

VOLUME II OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 05 2026

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable George M. McFaddin, Circuit Court Judge

VALENTINO M. HAYWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001530

APPENDIX

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

RUSS BARLOW
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED NOVEMBER 9-17, 2025	1
APPLICATION FOR POST-CONVICTION RELIEF	1065
RETURN AND MOTION FOR MORE DEFINITE STATEMENT	1072
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	1077
PCR HEARING TRANSCRIPT DATED FEBRUARY 10, 2023.....	1080
ORDER GRANTING POST-CONVICTION RELIF	1122
RESPONDENT’S RULE 59(E) MOTION	1138
REPLY TO RESPONDENT’S RULE 59 (E) MOTION	1176
ORDER GRANTING RULE 59(E) MOTION TO RECONSIDER – DENYING PCR	1183
INDICTMENT AND SENTENCE SHEET	1220

CYNTHIA SCHANDL, M.D. - CROSS EXAM BY MR. MAYER

1 alcohol or other drugs.

2 MS. MULKEY: Court's indulgence?

3 THE COURT: Uh-huh.

4 MS. MULKEY: No further questions at
5 this time. Please answer any questions the defense
6 may have.

7 THE COURT: You may proceed.

8 CROSS-EXAMINATION

9 BY MR. MAYER:

10 Q. How did you end up licensed in North
11 Carolina and Florida?

12 A. Sorry?

13 Q. How did you end up getting licensed in
14 North Carolina and Florida too?

15 A. I do some consulting in those states.

16 Q. Did you ever do autopsies in North
17 Carolina?

18 A. No, I haven't done any autopsy work in
19 North Carolina. Although, one of my cases from
20 York County was tried there.

21 Q. I only asked because those are the
22 states I'm licensed in.

23 So on the -- on the entry wound to the
24 back, safe to assume that the body came to you
25 laying face up?

CYNTHIA SCHANDL, M.D. - CROSS EXAM BY MR. MAYER

1 A. That's usually how they're packaged,
2 yes, sir.

3 Q. Was it apparent with the body laying on
4 the back, without -- if you hadn't been briefed,
5 would it have been apparent to you that it was a
6 gunshot wound?

7 A. If I knew nothing about the case? It
8 wouldn't have been apparent until I started to
9 investigate his clothing and then, of course, his
10 body.

11 Q. Right. And on the clothing -- let me
12 back up. I don't want to put you in an awkward
13 spot. Have you reviewed those photos from autopsy?
14 Do you remember whatever they looked like?

15 A. Well, I often do have a copy if you
16 want to refer to anything in particular.

17 Q. Okay. From the decedent's position,
18 face up, lying on the back, it wasn't apparent even
19 in the clothing that there was a gunshot wound; is
20 that correct?

21 A. Right. The defect and the blood
22 staining was to the back of the clothing.

23 Q. Which would have been in contact with
24 whatever the decedent was laying on?

25 A. Right. In my case, he was on the

1 autopsy table.

2 Q. You testified on direct that he was
3 23 years old. There is no way to tell that from
4 the medical examination, correct?

5 A. No, sir.

6 Q. We're not like trees?

7 A. Well, we are a lot like trees in a lot
8 of ways, but not in the way of growth with rings.
9 So my information about his age is from the
10 coroner. They provide us with a date of birth on
11 everybody that comes to us.

12 Q. Okay. There is one other thing right
13 there in your clinical summary where the age is
14 listed I want to ask you about. Do you have your
15 report there with you?

16 A. I do, sir.

17 Q. Can you just take a look at the second
18 sentence -- the first sentence after the age? You
19 don't need to read it out loud necessarily. Where
20 did you get that information from?

21 A. All the information in the clinical
22 summary is essentially retrieved from the coroner's
23 report. Not their report, excuse me. From our
24 conversation with the coroner. I consider it
25 hearsay because I'm not able to confirm that

1 information.

2 Q. Do you know what the coroner's source
3 for that information is?

4 A. No, sir.

5 Q. Because it says --

6 MS. MULKEY: Objection.

7 THE COURT: Basis?

8 MS. MULKEY: Hearsay.

9 THE COURT: Sustained, unless you can
10 establish it's for purposes of diagnosis and
11 treatment, and since he's deceased I would consider
12 you not be able to do that.

13 BY MR. MAYER:

14 Q. Is there -- how can that second
15 sentence be true based on your examination of the
16 body? How could that be true?

17 A. Well, I've found in my experience that
18 a lot of things can be true that you wouldn't
19 expect to be true. Without going into what it says
20 and what my findings were and how they may or may
21 not complement each other, it's difficult to
22 explain.

23 Q. This was a report that you authored,
24 though?

25 A. Yes, sir.

1 Q. Okay. And you did rely on the
2 information you got from the coroner as part of
3 your examination, correct?

4 A. Not part of my examination, but as to
5 my history, yes, sir.

6 Q. Okay. Okay. But as part of your duty
7 in this case, you were required to come up with an
8 autopsy final report, correct?

9 A. Yes, that's part of my job.

10 Q. And this report that you have there
11 before you is a fair and accurate copy of that?

12 A. Yes, it is.

13 Q. Let's talk about -- I think -- I know
14 you testified about it a little bit on direct, but
15 did you say ultimately how far away the muzzle of
16 the gun must have been from the decedent in order
17 not to cause death?

18 A. No. Essentially, my findings since I
19 did not find soot, I did not find stippling, that
20 leads me to determine that it is an indeterminate
21 range, gunshot range, simply because there are a
22 number of variables that can prevent those things
23 from actually depositing on the body.

24 So from my point of view, when I don't
25 find anything, it's indeterminate. If I find one

1 of those things, soot or stippling, then I call it.

2 Q. Okay. All right. Were you able to or
3 did you try -- let me ask that first. Did you try
4 to determine an angle of entry for this projectile?

5 A. Do you mean the trajectory of the
6 projectile that goes through the body?

7 Q. At the point that it entered the body.

8 A. So, we do look at that as a variable
9 for what good it's worth. So in as far as angles,
10 it's always going to be an estimate. So,
11 frequently, rather than actually estimate an angle,
12 I will simply describe the trajectory through the
13 body.

14 So what I'm getting at is it went --
15 say from here, it went back to front, from the
16 front, it went up, and it went forward.
17 (Indicating) So that's the trajectory through the
18 body from my point of view is forward, up, and
19 left. So, alternatively, I could guesstimate
20 angles, but I don't think I did that in this case.

21 Q. Was there something like bone inside
22 the back that this projectile hit that caused it to
23 change direction once it got inside the body?

24 A. It's hard to say if it changed
25 direction very much. It did hit the vertebral

1 column, but it's difficult to know if that changed
2 its direction significantly. Now, it was very
3 clear to me the direction it was going from here to
4 here, and then it's not very much further to end up
5 here. (Indicating)

6 So, I mean, it slowed it down. I know
7 that. As far as how much direct -- did it change
8 the direction? It's difficult to say because it
9 hit the neck and the vertebral column and it ended
10 right here and then it just ended right here.

11 (Indicating) So from my point of view it's still
12 going the same direction, same trajectory.

13 Q. So there's nothing else that it hit
14 prior to hitting the vertebral column up by the
15 Ts --

16 A. That's correct.

17 Q. -- that would have caused it to change
18 direction?

19 A. No, not the neck.

20 Q. Okay. And so --

21 MR. MAYER: Judge, permission for the
22 doctor to step down and do a quick demonstration on
23 me?

24 THE COURT: Any exception?

25 MS. MULKEY: None from the State.

1 THE COURT: Doctor, you may step down.

2 BY MR. MAYER:

3 Q. I don't have anything longer to use
4 than this. I'm going to turn around and be in the
5 position of the deceased. Will you use that to
6 indicate the trajectory of that projectile at the
7 time it came into the body?

8 A. Yes. So it went in here, somewhere in
9 the shoulder, and it's coming up and forward like
10 this. (Indicating)

11 Q. So if you carry that line on out of the
12 body, as if you were reversing that projectile --
13 will you do that for me, please?

14 A. I'm not sure what you mean, but it
15 ended here and so -- so it's here. (Indicating)

16 Q. I'm not being clear. Starting from
17 where the bullet hit the decedent, right?

18 A. Here.

19 Q. Yes, ma'am. If you'll reverse from
20 that point and just reverse the line back out of
21 the body.

22 A. Like this? (Indicating)

23 Q. Yes, ma'am.

24 A. Okay.

25 Q. So this angle here is what you're

1 indicating.

2 A. I can't tell you anything about what
3 happened outside of the body. So I know where it
4 hit and I know where it ended up, but as far as
5 where two people are in space, and where that
6 bullet came from, that I don't know.

7 He can bend over, he can go like this,
8 the person could be on the steps, the person could
9 be in a hole, so as far as where two people are in
10 space, I can't get to that from my trajectory. So
11 all I know is it started here and ended here.

12 (Indicating)

13 MR. MAYER: Thank you. You can go back
14 to your seat.

15 BY MR. MAYER:

16 Q. Did you note anywhere or can you say
17 the level of entry on the decedent's back as it
18 would be equal to the number of vertebra in the
19 spine?

20 A. No. The way that we measure -- because
21 we're measuring that not inside the body, but on
22 the external examination. So the way we designate
23 where those injuries are from the top of the head
24 and inches down from the top of the head, and then
25 we'd be right at midline. So I can give you those

1 coordinates, if that helps.

2 Q. Yes, please.

3 A. So, in this case, it's 11 inches from
4 the top of the head and three inches to the right
5 of the midline.

6 Q. And is the midline an imaginary line?

7 A. Well, I mean, it's not that imaginary.
8 Everybody knows where the midline is and can kind
9 of point at it, so it's the middle of the back.

10 Q. It's not from a certain side of the
11 vertebrae or anything like that?

12 A. No. It's from the middle of the back,
13 or middle of the front depending on where the
14 injury is.

15 Q. Did you get any other background
16 information from anyone other than the coroner?

17 A. The only thing I could do to figure
18 that out is to go through my notes and see if there
19 was anything else I wrote down.

20 Q. Do you have those handy?

21 A. Yeah, I can take a look.

22 Q. If you wouldn't mind.

23 A. The form I'm looking for right now is
24 called an I form. It's an information form that we
25 take down information when the case is being

CYNTHIA SCHANDL, M.D. - CROSS EXAM BY MR. MAYER

1 referred to us. I do have that sheet. I'm not
2 sure what information -- I can read off to you
3 everything that's on it or you can review it. I
4 don't know.

5 MR. MAYER: Judge, may I approach the
6 witness?

7 THE COURT: Uh-huh.

8 BY MR. MAYER:

9 Q. Whose handwriting is that?

10 A. That's me.

11 Q. And does it indicate on there who you
12 received that information from?

13 A. Yes, it does.

14 Q. Who did you receive that information
15 from?

16 A. Kelly Kraus, one of the deputy
17 coroners.

18 Q. Say the name again, please.

19 A. Kelly Kraus.

20 MR. MAYER: Court's indulgence?

21 BY MR. MAYER:

22 Q. How are you spelling Kraus?

23 A. K-R-A-U-S.

24 MR. MAYER: Thank you very much. No
25 further questions.

CYNTHIA SCHANDL, M.D. - REDIRECT EXAM BY MS. MULKEY

1 THE COURT: Any redirect?

2 MS. MULKEY: Yes, Your Honor.

3 THE COURT: You may proceed.

4 REDIRECT EXAMINATION

5 BY MS. MULKEY:

6 Q. Dr. Schandl, how tall was Mr. Miles
7 again?

8 A. Five-seven and a half.

9 Q. And Mr. Mayer had you stand up. He's a
10 tall guy; fair statement?

11 A. Taller than me.

12 Q. Just to be clear, can you tell from
13 your findings whether the victim, Mr. Miles, was
14 standing up at the time this happened?

15 A. No, ma'am.

16 Q. Can you tell if he was running?

17 A. No, ma'am.

18 Q. Can you tell if he was shot from the
19 ground?

20 A. No, ma'am.

21 Q. And can you conclude anything about
22 where he was at in relation to who shot him, based
23 on your findings?

24 A. No, ma'am.

25 MS. MULKEY: Court's indulgence?

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 THE COURT: Yes, ma'am.

2 MS. MULKEY: No further questions.

3 THE COURT: Any objection to the
4 witness being excused? From the State?

5 MS. MULKEY: None from the State.

6 THE COURT: From the defense?

7 MR. MAYER: No.

8 THE COURT: Doctor, you're excused.

9 THE WITNESS: Thank you.

10 THE COURT: You're welcome.

11 Call your next witness.

12 MS. MULKEY: State would call Lauren
13 Mosher.

14 LAUREN MOSHER,

15 being first duly sworn, testified as follows:

16 THE CLERK: Be seated. Please state
17 your name and spell the last name.

18 THE WITNESS: Lauren Mosher,
19 M-O-S-H-E-R.

20 THE COURT: You may proceed.

21 MS. MULKEY: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. MULKEY:

24 Q. Afternoon, Ms. Mosher.

25 A. Afternoon.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 Q. Where are you presently employed?

2 A. Charleston County Sheriff's Office.

3 Q. How long have you been with the
4 sheriff's office?

5 A. Since March of 2014.

6 Q. Where were you employed back in
7 December of 2013?

8 A. City of Charleston Police Department.

9 Q. And what was your role at the
10 Charleston Police Department?

11 A. I was originally hired as a police
12 officer, intel analyst. I ended my career at the
13 City of Charleston Police Department as an
14 intelligence analyst.

15 Q. And at that point you transitioned to
16 the Charleston County Sheriff's Office?

17 A. Yes, ma'am.

18 Q. And what type of background do you
19 have?

20 A. I graduated from the College of
21 Charleston in 2002, I went to the Criminal Justice
22 Academy and graduated in 2005, and was hired by
23 Probation and Parole. I stayed with them until
24 2008 when Chief Mullin offered me a position in his
25 new intelligence unit.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 I then was a field intelligence officer
2 with that unit. I transitioned over into a
3 full-time intel analyst giving up my sworn position
4 during that time. I attended training, 48 hours,
5 in Savannah, Georgia on basic and advanced
6 telephone mapping, and in 2013 I went to Seattle,
7 Washington to also take a beginner as well as
8 advanced telephone mapping [again. Technology is
9 always changing so you have to keep up with it.

10 Q. That kind of leads me into my next
11 question. Do you maintain any certifications or
12 training as a result of the constantly changing
13 technology?

14 A. In regards to the cell phone mapping,
15 every two years we try to alternate between myself
16 and another analyst in my office. So I have a
17 40-hour class with criminal intelligence analyst
18 training, beginner as well as advanced analysis,
19 with the Department of Homeland Security, a 40-hour
20 intelligence and surveillance class with the FBI.

21 Q. What is your current title with the
22 sheriff's office?

23 A. They call me an intelligence analyst
24 officer.

25 Q. What are the duties of an intelligence

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 analyst officer?

2 A. Currently, I connect local crime to
3 bigger picture crime with regards to terrorism or
4 other crimes outside of the state. I assist with
5 license plate reader data, as well as partial tag
6 database, cell phone mapping, and I'm currently
7 implementing a general intelligence collection
8 program in the Charleston County Detention Center.

9 Q. How long have you had experience in the
10 cell phone mapping?

11 A. 2010 is when I attended my first
12 classes.

13 Q. And how do you come to map a phone?
14 How does that process begin?

15 A. Initially, the officer has a search
16 warrant, obtains the subscriber information, they
17 then e-mail that to me.

18 Q. And once those records are obtained,
19 what information is received?

20 A. So you get a good bit of information.
21 You get the towers or antennas that are associated
22 with that cell phone carrier, as well as you get
23 the call detail record for that particular
24 subscriber. Within those call detail records, you
25 have the date and time of each initiated call, the

1 person dialing the call, the receiver or outgoing
2 call, the tower or antenna that the call began on,
3 as well as the tower or antenna the call ended, and
4 the duration of the call.

5 Q. And how are these records generally
6 submitted to you?

7 A. They are submitted via e-mail and they
8 come in a CSC or Excel format.

9 Q. Is all of the information you just
10 discussed that you received, is all of that
11 mappable?

12 A. Everything is mappable except for
13 Internet data usage.

14 Q. And so you receive that information in
15 that Excel format, then what happens next?

16 A. What happens -- well, from my -- the
17 way I've been taught, we map like layers. So you
18 would then put the towers or antennas on a map
19 using latitude and longitude. You'd then take the
20 call detail records, which is your subscriber
21 person who has the phone in their possession or
22 that the records come back to, and you overlay that
23 to those antennas to see which calls are made where
24 and when and how they ended on which towers.

25 Q. When you receive these records from the

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 detective, do you get the facts of the case?

2 A. No.

3 Q. Do they narrow down the timeline?

4 A. They will give me a date. Usually
5 records come in a 30-day format and, as you can
6 imagine, there's a lot of calls. So then the
7 detective narrows it down days, hours even, and you
8 go from there.

9 Q. And at any point, do you then learn the
10 facts of the case?

11 A. Not until I put the maps together and
12 take it back to the investigator to explain where
13 the travel path was.

14 Q. So is it a fair statement when you
15 receive that information to begin the mapping, you
16 are in the dark about the facts of the case?

17 A. Yes.

18 Q. Were you asked to create maps in
19 reference to this case?

20 A. Yes, ma'am.

21 Q. And did all of the steps you just
22 briefly testified to, search warrant, timelines,
23 did that all happen in this case?

24 A. Yes, ma'am.

25 Q. Can you explain the concept of cell

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 mapping to the jury? You discussed the layers that
2 is built. Can you explain what that is and what
3 that does for an investigation?

4 A. Cell phone waves are like radio waves.
5 There's natural barriers like mountains, or in New
6 York City, buildings. It's all about line of
7 sight. Here in Charleston we have very few natural
8 barriers, so the towers are very easily seen.

9 From a standpoint of cell waves, if you
10 were -- let's say you're at the port authority and
11 you make a phone call. Your tower could be going
12 straight across Mount Pleasant, because radio waves
13 travel easier over water as they do through land
14 through the City of Charleston.

15 Q. Now, take us through briefly how you
16 map. You said it was in layers. Can you explain
17 those layers again?

18 A. Ultimately, you take the base map, just
19 like you guys would use for streets and trips. You
20 plug in latitude and longitude. I import the file,
21 it's an Excel file, into a map. I used Microsoft
22 Streets and Trips for this case. It then drops
23 pins onto a map for the location of the cell tower
24 or antenna located.

25 Cell towers and antennas, all carriers

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 could be on there or not on there. They rent space
2 from the perceived tower. So they're always trying
3 to provide better service to their subscribers.

4 And so you rent space from a tower as a carrier.

5 Q. So let me make sure I understand this
6 correctly. When you receive that information, that
7 the provider gives you the location of their
8 towers?

9 A. They do.

10 Q. And you plot those on a map?

11 A. I do.

12 Q. And then you take the information that
13 you received from the call records and you plot
14 that on top of it?

15 A. Yes.

16 Q. Now, can more than one antenna be used
17 at any time?

18 A. Yes.

19 Q. And can you explain that to the jury?

20 A. It's like you're travelling from
21 Columbia to Charleston. As you're leaving Columbia
22 you're going to be -- they want to provide you with
23 the best service possible. So as you're moving,
24 you're going to go to the closest tower. So you
25 will possibly hit -- from Columbia you may hit

1 anywhere from nine to 15 towers.

2 Q. Does anything else affect which antenna
3 is being used?

4 A. Usage. For example, the Cooper River
5 Bridge Run. You have overloaded towers, 40,000
6 people trying to upload or send text messages, it
7 can get overloaded and jump; however, more often
8 than not, there's not usually 40,000 people in one
9 spot.

10 Q. Now, what happens if you see multiple
11 calls hitting off the same tower?

12 A. That would mean that the person is
13 staying stationary in that area or somewhere in the
14 region of that tower.

15 Q. And are the number of antennas and
16 towers consistent, or constant I should say?

17 A. No, they're always changing. The cell
18 phone company wants to give you the best service.
19 So if 5,000 people move into a neighborhood,
20 they're going to put a bigger antenna on that side
21 to make sure you don't have dropped calls.

22 Q. Now, I want to make sure I understand
23 what you're saying. Based on these records that
24 you receive and the maps that you created, can you
25 tell who is making a phone call?

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 A. No.

2 Q. Can you tell specifically where the
3 person is located when they are making that phone
4 call?

5 A. No.

6 Q. Can you tell which antenna is being
7 used when the phone call is being made?

8 A. Yes.

9 Q. Did you create any maps from the phone
10 records that you received in this case?

11 A. I did.

12 Q. For what phone numbers and carriers?

13 A. Both phone numbers had the same
14 carrier, TMobile. Phone number 8434604293 with the
15 subscriber of Valentino Hayward as well as
16 8435682027, Mr. Miles.

17 MS. MULKEY: May I approach the
18 witness?

19 THE COURT: You may.

20 BY MS. MULKEY:

21 Q. I would like to show you what was
22 admitted by consent as State's 34 and what's been
23 premarked as ID for State's 35. If you could
24 please look at those and tell me if you're familiar
25 with those.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 A. I am.

2 Q. Do you recognize them?

3 A. I do.

4 Q. How do you recognize them?

5 A. It's my streets and trips mapping for
6 this case.

7 Q. Do they fairly and accurately depict
8 the maps that you created from the records you were
9 provided?

10 A. Yes.

11 Q. Did you create both maps using the same
12 methodology that you just explained?

13 A. Yes.

14 MS. MULKEY: At this time the State
15 would seek to admit and publish to the jury Exhibit
16 35?

17 MR. MAYER: I have to object right now
18 because there's no --

19 THE COURT: No speaking objection.
20 Please approach.

21 (Bench conference was had; following
22 proceedings were had in open court.)

23 THE COURT: Madame Forelady, ladies and
24 gentlemen, I have a brief matter of law to take up
25 with the attorneys. During the break please do not

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 discuss this case and please leave your notepads in
2 your seats. We appreciate your patience.

3 (Jury out, 3:16 p.m.)

4 THE COURT: Take your seats. I need to
5 see both exhibits.

6 34 has already come in without
7 objection. What's the basis of the objection to
8 number 35?

9 MR. MAYER: Judge, there are several
10 objections that the defense would have, including
11 lack of personal knowledge, it being outside of the
12 opinion testimony allowed by a lay witness, and
13 this person not being qualified as an expert.

14 THE COURT: Would the State like to
15 respond?

16 MS. MULKEY: Your Honor, we are
17 prepared to offer Ms. Mosher as an expert in cell
18 phone mapping; however, we would also argue that
19 she's testified that this is the same methodology
20 as the one entered by consent through defense.

21 It's no different than the diagrams that Dr.
22 Schandl used to summarize her findings, and under
23 Rule 1006, Summaries, we believe that this will --

24 THE COURT: This is more than summary
25 or data compilation. This is the interpretation of

1 data. Placing certain calls in certain areas off
2 of certain towers, that is outside the knowledge of
3 the average person, although it's what she does for
4 a living. And I think under Rule 701, that it
5 could be the opinion of a lay person based on her
6 rational perception.

7 It's clearly helpful to understanding
8 the witness's testimony on the issue of fact, but
9 it does require specialized knowledge and skill
10 because I couldn't do it. I couldn't just look at
11 a map and decide where towers are pinging from.

12 I do think it's a little disingenuous
13 however, Mr. Mayer, for you to object to one and
14 not the other. It's the same data, it's the same
15 methodology. So if you didn't object to one I'm a
16 little confused as to why you objected to the
17 other.

18 MR. MAYER: Judge, since the Court is
19 asking, the one that I didn't object to I felt it
20 was pretty much irrelevant.

21 THE COURT: That doesn't change the
22 fact that by consenting to its admission you don't
23 question the authenticity of the document, the way
24 the data was compiled, or the scientific way in
25 which it was done.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 MR. MAYER: I understand. I mean, I'm
2 concerned that would be a PCR issue, but I
3 certainly understand what you're saying.

4 THE COURT: I don't know how it could
5 be a PCR issue. I mean, you know, PCRs are not
6 just on individual issues. PCR is on the totality
7 of a record. Not on every little objection you may
8 have failed to make. I think PCRs recognize that
9 people are human and they miss things.

10 What bears on the PCR is whether it
11 makes the Court doubt the ultimate resolution of
12 the case; in other words, whether the person got a
13 fair trial or not and were available to zealous
14 advocacy. I'm sure this comes probably more with
15 maturity, but, you know, you just don't object to
16 everything.

17 MR. MAYER: Right.

18 THE COURT: I mean, you object to
19 things that have some rational basis or foundation
20 to object to it and in good faith. If you have
21 some good faith basis to tell me that the
22 methodology that was used for this is somehow
23 flawed and it is not what is used industry wide,
24 which it's my understanding this is how it's
25 done --

1 MR. MAYER: And, Judge, I don't have
2 anything such as that. I just would -- if the
3 Court is inclined to allow it in, rather than just
4 as a demonstrative, I just would ask the Court to
5 limit this witness's testimony as to the mapping
6 and using the data to create the map and forbid
7 this witness from testifying about why certain
8 towers may be used by certain phones, at different
9 times --

10 THE COURT: I think that she's already
11 explained that, and it's a reasonable description
12 that I've heard many times. Thousands of phones
13 use thousands of towers. It's technology. They
14 bounce off towers, they're overloaded -- she's
15 already testified to all of that. It's how cell
16 phone towers work.

17 MR. MAYER: Let me be a little more
18 specific. There was a snippet of testimony from
19 this witness about the towers and natural barriers
20 between the phone and towers and how that may
21 affect whether the phone uses one tower versus
22 another.

23 And I don't think -- I think that would
24 require a lot of expert training to know about
25 those radio waves and that the -- the map of the

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 barriers and the locations of the barriers. I just
2 would like the Court to --

3 THE COURT: I think that you're making
4 it far more complicated and scientific than it
5 actually is. There's really no mystery as to how
6 sound waves travel and there's really no mystery to
7 the scientific methodology employed and how phones
8 ping off of cell phone towers.

9 She's already said she can't isolate
10 where a person was located. She can only say when
11 the phone bounced off a tower. For example, you
12 can be downtown, but your phone bounced off of a
13 tower in Mount Pleasant just because that's where
14 the sound traveled, where the wave traveled. It
15 doesn't mean you're in Mount Pleasant. It just
16 means your phone pinged off of a Mount Pleasant
17 tower.

18 MR. MAYER: I understand.

19 THE COURT: It's just a wave issue I
20 think, but I still think you need to qualify her as
21 an expert and lay the foundation, because even
22 though this is what she does for a living and this
23 is something that she does every day, it's beyond
24 the skill set or knowledge of the average person
25 and it's not simply a data compilation.

1 Data compilation is where you have a
2 list of things and you basically testify that this
3 is how we collect this data and here it is. When
4 you start analyzing data and saying what it is
5 doing, then it requires more particularized
6 knowledge.

7 Are you prepared to qualify her as an
8 expert?

9 MS. MULKEY: Yes, Your Honor.

10 THE COURT: Okay. Get the jury,
11 please.

12 Objection is sustained subject to the
13 State establishing the witness as an expert.

14 MR. MAYER: Thank you.

15 THE BAILIFF: Judge, may I speak to you
16 for a second?

17 THE COURT: Sure.

18 (Bench conference was had; following
19 proceedings were had in open court.)

20 THE COURT: The bailiff has just
21 advised me that Juror No. 298 advised him that he
22 went to high school with the witness, that she did
23 not recognize her name during voir dire, and that
24 it was over 17 years ago. She didn't recognize her
25 until she was on the stand.

1 I think the way to handle that would be
2 to conduct additional voir dire to determine her
3 ability to be fair and impartial. Any exception
4 from the State?

5 MR. SIMPSON: No, Your Honor.

6 THE COURT: From the defense?

7 MR. MAYER: Judge, with which witness
8 did she go to high school?

9 THE COURT: The one on the stand.

10 MR. MAYER: Oh, okay. No objection to
11 voir dire.

12 THE COURT: Get the juror for me,
13 please.

14 For the record, it is juror number 298,
15 who was the 12th juror and last final juror
16 selected for this panel, Katherine E. Rawl,
17 R-A-W-L.

18 (Juror 298 in, 3:28 p.m.)

19 THE COURT: Ma'am, could you state your
20 name for the record?

21 JUROR NO. 298: Katherine Rawl.

22 THE COURT: And your juror number?

23 JUROR NO. 298: 298.

24 THE COURT: Did you indicate to the
25 bailiff that you might know the witness?

1 JUROR NO. 298: We played basketball
2 against each other in high school.

3 THE COURT: So you didn't go to school
4 together --

5 JUROR NO. 298: No, ma'am.

6 THE COURT: -- you played as opponents
7 and adversaries on the team?

8 JUROR NO. 298: Yes, ma'am.

9 THE COURT: What high school did you go
10 to?

11 JUROR NO. 298: I went to Middleton.

12 THE COURT: And do you recall what
13 school the witness went to?

14 JUROR NO. 298: I think Bishop England.

15 THE WITNESS: Yes.

16 THE COURT: And how long ago was that?

17 JUROR NO. 298: I graduated in '98,
18 so --

19 THE WITNESS: '98, as well.

20 THE COURT: 17 years approximately,
21 correct? Have you had any interaction with the
22 witness since then?

23 JUROR NO. 298: No, ma'am.

24 THE COURT: Did you have any with her
25 at the time?

1 JUROR NO. 298: Other than playing
2 against each other.

3 THE COURT: You didn't hang out or
4 socialize?

5 JUROR NO. 298: No, ma'am.

6 THE COURT: As a result of this
7 experience, do you feel that you can remain fair
8 and impartial?

9 JUROR NO. 298: Yes, ma'am.

10 THE COURT: Do you feel you can render
11 a fair and impartial decision in this case based
12 solely on the evidence as it would be presented and
13 on the law as the Court will instruct?

14 JUROR NO. 298: Yes, ma'am.

15 THE COURT: Thank you, ma'am. Please
16 do not discuss what I have discussed with you with
17 your fellow jurors.

18 JUROR NO. 298: Okay.

19 THE COURT: You can go with the
20 bailiffs. Thank you, ma'am.

21 (JUROR NO. 298 out, 3:30 p.m.)

22 THE COURT: Any exception? I find
23 based on the Court's additional inquiry of voir
24 dire of the juror that she is fair and impartial,
25 that, in essence, it was a passing -- she knew the

1 witness in passing, they did not have a social
2 relationship, not related by blood or marriage,
3 she's indicated and I find credible they did not
4 socialize during high school, and she has not seen
5 her since graduation, and that they were
6 adversaries on a rival team, and she's indicated
7 she can remain fair and impartial and render a
8 decision in this case based solely on the evidence
9 and the law as the Court will instruct and,
10 therefore, she is still qualified.

11 Is there any exception from the State?

12 MR. SIMPSON: No, Your Honor.

13 THE COURT: From the defense?

14 MR. MAYER: Judge, there is --
15 respectfully.

16 THE COURT: Uh-huh.

17 MR. MAYER: Judge, I find it hard -- I
18 played high school soccer and I've never remembered
19 a single person I played against. I find it hard
20 to believe that --

21 THE COURT: Are you from Charleston?

22 MR. MAYER: No, from Raleigh.

23 THE COURT: Then I don't find it hard
24 to believe. In Charleston, everybody is separated
25 by two degrees of separation --

1 MR. MAYER: Understood --

2 THE COURT: -- and you would have to
3 know the rivalry -- and our high school is not as
4 big as yours.

5 MR. MAYER: Understood, Judge. But all
6 the same, we have rivalries and while for me it was
7 '94, and '98 is still 17 years ago, I have to say
8 somehow either Ms. Mosher made quite an impression
9 17 years ago to be remembered now or that -- or
10 that we did not ask the witness about social media
11 connections and other things --

12 THE COURT: She indicated -- I think it
13 goes without saying, I asked, did you interact with
14 her in high school. She said no. I said, have you
15 had any interaction with her since high school.
16 She said no.

17 MR. MAYER: Then, Judge --

18 THE COURT: And for her to have been as
19 forthcoming as she was to have brought something to
20 our attention we would not have known in such a
21 passing context, I feel certain she would have
22 disclosed anything further.

23 MR. MAYER: I respect that. I find it
24 an incredible memory.

25 THE COURT: Let me tell you, my brother

1 played football for Sanders High School. He can
2 tell you every person he played against from
3 Middleton. That was the biggest rivalry in the
4 state before they combined the two high schools,
5 which -- the rivalry still exists even though they
6 still all go to school together. And I would bet
7 you if I called him right now, he can probably tell
8 you by name every person he played against. It's
9 just the rivalry.

10 And even if you were to go probably
11 from a place like Spartanburg, who has huge school,
12 versus Charleston -- in Charleston at the time that
13 we're talking about in the constituent area, you
14 probably had more than 20 schools.

15 So you can imagine the population was
16 very small until they started to consolidate
17 schools. It's not unbelievable to me that she
18 would recognize her again and that they did not
19 interact with one another. Or she may just have
20 one of those memories.

21 Now, I probably recognize everybody I
22 went to high school with. I may not always
23 remember their name, and I'm not going to tell you
24 how long I've been out of high school, because I'm
25 vain. I'm just not going to tell you.

1 In the atmosphere of Charleston as
2 small of a community it is, it's probably a quarter
3 of the size of the Raleigh/Durham area. That's --
4 it's just not unbelievable to me, and I find her --
5 based on the fact that she volunteered information
6 we would not have known, could not have known, and
7 probably never would have discovered, I just think
8 that's an indicia of her veracity.

9 MR. MAYER: I understand, Judge. The
10 other part of my concern would be since she did
11 remember Ms. Mosher after all this time, then she
12 may give her opinions that we're about to have
13 elicited undue weight.

14 THE COURT: I don't find that to be a
15 persuasive argument in light of the fact that they
16 played -- they were in an adversarial relationship
17 with one another and played on separate teams, what
18 I would perceive as significant rivalry. If
19 anything, it would seem more likely that she would
20 probably give less weight to her testimony, not
21 more. But neither of those things are dispositive.

22 What is dispositive is her responses in
23 voir dire, that she can be fair and impartial and
24 that she can remain fair and impartial and that she
25 can make a decision based solely on the evidence

1 and the law as the Court will instruct.

2 And, again, I think what I find most --
3 not think. What I find most persuasive is that she
4 made a disclosure to us without prompting and
5 immediately upon her recognition of Ms. Mosher
6 without having recognized her name in voir dire and
7 did not -- and once she recognized her, she made us
8 fully aware of it. And I find for the record,
9 based on my observation of her, that she was
10 forthcoming -- that she was forthcoming in her
11 responses to the court.

12 Also the Court would -- the Court would
13 also note that prior to that time, the State, as
14 well as the defense actually -- both the State and
15 the defense had exhausted their strikes, and so
16 there really could be no credible argument that the
17 strikes would have been exercised differently. And
18 even if she disclosed it prior to that point, it
19 would not have been a basis for a challenge for
20 cause.

21 So the juror will remain. She has
22 indicated to the Court she can remain fair and
23 impartial.

24 Now, I need you to outside of the jury
25 see if you can establish for me her ability to act

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 as an expert in this case.

2 MS. MULKEY: Yes, Your Honor. May I
3 proceed?

4 THE COURT: Yes, you may.

5 BY MS. MULKEY:

6 Q. Ms. Mosher, I want you to go back and
7 briefly explain to the Court your background as it
8 pertains to the intelligence in cell phones.

9 A. In 2010, I attended Savannah, Georgia
10 with GEO Cell US through the City of Charleston
11 Police Department, and did both their advance and
12 basic cell phone mapping, and then went back in
13 2013 to Seattle, Washington with GEO Cell US and
14 did both the basic and advanced mapping of cell
15 phone analysis.

16 From an intelligent standpoint, I've
17 gone through the Department of Homeland Security's
18 fundamental analyst's training as well as the
19 advanced analyst's training courses. I've also
20 done the strategic intelligence analysis and
21 surveillance school with the FBI.

22 Q. And are these specialized trainings or
23 is this training available to everybody?

24 A. These are specialized trainings.

25 Q. And was it based on your proficiency in

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 your job then that you were selected to go?

2 A. Yes.

3 Q. Do you hold any certifications as they
4 relate to intelligence and cell phone mapping?

5 A. For the intelligence analysis training
6 through Homeland Security, we do certify as well as
7 28 CFR compliance, which is being compliant to
8 handle sensitive as well as classified data. I do
9 hold a Department of Homeland Security clearance
10 status of secret.

11 Q. How long have you been doing cell phone
12 mapping?

13 A. 2010.

14 Q. And do you -- are you required to
15 maintain a proficiency level with it?

16 A. We go based on technology as it's
17 always changing. So every other year myself and
18 Lewis Walker of the Charleston County Sheriff's
19 Office -- I'll be going in 2016. He went in 2015.

20 Q. And in the course of your duties as an
21 intelligence analyst, have you created maps for
22 other cases?

23 A. Yes.

24 Q. Are these typically used in
25 investigations?

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 A. Yes.

2 Q. And if you had to guess, how many maps
3 would you say that you have created?

4 A. Every year probably close to 25 to 50.

5 Q. And have you ever created maps that
6 have been used in trial?

7 A. I believe so, yes.

8 Q. And have you testified using your
9 experience and background in cell phone mapping in
10 trial?

11 A. I have not.

12 Q. And is the methodology that you use the
13 methodology that is deemed acceptable within the
14 industry?

15 A. Yes, ma'am.

16 Q. And is that the state and federal
17 level?

18 A. Yes, ma'am.

19 MS. MULKEY: And, Your Honor, at this
20 time, the State would request Ms. Mosher be
21 admitted as an expert in cell phone mapping?

22 THE COURT: Any questions regarding her
23 qualifications, Mr. Mayer?

24 MR. MAYER: Yes, Judge, briefly.

25 THE COURT: You may proceed.

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 VOIR DIRE EXAMINATION

2 BY MR. MAYER:

3 Q. Ms. Mosher, what is GEO Cell US the
4 place that put on the Savannah, Georgia located
5 training?

6 A. That's a cell phone -- cell phone
7 mapping class that is done privately through a
8 private company.

9 Q. So it's provided -- is the company name
10 GEO Cell?

11 A. It is.

12 Q. How long was that class?

13 A. Which time?

14 Q. Well, each class. You said you did
15 basic and advanced?

16 A. Yes.

17 Q. Are they always in Savannah?

18 A. No. I've been to Seattle, Washington
19 as well.

20 Q. How long was the basic class in
21 Savannah?

22 A. The basic class was one day.

23 Q. And how long was the advanced class?

24 A. One week.

25 Q. What amount of time lapsed between you

1 taking those two?

2 A. They were all in the same week.

3 Q. In those classes, did they talk about
4 how to transfer data from an Excel-based
5 spreadsheet into a mapping program?

6 A. Yes.

7 Q. And was it a particular mapping program
8 that they taught you in?

9 A. Streets and Trips, Microsoft.

10 Q. Okay. The next training you did after
11 the 2010 week, was that in the -- the DHS training?

12 A. Which DHS training?

13 Q. Well, I don't know. I just heard you
14 say you did a course.

15 A. I've done numerous courses in
16 intelligence analysis, both entry level as well as
17 advanced level in the last four years.

18 Q. And are all of those courses related to
19 transferring data from an Excel spreadsheet to a
20 mapping program?

21 A. No.

22 Q. Are any of them related to that?

23 A. From an intelligence standpoint, some
24 of them can be, yes.

25 Q. Can you explain that?

1 A. Ultimately, blending your cell phone
2 mapping with the intelligence you find, doing your
3 basic intelligence background to provide a profile
4 on a party.

5 Q. And you mentioned the other training
6 that you had was the Strategic Intelligence
7 Analysis with the FBI?

8 A. Yes, sir.

9 Q. Can you describe that?

10 A. It was a 40-hour class in which we
11 learned how to gather intelligence, both through
12 the computer as well as in the field, doing
13 realtime intelligence, using photography as well as
14 blending, once again, cell phone mapping with some
15 of the other databases we have access to, to
16 provide a product for investigators.

17 Q. Did you use any other databases in this
18 case?

19 A. No, sir.

20 Q. Okay. And you had said before that you
21 have not ever been qualified as an expert in a
22 trial before --

23 A. Correct.

24 Q. -- on this issue? And you said that
25 you believe that your maps have been used before.

1 Can you clarify that?

2 A. I've received several subpoenas for
3 trial; however, the case ended up getting -- it
4 pled out in the last two years.

5 Q. Okay. So you have not testified, that
6 you know of, to get one of your maps entered into
7 evidence before?

8 A. No.

9 Q. And in the week of training that GEO
10 Cell does occasionally, it sounds like there's no
11 real training on the issue of objects and their
12 mass and how it affects sound waves or radio waves;
13 is that correct?

14 A. The very first day of basics we talk
15 about the -- ultimately the nomenclature of how it
16 all works with radio waves, water, mountains, a
17 path of least resistance, simple science.

18 Q. Okay. Did they explain anything -- or
19 did you have any training at all that you could use
20 to calculate whether or not a particular cell phone
21 will reach from one tower versus another on an
22 otherwise flat area?

23 A. No. We were taught we can put a phone
24 into engineering mode to figure out which tower
25 they are drawing off of, but I did not utilize that

1 in this case.

2 Q. Let me clarify that question. So for
3 -- for -- did you ever get any training on the
4 issue of if there are two towers on a relatively
5 flat area, why -- how to figure out which cell
6 tower a particular phone will go to?

7 A. No. Only based on the records we're
8 given by the provider.

9 Q. Okay. So you never had any training on
10 that issue?

11 A. No.

12 MR. MAYER: Judge, I'm ready to be
13 heard.

14 THE COURT: I guess I'm trying to
15 figure out -- and I don't mean to place myself into
16 the inquiry, but that last question really didn't
17 make any sense to me, because if the cell phone
18 company is providing the data, there is no --
19 there's nothing she interprets from a cell phone
20 company.

21 MR. MAYER: Well, that's exactly my
22 point, Judge. And that's why I want her testimony
23 to be limited to that issue.

24 THE COURT: I don't understand what you
25 mean.

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 MR. MAYER: I would object --

2 THE COURT: Data is data; you either
3 made a phone call or you didn't. Either they
4 recorded it or they didn't.

5 MR. MAYER: Absolutely. And I just
6 want to -- I want to make sure that this witness's
7 testimony, if it comes in, is going to be limited
8 solely to the issue of taking the data from the
9 cell phone company, turning it to the map, and not
10 opining on why a cell phone would reach to --

11 THE COURT: I'm not sure they were
12 going to ask that question. Were you?

13 Unless she's just going to testify that
14 she overlaid this information. She got it from the
15 cell phone company, placed the towers on the map,
16 and then overlaid the phone calls, and based on
17 that information, this is where -- this is the
18 tower that each phone utilized in making these
19 particular calls at this date and time. Is that
20 the scope of her testimony:

21 MS. MULKEY: She will -- yes. And
22 based on her training and experience, what -- what
23 tower a phone call would go to as far as proximity.

24 THE COURT: I don't think she can say
25 that, can she?

1 MS. MULKEY: I believe that, based on
2 her training and experience, she has satisfied that
3 -- I mean, she's gone to multiple schools for the
4 state and federal, she maintains certification in
5 that she said, Your Honor, that --

6 THE COURT: You're going a little bit
7 beyond what's on this map. Either it went to --
8 you make a phone call, it goes to a tower. I think
9 she can testify that phone calls originated where
10 they originated from, where they went to, and what
11 towers they bounced off of.

12 Why it went to a tower West Ashley
13 versus a tower in Mount Pleasant, that's a lot of
14 variables, and she just said that. I'm trying to
15 figure out exactly what you're trying to elicit
16 from this witness.

17 MS. MULKEY: Can I offer that question
18 in camera?

19 THE COURT: I would have to hear it in
20 the context of the entire testimony. What I'm
21 trying to figure out is what exactly do you intend
22 to ask her.

23 MS. MULKEY: Your Honor, I intend to
24 get into -- to ask her about the phone numbers that
25 she received, as to what towers they're hitting at

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 what time, and that based on the times and the
2 towers, is that, you know, consistent with someone
3 being either in one area or is that consistent with
4 someone moving?

5 THE COURT: I think she can testify to
6 that, Mr. Mayer, because she's already testified
7 that if it's pinging off the same tower, that means
8 the person is stationary. And I don't think that
9 requires a great leap.

10 Now, her saying something beyond that I
11 think is a little problematic, but I think she's
12 qualified to testify as to whether -- if a person
13 is making several phone calls and is pinging off
14 the exact same tower, that generally means they're
15 in the same location. They're certainly not
16 travelling in their car except in a certain radius
17 where it would still ping West Ashley.

18 Say, for example, you were at the
19 Citadel Mall, you might be walking around the mall,
20 but your phone is still going to ping off of the
21 same tower unless they have 20 towers over there.
22 Which they might, I don't know.

23 MS. MULKEY: And that, that radius is
24 -- the other question, based on the records that
25 she received and where the towers are located with

1 the information she was provided, what that radius
2 is.

3 THE COURT: I think she's qualified to
4 say what the radius is, but I think to speculate
5 beyond that you have to make a contemporaneous
6 objection.

7 So my question becomes, do you have any
8 exception to her expertise?

9 MR. MAYER: Judge, I'm always reluctant
10 to be the test case. She's never been qualified as
11 an expert before.

12 THE COURT: Well, everybody has to be
13 qualified the first time. Our supreme court says
14 that's not a basis to exclude somebody's expertise.

15 MR. MAYER: I would just ask that the
16 Court restrict her testimony not to include
17 testimony about if there are two dueling cell
18 towers --

19 THE COURT: Yeah. I don't know if
20 she's going to testify to that.

21 MR. MAYER: It's on the map.

22 THE COURT: I think you'll have to make
23 a contemporaneous objection at that time.

24 MR. MAYER: Understood.

25 THE COURT: My question still becomes,

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 do you have any exception to her testifying as an
2 expert on this issue, her expertise?

3 MR. MAYER: Judge, I may -- here's my
4 concern if I may be heard. My concern is, if she's
5 not an expert, then I don't know if she's got -- if
6 there's proper foundation for her testimony yet at
7 this point because she's testifying about records
8 where we're kind of just hearing about them for the
9 first time.

10 THE COURT: You're not hearing about
11 these records for the first time. You've had them.
12 As a matter of fact, I ensured they were sent to
13 you again.

14 MR. MAYER: Well, no question, Judge,
15 and I appreciate that, but in terms of providing a
16 foundation for what these records are -- I'm just
17 having a hard time with -- if she's an expert and
18 she can use this data to formulate her opinions.

19 THE COURT: You're losing me, Mr.
20 Mayer. I don't understand what you're saying.

21 MR. MAYER: I think that the issue of
22 whether the records are good or not would have to
23 be determined before she can testify about the
24 results.

25 THE COURT: Are you telling me now that

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 you don't believe these records that were obtained
2 pursuant to a search warrant --

3 MR. MAYER: No. No. That's not what
4 I'm telling you.

5 THE COURT: Yeah, that's what I'm
6 saying. You're not being clear; I don't understand
7 what you're saying. I'm not trying to be thick, I
8 just really don't understand what you're saying.

9 MR. MAYER: The records aren't in
10 evidence technically.

11 THE COURT: They don't have to be. You
12 can use records to look at and to provide a
13 compilation. I guess I'm just trying to determine
14 in good faith, are you telling me they're not your
15 client's cell phone records and not --

16 MR. MAYER: Lord, no. Lord, no, that's
17 not what I'm saying. I'm saying that, you know,
18 the Court is much more experienced on this
19 evidentiary issue than I am. My concern is just
20 they're records that are not part of our records
21 and an expert can testify about them, but I don't
22 know that a lay person would be able to testify
23 about something that's not part of our records yet.
24 Without these extraneous documents, it would
25 otherwise be hearsay, et cetera.

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 THE COURT: It's not hearsay if she's
2 an expert. And really she still can rely on them
3 as a lay witness because you really don't have any
4 expectation of privacy in cell phone records. Once
5 you make a phone call, you lose all expectation of
6 privacy, according to the Fourth Circuit and United
7 States Supreme Court.

8 MR. MAYER: Judge, I might just be more
9 comfortable going forward with her not being an
10 expert than with her being an expert. I don't
11 know.

12 THE COURT: Well, maybe you all need to
13 talk for a moment and tell me because normally
14 these records come in. Not into evidence
15 necessarily, but normally you have the police --
16 someone in a police capacity testifying about the
17 records, where the cell phone towers are, and they
18 would have procured the records pursuant to a
19 search warrant, which means that they provided a
20 reasonable and articulate suspicion to somebody who
21 felt it was appropriate to issue a search warrant
22 to get the records.

23 And so, again, I guess I'm trying to
24 figure out exactly what your argument is because
25 you've already agreed to one of the exhibits, which

1 is the exact same information. And now you're
2 objecting I guess because it's not favorable to
3 your client, but that's not a basis for an
4 objection.

5 I don't know exactly what they intend
6 to prove, except that phone calls were made and
7 people were in a general vicinity of a radius in
8 making those phone calls.

9 MR. MAYER: And, Judge, honestly that's
10 -- that's part of my issue, is that this witness
11 doesn't have -- she's got one week of training
12 about how to convert spreadsheets into maps and she
13 doesn't have any particular training about why a
14 cell phone would reach to one tower versus another
15 tower in terms of practicality. It sounds like it
16 was mentioned in passing on the first day.

17 THE COURT: I think that's a
18 misinterpretation of what she said. She said they
19 were taught about the general dynamics of how sound
20 travels and the mechanics of how cell phones
21 operate. Having attended many courses, I've never
22 found any of them to be particularly cursory,
23 especially when you're handing out certifications.

24 MR. MAYER: But this certification is
25 not on the issue of whether a cell phone will reach

1 to tower A versus --

2 THE COURT: I don't think there is any
3 such certification. You get a certification in a
4 generalized area. You don't get them in every
5 little nuance of an area.

6 MR. MAYER: Well, and nor does this
7 witness have any experience in all practicality
8 other than conjecturing as to which cell tower of
9 -- if your cell phone was used, she hasn't
10 demonstrated any sort of practical exams in that
11 specific area, no practical experience in that
12 specific area, and no training other than what the
13 Court just --

14 THE COURT: She has practical
15 experience. She has created 25 to 50 maps a year.

16 MR. MAYER: Mapping, Judge -- I'm
17 trying to distinguish the issue from -- mapping I'm
18 okay with. What I'm not okay with is this witness
19 opining in any way about how far away from a cell
20 tower a cell phone would be before it changes to
21 another tower.

22 THE COURT: I don't think she's going
23 to testify to that, correct?

24 MR. SIMPSON: May I address that?

25 THE COURT: Sure.

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 MR. SIMPSON: I think I can sum it all
2 up.

3 THE COURT: Please do. I feel like I'm
4 going in circles.

5 MR. SIMPSON: Yeah. In a thumbnail
6 sketch, we have heard a statement from the
7 defendant, Valentino Hayward, saying he was in
8 Saint Andrews Gardens apartment. There is a cell
9 phone tower right by the Saint Andrews Gardens
10 apartments.

11 At the scene of the murder there is a
12 different cell tower right next to the scene of the
13 murder. All of the calls during the rest of the
14 time hit the phone as pinging off the tower right
15 by the scene of the murder. That is the purpose of
16 this witness and I believe she's competent to
17 testify.

18 THE COURT: Yeah, I think she's
19 competent, but I don't think -- I think that's an
20 argument you made. I don't think she gets to say
21 that. I don't think she gets to say that the Saint
22 Andrews Gardens towers is over here, the phone is
23 pinging off of here. I think it's your job to
24 connect the dots.

25 It's your job to provide factual

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 information, which is that I've -- and I don't
2 necessarily -- I'm sort of torn about whether she
3 really even needs to be qualified as an expert to
4 do that, because I think that's within the ambit of
5 what she does every day and that's within her job
6 description and she's created these maps.

7 I don't think she's really analyzing
8 any information. What she's basically saying is
9 that pursuant to a subpoena I got the phone
10 numbers, I got the cell phone towers and this is
11 how we create these maps and this is where the
12 phone calls originated from and this is where the
13 maps and the subpoenaed information shows the tower
14 that was utilized.

15 Now, it's up to you and Mr. Mayer to
16 argue how that's to be interpreted. I don't think
17 she gets to interpret that.

18 MR. SIMPSON: She will point out the
19 location of the towers and which ones and at what
20 times he was --

21 THE COURT: The phone calls were made,
22 correct?

23 MR. SIMPSON: Yes.

24 THE COURT: Now, with that
25 clarification, do you have any exception to that

1 line of questioning, Mr. Mayer?

2 MR. MAYER: Judge, I don't have any
3 exception to that line of questioning. I still
4 would ask that this map that we're talking about,
5 be used only demonstratively.

6 THE COURT: Well, I think, again, as I
7 have already indicated -- I guess I'm trying to
8 figure out --

9 MR. MAYER: Judge, it's almost
10 confusing without an expert to say --

11 THE COURT: If it's confusing, then
12 number 34 is confusing too. I don't think it's
13 confusing. It's pretty clear cut. It has a tower,
14 it has an overlay of the cell phone numbers, what
15 time the phone calls were made and where the tower
16 is located. That's pretty clear cut.

17 MR. MAYER: Without someone who could
18 explain that --

19 THE COURT: I don't think --

20 MR. MAYER: -- it could be much more
21 prejudicial --

22 THE COURT: There is no rocket science
23 to know where a cell phone tower is and where the
24 phone calls were made. Again, like I said, I'm
25 torn whether she even has to be qualified, because

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 if the person evaluating children for sexual trauma
2 does that within the scope of their everyday job
3 and they don't have to be qualified as an expert,
4 I'm really not certain she needs to be qualified as
5 an expert.

6 I'm not certain that the Rules requires
7 particularized knowledge outside of what she's
8 trained to do for her job. And what she is
9 basically doing is reporting data. She is not
10 analyzing that data.

11 MR. MAYER: I would tend to agree with
12 that, Judge, but without an expert here who can
13 explain about sound waves and radio waves and what
14 will -- may affect one cell phone from going to a
15 farther away tower versus a closer tower, obstacles
16 in the way, this sort of thing, this particular map
17 is unduly prejudicial to my client because it would
18 seem to imply that his phone is using one tower
19 when, in fact -- and putting him in that nearby
20 area of that tower when, in fact, there is no
21 indication from any qualified expert saying that
22 that's --

23 THE COURT: What is the name of the
24 Saint Andrews Gardens apartment -- isn't that
25 Waverly on the other side of 61?

1 MR. SIMPSON: It's the north part of
2 Ardmore. I can point it out on the map.

3 MR. MAYER: Judge, can we look at the
4 map?

5 THE COURT: Yeah. I've lived in
6 Charleston my whole life. I know where Saint
7 Andrews Gardens apartment is. I'm just trying to
8 make sure that I have the orientation correct in my
9 head.

10 MR. MAYER: There are a couple of cell
11 towers right there, Judge.

12 THE COURT: Yeah, but that's enough of
13 a distance -- I'm not an expert, but I know a phone
14 is not going to jump three towers for you to
15 utilize versus using one that's closer.

16 MR. MAYER: Judge, can we look at the
17 exhibit? It's like they're -- the towers are --

18 THE COURT: I think it's factual issue
19 for you all to argue. She is not going to opine
20 about it. She is going to simply say, these are
21 where the towers are located. When he or she made
22 the phone calls, these are the towers that were
23 utilized in making those phone calls.

24 If you all want to argue about the
25 reasonableness of, you know, whether it could have

LAUREN MOSHER - VOIR DIRE EXAM BY MR. MAYER

1 pinged off of another tower, or -- I mean, that's
2 up to you. Those are factual inferences which have
3 nothing to do with her testimony. She is not
4 opining about anything.

5 She is simply saying, within the scope
6 of my employment, this is what I was trained to do.
7 I used the methodology I was trained to use and
8 this is what I'm basically reporting to you, a
9 compilation of that data, which is, here's where
10 the towers are, these phones utilize these towers
11 at these particular times to make these particular
12 phone calls. That's the end of it.

13 How you all argue it is up to you. So
14 now what I need to know is, are you still
15 requesting that she be qualified as an expert to
16 testify?

17 MR. MAYER: No, Judge.

18 THE COURT: Okay. So then I will mark
19 that request as withdrawn.

20 And do you have any objection to her
21 testifying within the scope of what has just been
22 discussed?

23 MR. MAYER: No.

24 THE COURT: Okay. Now, so can we move
25 forward, ladies and gentlemen? Are we ready to

1 move forward?

2 MS. MULKEY: Yes.

3 THE COURT: Defense ready to move
4 forward?

5 MR. MAYER: Defense is ready.

6 THE COURT: Please get the jury for me.

7 Exhibit 34 has been marked and admitted
8 without objection. I need to know if there's an
9 exception to Exhibit 35.

10 MR. MAYER: Judge, I'm so sorry.

11 THE COURT: That's okay; you were
12 talking to your client. 34 has been marked and
13 admitted without objection. I need to know now if
14 there is any exception to the admission of 35.

15 MR. MAYER: Judge, there still is an
16 exception from the defense. Just that --

17 THE COURT: I'll note your exception
18 and take it under advisement, and I will make a
19 decision in the interest of time later. She can
20 use it demonstratively at this point, but I'm
21 inclined to let it in since you let 34 in because
22 it's the exact same technology and the exact same
23 method was utilized and it's for you to argue the
24 weight of the evidence. Because something is
25 adverse to your client, that's not a basis to

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 exclude it.

2 MR. MAYER: Well, Judge --

3 THE COURT: I will hear your argument
4 later.

5 MR. MAYER: Okay.

6 THE COURT: Before I admit it, I will
7 hear additional argument.

8 MR. MAYER: Thank you.

9 THE COURT: Before I make a decision
10 rather, I will hear additional argument.

11 (Jury in, 3:59 p.m.)

12 THE BAILIFF: All jurors are present.

13 THE COURT: Ladies and gentlemen, we
14 appreciate your patience. You may be seated.

15 We will resume testimony of the
16 witness.

17 MS. MULKEY: May I approach the
18 witness?

19 THE COURT: Yes, ma'am.

20 BY MS. MULKEY:

21 Q. I would like to hand you State's
22 Exhibit 34 and, at this point, premarked State's
23 Exhibit Number 35. If you could please review
24 those and tell me if you recognize them.

25 A. I do.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 Q. And what do you recognize them to be?

2 A. The cell phone mapping regards to this
3 case using Microsoft Street and Trips.

4 Q. Are they a fair and accurate depiction
5 of the maps that you created using the records that
6 you were provided in this case?

7 A. Yes.

8 Q. And did you use the methodology that
9 you explained earlier about the layers of mapping?

10 A. Yes.

11 Q. And did you use the same methodology to
12 create each of those maps?

13 A. Yes.

14 Q. And I would like to go back to what
15 carrier these were for.

16 A. TMobile.

17 Q. And what phone number they were for.

18 A. They were for phone number 8434604293
19 and phone number 8435682027.

20 Q. And now you previously testified when
21 you map these numbers and receive the information,
22 you did not know who they belonged to; is that
23 correct?

24 A. Correct.

25 Q. And after your work is done, do you

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 find out more information about the case?

2 A. I do.

3 Q. And based on that, do you now know who
4 these numbers belong to?

5 A. I do.

6 Q. Could you please tell the jury?

7 A. I know that suspect Hayward's phone
8 number is 8434604293, victim Miles' phone is
9 8435682027.

10 Q. I would like to start referring to the
11 victim's phone records. And what date and general
12 time were these for?

13 A. They were for December 11, 2013,
14 beginning at 1:00 in the afternoon, going until
15 8:30 that night.

16 Q. And based on the records that you
17 received, in your training and experience, was --
18 were the records indicative of a person who was
19 traveling or stationary?

20 A. The records were he was moving most of
21 the day.

22 Q. And does it show a final tower?

23 A. It does.

24 Q. And can you explain to the jury what a
25 final tower is?

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 A. Ultimately, at the end of the day,
2 that's the last call received or dialed out at that
3 tower of the day.

4 Q. And can you determine what time that
5 final tower last call was?

6 A. Yes. This was an outgoing call that
7 initiated at 8:24 in the evening, gives you the
8 duration of 11 minutes 93, and that together for a
9 total of 8:36 p.m.

10 Q. Let me make sure I understand that. It
11 was incoming or outgoing call?

12 A. It was an outgoing call.

13 Q. From whose phone?

14 A. From Miles to Hayward.

15 Q. And how long was the phone call?

16 A. 11 minutes, 93 seconds.

17 Q. And the final tower again, can you
18 explain what that is in relation to the duration of
19 the phone call?

20 A. Ultimately, the phone had been
21 travelling all day. That call was initiated on
22 that tower, the call ended on that tower.

23 Q. And does it give you a location for
24 that tower?

25 A. The records or --

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 Q. The records.

2 A. Yes.

3 Q. And where is that?

4 A. It's located 61 Line Bock Drive, West
5 Ashley.

6 Q. Now, you also testified that you get
7 information on the case after you have mapped
8 these?

9 A. Correct.

10 Q. Is 61 Line Bock close to 640 Sequoia?

11 A. It is.

12 Q. And do the records tell you, again, who
13 that outgoing call was to?

14 A. Yes, it does.

15 Q. And who was that?

16 A. Tells me the phone number that it was
17 to. Phone number 8434604293.

18 Q. And I would like to transition to the
19 maps that you developed for what was later
20 determined to be the defendant's phone. Based on
21 your experience and the information you were
22 provided, were those records indicative of someone
23 who was stationary or traveling?

24 A. He stayed in the same vicinity, the
25 same area.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 Q. And between the hours of 7:59 and
2 8:55 p.m., how many towers did that phone hit off
3 of?

4 A. One.

5 Q. And where was that tower located?

6 A. 61 Line Bock Drive.

7 Q. Is that tower consistent with where the
8 victim's final tower was?

9 A. Yes.

10 MR. MAYER: Objection.

11 THE COURT: Sustained.

12 BY MS. MULKEY:

13 Q. Do the records of the defendant's
14 phone, show an incoming call corresponding to the
15 records on the victim's phone that you just
16 previously testified about?

17 A. Yes.

18 Q. Can you elaborate on that?

19 A. It showed an incoming call coming in at
20 20:24 or 8:24 at night.

21 Q. And which towers are those on?

22 A. 61 Line Bock Drive.

23 Q. The same towers?

24 A. Same towers, yes, ma'am.

25 Q. Now after all the work was complete,

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 did you find out where this incident occurred?

2 A. I did.

3 Q. And where was that?

4 A. 640 Sequoia Street.

5 Q. And do you know what neighborhood
6 that's in?

7 A. Ardmore.

8 Q. Are you familiar with that
9 neighborhood?

10 A. I am.

11 Q. And are you also familiar with an area
12 named Saint Andrews Gardens?

13 A. Yes.

14 Q. How are you familiar with these areas?

15 A. I was a field intelligence officer in
16 Team Four and patrolled Ardmore as well as Saint
17 Andrews Gardens, and I'm a lifelong resident in
18 West Ashley.

19 Q. Based on the records that the phone
20 company provided you, which -- how many towers are
21 located between Saint Andrews Gardens and 640
22 Sequoia?

23 A. There are no towers between Saint
24 Andrews Gardens.

25 Q. Let me rephrase that. In the general

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 area of West Ashley there, how many towers did
2 TMobile have at that time?

3 A. Two.

4 Q. And where were they located?

5 A. One was 61 Line Bock Drive, the other
6 at 1525 Ashley River Road.

7 Q. And where, again, was the final tower
8 for the victim's phone call?

9 A. 61 Line Bock Drive.

10 Q. And where was the activity between 7:59
11 and 8:35 p.m. for the defendant's phone?

12 MR. MAYER: Objection.

13 THE COURT: Basis?

14 You need to rephrase the question.

15 BY MS. MULKEY:

16 Q. Which tower was the defendant's phone
17 pinging off of between 7:59 and 8:35 p.m.?

18 A. Pinging off of Line Bock Drive as well
19 as 1525 Ashley River Road.

20 MS. MULKEY: Thank you. Court's
21 indulgence?

22 THE COURT: Uh-huh.

23 MS. MULKEY: Your Honor, at this time
24 the State would move to introduce --

25 THE COURT: I have dealt with that and

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 taken it under advisement.

2 THE WITNESS: -- State's Exhibit 35
3 admitted into evidence and publish it to the jury.

4 THE COURT: I have taken it under
5 advisement.

6 MS. MULKEY: Court's indulgence?

7 MR. SIMPSON: May we approach?

8 THE COURT: You may.

9 (Bench conference was had; following
10 proceedings were had in open court.)

11 THE COURT: Proceed.

12 BY MS. MULKEY:

13 Q. Ms. Mosher, I would like to just review
14 some of your testimony.

15 MS. MULKEY: May I approach the
16 witness?

17 THE COURT: You may.

18 BY MS. MULKEY:

19 Q. I'm showing you what's been admitted by
20 consent as State's Exhibit 34. What is this?

21 A. This is a cell phone map for the
22 victim.

23 Q. I'm sorry?

24 A. This would be the cell phone map for
25 the victim's phone number.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 Q. This is the one that you created?

2 A. Yes.

3 Q. And if you could just summarize briefly
4 your testimony regarding -- regarding this, based
5 on the information provided by the carrier? Was
6 this indicative of someone stationary or
7 travelling?

8 A. Someone travelling.

9 Q. And can you please explain to the jury
10 how you can infer that?

11 A. The records are chronologically laid
12 out by time. You can see --

13 MR. MAYER: Judge, I object.

14 THE COURT: Overruled. It's within the
15 lay opinion under Rule 701. (Check) It's within the
16 scope and the ambit of her -- what she does for a
17 living and within the scope of her training and it
18 does not require particularized experience,
19 training, and education to provide the lay opinion.

20 You may proceed.

21 THE WITNESS: Yes, ma'am.

22 You can see on that tower right there,
23 this call made three outgoing calls at the times
24 that are in military time. Tower down here is the
25 final call of the day, ends on that tower. No more

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 calls were placed after that point. (Indicating)

2 BY MS. MULKEY:

3 Q. Is that indicated anywhere on that map?

4 A. It is not.

5 Q. And are those locations that you just
6 circled, the physical address of the tower or the
7 physical address of the person?

8 A. Physical address of the tower.

9 Q. And you testified that you are familiar
10 with West Ashley?

11 A. Yes, ma'am.

12 Q. Do you know based on that map where 640
13 Sequoia is generally?

14 A. Yes, ma'am.

15 Q. Could you please point that out to the
16 jury?

17 A. (Indicating) Right in there.

18 Q. And where is the closest tower that
19 TMobile advised to 640 Sequoia, other than the one
20 that you have circled there?

21 A. The next closest towers would be over
22 there. (Indicating)

23 Q. All right. I would like to transition
24 to what's been premarked as State's Exhibit Number
25 35. And you just let me know if you need me to

1 zoom in or out. Could you tell me what this is Ms.
2 Mosher?

3 A. This would be the defendant's cell
4 phone calls throughout that evening.

5 Q. And did you make this?

6 A. I did.

7 Q. Was this based on the records you
8 received?

9 A. Yes, ma'am.

10 Q. And you used methodology you used to
11 map the previous map?

12 A. Yes, ma'am.

13 Q. Can you use this to explain your
14 findings to the jury?

15 A. Once again they're laid out
16 chronologically throughout the day. So you could
17 be moving throughout West Ashley, but you're going
18 to go between towers obviously if you're moving.
19 Three towers were utilized by the subscriber in
20 this case. Each tower is set up once again
21 chronologically. You can see the incoming and
22 outgoing calls on that date.

23 Q. And which of these, if any, are the
24 final tower that was on the victim's phone map?

25 A. Same tower.

LAUREN MOSHER - DIRECT EXAM BY MS. MULKEY

1 Q. And based on your training and
2 experience and the records that you received in
3 this case, are these records indicative of someone
4 stationary or traveling?

5 MR. MAYER: Objection.

6 THE COURT: She's not been qualified as
7 an expert.

8 MS. MULKEY: Yes, Your Honor.

9 BY MS. MULKEY:

10 Q. In your training and experience, do
11 these records show the time that the individual was
12 hitting off of that tower?

13 A. Yes.

14 Q. And where is that?

15 A. You can see here he made a call at
16 10:01 a.m., 5:17, outgoing call at 5:21, 5:22,
17 5:27, incoming call at 5:28 and outgoing at 5:38,
18 6:42, 7:39 and outgoing -- keeps on going, outgoing
19 call at 8:04, 8:19, 8:42.

20 Now continue to the other side, these
21 are all outgoing and incoming calls.

22 Q. Based on these records, between
23 7:59 p.m. and 8:55 p.m., where was this phone
24 hitting? Which towers?

25 A. (Indicating) Tower right there.

LAUREN MOSHER - CROSS EXAM BY MR. MAYER

1 MS. MULKEY: Court's indulgence?

2 THE COURT: Uh-huh.

3 MS. MULKEY: State has no further
4 questions at this time. Please answer any that the
5 defense may have?

6 THE COURT: You may proceed.

7 MR. MAYER: Thank you, Judge.

8 THE COURT: You're welcome.

9 CROSS-EXAMINATION

10 BY MR. MAYER:

11 Q. Ms. Mosher, were you asked to do a map
12 of cell phone number 8435937819?

13 Do you want me to call it out again?
14 8435937819?

15 A. I don't have that phone number as being
16 mapped.

17 Q. And just to be abundantly clear, your
18 testimony on direct has nothing to do with where a
19 particular cell phone was located, only that it was
20 pinging off of a particular tower at a particular
21 time?

22 A. Yes.

23 MR. MAYER: Okay. No further
24 questions.

25 THE COURT: Any redirect?

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 MS. MULKEY: No, Your Honor.

2 THE COURT: Any objection to the
3 witness being excused? From the State?

4 MS. MULKEY: No.

5 THE COURT: From the defense?

6 MR. MAYER: No, Judge.

7 THE COURT: Ma'am, you're excused.
8 You may call the next witness.

9 MR. SIMPSON: The State calls Jamie
10 Green from SLED.

11 JAMES W. GREEN,
12 being first duly sworn, testified as follows:

13 THE CLERK: Be seated. Please state
14 your full name and spell your last name.

15 THE WITNESS: James William Green,
16 G-R-E-E-N.

17 THE COURT: You may proceed.

18 MR. SIMPSON: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 DIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q. Mr. Green, afternoon.

23 A. Afternoon.

24 Q. Busy week this week?

25 A. Yes, sir.

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 Q. You were in another county, in fact,
2 today, right?

3 A. Yes, sir I just got here from Horry
4 County.

5 Q. Trial going on there?

6 A. Yes, sir.

7 Q. Where do you work?

8 A. I'm employed by the South Carolina Law
9 Enforcement Division, commonly referred to as SLED.

10 Q. And in what capacity do you work for
11 SLED?

12 A. I'm a firearms examiner in the Forensic
13 Services Laboratory.

14 Q. How long have you been in that
15 position?

16 A. Since June of 2005.

17 Q. Okay. What kind of education and
18 professional training and expertise do you have to
19 have and do you personally go through to obtain
20 that position?

21 A. I have my Bachelor's and Master's from
22 Charleston Southern University. I also when I was
23 hired at SLED started the firearms and tool mark
24 course instruction which is approximately a three
25 to three-and-a-half-year course of instruction

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 studying to do what I do now in an apprentice type
2 capacity to become court qualified firearms
3 examiners.

4 Q. So they have you for sometime working
5 under a mentor, so to speak, before they let you do
6 the real work?

7 A. Yes, sir. I had a training officer and
8 I'm now a training officer.

9 Q. Okay. So you're actually the person
10 that trains people in your field?

11 A. Yes, sir.

12 Q. And explain to me what field that is?

13 A. Firearms identification.

14 Q. And does that extend to also the
15 examination of ballistics, bullets, et cetera?

16 A. Yes, sir. That's what -- when I say
17 firearms indication, what I'm referring to is what
18 most people -- what you see on CSI they call
19 ballistics. I deal with fired bullets, fired
20 cartridge casings and firearms.

21 Q. And as an instructor in this field,
22 have you testified as an expert in this field in
23 court before?

24 A. Yes, sir.

25 Q. And approximately how many times?

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 A. This morning made 43.

2 Q. And what county were you in?

3 A. Horry.

4 MR. SIMPSON: Your Honor, at this
5 point I would offer Mr. Green as an expert in
6 firearms identification.

7 THE COURT: Any objection or questions?

8 MR. MAYER: No, Judge.

9 THE COURT: So admitted without
10 objection. You may proceed.

11 MR. SIMPSON: Thank you.

12 BY MR. SIMPSON:

13 Q. Mr. Green, I wanted to ask you, do you
14 know who a person named Kenneth Whitler is?

15 A. Yes, sir.

16 Q. And who is Kenneth Whitler?

17 A. Kenneth Whitler was a firearms examiner
18 at SLED. He was the Firearms Identification Chief
19 of the FBI for a little while. When he retired
20 from the FBI, he came to work for SLED in the
21 capacity that I work in now. He retired about a
22 year ago.

23 Q. Did you work closely with him?

24 A. Yes, sir.

25 Q. Can most of what you do there in the

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 Firearms Identification Department be considered
2 scientific endeavor?

3 A. Yes, sir.

4 Q. Can you explain to the jury -- we've
5 had a bit of this, it's kind of a theme we have
6 going, but explain what peer review is and why it's
7 important in any scientific endeavor?

8 A. Peer review is basically the fact that
9 if I do something, somebody can come behind me and
10 replicate what I do. That's one of the hallmarks
11 of science is reproducibility and can be
12 replicated. At the SLED Lab, particularly the
13 firearms department, we have a 100 percent peer
14 review or micro verification policy. That means
15 for any report that's given out to a community
16 agency, before any phone calls are made, if it's a
17 rush case sometimes the investigators call and say,
18 we can't wait for the report, we need to know the
19 answer now. Before any of that information can be
20 given out, another second court qualified firearms
21 examiners comes in and looks at the evidence and --
22 and -- like I would go to Ken if he was still there
23 and say, I need you to micro verify a case. He
24 would come down to my microscope, look at my
25 evidence, and he would formulate his own opinion on

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 it.

2 Q. And that information isn't released or
3 reported until both people agree on the
4 conclusions?

5 A. Yes, sir. No conclusions are given out
6 to anyone, not even our supervisor, until my
7 initials, or whoever the micro verifier's initials
8 are, are on the worksheet saying that we agree with
9 what the results are.

10 Q. Now, if we look into the report that
11 your department gave on this case, would we see the
12 name Ken Whitler's name?

13 A. Yes.

14 Q. Do you, nevertheless, have personal
15 knowledge of the results in this case?

16 A. Yes, sir. I did the micro verification
17 in this case and I also did the technical
18 administrative review of his case file.

19 Q. Just to be clear, this is not just you
20 reading someone else's report. You did the same
21 work in this case?

22 A. Yes, sir.

23 Q. So that being said we'll get right to
24 it. I know it's late.

25 MR. SIMPSON: Your Honor, may I

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 approach the witness?

2 THE COURT: You may.

3 By MR. SIMPSON:

4 Q. Mr. Green, I'm handing you what has
5 been entered into evidence as State's 26. Can you
6 take a moment, open that up, and take a look at
7 that exhibit?

8 A. Ladies and gentlemen of the jury, you
9 see what I'm doing. You can actually see the
10 State's Exhibit 26 is a fired bullet. You saw me
11 rotating it around my fingers. When the invested
12 comes into the laboratory, we mark it with an
13 electric pencil like a journal tool with a lab
14 number, ID number, and initials. That's what I was
15 doing. This is the item ten bullet (CHECK) was
16 submitted in this case. It has Ken Whitler's
17 markings on it.

18 Q. It's a readily identifiable item to
19 you?

20 A. Yes, sir.

21 Q. Okay. And that was submitted to you
22 for what purpose?

23 A. The submitting agency sent it to the
24 laboratory for the signed examiner, in this case,
25 Ken Whitler, to give an investigative lead. In a

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 case where there's only one bullet submitted, they
2 would they would like for us to tell them what
3 caliber the bullet is, if you can, and if we can
4 also measure the rifling and put that into a
5 database provided by the FBI.

6 And sometimes we can give them a list
7 of firearms that could have fired it based on the
8 parameters we put forth in the database.

9 Q. And how would you categorize the
10 condition of that fired bullet?

11 A. The State's Exhibit 26 is -- lead,
12 first of all, is very soft and very malleable.
13 This bullet is heavily damaged. The only thing
14 that could have been given in this case was the
15 approximate caliber of the bullet. It was so
16 damaged we couldn't even tell how many lands and
17 grooves and the rifling specifications were, so we
18 were unable to give a list of firearms that could
19 have fired it.

20 Q. But you were able to make some
21 conclusions about the caliber of that bullet,
22 correct?

23 A. Yes, sir.

24 Q. And what were those conclusions?

25 A. The likely -- excuse me, the conclusion

JAMES W. GREEN - DIRECT EXAM BY MR. SIMPSON

1 was that --

2 MR. MAYER: Judge, objection.

3 THE COURT: Basis.

4 MR. MAYER: I'm not sure that --

5 THE COURT: You've already admitted him
6 without objection as an expert in firearms
7 identification, and that's what he's doing is
8 identifying the type of ammunition of this and what
9 type of weapon the projectile came from.

10 MR. MAYER: Okay.

11 THE COURT: Overruled. You may
12 proceed.

13 BY MR. SIMPSON:

14 Q. And what were your conclusions
15 regarding the likely caliber?

16 A. It's a nominal 38 caliber, 38 family.

17 Q. Any conclusions -- what metal is that
18 made of?

19 A. Lead.

20 Q. Are all bullets made of lead?

21 A. Not all bullets are made out of lead,
22 but most of them have lead as a -- either the
23 bullet in some revolver calibers, some handgun
24 calibers, or the core of some bullets are mostly
25 made out of lead.

JAMES W. GREEN - CROSS EXAM BY MR. MAYER

1 Q. And all lead bullets would you -- and
2 again I realize there are lots of different types
3 of guns, but you said often consistent with a
4 revolver?

5 A. More times than not, yes, sir.

6 Q. Okay. And so we have a nominal 38
7 caliber more times than not consistent with a
8 revolver?

9 A. Yes, sir.

10 MR. SIMPSON: Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. SIMPSON: Thank you for being
13 here. I know you had a lot of travelling today.
14 Answer any questions that Mr. Mayer has.

15 THE COURT: You may proceed.

16 MR. MAYER: Thank you, Judge. May it
17 please the Court.

18 CROSS-EXAMINATION

19 BY MR. MAYER:

20 Q. Mr. Green, what specifically about this
21 bullet makes you conclude that it's likely a 38 not
22 a nine-millimeter bullet.

23 A. Well, nine-millimeter does fall into
24 the nominal 38 caliber family. When we say nominal
25 38, we're referring to approximate. That includes

JAMES W. GREEN - CROSS EXAM BY MR. MAYER

1 380, 357, 38 special, 357 magnum, among others, but
2 based on the weight, which if I remember correctly
3 it was 140 grams, it's too heavy to be a usual 380.
4 So it's nine-millimeter, 38, somewhere around
5 there.

6 Q. Okay. And tell us, did you say there
7 why it can't be a nine-millimeter? Or did you say
8 it could be a nine-millimeter?

9 A. It could be, yes, sir. It's too
10 damaged for us to really say what caliber it is.

11 Q. Okay.

12 A. The only real way to say what caliber
13 it definitely is, is if we match it to a gun.

14 Q. Okay. And you worked with and tested
15 only what you were given, correct?

16 A. Yes, sir.

17 Q. And you had no role in recovery of that
18 bullet?

19 A. No, sir. All I did was come through
20 and verify Ken Whitler's examination and his
21 report.

22 Q. Have you seen bullets break up before
23 in bullets you've examined?

24 A. Many times, yes, sir.

25 Q. And when you say, many times, it's not

JAMES W. GREEN - CROSS EXAM BY MR. MAYER

1 -- so it's not always the case then, right, for you
2 to have the whole bullet to examine, right?

3 A. Correct.

4 Q. And in this case as well, you can't be
5 certain that you had the whole bullet to examine,
6 correct?

7 A. Like I said, we can't be certain, but
8 we have most of it. Based on the weight you can
9 see some damaged rifling impressions. If it were a
10 core, there would be no rifling impressions on it
11 whatsoever. So we know it's a lead bullet and not
12 a core from another bullet.

13 Q. But what you're saying is there could
14 be other fragments of the bullet that existed that
15 you did not get into your laboratory to examine?

16 A. Yes, sir. It may have been a very
17 small probably two or three grams, but, yes, sir,
18 it's possible.

19 MR. MAYER: Okay. Court's indulgence?

20 THE COURT: Yes, sir.

21 MR. MAYER: No further questions.

22 THE COURT: Any redirect?

23 MR. SIMPSON: Just briefly.

24 THE COURT: You may proceed.

25 REDIRECT EXAMINATION

JAMES W. GREEN - REDIRECT EXAM BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. Mr. Green, I believe your testimony on
3 direct was the makeup more likely than not was a
4 revolver?

5 A. Yes, sir.

6 Q. And nine-millimeters and 38s, those are
7 bullet-wise very close, right?

8 A. Yes, sir. The diameter of a
9 nine-millimeter is .355 inches, the diameter of a
10 38 is .357.

11 Q. Which of those two is most often in a
12 revolver?

13 A. 38 usually, but they are starting to
14 make some other revolvers in other calibers.

15 MR. SIMPSON: Nothing further.

16 THE COURT: Any objection to the
17 witness being excused? From the State?

18 MR. SIMPSON: No, Your Honor.

19 THE COURT: From the defense?

20 MR. MAYER: No, Judge.

21 THE COURT: Sir, you're excused.

22 Call your next witness.

23 MR. SIMPSON: The State calls Kevin
24 Sherbine.

25 KEVIN SHERBINE,

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 being first duly sworn, testified as follows:

2 THE CLERK: Please speak into the
3 microphone. State your full name and spell your
4 last name.

5 THE WITNESS: Kevin Sherbine,
6 S-H-E-R-B-I-N-E.

7 THE COURT: You may proceed.

8 MR. SIMPSON: Thank you.

9 THE COURT: You're welcome.

10 MR. SIMPSON: May I approach the Court
11 Reporter?

12 THE COURT: You may.

13 (STATE EXH. 43, Copy of Subpoena with
14 CD attached, was marked for identification.)

15 (STATE EXH. 44, Copy of Subpoena with
16 CD attached, was marked for identification.)

17 (STATE EXH. 45, Copy of Subpoena with
18 CD attached, was marked for identification.)

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q. Officer Sherbine, afternoon.

22 A. Afternoon.

23 Q. Where are you employed?

24 A. The Sheriff Al Cannon Detention Center.

25 Q. Are you an officer in the Charleston

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 County Sheriff's Office?

2 A. Yes.

3 Q. What rank?

4 A. I'm a detention officer first class.

5 Q. And what are your duties at the Sheriff

6 Al Cannon Detention Center?

7 A. I'm the professional visitation
8 officer, the main point of contact between the
9 inmates and their attorneys, public defenders,
10 other law enforcement agency, nonlaw enforcement
11 agency, I handle about 90 percent of the Subpoenas
12 that are served on the jail, as well as assist the
13 regular lobby officers with their day-to-day
14 responsibilities.

15 Q. And what sort of things are subpoenaed
16 from that detention facility?

17 A. Phone records, mail logs, visitation
18 logs, property.

19 Q. I would like to today to focus mainly
20 on the phone records.

21 A. Uh-huh.

22 Q. Are you familiar with the jail's system
23 of maintaining phone recordings?

24 A. Yes.

25 Q. Are you the custodian of those records?

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 You say you handle most of the Subpoenas?

2 A. Yes.

3 Q. Would it be fair to call you the
4 custodian of those records?

5 A. Sure.

6 Q. Explain a little bit to the jury sort
7 of phone privileges that an inmate at your facility
8 would have?

9 A. In terms of making phone calls?

10 Q. Yeah. Are people in jail allowed to
11 make phone calls?

12 A. They are allowed to make phone calls on
13 their recreation periods, yes.

14 Q. And how does an inmate go about making
15 a phone call?

16 A. An inmate when they come through the
17 booking process they are fingerprinted and
18 photographed. They're given a PIN number that is
19 unique to every inmate, and when they make a phone
20 call, they have to enter that pin number before the
21 call would be allowed to go through.

22 Q. Okay. And these phone calls are
23 recorded?

24 A. They are.

25 Q. Is the inmate advised that these phone

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 calls are recorded?

2 A. Yes.

3 Q. Okay. And how is that inmate advised?

4 A. There is a message when they make the
5 call that the call is recorded. When they get
6 their PIN number in the booking area, the sheet
7 says the calls are monitored, recorded, as well as
8 it's posted in various areas throughout the
9 facility that calls are monitored and recorded.

10 Q. And if law enforcement agency or my
11 office wants to obtain recorded phone calls at the
12 jail, what do we typically do?

13 A. You serve me with a Subpoena for jail
14 records.

15 Q. Okay. And how would you go about
16 responding to the typical jail call Subpoena?

17 A. Once I get a Subpoena, I look for what
18 it's looking for date, time, inmate, and once I
19 narrow that down I enter it into our database.
20 Once it pulls the information, I print a hard copy
21 and then the audio I burn on to the CD. And once
22 that process is finished, i put it in an envelope,
23 seal it, and contact the agency that requested it.

24 Q. And then does the agency come pick it
25 up?

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 A. Yes.

2 Q. I should note when you receive phone
3 records Subpoena from our office, do we ever ask
4 you to exclude certain calls?

5 A. You do.

6 Q. And what most typically would we be
7 excluding from these recorded calls?

8 A. Attorney calls.

9 Q. We ask you to do that, take them out?

10 A. That's correct.

11 Q. So you said each inmate is given a PIN
12 number when they are booked into the facility; is
13 that right?

14 A. Yes.

15 Q. That's unique to that inmate?

16 A. It is, yes.

17 Q. Okay. What's the most common sort of
18 way we would ask for phone calls from your
19 facility? Would we do it by inmate PIN number?

20 A. Typically, you do it by inmate name,
21 provide a date of birth to insure that I have the
22 correct inmate.

23 Q. And then you would pull calls made by
24 that PIN number?

25 A. That's correct.

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 Q. Is that the only way we can go about
2 requesting calls from your facility?

3 A. Through the PIN number you mean?

4 Q. Have you ever gotten a request, for
5 example, asking for calls from the whole facility
6 to a certain target number?

7 A. Oh, yes.

8 Q. Okay. And can you explain a little bit
9 to the jury what's the difference there? What are
10 we asking for there?

11 A. What you're asking for there is any --
12 within a certain parameter of time, any inmate that
13 has dialed a specific number. When we put that
14 number in, it brings us all the calls made to that
15 number from any inmate that's in our facility.

16 Q. And in that instance asking for certain
17 calls to a certain number and you run that CD, will
18 the records you provide to us indicate the inmate's
19 PIN who called that number?

20 A. It will, yes.

21 Q. Okay. How long have you been working
22 at the detention center?

23 A. Four-and-a-half years.

24 Q. Do you have a lot of interaction with
25 the inmates?

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 A. A fair amount.

2 Q. And you've been working with the phone
3 system and phone records there for most of that
4 time?

5 A. Yes.

6 Q. Okay. I'm -- hypothetically, I'm an
7 inmate and it's my recreation time. I walk up to
8 the phone, I put in my PIN number, and I can make a
9 call, is that correct?

10 A. Yes.

11 Q. Is there any sort of security
12 complicated technology that prevents me from
13 putting in another inmate's PIN number?

14 A. No.

15 Q. Are you aware in fact in your four
16 years there that that occurs?

17 A. Yes.

18 Q. Okay. Would you say it's common?

19 A. I don't know that it's common.

20 Q. Okay. But you can confirm it occurs?

21 A. Yes.

22 Q. Okay. Does the inmate when assigned a
23 pin number, are there any pre-recordings that are
24 made by the inmate that are attached to those phone
25 calls?

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 A. When they set up their phone call in
2 the processing area, they are asked to state their
3 name.

4 Q. And why is that? How does that
5 function with the phone system?

6 A. When they call that person, it says
7 that you've received a call from that person and
8 that person's name.

9 Q. And that's a pre-recorded name?

10 A. Yes, it is.

11 Q. Officer Sherbine, do you recall
12 receiving Subpoenas in the present case?

13 A. Yes.

14 MR. SIMPSON: May I approach the
15 witness?

16 THE COURT: Yes, sir, you may.

17 MR. SIMPSON: Thank you.

18 THE COURT: You're welcome.

19 BY MR. SIMPSON:

20 Q. Officer Sherbine, I'm showing you
21 what's sort of collectively been marked for ID only
22 as State's 43. Can you describe that item?

23 A. This is a phone Subpoena like I would
24 receive from your office for jail records.

25 Q. And what records does that Subpoena

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 pertain to?

2 A. Phone records for Valentino Hayward.

3 Q. Okay. And, again, did I sort of -- is
4 there an item clipped onto the Subpoena?

5 A. Yes, there's an audio CD.

6 Q. Do you see any markings on that CD?

7 A. Yes. It has inmate name, inmate
8 number, the date the calls are for, and my name.

9 Q. That do you recognize that handwriting?

10 A. That's mine.

11 Q. Is that how you would have responded to
12 that Subpoena?

13 A. Yes.

14 Q. And, again, what are the dates of that
15 Subpoena request?

16 A. 12/11/2013 until January 12, 2014.

17 Q. Okay. And what person or inmate number
18 are we asking for with that request?

19 A. Valentino Hayward, number 1259912.

20 MR. SIMPSON: Your Honor, may I
21 approach again?

22 THE COURT: You may.

23 BY MR. SIMPSON:

24 Q. Officer Sherbine, same questions for
25 what's been marked for ID only, State's 44. Is

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 that sort of a different kind of request than we've
2 already talked about?

3 A. It is a Subpoena for a specific phone
4 number as opposed to an inmate.

5 Q. And what phone number is that?

6 A. It's looking for 8436075964.

7 Q. Okay. And you've already described
8 this, but if we're asking for that, what are we
9 receiving from you there?

10 A. You're receiving from me a list of any
11 phone calls made to that particular number by any
12 inmate in my facility.

13 Q. Okay. And what are the dates requested
14 on that?

15 A. August 10, 2015, to present.

16 Q. And the same question, is there an item
17 attached to the Subpoena?

18 A. Audio CD.

19 Q. Do you recognize the markings on that?

20 A. I do. It's my writing.

21 Q. Is that your response to that Subpoena?

22 A. Yes.

23 MR. SIMPSON: Your Honor, may I
24 approach?

25 THE COURT: You may.

KEVIN SHERBINE - DIRECT EXAM BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. I know it's getting tedious. What's
3 been marked for ID only, State's 45, do you
4 recognize those items?

5 A. I do, yes.

6 Q. And what is that?

7 A. This is a Subpoena for jail records for
8 a Brian Bivens.

9 Q. Brian Bivens is the inmate's identity
10 in your facility?

11 A. Yes.

12 Q. What dates are we asking for on Mr.
13 Bivens' phone calls?

14 A. August 1, 2015, to present.

15 Q. Is there an item attached?

16 A. An audio CD, yes.

17 Q. Do you recognize the handwriting on
18 that?

19 A. I do, it's mine.

20 Q. And is that your response to the
21 Subpoena?

22 A. It is, yes.

23 MR. SIMPSON: May I approach?

24 THE COURT: You may.

25 MR. SIMPSON: Court's indulgence.

KEVIN SHERBINE - CROSS EXAM BY MR. MAYER

1 BY MR. SIMPSON:

2 Q. I asked you earlier sort of
3 hypothetically about using another inmate's PIN on
4 the phone. Is there more than one cell block in
5 the detention center?

6 A. Yes.

7 Q. Are the PIN numbers assigned to a
8 certain cell block?

9 A. No.

10 Q. Okay. So I could still use somebody's
11 PIN in another cell block?

12 A. Yes.

13 MR. SIMPSON: Okay. Thank you for
14 being here. Answer any questions that Mr. Mayer
15 has for you.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. MAYER:

19 Q. Afternoon, Deputy Sherbine. Good to
20 see you outside of the jail.

21 A. Yes, sir.

22 Q. So from your records that you collect,
23 it doesn't sound like there's any way for you guys
24 to know who is talking on a particular phone; is
25 that correct?

KEVIN SHERBINE - REDIRECT EXAM BY MR. SIMPSON

1 A. Not from listening to them, no.

2 Q. And you testified on direct that the
3 people housed in your facility commonly will share
4 their PINs with others?

5 A. Yes.

6 MR. MAYER: No further questions?

7 THE COURT: Any redirect?

8 MR. SIMPSON: Just briefly.

9 REDIRECT EXAMINATION

10 BY MR. SIMPSON:

11 Q. So in the records you provided, the PIN
12 number being used and the name associated with that
13 PIN number would be provided?

14 A. Yes.

15 Q. And you stated that you do have some
16 information that at times people use other people's
17 PINs?

18 A. Yes.

19 Q. And what would be the purpose of using
20 somebody else's PIN?

21 MR. MAYER: Objection; calls for
22 speculation.

23 THE COURT: Sustained, speculation.

24 MR. SIMPSON: Nothing further, Your
25 Honor.

1 THE COURT: Any objection to the
2 witness being excused? From the State?

3 MR. SIMPSON: No.

4 THE COURT: From the defense?

5 MR. MAYER: No, Judge.

6 THE COURT: Sir, you're excused.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 Ladies and gentlemen, we are going to
10 take advantage of this break in testimony to take
11 our evening recess. The lawyers and I have some
12 matters of law we need to deal with before we leave
13 for the evening, and the next witness after that
14 would take us well beyond 5:00. It's a fairly
15 lengthy witness. We are going to break and allow
16 you all to leave as we deal with those additional
17 matters.

18 We will resume in the morning at 9:30.
19 Again, follow the same procedure; come directly to
20 your jury room as soon as all of you have arrived
21 and we will resume testimony in the case. As you
22 arrive the deputy clerk, Mr. Mike Callahan, will be
23 taking your lunch order. We're going to order
24 lunch on tomorrow. So when you arrive, if you
25 could fill those out so we can place those orders

1 in a timely manner.

2 Please do not discuss this case among
3 yourselves, with anyone else. Please don't read,
4 wash, or listen to any media accounts about this
5 case. Don't do any independent research on the
6 Internet and do not post anything on any social
7 networking sites regarding your status or any
8 comments that could be easily misinterpreted. I
9 hope you have a good evening.

10 (Jury out 4:43 p.m.)

11 THE COURT: You may be seated.

12 There are no South Carolina cases
13 dealing with -- and I'm going -- I'm back-tracking
14 a little bit because I wanted to do some research,
15 but I did not take a break to do that in the
16 interest of time, and I'm referring to Lauren
17 Mosher's testimony. We do not have any South
18 Carolina cases on point; however, we have a Fourth
19 Circuit decision that is directly on point because
20 it is almost exactly the same factually that deals
21 with -- and, actually, I think even -- even more
22 different, because in that case the district court
23 allowed the cell phone employee to testify
24 regarding the gathering and compilation of the
25 data, and then an FBI agent testified regarding

1 almost the exact same software that Ms. Mosher used
2 with the lay over technique of showing where the
3 phone calls originated from and the towers that
4 were utilized, and actually the testimony from the
5 cell phone employee was more in the nature of what
6 Ms. Mosher provided, and the Fourth Circuit said
7 that there was no error in admitting that
8 testimony, that it was completely proper. And, as
9 we know, their Rule 701 and 702 are the exact same
10 as ours, and so I find the reasoning in that case
11 to be particularly persuasive.

12 And just in the interest of time, what
13 the Fourth Circuit found -- this was a case out of
14 Georgia, but, again, it was almost the exact same.
15 And the Fourth Circuit said it's completely
16 appropriate for them to testify as lay witnesses.
17 And, actually, it was an employee from Sprint
18 Nextel, who was the records custodian, and an FBI
19 special agent, who it appears went through the same
20 type of training Ms. Mosher went to.

21 And what the Fourth Circuit found was
22 that there was no abuse of discretion in the trial
23 court's admission of the testimony, and, again,
24 it's almost the exact same, where the FBI agent
25 created maps using the information that was

1 disclosed by Sprint Nextel -- Nextel and plotted
2 the locations of certain cell sites listed in the
3 record.

4 And in this case, actually, I think
5 it's even more -- I would -- I would think in the
6 nature of the testimony with the offer being more
7 prejudicial to this defendant because it dealt with
8 a series of robberies. And what they were allowed
9 to do was correlate where the robberies took place
10 and where phone calls were being made in
11 correlation to those robbery sites, and they were
12 allowed to testify and tie those phone calls to the
13 defendant. In other words, they were allowed to
14 testify to the proximity of those cell phones to
15 where the robberies took place and where the
16 defendant was located. They found there was no
17 error in that testimony.

18 And what I found interesting as I read
19 that opinion and what I find persuasive, and after
20 I thought about it, it makes complete sense to me,
21 what the Fourth Circuit found was that testimony
22 did not amount to an expert opinion. They said to
23 create the maps that the FBI agent utilized mapping
24 the software that was marketed -- and they found
25 that that software was marketed to the general

1 public, that it requires little more than
2 identification of the various locations he intended
3 to plot, that he basically just entered the
4 locations of the businesses, as well as defendant's
5 apartment by the physical addresses, then he
6 provided a layover of the cell phone sites by
7 latitude and longitude, and that being their towers
8 as disclosed by the Sprint Nextel employee, the
9 Fourth Circuit found that it required minimal
10 technical knowledge or skill to complete this task.
11 That it was not so specialized as to constitute a
12 matter of expertise within the meaning of Federal
13 Rule 702, which is exactly the same as our Rule
14 702.

15 And regarding the FBI agent's testimony
16 on how cell phones -- and actually what happened in
17 this case is the cell phone employee testified as
18 to how cell phone sites and phones connect, how
19 they go through switching towers, and all of this
20 information that we didn't even have in this case,
21 and the court found that they had some concern
22 about it, but as it regarded signal strength, how
23 phone towers are utilized, how they are utilized in
24 urban areas, dealing with two-mile maximum ranges
25 of radiuses and operability did not require expert

1 testimony.

2 Those conclusion were based -- they
3 were not conclusions based on any specialized
4 reasoning or assessment and were not presented in
5 the form of an opinion or inference. They were
6 simply facts based on the witness's experience as
7 an employee of Sprint Nextel. The witness also
8 testified about proximity, line of sight, call
9 traffic -- how call traffic affects phonability to
10 connect to a particular cell tower. They said that
11 did not constitute an expert opinion.

12 They said, however, they found that
13 testimony a little more concerning because it went
14 beyond some -- it talked about technical details
15 about how operations were performed at cell sites
16 and they cell calls were routed through network
17 switches, and that under Rule 701 and 702 that may
18 well have required specialized knowledge, but they
19 found that even the admissibility of that testimony
20 was harmless.

21 So based on what I find to be really
22 persuasive reasoning by the Fourth Circuit, I stand
23 by my original ruling that the witness's testimony
24 and your all's agreement, which I think is well
25 founded in the law, that the witness's testimony

1 was admissible pursuant to Rule 701, that it was
2 based on her rational perception, that it was
3 helpful to a clear understanding of her testimony
4 or the determination of a fact in issue, and it did
5 not require specialized knowledge, skill,
6 experience, and training.

7 And I agree with the Fourth Circuit,
8 really all of these programs are online and any one
9 of us can do it. It's just a matter of putting in
10 data and the program creates the map for you.
11 Based on that the testimony will stand.

12 Now, as it regards the maps, I think
13 that rational is likewise persuasive. It doesn't
14 require specialized knowledge or training, it is
15 based on the rational perception of the witness,
16 and it is helpful to the finder of fact to an issue
17 that is dispositive in this case. That being where
18 the cell phones were, where the calls originated,
19 and based on the testimony that this cell phone
20 company only had two towers in that area, and this
21 had 20 towers, I find that number 35 is marked and
22 admitted subject to Mr. Mayer's objection.

23 And, again, it does not required
24 specialized knowledge, training or experience, and
25 the programs that were utilized are available to

1 the general public.

2 Anything else we need to deal with
3 before we break for the afternoon? From the State?

4 MR. SIMPSON: No, Judge. I can kind
5 of tell you our plans going forward. I think we
6 have three, possibly four more witnesses.

7 THE COURT: Does the defense plan to
8 call any witnesses?

9 MR. MAYER: Yes, Judge, we do plan to
10 call a couple. And based on the testimony that's
11 come out, I would ask for leave of the Court to add
12 two witnesses to the witness list previously
13 provided.

14 THE COURT: Who are they? Were they
15 listed on the State's witness list?

16 MR. MAYER: No, I don't believe they
17 were, Judge.

18 THE COURT: Who are the two additional
19 witnesses?

20 MR. MAYER: One is Ryan Gammons.

21 THE COURT: G-A-M-M-O-N-S.

22 MR. MAYER: Yes. And I'm so sorry, I'm
23 blanking on the other persons's name. I can e-mail
24 you when I get back to my office.

25 MR. SIMPSON: Deputy Coroner Kraus?

1 MR. MAYER: Well, yes, if I can find
2 Deputy Coroner Kraus, she would be a third.

3 THE COURT: Are you talking about the
4 other gentlemen --

5 MR. MAYER: I haven't mentioned his
6 name in the courtroom.

7 THE COURT: You mean the other witness?

8 MR. MAYER: Yeah, the third witness.

9 THE COURT: If you could give me that
10 now I would appreciate it. I need it for me to
11 remember what I need to do in the morning. Because
12 I'm going to have to voir dire the jury about any
13 new witnesses.

14 MR. MAYER: Okay. I'm pretty sure it's
15 in my documents on my desk at work, Judge. At this
16 hour, I don't that my staff is going to be there.

17 THE COURT: They have eight minutes to
18 go. You might need to tighten up and tell them I'm
19 in trial --

20 MR. MAYER: It would be hard for me to
21 describe where to look.

22 THE COURT: Well, then that's
23 reasonable because my staff would never be able to
24 find anything on my desk.

25 MR. MAYER: Judge, I think we have a

1 stipulation, too.

2 THE COURT: So maybe it resolves the
3 issue of who you were going to call?

4 MR. MAYER: Partly.

5 MR. SIMPSON: Probably not.

6 THE COURT: While you-all are looking
7 at that, the cases I relied on from the Fourth
8 Circuit, United States v. Aaron Brown and United
9 State v. Eric Jordan. The opinions were rendered
10 August 25th of 2015.

11 MS. MULKEY: Thank you, Your Honor.

12 MR. MAYER: I don't know why we can't
13 agree on a resolution to this case; we can agree on
14 everything else.

15 THE COURT: You all can work on that
16 stipulation over the evening. You sill can't
17 remember the name of the witness, Mr. Mayer?

18 MR. MAYER: Judge I'm sorry.

19 THE COURT: It's all right.

20 MR. MAYER: I'll e-mail it tonight.

21 THE COURT: If you could, I just don't
22 want to leave that person out when I'm doing any
23 additional voir dire.

24 MR. MAYER: Great.

25 THE COURT: Anything else before we

1 adjourn for the evening? From the State?

2 MR. SIMPSON: Nothing further.

3 THE COURT: From the defense?

4 MR. MAYER: Nothing else, Judge.

5 THE COURT: Have a good evening. See

6 you at 9:30.

7 (These proceedings were recessed at
8 4:57, to be continued November 13, 2015, at 9:30
9 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The following proceedings were had
2 November 13, 2015, at 10:29 a.m., Charleston County
3 Circuit Court, in re, State v. Hayward.)

4 THE COURT: State ready to proceed?

5 MR. SIMPSON: We are, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MR. MAYER: Yes, Judge.

8 THE COURT: Please bring in the jury.

9 Who is the State's first witness going
10 to be?

11 MR. SIMPSON: Whitney Berry from SLED,
12 Your Honor.

13 THE COURT: Is she here?

14 MR. SIMPSON: She is.

15 THE COURT: Hi, Ms. Berry. How are
16 you?

17 THE WITNESS: Fine. And yourself?

18 THE COURT: Good.

19 Who is the next witness after that?

20 MR. SIMPSON: We were going to seek to
21 enter the stipulation first.

22 THE COURT: Yeah, I got that part.

23 MR. SIMPSON: Following Ms. Berry,
24 Corporal Rodney van Horn, digital forensics.

25 Following that, Thomas Walters, investigator of my

1 office, to address the foundation of the jail
2 calls.

3 THE COURT: How is he going to
4 establish the foundation of the jail calls?

5 MR. SIMPSON: Your Honor, I don't know
6 if you've reviewed my brief on this issue.

7 THE COURT: I did.

8 MR. SIMPSON: We believe that we have
9 several layers of foundation any one of which would
10 be -- independently support that authentication and
11 foundation. First, that he reviewed the interview
12 with Valentino Hayward, the known voice, heard
13 the --

14 THE COURT: You have to get somebody
15 else.

16 MR. SIMPSON: We have lots --

17 THE COURT: I'm telling you in advance.

18 MR. SIMPSON: Okay.

19 THE COURT: Somebody that doesn't know
20 him.

21 MR. SIMPSON: I believe State V. Smith
22 establishes --

23 THE COURT: I read the memo, but I'm
24 just telling you and giving you a heads-up what is
25 going to happen.

1 MR. SIMPSON: We have much more if you
2 want me to keep --

3 THE COURT: No, because my jury is out
4 here.

5 MR. SIMPSON: Okay.

6 THE COURT: And I assume you agree to
7 the stipulation, Mr. Mayer?

8 MR. MAYER: Yes, Judge.

9 (Jury in at 10:30 a.m.)

10 THE COURT: You may be seated. Good
11 morning, ladies and gentlemen. I hope everyone had
12 a pleasant evening. We're happy that everyone has
13 arrived safely this morning. To the individual
14 that had the car accident, we are happy that you
15 are safe and sound and that you were able to arrive
16 on today.

17 We are now going to proceed with the
18 State's case. The State may proceed.

19 MR. SIMPSON: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 MR. SIMPSON: Your Honor, at this time
22 the State would seek to pose a stipulation to the
23 jury.

24 THE COURT: You may proceed.

25 MR. SIMPSON: Thank you.

1 THE COURT: You're welcome.

2 MR. SIMPSON: Your Honor, marked for
3 ID only at this point is State's 42.

4 Ladies and gentlemen of the jury, the
5 State and the defense agree that, if called,
6 Sarah Gladwell, CPD Crime Scene Unit, would testify
7 to the following: She responded to the crime scene
8 at 639 Sequoia Street on 12/11/13, at approximately
9 9:19 p.m. She observed that two SCE&G utility
10 poles and street lights located on both sides of
11 the triplex parking lot were not operating at the
12 time.

13 At approximately 10:00 p.m., she
14 administered a gunshot residue kit on the hands of
15 Latoya Carson. Following this, the body blanket
16 was removed from the victim, Deontre Miles. At
17 that time, she observed that the victim was on his
18 back with his head facing the driver's side of a
19 nearby vehicle and his feet facing the residence of
20 635 Sequoia Street.

21 At approximately 10:30 p.m., she
22 administered a gunshot residue kit on the hands of
23 Deontre Miles. The gunshot residue kits were later
24 submitted to SLED for analysis.

25 Respectfully submitted, signed Benjamin

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 Chad Simpson, Assistant Solicitor and Aaron Mayer,
2 Counsel for the defendant.

3 At this time, Your Honor, the State
4 seeks to enter State's 42 into evidence.

5 THE COURT: Any objection?

6 MR. MAYER: No.

7 THE COURT: Marked and admitted without
8 objection.

9 (STATE EXH. 42 in evidence.)

10 THE COURT: You may proceed.

11 MR. SIMPSON: Thank you, Your Honor.

12 The State calls Whitney Berry of SLED.

13 WHITNEY BERRY

14 being first duly sworn, testified as follows:

15 THE CLERK: Please state your full name
16 and spell your last name for the record.

17 THE WITNESS: My name is Whitney Berry,
18 B-e-r-r-y.

19 THE COURT: You may proceed.

20 MR. SIMPSON: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 DIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q. Ms. Berry, where do you work?

25 A. I work for the South Carolina Law

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 Enforcement Division, also known as SLED.

2 Q. And in what capacity do you work for
3 SLED?

4 A. I am a forensic scientist in the Trace
5 Evidence Department.

6 Q. And what is the Trace Evidence
7 Department?

8 A. Trace evidence is a broad term for
9 evidence that you can't see with the naked eye and
10 you can't analyze without some sort of microscope.
11 So we do gunshot residue analysis, fibers, glass
12 analysis, as well as fire debris and fracture
13 match.

14 Q. Does this scientific undertaking
15 require any specialized education, training,
16 professional competency, et cetera?

17 A. Yes, it does.

18 Q. Could you explain to the jury your
19 personal educational and professional training?

20 A. Yes, sir.

21 I have a bachelor's of science in
22 chemistry from the University of South Carolina.
23 Once I began working at SLED, I completed SLED's
24 in-house training program for gunshot residue
25 analyst. It's approximately a nine-month program

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 in which you do multiple reading on the theory of
2 gunshot residue analysis, how the instrumentation
3 works, you do journal article reading about the
4 advances in gunshot residue analysis through the
5 years.

6 You then work cases under the
7 supervision of a court qualified analyst. You also
8 observe courtroom testimony from them.

9 And then at the end you would perform a
10 mock court, under which you would complete analysis
11 of your own case.

12 Q. And following that -- sorry. You
13 mentioned you had a chemistry degree first?

14 A. Yes, sir.

15 Q. And following all that training, how
16 long is sort of the on-the-job training before
17 you're allowed to analyze your own cases?

18 A. It's approximately nine months. It
19 varies from person to person. Approximately, nine
20 months.

21 Q. And does that include any sort of peer
22 review or confirmation of your work during that
23 period?

24 A. Yes, sir. Once I completed my mock
25 court, I was considered a qualified analyst. All

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 the reports that I have issued since I've become a
2 qualified analyst, you undergo a period of due
3 process before they're published.

4 Q. So two qualified analysts looked at all
5 the evidence?

6 A. Two qualified analysts would look at
7 all the data, but I would analyze the gunshot
8 residue kit and I would generate a report with my
9 data to report it. And then I would give it to my
10 reviewer and they would go through the data that I
11 presented them and see if they come to the same
12 conclusion as my report.

13 Q. Okay. Have you ever testified in court
14 before in the area of trace evidence, specifically
15 gunshot residue?

16 A. Yes, sir.

17 Q. And, approximately, how many times have
18 you testified in court?

19 A. About 25.

20 Q. Okay. How many of those were this
21 week?

22 A. This is number two this week,
23 thankfully.

24 Q. Okay. And where is SLED located?

25 A. It is located on Broad River Road in

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 Columbia, South Carolina.

2 Q. Well, thank you for your time and your
3 travel today. We appreciate it.

4 MR. SIMPSON: Your Honor, at this
5 point the State would offer Ms. Berry as an expert
6 in trace evidence and specifically gunshot residue.

7 THE COURT: Any questions or
8 objections?

9 MR. MAYER: No, Judge.

10 THE COURT: So admitted without
11 objection. You may proceed.

12 MR. SIMPSON: Thank you, Your Honor.

13 BY MR. SIMPSON:

14 Q. Ms. Berry, did you do any gunshot
15 residue analysis in the present case?

16 A. Yes, sir, I did.

17 Q. Actually, I'm getting ahead of myself.
18 What is gunshot residue?

19 A. Gunshot residue is a three-component
20 metal particle that is round in shape. It's
21 comprised of lead, barium, and antimony. And when
22 you see these three elements together in a molten
23 configuration or a round shape, it indicates that
24 the metal is under a high heat and pressure, which
25 is most consistent with the firing of a gun.

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 Q. And in regards to the materials you
2 just spoke of, what happens when a gun is fired?

3 A. When a gun is fired, typically, the
4 firing pin will hit the primer capsule in the
5 bottom of the cartridge and that will ignite a
6 small explosion. That explosion will make the
7 metals in the primer cap go molten, so they will
8 get super heated very quickly and then turn round.
9 They will all fuse together in different
10 configurations.

11 And that residue or primer residue will
12 come out from the ejection port of a semiautomatic
13 gun. So when it slides back, it would come out
14 there, or it would come out of the cylinder gap of
15 a revolver. So that would be the spot around the
16 cylinder.

17 If you've ever seen an old Western
18 movie when they go to pull the trigger, you see the
19 little plume of smoke, that is where the primer
20 residue is getting deposited on somebody's hands.

21 The majority of the gunshot residue
22 actually would follow the bullet or projectile
23 towards the intended target.

24 Q. So there is a quantity of gunshot
25 residue which actually travels from the barrel of

1 the gun with the bullet?

2 A. Yes, sir.

3 Q. And on that vein, hypothetically
4 speaking as an expert, if you have a person who is
5 shot with a firearm, would an expert in your field
6 expect to find gunshot residue on that person?

7 A. Yes, sir. We expect to find gunshot
8 residue on the victims of gunshot wounds.

9 Q. Is that irrespective of distance,
10 categories like that?

11 A. It can be dependent on the distance;
12 the caliber firearm used; the type of ammunition
13 used; weather conditions, if this was an outdoor
14 versus an indoor incident. It can be dependent on
15 the quality of the gun, how well it's been
16 maintained or taken care of and how well it was put
17 together.

18 Q. But a conclusion that a gunshot residue
19 kit was performed on the victim of a firearm, what
20 would you expect to find on the gunshot residue
21 kit?

22 A. In the majority of cases, I would
23 expect them to be positive for gunshot residue.

24 Q. Okay. Sorry, I'm getting ahead of
25 myself again.

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 We talk about a gunshot residue kit.

2 What is a gunshot residue kit?

3 A. A gunshot residue kit is an evidence
4 collection kit that SLED provides free of charge to
5 any agency in South Carolina that requests them.
6 It has four particle lists inside of it, which they
7 look like this. So there's four. They're labeled
8 for the different areas of the hand. So that would
9 be the right palm, the right back, the left palm,
10 and the left back.

11 Inside the kit is a worksheet on which
12 we want the collecting officer to write the name of
13 the subject that it's being taken off of, whether
14 they were living or deceased at the time of
15 collection, the time of the incident and then the
16 time of collection.

17 There is also an instruction sheet to
18 indicate to the officers how and where to perform
19 the collection and a set of gloves to make sure
20 that there is no contamination. They would put the
21 gloves on and follow the directions and then they
22 would sample the hands just by dabbing the center
23 part of the tape. So it's like a sticker and would
24 pick up any particulate on the hand.

25 Q. You mentioned there that you train law

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 enforcement on how to administer those kits?

2 A. No, sir, we don't train law enforcement
3 on how to collect those. There is an instruction
4 sheet inside the kits that is put there by the
5 manufacturer. Also, each agency should have its
6 own training protocol for that.

7 Q. Does your agency, specifically your
8 department with your expertise, offer any
9 recommendations regarding taking gunshot residue
10 kits based on the suspected time that has
11 transpired from the suspected firing of this
12 weapon?

13 A. Yes, sir. Based on the Scientific
14 Working Group For Gunshot Residue analysis, they're
15 kind of the guidelines for all GSR analysis, we
16 don't expect to find gunshot residue on somebody's
17 hands after six hours if that person is alive. And
18 that's because of the normal everyday activities
19 that you can do.

20 You can wipe your hands, put them in
21 your pockets, wash them, sweat. Rain and wind can
22 possibly remove them. Blood falling on the ground
23 has the potential to remove it, and it can absorb
24 through your skin.

25 Gunshot residue is very fragile and

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 very easy to remove. If you think about having
2 flour on your hands in the kitchen, every time you
3 clap your hands or you touch something, a little
4 bit of that flour comes off somewhere. That's the
5 same concept with gunshot residue.

6 Q. So is it true that the recommendation
7 of your department and its expertise is that
8 performing a gunshot residue analysis on a person
9 more than six hours later than the suspected firing
10 of a weapon should not be performed?

11 A. It's our policy that we will not
12 analyze anything that is collected after six hours
13 because we can no longer tie it to a particular
14 incident.

15 Q. Okay. Ms. Berry, could you please
16 explain to the jury in relation to the gunshot
17 residue, what is transference or evidence transfer?

18 A. Transfer would be like that flour
19 example I just gave. If you have flour on your
20 hands and you touch the countertop, you can see a
21 little bit of the flour there. Well, if someone
22 came behind you and they put their hand down right
23 where you did, they might have flour on their hand
24 now.

25 And it's the same idea with gunshot

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 residue. Anything that you touch could potentially
2 transfer some off you. If someone comes behind you
3 and they touch it, it can transfer on them.

4 Also, anything that's in the vicinity
5 of the discharge firearm. So, like, if it's shot
6 over a table or near a car, those items could
7 potentially have gunshot residue on them too that
8 could be picked up from somebody.

9 Q. I believe you testified earlier that a
10 victim of a gunshot wound would be expected to have
11 gunshot residue --

12 A. Yes, sir.

13 Q. -- on their body.

14 Would a person who touched the victim
15 of a gunshot wound be expected under the doctrine
16 you said just said to have gunshot residue on them?

17 A. It's possible. There have been no
18 scientific studies for how much GSR can be
19 transferred, but it is possible for gunshot residue
20 to transfer off of a victim onto somebody who's
21 performing some kind of resuscitation or is
22 checking on them.

23 Q. Would a single microscopic particle of
24 gunshot residue be more consistent with evidence
25 transfer or more consistent with a person who fired

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 a gun?

2 A. In my opinion, it would be more
3 consistent with evidence being transferred.

4 Q. Ms. Berry, did you perform any gunshot
5 residue analysis in the present case?

6 A. Yes, sir.

7 Q. And who was the first individuals -- do
8 the kits come to you labeled with typically a name
9 of a person?

10 A. They do. When they were logged in
11 through the evidence control department, everything
12 is given a barcode label with its own individual
13 item number and every case is given its own
14 laboratory number. So we can track where all the
15 evidence goes through an electronic chain of
16 custody.

17 So it's based on how it's logged in and
18 then when I get the actual item of evidence, I open
19 it up and make sure that it's from whom it is
20 supposed to be from.

21 Q. And the first gunshot residue kit that
22 you analyzed, and I'm referring to Item 3 on your
23 report, would refer to the gunshot residue kit on
24 whom?

25 A. That was one kit from Deontre Miles.

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 Q. And did you analyze that kit?

2 A. Yes, sir.

3 Q. And what were the results?

4 A. It was positive for gunshot residue on
5 both the right and left hand. And additionally, it
6 had one particle consistent with gunshot residue on
7 the right and left hand.

8 Q. Are those results, in your professional
9 opinion, consistent with what you would find on a
10 person who was the victim of a gunshot?

11 A. Yes, sir.

12 Q. Moving on. Referring to Item 4 on your
13 report, is there a name attached to the gunshot
14 residue kit on Item 4?

15 A. That was one gunshot residue kit from
16 Latoya Carson.

17 Q. Beginning with the right hand, can you
18 explain to the jury your results?

19 A. On the right hand, one particle of
20 gunshot residue was found.

21 Q. So let me stop you there. When you're
22 talking about gunshot residue, are you talking -- I
23 believe you mentioned that's something we could
24 just look at it and see?

25 A. No. It's microscopic, so we have to

WHITNEY BERRY - DIRECT EXAM BY MR. SIMPSON

1 analyze it with an electron microscope. If you
2 plucked one of your hairs out of your head, you
3 could fit about 100 GSR particles across the
4 diameter of your hair. Or if you're a football
5 fan, if you put two football fields together, I'm
6 looking for something the size of pea in the middle
7 of two football fields.

8 Q. You say the diameter is like --

9 A. It's across.

10 Q. Yeah. Not the length of the hair, just
11 across?

12 A. Just across the diameter.

13 Q. That can contain 100 particles?

14 A. You could fit approximately 100 GSR
15 particles in there.

16 Q. And how many particles of GSR was found
17 on the right hand of Ms. Carson?

18 A. One.

19 Q. One. Again, would the finding of one
20 microscopic particle of GSR, in your professional
21 opinion, be more consistent with the concept of
22 evidence transfer or more consistent with a person
23 who recently fired a weapon?

24 A. It would be more consistent with
25 transfer.

WHITNEY BERRY - CROSS EXAM BY MR. MAYER

1 Q. Okay. And how again does transfer
2 occur.

3 A. By touching something that would be in
4 the vicinity of the discharge of a firearm. That
5 would include the victim, the gun itself, the
6 person who fired it, any sort of combination there.

7 Q. And moving on to the left hand of
8 Ms. Carson, what were your results in regard to
9 that GSR kit?

10 A. Her left hand was negative. No gunshot
11 residue was found on it.

12 Q. Not even one particle that you could
13 fit a hundred on the cross section of a hair?

14 A. No, sir.

15 MR. SIMPSON: Court's indulgence?

16 THE COURT: Yes, sir.

17 MR. SIMPSON: Ms. Berry, thank you for
18 your travel and time. Please answer any questions
19 Mr. Mayer has.

20 THE COURT: Mr. Mayer, you may proceed.

21 CROSS-EXAMINATION

22 BY MR. MAYER:

23 Q. Good morning, Ms. Berry. I'm

24 Aaron Mayer for Valentino Hayward.

25 Isn't it true also that finding the

WHITNEY BERRY - CROSS EXAM BY MR. MAYER

1 amount of gunshot residue that you found from
2 Latoya Carson's sample would be consistent with her
3 being present when the deceased was shot.

4 A. It could be. I wouldn't -- based on
5 what was on her, I wouldn't place her within very
6 close proximity, but she could have been present,
7 yes.

8 Q. And isn't it possible also that had
9 someone who had been in the vicinity gone like this
10 (indicating), as fragile as gunshot residue is,
11 that could have gotten rid of a lot of it; right?

12 A. I can't really testify as to how much
13 could be removed, but I would still expect to find
14 more of a population of particles that are -- not
15 just three-component gunshot residue particles but
16 single-component particles such as round lead or
17 round barium or round antimony or what we would
18 call consistent particle, which would be a
19 combination of two of those elements, round and
20 molten. We are looking for the population when we
21 do GSR analysis.

22 Q. Now, you're talking about if that's the
23 person in the vicinity or are you talking about if
24 that's the person who had shot the weapon?

25 A. If that's the person who had shot the

WHITNEY BERRY - REDIRECT EXAM BY MR. SIMPSON

1 weapon, I would expect to find a good population of
2 particles on their hands.

3 Q. Okay. And there was no gunshot residue
4 samples submitted from Mr. Valentino's hands;
5 correct?

6 A. I did not receive any, no.

7 Q. Okay. Did you do any tests on
8 Ms. Carson's clothing for gunshot residue?

9 A. As far as I know, no clothing from
10 Ms. Carson was submitted in this case.

11 MR. MAYER: Thank you. No further
12 questions.

13 THE COURT: Any redirect?

14 MR. SIMPSON: Very brief.

15 REDIRECT EXAMINATION

16 BY MR. SIMPSON:

17 Q. You said that the single particle of
18 gunshot residue could hypothetically be someone
19 standing somewhere near a gunshot?

20 A. If you were in the room -- say we were
21 in a room this size and someone fired a gun, it
22 would be possible for someone to have one particle
23 on their hands just from being in the room.

24 Q. Okay. But in close proximity or
25 shooting a gun or being shot by a gun, you would

1 expect more?

2 A. I would expect to find a greater
3 population, not just of gunshot residue, but of
4 particles that would support it.

5 Q. And if a person went up to a person who
6 was recently shot, touched their head, touched
7 their hand, asked if they're okay, would that be a
8 situation, in your professional opinion, very much
9 consistent with the one particle found on
10 Ms. Carson?

11 A. That would be a situation in which I
12 could see that transfer happening, yes.

13 Q. And again, your organization, how long
14 after a suspected shooting is it when your
15 scientific organization won't even test a GSR kit?

16 A. Six hours.

17 MR. SIMPSON: Okay. Nothing further,
18 Your Honor.

19 THE COURT: Any objection to Ms. Berry
20 being excused? From the State?

21 MR. SIMPSON: None from the State,
22 Your Honor.

23 THE COURT: From the defense?

24 MR. MAYER: None, Judge.

25 THE COURT: Ms. Berry, you're excused.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 THE WITNESS: Thank you.

2 THE COURT: You're welcome.

3 Ladies and gentlemen of the jury, there
4 are additional proposed witnesses in this case that
5 were not available during the voir dire process.
6 And they are Brian Gammons, Deputy Coroner Krause
7 and Bill Caps.

8 Is there any member of the panel
9 related by blood or marriage to any of these
10 individuals or does anyone have a close personal or
11 social relationship with any of them? If so,
12 please stand at this time.

13 THE JURY: (No response.)

14 THE COURT: Let the record reflect
15 there was no response.

16 Counsel approach for me.

17 (Bench conference was had; following
18 proceedings were had in open court.)

19 THE COURT: You may call your next
20 witness.

21 MR. SIMPSON: The State calls Corporal
22 van Horn with the Charleston Police Department.

23 RODNEY VAN HORN,
24 being first duly sworn, testified as follows:

25 THE CLERK: Be seated. Please state

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 your full name and spell your last name for the
2 record.

3 THE WITNESS: Okay. First name Rodney,
4 middle Thomas, last name V-a-n H-o-r-n.

5 THE COURT: You may proceed.

6 MR. SIMPSON: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Mr. Van Horn, how are you?

11 A. Fine, thank you.

12 Q. What is your occupation?

13 A. I am a digital evidence examiner with
14 the Charleston Police Department, full-time sworn
15 officer.

16 Q. And I'm sorry?

17 A. Full-time sworn police officer.

18 Q. Okay. Could you provide -- you said
19 what department do you work in?

20 A. Charleston Police Department.

21 Q. I'm sorry, what unit?

22 A. With the forensic division, digital
23 examiner.

24 Q. What does a forensic digital examiner
25 do?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 A. We routinely take submitted media from
2 investigators or detectives. Media can include
3 computers, cell phones, tablets, any kind of
4 digital storage device, and we process that
5 evidence, analyze it and return the product back to
6 the investigator or detective for further
7 investigation.

8 Q. Okay. Does that field require any
9 specialized education, special training,
10 certification, et cetera?

11 A. Yes, sir, it does.

12 Q. And could you recount for this jury the
13 educational and professional training and
14 certification that you received?

15 A. Yes, sir. Some of the classes and
16 courses that we have to take, we start off with an
17 on-the-job -- in the unit that lasts for a year
18 on-the-job training. I've been to basic data
19 recovery and acquisition. I've been to
20 intermediate data recovery and analysis.

21 Also been to training on Windows NT
22 operating systems and NT file systems. All of
23 those were through the National White Collar Crime
24 Center, NWCCC.

25 I've been trained with access data,

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 been trained with the FBI to use image scan, which
2 is a software. Had classes such as Cyber War,
3 Cyber Crime, and that was from the Institute of
4 International and European Affairs.

5 Manipulation of digital evidence and
6 investigations. Intrusion detection, network
7 security, Bluetooth investigations, cloud
8 investigations, the UFED Cellebrite training, and
9 most recently the video and image enhancement
10 training given through Ocean Systems in Maryland.

11 Q. Okay. Do you maintain certifications
12 in this area?

13 A. There are certain certifications that
14 you can have. I currently maintain the ACE
15 certification, which is the Access Data Certified
16 Examiner certification.

17 Q. And you are being a little humble. Did
18 you recently win an award for your work in this
19 expertise?

20 A. I did. I was named the Nights of
21 Columbus Officer of the Year for my involvement
22 with the Emanuel AME Church.

23 Q. And did your work on that case involve
24 work on some of the digital evidence that you were
25 referring to?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 A. Yes, sir. It was the extraction from
2 some video and image system, surveillance system
3 that was on scene.

4 Q. Okay. Congratulations.

5 A. Thank you.

6 Q. Have you ever testified in a court of
7 law and the subject matter that you are here for
8 today?

9 A. I have. From approximately 2009 to the
10 present, I've been qualified in Charleston,
11 Dorchester County, approximately, nine times.

12 Q. Okay. So in those cases you mentioned,
13 you were qualified by the Court as an expert in
14 this area?

15 A. Yes, sir.

16 Q. You said about nine times?

17 A. Yeah, it was -- I've got eight here,
18 but this has been updated. It's nine times now.

19 MR. SIMPSON: Your Honor, at this
20 point the State would offer Corporal Rodney van
21 Horn as an expert in digital extraction.

22 THE COURT: Any questions or objection?

23 MR. MAYER: No, Judge.

24 THE COURT: What's the area again,
25 digital --

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 MR. SIMPSON: Digital forensics, Your
2 Honor.

3 THE COURT: Thank you. So admitted
4 without objection.

5 MR. SIMPSON: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 BY MR. SIMPSON:

8 Q. Again, we've touched on this, Corporal,
9 but what kind of work does the Charleston Digital
10 Evidence do?

11 A. We routinely will accept evidence that
12 is submitted in cases from investigators, from
13 detectives from the Charleston Police Department.
14 We assist the North Charleston Police Department,
15 Charleston County, Myrtle Beach, Georgetown. We've
16 assisted the attorney general's office in Columbia.

17 We take media submitted to us, we
18 process that media. We can analyze the data that's
19 on the media or just do an extraction. We create
20 the reports and then return the reports back to the
21 submitting officer or agent.

22 Q. So your unit here in Charleston you
23 said is actually utilized by law enforcement
24 statewide?

25 A. Yes, sir.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 Q. Does the work include working with cell
2 phones?

3 A. Yes, it does.

4 Q. And are modern cell phones sort of
5 similar to computers in any way?

6 A. They are very similar, especially with
7 the advancement of the cell phones. They have
8 become -- the storage capacity is greater of
9 Smartphones. It holds a lot of data and methods
10 for extraction can be very similar and the reports
11 given back are similar.

12 Q. Corporal van Horn, what is a digital
13 data dump?

14 A. For the purposes of a cell phone, a
15 data dump would be -- you can do several types of
16 extractions. For a logical extraction -- there's
17 three types: Logical extraction, a file system
18 extraction and physical extraction.

19 For a file -- for a logical extraction,
20 it's the quickest extraction. We often do that
21 first.

22 Q. Might you be sometimes be working under
23 time restraints?

24 A. Yes.

25 For logical extraction, we do that

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 first and get that back to the detectives in the
2 field, as they are often awaiting a lead or some
3 way to go with the -- with their investigations.
4 So we will do that one first and we will return it.

5 For a logical extraction, you're
6 basically going to get everything that's existing
7 on the phone logically. In other words, when you
8 turn the phone on, what you can see on the screen
9 is what we can extract. What you can thumb through
10 and get off of the phone or see on the phone is
11 what we can extract from a logical.

12 For a file system, it goes a little bit
13 deeper for a file system extraction. You're able
14 to get application data. If you download an app,
15 it creates a folder on the phone. You can't
16 necessarily see that by thumbing through the phone,
17 but we can get that information, databases,
18 spreadsheets, stuff like that.

19 And for a physical extraction, that's
20 basically an extraction that's done through the
21 firmware of the phone, the hardware itself. And
22 that obtains pretty much -- it's a bit-per-bit
23 image of the phone, and then the image is processed
24 within the software and we can get recover data.
25 We can get deleted data and pretty much everything

1 that you can get from the logical and file system,
2 so it's a three-tiered process, each tier getting
3 deeper.

4 Q. On that deepest tier, is it fair to say
5 the most thorough of the searches is the physical?

6 A. The physical.

7 Q. In the physical extraction, you can
8 find data that's been deleted?

9 A. That's correct.

10 Q. And in your -- in a report that you
11 would prepare for a physical extraction, do you
12 note this item was deleted from the actual phone?

13 A. It is noted in the report. We do
14 not -- I do not manually go in and say deleted or
15 not, but when the report is generated, it will
16 typically -- it will note if the file was deleted.

17 Q. And that suggests that a user of that
18 phone went in and --

19 A. Someone deleted it, yes.

20 Q. Corporal van Horn, in the present case,
21 were you asked to perform this sort of data dump
22 process on any cell phones?

23 A. I was. There were three phones in this
24 case.

25 Q. For purposes of today, I would like to

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 focus on one.

2 MR. SIMPSON: Your Honor, may I
3 approach the witness?

4 THE COURT: You may.

5 BY MR. SIMPSON:

6 Q. Corporal van Horn, I hand you what's
7 been marked as State's 27, previously admitted. Do
8 you recognize that exhibit?

9 A. I do.

10 Q. And what is that?

11 A. It is a T-Mobile carrier QAU865 8651T
12 cell phone, and within that phone was a SanDisk
13 2 gig, 2 gigabyte micro SD card.

14 Q. Okay. And did you perform the data
15 dumps that we have been referring to on that phone?

16 A. I did.

17 Q. Were those findings compiled in a
18 report?

19 A. Yes, they were.

20 Q. Did we meet together and sort of review
21 those findings?

22 A. Yes, we did.

23 Q. Let me ask you this now: Computers --
24 modern cell phones, little computers, that's fair?

25 A. Yes.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 Q. Are we talking about an often
2 voluminous amount of information?

3 A. It can be a lot of information, yes.

4 Q. And your reports are thorough; is that
5 correct?

6 A. Yes.

7 Q. Fair enough.

8 A. Yes.

9 Q. Fair to say that any sort of
10 investigation, there can a whole lot there that
11 just doesn't -- quite frankly, isn't relevant;
12 right?

13 A. Right. A lot of it is irrelevant. You
14 have to kind of cull through what is needed and
15 what is relevant.

16 Q. Is it helpful to this wise and
17 intelligent jury, as well as an idiot like me, to
18 maybe go in and pull out just specific things?

19 A. You can get very lost if you don't.

20 Q. So it's helpful to understand that?

21 A. Absolutely.

22 Q. In the course of -- obviously, we've
23 met; right?

24 A. Yes.

25 Q. We've discussed your report?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 A. Yes.

2 Q. And discussed the data that was in it?

3 A. Correct.

4 Q. Over the course of that, did our office
5 ask you to sort of focus on three different things?

6 A. You did.

7 Q. Okay. Was one of those things a text
8 message exchange that was recovered from that
9 phone?

10 A. It was.

11 Q. And were those exchanges on both the
12 physical and logical reports?

13 A. They were on both, with the exception
14 of on the logical report, there were some deleted
15 texts that I've already explained we would not be
16 able to get.

17 Q. So for simplicity, from here on out,
18 let's just talk about the physical report; okay?

19 A. That would be the most complete report.

20 Q. Thank you.

21 So following the compilation of that
22 report, the office asked you to review a specific
23 text exchange between the phone you were reviewing
24 there, State's 27, and a certain number?

25 A. Yes.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 Q. And --

2 A. A certain cell phone number, yes.

3 Q. And what was the cell phone number?

4 A. The exchange was between area code
5 843/437-4971.

6 Q. Between that number and that phone?

7 A. Yeah. And this phone, yes.

8 Q. And was that number assigned a contact
9 name in that phone?

10 A. The 843-437-4971 was in memory slot 420
11 on this phone, and it was under the name Marion.

12 Q. Marion?

13 A. Marion.

14 Q. Okay. And on the physical reports,
15 they get times for the text messages?

16 A. There are times.

17 Q. And in what manner for these on this
18 report?

19 A. On the physical report, the time stamps
20 that come out on a physical report are generally
21 set by the examiner. In this case, they are left
22 at a Coordinated Universal Time of zero, which is
23 basically the basic standard that the world goes by
24 with time. It used to be GMT Greenwich Mean Time.

25 And then as you move away from that

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 time zone, you start either adding or taking away
2 hours to correlate where you are. In our case, we
3 are in the Eastern Time Zone, and we would be at a
4 minus four from the UTC, again, Coordinated
5 Universal Time.

6 And then during the winter months when
7 we fall back, we have to take into account the
8 daylight savings time, we do, and we would be at
9 minus five. So, basically, during the winter
10 months, we're at minus five. During the spring
11 forward, we're at minus four.

12 Q. Okay. Minus four or minus five,
13 probably not that difficult of math for a guy like
14 you; right?

15 A. No. And I will note that the reason
16 that the -- it's left at zero on the forensic
17 machine when we do the report is for several
18 reasons, but when these phones come in, sometimes
19 people don't set their -- the older phones, they
20 didn't set their time correctly, so that we ran
21 into issues with my machine being at minus four or
22 minus five and trying to figure out what they were
23 because their phones weren't set correctly. So
24 it's just easier to leave it at zero and subtract
25 from zero.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 Q. Subtract from that. Okay.

2 So on the -- you said it's helpful to
3 sort of extract summaries of what we we're looking
4 for; right?

5 A. Correct.

6 Q. Helpful to you, helpful to us?

7 A. Correct.

8 Q. When we did those, did you -- are they,
9 just for simplicity's sake, converted to local
10 times by the methods that you just explained?

11 A. For -- I'm sorry, I'm not understanding
12 that.

13 Q. No, that's fine. I'll do that right
14 now.

15 MR. SIMPSON: May I approach, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. SIMPSON:

19 Q. Corporal van Horn, I'm showing you
20 what's been marked for ID only as State's 29. Do
21 you recognize that document?

22 A. I do.

23 Q. And what does that document depict?

24 A. It's a -- this is text -- the text
25 exchange that we discussed earlier between this

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 phone and the contact named Marion. It is a
2 compiled list of inbox and outbox messages. And
3 the times on this have been already converted to
4 our local time from the -- from the UTC of zero,
5 the standard baseline zero.

6 MR. SIMPSON: Okay. May I approach,
7 Your Honor?

8 THE COURT: You may.

9 MR. SIMPSON: Your Honor, at this
10 point the State would seek to admit State's 29 as
11 evidence and publish to the jury.

12 THE COURT: Please show it to
13 Mr. Mayer.

14 MR. MAYER: Judge, may we approach?

15 THE COURT: Uh-huh.

16 (Bench conference was had; the
17 following proceedings were had in open court.)

18 THE COURT: Madame Forelady, and ladies
19 and gentlemen, I have a brief matter of law to take
20 up with the attorneys. During the break, please do
21 not discuss the case, and please leave the notepads
22 in the seats.

23 (Jury out at 1:11 p.m.)

24 THE COURT: You can take your seats.
25 What's the basis of the objection?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 MR. MAYER: Judge, it's -- first of
2 all, it seems more to me that it's demonstrative,
3 but the first --

4 THE COURT: How can it just be
5 demonstrative when it's an admission against your
6 client's interest? It clearly implicates him in
7 the activity.

8 MR. MAYER: Well, it's created by this
9 witness for the purposes of aiding his testimony.

10 THE COURT: It came out of your
11 client's cell phone, not aiding his testimony. The
12 only reason he's here is to authenticate the data
13 dump that came from your client's phone.
14 Otherwise, he wouldn't have anything to testify to.

15 MR. MAYER: And, Judge, as I mentioned
16 also, any statement in there that's purportedly
17 from somebody who is not here testifying, such
18 as --

19 THE COURT: Tell me why her statements
20 would be substantive. Most of them just consist
21 of, okay, or, if I come into something, meaning if
22 she gets some money, he wouldn't have to do it,
23 that he could have whatever money she has. The
24 rest of it really, even though technically it would
25 be a hearsay statement, they don't amount to

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 anything. They don't prejudice your client in any
2 way.

3 MR. MAYER: Judge, I think they do
4 because I think they indicate that this potential
5 person on the other end is believing that based on
6 this text that --

7 THE COURT: I don't think it matters if
8 she believes it or not. The only purpose the State
9 is offering it is for the purpose that he made the
10 statement he was going to rob somebody.

11 MR. SIMPSON: Right. And so I'm not
12 objecting to that statement coming in from my
13 client. What I'm objecting to is this other
14 persons's reaction via text message, which text
15 messaging --

16 THE COURT: She testified that's what
17 she told him. She testified to this exact
18 exchange, if you remember her testimony. She was
19 on the stand. You had the ability to cross-examine
20 her. You could have used these text messages if
21 you so desired, but her testimony us consistent.
22 As a matter of fact, it's a mirror of the
23 conversation she said she had with him.

24 MR. MAYER: Judge, the concern is that
25 it's still in this document, that's hearsay and

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 that it's offered -- the jury isn't going to be
2 able to distinguish between it just being a
3 statement that they should disregard because it
4 doesn't matter --

5 THE COURT: I'm not clear they have to
6 disregard it. Without her statements, the State
7 is -- they're not in context. It's really res
8 gestae and they're really not offered for the
9 truth. They really don't amount to anything and
10 they don't prejudice your client.

11 What prejudices your client is his own
12 statements against his own interest, that he's
13 going to rob somebody. That's the only purpose for
14 which the State is really offering the text
15 dialogue, I would have to assume; otherwise, it
16 would make no sense.

17 For what purpose is the State offering
18 this text dialogue?

19 MR. SIMPSON: Judge, any time you have
20 a conversation between two people, it's important
21 that the statements of a person who may fall under
22 an exception, as they do here, to give the context
23 to that. They're not hearsay unless we're entering
24 them to assert some substantial fact. They are
25 meant to give context to that exchange, and we

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 culled it down substantially to get to the relevant
2 material.

3 And I think we're allowed to show not
4 only the statement that he had planned on robbing
5 somebody, but sort of the flippant way that he goes
6 about later describing --

7 THE COURT: That's a characterization.
8 I don't know it was flippant. I mean, I guess
9 that's the way they talk.

10 MR. SIMPSON: Characterization is our
11 job.

12 THE COURT: I don't know if it's
13 flippant and I don't know that you -- I mean,
14 that's certainly something you might be able to
15 argue, but I'm not going to -- I mean, to me, words
16 are words and it is what it is.

17 MR. SIMPSON: And it's a fair and
18 accurate corroboration of testimony that the jury
19 has already heard.

20 THE COURT: So that's the purpose for
21 which you're offering it?

22 MR. SIMPSON: I'm offering it for many
23 reasons. Yes, that's one purpose, to
24 corroborate -- obviously, the State has an interest
25 in any evidence which corroborates what our witness

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 says. And as you've already noted --

2 THE COURT: For what other purpose are
3 you offering it?

4 MR. SIMPSON: Offering it as a
5 statement by a party opponent. And the statements
6 taken in a vacuum lose their context. And it's not
7 hearsay because they're not offered to assert some
8 substantive fact or truth. And when they're just
9 offered to give the context of another person's
10 statement, it's not hearsay. It's just not hearsay
11 because it's not asserted to establish some
12 substantive fact or truth.

13 The facts that we're establishing are
14 what Mr. Hayward said about this upcoming robbery
15 he was planning to do.

16 THE COURT: Are you saying in closing
17 argument you're not going to argue that she
18 testified to a certain thing and that these text
19 messages don't corroborate her testimony?

20 MR. SIMPSON: Yeah, that's the main --

21 THE COURT: You're offering it for its
22 truth then if you're going to argue that it
23 corroborates something. When you offer something
24 -- and you don't offer something for its truth,
25 it's superfluous. It doesn't matter. You lose

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 your plan to talk about it. Well, if you plan to
2 talk about it, you're offering it for its truth
3 because you want the jury to believe that she said
4 it and you want them to believe that it inherently
5 has veracity and that it corroborates her
6 testimony.

7 MR. SIMPSON: I'll rephrase. I want
8 the jury to know that he said what he said, and
9 that's why I'm offering it, but it does also
10 corroborate that this exchange occurred. This is
11 just simply -- if evidence is relevant to a point
12 and it is not hearsay, the burden is on them to
13 show that is hearsay, not me to --

14 THE COURT: It's hearsay. It's an
15 out-of-court statement offered for its truth. If
16 her statement -- but she was here and testified to
17 the exact same thing, so I'm a bit of -- and it's
18 clearly res gestae. I would remove the statements
19 because they wouldn't make sense. It would be out
20 of context to have one side of the conversation.

21 She has already testified to this, so
22 I'm a little at a loss as to how it's prejudicial
23 to your client. It's clearly probative, but it's
24 res gestae and the State is not precluded from
25 putting things in their context and presenting them

1 the way they actually happened.

2 And this is how the conversation
3 actually took place. It taken from your client's
4 phone. You have consented to the expertise of this
5 witness in having downloaded this information from
6 your client's cell phone. And that most young
7 people think when they delete stuff, they think
8 it's gone.

9 Just like when I talk to kids when they
10 come to this Court. It's never gone. It's out in
11 cyberspace somewhere. If it's not on the cloud,
12 it's somewhere on the telephone. It's on the SIM
13 card. It's somewhere, but that's neither here nor
14 there.

15 The point is whether this text
16 conversation would amount to hearsay. His
17 statements clearly are not hearsay. They are an
18 admission against him. They clearly inculcate him,
19 he made them freely.

20 And under the Rules, people generally
21 don't inculcate themselves or say things against
22 their own interest. So his statements inherently
23 are reliable or -- and they do not lack veracity.

24 Her statements are an out-of-court
25 statement. They are offered for their truth

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 because they put the conversation in context. But
2 by that same token, it really becomes res gestae
3 because the conversation would not make sense if
4 you did not have both sides of the conversation.

5 And I don't see how your client was
6 prejudiced because Mrs. Marion -- I forget her last
7 name -- Ms. Marion --

8 MR. SIMPSON: Campbell.

9 THE COURT: -- Campbell testified, and
10 she testified that this was their conversation.
11 And you had the ability to cross-examine her at
12 that time and you didn't. So I can't discern any
13 prejudice to your client since it is their
14 conversation, and she literally testified verbatim
15 that this is what he said to her and how she
16 responded.

17 MR. MAYER: Judge, my biggest
18 concern --

19 THE COURT: Except the only thing she
20 left out is if I come into something, which means
21 if I get some money before then, it's yours. She
22 didn't -- I don't recall testifying to that, but
23 that doesn't mean she didn't say it. I would have
24 to go back and look at my notes.

25 My immediate recollection is that he

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 told her -- made the statement to her, and she
2 testified, you know, if you do it, please be
3 careful. And that's exactly what she says in the
4 text dialogue and then -- you know, then the rest
5 of it.

6 But the main purpose of the dialogue is
7 that your client made an admission against
8 interest. That being at 10:56 he said, well, I've
9 got to talk to somebody about robbing somebody
10 because I'm 180 short.

11 MR. MAYER: And, Judge, my biggest
12 concern, based on this hearing, is that it's still
13 lacking the context. If this single sheet of paper
14 is sent back there with the jury, that's going to
15 be all that they have to look at and it's still
16 lacking the context of the prior exchanges.

17 THE COURT: They're not precluded from
18 the cross-examination. He doesn't have to elicit
19 that testimony. You can. He has already consented
20 that you can.

21 So if there's text you want read prior
22 to this conversation starting, the State has
23 consented to you doing that. So, again, I can
24 discern no prejudice if your real concern is to put
25 the entire conversation in context.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 MR. SIMPSON: And, Judge, just for the
2 record, we excluded that because we thought it
3 wasn't relevant and somewhat prejudicial.

4 THE COURT: I don't know because I
5 don't know what the previous conversation was.

6 MR. SIMPSON: They're talking about
7 their relationship, and Mr. Hayward is not very --

8 THE COURT: Nice?

9 MR. SIMPSON: -- nice. So we took
10 that out as being unduly prejudicial.

11 THE COURT: Well, if you want it in,
12 Mr. Mayer, that's up to you. The State has
13 consented to you putting it in.

14 I have no idea what was said because
15 you all have not made me privy to those other text
16 messages, so I can't really comment on what was
17 said or what the exchange was.

18 I think clearly the text messages are
19 admissible. And even though technically
20 Ms. Campbell's responses are hearsay, they come
21 within an exception, that being res gestae, as they
22 put the entire conversation in their context. And
23 I can't discern anything that she said in this
24 conversation as prejudicial to your client.

25 As she was here, she testified to the

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 exact same thing and you had the ability to
2 cross-examine her and you didn't on these issues.

3 MR. MAYER: Okay.

4 THE COURT: I mean, you thoroughly
5 cross-examined her on the context of this
6 conversation she had with your client.

7 MR. MAYER: That's true.

8 THE COURT: Uh-huh. So I'm going to
9 note your exception and overrule it. Are there any
10 other text messages you all were going to seek to
11 introduce? Might as well do them all at once.

12 MR. SIMPSON: We have two more
13 summaries that have already been marked and
14 entered.

15 THE COURT: You have already consented
16 to those? What numbers are those?

17 MR. MAYER: I believe so, yes.

18 MR. SIMPSON: 30 and 31, Your Honor.

19 THE COURT: Okay. I would suggest
20 while we have the jury out that you go to the
21 restroom if you need to, and we will resume in a
22 few minutes.

23 THE WITNESS: Judge, may I see that
24 exhibit?

25 THE COURT: Detective; correct?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 THE WITNESS: That's fine.

2 THE COURT: Make sure I'm being
3 accurate.

4 THE WITNESS: Yes, ma'am, it's just --

5 THE COURT: Corporal van Horn.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: You are welcome to stand up
8 if you need to, stretch your legs. Just don't
9 discuss your testimony with anyone. Or if you need
10 to go to the restroom, feel free to.

11 THE WITNESS: Thank you.

12 THE COURT: You're welcome.

13 (A recess transpired.)

14 THE COURT: You may be seated. Is the
15 State ready to proceed?

16 MR. SIMPSON: We are, Judge.

17 THE COURT: Defense read to proceed?

18 MR. MAYER: Yes, Judge.

19 THE COURT: You may get the jury.

20 (Jury in at 11:37 a.m.)

21 THE COURT: You may be seated. Ladies
22 and gentlemen, we appreciate your patience. We
23 will now resume the testimony from the State.

24 MR. SIMPSON: The State would seek to
25 admit State's 29 into evidence.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 THE COURT: Marked and admitted.

2 (STATE EXH. 29 in evidence.)

3 BY MR. SIMPSON:

4 Q. Corporal van Horn, is this a fair and
5 accurate representation of the text messages
6 exchanged between that phone and the phone number
7 assigned to the contact, Marion?

8 A. Yes. This is the same -- what we
9 extracted off the phone would have been the UTC
10 zero, so this is the corrected time. In the phone,
11 you would have added five hours to that, but the
12 content is correct.

13 Q. And, Corporal, I should point out this
14 isn't the entire text message between the two
15 people; right?

16 A. No, it is not.

17 Q. Could you read the second -- who sent
18 the second -- sorry. What phone is this -- sorry.
19 Long week.

20 Is the second text message sent from
21 the phone that you're analyzing?

22 A. It is from this QA right here.

23 Q. And could you just read that second
24 text message?

25 A. The 10:56 a.m. message?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 Q. Yes.

2 A. Well, I about to talk to somebody about
3 robbing somebody because I 180 short.

4 Q. Okay. Let the exhibit speak for
5 itself.

6 So that was one exchange we talked
7 about I asked you to look at?

8 A. Correct.

9 Q. I want to at this point show you what's
10 been marked and admitted as evidence, State's
11 Exhibit 30. Do you recognize that document?

12 A. I do.

13 Q. And what is that document? What is
14 that document?

15 A. It is an exchange between this phone
16 and the number 843-568-2027.

17 Q. Okay. Is that a -- is that document --
18 does that summary include call logs, data from the
19 call logs?

20 A. Yes. This one includes call logs,
21 missed calls, received calls, sent calls, and text
22 messages.

23 Q. And text messages?

24 A. Yes, all four.

25 Q. And in your report, would those be

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 found at different spots?

2 A. Yes.

3 Q. Is that a fair and accurate summary?

4 A. Yes.

5 Q. Now, is that the entirety of the
6 exchanges between these two?

7 A. There were no other -- no other
8 references to 843-568-2027 on this phone.

9 Q. And on that phone, was the number
10 568-2027 given a contact name?

11 A. No. It was dialed -- appeared to be
12 dialed from the dialer.

13 Q. And how far back does the -- on your
14 physical report that we're referring to, do the
15 text messages records go?

16 A. On this target or the submitted phone,
17 the date you said the text messages or the call
18 logs?

19 Q. Text messages.

20 A. The text messages on this phone go back
21 to -- August 31st of 2013 was the first, the
22 earliest text that we located.

23 Q. And other than what we see here on
24 12/11/13, is there any exchange whatsoever between
25 the two phones?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 A. No. There's no other reference to this
2 number at all.

3 Q. On the text messages?

4 A. On the -- no.

5 Q. Okay. I will speed up. What about the
6 call logs, how far back do the call logs go?

7 A. The call logs go back to August 2,
8 2013.

9 Q. Other than 12/11/2013, were you able to
10 locate any exchanges on the call logs between --

11 A. Just that date.

12 Q. Okay. You mentioned the physical
13 report --

14 A. Yes, sir.

15 Q. -- And how that enables you to
16 sometimes find deleted items?

17 A. Correct.

18 Q. Is that a fair and accurate depiction
19 of items that were deleted from that phone by a
20 user?

21 A. Yes.

22 Q. I want to ask you, generally speaking,
23 about -- you mentioned these records can be
24 voluminous?

25 A. Yes.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 Q. On the call logs, do we see other calls
2 to other people around this same time frame?

3 A. There were calls made in between these
4 times to other numbers.

5 Q. Were calls during this time frame --
6 let's say 12/11, a week before, you know, go back a
7 week, was there any other items that were deleted
8 from that phone by the user?

9 A. Call logs or --

10 Q. Call logs.

11 A. Yes, there is. Let me double-check
12 here. Yes, there are deleted call logs.

13 Q. Okay. What number does it appear has
14 the most deleted around this period of time?

15 A. 843-568-2027.

16 Q. And you said that indicates to you that
17 a user deleted it?

18 A. Yes.

19 Q. And it appears that he may have missed
20 one or two?

21 A. Yes. It appeared like there was maybe
22 a call that didn't go through or didn't complete,
23 maybe it was skipped during the deletion.

24 MR. SIMPSON: Your Honor, may I
25 approach the witness?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 THE COURT: You may.

2 BY MR. SIMPSON:

3 Q. I should say again on State's 30, which
4 we just viewed, are those times as you've already
5 described converted to the local time?

6 A. They are converted to the local time.

7 Q. Okay. Corporal van Horn, I'm showing
8 you what's been entered by consent as State's 31.
9 Was there a third number we asked -- third exchange
10 between that phone that we asked you to look at and
11 summarize?

12 A. There is.

13 Q. Okay. And what number was that?

14 A. That was 843-442-6443.

15 Q. Okay. And was that number assigned a
16 contact in that phone?

17 A. It was. It was at memory slot 267 and
18 the name was Anisha.

19 Q. Okay. Does that document that you are
20 reviewing now incorporate all contacts between that
21 phone Anisha on 12/11/2013?

22 A. On that date, yes.

23 Q. And what -- are the times, as you have
24 already testified, converted into accurate local
25 times?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 A. The local, yes, minus five.

2 Q. What time is the first call to contact

3 Anisha?

4 A. Converted?

5 Q. Converted to local time.

6 A. It would be 8:05 p.m.

7 Q. And what time is the second call to

8 Anisha?

9 A. 8:40 p.m.

10 Q. And just following that we have what?

11 A. A missed call at 8:41 p.m.

12 Q. And what time is the third received

13 call?

14 A. The third received call would be at

15 8:50 p.m.

16 Q. Corporate van Horn, we talked about

17 cell phones being sort of like computers?

18 A. Correct.

19 Q. Do they hold pictures?

20 A. They do.

21 Q. Can you often take pictures on modern

22 cell phones?

23 A. Yes.

24 Q. Does your data extraction include the

25 extraction of images, image files?

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 A. For this model phone, yes, we were able
2 to get images.

3 Q. And again, can it get quite voluminous
4 at times?

5 A. Yes.

6 MR. SIMPSON: Court's indulgence?

7 BY MR. SIMPSON:

8 Q. In our review of your reports and our
9 review of a lot of data in this case, did we talk
10 about a specific image on that phone?

11 A. We did.

12 Q. And what can you tell the jury about
13 that image?

14 A. The image is a --

15 Q. Not what it contains, not what it
16 depicts, but just what you know.

17 A. Oh, each image typically contains our
18 metadata, which is basically just information about
19 the data. The data -- about the data. It can tell
20 you when the file was created, when it was
21 accessed, when it was modified.

22 A lot of times you can tell by looking
23 at the metadata what device was used to take the
24 picture, whether it be a Samsung or a Sony or the
25 type of phone.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 It can tell you the settings of the
2 picture, the size, the pixel, the quality, but most
3 importantly, what it was taken with, when, and when
4 it was last accessed.

5 MR. SIMPSON: Your Honor, may I
6 approach the witness?

7 THE COURT: Uh-huh.

8 BY MR. SIMPSON:

9 Q. I'm handling you what was marked for ID
10 only as State's 32 and 33. Beginning of
11 State's 32, do you recognize that document?

12 A. I do, yes.

13 Q. And what document is that?

14 A. This is a -- this is one of the images
15 that was extracted from the phone.

16 Q. And did you analyze, at our request,
17 the metadata for that image?

18 A. I did.

19 Q. And what did that metadata tell you?

20 A. The -- the path that this image was
21 stored in was on the camera's -- inside of the
22 camera. It was taken with a Huawei, camera model
23 was a Prism as the model number of this phone here,
24 and it was created on the -- created on the phone
25 on November 22, 2013, at 9:58 and 34 seconds p.m.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 I also have pixel resolution and all
2 that if you would like.

3 Q. No, that's okay.

4 MR. SIMPSON: Your Honor, at this
5 point, the State would seek to admit this exhibit
6 into evidence and publish.

7 THE COURT: Have you shown it to
8 Mr. Mayer?

9 MR. SIMPSON: I have.

10 THE COURT: Any exception, Mr. Mayer?

11 MR. MAYER: Judge, there is an
12 exception.

13 THE COURT: No speaking objections.
14 Approach please.

15 (Bench conference was had; the
16 following proceedings were had in open court.

17 THE COURT: You may proceed. The
18 objection is under advisement. The items are
19 marked for ID only, 32 and 33.

20 BY MR. SIMPSON:

21 Q. So image 32 was taken directly from
22 that phone?

23 A. In State's 32?

24 Q. In State's 32 in front of you.

25 A. Yes.

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 Q. You said the metadata indicated to you
2 that was taken from that camera?

3 A. Correct.

4 Q. I mean, the camera on that phone,
5 State's 27?

6 A. Yes, it was taken with a Huawei Prism.

7 Q. And that was on November 22, 2013?

8 A. Correct.

9 Q. Did we ask you to do anything with
10 that?

11 A. You did.

12 Q. And did we ask you to -- what did we
13 ask you to do?

14 A. To see if the -- the image was pretty
15 clear, but we --

16 Q. Let me just pause you so we can be
17 careful here.

18 A. Okay.

19 Q. Those images are not at this time
20 entered into evidence, so I don't want any
21 information about what might be on those images.
22 Okay?

23 A. Okay.

24 Q. Continue.

25 A. The image itself was pretty clear. We

RODNEY VAN HORN - DIRECT EXAM BY MR. SIMPSON

1 were -- I was asked to see if I could enhance some
2 detail and -- and possibly just clear up the image
3 a little bit so it could be seen better.

4 Q. Was the purpose of that to perhaps be
5 able to read something a little clearer?

6 A. Yes.

7 Q. When you enhance an image are you --
8 what are you doing?

9 A. What we do is we apply layers to the
10 image. We don't change the content of the image.
11 We simply -- we would add or we would use contrast,
12 we would use sharpness, different filters to try to
13 maybe change the color, maybe change the temp,
14 maybe change the contrast or the lightness or the
15 darkness so that you could see detail more vividly.

16 Q. Okay. And does that, again, change the
17 underlying data?

18 A. No, it does not change any of the
19 metadata. It does not change the content of the
20 image, just the details in it can be seen better.

21 MR. SIMPSON: Okay. The Court's
22 indulgence?

23 THE COURT: Uh-huh.

24 MR. SIMPSON: Thank you,
25 Corporal van Horn. Please answer any questions

RODNEY VAN HORN - CROSS EXAM BY MR. MAYER

1 that Mr. Mayer has for you.

2 MR. MAYER: May it please the Court?

3 THE COURT: You may proceed.

4 CROSS-EXAMINATION

5 BY MR. MAYER:

6 Q. Mr. Van Horn, Aaron Mayer representing
7 Valentino Hayward. Good morning.

8 A. Good morning.

9 Q. You testified on direct that the
10 Solicitor asked you to focus on three things out of
11 this very voluminous record; is that correct?

12 A. Yes.

13 Q. Okay. And did you -- did you analyze
14 other parts of this or scrutinize other parts of
15 the volumes of data that you recovered as it may
16 pertain to this homicide?

17 A. Generally, what we do with cell phones
18 is we do extractions, which are different than
19 analysis. The extraction is all of the data is
20 pulled off, put into a report and then sent back to
21 the detective.

22 We don't have -- in our lab, we are not
23 privy to specialized information relating to the
24 case. So then they will review the information and
25 then come back and get very specific on what we are

1 asked to do.

2 Q. Okay. So as I understand your
3 answer -- I'm not trying to be, you know, coy here,
4 you guys download it all and say, here's some
5 evidence that you may want to look through?

6 A. Correct.

7 Q. So it's not your job to look through
8 that evidence and apply it to the case?

9 A. Not in the case of cell phones.

10 Q. Okay. Very good.

11 And the volumes of data that you
12 recovered, you did, in fact, provide it to somebody
13 from the investigative unit?

14 A. Yes.

15 Q. Who did you provide that to?

16 A. I do not have the conclusion of work
17 form. It's generally who submitted. Let's see if
18 I can find it here.

19 Q. It's safe to say, though, that it would
20 have been given to somebody over there who is --

21 A. Correct.

22 Q. -- basically responsible where they
23 could look through it if they want to?

24 A. Detective Krasowski submitted it. So
25 it's usually whoever submits it comes and picks it

1 up.

2 Q. Okay. I'm handing you what's been
3 marked at this point for identification only as
4 Defense Exhibit 3. Would you take a look at that
5 and compare that to the records you extracted from
6 the text. It should be from the same text record
7 that's part of State's Exhibit 29.

8 A. Same date, same time.

9 Q. Same day from just a couple of minutes
10 prior.

11 A. Give me a second. There is a lot of
12 information, as we have just established.

13 The first -- can I break it up into
14 two?

15 Q. How do you mean?

16 A. The first one was in the inbox at 266,
17 slot 266 and is correct.

18 Q. Okay.

19 A. And the second one was in slot -- the
20 outbox, sent slot. It would be number 290 and it
21 is correct.

22 Q. Okay. Great.

23 MR. MAYER: Judge, at this time the
24 defense would move to admit Defense Exhibit 3?

25 THE COURT: Any objection?

RODNEY VAN HORN - CROSS EXAM BY MR. MAYER

1 MR. SIMPSON: No, Your Honor.

2 THE COURT: It's marked and admitted
3 without objection.

4 (DFT. EXH. 3 in evidence.)

5 MR. MAYER: May we publish this to the
6 jury?

7 THE COURT: You may.

8 BY MR. MAYER:

9 Q. Mr. van Horn, it's your testimony that
10 these text message times directly precede those
11 times referenced in State's Exhibit 29; correct?

12 A. Correct.

13 Q. Can you read these for us, please?

14 A. The first one was from Marion at
15 10:43 a.m. It says, no, I said that I was sick of
16 the fact that you have my loyalty and you don't
17 want or appreciate it.

18 And the second one was from
19 Valentine -- Valentino at 10:45 a.m. It says, I
20 appreciate it. I just want to be alone.

21 Q. Okay. Thank you very much.

22 I'm handing you what's been marked
23 again for ID only as Defendant's Exhibit 4. Take a
24 moment and see if you can verify that all pages of
25 that exhibit are true and correct copies of your

1 extraction report.

2 A. This looks like a logical report. I
3 can't verify that it's complete. I do not have a
4 logical here, but this is what a logical report
5 would come out as.

6 Q. Okay. So from your familiarity with
7 this extraction and everything else, can you say
8 that that looks like it would be a fair and
9 accurate copy of certain pages from your
10 extraction?

11 A. Yes. Yes.

12 MR. MAYER: Judge, at this time the
13 defense would move to admit Defense Exhibit 4 into
14 evidence.

15 THE COURT: Any objection?

16 MR. SIMPSON: Objection, relevance.

17 THE COURT: Please approach and bring
18 the exhibit.

19 (Bench conference was had; the
20 following proceedings were had in open court.)

21 THE COURT: Proceed.

22 BY MR. MAYER:

23 Q. Mr. van Horn, I'm handing you back
24 what's been marked for identification as
25 Defendant's Exhibit 4. There are certain portions

RODNEY VAN HORN - CROSS EXAM BY MR. MAYER

1 in there that are highlighted, and if you would --
2 if I could birddog you to those, then you can
3 explain what those highlighted portions are, what
4 meaning you can derive from those.

5 A. They appear to be entries into the
6 phone.

7 Q. If we could go just, you know, entry by
8 entry --

9 A. Okay.

10 Q. -- and you can tell the jury what you
11 can glean from those and talk about the ones that
12 are highlighted.

13 A. There was an entry with a category
14 listing of other. The e-mail address that was put
15 into there is mzcherrylove@yahoo.com. It appears
16 that that entire entry was deleted because there's
17 a column there that says, deleted? And it put,
18 yes, as the answer.

19 Q. Is there a contact name associated with
20 that?

21 A. No, not with that one.

22 Q. Okay.

23 A. Looking here where it says name, there
24 is nothing there.

25 Q. Okay. All right. And is there -- are

1 there multiple items in there that --

2 A. There is another e-mail address below
3 it.

4 Q. Okay. And what is that name?

5 A. That one is jasmine23page@yahoo.com,
6 and it also appears to be deleted.

7 Q. What is the next highlighted on there?

8 A. The next highlighted is down at slot 19
9 and it's GRNTRCTS@yahoo.com, and there is a number
10 underneath that, 1843566608.

11 Q. And has that also been deleted?

12 A. Yes. That's not a complete number.

13 Q. And is it -- well, what's the next --
14 is there another item on that page?

15 A. No, that is it on this page.

16 Q. Can you go to the highlighted item for
17 me?

18 A. Yes. In slot 575, under the name
19 Chucky, C-h-u-c-k-y, Freebandz, F-r-e-e-b-a-n-d-z,
20 there is an e-mail address, projectboi, B-O-I,
21 22@yahoo.com, with a mobile 1-843-593-7819, and
22 then there is a thumbnail of a photo.

23 Q. And was that information that was on
24 the phone of Valentino?

25 A. It was on, yes, the Prism.

RODNEY VAN HORN - CROSS EXAM BY MR. MAYER

1 Q. And that's the Huawei, or however you
2 pronounce it?

3 A. Yes, sir.

4 Q. And was that contact that there --

5 A. None of that was deleted.

6 Q. Okay. Okay. And what's the next
7 highlighted part?

8 A. It is in slot 464. Again,
9 Chuckyfreebandz spelled -- spelled the same way.

10 Q. Can you tell from either of those last
11 two entries the dates of those entries or some --
12 some calendar reference?

13 A. Not from this, no.

14 Q. Were you asked to examine either of
15 those or examine anything related to the name
16 Chucky, or the contact Chucky, by the Charleston
17 Police Department?

18 A. No.

19 Q. Can I see that?

20 Were you asked in any way to analyze
21 the phone number that you had just read out as the
22 contact here for Chucky?

23 A. What was the --

24 Q. That phone number was the 843-593-7819.

25 A. I'll have to check and see. There were

RODNEY VAN HORN - CROSS EXAM BY MR. MAYER

1 two additional phones submitted in the case. I
2 don't know if that number corresponds to either one
3 of those phones. That was not returned to me to --
4 for any further analysis.

5 Q. But do you know the phone numbers, the
6 other numbers you were asked to analyze?

7 A. They would be on the -- the other two
8 reports if they were able to be extracted.

9 Q. Okay. And from your familiarity and
10 your conversations with the Solicitor's office,
11 would you recognize the names associated with those
12 phones?

13 A. No. We are --

14 Q. Are they the numbers --

15 A. I'm sorry. Go ahead.

16 Q. Are they the numbers that you testified
17 about on direct?

18 A. No.

19 Q. Okay. Would you recognize the numbers
20 if you heard them or would you have some record you
21 could check to confirm what those numbers were that
22 you were asked to analyze?

23 A. On the direct? I do know those
24 numbers, yes.

25 Q. Okay. So it is those two numbers

RODNEY VAN HORN - REDIRECT EXAM BY MR. SIMPSON

1 associated with the exhibits from Mr. Simpson's
2 discussion earlier?

3 A. Correct.

4 Q. Okay.

5 A. The 843-568-2027 and the 843-442-6443.

6 Q. Okay. Both of which are different from
7 the number saved here as Chucky?

8 A. Correct.

9 Q. Okay. Thank you very much.

10 MR. MAYER: Court's indulgence?

11 Yes, sir.

12 MR. MAYER: No further questions.

13 THE COURT: Any questions on redirect?

14 MR. SIMPSON: Briefly, Your Honor.

15 THE COURT: You may proceed.

16 REDIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. Corporal Van Horn, referring you to the
19 same part of the reports that Mr. Mayer was
20 referring to. He testified about sort of what part
21 of the report that comes from. Was it the call
22 log?

23 A. This would be a contact list.

24 Q. Okay. Not a -- is it a phone contact
25 list or from an app?

RODNEY VAN HORN - REDIRECT EXAM BY MR. SIMPSON

1 A. Contact list, address book. Most
2 phones allow you to enter a work phone, home phone,
3 e-mail address, home address, and it categorizes.
4 You select, you know, what you want it to
5 represent.

6 MR. SIMPSON: Okay. May I approach
7 the witness?

8 THE COURT: You may.

9 BY MR. SIMPSON:

10 Q. Do you recognize this?

11 A. I do.

12 Q. Is that a portion -- what is that?

13 A. This is a -- these are outgoing call
14 logs.

15 Q. And on the far right column, do we
16 sometimes see in red the word, yes?

17 A. Yes.

18 Q. Does that appear to be a portion of
19 your report?

20 A. Yes.

21 Q. Okay. What is the red yes?

22 A. That would be the column for -- we're
23 asked in the report is it deleted.

24 Q. Is it deleted?

25 A. Is it deleted. And it responds yes.

1 And if it's not deleted, no.

2 Q. And that page, for a span of time, does
3 it show everything as opposed to just a little
4 summary that we provided and talked about?

5 A. Yes. On this one it would provide all
6 of the -- they are broken into sections. The
7 ingoing calls are all in a section of the report,
8 the outgoing -- but this would be all outgoing for
9 a period of time.

10 Q. Okay. Showing you again what's been
11 marked for ID only as State's 46. What date are
12 these the full call logs for?

13 A. They start on 12/11/2013, both sides,
14 all the way to 12/12/2013.

15 Q. Okay. And these are the full and
16 complete call logs for that time span for that
17 Huawei Prism phone?

18 A. Correct. If that's a physical report,
19 it will have deleted and existing.

20 MR. SIMPSON: Your Honor, at this
21 point the State would seek to admit State's 46 and
22 publish for the jury.

23 THE COURT: Any objection?

24 MR. MAYER: No, Judge.

25 THE COURT: Marked and submitted

RODNEY VAN HORN - REDIRECT EXAM BY MR. SIMPSON

1 without objection. You may proceed.

2 (STATE EXH. 46 in evidence.)

3 BY MR. SIMPSON:

4 Q. So this is the outgoing calls on this
5 phone that you analyzed; right?

6 A. Correct.

7 Q. And this column here would indicate
8 that someone went back and did what?

9 A. Deleted that log.

10 Q. So if I could just ask you to take a
11 minute, do you see, when you look at just the
12 things that were deleted by the user and
13 cross-reference them to the number, do you see
14 anything consistent about that?

15 A. It appears they are all the same
16 number, or in the case of the one in slot 314, the
17 number -- the first two numbers were transposed,
18 maybe a miss dial.

19 Q. Okay.

20 A. Because the length of that was zero
21 seconds.

22 Q. Are these other calls getting deleted
23 by the user?

24 A. No.

25 Q. Okay. Just the calls to that number?

RODNEY VAN HORN - REDIRECT EXAM BY MR. SIMPSON

1 A. Yes.

2 Q. And is that a consistent pattern
3 throughout?

4 A. Correct.

5 MR. SIMPSON: Thank you, Corporal van
6 Horn. I have nothing further.

7 THE COURT: Any objection to the
8 witness being excused the State?

9 MR. SIMPSON: Oh, Your Honor, may I
10 withdraw that very quickly?

11 THE COURT: Uh-huh.

12 MR. SIMPSON: I may have a couple more
13 questions of this witness, with your permission.
14 May I approach?

15 THE COURT: Yes.

16 (Bench conference was had; the
17 following proceedings were had in open court.)

18 THE COURT: Sir, you are excused,
19 subject to being recalled.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 You may call your next witness.

23 MR. SIMPSON: At this point the State
24 calls Thomas Walters.

25 THE COURT: Thomas Walters.

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 THOMAS WALTERS,

2 being first duly sworn, testified as follows:

3 THE CLERK: Please state your full name
4 and spell your last name for the record.

5 THE WITNESS: Thomas Walters,
6 W-a-l-t-e-r-s.

7 THE COURT: You may proceed.

8 MR. SIMPSON: Thank you.

9 THE COURT: You're welcome.

10 DIRECT EXAMINATION

11 BY MR. SIMPSON:

12 Q. Good afternoon, Mr. Walters. What is
13 your current occupation?

14 A. I'm an investigator with the Ninth
15 Circuit Solicitor's Office here in Charleston.

16 Q. Okay. So you work in the same office I
17 do?

18 A. Yes, sir.

19 Q. What sort of professional and
20 educational history do you have that makes you
21 qualified for that position?

22 A. I graduated from Fort Johnson High
23 School in 1980 and went to college a couple years
24 before being hired by the Charleston City Police
25 Department in 1982. I worked there until 2000,

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 uniformed division, traffic division,
2 investigations. In 2000, I came to work for the
3 Solicitor's Office where I am now currently
4 employed.

5 Q. And you have been with the Solicitor's
6 office since 2000?

7 A. Yes, sir.

8 Q. So, approximately, 15 years?

9 A. Yes, sir.

10 Q. How does the assignments within the
11 Solicitor's Office work? Are you assigned certain
12 prosecutors?

13 A. Yes, sir, I'm assigned to right now
14 currently three prosecutors: Yourself, Assistant
15 Solicitor Burns Whetmore and Assistant Solicitor
16 Scott Maynor.

17 Q. And what is the role of the
18 investigator in our office? Do you assist us in
19 preparation of cases?

20 A. Yes, sir. We pick up the case post
21 arrest and we follow the case to disposition. And
22 doing that, we are -- our job is filled with either
23 getting lab reports, if there's photos, if there
24 were videos, if there were stuff sent to SLED to be
25 tested, such as DNA or GSR, or if there were latent

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 prints, locating witnesses, re-interviewing
2 witnesses. Whatever needs to be done to get a case
3 disposed of after the office takes it.

4 Q. So does investigation on criminal
5 matters often continue right up to the time of
6 trial?

7 A. Yes.

8 Q. Okay. Investigator Walters, yesterday
9 we heard from Mr. Sherbine. Did you -- as part of
10 your duties as an investigator, would you be the
11 one -- you know, sometimes the prosecutors are
12 requesting jail recordings?

13 A. Yes.

14 Q. And did you request jail recordings in
15 the present case?

16 A. Yes, sir.

17 Q. And where would that sort of basic
18 request start with? Where would that begin?

19 A. Well, it usually will start with the
20 first month the defendant was in -- in the
21 Charleston County Detention Center or still in
22 jail, so we do what we call get the jail calls. We
23 usually get the first month of an arrest or the
24 first month they were still there.

25 Q. And we would request that -- would that

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 request be associated with an inmate name and PIN
2 number?

3 A. Yes, sir, inmate's name, date of birth,
4 Social Security number, also an inmate number.

5 Q. And did you make a request like that in
6 the present case?

7 A. Yes, sir.

8 MR. SIMPSON: May I approach the
9 witness, Your Honor?

10 THE COURT: You may.

11 BY MR. SIMPSON:

12 Q. Investigator Walters, I've handed you
13 what's been marked for ID only as State's 43. Do
14 you recognize that exhibit?

15 A. Yes, sir.

16 Q. And what is that?

17 A. This is the jail recordings for the
18 first month for Valentino Hayward.

19 Q. Okay. Investigator Walters, at the
20 time of that request in preparing this case, was
21 there any numbers already associated with Mr.
22 Hayward?

23 A. Yes, sir. During his interview with
24 Detective Holmes, he mentioned his mother's phone
25 number and I used that as a number of 843-475-8212.

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 Q. So he states that as his mother's
2 number, home number, during the interview?

3 A. Yes.

4 Q. And that interview, are you aware
5 previously already in evidence?

6 A. Yes.

7 Q. Okay. Is this number frequently called
8 from Mr. Hayward's assigned PIN number during the
9 first month?

10 A. Yes, sir.

11 Q. And were there any recordings from
12 Mr. Hayward's PIN number to that known number
13 deemed relevant in your investigation?

14 A. Yes.

15 Q. And, again, these numbers are from
16 Mr. Hayward's assigned PIN number to a known number
17 associated with him?

18 A. Yes, sir.

19 MR. SIMPSON: Okay. Your Honor, at
20 this point in time, the State would seek to publish
21 two calls from the Charleston County Detention
22 Center from State's 43.

23 MR. MAYER: Judge, we object.

24 THE COURT: Madam Forelady and ladies
25 and gentlemen, I have a matter of law to take up

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 with the attorneys. During the break please do not
2 discuss the case and please leave your notepad in
3 the seat.

4 (Jury out at 12:26 p.m.)

5 THE COURT: You may be seated.

6 What's the basis of the objection,
7 Mr. Mayer?

8 MR. MAYER: Judge, they have not
9 authenticated a voice that may or may not be heard
10 on these calls would belong to my client. Until
11 they do that, whatever is said on there would be
12 extremely prejudicial, unreliable, and perhaps --

13 THE COURT: Are you contesting that
14 these are calls made from your client's PIN number
15 to his mother's number?

16 MR. MAYER: No, Judge.

17 THE COURT: Are you contesting that, in
18 fact, there's not -- are you saying it's not your
19 client's voice? Because to some extent phone
20 calls, as well as pictures, are
21 self-authenticating. I need to know if you have
22 some good-faith basis that this is not your
23 client's voice.

24 Now, I agree with you this is not the
25 witness to elicit this testimony because he can't

1 authenticate your client's voice.

2 MR. MAYER: Right. I think --

3 THE COURT: It should have been played
4 to the jail personnel instead of authenticated that
5 this number came from his PIN number to this phone
6 number, because he's the guardian of those records.

7 MR. SIMPSON: Judge, we did.

8 THE COURT: You identified that, but
9 you should have played it through him. This
10 witness cannot testify as to what came from that
11 jail. It is not his responsibility to keep those
12 records in their ordinary course. He can't
13 authenticate this person's voice.

14 MR. SIMPSON: May I be heard on that
15 point?

16 THE COURT: Yes.

17 MR. SIMPSON: Thank you, Your Honor.

18 THE COURT: First I need to hear from
19 Mr. Mayer completely and then I'll let you respond.

20 MR. SIMPSON: Thank you, Your Honor.

21 THE COURT: Uh-huh.

22 MR. MAYER: Judge, I just think that
23 there is that final layer of validation of
24 authentication --

25 THE COURT: Hold on. How can the State

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 compel your client's mother to come testify that
2 this is her son's voice?

3 MR. MAYER: Well, there are lots of
4 people who --

5 THE COURT: Well, I guess they could
6 subpoena her.

7 MR. MAYER: There are lots of people
8 that would know his voice that could say, yeah,
9 that sounds like him. I just think that's the
10 layer that's lacking here.

11 THE COURT: Uh-huh. Yes, sir.

12 MR. SIMPSON: Thank you, Your Honor.
13 In State v. Smith, a 911 dispatcher received a
14 telephone call.

15 THE COURT: It's different.

16 MR. SIMPSON: That 911 dispatcher
17 later heard the voice of a person, and that became
18 an issue.

19 THE COURT: That's different because
20 when you call a 911 dispatcher, that's an excited
21 utterance and it has inherent threat. So the facts
22 of that case are totally different.

23 You have no other option to call
24 someone to authenticate Mr. Hayward's voice?

25 MR. SIMPSON: Mr. Hayward in this case

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 provided a lengthy three-hour video --

2 THE COURT: Nope. He's not an expert.
3 He cannot authenticate his voice.

4 MR. SIMPSON: State v. Smith talks
5 about this for six pages. And what it says, if a
6 person has an opportunity to listen to a person's
7 voice through telephone, video, in person, or
8 otherwise, they are then a witness who can later
9 testify that those sound the same.

10 And I'll point directly to the rule on
11 authentication, Your Honor, that gives several
12 examples. And it states in Rule 9 -- Rule 901,
13 Requirement for Authentication or Identification.

14 Illustration. By way of illustration
15 only, the following are examples of authentication
16 or identification conforming with the requirements
17 of this rule:

18 Voice identification. Identification
19 of a voice, whether heard firsthand or through
20 mechanical or electronic transmission or recording,
21 by opinion, based upon hearing the voice and under
22 circumstances connecting it with the alleged
23 speaker, suffices to illustrate that rule.

24 Mr. Walters repeatedly viewed a
25 three-hour video interview with this defendant, and

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 perhaps I forgot to lay that foundation, but I'm
2 happy to, and then later heard the voice from his
3 PIN number to a number which we already know from
4 that interview is associated with the defendant.

5 I would like to just note on this issue
6 of authentication, you can find this a lot of
7 places in the law, but what we're talking about
8 here -- and I like the way it's articulated in Deep
9 Keel v. Atlanta Private Equity here, the
10 authentication requirement is satisfied by evidence
11 sufficient to support a finding that the matter in
12 question is what its proponent claims.

13 The burden to authenticate is not high
14 and requires only that the proponent offer a
15 satisfactory foundation from which the jury can
16 reasonably find that the evidence is authentic.
17 The authentication requirement does not demand that
18 the proponent of evidence conclusively demonstrates
19 it's genuine.

20 This is going to, as we go forward,
21 Your Honor, at last in the manner that the State
22 wishes, pile on.

23 And I want to point also to Rule 901.
24 And I think this is very important. This is our
25 next of layer of authentication that I want to get

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 into, that Rule 901 allows the Court, or whoever is
2 determining authentication, to look at the evidence
3 itself. And this is under the section, distinctive
4 characteristics.

5 The Court can look to the substance,
6 the contents of the actual evidence and take that
7 in conjunction with the circumstances that you know
8 from this case.

9 And what I'm going to ask, you know,
10 more going forward, but right now even on these
11 tapes, is for Your Honor to refer -- if you'd like,
12 we can play it for you or we can refer to the
13 transcripts we provided.

14 You know in this case that the witness
15 says the person that walked up to the car was
16 wearing a black shirt. Call number 1 says to his
17 brother --

18 THE COURT: I'm stuck on
19 authentication. I have no doubt that if you
20 intended that it inculcates him --

21 MR. SIMPSON: That's not my argument,
22 Your Honor. Your Honor, my argument is that the
23 substance of these calls is an independent and
24 separate way for us to authenticate this under the
25 law, and it's allowable and it's been done a

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 hundred times.

2 That black shirt still in my yard? I
3 already moved that. Chill out. Right. Right.
4 Burn that.

5 You know the circumstances in this
6 case. You are allowed under the law to look at the
7 content of that phone call, say that that fits, and
8 allow a whole other layer of authentication in this
9 case.

10 This is a hurdle legally that is
11 literally like that. We're not talking about proof
12 beyond a reasonable doubt, which we see repeatedly
13 under the law. If I can put a foundation that a
14 reasonable person could conclude that this is what
15 I say it is, it comes in. Because all these things
16 we're talking about, well, it could mean this; it
17 could mean that. That's all weight. That's not
18 admissibility. And I'm prepared through
19 Mr. Walters to provide several.

20 And, Your Honor, I'm a little confused
21 by one comment that you made. I don't mean to be
22 argumentative, but Kevin Sherbine at the jail -- I
23 would have happily played these through him.
24 Kevin Sherbine at the jail has no idea --

25 THE COURT: The way you should have

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 dont it is you should have had someone who knows
2 him well enough to have already listened to those
3 tapes and asked them that question. They listen to
4 it, if it was his voice -- somebody like the woman
5 he was sleeping with, his girlfriend, whomever she
6 calls herself, who has talked to him several times.
7 I think that's a more appropriate way.

8 And I didn't mean to sound pejorative.
9 That wasn't my intention, but I'm just quoting the
10 testimony as she gave it during her testimony,
11 that -- I think the question was asked of her, was
12 she intimate with him or did they have a
13 relationship, did they have physical contact? And
14 she said, no, she had slept with him a couple of
15 times.

16 Because it's clear that their
17 relationship was ongoing in the sense that she had
18 talked to him on the phone several times and she
19 knew his voice. Generally, that is how you have it
20 authenticated. You do not have it authenticated
21 with a complete stranger who does not know him
22 because he is not an expert. He's not an expert on
23 voice authentication.

24 And while you have made an accurate
25 statement on the law, it is all discretionary, as

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 all evidentiary issues are. And when something --
2 you're trying something as serious as a murder
3 case, I just don't like issues that are
4 unnecessary. And that's my own proclivity and I
5 admit it and it's one I'm entitled to have.

6 So I think if you want to recall
7 somebody who knows him --

8 MR. SIMPSON: I don't believe that's
9 necessary.

10 THE COURT: -- to authenticate his
11 voice or if you would like to --

12 MR. SIMPSON: Your Honor, I'd just
13 like to put on the record -- have you read the
14 transcripts of these conversations?

15 THE COURT: That's attached to your
16 motion?

17 MR. SIMPSON: Yes.

18 THE COURT: Yes, I've read everything.
19 I read it before we started court.

20 MR. SIMPSON: So you're prepared to
21 exclude from a murder case --

22 THE COURT: I haven't done anything
23 yet. I have instructed you what you need to do.
24 Unless I hear something more that establishes a
25 foundation that allows the investigator from your

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 office to authenticate the voice of a criminal
2 defendant in this trial.

3 MR. SIMPSON: Understood, Your Honor.

4 THE COURT: And I'm -- you know,
5 sometimes -- you know, the great thing about the
6 role that I'm in, I'm completely objective. I
7 don't have anybody to reward or punish. I'm not an
8 advocate. It doesn't matter to me how it turns
9 out. That's why I get to have this great level of
10 objectivity because my concern is the protection of
11 an entire record. It has nothing to do with one
12 side or the other.

13 MR. SIMPSON: I understand, Your
14 Honor.

15 THE COURT: Because the way I look at
16 it is the least complicated way, the shortest way
17 to get from A to B.

18 MR. SIMPSON: Your Honor, in making
19 our decision on how to go forward, we were
20 following the dictates of State v. Smith and the
21 guidance provided to us by law. I apologize if we
22 did not proceed with this authentication in the
23 manner that the Court thought best.

24 THE COURT: I just think sometimes
25 things are made overly complicated that don't need

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 to be overly complicated. And, again, the Court
2 does not have anyone to reward or punish.

3 MR. SIMPSON: I know.

4 THE COURT: I look at it very
5 objectively.

6 MR. SIMPSON: I apologize for not
7 doing it that way, but I believe --

8 THE COURT: I'm just making an
9 observation that that was probably the easiest way
10 to do it that could not be questioned.

11 MR. SIMPSON: It very well might have
12 been, Your Honor, and I appreciate that guidance,
13 but I think we're at a point now where it's time to
14 look critically, however the Court decides, at
15 what --

16 THE COURT: And I haven't made a
17 decision. I'm hearing argument.

18 MR. SIMPSON: I understand. Whatever
19 the Court --

20 THE COURT: If you feel you need to ask
21 more questions of the witness to establish his
22 ability to authenticate the defendant's voice, you
23 are not precluded from doing that and we can do
24 that in camera.

25 MR. SIMPSON: Okay.

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 THE COURT: And then I will hear any
2 additional -- because I'm not certain that
3 Mr. Mayer made his complete argument regarding his
4 objection and I'm going to give him the opportunity
5 to do that.

6 Mr. Robinson, did you give me this or
7 did the other bailiff? Come here and let me ask a
8 quick question.

9 Bear with me one moment, please.

10 (Off the record.)

11 THE COURT: All right. Is there any
12 further argument from the State? And then I want
13 to hear from Mr. Mayer and then I will hear any
14 further testimony foundationally regarding this
15 witness' testimony.

16 MR. SIMPSON: Thank you, Your Honor,
17 no.

18 THE COURT: Mr. Mayer, I'd be glad to
19 hear from you.

20 MR. MAYER: Judge, I think I stated my
21 piece on this already.

22 THE COURT: Okay.

23 MR. SIMPSON: Judge, may I ask for the
24 foundation at this time?

25 THE COURT: Pardon?

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 MR. SIMPSON: May I ask for further
2 foundation at this time?

3 THE COURT: Yes, absolutely.

4 MR. SIMPSON: Thank you.

5 THE COURT: Uh-huh.

6 BY MR. SIMPSON:

7 Q. Investigator Walters, are you aware
8 that there is a videotaped interview currently in
9 evidence in this case with the defendant?

10 A. Yes, sir.

11 Q. Approximately, how long is that
12 interview?

13 A. Approximately, three hours.

14 Q. Okay. Does the defendant speak on that
15 mechanical device, that mechanical recording,
16 throughout those three hours?

17 A. Yes.

18 Q. Have you viewed that interview?

19 A. Yes, sir.

20 Q. Have you -- how many times would you
21 say you have viewed that interview, approximately?

22 A. Three times.

23 Q. Okay. That would be a total of nine
24 hours of listening to the defendant speak?

25 A. Approximately, yes, sir.

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 Q. Okay. When we first received the
2 subpoena, when we first subpoenaed the records for
3 Valentino Hayward, did you listen to the initial
4 batch of jail calls attached, by way of your
5 subpoena, to this inmate's PIN?

6 A. Yes, sir.

7 Q. Was that multiple hours of the
8 defendant's voice?

9 A. Yes, sir.

10 Q. Okay. Did you feel after the nine
11 hours of watching the defendant speak on video and
12 multiple hours on the first batch of jail tapes
13 which came directly from Mr. Hayward's PIN that you
14 had a pretty -- a good working knowledge of the
15 defendant's voice?

16 A. Yes, sir.

17 Q. Okay. Do you feel like you could
18 recognize it?

19 A. Yes, sir.

20 Q. In fact, as we go on, isn't it true
21 that we at one point subpoenaed another inmate's
22 PIN; is that correct?

23 A. Yes.

24 Q. And what was the name of that inmate's
25 PIN that we subpoenaed?

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 A. Brian Bivens.

2 Q. And if you could, explain to the Court
3 the process of how we got to the name Brian Bivens
4 for that subpoena?

5 A. We got to Brian Bivens by -- after this
6 original batch of tapes, we got some more tapes
7 correlating with some dates or events that
8 happened. And from that batch, Mr. Valentino
9 Hayward's calls weren't as frequent as they
10 originally were.

11 So it told me either he wasn't making
12 calls anymore or he was using another inmate's PIN.
13 So then I did a target number.

14 Q. Okay. And what was the purpose of that
15 target number search?

16 A. The target number search?

17 Q. Yeah. Why would -- why did you conduct
18 a target number search?

19 A. Because I know the numbers that he was
20 making phone calls to, and so when I did the target
21 number to the jail, I got any and all calls to a
22 certain target number. And when I got that target
23 number, it was from the -- it was from Mr. Bivens'
24 PIN.

25 So from there I started getting

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 Mr. Bivens' phone calls, and on Mr. Bivens' phone
2 calls I recognized Mr. Hayward's voice being used.

3 Q. And could you easily distinguish
4 between the voices of Mr. Bivens and Mr. Hayward on
5 those jail calls?

6 A. Yes, sir.

7 Q. Okay. Perhaps I forgot the easiest
8 question: On the first batch of jail calls, does
9 the caller and the recipient of calls ever refer to
10 the caller as Tino?

11 A. Yes, sir.

12 Q. Okay. Both the caller refers to
13 himself as Tino?

14 A. Yes, sir.

15 Q. And the people receiving calls refer to
16 the caller as Tino?

17 A. Yes, sir.

18 Q. Okay. On the PIN numbers of calls from
19 Mr. Bivens' phone -- PIN number, you said you could
20 recognize the voice of Mr. Hayward?

21 A. Yes.

22 Q. And that's after nine-plus hours of
23 listening to the --

24 A. Yes, sir, between the interview and the
25 batch of -- first batch of jail calls.

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 Q. Okay. On the calls from Bivens' calls
2 to the number, does the person making the call
3 refer to himself as Tino?

4 A. Yes.

5 Q. Do the people receiving the call refer
6 to the caller Tino frequently?

7 A. Yes, sir.

8 Q. Okay. Moving on.

9 I would like to talk a little bit --
10 and we are only talking about really four phone
11 calls. Is there anything about the actual
12 substance, the actual conversations of these calls
13 that leads you to believe that they are being made
14 by the defendant, Valentino Hayward?

15 A. Yes, sir. A call on, particularly,
16 August 14th and August 28th. Those calls have a
17 lot of content that relate directly to dates and
18 events of Mr. Valentino's --

19 Q. And --

20 A. -- case.

21 Q. And I'm sorry to be all over the place
22 here.

23 You mentioned that you did a target
24 number search?

25 A. Yes.

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 Q. And that was because you knew you
2 had -- your investigation revealed that someone was
3 being called by Tino through another inmate's PIN?

4 A. Yes.

5 Q. What detail on that call, other than
6 the voice and other than the name, led you to
7 believe that that was Tino Hayward?

8 A. Again, I go back to his voice from the
9 interview. I go back to the voice of the previous
10 jail calls, and I go to -- he talks about a
11 particular date when he was -- had to come in to
12 court, was brought down to court. And he didn't
13 like -- basically, he was complaining about having
14 to sit down here all day. And that --

15 Q. And you're working on this case with
16 me; is that correct?

17 A. Yes, sir.

18 Q. What was interesting about that day in
19 the case against Valentino Hayward?

20 A. That it was about a motion that was
21 supposed to be heard that morning and that got
22 pushed to the afternoon. So instead of him just
23 being here for a couple of hours, he ended up being
24 here all morning and all afternoon. He spent the
25 entire day.

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 Q. So if I understand, you recognize the
2 voice, we have frequent occurrences of the name
3 Tino from both the caller and recipient, and events
4 discussed on the calls correspond to your personal
5 knowledge with events going on in the case --

6 A. Yes, sir.

7 Q. -- is that correct?

8 Does that corroboration of events
9 discussed on the calls with events going on, on
10 Mr. Tino's case continue all the way to Call
11 Number 7?

12 A. Yes, sir.

13 Q. Okay. I want to ask you about that.
14 Did you take an audio recorded statement ever in
15 this case from a new witness?

16 A. Yes, sir.

17 Q. And when was that?

18 A. First statement was taken on -- her
19 audio statement was given March 5, 2014.

20 Q. Okay. What was that witness' name?

21 A. Elizabeth Littman.

22 Q. What does she go by?

23 A. Liz, Lizzie.

24 Q. So we obtained an audio recorded
25 statement from a Liz Littman?

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 A. Yes.

2 Q. Is part of your job as an investigator
3 knowing where potential witnesses reside and how to
4 get in touch with them?

5 A. Yes, sir.

6 Q. Where did Liz Littman live?

7 A. She lived at 640 Sequoia Street.

8 Q. Is that close to where the defendants
9 live?

10 A. Right around the block.

11 Q. Okay. What was the date of Call
12 Number 7?

13 A. We're talking about the August 28th
14 call.

15 Q. Yes, Your Honor -- I mean, yes.

16 A. What was the -- I'm sorry?

17 Q. You just answered my question. What
18 was the date of that call?

19 A. Oh, okay.

20 Q. August 28th?

21 A. Yes, sir, August 28th.

22 Q. Okay. Thank you. Regarding that
23 statement, had we -- had we disclosed that audio
24 statement to the defense? Had we given them a copy
25 of the audio statement at that time?

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 A. The audio statement was -- audio
2 statement was turned over -- I have September 8th,
3 2015, Tuesday.

4 Q. Okay. But the fact that, that audio
5 statement existed and who it was from, was that,
6 before August 28th, revealed to the defense?

7 A. It wasn't supposed to be.

8 Q. Was the fact that we had an audio
9 statement from Liz Littman, not the contents, just
10 the fact that we had it, was this disclosed on
11 August 28th to the defense?

12 A. No.

13 Q. What was going on at that time with
14 some jackets that were taken in this case?

15 A. Some jackets? They were at SLED being
16 tested.

17 Q. Okay. What day of the week were we
18 ordered to disclose that audio statement?

19 A. What date were we scheduled to?

20 Q. Yeah. What date were we supposed to
21 disclose that statement?

22 A. September 8, 2015.

23 Q. What day of the week was that?

24 A. A Tuesday.

25 Q. Okay. Did there come a point that we

THOMAS WALTERS - DIRECT EXAM BY MR. SIMPSON

1 told the defense about the audio statement and who
2 made it?

3 A. We notified the Court of the statement
4 and the defense counsel and the Courts were going
5 to make a decision as to when it would be released.

6 Q. And they ordered that on Tuesday,
7 September the 8th?

8 A. Yes, sir.

9 Q. And that was all going around the time
10 of this phone call?

11 A. Yes, sir.

12 MR. SIMPSON: Okay. Court's
13 indulgence?

14 THE COURT: Uh-huh.

15 BY MR. SIMPSON:

16 Q. Are all of the details that we just
17 discussed on that phone call?

18 A. On the August 28th phone call, yes,
19 sir.

20 Q. Okay. So things -- detailed elements
21 of Valentino Hayward's case are discussed in the
22 contents of the phone call that you recognize as
23 the voice of Valentino Hayward?

24 A. Yes, sir.

25 Q. And again, going back, do those sort of

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 confirming details from the actual content of the
2 calls lead to you conclude that all of these calls
3 were made by the defendant, Valentino Hayward?

4 A. Yes, sir.

5 Q. And again, you also listened to
6 Valentino Hayward's recorded voice, known recorded
7 voice from video interviews for nine-plus hours?

8 A. Yes.

9 Q. Okay. And on the Bivens PIN number CD,
10 are you easily able to distinguish between Brian
11 Bivens and Valentino Hayward?

12 A. Yes, sir.

13 MR. SIMPSON: Court's indulgence?

14 THE COURT: Uh-huh.

15 MR. SIMPSON: Thank you,
16 Investigator Walters. Please answer any questions
17 Mr. Mayer has of you on this point.

18 THE COURT: Mr. Mayer, you may proceed.

19 CROSS-EXAMINATION

20 BY MR. MAYER:

21 Q. Mr. Walters, isn't it accurate that the
22 interview that was conducted of Valentino Hayward
23 has a lot of time on it when Mr. Hayward is not
24 speaking?

25 A. Off and on, yes, sir.

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 Q. Okay. His answers are relatively short
2 and curt and he's not someone who elaborates a lot;
3 correct?

4 A. Again -- will you repeat what you said?

5 Q. Let me rephrase it.

6 When you talk about listening to three
7 hours of Valentino Hayward speaking, it's not like
8 you're listening to a narrator on a book on tape.
9 I mean, there is a lot of other stuff that's going
10 on during that three hours; right?

11 A. Yes, sir.

12 Q. There's a lot of quiet time?

13 A. Often, yes.

14 Q. And there is a lot of time when the
15 investigator or the detective who is interviewing
16 him is speaking; correct?

17 A. Yes.

18 Q. Now, with regard to the timing of the
19 disclosure of Elizabeth Littman to the defense as a
20 potential witness, as giving us that name, that was
21 scheduled to happen sometime after September 8th;
22 correct?

23 A. Yes, sir. Well, we notified the court
24 that we had it and we notified you that we had it,
25 and I guess there was a time either here or in

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 chambers prior to that, that we had the tape and
2 when it was going to be released.

3 Q. Right. And no name was given to us
4 prior to that, or was it?

5 All right. Never mind. I withdraw
6 that question.

7 From all your time listening to these
8 various jail calls and that sort of thing, isn't it
9 true that statements made are very hard to
10 understand at times and very hard to decipher
11 what -- what those words are?

12 A. Could be, but I guess like anything
13 else, the more you do it, the more you're able to
14 pick up on things. And over years and years, I've
15 kind of learned to understand different accents,
16 different type voices, yeah.

17 Q. Are you the person who transcribed
18 these jail calls onto the State's motion?

19 A. No, sir.

20 Q. Who did that?

21 MR. SIMPSON: I did.

22 MR. MAYER: You did?

23 THE WITNESS: I'm not a very good
24 typer. We would still be here if it was up to me
25 to be typing a transcript.

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 MR. MAYER: Judge, I would like to be
2 heard at the appropriate time.

3 THE COURT: Any redirect?

4 MR. SIMPSON: No, Your Honor.

5 THE COURT: Yes, sir.

6 MR. MAYER: Judge, as the detective
7 who -- Detective Holmes, who interviewed Valentino
8 testified and as this witness has testified, there
9 is a lot of downtime in that interview. Statements
10 made by my client in that interview are curt, are
11 without elaboration, and are not a good sample to
12 learn the type of voice that he has, and his
13 speaking tone and cadence, and all the other
14 identifying factors that we subconsciously absorb
15 about other people's voices.

16 There are something like 500 or more
17 inmates at least at the detention center, a lot of
18 them young men with very, very similar voices as my
19 client. And I just think that it would be -- this
20 is not the right witness to authenticate my
21 client's voice, Judge.

22 THE COURT: Would the State like to
23 respond?

24 MR. SIMPSON: Very briefly, Your
25 Honor. I feel like we have probably talked too

1 much to you on this already.

2 THE COURT: You need to say everything
3 you need to say because after I rule, you can't say
4 anything else. I'm giving you the opportunity, so
5 say what you need to say.

6 MR. SIMPSON: While I truly am
7 accepting of the Court's advice and in agreement
8 that perhaps this is not the best person.

9 THE COURT: After thinking about it,
10 the person who interviewed him could have
11 authenticated his voice as well. Give a statement
12 at the police department.

13 MR. SIMPSON: While there would have
14 been other ways to do this, I believe that the
15 person, for example, that interviewed him got the
16 exact same opportunity to hear this voice as
17 Investigator Walters did.

18 THE COURT: Not if he was face-to-face
19 with him. He was sitting with him and talking with
20 him face-to-face. That's a little different.

21 MR. SIMPSON: However, that being the
22 case, the authentication of the voice is this much
23 of the authentication. Okay. What the law tells
24 you is that you can look to the contents, and I
25 would like to, if I can -- we'll focus on Call

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 Number 7: What's going on with that old girl L?

2 You just heard from

3 Investigator Walters that we had obtained a
4 statement from Liz Littman, and that while they
5 didn't know the contents, that identity and that
6 existence of that statement was known.

7 Who, L on the block?

8 Liz Littman lives on the block with
9 Valentino Hayward.

10 I'm waiting for that statement. He
11 said I'm supposed to get that statement Tuesday.

12 You heard from Investigator Walters on
13 Tuesday, September 8th we were disclosing that
14 statement.

15 Well, we're trying to see what
16 September is going to bring, like on the 24th when
17 that jacket F comes back.

18 You heard from Investigator Walters, at
19 this time we were awaiting the results of a jacket
20 from SLED and said in open court that we would be
21 getting that result by the 24th.

22 And if you need more, later, in the
23 thing they said, well, hurry up -- in speaking
24 about this witness -- because you know she's
25 moving.

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 And I will be frank with the Court, I
2 forgot to ask, but Investigator Walters knew that
3 Liz Littman was getting kicked out of her house on
4 September 1st, two days before this conversation
5 takes place.

6 To me, Your Honor, the most compelling
7 evidence of authentication is that this is what we
8 say it is. And again, I would remind the Court
9 that we're talking about a really easy little low
10 bar here as in the cases that I've set --

11 THE COURT: Which is still by
12 preponderance of the evidence. It's always by a
13 preponderance of the evidence when the Court has to
14 make a decision. The ultimate decision beyond a
15 reasonable doubt is for the jury.

16 The preponderance of the evidence is
17 evidence that makes it more likely than not. It is
18 a -- but it's still a gatekeeper. It's still
19 substantial. It's not a scintilla.

20 MR. SIMPSON: And I would say one
21 thing, and sit down, Your Honor, and I forgot the
22 most obvious thing: As you heard from Mr. Walters,
23 when the person making these calls as I provided
24 the Court with three example clips, honestly
25 multiple times, says, I'm Tino. And the people

1 receiving the calls say, bye, Tino.

2 And when you talk about a preponderance
3 of the evidence of something being more likely than
4 not, I find that to be pretty persuasive evidence
5 on top of the voice, because I know you're not
6 convinced by it and that's one thing --

7 THE COURT: It's not that I'm not
8 convinced. It's just that I know that I'm probably
9 OCD in some regard, and I just like things to be
10 clean. I just don't like issues where they don't
11 have to be.

12 MR. SIMPSON: I understand.

13 THE COURT: And I'm just being real
14 transparent. Probably a little more transparent
15 than I should be, but I'm just real direct and I
16 just don't like issues where there doesn't have to
17 be one. And so why create one when you don't need
18 it?

19 MR. SIMPSON: I appreciate that. And
20 I can tell you, Your Honor, your advice to me on
21 how to go about doing this in better ways is taken
22 and --

23 THE COURT: That's just generally the
24 way it's done.

25 MR. SIMPSON: It's taken and accepted,

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 but it's not the only way it can be done, and
2 that's our argument today.

3 THE COURT: Well, what is lawful is not
4 always expedient and, again --

5 MR. SIMPSON: I understand.

6 THE COURT: -- you just -- when you
7 can, something this significant, you should just
8 eliminate issues where you don't need them. Why
9 have it if you don't have to have it?

10 MR. SIMPSON: I think that's very good
11 advice and advice I live by and just failed to do
12 so in this instance.

13 THE COURT: Well, you get tunnel vision
14 when you try a case. And that's natural. You
15 should, you're an advocate. I mean, that's just --
16 it's natural. It's not something that you have to
17 apologize for.

18 All right. I'm -- actually, we need to
19 deal with several things. Officer, I'm going to --
20 I apologize.

21 THE WITNESS: That's all right.

22 THE COURT: Mr. Walters, you can step
23 down. We are going to recess your testimony.
24 Please don't discuss it with anybody.

25 The jury's lunch came at quarter of

1 one. I've already had it given to them so I'm
2 going to deal with a couple of things -- excuse
3 me -- and then we're going to break for lunch
4 ourselves, and then we'll come back and resume the
5 witness' testimony.

6 And at that time I'll make a decision
7 regarding the tape recordings, but we need to go
8 back to a couple of things that I took under
9 advisement and take up argument on those things,
10 one of which is -- you can step down -- one of
11 which is State's 32 and 33.

12 I need to know the defense's objection,
13 which is the images that were downloaded from the
14 telephone, which is an image of a gun which was
15 taken by that phone according to the witness on
16 November 22nd of 2013, at 9:58:34 p.m. Well, it
17 would be p.m. Well, yeah p.m.

18 And then State's 33, which is the
19 enhanced image of the very same image which the
20 witness testified was not altered in any way by the
21 enhancement.

22 What's the basis of the objection?

23 MR. MAYER: Judge, the prejudicial
24 effect would be -- would substantially outweigh the
25 probative value of these exhibits, reason being

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 that it's just a picture of, at this point, Judge,
2 a random gun. There is no ballistics or anything
3 suggesting that that gun was used in this crime.

4 It just is -- it's very convenient for
5 the State to use that picture because it's so
6 suggestive, but the fact of the matter is its
7 probative value is substantially outweighed by the
8 prejudicial effect, Judge, and that's as to State's
9 Exhibit 32.

10 Of course, 33, all those same
11 objections would apply. Additionally, it's been --
12 that image has been manipulated by the State, and
13 so we have that further objection about that one.

14 THE COURT: Say that part one more
15 time.

16 MR. MAYER: The State's exhibit they
17 are offering, 33, is the image that was enhanced by
18 Officer van Horn. And because it's been
19 manipulated and it --

20 THE COURT: Well, it wasn't
21 manipulated; it was enhanced. There is a
22 difference. It's just a close-up. I mean, we're
23 using technical terms, but it's just a close-up of
24 the original image, and he testified that it was
25 not in any way hypothecated or changed.

1 It wasn't distorted. The only thing is
2 it's just a close-up of the other images, one
3 image, and then a close-up of that image.

4 MR. MAYER: I think it's also
5 duplicative, Judge. I think it's similar to the
6 first image. I think the more of this stuff the
7 jury sees, the more prejudicial it is. I think the
8 initial probative value is very, very low because
9 the image depicted there of this weapon has not
10 been tied in through any fingerprints, through any
11 DNA, through any ballistics, through any anything
12 to my client and to the crime scene.

13 THE COURT: Would the State like to
14 respond?

15 MR. SIMPSON: Just briefly, Your
16 Honor.

17 Jennifer Wooley was the first to
18 testify on this issue and explained to the jury
19 about the lack of shell casings at the crime scene
20 and how that lack, while it could mean someone
21 picked them up and took them somewhere, it most
22 likely would mean that the murder weapon in this
23 case would have been a revolver.

24 We heard similar testimony I believe
25 from two other witnesses, and then we get to the

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 testimony of Jamie Green from SLED who analyzed the
2 bullet taken from autopsy and concludes a nominal
3 .38 caliber bullet.

4 He also talked about, more likely than
5 not, the metallic makeup of that bullet leads him
6 to believe -- again, it's not absolutely
7 conclusive, but it leads him to believe that it was
8 more likely that this was a .38 caliber revolver.

9 And so we're left with that conclusion,
10 that the murder weapon in this case is a .38
11 caliber revolver, a reasonable conclusion to be
12 drawn under the evidence.

13 We then go to the cell phone dump and
14 see that in a time -- you heard about the metadata
15 and you heard that this phone took the picture,
16 that at a time of pretty close proximity to the
17 murder, I think we're within two weeks, Mr. Hayward
18 with his phone took a photograph of a weapon of a
19 consistent caliber and make of the -- that, that at
20 least strong circumstantial evidence points to was
21 the actual gun that fired the bullet in this case.

22 I think it would be hard to understate
23 the probative value of that, and I think -- I think
24 it was Alex Sanders famous quote, you know, the
25 analysis here isn't if something is prejudicial.

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 Any relative evidence is prejudicial. The analysis
2 is it unduly or unfairly prejudicial. Is it
3 prejudicial on some unfair basis.

4 And I don't think the fact that we just
5 got this picture from his phone is anything that's
6 been alleged to have been unfair about that. I
7 think it's relevant and we would ask that the
8 exhibit be admitted. Thank you, Your Honor.

9 THE COURT: You're welcome.

10 Anything further from the defense?

11 MR. MAYER: No, Judge.

12 THE COURT: Image 32 is in color and 33
13 is black and white. It almost looks the same size.
14 I don't see any difference on both of them, but I
15 guess I still -- my eyes have gotten bad. I
16 can't read --

17 MR. SIMPSON: Judge, we don't feel
18 that strongly about the enhanced version.

19 THE COURT: So you don't really need 33
20 is what you're telling me?

21 MR. SIMPSON: Not if it's going to be
22 a problem, Your Honor.

23 THE COURT: Well, now, I'm trying to
24 figure out what the difference is between 32 and
25 33.

1 MR. SIMPSON: On the barrel of the gun
2 it has the caliber and brand. We asked them, like,
3 is there anything you can do to make that more
4 legible?

5 THE COURT: Are you talking about this
6 little circle stamp?

7 MR. SIMPSON: Partly the stamp and
8 really on the barrel where it says .38 and Smith
9 and Wesson.

10 THE COURT: Oh, I got you.

11 MR. SIMPSON: I don't really know how
12 effective --

13 THE COURT: I think it is clearer on 33
14 than on 32.

15 MR. SIMPSON: That was our purpose
16 anyway. I don't know how effective --

17 THE COURT: It's more clear.

18 There are several layers to this issue,
19 one of which is the relevance of the evidence,
20 whether it's more probative than prejudicial, and
21 the weight to be accorded the evidence, which is
22 always a jury question.

23 There is no question regarding the
24 authenticity of these pictures. To some extent
25 pictures, according to our case law, are

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 self-authenticating and there can be no question
2 that these photographs were a part of the -- and I
3 will use the word I believe Detective van -- and I
4 always get this title wrong -- Corporal van Horn
5 testified that they were part of a data dump that
6 would have taken place from Mr. Hayward's cell
7 phone.

8 There's been no question regarding the
9 authenticity of the information downloaded from his
10 phone and that these photos were, in fact,
11 downloaded from the data which was stored on his
12 phone. In other words, in common parlance, he took
13 pictures with his cell phone and they were stored
14 on the -- in the memory of that cell phone and they
15 were able to be downloaded and then printed as
16 State's 32 and 33.

17 One is a color photo, which is a
18 little -- I would say it's probably -- it's not
19 enhanced. A color photo of the gun which appears
20 to have been taken in the bathroom of a residence.

21 The 33 is an enhanced version of the
22 phone -- I mean of the gun, which, in fact, does
23 show the caliber of the weapon on the -- what do
24 you call that on a gun?

25 MR. MAYER: The barrel.

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 THE COURT: The barrel. I'm sorry, I
2 couldn't remember. On the barrel of the weapon.
3 And then there appears to be some other stamp near
4 the handle of the weapon, which looks like a dog of
5 some type. I'm not sure. Maybe not. I don't want
6 to speculate what it is because I can't really
7 tell, but it's a stamp of some type on the weapon.
8 I would assume that it is tied in some way to the
9 marketing or name of the weapon.

10 The evidence is relevant. It does make
11 a fact of consequence in the case more or less
12 probable, that being the ownership or possession of
13 a weapon of similar caliber by the defendant. It
14 is probative to the extent that he took a picture
15 of the weapon and stored it on his telephone.

16 It is relevant and it is corroborated
17 by the testimony of the SLED firearms expert,
18 James W. Green, who testified that it is -- and I
19 believe his exact words, it is more likely than not
20 a revolver, a .38 caliber or a 9 millimeter.

21 And he testified regarding the
22 differences in those weapons. There was not even a
23 point off. One was .355 and one was .3577 when he
24 was testifying about them and said they were very
25 much alike.

1 He also testified that the bullets
2 still had some rifling present even though it was
3 pretty much destroyed. Was not -- destroyed was
4 not his words, my words. His words were too
5 damaged to say what caliber it is unless he had a
6 gun to match it to, but he said that the bullets
7 still had most of its rifling present and he was
8 able to say more likely than not, which would be
9 the standard for an expert.

10 He doesn't have to say to a reasonable
11 degree of certainty most likely, but he certainly,
12 by testifying that it was more likely than not,
13 meets that standard that it was a .38 or
14 9 millimeter.

15 The other thing that convinces this
16 court of the probative nature of this evidence is
17 the fact that this picture was taken on
18 November 22nd of 2013, which was in close
19 proximity, less than a month -- to be exact,
20 20 days prior to this incident.

21 What else is probative is the caliber
22 of the weapon that is displayed in State's 33 on
23 the barrel of the weapon.

24 So the Court would find that the
25 testimony is relevant, that it makes initial

1 consequence in this litigation, that being the
2 contention of whether the defendant was in
3 possession or owned a firearm more or less
4 probable, that it is more probative than
5 prejudicial in that it indicates the caliber of the
6 weapon, which corroborates the testimony of
7 James Green who was the SLED firearms expert, that
8 it is authentic and that it was downloaded from the
9 metadata that was taken from Mr. Hayward's
10 camera -- was taken by the camera on Mr. Hayward's
11 cell phone and was downloaded as a part of the data
12 dump from his telephone, that a picture was taken
13 on 11/22 of 2013.

14 And I find that the evidence is more
15 probative than prejudicial, especially when you're
16 dealing with a factual issue such as possession or
17 ownership of a weapon in close proximity to an
18 alleged event.

19 Now, the arguments that Mr. Mayer had
20 made really goes to the weight and any inferences
21 to be accorded to that testimony, but not its
22 admissibility.

23 State's 32 and 33 will be admitted and
24 I find they're also not cumulative, that they have
25 not been hypothecated in any way, as corroborated

THOMAS WALTERS - CROSS EXAM BY MR. MAYER

1 by the testimony of Corporal van Horn, in that 32
2 is the picture originally downloaded and 33 is an
3 enhancement which shows the barrel which displays
4 the caliber of the weapon.

5 Both are marked and admitted subject to
6 the defense's objections.

7 (STATE EXH. 32 in evidence.)

8 (STATE EXH. 33 in evidence.)

9 THE COURT: Now, the next thing we need
10 to deal with or I need to find out from Mr. Mayer
11 is, did you -- did you -- after questioning
12 Corporal Van Horn, do you still wish to seek the
13 admission of Defense Number 4 or have you -- or
14 have you withdrawn that request?

15 Because I wasn't clear by the way you
16 continued the questioning whether you intended to
17 seek to introduce it or whether you had withdrawn
18 that request, and I wanted to be clear before I
19 proceeded.

20 MR. MAYER: Judge, thank you for that.
21 I would like to still have that admitted.

22 THE COURT: Okay. What's the
23 State's position?

24 MR. SIMPSON: Without objection.

25 THE COURT: Okay. So that will be

1 marked and admitted without objection, Defense
2 Number 4.

3 (DFT. EXH. 4 in evidence.)

4 THE COURT: Now, my record reflects
5 that those were the only two things that I had
6 under advisement, which was State's 32 and 33 and
7 Defense Number 4. Were there any other exhibits
8 that were sought to be admitted that I took under
9 advisement that my notes do not reflect.

10 I just want to make sure, out of an
11 abundance of caution, because my memory is not --
12 it's pretty good, but it isn't perfect. So if you
13 have something that I've missed, please make me
14 aware of it.

15 MR. SIMPSON: Not to my knowledge,
16 Judge.

17 THE COURT: Mr. Mayer?

18 MR. MAYER: No.

19 THE COURT: Okay. I will think about
20 the other matter while we're having lunch and we
21 will proceed from there. In the meantime,
22 Mr. Simpson, let me know if you are able to procure
23 or you wish to supplement the record with the
24 testimony of Marion Campbell or Detective Holmes.

25 MR. SIMPSON: Thank you, Your Honor.

1 THE COURT: We will be at ease until --
2 gosh, the jury had their lunch at quarter till. I
3 still want to get going and have time to eat as
4 well.

5 And just so that you know, one of my
6 jurors was having some issue with her legs, some
7 pain in her legs. She took some medication,
8 however, just some Ibuprofen, nothing that will
9 affect her ability to understand the proceedings,
10 and I have advised her that if she encounters any
11 further difficulty to let us know so that I can get
12 medical attention for her.

13 But up to this point, she has indicated
14 that the Ibuprofen has worked, and I would imagine
15 having eaten some food probably has helped with
16 that as well. So if she has any further
17 difficulties, I will just make you all aware of
18 that. Okay?

19 MR. SIMPSON: Thank you, Your Honor.

20 THE COURT: Have a good lunch. Let's
21 be back at -- is 45 minutes enough for you all or
22 is that --

23 MR. MAYER: That's fine.

24 THE COURT: Because I have 1:17. I
25 should have told you, I never pay attention to the

1 clocks because they are never right and every one
2 is at a different time. So it's 1:17. Let's call
3 it 1:20 for the sake of -- is 2:00 o'clock enough
4 for you to eat.

5 MR. MAYER: Yes, Judge.

6 MR. SIMPSON: Yes, Judge.

7 THE COURT: Okay. See you at
8 2:00 o'clock. Enjoy your lunch.

9 (A luncheon recess transpired.)

10 THE COURT: Is the State ready?

11 MR. SIMPSON: We kindly request that
12 we be allowed to supplement the -- provide some
13 proper supplemental testimony on the legal issue of
14 foundation and identification of the jail calls?

15 THE COURT: Through?

16 MR. SIMPSON: Through Sergeant
17 David Osborne, formerly of the Charleston Police
18 Department. He's previously testified in this
19 case.

20 THE COURT: I'm confused. Tell me
21 what --

22 MR. SIMPSON: Sure. I can summarize.

23 THE COURT: Yes, give me --

24 MR. SIMPSON: Don't hold me to it
25 because we haven't worked it all out. He has had

1 prolonged interaction --

2 THE COURT: Oh, he needs to be brought
3 in. And while we're waiting, have you made inquiry
4 to see if Ms. Campbell is available or if Detective
5 Holmes is available?

6 MR. SIMPSON: Yes, Your Honor.
7 Ms. Campbell -- well, to be frank, we just knew
8 from previous interactions that Ms. Campbell would
9 be very difficult to get her on short notice.

10 THE COURT: Say that one more time.

11 MR. SIMPSON: We knew from our
12 previous interactions with Ms. Campbell that it
13 would be very difficult for us to get in touch with
14 her and secure her presence, having released her
15 from the subpoena.

16 THE COURT: Okay. I got you.

17 MR. SIMPSON: So we reached out to
18 Detective Richard Holmes. He is on vacation, but
19 he is --

20 THE COURT: Till when?

21 MR. SIMPSON: Well, he's in town.
22 He's mowing his yard.

23 THE COURT: Oh.

24 MR. SIMPSON: And what we determined
25 while we're all working through this, that he did

1 have, as you know, the three hours of interaction
2 with the defendant on the tape.

3 What we did is found another witness
4 who's already testified which had -- actually had
5 much more interaction with this defendant and over
6 a longer course of time, so we actually think it's
7 a much better witness for our point than would be
8 Detective Holmes.

9 He had an interaction with the
10 defendant on a face-to-face basis in this case,
11 which he's prepared to testify to now.

12 THE COURT: Okay. Let me ask another
13 question so that procedurally I can make sure that
14 we don't skip over anything.

15 MR. SIMPSON: Sure.

16 THE COURT: I'm sorry, I'm trying to
17 gather my thoughts.

18 That would eliminate the need for
19 Detective Walters testimony; correct?

20 MR. SIMPSON: I would still like to
21 present the tape to Investigator Walters because
22 what he does is lay another layer of reliability to
23 it --

24 THE COURT: I'm not going to let him
25 testify to any of that stuff about his conjecture

1 about what the defendant says about being delayed
2 for court and all that speculation on his part.
3 None of that is germane. The jury can draw that
4 conclusion from the statements. They see it for
5 themselves.

6 So I wouldn't let any of that in. If
7 he hasn't objected yet, I'm sure he will. As I
8 listen to it, that red flag -- it's all
9 speculative. Well, you know, I know it's him
10 because he was in court longer than he expected and
11 it so happens that the case was continued and --
12 all that is speculation. It has -- you have not
13 established foundation to my satisfaction for that
14 to be admissible, so that wouldn't come in.

15 MR. SIMPSON: Okay. Thank you, Your
16 Honor. The other purpose of Investigator Walters,
17 and I'd be happy to hear from --

18 THE COURT: Well, it's the chain. You
19 got calls from him?

20 MR. SIMPSON: No, Your Honor. The
21 relevance of Clip Number 7, a transcript has been
22 provided --

23 THE COURT: Clip Number 7 being?

24 MR. SIMPSON: On the transcripts
25 provided on Wednesday to the Court, Your Honor. I

1 have several copies.

2 THE COURT: No, I've got it right here.
3 What Clip Number 7 are you referring to?

4 MR. SIMPSON: I think it's important
5 for the context of -- transcript -- on the jail
6 call transcripts, they're labeled 1 through 7, and
7 it's Number 7.

8 THE COURT: Okay.

9 MR. SIMPSON: All right. What
10 Mr. Walters would testify to is he took a statement
11 from a witness named Elizabeth Littman, who goes by
12 Liz Littman. You see on line number 1, they say,
13 what's going on --

14 THE COURT: Yes, I understand all of
15 that. Are you not calling Ms. Littman to testify?
16 She isn't on your witness list.

17 MR. SIMPSON: No, Your Honor. The
18 defendant was successful, and I'm happy to present
19 testimony --

20 THE COURT: The only thing he would be
21 able to testify to is that he took a statement from
22 her. He is not going to be able to say what she
23 said.

24 MR. SIMPSON: Oh, of course. And nor
25 do we intend to elicit that.

1 THE COURT: What else would you be
2 eliciting from him in that regard?

3 MR. SIMPSON: That she lived around
4 the block. The next line in the jail call is, L,
5 from around the block, as you go through Clip 7,
6 that we had provided the defense -- and in Court,
7 we had told the Court and the defense that we had
8 an audio statement from her, but we had not yet
9 provided the actual copy of the statement. We were
10 given until Tuesday, September 8th.

11 And as you see that thing, we'll wait
12 until Tuesday in September to see what is on the
13 audio tape.

14 They go on --

15 THE COURT: Just tell me in a nutshell
16 what it is you would be eliciting from him; one,
17 that he took a statement from this witness.

18 MR. SIMPSON: He took a statement.

19 THE COURT: You were required to turn
20 that over --

21 MR. SIMPSON: And --

22 THE COURT: -- by Tuesday.

23 MR. SIMPSON: That this conversation
24 occurs and --

25 THE COURT: Well, he's not going to be

1 able to testify the conversation occurs.

2 MR. SIMPSON: Well, we would then
3 publish this conversation free of editorializing
4 and then ask him, did we receive a second statement
5 from Ms. Littman? Yes, we did. It was dated days
6 after this conversation and it was a complete
7 reversal of her first statement, without eliciting
8 any --

9 THE COURT: You're not going to be --
10 he's not going to be able to say she denied -- it's
11 a complete reversal of her statement because that
12 denies him the ability to cross-examine her about
13 what was said -- what was said or not said.

14 MR. SIMPSON: How about we received a
15 second statement shortly after this conversation?

16 THE COURT: You can say you received a
17 second statement. I don't have a problem with
18 that.

19 Now, I need to know does the defense
20 have any objection to that line of questioning from
21 the witness?

22 MR. MAYER: Judge, we would object in
23 full to any purportedly transcribed version.

24 THE COURT: That's not my question. I
25 need you to stay on point for me. You said there

1 are many layers to this issue, and I'm going to get
2 to that, but right now I need you to address
3 Mr. Simpson's contention.

4 I asked him if there would be any
5 additional testimony from his investigator
6 regarding this case. He's told me what the
7 substance of that testimony would be. I need to
8 know if you have any objection to that line of
9 questioning, that being that he took a statement
10 from Ms. Littman and he took a second statement
11 from Ms. Littman, and the dates in which they
12 were -- the Court required the Solicitor's Office
13 to turn over the statement to -- or to provide
14 those statements. Do you have any exception to
15 that line of questioning?

16 MR. MAYER: No.

17 THE COURT: Okay. Then that eliminates
18 that issue.

19 Now, I'm not dealing with the recording
20 or the transcription. I'm taking it under
21 advisement. I will think about it. I will give
22 the State the opportunity to cure what I perceive
23 to be defects in their authentication, and we will
24 go from there.

25 But I will say that it is unlikely that

1 I will let in any transcriptions because the tapes
2 speak for themselves. They say what they say.
3 People have different dialects, especially from
4 Charleston. They have -- and I can even attest to
5 that myself.

6 When I came back home, my voice got
7 very deep and very -- my friends in the north were
8 like, oh, my god, what happened to you? And I
9 didn't even recognize what had happened.

10 But being in your environment -- I
11 mean, different sides of Charleston have different
12 dialects. People talk -- and this generation talks
13 in a whole other language. I don't understand what
14 half of it means. People have slang that they use,
15 and the tapes say what they say and the jury can
16 listen to them.

17 And I would caution you to get a clean
18 laptop or other device so that the jury can listen
19 to these exhibits in the jury room without our
20 interfering. And they are free, if they come in,
21 to listen -- subject to the authentication, to
22 listen to them as many times as they want to. And
23 it's for them, the fact finders, to determine what
24 is said or isn't said.

25 Unless there is some transcription from

1 somebody that you -- unless you all agree to the
2 transcription or that you all have the
3 transcription done jointly through somebody who can
4 certify that this is an accurate transcription of
5 what was said.

6 And sometimes, also, phone recordings,
7 they're inaudible. And I don't want somebody
8 interpreting what they think they heard. You know,
9 they speak for themselves.

10 MR. SIMPSON: Understood, Your Honor.

11 THE COURT: But what we can do is mark
12 the transcriptions as a Court Exhibit in advance of
13 dealing with that.

14 MR. SIMPSON: Sure.

15 THE COURT: Because I assume that was
16 your objection, Mr. Mayer?

17 MR. MAYER: Yes, Judge.

18 THE COURT: So we will mark those as a
19 Court's Exhibit in advance of the Court ruling. If
20 I should change my mind over the weekend, then it
21 will be converted to a State's exhibit. If not, it
22 will remain a Court's exhibit.

23 Now, that deals with everything that
24 deals with Investigator Walters; correct?

25 MR. SIMPSON: A brief clarification,

1 Your Honor. I didn't intend to say the wrong
2 thing.

3 THE COURT: No, that's okay.

4 MR. SIMPSON: The second statement
5 from Elizabeth Littman was provided to us by the
6 defense and I would elicit that.

7 THE COURT: So he didn't take it.

8 MR. SIMPSON: No, it was provided to
9 us by the --

10 THE COURT: Well, I think you can
11 testify that a second statement was provided.

12 MR. SIMPSON: And you would not --

13 THE COURT: He said he didn't object to
14 that line of questioning.

15 So we will then -- and then you said
16 you had an additional -- I tell you what we'll do:
17 We will finish Investigator Walters' testimony, we
18 will do the cross, and then we will do Mr. Osborne
19 in camera so I can hear exactly what he's going to
20 say.

21 MR. SIMPSON: Okay.

22 THE COURT: And then we will hear any
23 arguments. Well, I guess I need to ask, do you
24 have any objection to him testifying, Mr. Mayer, or
25 take any exception to him authenticating your

1 client's voice?

2 MR. MAYER: To Mr. Osborne?

3 THE COURT: Uh-huh.

4 MR. MAYER: I have no problem with the
5 State re-calling him. I have to hear what he has
6 to say, though.

7 THE COURT: We will take it up in
8 camera. So once we finish that, say you have a
9 matter of law and we will deal with that outside of
10 the jury's presence.

11 Is my juror feeling better?

12 THE BAILIFF: Yes, ma'am.

13 THE COURT: Perfect.

14 MR. SIMPSON: May I ask one question?

15 THE COURT: Sure.

16 MR. SIMPSON: And, forgive me, as to
17 the publication of the recordings, if you should
18 decide that, that would just take place later when
19 you decide, free of any testimony --

20 THE COURT: Let's just say if
21 Mr. Osborne can authenticate Mr. Hayward's voice,
22 they would theoretically come in through him
23 because you've already had your chain witness
24 testify that they were kept in the ordinary course
25 and the method that they were produced.

1 You've already had another witness, I
2 guess theoretically a chain witness, Mr. Walters,
3 say they were received in your office. I assume
4 they were provided to Mr. Mayer. So they could --
5 if Mr. Osborne can authenticate his voice, then,
6 yeah, I don't see a problem with it, with you
7 playing them.

8 MR. SIMPSON: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 All right. Are we ready?

11 MR. SIMPSON: Yes, Your Honor.

12 THE COURT: Defense ready?

13 MR. MAYER: Yes, Judge.

14 THE COURT: Please bring in the jury.

15 And, sir, I remind you, you are still
16 under oath.

17 And if you could too, and I'll say this
18 again at the end, just make sure once you use
19 exhibits, if you could put them back on that table
20 so that at the end of the proceedings we can
21 account for all of them with the court reporter,
22 especially since we will be adjourning for the
23 weekend. I make to sure that we have everything,
24 because it's easy to pick stuff up.

25 But, also, you can leave all of your

1 things over the weekend that you don't need. Our
2 cleaning staff cleans during the day and everything
3 is locked up on the weekend, so you don't have to
4 worry about toting stuff you don't need.

5 How many witnesses do you have in
6 total? I have a list left that it's also
7 Brian Gibbons, Antonio Gibson, Detective Krasowski,
8 Elizabeth Anne Littman --

9 MR. SIMPSON: Judge, we're going to
10 call Investigator Walters and Detective Osborne and
11 that's it.

12 THE COURT: And then Samuel Stuart I
13 have. You're not calling Samuel Stuart, I guess?

14 MR. SIMPSON: I will say there is a
15 very slight chance we could need him in rebuttal.

16 THE COURT: And I'm saying this to the
17 both of you, when I looked at the -- when I looked
18 at the pretrial stuff in this case last week, I
19 already determined this case was going to take more
20 than a week. That's why I asked that question in
21 voir dire.

22 So I don't want anybody to feel -- I
23 always felt when I tried a case, you only get one
24 shot at it. And, as a lawyer, you're always
25 thinking, what did I forget? That's just the

1 nature of the beast because you're human and there
2 are things you're going to forget, but I don't want
3 you to feel stressed, like you have to rush,
4 because you only get one time to try this case and
5 I don't want anybody having -- you will have second
6 thoughts about things because nobody is perfect and
7 you're going to miss things, but I don't want you
8 feeling like you have to be rushed to present your
9 case because I already knew objectively looking at
10 this that it would take more than a week.

11 Again, I don't want anybody feeling
12 like they have to -- feel like somehow they're
13 compressed or that somehow I'm imposing some
14 artificial timeline on you because I'm not. So if
15 you have additional witnesses you need to call, you
16 are allowed to call them.

17 And, Mr. Mayer, likewise; if you have
18 any witnesses you need to add or subtract from your
19 list, let me know because I will allow you to try
20 your case as well.

21 MR. MAYER: Thank you, Judge.

22 THE COURT: And any rebuttal you may
23 need, do not feel that there is some -- you're in
24 some pressure -- that's not a healthy way to try a
25 case. It's not healthy for the system. It's not

1 healthy for you all and it's certainly not healthy
2 for the defendant, and I want you all to know that
3 you need to just try your case and don't be
4 stressed out.

5 MR. SIMPSON: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MR. SIMPSON: I needed that advice
8 today.

9 THE COURT: Well, you know, it's a
10 funny thing. I would be here anyway, so I find
11 Friday very helpful to clean off my desk, so the
12 phone isn't ringing and it's quiet. So, I mean --
13 and we're going to be here next week whether it's
14 trying this case or trying another case, so you
15 need to try your case and focus on doing -- being
16 the best advocate you can and don't get yourself
17 all stressed out about it.

18 (Jury in, 2:34 p.m.)

19 THE COURT: Ms. Dunmeyer, do you want
20 to sit near the bailiff in case you have --

21 A JUROR: Can I please?

22 THE COURT: Yes, ma'am. Not a worry.
23 And if you need anything else, please let us know.
24 If you all could let her sit closest to the bailiff
25 in case she needs -- and if you need to stand up or

1 anything, you just go ahead and do it. You don't
2 need my permission. Or if you need any assistance,
3 just please don't hesitate to let us know.

4 A JUROR: Thank you so much.

5 THE COURT: You may be seated.

6 Ladies and gentlemen, I need to, as
7 they say, fall on my sword. I apologize that you
8 had a longer lunch than we anticipated. I hope
9 that you, however, enjoyed the county's
10 hospitality. Jimmy John's is the only thing that
11 makes me cheat on my diet. I hope you all enjoyed
12 it.

13 We are -- we had some matters of law.
14 We continued to work until about 1:30 before we
15 broke for lunch, and I had to give the court staff,
16 as well as the attorneys, a little time to eat and
17 just sort of take a little deep breath as well. So
18 we apologize. I hope that you all went outside and
19 enjoyed some of the sunshine after you ate. You
20 could have gone outside.

21 JURORS: They told us we couldn't go
22 out.

23 THE COURT: I am so sorry for that
24 miscommunication. I told them that you all could
25 go outside. I apologize if that was

THOMAS WALTERS - REDIRECT EXAM BY MR. SIMPSON

1 miscommunicated in some way, but we appreciate your
2 patience and please note we don't take your time
3 for granted. We were working while you all were
4 waiting. So we will now resume with the witness'
5 testimony and the Court appreciates your patience.

6 You may proceed.

7 MR. SIMPSON: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 REDIRECT EXAMINATION

10 BY MR. SIMPSON:

11 Q. Investigator Walters, I believe when we
12 left off you had identified State's 43?

13 A. Yes, sir. This is the first month of
14 jail calls for Valentino Hayward.

15 Q. And we discussed two calls on this?

16 A. Yes, sir.

17 Q. And what number were those two calls
18 to?

19 A. 475-8212, which was his mother's phone.

20 Q. Thank you.

21 Investigator Walters, at some point did
22 you ask for a target number request from the jail?

23 A. Yes, sir, I did.

24 Q. And what number did you ask for?

25 A. For target number I used 843-607-5964.

THOMAS WALTERS - REDIRECT EXAM BY MR. SIMPSON

1 Q. And why did you make that target number
2 request?

3 A. I had made contact with a witness in
4 the case who I took an interview from, took an
5 audio statement from, and it was during the
6 investigation where I was learning that possibly
7 she was being contacted by --

8 Q. By whom?

9 A. Valentino Hayward.

10 Q. Using his PIN number?

11 A. No. It was coming from a different
12 number that she wasn't --

13 Q. Did she -- did you know what PIN number
14 it was coming from?

15 A. Yes, sir, I did.

16 Q. I'm sorry, did you then request all the
17 calls to that number?

18 A. Yes, sir, I did. The target call to
19 her number and the number came back with a -- and
20 their PIN number affirmed that.

21 Q. Okay. Was there then a third request?

22 A. Yes, sir, then I started -- then I got
23 a couple months calls from Brian Bivens.

24 Q. And were any calls -- I believe you
25 testified before, you have viewed the video

1 interview with the defendant?

2 A. Yes, sir.

3 Q. More than once?

4 A. Yes, sir.

5 Q. He speaks on that video?

6 A. Yes, sir.

7 Q. And do you have any special training on
8 voice identification?

9 A. No, sir.

10 Q. Okay. To you, does it sound like the
11 same voice on the first jail call as on the video?

12 A. Yes, sir.

13 Q. And what about on the Brian Bivens'
14 inmate number calls?

15 MR. MAYER: Objection.

16 THE COURT: Basis?

17 MR. MAYER: Relevance.

18 THE COURT: I think we've already done
19 what we needed to do in camera and you can move
20 along from that.

21 MR. SIMPSON: Thank you.

22 THE COURT: You're welcome. Proceed.

23 BY MR. SIMPSON:

24 Q. So were there also calls on Bivens' CD
25 where the caller uses the name Tino?

THOMAS WALTERS - REDIRECT EXAM BY MR. SIMPSON

1 A. Yes, sir.

2 Q. Okay.

3 A. I would say actually quite a few.

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

6 THE COURT: You may.

7 BY MR. SIMPSON:

8 Q. I will just have you ID -- I'm showing
9 you what's been marked for ID only as State's 45.
10 What is that exhibit?

11 A. These are jail calls from inmate
12 Brian Bivens.

13 Q. And, again, those are just jail calls
14 compiled using the Bivens PIN number?

15 A. Yes, sir.

16 Q. Mr. Walters, I want to ask you to get
17 away from the jail calls. One of your duties as an
18 investigator for the Solicitor's Office, I believe
19 you have already testified, is to try to identify
20 any other people within -- that could have
21 information on the case?

22 A. Yes, sir.

23 Q. And did you do that in this case?

24 A. Yes, sir.

25 Q. What was the persons's name?

THOMAS WALTERS - REDIRECT EXAM BY MR. SIMPSON

1 A. Elizabeth Littman.

2 Q. What did she go by?

3 A. Liz or Lizzie.

4 Q. So her name was Liz Littman?

5 A. Yes, sir.

6 Q. Okay. Did she provide you a statement
7 in this case?

8 A. Yes.

9 Q. And what date did she provide you a
10 statement in this case?

11 A. March 5, 2014, she came into our office
12 conference room and gave us a recorded statement.

13 Q. You said recorded. Was that recorded
14 on an audio recording?

15 A. Audio recording, yes, sir.

16 Q. Okay. Was that statement disclosed to
17 the defense immediately?

18 A. No, sir.

19 Q. At some point, is it your understanding
20 that we have to get that to the defense?

21 A. Yes, sir. It was made aware to the
22 defense and to the Courts that we had a statement,
23 but there is times with potential witness that we
24 try to pull back from disclosing that because of
25 safety or her privacy. So, in this case, we made

THOMAS WALTERS - REDIRECT EXAM BY MR. SIMPSON

1 it aware to both the courts and they gave us a date
2 when that tape would be -- should be released.

3 Q. Okay. And what date was that tape to
4 be released?

5 A. September 8th.

6 Q. And do you remember what day of the
7 week that was?

8 A. That was a Tuesday. It was the day
9 after Labor Day.

10 Q. Okay. September 8th of 2015?

11 A. Yes, sir, 2015.

12 Q. Okay. You said there are two calls on
13 the Bivens CD of relevance?

14 A. Yes, sir.

15 Q. And on the second call on the Bivens
16 CD, what is the date of that call?

17 A. August 28, 2015.

18 Q. Okay. Did you ever receive a second
19 statement from Liz Littman?

20 A. Yes, sir. I received a second
21 statement or a second statement was given by
22 Elizabeth on October 5, 2015.

23 Q. And through whom did we received that
24 statement?

25 MR. MAYER: Objection.

THOMAS WALTERS - REDIRECT EXAM BY MR. SIMPSON

1 THE COURT: Basis?

2 MR. MAYER: Lack of personal knowledge.

3 THE COURT: Please approach.

4 (Bench conference was had; the
5 following proceedings were had in open court.)

6 THE COURT: Okay. Sustained;
7 foundation.

8 BY MR. SIMPSON:

9 Q. Mr. Walters, you have already said
10 you're assigned to me, I'm one of your prosecutors?

11 A. Yes, sir.

12 Q. Do we work on cases together?

13 A. Yes, sir.

14 Q. Do you keep me apprised of what is
15 going on with you?

16 A. Yes, sir.

17 Q. And do I keep you apprised of what's
18 going on in a case on my end?

19 A. Very much, yes, sir.

20 Q. Probably gets on your nerves. Were you
21 made aware of the source of the second statement
22 when we received it?

23 A. Yes, sir.

24 Q. And through what channels?

25 A. I got it from you saying that the

THOMAS WALTERS - REDIRECT EXAM BY MR. SIMPSON

1 defense counsel just turned another statement -- a
2 new statement from Elizabeth Littman,
3 Lizzie Littman, over to us.

4 Q. I would like to just review a couple of
5 dates and then we will be finished. Okay.

6 Liz Littman provided a statement
7 initially on audio to our office on what date, the
8 first one?

9 A. The first time she gave us a statement
10 was March 5, 2014, that was two hours.

11 Q. The second phone call of relevance from
12 the Bivens CD is on what date?

13 A. August 28th, 2015.

14 Q. And the second statement we received
15 from Elizabeth Littman was on what date?

16 A. October 5, 2015.

17 Q. One final question,
18 Investigator Walters, part of your job as
19 investigator is that -- knowing how to contact a
20 potential witness?

21 A. Yes, sir.

22 Q. Updating that contact?

23 A. Yes, sir.

24 Q. Was Elizabeth -- what was going on at
25 the residence of Elizabeth Littman on September 1,

THOMAS WALTERS - RECROSS EXAM BY MR. MAYER

1 2015?

2 A. She was getting word that she was going
3 to be moving out of her address at 640 Sequoia
4 Street.

5 Q. Okay. 640 Sequoia Street, is that
6 close to the events of this?

7 A. Basically, right across the street.
8 It's the apartments across the street.

9 MR. SIMPSON: Okay. Thank you,
10 Investigator Walters. Please answer any questions
11 that Mr. Mayer has.

12 THE COURT: You may proceed.

13 MR. MAYER: Thank you, Judge.

14 THE COURT: You're welcome, yes, sir.

15 RECROSS-EXAMINATION

16 BY MR. MAYER:

17 Q. Investigator Walters, you testified
18 that in the '80s you were a police officer; right?

19 A. Yes, sir.

20 Q. And did you work murder investigations?

21 A. Yes, sir. After traffic division, I
22 became the hit-and-run investigator for awhile.

23 Q. Could you estimate for the jurors how
24 many man-hours are involved in conducting a murder
25 investigation?

THOMAS WALTERS - RECROSS EXAM BY MR. MAYER

1 A. How many man-hours? It depends how
2 fast it's solved, first of all. How fast it's
3 solved, hours, hours, days, sometimes weeks. It
4 just depends.

5 Q. Average? I mean, do you add up -- is
6 that common to know it's a thousand hours in a case
7 or 2000 hours in a case?

8 A. I never looked at it like that.

9 Q. Okay. So it's fair to say that it
10 easily could -- between all the police and
11 investigators and everything else, it easily could
12 be a thousand hours in man-hours?

13 A. Depends on how much you have when
14 you -- when that happens, how much information you
15 have on the suspect. You start with something
16 cold, a cold case, or are you starting right away
17 where the suspect is on scene when you get there.
18 It just depends.

19 Q. Okay. How about you personally in this
20 case? Now, you're not even with the police
21 department anymore. Now you're just with --

22 A. I'm an investigator with the -- yes,
23 sir.

24 Q. And how many hours do you estimate you
25 spent on this case?

THOMAS WALTERS - RECROSS EXAM BY MR. MAYER

1 A. Last three or four weeks, basically
2 every day.

3 Q. And have you had the opportunity to
4 review the Charleston Police Department's file in
5 this case?

6 A. Most of it, yes, sir.

7 Q. And they had several officers and
8 detectives involved; right?

9 A. Yes, sir.

10 MR. MAYER: Court's indulgence?

11 No further questions.

12 THE COURT: Any redirect?

13 MR. SIMPSON: No, Your Honor.

14 THE COURT: Any objection to the
15 witness being excused? From the State?

16 MR. SIMPSON: No, Your Honor.

17 THE COURT: From the defense?

18 MR. MAYER: No, Judge.

19 THE COURT: You're excused.

20 Can counsel please approach?

21 (Bench conference was had; the
22 following proceedings were had in open court.)

23 THE COURT: Madam Forelady, and ladies
24 and gentlemen, we have a brief matter of law to
25 take up. During this break, please do not discuss

DAVID OSBORNE - IN CAMERA TESTIMONY

1 the case and please leave your notepads in your
2 seats. We appreciate your patience in advance.

3 (Jury out, 2:47 p.m.)

4 THE COURT: You may proceed.

5 MR. SIMPSON: Thank you, Your Honor.

6 The State calls former detective, Detective
7 Osborne.

8 THE COURT: If he'll come to the stand.

9 DAVID OSBORNE

10 being first duly sworn, testified as follows:

11 THE CLERK: Thank you. Please state
12 your full name and spell your last name for the
13 record.

14 THE WITNESS: David Osborne,
15 O-s-b-o-r-n-e.

16 THE COURT: You may proceed.

17 MR. SIMPSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MR. SIMPSON: I would like the record
20 to reflect that we are out of the presence of the
21 jury for this line of questioning.

22 DIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q. Detective Osborne, you already
25 testified in this trial; correct?

DAVID OSBORNE - IN CAMERA TESTIMONY

1 A. Yes.

2 Q. Did you establish sort of your
3 professional career in that testimony?

4 A. I did.

5 Q. Did that career include being a
6 homicide detective for Charleston Police
7 Department?

8 A. Yes.

9 Q. Did it also include it being the
10 supervisor of the homicide unit?

11 A. It did.

12 Q. And how long -- how many years were you
13 with the Charleston Police Department?

14 A. It was over 11 years total.

15 MR. SIMPSON: Okay. Your Honor, to be
16 clear, I would not be asking the following
17 questions in front of a jury.

18 THE COURT: Okay.

19 BY MR. SIMPSON:

20 Q. In the course of your history with the
21 Charleston Police Department, have you ever had any
22 face-to-face personal interactions with the
23 gentleman sitting here?

24 A. I have.

25 Q. Could you -- as best -- I know this is

DAVID OSBORNE - IN CAMERA TESTIMONY

1 on the fly, but as best as you can recollect, could
2 you honestly confer to the Court the personal
3 interaction and the little bit about each that
4 you've had with Mr. Hayward.

5 A. I can. If I remember correctly, Your
6 Honor, my first encounter with Mr. Hayward was
7 involving an armed robbery. He was in the vehicle
8 of the car, and either I was directly involved with
9 interviewing him that time or with another officer.
10 He, along with two other individuals, were charged
11 with armed robbery.

12 My second encounter with him I believe
13 was around 2010, and there were two encounters that
14 year, if I remember correctly. He was a suspect in
15 a shooting and I believe he was also a victim in a
16 shooting. That case in which he was a victim, I
17 spoke to him several times.

18 I believe I spoke to him in reference
19 to another shooting investigation, but I know I
20 spoke to him quite awhile in reference to the
21 Marley Lion murder investigation. I remember that
22 conversation distinctly. We were in my police
23 vehicle and I spoke to him that day probably
24 30 minutes, 45 minutes.

25 And I'm sure there were others. I know

DAVID OSBORNE - IN CAMERA TESTIMONY

1 I spoke to him briefly in reference to this
2 investigation. Those are just the ones that I can
3 remember off the top of my head.

4 Q. These interactions, if you could
5 approximate for the Court -- yeah, you just said at
6 one point 35- to 45-minute conversation?

7 A. Yes.

8 Q. Is it fair to say that that was --
9 what's the approximate length of the interaction in
10 each? And I know it's almost impossible to --

11 A. It is. It is tough to recall. I know
12 in reference to the shooting, the two shooting
13 investigations, they would have at least been
14 30 minutes to an hour, especially where he was the
15 victim.

16 Q. Okay. So these were not just hi,
17 hello, how are you conversations?

18 A. No. In fact, just this investigation
19 right here, I also had personal knowledge what his
20 cell phone number was because I spoke to him on the
21 phone as well. I even had his number saved in my
22 phone.

23 Q. So when this investigation started,
24 your interactions with Mr. Hayward were such that
25 you had his cell number?

DAVID OSBORNE - IN CAMERA TESTIMONY

1 A. Yes.

2 Q. In your phone?

3 A. Yes.

4 Q. Okay. And just to give us an idea of
5 dates, these interactions spanned a period of how
6 long?

7 A. The shootings were in 2010. I believe
8 the armed robbery which he was arrested for which I
9 didn't get a chance to look up was prior to that.

10 Q. So we're talking --

11 A. So probably, like -- until 2010,
12 probably, like, 2008, 2007.

13 Q. In the year of the Marley Lion
14 investigation?

15 A. No. The Marley Lion investigation
16 would have been in 2012. I'm saying the first time
17 I had interacted with him was, like, 2008 or so.

18 Q. Okay. So these were interactions that
19 repeated over the course of about, sounds like,
20 five or six years?

21 A. Yes.

22 Q. Do you feel through all this span of
23 interactions, personal interactions with the
24 defendant, that you have a pretty good knowledge of
25 his voice?

DAVID OSBORNE - IN CAMERA TESTIMONY

1 A. Yes.

2 Q. And you've testified to the Court that
3 you actually had his cell number in your phone?

4 A. I did.

5 Q. Is it reasonable to think that you have
6 spoken to him on the phone before?

7 A. I know I did.

8 Q. Okay. Over the lunch break, did I give
9 you the opportunity to listen to what was marked
10 for ID only as State's 43, two samples from that
11 CD?

12 A. Yes, we did.

13 Q. Over the lunch break, did you have an
14 opportunity to review two samples from what's been
15 marked for ID only as State's 45?

16 A. Yes, I did.

17 Q. Okay. And what were your conclusions
18 after listening to those calls?

19 A. That Tino was one of the individuals on
20 the call.

21 MR. SIMPSON: Okay. Your Honor, what
22 I would seek to do, maybe Mr. Mayer --

23 THE COURT: Any objection?

24 MR. MAYER: Judge, so --

25 THE COURT: He's seeking to

DAVID OSBORNE - IN CAMERA TESTIMONY

1 authenticate Mr. -- your client's voice through
2 Mr. Osborne. Of course he would not be able to
3 talk about any stuff he just talked about. That
4 would be prior bad acts not the subject of a
5 conviction and it would be character and it would
6 be extremely problematic.

7 MR. SIMPSON: Absolutely, Your Honor.
8 I would just say do you recognize his voice? Yes.
9 Were you able to recognize it on these calls? Yes.

10 And I would seek to play seven short
11 phone calls.

12 MR. MAYER: As long as -- as long as
13 Mr. Osborne is clear here in camera as to which
14 voice is Valentino --

15 THE COURT: I guess the only question
16 Mr. Simpson is going to ask the detective is have
17 you reviewed State's 43 and 45. If I'm wrong with
18 the numbers, I apologize. I think it's 43 and 45.

19 And if he has listened to -- and if I'm
20 wrong, please correct me, but I understand what he
21 would be asking is, have you listened to State's 43
22 and 45, and do you recognize any of the voices?
23 And he would say that he recognized the voice of
24 Tino and then he'd want to play them.

25 Is that accurate?

DAVID OSBORNE - IN CAMERA TESTIMONY

1 MR. SIMPSON: Perfectly accurate.

2 THE COURT: So do you have any
3 objection to that line of questioning?

4 MR. MAYER: I don't have an objection
5 to that line of questioning.

6 THE COURT: Do you have any objection,
7 then, to him authenticating your client's voice on
8 these tapes?

9 MR. MAYER: Judge, I do have an
10 objection to that.

11 THE COURT: What's the basis of the
12 objection?

13 MR. MAYER: Well, on the basis that
14 these interactions took place years ago and that
15 there is nothing distinctive about my client's
16 voice.

17 THE COURT: Well, everybody's voice
18 is distinct. Everybody's voice is different. It's
19 just like a handprint or a fingerprint.
20 Everybody's voice is different.

21 Unless, of course, within families,
22 even though people sound the same, once you talk to
23 them a little while, you know it's different. Even
24 when you work together a lot, you still -- people
25 start to sound alike after you have spoken for

DAVID OSBORNE - IN CAMERA TESTIMONY

1 while and you can distinguish between voices.

2 So my question, it's really a very
3 simple question: Do you have an objection to this
4 witness? We have established you have no objection
5 to the line of questioning, but my question then
6 becomes, do you have a question -- an objection to
7 the authenticity to your client's voice on these
8 recordings?

9 MR. MAYER: Not to question
10 Mr. Osborne's veracity or anything, but he is now
11 working for the Solicitor's Office, which to me
12 seems problematic and is using an employee from the
13 Solicitor's Office as the one to authenticate the
14 defendant's voice.

15 THE COURT: Let me ask another
16 question, Mr. Simpson: You indicated that
17 Detective Holmes is on vacation. Is that just for
18 today or is that for next week as well?

19 MR. SIMPSON: I'm unsure about his
20 status next week?

21 THE COURT: Can we find out while we're
22 on the break?

23 MR. SIMPSON: Yes, Your Honor. But
24 he's generally available to us. It's not --

25 THE COURT: Well, I want to -- I want

DAVID OSBORNE - IN CAMERA TESTIMONY

1 to -- you know, I don't ask random questions, so
2 there is a reason I'm asking the question. So can
3 we find out?

4 MR. SIMPSON: Yes. Detective
5 Krasowski is giving him a call right now.

6 THE COURT: Thank you. I appreciate
7 it.

8 MR. SIMPSON: Detective Krasowski
9 wants to know if the Court would like him here
10 today if possible?

11 THE COURT: If he's available, that
12 would be -- but I don't want -- I mean, if he's on
13 vacation cutting his grass, I don't want him to --

14 MR. KRASOWSKI: I spoke with him during
15 lunch and he said he could make himself available
16 if needed. I don't know the time frame that he
17 could be here, but I will find that out.

18 THE COURT: That would be great.

19 MR. KRASOWSKI: Thank you.

20 THE COURT: You're welcome. And why
21 don't you check to see if your witness is here,
22 Mr. Mayer --

23 MR. MAYER: Yes, Judge.

24 THE COURT: -- while we're doing that?
25 And so as I under -- well, I'll ask

DAVID OSBORNE - IN CAMERA TESTIMONY

1 that question when Mr. Mayer comes back.

2 MR. SIMPSON: So just to clarify,
3 Detective Holmes has never listened to these jail
4 tapes, so were he to come, we would have to go play
5 them for him. And I do believe --

6 THE COURT: Well, wait to talk until
7 Mr. Mayer comes --

8 MR. SIMPSON: Oh.

9 Your Honor, Detective Holmes said he
10 could be here in about an hour. What you were
11 looking for is testimony identical to --

12 THE COURT: Well, I wanted to know is
13 he on vacation next week or is he just on
14 vacation --

15 MR. SIMPSON: He's on leave until
16 Tuesday, so he'll be back in the office on Tuesday.

17 THE COURT: So does he plan to be out
18 of town on Monday or Tuesday?

19 MR. KRASOWSKI: No, ma'am, I don't
20 believe so.

21 THE COURT: An hour from now is
22 4:00 o'clock. Well, let's wait for Mr. Mayer to
23 come back. I don't want to talk outside of his
24 presence.

25 MR. MAYER: She is here, Judge,

DAVID OSBORNE - IN CAMERA TESTIMONY

1 Ms. Kraus.

2 THE COURT: Do you think we will reach
3 her today? How many witness do you -- well, let me
4 ask this question differently. Backing up to the
5 State, do you plan to call Brian Bivens?

6 MR. SIMPSON: No. Judge, we plan to
7 call no more witnesses, assuming that these --

8 THE COURT: So you're not calling
9 Antonio Gibson either?

10 MR. SIMPSON: We're going to call
11 every witness we can to play these --

12 THE COURT: I would imagine. Are you
13 going to call Detective Krasowski?

14 MR. SIMPSON: No, Your Honor.

15 THE COURT: And you cannot -- do you
16 plan to call Ms. Littman?

17 MR. SIMPSON: No, Your Honor.

18 THE COURT: And I guess not
19 Investigator Osborne either?

20 MR. SIMPSON: He's on the stand.

21 THE COURT: Oh, duh.

22 MR. SIMPSON: Oh, Osborne? No, no.
23 Sorry.

24 THE COURT: That's a different one.
25 Samuel Stuart.

DAVID OSBORNE - IN CAMERA TESTIMONY

1 MR. SIMPSON: Slight chance in
2 rebuttal. Probably not.

3 THE COURT: And that would be everyone?

4 MR. SIMPSON: Yes.

5 THE COURT: Mr. Mayer, do you plan to
6 call Thomas Brown? Well, I guess the better way to
7 ask, is there anybody on this list you're not
8 calling?

9 MR. MAYER: Yes, Judge, absolutely
10 there is. And at this point I would not anticipate
11 calling Thomas Brown, Sofia Knowle, Officer Miller,
12 Investigator Sheehan. I don't think I would call
13 Officer Broadwater or Samuel Stuart or Sidaysia
14 Freeman. I can't call Vanessa Singleton because
15 that's the client's mom and she wanted to sit in so
16 we nixed her off this list.

17 THE COURT: Okay.

18 MR. MAYER: I do plan to call
19 Wallace Bishop.

20 THE COURT: Whitney Berry has already
21 testified.

22 MR. MAYER: Yes.

23 THE COURT: And Officer Burton has
24 already testified.

25 MR. MAYER: And we stipulated about No.

DAVID OSBORNE - IN CAMERA TESTIMONY

1 6 -- well, my list as No. 6, Gladwell. So she will
2 not be testifying.

3 THE COURT: Are you going to call
4 Officer Wooley?

5 MR. MAYER: I think she already
6 testified.

7 THE COURT: She did. I just needed to
8 make sure whether you plan to call her again.

9 MR. MAYER: No, Judge. That's a good
10 question, though, but, no.

11 THE COURT: So I have left
12 Herbie Singleton, Fred Sanders.

13 MR. MAYER: Judge, I won't need
14 Fred Sanders either now.

15 THE COURT: Wallace Bishop?

16 MR. MAYER: We will be calling
17 Wallace Bishop.

18 THE COURT: Shannon Fraley?

19 MR. MAYER: We will be calling
20 Shannon Fraley.

21 THE COURT: Ryan Gibbs?

22 MR. MAYER: We will not be calling
23 Ryan Gibbs.

24 THE COURT: And I don't know who
25 John Doe referred to. I assume that's eliminated

DAVID OSBORNE - IN CAMERA TESTIMONY

1 as well?

2 MR. MAYER: Yes, ma'am.

3 THE COURT: And then I had Brian
4 Gammons.

5 MR. MAYER: We will be calling Brian.

6 THE COURT: Deputy Coroner Kraus.

7 MR. MAYER: Yes.

8 THE COURT: And Bill Caps.

9 MR. MAYER: And Bill Caps, yes, Judge.

10 And we may want to call Officer Krasowski,
11 Detective Krasowski, but we would request -- we
12 would like to be able to treat him with leading
13 questions.

14 MR. SIMPSON: What?

15 THE COURT: I'm sorry, you lost me.

16 MR. MAYER: I was planning to cross
17 Officer Krasowski, but if the State is not calling
18 him, I think I would still like to.

19 THE COURT: I think you are bound to
20 call him in your case in chief, I mean, if you want
21 to call him. You don't have to. I didn't mean to
22 say bound because you don't have any burden of
23 proof. You don't have to call anybody. If you
24 call him in your case in chief, I don't think
25 that's going to eliminate you from questioning him

DAVID OSBORNE - IN CAMERA TESTIMONY

1 appropriately under the rules.

2 MR. MAYER: Thank you.

3 THE COURT: Okay. Now, I think that I
4 would prefer -- I think that the cleaner way to
5 authenticate the tapes, because right now we're
6 just going through legal gymnastics, which is
7 the -- well, it's not really legal gymnastics.

8 It's a requirement and it's an
9 important requirement and it's there for a reason
10 to authenticate a person's voice because it goes to
11 -- when you have something as critical as
12 credibility in a case and in a case like this where
13 everything is basically circumstantial or pieces
14 fitting together, it is important and the Rules
15 serve a definitive purpose.

16 I think the cleaner way to do it is to
17 have Detective Holmes, who interviewed the
18 defendant for three hours, who sat in very close
19 proximity to him, they had what I would call, based
20 on Detective Holmes' testimony, a conversational
21 tone, which is evidenced by the recording, to
22 authenticate his voice, and I think that just will
23 eliminate everything.

24 So tell him if he could be here in an
25 hour, that would be wonderful. If that presents a

DAVID OSBORNE - IN CAMERA TESTIMONY

1 problem for him, we will do him Monday morning, but
2 if he could come today that would be wonderful so
3 then that would free him up to go out of town, do
4 whatever he wants to do on his time off.

5 MR. KRASOWSKI: I understand. I'll
6 give him a call.

7 MR. SIMPSON: We would then require an
8 additional 45 minutes so that he can review the
9 jail tape.

10 THE COURT: I don't think he has to
11 review the entire tape. He can listen to the
12 beginning of the tape, and if he can authenticate
13 the defendant's voice, I think that's sufficient.

14 MR. SIMPSON: Well, I would
15 certainly --

16 THE COURT: Because I don't think
17 there's any testimony that he -- that these tapes
18 are hypothecated or that they're different or that
19 they don't contain what they contain. Mr. Mayer
20 just wants you to clear the hurdles of
21 authenticating his client's voice for what is
22 significantly damaging admissions against him if it
23 would come into the record.

24 I don't think he has to listen to all
25 45 minutes of it, but now if you feel --

DAVID OSBORNE - IN CAMERA TESTIMONY

1 MR. SIMPSON: I would rather not do
2 that live for the first time.

3 THE COURT: No, and I wouldn't have --
4 and I wouldn't have you do that. I think you need
5 to play it outside.

6 MR. SIMPSON: What I'll do, then, Your
7 Honor, is if he can be here to play clips of each.

8 THE COURT: No, you can do it outside
9 of the jury's presence.

10 MR. SIMPSON: Okay.

11 THE COURT: Because I think he needs to
12 listen to it. I think he needs to be able to say,
13 I have listened to it and I recognize his voice.

14 Yes, sir.

15 MR. KRASOWSKI: He's on his way.

16 THE COURT: Perfect. Thank you so very
17 much.

18 Now, so that is your last witness,
19 Mr. Simpson?

20 MR. SIMPSON: Yes.

21 THE COURT: What we will do then and
22 what we can do is I can instruct the jury that
23 we're waiting on a witness to arrive and that we
24 are going to push forward.

25 And, Mr. Mayer, if you would like, I

DAVID OSBORNE - IN CAMERA TESTIMONY

1 can go ahead and question your client regarding his
2 right to testify. You can go ahead and chat with
3 him about that. I will certainly give you
4 additional time to chat with him about that, but I
5 think you need to have that initial conversation,
6 because although I'm sure you may have had it
7 before, that was before all of the evidence came in
8 and all the case -- and the case developed as it
9 did. And I think you need to have a meaningful
10 conversation with him about his right to testify.

11 Now, before I question him about that,
12 I need to know, does the State have any record it
13 would be seeking to introduce to impeach his
14 credibility?

15 I'm sorry, can we let Mr. Osborne go?

16 MR. SIMPSON: Yes, Your Honor.

17 THE COURT: Have a great afternoon.

18 THE WITNESS: Thank you.

19 THE COURT: Appreciate you
20 accommodating us.

21 And my other concern is -- and I
22 thought about it, but I didn't say it out loud. My
23 other concern about Mr. Osborne is it creates --
24 not that I question his veracity at all, but the
25 other problem that you really -- it's hard to get

VALENTINO HOWARD - EXAM BY THE COURT

1 around the whole issue of prior bad acts and how he
2 would have known the defendant's voice.

3 I think it's not a really big leap for
4 the jury to assume that he had some other contact
5 with him and that's how he knew his voice other
6 than this case, and I just need to eliminate that
7 altogether.

8 All right. Now, what record would
9 be -- or is there any record?

10 MR. SIMPSON: There is, but we
11 wouldn't --

12 THE COURT: Okay. Now, sir, if you
13 would stand for me please and raise your right hand
14 to be sworn.

15 VALENTINO HAYWARD,
16 being first duly sworn, testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q. You can put your right hand down.
20 Please state your full name for the record.

21 A. Valentino Hayward.

22 Q. Mr. Hayward, do you have a middle name?

23 A. Yes, ma'am.

24 Q. What is your middle name?

25 A. Martel.

VALENTINO HOWARD - EXAM BY THE COURT

1 Q. Is that Monte?

2 A. No, M-a-r-t-e-l.

3 Q. Martel? Okay. Sir, if you could speak
4 up just a little bit more for me.

5 A. All right. Martel.

6 Q. Sir, at this time I'm going to explain
7 to you certain of your rights. If you do not
8 understand anything that I say, please let me know.
9 If you want me to explain anything in more detail,
10 please let me know. Do you understand?

11 A. Yes, ma'am.

12 Q. We have now reached the state of the
13 trial where you may present your defense. You have
14 the right to claim the protections given to you by
15 the Fifth Amendment to the United States
16 Constitution and the State Constitution, which
17 states, in part, that no person shall be required
18 in a criminal case to incriminate themselves, which
19 means you do not have to testify in this case.

20 You have no burden of proof in this
21 case. The burden of proof remains on the State to
22 prove each and every element of the offenses that
23 you are charged with beyond a reasonable doubt;
24 however, you have the right to testify if you so
25 desire, and any decision to testify must be made

VALENTINO HOWARD - EXAM BY THE COURT

1 freely, voluntarily, and intelligently with
2 knowledge of the protections given to you by the
3 Fifth Amendment to the Constitution of the United
4 States, as well as our State Constitution, so that
5 you can make a free, informed, and voluntary
6 decision regarding that.

7 No one can make you testify. It's a
8 personal right and no one can waive that right
9 except you. And as I have explained, you do have
10 the right to testify on your own behalf, if you
11 make that decision freely, voluntarily, and
12 intelligently.

13 If you decide to testify, you will be
14 subject to the same rules that govern other
15 witnesses and you may be examined and
16 cross-examined on any relevant issue in this case.

17 In addition, if you have any
18 convictions involving dishonesty or false statement
19 or crimes punishable by imprisonment for more than
20 one year and this Court determines that further
21 value of admitting this evidence outweighs its
22 prejudicial effect to you, the Solicitor will be
23 able to introduce your record to attack your
24 credibility.

25 If you decide to testify, this decision

VALENTINO HOWARD - EXAM BY THE COURT

1 on your part must be made freely, voluntarily, and
2 intelligently with knowledge of the protections
3 given to you by the Fifth Amendment and the
4 consequences of your decision to testify.

5 If you decide not to testify, I will
6 instruct the jury that they cannot give this fact
7 any consideration whatsoever, that there's to be
8 absolutely no prejudice to you, that it is not to
9 be discussed in any manner whatsoever in their
10 deliberations, that you have the constitutional
11 right to remain silent and the burden remains on
12 the State to prove your guilt beyond a reasonable
13 doubt.

14 It is left entirely up to you whether
15 or not you testify. You may speak with your
16 attorney, your family members, friends, or anyone
17 else, but the final decision, sir, is left entirely
18 up to you.

19 Have you understood your rights as I
20 have just explained them to you?

21 A. Yes, ma'am.

22 Q. Do you have any questions about your
23 rights as I have explained them to you?

24 A. No, ma'am.

25 Q. Sir, have you discussed with your

VALENTINO HOWARD - EXAM BY THE COURT

1 lawyer whether you should or should not testify?

2 A. Not yet.

3 Q. Okay. I will give you a few minutes to
4 do that.

5 THE COURT: If you will take
6 Mr. Hayward where he can speak with Mr. Mayer
7 privately.

8 And then, Mr. Mayer, why don't you go
9 ahead -- Ms. Kraus is here?

10 MR. MAYER: Yes, Judge.

11 THE COURT: Once you have done that,
12 what I'll do is instruct the jury we will take a
13 couple of witnesses out of sequence and then we can
14 take Ms. Kraus. And by that time we should be back
15 on track.

16 MR. SIMPSON: I have no objection to
17 going out of sequence.

18 THE COURT: Thank you. I appreciate
19 your accommodation.

20 All right. We'll be at ease for a few
21 minutes while you talk with your client.

22 MR. MAYER: Judge, for the record, we
23 have discussed this issue at length already --

24 THE COURT: I'm sure.

25 MR. MAYER: -- twice.

VALENTINO HOWARD - EXAM BY THE COURT

1 THE COURT: I'm sure, but, you know,
2 it's a funny thing. It's like when somebody asks
3 for a trial, then the reality of it -- and, you
4 know, truth is stranger than fiction. Things
5 develop differently and he may have some questions
6 for you.

7 MR. MAYER: Yes, Judge. Thank you.

8 THE COURT: All right.

9 MR. SIMPSON: May we take a comfort
10 break too? Do we have time to do that?

11 THE COURT: Absolutely.

12 MR. SIMPSON: Thank you, Judge.

13 (A recess transpired.)

14 THE COURT: I remind you you're still
15 under oath. Have you discussed with your attorney
16 whether you should or should not testify?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you need to speak with
19 him any further at this time?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: And, sir, do you wish to
22 testify?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Okay. You can take your
25 seat.

1 All right. What we will do is, I will
2 bring the jury in and I will tell them we have had
3 some scheduling challenges, and as a result I'm
4 taking witnesses -- or a witness out of order and
5 we appreciate their accommodating us.

6 You can call Ms. Kraus and then -- by
7 then the detective will be here and we can go from
8 there. And that should probably take us to 5:00.
9 After which then you can be prepared to bring the
10 rest of your witnesses next week.

11 MR. MAYER: Thank you, Judge.

12 THE COURT: You're welcome.

13 MR. MAYER: Should I go ahead and
14 release my other witnesses that are here?

15 THE COURT: How many witnesses do you
16 have?

17 MR. MAYER: I have -- I think I have
18 one other witness who -- it's his old employer.

19 THE COURT: Keep them here just in
20 case.

21 MR. MAYER: Okay. They don't have to
22 wait too long.

23 THE COURT: Just keep them here just in
24 case.

25 MR. MAYER: Judge, should I call

1 Ms. Kraus?

2 THE COURT: Yes, go ahead. Do you need
3 the bailiff?

4 THE BAILIFF: I'll get her. I'll get
5 her. What's her name?

6 MR. MAYER: Kelly Kraus.

7 (Jury in at 3:21 p.m.)

8 THE BAILIFF: All jurors are present,
9 Your Honor.

10 THE COURT: You may be seated. Ladies
11 and gentlemen, due to some scheduling challenges
12 with the arrival of witnesses, we are going to
13 proceed with some witnesses out of order.

14 Mr. Mayer, you may proceed.

15 MR. MAYER: Thank you, Judge.

16 THE COURT: You're welcome.

17 MR. MAYER: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. MAYER: Call Ms. Kelly Kraus.

20 THE COURT: Ms. Kraus, if you would
21 come to the stand to be sworn.

22 KELLY KRAUS

23 being first duly sworn, testified as follows:

24 THE CLERK: You may be seated. Please
25 speak into the microphone and state your full name

KELLY KRAUS - DIRECT EXAM BY MR. MAYER

1 and spell your last name for the record.

2 THE WITNESS: Kelly Kraus, K-R-A-U-S.

3 DIRECT EXAMINATION

4 BY MR. MAYER:

5 Q. Ms. Kraus, have you testified at trial
6 before?

7 A. Yes.

8 Q. Okay. So, as you know, please direct
9 your answers to the jury. Please describe for the
10 jury what your job is and what you do.

11 A. Yes. I am a Deputy Coroner for
12 Charleston County and my job is to respond to
13 deaths that are traumatic or unwitnessed or
14 anything that needs to be investigated. Our job is
15 to investigate deaths, determine cause and manner,
16 also identify the decedent and make a notification
17 to their families.

18 Q. And were you called upon to work the
19 death of Deontre Miles?

20 A. I was.

21 Q. Okay. How did you go about working
22 that case?

23 A. I got notified by Charleston County EMS
24 that there was a death from a shooting on Sequoia
25 Street, and I responded to the scene.

KELLY KRAUS - DIRECT EXAM BY MR. MAYER

1 Q. Okay. And is part of your job passing
2 information on to the pathologist?

3 A. Yes, it is.

4 Q. And also transporting the body; right?

5 A. Well, we have a contract with a service
6 that transports the bodies for us.

7 Q. Okay.

8 A. But we arrange for that to be done.

9 Q. And in this case, did you pass -- did
10 you arrange for that to be done with Mr. Miles'
11 body?

12 A. Yes.

13 Q. And did you pass on information to the
14 pathologist as well?

15 A. Yes.

16 Q. What did you -- what information did
17 you pass on out of your mouth to the pathologist?

18 MR. SIMPSON: Objection, Your Honor.

19 THE COURT: Basis?

20 MR. SIMPSON: Statement contains
21 hearsay.

22 THE COURT: Well, she is saying what
23 she said, so it's a statement of a proponent.

24 MR. SIMPSON: Passing on information
25 she acquired from others.

KELLY KRAUS - DIRECT EXAM BY MR. MAYER

1 THE COURT: Well, it's in the course of
2 her investigation. I'll give him a little
3 latitude. I don't think it's really being offered
4 for its truth.

5 Mr. Mayer, to the extent that she knows
6 of her own personal knowledge because she cannot
7 say what someone said to her.

8 THE WITNESS: Okay. Well, when I
9 scheduled his autopsy and spoke with the forensic
10 pathologist, we gave all his demographic
11 information. What I passed along to the
12 pathologist was the decedent's name and date of
13 birth and the circumstances regarding his death,
14 which is -- at that time, which is probably just an
15 hour or so or right after I leave the scene of the
16 incident is when I called him.

17 So any information that I give to the
18 forensic pathologist is just early-on information
19 and preliminary things. And it just tells
20 basically what we have learned, which comes from
21 officers and what they tell me when I arrive on the
22 scene and then also what I see.

23 BY MR. MAYER:

24 Q. Okay. And here, what information did
25 you think was relevant that you passed on to the

KELLY KRAUS - DIRECT EXAM BY MR. MAYER

1 pathologist?

2 A. Right. I --

3 THE COURT: She can only say what she
4 knows of her own personal knowledge, what she has
5 indicated by her testimony that she perceived. She
6 can't state what somebody told her. That's
7 hearsay.

8 So, ma'am, what you perceived or saw,
9 what you know of your own knowledge, you may
10 answer -- you may give in response to the question.

11 THE WITNESS: Okay.

12 THE COURT: You may proceed.

13 BY MR. MAYER:

14 Q. Well, now -- okay. Well, if you can
15 answer the question given those caveats, Ms. Kraus,
16 feel free.

17 A. What I -- well, given that -- I mean,
18 what I told the pathologist was just what I saw
19 upon my arrival, the deceased, how he was found and
20 his injuries.

21 Q. Okay. Now, you made a statement to the
22 pathologist that was based on, I guess, some part
23 of a preliminary investigation?

24 A. That's right.

25 Q. And do you know where you got that

KELLY KRAUS - DIRECT EXAM BY MR. MAYER

1 information from?

2 A. First responders, which would have been
3 officers or paramedics.

4 Q. Okay. Is there anyone else that
5 information might come from?

6 A. No. I do not know where they get their
7 information from. That could be from other
8 witnesses at the scene, but I just spoke to -- this
9 particular scene, I spoke to officers that were at
10 the scene and paramedics.

11 Q. Okay. Do you recall specifically or do
12 you have notes anywhere that you could reference
13 that would tell you the exact source of this
14 statement?

15 A. I can look through my notes. Give me
16 one second.

17 Q. Please take your time.

18 A. No, I do not see in my notes anything
19 like that.

20 Q. But for you to have passed on anything
21 to the pathologist, you would have only passed on
22 information that you believed to be relevant and
23 reliable both?

24 A. Right. At that time.

25 Q. Okay. And any information you were

KELLY KRAUS - CROSS EXAM BY MR. SIMPSON

1 passing on, like you said, it would have come from
2 either police or EMS?

3 A. Right. I did not speak to any
4 witnesses at that scene besides the police and EMS.
5 I spoke to family, but that was in reference to
6 making the notification.

7 MR. MAYER: Okay. Court's indulgence?

8 THE COURT: Yes, sir.

9 MR. MAYER: I guess I have no further
10 questions.

11 THE COURT: Any questions for the
12 witness?

13 MR. SIMPSON: Just briefly. Thank
14 you.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION

17 BY MR. SIMPSON:

18 Q. Hey, Ms. Kraus.

19 A. Hello.

20 Q. You've already expounded on this a
21 little bit, but the coroner's -- is it true that
22 the coroner's duty is to come out, assess a
23 suspicious death and determine some sort of
24 suspected manner of death?

25 A. Yes.

KELLY KRAUS - CROSS EXAM BY MR. SIMPSON

1 Q. And pass on, I believe you used the
2 words, preliminary and brief, history to the
3 forensic pathologist?

4 A. That's correct.

5 Q. And you have the very unenviable job of
6 notifying the family?

7 A. (Nodding)

8 Q. Managing the remains of the individual;
9 correct?

10 A. Correct.

11 Q. The job of figuring out what happened
12 in a homicide or suspected criminal activity, what
13 agency does that fall on?

14 A. That falls to the law enforcement, to
15 police.

16 Q. Okay. So when you get to a scene, you
17 want to get just a preliminary assessment of what
18 might be suspected at that time?

19 A. That's correct.

20 Q. And is that some -- in any way some
21 sort of final determinative --

22 A. No.

23 Q. -- assessment?

24 A. No. Things change as the case
25 progresses.

KELLY KRAUS - CROSS EXAM BY MR. SIMPSON

1 Q. Okay. And so what you want to do is
2 ask the people there and sort of -- and I'm not
3 minimizing your job or anything, but --

4 A. Correct.

5 Q. -- assess from others, right? Kind of
6 what the thoughts are on the fly and pass those on?

7 A. That's right.

8 Q. Okay. So -- and, again, not be
9 belittling your work in any way, shape, or form,
10 but if we were interested in any sort of details or
11 evidence of what actually occurred, where would our
12 attention be better directed?

13 A. Law enforcement or investigating agency
14 police-wise.

15 MR. SIMPSON: Okay.

16 THE COURT: Any redirect?

17 MR. MAYER: No, Judge.

18 THE COURT: Any objection to the
19 witness being excused from the State?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: From the defense?

22 MR. MAYER: No, Judge.

23 THE COURT: Ma'am, you're excused.

24 THE WITNESS: Thank you.

25 THE COURT: You're welcome.

SHANNON FRALEY - DIRECT EXAM BY MR. MAYER

1 You may call your next witness.

2 MR. MAYER: Judge, we will call
3 Ms. Shannon Fraley.

4 THE COURT: Shannon Fraley.

5 SHANNON FRALEY

6 being first duly sworn, testified as follows:

7 THE CLERK: Be seated. You just need
8 to speak into this microphone and state your full
9 name and spell your last name.

10 THE WITNESS: Shannon Christy Fraley,
11 F-R-A-L-E-Y.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. MAYER:

15 Q. Hi, Ms. Fraley. Aaron Mayer, I
16 represent Valentino. Please tell the jury a little
17 bit about yourself and where you work.

18 A. I work for Azalea Motors. I'm the
19 office manager down there. I've been there for 11
20 years.

21 Q. Okay. And during your time there, did
22 you have the opportunity to meet Valentino?

23 A. Yes, sir.

24 Q. About when did you get to meet him?

25 A. He's worked for us for a good while.

SHANNON FRALEY - DIRECT EXAM BY MR. MAYER

1 Exact date, I couldn't tell you.

2 Q. But he's -- he's worked there as long
3 ago as -- what year did he start? Do you know?
4 Might have been 2010?

5 A. Yeah, at least.

6 Q. Is that right?

7 A. That sounds right, yeah.

8 Q. And he was -- he was working full time
9 there; is that right?

10 A. Yes.

11 Q. Monday through Friday?

12 A. Uh-huh.

13 Q. And if you -- if you recall
14 specifically, do you recall whether he worked the
15 day of December 11, 2013?

16 A. I honestly -- I don't have the pay
17 records with me, so honestly, I don't remember.

18 Q. Okay. But if I represented to you that
19 that was a Wednesday, that would --

20 MR. SIMPSON: Objection, Your Honor.

21 THE COURT: Basis?

22 MR. SIMPSON: Leading.

23 THE COURT: I will give him a little
24 latitude.

25 BY MR. MAYER:

SHANNON FRALEY - DIRECT EXAM BY MR. MAYER

1 Q. Wednesday would have been an ordinary
2 day for him to work?

3 A. Yes.

4 Q. Okay. And what were his typical hours?

5 A. Usually, he was there any time between
6 8:30 or 9 in the morning until about 5 in the
7 evening, sometimes later.

8 Q. And what was his job with Azalea
9 Motors?

10 A. Basically, cleaned up the cars, checked
11 tire pressure, that kind of thing, made sure that
12 the oil looked fine too and that kind of thing, see
13 if they needed an oil change and stuff like that.

14 Q. And you paid him for his work?

15 A. Yes.

16 MR. MAYER: Okay. No further
17 questions.

18 THE COURT: Any questions for the
19 witness?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: Any objection to the
22 witness being excused?

23 MR. SIMPSON: No.

24 THE COURT: From the defense?

25 MR. MAYER: No.

SHANNON FRALEY - DIRECT EXAM BY MR. MAYER

1 THE COURT: Ma'am, you're excused.

2 You may proceed with your next witness.

3 MR. MAYER: Thank you, Judge.

4 THE COURT: You're welcome.

5 MR. MAYER: We would like to call

6 Herbie Singleton, if he's in the hallway.

7 THE COURT: Could the bailiff check and
8 see if -- thank you. I appreciate it.

9 MR. SIMPSON: Judge, may we approach?

10 THE COURT: Yes.

11 (Bench conference was had; the
12 following proceedings were had in open court.)

13 THE COURT: You may proceed.

14 Is the objection withdrawn?

15 MR. SIMPSON: Your Honor, we'll waive
16 our objection.

17 THE COURT: Okay.

18 HERBIE SINGLETON

19 being first duly sworn, testified as follows:

20 THE CLERK: Please be seated. I need
21 you to speak into this microphone and please state
22 your first name and spell your last name.

23 THE WITNESS: Herbie Val Singleton,
24 S-i-n-g-l-e-t-o-n.

25 THE COURT: Sir, could you tell us your

HERBIE SINGLETON - DIRECT EXAM BY MR. MAYER

1 middle name again?

2 THE WITNESS: Val, V-A-L.

3 THE COURT: Thank you.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MR. MAYER:

8 Q. Mr. Singleton, please tell the jury how
9 you know Valentino.

10 A. I'm his father. I'm considered his
11 step-father, but I raised him since he was five
12 years old, so I consider him my son.

13 Q. Okay. And what I would like you to do
14 is just tell the jury a little bit about
15 Valentino's educational background and history.

16 A. My understanding he gone all the way up
17 to, I believe, the 11th grade, not no troubled
18 child.

19 Q. And I don't want you to, you know, get
20 into anything like that. If you know -- I can ask
21 you specific questions.

22 Do you know if he's been diagnosed with
23 any learning disabilities?

24 A. Yeah, he's been diagnosed with BED.

25 Q. And anything else?

HERBIE SINGLETON - DIRECT EXAM BY MR. MAYER

1 A. Basically, no, not that I know of.

2 Q. Okay. And where do you live?

3 A. At [REDACTED]

4 Q. And at the time around and the time
5 prior to December 11, 2013, was Valentino living
6 with you?

7 A. Yes, he was.

8 Q. Okay. Please describe the character of
9 that neighborhood, if you would, for the jury.

10 A. It's considered a troubled area, mostly
11 young teenagers. It's a small community. People
12 basically just be walking around communicating with
13 one another, and officers come through and maybe
14 ask some questions like, what are you doing, pat
15 them down, things of this nature.

16 Q. Did you ever witness officers doing
17 that to Valentino?

18 A. Yes, I have.

19 Q. Tell the jury about that, please.

20 A. He would leave work in the evenings
21 around 4:30 or 5, and I would still be at work and
22 so I would leave and I would drop him off. My wife
23 would call me and say, police are in front of the
24 door patting him down and harassing him.

25 MR. SIMPSON: Objection.

HERBIE SINGLETON - DIRECT EXAM BY MR. MAYER

1 THE COURT: Sustained.

2 BY MR. MAYER:

3 Q. Sir, you can't say anything that you
4 didn't witness --

5 A. Okay. I apologize.

6 Q. And you mentioned you were at work.
7 Where do you work?

8 A. I work at Azalea Motors. It's a car
9 dealership.

10 Q. Okay. So you and Valentino at the time
11 were working together?

12 A. Right.

13 Q. And do you recall about how long
14 Valentino was there working with you?

15 A. He would have been employed now five
16 years. He was there I think two and-a-half-years
17 before this happened.

18 MR. MAYER: Okay. Court's indulgence?

19 THE COURT: Yes, sir.

20 MR. MAYER: No further questions.

21 Thank you, Mr. Singleton.

22 THE COURT: Any questions of the
23 witness?

24 MR. SIMPSON: No, Your Honor.

25 THE COURT: Any objection to the

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 witness being excused from the State?

2 MR. SIMPSON: No, Your Honor.

3 THE COURT: From the defense?

4 MR. MAYER: No, Judge.

5 THE COURT: Sir, you're excused.

6 You may proceed.

7 MR. MAYER: Judge, I believe we have

8 Wallace Bishop outside in the hallway.

9 THE CLERK: Mr. Bishop, up here,
10 please.

11 WALLACE BISHOP

12 being first duly sworn, testified as follows:

13 THE CLERK: Be seated. Speak into this
14 microphone and state your full name and spell your
15 last name.

16 THE WITNESS: Wallace Bishop,
17 B-i-s-h-o-p.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MR. MAYER:

21 Q. Mr. Bishop, please tell the jury what
22 you do for a living now.

23 A. I work at Ted's Butcher Block prepping,
24 cutting meat.

25 Q. All right. And did you have an

1 opportunity in the past to know Valentino Hayward?

2 A. In the past?

3 Q. Yes.

4 A. Yeah.

5 Q. How did you and Valentino know each
6 other?

7 A. From the neighborhood, grew up in the
8 neighborhood, like, we were friends.

9 Q. Okay. And what neighborhood are you
10 referring to there?

11 A. Ardmore.

12 Q. Do you recall the day of December 11,
13 2013?

14 A. Yes, sort of. Yeah. Yeah.

15 Q. Were you around the neighborhood that
16 day?

17 A. Around -- yeah.

18 Q. Did you have an opportunity that day to
19 see Valentino?

20 A. Yeah.

21 Q. Can you describe to the jury what you
22 guys did or what you saw of Valentino that day?

23 A. You want the whole day?

24 Q. Well, starting at about 6:00 at night,
25 how about that?

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 A. Oh.

2 Q. After work.

3 A. All right. I get off and, you know,
4 usually we go hang out and, I mean, just cool out,
5 smoke some weed and just cool out in the
6 neighborhood, you know.

7 Q. Okay. And where did you first
8 encounter Valentino that day?

9 A. Oh, he had came to my house that day
10 when I get home. He usually come to my house.

11 Q. Do you still live in the same place?

12 A. No.

13 Q. What street -- at the time, what street
14 was your house on?

15 A. Juniper Street.

16 Q. Okay. I'm going to ask you just to
17 look at a map here for us and indicate where your
18 house is.

19 That screen in front of you,
20 Mr. Bishop, is like a lot of screens these days,
21 it's a touch screen.

22 A. All right.

23 Q. And I'm showing you what's already been
24 admitted as State's Exhibit 7.

25 Can we clear that?

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 (Discussion off the record.)

2 THE COURT: And please make sure you
3 identify what you put in front of the witness.

4 BY MR. MAYER:

5 Q. And, again, Mr. Bishop, I'm referring
6 to State's Exhibit Number 7. Can you read these
7 street names here? Do you recognize this?

8 A. Yeah, but you got -- you have to go
9 downtown here. I mean, I don't see -- Juniper
10 Street is right off of White Oak and you've got
11 White Oak.

12 Q. Yeah, I do.

13 A. It's, like, right off -- well, matter
14 of fact -- and I apologize. It's right here, up in
15 this area, Juniper Street. (Indicating)

16 Q. I think the first mark you made is
17 White Oak; is that --

18 A. Yeah, that's White Oak Street. I
19 didn't see Juniper until right here.

20 Q. Okay. And what section of Juniper --
21 are you oriented now on this map?

22 A. Yeah. Yeah.

23 Q. What section of Juniper did you live
24 on?

25 A. As a matter of fact, right here where I

1 marked it at.

2 Q. Okay. And that's where -- that's where
3 Valentino you're saying came over to your house
4 that day?

5 A. Yes, sir.

6 Q. Okay. Thank you very much.

7 Do you remember about what time he came
8 over?

9 A. It was about -- it was late, so around
10 about 7. Not too late, probably about 7:30,
11 something like that. I know it was dark. It get
12 dark early then.

13 Q. Okay. And tell the jury, if you would,
14 what you guys did after he came over?

15 A. Kicked back, tried to find -- at first
16 we tried to find some weed, you know. Called the
17 man up, trying to get yourself together, cool out,
18 talk, check our Facebook, searching for girls, you
19 know, tripping about who -- who we talking to. And
20 then he was like, man, let's go around the corner,
21 you know.

22 Q. Okay. And when you say, let's go
23 around the corner, what were you guys -- what does
24 that mean?

25 A. I mean, going around in what we call

1 the hood. I hang around with Tino because that's
2 where we usually hang out right there.

3 Q. Okay.

4 A. Yeah.

5 Q. Was there anyone else with you guys?

6 A. No.

7 Q. Okay. How about kids, were there any
8 kids with you guys?

9 A. Yeah.

10 Q. Okay. Tell the jury about that, if you
11 would.

12 A. I had my two girls with me, you know,
13 and went around the corner, dropped my girls off
14 and, you know, we just hang out.

15 Q. Where did you drop your girls off at?

16 A. At one of Tino's friend's house. I
17 mean, one of the -- a person he's messing with.
18 You know what I mean? I don't really know her too
19 well like that, but --

20 Q. Okay. And why did you drop your girls
21 there?

22 A. Because it was cold, but it was too
23 cold and usually my baby-sitters around there too.
24 You know what I'm saying? So she wasn't there at
25 the time, so she was more convenient. You know

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 what I mean? And it was outside. It wasn't a
2 problem, you know.

3 Q. Okay. What did you guys do after you
4 dropped the girls off?

5 A. Dropped the girls off, waited for the
6 weed man and kicked back.

7 Q. Let me slow you down here. So I think
8 you said you went to his house. Whose house are
9 you talking about?

10 A. Oh, Tino's house.

11 Q. Okay. So Tino lives around near where
12 you dropped the girls?

13 A. Yes. It's like right down not even a
14 mile. I mean, like right there. And his house to
15 where the girl live at is, like, 20 steps.

16 Q. I'm showing you the same exhibit I
17 showed you a few minutes ago, State's Exhibit 7.
18 And do you -- take a second and get oriented to
19 that map, if you can. Can you -- can you identify
20 on that map where Tino's house is?

21 A. Yeah. I'm looking for Evergreen
22 Street. I don't see Evergreen Street on here. I
23 see Balsam Street right here (indicating) and
24 Evergreen Street is the next street over, so I
25 assume this right here is Evergreen, I guess. This

1 street right here. I don't see it have -- it
2 doesn't have a name on it.

3 Q. But you are saying that's Evergreen?

4 A. That's Evergreen, yeah.

5 Q. Okay. And where on that street does
6 Tino live?

7 A. I can see a little --

8 Q. Maybe if I zoom into the area -- would
9 that help you?

10 A. Yeah, if you can.

11 Q. Can you identify -- while you're
12 looking at State's Exhibit 7, can you identify on
13 there where you dropped the girls off? Do you
14 recall where you dropped the girls off?

15 A. All right. Like, this right here is
16 Sequoia Street. So this right here would be the
17 apartments in the back. Like, we called it --
18 there's the back at the end of the street, so we
19 called it The Back. This right here be the
20 apartments. So Tino live, like, somewhere, like,
21 right up in here. (Indicating)

22 Q. Okay.

23 A. Because he lived before here, somewhere
24 up in there.

25 Q. Okay. And are you sure about where the

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 apartments are on there or are you -- I know it's a
2 long time ago.

3 A. Yeah.

4 Q. Okay.

5 A. Because you got Locust Street right
6 here. That's a little street. Then you got Cassia
7 Street. That's, like, another little side street.
8 If you come in, like -- so if you're driving,
9 turning in through Pep Boys place, this would be,
10 like, Pep Boys. You come in and you're riding down
11 Evergreen, you know, and you pass White Oak to hit
12 Cassia. You pass Cassia, Tino house is, like, two
13 houses before you -- like, as soon as you pass
14 Cassia, so, yeah, about right up in here. And you
15 have the apartments, then you go around and that's
16 how you get on Balsam Street.

17 Q. And are they -- coming from Tino's
18 house, do you turn right on Sequoia or left on
19 Sequoia?

20 A. You make a right.

21 Q. Make a right on Sequoia?

22 A. This little side street right here.
23 That's Tino's house right here, so you would make a
24 right and that's about 20 steps.

25 Q. The lower green mark that you made on

1 there is the apartment complex where you would have
2 dropped your girls?

3 A. Right.

4 Q. Okay. And just to zoom in a little
5 bit, I will show you what has already been admitted
6 as State's Exhibit -- as State's Exhibit 1. I know
7 it's an unusual angle or view to look at that, but
8 if you can imagine the apartment complex that you
9 know from the ground --

10 A. Tino's house right there. (Marking)

11 Q. Go ahead and touch it on the screen.

12 A. This. (Indicating)

13 Q. Right there?

14 A. The apartments, like, right here.

15 (Marking) The apartment's, like, 20 steps, like,
16 little -- (Indicating) and you're right there.

17 Q. Thank you very much, Mr. Bishop.

18 All right. So you were saying you guys
19 dropped the girls off at that apartment and then
20 you went back to Tino's house and what did you do?

21 A. Smoke, play some music on the porch,
22 and trying to find something, you know.

23 Q. So you hung out on the porch you said?

24 A. Yeah.

25 Q. Okay. Do you remember who you obtained

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 the marijuana from that day?

2 A. Who we got it from?

3 Q. Yeah.

4 A. I mean, like you mean a name or
5 something?

6 Q. I'm just saying did someone come by
7 there and -- yeah, I guess a name, yeah.

8 A. Yeah, one of the -- one of the
9 homeboys. I mean, he came through, you know, got
10 the weed.

11 Q. Do you remember who it was?

12 A. No. I mean, not exactly. I mean, we
13 called some of my people. Sometimes you got to
14 find it. So you have to just, like, call around.
15 First-come, first-served type thing. You know what
16 I mean?

17 Q. Okay. And then what happened -- what
18 happened after you guys smoked the weed?

19 A. Cooled out. And he said he had
20 something set up. He got a little mission. And, I
21 mean, mission meaning, like, girls, going to knock
22 something off. You know what I mean? Like you got
23 to -- you know what I mean?

24 So I'm like, well, shit, you go on your
25 mission then. I'm going back around the corner

1 where I live with the baby mom, and that's the end
2 of our night basically.

3 Q. Okay. And where did you go from
4 Tino's?

5 A. Back to Juniper Street, 1556 Juniper
6 Street, yeah.

7 Q. Did you just leave the girls at the --

8 A. No, I went to get my girls. Get my
9 girls and then we went, you know.

10 Q. Okay. And do you recall times -- like,
11 exact times of when everything happened? I mean, I
12 know that's -- and don't say if it's not -- if you
13 don't remember.

14 A. Yeah. I can't, like, give you exact
15 time for time, basic, but it was late at night, not
16 too late, before 12. It was way before that.

17 Q. Okay. And just to be clear, while you
18 were with Valentino, did you observe him hurt
19 anybody?

20 A. No. We do what we do every day. He go
21 to work. He get off around about 4, 5:30,
22 something like that. I get off around, like, 6,
23 6:30, 7. You link up. You get high. Try to go
24 find -- you know what I mean? Same thing every
25 day. It ain't be nothing new.

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 Q. Okay. Do you recall what Valentino was
2 wearing that day?

3 A. Probably, like, black, normal colors,
4 like, colors we wear every day. I mean, nine times
5 out of ten, black. That's what --

6 Q. Now, I don't want you to guess. I'm
7 just asking if you have a distinct memory.

8 A. All black, yeah.

9 Q. You mentioned you were on Facebook.
10 Did anything unusual occur while you guys were
11 hanging out that night or did you learn anything or
12 anything like this?

13 A. Learn anything, like, through Facebook
14 or just, like, general outside?

15 Q. Yeah.

16 A. No. Just smoke weed, trying --
17 scrolling through Facebook. You know what I mean?
18 And talking, trying to see who we can get in.

19 Q. Okay. Did you know somebody named
20 Happy?

21 A. Yeah.

22 Q. Tell the jury who Happy was.

23 A. Happy, that's my cousin. One of my
24 cousin's cousin, so, I mean, we know each other
25 but, like, not -- we don't be around each other or

1 hand around each other. But if we see each other,
2 it's like, what's up, what's up. You know what I
3 mean?

4 Q. What's your understanding of what
5 happened to Happy?

6 MR. SIMPSON: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. SIMPSON: Relevance.

9 (Bench conference was had; the
10 following proceedings were had in open court.)

11 THE COURT: Madam Forelady, and ladies
12 and gentlemen, I have a brief matter of law to take
13 up. During this break, please do not discuss the
14 case and please leave your notepads in your seats.

15 Stay right there.

16 Yes, sir. Stay right there.

17 (Jury out at 3:57 p.m.)

18 THE COURT: All right. Go ahead and
19 ask the questions you want to ask, Mr. Mayer.

20 MR. MAYER: Thank you, Judge.

21 THE COURT: You're welcome.

22 BY MR. MAYER:

23 Q. Mr. Bishop, what is -- please tell this
24 Court your relationship to Happy and Happy's real
25 name.

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 A. I don't know the real name, right,
2 because, like I say, I only know him by Happy.
3 It's -- whatever. That's a cousin of my cousin's,
4 you know what I mean? Off my dad's side.

5 But at the same time, like, I see him
6 all the time. He rap. You know what I mean? He
7 in the North Charleston area. He do a lot of
8 rapping. You know what I mean? Him and I, like,
9 that, best friends or whatever. You know what I
10 mean.

11 THE COURT: I'm sorry. Could you
12 please repeat your last answer? I didn't
13 understand.

14 THE WITNESS: I said Happy and Chucky
15 guy, they, like, best friend. You know what I
16 mean? So --

17 BY MR. MAYER:

18 Q. So you had seen them together?

19 A. Yeah. I mean, they do the rap thing,
20 like I said. You see -- you bump into him every
21 now and then. You see them together.

22 THE COURT: Is that the extent of what
23 you wanted to ask?

24 MR. MAYER: That's all I wanted to ask.

25 THE COURT: Do you have any objection?

1 MR. SIMPSON: Yes. It's utterly
2 irrelevant to the trial that we are trying right
3 now. I think the fact that he said he doesn't even
4 know his real name, which is conveniently unable to
5 be confirmed, and what -- the fact that he's seen
6 the decedent in another murder with his cousin's
7 cousin's Happy, I don't understand how that would
8 be relevant in the present case.

9 THE COURT: Tell me how it's relevant.
10 What facts does it make --

11 MR. MAYER: Judge, it makes the
12 defense's theory of the case more probable.

13 THE COURT: How?

14 MR. MAYER: By linking together the
15 murder that Ms. Carson has --

16 THE COURT: But I'm at a loss as to how
17 this testimony links those two murders together.

18 MR. MAYER: Well, Ms. Carson --

19 THE COURT: You need to tell me how it
20 links it.

21 MR. MAYER: It's Ms. Carson's word upon
22 which the whole State's whole investigation was
23 founded. And Ms. Carson, after that, it's her word
24 saying Tino gave Chucky step-by-step directions.
25 That's what links him up.

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 THE COURT: That's not what she said.
2 She said he was on the telephone with someone who
3 gave step-by-step directions. She doesn't say she
4 knows who it was. She said she was involved in
5 Zello and she was taking a ride.

6 So she is not the person who provides
7 that link. It's the phone records that provide the
8 link, which has nothing to do with her. She simply
9 says she was in the car with him. He asked her to
10 take a ride with him, and she was so involved in
11 this chat room that she just knows he was on the
12 phone getting directions. She didn't know where
13 she was.

14 I mean, she certainly could not have
15 helped him give directions because she didn't know
16 where he was going.

17 MR. MAYER: Judge, still, it seems to
18 me that it makes it more probable that she -- the
19 fact that she is charged in Happy's death and the
20 fact that she was the last one to see Chucky alive,
21 or one of two, I just think that it makes the
22 defense's theory more probable.

23 THE COURT: That doesn't meet the mere
24 suspicion test. Those are two unrelated events.
25 She knows two people who were murdered. Without

1 more --

2 MR. MAYER: She was the last people to
3 see two people who were murdered, one of those
4 deaths she's charged with.

5 THE COURT: We don't know that she was
6 the last person to see this Happy person alive. I
7 have no idea. There's no evidence in the record of
8 that.

9 And, theoretically, she wasn't the last
10 person to see this Chucky alive because the last
11 person to see him alive was the person that shot
12 him. She was the second to the last person to see
13 him alive, might have been the third to the last
14 person to see him alive, but I don't know who was
15 out there because I wasn't there.

16 So I'm trying to figure out, what is
17 the evidentiary link between him saying that --
18 well, first of all, you haven't even established
19 that he knows Ms. Carson. You haven't been able to
20 establish that.

21 The only thing this witness can
22 establish is that he knows somebody named Happy,
23 which we cannot confirm is the person that was
24 killed in this other murder, investigation, or
25 prosecution, and that he just knows he knew

WALLACE BISHOP - DIRECT EXAM BY MR. MAYER

1 somebody named Happy and had seen -- to be seen
2 together on basically two occasions is what his
3 testimony amounts to.

4 MR. MAYER: I believe he would testify
5 that -- not in front of the jury, but I believe if
6 we asked him -- may I ask him a couple more?

7 THE COURT: Sure.

8 BY MR. MAYER:

9 Q. Mr. Bishop, do you have an
10 understanding of what happened to Happy?

11 A. Yeah.

12 Q. What's that?

13 A. He got in an altercation outside --
14 outside of the studio where he rapped at. Him
15 and -- sorry for my choice of words, but him and
16 another guy got in an altercation and got shot.

17 MR. MAYER: So, Judge, he does know
18 what happened to him.

19 THE COURT: That's not my question.
20 There is no indication he knows Ms. Carson or what
21 her relationship is to any of this. And even if it
22 was, it's hearsay. He doesn't know of his own
23 personal knowledge what happened. He wasn't there.
24 He heard through the wind what happened. You know,
25 as things are repeated, they morph into -- look, I

1 have no idea.

2 The bottom line is, I have not heard
3 any evidentiary link between -- first of all, you
4 can't confirm who Happy is. I have no clue who
5 that is that he's speaking of or that we're talking
6 about the same person.

7 The other issue is that I just -- I
8 have not been able to determine any sort of
9 evidentiary link between the two things.

10 MR. MAYER: Okay, Judge.

11 THE COURT: I think we're going to have
12 to adjourn for the afternoon anyway because our
13 juror has indicated -- I told her that if she
14 needed additional assistance to let me know and she
15 wants to go to the emergency room.

16 As a matter of fact, I think I may have
17 somebody come get her. She has -- she just advised
18 she has edema in her legs and I don't want her to
19 be in this -- it's at the point now where it's very
20 difficult for her to stand up. So she -- so I
21 think what we need to do is adjourn for the
22 weekend.

23 Sir, will you be able to come back
24 Monday and testify?

25 THE WITNESS: Yes, ma'am. Yes, ma'am.

1 THE COURT: I will instruct you that
2 you are not to discuss your testimony with anyone
3 and I need you to return at 9:30 on Monday morning.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Okay?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: We appreciate you
8 accommodating us. We know your time is valuable.
9 Okay. You may step down.

10 I need you to find out if she needs an
11 ambulance so I can call one to have one come get
12 her because I don't want her -- I don't want her to
13 have any issues while she is at the courthouse.
14 Because we can get somebody here quicker than she
15 can get to the ER, especially at 4:00 in traffic.

16 And then what I think we should do is
17 adjourn for the weekend, and then I will instruct
18 the jury that we have adjourned and not to -- you
19 know, the usual admonitions.

20 Are there any exceptions from the
21 State?

22 MR. SIMPSON: None, Your Honor.

23 THE COURT: From the defense?

24 MR. MAYER: None, Judge.

25 THE COURT: And I will mark her note as

1 an exhibit, a Court's Exhibit. It simply says, To
2 whom it may concern, I'm Juror No. 86. I would
3 like to be excused to go to the ER at Roper
4 Hospital to have my legs checked. I currently have
5 edema of the legs.

6 And she's had -- she started having
7 some difficulty before lunch. At that time I told
8 her if she needed medical attention, we would get
9 it for her immediately. She indicated to the
10 bailiff that she had taken some Ibuprofen and she
11 thought that had relieved it. But I told her if
12 she experienced any other -- you know, more
13 distress, to let me know so I could get medical
14 attention for her.

15 MR. SIMPSON: Understood, Judge. Your
16 Honor --

17 THE COURT: We have a deputy that's
18 going to take her to the ER.

19 Yes, sir.

20 MR. SIMPSON: Detective Holmes is
21 here. I was wondering if maybe we could present
22 that in camera. I do think foundation might be a
23 legal issue and then maybe we can present --

24 THE COURT: How long will it take to --
25 ask her if she feels she can tolerate being here

1 about ten more minutes. Tell her I don't want to
2 push it, but does she think she can tolerate it.
3 Can she not walk at all? I don't want her to walk.
4 I don't want to push it.

5 MR. SIMPSON: He can come back.

6 MR. MAYER: I'm okay with it being in
7 camera.

8 MR. SIMPSON: He can come back.

9 THE COURT: So you don't need it to be
10 in the presence of the jury?

11 MR. MAYER: Right.

12 THE COURT: Works for me.

13 All right. Well, I need to bring
14 everybody in here, and then I'll excuse them
15 because I don't want her getting distraught.

16 Do we have a wheelchair around here
17 somewhere? Ask her if she needs the assistance of
18 a wheelchair to be brought so I can excuse her.

19 (Discussion off the record.)

20 THE COURT: You will probably need to
21 take her through the back way. Take her through
22 the clerk's office. I will leave it to you all,
23 however you wanted to --

24 Give that to the court reporter.

25 (COURT EXH. 5, Juror Note, was marked

1 for identification.)

2 MR. SIMPSON: Judge, my decision is,
3 we could probably put a witness up to testify and
4 enter the actual recordings.

5 THE COURT: I don't know that we need a
6 witness? Do we need a witness to publish the
7 tapes?

8 MR. MAYER: Not for us.

9 MR. SIMPSON: Okay. I can just play
10 them.

11 THE COURT: Okay. Do you all have any
12 requests for instruction you want to give me? I'm
13 not trying to put you to extra work.

14 MR. SIMPSON: I don't know of any at
15 this point, Your Honor.

16 THE COURT: Okay. We will have charge
17 conference, of course. If there is anything that I
18 need to read over the weekend, I want you to give
19 it to me.

20 Mr. Mayer, is anything that you want
21 the Court to consider over the weekend?

22 MR. MAYER: Judge, it may well be. I
23 need to read through the charges.

24 THE COURT: I would say this as a
25 cautionary tale, I rarely, if ever, use anything

1 that is submitted. I use my standard instructions,
2 which I think are comprehensive. I say that to you
3 not to discourage you, but I don't want to put you
4 to extra work you don't need to.

5 So if it's going to duplicate a
6 standard instruction, don't put yourself to the
7 extra work. If it's something out of the
8 ordinary --

9 MR. MAYER: We would request -- well,
10 let me --

11 THE COURT: I will have a charge
12 conference. I just need to know if there's
13 something --

14 THE BAILIFF: She is in her wheelchair.

15 THE COURT: Perfect. Bring them in for
16 me and sit her over there next to you all.

17 (Jury in at 4:12 p.m.)

18 THE COURT: Due to circumstances beyond
19 our control, we will break for the weekend. During
20 this break, it's essential that you have no
21 communication among yourselves or with anyone else
22 regarding the facts and circumstances of this case.

23 Please do not read, watch, or listen to
24 any media accounts about this case. Please do not
25 do any independent research on the Internet. And,

1 also, please do make any comments regarding your
2 status on any social networking sites.

3 We will resume on Monday morning at
4 9:30. For your planning purposes, I anticipate
5 that we will finish this case on Monday, at which
6 time -- unless something comes up that's
7 unforeseen, but I anticipate that we will conclude
8 on Monday.

9 You will come directly to your jury
10 room in the same manner that you have done every
11 day this week. And as soon as all of you arrive,
12 we will resume the testimony.

13 If you would leave your notepads on the
14 ledge as you leave so that we can secure them
15 during the recess. And the clerk, if you all
16 could, as you encounter him as you leave, he needs
17 to give you new stickers for your windshield so
18 that you can park exactly where you have been
19 parking this week.

20 We appreciate your patience. You have
21 been incredibly generous with us and we appreciate
22 it. I know it may seem that a lot of things we
23 should be able to do before the process starts,
24 but, unfortunately, it's just the nature of our
25 proceedings. A lot of things we can't do in

1 advance. So, again, please know that we do not
2 take your time for granted.

3 I hope you all have a wonderful
4 weekend. The weather is supposed to be gorgeous
5 except for a little cold snap. We look forward to
6 resuming and concluding the case on Monday. Have a
7 good weekend.

8 And, ma'am, I hope you feel better.

9 JUROR: Thank you.

10 THE COURT: They are going to take you
11 downstairs.

12 (Jury out, 4:14 p.m.)

13 THE COURT: You may be seated.

14 All right. Any exception from State?

15 MR. SIMPSON: No, Your Honor.

16 THE COURT: From the defense?

17 MR. MAYER: No, Judge.

18 THE COURT: All right. Let's proceed.

19 MR. SIMPSON: I guess I can be a
20 little more informal. How do you want me to do it?

21 THE COURT: Is Detective Holmes here?

22 MR. SIMPSON: He is. He's out in the
23 hall.

24 THE COURT: Go get him. We can play it
25 for him. The jury isn't here. We can play it for

RICHARD HOLMES - IN CAMERA TESTIMONY

1 him and authenticate it.

2 Thank you for accommodating us,
3 Detective.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: When you get there, raise
6 your right hand to be sworn.

7 RICHARD HOLMES,
8 being first duly sworn, testified as follows:

9 THE COURT: Please have a seat for me
10 and state your full name for the record, spelling
11 your last name for the court reporter.

12 THE WITNESS: Richard Holmes,
13 H-o-l-m-e-s.

14 THE COURT: You may proceed.

15 MR. SIMPSON: Thank you, Judge.

16 THE COURT: You're welcome.

17 DIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q. Detective Holmes, you previously
20 testified in this case?

21 A. Yes, sir.

22 Q. We laid out your professional history
23 in that testimony?

24 A. Yes, sir.

25 Q. I will get to the point. We also

1 reviewed the fact that you interviewed the
2 defendant --

3 A. Yes, sir.

4 Q. -- in this case?

5 A. Yes, sir.

6 Q. Approximately, how long was that
7 interview?

8 A. It was approximately three hours.

9 Q. Okay. And there were breaks; correct?

10 A. Yes, sir.

11 Q. I believe you were asked this by
12 Mr. Mayer on defense: Was that -- that three hours
13 was your -- the whole of your interaction with the
14 defendant?

15 A. Yes, sir.

16 Q. Okay. Was that the three hours that
17 are captured on video?

18 A. Yes, sir.

19 Q. Have you had the occasion to go back
20 since and also watch the video of that interview?

21 A. Yes, sir.

22 Q. Detective, if you'll bear with me, I'm
23 going to play for you several clips of some phone
24 calls.

25 A. Yes.

RICHARD HOLMES - IN CAMERA TESTIMONY

1 Q. These should not be long, but it might
2 take me some time to go from one to the other. I
3 would like for you just to be attentive to the
4 voices on the recordings.

5 A. Yes, sir.

6 (Video played.)

7 MR. SIMPSON: And some of these clips
8 may be brief, so I might let them go a little
9 longer than I would to give you an opportunity to
10 hear them.

11 THE WITNESS: Yes, sir.

12 (Video played.)

13 MR. SIMPSON: Court's indulgence while
14 I change CDs?

15 THE COURT: Sure.

16 (Video played.)

17 BY MR. SIMPSON:

18 Q. Did you pay attention to the clips that
19 were just played?

20 A. Yes, sir.

21 Q. Did you recognize the consistent voice
22 that was present on each clip?

23 A. Yes, sir.

24 Q. And whose voice was that?

25 A. That's Mr. Hayward'S voice.

RICHARD HOLMES - IN CAMERA TESTIMONY

1 MR. SIMPSON: Okay. Nothing further,
2 Your Honor.

3 THE COURT: Any questions for the
4 witness?

5 MR. SIMPSON: No, Judge.

6 THE COURT: Any objection to the
7 witness being excused?

8 MR. SIMPSON: None from the State,
9 Your Honor.

10 THE COURT: From the defense?

11 MR. MAYER: None, Judge.

12 THE COURT: Detective, you're excused.
13 Thank you again for accommodating us.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Any exception to the
16 authenticity or the authentication regarding
17 State's 43 and 45?

18 MR. MAYER: Judge, I would just
19 maintain the same objection for the record, but now
20 that -- I have to question its relevance. I can't
21 understand a thing on that stuff. Even if it gets
22 played, I would ask that the Court limit counsel
23 from making arguments based on things that may be
24 appropriate from that stuff because it's --

25 THE COURT: I think you can argue

1 inferences from any evidence. The statements are
2 clearly statements against interest. You have to
3 listen hard. He does have a very heavy Charleston
4 dialect, but very clearly he makes statements that
5 inculcate him regarding evidence, the destruction
6 of evidence, and other statements that clearly
7 inculcate him.

8 And they are relevant; they are
9 probative; they are clearly admissions against
10 interest; they are self-authenticating. They say
11 what they say. The jury has the ability to listen
12 to them over and over again.

13 And, again, as I have indicated, both
14 parties are free to argue whatever inferences
15 they -- inferences they feel may be drawn from the
16 evidence.

17 Clearly, the detective was able to
18 authenticate his statement, authenticate his voice.
19 He spoke with him at length in a very intimate
20 setting at the police department. They were not
21 even inches apart from one another, and I think
22 very clearly he's able to authenticate the
23 defendant's voice from the recordings, which is all
24 that is required from the Rules.

25 The next step then becomes relevance.

1 I have already found that they are relevant. They
2 make a fact of consequence in this case more or
3 less probable. The weight to be accorded that
4 evidence is for the finder of fact. The way you
5 argue the evidence is certainly left up to counsel.

6 Of course everyone is required to argue
7 only what is in the evidence and any reasonable
8 inferences to be drawn from the evidence.

9 Clearly, they are statements made by a
10 party opponent, which would be the defendant, and
11 they are clearly statements against his interest;
12 in other words, adverse and they have inherent
13 liability because it is unlikely that people will
14 make statements that inculcate them in a crime.

15 So the objection is noted and
16 overruled. 43 and 45 will come in and the State
17 has already established a chain of custody
18 regarding those documents being kept in the
19 ordinary course of business, as well as them being
20 subpoenaed pursuant to legal process and having
21 been delivered to the Solicitor's Office.

22 And I have not heard any arguments in
23 good faith that those recordings have been
24 hypothecated in any way.

25 All right. Are you ready to go forward

1 on Monday?

2 MR. SIMPSON: Yes, Your Honor.

3 THE COURT: What I would suggest we do
4 is finish the testimony of the witness who was in
5 progress. And then after we do that, we will then
6 go back in the State's order. You will be allowed
7 to publish those portions of the transcript. Then
8 you will rest. We will hear motions. Then we will
9 resume the defense case and go from there.

10 MR. MAYER: Did you say transcript,
11 Judge?

12 MR. SIMPSON: Recordings.

13 Oh, and there were two pictures that
14 were never published I might ask the Court.

15 THE COURT: You can do that as well, if
16 you would like.

17 MR. SIMPSON: Thank you.

18 THE COURT: All right. Yes, sir.

19 MR. SIMPSON: Should I move these into
20 evidence?

21 THE COURT: I've already admitted them
22 into evidence, subject to the objection.

23 MR. SIMPSON: May I?

24 THE COURT: State's 43 and 45 in
25 evidence. Madame Court Reporter, if I have the

1 numbers wrong, you let me know.

2 MR. SIMPSON: 43 and 45 are in
3 evidence; 44 is going to remain ID
4 only.

5 (STATE EXH. 43 in evidence.)

6 (STATE EXH. 45 in evidence.)

7 THE COURT: Okay. Is there anything
8 else before we adjourn for the weekend from the
9 State?

10 MR. SIMPSON: No, Your Honor. I would
11 like to approach when we are done and speak with
12 you.

13 THE COURT: Sure. Anything further
14 from the defense?

15 MR. MAYER: No, Judge.

16 THE COURT: All right. You all have a
17 good weekend. See you on Monday. As I said
18 before, you all can leave anything in here. The
19 courtroom will be locked. There's no need for you
20 to tote stuff you don't need to tote.

21 (These proceedings were recessed at
22 4:38 p.m., to be continued November 16, 2015 at
23 9:30 a.m.)

24

25

1 (The following proceedings were held
2 November 16, 2015 at 9:53 a.m. in re State v.
3 Hayward, Charleston County Circuit Court.)

4 MR. MAYER: Judge, I did something to
5 my back yesterday and I was actually in bed all
6 afternoon trying to get a doctor's appointment
7 tomorrow, but if there's any way to not jump up and
8 down too much today for my part, I would much
9 appreciate that.

10 MR. SIMPSON: Judge, I have a quick
11 matter I can address.

12 THE COURT: One moment. Okay. Our
13 alternate, No. 25, the reason we're delayed in
14 starting is because she has not yet arrived and so
15 we're trying to track down her situation. We were
16 finally able to get a response on a cell phone. It
17 appears that a young person answered the telephone,
18 we're assuming it's her son, and he indicated to us
19 that she had been admitted to the hospital last
20 night for issues with her health.

21 What Mike was able to figure out is she
22 is in the hospital. So it's my estimation it's
23 unlikely that she will be able to appear for the
24 conclusion of the trial. I have directed Mike to
25 let her son know that she is excused and that we

1 hope that her health improves and appreciate her
2 service.

3 Is there any exception from the State?

4 MR. SIMPSON: No, Your Honor.

5 THE COURT: From the defense?

6 MR. MAYER: No, Judge.

7 THE COURT: That would leave us then
8 with No. 2 as our alternate. And also the juror
9 who was ill on Friday, she went to the hospital and
10 they were able to remedy her situation and she
11 indicated to me this morning that she is better.

12 MR. SIMPSON: Thank you.

13 THE COURT: Yes, sir.

14 MR. SIMPSON: Your Honor, we admitted
15 on Friday, not published yet, State's 43 and 45.
16 Those are entire CDs of the first month of the
17 defendant's phone calls and then State's 45 is the
18 long period of time with multiple phone calls from
19 the Brian Bivens' PIN number. That's all been
20 established in evidence.

21 You asked, Your Honor, for us to make a
22 clean redacted copy containing just the clips that
23 we were seeking to admit. We have done that,
24 marked that as State's 47, and we'd piggy-back on
25 the earlier admission and ask that State's 47 be

1 moved into evidence.

2 THE COURT: I think I've ruled on both
3 of these exhibits to my recollection.

4 MR. SIMPSON: Yes, Your Honor; 43 and
5 45 were moved into evidence. I'm just adding 47,
6 which is the clean CD you requested us to --

7 THE COURT: Okay. And that will be
8 marked and admitted.

9 (STATE EXH. 47 in evidence.)

10 MR. MAYER: Just to be clear then, the
11 ones that Mr. Simpson are saying are not clean will
12 not --

13 THE COURT: That's a Court's Exhibit
14 only, for appellate purposes.

15 All right. Is Mr. Bishop present?

16 MR. MAYER: He's in the hallway, Judge.

17 THE COURT: Go ahead and get him,
18 please.

19 Sir, if you would retake the stand for
20 me. I will remind you that you are still under
21 oath.

22 THE WITNESS: Okay.

23 THE COURT: Is there anything else
24 before we bring in the jury and resume the
25 testimony of Mr. Bishop? From the State?

WALLACE BISHOP - CONTINUING DIRECT EXAM BY MR. MAYER

1 MR. SIMPSON: Nothing.

2 THE COURT: From the defense?

3 MR. MAYER: No, Judge.

4 THE COURT: Please bring in the jury.

5 (Jury in, 9:58 a.m.)

6 THE BAILIFF: All jurors present, Your

7 Honor.

8 THE COURT: You may be seated.

9 Ladies and gentlemen, I hope that you
10 had a pleasant weekend. We are going to resume the
11 testimony of Mr. Bishop.

12 You may proceed.

13 MR. MAYER: Thank you, Judge.

14 THE COURT: You're welcome.

15 WALLACE BISHOP,

16 being previously first duly sworn, testified as
17 follows:

18 CONTINUING DIRECT EXAMINATION

19 BY MR. MAYER:

20 Q. Mr. Bishop, most of what I want to
21 cover with you I believe we covered on Friday, but
22 just to kind of sum up your testimony, do you
23 understand why we're here today?

24 A. Yes, sir.

25 Q. And you understand that Valentino is

1 accused of murder, right?

2 A. Right.

3 Q. Do you understand when that murder
4 occurred?

5 A. December -- November. November.

6 Q. Okay. You understand that -- that --
7 let me ask you this: On Friday we were talking
8 about a particular day with you and Valentino?

9 A. Right.

10 Q. Okay. And I wanted you to explain to
11 the jury why you remember that day in particular.
12 Can you do that for us?

13 A. Because it was -- I mean, the next day,
14 you know, I heard that Valentino got locked up for
15 a murder charge. And, you know, after, like --
16 that would make the day stand out, you know. And
17 someone got shot that night in the area that we be
18 at, so it's -- that's why it kind of sticks in your
19 mind, you know.

20 Q. Right. While you were with
21 Valentino --

22 A. Right.

23 Q. -- did he do this murder?

24 A. No. No.

25 Q. Okay.

WALLACE BISHOP - CROSS EXAM BY MR. SIMPSON

1 A. No.

2 MR. MAYER: Please answer any questions
3 that the Solicitor may have.

4 THE WITNESS: All right.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. SIMPSON:

8 Q. Morning, Mr. Bishop. How are you?

9 A. All right.

10 Q. Doing good?

11 A. Yes, sir. How are you doing?

12 Q. So you give me a good segue there. You
13 found out the next day that Mr. Hayward, your
14 friend, got charged with murder, right?

15 A. Right.

16 Q. And you, of course, rushed to police --

17 A. No.

18 Q. -- to tell them -- no? Whoa. Why not?

19 A. Why didn't I rush to police?

20 Q. Yeah, to tell them -- you went right to
21 police to tell them, look, he was with me all
22 night.

23 A. I mean, because, like, I wasn't
24 involved and they never came at me. I had a
25 detective came and talked to me.

WALLACE BISHOP - CROSS EXAM BY MR. SIMPSON

1 Q. Okay. Here we go. They came at you?

2 A. Like, then a detective came, like, a
3 month or some later to come talk to me.

4 Q. Mr. Bishop, isn't it true that they
5 reached out to you several times, many times?

6 A. On the phone they called me, but they
7 never met with me. He called to set up a meeting
8 with me, but we never --

9 Q. Mr. Bishop, do you see these 14 people
10 sitting here?

11 A. Yes.

12 Q. Are you aware that they have sat here
13 for over a week trying to find the truth in this
14 case?

15 A. Yes.

16 Q. Isn't it true that the detective did
17 set up several appointments with you and you never
18 showed up?

19 A. No, that's not true.

20 Q. That's not true?

21 A. No. We set up appointments and I was
22 working at the time and -- most of the time I was
23 working, and I had a detective, he came to my house
24 on Juniper Street and we had a discussion right
25 there. I mean, so it wasn't like --

WALLACE BISHOP - CROSS EXAM BY MR. SIMPSON

1 Q. And in that discussion you got -- set
2 up yet another attempt for you to come in and talk
3 about what happened?

4 A. No, not to come in. It was over the
5 phone, discussion-wise.

6 Q. And so isn't it true that through all
7 of this you never gave the police a statement
8 saying that Mr. Hayward was with you the whole
9 time?

10 A. No.

11 Q. That's not true?

12 A. I mean, yeah. Yeah. I told the
13 detective that, but it wasn't no statement though.

14 Q. Okay. Mr. Bishop, you have a Facebook
15 page, right?

16 A. Yes.

17 Q. Under Wallace Bishop?

18 A. Right.

19 Q. I want to ask you, if I can, about a
20 statement you made on that Facebook page.

21 A. Okay.

22 Q. You complain about a friend of yours
23 that's serving life?

24 A. Right.

25 Q. And you say, the reason that he's

WALLACE BISHOP - CROSS EXAM BY MR. SIMPSON

1 serving life is because --

2 MR. MAYER: Judge, I object.

3 THE COURT: Basis?

4 MR. MAYER: May we approach?

5 THE COURT: Sure.

6 (Bench conference was had; the
7 following proceedings were had in open court.)

8 THE COURT: The objection is overruled.

9 Goes to credibility; however, redact any mention of
10 any other prior bad act not the subject of a
11 conviction or someone involved in a prior bad act
12 that's not the subject of a conviction.

13 MR. SIMPSON: Understood, Your Honor.

14 BY MR. SIMPSON:

15 Q. Mr. Bishop, you referenced something in
16 that statement called the G code; do you not?

17 A. Right.

18 Q. Can you explain to the jury what the G
19 code is?

20 A. The G code? That's like a hood
21 terminology, like, just keeping it real or loyal to
22 is what that means. It might be just to self so
23 others respect you in the same manner. You know
24 what I mean? Like, you're around a certain
25 neighborhood for a long term. You know what I

WALLACE BISHOP - CROSS EXAM BY MR. SIMPSON

1 mean? You got the street code, G code, same thing.

2 Q. Does the street code mean you give the
3 police honest statements?

4 A. Honest statements? I mean, street code
5 is you don't talk to the police.

6 Q. Right. Right. What you did in this
7 case?

8 A. Well, I mean, I guess. I did talk to
9 the police, you know, but not like the way they
10 wanted me to.

11 Q. Right. That wouldn't be G code, right?

12 A. Well, not necessarily wouldn't be G
13 code. It's, like, not wanting to be, you know,
14 involved with the police and, you know, how they go
15 about things.

16 Q. So in the weeks and months following
17 this, no talking to the police, right?

18 A. Right.

19 Q. Or not the way they wanted you to?

20 A. Right.

21 Q. Come in and tell your story that you
22 told these people?

23 A. No. They wasn't coming at me like
24 that. They were coming at me more of, like, we be
25 hearing about you, we want to know what's going on

1 with you. You know what I mean?

2 Q. You did, in fact, at some point decide
3 to give a statement about this case, right?

4 A. Right.

5 Q. To who?

6 A. Tino's lawyer.

7 Q. To Tino's lawyer?

8 A. Right.

9 Q. And you gave the statement?

10 A. Right.

11 Q. And it was in writing?

12 A. Right.

13 Q. And it was an affidavit, formalized
14 statement; is that correct?

15 A. Right. Right.

16 Q. And it's the same thing that you just
17 told these jurors, right?

18 A. Right.

19 Q. It's your testimony that that statement
20 you gave -- did you give it in 2014?

21 A. Right.

22 Q. Sound about right? February 2014?

23 A. Yeah.

24 Q. It's your statement to these 14 people
25 that that affidavit you gave to Tino's lawyer is

WALLACE BISHOP - CROSS EXAM BY MR. SIMPSON

1 the same as the story you just told them?

2 A. Right.

3 Q. Okay. Isn't it true that in the
4 affidavit you gave Tino's lawyer back then, you say
5 you-all were hanging out at your place the whole
6 time? Not down in the hole, at your place.

7 A. No. We was at my place in the
8 beginning, he came to my house.

9 Q. You say in your affidavit, isn't it
10 true, that you were there when the murder occurred?

11 A. When the murder occurred.

12 Q. You and Tino were at your apartment
13 when the murder occurred?

14 A. No. If we was at his house. I mean,
15 around -- you know what I mean? We left my house
16 and went around to his house. That's what my
17 statement is.

18 Q. I realize that is your statement to
19 them now. I'm talking about the statement you gave
20 back then when a different story --

21 A. I mean, the question probably was
22 different too, you know? Because dealing with
23 Tino's lawyer, he wasn't asking me, like -- he was
24 asking me, like, what happened and stuff like that.
25 Towards the detective was, like, more, like, of

1 aggression, I mean, question -- there's a
2 difference.

3 Q. Rather than just sit here and dance
4 around and waste more of their time --

5 A. Right.

6 Q. -- let me tell you a quote that I
7 really enjoyed. I am absolutely 100 percent
8 certain that Tino was with me and my two daughters
9 at my apartment at the time the shooting occurred.

10 That was your -- that was your story
11 back in 2014, right?

12 A. Right.

13 Q. And then between then and now you
14 figure out, well, that doesn't quite fit, so I have
15 to change it; isn't that true?

16 A. No.

17 Q. It's the code; don't talk to the police
18 right away, right?

19 A. That's the code.

20 Q. Say whatever you've got to say to help
21 your friend, right?

22 A. No.

23 Q. And if it turns out that what you say
24 doesn't help your friend, you change it up, right?

25 A. No.

WALLACE BISHOP - CROSS EXAM BY MR. SIMPSON

1 Q. Because this is just a game to you;
2 isn't that true?

3 A. Why would it be? It's somebody's life,
4 right?

5 Q. Believe me, I understand. It's two
6 peoples' lives.

7 A. Right. It's not a game at all.

8 Q. Well, then why is it that you change
9 your story, whatever you have to do, change that
10 story to help Tino as best you can, right?

11 A. No, because, like, at the time, like, I
12 said, I was explaining the situation. I mean,
13 like, the way I speak, I mean, my choice of words
14 are, like, yeah, he was with me all night, me and
15 my girls. You understand? Basically, what it was
16 --

17 Q. And there was nothing in that 2014
18 statement about you taking your girls anywhere,
19 right? You say you were hanging out at your
20 apartment with you and your girls the whole time,
21 right?

22 A. I mean, he didn't ask me about --

23 Q. Oh, he didn't ask you that?

24 A. Yeah, you got it.

25 Q. I am 100 percent certain that Tino was

1 with me and my two daughters at my apartment at the
2 time the shooting occurred, but then you've got a
3 problem because that doesn't fit with the evidence
4 and that doesn't help your friend so you've got to
5 change it up and come in here and tell these people
6 that; isn't it true?

7 A. No.

8 Q. No. No. Mr. Bishop, I truly don't say
9 this to embarrass you, you've had some run-ins with
10 the law before?

11 A. Right. Right.

12 Q. And you've been convicted of voluntary
13 manslaughter; isn't that true?

14 A. Yes, I was.

15 Q. And distribution of crack?

16 A. Yes, I was. Both charges I served
17 time --

18 Q. You answered the question.

19 A. About ten years.

20 Q. Your phone number is 843/460-0902,
21 correct?

22 A. Correct.

23 Q. And, Mr. Bishop, who is Liz Littman?

24 A. A female that lives in the hood.

25 Q. Uh-huh. You know exactly who she is.

WALLACE BISHOP - REDIRECT EXAM BY MR. MAYER

1 A. Yeah, I know.

2 Q. Uh-huh. 460-0902?

3 A. 460-0902.

4 MR. SIMPSON: Court's indulgence?

5 THE COURT: Uh-huh.

6 MR. SIMPSON: Your Honor, I have no
7 further questions.

8 THE COURT: Any redirect?

9 MR. MAYER: Very briefly.

10 THE COURT: You may proceed.

11 REDIRECT EXAMINATION

12 BY MR. MAYER:

13 Q. The statement that the Solicitor
14 referenced, did you type that up?

15 A. Did I type it up?

16 Q. Yeah.

17 A. No, sir.

18 Q. It was more of a preliminary statement,
19 wasn't it, that you gave me long ago?

20 A. Right.

21 Q. And you -- we didn't get into many
22 specifics on that statement, did we?

23 A. No. That's what I was trying to
24 explain. Like the question wasn't, like -- we
25 didn't get into it a whole lot, so...

WALLACE BISHOP - REDIRECT EXAM BY MR. MAYER

1 Q. And, as you recall, the purpose of that
2 statement was more to provide the police with a
3 statement from you?

4 A. Right.

5 MR. MAYER: Okay. All right. Very
6 good. Thank you very much.

7 THE COURT: Any objection to the
8 witness being excused? From the state?

9 MR. SIMPSON: No, Your Honor.

10 THE COURT: From the defense?

11 MR. MAYER: No, Judge.

12 THE COURT: Sir, you're excused.

13 State may proceed.

14 MR. SIMPSON: Thank you. Your Honor,
15 at this time, the State would seek to publish to
16 the jury some exhibits that were admitted outside
17 of their presence.

18 THE COURT: You may proceed.

19 MR. SIMPSON: May I approach the
20 evidence table?

21 THE COURT: Yes, sir.

22 MR. SIMPSON: By way of refreshment,
23 State's 32 is a photograph taken from the
24 defendant's phone.

25 THE COURT: You need to do it on the

1 ELMO.

2 MR. SIMPSON: Sure.

3 Publishing State's 32.

4 State's 33, an enhanced version of the
5 same exhibit.

6 Your Honor, at this time the State
7 would seek to publish to the jury State's 47, a CD
8 containing clips from Mr. Hayward's jail calls.

9 It may take me a minute to get the
10 volume right, so I may play the first clip more
11 than once to get the volume correct.

12 For the record, clip 1 on 12/12/13 to
13 843/475-8212. I'm having a hard time getting this
14 -- it's playing out of the laptop.

15 Judge, we're just going to play it out
16 of the laptop.

17 (Audio played)

18 Second clip, 12/16, Your Honor.

19 (Audio played)

20 Your Honor, the next three are three
21 successive short clips from the PIN number of Brian
22 Bivens.

23 (Audio played)

24 Second to last call, August 14, 2015.

25 (Audio played)

1 Final clip is broken into two parts
2 August 28th of 2015 to 460-0902.

3 Last clip, same phone, call,
4 approximately, one minute later.

5 Court's indulgence?

6 THE COURT: Uh-huh.

7 MR. SIMPSON: Your Honor, at this time
8 the State rests.

9 THE COURT: Madame Forelady, ladies and
10 gentlemen, the State has rested their case.
11 There's some matters of law that I need to take up
12 with the attorneys. I also have to deal with an
13 administrative matter unrelated to this case that
14 may take about 15 minutes. During this -- in
15 addition to what I need to take care of in this
16 case.

17 During the break, please do not discuss
18 the case among yourselves or with anyone else.
19 Please do not -- I'm sorry, I'm trying to think of
20 two things at one time, which is hazardous. If you
21 need to go outside, let the bailiffs know. I'm
22 letting them know in advance that you can go
23 outside and get some air if you need to. We
24 appreciate your patience. Please leave your
25 notepads in your seats.

1 (Jury out, 10:25 a.m.)

2 THE COURT: You may be seated. The
3 State has rested. Are there any motions?

4 MR. MAYER: Judge, the defendant does
5 have a motion to dismiss at the appropriate time.

6 THE COURT: This is the time.

7 MR. MAYER: Okay. Judge, the State's
8 case is entirely circumstantial, and while that
9 alone under the law can sometimes be enough to
10 enable them to proceed beyond this point, the facts
11 as they have presented them are -- indicate there
12 is no eyewitness of my client on the scene. There
13 are, in fact, State's witnesses who describe my
14 client around the same time as being dressed
15 entirely differently from how this person, who was
16 involved in this murder, was dressed according to
17 the one eyewitness.

18 Additionally, the one eyewitness the
19 State did procure to the incident right before the
20 murder is entirely unreliable as she's been
21 subsequently charged in a different murder.

22 Judge, for that, and so many other
23 reasons here in this case, I think the appropriate
24 thing is not to allow this to go forward to the
25 jury. It's unlikely that a jury can find

1 sufficient facts against my client as there is no
2 eyewitness and everything else in this case, so,
3 Judge, we would ask that the State's case be ended
4 at this time.

5 THE COURT: Would the State like to
6 respond?

7 MR. SIMPSON: Your Honor, I won't
8 belabor the point. We've been in this trial now
9 for over a week. I think the State has presented
10 substantial evidence on each element of murder and
11 possession of a firearm, including pretty
12 convincing evidence of the defendant's conduct
13 leading up to and during the case, including
14 forensic evidence, fingerprints, the gun matching
15 the caliber and make of the gun that killed the
16 victim, cell phone records that place him right
17 there, the attempts to hide a gun, the attempts to
18 flee, the jail tapes where he attempts to destroy
19 evidence, the jail tapes where he attempts to
20 silence witness and create new ones that favor him.

21 I believe the standards that you are
22 applying, Your Honor, and looking at all that in
23 the light most favorable to the State survives
24 directed verdict by leaps and bounds.

25 THE COURT: Anything further?

1 MR. MAYER: No, Judge.

2 THE COURT: The motion for directed
3 verdict is denied. In considering the motion for
4 directed verdict, the court is concerned with the
5 existence or nonexistence of evidence and not its
6 weight. If there is any evidence, direct or
7 circumstantial, which reasonably tends to prove the
8 guilty accused -- from which the guilt of the
9 accused may be fairly and logically deduced, a
10 motion for directed verdict is improper.

11 Again, it's not for the court to weigh
12 evidence, it's not for me to determine credibility
13 or believability of witnesses. It is rare that
14 most crimes are done with eyewitnesses. That is
15 not a requirement. I would probably estimate the
16 majority of cases are proven by substantial and
17 circumstantial evidence.

18 Of course, the evidence has to raise
19 above more than a mere suspicion, and I would find
20 that the evidence in this case does meet that
21 burden, does rise above that burden, and there is
22 direct, as well as substantial circumstantial
23 evidence, reasonably tending to prove the
24 defendant's guilt when we look at substantial
25 circumstantial evidence in its context.

1 I'm not in the interest of time going
2 to go through all of it, but we've all been here
3 and we've all listened to it. When you connect
4 those dots, the State certainly could prove their
5 case by substantial circumstantial evidence
6 reasonably tending to prove the defendant's guilt,
7 and the motion is denied.

8 Do you have any other witness that you
9 need to call from your list, Mr. Mayer?

10 MR. MAYER: Judge, considering how the
11 case has played out, the only witness we would like
12 to call would be Detective Krasowski.

13 THE COURT: So you are not calling
14 Brian Gammons?

15 MR. MAYER: Correct, Judge.

16 THE COURT: And you are not calling
17 Bill Caps?

18 MR. MAYER: Correct, Judge.

19 THE COURT: And you are -- you have
20 already called -- is Detective Krasowski here?

21 MR. SIMPSON: Yes, Judge.

22 THE COURT: Okay. And does the State
23 have any rebuttal testimony?

24 MR. SIMPSON: I don't believe so, Your
25 Honor.

1 THE COURT: Okay. Will the State be
2 opening and closing?

3 MR. SIMPSON: Just closing, Your
4 Honor.

5 THE COURT: And how long do you
6 estimate your argument to be?

7 MR. SIMPSON: I think between 30 and
8 45 minutes.

9 THE COURT: And, Mr. Mayer, how long do
10 you estimate your closing to be?

11 MR. MAYER: Probably about the same.

12 THE COURT: How long do you anticipate
13 Detective Krasowski's testimony to be?

14 MR. SIMPSON: Maybe 10 or 15 minutes,
15 Judge.

16 THE COURT: Okay. Let me deal with
17 these status conferences right quick and then we
18 will resume with the detective's testimony, and
19 then we will deal with motions and have charge
20 conference and then we will proceed with closing
21 argument.

22 I have ordered the jury's lunch. Once
23 it comes we will stop wherever we are and then
24 resume after.

25 (There was a break in these

1 proceedings.)

2 THE COURT: State ready to proceed?

3 MR. SIMPSON: Yes, Your Honor.

4 THE COURT: Find Mr. Mayer for me,
5 please.

6 And is Detective Krasowski present?

7 MR. SIMPSON: Yes, Judge.

8 THE COURT: I'm sorry.

9 Okay. Mr. Mayer, you wanted to call
10 Detective Krasowski?

11 MR. MAYER: Yes, Judge.

12 THE COURT: Please bring in the jury.

13 MR. MAYER: My office informs me they
14 got that old interview of Latoya Carson working and
15 they are bringing it down to me now.

16 THE COURT: You-all consented to that,
17 correct? I don't remember at this point. I'll
18 have to go back and look.

19 (Jury in, 11:14 a.m.)

20 THE BAILIFF: All jurors present, Your
21 Honor.

22 THE COURT: You may be seated.

23 Ladies and gentlemen, we appreciate
24 your patience as I attended to that matter. We do
25 not take your time for granted. We will resume

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 with the presentation of the defendant's case.

2 You may proceed.

3 MR. MAYER: Judge, we call Detective
4 Krasowski.

5 THE COURT: Sir, come to the stand to
6 be sworn.

7 PAUL KRASOWSKI,
8 being first duly sworn, testified as follows:

9 THE CLERK: Please be seated. State
10 your full name and spell your last name.

11 THE WITNESS: It's Paul Krasowski. And
12 my last name is spelled K-R-A-S-O-W-S-K-I.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MR. MAYER:

16 Q. Mr. Krasowski, please tell the jury how
17 you're involved in this investigation.

18 A. Well, I'm a detective with the City of
19 Charleston Police Department and I was assigned the
20 case, obviously the case agent, at the early stages
21 of the investigation.

22 Q. And some time that wasn't in the early
23 stages of the investigation, you guys learned about
24 Latoya Carson's subsequent murder charge, right?

25 A. Yes, sir.

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 Q. Okay. And did you at that time, or any
2 time before, go and pull her records?

3 A. No, we didn't.

4 Q. As to the hours and this sort of thing
5 in the investigation, you've spent a substantial
6 amount of time on this investigation; is that fair?

7 A. That is very fair to say, yes.

8 Q. Okay. Could you estimate the number of
9 hours you and your agency have spent?

10 A. Gosh, with a fresh murder
11 investigation, it requires -- I mean, I would say
12 60- to a 70-hour workweek in that first week. And
13 it's a team effort, so it's hard to say exactly.
14 This case required a large amount of resources.

15 Q. Okay. And in order to get some of the
16 cooperation that you guys needed in your case, you
17 guys paid one or more witnesses, correct?

18 A. I'm not sure about that.

19 Q. Would looking at your notes refresh
20 your memory?

21 A. It might help if you can give me a
22 second.

23 Q. Do you have them up there with you?

24 A. I have the printout. Can you refer
25 to --

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 Q. I'm sorry?

2 A. Could you refer to -- is there a
3 specific time frame that that would have occurred?

4 Q. Yeah. Let me see if I can find it
5 here. You have a witness one, right? Like a
6 witness one in the case report and a witness number
7 two, witness number three; do you recall that?

8 A. Are you referring to Detective
9 English's --

10 Q. Referring to the case supplemental
11 report. It may have been authored by English.

12 Is it true that you would have reviewed
13 whatever supplemental reports other officers wrote
14 in the case?

15 A. Yes, sir.

16 Q. Okay. It's part of your investigation
17 trying to figure out what to do next, right?

18 A. As the case agent, yes, I would make
19 sure I was aware of all the events that led up
20 through the investigation and what -- the work of
21 others.

22 Q. Isn't it true that early on in the
23 investigation even, you know, the night of or the
24 day after, well before anyone knew about Latoya
25 Carson's other charges --

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 MR. SIMPSON: Objection.

2 THE COURT: Basis?

3 MR. SIMPSON: Leading.

4 THE COURT: I will give him a little
5 latitude, but don't make an argument in the
6 question. You need to ask the question.

7 MR. MAYER: Yes, Judge.

8 BY MR. MAYER:

9 Q. Was there a potential culprit named
10 Raphael Ward that came to your attention early on?

11 A. Not early on in the investigation at
12 all.

13 Q. Okay.

14 MR. MAYER: Judge, may I approach?

15 THE COURT: You may.

16 BY MR. MAYER:

17 Q. Detective, I'm handing you what I think
18 is one of your reports. If you could look at the
19 bottom of page 83 and see if that refreshes your
20 memory as to Raphael Ward.

21 A. Oh, I understand. When you said, early
22 on in the investigation, I was thinking in the
23 first couple of days.

24 Q. I'm sorry, when did his name come up?

25 A. His name came up on a follow-up

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 interview that I did with Latoya Carson on the 27th
2 of December. During that follow-up investigation,
3 she -- she presented some possible rumors that she
4 heard on the street as to why Deontre Miles was
5 shot and killed.

6 And she had searched Facebook social
7 media sites and she found the posting of the
8 subject named Raphael Ward which provided a post,
9 something to the effect that -- good-bye, Facebook,
10 that's my -- this is my last -- something to do
11 with his last post on Facebook.

12 Q. Okay. And did you take steps then to
13 find Raphael Ward and speak to him?

14 A. I did. Just because his name came up
15 in the investigation and it seemed like an
16 unrelated post, but just to make sure, I wanted to
17 try to speak with him and understand exactly the
18 context of that post.

19 Q. Okay. And did you -- did you get hold
20 of him?

21 A. I made contact at his residence, I
22 spoke with his father, I might have made contact
23 with him on the phone. We had agreed to make an
24 appointment, and he never showed up and I was
25 unable to get hold of him again.

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 Q. Okay. And -- and so you never spoke
2 with him face to face?

3 A. I can't recall. I believe I actually
4 did talk to him face to face at his house, and
5 that's when we set up an appointment for him to
6 come down to the station to discuss this matter.
7 And he just never showed and I was unable to make
8 contact with him again.

9 MR. MAYER: May I approach the witness,
10 Judge?

11 THE COURT: You may.

12 BY MR. MAYER:

13 Q. Detective, I'm handing you another of
14 your reports.

15 A. Yes.

16 Q. Take a look at page 93, kind of in the
17 middle there. It talks about your contact with
18 Mr. Ward. Take a minute and see if that refreshes
19 your memory.

20 A. Yes. This was -- I never was able to
21 receive a statement from him, but I had a brief
22 interaction with him.

23 Q. So you left a notice at his house with
24 his dad and he called -- he called you, but you
25 never talked to him face-to-face?

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 A. So it wasn't face-to-face, no.

2 Q. And he never did come down to speak
3 with you face-to-face. You guys made an
4 appointment and he didn't come?

5 A. That's correct.

6 Q. And you kind of left it there?

7 A. Yes.

8 Q. Okay. Now, how about Wallace Bishop,
9 did you try to speak with Wallace Bishop?

10 A. I did. I reached out to him on several
11 occasions with no result.

12 Q. And there was evidence at the time to
13 suggest that Wallace was with Valentino at the
14 time, correct?

15 A. That's why we reached out to him, yes.

16 Q. But, again, he never came in for a
17 face-to-face and you didn't follow up with him?

18 A. Well, I did follow up, but he never was
19 able to come in.

20 Q. Being in charge of the investigation,
21 you would be aware if there was an eyewitness,
22 correct?

23 A. Yes, sir.

24 Q. Okay. Take a look at this and see if
25 that -- see if you recognize that.

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 A. Okay.

2 Q. So this is the pathology report?

3 MR. SIMPSON: Your Honor, objection.

4 THE COURT: Approach.

5 (Bench conference was had; the
6 following proceedings were had in open court.)

7 THE COURT: You may proceed.

8 BY MR. MAYER:

9 Q. Mr. Krasowski, did you at any point
10 tell the pathologist or someone else that the
11 decedent was witnessed to run a short distance and
12 collapse?

13 A. No, I did not say that.

14 Q. Would you have gone about the
15 investigation differently if you had known up front
16 that Ms. Carson was going to be later charged with
17 the other murder?

18 A. No, I wouldn't. We wouldn't.

19 Q. You wouldn't have wanted to at least
20 get her phone records to verify that she was
21 telling the truth?

22 A. Her phone content was looked at on the
23 night of the incident. There was an extensive
24 interview done with her and her statement was
25 corroborated entirely with the findings of the

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 detective.

2 Q. Except there were no fingerprints from
3 her found on the car, were there?

4 A. No, there were not.

5 Q. Is it possible there could be other
6 fingerprints for people who were around that night
7 not on the car?

8 A. They found three sets of fingerprints
9 on that vehicle, one being Valentino Hayward, one
10 being the victim's roommate at the time, Hannah
11 Dobson, and then the victim as well.

12 Q. And that wasn't my question. My
13 question was, they didn't find Latoya Carson's
14 print and, similarly, they could have overlooked or
15 not found the print of someone else that was
16 present that night, correct?

17 A. There could have been other
18 fingerprints that were not identifiable.

19 Q. And there could have been other people
20 there or another person who didn't leave a print,
21 correct?

22 MR. SIMPSON: Objection, Your Honor.

23 THE COURT: Lack of foundation and
24 speculation.

25 BY MR. MAYER:

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 Q. Bottom line is, it's really hard to go
2 back and not charge someone once they've been
3 charged, isn't it?

4 A. Can you clarify that? I'm sorry.

5 Q. Once someone -- once your agency
6 charges someone with a crime, you guys have kind of
7 set your course and it's really hard to turn back;
8 isn't that correct?

9 A. No, I wouldn't say that.

10 Q. And, certainly, that would be true of a
11 few months down the road, right? The longer the
12 case is there, the harder it is to kind of change
13 direction with it, right?

14 A. If there is evidence, legitimate
15 evidence to suggest otherwise, then it would need
16 to be visited.

17 Q. But it's not your job as a police
18 officer to find all the evidence that is going to
19 exonerate somebody. It's your job as a police
20 officer to build a case against the person,
21 correct?

22 A. That's -- it's about finding evidence
23 and let the evidence lead in the investigation, and
24 that's what this investigation yielded.

25 Q. Do you know how many times your agency

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 stopped and questioned Valentino prior to this
2 incident?

3 A. I don't know that answer.

4 Q. And so in your notes, did you find
5 which witness you guys had paid money or which
6 witnesses you paid money to?

7 A. I wasn't sure exactly -- you were
8 referring to Detective English's report?

9 Q. I'm just referring to the supplemental
10 report that runs to about 98 pages from your
11 department that you said you reviewed for this
12 case?

13 A. I do. I don't recall any witnesses
14 being paid.

15 MR. MAYER: Okay. Court's indulgence?

16 BY MR. MAYER:

17 Q. Officer, if you could look at your
18 supplemental report on page 66.

19 A. I just located that, Detective English.

20 Q. And it's witness one. Can you tell us
21 about that?

22 A. There was an additional witness in this
23 investigation early on that assisted in our
24 investigation and we obtained statements from him.

25 Q. Okay. And you guys paid for the

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 statements?

2 A. That's correct. For his level of
3 cooperation, we paid him a sum of money.

4 Q. And you paid him about \$200; is that
5 right?

6 A. That's correct.

7 Q. And were there other witnesses that
8 were paid?

9 A. That was the only witness that had been
10 paid.

11 Q. Were there witnesses paid by other
12 organizations besides yours?

13 A. Not that I'm aware of.

14 Q. Don't you think that paying witnesses
15 -- you might get bad information just because they
16 want the money?

17 A. That's always a possibility.

18 Q. Tell the jury about the crowd outside
19 around this crime scene area. Was this an unusual
20 crowd?

21 A. So I didn't make the initial response
22 to the crime scene. I was called in about
23 4:00 a.m. the following morning. So -- but
24 speaking out of responding to a typical crime scene
25 investigation like that, usually the neighborhood

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 people will empty out to see what's going on,
2 curiosity sake.

3 Q. And in your investigation, do you
4 recall -- did you find that this one may have been
5 unusual in that there was a posting on Facebook
6 pretty immediately after the incident?

7 A. The way social media is in our present
8 time where everybody has mobile devices that you
9 can post things, it's not uncommon to see multiple
10 postings of things relating to a crime scene
11 investigation.

12 Q. And wouldn't it be important then,
13 also, if someone is posting that quickly to follow
14 up on those leads as well, if they may have
15 information about what happened?

16 A. Yes. We have a crime intelligence unit
17 that monitors social media, so we're always trying
18 to keep an eye on that. Obviously, there's lots of
19 different networks and you may not see a private
20 posting, so we try to keep an eye on that to see if
21 anything comes to light so we can follow up on
22 that.

23 Q. Did you identify in this case who made
24 that really early on posting about what happened?

25 A. If you're speaking about Raphael Ward,

PAUL KRASOWSKI - DIRECT EXAM BY MR. MAYER

1 we did try to reach out to him and obtain his
2 statement.

3 Q. Did you get it figured out how he would
4 have had knowledge about this before it was --

5 MR. SIMPSON: Objection, Your Honor.

6 THE COURT: To the extent he knows, he
7 can answer the question. It's overruled. Of his
8 own knowledge.

9 THE WITNESS: Raphael's Facebook post
10 mentioned nothing of this murder, so...

11 BY MR. MAYER:

12 Q. But, you know, you being in charge of
13 this investigation, you would know there was a
14 different Facebook post that actually got the
15 decedent's friends and family out to the crime
16 scene, right?

17 A. I didn't know that a Facebook post was
18 the reason for that. Latoya Carson I believe made
19 contact with his family which created a response.

20 MR. MAYER: No further questions, Your
21 Honor.

22 THE COURT: Any questions for the
23 witness?

24 MR. SIMPSON: Briefly, Your Honor.

25 THE COURT: You may proceed.

1 CROSS-EXAMINATION

2 BY MR. SIMPSON:

3 Q. All right. Detective Krasowski, on the
4 issue of giving compensation in exchange for a
5 statement, any witness that this jury has heard
6 from in this trial, were any of them paid any
7 money?

8 A. No, sir, they were not.

9 Q. The individual that Mr. Mayer was
10 referring to on the \$200, is he a known person with
11 a drug issue to you?

12 A. As part of his problem, yes.

13 Q. And even after the conversation, did he
14 give you any information whatsoever that he was
15 anywhere near Sequoia Street when this happened?

16 A. No.

17 Q. Okay. As to the mysterious Facebook
18 post, I believe you just hit on this, someone on
19 Facebook named Raphael Ward, did he indicate any
20 knowledge of this crime?

21 A. No, he didn't.

22 Q. And let's just get right out with it.
23 What did it say again?

24 A. It said something to the effect of
25 farewell to Facebook, good-bye Facebook, as if he

1 was maybe going to close his account or something.

2 Q. You attempted to follow up on that?

3 A. Absolutely.

4 Q. And you followed up as the lead

5 investigator on all of the avenues in this

6 investigation?

7 A. That's correct.

8 Q. Where does Raphael Ward live again?

9 Does he live anywhere close to where this happened?

10 A. His residence is listed in the Ardmore

11 area; however, it is down White Oak Drive. It

12 would probably be closer to Saint Andrews Gardens

13 than it would be to The Hole.

14 Q. Any evidence whatsoever from any source

15 whatsoever that Raphael Ward was anywhere close to

16 this location?

17 A. Not at all.

18 Q. And, again, the content of this

19 earth-shattering message is, good-bye, Facebook?

20 A. Yes.

21 Q. Indicating that he's closing his

22 account?

23 A. Yes.

24 Q. Anything else whatsoever?

25 A. Nothing to do with the murder.

PAUL KRASOWSKI - CROSS EXAM BY MR. SIMPSON

1 Q. In your experience as an investigator,
2 did that suggest to you in any way that he had
3 something to do with this?

4 A. No. That's why I reached out to him,
5 just to determine for sure that there was nothing
6 to suggest that he had involvement.

7 Q. Because that sort of dovetails nicely
8 into some other questions that you were asked about
9 by Mr. Mayer regarding the evidence. Are you
10 following the evidence in this case?

11 A. Yes.

12 Q. To wherever it leads?

13 A. That's right.

14 Q. And if should that evidence -- this
15 investigation continued long after arrest; is that
16 correct?

17 A. That is correct.

18 Q. And should even after a charge that
19 evidence starts to reflect to you that maybe that
20 charge wasn't correct, you would inform us,
21 correct?

22 A. Absolutely.

23 Q. And we would work together --

24 A. Yes.

25 Q. -- to remedy that situation?

PAUL KRASOWSKI - CROSS EXAM BY MR. SIMPSON

1 A. That's correct.

2 Q. Okay. You mentioned on your cross the
3 fingerprints on the Buick. There was the victim's?

4 A. That's right.

5 Q. His roommate?

6 A. That's right.

7 Q. And Valentino Hayward's?

8 A. That's correct.

9 Q. You mentioned in your direct that it
10 was -- you had knowledge that Latoya Carson called
11 the victim's family so they could know what was
12 going on and come out there?

13 A. That's correct.

14 Q. And in your experience and your years
15 as a detective, have you ever known of a case where
16 the killer immediately calls the family of the
17 victim to let them know what happened and come meet
18 them?

19 A. I have not seen that before.

20 Q. You made -- you attempted to contact
21 Wallace Bishop, right? Give him a chance to give
22 you the story that --

23 A. That's correct.

24 Q. More than one time?

25 A. Yes, multiple times.

PAUL KRASOWSKI - CROSS EXAM BY MR. SIMPSON

1 Q. Did he ever come talk to you?

2 A. He never did.

3 Q. And Mr. Mayer sort of left something a
4 little vague. He said there was evidence at the
5 time that they were together. What evidence was
6 that?

7 A. Well, from Anisha Pearson's statement,
8 Wallace and Valentino dropped off Wallace's
9 children at 8:00, or 8:05, at her residence, which
10 was at 640 Sequoia. That's why we reached out to
11 him, because he was with Valentino shortly before
12 this incident occurred.

13 Q. And Mr. Mayer sort of challenged you on
14 not reviewing Latoya Carson's phone; is that
15 correct?

16 A. He did challenge me on that, and
17 Detective Williams did go through the phone. They
18 had to charge the phone so that they could view it
19 to corroborate all of her statements.

20 Q. And I believe she was on a chat site
21 that had times on it; is that correct?

22 A. That's correct.

23 Q. Okay. And so she was able to pretty
24 much match up some pretty -- times of events using
25 what was going on, on the phone?

PAUL KRASOWSKI - REDIRECT EXAM BY MR. MAYER

1 A. That's correct.

2 MR. SIMPSON: I have no further
3 questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. MAYER: Just very briefly.

6 REDIRECT EXAMINATION

7 BY MR. MAYER:

8 Q. Detective Krasowski, you testified here
9 just now twice that it's your belief that the
10 deceased family learned about this and that came
11 from Ms. Carson, not Facebook. Can you take a
12 minute and find anywhere in the notes -- your
13 extensive notes from this case where you document
14 that happened?

15 A. I could look in Sylvester Williams'
16 report, but I reviewed his statement yesterday
17 evening. And it was stated in her statement that
18 was recorded that she had reached out to his
19 family.

20 Q. So it's not in any of the paperwork?

21 A. It might be, but I'm just going off of
22 -- it was like a three-hour interview that I had
23 watched last night so I'm familiar with that.

24 Q. And which day was that interview given,
25 the one you're referring to?

PAUL KRASOWSKI - REDIRECT EXAM BY MR. MAYER

1 A. That was with Detective Williams, which
2 was -- he responded directly to the scene. So that
3 would have been in the evening hours -- the latter
4 hours of the 11th into the 12th.

5 Q. Okay. And those were the portions of
6 the interview that the State previously played in
7 this trial, right?

8 A. Yes.

9 Q. Not her follow-up interview of
10 December 27th?

11 A. No. December 27th was a follow-up
12 interview that I did with her.

13 Q. Just to be clear, you didn't ask the
14 digital evidence -- Mr. Van Horn to review Latoya
15 Carson's records, right?

16 A. No, we never downloaded her phone.

17 MR. MAYER: Okay. All right. No
18 further questions.

19 THE COURT: Any objection -- sir, you
20 may step down.

21 THE WITNESS: Thank you, Judge.

22 THE COURT: You're welcome.

23 Defense may proceed.

24 MR. MAYER: Judge, I believe that is
25 the last witness the defense would call. I think

1 there is one evidentiary --

2 THE COURT: Do you plan to rest?

3 MR. MAYER: We would like to rest.

4 THE COURT: Madame Forelady, ladies and
5 gentlemen, the defense has rested their case. I
6 have some matters of law to take up with the
7 attorneys. During the break, please do not discuss
8 this case and please leave your notepads in your
9 seats. We appreciate your patience.

10 (Jury out, 11:42 a.m.)

11 THE COURT: You may be seated. All
12 right. Mr. Mayer, what is it that you're referring
13 to?

14 MR. MAYER: Judge, I'm referring to
15 this follow-up interview from Latoya Carson dated
16 December 27th, 2013. That's the one I mentioned
17 that my office located and they just delivered here
18 to me which I believe they got it working back at
19 the office. I just want to see if this is
20 something that can be set up and work here now.
21 Could I have just a brief couple of minutes to do
22 that?

23 THE COURT: Uh-huh.

24 MR. MAYER: Thank you.

25 MR. SIMPSON: Your Honor, my

1 apologies, may I run to the restroom.

2 THE COURT: Sure.

3 (A recess transpired.)

4 MR. MAYER: Judge, at this time I'm
5 still unable to make the audio portion of this
6 interview work. I would like -- I would ask to do
7 two things. First, I would ask to make a proffer
8 of this disk, along with --

9 THE COURT: For what purpose?

10 MR. MAYER: I guess, Judge, to show
11 that it -- I guess just to -- just to show that we
12 had listened to it and it did work at one time. I
13 would like to include with the profer the
14 contemporaneous notes that I made on the sleeve of
15 the disk back March 1st, which I believe was
16 March 1, 2014. It says, heard both files of client
17 on 5/1.

18 And, Judge, along with that I would
19 like to include --

20 THE COURT: Still trying to figure out
21 for what purpose you're making this profer.

22 MR. MAYER: Judge --

23 THE COURT: I don't think anybody is
24 questioning that you can't hear it and I don't know
25 why you would want to make your notes part of a

1 record because that vitiates the privilege as your
2 work product.

3 MR. MAYER: Judge, I think it's really,
4 really important --

5 THE COURT: Important for what
6 purpose? I haven't even determined if it's
7 admissible or relevant, so I'm trying to figure out
8 why -- I'm still not clear why you're seeking to
9 admit it.

10 MR. MAYER: The reason I'm seeking to
11 admit it is because the fingerprint or hand print
12 that's pulled of my client off of this automobile
13 is from a right palm. Okay? And this interview
14 given by the eyewitness who said the assailant came
15 up to the car, she gives an interview within two
16 weeks of this murder.

17 And she very clearly tells
18 investigators -- and we can see her motioning in
19 the video --

20 THE COURT: Yeah, but I can't hear
21 what she's saying.

22 MR. MAYER: Exactly. We can see her
23 motioning with her left hand repeatedly, but we
24 don't hear the words.

25 THE COURT: I guess I'm still trying to

1 figure out how it would be admissible. She was
2 here and she testified. You had the opportunity to
3 ask her these questions. You don't get to play her
4 interview.

5 MR. MAYER: Well, Judge --

6 THE COURT: Except for impeachment.

7 MR. MAYER: I understand, Judge, and
8 since I wasn't able to do that at the time --

9 THE COURT: No. No. That's not my
10 question. I have not heard anything that she said
11 that would be inconsistent such that would have
12 allowed you under the Rules to use that to impeach
13 her.

14 MR. MAYER: And so, Judge, what she --
15 if the audio had worked, what it would have said --

16 THE COURT: I can't take your word for
17 that because I can't hear it.

18 MR. MAYER: Well, Judge, I know.
19 That's why I'm offering --

20 THE COURT: I'm not going to take your
21 word for it because you're an advocate and I don't
22 know whether what you're saying is accurate. Not
23 that I'm impugning your credibility, but I need
24 something objective to make a ruling on that says
25 it's impeachable.

1 You had her here; she was present; she
2 testified. You had the opportunity to ask her
3 those questions, and as far as I recall her
4 testimony, she answered consistently. So I'm
5 trying to figure out how you would have been able
6 to use that to impeach her.

7 MR. MAYER: Well, first off, we already
8 had the offer from Mr. Simpson to allow this to
9 come in to be shown to the jury.

10 THE COURT: Is that right?

11 MR. SIMPSON: I said -- just to back
12 up a little bit. We had an interview with Latoya
13 Carson that the audio never worked on. Detective
14 Krasowski gave the interview, he gave a very
15 detailed report about the content --

16 THE COURT: So you're saying the audio
17 never worked on the CD.

18 MR. SIMPSON: I can tell you no one in
19 my office has ever been able to listen to this
20 interview. Nevertheless, we handed it over with
21 the report from Krasowski. What I told Aaron was,
22 if you come in and get a clip that's impeachable
23 and get the audio to work, I will consent to that
24 coming in. We're not at that point and --

25 THE COURT: So they didn't agree to

1 anything except what's in the Rules so we're back
2 to the original point, which is, how could you have
3 used this to impeach her? First, you would have to
4 have it audible, which you are unable to do. Next
5 you would have to prove to me -- well, that's in
6 reverse order.

7 First, you would have to prove to me
8 she said something that is inconsistent such that
9 you get to use an extraneous statement to impeach
10 her, but under the Rules you still have to give her
11 the opportunity to review the statement. Ask her
12 the exact same question, have her answer
13 inconsistently, then you can use it to impeach her.

14 So I'm at a bit of a loss of an audio
15 that never had anything that could be heard, how
16 you ever would have been able to use that to
17 impeach her.

18 MR. MAYER: Well, Judge, that's what --

19 THE COURT: Because you haven't proved
20 to me that she said anything inconsistent.

21 MR. MAYER: Judge, I understand, and
22 that's why I want to proffer --

23 THE COURT: You create a proffer when
24 it's something that I haven't allowed, and then you
25 creat a proffer so that the Court of Appeals can go

1 back and review what it said to see if there was
2 any evidence to support the court's conclusion that
3 it was admissible or inadmissible.

4 You haven't even met the threshold,
5 which is that you would have been able to use it to
6 impeach her.

7 MR. MAYER: Judge, I hear you. Can I
8 tell the Court my concern?

9 THE COURT: Yes.

10 MR. MAYER: My concern is, at one time
11 I had a piece of evidence in my possession which I
12 heard because I have notes from. And I know I
13 wouldn't have made notes from something I didn't
14 hear that would have been very beneficial to my
15 client's case at trial, specifically --

16 THE COURT: Then why didn't you ask
17 her those questions directly when she was here in
18 your presence to testify?

19 MR. MAYER: Judge, I did, and she said
20 she didn't remember. And now I'm going to impeach
21 her with this --

22 THE COURT: I don't know if that's
23 exactly what she said. I would have to go back and
24 look at it. Why didn't you just ask her those
25 questions directly? She was her, she was present

1 to testify.

2 MR. MAYER: I did ask her the
3 questions, Judge, and she answered inconsistently.

4 THE COURT: How did she -- not
5 remembering is not inconsistent. If somebody
6 doesn't remember and you have something that can
7 refresh their recollection, you give it to them for
8 that purpose.

9 MR. MAYER: Right.

10 THE COURT: Inconsistent is when you
11 say something completely inapposite of what you
12 said the first time.

13 MR. MAYER: Judge, I understand, but
14 because I was unable to play this and refresh her
15 memory, there was no refreshing that was done.

16 THE COURT: Well, I don't know that
17 what she said was inconsistent on the tape and you
18 can't prove that to me. All I see is somebody on a
19 tape and them looking -- I don't know what they're
20 doing.

21 MR. MAYER: I think it's -- the crux of
22 the reason that I want to make this proffer, Judge,
23 is because it's either -- it's either my fault or
24 it's technology fault, but there was a way at one
25 time that I heard this. And if it's my fault, I

1 want to make that part of the record.

2 THE COURT: Well, I don't know how you
3 can make it your fault. If the State says it was
4 never audible, I question now whether it was ever
5 audible. So if they never were able to hear it,
6 how were you able to hear it?

7 MR. MAYER: Judge, I have no idea. I
8 have no idea how they wouldn't hear it, but I'm
9 certain I was able to hear it. It's the disk that
10 is kept in here as her follow-up interview.
11 (Indicating) It has my notes. I always mark what
12 I hear with the client. I heard it with the client
13 of May 1 of 2014. I've got my notes from May 1,
14 from where I marked down my minute mark hashmark in
15 case I have to refresh a memory or impeach a
16 witness.

17 THE COURT: Yeah, but it wouldn't be
18 the first time during this trial that your
19 recollection was inaccurate. I don't mean that in
20 any pejorative sense. How you perceive something
21 may well be different than how the court would
22 perceive it. Often times you have thought
23 something was inconsistent and it wasn't, it was
24 consistent.

25 I'm trying to figure out how -- you

1 have to meet a threshold burden with this court to
2 use extraneous evidence. Her statement is hearsay,
3 it's an out of court statement offered for its
4 truth. You had her present to testify. You could
5 have asked her all these questions.

6 And it's your burden to prove by a
7 preponderance of the evidence that, in fact, the
8 statement that you claim to have is inconsistent
9 and that it would have impeached her. And you
10 still would have had to have given her the
11 opportunity to review it, to refresh her memory
12 such that she could answer inconsistently or
13 consistently.

14 So, at this point, I don't know whether
15 what you have would have been an inconsistent
16 statement, and I tend -- having dealt with a lot of
17 technology, generally, if something is inaudible,
18 it's inaudible. Unless you get the assistance of
19 some professional to enhance it and make it work --
20 you know, we like to believe that digital
21 recordings and everything are infallible. They're
22 not. Just like we tend to rely on computers and
23 think they're infallible, but they break as well
24 and they don't work.

25 So I'm a little at a loss as to how it

1 would have been audible if it was always -- if it's
2 the State's position that it was always inaudible
3 and they were unable to hear it. And I would
4 imagine the City of Charleston has -- unlike most
5 police departments, has an incredible technology
6 department, as well as a forensic department that
7 deals with computers. If they weren't able to make
8 it work, I'm confused as to how you would have been
9 able to make it work.

10 MR. MAYER: Judge, I'm not saying it
11 was any sort of technical problem. It would have
12 been a complete fluke. I admit that it would have
13 been a complete fluke if I were able to hear it.

14 Can I just offer the Court to look at
15 my notes?

16 THE COURT: I don't want to look at
17 your work product because I can't become a witness
18 in this case. And I don't think you should be
19 putting your work product in the record. It's
20 still your perception; it's not evidence.

21 MR. MAYER: Okay, Judge.

22 THE COURT: And in the process of
23 preparing for a trial, it would not be unusual for
24 people to get things mixed up or confused. As
25 human beings, we're fallible. If you want to take

1 some time to have a professional look at it to try
2 to enhance it so I can make some determination as
3 to whether what was on there is impeachable or not,
4 that would -- I don't have a problem giving you
5 that time if you need it, but at this point, the
6 witness has been here, she's testified. I don't
7 know whether what you're contending is inconsistent
8 or not.

9 Up to this point she testified as to
10 what she told the police, and it bore out when they
11 went and dusted the car. And you've already
12 questioned all of them regarding the extent of
13 their investigation and whether they dusted for
14 other prints and whether other prints were found on
15 the vehicle.

16 So I don't know what it is you're
17 saying that she would have said in that statement
18 that was inconsistent.

19 MR. MAYER: Do you want me to put that
20 on the record?

21 THE COURT: Well, I need to know what
22 it is that you claim she said was inconsistent.

23 MR. MAYER: Judge, what I claim that
24 she said is inconsistent was that in the interview
25 from December 27th, she said, whoever came up to

1 the car put his left hand on top of the car by the
2 door.

3 And why that's so important is that she
4 says very clearly shortly after this incident it
5 was the left hand.

6 THE COURT: How is that inconsistent?

7 MR. MAYER: Because in testifying she
8 didn't -- she didn't testify -- she didn't specify.
9 She refused to specify, and the print they pulled
10 was of Valentino's right palm.

11 THE COURT: I still don't see how
12 that's -- saying, I don't remember, is not
13 inconsistent. You can't use that to impeach her.
14 If she said originally it was his left and now she
15 says she doesn't remember, I don't -- you still can
16 argue that to the jury as to her credibility, that
17 she didn't remember, which goes to her veracity.

18 MR. MAYER: Judge, this would have been
19 different if I had been able to refresh her memory
20 and had she --

21 THE COURT: Yeah, but I can't deal with
22 hyperbole. I have to deal with what is. If you
23 can't get the disk to play, I can't make an
24 independent determination of what it says. And
25 putting it the record as a proffer is useless

1 because they can't hear it either.

2 And nobody is questioning that you said
3 you can't hear it. The State says it's always been
4 inaudible, but out of an abundance of caution, they
5 turned it over to you.

6 You've had more than ample time to have
7 it enhanced if you desired. I gave you additional
8 time because you said you wanted time to try to get
9 it to work. I don't know what you did in the
10 meantime, but certainly there are many services in
11 Charleston -- and I assume that's why you contacted
12 Mr. Casper who was unable to provide you any
13 assistance; otherwise, he would be here to talk
14 about how he enhanced it and how he could make it
15 work, correct?

16 MR. MAYER: Judge, we actually had
17 Mr. Casper for a totally different issue that we
18 ended up not using him.

19 THE COURT: Well, he certainly does
20 that kind of work, doesn't he?

21 MR. MAYER: I'm not sure, Judge.

22 THE COURT: Well, there are other
23 services in town. I believe AVS down on King
24 Street does it. There are other services that you
25 could have employed, but I don't know that it would

1 have really, frankly, in the scheme of things made
2 a difference because it appears that from when they
3 did it, some type of equipment was not working to
4 have recorded it. I don't know how you can enhance
5 something that's inaudible.

6 MR. MAYER: Judge, thank you for
7 hearing my argument on it.

8 THE COURT: What was the problem with
9 the tape when they recorded her interview?

10 MR. SIMPSON: Thank you, Judge. We
11 were never able to determine that. I can put on
12 the record our efforts. We got two copies of two
13 CDs, the first one that we've used in this case and
14 a follow-up by Detective Krasowski. The first was
15 fine, the second one is what you've seen, that
16 noise --

17 THE COURT: You said the first one was
18 fine. What does that mean?

19 MR. SIMPSON: Just being audible,
20 clear, and everything. And then the follow-up, you
21 know, which Mr. Mayer keeps saying was right after
22 the murder, it was actually several weeks later.

23 THE COURT: Let's be clear for the
24 record. When you say, the first one, I need you to
25 give dates. When you say, the first one, it

1 implies that you had a first interview with
2 Detective Krasowski that was audible. I need you
3 to be clear.

4 MR. SIMPSON: There is an interview
5 between Latoya Carson and Detective Williams. That
6 is a lengthy interview that was given the night of
7 the crime, December 11, 2013, carrying over to
8 December 12th, 2013. Several weeks later on the
9 27th of December, Detective Krasowski called her
10 back in to do a follow-up interview; it's much
11 shorter. We got a copy of that interview in the
12 same condition and -- honestly, before we even
13 looked at it, we copied it and gave Mr. Mayer a
14 copy of it.

15 When we went to open that, it was in
16 the same condition as you've seen, Your Honor,
17 which is where there's noise and you can't hear
18 what is being said; however, Detective Krasowski
19 wrote quite a detailed report --

20 THE COURT: What does that report say
21 she said? Does it say --

22 MR. SIMPSON: On the issue --

23 THE COURT: -- right palm?

24 MR. SIMPSON: -- it clarifies -- it
25 doesn't say. She said that he touched the top of

1 the car in that location with his hands. Hands was
2 plural.

3 THE COURT: So she never said left or
4 right?

5 MR. SIMPSON: He has no recollection.
6 His recollection is that she's always been confused
7 on that issue. They've asked her several times,
8 she's always answered how she answered on the tape.
9 I know he touched it, I don't really remember.

10 There is a point, and I think you see
11 it in the clip Mr. Mayer showed you where she seems
12 to be sort of signifying left rather than right,
13 but not having any audio we have no idea if she's
14 saying, well, it might have been like this, but I
15 don't remember. That would be consistent with how
16 she has always testified.

17 Just to put on the record too, what we
18 did when we noticed that we couldn't view ours, we
19 went to CPD to get the original in hopes that the
20 original wouldn't have those problems. We brought
21 the original to our office to try to remedy that
22 situation and it also failed. The original
23 recording was --

24 THE COURT: So it was some equipment
25 error?

1 MR. SIMPSON: We're alleging equipment
2 error, and Detective Krasowski said that it
3 frequently happened with that equipment and they
4 are working on that.

5 THE COURT: But her -- his statement
6 does not indicate that she ever indicated which
7 palm?

8 MR. SIMPSON: No, Your Honor. It does
9 look that they were discussing it on that video, as
10 you can see it, but -- the way he wrote in his
11 report on that interview, Latoya advised they
12 parked in a dark spot and told Deontre this;
13 however, Deontre said that he would only be a
14 minute.

15 Latoya observed a black male with short
16 dreds in a dark-colored shirt, dark hat, walk up to
17 her window, the front passenger, and prop himself
18 using the roof top part of the door to lean in
19 towards the window.

20 THE COURT: Mr. Mayer, I will give you
21 this option if you want to exercise it, you can
22 call Ms. Carson in your case in chief. You can
23 allow her to review this video that does not have
24 any audio, ask if that refreshes her memory
25 regarding the placement of the palm, and that would

1 be the extent of what -- how far you could go
2 without audio.

3 So I'll give you that option if you
4 want to exercise it, but the supplemental report
5 indicates that she never indicated which palm.

6 MR. MAYER: Judge, may I confer with my
7 client?

8 THE COURT: Sure.

9 MR. SIMPSON: And, Judge, if I may,
10 she was asked about that on the stand.

11 THE COURT: She was, but --

12 MR. SIMPSON: She said she didn't
13 remember which hand.

14 THE COURT: I'll give her the
15 opportunity to look at it and see if that refreshes
16 her memory. She can say she looked at it and if it
17 does, it does. If it doesn't, it doesn't.

18 MR. MAYER: Judge, I think that we
19 would like to take the Court up on that offer.

20 THE COURT: How long will it take to
21 transport her?

22 MR. COLEMAN: I can check on it.

23 THE COURT: Could you check on that for
24 me please?

25 MR. COLEMAN: They can get her here

1 within about an hour-and-a-half, as long as we get
2 the transport order to them ASAP.

3 THE COURT: Hour-and-a-half. That
4 would be what?

5 MR. COLEMAN: About 1:30.

6 THE COURT: Any exception from the
7 State?

8 MR. SIMPSON: Court's indulgence?

9 THE COURT: Uh-huh.

10 MR. SIMPSON: Judge, obviously, you've
11 offered this to the defense. I would just say that
12 she's been questioned on this on the stand already.
13 She indicated that -- answered the question that
14 she doesn't know which hand he used. This is in
15 the interest of the jury's time quite a substantial
16 delay just to show -- and I think it's prejudicial
17 to us to show movements and genuflecting --

18 THE COURT: The jury is not going to
19 see that. She gets to look at that to refresh her
20 memory. Period.

21 MR. SIMPSON: Okay.

22 THE COURT: You can't use it to impeach
23 her with no sound. You use a person's statement to
24 impeach them, not their motions, unless it's
25 definitive in some way showing that they've done

1 something that is the exact opposite.

2 Her merely demonstrating and going back
3 and forth, the jury would not see that, but I don't
4 see any harm to the State because you will have the
5 opportunity to cross examine her.

6 I don't see any harm to the State in
7 her looking at the video to see if it refreshes her
8 memory and for him to ask her the questions again;
9 however, it's probably going to delay closing
10 arguments and instruction by the time we get her
11 here. By the time you all get through talking and
12 I charge them, it would be 5:00 o'clock. I'm not
13 going to do that.

14 MR. SIMPSON: Continue it until
15 tomorrow morning?

16 THE COURT: Probably that's what we're
17 looking at depending -- we have jurors with small
18 children with daycare issues, and I'm not going to
19 -- because I have no control over how long they
20 will deliberate. I'm going to play it by ear.

21 MR. SIMPSON: I'm sorry?

22 THE COURT: I'm going to play it by
23 ear. The chief justice has instructed us not to
24 close and charge after 3:00. You don't know how
25 long it's going to go and, frankly, in the interest

1 of the State and defense, I would not want for the
2 jury to feel like they're being held hostage to
3 make a decision.

4 MR. SIMPSON: I think they feel that
5 way right now.

6 THE COURT: I don't know; they're a
7 very a congenial group.

8 MR. SIMPSON: Okay.

9 THE COURT: We just run the risk of
10 another alternate getting sick. I'm not saying
11 that I've made a decision about scheduling, I'm
12 just going to see how it goes. If it's an
13 hour-and-a-half to get her here, that's 12:15, that
14 is quarter of -- I'm not good with time.

15 I have 12:13, so that's 1:15, that's
16 quarter to 2. You wouldn't be able to resume until
17 2:00 because we have to get her lawyer over here.
18 Somebody needs to call Ms. Sarji.

19 MR. SIMPSON: We have someone calling
20 her now.

21 THE COURT: Is that the defense's last
22 witness?

23 MR. MAYER: Yes, Judge.

24 THE COURT: Is the State going to have
25 any rebuttal testimony?

1 MR. SIMPSON: Judge, if we do, and I
2 doubt it, it would just be Paul Krasowski to talk
3 about her consistently not knowing.

4 THE COURT: What I'll do is bring the
5 jury in and let them go until 2:00. Their lunch is
6 here so they -- but I will let them leave the
7 courthouse. I don't see any point in keeping them
8 here for that purpose.

9 Get the jury.

10 (Jury in, 12:18 p.m.)

11 THE COURT: You may be seated.

12 THE BAILIFF: All jurors present.

13 THE COURT: You may be seated, ladies
14 and gentlemen. We are going to take a little
15 extended lunch recess, your lunch is here; however,
16 you can stay here or take it with you.

17 We're having some challenges in
18 procuring the attendance of a witness and it's
19 going to take us an unanticipated time to transport
20 that person here to the courthouse. I don't want
21 you waiting while we are doing that; however, the
22 lawyers and I will continue to work ahead so that
23 we can get some work done during that delay.

24 During this break, please do not
25 discuss the case among yourselves or with anyone

1 else. Do not watch, read, or listen to any media
2 accounts about this case. Please do not do any
3 independent research on the Internet and do not
4 post anything regarding your status on any social
5 networking sites.

6 You will need to return to the
7 courthouse at 2:00. You will come directly to your
8 jury room. I anticipate that this would be the
9 last testimony we will hear today. I cannot
10 guarantee that we will have closing argument and
11 instruction because I'm sort of, as I told the
12 lawyers, taking it one step at a time to see how
13 long this is going to take.

14 I recognize that you have lives beyond
15 this process and I'm not going to hold you hostage
16 at the courthouse all night. It's not fair to you,
17 or the attorneys, in terms of your attention span
18 and in terms of you being tired and weary from
19 being here all day, and I will take that as it
20 comes.

21 I anticipate that the closing argument
22 and instruction will take more than two hours, and
23 so I don't want you all to start deliberating at
24 5:30. It's not fair to you all. I will sort of
25 take that as it comes and I will have some

1 conversation with you all about your time
2 allocations before I make any final decisions.

3 We appreciate your patience. We will
4 see you at 2:00. Please leave your notepads in
5 your seats.

6 (Jury out, 12:20 p.m.)

7 THE COURT: You can take your seats.
8 All right. While we're at break we're going to
9 deal with charge conference and, also, out of an
10 abundance of caution, I'm going to question the
11 defendant regarding his right to testify now that
12 we've truly come to the end of the process.

13 If you would stand for me and raise
14 your right hand to be sworn.

15 VALENTINO HAYWARD,
16 being first duly sworn, testified as follows:

17 THE DEFENDANT: Yes, ma'am.

18 EXAMINATION

19 BY THE COURT:

20 Q. State your name for the record.

21 A. Valentino Hayward.

22 Q. Mr. Hayward, do you recall me
23 explaining to you your rights regarding your
24 ability to testify?

25 A. Yes, ma'am.

CHARGE CONFERENCE

1 Q. Do you need me to explain those rights
2 to you again?

3 A. No, ma'am.

4 Q. And, sir, do you need to discuss with
5 your attorney anymore at this time whether you
6 should or should not testify?

7 A. No, ma'am.

8 Q. And, sir, is it still your desire that
9 you do not wish to testify in this case?

10 A. Yes, ma'am.

11 THE COURT: You can take your seat.
12 Thank you.

13 Okay. I will give the jury a general
14 instruction regarding their responsibility and my
15 responsibility, how they are to judge witness
16 credibility and believability. I'll give them a
17 general instruction regarding the prior record of a
18 witness which is only to be used regarding
19 someone's credibility.

20 I will also give a general instruction
21 regarding prior bad acts evidence that is not the
22 subject of a conviction because several -- well,
23 not several. One of the defense witnesses
24 indicated that he and the defendant were engaged in
25 illegal behavior, that being smoking weed, and I

CHARGE CONFERENCE

1 need to instruct them that they are not to consider
2 that against the defendant as evidence of what he
3 is convicted of.

4 I'll give them a general instruction
5 regarding expert witness testimony. I will
6 instruct State v. Raton on circumstantial and
7 direct evidence, including the additional language
8 regarding the State's requirement regarding
9 circumstantial evidence.

10 MR. MAYER: Judge, may I step out for a
11 minute? For a minute?

12 THE COURT: We're in the middle of
13 charge conference.

14 I'll give them a general instruction
15 that the charge, the arrest, and the indictment are
16 not evidence, as well as on the presumption of
17 innocence. I will instruct Victor v. Nebraska on
18 reasonable doubt.

19 I will also instruct regarding the
20 statement of the defendant and that the jury is to
21 consider whether he was Mirandized, and whether they
22 believe the statement is for them to determine
23 beyond a reasonable doubt regarding the other
24 factors that are relevant.

25 I will then instruct on the elements of

CHARGE CONFERENCE

1 murder, which includes express and inferred malice.
2 And since self-defense is not an issue in this
3 case, the Belcher language is not applicable. I
4 will then charge on the elements of possession of a
5 firearm during the commission of a violent crime.

6 I will give a general instruction
7 regarding multiple charges; in other words, the
8 defendant is charged with two offenses. They have
9 to be considered separately on the evidence
10 offered, and the State must prove each and every
11 element of each offense beyond a reasonable doubt.

12 I will then instruct on the form of the
13 verdict.

14 Are there any exceptions from the
15 State?

16 MR. SIMPSON: The State would ask for
17 the addition of a hand of one charge. We've heard
18 evidence that just before this, it was Wallace
19 Bishop and Valentino Hayward dropped off the kids
20 and went over there. I think we've got pretty
21 clear evidence pointing to Mr. Hayward as the
22 shooter, but I think that implication meets the any
23 evidence standard and that they should be
24 instructed on the fact that the lack of a belief
25 that he actually pulled that trigger doesn't end

CHARGE CONFERENCE

1 the discussion as far as whether he was guilty of
2 the charge or not.

3 THE COURT: Anything further from the
4 State?

5 MR. SIMPSON: No, Your Honor. That
6 would be our only request.

7 THE COURT: Anything from the defense?

8 MR. MAYER: Judge, you mentioned the
9 presumption of innocence. Will there also be an
10 instruction --

11 THE COURT: Oh, failure of the
12 defendant to testify. I knew I was forgetting
13 something. Yes, I will. I just skipped over that
14 inadvertently.

15 MR. MAYER: Thank you, Judge.

16 THE COURT: You're welcome.

17 I assume there are no requests for a
18 lesser included instruction as there has been no
19 evidence to support that?

20 MR. MAYER: That's correct, Judge.

21 THE COURT: Give me one moment. My
22 secretary is going to bring the verdict forms to me
23 so you can look at them.

24 Will Counsel approach please?

25 THE COURT: Any exception to the form

CHARGE CONFERENCE

1 of the verdict? From the State?

2 MR. SIMPSON: No, Judge.

3 THE COURT: From the defense?

4 MR. MAYER: No, Your Honor.

5 THE COURT: Any exception from the
6 defense instructing conflict liability, which is
7 hand of one?

8 MR. MAYER: Sorry, Judge?

9 THE COURT: Is there any exception from
10 the defense to the State's request on instructing
11 hand of one?

12 MR. MAYER: No.

13 THE COURT: Okay. Anything else we
14 need to take up before we adjourn for lunch? From
15 the State?

16 MR. SIMPSON: No, Your Honor. Just
17 briefly, just so I understand where we're at right
18 now. If Ms. Carson is allowed to testify in front
19 of the jury, we are just limiting --

20 THE COURT: Not if. She is going to
21 testify. It's just that he's going to -- when she
22 gets here he's going to allow her to refresh her
23 memory with the --

24 MR. SIMPSON: Outside the presence of
25 the jury?

1 THE COURT: Uh-huh.

2 MR. SIMPSON: But we're just calling
3 her back for this one issue, right?

4 THE COURT: I don't know. He can ask
5 her whatever else. I mean, you'll have to make a
6 contemporaneous objection.

7 MR. SIMPSON: I just want to make sure
8 that I don't have to prepare for a whole new Carson
9 part two, or just prepare for this one issue which
10 is why we're bringing her back.

11 THE COURT: I don't know. You have to
12 ask Mr. Mayer that. I have no clue.

13 MR. MAYER: Just the one issue.

14 MR. SIMPSON: Okay.

15 THE COURT: All right. Anything else
16 before we break for lunch? From the defense?

17 MR. MAYER: No, Your Honor.

18 THE COURT: Please make sure the Court
19 Reporter has all of the exhibits and they're all
20 accounted for before you all leave the courtroom.

21 MR. MAYER: Judge, there was one thing.
22 The defendant's father was in the hallway and
23 overheard someone speaking with Ms. Carson's
24 attorney and asking --

25 MR. SIMPSON: That was me, sorry. I

1 called Ms. Sarji. She has a sick kid. I explained
2 to her they were bringing Ms. Carson back down and
3 kind of gave her a little bit of background of
4 what's going on, that Mr. Mayer was calling her
5 back. She said, well, I can't come, I'm home with
6 a sick kid.

7 And I told her it was -- like, again,
8 this goes to my question -- for a limited purpose,
9 I don't really see how this is going to change
10 anything. Is it possible that you would waive your
11 presence for just the one issue? And she said,
12 yeah, that's fine, I don't need to be here.

13 THE COURT: It really doesn't matter
14 what he said to her. She's the one that's
15 testifying --

16 MR. SIMPSON: I would love to hear
17 what --

18 THE COURT: It's unlikely that she
19 will have any contact with her client. If she
20 changed her testimony substantially, you have the
21 sworn record to impeach her.

22 MR. SIMPSON: I think -- I'm sorry,
23 just for my purposes and ethics, I would like to
24 hear what Mr. Hayward thinks I said to her lawyer.

25 MR. MAYER: Would the Court be willing

1 to hear from Mr. Hayward?

2 THE COURT: Not particularly, but I
3 will hear from you since you've raised the issue
4 and purported that what he said was improper.

5 MR. MAYER: Well, no. Judge, I don't
6 know what he thinks he overheard. He was just
7 saying, tell her to say the same thing that she
8 said before.

9 MR. SIMPSON: She's not even going to
10 talk to her. She was telling me she was home --

11 THE COURT: She's not allowed to talk
12 to her anyway, period, because she can't talk to
13 her about her testimony. I have instructed her she
14 is not to talk about her testimony with anyone.

15 I know people have a heightened sense
16 of paranoia during litigation, and I'm just not
17 going to get into something unless there is
18 something independent that corroborates what was
19 said. It really doesn't matter.

20 Mr. Simpson can't talk to Ms. Carson,
21 Ms. Sarji can't talk to Ms. Carson. And if it
22 makes you feel any better, you can ask Ms. Carson
23 when she gets here if she talked to her lawyer
24 about her testimony, because I've instructed her
25 not to.

1 And if it were what -- what was said,
2 it would be an ethical issue. It wouldn't be
3 anything that would affect this trial and it would
4 be something I would have to take up with the
5 Disciplinary Council. So it really doesn't affect
6 this trial at all.

7 MR. MAYER: Thank you, Judge.

8 THE COURT: Have a good lunch. See
9 you at 2:00.

10 I don't want to hear any editorial
11 comment from anyone in my courtroom. So please
12 exit. Thank you.

13 And if I need the assistance of
14 Security, let me know.

15 THE BAILIFF: Yes, ma'am.

16 (A luncheon recess transpired.)

17 THE COURT: You may be seated.
18 State ready to proceed?

19 MR. SIMPSON: Judge, I have one quick
20 matter I would like to put on the record. Just
21 before we broke, we had a conversation about some
22 statements I was alleged to have made in the hall.

23 THE COURT: Yes, sir.

24 MR. SIMPSON: It has been, as you
25 know, as a former attorney yourself, a very long

1 eight days for me. I have a fuse that's a little
2 short. I encountered Mr. Singleton as I was
3 walking out and I think I behaved very
4 unprofessionally.

5 THE COURT: Okay.

6 MR. SIMPSON: And I apologized to
7 Mr. Singleton in the hall. He was man enough to
8 look at me, and I won't say he accepted it, but he
9 acknowledged my apology. And he just said, well, I
10 want you to go tell it to the Judge, and I am here
11 telling it to you. Tempers get short and --

12 THE COURT: That's why I said what I
13 said before we broke. We've been in a long trial,
14 tempers run high, people tend to be a little
15 paranoid. There's a lot on the line and so I would
16 -- everybody's tempers run high, and so it's not
17 surprising to me.

18 The Court would note your apology for
19 the record.

20 MR. SIMPSON: More should be expected
21 of me.

22 THE COURT: I agree. I agree
23 completely. As officers of the court we have a
24 higher standard. When everybody else loses their
25 heads, we have to keep ours.

1 Mr. Mayer, ready to proceed?

2 MR. MAYER: Yes.

3 THE COURT: Is Ms. Carson present?

4 THE BAILIFF: Yes, Judge.

5 THE COURT: And do you have the DVD --

6 CD cued up so she can watch it?

7 MR. MAYER: Yes, Judge, to the minute.

8 LATOYA CARSON,

9 being first duly sworn, testified as follows:

10 THE CLERK: Have a seat. State your
11 full name and spell your last name.

12 THE WITNESS: Latoya Carson,
13 C-A-R-S-O-N.

14 THE COURT: Ms. Carson, you have been
15 recalled as a witness. Ms. Sarji is your attorney,
16 correct?

17 THE WITNESS: Yes.

18 THE COURT: And she is not present. Is
19 that also correct?

20 THE WITNESS: Not to my knowledge.

21 THE COURT: Okay. Ma'am, do you wish
22 to go forward in her absence in testifying?

23 THE WITNESS: No.

24 THE COURT: Okay. So we need to
25 procure Ms. Sarji because this is who has to waive

1 her appearance. Not her lawyer.

2 MR. SIMPSON: She is at home, the only
3 caregiver of a sick child.

4 THE COURT: Let's see what the
5 situation is. What area of town does she live in;
6 do you know?

7 MR. SIMPSON: I don't, Your Honor. At
8 the moment she is not answering her phone.

9 THE COURT: Okay.

10 MR. SIMPSON: If I could reach her,
11 could we arrange for Latoya to speak with her
12 about this?

13 THE COURT: She's indicated she wants
14 her lawyer present. And the purpose of her lawyer
15 being present in case anything comes up that she
16 feels she wants to assert her Fifth Amendment
17 privilege, and Ms. Sarji can't waive that for her
18 client. She's indicated to me she's not
19 comfortable going forward. I'm inclined to
20 accommodate that.

21 MR. SIMPSON: I'll keep trying her,
22 Your Honor.

23 THE COURT: Does she indicate whether
24 she's taken the child to the doctor?

25 MR. SIMPSON: I didn't ask her.

1 THE COURT: Is there anybody else in
2 her office? Who does she practice with?

3 MS. MULKEY: I believe she's a sole
4 practitioner.

5 THE COURT: When were you notified that
6 you were being transported?

7 THE WITNESS: About an hour ago.

8 THE COURT: Right before you came over?

9 THE WITNESS: Uh-huh.

10 THE COURT: I think we don't have any
11 other option but to recess the hearing until we can
12 procure Ms. Sarji's appearance. I don't know what
13 the status of Ms. Sarji's child is. I don't know
14 the nature of his or her illness. Did she indicate
15 if she thought she was going to be out for a long
16 period of time?

17 MR. SIMPSON: My investigator said she
18 told him she'd been diagnosed with pneumonia.

19 THE INVESTIGATOR: When I talked to her
20 on the phone and let her know, she said that her
21 son had been diagnosed with pneumonia this morning
22 and she'd just got back home, she was with him and
23 she was by herself and not able to come back here.

24 THE COURT: I would imagine she can't
25 so -- but pneumonia is fairly significant so we'd

1 have to know what her situation is going to be
2 tomorrow.

3 MR. SIMPSON: Thank you, Judge.

4 THE COURT: What is the State's
5 preference in proceeding?

6 MR. SIMPSON: Well, Judge, we sort of
7 objected to this to begin with. She needs to be
8 here and I understand that thinking, we'll keep
9 trying to call Ms. Sarji.

10 This is not our witness at this point
11 and these arrangements really should be made by the
12 person calling the witness.

13 THE COURT: I agree.

14 M. Mayer?

15 MR. MAYER: Judge, I guess we would
16 just, you know, stay this course and get to --

17 MR. SIMPSON: Your Honor, sorry to
18 interrupt.

19 THE COURT: Go ahead and answer it.

20 MR. SIMPSON: Do you want me to answer
21 it?

22 THE COURT: Yes.

23 (The following telephone conversation
24 was had via speakerphone.)

25 MR. SIMPSON: We're in court. Judge

1 Jefferson is here, and Lauren and Aaron Mayer.
2 Mr. Mayer wished to call your client. She is here
3 and on the stand. We're looking for guidance from
4 you. We know you're in a tough spot.

5 MS. SARJI: Yeah. My six-year-old son,
6 Alex, was just diagnosed with pneumonia at the
7 pediatrician's office and so I don't have any
8 options as far as childcare goes. If you need me
9 down there, I'm happy to load him up and put him in
10 the corner of the courtroom and he'll cough the
11 whole time. If you need me there, I would have to
12 bring him tomorrow also.

13 THE COURT: What is your situation in
14 the morning?

15 MS. SARJI: It all depends. The
16 doctors (inaudible) -- so I might can get my dad to
17 take off work tomorrow morning and sit with him.
18 That probably would be --

19 MR. SIMPSON: Would you be comfortable
20 -- and as a parent I know with just -- neither side
21 I don't think is anticipating really long testimony
22 at all. Would you be comfortable for a short
23 period of time if somebody from my office just sort
24 of held him in the hall? For a short period of
25 time?

1 MS. SARJI: Yeah. I mean, he's a
2 really easy kid, he just doesn't feel good. I can
3 put him with like my phone to play with or
4 something and he'll -- you know, he's an easy kid.
5 He just has to come with me.

6 THE COURT: How far away are you from
7 the courthouse?

8 MS. SARJI: I live on Congress Street
9 so I'm downtown already. It would take me probably
10 -- I could throw on a skirt and be up there in
11 20 minutes. And I'm happy to do it, you know, if
12 Chad can get somebody from his office, or if maybe
13 Judge Jefferson's law clerk could sit with him or
14 --

15 MR. SIMPSON: We can get someone with
16 no problem.

17 THE COURT: Okay.

18 MR. SIMPSON: Leslie, I believe Judge
19 Jefferson prefers in the morning.

20 (Off-the-record conference.)

21 MS. SARJI: I'm sorry.

22 THE COURT: No, you don't have to
23 apologize. Your child is ill and you are
24 accommodating us.

25 Ma'am, are you comfortable with that,

1 with Ms. Sarji being here in the morning with you?

2 THE WITNESS: I just want to get this
3 over with. They done drag me down here all week
4 for nothing. I'm really ready to get it over with.

5 THE COURT: Are you telling me now you
6 wish to go forward without --

7 THE WITNESS: Yeah, I am ready to get
8 it over with.

9 THE COURT: Ms. Sarji, your client has
10 indicated to us that she wants to get it over with
11 and she's willing to go forward without you.

12 MS. SARJI: Okay. That sounds fine. I
13 feel like it's fine.

14 THE COURT: All right. Thank you so
15 much.

16 MR. SIMPSON: Thank you, Leslie.

17 (End of telephone call.)

18 THE COURT: All right. Issue resolved.
19 Ma'am, if you feel uncomfortable at any
20 time, please make me aware of it.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Of course, I'm sure your
23 attorney has advised you, you are not required to
24 say anything or answer any question that will
25 violate your right against self-incrimination.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Okay. All right.

3 Get the jury for me.

4 MR. MAYER: Judge, were we going to
5 show her the video outside of the presence of the
6 jury?

7 THE COURT: Yes. Wait one second, I'm
8 sorry.

9 Go ahead and do that.

10 MR. MAYER: Thank you.

11 THE COURT: Ma'am, Mr. Mayer is going
12 to show you a video to allow you to refresh your
13 memory about your testimony.

14 And according to the Rules, you need to
15 advise her which interview, the date and time, and
16 who it was with.

17 MR. MAYER: And, Ms. Carson, this is
18 the December 27th interview that Mr. Krasowski
19 conducted with you there at CPD headquarters. At
20 about 12:51 in the afternoon is when the interview
21 is going on. And the sound on the interview for
22 some reason is not working, but I wanted you to
23 watch the video and watch yourself closely and tell
24 -- just answer a couple of questions about -- if it
25 brings back to mind anything that you said to him

1 in that interview. Okay?

2 Are you left-handed or right-handed?

3 THE WITNESS: Right.

4 MR. MAYER: If you will watch this
5 video for me.

6 (Video played in open court.)

7 MR. MAYER: Can you see the video? Do
8 you see yourself gesturing with your left hand
9 there?

10 THE WITNESS: Yes.

11 MR. MAYER: Does that refresh your
12 memory about which hand you said the person used
13 when they came up to the car?

14 THE WITNESS: Yes.

15 MR. MAYER: And now that you've
16 refreshed your memory, which hand did they use?

17 THE WITNESS: The left.

18 MR. MAYER: Okay. Thank you very much.

19 Judge, at this time we would -- we
20 would like to call the jury to elicit the testimony
21 about what she said before.

22 MR. SIMPSON: Free of the video.

23 THE COURT: Of course. It's not
24 admissible. She didn't answer inconsistently.

25 Ma'am, if you could accommodate -- the

LATOYA CARSON - DIRECT EXAM BY MR. MAYER

1 clerk is going to swear you again in the presence
2 of the jury.

3 She can stay seated. Can we undo her
4 hands please?

5 THE DEPUTY: Yes, ma'am.

6 (Jury in, 2:27 p.m.)

7 THE BAILIFF: All jurors present.

8 THE COURT: You may be seated. Call
9 the witness.

10 MR. MAYER: Judge, the defense would
11 call Ms. Latoya Carson.

12 THE COURT: Swear the witness.

13 LATOYA CARSON,

14 being first duly sworn, testified as follows:

15 THE CLERK: State your full name and
16 spell your last name.

17 THE WITNESS: Latoya Carson,
18 C-A-R-S-O-N.

19 THE COURT: You may proceed.

20 MR. MAYER: Thank you.

21 THE COURT: You're welcome.

22 DIRECT EXAMINATION

23 BY MR. MAYER:

24 Q. Ms. Carson, I understand that your
25 attorney is not present here today; is that

LATOYA CARSON - DIRECT EXAM BY MR. MAYER

1 correct?

2 A. Yes, sir.

3 Q. And I have just the one question for
4 you as a result; since you testified last, you've
5 had the opportunity to refresh your memory about a
6 particular interview that you gave, right?

7 A. Yes, sir.

8 Q. And now I'll ask you the same question
9 again. When the assailant came up to your side of
10 the car, which hand did they place on the car?

11 A. I believe it was the left.

12 Q. The left hand.

13 MR. MAYER: Okay. Thank you very much.
14 Please answer any questions that the Solicitor has
15 for you.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. SIMPSON:

19 Q. Hey, Ms. Carson.

20 A. Hey.

21 Q. You remember testifying on direct,
22 correct?

23 A. Yes, sir.

24 Q. Do you remember talking about how the
25 guy came to the car and it was real quick?

LATOYA CARSON - CROSS/REDIRECT EXAM

1 A. Yes.

2 Q. Happened pretty quickly?

3 A. Yes.

4 Q. Do you remember being asked the night
5 of the event what hand he touched the car with?

6 A. I can't remember.

7 Q. Do you remember answering that you
8 weren't sure?

9 A. Yeah.

10 MR. SIMPSON: Okay. Nothing further,
11 Your Honor.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. MAYER:

15 Q. Did you spend some time with Detective
16 Krasowski trying to remember what hand it was,
17 during your December 27th, 2013 interview with
18 Detective Krasowski?

19 A. I can't remember. I think so. I can't
20 remember.

21 MR. MAYER: Okay. No further
22 questions.

23 THE COURT: Any objection to the
24 witness being excused? From the State?

25 MR. SIMPSON: None.

1 THE COURT: From the defense?

2 MR. MAYER: No, Judge.

3 THE COURT: Ma'am, you're excused.

4 Defense may proceed.

5 MR. MAYER: Judge, that concludes the
6 defense's case.

7 THE COURT: Does the defense rest?

8 MR. MAYER: Yes.

9 THE COURT: Madame Forelady, ladies and
10 gentlemen, the defense has rested their case.
11 There are some matters of law I need to take up
12 with the attorneys. During the break, please do
13 not discuss the case and please leave your notepads
14 in your seats. We appreciate your patience.

15 (Jury out, 2:30 p.m.)

16 THE COURT: You may be seated.

17 The defense has rested. Are there any
18 motions?

19 MR. SIMPSON: None from the state,
20 Your Honor.

21 MR. MAYER: Judge, we would renew our
22 motion for directed verdict?

23 THE COURT: Anything in response from
24 the State?

25 MR. SIMPSON: Your Honor, we stand by

1 our argument made at the closing of the State's
2 case.

3 THE COURT: Based on what's been
4 presented to the court, I find there is no basis
5 for a grant of a renewed motion of directed
6 verdict. There is direct, as well as substantial
7 circumstantial evidence, reasonably tending to
8 prove the defendant's guilt. Any issues of
9 credibility or believability, as well as -- other
10 than the weight to be afforded to the evidence are
11 matters within the purview of the jury.

12 And, again, there is more than
13 sufficient direct, as well as substantial
14 circumstantial evidence, reasonably tending to
15 prove the defendant's guilt and, therefore, the
16 motion is denied.

17 Does the State have any rebuttal
18 testimony?

19 MR. SIMPSON: We do not, Your Honor.

20 THE COURT: While we have the jury
21 out, I meant to do this earlier, just as a matter
22 of housekeeping, there was a motion made to
23 challenge the array of jurors. During the break I
24 had the jury coordinator compile the numbers for me
25 as to who was subpoenaed and the breakdown.

1 The number of jurors that were
2 originally summoned for Monday, November 9, 2015,
3 were 400. The racial breakdown was 298 white, 88
4 black, 10 Hispanic, 2 Asian, and 2 other, with the
5 breakdown of 198 male and 202 female. The actual
6 number of jurors that appeared were 109, 84 white,
7 22 black, 2 Hispanic, and 1 Asian, 63 male and 46
8 female.

9 I stand by my original ruling that
10 there is no basis for the motion to challenge the
11 array of jurors, that it is a composite of the
12 racial makeup of our community and in terms of our
13 demographic in number, it is an appropriate
14 reflection and the motion is denied.

15 Now, there was also a motion made to
16 see the jury scene. That is the only motion that I
17 had remaining that I had not ruled upon. And I
18 need to know if you have abandoned that motion.

19 MR. MAYER: Judge, we would abandon
20 that motion.

21 THE COURT: Okay. Are there any other
22 motions outstanding that the court has not ruled
23 upon? I went through all of the ones that you all
24 gave to me in writing and I have that I have ruled
25 on all of those.

1 MR. MAYER: I don't believe so.

2 THE COURT: Now, the State has
3 indicated it will waive its opening; is that
4 correct?

5 MR. SIMPSON: That's correct, Your
6 Honor.

7 THE COURT: And how long do you think
8 your closing argument will be? I think an hour is
9 safe, wouldn't you say?

10 MR. SIMPSON: I think an hour is safe.

11 THE COURT: Mr. Mayer, I would assume
12 that yours would be at least an hour.

13 MR. MAYER: Yeah, that's probably
14 accurate.

15 THE COURT: So that then takes us to
16 4:30, and my instructions are at least 40 minutes,
17 so that would be beyond 5:00. Is it safe to say I
18 think we should do closing argument and instruction
19 in the morning?

20 MR. SIMPSON: The State leaves that to
21 your discretion. I'd prefer now but --

22 THE COURT: Yeah. I think we're going
23 to end up back here in the morning anyway with them
24 deliberating. They are tired, it's been a long
25 day. I think people tend to -- especially once you

1 have long closing arguments and you give
2 instructions at the end, they're not really
3 listening. I mean, they're listening, but they're
4 tired, their senses are overloaded at that point.

5 And it's been my experience when you do
6 that, they may deliberate -- I will give them the
7 option to go home about 5:30 or 6:00, and I
8 wouldn't finish instruction until 5:30. So
9 basically they only have 30 minutes for
10 deliberation. I don't have any way to get them
11 dinner.

12 MR. SIMPSON: I understand.

13 THE COURT: Nothing that is palpable
14 or healthy. And we have so many people who are
15 diabetic and hypoglycemic, I can't order pizza for
16 them. And we would just end up back at the same
17 place, which is them deliberating in the morning,
18 and then they would probably ask me to reinstruct
19 them because they're not going to remember. So
20 that's kind of where we would end up.

21 Any exception from the defense?

22 MR. MAYER: No, Judge.

23 THE COURT: Please bring in the jury.

24 (Jury in, 2:36 p.m.)

25 THE BAILIFF: All jurors are present.

1 THE COURT: You may be seated.

2 Madame Forelady, ladies and gentlemen,
3 both the State and defense have rested their cases.
4 We have now reached the stage of the trial for
5 closing argument and instruction. Based on my
6 estimate of how long that would take, you wouldn't
7 be free to begin your deliberations until probably
8 close to 6:00, which I think is a little late in
9 light of the fact that we cannot get dinner for
10 you. And so it would not leave you with any real
11 appreciable time to begin your deliberations before
12 I would let you go home for the evening.

13 So I have made the decision that it's
14 more appropriate to begin closing arguments and
15 instruction in the morning so we can go straight
16 through without interruption.

17 We've had a few sort of stumbling
18 blocks today that have sort of -- not protracted
19 the matter, but it's just sort of things that could
20 not have been anticipated that we had to delay the
21 proceedings in some regard, that being the
22 transport of a witness. So we appreciate your
23 patience.

24 Please know we do not take your time
25 for granted and my decision to proceed in this way

1 comes from well hard-earned experience. Once
2 you've heard long closing arguments, you're going
3 to be tired and in all likelihood you would not
4 remember my instructions, which would probably
5 necessitate me giving them again in the morning, so
6 it's better to start fresh with your minds rested.

7 It is even more important during this
8 break that you have no discussion among yourselves
9 or with anyone else regarding what you have heard
10 in this case. While you've heard all the evidence,
11 you have not heard the closing arguments, nor have
12 you heard the court's instruction on the law.

13 And as I have said time and time again,
14 which we say it over and over again because it's
15 necessary, it's not that we think you're not
16 listening, but to begin to talk about what you've
17 heard really requires you to process that
18 information and draw conclusions upon it. And it's
19 not appropriate that you do that until you've heard
20 all of the arguments and the court's instruction.
21 So I would ask that you strictly abide by that
22 instruction.

23 Do not read, watch, or listen to any
24 media accounts about this case. That includes
25 anything about that could be heard or seen on

1 television, radio, or the Internet, as well as
2 anything -- any independent research that you could
3 do on the Internet or anything that you could hear
4 on the radio. Please guard your minds.

5 Again, it is important and essential
6 that you remain impartial until you've heard all
7 the arguments and the court's instructions.

8 Also, please don't do any independent
9 research on the Internet and don't post any remarks
10 or comments about your status on any social
11 networking sites.

12 When you return in the morning, please
13 come directly to your jury room. You will continue
14 to park as you have, which is in the parking deck
15 next door to -- immediately adjacent to the
16 courthouse. Once everyone has arrived, we will at
17 that time begin closing argument and instruction.
18 We would ask that everyone be prompt. As soon as
19 everyone arrives, we will begin those arguments and
20 instruction.

21 And, again, please do not have any
22 contact with anyone in or about the courthouse as
23 you return. We would not want an innocent
24 conversation to be observed and misinterpreted.

25 Again, you all have been very gracious

1 and patient with us as it regards your time. There
2 are many parts of this process that you cannot see,
3 but please know we are working while you're
4 waiting. And we, again, as I instructed at the
5 beginning of the trial, have to guard your
6 impartiality. So while it would be helpful for you
7 to understand why you're waiting, it could impact
8 your ability to be fair and impartial, so we have
9 to insulate from that.

10 Hope you have a great evening. See you
11 in the morning at 9:30. We may well take your
12 lunch orders at that time as well. I hope you have
13 a good evening and we'll see you in the morning at
14 9:30. If you would, leave your notepads and we
15 will secure them during the break.

16 (Jury out, 2:40 p.m.)

17 THE COURT: You may be seated. Is
18 there anything before we break for the evening?
19 From the State?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: From the defense?

22 MR. MAYER: No, Judge.

23 THE COURT: If you could make sure for
24 me once again with the Court Reporter that all the
25 exhibits are in place. That doesn't preclude you

1 from using them during argument, I just need to
2 make sure that all exhibits are accounted for.

3 (These proceedings were recessed at
4 2:43, to be continued, November 17, 2015 at 9:30
5 a.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CLOSING ARGUMENT - BY MR. MAYER

1 (The following proceedings were held
2 November 17, 2015, at 9:49 a.m., in re State v.
3 Hayward, Charleston County Circuit Court.)

4 THE COURT: State ready to proceed?

5 MR. SIMPSON: We are.

6 THE COURT: Defense read to proceed?

7 MR. MAYER: Yes, Judge.

8 THE COURT: Please bring in the jury.

9 (Jury in, 9:49 a.m.)

10 THE BAILIFF: All jurors are present,
11 Your Honor.

12 THE COURT: Thank you. You may be
13 seated.

14 Hope that everyone had a restful
15 evening. Both the State and defense have rested
16 their cases. We have now reached the stage of the
17 trial where we will have closing argument and
18 instruction. I would ask that you give the
19 attorneys your undivided attention.

20 You may proceed, Mr. Mayer.

21 MR. MAYER: Thank you, Judge. May it
22 please the Court?

23 THE COURT: Yes, sir.

24 MR. MAYER: Guys, thanks so much for
25 your attention in this relatively long case. This

CLOSING ARGUMENT - BY MR. MAYER

1 case for us is all about reasonable doubt. I
2 believe that Tino is innocent of this, but that's
3 not our burden to prove. It's the State's burden
4 to prove to you otherwise, and so what I want to
5 talk with you about this morning is exactly what
6 reasonable doubt is.

7 The Judge will give you a definition of
8 what reasonable doubt is, but I've always learned
9 better through analogy so I want to give you a
10 brief analogy. I had a matter earlier this year,
11 totally unrelated, where a home construction
12 contractor went missing for four days and his
13 family contacted me. He ended up in a hospital in
14 Georgetown in Berkeley County.

15 He had taken an Ambien one night at
16 10:00. At 11:00, his girlfriend got a bizarre text
17 from him, and then he was missing for four days.

18 It ended up that detectives in Berkeley
19 wanted to charge him of burglary of a house and
20 this sort of thing 45 miles from his house. They
21 said, we're going to wait until he recovers from
22 his injuries. So I said, well, let me get -- take
23 this opportunity to get the crime scene photos and
24 see what happened. The detective says, all right,
25 here's what happened.

CLOSING ARGUMENT - BY MR. MAYER

1 He goes and -- drives around the house
2 and goes to kick in their door and goes to -- you
3 know, try to burglarize the house. I flipped
4 through the crime scene photos, and the detective
5 said, yeah, when he got seven or eight paces inside
6 the living room, the homeowner had a shotgun and he
7 opened up with the shotgun and shot the guy. And
8 he hurt him real bad. Deep inside the house we're
9 talking about. And I said, okay.

10 So the detective said, you know, look
11 at crime scene photo number whatever it was, maybe
12 45, and what is that in the front yard? Well,
13 that's the ejected cartridge from the shotgun.
14 What's it doing in the front yard? And they still
15 didn't ended up charging him, and that was many
16 months ago.

17 The point of that story is that's
18 reasonable doubt, okay, when you are not convinced
19 that somebody is guilty. By drawing that
20 detective's attention to that shotgun casing in the
21 front yard, he admitted to having reasonable doubt
22 in the case and decided not to charge.

23 Now, here the crime scene is maybe not
24 quite as telling, but I still would suggest to you
25 it's very telling. Okay. Here, maybe it wasn't as

CLOSING ARGUMENT - BY MR. MAYER

1 immediately obvious because Latoya Carson's other
2 concerns maybe came up later, but there are a
3 couple of things that the detective at the time
4 didn't have the benefit of that we now have benefit
5 of.

6 First is the 911 call that Ms. Carson
7 made. She made a 911 call five minutes or so after
8 hearing the gunshot. And the fact as I have them
9 -- and we'll go through them in a little bit more
10 detail in a few minutes, but the facts as I have
11 them is, Ms. Carson claimed that she was in a car
12 with the window down, cracked somewhat, across a
13 relatively narrow residential street from where
14 Mr. Miles was killed.

15 She heard what she says now was maybe a
16 gunshot, could have been a firecracker. Guys, a
17 gunshot is so loud, and if a gunshot goes off
18 behind your car from across a residential street,
19 it's going to be startling. It's alarming. It's
20 not around the block. It's not ambient noise.
21 Okay. To ignore that for five minutes is very
22 suspicious. Okay?

23 But that's not all, that's not the only
24 problem. She has -- she admitted she has no EMS
25 training, no emergency medical training. It's a

CLOSING ARGUMENT - BY MR. MAYER

1 very dark scene there. And we heard Charles
2 Rodwell, the State's very first witness, come and
3 testify that he had enough training -- he examined
4 the decedent after the 911 call. Okay.

5 It's very dark. We had multiple people
6 testify that the decedent's position and the way
7 the gunshot wound was to the back and with him
8 laying on his back, it wasn't obvious. It wasn't
9 apparent. And you couldn't have known that he was
10 a gunshot victim until you turned him over. Okay.

11 Ms. Carson testified that she didn't
12 turn him over. Okay. But yet, after waiting five
13 minutes from the time she heard this gunshot, after
14 saying that she had tried to call his phone -- and
15 you heard Detective Osborne say there were no
16 missed calls from her in his own records.

17 After saying that -- that she then --
18 oh, then she calls 911 before Charles Rodwell does
19 his examination of the decedent. And she says --
20 the 911 is in evidence, you can listen to it. She
21 says right away, he's been shot, he's been shot.
22 Okay. And that doesn't line up with the rest of
23 her story about sitting in a car, maybe hearing
24 something, going to look.

25 The way that he was positioned there --

CLOSING ARGUMENT - BY MR. MAYER

1 you heard Detective Osborne, who looked at State's
2 Number -- I think it was State's Number 9 for me,
3 which is not in evidence, and he said there was no
4 visible blood. Okay.

5 This decedent at the time that Latoya
6 Carson examined him, he could have been
7 unconscious, he could have been knocked out. There
8 was no -- there was no indication that he had a
9 gunshot wound unless she had some other knowledge
10 that she didn't want to share with the police.
11 Okay. And there, for me, that's reasonable doubt
12 in a big, big way. Okay.

13 There are a couple of other things here
14 too where Mr. -- Mr. Rodwell -- and, again, he was
15 the State's first witness. He seemed like he was a
16 nice guy who was in the area and was able to
17 potentially offer assistance. The State asked him
18 multiple times, she was upset, right? Wasn't she
19 upset? And his answer, I quote exactly, I can't
20 say she was upset. I can't say she was upset.

21 And then they pushed him on it and he
22 said, well, maybe she was a little upset. That
23 again, guys, doesn't jive with her story as she
24 told it to the police that night. Okay.

25 She had gunshot residue on her hands,

CLOSING ARGUMENT - BY MR. MAYER

1 which you heard the expert testify that could be
2 from her being in the area. Okay. The State is
3 going to tell you it's from her touching the
4 decedent's hand. That's their theory of it; we
5 don't know. When you're talking about another
6 person's life on the line, another person's future,
7 I would ask that you make any inferences in
8 Valentino's favor since we don't know.

9 And the burden of proof is on the
10 State. You know, I think probably Ms. Carson
11 probably was an accomplice. She probably didn't
12 know this was going to happen like this. She
13 probably didn't mean for it to go down that way,
14 but she definitely -- I believe she definitely had
15 a hand in setting this up. And, you know, that's
16 why I think probably in her own way -- rather than
17 naming names and this sort of thing, probably in
18 her own way when she said, whoever came up to the
19 car put their left hand right here. (Indicating)

20 And, you know, I had to refresh her
21 memory with a video, but she in the end -- you guys
22 heard her yesterday, she said, yeah, at the time,
23 on December 27th, not long after this incident, you
24 know, we went back, and I think it was the left
25 hand. Okay.

CLOSING ARGUMENT - BY MR. MAYER

1 You know, and the fingerprint stuff --
2 I mean, I want to talk about the fingerprint stuff,
3 but, really, I first want to talk about Tino being
4 kind of the usual suspect there in Ardmore.
5 Valentino grew up in Ardmore. You heard testimony
6 that he probably was stopped and questioned by the
7 police a dozen times or more. I don't think we
8 talked about how extensive some of that questioning
9 was, but some of at least was stopping and frisking
10 him. Okay.

11 And stopping and frisking is something
12 that I believe really violates people's rights to
13 privacy. It really violates their constitutional
14 rights. You know, I think it's racially based, I
15 think it's really unfair. I've never been stopped
16 and frisked and I doubt that many of you have been
17 stopped and frisked. When you're talking about
18 this community policing and trying to establish
19 ties with the community as well, I would think that
20 would be probably the most counterproductive thing
21 you could do.

22 And that's certainly the effect it had
23 on Valentino and his peers in the Ardmore
24 neighborhood. Being stopped and frisked countless
25 times by the police just engendered a feeling of

CLOSING ARGUMENT - BY MR. MAYER

1 antagonizing. Right? You're going to antagonize
2 me? Well, I'm not going to talk to you. I'm going
3 to stiff arm you, you know.

4 And there are -- there are some
5 statements where Valentino should have been more
6 forthcoming with the police. Okay. There is no
7 question about that. But he's coming out of a very
8 different background than, say, I'm coming out of,
9 for instance. If I'm lying to the police, then you
10 can infer that that's something going on with me,
11 and that's what they're going to ask you to infer
12 about Valentino, but I would strongly submit to you
13 that the same assumption about someone in
14 Valentino's neighborhood doesn't apply as what you
15 might assume about someone like me. Okay. I've
16 had a lot of privilege and Valentino, quite
17 frankly, hasn't, and it's just a completely
18 different upbringing.

19 Let's talk about some of the other
20 facts of the case and what, you know, the State's
21 theory is of what's going on. The State has a
22 photograph of a weapon that was taken off of
23 Valentino's cell phone from the month prior.
24 Valentino had taken the photo of a gun apparently.
25 Okay. Looks like it's a 38 in the picture. There

CLOSING ARGUMENT - BY MR. MAYER

1 is absolutely no evidence whatsoever saying that
2 that's the weapon that was used to kill this
3 decedent. Okay?

4 You heard the ballistics guy testify
5 it's a nominal 38 caliber slug. It could have been
6 a 38, could have been a 357, could have been a 9
7 millimeter. Okay? Having a picture of something
8 on our phone, I just think there shouldn't be any
9 assumptions made about that.

10 As I mentioned a moment ago, I do think
11 one of the things that Ms. Carson was pretty candid
12 about was trying to figure out which hand, I'm
13 going to call him her accomplice, came and put on
14 this car. I think that that was going to be her
15 way of saying this wasn't right, I want to try to
16 make this right, but I'm sure as heck not calling
17 any names.

18 And she did say it was a left hand, and
19 she said it really clearly back on the 27th. And
20 the State developed a palm fingerprint from the
21 right hand. And you heard testimony that a
22 right-hand palm print is not the same as a
23 left-hand palm print.

24 Valentino and Chucky went way back.
25 They went way back to their teenage years. You

CLOSING ARGUMENT - BY MR. MAYER

1 heard on his interview how they knew each other,
2 they were at a group home in Orangeburg together.
3 You will see that in one of the -- I think it's
4 Defendant's Exhibit 3 or 4 is excerpts of the phone
5 download from Valentino's phone that Mr. Van Horn
6 did. It shows Chucky had contacted Facebook, it
7 shows a mobile number, it shows all of this stuff.
8 None of that is deleted stuff. That's all stuff
9 that was maintained on Valentino's phone the next
10 day.

11 And so the State is asking you to
12 assume or think that, well, Valentino after all
13 these years of knowing Chucky, Mr. Miles, decided
14 finally to set him up. Okay. And, you know, why
15 now? And they're looking at a text that Valentino
16 sent to a woman, Marion Campbell. And Valentino --
17 I can tell I'm a little bit -- and you'll probably
18 see it in bits of the phone excerpts, that he had a
19 lot of girlfriends. And -- and that was something
20 he was very interested in was girls.

21 You know, he's kind of a typical young
22 man; girls, you know, cool cars and, you know, he
23 liked guns too. And in his neighborhood, guns were
24 a cool thing. And he sent Marion a text that said,
25 I just want to be alone. You know, I thank you for

CLOSING ARGUMENT - BY MR. MAYER

1 all your attention, but I just want to be left
2 alone. And she persisted.

3 And he sent her a crazy text. Okay?
4 He sent her a text about, you know, I'm \$180 short,
5 I'm going to go rob somebody. Completely out of
6 the blue, completely uncorroborated by any other
7 evidence in this case. Right? And then what we
8 omitted from the text string was pretty graphic
9 stuff, but, anyway, the end result was she
10 persuaded him not to cut off contact with her.
11 Okay. She was pretty persuasive. And he ended up
12 seeing her that very night. Okay.

13 Guys, the State is trying to piece this
14 thing, bunch of disjointed parts, together, and
15 they're trying to present a picture to you of
16 Valentino as a murder er. And I'm here to tell you
17 it's just not accurate. There is so much
18 reasonable doubt in the Latoya Carson thing -- and
19 the rest of the case isn't even strong.

20 I want to talk through some of the
21 other facts if you'll bear with me -- if you'll
22 bear with me, we'll get through these facts and we
23 can go on and talk about some other things, but I
24 would -- I would have loved for you to have heard
25 from Valentino. I like Valentino a lot. He's been

CLOSING ARGUMENT - BY MR. MAYER

1 a great guy to work with. He is not super
2 articulate and, as you heard in some of the
3 testimony, he didn't get past the tenth grade; he's
4 got a learning disability, or more.

5 And you may have seen where even I
6 stumbled in these situations and I've had a lot of
7 training and, you know, a fair amount of
8 experience. Detective Holmes was on the stand and
9 I was trying to elicit from him that basically he's
10 the ringer they bring in to interview kind of, you
11 know, guys like Valentino, right, who really don't
12 like to talk to officers.

13 And I was going about it, you know, I
14 was saying, you're the African American guy in the
15 department, et cetera. And, you know, Mr. Simpson
16 called me out on that. He didn't let me get away
17 with that question. He said to Mr. Holmes, are you
18 the token African American in that department? And
19 that, of course, was not the point that I was
20 trying to get at.

21 Even with all my training and
22 experience that I have, I asked a bad question.
23 And Mr. Simpson jumped right on it. And I'm not
24 going to expose someone with a tenth grade
25 education and learning disability to that kind of

CLOSING ARGUMENT - BY MR. MAYER

1 scrutiny. Okay? So that's on me.

2 Now, some of the other issues; Tino did
3 not have a motive to do anything unlawful for \$180,
4 as the State would seek for you to believe. Okay?
5 You heard that he was gainfully employed full-time
6 at Azalea Motors for two-and-a-half or three years.
7 Okay? And there was just no reason for him to have
8 to go and do something that the State is saying
9 that he wanted to go do or was going to go do.

10 What I would submit to you as part of
11 my argument in the case, you heard facts about it,
12 would be that the palm print they developed from
13 Valentino's right hand off of Chucky's car came
14 from some time prior. Okay. We saw that it was a
15 new vehicle, still had paper tags on it, and
16 probably Chucky went around and showed it off to
17 his friends. I certainly would have. And
18 Valentino was a longtime friend, and they probably
19 met up like that. A brand new car is easy to leave
20 a print on it. We heard the gal from the -- that
21 compared all the prints and this sort of thing said
22 they could stay on there for a good long while.

23 The other thing I wanted to discuss
24 briefly with you is, Marion Campbell, Anisha
25 Pearson, and Officer Gerten were all consistent

CLOSING ARGUMENT - BY MR. MAYER

1 about what Valentino was wearing the evening of
2 this event. He was wearing jeans, a white T-shirt,
3 I believe it was the same white T-shirt that we saw
4 in the video the next morning, and a leather
5 jacket.

6 Officer Gerten less than an hour before
7 this murder stopped and frisked Valentino for the
8 umpteenth time, and what did he find? What weapon
9 did he find on him? No weapon on him. Okay. He
10 was just walking down the street. And I'm so -- I
11 know Valentino hated it at that time to be frisked
12 by the police, but I'm so glad they frisked him
13 right then and there, because I believe that that
14 is really, really important.

15 I believe that if you're about to
16 commit an armed robbery and planning to use a
17 pistol, as the State's theory goes, I believe you
18 are going to have that pistol on you. I don't
19 think that you're going to put that pistol over
20 somewhere else. I think you would have the pistol.
21 It's wintertime, you have a winter jacket on and
22 there are lots of places -- lots of pockets or
23 places to put a pistol in. So I think it's really,
24 really important that they frisked him and that
25 they found nothing.

CLOSING ARGUMENT - BY MR. MAYER

1 Now, we did hear Wallace Bishop saying
2 Tino was wearing black -- probably was wearing
3 black. And, unlike the State, I'm not in the habit
4 of prepping my witnesses too much; I count on
5 people to be honest. I think candor is the best
6 way to go. I think it's really important. I think
7 we can all perceive it when testimony is rehearsed.

8 And I kind of thought Wallace might say
9 something like, I don't remember, or it was that
10 white shirt, or whatever. But he said, I don't
11 remember and it was probably black. So I would
12 submit that that -- that he probably was wrong
13 about that.

14 The -- let's see here. It's
15 interesting about the way the State went around
16 this case trying to say that Valentino used one
17 cell tower versus another cell tower for the
18 service on his phone at a particular time and this
19 sort of thing. There's no evidence at all about
20 how these cell towers switch off, or don't switch
21 off, and hand off the signal when one cell tower is
22 busier than another, or anything else.

23 I think the assumption they would like
24 you to make is that it's whatever cell tower that
25 you're closest to, but even if that's the

CLOSING ARGUMENT - BY MR. MAYER

1 assumption that you end up making, Valentino's
2 house where you heard Wallace Bishop say they were
3 when they were hanging out a little bit when he
4 dropped the girls off at Anisha Pearson's,
5 Valentino's house is right around the corner from
6 where this occurred and well within, I would submit
7 to you -- if you look at the State's map, well
8 within the same radius as that cell tower. Sitting
9 at home there, it's going to light up that same
10 cell tower if it's based only on distance.

11 Now, something that I didn't see here
12 that I kind of expected early on that the State
13 never did was -- with these modern cell phones,
14 touch screens and smart phones, you can get GPS
15 coordinates off of most of these things and they
16 get down to the yard -- by yard, I mean, meters --
17 as to where someone is. And that wasn't developed
18 here, or it wasn't going to help the State's case,
19 because we didn't hear anything about it, but I
20 don't know quite why that occurred.

21 But, you know, part of the reason that
22 the burden of proof is not on the defendant in
23 cases like this is because very few individuals
24 have resources that are commensurate with the State
25 that they can put on a full murder investigation.

CLOSING ARGUMENT - BY MR. MAYER

1 And Valentino is certainly in the category of
2 people who could not mount a full investigation
3 comparable to how the State can conduct a murder
4 investigation.

5 You heard -- I attempted to elicit from
6 the investigator, you heard Mr. Krasowski, how much
7 time they spent, tons and tons of time, on
8 investigating this particular murder case. For a
9 private individual to mount an investigation to
10 completely exonerate themselves, to chase down this
11 lead with Latoya Carson or Raphael Ward, to chase
12 down that rabbit hole would cost many, many
13 thousands of dollars which most individuals don't
14 have resources for. And that's one very valid
15 reason that the burden remains on the State, and
16 that's why what the defense does is we ask you to
17 look at the reasonable doubt in cases like this.

18 The reasonable doubt in this case --
19 there's a lot of reasonable doubt. Okay. There's
20 the Latoya -- the whole Latoya Carson thing, and
21 what I would like is -- I'm just going to flip
22 briefly through some of the evidence. We've
23 already talked briefly about Mr. Rodwell's
24 testimony, and you may have in your notes as well
25 that he said he can't say she was upset, referring

CLOSING ARGUMENT - BY MR. MAYER

1 to Latoya Carson.

2 The body was not disturbed from the
3 scene, he said. And when Mr. Simpson kind of
4 pushed Mr. Rodwell on it, did she appear upset to
5 you I think was the question, and Mr. Rodwell said,
6 a little bit, I think that's very telling, guys.

7 Officer Malinowski talked about The
8 Hole and what The Hole is to the police. They have
9 this very derogatory term for Valentino's
10 neighborhood. It's almost like they think about
11 Ardmore as a third-world country where the US
12 Constitution does not apply. They go in there,
13 they stop anybody they want walking down the
14 street, they frisk them, and they call it The Hole.
15 And -- and I think it was Officer Malinowski who
16 admitted that his agency could well have stopped
17 Valentino and frisked him more than a dozen times.

18 We've already spoke briefly about
19 Latoya Carson's statements and I would say her
20 non-statements, the things that I believe she
21 probably held back from the police, but one of the
22 interesting things that she said in her testimony,
23 when I was asking her about this five-minute period
24 where she told one of the investigators before --
25 it was five minutes before I did anything after I

CLOSING ARGUMENT - BY MR. MAYER

1 heard the gunshot right behind my car, it seemed to
2 me that she said that she passed out at one point.

3 I said, you mean you passed out, like,
4 you lost consciousness? And she said, well, no,
5 no. And she kind of backed off. You know, I was
6 just kind of -- it was really a confusing time, or
7 something like this. That seems to me like an
8 attempt to explain some of this period where she
9 just allegedly sat and didn't do anything, which I
10 really don't think was her sitting and not doing
11 anything.

12 I believe that during that five minutes
13 a lot happened, that if she had been candid about
14 it, it would have changed the whole course of this
15 investigation.

16 Remember, guys, it's only Latoya
17 Carson's word about what the substance of
18 Valentino's conversation was with Chucky. It's
19 only Latoya Carson's word. Okay. She is -- she is
20 a highly suspect witness, and I don't believe what
21 she's saying about Valentino giving, you know,
22 detailed directions in coming down to the spot. I
23 don't believe that for one second, and I hope that
24 you guys can see through that too.

25 There is no other way that the police

CLOSING ARGUMENT - BY MR. MAYER

1 tried to corroborate that. They didn't ask -- they
2 didn't subpoena a copy of her cell phone records,
3 they didn't go and check on her contacts, they
4 didn't check on the people that she was supposedly
5 texting on -- with this Zello app.

6 They basically took her word at face
7 value at the crime scene because it -- her bias
8 hadn't become obvious at that time. They hadn't
9 listened to the 911 call, and they didn't know that
10 she was later going to be charged with the murder
11 of Chucky's friend. And seeing that, 20/20
12 hindsight, you know -- I have a stressful job, but
13 one of the luxuries of it is that we can kind of
14 Monday morning quarterback some of this stuff.

15 These detective when they're in the
16 thick of it at the crime scene, it's very, very
17 hard to get a perspective on this stuff. And I
18 would submit to you that despite what Mr. Krasowski
19 testified to yesterday about, oh, no, we see
20 something months down the road in a murder case
21 where we should totally change course, we would
22 totally change course, I would submit to you that
23 that's much easier said than done.

24 And the fact that -- when this later
25 bias becomes apparent from Latoya Carson's charge

CLOSING ARGUMENT - BY MR. MAYER

1 that's still pending, the fact that they didn't
2 then go back and search her cell phone records and
3 search her text records and everything else which
4 could have led to a lead, a viable lead, I would
5 submit to you that that shows -- that is one of
6 several things that shows as is common in these
7 cases, it's not the police's job to find someone
8 innocent.

9 Once they have their guy, they're going
10 to stick to it tenaciously. And that happens a
11 little bit too with Valentino's interview with
12 Detective Holmes, right? Valentino went into the
13 interview in the context of, these guys are
14 harassing me again. Here they are, they want to
15 know about something else -- something else
16 happened in Ardmore, here they are, they want to
17 question me and pull me into this. That's the
18 whole reason he wanted to get out of Ardmore that
19 night when he heard about this incident.

20 He said, I don't want any part of this,
21 I know they're going to come to me, I'm going to go
22 up to North Charleston to my aunt's house. Okay?
23 Guys, I would submit to you that's a perfectly
24 reasonable thing for Valentino to do with his
25 background in that situation. Okay? And it was

CLOSING ARGUMENT - BY MR. MAYER

1 his background with the police and the tension and
2 friction between his peer group and the police in
3 his neighborhood that he brought into his interview
4 with Detective Holmes.

5 Detective Holmes is kind of, you know,
6 developing evidence against Valentino during this
7 interview and Valentino is just kind of, you
8 know -- I think it's fair to say that he didn't
9 appreciate the seriousness of what was going on at
10 that time. He thought, here the cops are harassing
11 me again. All right? And he did what he does when
12 the -- what the peer group does when the police
13 stop to harass him, which I think is justified.
14 You know, I'd probably go too if the cops stopped
15 and harassed me every month or a couple times a
16 month, whatever it is, but here in the context of a
17 murder investigation, now they're collecting
18 evidence against him. And they're trying to say,
19 hey, because Valentino wasn't prim, proper, and
20 forthcoming with Detective Holmes, that's evidence
21 of his guilt.

22 Guys, I completely disagree and I hope
23 you can see Valentino's perspective on this
24 interview, and the way that Valentino's perspective
25 ultimately comes out is, at the end when Detective

CLOSING ARGUMENT - BY MR. MAYER

1 Holmes was -- they were kind of going back and
2 forth, you didn't tell me you were on the phone,
3 yeah, I told you I was on the phone. If you guys
4 listen to part of that interview again, you will
5 hear Valentino say -- the detective says, what were
6 you doing?

7 Valentino says, I was on the phone.
8 The detective did not ask him who he was on the
9 phone with earlier in the interview. He asked
10 later and Valentino told him, okay, but Valentino
11 also gave some garbage answers. But at the end
12 when Valentino started to appreciate that this was
13 no laughing matter and that this was a serious
14 investigation with serious ramifications in his
15 life, what did he do? He volunteered a DNA swab
16 and he volunteered to take a polygraph.

17 You heard Mr. Simpson object because,
18 you know, polygraph tests aren't allowed. That's
19 why they didn't give him one; they were collecting
20 evidence against him. If they wanted to figure out
21 if he was telling the truth, they would have given
22 him a polygraph test. Okay? They were busy
23 collecting evidence against him.

24 Now, I don't want to take up too much
25 of your time here so I will buzz through the other

CLOSING ARGUMENT - BY MR. MAYER

1 witness' testimony. And I think we've already
2 talked about Mr. Osborne's testimony where he said
3 that -- the two most important things that I believe
4 he said were that he looked at State's Exhibit for
5 identification only Number 9 of the crime scene,
6 and he agreed that there was no blood, which goes
7 back to my point earlier about what Ms. Carson
8 could have seen from a lay person looking at
9 Mr. Miles laying there on the asphalt.

10 And the other important thing that he
11 said was that he reviewed Chucky's cell phone
12 records and noted no missed calls, which shows you
13 right there Ms. Carson was lying to the police at
14 least in that one way. And I submit to you, guys,
15 that if she's lying about the one thing, who's
16 drawing the line? This is a woman now accused of a
17 murder.

18 Okay. And, you know, honestly, I feel
19 like that's all I need to say on the reasonable
20 doubt issue, but I want to keep going through this.
21 Okay. So they -- they put Jennifer Wooley on the
22 stand, she was one of the crime scene supervisors.
23 She was another person that confirmed Mr. Miles was
24 positioned on his back on the asphalt. I think
25 she's the person who confirmed when they removed

CLOSING ARGUMENT - BY MR. MAYER

1 the items from his pockets, he still had his wallet
2 and all the money. He had not been robbed.

3 Then we have -- let's see here. We
4 have the testimony from Detective Holmes. I think
5 we've already talked about Valentino's statements
6 there. We had the testimony from Officer Gerten,
7 the officer who patted down Valentino for weapons.

8 We had testimony from Ms. Pearson, who
9 -- let's see. She testified about the stuff we
10 talked about before. She also said that Valentino
11 was -- his demeanor was not abnormal, always
12 somebody who walks quickly, talks quickly, moves
13 quickly, impatient person. And she said that's how
14 it was that night. And she testified that she took
15 him to his aunt's house in North Charleston.

16 And she did tell, I think, three
17 different versions of her story, and in at least
18 one version there's a version where she does
19 receive a firearm from Valentino and does take that
20 somewhere.

21 And, you know, that's I think -- guys,
22 that's probably part of Valentino saying, hey,
23 look, I know you're going to look at me for this, I
24 just don't want any problems. I know it wasn't me.
25 I know I'm a usual suspect, let's just get this out

CLOSING ARGUMENT - BY MR. MAYER

1 of the neighborhood entirely. There's no testimony
2 about what type of gun that was, what it looked
3 like, anything like that, unfortunately.

4 But -- but -- but that goes back to my
5 point about when you're -- when you're the usual
6 suspect, when you know that they're going to come
7 at you, it makes it -- the State's argument is that
8 he deleted the phone calls from the deceased; he
9 tried to leave the neighborhood right after this
10 murder; he, you know, took his gun with him. And
11 they're saying that's evidence of guilt. Well,
12 guys, I'm saying it's evidence of someone who
13 doesn't want to be further harassed by the police.

14 Now, you know, you guys will have to
15 decide what you think. I'm firmly in the camp that
16 Valentino is innocent. These are very unfortunate
17 events that could potentially suggest
18 circumstantially -- very circumstantially that he
19 was involved, and that's the whole basis of the
20 State's case, but, guys, when you're coming from a
21 background that's so, so, so different from the
22 background that I may have, or that some of you may
23 have, I really would ask you honestly to put
24 yourself in Valentino's shoes.

25 I really would ask you to do that

CLOSING ARGUMENT - BY MR. MAYER

1 because they are very different shoes than I was
2 reared in and the shoes I was taught to wear.

3 We heard testimony from Officer
4 Williams that it was about five minutes from when
5 Latoya Carson said she heard the gunshot to when
6 she decided to do anything about it.

7 We have -- let's see, print examiner,
8 we talked about that. I don't really think it's
9 worth discussing too much the fact that the
10 fingerprint examiner may have matched about half of
11 the available characteristics. She testified that
12 you can get about a hundred characteristics and she
13 got about 40 characteristics to match up with
14 Tino's print. I don't think that's worth focussing
15 on too much here.

16 The Gladwell stipulation that
17 Mr. Simpson read into evidence; Ms. Gladwell was
18 one of the crime scene techs from the Charleston
19 Police Department and she was unavailable this
20 week. But in the stipulation you heard what she
21 would have testified to, which is that two of the
22 street lights in this area were not operating at
23 the time which would support the idea that the
24 scene was very dark and, also, that she measured
25 the gunshot residue kits on Latoya Carson's hands

CLOSING ARGUMENT - BY MR. MAYER

1 and, also, that she observed the decedent on his
2 back at the crime scene.

3 And we heard from Whitney Berry from
4 South Carolina Law Enforcement Division. Testified
5 that there was, in fact, gunshot residue on Latoya
6 Carson's hands. The State would ask you to make
7 assumptions about where that came from. I would
8 implore you that if you are going to make any
9 assumptions in this case, make them in Valentino's
10 favor. It's not his burden of proof to prove the
11 case. If there's not a fact that's been
12 established, you should resolve that conflict in
13 his favor.

14 And that goes -- that goes for the --
15 where the gunshot residue came from on Latoya
16 Carson's hands as much as it goes for anything
17 else.

18 Guys, I have talked longer than I
19 planned, but what I want to emphasize to you is
20 that each of you -- each of you have a unique
21 perspective that you will bring to the
22 deliberations in this case. Each of your
23 perspectives will be different, it will be based on
24 your experience, and I would like to ask you to
25 respect each of your peer's perspective on that.

CLOSING ARGUMENT - BY MR. MAYER

1 It's very important in coming to a
2 conclusion here that -- that you not acquiesce to a
3 peer group that says, oh, you know, let's just do
4 this and get out of here. It's very important that
5 you stand your ground, that you assert your opinion
6 and that you find that there is absolutely
7 reasonable doubt in this case.

8 Don't let anyone bully you into making
9 the State's case for them. There is absolutely
10 reasonable doubt here. Look at all the facts
11 related to Latoya Carson. That's all you have to
12 look at. You don't even have to go beyond that.

13 This case has been so tainted by the
14 bias that wasn't apparent initially, but they came
15 out late from Latoya Carson. I just want to say it
16 one more time before I sit down, her window was
17 rolled partially down, she could have heard that
18 shot loud and clear, she waits five minutes. Okay.
19 There is no good explanation for waiting five
20 minutes after that shot went off. She has no EMS
21 training, it's very dark, there's no blood, but yet
22 when she calls 911 before Mr. Rodwell examines the
23 deceased, she says, he's been shot, he's been shot.
24 She told on herself right there. She told on
25 herself right there, she slipped up.

CLOSING ARGUMENT - BY MR. MAYER

1 No visible indication of a gunshot
2 wound the way that he was lying, even -- even if
3 she said I lifted his head up, I held his hand, she
4 wouldn't have seen it. The crime scene gal
5 testified that -- I'm sorry, maybe it was the
6 pathologist that testified and said you couldn't
7 have seen there was a bullet wound when he was
8 lying on the ground. Several people testified to
9 that.

10 She had gunshot residue on her hands --
11 on her hand and her prints weren't on the car
12 either. And I would ask you to think about who
13 else's prints might not have been on the car.
14 Okay? This investigation could have been done
15 stronger. Okay?

16 They should have followed up with
17 Wallace Bishop. Wallace Bishop was someone who
18 Anisha Pearson saw right before this incident. Saw
19 him with Valentino right before this incident.
20 Right? The State should have thought about him --
21 if they're believing their case, they should have
22 thought about Wallace Bishop as an accomplice.
23 They should have exercised the full power of the
24 State to bring Wallace Bishop in for questioning,
25 if Wallace Bishop didn't want to talk to him.

CLOSING ARGUMENT - BY MR. MAYER

1 Okay.

2 That right there reveals where they --
3 how they feel about their case. If they believe
4 Valentino was guilty at the time, they would have
5 brought Wallace Bishop in for questioning. They
6 didn't do that. They didn't follow up with this
7 Raphael Ward guy who lives in Ardmore whose name
8 was called about this. You can't let the lines of
9 inquiry go slack in a murder investigation, guys.
10 And they did here and they did with the Latoya
11 Carson follow-up. And that's why there is so much
12 reasonable doubt in this case.

13 I believe Valentino is innocent. On
14 the jury verdict form there will say an option for
15 not guilty. That's the option I would like you to
16 check because of all this reasonable doubt, because
17 of Valentino's background, and because everything
18 else that we talked about.

19 Thank you for your time.

20 THE COURT: Madame Forelady, ladies
21 and gentlemen, we are going to take a brief
22 restroom break. Please do not discuss the case and
23 please leave your notepads in your seats.

24 (Jury out, 10:39 a.m.)

25 THE COURT: We will be at ease until

CLOSING ARGUMENT - BY MR. SIMPSON

1 the jurors have let us know they have finished
2 their break. It should be five to seven minutes.

3 (A recess transpired.)

4 MR. MAYER: Okay. I was wondering --
5 I was wanting to go to a doctor sometime today.

6 THE COURT: We will have to see how it
7 goes. I need you here while the jury is
8 deliberating.

9 MR. MAYER Okay.

10 THE COURT: You may be seated. Bring
11 in the jury.

12 (Jury in, 10:47 a.m.)

13 THE BAILIFF: All jurors present.

14 THE COURT: Thank you. You may be
15 seated.

16 State may proceed.

17 MR. SIMPSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MR. SIMPSON: Ladies and gentlemen,
20 good morning. It has been a long couple of weeks
21 for you, it's been a long couple of weeks for us,
22 and I'm going to start -- I will start really in
23 the opening, as Mr. Mayer did, by sincerely
24 thanking you. I appreciate and understand this is
25 a lot of disruption in your life, but you stayed

CLOSING ARGUMENT - BY MR. SIMPSON

1 here and you were attentive.

2 I'm not going to pile on the praise
3 unless you think I'm kissing up. This was a long
4 trial, there was an auto accident, there were
5 jurors dealing with physical pain, and even though
6 you sat here at the beginning of trial and seen
7 people get out of things and people come up with
8 things to not be here, we sat here and we watched
9 you and you were attentive. So I join Mr. Mayer,
10 and I'm sure the court, all together, to say thank
11 you, we're almost done.

12 In particularly long cases, as I told
13 you in my opening, this very much works like a
14 puzzle, or painting a picture, where you hear
15 little details all throughout two weeks, and here
16 we are finally at the point where we have an
17 opportunity to take everything you've heard and put
18 it together. And I submit to you what we're about
19 to review, it fits like a puzzle. It fits like a
20 puzzle that displays a picture that is inescapable
21 despite wild conspiracy theories by the defense
22 pointing fingers this way and that, it's a clear
23 picture of Mr. Hayward's guilt in this case beyond
24 a reasonable doubt.

25 The State versus Valentino Hayward. We

CLOSING ARGUMENT - BY MR. SIMPSON

1 begin with Valentino's story and here's where the
2 difficulty begins. It is very difficult for us
3 even after over a week of hearing that, of
4 surmising, of figuring out a clear picture of what
5 they're trying to tell you Valentino was doing.

6 We have the interview with Valentino.
7 He converses just fine. He's a talkable guy. I
8 don't want you to get too pulled in to the story of
9 Valentino, the poor guy with a learning disability.
10 I'm not minimizing that. He is not some person who
11 has a problem communicating. He is communicating
12 clearly, and as you'll see as this case unfolds,
13 communicated smartly if it serves his purpose.

14 I'm in the SAG. I don't know anything
15 about it, I'm in the SAG the whole time. And then
16 evidence comes forward; that doesn't work. I'm at
17 Wallace's. I'm at Wallace's apartment. You hear
18 from Wallace, he was at my apartment. You heard
19 his first statement, and I love that quote, I'm
20 100 percent certain we were at my apartment the
21 whole time. More evidence comes to light; oh, we
22 were at my house.

23 We'll get back to that later, but the
24 evidence follows an innocent man's story. A guilty
25 man has to keep changing it to fit the evidence.

CLOSING ARGUMENT - BY MR. SIMPSON

1 But let's just take it for what it's
2 worth. Valentino's story; had just a normal day.
3 He went to work, or so we heard in the trial. And
4 it's immaterial, I don't care one way or the other,
5 but when asked again in this interview, hey, what
6 did you do yesterday, the easiest thing for him to
7 say was, I was at work all day. Go check it out.
8 That's not what he says the day after this. He
9 says he slept into the late afternoon. But that's
10 immaterial.

11 Hanging out with friends, just a normal
12 day, went up to the SAG for hours. And then when
13 pressed, said he was alone. That doesn't sound
14 great; we're going to have to change that later.

15 Caught a ride to North Charleston;
16 first from a guy -- one of my guys in a blue
17 charger, and then when pressed, well, okay, I did
18 get a ride from a girl. That's Valentino's story.
19 We've heard several different versions, it has
20 changed many times, but something to that effect
21 was Valentino's story for the day of the murder.

22 Wallace changes it again because
23 evidence comes forward and he changes his own story
24 to fit.

25 Now let's spend much more time talking

CLOSING ARGUMENT - BY MR. SIMPSON

1 about the real story and talking about actual
2 evidence. Not conspiracy theories, but actual
3 evidence. Valentino starts his day with a problem
4 and a plan. And, you know, I really am fond of
5 Mr. Mayer, he's a great guy, but I sort of enjoyed
6 hearing him say, oh, it was just a weird text.

7 No; this is like having Valentino's day
8 planner, knowing -- looking into his head and
9 seeing exactly what he has planned for the day of
10 December 11th. And you can't explain away his wild
11 fantasy, this text message that he sends to Marian
12 Campbell. How does his day start? What is he
13 concerned with? He's 180 short and he knows how
14 he's going to get it. He's going to rob somebody.

15 That's the first view into Valentino's
16 mind on December 11th. We're going to go back to
17 it with other witnesses, but before we even start
18 talking about how this case unfolds, we know we
19 have an individual who has a problem and knows how
20 he's going to solve it.

21 The set-up: This is where things that
22 we just sort of document, that we just looked at
23 for a second during trial, this is where they all
24 start coming together and painting that clear
25 picture.

CLOSING ARGUMENT - BY MR. SIMPSON

1 The day doesn't start with Latoya
2 Carson doing anything about this or Deontre Miles
3 doing anything. This day starts with what?
4 Hayward to Miles, Hayward to Miles, Hayward to
5 Miles, Hayward to Miles, Hayward to Miles.

6 It's the perfect set-up. Obviously,
7 Valentino knows who Deontre Chucky Miles is, but he
8 lives way off in north North Charleston. Perfect
9 guy to set up. You need 180 bucks, you can't just
10 rob somebody on the streets. I haven't had 180
11 bucks on me in five years.

12 You have to set someone up. You've got
13 to set up a transaction, and he had the perfect
14 target, a guy he knew kind of and a guy he knew
15 would be interested in a transaction for 180 bucks.

16 It all starts -- the entire day starts
17 off with Valentino Hayward contacting the victim,
18 Miles. He calls him back. They have some
19 conversations. This thing gets set up. The most
20 important call of course is the last and we'll come
21 back to that, but I want to draw your attention to
22 this time and this text.

23 Miles calls Hayward, they discussed,
24 Hayward calls right back, they talk for eight
25 seconds. Eight seconds isn't a very long time, but

CLOSING ARGUMENT - BY MR. SIMPSON

1 I submit to you today eight seconds is long enough
2 to do a phone call that you and I do every single
3 day; I'm on the way. We're good, I'm on the way.

4 And that's not wild speculation because
5 look at these times. It fits with exactly what we
6 know is going on with Miles. Carson said he showed
7 up about seven, he came in, he had a headache, he
8 took some medicine. So shortly after seven, we're
9 ready to. Okay? We're on the way. That's what is
10 going on with Chucky and Carson.

11 What's going on with Valentino Hayward?
12 Because it's action time now. He spent the day
13 setting up his plan which we know about, he's going
14 to rob somebody, it's action time. Just to
15 reacquaint you with this area, this is Saint
16 Andrews Gardens, this is Sequoia Street or The Hole
17 -- and unless I forget, The Hole is the terminology
18 of this area that the neighborhood calls it. The
19 neighborhood named it The Hole, and after that it
20 was referred to by the police having heard it as
21 The Hole. This is not some derogatory thing the
22 police made up.

23 It is a dark place, it is the perfect
24 place to set up a robbery or murder. It's down in
25 a dead end, dark alley. So there is that

CLOSING ARGUMENT - BY MR. SIMPSON

1 eight-second quick call, on the way, for setting
2 this up.

3 What's -- you know what Chucky's doing.
4 He's getting ready, he's got his friend, they're
5 coming down. What's Valentino's doing? It's time
6 for action and here we have our first contact with
7 Valentino Hayward.

8 White Oak and Juniper Street,
9 (Indicating) Officer Gerten, 7:25 p.m.,
10 five minutes after that contact that you just saw,
11 saw Valentino running. Time for action, time for
12 the setup.

13 Now, we've heard a lot of conversations
14 from Mr. Mayer about people getting harassed,
15 people getting unfairly treated. Let me just
16 remind you when you go back -- and let me be honest
17 with you, we all know the story. Does that happen
18 in neighborhoods like that? It can. It can. But
19 we're here to talk about this case and Officer
20 Gerten, this horrible, harassing police officer
21 you've heard about took the stand, little skinny
22 nerdy dude, and told you who he was.

23 Who was Officer Gerten, this horrible
24 harassing police officer. He's a dude that has
25 been a pastor for 12 years, a guy who was a pastor

CLOSING ARGUMENT - BY MR. SIMPSON

1 for 12 years helping troubled youth until he
2 decided a better way to help them is to go into the
3 police force.

4 Now I'm not insulting anybody's
5 intelligence. I know police can get aggressive out
6 there. I know that. But Officer Gerten is not
7 that guy. You heard from him. What he does talk
8 about, I see Valentino running and I want to check
9 it out. Do I want to look to see if Valentino is
10 up to no good? Sure. Do I also want to see if
11 Valentino is running from somebody, if he needs
12 help? Sure. So he does what they do, they check
13 him. He's running and he tells him just where he's
14 going. Heading to his boy's house, walks in a
15 clear direction, residence of Wallace Bishop.

16 When you're setting up a robbery, when
17 you're setting up something like this, you don't
18 know what the other guy is going to bring. You
19 need backup and you need help.

20 But Wallace has got a problem; Wallace
21 is watching his two girls. Who fixes that problem?
22 Wallace? No. He tells you, Valentino said don't
23 worry about it? I know a girl down there. We can
24 drop the girls off there. I need you. Not to help
25 me, but I need you there watching in case something

CLOSING ARGUMENT - BY MR. SIMPSON

1 goes -- I don't know what the other guy is
2 bringing. 7:25 p.m., this is happening. Makes
3 that call to Chucky and the action is happening,
4 7:25.

5 7:25 p.m., he's up there. (Indicating)
6 640 Sequoia Street, apartment E, the residence of
7 Anisha Pearson is the next place we know Valentino
8 went. And thanks to these cell phones, we know
9 exactly when he got there.

10 Miles is on the way. Let's get this
11 thing straight. First contact with Valentino
12 Hayward of the whole day on the phone record
13 happens now. Where is Valentino? Her front door.
14 She told you, he called from right outside. I need
15 you to watch these girls for Wallace. When?
16 8:05 p.m.

17 These times become important.
18 8:05 p.m., shortly thereafter, girls dropped off,
19 Valentino's ready, but Deontre Miles is lost.
20 We'll get to this later, but when we get to the
21 wild theory of the defense in this case, keep this
22 in mind, Latoya doesn't know anything about this
23 neighborhood. Deontre doesn't know anything about
24 this neighborhood. She doesn't know anybody there.
25 They don't even know how to get there.

CLOSING ARGUMENT - BY MR. SIMPSON

1 If Latoya is master-minding this crazy
2 murder, she's going to do it in a place she doesn't
3 even know? No. No. We know how they got there.
4 We know exactly how they got there. Valentino
5 Hayward led them there and the phone records, clear
6 as day, show that and prove that and they don't
7 lie. It's a call that lasts 11 minutes and
8 56 seconds.

9 Valentino gives the victim turn-by-turn
10 directions right down to a dead end, to a dark dead
11 end where this is going to happen. This is his
12 setup. All of the evidence tells you this is
13 Valentino's setup, not Carson's. They pull the
14 Buick -- as you heard, this scene right here is lit
15 up with lights that the police brought.

16 They pull the Buick, as directed by
17 Valentino, into a dark driveway. A black male
18 approaches the passenger side. Already it is a
19 pretty clear assumption from the phone records that
20 this is Valentino leading them there. It's
21 probably Valentino that walks up to the car.

22 Carson: I don't know the dude, I get a
23 very quick look at him, but he has a black
24 thermal-type shirt on, slim build, hair in twists
25 and short dreds, and he's short. Valentino

CLOSING ARGUMENT - BY MR. SIMPSON

1 Hayward, five feet, nine inches, short and slender,
2 hair in twists and dreds. We'll get to what
3 happened to that shirt later.

4 She says the person who came up it
5 happened fast, but he touched the car in this area
6 (Indicating) on the top of my door to peek in. And
7 this is exactly when Deontre is getting off the
8 phone. You've done it a hundred times when you're
9 meeting somebody. All right, I'm here. Oh, I see
10 you. And you get off the phone and hang up, so we
11 know exactly when this is occurring.

12 I want to address real quick right
13 hand, left hand. Let me address to you the
14 testimony you've heard and the testimony that is
15 given by Ms. Carson throughout this case. Do you
16 know what hand he touched the car with? I don't.
17 It happened fast, I don't know. Are you sure you
18 don't know what hand he touched the car with? I
19 don't. I don't know. What hand do you think it
20 might have been? Well, I think it might have been
21 his left.

22 Wrong, we know, because we have the
23 right palm print, but understandable. She said
24 over and over again, I don't really know, but if
25 you press me it could be either one. And of course

CLOSING ARGUMENT - BY MR. SIMPSON

1 what do we know right where she says the person
2 touched the car? The right palm print of Valentino
3 Hayward.

4 Let's talk about prints for a second
5 and, again, these sort of wild conclusions that the
6 defense wants to tell you. You can't date or time
7 a print. I'm not trying to BS any of you, you
8 heard it directly. That's not scientifically
9 possible. That doesn't mean that's all you've
10 heard about the science of fingerprints, is it?

11 You heard from a certified print expert
12 that fingerprints are liftable and subject to all
13 of the elements that liquids are subject to. Wind,
14 rain, light, heat, sun, all of that degrades a
15 print and makes it less and less likely that you're
16 going to find it where you think you're going to
17 find it.

18 Can you imagine -- any of you imagine
19 an area more subject to rain, heat, light, wind,
20 than the exterior of a car. A print on that place
21 is not going to last very long. Let's explore this
22 defense theory on the prints a little more. The
23 defense wants you to believe that, oh, this print
24 could have came anywhere because they were friends.
25 It could have come from earlier that night.

CLOSING ARGUMENT - BY MR. SIMPSON

1 Are they friends? Let's look at what
2 the evidence shows about this. Deontre Miles is
3 not even a phone contact in Valentino's phone. You
4 know from your life that when you're close with
5 somebody, you put them as a phone contact in your
6 phone. You look at the phone records, there's some
7 slight evidence that maybe way before there was
8 some Facebook like. So they said they did know
9 each other, but he's not even a contact in the
10 phone.

11 We see from the phone records on
12 December 11th what happens when Valentino and
13 Deontre want to get together. They call and they
14 text. But Corporal Van Horn told you these texting
15 calls go back all the way to August. How much
16 contact did these two have between December 11th
17 and way back in August? Other than the day of the
18 murder, zip. Zero.

19 These are not two people that are
20 interacting on a daily basis, they're not seeing
21 each other on a daily basis. It's right in your
22 face. This print came from that night. That's
23 what the evidence shows and that's what the
24 evidence suggests.

25 And just for one more topper on top of

CLOSING ARGUMENT - BY MR. SIMPSON

1 this, it's a new car. He's got more than two weeks
2 left on a temporary tag. The prints came just as
3 it had been explained, the most obvious answer,
4 from that night when Valentino who had led them
5 there put his hand on that car.

6 Deontre hangs up the call with the
7 person, the defendant, that he's talking to just as
8 he's getting out of the car. They walk together in
9 the direction of the rear of the car. You know
10 exactly when this happened. Exactly 8:36 p.m. and
11 8 seconds. This is -- we're about to get to the
12 part where things get very bad for Mr. Hayward.

13 Carson: Not five minutes. She said a
14 couple minutes, a few minutes, and then she tells
15 the detective, man, I've got my earphones in my ear
16 with a chat audio going in my year, chatting on the
17 Zello app with a guy from Florida, as Detective
18 Williams -- she said to Detective Williams, and I
19 hear the noise. I hear the noise behind me, a
20 gunshot.

21 They go back, she looks at it. You
22 heard the defense said, oh, they never went through
23 her phone. She sat there with the detective and
24 they went through the phone and we know exactly
25 when she hears it, somewhere between on the chat

CLOSING ARGUMENT - BY MR. SIMPSON

1 that lasted 8:37 to 8:40. 8:36:08 p.m., Deontre
2 gets out of that phone; (sic) 8:37 to 8:40,
3 gunshot; Deontre dead, 8:36. 8:37 to 8:40, second
4 call from the defendant.

5 Anisha Pearson testified to you the
6 second time she hears from the defendant that night
7 it's different. Orders, he's demanding, and, yeah,
8 she said this is how Valentino was a lot, but on
9 this night it's different than the first
10 interaction. I need you to rush to my house, come
11 on, [REDACTED] Evergreen Street. Why? To get rid of a
12 gun. And we'll get to the gun. When? Second
13 call to Anisha, 8:40.

14 I would like you to ponder this for one
15 second. These are records, they don't lie, they're
16 evidence. 8:36 p.m., Deontre Miles gets out of a
17 car to meet the defendant. 8:37 to 8:40 p.m., the
18 gunshot. 8:40 p.m., the man seated right there,
19 dragging women into his life, dragging them into
20 this whole mess like he does time and time again,
21 manipulating them, using them, 8:40 p.m., get to my
22 house. And we know why. Come get this gun.

23 Let's talk about the gun. Jennifer
24 Wooley; we got to the scene, we did a line search.
25 This is people in a line looking for shell casings;

CLOSING ARGUMENT - BY MR. SIMPSON

1 didn't find any. We went through it with a metal
2 detector; didn't find any. We went through it with
3 a K9; didn't find any.

4 I asked her, what does that mean when
5 you don't find shell casings at what obviously is a
6 shooting? This was obviously a shooting
7 immediately to Latoya Carson as well.

8 What does that mean? It means that
9 either a person in the heat of the moment of
10 killing someone bent down and went through the
11 grass and picked up the shell casings -- it's
12 unlikely, but possible -- or more likely, it means
13 it's a revolver that just killed this person, a
14 revolver.

15 We get a whole lot more from Green from
16 SLED, the ballistics expert. And he tell you,
17 yeah, the first thing they do is they weigh the
18 bullet most. Most consistent with a 38. So,
19 again, nobody is trying to BS you. He says a 38
20 caliber is very close to a 9 millimeter. I don't
21 remember all the testimony that Mr. Mayer said to
22 you, but he did say 38 and 9 millimeter are pretty
23 close weight-wise. It's hard to determine.

24 But then he goes on. He said, but this
25 bullet was an all lead bullet. What does that mean

CLOSING ARGUMENT - BY MR. SIMPSON

1 to you? I'm not a gun person. You heard it from
2 the expert. What does an all lead bullet mean to
3 you? Well, not 100 percent of the time, but most
4 of the time an all lead bullet means it's a 38
5 revolver because 9 millimeter ammunition tends to
6 be lead jacketed or lead core.

7 So we're left after this testimony with
8 a pretty solid evidentiary basis to know what shot
9 Deontre Miles; it's a 38-caliber revolver. Lots of
10 different types of guns out there. Nine
11 millimeters are popular. All kinds of different
12 guns are out there. Valentino's phone within weeks
13 of this murder, clearly a revolver. It's hard to
14 see on the screen, but it's clear as day on the
15 actual evidence, 38-caliber Smith and Wesson
16 revolver.

17 It looks terrible on the screen, but we
18 did this to make that writing on the barrel more
19 clear. When you look at the actual evidence it is
20 more clear, 38-caliber revolver.

21 Cell tower records: Again, just
22 consistent with all of the evidence presented to
23 you. Arrives at The Hole 8:02. Setting this up,
24 dropping Wallace's kids off, remains until Anisha
25 Pearson picks him up.

CLOSING ARGUMENT - BY MR. SIMPSON

1 Just to explain what I have here, the
2 blue circles are the two cell towers. The red
3 locations are SAG and Wallace Bishop's. The green
4 location, which would bounce off of that cell tower
5 to the location of the crime.

6 I also put this up there just so you
7 know why Wallace Bishop had to 180 his story during
8 the course of this case, because before this came
9 out, don't worry, I got your back, Tino. We were
10 hanging out at my apartment the whole time.

11 Once this comes out, Wallace Bishop
12 180s and comes in here and tells you, no, that's
13 not the story even though I said I'm 100 percent
14 certain, we were actually down here. This is what
15 he's trying to do.

16 Anisha, soft-spoken, a young woman
17 admirably about to become a nurse when this
18 happened, who got dragged into this crap with
19 Valentino Hayward. She's in school, she's doing
20 good, she's soft-spoken, and there's evidence that
21 she was interested romantically in Mr. Hayward.
22 She is used and abused this night like he does all
23 women as a pawn.

24 All of these calls are on there. She
25 says -- she says she went, took the gun, wrapped it

CLOSING ARGUMENT - BY MR. SIMPSON

1 in a jacket, ran back to her house, went -- only
2 had moments when the phone rings again, and it's
3 Tino again. Come back, come back. She goes to
4 Tino's house and then she gets another call and he
5 says, oh, I'm not there anymore. I'm around the
6 corner down the street. She goes there. Tino says
7 give me that gun back. He gives it to another
8 female, dragging another person into this mess we
9 never identified. We don't know who that is. She
10 then leaves and drives around until she's blown up
11 -- and the records are consistent, exactly what her
12 testimony is, she is blown up by Valentino Hayward
13 to come back and get him, and she drives him to
14 North Charleston.

15 At this point, you not only have the
16 evidence of the crime, you also have the evidence
17 of the coverup. And this is where it gets worse
18 and worse and worse for Mr. Hayward. He's got the
19 gun taken care of, he's got the shirt changed, and
20 we'll get back to that. Testimony all over the
21 place from the defense on this, but what we know is
22 he had a black shirt on before the crime. He had a
23 white shirt on after the crime; he changed. And I
24 can't wait to get back to that, keep that in your
25 head.

CLOSING ARGUMENT - BY MR. SIMPSON

1 He got out of the neighborhood, but
2 he's not in the best place. If you just committed
3 a murder, you don't want to be at a family member's
4 house. He doesn't stay there very long. He got a
5 ride from Anisha up to North Charleston on Bailey
6 Drive. What next? On the way to his family's
7 house.

8 What next? The coverup: Delete,
9 delete, delete all phone contacts. He's in a
10 hurry, he misses a couple, but he goes through and
11 systematically deletes from his phone his contact
12 with the victim Deontre Miles. And in case you
13 just want to think that maybe he's just doing some
14 mass deletion, I request you to take a look at 46.
15 These are the actual call logs during this time.
16 He's not going through deleting just for the sake
17 of deleting. He's going through and finding all of
18 the contacts with the victim and getting rid of it,
19 get it off of that phone.

20 What else? Cell phone battery, man.
21 You heard all kind of stuff in this trial about
22 what a cell phone can do and how people can find
23 you with a cell phone. Let's shut that down.
24 Victim has his phone right there. Let's shut it
25 down. I'm not going to get tracked, let's take the

CLOSING ARGUMENT - BY MR. SIMPSON

1 cell phone battery out. How do we know he did it?
2 He did it right when he got to North Charleston.
3 These are the actions of a guilty person. He did
4 it right when he got there.

5 You heard about the exhibit -- and I
6 think Mr. Bruder referred to it as a cell phone
7 cover. It's not really a cell phone cover, it will
8 be in evidence, it's the back to the cell phone.
9 Remember, the next day when he was arrested, the
10 battery is out, cell phone in there. Hangs on to
11 it. In an emergency, he may have to put that
12 battery in and make a quick phone call, but he's
13 getting that battery out of the cell phone so he
14 can't be tracked.

15 He also decides, wisely, that being at
16 a family member's house is probably not a good idea
17 here. So he drags another female into this mess
18 and gets Marion Campbell to pick him up and take
19 him to her house where he doesn't think he will be
20 found, but he is. And you saw how that happened.

21 He's arrested the next day and charged,
22 but that doesn't stop the cover-up. An innocent,
23 honest man doesn't have to cover up.

24 At this point, it's kind of difficult
25 for me because I screwed up. Okay. I'm telling

CLOSING ARGUMENT - BY MR. SIMPSON

1 you, I screwed up and made a mistake. There came a
2 point for you to hear these jail conversations, big
3 moment. Can't wait for you to hear them. Would
4 have been a very dramatic moment, in my estimation,
5 to the case, but we had some technical
6 difficulties. You saw it, and I'll tell you,
7 believe me, this is what's going in my mind, if I
8 send that jury back out one more time, they are
9 going to be very annoyed.

10 So I made the call on the fly just to
11 play it straight from the laptop. In this big
12 room, it got lost. I think a couple of you picked
13 up a couple of things, but most of it got lost. I
14 was frustrated and I sensed some frustration from
15 some of you as well. And i think some of that
16 frustration was probably because you thought,
17 here's something important and we are not going to
18 hear it because this idiot can't work a computer.

19 I apologize to you for that, but don't
20 worry. Okay. State's 47 is in evidence. You
21 heard the length of the clips, they are very short.
22 There is going to be a laptop in that jury room.
23 To be honest, even if I did get it to work, this is
24 a bad room to listen to this stuff because it's so
25 big the sound gets lost.