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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Appellate Case No. 2024-001749

The Honorable Donald B. Hocker, Circuit Court Judge

State of South Carolina.....Respondent,

v.

William Gray Ackerman Jr. Appellant.

RECORD ON APPEAL
VOLUME II

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(State's Exhibits

- **No. 1A, 1B, 1C, 1D - DVDs; and**
- **No. 2 - videos - are all on file with this Court.)**

1 mobile device to your car, but some of them also collect data
2 from the vehicle itself. And so there's -- there's software
3 that -- that we use that -- that can connect to those
4 devices, and then extract that data, and then present it in a
5 readable format.

6 Q. Okay. All right. And would you say -- you said,
7 "Vehicles with touch screen devices generally have this sort
8 of information" is that correct?

9 A. That's correct.

10 Q. And so really most modern vehicles these days have
11 some sort of device that's collecting data and storing it on
12 the vehicle itself, is that correct?

13 A. That's correct. In the infotainment center. And
14 depending on the vehicle, it just depends on what they
15 collect, and/or if we can get to it.

16 Q. Right. And so some manufacturers it's -- is it --
17 is it difficult to get useful information off of -- of those
18 vehicles?

19 A. Yeah, some manufacturers we can't collect any data
20 beyond what -- what the engine might store. Yeah. But some
21 we can collect a lot of data on.

22 Q. And, for example, a Ford -- has it been your
23 experience that Ford vehicles collect a lot of information
24 that Berla can access?

25 A. Yeah, Fords generally are the -- have been the

1 most -- Fords have some of the most data that I've seen in
2 the extractions that I've done on vehicles.

3 Q. What about BMW? Just as generally speaking, what
4 about BMW vehicles? Do they tend to have a lot of
5 information that you can access?

6 A. They have more phone data -- and not as much track
7 log data in the examination that I've done.

8 Q. All right. So let's -- let's talk about your
9 involvement in this particular case. Were you contacted by
10 the Greenwood County Sheriff's Office to assist them in the
11 investigation into the incident that occurred on the morning
12 of May 7, 2023, here in Greenwood County?

13 A. Indirectly, we were contacted by Trooper Clark
14 with the Highway patrol, and he put me in touch with
15 Investigator Belcher of the Greenwood County Sheriff's Office
16 who was requesting our assistance in recovering the data from
17 the vehicles.

18 Q. You were actually initially contacted by the
19 highway patrol?

20 A. Yes.

21 Q. And what did they request that you do?

22 A. They were requesting that we come to Greenwood,
23 and remove the -- the infotainment centers out of both
24 vehicles to see what data that we could recover from those
25 devices.

1 Q. And to your knowledge, does
2 Greenwood County Sheriff's Office, or any agency in
3 Greenwood County have the capability that you have with the
4 Berla equipment?

5 A. They did not at the time, and not that I -- I'm
6 aware of currently.

7 Q. Okay. And that's why they contacted you for
8 assistance, is that correct?

9 A. Yes.

10 Q. Do you provide assistance to multiple agencies
11 besides your own to -- to assist with this type of
12 investigation?

13 A. Yes, sir. We'll -- we'll provide assistance to
14 any of our surrounding agencies.

15 Q. Okay. All right. So let's talk about
16 specifically what you did in this case. Do you recall when
17 you first responded down here to Greenwood County in response
18 to this request?

19 A. Yes, I -- I was -- we set up that appointment on
20 -- for -- on May 8th, and I came down to Greenwood on May
21 9th.

22 Q. Okay. And so that'd be two days after the -- the
23 incident that --

24 A. Yes.

25 Q. -- this part of this case, correct?

1 A. Yes.

2 Q. All right. What did you do when you came to
3 Greenwood?

4 A. I went to --

5 THE COURT: Just stop just a second. Are --?

6 Mr. Conrad, are you offering Officer Bryan as an expert?

7 MR. CONRAD: I am not, Your Honor.

8 THE COURT: Okay. Just wanted to make sure.

9 Thank you. Go ahead with your answer, sir.

10 THE WITNESS: Thank you, sir.

11 When I came to Greenwood, I -- I met with
12 Investigator Belcher, and later the highway patrol, I believe
13 was there, but Investigator Belcher at the
14 Greenwood County -- what we would call it, the service center
15 where they -- where they work on vehicles and store vehicles,
16 and I believe they had some seized vehicles there. And in
17 this case, the vehicles in this case were -- were stored at
18 that location.

19 BY MR. CONRAD:

20 Q. So on May 9th, what -- what two vehicles did you
21 work on -- attempt to extract information from?

22 A. There's an F-250, I believe it was a 2019, and a
23 BMW.

24 Q. And what I'm going to do now, Investigator, just
25 ask for you to describe the specific steps that you took to

1 retrieve information off these vehicles and, you know, as
2 briefly as you can, but -- but just so it's complete.

3 A. Right.

4 Q. So that the jury understands precisely what you
5 did to retrieve this data.

6 A. Yes, sir. So in with the Berla software, it has a
7 phone app that I can refer to, what I do when I arrive on
8 scene, I put the VIN, which is the "Vehicle Identification
9 Number" from the vehicle. I put that into the application,
10 it then presents me with an option of what I can obtain from
11 the vehicle. When I -- so I started with the -- the Ford
12 F-250, put the VIN in the -- in the app, it shows me that it
13 had the type of radio it has, and then it gives me pictures,
14 and step-by-step instructions on what trim pieces to, remove
15 and what screws to remove -- exactly how to unplug it. And I
16 follow those instructions precisely, and then removed the --
17 the infotainment center from -- from the vehicle, and then
18 took that into my possession. Then we had to work on the
19 BMW. BMW same process, put the VIN in the application, it
20 pulls up the -- what is available, and how to remove it.

21 I followed those instructions. We may get into as to
22 why we didn't immediately do the analysis on that, but that
23 was because the BMW instructions stated that I needed
24 two different numbers off of -- from that device. One of
25 those numbers, if it wasn't on the sticker, is that it may be

1 on the sticker, or it may be in the car, like, in the
2 infotainment center. So you have to turn it on.

3 The -- the problem was -- is that we couldn't get the
4 vehicle on. And so at that point I could not -- I wasn't
5 entirely sure if I was going to be able to get it off of that
6 device. Why that's important is with the Ford, we take the
7 data directly off the -- the board and I can explain that
8 probably in a follow-up question. And from the BMW, it's
9 stored on a hard drive just like it would be in your
10 computer. And so we take that hard drive out, but that data
11 is encrypted, and the numbers from the stickers on it -- or
12 what I thought at the time, I would have to get from the --
13 the device itself are used to decrypt that data.

14 Q. Well, I'm going to show you, this has been marked
15 as State's Exhibit 27. I'm going to ask you, do you
16 recognize that, sir?

17 A. I do recognize this.

18 Q. What is that?

19 A. This is the infotainment center from the
20 Ford F-250.

21 Q. Okay. And is -- that infotainment center, does it
22 have a serial number on it?

23 A. It does.

24 Q. And when you extracted this infotainment center
25 from the truck, did you record the VIN number of the truck

1 you were tracking in the front?

2 A. Yes, it's recorded in the application when you
3 type it in to find what vehicle to look it up.

4 Q. And do you have in front of you -- you have the
5 VIN number recorded (inaudible) that you aware?

6 A. The -- that's on -- so the VIN number is currently
7 listed on this document that's here. And -- and that's the
8 same VIN as was -- that I recorded.

9 Q. Could you just read that VIN into the record?

10 A. Yes, sir. The VIN is -- and I'm going to use a
11 phonetic alphabet just so we know what letters that we're
12 talking about here. It's 1 Foxtrot, Tango 7, Whiskey 2,
13 Bravo, Tango, 0, Kilo, Echo, Charlie 04478.

14 Q. And when I say "VIN" what -- what is a VIN?

15 A. VIN is a unique number that's assigned by the
16 manufacturer to identify specifically that vehicle.

17 Q. Specifically it is -- is VIN stamper vehicle
18 identification number?

19 A. It does.

20 Q. All right. And every vehicle in the United States
21 has a unique number, correct?

22 A. That's my under -- that's my understanding, yes.

23 Q. All right. And when you -- when you took that out
24 of that F-250 it had a serial number, correct?

25 A. It does.

1 Q. All right. And for the jury, for the record,
2 could you read the serial number of that (inaudible)?

3 A. Yes, I recorded two numbers off of this device.
4 They're on the stickers that are on the device itself. The
5 first one, I wasn't sure if it was a serial number, but I
6 wrote it down on my evidence tracking sheet. And it's
7 Whiskey X-ray, 6 Tango, 3 Juliet, Delta 7, Golf Romeo 26,
8 Alpha Juliet, Charlie 3, Tango-14, golf 370-Alpha Charlie
9 Echo. And then I noticed on the side there was another
10 sticker, and I have clearly gotten older since the last time
11 I looked at this, but it, you know, I'm probably going to
12 need some mechanical assistance to look at this number. But
13 it starts with -- I don't look, you know, I'm not quite there
14 yet. I can use a --

15 Q. (Inaudible) glasses?

16 A. Sure, I can try. Well, try some glasses. These
17 are --

18 Q. Those are Mr. Meadors.

19 A. We'll see. So this is -- this actually works
20 really well. Looks like one --

21 THE COURT: May not get them back, Mr. Meadors.

22 THE WITNESS: 166534. And that's marked serial number
23 on the -- on the side.

24 BY MR. CONRAD:

25 Q. Keep it there with you for a second. You're --

1 you're confident that is the infotainment center you took out
2 of that truck for which VIN you just read through out.

3 A. I know absolutely that it is.

4 Q. And as part of what you did in this case, did you
5 run that VIN into DMV to establish who was the registered
6 owner of that truck?

7 A. I did.

8 Q. And who was that?

9 A. Mr. William Ackerman.

10 Q. Can you just read --? Is there a DMV report that
11 you -- in that?

12 A. There is.

13 Q. You read the name on that DMV report.

14 A. It's "Ackerman, William Gray Junior."

15 Q. All right. Now before we get to the next steps of
16 what you did with this infotainment center. Explain to the
17 jury how you learned how to do what you just talked through,
18 and what you're going to talk through next. What training
19 have you had? Have you -- have you attended any classes or
20 anything like that?

21 A. Right. So my supervisor at the time,
22 Michael Rainey had -- had gone to and attended the -- been
23 trained in the Berla equipment and software. It's -- it's
24 software, and it's a big giant kit of -- of various
25 attachments for various vehicles. When he returned to that

1 training, he instructed myself and some of my coworkers on
2 how to use that equipment, in case he was not available such
3 as an instance like this when he was not available.

4 Q. And does Berla provide instructions on how to
5 accomplish these tasks?

6 A. Yes. To -- for the removal from the vehicle. He
7 used it through a phone app, and then once you are -- it's
8 taken out of the vehicle on the computer, it again gives you
9 step-by-step instructions on how to disassemble the -- the
10 infotainment center should it require that. And then also
11 shows you pictures on how to connect their cables, or their
12 circuit boards to this, to obtain the extraction.

13 MR. CONRAD: And at this time, State would move --
14 enter State's Exhibit 27 in to evidence.

15 MR. SWERLING: No objection.

16 THE COURT: All right. Without objection 27 in to
17 evidence for the State.

18 (State's Exhibit 27 was admitted in to evidence.)

19 BY MR. CONRAD:

20 Q. All right. And so next, Investigator Bryan, why
21 don't you talk us through -- after you removed that from the
22 -- from the truck, which next steps did you take?

23 A. So we're moving to later in the day now I've --
24 I've now taken that, and -- and transported it back to
25 Greenville, and now I'm in the -- our office space there. So

1 I have that device, and -- and a laptop running the -- the
2 Berla software. And like I said, we have a big bag that has
3 a lot of parts that would connect to it. What's in that bag?
4 There's actually two separate pieces. You have the screen on
5 the front half, of it, and then you have the actual computer
6 portion on the back half. Inside that metal box on the back
7 half it has two circuit boards in it. And the one that has
8 the data is the second circuit board. So when you open it
9 up, so you take three screws off of it, it takes it off the
10 screen, takes seven more screws off of it, it opens up, pull
11 the first circuit board out, that is not -- doesn't contain
12 user data.

13 The second circuit board in there. It does. And so
14 what we use -- and this is a -- a Ford SYNC generation three
15 version one model infotainment center. That's important
16 because there's version one and there's version two. They
17 have two different connectors. This is version one.

18 So it's a -- they make it fairly dummy proof. I open
19 the big bag, there's a box that says "For GenZ three version
20 one." You open it up, it's got a board inside of it. That
21 board is designed so that it connects to the board that I
22 removed from that -- from that infotainment center. The
23 holes line up where you -- the -- where the -- they will
24 screw together with the existing holes. It's got pins on it
25 -- on the board from Berla that touch on certain contact

1 points. And then it's connected to a -- a -- once you
2 connect those together, that connects to something called an
3 "SBC." It's just a -- it stands for "Single board computer"
4 but it's not very -- I know it's not creative, but that's
5 what it's called SBC.

6 And then, that SBC connects to the laptop. Once you
7 have the Berla board sandwiched to the board from that device
8 connected to the SBC, which is then connected to the
9 computer, you can power it on using a -- it's like a regular,
10 old-style phone charger. And then in the software, it will
11 tell you that you've done it all correctly. Because it runs
12 a test, it shows a green light that the test is correct, and
13 that is -- is able to pull the data, and then it is as simple
14 as hitting a button to extract, it pulls the data from the
15 device.

16 Q. When you say the word "Extract" you mean it -- it
17 makes a copy of the data that's on the infotainment?

18 A. That's correct. Correct. It's reading the info
19 -- it is reading the data off the infotainment center. And
20 in this case, I requested a -- a physical acquisition, which
21 we can talk about that. But it's -- it copies -- it's making
22 a copy of the data from the device itself.

23 Q. And -- and you said, "We're physical" but would it
24 be a full copy of the --?

25 A. Is it? Yes. Full physical is a good word for

1 full copy. A -- a -- the other option -- I don't want to get
2 too in the weeds on this, but the other option is logical --
3 logical will be what we saw on the screen when they were
4 navigating to the picture. Copy paste, you can copy and
5 paste that. Physical would be everything in between.

6 Q. So you're confident that you got a full set of
7 data per the Berla instructions off of this -- off of this
8 infotainment?

9 A. Yes. I -- I'm confident that I got everything
10 that -- that -- Berla is going to be able to get.

11 Q. And to your knowledge, does the Berla software or
12 anything else while you were in control alter any of the data
13 that was pulled off of that?

14 A. No, it doesn't.

15 Q. Okay.

16 MR. SWERLING: No objection.

17 BY MR. CONRAD:

18 Q. And what did you do with that data once you pulled
19 it off of -- of this?

20 A. So very simply, it presents the data. I could see
21 that it had recovered. So that data in its raw form is then
22 processed by the Berla software which -- which knows how to
23 -- how to read it, and to -- to parse it out into its varying
24 pieces of information. Just glancing at it, I could see that
25 there was some phone data, and some vehicle information data

1 recovered from it. And so there's a report -- very simply a
2 report button. I hit the report button, and produced a
3 report of all the data. And then, because it collects a lot
4 of data, I -- I constrained it to just May 7th, the entire
5 day of May 7th, and ran a report for just May 7th. I placed
6 all of the information, the reports, and the raw data onto a
7 CD, and --

8 Q. I'm going to approach and show you what's been
9 marked as State's Exhibit 28. Do you recognize that CD?

10 A. I -- I guess technically I misspoke. This is a
11 DVD, but it's -- but yeah, I -- this is the DVD, this is my
12 handwriting, and that's my signature on the DVD that I made
13 for Investigator Belcher.

14 Q. Okay. And -- and who did you give that to?

15 A. Investigator Belcher.

16 Q. And who is he with?

17 A. He's with the Greenwood County Sheriff's Office.

18 Q. And did you personally -- other than you said,
19 "You kind of checked it briefly after you first did the
20 extraction" -- did you personally go through and -- and look
21 at any more of this data in depth?

22 A. I didn't make any -- I didn't draw any conclusions
23 or make any assumptions off the data itself.

24 MR. CONRAD: And at this time, we will go ahead and
25 just move this State's 28 in to evidence.

1 MR. SWERLING: No objection.

2 THE COURT: Without objection 28 in to evidence for the
3 State.

4 (State's Exhibit 28 was admitted in to evidence.)

5 BY MR. CONRAD:

6 Q. All right. And let's talk about the BMW.

7 A. Yes, sir.

8 Q. Did you attempt to the same process with the --
9 with the BMW that -- that day on May 7th?

10 A. I did. And at that -- at that point, I had called
11 tech support because it indicated that I needed two different
12 numbers off of the sticker to be able to decrypt the data. I
13 only saw one of those numbers, and I -- we could not get the
14 vehicle on after even having the mechanics from the -- the --
15 the Sheriff's office come out there, and try to work on the
16 car.

17 And so I told Mr. Belcher or Investigator Belcher to
18 just hold onto that device because I wouldn't be able to
19 decrypt the device. I later learned that the second number
20 that I needed was -- was listed as something different. And
21 so I verified that that number was on the infotainment
22 center, and Mr. Belcher -- or Investigator Belcher brought
23 that device up to me at a later date. Did it -- again on
24 this device? It's a hard drive. It's not -- so there's not
25 all the extra parts. We just would image it like we would a

1 normal hard drive. We did -- I did do the analysis using the
2 Berla software on that device, and the only thing that I
3 believe it captured was some phone connective data, but no
4 data that -- no track log data.

5 Q. Did it capture any location data off of BMW?

6 A. It did not.

7 Q. Or any speed data?

8 A. No.

9 Q. Any other sort of vehicle-related data?

10 A. No, it did not.

11 Q. You saw?

12 A. No.

13 Q. And -- and -- okay. And are those the only
14 two vehicles that you investigated to assist
15 Greenwood County Sheriff's office in this case?

16 A. Yes, sir.

17 MR. CONRAD: Okay. All right. Nothing further for
18 this witness.

19 THE COURT: Okay. Mr. Swerling, any cross-examination?

20 MR. SWERLING: Yes, sir. A couple questions.

21 THE COURT: Sure.

22 CROSS-EXAMINATION

23 BY MR. SWERLING:

24 Q. So the -- the information is stored in the
25 infotainment system, is that correct -- or just so I

1 understand what we're talking about.

2 A. I think it just clarification on what information
3 are you referring to.

4 Q. The information -- the data that you get from the
5 extraction.

6 A. Yeah, the data that I recovered is strictly from
7 the infotainment center. The -- the vehicle has other data
8 that's stored in it, but the information that we're speaking
9 that's on that CD, it did come from the infotainment center.

10 Q. And the Berla is the actual application that
11 extracts?

12 A. Yes, sir. Berla is a software suite. And it --
13 it -- that is the data -- that is the software that extracts
14 the data from -- from the device.

15 THE COURT: How is Berla spelled?

16 THE WITNESS: It is B-E-R-L-A.

17 THE COURT: Okay. Thank you.

18 BY MR. SWERLING:

19 Q. That -- is that the name of the system? Is it --
20 everybody uses to extract the information off of these
21 infotainment centers?

22 A. I'm not -- I'm not aware of a competitor, but
23 Berla is one of the larger -- is -- is the company that I'm
24 aware of that's in that market for vehicle information
25 recovery.

1 Q. Okay. That's the one you use?

2 A. Yes, sir.

3 Q. I -- I'm not questioning whether is --

4 A. Yeah -- yeah.

5 Q. -- Good or not. I'm just trying to understand the
6 -- are there any competitors to it, or are there any other
7 types of software that read the data?

8 A. So I would imagine there is, but I'm not aware of
9 it.

10 Q. You use the Berla and -- okay. A report was
11 generated out of the -- from the Ford, is that correct?

12 A. That is correct.

13 Q. Okay. What kind of data is recorded on that?

14 A. There's again -- I didn't go in depth in that, but
15 I could see that there was some phone data, some Wi-Fi data,
16 some vehicle track log data, GPS points, some acceleration
17 data, and braking data. All that is recorded on that.

18 Q. So that's the kind of data that's recorded, but
19 you didn't analyze that at this particular scene?

20 A. Right. I didn't -- I didn't draw -- I didn't -- I
21 was never asked to draw a conclusion for the data. And so I
22 observed the data, but I didn't -- I didn't try to piece
23 together what the data meant, that data was given to the
24 Greenwood County Sheriff's Office.

25 Q. But the data is all humans, correct? I mean --

1 it's a type -- it's everything about the vehicle that is
2 recorded on that system, correct?

3 A. Not --

4 Q. Speed, phone braking.

5 A. There's a -- there is a -- your -- to your
6 question, is it -- is there a lot of data? Yes, there's a
7 lot of data. To your question, is it everything that the
8 vehicle records? No. The --

9 Q. No, go ahead -- no, go ahead.

10 A. There's -- there are computers that are in your
11 engine compartment that record other data, you know, fuel,
12 rail pressure, you know, things like that -- that -- that I
13 did not extract the data from those. Some people may be
14 familiar with the port that's up underneath your dash that
15 you can get diagnostics from. That collects all kind of
16 transmission, and -- and -- and -- and data, not GPS data,
17 not location data, but just the -- the vehicle-running data,
18 mechanical data, I did not collect that data.

19 Q. So you didn't collect GPS data?

20 A. No, GPS data is collected in the infotainment
21 center. Yes.

22 Q. Okay. That's all --

23 A. I did not collect. I didn't --

24 Q. (Crosstalk) GPS data, you have speed data, you
25 have braking data, things of that nature are recorded on the

1 -- on that.

2 A. Yes. And -- and wireless -- you know, wireless
3 Wi-Fi point connection data, phone data, that particular
4 vehicle, when you drive by a -- a speed limit sign, it -- it
5 records that. It's -- that it sees the speed limit sign, and
6 it records that. And the -- at the location, that it records
7 that information.

8 Q. It's pretty sophisticated system?

9 A. Yes.

10 Q. So the BMW -- I mean -- the Ford you were able to
11 do that for, and generate that CD.

12 A. Yes.

13 Q. And turn that over to Investigator Belcher, but
14 I'm still a little -- the BMW did not yield that kind of
15 information, or it was not -- you were not able to go ahead
16 and run the Berla on that, and get all that inform?

17 A. So I did run it on -- I did get data from the --
18 from the hard drive. The BMW did not record that data as far
19 as you're asking specifically about location data. It did
20 not record location data on the hard drive that I was able to
21 recover.

22 Q. Now, even though a vehicle may be stationary, it
23 still would -- could record the data, correct?

24 A. I don't know the -- the answer to that. I don't
25 know what triggers the recording of the data. I just know

1 that the data exists after it's extracted.

2 Q. I'm just trying to educate myself.

3 A. Yeah.

4 Q. So we don't have any kind of report from the BMW?

5 A. For location data and speed data? No, we don't.

6 MR. SWERLING: All right. That's fine (inaudible).

7 THE COURT: Okay. Mr. Conrad, any re-direct?

8 MR. CONRAD: No, not from State.

9 THE COURT: Okay. All right. You can step down sir.

10 INVESTIGATOR BRYAN: Thank you, sir.

11 THE COURT: You're free to leave the courthouse.

12 You're more than welcome to remain with us if you'd like.

13 INVESTIGATOR BRYAN: Thank you, sir.

14 THE COURT: Let me see the lawyers for just a minute
15 please.

16 (Bench conference at 12:30 to 12:31 p.m.)

17 MR. MEADORS: Okay. May it please the Court? State
18 calls Michael Dixon.

19 THE COURT: Okay.

20 MICHAEL DIXON,

21 being duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MEADORS:

25 Q. Good afternoon.

1 A. Hey.

2 Q. Tell us about Michael Dixon. Where are you from?

3 A. Originally from Iowa, but been in South Carolina
4 for about 22 years.

5 Q. And what -- what do you -- what -- what have you
6 done here in South Carolina when you came?

7 A. I went to Greenville Tech for a little bit when I
8 first moved here in 2002. After that, I joined the military,
9 was in the Army for a couple years, and once I did a
10 deployment to Afghanistan '05 -- '06 came back, and applied
11 for a position with the police department in Greenwood.

12 Q. And how long were you at the police department?

13 A. From 2007 to 2020, and I transferred from 2020 to
14 current with the Sheriff's Department.

15 Q. With Sheriff Kelly in Greenwood?

16 A. Yes, sir.

17 Q. And what's your position with the
18 Greenwood County Sheriff's department?

19 A. Investigator.

20 Q. And you've been investigator how long here?

21 A. Just a year with the county.

22 Q. Maybe on two days after this -- or on May 9 of
23 2023, were you request -- did someone ask you to go out, and
24 film basically from the intersection of Avid and Sawgrass to
25 1714 Old Abbeville?

1 A. That's correct. I was on uniform patrol at the
2 time. I had not transferred to investigations yet. So I
3 went out there, and I was requested to use patrol car since I
4 had an in-car camera, and it was several days later to drive
5 that route.

6 Q. And during the daylight time?

7 A. Yes, sir.

8 Q. Okay. And this has been marked State's 37. Have
9 you reviewed this, and does it accurately reflect what you're
10 fixing to testify about?

11 A. Yes sir.

12 MR. MEADORS: Your Honor, at this time we'd offer
13 State's 37.

14 MR. SWERLING: No objection.

15 THE COURT: Without objection, 37 in to evidence for
16 the State.

17 (State's Exhibit 37 was admitted in to evidence.)

18 MR. MEADORS: Permission to publish?

19 THE COURT: Certainly.

20 BY MR. MEADORS:

21 Q. Now you're in your -- your patrol at this time?

22 A. Yes, sir.

23 Q. Okay. And did you get out to the car, and film
24 it, hold your hand out or did you have a camera in the car?

25 A. Had an in-car camera system.

1 Q. Would you object to filming the whole stain from
2 the beginning of the Avid/Sawgrass to where it ended?

3 A. Yes, sir.

4 Q. Okay. Okay. Now, Investigator, before we start
5 filming, is we -- we see a view from -- is this your vehicle
6 we're looking from?

7 A. Yes, sir.

8 Q. Okay. And it is -- is that Avid Road?

9 A. Yes, sir.

10 Q. And is that the view down from Avid toward
11 Sawgrass on your left?

12 A. Yes, sir.

13 Q. Okay. Now there appears to be a car there on the
14 left. I forgot about. What is that?

15 A. I believe that's one of the -- who -- whether --
16 or highway patrol, or anybody else down there. I know
17 there's other investigators.

18 Q. Is this you pulling away?

19 A. Yes, sir.

20 Q. Did you talk during this, or just video?

21 A. No, sir, it's just video.

22 Q. And was this on May 9th?

23 A. Yes, sir.

24 Q. Of 2023?

25 A. Yes, sir.

1 Q. Okay. Those other investigators with highway
2 patrol perhaps?

3 A. Yes, sir.

4 Q. Is that Mr. Maceda's house on the right, or do you
5 know?

6 A. I do not know.

7 Q. Okay. And you -- with your own eyes, on May 9th
8 of 2023, see the -- what appears to be an all state?

9 A. Yes, sir.

10 Q. And is that what you're filming?

11 A. Yes, sir.

12 Q. Is the -- this the end of Avid Road here?

13 A. Yes, sir. I believe that turns up towards the Old
14 Abbeville Highway area.

15 Q. And is that Old -- Old Abbeville Highway right
16 here?

17 A. Yes, sir.

18 Q. Are those things -- are they in the right-hand
19 lane?

20 A. Yes, sir. It's on the left -- the left side of
21 the right-hand lane, more towards the center line.

22 Q. And then you're turning here. What address is
23 that?

24 A. The 1417 Old Abbeville Highway.

25 Q. Is it 1714?

1 A. Or 1714. Yes, sir.

2 MR. MEADORS: Beg the Court's indulgence?

3 THE COURT: Sure.

4 BY MR. MEADORS:

5 Q. Okay. And -- and -- and I don't know if you went
6 further this day, but did you see oil going on up the
7 driveway?

8 A. Yes, sir.

9 Q. To the house?

10 A. Yes, sir.

11 MR. MEADORS: That's all. Thank you very much,
12 Investigator.

13 THE WITNESS: Okay.

14 THE COURT: Mr. Swerling, any examination?

15 MR. SWERLING: No, your Honor. No, your Honor.

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

17 All right. Ladies and gentlemen, I think this will be
18 a good time to break for lunch, and you'll be back here, and
19 we'll start back at 2:15. So that'll give you
20 an hour and a half for lunch. And I think you were told
21 yesterday by one of my bailiffs to -- if you go to a local
22 restaurant -- keep your badge visible. And the reason for
23 that is -- is that we -- we have a lot of people in this
24 courtroom, they may be at a -- a public rest -- restaurant,
25 may not recognize you as being on the jury. They may be

1 talking about the case. And we don't want you to overhear
2 anything being said, but you have your badge visible, and
3 they'll know not to talk loud enough to where you can hear.
4 So do that for me. I would appreciate it. Remember all my
5 instructions, and have a good lunch, and we'll see you back
6 at 2:15.

7 (Jury exits room at 12:39 p.m.)

8 THE COURT: All right. We'll be in recess till 2:15.
9 Have a good lunch.

10 MR. CONRAD: Thank you, your Honor.

11 (Off the record from 12:40 to 2:15 p.m.)

12 THE COURT: Ready for the jury, State?

13 MR. MEADORS: Yes, sir. Thank you.

14 THE COURT: Okay. Defense?

15 MR. SWERLING: Yes, sir.

16 THE COURT: Okay. Let's bring the jury out please,
17 Trudy.

18 Let me ask you this worst case scenario.

19 (Jury enters room at 2:40 p.m.)

20 THE COURT: All right. Let the record reflect the jury
21 is back in.

22 Ladies and gentlemen, hope you had a good lunch, and
23 ready to get back to work this afternoon. Very good.

24 State ready?

25 MR. MEADORS: May it please, your Honor?

1 THE COURT: Yes, sir.

2 MR. MEADORS: Your Honor, the State of South Carolina
3 will now call Patrick Hensarling.

4 THE COURT: Okay.

5 THE CLERK: Good afternoon. Place your left on the
6 Bible, and raise your right hand.

7 PATRICK HENSARLING,
8 being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MEADORS:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. What's your last name?

14 A. Hensarling.

15 Q. Do you mind spelling that please?

16 A. H-E-N-S-A-R-L-I-N-G.

17 Q. Would you please tell these ladies and gentlemen
18 of this jury about Patrick Hensarling? Where are you from?

19 A. I'm from all over the US, I was born in Wisconsin,
20 lived 14 different states, moved to South Carolina, probably
21 about 2017. Been living out here working. We bought the
22 original Connie Maxwell House as a family, and kind of been
23 fixing it up. So I work at Break on the Lake. I am the
24 general manager out there. I have been working there for
25 almost seven years dealing with everything IT-related,

1 food-related. And now recently front-ofhouse related.

2 Q. What was the last part?

3 A. Front-of-house related. So customer relations and
4 things like that.

5 Q. For those of us that -- well I've been there, but
6 for anyone that hadn't been there. What is Break on the
7 Lake?

8 A. So Break on the Lake is a steak and seafood
9 family-style restaurant. We can seat up to 300 people.
10 Lakeside of Lake Greenwood, I mean -- it's great spot to be.

11 Q. For the record now. It's right on the lake, isn't
12 it?

13 A. It is -- it is.

14 Q. You said, "You're kind of" -- you mentioned IT in
15 one of your --

16 A. Yes.

17 Q. -- possibilities.

18 A. Yes.

19 Q. So does Break on the Lake have video equipment?

20 A. We do.

21 Q. Okay. And -- and you're familiar with that?

22 A. I am.

23 Q. Now, after this incident, May of 2023, did law
24 enforcement approach you about any video you had on
25 May 6th, 2023, and May -- up to maybe May 7, 2023?

1 A. They did.

2 Q. Now, did they ask for specific times?

3 A. They didn't really ask for direct specific times
4 except for later on in early morning of the following day.
5 But prior to that they just wanted to browse through, and see
6 when one customer -- two customers had come in, and sat at
7 our bar.

8 Q. And -- and how many different cameras or views do
9 you have?

10 A. So right now we have 32 views. And around that
11 time we had the same amount.

12 Q. And so was there a view of your inside bar where
13 we see Davis and Meredith?

14 A. There is.

15 Q. And for the record, Davis McClendon and
16 Meredith Hainey, did you provide law enforcement from the
17 afternoon on -- of May 6, 2023, to the evening on?

18 A. Just those two (inaudible), you know, so I had
19 that one where they were there at the bar, and then that
20 following morning, sometime around 2:00 a.m., where our
21 parking lot is, and where it can view across the bridge.

22 Q. So you provided law enforcement with a video
23 inside Break on the Lake?

24 A. Yes.

25 Q. And then, sometime in the morning of May 7, 2023?

1 A. Correct.

2 Q. There's a camera on the outside which shows what?
3 What -- what --?

4 A. So we have two different ones that were provided.
5 One was our main parking lot, which shows, you know,
6 everything that's outside of the parking lot, you can see
7 from one edge all the way to the other. And then the other
8 one was our back dock view, which can see across the bridge
9 over to what is now the port.

10 Q. So you provided both those time periods to law
11 enforcement?

12 A. I did.

13 Q. And what are the hours of record of Break on the
14 Lake. And specifically on May 6, 2023, what were your hours?

15 A. So our hours of operation that day were 11:00 to
16 9:00 at night.

17 Q. And I'm going to show you State's 36. Have you
18 --? The video you provided law enforcement, have you looked
19 and viewed it? And does that accurately reflect what your
20 cameras at Break on the Lake captured on May 6, 2023, and the
21 early morning hours of May 7, 2023?

22 A. They do.

23 MR. MEADORS: Your Honor, this time State's 36.

24 MR. SWERLING: No objection.

25 THE COURT: Without objection number 36 in to evidence

1 for the State.

2 (State's Exhibit 36 was admitted in to evidence.)

3 MR. MEADORS: Your Honor, that's all we have of this
4 witness. Thank you.

5 THE COURT: Okay. Any cross-examination?

6 MR. SWERLING: Just one.

7 CROSS-EXAMINATION

8 BY MR. SWERLING:

9 Q. The -- have you reviewed the video?

10 A. I viewed it when I had that officer there to,
11 like, get him what time stamps exactly he needed.

12 Q. All right. The time stamps that are on the video,
13 are those accurate, or are they --? Have they been
14 synchronized with anything? Are they off?

15 A. They -- they may be off by a few minutes. Because
16 whenever our power goes out for extended periods, you know,
17 the little battery inside can't keep up.

18 Q. But the most that they'd be off would be a few
19 minutes?

20 A. Yeah, but at most about a few minutes at the time.

21 MR. SWERLING: Thank you.

22 THE COURT: Okay. You can step down sir. Thank you.
23 You're free to leave the courthouse, or you're more than
24 welcome to remain with us, sir.

25 MR. CONRAD: May it please the Court? State calls

1 Anthony Knecht.

2 MR. SWERLING: What's the name?

3 MR. CONRAD: Anthony Knecht.

4 MR. SWERLING: Knecht. Oh, okay.

5 ANTHONY KNECHT,

6 being duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. CONRAD:

10 Q. All right. Good afternoon Mr. -- and it's
11 pronounced Knecht, correct?

12 A. That is correct.

13 Q. Could you spell your last name for the court
14 reporter, please?

15 A. K-N-E-C-H-T.

16 Q. All right. And where are you currently employed,
17 Mr. Knecht?

18 A. Verizon Wireless.

19 Q. And what are your duties there?

20 A. In this capacity, I'm a custodian of records.

21 Q. And just generally speaking, what does that mean
22 to you -- what do you want the jury to understand about what
23 that means to you?

24 A. Custodian of records validates that the records
25 that an agency received at the point of a search warrant or

1 subpoena are complete and accurate records that were sent to
2 the agency that they're going to submit in to evidence.

3 Q. And so Verizon Wireless in its capacity as a cell
4 phone carrier from time to time receives either subpoenas or
5 search warrants from law enforcement, is that correct?

6 A. That is correct.

7 Q. And typically -- generally speaking, what are
8 those requests usually -- what kind of information do those
9 requests usually ask for?

10 A. The subpoenas will request subscriber information,
11 cell tower information, information based off of well --
12 where the cell towers are located, latitude, longitude, a
13 physical address, call details where the call took place,
14 text message, picture message, any type of data session that
15 the phone can initiate based off the search warrant and
16 subpoena to give information that's provided.

17 Q. Okay. And in regards to this case, sometime after
18 May 7 of 2023, did Verizon Wireless receive a search warrant
19 from the Greenwood County Sheriff's Office that Verizon later
20 provided records to the Sheriff's Office in response to that?

21 A. That is correct.

22 Q. And -- I'm going to show you -- it's -- it's a
23 thumb drive. It's been marked as Exhibit 39. Ask you if you
24 recognize that.

25 A. I do.

1 Q. And have you had an opportunity to review the
2 contents of that thumb drive?

3 A. I have.

4 Q. All right. And have you verified that the
5 contents of that thumb drive are true, and accurate copies of
6 data, or information that was sent to the
7 Greenwood County Sheriff's Office in response to a search
8 warrant?

9 A. I have.

10 MR. CONRAD: At this time the State would move to enter
11 Exhibit 39 in to evidence.

12 MR. SWERLING: No objection to this.

13 THE COURT: Without objection 39 in to evidence for the
14 State.

15 (State's Exhibit 39 was admitted in to evidence.)

16 MR. CONRAD: And the State would seek to publish.

17 THE COURT: Okay.

18 BY MR. CONRAD:

19 Q. All right. Mr. Knecht -- and if with the Court's
20 permission, I'm going to have Mr. Knecht step down.

21 THE COURT: If you'll step down, just be sure to stand
22 right in front of that microphone that's on the railing
23 there.

24 MR. SWERLING: Judge, can I have --? Come over with
25 the (inaudible).

1 THE COURT: Sure. Yeah, yeah. Position yourself
2 wherever you need to. Not -- not that one. The -- the one
3 on the railing there closer to the jury. Yeah. Thank you.

4 BY MR. CONRAD:

5 Q. And, Mr. Knecht, first of all you haven't
6 personally reviewed all the actual records in this -- in --
7 in this data, have you?

8 A. I've reviewed the file structure, and the names of
9 the files, and the information on the disk. Right.

10 Q. But in terms of, like, individual calls, who
11 called who, and what time, and what cell tower the call was
12 made on, you haven't personally reviewed all those, correct?

13 A. That is correct.

14 Q. Okay.

15 A. I have not.

16 Q. Okay. All you've done is verify that these are
17 accurate copies of the records Verizon kept, correct?

18 A. That is correct.

19 Q. What I want to do before we let you go is just to
20 help explain some of the information, not necessarily discuss
21 the information itself. Just explain it so the jury
22 understands what kind of records Verizon keeps. Let's see.
23 And so the first thing I want to look at are cell sites.
24 This is a file labeled cell sites CDR 4G VOLT. What kind of
25 information does Verizon store in this particular file -- and

1 I can go ahead and open it.

2 A. This file is going to have the date of the record
3 in local time, and also the date of the record in GMT. It's
4 going to have cell tower information, cell face information.

5 Q. Okay. And cell face is -- is means what?

6 A. The -- the face on the cell tower that the call or
7 data session used to initiate the call.

8 Q. Okay. And I see something that says "Market ID."
9 What does that mean, sir?

10 A. Market ID is a definition that Verizon uses to
11 identify a group of cell towers. And they're going to have a
12 common name for that group of cell towers.

13 Q. Okay. And then I see something "ENBID" call them
14 by that name. What does that mean, sir?

15 A. That is the name of the cell tower plus the market
16 ID of the cell tower.

17 Q. Okay. So each individual cell tower out there has
18 a unique number that Verizon assigns it, is that correct?

19 A. That is correct.

20 Q. Okay. And I see a column labeled "DIR." What is
21 that?

22 A. That is the direction of the call.

23 Q. Okay. And when we say, "Direction," do you mean
24 like east, west, north, or -- or something different?

25 A. MT stands for "Mobile terminated," meaning the

1 subscriber answered a phone call. MO is "Mobile originated,"
2 which means the subscriber placed a phone call.

3 Q. Okay. And then I see a column, and it's labeled
4 "MSISDN." What is that column -- the information in that
5 column?

6 A. That is the subscriber's mobile telephone number.

7 Q. Okay. And so this number here in this column
8 would be the actual records that law enforcement requested,
9 correct? The number of the account?

10 A. That is correct.

11 Q. And could -- can you read that from here? What
12 number that is, from where you're standing?

13 A. If you zoomed in.

14 Q. Let me make sure, I don't want to mess it up.
15 Sorry. Can you zoom in that number? There we go. Okay.
16 Okay. And what -- can you read that number?

17 A. (864)455 -- can you zoom in a little bit more?
18 I'm sorry. (864) 554-0292.

19 Q. Okay. And we'll zoom back out. Okay. So that's
20 the subscriber of the account that was requested, that's
21 their number -- the telephone number for that person,
22 correct?

23 A. That is correct.

24 Q. And K -- column K it says "called" and then a
25 number sign. What does that mean?

1 A. That is the number that was either received or
2 made from our subscriber.

3 Q. Okay. And then calling -- called "CPN." What
4 does that mean?

5 A. That would be the calling party number.

6 Q. Okay. Column SOU what does that mean?

7 A. Seconds of use.

8 Q. Okay. And that's how long the call lasted,
9 correct?

10 A. That is correct.

11 Q. So for example, this first one says, "It lasted 9"
12 -- 919. Is that 919 minutes or --? but -- or seconds?

13 A. That would be seconds.

14 Q. And then, RAT is what?

15 A. The type of technology that was used to make the
16 call.

17 Q. And this -- when you say technology, what do you
18 mean by that?

19 A. Verizon Wireless has over the course of time
20 several types of technology that we've used, and through our
21 evolution the technology name has changed.

22 Q. Okay. And what is this? -- at least as far as we
23 see in this column, what technology is being used for that
24 call?

25 A. LTE.

1 Q. And would that be short for a -- a -- a voiceover
2 LTE-type of call VOLT?

3 A. Long-term evolution.

4 Q. Okay. All right. I think that's all we're going
5 to -- we're going to talk about in that. All right. And
6 then, the next thing I want to talk about is the subscriber
7 information, and I might ask you to step back here, and help
8 me find it because it's a -- there's a number of files in
9 here.

10 Mr. -- Mr. Knecht, can you come back here? File
11 called. Okay. All right. And I'm opening the file by the
12 name of "Subscriber MTN" excuse our -- okay. And we see a
13 phone number on the far left there, and you may not be able
14 to read it, and I'll see if I can zoom a little bit. What
15 you --? What is that phone number on the far left column
16 there in the subscriber MTN?

17 A. (864) 554-0297.

18 Q. Okay. And we see in column B and column C says
19 "Search" -- and I'll expand it out "Search start and search
20 in." Is that the -- the dates that law enforcement
21 originally requested from Verizon?

22 A. That is correct.

23 Q. Okay. And we see an account number. Is that the
24 Verizon account number of that phone number with --?

25 A. That is correct.

1 Q. And then -- okay. And then, finally we see a last
2 name and first name. And that name is -- what -- what is
3 that name? Can you read that from here?

4 A. Last name, "Ackerman." First name, "Kelly."

5 Q. And that would be the name of the individual who
6 actually owned this account, correct?

7 A. That is correct.

8 Q. And a Verizon account might have several phone
9 numbers assigned to it, is that correct?

10 A. That is correct.

11 Q. And then we're going to scroll right? And we see
12 an address. Is that the address of the -- the Verizon
13 account subscriber?

14 A. That would be correct.

15 Q. Can you just read that address?

16 A. "1714 Old" --

17 Q. Is that Abbeville?

18 A. Yes. But do we need to move the column out to see
19 the rest of the address?

20 Q. Okay.

21 A. So it is "1714 Old Abbeville."

22 Q. Okay. What city?

23 A. Greenville -- Greenwood.

24 Q. And finally, one last thing on this file is, we
25 see a contact last, and columns contact last and contact

1 first. What -- what is that as far as Verizon's concerned?

2 What is that -- what is that information?

3 A. That's the name that our subscriber listed as the
4 contact person for that phone number.

5 Q. Okay. So if an individual Verizon account has
6 several phone numbers assigned, then the subscriber could
7 assign a person to each a -- a different person to each line,
8 is that correct?

9 A. That is correct.

10 Q. And the individual that the subscriber assigned to
11 that number, that you just read, is -- it says what -- what's
12 that name?

13 A. Last name "Ackerman." First name "Bud."

14 Q. Okay. All right. And I think that's all we
15 wanted to look at there. And one -- one other thing, we see
16 a number of PDF files that contained in this -- these record
17 returns, is that correct?

18 A. That is correct.

19 Q. And those are -- what are those, for instance,
20 this one that I have highlighted, can you read that?

21 A. I can't make up. This is the historical IP data
22 with cell-side information.

23 Q. And what -- why does Verizon provide this
24 particular sheet? What is contained in this sheet?

25 A. This is the key for other people to be able to

1 read their records, and identify what each column in -- wrote
2 in the records mean.

3 Q. So if someone were reviewing these records, and
4 they forgot whatever or column that some of the ones we just
5 went through, they can refer to this key to help them out, is
6 that correct?

7 A. That is correct.

8 MR. CONRAD: Okay. Let's see. Okay. If you can take
9 a seat, Mr. Knecht. All right. And now I think that's all
10 the questions I have for you. Please answer questions
11 Mr. Swerling might have.

12 MR. SWERLING: I don't have anything, your Honor.

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

14 MR. KNECHT: Thank you.

15 THE COURT: You're free to leave the courthouse.
16 You're more than welcome to remain with us.

17 MR. MEADORS: State would now call Mark Davis.

18 THE CLERK: Place your left hand on the Bible, and
19 raise your right hand, please.

20 MARK GRAYSON DAVIS,

21 being duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MEADORS:

25 Q. Good afternoon.

1 A. Afternoon.

2 Q. Please state your name for the record.

3 A. Mark Grayson Davis.

4 Q. Where are you from?

5 A. Greenwood originally.

6 Q. Born and raised?

7 A. Born -- lived in Georgia, New York, but been home
8 for a while now.

9 Q. And where'd you go to school?

10 A. I went to the Governor's School in Greenville for
11 the arts and humanities. Graduated there.

12 Q. What'd you do after that?

13 A. I was a professional ballet dancer.

14 Q. My daughter is a ballet dancer.

15 A. Well, now I'm no longer a dancer, so...

16 Q. Where'd you -- where'd you do that?

17 A. New York City.

18 Q. How long did you do that?

19 A. Fifteen years.

20 Q. And what'd you do after that?

21 A. Began a career in law enforcement 2019.

22 Q. Where'd you start?

23 A. I started in Abbeville County.

24 Q. What county?

25 A. Abbeville County. Was there for five years, was

1 on the road, became sergeant, ended up leaving Abbeville,
2 came to -- to Greenwood beginning of 2023. Been on the road
3 here and, in March this year, became K-9 handler is what my
4 duties are now.

5 Q. You had a limited role in this case, didn't you?

6 A. Yes, sir.

7 Q. And I'm going to show you what's marked -- you
8 come in contact with the Defendant, William Bud Ackerman?

9 A. Yes, sir, I did.

10 Q. After he was arrested?

11 A. Yes, sir.

12 Q. And where was that?

13 A. At the Greenwood County Detention Center.

14 Q. Greenwood County Detention Center?

15 A. Yes, sir.

16 Q. And was that the day of his arrest, or the day
17 after?

18 A. It was the morning of -- he -- was prior to him
19 being processed into the detention center.

20 Q. And were you on -- was that your job, or how'd you
21 get him up?

22 A. At the time that he was being -- prior to him
23 being processed into the detention center, it was -- well, a
24 little after the shift-change hours, and solely assisted the
25 -- the night shift by going and seizing his belongings,

1 clothings, and whatever belonged on his person, and entered
2 in to evidence.

3 Q. And for these purposes, and some -- some witnesses
4 we have coming up this afternoon, I'm going to show you
5 what's marked State's 25, officer. And did you collect his
6 pants?

7 A. I did.

8 Q. Okay. And can you --? -- were they khaki pants --
9 short pants?

10 A. They were -- I believe, some -- they were shorts.
11 I couldn't remember the color off the top of my head, but
12 khaki-type material.

13 Q. We'll, tell these folks. Did you collect them
14 from the body of -- of Bud?

15 A. I did. Ackerman.

16 Q. You yourself got them from him?

17 A. Correct.

18 Q. No question about that?

19 A. Correct.

20 Q. And then what did you do with them?

21 A. I -- I entered them in to evidence.

22 Q. And then, they stayed there until they were
23 transferred for further processing?

24 A. To the best of my knowledge, yes.

25 Q. Okay. And you didn't have any part in that?

1 A. Correct.

2 Q. And when you gather evidence, does it then go to
3 your evidence custodian?

4 A. Correct. It's -- beginning of chain of custody.

5 Q. And -- and what's his name?

6 A. The -- at the top of my head, I can't think off
7 the top of my head, but --

8 Q. But you went, and it was in the custody of your
9 evidence custodian, it went on to somebody else?

10 A. It's Investigator Allison, I believe.

11 Q. Ms. Allison?

12 A. Yes, that's right.

13 MR. MEADORS: Okay. Your Honor, State's 25.

14 MR. SWERLING: No objection.

15 THE COURT: Without objection 25 in to evidence for the
16 State.

17 (State's Exhibit 25 was admitted in to evidence.)

18 MR. MEADORS: Thank you. That's all.

19 MR. SWERLING: No questions.

20 THE COURT: Okay. You step -- answer. Thank you.

21 MR. MEADORS: Your Honor, now would be the time if we
22 could have, have a short --

23 THE COURT: Okay. All right. Lawyers need a -- a few
24 minutes to get ready for the next witness. So ladies and
25 gentlemen, I'm going to ask that you go back to the jury

1 room. Hopefully it won't be too long. We'll get you back
2 out, and we'll proceed forward. Thank you.

3 (Jury exits room at 3:07 p.m.)

4 THE COURT: Okay. Be in a short recess.

5 MR. MEADORS: Yes, sir. Thank you.

6 THE COURT: Okay.

7 (Off the record from 3:07 to 3:31 p.m.)

8 (Jury enters room at 3:31 p.m.)

9 THE COURT: All right. Let the record reflect the
10 jury's back in.

11 State ready for the next witness?

12 MR. MEADORS: Yes, sir.

13 THE COURT: Okay.

14 MR. MEADORS: May it please the Court?

15 State of South Carolina will now call Rachel Nguyen.

16 THE COURT: Okay. Come around, Ms. Nguyen.

17 THE CLERK: Good afternoon. Place your left hand on
18 the Bible, and raise your right hand.

19 RACHEL NGUYEN,

20 being duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. MEADORS:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. You are Rachel Nguyen?

2 A. I am.

3 Q. Please spell your last name.

4 A. N-G-U-Y-E-N.

5 Q. Please tell these ladies and gentlemen of this
6 jury about yourself. First of all, just your background,
7 where you're from, much as your personal life as you want to
8 tell, and then your education and training, and in
9 particular, your educational training, and field of expertise
10 I've asked you to testify about today.

11 A. I'm originally from Connecticut. I've lived in
12 South Carolina for 10 years. I attended the
13 University of New Haven, and received two bachelors of
14 science degrees, one in forensic science and one in biology.
15 I then moved to South Carolina for this position at SLED. I
16 initially started as a toxicology technician in the
17 toxicology department. And then, about seven years ago, I
18 started my career within the DNA casework department. I am
19 currently a forensic scientist. I started as a forensic
20 serologist and training.

21 So upon being employed within the DNA casework
22 department, I've undergone several training programs in the
23 areas for testing of serology, which is body fluid
24 identification, evidence processing, which is collecting any
25 DNA that may be on items such as what you think -- of touch

1 from handling an item or ownership collection, which is
2 collecting potential skin cells from -- being the primary
3 owner of an article of clothing.

4 I also perform the laboratory portion of DNA analysis
5 and provide courtroom testimony when required. So my
6 training program, I learned all those different types of
7 analysis. I was able to observe them as well as perform
8 them. And at the end of the training, each training program,
9 I then entered what's called a competency testing phase. So
10 during that phase, I am tested on my knowledge and abilities
11 to perform all these tests independently.

12 There's four components, a written exam, an oral exam,
13 a mock case, and a mock quo. And once I've successfully
14 completed all of those steps, I am then authorized to perform
15 analysis in those various areas.

16 Q. And two of those are evidence processing and
17 serology?

18 A. Yes.

19 Q. And I know you said it kind of brief, but tell us
20 a little bit more about serology?

21 A. So serology is body fluid identification. At --
22 within the DNA casework department, we have testing for
23 blood, semen, and saliva. Evidence processing includes the
24 various testing for body fluids as well as -- as I mentioned,
25 collecting any DNA that may be left behind from handling an

1 object, or from wearing, like, articles of clothing. We also
2 are responsible for preparing these samples for DNA analysis.

3 Q. How many tests do you think you performed?

4 A. I would say probably upwards of 15,000 tests.

5 Q. And -- and -- and tell these ladies and gentlemen
6 where your office is.

7 A. Like, the location geographically?

8 Q. It's in Columbia?

9 A. Yes, it's in Columbia.

10 Q. And have you all got a new -- I say you all just
11 SLED having a new laboratory?

12 A. Yes, a new forensics laboratory. We started
13 working in about a little over a year ago.

14 Q. Have you testified in courts of (inaudible) of
15 this state as an expert in field of -- in the field of
16 evidence collection and or forensic serology?

17 A. Yes, I have.

18 MR. MEADORS: Your Honor, at this time, we can offer
19 Rachel Nguyen as an expert in the field of evidence.

20 MR. SWERLING: No objection.

21 MR. MEADORS: Also forensic serology.

22 MR. SWERLING: No objection.

23 THE COURT: Okay. She's so found to be an expert in
24 those areas.

25 Ladies and gentlemen, let me explain to you something

1 concerning witnesses, and witnesses rendering opinions.

2 Normally witnesses cannot state opinions in a -- in the

3 matter in a case. Basically witnesses can only testify as to

4 what they saw, heard, felt, that sort of thing. There is an

5 exception in -- in our rules that allow for individuals who

6 are found to be an expert in certain areas by virtue of

7 training, education, experience they are permitted to offer

8 opinions in certain areas that they are an expert in. And

9 any basis for those opinions. Now the fact that, Agent

10 Nguyen from SLED has been found to be an expert in those

11 areas of serology and evidence collecting, you give it

12 whatever weight as you normally would with any other witness.

13 Okay. All right. Thank you.

14 May proceed, Mr. Meadors.

15 MR. MEADORS: Beg the Court's indulgence.

16 BY MR. MEADORS:

17 Q. Describe the lab and the lab you used to perform

18 these tests.

19 A. So the only individuals that have access to the

20 lab are people who work within the department as well as our

21 chain of command. So it's a secure area, and we have to sign

22 in and out anyone who enters the lab that is not an

23 authorized personnel. It is a sterile environment so we wear

24 lab coats, masks, gloves -- frequent changing of gloves. We

25 decontaminate any surfaces that we process on, or do analysis

1 on. Any tools we use. Any instruments that are used in the
2 lab are always cleaned in between samples. And another good
3 rule in terms of evidence processing is only one item of
4 evidence is out at a time.

5 Q. Is the room climate controlled?

6 A. We have AC.

7 Q. Okay. I asked that before, so I wanted to ask,
8 but it's a sterile environment?

9 A. Yes.

10 Q. You're very particular in -- in what goes in, what
11 comes out, what you're wearing. You actually wear a white
12 coat?

13 A. Yes.

14 Q. And you only examined one piece of evidence at a
15 time?

16 A. That's correct.

17 Q. Let's get right to this case -- case please, Agent
18 Nguyen. Did particular items come into your possession for
19 analysis in the State of South Carolina versus
20 William Bud Ackerman in this case? Did you review some
21 items?

22 A. Yes, I had several items in my custody.

23 Q. And do you -- to aid you, but more importantly to
24 aid me, do you have an evidence worksheet that you produced
25 which will help you in this -- your testimony?

1 A. I do.

2 Q. Okay. And when -- when do you prepare that?

3 A. So anytime you start analysis on a case, an
4 evidence worksheet is created, it'll document any items that
5 are in your possession, any analysis that's performed
6 specifically for evidence processing. We take photographs of
7 the evidence, we write a description to have good
8 recollection for -- when we do have to testify in court. It
9 -- I would note maybe anything I noticed wrong with the
10 package -- it's just a good form to document anything that we
11 notice.

12 Q. I don't think we've gone into detail yet on this,
13 but are you familiar with what is referred to as the chain of
14 evidence?

15 A. Yes, I am.

16 Q. Can you explain that to me?

17 A. So a chain of custody specifically at the SLED
18 laboratory is electronic. So that means that we record the
19 movement of evidence within the laboratory, from the moment
20 it is brought to the laboratory until it is returned to the
21 submitting agency. That's done by barcodes. So each
22 individual in the laboratory has a barcode, any locations or
23 rooms that evidence is stored, and has a barcode. And each
24 barcode is scanned as it moves throughout. So if I receive
25 evidence from our evidence control department, they will scan

1 my barcode, and I'll put in my password and then now that
2 evidence will show on the chain of custody that I have taken
3 custody of that.

4 Q. We can document or -- you all can document SLED,
5 when a piece of evidence comes in, and where it goes from
6 there, correct?

7 A. That's correct. It'll also show who submitted the
8 item of evidence, and also who took it when they leave SLED.

9 Q. Let's start with the -- the way you numbered it.
10 Item number one. Can you tell the ladies and gentlemen what
11 that is?

12 A. Item number one is a pair of khaki shorts
13 belonging to William Ackerman Junior.

14 Q. I'm going to show you what's been entered as
15 State's 25. Next. Can you please, ma'am, if you recognize
16 that?

17 A. I do recognize this item. It has the unique case
18 number and item number for this item. It also has my initial
19 and date on the seals, and then there is this white
20 processing paper inside is what I wrapped the item in, and it
21 has the case number, the item number, my initials, and the
22 date that I processed it.

23 Q. You could look at that and say, I know that's what
24 that is?

25 A. Yes.

1 Q. And then I process it?

2 A. Yes.

3 Q. Will you open it up?

4 A. Sure.

5 Q. Do you mind?

6 A. Do you have scissors?

7 Q. Do you need gloves?

8 A. I have gloves. Oh, sorry.

9 Q. And I want to stop you right there. Do you also
10 take pictures of the item (inaudible)?

11 A. Yes. So --

12 Q. Pull you up a minute. Will you look at these and
13 tell me if you recognize these?

14 A. I do.

15 MR. MEADORS: Okay. Your Honor. 40, 41, 42, and 43 I
16 believe without objection.

17 MR. SWERLING: Correct.

18 THE COURT: All right. Without objection 40 through 43
19 in to evidence.

20 (State's Exhibits 40 through 43 were admitted in to
21 evidence.)

22 THE COURT: Are those pictures of the khaki shorts?

23 MR. MEADORS: Okay.

24 BY MR. MEADORS:

25 Q. All right. Go ahead.

1 A. This manilla envelope is what the item was
2 originally packaged in. And then for any item that we
3 perform evidence processing on, we'll use a sterile
4 processing paper. And it's to collect any debris that may
5 come off the item while we're processing it.

6 May I stand?

7 MR. MEADORS: Your Honor?

8 THE COURT: Sure. Yeah, you do whatever you need to
9 do.

10 THE WITNESS: Do you want me to hold them up?

11 MR. MEADORS: If you don't mind.

12 BY MR. MEADORS:

13 Q. Now, when -- when these came into your possession,
14 I see some markings, and cuttings, and we're going to get on
15 that. Get -- get into that in a minute. Those were not
16 there when you first got these were --

17 A. No, I did that.

18 Q. Could you show us please State's 40, 41, 42.
19 Start with State's 40. And, agent, can you look at -- as
20 soon as it comes up, if you can see State's 40 is -- is that
21 how the shorts came into you?

22 A. Yes.

23 Q. Okay. And is that your practice to take a picture
24 of it before you start examining it?

25 A. Yes. We generally take pictures as we first open

1 it. If there is any body fluid testing performed, we will
2 take pictures. Then at that point, after the testing is
3 finished, it's to document the results of the different areas
4 that were tested. And then if any areas that were tested are
5 moving forward for DNA analysis, we'll take a third set of
6 photos to show that that cutting was removed from the actual
7 item, and move forward for analysis.

8 Q. State's 41. These also are a picture of the
9 shorts?

10 A. Yes, there were four pictures of the shorts.

11 Q. Four pictures. 42?

12 A. Also prior to processing.

13 Q. And 43?

14 A. Also prior to processing.

15 Q. Thank you very much. We've taken pictures, you've
16 got the shorts out. What do you do next?

17 A. So for this item, the submitting agency requested
18 blood testing as well as ownership testing. As I mentioned
19 before, ownership testing is trying to collect any cells left
20 behind from being the primary wear of an article of clothing.
21 So I first visually examine this item for any red, brown
22 staining that is consistent with being blood. Any areas that
23 resembled that I would circle, and then test without
24 presumptive blood tests. A presumptive test indicates the
25 possible presence of blood. And then I would document the

1 results on the item as well as on my evidence worksheet.

2 For the ownership collection, I used a serial scraper,
3 which is always packaged with the item to show that it's only
4 used on one item, and I scraped the interior waistband, and
5 then used a moistened sterile swab to collect any DNA that
6 may be on the interior waistband. I also collected hair off
7 of this item.

8 Q. And -- and did you have the standards then?

9 A. From the known individuals?

10 Q. Yes.

11 A. I did.

12 Q. I'm going to show you what's marked for ID at this
13 point. State's 44. Do you recognize that?

14 A. I do. For the same reasons as before, it has the
15 unique case number. This actually has a container letter on
16 it, which means that more than one item is packaged inside.
17 And then I notice my initials and date from when I sealed
18 this package.

19 Q. And what is State's 44 for ID?

20 A. It appears to have items nine and 10. Item nine
21 was a swab from the right hand of Kenneth McClendon. And
22 item 10 is a dried blood standard from Kenneth Davis
23 McClendon.

24 Q. Is -- is -- is -- is -- from those items -- or are
25 you able to get a standard (inaudible) evidence?

1 A. Yes. So that would be item 10. The dried blood
2 standard would be used as a known standard. A known standard
3 is just a sample that's collected from a known individual to
4 be later used for DNA comparison.

5 Q. And -- and that came from the autopsy, correct?

6 A. It appears it did.

7 MR. MEADORS: Your Honor, at this time 44 for ID.
8 We'll -- we'll, offer that in through the pathologist.

9 THE COURT: All right. You'll get that in through the
10 pathologist. Okay. All right. It'll remain for
11 identification purposes only at this time.

12 MR. MEADORS: And I -- I've discussed that with the
13 Defense Counsel.

14 THE COURT: Mr. Meadors, since she's done some DNA
15 testing should we not also have her qualified as an expert in
16 DNA analysis separate from serologist?

17 MR. MEADORS: We have a DNA expert that's coming up.

18 THE COURT: Oh, okay.

19 MR. MEADORS: State --

20 THE COURT: Got you.

21 MR. MEADORS: -- separated in this. That's why I
22 didn't.

23 THE COURT: Got you. I'm -- I'm good with that.

24 BY MR. MEADORS:

25 Q. State's 24. Do you recognize this?

1 A. Yes. For the same reason as mentioned before, it
2 has the SLED unique keys number, item number, and my initials
3 and date are on the seals, as well as the interior packaging.
4 And it is -- item 11 is buccal swabs from William Gray
5 Ackerman Junior.

6 MR. MEADORS: Your Honor, we'd offer this as
7 State's 24. I believe there's been testimony from
8 Investigator Durkin. He executed a search warrant, but
9 Greg Allison actually took a swab.

10 THE COURT: And he was present. Right.

11 MR. MEADORS: But, Greg Allison is coming in tomorrow
12 to testify to this.

13 THE COURT: Okay.

14 MR. MEADORS: So I guess at this point, 24 for ID, we
15 -- we -- we'll go ahead, and offer it because he --

16 THE COURT: Okay. Any -- any objections?

17 MR. SWERLING: Subject to cross.

18 THE COURT: Oh, yes. Subject to cross 24 in to
19 evidence for the State.

20 (State's Exhibit 24 was admitted in to evidence.)

21 BY MR. MEADORS:

22 Q. Let's go back to the pants.

23 A. Okay.

24 Q. Tell the ladies and gentlemen what you did with
25 the pants.

1 A. So I mentioned the ownership collection, and the
2 swab, and the hair that I collected. The results from the
3 blood testing, I took six cuttings from the shorts. Five of
4 them more positive presumptively for blood, and one was
5 inconclusive. An inconclusive so -- let me back up.

6 The presumptive blood test is a two chemical --
7 two-part color change test. So the reason why one of the
8 stains was inconclusive was because the color change should
9 occur after the addition of the second chemical. And in this
10 case, a color change occurred after the addition of the first
11 chemical. So any positives or inconclusive results will be
12 forwarded for further analysis.

13 Q. And I'm showing you what's marked State's 23. Do
14 you recognize this?

15 A. I do. This is several items that I -- or
16 cuttings, and I believe the swab and the hair that I took off
17 of the khaki shorts. I created this container because it has
18 all of the items that I created off of the shorts.

19 Q. And that's what you're going to be testifying
20 about right now?

21 A. Yes.

22 MR. MEADORS: And, your Honor, we'd offer State's 23.

23 THE COURT: Okay.

24 MR. SWERLING: That is the --?

25 MR. MEADORS: Actual cutting from the short.

1 MR. SWERLING: Okay. No objection.

2 THE COURT: Cuttings from the shorts. Okay. 23 in to
3 evidence for the State.

4 (State's Exhibit 23 was admitted in to evidence.)

5 BY MR. MEADORS:

6 Q. Can you tell us exactly how you did it? You've
7 testified, but show them holding the pants up where you cut
8 -- why you cut (inaudible)?

9 MR. MEADORS: Did you (inaudible) she come down?

10 THE COURT: Sure. Where she's most comfortable.

11 THE WITNESS: So you can see some, of these areas are
12 circled and not removed from the shorts. Those were areas
13 that were negative for the blood test. Areas that went
14 forward are -- you can see the missing pieces. So this area
15 was the inconclusive test, which was labeled item 1.4.

16 There were multiple cuttings taken from inside this
17 pocket. So there's the positive test result, and this was
18 item 1.3. The majority of this pocket here was item 1.1.
19 The interior portion of the zipper area was also positive,
20 labeled 1.60. Here we go. This cutting here is 1.5. I
21 think I'm missing 1.2. Going to look at my notes real quick
22 please. And then lastly, 1.2 was the interior of this pocket
23 here.

24 Q. Okay. And -- and you made those cuttings, and did
25 what with them?

1 A. So each cutting got its own evidence envelope, and
2 was labeled with the case number -- the item number it was
3 assigned, that it was for blood testing. And then it was
4 they -- each envelope was sealed, and initial and dated on my
5 end, and then put in this what we call a "Heat seal pouch."

6 Q. And that's what's State's 23?

7 A. Yes.

8 Q. You cut them, put them in here, and pass them on
9 for testing?

10 A. I prepare the samples for DNA analysis, which
11 basically means I take a small cutting from the cutting,
12 place it in a tube, label it with the case number and the
13 item number. I will package those tubes with the envelopes
14 in the cuttings, and that will move on for further analysis.

15 Q. Thank you very much. We -- sit back. Thank you.
16 So going back to your report, 1.1 a cutting from the interior
17 of the right pocket of the khaki shorts belonging to William
18 Ackerman, what did you do with that?

19 A. So that was positive presumptively for blood. So
20 that I cut a small portion, and forwarded that for DNA
21 analysis.

22 Q. 1.2?

23 A. Same thing, it was positive for the presumptive
24 test, and then I cut a small portion and forwarded that for
25 further analysis.

1 Q. 1.3?

2 A. Same thing as that one, it was positive, so it got
3 prepared for DNA analysis.

4 Q. 1.4?

5 A. So 1.4 is the inconclusive stain, and it was
6 prepared for DNA analysis.

7 Q. 1.5?

8 A. It was presumptively positive for blood. That
9 item was not prepared for DNA analysis. There was a request
10 to only forward any presumptive blood tests that were
11 positive from within the pockets. So the cutting was made,
12 and the item was retained in the event. Further analysis was
13 requested later.

14 Q. 1.6?

15 A. Same thing as 1.5. It was presumptively positive,
16 however, it was not cut or prepared for DNA analysis, but the
17 cutting was retained in the even further analysis was
18 requested.

19 Q. 1.7?

20 A. 1.7 was the swab that was swabbed around the
21 interior waistband for ownership. I cut a small portion of
22 that, placed it in a tube, and that went on for DNA analysis.

23 Q. Now, one of the -- the cuttings you had on the
24 back -- back here of the pants, you had said, "They was
25 request for DNA analysis from the pocket?"

1 A. Yes.

2 Q. But you also observed on the back of the pants
3 something that you did cut right and send on. Why'd you do
4 that?

5 A. Yes. So I forwarded all stains that were
6 positive. And then the -- for -- I removed them from the
7 shorts, then only the items that were in the location that
8 was requested moved on for DNA analysis. But those other
9 positive areas were still created as a new item in the event
10 that possibly those other items didn't yield any DNA
11 profiles, or someone were to review the case later, and want
12 those items tested.

13 Q. So you sent those -- forward to those on, correct?

14 A. Yes. They moved forward with the other cuttings.

15 Q. And you cut those based on your observations?
16 There might be something.

17 A. Yes, based on the visual examination as well as
18 the presumptive blood test.

19 Q. And -- and you said, "It we're almost 1.8 here
20 from the khaki shorts belonging to William Ackerman?"

21 A. Yes.

22 Q. And you got in your comments here are not suitable
23 for STR PCR DNA analysis. I know you're not qualified to do
24 it, but can you say that -- just to what that means?

25 A. So 1.8 is the hair collection itself, which may

1 contain multiple possible hairs. I forwarded two hairs for
2 DNA analysis. So the type of DNA testing that we perform
3 within the laboratory, you need the hair root for analysis.
4 So the comment that you referred to the hair not suitable for
5 SCRPCR DNA analysis retained simply indicates that there was
6 hair possibly present on my collection. However, it was not
7 suitable for the type of DNA testing that we perform.

8 Q. 1.8.1 and 1.8.2?

9 A. Those are the hairs that move forward for
10 analysis.

11 Q. Then go into two -- item 2.

12 A. Item 2 is a swab from possible vomit near a
13 potential oil stain on crime scene Avid Road.

14 Q. Did you feel like? -- what, if anything, were your
15 observations of that?

16 A. I just prepared that swab for DNA analysis. So
17 once again, just cutting a small portion from the swab,
18 putting it in a tube, labeling that tube, and then forwarding
19 it for further analysis.

20 Q. There's been testimony that was collected by
21 Investigator Durkin. I don't know if you were in the
22 courtroom or not.

23 A. I don't think so.

24 Q. Item 3?

25 A. Item 3 is the swab from the front driver's seat of

1 the 2019 Ford F-250.

2 Q. And what did you do with that?

3 A. It came in with a blood request. So I
4 presumptively tested that swab. Swabs are tested
5 presumptively a little bit different than as I explained with
6 the khaki shorts. So I took a sterile swab, moistened it
7 with water, and then I rubbed it on the collection swabs that
8 were submitted to the lab. Then I test that swab that I have
9 just rubbed on the set of swabs that were submitted and the
10 result was negative.

11 Q. And this is State's 20, which has already been
12 entered. It's listed as vomit potential near the oil stain,
13 and a swab from the front seat driver. That's what you've
14 just testified to, correct?

15 A. Yes.

16 Q. Item 4?

17 A. Item 4 is a swab from the "T" portion of the hood
18 in the middle of the dent of 2019 Ford F-250 of
19 William Ackerman Junior.

20 Q. And what, if anything, did you -- or your
21 examination -- or find is item 4?

22 A. That also had a blood request on it. So I
23 performed the same presumptive blood test on that set of
24 swabs, and the result was negative.

25 Q. Let me just ask you something. If you -- as a

1 serologist, if -- if you know blood is on here, if you just
2 know it, and by the time it gets to the laboratory, and you
3 test and it's not presumptive for blood, what are the --? --
4 how could the blood that was on there get off?

5 A. I mean -- it can either indicate that the
6 substance is not blood, or it could indicate that that stain
7 may have interacted with some kind of chemical or cleaning
8 reagent. Something that interferes with the blood test that
9 we have.

10 Q. Something like cleaning agent?

11 A. That's possible.

12 Q. I am trying to find the swab of the smudge from
13 the chrome grille. Did you see that?

14 A. The swab from the smudge on the chrome grille is
15 item 12.

16 Q. Perfect. And I'm showing you what's been entered
17 as nine -- State's 19. Does this include the swab from the
18 smudge grille, and the swab from the T portion you just
19 testified?

20 A. It does.

21 Q. And please tell the ladies and gentlemen what your
22 examination of that revealed, if anything -- the smudge of
23 the chrome grille.

24 A. The swab from the smudge on the chrome -- chrome
25 grille where the grille was broken off the white F-250. I

1 just prepared that sample for DNA analysis.

2 MR. MEADORS: Beg the Court's indulgence?

3 THE COURT: Sure.

4 BY MR. MEADORS:

5 Q. When you got through with the cuttings, what
6 happened to it?

7 A. When I was done with the cuttings, I brought the
8 cuttings to our evidence control department.

9 Q. And did they go on for further testing after that?

10 A. Yes. They went on for further testing within the
11 DNA department.

12 Q. And that was your role in the -- you have -- you
13 can -- you're a DNA specialist too -- you're expert, but your
14 role in this case was serology?

15 A. Yes. And evidence processing.

16 Q. And evidence processing.

17 MR. MEADORS: Your Honor. Thank you. That's all we
18 have.

19 THE COURT: Okay. Mr. Swerling, any cross-examination?

20 MR. SWERLING: I just have one question.

21 CROSS-EXAMINATION

22 BY MR. SWERLING:

23 Q. Mr. Meadors was asking you about if they knew
24 there was blood there, but if it didn't show up presumptively
25 in your testing what the possibilities are? I mean -- one of

1 the possibilities is it's not blood.

2 A. That's correct.

3 MR. SWERLING: Okay. Thank you.

4 THE COURT: Okay. Agent Nguyen, you can step down.

5 MR. CONRAD: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. CONRAD: All right. State calls Samantha Selden.

8 SAMANTHA SELDEN,

9 being duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. CONRAD:

13 Q. All right. Good afternoon, Ms. Selden.

14 A. Good afternoon.

15 Q. Could you just say your name one more time, and
16 spell your last name for the court reporter, please?

17 A. Samantha Selden, S-E-L-D-E-N.

18 Q. Where are you employed, Ms. Selden?

19 A. I'm currently employed at the
20 South Carolina Law Enforcement Division, more commonly known
21 as SLED.

22 Q. How long have you been employed?

23 A. Approximately two and a half years.

24 Q. What are your current duties at SLED?

25 A. I am a forensic serologist, so I am responsible

1 for the body fluid identification such as blood, semen, or
2 saliva, as well as the first part of DNA analysis, which
3 includes extraction and quantitation.

4 Q. Okay. And we'll just go straight to -- to this
5 case. What role did you have in processing the evidence in
6 this case?

7 A. May I look at my notes?

8 Q. Yes.

9 A. Within this case, I was responsible for the
10 extraction and quantitation for items of evidence and the
11 standards.

12 Q. Okay. And specifically, when you say, "The items"
13 were those a series of cuttings from the short, and some --
14 and some spots?

15 A. Yes.

16 Q. And if I showed you those, would you recognize the
17 items that you processed?

18 A. Yes.

19 Q. Okay. And I'm going to hand you -- this is
20 State's 23, which I believe is -- it is in evidence.

21 THE COURT: Twenty-three is in evidence.

22 BY MR. CONRAD:

23 Q. Do you recognize that?

24 A. Yes, I do. It has the lab number, and it also has
25 my initials and date from when I opened it.

1 Q. Okay. So Ms. Nguyen just testified that she
2 placed those at the evidence control point, correct?

3 A. Yes.

4 Q. Were you the first person to take them from the
5 evidence control point for further processing?

6 A. Yes, I was.

7 Q. And what did you do with them once you picked
8 those items up?

9 A. When I receive these items of evidence, I will
10 inventory them. And once I have the tubes that forensic
11 scientists Nguyen had made, I will double-check the lab
12 number and item number written on these items before I begin
13 any of my analysis.

14 Q. And -- okay. So what analysis did you do at that
15 point?

16 A. The evidence samples were extracted first.
17 Extraction just means that the DNA is isolated and purified,
18 so it's removed from the item that it was housed on, such as
19 the cuttings or the swabs. And those would be extracted
20 first, and then the standards would be extracted after that
21 same process, just isolating and purifying the DNA from
22 whatever it was housed on.

23 Q. Okay. And what did you -- after the extraction
24 and the purification, if I understand it correctly, what
25 actions did you take next in regards to that evidence?

1 A. The next step in the DNA-analysis process is
2 quantitation. That is where any human DNA, how much, if any,
3 is present will be identified.

4 Q. Okay. And do you do that analysis of the
5 quantification of the DNA?

6 A. No, I do not.

7 Q. Okay. And is there another person in your lab
8 who's responsible for doing that?

9 A. Yes.

10 Q. And in this specific case, who did that? -- that
11 processing or that analysis? -- excuse me.

12 A. Forensic scientist, Samuel Stewart.

13 Q. And in terms of your role in this case, is there
14 anything else you processed other than the items in 23?

15 A. No.

16 MR. CONRAD: All right. Nothing -- I'll take this
17 back. Nothing further for this witness.

18 THE COURT: All right. Any cross-examination?

19 Okay. You step down, Agent Selden. Thank you.

20 Next witness, Mr. Conrad.

21 MR. CONRAD: May it please the Court? So the State
22 calls Samuel Stewart.

23 SAMUEL ALLEN STEWART,

24 being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. CONRAD:

2 Q. Mr. Stewart, if you just state your name one more
3 time, and then spell your last name for the court reporter,
4 please.

5 A. It's Samuel Allen Stewart, S-T-E-W-A-R-T.

6 Q. Mr. Stewart, where are you employed?

7 A. I work for the South Carolina Law Enforcement
8 Division, commonly known as SLED.

9 Q. And what are your current duties there?

10 A. I'm a forensic scientist assigned to the DNA
11 casework department as the DNA analyst also known. We are
12 responsible for processing any biological evidence from a
13 criminal investigation with the hopes of developing a DNA
14 profile.

15 My purpose is to try to determine whether the DNA
16 profile from known individuals that are involved in that
17 criminal investigation -- whether their DNA profile can be
18 included or excluded as a possible contributor to that DNA
19 profile that may develop from the items of evidence.

20 I'm also responsible for putting those findings in
21 report, and generating that report for the submitting agency.
22 I'm also responsible for eight hours of continued education
23 every year. I'm reviewing the work of my peers, training,
24 any new DNA analysts in the DNA case-work department, and
25 taking care of any other miscellaneous tasks that may come up

1 as well.

2 Q. How long have you worked at SLED?

3 A. I've been here for 12 years.

4 Q. And have you been a DNA analyst since the
5 beginning, or what other roles have you had at SLED?

6 A. All 12 years has been a DNA analyst.

7 Q. Okay. And did you go to any school to help you
8 learn how to be a DNA analyst?

9 A. I -- excuse me. I received my bachelors in
10 science in biology from Francis Marion University. Then I
11 also underwent -- excuse me, underwent in-house SLED training
12 under another court-qualified analyst for over
13 a year and a half. I had to successfully complete hundreds
14 of practice and -- and training samples, a written exam and
15 oral exam, a -- a company test, and a mock trial before I was
16 deemed competent as a DNA analyst.

17 MR. SWERLING: Your Honor, I'd stipulate those
18 qualifications.

19 THE COURT: Okay. All right. He's found to be an
20 expert in the area of DNA analysis.

21 BY MR. CONRAD:

22 Q. Okay. All right. And so you've been qualified
23 before as an expert in DNA analysis, is that correct?

24 A. That's correct. Approximately 50 times.

25 Q. All right. And so let's take a minute, and I want

1 you to explain to the jury when you say DNA -- first of all,
2 what is DNA, and what is the one pack -- just a little bit
3 explain DNA, and how it relates as a -- its evidentiary value
4 in a case in a general sense.

5 A. DNA stands for deoxyribonucleic acid. It is the
6 genetic material that's found in every individual, and is
7 responsible for certain traits such as our eye and our hair
8 color. DNA is contained in the dense packets known as
9 chromosomes, and those chromosomes are found in various cells
10 in your body excluding red blood cells. You receive half of
11 your chromosomes from your mother, and the other half from
12 your father. On those chromosomes, we target certain
13 locations known as STRs, and our -- STR stands for "Short
14 Tandem Repeats." And we compile 21 of those STR locations
15 that are found on various chromosomes to develop (inaudible)
16 of DNA profile.

17 Now -- then we can use this DNA profile to identify one
18 individual from another excluding identical siblings such as
19 twins and triplets. And as I stated, it is helpful so we can
20 try to determine, or get an idea if an individual has come in
21 contact, or -- or donated their DNA profile to any items of
22 evidentiary importance in a criminal investigation.

23 Q. And would it be fair to say that with the
24 exception of twins, identical twins, and triplets, that you
25 just discussed everybody in this courtroom has a unique DNA?

1 A. That -- that is correct.

2 Q. More or less. And you talked about transfer, and
3 -- and -- and so on and so forth, but let say bodily fluids,
4 if someone leaves behind bodily fluids at a -- at a crime
5 scene, can you -- can those body fluids be tested? And is it
6 possible that body fluids contain DNA?

7 A. Yes, it is. That's correct. Body fluids such as
8 blood, semen, saliva these have a -- a -- a great amount of
9 DNA, and we are able to get a DNA profile as long as there --
10 the genetic information is there available.

11 We can also get DNA from skin cells. We commonly refer
12 to this as, "Touch DNA" and so that's a little bit more
13 variable. And this is because individuals skin -- shed skin
14 cells differently. Some individual's are heavy shedders, and
15 some individuals are light shedders. And it's not even
16 consistent from day-to-day for an individual. It just
17 depends upon their daily habits and routines. So it -- it is
18 possible to get DNA from what we commonly -- on the touch
19 DNA, but it just -- it just varies a lot more because of that
20 -- because of those factors.

21 Q. Let -- let's just compare for a moment, you know,
22 if I were to cut myself, and leave a drop of blood on -- on
23 this railing, would you -- if -- if somebody came and saw
24 that blood, and took a swab of it, you know, at some point
25 later, would you expect to find DNA after -- even after a --

1 a period of time passed from that?

2 A. I -- I would expect, but it would just also depend
3 upon what kind of factors may have come in contact with --
4 whether it's cleaned, wiped off. Environmental factors
5 sometimes affect that too, but if it were just there and --
6 and recently collected, then yeah, I would expect to be able
7 to get a different profile from it.

8 Q. And that's a bodily fluid. And you -- you talked
9 about touch DNA, correct?

10 A. Uh-huh. That's correct.

11 Q. If I understood you correctly, touch DNA results
12 -- whenever human beings come into contact, their skin comes
13 in contact with something they shed -- we shed cells -- skin
14 cells, right?

15 A. That is correct.

16 Q. Any of -- we're not conscious of this, correct?

17 A. Yes, it happens unconscious to us snoring.

18 Q. But if I were to touch this railing, and then
19 somebody come by, and swab that, it is possible to find my
20 remaining skin cells sitting there that would contain my DNA,
21 would that be correct?

22 A. Yes. If you shed skin cells there, then yes, it
23 is possible.

24 Q. Let's talk about clothing just in general sense.
25 You know, if not -- going to do this, but if -- if I take off

1 my pants, and hand them to you for sampling, would you expect
2 to find my DNA on my pants? Is that something that would be
3 -- you expect?

4 A. That is correct. Items of clothing, that's
5 something we come in contact, especially something that's
6 coming in contact with your direct skin. Yes, I would -- I
7 would expect to find your DNA on that.

8 Q. And, you know, if I -- if Mr. Meadors -- if
9 Mr. Meadors were -- were to touch my clothing like this, and
10 then I would take my jacket off, and hand it to you for a
11 collection, the fact that Mr. Meadors just touched this,
12 would it be possible to find his DNA by swabbing that area
13 where he touched?

14 A. Yes. If he shed skin cells when he touched, then
15 yeah, it is possible. It just depends also how much DNA he
16 left behind too.

17 Q. Okay. There's some variability in there, correct?

18 A. That is correct.

19 Q. Now, it is possible, and it is in fact fairly
20 frequent when you test certain items that you can sometimes
21 find mixtures of DNAs, is that correct?

22 A. Yes, that is correct. And so if I may explain, we
23 -- the DNA profiles that we develop, they can come in one or
24 two forms, we can get a single-source profile, which that
25 means our profile only originated from one individual. Or we

1 can get what is known as -- also as a mixture. A mixture is
2 when we have more than one individual contributing their DNA
3 to that DNA profile. So it is my job to be able to identify
4 it, and be able to recognize whether or not a DNA profile is
5 -- we consider single source from one individual, or is it a
6 mixture coming from multiple individuals.

7 Q. Okay. And we'll talk about how you kind of figure
8 out if there's a mixture, and how to figure out who's in that
9 mixture in a minute. But going back to my blood example, if
10 I left a drop of blood there, and that were to be swabbed and
11 to be tested, would you expect there -- would it be more
12 likely that to be a single-source profile or would you --
13 would it be possible also find a mixture from that blood?

14 A. I would expect it to be single-source blood if
15 it's just a single drop of blood from one individual, but it
16 is possible, it also could be a mixture just upon --
17 depending upon if there's any DNA that was left on that -- on
18 that banister prior to your blood being there too, in both
19 items -- both DNAs got swabbed, so it is possible to be
20 single source, but it also could be a mixture too. It just
21 depends upon how much genetic information was collected from
22 it.

23 Q. And one more hypothetical, you know, we talked
24 about leaving skin cells for touch DNA, correct?

25 A. That is correct.

1 Q. And I touched this desk, and then Mr. Meadors were
2 to touch it behind me, and then someone were to come swab
3 that both our skin cells could be present in -- in that swab,
4 is that correct?

5 A. That is correct.

6 Q. And that would be a -- a -- an example of a
7 situation where you find a mixture of DNA, is that correct?

8 A. That is correct.

9 Q. And -- and I don't want to get too far into this,
10 but you've -- you've been doing DNA for 12 years, correct?

11 A. That is correct.

12 Q. And just in those 12 years, has DNA science been
13 advanced -- that from your perspective gotten more advanced?

14 A. Yes, it has. The -- the technology has gotten
15 significantly more sensitive. So we are able to generate
16 more DNA profiles from -- from less -- for less genetic
17 information, and basically being able to extract more and
18 more information from lesser amounts of DNA. So I have seen
19 it grown in that way.

20 Q. Okay. And then, when did it become more possible
21 to detect distinct individuals within DNA mixers? When has
22 that -- when has that DNA technology become more advanced?

23 A. To identify more than one individual?

24 Q. Right. When did -- when did you gain more
25 capability to detect multiple individuals in a DNA mixture?

1 A. I -- I would say somewhere -- I would say maybe,
2 like, the late '80s, early '90s prior to when I was started,
3 but yeah, around that time period is what I would believe.

4 Q. Early on before the development of some computer
5 software to help you. How would DNA -- DNA analyst go about
6 trying to figure out if -- how many, and who they might be of
7 multiple individuals in a DNA mixture before the advancement
8 STRmix and all that?

9 A. Well, we still do it the same. We just use
10 STRmix, and that's a software and I -- I'll speak on that,
11 but we still have criteria. We -- we looked at readings and
12 peaks at those 21 different locations, and based upon those
13 criteria that we have set forth, we're able to determine
14 whether or not a profile is single source, or if a profile is
15 a mixture. And that's just based on our training, and our --
16 our criteria. That's -- that's laid out for us.

17 Q. Okay. And you said, "21 peaks" would those
18 sometimes be called alleles, some folks sometimes refer that
19 --

20 A. Yes, it can be referred to as alleles or -- or DNA
21 peaks, but those are the -- the, like I said, DNA types that
22 are developed at each and every of those 21 locations that we
23 -- that we -- that we look at for the DNA profile.

24 Q. Okay. All right. And let's just briefly run
25 through an example of exactly how your process works. We

1 have the individual like, Ms. Selden, who testified about
2 taking the cuttings, and swabs, and placing them to be --
3 into -- for quantification, correct?

4 A. That's correct.

5 Q. And then what do you start doing at that -- once a
6 quantification plea? Where does your role come in, and what
7 do you do from that point forward?

8 A. At that point, I evaluate the quantitation
9 results. And that step is very vital to the DNA process. We
10 want to try to make sure that we get a -- a good range for
11 the DNA, too much or too little DNA will not give us a viable
12 DNA profile for interpretation down -- downstream.

13 Q. Let me stop you. I'm sorry.

14 A. Uh-huh.

15 Q. When you say, "Quantification" that's simply
16 measuring how much biological DNA materials is there, not
17 too, or -- or what -- it's just how much is there, correct?

18 A. That is correct.

19 Q. And -- and so you want to have the right amount,
20 is that what you just testified to?

21 A. That is correct.

22 Q. Okay. Keep going.

23 A. So once it's done, and I got the -- the
24 quantitation values, or the results we -- the next step is
25 known as amplification. This is where we make many -- many

1 copies of the DNA. And this is once again, an effort to --
2 to get a very good viable DNA profile that's suitable for
3 interpretation.

4 And so once I have application, I move on to
5 separation. And separation is where we separate those DNA
6 types into those 21 different locations that were -- that I
7 spoke of. Once I have those DNA profiles, I look at their
8 profiles first from the evidentiary items, and I determine
9 whether or not that profile is suitable for comparison. And
10 if it is, how many -- how many individuals are contributing.
11 Do I believe it to be single source, or do I believe it to be
12 a mixture? Once I have determined those things for that DNA
13 profile, then that's when I make my comparisons to the known
14 standards that I have. And I compare, and try to determine
15 whether I believe those known individuals are a contributor,
16 or what we can call an inclusion, or do I believe that person
17 is not contributing to that profile, and that means that
18 person needs to be excluded as a contributor.

19 Q. All right. When you said, "Known standards" you
20 -- that is a swab that law enforcement has taken from --
21 directly from an individual, correct?

22 A. Yeah. So it can come in the form of a buccal
23 swab, which is a sterile swab used to collect the cheek swab
24 -- cheek cells within an individual, or we can get your
25 blood. That's another way for a known standard or hair. So

1 any one of those three are the most common types that we use
2 for a DNA profile from a known individual.

3 Q. All right. And so you complete your analysis and
4 for instance, you determine that there is a mixture of
5 individuals present in a DNA sample. What would your next
6 step be once you -- you determine there's a mixture?

7 A. So once I've determined whether -- or I have
8 single source or a mixture, and I've made my comparisons of
9 those known standards to my profile, that's when I bring in
10 the software that we use on the STRmix. And STRmix is just a
11 software tool that we use to aid into interpretation of our
12 DNA profiles. And what STRmix can do also is it can assign
13 statistical weight to the comparisons of that known standard
14 to the DNA profile from the evidence. And that statistical
15 weight comes in the form of a likelihood ratio.

16 And if I may explain, a likelihood ratio is a
17 mathematical value that can give value or context away to
18 two varying or opposing views. So the example I like to use
19 is the scenario where you would see a lion, if you -- is it
20 more likely to see a lion walking down the street, or is it
21 more likely that you'll see this lion at the zoo? And
22 obviously it's more likely that you'll see a lion at the zoo
23 than walking down the street. And so essentially that's the
24 same thought process that we put to our DNA profiles when we
25 make our comparisons. Is it more likely that this known

1 individual that have a DNA profile from is contributing to
2 this DNA profile? Or is it more likely that this an unknown,
3 unidentified, unrelated individual is contributing to that
4 profile? And essentially that's what we use STRmix for, is
5 to try to give deficit that comparison, and give context and
6 weight to the comparisons that we're making.

7 Q. And so when you're doing your analysis, before you
8 bring in STRmix, you're looking at the varying peaks that you
9 testified or the alleles, and you're making a determination,
10 you see more alleles here than can be just one person?

11 A. That's correct.

12 Q. And that's how you determine, hey, there's a
13 mixture of -- there's two or more people here, correct?

14 A. That is correct.

15 Q. And that's when you bring in the statistical tool
16 STRmix, which is simply a software algorithmic program,
17 correct?

18 A. That is correct.

19 Q. That analyzes those peaks, and makes a
20 determination of how many people it sees, and then compares
21 that to the known standards. You -- you previously talked
22 about -- about people who might be involved in the case, is
23 that --?

24 A. Well, yeah. I tell STRmix how many contributors
25 there are, so I give it that information about the number of

1 contributors, but yes, then it would assign the likelihood
2 ratio that I spoke about, if it does believe it to be a
3 person who's contributing, or it could also let me know
4 whether or not I believe that person is excluded.

5 And I also want to mention too that as I stated before,
6 I make my own comparisons on the front end before I take it
7 to STRmix. So I would like to see the STRmix agree with my
8 own initial -- or original determinations -- what's happening
9 as far as those individuals being included or excluded. And
10 those two need to come and agree, I should say, before I put
11 those findings in my report.

12 Q. Okay. So -- and -- and I want to make sure we
13 understand this -- this likelihood ratio, and this
14 comparison, it's a little more so bear with me.

15 A. Uh-huh.

16 Q. If I'm not asking a question right excuse me.
17 Okay.

18 A. No problem.

19 Q. So essentially what STRmix is doing is making
20 statistical comparisons of known individuals. It takes the
21 mixture of known individuals from -- from known samples.

22 A. That's correct.

23 Q. And then it's making a statistical calculation as
24 to whether it's more likely those known individuals aren't in
25 a mixture versus just random people from the just general

1 population. Is that -- is that a fair way to put it?

2 A. That is correct.

3 Q. Okay. All right. Let's talk about your
4 participation in this particular case.

5 A. Okay.

6 Q. And first of all, did you prepare a report for
7 this case?

8 A. Yes, I did.

9 Q. And -- well, first of all, I'm going to show you
10 this, and this has been marked as State's Exhibit 38. You
11 recognize that?

12 A. Yes. This is the report I generated.

13 Q. Okay. You prepared (inaudible), correct?

14 A. That is correct.

15 Q. And this is for the case that Ms. Nguyen and
16 Ms. Selden has testified about the items that they process --
17 that you took over after Ms. Selden did her extraction
18 quantification, is that correct?

19 A. That is correct.

20 MR. CONRAD: Your Honor, at this time, the State would
21 move to introduce State's Exhibit 38 in to evidence.

22 MR. SWERLING: Judge, I don't have any problem with him
23 testifying to it, but the report -- the document itself, I
24 don't believe is admissible, but he can testify to it.

25 THE COURT: Yeah, typically, if an -- if an expert

1 testifies, usually the report doesn't come in, but I'll be
2 glad to hear your argument.

3 MR. CONRAD: Your Honor, I would -- I would ask to be
4 admitted as it would be helpful for the jury, and to, you
5 know, the DNA's fairly complex topic, and it would be helpful
6 for the jury later on during the deliberations -- they want
7 to review the findings.

8 THE COURT: All right. Well, let's -- let's do this,
9 let's keep it marked as for identification purposes only.
10 Let me hear his testimony, and I can compare it with the
11 report, and then I can make a ruling on whether or not it's
12 submitted in to evidence. Fair enough?

13 MR. CONRAD: Yes, sir.

14 THE COURT: Okay.

15 BY MR. CONRAD:

16 Q. All right. And your item is broken down into
17 multiple items that you analyze, is that correct?

18 A. That is correct.

19 Q. Excuse me. The report is broken down into several
20 items, is that correct?

21 A. That is correct.

22 Q. And these items would be the items that Ms. Selden
23 just testified, which has been introduced -- which is
24 State's Exhibit 23, but did you ever physically handle these
25 items after Ms. Selden did her (inaudible)?

1 A. Yes, I did. I took the items into my custody.

2 Q. Tell the jury what you did (inaudible).

3 A. Yes, I -- so I inventoried the items just to
4 ensure that the -- the items that she did the extraction of
5 quant are the same items that I took for the downstream, for
6 the amplification, the separation, and then generated the
7 report for that. So I did take -- I did look at these items.

8 Q. All right. So let's -- let's talk about your
9 report. So on the front page there's a -- it says
10 "Comparison standards." Is that correct?

11 A. That is correct.

12 Q. And those are those known DNA samples that you've
13 previously testified in a general sense, correct?

14 A. That is correct.

15 Q. And what are the known examples that were
16 submitted to you in this case that you use for analysis?

17 A. Okay. So we got item 5, which was a gray top tube
18 with blood from Kenneth Davis McClendon. My results for this
19 one was that this item was returned to the submitting agency
20 without analysis, and was not inventoried.

21 Q. And why was that?

22 A. And this was because I already had another known
23 standard for Mr. McClendon, and that's the one that I used
24 for -- for comparison purposes.

25 Q. And -- and what item was that?

1 A. This was my item 10, the dried blood standard from
2 Kenneth Davis McClendon. And my result was that the DNA
3 profile developed is suitable for use as a known standard.
4 So essentially that statement just means that this profile is
5 suitable to be used for comparison purposes.

6 Q. And what is the next item for a comparison
7 standard?

8 A. My item 11 is buccal swabs from William Gray
9 Ackerman Junior. And my result for this one is that the DNA
10 profile developed is suitable for use as a known standard.

11 Q. So items -- items 10 and 11 on your report
12 would've originally come State's Exhibits 19 and 20, which I
13 think are marked for ID only at this point that Ms. Nguyen
14 and Ms. Selden testified about, is that correct?

15 A. That is correct.

16 Q. Okay. So we'll go on to the next page -- page two
17 and what it says "Items of evidence" across the top. Is that
18 correct?

19 A. That is correct.

20 Q. And these are the items that you further process
21 for analysis after Ms. Selden completed her portion, is that
22 correct?

23 A. That was correct. So this is the -- the items
24 that -- for item 1, for example, the pair of the khaki shorts
25 this is the one where Rachel -- she took, and she separated

1 into those subitems from that. And then yes -- then
2 Samantha, she also did the extraction and quant beginning
3 purpose portion -- excuse me, of the DNA analysis process.

4 MR. CONRAD: Your Honor, may we approach real quick?

5 THE COURT: Sure.

6 (Bench conference at 4:33 to 4:34 p.m.)

7 THE COURT: Why -- why don't we do this Mr. Conrad, the
8 last page will come in to evidence at this time and we'll be
9 published. Let's mark that separately as 38A.

10 MR. CONRAD: Okay. One moment, your Honor.

11 THE COURT: Yeah, you got an extra copy of that page?

12 MR. CONRAD: I think I do.

13 THE COURT: Now without objection as to the last page.

14 (State's Exhibit 38A admitted in to evidence.)

15 BY MR. CONRAD:

16 Q. And, Mr. Stewart, I'm going to approach and show
17 you -- it's been marked as Exhibit 38A. See if you recognize
18 that page, sir.

19 A. Yes, I do.

20 Q. And what is that page?

21 A. So this is the page that has the verbal scale. So
22 the verbal scale gives extra context because the likelihood
23 ratios are a number, but the verbal scale actually gives more
24 context and weight to those numbers to give more evidence or
25 -- or more consideration of how much weight we actually are

1 putting to it. Because we understand that a number -- it can
2 be a big number or a small number, but these -- the verbal
3 scale actually gives you a kind -- almost like a gradient
4 scale of how much context and weight to give those actual
5 numbers. So that's why I like the verbal scale.

6 Q. So this is simply an explainer of -- of some of
7 the stuff you're going to talk about in the item results,
8 that helps understand whether something is -- is strongly
9 supported by the statistics, or not strongly supported and so
10 on and so forth, is that correct?

11 A. That's correct.

12 MR. CONRAD: Okay. All right. At this time the State,
13 but we -- we've got in to evidence 38A, and I'd like to
14 publish it to the jury.

15 THE COURT: Certainly.

16 BY MR. CONRAD:

17 Q. I'm going to zoom in a little bit here I
18 apologize. Just -- okay. And -- and before we move on, I
19 just want to get an idea. We're talking about the likelihood
20 with the issue is -- correct?

21 A. That is correct.

22 Q. And we have -- we -- this graph here, what is
23 that?

24 A. So the first box is the HP so that's our
25 hypothesis of whether that person is inclusionary, or is an

1 included individual for that DNA profile. The second box is
2 the HD, that's our -- a hypothesis of whether that person is
3 not the -- you know, not a contributor. And it's almost like
4 a sliding scale going to -- going towards an exclusion.

5 So essentially this is the two varying, or different
6 opposing of views that I spoke of earlier. Is this person a
7 contributor? And if they are, you know, how much strong --
8 or how much weight do we get to -- give to it, or if that
9 person is not a contributor, or this -- excuse me, sliding
10 towards being an exclusion, how much weight do you want to
11 put to that -- to that hypothesis as well. And so those are
12 the two varying reviews. And so that's what the two boxes
13 represent.

14 Q. And again, we're going back to the -- the
15 hypothesis we already talked about: "Collect order ratio"
16 we're comparing the known persons, and whether their want are
17 in the mixture versus just random folks from society as a
18 whole, correct?

19 A. That's correct.

20 Q. And when we see a big number on your report,
21 according to this scale that says, "There's very strong
22 support" is that over a million -- is that -- that number a
23 million?

24 A. That's correct. So any likelihood ratio that's
25 over a million is very strong support.

1 Q. And so -- okay. And then at the other end of the
2 scale, we see, you know, a number between two and 99, that's
3 a weak support, correct?

4 A. Yes, that is correct. So anything from two to 99
5 will be considered weak support for an inclusion. That is
6 correct.

7 Q. And then as the numbers get bigger, the stronger the
8 support gets stronger for whatever the hypothesis is?

9 Q. That is correct.

10 Q. All right. And so again, one more example, and
11 then we'll move on to your report. But again, we have a
12 mixture. We have your known samples and let's say STRmix
13 says, "That there's a" -- "a number greater than a million"
14 that the individual in the samples or -- a mixture, you would
15 consider that what?

16 A. A very strong support.

17 Q. And if STRmix says, "We have our mixture known
18 samples," random individuals, and STRmix says, "It's a number
19 somewhere between two and 99," what conclusion would you draw
20 from that?

21 A. That'd be weak support.

22 Q. Okay. So let's go on back to page two of your
23 report, Mr. Stewart. All right. And the first item that's
24 listed item 1. What is that?

25 A. The pair of khaki shorts belong to

1 William Ackerman Junior.

2 Q. Okay. And those I believe have been admitted in
3 to evidence. Did you yourself ever inspect the shorts by
4 themselves?

5 A. I did not.

6 Q. And that's what Ms. Nguyen and Ms. Selden did,
7 right? Or actually just Ms. Nguyen, correct?

8 A. Yes. Ms. Nguyen, she was the one who processed
9 the -- the shorts. That's correct.

10 Q. Ms. -- and then Ms. Nguyen did the individual
11 cuttings from the shorts, correct?

12 A. That is correct.

13 Q. She just testified about where she did those --
14 she showed the jurors the shorts, correct?

15 A. That is correct.

16 Q. And -- and then she provided those cuttings to
17 Ms. Selden, correct?

18 A. That is correct.

19 Q. She did the extraction and quantification,
20 correct?

21 A. That is correct.

22 Q. And then you analyzed the data from there,
23 correct?

24 A. That is correct.

25 Q. So let's look below that, and we have item 1.1,

1 and what -- what is -- what does your report say item 1.1
2 came from?

3 A. 1.1 came from the cutting from interior of right
4 pocket of khaki shorts belonging to William Ackerman Junior.

5 Q. Okay. So that's from the inside of the pocket --
6 right front pocket of Mr. Ackerman's shorts, correct?

7 A. That is correct.

8 Q. And first of all, we see it says, "There's been
9 some results," correct?

10 A. That's correct.

11 Q. And some of the results listed in your report
12 actually were done by Ms. Nguyen has already testified,
13 correct?

14 A. That is correct.

15 Q. And so the first result says what?

16 A. "A presumptive testing for blood was positive."

17 Q. That's what Ms. Nguyen did, and she just testified
18 about, correct?

19 A. That is correct.

20 Q. All right. And then what is the next result?

21 A. The next statement is a DNA profile suitable for
22 comparison was developed.

23 Q. Okay. And were you -- did you then compare that
24 known -- that sample found in the shorts to the known
25 standards you already testified about?

1 A. That is correct.

2 Q. Okay. And was anybody of those two individuals,
3 Mr. McClendon and Mr. Davis, excluded from the inside of the
4 shorts?

5 A. Yes. Kenneth McClendon is excluded as the
6 contributor.

7 Q. Okay. But did you identify that -- first of all,
8 was there a mixture found from the known shorts?

9 A. This item was determined to be single source,
10 meaning it is originally from one individual.

11 Q. Okay. And did you make a determination of whose
12 DNA was inside the pocket of Mr. Ackerman's shorts?

13 A. Yes. So like I said, those varying views, or the
14 statement will say that the person of interest contributed
15 the DNA profile. or an unidentified, unrelated individual
16 contributed the DNA profile. And so then the result is that
17 the DNA profile is approximately eight octillion times more
18 likely if William Ackerman Junior contributed the DNA profile
19 and if an unidentified, unrelated individual contributed the
20 profile.

21 Q. So let's talk about that number first.
22 "Eight octillion" you said?

23 A. That is correct.

24 Q. Eight -- that's eight -- and how many zeros?

25 A. Eight and 27 zeros behind it.

1 Q. Okay. So that's a number that's on your scale,
2 much bigger than 1 million, is that correct?

3 A. That is correct.

4 Q. All right. So your result, you -- you feel like
5 you have very strong support, is that correct?

6 A. That is correct.

7 Q. All right. And so you're -- you're fairly
8 confident -- you're extremely confident that Mr. McClendon's
9 own DNA was inside his own pocket, is that correct?

10 A. It is more likely to be him than an unidentified
11 unrelated individual.

12 Q. Okay. And is that a surprising result considering
13 he owned those, and was wearing those shorts?

14 A. It is not.

15 Q. All right. Let's go on to item 1.2. And what is
16 item 1.2?

17 A. Item 1.2 is a cutting from the interior of the
18 right pocket of the khaki shorts belonging to William
19 Ackerman Junior.

20 Q. All right. And what are the results?

21 A. "Presumptive testing for blood was positive."

22 Q. And that test was (inaudible), correct?

23 A. That is correct.

24 Q. Keep on.

25 A. A DNA profile suitable comparison was developed,

1 and Kenneth McClendon is excluded as the contributor.

2 Q. Okay. And so now we're talking about -- excuse
3 me, the first pocket, this is a second cutting from the same
4 pocket inside the right shorts, correct?

5 A. Yes, it is. That's correct.

6 Q. Mr. McClendon was -- was excluded from that,
7 correct?

8 A. That is correct.

9 Q. However, what -- continue with your results, go
10 ahead.

11 A. This DNA profile was interpreted as single source,
12 meaning it came from one individual, and the DNA profile --
13 the results is that the DNA profile is approximately eight
14 octillion times more likely if William Ackerman Junior
15 contributed the profile than if an unidentified, unrelated
16 individual contributed the profile.

17 Q. So once again, we found Mr. Ackerman's own DNA
18 inside his own pocket; is that fair to say?

19 A. That is correct.

20 Q. And is that a surprising result?

21 A. It is not.

22 Q. All right. Item 1.4, what is that -- what was
23 that?

24 A. Okay. Do you want to do 1.3?

25 Q. I'm sorry, did we skip 1.3? My bad. Tell -- tell

1 us about 1.3.

2 A. Yes. 1.3 is a cutting from the interior of the
3 right pocket of the khaki shorts belonging to William
4 Ackerman Junior.

5 Q. Okay. And did you develop some results from that
6 cutting?

7 A. Yes. "Presumptive testing for blood was positive,
8 and a DNA profile suitable for comparison was developed."

9 Q. Okay. And was anybody excluded from that?

10 A. Yes, Kenneth McClendon is excluded as a
11 contributor.

12 Q. And what -- did you determine whose DNA was there?

13 A. The DNA profile is interpreted as single source.
14 And the result is that the DNA profile is approximately eight
15 octillion times more likely if William Ackerman Junior
16 contributed the profile than if an unidentified, unrelated
17 individual contributed the profile.

18 Q. Once again, Mr. McClendon's own DNA is inside his
19 own pocket, correct?

20 A. Mr. William Ackerman Junior.

21 Q. Yes. Mr. Ackerman.

22 A. Yes.

23 Q. All right. 1.4, and then what is that?

24 A. 1.4 is a cutting from the exterior front, near
25 right pocket opening of the khaki shorts belonging to

1 William Ackerman Junior.

2 Q. Okay. And what results if any, did you develop
3 from that cutting?

4 A. "Presumptive testing for blood was inconclusive."
5 And DNA --

6 Q. Ms. Nguyen's test, right?

7 A. That is correct.

8 Q. Keep going.

9 A. A DNA profile is suitable for comparison was
10 developed, and Kenneth McClendon is excluded as the
11 contributor.

12 Q. Okay. Keep going.

13 A. This DNA profile was interpreted as single source
14 meaning came from one individual, and my results are that the
15 DNA profile is approximately eight octillion times more
16 likely if William Ackerman Junior contributed the profile
17 than if an unidentified, unrelated individual contributed the
18 profile.

19 Q. Okay. Once again, Mr. Ackerman's own DNA is on
20 his own shorts, is that correct?

21 A. That is correct.

22 Q. All right. Let's go on to item 1.5.

23 A. Okay.

24 Q. What is that?

25 A. So 1.5 is a cutting from the exterior rail,

1 right-side leg opening of the khaki shorts belonging to
2 William Ackerman Junior.

3 Q. Okay. And so this would've been from the right
4 leg of the shorts, correct?

5 A. That is correct.

6 Q. And the exterior of AFT portion, so on the back of
7 the shorts on the right leg, is that correct?

8 A. That is correct.

9 Q. And were -- were you able to develop any results
10 from that cutting?

11 A. Yes. "Presumptive testing for that was positive."

12 Q. Okay.

13 A. A DNA profile suitable for comparison was
14 developed. This profile was determined to be a mixture, and
15 it is determined to be a mixture originated from
16 two individuals. So the two varying statements are that the
17 person of interest in an unidentified, unrelated individual
18 contributed to the mixture, or if two identified unrelated
19 individuals contributed to the mixture.

20 And so once those statements are made, I'm going to
21 compare both Mr. Kenneth McClendon and William Ackerman
22 Junior to that profile separately. So for the first one, for
23 Mr. Kenneth McClendon the DNA profile is approximately 29
24 septillion times more likely if Kenneth McClendon, and an
25 unidentified, unrelated individual contributed to the mixture

1 than if two unidentified unrelated individuals contributed to
2 the mixture.

3 Q. Well, let me stop you right there.

4 A. Uh-huh.

5 Q. You just said, "29 septillion times more likely"
6 29 followed by how many zeroes?

7 A. It's what -- 2.9 followed by 25 zeros.

8 Q. Number much bigger than the 1 million on your --
9 on your key, is that correct?

10 A. That's correct. So it would be very strong
11 support.

12 Q. Okay. So is that huge number more likely that
13 Mr. Kenneth McClendon's DNA was found in that cutting than
14 just some random individual pulled from the whole population,
15 is that correct?

16 A. Well, it's just the likelihood yeah -- versus two
17 unidentified, unrelated individuals. Yes.

18 Q. All right. Keep going.

19 A. Now, I will -- I'm comparing
20 Mr. William Ackerman Junior to that profile, and the result
21 is that the DNA profile is approximately 150 times more
22 likely if William Ackerman Junior, and an unidentified,
23 unrelated individual contributed to that mixture than if
24 two unidentified, unrelated individuals contributed to that
25 mixture.

1 Q. Okay. Let me stop you there. You said, "150
2 times more likely" and we're going to refer to your scale
3 again. Where do you fall on that scale at that 150 times?

4 A. That will fall under moderate support.

5 Q. Okay. And that's between 109,999, correct?

6 A. That is correct.

7 Q. All right. And so he's 150 more times likely that
8 Mr. Ackerman's own DNA is on his own shorts in a mixture
9 versus two random individuals pulled from the population, is
10 that correct?

11 A. That is correct.

12 Q. All right. Let's look at the next proposition.

13 A. Okay. So when we ever -- we have individuals --
14 multiple individuals with inclusionary -- or are being
15 included in a profile, we want to test it and see whether or
16 not these individuals make sense being compared to that
17 profile at the same time. So that's my next proposition.

18 So once again, it is a mixture of two individuals. And
19 I'm comparing to see whether or not Kenneth McClendon and
20 William Ackerman Junior contributed to the profile versus
21 just two unidentified, unrelated individuals contributing to
22 the profile. And my result for that is that the DNA profile
23 is approximately 28 octillion times more likely if Kenneth
24 McClendon and William Ackerman Junior contributed the
25 mixture, than if two unidentified, unrelated individuals

1 contributed to the mixture.

2 Q. Okay. So you said, "28 octillion" correct?

3 A. That is correct.

4 Q. So that's 28 followed by how many zeros?

5 A. Twenty-eight zeros.

6 Q. All right. Again, the number is much bigger than
7 the 1 million on your scale?

8 A. That is correct.

9 Q. You would say there's what support for that
10 proposition?

11 A. Very strong support.

12 Q. So it's 28 million -- excuse me, 28 octillion
13 times more likely that that mixture contained Davis McClendon
14 and Kenneth -- or excuse me, Bud Ackerman,
15 Lee Ackerman Junior. Than just two random individuals pulled
16 from the population. Is that a fair way to say that?

17 A. That is correct, but I also have to read -- we
18 have what is known as a -- a disparity statement. So when we
19 ever have -- when we comparing these individuals at the same
20 time to a profile, and we have a very large number, but then
21 we have one individual who had a very low number as far as
22 Mr. William Ackerman Junior did when he was convening
23 compared to it individually, we -- we know that when being
24 compared together, it is likely that Mr. -- Mr. Kenneth
25 McClendon his profile is being -- is bumping up this number

1 as far as when they're being included together. So we just
2 want to read the disparity statement saying that if you are
3 looking at this profile, and you're comparing these
4 individuals, we still want you to put more weight on the
5 first proposition where Mr. William Ackerman Junior is being
6 included at 150 times. Yeah, 150 times versus this big
7 number. And that's just because of the -- how -- how big it
8 is -- the disparity. And we just don't want to put too much
9 unbias on this bigger number when the smaller number for Mr.
10 William is more accurate when he's being compared to it
11 separately.

12 Q. Well, let's break that down a little bit.

13 A. Uh-huh.

14 Q. Just so we understand, what you're saying is that
15 number -- that big numbers coming from a -- more result of
16 Kenneth McClendon's DNA, which you found a much higher
17 probability of being there than some random individual versus
18 just William Ackerman Junior's DNA. Is that a fair way to
19 say that?

20 A. That's a fair representation of that.

21 Q. Okay. So you're much more confident that Kenneth
22 McClendon's DNA -- Kenneth Davis McClendon's DNA is on those
23 shorts -- or excuse me on that cutting from those shorts than
24 William Bud Ackerman; is that a -- a fair statement?

25 A. That is correct.

1 Q. Okay. And -- and once again, when you're just
2 talking about Kenneth McClendon's DNA it is
3 29 septillion times more likely that it's Kenneth Davis
4 McClendon's DNA on that cutting, and -- just some random
5 individual from the population, is that correct?

6 A. Well, Kenneth McClendon and an unidentified,
7 unrelated individual contributing than two unidentified,
8 unrelated individuals.

9 Q. And -- and this is not a direct comparison, just
10 -- just for the jury's knowledge, approximately how many
11 people are -- are on earth today that -- that you know.

12 A. I think the numbers are around -- I think maybe
13 five to 7 billion. I -- I'm not 100 percent sure, but I -- I
14 also want to make sure that it's not based upon the world's
15 population, it's just based upon the rarity, and the
16 likelihood of that -- on that known person. DNA profile
17 being compared to this DNA profile from the evidence.

18 Q. Okay. All right. And can you -- so talking about
19 Kenneth McClendon -- Kenneth Davis McClendon's contribution
20 to that cutting from the shorts on the back of Bud Ackerman's
21 shorts, can you make a determination from what your testing
22 did, whether that was blood or touching it or some other
23 bodily fluid?

24 A. So I know we tested it for -- and it tested
25 positive for presumptive testing for blood, but I can't speak

1 to that -- the -- the source of -- you know, exactly what the
2 DNA is coming from. I know we -- we test for blood, and then
3 we also do the DNA, but I can't say specifically that the DNA
4 profile or the -- the DNA profile is originally all from just
5 the blood.

6 Q. So it could be from touch, it could be from blood,
7 but there is blood on that cutting presumptively, correct?

8 A. That is correct. I just can't say the source of
9 the DNA profile that's developed.

10 Q. All right. Let's move on. Let's talk about
11 item 1.6. What is that?

12 A. 1.6 is the cutting from the interior side of the
13 flap over zipper of khaki shorts belonging to William
14 Ackerman Junior.

15 Q. Okay. And did you develop any results from your
16 testing of that?

17 A. Yes. Presumptive testing for blood was positive,
18 and a DNA profile was developed, but due to the inability to
19 determine the number of contributors, no further
20 interpretation will be offered. And so that's what I -- as I
21 stated earlier, I have to be able to determine the number of
22 contributors before I can do any comparisons with the
23 profile. And since I was unable to determine the number of
24 contributors, I deemed it not suitable for comparison. And
25 sometimes that does happen with these profiles. It's just

1 that we just do not have enough genetic information to make a
2 strong determination on whether or not, how many contributors
3 are being there. So if I can't make that the strong
4 determination, I -- I don't want to guess or anything like
5 that. So we just deemed that -- that profile, and that's
6 suitable for comparison.

7 Q. So -- so there's some DNA, and it's a mixture
8 correct from that location?

9 A. Yes, it is -- it's a mixture, but I just can't say
10 how many individuals are there.

11 Q. Would it be fair to say the limit of your science
12 and technology at this point, you're just not going to be
13 able to figure out who that is?

14 A. Yes, at this point in time, yeah. I -- I just
15 can't figure out the number of contributors, and because of
16 that I won't deem it for comparisons.

17 Q. So you can't say whether it is or isn't Mr. Davis
18 McClendon's DNA, correct?

19 A. I -- I cannot.

20 Q. Or Mr. William Bud Ackerman Junior's, is that
21 correct?

22 A. I cannot.

23 Q. Okay. All right. Number 1.7, what is that?

24 A. 1.7 is swabbed from scraping the interior
25 waistband of the khaki shorts belonging to William Ackerman

1 Junior.

2 Q. So this is inside the waistband, correct?

3 A. That is correct.

4 Q. And did you develop any results from that swab?

5 A. Yes. Identity profile was developed, but once
6 again, due to the inability to determine the number of
7 contributors, no further interpretation will be offered.

8 Q. Okay. So again, a mixture?

9 A. Yes. I can see it's a mixture, but I can't deem
10 it -- or I can't put a number of contributors to it, so it's
11 not suitable for comparison.

12 Q. 1.8, what is that?

13 A. 1.8, these are the hairs that Ms. Nguyen said she
14 collected from the pants. So there were two hairs that she
15 forwarded to me for DNA analysis: Item 1.8.1, that was a
16 hair, but no human DNA was detected on that item. And then
17 another hair item, 1.8.2, but no DNA profile was developed.

18 Q. And -- and does all hair contain DNA?

19 A. It -- it contains DNA, but the method that we use
20 at the SLED DNA laboratory for testing DNA, we need a strong
21 root material. That's where we -- that's where the genetic
22 information that we test for is that -- is housed. And so if
23 I don't have a definite or a strong root from that hair, then
24 I won't be able to develop a DNA profile from it.

25 Q. Okay. All right. So that's 1.8.1 and 1.8.2.

1 Item number 2, what is that?

2 A. Item 2 was swabbed from possible vomit, near a
3 potential oil stain on the crime scene to believed to be at
4 Avid Road.

5 Q. Okay. And did you develop any results from that?

6 A. Yes. A DNA profile suitable for comparison was
7 developed. Kenneth McClendon and William Ackerman Junior are
8 excluded as the contributor.

9 Q. And was that a mixture or was a single-source, or
10 can you tell?

11 A. Yes, that was a single-source profile, but I -- I
12 do not know who that contributor of that profile is, but I
13 can say that Kenneth McClendon and William Ackerman Junior
14 are excluded as the contributor.

15 Q. Item 3. What is that?

16 A. This is a swab from the front driver's seat of the
17 2019 Ford F-250. The results were as a presumptive testing
18 for blood was negative.

19 Q. Was any DNA analysis performed on that item?

20 A. It was not.

21 Q. And that was because it was presumptively negative
22 for blood?

23 A. That is correct.

24 Q. Item number 4, what was that -- what is that?

25 A. This is a swab from the T portion of the hood in

1 the middle of the dent of the 2019 Ford F-250 of William
2 Ackerman Junior.

3 Q. Okay. And did you develop any results from that?

4 A. Presumptive testing for blood was negative.

5 Q. Because it was negative for blood, did you -- did
6 you do any analysis for DNA?

7 A. I did not.

8 Q. Item number 8, what is that?

9 A. This is a swab from the left hand of
10 Kenneth Davis McClendon. And my results for that is the DNA
11 -- excuse -- the partial-DNA profile developed is
12 attributable to Kenneth McClendon. So if I explain that,
13 when we say attributal this is something like a swab coming
14 from his hand. So I expect to find his DNA there. So the
15 only DNA types that I found were attributable, or consistent
16 with the DNA profile of Kenneth McClendon. I'm saying it's
17 partial because I didn't get DNA types at all 21 locations
18 that we test for. So if we are missing even just one of
19 those locations, we deem that -- that profile as partial, but
20 that does not mean I can't still do interpretations with it.

21 Q. Okay. And your interpretation was that
22 Mr. McClendon's own DNA was on his own hand? Is that --?

23 A. From that item, that is correct.

24 Q. From the swab that was taken from his hand?

25 A. That is correct.

1 Q. Item number 9, what is that?

2 A. This is the swab from the right hand of
3 Kenneth Davis McClendon. So my results for that was a DNA
4 profile suitable for comparison was developed, and like I
5 said, likely ratios used in STRmix. For this one, I once
6 again found DNA types that were charitable to -- are
7 consistent with the DNA profile of Kenneth McClendon. So for
8 that -- with that profile, what I did, as I told this the
9 software, the STRmix software, that I understand, and I know
10 that the DNA types that are attributable to Kenneth McClendon
11 in here. So I just want to look at any foreign, or any DNA
12 types that do not belong to him, and compare them to any
13 other DNA profiles that I have suitable for comparison, which
14 would be from Mr. William Ackerman Junior. So when I
15 compared
16 Mr. William Ackerman Junior to this profile, he was excluded
17 as a contributor to the mixture.

18 Q. Okay. And so another swab from Mr. Davis
19 McClendon's hand, correct?

20 A. That is correct.

21 Q. Do you believe there was -- there was a mixture of
22 some sort there, correct?

23 A. Yes -- I'm sorry, I'm -- there was a mixture of
24 two individuals. I apologize.

25 Q. Okay. And obviously, you assumed because it came

1 from Mr. McClendon's hand that Mr. McClendon was part of that
2 mixture, correct?

3 A. Yes. I could see that his DNA types were there,
4 and so I expect to find his own DNA on his hand. So like I
5 said, that's why I told the system -- the software, to just
6 look at the DNA types that do not belong to him.

7 Q. But Mr. Bud Ackerman was excluded from -- from
8 that hand, is that correct?

9 A. That is correct.

10 Q. Last item, and that is item 12, what is that?

11 A. That's the swab from the smudge on the chrome
12 grille where the grille was broken off the white F-250.

13 Q. Okay. And did you attempt to process that for
14 DNA?

15 A. Yes, I did.

16 Q. And did you get any results?

17 A. My results was that the -- there was no DNA
18 profile developed.

19 Q. And -- and almost done, but let's -- let's talk
20 about, you know -- at the beginning, we talked about how DNA
21 can be deposited in different places, correct?

22 A. Yes, we did.

23 Q. And is that DNA on that -- now if I touch here,
24 and leave my skin on that -- that railing, is -- is that
25 going to be there for the -- the rest of the time?

1 A. It just depends upon if anything comes in contact
2 with it. Anything brushes against it, any kind of
3 environmental factors, it -- it just depends upon what else
4 may come in contact -- or like I said, the time lapse of how
5 -- how long it's been -- been left there before it's tested.

6 Q. So -- so somebody comes, and -- and cleans this
7 railing, would it be more likely or less likely that my DNA
8 would still be there?

9 A. It'd be less like -- excuse me, less likely.

10 Q. And if somebody comes -- that nobody else touches
11 that railing, and somebody comes and swabs it, you know,
12 10 years from now, would you consider that more likely or
13 less likely that my DNA would still be present?

14 A. It'd be -- it would be less likely to me.

15 Q. Okay. So as time goes on, the DNA is not going to
16 persist on a -- a lot of variabilities, but as time goes on,
17 DNA is not likely to persist on various surfaces, is that
18 correct?

19 A. It's my expectation that as time passes, it will
20 lessen, but I can't say that for 100 percent certainty.

21 Q. There's no set formula rule to tell you how long
22 it's going to be there, correct?

23 A. That is correct.

24 Q. It's not going to be forever, correct?

25 A. It is not.

1 Q. And an individual can wipe or clean DNA away --
2 away, is that correct?

3 A. Yes. Any cleaning items, bleach, cleaning
4 products, those can definitely degrade and break down DNA.

5 MR. CONRAD: Beg the Court's indulgence?

6 THE COURT: Sure.

7 MR. CONRAD: All right. That is all the questions I
8 have. Please answer anything Mr. Swerling has.

9 MR. SWERLING: Just briefly.

10 CROSS-EXAMINATION

11 BY MR. SWERLING:

12 Q. You're not saying that anybody cleaned anything to
13 -- with any kind of substance to go ahead and wipe out any
14 blood or DNA, are you?

15 A. No. Not at all.

16 Q. Nobody knows that, right?

17 A. I do not.

18 Q. And the -- the fact of the matter is that you
19 cannot date when DNA was possibly deposited on a subject --
20 on an object?

21 A. That is correct. I can't tell you the time on
22 when the DNA got there.

23 Q. Could be a year, two years, five years?

24 A. That is correct.

25 Q. Okay. So there's no way to know a particular DNA

1 sample -- when that was put there? That's basically what was
2 -- you saying?

3 A. I cannot tell you when it got there.

4 MR. SWERLING: Thank you.

5 THE COURT: Any re-direct, Mr. Conrad?

6 MR. CONRAD: One quick question.

7 RE-DIRECT EXAMINATION

8 BY MR. CONRAD:

9 Q. You know, we talked and you -- you testified about
10 a number of cuttings from inside of pocket for Mr. Ackerman's
11 own DNA was found, correct?

12 A. That is correct.

13 Q. And if those items have been washed or cleaned,
14 could that possibly remove DNA?

15 A. It's possible, yes.

16 MR. SWERLING: But -- excuse me, but it wasn't,
17 correct? You found DNA in the pockets?

18 THE WITNESS: Yes. We were able to develop the
19 profiles from those pocket cuttings that --

20 MR. SWERLING: (Inaudible)?

21 THE WITNESS: Yes, that is correct.

22 MR. SWERLING: Which were his shorts correct?

23 THE WITNESS: To my knowledge, yes. Those were his
24 shorts.

25 MR. SWERLING: Thank you. I just want to clarify that.

1 BY MR. CONRAD:

2 Q. And one last question. It is possible for DNA to
3 be transferred between multiple objects, is that correct?

4 A. Do you mean, like, from one item -- like, from one
5 place to another?

6 Q. Yes.

7 A. Yes. We consider that either secondary transfer.
8 So the thought process is, if I touch this banister here, and
9 somebody else comes along, touches the same banister, and
10 then maybe touches the Bible, it is possible that they could
11 have deposited my DNA from this banister to the Bible, but
12 yeah -- so that's -- something like that is possible.

13 MR. CONRAD: That's all I have.

14 THE COURT: Okay. All right. You can step down, sir.
15 Thank you.

16 Is that all the SLED witnesses you have?

17 MR. CONRAD: Yes. Yes, it is, your Honor.

18 THE COURT: All right. Let me see the lawyers for just
19 one second.

20 (Bench conference at 5:04 to 5:05 p.m.)

21 THE COURT: All right. Ladies and gentlemen, we're
22 going to go ahead and recess for the evening. Now, we are
23 understanding that some -- there's some school closings. I'm
24 not sure if -- if Greenwood is going to be a part of that.
25 What I want you to do this evening, is to see if you have any

1 conflicts because of this hurricane, and the resulting
2 weather for Friday. We understand -- and don't quote me on
3 this, but we understand that the heavy rain is going to be
4 tomorrow night, Friday morning. And I think that's why some
5 of the schools are -- are -- are trying to close, and go to
6 some sort of e-learning. And I don't -- I don't know how
7 many of you, if any, have any children at school, check and
8 see. And then in the morning, I will inquire of you if
9 there's going to be any sort of conflict issue for you on
10 Friday with respect to this hurricane and the weather. So if
11 it's not going to be an issue, then -- then fine, but check
12 and see, and then -- then we'll -- we'll talk about it in the
13 morning, okay?

14 All right. With that said, go home, get something to
15 eat, get some rest, and we'll see you bright and early at
16 10:00 in the morning. Okay? Have a great evening.

17 (Jury exits room at 5:07 p.m.)

18 THE COURT: Okay. Anything we need to discuss from the
19 State?

20 MR. CONRAD: Your Honor, I guess, Mr. Meadors is going
21 to look at those texts tonight, and then we can --

22 THE COURT: Deal with that in the morning?

23 MR. CONRAD: Yes, sir.

24 THE COURT: All right. And if you can just get me a
25 copy of the DNA report so I can be looking at that.

1 MR. CONRAD: Yes, sir.

2 THE COURT: Mr. Swerling, anything from your side that
3 we need to discuss before we recess for the evening?

4 MR. SWERLING: I'm good, your Honor. I'm good.

5 THE COURT: Good. Okay. All right. We'll be in
6 recess until 10:00 in the morning -- maybe a few minutes with
7 the lawyers before 10:00.

8 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT

9 5:08 P.M.)

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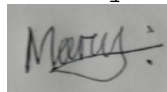
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CERTIFICATE OF TRANSCRIBER

I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 8 of Greenwood County, South Carolina, on September 25, 2024.

I do further certify that I am neither of kin, Counsel, nor interest to any party hereto.

January 10, 2025

A rectangular box containing a handwritten signature in dark ink. The signature appears to be "Mary" followed by a stylized flourish or surname.

MARY RAGSDALE

Transcriber

1 CONTINUATION OF PROCEEDINGS - SEPTEMBER 26, 2024.

2 THE COURT: And we're on the record, and we have one
3 evidentiary issue as it relates to a -- a couple text
4 messages.

5 So, Mr. Meadors, your're standing, if you want to just
6 present what -- what the State wants to offer in to evidence,
7 and take your argument, and then we'll hear whatever
8 objections that Mr. Swerling has. So I'll turn it over to
9 you, sir.

10 MR. MEADORS: Okay. May it please the Court? For
11 these purposes, this is marked State's 30 for identification.
12 For the record it's a --

13 MR. CONRAD: Text message.

14 MR. MEADORS: Text message from Davis McClendon to one
15 Brandon Smith at 12:42 on May 7 of 2023. "FYI, apparently,
16 Bud is drunk and out trying to hunt Meredith down. She's
17 wanting to call the cops. I was hoping maybe you could get
18 his dad to rope him in."

19 Judge, we'd respectfully argue that clearly it's
20 hearsay. There's no question about that. But if -- ask your
21 Honor, consider if it was an exception to the hearsay
22 Rule 803(3) (inaudible), then existing state of mind, is what
23 we would be offering it for. I think one of the cases on
24 point is State v. Weston. I know -- I think everybody's
25 familiar with it, your Honor, that's what we're offering it

1 for, is an exception to the hearsay rule under 803(3) is
2 (inaudible), then existing state of mind.

3 THE COURT: Okay. And let's go ahead. Before I hear
4 from Mr. Swerling, there's another text message, Mr. Conrad.
5 I think we talked about it just a moment ago in chambers.
6 Can you -- can you offer that one, please?

7 MR. CONRAD: Yes, sir. This -- this is start -- marked
8 for identification as State's Exhibit 29. This is a series
9 of texts between the Defendant, Bud Ackerman, to a -- a
10 mutual friend of his Davis's a guy -- a gentleman named Danny
11 Hayden, I believe.

12 MR. MEADORS: Daniel Hayden.

13 MR. CONRAD: Daniel Hayden. And this first -- this --
14 this text sequence starts off on April 29th, in the morning
15 of April 29, 2023, which will be about a week before the
16 incident. And the first text from Bud to Danny says "What
17 the hell is Davis thinking, man?" I think -- I mean -- "What
18 the hell, Danny?" Danny responds and says "I have no clue
19 what you're talking about. What did he do?" And then a
20 little later in the morning, Bud responds to Danny and says
21 "He has been" -- excuse my language "fucking Meredith." And
22 then Danny responds and says "That's news to me. I don't
23 keep up with anyone's business." And then Bud sends a text
24 to Danny Hayden and says "I have my suspicions, but it was
25 confirmed by her. I can't believe he would do that to me. I

1 mean, damn, I've known him all my" -- or excuse me "I've
2 known him my whole life."

3 THE COURT: Okay.

4 MR. CONRAD: And Danny, there's one final response from
5 Daniel that says, "I don't know what to tell you, Bud."

6 THE COURT: Okay.

7 MR. MEADORS: Judge, if I could add back to mine, and I
8 apologize. What's that mark?

9 MR. CONRAD: Oh, and I'm sorry. I'll flip the page.
10 There's one other response from Bud to Danny. My apologies,
11 Mr. Meadors. That says "Damn, I don't know either. It's
12 just effed up" and it's the -- the -- the real word.

13 THE COURT: All right. Okay. Mr. Meadors.

14 MR. MEADORS: What was that marked for this --

15 MR. CONRAD: 29.

16 MR. MEADORS: And that was 29, Mr. Conrad. Judge back
17 to 30. And I apologize.

18 THE COURT: All right.

19 MR. MEADORS: I'd ask you, your Honor, consider too,
20 his state of mind was based -- his being Davis McClendon
21 prior to this text at 12:42. And you can actually see him
22 texting it on the video from Key West. He, Davis McClendon
23 had been with Meredith, then Ackerman now Hainey, at Key West
24 bar earlier in the evening. We have several phone calls
25 coming in from the Defendant to Meredith. She's actually

1 showing them to Davis McClendon. So that was in his mind.

2 And then when they got to Key West later on, the
3 Defendant was also calling again -- calling again, and she's
4 showing him those phone calls. So we'd just like to add that
5 to the analysis. Thank you.

6 THE COURT: Very good. Thank you. All right.
7 Mr. Swerling?

8 MR. SWERLING: Judge, as to State's Exhibit Number 30,
9 we object to that for several different reasons:
10 Number one, we're talking about not the Defendant's state of
11 mind, but we're talking about Davis McClendon's state of
12 mind. That's what they're referring to. And the statement
13 he made at that point was prior to any conversation he had
14 with the Defendant that night -- with Mr. Ackerman that
15 night. So he had -- would not have had any personal
16 knowledge of what's reflected in that statement. That text
17 that he sent to the -- Brandon, I believe.

18 So it -- it's basically an assumption on his part,
19 speculation on his part, opinion on his part. And that could
20 only have come from hearsay sources. So I don't think that
21 meets the reliability test that would be required to indicate
22 or indicia of reliability that -- that would be a proof of
23 his state of mind based on just his speculation, and his
24 conjecture, and his opinion.

25 And we don't -- I certainly wouldn't have the right to

1 cross-examine him because of the circumstances. And, your
2 Honor, even if you find that is an exception to the hearsay
3 rule, which I clearly think it's not, because of the nature
4 of how he got that information, and what he was saying, but
5 under 403, it's certainly the prejudicial effect of that
6 would outweigh any probative value because of the comments
7 that are being made in that statement that he's drunk, and
8 he's hunting her down. And certainly, that would be
9 prejudicial and would outweigh any probative value or vice
10 versa. Probative values outweighed by the prejudicial
11 effect. So I -- I ask that be excluded.

12 THE COURT: Okay.

13 MR. SWERLING: As far as State's Exhibit Number 29,
14 those texts between Mr. Ackerman and his friend were on
15 April 29th. That's a week before this event. There's no
16 threat in there. There's no -- no indication of what
17 Mr. Ackerman's state of mind is in that, except that he was
18 upset about it, that he found out that his wife was having a
19 relationship with Mr. McClendon. But there's nothing
20 probative in there about what the State has to prove in this
21 case. I mean -- I could see if there was something said in
22 there that would explain maybe the events of May 7th, but it
23 certainly doesn't go that far. It was just somebody
24 expressing how he felt about finding out that Mr. McClendon
25 and his wife, at that point, still his wife, were having a

1 relationship. So I -- I don't think I -- I -- I don't
2 believe it's relevant. And I certainly would've also argued
3 under 403. It would not be -- it should be excluded.

4 THE COURT: I -- I thank you. Go ahead, Mr. Meadors.

5 MR. MEADORS: All right.

6 THE COURT: It's okay.

7 MR. MEADORS: As far as 29, your Honor, we don't think
8 anything could be more relevant as far as the Defendant's
9 action. And I will argue that's when the malice train
10 started. He was angry then. And week later, Davis McClendon
11 is dead. As far as back to State's 30, I -- I -- I think the
12 law is that we're allowed a -- a declarant, in this case to
13 -- to offer his state of mind, but maybe not the reason for
14 his state of mind. And -- and I know that's a tough issue,
15 quite frankly, but -- but that's our argument. Thank you.

16 THE COURT: All right. We're going to go off the
17 record. Take a -- just a few minutes. Let me look at a
18 couple things. Could I go ahead, and get my review on the
19 record, Madam Court Reporter? Okay.

20 THE CLERK: Yes, sir.

21 MR. SWERLING: I just wanted to add that on reading
22 803(3), I don't believe that fits within 803(3) what the
23 State is trying to offer.

24 THE COURT: Very good. Thank you.

25 (Off the record from 10:35 to 10:43 a.m.)

1 THE COURT: I have done my -- my brief research
2 concerning Exhibit 30. I will not allow that to come in to
3 evidence. I don't see where it fits in to any exception as
4 to the hearsay rule under 803 or 804, and I don't see where
5 it fits under Weston.

6 In Weston, it was the victim's state of mind, and here,
7 the text really doesn't apply to Davis state of mind. Maybe
8 Meredith's state of mind, but not Davis. So I'm not going to
9 allow that in. I'm not excluding 30 under 403. I don't take
10 all that aside. I think probative value certainly outweighs
11 any unfair prejudicial effect. So I'm not excluding it under
12 403. 29 is coming in to evidence. It's a statement by the
13 Defendant. It could go towards his state of mind and/or
14 motive. One week in time, I don't think is too remote to
15 allow it in. So 30, not admissible, 29 is admissible. Okay.

16 MR. MEADORS: Yes, sir.

17 THE COURT: All right. So I'm going to give these back
18 to you, Mr. Meadors. All right. Okay.

19 Mr. Conrad, you're standing, so...

20 MR. CONRAD: I have one more battery, your Honor. I
21 apologize we didn't bring this up earlier.

22 THE COURT: All right.

23 MR. CONRAD: I mentioned back there, when it comes to
24 Mr. -- the Defendant's call log that State's looking to
25 introduce here in a few moments, I have two versions because

1 I assume this might be an issue, but at the end of the night
2 when -- we believe Mr. -- the Defendant is back at his
3 parents' house, we have his call log, and he makes a number
4 of calls to Ed McCallum.

5 THE COURT: Okay.

6 MR. CONRAD: In the call log, they are -- identifies Ed
7 McCallum, just -- and that's just what it's saved as. It
8 didn't say it. So he's a lawyer or anything, but I -- I -- I
9 don't know if Mr. Swerling is going to find that objectional
10 or not, those particular calls being in the -- in the record.

11 THE COURT: Okay.

12 MR. SWERLING: No, I don't have a problem.

13 THE COURT: Okay. All right. Very good.

14 MR. CONRAD: For the record, that State's 35.

15 MR. SWERLING: Now those were at his -- from his
16 parents' house when he was there at the house?

17 MR. CONRAD: They're -- they're from his phone. We
18 believe he's at his parents' house.

19 MR. SWERLING: Yeah.

20 THE COURT: Okay. All right.

21 MR. CONRAD: Okay. That's it, your Honor.

22 THE COURT: Okay. Anything else? Are we ready for the
23 jury? State, ready for the jury?

24 MR. MEADORS: Yes, sir.

25 THE COURT: Defense?

1 MR. SWERLING: Yes, sir.

2 THE COURT: Okay. Let's bring the jury in please.

3 MR. SWERLING: Judge, just to preserve the record on
4 the motion in limine since he's the next witness, Mr. Womack,
5 then I'd just like the Court to incorporate my objection to
6 run throughout the testimony.

7 THE COURT: Possession.

8 MR. SWERLING: Of the issue.

9 THE COURT: So noted on the record, you're protected.

10 MR. SWERLING: Actually, Judge, I just realized there
11 was one other issue we talked about was the text messages
12 between Meredith Ackerman and Bud Ackerman, which was several
13 days before. And I -- I was objecting to those also as being
14 not relevant to the case because there's nothing in those.
15 May 6th is, you know, one -- one issue, but not the ones
16 prior to that.

17 THE COURT: You're telling them to hold off?

18 Amber, thank you.

19 MR. SWERLING: I'm sorry, I just apologize.

20 THE COURT: All right. So I'm going to need -- all
21 right. Did we even discuss those back in chambers?

22 MR. MEADORS: Very briefly, your Honor.

23 MR. SWERLING: I did, your Honor.

24 THE COURT: Very brief. Because I don't remember.

25 MR. CONRAD: What I would suggest -- I'm just

1 interested of moving -- keep -- keep moving -- this morning
2 is -- I simply authenticate them, and not publish them with
3 -- with Womack.

4 THE COURT: Okay.

5 MR. CONRAD: And then just have marked I purposes only,
6 and then before Meredith (inaudible).

7 THE COURT: That's right.

8 MR. CONRAD: -- you review them and make a ruling.

9 THE COURT: Okay.

10 MR. SWERLING: That'd be fine.

11 MR. CONRAD: About whether Meredith could testify about
12 them or not.

13 THE COURT: All right.

14 MR. CONRAD: Is that --?

15 THE COURT: Okay.

16 MR. SWERLING: That I apologize. I just --

17 THE COURT: Okay. All right. And what -- before the
18 jury comes in, we had an issue yesterday when the -- the DNA
19 SLED analysis person, the last one, I can't think of his
20 name.

21 MR. SWERLING: Stewart.

22 MR. MEADORS: Mr. Stewart. Yes, sir.

23 MR. CONRAD: Samuel Stewart.

24 MR. MEADORS: Samuel Stewart.

25 THE COURT: Yeah. Yeah, Mr. Stewart. And there -- the

1 State had offered his report in to evidence. Mr. Swerling,
2 you objected, and while normally reports of this nature do
3 not come in -- in -- in addition to the live testimony, I
4 think, because of the technical nature of analyzing DNA, I
5 think it would be of some benefit to -- to the jury to have
6 the report. I'm kind of doing an analysis of what we
7 oftentimes -- whether or not to qualify a person as an
8 expert. And we look at whether or not their testimony would
9 be outside the normal knowledge of a typical juror, and
10 whether or not the expert's testimony would be of any aid to
11 the jury. So I kind of did that same type of analysis. And
12 while again, it's not custom-made to have reports like this
13 come in, I think because of the technical nature, I am going
14 to allow 38 in to evidence. I'll just put it right here, and
15 you can get it whenever.

16 MR. MEADORS: Thank you, your Honor.

17 THE COURT: One second, Amber. Okay. Thank you.

18 Now, Madam Clerk -- or Madam Deputy Clerk.

19 (Jury enters room at 10:51 a.m.)

20 THE COURT: All right. Let the record reflect the jury
21 is back in.

22 Good morning ladies and gentlemen.

23 THE JURY: Good morning.

24 THE COURT: Hopefully you -- you were able to stay
25 somewhat drive -- getting to the courthouse. You remember

1 before we broke yesterday, I mentioned for you to check to
2 see as far as tomorrow with respect just to weather. Does
3 anybody have any issues? And my thinking is -- and I'll make
4 a final decision at the end of the day. My thinking is
5 tomorrow start later in the day to try to get us through
6 morning time, but I'll make a final decision on that. But
7 does anybody have any issues with respect to -- to tomorrow
8 as it relates to the weather event that we will be having?
9 Okay. I've got one.

10 Yes, ma'am. Your name and your juror number?

11 JUROR NUMBER 601: Wendy Brown, 601.

12 THE COURT: Okay. And, Ms. Brown, what -- what issue
13 do you have?

14 JUROR NUMBER 601: I have two grand-boys that I send to
15 school, so I have them being out tomorrow, I won't have
16 anybody to watch them.

17 THE COURT: Okay. All right. Okay. All right. Even
18 if we were to start say, like, noontime that -- would that be
19 of any help to you maybe?

20 JUROR NUMBER 601: Not really. Not with the boys.

21 THE COURT: Okay. All right. Okay. We'll,
22 Madam Clerks, if you'll just remind me to -- to make a
23 decision on -- on this juror at the end of the day. Okay.
24 All right. Thank you. Nobody else? Okay.

25 All right. State ready to call the first witness of

1 the day?

2 MR. CONRAD: We are, your Honor.

3 THE COURT: Okay.

4 MR. CONRAD: May it please the Court? Lieutenant
5 Matthew Womack.

6 THE COURT: Okay.

7 LIEUTENANT MATTHEW WOMACK,
8 being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CONRAD:

11 Q. Good morning, sir.

12 A. Good morning.

13 Q. You just say your name one more time, and spell
14 your last name for the court reporter, please.

15 A. Matthew Womack, W-O-M-A-C-K.

16 Q. Where are you currently employed, sir?

17 A. I'm a lieutenant in the criminal investigations
18 division of the Greenwood County Sheriff's Office.

19 Q. How long have you been employed at
20 Greenwood County Sheriff's Office?

21 A. I've been employed here since 2017. Previously, I
22 was at the Newbury County Sheriff's Office.

23 Q. And your current duties as a lieutenant and
24 criminal investigator is to investigative division, what does
25 that -- what does that entail?

1 A. So I am the direct supervisor to the other
2 investigators, as well as the IT sergeant, and training
3 sergeant as well.

4 Q. Okay. And do your duties involve forensic digital
5 analysis of -- of devices?

6 A. It does. In 2021, prior to my -- to my promotion,
7 we started the digital investigations portion of criminal
8 investigations. And I've been doing that since.

9 Q. You would consider yourself a supervisor of the --
10 the digital investigations?

11 A. Yes, I would.

12 Q. All right. What trainings and qualifications do
13 you have to analyze digital devices?

14 A. So I've attended numerous trainings, some of which
15 relating to -- for digital forensics would be from the
16 Atlanta-Carolinas HIDTA intensity drug trafficking, or -- or
17 Hidta social media research from the
18 National Criminal Justice Training Center. I've conducted
19 the ICAC introduction to osTriage, essentially that's
20 triaging computers, as well as the basic investigations to
21 osTriage.

22 I've completed undercover chats and communications
23 between ICAC offenders, responding to cyber incidents
24 specifically in schools at the
25 National White Collar Crime Center, otherwise known as NW3C.

1 I've completed basic cell phone investigations, basic GPS
2 interrogations, introduction to social media and networking,
3 introduction to the dark web, introduction to digital
4 evidence in court, understanding the digital footprint,
5 Google locations, and geofence investigations, post-seizure
6 evidentiary, digital concerns, and search warrants for
7 involving digital evidence.

8 I've also attended the National Computer Forensics
9 Institute, also known as NCFI. This is operated by the
10 United States Secret Service, and I've completed command line
11 principles program, the Digital Investigation Supervisor
12 course, as well as advanced mobile extraction techniques.

13 I also completed and done a recertification from
14 Cellebrite as a Cellebrite mobile forensics fundamentals,
15 Cellebrite-certified operator, and Cellebrite-certified
16 physical analyst.

17 Q. Okay. All right. And have you ever been
18 qualified as an expert in a state or court of this state?

19 A. I have.

20 Q. What have -- what have you been qualified?

21 A. I was qualified as a mobile forensics examiner
22 specifically for digital evidence.

23 Q. How many times have you been qualified?

24 A. Once before.

25 MR. CONRAD: Your Honor, at this time, State would seek

1 to enter Mr. -- Lieutenant Womack as an expert in mobile
2 digital device analysis.

3 THE COURT: Okay.

4 MR. SWERLING: No objection.

5 THE COURT: All right. Without objection Lieutenant
6 Womack is so found to be an expert in that area.

7 BY MR. CONRAD:

8 Q. Okay. All right. Lieutenant Womack, you've --
9 you just read off quite a list, and used a lot of terms.

10 A. Yes, sir.

11 Q. I suspect the jury may not be familiar with.

12 A. That's correct.

13 Q. Let's talk about the cell phones.

14 A. Okay.

15 Q. You analyze cell phones that are brought in as
16 evidence?

17 A. That's correct. Yep.

18 Q. Could you just step -- talk the jury about the
19 basic steps you take once a device comes into your possession
20 to be analyzed?

21 A. So a device comes in to our evidence, and it is
22 placed in to certain states, or if the -- we've tried to, you
23 know, advise the -- the first responding deputies or the
24 investigators of how to place the device in a certain state.
25 So there are two states: A hot state, and a cold state. The

1 otherwise known as an "After first unlock" or "Before first
2 unlock." Essentially, if many of you have an iPhone, for an
3 example, if your face or your fingerprint doesn't work, and
4 it requires you to put in a passcode that is a before first
5 unlock state. If it doesn't, and you're able to swipe, and
6 it opens automatically without a passcode, that's an after
7 first unlock state. We typically have those guys take it off
8 of the network, essentially putting the phone in airplane
9 mode, putting it in a Faraday bag, or removing the SIM card
10 from the device. We also have them to plug the device up to
11 charge it so that it does not lose power, depending if it's
12 in the after first unlock state.

13 Q. You're talking about before first unlock and after
14 first unlock. Why is that important? What -- what key thing
15 does that take into account? Do you need to analyze a phone?

16 A. So, for instance, if I have a cell device that's
17 in an after first unlock state, and I don't have the passcode
18 to the phone, I can still complete an extraction from the
19 device that gets about 90 -- 85 to 90 percent of the data.
20 If it's in the before first unlock state, the encryption has
21 not been put in to the device, and I can only get about 25 or
22 30 percent of the -- without the passcode.

23 Q. Is that because most modern cell phones in their
24 normal rest of state -- is the data encrypted?

25 A. Yes, it uses 256-bit encryption.

1 Q. Without these tools you're going to talk about.
2 If you didn't have the passcode, would you be able to access
3 the data on that phone?

4 A. I would not without these tools.

5 Q. Okay. Well, let's -- let's talk about that. So
6 you just described how -- in general sense of -- of how you
7 like to receive a device as if -- as it comes in as evidence.
8 Again, you set it up, what tools do you use and how do you
9 use them at that point to -- to extract information off the
10 cell phones?

11 A. So depending on the device, if we have a known
12 passcode, we can utilize any of the tools that we have,
13 whether it be the Cellebrite or the Graykey. The Graykey
14 will pull a full file system extraction. The Cellebrite, we
15 can choose between a logical, advanced logical, depending
16 specifically to an iPhone.

17 Q. So words, "Cellebrite" and "Graykey." What are --
18 what are those?

19 A. Cellebrite is a -- a company that provides
20 hardware and software to extract the data off of the device.
21 Graykey is owned by Magnet Forensics. It's also a device
22 that can extract the data, or bypass, or brute force a device
23 to -- to get the passcode or bypass the passcode.

24 Q. When you say, "Brute force" does that mean
25 randomly trying codes to see if something works?

1 A. Essentially.

2 Q. Okay. So you have these devices, Cellebrite and
3 Graykey, to help extract information off these cell phones.
4 Are there different types of extractions?

5 A. There are.

6 Q. What are some different types of extractions?

7 A. So the lowest level would be -- sort of be the
8 logical, the logical is -- is essentially what you see on the
9 phone. Your -- your messages, your calls, some photos,
10 things of that nature. You can also do an advanced logical
11 on an Apple device, which gains a little bit of the file
12 system information on top of the -- the basic information
13 that you see.

14 A full file system you can start getting into the file
15 system databases in the device. The last or -- or the most
16 strenuous is the physical. Now in a physical extraction, the
17 device has to be rooted, or you have to jailbreak the phone.
18 Essentially you're gaining writing access to it, removing all
19 the security features. We do not do that at the sheriff's
20 office. We do not practice rooting or jail-breaking.

21 Q. So essentially the -- the different types of
22 extractions affect the various -- the amount, and types of
23 information you get off the phones, is that correct?

24 A. That's correct.

25 Q. And a logical extraction is only going to access

1 data that a user of the phone can normally access?

2 A. That's correct.

3 Q. So that would be a call log, photos, texts, apps
4 that's -- that's (inaudible)?

5 A. Essentially the surface of what you see or what
6 the user would use.

7 Q. In an advanced logical pulls -- other information
8 off?

9 A. That's correct. It pulls portions of the file
10 system as well.

11 Q. And what kind of information would you normally
12 find in that file system when you do an advanced logical
13 extraction?

14 A. So if you're doing a file-system extraction,
15 again, it -- it gets into the file database. So essentially
16 if you look -- let's just talk Apple devices, you know, you
17 have a certain amount of storage on your phone. All right.
18 So you don't care every time your phone plugs up, you don't
19 care to see that information. Or every time your phone --
20 the backlight, or the orientation, or every time it connects
21 to a -- a Wi-Fi, or shakes hands with a -- with another
22 device, you don't care as the user about that information.
23 What you care about is your pictures, your applications, your
24 videos, things of that nature.

25 So what Apple does is this, is they put it all in a

1 file system -- the stuff you don't care about in a file
2 system, and that information is plugged in there basically on
3 how much you use your device. If you turn your phone on and
4 off, on and off, on and off, it's going to keep logging those
5 dates and times.

6 The newest information is -- is kept in, and it's sort
7 of like a conveyor. So once you get to the end of the file
8 system, let's just say you used it a week ago, and you turned
9 your phone off it, logged it, but that's not needed anymore
10 because you don't care. It's not going to use up your
11 storage, it saves that other portion for the stuff you do
12 care about.

13 Q. And so essentially there are file systems on a
14 phone that aren't normally user accessible, correct?

15 A. That's correct.

16 Q. But they still store information, correct?

17 A. They do.

18 Q. And sometimes that information can be useful in
19 your investigation?

20 A. Absolutely, yes.

21 Q. And typically those other file systems are finite
22 in size, correct?

23 A. That's correct.

24 Q. And they will override each other as time goes
25 through?

1 A. That's correct.

2 Q. And that way if you have -- say what's a typical
3 phone size that you see these days?

4 A. I mean -- they're getting larger and larger. Used
5 to -- at one point in time you could see 64. And now -- I
6 mean -- there's phones that have a terabyte now.

7 Q. Okay. You know, is -- is 100 gigabyte of a common
8 size you see?

9 A. That's fairly common. Yeah.

10 Q. So if you have a 128-gigabyte size phone most of
11 that memory is going to be taken up by stuff that the user
12 cares about?

13 A. That's correct.

14 Q. But there's these other hidden databases that are
15 -- store finite amount of information as well?

16 A. That's correct.

17 Q. All right. And just a couple examples, and we'll
18 move on -- just a couple examples of things you might find on
19 those other file systems?

20 A. So mainly it's for -- there's -- there's
21 KnowledgeC, which is an SQLite database as well as biomes,
22 which is originally under the streams. Biomes just began in
23 iOS 15. And by iOS 16 they were heavily taking place of the
24 KnowledgeC, and what the biomes store is information such as
25 connectivity to the device.

1 Q. You say, "Connectivity" what do you mean?

2 A. As in connected to your Bluetooth, connected to
3 your Wi-Fi, if it sees any Wi-Fis, or any public Wi-Fis that
4 you don't connect to.

5 Q. So -- so -- so a phone in theory -- if you're
6 walking by a place that has Wi-Fi, even though you don't
7 connect to it, the phone's going to record --

8 A. That it sees that Wi-Fi.

9 Q. (Inaudible)?

10 A. Absolutely.

11 Q. Okay.

12 A. And then, like I said, that's information that you
13 don't care about. So Apple makes it where you don't need to
14 see it because you really wouldn't care for it --

15 Go ahead, I'm sorry. Your next question.

16 Q. No, that's fine. All right. So let's -- let's
17 move on and talk about your involvement in -- in this case.

18 A. Okay.

19 Q. And did you receive any phones to analyze as part
20 of this case?

21 A. I did.

22 Q. Okay. Let's -- and how -- let's talk about
23 three phones in specific. And did you analyze the Defendant
24 Mr. Bud Ackerman's phone?

25 A. I did.

1 Q. And did you analyze the decedent in this case,
2 Davis McClendon?

3 A. I did.

4 Q. And then did you also analyze the -- the separated
5 wife, Meredith Ackerman, now Hainey her phone as well?

6 A. Yeah.

7 Q. Okay. All right. Well, let's talk about
8 Meredith's phone first. What did you do to analyze
9 Ms. Hainey's phone?

10 A. So if I can refer to my notes -- I received
11 Ms. Hainey -- was Ackerman, now Hainey her device. It was an
12 Apple iPhone 13 Pro with a 256-gigabyte storage capacity. I
13 received it on May the 8th, from Captain Murdock. And a
14 passcode was provided, so I completed both an advanced
15 logical and logical extraction on these devices. And then,
16 placed that into a physical analyzer, which is a software
17 provided by Cellebrite, which parses or sorts if you -- you
18 know, if you will, of -- all right, here's all your pictures,
19 and it puts it in certain sections. It makes it
20 user-friendly to review.

21 Q. Okay. All right. And did you review the
22 information you had on Ms. Hainey's phone?

23 A. I did for validations and malware purposes.

24 Q. Okay. And are you confident when you performed
25 the extraction of -- of Ms. Hainey's phone that all the data

1 you pulled was intact, and not altered in any way?

2 A. I am confident.

3 Q. And how -- how large is Ms. -- was Ms. Hainey's
4 phone?

5 A. It -- it was over 200 gigabytes. It was -- it was
6 a large amount of -- of data on the device, but the capacity
7 was 256 gigs.

8 Q. You removed all the data off, is that correct?
9 Saved it elsewhere?

10 A. Essentially it mirror -- it images it, yes.

11 Q. It images. So you don't actually remove it, you
12 simply make a copy?

13 A. That's correct. There's no altering.

14 Q. All right. And when -- when you're done with that
15 extraction with Ms. Hainey's phone, what did you do with it?

16 A. I then -- again completed my validations of the
17 information that I was seeing -- a malware scan -- scan, and
18 then provided a report which I provided to Investigator
19 Powell.

20 Q. Okay. All right. All right. I'm showing you
21 what's been marked as State's Exhibit 31. See if you
22 recognize that.

23 A. I do recognize it.

24 Q. And what is that?

25 A. This is the call log report for Meredith's phone.

1 Q. And what -- what dates does that accompany? Dates
2 and from then read every entry just from the beginning to the
3 --

4 A. This report specifically is from May the 6, 2023
5 at 2:23:31 p.m., to May the 7, 2023, at 1:41:47 a.m.

6 Q. Okay. So from the afternoon of May 6th to the
7 early morning hours of May 7th, is that correct?

8 A. That's correct.

9 MR. CONRAD: And at this time, State would move to
10 enter Exhibit 31 in evidence.

11 MR. SWERLING: No objection.

12 THE COURT: Without objection 31 in to evidence for the
13 State.

14 (State's Exhibit 31 was admitted in to evidence.)

15 MR. CONRAD: And the State's going to publish. We're
16 going to discuss the -- some of the information -- what it
17 means on a call log.

18 LIEUTENANT WOMACK: Okay.

19 THE COURT: Okay. You need to step down, Anthony?

20 MR. CONRAD: Well --

21 LIEUTENANT WOMACK: I -- I'll have to see first.

22 MR. CONRAD: Ms. Colon is -- is working on that.

23 MR. SWERLING: Is that just the phone log?

24 MR. CONRAD: Yes.

25 MR. SWERLING: Yeah. Okay.

1 BY MR. CONRAD:

2 Q. While we're -- she's setting that up -- when we
3 say phone log or call log, what -- what is that?

4 A. So it -- it can capture in this particular device
5 -- there is a call log database in the SQLite database, and
6 it captures when an outgoing or incoming call as well as the
7 duration, and whom it is made to.

8 Q. Okay. And so and this is user-accessible data
9 that would normally a user could see on their own phone, is
10 that correct?

11 A. That's correct.

12 Q. And it's their call, right?

13 A. That's correct.

14 Q. You can -- on an individual's phone, they can kind
15 of look and see, oh, I made a call this time to this person,
16 and they called -- somebody else called me at this time so on
17 so forth, correct?

18 A. That's correct.

19 Q. All right. And this is -- and what tool did you
20 use to produce this report?

21 A. I extracted the device using the Cellebrite UFED
22 4PC, and then it -- with Cellebrite physical analyzer.

23 MR. CONRAD: Okay. All right. And with the Court's
24 permission, can I -- can Lieutenant Womack --?

25 THE COURT: Sure. Yeah, he can. Yeah, just be sure --

1 Lieutenant Womack, that you stand behind that microphone on
2 the juror railing.

3 BY MR. CONRAD:

4 Q. And -- and what I'm going to do, Lieutenant
5 Womack, is I'm just going to have you explain the various
6 columns here so the jury understands what information looking
7 at. We're not necessarily going to go and review every call
8 at this point, but -- but let's start with -- we see several
9 columns across the report, is that correct?

10 A. That's correct.

11 Q. And on the left-hand side -- let's just start left
12 to right on the very far left-hand side, what is that called?
13 What information is there?

14 A. So you'll see the calling parties the two is
15 obviously the number being called and --

16 Q. Well, let's -- let's -- let's -- to left of that.
17 What --?

18 A. I'm sorry. That's just a number calling the -- in
19 this report -- the number of -- of -- of the data.

20 Q. Is that the number that Cellebrite assigns to that
21 data entry? Just --

22 A. Yes.

23 Q. -- so it can keep it straight?

24 A. That's right. Just to make it user-friendly.

25 Q. Okay. So someone could refer to entry 1 as a

1 shorthand way of saying that first call?

2 A. That's correct -- that's correct.

3 Q. All right. So the next column, it says at the top
4 "Parties." What -- what is that?

5 A. So the parties could be the calling party or
6 receiving party. And then, you'll see it has a direction of
7 outgoing or incoming. The outgoing would be the user of the
8 device in this case Meredith was calling. If you, for
9 instance, look at line number one, she's calling a phone
10 number, and the contact in blue it says "Abby."

11 Q. Okay. All right. Let's -- let's discuss that.
12 So we see a phone number that is associated with that first
13 entry and then we see a name that says "Abby." Is that --
14 that's correct?

15 A. That's correct.

16 Q. All right. And the phone number is the phone
17 number that was actually called out from Meredith's phone,
18 correct?

19 A. That's -- that's correct.

20 Q. And then where it says "Abby." Where is that
21 information coming from?

22 A. That's saved in the contact -- in the contact log.
23 It associates that number with Abby.

24 Q. And that's something the user would've had to
25 enter into her phone -- Ms. Hainey would've had to enter her

1 phone, when she saved that number as Abby, correct?

2 A. That's correct.

3 Q. All right. And then so that first entry is -- is
4 an outgoing call, correct?

5 A. That's correct.

6 Q. And then there's a time stamp. What -- how does
7 the phone figure out what time to use in an entry?

8 A. So typically the phones are using the -- can you
9 hear me? Everybody hear me? Typically the phones use the
10 carrier time from the tower itself.

11 Q. Okay. And so cell phone networks provide a time
12 with their network that the phone syncs to it, is that
13 correct?

14 A. That's correct.

15 Q. Okay. And that's where the phone arrives. Its --
16 its -- its phone?

17 A. That's correct.

18 Q. Excuse me. All right. So let's -- that first
19 entry, just for an example it -- what's the date on that
20 first entry?

21 A. First entry is May the 6, 2023.

22 Q. And what time does it say for that first entry?

23 A. 2:23:31 p.m. That's minutes, seconds. And then
24 so on.

25 Q. Then it says something about UTC minus scale.

1 What does that -- and what does that mean?

2 A. So UTC essentially is the -- is -- is a universal
3 time, so we're four hours from that time. So not in -- it
4 would -- if we had daylight savings time, it would be
5 included as a minus five, but this was not, so it's a minus
6 four, essentially it's Eastern Standard Time.

7 Q. And so on May 6, 2023, local time was four hours
8 behind UTC?

9 A. That --

10 Q. Correct?

11 A. That's correct.

12 Q. And the time you see on this report is in fact
13 local Greenwood time on that day?

14 A. It is -- it's --

15 Q. Okay. All right. And then the next column it
16 says "Duration." What -- what's that?

17 A. That is the duration of the call.

18 Q. Okay. And how long is it?

19 A. Nineteen seconds 44 10.

20 Q. Is it? So that call lasts for 19 --

21 A. I'm -- I'm sorry, 19 minutes, 44 seconds.

22 Q. All right. And so -- all right. And then the
23 next it says "Outgoing." Correct?

24 A. Correct. That's the status of the direction of
25 the call.

1 Q. Country code is that -- would be if there -- would
2 that be something, if there's an international call?

3 A. That's correct.

4 Q. There could be information there. All right. And
5 then finally in the far right it says "Source info." What
6 does that mean?

7 A. So the source is where it was stored, and if
8 you'll notice line one and line two are identical. And the
9 reason that is -- is when you run the report -- again, I
10 completed two extractions, logical and an advanced logical.
11 And I did that to get the most data. And so within this
12 report you'll see it's pulled from the call history database
13 in the advanced logical, and that's why you see more
14 information in the second line.

15 Q. Okay. And so let's -- let's -- let's discuss that
16 a little more. We -- we see entry 1, and that's the call
17 we've been talking about so far?

18 A. That's correct.

19 Q. Then there's an entry 2 right beneath it, correct?

20 A. That's correct.

21 Q. And we look at the data at the time stamp, and the
22 duration, and the -- the contact, it's -- it's identical to
23 entry 1, correct?

24 A. That's correct.

25 Q. And your -- you -- your explanation for that is

1 you did two different extract -- type of extractions, and it
2 pulled this, what is essentially duplicate information from
3 different databases on that phone, is that correct?

4 A. Yes. Yes.

5 Q. Okay. And that's why we see two entries for the
6 same call?

7 A. That's correct.

8 Q. And is that a fairly common phenomenon as you're
9 analyzing these phones?

10 A. Yes, it happens all the time. And then
11 essentially the reason we do it is to pull as much data as
12 possible.

13 Q. Okay. And so if someone were reviewing this
14 report, and they saw identical entries next to each other for
15 the same contact, the same time, same duration, what should
16 they treat those as?

17 A. You're saying if there are duplicates?

18 Q. Yes.

19 A. Then they -- they should see that as not an
20 anomaly.

21 Q. Okay. And is it the same call?

22 A. It is the same.

23 Q. And should they treat it as the same call?

24 A. They --

25 Q. Two separate?

1 A. They should.

2 Q. Okay. And that's if they see the same contact or
3 phone number, the same date and time and the same duration,
4 correct?

5 A. That's correct.

6 MR. CONRAD: Okay. All right. Make sure --
7 Beg the Court's indulgence.

8 THE COURT: Sure. Take your time.

9 BY MR. CONRAD:

10 Q. Okay. I think that's all the questions I'm asking
11 you about the State's Exhibit 31. You can take a stand real
12 quick. And I've got State's Exhibit 35 -- I'm going to hand
13 you State's Exhibit 35. I'm going to ask if you recognize
14 it.

15 A. I do recognize it.

16 Q. And what is that?

17 A. It is the call log for the Defendant, Mr. Bud
18 Ackerman.

19 Q. And actually -- and I can hand you back. I -- I
20 forgot one thing. I apologize. Exhibit 31 Meredith's call
21 log, and her phone number. Did you determine what phone
22 number was assigned to Meredith's phone at the time of the
23 extraction?

24 A. I -- I did.

25 Q. Would you just read that for the record? For

1 Meredith's phone?

2 A. Meredith's phone was (864) 934-1601.

3 Q. Now, let's talk about Bud's call log. What time
4 duration does that log capture in this particular
5 (inaudible)?

6 A. So in this case -- excuse me. This report for
7 this call log, it is captured for May the 6, 2023, at
8 8:50:07 a.m., and it runs to May the 7, 2023 at 1:55:29 a.m.

9 Q. And, you know, is -- of all the -- are those all
10 the calls that were on Bud's phone?

11 A. No. No.

12 Q. And if -- if you were to print the entire call log
13 from Bud or Meredith's phone, or anyone's phone, how long
14 could that report run that you seen in that report?

15 A. I'm -- I'm seeing hundreds of pages.

16 Q. So this is just simply a -- a selection of data
17 find -- that in your investigation you believe is relevant to
18 this particular case?

19 A. That's correct.

20 Q. All right. And -- and I skipped the spot. So
21 let's talk about your extraction of Bud's phone. How did you
22 get it, and what did you do to accomplish an extraction?

23 A. So I received Mr. Ackerman's device, and it was an
24 -- an after first unlock state, and it was charged, and taken
25 off the network, and kept in that state. It was an Apple

1 iPhone 13 Pro. And it had a software version of 16.3.1. At
2 the time I received it on May the 8th, Graykey didn't support
3 it at that time. And then on May the 19th an update was
4 completed to Graykey, and I was able to complete an "After
5 first unlock file" system extraction.

6 Q. Okay. And the report you have in front of you,
7 which is -- I apologize, but State's 35 that is generated
8 from that extraction?

9 A. It was.

10 MR. CONRAD: At this time, State will move to enter the
11 State's Exhibit 35 in to evidence.

12 MR. SWERLING: No objection.

13 THE COURT: Without objection 35 in to evidence for the
14 State.

15 (State's Exhibit 35 was admitted in to evidence.)

16 BY MR. CONRAD:

17 Q. And we're -- we're going to do one thing here to
18 -- to make a comparison.

19 A. Yep, sure.

20 Q. And you can step down again, Womack. Can you read
21 that from there? We could zoom a little bit if we need to.
22 One -- you're looking at -- let's look at entry 10.

23 A. Entry 10, okay. Yeah, I could read it from here.

24 Q. All right. And would you read for the jury what
25 that call is? Is it ingoing or outgoing from Bud's phone?

1 And what time it is, and how long that call lasts.

2 A. So from entry 10 you'll see the phone number
3 incoming from -- its -- its contact saved as
4 Meredith Ackerman. That was May the 6, the 2023, at 7:38
5 p.m. And it lasted two minutes and one second. And it was
6 -- this was actually a FaceTime call.

7 Q. Okay. And so are FaceTime calls -- what is
8 FaceTime?

9 A. FaceTime is an -- an Apple program essentially
10 where you can see the other party, or use the -- it uses the
11 iCloud account to contact each device.

12 Q. It's a video calling?

13 A. That essentially yes, it's a video calling.

14 Q. All right. But the phone stores those calls in
15 the same database or as regular phone calls?

16 A. It considers it a call. Yes.

17 Q. All right. And we see something that says
18 "Answered." What -- what does that mean?

19 A. That shows that this device answered that call.

20 Q. Okay. And then, I can pull to the top, but
21 there's something that says "Yes." On the far right, and
22 what is that yes, for the --

23 A. If -- was it a video call or not?

24 Q. Now, I'm going to go back to State's 31, which is
25 Meredith, and again State's 35. This came from Bud's phone,

1 correct?

2 A. Correct.

3 Q. And then State's 31 that came from Meredith's
4 phone, correct?

5 A. Correct.

6 Q. What I'm going to do is? Bear with me, I
7 apologize. I am going to direct your attention to items 15
8 and 16. Do you see those?

9 A. I do.

10 Q. And first of all are 15 and 16 duplicate entries?

11 A. They are.

12 Q. Okay. And so would you treat 15 and 16 as the
13 same call?

14 A. I would.

15 Q. All right. And read the information as far as --
16 you know, who is the phone? Is it outgoing or incoming call
17 to Meredith's phone?

18 A. Right. So this is an outgoing, the contact is
19 saved as Ice Bud, the time, May the 6, 2023, 7:36 -- is that
20 8:36:49 p.m., two minutes and one second. It was answered,
21 and it was a FaceTime video call.

22 Q. All right. And so this is made to a phone of 2 --
23 0292 last four digits of that phone number?

24 A. That's correct.

25 Q. And did you just read those numbers as Bud's phone

1 that you extracted?

2 A. I did.

3 Q. Okay. You can take -- take a seat. Okay. Let's
4 talk about Davis's phone.

5 A. Okay.

6 Q. Tell the jurors how you received it, when you
7 received it, and what you did with it.

8 A. I received this device from Captain Murdock. It
9 was in an after first unlock state, or a hot state as well,
10 meaning that the encryption passcode had been entered at one
11 point in time, and the phone had not restarted. It was an
12 Apple iPhone 14 Pro Max. And it had a software version of
13 16.4.1. Just for comparison, the 18 just came out. So I
14 attempted to extract this with the Graykey as well. It was
15 not supported at the time. It was not until
16 September the 20th to where Graykey updated with a software
17 while I was able to bypass the passcode.

18 Q. Maybe that's something we should explain a little
19 more before you move on.

20 A. Okay.

21 Q. You said that something similar happened with
22 (inaudible), is that correct?

23 A. That's correct.

24 Q. And Graykey for lack of a better term, likes --
25 tries to find exploits, and codes to extract data?

1 A. That's correct. To bypass the lock.

2 Q. And Apple will -- will often, in their software
3 updates, kind of plug those gaps, is that correct?

4 A. That's correct.

5 Q. And then Graykey will have to find a new exploit,
6 or a hack. I mean -- that's -- that's probably not the
7 technical term (inaudible)?

8 A. Essentially that's what it does. Yeah.

9 Q. You get back into the phone, and is in a
10 commenting series?

11 A. It is. It is a ping pong between Apple and
12 Graykey -- Apple and Graykey.

13 Q. So it's not uncommon when you first get a phone
14 that you -- you can't be able get into it?

15 A. That's correct. For -- for example, like I stated
16 -- iOS 18 is out now. Graykey does not have a software
17 update at this point to be able to bypass an iOS 18.

18 Q. Rest assured are the folks at Graykey working on
19 it?

20 A. I assure you they are.

21 Q. Okay. So then what sort of extraction --? Once
22 you got that -- the Graykey updated, what sort of extraction
23 did you perform?

24 A. So I was able to do an "After first unlock file"
25 system extraction. Again, it -- it bypasses the passcode.

1 We attempted multiple different avenues to try to retrieve
2 the device passcode, but was very unsuccessful until the
3 software update for Graykey.

4 Q. So you were eventually able to get into it, and
5 get information off of Davis' phone?

6 A. I was. And it pulled 168.46 gigabytes out of a
7 256-gigabyte phone.

8 Q. All right. And I'm going to hand you what's been
9 marked as Exhibit -- State's Exhibit 34, if you recognize
10 that?

11 A. I do recognize this.

12 Q. What is that?

13 A. This is the -- this is Davis call log from
14 May the 6, 2023, at 9:36:19 a.m., to May the 7, 2023, at
15 2:05:10 a.m.

16 Q. And -- and once again, this isn't every phone call
17 that was stored, or call log that it stored on Davis' phone,
18 correct?

19 A. That's correct.

20 Q. And if you print all that it could run to hundreds
21 of pages?

22 A. It sure could have. Yep.

23 Q. And this is just simply a truncated version of
24 that around the times of this incident, the day of, and the
25 day after?

1 A. That is correct.

2 MR. CONRAD: All right. State would move to enter
3 State's 34 in to evidence.

4 MR. SWERLING: No objection.

5 THE COURT: Without objection 34 in to evidence for the
6 State.

7 (State's Exhibit 34 was admitted in to evidence.)

8 MR. CONRAD: I'm going to publish.

9 THE WITNESS: I want to step down.

10 MR. CONRAD: If you want to step back -- step back
11 down.

12 BY MR. CONRAD:

13 Q. Womack -- and I'm going to direct your attention
14 to the second page of this report. We're going to start
15 looking on entries 13, 14, and then -- then after that.

16 A. Okay.

17 Q. So let's take a look at entry 13. We'll get that
18 adjusted just a minute. Zoom -- zoom out.

19 A. Yeah, just a -- just a tad, you know. Okay.
20 That's -- that's good. Yep.

21 Q. All right. So let's look at entry 13. First of
22 all, what -- what is that from Davis' phone? Is that an
23 outgoing call or an incoming call?

24 A. That is outgoing to Meredith.

25 Q. And what time is that?

1 A. That is at 12:55:22 a.m., on May the 7th.

2 Q. Okay. And how long does that call last?

3 A. Three minutes 43 seconds.

4 Q. Okay. And then the entry below that, it says
5 entry 14. What is that? Is that outgoing call or incoming?

6 A. That is outgoing to what's listed as Bud Ackerman,
7 May the 7th, at 12:59:18 a.m.

8 Q. All right. And how long does that call last?

9 A. Lasted a minute and six seconds.

10 Q. All right. And so --

11 THE COURT: Let -- let me just stop you just a second.
12 I think you don't need the microphone according to the court
13 reporter. You talk loud enough anyway. I -- I think yeah,
14 put it down, and we'll try this. Okay.

15 THE WITNESS: All right.

16 THE COURT: Thank you.

17 BY MR. CONRAD:

18 Q. All right. So let's do some rough math. Just to
19 help the jurors out. So the call to Meredith started at
20 12:55 and 22 seconds, correct?

21 A. Correct.

22 Q. And that call would've lasted -- it did last
23 three minutes and 43 seconds, correct?

24 A. That's correct.

25 Q. And if you -- therefore, if you do a little rough

1 math in your head, about what time did that call end?

2 A. 12:58, somewhere around there.

3 Q. Okay.

4 A. 12:59, somewhere around there.

5 Q. Okay. So --

6 A. And some minutes.

7 Q. Not very long. Just a few seconds afterwards,

8 Davis is making a call to Bud Ackerman, is that correct?

9 A. That is correct.

10 Q. Okay. And then that call lasts for a minute.

11 A. It does. Minute and six seconds.

12 Q. So that call would've ended roughly speaking
13 almost a little after 1:00 a.m., exactly.

14 A. That's correct.

15 Q. On May 7 of 2023, correct?

16 A. That's correct.

17 Q. And then let's look at entry 15. First of all,
18 what -- incoming or outgoing call?

19 A. That is incoming.

20 Q. All right. And we don't see a contact, but we see
21 a phone number, correct?

22 A. That's correct.

23 Q. All right. And what is that phone number?

24 A. That phone number is (864) 934-1601.

25 Q. All right. Looking at the previous contacts,

1 would you be able to identify whose phone that is?

2 A. That is Meredith's phone.

3 Q. All right. But we don't see the name Meredith
4 there.

5 A. That's right.

6 Q. Correct?

7 A. That's correct.

8 Q. Why is that?

9 A. So essentially what happened -- and this is the
10 type of information that catches your attention when you're
11 reviewing this, and then you want to know why obviously, or
12 the type of vehicle that he had, or -- or any other third
13 party it connected to Bluetooth, and, you know, sometimes in
14 -- in --

15 MR. SWERLING: Maybe can you speak up a little bit
16 Lieutenant? Just sir, sorry. Just a little bit.

17 THE COURT: Yeah, we may need to go back to the mic.

18 THE WITNESS: I'm sorry. Could you hear all of it or
19 just --

20 MR. SWERLING: No, I got it. Yeah.

21 THE WITNESS: Okay. So essentially, have you ever been
22 in -- in your newer vehicle, or a rental vehicle that your
23 device has never seen, and it may ask you, do you want to
24 download your contacts? And if you don't download your
25 contacts, it's going to come in as the number itself, not as

1 a contact. And so that's what this anomaly is there.

2 BY MR. CONRAD:

3 Q. So would an explanation of why you don't see
4 Meredith's name next to a number be that Davis' phone is
5 connected via Bluetooth to his car?

6 A. That's correct.

7 Q. All right. And so that call begins at what time
8 again?

9 A. That was at 1:08:13 a.m.

10 Q. All right. And how long does that call last?

11 A. Five minutes and 27 seconds.

12 Q. All right. Let's go to the next line.

13 A. Okay.

14 Q. And that's line 16. What -- first of all, is that
15 outgoing or incoming call?

16 A. That is incoming.

17 Q. All right. And I don't see a contact, but I see a
18 number. What call is that -- what number is that call from?

19 A. (864) 554-0292.

20 Q. Okay. And once again, we don't see a name, but
21 looking at the contacts above that, which number would you --
22 who would you associate that number with?

23 A. Bud Ackerman.

24 Q. All right. And do you -- would it be for the same
25 reason you just discussed -- the reason we don't see Bud's

1 name next to his number in this entry?

2 A. That's correct.

3 Q. Because the phone is -- could potentially be
4 connected to the Bluetooth of that BMW?

5 A. That's correct.

6 Q. Okay. All right. Now going back to doing a
7 little rough math in your head, and I apologize for -- for
8 making you do this.

9 A. No. That's fine.

10 Q. The call -- the entry 15, the call before that.

11 A. Uh-huh.

12 Q. From Meredith, correct?

13 A. Correct.

14 Q. Lasted for five minutes and 27 seconds starting at
15 1:08:13 a.m.

16 A. That's correct.

17 Q. All right. So we're doing some rough math. About
18 when would that call -- Meredith's call have ended?

19 A. Have ended 1:12 or so -- somewhere around there

20 Q. Around 1:12 a.m.?

21 A. That's correct.

22 Q. But we see that call coming from Bud at 1:09 a.m.?

23 A. That's correct.

24 Q. And was that call answered as well?

25 A. It was answered.

1 Q. All right. So -- but the call from Meredith,
2 according to what you testified hadn't ended, correct?

3 A. Right.

4 Q. Can you explain that to the jury why -- how that
5 could have happened?

6 A. He would've placed Meredith on hold to answer
7 Bud's call.

8 Q. Okay. And Bud's call last for -- for how long?

9 A. Three minutes and 28 seconds.

10 Q. All right. And so when would've that call ended?

11 A. 1:12 almost 1:13.

12 Q. Okay.

13 A. Uh-huh.

14 Q. All right. I'm going to have you take a seat.

15 I'm going to show you what's been marked as
16 State's Exhibit 33, see if you recognize it.

17 A. I do.

18 Q. What is that?

19 A. This is a report from a tag that was conducted. A
20 tag essentially is, hey, I want to save and review that later
21 by the investigator, or whomever reviewing the report. It's
22 three specifically on there from May the 7, 2023, at 12:55:20
23 a.m., to May the 7, 2023, 1:11:35 a.m.

24 Q. All right. And first of all, whose phone is that
25 from?

1 A. This is from Davis phone.

2 Q. Davis phone. Next would -- came from the same
3 extraction. The call log you just talked about?

4 A. That is correct.

5 Q. I apologize.

6 A. No, that's fine.

7 Q. Okay. And so what -- I think you said something
8 about biomes, and you testified a little bit ago about
9 biomes.

10 A. That's correct.

11 Q. These are specific data entries from those biomes?

12 A. That's correct. This specifically --

13 Q. I'm sorry.

14 A. Go ahead.

15 Q. So this is information that's stored in those
16 other databases on the phone that wouldn't normally be user
17 accessible, is that correct?

18 A. That's correct.

19 Q. All right. And specifically what are those data
20 points that you -- are in that report? Excuse me.

21 A. So these three events between that time frame that
22 I mentioned a second ago, are their device status plugins.
23 It shows when the phone is plugged in to charge, and removed
24 from charge.

25 Q. Okay. And you said, "Plugged in." Does -- does

1 this phone necessarily have to be plugged in to charge?

2 A. It does not. This is an Apple iPhone 14 Pro Max,
3 it has charging capabilities from essentially from the back
4 of the device.

5 Q. And it could wirelessly charge, right?

6 A. It -- it can, yes.

7 Q. And would -- would -- if it's charging wirelessly,
8 would the phone record it still being plugged in as charging?

9 A. Absolutely.

10 Q. Even though it's not physically on the cable?

11 A. That's right. You don't have to use the -- a
12 lightning cable. It -- you could put it on the charger, and
13 it will -- it will record as if it's charging.

14 Q. And what were the times of those entries, again?
15 I apologize.

16 A. The first one was May the 7th, at 12:55:20 a.m.,
17 the second is May the 7th, at 1:11:34 a.m., and the third is
18 May the 7th, at 1:11:35 a.m.

19 MR. CONRAD: Okay. And at this time, State would move
20 to enter the Exhibit 33 in to evidence.

21 MR. SWERLING: No objection.

22 THE COURT: Without objection number 30 in to evidence
23 for the State.

24 (State's Exhibit 33 was admitted in to evidence.)

25 MR. CONRAD: I'm going to publish this.

1 THE WITNESS: I'm going to step down, Judge.

2 MR. CONRAD: You can step back down.

3 BY MR. CONRAD:

4 Q. Did your exercise this morning?

5 A. Yes.

6 Q. And can you read that from there?

7 A. Yes.

8 Q. Okay. And so what that shows is a similar setup

9 to the call logs, correct?

10 A. That's correct.

11 Q. We have callings, and we have information stored

12 in the separate columns, correct?

13 A. That's correct.

14 Q. And so starting with the left-hand side, we see an

15 entry that says "One." Correct?

16 A. That's correct.

17 Q. And it says "Events."

18 A. That's correct.

19 Q. To the right of that, correct?

20 A. Yes.

21 Q. And that's -- what does that say?

22 A. "Device events" or "the plugged in?" I'm sorry.

23 Q. Yep. It's plugged in. And what does that mean to

24 -- what does your expert opinion -- what that means?

25 A. The device began charging.

1 Q. Okay. And that could have been either physically
2 a cable plugged in, or how else?

3 A. Wirelessly.

4 Q. Okay.

5 A. Or through the back of -- essentially the back of
6 the device.

7 Q. What time did that event occur on this device?

8 A. So again, it was -- go up to the first -- first
9 table, not the second one. I'm sorry.

10 Q. I'm sorry.

11 A. Yeah, yes.

12 Q. Is this -- does this contain the same information?

13 A. Yes, that's the same information that's just
14 reviewing the tags that were saved by the reviewer party.

15 Q. So -- so we don't confuse anyone. There's
16 two tables on page two initial report, and they both contain
17 identical information.

18 A. Right.

19 Q. Different format.

20 A. And when you see "Created over there" that's just
21 where the investigator created -- it was created the tag.

22 Q. Okay. All right. So let's look at the -- let's
23 start that over.

24 A. Okay.

25 Q. Let's look at event 1. Under "Device events" and

1 what time does that occur?

2 A. So line one, May the 7, 2023, 12:55:20 a.m., the
3 device status was plugged in.

4 Q. Okay.

5 A. It was captured -- and you want me to keep going?

6 Q. Keep going.

7 A. All right. So it was captured in the biomes, and
8 it says, "Deleted." Yes. So on any mobile device, it --
9 when it's deleted, it's marked for deletion. That doesn't
10 mean that it actually deletes it. Again, if the device --
11 depending on how often it's used, again, it's -- it says,
12 "Okay, this is not important." I can delete it when I'm
13 ready to, and once it gets to the end of the conveyor belt,
14 then it drops off once again, you got new activities coming
15 in -- into the phone. So again, it's marked for deletion,
16 it's not deleted.

17 Q. All right. And let's talk about the second entry
18 we see there.

19 A. So May the 7, 2023, 1:11:34 a.m., device status
20 unplugged. Again, this is in the biome file, and it was
21 marked for deletion.

22 Q. What does "Unplugged" mean?

23 A. Unplugged means it was either unplugged from a
24 cable, or removed from the wireless charger.

25 Q. Okay. All right. And we're going to pull up --

1 you can take -- go ahead, and grab a seat again. We're going
2 to pull up what's been entered in to evidence, and that is
3 Exhibit -- bear with us one second. We'll find it. This is
4 Investigator Durkin's pictures from yesterday. The crime
5 scene -- okay. State's Exhibit 18. And this is in evidence.
6 Let's go to picture -- I believe it was 706, and we'll verify
7 that. Is that -- is that in fact 706?

8 All right. This is picture 716 on State's Exhibit 18.
9 And first of all, did you respond to the crime scene that
10 night of --?

11 A. I did not.

12 Q. Okay. But can you just describe for the jury
13 what's sitting in that seat that's readily identifiable by
14 you?

15 A. See the iPhone.

16 Q. Okay. Okay. All right. And I -- you can see on
17 the right, and this is a picture which -- what number?

18 THE CLERK: 708.

19 BY MR. CONRAD:

20 Q. This is picture 708 on State's Exhibit 18. And we
21 see in the middle of a picture a column of the center column
22 of -- of the BMW, correct?

23 A. Correct.

24 Q. And we see above that looks like some sort of --
25 of stand. Can you identify that from your training

1 experience?

2 A. From my training experience, it appears to be a --
3 a cell phone holding stand that has charging capabilities.

4 Q. Okay. And directly to the right of where that
5 stand is, what do you see?

6 A. Airbag.

7 Q. Okay. And again, in your opinion, would it be
8 possible that if that phone was sitting in that charger
9 charging when that airbag went off, and the airbag made
10 contact with the charger, and knocked it off of that charger.
11 What would the device potentially record that event as?

12 A. It would record it as unplugged.

13 Q. And -- and do you recall -- and I can get the
14 report back on when you see that -- that device event showing
15 it unplugged?

16 A. 1:11:34.

17 Q. Okay. All right. Okay. And you -- you
18 previously testified about this, but these phones store all
19 sorts of information, do they not?

20 A. That's correct.

21 Q. Including text?

22 A. That's correct.

23 Q. I am going to show you what the -- all right.
24 This is State's Exhibit 29 -- show you this. Do you
25 recognize that, sir?

1 A. I do.

2 Q. What is that?

3 A. This is some text message content between --

4 Q. First of all, where did that come from? An
5 extraction you performed?

6 A. Yes, it did. From Mr. Ackerman's device.

7 Q. The Defendant's phone?

8 A. That's correct.

9 Q. All right. And you found that information in the
10 text that you pulled off Mr. Ackerman's phone?

11 A. That's correct.

12 MR. CONRAD: All right. At this time, State moves to
13 enter Exhibit 29 in evidence.

14 THE COURT: Subject to what's already been placed on
15 the record 29 in to evidence for the State.

16 (State's Exhibit 29 was admitted in to evidence.)

17 MR. CONRAD: And we're going to publish this.

18 THE WITNESS: I'm going to step down.

19 BY MR. CONRAD:

20 Q. And first of all, before we talk about any
21 content, let's just discuss the format of what we're seeing
22 here so the jury understands. So you can step back down. Do
23 we need to zoom a little bit there or -- or can you read
24 that?

25 A. I think I can read it.

1 Q. Okay. I can zoom a little bit. Can you still
2 read that?

3 A. I can.

4 Q. All right. Let's just talk about format first of
5 all. So the jury understands what they're saying. We see a
6 green box in front of us, correct?

7 A. That's correct.

8 Q. And it -- we see says "From" and a phone number?

9 A. That's correct.

10 Q. And what else does it say there?

11 A. It says "William Ackerman the owner."

12 Q. Okay. And so this is a text sent from the
13 Defendant's phone, correct?

14 A. That's correct.

15 Q. And it's sent to who?

16 A. An (864) 554-1589. The contact is saved as a
17 Danny B.

18 Q. Okay. All right. And then there's the content of
19 the text below that, and we'll read -- we'll get to that in a
20 second. But below that, we see in the bottom-right corner
21 date and time. What does that say?

22 A. It says "April the 29, 2023 at 9:59:29 a.m."

23 Q. All right. So this text would've been sent from
24 Bud's phone a little more than a week before the incident
25 that occurred at Avid and Sawgrass, is that correct?

1 A. That's correct.

2 Q. All right. Can you read that text?

3 A. "What the hell is Davis thinking, man? I mean,
4 what the hell Danny."

5 Q. Let's go down to the next entry, and this one is
6 blue. And generally speaking on these texts, does a green
7 and blue signify anything on these reports?

8 A. Yes. Whenever -- it just depends if it's an
9 iMessage or not.

10 Q. Okay. And iMessage is what? Let's make sure we
11 understand.

12 A. So you have SMS, which is originally sent an -- a
13 green. If you're sending, like, the first time to an
14 individual, or if you haven't sent one in a while, it doesn't
15 recognize whether they have an iPhone or not. And you can
16 have your phone set up on an Apple device to receive
17 iMessages. And the blue would indicate the iMessage.
18 Essentially if you've ever text anyone that has an Android
19 device from your Apple, you'll see it's green, but if you
20 text another iPhone, and they have iMessages set up, it's
21 blue.

22 Q. Okay. All right. And so this text was from who?

23 A. That is from the 5541589 Danny B number.

24 Q. It was to who?

25 A. To (864) 554-0292. And then it has a -- a number

1 of some numbers and symbols.

2 Q. Well first of all, why -- why do we see those
3 numbers as symbols here?

4 A. That could be how either Danny has entered him, or
5 it could have been showing him as the owner, but he doesn't
6 have it plugged into iMessage.

7 Q. Okay. But is that an incoming text to Bud
8 Ackerman's phone from Meredith?

9 A. It is.

10 Q. Okay. And then date and time, we see in the
11 bottom-right corner?

12 A. Correct. May the 29, 2023, 10:10:18 a.m.

13 Q. All right. And then it says -- it says what?

14 A. "I have no clue what you're talking about. What
15 did he do?"

16 Q. All right. We'll go to page two of this report.
17 All right. And can you read that.

18 THE COURT: Lieutenant Womack, I think you said,
19 "May 29th."

20 THE WITNESS: It should have been April 29th. I'm
21 sorry, my apologies.

22 THE COURT: Just wanted to make sure.

23 BY MR. CONRAD:

24 Q. Yeah. Okay. So this is another text on page two
25 at the top. It's from who?

1 A. It's from Mr. Ackerman.

2 Q. Okay. To who?

3 A. Danny B.

4 Q. All right. And what does that text say?

5 A. "He has been expletive Meredith." I'll say
6 expletive rather than using the word.

7 Q. For the record. It doesn't say actually
8 expletive?

9 A. It -- it does not. That's me cleaning it up.

10 Q. Okay.

11 THE COURT: Go ahead and just spell -- spell it if you
12 don't want to actually say it, Lieutenant Womack.

13 THE WITNESS: F-U-C-K-I-N-G.

14 THE COURT: Okay.

15 BY MR. CONRAD:

16 Q. Okay. And what date and time did that occur?

17 A. That is April 29, 2023, 10:10:48 a.m.

18 Q. Okay. And we'll read the next one from Danny B
19 back to Bud. What does that say?

20 A. "That's news to me. I don't keep up with anyone's
21 business."

22 Q. What date and time did that text?

23 A. April 29, 2023, at 10:13:58 a.m.

24 Q. Okay. Let's move on to the next text. Who is
25 that from?

1 A. That is from Mr. Ackerman to Danny B.

2 Q. What does that text say?

3 A. "I had my suspicions, but it was confirmed by her.
4 I can't believe he would do that to me. I mean, damn I know
5 him my whole life."

6 Q. What date and time did that occur?

7 A. April the 29, 2023, 10:16:28 a.m.

8 Q. All right. And what's the next text entry, what
9 does that say?

10 A. It's from --

11 Q. Who's it from, and who is it?

12 A. From Danny B to the owner Mr. Ackerman. "I don't
13 know what to tell you Bud." April 29, 2023, 10:40:13 a.m.

14 Q. Okay. One last time -- text. All right. And
15 what is -- who is this from, and who is it to?

16 A. This is from Mr. Ackerman to Danny B, "Damn, don't
17 know either. It is just expletive." F-U-C-K-E-D up.
18 April 29th, 10:43:05 a.m.

19 Q. And all these phones contain a lot of texts, did
20 they not?

21 A. That's correct.

22 Q. And did you review the lot of texts?

23 A. I did.

24 Q. All right. And you've marked this as significant,
25 correct? To your investigation?

1 A. Yes. Yes.

2 Q. And that's why this report was saved, correct?

3 A. That's correct.

4 Q. And I'm going to show you this -- this is going to
5 be marked for ID only to see if you recognize this. This is
6 State's 32, ID only. And do you recognize that?

7 A. I do.

8 Q. And what is that? Without reading any content,
9 just tell us what it is.

10 A. It's a -- a report from -- or between
11 two individuals text message.

12 Q. And without reading any text messages, who is it?
13 Who are they? What's the -- who is the conversation between?

14 A. The Defendant and Meredith.

15 Q. Okay. And do you recall whose phone that extra --
16 that information was put?

17 A. I believe it was from Meredith.

18 Q. Okay. All right.

19 A. Yes, it was from Meredith's.

20 Q. Okay. And -- we'll -- we'll leave that at that.

21 A. Okay.

22 MR. CONRAD: One moment. Beg the Court's indulgence?

23 THE COURT: Sure. Take your time.

24 MR. CONRAD: All right. Nothing further from the
25 State.

1 THE COURT: Okay. Mr. Swerling.

2 MR. SWERLING: Judge, can we take a restroom break?

3 THE COURT: Okay. Okay. Let's take a short break,
4 ladies and gentlemen. Go back to the jury room, and we'll
5 get you back out in a few minutes. Okay.

6 (Jury exits room at 11:54 a.m.)

7 (Off the record from 11:54 to 12:12 a.m.)

8 THE COURT: All right. Let the record reflect the jury
9 is back in.

10 Ladies and gentlemen, what the plan is, is that the
11 lawyers will finish with Lieutenant Womack, and then we will
12 take a lunch break then. Okay. So just kind of give you an
13 idea.

14 All right. Mr. Swerling, in your cross-examination.

15 CROSS-EXAMINATION

16 BY MR. SWERLING:

17 Q. Okay. I'm going to be very brief.

18 A. Yes, sir.

19 Q. Do you have a copy of Exhibit 34 with you?

20 A. I may.

21 Q. Davis -- the Davis call log.

22 A. I think they had.

23 Q. I just want to get an explanation. First of all,
24 the time stamps, these are what happens -- the -- the
25 computer software program that you use turns the UTC time

1 into local time?

2 A. That's correct.

3 Q. Based on whatever that program?

4 A. That's correct, yes, sir.

5 Q. And so it always -- it'll say, UTC-4, which means
6 they're subtracting four from the UTC time, which brings it
7 to Eastern Standard Time?

8 A. That's correct.

9 Q. Okay. The other thing is, you had said that
10 sometimes it's a duplicate. What there is a duplicate?
11 You're running two different programs.

12 A. Under Meredith's device. Yes.

13 Q. Yeah. What about now here under the date is call
14 log which is 34?

15 A. Uh-huh.

16 Q. If you go to entry 10 -- number 10.

17 A. Uh-huh.

18 Q. There's a call, it's noted here from Mr. McClendon
19 to Bud Ackerman, correct?

20 A. Is that the 12:51 when --?

21 Q. Yeah, 12:51.

22 A. Yes, sir.

23 Q. Okay. So there's one entry there at paragraph --
24 I mean -- number 10.

25 A. Uh-huh.

1 Q. At 11 -- entry 11 is another entry at the same
2 time, correct?

3 A. One is 12:51.

4 A. That's correct. And one -- and the other is
5 12:51:06.

6 Q. Okay. But it's the same time?

7 A. That's correct.

8 Q. Okay. And what about the entry 12?

9 A. Entry 12 is an outgoing to Mr. Ackerman
10 12:51:15 a.m.

11 Q. So is that two separate calls, or one call that's
12 got three entries?

13 A. So what it shows is there's an outgoing one way.
14 To explain it would be he dialed it, he -- and he changed his
15 mind not to, and in the end another could be that it went
16 directly to a voicemail. That could -- there's -- there's a
17 few possibilities of that.

18 Q. Okay. But that just shows three entries here.

19 A. Correct.

20 Q. For that time, that's what I'm talking about.

21 A. Mr. McClendon's device logged the entries. That's
22 correct.

23 Q. And so that was at 12:51, and it looks like it was
24 -- there was a discussion on the phone. It lasted
25 two minutes and 18 seconds?

1 A. At line 12. Yes, sir.

2 Q. And that was from Davis McClendon to Bud Ackerman
3 at 12:51?

4 A. That is correct.

5 Q. Correct. And then, if you drop down to 14, entry
6 14 it appears that Mr. McClendon called Bud Ackerman again on
7 -- at 12:59?

8 A. That's correct.

9 Q. And that call lasted -- apparently was answered,
10 and it was a discussion for one minute and six seconds?

11 A. That's correct.

12 Q. So -- so the other one, there's some explanation.
13 Normally you're going to find two, you're going to have a
14 duplicate.

15 A. Well, it -- it depends on the extraction. So the
16 same software, hardware and software was not used to extract,
17 for instance, like it did Meredith's phone as it did, your
18 client as well as Mr. McClendon. When I extracted her
19 device, I used the UFED 4PC. Graykey did not support the
20 consent mode because of the software version of that time.
21 And then, with your client as well as Mr. McClendon, I used
22 the Graykey at that point, but -- and on hers, again, I could
23 choose which extractions I do, whether logical, physical,
24 advanced logical, and I'd usually do both for redundancy, and
25 pull in as much data as possible.

1 Q. But I -- I guess my -- my point is that there are
2 -- when -- when anybody looks at this log -- any of these
3 logs, it -- it's the same time, it's not another call, it's
4 just duplicated by the system.

5 A. In -- in -- in her case -- yes, in this case here,
6 one explanation again would be, you know, he -- he called it,
7 and he changed mind or, you know, a lot of folks refer to it
8 as a "Butt dial" you don't mean to, but they sometimes
9 retrieve the call anyhow, so...

10 Q. Well, if it's exactly the same time, it has --
11 would have to be a duplicate.

12 A. It was a -- it was a five-second difference from
13 what I -- what I'm observing.

14 Q. So you can't say whether or not number 10 is one
15 call to Bud Ackerman from Davis McClendon, or number 11 is a
16 duplicate call, and number 12 is a duty call, or maybe
17 another call?

18 A. I mean -- it's -- it's possible, but yes, it -- it
19 logged in as a call, yes.

20 MR. SWERLING: Okay. Very -- that's all I have.

21 THE COURT: Okay. All right. Any re-direct,
22 Mr. Conrad?

23 MR. CONRAD: Just briefly.

24 RE-DIRECT EXAMINATION

25 BY MR. CONRAD:

1 Q. Can you -- have what you (inaudible) that's
2 Exhibit 34 again, we're just going to let the jury see this
3 real quick.

4 A. I'll step down.

5 Q. Sure. Mr. Swerling was asking you about entry 10,
6 correct?

7 A. Correct.

8 Q. And at that entry we see, again, this is Davis
9 call log, correct?

10 A. That's correct.

11 Q. This is a call from Davis to Bud that started at
12 12:51, correct?

13 A. That's correct.

14 Q. It says, "A duration of five seconds?"

15 A. That's correct.

16 Q. And when you see a duration of five seconds, what
17 would that anomaly indicate to you when you're reviewing
18 these records?

19 A. Either again -- it could explain an -- a butt dial
20 if you will, or decide not to one of the two.

21 Q. Could it be a phone -- a call that went to
22 voicemail?

23 A. It's possible, but typically the -- it's usually a
24 little longer on the duration. Yeah, also if you see the
25 answer to the unknown, it doesn't -- it -- it wasn't

1 connected long enough to know whether Mr. Ackerman received
2 it or not.

3 Q. Okay. So from this record, you can't tell whether
4 that call actually went through to Bud's phone?

5 A. That's correct.

6 Q. Okay. Looking at entry 11 and 12 again, which
7 Mr. Swerling just asked you about, this is at 12, number 11
8 is at 12:51:06, correct?

9 A. That's correct.

10 Q. So that's actually six seconds after entry 10?

11 A. That's correct.

12 Q. And would you interpret that with this -- this
13 information is potentially two attempted calls, or one
14 attempted call, or can you make that --?

15 MR. SWERLING: Your Honor, unless he has -- I mean,
16 knowledge of that found -- foundation I would object to just
17 --

18 THE COURT: Well, based -- based upon the -- the work
19 that he did, and the report information, I think he's able to
20 render an opinion if he can.

21 THE WITNESS: It -- it's hard to say. Again, it -- it
22 could be explained by being ignored. If -- if Mr. Ackerman
23 was to ignore the -- the -- the call -- I mean -- that's --
24 there's several explanations that it could be.

25 BY MR. CONRAD:

1 Q. But entry 12, we see an outgoing call -- excuse
2 me, to Bud that was answered, correct?

3 A. Correct. For two minutes and 18 seconds. Yes.

4 Q. And that was at what time again for entry 12?

5 A. That was at 12:51:15 a.m.

6 Q. And then I just want to highlight this on entry --
7 entry 17, I believe.

8 A. Uh-huh.

9 Q. What is that? Is that incoming or outgoing call?

10 A. That is --

11 Q. I'm sorry, not 17. I am looking at entry 15. Is
12 that an incoming call or outgoing?

13 A. That is an incoming call.

14 Q. And again, we don't see the name, but we see a
15 number, correct?

16 A. Correct.

17 Q. You testified previously about why that might be?

18 A. That's correct.

19 Q. But that's from who to Davis phone?

20 A. The number associated with Meredith.

21 Q. That outgoing call, that lasted for how long?

22 A. Five minutes 27 seconds.

23 Q. And then starting at 1:09 a.m. Entry 16, we see an
24 incoming or outgoing call?

25 A. Incoming.

1 Q. And again, we don't see the name, but what number?

2 A. 0292 is the last four associated with Mr.

3 Ackerman.

4 Q. And that call lasted how long?

5 A. Three minutes and 28 seconds.

6 MR. CONRAD: And that's all I have. Thanks.

7 THE COURT: Anything in re-cross, Mr. Swerling?

8 RE-CROSS-EXAMINATION

9 BY MR. SWERLING:

10 Q. Go back if you can to -- it would be entry 14.

11 THE COURT: You want back on the screen?

12 MR. SWERLING: No. I mean -- he could be -- he could
13 sit up next.

14 THE COURT: Okay. All right.

15 MR. SWERLING: I don't want -- I don't want to tire him
16 out.

17 BY MR. SWERLING:

18 Q. But there's another call from Davis McClendon to
19 Mr. Ackerman at 12:59. That's a separate call.

20 A. I'm sorry, which line again? I'm sorry.

21 Q. That would be 14.

22 A. That is an outgoing call to a number associated
23 with Mr. Ackerman.

24 Q. That's two calls from between 12:51, and then
25 12:59. Two separate calls?

1 A. That is correct.

2 Q. Okay. And this one, the -- they spoke for one
3 minute and six seconds?

4 A. That's correct.

5 MR. SWERLING: Okay. That's all.

6 THE COURT: You step down. One moment.

7 Okay. Ladies and gentlemen we're going to take a lunch
8 break, be back at 1:45. Go to a local restaurant, like I
9 said yesterday, make sure your badge is -- is visible. Try
10 to stay dry, and we'll see you back at 1:45. Have a good
11 lunch.

12 (Off the record from 12:24 to 2:03 p.m.)

13 THE COURT: Okay. We're back on the record. And we
14 did have a little conference back in chambers. Is there
15 anything we need to put on the record now?

16 MR. SWERLING: There's just some of the objections I
17 was going to note. Move in limine, and of course under the
18 rules since she's the next witness, I hope that the -- any
19 rulings would just carry out through my objection -- would
20 carry through the testimony. I -- I object to Ms. Hainey
21 testifying about -- anything about Mr. Ackerman's sobriety,
22 or anything of that nature is putting his character an issue
23 during the marriage, or that night.

24 THE COURT: Okay.

25 MR. SWERLING: And so I'd like that -- to put on the

1 record. I just don't think that's probative. And I do think
2 under 403 would outweigh the prejudicial -- will effect
3 without outweighing the probative value.

4 THE COURT: Okay.

5 MR. SWERLING: And --

6 THE COURT: And -- and you -- you're protected on the
7 record based upon our conversation in chambers, I think we
8 pretty much had the understanding at least, that will not get
9 into anything related to sobriety during the marriage. But
10 that I felt like it would be admissible to come in, anything
11 about sobriety, or the lack thereof that night -- the night
12 in question so...

13 MR. MEADORS: We understand. Yes, sir.

14 THE COURT: Okay. All right. So but you so noted on
15 the -- on the record.

16 MR. SWERLING: Yeah, that's -- that's all I wanted to
17 do. I think that was the only other thing that was
18 outstanding.

19 THE COURT: Now, I do have Exhibit 32, some text
20 messages between -- you know, seems like we're on first-name
21 basis here, Meredith and Bud, but I think now the State has
22 decided not to put in to evidence anything except that night.

23 MR. MEADORS: At this point that day. Yes.

24 THE COURT: And -- and certainly things can change,
25 doors can get opened up, and -- but so I'm just going to hand

1 that back. And I think as far as text messages between
2 Meredith and Bud that night, Mr. Swerling, you do not have an
3 objection to that.

4 MR. SWERLING: Not that night, right?

5 THE COURT: The night in question.

6 MR. SWERLING: Okay. Yeah, we --

7 THE COURT: Okay. All right. Very good. Anything
8 else?

9 MR. SWERLING: -- we'll air that down.

10 THE COURT: For the record.

11 MR. SWERLING: I don't think there's anything else.

12 THE COURT: Okay. Ready for the jury, State?

13 MR. MEADORS: Yes, sir.

14 THE COURT: Defense?

15 MR. SWERLING: Yes.

16 THE COURT: All right.

17 MR. SWERLING: Just to state Rule 403 properly -- the
18 prejudicial probative, I'm sorry.

19 THE COURT: 403 probative value, unfair prejudice.

20 MR. SWERLING: Right.

21 THE COURT: You're basing your objection in addition to
22 other -- basis 403.

23 MR. SWERLING: Right. Probative value substantially
24 outweighed by the prejudicial.

25 THE COURT: Got you. So noted.

1 MR. SWERLING: Keep trying to -- how -- or another keep
2 getting that fixed.

3 (Jury enters room at 2:07 a.m.)

4 THE COURT: Okay. Let the record reflect the jury is
5 back in.

6 Ladies and gentlemen, I think the clerk talked with you
7 just a little while ago, and it certainly appears --
8 especially since we're more than likely going to start later
9 tomorrow, that this case is going to go into next week. And
10 I think maybe some of you had -- had some concerns about over
11 the weekend, people approaching you wanting to ask you, how's
12 the case going? Whatever questions may be, here's how you
13 handle it. You immediately tell them, the judge has told me
14 that nobody on the jury can have conversations with anybody,
15 spouse, children, neighbors, friends, whoever. And -- and
16 put it off on me. Okay. And on -- just tell them I can't do
17 it. You know, after the case is over with, then certainly
18 you can have those kind of conversations, but while this case
19 is going on, you can't. So tell them, the judge has told me,
20 I'm sorry, but I just can't talk to you about the case, and
21 that's how -- that's how you handle it. Okay. And then we
22 will address two jurors in the -- in the back, as far as
23 tomorrow, and you, ma'am, but we'll just take care of that at
24 the end of the day, okay? All right.

25 All right. Mr. Meadors, you ready?

1 May it please, your Honor?

2 THE COURT: Yes, sir.

3 MR. MEADORS: State of South Carolina would now call
4 Meredith Hainey.

5 THE COURT: Come around please, ma'am.

6 MEREDITH HAINEY,

7 being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MEADORS:

10 Q. Good afternoon. Are you nervous?

11 A. Yes.

12 Q. You're going to have to speak up and speak into
13 this so.

14 A. Okay.

15 THE COURT: At any time you need to take a break, all
16 you have to do is ask. Okay.

17 THE WITNESS: Okay. Thank you.

18 BY MR. MEADORS:

19 Q. You wish you didn't even have to be here today,
20 don't you?

21 A. Yes, very much so.

22 Q. As I do with every witness I've ever had, I want
23 you to tell the ladies and gentleman of this jury about
24 Meredith Hainey. I want you -- your background, where you're
25 from, your schooling, and what you did -- what you're doing

1 in life as an occupation, please.

2 A. All right. So I'm from Anderson, South Carolina.
3 I was born and raised there. I graduated from Hanna in 2002,
4 and I went to Lander, and got an education degree, and I got
5 my masters in professional Christian counseling from
6 Liberty University. And I am a teacher. I've been teaching
7 for 17 years.

8 Q. Where are some of the different schools you've
9 taught?

10 A. I've taught in Greenwood at Pinecrest and
11 Springfield, and I've taught in McCormick, and I taught
12 middle school math in '96.

13 Q. And were you teaching a certain grade?

14 A. Oh, yes. I taught kindergarten, first grade, and
15 I've taught reading. Uh-huh.

16 Q. And now you're teaching in another county?

17 A. Uh-huh.

18 Q. And you'll have to say, "Yes," I'm sorry, just for
19 --

20 A. Yes, yes. I'm teaching in another county, yes.

21 Q. But you're born and raised where? Anderson?

22 A. Anderson. Yeah.

23 Q. And are you -- are you -- are some of your family
24 in the courtroom?

25 A. They're all here. Every one of them.

1 Q. Some in the front, some in the back.

2 A. Uh-huh.

3 Q. Here in support of you?

4 A. Yes. Yes.

5 Q. When did you meet the Defendant,

6 William Bud Ackerman?

7 A. I met Bud in 2006.

8 Q. And do you remember where you met?

9 A. I met him out one night at Jeff's.

10 Q. Is that a bar?

11 A. This a bar and grille. Yeah.

12 Q. Where?

13 A. In Greenwood.

14 Q. Greenwood?

15 A. Uh-huh.

16 Q. As a result of that, did you all start dating?

17 A. We did.

18 Q. How long did you all date?

19 A. We dated six years.

20 Q. And after that did you all get married?

21 A. We did.

22 Q. You and William Bud Ackerman?

23 A. Yes.

24 Q. Where did you get married?

25 A. We got married in Anderson.

1 Q. And after that, where did you reside?

2 A. In Greenwood.

3 Q. And where -- were you -- what were you doing then
4 as an occupation?

5 A. I was teaching in McCormick -- teaching reading in
6 McCormick.

7 Q. As a result of that marriage, did you have
8 three children?

9 A. We did.

10 Q. What are their ages?

11 A. They're 11, nine, and seven.

12 Q. As of last met -- excuse me, May of 2022 -- in
13 May of 2022, how long had you and William Bud Ackerman been
14 married?

15 A. We had been married 10 years.

16 Q. In May of 2022, did you all separate?

17 A. We did.

18 Q. Okay. Things just weren't going well?

19 A. They were not.

20 Q. And did you -- and I meant to ask this about where
21 were you all living in Greenwood in May of 2022 -- you and
22 Bud -- Defendant Bud Ackerman?

23 A. In Hunters Creek Tally Ho.

24 Q. Hunters Creek subdivision?

25 A. Uh-huh. Yes.

1 Q. And what was your address? Tally Ho is in Hunters
2 Creek?

3 A. Yes.

4 Q. And what was your address?

5 A. 115 Tally Ho Drive.

6 Q. How long had you all been living in Tally Ho?

7 A. Probably five years.

8 Q. You familiar with that subdivision?

9 A. Yeah.

10 Q. Was the Defendant familiar with that subdivision?

11 A. Yeah.

12 Q. And you lived there how many years?

13 A. Just about five.

14 Q. Okay. Now the intersection of Avid and Sawgrass
15 down there, were you familiar with that?

16 A. Yes, sir.

17 Q. Was the Defendant familiar with that?

18 A. Yes, sir.

19 Q. And was that an area that was just known in the
20 community, is that fair to say?

21 A. Yeah, we just rode the golf cart around, and we
22 would go down there so, yeah.

23 Q. And did you all separate sometime in May of 2022?

24 A. Yes.

25 Q. Okay. Were divorce proceedings begun?

1 A. Yes.

2 Q. Where did you stay -- or where were you residing
3 after that?

4 A. I stayed at Tally Ho.

5 Q. And where did the Defendant move to?

6 A. He moved to his parents' house.

7 Q. Do you know that address?

8 A. 1714 Old Abbeville Highway.

9 Q. And without going into the details, you began
10 divorce proceeds?

11 A. Yes.

12 Q. Okay. Both had lawyers?

13 A. Yes. Legally separated.

14 Q. You (inaudible)?

15 A. I said, "Legally separated in May." Yes.

16 Q. Was that separation in May of 2022, did it have
17 anything to do with Davis McClendon?

18 A. Absolutely not.

19 Q. Say absolutely not.

20 A. Absolutely not, no.

21 Q. When did you meet Davis McClendon?

22 A. I met Davis on my birthday December 23rd.

23 Q. And where did you meet Davis McClendon?

24 A. At Key West.

25 Q. And -- and we've heard talk -- well, we had

1 Ms. Poore actually in here, the owner of Key West that's a
2 bar?

3 A. Uh-huh. Yes.

4 Q. And did they serve food? I forgot to ask her.

5 A. No.

6 Q. Okay. So you met Davis McClendon at what -- what
7 time period of December? Do you remember of 2022?

8 A. December 23rd.

9 Q. Okay. Your birthday.

10 A. Uh-huh.

11 Q. As a result of that, did you all begin a
12 relationship -- have a relationship?

13 A. Yes.

14 Q. You started dating?

15 A. Yes.

16 Q. Now, did the Defendant at that time, to your
17 knowledge, know about that?

18 A. No.

19 Q. And when you all were in your relationship, did
20 you go out much -- in or any in Greenwood?

21 A. No.

22 Q. Okay. And was that on -- by choice?

23 A. We chose not to out of respect, yes.

24 Q. And would -- if you went out with Davis McClendon
25 where -- if you went out and eat, or something, would you --

1 what would you do?

2 A. We would go out of town.

3 Q. Did there come a point in the spring of 2023,
4 where you're aware of that the Defendant became aware of your
5 relationship with Davis McClendon?

6 A. Yes.

7 Q. Okay. Can you tell the ladies and gentlemen when
8 that was to the best of your recollection?

9 A. He found out about Davis on April 29th, I believe.

10 Q. And did you have a conversation with Bud Ackerman
11 either then, or around that time about that?

12 A. I did. Through text message. Yes.

13 Q. Okay. And -- and -- and did you confirm that
14 relationship?

15 A. I did.

16 Q. Okay. So based on those text messages, what --
17 what was his response?

18 A. He was not happy. He was very upset. He was mad.
19 He was -- he was hurt, but he was very mad.

20 Q. And do you know a fellow named Daniel or
21 Danny Hayden?

22 A. Yes.

23 Q. What -- what relationship do he and you have, or
24 he and the Defendant have; did you know?

25 A. Danny and Bud were friends, they rode Jeeps

1 together. Uh-huh.

2 Q. So they were friends?

3 A. Uh-huh. Yes, sir.

4 Q. Okay. Do you happen to know if Danny Hayden knew
5 Davis McClendon?

6 A. Yes.

7 Q. So -- so Danny knew Bud?

8 A. Yes. Danny and Davis were good friends.

9 Q. Well, man, now may be the time to ask you, I don't
10 know. Did Davis and Bud know each other?

11 A. They knew each other. I mean -- they were both
12 from Greenwood.

13 Q. But did -- prior to your relationship starting
14 with Davis, did they -- were they -- did they have a close
15 relationship?

16 A. No.

17 Q. Okay.

18 A. No, no. I mean -- they would say, "Hey," in
19 public, but there was no -- they didn't hang out together.
20 They didn't -- they weren't in the same social scene, that
21 kind of thing.

22 Q. Who was older?

23 A. Davis.

24 Q. Okay. And then, do you know where Davis was
25 working?

1 A. He was working at Wesley Commons.

2 Q. Where is that?

3 A. I'm not really good with directions, but it's a
4 retirement home here in Greenwood.

5 Q. So he worked at the retirement home?

6 A. Uh-huh.

7 Q. What was his job?

8 A. He was part of bringing people in. He would talk
9 to them, and try to bring them in, and I guess kind of sell
10 the homes to them.

11 Q. I'm just trying to make sure I phrase this
12 correctly.

13 A. Okay.

14 Q. Was there a -- was a final hearing scheduled in
15 your divorce?

16 A. Yes.

17 Q. Okay. When was that?

18 A. That was scheduled for May 25th. It was either
19 May 25th, or May 31st.

20 Q. Just a few weeks after this incident?

21 A. Yes.

22 Q. Okay. And during the legal separation period,
23 were -- were -- were both of you and Bud Ackerman still
24 seeing the children? Was there arrangement there to see --

25 A. Yes.

1 Q. Okay.

2 A. Uh-huh.

3 Q. Were -- you decided to go out in Greenwood, you
4 and Davis McClendon?

5 THE COURT: Need to verbally respond your answer.

6 THE WITNESS: Yes.

7 BY MR. MEADORS:

8 Q. Well, on May 6th, did you all go to Break on the
9 Lake?

10 A. Yes, yes, yes.

11 Q. I'm sorry. I would -- I'm -- I'm trying to be
12 very careful on my question.

13 A. Yes.

14 Q. And --

15 A. We did.

16 Q. Had you been out publicly in Greenwood before?

17 A. We had gone the night before to -- I think it was
18 the Schoolhouse, but that was maybe in Abbeville. We had
19 been to the Port Grill also that night -- the night before,
20 so...

21 Q. What is the Port Grill?

22 A. It's also a bar on the lake.

23 Q. So your testimony is that the Defendant had
24 learned about your relationship approximately April 29th?

25 A. Uh-huh. Yes.

1 Q. About a week before this?

2 A. Yes.

3 Q. And did the Defendant know, based on your
4 knowledge, whether or not you were going to be at Break on
5 the Lake on May 6 of 2023?

6 A. He did not know that until he FaceTimed, and saw
7 that I was there.

8 Q. Okay. So that's what I couldn't figure out. So
9 FaceTiming, he could tell where you were?

10 A. Yes.

11 Q. And -- and did he ask you if you were there?

12 A. He -- I don't recall him asking if we were there
13 specifically. I tried to tell him that we were out of town,
14 but he could tell I think, in the background of the FaceTime
15 call.

16 Q. Okay. And why did you tell him you all were out
17 of town?

18 A. Just to keep him at bay, and make him not come
19 looking for us, I guess.

20 Q. Did you go to Break on the Lake?

21 A. Yes.

22 MR. MEADORS: Your Honor, I could not do this without
23 the help of Danielle (inaudible) if she could assist me at
24 this point with your Honor's permission.

25 BY MR. MEADORS:

1 Q. Have you reviewed the video from Break on the Lake
2 and Key West?

3 A. Yes, sir.

4 Q. And does that accurately reflect when you were
5 there that night, and is that you on both of them?

6 A. Yes, sir.

7 Q. Okay. We're now showing what's marked State -- or
8 entered as State's 31. On line 15, can you see that from
9 there?

10 A. No, sir.

11 Q. A copy of this.

12 THE COURT: Ma'am, do you need to step down in order to
13 see it or --?

14 MR. MEADORS: Can I start with this?

15 THE COURT: Sure. Yeah. And then if you need further
16 to come down, that's -- that's fine too.

17 MR. MEADORS: Thank you, Judge.

18 BY MR. MEADORS:

19 Q. This is a copy of State's 31. Did you look at
20 line 15 please, ma'am?

21 A. Yes, sir.

22 MR. SWERLING: Did you say State's 31, Mr. Meadors?

23 MR. MEADORS: Yes, sir. Yes, sir.

24 BY MR. MEADORS:

25 Q. And you mentioned earlier a FaceTime call. Is

1 that depicted on State's 31?

2 A. That is a FaceTime, but that is not when we were
3 at Break on the Lake.

4 Q. Okay. When was that?

5 A. When was the one at Break on the Lake, or this
6 one?

7 Q. At 7:36.

8 A. That was probably just with my children.

9 Q. Okay.

10 A. Uh-huh.

11 Q. And it's got the name Ice Bud there?

12 A. Yes.

13 Q. Who does that identify?

14 A. That's Bud.

15 Q. Okay. So you were talking to your children
16 through his phone?

17 A. Yes.

18 Q. At 7:36?

19 A. Yes.

20 Q. If you look down on that number 18 please ma'am?

21 A. Yes, sir.

22 Q. At 8:47:30, is that another FaceTime?

23 A. Yes, sir.

24 Q. Okay. Is that what you were referring to earlier?

25 A. I think that's also with my children before they

1 went to bed.

2 Q. And were you in the parking lot then at
3 Break on the Lake?

4 A. I think so, because we got there really close to
5 them closing, so yes.

6 Q. Do you recognize this is Break on the Lake's
7 parking lot?

8 A. Yes, sir.

9 Q. And I don't know if you can read the time there at
10 the left, but would you dispute if I told you it was 8:44?

11 A. I would not, no, sir.

12 Q. Okay. Let me stop it now. If you can't see this,
13 you're going to have to come down. I'm sorry.

14 A. No. Okay. I can -- I can see.

15 Q. Can you see a car coming in?

16 A. No.

17 Q. You're going to have to come down.

18 A. Yeah.

19 Q. I'm sorry with the Judge's permission.

20 THE COURT: Ms. Hainey, just be sure you stand in front
21 of that microphone that's on the jury railing there.

22 THE WITNESS: Yes, sir.

23 MR. MEADORS: Okay. Ms. Danielle.

24 BY MR. MEADORS:

25 Q. We see a car pulling in there. Do you recognize

1 that?

2 A. Yes, sir.

3 Q. Whose car is that?

4 A. That is Davis's.

5 MR. SWERLING: I'm sorry.

6 THE COURT: So that was Davis?

7 BY MR. MEADORS:

8 Q. Speak up -- speak up, ma'am. And what -- what
9 kind of car did he drive?

10 A. A BMW.

11 Q. All right. And that's at 8:44, correct? It's up
12 on the left.

13 A. Yes.

14 Q. We're going to try to put both of these on the --
15 okay. You had a phone call at 8:47?

16 A. Yes.

17 Q. From Ice Bud?

18 A. Yes, sir.

19 Q. Okay. And who was that from?

20 A. That was from the children.

21 Q. Okay. We're going to try to put them both on the
22 screen if you'll bear with us please. Now, did -- did -- who
23 went into the restaurant first as best you remember?

24 A. Davis went in so that they did not -- the children
25 didn't see Davis, and Bud didn't see Davis in the background

1 of the video -- video call.

2 Q. And is -- can you see Davis walking into Break on
3 the Lake at this moment right now?

4 A. I do see him.

5 Q. That is Davis McClendon?

6 A. It is, yes sir.

7 Q. At this point, where are you, Ms. Hainey?

8 A. I'm still on the phone in the car.

9 Q. And you stayed on that phone call for
10 two minutes and 58 seconds. Would you dispute that?

11 A. No, sir.

12 Q. And again, you were talking -- who were you
13 talking to?

14 A. My children.

15 Q. What did you do after that?

16 A. I got out, and came inside.

17 Q. Is that you?

18 A. Yes, sir.

19 Q. And this is at 8:46:24?

20 A. Yes, sir.

21 Q. So we'll speed this up a little bit. You get in
22 -- you walk into the restaurant, correct?

23 A. Yes, sir.

24 Q. Okay. And -- and there is a time stamp on the
25 rest of these videos. Is there from Break on the Lake, you

1 don't see any in the left, do you?

2 A. I do not.

3 MR. MEADORS: Beg the Court's indulgence?

4 THE COURT: Yeah, that's fine.

5 MR. MEADORS: Your Honor, I thought we had something
6 marked, and we don't know, and I follow.

7 THE COURT: That's fine. Take your time.

8 BY MR. MEADORS:

9 Q. I'm going to show you what's marked State's 32.
10 If you'll just stay there please. Sorry, you have to stand.

11 A. Yes, sir.

12 Q. Do you recognize that text?

13 A. Uh-huh. Yes, sir.

14 Q. And that was -- looks like sent at 8:54, and read
15 at 9:08?

16 A. Yes, sir.

17 Q. And -- and -- and who was that from?

18 A. That was from Bud.

19 Q. And that's 9:08 on -- on May 6 of 2023?

20 A. Yes, sir.

21 Q. And what does it say?

22 A. "Why do you hate me? I just don't understand."

23 Q. Now at some point. All right. Let's go back to
24 State's 31. Line 19, did you get another call from Bud
25 Ackerman or a call from Bud Ackerman?

1 A. Yes.

2 Q. And did you accept it?

3 A. I do not -- I got another FaceTime that I didn't
4 accept, and then one that I did because I thought it was the
5 children again.

6 Q. Okay. Well, that's what I'm going to ask you
7 next.

8 A. Okay.

9 Q. Do you see two mixed -- missed calls on State's
10 31?

11 A. Yes. Yes, sir.

12 Q. One on line 19?

13 A. Yes, sir.

14 Q. One on line 21?

15 A. Yes, sir.

16 Q. Do you agree with that?

17 A. Yes, sir.

18 Q. Okay. Excuse me. Now I'm referring back to
19 State's 32. You recognize that?

20 A. Yes, sir.

21 Q. And that's at 9:08:43, correct?

22 A. Yes, sir.

23 Q. And what is this?

24 A. This was me asking him who was calling me -- who
25 was FaceTiming me again.

1 Q. And -- and -- and when you said that, do you mean
2 you didn't know if it was him calling, the kids calling, you
3 didn't know right?

4 A. I was trying to figure out if it was the children
5 calling again.

6 Q. And did -- what was the response?

7 A. His response was the kids so I called back.

8 Q. And his response to the kids was, like, 18 seconds
9 after you were questioned, correct?

10 A. Right.

11 Q. And we'll get to that next one. But the last one
12 at this point is 9:08:28. What is that?

13 A. "Never mind. But I had already called."

14 MR. MEADORS: Okay. And so and -- your Honor, at this
15 time, we'd offer State's 32. I think it'd been ID'd before,
16 now -- we now offer.

17 THE COURT: Thirty-two was marked for ID only, State's
18 moving it in to evidence.

19 Mr. Swerling, subject to what has already been noted on
20 the record. All right. 32 in to evidence for the State.

21 (State's Exhibit 32 was admitted in to evidence.)

22 BY MR. MEADORS:

23 Q. I'd ask you to look at line 23. You testified
24 that as a result of that text saying it's the kids, did you
25 call?

1 A. Yes, sir.

2 Q. Okay. And who answered?

3 A. Bud.

4 Q. So was it the kids trying to get you?

5 A. It was not.

6 Q. And there's a minute-and-11-second phone call.

7 Can you tell the ladies and gentleman about that phone call?

8 A. Yes, it was him trying to figure out where I was,
9 and who I was with, and what I was doing, and why I was doing
10 this to him.

11 Q. And when you say, "Why I was doing it to him,"
12 what are you talking about?

13 A. Like, not getting back together while I was not
14 with him. Why I was moving on -- why I had moved on.

15 Q. And again, what time was this phone call?

16 A. That was at 9:10.

17 Q. And again, there's not a time stamp on this, but
18 this is the inside of the bar of the Break on the Lake?

19 A. Yes, sir.

20 Q. And that you -- that just came in sat by Davis?

21 A. Yes, sir.

22 Q. And the phone calls we just went over, there's not
23 a time stamp on here, but were some of those happening when
24 you were in here?

25 A. Yes.

1 Q. At Break on the Lake?

2 A. Yes, sir.

3 Q. Okay. And here the Break on the Lake, the jury is
4 going to have it, you'll see. Did you look at your phone
5 during here, and text, and/or make phone calls when you were
6 at Break on the Lake?

7 A. Yes. And you can kind of see the light in my
8 face.

9 Q. Say that one more time.

10 A. You can kind of see the light in my face. Because
11 I was trying to hold it really close to my face.

12 Q. So what we just went over were calls and, her
13 texts you did while you were at Break on the Lake with
14 Davis McClendon?

15 A. Yes, sir.

16 Q. Did -- did -- in the conversation you had with the
17 Defendant, did he say anything about whether he wanted to see
18 you that day, or that night when you were at Break on the
19 Lake?

20 A. He did at the end of the conversation, which at
21 the time I didn't think anything about it until later. He
22 said at the end of the conversation, he said, "Well, I'll see
23 you later tonight."

24 Q. Based on your conversation, was he trying to get
25 in touch with you, and -- or was he trying to find you? He

1 wanted to know where you were.

2 MR. SWERLING: Objection, your Honor. There's no basis
3 -- her opinion about what that meant. It is not relevant.

4 THE COURT: No. Maybe rephrase, and we will see, and
5 certainly Mr. Swerling can object again if he wants to.

6 BY MR. MEADORS:

7 Q. Did he ask you where you were?

8 A. Yes.

9 Q. Did he ask you where you were going?

10 A. Yes.

11 Q. Did he ask you who you were with?

12 A. Yes.

13 Q. Based on that, did you think he was trying to find
14 you?

15 A. I did worry, yes. Especially after he said,
16 "Well, I'll see you later tonight."

17 MR. MEADORS: And we'll fast-forward through this, your
18 Honor, just to just show them till they leave.

19 BY MR. MEADORS:

20 Q. Did you and Davis McClendon end up leaving at
21 Break on the Lake?

22 A. We did.

23 Q. Now you see his wallet there. Did he -- did he
24 have a wallet with him at that point?

25 A. He did, yes, sir.

1 Q. Is that him paying with his wallet?

2 A. Yes, sir.

3 Q. Is that you all leaving at --?

4 A. Yes.

5 Q. And I'm sorry, we'll see the time here in a minute

6 -- what time was that when you all left? That'd be 9:42?

7 A. Yes, sir.

8 Q. Based on what's on the screen in to evidence?

9 A. Yes, sir.

10 Q. Military time, correct?

11 A. Yes, sir.

12 Q. All right. Can you describe what you all --? I

13 mean -- was -- were you in a good mood at that point? Was

14 --? I mean --

15 A. Yes.

16 Q. Was Davis on a good mood?

17 A. Yes, we both were very happy.

18 Q. You going to have to get -- you want to go back,

19 and sit for a minute, and then you're going to have to come

20 back down in a minute bit. Are you okay right there?

21 A. I'm okay wherever you want me.

22 Q. All right. Where'd you all go after this?

23 A. We left there, and went back to my house for a

24 little bit so he could make some phone calls, and then we

25 went to a Derby party.

1 Q. Okay. State's 50 please, Ms. Hainey. And tell me
2 if you recognize State's 50, and is a --

3 A. Yes.

4 MR. MEADORS: Okay. Your Honor, State's 50, I believe
5 without objection.

6 MR. SWERLING: That's correct.

7 THE COURT: Okay. And what is 50, Mr. Meadors?

8 MR. MEADORS: Your Honor, that's a picture of a part of
9 Lake Greenwood, and it shows Lakeshore Drive where the victim
10 David McClendon lived -- Davis McClendon lived.

11 THE COURT: All right. All right. In to evidence for
12 the State's Number 50.

13 (State's Exhibit 50 was admitted in to evidence.)

14 MR. SWERLING: No -- no objection.

15 THE COURT: Right.

16 BY MR. MEADORS:

17 Q. Do you know the address of where Davis McClendon
18 lived at this time for his residence?

19 A. 206 Lakeshore Drive.

20 Q. Okay. And you may not be sure of the number, did
21 he live on Lakeshore Drive?

22 A. Yes, sir.

23 Q. Was that near Break on the Lake?

24 A. Yes, it was right across from it. Yes, sir.

25 Q. And would you dispute where that little red dot is

1 -- might -- would that be general location where he resided?

2 A. Yes, absolutely. Uh-huh.

3 Q. Okay. I think you said it, but you all left here,
4 and went -- he went to somebody's house, or you all went to
5 somebody's house?

6 A. We went to my house, yes, sir.

7 Q. And what was the purpose of that?

8 A. He was calling his son to talk to him for a little
9 bit.

10 Q. How many children did Davis McClendon have?

11 A. Three.

12 Q. Do you know their ages?

13 A. He has one that's a freshman in college, and 11th
14 grader, and eighth or ninth grader.

15 Q. How long were you all at -- there when he was
16 touching base with one of his kids?

17 A. We were at my house for 45 minutes -- maybe an
18 hour.

19 Q. Where did you all go after that?

20 A. We went to one of Davis friend's house for a Derby
21 party.

22 Q. A what party?

23 A. Derby Party.

24 Q. Okay. All right. A Kentucky Derby Party?

25 A. Uh-huh.

1 Q. All right. At this point -- let's go back to
2 State's 31, please. I did all these? Okay. State's 31.
3 There appears to be at line 41 a call to Mr. Dee. Who -- who
4 was that?

5 A. That was Davis.

6 Q. That's how you had him saved in his phone?

7 A. Yes, sir.

8 Q. Okay. And -- and you testified you all were at a
9 Derby party?

10 A. Yes, sir.

11 Q. And this is at the 12:08?

12 A. Yes, sir.

13 Q. All right. And -- and -- and if you all were at
14 the party together, explain to me and the ladies and
15 gentlemen of the jury, why'd you have need to call him?

16 A. I called him because I had found out that Bud was
17 out looking for us, and acting crazy, and --

18 MR. SWERLING: Your Honor, I -- I object to that. That
19 conclusion -- that characterization first of all it would be
20 based on some kind of hearsay.

21 THE COURT: Right.

22 MR. SWERLING: And -- well, that's -- that's enough.
23 Yeah.

24 THE COURT: Okay. So what you're objecting to is the
25 part acting crazy.

1 MR. SWERLING: Right. And that's -- he was out and
2 about looking for them. I mean -- that has to come from a
3 hearsay source. It's just hearsay.

4 THE COURT: Okay. All right. If -- if she heard that
5 from someone, that would be offered for the truth of the
6 matter asserted, at least appears to me. So I would sustain
7 the objection. And strike that from the record. Now, if you
8 want to ask differently then certainly you have a right to
9 it.

10 BY MR. MEADORS:

11 Q. Had you been to -- was your plan to go to Key West
12 planned? Had you --?

13 A. We had not originally planned to go there, but we
14 did go later.

15 Q. Okay. Do you know that whether or not Bud
16 Ackerman had been at Key West bar that night?

17 A. I found out that he had been.

18 Q. Okay. And were you going to go to the bar when
19 Bud Ackerman was there?

20 A. Absolutely not.

21 Q. Okay. And did you go to the Key West Bar when
22 Bud Ackerman was there?

23 A. No.

24 Q. And did you know when he was there?

25 A. Yes.

1 Q. Okay. After you got knowledge of that fact, did
2 you call Mr. Dee at the party?

3 A. I did. Because I was upset, and I didn't want to
4 go back into the party upset, so I called him to come to
5 where I was and meet me. And that's why the phone call is
6 there.

7 Q. Okay. Well, that's what I was just confused on.

8 A. Yes, sir.

9 Q. So you all were at the same party?

10 A. Yes.

11 Q. Just separated at the party?

12 A. Yes.

13 Q. Okay. And that explains that phone call to him
14 when you all were together, but just different parts of the
15 party?

16 A. Yes, sir.

17 Q. That -- that was my point. Okay. Let's look at
18 line 44 please at 12:16:58. And these came from your phone
19 -- extractions from your phone?

20 A. Yes, sir.

21 Q. Do you see a call at 12:16:58?

22 A. Yes, sir.

23 Q. Who's that from?

24 A. Bud.

25 Q. To you?

1 A. Yes, sir.

2 Q. Did you answer it?

3 A. No, sir.

4 Q. Did you see a call at 12:17:46?

5 A. Yes, sir.

6 Q. From whom to whom?

7 A. From Bud.

8 Q. To you?

9 A. To me. Uh-huh.

10 Q. Did you -- so a little less than a minute, he

11 called you twice?

12 A. Yes, sir.

13 Q. You didn't pick up the second one?

14 A. No, sir.

15 Q. Why not?

16 A. I didn't want to talk.

17 Q. At 12:17:59 -- 59 about 13 seconds later, did you

18 get another call from Bud?

19 A. Yes, sir.

20 Q. Did you answer that one?

21 A. No, sir.

22 Q. At 12:18:34, line 50?

23 A. Yes, sir.

24 Q. Did you get another call from Bud Ackerman?

25 A. Yes, sir.

1 Q. Did you answer it?

2 A. No, sir.

3 Q. How many times had you talked to him on the phone
4 prior to that -- that night? I'm sorry.

5 A. I -- the last time it would've been that FaceTime
6 call.

7 Q. At Break on the Lake?

8 A. Yes, sir. I -- I think that's what I remember.

9 Q. Now, did there come a point where you -- and -- or
10 Davis McClendon went to the Key West bar?

11 A. Yes.

12 Q. Okay. And when you got there, was -- had the
13 Defendant, Bud Ackerman already left?

14 A. Yes.

15 Q. Okay. Did you know he'd left before you went
16 there?

17 A. Yes.

18 Q. Would you have gone there if he was still there?

19 A. No.

20 Q. Now, we're going to try to put both sides.

21 MR. MEADORS: Beg the Court's and jury's indulgence one
22 second, please?

23 BY MR. MEADORS:

24 Q. Is this the inside or the bar area of Key West,
25 Ms. Hainey?

1 A. Yes, sir.

2 Q. Please let us all know when you see yourself or
3 Davis coming in.

4 A. No, we're walking in the back.

5 Q. From the back door there?

6 A. Yes, sir.

7 Q. Okay. And it says, "9:35," and we -- Ms. Poore
8 said that, "The time was different."

9 MR. MEADORS: And, your Honor, we'll have the witness
10 clarifying this coming up.

11 BY MR. MEADORS:

12 Q. But would you dispute that as two hours and
13 55 minutes off?

14 A. Yes, sir.

15 Q. You would not dispute that?

16 A. No. I -- you're right.

17 Q. So this would be approximately 12:30 when you all
18 got there?

19 A. Yes, sir.

20 Q. And is that Davis greeting someone?

21 A. Yes, sir.

22 Q. And you're sitting next to -- or standing next to
23 who?

24 A. Abby.

25 Q. And you'll need another name, please? What's her

1 last name?

2 A. I can't say her last name.

3 Q. Okay. Now, did you receive another call from the
4 Defendant, Bud Ackerman?

5 A. Yes, sir.

6 Q. And on line 53 or 54 -- I think they're the same
7 thing. Do you see the time of that call?

8 A. Yes, sir. 12:38.

9 Q. And did you answer that call?

10 A. That one. Yes, sir, I did.

11 Q. And -- and why'd you answer that one?

12 A. I think I got -- I mean -- I was tired of him
13 calling. It was time to just answer, and see what was going
14 on, especially after I had talked to Abby who had been at the
15 bar.

16 Q. Don't go into what she said.

17 A. While he was there.

18 Q. And so at 12:38 on this video, do you see where
19 you're talking on the phone?

20 A. Yes.

21 Q. Is that you talking to the Defendant,
22 Bud Ackerman?

23 A. Yes, sir.

24 Q. At Key West bar?

25 A. Yes, sir.

1 Q. On May 7th, at 12:38?

2 A. Yes, sir.

3 Q. And that was a call -- how long did that call
4 last?

5 A. A minute and 39 seconds.

6 Q. How long had you known him -- how long have you
7 known him? Years?

8 A. Bud?

9 Q. Yeah.

10 A. Yes, 16 years.

11 Q. Okay.

12 A. Uh-huh.

13 Q. Have you talked to him on the phone when he is
14 sober?

15 A. Absolutely.

16 Q. Have you talked to him on the phone when he is
17 drinking?

18 A. Absolutely. Yes.

19 Q. Can you tell the difference based on the time you
20 spent with him over the years?

21 A. 1000 percent. Yes.

22 MR. SWERLING: I couldn't hear, I'm sorry.

23 MR. MEADORS: 1000 percent.

24 BY MR. MEADORS:

25 Q. Did -- did -- can you describe his voice when you

1 were talking to him here?

2 MR. SWERLING: Again, I object to this as character
3 issue.

4 THE COURT: I did -- your -- your objection so noted on
5 the -- on the record.

6 THE WITNESS: It was not sober.

7 BY MR. MEADORS:

8 Q. Based on the time you knew him, lived with him,
9 dated him.

10 A. Yeah.

11 Q. Talked to him on the phone.

12 A. This was drunk. This was -- this was not sober
13 talk.

14 Q. Okay. And you could tell that based on the
15 conversation?

16 A. I could tell by the language he was using and --
17 yes.

18 Q. And what did he say?

19 A. This was him asking where we were, telling me I
20 think that he was driving around, where were we? He was
21 going to find us. And again, why was I doing this to him.

22 Q. Did you say anything to him about you're going to
23 call the police?

24 A. I did. I did tell him that I was going to call
25 the police because he was drinking and driving, and I also

1 thought that that would solve the problem.

2 Q. Did you end up calling the police?

3 A. I did not, because Davis --

4 MR. SWERLING: Objection.

5 THE WITNESS: -- asked me not to.

6 THE COURT: And don't repeat what Davis said.

7 BY MR. MEADORS:

8 Q. You did not end up calling the police.

9 A. Uh-uh. No, sir.

10 Q. And what time --? Where are we now? Okay. Let
11 me ask you that -- this -- you got off that phone call?

12 A. Uh-huh. Yes, sir.

13 Q. Based on the phone call, did you feel like he was
14 looking for you and/or Davis?

15 A. Yes.

16 Q. Okay.

17 A. He said he was.

18 Q. That's not -- he said, "He was looking for you?"

19 A. Yes.

20 Q. Okay. Did you take that seriously -- did you take
21 that seriously?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. After you decided not to call the police, what did

1 you do?

2 A. I called his family.

3 Q. And let's start looking -- it's line number 55 at
4 9 -- it's 12:41 on State's 31, but on the screen, I believe
5 it's 9:46:07. Did you start trying to call his family?

6 A. I did.

7 Q. And -- and who is Bee2?

8 A. Bee2 is more of a friend, but that's his cousin.
9 They were out of town. If you go down a little bit further,
10 it starts on line 59.

11 Q. Okay. Let's go back to 55 -- that -- the Bee2 is
12 who?

13 A. That's -- that's his cousin.

14 Q. Okay. And that call is at what time?

15 A. 12:41.

16 Q. Were you able to get in touch with that person?

17 A. No.

18 Q. Okay. Let's go next to line 57.

19 A. Uh-huh.

20 Q. At 9:46:22, on the screen 9:41, on Exhibit 31.

21 A. Uh-huh.

22 Q. Who were you trying to call then?

23 A. That's my best friend, Brittiny.

24 Q. Okay. Did you get in touch with them?

25 A. I did not.

1 Q. Okay. Let's go down to 59, as you just stated
2 correctly, a minute ago, 9:48 on the screen. I'm going too
3 fast? Who is Wilson?

4 A. Wilson is Bud's brother.

5 Q. And did you attempt to call Wilson?

6 A. I did.

7 Q. And did you get an answer?

8 A. No, sir.

9 Q. We're going to come back to 9:42 in a minute, but
10 at 9:44 line 61.

11 MR. SWERLING: Mr. Meadors, did you say nine something?
12 It says 12 --

13 MR. MEADORS: On the screen.

14 MR. SWERLING: Oh, okay. Okay. I thought --

15 MR. MEADORS: I'll make that clear.

16 MR. SWERLING: Okay.

17 MR. MEADORS: I'm sorry.

18 BY MR. MEADORS:

19 Q. The screen shows two hours and 55 minutes behind
20 the actual time, correct?

21 A. Yes.

22 Q. So on line 61 12:44, actual time 9:49 Key West
23 time, who did you call on line 61?

24 A. Ms. Ackerman.

25 Q. Okay. Would that be Bud Ackerman's mama?

1 A. Yes, sir.

2 Q. Did you get an answer?

3 A. No, sir.

4 Q. At 12:45 actual time, 9:50 Key West time on the
5 video. And let me ask you, where are you going right now?

6 A. I'm going outside the bar to call Bud back.

7 Q. And were you at this point trying to call Dr.
8 Ackerman?

9 A. I did call, yep. Yes, sir. I called Dr. Ackerman
10 as well.

11 Q. And that was at 9:50?

12 A. Uh-huh. Yes.

13 Q. And you may have been off camera at this point,
14 but does the record reflect you called at 9:50 Dr. Ackerman?

15 A. Yes, sir.

16 Q. Were you able to talk to Dr. Ackerman?

17 A. No, sir.

18 Q. Look -- look now at camera five. Who's that to
19 your left?

20 A. Ms. Davis.

21 Q. Who's to your right?

22 A. Abby.

23 Q. Okay. Go ahead and play. At approximately --
24 freeze it. At approximately 9:42, 9:47 Key West time, which
25 would be 12:42 real time -- I don't want you to say what was

1 in there, okay?

2 A. Okay.

3 Q. But what is Davis showing you right now?

4 A. He's showing me a text message.

5 Q. Okay. Who was that to?

6 A. To Brandon Smith.

7 Q. Okay. After that, did you decide not to call the
8 police?

9 A. I did not call the police.

10 Q. Had -- listen to this carefully please.

11 A. Uh-huh.

12 Q. Had the Defendant asked to see or talked to
13 Davis McClendon and Bud asked to talk to Davis?

14 A. Yes, he did.

15 Q. And when was that?

16 A. When I went outside that next time, and we talked
17 on the phone, is when he asked, or told me that he wanted to
18 see him, he wanted to talk to him.

19 Q. He said, "He wanted to see him, he wanted to talk
20 to him." The Defendant?

21 A. Yes, sir.

22 Q. After you called Ms. Ackerman, or tried to call
23 Dr. Ackerman, did you come back inside -- and again to some
24 of the phone calls you've testified, do you see -- but the
25 jury's going to have it. Do you see them on here when you're

1 making a --

2 A. Yes.

3 Q. -- a video?

4 A. Yes, sir. Yes, sir.

5 Q. After you tried to get Dr. Ackerman, Ms. Ackerman,
6 Wilson, did you come back inside the bar?

7 A. I'm not sure if I came back in between that, and
8 talking to Bud again or not.

9 Q. Okay. Well, let's watch. All right. Let's go
10 back to line 65. I'm sorry. At line 65, did you get a call
11 from Bud Ackerman? 9:50 when you're off camera, does that
12 show you got a call from Bud Ackerman on State's 31?

13 A. Yes, sir.

14 Q. At 12:45:11?

15 A. Yes, sir.

16 Q. Did you reject that call, or did you not pick it
17 up?

18 A. Yes, sir.

19 Q. And then looking at now 12:45:54?

20 A. Yes, sir.

21 Q. Did you get another call?

22 A. Yes, sir.

23 Q. And is that the call that you did answer?

24 A. Yes, sir.

25 Q. And what time was that?

1 A. 12:45.

2 Q. Which Key West time would be 9:50? Were you off
3 camera then?

4 A. Yes, sir.

5 Q. Where were you?

6 A. In the back parking lot.

7 Q. Okay. And to your knowledge, are there cameras in
8 the back?

9 A. No, sir.

10 Q. But you were on this phone call, correct?

11 A. Yes, sir.

12 Q. To who -- who were you talking to?

13 A. I was talking to Bud.

14 Q. What was that conversation about?

15 A. That was the conversation about -- that he wanted
16 to see Davis, he wanted to meet Davis, wanted to know where
17 we were, and I feel like at that point he was at Break on the
18 Lake looking for us there, but I'm not positive, so I told
19 him that we were at Port Grill to buy time. So he rode over
20 there.

21 Q. But he was looking for you based on your
22 conversation with him?

23 A. Yes. Yes, he was. He had told me he was looking
24 for us.

25 Q. And let's go to line -- you talked to him for

1 two minutes and 40 seconds?

2 A. Yes, sir.

3 Q. Do you come back inside?

4 A. Yes, sir.

5 Q. What's going through your mind right now,

6 Meredith?

7 A. I think that we needed to get away from there
8 anywhere.

9 MR. SWERLING: I -- I'm sorry, I can't -- can't hear.

10 BY MR. MEADORS:

11 Q. We need to get away from there anywhere?

12 A. But I wasn't really sure what to do at that point.
13 And I also wanted Bud to be home safe, and that way he could
14 sober up, and all of this would be over.

15 Q. Is that you coming back inside?

16 A. Yes, sir.

17 Q. Okay. Did you basically convey what you had heard
18 from Bud and Davis?

19 A. Yes, sir.

20 Q. That he wanted to meet him?

21 A. Yes, sir.

22 Q. He wanted to talk to him?

23 A. Yes, sir.

24 Q. Okay.

25 A. But not in a way that I thought that Davis would

1 actually go, but just telling him what he said.

2 Q. Okay. Now, looking on State's -- excuse me,
3 State's 31, line 69, was there another call from
4 Defendant Bud Ackerman at 12:48:33?

5 A. Yes, sir.

6 Q. And that is at 9:53 Key West time?

7 A. Yes, sir.

8 Q. Okay. All right. And did you reject that?

9 A. Yes, sir.

10 Q. Okay. Keep going. At 9 -- excuse me, line 71,
11 12:48:42 was there another call?

12 A. Yes, sir.

13 Q. That you rejected from?

14 A. Yes.

15 Q. Okay. So he'd already talked to you.

16 A. Uh-huh.

17 Q. Said he would --

18 A. Yes, sir.

19 Q. -- come to meet with Davis?

20 A. Yes, sir.

21 Q. Then he keeps calling?

22 A. Yes, sir.

23 Q. Line 74?

24 A. Yes, sir.

25 Q. Got a call from the Defendant, Bud Ackerman?

1 A. Yes, sir.

2 Q. Less than a minute later than the other one. At

3 9:54:46 Key West time item -- line 74?

4 A. Yes, sir.

5 Q. Did you reject that call?

6 A. Yes, sir.

7 Q. Okay. 12:49:28?

8 A. Yes, sir.

9 Q. Twenty-two seconds later, another call from Bud?

10 A. Yes, sir.

11 Q. Did you reject that call?

12 A. Yes, sir.

13 Q. 11:49:46.

14 A. 12:00.

15 Q. 12:49:46, 18 seconds later, 9:54 16:46 Key West
16 time. Did you get another call?

17 A. Yes, sir.

18 Q. What'd you think about all these calls coming in
19 after the conversation you just had with him?

20 A. I was getting very frustrated, and angry, and just
21 -- it was getting obsessive. It was getting scary.

22 THE COURT: One minute -- minute.

23 BY MR. MEADORS:

24 Q. Frustrated, angry, and --?

25 A. Scary.

1 MR. SWERLING: She was what or he was -- she was?

2 BY MR. MEADORS:

3 Q. Frustrated, angry, and scary?

4 A. Yes.

5 Q. Line 80 12:50:25 real time, 9:55:25 Key West time.

6 Did you get another call from Bud Ackerman?

7 A. Yes, sir.

8 Q. Did you reject that?

9 A. Yes, sir.

10 Q. You had conveyed this information to

11 Davis McClendon. What did he do?

12 A. He said that he would --

13 MR. SWERLING: Objection.

14 THE COURT: Don't repeat what Davis said, you can

15 describe what he did without talking what he did, if

16 anything, as a result of your conversation with him.

17 BY MR. MEADORS:

18 Q. I'm sorry, I wasn't clear on that. What
19 physically -- what did he do after you had told him this, and
20 he -- did you show him the missed messages?

21 A. Yes.

22 Q. That the missed calls?

23 A. Yes, sir.

24 Q. And you told him about the conversation you had
25 with the Defendant, correct?

1 A. Yes, sir.

2 Q. What does he end up doing? Not what he said, but
3 what does he end up doing?

4 A. Okay. He got up, and decided that he would call
5 him, and talk to him so that he would stop.

6 MR. SWERLING: Objection.

7 BY MR. MEADORS:

8 Q. Just -- just -- I got -- did he leave?

9 A. Yes.

10 Q. That's what I'm trying to ask you.

11 A. Yes.

12 Q. Did he leave the bar?

13 A. Yes, he left.

14 Q. Sorry about that. And do we have him leaving the
15 bar here? Okay. And is that Davis McClendon leaving the
16 bar?

17 A. Yes.

18 Q. Did you ever see him after that alive?

19 A. No.

20 Q. Where are you going now?

21 A. To see if he's outside.

22 Q. And did you find him outside?

23 A. No.

24 Q. Did you go look for his car where you had parked?
25 Did you go see if his car was still there?

1 A. Yes, I think so.

2 Q. And did -- was his car gone?

3 A. Yes.

4 Q. Okay. Listen to me carefully, without saying what
5 he said. Did you get a call from Davis on line 81?

6 A. Yes, sir.

7 Q. Okay. How long was that conversation?

8 A. Three minutes and 44 seconds.

9 Q. As a result of that phone call, did you learn
10 where they were going to meet?

11 MR. SWERLING: Objection. They would have to be from a
12 hearsay source.

13 MR. MEADORS: Was there a -- your Honor, I'm not really
14 asking that for the truth of the matter.

15 THE COURT: Right.

16 MR. MEADORS: I'm asking for her action where she later
17 went.

18 THE COURT: Okay. All right. I'll -- I'll allow that.
19 Overruled.

20 BY MR. MEADORS:

21 Q. Was there a meeting planned between Davis and Bud?

22 A. Yes, sir.

23 Q. And where was that initially planned?

24 A. It was initially planned to -- at Bud's house.

25 Q. Did that location change?

1 A. Yes.

2 Q. Why did it change? Just only from --

3 MR. SWERLING: Object. That would have to be from a
4 source -- hearsay source.

5 MR. MEADORS: Your Honor, it's from her. I'm sorry.

6 THE COURT: If -- if she has firsthand knowledge then
7 she can testify to it. If she has heard it from somebody
8 else about the meeting place changing, then of course that
9 would not be proper. So -- I mean -- I -- I don't know what
10 she's going to say, but --

11 BY MR. MEADORS:

12 Q. The meeting place changed?

13 A. It changed. Yes.

14 Q. Why?

15 A. It changed because when Davis --

16 MR. SWERLING: Objection now.

17 THE COURT: Wait -- wait a minute. We don't know what
18 she's --

19 MR. SWERLING: I know, but you got to lay a -- got to
20 lay sometimes.

21 THE COURT: Wait a minute.

22 MR. SWERLING: I'm sorry, Judge.

23 THE COURT: Wait a minute. Okay.

24 Ladies and gentlemen, go out to the back to your jury
25 room for just a minute. We'll get you back out shortly.

1 (Jury exits room at 3:08 p.m.)

2 THE COURT: Ms. Hainey, have a seat back here.

3 Okay. I love you guys.

4 MR. SWERLING: Sorry.

5 THE COURT: But don't talk at the same time. It makes
6 it more difficult for me. You all are doing a great job.

7 I'm not being (inaudible). All right.

8 MR. MEADORS: For the record, we both apologize. I'm
9 sorry.

10 THE COURT: Yes. All right. Now, Mr. Meadors, ask
11 Ms. Hainey the question you want to ask, and let's see what
12 she says, and then I can make a determination whether or not
13 one, Mr. Swerling you have an objection, and if so, then I
14 can make a ruling. Okay. So ask the question and you're
15 permitted to give an answer. Okay.

16 BY MR. MEADORS:

17 Q. Who changed the meeting location?

18 A. Davis.

19 Q. Why did he change it?

20 A. He changed it because when he called, I told him
21 that they were not going to meet at the -- the Ackermans'
22 house where my children were. They needed to meet somewhere
23 else if they were going to do this at all. So he called, and
24 changed the meeting location.

25 Q. And I guess that's what -- who told them not to

1 meet there?

2 A. Me.

3 Q. You did?

4 A. I told them not to meet there.

5 Q. Is that hearsay? You --

6 A. No, I told them that.

7 Q. And I didn't mean to raise my voice.

8 A. That's all right.

9 THE COURT: We're all tired. She can say that the
10 meeting changed as a result of what I said, but nothing,
11 don't say what Davis said or -- but you can say the meeting
12 place changed at my direction. Okay. You understand?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. That's -- that's fine -- that's
15 fine. Listen, you all doing a great job. While the jury is
16 out, do you all need to take a little short break?

17 MR. SWERLING: Sure.

18 THE COURT: Okay. All right. Take a 10-minute recess.

19 (Off the record from 3:10 to 3:30 p.m.)

20 THE COURT: Okay. Ready for the jury?

21 MR. MEADORS: Yes, sir.

22 MR. SWERLING: Yes.

23 THE COURT: Okay. All right. Bring the jury out
24 please.

25 (Jury enters room at 3:31 p.m.)

1 THE COURT: Let the record reflect the jury is back in.

2 Ladies and gentlemen, after we dealt with the legal
3 issue that I had, we went ahead and decided to take our
4 afternoon breaks. That's why it's a little bit longer.

5 Mr. Meadors, you want to continue with your direct?

6 MR. MEADORS: May it please the Court?

7 THE COURT: Yes, sir.

8 BY MR. MEADORS:

9 Q. Who changed the meeting location?

10 A. I did. I changed it.

11 Q. You did?

12 A. Yes, sir.

13 Q. Why?

14 A. Because they were meeting where my children were.

15 Q. Now, I think you testified Davis McClendon had
16 already left Key West, correct?

17 A. Yes, sir.

18 Q. Had you come there with him?

19 A. Yes, sir.

20 Q. All right. Did you have a car?

21 A. No, sir.

22 Q. And -- and let me just get this on the record,
23 everybody, was -- were you all drinking that night?

24 A. Yes, sir.

25 Q. Okay. Was -- was -- was everybody drinking?

1 A. Yes, sir.

2 Q. And that Key West was a bar that you went to
3 drink?

4 A. Yes.

5 Q. That was part of it, right?

6 A. Yes, sir.

7 Q. And you left Key West bar at -- do you remember
8 leaving Key West?

9 A. Yes.

10 Q. Okay. Let me show you the -- and the phone call
11 you just -- had talked about with Davis McClendon. After
12 that ended, did you leave Key West after that?

13 A. Yes.

14 Q. Okay. Is this you leaving the front door now?

15 THE COURT: You need to step down.

16 BY MR. MEADORS:

17 Q. I'm sorry. 1:07 real time.

18 A. Yes, that's Abby and I leaving.

19 Q. And approximately 1:07, is that you leaving
20 Key West?

21 A. Yes, sir.

22 Q. Okay. You had come with Davis McClendon?

23 A. Yes, sir.

24 Q. Did you have a car?

25 A. No, sir.

1 Q. Okay. How were you going to get home wherever you
2 were going?

3 A. I rode home with Abby.

4 THE COURT: Mr. Meadors, turn the podium mic.

5 MR. MEADORS: I'm sorry, Judge.

6 THE COURT: That's okay.

7 MR. MEADORS: I'm sorry about that.

8 THE COURT: Repeat that question, Mr. Meadors.

9 BY MR. MEADORS:

10 Q. You -- you -- you didn't have a car?

11 A. I did not have a car.

12 Q. How were you going to get home, or wherever you
13 were going? I think is what I said.

14 A. Well, I rode home with Abby.

15 Q. Okay. And that was the lady that walked out the
16 front?

17 A. Yes, sir.

18 Q. Okay. And did you go home with her?

19 A. Yes. Well, we went to one of her friend's houses
20 close by. Yes.

21 Q. Okay. If we're going to put back up State's 31 on
22 line 83, could you call Davis McClendon after that?

23 A. Yes.

24 Q. I'm not asking you what he said, but what was the
25 time of that call?

1 A. 1:08.

2 Q. 1:08:13?

3 A. Yes, sir.

4 Q. And what was the length of that call?

5 A. Five minutes and 26 seconds.

6 Q. 1:08:13 5 minutes 26 seconds. Without saying what
7 he said, did you start a conversation with him?

8 A. Yes, sir.

9 Q. All right. Were you put on hold?

10 A. Yes, sir.

11 Q. Okay. Did you ever talk to him again?

12 A. No.

13 Q. And did you eventually hang up?

14 A. Yes.

15 Q. Okay. All right. You can have a seat back
16 please, ma'am. Did you become concerned after you -- he
17 didn't come back at the bar?

18 A. Yes.

19 Q. Is that fair to say?

20 A. Yes.

21 Q. Okay.

22 A. Yes.

23 Q. And you know a lady named Meg McGovern?

24 A. Yes. Yes.

25 Q. (Inaudible)?

1 A. Yes.

2 Q. Okay. How -- how do you know her?

3 A. She babysat for us for a long time.

4 Q. For the family?

5 A. Yes, sir.

6 Q. Did she go on trips with you?

7 A. Yes, sir.

8 Q. Almost a full-time nan?

9 A. Yes, sir.

10 Q. Did you contact her that night?

11 A. I did.

12 Q. Did you use your phone?

13 A. I did not. I called her from Abby's phone because
14 I didn't want to hang up with Davis when he put me on hold.

15 Q. So you're on hold with Davis?

16 A. Uh-huh.

17 Q. You used Abby's phone to call Meg, is that shown
18 -- okay. And after the line had disconnected, did you also
19 call Meg?

20 A. Yes.

21 Q. And -- and why were you calling Meg without what
22 you all talked about?

23 A. I'm not sure.

24 Q. Okay. Did you see Meg after that?

25 A. Yes.

1 Q. And where did you see her?

2 A. Meg and Drew came, and picked me up.

3 Q. At your request?

4 A. Yes.

5 Q. Now, going back to State's 31. So you initially
6 called on Abby's phone?

7 A. Yes.

8 Q. And then you later called her on your phone?

9 A. Yes, sir.

10 Q. Did she -- how did she know to get where you were,
11 ma'am?

12 A. When I called from Abby's phone, I told her where
13 I was.

14 Q. Did they pick you up, ma'am?

15 A. Yes, sir. Yes, sir.

16 Q. Was Drew a friend of Meg?

17 A. Yes. And she had babysat for us too. She was a
18 friend. Yeah.

19 Q. She'd also been a babysitter?

20 A. Uh-huh.

21 Q. I think it was State's 31. Did you attempt to
22 call Davis McClendon after that line 87?

23 A. Yes.

24 Q. Line 87?

25 A. Yes.

1 Q. What time was that?

2 A. That was at 1:22.

3 Q. 1:22:33?

4 A. Yes, sir.

5 Q. Did you get an answer?

6 A. No, sir.

7 Q. After that, who did you call?

8 A. I called -- I -- I called him again.

9 Q. Line 89. Oh, was there a call then from a
10 Ms. Ackerman?

11 A. There was a call that came in, and it hung right
12 up from her. Yes.

13 Q. That was at 1:25?

14 A. Uh-huh.

15 Q. That hung up?

16 A. Yes, sir.

17 Q. So you didn't talk to her?

18 A. No, sir.

19 Q. On line 91, there's a call at 1:32:04. Who were
20 you trying to call?

21 A. I was trying to call Davis.

22 Q. Did you get an answer?

23 A. No, sir.

24 Q. At approximately that time, did you end up at Avid
25 and Sawgrass?

1 A. Yes, sir.

2 Q. Who was driving?

3 A. Meg.

4 Q. Okay. As a result of that last phone call you had
5 with Davis is that why you went here?

6 A. Yes.

7 Q. Is that the only way you would've known to go
8 there?

9 A. Absolutely.

10 Q. What happens as you're coming down Avid Road? Who
11 was driving?

12 A. Abby was driving, and we saw Davis car, and that
13 was the only car. So we pulled up beside it.

14 Q. On line 93 of 31, it appears there's a call to Bud
15 Ackerman at 1:33:48?

16 A. Uh-huh.

17 Q. You have to say yes.

18 A. Yes. Yes.

19 Q. Were you trying to reach out to Bud then?

20 A. Yeah, I guess.

21 Q. Do you remember why?

22 A. No.

23 Q. Did you see Bud's car or truck?

24 A. Bud's car it was not there. No.

25 Q. Bud's truck was not there when you got there?

1 A. No.

2 Q. Who was -- what vehicle was there?

3 A. Davis.

4 Q. So then there's a call on your phone calls to
5 Bud Ackerman. Did he pick up?

6 A. It says --

7 Q. Did -- did you talk to him?

8 A. No. No.

9 Q. It says "On four," but did you talk?

10 A. No.

11 Q. At what point -- well, tell us what happened then.
12 Did you get out of the car? Tell us what happened when you
13 were at the -- near the intersection of Avid and Sawgrass,
14 Meredith?

15 A. We pulled in, and saw Davis' car and everything.
16 Then we saw the wrecked side of it, and got out, and realized
17 that the airbags were out. And one of the girls yelled about
18 there being a body, and I drove back into Meg's car because I
19 thought that the only way that Bud would've ever killed
20 somebody would've been to shoot.

21 MR. SWERLING: Objection. Objection. Don't go in --

22 THE COURT: Right.

23 THE WITNESS: Okay.

24 THE COURT: Sustained.

25 THE WITNESS: I was scared.

1 BY MR. MEADORS:

2 Q. You were what?

3 A. I was scared that he was still out there.

4 Q. Did you learn that Davis McClendon was laying on
5 the side of the road?

6 A. Uh-huh.

7 Q. And did you learn he was dead?

8 A. Uh-huh. Yes.

9 Q. You have to say yes.

10 A. Yes, yes, yes.

11 Q. You were scared then?

12 A. Yes.

13 Q. Were you scared earlier?

14 A. Yes.

15 Q. Were you scared that night?

16 A. Yes.

17 THE COURT: You need to verbally say yes.

18 THE WITNESS: Yes. Yes, sir. Yes, sir. Yes, sir.

19 MR. MEADORS: Judge, here State's 45 and 46 Key West
20 and Break on the Lake in evidence. But these are the clips
21 of what we're shown just for her testimony. I don't believe
22 that's without objection.

23 MR. SWERLING: Yes, sir. No problem.

24 MR. MEADORS: (Inaudible) may want to view them later
25 -- 45 and 46.

1 THE COURT: Yeah, I'm just -- I'm looking on my notes.
2 I know that they were put in to evidence. What were the
3 original numbers, do you remember? Okay. 17A, 17H Key West
4 videos, and --

5 MR. MEADORS: Those were the entirety, your Honor. We
6 just cut these down.

7 THE COURT: Right, I understand. I'm just trying to
8 find the other exhibit number for Break on the lake. Okay.
9 That's 36. So these are 40 -- what -- 45, 46?

10 MR. MEADORS: Yes, sir. 45 and 46. And for the
11 record, 45 is Meredith and Davis.

12 THE COURT: Okay.

13 MR. MEADORS: At the -- and 46 is the Meredith video.
14 We're calling 46.

15 THE COURT: Okay. These are just video clips. Okay.
16 Any objection since the --?

17 MR. SWERLING: No, sir.

18 THE COURT: Okay. Video clips.

19 (State's Exhibits 45 and 46 were admitted in to evidence.)

20 MR. MEADORS: Beg the Court's indulgence?

21 THE COURT: Sure.

22 BY MR. MEADORS:

23 Q. Did you move out of town after this?

24 A. Yes, sir.

25 MR. MEADORS: That's all. Thank you.

1 THE COURT: Okay. Mr. Swerling, any cross-examination?

2 MR. SWERLING: I have no questions.

3 THE COURT: Okay. You step down, ma'am.

4 Okay. Mr. Conrad, who do we have next?

5 MR. CONRAD: Your Honor, State calls special

6 Agent Brian Hudak from SLED.

7 THE COURT: Okay.

8 AGENT BRIAN HUDAK,

9 being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CONRAD:

12 Q. All right. Special Agent Hudak. Could you just
13 say your name again, and spell your last name for the court
14 reporter, please?

15 A. Sure. It's Brian Hudak, H-U-D-A-K.

16 Q. All right. And where do you work?

17 A. Work for South Carolina Law Enforcement Division,
18 also known as SLED in the computer crime center.

19 Q. All right. And what is the computer crime center
20 at SLED?

21 A. We work under the forensic laboratory, and we
22 conduct analysis on any sort of digital evidence, whether it
23 be cell phones, computers, vehicle infotainment systems,
24 video, audio enhancement. Also respond to ransomware
25 business, email compromise. Pretty much if it has a digital

1 component, we can do an analysis on it, or at least try.

2 Q. And how long have you worked in the computer crime
3 section?

4 A. Just shy of nine years. I was hired in
5 October of 2015.

6 Q. Okay. And do you have some training -- have you
7 picked up some training and qualifications of -- of -- for
8 various things in computer crimes? If so, would you repeat
9 some of those to the jury?

10 A. Sure. I'm currently a member of the
11 United States Secret Service Cyber Fraud Task Force. I was
12 also a former member of the FBI's Cyber Task Force. Through
13 the Secret Service, they run the National Computer Forensics
14 Institute. I've been through the basic investigation of
15 Computer and Electronics Crimes program, basic network
16 investigation training, network intrusion response program,
17 advanced forensics training. I've also taken training
18 through Cellebrite, and I'm a Cellebrite-certified operator
19 and physical analyst. I've also been through their chip-off
20 training.

21 I've also taken the Berla iVe vehicle system forensics
22 course, and I'm certified through Berla as a certified
23 vehicle system forensic technician, and a certified vehicle
24 system examiner. I've had other training, but that's the
25 highlights.

1 Q. And have you ever been qualified in a -- a state
2 court of -- as an expert?

3 A. I have four times.

4 Q. All right. And what have you been qualified as?

5 A. As an expert in digital forensics.

6 MR. CONRAD: And this time, State would offer
7 Agent Hudak as an expert in digital forensics.

8 MR. SWERLING: What was the -- what was the forensic
9 --?

10 MR. CONRAD: Digital forensics.

11 MR. SWERLING: Okay.

12 THE COURT: What says the Defense?

13 MR. SWERLING: No -- no -- no objection.

14 THE COURT: Okay. All right. Qualified as an expert
15 in the area of digital forensics.

16 BY MR. CONRAD:

17 Q. And, Agent Hudak, you -- you said something in the
18 middle of that list that you read a second ago called Berla,
19 is that correct?

20 A. That's correct.

21 Q. All right. And this jury's heard a little bit
22 about Berla. Can you explain to them what Berla is, and what
23 it does?

24 A. Sure. They're a company that specializes in
25 extracting data from vehicle infotainment systems. Most

1 modern vehicles -- basically think of your -- could be a
2 touch screen or not, but the screen that shows, you know,
3 your GPS, the radio nowadays, it's basically a separate
4 computer in your car, and they're the -- the main company
5 that specializes in trying to decode that information for
6 forensic purposes.

7 Q. All right. And do most modern vehicles have an
8 infotainment center?

9 A. They do.

10 Q. And do those infotainment -- excuse me,
11 infotainment centers record various types of data from the
12 vehicle?

13 A. They do.

14 Q. And that -- those types can vary pretty widely,
15 can't they?

16 A. That's correct. Each vehicle manufacturer has
17 their own -- I guess, proprietary, if you want to call it
18 system. So Ford is different than GM, than Toyota, than
19 Nissan.

20 Q. And have you performed extractions on a number of
21 vehicles in the course of -- of -- of your use of Berla?

22 A. I have.

23 Q. All right. Can you just -- just a rough estimate
24 -- how many vehicles that -- that you analyzed?

25 A. Slightly over a dozen. I've got calls for a lot

1 more, but like I was saying, it's kind of hit and miss about
2 whether or not they're supported. So for the ones I've
3 gotten calls that have been supported, it's over a dozen.

4 Q. And you said, "Some manufacturers record more data
5 and some don't," correct?

6 A. Correct.

7 Q. And let me ask you about Ford. Do -- do moderate
8 Ford vehicles record a -- a lot of data?

9 A. Oh yeah, yeah.

10 Q. I'm going to show you -- it's in evidence been
11 marked as State's Exhibit 27. Now, you probably don't
12 recognize that particular item, do you, sir?

13 A. Not this specific item, but I do recognize what it
14 is.

15 Q. What is it?

16 A. It's a Ford SYNC, I believe it's a gen three
17 infotainment system, and the -- the screen from the vehicle,
18 as well -- that the infotainment system the -- computer for
19 the infotainment system is attached to.

20 Q. And now you didn't perform the actual extraction
21 of data off that infotainment system?

22 A. No, I didn't.

23 Q. And I'm going to give that back to you a second,
24 but I'm going to show you something else. And this is
25 State's Exhibit 28. It's in evidence, it's a DVD. And you

1 have been provided some data from the
2 Greenwood County Sheriff's Office, is that correct?

3 A. That's correct.

4 Q. All right. And that data was from a Berla
5 extraction, and performed by Investigator Michael Bryan of
6 the Greenville County Sheriff's Office, is that correct?

7 A. Yes.

8 Q. All right. And that data that's contained on that
9 DVD in evidence was the data that was provided to you, and
10 that you analyzed, is that correct?

11 A. That's correct.

12 Q. And I'm going to hand you back State's Exhibit 27
13 again, which you didn't perform the extraction on this.

14 A. Correct.

15 Q. However, on the data that you analyzed, is the VIN
16 saved as part of that data that you analyzed the VIN from the
17 original vehicle that the -- the information was extracted
18 from?

19 A. That is correct.

20 Q. All right. And did you verify that the VIN that
21 you found in that data that you analyzed matches the VIN that
22 -- that particular infotainment center was taken of?

23 A. That's correct. I loaded the extraction into
24 Berla software, and I searched for this VIN number, and I
25 received over, like, 200 hits from various databases, and

1 logged files that -- that matched this VIN for this vehicle.

2 Q. All right. And so you're confident that the data
3 that you analyzed came from that infotainment center that's
4 been entered in to evidence, is that correct?

5 A. Yes, sir.

6 Q. And that once again is State's Exhibit 27. All
7 right. I'm going to show you what's been marked as
8 State's Exhibit 47, and I'm going to ask if you recognize
9 that.

10 A. I do.

11 Q. All right. And that's a spreadsheet, correct?

12 A. Yes.

13 Q. And that contains a -- a lot of information on it,
14 does it not?

15 A. Yes, it does.

16 Q. And when you analyzed the data that was provided
17 to you by the Greenwood County Sheriff's Office, is there a
18 spreadsheet in that data that contains multiple days of
19 information?

20 A. There is.

21 Q. And I'm going to ask you for an exact amount, but
22 if you were to print that entire spreadsheet, how many pages
23 do you think it would be?

24 A. Hundreds, I would guess.

25 Q. Okay. In that particular -- and that particular

1 spreadsheet is, you can -- you can look at the back, how many
2 pages is that?

3 A. Twenty-two.

4 Q. And that is simply a time-wise, narrowed down
5 portion of the data that's been entered in to evidence on --
6 on the -- the DVD, is that correct?

7 A. That's correct.

8 Q. And can you just -- just from beginning in --
9 where does that particular data start and at what time and
10 date, and when does it -- that -- what you have there, and at
11 what time of day?

12 A. It starts May 6, 2023, approximately 10:06:29
13 p.m., and goes till May the 7, 2023 at 1:31:41 a.m.

14 Q. Okay. So that would be -- what about
15 three and a half hours of data? Is that -- am I doing my
16 math correctly?

17 A. I'll go with that. It sounds -- it sounds about
18 right.

19 Q. All right. And it still comes to how many pages?

20 A. About twenty.

21 MR. CONRAD: All right. At this time the State would
22 move to enter in to evidence State's Exhibit 47.

23 MR. SWERLING: Do -- one question. Did -- did he print
24 that, or did Brian from Greenville do that? Who print it?

25 MR. CONRAD: Honestly, I'm not even sure who printed

1 it. He verified it.

2 MR. SWERLING: Okay.

3 MR. CONRAD: We don't know.

4 MR. SWERLING: Just asking. I'm just --

5 BY MR. CONRAD:

6 Q. Did you -- did you physically print this?

7 A. No, I didn't.

8 Q. Did you verify that this information is simply a
9 three-hour window that came off of the data that's on this
10 disk, is that correct?

11 A. That's correct. It -- it's from the spreadsheet I
12 -- I looked at on that disk.

13 MR. CONRAD: State would move in evidence.

14 THE COURT: Without objection 47 in to evidence for the
15 state.

16 (State's Exhibit 47 was admitted in to evidence.)

17 MR. CONRAD: Okay we're going to publish this. And
18 now, you're probably going to need to step down, Agent Hudak.

19 THE COURT: And, Agent Hudak, what you need to do is
20 stand right in front of that microphone that's on the jury
21 railing, please.

22 THE WITNESS: Yes, sir.

23 BY MR. CONRAD:

24 Q. Okay. As I said, this contains a lot of
25 information, does it not?

1 A. It does.

2 Q. And you've already testified Ford tends to record
3 a significant amount of information from the vehicle,
4 correct?

5 A. They do.

6 Q. And what we're going to do is, we're going to go
7 through, and we're going to talk about various types of data
8 that's stored on -- on this truck.

9 A. All right.

10 Q. All right. So first of all, it's a spreadsheet
11 format, and on the left-hand column, what is that?

12 A. That's -- that's the record number. That's just
13 when the spreadsheet was created -- just a unique identifier
14 for each line to make it easy to reference certain
15 information.

16 Q. And the next line it says "Event." And we'll talk
17 about various types of events, but what, generally speaking,
18 what is an event as it's recorded on the spreadsheet?

19 A. It's an event that the Ford infotainment system
20 processed, and that the Berla system was able to decode.

21 Q. Okay. And the next column is "Event type."
22 Again, generally speaking, what does that mean?

23 A. Berla categorizes events kind of by type to make
24 it easier to find if you're looking certain things. So just
25 as an example, the first one was door so any door activity

1 would be categorized under the "Door event type."

2 Q. And we see the next column again is -- is -- it
3 says "Action." Generally speaking, what does action mean?

4 A. That'd be whatever action that item or that event
5 was causing.

6 Q. All right. And then we see the next column says
7 "Event date and time." And just what does that mean?

8 A. That's the date and time recorded from the
9 infotainment system that is in local time.

10 Q. Okay. And so does the -- does the Ford
11 infotainment center actually record in local time versus UTC?

12 A. It does record in local time.

13 Q. Okay. All right. And then next we see
14 two columns that say "Latitude and longitude." What does
15 that mean?

16 A. That's the GPS coordinates, latitude, and
17 longitude. For this type of Ford with the gen three, it does
18 -- since it offers a navigation, it's whenever it registers
19 an event, it'll also register the GPS coordinates of when
20 that event occurred.

21 Q. Okay. And so that is a latitude and longitude
22 that you could take and plot on a map, is that correct?

23 A. That's correct.

24 Q. And there are various types of software that will
25 take those coordinates, and plot them on a map for you, is

1 that correct?

2 A. Yes.

3 Q. All right. Go -- go back to the left. All right.
4 So let's -- let's talk about various types of data that --
5 that you find in this spreadsheet. So let's -- the first one
6 -- and this one should be self-explanatory. What is -- what
7 is that very first event line 2102?

8 A. That's the driver door opening.

9 Q. All right. And so what -- in layman's terms, what
10 happened on that truck at that event?

11 A. The driver door opened.

12 Q. Okay. Scroll to the right, keep going. Door
13 opened at what time, date and time?

14 A. May 6, 2023, at 10:06:29 p.m., local time.

15 Q. Okay. Keep going to the right. And we have along
16 that -- that truck recorded exactly where it was when that
17 door was opened at 10:06 p.m., correct?

18 A. That's correct.

19 Q. All right. And I say 10, but what's listed as
20 military -- military times, is that correct?

21 A. That's correct. I was trying to decode it
22 (inaudible).

23 Q. Understood. But for someone who is unfamiliar
24 with military time, how would you convert 22:06 to actual
25 time?

1 A. You just subtract 12 from it.

2 Q. Okay. All right. And so that --

3 A. Or for the hours, 12 hours, sorry.

4 Q. 10:06:29 seconds with that particular event?

5 A. Correct.

6 Q. All right. Go back to the left. All right. And
7 let's just talk about the next line 2103. What -- what does
8 that event say?

9 A. Valet mode disabled.

10 Q. All right. And what does that mean?

11 A. A lot of modern cars come with a valet, a mode
12 that if you hand off to a valet, or someone it can disable
13 certain features.

14 Q. And so what -- what does that tell you when it
15 says -- when you see this thing saying it's -- excuse me,
16 that mode is disabled.

17 A. It's either -- if it's pushed to start, it's
18 detecting the key fob, or the main key in the ignition if
19 it's T start.

20 Q. All right. And so it would be someone who has a
21 primary key to this vehicle more than likely?

22 A. Yes.

23 Q. Is why the valet mode is disabled?

24 A. Yes.

25 Q. Okay. All right. And then let's -- let's talk

1 about some other below -- line below that 2104 says "Seatbelt
2 reminder is true." What does that mean?

3 A. That's the noise your vehicle makes if you start
4 driving off, and you haven't put the seatbelt on. Definitely
5 for the driver's seat, depending on the vehicle, it could be
6 for other seats as well though usually like a dinging noise
7 or something. So it's just -- it's that is turned on -- on
8 this vehicle.

9 Q. Okay. So that -- that's the vehicle making that
10 annoying beep saying "Buckle your seatbelt," correct?

11 A. Correct.

12 Q. And it says "Seatbelt reminder is true." which is
13 kind of a strange way to put it, but that's what it means,
14 correct?

15 A. Correct.

16 Q. All right. All right. Let's look a line below
17 that. It says "Driver distraction prevention disabled."
18 What -- what word does that mean?

19 A. A lot of infotainment systems, they -- for driver
20 safety, they don't want you, like, typing in stuff on your
21 touch screen while you're driving around. So a lot of
22 vehicles, Ford included will limit touch screen
23 functionality, for instance, from own personal experience
24 with this infotainment system, and using, like, a phone,
25 like, your GPS, if you're -- if the driver want to stretch,

1 and prevention is enabled, you won't be able to necessarily
2 type, but with a -- with a disabled you could type in, like,
3 an address or something into your GPS.

4 Q. Okay. And then below that there's a couple of
5 lines. One -- first one to 2106 says "Vehicle GPS
6 initialization failed. There may be no truck data." And
7 then it says below that "2107 truck 129 started." In
8 combination, what do those messages mean -- mean to you?

9 A. Starting with the first line, it did -- the
10 vehicle didn't have a good lock on -- I guess enough GPS
11 satellites to be able to give accurate coordinates. So it
12 was flashing that message, but then immediately after it did
13 -- and the way Ford records location as the vehicle's moving,
14 they called them trucks. So -- and they just give them the
15 next -- give them a number. So this happened to be a "Got
16 enough GPS signal," it started track 129.

17 Q. So initially had trouble finding some satellites
18 to coordinate off of, correct?

19 A. Correct.

20 Q. But then it quickly figured it out, correct?

21 A. Correct.

22 Q. Let's scroll to the right until we get to the
23 dates -- to the times, excuse me. And we can see that series
24 of messages we just talked about all happened within a
25 few seconds of each other, is that correct?

1 A. Yeah, it looks to be about seven or eight seconds.

2 Q. Okay. And that's pretty common as we go through
3 this data, that track -- the track records a lot of
4 information sometimes in a very short period of time, is that
5 correct?

6 A. Correct. It even records multiple events at -- at
7 the same time.

8 Q. Okay. Back to the left. Scroll slowly down.
9 Okay. Let's look towards the bottom there. Let's look at
10 line 2127. It says "Gear shift to reverse." What -- seems
11 self-explanatory, but what does that mean?

12 A. Just placing of the gear shifter in reverse.

13 Q. So an individual or a driver placed in reverse,
14 correct?

15 A. Correct.

16 Q. And it says -- I mean-- there's two entries that
17 say -- 2127, 2128 that both say "Gear shift to reverse."
18 What -- why would you see two things saying the same thing?

19 A. It may have just overlapped. It may have been
20 detecting it as it was going into the gear, and then actually
21 in the gear.

22 Q. And then below that on 2129 it says "Gear shift
23 into overdrive." Correct?

24 A. Correct.

25 Q. And that -- it's simply the truck was put in the

1 drive, correct?

2 A. Correct. Yes.

3 Q. Keep going down. All right. And then let's look
4 at 2131 and 2132. It says what -- what do those two lines
5 say?

6 A. They say "Media device name Bud's phone is
7 available."

8 Q. Okay. What does that mean?

9 A. Basically means it's detecting a phone that has
10 been named Bud's phone, and that it's a familiar phone
11 because if it's detecting it is available that says to me
12 it's already been synced via Bluetooth connection at some
13 point.

14 Q. So this vehicle is -- is detecting Bud's iPhone,
15 correct?

16 A. Yeah. Bud's phone. Yes.

17 Q. Bud's phone, excuse me. And it had previously --
18 is it your opinion that it previously had a Bluetooth
19 connection -- and knew and was familiar with Bud's phone?

20 A. That's correct.

21 Q. All right. And now it's reconnecting via
22 Bluetooth, correct?

23 A. Correct.

24 Q. And with these modern cars, can you -- as soon as
25 Bluetooth connection displays phone information on the -- the

1 vehicle touch screen --

2 A. That's correct.

3 Q. And that's what that is -- is signifying, is that
4 correct?

5 A. Yes.

6 Q. All right. Keep going up. All right. And then
7 at -- all right. And then 2141 it says "Odometer." And what
8 does that mean?

9 A. It's just taking an odometer reading, Fords do it
10 periodically. I'm not aware of -- if they do it at, you
11 know, every so often time-wise, but you'll see just randomly
12 in the data, it's taken a reading from the odometer.

13 Q. Okay. And so is that a way to keep track of
14 mileage of the truck by -- by using this -- looking at the
15 starter?

16 A. Oh, that's correct.

17 Q. All right. And it says "Kilometers" but also
18 gives the miles version of that?

19 A. Yes.

20 Q. And I'm going to go to this next page. We're on
21 page two. All right. And first of all, look at what time --
22 we're talking about these top two lines. What's that top
23 time there?

24 A. May 6, 2023, 10:31:50 to 10:31:55 p.m.

25 Q. Okay. And we see a series of messages starting at

1 line 2146. It says "Access point detective." What does that
2 mean?

3 A. So the modern Ford infotainment system that this
4 is, it kind of acts like a phone; in some ways it can connect
5 to Wi-Fi. And so what it's doing is as the vehicles' maybe
6 moving, starting driving around, it can locate, and stand for
7 Wi-Fi access points. So these would be all Wi-Fi access
8 points that happens to be seen at that time.

9 Q. And so we -- we see, like, in line 2146 says
10 "Access point Stokes Private." That would be somebody's
11 Wi-Fi somewhere that they named the network "Stokes Private,"
12 is that correct?

13 A. That's correct.

14 Q. All right. And this would signify that the truck
15 at some point came within range of that Wi-Fi, or at least --
16 not at some point -- at that time we just discussed it came
17 in within range of that particular Wi-Fi, is that correct?

18 A. That's correct.

19 Q. Now does that mean it actually connected to the
20 Wi-Fi at Stokes Public?

21 A. No. I would expect to see either a connection
22 thing, it's just -- it's just detecting the access points.

23 Q. It's just saying, "Hey, I -- I saw Stokes Private,
24 I'm going to record that." Is that --

25 A. Correct.

1 Q. -- what's going on? Okay. And just generally
2 speaking -- and I know there's a lot of variability in there,
3 but how far would you typically expect to be able to detect a
4 Wi-Fi point? Do you need to be from it? How close do you
5 need to be to reliably detect a Wi-Fi?

6 A. Within maybe 100 yards or so. Maybe even closer
7 depending on just like you said, a lot of factors, so...

8 Q. Yeah. But generally within 100 yards would you
9 say?

10 A. Yeah. Yeah.

11 Q. But, you know, what about a mile away, would you
12 expect to be able to detect a Wi-Fi point a mile away?

13 A. No.

14 Q. Okay. Okay. And I'm going to go now we're going
15 to look at lines 2168 and 2169. What are those two lines?

16 A. Those are saying "Speed limit signs are detected."
17 2168 shows a speed limit sign saying 35 miles an hour on
18 Calhoun Road was detected. 2169 was saying "A speed limit
19 sign of 45 miles an hour on Calhoun Road was detected."

20 Q. How -- how does it do that? How in the world does
21 a truck know speed limit?

22 A. They have cameras in the front, and, like, if you
23 drive a car with one of those infotainment systems or
24 speedometer where it has a little speed limit sign icon or
25 whatever, trying to tell you what speed you should be

1 driving, that's how it knows it's actually detecting those
2 signs as you drive down the road.

3 Q. Okay. And this would indicate to you that --
4 we'll look at the times for lines 20 -- I lose my place 2168,
5 2169. I'll scroll. At what time did those two detections
6 occur?

7 A. Same. Both of them have the same time stamp of
8 10:34:22 seconds p.m.

9 Q. All right. We're going to go on. Okay. And I'm
10 going to go to the bottom of page three, and this is lines 22
11 -- 2225, and 2226, and 2227. Are -- are those -- those some
12 more access point detections?

13 A. Correct. Those are, yeah, Wi-Fi access points,
14 yes.

15 Q. Okay. And what are those network names?

16 A. He -- first one is KW Club Private, the second is
17 ARIS-4726-5G. And then the other one is KW.club.private
18 again.

19 Q. Okay. And let's take a look at what times those
20 were detected by the truck.

21 A. 10:39:24 p.m.

22 Q. And once again, we see GPS -- or coordinates that
23 the truck recorded where it detected those points, is that
24 correct?

25 A. That's correct.

1 Q. And now did you personally go and plot every one
2 of these points on a map?

3 A. No.

4 Q. All right. But you did a couple that -- that you
5 were asked to do, correct?

6 A. I did.

7 Q. And we'll get to that in a minute. But there's
8 software out there that you can take this data, and load it
9 into, and it'll automatically plug all this data into, and
10 map it for you, is that correct?

11 A. Oh, yeah. There's multiple software out there.

12 Q. And can you just throw a couple examples out
13 there?

14 A. I mean you could literally throw into Google Maps
15 or Google Earth, Penlink is another one. Berla, I don't know
16 about at the time Mr. (Inaudible) was done, but now they do
17 -- can do it as well, in their software.

18 Q. You mentioned Penlink. Is that something that
19 SLED uses?

20 A. I believe our fusion center uses it, computer
21 crimes does, we don't do a lot of mapping.

22 Q. All right. Move on to page four at the top of
23 page four, and I'm looking at line 2230. And what does --
24 what does that say?

25 A. "Media device named Bud's phone has become

1 unavailable."

2 Q. Okay. And what -- what does that mean?

3 A. That device for whatever reason is not detected by
4 the infotainment system anymore. It could be the device
5 turned Bluetooth off on that phone, or that it was out of
6 range.

7 Q. Okay.

8 A. And that was unable to be detected anymore.

9 Q. Either the phone was manually disconnected, or
10 simply just moved far enough from the truck where it just
11 couldn't make a connection anymore, is that correct?

12 A. That's correct.

13 Q. All right. And I'm going to look at the times for
14 line 2230. What times did that disconnection occur?

15 A. 10:39:24 p.m.

16 Q. All right. And then below that lines 2231 through
17 2235, the -- the truck is -- is still detecting some -- some
18 networks, correct?

19 A. That's correct.

20 Q. And we look back at 2231, and that's still the KW
21 Club Private, is that correct?

22 A. That's correct.

23 Q. And again, that all occurred within a few seconds
24 of each other at what -- about what time?

25 A. About 10:39:29 seconds.

1 Q. And then finally at line 2237, what does that say?

2 A. "That's the driver door being closed."

3 Q. Okay. And then we look at what time did that
4 occur? What time did the driver door close?

5 A. 10:39:31 seconds p.m.

6 Q. So taking those sequence of events into account,
7 just putting those -- that data together in layman's terms,
8 what -- can you explain to the jury what you think happened
9 with this truck, and the driver at that point in time at
10 22:39 or 10:39, on the evening of May 6, 2023?

11 A. That point just with everything in totality, the
12 phone left the vehicle -- driver door -- driver door closed,
13 and so that it disconnected at the first as leaving the
14 vehicle was the vehicle turned off, and then the driver door
15 closed, and it was detecting those access points, you know,
16 in between those two events.

17 Q. Okay. All right. And then, the next line below
18 that last access point detection is line 2237 -- or excuse
19 me, after the door closed. That's 2237 after 22 -- for
20 line 2238. What does that say?

21 A. 2238 "Initial mode to run" meaning starting the
22 vehicle.

23 Q. Okay. All right. And let's look at the times
24 when that occurred. And so when the door closed it -- what
25 time did the door close?

1 A. 10:39:31 seconds p.m.

2 Q. And then in next -- next thing the truck records
3 is what?

4 A. The ignition going to run.

5 Q. Okay. And what time does that occur?

6 A. May 7, 2023, about 12:07:43 a.m.

7 Q. And -- and again, we're -- we're -- we're still
8 dealing with military versus civilian time?

9 A. Correct.

10 Q. What it actually says, what -- what time?

11 A. Zero, I'm sorry, 0 -- 0743.

12 Q. But that is seven minutes past midnight?

13 A. That's correct.

14 Q. Okay. All right. And so we see between 10:39,
15 and -- you know, what hour and a half or so passes not doing
16 exact math, the truck records nothing, is that correct?

17 A. That's correct.

18 Q. And so again, what is your opinion of -- of why
19 that is? Why is the truck recording nothing between 10:39
20 and a little luck at midnight?

21 A. Just it's parked, it's not running. There's, you
22 know, it's --

23 Q. So when the truck's off, is it recording
24 information?

25 A. No.

1 Q. All right. And in fact, it doesn't start
2 recording information in this sequence of -- that's until
3 when?

4 A. Until the ignition is placed into the run setting
5 again.

6 Q. So the truck's off, somebody opens the door, it's
7 not necessarily going to record that, correct?

8 A. No, that's correct.

9 Q. But somebody gets in, and hits ignition, it's
10 going to start recording again, correct?

11 A. That's correct.

12 Q. We are going to skip ahead here, bear with me. As
13 we said, this truck records (inaudible) amount of
14 information, doesn't it not?

15 A. It does.

16 Q. We're going to skip ahead here to page 14. Now,
17 I'm going to direct your attention to -- starting at lines 28
18 -- 2680, and going on down to 2700. What are -- what are
19 those messages?

20 A. It's accepting for that one speed limit sign
21 detected in the middle. They're all a hard braking event.
22 Ford, I believe it's around about four tenths or so of a
23 GForce if it's braking. It'll actually record that as a hard
24 braking event.

25 Q. So if the driver hits the pedal above a certain --

1 the brake pedal above a certain threshold, the truck is going
2 to record that as a hard braking event?

3 A. That's -- that's correct.

4 Q. Okay. And let -- let's look -- I mean -- that's a
5 lot of hard braking events, but let's look at the times those
6 are all occurring. And some of those are -- are pretty close
7 together in terms, is that correct?

8 A. That's correct, yeah, there's even -- there's a
9 few that appear to be to the second at the same time.

10 Q. So that -- that could be the truck recording
11 really -- not necessarily duplicative info, but just
12 amalgamating info. Is that a fair way to put it?

13 A. Yeah, it's just -- it's just constantly -- it
14 knows it's a hard braking event, at least according to, you
15 know, its sensors and computer, and there's -- just recording
16 that it's still just ongoing that -- it just keeps recording
17 it.

18 Q. Okay. And this is all occurring -- looks like
19 between -- it says 059 and about one -- zero or one, and
20 those are civilian times what?

21 A. 12:58 a.m., and 1:00 a.m.

22 Q. Okay. And we see a series of hard braking events
23 correct at that time?

24 A. Yes.

25 Q. And we go to the next page, and look at page 15

1 now, and we see some more hard braking events at the top 20
2 -- at lines 2713 through 2718, is that correct?

3 A. That's correct.

4 Q. And those are occurring at what time?

5 A. 1:01 a.m.

6 Q. All right. All within a few seconds short or even
7 the same -- at the same time?

8 A. Pretty much within a second, yeah.

9 Q. Okay. And then we go down, let's take a look at
10 line 2721. What is that?

11 A. Sorry -- hard acceleration wheel speed. So just
12 like the hard braking events, Ford also require -- or records
13 hard acceleration events over a certain amount of G-Forces.

14 Q. Okay. And you said, "G-Forces" and -- and let's
15 explain that. All right. So what does that mean? What's a
16 G-Force?

17 A. So G-Force is the force of gravity. One G is what
18 we're all experiencing now. We're being pulled towards, you
19 know, the earth of the ground at basically one G. So
20 anything -- what it's detecting is more what we would call
21 lateral movement, either forward or back depending on braking
22 or acceleration of up to what it detects.

23 Q. And so all of us humans walk around every day on
24 earth. We experience one G just -- just standing here,
25 correct?

1 A. Yes.

2 Q. But that is in the axis of pulling us straight
3 down towards the center of the earth, is that correct?

4 A. That's correct.

5 Q. All right. And when we see -- let's take 2716,
6 for example, and we see it says -0.51Gs as far so that's
7 essentially half a G, correct?

8 A. Yeah, that would be half a G. And because it says
9 a deceleration, that'd be like you getting -- as you're
10 hitting the brakes hard, getting kind of thrown forward in
11 the seat a little bit.

12 Q. So that's half of the normal acceleration that we
13 experience towards the earth. But it's pulling the person --
14 if -- person is inside the vehicle straightforward.

15 A. Correct.

16 Q. If it's the acceleration.

17 A. Yeah. And it's what the vehicle itself is
18 actually experiencing in that way as well.

19 Q. Yes. It's the vehicle --

20 A. Yeah.

21 Q. And -- okay. And so 2721, going back to a hard
22 acceleration again we see a -- a G it says "Point" -- what --
23 what does that say?

24 A. 0.38.

25 Q. Okay. 0.38Gs. But this is acceleration. So in

1 which axis is this -- is this force pushing?

2 A. It'd be towards the rear of the vehicle. It's
3 basically if it was top by the person, it'd get pushed back
4 into the seat as the car accelerates.

5 Q. Okay. All right. And -- and you were talking for
6 a minute, I may have interrupted you, but you're saying
7 something -- it says, "Wheel speed 21.9." What -- what does
8 that mean?

9 A. Correct. Ford when it measures speed for the
10 infotainment system in this data, it actually measures it
11 directly from the drive train itself. So normally your
12 speedometer calculates how fast your wheels are moving, which
13 gives you your speed. Ford isn't just reading the
14 speedometer, it's reading from the drive-train itself. So
15 that's where it's getting that -- those miles per hour
16 information from.

17 Q. Okay. Okay. Let's go back down towards the
18 bottom of page 15. Looking at lines 2751, and down what --
19 what -- first of all, 2751, what does that say?

20 A. "Traction event wheel speed 37.8 miles an hour.
21 Acceleration 1.2G implied."

22 Q. Okay. And keep going to the right. What does
23 this say?

24 A. "Wheel traction possible wheel-spin."

25 Q. What does that mean?

1 A. So basically the -- the way modern vehicles work
2 is most of them have a -- what is known as traction control.
3 So if it notices a tire -- series of tires spinning, it'll
4 try to reduce power. Not to say that necessarily tires were
5 spinning, but the infotainment system at this point, based on
6 the mounted acceleration, and the wheel speed, at least
7 thought that that's what was happening at the time, that the
8 wheels either were spinning or about to be spinning.

9 Q. Okay. And -- and -- and above that between 2731
10 and 2742 we see some -- some more hard acceleration messages,
11 is that correct?

12 A. That's correct.

13 Q. And let's -- let's take a look at the times of all
14 this. This is all occurring between one oh -- what time we
15 see the -- what times do we see those hard accelerations
16 begin?

17 A. 1:02:57 to 1:02:59.

18 Q. And then we go back down to the bottom page
19 towards 2752 and down. What times are those occurring?

20 A. 1:03:02 to 1:03:20.

21 Q. All right. And looking again, starting at 2767 on
22 page 16, and now we see another series of what?

23 A. Another series of hard braking events.

24 Q. Okay. And looking at the times of those hard
25 braking events, what -- what times are those occurring?

1 A. 1:04:55 to 1:04:57.

2 Q. All right. So all within a few seconds of each
3 other, correct?

4 A. That's correct.

5 Q. It's more hard accelerations at the -- at the
6 bottom. 2795 through 2799, correct for both the reports?

7 A. Yes.

8 Q. All right. And then, let's look at page 17. And
9 this is 2813 -- line 2813. Actually we'll just start at the
10 top. We see what at the top? 2801 and down. What do you
11 see?

12 A. Hard braking wheel-spin to hard acceleration, to
13 an odometer reading, to another hard braking event.

14 Q. Okay. And this is all occurring from when to
15 when? Starting at?

16 A. 1:05:36.

17 Q. To?

18 A. 1:06:10.

19 Q. Okay. So it's all within about a minute of each
20 other, correct?

21 A. Correct.

22 Q. We are going to skip a few pages here. Go to
23 page 21. Okay. So let's start at the top on page 21.
24 What's that first entry? That's line 2977.

25 A. That's the gear shift going into drive.

1 Q. Okay. And then what time does that occur?

2 A. 1:10:10.

3 Q. Okay. And below that, I see a series of messages
4 all due with the gear shift. Why -- why would you see a
5 bunch of gear shifts in the same little sequence like that?

6 A. Looks like it was just -- it got put into drive
7 then neutral to reverse back to neutral to drive. So it was,
8 like, you know, if it's column shift, or someone's going up
9 and down the column shift, or it's one -- the new dial ones
10 just --

11 Q. Okay.

12 A. -- twisting the dial.

13 Q. And then it goes into drive. Finally a -- was
14 that line 2985?

15 A. Yes.

16 Q. And what time does that occur?

17 A. 1:10:30.

18 Q. Okay. Okay. So let's start looking at line 2987,
19 and we see going down several things appear to happen. Let's
20 talk about that. So starting at line 2987 we see what?

21 A. Hard acceleration wheel speed at
22 14 and a half miles an hour acceleration equals 0.45G.

23 Q. And we see odometer reading at 2988, correct?

24 A. Yes.

25 Q. And then below that we see 2989. What is that?

1 A. Another hard acceleration wheel speed

2 25.4 miles an hour acceleration is 0.4 3G.

3 Q. Let's -- let's take a look at the time that

4 occurred, and you were just talking about line 2989. What --

5 what time did that occur?

6 A. I believe it's 1:11:16. If it get charged of the

7 right line.

8 Q. I'll do it again.

9 A. It's all right.

10 Q. So 2989.

11 A. Yeah, sure. 1:11:16.

12 Q. Okay. All right. So after 2990, what we did it

13 centered -- sorry, 2990, what is that?

14 A. Hard braking wheel speed 38.4 miles an hour

15 deceleration at minus 0.95G.

16 Q. Okay. Or is that -- yeah, 2990. The vehicle is

17 the -- the wheels are spinning at how fast?

18 A. Approximately 38.4 miles an hour.

19 Q. All right. And we see some braking, and it's --

20 how much -- what was the G associated with that particular

21 braking?

22 A. 0.95 -- not minus 0.95. Sorry.

23 Q. Can you -- can you step a little closer? Is that

24 95, or is that a 45?

25 A. Well, it's a 95.

1 Q. (Crosstalk) different ones.

2 A. Oh, I apologize.

3 Q. All right. We're talking about different ones.

4 2990 it -- well, let's -- let's talk about that. It says in
5 the far left column, what does that say? "Hard brake starts
6 hard breaking."

7 A. Yeah. Wheel speed 30 -- 38.4 decel equals minus
8 0.95G.

9 Q. Okay. All right. And there's some hard braking.
10 Let's see what time that occurs. And we're talking about
11 2991.

12 A. 1:11:29.

13 Q. Okay. So let's go down to 2991. What is that?

14 A. Traction event wheel speed 20 -- 25.9 miles an
15 hour deceleration at minus 1.2G.

16 Q. Okay. And so and it looks to the -- what are the
17 -- next two columns say?

18 A. "Wheel traction and possible wheel slip."

19 Q. So we see the speed change from what to what?

20 A. 38.4 to 25.9.

21 Q. Okay. And let's look at the times those
22 two events occurred. And what times did that -- does that
23 speed change occur between the two points?

24 A. Between 1:11:29 and 1:11:31.

25 Q. And then the next line is 2992. Do you see that?

1 A. Yes.

2 Q. All right. And what does that say?

3 A. "Hard braking wheel speed 24.4 miles an hour
4 deceleration minus 0.65G."

5 Q. Okay. And then at 2993, what does that say?

6 A. "Traction event wheel speed 14.2 miles an hour
7 deceleration equals minus 2.4 G."

8 Q. Okay. And so when -- you see another speed drop
9 between those two points, correct?

10 A. Correct.

11 Q. From what to what?

12 A. 24.4 to 14.2.

13 Q. Let's look at the times of those two events, and
14 we're talking about 2992 -- excuse me, 29 -- yes 92 -- 2993.
15 What are the times those two events occurred?

16 A. 1:11:31, 1:11:32.

17 Q. Okay. And we -- we saw -- you saw a -- a number
18 of minus 2.4Gs, is that correct?

19 A. That's correct.

20 Q. At 2993?

21 A. Yes.

22 Q. Okay. Now, you've reviewed a lot more data from
23 this particular truck than just what we're seeing here today,
24 is that correct?

25 A. That's correct.

1 Q. And okay -- we'll -- actually we'll get to that
2 question in a second. At 2993, we see with that the
3 acceleration, we see what -- what two messages?

4 A. "Wheel traction, possible wheel slip."

5 Q. Okay. And did you review the rest of this data,
6 and look for an instance where you saw a deceleration as high
7 as minus 2.4Gs associated with a wheel slip?

8 A. I did look for that data. I did not find -- I
9 found some decelerations around 2.4, maybe even a little
10 higher, but not associated with a possible wheel slip, just
11 heavy braking.

12 Q. Okay. All right. So there's something that
13 causes his truck to decelerate very quickly, correct?

14 A. Correct.

15 Q. And there's a wheel slip at the same time,
16 correct?

17 A. Correct.

18 Q. And that time is between?

19 A. 1:11:31 and 1:11:32.

20 Q. And let's continue now. And let's -- let's --
21 let's keep going to 2993 through 2995. What are those
22 events?

23 A. Ninety-three is traction event wheel speed 14.2.
24 Decel the two -- I'm sorry, that's the (crosstalk) okay.

25 Q. 2994 what is that?

1 A. Traction event wheel speed 17.3 miles an hour
2 acceleration, so that's positive 1.2G applied.

3 Q. Okay. And then it says the next two columns what?

4 A. "Possible wheel-spin."

5 Q. Okay. And so we see a deceleration from 24.4 to
6 14.2, and then it's all of a sudden back up to 17.3, is that
7 correct?

8 A. That's correct.

9 Q. Okay. And again, the truck is measuring more or
10 less how fast those tires are spinning that?

11 A. That's correct.

12 Q. A good way to understand that?

13 A. Yes.

14 Q. And that's how it's calculating those speeds?

15 A. That's correct.

16 Q. And so if the wheels are spinning, but the truck
17 isn't physically moving, how would this -- the -- this
18 infotainment center record that if the wheels are spinning,
19 but the truck is not physically moving?

20 A. It's a possible wheel-spin.

21 Q. Okay. Okay. Keep going. Below that we see 2996,
22 what is that?

23 A. 2996. "It's a driver's traction prevention
24 disabled."

25 Q. Okay. And we -- we've already talked a little bit

1 about that, but remind the jurors what that means?

2 A. That's the driver distraction prevention system,
3 like, while you're riding down the road, prevents you from
4 typing, it limits what you can interact with on the
5 infotainment system screen to try to not distract you from
6 driving normally, it only gets disabled in Fords if the
7 vehicle's in park, if it's in drive, and the -- and the
8 vehicle's not moving or, like, you know, neutral, but if the
9 vehicle's in drive and in motion, it should be enabled.

10 Q. Okay. All right. Let's keep going. 1997 through
11 20 -- 3001. What are those events?

12 A. The first one's a track event wheel speed at
13 five miles an hour. Deceleration minus 1.1G with an event
14 type of wheel track, and possible wheel slip. And then it
15 continues with hard braking wheel speed 13.7 miles an hour,
16 decel minus 0.53G, and that line is hard braking wheel speed.
17 9.9 miles an hour decel 0.61G.

18 Q. Okay. All right. And then let's -- let's look at
19 the times of -- all these events are starting, you know, at
20 1992 to now at 3001. What -- just tell us those times again.

21 A. You can point which line you -- I'm sorry, I
22 can't.

23 Q. Let's start at 1992. When we see 24.4 miles an
24 hour on a wheel spin, what time is that?

25 A. That's at 1:11:31.

1 Q. And then we go down to 20 -- 3001, and that's
2 another vehicle braking, and the accelerating. And what time
3 is that?

4 A. 1:11:33.

5 Q. All right. Sir, all this occurs within what
6 about? Two seconds?

7 A. Two seconds.

8 Q. All right. And, you know, in your experience, and
9 analyzing this sort of data, have you formed an opinion about
10 what could cause this sequence of events or the vehicle to
11 record the sequence of events?

12 A. There could -- with obviously the possible wheel
13 slip it, either the tires are about to lock up.

14 MR. SWERLING: Higher standard than that. If you can
15 ask an opinion, it's got to be to some degree of certainty.

16 THE COURT: To a reasonable degree of whatever
17 certainty he would have, engineering, medical whatever.

18 BY MR. CONRAD:

19 Q. To a reasonable degree of certainty, taking into
20 account your trained experience in analyzing digital data
21 from infotainment systems on trucks or vehicles in general
22 would -- have you been able to form an opinion about whether
23 a collision could or could not result in this series of
24 messages recorded by this truck?

25 A. I have.

1 Q. All right. And what would that opinion be?

2 A. I believe that there was a potential collision
3 during this time because of the 2.4 negative G deceleration
4 followed by immediately the acceleration and deceleration.
5 That's all within the same second, I don't -- I mean -- it's
6 just even physical mechanics if you're hitting the brakes,
7 unless you're on both pedals at the same time, to decel on
8 itself like that. So there, in my opinion, there would be
9 some sort of outside influence besides just the accelerator
10 and the brake.

11 Q. Fair enough. Now, previously I asked you if you
12 had plotted all these GPS data points on a map somewhere, and
13 you answered how?

14 A. A few that I was asked.

15 Q. All right. And in fact, these GPS data points
16 that are associated with this sequence of events, you have
17 plotted those, is that correct?

18 A. I have.

19 Q. All right. And where did you plot those?

20 A. I put them into Google Maps.

21 Q. All right. And then what location did this series
22 of events occur at?

23 A. Appeared -- appeared to be in Greenwood at the
24 intersection of Avid and Sawgrass.

25 Q. Okay. All right. And so let's -- let's keep

1 going for just a little longer. After that final hard
2 braking at 3001 line 3002, what do we see?

3 A. 3001 is hard braking wheel speed, four miles an
4 hour decel negative 0.46G and --

5 Q. And then 3002.

6 A. Sorry. The driver door then opens.

7 Q. Okay. And let's take a look at the time the door
8 opens. And what time does the door open?

9 A. 1:11:34.

10 Q. And then we see what happened with the truck after
11 the door opens?

12 A. Gear shift goes into reverse, then into park, and
13 then the driver door closes.

14 Q. Okay. So the gear shift is -- is shifted into
15 reverse then park, correct?

16 A. Correct.

17 Q. And then you see the driver door close, but let's
18 look at the time of that. And that's line 3007. And what
19 time does the door close, can you see that?

20 A. Yes. 1:12:33.

21 Q. Okay. So let's go back to where the door was
22 open. What time was that?

23 A. 1:11:34.

24 Q. And then it closes again at what?

25 A. 1:12:33.

1 Q. All right. Not to put you on the spot, but
2 roughly how much time was that door open?

3 A. About a second.

4 Q. Excuse me.

5 MR. SWERLING: How -- how long?

6 THE WITNESS: I apologize a minute not a second.

7 BY MR. CONRAD:

8 Q. About a minute, correct?

9 A. I apologize.

10 Q. The door was open for about a minute?

11 A. Yes.

12 Q. All right. And again, this is right where you
13 plotted near that intersection of Avid and Sawgrass, is that
14 correct?

15 A. That's correct.

16 Q. I think that's all I'm going to review at this
17 time with you. Just -- just that last thing we talked about,
18 and I can put it back up there if you'd like me to, but after
19 that series of events that -- you believe could be consistent
20 with the collision we see the door open, correct?

21 A. Yes.

22 Q. And it remains open for how much? Was it about a
23 minute?

24 A. About a minute.

25 Q. A little less than a minute?

1 A. Yes.

2 MR. CONRAD: Okay. All right. Nothing further from
3 the State for this witness.

4 THE COURT: Any cross-examination, Mr. Swerling?

5 MR. SWERLING: No, your Honor.

6 THE COURT: Is that a no?

7 MR. SWERLING: No.

8 THE COURT: Okay. All right. Thank you, sir. You can
9 step down.

10 AGENT HUDAK: Thank you.

11 THE COURT: See the lawyers for just a minute, please.

12 (Bench conference at 4:39 to 4:40 p.m.)

13 THE COURT: All right. Ladies and gentlemen, here is
14 the -- the plan. We're going to go ahead, and recess for
15 today. My plan is, as I mentioned earlier, to start back at
16 12:00 tomorrow.

17 Now, what I will want you to do -- this applies to
18 Ms. Ross, and Ms. Brown, okay? If for some reason something
19 were to happen to where the whole courthouse is closed --
20 part of it is being closed tomorrow, right? Madam Clerk, the
21 part is staying open, but if something were to happen that
22 the entire courthouse is closed, and we could not go forward,
23 then Friday is not a problem for either one of you, I assume,
24 correct?

25 Ms. Brown, Ms. Ross? Ma'am?

1 MS. BROWN: Well, can you ask again?

2 THE COURT: Okay. I understand that you -- Friday was
3 the problem for you because of your dad's appointment?

4 MS. BROWN: Yes.

5 THE COURT: That your sister took care of the -- the
6 other four days of the week, right?

7 MS. BROWN: Right.

8 THE COURT: Okay. I assume that applies to next week?

9 MS. BROWN: Next week Friday.

10 THE COURT: Okay. All right. So I don't want to
11 excuse you yet now if the -- you call after 10:00 on that
12 recorded message, if you -- if you don't still have the
13 little card with the number on it, make sure you get that.
14 If it says we're starting back at 12:00, then Ms. Ross and
15 Ms. Brown, you are excused, and you do not need to come back,
16 okay? But if for some reason, again, we don't go forward
17 tomorrow at 12:00, then you all are okay, and then I want you
18 back on Monday. All right? So -- but if it says "Jury
19 report back at 12:00 tomorrow Friday," then that means the
20 two of you all are excused, and you do not need to come back
21 for the render of the case. Okay? Is that clear? Okay. So
22 all of you call after 10:00 in the morning, and -- for that
23 recorded message, and again, if you don't have that little
24 card with a number, don't leave until you get that. Okay?

25 MS. BROWN: It's on the back.

1 MS ROSS: It's on the back.

2 THE COURT: Oh, it's on the back of -- yep, you're
3 right. It's on the back of your juror tag. Okay? Is that
4 clear? Anybody have any questions about that? Okay. Call
5 at 10:00 in the morning. Yes. Recorded message will tell
6 you -- more than likely, we hope is going to say, "Yeah, be
7 back at 12:00 and everything is good." But I told the clerk
8 if the courthouse washes away, then we can't -- we can't go
9 forward, and no court tomorrow.

10 All right. Okay. Have a good evening. Stay safe, try
11 to stay dry, and hopefully we'll see you back at 12:00
12 tomorrow. Okay.

13 (Jury exits room at 4:43 p.m.)

14 THE COURT: From the lawyers, anything further before
15 we recess for the day?

16 MR. MEADORS: No, sir. Thank you.

17 THE COURT: Okay. From the Defense?

18 MR. SWERLING: No, your Honor.

19 THE COURT: Okay. Thank you. You all have a good rest
20 of your day, and stay safe, stay dry, let's see everybody
21 hopefully at 12:00 in the -- tomorrow.

22 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
23 4:44 P.M.)

24

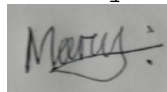
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CERTIFICATE OF TRANSCRIBER

I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 8 of Greenwood County, South Carolina, on September 26, 2024.

I do further certify that I am neither of kin, Counsel, nor interest to any party hereto.

January 14, 2025

A rectangular stamp containing a handwritten signature in dark ink. The signature appears to read "Mary" followed by a flourish.

MARY RAGSDALE

Transcriber

1 STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT OF
2) THE EIGHTH JUDICIAL CIRCUIT
3) 2023-GS-24-00958
4)
5 COUNTY OF GREENWOOD)

5 STATE OF SOUTH CAROLINA,)
6)
7 Plaintiff,)
8) TRANSCRIPT OF RECORD
9 vs.)
10 WILLIAM G. ACKERMAN, JR.,)
11 Defendant.)

12 October 2, 3, 4, & 5, 2024

13 Greenwood, South Carolina

14 B E F O R E:

15 HONORABLE DONALD B. HOCKER, JUDGE

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

17 John P. Meadors, Esquire
18 John B. Conrad, Esquire
19 Attorneys for the State

20 Jack B. Swerling, Esquire
21 Attorney for the Defendant

22
23
24 Lisa G. Amick
25 Court Reporter

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(SW) - Denotes State's Witness

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1 THE COURT: Good morning everyone. I hope everyone
2 has remained safe in dealing with the hurricane. And for those
3 of you who do not have power, I hope that you'll get it on as
4 soon as possible. We have 16 out of 17 jurors who have showed
5 up today, and that's amazing. The clerk and I felt like we'd
6 be lucky to get 12, but we have 16 out of 17 and the one who
7 has not shown up, she had already had travel plans. So
8 anyways, we got 16 so that's, the jury is going to be
9 commended by me when we bring them out, okay? State ready for
10 the jury?

11 MR. MEADORS: Yes, sir.

12 THE COURT: Defense?

13 MR. SWERLING: Yes.

14 THE COURT: Okay. Bring the jury out please.

15 (Jury entering Courtroom.)

16 THE COURT: Okay. Let the record reflect the jury is
17 in. Good morning, ladies and gentlemen.

18 JURORS: Good morning.

19 THE COURT: I want to start off by thanking you and
20 commending you for showing back up today. Quite frankly and
21 with all candor, the clerk and I did not think because of the
22 situation that we all have been in, that we would have a hard
23 time getting at least 12 here and we've got 16. The one, Stacy
24 Sullivan, who is not here already had travel plans I think
25 starting yesterday, I believe, so that's why she's not here.

1 So thank you very, very much, and on behalf of the State and of
2 the Defense and all the family and friends who are here, they
3 also thank you for honoring your very important civic duty and
4 responsibility. And for those of you who do not have power, I
5 hope and pray that you'll get it on very, very soon, okay?

6 Now, in talking with the lawyers, this case will go into
7 Friday, there is that slim possibility, and I'm letting you
8 know now, it could go into Saturday. But they're going to work
9 real hard, we're going to work real hard to try to get this
10 case to you by Friday, so that's our goal, alright? So if
11 there's any, if anybody has any issues then you need to let me
12 know that, but that's the plan right now. Once again, I thank
13 you, and as you already know, we're going to feed you lunch, so
14 if any of you are hungry, hopefully we can take care of that,
15 okay? Alright. State ready to call its first witness for the
16 day?

17 MR. MEADORS: Yes, we are, Your Honor. May it please
18 the Court?

19 THE COURT: Before you start, let me explain since
20 Ms. Sullivan, one juror who is not here because of travel
21 plans, so I'm having to appoint one of the five alternates as
22 now part of the 12. And we do it by random, we put your juror
23 number on a sheet of paper and put it a cup, the clerk drew the
24 one out, so Denise White, raise your hand please? Okay. Ms.
25 White, you are now one of the 12 and you can just come up and

1 have a seat right there, okay? Alright. Now, Mr. Meadors, you
2 may proceed.

3 MR. MEADORS: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. MEADORS: Your Honor, the State of South
6 Carolina, we now call Abigail, Mohajer, M-o-h-a-j-e-r.

7 CLERK: Raise your right hand. Do you solemnly swear
8 the testimony you're about to give this Court to be the truth,
9 the whole truth, and nothing but the truth so help you God?

10 MS. MOHAJER: Yes, ma'am.

11 CLERK: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. MEADORS:

14 Q Good morning.

15 A Good morning.

16 Q And if you'll please speak into that microphone so
17 everybody can hear you, please ma'am. Pronounce your last
18 name.

19 A Mohajer.

20 Q Please spell it.

21 A M-o-h-a-j-e-r.

22 Q Are you nervous?

23 A Yes.

24 Q Nobody's watching. Okay. Relax. Tell these folks where
25 you're from.

1 A I'm from Greenwood, South Carolina. I was born and raised
2 here.

3 Q You went to school here?

4 A Yes.

5 Q What did you do after school?

6 A I did artwork and taught preschool.

7 Q Okay. And where did you teach preschool?

8 A At Noah's Ark.

9 Q I'm sorry?

10 A At Noah's Ark.

11 Q And are you currently working?

12 A Yes, sir.

13 Q Where do you work?

14 A For Greenwood School District 50.

15 Q Do you have a child?

16 A Yes, sir.

17 Q How old's your child?

18 A He is 7.

19 Q We're going to go right through this, okay?

20 A Okay.

21 Q You know Davis McClendon, or did you know Davis McClendon?

22 A Yes, sir.

23 Q And how long had you known him?

24 A Probably 10 years.

25 Q And did you know Meredith Ackerman, now Meredith Haynie?

1 A Yes, sir.

2 Q And prior to this in May of 2023, how long had you known
3 Meredith?

4 A Not very long, like a couple of months.

5 Q How did you get to know Meredith?

6 A Through a mutual friend who works at my son's school.

7 Q As a result of that, did y'all become friends?

8 A We did.

9 Q Socialize?

10 A Yes, sir.

11 Q And did you know the Defendant, Bud Ackerman?

12 A No, sir.

13 Q You did not know him?

14 A No, sir.

15 Q I'm going to go right to on May 6th of 2023. Did you have
16 an occasion to go to Key West Bar?

17 A Yes.

18 Q On May 6th, 2023?

19 A Yes, sir.

20 Q And I'm going to show you what's marked 51. Have you
21 previously viewed a video that's in evidence of activity at the
22 Key West Bar here in Greenwood?

23 A Yes, sir.

24 Q And have you seen yourself on that video?

25 A Yes, sir.

1 Q And have you watched that video?

2 A Yes, sir.

3 Q Does it accurately reflect the time you were in there that
4 night?

5 A Yes, sir.

6 MR. MEADORS: Your Honor, this is State's 51 which is
7 basically the Abbi Mohajer part of this video which is already
8 in evidence, but this is just a certain section of that,
9 State's 51.

10 THE COURT: Alright. Very good.

11 MR. SWERLING: Yeah. It's already in?

12 MR. MEADORS: Yeah. This is just ---

13 THE COURT: Yeah. It's already in evidence.

14 MR. MEADORS: This is just to help us present it,
15 Judge. I'm going to ask Mr. Matt Ellis if he would assist me
16 on this, Your Honor. Now, for the sake of, there's been
17 evidence presented and will be evidence presented that this
18 video is two hours and 55 minutes off, okay?

19 THE COURT: Alright. Now, Mr. Meadors, is this a
20 portion? Because I show the Key West video 17 A through H, is
21 this a clip of it ---

22 MR. MEADORS: Yes, sir.

23 THE COURT: --- and marked as an additional exhibit?

24 MR. MEADORS: But it is included in that what's
25 already in evidence ---

1 THE COURT: Okay. Alright.

2 MR. MEADORS: --- yes, sir. And this is 51
3 again.

4 THE COURT: Gotcha.

5 (Video playing.)

6 Q This would be approximately 9:48 on May 6th of 2023. Can
7 you tell me who is that coming into the bar?

8 A That's me.

9 Q Can you see from there?

10 A Yes, sir.

11 Q Okay. And is that you walking in the bar?

12 A Yes, sir.

13 Q And is this the inside bar area of Key West?

14 A Yes, sir.

15 Q And then how many times had you been to Key West Bar,
16 approximately?

17 A Probably ---

18 THE COURT: Can you speak up a little bit? I know
19 you're soft-spoken, but I need for you to speak up so everybody
20 can hear you.

21 Q Had you been there numerous times?

22 A Yes, sir.

23 Q Okay. Did you see Bud Ackerman at Key West Bar on May 6th
24 of 2023?

25 A Yes, sir.

1 Q Now, I want to stop right here where it looks like 11:11,
2 if you will. Can you point yourself out in there now, can you
3 see yourself, Abbi? This one here?

4 A Yes.

5 Q Okay.

6 A Yes.

7 Q Are you behind the nice lady with the blonde hair?

8 A Yes, sir.

9 Q Do we see the back of your head?

10 A Yes.

11 Q Is that you?

12 A Yes, sir.

13 Q Okay. Now, do you see Bud Ackerman in there?

14 A Yes, sir.

15 Q And what's he wearing?

16 A He has a hat on and gold shirt.

17 Q Is that Bud Ackerman?

18 A Yes, sir.

19 Q And when you were in the bar at that time, did you know
20 that was Bud Ackerman?

21 A Not right away.

22 Q Well, how did you end up finding that out?

23 A Because he approached me.

24 Q He approached you?

25 A Yes, sir.

1 Q And it appears to be, are you looking at him or is he
2 looking at you at this point?

3 A I mean, I don't think I was looking at him.

4 Q Okay. Were you drinking that night?

5 A Yes, sir.

6 Q Okay. It looks like everybody in this video was drinking,
7 right?

8 A Yes, sir.

9 Q Did it appear Bud Ackerman ---

10 MR. SWERLING: Objection, that's a leading question.

11 THE COURT: Yeah. Rephrase Mr. Meadors, if you
12 would.

13 Q Was Bud Ackerman drinking?

14 A Yes, sir.

15 Q Were others in the bar drinking?

16 A Yes.

17 Q Can you see that on the video?

18 A Yes.

19 Q Let's stop right there. Can you point out or tell us
20 where Bud Ackerman is at that point in the video?

21 A He's wearing the hat in front of me.

22 Q And at this point, are you talking with him?

23 A Yes.

24 Q Do you remember what he said to you?

25 A He asked me where ---

1 Q I'm sorry. What did you say? Strike that, I apologize.
2 Do you remember what Bud Ackerman said to you when you first
3 talked to him at the bar? I'm sorry.

4 A He asked me where my girl was.

5 Q Where your girl was, okay. And did you know who he was
6 referring to?

7 A Yes.

8 Q And who was he referring to?

9 A Meredith.

10 Q Is that the first thing he said to you?

11 A Yes, sir.

12 Q Had you ever talked to him before prior to that?

13 A No, sir.

14 Q Ever?

15 A No, sir.

16 Q Now, did there come a point at approximately, well, did
17 Bud Ackerman leave this bar area and come back? This back
18 part, did he come back, or did you talk with him again later?

19 A Yes.

20 Q Okay. Is that Bud Ackerman that just left?

21 A Yes.

22 Q Who's that fellow you're talking to now?

23 A Bob Thompson.

24 Q And does Bud Ackerman come back into this part of the bar
25 area?

1 A Yes, sir.

2 Q And at that point, actually, 11:39 by this clock or, do
3 you and Bud Ackerman start talking again?

4 A Yes.

5 Q And is that depicted in the video we're seeing now?

6 A Yes, sir.

7 Q Is the arrow on you? Is that you?

8 A Yes, sir.

9 Q Is the arrow on Bud Ackerman?

10 A Yes, sir.

11 Q There seemed to be an animated conversation right there,
12 can you tell us what that was?

13 A I was trying to change the subject, and I brought up his
14 kids to keep the peace. And I just said that my son really
15 enjoyed hanging out with his little girl.

16 Q Well, you appear that you got, left quickly and can you
17 tell us why?

18 MR. SWERLING: Objection, Your Honor, unless it's
19 relevant, it's got to be relevant to this situation.

20 THE COURT: Okay. You want to lay a little
21 foundation for that question and then we'll see where we go.

22 Q Were you upset?

23 A Yes.

24 Q Okay. At something the Defendant had said?

25 A He said ---

1 MR. SWERLING: Objection.

2 Q Without saying it ---

3 THE COURT: What's the basis for your objection?

4 MR. SWERLING: The basis for my objection, it's got
5 to be relevant to this particular case. Something that does,
6 proof of this case, not just in general conversation.

7 THE COURT: Well, I don't know what her answer is.

8 Q Don't say what he said. Were you anxious or leaving
9 because of something he said? Not what he said, but because of
10 something he said?

11 A Yes, sir.

12 Q Okay. And can you describe his demeanor when he was
13 saying it?

14 A He was being rude and not nice.

15 Q And you left after that?

16 A Yes, sir.

17 Q Without going into the substantive, was it something
18 involving the children?

19 A Yes, sir.

20 Q Okay. We'll leave it at that. Okay. What did you do
21 next?

22 A I, my phone was dying, so I went to my car, and I called
23 Meredith.

24 Q Let's stop. This fellow you're talking to here, is this
25 the Thompson fellow you mentioned earlier?

1 A Yes.

2 Q Okay. Keep going. What did you tell Thompson?

3 A That he was ---

4 MR. SWERLING: Well, that's not a conversation
5 involving any of the parties.

6 THE COURT: Okay.

7 Q Was it about, without saying what it was, was it about the
8 Defendant?

9 A Yes, sir.

10 Q Okay. Is that you?

11 A Yes, sir.

12 Q And this is approximately 11:48?

13 A Yes, sir.

14 Q And it looks like you've got something in your hand?

15 A Yes, sir.

16 Q Okay. Well, what is it, I'm sorry?

17 A My phone.

18 THE COURT: What was your answer, ma'am?

19 A My phone.

20 Q You mentioned earlier I think you called Meredith, is this
21 when you called Meredith?

22 A Yes.

23 Q As a result of that, did Meredith end up coming right
24 then?

25 A No. I told her not to, that's why I called her.

1 Q That's why you called her?

2 A (Nonverbal response).

3 Q Alright. Was the Defendant's truck still there when you
4 left here at this moment?

5 A Yes.

6 Q Where did you go, we see you walking off right here, where
7 did you go?

8 A I went to my car so I could charge my phone.

9 Q Okay. And did you have a conversation with Meredith, and
10 I think it's already in the records in State's 31, for
11 approximately 18 minutes?

12 A Yes, sir.

13 Q Did you see the Defendant's car leave?

14 A Yes, sir. While I was on the phone.

15 Q While you were on the phone with ---

16 A Meredith. With Meredith.

17 Q Did you tell her his car had left, or he left?

18 A Yes, sir.

19 Q As a result of that, did you later see Meredith and Davis
20 come to Key West Bar?

21 A Yes, sir.

22 Q And were you there with them?

23 A Yes, sir.

24 Q And this would be approximately 12:24 on May 7th, is that
25 you going back in?

1 A Yes, sir.

2 Q We played these, and I'm not going to go through all these
3 again, I'm going to go through this very quickly. Is that you
4 coming in the front?

5 A Yes, sir.

6 Q Is that Meredith and Davis arriving?

7 A Yes, sir.

8 Q And we've seen all this, and I'm not going to go back
9 through it, but were you present when Meredith was receiving
10 some phone calls?

11 A Yes, sir.

12 Q And were you present when Davis appeared to send a text,
13 without saying what it was?

14 A Yes, sir.

15 Q You were in that video?

16 A Yes, sir.

17 Q Did there come a point where Davis left?

18 A Yes, sir.

19 Q Davis McClendon?

20 A Yes, sir.

21 Q Describe his demeanor?

22 A He was in a great mood.

23 MR. SWERLING: I object unless there's a foundation
24 laid as to what he's looking for and what she knows.

25 THE COURT: Well, I mean, he can, she can

1 testify what she observed about a particular person without
2 going into what, you know, he may have said, so I'll overrule,
3 allow you to answer the question.

4 Q I was not going to go back and play it, but did you sit
5 and talk to him for a while at the bar?

6 A Yes, sir.

7 Q Interacted with him?

8 A Yes.

9 Q And based on that time, can you describe Davis McClendon's
10 demeanor?

11 A He was in a great mood, he was laughing, and ---

12 MR. SWERLING: I'm sorry?

13 A He was in a great mood; he was laughing and happy.

14 Q At some point, did Davis McClendon leave?

15 A Yes, sir.

16 Q And were you still at the bar with Meredith?

17 A Yes, sir.

18 Q Did Davis McClendon ever end up coming back to the bar
19 while you were there?

20 A No.

21 Q And did Meredith have a car there?

22 A No, sir.

23 Q And did, how did Meredith get from Key West or wherever
24 she went next?

25 A She rode with me to Devon Park.

1 Q Okay. And we're not from around here, I know where it is
2 now, but is Devon Park right near Key West?

3 A Yes, sir. It's 10 minutes away.

4 Q About 12:07 on May 7th, is that you and Meredith leaving
5 Key West?

6 A Yes, sir.

7 Q How did Meredith get from where you were at Devon Place to
8 wherever she went?

9 A Meg McGovern picked her up.

10 Q Say that one more time.

11 A Meg McGovern picked her up from me.

12 Q Okay. Had your phone been used to contact Meg McGovern?

13 A Yes, sir.

14 Q And the individual you had that encounter with at Key
15 West, and the individual that said where's your girl, an
16 individual you never met before, is he in the Courtroom?

17 A Yes, sir.

18 Q Is it the Defendant sitting next to Mr. Swerling?

19 A Yes, sir.

20 MR. MEADORS: We'd ask the record so reflect. Beg
21 the Court's indulgence.

22 THE COURT: Sure. So noted for the record she's
23 identified Mr. Ackerman, the Defendant.

24 Q I've been reminded by my friends here that I may have said
25 12:07, at 1:07 when y'all left?

1 A Yes, sir.

2 Q Approximately?

3 A Yes.

4 MR. MEADORS: And again for the record, the Key West
5 time is off two hours and 55 minutes which will be straightened
6 out later or if it hadn't already. That's all, thank you.

7 THE COURT: Okay. Mr. Swerling, any ---

8 MR. SWERLING: No questions.

9 THE COURT: Okay. Ma'am, you can step down, you're
10 free to leave the Courthouse, you're more than welcome to
11 remain with us if you'd like. Okay. Mr. Conrad, next witness,
12 sir?

13 MR. CONRAD: May it please the Court? State calls
14 Seargent Andis with the South Carolina Highway Patrol.

15 THE COURT: Okay. Come around Trooper Andis.

16 CLERK: Raise your right hand. Do you solemnly swear
17 the testimony you're about to give this Court to be the truth,
18 the whole truth, and nothing but the truth so help you God?

19 MR. ANDIS: I do.

20 **DIRECT EXAMINATION**

21 BY MR. CONRAD:

22 Q Seargent Andis, first thing, if you'd just say your full
23 name and spell your last name for the Court reporter, please.

24 A David Christopher Andis, A-n-d-i-s.

25 Q Where are you currently employed?

1 A South Carolina Highway Patrol.

2 Q How long you been working at that highway patrol?

3 A Since 2005.

4 Q And just briefly give the jurors an overview of your
5 career at the highway patrol, what various positions and duties
6 you've had since 2005.

7 A I first joined the highway patrol in 2005, I was assigned
8 to Pickens, Oconee County as a regular road trooper. Normal
9 traffic duties, stop cars, working typical collisions. After
10 approximately a year, I transferred back to my home county,
11 Greenville, and worked there on the road from 2006 to 2010. At
12 that point I was able to apply for the MAIT Team, coming out of
13 2010, been there ever since.

14 Q Okay. Alright. You said MAIT Team, explain to the jurors
15 what the MAIT Team is and what it does.

16 A So the MAIT Team stands for the Multi-Disciplinary Action
17 Investigation Team. Our duties are to assist the highway
18 patrol and other agencies for thorough collision reconstruction
19 of collision scenes or incident scenes.

20 Q Okay. And you say multi-disciplinary, does that mean
21 there are a number of individuals assigned to each team, is
22 that correct?

23 A That's correct.

24 Q And are there multiple MAIT Teams within South Carolina
25 within the highway patrol?

1 A Yeah. So we have four separate teams across the state.
2 I'm currently over the Piedmont Team which is the upstate which
3 comprises of 12 counties here in the upstate.

4 Q And you're a supervisor of the upstate for the Piedmont
5 Team, is that correct?

6 A That's correct.

7 Q How many individuals does a MAIT Team normally consist?

8 A Currently I have a corporal, and eight investigators
9 assigned to me.

10 MR. SWERLING: Your Honor, can I ask the witness to
11 speak up a little bit?

12 THE COURT: Speak up a little bit ---

13 A Sorry.

14 THE COURT: --- thank you, sir.

15 A So currently I have a corporal, and eight investigators
16 assigned to me.

17 Q Alright. And does MAIT respond to every accident that
18 occurs in your 12 county region?

19 A No, sir.

20 Q Alright. And what criteria that generally have to be met
21 before MAIT responds?

22 A I'd say a laundry list of what the criteria could be, but
23 we do have a set policy, but there's a caveat where at any
24 point a captain or above can request our assistance with any
25 collision.

1 Q Okay. Would it be fair to say that most collisions
2 where death occurs, MAIT is usually, vehicle collisions
3 where death occurs, MAIT in general responds to those type of -
4 --

5 A Not necessarily a death, but typically it's something
6 that's looking at Circuit Court level charges, felony dui and
7 death, or leaving the scene, something like that.

8 Q Alright. And you're currently the supervisor of the
9 Piedmont crew, is that correct?

10 A Yes, sir.

11 Q And so to get to your position as the supervisor of the
12 Piedmont MAIT Team, have you undergone specific training and
13 various things to help you with your duties?

14 A Yes. Since being on MAIT, I have probably 11, 1200 hours
15 of training just pertaining to collision reconstruction ranging
16 from basic at scene through the common core courses of
17 reconstruction through pedestrian collisions, motorcycles,
18 merging motor vehicles, things of that nature.

19 Q You say over 1200 hours, would that be 1200 of training
20 that your average road trooper would not have?

21 A That's correct. That's just pertaining to collision
22 reconstruction.

23 Q Okay. And additionally, do you have any experience in
24 crash or sometimes known as airbag data recorders in vehicles,
25 do you have any training or experience with those?

1 A Yes, sir. I'm certified as a technician, I'm able to
2 obtain the data and I'm also certified as an analyst which
3 means I'm able to interpret the data that comes from that.

4 Q And specifically, what training courses have you taken
5 to become certified to analyze data from those type of
6 boxes?

7 A I've had CDR technician 1 and 2, which is the courses to,
8 gives us the knowledge and training to get to the data and
9 safely retrieve it. And then I've also been through the CDR
10 analyst and operations course which teaches us how to analyze
11 the date that is produced.

12 Q Okay. And so the jury understands, the jury's heard a
13 good bit of testimony about the infotainment center of the
14 vehicles. What you're talking about is different from that, is
15 that correct?

16 A Totally different.

17 Q The data that you're certified in, the crash boxes for
18 lack of a better term, can you explain it to the jury what the
19 difference is between that and the infotainment center data
20 that the jury's already seen?

21 MR. SWERLING: Your Honor, can I just stand over
22 here?

23 THE COURT: You sure can.

24 A So the infotainment center which I have knowledge of but
25 I'm not specifically trained in that data or how to extract it

1 is tied into the brains probably of the vehicle, computers
2 inside the infotainment center.

3 Q And you know, depending on the car manufacturer, but would
4 it be, suffice it to say infotainment centers generally report
5 data fairly continuously when a vehicle is on?

6 A As far as I'm aware, yes.

7 Q Okay. Now, the data that you have been taught, the CDRs,
8 first of all, what does CDR stand for?

9 A CDR stands for crash data retrieval.

10 Q And is that a separate box in the car from the
11 infotainment center?

12 A Yeah. It's a module, most people call it a black box
13 even though most of them aren't black and it's not like an
14 airplane, they're not constantly recording. There needs to be
15 certain thresholds met to either A, tighten your seatbelt, or
16 B, make your airbags deploy which is what it's designed
17 for.

18 Q Okay. So the CDR doesn't necessarily record data
19 continuously while the vehicle's on, is that correct?

20 A It does not.

21 Q It only records data under certain conditions?

22 A Correct.

23 Q And generally speaking, what are some of those conditions?

24 A An impact occurs, a sudden change in velocity or a change
25 in speed over time that would perhaps make your seatbelts

1 tighten. It could record a deployment event depending on the
2 module.

3 Q So when the airbag deploys, the CDR's going to record
4 that?

5 A Yes.

6 Q And certain conditions when a seatbelt tightens up from
7 someone hitting the brakes for instance, does a CDR record
8 that?

9 A It can.

10 Q Can CDRs detect a collision in some circumstances?

11 A They're always monitoring to send out your airbags for
12 safety.

13 Q Okay. And what sorts of data do CDRs typically record?

14 A It depends on the manufacturer of the model and the module
15 itself towards ---

16 Q Generally speaking ---

17 A --- precrash speeds, seatbelt status, RPMs, steering
18 angle, things of that nature.

19 Q Okay. So CDR records data from, is it only after the
20 impact or sometimes before the impact occurs ---

21 A What is does is it's on a continuous loop and as it's
22 monitoring to whether to deploy your airbags or tighten your
23 seatbelt, what have you, and when it senses something to create
24 that event, it backs up, depending on the module, typically
25 around five seconds prior to that it gives you data.

1 Q Okay. Alright.

2 MR. CONRAD: Your Honor, at this time --

3 Q Have you been qualified in a court in this state as an
4 expert?

5 A Yes.

6 Q And what have you been qualified as before?

7 A CDR analyst and collision reconstructionist.

8 Q Okay. Do you remember how many, approximately how many
9 times you've been qualified?

10 A 10 or 12 times.

11 Q Okay.

12 MR. SWERLING: I'm sorry?

13 THE COURT: He said 10 or 12 times.

14 MR. CONRAD: And at this time, State would go ahead
15 and move to introduce Sergeant Andis as an expert in CDR
16 analysis.

17 THE COURT: Okay. Mr. Swerling, anything concerning
18 qualifications of Trooper Andis?

19 MR. SWERLING: No, sir. No questions about the
20 qualifications.

21 THE COURT: Okay. Alright. The Court will find that
22 Trooper Andis is an expert in the area of CDR retrieval and
23 analysis. Ladies and gentlemen, if you remember last week, one
24 day last week, I don't remember what day that may have been
25 where I've qualified a witness as an expert and explained to

1 you that normally witnesses such as lay witnesses are not
2 allowed to render opinions about certain matters or give the
3 basis for those opinions. Typically, lay witnesses can only
4 testify as to what they saw, heard, that sort of thing.
5 There's an exception to the rule and that is an exception
6 called expert witnesses. When someone by virtue of training,
7 education, experience and the like is found to be an expert in
8 a particular area, they are therefore allowed to give opinions
9 in the matter that they are rendered an expert in and can
10 provide any sort of basis for those opinions. But again, you
11 determine whatever weight you feel like you need to give to
12 Trooper Andis' testimony as you do with any other witness in
13 this case, okay? Mr. Conrad, you may proceed.

14 MR. CONRAD: Thank you.

15 Q Seargent Andis, so getting to the incident at hand, did
16 the South Carolina Piedmont MAIT Team get a request for
17 assistance to assist with an incident that occurred in the
18 corner of Avid and Sawgrass in Greenwood County here in the
19 early morning hours of May 7th of 2023?

20 A Yes, sir.

21 Q Alright. Well, can you just describe what, generally
22 speaking, when MAIT responded and what MAIT did at the scene to
23 investigate this accident?

24 A So in this particular case, MAIT was requested from the
25 Greenwood County Sheriff's Office through the highway patrol to

1 assist them with their investigation of certain aspects. In
2 this particular case we were requested to document the scene,
3 complete forensic mapping of the scene which means using survey
4 type equipment to document the scene, take pictures of the
5 scene. We were also requested to image or download the
6 vehicles for any event data or report data, airbags from both
7 vehicles involved, and also to complete a mechanical exam of
8 the Ford F250 involved.

9 Q Okay. Alright. And do you recall when yourself and the
10 rest of your team responded to Greenwood to undertake all that?

11 A I personally did not respond, my corporal and two
12 investigators responded I believe two days after the ---

13 Q You say a corporal, specifically who?

14 A Corporal Bratcher.

15 Q Is he in the Courtroom?

16 A He is.

17 Q And generally speaking, what did they, did they accomplish
18 all those tasks when they first responded to Greenwood
19 County?

20 A Yes.

21 Q Okay. We're going to get the specifics of what they did
22 when Corporal Bratcher's on the stand. But you undertook to
23 analyze the CDRs involved in this accident, is that correct?

24 A Correct. At the time, I was the only member of our team
25 that was qualified to analyze the data.

1 Q Okay. Well, tell the jurors exactly what you did to
2 retrieve and analyze the data off of the BMW and the Ford F250
3 involved in this accident.

4 A So I did not retrieve the data, Master Trooper Hudgens
5 went to the vehicle and retrieved the data. He was able to
6 connect directly to the module itself ---

7 Q With the BMW we're talking about?

8 A Correct. And was able to extract the data, image it, it
9 really just takes a digital picture of what's on that module,
10 it doesn't change anything. He brought that and then I
11 analyzed the data in the CDR software.

12 Q Okay. Alright. And did, did this Master Seargent
13 Hudgens, did he attempt to extract any data from the CDR of the
14 Ford F250?

15 A He did.

16 Q And did he, was he able to retrieve the data from that
17 F250?

18 A He did retrieve the data. There was no event
19 recorded.

20 Q Okay. And can you offer an opinion as a CDR analyst
21 within reasonable scientific certainty as to why the F250
22 did not record any event in this particular
23 incident?

24 MR. SWERLING: I think he has to lay more of a
25 foundation as to how he would know that.

1 THE COURT: Okay. Your question is, Mr. Conrad, is
2 does he have an opinion as to why the data that was received
3 did not record any sort of event?

4 MR. CONRAD: From the Ford F250.

5 THE COURT: Okay. Alright. Well, if he knows then
6 inquire into the basis for him having an opinion as to why it
7 did not record any event.

8 MR. CONRAD: Okay.

9 Q And we, you've analyzed, how many cars of CDR data have
10 you analyzed over the years? Would you, just rough estimate.

11 A 500.

12 Q Okay. And when there's a major collision of some sort, an
13 airbag deployment, do you always find information on the CDR
14 module?

15 A For deployment, generally speaking, yes.

16 Q Okay. Now, if there's a collision where there is no
17 airbag deployment, is it less likely to find data on a
18 vehicle?

19 A Generally, yes.

20 Q Okay. And if you see for instance a truck like the F250
21 with a minimal amount of damage, but you have evidence that it
22 was involved in a collision, if you were to attempt to retrieve
23 CDR data off of that recorder on the F250 and there was no
24 event triggered on the F250 what would your conclusion be as to
25 why there was no events recorded on that F250?

1 MR. SWERLING: Again, I think that he needs to
2 specifically with this particular situation ---

3 THE COURT: Well, I think he can testify in general
4 and then give an opinion as to why no event was obtained in
5 this particular situation.

6 A It's pretty simple. Just like with the majority of our
7 pedestrian type collisions, we typically do not see a recorded
8 event because simply the module didn't see a change to that
9 system in order to lock in an event to record that.

10 Q Alright. And in fact, with the MAIT Team's examination of
11 that truck, did the airbags deploy in that truck?

12 A No.

13 Q Okay. Alright. But you did testify a minute ago that
14 there was some data retrieved from the BMW, is that correct?

15 A That's correct.

16 Q And you did analyze that data, correct?

17 A Yes, sir.

18 Q Alright. And my first question would be is from your
19 analysis of that data, can, what does the data show the state
20 the BMW was in at the time of the impact?

21 A It was on, running, in park.

22 Q So the BMW was on, correct?

23 A Yes.

24 Q It was running, correct?

25 A Yes.

1 Q It was in park, correct?

2 A Yes.

3 Q Alright.

4 MR. SWERLING: No objection.

5 THE COURT: Okay.

6 Q And I'm going to show you what's marked as State's Exhibit
7 48, I want to see if you recognize that. What is that, sir?

8 A This is a printout from the imaged data from the BMW.

9 Q Okay. Alright. And this is data from the BMW, correct?

10 A Yes, sir.

11 MR. CONRAD: And the State would move to enter
12 Exhibit 48 into evidence.

13 MR. SWERLING: No objection.

14 THE COURT: And without objection number 48 into
15 evidence for the State.

16 (Whereupon a printout was submitted as State's Exhibit
17 Number 48 for identification and entered into evidence.)

18 MR. CONRAD: And we're going to publish this.

19 Q One more question, how much back in time did this
20 particular BMW record data for this event, how far back did it
21 go?

22 A This particular module recorded five seconds of pre-crash
23 or pre-deployment data.

24 MR. SWERLING: I'm sorry. Did you say four minutes,
25 three ---

1 THE COURT: He said five seconds before crash.

2 MR. SWERLING: Okay.

3 THE COURT: Pre-crash I think is the term he
4 used.

5 Q Okay. And can you read that from where you are Seargent
6 Andis, or do you need to come down?

7 THE COURT: Just be sure to stand in front of that
8 microphone that's on the jury railing. And just be sure to
9 speak up a little louder.

10 A Yes, sir.

11 THE COURT: Thank you.

12 Q Alright. Seargent Andis, this is a printout from the BMW,
13 correct?

14 A Yes, sir.

15 Q This shows the data from the BMW and the state the vehicle
16 was in at the time of the collision, correct?

17 A That's correct.

18 Q And so let's just start at the bottom because we see on
19 the very bottom column, it says time, zero, what does that
20 indicate, what is time zero?

21 A Time zero in this particular module is when the airbags
22 decided to deploy.

23 Q And we see next to it a vehicle speed, and what does that
24 indicate?

25 A Zero miles per hour.

1 Q Okay. So the BMW was not moving at the time of collision,
2 is that correct?

3 A That's correct.

4 Q And we see an accelerator pedal and a percentage sign,
5 what does that mean?

6 A The amount of pressure on the accelerator pedal.

7 Q And that's states zero, correct?

8 A Yes, sir.

9 Q And not to skip ahead, but as we go up, the data goes back
10 in time, is that correct?

11 A Correct.

12 Q And we see both speed and accelerator were both at zero
13 through the entire event, is that correct?

14 A Yes, sir.

15 Q And to the next column, we see engine RPM, what does that
16 mean?

17 A That's the idling RPM for the BMW.

18 Q Okay. So that indicates the engine's on, correct?

19 A Yes.

20 Q And then we see steering input for the next column. What
21 does that mean?

22 A That's the amount of steering input from zero to I believe
23 this model goes to 220 or 240 degrees steering, I think.

24 Q So that shows how much, how far the steering wheel might
25 be turned, is that correct?

1 A Yes.

2 Q Next step, the next column says service brake. What does
3 that mean?

4 A That's just indicating whether somebody's pressing the
5 brake or not.

6 Q Okay. Alright. And so does that remain off the entire
7 time of this event?

8 A Correct. It means nobody had their foot on the brake.

9 Q Okay. And actually, it says ABS activity, engaged or not
10 engaged. What does that mean?

11 A If you're going to a braking event prior to an impact, it
12 could record in ABS ---

13 Q What is ABS, first of all?

14 A It's a lock brake system, keep the brakes from locking up.

15 Q Okay. And that is a system in a vehicle so if someone,
16 how does that function generally speaking? Just so the jury's
17 understanding. If somebody slams on their brakes, what does
18 ABS do?

19 A It's designed to keep your brakes from locking up and you
20 slide and you having no control over your car.

21 Q Okay. And the next final column, it says stability
22 control. What does that mean?

23 A That's, say you run into water or a curve at too much
24 speed, it will reduce your speed or RPMs to help you navigate
25 the curve from hydroplaning, what have you.

1 Q And both in ABS activities and stability controls show no
2 activity, is that correct?

3 A That's correct.

4 Q The entire time, correct?

5 A Yes.

6 Q We'll come back down to the spreadsheet in a moment. But
7 looking up here, it says pre-crash data minus one second and
8 there's a few things I'm going to point out here. Number one,
9 it says safety belt status, driver. What does that mean?

10 A That is indicating whether the driver had their seatbelt
11 on or not.

12 Q And did, was the seatbelt engaged or belted at the time of
13 the collision in this case?

14 A No.

15 Q And then safety belt status for a passenger says what?

16 A Unbelted.

17 Q Okay. Alright. So let's go back down to the bottom
18 column and let's look at the steering input column for that.
19 And as we said, the far left column shows time zero, time of
20 collision and going backwards for five seconds, is that
21 correct?

22 A Yes, sir.

23 Q And then what do you see with the steering input? Is
24 there a change in the steering input at any point prior to the
25 time of collision?

1 A Yes. From minus five to minus three and a half second
2 prior to deployment, the steering input changes.

3 Q And so that's prior to the collision, correct?

4 A That's correct.

5 Q And so the collision could not have changed at time minus
6 three and a half seconds the steering input we see,
7 correct?

8 A No.

9 Q And so can you offer an opinion within reasonable
10 scientific certainty of what caused that steering input change
11 at three to three and a half seconds prior to the collision
12 impact?

13 A So prior to that it's all, somebody's in there touching
14 the steering wheel.

15 Q Okay. So it's your opinion that when we see that steering
16 wheel position changed, a person caused that, correct?

17 A Absolutely.

18 Q And is there any other reasonable explanation as to why
19 that steering input changed three to three and a half seconds
20 prior to the collision that you're aware of?

21 A No.

22 Q Alright. Take a seat. Now, there was more data on this,
23 that CDR box that you reviewed or analyzed, is that
24 correct?

25 A Yes.

1 Q And as a supervisor of the MAIT Team, you're aware of and
2 are familiar with the work of the individuals who help you
3 prepare the report for this case?

4 A Absolutely.

5 Q Alright. And so you're familiar with Corporal Bratcher's
6 work, correct?

7 A Yes.

8 Q Alright. And without getting into what those conclusions
9 were, you're aware or you're familiar with what his conclusions
10 were in regards to the accident reconstruction, is that
11 correct?

12 A Absolutely.

13 Q Alright. And the data that you see on the CDR from the
14 BMW, is it consistent with what you know to be Corporal
15 Bratcher's opinion ---

16 MR. SWERLING: I object to that, it's comparing two
17 experts together. I object to that.

18 THE COURT: Pairing or competing, what ---

19 MR. SWERLING: Competing, I mean, I'm just not sure
20 where they're going with that. He has an opinion, he has an
21 opinion, crossing over opinions would not be appropriate.

22 THE COURT: Well, he's the supervisor over the
23 Piedmont MAIT Team, certainly I would assume in his capacity as
24 supervisor, he reviews all reports that are generated, is that
25 correct, Trooper?

1 A Yes, sir.

2 THE COURT: Okay. Alright. I'm going to overrule
3 it, I'll allow him to answer the question.

4 MR. SWERLING: Yes, sir.

5 Q Is the data that you reviewed from the BMW CDR consistent
6 with what you know to be Corporal Bratcher's conclusions?

7 A Yes, absolutely.

8 Q Okay. Is there any data that you observed in the CDR that
9 would be inconsistent with Corporal Bratcher's conclusions?

10 A No.

11 Q Alright.

12 MR. CONRAD: One moment. Alright. No further
13 questions for this witness.

14 THE COURT: Okay. Mr. Swerling, any questions of
15 Trooper Andis?

16 MR. SWERLING: I just have a couple questions.

17 **CROSS EXAMINATION**

18 BY MR. SWERLING:

19 Q As I understand it, you're saying that somebody was inside
20 the car or outside the car manipulating the steering wheel
21 three and a half seconds prior to impact?

22 A That's correct.

23 Q Okay. And if the impact, if the vehicle hit a pedestrian,
24 then that person would have gotten out of the car and been in
25 the road in three and a half seconds?

1 A I'm sorry?

2 Q If in fact somebody had to be in the vehicle or reaching
3 into the vehicle, I don't know what it was, three and a half
4 seconds prior to impact, then that pedestrian if he was struck
5 in the road, would have had to gotten out of the car or not
6 touch the wheel in a period of three and a half seconds, is
7 that correct?

8 A That's correct.

9 Q Okay. And there's no other way that that data would have
10 been recorded unless someone had changed the wheel or ---

11 A That's correct.

12 Q --- did something with the wheel?

13 A That's correct.

14 Q Okay. I just wanted to make sure I understood.

15 MR. SWERLING: Okay.

16 THE COURT: Anything in redirect, Mr. Conrad?

17 MR. CONRAD: Just briefly.

18 **REDIRECT EXAMINATION**

19 BY MR. CONRAD:

20 Q Mr. Swerling asked you about the potentiality of someone
21 reaching in and moving the steering wheel, correct?

22 A That's correct.

23 Q And in review, overall review of this case, did you come
24 across any evidence that would make that more likely or less
25 likely that somebody reached in and moved the steering wheel?

1 A From my analysis, the, when the vehicle was found the door
2 was shut, so I don't see how they would have reached in without
3 closing ---

4 Q Do you recall whether the window was up or down?

5 A --- the door. The window was up.

6 Q Okay. Alright.

7 MR. CONRAD: Nothing further.

8 THE COURT: Anything on recross?

9 **RECROSS EXAMINATION**

10 BY MR. SWERLING:

11 Q The CDR data would record whether the door is open or
12 closed?

13 A This particular model did not.

14 Q Okay. Alright.

15 MR. SWERLING: Thank you.

16 THE COURT: Alright. You can step down, Trooper
17 Andis. You're free to leave the Courthouse, you're more than
18 welcome to remain with us. Okay. Mr. Conrad, next witness?

19 MR. CONRAD: The State calls Corporal Bratcher with
20 the highway patrol.

21 THE COURT: Okay. Come around Trooper Bratcher.

22 CLERK: Do you solemnly swear the testimony you're
23 about to give this Court to be the truth, the whole truth, and
24 nothing but the truth so help you God?

25 MR. BRATCHER: I do.

DIRECT EXAMINATION

BY MR. CONRAD:

Q Corporal Bratcher, good morning, excuse me, good afternoon, sir.

A Good afternoon.

Q If you'd just state your full name and spell your last name for the Court reporter, please.

A It's Christopher Kenneth Bratcher, B-r-a-t-c-h-e-r.

Q Alright. Mr. Bratcher, you're currently employed with the highway patrol, correct?

A Yes.

Q And are you a member of the Piedmont MAIT Team?

A I am.

Q Alright. And what are your current duties with the Piedmont MAIT Team?

A Current duties right now, I'm first line supervisor over Piedmont MAIT Team.

Q Okay. And do you respond to collision scenes and act as an investigator?

A I do.

Q And have you ever attended any training or any specialized training in accident reconstruction? If so, could you give the Court a brief overview?

A I have. I've attended approximately 1100 hours of collision reconstruction training specific. In addition to

1 collision reconstruction training, I've also attended some
2 mechanical training as well on post collision mechanical
3 inspections. I've completed all the training through the South
4 Carolina Criminal Justice Academy that relate to the at scene
5 collision investigation, technical collision investigation,
6 collision reconstruction training, pedestrian, bicycle
7 collision reconstruction training, commercial motor vehicle
8 collision reconstruction training, and numerous other courses.

9 Q Okay. And prior to becoming a member of the MAIT Team,
10 were you a standard patrol trooper from the highway patrol?

11 A I was. I started with the highway patrol in 2006 ---

12 Q Okay.

13 A --- I was assigned to Anderson County.

14 Q Okay. And prior to joining the MAIT Team, did you
15 investigate collisions as a normal or regular patrol trooper?

16 A Yes.

17 Q And would you care to offer an estimate of how many you
18 worked as your, on your time on the road?

19 A Typically, a typical trooper in Anderson would work
20 anywhere from 5 to 600 motor vehicle collisions in a
21 year.

22 Q Okay. And how many years did you do that?

23 A For five years.

24 Q Okay. And then you joined the MAIT Team when?

25 A 2013.

1 Q Okay. And since joining the MAIT Team, how many
2 collisions have you investigated?

3 A On a typical year, in some aspects of most every case that
4 we investigate, usually around a hundred to 150.

5 Q Okay. And does that mean you're personally involved, or
6 is that just the MAIT Team as a whole?

7 A Usually personally involved, especially as a first line
8 supervisor and reviewing other team member's work.

9 Q And of those, can you just offer an estimate how many
10 would involve a vehicle on pedestrian situation?

11 A Typically, we have a lot of pedestrian collisions. I
12 would say probably 50 of those in a year.

13 Q So maybe half of the accidents you ---

14 A About a third I would say.

15 Q Alright. And you've been doing that since 2013?

16 A Yes, sir.

17 Q Alright.

18 MR. CONRAD: At this time State would --

19 Q Have you been qualified as an expert in the state or Court
20 in South Carolina before?

21 A I have. I've been qualified three times as an expert, one
22 time was in this court, on a felony DUI case.

23 Q And what, qualified as what?

24 A In collision reconstruction and forensic mapping.

25 Q Alright.

1 MR. CONRAD: And at this time, State would offer
2 Corporal Bratcher as an expert in collision reconstruction and
3 forensic mapping.

4 THE COURT: Okay.

5 MR. SWERLING: No objection.

6 THE COURT: Alright. Without objection. So found by
7 the Court.

8 Q Alright. Corporal Bratcher, let's talk about the case at
9 hand. After the morning of May 7th, 2023, did MAIT receive a
10 request from Greenwood County Sheriff's Office to assist with
11 an investigation?

12 A Yes. We, through the highway patrol, the Greenwood County
13 Sheriff's Office reached out to us. I actually made contact
14 with a Captain Murdock with the Greenwood County Sheriff's
15 Office. I spoke to him briefly on what we could do to assist
16 them. Mainly what we were looking at was the incident
17 location. There's typically three phases to a collision,
18 there's what happens before the collision, during the
19 collision, and after the collision. Our main focus was going
20 to be on the vehicles themselves and the incident location.

21 Q Okay. And do you recall what day you all responded to
22 here in Greenwood to perform this investigation?

23 A It was on the 9th, I spoke to Captain Murdock on the 8th.

24 Q Okay. And so about two days after the incident, is that
25 correct?

1 A Yes, sir.

2 Q Alright. And what did you, where did your team go? First
3 of all, who came and where did y'all go initially when you
4 responded to Greenwood?

5 A So after speaking to Captain Murdock, he gave me the
6 vehicle information as far as the VIN, what type of vehicles
7 they were, so I was able to relay to him what we could assist
8 them with. We knew that both vehicles, the BMW and the F250
9 had airbag control monitors for restraint control modules that
10 record crash data so we made a plan to attempt to get that data
11 from the vehicles. From previous knowledge with a F250, I knew
12 that there was an infotainment center in it, I was able to
13 check the VIN on the BMW and knew that it had an infotainment
14 center as well. One of my investigators, Master Trooper Clark,
15 reached out to Greenwood County Sheriff's Office to assist us -
16 --

17 Q Would that be Michael Bryan?

18 A Yes.

19 Q Investigator Michael Bryan, okay.

20 A Basically to assist us assist them. And they were more
21 than willing to help. So we responded, we come up with a plan
22 to meet on the 9th at the incident location which was Avid Road
23 and Sawgrass Place in Greenwood County.

24 Q Okay. And what did you do at that area that morning?
25 Briefly speaking.

1 A So myself, Master Trooper Hudgens and Master Trooper
2 Patrick Clark and Lance Corporal Casey Thomas responded to the
3 scene. We met with the investigators of Greenwood County
4 Sheriff's Office at Avid Road and Sawgrass Place. The first
5 thing we do is, when we go to a scene is we do a walkthrough
6 through the scene, look for any physical evidence that was left
7 on the roadway. And then we start documenting the evidence
8 with digital photographs, digital video, we have a SUAV which
9 people call a drone, we take aerial photographs of the
10 collision scene, and we also complete a forensic mapping of the
11 scene.

12 Q And what does that involve, what do you mean forensic
13 mapping?

14 A Forensic mapping is just a fancy way of saying we take a
15 lot of measurements. There's several ways to do it, there's
16 scanners, there's DNSS systems, there's total stations, it's
17 all survey equipment, it's used industry wide in the collision
18 reconstruction world. And basically, we're just plotting
19 points so we can draw a scale diagram.

20 Q Okay. And were you, later on when you responded on May
21 9th, were the two vehicles still at the scene at Avid and
22 Sawgrass?

23 A No. From my understanding, one of the vehicles was not at
24 that location, it was at a different location. The vehicles
25 had been towed to, it's like a service center for Greenwood

1 County Sheriff's Office. In the back they have like an impound
2 lot and that's where those vehicles were located.

3 Q Okay. But was there evidence that you found out at the
4 scene that would indicate the collision occurred?

5 A Yes. We did find a fluid trail on the scene, there was
6 some tire prints at the scene. The Greenwood County Sheriff's
7 Office had marked the final rest location of the BMW with
8 paint.

9 Q Okay.

10 A They marked each wheel and in which direction it was
11 pointing at.

12 Q Okay. And after you went through the scene, did you
13 respond to the impound lot where the vehicles were, or did you
14 respond to the vehicles first?

15 A No. We went to the scene first and then we went to the
16 vehicles right after that.

17 Q And what did you do when you went to inspect the
18 vehicles? First of all, did you inspect them both for
19 damage?

20 A Yes. So basically, we're looking at the evidence on the
21 roadway and the evidence or the damage profiles of the
22 vehicles. We do the same thing with the vehicles, we document
23 those with visual pictures and document them with digital
24 video, we complete an examination of the vehicle, of the
25 overall condition of the vehicle as we find them.

1 Q Okay. Did you perform any mechanical tests on either
2 vehicle?

3 A I did a post collision mechanical inspection. It's a
4 little different than taking your vehicle to a shop, I'm not
5 repairing the vehicle to put it back on the road, I'm just
6 looking for any types of mechanical failure that could have
7 contributed to the collision itself.

8 Q Okay. Speaking to the F250 inspection, did you find any
9 mechanical problems that would have contributed to this
10 collision?

11 A No.

12 Q Did you test the brakes?

13 A Yes.

14 Q And were they working?

15 A The brakes were working, and the vehicle was able to turn
16 left and turn right.

17 Q So the steering was fine, and the brakes were fine,
18 correct?

19 A Yes.

20 Q Did you find any evidence that there was a problem
21 with the engine or the accelerator or anything like
22 that?

23 A There was a oil cooler that's underneath the vehicle next
24 to the oil pan, it had a puncture in it which was allowing
25 engine oil to leak out of the vehicle.

1 Q Okay. And I'm going to show you State's Exhibit 49. Have
2 you reviewed the contents of that?

3 A Yes, I have.

4 Q And what is on there?

5 A Those are MAIT photographs.

6 Q And one other thing as well?

7 A And some Greenwood County Sheriff's Office scene
8 photographs as well.

9 Q Okay. And is there, you talk about the forensic mapping,
10 did you produce any as part of your report, produce any
11 drawings or mapping of the incident location?

12 A Yes. I created a scale diagram which includes the roadway
13 of how it would have been found before the collision, evidence
14 in the roadway, impact layers, and the sequence of events that
15 we determined.

16 Q And are those drawings ---

17 MR. SWERLING: Please speak up a little bit, I didn't
18 ---

19 THE COURT: Repeat that last answer, Trooper, a
20 little louder so Mr. Swerling can hear.

21 A So the diagrams that were created that I drew, the first
22 diagram depicts the roadway before the collision would have
23 occurred. The second diagram depicts the impact as how we
24 determined it. The third diagram depicts the evidence and the
25 final rest of the vehicle and the deceased victim in this case.

1 And also, the fourth diagram depicts the sequence of events as
2 how we determined it.

3 Q And those drawings are on this CD as well, correct?

4 A Yes.

5 Q Alright.

6 MR. CONRAD: At this time State would enter exhibit
7 49 into evidence.

8 MR. SWERLING: No objection.

9 THE COURT: Without objection, 49 into evidence for
10 the State.

11 (Whereupon a CD was submitted as State's Exhibit Number 49
12 for identification and entered into evidence.)

13 MR. CONRAD: And we're going to publish.

14 (Playing video.)

15 Q Can you see from where you are, would you like to step
16 down?

17 A I'm going to step down.

18 MR. CONRAD: With the Court's permission?

19 THE COURT: Sure, no problem. Trooper Bratcher, just
20 stand in front of that microphone, you can even pick it up if
21 you'd like to, if it's a little more convenient to.

22 Q Alright. What is this picture of?

23 A That's the intersection of Avid Road and Sawgrass
24 Place.

25 Q And what was this taken from?

1 A This was taken from the SUAV, it's an aerial photograph of
2 the incident location.

3 Q And does this accurately reflect the scene as you found it
4 on May 9th of 2023?

5 A Yes.

6 Q Okay. Let's go to the next picture. Alright. And is
7 this the same scene from a different angle?

8 A It is, it's just a lighter view.

9 Q Let's look to the far left in this picture, and I see a
10 dark streak in the middle of that road. Do you see that,
11 sir?

12 A Yes. That's where oil has dripped out onto the roadway.

13 Q Okay. And first of all, where that leak had occurred,
14 what road is that?

15 A That is Avid Road where it dead ends into a, there's a
16 gate there.

17 Q Okay. And the crossroad we see in the middle of this
18 picture is what?

19 A That's Sawgrass Place.

20 Q Alright. And you said, you testified a few minutes ago
21 about a fluid trail, is that correct?

22 A Yes.

23 Q Can you talk the jurors through what you see, can you see
24 that fluid trail in this picture first of all?

25 A Yes.

1 Q Alright. Talk to the jurors about what you observed in
2 the fluid trail and what that tells you as an accident
3 reconstructionist?

4 A Okay. So the orange markings, do you have a pointer?

5 Q No. I don't think we do, but I tell you what, if it's
6 --

7 MR. CONRAD: -- with the Court's permission, can
8 Corporal Bratcher walk up there and point out ---

9 THE COURT: Sure.

10 MR. CONRAD: --- objects on the picture?

11 THE COURT: Okay. Just make sure you speak up louder
12 since you're away from the microphone now.

13 A So right here is where the BMW was marked at its final
14 rest location.

15 Q When you say marked, you testified that a second ago, but
16 marked by who?

17 A So this was marked by the investigators at the scene at
18 the time, the night of the collision.

19 Q Okay.

20 A This arrow indicates the front of the vehicle and each one
21 of these T marks indicates left front, left rear and so on
22 around.

23 Q And so that was where the vehicle was when the Greenwood
24 County Sheriff's Office originally responded the morning of May
25 7th, is that correct?

1 A Yes. That's where the vehicle was found at final
2 rest. And so, they marked the location of it before they
3 ---

4 Q Okay. Keep going.

5 A So you have a fluid trail that starts right where the left
6 front of the vehicle, it continues on to where the fluid leaks
7 out, this is where the vehicle sat there for a period of time
8 and leaked out onto the assault and then the fluid trail comes
9 back this way and there's a tire print inside this fluid trail,
10 that happened all the way up to the tire print into the grass
11 here. The fluid trail continues on all the way out of the
12 subdivision.

13 Q So putting that together, what does that tell you the
14 vehicle did?

15 A It's telling me the vehicle began leaking oil right after
16 impact of the BMW the F250 hit and stopped for a short period
17 of time, leaked out some oil, the vehicle then backed up into
18 the grass and then left out on Avid Road.

19 Q And it looks like that trail is where it backs up and the
20 grass is near an object, can you see on this picture what that
21 object is?

22 A This right here is a light, a streetlight.

23 Q Okay. And did you see any evidence that the vehicle, the
24 truck as it was backing, did it make any contact with that
25 light?

1 A It did not, it came close, but it did not strike the
2 light.

3 Q Okay. And what is this picture of? And for the record's
4 sake, excuse me, the first picture was number 111, the second
5 picture you were just talking about is number 164, and now
6 we're talking about picture 73. What is this picture of?

7 A That's a picture of a tire print in the, it's right there
8 on Sawgrass Place, the corner of it, so the light post.

9 Q And we see where fluid leaked out of the vehicle as it was
10 backing right up to the curb there?

11 A Yes.

12 Q Alright. And to the left of the picture, you see what?

13 A That's the light post, it's a streetlight.

14 Q And you just testified you saw no evidence of impact with
15 the streetlight, correct?

16 A No.

17 Q So could you draw a conclusion of that, on that truck
18 which tire likely caused that imprint?

19 A The left rear.

20 Q Okay. And why is that?

21 A Well, because it stops right there in the left front, if
22 it would have been the left front then it would have been more
23 tire marks along the back.

24 Q Okay. It could have possibly hit the streetlamp if it had
25 been the other side of the vehicle?

1 A If it would have been the right front or the right rear,
2 the vehicle would have backed over the top of it, the
3 streetlight.

4 Q Alright. Next picture. This is picture 143 on the disc,
5 and I see some orange markings, what is that again?

6 A That's where they marked where the final rest of the BMW
7 was at.

8 Q And so we're looking back up what road right now?

9 A It's looking up Avid Road, it's looking back east.

10 Q And that's, to the right is which crossroad again?

11 A That is Sawgrass Place.

12 Q And so based off these markings, you said a minute ago you
13 could tell which way the BMW was, is resting. The side that's
14 facing us, which side of the BMW is that?

15 A That's, that's the rear, they have a T and the, have an R
16 there and then you'll see typically they mark left front or
17 left rear with LF or driver front, driver rear.

18 Q Next picture. This is picture 152, and what do we see
19 here?

20 A That's a fluid trail where a vehicle has set there and
21 leaked oil onto the roadway surface.

22 Q So it is your opinion that that vehicle sat there for a
23 period of time?

24 A Yeah. It had been a short period of time.

25 Q Can you tell us exactly how much time ---

1 A I can't, no, I cannot.

2 Q But that's a fairly substantial pool of fluid, would you
3 agree?

4 A Yes. It's a 67 Power Stroke Deisel, they hold
5 approximately 13.1 quarts, right around three gallons of oil,
6 that's why you see so much oil.

7 Q Okay. And can you explain to the jurors why does the
8 puddle look the way it does with that elongated shape? What
9 is, what is the oil doing once it leaks out of the
10 truck?

11 A It's just leaking down the roadway surface.

12 Q Okay.

13 MR. SWERLING: I'm sorry?

14 A It's leaking down the roadway surface, it's not a level
15 surface.

16 Q So is it likely leaking into one location and then
17 flowing?

18 A Yes.

19 Q Okay. Per the grading of the road?

20 A Yeah. It's just like water flows.

21 Q Okay. Alright. And to your knowledge, without being
22 exact, approximately speaking, in this picture, where would the
23 body of Davis McClendon would have been?

24 A I was told it was off to the left there, there was like a
25 tree branch or some type of log that ---

1 Q And as part of your investigation, were you provided any
2 of these photographs from the Greenwood County's Office for
3 your review?

4 A Yes. They provided us the scene photographs ---

5 Q And those were the pictures taken the morning of May 7th,
6 correct?

7 A Yes.

8 Q And you reviewed those, right?

9 A Yes.

10 Q Next picture. And this is picture 169, and is this the
11 same puddle?

12 A It's the same puddle; it's just looking back west on Avid
13 Road.

14 Q And do you see that gate just beyond it, correct?

15 A Yes.

16 Q And over off to the right, just off of the road, is that
17 where Davis McClendon was found?

18 A That's what we were told. There was some, it looked like
19 bodily fluids on that little log there.

20 Q This is picture 177, and is this Avid Road again?

21 A Yes, that's Avid Road looking back west.

22 Q Alright. And is that looking back down towards the gate?

23 A It is.

24 Q And I see something down the middle on the roadway, what
25 is that?

1 A That's the fluid trail.

2 Q And would that have been left by the truck as it was
3 leaving the scene of this incident?

4 A Yes.

5 MR. SWERLING: What was that? What did you say?

6 A It's a fluid trail.

7 MR. SWERLING: Okay.

8 A It's oil on the road.

9 Q Next up, okay, now, is this, this is picture 503, is this
10 a picture that was provided to you by the Greenwood County
11 Sheriff's Office for your review?

12 A It is. This is a picture of the BMW while it's still on
13 scene at the night of the incident.

14 Q Okay. And you reviewed this to help you draw a conclusion
15 about what occurred, is that correct?

16 A I did.

17 Q Okay. And I might come back to this in a minute, but
18 let's go on to the next picture. And this is picture 506, and
19 this was another Greenwood picture that you reviewed?

20 A Yes. That's the vehicle still on scene.

21 Q And we see the tire on the left hand side, is that the
22 front ---

23 A That's the ---

24 Q --- driver's side tire?

25 A That's the left front driver's side tire of the BMW.

1 Q And I see back behind the tire it looks like something in
2 the road, can you see that, sir?

3 A Yes. That's the lower control arm for the BMW, it's a
4 suspension arm for the BMW.

5 Q Okay. And is it broken?

6 A Yes.

7 Q Is it your opinion that it was broken as a result ---

8 MR. SWERLING: Objection to leading. Just ask
9 him.

10 Q Do you have an opinion about what caused that suspension
11 arm to break?

12 A It was from the impact.

13 Q From the truck?

14 A Yes.

15 Q Next picture. This is picture 1008. And this picture was
16 taken where, do you know?

17 A That was taken at the Greenwood County Service Center
18 after that vehicle had been towed from its final rest
19 location.

20 Q And you previously testified about inspecting an F250 for
21 damage and did some mechanical tests, is that correct?

22 A Yes.

23 Q Is that the truck you inspected, and you did some
24 mechanical tests on it?

25 A It is.

1 Q And can you describe to the jurors even though it's not
2 readily visible, what damage did you find on this F250 when you
3 inspected it?

4 A As far as cosmetic damage, there wasn't much damage.
5 There's, to the lower left hand driver's side, the chrome
6 portion of the bumper.

7 Q And Corporal, I'm going to have you go up and point out --
8 -

9 A Okay.

10 Q --- the specific damage.

11 A I'll try to speak up. So the damage located on this
12 vehicle is right in here on this portion of the bumper, then
13 there was a dent in the hood near the Duty, and there was some
14 cracking on the grille here in front of the F250.

15 Q Okay. Alright. Next picture. And this is picture
16 1009, is this the same truck just from a slightly different
17 angle?

18 A It is, it's just from a different angle.

19 Q Next picture. This is 1023, same truck?

20 A Yes. That's the left front tire of the F250.

21 Q And there's a little bit of damage on the left side of the
22 bumper, is that correct?

23 A Yes.

24 Q Could you just point out where that damage is in this
25 picture?

1 A There's some scratching and some scraping on this part of
2 the bumper, right in here.

3 Q Okay. Next picture. Alright. This is picture 1054.
4 What is this?

5 A That's where fluid has been sprayed underneath the
6 vehicle.

7 Q Is this the same truck?

8 A Yes.

9 Q And that's where you can see the fluid, the same fluid
10 that was on the road?

11 A Yes.

12 Q Next picture. This is picture 1378, 1378. What, what is
13 in this picture?

14 A That's the steering stabilizer, that's from the
15 passenger's side, the right passenger's side, it's the steering
16 stabilizer for the F250, it's been knocked loose from the
17 impact.

18 Q And what is a steering stabilizer?

19 A It's basically a shock absorber that stops vibration from
20 coming back to the steering wheel. It's connected to the tire
21 rod and usually connected to an axle or some other point of the
22 vehicle to keep vibration out of the steering wheel.

23 Q And you just testified it was disconnected, correct?

24 A Yes.

25 Q What caused that disconnection in your opinion?

1 A That was from impact, it just came loose from the
2 collision.

3 Q Now, with a steering stabilizer disconnected, is the
4 vehicle still steerable?

5 A Yes. It'll still turn left, it'll still turn right, you
6 just may have more vibration in the steering wheel.

7 Q So the vehicle was still drivable when this connection
8 broke?

9 A Yes. And I was able to drive the vehicle as well.

10 Q The next picture. This is picture 1405, 1405. What are
11 we seeing in this picture?

12 A That's a left front brake rotor, I removed the wheels from
13 the vehicle to look at the rotors, to look at the brake pads.
14 I didn't notice anything out of the ordinary, there was plenty
15 of friction material left on the brake pads, the rotors looked
16 like they were in good condition.

17 MR. SWERLING: I'm sorry, I ---

18 A The rotors looked like they were in good condition, the
19 brakes were in good condition, the brake pads were in good
20 condition. All the brake lines were dry, they were tight, all
21 the AVS wires were intact, everything was normal.

22 Q So can you offer an opinion as to whether the brake system
23 was functioning at the time of impact?

24 A Yeah. So it was functioning, I was able to actually drive
25 the vehicle and test the brakes and they worked.

1 Q Okay. One last thing about this picture. I see, so
2 just to the right of the brake pad on the frame, it looks
3 like there's, is that rubbing of some sort, what is
4 that?

5 A It is. The vehicle was equipped with larger tires than
6 what came from the original manufacturer. It had 37 inch
7 tires, the vehicle normally came with right around 34 inch
8 tires, so he put larger tires on the vehicle to gain more
9 ground clearance.

10 Q Okay. And did those larger tires cause that rubbing, is
11 that ---

12 A Yes. They're just rubbing.

13 Q Okay. Next picture. This is picture 1483, 1483, what is
14 this picture of?

15 A Oh, that's a picture of a oil cooler.

16 Q And this is the same F250, correct?

17 A Yes.

18 Q And in your investigation, did you determine where the
19 fluid trail that you observed at the crime scene came from this
20 truck?

21 A Yes. This came from the oil cooler, and it had punctured
22 at some point during the impact.

23 Q Okay. Can you determine with any certainty exactly what
24 on the BMW punctured that oil cooler?

25 A I cannot.

1 Q But you are confident that it was caused by the collision,
2 though, correct?

3 A Yes.

4 Q Next picture. This is 1493, 1493. And what is this?

5 A That's the front drive shaft, but right up above it is the
6 picture of the oil cooler where it's leaking oil.

7 Q And that's the same oil cooler, just a little closer,
8 correct?

9 A Yes.

10 Q Next picture. This is 1635, 1635. And what is this
11 picture of?

12 A That's a picture of the left front of the BMW.

13 Q Okay. And is there damage on this vehicle?

14 A There is. It starts on the bumper, the lower left hand
15 part of the bumper.

16 Q And we'll maybe do this, well, let's do it on this
17 picture. If you can approach and talk the jurors through what
18 damage you see on this BMW and what as an accident
19 reconstructionist that tells you?

20 A So what I'm noticing is the damage starts right around
21 this area where you see the black smudging from the tire of the
22 F250. As you get up further the left front of the F250 and the
23 left front of the ---

24 Q If you could stop --

25 MR. CONRAD: Does he need to speak up?

1 CLERK: Yes.

2 Q Can you speak up a little bit, Corporal? Sorry about
3 that.

4 A The damage starts at the beginning of the bumper of the
5 BMW. We know that the left front tire of the F250 and the left
6 front tire of the BMW made contact with each other which caused
7 this control arm to brake. As the damage goes in further, you
8 still see smudging on the fender from the tire of the F250.
9 One thing I did notice, there's no damage to the door, the
10 mirror wasn't even struck, the mirror's still on in the scene
11 photograph as well.

12 Q And just in regards to the lack of damage on the door and
13 the mirror, does that lead you to the conclusions about whether
14 the door was opened or closed at the time of impact?

15 A It leads me to believe that the door was closed at the
16 time of impact.

17 Q Okay. Alright. Let's go to the next picture. And this
18 is 1635, oh, excuse me, 1636, 1636. Now, one thing that's
19 different we showed you on a picture a minute ago on this BMW
20 at the crime scene on the night, oh, excuse me, the morning of
21 the incident, is that correct? You saw a picture from the,
22 that Greenwood County provided you, is that correct?

23 A That's correct.

24 Q Okay. And the tire of the BMW was pretty severely off
25 centered, is that correct, in that picture?

1 A Yes.

2 Q Is it in the same position here?

3 A No. It's straight after it's been towed.

4 Q Alright. So that tire had to be straightened just for
5 purposes of towing, is that correct?

6 A I assume so.

7 Q Alright. And does this reflect that same damage you were
8 just talking about in the previous picture?

9 A Yes, it's just a picture of the left driver's side of the
10 vehicle.

11 Q Can you offer an opinion as to what from the truck
12 primarily caused the damage that we see in this picture on this
13 BMW?

14 A It's the left front wheel of the truck.

15 Q From the tire itself?

16 A Yes. It's a 37 inch tire, the BMW at the base of the hood
17 near the windshield is approximately 37 inches as well.

18 Q Okay. And does that mean at the time of impact the truck
19 tire was turned into the BMW? Is that a correct
20 conclusion?

21 A No, it's more of a side swipe collision.

22 Q Okay. We'll talk more about that in a second. Next
23 picture. This is picture 1637, and this is the same vehicle,
24 correct?

25 A Yes.

1 Q And this is a better picture of the driver's side front
2 door, correct?

3 A Yes.

4 Q And again, no damage to that door, correct?

5 A No damage to the door or the mirror itself.

6 Q Okay. Next picture. And here's, I'm going to ask you to
7 step up, this is 1462, 1642, excuse me, and I'm going to have
8 you step up. This is a little better picture of the damage you
9 were describing a minute ago. Just point out to the jurors the
10 damage you see and what conclusions you can draw from that, the
11 damage you see in this picture.

12 A So the damage that I notice is first contact is made where
13 you see the smudging of the tire onto the lower front bumper.
14 And the damage continues, goes on in, you can see the smudging
15 from the tire on the BMW itself.

16 Q Okay. Next picture, this is 1644, and is this a
17 closeup of that same initial smudging you were just talking
18 about?

19 A It is. You start to see some damage, see some smudging on
20 the rim where the tire is damaged as well.

21 Q And we're going to back up a few pictures. And we're back
22 at a picture taken by Greenwood County the morning of May 7th,
23 correct?

24 A Yes.

25 Q And this is, again, we'll go back to the picture

1 503 which, 503, and this is the same damage you were just
2 showing from a picture that was taken a couple days later,
3 correct?

4 A Yes, sir.

5 Q Accept the tire of the BMW is back in its original
6 position, correct?

7 A Yes.

8 Q And the next picture which was 506 is that same control
9 arm that got broken from the impact, is that correct?

10 A Yes.

11 Q Alright. And Seargent Bratcher, why don't you come back
12 over here for a second. Actually, why don't you take the stand
13 for a second.

14 A Okay.

15 Q I'm sorry. And before we show them to the jury, you did
16 some drawings after you drew some conclusions about how this
17 collision occurred, is that correct?

18 A That's correct.

19 Q Just one more time just briefly explain to the jurors
20 about how you were able to accomplish that and what evidence
21 you used to draw the conclusions you did in your CAD drawings.

22 A Okay. So basically, we're plotting points and each point
23 we can draw a diagram with those points using computer software
24 that we have. We are able to, say like if you want to draw a
25 roadway, you apply points down where the edge of the pavement's

1 at. You draw a line between the points, and you can tell the
2 program that you want asphalt to be between those two lines and
3 it'll draw asphalt in it. Same way with evidence, tire marks
4 or gouging or fluid trail, things of that nature. And we're
5 able to complete a scale diagram where we put the vehicles to
6 scale back into the diagram to line up the damage profiles and
7 line up the evidence that was left at the roadway.

8 Q Okay. We're going to put up what's in evidence already,
9 this is State's Exhibit 18, and this is another picture for
10 you, this is picture 502. And is this a picture you've seen
11 before?

12 A It is. It's a picture that was provided by the Greenwood
13 County Sheriff's Office.

14 Q Okay. And looking at this picture, and also looking at
15 the other evidence that you reviewed so far, have you come to a
16 conclusion as to whether a truck at the time of impact was
17 swerving into the BMW or going more straight in front of it?

18 A It's more parallel with the BMW and the reason I say that
19 is because if you look at the left front wheel on the roadway,
20 right in front of it, there's a, where the, a tire mark there,
21 it's a short tire mark where the BMW is, it's pushed back a
22 short ways.

23 Q Okay. And I'm going to have you just get up and point out
24 to the jurors --

25 MR. CONRAD: With the Court's permission?

1 THE COURT: Certainly.

2 Q -- exactly what you're talking about.

3 A This area here.

4 Q Keep your voice up, sorry.

5 A A short tire mark starts here and it's right here where
6 this tire's at.

7 Q Okay. And what does that mean to you as accident
8 reconstructionist?

9 A To me looking at what I'm seeing on the scene, the BMW was
10 pushed back approximately a foot or so. That mark was not
11 there, tire marks fade over time, so that mark was not there
12 when we arrived at the scene.

13 Q Okay. Alright. But you reviewed this photograph
14 obviously?

15 A Yes.

16 Q And when you say pushed back, which way is the truck
17 pushing the BMW in this picture? If you need to get back up
18 you can, but which way ---

19 A It's pushed straight back.

20 Q You mean, just so the jury understands, and I
21 apologize Corporal Bratcher, come on down. Point in the
22 picture which way the truck in your opinion pushed the
23 BMW?

24 A The truck pushed the BMW straight back.

25 Q Okay. Alright. And based off of that, did you

1 draw any conclusions about how the truck was angled in relation
2 to the BMW?

3 A The first angle I believe was directly in line with,
4 parallel to the BMW.

5 Q Is that consistent with the damage you see on the BMW?

6 A It is.

7 Q Is that consistent with the damage that you inspected on
8 the truck?

9 A Yes.

10 Q Now, if the truck had been swerving or turning into that
11 BMW, which way would you expect to see that BMW pushed?

12 A If the truck would have been at more of an angle it would
13 have pushed it towards the side of the roadway.

14 Q And do you see any evidence in this picture or anything
15 else you've reviewed in this case to suggest that the BMW was
16 pushed towards the side of the roadway by the truck?

17 A No. There's no physical evidence of that.

18 Q Okay. What is the emergency brake?

19 A It's typically when the wheels on a vehicle lock up, and
20 they'll leave marks on the roadway.

21 Q Okay. And you testified a minute ago about ABS,
22 correct?

23 A Yes.

24 Q And what is or ---

25 A I didn't testify to ABS.

1 Q Right, that was Seargent Andis. But is that F250 equipped
2 with ABS?

3 A It is.

4 Q And in an emergency braking situation even with ABS,
5 would you still expect to see evidence on the roadway?

6 A You can see tire marks and skid marks from ABS
7 braking.

8 Q And if, in an emergency swerve, if someone were to
9 emergency swerve that truck or really any vehicle, would you
10 expect to see evidence on the roadway from that emergency
11 swerve?

12 A You can see evidence, it's usually from weight shift,
13 weight shifts from one side of the vehicle to the other and
14 there will be a mark in the roadway.

15 Q And in any of the pictures you reviewed from the date of
16 the incident, from your own review of the scene two days later,
17 did you find any evidence of any emergency swerving or any
18 evidence of any emergency braking?

19 A No, I did not.

20 Q Alright. And we're going to pull up, in this, we're back
21 on State's Exhibit 49, and we're going to go to the, there's a
22 pdf labeled SCHPCADS and it's up on the screen now, and this is
23 a three page document. Do you recognize that?

24 A Yes. That's a scheduling that I created based off the
25 forensic mapping that we completed and that depicts the roadway

1 as it would have been found prior to the collision where the
2 incident had taken place.

3 Q Let's go to the next page. Alright. And we probably need
4 to zoom in, okay. What, and save it right there, Danielle, but
5 what is this depiction of?

6 A So that is a depiction, again, it's a scaled diagram of
7 the roadway at the incident location, and that is a, how we
8 determined, I determined how the impact took place.

9 Q Okay. That is your conclusion of how this occurred,
10 correct?

11 A Yes.

12 Q Alright. And we see an individual standing, we see the
13 BMW, correct?

14 A Yes.

15 Q We see the truck?

16 A Yes.

17 Q And we see an individual standing directly next to the BMW
18 in front of the truck, is that correct?

19 A Yes.

20 Q And we'll get into why that is in a second, but is that
21 your opinion of how those three objects were situated at the
22 time of the collision?

23 A Yes, it is.

24 Q Alright. And is the positioning of the truck and the BMW
25 based upon the damage you saw on both vehicles?

1 A It's based upon the damage profiles of the vehicles and
2 the evidence that we found on the roadway.

3 Q Okay. And the individual standing in front of the truck,
4 what evidence did you rely upon to place that individual there
5 at the time of the collision?

6 A That is from the dent in the hood and the cracking in
7 front grille of the F250.

8 Q Alright. So it is your opinion that the hood dent that
9 this jury's seen several pictures of and the crack on the
10 grille, you believe that it was caused by Mr. Davis
11 McClendon?

12 A Yes.

13 Q The truck striking Mr. Davis McClendon?

14 A Yes.

15 Q And it's your opinion that Mr. Davis McClendon as situated
16 in this drawing was standing directly next to his BMW at the
17 time of the impact, is that correct?

18 A That's correct.

19 Q And we see the vehicles, the truck and the BMW situated,
20 how would you describe how they're facing each other at this
21 point?

22 A They're parallel to each other, it's more of a sideswipe
23 collision.

24 Q Can you zoom in on that a little bit? A little more,
25 scroll down a little bit. Okay. And so more or less, the

1 vehicles were parallel to each other at the time of impact,
2 correct?

3 A Yes.

4 Q And as you previously testified, the BMW door was open or
5 closed at this point?

6 A It would be closed because if it was open it would have
7 had damage to it.

8 Q Okay. And you observed no damage on that door to indicate
9 that it was open, correct?

10 A There was no damage to the door or the driver's side
11 mirror.

12 Q Alright. Let's go to the next page, excuse me. Alright.
13 Zoom a little bit on the lefthand side, Danielle. Okay. And
14 what is this depiction of?

15 A That's a depiction of the evidence that we located on the
16 roadway along with the final rest, the area of final rest of
17 Mr. McClendon and the BMW.

18 Q Okay. And so, alright, and this would have been after the
19 truck had departed, is that correct?

20 A That's correct.

21 Q Now, can you describe the mechanism of how Mr. McClendon's
22 body would have ended up so far beyond, because you say the
23 truck initially impacted Mr. McClendon at the same time it
24 impacted the vehicle, correct?

25 A Close to it, yes.

1 Q Close to it. But we see Mr. McClendon's body well beyond
2 where the BMW ended up?

3 A Yes.

4 Q Can you describe for the jury the mechanism that would
5 have caused his body to move so far?

6 MR. SWERLING: To a degree of scientific
7 certainty.

8 THE COURT: Right.

9 Q Can you offer an opinion with a reasonable degree of
10 scientific certainty an explanation of why that body moved so
11 far beyond the BMW at impact?

12 A A Ford F250, the same as a van or a commercial motor
13 vehicle is a high-profile vehicle, it's a blunt force, a blunt
14 vehicle. Typically, with like a sedan or something like that
15 you may see a pedestrian, you see their body wrap onto the hood
16 or actually into the windshield. But a higher profile vehicle,
17 a blunt vehicle, you get more of a forward projection from a
18 pedestrian and that's based off tons of crash data that's been
19 done in the reconstruction world and plus real world
20 experiences I've had on numerous pedestrian collisions that
21 I've worked. The, once the Ford F250 strikes the victim here,
22 it just pushes the victim straight down the roadway. He just
23 rides with the vehicle.

24 Q And what did the, would the body had flown off the front
25 of the truck after the impact at some point?

1 A No. It's like a wall coming at you, it's going to just
2 push you straight down the roadway.

3 Q Okay. Alright. Let's go to the next one, picture, excuse
4 me. Alright. And explain to the jurors what this drawing is
5 of. And if you want to step down to explain this you can.

6 A Okay. So this is the sequence of events.

7 THE COURT: A little bit louder, trooper.

8 A Okay. This is the sequence of events. This is the truck
9 coming in as it strikes the BMW, it goes over to where it comes
10 to a final rest, and then this is the truck backing up on the
11 fluid trail, where we see the tire marks at the pole, and the
12 truck is leaving, and this is the fluid trail leaving the
13 subdivision.

14 Q Okay. And so it's your opinion that the truck, when we
15 see the oil puddle that you previously testified about,
16 correct, that's where the truck came to a stop, correct?

17 A Yes.

18 Q And that is essentially directly by where the body of
19 Davis McClendon was found to your knowledge?

20 A Yes.

21 Q Now, before you sit down, you testified a minute ago that
22 it was your opinion that the truck was not swerving into the
23 BMW, is that correct?

24 A No, the damage profile on the vehicle does not suggest the
25 angle of the F250 would have been more horizontal.

1 Q Okay. And you testified if there had been a swerve into
2 the BMW, the BMW would have been pushed which way?

3 A If the truck would have came in at more of an angle, the
4 BMW would have been pushed this way, it would have pushed it
5 towards the side of the roadway.

6 Q Did you see any evidence in your investigation that would
7 suggest that the BMW was pushed in that direction?

8 A No.

9 Q Okay. And the evidence, one more time, that you reviewed
10 suggests the BMW be pushed in which direction? Just point it
11 out on this diagram, please.

12 A So the BMW was moved but it was moved a short distance, it
13 was straight back.

14 Q Okay. And one more time, you may not want to sit down
15 just yet. If the truck had swerved into the BMW at the point
16 of impact and struck Mr. McClendon at the same time, where
17 would you, would you still expect to see Mr. McClendon's body
18 where it ended up?

19 MR. SWERLING: If he can state to a reasonable degree
20 of scientific certainty.

21 Q To a reasonable degree of scientific certainty, if the
22 truck had swerved into the BMW, would you see the body of Davis
23 McClendon end up where it did end up?

24 A No. It would have pushed the BMW further this way and it
25 would have also pushed the body further down this way.

1 Q You would see the body somewhere on the left hand side of
2 the road?

3 A Correct.

4 Q Okay. You can grab a seat, trooper.

5 MR. CONRAD: One moment, Your Honor.

6 THE COURT: Sure, take your time.

7 MR. CONRAD: Alright. No further questions of this
8 witness.

9 THE COURT: Okay. Mr. Swerling, do you have cross
10 examination of this ---

11 MR. SWERLING: Yes, Your Honor. It would be quite,
12 it will be a while if you wanted ---

13 THE COURT: Alright. Okay. Let me see the lawyers
14 for just a minute.

15 (Off the record.)

16 THE COURT: Alright. Ladies and gentlemen, we're
17 going to go ahead and break for lunch. Your lunch is not here
18 yet but should be here in just a few minutes.

19 CLERK: They're pulling in the parking lot.

20 THE COURT: Pulling in the parking lot now, okay.
21 The Chick-fil-A truck. So we'll start back for everybody's
22 benefit at 2:15, and enjoy your lunch, relax back in the jury
23 room and we'll start back at 2:15, okay?

24 (Jury exiting Courtroom.)

25 THE COURT: Okay. We'll start back in an hour.

1 (Off the record.)

2 THE COURT: Alright. We ready for the jury, State?

3 MR. CONRAD: Yes, Your Honor.

4 THE COURT: Defense?

5 MR. SWERLING: Yes, Your Honor.

6 THE COURT: Okay. Let's bring the jury out, please.

7 (Jury entering Courtroom.)

8 THE COURT: Let the record reflect the jury is back
9 in. Ladies and gentlemen, I hope you enjoyed your Chick-fil-A
10 lunch thanks to your elected Clerk of Court, Chastity Copeland.
11 Alright. Mr. Swerling, are you ready for your cross
12 examination?

13 MR. SWERLING: Yes, sir.

14 THE COURT: Okay. You may proceed.

15 MR. SWERLING: Good afternoon, ladies and gentlemen.
16 I'm going to ask Ms. Colon to pull up a couple of photographs
17 for me, Your Honor.

18 THE COURT: Yes, sure.

19 MR. SWERLING: Well, you don't have to do it right
20 now, but I am going to call on your assistance.

21 **CROSS EXAMINATION**

22 BY MR. SWERLING:

23 Q Mr. Brasher, I have several questions for you. I just
24 want to kind of clear up a few issues, okay?

25 A Okay.

1 Q And I don't think it's going to take that long, but some
2 of it may be important questions. Let me ask you this, did you
3 do anything to determine the preimpact position of the BMW in
4 this particular case?

5 A The BMW was just pushed back approximately about a foot,
6 so it was, if you move the vehicle forward approximately a
7 foot, it would have been where the vehicle was impacted at.

8 Q Okay. And how did you make that determination?

9 A From the tire mark that was left on the road, the emphasis
10 in the road.

11 Q Okay. So the tire mark that we saw in one of the
12 photographs was caused by the BMW being pushed back?

13 A Yes. It's by the left front wheel of the BMW being pushed
14 rearward.

15 Q Okay. And I've got some questions written down, so it may
16 take me a couple of minutes to get through them. The, so the
17 impact, this parallel stripe that you were talking about, the
18 Ford basically went parallel to the BMW, pushed the car
19 back?

20 A It's a sideswipe.

21 Q Or a sideswipe, the reason I'm using parallel is a word
22 you used several times ---

23 A Yes.

24 Q --- but basically a sideswipe was enough force to push the
25 BMW back?

1 A Yes. Because it was enough force to break the lower
2 control arm on the BMW.

3 Q Okay. And that is from, if I understand what you mean by
4 side by side, you're talking about like this, sideswiping?

5 A Where the front bumper meets the front bumper of the BMW.

6 Q Okay. The front bumper of the Ford did not hit the light
7 on the BMW. The left, it would be the left light, but it hit
8 the bumper, right?

9 A It hit the bumper.

10 Q Alright. And the, was it the wheel or the vehicle
11 itself that caused the damage to the tire and drove it
12 inward?

13 A It's the tire, the tire wheel assembly of the F250.

14 Q Okay. And that was enough force to drive that tire inward
15 and cause the scuff mark and push it back?

16 A Yes.

17 Q I'm just trying to understand how a sideswipe can do that
18 type of damage. That's all I'm trying to determine.

19 A Well, you have a vehicle, an F250 weighs almost twice as
20 much weight as the BMW.

21 Q Okay. And what does that mean?

22 A You have 37 inch tires on an F250 which is the same height
23 of the hood of the BMW, so you would not have any body damage
24 to the BMW, I mean to the Ford F250 because you have the tire
25 making contact with the body panels of the BMW.

1 Q So a Ford tire was actually what caused that damage to the
2 BMW?

3 A It was the tire and there's a little scuffing on the front
4 bumper of the, left front bumper ---

5 Q And that's by going parallel to it?

6 A Yes.

7 Q So the tire itself, that's what I want to understand, the
8 tire itself on the Ford was the thing that drove the, or
9 damaged the BMW on the left side?

10 A Yes.

11 Q Caused the tire to go inward, did the scuff mark and then
12 pushed the BMW back?

13 A Yes.

14 Q The tire. Okay. And what I understand you testified to
15 was that there was, maybe I'm not using the right word, but a
16 scuff mark on the rim of the tire? There was no damage to BMW,
17 I mean the Ford tire?

18 A No.

19 Q Okay. But there's damage to the BMW?

20 A Yes.

21 Q Okay. And the Ford also as you said I think was damage on
22 the lower left front of it as well?

23 A On the bumper?

24 Q Bumper, yeah.

25 A Yes.

1 Q Okay. But there's no damage on the side of the Ford
2 vehicle at all?

3 A No.

4 Q So none of the side of that vehicle or the front part of
5 that vehicle on the left hand side impacted with the car as it
6 was going parallel to the BMW, sideswipe?

7 A Just the left front bumper and the left front tire.

8 Q Okay. If the left front of the left tire on the Ford and
9 the bumper was enough to cause that damage and was going
10 parallel to the BMW, okay? That's my preface at this point,
11 okay?

12 A Okay.

13 Q Why's there no damage, what happened to the mirror? Why
14 didn't the mirror get hit? Why didn't the door get scraped by
15 the BMW?

16 A Because after impact the F250 went to the right.

17 Q And what caused that? I mean is there something
18 mechanical that caused that?

19 A It's more than likely from the impact.

20 Q The impact?

21 A Yes.

22 Q Okay. But clearly there was enough force by, caused by
23 the tire of the Ford to go ahead and do the damage, that's,
24 this is your opinion, to do the damage to the BMW, correct?

25 And moved it about a foot ---

1 A Yes.

2 Q --- and do the damage that it did to the front left side
3 of the BMW ---

4 A Yes. Enough damage ---

5 Q --- but not hit the mirror and not hit the door?

6 A Yes. Enough damage to deploy the airbags in the BMW.

7 Q Yeah, okay. How did you determine where Mr. McClendon was
8 standing? What computations did you make or do, reconstruct
9 where he was standing?

10 A Because we know when you have an approach angle of the
11 F250 and you line up the damage profiles on the BMW and the
12 Ford F250, then you have a damage profile on the front hood of
13 the F250, that would be where Mr. McClendon would be standing
14 at is where the damage to the hood of that F250 was at.

15 Q Okay. And so he was standing, where's the damage at the
16 250, the Ford?

17 A It's on the grille where the Super Duty is on the hood,
18 it's on the Duty portion of the license.

19 Q So mid-hood, is that what you're thinking?

20 A More towards the driver's side.

21 Q Okay. So I guess we have a picture somewhere. So what
22 you're saying is almost center of the hood is about where he
23 would have been standing, maybe a little bit to the driver's
24 side?

25 A It's, yeah, it's more towards the driver's side, yes.

1 Q Okay. And that would have been the point of impact?

2 A Yes.

3 Q And how many feet is that in the front of the Ford, did
4 you measure that?

5 A From?

6 Q From the edge of the Ford, the left side of the Ford to
7 the impact point that you came to the conclusion was the impact
8 with Mr. McClendon, how many feet is that?

9 A It's approximately two feet, I didn't measure it though.

10 Q Okay.

11 A Just a rough estimate.

12 Q Okay. So Mr. McClendon would have been at least, at least
13 two feet from the vehicle, the BMW in order to have that impact
14 where you say it was?

15 A Yes. He's next to the car.

16 Q Next, well, two feet away from the car is not next to the
17 car. In the diagram you have him actually next to the car, but
18 he's not actually next to the car, he's a couple feet away,
19 correct?

20 A Yeah. But he's still next to the car, he's still in that
21 lane of travel.

22 Q I'm not disputing you, I'm just saying that the diagram
23 sort of indicates that he's next, right next to the car. But
24 that's not what you're suggesting, you're suggesting he's a
25 least a couple feet away from the car?

1 A Yeah. But no more than a couple feet away from the
2 car.

3 Q A couple feet?

4 A I agree he's within a couple feet of the car.

5 Q Okay. The other trooper said that the airbag, I think it
6 was like less than maybe three seconds or something like that
7 prior to impact the airbags were, I'm trying to remember how he
8 put it. Basically, he was, somebody was moving the wheel of
9 the BMW within three seconds of the impact, I think that's
10 pretty much what he said?

11 A That's correct.

12 Q Okay. So that means that somebody, Mr. McClendon, there
13 was nobody else there, was in the car, the system registered
14 that somebody was moving the wheel around three seconds prior
15 to impact and Mr. McClendon would have not been able to get out
16 of the car, open the door, close the door, and then move two
17 feet away from the BMW all within a two to three second period,
18 correct?

19 A Yes.

20 Q That's pretty quick.

21 A It doesn't take that long to get out of a car.

22 Q Oh, I'd say, you agree what we're talking about, if the
23 wheel is moving at less, around three seconds before impact and
24 then he's sort of center or close to the center of the Ford at
25 impact that he was in the car, got out of the door, closed the

1 door, and then was far enough in the road to go ahead and have
2 the impact where you said it happened?

3 A Yes.

4 Q Okay. Alright, that's fine. Did you determine what Mr.
5 McClendon was wearing at the time of the attack?

6 A I didn't because I didn't have any pictures, and I didn't
7 know what kind of injuries he had at the time.

8 Q Okay. So what about since then?

9 A I've, since then I've seen photos of Mr. McClendon.

10 Q Okay. And do you know what color pants he was wearing?

11 A No. It was autopsy photographs that I looked at so ---

12 Q Okay.

13 A --- it was ---

14 Q Well, specifically, clothes, you don't know what kind of
15 clothes he was wearing?

16 A No. I just seen in a picture there was a shoe that came
17 off.

18 Q Right.

19 A But that's the only clothing that I know of.

20 Q Were you made aware by the information that was given to
21 you by Greenwood County that he was in the road shirtless at
22 the time of the accident?

23 A I know that now, I didn't know that at the time that we
24 responded.

25 Q And his shirt was found somewhere on the road?

1 A That's my understanding.

2 Q Okay. Did you do any kind of testing other than your
3 observations to go ahead and determine exactly how far the car
4 was moved and what the preimpact position was? I guess what
5 I'm talking about is any demonstration by other vehicles to
6 see?

7 A No. We based our reconstruction on the evidence that was
8 in the roadway and the damage profiles on each.

9 Q You mentioned during your testimony that there was some
10 physical evidence that you took from the road, physical
11 evidence that you got. What did you get? What physical
12 evidence did you get off of the road?

13 A Physical evidence, what I was referring to is the fluid
14 trail that was in the roadway, also the tire print that was in
15 the roadway, we don't physically take that into evidence. We
16 document that with photographs and video.

17 Q Okay. So there's really, there's no physical evidence you
18 actually took off the road?

19 A No. It's evidence, it's roadway evidence.

20 Q Pardon?

21 A It's roadway evidence.

22 Q Oh, yeah. But did you take that into your possession and
23 analyze it?

24 A No. We didn't, we didn't take Avid Road and put it into
25 evidence, no, sir.

1 Q No. I'm not talking about Avid Road, I'm talking about
2 physical evidence that you said, I wrote down you got physical
3 evidence from the road.

4 A No, sir.

5 Q Did I write it down wrong? That's what I'm just asking.

6 A There's no physical evidence.

7 Q Okay.

8 A But it's roadway evidence, the same way if you have a skid
9 mark in the roadway or if you have a gouge where vehicles make
10 impact that digs into the asphalt, it's still physical
11 evidence, but we didn't take that into physical custody.

12 Q Maybe I misunderstood the word physical, but it sounded to
13 me you actually got some things in evidence, and I was just
14 trying to figure out what that was.

15 A No, sir.

16 Q Okay. Alright.

17 A Sorry to confuse you.

18 Q Does the diagram that you have in your report, does that
19 show the preimpact position of the vehicle?

20 A It's shows ---

21 Q Did you try to map it out?

22 A It shows the vehicle at first touch where the two vehicles
23 first come together when they first touch.

24 Q And that would be the preimpact?

25 A That would be the impact.

1 Q Okay. And then the final resting of the vehicle you
2 determine from just the scuff, the tire mark, the scuff mark
3 that was moved one foot back, or could it have been more or
4 less?

5 A The vehicle was marked with paint at the scene before it
6 was moved to mark its final rest location.

7 Q Alright.

8 A So we would know exactly where it was at when we came
9 back.

10 Q Right. Okay. You observed the scuff mark on the asphalt,
11 correct?

12 A I noticed it in the pictures that were provided to me by
13 the Greenwood County Sheriff's Office.

14 Q And I think you testified that two days later that scuff
15 mark or tire mark was not there for you to observe?

16 A No, it wasn't there. We would have mapped it in our
17 forensic mapping.

18 Q Right. So it's, within a two day period, it disappeared?

19 A Yes.

20 Q But you did observe it on the roadway?

21 A In the photographs I did observe it, yes, sir.

22 Q Yeah. What was the length of the scuff mark?

23 A I don't know it wasn't there when we got to the scene.

24 Q Were you able to measure it off a picture, is there some
25 method to do that?

- 1 A No, we did not measure it in a picture or anything.
- 2 Q So you don't know how far that, or you don't know the
3 length of the skid mark at this point?
- 4 A No. I can just see from my observations.
- 5 Q Just observing it on a picture?
- 6 A It was a short tire mark based on my observations.
- 7 Q Does your diagram as you refer to, does it place the BMW
8 at the front of the skid mark or at the back of the skid mark?
- 9 A It's at the final rest position.
- 10 Q So that would be at the end of the scuff or the beginning
11 of the scuff?
- 12 A It would be at the end.
- 13 Q Alright. You did not observe any damage to the headlight
14 of the BMW, the left headlight, correct?
- 15 A No. There was damage to the left fog light down on the
16 lower part of the bumper.
- 17 Q Okay. So it was the, you referred to a bumper, but also
18 damage to the fog light?
- 19 A The fog light is found in the bottom of the bumper ---
- 20 Q Okay. So ---
- 21 A --- and the headlight is above that.
- 22 Q --- in front of the vehicle the damage was localized in
23 the front of the bumper? Was it the front or the side of the
24 bumper?
- 25 A It's at left front.

1 Q Okay. We talked about your basis for the, your opinion on
2 where the pedestrian, where Mr. McClendon was, so I don't need
3 to go back into that. Let's talk about the, if I can, the
4 damage to the BMW. The front left quarter panel was damaged in
5 the accident, correct?

6 A The left front fender.

7 Q Yeah. But what about the quarter panel? I mean the
8 pictures show the quarter panel was damaged as well as the tire
9 ---

10 A Yes.

11 Q --- correct? Is that right?

12 A Yes.

13 Q Okay. Do you agree that what you recall is that the tire
14 was pushed inward, it's actually, it looks like it's to the
15 right, facing the right, it's turned inward?

16 A That's correct, yes, sir.

17 Q Okay. And your testimony is that was caused by a
18 sideswipe by the Ford's vehicle, the Ford vehicle tire causing
19 that tire to go inward, is that correct?

20 A Yes, sir. It's caused from the impact.

21 Q So in your testimony you said the Ford was not moving into
22 the BMW, it was traveling alongside the BMW and sideswiped it?

23 A Yes.

24 Q But there's nothing on the Ford, body of the Ford to
25 corroborate that, is that correct? It was a tire?

1 A And there's a little bit of damage to the left front
2 bumper to the Ford.

3 Q To the bumper but not the side of the Ford truck?

4 A No, there was no damage to the side of the Ford
5 truck.

6 Q If the vehicle, if Mr. McClendon was two to three feet
7 from the vehicle, that's a pretty big truck you would agree, do
8 you know what the length or the width of the front of the truck
9 is?

10 A We have it in our case notes, we have the whole
11 specifications for the F250.

12 Q So if he was toward the middle of the Ford, but you said
13 more toward the driver's side, that's a pretty big vehicle,
14 correct, the Ford F250?

15 A Yes, that's a large vehicle.

16 Q How would it be that it would hit him where you say it hit
17 him and not cause damage to the mirror or the door, the driver
18 door of the BMW, how is that possible?

19 A Because after impact, the Ford vehicle goes to the right.
20 If it would have continued going straight, then it would have
21 struck the mirror and got more damage into the driver's side
22 door.

23 Q Alright. Again, what I want to try to figure out is
24 you're saying he was close to the middle of the vehicle or
25 maybe to the little bit of the driver's side, the left of the

1 vehicle. But the size of that vehicle would indicate that if
2 he was standing there the BMW would have been damaged along
3 the side and the mirror as well if it was that
4 close?

5 A It was close, but it went to the right after impact. The
6 Ford vehicle's completely on the wrong side of the road when it
7 strikes the BMW.

8 Q Right. I gotcha. How much time did the MAIT Team
9 actually spend investigating the case with the analysis and the
10 investigation and reconstructing the accident?

11 A It usually takes us around 30, 30 days or so to complete
12 an investigation.

13 Q Right. I'm talking about it like hours, actual
14 production?

15 A I'm not sure, we have multiple cases going on at one time.
16 So we didn't just work on this one particular case because like
17 I said, we cover 12 different counties so we have multiple
18 collisions going on.

19 Q So you really don't know how much time you spent, honest
20 answer, I'm just asking.

21 A No. It's several, we spent a day in Greenwood and then we
22 spent several days in the office compiling everything for the
23 case.

24 Q So the reconstruction, would you call what you did a
25 reconstruction of the accident?

1 A It's a limited investigation to determine the collision
2 dynamics. And we was over there to assist Greenwood with the
3 damage profiles of the vehicles in a vehicle lab.

4 Q So it's a limited investigation, it's not a
5 reconstruction?

6 A We do formal investigations where we do interviews and
7 things of that nature, but in this case, the Greenwood County
8 Sheriff's Office was handling interviews and ---

9 Q So the answer to my question is you did not do a
10 reconstruction of the accident; you did a limited
11 investigation?

12 A At the incident scene, yes.

13 Q Did you, did anybody on your team make any effort to go
14 ahead and determine how much time or distance Mr. McClendon
15 would have been visible prior to the impact?

16 A No.

17 Q You are aware that the, Avid Road is a, slopes down, is
18 that correct?

19 A Yes.

20 Q Okay. And you are aware of the fact that the lights, the
21 headlights were on on the BMW, the car was running at the time
22 of the impact?

23 A In the pictures I've seen from Greenwood County Sheriff's
24 Office, I did observe the BMW had headlights on and that a
25 streetlight was illuminated at that intersection.

1 Q Alright. So did you ever find out that the headlights
2 were on?

3 A When we looked at the vehicle, at the impound lot or
4 whatever they call it, service center, the vehicle had been
5 towed, been turned off and the switch was off at the time.

6 Q Did you ever inquire as to whether the headlights were on
7 on the BMW?

8 A I saw the headlights on in the photographs.

9 Q So you knew that, you had that knowledge?

10 A I had knowledge of that ---

11 Q Yeah, okay.

12 A --- from the pictures.

13 Q I wanted to make sure that I understood it, okay.

14 A Yes.

15 Q And did you determine whether or not it was the low beams
16 or the high beams?

17 A I couldn't tell with, when we did our examination due to
18 the fact that the vehicle had been turned off and the switch
19 was off at the time when we did our examination.

20 Q Was there anything that would indicate or tell it by
21 whether or not the high beams were on or the low beams?

22 A The switch had been documented in the, in the vehicle
23 maybe.

24 Q But you don't know that?

25 A I don't know that.

1 Q You'd agree I would think that the headlights cause glare
2 on oncoming vehicles, correct? Limits your vision.

3 A It can.

4 Q And so without knowing whether it was low beam or high
5 beam, we don't know to what extent that took place, correct?

6 A I don't know; I would just be assuming.

7 Q On a slope downward, would that cause the, a little bit
8 less time where you would be able to see the person in the
9 glare of a headlight?

10 A I don't know, I've never struck a pedestrian, I can't
11 ---

12 Q Well, you, no, I understand, that was not a really
13 necessary answer. I wasn't asking you whether you struck a
14 pedestrian, I'm talking about based on your knowledge and your
15 expertise, would that affect the distance you would be able to
16 determine how far something was or whether they can see, the
17 driver of an oncoming vehicle could see it?

18 A I don't quite understand the question because we live in
19 the upstate and we go up and down hills and I don't recall ever
20 losing vision from going downhill or up the hill from my
21 headlights.

22 Q Not your headlights, the oncoming headlights. I mean, you
23 would agree that oncoming headlights can sometimes cause you to
24 distort your vision?

25 A Yes, absolutely.

1 Q That's why we all signal people, supposed to anyway, if
2 somebody's approaching you with a high beam on, you acknowledge
3 them and you tell them to go ahead, basically through the flick
4 of your headlights to lower the light so you can actually see,
5 correct?

6 A That's correct.

7 Q Did you or anybody on the MAIT Team ever make any kind of
8 calculations or determination as to when in time, how long the
9 driver, Mr. Ackerman, coming down Avid Road would have been
10 able to see Mr. McClendon?

11 A I can't say from what a driver would see and not see.

12 Q I'm asking based on your experience and your knowledge?

13 A No.

14 Q Okay. But there are calculations that could be made,
15 illumination calculations for example, did you do any
16 illumination calculations to the extent that the lights
17 affected Mr. Ackerman and when he would have seen Mr.
18 McClendon?

19 A No. And I can explain why. Mr. Ackerman lives in the
20 neighborhood, is familiar with the area. It's not typical for
21 us to do a lighting study unless it's, say like an incident
22 where we're having a lot of pedestrians struck on the roadway
23 and we're trying to prevent future collisions ---

24 MR. SWERLING: Can I get some water?

25 THE COURT: Go ahead.

1 A He's familiar with the roadway, lives in the neighborhood,
2 the vehicle's completely on the wrong side of the road, strike
3 a vehicle with headlights on and it's coming to a dead end, so
4 the headlights are on on the BMW, there's a streetlight out
5 there, I mean, he's coming to a dead end, so ---

6 Q I'm not asking you ---

7 THE COURT: Let him finish his answer, okay?

8 MR. SWERLING: Okay.

9 THE COURT: Thank you, Mr. Swerling.

10 A I'm finished, Your Honor.

11 THE COURT: I just didn't hear the last part, so I
12 didn't know if you were finished or not.

13 A Okay. So Mr. Ackerman is familiar with the area, lives in
14 the neighborhood, it's a dead end road with a streetlight
15 illuminating the intersection. There's a car there with
16 headlights on that I know of because I saw that in the pictures
17 and when the truck is completely on the wrong side of the road
18 when it strikes the vehicle ---

19 Q That's not what I'm asking you. I asked you did you make
20 any determination about what the illumination factors were so
21 that you could convey to the jury what the distance and time
22 would be that Mr. Ackerman would have seen that individual in
23 the roadway?

24 A No. We did not do any type of lighting studies.

25 Q I'm sure you've had training with night accidents,

1 am I correct? You know the time of this accident was somewhere
2 between 1 and 1:30 in the morning?

3 A Yes, that's what I was told.

4 Q Okay. So it was dark?

5 A Yes.

6 Q You got headlights on the vehicle, you had a streetlight
7 there, and of course, did y'all determine what the cloud cover
8 was that night or whether it was a full moon, half moon, or
9 whatever, the lighting conditions, did you ever look into the
10 lighting conditions?

11 A No, we did not.

12 Q That would affect the ability of someone to see somebody
13 in the road, correct? At some point, at some ---

14 A The lighting conditions?

15 Q Yes.

16 A Absolutely, yes.

17 Q And there are people who can testify about the illuminance
18 factor and whether or not someone can make, at what distance
19 somebody can see something based upon what their clothes are,
20 and what the lighting conditions are. There are people who can
21 do that, correct?

22 A You're talking about people that can do lighting studies?

23 Q Who are experts in that field, the accident
24 reconstruction. You may not do it, but there are people who
25 can do that?

1 A Yes.

2 Q Did you ever receive any training regarding lighting or
3 illumination or visibility in low light conditions or high
4 light conditions?

5 A There's meters you can use, but no, I haven't done a
6 lighting study in my career.

7 Q Do you know what the definition of illuminance is?

8 A The definition of luminance?

9 Q Illuminance?

10 A No.

11 Q What about reflectance?

12 A I would assume something reflecting off of something.

13 Q Did you determine, make any kind of determination, the
14 MAIT Team as to what the reflection of Mr. McClendon would have
15 meant to an oncoming driver?

16 A No, sir, we did not.

17 Q What about contrast, would contrast affect whether or not
18 somebody could see somebody in the roadway ahead of them?

19 A We did not do any lighting studies or contrast studies or
20 reflecting studies.

21 Q Do you know anything about something called discomfort
22 glare?

23 A I do not.

24 Q Do you know, how does glare, if you don't know, how does
25 glare affect the ability of a person to perceive contrast?

1 A We did not do any studies on any of this.

2 Q You would agree that what clothing that someone's wearing
3 would have an effect on whether or not, what the visibility was
4 of someone approaching that vehicle, correct?

5 A Yes. The color of the clothing does affect the ability
6 for someone to see someone else at nighttime.

7 Q Do you know how tall Mr. McClendon was?

8 A I think in, his DMV record had him at six foot.

9 Q But you don't know what clothing he had on?

10 A I do not.

11 Q Do you know whether or not there was any cloud cover that
12 night or what the stage of the moon was?

13 A I do not.

14 Q And I guess you can't answer this, if you didn't know what
15 the clothing was, you don't know what the reflectance factor
16 would be on the clothing or somebody bare chested?

17 A No.

18 MR. SWERLING: Danielle, can I impose on you a
19 minute? Your Honor, I'm referring to 503 and 506 of the ---

20 THE COURT: Okay.

21 MR. SWERLING: --- State's exhibits.

22 Q Okay. This is 503. I wanted you while we're talking
23 about this subject to visualize what the BMW looked like. In
24 the front of the vehicle, is that the scuff mark you were
25 referring to?

1 A On the lower front bumper there's a black scuff mark.

2 Q Right. That's what you were referring to?

3 A Yes, sir.

4 Q Alright. And the car, this is the car at rest, correct,

5 position at rest?

6 A That's correct.

7 Q Okay. But the damage to the, I don't want to go there,

8 but the damage to the, what would you call the area between the

9 front of the car and the start of the driver's door, what's

10 that area there? Wheel well or, I'm not very familiar with

11 those things.

12 A The left front fender.

13 Q It's just the left front fender?

14 A Yes, sir.

15 Q Okay. It's pretty damaged, correct?

16 A It is.

17 Q And your testimony is, your opinion is that's all based

18 upon the tire of the Ford?

19 A Yes.

20 Q Correct?

21 A Yes, sir.

22 Q Alright. And looking at the Ford, I mean the BMW at this

23 angle, the tire is facing towards the left, to the right, I'm

24 sorry, correct?

25 A Yes.

1 Q So your testimony is that came from a side swipe caused by
2 the Ford's tire as well?

3 A Yes. It broke the lower control arm on the BMW.

4 Q Right. And that would have not come from somebody turning
5 into the vehicle in your opinion?

6 A No, sir.

7 Q Okay. All from the parallel position of the Ford truck
8 side swiping that car caused all that damage?

9 A That's correct.

10 Q Okay. And I was going to put the Ford back up, but I
11 don't, your testimony is the only thing that was damaged on the
12 Ford was the scuff mark on the wheel, not the wheel itself, but
13 the hubcap, not the hub, the side of the tire, correct? Where
14 was the scuff mark, I'm sorry?

15 A There was a scuff mark on the left front bumper on the ---

16 Q Right bumper, okay. Just a scuff mark?

17 A Yes.

18 Q Not a dent?

19 A No, sir.

20 Q Okay. And then the wheel itself of the Ford?

21 A There was some black scratches on it, but not a lot of
22 damage.

23 Q Not a lot of damage even to the wheel of the Ford?

24 A No, sir.

25 Q And there was no other damage on the vehicle?

1 A No, sir.

2 Q But it caused all that?

3 A Yes.

4 Q Okay. That's from a sideswipe?

5 A Yes, sir.

6 Q Alright. And your testimony is that after the Ford
7 sideswiped the BMW, showing that evidence of that damage, it
8 automatically, it just veered to the right and did not strike
9 the mirror or the door and just hit the pedestrian, Mr.
10 McClendon?

11 A That's correct.

12 Q There's no question that Mr. McClendon was standing
13 outside the vehicle, no question about that?

14 A No, sir, there's not.

15 MR. SWERLING: Your Honor, I just have a couple more,
16 I believe.

17 Q I just want to clarify something. I think your testimony
18 was that the, the size of the Ford or the weight of the Ford
19 was the thing that carried Mr. McClendon so far, is that what
20 it was?

21 A It's being a blunt force, a blunt, high-profile
22 vehicle.

23 Q Alright.

24 A Which would forward project a pedestrian. There's plenty
25 of crash studies that's been done nationwide on this.

1 Q Okay. And that would explain why he was on the other side
2 of the road as well?

3 A Yes. He was carried as the Ford went off to the right
4 side of the road.

5 Q Your testimony as I understood it was that had Mr.
6 Ackerman turned into the BMW and struck Mr. McClendon, Mr.
7 McClendon would have been on that side of the road where the
8 BMW was?

9 A Yes. And it would have pushed the BMW to the side of the
10 roadway as well.

11 Q Right. But it did push the tire in that direction,
12 correct?

13 A Yes. And ---

14 Q And it did cause a scuff mark, correct?

15 A It did.

16 Q Which means it moved that vehicle?

17 A It moved it straight back, yes, sir, it did.

18 Q Did you make a determination of what the damage, the
19 extent of the damage was there as far as cost is concerned?

20 A As far as cost is concerned?

21 Q Yeah. I mean, what that damage to that car would have
22 cost to repair it, it was, would you agree with me a pretty, a
23 good amount of money?

24 A Absolutely. Any body damage now a days is real expensive.

25 Q For a side swipe?

1 A Yes.

2 MR. SWERLING: Judge, I think that's all I have.

3 THE COURT: Okay. Mr. Conrad, any redirect?

4 MR. CONRAD: Yes, sir.

5 **REDIRECT EXAMINATION**

6 BY MR. CONRAD:

7 Q Corporal Bratcher, Mr. Swerling asked you about, you know,
8 several times about the side swiping and the action of the two
9 vehicles when they impacted. You testified previously about
10 the size of the tire on the truck, correct?

11 A Yes.

12 Q And what's the size of the tires on that F250?

13 A It was a 37, 37 inch tire.

14 Q Okay. And when you say 37 inches, is that, is that the
15 diameter or the circumference or what is that?

16 A They're 37 inches tall.

17 Q Okay. And in your investigation, did you make a
18 determination about how high the BMW fender is?

19 A We pulled the specifications for the BMW and the height of
20 the hood at the base of the windshield is just a little above
21 37 inches.

22 Q Okay. Alright. And we're still looking at 503 for that
23 question. And I'm going to go back to another picture. We'll
24 pull up 1008. Mr. Swerling asked you several different
25 questions about the positioning of Mr. Davis at the time of

1 impact. And you testified that you were basing your
2 determination from off the damage found off of that truck, is
3 that correct?

4 A Yes.

5 Q And we can see the damage in this picture, which is once
6 again 1008, correct?

7 MR. SWERLING: What number?

8 MR. CONRAD: 1008.

9 MR. SWERLING: 8, thank you.

10 MR. CONRAD: 1008.

11 Q Can you see the damage that you made the determination of
12 where Mr. McClendon was standing when he was struck by the
13 truck?

14 A Yes.

15 Q Alright. And review again to the jury what you're seeing
16 that made you, led you to that determination, what damage are
17 you talking about?

18 A So there's a dent in the hood where the word Duty is, and
19 there's also some cracking in the grille, the chrome portion of
20 the grille.

21 Q And you see where the word Duty is, is that, to be more
22 specific, is that dent where the U and T is in the word Duty?

23 A It is.

24 Q Okay. And the crack that you testified about, it's not
25 necessarily visible in this picture, correct?

1 A No. It's just, it's more to the driver's side of the Ford
2 emblem.

3 Q Is the crack in the grille directly beneath the Duty
4 portion where you see the dent or is it to the right?

5 A No. It's directly below it.

6 Q Okay.

7 A It's in line.

8 Q And would you agree with me where we see the Ford symbol
9 on the truck, is it, it's direct center of the truck, correct?

10 A That's correct.

11 Q Alright. And where you see the evidence of the impact of
12 Mr. McClendon is in this picture to the right or more towards
13 the driver's side of where that center symbol is, correct?

14 MR. SWERLING: Your Honor, I hate to object, but just
15 the leading is what, my concern.

16 THE COURT: Rephrase, Mr. Conrad, if you would,
17 please, sir.

18 MR. CONRAD: Okay.

19 Q The damage in the U and T, is that to the, as we see in
20 this picture, to the right or to the left of the word Ford in
21 the front grille?

22 A As we see in this picture, it's to the right.

23 Q Alright. And is that more towards the driver's side or
24 the passenger's side?

25 A It's more towards the driver's side.

1 Q Okay. Alright. We will go back to, I believe it's 503.
2 And Mr. Swerling asked you a few different questions about how
3 the side swipe caused this damage but then didn't cause further
4 damage back towards the mirror of the driver's door, correct?

5 A That's correct.

6 Q Alright. And you testified that the truck veered right
7 after this initial impact that you, you determined,
8 correct?

9 A That's correct.

10 Q Now, are you able to offer an opinion to a reasonable
11 scientific degree of certainty as to why the truck veered to
12 the right after the initial impact?

13 MR. SWERLING: Your Honor, I think he needs to lay a
14 foundation for that before he can ask the opinion.

15 THE COURT: Well, he's already testified on
16 direct. I think, you can ask him the opinion concerning
17 that. I overrule the objection.

18 A My opinion is the truck went to the right because the
19 mirror was never struck on the ---

20 Q Okay.

21 A --- vehicle nor was the door damaged at all on the
22 driver's side.

23 Q Okay. But when, you testified that the evidence would
24 suggest that the truck veered to the right, correct?

25 A That's correct.

1 Q Were you able to determine in your investigation of the
2 mechanism of why the truck veered to the right, i.e., did
3 somebody turn the steering wheel to the right and that's why it
4 veered off to the right or was there some sort of physical
5 reaction between the two vehicles that forced the truck to the
6 right?

7 A There wasn't any evidence on the roadway to suggest either
8 way.

9 Q Okay. So that's something that you're, you can't offer an
10 opinion as to exactly why it veered off to the right,
11 correct?

12 A No. It's all based off of roadway evidence.

13 Q Okay. And I'm going to pull up the pdf of your CAD
14 drawings again. We're going to go to the second page. And you
15 testified you didn't do an exact measurement from where the
16 dent occurred in the truck on the hood to the driver's side
17 edge of the vehicle, correct?

18 A That's correct.

19 Q But you estimated about a couple feet, correct?

20 A I estimated that the dent was on the driver's side of the
21 Ford emblem.

22 Q But in your testimony when Mr. Swerling asked you was that
23 Mr. McClendon was most likely standing how far from the BMW
24 when he was struck by the truck?

25 A Just around a couple feet.

1 Q A couple feet, okay. And would you agree that that is
2 more or less what's depicted in your drawing as presented
3 now?

4 A It is.

5 Q Alright. Mr. Swerling asked you a number of questions
6 about lighting studies and this and that. In your
7 investigation and reviewing the pictures, you determined that
8 it looks like the headlights of the BMW were on, correct?

9 A Yes. They were on in the pictures I got from Greenwood
10 County ---

11 Q And there was a streetlight that was projecting right into
12 that intersection, correct?

13 A That's correct.

14 Q And to the best of your knowledge, was this streetlight
15 working on the night of this incident?

16 A There were photographs of it working.

17 Q Alright. And the headlights of the truck, would they be
18 higher or lower than the headlights of the BMW, assuming the
19 headlights of the truck were on?

20 A They're higher.

21 Q Alright. In this diagram where you show the impact
22 occurred, I think you testified to this in response to one of
23 Mr. Swerling's questions, is the truck in the correct lane of
24 travel at this point?

25 A It is not.

1 Q Alright. And where would the correct lane of travel be
2 for the truck?

3 A A bit more to the right.

4 Q Okay. And so it's illegally on the wrong side of the road
5 at this point ---

6 MR. SWERLING: Your Honor, I object to Mr. Conrad's
7 conclusion.

8 THE COURT: Rephrase the question.

9 Q Does South Carolina Law, as a South Carolina Highway
10 Patrolman are you aware that South Carolina Law requires
11 vehicles to be on separate sides of the road?

12 A Yes.

13 Q And which side of the road would South Carolina Law
14 require the truck to be on at this instance at this location?

15 A To be on the right side of the roadway.

16 Q Alright. And --

17 MR. CONRAD: Just a couple more questions.

18 Q Okay. This is picture 169, and we see the oil puddle,
19 correct?

20 A That's correct.

21 Q And that's where you offered the opinion that you believe
22 the truck came to a final stop after the collision, correct?

23 A Yes.

24 Q Alright. Did you measure, and we see what in the
25 background here?

1 A There's a gate.

2 Q In your investigation, did you measure, and I'm going to
3 go back to your diagram, how far from where you believe the
4 point of impact occurred to where that gate is?

5 MR. SWERLING: Your Honor, I have to object, it's not
6 appropriate redirect.

7 THE COURT: Is it in response to something Mr.
8 Swerling asked on cross examination in so far as the distance
9 to the gate?

10 MR. CONRAD: Mr. Swerling asked a number of questions
11 about illumination ---

12 THE COURT: Okay.

13 MR. CONRAD: --- and visibility ---

14 THE COURT: Okay. Is this kind of leading up to
15 that?

16 MR. CONRAD: And this question is, I think in direct
17 response to ---

18 THE COURT: Okay. Alright. I'll overrule and let
19 you ask.

20 Q Did you make a measurement?

21 A We can measure that distance in the CAD in that actual
22 drawing in the software.

23 Q Do you have that information available right now?

24 A I know it's less than 70 feet.

25 Q Okay. Alright. But you don't recall the exact?

1 A No, I don't recall the exact.

2 Q Okay. And the streetlight is depicted, is my cursor
3 pretty much where the streetlight is in your CAD that was
4 illuminated that night?

5 A Yes. It's right on the corner of Sawgrass Place and Avid
6 Road.

7 Q Okay. And so that gate would be approximately, maybe a
8 little more than 70 feet from that streetlight?

9 A Yes.

10 Q And I'll go back to 169. And on that gate, what do you
11 see ---

12 MR. SWERLING: Your Honor, what does that, that's not
13 redirect.

14 THE COURT: Okay. What ---

15 MR. CONRAD: I was just going to ask him about the
16 reflector strips on the gate, Your Honor. But I can move on.

17 THE COURT: Well, some questions were asked about
18 reflection, so, and this is a reflective something on the gate,
19 so I think it's close enough to allow him to ask it, so go
20 ahead.

21 Q And do you see reflective tape on that gate?

22 A Yes, there's reflective tape on the gate.

23 MR. CONRAD: One moment, please.

24 Q Mr. Swerling asked you a question about, you know, a
25 limited investigation versus a full investigation. I just want

1 to clarify that. When you say full investigation that the MAIT
2 does, what would that include that you didn't do in this
3 particular investigation?

4 A Well, typically when we receive a case from the highway
5 patrol, we do the full, we may look for videos, we may pull
6 data from the vehicles, we do speed ---

7 Q Which you did in this case, correct?

8 A Yes.

9 Q Okay. Keep going.

10 A We conduct interviews with drivers, witnesses, occupants,
11 anybody that's involved, if someone's called 911.

12 Q So in this case, y'all didn't do any interviews, correct?

13 A No. We were there to assist the Greenwood County
14 Sheriff's Office.

15 Q And to your knowledge, Greenwood County Sheriff's Office
16 did interviews, correct?

17 A Yes.

18 Q Okay. But in terms of your actions at the scene for this
19 investigation, in terms of measurements, in terms of
20 photographing, in terms of everything you would normally do at
21 the scene, did you do everything you would do in a quote,
22 unquote full investigation versus a quote, unquote limited
23 investigation?

24 A Yes, we did everything we would normally do.

25 Q Okay.

1 MR. CONRAD: Nothing further of this witness.

2 THE COURT: Any recross?

3 MR. SWERLING: Just --

4 **RECROSS EXAMINATION**

5 BY MR. SWERLING:

6 Q -- did you do your own photographs?

7 A Yes. We take photographs ---

8 Q In this situation?

9 A Yes.

10 Q Alright.

11 A We took photographs when we went to the scene, and we also
12 did a digital video of the scene.

13 Q Okay. I just was wondering what the difference was
14 between limited and full as well. So basically, you don't
15 investigate the case, you investigate the scene?

16 A Yes. We're asked to look at this incident location ---

17 Q Yeah. Okay.

18 A --- the damage profiles of the vehicles and any data that
19 was on the vehicles that we could get.

20 Q Let me just go back to what something Mr. Conrad asked
21 you. The headlights on the Ford are higher than the BMW,
22 correct?

23 A Yes.

24 Q But there are no calculations that you made about the F250
25 going down the slope on Avid as it approached the BMW and what

1 the effect of the headlights would have been going down the
2 hill?

3 A No, we did not do a study of that.

4 Q And I think you already testified that you could not make
5 a determination about the distance that somebody would have
6 seen Mr. McClendon standing there or the time, reaction of it?

7 A No, sir.

8 MR. SWERLING: That's all. Thank you.

9 THE COURT: You can step down, sir. You're free to
10 leave the Courthouse, you're more than welcome to remain with
11 us. Mr. Meadors, I think we have a, not we, the State has a
12 short witness that we can take before we can take an afternoon
13 break?

14 MR. MEADORS: Yes, sir. May it please the Court?

15 THE COURT: Yes, sir.

16 MR. MEADORS: The State would call Greg Allison.

17 CLERK: Raise your right hand please. Do you
18 solemnly swear the testimony you're about to give this Court to
19 be the truth, the whole truth, and nothing but the truth so
20 help you God?

21 MR. ALLISON: So help me God.

22 **DIRECT EXAMINATION**

23 BY MR. MEADORS:

24 Q To be fair as every witness I've ever had, tell these
25 folks about Greg Allison.

1 A My name is Greg Allison, I'm a resident of Greenwood
2 County, I work for the Greenwood County Sheriff's Office, I'm
3 the evidence technician.

4 Q What's that last part?

5 A I'm the evidence technician.

6 Q How long have you been in law enforcement?

7 A Total of 18 years.

8 Q And have you held different positions in law enforcement?

9 A Yes, sir. My first position was a detention officer and
10 then I became the, give me a minute, I became the security
11 guard downstairs at the desk and then I got promoted to
12 evidence technician.

13 Q And tell the folks about your job, what does it mean to be
14 evidence technician in this, for the Greenwood County Sheriff's
15 Department?

16 A Yes, sir. I'm charged with transferring all the evidence
17 from the evidence lockers that all officers have submitted into
18 evidence the following evening or that night to either short
19 term, long term, or process for SLED.

20 Q If evidence, let's say fungible evidence or evidence
21 that's gathered by the officers and sealed and taken to you,
22 what do you do with it, just in general when it comes to ---

23 A First it's given to me by the investigator who requests it
24 be sent to SLED, and then I'll package it and label it for
25 SLED.

1 Q I'm going to show you what's marked State's 44 and there's
2 already been some testimony about this, but do you recognize
3 State's 44, does it relate to what you're talking about right
4 now?

5 A Yes, sir, it does.

6 Q What is State's 44?

7 A State's 44 is a DNA submission for, toxicology for the
8 items that was collected from the victim at the autopsy.

9 Q And are there several items in that package in addition to
10 that?

11 A Yes, there are, sir.

12 Q What are the other items?

13 A The other items are two swabs from the left and right
14 hand, blue top, a urine sample, one is a red top for the blood,
15 and you have one DNA card.

16 Q And does it say whose DNA card that is?

17 A Yes, sir.

18 Q Whose is that?

19 A It is Kenneth McClendon.

20 Q So did you package this up, seal it until it was sent to
21 SLED?

22 A Yes, sir, I did.

23 Q And when it comes back from SLED, what happens to it?

24 A It is resubmitted into evidence.

25 Q Okay. And do you submit it?

1 A Yes, sir, I do.

2 Q So when it's in this county, it's in your control?

3 A Yes, sir. I ---

4 Q Once it's submitted to you?

5 A Yeah. I send it down and I also retrieve it and submit it
6 back into evidence from SLED.

7 MR. MEADORS: Your Honor, at this time for the
8 record, State's 44 I believe without objection.

9 MR. SWERLING: No objection.

10 THE COURT: Without objection, 44 into evidence for
11 the State.

12 MR. MEADORS: Thank you, Judge.

13 (Whereupon an autopsy kit was submitted as State's Exhibit
14 Number 44 for identification and entered into evidence.)

15 THE COURT: Okay. Any examination ---

16 MR. SWERLING: No, sir.

17 THE COURT: Okay. You can step down, sir, thank you.
18 Okay. Ladies and gentlemen, we're going to take an afternoon
19 break, it may be just a little bit longer, I know that there's
20 some evidence that needs to be reviewed between the lawyers
21 and, but we'll get you back out shortly, okay?

22 (Jurors exiting Courtroom.)

23 THE COURT: Alright. We'll be in recess.

24 (Off the record.)

25 BAILIFF: Court come to order.

1 THE COURT: Thank y'all, have a seat.

2 MR. SWERLING: If we can just approach.

3 (Off the record.)

4 THE COURT: Okay. We're back on the record and just
5 a couple things we need to put on the record before we bring
6 the jury out. One, Mr. Conrad, the Mejia body cam video that
7 we've already dealt with, and I've ruled, the necessary
8 redactions have been made, and Mr. Swerling, you're comfortable
9 with that?

10 MR. SWERLING: I looked at it. That was the reason
11 we were in there ---

12 THE COURT: Okay.

13 MR. SWERLING: --- looking at these documents and the
14 videos, and I'm comfortable if that ---

15 THE COURT: Okay.

16 MR. SWERLING: --- complies with your ruling.

17 THE COURT: Okay. And that's State's Exhibit 16?

18 MR. CONRAD: Correct, Your Honor.

19 THE COURT: So we're good with that.

20 MR. CONRAD: And my plan was just with the Court's
21 permission, swap out the current exhibit with the correctly
22 redacted ---

23 THE COURT: Okay. Alright.

24 MR. CONRAD: Alright. And the next thing, Your
25 Honor, is our next witness is Benjamin Baker. He has compiled

1 the data from innumerous sources that we introduced into
2 evidence, particularly, the Berla data, the call logs, and some
3 Verizon tower data. And he's produced a couple exhibits that
4 Jack, Mr. Swerling's reviewed now. I believe there's two
5 things he's going to introduce, one is a map that shows the
6 data points from the Berla data as the truck is driving that
7 evening ---

8 THE COURT: Okay.

9 MR. CONRAD: --- of the incident. The data itself is
10 in evidence, and it also includes a few other things like
11 Verizon tower data to show the Defendants phone ---

12 THE COURT: Okay.

13 MR. CONRAD: --- during some of the events during the
14 night. And then he's also created a spreadsheet that pulls the
15 same information together in written format ---

16 THE COURT: Okay.

17 MR. CONRAD: --- and includes the Berla information
18 and primarily call logs. And I believe Mr. Swerling might
19 object to the last couple pages which is just at the end of the
20 night which is just really only Meredith's call log that shows
21 who she's calling for the hour, hour and a half after Mr.
22 Ackerman, or Mr. McClendon's discovered. We won't publish that
23 today with mister, with this next witness and we can deal with
24 that in the morning if ---

25 THE COURT: Sure.

1 MR. CONRAD: --- the Court needs to make a ruling
2 about those particular calls ---

3 THE COURT: Okay.

4 MR. CONRAD: --- as to whether they come in or not.

5 THE COURT: Okay. So for purposes of today, the last
6 two pages, we'll just deal with at some future point in time.
7 And you're good with that, Mr. Swerling?

8 MR. SWERLING: I'm good with it.

9 THE COURT: Okay. Alright, very good. Thank you,
10 gentlemen. Alright. Let's bring the jury out, please.

11 (Jury entering Courtroom.)

12 THE COURT: And this will be the last witness for the
13 day, I think, correct?

14 MR. MEADORS: Yes, sir, thank you.

15 THE COURT: Okay. Let the record reflect the jury is
16 back in. Ladies and gentlemen, thank you for your patience,
17 and the State has one more witness for today, so once we
18 conclude with that witness then we will go ahead and break for
19 the evening. Mr. Conrad?

20 MR. CONRAD: State calls Benjamin Baker.

21 CLERK: Raise your right hand, please. Do you
22 solemnly swear the testimony you're about to give this Court to
23 be the truth, the whole truth, and nothing but the truth so
24 help you God?

25 MR. BAKER: I do.

DIRECT EXAMINATION

BY MR. CONRAD:

Q Alright. And Mr. Baker, if you could just say your name and spell the last name for the Court reporter, please.

A Alright. My name is Benjamin Baker, B-a-k-e-r.

Q Alright, Mr. Baker. Where are you currently employed?

A With the City of Greenwood.

Q Alright. Is that the police department?

A Yes, sir. In a part time role.

Q Alright. In a part time role. Do you also have other part time duties as well with other agencies?

A As of right now just with the Greenwood Police Department.

Q Okay. And how long have you worked in law enforcement?

A Since 2010.

Q Okay. And what are your duties in this part time role at the Greenwood Police Department?

A So I'm attached to the investigations division and just assist them in an auxiliary type role.

Q Okay. And specifically in relation to what, generally?

A Any kind of digital forensics, any kind of mapping or anything related to that.

Q Okay. And are you familiar with a software called Pen-Link?

A I am.

Q Explain to the jury what Pen-Link is.

1 A So Pen-Link developed a software called PLX and it is a
2 digital analysis tool, and it also is a digital mapping tool
3 for any kind of data that is retrieved from vehicles or cell
4 phones or tower data.

5 Q Alright. And so, can Pen-Link incorporate data from other
6 sources?

7 A It can.

8 Q Like what?

9 A It can include any vehicle information or anything that
10 has a GPS coordinate with it.

11 Q Okay. Can it include cell phone information?

12 A That's correct.

13 Q Can it include cell tower information?

14 A That's correct.

15 Q And you said vehicle information, correct?

16 A Yes, sir.

17 Q Alright. And were you asked to assist in this
18 case?

19 A I was.

20 Q Alright. And by who?

21 A By Lieutenant Womack with the Greenwood County Sheriff's
22 Office.

23 Q And what did he ask you to assist with?

24 A He provided me with the Berla records from the Ford F250
25 and requested that I map it. And also, Investigator Powell

1 provided me with Verizon call detail records and asked me to
2 map those as well.

3 Q And did Lieutenant Womack provide you with some cell phone
4 information as well?

5 A Yes. He provided me with some call logs and ---

6 Q Okay.

7 A --- device events.

8 Q And I'm going to show you some exhibits here that are in
9 evidence. And that's Exhibit 35, 34, 31, and 33. I just ask
10 if you recognize those exhibits?

11 A I do.

12 Q And what are those?

13 A This is the extraction report from Cellebrite that was
14 obtained from the, this one I believe it was Bud's call log and
15 Davis' call log, and Meredith's call log.

16 Q Okay. And there's some device events from ---

17 A Yes, sir.

18 Q --- Bud's phone, or excuse me, Davis' phone?

19 A That's correct.

20 Q Alright. Is that the information that Lieutenant Womack
21 provided you?

22 A Yes, sir, it is.

23 Q Alright. And I want to show you, this is already in
24 evidence, State's Exhibit 28. And I'm going to ask you if
25 you're familiar with the information contained on that DVD?

1 A Yes, sir, I am.

2 Q And what is on that?

3 A So this is the Berla extraction that was obtained from the
4 Greenwood County Sheriff's Office provided to Womack which in
5 turn was provided to me.

6 Q Okay. And finally, I'm going to show you, it's Exhibit 39
7 which I believe contains a photograph. Are you familiar with
8 the contents, 39 is in evidence, are you familiar with the
9 contents on that thumb drive?

10 A Yes, sir, I am.

11 Q And what is that?

12 A It's labeled as a Verizon flash drive ---

13 Q Okay.

14 A --- and it would contain the call detail records from ---

15 Q From Bud McClendon?

16 A Yes.

17 Q Excuse me, Bud Ackerman?

18 A That's correct.

19 Q Alright. And what did you do with that information once
20 it was provided to you by Lieutenant Womack?

21 A So what I do is I take that information that's provided in
22 a digital format and then I input it into a POA software called
23 Pen-Link and then it produces it on a map per se, it has all
24 the different points ---

25 Q Okay.

1 A --- of the GPS locations.

2 Q Did you also create a spreadsheet through Pen-Link as
3 well?

4 A I did. What I did was I took that raw data that was
5 provided from those sources that I just, that you just showed
6 to me and just put it on a spreadsheet in chronological order
7 and I color coded it to each device so it's more user friendly
8 and can be easily readable.

9 Q Okay. I'm going to show you what is marked for ID, and
10 that's State's Exhibit 53. I'll see if you recognize
11 that?

12 A Yes, sir, I do.

13 Q Alright. And what is that?

14 A This is the spreadsheet that I created and compiled all
15 the data from the Ford F250, the phone calls and device events
16 from Davis McClendon's phone, from Meredith Ackerman's phone,
17 and William Ackerman's phone. And what I did was is I color
18 coded each of these different targets, so the Ford F250, I
19 color coded it yellow, Davis McClendon's phone is blue,
20 Meredith's phone's green, and Mr. William Ackerman's phone is
21 red on the spreadsheet.

22 Q Okay. And it puts all that information into what kind of
23 order?

24 A Chronological order.

25 Q Okay.

1 MR. CONRAD: At this point, State, subject to Mr.
2 Swerling's objection, moves to introduce State's Exhibit 53
3 into evidence.

4 THE COURT: Okay. And subject to our discussion just
5 a few moments ago ---

6 MR. SWERLING: That's right.

7 THE COURT: --- before the jury came out concerning
8 several pages and we'll deal with that tomorrow.

9 MR. SWERLING: Just the several pages, not the whole
10 thing.

11 THE COURT: Okay.

12 MR. CONRAD: Okay.

13 THE COURT: Alright. Into evidence for the State,
14 53.

15 (Whereupon a spreadsheet was submitted as State's Exhibit
16 Number 53 for identification and entered into evidence.)

17 MR. CONRAD: We're going to publish this.

18 Q And first of all, we're looking at the first page,
19 correct?

20 A Yes, sir, that's correct. I created it.

21 Q And you just testified about kind of color coding the
22 information, correct?

23 A Yes, sir.

24 Q And we see that, we see that color coded, we see yellow
25 for the Ford F250, blue for Davis McClendon's phone, green for

1 Meredith Ackerman's phone, and red for William Bud Ackerman's
2 phone, is that correct?

3 A That's correct.

4 Q Okay. So we're going to flip to page one which is the
5 first page with data and this is spreadsheets, it contains a
6 lot of information. So first of all, in the first column where
7 it says target, what does that mean?

8 A That is just where the source of the data is, so on the
9 first line is just from the Ford F250.

10 Q Okay. And then next column says type. What does that
11 mean?

12 A So the type refers to, on the devices refer to the phones,
13 so it could be where there's an incoming call or the, well, on
14 that one, it shows the call log, excuse me. And then whether
15 it's a device event or something of that nature.

16 Q And so if it's from the Ford, it doesn't necessarily have
17 a type which would be if it were a call record it's got the
18 type, but if it's the Ford it's not going to have
19 anything?

20 A That's correct. And that was just what was obtained from
21 the raw data that was provided to me.

22 Q Okay. And the next line, column, excuse me, it says time,
23 call begin time in parentheses, what does that mean?

24 A On the call begin time would just be what time the call
25 began or what time the event took place.

1 Q Okay. So if it's the Ford data, it's not a call, it's
2 just the time that the Ford event is recorded, correct?

3 A That's correct.

4 Q If it's a call, the first, that column would be the call
5 begin time ---

6 A That's correct.

7 Q --- is that correct? Okay. And then the next column says
8 call end time?

9 A Yes, sir.

10 Q And is that self-explanatory? It's whenever that
11 particular call ended?

12 A Yes, sir, it's just taking the call begin time and adding
13 the durations, the call end time.

14 Q Alright. And the next column says party. What does that
15 mean?

16 A That is just for the call log, that was just the party
17 that they would have been calling at the time.

18 Q Okay. So let's, alright. And then finally, there's a
19 description, and then at the very first line, that's color
20 coded yellow for the Ford, correct?

21 A That's correct.

22 Q And it says, what does that say?

23 A I can't read it from here.

24 THE COURT: You can step down and just be sure to
25 stand right in front of that microphone on the jury railing.

1 And you can even hold that microphone up if you'd like, if it's
2 more comfortable for you.

3 Q Alright. And what is that first description or the line
4 of description say?

5 A On the first line it says driver door open, door and open.

6 Q Okay. And that came from that Berla data ---

7 A That's correct.

8 Q --- that this jury's previously heard about, correct?

9 A That's correct.

10 Q And this particular report begins at what time?

11 A The first line is at 10:06 and 29 seconds.

12 Q And that's local time, correct?

13 A That's correct.

14 Q Okay. Let's talk about, let's just go down and use an
15 example, the phone call. And line 12, it says, it's blue in
16 color so what's that source again?

17 A So the event there ---

18 MR. SWERLING: Your Honor, if we could just use the
19 microphone, it would be a little better.

20 THE COURT: Yeah. Just hold that up, there you go.

21 A So the event there is Davis McClendon is making a phone
22 call, and the source comes from a call log that indicates an
23 incoming call at 10:14 and 58 seconds would have been the call
24 time that he received it. It lasted 14 minutes and 20 seconds
25 there on the far right. The end time would have been at 10:29

1 and 18 seconds and the phone call would have been from the 864-
2 992-0738. And the McClendon thread would have been the, what
3 he had that particular number saved as his contact in his
4 device.

5 Q Okay. So at 10:14 pm, Davis McClendon would had gotten a
6 call from Freddie McClendon, and that call lasted 14 minutes
7 and 20 seconds, correct?

8 A That's correct.

9 Q And doing the math, that would have been at 10:29 pm?

10 A That's correct.

11 Q And this spreadsheet just goes on through the night and
12 brings in various call logs and the Berla data this jury's
13 already heard about and just puts it in one easy to look at
14 place, correct?

15 A Yes, sir. Just trying to make it as user friendly as I
16 could.

17 Q I'm going to skip ahead to about, I'm on page 31, okay?
18 And in line 766, can you see that from where you are?

19 A Yes, sir.

20 Q Can you maybe adjust this a little bit? Okay. That's
21 probably a little better. Can you read that, Mr. Baker?

22 A Yes, sir.

23 Q Okay. So it says line 766 is what?

24 A Line 766 indicates that William Ackerman, according to his
25 call log, made an outgoing call May 7th at 1:09 am and the call

1 end time would have been May 7th at 1:12 and would have been to
2 864-992-8767.

3 Q Okay. And to your knowledge, is that Davis McClendon's
4 number?

5 A Yes, sir.

6 Q Okay. Alright. So 1:09 am, Bud Ackerman makes a call
7 that lasts for three minutes and 20 seconds,
8 correct?

9 A That's correct.

10 Q Alright. And so it ends at, this call on here, what time
11 again?

12 A 1:12:38.

13 Q Okay. And what do we see right after that call starts
14 with the Ford, the truck? I'll move over.

15 A Alright. You start to see more data incoming from the
16 truck, it shows the first line after the outgoing call was gear
17 shift to reverse.

18 Q Okay. So about a minute after that call begins, the truck
19 was put into gear, correct?

20 A That's correct, yes, sir.

21 Q Okay. Now we're on page 32 and again, we're looking at
22 the Ford data. And this sequence of events starts at about
23 1:10 am, correct?

24 A That's correct.

25 Q And here this jury's seen the sequence of data

1 before. We see the series of hard accelerations and hard
2 brakings and wheel slips, is that correct?

3 A That is correct.

4 Q All starting, between 1:11:29 and 1:11:33, is that
5 correct?

6 A That's correct.

7 Q Alright. And then at 1:11:34 from Davis McClendon's
8 phone, what happens?

9 A It recorded a device event of unplugged.

10 Q Okay. And then almost at the same time at 1:11:34, what
11 does the Ford record?

12 A The driver door was open.

13 Q Okay. And then starting at 11:36, 1:11:36 am, what is the
14 truck doing?

15 A Shifted into reverse.

16 Q And then what?

17 A Shift into reverse and then parked.

18 Q Okay. And then finally at 1:12:33 am, what happens on the
19 truck?

20 A Driver door was closed.

21 Q Okay. You can take a seat again. Okay. So that was the
22 spreadsheet that you prepared, correct?

23 A That's correct.

24 Q And you also did what in relation to this
25 case?

1 A I did the mapping which takes that data and puts it on the
2 maps on the GPS maps, I mean Google maps.

3 Q Alright. I'm going to show you State's Exhibit 52. And I
4 just want to ask if you are familiar with the contents on this
5 DVD?

6 A Yes, sir, I am.

7 Q Alright. And does that contain the maps that you produced
8 for this case?

9 A Yes, sir.

10 Q Okay. And is it, what format are they in, first of all?
11 What kind of file format are they?

12 A I couldn't tell you the exact ---

13 Q Is it a video file?

14 A The, yes, sir. The MP4, I believe.

15 Q Okay. Why did you record the mapping data as a video?
16 Explain why that had to happen for the jury.

17 A So I could replicate it and show the jury the information
18 that's provided there on the mapping.

19 Q Okay. Does it plot each point sequentially?

20 A That's correct.

21 Q And you had to kind of record a video to show each plot as
22 it goes forward in time?

23 A Yes. What PLX does is basically does a screen recording
24 more or less and as it plays along you see the data, they're
25 mapped out on the map itself.

1 Q Okay.

2 MR. CONRAD: Alright. At this time, State would move
3 to enter introduce State's Exhibit 52 as evidence.

4 MR. SWERLING: No objection.

5 THE COURT: Alright. Without objection, 52 into
6 evidence for the State.

7 (Whereupon a DVD was submitted as State's Exhibit Number
8 52 for identification and entered into evidence.)

9 Q Alright. And Mr. Baker, what I'm going to ask you to do
10 at this point is, I'm going to have you step down with the
11 Court's permission, kind of give you the controls so you can
12 kind of play this video and we'll be able to see it up close
13 from the screen here, and I can ask you questions about what
14 the jury's seeing.

15 THE COURT: Yes, sir.

16 Q Come on down. And when you're down here, there's a
17 microphone right here, just remember to speak into that.

18 THE COURT: And this video lasts about how long in
19 length? Just for my information.

20 MR. CONRAD: Do you recall exactly?

21 MR. BAKER: Not off the top of my head.

22 MR. CONRAD: Is it about 20 minutes or so?

23 MR. BAKER: Yes, sir.

24 MR. CONRAD: Approximately a little more than 20
25 minutes.

1 THE COURT: Okay. Alright.

2 Q Okay. First of all, before we go any further, on the
3 disc, there's actually three separate videos, correct?

4 A Yes.

5 Q Why is that?

6 A The software only records 10 minute increments at a time,
7 so what I do is record to the 10 minutes and then at the exact
8 point that video stops, start the next recording and the second
9 video picks up exactly where the first one left off.

10 Q Okay. And so where it says Ackerman mapping 1, 2, and 3,
11 that's just sequentially as the time goes on throughout the
12 ---

13 A Right.

14 Q Alright. Why don't you open up the first video. Alright.
15 Before you play it, what generally is this the map of?

16 A This is just an overall view of Greenwood.

17 Q Okay. And were you given points of interest to reference
18 on the map as you plotted, or the software plotted?

19 A I was.

20 Q Okay. And is that what the first portion of the video is
21 going to show?

22 A Yes, sir. So right now as you can see kind of before it
23 starts playing, you see there's four on the lower lefthand side
24 and there's two at the top right and as it plays through,
25 you'll see the callouts is what they're called, it's a little

1 pop up window or bubble if you would that will show what's
2 specific to those locations.

3 Q Alright. Well, hit play. Okay. And then what is that
4 first area of interest? Is that the incident location?

5 A Yes, sir. That's the crime scene there, Avid Road and
6 Sawgrass.

7 Q Okay. Keep playing. Alright. And what is that location
8 in red?

9 A That is the Ackerman home on Old Abbeville Highway.

10 Q Okay. Keep going. Alright. And what is that location?

11 A That is the Ackerman home there on Tally Ho Drive.

12 Q Okay. Just speak up a little bit.

13 A Yes, sir.

14 Q Keep going.

15 A Alright. The next location is the Key West Bar and Grill.

16 Q Alright. And is that what, and pause it, we're seeing a
17 little window pop up and I know it's going to be pretty much
18 impossible for the jury to read, but the information that is
19 located if someone's able to look closely if you're looking up
20 here, they can read that and it says something else, correct?

21 A That's correct.

22 Q Alright. And there's no way with the software to kind of
23 make that text any bigger is there, that you know of?

24 A Not on PLX, no, sir.

25

1 Q Alright. Keep going. And just whenever it pops up to the
2 next location, what is that location up in the upper right?

3 A Alright. Yes, sir. So right now, what is done is I had
4 to manually zoom in so the next location will show, but what
5 I'll do on the recording is I'll move the map and you'll be
6 able to see a better location.

7 Q Okay.

8 A And that's what I'm doing there. So that location is
9 Break on the Lake.

10 Q Okay. And then the next location ---

11 A Is Port Grille.

12 Q And at this portion of the video, if you zoom in on the
13 locations do you have a little bit better view?

14 A So at this point we're going to deal with the overall to
15 where you can see the map as a plot to kind of give you an idea
16 because if you zoom in, it kind of takes away some of the
17 context as far as the location, but it'll show as it plays
18 through.

19 Q Okay. We'll let it play. Okay. And this is just a
20 little closer view ---

21 A Yes.

22 Q --- that blue marker on the left is the incident location,
23 correct?

24 A Yes, sir.

25 Q And then that's the Ackerman home, correct?

1 A That's correct. This is just kind of zooming in.

2 Q And that's the former marital residence of Bud and
3 Meredith, is that correct?

4 A That's correct.

5 Q And what is that?

6 A This is Key West Bar and Grill.

7 Q Okay. And that is?

8 A Break on the Lake.

9 Q Okay. And what is that?

10 A That's Port Grille.

11 Q Okay. Alright. And that is the points of interest you're
12 provided, correct?

13 A That's correct.

14 Q Alright. And then at this point what is the jury about to
15 see?

16 A What they'll see in the beginning is the Verizon call
17 detail records kind of, some are in a cone shape and some are
18 in an arc shape.

19 Q Okay. We'll discuss those when they show up.

20 A Okay.

21 Q Go ahead and play it.

22 A Alright. So what just popped up here is just the settings
23 whenever you have different settings in order to view. At the
24 top it's overview, it will show all the records at one time,
25 and once you do that it becomes very busy on the screen and it

1 is hard to decipher. The second is the progress view, you can
2 click through it, and it'll show one at a time, but the setting
3 that I chose basically shows you several events as they go on.
4 It'll show, when you click the next, it will show the previous
5 and you can change the number that you would like for it to
6 show previously as well, but it just kind of shows as you go
7 along what happened in the past.

8 Q And pause this, and the jury can't read that on that
9 screen, so what is that data event right there that's popped
10 up?

11 A So right here, and I know it's hard to see, but on the
12 right side, you can see the location information, and on this
13 one, it is from the F250. At the time, at 22:06:29 ---

14 Q Okay. What time is that in regular time?

15 A 10:06 pm.

16 Q Alright. And 22:06 is just military time, correct?

17 A That's correct.

18 Q Alright. So that's at 22:06, and a flag marker which you
19 already put in, where is that?

20 A The location there is the Ackerman home on ---

21 Q On Old Abbeville?

22 A Yes, sir.

23 Q Okay. And so at 22:06, what is happening with that truck?

24 A It recorded that the driver door was open.

25 Q Alright. At the Ackerman residence, correct?

1 A That's correct.

2 Q Alright. And on the right hand side, what was that
3 information again?

4 A It's the same thing there as the call out, it's got the
5 date and the time and what event it was and latitude and
6 longitude coordinates.

7 Q Okay. Keep going. Alright. And I'm not going to have
8 you read all these data points because there's several hundred,
9 correct?

10 A Yes, sir.

11 Q Just let it keep playing. But most of these when we see
12 the box is just truck information, correct?

13 A That's correct. So on the points, I know you can't see it
14 because of the orange pin there, but the black pins represent
15 truck data and then the orange pins are phone information will
16 be the Verizon records.

17 Q And just stop whenever we get to the first Verizon ---

18 A Okay.

19 Q Alright. Just pause it there. And I see a little, what
20 looks like a red arc on the screen, and again, this is Verizon
21 information that's in evidence from Bud Ackerman's phone
22 records, correct?

23 A That's correct.

24 Q And I see a little red arc, just in laymen's terms,
25 explain to the jury what that means.

1 A So basically the arc is is that's the side of the tower
2 that the cell phone hit. Cell phone towers have three sides
3 and what the arc represents is where his cell phone would have
4 approximately been within that arc.

5 Q So in theory, according to the Verizon records, Bud
6 Ackerman's phone would be somewhere in that arc at that time?
7 What time is that again?

8 A This one's at, in military time it's 22:27, but that would
9 be 10:27.

10 Q Okay. And additionally, with that arc is what location
11 that you've previously plotted?

12 A The Ackerman home, but it's kind of hard to see from this
13 view as well, but you can see the black pin behind it which
14 also shows the truck there at that location as well.

15 Q Okay. Keep playing. And here we see kind of a much
16 bigger red triangle, and what does that mean?

17 A So what this represents is that's the sector of the tower
18 that it hit. On the previous one it showed the arc with the
19 information that was provided there would have narrowed down
20 within an approximate area, but what this indicates, it just
21 hit that side of the tower.

22 Q So the phone is somewhere within that pretty large ---

23 A Yeah.

24 Q --- section?

25 A Yes, sir.

1 Q Alright. Keep going. Alright. And this is truck
2 information again, correct?

3 A That's correct. It's a combination of both as it
4 continues on.

5 Q And truck information is not an arc, it's provided very
6 precisely ---

7 A That is very precise, yes, sir.

8 Q And let it play, but what time's it currently going
9 through right now, on the May 6th ---

10 A Right now we're at 10:28.

11 Q On May 6th, 2023?

12 A That's correct.

13 Q Alright. And now, just pause it real quick. Now it looks
14 like the truck is actually moving, correct?

15 A Yes, sir.

16 Q And what time is it at this location?

17 A Right now it's 10:31.

18 Q Okay. Keep playing. And some of these data points on the
19 truck would be very close together, can't they?

20 A Yes, sir.

21 Q Within a second or even ---

22 A Yes, sir. It's depending on what's in recording, it could
23 be recording multiple events at the same time at the exact same
24 location.

25 Q Okay. And so now we see the truck is located

1 near the previously marked gold marker, and what was that
2 again?

3 A This marker right here was the ---

4 Q The Key West marker?

5 A Yes, sir, Key West.

6 Q And what time is this data recorded at the Key West?

7 A 10:34.

8 Q Okay. Keep playing. Okay. Now the truck has left, it
9 looks like he's leaving the vicinity of Key West. At what time
10 does it appear to have left?

11 A 10:35.

12 Q Okay. Keep playing. And what time are these data points
13 that's playing?

14 A 10:37.

15 Q Alright. It appears the truck's back at Key West,
16 correct?

17 A That's correct.

18 Q And what time are we at now?

19 A 10:39.

20 Q Okay. And it appears the truck has left Key West again?

21 A Yes, sir.

22 Q And what time did it appear to leave Key West?

23 A 10:50.

24 Q Okay. Keep playing. What time are these data points?

25 A This is at 12:08 now.

1 Q Okay. So at 12:08 does, the truck still appears to be at
2 Key West, is that right?

3 A That's correct.

4 Q Okay.

5 A Now it's moving.

6 Q What time is that?

7 A 12:10.

8 Q Alright. And now the truck has moved to another one of
9 your points of interest, correct?

10 A That's correct.

11 Q What time is it now?

12 A This is 12:13.

13 Q Okay. And do you recall what that point of interest is?

14 A That is the home on Tally Ho Drive.

15 Q Is that the former marital residence?

16 A Yes, sir.

17 Q Alright. At the time of this, and later at the time of
18 this incident?

19 A That's correct.

20 Q Okay. Keep playing. What time are these data points at
21 this point?

22 A 12:15.

23 Q Alright. It appears the truck might be moving again,
24 correct?

25 A That's correct.

1 Q What time are we at now?

2 A 12:16.

3 Q Okay. And what time are these data points?

4 A 12:24.

5 Q And the truck is now in relation to Key West?

6 A At this moment it's near the airport.

7 Q We're getting to near the end of the first segment of your
8 video, is that correct?

9 A Yes, sir.

10 Q Alright. And what time does that end? It's the last data
11 point.

12 A Yes, sir, it's 12:32:06.

13 Q And the vehicle is, the truck is north of Greenwood, is
14 that out toward the lake?

15 A That's correct.

16 Q Okay. Let's go ahead and open up your second video. And
17 that should start exactly where this one stopped, correct?

18 A Yes.

19 Q Okay. And what's this first data point?

20 A It's at 12:32:06 and it's the same location as previously
21 shown.

22 Q Okay. Let it play. And the truck is up by what right
23 now?

24 A Apparently it's near Lake Greenwood in the subdivision
25 Lake Shores.

1 Q Okay. And I think this zooms in in a second, doesn't
2 it?

3 A Yes, sir. It's 12:37 at the moment.

4 Q And what time is this again?

5 A 12:38.

6 Q We're going to zoom in here, can you see what road the
7 truck is on at 12:38?

8 A Lake Shore Drive.

9 Q Okay. And we see a point of interest that you previously
10 marked in the kind of middle top of the screen, what is that
11 again?

12 A The one in the middle of the screen is Break on the Lake
13 and the one above it across the lake is Port Grille.

14 Q Okay. What time does the, approximately does the truck
15 leave that neighborhood?

16 A Right now it's 12:40.

17 Q Alright. And where is the truck now in relation to your
18 ---

19 A In the parking lot at Break on the Lake.

20 Q Okay. Alright. What time is it there in the parking
21 lot?

22 A 12:41.

23 Q And what time were these data points right now?

24 A 12:41.

25 Q Okay. So it's only been a couple minutes?

1 A Yes, sir. What it's doing is it's recording multiple
2 events at the same time, and it's at a place where it shows
3 each location at the same time.

4 Q Okay.

5 A Like this specific incident recorded 22 events, but
6 they're all the same time at 12:21.

7 Q Okay. Now, the truck has left Break on the Lake, correct?

8 A That's correct.

9 Q What time was that?

10 A This is 12:43.

11 Q Okay. And where does it go?

12 A Right now it's in the parking lot of Port Grille.

13 Q Okay. And what time is this?

14 A At 12:43.

15 Q Okay. And what time are these data points?

16 A 12:43.

17 Q What are some of these points just for the jury?

18 A It's showing access points, it's got several different one
19 of those, now it's showing ignition ---

20 MR. SWERLING: Can he speak in the mic, Your Honor?

21 A It was showing access points, now the door being closed,
22 it's registering numerous access points.

23 Q Okay. And access points would be Wi-Fi locations the
24 truck is detecting, correct?

25 A That's correct.

1 Q Okay. The truck is on the move again at about what
2 time?

3 A 12:49.

4 Q Alright. And it's heading south across the lake?

5 A Yes, sir.

6 Q Okay. Keep playing. Is the truck passing the airport
7 again?

8 A Yes.

9 Q Okay. About what time are we at now?

10 A 12:58.

11 Q What time is this on these data points?

12 A Yes, sir. This is at 1:01.

13 Q And again, the truck is recording multiple data points at
14 essentially the same time, correct?

15 A That's correct.

16 Q And what time are we in now?

17 A 1:03. And that's the end of that video.

18 Q Okay. And where's the truck located at the end of this
19 video? What road is that, can you tell?

20 A It looks like 25, Highway 25.

21 Q And what time does this video end?

22 A At 1:03.

23 Q 1:03 am on May 7th?

24 A That's correct.

25 Q And that's the end of this video. Let's go to

1 the last video. And what time does this video start or that
2 first data point?

3 A This is at 1:03 on May 7th.

4 Q Okay. Play. Once again, back in view, you've got two
5 markers, an orange one and a blue one, and the orange one is
6 what again?

7 A The Ackerman home on Old Abbeville Highway.

8 Q And the blue one is the incident location, correct?

9 A That's correct.

10 Q And what time are these data points?

11 A This is at 1:04.

12 Q Alright. And what are, just read some of these data
13 points as it proceeds.

14 A This one on the screen is ---

15 Q Keep playing.

16 A --- hard breaking, wheel speed at 32.3 miles an hour,
17 decel.

18 Q Okay. Just let it play and read a few of them, not every
19 one.

20 A Okay. Hard acceleration, wheel speed at 24.6 miles an
21 hour. Hard acceleration, hard breaking at 47 miles an hour.
22 Hard acceleration at 29.3 miles an hour.

23 Q What time is this?

24 A This is at 1:05, it's hard acceleration at wheel speed of
25 41.5 miles an hour.

1 Q Keep playing.

2 A Hard breaking at 53 miles an hour.

3 Q What time?

4 A 1:06. Hard breaking at 47.4 miles an hour at 1:06. Here

5 we have a traction event, wheel speed at 15.6 miles an hour at

6 1:06, possible wheel spin. Hard breaking at 20 miles an hour

7 at 1:06. Hard acceleration at 36 miles an hour, 1:06. The

8 gear shift's going into neutral.

9 Q And pause it real quick. What road is the truck on right

10 now?

11 A Old Abbeville Highway.

12 Q Alright. And the incident location is on what road again?

13 A Avid Court right there at Sawgrass.

14 Q Alright. Okay. Keep going. So it appears, what's the

15 entrance road, do you know?

16 A Rivers Run; it's right here on the map.

17 Q Okay. What time are we at again?

18 A 1:06.

19 Q So it went past Rivers Run, is that correct?

20 A That's correct.

21 Q Keep playing.

22 A You got the gear shift going into drive at 1:06. Gear

23 shift going into park at 1:07.

24 Q And the truck is still on what highway?

25 A Old Abbeville Highway.

1 Q Okay. Keep playing.

2 A Going into drive now. Got the ignition mode turned to run

3 at 1:07. Going into drive at 1:07. Hard acceleration at 21.5

4 miles an hour at 1:07.

5 Q Pause it here real quick. What road is the truck on?

6 A Right now it's on Avid Court.

7 Q What time are we at now?

8 A 1:07.

9 Q 1:07 am on May 7th?

10 A Yes, sir.

11 Q Alright. Keep playing. And is this at the kind of the

12 beginning of Avid where it is now?

13 A That's correct.

14 Q Keep playing. And the truck, is it, what road is it on

15 now?

16 A Rivers Run.

17 Q What time?

18 A At 1:07.

19 Q The trucks on what road now?

20 A Just a second, when I was trying to zoom out it went too

21 far on me.

22 Q Okay. Alright. And the truck is back on what road?

23 A Old Abbeville Highway.

24 Q What time?

25 A At 1:08.

1 Q Okay. And what's going on with the truck through these
2 data points?

3 A Right now it's showing gear shift going into reverse. And
4 in neutral, park.

5 Q What time?

6 A At 1:08.

7 Q And it is still on Old Abbeville at this point, correct?

8 A Correct.

9 Q But it's out in front of what location of interest?

10 A It's at the end of the driveway to the Ackerman home on
11 Old Abbeville Highway.

12 Q Now it appears to have left Old Abbeville, correct?

13 A Right after it leaves right there at the end of the
14 driveway, just barely pulled into it.

15 Q At what time?

16 A At 1:10.

17 Q Just remember to keep your voice up.

18 A Okay.

19 Q And what is the truck doing, what are those data
20 points?

21 A Now it's showing it was going in reverse, and now it's
22 going into drive at 1:10.

23 Q Okay. And the truck, pause, it's back on Old Abbeville?

24 A Yes, sir.

25 Q What time? And read the seconds, too.

1 A Alright. This is at 1:11:07, it looks like it just made a
2 left turn onto Rivers Run from Old Abbeville Highway, the event
3 registered as the odometer.

4 Q Okay. Keep playing. Pause it. And what time are we at
5 now?

6 A This is 1:11:16, and the event registered is a hard
7 acceleration with a wheel speed of 25.4 miles an hour.

8 Q And what road is the truck on now?

9 A It's on Avid Court just off of Rivers Run.

10 Q Okay. Keep playing.

11 A This event's at 1:11:29, it's hard breaking at wheel speed
12 at 38.4 miles an hour.

13 Q Okay. Keep playing and read them as they come up.

14 A Alright. This one's at 1:11:31, it's a traction event
15 with a wheel speed at 25.9 miles an hour, possible wheel
16 slip.

17 Q And pause this one real quick. Are you able to back it up
18 to that last data point, my apologies. Okay. And that, it's
19 at the intersection of what at this time?

20 A Sawgrass and Avid.

21 Q And what time was this again?

22 A 1:11:31.

23 Q Alright. And what speed is the truck registering?

24 A It registered a traction event and wheel speed at 25.9
25 miles an hour, possible wheel slip.

1 Q Okay. Keep playing to the next data event. Alright,
2 pause it. And what does this data point say?

3 A This is at 1:11:32 showing a traction event wheel speed at
4 14.2 miles an hour with a possible wheel slip.

5 Q Is this just past the intersection of Avid and
6 Sawgrass?

7 A That's correct.

8 Q And what time is this one again, I'm sorry?

9 A 1:11:32.

10 Q Keep playing. Okay, pause. And what is this data
11 point?

12 A This is at 1:11:33 showing driver distraction, prevention
13 disabled.

14 Q Okay. Let it play to the next data point. Alright.
15 Okay, what is this one?

16 A At 1:11:34 it's showing the driver door open.

17 Q Okay. And once again, it's further past the intersection
18 of Sawgrass, is that correct?

19 A That's correct.

20 Q And this is again, what time?

21 A At 1:11:34.

22 Q Am?

23 A Yes, sir.

24 Q What day?

25 A On May 7th.

1 Q Keep playing. And pause it. In a second you'll see, and
2 it's at that point that it should say the door closes, is that
3 correct?

4 A Yes, sir.

5 Q Just pause that when you get there.

6 A Alright.

7 Q Alright. And what is this event?

8 A This is May 7th at 1:12:33, the driver door closes.

9 Q Okay. And so, you can go back and look at the door open
10 at that point if you need to, but we now see the door close at
11 what time again?

12 A 1:12:33.

13 Q So approximately how long was that door open?

14 A Let me scroll back to it. At 1:11:34 when the door was
15 open.

16 Q And it closed at what, 12, excuse me, 1:12:33, is that
17 what you just testified to?

18 A Yes, sir. Let me review it. Yes, sir, 1:12:33, so
19 approximately a minute or so.

20 Q Okay. Keep playing. Okay. The truck's back on Old
21 Abbeville, pause it. What time is it on Old Abbeville?

22 A 1:14:11.

23 Q Okay. Keep playing. Now where is the truck?

24 A Now the truck's in the driveway of the Ackerman home on
25 Old Abbeville Highway.

1 Q And what time is this?

2 A This is at 1:14:52 on May 7th.

3 Q Okay. And let it play. We see the location jump around a
4 little bit at the Ackerman residence, correct?

5 A Yes, sir.

6 Q The data you reviewed, does the truck essentially stay at
7 the Ackerman residence?

8 A Yes, sir.

9 Q Alright. That's the end of your last video, is that
10 correct?

11 A Yes, sir.

12 Q I want you to take the stand and we're going to do one
13 last thing, put you on the spot a little bit.

14 MR. CONRAD: One moment, Your Honor.

15 Q I'm going to look for State's Exhibit 47, I'm going to
16 show you, it's in evidence, I just need to find it. Here we
17 go. Alright. I'm going to show you what's marked as State's
18 Exhibit 47, it's in evidence, and I'm just going to see if you
19 recognize that data?

20 A Yes, sir, I do.

21 Q Alright. Is that the Berla data we just went through on
22 the map?

23 A That is.

24 Q Okay. Flip until you find at 12:08 am on May 7th,
25 approximately 12:08. Okay. So somewhere on there you should

1 see an odometer reading right around 12:08, see if you can find
2 it.

3 A Yes, sir.

4 Q Alright. And what I'm going to ask you, do you have a
5 pen?

6 A No, sir, I do not.

7 Q I'm going to let you borrow a pen here. First of all,
8 read that odometer for the record, please, and mileage at 12:08
9 am.

10 A The one I seen was at 12:09:31.

11 Q Is there one closer to 12:08?

12 MR. SWERLING: Could you say that a little louder, I
13 couldn't ---

14 A Yes, sir. The one I'd seen was at 12:09.

15 Q Well, let's go with the 12:09. What does the odometer
16 read at 12:09 am on May 7th?

17 A The odometer reading was 115,834 kilometers and 71,976.1
18 miles.

19 Q Okay. Can you write that down, do you have anything to
20 write that on?

21 THE COURT: Give us the mileage again, please,
22 officer.

23 A Yes, sir. The odometer reading was 115,834 kilometers and
24 71,976.1 miles.

25 THE COURT: Okay.

1 Q Alright. And that's at 12, just write that number down so
2 you can reference it. In miles, let's reference miles.

3 A Okay. Alright.

4 Q You got that?

5 A Yes, sir.

6 Q Alright. Flip ahead to right around 1:11 am on May 7th.
7 And right about that time which you just testified on that map
8 the truck was located near the incident location on Avid,
9 correct, at 1:11 am?

10 A Yes, sir.

11 Q See if you find a mileage recording at around that time,
12 1:11.

13 A Yes, sir. I have it right here.

14 Q Okay. What time is that mileage recorded?

15 A 71,976.7 miles.

16 Q Okay. Write that number down. And I'm going to ask you
17 to do some math in a second. First of all, what exact time is
18 that mileage report?

19 THE COURT: What's that mileage again?

20 A Yes, sir. It's 71,976.7 miles.

21 Q Alright. And what time is that 71,000, exact time?

22 A 12:11:14.

23 Q Oh, 12? No, no. Yeah, actually, my apologies, I may have
24 misspoken. But I want you at 1:11 am on the 7th, not 12, my
25 apologies. Alright. So right around 1:11 you should see an

1 odometer, okay, that's the one. Alright. First of all, read
2 the exact time and read the exact mileage at 1:11 am.

3 A Okay. The time is May 7th, 2023, at 1:11:07, with an
4 odometer reading of 72,007.8 miles.

5 Q Okay. Write that number down.

6 MR. SWERLING: Was that, the last one?

7 A 72,007.8 miles.

8 MR. SWERLING: 7?

9 A Yes, sir, 7.

10 Q Just give me a nod when you've written that down.

11 A Okay.

12 Q Alright. So I'm going to put you on the spot and do a
13 little math. Between the mileage at 12:08, the first one you
14 wrote down and 1:11 am, the second one you wrote down, how far
15 did the truck travel?

16 A If my math's correct, it's 131.9 miles.

17 Q You might need to check.

18 THE COURT: Here, we got a calculator.

19 A Alright.

20 Q Okay. Now that you've used a calculator, how many miles
21 did the truck ---

22 A 31.7 miles.

23 Q Okay. And I'll take that calculator.

24 A Thank you.

25 Q I'll take the exhibit back.

1 A Yes, sir.

2 MR. CONRAD: Beg the Court's indulgence.

3 THE COURT: Sure.

4 Q And all that data that you just watched, all those data
5 points, the vast majority of them came from what source?

6 A The raw data from the F250 from ---

7 Q The Ford F250, correct?

8 A Yes, sir.

9 Q There were a few Verizon data points as well,
10 correct?

11 A That's correct.

12 MR. CONRAD: Nothing further.

13 THE COURT: Mr. Swerling, any cross?

14 MR. SWERLING: I'll try to make it brief.

15 **CROSS EXAMINATION**

16 BY MR. SWERLING:

17 Q Do you have the exhibit up there?

18 MR. CONRAD: Which one?

19 THE COURT: The spreadsheet?

20 Q The spreadsheet?

21 A No, sir, I do not.

22 Q I'll hand you this.

23 A Alright.

24 Q First of all, what's a hard break event? Do you know
25 that, what it is?

1 A I couldn't tell you specifically what it's registered as,
2 I just know what the, the information that was provided to me
3 on there.

4 Q Okay. You don't, so the answer is you don't know what it
5 is?

6 A No. I just imagine that it breaks hard.

7 Q No, I know. But the technical definition?

8 A No, sir, I do not.

9 Q Okay. That's what I was asking. What about a hard
10 acceleration, do you know what that is?

11 A No, sir, not the technical.

12 Q That's fine, I just thought I'd ask you. If you could go
13 on that document to page 20 and line 480.

14 A 480?

15 Q Yes.

16 A Yes, sir.

17 Q Who is calling who and at what time?

18 A So on line 480, Davis McClendon's phone on his call log
19 made an outgoing phone call at 12:51 am to 864-554-0292 and
20 that was Bud Ackerman.

21 Q Okay. So it's recorded that he made the phone call at
22 that time, correct?

23 A That's correct.

24 Q Alright. As I understand it, these still have the
25 duplicates that were taken out of the extraction, some of these

1 numbers or calls are actual duplicates, the way the program is
2 done?

3 A What I did was I just took the information that was
4 provided from you, if that was what was ---

5 Q I got you. I'm sorry, maybe I put you in a bad position.

6 A No, sir.

7 Q This is the exact data that you got from the toll records?
8 These phone calls?

9 A Yes, these ---

10 Q Not toll records, I mean phone records?

11 A --- are from Cellebrite, yes, sir.

12 Q Okay. And did you notice that some of the calls were
13 duplicates at exactly the same time?

14 A Yes, sir.

15 Q Did anybody explain that to you?

16 A Briefly. Just from my previous experience, if I
17 understand it, it pulls from different sources on the phone and
18 it could show duplicate events, but it's just pulled from a
19 different, you know, how the report was ran.

20 Q Okay. So even though it's on here, again, it's still a
21 duplicate call, correct? You don't dispute that?

22 A No, sir.

23 Q Okay. So basically, what we've already gone through
24 before on another occasion, correct?

25 A Yes, sir.

1 Q Okay. So you have a, line 480, Davis McClendon calls Bud
2 Ackerman at 12:51. Did he call, if you go down to 484, did he
3 call him again?

4 A Yes, sir. On 484, Davis McClendon's phone is call logged
5 an outgoing call at 12:51:15 to Bud Ackerman of the phone 554-
6 0292.

7 Q So that was the second phone call that Davis McClendon
8 made to Bud Ackerman?

9 A That's ---

10 Q Is that correct?

11 A Yes, sir.

12 Q And that call lasted two minutes and 18 seconds?

13 A That's correct.

14 Q Okay. And then if you flip over to page 21, line 505.

15 A Yes, sir.

16 Q Does that show that Davis McClendon made another phone
17 call to Bud Ackerman at 1:00?

18 A Yes, sir, at 12:59.

19 Q And that lasted what, 1 minute and 6 seconds?

20 A That's correct.

21 Q So that's three phone calls from Davis McClendon to Bud
22 Ackerman that we just reviewed, correct?

23 A Yes, sir.

24 Q Okay.

25 MR. SWERLING: That's all I have.

1 THE COURT: Any redirect, Mr. Conrad?

2 MR. CONRAD: Not from the State, Your Honor.

3 THE COURT: Okay. You can step down, sir, thank you.
4 Okay. Ladies and gentlemen, it's about a quarter to 6, it'd be
5 a good time to adjourn for the evening. I appreciate your hard
6 work, and we'll start back at 10:00 in the morning, okay? Have
7 a good evening, get some good rest, and we'll see you in the
8 morning at 10:00.

9 (Jury exiting Courtroom.)

10 THE COURT: Okay. Anything further from the State
11 for this afternoon?

12 MR. MEADORS: No, sir, thank you.

13 THE COURT: From the Defense?

14 MR. SWERLING: No, Your Honor.

15 THE COURT: Okay. Alright. Everybody have a good
16 evening, and start back at 10:00 in the morning.

17 (Whereupon the hearing ended at 5:47 pm.)

18 **DAY TWO OF STATE V. ACKERMAN - OCTOBER 3, 2024**

19 THE COURT: Thank you, have a seat. Let's bring the
20 jury out, please.

21 (Jury entering Courtroom.)

22 THE COURT: Let the record reflect the jury is back
23 in. Good morning, ladies and gentlemen. I see some smiling
24 faces this morning, that's always good to see. I just wanted
25 to explain to you, we're in the middle of working through some

1 legal issues with the lawyers and it's going to be a little
2 while longer. So I just wanted to explain that to you while
3 you're sitting back there and not in the Courtroom. We're
4 going to try to get through those issues just as prompt and as
5 soon as we can, so I just ask you to continue to be patient
6 with us as you have done and I appreciate that very much. So
7 if you'll go back to the jury room, we're going to work through
8 that to get you back out just as soon as we possibly can, okay?
9 Thank you.

10 (Jury exiting Courtroom.)

11 THE COURT: Okay. We are back on the record, and I
12 had a brief in camera discussion with the lawyers concerning
13 autopsy pictures. Some are not in dispute and they will come
14 into evidence under seal, but there are nine photographs,
15 autopsy photographs, 75, 76, 98, 99, 117, 119, 127, and 128,
16 and 133 that are in dispute and I did mention to the lawyers
17 that it may be helpful to have some in camera testimony from
18 the pathologist, Dr. Shaw concerning these photographs. But
19 before we do that, let me throw out the general question, are
20 these injuries that are depicted in these contested
21 photographs, are they in dispute? In other words, is the
22 Defense taking the position that the accidental hitting of
23 Davis by the Defendant, these injuries could not have been
24 caused by that accidental hitting of Davis by the truck? If
25 that's not in dispute, then under the State versus Nelson case

1 that came out not too long ago, the pictures don't come in. So
2 Mr. Swerling, I'm going to turn it over to you first. These
3 various injuries that are shown in the pictures, are, is the
4 Defense taking the position that they could not have been
5 caused by the Defendant's accidental, because that's your
6 defense, the accidental hitting of the victim by the F250
7 truck?

8 MR. SWERLING: Yeah. The injuries are not in dispute

9 ---

10 THE COURT: Okay.

11 MR. SWERLING: --- as having been caused by the
12 accident.

13 THE COURT: Under State versus Nelson, certainly, Mr.
14 Meadors, I'll give you every opportunity to argue against that,
15 but the cite just for y'all's benefit, 440 S.C. 413, it's an
16 August 9, 2023 opinion which basically says if the injuries are
17 not in dispute, then the pictures, the probative value of the
18 pictures far outweighed by the unfair prejudice. Certainly,
19 the pathologist can testify as to the injuries, but as far as
20 the pictures coming in, they would not. Mr. Meadors?

21 MR. MEADORS: Your Honor, I'm familiar with that
22 case, our appellate division reminds us every time, I didn't
23 know until just then that any of these on the record were not
24 in dispute and potentially they're claiming accident, we're
25 saying it was intentional, that's why in our preparation ---

1 THE COURT: Sure.

2 MR. MEADORS: --- that's what we got them prepared
3 for. Judge, I, the x-rays, I don't, obviously, the ones we've
4 agreed to, is Your Honor ---

5 THE COURT: If they're agreed to come in ---

6 MR. MEADORS: Okay.

7 THE COURT: --- then they're coming in.

8 MR. MEADORS: I wasn't ---

9 THE COURT: Right. Yeah. They're coming in. It's
10 the ones in dispute, since Mr. Swerling says the Defense does
11 not contest the existence of those various injuries as shown in
12 the contested autopsy pics, since he has told the Court that,
13 then they're not coming in based under State versus Nelson, but
14 certainly those that he agrees to, the other ones that he
15 agreed to back in chambers, they certainly could still come in.

16 MR. SWERLING: Yes, sir. And if I can say ---

17 THE COURT: Sure.

18 MR. SWERLING: --- I mean, we met back there, and we
19 reviewed them and, you know, my goal at that point was to go
20 ahead and agree to whatever I did not think was too
21 prejudicial.

22 THE COURT: Right.

23 MR. SWERLING: But I, and I still don't have any
24 problem with like showing the clothes ---

25 THE COURT: Right.

1 MR. SWERLING: --- I think that, let's see, I can
2 just put it on the record.

3 THE COURT: Well, let's do this. Before we bring the
4 jury out, let's make sure that we're clear because we were not
5 on the record in chambers, let's make sure that we're clear as
6 to those autopsy pics that are not contested and will come in,
7 let's just make sure that we're clear on those. So I don't
8 know how y'all want to do that, but...

9 MR. SWERLING: Some of them I just didn't have an
10 issue with.

11 THE COURT: Right.

12 MR. SWERLING: But body pictures are ---

13 THE COURT: Right. Well, I guess if y'all want to,
14 and we can go off the record in just a minute, do like we did
15 back in chambers, make sure y'all are clear on the number ---

16 MR. SWERLING: Okay.

17 THE COURT: --- designated to the pictures not in
18 dispute then we can put that on the record and then we can move
19 forward. Alright. So we're off the record for just a minute.

20 (Off the record.)

21 THE COURT: Alright. Mr. Meadors, you wanted to put
22 one more thing on the record as it relates to my, or Mr.
23 Conrad, as it relates to my ruling concerning autopsy pictures
24 not coming in relying on the State versus Nelson case. I'd be
25 glad to hear from you.

1 MR. CONRAD: Yes, sir. And we understand the
2 Court's ruling and I just want to preserve one argument if I
3 could.

4 THE COURT: Sure.

5 MR. CONRAD: And that is under the State v. Nelson
6 case, and I'm looking at page 426 of that case, it says where,
7 you know, where the nature of the victim's injuries are in
8 dispute, which I understand Mr. Swerling's not disputing the
9 nature of the injuries, or a case where there was no other
10 convincing evidence of malice or in the manner in which the
11 victim died. I would focus our argument on the middle of those
12 where there's no other convincing evidence of malice. While I
13 feel like the State has presented evidence of malice so far in
14 this case, that malice is the very heart of the dispute of this
15 trial from what I believe has occurred so far. And therefore,
16 I think there's still that narrow window to convince,
17 particularly the mouth injuries which the State would contend
18 would corroborate what the doctor's going to testify about,
19 what MAIT testified that it was Davis' mouth, or head or mouth,
20 face that caused the dent in the top of the hood of the truck.
21 And I think that will be probative to the issue of malice and
22 where the victim was standing, visibility, so on and so forth.
23 But that's ---

24 THE COURT: Okay.

25 MR. CONRAD: --- just to preserve that ruling.

1 THE COURT: Okay. Thank you, Mr. Conrad. Let me
2 just look at what you just referred to. Okay. Well, my ruling
3 certainly remains the same and of course, Dr. Shaw can testify
4 in as much detail as he feels like is necessary concerning the
5 injuries and what he found and that sort of thing, he's not
6 precluded from that. And certainly, not trying to tell the
7 State what questions to ask Dr. Shaw, but you know, you can ask
8 him, injuries to the mouth, would that be consistent with
9 coming into contact with the hood of the 250. So now, the
10 lawyers have gone back through what we initially understood
11 were not in dispute, but now, Mr. Swerling, you are disputing
12 all the autopsy pictures except for the picture or pictures of
13 x-rays, is that correct?

14 MR. SWERLING: That's correct, Judge. There's a few
15 other pictures that are just, not part of the autopsy, but they
16 are clothing for example, and I didn't have any objection to
17 that.

18 MR. MEADORS: Autopsy bag with the number, that sort
19 of thing he's not objecting to.

20 THE COURT: Okay. Well, give me, either side, give
21 me the number of those pictures that are not in dispute because
22 I want to make sure the record is clear. Can you do that, Mr.
23 Meadors or Mr. Conrad?

24 MR. CONRAD: One second, Your Honor. Okay. If I
25 understand this correctly ---

1 MR. SWERLING: 625 and 228 are not in dispute. 1's
2 not in dispute.

3 MR. MEADORS: 625, Your Honor.

4 THE COURT: Alright. 25.

5 MR. MEADORS: 625, I'm sorry.

6 THE COURT: What?

7 MR. MEADORS: 625.

8 THE COURT: Oh, 625, I'm sorry. 625.

9 MR. MEADORS: 228.

10 THE COURT: 228.

11 MR. MEADORS: 01.

12 THE COURT: 01.

13 MR. MEADORS: 26.

14 THE COURT: 26.

15 MR. MEADORS: 37.

16 THE COURT: 37.

17 MR. MEADORS: And 39.

18 THE COURT: 39. Okay.

19 MR. SWERLING: That's correct.

20 THE COURT: Alright. Is that correct, Mr. Swerling?

21 MR. SWERLING: Yes, sir.

22 THE COURT: Okay. Alright. Those will be admitted
23 into evidence on behalf of the State under seal. Alright.

24 MR. MEADORS: And I really don't think there's a need
25 to seal those, quite frankly.

1 THE COURT: What?

2 MR. MEADORS: I don't think there's a need to seal
3 those.

4 THE COURT: Oh, okay. No issue there, Mr.
5 Conrad?

6 MR. CONRAD: No, Your Honor.

7 THE COURT: Okay. Alright. They will not be under
8 seal then.

9 THE COURT: Okay. Anything further before we bring
10 the jury out, State?

11 MR. MEADORS: No, sir, thank you.

12 THE COURT: Defense?

13 MR. SWERLING: No, sir.

14 THE COURT: Okay. Alright. Let's bring the jury
15 out, please.

16 (Jury entering Courtroom.)

17 THE COURT: Alright. Let the record reflect the jury
18 is back in. State ready to call the next witness?

19 MR. MEADORS: Yes, sir, Your Honor, thank you.

20 THE COURT: Okay. Thank you.

21 MR. MEADORS: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. MEADORS: Your Honor, the State would call Dr.
24 Kyle Shaw.

25 THE COURT: Okay.

1 CLERK: Raise your right hand, please. Do you
2 solemnly swear the testimony you're about to give this Court to
3 be the truth, the whole truth, and nothing but the truth so
4 help you God?

5 DR. SHAW: I do.

6 **DIRECT EXAMINATION**

7 BY MR. MEADORS:

8 Q Good morning, Dr. Shaw.

9 A Good morning.

10 Q Would you please tell the ladies and gentlemen of this
11 jury about Dr. Kyle Shaw, your background, where you're from,
12 your education and in particular, doctor, your education in the
13 field of expertise I've asked you to testify about today?

14 A Sure. I got my medical degree from the University of
15 Sydney in Sydney, Australia. Following that, I did a one year
16 clinical internship of the Southeastern Sydney Area Health
17 Service, also in Australia. Following that, I returned to the
18 U.S. for the first two years of my general pathology residency
19 training at the Eastern Virginia Medical School in Norfolk,
20 Virginia. Following that, the final two years of my general
21 pathology residency training at the University of Maryland
22 Medical Center in Baltimore. Following that, I did a one year
23 subspecialty fellowship in forensic pathology with the Office
24 of Chief Medical Examiner in the State of Maryland also in
25 Baltimore. Following that, I moved to Florida and took a job

1 at a medical examiner's office in Florida where I worked for a
2 decade. And then following that, about five years ago, I moved
3 to the upstate area and took a job up here working for several
4 coroner counties in the upstate area and serving as their
5 forensic pathologist.

6 Q What's the difference between pathology and forensic
7 pathology, doctor?

8 A So pathology is a medical specialty that largely focuses
9 on the study of and the diagnosis of disease and disease
10 processes. Forensic pathology is a subspecialty of pathology
11 where again, we're also focusing on disease and processes but
12 more a focus on injury than your typical general pathologist.
13 Then we take that knowledge and apply it in a public element,
14 sometimes in a legal setting.

15 Q And who do you work for?

16 A So currently I work for several counties in the area that
17 includes Abbeville County, Greenwood County, Anderson County,
18 Pickens County, and sometimes also McCormick County.

19 Q And what do you do for all those counties?

20 A So I serve as their forensic pathologist. That basically
21 means that if they have questions about a death investigation,
22 they can ask me, but for the most part, I perform autopsies on
23 cases that they refer to me for an autopsy and provide them
24 with my opinion of cause of injury and death.

25 Q How many autopsies have you performed?

1 A On the order of something over 3,500 at this point.

2 Q And are you board certified in forensic pathology?

3 A Yes. I'm board certified in anatomic pathology, clinical
4 pathology, and forensic pathology.

5 Q And have you testified as an expert in the field of
6 forensic pathology in courts of record in this state, South
7 Carolina?

8 A Yes.

9 MR. MEADORS: Your Honor, at this time we'd offer Dr.
10 Kyle Shaw as an expert in the field of forensic pathology.

11 MR. SWERLING: No objection.

12 THE COURT: Okay. The Court will find Dr. Shaw as an
13 expert in the area of forensic pathology. You may proceed.

14 MR. MEADORS: Thank you, Your Honor.

15 Q Before we get to this case, doctor, I know you've said
16 what you do, but what do you really do when a body comes to
17 you? What's your general practice before we get specifically
18 to Mr. McClendon?

19 A Sure. So focusing basically on the autopsy, the autopsy
20 is basically broken down into two main parts, an external
21 examination and an internal examination. So during the
22 external examination, I look at the outside of the body and
23 anything that is with or on the body for evidence of natural
24 disease or injury, that's scars, that's injuries, that's body
25 habits, lots of different things. And then during the internal

1 examination, I look at the internal organs of the head, neck,
2 chest, abdomen, and pelvis, again, looking for evidence of
3 natural disease or injury and correlating those findings with
4 the external examination as well as any investigative
5 information that is available at the time.

6 Q And did you perform an autopsy on Davis McClendon at the
7 request of the Greenwood County Coroner in this case?

8 A Yes.

9 Q Tell these ladies and gentlemen where's your office, where
10 did you perform the autopsy in Greenwood County?

11 A So currently, Greenwood County sends their cases to
12 Abbeville County, and we perform the autopsy at the Abbeville
13 County Coroner's Office which has a, basically, a set up for us
14 to be able to do that.

15 Q Is that what we all commonly call the morgue?

16 A Yes.

17 Q I'm going to show you, doctor, previously, have you, we
18 just got a few pictures we're going to show you. Have you
19 looked at some of those pictures with me previously back in the
20 room earlier?

21 A Yes.

22 Q Okay. And specifically, I'm talking about the container
23 that Mr. McClendon came to you in and some other items of
24 clothing, correct?

25 A Yes.

1 Q Did those accurately reflect what you observed on
2 Mr. McClendon and how he got to you to perform this
3 autopsy?

4 A Yes.

5 MR. MEADORS: And Your Honor, these will be State's
6 54, it's what we've talked about this morning. These few
7 pictures will be State's 54.

8 MR. SWERLING: Okay. Which one is that?

9 MR. MEADORS: That's just the few pictures we just
10 agreed on.

11 MR. SWERLING: Alright. Okay. I got you.

12 MR. MEADORS: Without objection, Your Honor.

13 THE COURT: Right. 54 into evidence for the State.
14 I think there's six photographs.

15 (Whereupon six photos were submitted as State's 54 for
16 identification and entered into evidence.)

17 Q When a body arrives and, in this case, when Mr. McClendon
18 arrived what is he contained in?

19 A So typically a body is sealed within, or zippered within
20 a, what we call a body transport bag.

21 Q Ladies and gentlemen of the jury and doctor, if you will
22 focus on the, if you give me one second. Now, this is number
23 1, autopsy photo, and you just described the body comes in, Mr.
24 McClendon came to you, is this what you're talking about,
25 doctor?

1 A Yes. That's a picture of one corner of the body transport
2 bag and it includes a label tag and a seal tag, those, the
3 yellow tags, and then towards the bottom is a ruler with the
4 name of the decedent as identified to me and some additional
5 information on that label.

6 Q And he's identified here, it shows 3115143, is that
7 correct?

8 A Yes, that's correct.

9 Q And did you actually put that in your report before you
10 start examining him that that's how he arrived?

11 A Yes.

12 Q Under that number?

13 A Yes.

14 Q You opened the bag, obviously?

15 A Yes.

16 Q And was there a shoe contained in the bag with him?

17 A There was, yes.

18 Q And were there also some pants that Mr. McClendon had?

19 A Yes.

20 Q And is that depicted at 37, for the record? 26, I
21 apologize. So going back to the pants, number 37, did you
22 observe those when you opened the bag?

23 A Yes, yes, I did. Those had been previously cut and
24 removed. And the image that we see here, just kind of for
25 orientation, you can see towards the left of the image, you can

1 see a belt, that's the waistline, this is actually
2 predominantly in the back part of the pants, but because they'd
3 been cut, we can see the sides and the front of the pants that
4 have been laid open. But again, just for orientation, we're
5 looking more towards the, what would be the right buttock area
6 and right hip area currently. I'll just briefly draw your
7 attention to the green, brown grass and dirt stain, they're for
8 orientation purposes for the next image.

9 Q And where Ms. Colon's putting an arrow on that, is that
10 what you're referring to?

11 A Yes.

12 Q Okay. What was it again, I'm sorry?

13 A So that's just a grass and dirt stain there, and again,
14 it's mainly for orientation purposes to help with understanding
15 the next image.

16 Q Okay. Alright. Is this the next image you're talking
17 about?

18 A It is. And we can see up towards the top left of this
19 image, we can see a little bit of that dirt and grass stain.
20 In the center of the image, this is the lower part of the right
21 leg area, right pants leg area, and we can see some black
22 pattern marking on the leg that would correspond approximately
23 to the inside part of the right leg.

24 Q And based on your experience and training, what would that
25 be consistent of?

1 A It is consistent with a tire type of mark. Those marks
2 can have lots of different appearances, but that could be a
3 tire mark.

4 Q Okay. So doctor, we have a, the next photo, 39 for the
5 record.

6 MR. SWERLING: What number?

7 MR. MEADORS: 39.

8 THE COURT: 39.

9 Q Now, doctor, let's, we zip the bag, we get Mr. McClendon
10 out, do you measure and weigh him?

11 A Yes.

12 Q Okay. And what were your findings when you did that?

13 A He was measured at 72 and a half inches in length or
14 height and weighed 189 pounds at that time.

15 Q And doctor, I want to do this what's easiest, quite
16 frankly for me, but also for you. You testified earlier you do
17 an external exam, correct?

18 A Yes.

19 Q And do you document, when you're looking at Mr. McClendon,
20 everything on the outside, you take pictures?

21 A Yes.

22 Q Okay. Can you tell the ladies and gentlemen of this jury
23 on your external exam, is there anything you want to reference
24 before we get specifically to the external evidence of
25 injury?

1 A As, well, as part of the external examination, or even
2 before the external examination, we take x-rays, that's one
3 part of the process, and again, begin documenting things as I
4 see them.

5 Q And your x-rays in this case, I think we're moving on to
6 the next picture, 625 for the record, what is this an x-ray of?

7 A This is an x-ray of his head which includes the skull and
8 basically the upper part of the neck, the majority of the
9 neck.

10 Q And in your report, and I think you've discussed it with
11 everybody, are there some subtle fractures?

12 A There are. And I can try to show those, but it would mean
13 getting a little closer.

14 Q Okay.

15 MR. MEADOWS: With the Court's permission?

16 THE COURT: Sure. You can step down, just be sure to
17 speak up loud and if you have to go to the screen, no problem.
18 Just be sure to speak up a little louder.

19 A Yes, sir. What I think what may be easiest just to go
20 straight to the screen.

21 Q Just keep your voice up, doctor.

22 A So again, it is quite subtle, but we can see a fracture
23 through part of his jaw here, there's an area that's darker,
24 that's, the back line represents a fracture. And then here, as
25 I'm indicating, again, shows an area of darkening right there,