to bring the jury
16 back?

17 MS. SWANSON: Yes, sir.

18 THE COURT: Mr. Mathews, are you ready to
19 bring the jury back in?

20 MR. MATHEWS: Yes, sir.

21 THE COURT: Let's go ahead and do that.
22 Thank you, Mr. Bailiff.

23 (Jury enters the courtroom at 12:23.)

24 THE COURT: All right. Mr. Mathews, I'm
25 going to overrule your objection.

1 And, Solicitor, you can please continue.

2 Okay?

3 MS. SWANSON: Thank you.

4 (STATE EXH. 2, Holloway Cell Phone, was
5 marked for identification.)

6 BY MS. SWANSON:

7 Q Sergeant Fisk, we were talking about the victim's
8 phone that you received the passcode on and reviewed.
9 I'm going to show you what has been marked as State's
10 Exhibit 2 and ask you to identify this.

11 A Okay. This is Donasia Holloway's cell phone.

12 Q All right. And is the phone that you were
13 referring to in your testimony that you reviewed?

14 A Yes, ma'am.

15 Q And got into with the passcode?

16 A Yes, ma'am.

17 Q Thank you.

18 MS. SWANSON: And that's Exhibit 2 just
19 for identification at this point.

20 BY MS. SWANSON:

21 Q And, Sergeant Fisk, I believe you were talking
22 about something that you came across on that phone.
23 What was that?

24 A It was a video in the camera roll of the
25 phone.

1 (STATE EXH. 17, Snapchat Video, was
2 marked for identification evidence.)

3 BY MS. SWANSON:

4 Q All right. I'm going to hand you what has been
5 marked as State's Exhibit 17 and ask if you can
6 identify what's contained on this disk?

7 A Yes, ma'am. It is the Snapchat video that
8 was found in the phone, a disk of it.

9 Q All right. And the one that you reviewed?

10 A Yes.

11 Q Okay. And are your initials on this?

12 A Yes, my signature.

13 Q And that was a fair and accurate depiction of the
14 video on the victim's phone?

15 A Yes, ma'am.

16 Q Thank you.

17 MS. SWANSON: State would move Exhibit 17
18 into evidence and request to publish.

19 MR. MATHEWS: Subject to my objection.

20 THE COURT: All right. It's admitted
21 subject to objection, sir. You may publish. Yes,
22 ma'am.

23 MS. SWANSON: Thank you.

24 (STATE EXH. 17, Snapchat Video, was entered
25 into evidence.)

1 (Video played.)

2 MS. SWANSON: You can hit it again. It's
3 fairly quick.

4 (Video replayed.)

5 MS. SWANSON: All right thank you.

6 BY MS. SWANSON:

7 Q Sergeant Fisk, do you recall any date or time
8 stamp on that?

9 A Yes, ma'am. In the camera roll whenever I
10 clicked on the video the very top says Saturday at
11 10:07 p.m.

12 Q All right. Thank you. That's all the questions I
13 have for you at this time.

14 THE COURT: Mr. Mathews?

15 MR. MATHEWS: No questions.

16 THE COURT: All right. Can she be
17 released from subpoena?

18 MS. SWANSON: Yes, Your Honor.

19 THE COURT: Great. Thank you very much.
20 Have a great day.

21 THE WITNESS: Thank you.

22 THE COURT: Yes, ma'am.

23 All right. Ladies and gentlemen, what
24 we're going to do is, we're going to go ahead --
25 it's about 12:30, and so I'm going to ask you if

1 stand. State your name again for the record,
2 spell your last name.

3 THE WITNESS: Kyle Bealer, B-e-a-l-e-r.

4 WHEREUPON:

5 KYLE BEALER,

6 after having been sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. SWANSON:

9 Q Good afternoon, Kyle. Where were you working in
10 May of 2021?

11 A May of 2021, I was working for Berkeley
12 County Sheriff's Office.

13 Q It's been a while since you've been there, right?

14 A July of 2022 is when I left.

15 Q Okay. I'm just going to hand you your Berkeley
16 County Sheriff's Office report so that you can refer
17 to that if need be, all right?

18 A Okay.

19 Q And you've relocated since?

20 A Yes, ma'am.

21 Q Where are you now?

22 A I currently work for United State Probation
23 Forensics Lab in St. Louis, Missouri.

24 Q So you came down from Missouri?

25 A Yes, ma'am.

1 Q Thank you for that.

2 When you were working for Berkeley County,
3 what did you do there?

4 A I was on the Internet Crimes Against Children
5 task force. I did primarily digital forensics and
6 investigations, so I was part of the Secret
7 Service Digital Forensics Task Force.

8 Q All right. Did you ever help other agencies to
9 dump phones?

10 A Many times.

11 Q All right. And what does that mean? Can you tell
12 the jury?

13 A It's pretty much taking the information off
14 of the phone and turning out a report that makes
15 it very easily readable by the officer.

16 Q All right. And you can search various things?

17 A Yes, ma'am.

18 Q So it shows, like, whatever text messages were on
19 the phone, videos, photos?

20 A Depending on what kind of extraction is able
21 to obtained, yes, ma'am.

22 Q All right. And did you ever meet with Detective
23 Shipp? Did he ever ask you to dump mobile phones in
24 the Holloway murder investigation?

25 A Yes, ma'am.

1 Q All right. When did you do that?

2 A On May 26th of 2021.

3 Q Okay. How many phones did he ask you to
4 analyze?

5 A Two.

6 (STATE EXH. 1, Black LG Phone, was marked
7 and entered into evidence.)

8 BY MS. SWANSON:

9 Q I'm going to hand you what's been marked and
10 entered at this time as State's Exhibit 1. I'm
11 handing you a black LG phone. Is this a phone that
12 you dumped for Waltherboro PD?

13 A It could be. I would have to be able to
14 check. Is the IMEI on here? I have the IMEI of
15 the phone that I dumped on here.

16 Q Do you have your initials?

17 A I don't think so. No, ma'am. Oh, yes, I do.
18 Right there. Yes, that is my initials.

19 Q All right, thank you.

20 A Yes, ma'am.

21 Q And that was the LG phone, sir?

22 A Ye.

23 Q I'm going to hand you --

24 THE COURT: Did he say yes?

25 THE WITNESS: I'm sorry. Yes.

1 THE COURT: Thank you.

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

4 BY MS. SWANSON:

5 Q I'm going to hand you what's been marked as
6 State's Exhibit 2 and ask if you can identify this as
7 the iPhone that you dumped? Are those your initials?

8 A They are. The IMEI is visible on this one.

9 Q Okay.

10 A And that is -- sorry, habit. Yes, that is
11 the same phone.

12 Q Thank you. So let's start with the iPhone. There
13 are a couple of items that I want to show you to see
14 if you verified that these items came from that
15 iPhone.

16 (STATE EXH. 23, Photo; Still from Video, was
17 marked for identification.)

18 BY MS. SWANSON:

19 Q I'm going to hand you what has been marked as
20 State Exhibit 23 and ask if you this still from a
21 video?

22 A Yes, ma'am. I can identify that this came
23 from -- was disclosed from the iPhone that was
24 extracted.

25 Q All right. And is that a fair and accurate still

1 shot of the video?

2 A Yes, ma'am.

3 MS. SWANSON: State would move Exhibit 23
4 into evidence at this time.

5 THE COURT: Exhibit 23 is a?

6 MS. SWANSON: A still shot --

7 THE COURT: From the iPhone?

8 MS. SWANSON: Yes.

9 THE COURT: Mr. Mathews?

10 MR. MATHEWS: Is he being propounded as
11 an expert, or what was his roll and what were the
12 prerequisites? I don't know any of that.

13 MS. SWANSON: Okay. Well, we can go back
14 to that.

15 BY MS. SWANSON:

16 Q What sort of training and experience do you have
17 in dumping cell phones?

18 A As of 2021, I was certified with Cellebrite
19 as an operator and an analyst. I also attended
20 the National Computer Forensic Institute in
21 Hoover, Alabama, for the multi-device examiners
22 school there. I attended several courses through
23 the NWAC, the National White Color Crime Center,
24 and a lot of law enforcement base courses on
25 analysis and digital forensics. And since then,

1 I've also had additional training.

2 Q Okay.

3 MS. SWANSON: And, Your Honor, I'm not
4 offering him as an expert because I'm not asking
5 an opinion. This is simply data that he is
6 trained to take off of phones.

7 MR. MATHEWS: May I voir dire? At this
8 point, as far as his --

9 THE COURT: I'm going to allow it. Yes,
10 sir.

11 VOIR DIRE

12 BY MR. MATHEWS:

13 Q Mr. Bealer, you indicated that you had some
14 training. What is your educational background?

15 A As far as formal education, college?

16 Q Formal education, college, whatever.

17 A Education was, I have an Associate's degree
18 in not a relevant degree. It's an Associate's in
19 arts. However, I have extracted over 1,000 phones
20 during my time with Berkeley County, and
21 approximately 250 to 300 per year since then.
22 I've done 60 or 70 hours of certification with
23 Cellebrite, including their Capstone
24 certification, which is their highest
25 certification they allow which is Cellebrite

1 mobile examiner.

2 Q And what -- do you have any prerequisites before
3 you extract something? If I can just came in and
4 said, *Here, I found this phone on the corner. Here*
5 *you go, extract it*, would you do that? Or do you have
6 protocols?

7 A There are protocols.

8 Q Okay. What are your protocols?

9 A I have to have the appropriate
10 documentation.

11 Q Appropriate documentation for --

12 MS. SWANSON: Your Honor, I believe we're
13 getting past qualifications at this point and
14 we're going into just questioning about
15 everything.

16 THE COURT: All right. Overruled. Go
17 ahead.

18 MR. MATHEWS: Thank you, Your Honor.

19 BY MR. MATHEWS:

20 Q Go ahead.

21 A A search warrant.

22 Q And a search warrant?

23 A Yes, sir.

24 Q Okay. Would you do a search on something without
25 a search warrant?

1 A That's a very -- I'm not sure what you're
2 asking.

3 MS. SWANSON: Objection; relevance.

4 THE COURT: I'm going to sustain that.
5 I'm going to sustain that on relevance.

6 MR. MATHEWS: Okay. I'll ask him --

7 THE COURT: We are getting outside of his
8 expertise in Cellebrite.

9 MR. MATHEWS: In Cellebrite.

10 BY MR. MATHEWS:

11 Q What's Cellebrite?

12 THE COURT: Isn't it Cellebrite?

13 THE WITNESS: Yes, sir.

14 THE COURT: You were asking him about
15 expertise in Cellebrite, but we're not going to
16 get into legal theory, sir.

17 MR. MATHEWS: As far as protocol, I guess
18 once -- this voir dire as to his expertise.

19 THE COURT: Yes, sir.

20 MR. MATHEWS: I wanted his ask questions
21 about his protocol after Miss Swanson is done with
22 him.

23 THE COURT: Well, that's not an issue
24 right now. Move ahead.

25 MR. MATHEWS: Okay.

1 BY MR. MATHEWS:

2 Q What is Cellebrite?

3 A So Cellebrite is a company that they provide
4 several different tools for criminal device
5 extraction and other forensic applications.

6 Q Okay. And you indicate that you have a Bachelor's
7 of science, Bachelor's of arts, what kind of --

8 A I have an Associate's in arts.

9 Q Associate's in arts.

10 A Seven years in a community college. I kind
11 of got lost along the way.

12 Q Okay. And prior to this, you had extracted 1,000
13 phones; is that correct? Did I hear you correct or
14 that's not correct?

15 A That's incorrect. During the course of my
16 time in Berkeley County, I started recording how
17 many phones I was doing. So January of 2019 until
18 I left in January of '22, I extracted over 1,000
19 phones.

20 MR. MATHEWS: I have no further questions
21 about his expertise and no objections.

22 THE COURT: All right.

23 MS. SWANSON: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 CONTINUATION OF DIRECT EXAMINATION

1 BY MS. SWANSON:

2 Q Mr. Bealer, did you have any involvement in this
3 case other than getting the information that was
4 stored on these phones into readable format?

5 A No, ma'am.

6 Q Okay.

7 A All I did was perform the extractions and
8 then provided those to the officer.

9 Q Right. Using the tool called Cellebrite or
10 GrayKey?

11 A And there was another tool that was used in
12 this case called GrayKey.

13 Q And those are just -- that's technology that
14 allows you to get stuff off a phone?

15 A Yes, ma'am.

16 Q Okay, thank you.

17 I'm just going to hand you a couple items. I
18 think we were talking about State's Exhibit 23.

19 THE COURT: Have you seen those?

20 MR. MATHEWS: Yes, sir.

21 THE COURT: All right.

22 BY MS. SWANSON:

23 Q And do you recognize this still shot from a video
24 as coming off of the iPhone?

25 A Yes, ma'am.

1 Q All right. And is that a fair and accurate
2 depiction?

3 A Yes, ma'am.

4 Q All right.

5 MS. SWANSON: State would move 23 into
6 evidence at this time.

7 THE COURT: Any objection to 23?

8 MR. MATHEWS: Subject to my prior
9 objections, Your Honor.

10 THE COURT: All right. Admitted subject
11 to his prior objection.

12 MS. SWANSON: Thank you.

13 (STATE EXH. 23, Photo; Still from Video, was
14 entered into evidence.)

15 (STATE EXH. 24, Text Messages, was marked
16 for identification.)

17 BY MS. SWANSON:

18 Q I'm going to hand you State's Exhibit 24. Can you
19 describe what this is? Is it a series of text
20 messages?

21 A Yes, ma'am. It's a series of text messages
22 between phone number [REDACTED] --

23 Q What phone did those come off of?

24 A This came off of the iPhone.

25 Q Okay. And you affirm that this was a fair and

1 accurate depiction of a text exchange that came off of
2 the iPhone with that number?

3 A Yes, ma'am.

4 MS. SWANSON: Okay. I would move 24 into
5 evidence at this time.

6 THE COURT: Subject to your prior
7 objection?

8 MR. MATHEWS: Yes, sir.

9 THE COURT: All right. Yes, ma'am.

10 (STATE EXH. 24, Text Messages, was entered
11 into evidence.)

12 BY MS. SWANSON:

13 Q And, I'm sorry, looking back at State's Exhibit
14 23, is there a date and time stamp on this?

15 A There is created, modified, and access dates.
16 They are all for May 22nd of 2021.

17 Q And there a time on there?

18 A Approximately, 10:07 p.m., UTC-4, which is
19 Eastern time.

20 Q Thank you.

21 MS. SWANSON: Move to publish --

22 THE COURT: Let me see both of those,
23 please, ma'am.

24 BY MS. SWANSON:

25 Q Can you hand that up to the judge?

1 THE COURT: Thank you, sir.

2 THE WITNESS: Yes, sir.

3 THE COURT: Yes, ma'am. Go right ahead.

4 MS. SWANSON: I'm just publishing State's
5 Exhibit 23 at this time.

6 BY MS. SWANSON:

7 Q All right. Thank you, Kyle. That's all I have
8 for you.

9 A Thank you, ma'am.

10 THE COURT: Mr. Mathews, any questions of
11 this witness?

12 MR. MATHEWS: I do, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. MATHEWS:

16 Q All right. What do you prefer to be called?

17 A Mr. Bealer, will work.

18 Q All right.

19 A I am no longer a law enforcement officer.

20 Q Mr. Bealer, how many -- you identified, like, 12
21 texts, or something like that, and one photo. Is that
22 all you got out of the phone?

23 A No.

24 Q If you were to indicate, how many different -- do
25 all documents, how big would that stack be?

1 A That came out of the phone?

2 Q Right.

3 A Off the top of my head, I couldn't tell you.

4 Q Did you --

5 A I don't recall the actual size of the
6 extraction.

7 Q Did you put it on a blue ray disk or a regular DV
8 disk?

9 A I don't recall. I know I put them on disks
10 for my report.

11 Q Okay.

12 A Per standard practice, those optical disks
13 have a better shelf life.

14 Q All right. Would it be thousands of interactions
15 over the course of the phone or would it be 15?

16 A In what context? That's important.

17 Q In any context. Calls, texts, videos, Facebook
18 messages, any of that stuff, would it be more like 10
19 or more like 5,000?

20 A Without context, I couldn't answer that
21 question, I apologize.

22 Q Do you -- I mean, like I said, do you know how
23 long they went back?

24 A Off the top of my head, I do not.

25 Q Okay. So you did an entire phone dump and you

1 came up with 12 texts and one picture?

2 A No, sir. I did the phone extraction. I
3 placed it on a disk and provided it to the officer
4 for them to further their investigation. I didn't
5 perform a full analysis of the phone.

6 Q Okay.

7 All right. Did you come up with that edit
8 there, or did somebody else come up with that edit of
9 those particular texts out of all the texts that were
10 on the phone?

11 A Are you talking about the actual exhibit?

12 Q I'm talking about, what we see in the exhibit, is
13 that your work or did somebody edit it and then
14 present it to you?

15 A I did not extract -- I did not export those
16 text messages. Extraction and exportation.

17 Q I see, okay. So the document that we're looking
18 at now that is in evidence, that might be a product of
19 your work, but that's not your work.

20 A My work was the extraction itself.

21 Q Okay. And that's not extraction. What we saw is
22 not the extractions; is that correct?

23 A That was text messages from the extraction.

24 Q From the extraction. Oh, something from it. And
25 that editorial process that brought us to that point,

1 you did not do that; is that correct?

2 A I wasn't a part of that, no, sir.

3 Q Okay. And the still shot in there, also,
4 likewise, that is a result of your work, but that's
5 not your work.

6 A I think I understand what you're saying, but
7 would you mind rephrasing that?

8 Q Okay. There was a picture --

9 A Yes, sir.

10 Q -- of a dude.

11 A Uh-huh.

12 Q Okay. In all the work that you did, did you just
13 pull everything out and say, *Here you go*, or did you
14 say, *You know, I found a picture that you might*
15 *like?*

16 A I pulled everything out and said here you go,
17 essentially.

18 Q So that picture also -- when I say it is a result
19 of your work, but it's not your work, that's what I'm
20 talking about. The editing that brought you to that,
21 you didn't do that. They did that.

22 A That is correct.

23 Q Okay. And you indicated -- we are talking some
24 about protocol, and you already talked about it some.
25 I don't know how much more we need to go into it, but

1 if you get a valid -- or what you believe to be a
2 valid search warrant, you're going to do what they say
3 and extract it.

4 A Yes, sir.

5 Q Do you have any other protocols before you will do
6 an extraction?

7 A There's a chain of custody.

8 Q A what now?

9 A Chain of custody.

10 Q A chain of custody. Okay, why do you have that?

11 A So we can track where all the evidence goes
12 through its entire lifetime of the
13 investigation.

14 Q Okay. So nobody messes with it, right?

15 A Yes, sir.

16 Q So you want to see a chain of custody so that
17 you'll know that you're getting the real deal, not
18 something somebody had edited even before you get it,
19 right? Or changed, or corrupted, or something like
20 that.

21 A Of the phone?

22 Q Of the data on the phone. I'm good. You insist
23 on a chain custody for whatever reason?

24 A Yes, sir.

25 Q All right, sir.

1 And, again, would it be a decent estimate to
2 say the stack that you presented from that might be
3 about three inches thick? Does that sound about
4 right?

5 A That is a speculation I'm not comfortable
6 making.

7 Q Two inches?

8 A Again, that's a speculation because I don't
9 recall the exact size of the extraction nor the
10 actual quantity of data within the extraction.

11 Q Okay.

12 A Those are factors in the hypothetical you're
13 presenting that I wouldn't be able to give you at
14 this time.

15 Q Did anybody ask you to do that ahead of time to
16 prepare for this, to say I'm going to be asking you?
17 Did anybody -- I see that you have only the report
18 that you were handed just now. Did anybody do
19 anything to prepare you for this prior to now?

20 A You mean prepare me for court?

21 Q Right.

22 A I was shown the extraction.

23 Q Okay. You were shown the extraction. Of those
24 particular parts of what you had sent them, right?

25 A Correct.

1 Q So they said you sent me -- what's about an
2 average stack size on an average iPhone? Give me a
3 range. You've done thousands, so tell me what are you
4 used to seeing?

5 MS. SWANSON: Objection, Your Honor.
6 This referring to "stacks" like it's just a stack
7 of paper, it's not. It's electronic.

8 THE COURT: All right.

9 MS. SWANSON: I don't think.

10 THE WITNESS: It would be --

11 THE COURT: Hold on, hold on, hold on.
12 Go ahead.

13 MS. SWANSON: I don't think the witness
14 knows how to answer that.

15 THE COURT: All right.

16 MS. SWANSON: And it's been asked and
17 answered several times.

18 THE COURT: Overruled. Go ahead.

19 MR. MATHEWS: Thank you.

20 BY MR. MATHEWS:

21 Q When you take the data and you put it on a disk
22 digitally, do you sometimes print it out or are you
23 asked sometimes to print it out, like you just saw?
24 You saw actual physical pictures, right?

25 A I have been before. Those were local. Those

1 were our cases.

2 Q In Berkeley?

3 A Yes, sir.

4 Q Okay. How many times did you do that?

5 A When I perform an analysis?

6 Q No, no. Turn the digital things into something
7 you can put in your hand?

8 A I don't know a number. I apologize.

9 Q All right.

10 A It's a pretty common practice in order to be
11 able to present digital things easily.

12 Q Okay.

13 A And in a recognizable way.

14 Q Sure, I get that. So how many times about have
15 you done that?

16 A I don't know. That would be -- that would be
17 a guess.

18 Q Well, give me an educated guess, a reasonable
19 guess. Is it more than 10?

20 A Probably more than 10.

21 Q Okay. In those 10 times that you've done that,
22 about what size was average between those 10, among
23 those 10?

24 A I apologize, but that's a false
25 equivalence.

1 Q Okay. Well, help me understand. I'm looking to
2 quantify. You've got four, five pieces of paper here.
3 I'm guessing -- well, since I've been sent it, I'm
4 guessing that probably the number of papers in there
5 is at least hundreds, okay, based on what my
6 experience is of them. Now, I'm not testifying. You
7 are. But just based on what I've seen, it's at least
8 hundreds of pages. You've been qualified as an
9 expert. I'm only asking you --

10 MS. SWANSON: Objection.

11 THE COURT: Sustained, he hasn't been
12 qualified as an expert.

13 BY MR. MATHEWS:

14 Q Okay, you're not an expert. So why are you doing
15 this? It's not your case. You don't work for the
16 Walterboro Police Department. Why do you do it?

17 A Because law enforcement, we assist. And
18 we're all within the same state.

19 Q Okay.

20 A And as part of the Secret Service Digital
21 Forensics Task Force, we assist other agencies who
22 don't have our capability of extraction of data in
23 order to further their investigations.

24 MR. MATHEWS: I don't have anymore
25 questions for this witness.

1 THE COURT: All right. Thank you.

2 Yes, ma'am, anything else?

3 MS. SWANSON: Just briefly.

4 REDIRECT EXAMINATION

5 BY MS. SWANSON:

6 Q Just to clarify, Mr. Bealer, you don't analyze the
7 report, do you?

8 A Read the report? No, ma'am.

9 Q Right. You give it to the investigator on the
10 case, right?

11 A Correct.

12 Q For him to analyze.

13 A That is correct.

14 Q And see what's relevant to his case?

15 A Yes, ma'am.

16 Q Okay, thank you.

17 In reference to the text exchange, that was
18 just a portion of what was found on the Apple iPhone,
19 right?

20 A Yes, ma'am.

21 Q Okay. Were you able to find that same exchange
22 that Mr. Mathews questioned you about in the LG
23 phone?

24 A Yes.

25 Q You were?

1 A Oh, sorry. I apologize. Not the LG phone.

2 Q So were you able to find any text messages in the
3 LG phone?

4 A I believe there were only a couple.

5 Q Okay.

6 A One or two.

7 Q But not the exchange that you identified as coming
8 from the Apple iPhone?

9 A Correct.

10 Q Thank you. That's all I got.

11 A I apologize. I got them mixed up in my
12 head.

13 THE COURT: Anything else?

14 MR. MATHEWS: No, sir.

15 THE COURT: Thank you, sir. Can he be
16 excused?

17 MS. SWANSON: Please.

18 THE COURT: Great. Thank you for being
19 here. Have a safe trip home.

20 THE WITNESS: Thank you, sir.

21 THE COURT: All right. Yes, ma'am, you
22 can call your next witness.

23 MS. SWANSON: The State calls Charles
24 Shipp.

25 THE CLERK: Raise your right hand, sir.

1 Put your left hand on the Bible. Do you affirm
2 the testimony you're about to give the Court shall
3 be the truth so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Thank you. Take a seat in
6 the witness stand. State your name again for the
7 record, spell your last name.

8 THE WITNESS: My name is Charles Shipp.
9 Last name is spelled S-h-i-p-p.

10

11 WHEREUPON:

12 CHARLES SHIPP,
13 after having been sworn, testified as followed:

14 DIRECT EXAMINATION

15 BY MS. SWANSON:

16 Q Detective Shipp, who do you work for?

17 A The Waltherboro Police Department.

18 Q All right. And how did you become involved in the
19 investigation of Donasia Holloway's murder?

20 A I was the on-call investigator.

21 Q All right. And so on May 22nd of 2021, did you
22 respond out to the scene?

23 A I did.

24 Q And what did you find when you got there?

25 A Upon arriving, I made contact with responding

1 officers. They relayed that there was an
2 unresponsive black female in a silver Lexus with
3 bullet holes located in the driver's side window.
4 EMS was en route, if not arriving shortly after I
5 arrived on scene. I had been advised that casings
6 were collected by Corporal Hartley, and she
7 advised me she had taken some photos as well.

8 Q Okay. Eventually was the victim taken out of the
9 Lexus?

10 A I'm sorry?

11 Q Eventually was the victim taken out of the
12 Lexus?

13 A She was.

14 Q All right. And did you-all find a phone in there?

15 A Yes. I did find the victim's phone. It
16 would have been located underneath the victim.

17 Q I'm going to hand you State's Exhibit 2 and ask if
18 this is the phone that you found?

19 A This is the phone I did retrieve.

20 Q Okay. And that came out of the victim's car?

21 A Correct.

22 Q Okay. Were you aware of a previous incident
23 between Donasia Holloway and Justin Carroll?

24 A It had been brought to my attention while on
25 the scene.

1 Q Okay. What did you do as a result of that?

2 A So with the information that I was given on
3 scene about a prior incident involving the same --

4 MR. MATHEWS: Objection, Your Honor.

5 THE COURT: All right. I'm going to
6 sustain the objection.

7 MS. SWANSON: May we approach?

8 THE COURT: Sure you can.

9 What is your objection?

10 MR. MATHEWS: This is -- he's getting
11 into prior bad acts. There was some discussion of
12 it.

13 THE COURT: I think the only thing she's
14 doing now is asking him what did he do next.

15 MS. SWANSON: Right.

16 MR. MATHEWS: Right.

17 MS. SWANSON: Which was pull the DMV
18 picture and look at the surveillance and think
19 that he resembled the guy in the surveillance.

20 THE COURT: I don't think he's talking
21 about it anymore.

22 MS. SWANSON: No.

23 THE COURT: So what -- I mean, he
24 wasn't --

25 MS. SWANSON: He just said "incident,"

1 which is how we've been referring to it all
2 along.

3 MR. MATHEWS: That's fine. It's --

4 THE COURT: I think you were objecting
5 because you thought he was getting --

6 MR. MATHEWS: Because I thought he was
7 getting into it --

8 THE COURT: -- you want to make a
9 preemptive strike.

10 MR. MATHEWS: Yes, that's correct.

11 THE COURT: But I think she's going to go
12 straight into, *What did you do next? You pulled*
13 *the DMV?*

14 MR. MATHEWS: If that's the case, I
15 prematurely --

16 THE COURT: Don't say anymore.

17 MS. SWANSON: If you let me lead a
18 little, then I will make sure we don't get into
19 anything.

20 THE COURT: Lead the two questions.

21 MS. SWANSON: Yes.

22 THE COURT: And let's get through this.

23 MS. SWANSON: Okay.

24 THE COURT: Mr. Mathews, I understand why
25 you objected, but I believe that, at this point,

1 given what the solicitor has assured us is the
2 situation, you're withdrawing your objection; is
3 that correct?

4 MR. MATHEWS: Yes.

5 THE COURT: Thank you.

6 MS. SWANSON: Thank you.

7 THE COURT: Go ahead, Solicitor. Thank
8 you.

9 BY MS. SWANSON:

10 Q All right. After you were made aware of a prior
11 incident between Donasia Holloway and Justin Carroll,
12 did you then pull a picture of Justin Carroll from
13 DMV?

14 A Yes, I did.

15 Q Okay. And at some point, what did you compare
16 that photo to?

17 A I compared the DMV photo along with the
18 height and weight along with the video from the
19 Forest Point Apartments video footage.

20 Q And is that when he became a person of interest in
21 this case?

22 A Yes, ma'am.

23 Q All right. So, in addition to the apartment
24 surveillance -- you reviewed that, right?

25 A Yes.

1 Q Did you review any other surveillance in the
2 area?

3 A There was a church at the -- kind of caddy
4 corner to the opening of where Forest Point
5 Apartments is. They had some cameras that were --
6 kind of captured Forest Circle and Wildwood, which
7 is the next connecting street.

8 Q All right. Did you see anything that caught your
9 eye on the church video?

10 A There was a white single-cab pickup truck in
11 that area prior to the event.

12 Q Okay. Did you make contact with family members of
13 the defendant that night?

14 A We did.

15 Q Was he home?

16 A He was not.

17 Q All right. And did you-all put a BOLO out?

18 A Yes, a BOLO was put out.

19 Q Okay. Did you respond to the traffic stop that
20 Colleton County made?

21 A Yes, I did.

22 Q All right. And at some point was he detained and
23 taken back to investigations?

24 A Yes.

25 Q And did you conduct a GSR kit on him?

1 A I did.

2 Q All right. Can you tell all the jury what GSR
3 is?

4 A So GSR stands for gunshot residue. This kit
5 allows me the opportunity to --

6 MR. MATHEWS: Your Honor, this is subject
7 to my earlier objection on gunshot residue.

8 THE COURT: Oh, subject -- yes. Yes,
9 sir. So I note your objection. I'm going to
10 overrule subject to your ongoing objection as it
11 relates it that.

12 Yes, ma'am, you can continue.

13 BY MS. SWANSON:

14 Q So a GSR kit to test for gunshot residue?

15 A Yes.

16 Q And what's in the kit?

17 A So there's a set of gloves. There's a
18 questionnaire. There are two vials; one for the
19 left and then one for the right hand.

20 Q What do you do? How do you administer the kit?

21 A I do have to glove up prior to doing
22 anything. I take the vials, either left or right
23 hand. The vial has a kind of a swab, I guess you
24 would say, and what I do for the left hand is, I
25 would just press and stamp the entire front and

1 back of each hand and then seal it up.

2 Q Okay. So you did perform that test on Justin
3 Carroll?

4 A Yes.

5 Q That night?

6 A Yes, ma'am.

7 Q I'm going to hand you what has been marked as
8 State's Exhibit 33. This is for identification only
9 at this point. If you can, verify that this is the
10 GSR kit that you conducted and sealed for Justin
11 Carroll.

12 A This is.

13 Q Okay. And is it the white bag that's yours?

14 A Yes, the white bag.

15 Q And that you sealed?

16 A Yes, ma'am.

17 Q Prior to submitting into evidence?

18 A Yes.

19 Q Thank you.

20 MS. SWANSON: 33 for identification.

21 (STATE EXH. 33, GSR Kit; Carroll, was
22 marked for identification.)

23 BY MS. SWANSON:

24 Q All right. And after you conducted that GSR, he
25 was not arrested that night, right?

1 A That is correct.

2 Q Okay. So did you-all continue the
3 investigation?

4 A We did.

5 MS. SWANSON: Beg the Court's
6 indulgence.

7 (STATE EXH. 34, Photo; Carroll, was marked
8 for identification.)

9 BY MS. SWANSON:

10 Q I'm going to hand you what has been marked as
11 State's 34. Do you recognize who is in that
12 picture?

13 A Yes, that is Justin Carroll.

14 Q And where is he at that moment?

15 A He is at defense table.

16 Q No, I'm sorry. In that picture. Was he at
17 investigations?

18 A He is in investigations.

19 Q Is that at the time that you were conducting the
20 GSR kit?

21 A That would be.

22 Q Okay. So that would be early morning hours of May
23 23rd?

24 A Yes, ma'am.

25 Q Okay. And this is a fair and accurate depiction

1 of how he appeared?

2 A That's how he appeared when I had contact
3 with him.

4 MS. SWANSON: That's State's 34 I would
5 offer into evidence and then publish.

6 MR. MATHEWS: Subject to my previous
7 objection.

8 THE COURT: All right. Subject to his
9 previous objection.

10 (STATE EXH. 34, Photo; Carroll, was entered
11 into evidence.)

12 BY MS. SWANSON:

13 Q Can you describe his hair style?

14 A He looks clean and shaven with a chin strap
15 beard.

16 Q Does it look freshly shaven?

17 MR. MATHEWS: Objection, Your Honor. I
18 don't know that he can --

19 THE COURT: I'll sustain that.

20 (STATE EXH. 35, Photo, was marked for
21 identification evidence.)

22 (STATE EXH. 36, Photo, was marked for
23 identification.)

24 BY MS. SWANSON:

25 Q Okay. When was Mr. Carroll arrested?

1 A He was arrested on the 24th.

2 Q Where was he arrested?

3 A At his place of employment, which would have
4 been Pizza Hut.

5 Q All right. I'm going to show you what has been
6 marked as State's 35 and 36 and ask if you can
7 identify what's in this picture.

8 A That appears to be still shots from body
9 camera at the time of his arrest.

10 Q Of who?

11 A Of Justin Carroll.

12 Q Okay. At Pizza Hut?

13 A Yes.

14 Q On the 24th?

15 A Yes, ma'am.

16 Q Fair and accurate depiction?

17 A Yes.

18 MS. SWANSON: All right. Move State's 35
19 and 36 into evidence.

20 THE COURT: What about 35, 36? Any
21 objection, Mr. Mathews?

22 MR. MATHEWS: No, sir.

23 THE COURT: So those are admitted without
24 objection.

25 Yes, ma'am, go ahead.

1 (STATE EXH. 35, Photo, was entered into
2 evidence.)

3 (STATE EXH. 36, Photo, was entered into
4 evidence.)

5 MS. SWANSON: I'm going to publish.

6 THE COURT: And those are the photographs
7 at Pizza Hut?

8 MS. SWANSON: Pizza Hut.

9 THE COURT: Yes, ma'am.

10 MS. SWANSON: At the time of the arrest.

11 BY MS. SWANSON:

12 Q All right. Do you have your case file with you?
13 Is it over here?

14 A It is.

15 Q I'm going to hand it to you if that's okay because
16 I'm going to ask you some questions and you may need
17 to refer to it.

18 A Thank you.

19 MS. SWANSON: I'm going to hand him his
20 case file.

21 MR. MATHEWS: For his own -- I mean,
22 obviously, if it's coming into evidence --

23 MS. SWANSON: No, no. Just, I'm going to
24 ask him about a phone number.

25 BY MS. SWANSON:

1 Q All right. Let's go back to the phones. I want
2 to talk about the State's Exhibit 1, the black LG
3 phone. Who is that phone associated with?

4 A The black LG phone is associated with Justin
5 Carroll.

6 Q Okay. And what phone number is associated with
7 that phone?

8 A Give me just a second.

9 MR. MATHEWS: Your Honor, this is also
10 subject to my prior objection.

11 THE COURT: Yes, sir.

12 THE WITNESS: The number associated with
13 Justin Carroll is [REDACTED].

14 BY MS. SWANSON:

15 Q [REDACTED]?

16 A Or [REDACTED].

17 Q Okay.

18 THE COURT: I'm sorry. What was that
19 again? [REDACTED]?

20 THE WITNESS: [REDACTED].

21 THE COURT: Thank you.

22 BY MS. SWANSON:

23 Q And then State's 2, the iPhone, is associated with
24 who?

25 A The iPhone is associated with Donasia

1 Holloway.

2 Q Okay.

3 All right. Going back to the arrest, did you
4 look at video on Donasia Holloway's iPhone?

5 A Yes, I did.

6 Q And is it the same video that we watched in here?
7 I'm going to show you State's Exhibit 17.

8 A Yes, this is the video I watched.

9 Q And could you identify the person in that video?

10 A The person in that video I identified as
11 Justin Carroll.

12 Q And is that when you obtained an arrest warrant
13 for Justin Carroll?

14 A At that time, yes.

15 Q Okay.

16 MR. MATHEWS: May we approach?

17 THE COURT: Yes, sir, Mr. Mathews.

18 MR. MATHEWS: There are a couple of
19 pictures here that appear to be from body cams
20 that are not this officer's body cam and she's
21 trying to get in information from -- I don't know
22 what other officer because I don't know what body
23 cam these came from. And so far everybody is just
24 saying it's fine, experts and everybody. Whatever
25 she presents they're saying is fine, but it's not.

1 This is not -- whose body cam is that?

2 THE COURT: She's asking if he can
3 recognize the photograph. I mean, I think you can
4 -- I'm going to overrule your objection. I think
5 that if he can identify that it's a photograph,
6 that he recognizes it. You can cross-examine him
7 on whether -- if he knows who took it or things of
8 that nature.

9 But I think if he could identify these
10 documents -- he doesn't have to say whose body cam it
11 came from. I don't think --

12 MR. MATHEWS: I can ask him.

13 THE COURT: Yes, that's up to you. But
14 as far as her getting into that, I don't want him
15 speculating, but she can show him those documents
16 and let him do that.

17 So what I'm going to do is, I'm going to
18 overrule your objection and you can proceed.

19 (STATE EXH. 37, Cam Still Shot; Holloway
20 Phone, was marked for identification.)

21 BY MS. SWANSON:

22 Q I'm going to hand you what is marked as State's
23 Exhibit 37 and ask if you know where this still shot
24 came from.

25 THE COURT: Came from as in where that

1 is?

2 MS. SWANSON: Well, correct.

3 BY MS. SWANSON:

4 Q What is it a still shot from, first of all?

5 A It appears to be a still shot from the video
6 extracted from Donasia's phone.

7 Q Okay. And you reviewed that video?

8 A I have.

9 Q Okay. What appears to be contained in that image?

10 A It looks like the garages from the Forest
11 Point apartments along with the vehicle that was
12 parked one space over from the silver Lexus that
13 Donasia was found in.

14 Q Okay. And is that a fair and accurate depiction
15 of the still shot from the video?

16 A Yes.

17 MS. SWANSON: Moving State's 37 into
18 evidence.

19 MR. MATHEWS: Subject to my --

20 THE COURT: Subject to his objection,
21 yes.

22 (STATE EXH. 37, Cam Still Shot; Holloway
23 Phone, was entered into evidence.)

24 (STATE EXH. 38, Photo; Lexus and
25 Defendant, was marked for identification.)

1 BY MS. SWANSON:

2 Q I'm going to show you what's been marked as
3 State's 38, and what is in that picture?

4 A In this picture, it shows the silver Lexus
5 where Donasia was located and then his face
6 between that and the car at the end of the road
7 which is parked next to the garages on scene at
8 Forest Point Apartments.

9 Q And where did that still shot come from?

10 A It appears to be a body cam-captured picture.

11 Q Okay. Is that a fair and accurate depiction of
12 the scene that night?

13 A Yes.

14 MS. SWANSON: All right. State would
15 move 38 into evidence at this time.

16 MR. MATHEWS: Subject to my objection.

17 THE COURT: Yes, sir, I understand. I'm
18 going to admit it subject to his objection.

19 (STATE EXH. 38, Photo; Lexus and Defendant
20 was entered into evidence.)

21 BY MS. SWANSON:

22 Q And is there anything that you notice in 37 and
23 38 -- anything you noticed about these shots?

24 A It appears to be the same garage building.
25 And the vehicle parked at the end of the road, it

1 appears to be the same vehicle because of the
2 identifiable distinguishable rims on that
3 vehicle.

4 Q Okay. So it appears to be the same vehicle from
5 Donasia's video and when you-all arrived that night?

6 A Yes.

7 Q Okay.

8 MS. SWANSON: You guys will all have
9 these pictures at the close of evidence.

10 BY MS. SWANSON:

11 Q All right. You saw Kyle Bealer testify. He was
12 the one that did the cell dumps, right?

13 A Yes.

14 Q And he provided you with those Cellebrite reports;
15 is that right?

16 A That is correct.

17 Q Okay. And did you review those?

18 A I did.

19 Q And did you identify a text exchange?

20 A I did.

21 Q All right. I'm going to hand you State's Exhibit
22 24. It's been entered. I'm going to ask if this is
23 the text exchange that you identified when you
24 reviewed the report from Donasia Holloway's cell
25 phone?

1 A This appears to be the text conversation.

2 Q So who are the messages between? What is the
3 number?

4 MR. MATHEWS: Your Honor, I object. We
5 had an expert here that maybe could have testified
6 to this, he's not.

7 THE COURT: I think he's already
8 testified as to what the numbers are.

9 MS. SWANSON: Well, the text exchange is
10 in. It just hasn't been published yet.

11 THE COURT: I'm going to overrule your
12 objection. I think the information of what
13 numbers is associated with which phone has already
14 come into evidence, correct?

15 MS. SWANSON: Correct, but he's just
16 publishing the number that's on the text.

17 THE COURT: Yes, ma'am. And that's
18 already been admitted into evidence. I'm going to
19 overrule your objection.

20 What exhibit is that?

21 THE WITNESS: 24.

22 MS. SWANSON: 24.

23 THE COURT: All right. Go ahead.

24 MS. SWANSON: Thank you.

25 BY MS. SWANSON:

1 Q Can you tell us who the text exchange is between,
2 the number associated, and then -- obviously, it's the
3 victim's phone -- so the victim and what number?

4 A So it's the conversation on the victim's
5 phone and the number associated with this
6 particular conversation is [REDACTED] [REDACTED].

7 BY MS. SWANSON:

8 Q And whose number is that?

9 A That would be Justin Carroll's phone
10 number.

11 Q Okay. And if I could have you publish, i.e. read,
12 that text exchange for the jury and list the dates and
13 times, please. So incoming, outgoing. Or you can see
14 from Justin, from Donasia.

15 A From Justin, "Size 9, 10," and then "Black
16 slip resistant shoes and I don't care what size
17 black pants, and boxers and socks."

18 Donasia: "Pulled out boxers and socks too."

19 From Justin: "Yeah."

20 From Justin: "No never mind." Then, "Unless
21 you can."

22 From Justin: "Two XL boxers."

23 From Donasia: "In the area."

24 From Justin: "I love you, Donasia."

25 Again from Justin: "I love you, Donasia."

1 From Justin: "I hope you have a good day at
2 work."

3 Q What date was that?

4 A The last one I read is dated 5/17 of '21.

5 Q Okay.

6 A And, if you'd like, the first text message I
7 read was 5/16 of '21.

8 Q Okay. So we're on 5/17/21, "I love you, Donasia."

9 A The next message, "I hope you have a great
10 day at work," which is 5/17/2021 which is from
11 Justin.

12 Donasia responds: "I love you too and thank
13 you, you have a good day as well."

14 Justin responds: "Call me when you get off."

15 He then messages again. From Justin: "When
16 I get my money up, I want to do fun stuff and go out
17 together."

18 He then sends another message: "Call
19 me." Followed by another message: "Call me."

20 He sends yet another message: "I'm
21 calling you."

22 Another message later: "Did you ever call
23 me?"

24 And he sends another message after that:
25 "Your phone is going to voicemail."

1 Donasia responds: "I can't answer the
2 phone. I'm drunk AF."

3 All these messages are still taking place
4 on the 17th.

5 Justin responds: "Where you at?," followed
6 by another message, "Call me." And then another
7 message, "Where you at?"

8 Donasia responds: "I'm in Fort Laude having
9 fun."

10 Justin responds: "Who are you with?"
11 Followed by another message: "You a lying-ass bitch."

12 Donasia responds with: "IDGAF."

13 He responds to that: "Who you with?"

14 Donasia responds: "I'm on vacay and getting
15 lit, my dog."

16 He responds: "Go ahead have fun while you
17 can and fuck as much as you can, ho." This is still
18 the 17th.

19 She responds: "I will, love. Thank you."

20 His response: "Make a video at home."

21 Justin sends another message: "And show you,
22 me, you there's a pic..." It's a little hard to read
23 here because it's kind of printed. "Take a pic right
24 now in the hotel room then."

25 He then sends another message after that:

1 "Quit capping."

2 She responds: "You want video of me, wait
3 until tonight."

4 His response to that: "Yeah, sure. I'll
5 believe it when I see it."

6 Justin sends a message: "Make a video of you
7 sucking dick too."

8 She responds: "You got it, my dog, I'm about
9 to drown another cup and you'll have it too."

10 He responds: "Hurry up then. Who you with
11 then or you getting," 'N word', from up there?"

12 She responds. It looks like there's an
13 acronym I'm not familiar with, "YAK WTF GO," and
14 there's an attachment of what appears to be an image
15 of a black male with an emoji over his face. This is
16 all still dated the 17th.

17 Justin sends a message: "Yeah, I bet, but
18 worth it."

19 She responds: "And it is."

20 He responds: "Aye." Sends another message
21 after that: "You a dump bitch." That last message I
22 read is dated on the 18th.

23 He then sends her a message: "Slug-ass
24 bitch."

25 She responds: "Thank you." And that's the

1 end of that conversation.

2 Q Okay. And was the last message on the 18th as
3 well?

4 A Yes.

5 Q Detective Shipp, can you identify Justin Carroll?
6 Do you see him in the courtroom today?

7 A I do.

8 Q All right. And can you point him out for the
9 record, please?

10 A He's at the defense table with a white button
11 up.

12 Q All right. And through your investigation --
13 which was from the 22nd to the 24th; is that right?

14 A Yes.

15 Q -- did you develop any other suspects besides
16 Justin Carroll?

17 A I was unable to develop any other suspect
18 other than Justin Carroll.

19 Q All right. Thank you. That's all I have for you
20 at this time.

21 THE COURT: Mr. Mathews, do you have
22 cross-examination, sir?

23 MR. MATHEWS: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MATHEWS:

1 Q Detective is it?

2 A Technically, my rank is Corporal. Detective
3 is just kind of a --

4 Q That was a job ability.

5 A More or less.

6 Q So, you were detective in this case?

7 A Yes, sir.

8 Q How many murder cases had you done as a detective
9 prior to this?

10 A Prior to this, none.

11 Q There was some discussion about you used
12 Mr. Carroll's driver's record, driver's picture to
13 come up with him as a suspect; is that correct?

14 A That is correct.

15 MR. MATHEWS: May I approach the witness?

16 THE COURT: Sure.

17 (DFT EXH. 3, DMV; Carroll, was marked for
18 identification.)

19 BY MR. MATHEWS:

20 Q Corporal, I'm handing you what has been marked as
21 Defendant's Exhibit Number 3 and ask if you can
22 identify that.

23 A This is Justin Carroll's DMV information.

24 Q And if you'll look at the time stamp on the bottom
25 of that, did you obtain that on the right -- just

1 after midnight on May 23rd?

2 A That is correct.

3 Q Okay. So you got that from the DMV and that
4 helped you move things along getting search warrants,
5 et cetera?

6 A It did.

7 Q All right.

8 MR. MATHEWS: May I introduce this into
9 evidence at this point? I am introducing this
10 into evidence at this point?

11 THE COURT: All right. Any objection to
12 defense 3? Is that right?

13 MR. MATHEWS: Yes, sir.

14 THE COURT: All right.

15 (DFT EXH. 3, DMV; Carroll, was entered into
16 evidence.)

17 MR. MATHEWS: May I publish, Your Honor?

18 THE COURT: Sure.

19 MR. MATHEWS: You'll have a change to
20 look at this back when you get to retire and all
21 the sort of stuff, but that's the driver's license
22 picture.

23 BY MR. MATHEWS:

24 Q Was it your job to be, kind of, the quarterback on
25 the team? Your job was to, kind of, say where things

1 went, and all that, during this investigation?

2 A As the lead investigator.

3 Q Not really a football guy?

4 A No, sir.

5 Q But you were in charge?

6 A I was in charge of the case, correct.

7 Q All right. And so -- and did you oversee things
8 that were taken into evidence?

9 A I was unable to see everything that was
10 collected. As I stated earlier, there were some
11 evidence that was collected prior to my arrival on
12 scene.

13 Q What time did you get on scene?

14 A Approximately 10:30-ish.

15 Q Who all was there when you arrived?

16 A The responding officers which included
17 Sergeant Hantz, Sergeant Lewis, Corporal Hartley
18 and Patrolman Ulmer.

19 Q Al Lewis there?

20 A I'm sorry?

21 Q Was Al Lewis there?

22 A Sergeant Lewis.

23 Q Ambulance not there yet?

24 A I don't remember if they were already there
25 or just -- right about the same time that I was

1 arriving on scene.

2 Q Okay. And all the evidence that you got, it when
3 to Jamie Bloodworth, right?

4 A To my knowledge, everything was logged. And
5 from that point, Officer Bloodworth is the
6 custodian of evidence at that point.

7 Q And there was fingerprints, correct?

8 A Yes.

9 Q Okay. And those fingerprints were billeted to be
10 sent to SLED to be examined, correct?

11 A That is correct.

12 Q And a report was made, correct? And received
13 back, correct?

14 A That is correct.

15 Q Okay. Trace evidence, I guess that would be the
16 GSR, that was sent to SLED also, right?

17 A Yes, sir.

18 Q A report was received back?

19 A Yes, sir.

20 Q And the firearm was sent -- the shells, correct?

21 A Yes. The casings and fragments.

22 Q Okay. And that was earmarked to SLED to go to
23 both firearms and to DNA; is that correct?

24 A Yes.

25 Q Officer Hantz's piece of hard red candy, that was

1 received and sent to SLED for DNA; is that correct?

2 A Yes, sir.

3 Q And a report was received back; is that correct?

4 A Yes, sir.

5 Q All right. Am I missing anything? Let's see.

6 Firearms, trace, fingerprints and DNA all were sent to
7 SLED and reports were received on all four of those
8 things, correct?

9 A Yes.

10 Q The rounds, the shells that were found on the
11 scene were sent to DNA and to firearms, right?

12 A Yes.

13 Q Okay. And fingerprints, just to fingerprints?

14 A Yes, sir.

15 Q Do you know where the fingerprints were taken
16 from?

17 A I lifted them from the silver Lexus.

18 Q All right. And where were the shells found?

19 A I was advised roughly of their location.

20 Like I said, they were collected prior to my
21 arrival. They were all predominantly located on
22 the driver's side of the victim's vehicle.

23 Q You had mentioned taking a gunshot residue and you
24 mentioned putting on gloves. Why do you put on
25 gloves?

1 A So I don't contaminate it.

2 Q Okay. What happens if -- do you normally wash
3 your hand before you put on the gloves?

4 A I don't recall washing my hand before.

5 Q Okay. In fact, you didn't. There's a video of it
6 and you, in fact, did not wash your hands before.

7 A I don't think I have ever.

8 Q So you do that. But as you handle the gloves, if
9 you handle on the outside of the gloves, you could
10 have transferred whatever at that point to, correct?

11 A That is possible.

12 Q Okay. So you want to be -- and when you were --
13 you took this when you were interviewing Mr. Carroll,
14 correct?

15 A We had made contact with him at the traffic
16 stop and he was brought to investigations and GSR
17 was performed at that point.

18 Q Initially, he consented, and then, at some point,
19 you asked some questions, he saw where things were
20 going --

21 MS. SWANSON: Objection, Your Honor.

22 MR. MATHEWS: I can show the video if you
23 want to see it.

24 THE COURT: Hold on. What's your
25 objection?

1 MS. SWANSON: He's asking about
2 inadmissible hearsay.

3 THE COURT: I'm going to send you-all out
4 and take a break for a few minutes. Don't talk
5 about the case and I'll get you back in here as
6 soon as I can. Thank you.

7 (Jury exits the courtroom at 3:23 p.m.)

8 THE COURT: So, Mr. Mathews, what was
9 your question again? Remind me.

10 MR. MATHEWS: I think I asked him was he
11 interviewing the defendant when the defendant
12 asked for his Mirandas. He initially in the
13 beginning -- he asked him, *Would you consent to a*
14 *GSR?* He said he would. They asked some more
15 questions. He invoked his right to counsel.

16 THE COURT: So what's your objection,
17 Counsel?

18 MS. SWANSON: That's hearsay.
19 Mr. Mathews is eliciting testimony that is
20 hearsay. His client is not a party opponent. It
21 falls under no exceptions.

22 If he wants to testify, he can take the
23 stand and be cross-examined, but that is hearsay.
24 The defendant's testimony that he is eliciting
25 through a witness is hearsay. What exception --

1 THE COURT: What about that, Mr. Mathews?

2 MR. MATHEWS: I think that's great. That
3 means no confessions ever come in. No statements
4 ever come in.

5 I think it's -- it's hard for me to
6 imagine that somebody eliciting a -- saying they
7 have invoked their Miranda, I mean, that's -- this
8 is a first for me, I got to say.

9 THE COURT: What about it, Solicitor?
10 Why is it hearsay? Why is it -- what was the
11 question? Mr. Mathews was asking him a question
12 about when he took the -- when he took the sample
13 and then questioned him. What's the hearsay?
14 What's the hearsay?

15 MS. SWANSON: The defendant's --

16 THE COURT: Because it's not a statement
17 against interest?

18 MS. SWANSON: The defendant's statements
19 are all hearsay.

20 THE COURT: Okay.

21 MS. SWANSON: Because --

22 THE COURT: So if he confessed to him,
23 that's not hearsay, though, right?

24 MS. SWANSON: Not for me because I'm a
25 party opponent -- or he's a party opponent.

1 THE COURT: All right.

2 MS. SWANSON: Mr. Mathews --

3 THE COURT: Well, what are you trying to
4 get at, Mr. Mathews? Let me understand that.

5 MR. MATHEWS: He asked -- and, actually,
6 this is not to prove the truth of the matter
7 asserted, so it's not hearsay. It's not.

8 THE COURT: Well, what are you trying
9 to -- what is the question you want to ask?

10 MR. MATHEWS: I want to ask him, you
11 started to take GSR. He asked for his lawyer, and
12 you continued to take his GSR after that. That's
13 what I'm getting at with those questions. I also
14 wanted to continue to ask questions about protocol
15 and all that. What he did to keep this all safe.

16 THE COURT: Well, protocol, I think
17 that's -- I mean, you can ask him questions about
18 protocol.

19 Solicitor, yes, ma'am.

20 MS. SWANSON: I agree protocol, but
21 eliciting statements made by his client is
22 hearsay. It's hearsay all day long.

23 MR. MATHEWS: Your Honor, that doesn't
24 make sense.

25 THE COURT: Well, he's not a party

1 opponent. I do agree with that, Mr. Mathews.

2 Hold on one second.

3 MS. SWANSON: There is no exception.

4 MR. MATHEWS: No. Hearsay is something
5 to prove the truth of the matter asserted. Asking
6 for your lawyer doesn't prove anything other than
7 *I want a lawyer.* It's not proving a fact that's
8 in controversy.

9 THE COURT: Well, I mean, Mr. Mathews, if
10 you're asking a question, did he ask for a lawyer,
11 I mean, that is -- what are you offering that for
12 that's not -- I mean, it seems to me -- you just
13 said you were asking the question because you want
14 to get at that he asked for a lawyer. I mean,
15 that's exactly offered for the proof of the matter
16 asserted, right?

17 MR. MATHEWS: Well, not as to a material
18 fact.

19 THE COURT: Oh.

20 MR. MATHEWS: This is a series of -- I'm
21 only trying to show that he asked for a lawyer.
22 They went ahead and they took this anyway after he
23 asked for a lawyer. He consented -- Your Honor
24 has ruled some on this anyway.

25 THE COURT: Well, yeah. But that's a

1 legal matter, Mr. Mathews. I don't think that's a
2 matter for the jury. I think that's a legal issue
3 as it relates to this matter. What are you going
4 to ask the jury, to decide whether or not it was
5 appropriate or not, for a point of law? I mean,
6 I'm asking. It seems to me that's a -- you're
7 right. I did rule. We did get into this. And so
8 that seems to me that's a legal matter. You can't
9 sit there and let the jury decide, *Wait a second,*
10 *he asked for his lawyer and so we really can't*
11 *consider this.*

12 MR. MATHEWS: Your Honor, I think that
13 when you look at *Jackson v. Denno*, some of the
14 things, the admissibility, voluntariness of
15 statement is, the first instance, a matter of law,
16 but it's also something the jury can consider.

17 And this is a -- there's not -- I'm
18 not -- this is a small point. It just astounds me
19 that the kinds of objections that I'm getting, it
20 is a -- I'm overstating that a bit.

21 THE COURT: I've seen a lot of crazier
22 objections. Not that this is a crazy objection.
23 Don't get me wrong.

24 What I'm going to do is this: I'm going
25 to sustain objection. I think that it is -- as I

1 heard you talk to the solicitor, I absolutely
2 believe it's eliciting -- you're asking it. I
3 think it is hearsay. He's not a party opponent.
4 And, basically, you're eliciting it to show that
5 he asked for an attorney. And I also don't think
6 it's appropriate for the jury to make a
7 formulation about whether this was taken after he
8 asserted his rights to counsel. That was a legal
9 issue that came up. I'm going to sustain that
10 objection.

11 All right. Anything else before we bring
12 the jury back in? We'll take a break for a few
13 moments.

14 MR. MATHEWS: I'm good.

15 THE COURT: Let's take five minutes,
16 okay? Thank you-all.

17 (A break was taken from 3:29 p.m. to 3:44 p.m.)

18 THE BAILIFF: All rise.

19 THE COURT: All right. You can be
20 seated. Thank you.

21 All right. Is it my understanding that
22 the State has one other witness they want to call
23 today?

24 MS. SWANSON: A very quick Verizon
25 witness, and then historical site analysis

1 expert.

2 THE COURT: All right. And then how many
3 witnesses you got tomorrow?

4 MS. SWANSON: Three.

5 THE COURT: And you may have three?

6 MR. MATHEWS: Your Honor, I have one
7 that's coming at 2:00, so if we --

8 THE COURT: 2:00 when?

9 MR. MATHEWS: 2:00 p.m. tomorrow.

10 THE COURT: Oh, yeah. We're good. We'll
11 get it. Anything before we bring the jury back
12 in, Mr. Mathews?

13 MR. MATHEWS: Nothing further, Your
14 Honor.

15 THE COURT: All right. Anything before
16 we bring the jury back in?

17 MS. SWANSON: No, Your Honor.

18 THE COURT: Let's get the jury back in.

19 (Jury enters the courtroom at 3:46 p.m.)

20 THE COURT: All right. Mr. Foreman,
21 ladies and gentlemen, we are ready to proceed.

22 I'm going to sustain the Solicitor's
23 objection.

24 And so, Mr. Mathews, I need you to go
25 ahead and you can continue with your

1 cross-examination of Mr. Shipp, sir.

2 MR. MATHEWS: Thank you, Your Honor.

3 BY MR. MATHEWS:

4 Q When you were interviewing Mr. Carroll during the
5 time when you took the GSR sample, you were wearing
6 your side arm, were you not?

7 A I was.

8 Q Okay. And at a time earlier, when he was picked
9 up, did you have your side arm drawn at that time?

10 A I did not.

11 Q Okay.

12 All right. At the end of the day, what do
13 you do with your side arm, your pistol, your weapon?

14 A At the end of the day, I secure it and put it
15 in a safe.

16 Q You put it in a safe?

17 A Yeah.

18 Q All right.

19 MR. MATHEWS: I don't have anything
20 further, Your Honor.

21 THE COURT: Thank you, Mr. Mathews.
22 Anything else, Solicitor?

23 MS. SWANSON: Just briefly.

24 REDIRECT EXAMINATION

25 BY MS. SWANSON:

1 Q In reference to Defendant's Exhibit 3, the DMV
2 picture, do you have any idea when this picture was
3 taken?

4 A The DMV photo?

5 Q Yeah. Would you have any information as to
6 when --

7 A I have no way of telling you when that
8 particular picture was taken.

9 Q Okay. So you don't know if he appeared that way
10 at 10:07 on May 22nd, 2021?

11 A I have no way of knowing for sure.

12 Q All right, thank you.

13 MS. SWANSON: That's all I have.

14 THE COURT: Mr. Mathews, do you have
15 anything else, sir?

16 MR. MATHEWS: Just briefly.

17 RECROSS-EXAMINATION

18 BY MR. MATHEWS:

19 Q But you used that picture to locate Mr. Carroll,
20 correct?

21 A So the DMV photo was used to identify
22 Mr. Carroll against the pictures.

23 Q Okay. He looked then about how he looks now,
24 right?

25 A Correct.

1 Q Thank you.

2 MR. MATHEWS: No further questions.

3 THE COURT: Anything else?

4 MS. SWANSON: No.

5 THE COURT: Thank you, Mr. Shipp.

6 THE WITNESS: Thank you.

7 THE COURT: You can call your next
8 witness, Solicitor.

9 MS. SWANSON: Thank you. The State calls
10 Courtney Daniels.

11 MR. MATHEWS: Is this the Verizon records
12 custodian? Because I have not heard that name
13 before.

14 MS. SWANSON: That's correct.

15 THE CLERK: Come forward to be sworn.
16 Raise your right hand. Put your left hand on the
17 Bible. Do you affirm the testimony you give the
18 Court shall be the truth so help you God?

19 THE WITNESS: Yes.

20 THE CLERK: Please have a seat in the
21 witness stand. State your name after you're
22 seated and spell your last name.

23 THE WITNESS: Courtney Daniels,
24 D-a-n-i-e-l-s.

25 WHEREUPON:

1 COURTNEY DANIELS,
2 after having been sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SWANSON:

5 Q Thank you, Miss Daniels. Who do you work for?

6 A Verizon Wireless.

7 Q And what is your title?

8 A I'm a custodian of records.

9 Q Okay. So as part of your duties, you go to court?

10 A Yes.

11 Q All right. And authenticate records that are
12 obtained?

13 A Correct.

14 Q And how are those records typically obtained?

15 A The records are obtained by a requester.
16 Typically, a law enforcement officer reaching out
17 to our Verizon security assistance team through a
18 subpoena or search warrant.

19 Q Okay. And so the case that we're here for today,
20 Verizon was served with a search warrant and that was
21 responded to, right?

22 A Yes.

23 Q And that was for location data for phone number
24 [REDACTED]?

25 A Yes. As well as other information, but, yes,

1 that was part of it.

2 (STATE EXH. 39, Verizon Records, was
3 marked for identification.)

4 BY MS. SWANSON:

5 Q Okay. I'm going to hand you what has been marked
6 as State's Exhibit 39 and ask if you can identify
7 what's contained on this disk.

8 A Yes.

9 Q And what's contained on that disk?

10 A These are the cell phone records for the
11 phone that you just stated as well as the text
12 message content, call records, all TT records, any
13 other requested information from the search
14 warrant.

15 Q Okay. And you initialed that as having reviewed
16 that it was a fair and accurate copy of those
17 records?

18 A Yes, I did.

19 Q Okay, thank you.

20 MS. SWANSON: I would ask to enter
21 State's 39 at this time.

22 THE COURT: Mr. Mathews?

23 MR. MATHEWS: Subject to my previous
24 objection.

25 THE COURT: All right. Yes, sir.

1 Subject to the previous objection.

2 (STATE EXH. 39, Verizon Records, was entered
3 into evidence.)

4 BY MS. SWANSON:

5 Q Miss Daniels, that is all I have for you.

6 A Thank you.

7 THE COURT: Do you have anything,
8 Mr. Mathews?

9 MR. MATHEWS: I do, Your Honor, just very
10 briefly.

11 THE COURT: Sure.

12 CROSS-EXAMINATION

13 BY MR. MATHEWS:

14 Q I notice that you don't have any reports with you
15 today; is that correct?

16 A We don't bring the reports. The records are
17 provided to the requester, and those are records
18 that I have verified that were sent per the search
19 warrant.

20 Q Okay. How many different venues do you respond
21 to?

22 A I don't understand the question.

23 Q How many -- have you ever testified before?

24 A Oh, absolutely.

25 Q How many times about?

1 A Oh, it might be over 40 at this time.

2 Q Okay. And have they all been in Walterboro?

3 A No.

4 Q Okay. What other places have you testified?

5 A All across the country.

6 Q All right. Just a few minutes ago when you were
7 standing there with no report and Miss Swanson read to
8 you a series of numbers on the report, did you
9 memorize that?

10 A Well, I reviewed the records, not only
11 yesterday, but before coming to court so the
12 number is fresh in my mind.

13 Q What was the number again?

14 A 843 -- I know the last four numbers are [REDACTED].
15 When I hear it, I know what the number is.

16 Q [REDACTED] you think?

17 A Yes, sir. I think that's the number. I'd
18 have to see. When I hear it, I know that
19 number.

20 Q All right. And so you don't just -- really just
21 answer whatever the solicitor asks you. You're
22 thinking for yourself here?

23 A Oh, absolutely. It's based on the records.

24 Q Okay.

25 MR. MATHEWS: Your Honor, let the record

1 reflect that the number is [REDACTED] not [REDACTED].

2 Anyway, no further questions.

3 THE COURT: All right. Anything else,
4 Solicitor?

5 MS. SWANSON: Just briefly.

6 REDIRECT EXAMINATION

7 BY MS. SWANSON:

8 Q Miss Daniels, is the number actually written on
9 the disk that you reviewed?

10 A Yes.

11 Q Okay, thank you. And you verified all of this?

12 A Yes. Yesterday as well as this morning.

13 Q Thank you.

14 MS. SWANSON: Nothing further.

15 THE COURT: Anything else, Mr. Mathews?

16 MR. MATHEWS: No, sir.

17 THE COURT: Thank you very much, ma'am.
18 Have a great day.

19 MS. SWANSON: Thank you, Miss Daniels.

20 The State calls Dylan Hightower.

21 THE CLERK: Place your left hand on the
22 Bible, raise your right. Do you affirm the
23 testimony you're about to give the Court shall be
24 the truth so help you God?

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Please have a seat on the
2 witness stand. State your name for the record and
3 spell your last name.

4 THE WITNESS: My name is Dylan Hightower,
5 H-i-g-h-t-o-w-e-r.

6 WHEREUPON:

7 DYLAN HIGHTOWER,
8 after having been sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SWANSON:

11 Q Mr. Hightower, do you have a copy of your report
12 that you did in this case?

13 A Yes, ma'am, I do.

14 Q Okay. I just wanted to make sure I didn't need to
15 hand it up.

16 All right. And I should call you
17 investigator, right?

18 A Sure.

19 Q Who do you work for?

20 A I work for the 14th Circuit Solicitor's
21 Office as an investigator. I also supervise the
22 criminal intelligence unit.

23 Q All right. And do you ever help agencies with
24 cell phone mapping?

25 A I do, among other things.

1 Q All right. And tell us what experience have you
2 in that field?

3 A So, mainly, I'm focused on -- obviously, it's
4 2024. Things are much different technology-wise
5 than they were 10, 15 years ago. What I
6 specialize in and what I focus on is called
7 historical cell site analysis where you basically
8 understand the cellular network, how a device
9 connects to a cellular tower, how to analyze and
10 interpret call detail records, and basically use a
11 mapping software in order to basically identify
12 the general location of a device as it's in use
13 with a cellular network.

14 Q Okay. And what training have you had in that
15 field?

16 A May I refer to my notes?

17 Q Yes, sir, please.

18 A In 2010, I graduated from the University of
19 South Carolina with a Bachelor's of Arts degree in
20 sociology.

21 In 2011, I attended a full week on-the-job
22 training to become a SLED-certified criminal
23 intelligence analyst. In 2011, later in 2011, I
24 attended a course for PenLink analysis training
25 school.

1 In 2013, I became a Class I law enforcement
2 officer with the South Carolina Criminal Justice
3 Academy.

4 In 2014, I attended class for emergent
5 technology solutions for the fundamentals of call
6 detail records analysis.

7 In 2015, I attended a course of gladiator
8 forensics where we run ESPA and GAR. ESPA stands for
9 Enterprise Sensor Processing Analytics. And GAR
10 stands for Gladiator Autonomous Receiver. That
11 essentially teaches you and shows you the digital
12 footprint of a cellular tower in a live format.

13 In 2017, I became a mobilized cellular
14 forensics operator which is a -- at the time it was a
15 digital extraction tool to extract data from a
16 physical phone.

17 In 2018, I attended a course through the FBI
18 called the CAST Team. That was a course on historical
19 cell site analysis. CAST standing for Cellular
20 Analysis Survey Team. It's a specialized team that
21 the FBI uses to teach law enforcement throughout the
22 entire United States proper techniques on historical
23 cell site analysis.

24 In 2022, I attended a course in Hoover,
25 Alabama, the National Computer Forensics Institute on

1 ransomware incident response training. Among other
2 things, they had training in Cellebrite, a mobile
3 extraction tool. And I've also been a member of the
4 National Domestic Communications Assistance Center.
5 Again, they offer a lot of tools in law enforcement in
6 the field of cell site analysis.

7 Q Can you just briefly tell the jury what historical
8 cell site analysis is?

9 A Yes. So it's essentially, a search warrant
10 is executed on a specific target, or a cellular
11 telephone number. You determine the network
12 provider, so Verizon, AT&T, things like that. The
13 reports are then obtained by Verizon and sent to
14 the law enforcement agency. I obtained those
15 records. What the classes had taught me in the
16 past is how to interpret and analyze the data and
17 utilize the mapping software to determine the
18 general location of that device as it's connected
19 to the cellular network.

20 MR. MATHEWS: Your Honor, for the record,
21 I would stipulate that he is an expert witness. I
22 don't need to voir dire him on that.

23 MS. SWANSON: Okay, thank you. I would
24 ask that Investigator Hightower be qualified as an
25 expert in historical cell site analysis.

1 THE COURT: All right. Ladies and
2 gentlemen, normally a person cannot give opinion
3 testimony. Normally, when a person testifies,
4 that individual must testify as to what they saw,
5 heard, smelled, sensed, or something of that
6 nature. However, there is an exception when
7 someone is qualified because of education or
8 experience and they are permitted to give their
9 opinion in certain areas if the Court qualifies
10 them that way.

11 Ladies and gentlemen, this witness will
12 be qualified in the area of historical cell site
13 analysis and will be able to give opinion
14 testimony in that area.

15 However, that does not mean that you must
16 accept the opinion, but it is evidence for you to
17 use in any way you see fit, ladies and gentlemen.

18 You can continue, yes, ma'am.

19 MS. SWANSON: Thank you.

20 BY MS. SWANSON:

21 Q And were you asked to analyze records from Verizon
22 in this case?

23 A Yes, ma'am, I was.

24 Q All right. And what was the target number?

25 A The target number in this case was

1 [REDACTED] [REDACTED].

2 Q Okay. Were those records that were provided by
3 Verizon?

4 A Yes, ma'am, they were.

5 Q Okay. What time frame did you look at data
6 from?

7 A So the search warrant was for the time frame
8 from May 22nd of 2021, 7:08 hours -- excuse me.
9 1908, so 7:08 p.m. of that evening to 1:56 a.m. on
10 May 23rd of 2021.

11 Q All right. And did you prepare some diagrams to
12 aid in your testimony?

13 A Yes, ma'am, I did.

14 (STATE EXH. 25, Cell Site Diagram, was
15 marked for identification.)

16 BY MS. SWANSON:

17 Q I'm going to show you what has been marked as
18 Exhibit 25. Do you recognize this diagram?

19 A Yes, ma'am, I do.

20 Q Is this what you prepared?

21 A Yes, ma'am.

22 MS. SWANSON: All right. I would enter
23 25 at this time and ask that the witness be
24 allowed to come off the stand.

25 THE COURT: Any objection?

1 MR. MATHEWS: No, sir.

2 THE COURT: All right. So 25 is admitted
3 without objection, Solicitor.

4 MS. SWANSON: Yes. And I don't know if
5 Mr. Mathews wants to come over.

6 THE COURT: Anytime anybody wants to
7 move, they can move any time they want to, any of
8 my lawyers.

9 (STATE EXH. 25, Cell Site Diagram, was
10 entered into evidence.)

11 BY MS. SWANSON:

12 Q All right. So just explain to us what we're
13 looking at and what you can deem from the phone calls
14 that were associated with that target number. Was
15 that connected to Justin Carroll?

16 A Yes. The phone number was provided to me as
17 this number belonging to Justin Carroll, yes.

18 Q Okay.

19 A So this is the cell towers that were in use
20 and the sectors that were in use during this
21 specific time frame. All a sector is is the
22 general area or the site of the tower that was in
23 use. It's broken down into 123 sectors, so you
24 have basically like -- you look at a piece of
25 plywood breaking down to 123 pieces. You have

1 sector 1, 2, and 3. That's what these all
2 indicate. So the side of the tower that was in
3 use at that specific time.

4 This is all between 1908, so 7:00 p.m. on
5 May 22nd to 1:56 a.m. on May 23rd. There were
6 additional towers that were in use in the Charleston
7 area, the Johns Island area. During this time frame,
8 the device actually goes back into this general
9 vicinity and hours after that.

10 So starting off at 1908, the cell phone
11 number [REDACTED], that device connected with
12 tower 240, sector 1. So that would be this sector
13 here. Directly due North on tower 240. That was an
14 outgoing call that lasted for a duration of 37
15 seconds.

16 At 7:20 p.m., again, tower 240, sector 1, was
17 an outgoing call for a total of 39 seconds.

18 At 7:21 p.m., again, tower 240, sector 1, was
19 an incoming call that lasted for a total of 183
20 seconds.

21 At 7:34 p.m. tower 240, sector 2 -- so the
22 device moved from this sector to this sector and
23 connected to the network during that time frame.
24 That's something to keep note of. The sector
25 information here on the side of the tower was in use.

1 The general vicinity would be around right in here
2 where that device was in use at the time it connected
3 to that tower.

4 Q And what time was that?

5 A That was at 7:34 p.m. when it went to tower
6 240, sector 2.

7 Again, at 7:37, tower 240, sector 2. So
8 again down in this general area.

9 At 8:44 p.m., tower 240, sector 2, once
10 again.

11 Moving on to 9:22 p.m., tower 240, sector 1
12 here.

13 Moving on to 9:24 p.m., tower 240, sector 1
14 here.

15 9:48 p.m., tower 240, sector 1.

16 At 9:55 p.m., the target number connected to
17 tower 282, which would be this here, sector 1. Again,
18 the general vicinity right in here.

19 Q So does that mean that the device moved up further
20 into this area?

21 A It's tough to determine based off of this
22 data here. It could be here, it could be here, it
23 could be here (indicating). I mean, with the
24 towers so close to each other, I've seen them
25 bounce back and forth. Because it's more of an

1 urban area, the towers are much closer.

2 Q But in this general vicinity.

3 A Correct, this general vicinity.

4 And then at 10:15 p.m., tower 204, sector 2,
5 which would be this tower here pointing in this
6 direction. So, again, kind of in this general
7 vicinity.

8 And then at 10:16 p.m., tower 82, sector 1,
9 again, back down here, around the area of where the
10 incident location took place.

11 Then at 10:17 p.m., the device started moving
12 out east of downtown Walterboro heading in the
13 direction of Highway 17 towards Charleston. So, we
14 saw the device move to this tower 205. Again, that's
15 at 10:17 p.m., sector 2.

16 At 10:58, it received an incoming call
17 utilizing tower 355, which is around -- just on the
18 outskirts of Johns Island. Again, going down like
19 you're 64 to 17 and going north on 17.

20 Again, at 1:18 a.m., tower 355. Again, the
21 Johns Island tower.

22 Then 1:32 a.m., tower 435 which is in the
23 Jacksonboro area of Colleton County coming back into
24 the county. And then again back to tower 220. Again,
25 just outside of this map area here.

1 Q And that's the extent of the information that you
2 have?

3 A Correct. That was all the data that was
4 recovered. It was a total of 19 calls that were
5 recovered via search warrant from Verizon.

6 Q Okay, thank you. You can take the stand again.

7 (STATE EXH. 26, Overall Map, was marked for
8 identification.)

9 BY MS. SWANSON:

10 Q I'm going to show you what has been marked as
11 State's Exhibit 26 and ask what is contained in this
12 exhibit.

13 A Yes. This is the overall map that
14 incorporates the other towers that weren't
15 depicted on the larger map.

16 Q Okay. And that's a fair and accurate depiction of
17 the diagram that you prepared?

18 A Yes, it is.

19 MS. SWANSON: State would enter 26 into
20 evidence at this time.

21 MR. MATHEWS: Subject to my previous
22 objection.

23 THE COURT: All right. Subject to his
24 previous objection. Yes. Thank you, Mr. Mathews.

25 MS. SWANSON: And move to publish.

1 THE COURT: Yes, ma'am.

2 (STATE EXH. 26, Overall Map, was entered
3 into evidence.)

4 BY MS. SWANSON:

5 Q I'm not going to have you go through all of that
6 again. I just want to put this up just to make sure
7 the jury understands what it is.

8 So this map contains -- now, this is what we
9 just looked at, correct?

10 A Yes, ma'am. That's correct.

11 Q Okay. And then this is everything that happened
12 further off out of the county?

13 A Correct. There were three other towers that
14 were utilized. I misquoted earlier regarding
15 tower 435. Tower 435 is actually in the Ravenel
16 area. Tower 220 is in the Jacksonboro area.

17 Q Okay. All right. Thank you.

18 I think that's all I have, Investigator.
19 Please answer any questions Mr. Mathews may have
20 for you.

21 MR. MATHEWS: May it please the Court?

22 THE COURT: Yes, sir, Mr. Mathews.

23 MR. MATHEWS: May I approach the witness?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. MATHEWS:

2 Q Mr. Hightower, may I see your report that you were
3 referring to?

4 A Absolutely.

5 Q I'm going to hand you back your report and I'm
6 also going to hand you a report that I received
7 through discovery and ask if you can identify each of
8 them.

9 A Yes, sir.

10 Q Okay. Is there a difference between the report
11 you looked at today and the report -- is the other
12 report also your report?

13 A It was my original one that I sent out, yes.

14 Q Okay. Are there any defects or problems with the
15 original report you did?

16 A So the original report, the header on my
17 template was from a previous case that I had to
18 change and the data that I analyzed for Justin
19 Carroll's phone number. But, yes, that's the only
20 difference between this report and the report --

21 Q It was a cut and paste or whatever from the
22 different report?

23 A Well, the header and the footer automatically
24 saves from a template from your previously case,
25 so it wasn't really a cut and paste.

1 Q Okay.

2 MR. MATHEWS: May I approach again to get
3 this back?

4 THE COURT: Of course.

5 BY MR. MATHEWS:

6 Q So in your initial report, you had this listed as
7 a case involving Jay Chaneyfield, S. Boyd, and J.
8 Boyd, does that sound right?

9 A That is correct.

10 Q And the agency in that case, rather than the
11 Walterboro Police Department was the Bluffton Police
12 Department?

13 A That's correct.

14 Q Okay. And the investigating officer, instead of
15 Officer Shipp was Sergeant Fazekas?

16 A Yes, sir. That's correct.

17 Q But you remain the same, D. Hightower. Or as I
18 like to refer to you as Dylan Celltower?

19 A Yes, sir.

20 Q All right. You received the Verizon -- I'll hand
21 yours back.

22 You reviewed some records that were sent to
23 you from Verizon, correct?

24 A Yes, sir. That's correct.

25 Q And you came up with just two pages worth of

1 numbers. What did you receive from that? How much
2 data did you receive from that?

3 A So, essentially, every time a device connects
4 to the network. So you have like your data
5 transactions, any time you log into your social
6 media account. Any time you access that network
7 outside of making a phone call, it would connect
8 to a specific cellular tower at that time, as well
9 as the call detail records which is what I
10 analyzed involved in this case among other PDS
11 explaining what each report depicts and how to
12 read it. It also incorporates the cell site
13 listing which gives you the tower location,
14 latitude, longitude, and the physical address of
15 each of those towers which is what I use to
16 document the tower's use for whatever specific
17 tower I'm referring to.

18 Q So you receive things, like, information, was it a
19 text, was it a phone call, was it a call out or call
20 in, all that stuff is in the Verizon report you get?

21 A It is.

22 Q Okay. And so your report is two pages. Did you
23 reduce any of those things to print or did you review
24 them all on-line? How did you do that?

25 A In most scenarios, I'm reviewing all the

1 transaction or the connections with the cellular
2 network. So I'm looking at your caller detail
3 records, your data transactions to determine,
4 again, the device's general location as it's in
5 use with the cellular network. I did not review
6 any text message content information. I don't
7 believe it was retained in time to obtain those
8 records from Verizon.

9 Q It wasn't retained in time? I thought -- the
10 search warrant that you got is attached to that.
11 Wasn't that in June, June 3rd of 2021?

12 A The search warrant that I received with the
13 packet was sent out on June 7th, 2021.

14 Q June 7th, okay. They didn't have the messages at
15 that point in the text? None of that information was
16 included?

17 THE COURT: Hold on. Yes, ma'am.

18 MS. SWANSON: Objection. Verizon would
19 be the appropriate party to ask that question to.

20 THE COURT: All right.

21 MS. SWANSON: How is Investigator
22 Hightower to know?

23 THE COURT: Well, he's an expert witness.
24 These are things he relies on on a regular basis.
25 I'm going to allow him to proceed with that. I'm

1 going to overrule your objection, ma'am. Thank
2 you.

3 BY MR. MATHEWS:

4 Q Go ahead.

5 A So generally within a five- to seven-day
6 window, or whenever the crime was committed, if a
7 preservation was not attached on that specific
8 account, you could lose specific information.

9 Q Okay.

10 A One of those being text messages.

11 Q Do you know whether a preservation letter was sent
12 by Officer Shipp or anybody else in this case?

13 A I do not.

14 Q Okay. But you would expect -- that would be the
15 normal thing to do, right? If you want to protect the
16 records, you send the protection letter.

17 A Well, it depends on what time we obtain the
18 cellular number and all that.

19 Q And you didn't need that for what you wanted to
20 do.

21 A Correct.

22 Q So this must have been a pretty sparse couple of
23 pages?

24 A What do you mean?

25 Q The information that you got, since it didn't

1 actually have the text of any texts or the content any
2 of phone calls or anything like that, it must have
3 been just a little bit of information that you
4 received. That's true or that's not true?

5 A Well, most scenarios, you will get a lot --
6 an exorbitant amount of data from -- depending on
7 how much use that particular user uses their cell
8 phone.

9 In this particular example, the only records
10 that were obtained from Verizon were 19 phone calls,
11 but it was a very shortened time frame from just a
12 couple hours before the incident occurred to a few
13 hours after.

14 Q Okay. Nineteen phone calls was what you had?

15 A That is correct, yes.

16 Q So whatever you sent and put into evidence.com or
17 whatever, it would be about 20 pages. Or not even
18 that. Two pages, three pages, something like that?

19 A Four pages including my visuals.

20 Q All right. If you had all the rest of that stuff,
21 as an expert, since you did study that, phone
22 extraction and things like that, a garden variety
23 phone, how much data -- and you can use bytes,
24 megabytes, you can use pages, whatever you need -- how
25 much data would you see in a normal phone dump?

1 A Are you talking about the specific LG phone
2 in this case?

3 Q No. I'm talking about -- well, you said iPhone.
4 Not the LG. The iPhone, how much?

5 A I mean, it could be anywhere from, you know,
6 two to three megs to now 128 to 164, 200 gigs. I
7 mean, it could be a lot of data.

8 Q So in terms of paper, how much paper would that
9 be?

10 A Thousands of pages.

11 Q Okay.

12 All right. And, obviously, in looking at
13 this, you got to have good attention to detail, I
14 suppose.

15 A Yes, sir.

16 Q Okay.

17 MR. MATHEWS: I don't have any further,
18 Your Honor.

19 THE COURT: All right. Thank you.

20 Solicitor, do you have any redirect?

21 MS. SWANSON: Just to clarify.

22 THE COURT: Yes, ma'am.

23 REDIRECT EXAMINATION

24 BY MS. SWANSON:

25 Q Investigator Hightower, the data that is contained

1 in your report that you just testified to is it all
2 regarding Justin Carroll's phone number with the
3 records from Verizon not the Bluffton PD
4 investigation?

5 A That is correct. Again, the header and
6 footer on my template, that was the previous case
7 that I conducted a historical cell site analysis
8 in. I did not change the header for this
9 particular case.

10 Q Thank you.

11 MS. SWANSON: And may he be excused?

12 THE COURT: Of course. I was getting
13 ready to ask you. You beat me to the punch.

14 Any objection to Mr. Hightower being excused?

15 MR. MATHEWS: Your Honor, Mr.
16 Celltower.

17 THE COURT: I understand.

18 All right. Thank you so much, Investigator.
19 You're excused. Have a good day.

20 All right. Solicitor, Counsel, approach,
21 please.

22 THE COURT: What do you want to do? You
23 have another witness?

24 MS. SWANSON: Well, the three I have
25 coming tomorrow are coming from Columbia and

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF COLLETON

4 State of South Carolina,

5 vs. Transcript of Record
2021-GS-15-0472

6 Justin Carroll,
7 Defendant.

8
9
10 April 24, 2024
11 Walterboro, South Carolina
Volume III

12 B E F O R E:

13 The HONORABLE ROBERT J. BONDS

14
15 A P P E A R A N C E S:

16 Hunter Swanson, Assistant Solicitor
Julie Kate Keeney, Assistant Solicitor
17 David Mathews, Representing the defendant
18 Carlese Anderson, Representing the defendant

19

20

21

22

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

23

24

25

1 WHEREUPON:

2 SHAMEKA HOLLOWAY,

3 after having been sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SWANSON:

6 Q Thank you, Miss Holloway.

7 During the time that Cole and Donasia were
8 dating, did you-all get together?

9 A Yes.

10 Q About how many times?

11 A A lot.

12 Q Okay. And did you have an occasion to view his
13 appearance?

14 A Yes.

15 Q What did his hair look it?

16 A He always had hair.

17 THE COURT: Hold on. Speak up just a
18 little bit.

19 THE WITNESS: He has hair. He always had
20 hair on his head.

21 BY MS. SWANSON:

22 Q Did you ever see his head shaved?

23 A No, ma'am.

24 Q Thank you. Please answer any questions defense
25 may have?

1 MR. MATHEWS: No questions.

2 THE COURT: Okay, thank you.

3 MS. SWANSON: Thank you. State calls
4 Paul Greer.

5 THE COURT: All right.

6 THE CLERK: Raise your right hand. Left
7 hand on the Bible. Do you affirm that the
8 testimony you're about to give the Court in this
9 trial shall be the truth so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Take a seat in the witness
12 stand. State your name again for the record,
13 spell your last name, please.

14 THE WITNESS: My name is Paul Greer,
15 G-r-e-e-r.

16 WHEREUPON:

17 PAUL GREER,
18 after having been sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SWANSON:

21 Q Thank you. Agent Greer, who do you work for?

22 A I'm employed at the South Carolina Law
23 Enforcement Division, which is commonly known as
24 SLED.

25 Q And what do you do there?

1 A At SLED I'm a forensic scientist, but more
2 specifically a firearms examiner within our
3 forensic services laboratory.

4 Q Okay. And how long have you been there?

5 A I've been with SLED employed as a firearms
6 examiner for approximately 10 years.

7 Q And if you can tell the jury a little about your
8 background and training in that field?

9 A Sure. I received a Bachelor of Science in
10 biological sciences from the University of South
11 Carolina.

12 And upon my appointment at SLED, I began our
13 SLED finely-tool-marked portion of instruction. This
14 is an apprenticeship training program that's conducted
15 in house under the supervision of other
16 court-qualified examiners. During that time -- it was
17 pretty lengthy. It took approximately three years to
18 go through this training program. I completed
19 multiple written and practical examinations. I
20 assisted other examiners. Prepped their cases. And I
21 also conducted many microscopic comparisons during
22 that time.

23 At the conclusion of that training, I was
24 given a multi-part comprehensive final exam that
25 includes some case work. I successfully passed that

1 and was allowed to begin casework on my own.

2 Q Okay. And how many times have you testified as an
3 expert in court in the field of firearms and tool
4 marks at this time?

5 A Approximately 57 times.

6 Q Thank you.

7 MS. SWANSON: I would ask that
8 Agent Greer be declared an expert in firearms and
9 tool marks at this time.

10 THE COURT: Firearms and tool marks?

11 MS. SWANSON: Yes, sir.

12 THE COURT: Any objection.

13 MR. MATHEWS: Just one voir dire, or two.

14 THE COURT: Yes, sir. Go ahead.

15 VOIR DIRE

16 BY MR. MATHEWS:

17 Q Have I ever cross-examined you before today?

18 A I don't believe we've met before today.

19 Q All right. But you testified, you said, 56 times,
20 or something like that?

21 A Yes, sir. Over 50 times.

22 Q Okay.

23 MR. MATHEWS: No objections.

24 THE COURT: All right, thank you.

25 Ladies and gentlemen, I will qualify this

1 witness as an expert in the area of firearms and
2 tool marks, and remember that means that he can
3 give opinion testimony. That doesn't mean,
4 though, that you must accept the opinion, but it's
5 evidence for you to use any way you say see fit.

6 Yes, ma'am.

7 CONTINUATION OF DIRECT EXAMINATION

8 BY MS. SWANSON:

9 Q And Agent Greer, in fact, have you testified in
10 this courtroom before?

11 A Yes, ma'am, I have.

12 Q When was the last time you did that?

13 A Last January or February.

14 Q For what trial?

15 A That was for *State vs. Murdaugh*.

16 Q Okay. Were you asked to analyze items in the case
17 against Justin Carroll?

18 A Yes, ma'am, I was.

19 Q All right. I'm going to hand you State's Exhibit
20 10 and ask if you recognize these items. Well, first
21 of all, let me ask you -- State's Exhibit 10 is the
22 actual bag and there are certain items in that bag.
23 But tell us -- tell the jury about this bag.

24 A Sure. This is what we refer to as a heat --
25 sealed pouch. On it you will see several

1 different stickers and markings. One of them,
2 very important, is that top sticker that's labeled
3 and it has a number on top with -- it says
4 L21-10427, and then it's C, for container, and it
5 says container A.

6 When items are submitted to the SLED
7 laboratory, they are brought into our evidence control
8 department by agencies from all over the state of
9 South Carolina. They are given a unique SLED number,
10 which is that number we just read off, and they're
11 itemized accordingly.

12 At the time of that submission to the
13 laboratory, they are also -- those items are given
14 assignments to travel to the various departments
15 within our laboratory. That can be -- for
16 firearms, it would come to my department. We have
17 DNA trace, toxicology, computer crimes, latent
18 prints. So we have various departments. So that
19 all happens at the time of the submission,
20 typically. Items are submitted in steal
21 containers or brought up to our submission,
22 policy, and standards.

23 So I received this heat-sealed pouch. This
24 is container A. And inside the container are multiple
25 items. So State's Exhibit 10 is exhibited right here

1 on the sticker. Inside there are items. Would you
2 like me to open it?

3 Q Please.

4 MR. MATHEWS: Your Honor, I don't know if
5 the proper foundation has been set. May we
6 approach?

7 THE COURT: Sure.

8 MR. MATHEWS: He mentioned that an
9 evidence custodian takes it first. I don't think
10 they've shown the chain of custody to get to him.
11 I mean, I have the documents if they want to use
12 them. But, at this point, there is not the proper
13 foundation.

14 MS. SWANSON: These are non-fungible
15 items that have already been entered into
16 evidence. They were entered through the person
17 that collected them. They're in evidence.

18 MR. MATHEWS: It's an easy cure. I have
19 the documents.

20 MS. SWANSON: It's not your --

21 MR. MATHEWS: He just has to read that
22 person and that person and that person. I have
23 the documents. All he has to do is read them.

24 THE COURT: I'm going to order that he
25 reads them.

1 MR. MATHEWS: Thank you, Your Honor.

2 MS. SWANSON: Okay.

3 THE COURT: Let's put it this way, if he
4 puts them in evidence, you're going to have to
5 establish a chain.

6 MS. SWANSON: I did. The person that
7 collected --

8 THE COURT: He hadn't testified at all,
9 and he's the one that took it to SLED.

10 MS. SWANSON: It was sealed.

11 THE COURT: I didn't ask you that.

12 MS. SWANSON: It doesn't matter because
13 it's sealed and it's non-fungible. I have a case
14 if you'd like to see it.

15 MR. MATHEWS: For his purposes --

16 THE COURT: All right. I'm going to send
17 you-all out for just a minute. I'll get you back
18 in here as soon as I can. Thank you.

19 (Jury exits the courtroom at 9:55 a.m.)

20 THE COURT: All right. Mr. Mathews, yes,
21 sir.

22 MR. MATHEWS: Thank you, Your Honor. I
23 have both the SLED internal chain of custody and I
24 have the SLED laboratory submission receipt. Both
25 of those things were provided to me during

1 discovery.

2 I'm sure that this technician will do a
3 great job, but he still has to say how he got it
4 and who handled it before he got it. And one of
5 the reasons is, this was sent to firearms and to
6 DNA, and they had some questions about does DNA go
7 first or does firearms go first, and things like
8 that. It may be a fungible -- it may not be
9 fungible. An item has to trace -- I mean as to
10 firearms, but it certainly does as to DNA. And
11 the procedure and the chain of custody is
12 essential. And it puzzles me as to why the State
13 doesn't just want to follow the normal
14 procedures.

15 THE COURT: It puzzles me also, but let
16 me ask you this: What's stopping you from just
17 asking about it when you get up there, bamm, and
18 knocking it out? I mean, in other words, I
19 understand what it is you're saying. It does
20 puzzle me. Every case I've tried, fungible or
21 not, they go, bomp, bomp, bomp, and lead up to the
22 individual. In this case, the solicitor, for
23 whatever reason, hadn't done that.

24 But my question to you is: Your remedy
25 or what you want done, why can't that be

1 accomplished by you simply handing him those
2 documents -- because, believe me, I'd let you --
3 having him identify it and then saying, *Yeah, this*
4 *shows the chain of custody.*

5 MR. MATHEWS: I'll do that, Your Honor.

6 THE COURT: All right. That's what we're
7 going to do.

8 MS. SWANSON: Yes, sir.

9 THE COURT: All right. We'll get the
10 jury back in.

11 (Jury enters the courtroom at 9:57 a.m.)

12 THE COURT: All right. Ladies and
13 gentlemen, thank you. Welcome back.

14 Mr. Mathews, I'm going to overrule your
15 objection.

16 Solicitor, you can proceed.

17 MS. SWANSON: Thank you.

18 THE COURT: Yes, ma'am.

19 BY MS. SWANSON:

20 Q All right. We were talking about the VEST bag
21 which is what sealed items that are submitted to SLED
22 are put in, right?

23 A That's just a normal heat-sealed pouch and it
24 is sealed at the time that I receive it.

25 Q Okay. And does SLED accept any items that are not

1 sealed?

2 A No, they should not. Those issues are taken
3 care of at our evidence control stand, so they
4 should be submitted sealed. If not, they are
5 brought up to those standards and those procedures
6 are taken during the submission process.

7 Q Okay. Carmen Hartley whose name on these packages
8 had already testified that she collected these items
9 and sealed the packages. So SLED receives them
10 sealed, correct?

11 A Yes, ma'am.

12 Q And then you unseal them, right?

13 A Yes, ma'am. I will open the sealed packaging
14 to take an inventory of items within the
15 container.

16 Q And SLED keeps a chain of custody, correct?

17 A That's correct.

18 Q Okay. And so that tracks exactly where these
19 go?

20 A Yes, ma'am. The chain of custody will
21 document every person or place or location or
22 storage shelf that these items have been on during
23 their time at the SLED laboratory.

24 Q But do they remained sealed until they get to
25 you?

1 A Yes, ma'am, they should be sealed. If they
2 are not, there would be documentation to discuss
3 or determine the cause of that and address what
4 may have occurred.

5 (STATE EXH. 11, Cartridge Case, was marked
6 for identification.)

7 (STATE EXH. 12, Cartridge Case, was marked
8 for identification.)

9 (STATE EXH. 13, Cartridge Case, was marked
10 for identification.)

11 (STATE EXH. 14, Cartridge Case, was marked
12 for identification.)

13 (STATE EXH. 15, Cartridge Case, was marked
14 for identification.)

15 (STATE EXH. 16, Cartridge Case, was marked
16 for identification.)

17 BY MS. SWANSON:

18 Q Okay. And -- let's see. If you can go through
19 each of these and tell us if these are cartridge cases
20 that you analyzed for *State vs. Justin Carroll*. These
21 are State's Exhibits 12, 13 -- I'm sorry. 11, 12, 13,
22 14, 15, and 16?

23 A Yes, ma'am, I recognize these items.

24 Q Are you able to come to any conclusions about
25 these items?

1 A Yes, ma'am.

2 Q Tell us about your findings.

3 THE WITNESS: Your Honor, may I refer to
4 my notes?

5 THE COURT: Of course. Yes, sir. '

6 THE WITNESS: Based on my examination of
7 these items, which are the State's Exhibits 11
8 through 16, I determined each of those to be fired
9 40 Smith & Wesson caliber cartridge case. I'm
10 sorry. Six of these cartridge cases. And based
11 on my examinations and my microscopic comparisons
12 of those items with each other, I determined that
13 those items were all fired by the same firearm.

14 BY MS. SWANSON:

15 Q All right. I'll take those items back from you
16 and hand you what has already been entered as State's
17 Exhibit 20. And that is actually the bag. And then
18 within the bag is State's Exhibit 19. So, again, we
19 have the same type of bag, and then I'm going to ask
20 you if you analyzed -- if this came to you sealed, if
21 you unsealed it, and you analyzed State's Exhibit 19.

22 A Inside State's Exhibit 20 is another package
23 which is labeled as State's Exhibit 19. I did
24 receive, as we discussed what this is, a
25 container. I did receive that sealed. I opened

1 it and found -- did my inventory of those items.
2 There were two items. I found that to be SLED 11
3 and SLED item 13. SLED 11 was determined to be
4 one fired bullet. And there's more items inside
5 there that we can't see. If we'd like to open it,
6 we can do that to show you. But I do recognized
7 these items and I did receive them sealed.

8 Q We don't need to open it if you know that you
9 analyzed them. And tell us about your findings.

10 A Yes, ma'am. And, furthermore, I do notice
11 that my initials and my seal date are here at the
12 bottom where I sealed this item at the conclusion
13 of my examination. So after I finish my
14 examination, I packaged it this way and it still
15 appears to be in the same manner I sealed it in.

16 Q What were your conclusions?

17 A Based on my examination of those two items,
18 SLED item 11, which is one fired bullet, and SLED
19 item 13, which is one fired bullet jacket
20 fragment, based on the observable physical
21 characteristics, item 11, the fired bullet, it was
22 most consistent with a bullet that's loaded into
23 some 40 Smith & Wesson caliber or 10mm auto
24 caliber cartridge. Due to damage and the size of
25 the item 13 fragment, I was unable to determine

1 the caliber of that projectile.

2 Furthermore, I did compare those two items
3 with each other. Due to the damage that item 13 has
4 sustained and also just insufficient individual
5 characteristics, the results of those comparisons were
6 inconclusive.

7 So what the means is, I was unable to
8 determine, based on damage and those insufficient
9 individual identifying characteristics, that those two
10 projectiles, the fired bullet and the fragment were
11 fired by the same firearm or they could have been
12 fired by separate firearms.

13 Q Okay. And did you determine that item 11 could
14 have only -- I'm sorry. Did you testify to what item
15 11 was most consistent with?

16 A Yes, ma'am. Item 11 was most consistent with
17 a bullet that's loaded into some 40 Smith & Wesson
18 10mm auto caliber cartridge.

19 Q Right. And is that the known manufacturer of that
20 caliber?

21 A So one thing that we do is called GRC,
22 general rifle characteristic exam. That is
23 something that I do. It's a laboratory
24 examination where I take that caliber, the type of
25 rifle that's exhibited on the item and the

1 direction and twist of that rifle in order to
2 determine manufacturer of a firearm that could
3 have fired that bullet.

4 Q Okay, thank you. One more question: Did you have
5 a firearm to test in this case?

6 A I did not receive a firearm to test in this
7 case.

8 Q All right. Thank you. Please answer any
9 questions defense may have.

10 THE COURT: Mr. Mathews.

11 MR. MATHEWS: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. MATHEWS:

15 Q Special agent Greer, how are you today?

16 A I'm fine. Thank you. How are you?

17 Q This is, kind of, a step down for you after that
18 circus that you had a little while ago, right?

19 A I've been in court a lot here lately.

20 Q This is a nice court house.

21 A Oh, yes, very nice.

22 Q I think I testified that you get -- before you do
23 something, there is a request from law enforcement to
24 SLED to review something; is that correct?

25 A Yes, sir. That's correct.

1 MR. MATHEWS: May I approach the witness?

2 THE COURT: Of course.

3 (DFT. EXH. 4, Submission Receipt, was
4 marked for identification.)

5 BY MR. MATHEWS:

6 Q Special Agent Greer, I'm handing you what's been
7 marked as defendants's Exhibit Number 4 and ask if
8 that looks familiar to you.

9 A Yes, sir, it does.

10 Q What is that?

11 A This appears to be a copy of the submission
12 receipt for submission 1 of items 1 through 7 to
13 the SLED laboratory.

14 Q What are those items?

15 A Sled item 1 was listed on the submission
16 paperwork as a GSR kit. And items 2 through 7
17 were listed as spent casings.

18 Q And what services -- does that tell you what
19 services are requested from SLED?

20 A Yes, sir, it does.

21 Q And what services are requested from the items
22 that you see on Defendant's 4?

23 A For item 1, that was GSR kit, that has a
24 trace for the GSR analysis. And items 2 through 7
25 all have a DNA touch and a FA, or firearms

1 request.

2 Q Okay. So two things are requested from the shells
3 and bullets, correct?

4 A Yes, sir, items 2 through 7.

5 Q What you did, which is what the -- I'm going to
6 hand you also --

7 (DFT. EXH. 5, Case File Release, was marked
8 for identification.)

9 MR. MATHEWS: May I approach the witness?

10 THE COURT: Yes, sir.

11 BY MR. MATHEWS:

12 Q I'm handing you what has been marked as Defense
13 Exhibit Number 5 and ask if you can identify that.

14 A Yes, sir.

15 Q What is that? I might have one page. You're
16 looking for something else? Are you looking for
17 this?

18 A No, sir.

19 Q Is that pretty close to being your report? And if
20 you got your other report, I'm happy to look at that
21 too. I just want to make sure.

22 A Yes, sir. This appears to be a copy of the
23 case file release that I prepared for release from
24 the SLED laboratory.

25 Q That's your homework?

1 A Basically, yes, sir.

2 Q Okay. You got pictures of the shells that you
3 looked at. You got pictures of the back of them for
4 indentations and things like that. If you had a
5 pistol or a rifle or some firearm that was presented
6 you could compare them based on the pictures you took,
7 right?

8 A If I had a firearm to compare it, I would
9 need that in the laboratory. I did document what
10 I had at the time of my examination. I can't
11 compare versus a photograph.

12 Q Sure. But that's a copy of your homework, the
13 work that you did. You didn't just come out here and
14 say, well, I think these were all fired from the same
15 thing. You put your science to work looked at them
16 microscopically to determine that they appeared to be
17 fired from the same gun.

18 A Yes, sir. I did.

19 Q Okay.

20 MR. MATHEWS: May I approach the witness?

21 THE COURT: Yes, sir.

22 (DFT. EXH. 6, Chain of Custody, was marked
23 for identification.)

24 BY MR. MATHEWS:

25 Q Special Agent Greer, I'm handing you what has been

1 marked as Defense Exhibit 6 and ask you if you
2 recognize that.

3 A Yes, sir.

4 Q What is that?

5 A This appears to be a copy of the chain of
6 custody that was prepared for a release by Sharon
7 Hunt. She is an employee in our forensics
8 laboratory, so this would be a copy that was
9 turned over and should be a copy of all the items
10 in the case.

11 Q And that identifies -- on yours particularly, just
12 go through one of them. You don't have to go through
13 each. I imagine it's pretty much the same. What --
14 who all handled this before -- well, I note there
15 are -- this was sent for DNA as well as firearms. Do
16 one of you-all go first?

17 A Yes, sir. DNA, if they have an assignment on
18 evidence that needs to come to the firearms
19 department, that assignment must be taken care of
20 prior to the firearms department receiving it.

21 Q Because if you got touch DNA and you're touching
22 it your DNA is going to be on it and it's going to
23 mess everything up.

24 A That's correct. We do not wear gloves and
25 wear masks like the DNA personnel do, so they must

1 preserve that DNA prior to us receiving it.

2 Q Okay. And that list on 6, that's everything that
3 goes from the time it gets to SLED to the time it gets
4 to you and the time it goes back to local law
5 enforcement, right?

6 A Yes, sir. The chain of custody will document
7 the evidence throughout the laboratory from each
8 technician, examiner, and storage locations.

9 Q And from that, you can determine if somebody would
10 have been able to mess with it. You can look at the
11 chain and see who all handled it?

12 A Yes, sir, I can.

13 Q Okay.

14 MR. MATHEWS: Your Honor, I seek to
15 introduce number 6 -- Defense 6 into evidence at
16 this time.

17 THE COURT: Any objection?

18 MS. SWANSON: No objection.

19 THE COURT: All right. Defendant's 6.
20 That's the chain of custody?

21 MS. SWANSON: SLED chain of Custody.

22 THE COURT: All right. Admitted without
23 objection.

24 (DFT. EXH. 6, Chain of Custody, was entered
25 into evidence.)

1 in?

2 A I believe it was collected, I think, four
3 hours and 31 minutes after the shooting
4 incident.

5 Q Okay. And what were your findings in reference to
6 the kit that you analyzed coming from Justin
7 Carroll?

8 A So on the GSR kit I received from Justin
9 Carroll, I found one particle characteristic of
10 primer gunshot residue. Which means, I found one
11 round particle that contained the three elements
12 that are required to call something gunshot
13 residue.

14 Q Thank you. That's all I have for you. Thank you,
15 Lieutenant.

16 THE COURT: Hold on one second. Can I
17 get counsel to approach?

18 Did you-all qualify her as an expert?

19 MS. SWANSON: I thought we did. I'm
20 sorry.

21 THE COURT: Would you like to?

22 MS. SWANSON: Yes. Yes, please.

23 THE COURT: Go right ahead. Solicitor.

24 MS. SWANSON: I believe I neglected to do
25 this, but we had you go through all your

1 qualifications. At this time, I would submit
2 Lieutenant Nates as an expert in trace analysis.

3 THE COURT: Any objection?

4 MR. MATHEWS: One question on voir dire
5 before I cross-examine her.

6 THE COURT: Yes, sir.

7 VOIR DIRE

8 BY MR. MATHEWS:

9 Q We've met before.

10 A Yes, we have.

11 Q We've done this thing before.

12 A Yes, sir.

13 MR. MATHEWS: No objections.

14 THE COURT: All right. So let me, ladies
15 and gentlemen, I will find this witness qualified
16 as an expert in trace analysis. And as such, she
17 can give and I think has given opinion testimony
18 in this matter. And, again, like we talked about
19 before, that doesn't mean that you must accept the
20 opinion, but it's evidence for you to use any way
21 you see fit. Thank you.

22 Mr. Mathews, you can continue and
23 cross-examine the witness, sir.

24 MR. MATHEWS: May I approach the witness?

25 THE COURT: Of course.

1 spell your last name, please.

2 THE WITNESS: My name is Nick Batalis,
3 B-a-t-a-l-i-s.

4 WHEREUPON:

5 NICK BATALIS, M.D.,
6 after having been sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. SWANSON:

9 Q Thank you, Dr. Batalis. Good morning.

10 A Good morning.

11 Q Can you tell the jury what you do and where you
12 work?

13 A Yes. I'm employed as a forensic pathologist
14 at the Medical University of South Carolina in
15 Charleston.

16 Q All right. And how long have you been a
17 pathologist at MUSC?

18 A In July, will be 16 years.

19 Q And what do you do as a pathologist?

20 A Sure. My daily routine there are a few
21 different things I do. I'm involved in teaching
22 medical students. I direct a training program.
23 But my primary job is as a forensic pathologist.
24 Forensic pathology is a sub-specialty of medicine
25 that deals with the medical legal aspects of

1 medicine, predominantly performing autopsies to
2 determine a cause and manner of death.

3 Q Okay, thank you. And can you describe your
4 education and training in the field, please?

5 A Sure. So after graduating college, I went on
6 to medical school at the Emory University School
7 of Medicine. After graduating medical school, I
8 then moved down to Charleston to MUSC for
9 residency training or training in general
10 pathology. So general pathology is going to be
11 the study of disease. A pathologist would be the
12 one to, if you had a biopsy taken or a tumor taken
13 out, the pathologist would be the one to look at
14 that and tell the surgeon whether it's a cancer or
15 whether it's benign, that sort of stuff. A
16 pathologist also oversees the clinical
17 laboratories. So if you have any blood tests
18 drawn, we're going to be the ones behind the
19 scenes interpreting that and working with your
20 physician.

21 So after those four years of general
22 pathology training, I passed an examination to
23 become board certified in anatomic and clinical
24 pathology or general pathology, and then went on
25 to a one-year fellowship training program

1 specifically regarding forensic pathology at the
2 Dallas County Medical Examiner's Office in Dallas,
3 Texas. Again, at the end of that year, past
4 another examination to become board certified in
5 forensic pathology. And then I took my current
6 position back in Charleston.

7 Q Okay. And about how many times have you testified
8 as an expert in court?

9 A At this point, it's over 100 times in South
10 Carolina, and I believe twice in North Carolina
11 and twice in Texas.

12 MS. SWANSON: At this time, I would ask
13 and submit Dr. Batalis as an expert in forensic
14 pathology.

15 MR. MATHEWS: Your Honor, if I might just
16 ask one or two and then let Miss Anderson, who is
17 leaving us sadly, do the further cross.

18 THE COURT: That's fine. Do you got any
19 objection to him asking one two questions? Are
20 you talking about one or two questions just as it
21 relates to qualifications, and you want to have
22 Miss Anderson cross-examine?

23 MR. MATHEWS: Yes.

24 THE COURT: You got any objection to
25 that?

1 MS. SWANSON: No, sir.

2 THE COURT: Yes, sir. Go ahead.

3 VOIR DIRE

4 BY MR. MATHEWS:

5 Q Dr. Batalis, we spoke last week?

6 A Yes, sir.

7 Q I think we've met, right?

8 A I believe so, yes, sir.

9 Q I think so. We've done this thing. I told you
10 that, and maybe Miss Anderson cross-examined you as
11 well.

12 MR. MATHEWS: No objections to his
13 qualifications.

14 THE COURT: All right. So in that case,
15 ladies and gentlemen, I'm going to qualify the
16 doctor as an expert in the field of forensic
17 pathology, and, of course, he can give expert
18 opinions in that area. It's for your
19 consideration and for you to use the evidence as
20 any way you see it fit.

21 Miss Anderson, you want to cross-examine?

22 MS. SWANSON: If I could finish my
23 direct.

24 THE COURT: I apologize. I was getting
25 ahead of myself. I'm sorry. I will qualify him

1 as an expert. And, Solicitor, you can continue.

2 MS. SWANSON: Thank you, Your Honor.

3 BY MS. SWANSON:

4 Q Dr. Batalis, were you asked to conduct an autopsy
5 on Donasia Holloway?

6 A Yes, I was. May 28th of 2021.

7 Q All right. And can you tell the jury about your
8 findings?

9 A Sure. The major findings in this case were
10 four gunshot wounds; one to the left ear, one to
11 the left side of the neck, and two to the left
12 elbow.

13 Q Were there additional marks on her?

14 A Yes, there were.

15 Q Okay. And can you describe those for the jury?

16 A Sure. So, associated with some of the
17 gunshot wounds and then also separate from some of
18 the gunshot wounds were small areas of basically
19 scrapes on the skin. And when we're evaluating a
20 gunshot wound, we look for different features of
21 the wound that may help us tell how far the gun
22 was from the body. And so other than a bullet
23 coming out, you could also have soot, which is the
24 smoke the comes out. You could have stippling
25 which are pieces of gun powder that fly out of the

1 barrel that don't get consumed in that explosion
2 and those could cause scrapes that we call
3 stippling. We also will see things that we call
4 pseudo stippling. So pseudo stippling is going to
5 essentially be when something else strikes the
6 skin, but it kind of causes these little abrasions
7 that mimic the stippling.

8 So, in this case, there were large areas of
9 that pseudo stippling likely from, you know, broken
10 glass, that sort of thing on her face, on her upper
11 extremities, and then on her right thigh.

12 Q So right or left side?

13 A She had predominantly -- it was on both sides
14 of the body, so we had a little bit on the left
15 side of the face, we had some on both upper
16 extremities, and then some on the right thigh.

17 Q And would those types of marks be consistent with
18 a gunshot through a closed window?

19 A Yes.

20 Q Okay. Did you remove any projectiles or fragments
21 from her body?

22 A Yes. So, in examining the body, before we
23 did any incisions or internal examination, we did
24 find some fragments of bullets. So we found a
25 fragment of a jacket within the mouth, and then we

1 also found three fragments of bullets within the
2 hair.

3 Upon examining the body internally, we then
4 recovered four bullets that corresponded with the
5 entrance wound.

6 (STATE EXH. 27, Bullet Fragment; Autopsy,
7 was marked for identification.)

8 (STATE EXH. 28, Bullet Fragment; Autopsy,
9 was marked for identification.)

10 (STATE EXH. 29, Bullet Fragment; Autopsy,
11 was marked for identification.)

12 (STATE EXH. 30, Bullet Fragment; Autopsy,
13 was marked for identification.)

14 (STATE EXH. 31, Bullet Fragment; Autopsy,
15 was marked for identification.)

16 (STATE EXH. 32, Bullet Fragment; Autopsy,
17 was marked for identification.)

18 BY MS. SWANSON:

19 Q I'm going to hand you what has been marked as 27,
20 28, 29, 30, 31, and 32 and ask if these are fragments
21 that you removed from Miss Holloway's body during this
22 autopsy?

23 A Yes. These are the bullets and jacket
24 fragments that I just described.

25 MS. SWANSON: Thank you.

1 At this time, I would move 27 through 32
2 into evidence.

3 MS. ANDERSON: No objection.

4 THE COURT: All right. That would be 27
5 through 32?

6 MS. SWANSON: That's correct.

7 THE COURT: Without objection.

8 (STATE EXH. 27, Bullet Fragment; Autopsy,
9 was marked for identification.)

10 (STATE EXH. 28, Bullet Fragment; Autopsy,
11 was marked for identification.)

12 (STATE EXH. 29, Bullet Fragment; Autopsy,
13 was marked for identification.)

14 (STATE EXH. 30, Bullet Fragment; Autopsy,
15 was marked for identification.)

16 (STATE EXH. 31, Bullet Fragment; Autopsy,
17 was marked for identification.)

18 (STATE EXH. 32, Bullet Fragment; Autopsy,
19 was marked for identification.)

20 BY MS. SWANSON:

21 Q All right. And, Dr. Batalis, what did you
22 determine the cause of death to be?

23 A The cause of death in this case was
24 specifically the gunshot wound on the left side of
25 the neck as it resulted in laceration or rupture

1 of two of the major blood vessels in the neck and
2 then also fractured the spine and caused damage to
3 the spinal cord.

4 Q And what did you determine the manner of death to
5 be?

6 A The manner of death in this case was
7 homicide, which, in our terms, is death at the
8 hands of another individual.

9 Q Thank you.

10 MS. SWANSON: I don't have any other
11 further questions.

12 THE COURT: Yes, ma'am.

13 MS. ANDERSON: May it please the Court?

14 THE COURT: Yes, ma'am.

15 BY MS. ANDERSON:

16 Q Good morning, Dr. Batalis. How are you doing
17 today?

18 A Good morning. Well.

19 Q You just testified that the manner of death could
20 have been either a fracture to the cervical spine --

21 THE COURT: Hold on one second. Go
22 ahead.

23 (Interruption in the proceedings.
24 Shameka Holloway exits courtroom.)

25 THE COURT: All right. Let's go ahead.

1 Go ahead, Miss Anderson. Yes, ma'am.

2 BY MS. ANDERSON:

3 Q Doctor Batalis, you just testified that there
4 could have been one or two ways that she died, that
5 being either a laceration of a major blood vessel or a
6 fracture of the spine. Do you know in which manner?

7 A So, just to clarify, manner of death would be
8 how the death came about. So the manner of death
9 in this case is homicide as it was due to somebody
10 else.

11 The cause of death is the major process that
12 leads to the death. Is it a heart attack? Is it a
13 gunshot? So, in this case, the cause of death was
14 undeniably the gunshot to the left side of the neck.

15 What you're speaking of is the mechanism.
16 So, you know, what was the exact precise reason that
17 that gunshot wound led to her death, and I can't sit
18 here and say definitively it was from bleeding out
19 from the neck injury or from damage to the spinal cord
20 or likely a combination of the two of them.

21 Q If it were the mechanism of bleeding out, could it
22 have taken several minutes for that to happen?

23 A Yes.

24 Q Would you have been surprised if the EMS had found
25 a faint heartbeat from her at 20 minutes?

1 A No, I would not.

2 MS. ANDERSON: No further questions.

3 THE COURT: All right. Anything else?

4 MS. SWANSON: Nothing further. Thank
5 you.

6 THE COURT: All right. Doctor, thank
7 you. Can he be released?

8 MS. SWANSON: Yes, please.

9 THE COURT: Have a great day, sir.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Yes, ma'am. You can call
12 your next witness.

13 MS. SWANSON: Thank you, Your Honor. At
14 this time, the State rests its case.

15 THE COURT: All right. How about my
16 attorneys approach for one minute.

17 So your witness is here a 2:00?

18 MR. MATHEWS: Two o'clock.

19 THE COURT: I'll excuse the jury until
20 two o'clock.

21 MS. SWANSON: Yeah.

22 THE COURT: All right. Ladies and
23 gentlemen, the State has rested their case. There
24 are several matters of law that I will need to
25 take up outside of your presence. I will also

1 defense calls Samuel Stewart.

2 THE COURT: All right. Raise your right
3 hand. Left on the Bible. Do you affirm the
4 testimony you're about to give the Court shall be
5 the truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Take a seat in the witness
8 stand. State your name again for the record.
9 Spell your last name.

10 THE WITNESS: Samuel Alan Stewart,
11 S-t-e-w-a-r-t.

12 THE COURT: Your witness.

13 MR. MATHEWS: Thank you.

14 WHEREUPON:

15 SAMUEL STEWART,
16 after having been sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MATHEWS:

19 Q Mr. Stewart, if you would, briefly tell the jury
20 your educational background and experience.

21 A Yes. I'm a forensic scientist at forensics
22 department at SLED, which is commonly known as the
23 South Carolina Law Enforcement Division. I
24 received my Bachelor's of Science in biology from
25 Francis Marion University. I also received

1 in-house SLED training under another qualified
2 analyst for over a year and a half where I would
3 have to successfully complete 100 practice and
4 training samples, a written exam, an oral exam, a
5 competency test, and a mock trial before I would
6 be deemed competent as a forensic analyst.

7 MS. SWANSON: Your Honor, the State will
8 stipulate to Agent Stewart's expertise in the area
9 of DNA analysis.

10 THE COURT: Is that what you're looking
11 to qualify him in?

12 MR. MATHEWS: Yes, sir.

13 THE COURT: All right. Is that
14 stipulation sufficient for you, Mr. Mathews?

15 MR. MATHEWS: Yes, sir.

16 THE COURT: All right. Hold on one
17 second.

18 All right. Ladies and gentlemen, I am
19 going to qualify this witness as an expert in DNA
20 analysis. And, again, he is then free to give
21 opinion testimony in this matter. This is
22 evidence for you to use any way you see fit.
23 Thank you very much.

24 Your witness, sir?

25 MR. MATHEWS: Thank you, Your Honor.

1 BY MR. MATHEWS:

2 Q Agent Stewart, did you have a chance to do any
3 work in Justin Carroll's case? I guess you need the
4 lab number?

5 A I have the lab number.

6 Q You have the file?

7 A Yes, I do. The unique SLED number L2110427.

8 Q Okay. And did you receive some items to
9 analyze?

10 A Yes, I did.

11 Q If you could -- if you have a chain of custody,
12 show them how you came to be -- or asked to analyze
13 something. What you're analyzing, it's not actually a
14 physical object. It's a physical object, but not the
15 object that originally comes in to SLED; is that
16 correct?

17 A Yes. So if I may explain. As a DNA
18 analysis, I'm responsible for processing any
19 biological evidence in a criminal investigation
20 with the purpose of trying to develop a DNA
21 profile. I'm also responsible for processing any
22 known standards which can come from any
23 individuals involved in that case, in that
24 criminal investigation case, with the hope to
25 develop a DNA profile from them as well.

1 My purpose is to try to determine if the DNA
2 profile from those known individuals can be included
3 or excluded as a possible contributor to the DNA
4 profile from the evidence.

5 Q Okay. And everything that comes in to SLED goes
6 through a chain of custody; is that correct?

7 A Right. It's submitted through our evidence
8 control department. And once they bring that
9 evidence in, yes, we establish an internal record
10 known as a chain of custody.

11 The chain of custody just keeps record of
12 which individuals have the evidence at any point in
13 time during this duration at SLED. It makes a note of
14 who takes the items into custody for analysis, and
15 then it keeps a record also, once those analyses are
16 complete, and give it back to the evidence control
17 department which then the submitting agency can come
18 pick it up from there.

19 Q Do you have the chain of custody for the items
20 that you examined?

21 A Yes, I do.

22 Q Do you have a copy of that?

23 A Yes, I do.

24 Q Okay.

25 MR. MATHEWS: I ask that to be marked and

1 then submitted into evidence.

2 THE COURT: All right.

3 MS. KEENEY: It's in.

4 MS. SWANSON: The chain of custody is in
5 evidence and the State has already stipulated to
6 the chain of custody, so that's not necessary.

7 MR. MATHEWS: Okay.

8 BY MR. MATHEWS:

9 Q Mr. Stewart, what items did you ultimately receive
10 swabs on?

11 A So the known standards, which are the ones
12 that come from the known individuals that they
13 wanted me to test for any possible DNA that could
14 be developed on the evidence, my item 8 was a
15 blood spot standard from Donasia Holloway. My
16 item 16 was a buccal swab was Justin Carroll. My
17 item 17 was a buccal swab from Officer Hartley.
18 My item 18 was a buccal swab from Officer Shipp.
19 And my item 19 was a buccal swab from
20 Officer Hantz. Those were the known standards
21 that were submitted.

22 I also received some of items of evidence to
23 process for possibly getting a DNA profile from. My
24 item 7.1 was an impact collection from items 2 through
25 7, which were -- these were spent shell casings.

1 And if I can just briefly describe that.

2 Sometimes the SLED agency wants us to try to see if we
3 can get a DNA profile from spent shell casings. So we
4 do a process where, if we have multiple ones, we have
5 a soaking method. We soak those shell casings in a
6 solution to try to see if we can get any kind of DNA
7 that may be on those shell casings. We dry that
8 solution in an impact filter. And once it's dry, I
9 can cut from it and try to see if there is any kind of
10 DNA off of those shell casings.

11 I also received item 13.1, which is swabs
12 from a fired round and a fragment of casing.

13 I also had item 12.1, which is a swab from an
14 exterior of a red piece of candy. I'm sorry. That
15 was my last one.

16 Q All right. I guess we're getting a little ahead
17 of ourselves. So this goes through the chain.
18 Somebody swabs the red candy, for example, and then
19 that swab ends up with you. And then you testified
20 that you then examine the contents of the swab to find
21 out if there's DNA -- useful DNA on it?

22 A Yes, that is correct. We have another
23 analyst that swabs those items for me. Her name
24 is forensic scientist Brittany Thompson. So she
25 would have swabbed that piece of candy for me so

1 that I can take that swab and get DNA.

2 Q What is DNA? Can you explain it? We hear about
3 it all the time, but what is DNA? Act like -- I have
4 not cross-examined you, I don't think, but
5 Miss Swanson, I think, has, right?

6 A Yes.

7 Q I'm not sure, I have, have I?

8 A I don't believe so.

9 Q I don't think we met until now. Act like we don't
10 know anything. Tell us what DNA is. We hear about it
11 on TV all the time, but if you can explain to the jury
12 what DNA is and what are you looking for.

13 A Yes. So DNA stands for deoxyribonucleic
14 acid. It is a genetic material that's found in
15 every individual and it is responsible for our
16 certain traits which is our eye and hair color.

17 DNA is contained in dense packets known as
18 chromosomes, and those chromosomes are found in every
19 cell in your body excluding red blood cells. You
20 receive half of your chromosomes from your mother and
21 the other half from your the father. So on those
22 chromosomes, we target certain locations. Those
23 locations are known as STRs, and that stands for short
24 tandem repeats. And we look at 21 of those differing
25 STR locations that are found in the various

1 chromosomes excluding any gender markers that develop
2 in the DNA profile. We can then use that DNA profile
3 to identify one individual from another, excluding
4 identicals siblings such as twins and triplets.

5 Q All right. You are flying, man. I tell you, you
6 know this stuff so well that you just -- it trickles
7 out.

8 A I'm sorry.

9 Q That's fine. I'm just saying, I just want to make
10 sure that the jury can follow. So when you're
11 looking -- you say certain DNA certain traits, like,
12 for example, the length of my fingers, for example.
13 There's a DNA pair for that, isn't there? Or is
14 there?

15 A You would have to -- I can get DNA from
16 possible items like the skin that may be up
17 underneath your fingernails or from blood or semen
18 or saliva those types of items we can get DNA
19 profiles from.

20 Q And touch DNA as well?

21 A Yeah, those are skin cells. So, yeah, we
22 could possibly get DNA profiles from that as well.

23 Q Okay. And that's how you're able to examine a
24 fired shell. You testified you put that in water and
25 the DNA, I guess, floats up, or something like that,

1 and you're able to test it.

2 A If there's any kind of potential DNA there in
3 the solution, then you try to bring it off of
4 that, that shell casing for us, and then put that
5 on that filter that I mentioned, yes.

6 Q Okay. And how many different combinations of DNA
7 are there?

8 A Oh, man. It's thousands. You have millions
9 of different types of combinations of DNA.

10 Q And how they work out -- you know, for example,
11 it's gray now, but my hair used to be red, if you can
12 believe it. Is there a DNA place where you can see
13 this person had red hair?

14 A Well, I don't test for that. That's outside
15 of my realm of what I test for DNA, but I would
16 think genetic markers would establish, you know,
17 that you probably had red hair. But, like I said,
18 that's outside of what I do.

19 Q Okay. You look for -- is it correct to say that
20 you look for polymorphic-type strands?

21 A No.

22 Q Something that is -- something that's somewhat
23 different -- if you look for somebody who is, for
24 example, a biped, somebody who's got two legs -- all
25 humans are bipeds at one point or another. So if

1 you're looking for that piece of DNA, it's going to be
2 100 percent of the time. You're not going to use that
3 one, or is that outside of your pay grade?

4 A Yeah, we usually stick to the portion of the
5 DNA -- because there's millions of different types
6 of it, but we stick to a certain area of DNA so
7 that it's -- that's unique to that individual.
8 Like I said, it's going to be from multiple
9 siblings -- individual, excuse me.

10 Q Okay. I'm not sure if they still do it -- okay.
11 And if you find -- okay.

12 Looking at, let's see, item 13.1, if you look
13 on your report for that.

14 A Yes. .

15 Q That is a portion of a round, a bullet or
16 something like that. What was that item originally?

17 A Yeah. So item 13.1, swabs from items 11 and
18 13. Item 11 was a fired round or a shell casing
19 and item 13 was a fragment of a casing. So both
20 those items were swabbed and sent to me to process
21 for DNA.

22 Q Okay. And you compared the DNA on those two items
23 to the known DNA of Justin Carroll, Officer Shipp and
24 Officer Hantz; is that correct?

25 A And Donasia Holloway.

1 Q And Donasia Holloway?

2 A Yes.

3 Q And was -- whose DNA -- can you say pretty
4 confidently whose DNA was on that shell, fragment?

5 A Yeah. A DNA profile suitable for comparison
6 was developed for Justin Carroll, Officer Hartley,
7 Officer Shipp, and Officer Hantz are excluded as
8 the contributor. And the likely ratios for those
9 profiles were calculated using STRmix. The DNA
10 profile was interpreted a single source, meaning
11 it only came from one individual. My results are
12 that the DNA profile is approximately 2.1
13 octillion times more likely if Donasia Holloway
14 contributed to the profile than if unidentified,
15 unrelated individual contributed to the profile.

16 Q So that is -- how many millions is an octillion?

17 A About 27 -- well, it's 27 zeros.

18 Q That's really a lot of zeros. So you can be
19 confident that the DNA on that bullet was from
20 Donasia Holloway?

21 A I can say there's very strong support that
22 Donasia Holloway contributed to the DNA versus an
23 unidentified, unrelated individual.

24 If I can speak to some of the terminology I
25 use. The STRmix is a software that we use to aid in

1 our interpretations of our DNA profiles. STRmix can
2 also assign a statistical weight whenever we're making
3 comparisons of known standards to that DNA profile
4 from the evidence, and that statistical weight comes
5 in the form of a likelihood ratio which is what I was
6 just referring to in my results.

7 That likelihood ratio is essentially a
8 numeric value that we can assign to give context of a
9 weight to two different or opposing views of a
10 scenario. So the example I like to use is that, what
11 is the best case that you would see most likely see a
12 lion? Would you see a lion at the zoo or would you
13 see a lion walking down the street? So it's certainly
14 more likely that you would see a lion at the zoo than
15 you would walking down the street.

16 And so, essentially, it's that same thought
17 process that we put toward our DNA profiles. Is it
18 more likely that this known individual contributed to
19 the DNA profile given that DNA profile from the
20 evidence or is it more likely an unidentified,
21 unrelated individual contributed that DNA given that
22 DNA from the evidence?

23 So I just wanted to, kind of, give some
24 context to some of the information that we've just
25 explained.

1 Q Okay. And if this was the bullet that was taken
2 from Donasia Holloway, it would certainly be likely --
3 that increases the likelihood that this is her DNA?

4 A I did not know.

5 Q You didn't know.

6 A I didn't know.

7 Q Looking at the shell casings, these were the shell
8 casings recovered from the parking lot in Forest
9 Point. Those are items 2 through 7; is that correct?

10 A Yes. Those are spent shell casings, that's
11 correct.

12 Q You were able to find usable DNA on those shell
13 casings?

14 A Yes, I was able to develop a DNA profile.

15 Q Okay. Did Justin Carroll have any DNA on any of
16 those shells?

17 A The DNA profile was a mixture of two
18 individuals, and Justin Carroll was excluded as a
19 contributor to that mixture.

20 Q Okay.

21 A So a mixture is when I have two or more
22 individuals contributing DNA to an item. Which
23 that does occasionally happen on items, have more
24 than one person contributing.

25 Q So, for example, if somebody was loading a shell

1 into a gun that might be their DNA.

2 A I mean, it's possible for them to leave it
3 there. I can't say that because I didn't test it.
4 But if they touched the metal, came in contact
5 with it, it is possible.

6 Q Okay. But neither Miss Holloway, Justin Carroll,
7 Officer Shipp, or Officer Hantz, none of them
8 contributed to that DNA?

9 A Yeah. Donasia Holloway, Justin Carroll,
10 Officer Shipp, and Officer Hantz were all excluded
11 as contributors to that mixture.

12 Q Okay. You looked at some candy, swabs taken from
13 some red candy. Is that also correct?

14 A Yes, that's correct. Item 3.1.

15 Q Okay. And were you able -- you were able to
16 extract the DNA from that useful DNA?

17 A Yes, I was.

18 Q Okay.

19 A The DNA profile -- the partial DNA profile
20 developed that was suitable for comparison. I
21 have two sets of different propositions. And so
22 each proposition is usually when I'm comparing
23 each individual to it, but in an effort to
24 truncate it and I can kind of group individuals
25 who have the same kind of results.

1 So in my first proposition, I'm excluding
2 Donasia Holloway, Justin Carroll, Officer Hartley, and
3 Officer Shipp as contributors to that mixture. In my
4 second proposition, I'm comparing Officer Hantz and an
5 unidentified, unrelated individual, and it's more
6 likely there's two unidentified, unrelated
7 individuals. And the DNA profile is approximately
8 1400 times more likely if Officer Hantz and an
9 unidentified, unrelated individual contributed to the
10 mixture than if two unidentified, unrelated
11 individuals contributed to the mixture.

12 Q So transfer can be a big deal whether it's DNA or
13 any other substance, right?

14 A Yes. Transfer is possible. Transfer is
15 essentially when you may be able to get your DNA
16 on an item such as a pen or a doorknob that you
17 may come in contact with.

18 Q So an example might be, whoever was chewing the
19 candy, that was -- or had that candy in their mouth,
20 that's one contributor, and Officer Hantz who picked
21 it up, may have contributed some DNA also.

22 A Well, I can't say how the DNA got on the
23 item. I can say that it's moderate to support
24 that Officer Hantz and an unidentified, unrelated
25 individual contributed to the mixture than two

1 unrelated individuals.

2 Q All right. What's Francis Marion's mascot?

3 A I think it's a swamp fox.

4 Q Okay. Swamp fox, sure.

5 I don't have any further questions, Agent
6 Stewart. Answer any questions the State has.

7 A Thank you.

8 THE COURT: Solicitor.

9 MS. SWANSON: Thank you.

10 CROSS-EXAMINATION

11 BY MS. SWANSON:

12 Q All right. Agent Stewart, the swabs that were
13 submitted from the various officers, those were for
14 the purposes of elimination, correct?

15 A That's correct. So sometimes we get a known
16 standards that actually are done to get an
17 elimination, just to rule out their DNA from any
18 kind of evidence of evidentiary importance.

19 Q And when you're talking about your item 7.1, which
20 is the MVAC collection from six different spent shell
21 casings, that's a conglomerate. It's all six. You
22 don't know which shell casing had a profile or not on
23 it, right?

24 A That is correct. They were all soaked
25 together.

1 Q Okay. And so touch DNA, you told Mr. Mathews,
2 could come from someone loading a gun, right?

3 A I mean, it is possible for them to get their
4 DNA on it that way, that's correct.

5 Q Or touching ammunition in general at some point.

6 A Yeah. I mean, if you come in contact with
7 that item, it is possible for you to have traces
8 of your DNA on it.

9 Q You didn't have a firearm to conduct any analysis
10 on, did you?

11 A No, I don't believe any firearms were
12 submitted in this case. Not for my analysis.

13 Q Right. Or any swabs from the firearm testing for
14 DNA, right?

15 A That is correct.

16 Q And so you don't have any information about could
17 have loaded a gun in this particular case, right?

18 A I do not.

19 Q Or who may have handled ammunition that was loaded
20 into a gun in this particular case?

21 A I do not.

22 Q And, in fact, someone can touch or load ammunition
23 in a gun and not leave their DNA. Isn't that true?

24 A That is also correct. If I can explain that
25 to you. It's because of the variability of touch

1 DNA, and even for each individual. Every
2 individual sheds skin cells differently. Some
3 individuals are heavy shedders and some
4 individuals are light shedders. And it's not even
5 consistent day to day for those individuals. A
6 heavy shedder can be a light shedder one day and a
7 light shedder can be a heavy shedder the next day.
8 It just depends on their daily routines and their
9 daily habits.

10 So because of that, their variability -- we
11 can't really say -- you know, if a person touches
12 something then automatically they're leaving their DNA
13 on here. It just depends on that individual's
14 shedding characteristics.

15 Q Okay. So it is possible that Justin Carroll could
16 have handled these shell cartridge cases and his DNA
17 not be present, correct?

18 A That is possible.

19 MS. SWANSON: Thank you. That's all I
20 have.

21 THE COURT: Anything else, Mr. Mathews?

22 MR. MATHEWS: Just one for clarification.

23 REDIRECT EXAMINATION

24 BY MR. MATHEWS:

25 Q But the positive evidence you had is from DNA from

1 somebody that is Justin Carroll?

2 A For which item?

3 Q For the shells that Miss Swanson was talking
4 about.

5 A From that DNA profile, he was excluded as a
6 contributor.

7 MR. MATHEWS: No further questions.

8 THE COURT: All right. Anything else,
9 Solicitor?

10 MS. SWANSON: Nothing further.

11 THE COURT: All right. Mr. Mathews, can
12 this witness step down and be released from his
13 subpoena?

14 MR. MATHEWS: Yes. The defense rests.

15 THE COURT: All right. Sir, thank you so
16 much for your trip down. We appreciate your
17 testimony and you are excused. Okay?

18 THE WITNESS: Thank you.

19 THE COURT: All right. Mr. Mathews, you
20 can call your next witness?

21 MR. MATHEWS: The defense rests, Your
22 Honor.

23 THE COURT: Defense rests.

24 Counsel approach.

25 All right. Mr. Mathews, now would be the

1 MS. SWANSON: Thank you. May it please
2 the Court? And just briefly, I need to -- my
3 investigator is going to come forward and plug in
4 the TV and begin with video.

5 THE COURT: Yes, ma'am.

6 CLOSING ARGUMENT

7 MS. SWANSON: We're going start by
8 playing the last thing Donasia Holloway saw before
9 she was so violently murdered. We're going to
10 play it a little bit slower.

11 THE COURT: Mr. Mathews, feel free to
12 move.

13 MR. MATHEWS: I've seen the video.

14 THE COURT: All right, sir.

15 MS. SWANSON: Take one more look at what
16 she saw last before she died.

17 (Video played.)

18 MS. SWANSON: Guys, this is no conspiracy
19 to convict Justin Carroll of murder. He is the
20 man that we have shown to have had the motive, the
21 means, and the opportunity to commit this horrible
22 crime.

23 Let's look at the facts that should not
24 be in dispute. Okay?

25 I'll wait for Investigator Phillips to

1 get out of the way and now the sirens.

2 Okay. There is no question that Donasia
3 was shot while she sat in her locked car. This
4 was after arriving home from her trip to Florida.
5 All signs, video, firearms point to there being
6 one shooter. So the question is, of course, who
7 is that shooter? We have an identity case. The
8 inquiry becomes how do we know that Justin Carroll
9 is the shooter here?

10 Let's talk about motive first. We don't
11 have to proof motive as the State, but it helps
12 jurors determine why this happened and who did it
13 based on the motive.

14 Cole had a relationship with Donasia that
15 lasted a while. All right? It lasted close to
16 about two years. They lived together. They lived
17 together until January of 2021 when that incident
18 that was serious enough to call police and have
19 police write a report about happened. The
20 incident that was serious enough for Donasia's
21 mother to come to the apartment and help pack up
22 all of Cole's things and take them to his
23 grandma's house. Serious enough to get him out of
24 the picture.

25 Cole had a history of obsessive and

1 stalker-like behavior. Shameka, Donasia's mother,
2 testified that he would call or text over and over
3 and over again. If he couldn't reach her, he
4 would even call Shameka. He was keeping tabs on
5 her. That is a trait of the controlling person.
6 That is not a functional relationship. It is a
7 toxic relationship.

8 Shameka also testified that she and her
9 daughter talked about everything and they talked
10 about her relationship with Cole. She gave her
11 advice about her relationship with Cole. Her
12 advice was that Donasia should leave him because
13 this relationship is not normal. We saw in that
14 text exchange that -- you're going to have that in
15 your jury room, this one right here that Detective
16 Shipp read out for the guys. I'm not going to go
17 through this whole exchange, but it was clear that
18 Cole was in touch with Donasia while she was on
19 her Florida vacation.

20 The text exchange begins nice enough, but
21 on May 17th, when she fails to respond to seven
22 different texts from him, things become
23 increasingly hostile. He begins to obsess. He
24 wants to know who she's with, where she is. He
25 begins to call her names and berate her.

1 In a text on May 17th of 2021, he tells
2 her, "Go ahead and have fun while you can and fuck
3 as much as you can, ho." While she can? Was that
4 a threat? Was this when he hatched the idea to
5 lay in wait and be rid of her as soon as she came
6 back from this vacation? Stop her from seeing her
7 new boyfriend and going on vacation with him?
8 Because she ends up just a few minutes after
9 arriving back from that vacation at her apartment.
10 Remember, she went to her parents' house. She was
11 there until about shortly after 9:00, then she
12 leaves in a different car than the one she was
13 driving, goes to her apartment, and it's just a
14 few minutes later that shots are fired into her
15 window.

16 How do we know that Cole was at the
17 murder seen? Well, there's Donasia's video.
18 Donasia tells us. It's a pretty eerie Snapchat
19 video. A piece of evidence that I have not seen
20 the likes of; a victim, a murder victim who is
21 speaking to us from the grave. You will have this
22 back there. We just watched the video again. But
23 she is telling us that she saw Cole follow her
24 into the apartment complex. This man that won't
25 stop bothering her. This man that won't stop

1 obsessing about her. She's fed up. It has to
2 stop.

3 How do we know it's Cole in that video?
4 Because there is not another stocky white male who
5 drives a white pick-up truck with a big head,
6 weird facial hair that's stalking her. All right.
7 It doesn't make any sense that anybody else did
8 this. It looks just like him. We've got the DMV
9 photo. Yes, he has a shaved head in this, but DMV
10 photos are for 10 years. Right? How long does it
11 take to shave a head? Minutes. All right? That
12 can be accomplished very quickly. But you might
13 know that he is five six, 230. Short, stocky, guy
14 with a big head in the video. Also in the
15 apartment surveillance video.

16 One other thing I want to point out about
17 Donasia's video is the mask that he has on that's
18 looped around his ears and tucked under his chin,
19 same way he was wearing it when he was arrested at
20 the Pizza Hut.

21 Shameka told you that Cole always had
22 hair from what she remembers when they would
23 gather during Donasia's time of dating him. She
24 had never even seen him with a shaved head.

25 Donasia's video was created, Sergeant

1 Fisk's testimony, as well as Kyle Bealer's
2 testimony, on May 22, 2021, at 10:07.
3 Sergeant Hantz called in shots fired at 10:14 p.m.

4 The apartment surveillance corroborates
5 Donasia's video and shows us what is believed to
6 be a truck follow her in and park out of the way,
7 and then we saw the stocky white male, the same
8 guy in her video, who is a smoking a cigarette in
9 her video as well approach her car before fleeing
10 shortly thereafter. You see him running.

11 Detective Shipp testified that he also
12 reviewed a video from a neighbor in church that he
13 saw is a white pick-up on surveillance in the area
14 around that same time.

15 He leaves the apartment complex which is
16 corroborated by the south side analysis that
17 Investigator Hightower testified to. Obviously,
18 Cole had his cell phone with him because, of
19 course, that's the only thing that was in that
20 truck. Literally, the only thing. That cell cite
21 analysis showed him rapidly leaving the county
22 spending some late-night time in Ravenel where he
23 had plenty of time to clean up.

24 Let's talk about the clean up. Sergeant
25 Fisk testified that when she executed the search

1 warrant on the single-cab white Chevy truck that
2 Cole was driving that there also literally nothing
3 in it. Not a piece of paper. Not a piece of
4 trash. Nothing in the glove box. Strike you as
5 unusual? I'm sure it does. Look at your own
6 cars. Look at your kids' cars. It was totally
7 clean.

8 The night of the traffic stop when the
9 GSR was collected, Justin Carroll has what appears
10 to be a freshly shaved head. This is how he
11 appeared. You can even see where there's like a
12 tan line and not a scratch or stubble or hair on
13 that head. Well, why would he want to change his
14 appearance? Because he watched Donasia take a
15 video of him right before he shot her. He knows
16 there's video of this or a picture of him
17 somewhere in Donasia's phone.

18 His phone also seemed to be pretty clean.
19 Maybe a couple of text messages Kyle Bealer said.
20 There was certainly no angry text exchange between
21 him and Donasia like what appeared on her phone.
22 Her phone that he didn't have access to to delete.

23 He appears also to have changed clothes
24 since was running away from the apartment complex
25 and he probably wiped his hands at some point

1 which would explain the lack of GSR. But,
2 remember, it had also been four-and-a-half hours
3 and Lieutenant Nates testified that, really, GSR
4 begins to dissipate the minute you have fired that
5 gun. But there was one particle that I'm sure the
6 defense will say was transferred or planted
7 somehow when he was being arrested because
8 Detective Shipp wears a firearm. Yeah, right.
9 Okay? Yeah, right.

10 Detective Shipp also testified that he
11 gloved up when he conducted the GSR kit. He used
12 the gloves that were contained in the GSR kit
13 before he conducted that test on him.

14 Clearly, Justin Carroll also got rid of
15 the murder weapon while he was on his field trip
16 out of the county. Whether he tossed it in a body
17 of water, hid it in a friend's place, we will
18 never know. In fact, we don't know much about
19 that firearm. We don't know where he got it.
20 Probably, he got it from a friend. We don't know
21 whether he got it loaded, unloaded, who had
22 touched the ammo, whether he loaded it, whether
23 someone else loaded it, but why would you want to
24 use a gun to murder someone that could be traced
25 back to you? So I bet you it wasn't his gun. It

1 certainly wasn't a legal, registered gun to Justin
2 Carroll.

3 Defense is going to make a big deal about
4 the evidence that you just heard, that Justin
5 Carroll was excluded from the DNA profile that was
6 found on the shell casings, on the cartridge
7 cases. Well, we don't know whether that was on
8 all of the cases, some of the cases, one of the
9 cases, whether multiple people had loaded this
10 weapon, whether or not someone had touched this
11 ammunition. And what that means also, per the
12 expert, is it does not mean that Justin Carroll
13 did not touch the shell cases or the ammo. He
14 could have just not left his DNA, and that's
15 totally plausible. But it's also totally
16 plausible that he borrowed or bought a loaded gun
17 from someone and shot her with that.

18 So don't ignore the plethora of evidence
19 against the defendant and go down a rabbit hole
20 that the defense wants you to go down, that this
21 was some random person that had it out for Donasia
22 for God knows what. You know, there was no sign
23 of anything taken. I mean, she was just a sitting
24 duck in her apartment.

25 I'm going talk to you just a little bit

1 about a couple of areas of the law. Judge Bonds
2 is going to charge you on the law at the end of
3 our closing statements and what he says goes. I
4 just want to point a couple of things out.

5 He is going to charge you on
6 circumstantial and direct evidence. Okay? They
7 are treated the same. We can rely on
8 circumstantial evidence completely, if we want to,
9 so long as it, combined, definitively and
10 decisively points to the defendant on trial.
11 Rarely is there an eyewitness to a domestic
12 homicide. We almost had Donasia's view of her own
13 death here. But along with the other evidence, it
14 all points directly and decisively and
15 conclusively to Cole.

16 Use your common sense and your evaluation
17 of the testimony of the witnesses, their
18 credibility, and all of the exhibits that have
19 been entered.

20 The last thing I want to point out to you
21 is that reasonable doubt has to be reasonable.
22 The State does not have an impossible burden. We
23 do not have to overcome every doubt. You must be
24 firmly convinced that Justin Carroll killed
25 Donasia Holloway in order to convict him.

1 Now, Mr. Mathews is going to get up here
2 and speak to you, and the way this works is, I
3 will have a brief opportunity to approach you
4 again and reply to any of his new arguments and so
5 I'll speak to you after that. Thank you.

6 THE COURT: Thank you, Solicitor.

7 Mr. Mathews, yes, sir.

8 MR. MATHEWS: Thank you, Your Honor.

9 CLOSING ARGUMENT

10 MR. MATHEWS: Mr. Foreman, ladies and
11 gentlemen of the jury, we haven't been here that
12 long for a murder case. It was pretty quick. And
13 perhaps it was too quick.

14 I always hated school. I am still a
15 little ADHD, that might be apparent if you've been
16 paying attention. And one of the things that
17 troubled me a lot is that in math, particularly
18 long division, the teachers always wanted me to
19 show my work. Why would they do that? Well, they
20 want to make sure my thought process is good, but
21 they also wanted to make sure I didn't cheat.
22 Right? That's what they do. *Let me see your*
23 *work. Show me your work.*

24 When you have witnesses like the Verizon
25 witness who came in to verify the cell records

1 that they looked at, for example, she didn't even
2 have a piece of paper. She just strolled in here.
3 Got off the plane from St. Louis, or wherever she
4 came from, and sat down and said, *Yup*. And when
5 the State said, *What's the number you looked up?*
6 ████-whatever. █████. She said, *Yes, that was*
7 *it*. I said, *What was the number?* Moments later,
8 she got it wrong. She was responding the way the
9 State wanted her to respond. She didn't show her
10 work. She didn't do anything. She brought
11 nothing. And so we're looking at these cell
12 records, nothing.

13 Kyle Bealer, on his phone dumps out there
14 said there was nothing but a few texts. A little
15 bit on that. But what he did is, he gave a
16 Blu-ray disk from her phone and a DVD disk on his
17 phone, and somebody else put that together. And
18 so when you see this back and forth, that wasn't
19 what was revealed from the phone. Dylan Hightower
20 said when he used to do phone dumps it could be
21 thousands of pages you'd get. Thousands. And
22 Kyle Bealer got less than -- he wouldn't say. He
23 wouldn't give any number. I just said, *I don't*
24 *know*, because he didn't want to mess it up. He
25 knew what he was supposed to say, so he didn't

1 show his work. He gave a disk and somebody else
2 put that together. Somebody else put this back
3 and forth together. But one thing he did say, it
4 wasn't on Justin's phone.

5 We're looking at -- we're supposed to
6 believe -- fine. We're supposed to believe that
7 he changed his clothes, his hair, his phone, and
8 his weapon. All of those things he changed, or
9 maybe it wasn't him. That's the thing about this.
10 The reason the State has to show something beyond
11 a reasonable doubt is, if you got something to
12 say, well, maybe somebody else did this. Maybe
13 the guy whose -- or gal whose DNA was on the
14 grounds. It's possible that there's some other
15 way it could have got on there. Or it's possible
16 that whoever did the firing took these rounds and
17 loaded them into a gun and they were expelled and
18 it was still there. Whether it was on one or five
19 or six or whatever. Somebody's DNA and not
20 Justin's was on those.

21 The candy out there that Officer Hantz
22 took, whether you consider that an important piece
23 of evidence or not, they did. They took it. They
24 had it tested and it was Justin's DNA on it.

25 They said on the blood spot on the one

1 thing they knew came from Donasia, octillions, or
2 something like. You say a picture is worth a
3 thousand words. DNA is worth a octillion.
4 Millions and millions. Twenty zeros, or something
5 like that. I can't even imagine such a number.

6 So you got ways now to determine if
7 somebody was around there. It's amazing how far
8 technology has come. And that's one thing you
9 can't fudge. You sit back there and -- all these
10 pictures you're going to have to look at -- you
11 get to look at and say, it seems like that's
12 Justin. Well, look at this picture. Maybe that's
13 Justin. And the one person who said, *Oh, I know*
14 *Justin. He came over and had his hair cut*
15 *different. It was always long. But nobody showed*
16 her this. Right? Wouldn't that be the easiest
17 way to do that? Show the person who knows him. *I*
18 *know what he looks like. He's over at my house*
19 *all the time. They didn't do that.*

20 Now, they didn't present the DNA evidence.
21 You know why? Because it didn't help them. They
22 didn't call him as a witness. I called him as a
23 witness because you needed to know that. They're not
24 showing their work. They're like me in the sixth
25 grade. God, what a mess that was.

1 Look at this, maybe, perhaps -- but you
2 got somebody who -- he's been at my house for --
3 many times. And you can talk about, oh, they had
4 troubles and all that sort of stuff. Is this him?
5 Is this him?

6 Now -- you know, why did the prosecutor
7 not present that? You can draw whatever
8 conclusions you want, but certainly one of the
9 conclusions you can draw is it didn't help.

10 So consider this. You will have a chance
11 to look through all this stuff, but don't break
12 your tail out there trying to make something
13 happen, to explain, oh, the clothes were changed,
14 the hair was changed. Look at this. You know,
15 look at it, but look at it also -- yes, you use
16 your common sense. Absolutely. Somebody right
17 here can identify him. That wasn't the case. Why
18 not?

19 Consider the evidence carefully. When
20 you do, I don't think there are any good answers
21 and I imagine Miss Swanson is going to try. But
22 go back and consider this very carefully. And
23 when you do, I believe the verdict you should come
24 to is not guilty.

25 THE COURT: Thank you, Mr. Mathews.

1 Solicitor.

2 MS. SWANSON: Thank you. Just briefly.

3 THE COURT: Yes, ma'am.

4 CLOSING ARGUMENT

5 MS. SWANSON: The State is not trying to
6 hide the ball here. We stipulated to most of
7 what, you know, the DNA evidence was going to
8 reveal. Obviously, it's the State's, you know,
9 case to present in the way that we wish to present
10 it and that would be with evidence that is
11 relevant to the defendant's guilt, which I believe
12 we've done a good job of this week.

13 The Verizon rep, Kyle Bealer, these
14 people who were simply here to take the stand and
15 get evidence in that was then turned over to other
16 people to analyze because they actually knew the
17 facts of the case and could determine the
18 relevancy of things, they don't have any dog in
19 this fight. They don't have anything to hide. So
20 their credibility is not at issue here.

21 Use your common sense. Listen to the
22 law. At the end of this case, I'm asking you to
23 find Justin Cole Carroll guilty of this murder.
24 Thank you.

25 THE COURT: Mr. Foreman, ladies and

1 gentlemen, my charge will take approximately 15
2 minutes. Do you want to take a brief break and
3 then come back in, or do you want me to go ahead
4 and present my charge to you? Does anybody need
5 to take a break? All right, then I'll go ahead
6 and read my charge. Thank you.

7 JURY CHARGE

8 THE COURT: All right. Mr. Foreman,
9 ladies and gentlemen, it's now my duty as trial
10 judge under the constitution of this state to
11 charge and instruct you on the law applicable to
12 this case. It's your duty as jurors, ladies and
13 gentlemen, to accept and apply the law as I now
14 state it to you. Furthermore, it is your
15 exclusive duty to decide all issues of fact in
16 this case and determine the effect, the value, and
17 the weight of the evidence. Both the State and
18 the defendant have a right to expect that you will
19 carefully consider and evaluate the evidence and
20 apply the law of this case to it so that in the
21 end both the State of South Carolina and the
22 defendant will receive a fair and impartial trial.
23 I want you to understand, folks, that when I use
24 the word "defendant," I am referring to Mr. Justin
25 Carroll.

1 Furthermore, it's important to understand
2 that the state of South Carolina charges the
3 defendant with the offense known as murder. To
4 this charge, the defendant has entered a plea of
5 not guilty. This plea of not guilty places the
6 burden of proof on the State to prove guilt of the
7 defendant to you, the jury, beyond a reasonable
8 doubt.

9 Now, I want to remind you, ladies and
10 gentlemen, the fact that the defendant was
11 arrested, was charged, indicted in the case is not
12 evidence in the case and cannot be considered by
13 you as evidence of guilt in this case; nor does it
14 create any presumption or inference of guilt. The
15 indictment is simply the formal written instrument
16 which contains the charge made against the
17 defendant. It's the formal document by which this
18 case is brought into court.

19 Now, during the trial, folks, you and I
20 have had separate duties to perform. As a trial
21 judge, it's my responsibility to preside over the
22 trial and I also have the duty to rule upon the
23 admissibility of evidence offered during the
24 progress or process of the trial. In that regard,
25 you are to consider only the competent evidence

1 before you and you are to disregard from your mind
2 any testimony ordered stricken from the record of
3 this case during the process -- progress of this
4 trial, if there were any, and you are to consider
5 only the testimony which has been presented from
6 the witness stand, folks, together with any
7 exhibits admitted into evidence, ladies and
8 gentlemen, and any stipulations of counsel that
9 were made into the record.

10 Now, furthermore, I have the duty to
11 charge you on the applicable law in this case, and
12 in that regard, ladies and gentlemen, I am the
13 judge of the law. It's your duty to accept and
14 apply the law as I state it to you. If you have
15 any preconceived notion as to what the law is or
16 what the law ought to be and it doesn't agree with
17 what I tell you the law is, you're obligated under
18 your oath, folks, to go and to abandon those
19 preconceptions because you're sworn to accept the
20 law precisely as I state it to you.

21 Now, ladies and gentlemen, in this trial
22 you are the sole and exclusive judges of the
23 facts. I am the judge of the law. And, ladies
24 and gentlemen, I do not want you to infer that I
25 have an opinion about the facts of this case from

1 anything that I may have said during the course of
2 this trial, in ruling upon admissibility of
3 evidence or otherwise, or from anything that I say
4 during the course of this charge to you. In that
5 regard or this regard, the law does not permit me
6 to have an opinion about the facts. As jurors
7 it's your duty alone, ladies and gentlemen, to
8 determine the effect, the value, and the weight of
9 the evidence that's presented to you during the
10 course of the trial.

11 Now, folks, in determining what the facts
12 of the case are, you must judge the credibility
13 which simply means the believability of the
14 witnesses and the value or weight to be given to
15 their testimony. You alone must decide the force
16 and effect of the testimony. In making this
17 decision, there are many things that you may and
18 should take into consideration. Okay? The
19 appearance and manner of the witness on the stand,
20 a characteristic often referred to as the demeanor
21 of the witness. Was the witness forthright or
22 hesitant? Was the witness's testimony consistent
23 or did it contain discrepancies? What was the
24 ability of the witness to know the facts about
25 which he or she testified? Did the witness have a

1 cause or reason to be bias or prejudice in favor
2 of the testimony he or she gave? Was the
3 testimony of the witness corroborated or made
4 stronger by other testimony in evidence, or was it
5 made weaker, or impeached by such other testimony
6 in evidence?

7 Now, as jurors, I want you to know,
8 folks, you have a right to believe a small portion
9 of a witness's testimony and disregard the large
10 portion, or visa versa. You may believe all the
11 witness's testimony or none. You may believe the
12 testimony of a single witness against that of many
13 witnesses or the other way around.

14 In exercising your mental processes in
15 attempting to decide the verdict, ladies and
16 gentlemen, the law simply requires that you
17 exercise your good judgment, your common sense,
18 your sense of logic and reason, and your
19 experience in life, then apply these attributes to
20 the evidence and the law as I'm stating it to you
21 and thus you arrive at a verdict.

22 Now, the rules of evidence, ladies and
23 gentlemen, ordinarily does not permit witnesses to
24 testify as to opinions or conclusions. An
25 exception to this rule exists for witnesses we

1 call expert witnesses. A witness who by education
2 and experience has been an expert in some art,
3 science, profession, or calling may state an
4 opinion as to relevant material matter in which
5 the witness claims to be an expert and may also
6 state the reasons for the opinion. You should
7 consider any expert testimony received in evidence
8 in this case, and, like any other evidence, give
9 it the weight that you think it deserves. If you
10 decide that the opinion of an expert is not based
11 on sufficient education and experience, or, if you
12 conclude that the reasons are, folks, given to
13 support the opinion are not sound or that the
14 opinion is outweighed by other evidence, you may
15 disregard the opinion in its entirety. An expert
16 witness's testimony is to be given no greater
17 weight than that of any other witness's simply
18 because the witness is an expert. Further, you
19 are not required to accept an expert's opinion
20 even though it is not contradicted.

21 Now, ladies and gentlemen, I want you to
22 know that it is vital to understand that the
23 defendant is presumed innocent under the law.
24 Okay? He's presumed under the law to be innocent
25 of these charges. The defendant has no obligation

1 to prove his innocence. It's a fundamental rule
2 of our law that a defendant irrespective of the
3 seriousness of the charges against him is always,
4 ladies and gentlemen, presumed innocent of the
5 crimes for which he is charged unless and until
6 his guilt has been proven by evidence that
7 satisfies you, the jury, beyond a reasonable
8 doubt.

9 Now, I want you to know, folks, the
10 presumption of innocence is not a mere legal
11 theory or legal phrase. The presumption of
12 innocence is very important and you need to
13 understand that this presumption accompanies the
14 defendant from the time of his arrest and
15 appearance in this court and continues with him
16 even after you retire to the jury room to
17 deliberate. In other words, the defendant
18 receives the benefit of the presumption of
19 innocence until the very end of this trial when
20 you, the jury, will deliberate upon the evidence
21 and decide whether the State has proven his guilt
22 beyond a reasonable doubt.

23 Now, ladies and gentlemen, what's a
24 reasonable doubt? A reasonable doubt in the law,
25 what is it? A reasonable doubt is the kind of

1 doubt that would cause a reasonable person to
2 hesitate to act. Proof beyond a reasonable doubt
3 is proof that leaves you firmly convinced of the
4 defendant's guilt. There are very few things in
5 this world that we know with absolute certainty.
6 So, even in criminal cases, the law does not
7 require proof that overcomes every possible doubt.
8 However, if based on your consideration of the
9 evidence, you are firmly convinced that the
10 defendant is guilty of the crimes charged, you
11 must find him guilty. And, ladies and gentlemen,
12 if on the other hand you think there's a real
13 possibility he's not guilty, you must give him the
14 benefit of the doubt and find him not guilty.

15 Now, jurors, I want to make sure you
16 understand that reasonable doubt may arise from
17 evidence which has been presented in the case or
18 from the lack of evidence in the case. It's your
19 duty, it's your responsibility to determine
20 whether or not reasonable doubt exists as to the
21 guilt of this defendant.

22 I charge you, ladies and gentlemen, that
23 the defendant is entitled to every reasonable
24 doubt arising out of the whole case. If upon any
25 error of facts essential to conviction and a

1 verdict of guilty you have a reasonable doubt as
2 to how that issue should be resolved, it would be
3 your duty to resolve that reasonable doubt in
4 favor of the defendant.

5 Thus, in summary, it's important to
6 understand that a defendant is not required to
7 prove his innocence; instead the State is required
8 by law to prove every essential element of the
9 offense charged against the defendant by evidence
10 which satisfies you, the jury, of his guilt beyond
11 a reasonable doubt. Only then, ladies and
12 gentlemen, can you convict the defendant and find
13 him guilty.

14 Now, folks, there's generally two types
15 of evidence that are presented during a trial;
16 direct evidence and circumstantial evidence.
17 Direct evidence directly proves the existence of a
18 fact and does not require deduction.

19 Circumstantial evidence is a proof of a
20 chain of facts and circumstances indicating the
21 existence of a fact. Crimes may be proven by
22 circumstantial evidence and the law makes no
23 distinction between the weight or value to be
24 given to either direct or circumstantial evidence.
25 However, to the extent the State relies on

1 circumstantial evidence, all of the circumstances
2 must be consistent with each other, and, when
3 taken together, ladies and gentlemen, point
4 conclusively to the guilt of the accused beyond a
5 reasonable doubt. If the circumstances merely
6 portray the defendant's as suspicious, the proof
7 has failed.

8 The State has the burden of proving the
9 defendant beyond a reasonable doubt. And, folks,
10 this burden rests with the State regardless of
11 whether the State relies on direct evidence,
12 circumstantial evidence, or some combination of
13 the two.

14 Now, ladies and gentlemen, I instruct you
15 and emphasize, folks, that the fact that the
16 defendant did not testify is not a factor to be
17 considered by you in any way in your deliberations
18 and in your consideration on the question of the
19 guilt or innocence of the defendant. It must not
20 be considered by you in any manner whatsoever.
21 The defendant has the constitutional right to
22 remain silent and the assertion of this right must
23 not be considered by you in your deliberations. I
24 repeat, under your oath, you are to draw no
25 conclusion whatsoever from the fact that the

1 defendant in this case did not testify, folks.

2 The fact that this defendant did not testify
3 should not even be discussed in the jury room.

4 The burden of proof, as I stated to you, is on the
5 State. The defendant is not required to prove his
6 innocence. Again, the burden of proof remains on
7 the State to prove guilt beyond a reasonable
8 doubt.

9 Now, ladies and gentlemen, in order to
10 establish criminal liability, criminal intent is
11 required. For example, the mental state required
12 to be proven by the State for a particular crime
13 might be purpose, intent, knowledge, recklessness,
14 or criminal negligence. Criminal intent must be
15 proven by the State beyond a reasonable doubt.
16 Criminal intent is always a matter that must be
17 determined by the jury from the circumstances
18 surrounding the situation. There is no way to
19 prove intent to a mathematical certainty. There
20 is no way medical science can dissect someone's
21 brain and determine what that person had in mind,
22 so the law says that criminal intent may be shown
23 from the circumstances shown to have existed.
24 This is how you make a determination of whether or
25 not the element requiring intent was present.

1 It's not necessary to establish intent by direct
2 and positive evidence, but intent may be
3 established in the same way as any other fact by
4 taking in consideration the acts of the parties
5 and all the facts and circumstances in the case.

6 Criminal intent is a mental state, a
7 conscious wrongdoing and it's up to you to
8 determine what the defendant intended to do based
9 on the circumstances shown to have existed.
10 Criminal intent can arise from an action or a
11 failure to act. It may arise from negligence,
12 recklessness, or an indifference to duty, or to
13 consequences that is considered by the law to be
14 the equivalent of criminal intent.

15 Now, folks, the defendant is charged with
16 murder. The State must prove beyond a reasonable
17 doubt that the defendant killed another person
18 with malice aforethought. Malice is ill will or
19 hostility towards another person. It is the
20 intentional doing of a wrongful act without just
21 cause or excuse and with an intent to inflict
22 injury. It is an evil intent. Malice is wrongful
23 intent to injure another person. It indicates a
24 wicked or depraved spirit intent of doing wrong.
25 Malice is a legal term implying wickedness and

1 excluding a just cause or excuse. The term malice
2 indicates a formed purpose and designed to do a
3 wrongful act under the circumstances that exclude
4 any right to do it. Malice aforethought does not
5 require, ladies and gentlemen, that malice exists
6 for any particular time before the act is
7 committed, but malice must exist in the mind of
8 the defendant just before and at the time the act
9 is committed. Therefore, there must be a
10 combination of the previous evil intent and the
11 act. Malice aforethought may be expressed or
12 implied. These terms "express" and "implied" do
13 not mean different kinds of the malice but merely
14 the manner in which malice may be shown to exist
15 either by direct or by circumstantial evidence
16 from the facts and circumstances that are proven.

17 Express malice is shown when a person
18 speaks words which express hatred or ill will for
19 another, or when the person prepared beforehand to
20 do the act which was later accomplished. For
21 example, lying in wait for a person or any other
22 acts of preparation going to show that the deed
23 was within the defendant's mind would be express
24 malice. Malice may be shown from conduct showing
25 a total disregard toward human life.

1 Now, folks, I want you to understand that
2 you are not partisans or advocates for the State
3 of South Carolina or the defendant. It's your
4 duty by your joint deliberations, folks, to
5 determine the facts of this case giving the
6 defendant the benefit of every reasonable doubt on
7 each and every issue. Then to the facts that you
8 determine to be true, you should take and apply
9 the law which has been given to you by this Court
10 and thus arrive at a verdict in the case. Thus,
11 when you have accomplished these responsibilities,
12 I will have satisfied the oath that you took as
13 jurors and you will have discharged your duty to
14 this Court.

15 Now, once you go back to the jury room,
16 the bailiff will give the verdict form to the
17 foreperson. When you, the jury, arrive at the
18 verdict as to the offense charged in this case,
19 the foreperson will select the verdict as to that
20 offense on the verdict form. If the State has
21 failed to prove guilt of the defendant beyond a
22 reasonable doubt, your verdict will be not guilty.
23 Likewise, if the State has proven the guilt of the
24 defendant beyond a reasonable doubt, your verdict
25 will be guilty. Once the decision has been made,

1 the foreperson will check whichever choice is the
2 verdict of the jury as to the offense charge.

3 The verdict that you render in this case
4 must be the verdict of each and every juror. It
5 must be your anonymous verdict, ladies and
6 gentlemen. All 12 jurors must agree on the
7 verdict which you then authorize the foreperson to
8 write for the jury.

9 Now, ladies and gentlemen, I also want to
10 further -- I want you to understand that the order
11 in which the choices of the verdict appear on the
12 verdict form are not suggestive of any verdict on
13 the part of this Court. The verdict in this case
14 is to be determined by you, the jury, not the
15 Court.

16 Furthermore, ladies and gentlemen, please
17 understand even though I will give the verdict
18 form to the foreperson, it's not his verdict
19 alone. It is the verdict of all 12 of you. And I
20 emphasize again, your verdict has got to be
21 unanimous.

22 All right. You must consider the
23 instructions that I've given you as a whole and
24 not follow some and ignore others.

25 Now, I'm going to ask you to retire to

1 the jury room but do not begin your deliberations
2 until you are told to do so. The law requires
3 that I consult with the attorneys to make sure I
4 have not left anything out of these instructions.
5 After I've check with the attorneys, the bailiff
6 will bring the verdict form and will instruct you
7 to begin your deliberations.

8 Also, folks, should you have any
9 questions during your deliberations, you must put
10 them in writing and send them to me by the
11 bailiff. The court bailiff will be placed
12 immediately outside of the jury room during your
13 deliberations. If you have a question, please do
14 not write down the breakdown of your vote on the
15 paper. Okay?

16 Once you have reached your verdict,
17 please knock on the jury room door and ask the
18 bailiff to advise the Court that you have reached
19 your verdict and we will return you to the
20 courtroom as soon as possible. Okay?

21 So, again, the verdict form, I'm just
22 going to show you right here. It's pretty
23 straight forward. It's just going to say right
24 here, "We, the jury, in above-captioned case on
25 the charge on murder find the defendant . . .,"

1 foreperson shall check one. Okay? Not guilty or
2 guilty. Again, there is no rhyme or reason as to
3 which one is first. We got to put one down and
4 that's what I did. Okay?

5 Then, once you've reach a verdict and the
6 foreperson has checked the appropriate box, the
7 foreperson would sign. And also, Mr. Foreperson,
8 if you would date right down there. If you would
9 put today's date, I would appreciate that. Okay?

10 So, ladies and gentlemen, I'm going to
11 ask you to retire to the jury room, but please do
12 not begin your deliberations until you have been
13 advised to do so. Okay?

14 Thank you very much.

15 Do not start to deliberate until you have
16 been advised to do so.

17 (Jury exits the courtroom at 3:38 p.m.)

18 THE COURT: Any exceptions or problems
19 with the charges that were presented to the jury
20 from the State?

21 MS. SWANSON: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. MATHEWS: No, sir.

24 THE COURT: All right. So what I'd like
25 you-all to do is, if you-all cold come up and

1 THE COURT: We'll step down until we have
2 a question or a verdict.

3 (Off the record at 3:47 p.m.)

4 (Verdict reached at 4:15 p.m.)

5 THE BAILIFF: All rise.

6 THE COURT: You can be seated, please.

7 All right. Folks, I'm informed that we
8 have a verdict in the case. Hold on. Let's get
9 the defendant.

10 All right. Mr. Carroll, I'm informed
11 that we have a verdict in the case.

12 And so before I bring the jury in, I want
13 everyone in the courtroom to know that there are
14 going to be people who are disappointed by the
15 verdict. There may be people who are happy about
16 the verdict. You know, I don't know. But what
17 I'm telling everyone in this courtroom right now
18 is, if they question whether they can control
19 their emotions as the verdict is read, they need
20 to leave the courtroom because I am not going to
21 put up with, and I am not going to allow outbursts
22 while this verdict is being read or immediately
23 after it's being read. I want everyone in the
24 courtroom to know that I have the ability to
25 impose sanctions as a result of that to include

1 holding the individual or individuals in immediate
2 contempt of court to include up to incarceration
3 for 180 days. So if anyone needs to leave, now is
4 the time to do it.

5 I see no one is leaving, so we can bring the
6 jury in, please.

7 (Jury enters the courtroom at 4:16 p.m.)

8 THE COURT: All right. Mr. Foreman, I am
9 informed that the jury has reached a verdict; is
10 that correct?

11 FOREPERSON: Yes, sir.

12 THE COURT: All right. Could you hand
13 that verdict to the bailiff who will hand it to
14 me.

15 FOREPERSON: (Complies.)

16 THE COURT: Thank you so much, sir.

17 All right. I believe the verdict form
18 has been appropriately completed.

19 Madame Clerk, if you can publish the verdict
20 of the jury, please.

21 THE CLERK: The State of South Carolina,
22 County of Colleton, State of South Carolina vs.
23 Justin Carroll, court of general sessions, 14th
24 Circuit, indictments number 2021-GS-15-00472, We,
25 the jury, in the above-captioned case on the

1 charge of murder find the defendant guilty.

2 Foreperson, Dale Lyons, and it's dated
3 for April 24, 2024.

4 THE COURT: All right. Mr. Mathews, do
5 you have any motions before I would discharge the
6 jury, sir?

7 MR. MATHEWS: At this time, they should
8 be poled.

9 THE COURT: All right. You want to go
10 ahead and pole the jury. Hold on to that. Go
11 ahead and pole the jury.

12 THE CLERK: Juror number 154, is this
13 your verdict?

14 JUROR 154: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR 154: Yes.

17 THE CLERK: Juror number 143, is this
18 your verdict? That's you, Mr. Lyons.

19 JUROR 143: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR 143: Yes.

22 THE CLERK: Ivory-Marie Langston, is this
23 your verdict?

24 JUROR 136: Yes.

25 THE CLERK: Is it still your verdict?

1 against him, but if he wants to tell me something,
2 he can. Do you want to talk to him about that or
3 does he want -- whatever you-all want to do. I
4 just wanted to say that.

5 MR. MATHEWS: Thank you, Your Honor.
6 I've talked briefly to him and I recommend that he
7 not make any statements other than -- I mean, I've
8 passed along that he's had kind of a tough life.
9 His grandmother is here and I pass those things
10 along.

11 THE COURT: All right. Great. Thank you
12 very much.

13 All right. We'll be at ease for just a
14 minute and I will be back out. Thank you.

15 Mr. Mathews, can you find out how much
16 time he has in so that is properly documented on
17 the sheet?

18 MR. MATHEWS: Yes, sir.

19 (A break was taken from 4:41 p.m. to 4:48 p.m.)

20 THE BAILIFF: All rise.

21 THE COURT: You-all can be seated.

22 All right. I know all my lawyers in here
23 have heard me say it, but I'm going to say it to
24 the families, both families, that find themselves
25 in a nightmare, and to jurors who are here, what I

1 will say is that when I took this job, I just
2 never thought about how many times I'd have to sit
3 here and tell people how sorry I am for their
4 loss. It just didn't dawn on me. It just never
5 gets easier for me to relay that. And, you know,
6 again, two families' lives ruined. In many cases,
7 future is taken away for whatever reasons. Some
8 we may know, some we'll never know.

9 Did we find out -- do know about the time
10 in?

11 MR. MATHEWS: 1066 days.

12 THE COURT: And, Solicitors, I
13 understand, being that this is a murder charge,
14 this is a day-for-day sentence, and so any
15 sentence that I impose will be a day-for-day
16 sentence, less, I believe, the time that he has
17 in. Is that correct?

18 MS. SWANSON: That's correct.

19 THE COURT: All right.

20 Mr. Mathews, your client is 24 years old,
21 sir?

22 MR. MATHEWS: Yes, sir.

23 THE COURT: All right. In
24 2021-GS-15-00472, that's the *State vs. Justin Cole*
25 *Carroll*, Mr. Carroll, the charge of murder, sir,

1 I'm going to commit you to the department the
2 correction for a term of 60 years, sir. I'm going
3 to give you credit for 1066 days that are served,
4 and I believe that should bring the sentencing
5 portion of this matter to a close.

6 Solicitor, is there anything further?

7 MS. SWANSON: No, Your Honor.

8 THE COURT: All right. Mr. Mathews,
9 anything further from the sentencing, sir?

10 MR. MATHEWS: No, sir.

11 THE COURT: All right. So let me ask
12 you -- Mr. Mathews, just file whatever appropriate
13 documentation you need, sir, as it relates to the
14 motions and I'll be glad to -- we can schedule --
15 check with Nathan and we'll schedule the motions.
16 Just make certain that when you do -- Nathan, make
17 sure that all families have adequate time so that
18 if they want to appear and attend the motions that
19 they can.

20 All right. Thank you. We'll be adjourned
21 until tomorrow morning, Ms. Keeney?

22 MS. KEENEY: Yes, Your Honor.

23 THE COURT: Thank you.

24 MS. SWANSON: Thank you, Your Honor.

25 (The trial was concluded at 4:53 p.m.)

402

WITNESSES

Walterboro PD-

[Signature]

ARREST WARRANT NUMBER

2021A1520300127

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: *1-17-23*

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: *4*

INDICT

DOCKET NO. 2021GS1500472

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

January Term 2023

THE STATE

vs.

Justin Carroll

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

.After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

JAN 17 2023 PM 4:13
COLLETON CO SS, REBECCA H. HILL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF COLLETON)

2021GS1500472

At a Court of General Sessions, convened on January 17, 2023 the Grand Jurors of Colleton County present upon their oath:

Murder

That in Colleton County, South Carolina, on or about May 22, 2021, the Defendant, Justin Carroll, did, with malice aforethought, kill Donasia Alexis Holloway and Donasia Alexis Holloway did die as a proximate result of Justin Carroll's actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

404 ✓

(30 - Life)

STATE

JUSTIN COLE CARROLL

INDICTMENT/CASE#: 2021GS1500472 ✓

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF COLLETON

STATE

VS.

INDICTMENT/CASE#: 2021GS1500472

JUSTIN COLE CARROLL

AKA:

Race: White Sex: Male Age: 24

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#* SID#

AW#: 2021A1520300127

Date of Offense: 05/22/2021

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

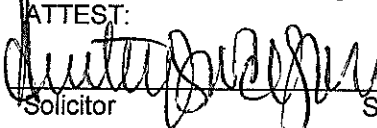
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor  #72934

SC Bar #

Defendant

Attorney for Defendant

SC Bar # 1192

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 60 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$___; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.

1066 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

STATE

JUSTIN COLE CARROLL

INDICTMENT/CASE#: 2021GS1500472

405

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

 Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5%)				\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)		\$100		\$ _____
§56-5-2995 (DUI Assessment)		\$12		\$ _____
§56-1-286 (DUI Breath Test)		\$25		\$ _____
§14-1-212 (Law Enforce. Funding)		\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)		\$150		\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41		\$ _____
§50-21-114 (BUI Breath Test Fee)		\$50		\$ _____
§56-5-2942(J) (Vehicle Assessment)		\$40/ea		\$ _____
3% to County (if paid in installments)		TBD		\$ 3.75

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees

☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk:

Court Reporter:

Presiding Judge:

Judge Code:

Sentence Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

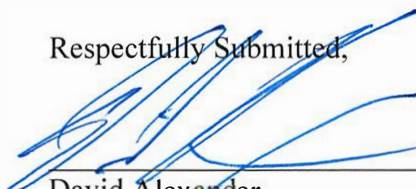
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED

Aug 28 2025

SC Court of Appeals

Respectfully Submitted,



David Alexander

Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 28th day of August, 2025.

RECEIVED

Aug 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN COLE CARROLL,

APPELLANT.

APPELLATE CASE NO. 2024-000722

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 28th day of August, 2025.



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT