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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Laurens County

Honorable R. Scott Sprouse, Circuit Court Judge

DARRELL E. RAINES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002093

APPENDIX

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1 I needed to know." And the last response was Myranda's
2 account was, "Wow. Well, good luck. I wouldn't give him
3 another chance because I've been cheated on before many
4 times and finally had to say enough. You are much more
5 forgiving than I am. Maybe really foolish, too, but that's
6 just looking at it through my experiences. You're welcome
7 though. Maybe a counselor will help. I hope for your sake
8 it does." And that's it.

9 Q So that person seemed to be wanting you to break up
10 with Jason?

11 A Yes. That's what I gathered.

12 Q Well, in fact, it had that effect. It kind of drove
13 you all apart, didn't it?

14 A Yes.

15 Q Because you were in a position to have to accuse him,
16 weren't you?

17 A Yes.

18 Q And did you ever -- looking back, did it ever seem like
19 that was something that happened to you?

20 A No. But at the time that I'm reading this and went --
21 you know, I wake up and I start reading this on my Face book
22 and it doesn't make any sense to me. But looking back, this
23 doesn't even seem like anything -- I mean, it doesn't seem
24 like a response that you would get from someone being
25 Myranda Southern.

1 Q You had never known her. But is that Myranda Southern
2 saying she looked on your Face book page and saw that you
3 were dating Jason?

4 A Which would be difficult to do considering that we
5 weren't friends. She could have -- this came from
6 messaging, which is what Face book allows. She and I were
7 never friends on Face book. And my privacy settings, she
8 couldn't see that information.

9 Q So then people who don't really know how Face book
10 works, somebody who was friends with you, I guess, would
11 have to be friends with you to get that information?

12 A Right.

13 Q And you had been friends with Darrell Raines, right, on
14 Face book?

15 A I blocked him at some point. I'm not sure when. But I
16 still am friends with his mother, and also his sister.

17 Q But his mother is who I want to talk to you about. His
18 mother, who had contacted you on his behalf a number of
19 times, she would still able to see your profile, wouldn't
20 she?

21 A Yes.

22 Q But Myranda was not your friend on Face book because
23 you didn't know her?

24 A No.

25 Q And that was the 17th?

1 A Correct.

2 Q Do you remember the next week? Do you remember what
3 was in the news that next week up in Greenville?

4 A (Nods head affirmative.)

5 Q What was on the news?

6 THE COURT: You need to verbally respond, ma'am.

7 A Yes, I remember what was on the news.

8 Q What was on the news?

9 A That Myranda Southern had gone missing. And here I am
10 receiving messages from Myranda Southern, who I don't know,
11 and then Myranda Southern's missing. So to me that's
12 obviously an issue. Because I'm being contacted by this
13 person who is now missing.

14 Q What did you do with that information?

15 A I took it to Greenville County.

16 Q Did you take that Face book posting with you?

17 A I did. I also gave them all permission to have any --
18 to go through anything and everything on my Face book
19 account, and it's been kept exactly the same. Everything's
20 still there.

21 Q And then you gave them the letters that you'd been
22 getting from Darrell?

23 A Yes.

24 Q Did you -- did he contact you after that week? You
25 said something about Laurens County. Did he send you

1 letters after he was arrested?

2 A Yes. There's a letter here that's stamped from jail.
3 Laurens County jail.

4 Q So he's still trying to contact you?

5 A November 20 -- November 20th, 2013.

6 Q He's still trying to contact you even then?

7 A Yes, at this point.

8 Q Did he ever try to call you?

9 A He did call.

10 MR. SCOTT: Your Honor, I'm going to offer State's 42
11 for admission into evidence.

12 THE COURT: That's one packet of all the letters?

13 MR. SCOTT: Yes, sir.

14 MR. ABLE: I haven't seen it.

15 THE COURT: Would you show those to Mr. Able, please.

16 MR. ABLE: What number, Solicitor?

17 THE COURT: 42.

18 MR. ABLE: Judge, this is going to take me a moment.

19 THE COURT: Sure.

20 MR. ABLE: I need to provide -- see what I've been
21 provided versus what's -

22 THE COURT: Okay. Let me see the lawyers first before
23 you start doing that.

24 (Whereupon, a side bar was held.)

25 Q All right. You said you spoke with law enforcement

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1 after you came forward to them?

2 A Correct.

3 Q At some point were you made aware of some of the things
4 that were found on Mr. Raines' phone?

5 MR. ABLE: Objection. Calls for hearsay.

6 THE COURT: Well, it hasn't gone into the specifics of
7 what she may have learned, so I will overrule the objection
8 at this point in time. You may proceed. You may answer the
9 question, ma'am.

10 Q Pictures and whatnot?

11 A I'm sorry. Can you repeat that?

12 Q Did you become aware of pictures and things of that
13 nature that were found on Mr. Raines' phone?

14 A I was made aware that there were things. I wasn't
15 given specific details, but I was told that there were other
16 -- there were other issues in evidence that --

17 MR. ABLE: Objection, she was made aware of, Judge.

18 Q Have you seen pictures of children on his phone?

19 MR. ABLE: Objection.

20 THE COURT: Well, I think what he's -- I think the
21 question is has she seen pictures that were on his phone.
22 But now, she would have had to have been told that it was on
23 his phone, correct?

24 MR. SCOTT: Yes, sir. And his phone, I guess, dump is
25 in evidence. And she would have to identify these people as

1 being her relatives.

2 MR. ABLE: The issue of relevance, Judge.

3 MR. SCOTT: Res gestae would be the argument, Your
4 Honor.

5 THE COURT: If the objection is relevance I'm going to
6 overrule the objection. You may proceed.

7 MR. ABLE: Your Honor, I'm saying it was hearsay, too,
8 Judge.

9 THE COURT: Well, I think the Solicitor has made the
10 point that the -- all the information off the cell phone is
11 already into evidence. And if that is a correct statement
12 then I will overrule the objection based on that.

13 MR. SCOTT: State's No. 30 is the complete phone dumb,
14 Your Honor.

15 Q Who is that?

16 A That's my youngest son.

17 Q Who is that?

18 A My oldest son.

19 Q Do you -- have you seen that picture before? Who is
20 that and what is going on in the picture?

21 A That's a picture of me from several years ago that was
22 posted to my Face book.

23 Q Tell me if you recognize this Facebook post?

24 A Yes, I recognize it.

25 Q Do you recall when you responded to the post if you

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1 could write a note to your younger self what would you say
2 in only two words?

3 A My response was trust carefully.

4 Q And on that same, I guess, thread what was Darrel
5 Raines' response?

6 A Choose Lisa.

7 Q If he could give two words of advise to his younger
8 self it would be choose Lisa?

9 A Yes.

10 Q Let me ask again. Did you become aware of pictures of
11 your children, pictures of you on Darrel Raines' phone?

12 A Now, yes. Yes. I mean, this is obviously -- this is
13 me. This is my children. This is my son. This is my other
14 son. Yes.

15 MR. SCOTT: Thank you. Nothing further. Please answer
16 any questions Mr. Able has for you.

17 THE COURT: So Mr. Able needs a few minutes to look
18 through those letters. So I don't really want to break for
19 lunch yet until we finish up with this witness. Mr. Able
20 needs a few minutes to go through those letters. So what I
21 want to do, Mr. Foreman, ladies and gentlemen, I'm going to
22 ask you to go back to your jury room. And Mr. Able says he
23 will not take that long to look through those letters. And
24 we'll get back out and hopefully finish with this witness
25 here.

1 (Whereupon, the jury exited the courtroom at 12:20
2 p.m.)

3 THE COURT: We'll be at ease for a few moments.

4 (Whereupon, a recess was held from 12:20 p.m. to 12:38
5 p.m.)

6 THE COURT: You ready?

7 MR. ABLE: Yes, sir. Without any objection, Your
8 Honor.

9 THE COURT: Without objection, 42 will be in evidence
10 on behalf of the State. Mr. Bolt, if you'd bring the jury
11 back out, please.

12 (Whereupon, State's Exhibit No. 42 was admitted into
13 evidence.)

14 (Whereupon, the jury entered the courtroom at 12:38
15 p.m.)

16 THE COURT: Let me see the lawyers for just a sec,
17 please.

18 (Whereupon, a sidebar was held.)

19 THE COURT: Mr. Able, are you ready for your cross?

20 MR. ABLE: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. ABLE:

23 Q How are you, Ms. Hamlett?

24 A I'm just fine. Thank you.

25 Q Good. I just want to ask you a few questions. Now,

1 concerning your boyfriend at the time, Jason Gillespie. Is
2 that his name?

3 A That would be his name, yes.

4 Q And you and he met on Match.com?

5 A Yes.

6 Q And you discovered after you had received these Face
7 book messages from Myranda Southern that Mr. Gillespie and
8 Ms. Southern were, in fact, friends on Face book, weren't
9 they?

10 A I'm not sure about that.

11 Q Didn't you make that statement at one time that Mr.
12 Gillespie and her were Face book friends?

13 A I believe he stated they went to high school together.
14 I don't know that I knew they were Face book friends.

15 Q Now, she had stated that to you in the message, right?
16 That they had gone to --

17 A Talking about this one that I just read?

18 Q Yeah.

19 A It doesn't say anything that they were Face book
20 friends in this message.

21 Q No. I'm saying they said that they went to high school
22 together.

23 A Yes.

24 Q But I thought in an early statement you had said that
25 they were, in fact -- after you got this message you went to

1 his Face book and found that they were Face book friends
2 together?

3 A I don't remember. I can't say either way.

4 Q You can't say either way?

5 A I mean, if you can show me something. I mean, this was
6 three years ago. I'll be glad to answer the question you
7 have.

8 Q I'm just referencing what I believe to be your prior
9 statement.

10 A Okay.

11 Q So you don't know either way?

12 A No.

13 Q You can't say no, you can't say yes?

14 A No.

15 MR. SCOTT: Asked and answered, Your Honor.

16 Q Now, the night you and Mr. Raines were at Applebee's
17 you left there and you went to a movie?

18 A I don't believe we went to a movie.

19 Q Saw a movie -- ma'am?

20 A I don't remember going to a movie.

21 Q You didn't go and see Taken 2 that night?

22 A I don't recall going to a movie.

23 Q And you and he kissed out in the parking lot?

24 A Yes. I've stated that already.

25 Q And he told you at that time he should have done that

1 20 years before, correct?

2 A I believe so, yes.

3 Q And he at one time -- he did meet one of your children,
4 Jonathon. He brought over a pizza and you and he drank beer
5 and Jonathan was there and ate with you all?

6 A That is not true.

7 Q Now, this incident at your home with the Clemson game.
8 You and he had sex at that time?

9 A Yes. I've already stated that.

10 Q Well, I'm asking.

11 A Yes.

12 Q You and he had sex. And there was another time you and
13 he had asexual relationship, too?

14 A No, that's not correct.

15 Q Didn't he come to your house a couple of times and
16 y'all had sex?

17 A No.

18 Q Now, about the -- you're saying that the -- you had
19 found out about him having a wife and a girlfriend and that
20 made you not want to have a relationship. He had told you
21 that right at the very beginning that he had a -- still had
22 a wife.

23 A He was still married and they had been separated for
24 quite some time. He was living with his mother. That his
25 daughter's name is Amber. I'm sorry. His ex-wife, or wife

1 is Amber, correct? I don't know. But no, I did not know
2 there was any girlfriend at the time.

3 Q But when you -- when you first contacted him -- you all
4 connected back together on Face book, correct?

5 A Correct.

6 Q And at that time you had stated something, or asked
7 him, hey, I thought you were married. And he said we aren't
8 together anymore. Haven't been for a while.

9 A Okay.

10 Q Is that true?

11 A Yes.

12 Q So you knew he was married the entire time?

13 A Yes. What I didn't know is that in addition to being
14 married he also had a girlfriend is what I stated. That's
15 what I stated.

16 Q And you had stated at some point he had left you some
17 money out on the porch?

18 A Yes.

19 Q And he had left you money because you had lost your
20 job, hadn't you?

21 A I was placed -- I had an injury at work that's
22 completely unrelated to any of this. When he and I were
23 together he had MRSA.

24 Q You're talking about he --

25 A Darrell.

1 Q Mr. Raines, okay.

2 A Had MRSA, and at that time I had developed it on my
3 skin and was unable to attend a training session that I was
4 required to attend from my current employer. I was on light
5 duty due to the injury that had occurred long before any of
6 this. If that's what you're referring to.

7 Q And that was the reason he left the money?

8 A I can't tell you why he left the money. He offered his
9 debit card and I said I didn't want it. That's also in all
10 of these messages.

11 Q Now, you never believed Mr. Raines to be a threat to
12 you?

13 A Not at first, no, obviously. I wouldn't have had him
14 in my home.

15 Q Well, I mean, obviously you liked him. You had sex
16 with him?

17 A Well, yeah. I've known him my entire life. I felt
18 comfortable with him. He's always been a good guy. He's
19 never been aggressive, never been in any trouble to my
20 knowledge. No.

21 Q And the things you've talked about as far as leaving
22 the candies and the letters, you believed it was just a
23 crush and it would eventually wane, correct?

24 A Yes.

25 Q And eventually it waned?

1 A No. Eventually -- it went on for eight months past the
2 point of me speaking to him, and this continued. This
3 continued. We did not -- there was no conversation between
4 the two of us. This continued. You can look at the Face
5 book messages. This continued. This was a one-sided
6 conversation for many, many, many months after he and ended
7 any conversations between the two of us.

8 Q And these letters that have been made an exhibit, he
9 never threatened you in those letters?

10 A No. He didn't threaten me. Do I need -- I would be
11 more than willing to read them all, if you would like.

12 Q Did you read them before you came here today?

13 A I've read the letters. They were left at my house,
14 yes.

15 Q But I'm saying did you read them in preparation for
16 your testimony today?

17 A No, I haven't -- I haven't read through all this stuff.

18 Q Do you recall if he in any way threatened you in the
19 letters?

20 A No. I was a little creeped out towards the end when he
21 asked me if when he died to bury him under a cherry tree,
22 because for somebody to tell you that when you're not even
23 having contact with them is a little strange. That's in the
24 letters.

25 Q You said if he died?

1 A Yes.

2 Q To bury him with a cherry tree?

3 A Yes. And to me that all seems -- I don't know if it
4 was suicidal. I don't know if he was referring to some type
5 of illness he may have had. I --

6 Q Well, you were aware he had --

7 THE COURT: Wait a minute. Let her finish, Mr. Able.
8 You may continue. Finish your answer.

9 A I didn't know if that was in reference to him hurting
10 himself. If he was -- had some type of terminal illness.
11 Who knows. That's not what was explained in that particular
12 letter. It says if I die I want for you to -- I believe it
13 said cremate my body and bury me under a cherry tree.

14 Q And you were aware during the time of your relationship
15 with him he had leukemia?

16 A No. No. I don't even know to this day what extent --
17 I don't know what to believe. I don't know if he has
18 leukemia. I don't know -- he didn't tell me any of this to
19 begin with. I don't even know his current physical
20 situation.

21 Q Didn't you discuss it with his mother?

22 A Yes.

23 MR. SCOTT: That's fine. It's been answered as far as
24 any other hearsay. I don't think what she discussed with
25 his mother is permissible.

1 MR. ABLE: That's all, Your Honor.

2 THE COURT: Anything on redirect, Solicitor?

3 MR. SCOTT: No, sir. Not for this witness, Your Honor.

4 THE COURT: Thank you, ma'am, for your testimony. You
5 can step down. You're free to leave or you're welcome to
6 remain with us.

7 (Whereupon, the witness stepped down from the witness
8 stand.)

9 MR. SCOTT: Can we approach, Your Honor?

10 THE COURT: Sure.

11 (Whereupon, a sidebar was held.)

12 THE COURT: All right. Mr. Foreman, ladies and
13 gentlemen of the jury, I think the next witness for the
14 State may be somewhat lengthy and it's almost ten till 1:00,
15 so it would be a good time to break for lunch. And so, if
16 you'll be back at 2:00. And again, I remind you as I have
17 been not to discuss this case or any aspect of this case
18 among yourselves or anybody that you come into contact with.
19 And be sure to keep your juror button on if you're out in
20 public and I will see you back at 2:00. Have a good lunch.

21 (Whereupon, the jury exited the courtroom at 12:49
22 p.m.)

23 THE COURT: Solicitor, we've got how many more total
24 witnesses?

25 MR. SCOTT: Four.

1 THE COURT: Four?

2 MR. SCOTT: Yes, sir.

3 THE COURT: And we've got one witness, because of some
4 illness he can't be here until in the morning?

5 MR. SCOTT: Yes, sir.

6 THE COURT: Three other witnesses. You can get those
7 done this afternoon?

8 MR. SCOTT: Yes, sir. I hate that. He's got kidney
9 stones and he's got a doctor's appointment at 1:00. It's
10 kind of one of these Murphy's Law.

11 THE COURT: Does he anticipate that he's going to be
12 well enough in the morning?

13 MR. SCOTT: Oh, I told him I didn't care. He's got to
14 be here. He's going to be here tomorrow morning, Your
15 Honor. We're going to provide transportation here and
16 everything.

17 THE COURT: All right. Well, we'll be in recess until
18 2:00.

19 MR. SCOTT: Thank you, Judge.

20 (Whereupon, a recess was held from 12:49 p.m. until
21 2:13 p.m.)

22 (Whereupon, the jury entered the courtroom at 2:13
23 p.m.)

24 THE COURT: Solicitor, you ready?

25 MR. SCOTT: Yes, sir. Your Honor. The State calls

1 Garland Blue.

2 GARLAND BLUE, having first been
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Mr. Blue, where are you employed?

7 A I'm currently employed at the Postal Service,
8 specifically the Clemson office.

9 Q At some point were you employed at the Post Office in
10 Greer?

11 A Yes. I was over at that office for an interim post
12 master to be hired here recently.

13 Q And you are a post master?

14 A Yes.

15 Q And what does that mean? What does a post master do?

16 A We receive and deliver mail, all operations of our
17 office that are assigned; delivery, selling stamps.

18 Q So you're familiar with the policies of the postal
19 service and transit times and things of that nature?

20 A Yes.

21 Q Let me show you State's 44. Would you pick that up for
22 me?

23 A Okay.

24 Q What is that? It's a pistol, right?

25 A Yes.

1 Q Now, do pistols get shipped through the mail?

2 A Yes, they do. They do.

3 Q And are there certain guidelines you guys use whenever
4 pistols are being shipped?

5 A Yes. The guidelines are that they're shipped priority
6 mail or overnight, express mail.

7 Q Priority mail. And you all have weight restrictions as
8 far as what determines whether it could be priority mail?

9 A Yes. Basically once something is 16 ounces or higher
10 the first class mail option goes away and it's going to be
11 priority or express.

12 Q Is that 16 ounces or more?

13 A Yes.

14 Q I want to ask you -- I've asked you to look into
15 transit times in this case, haven't I?

16 A Yes.

17 Q If I were to tell you that a -- or I have told you that
18 that pistol was received by Hi-Point Firearms in Mansfield,
19 Ohio on August 23rd --

20 A Correct.

21 Q -- it being a pistol and it weighing over 16 ounces,
22 you're telling me it would have to be priority postage?

23 A Yes, sir.

24 Q Mash that button right there. That would be the laser.
25 I say to you that it was received in Mansfield on the 23rd.

1 A Uh-huh.

2 Q Tell me if it was shipped by U.S. mail when would it --
3 when would it have been, I guess, taken out of upstate South
4 Carolina?

5 A If it was shipped on the 23rd, it was shipped express
6 in our overnight service. That would have gone as late as
7 the 22nd.

8 Q It could have been shipped on the 22nd if it was
9 overnight. What if it was just standard priority mail?

10 A If it was priority mail it would have been either the
11 21st or the 20th.

12 THE COURT: Could you give me those dates again,
13 please.

14 THE WITNESS: Yes, sir. The 21st or the 20th for
15 priority mail. The 22nd for express mail.

16 Q Priority shipped on the 21st or 20th, right?

17 A 20th or 21st, yes.

18 Q Or 21st. If overnight it would have been shipped on
19 the 22nd. Those are the only two choices for that weight
20 class and then the fact that it's a firearm; is that right?

21 A Correct.

22 MR. SCOTT: Thank you. Answer any questions Mr. Able
23 has, please.

24 MR. ABLE: No questions, Your Honor.

25 THE COURT: Thank you for your testimony, sir. You can

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1 step down and you are free to leave or you are welcome to
2 remain with us.

3 THE WITNESS: Thank you, sir.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 MR. SCOTT: The State calls Antonio Bailey.

7 ANTONIO BAILEY, having first been
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q Mr. Bailey, you work with the Greenville County
12 Sheriff's Department?

13 A Yes, sir.

14 Q And you were involved in this case, the disappearance
15 of Myranda Southern out of Greenville County?

16 A Yes.

17 Q And at what point did you become involved in the case?

18 A On August 22nd.

19 Q August 22nd?

20 A Yes, sir.

21 Q Now, let me backtrack, because -- on the poster board.
22 What did you learn on the 22nd, and how did you become
23 involved with the case, I guess, on the 22nd?

24 A When I was notified -- I work for the homicide unit in
25 Greenville County. We were currently investigating a

1 missing persons report, or missing persons case. I was
2 informed by one of the missing persons -- one of the missing
3 persons investigators that they had a witness that was
4 coming in that knew -- or that used our victim's credit
5 card. So I was asked to sit in on that interview, which I
6 did.

7 Q Looking at State's 26. At that point were you made
8 aware of this?

9 A Yes, sir.

10 Q And then were you made aware that at that transaction
11 this individual had done two balance inquiries and then
12 withdrew \$500?

13 A That's correct.

14 Q Tell me what else you were made aware of at that time?

15 A During the interview with Mr. Raines he indicated that
16 he had met our victim approximately two weeks prior. He
17 said he met her on a dating website called Plentyoffish.
18 That he -- they communicated back and forth via text up
19 until, I believe, the week of the -- I believe on the 6th.
20 The 6th was the first time, I believe, they met. And the
21 7th is the actual time they actually got together.

22 Q They met -- now, you say met on Plentyoffish on the
23 6th?

24 A No, sir. They actually -- they physically -- they
25 actually met, I believe.

ANTONIO BAILEY: DIRECT EXAMINATION

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1 Q Let me show you State's No. 1. See if this refreshes
2 your memory as to when they met.

3 A August the 13th.

4 Q So they meet online on the 6th and then one week later
5 they meet in person?

6 A That's correct.

7 Q Tell me -- tell me what else.

8 A He indicated that after they met on the 13th -- after
9 they met on the 13th he actually went to her house, I
10 believe, on the 14th. He said they had had sex. After that
11 he talked about -- he, being Mr. Raines, talked about our
12 victim getting into an argument with her husband in the
13 parking lot and busting up her phone. He told us about
14 actually going -- he told me about going to the bank on the
15 morning of the 18th. He indicated that she had spoken with
16 him previously and asked him to withdraw some money out of
17 the bank.

18 Q I don't mean to interrupt. Sorry about that. But when
19 did he indicate that he had gotten the card from her?

20 A A couple of weeks prior. He may have even said a
21 couple of days prior.

22 Q Correct me if I'm wrong. Did he say it was the morning
23 of the 18th that he received the card?

24 A No, sir.

25 Q Review his statement if you will and just refresh your

1 memory.

2 MR. ABLE: Judge, I don't think the witness has
3 indicated he needs to have his memory refreshed. He's
4 answering the questions and he hasn't indicated any
5 necessity of reading the statement.

6 THE COURT: Solicitor, ask this witness does he need to
7 review the statement.

8 Q Do you need to review the statement to see when he told
9 --

10 A Yes, sir.

11 Q If I ask you a question you don't know the answer, just
12 ask to review any kind of records you need.

13 A Solicitor, could you repeat your question, please.

14 Q At the interview on the 22nd is that the first time he
15 was interviewed?

16 A Yes, sir.

17 Q Surely you talked to him about having knowledge of him
18 using the ATM card?

19 A Yes, sir.

20 Q Did he have an explanation for that?

21 A He did.

22 Q What did he tell you?

23 A He indicated that he spoke with -- he spoke with our
24 victim and she asked him to withdraw some money out of the
25 bank for her -- for him, rather, because he had to pay a car

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1 payment. He had to make a car payment.

2 Q Do you recall -- and if you don't recall, don't answer.

3 But do you recall when he said Ms. Southern transferred the
4 card to him?

5 A A couple days, I believe. But he made it -- he made it
6 clear to us that it was not on the 18th.

7 Q And, Mr. Bailey, I just want to -- do you know when --
8 do you know when Ms. Southern went missing?

9 A I believe it was on the 5th, I believe.

10 Q 5th?

11 A Hold on. I want to make sure. The 18th. The night of
12 the 18th.

13 Q Then we've got this right here showing him using the
14 ATM card at 3:30 in the morning?

15 A Yes, sir.

16 Q And then on the 22nd you interviewed him?

17 A That's correct.

18 Q He indicated sometime prior to this that she gave him
19 the card but you don't remember when?

20 A Yes, sir.

21 Q As a result of that interview did you retrieve his
22 phone?

23 A We did.

24 Q And what was the purpose of that?

25 A A cell phone, either knowingly or unknowingly obtains

1 -- well, stores a whole lot of data, whether we know it or
2 don't. So at the time when we brought him in, based on the
3 information I had, he was probably one of the few people --
4 one of the last persons that had spoken to Ms. Southern. So
5 I just wanted to see how much information was on his phone.

6 Q Did he voluntarily hand over his phone?

7 A He did.

8 Q At that time did you all perform, I guess, through Jim
9 Perry, a phone extraction?

10 A We did.

11 Q And were you made aware of the results?

12 A I was.

13 Q And do you recall when Ms. Southern was scheduled to
14 get off work on the 18th?

15 A Yes, sir.

16 Q What time was that?

17 MR. ABLE: Foundation needs to be laid, Your Honor.

18 THE COURT: Would you list a foundation, Solicitor?

19 Q Through your investigation, you had to learn a lot of
20 things to get up to speed in searching for this missing
21 woman. Is that fair to say?

22 A Yes, sir.

23 Q And you had to speak with a lot of people, right?

24 A That's correct.

25 Q Some of those were her supervisors at work, correct?

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1 A That's correct.

2 Q And multitudes of other information that you can't
3 possibly really cover in the time it's going to take you to
4 testify; is that correct?

5 A That's correct.

6 Q It's part of an investigation. You've got to gather
7 information as much as possible; is that right?

8 A That's right.

9 Q So in doing so, you had to ascertain how long people
10 can account for Ms. Southern on the night of the 18th,
11 right?

12 A Yes, sir.

13 Q In doing so you had to talk with coworkers, you had to
14 review surveillance, you had to talk with the supervisors.
15 How long can we account for her on the 18th?

16 A How long, sir?

17 Q Until what point on the 18th can you account for Ms.
18 Myranda Southern?

19 A Midnight.

20 Q Midnight on the 18th?

21 A Yes, sir.

22 Q Did you review the phone extraction?

23 A I did.

24 Q And did you review her phone calls and did you review
25 Mr. Raines' phone calls around that time period?

1 A I did.

2 Q And what did you determine as far as phone calls
3 between Mr. Raines and Ms. Southern around that midnight
4 time period of the 18th going into the 19th?

5 MR. ABLE: Judge, I'm going to object to this question.
6 The phone extraction that he's referring to was done by Mr.
7 Perry. Mr. Perry has testified. I understand that. But
8 it's his report. All his words would be -- he's essentially
9 reading the report of Mr. Perry that was introduced -- or it
10 should have been introduced with Mr. Perry. So I would
11 object to this witness basically entering a report and just
12 reading on it. That's what he's doing.

13 MR. SCOTT: It has been introduced, Your Honor. I put
14 the entire -- the entire report is encapsulated in State's
15 --

16 THE COURT: I thought it had been, too.

17 MR. SCOTT: State's No. 30 is the entire phone dump,
18 Your Honor.

19 MR. ABLE: I stand -- I was mistaken, Your Honor. I'm
20 sorry.

21 THE COURT: Okay. That's fine. Not a problem.

22 MR. ABLE: I thought it had just been marked.

23 THE COURT: Yeah, 30 is the -- well, 30 is the CD of
24 the cell phone extraction. The summary I still have marked
25 as for identification.

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1 MR. SCOTT: That's correct. Yes, sir.

2 MR. ABLE: Okay, that's fine. Is he -- which one is he
3 reading from? Is he reading -

4 THE COURT: Well, I don't know.

5 Q The way to read the disk is -- it's thousands of pages
6 long. So what I'm asking, did you review the results of the
7 phone extraction?

8 A I did.

9 Q And were you able to, I guess, view phone activity
10 between Mr. Raines and Ms. Southern around midnight on the
11 18th leading into the 19th?

12 A Yes, sir.

13 THE COURT: Let me ask. Do you still have an objection
14 or is that withdrawn, Mr. Able? You're still standing, so
15 that's why I wanted to go ahead and ask.

16 MR. ABLE: Judge, I think if -- I need to know what
17 he's referring to. Whether he's referring to he viewed the
18 actual report that's, you know, so voluminous, or if he just
19 referred to the synopsis that hasn't been introduced yet.

20 THE COURT: Can you ask him -- or do you know what he
21 is referring to?

22 Q Mr. Perry did a phone extraction. Is that your
23 recollection?

24 A Yes, sir.

25 Q And he hooked it up to a Cellebrite machine. Is that

1 -- is that how they do it?

2 A Yes, sir.

3 Q And then there was a -- an enormous report that was
4 generated; is that correct?

5 A That's correct.

6 Q And were you able to review the substance, the contents
7 of Mr. Raines' cell phone at the time?

8 A Yes, sir.

9 Q I ask you again, were you able to look at phone calls
10 between Mr. Raines' phone and Ms. Southern's phone the night
11 of the 18th leading into the 19th around the time she would
12 have gotten off work?

13 A Yes, sir.

14 MR. ABLE: From what's been referred as a phone dump,
15 many, many pages. I'm asking if that's what you're
16 referring to.

17 THE COURT: I guess what you're asking is he referring
18 to Exhibit 30, 31, 32, 33. Is that what you're --

19 MR. ABLE: No, sir. I'm saying is the information he's
20 getting ready to provide us from -- yeah, State's Exhibit
21 30. If that's what he reviewed, or if he reviewed the items
22 that had not yet been introduced into evidence.

23 THE COURT: Well, I don't know.

24 MR. ABLE: That's my objection, Your Honor, is I don't
25 know what he's referring to as far as the documents that

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1 he's looked at to tell us -- or to testify from.

2 MR. SCOTT: I thought he answered that. But he hooked
3 it up to the Cellebrite machine.

4 Q Is that right, Mr. Bailey?

5 A That's correct.

6 Q And then it generated a vast report of all the contents
7 of Mr. Raines' phone; isn't that right?

8 A 106 pages.

9 Q Were you able to go through those pages of information?

10 A Yes, sir.

11 Q Were you able to see what Mr. Raines was up to as far
12 as phone calls in the early morning hours of the 19th?

13 A Yes, sir.

14 MR. ABLE: That answer is.

15 THE COURT: All right.

16 Q As far as you can tell, who was the last person who had
17 contact with Myranda Southern after she left work?

18 A Mr. Raines.

19 Q And were you able to review text messages between the
20 two of them leading up to her getting off work?

21 A Yes, sir.

22 Q And who was the last person to text with her as she was
23 getting off work?

24 A Mr. Raines.

25 Q Did you respond to Bramlett Church Road on the 23rd

1 when Ms. Southern's body was found?

2 A I did.

3 Q And did you observe the magazine they found out in the
4 field?

5 A I did not physically observe it. I heard that they had
6 collected it.

7 Q What did you do while you were out there?

8 A When I arrived I met -- I met with several of the
9 Laurens County investigators. They basically indicated that
10 -- they were asking me about a missing person from
11 Greenville. They wanted to inquire as to whether or not the
12 person that they just found in the field could be the
13 missing person from Greenville. So they were asking me
14 about clothing description, if I knew -- if I knew the last
15 -- what the last thing she was wearing, things of that
16 nature, which I -- which I provided to them. There was a --
17 do you want me to tell what I saw?

18 Q Yeah, I think -- I don't know what you're going to say,
19 but, yeah, go ahead. What did you see?

20 A Well, when I got -- when I got there there was a -- it
21 was actually in the middle of a field and the field had been
22 freshly cut with the exception of an area of uncut grass
23 probably about waste high. Waist high cut grass. And
24 within that -- within that patch of weeds I found -- or I
25 observed a body, badly decomposed, extensive insect

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1 activity. And I met with one of the homeowners in the area
2 that indicated that on Monday evening he was cutting -- he
3 was cutting that field.

4 MR. ABLE: Objection, hearsay.

5 THE COURT: Don't repeat what someone else told you.

6 Q Let me show you State's No. 10. Is that what you're
7 describing?

8 A Yes, sir.

9 Q Myranda Southern had been missing at this point one,
10 two, three -- about four days?

11 A That's correct.

12 Q And you may have had a hunch that was her, but you were
13 unable to identify her at that point; is that right?

14 A That's correct.

15 Q Were you involved in retrieving the toothbrush and the
16 hair brush from her home?

17 A Yes, sir.

18 Q Tell the jury -- I don't know if we really explained
19 that. But tell them why that would be important in trying
20 to -- trying to identify somebody who you were unable to
21 ascertain who they were at that point.

22 A One of the first things that we did on the scene was we
23 tried to get -- we tried to obtain some fingerprints from
24 the body, which we did when we ran it through a system we
25 call IAFIS, which came back negative. So the other thing --

1 the only thing that we had available to us was to possibly
2 match the individual through DNA. One of the ways that --
3 we needed something to extract that DNA from. So with her
4 being from Greenville, I responded back to her apartment,
5 met with the young lady who initially reported her missing
6 who gave me access to the apartment and I obtained her
7 toothbrush and -- toothbrush and a hair comb, I believe it
8 was.

9 Q Let me show you. Is that what you're talking about,
10 State's 17? What is that?

11 A That's the hair brush.

12 Q State's 15?

13 A That's the toothbrush.

14 Q Did you get swabs off of them or did you just take the
15 whole hairbrush and toothbrush?

16 A I took the whole thing. I went in the house, put some
17 gloves on. Placed both items in separate -- in separate
18 brown paper bags, and then delivered it to the Laurens
19 County investigator.

20 Q So you would have taken them to Ben Blackmon or Keith
21 McIntosh?

22 A Yes, sir.

23 Q Do you remember when they found her car?

24 A I believe they found her car on the night of the 23rd.

25 Q Were you there whenever they were processing the car?

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1 A No, sir.

2 Q Do you have knowledge of DNA swabs being taken?

3 A It's standard. It's listed in the search warrant that
4 was prepared there were some swabs taken and there was some
5 DNA swabs collected.

6 Q At some point -- I don't want to -- at some point did
7 the presence of her DNA in that car become less important in
8 your mind?

9 A Yes, sir.

10 Q And I know that's an odd thing to say, but explain to
11 the jury why suddenly the presence of her DNA in the truck
12 wouldn't be as important as in other cases?

13 A During the interview -- or during the initial interview
14 when I spoke with Mr. Raines he indicated that our victim
15 had been in the pickup truck. It's no different than we're
16 all sitting in these chairs in this room. It may -- I can
17 test that chair. That chair may -- I may can get your DNA
18 from that chair but it won't necessarily tell me how long it
19 had been in that chair. It will just indicate that you sat
20 in that chair. So with her -- with us having the
21 information that she was already -- that she was in the
22 truck, it wouldn't have served any purpose.

23 Q So he admitted to riding her around in that truck on
24 prior occasions. So if you find DNA on the passenger seat,
25 well, he says, I told you she had been riding with me.

1 A That's correct.

2 Q Getting back to the phone extraction. That became an
3 important aspect of your investigation at some point, didn't
4 it?

5 A Yes, it did.

6 Q Did you -- what did you find on his phone as far as
7 Lisa Hamlett?

8 A Several searches that were made.

9 Q Did you -- did you speak with Lisa Hamlett at some
10 point?

11 A I did.

12 Q And I guess you found out about the Face book posts
13 supposedly from Myranda Southern?

14 A Yes, sir.

15 Q And what did you find on his phone about Jason
16 Gillespie who was her boyfriend at the time?

17 A Also searches.

18 Q Searches for Jason Gillespie on his phone?

19 A Yes, sir.

20 Q This is something. I don't know if you explained this.
21 But did you find Myranda Southern's phone number saved in
22 Darrell Raines' phone?

23 A We did.

24 Q And was it saved under Myranda Southern?

25 A No, sir.

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1 Q What was it saved under?

2 A Jessica.

3 Q Jessica?

4 A Yes, sir.

5 Q Do you have any information about that being a known

6 nickname for Myranda Southern?

7 A No, sir.

8 Q Did Mr. Raines provide any explanation as to why he had

9 her name saved as Jessica in his phone?

10 A No, sir.

11 Q Did you find any information in his phone about

12 firearms that you recall?

13 A Not that I can recall.

14 Q The .380, the pistol that he had, how were you involved

15 in obtaining the pistol? The .380 he had shipped to

16 Hi-Point?

17 A Once we found out about -- once I found out about the

18 pistol possibly being shipped I contacted FedEx and found

19 out the tracking number on the weapon. They gave me a --

20 they gave me a tracking number along with a possible

21 delivery date. Once I got that information I went to the

22 magistrate and obtained a search warrant to intercept the

23 package when it was delivered, which that's what we did.

24 Q were you there on September 3rd when it was

25 intercepted?

1 A Yes, sir.

2 Q Did you interview Shawn Southern?

3 A I did.

4 Q Did he provide an alibi for you?

5 A He did.

6 Q Did you ever consider him a suspect in this case?

7 A Initially.

8 Q And when was that ruled out?

9 A As more information came in about -- it kept pointing
10 me toward Mr. Raines. And after -- after I spoke with him
11 and checked his alibi for that night.

12 Q I want to show you State's No. 31. Have you seen that
13 document before?

14 A I have.

15 Q And have you -- you said you reviewed the phone
16 extraction found in State's 30. Is that a true and accurate
17 synopsis of text messages found in the phone extraction of
18 Darrell Raines?

19 A Yes, sir.

20 Q And does it accurately reflect the times they were sent
21 and the order they were sent in?

22 A Yes, sir.

23 Q Does it further and accurately reflect the text
24 messages that had been deleted by Mr. Raines prior to the
25 phone extraction?

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1 A Yes, sir.

2 MR. SCOTT: Your Honor, I do want to publish this now,
3 and at this time State would offer State's 31 for admission.
4 The foundation being laid through Jeff Perry and then
5 further identified by --

6 THE COURT: 31 is offered into evidence. Do you need
7 to look at something? Do you need to see something?

8 MR. ABLE: I do. Without objection.

9 THE COURT: All right. Without objection, 31 into
10 evidence on behalf of the State.

11 (Whereupon, State's Exhibit 31 was admitted into
12 evidence.)

13 MR. SCOTT: Your Honor, it is a -- just a different
14 display and -- it's 32. It's just on the poster board. But
15 the State would offer 32 for admission as well. It's the
16 same thing.

17 MR. ABLE: No objection.

18 THE COURT: Without objection, 32 is in evidence on
19 behalf of the State.

20 (Whereupon, State's Exhibit No. 32 was admitted into
21 evidence.)

22 Q Now, what I want you to do, Mr. Bailey, I want you to
23 read it, and the way I want you to do it is to indicate when
24 you're reading a text from Darrell Raines -- this is going
25 to be a lot, but I want you to also indicate the time it was

1 sent. Then I want you to indicate when Myranda Southern is
2 replying.

3 MR. SCOTT: Judge, beg the Court's indulgence for one
4 minute. I'm going to get Mr. Able a copy of this while we
5 go over it.

6 THE COURT: Okay.

7 Q You ready, Mr. Bailey?

8 A Yes, sir.

9 Q If we look at the top, the blue, that is a text from
10 Darrell and the day is August 16th. The time is 9:33.
11 Would you publish that for the jury?

12 A Darrell, "Thought. If he isn't there -- if he isn't
13 there tonight, he's home right now, and we went the message
14 tonight and she confronts him, I know how I'd react to
15 something like that and want to drive over immediately.
16 Think we should plant phase two either way."

17 Q All right. Stop for one minute. I want to show you
18 State's 52. Do you recognize that?

19 A Yes, sir.

20 Q What is it?

21 A It's a copy of a Face book post.

22 Q From who?

23 A It looks like it's from Myranda.

24 Q Is that the one to Lisa Hamlett that she told you
25 about?

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1 A Yes, sir.

2 Q And I know the lights are dim. Can you read when that
3 was posted?

4 A It looks like August 17th.

5 Q August 17th the Face book message from Myranda Southern
6 -- of Myranda Southern to Lisa Hamlett was posted on August
7 17th?

8 A Yes, sir.

9 Q And this is August 16th, this Face book message that
10 you're reading?

11 A Yes, sir.

12 Q You read Darrell's, and then -- now go ahead and read
13 Myranda's responses.

14 A "I know."

15 Q Keep going.

16 A Myranda -- indicate the time or just --

17 Q Just keep reading. I think the jury can read all the
18 times and everything. "I can't use my computer." Darrell,
19 "Huh." Myranda, "I can't use my computer here to plug in
20 the charger," and "Hmm, I need to think -- I need to think
21 about that." Darrell, "Only two more hours before you get
22 off." Darrell, "If your battery is low turn your data off
23 and it might save some battery." Myranda, "Yaw." Darrell,
24 "Settings. More in the networks, mobile networks, uncheck
25 data enable. Just turns off the Internet portion."

1 Q All right. Stop right there. The far right column in
2 yellow. What does that indicate?

3 A That indicates that those texts that I'm reading have
4 been deleted.

5 Q At some point before he turned his phone over to you he
6 had deleted these texts?

7 A Yes, sir.

8 Q Now, August 16th, Myranda, at 9:42 p.m. Continue
9 reading.

10 A Myranda, "Are you anxiously awaiting me to get off,
11 lol." Darrell, "Yes, lol." Myranda, "Lol." Myranda, "I
12 will be -- I will when I get a sec." Darrell, "Will what
13 LMAO." Myranda, "The thing about my battery." Darrell,
14 "Oh, lol." Myranda, "Lol." Darrell, "P". Myranda, "I
15 can't even find settings IMAO." Myranda, I don't have my
16 key, hmm." Myranda. "I turned off my wifi."

17 Q Wait a minute. So after he gives the instruction on
18 the phone she turns off her wifi on her phone is what you're
19 saying?

20 A Yes, sir.

21 Q And these are all deleted, right?

22 A That's correct.

23 Q Continue on this 10:02 p.m. post on August 16th.

24 A Darrell, "Lol. So got to teach you how to use that
25 thing. Want me to run by and walk her." Myranda, "If you

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- 1 really wouldn't mind. Then remind me to look for that key."
2 Darrell, "Headed there now." Myranda, "Thank you."
3 Darrell, "Np." Darrell, "Cable doesn't work." Myranda,
4 "Yes. It just needs a signal sent to that box." Myranda,
5 "Hang on." Darrell, "No rush. It just shows reference code
6 S0900." Myranda, "I know. Hang tight." Darrell,
7 "Uh-huh." Myranda, "It would be funny except I just
8 realized it and it is completely true, but also kind of
9 funny now that I don't have to worry about it." Darrell,
10 "What's there to worry about. It's a TV." Myranda, "I
11 meant Shawn would be yelling and losing his temper with me
12 and now I don't have to worry about it." Myranda, "And I
13 need a contact picture for you and more than half my phone.
14 I thought that it would somehow download from FB for some
15 people." Darrell, "Face book doesn't do that on Android."
16 Darrell, "I'll have to wait until I have a decent signal."
17 Myranda, "Didn't use it -- didn't it used to." Darrell --
18 continue?
19 Q Yeah. So all of these are deleted still?
20 A Yes, sir.
21 Q Continue. If you could look up on August 17th at 5:50
22 a.m.
23 A Darrell calls Myranda.
24 Q 6:13 a.m.
25 A Darrell calls Myranda.

1 Q August 17th, 2013 at 6:38 a.m. what is denoted at that
2 time?

3 A Myranda's Face book message to Lisa.

4 Q Again, does that correspond with the Face book message
5 sent on Myranda Southern to Lisa Hamlett that we heard
6 about, State's 52? If you look at the times, is that the
7 time that message was sent?

8 A Yes, sir.

9 Q August 17, 2014, later on that morning, you mentioned
10 some searches on there where he's searching for Lisa's Face
11 book and Jason Gillespie. Did you notice an entry at 10:42
12 where Darrell searches Lisa on Face book?

13 A I did.

14 Q Well, continue after that. What happens next?

15 A Darrell, Darrell calls Myranda. Myranda, Myranda calls
16 Darrell.

17 Q On the 17th Myranda calls him. 1:19 on the 17th
18 --

19 A Darrell calls Myranda.

20 Q I want you to read this for the jury. 2:56 on the
21 17th. After that Face book message that was sent to Lisa
22 Hamlett what does Myranda Southern say at 2:56?

23 A "You didn't tell me you messaged her back."

24 Q And then what did Darrell Raines do with that text
25 message?

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- 1 A Delete it.
- 2 Q What was his response?
- 3 A "Oh, sorry. Yeah, too much."
- 4 Q 2:57, directly after that text message exchange what
- 5 did Myranda do?
- 6 A Myranda calls Darrell.
- 7 Q Five minutes later what's Darrell -- what's Darrell
- 8 doing on Face book?
- 9 A Searching for Justin Gillespie on Face book.
- 10 Q Jason Gillespie?
- 11 A Yes, sir.
- 12 Q Do you know who Jason Gillespie is?
- 13 A Yes, sir.
- 14 Q Who is that?
- 15 A That's Lisa's boyfriend.
- 16 Q That was the boyfriend she was dating when this Face
- 17 book message was sent to Lisa Hamlett?
- 18 A Yes, sir.
- 19 Q Darrell is searching him on Face book. Fifteen minutes
- 20 later who is he searching on Face book?
- 21 A He's searching for Lisa on Face book.
- 22 Q Now, pick up at 3:36 p.m. on August 17th.
- 23 A Darrell, "Couldn't sleep. Oh, well. I'm okay by the
- 24 way." Myranda, "So what are you up to." Darrell, "Watching
- 25 Netflix." Myranda, "We have both had shitty days. Wish I

1 didn't have to be here." Darrell, "True, and wish you
2 didn't either. On the plus side, there is doubt on either
3 side now. Who knows. Things can still go either way."

4 Q I want you to read August 17th at 4:00 p.m. Read that
5 text from Darrell to Myranda one more time, please.

6 A "True, and wish you didn't either. On the plus side,
7 there is doubt on either side. Who knows. Things can still
8 go either way."

9 Q You're reading an "either" in there I just don't see.
10 I'm reading, "On the plus side there's doubt and her side
11 now?. Is that what you're reading?

12 A You're reading at 8/17/2013 at 4:00 p.m.?

13 Q Yes, sir.

14 A "True, and wish you didn't either. On the plus side,
15 there is doubt on either -- there is doubt -- there is doubt
16 on her side now. Who knows. Things can still go either
17 way."

18 Q Now, that's the same day this message was sent to Lisa
19 Hamlett from Myranda Southern?

20 A Yes, sir.

21 Q Continue.

22 A Myranda, "True." Myranda, "Just don't drive by there
23 today."

24 Q All right. Wait a minute. Wait a minute. August 17th
25 at 4:00 what does Myranda say to him?

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- 1 A "True."
- 2 Q Then what?
- 3 A "Just don't drive by there today."
- 4 Q Just don't drive by there today. And what did he do
- 5 with that message?
- 6 A Deleted it.
- 7 Q Keep going, please.
- 8 A Darrell, "Wasn't planning on it. Even if I did it
- 9 wouldn't be in my truck, LOK." Myranda, "Lol. What would
- 10 you be in." Darrell, "Left the house and came to the gun
- 11 show. Not that I can really afford any of these even as
- 12 cheap as they are, but still." Myranda, "I didn't know
- 13 there was a gun show, and are they really cheaper at a
- 14 sale." Myranda," Myranda, "The weather fits my mood."
- 15 Darrell, "Oh, yes. And big convention for sellers."
- 16 Myranda, "Where." Darrell, "On Pleasantburg at TV
- 17 Convention Center." Darrell, "They have bulletproof
- 18 backpacks." Myranda, "I never saw it went I was over there
- 19 today." Myranda, "What, seriously, backpacks." Darrell,
- 20 "Yep. And even popular kids' stuff like Mario Cart, lol."
- 21 Darrell, "If I had 200 extra right now I swear." Myranda,
- 22 "Lol. What would go to school with a bulletproof backpack."
- 23 Myranda, "I want to go shooting but I haven't shot a gun
- 24 since I was a kid."
- 25 Q Wait a minute. Wait one minute. I think you skipped

1 one. I want you to look at August 17th at 4:21 p.m.

2 A "Lol. That, too. Found a nice one I would love."

3 Q Then Myranda at 4:25, what did she say?

4 A "I want to go shooting but I haven't shot a gun since I

5 was a kid." Darrell, "If I can -- if I can even afford one

6 I'll take you." Myranda, "Lol, thank you. And you will be

7 able to afford one soon." Darrell, "I wish, lol. They do

8 have stun guns, lol." Myranda, "LOK." Myranda, "Lol."

9 Myranda, "Just think positive thoughts." Darrell, "Nothing

10 but, lol." Myranda, "Yeah, me too, lol." Darrell, "Lol,

11 people keep playing with stun guns waiting for someone to

12 get stunned." Myranda, "Lol. You should be ready to record

13 and post in YouTube when they do." Darrell, "Who says I'm

14 not." Myranda, "I'm sorry, but what would be awesome -- I'm

15 sorry, but that would be awesome." Darrell, "So what's --

16 so what's up." Myranda, "I was just on the brink -- I was

17 just on break. No biggy." Myranda, "Just going to chat

18 you." Darrell, "Nothing much. Jenny and them are

19 practically begging me to go out tonight." Myranda, "Maybe

20 you would have fun." Darrell, "Maybe. I'm definitely

21 thinking about it." Myranda, "It may be just what you need.

22 If you needed a sober ride you know I'll give you."

23 Myranda, "Or not. I'm not trying to invade your space."

24 Darrell, "Lol, haven't decided yet." Myranda, "What. I

25 just don't want you to think I'm trying to monopolize your

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1 time or something crazy." Darrell, "Lol. I know."
2 Myranda, "Well, just make sure you are still invited to that
3 hot shower though either way, lol." Darrell, "Hmm."
4 Myranda, "You don't have to choose. I may just like
5 driving, Darrell, LMFAO." Darrell, "LMAO driving."
6 Myranda, "K." Myranda, "Is it okay if I talk you on lunch."
7 Darrell, "Yeah, may be in shower. Then just -- then just
8 fair warning." Myranda, "Hmm, lol." Myranda, "I'm sorry.
9 I feel like maybe I'm being clingy to you. You would say
10 something to me if you felt like that, right." Myranda, "Or
11 maybe I'm just crazy and over anxious." Darrell, "Lol,
12 you're fine, and maybe crazy, but definitely exhausted."
13 Myranda, "Lol." Myranda, "I'm sorry." Darrell, "For."
14 Darrell, "Heading downtown." Myranda, "Have fun. I've got
15 a -- I've got a few monsters, lol." Darrell, "Lol."
16 Myranda, "Monsters." Darrell, "Save me." Darrell, "Lol."
17 Myranda, "Lol, already." Myranda, "Stop being a party
18 pooper." Darrell, "Lol." Myranda, "Are you having -- are
19 you having any fun." Darrell, "Not really. Mind stuck on
20 other things, even after two beers." Myranda, "It's still
21 early. Maybe it will be better or you have to at least stay
22 a polite amount of time." Myranda, "Right." Darrell,
23 "True. Dinner is finishing and they want to go to the bar.
24 They want slushies that are 180 proof." Myranda, "Wow,
25 they're serious. And remember, they don't know about your

1 shitty day." Darrell, "Day isn't over -- Day isn't over
2 with yet." Myranda, "So maybe it won't turn out to be a
3 shitty day." Darrell, "10 to 1 it does." Myranda, "Huh.
4 Why is it you will not let me be in a crappy mood but you
5 are allowed." Darrell, "LMAO. There's a difference. A
6 crappy mood and the truth." Myranda, "There's no way to
7 know if you got the truth today, and yes it does stuck -- it
8 does suck and you are allowed the rest of today, but then no
9 more." Myranda, "I understand how you feel, but you always
10 make me smile when I'm down and I just want you to smile."
11 Darrell, "P." Darrell, "Vodka slushy." Myranda, "Oh, boy.
12 Having a better time." Darrell, "Not cold anymore LMAO.
13 Still stuck on my mind." Myranda, "LMAO. I know. It
14 doesn't go away. But I'm glad you see more chipper and
15 aren't cold. You're a hot mess." Darrell, "No. I'm still
16 cold. Not enough vodka, lol. 180 proof Ever Clear in my
17 future." Myranda, "Wow, sounds like quite the party."
18 Darrell, "Not really." Darrell, "Oh, well. Maybe one more
19 drink and that's it for me. The slushy sucks. The waitress
20 is cute though. Too bad she looks a lot like Lisa."
21 Q All right. Wait a minute. August 17th 10:10. Were
22 you familiar with Myranda Southern's work schedule and work
23 hours?
24 A Yes, sir.
25 Q And on the 17th where would she have been at around

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1 that time, 10:00 at night?

2 A At work.

3 Q So read one more time -- and this is -- Darrell is
4 texting Myranda about this?

5 A At 10:10 p.m.

6 Q What's he saying to her, Myranda?

7 A "Oh, well. Maybe one more drink and that's it for me.
8 The slushies suck. Waitress is cute though. Too bad she
9 looks a lot like Lisa."

10 Q Lisa. And then what's Myranda's response to all that?

11 A "Geez." Myranda, "I could possibly get out at 11:00 if
12 you need/want company." Darrell, "I don't know." Myranda,
13 "Maybe you need some alone time." Myranda, "Try a different
14 type of slushy." Darrell, "The slushies are \$750 each --
15 7.50 -- 7.50 each, lol." Myranda, "Lol, grab a beer."
16 Myranda, "Any improvements." Darrell, "I'm feeling like --
17 I'm feeling the Clemson orange Ever Clear slushy. It tastes
18 like crap but oh well." Myranda, "enjoy. Do you dance."
19 Darrell, "Hmm, not -- not even Ever Clear. And no, I don't
20 dance." Myranda, "Are you enjoying yourself at all."
21 Darrell, "Not really. It's what we discussed before. All I
22 am doing is thinking of why I am married to begin with.
23 Sure, the alcohol is kicking in, but it's not taking my mind
24 off of thing which I knew it wouldn't." Myranda, "Of course
25 it won't. I wish I could say something to help. I know how

1 you're feeling." Darrell, "It's okay. I just need time to
2 adjust and heal a bit." Myranda, "True, but you always
3 helped me feel at least a little better." Darrell, "Hmm."
4 Myranda, "That's a fake smile." Darrell, "Maybe. Liquor
5 and I typically do not get along." Myranda, "Well, it
6 sounds like your night might get interesting." Darrell,
7 "Maybe, who knows." Myranda, "Only you know D." Darrell,
8 "We will see." Myranda, "I can't tell if you're being
9 sarcastic." Darrell, "I'm not sure myself. Like I said,
10 liquor and I don't get along." Myranda, "Would you prefer
11 to just stop texting." Darrell, "No, it's fine. It's good
12 to talk to someone who isn't trying to make me happy and
13 avoid the subjects." Myranda, "I don't see the point in
14 that, acting like you're not upset when you have the right
15 to be is silly. I have to work through it." Darrell,
16 "Yep." Myranda, "You figure it out for yourself in your own
17 way and time, and if you need someone to listen or talk to
18 you know how to find me -- you know how to find me."
19 Darrell, "Hmm." Myranda, "Bella has been at Laurie's and
20 Ms. J House since my lunch and he had some -- and he had
21 some company." Myranda, "Be safe." Darrell, "I will. You
22 too." Myranda, "I will." Darrell, "You better." Myranda,
23 "Or what." Darrell, "I won't spank you, lol." Myranda,
24 "Lol, that's not -- that's not nice. And remember, I can
25 start using my talent, too." Darrell, "True." Myranda,

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- 1 "But it's doubtful I would." Darrell, "Lol." Myranda,
2 "Because I'm a cheap whore, remember, lol." Darrell, "True.
3 True that, lol." Myranda, "Lol, you are an ass." Darrell,
4 "Lol, P." Darrell, "Two Bud Lites followed by a vodka slush
5 and then a 180 proof Ever Clear slushy equals what the fuck
6 was I thinking." Myranda, "Unless you plan on using that
7 tongue, keep it in your mouth." Myranda, "Oh, shit."
8 Myranda, "Can you drive." Darrell, "Yes." Darrell, "You
9 still at work." Myranda, "Leaving now." Darrell, "Care to
10 drive by." Myranda, "Where." Darrell, "Her house. Just
11 curious if there was any impact."
12 Q Wait a minute. Read that one more time.
13 A "Her house. Just curious if there was any impact."
14 Q 12:04 on the 18th he says, care to drive by, question
15 mark, and she says where and he says her house, just curious
16 if there was an impact?
17 A That's correct.
18 Q And what did he do with those messages?
19 A He deleted it.
20 Q Now, August 18th, that's at 12:05 a.m.?
21 A Yes, sir.
22 Q So that's the 17th going into the 18th?
23 A Yes.
24 Q And the 18th is going to be that Sunday morning.
25 Continue.

- 1 A Myranda, "Where are you." Myranda, Myranda calls
2 Darrell. The call lasts one hour, six minutes, 54 seconds.
3 Myranda, "Hi." Darrell, "Hey." Darrell, "Just woke up,
4 lol." Darrell, "And it's 1:11."
5 Q Now, that's 1:11 p.m.?
6 A 1:11 p.m.
7 Q So this is the afternoon of August 18th, that Sunday?
8 A That's correct. Myranda, "Lol. I figured you were
9 asleep and TD time is weird -- TGE time is weird." Darrell,
10 "Lol." Darrell, "Hoping in shower." Myranda, "Me too,
11 lol." Darrell, "It made an impact. She has posted more on
12 Face book in the last few hours than all week."
13 Q Stop one minute. August 18th about 2:00 p.m. So the
14 afternoon of the 18th he's posting that, and then the 17th
15 would have been the Face book messages that Lisa Hamlett
16 received from Myranda Southern?
17 A Yes, sir.
18 Q Read one more time on the 18th at 2:00 -- 1:59 p.m.
19 what he text to Myranda.
20 A "It made an impact. She has posted more on Face book
21 in the last few hours than all week." Myranda, "Hmm."
22 Q You skipped one, Antonio.
23 A The last I have on this page is Myranda at 2:00 p.m.
24 Q Okay, I'm sorry. Go ahead.
25 A Darrell, "Thoughts." Myranda, "What has she posted."

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1 Darrell, "Nothing relationship-wise but has liked a ton of
2 stuff today and is commenting a fair amount on her stuff and
3 others. Stuff she hasn't done in a while." Myranda,
4 "Trying to take her mind off things maybe." Darrell,
5 "Maybe." Myranda, "Maybe debating messaging me." Darrell,
6 "Good question." Myranda, "Lol." Myranda, "Bored at work."
7 Darrell, "Lol, it'll be over soon." Myranda, "Are you
8 having fun." Darrell, "Yes, we are." Darrell, "Headed home
9 shortly and then going to take a long nap. Will you call
10 and wake me up around 11:00." Myranda, "Sure, not a
11 problem." Myranda, "I want a nap. I'm jealous." Darrell,
12 "Awesome. You get off at 12:00, right." Myranda, "Yes,
13 12:00." Darrell, "Good." Myranda, "Will I be seeing you,
14 sir." Darrell, "Who knows, lol."

15 Q 6:48 p.m. on the 18th she would have been at Charter on
16 duty at that time?

17 A That's correct.

18 Q And she asked will I be -- she said she gets off at
19 12:00 and asked will I be seeing you, sir. And then his
20 response is what?

21 A "Who knows, lol." Myranda, "Lol." Myranda, "No
22 pressure. Just thought you seemed glad that I got out at
23 12:00, lol." Darrell, "Lol." Myranda, "This night is
24 moving slow. I don't think my lunch will ever get here."
25 Myranda, "Are you driving out past my job this evening."

1 Darrell, "I don't plan on passing your work tonight. Why?"

2 Myranda, "Lol, because you -- because you COMFD what time I
3 got off and I'm waking you up at 11:00. I was curious."

4 Myranda, "And I can't wait to --" it says, "Get off this
5 phone. It doesn't send notification to my iPhone."

6 Darrell, "Lol, I'll get -- I'll get it fixed for you."

7 Myranda, "Thank you, lol." Myranda, "Finally lunch hour."

8 Darrell, "Wow, lol."

9 Q Let me ask you this. 7:00 -- her weird hours. 7:00,
10 is that what she considered her lunch hour, I guess?

11 A Yes, sir.

12 Q And you were able to review bank records you talked
13 about earlier?

14 A I did.

15 Q Are you aware of her using her bank card at
16 approximately 8:00 during that lunch break?

17 A Yes, sir.

18 Q You reviewed some of that videos and stuff we watched
19 in here?

20 A I did.

21 Q So you got her using her bank card around 8:00 during
22 this lunch break?

23 A Yes, sir.

24 Q Again, this is August 18th and -- August 18th. I just
25 want to keep the timeline in order. That's the night she

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1 goes missing, or into the early morning hours of the 19t; is
2 that right?

3 A That's correct.

4 Q Still at work here -- or on break rather. What happens
5 at 8:00? 8:02, sorry.

6 A Darrell calls Myranda. The call lasts two minutes and
7 26 seconds. Myranda, Myranda calls Darrel. The call lasts
8 24 seconds. Darrell, "You off?" Myranda, "Hey you."

9 Myranda, "10 minutes." Darrell, "K." Myranda, Myranda
10 calls Darrell. The call lasts six minutes and 12 seconds.

11 Q All right. Wait a minute. 12:03 a.m. Now, it's August
12 19th by three minutes, right?

13 A That's correct.

14 Q Why is that time significant?

15 A Because she gets off at 12:00 midnight.

16 Q When's the last time anybody ever sees Myranda
17 Southern?

18 A 12:00 midnight.

19 Q And what's going on at 12:03 a.m.? What's going on?

20 A Myranda calls Darrell.

21 Q And we don't know what they talked about, do we?

22 A No, sir.

23 Q Never will, will we?

24 A No, sir.

25 Q What time did the neighbor over there off Bramlett

1 Church Road say she hears those gunshots?

2 A She just said the early morning. Early morning.

3 Q Was it between 1:00 and 1:30 a.m.?

4 A Yes, sir.

5 Q 2:56 a.m. what's going on?

6 A "Darrell, I can't sleep. You?" Myranda, "I'm still
7 with Shawn. He's being an ass. I'm not giving him what he
8 wants. I'll call you tomorrow." Darrell, "Okay. Just let
9 me know when you make it home. I'm headed to bed.

10 Goodnight." Myranda, "Okay, good night." Darrell, "Oh, I
11 forgot to run by the bank like you asked. I'm going to do
12 it real quick before I go to bed." Myranda, "That's fine,
13 and thank you so much for doing that. I'm headed home now."
14 Darrell, "You're welcome. What are friends for." Darrell,
15 "Be careful." Myranda, Myranda calls Darrell. The call
16 lasts 35 minutes, 22 seconds. Darrell, "Good morning."
17 Darrell, "Hey. Hey, you okay? All my calls are going to
18 voice mail and you haven't text back. Laurie and Ms. V. say
19 they haven't heard from you either. Call me. I'm worried."

20 Q 12:03 a.m. Myranda is calling Darrell. She's getting
21 off work. And then there's about a three hour gap. Is that
22 what you're reading?

23 A Yes, sir.

24 Q Did you ever find Myranda's phone?

25 A No, sir. Did not.

1 Q Do you have any idea who was sending these texts from
2 Myranda's phone after she passed away?

3 MR. ABLE: Objection, speculative.

4 Q Do you have any knowledge who would be using that
5 phone?

6 A No knowledge but speculation.

7 Q I don't want you to speculate. But you don't have any
8 knowledge of who was using it though?

9 A No, sir.

10 Q But you did get his phone; is that right?

11 A Yes, sir.

12 Q Let me show you State's 41. How many phones did you
13 get from him?

14 A Just one.

15 Q Do you recognize that?

16 A Yes, sir.

17 Q State's 41. You retrieved that from Mr. Raines?

18 A Can I open it?

19 Q Yeah.

20 A Yes, sir.

21 MR. SCOTT: Your Honor, State offers 41 for admission
22 into evidence.

23 THE COURT: Solicitor, would you allow Mr. Able to take
24 a look at it. Any objection, Mr. Able?

25 MR. ABLE: It's offered as No. 41, Your Honor?

1 THE COURT: That's what --

2 Q Look at this State's No. 41 again. Do you recognize
3 that?

4 A Yes, sir.

5 Q And what is it?

6 A It's the phone we took from Mr. Raines.

7 Q And that's the phone that ultimately, I guess, you did
8 the phone dump with?

9 A Yes, sir.

10 THE COURT: Is that --

11 MR. ABLE: Without objection.

12 THE COURT: Without objection, 41 into evidence on
13 behalf of the State.

14 (Whereupon, State's Exhibit No. 41 was admitted into
15 evidence.

16 Q Do you know what the last time Darrell called Myranda's
17 phone was?

18 A Call or the last text?

19 Q Well, do you have any information on the last call?

20 And if you don't know -- I don't know if it's in that
21 summary. But do you have any knowledge of that last time he
22 called her?

23 A The last text was sent beginning at 11:50 p.m.

24 Q I didn't hear the time.

25 A 11:50 p.m.

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1 Q On what date?

2 A I have early morning hours. Sunday early morning
3 hours. That would be going into Monday morning.

4 Q Are you referring to this?

5 A 11:50. Ten minutes. That's what I have in my notes.

6 Q Well, I just -- I didn't understand that answer. What
7 was it?

8 A 12:00 midnight with the last text being sent at 11:50
9 p.m.

10 Q On what day?

11 A August 18th.

12 Q Now we're getting -- somehow getting sideways here.

13 What did you just read here? What's this? August 19, what
14 is this?

15 A Which one are you -- which one are you referring to?

16 Q My question is, do you have any other texts or phone
17 calls after that from him?

18 A No, sir.

19 Q Is this still a time when -- I guess the 19th, 20th,
20 21st, 22nd, that was when people were still unsure of Ms.
21 Southern's whereabouts; is that right?

22 A That's correct.

23 Q That was a summary of some text messaging. Let me show
24 you State's No. 33. Have you seen that document before?

25 A Yes, sir.

1 Q What is that?

2 A It's a list of deleted phone calls.

3 Q Now, have you reviewed that and reconciled it with the
4 State's No. 30 which is the entire phone extraction and
5 found that to be a true and accurate representation of phone
6 calls he was making?

7 A Yes, sir.

8 MR. SCOTT: Your Honor, the State now would offer --
9 this is State's 33. The foundation was laid through Mr.
10 Perry and further identified through Mr. Bailey.

11 MR. ABLE: Without objection.

12 THE COURT: Without objection, 33 into evidence for the
13 State.

14 (Whereupon, State's Exhibit No. 33 was admitted into
15 evidence.)

16 MR. SCOTT: Your Honor, the State also offers No. 38
17 for admission into evidence.

18 THE COURT: 38?

19 MR. SCOTT: Yes, sir.

20 THE COURT: Is 38 and 33 the same?

21 MR. SCOTT: Yes, sir. It is the same.

22 THE COURT: Without objection. In evidence on behalf of
23 the State, 38.

24 Q Where was Ms. Southern's vehicle ultimately found?

25 A The Bi-Lo in Simpsonville.

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1 Q Highway 14?

2 A Yes, sir.

3 Q And do you recall when it was found?

4 A I believe it was Friday night.

5 Q Is that the Friday the 23rd?

6 A That's correct.

7 Q What I want you to do, and you've got a copy of it,
8 August 18th. Is that, I guess, the day and then the night
9 that Ms. Southern went missing?

10 A Yes, sir.

11 Q Going through this list I want you to talk about the
12 date, the time, and then who Mr. Raines is calling. Okay?

13 A What date? Call off date and times?

14 Q Well, yeah. There's only one entry for August 18th.
15 That's the first one. So August 18th on the top one. Who
16 is he calling at 3:59 p.m.?

17 A Hi-Point.

18 Q And what did he do with that phone call?

19 A Deleted it from his phone.

20 Q Now, on the 19, go with the times, and how is he
21 calling?

22 A 19th at 2:20, Hi-Point deleted from the phone. The
23 19th, 2:21 Hi-Point, deleted from the phone. The 19th, 2:59
24 p.m. to Hi-Point, deleted from his phone. 2:59 a call from
25 Hi-Point, deleted from his phone. August 19th at 3:03 p.m.,

1 a call made to Hi-Point, deleted from his phone. August
2 19th, 3:03 p.m., a call to Hi-Point deleted from his phone.
3 August 19th at 3:04, a call made to Hi-Point, deleted from
4 his phone. A call on the 19th, August 19th, 3:05 p.m., a
5 call made to Hi-Point also deleted from his phone. Another
6 call August 19th, 3:05 p.m., a call made to Hi-Point deleted
7 from his phone. August 19th, 3:16 p.m., a call made to
8 Hi-Point, deleted from his phone. A call on the 19th, made
9 at 3:17 to Hi-Point also deleted from his phone. A called
10 made on the 19th at 3:33 p.m. made to Hi-Point also deleted
11 from his phone. Another call August 19th at 3:33 p.m. made
12 to Hi-Point also deleted from his phone. August 19th, 3:34
13 p.m., a call made to Hi-Point deleted from his phone. A
14 call made August 19th, 3:34 p.m., made to Hi-Point, deleted
15 from his phone. August 19th, 3:34, call made to Hi-Point,
16 deleted from his phone. August 19th, 3:54 p.m., made to
17 Bi-Lo, call deleted from his phone. August 19th, 3:56, call
18 made to Bi-Lo, also deleted from his phone.

19 Q Now, wait just one minute. August 19th, that's a
20 significant date why? Isn't that the night that Ms.
21 Southern went missing and isn't that the night or early
22 morning where Ms. Yates heard the gunshots?

23 A Yes, sir.

24 Q And 3:54 and 3:56 on the 19th, that afternoon, later
25 that afternoon, this is after Ms. Southern fails to come

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1 home, he's calling Bi-Lo out on Highway 14 where her car is
2 ultimately found?

3 A Yes, sir. In Simpsonville.

4 Q He's making that call on the 19th. You all didn't even
5 find her car until the 23rd; ain't that right?

6 A That's correct.

7 Q And he did what with those phone calls?

8 A He deleted it from his phone. August 19th, 4:21 p.m.,
9 a call made to Hi-Point, deleted from his phone. A call
10 made on the 19th at 4:21 p.m. made to Hi-Point deleted from
11 his phone. A call on the 19th at 4:22 p.m. made to Hi-Point
12 deleted from his phone. August 19th, 4:26 p.m., a call made
13 to Hi-Point, also deleted from his phone. A call on the
14 20th, August 20th at 1:37 p.m., a call made to Hi-Point.
15 It's also deleted from his phone. A call on the 20th at
16 1:37 p.m. A call made to Hi-Point, deleted from his phone.
17 August the 20th, 1:45, a call made to Hi-Point, deleted from
18 his phone. August 20th, 1:45 p.m, a call made to Hi-Point
19 which is deleted from his phone. August 20th, 3:20 p.m., a
20 call made to Hi-Point, deleted from his phone. August 20th,
21 3:21 p.m., a call made to Hi-Point, also deleted from his
22 phone. August 21st, at 9:21 a.m., a call made to Hi-Point.
23 It's also deleted from his phone.

24 Q This .380 that you all recovered in the intercept?

25 A This is a Hi-Point. It's a clip. A magazine.

1 Q And it was found where?

2 A It was found at the scene of the -- where we found Ms.
3 Southern's body.

4 Q Phone calls to Bi-Lo on the 19th. You said those phone
5 calls to Hi-Point were the 18th, 19th, 20th, and one on the
6 21st?

7 A Yes, sir.

8 Q For a total of how many calls?

9 A I count 30.

10 Q And the key at the bottom, is that correct? It states
11 that there was 30 calls to Hi-Point, all of them deleted?

12 A All of them deleted.

13 Q And two calls to Bi-Lo?

14 A That's correct.

15 MR. SCOTT: Judge, also at this time I'm going to offer
16 our calendar, State's 39, for admission into evidence.

17 THE COURT: Okay. Mr. Able?

18 MR. ABLE: Judge, I'm going to object. I believe the
19 information contained within the exhibits have been
20 testified to. There's no purpose in it.

21 THE COURT: Is your argument that it's cumulative to
22 what is already been --

23 MR. ABLE: It's already been testified to. Yes, sir.

24 MR. SCOTT: Judge, what I've got here is a bunch of
25 stuff that's happened in a two, three week period. What

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1 I've done is very meticulously built this calendar witness
2 by witness, and as they testified the dates I've put it on
3 here. This is nearly impossible for any person to remember
4 all these dates and why each one of these dates are
5 important. I believe this to be highly important for the
6 entire fact of this case and I think it's --

7 THE COURT: Let me just take that objection under
8 advisement at this point.

9 MR. SCOTT: Answer any questions Mr. Able has for you.

10 THE COURT: Let's take a 10 minute afternoon break
11 before we start cross-examination. Mr. Foreman, ladies and
12 gentlemen of the jury, let's take about a 10 minute break.
13 I advise you don't bring any discussions about this case.
14 I'll get you back out shortly.

15 (Whereupon, the jury exited the courtroom at 3:38 p.m.)

16 THE COURT: We'll be in recess about 10 minutes.

17 THE COURT: We're back on the record. Let me just make
18 my ruling concerning the calendar. That's basically
19 demonstrative. The evidence which routinely does not go
20 back to the jury room as evidence. Certainly, Solicitor
21 Scott, you can use that all you want to, which I know you
22 will when you make your closing. But it is demonstrative
23 evidence and would not be admissible as part of the record.
24 So I grant Mr. Able's objection or motion to exclude it.

25 All right. Mr. Bolt, if you'll bring the jury out,

1 please. And we are in cross-examination with -- okay.

2 You're sitting over in the corner there. If you want to
3 come on over, please, sir.

4 MR. SCOTT: Are we in direct or are we in
5 cross-examination, Your Honor?

6 THE COURT: I think we're ready for Mr. Able's cross.

7 MR. ABLE: The last thing you said was answer any
8 questions Mr. Able has.

9 THE COURT: Now, if there's something -- I don't have a
10 problem if there's something else that you want to cover?

11 MR. SCOTT: I would, Your Honor. Just basically based
12 on the ruling I would like to ask one more question.

13 (Whereupon, the jury entered the courtroom at 4:14
14 p.m.)

15 THE COURT: Solicitor, you indicated you had another
16 question for Officer Bailey.

17 Q I show you State's 39 and ask you to review it, please.
18 Take as much time as you need.

19 A Okay.

20 Q You were one of the lead investigators out of
21 Greenville County on this case, were you not?

22 A Yes.

23 Q And did you continue to work with Laurens County once
24 it became a homicide case?

25 A I did.

1 Q Have you reviewed all the dates that are listed there
2 and some of the events that happened on those dates in
3 August 2013?

4 A Yes, sir.

5 Q And were you privy to all those entries and all those
6 things that occurred on those dates?

7 A Yes.

8 Q And is it a true and accurate reflection of what you
9 investigation found out, and as far as you know what the
10 testimony of this trial has been, is it a fair and accurate
11 presentation of all those things?

12 A Yes.

13 MR. ABLE: Judge, I'm going to enter an objection at
14 this time. I don't have an accurate count right in front of
15 me. We've gone through 20 some odd witnesses in the last
16 few days. The question being did he personally view each of
17 these entries upon this board, and there's been no testimony
18 elicited from him other than did you witness all these.
19 There hasn't been any testimony as to each even and what he
20 saw. I would object to it.

21 Q To your knowledge, that is a fair and accurate
22 representation of August 2013, as far as your involvement?

23 A Yes, sir.

24 MR. SCOTT: Thank you.

25 THE COURT: Cross-examination, Mr. Able?

1 MR. ABLE: Yes, sir. Just briefly. Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. ABLE:

4 Q Officer, you were at the initial interview of my
5 client, correct?

6 A Yes, sir.

7 Q And it was at that time he was informed he was the last
8 person to speak to Ms. Southern that night on the telephone?

9 A I'm not sure if he was told that particular day.

10 Q But he was at some time told that?

11 A Yes, sir.

12 Q Now, you had mentioned in direct examination that my
13 client had Ms. Southern listed on his phone as Jessica?

14 A Yes, sir.

15 Q And that he never offered any explanation as to why?

16 A No, sir.

17 Q No one ever asked him why, did they?

18 A I don't recall if I asked or not.

19 Q And these Exhibits Nos. 31 and 33, this being No. --
20 State's Exhibit 31, being the text messages that you read
21 and published for the jury and it shows a number of these
22 text messages -- text messages having been deleted. He
23 didn't just delete these particular messages? He deleted a
24 lot of messages according to the phone dump, correct?

25 A I knew that those messages that have been pointed out

ANTONIO BAILEY: CROSS-EXAMINATION

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1 were deleted. Now, whether or not there were some more, it
2 could very well be.

3 Q I thought you said you'd reviewed the entire document
4 of hundreds of pages of documents?

5 A 106 pages of it.

6 Q So you don't know whether or not he deleted any other
7 text messages?

8 A I'm sure he did.

9 Q And the same thing with State's Exhibit No. 33. You
10 have the phone calls to Hi-Point and the phone calls to
11 Bi-Lo. Again, the document that was produced as far as
12 what's been referred to the phone dump, a hundred page
13 document --

14 A Yes, sir.

15 Q -- there were other telephone calls on his phone that
16 had been deleted as well?

17 A Yes, sir.

18 Q These two exhibits just reflect a small portion of the
19 ones that were deleted?

20 A That's correct.

21 Q I mean, that's not unusual for people on a cell phone
22 to delete messages or delete -- I'm sorry, text messages or
23 phone calls?

24 A I would venture to say probably not.

25 Q And as far as the substance of those phone

1 conversations, we don't know what the substance of those
2 were, do we?

3 A None other than what I've read.

4 Q I'm saying, the text messages. But the phone calls
5 that were shown deleted on that exhibit, we don't know what
6 the substances of those were?

7 A No, sir.

8 Q I meant to ask you one more question about this
9 particular exhibit. Exhibit 31. Again, the text messages.
10 These are the ones that obviously between Myranda and
11 Darrell. There were other text messages between my client
12 and other people during these periods of time, correct?

13 A That's correct.

14 Q I mean, we're not just showing -- from these exhibits
15 we're just not showing Darrell to Myranda, Myranda to
16 Darrell and that's all that was on the phone?

17 A That's correct.

18 Q I mean, there were other entries on the phone?

19 A That is correct.

20 Q And then back here where we had -- there was some
21 discussion about the August 19, 2013 date, 12:03 a.m., I
22 want to make sure I understand. Myranda calls Darrell. It
23 wasn't Darrell calling Myranda?

24 A That's correct.

25 MR. ABLE: Thank you, sir. That's all I have, Your

1 Honor.

2 THE COURT: Any redirect, Solicitor?

3 REDIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q But there were other texts and other phone calls. But
6 State's 32, as referenced in State's 31, this represents
7 kind of the critical time period of your investigation,
8 doesn't it?

9 A Yes, sir.

10 Q It represents just before and just after the Face book
11 message to Lisa, right?

12 A Yes, sir.

13 Q And then it references the critical time point from
14 when she gets off work and is never seen again, doesn't it?

15 A That's correct.

16 Q It accurately reflects the text message going on then,
17 doesn't it?

18 A Yes, sir.

19 Q Again, State's 38. We're calling it the critical time
20 period because this represents the day before and then the
21 whole day she's gone missing, and then the day after?

22 A That's correct.

23 Q And it's a snapshot on his phone calls and kind of what
24 Darrell Raines was doing in that critical time in this
25 investigation, doesn't it?

1 A Yes, sir.

2 MR. SCOTT: Thank you.

3 THE COURT: Recross.

4 RECROSS-EXAMINATION

5 BY MR. ABLE:

6 Q And just again, Investigator, just to follow-up. And
7 during those what have been termed critical times there were
8 other phone calls made by my client, other text messages
9 made and received by my client as reflected upon the
10 records?

11 A Yes, sir.

12 Q Thank you, sir.

13 THE COURT: Thank you, sir, for your testimony. You
14 can step down. You are free to leave or you're certainly
15 welcome to remain with us.

16 (Whereupon, the witness stepped down from the witness
17 stand.)

18 THE COURT: Your next witness.

19 MS. BOYKIN: Thank you, Your Honor. The State calls
20 Katherine Leisy.

21 KATHERINE LEISY, having first been
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. BOYKIN:

25 Q And I asked you this earlier. Is it Leisy or Leisy?

KATHERINE LEISY: DIRECT EXAMINATION

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1 A Leisy.

2 Q Leisy. Ms. Leisy, if you could, tell us where you
3 work.

4 A I work for the South Carolina Law Enforcement Division
5 more commonly known as SLED.

6 Q And what do you do there?

7 A I am a forensic scientist assigned to the DNA and
8 serology unit.

9 Q How long have you been in that position?

10 A For about nine and a half years.

11 Q Do you have any education and background that enables
12 you to get that position?

13 A I have a Bachelor of Science degree in genetic
14 engineering from Cedar Crest College in Allentown,
15 Pennsylvania. And prior to my experience with SLED I spent
16 approximately four years working as a forensic DNA analyst
17 at a private testing facility that at the time was in
18 Germantown, Maryland where I performed the same type of test
19 and analysis that I do with SLED.

20 Q About how many cases have you been involved with?

21 A Throughout the course of my career I would estimate at
22 least 1,000.

23 Q And have you ever testified in court before?

24 A I have.

25 Q How many times?

1 A Over 50 in various jurisdictions throughout South
2 Carolina, California, Massachusetts, New Jersey, the
3 District of Columbia, and United States Federal Court in
4 Florence.

5 Q Have you been qualified as an expert in all of those
6 times?

7 A Yes.

8 Q What were you qualified as an expert in?

9 A Typically in forensic DNA identification testing.

10 MS. BOYKIN: Your Honor, at this time I would offer Ms.
11 Leisy as an expert in forensic DNA testing.

12 THE COURT: Okay. Mr. Able, do you have any questions
13 concerning qualifications or any objections to her being
14 found an expert?

15 MR. ABLE: None, Your Honor.

16 THE COURT: All right. This witness will be deemed an
17 expert in the area of forensic DNA with analyzing and
18 identification; is that correct?

19 MS. BOYKIN: That's correct, Your Honor.

20 THE COURT: Very good. You may proceed.

21 MS. BOYKIN: Thank you, Your Honor.

22 Q Ms. Leisy, have you -- were you working at SLED in
23 2013?

24 A Yes, I was.

25 Q And did you happen to become involved in the case of

KATHERINE LEISY: DIRECT EXAMINATION

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1 Myranda Southern?

2 A I did.

3 Q If you could, what was your lab number regarding that
4 case?

5 A SLED lab number is L13-11094.

6 Q And what were you asked to do in this case?

7 A I was asked to develop a DNA profile from items that
8 were submitted as what we refer to as alternate known
9 standards, items that were identified as belonging to a
10 Myranda Southern, and compare them to several items of
11 evidence including what was identified as a piece of liver
12 tissue from a Jane Doe.

13 MR. ABLE: Judge, if I could -- if the witness could
14 move closer to the microphone. I've got this air blowing
15 over me and I --

16 THE COURT: If you could sit a little closer, ma'am.
17 Thank you.

18 Q I need to step back for a second. If you could, kind
19 of explain DNA to the jury and how that is relevant to try
20 to figure out who this Jane Doe was in this case.

21 A DNA stands for deoxyribonucleic acid. It's the genetic
22 material found in all of our body cells with the exception
23 of our red blood cells. DNA is packaged into structures
24 called chromosomes which contain our genes. And genes are
25 simply strains of DNA that make up our physical

1 characteristics such as our height or our eye color. We
2 receive one copy of DNA from our mother and one from our
3 father, and therefore have two copies of every gene. And
4 approximately 99.9 percent of an individual's DNA is
5 identical to that of everyone else's. It's the variation in
6 that remaining .1 percent that allows us to tell different
7 people apart. So for an identification such as this we
8 would try to develop an DNA profile from an item removed
9 from the remains and compare it to the DNA profile developed
10 from an item that is believed to have belonged to the
11 individual that we're trying to identify.

12 Q Thank you. I'd like to show you what has been marked
13 as State's Exhibit 15. Do you recognize that?

14 A I recognize the SLED case number and the item number.
15 This particular item was not in my custody during testing.

16 Q If you could, just read off what SLED -- I'm sorry,
17 State's Exhibit 15 is. I believe it has on the back what it
18 contains.

19 A This is indicated as SLED item number 10 which was
20 identified as a white and purple stripped Reach toothbrush.

21 Q And if you could, do the same, please for State's
22 Exhibit 17.

23 A Again, I recognize the SLED case number on this
24 particular item. It is identified as SLED item number 11
25 and it is described as a hair brush.

KATHERINE LEISY: DIRECT EXAMINATION

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1 Q Thank you. And now State's Exhibit 16. Do you
2 recognize this?

3 A I do.

4 Q And what is that?

5 A This pouch contains swabs that were taken by a forensic
6 technician of both the hair brush and the tooth brush.
7 There were also possible hairs collected from the hair
8 brush.

9 Q And how do you know what that is?

10 A Again, I can identify this with case number, as well as
11 my initials on the pouch, and can identify the item numbers
12 as they are labeled on the envelopes within the pouch.

13 Q How did you originally get these swabs?

14 A These swabs were passed to me by the forensic
15 technician who took them. They were passed directly to my
16 custody.

17 Q And is it in the same quality as when you had it last?

18 A It is. When we receive items of evidence they're
19 placed within a heat sealed pouch. They are sealed. The
20 individual who seals the pouch initials and dates that seal.
21 And the fact that the pouch was intact when it was taken
22 into my custody indicates that it was not in any way
23 tampered with.

24 MS. BOYKIN: Your Honor, at this time State would offer
25 State's Exhibit 16 for admission into evidence.

1 THE COURT: And what says the --

2 MR. ABLE: Without objection.

3 THE COURT: Without objection, 16 is in evidence for
4 the State.

5 (Whereupon, State's Exhibit No. 16 was admitted into
6 evidence.)

7 Q Now, State's Exhibit 16 is, as you testified earlier,
8 the swabs from toothbrush and hair brush belonging to the
9 victim; is that correct?

10 A That is how it was identified to us, yes.

11 Q Now, did you also receive something in this case to
12 match that against?

13 A I did.

14 Q And what did you receive?

15 A I received a portion of tissue that was identified as
16 liver from a Jane Doe FA13-595.

17 Q And what were your findings in this case?

18 A I was able to develop DNA profiles from both of those
19 items, and if the DNA profile defile developed from the
20 toothbrush that I tested is from Myranda Southern, then the
21 DNA developed from the liver matches the DNA profile of
22 Myranda Southern. And the probability of randomly selecting
23 an unrelated individual having a DNA profile matching this
24 item is approximately 1 in 330 quadrillion.

25 Q So is it safe -- would you be able to say that this

KATHERINE LEISY: CROSS-EXAMINATION

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1 was, in fact, Miranda Southern?

2 A I'm comfortable saying within a reasonable degree of
3 scientific certainty it is opinion that if the DNA profile
4 from the toothbrush is from Miranda Southern, then the DNA
5 profile developed from the liver is that of Miranda
6 Southern.

7 MS. BOYKIN: Thank you.

8 THE COURT: Cross-examination?

9 MR. ABLE: Thank you, sir.

10 CROSS-EXAMINATION

11 BY MR. ABLE:

12 Q Odds are 1 in 330 quadrillion?

13 A That is the rarity of that particular DNA profile.
14 When we make a comparison such as this we generate a
15 frequency or probability of how likely we are to see that
16 profile if we randomly select an individual from the
17 population for testing.

18 Q So that's the numbers 330 followed by 15 zeros?

19 A That's correct.

20 Q That's very accurate?

21 A It's a very large number. Yes, sir. It's a very rare
22 profile.

23 Q Now, you also did some other tests, I believe, in this
24 case?

25 A I did.

1 Q And you have a copy of your report?

2 A Yes, sir. I do.

3 Q And it's dated on January 30, 2014?

4 A Correct.

5 Q And you also received as part of evidence you reviewed
6 some swabs from -- is it buccal, b-u-c-c-a-l?

7 A We usually pronounce it buccal.

8 Q Buccal.

9 A Either way is acceptable, yes.

10 Q Buccal. And what is that, a buccal swab from Darrell
11 Raines, Jr.?

12 A Correct. A buccal swab is what we typically use for a
13 known standard for an individual. It's basically just a
14 sterile cotton swab that looks just like a Q-tip. We rub it
15 against the inside of an individual's cheek in their mouth
16 to collect cells. We then develop a DNA profile from those
17 cells to use as that individual's profile.

18 Q And what's the purpose of that? Why do you do that?

19 A Once we've been able to develop a DNA profile from an
20 item of evidence we use the individual's known standard in
21 comparison, and if that particular standard matches the
22 standard from the evidence we can identify them as the
23 contributor to that particular profile.

24 Q And so, the way I would state it is you know Darrell
25 Raines' DNA profile?

KATHERINE LEISY: CROSS-EXAMINATION

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1 A That's correct, yes.

2 Q Based upon those swabs?

3 A As it was identified and submitted to us, it is the DNA
4 profile of Darrell Raines. Yes, sir.

5 Q Now, on your report you have item number five listed as
6 fingernail scrapings from the left hand of Jane Doe?

7 A That's correct.

8 Q And then number six, fingernail scrapings from the
9 right hand of Jane Doe?

10 A Correct.

11 Q Now, Jane Doe being who you now identified as Myranda
12 Southern?

13 A Yes, sir.

14 Q Now, what -- the results here. I'm looking at the
15 results of your exam. It says the partial Y/STR. What is a
16 Y/STR?

17 A Y/STR refers to a type of testing that we can perform
18 to focus solely on male DNA. So in a case just as this
19 where we have fingernail scrapings from a female victim,
20 what we typically see is just the female profile when we run
21 the type of testing that I ran on the liver and on the
22 toothbrush and the hair brush. We know that there may be
23 lower levels of male DNA present that might not be available
24 to us because there's so much female DNA because it's a
25 sample directly from her body. So Y/STR testing allows us

1 to focus solely on any male DNA that may be present to try
2 and develop just that male profile for comparison to a known
3 standard.

4 Q And your results show that the partial Y/STR profile
5 developed from item five is not suitable for reliable
6 interpretation. What does that mean?

7 A That means at the 16 locations in the DNA that I tested
8 I received information from only two of them, and that's not
9 enough information for me to make a reliable comparison
10 between that particular profile and any known male
11 individual.

12 Q And then item six, the fingernail scrapings from the
13 right hand of Myranda Southern. It says Darrell Raines, Jr.
14 is excluded as a possible contributor to the partial Y/STR
15 profile developed from item six. What does that mean?

16 A For the fingernail scrapings that were identified as
17 from the right hand of this particular Jane Doe I received
18 information at eight of the 16 locations I tested using the
19 Y profile. And based on what I can see, there's not enough
20 consistency for me to indicate that Mr. Raines is a
21 contributor. Therefore, he is excluded as being the
22 contributor of the profile I developed from those fingernail
23 scrapings.

24 Q So you took the DNA -- known DNA from Darrell Raines
25 and compared it to these item -- item six, the fingernail

KATHERINE LEISY: REDIRECT EXAMINATION

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1 scrapings from Myranda Southern, and what you're saying is
2 that the fingernail scrapings taken from Myranda Southern
3 are not -- does not contain the DNA of Darrell Raines?

4 A Correct. Based on the profile I developed, that
5 profile did not come from Mr. Raines.

6 Q Would that have the same odds of probability that 1 in
7 330 quadrillion?

8 A No. A statistic only applies to a match or an
9 inclusion. Of an individual who is excluded we don't apply
10 a statistic to it. It just means that in our opinion they
11 are not a contributor to that profile.

12 Q So you're saying a fingernail scraping. It was
13 something under the nails?

14 A As it was submitted to me they were basically nail
15 clippings. I took portions of some visible debris that was
16 present, as well as small portions of the clippings and
17 extracted material from those items.

18 Q Now, you also ran -- let's see. You were also -- there
19 was also submitted to you swabs from the base of the
20 magazine which was item -- your item 1.1 and item 1.2, swabs
21 from the head stamps of the cartridges?

22 A That's correct.

23 Q And as concerning those pieces of evidence your results
24 were there -- no DNA profile was developed from items 1.1
25 and 1.2. Does that mean it was not tested or you couldn't

1 develop a profile, or what?

2 A I did test both the swabs from the base of the magazine
3 and the swabs from the head stamps of the cartridges. I was
4 not able to develop a DNA profile from either item which
5 would indicate either that there was not enough DNA present
6 when the items were tested to develop a profile, or that any
7 DNA that may have been there had been wiped away or been
8 degraded and was not in good enough shape for us to develop
9 a profile.

10 MR. ABLE: Thank you.

11 THE COURT: Solicitor, any redirect?

12 MS. BOYKIN: Briefly, Your Honor.

13 THE COURT: Sure.

14 REDIRECT EXAMINATION

15 BY MS. BOYKIN:

16 Q Now, you just testified that no DNA was found on the
17 magazine and bullets; is that correct?

18 A That's correct.

19 Q Why is that? What's a possible reason why?

20 A Again, there are lower -- limits to level of
21 sensitivity of the test. It could be that there just was
22 not enough DNA present when the items were swabbed to
23 develop a DNA profile. And it also could be that due to
24 environmental factors the DNA had been degraded or broken
25 down and was not in good enough shape for us to develop a

1 profile. If an individual wore gloves when they held it and
2 it prevented the transfer of their DNA to that item. That
3 would also prohibit us from developing a profile.

4 Q So being outside for four days would have a big impact
5 on whether DNA was found?

6 A It certainly could. Environmental factors such as
7 sunlight, heat and humidity, moisture, as well as bacteria
8 and enzymes that are naturally found outdoors can have quite
9 an impact on quality of DNA and can cause severe
10 degradation.

11 MS. BOYKIN: Thank you.

12 THE COURT: Thank you for your testimony. You can step
13 down and you're free to leave or you're welcome to stay with
14 us.

15 THE WITNESS: Thank you.

16 (Whereupon, the witness stepped down from the witness
17 stand.)

18 THE COURT: Any further witnesses for today?

19 MR. SCOTT: None for today, Your Honor.

20 THE COURT: Okay. Mr. Foreman, ladies and gentleman of
21 the jury, it looks like we're going to go ahead and
22 concluded for the day. As I understand it, they -- the
23 State may have another witness or two that could not be here
24 today and will testify in the morning. So we're going to go
25 ahead and adjourn for today and I need for you to be back

1 here promptly at 9:30. You all have done a very good job of
2 being prompt and I appreciate that very much. And I hope
3 you have a good evening. Again, refrain from discussions
4 with anyone about this case. And if you happen to come
5 across any video coverage, newspaper, TV, Internet, radio
6 about this case then refrain from looking at that. And
7 we'll see you in the morning at 9:30. Okay?

8 (Whereupon, the jury was released for the day at 4:38
9 p.m.)

10 THE COURT: Anything we need to put on the record
11 before we conclude for the day?

12 MR. SCOTT: Nothing from the State, Your Honor.

13 THE COURT: Mr. Able?

14 MR. ABLE: No, sir. Thank you.

15 THE COURT: We'll be at recess until 9:30 in the
16 morning. If I could see the lawyers for just a second.

17 (Whereupon, court was adjourned at 4:39 p.m.)

18 TRIAL DAY 5-12/11/15

19 THE COURT: Anything we need to put on the record
20 before we bring the jury out?

21 MR. ABLE: Judge, right -- before we bring the jury out
22 I'd like to go ahead and -- it's my understanding that the
23 next witness will be the Greenville County sheriff's deputy
24 or lab technician, or whatever, who is going to testify
25 concerning the cell tower location information. And in

DAN KELLY: DIRECT EXAMINATION

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1 light of that I just wanted to go ahead and renew the
2 motions that I had made earlier in the week, Monday.

3 THE COURT: Right.

4 MR. ABLE: I think they've been marked as Court's
5 Exhibits 1. I think all three were marked as Court's
6 Exhibit 1.

7 THE COURT: Three motions.

8 MR. ABLE: Yes, sir. And, of course, I'm not going to
9 go into detail because we've already argued them, but I did
10 want to renew them. The first one being the argument
11 concerning the Fourth Amendment search. South Carolina
12 Constitution Article 1 Section 10 and the Fourth Amendment
13 of the Federal Constitution. The second one being what my
14 client's position is as far as procurement of these records
15 by court order as opposed to a search warrant as required by
16 the Fourth Amendment. Arguing on that motion the Graham
17 case which, of course, we're familiar with.

18 THE COURT: Right.

19 MR. ABLE: And then, of course, the last one being the
20 internal inconsistency of the secured -- or Stored
21 Communications Act, the SCA, arguing it was inconsistent
22 based upon the internal -- it was unconstitutional based
23 upon the internal inconsistency. So I would renew those
24 motions at this time, given the fact of the next witness.

25 THE COURT: Okay. And certainly those motions are

1 noted for the record and, once again, overruled. Thank you
2 very much.

3 Anything further before we bring the jury out?

4 MR. ABLE: No, sir. Not at this time. No, sir.

5 THE COURT: From the State?

6 MR. SCOTT: Nothing from the State, Judge.

7 THE COURT: All right. Mr. Bolt, you can bring the
8 jury out.

9 (Whereupon, the jury entered the courtroom at 9:39
10 a.m.)

11 THE COURT: Good morning ladies and gentlemen.
12 Solicitor, are you ready to call your next witness?

13 MR. SCOTT: I am, Your Honor. The State calls Dan
14 Kelly.

15 DAN KELLY, having first been duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Mr. Kelly, where are you employed?

20 A With the Greenville County Sheriff's Office.

21 Q What do you do there?

22 A Currently I'm the sergeant over the technical services
23 unit.

24 Q So what does that mean? What do you do on a day-to-day
25 basis?

DAN KELLY: DIRECT EXAMINATION

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1 A For lack of a -- in a nutshell we pretty much are
2 investigative support. So we support all aspects of
3 day-to-day operations, special investigations for the
4 sheriff's office.

5 Q Do you remember August 2013 a missing persons case that
6 originated in Greenville County?

7 A Yes, sir.

8 Q Involving Myranda Southern?

9 A Yes, sir.

10 Q Were you asked to do some things in the investigation
11 of that case?

12 A I was.

13 Q Pertaining to cell phone records of Ms. Southern and
14 Darrell Raines what were you asked to do?

15 A I was asked to utilize a program that we had just
16 recently acquired to incorporate those programs in there, or
17 the records from the call detail records of the tower keys
18 to plot the cell towers on that for visualization.

19 Q Let me show you State's 23. Do you recognize that?

20 A Yes, sir. These are the call detail records.

21 Q For which provider?

22 A These are for Sprint.

23 Q That would be Myranda Southern's provider?

24 A Correct.

25 Q And then State's 21 and 22, do you recognize that?

1 A Yeah. These are the Verizon records, or call detail
2 records.

3 Q Where you also given the information contained in
4 State's 24?

5 A Yes. This is the Verizon tower key.

6 Q So in those records you would get phone calls made by
7 those people, by Myranda and Darrell, and phone calls they
8 received?

9 A Correct.

10 Q And tell me about the tower key. What information did
11 you get from the tower keys provided by the cell phone
12 service providers?

13 A I think it would help to explain that -- what the tower
14 key does. Basically when you make a phone call you're
15 taking -- your cell phone is talking to a tower and a
16 certain site of that tower.

17 MR. ABLE: Judge, I'm going to object at this point. I
18 think it requires an expert's testimony for him to describe
19 how a cell phone works and how they connect to a tower.
20 There's been no information provided as to this gentleman's
21 expertise in that area.

22 THE COURT: Do you want to lay a little bit of
23 foundation concerning his -- and I'm not sure this is a
24 situation where I necessarily have to qualify him as an
25 expert. I may or may not. I don't know. But at least as

1 far as his qualifications to discuss how cell phones work,
2 if you'll lay a little bit of foundation, Solicitor.

3 MR. SCOTT: Yes, sir.

4 Q The cell phone providers gave you a tower key. Is that
5 what you were talking about?

6 A Correct.

7 Q And the tower key is what, the cell phone towers?

8 A It is the cell phone towers that were active during the
9 time that those calls were made to each others handsets, and
10 those are the actual tower keys, because the tower key shows
11 which towers were utilized by those phones.

12 Q So during the time period those phone records were
13 displayed the towers that Darrell Raines' phone was hitting
14 off of, and then during that same time period it would show
15 towers that Myranda Southern's phone was hitting off of?

16 A Correct.

17 Q So that's helpful for what reason? If you pull my
18 phone records from yesterday and you look at the phone
19 towers that my phone was hitting off of, you can tell what
20 about me?

21 A I can tell you where that handset was, in the general
22 area.

23 Q When you're talking about handset you're talking about
24 cell phone?

25 A The cell phone, correct.

1 Q So you can determine within the general location where
2 I was yesterday when I was using my phone?

3 A The general location, yes. They can tell from that
4 handset, yes.

5 Q So you did that -- you were asked to do that with
6 Darrell Raines' phone in this case?

7 A Correct.

8 Q And you were asked to do that with Myranda Southern's
9 phone on that case -- in this case?

10 A Yes, sir.

11 Q And you were able to generate using this system -- tell
12 me about this software you used. What's it called?

13 A It's called GeoTime. It's from a company called
14 Uncharted and they're out of Toronto, Canada. And it is
15 pretty much state of the art software program that takes the
16 mirror at a day that it's in a call detail record and a
17 tower key and it imports them into the system, into the
18 program, and automatically plots the data for you.

19 Q So tell me how it works. Verizon sends you in a
20 digital format --

21 A Yes.

22 Q -- all this information?

23 A Correct.

24 Q And then all you do is plug it into the software and it
25 spits out an animation for you?

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1 A That's it.

2 Q You were able to run one on Mr. Raines' phone and Ms.
3 Southern's phone, you said?

4 A Correct.

5 Q Let me show you State's 51. Do you recognize this?

6 A Yes. Yes. That's the animation that I made for you.

7 Q You recorded that and provided that to the Solicitor's
8 office?

9 A Correct.

10 Q What's on this?

11 A Basically it shows the track of the two phones.

12 Q And you brought your software here; is that right?

13 A Yes, sir.

14 Q And in reviewing here the cell phone records, were you
15 able -- or do you have personal knowledge that different
16 providers will use different cell phone towers?

17 A Yes.

18 Q So Verizon will have a set of cell phone towers and
19 Sprint would have a set of cell phone towers?

20 A That's correct.

21 MR. SCOTT: I think, Your Honor, at this time I would
22 ask that Mr. Kelly be allowed to step down, and for
23 demonstrative purposes he's going to show the software, and
24 using these coordinates he talked about he's going to
25 provide some animation for the jury to see.

1 THE COURT: All right. Mr. Kelly, when you do that,
2 since you'll be away from the microphone, just make sure
3 that you speak up loud enough if you're talking while the
4 animation is showing. Okay?

5 THE WITNESS: Yes, Your Honor.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 A This is basically a map of Greenville with the
9 extension going down into Laurens County.

10 Q You're talking about right here is Laurens County?

11 A Yeah.

12 Q And this would be, I guess, the greater Greenville
13 area?

14 A Correct.

15 Q And then is that 385?

16 A Yes, that's 385.

17 Q And then the pink icon up here, that would -- and
18 you've got the name beside it. But that would indicate
19 Myranda Southern's cell phone?

20 A Correct. This is -- basically if you looked on your
21 left, you have a timeline with the dates and the times. And
22 as you stretch this timeline out it actually starts showing
23 where they are hitting towers. Where those phones are
24 hitting towers and how they're moving through.

25 Q What date are you on right there?

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1 A That is August 17th.

2 Q For purposes of what we're doing right now I'm going to
3 ask you to go to the morning of August 18th. That's Sunday
4 August 18th. And if you could start at the beginning of the
5 day and let's kind of see where these people were going that
6 day.

7 A This is -- this is Sunday, August 18th at 0120.

8 Q What's that, 1:20 p.m.?

9 A No. I believe that's going to be 0120 in the morning.
10 Yes, 1:20 a.m. So you can see they're hitting towers in
11 different areas.

12 Q It looks like he's -- where is that? Is that downtown
13 Greenville?

14 A Yeah. That's going to be close to downtown Greenville.

15 Q And then she's in Taylors? Is that where that is?

16 A That looks like Taylors. Yes, that's Taylors.

17 MR. ABLE: Judge, if I could. There's something I need
18 to take up outside the presence of the jury very quickly.

19 THE COURT: If you'll just stop that animation, Mr.
20 Kelly. Ladies and gentleman of the jury, I have a matter of
21 law that needs to be dealt with, unfortunately outside your
22 presence, if that's okay. And so, I ask that you go back to
23 your jury room, and hopefully it won't take long and we'll
24 bring you back out. Okay?

25 (Whereupon, the jury exited the courtroom at 9:50 a.m.)

1 THE COURT: Okay, Mr. Able.

2 MR. ABLE: Yes, sir. Your Honor, I would object to
3 Officer Kelly testifying in the fashion that he is. I
4 believe now he has crossed into the field of interpreting
5 the results. Before when I objected and the Solicitor had
6 him testify, basically he testified that what he did was
7 take the information that was provided to him from the
8 exhibits. There was a -- there was a computer program. He
9 plugs that into the computer program. I agree that --
10 that's why I didn't re-raise the objection at that time
11 because basically it wasn't anything -- any technical
12 requirements, or any scientific requirements, any special
13 knowledge other than to import that information from the
14 cell tower to the cell phones into the program. His
15 testimony a few moments ago was that, you know, if he plus
16 this information in and the software generates an animation,
17 which we're reviewing now. My objection is directed toward
18 Mr. Kelly interpreting those results. I believe the results
19 are what they are. He's now taking the position of looking
20 at the results from the computer program and saying this is
21 what it shows. I think like any other exhibit, it would
22 plainly speak for itself. It could be run. The jury could
23 draw from that what conclusions they want to. But for him
24 to sit here and basically testify that he has this whatever
25 special training, he has an expertise and a special

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1 knowledge to be able to sit and interpret what these records
2 are showing. That would be my objection. I think he has to
3 be qualified as an expert to do that.

4 THE COURT: Solicitor.

5 MR. SCOTT: I don't think he's interpreted really
6 anything. I've asked him general locations on this map
7 which is labeled. And he's plugged in this data and he's
8 basically testifying to what he's showing as he's showing
9 it. I don't -- I don't know that that's any kind of
10 scientific or any kind of expert-based testimony.

11 THE COURT: Let me ask you this, Mr. Kelly. You can
12 just keep your seat right where you are.

13 THE WITNESS: Yes, sir.

14 THE COURT: Have you -- what sort of training have you
15 had in order to utilize this particular GeoTime software and
16 then interpreting what the software shows?

17 THE WITNESS: Just training online with the company
18 that creates this program, and working on several different
19 cases in the past with -- in conjunction with those trainers
20 up in Toronto. And we worked closely with that and they,
21 you know, train you on how to use the software.

22 THE COURT: All right. Have you testified in court
23 using this particular software before?

24 THE WITNESS: No, sir. This is relatively new.

25 THE COURT: How much training has that consisted of

1 insofar as training online and in conjunction with the
2 company up in Toronto?

3 THE WITNESS: I would say probably six to seven hours
4 of online training. And the phone conversations with their
5 technical people is many more hours, because we've used it
6 in several different cases.

7 THE COURT: So you have -- even though you may not have
8 testified in court using this, you have utilized it in other
9 cases?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Solicitor, do you have any
12 questions of Mr. Kelly insofar as the qualifications to
13 utilize this software?

14 MR. SCOTT: No, sir. I haven't intended on calling him
15 as an expert because I don't think any of his testimony
16 rises to the level of requiring an expert opinion. But if I
17 get a -- if I have a minute, I might be able to think of
18 what I'll qualify him as an expert in, because I certainly
19 think he would qualify. Then I would ask opinions of him at
20 that point.

21 THE COURT: Well, just take a few minutes and just look
22 at something real quick.

23 (Whereupon, a brief recess was held.)

24 THE COURT: Solicitor, while you're going whatever
25 you're doing there I'll ask Mr. Able, are there any

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1 questions you want to ask, Mr. Kelly concerning
2 qualifications or visibility or inability to explain this
3 animation?

4 MR. SCOTT: Yes, sir. Thank you.

5 THE COURT: Mr. Kelly, why don't you just have a seat
6 back in the witness stand.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness stepped back from the witness
9 stand.)

10 IN-CAMERA EXAMINATION

11 BY MR. ABLE:

12 Q Sergeant.

13 A Yes, sir.

14 Q Sergeant Kelly, okay. Sergeant, as it concerns the
15 software, the Geotime software you said it's relatively new?

16 A Yes, sir.

17 Q And I believe from what I've read, that when this
18 information was brought to you it was the first time you'd
19 ever used this?

20 A No.

21 Q Oh, it wasn't?

22 A No, sir.

23 Q One of the first times.

24 A I was one of the first few times that we've used it.

25 Yes.

1 Q And when you got this information involved in this case
2 you called one of the representatives from -- I don't
3 remember the name.

4 A GeoTime.

5 Q GeoTime, and had they help you import that information
6 into the program, correct?

7 A Correct.

8 Q I think the young lady's name was Dale Commessa?

9 A His name, yeah.

10 Q So you needed assistance to even import it into the
11 program?

12 A No. We needed assistance to port it in. I called him
13 to make sure that I was doing it correctly just to make sure
14 there were no errors.

15 Q You believe it prudent to get some help?

16 A Correct.

17 Q So once you get this information into the -- do you
18 manually get it in there? Do you have to type it in or you
19 just --

20 A It's a program. There's a call records translator, and
21 it actually pulls the tower key and the call detail record.
22 You have to have both of those in order for it to work. And
23 it actually translates those. Pulls that into the system
24 and plots it in on the map for you.

25 Q So it imports that data and then the software just

1 makes a map?

2 A Correct.

3 Q And you said you had received six or seven hours of
4 online training. Has that been since the entire time that
5 your office has utilized this GeoTime software?

6 A Yes, sir.

7 Q So back in August of 2013 how much training had --
8 online training had you used -- had you had at that time?

9 A Probably three to four hours.

10 Q And when the judge was questioning you a moment ago you
11 said you had been trained those six or seven hours, and now
12 back in August of 2013 three or four hours you were trained
13 on how to use the software?

14 A On how to use certain aspects of the software.

15 Q You weren't trained on how to interpret the results of
16 the software?

17 A Well, you have to know how to interpret the results to
18 know what you're looking at when you get it and that's part
19 of the training.

20 Q So there's three or four hours that you're discussing
21 was not just how to --

22 A How to import the data. It was also discussing the
23 results that you see. Where the towers are. The direction
24 that the tower is being utilized. Which side the handset it
25 is hitting off of. That sort of thing.

1 Q And that was all inclusive of that three or four hours?

2 A Yes, sir.

3 Q And you've not testified concerning this software
4 before?

5 A No, sir.

6 Q And you've not been qualified as an expert in any court
7 on the use of the GeoTime software?

8 A No, sir.

9 MR. ABLE: One moment, Your Honor.

10 THE COURT: Sure.

11 MR. ABLE: That's all I have. Thank you.

12 THE COURT: Any questions concerning qualifications,
13 Solicitor?

14 MR. SCOTT: Yes, sir.

15 IN-CAMERA EXAMINATION

16 BY MR. SCOTT:

17 Q About how many hours do you think in today you spent
18 using this program?

19 A Total in all the cases that we've worked? Probably
20 more than 100 hours.

21 Q That's using -- it's called GeoTime?

22 A GeoTime.

23 Q And that's the GeoTime software?

24 A Yes. You have the records translator and everything in
25 order to do all the -- all the information that's needed and

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1 all the data that's needed to get it into the system.

2 Q And then you say seven hours or so of training to use
3 the software?

4 A Correct.

5 Q And then you're -- you're in what unit at the
6 Greenville Sheriff's Department?

7 A Technical Services Unit.

8 Q About how many cases have you used this software on?

9 A We've used it in about nine cases for the Greenville
10 County Sheriff's Office. I've done four for the Greenville
11 City Police Department.

12 Q So 13 in all.

13 MR. SCOTT: I hadn't intended on doing it, but I would
14 offer Dan Kelly as an expert in cell tower plotting using
15 the GeoTime software.

16 THE COURT: Sergeant Kelly, I want to ask you. The
17 part of tech support that you've managed, does that utilize
18 just in general the use of computers and different
19 functions?

20 A. Yes, sir. Every day.

21 Q. And how long have you been in this division or
22 this department?

23 A. I've been a sergeant over that unit for 15 years.

24 Q. Would you consider yourself to be computer savvy?

25 A. Yes, sir.

1 Q. And in order to operate this software and
2 interpret the results do you have to have computer
3 expertise?

4 A. Yes, sir.

5 Q. What we'll -- I'm going to find him to be an
6 expert for the very limited purpose of utilizing and
7 analyzing and interpreting using this GeoTime software, and
8 analyzing and interpreting the results. For that limited
9 purpose. What you're going to need to do, Solicitor, is
10 when we bring the jury out we're going to need to go through
11 this qualification. So, Mr. Able, if you want to re-ask any
12 questions you would like to ask, and he would need to be in
13 front of the jury found to be an expert for this limited
14 area.

15 MR. ABLE: Yes, sir.

16 THE COURT: Okay. Mr. Bolt, bring the jury out,
17 please. Under Rule 702 I think that it's necessary that he
18 be qualified as an expert to provide some assistance to the
19 jury to understand what that animation is showing.

20 (Whereupon, the jury entered the courtroom at 10:07
21 a.m.)

22 THE COURT: Ladies and gentleman, the Solicitor is
23 going to -- and Mr. Able will want to as well, kind of go
24 into Sergeant Kelly's background and qualifications as it
25 relates to this particular computer software. You may

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1 proceed.

2 MR. SCOTT: Yes, sir.

3 VOIR DIRE

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Sergeant Kelly, you are over -- tell us the division
7 again at the Greenville Sheriff's Department.

8 A The unit I'm over is the Technical Services Unit.

9 Q And how long have you been over that unit?

10 A For 15 years.

11 Q And tell us again your day-to-day activities? You were
12 --

13 A For an Investigative Support Unit we utilize several
14 different technical programs to assist in investigations.
15 Some of them are Internet based. Others are stand alone
16 programs such as GeoTime. We use whatever we have necessary
17 to help an investigation come to fruition.

18 Q Let's get back to GeoTime. This software that kind of
19 tracks cell phone tower locations. Did you have to have
20 some training in order to learn how to use this system?

21 A Yes.

22 Q Approximately how many hours have you had?

23 A Approximately six to seven hours.

24 Q And that's through the company that manufacturers the
25 software?

1 A Yes, sir.

2 Q But then real time training, or as far as your use of
3 the program, about how many hours do you think you spent
4 using this program?

5 A On and off probably over 100 hours.

6 Q And approximately how many cases have you used this
7 program on?

8 A Right around 13, 14.

9 MR. SCOTT: Your Honor, at this time we would offer
10 Sergeant Kelly as an expert in cell tower plotting using the
11 GeoTime software.

12 THE COURT: Okay. And, Mr. Able, any examination to
13 Sergeant Kelly related to qualifications?

14 MR. ABLE: Yes.

15 VOIR DIRE CROSS-EXAMINATION

16 BY MR. ABLE:

17 Q Sergeant, as to the GeoTime software, it's my
18 understanding you get the information, you import the data
19 into the software and the software plots out these
20 locations?

21 A Correct.

22 Q And it doesn't take any expertise or special knowledge
23 in how to import the information to the software?

24 A You have to have a working knowledge of Microsoft Word
25 Excel, PDF, TXT files. And all of those are used in

DAN KELLY: DIRECT EXAMINATION

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1 conjunction with the CRT program which imports that software
2 in there. And the CRT portion is actually new as of about a
3 year ago. Everything else we had to do by hand in Microsoft
4 Excel to import it into GeoTime.

5 Q Now, the training you said you had, the six or seven
6 hours of training, that's online training?

7 A Correct, sir.

8 Q And back in August of 2013 you would have had about
9 three or four hours online training in this particular
10 software?

11 A That's correct, sir.

12 Q And you've never testified in court before about this
13 software?

14 A No, sir.

15 Q You've never been qualified as an expert before?

16 A No, sir.

17 MR. ABLE: That's all I have, Judge, on that point.

18 THE COURT: All right. Thank you very much. I'm going
19 to find that Sergeant Kelly is an expert in the limited area
20 of cell phone tower location as it relates to the use and
21 interpretation of the GeoTime software program.

22 MR. SCOTT: Thank you, Your Honor. And again, I'm
23 going to ask Sergeant Kelly to leave the witness stand and
24 step down here to demonstrate some of the GeoTime software.

25 THE WITNESS: With your permission, Your Honor.

1 THE COURT: Yes, sir.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 Q Sergeant Kelly, what is the time -- what is the date
5 and the time period we're looking at right now?

6 A It shows the time range up here. You'll see that the
7 first time that you see on the map would be August 17th at
8 22:21 and the last time would be August 18th at 0213.
9 That's the window of timeframe that we're looking at.

10 Q If you would, just for purposes of this demonstration,
11 what we're really interested in as the comings and goings of
12 both these phones on the 18th and the 19th. If you could,
13 go to the August 18th.

14 A This is August 18th at 0120.

15 Q So what we're seeing there is at 1:03 Mr. Raines' phone
16 is --

17 A Yes. That's at 3:59 in the afternoon. 15:59 hours.

18 Q Sunday, August 18th at about 4:00 p.m. he's up here in
19 the --

20 A Greer.

21 Q -- Greer area?

22 A Correct.

23 Q Now, then I'm seeing that Myranda is located right here
24 off of 385. Is that around Simpsonville?

25 A I believe that's right around the Mauldin, Simpsonville

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1 area, around -- I think when we look at the map, I can zoom
2 in there. I think that's around where Charter
3 Communications is.

4 Q And that would -- that's around her working hours, I
5 guess. So that's consistent with being near Charter
6 Communications just off 385 in the Mauldin, Simpsonville
7 area?

8 A Yes, sir.

9 Q If you would --

10 A I'm trying to rebuild.

11 Q It looks like -- is that Mr. Raines, the blue?

12 A Yes.

13 Q Has he hit a tower yet, or do you need to let the
14 animation --

15 A There's the tower that he hit here.

16 Q That's an event. And that is at -- what's the time?
17 What is 19:29?

18 A That's 7:29 p.m.

19 Q 7:29 p.m. on August 18th. 7:29 p.m. his tower is
20 hitting down in the Gray Court area?

21 A Yes, sir.

22 MR. ABLE: Judge, I object to the leading.

23 Q Zoom in on that, please, if you could.

24 THE COURT: Try to rephrase it a little bit, Solicitor.

25 Q Sergeant Kelly, are you familiar with that general area

1 where that would be located?

2 A I'm vaguely familiar with that. It's 385 and 14. Also
3 known as the Gray Court area.

4 Q Would you continue the animation, please. And that's
5 7:29?

6 A Yes, sir.

7 Q 7:29 on the 18th and he's down in the Gray Court area?

8 THE COURT: That's p.m. or a.m., Solicitor?

9 MR. SCOTT: P.m., Your Honor.

10 Q And you continued the animation. He is tracked where?

11 A It looks -- it appears he's going up 385. He's hitting
12 towers along 385.

13 Q So he hit the tower on 385 at what time?

14 A At 20:02 hours, which is 8:02 p.m.

15 Q So about 8:00 p.m. he's coming back up 385 is what the
16 animation is showing?

17 A Yes, sir.

18 Q What's Myranda up to?

19 A She's going -- it looks like she's back around Charter.

20 Q She's still at work. Could you continue the animation,
21 please? What event was that?

22 A Sunday, August 18th at 23:03 hours, which is 11:03 p.m.

23 Q 11:00 p.m., one hour before Myranda gets off work,

24 where was -- where was Darrell Raines? What general area?

25 A In the same general area.

DAN KELLY: DIRECT EXAMINATION

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1 Q What same general area?

2 A This was in downtown Greenville where this tower was
3 hit.

4 Q So it's your testimony at 7:30 he's down in Gray Court,
5 and then 11:00 he's back in downtown Greenville --

6 A Correct.

7 Q -- and Myranda is at Charter?

8 A Yes.

9 Q What's his next event?

10 A Monday, August 19th at 0003 hours, which is three
11 minutes after midnight.

12 Q Three minutes after midnight where is Darrell Raines?

13 A Right near Charter.

14 Q Right near where?

15 A Charter Communications.

16 Q Midnight, the 18th going into the 19th, Darrell Raines
17 is using a tower right near Charter Communications. Where's
18 Myranda's phone?

19 A Her phone at 0009 hit right there at the Charter
20 Communications. Right in that area.

21 Q So about nine minutes after midnight she's around the
22 general vicinity of Charter Communications?

23 A Correct.

24 Q If you could, I guess, zoom back out and let the
25 animation play. 12:51 a.m.

- 1 A Correct.
- 2 Q And that is event on whose phone?
- 3 A Myranda's phone.
- 4 Q And what is the general area she's in?
- 5 A That is over in Laurens County.
- 6 Q Laurens County, just shy of 1:00 a.m., her phone --
- 7 A Near Woodruff.
- 8 Q Sorry?
- 9 A Near Woodruff.
- 10 Q Near Woodruff. Her phone is using a tower near
- 11 Woodruff. Where's his phone at this point?
- 12 A It shows the last hit on his phone at 0003 hours.
- 13 Q So the last time his phone used a tower was that
- 14 midnight range right around the Charter Communications you
- 15 testified to?
- 16 A Yes, sir.
- 17 Q And then what does her phone do after that event?
- 18 A It moves back towards Greenville city.
- 19 Q So her phone, just shy of 1:00 a.m., is -- you're
- 20 saying Laurens County?
- 21 A Yes.
- 22 Q And then what does it do?
- 23 A Then it -- the next time it hit was downtown
- 24 Greenville.
- 25 Q What time was that?

DAN KELLY: DIRECT EXAMINATION

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1 A I'll have to zoom in. 03:30.

2 Q 3:30 a.m. 3:30 a.m. Where is Mr. Raines' phone at
3 3:30 a.m.?

4 A 3:30 a.m., right there in downtown Greenville.

5 Q Thereafter where does his phone go?

6 A Let me zoom out. It heads towards Berea.

7 Q After 3:30 downtown Greenville it goes up to Berea. Do
8 you have any idea how long it takes to get from Greenville
9 up to Berea?

10 A From downtown to Berea it's probably six to seven
11 minutes in light traffic.

12 Q Does Myranda's phone ever move again from this area?

13 A At 04:05 -- that one's 04:05, and that is -- it does
14 not move from that area.

15 Q Myranda's phone tracks to downtown Greenville and never
16 moves again?

17 A Correct.

18 Q And now we're seeing the movements of Mr. Raines when?

19 A After. After he went to Berea. 10:50 in the morning.

20 Q All right. 10:50 the next morning he goes where? Back
21 downtown Greenville?

22 A He's on the outskirts on the west side of Greenville.

23 Q And then where does he go the next day?

24 A That's 11:52 a.m., over towards -- let's see. It looks
25 like the Saluda area. After that he heads back into

1 downtown Greenville, then out Wade Hampton Boulevard into
2 Greer.

3 Q Were's that? Where's he back down to? What is that?

4 A 3:56 in the afternoon on the 19th.

5 Q Hold on one second. 3:56 on the 19th he goes back down
6 to Gray Court. 3:56 in the afternoon on the 19th you're
7 saying he's back down in Gray Court?

8 A Yes, sir. Then back to Greer. In the Greer area, and
9 then back over towards this area here, which is back in the
10 Simpsonville area.

11 Q So, in analyzing the software, is it your testimony
12 that on the 18th Mr. Raines' phone around 7:30 p.m. was down
13 in Gray Court?

14 A I'm sorry. What time?

15 Q Around 7:30 p.m. on the 18th his phone was down in Gray
16 Court?

17 A Yes, sir.

18 Q And then the next afternoon around 4:00 p.m. his phone
19 was back down in Gray Court?

20 A Correct.

21 Q I think that's -- I think that's all I have as far as
22 -- let me ask you just a couple more questions since -- I
23 think we can hear okay. Now, if I have my cell phone and I
24 drive up to Greenville and I make a phone call, presumably
25 I'd use a cell phone tower in the Greenville area?

DAN KELLY: CROSS-EXAMINATION

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1 A Yes, sir.

2 Q What affect would it have if I turn my phone on the
3 airplane mode and then traveled up to Greenville?

4 A You wouldn't hit any cell towers because it's not
5 sending out a cell signal.

6 Q So that's one way to avoid hitting towers is to just
7 switch it to the airplane mode?

8 A Yes, sir.

9 Q Likewise, if I took my battery out would I hit the
10 towers?

11 A No, sir.

12 Q But if I cut my phone off it would still hit towers?

13 A It would still try and track towers in the area if the
14 phone was off.

15 Q If I turn to airplane mode or took the battery out I
16 could avoid hitting towers and being tracked?

17 A Yes, sir.

18 Q State's 51. Does this demonstrate some of the
19 animation you just showed up there?

20 A Yes, sir.

21 MR. SCOTT: Your Honor, State would offer State's 51
22 for admission into evidence.

23 THE COURT: Mr. Able --

24 MR. ABLE: Subject to my prior objections.

25 THE COURT: Right. 51 is into evidence for the State.

1 That is a CD?

2 MR. SCOTT: Yes, sir.

3 (Whereupon, State's Exhibit No. 51 was admitted into
4 evidence.)

5 THE COURT: Are you finished with this witness,
6 Solicitor?

7 MR. SCOTT: I am, Your Honor.

8 THE COURT: Mr. Able, cross-examination?

9 MR. ABLE: Yes, sir.

10 THE COURT: Do you want the witness where he's seated
11 or you want him back at the witness stand?

12 MR. ABLE: He can return to the stand.

13 (Whereupon, the witness returns to the witness stand.)

14 CROSS-EXAMINATION

15 BY MR. ABLE:

16 Q Sergeant, we're not talking about GPS here, Global
17 Positioning System? We're not talking about that type
18 technology, are we?

19 A No, sir.

20 Q When the Solicitor was asking you questions concerning
21 your animation up here, most of his questions -- not all of
22 them, but most of his questions were prefaced upon the words
23 general area. That's what we're talking about. And I think
24 during your direct examination when you were on the stand,
25 we're just talking about general areas here, right?

DAN KELLY: CROSS-EXAMINATION

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1 A Correct.

2 Q For something like GPS that's more sophisticated. You
3 can pinpoint a person's location with GPS?

4 A You can pinpoint it to within a degree of accuracy,
5 yes.

6 Q And what this software is doing, the GeoTime software,
7 to tell you -- to figure out where a cell phone is based
8 upon what cell tower it's connected to?

9 A Correct.

10 Q Again, in a very broad general area?

11 A Within a general area around that tower, yes.

12 Q And because a cell phone, or someone's cell phone is
13 connected to a particular tower it doesn't give their exact
14 location. It just says it was connected to that tower?

15 A Correct.

16 Q And a lot of different variables go into what tower a
17 cell phone connects to?

18 A Yes, sir.

19 Q And as I understand it, a cell phone will usually try
20 to connect to a tower that has the most strength or -- I
21 don't know if that's the correct word or not, but wherever
22 can get the strongest signal?

23 A Correct. The one it's closest to is usually the one it
24 will hit first.

25 Q Usually but not always?

1 A Right.

2 Q So it can -- a cell phone can get a stronger tower from
3 a -- a stronger signal from a tower many miles away?

4 A Yeah. Certain towers have different wattage
5 capabilities where they can put out more power. A tower
6 such as downtown Greenville would not have as much strength
7 because it has a large population that it could serve by not
8 having much power. But a tower out in the country would be
9 -- would have a further range.

10 Q So you're saying then you would get better reception in
11 a rural area than you would in a --

12 A No. You'd be able to connect to the tower. It's not
13 that you would get better reception.

14 Q So this software doesn't provide us with a pinpoint of
15 --

16 A No, sir.

17 Q -- anything but -- and it doesn't show where -- for
18 example, it doesn't show the location or the final
19 destination of the cell phone. It just shows where the
20 tower it was connected? I mean, for somebody to connect to
21 a Gray Court tower or a Laurens tower doesn't mean you have
22 to be in either Gray Court or Laurens?

23 A If you're going to connect with that tower you have to
24 be within range of that tower.

25 Q You have to be within range of the tower, but it

DAN KELLY: REDIRECT EXAMINATION

621

1 depends upon how -- the strength of the signal and what
2 range that tower has?

3 A Correct.

4 Q So you can be many miles from a tower and still connect
5 to that tower?

6 A Yes, sir.

7 Q My point is, where you're showing the terminus of these
8 lines, that doesn't mean that's where the phone was or a
9 person with that phone?

10 A It shows the handset was connected to that tower at
11 that time.

12 Q That's right. Not where it was. It's showing it was
13 connected to a tower?

14 A Correct.

15 Q Now, as I would view the animation it shows that Mr.
16 Raines' cell phone was no further south than a Simpsonville
17 tower during the early morning hours of August 19th.

18 A Correct.

19 Q It doesn't show him in the Gray Court area?

20 A No, sir.

21 Q And this animation doesn't show him on Bramlett Church
22 Road?

23 A No, sir.

24 Q And this animation doesn't show him in a field on
25 Bramlett Church Road?

1 A No, sir.

2 Q So from this animation you cannot say Darrell Raines
3 was on Bramlett Church Road in Laurens County during the
4 early morning hours of August 19th, 2013?

5 A The only thing the animation shows is where the handset
6 was.

7 Q Shows where the handset was in relation to connection
8 to that tower?

9 A Right. While it was on, yes.

10 MR. ABLE: That's all I have.

11 THE COURT: Anything on redirect, Solicitor?

12 REDIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q Mr. Able asked you, you answered the tower that you hit
15 on could be many miles away and you said yes?

16 A Yes, sir.

17 Q And an urban area generally has -- what's the range of
18 a cell phone tower?

19 A It varies depending on the cell phone company and their
20 service that they have. If they have 100,000 clients in
21 that area it wouldn't a very strong tower to do that. The
22 further you get out the stronger they need in order to hit a
23 good customer base.

24 Q Well, do you have a general idea of what the range is?

25 A It could be anywhere from three to five miles downtown

1 to 50 to 100 miles out in the country.

2 Q Do you have an explanation while on the same night Mr.
3 Raines' phone would be hitting in the greater Greenville
4 area and then down in the Gray Court area?

5 A If it was in airplane mode or if it was turned off or
6 the battery was out. That's the only reason that it would
7 --

8 MR. ABLE: I don't think that was the testimony, Judge,
9 on the night of August 19th.

10 THE WITNESS: I'm sorry. I may have misunderstood the
11 question.

12 MR. SCOTT: Let me ask again.

13 THE COURT: Repeat the question.

14 Q Let's use, for example, the day of the 18th. Was there
15 any reason, or what's your explanation for his phone using
16 towers in Greenville, Berea and then down in Gray Court
17 around 7:30 p.m.? What's that indicate, in your opinion as
18 an expert in this software, what is your opinion of why his
19 phone would hit down in Gray Court?

20 A That phone hit that tower if it was there.

21 Q So it's your opinion that his handset was in the
22 general vicinity of Gray Court, South Carolina?

23 A If that's where the handset shows on that tower, then
24 that handset was nearby.

25 Q Now, Mr. Able asked you, in the early morning hours of

1 the 19th, between midnight -- well, the midnight on the 18th
2 leading into the 19th, your testimony was that his phone was
3 near Simpsonville; is that right?

4 A Near the Mauldin area, where Charter was at midnight.
5 Near there.

6 Q You live up in Greenville, don't you?

7 A Yes, sir. Mauldin.

8 Q Are you familiar with the Bi-Lo on Highway 14 in
9 Simpsonville?

10 A Yes, sir.

11 Q And what -- how far away is that from the Charter
12 Communications?

13 A I couldn't give you an exact distance, but it's
14 probably five to 10 miles.

15 Q Is it the general vicinity -- or is it near the Charter
16 Communications?

17 A It's not far.

18 Q So it's in Simpsonville, I guess you'd say?

19 A Yes, sir.

20 Q So is it your testimony that around midnight, 12:03,
21 that there was an event using Darrell Raines' phone right in
22 Simpsonville area?

23 MR. ABLE: Judge, I think that was elicited on direct
24 examination.

25 THE COURT: But it's in response. I'll overrule it.

DAN KELLY: REDIRECT EXAMINATION

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1 He's allowed to ask it. Repeat your question, Solicitor.

2 Q Mr. Able asked you the last time there was an event on
3 Raines' phone, or the 12:03 a.m. event, and that was where?

4 A That was near Charter in Mauldin, just north of
5 Simpsonville.

6 Q In your animation it appears that his icon sort of
7 drifts a little bit while Myranda's continues down to Gray
8 Court.

9 A Yes, sir.

10 Q Is there an explanation for that?

11 A Yes. When -- if her -- if her cell phone continues on
12 further south and hits a tower down there and his stays
13 there and slowly moves north towards Greenville City, what
14 it's doing is it's tracking to its next point. To the next
15 time it hits a tower. So based on the time and difference
16 in time, it's going to click on the next tower. So it's
17 slowly going to move in that direction until it hits that
18 time.

19 Q So it doesn't mean that at that time he's actually
20 moving north. Is that your --

21 A Correct.

22 Q And again, what effect would it have setting your phone
23 to airplane mode?

24 A No cellular signals go out --

25 MR. ABLE: Asked and answered, Your Honor.

1 THE COURT: That's been asked and answered.

2 MR. SCOTT: Nothing further, Your Honor.

3 THE COURT: Is there anything on recross?

4 MR. ABLE: No, sir. Thank you.

5 THE COURT: Thank you, Sergeant Kelly, for your
6 testimony. You can step down. You are free to leave or
7 you're welcome to remain with us.

8 THE WITNESS: Thank you, Your Honor.

9 MR. SCOTT: Your Honor, the State rests.

10 THE COURT: Thank you very much, Solicitor.

11 Mr. Foreman, ladies and gentlemen of the jury, this is
12 kind of the part of the case we're going to take a break.
13 The State has rested. In other words, they're not putting
14 up any other evidence or witnesses in their case in chief.
15 So I'm going to ask you go to back to the jury room. Take a
16 morning break. And we'll bring you back out shortly. Once
17 again, don't begin any discussions among yourselves about
18 this case. Okay?

19 (Whereupon, the jury exited the courtroom at 10:38
20 p.m.)

21 THE COURT: We'll take a short recess and I'll come
22 back and entertain any motions that need to be made.

23 (Whereupon, a recess was held from 10:38 a.m. to 10:54
24 a.m.)

25 THE COURT: We're back on the record. Mr. Able, do you

1 have any motions you want the Court to entertain?

2 MR. ABLE: Yes, sir. I do. Judge, at this time, of
3 course, I would move pursuant to Rule 19 for a directed
4 verdict in this case. Of course, in a case like this when a
5 motion for a directed verdict is made the Court is concerned
6 with the existence or none existence of evidence and not its
7 weight. And in a case like this where it's a circumstantial
8 case the Court -- our Supreme Court has held that the Court
9 should direct the verdict -- the Court should direct a
10 verdict motion when the evidence merely raises a suspicion
11 that the accused is guilty. A suspicion implies a belief or
12 opinion as to guilt based upon facts or circumstances which
13 do not amount to proof. And I cite the case of State vs.
14 Hepburn, 406 S.C. 416. Judge, it's our position in this
15 case that the evidence produced by the State merely raises a
16 suspicion that Darrell Raines committed the crime. The
17 crimes that he's been indicted for. And this mere suspicion
18 is insufficient at this point, and the Court should direct a
19 verdict in the Defendant's favor. The State, of course, as
20 I've said, they must show substantial circumstantial
21 evidence which a directed verdict motion at this point.

22 Judge, what the State has basically shown, number one,
23 is that -- which is not being contested, that Myranda
24 Southern died as a result of homicide. That's uncontested,
25 as I said. Number two, they've shown that my client owned a

1 weapon. A Hi-Point -- I think it was a Hi-Point --

2 THE COURT: .380.

3 MR. ABLE: -- CP .380. Yes, sir. I was trying to
4 remember the letter. A .380. A Hi-Point .380. Of course,
5 the State's expert, ballistics person from SLED, said that
6 she could not identify the weapon owned by my client as the
7 gun that was utilized to shoot Miranda Southern. And the
8 reason being, it was because of the condition of the bullet
9 that was removed from Ms. Southern. Not because of anything
10 that had subsequently been done to the gun. But the results
11 there were inclusive. They've shown suspicion by the
12 animation that was just produced concerning the location of
13 my client's cell phone and the cell phone of Ms. Miranda
14 Southern. And as Sergeant Kelly testified at the end of my
15 cross-examination, as a result of the GeoTime software and
16 the plotting of the cell phone towers and the locations of
17 the telephones, he could not testify, and the Court didn't
18 qualify him as an expert when I raised the issue, he could
19 not testify in his opinion -- expert opinion that during the
20 early morning hours of August 19, 2013 Darrell Raines, nor
21 his phone, were on Bramlett Church Road in Laurens County,
22 nor that Darrell Raines or his phone were in that field on
23 Bramlett Church Road during those times. They've not
24 produced any video evidence placing these two together
25 during the time in question. They haven't produced a

1 witness that places the two of them together during this
2 time in question. So as far as the location, all they have
3 is suspicion, just like with the gun. The gun is suspicious
4 but it's -- their own expert says it's inconclusive. They
5 have -- as far as a witness they have Ms. Yates who had
6 testified, I think the second day of trial, that she heard
7 these shots. She looked out her window in proximity, you
8 know, less than 50 yards from the field, not even that far,
9 and that she couldn't see anything. So there's nothing to
10 place my client in that field on Bramlett Church Road.

11 They've next shown you, after you take all that
12 evidence as a whole, that my client used his bank card. He
13 never denied that. He explained that during his first
14 statement, and then the video statement that we watched
15 Wednesday. Of course, using someone's ATM card, having
16 someone's ATM card doesn't demonstrate any of the elements
17 of the crimes that he's charged with. It doesn't show
18 anything of that nature just by using her card. I can't
19 remember the young lady's name, Ms. Searcy, I think it was.
20 The first witness. As far as the use of the card, that Ms.
21 Southern had loaned her the card and her pin number at times
22 and she had used the card. So just use of the card, having
23 the card, again, suspicious, but it doesn't carry the day in
24 a case like this. And also I point out that the bank
25 representative from BB&T, Ms. Cervetti, testified that the

1 card had been used at 11:56 p.m. on August 18th, 2013 when
2 Myranda Southern was supposed to be getting off work. So
3 the card was being utilized during that time. Even though
4 it's the State's contention that Ms. Southern had her card,
5 but based upon the videos and the bank records that she'd
6 use the card, I think, at 8:00 -- or between 7:00 and 8:00
7 that evening of the 18th while she was at work and on her
8 lunch break. But then the bank representative, Ms.
9 Cervetti, said, well, the card had been used again. Her
10 records showed that the card had been used again at 11:56
11 p.m. that night the 18th when she was at work.

12 As going to other evidence in the case, or lack thereof
13 as far as the existence or nonexistence. I've already
14 spoken about the gun. Spoke about the bank card. The fact
15 that the State's expert, DNA expert, identification expert
16 testified that there were samplings taken, and one of those
17 samplings from one of the hands of Ms. Southern, underneath
18 the fingernail sampling, excluded my client as a contributor
19 to that.

20 So, Judge, at this point I think that the State has
21 failed in its necessity to show a substantial circumstantial
22 evidence case. Again, there's no evidence that Mr. Raines
23 and Ms. Southern were together that night. No fingerprint
24 evidence to place Mr. Raines at the scene. The -- Ms.
25 Hezel, the SLED forensic expert for the State, said there

1 was no footprints, no tire tracks or anything like that at
2 the scene. They can't show that the weapon used was the one
3 that was used to inflict any injuries upon this lady.

4 So while there is suspicion, Judge, all right, you
5 know, there's no getting around that. There's suspicion.
6 But, of course, we don't deal in suspicion. That's what
7 Hepburn and the other cases say. We deal in substantial
8 circumstantial evidence. And while the State has produced a
9 volume of evidence, I think once you boil it down it's kind
10 of, you know, simple as far as the directed verdict motion.
11 They raise a suspicion of all this evidence. But as I said,
12 we don't deal in suspicion. We deal in substantial
13 evidence, and we don't believe it's here, and it's not
14 enough to require -- to survive a directed verdict motion.
15 So we would ask that the Court direct a verdict in favor of
16 the Defendant in this case.

17 THE COURT: Thank you, Mr. Able. Solicitor, do you
18 want to respond to Mr. Able's motion for directed verdict?

19 MR. SCOTT: Yes, Your Honor, I do. Well, we have
20 produced substantial and significant circumstantial
21 evidence, almost -- almost so much I can't keep it straight,
22 Your Honor. Just looking at a few things. We've got the
23 box. And the way that comes to us is because they ask him
24 do you have a gun, Mr. Raines, and he said, I have a nine
25 millimeter, when any person would say I have a .380 and a

1 nine millimeter. Now, why would he fail to tell law
2 enforcement that? Because he knew what law enforcement
3 would find down there. He knew they would find that clip
4 down there in the field, and that's why he was down there
5 the next day after she was murdered. He was looking for
6 that clip. So, of course, he's going to -- he's not going
7 to tell them why he doesn't have a -- why he has a nine
8 millimeter instead of a .380. Of course it's going to come
9 back in this box because he sent it off to Hi-Point to get
10 it retooled because he knew they were going to find the clip
11 in the field. He knew they were going to find his bullet in
12 her neck. He doesn't want to get it traced back to him.

13 The phone records, we just went over that. He tells
14 law enforcement I haven't been to Gray Court. I was at home
15 with mom that night. But the records don't lie. His cell
16 phone doesn't lie, and we know where he was. He was right
17 at Charter Communications midnight that night right when she
18 got off. The bank card in and of itself, I think that
19 alone. Law enforcement has a missing person. They run her
20 bank records. They say, okay, well, she gets off work at
21 midnight. We can account for her at midnight. She
22 disappears off the face of the earth. But then her bank
23 records are showing two balance inquiries and then a
24 withdraw at 3:30 a.m. that night. They pull it and they see
25 Darrell Raines. They ask him about it. He says, oh, okay.

1 Well, yeah, that's right. I got it Sunday morning on the
2 18th. Well, that's a lie right there because we got her
3 using that card at 1:20 p.m. that day and then later on 8:00
4 p.m. that night just four hours after she gets off work. So
5 anybody can just deduce right then that he did have some
6 contact with her after 8:00 and, you know, before 1:30 a.m.,
7 which is when we know the gunshots were heard and when she
8 died.

9 All the deleted calls and the texts and which ones he
10 was deleting. That's so important here, because it's
11 showing what -- his coverup. It's showing what he's trying
12 to prevent law enforcement from seeing before they get his
13 phone. He's going to turn it over voluntarily. He knows
14 it's coming, and he's going to try to delete as much of that
15 information as he can before he turns it over to law
16 enforcement. He didn't understand that a phone extraction
17 were able to get his deleted information that he's deleted
18 off his phone that for some reason people don't know about.
19 The phone calls to Hi-Point and Bi-Lo. Judge, that's so
20 important because that is days before her car is found at
21 that specific Bi-Lo in Simpsonville. He calls two different
22 numbers associated with the Bi-Lo in Simpsonville days
23 before law enforcement finds her car at that Bi-Lo.

24 I could go on, Your Honor. I think Your Honor has
25 taken extensive notes on all the evidence. But I would just

1 argue that maybe -- maybe I'm getting ahead of myself.
2 Maybe I should save some of this for closing argument. But
3 the circumstantial evidence is significant and it is
4 substantial and it does get us past this directed verdict
5 argument.

6 THE COURT: Thank you very much. Yeah, I've kept a lot
7 of notes and I made a list of what I consider -- what I
8 considered to be substantial circumstantial evidence in this
9 case, and I've got it numbered at up to 21 different things.
10 And I'm not going to go over all that. The argument, Mr.
11 Able, that you have made concerning him not being seen in
12 the field, the DNA, not the -- the no match concerning DNA
13 and those sorts of things, that would be direct evidence.
14 And I agree. None of that is there, but that's direct
15 evidence. So what I've got to look at is circumstantial
16 evidence. I think that it is significant the fact that he
17 purchased a .380 gun just two days before this murder and it
18 was a .380 that killed Ms. Southern. I think it's
19 significant that either one day, two days or three days
20 after the alleged murder that the .380 was shipped off to
21 the manufacturer. I think it's very significant the fact
22 that, and Solicitor Scott alluded to this, the ATM card.
23 Contrary to what the Defendant told police that he had
24 possession of the card when, in fact, he did not because the
25 video at both 7-Elevens show that she had the card and the

1 bank records show that she -- she used the card. So I do
2 think that that's significant. I think it's somewhat
3 significant certainly in and of itself, would not carry us
4 anywhere, but the fact that the \$300 and the ATM card was
5 not found in the end table as stated repeatedly by the
6 Defendant during his second interview. Deleting calls and
7 texts. I don't know why you'd do that. Why you delete
8 calls and texts. I think that's -- I think some of the
9 evidence related to the GeoTime animation is important as
10 far as showing various location of both the parties. And,
11 you know, I could go and on. I think that viewing the
12 evidence in the light most favorable to the State is
13 certainly how I have to do it, I do believe that there is
14 the existence of more than just a suspicion and the
15 existence of substantial circumstantial evidence that would
16 cause me to respectfully deny your motion for directed
17 verdict.

18 MR. ABLE: Yes, sir.

19 THE COURT: Okay. If you haven't already explained to
20 Mr. Raines what I have to advise him concerning his right to
21 testify or not testify. If he's familiar with that. I'll
22 need Mr. Raines, would you stand, and Madam Clerk, would you
23 swear him in, please.

24 DARRELL RAINES, having first been
25 duly sworn, testified as follows:

1 THE COURT: Put your hand down and remain standing, Mr.
2 Raines. At this time I'm going to explain to you certain of
3 your rights, and if you do not understand anything that I
4 saw to you, please let me know that. If you want me to
5 explain anything in more detail, please let me know that as
6 well. Do you understand, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, we have now reached the stage of this
9 trial where you may present your defense. You have the
10 right to claim the protections given to you by the Fifth
11 Amendment to the Constitution of the United States, and this
12 amendment states in part, "No person shall be compelled in
13 any criminal case to be a witness against himself. This
14 means that you cannot be required to testify in this case.
15 You have the right to testify on your own behalf. However,
16 no one, including myself, can make you testify. This is a
17 personal right and no one can waive this right except you,
18 sir. If you decide to testify, you'll be subject to the
19 same rules that govern other witnesses and you may be
20 examined and cross-examined on any relevant issue in this
21 case. In addition, if you have any convictions involving
22 dishonesty or false statements, or crimes punishable by
23 imprisonment for more than one year, and this Court
24 determines that the probative value of admitting this
25 evidence outweighs its prejudicial affect to you, the

1 Solicitor would be able to introduce your record to attack
2 your credibility. However, I don't think you have a prior
3 record. At least that's what's been -- I've been told that.

4 MR. ABLE: I don't think that would be applicable.

5 THE COURT: Right. But anyway. If you decide to
6 testify, this decision on your part must be freely,
7 voluntarily and intelligently made with the knowledge of
8 protections given to you by the Fifth Amendment and the
9 consequences of your decision to testify. If you decide not
10 to testify, I will instruct the jurors that they cannot give
11 the fact that you did not testify any consideration
12 whatsoever and that there's to be absolutely no prejudice to
13 you because you did not testify. I'll even go further and
14 instruct them they can't even talk about it in the jury room
15 when they start their deliberations. This matter is left
16 entirely up to you whether or not you testify. You can talk
17 with your attorney, and I'm sure you already have. You can
18 talk to any family members, friends, anyone to assist you in
19 making this decision whether or not you will testify, but
20 the final decision must be left entirely up to you.

21 Have you understood everything I've explained to you,
22 sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you have any questions that you
25 either want to ask Mr. Able or ask the Court concerning what

1 I have explained to you?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you discussed this matter fully with
4 your attorney whether or not you should testify or not
5 testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you need to talk with your lawyer
8 anymore about this particular issue?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you made a decision to testify or not
11 testify?

12 THE DEFENDANT: I have.

13 THE COURT: And what is your decision?

14 THE DEFENDANT: I've decided not to.

15 THE COURT: Not to. Okay. And this decision not to
16 testify, is this a decision made by you freely, voluntarily
17 and intelligently?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. And I so find. Thank you, sir.
20 You can sit down.

21 Mr. Able, do you intend to put up a defense?

22 MR. ABLE: No, sir. We're not going to call any
23 witnesses.

24 THE COURT: Very good, thank you.

25 MR. ABLE: Judge, I would though at this point, just as

1 an abundance of caution, I would renew my motion for
2 directed verdict --

3 THE COURT: Sure.

4 MR. ABLE: -- based upon the same --

5 THE COURT: Certainly.

6 MR. ABLE: -- factors that I had argued a few moments
7 ago. And I would go ahead and renew all previous motions
8 made prior to the trial beginning and during the State's
9 presentation.

10 THE COURT: Very good. And any of those motions,
11 including the directed verdict motion that I denied, they
12 will be denied again.

13 MR. ABLE: Thank you, sir.

14 THE COURT: But you are fully protected on the record.

15 MR. ABLE: Thank you, sir.

16 THE COURT: Let me see the lawyers for just a second.

17 (Whereupon, a sidebar was held.)

18 THE COURT: We're going to take just a short break.

19 I'm going to have a charge conference with the lawyers in
20 chambers and then we'll figure out where to go from here.
21 So everybody be at ease.

22 I'm looking for Mr. Bolt but he's not here. Mr. Byers,
23 would you go back. I don't know if Mr. Bolt might be back
24 there with the jury. But I just need the jury back out,
25 please.

1 (Whereupon, the jury entered the courtroom at 11:20
2 a.m.)

3 THE COURT: The Defense rest?

4 MR. ABLE: Yes, sir. We rest.

5 THE COURT: Very good. Ladies and gentlemen, that ends
6 the -- what we'll call the evidentiary record in this case.
7 What we have left to do, the lawyers will make their closing
8 arguments to you, and I'll explain a little bit more about
9 that in just a -- after a while, and then I will instruct
10 you on the law in this case. But we need to discuss -- the
11 lawyers and I need to discuss the charge that I'm going to
12 give you. I'm going to let them know what I intend to
13 charge and let them make any comments that they feel like
14 they need to make. And plus, they need a little bit of time
15 to kind of get their closing arguments put together. This
16 has been a long trial, all week, a lot of testimony and a
17 lot of exhibits. So what we're going to do, I'm going to go
18 ahead and give you an early lunch. Let you leave. It's
19 11:20. If you'll be back here at 1:00. And again, as I've
20 told you before, if you're out in public, keep your pins on.
21 No discussion among yourself or anybody that you come into
22 contact with. But this afternoon at a certain point in time
23 I'm going to tell you to begin your discussions. So it's
24 coming. All right? But until I instruct you, you can't
25 begin any of those discussions among yourselves or with

1 anybody else. So have a good lunch and we'll see you back
2 at 1:00. Okay?

3 (Whereupon, the jury exited the courtroom at 11:20
4 a.m.)

5 THE COURT: We'll be at recess until 1:00, and the
6 lawyers can come back with me, please, for a minute.

7 (Whereupon, a recess was held from 11:20 a.m. to 1:09
8 p.m.)

9 THE COURT: Since the Defense did not put up a case
10 and, Mr. Able, you have the right to final closing.

11 MR. ABLE: Yes, sir.

12 THE COURT: I trust you're going to exercise that
13 right?

14 MR. ABLE: Yes, sir. I am. Yes, sir.

15 THE COURT: Solicitor, are you ready for your closing?

16 MR. SCOTT: I am, Your Honor.

17 THE COURT: Let's bring the jury out.

18 MR. SCOTT: Judge, can you see everything you need to
19 see with my posters and everything?

20 THE COURT: That's fine. You position that stuff where
21 you want it. I'm good. Bring the jury out.

22 (Whereupon, the jury entered the courtroom at 1:12 p.m.)

23 THE COURT: Ladies and gentlemen, as I explained to you
24 before we broke for lunch, what we have left in this trial
25 are closing arguments. The Solicitor will make his argument

1 first and then Mr. Able will make his argument. After
2 that's done we'll probably take a short break and then I
3 will charge you on the law of the case. So please give
4 these lawyers, who have worked extremely hard in this case,
5 please give them your undivided attention.

6 Solicitor, you may proceed, sir.

7 MR. SCOTT: Thank you, Your Honor. If it please the
8 Court.

9 CLOSING ARGUMENT

10 BY MR. SCOTT: Obsession, deception and a completely
11 senseless act. That's what we told you this case was about.
12 Have you not learned that during the course of this
13 testimony? It is a frightened tale of what man can be
14 capable of. It is truly frightening what Darrell Raines
15 proved himself capable of doing in order to somehow in his
16 mind, in his warped reality, obtain Lisa Hamlett. It's
17 truly frightening. In 2013 -- August 2013 he was
18 unraveling. He was coming undone. He woke up thinking
19 about Lisa Hamlett. Moped around his mom's house
20 daydreaming about Lisa Hamlett. He saw her face in complete
21 strangers. He talked about her to anyone who would listen.
22 He wrote letters. He did Face book searches. He used her
23 name as a password. He set goals to obtain her. He left
24 things on her doorstep. Drove around her house all hours of
25 the day and night. He was completely and utterly fixated

1 and obsessed. Just like pulling the thread on a sweater, he
2 was becoming unraveled layer by layer, and that was his life
3 in August 2013.

4 To his friends he seemed forlorn, detected, a hurt
5 puppy. He was everyone's little brother in this group of
6 friends he had. He surrounded himself with these women who
7 had their own issues. They had marital problems and this
8 and that and they looked down at him as kind of like the
9 little brother who was a hurt puppy. Of course, to them,
10 the story he described about Lisa was they had this just red
11 hot romance. They had dated for over a year. He had moved
12 in with her. Things just didn't work out and, for whatever
13 reason, they went their separate ways, but he was going to
14 get her back. He was going to get her back. That's the
15 story all these people knew about Lisa because that's --
16 that was his warped realty. That's what I think was in his
17 mind, because that's certainly what he was trying to sell
18 other people. He was the harmless forlorn love sick
19 Darrell. But beware of those who would come to you in
20 sheep's clothing, because inwardly they are ravenous wolfs.
21 Is that not who he was? Did he not appear to be harmless
22 Darrell to everyone? Just a love sick guy?

23 He truly caught Myranda at the lowest point of her
24 life. Financially she seemed to be in dire straights. She
25 was the mother to two small children. In the process of

1 being evicted from her apartment. Far away from her home in
2 Florida. Recently separated and just found out her
3 estranged husband had gotten another woman pregnant. This
4 was a low point in Miranda Southern's life, and that's what
5 all the testimony has been. And she was the wounded lamb.
6 She was the wounded lamb the wolf could use.

7 He never saw this lonely woman as a real person. He --
8 as prolific on Face book as he was, he didn't even friend
9 her on Face book. It's telling to me in his cell phone
10 she's saved as Jessica. None of his friends knew about
11 Miranda. He's keeping her aside. I submit to you there's a
12 reason for that. He never saw her as a person. She was
13 just a means to an end. The lamb for the wolf to use up and
14 spit out.

15 He couldn't really care less about Miranda because he
16 was so focused on Lisa. And Miranda, without knowing, had
17 fallen into a place where she was being used by Raines. She
18 wasn't the first. There had been others who had let
19 themselves think that Mr. Raines cared about them and then
20 had to swallow hard when time after time he would mention
21 this Lisa person and ask them, well, what do you think.
22 What's my best change at getting back with Lisa. You heard
23 Mia McCarter up here. She said that they started this
24 romantic relationship, via text message mostly, after he
25 befriended her and sent pictures and this, that and the

1 other. But then ultimately he'd say, well, you know, I got
2 this other girl Lisa. You know, what do you think about
3 this letter I'm thinking about sending her? And this was a
4 theme. And Miranda had fallen into this same pattern where
5 she let herself think that the wolf cared for her, but all
6 he wanted was for her to be a means to an ultimate end.

7 You know, the strong woman wouldn't put up with this.
8 The strong woman would not put up with his whining and his
9 sniveling about Lisa. A strong would say, I could care less
10 about your past love life and the one that got away. But
11 Miranda, in August 2013 -- and I'm sorry. I mean no
12 disrespect. But Miranda, she was not a strong woman at that
13 point. She was weak. She was vulnerable. And at times,
14 I'm sorry to say this, but she was pitiful. The perfect
15 prey for the wolf in sheep's clothing.

16 The fact that their paths crossed at this time, August
17 2013, it's the saddest kind of fate to me, because she's at
18 her lowest point and he's at his most desperate at this
19 point. And Lisa Hamlett, none of this is your fault. I
20 want you to know that. You didn't ask for this. You know,
21 they say Cleopatra was the face that launched 1,000 ships.
22 For Darrell Raines was Lisa Hamlett not the face that
23 launched 1,000 letters, text messages, Face book searches.
24 Just a complete object of obsession.

25 It was so interesting to me to hear the order of

1 witnesses. You hear these friends of his, and they would
2 get up on the stand and they'd say I've known him since
3 childhood. He's just always been harmless and just -- it's
4 just Darrell. And I would ask them, tell me what he told
5 you about his relationship with Lisa Hamlett. And they'd
6 say, oh, well, yeah. That was his girl. I mean, you know,
7 of course they lived together and they dated for over a year
8 and, I mean, it was just the one that got away for him. He
9 really loved her and he talked about her all the time, and
10 he'd send me letters and ask me to proof read them and ask
11 me, you know, should I send this to Lisa. And you would
12 just oppose that with Lisa's testimony, because she got up
13 there and she said, you know, what. I knew the guy when we
14 grew up. He lived in my neighborhood. His mother and my
15 mother were friends. We went our separate ways after high
16 school. To whatever extent we knew each other in high
17 school, when high school was done I was here and he went
18 there. I lost touch with him until he friended me on Face
19 book and asked me to go to Applebee's. I went to
20 Applebee's. He kissed me in the parking lot that night.
21 That was it. Sometime later he came to her house. They
22 watched a Clemson game. And I'm sure she regrets it to this
23 day, but she had sex with him that night. But shortly after
24 that, that was it. I mean, she finds out he's not divorced.
25 He's supposed got some other woman pregnant. She said I had

1 enough, you know. I tried it. It didn't work, you know.
2 Thank you, but no thank you. And she was able to move on.
3 Darrell was not. You heard about the progression. How he
4 ran things up. You know, it started with just these -- a
5 letter here, there, and at some point it was a letter every
6 morning. She'd come out of her house and there's be a
7 letter there written by Darrell Raines that he had left some
8 -- under the cover of darkness the night before. She had
9 offhandedly mentioned that she liked Jolly Ranchers, so he
10 filled up her whole porch with Jolly Ranchers, handcrafted
11 some vase made out of Jolly Ranchers. All the texts. The
12 money left on the porch. The ATM cards. Texting her saying
13 I'm outside of your house. Come talk to me. I can't
14 remember everything. But it had an affect on Lisa. When I
15 die bury me under a cherry tree. Is that something you say
16 to somebody you went on two dates with? This was not
17 romance. This was a sick, sick obsession.

18 And I want you all to remember this is August 2013
19 where all of our events happen. Their two dates happened
20 back in 2012. So in the eighth month of 2013 he's still
21 carrying on like this.

22 He sent the Face book message to Lisa Hamlett on the
23 17th. Did he know then the next day he'd march Myranda down
24 to the killing field? He bought the gun that same day. He
25 bought the .380 on the 17th. Did he know then he'd use it

1 on Myranda down in the killing fields? He met her after
2 work, midnight on the 18th going into the 19th. He knew
3 then he was taking her down to the killing fields, because
4 earlier that same night he drove all the way from his home
5 in Greenville down to Bramlett Church Road, 7:30 that night.
6 Do you all remember that? You all remember that? The cell
7 phone animation. While she's at work at Charter trying to
8 earn a living he drives his truck down to Gray Court. Was
9 he scouting the killing fields? Drove back up to
10 Greenville. She's still at work. The same time period,
11 8:00 -- 8:00 that night she goes on break. I want you all
12 to remember this. 8:00 she's using her bank card at the
13 Hickory Point on Wade Hampton Boulevard. That's such an
14 important fact. All right? Uses her card at the ATM at
15 Hickory Point. Midnight -- we watch the animation. We saw
16 it. He comes back down through Greenville. His phone
17 travels down 385 right there at Mauldin, right there where
18 the Bi-Lo and the Charter Communications are, and his phone
19 has an event on a cell tower right there at 12:03 a.m. And
20 we all know what time Myranda got off work. We all know the
21 last time anybody other than Darrell Raines saw her alive
22 and that was midnight at Charter. What's Darrell tell
23 investigators? I was at home that night. His cell phone
24 says otherwise. We saw Myranda's phone at the same time
25 using cell towers right there, which is expected because she

1 works at Charter. When he met her at the Bi-Lo what did he
2 tell her? What did he tell her that they were going?

3 There are so many questions, you know. Why couldn't he
4 let Lisa go? Why couldn't he get over it? She didn't want
5 you. Why did you have to bring Myranda into it? She didn't
6 deserve it. I'm going to wake up for -- just like I have
7 for months. I wake up in the middle of the night wondering
8 why. Why did he do that? Which pales in comparison for
9 that family who will spend the rest of their life wondering.
10 Why did he do it? Why? I can't tell you. I can give you
11 all theories. The good news is this, you don't have to
12 worry yourselves about it so much. Motive never has been
13 and never will be an element of murder. It's enough that we
14 know that he did it, and we certainly know he did it beyond
15 any and all doubt. Not just beyond a reasonable doubt.
16 Beyond a shadow of a doubt we know he did it. We know it
17 was those cold eyes that set the pistol on her neck. It was
18 those fingers that pulled the trigger on that .380 that he
19 bought the day before. We know these things. We want to
20 know why. Ladies and gentlemen, I don't think I can answer
21 that for you. The why.

22 He spooked that night though, didn't he? When he
23 pulled the trigger on that .380 that he had been longing
24 for. You saw the texts. He'd been talking about wanting a
25 gun. If he could only come up with \$200 he was going to get

1 him a gun. I don't know why. Why did he suddenly in August
2 want that gun so bad. The novice. He talked about not
3 really having experience with guns. And that explains why
4 he dropped the clips. He panicked. He hit the eject
5 button, dropped the magazine and in the darkness couldn't
6 find it. But he had to get out of there because he'd just
7 fired off a .380. He got back on 385. Had her phone still
8 in his car. Had his phone with him. Drove on up 385. Got
9 to Greenville. I submit to you that's when he ditched her
10 phone. But only after he did something. Used her phone to
11 dial his phone. He's starting to cover his tracks now. The
12 man with the background in computer technology. The man who
13 describes his background as being able to make computers
14 talk to one another. Remember that interview? The man who
15 fixes other peoples' phones. The man who knows if he turns
16 his phone on airplane mode you can't track him down there
17 that night. So what he does is he uses her phone to call
18 his. So he's establishing the fact that he's on the phone
19 with Myranda at midnight, and the phone records show that.
20 The problem is, they're also showing that he -- his phone
21 and her phone are in the exact same area at 3:00 a.m. We
22 know Myranda ain't there. We know she's down in the killing
23 field. We know that because the gun shots between 1:00 a.m.
24 and 1:30 a.m. He's in Greenville. He's on the phone. All
25 right? But guess what? There ain't nobody on the other end

1 because the phone is sitting right beside him in the truck.
2 He gets 500 bucks out, after doing two balance inquiries.
3 That's interesting, too, because -- we're going to get to
4 his story about the ATM in a minute. But two balance
5 inquires. In other words, he's checking to see how money
6 she has before he draws out the maximum. Thereafter he goes
7 on back up to Berea. And then the next day was interesting.
8 You all remember that? The next day Dan Kelly testified --
9 what's his phone do? Goes up to Greer and goes to a couple
10 other places. Around 4:00 p.m. he's going back down 385.
11 Going back down to the killing field. You all want to know
12 why? He's got to find the clip. He knows he dropped that
13 clip there. Still can't find it. It's in that high grass.
14 He leaves a clip behind. Now he's ready to -- he needs to
15 start coming up with covering his tracks. And it's so
16 interesting to see the steps he did to try to cover his
17 tracks. You remember the dummy Face book post that
18 everybody said that ain't Myranda? Hey, everybody, it's me,
19 Myranda. I decided to go on down to Florida. Okay. Well,
20 then he -- right after that he sends a Face book message to
21 Myranda's mother. I'm coming down to Florida to see you.
22 Well, about 7:00 that night he realizes, well, that bought
23 me a little bit of time. But, you know, Ms. Smithers,
24 Myranda's mom, is probably going to become suspicious when
25 she doesn't show up down in Florida. Then he has to regear.

1 He has to regroup and he sends the next Face book message
2 out. Everyone, don't worry about me. I'm going to Savannah
3 to hang out with some friends. That'll buy him some more
4 time, won't it? Because, you know, if she doesn't show up
5 down in Florida, well, she'd already sent that message that
6 said she's in Savannah. The problem is, people were still
7 getting worried because they knew those message didn't sound
8 like Myranda. That wasn't Myranda talking. Something was
9 wrong. And she didn't know anybody in Savannah anyway, and
10 she wasn't going to miss her daughter's eighth birthday,
11 which tragically is the day she was killed.

12 What else does he do? He takes that .380 and he ships
13 it off to Hi-Point to get retooled. To get reworked. And
14 then he uses some of that money that he took from Myranda.
15 And I'll be damned if he doesn't buy another gun on the
16 20th. He bought the nine millimeter on the 20th. So you
17 got him buying the .380 on the 17th, killing her on the
18 19th, and buying another gun on the 20th. He begins leaving
19 calls and text messages. And that's so significant. You
20 all are going to have this, by the way. You all remember we
21 went over it with Antonio Bailey? He went by text by text.
22 You all are going to have that back there, so you call can
23 look at it. Look at the ones he deletes. First of all, do
24 you all delete your phone calls and your text messages?
25 That's not very common. And if you're picking out certain

1 ones to delete. I want you all to look at the ones he
2 deleted on there. He's covering his tracks. He tries to
3 craft a story of why he's at the ATM when police ultimately
4 talk to him. And in his statement on the 29th he made the
5 following statement. "There's details I didn't pay
6 attention to." And he is right. He's right. Because the
7 first time Darrell Raines comes up as a suspect is when they
8 go looking at her bank records to see where did she go. She
9 left work. Where did she go. Oh, okay, well, it looks like
10 she made some transactions here in Berea at 3:30 a.m. the
11 night she went missing. \$500 withdrawn. Let's go look at
12 surveillance. Well, what's Darrell Raines doing there?
13 That's not Myranda Southern. So his story when law
14 enforcement says what were you doing up there using this
15 woman's card. Oh, oh, there's a great explanation for that.
16 On the morning of the 18th, which by the way is the last
17 time I saw her, she gave me that card and she said she
18 wanted to loan me \$200 and she just gave me her card and the
19 pin number and just told me take it out whenever you feel
20 like it.

21 First of all, who does that? If she was going to loan
22 him 200 bucks -- this woman who's in the process of getting
23 evicted from her apartment, this woman who's having to pawn
24 her jewelry off because she's having so much financial
25 difficulties, first of all, is not going to loan him \$200.

1 Second of all, the way you loan money to somebody is you go
2 get the money out yourself from the ATM and then you hand it
3 to them. You don't give them the ATM card. Aside from
4 that, if he's getting the card from her the morning of the
5 18th how in the hell is she using it at 8:00 p.m. that
6 night? Four hours before she gets off work. You all saw
7 the surveillance. How could that be? And then he's using
8 it at 3:30 in the morning. Between 8:00 p.m. and 3:30 he
9 had contact with her. We know this. So why is he saying
10 the last time he saw her was the morning of the 18th? I
11 submit to you that alone is enough evidence for you to go
12 back there and deliberate for 15 minutes and convict him of
13 murder. That alone.

14 This calendar, it's so important. The rules of law --
15 you know, we had to argue outside of your all's presence and
16 we got to talk about the law all the time. We're governed
17 by the rules of law. This book, plus however many cases are
18 out there that have decided all these things. But the rules
19 say y'all can't take the calendar back there with you. And
20 I built it. I hope -- I know you all saw every time I put
21 something up there. But there's so many important things in
22 here. And when you look at it as a whole it just knocks
23 this case out of the water. I want to take a minute to go
24 over some things with you guys with the calendar. And I've
25 got this up here. You may not be able to see it from where

1 you are. But if I could, I want to go over some important
2 dates for you guys and explain some significance. And I
3 don't want to reiterate what we've gone through in trial,
4 but there's some important things here that I want to show
5 you.

6 This is August 2013, and I want to talk about the
7 testimony. August 6th Darrell Raines and Myranda Southern
8 meet on Plentyoffish. And this is when they meet online.
9 They have not yet met in person. Seven days after that they
10 meet in person. Seven days after that is the same day that
11 Myranda drops her kids off with her mother down in Florida.
12 They meet in person for the first time. Darrell spends the
13 night. The 17th. They've only known each other four days.
14 Okay? This is when Myranda and Darrell send the Face book
15 message to Lisa. Make no mistake about it. The message was
16 sent by Darrell, and the way we know this is if you look at
17 the message and then you look at the text messages you can
18 see in the text message thread that Face book message was
19 sent, and you can see what they're saying to one another.
20 Right after it's sent from her account. Look, he had her
21 Face book password. Okay? He'd been working on her
22 computer. We know this. Right after it's sent Myranda text
23 him and says you didn't tell me you were going to send it to
24 her, which tells us Darrell was the one who sent it. Why
25 would Darrell send a message like that to Lisa? Because

1 Lisa's got a boyfriend named Jason Gillespie and Darrell
2 doesn't want Lisa seeing Jason Gillespie. If Darrell can
3 drive Jason Gillespie away maybe Lisa will come running back
4 to good ole Darrell Raines. I'm sorry, but that is the
5 warped reality of an obsessed man, and that is what he
6 wanted to do.

7 Jason Gillespie, by the way, is the one who he'd been
8 doing all those Face book searches on. When law enforcement
9 asked who Lisa's new boyfriend was he said I don't know. I
10 have no idea. Well, his Face book searches tell otherwise
11 because he'd been looking up Jason Gillespie quite a bit.

12 Same day he buys the .380. You all are going to have
13 his purchase records here and the date, but the date that he
14 bought the .380 was on the 17th. The next day Myranda uses
15 her bank card at the 7-Eleven on Wade Hampton at 1:20 p.m.
16 You all saw the video. There she is. There's the prove of
17 her using her bank card. If you look at the bank records,
18 it gives a time when she was using her card. If you pull
19 the surveillance at the gas station, there she is plain as
20 day using her card. Lauren Searcy sees Myranda leave for
21 work around 2:00 p.m. And again, like I said, Myranda uses
22 her bank card again at 8:00 p.m. This is well after Darrell
23 says -- he's saying that morning is when she gave the card
24 to him. That's a lie because here she is at 8:00 p.m. using
25 that card at another -- at Hickory Point on Wade Hampton.

1 Myranda gets off work at midnight. We heard that from her
2 supervisor. We knew that was her work hours. We know
3 that's the last time anybody can account for her, midnight
4 on the 18th. Then we get to the 19th. Nikki Yates hears
5 gunshots between 1:00 a.m. and 1:30 a.m. That was Myranda
6 Southern's last moment on this earth, between 1:00 a.m. and
7 1:30 a.m. Then what do we have? We've got Darrell Raines
8 at the ATM using Myranda's bank card at 3:30 a.m. Then
9 comes the first Face book post at 4:07 a.m., "So tired, but
10 I don't care. I'm heading to see my babies. Florida, here
11 I come." That's Darrell Raines typing that from Myranda
12 Southern's Face book page. 4:07. Penny Smithers receives a
13 Face book message at 5:16 a.m., "I'm driving down there. I
14 know it's crazy but I need to be away from all this for a
15 day or two. See you soon. Kiss them for me." He's trying
16 to cover his tracks. He's trying to throw off suspicion at
17 this point. Finally the Face book post at 7:29, because
18 this is when he realizes they're going to be looking for
19 down in Florida. Now I'd better try to say she's down in
20 Savannah. "Just want to let everyone know I'm okay. I'm
21 just having a tough time dealing with everything right now.
22 I need time to figure everything out. I'm staying with a
23 friend in Savannah until I'm ready. I love you all and I'll
24 see you all soon." Myranda didn't know anybody down in
25 Savannah. The next day Darrell decides to buy another gun.

1 A nine millimeter. Because at this point he's got to ship
2 this .380 off to Hi-Point and get it reworked. We heard the
3 testimony regarding that. Officers begin to get bank
4 records on the 21st. They first see Darrell at the ATM.
5 That's an interesting picture. I think that's an
6 interesting picture. You got a clear image. It's from the
7 same time as the one with his face but it's just a different
8 angle. But you clearly see there's nobody else in the car.
9 Remember the story he told Crystal Smith, his friend when he
10 was in jail? And she said they're showing you on the news
11 at the ATM using that girl's card. What's up with that?
12 Oh, well, she was in the car with me. She was just -- she
13 was scared to get out. And there's Crystal Smith sitting
14 over there and she's a friend of Darrell's. I submit to you
15 she has no reason to make something like that up. That's
16 what Darrell told her because he still can't really explain
17 it. She's in the car with him but she's too scared to get
18 out. I want you all to look closely at these pictures and
19 see if there's anybody else in the car with him. The 22nd
20 he gives his first statement. They do a search of his
21 phone. He gives consent, but then they say, well, I'm going
22 to get a search warrant. They dump the contents of his
23 phone and that's where we get all this information. And
24 that's when he first tells officers -- well, at that point
25 he's telling them he got the card on Saturday. So he's

1 still trying to figure out what his excuse is. At that
2 point he says he got the -- it's that second statement he
3 says he got it on the 18th. Both of them are lies though,
4 so don't even worry about it. The 23rd, the search warrant
5 for Miranda's phone. That's where we get her coordinates
6 where we can see where she is on the 18th. Her body is
7 found on the 23rd. What else is found out in the killing
8 field? Do you all remember? The clip to a .380. A clip
9 that fits two guns in the world. One of them is the
10 Hi-Point .380 that Darrell bought on the 17th and the other
11 is a specific nine millimeter that Hi-Point manufactures.
12 Found some seven feet away from Miranda's body. Hi-Point
13 received the .380 that same day to be worked on. Miranda's
14 car is found at the Bi-Lo. Nobody has any idea where
15 Miranda's car is until this date. All right?

16 I want to show you all -- again, I want to remind you
17 all her car is found on the 23rd. Look on the 19th who
18 Darrell is calling? Why on earth did he make two calls the
19 day Miranda gets killed to the very Bi-Lo on Highway 14 in
20 Simpsonville, South Carolina where her car is found four
21 days later? Was that apparent to you all when it came out
22 in testimony? Why would he do that? Was it to say, hey,
23 there's a car out there. Don't tow it. Don't tow it.
24 Leave it there. It's my car. I'm going to come get it
25 later. I don't know. Was it to ask is anything going on

1 out in the parking lot out there that I should know about?

2 I don't know. I think it is incredibly compelling that on
3 the 19th he's calling that Bi-Lo twice. Two different
4 numbers that are both linked to that Bi-Lo.

5 The autopsy is performed on the 24th. There's Myranda.
6 There's the .380 slug that left the .380 that Darrell
7 purchased on the 17th and was ultimately found in her neck.

8 Phone records are continued to be reviewed on the 26th.
9 The body is identified as Myranda's on the 29th. Darrell's
10 interviewed and arrested on the 29th. Then we start to get
11 some of Darrell's greatest hits. I hated to have to play
12 that whole thing for you all, but you all deserved to hear
13 his interview in its entirety. You all are going to have it
14 back there. You all can listen to Darrell's greatest hits,
15 but I'm going to play a couple for you. You got this gem.
16 Remember when he's talking in that first and he volunteered,
17 "Well, I knew you guys would want to talk to me because I
18 was the last person to talk to her." How did he know that?
19 He says that without being told. How did he know he was the
20 last person to talk to Myranda?

21 (Whereupon, excerpt of audio of police interview was
22 played.)

23 "I was the last person to talk to her." He's right.
24 But how did he know that at that point? What about this?
25 This is what I was talking about. This is his explanation

1 of when he got her bank card.

2 (Whereupon, excerpt of audio of police interview was
3 played.)

4 That's a lie. We know when she was using her card,
5 1:20 and then 8:00 p.m. that night. He says it again.

6 (Whereupon, excerpt of audio of police interview was
7 played.)

8 What about this one? "Darrell, where's the ATM card
9 now? Where's the 500 bucks?"

10 (Whereupon, excerpt of audio of police interview was
11 played.)

12 What about this one. "Do you own a gun?" Now's the
13 time to talk about the .380 when the officer asks do you own
14 a gun. Here's what he said.

15 (Whereupon, excerpt of audio of police interview was
16 played.)

17 He didn't say anything about a ..380. He'll talk about
18 that nine millimeter. He conveniently forgot to mention the
19 .380 that he had just sent off to Hi-Point to get reworked.
20 They do the search warrant. They go up there and they find
21 the little drawer he's talking about right next to the couch
22 he sleeps on. They find this notepad. It's got two
23 columns. There's his want column. He wants a house. He
24 wants a new car. He wants a motorcycle, and he wants Lisa.
25 Then the other column is how to get there. He says he needs

1 the new job to get the new car and he needs to save to get
2 the motorcycle. He hadn't figured out how he's going to get
3 Lisa. Now, that's on top of the dresser. So then they open
4 the drawer because that's where he says the bank card and
5 the money can be found. Surprise, there's no money.
6 There's no bank card. The next day officers speak with
7 Traders because -- and this is kind of confusing but I hope
8 you all understood it. When he says I have a nine
9 millimeter. They said, "We'll, where did you get it?"
10 "Traders gun store up in Greenville." Officers like
11 McIntosh are trained to do this kind of stuff. They're
12 trained to follow-up on tips like this. So he takes -- he
13 and Cheek, the other guy in the interview, they go up to
14 Traders and they speak with the guys at Traders gun shop and
15 they say, I remember that guy. Yeah, he came in and bought
16 a nine millimeter, then he tried to return it a couple days
17 later and we told him sorry, we don't do exchanges, but
18 Hi-Point has a good warranty program. And Darrell Raines,
19 he remembered this and volunteered this. "I'm familiar with
20 Hi-Point's warranty. I just sent a .380 up there to get
21 reworked." Shear luck they were speaking with that guy and
22 just shear luck he happened to remember that, because he
23 tells law enforcement that. They get on the phone with
24 Hi-Point and say, hey, you all got a .380 up there you all
25 are working on for a Darrell Raines? They say, as a matter

1 of fact we do. We just sent it back. They get a search
2 warrant. They go to intercept it just as it's getting to
3 his house, just as his mom's receiving it. What do they
4 find? A FedEx box addressed to Darrell Raines with a copy
5 of his driver's license on it with his request for work to
6 be done on it. Inside that box is the .380. The murder
7 weapon. Isn't that neat? That's how they came to get the
8 gun. The gun which is one of only two that fit the clip
9 that was found in the killing field. You all see how that
10 worked?

11 This is a circumstantial case. We don't have anybody
12 who watched him shoot her. We know he did it, but that's
13 direct evidence. We got circumstantial evidence, and we've
14 got more than I think I've ever had in a case. I mean, if
15 you think about it, everything, if you think about all this
16 stuff put together it's like a puzzle. It really is. And I
17 think that's kind of how I described it in opening. You
18 take all these little hints and clues and everything and you
19 put them together and then the puzzle is just kind of built
20 right before your eyes. Piece by piece this circumstantial
21 evidence comes together until the picture is so clear you
22 can't avoid it. It's unmistakable. It's undeniable. How
23 did Myranda get to the killing fields? How did she become
24 -- how did she come to be left out there like a piece of
25 trash like Ms. Boykin said in opening. Put the puzzle

1 together. It's just one minor piece in the puzzle. You got
2 his financial difficulties. If you look through the text he
3 -- if I can only get \$200 I'll get what? What does he want
4 that \$200 so bad for? He wants a gun. He's suddenly become
5 -- he's got to have a gun. He hasn't described why. But
6 for whatever reason in this time period he needs a gun, and
7 if he can only get \$200 he can get a gun. Look at that
8 information. Look at that chart. Why is he calling
9 Hi-Point nonstop all day on the 19th, the day she's killed,
10 and then on the 20th? Hi-Point, the manufacturer of the
11 magazine he left in the field from the gun he bought on the
12 17th? Why is he calling them nonstop? The .380 Hi-Point,
13 that this kind of links in with it. Isn't that just so
14 coincidental that he bought that gun the day before she's
15 killed? And isn't that so coincidental that he shipped it
16 off? You all remember what the Post Master said? It would
17 have either been sent -- had it been shipped -- sent
18 priority, which is what guns are sent by? Either on the
19 20th or the 21st, the day after she's killed. It's a
20 puzzle. We're building a puzzle. And we've got to use all
21 these clues and all this great information. ATM at 3:30. I
22 don't care how you bend it. His story never makes any
23 sense. Not one shred of sense. The lies about the ATM.
24 She gave me the card. I was going to use it to get money
25 that this broke woman was going to loan me 200 bucks. The

1 last minute she changed it to 500. She called me on the
2 phone and said go ahead and take 500 out. This woman that
3 was broke. She gave it to me on the morning of the 18th.
4 And by the way, I forgot to use it all day on the 18th. But
5 suddenly at 3:30 a.m. in the morning on the 19th I woke up
6 and said I got to go to the ATM. So I jumped in my car and
7 drove across town to the ATM at 3:30 a.m. It doesn't make
8 any sense. Location, location, location.

9 Why is his car -- his cell phone down right near
10 Bramlett Church Road in Gray Court earlier in the day on the
11 18th? I don't know. Was he scouting? I don't know. But
12 it was down there. The phone records don't lie. The cell
13 towers don't lie. Why was his phone hitting on a tower
14 right by Charter at midnight the night she went missing?
15 Midnight, the last time anybody saw her. Those towers don't
16 lie. Then the next day, after she had been killed, why was
17 his phone hitting down here in Gray Court again? I submit
18 he was trying to find that magazine. It's a puzzle, and
19 it's a puzzle that we put together. And as I said, it's
20 unmistakable. It's undeniable. It's right there in front
21 of you.

22 You know, there's an idea that circumstantial evidence
23 is no good evidence. Now, this Judge is going to tell you,
24 you don't give any different weight between direct evidence
25 -- direct evidence would be a witness saying I saw Darrell

1 Raines shoot her. You give no more weight to that kind of
2 evidence than you do circumstantial evidence. But there's
3 a, I guess, idea. I expect Mr. Able, who's one of the best
4 lawyers money can buy, to get up here and talk about all
5 they have is circumstantial evidence. It's just
6 circumstantial. Circumstantial evidence alone. If I only
7 told you that there was a clip found in that field and it
8 was of the same type of gun he had. That would admittedly
9 be pretty flimsy evidence. But then when you take piece
10 after piece, after piece after piece, after piece after
11 piece, after piece after piece, after piece of
12 circumstantial evidence, what it does is it forms the kind
13 of evidence that is so strong it's unbreakable. You can't
14 break it. If you take any of them on their own, yeah. You
15 can snap it in half. But when you bind them altogether
16 sometimes the evidence is so strong it cannot be broken. It
17 is so strong you can't deny it. And that's what the puzzle
18 is, ladies and gentlemen. That's what the circumstantial
19 evidence is showing you. I hope you're saying to yourself
20 -- and if you are, is it just me or does all this stuff just
21 point in one direction, that Mr. Raines did this horrendous
22 act. That he killed this poor woman in the early morning
23 hours of August 19th, 2013. If you're saying that to
24 yourself, it's not just you. It is there, and it is clear,
25 and it is unmistakable, and there is no other logical

1 reason, no other reasonable explanation of how this thing
2 came to be. This horrible thing came to be. He's going to
3 get up there and say you don't have any video. Let's don't
4 let Darrell Raines get away with this just because a video
5 camera didn't catch him. He's going to say you got no
6 eyewitness. Let's don't let Raines get away with this just
7 because Nikki Yates couldn't see him through the 1:30 a.m.
8 darkness. He's going to say you don't have any DNA. What
9 would he have said if I said they pulled DNA out of his
10 truck? If they pulled DNA out of his truck that belonged to
11 Myranda Southern. What would that have shown that he didn't
12 already admit to. He said she rode in the truck with him.
13 It's a Law And Order argument. The Law And Order argument
14 is an hour. They show the crime, and then they get the
15 fingerprints off everything and they get the DNA and it's
16 all wrapped up. That's the Law And Order argument. This is
17 the real world, ladies and gentlemen. You don't get
18 fingerprints off a clip that's left out in the August sun
19 and the August rain for about a week. You don't get DNA off
20 of evidence that's left out there in the elements for a
21 week. That's the Law And Order argument. We're talking
22 about the real world here. We're talking about ATM videos
23 at 3:30 a.m. We're talking about cell phone towers. We're
24 talking about .380s.

25 The Judge is going to say that murder is killing

1 another person with malice aforethought. He's going to say
2 malice is hatred, ill will or hostility toward another
3 person, and that it is the intentional doing of a wrongful
4 act without just cause or excuse. Tell me what just cause
5 or excuse Darrell Raines had for killing this mother of two?
6 I've heard no just cause or excuse. With the intent to
7 inflict an injury or under circumstances that the law will
8 infer an evil intent. What was his intent when he bought
9 that .380 the day before he killed her? What was his intent
10 when he went down to the killing field while she was at
11 work? I want you to think about him out there in the
12 killing field. I know it's unpleasant. I want you to
13 think about him leaving her out there like a piece of trash.
14 Ask yourself why would he do that. But don't expect your
15 mind to give you any kind of reason that makes any sense.
16 That's justified in any way. At some point you've just got
17 to realize that people do terrible things. People do
18 unthinkable things to other people. And it's very rarely a
19 good reason for it. I say again, we don't have to know why
20 he did it. I got in my head it has something to do with
21 this Face book post. I got in my head that if you look at
22 the calendar, this happened on the 17th and he killed her
23 the next night, that maybe Miranda got a little bit of
24 strength. Maybe that broken woman, maybe that weak woman
25 finally said I ain't dealing with this anymore. I'm not

1 going to be your helper in this sick game you're playing.
2 Maybe Myranda said I think I'm going to tell Lisa about this
3 thing. We don't know why Raines did this, but we know for
4 certain he did it. Think about him down there in the
5 killing field, and go back there and render the only verdict
6 that is just. Go back there and find him guilty of having
7 that gun when he committed that murder, and then go back
8 there and find him guilty of the murder itself. That is the
9 only verdict that is just in this case, ladies and
10 gentlemen. That is the only verdict that all this evidence
11 tells you is right. Thank you.

12 THE COURT: Thank you, Solicitor. Mr. Able, are you
13 ready, sir?

14 MR. ABLE: Yes, sir.

15 CLOSING ARGUMENT

16 BY MR. ABLE: Good afternoon. Darrell Raines murdered
17 -- sorry, Myranda Southern because of his desire for Lisa
18 Hamlett. That's the State's theory. Darrell Raines
19 murdered Myranda Southern because of his desire for Lisa
20 Hamlett. As hard as I think about that and as hard as I
21 thought about it over the past week, and over the past
22 couple of years, I can't make it connect up. I can't make
23 it happen. I know the State has this pretty little
24 animation up here of the puzzle pieces going together. But
25 think about that. Think about the State's theory in this

1 case. What would have Darrell Raines had to gain by harming
2 Myranda Southern? Nothing. He would have nothing to gain.
3 This theory that he was going to hurt her because he wanted
4 this woman to come running back to him, Lisa come running
5 back to him and fall in his arms, it doesn't make sense. It
6 doesn't make sense. If you look at the messages they were
7 sending back and forth, Myranda and Darrell, when you look
8 at these, she was helping him fashion these messages to
9 Lisa. They were talking about those things. She was
10 complicit in these things. He wasn't trying to get Lisa
11 back. He was trying to hurt Lisa by having her break up
12 with her boyfriend. Darrell had a girlfriend. Myranda.
13 They were conspiring and working together on that. It
14 wasn't just him, and I'm going to hurt Myranda to try to get
15 back Lisa. That's not at all. He was wanting to hurt Lisa
16 and Myranda was willingly helping him do that. He didn't
17 want to hurt her. He needed her. So the State's theory of
18 -- about this love affair that wouldn't die. It was dead.
19 It was gone. He was trying to hurt her. Now, that might
20 make Darrell Raines a bad person, and it might make Myranda
21 Southern a bad person for going along with it, but it
22 doesn't make Darrell Raines a murderer.

23 Now, we've been at trial now for five days. What has
24 the State shown based upon all this evidence, this
25 voluminous pile of evidence they have here? They've shown,

1 number one, that Miranda Southern died as a result of a
2 homicide. That's uncontested. Number two, it's shown that
3 Darrell knew Miranda Southern. It goes without question.
4 They met on Plentyoffish. They met a week later and started
5 having an affair. Started having sex. They were boyfriend
6 and girlfriend pretty quickly. Three, they've shown to you
7 that Darrell Raines owned a gun. He owned a Hi-Point .380.
8 It goes without saying. They have the gun. They got the
9 gun. And number four, they show that Darrell Raines used
10 Miranda Southern's bank card. Those are the four things I
11 think that they've proven and shown you. Once you boil down
12 all this evidence that the State has those are the four
13 things they can show you.

14 Now, I want you to think back. I know you've heard a
15 lot over the past five days. There's so much here to take
16 in. But I want you to think back to Monday afternoon when I
17 first had a chance to talk to you and address you in my
18 opening statement. I told you, I said, I think this case is
19 going to be important about the things that the State cannot
20 show you, and I listed a laundry list of things that I
21 didn't think they're going to be able to show you in this
22 case. Now, I appreciate the Solicitor pointing out the
23 weaknesses in its case. But that's just what he was doing.
24 He was telling you, well, Mr. Able's going to get up here
25 and he's going to say this, and he's going to say this.

1 Well, you're darn right I'm going to say that. Because
2 that's where the State has failed. That's where the State
3 has failed to carry that burden of proof that I discussed
4 with you Monday afternoon. He was pointing out -- he was
5 saying it in a clever way. Mr. Able is the best lawyer
6 money can buy in this case. He's going to get up here and
7 say the State doesn't have this and it doesn't have this.
8 Well, he was pointing out the weaknesses in his case, and he
9 was saying it in that way rather than saying this is where
10 our case is weak and I'm going to tell you about it. I'm
11 going to tell you about them again because I told you about
12 them Monday afternoon, and I told you that I believe the
13 State would not be able to produce a witness, an eyewitness,
14 that put Myranda Southern and Darrell Raines together during
15 the early morning hours of August 19th, 2013, and they
16 didn't do it. The closest they came to it was Christian
17 Nicole Yates who lived in the house next-door to the field.
18 She said she heard some gunshots. She got up. She looked
19 out the window. She was not very far from the field. She
20 didn't see anything. It was dark. Of course it was. It
21 was 1:00, 1:30 in the morning. It was dark. But remember I
22 asked her. I said, you didn't see a vehicle. From her
23 window you could see the entire field. You could see the
24 house next-door, you could see the road. She didn't see a
25 vehicle, ladies and gentlemen. So there's no eyewitness

1 that can put Darrell Raines and Myranda Southern together.

2 And I appreciate the Solicitor pointing that out to you.

3 I also appreciate him pointing out to you the fact that
4 they don't have any vide evidence. Now, you remember --

5 remember Officer Cheek when we watched the video. I think

6 it was Wednesday afternoon. He kept pointing up in the --

7 up in the corner of the room saying, "You see that there?

8 You see that there?" He was pointing to that camera. You

9 can't make a move without somebody seeing you on those

10 cameras nowadays. Mr. McIntosh came back in and said it.

11 "We can't make a move in this world anymore without somebody

12 seeing you on a camera." They told him, they said, "We got

13 pictures of you going up and down 385. We got a --" Mr.

14 Cheek said, "I got a picture of you in your car with your

15 tag going up and down 385." I submit to you, you don't have

16 any evidence submitted to you in this case where the State

17 can show you a picture of my client going up or down 385 in

18 the early morning hours of August 19th, 2013. There are no

19 videos. They were saying there were videos, but there

20 weren't. There are no videos from the Bi-Lo on Highway 14

21 up there in Simpsonville where they found this young lady's

22 car. There's no video from Kellett's Store which sits right

23 there at the intersection of Highway 101 and Bramlett Church

24 Road. Right there at that intersection. You remember I

25 asked Mr. McIntosh. I said, they got cameras outside all

1 over the place. Yeah. I couldn't see anything but the
2 headlights. So they don't have any video. And again, I
3 appreciate the Solicitor pointing that out to you because
4 it's a weakness in this case, and I told you that Monday
5 that they weren't going to be able to produce that.

6 He was talking about the DNA evidence, or lack thereof,
7 in the vehicle. And I'll get to that in a minute. But I
8 think the first thing I said Monday afternoon about DNA was
9 they would not be able to produce for you any DNA evidence
10 showing that my client was in that field that night. And
11 you're going to have two pieces of evidence there with you.
12 You're going to have State's Exhibit 14, that clip, and
13 you're going to have State's Exhibit 18, the cartridges.
14 And you'll recall that the State's experts, and I'll talk a
15 little bit more about this in a minute. But the State's own
16 witnesses, their experts said there was no DNA on it. The
17 State's own experts says there's no fingerprints on these.
18 They can't place him in that field that night, ladies and
19 gentlemen. They can't do. No matter how hard they try, nor
20 how hard they want to, they can't do it. The evidence is
21 just not there. So you'll have this back there with you.
22 And you heard the testimony. You heard the State's experts
23 say there's nothing on either of these pieces of evidence
24 linking these to Darrell Raines.

25 Now, the Solicitor wants to say, Your Honor, I really

1 appreciate -- his use -- his words, but there's only two
2 guns in the world this fits. Only two guns in the world
3 this clip would fit into. Now, that's not what Mr. Deeb
4 said when he was up there testifying. He meant to tell you,
5 the Solicitor did, there's only two models of Hi-Point
6 firearms that this will fit. And I'll come back to this in
7 a moment. But you remember Mr. Deeb testifying, the creator
8 of these weapons and the creator of these clips, that he
9 produces about 2,000 guns per week that that clip will fit
10 into. He produces about 1,500 nine millimeters every week
11 and about 500 .380s, but that clip will fit into both of
12 them. So in just the year of 2013 I think he said he
13 produced 80 to 85,000 weapons that that clip will fit into.
14 So the Solicitor saying there's only -- this is only one of
15 two guns this clip will fit in. No. This clip will fit
16 into a lot more than just one or two. It's one or two
17 models, but he produced 100,000 that are 80 to 85,000 that
18 year alone. Mr. Deeb also testified that it was an
19 affordable weapon. And that's how he designed it. I was
20 really fascinated with his testimony. I'd never heard
21 somebody testify who had actually been the person who
22 designed the gun that we're talking about in this courtroom.
23 But it was fascinating to hear him. But you heard him say
24 it was an affordable weapon. And Hi-Point firearms has
25 approximately 50 dealers only in the state of South

1 Carolina. Just in this state they have 50 dealers. And I
2 asked him about within 100 miles of Greenville I think there
3 were like 57 within 100 miles of Greenville. So there's a
4 lot of these guns. It's not unique. I think I asked him
5 that. I said it's not a unique weapon, and it's not. I
6 think I asked that of the Trader gun fellow, too. I can't
7 remember his name right off the top of my head. But it's
8 not a very uncommon weapon for somebody in this area to own.

9 I also told you Monday afternoon that the State would
10 not be able to produce any DNA evidence that shows that Mr.
11 Raines had any contact with Ms. Southern. And that's going
12 back to, again, one of the State's -- the State's own expert
13 witnesses talked about the fingernail scrapings, and I'll
14 talk about that in a minute.

15 And then also I pointed out Monday that there was no
16 evidence, DNA, hair, fiber, blood, anything else that these
17 forensic people look for. Nothing to put Ms. Southern in
18 Mr. Raines' car. Nothing. And then, of course, after I
19 pointed that out to you in the direct -- in my opening
20 statement, the State, of course, asked Investigator Bailey
21 from Greenville. Oh, that wasn't important. That's not
22 important. We didn't look for that. Well, why did they
23 haul his car off. He said he took the car to forensics.
24 Why did they go through it if that wasn't important?
25 Because that's what they were looking for. That's what they

1 wanted. That's what they hoped to find in that car. That's
2 why they did that. But all of a sudden when there was
3 nothing there to show the jury, well, that's not important.
4 We weren't -- we weren't -- we really didn't care about
5 that.

6 And as I pointed out a few moments ago, no matter how
7 hard they try, no matter how hard they try and no matter how
8 hard they want to do it, and no matter how hard they want
9 it, they cannot put Darrell Raines on Bramlett Church Road
10 that night. They can't do it. You heard Mr. Kelly -- Mr.
11 Dan Kelly talk about it this morning. He testified about
12 it. I asked him specifically.

13 Now, you know, if you listen to the questions that were
14 asked this morning of Mr. Kelly, general area, everything.
15 Well, it's a general area. I'm not worried about a general
16 area. I'm worried about what happened on Bramlett Church
17 Road in that field at 40120 Bramlett Church Road. That's
18 what you should be interested in.

19 Now, the reason that I pointed those things out to you
20 Monday and the reason I go back to them now is I had
21 mentioned to you during my opening argument about reasonable
22 doubt. And the judge is going to tell you about that in a
23 moment. He's going to define what reasonable doubt is. I
24 would do it, but I don't want to do it wrong. That's his
25 job, not mine. So I'm going to let him tell you about

1 reasonable doubt. And the reason I pointed them out to you
2 then, the different things that I'd talked about Monday, and
3 I'll point them out to you again because each of those are
4 reasonable doubt. Each of those are reasonable doubt in
5 this case.

6 Now, let's turn -- and I've touched on some of this,
7 but I want to go back around to it. About the State's case.
8 The science in this case. And I've talked about it a little
9 bit. I want to talk about it a little bit more. The
10 science in this case. And remember, these are all the
11 State's witnesses. We had Agent Cromer from SLED, the
12 ballistics expert. Now, what did Agent Cromer tell us.
13 You're going to have this back with you in evidence, State's
14 Exhibit 19. The bullet that was taken from Ms. Southern.
15 And the Agent, Ms. Cromer, told you -- she did not tell you
16 that bullet came from this gun. She said it several times.
17 She did not tell you that. The tests that she had run were
18 inconclusive. Now, the State wants to say, well, all right,
19 well, that's a problem for us. That's a big problem that we
20 don't have our own State's expert from SLED that can put
21 this bullet in this gun. She couldn't do it. So since
22 we've got that problem, oh, yeah. Yeah, he sent that gun
23 off. That will remedy this problem. He sent this gun off.
24 And they took this gun up at Hi-Point and they reamed out
25 that barrel, and that's why you're not going to be able to

1 tell that bullet came out of that gun. That'll fix that for
2 us. Well, you're going to have -- back in your chambers
3 when you deliberate you're going to have State's Exhibit No.
4 45, and I asked two of the witnesses, including Mr. Deeb
5 from Hi-Point, I said, you know, this second page of this
6 document. I'm going to read it for you. I asked Mr. Deeb,
7 I said, you know, right here it says, "Please state the
8 nature of your request." And this where Darrell Raines took
9 the gun back. Think about that. He took the gun back
10 saying it was jamming. And he said, "State the nature of
11 your request." "Gun consistently jams. I've been able to
12 get the rounds out manually. Spent casings consistently
13 become lodged in exit as well." Mr. Raines didn't tell them
14 -- they didn't -- he didn't send this gun back and say, hey,
15 Hi-Point, here's my .380 weapon. Ream out that barrel for
16 me real good. Fix this problem. No, he didn't say that.
17 That's what the State's saying. We've got to remedy the
18 problem we've got. The gentleman who -- the gunsmith named
19 Rocky reamed chamber. That's what they decided to do. But
20 the State's wanting you to believe, oh, he sent the gun back
21 and had it worked on because that gun was somehow involved.
22 It wasn't. I submit to you it wasn't. And the fact that it
23 was sent back to Hi-Point for repairs, if he had wanted that
24 gun that's what he would have said to do. He was just
25 saying my gun's not working right.

1 Now, we also had Agent Hezel. I think it was the
2 second day of trial. The forensic expert who was out there
3 on the site. Do you remember? Her testimony was, you
4 know, she reviewed everything, photographed everything. But
5 specifically, no footprints, no shoe prints, no tire tracks.
6 And I'm pretty sure it was her who testified there were no
7 fingerprints on the magazine or on the shells. She also
8 testified that there were no shell casings. Now, the
9 Solicitor again talking about -- I think it was up on the
10 screen showing the -- oh, right here. I'm sorry. I'm
11 sorry. The -- Mr. Raines is back down in Gray Court. Well,
12 again, we're talking about general areas that day or that
13 afternoon. He's looking for that -- he was back down there
14 looking for that magazine. You remember when I asked Agent
15 Hezel - Hezel. I'm sorry if I can't remember her name.
16 Hezel. I said there was a metal detector going over that
17 ground and they were looking for some spent shells. They
18 didn't find any. Well, they're wanting to say he was down
19 there looking for a magazine that he dropped. That he
20 dropped a magazine. How in the world did he find those
21 shells. It just doesn't make sense. There were no shells
22 found. Where were those. And then you had the State's DNA
23 expert, Agent Leisy. And remember she talked about those
24 fingernail scrapings from Myranda Southern's hands and how
25 she'd developed -- how she utilized those and developed

1 certain profiles on them. And if you remember, she said the
2 one that -- I can't remember if it was the one on the right
3 hand or the left hand, but it excluded -- the fingernail
4 scrapings, what they had scraped out from underneath her
5 fingernails, excluded Darrell Raines as a contributor saying
6 it wasn't his DNA under her fingernails. And then the last
7 expert witness the State had testify was Sergeant Kelly from
8 the Greenville County Sheriff's Office.

9 And again, going back to what I said already, I believe
10 twice in this argument, no matter how hard they try, because
11 I asked him, they can't place him in that field during the
12 early morning hours -- on Bramlett Church during the early
13 morning hours of August 19, 2013. Remember his testimony
14 was as far as towers hit -- and again, we're talking -- make
15 sure you understand. And I know you do. You've heard this
16 testimony and you've listened very attentively. But we're
17 talking about location of a cell phone, not a person but a
18 cell phone, to a tower. And Sergeant Kelly's testimony was
19 it doesn't always connect to the closest tower. It can
20 connect to the next closest tower because it might be a
21 stronger signal. And that can be many miles away. Many
22 miles away. And then if you take that from the tower to
23 that particular phone and then make a radius of it and put
24 it on the other side, too, it's many more miles away to that
25 particular tower. But he couldn't put him on Bramlett

1 Church Road in that field. He could say his phone was
2 connected to a tower near Gray Court -- or, I mean, I'm
3 sorry, Simpsonville, but no further. Now, you remember at
4 one point he said that Ms. Southern's phone was connected to
5 a tower where? In Woodruff, in a different county. I don't
6 know what that's all about. But her phone was connected by
7 signal to a tower in Woodruff, South Carolina. But all
8 that, ladies and gentlemen, I submit to you is reasonable
9 doubt. And these are the State's four expert witnesses.

10 Now, he also talks about -- the Solicitor, about the
11 testimony of -- well, he talked about the fact that Darrell
12 Raines' had Myranda Southern's card that night -- or that
13 morning, and that she'd used that card at 1:20 on the 18th
14 -- 1:20 p.m. on the 18th and at 8:00 p.m. that night on her
15 lunch break. Showed the videos. And you remember the
16 testimony of Ms. Sarah Duckworth, the lady who worked for
17 BB&T. And right up at the end of my cross-examination of
18 her I asked her about someone had used that card at 11:56 on
19 the evening of August 18th, that Sunday. I was asking her
20 about that record I'd shown. And she said that was possible
21 that someone had used that card at 11:56 that evening the
22 18th, and that was the time -- during the time Ms. Southern
23 would have still been at work. That was her testimony.
24 Again, just another reasonable doubt.

25 As I told you Monday afternoon when I spoke to you,

1 Darrell Raines has to prove nothing. That's not the way our
2 system works. In criminal cases the burden always remains
3 and rests on the State. That's just the way it is. The
4 State has to prove Darrell Raines did this. They have to
5 prove his guilt of both of these crimes beyond a reasonable
6 doubt. I told you the Judge is going to define that.

7 THE COURT: Speak up.

8 MR. ABLE: I'm sorry, sir. I'm sorry. But listen to
9 him and pay close attention to him, because you're going to
10 take the facts that you find in this case and you're going
11 to apply it to that law and you're going to deliberate.

12 I also told you Monday afternoon that we all, the
13 citizens of this country and of this state, enjoy our
14 presumption of innocence whenever we're charged with a
15 crime. Each of us, Darrell Raines included, comes into this
16 courtroom with a cloak of innocence wrapped around him.
17 It's just the way it is. It's a privilege that each of us
18 enjoy, because that burden never leaves the State and they
19 have to remove that cloak. I believe that once you examine
20 the evidence in this case and the shortcomings of the
21 evidence that I pointed out to you today and I pointed out
22 to you Monday, that you'll decide that the State hasn't
23 carried their burden in this case, and that cloak will
24 remain upon the shoulders of Darrell Raines. Thank you.

25 THE COURT: Thank you, Mr. Able.

1 MR. ABLE: Thank you, sir.

2 THE COURT: Mr. Foreman, ladies and gentlemen of the
3 jury, let's take a break. And I'm going to ask you to go
4 back to the jury room. Again, don't start any discussions
5 about this case because you still have to receive the
6 Court's final charge to you. So let's take a break and
7 we'll bring you back out and I'll give you the final charge.

8 (Whereupon, the jury exited the courtroom at 2:38 p.m.)

9 THE COURT: We'll be in recess for about 15 minutes.

10 (Whereupon, a recess was held from 2:38 p.m. to 3:00
11 p.m.)

12 (Whereupon, the jury entered the courtroom at 3:00
13 p.m.)

14 THE COURT: Mr. Foreman, and ladies and gentlemen of
15 the jury, I now will charge you the law applicable to this
16 case and you must consider the charge as a whole and not
17 focus on some portions to the exclusion of other portions.

18 Now, the two indictments in this case charge the
19 Defendant with murder and with possession of a weapon during
20 the commission of a violent crime. I remind you that the
21 fact that the Defendant has been arrested, charged and
22 indicted in this case is not evidence in this case and
23 cannot be considered by you as evidence of guilt in this
24 case, nor does it create any presumption or inference of
25 guilt. These documents are simply the formal written

1 instruments which contain the charges made against the
2 Defendant. They are the formal documents by which this case
3 is brought into this Court. Again, these indictments in
4 this case allege two different offenses against the
5 Defendant. Charge one is murder. Charge two is possession
6 of a weapon during the commission of a violent crime. Each
7 indictment charges a separate and distinct offense. You
8 must decide each indictment separately on the evidence and
9 the law applicable to it uninfluenced by your decision as to
10 any other count in the indictment. The Defendant may be
11 convicted or acquitted on any or all of the offenses
12 charged. You'll be asked to write a separate verdict of
13 guilty or not guilty for each indictment.

14 Now, I'll remind you during this trial that you and I
15 have had certain duties to perform. As the trial judge it
16 has been my responsibility to preside over the trial of this
17 case, and I also have had a duty to rule on the
18 admissibility of the evidence offered during this trial.
19 You are to consider only the competent evidence before you.
20 If there was any testimony ordered stricken from the record
21 in this case during this trial, and I believe that there
22 were a couple of times, you must disregard that testimony.
23 You'll have to consider only the testimony which has been
24 presented from this witness stand, any exhibits which have
25 been made a part of the record in this case, and any

1 stipulations of counsel. I've had the additional duty to
2 charge you on the law applicable to this case as I'm doing
3 that. As the presiding judge, I am the sole judge on the
4 law of this case, and it is your duty as jurors to accept
5 and apply the law as I now state it to you. As I told you
6 at the outset, if you already have any idea as to what the
7 law is or what the law ought to be and it does not agree
8 with what I now tell you the law is, you must abandon your
9 idea because you are sworn to accept the law and apply the
10 law exactly as I state it to you.

11 In every case tried in this court before a jury the
12 jury becomes the sole and exclusive judge of the facts of
13 the case. A trial judge cannot intimate, state, comment on,
14 or make any statement to a trial jury about the facts in a
15 case. Since you, the jury, are the sole judge of the facts
16 of this case you are not to infer from what I said during
17 the progress of this trial in ruling upon the admissibility
18 of evidence or otherwise or anything that I now say to you
19 during the course of this instruction to you that I have any
20 opinion about the facts in this case. The law does not
21 allow me to have an opinion about the facts in this case.
22 This is a matter solely for you, the jury, to determine. As
23 jurors it's your duty to determine the affect, valuate and
24 truth of the evidence presented during this trial.

25 Now, the Defendant has pled not guilty to these two

1 indictments, and that plea puts the burden on the State to
2 prove the Defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent. I charge you that it is
5 an important rule of the law that the Defendant in a
6 criminal trial, no matter what the seriousness of the charge
7 may be will always be presumed to be innocent of the crime
8 for which the indictment was issued unless guilt has been
9 proven by evidence satisfying you of that guilt beyond a
10 reasonable doubt. The presumption of innocence does not end
11 when you begin your deliberations but it accompanies the
12 Defendant throughout the trial unless you reach a verdict of
13 guilt based on evidence satisfying you of that guilt beyond
14 a reasonable doubt. The presumption of innocence is like a
15 robe of righteousness placed about the shoulders of the
16 Defendant which remains with the Defendant unless it has
17 been stripped from the Defendant by evidence satisfying you
18 of the Defendant's guilt beyond a reasonable doubt. The
19 presumption of innocence it not more legal theory. It is
20 not just a legal phrase. It is a substantial right to which
21 ever Defendant is entitled unless you, the jury, is
22 satisfied from the evidence of the Defendant's guilt beyond
23 a reasonable doubt. I'll say it once again. The State has
24 the burden of proof. The burden of proving the Defendant
25 guilty beyond a reasonable doubt. Some of you may have

1 served as jurors in civil cases where you were told that it
2 was only necessary to prove that a fact is more likely true
3 than not true, such as by the greater weight or the
4 preponderance of the evidence. But in criminal cases the
5 prove -- the State's prove must be more powerful than that.
6 It must be beyond a reasonable doubt. Proof beyond a
7 reasonable doubt is proof that leaves you firmly convinced
8 of the Defendant's guilt.

9 Now, Mr. Foreman, and ladies and gentlemen of the jury,
10 there are very few things in this world that we know with
11 absolute certainty and in criminal cases the law does not
12 require proof that overcomes every possible doubt. If based
13 on your consideration of the evidence you are firmly
14 convinced that the Defendant is guilty of the crimes charged
15 then you must find the Defendant guilty. If on the other
16 hand you think there's a real possibility that the Defendant
17 is not guilty, you must give the Defendant the benefit of
18 the doubt and find him not guilty.

19 Now, there are two types of evidence which are
20 generally presented during a trial, direct evidence and
21 circumstantial evidence. Direct evidence directly proves
22 the existence of a fact and does not require deduction.
23 Circumstantial evidence is proof of a chain of facts and
24 circumstances indicating the existence of a fact. Now,
25 crimes may be proven by circumstantial evidence. The law

1 makes no distinction between the weight or value to be given
2 to either direct or circumstantial evidence. However, to
3 the extent the State relies on circumstantial evidence, all
4 of the circumstances must be consistent with each other, and
5 when taken together point conclusively to the guilt of the
6 accused beyond a reasonable doubt. If these circumstances
7 merely portray the Defendant's behavior as suspicious, the
8 proof has failed. The State has the burden of proving the
9 Defendant guilty beyond a reasonable doubt and this burden
10 rests with the State regardless of whether the State relies
11 on direct evidence or relies on circumstantial evidence or
12 some combination of the two.

13 Necessarily, as jurors, you must determine the
14 credibility of witnesses who have testified in this case.
15 Credibility simply means believability. It becomes your
16 duty as jurors to analyze and to evaluate the evidence and
17 determine which evidence convinces you of its truth. In
18 determining the believability of witnesses who have
19 testified in this case you may believe one witness over
20 several witnesses, or several witnesses over one witness.
21 You may believe a part of the testimony of a witness and
22 reject the remaining part of the testimony of that same
23 witness. You may believe the testimony of the witness in
24 its entirety or reject the testimony of a witness in its
25 entirety. You may consider whether any witness has

1 exhibited to you any interest or bias, prejudiced, or other
2 motives in this case. You may also consider the appearance
3 and the manner of a witness while on the witness stand.

4 Now, as I told you during the course of this trial the
5 rules of evidence ordinarily do not permit witnesses to
6 testify to opinions or conclusions. An exception to this
7 rule exists for witnesses we call expert witnesses. A
8 witness who by education and experience has become an expert
9 in some art, science, profession or calling may state an
10 opinion as to relevant and material matter in which the
11 witness claims to be an expert, and may also state the
12 reasons for the opinion. You should consider any expert
13 opinion received in evidence in this case, and like any
14 other evidence, give it the weight you think that it
15 deserves. If you decide that the opinion of an expert
16 witness is not based on sufficient education and experience,
17 or if you conclude that the reasons given in support of
18 their opinion are not sound, or that the opinion is
19 outweighed by other evidence, you may disregard their
20 opinion entirely. An expert witness' testimony is to be
21 given no greater weight than that of other witnesses simply
22 because the witness is an expert. Further, you're not
23 required to accept an expert's opinion even though it is not
24 contradicted.

25 A statement or statements alleged to have been made by

1 the Defendant have been admitted into evidence in this case.
2 While the Court has determined that the statements are
3 admissible, I instruct you that you make the ultimate
4 decision of whether or not the Defendant made the
5 statements. If the Defendant did make the statements you
6 must then determine whether the statements were made by the
7 Defendant voluntarily and of his own free will. This means
8 that the statements were not caused by pressure, force,
9 fear, threats, coercion or intimidation or by hope or a
10 promise of leniency or a reward of any kind. In determining
11 whether the statements were voluntary you should consider
12 both the characteristics of the Defendant and the details of
13 the questioning. Some of the factors that you may consider
14 are the age of the Defendant, the Defendant's education or
15 lack thereof, the Defendant's mental ability and capacity,
16 the Defendant's IQ or intelligence, the Defendant's
17 background and environment, the place and length of
18 detention, the nature of the questioning, and the advice or
19 lack thereof to the Defendant of his Constitutional rights
20 including but not limited to the right to remain silent,
21 that any statement could be used against him in a court of
22 law. The right to have a lawyer present. That if he could
23 not afford a lawyer, a lawyer would be appointed to
24 represent him without any cost, and that he could stop
25 making the statement at any time. You must carefully

1 consider all of the surrounding circumstances before you
2 give any weight to the alleged statement or statements. The
3 State has the burden of proving beyond a reasonable doubt
4 that the alleged statement or statements were voluntary. If
5 you determine they were you may give the statements any
6 further consideration that you deem proper. You must decide
7 what weight if any should be given to the alleged
8 statements. If you determine that the alleged statements
9 were not the free and voluntary statements of the Defendant,
10 you should not consider the statements at all.

11 Criminal intent is a necessary element of each crime
12 and must be proven by the State beyond a reasonable doubt.
13 Criminal intent is always a matter that must be determined
14 by the jury from the circumstances surrounding the
15 situation. Now, there's no way to prove intent to a
16 mathematical certainty. There's no way medical science can
17 dissect a person's brain to determine what he or she had in
18 mind, so that the law states criminal intent may be inferred
19 by the circumstances shown to have existed both before and
20 after the fact. This is how you, the jury, make a determine
21 of whether or not the element requiring an intent was
22 present. Criminal intent is a state of mind that operates
23 jointly with an act or omission in the commission of a
24 crime. Criminal intent is a mental state of conscious
25 wrongdoing, so it is up to you, the jury, to determine what

1 the Defendant intended to do based on the circumstances
2 shown to have existed. I tell you that statements prove
3 criminal intent beyond a reasonable doubt just as the
4 statements prove every element of the offense beyond a
5 reasonable doubt as I have previously explained to you.

6 Now, as stated before, the Defendant has been charged
7 with murder. The State must prove beyond a reasonable doubt
8 that the Defendant killed another person with malice
9 aforethought. Malice is hatred, ill will or hostility toward
10 another person. It is the intentional doing of a wrongful
11 act without just cause or excuse and with an intent to
12 inflict an injury or under circumstances that the law will
13 infer an evil intent. Malice aforethought does not require
14 that malice exists for any particular time before the act is
15 committed, but malice must exist in the mind of the
16 Defendant just before and at the time when the act is
17 committed. Therefore, there must be a combination of the
18 previous evil intent and the act. Now, malice aforethought
19 may be expressed or inferred. These terms expressed and
20 inferred do not mean different kinds of malice, but merely
21 the manner in which malice may be shown to exist. That is
22 either by direct evidence or by inference from the facts and
23 circumstances which are proven. Express malice is shown
24 when a person speaks words which express hatred or ill will
25 for another, or when the person prepared beforehand to do

1 the act which is later -- which was later accomplished.
2 Just for example purposes only, lying in wait for a person,
3 or any other acts of preparation going to show that the deed
4 was within the Defendant's mind would be expressed malice.
5 On the other hand, malice may be inferred from conduct
6 showing a total disregard for human life. Inferred malice
7 may also arise when the deed is done with a deadly weapon.
8 A deadly weapon is any article, instrument or a substance
9 which is likely to cause death or great bodily harm.
10 Whether an instrument has been used as a deadly weapon
11 depends on the facts and circumstances of each case. A gun
12 is a deadly weapon.

13 Now, the Defendant has also been charged with
14 possession of a weapon during the commission of or the
15 intent to commit a violent crime. The State must prove
16 beyond a reasonable doubt that the Defendant was in
17 possession of a firearm or visibly displayed what appeared
18 to be a firearm during the commission of a violent crime. A
19 firearm means any machine gun, automatic rifle, revolver,
20 pistol or any weapon which will and is designed to or may be
21 readily converted to expel a projectile. In order to find
22 the Defendant guilty of possession of a weapon during the
23 commission of a violent crime you must first find the
24 Defendant guilty of either committing a violent crime or
25 attempting to commit a violent crime. Murder is a violent

1 crime. The State must prove beyond a reasonable doubt that
2 the weapon furthered, advanced or helped in the commission
3 of the crime.

4 Now, I instruct you Mr. Foreman and ladies and
5 gentlemen of this jury and emphasize that the fact that the
6 Defendant did not testify is not a factor to be considered
7 by you in any way in your deliberations and in your
8 consideration on the question of the guilt or innocence of
9 the Defendant. It must not be considered by you in any
10 manner whatsoever. A Defendant has the Constitutional right
11 to remain silent. And the assertion of this right must not
12 be considered by you in your deliberations. I repeat, under
13 your oath, you are to draw no conclusion whatsoever from the
14 fact that the Defendant in this case did not testify. The
15 fact that this Defendant did not testify should not even be
16 discussed in the jury room. The burden of proof, as I have
17 stated to you several times, is on the State. The Defendant
18 is not required to prove his innocence. The burden of proof
19 remains on the State to prove guilt beyond a reasonable
20 doubt.

21 Now, since we have two charges there are four possible
22 verdicts in this case, and I'm going to show you a verdict
23 form. I'm going to come down and show it to you in just a
24 minute. Mr. Foreman, ladies and gentlemen of this jury,
25 your verdict has to be unanimous among the 12 of you. And

1 after you have reached your verdict you notify the bailiff
2 and then we will make provisions for you to come out so the
3 verdict will be received. And I will also tell you what I
4 have just read to you, which was a lot, I understand that,
5 you'll be given a copy of what I've just read to you in the
6 jury room along with the exhibits.

7 Let me just show you. It's a very simple verdict form.
8 In a lot of cases we have we have very complicated verdict
9 forms. But this is a very simple verdict form. This is
10 what you will have to complete Mr. Foreman when you have
11 reached a verdict. It basically identifies the case. And
12 then as to the murder charge it references the indictment
13 number. You either mark guilty or not guilty. And likewise
14 with the possession of a weapon during the commission of a
15 violent crime charge, same thing, guilty or not guilty. The
16 fact that guilty is placed first and not guilty second is of
17 no significance. One has to be placed above the other.
18 Okay? So this is the form that you will mark and sign and
19 put today's date.

20 Now, I'm going to ask that all of you, including the
21 three alternates, go back to your jury room. Don't begin
22 your deliberations yet. I need to discuss with the lawyers
23 to make sure that there are no additional charges or no
24 objections to any of my charge that we need to take up with
25 you. Two things will happen, you'll either be brought back

1 out for additional charge, or two, the bailiffs will bring
2 to you the exhibits that have been offered into evidence in
3 this case, the verdict form, and a copy of my charge. That
4 will be your cue for two things to happen. One, the three
5 alternates will need to come back here to the courtroom, and
6 I'll give you further instructions, and then, Mr. Foreman,
7 you can start your deliberations.

8 Now, I'll mention one thing to you. The gun, the .380
9 that's into evidence, will not go back to the jury room.
10 Okay? If you want to see this .380 then we'll bring it to
11 you, but we'll need to -- this is all out of just safety.
12 We'll have to then take the magazine and the bullets back
13 out of the jury room. So if at any time you need that .380
14 back there, you just let the bailiffs know and they'll be
15 more than happy to bring it to you. Okay?

16 So go back. Don't start deliberations yet. But I
17 anticipate in just a few moments Mr. Bolt will bring to you
18 the exhibits and you can start. Okay?

19 (Whereupon, the jury exited the courtroom at 3:20 p.m.)

20 THE COURT: Does the State have any exceptions or
21 objections to the Court's charge?

22 MR. SCOTT: No, Your Honor.

23 THE COURT: Defense?

24 MR. ABLE: None, Your Honor.

25 THE COURT: Thank you very much.

1 MR. ABLE: Thank you.

2 THE COURT: We'll be off the record, and as soon as Mr.
3 Bolt comes back you can give him all that.

4 (Whereupon, the jury was in deliberations as from 3:22
5 p.m. to 4:10 p.m.)

6 THE COURT: We're back on the record, and it's my
7 understanding from Mr. Bolt that we have a verdict.
8 Anything we need to put on the record before I bring the
9 jury out and we receive the verdict?

10 MR. SCOTT: Nothing from the State, Your Honor.

11 MR. ABLE: No, sir.

12 THE COURT: We've got a lot of people in this
13 courtroom. Certainly these kinds of cases have a lot of
14 emotion to it, and I can understand that and I can
15 appreciate that. Tragedy both ways. But I can't have any
16 -- any showing of, or any outburst of emotion with the
17 verdict is published. So if you feel like, anybody, you
18 feel like you cannot contain your emotions when the verdict
19 is published, then I would really ask that you exit the
20 courtroom at this time. Otherwise, if you cannot contain
21 your emotions when the verdict is published then, you know,
22 you're going to put the Court in a difficult situation to do
23 something about that. Okay?

24 All right. Seeing none, Mr. Bolt, if you would bring
25 the jury out, please.

1 (Whereupon, the jury entered the courtroom at 4:19
2 p.m.)

3 THE COURT: Mr. Foreman, it's my understanding that you
4 have reached a verdict; is that correct?

5 MR. FOREMAN: Yes, sir.

6 THE COURT: And without telling me what the verdict is,
7 was and is the verdict unanimous?

8 MR. FOREMAN: It is, Your Honor.

9 THE COURT: Would you hand the verdict form to Mr.
10 Bolt, please.

11 Mr. Raines, if you will please stand with your
12 attorney. I'm going to ask the Clerk to publish the
13 verdict.

14 MADAM CLERK: Your Honor, in the case of State of South
15 Carolina vs. Darrell Ervin Raines, Jr., case number
16 2013-GS-30-1932 and 1933, as to question number one, as to
17 indictment number 2013-GS-30-1932 which charges the
18 Defendant, Darrell Ervin Raines, Jr., with murder, we the
19 jury find the Defendant guilty. As to question two, as to
20 indictment number 2013-GS-30-1033 which charges the
21 Defendant, Darrell Ervin Raines, Jr., with possession of a
22 weapon during the commission of a violent crime, we the jury
23 find the Defendant guilty. Signed by the Foreman, Kenneth
24 Wright, dated December 11th, 2015.

25 Ladies and gentlemen, if that be your verdict, please

1 indicate by raising your right hand.

2 (Whereupon, jury panel raises right hand.)

3 MADAM CLERK: Thank you.

4 THE COURT: Thank you, Madam Clerk. You can have a
5 seat Mr. Able, Mr. Raines. Does either side wish for
6 individual polling of the jury? State?

7 MR. SCOTT: Not from the State, Your Honor.

8 THE COURT: Defense?

9 MR. ABLE: Yes, sir. We would.

10 THE COURT: Okay. Madam Clerk, if you could handle
11 that for us, please ma'am.

12 MADAM CLERK: Ladies and gentlemen, the verdict that I
13 have just published was the verdict you reached in the jury
14 room. I ask you was it your verdict then and is it your
15 verdict now. As I call your name, please answer yes or no.

16 Katrina A. Moulder?

17 JUROR: Yes.

18 MADAM CLERK: David M. Rice?

19 JUROR: Yes.

20 MADAM CLERK: Billy C. Copeland?

21 JUROR: Yes, ma'am.

22 MADAM CLERK: Doris A. Jones?

23 JUROR: Yes.

24 MADAM CLERK: Maxie Richey Rice?

25 JUROR: Yes, ma'am.

1 MADAM CLERK: Jack M. Pepper?

2 JUROR: Yes.

3 MADAM CLERK: Charles A. Richter?

4 JUROR: Yes.

5 MADAM CLERK: Paul E. Dellinger?

6 JUROR: Yes.

7 MADAM CLERK: Linda Michelle Meier?

8 JUROR: Yes.

9 MADAM CLERK: Kenneth W. Wright?

10 JUROR: Yes.

11 MADAM CLERK: Catherine A. Streeter?

12 JUROR: Yes.

13 MADAM CLERK: And Tonya Littleton? Sorry.

14 JUROR: Yes.

15 THE COURT: Thank you, Madam Clerk. Ladies and
16 gentlemen of the jury, I want to extend to you the Court's
17 sincere appreciation for your hard work in this case. The
18 verdict that you reach is of no concern to the Court. What
19 I want is for the jury to conscientiously and diligently
20 perform jury service. I believe that you have. It's been a
21 long case. A five day case. It's a long case. We've spent
22 a lot of time in here. And I can only just thank you enough
23 for your service on this jury in this case.

24 Before I can get -- Mr. Wright, you will need to stay
25 here for just a moment. We've got the two indictments that

1 will have to be signed by you as the Foreman. The checks
2 for your service, the Clerk has those. And you are free at
3 this time to speak with anybody about this case, if you want
4 to. You don't have to. Certainly if someone -- and I'm not
5 suggesting this will happen, but if someone insists on
6 talking to you about this case and you do not want that to
7 happen and they continue to insist -- and I'm not
8 suggesting, again, that this will happen. You need to
9 notify the Court so the Court can take care of that. But if
10 you want to talk with someone about this case, you certainly
11 can.

12 I like to shake the hands of my jury, so I'm going to
13 come down there and shake your hand as you leave. And,
14 Madam Clerk, would you come with me and hand out the checks.
15 And I hope -- this has been a very difficult case. I
16 realize that, and I can understand that. But I hope that
17 the experience has been a good experience for you. One that
18 was educational and that you learned something about our
19 judicial system. As I told you the very first day, we have
20 the greatest justice system in the world and I hope that you
21 agree with that.

22 (Whereupon, the jury was released.)

23 THE COURT: We're going to take about a five minute
24 break before we go into sentencing proceedings.

25 THE COURT: This is now the sentencing phase of this

1 proceeding and let's just handle it -- come on up like we
2 do, please.

3 MR. ABLE: Judge, can he be accompanied by his mother?

4 THE COURT: Sure. And I -- let me go and say, I'll be
5 glad to hear from anybody on behalf of the State. I'll be
6 glad to hear from anybody on behalf of the Defendant.
7 Typically what I do in these situations, I'll hear
8 everything from the State first, and then everything from
9 the Defense.

10 Solicitor Scott, I'll be glad to hear from you.

11 MR. SCOTT: Judge, after considering the full week's
12 testimony and seeing all the evidence, looking into the mind
13 of Mr. Raines there's some information we got. I read a
14 saying the other day. It said "Some crimes speak to you.
15 Murder shrieks out." And we know that to be true. But this
16 particular murder, it was the most senseless and the most
17 meaningless and without reason killing I've ever seen. I
18 mean, did he do it for 500 bucks and an ATM card or did he
19 do it for some unattainable goal, being Lisa Hamlett? I
20 don't know. But to kill the mother of two, to leave her in
21 a field in the hot August sun for a week, to go to the field
22 the day of the murder before doing it shows a complete
23 premeditated and cold blooded thought process. And then to
24 do it. And then to be cruel enough to send these Face book
25 posts and these Face book messages to these family members

1 while they're out looking for this woman is the cruelest
2 most unthinkable, most senseless murder I've ever dealt
3 with. And, Judge, based on that, I'm asking you to give him
4 the max. He took it to trial. He was found guilty,
5 overwhelmingly. I'm asking you to give him life in prison,
6 Judge. I've got the victim's mother here, Penny Smithers,
7 and she's going to address the Court. This is the mother of
8 Myranda Southern.

9 THE COURT: Okay. Ms. Smithers, I'll be glad to hear
10 from you, ma'am.

11 MS. SMITHERS: Thank you, Your Honor. Myranda was
12 filled with life, love and laughter and a sense of -- a very
13 strong sense of family. She had two lovely children she
14 adored and loved them dearly. And our family has a huge
15 void now that she's gone. I still to this day find myself
16 reaching for my phone to either call her or text her and
17 then I realize she's no more. Darrell chose to take her
18 life from us. He knew she had Alex and Abby. He also knew
19 that he murdered her on Abby's eighth birthday because he
20 referenced Myranda not liking Abby not being home on her
21 birthday when he spoke to me. The children were in Florida
22 with me on a different week than normal because of our work
23 schedules. We do the best we can to make Abby's birthday
24 special to her, but every year she looks at it as this is a
25 sad day. She tries to enjoy her birthday but at some point

1 she simply escapes. She cannot escape that it was the day
2 that her mommy was murdered. And he did this to these
3 children. I took great care in order to bring Myranda into
4 this world. I had to stay in bed and I was not allowed to
5 get out except to go to the bathroom for three months or I
6 would have lost her. And in an instant Darrell took her
7 life as if she never mattered. Alex was his mommy's boy.
8 She was his best friend. His confidant. His peaceful place.
9 In an instance Darrell took that from Alex. Myranda did
10 bring laughter and warmth to everyone. She has friends that
11 are still grieving for her two years later. I will never be
12 able to hold my daughter, kiss her, have girl talk with her,
13 go shopping, out to lunch, anything ever again. Darrell
14 took that from me and her. Myranda told me about meeting
15 Darrell and that they talked via the Internet a week before
16 physically meeting. She was very depressed over Shawn
17 leaving and there was going to be a baby. She needed
18 someone to confide in. She had moved away from her family.
19 And Darrell learned this and told Myranda he was going
20 through the same situation with his ex, Lisa. She said,
21 Mom, we're just there for each other. I was happy for her
22 because she was laughing again. She was smiling. She had a
23 spring in her step, so to speak. She knew the marriage that
24 she had tried to hold together was over. She needed to feel
25 loved and wanted by someone kind. Darrell presented himself

1 as that person. She told me that she felt they'd always be
2 friends but nothing serious would become of it. She knew
3 they both loved other people that they couldn't be with.
4 She was all about helping people feel better about
5 themselves. She showed him all this kindness and
6 understanding and he killed her in an instant. She was
7 extremely vulnerable and Darrell knew it. Our families
8 mourn for her daily. Even though it's over two years after
9 her death our family cannot get past the huge void that is
10 her absence. She and my niece were like sisters. My niece
11 cries every time she has something she wants to call Myranda
12 about. To this day there are times, I told you, I pick up
13 the phone and remember she's no more. My heart breaks over
14 and over. It's as if somebody ripped my chest open and my
15 heart out and yet I'm still walking around without her. I
16 know I will never wake up from this nightmare and see my
17 baby girl's face. Her children will never feel another hug
18 or kiss from their mommy. They will never hear her voice
19 say I love you or read a story to them. They will never get
20 all excited again that mommy is chaperoning one of their
21 field trips. They don't understand why he took their mommy
22 from them. There will never be a day that I will forget
23 those babies cries when they were told their mommy was an
24 angel now and lived in Heaven. They didn't understand why a
25 friend did that to their mommy. Alex, at 10-years-old, said

1 to me, "Mimi, do they know what his motive was?" No
2 10-year-old should ever have to ask such a question. No
3 eight-year-old little girl should learn that on her birthday
4 her mommy was murdered. I could go on and on, Your Honor,
5 but the bottom line is in an instant Darrell took their
6 mommy, my only child from us without a second thought. He
7 discarded her as if she was a bag of trash. Someone that
8 did not matter. And she did matter. And her life mattered.
9 Your Honor, I believe in an eye for an eye, and I believe in
10 the death penalty. That is what I would like to see Darrell
11 Raines, Jr. receive. Since in this case the State of South
12 Carolina will not allow this, I feel he has earned nothing
13 less than a lifetime in prison without absolutely no chance
14 of parole so the world can be sure he can never take another
15 mommy's life away again.

16 THE COURT: Thank you, ma'am, for your comments, and
17 I'm truly sorry for your loss.

18 MS. SMITHERS: Thank you.

19 THE COURT: Solicitor Scott, anything further from the
20 State before I go to the Defense?

21 MR. SCOTT: No, Your Honor.

22 THE COURT: Okay. Thank you very much. Mr. Able, I
23 would be glad to hear from you and anybody on behalf of the
24 Defendant, and if Mr. Raines wishes to address the Court I'd
25 be glad to hear from him, too. I'll leave it up to you.

1 MR. ABLE: Thank you, Judge. Judge, I have not a lot
2 to add right now. This has been a very emotional case for
3 everybody on both sides. In my time as an attorney it's one
4 of the most difficult cases I've been engaged in. Not
5 because of the work involved, but just because of the
6 emotion that had been involved for everyone. I will mention
7 that my client is 36-years-old. And this -- these are
8 things you've already learned through the testimony. He has
9 a daughter. And I think the most striking thing is that up
10 to this point he has no criminal history. Nothing. So
11 based upon that, Judge, we would ask that you afford him the
12 liberty and grant a minimal sentence as allowed by statute.
13 Thank you, sir.

14 THE COURT: Thank you. Anybody on his behalf? Does
15 the mother want to speak?

16 MR. ABLE: Yes, sir.

17 DEFENDANT'S MOTHER: I have three sons. He's never
18 ever showed any hatred, any. He never fought with his
19 brothers. He's always broke the other two up. He -- when
20 his nieces and nephews were going through a bad rough spell
21 with their parents fighting, one leaving and the other
22 abandoning them anywhere, he's the one who would go pick up
23 the kids even if it wasn't for just to take them to
24 McDonald's to make them smile. He's not a monster. He's
25 never been a monster. I don't know what's what. All I know

1 is he's a good person. And I ask you to be lenient on him.
2 He's one of my kids I never had to punish. He's always the
3 best one. He's never had -- he doesn't have a record. He's
4 never fought. It just --

5 THE COURT: Thank you, ma'am, for your comments, and
6 I'm sorry for your loss as well.

7 Mr. Able, do you want Mr. Raines to -- does he want to
8 say anything to the Court?

9 MR. ABLE: Judge, I spoke to Mr. Raines this afternoon.
10 He's indicated to me he would not.

11 THE COURT: All right. Everybody be at ease for just
12 one moment.

13 (Whereupon, a brief recess was held.)

14 THE COURT: This whole week I've tried to -- well, let
15 me first say publicly for the record, I commend all three
16 attorneys for the -- not only the excellent representation
17 on each side, your respective sides, but all the work that
18 you all put into this. All three of you. A ton of work.
19 And I commend you for that. I really do. And I told you
20 back in my office I'm proud of all three of you. I truly
21 am.

22 Mr. Raines, I've tried to get my arms around this case
23 all week long. I have given it a ton of thought. And
24 trying to -- and I think maybe Solicitor Scott alluded to
25 this in some fashion during his closing argument, you know,

1 why. Why did this happen. I don't know. But it's very
2 clear from the evidence, extremely clear from the evidence,
3 that there was a tremendous amount of preparation, a
4 tremendous amount of effort before and after. It's not --
5 not to minimize a killing that takes place on the spur of a
6 moment after a fight between two individuals. I'm not
7 minimizing that at all. But in this particular situation
8 there was a lot that you did in planning this and carrying
9 it out and then trying to cover it up. That's clear from
10 all the evidence that's in the record. But again, I can't
11 understand why. Why you did it. But the jury has come back
12 and has found that you have.

13 On the indictment 13-GS-30-1933, which is the
14 possession of a weapon during a violent crime, even though
15 I'm not required to necessarily sentence you on this I am
16 going to commit you to the State Department of Corrections
17 for five years, and that will run consecutive to the other
18 sentence.

19 On indictment 13-GS-30-1932, which is the charge of
20 murder, you'll be committed to the State Department of
21 Corrections for the remainder of your life. Good luck to
22 you, sir. That concludes this hearing.

23 (Whereupon, the proceeding was concluded.)

24

25 - - - END OF TRANSCRIPT OF RECORD - - -

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 7th-11th day of December, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR

Circuit Court Reporter

June 11, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL ERWIN RAINES JR.,

APPELLANT

APPELLATE CASE NO 2016-000142

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court erred reversibly by admitting the unredacted video tape of Appellant's interrogation by law enforcement during which investigators, several of whom did not testify at trial, repeatedly called Appellant a liar, misrepresented or fabricated evidence of Appellant's guilt during the interrogation, and urged Appellant to confess to Miranda Southern's murder; all of which constituted inadmissible hearsay.

II.

The trial court erred reversibly in admitting texts messages purportedly sent by Miranda Southern to Appellant where the text messages purportedly sent by Southern constituted inadmissible hearsay, not fitting within any exception.

STATEMENT OF THE CASE

On November 1, 2013, the Laurens County Grand Jury indicted Appellant Darrell Raines for murder and possession of a weapon during the commission of a violent crime. R. 604 – 607.

On December 7-11, 2013, Appellant proceeded to trial before the Honorable Donald B. Hocker and a jury. R. 1. Bryan C. Able represented Appellant, and Assistant Solicitors Dale Scott and Margaret Boykin represented the State. The jury found Appellant guilty as charged. R. 591, l. 14 - 593, l. 23. The trial court sentenced Appellant to life imprisonment. R. 601, l. 14 - 602, l. 22.

This appeal follows.

ARGUMENT

I.

The trial court erred reversibly by admitting the unredacted video tape of Appellant's interrogation by law enforcement during which investigators, several of whom did not testify at trial, repeatedly called Appellant a liar, misrepresented or fabricated evidence of Appellant's guilt during the interrogation, and urged Appellant to confess to Miranda Southern's murder; all of which constituted inadmissible hearsay.

Introduction

The State accused Appellant of murdering Miranda Southern, a woman he had met on the online dating site Plenty-of-Fish. Southern went missing after finishing a shift at Charter Communications in Simpsonville on August 19, 2013. On August 23, 2013, her body was found in a rural field in Laurens County just south of Woodruff. She was killed by a single gunshot wound to the back of the neck.

Confusingly, the State alleged that Appellant was motivated to murder Southern because he was obsessed with another woman, Lisa Hamlett. As will be seen *infra*, the State's case against Appellant was circumstantial. Prosecutors pieced together, and at times overstated the relevance of, an amalgamation of gun purchases, text messages, historical cell site data, and purported inconsistencies in Appellant's statements to law enforcement to allege that Appellant killed Southern.

Relevant Facts

On August 19, 2013, Miranda Southern was reported missing by her neighbor, Lauren Searcy, after Southern missed their usual morning chat from their adjoining apartment porches. R. 64, l. 16 – 66, l. 18. Calls and text messages Searcy made to Southern's cell phone went unanswered. Southern's car was also missing.

Searcy then checked Southern's Facebook page where Southern had posted that, due to stress, she was leaving the Greenville area to visit friends in Savannah. R. 69, l. 5 – 70, l. 23. Despite only knowing Southern for five months prior to her disappearance and admittedly being unfamiliar with Facebook, Searcy asserted at trial that the Facebook entries did not appear to be written by Southern. R. 68, ll. 16-25.

Searcy called the police and reported Southern missing. R. 70, l. 21 – 72, l. 16. Greenville County Investigators Tracy King and Antonio Bailey interviewed Searcy regarding the missing persons report she filed. R. 186, l. 8 – 187, l. 21. From Searcy, the officers learned that Southern was estranged from her husband, Shawn Southern, with whom she had two children. R. 73, ll. 3-15. Investigators also learned that Southern had met and begun to socialize with Appellant. R. 59, l. 11 – 63, l. 14.

Shawn and Southern had a volatile relationship. Shawn had recently moved out of their apartment. R. 109, l. 7 – 111, l. 18. At the time of Southern's disappearance, he was living with his girlfriend, Deborah Nulph. He had recently impregnated her and, by the time of Appellant's trial, had married her. *Id.* Shawn testified that Southern "exploded" when she discovered that he had impregnated Nulph. R. 123, l. 4 – 127, l. 10. Nulph was the only person able to provide Shawn with an alibi for the time period during which Southern disappeared. R. 132, l. 13 – 136, l. 6. Police eliminated Shawn as a suspect based on Nulph's averments.

Shawn was unemployed and unable to financially support the two children he had with Southern. R. 82, l. 4 – 83, l. 12. His relationship with Southern's family was so fraught that Southern's mother refused to turn her grandchildren over to his custody after Southern went missing. R. 88, ll. 4-23. Southern was employed at Charter Communications and still maintained a joint bank account with Shawn. R. 211, l. 1 – 212, l. 17.

With the impending dissolution of her marriage, Southern began online dating. R. 59, l. 8 – 60, l. 16. Only two days before she disappeared, Shawn found out that Southern was socializing with Appellant and – despite his infidelity leading to the end of their marriage – he instigated a violent fight with Southern during which he broke her cell phone and stole her big-screen television. R. 109, l. 7 – 112, l. 21; R. 124, l. 7 – 127, l. 10. However, at trial, Shawn claimed the two had reconciled and, that on the day she disappeared, Southern visited him during her break at around 8:00-8:30 pm and the two had a friendly conversation. R. 111, l. 7 – 112, l. 2.

At the beginning of their investigation, police accessed Southern's financial records. Her banking records revealed that a five hundred dollar ATM withdrawal was made at 3:30 am on August 19, 2013. R. 214, l. 1 – 220, l. 25. Southern was last seen leaving work at Charter Communications just after mid-night, early on August 19th.

Video surveillance from the ATM machine located in Berea, South Carolina, just north of Greenville showed Appellant made the withdrawal using Southern's debit card. (State's Exhibit #29). Video cameras from a convenience store established that Southern had her debit card with her until at least 8:00 pm on August 18th. R. 214, l. 1 – 220, l. 25.

Police first interrogated Appellant on August 22, 2013. R. 442, l. 11 – 447, l. 10. Investigators Antonio Bailey and Tracy King conducted the interrogation. In a written statement, Appellant explained that Southern had lent him her debit card so that he could borrow money to make a car payment. *Id.*; (State's Exhibit #26). Appellant stated that he had borrowed the debit card either the night before or the morning that Appellant disappeared. *Id.*

Appellant wrote that Southern and Shawn had been fighting because Shawn was upset about Southern dating other men. *Id.* Appellant explained that, when he texted Southern to let her know he was about to make the withdrawal from Southern's joint bank account she shared

with Shawn, she asked him to withdraw three hundred dollars for her. *Id.* At trial, Searcy confirmed that Southern also allowed her to borrow her debit card to make purchases on her behalf. R. 132, ll. 3-21.

Appellant also wrote that he owned a 9mm Hi-Point pistol that he had purchased from a Greenville area gun shop. (State's Exhibit #26). Police later interviewed the gun shop owner, who recalled that Appellant had tried to return the 9mm because rounds frequently jammed. R. 320, l. 1 – 323, l. 13. The shop owner further recalled that Appellant had remarked to him that he had a similar problem with a .380 Hi-Point pistol that he had sent to manufacturer for repairs. *Id.* Police asked him to hand over his cell phone. Appellant agreed.

On August 23, 2013, the Laurens County Sheriff's department responded to a call from Christine Yates about a body in a grass field in a rural area south of Woodruff. R. 147, l. 21 – 149, l. 2. Yates also told police that she thought she had heard two gunshots around 1:00 – 1:30 am on the morning of August 19, 2013, but did not see anything. R. 144, ll. 5-22.

The body police found in the field was badly decomposed and barefoot. The body was identified as Southern through DNA matching. R. 162, l. 3 – 168, l. 7. Laurens County law enforcement also located Southern's car in the parking lot of the Simpsonville BI-LO, near the Charter Communications' campus. R. 262, l. 7 – 264, l. 5. Southern had been killed by a single gunshot in the back of her neck, just below her skull. R. 253, l. 21 – 255, l. 7.

SLED ballistic analyst testified the bullet recovered from Southern was "most consistent" with a .380 caliber bullet from a Hi-Point. R. 351, l. 1 – 354, l. 4. However, a 9mm Hi-Point could not be ruled out. No bullet casings were recovered from the crime scene. Police found a magazine fitting either a .380 or 9mm Hi-Point pistol about seven feet away from Southern's body. R. 162, l. 3 – 164, l. 17. No DNA or fingerprints were recovered from the magazine.

DNA taken from fingernail scrapings of Southern's right hand tested positive for Y/STR, but Appellant was excluded as a possible contributor. R. 504, ll. 3-25.

Police intercepted Appellant's .380 on its return from the manufacturer. Despite being extensively reworked, the SLED ballistics expert testified at trial that nothing done to the gun to address the jamming issue would have changed the ballistics. R. 353, l. 12 – 354, l. 21. The SLED expert also conceded that the model gun purchased by Appellant was extremely common with tens of thousands manufactured each year and sold in over fifty-seven stores within a hundred miles of Greenville. R. 371, l. 6 - 374, l. 25.

Police processed Southern's car, but found no evidence to suggest that Appellant had ever been in it. R. 313, l. 15 - 315, l. 22. Police also processed Appellant's truck, but found nothing incriminating. *Id.* The ballistics testing was inconclusive, The bullet fragments recovered from Southern's body were too degraded. R. 354, l. 15 - 355, l. 25.

Appellant's August 29, 2013 Interrogation

Police interrogated Appellant for a second time on August 29, 2013. R. 282, l. 12 – 283, l. 21; (State's Exhibit # 47). Unlike the first interrogation, Appellant was *Mirandized* and the interrogation was recorded. Laurens County Lieutenant Keith McIntosh and Investigator Bryan Cheeks led the almost two hour interrogation. R. 284, l. 10 – 308, l. 12. Other officers periodically participated in the interrogation, but were never identified by the State. *Id.*

Throughout the interrogation police, particularly Cheeks, threatened Appellant and repeatedly called him a liar. *Id.*; (State's Exhibit #47). In an effort to get a confession, investigators misrepresented evidence, telling Appellant that they had cameras showing him driving in his truck down I-385 from Greenville towards where Southern's body was discovered on the night she disappeared. *Id.*

There was no interstate video footage. R. 309, l. 10 – 317, l. 10. Nor was there any evidence that Appellant was in Laurens County on the night the State claimed Southern's was murdered. *Id.* Video footage from the BI-LO where Southern's car was found was totally obscured by foliage. *Id.* Video footage from a convenience store located near the field where Southern's body was found was likewise inconclusive, showing only unidentifiable headlights around the time Yates reported hearing gun shots. *Id.*

Law enforcement also threatened Appellant with execution for Southern's murder and gloated to him that he would never see his son again. R. 284, l. 10 – 308, l. 12; (State's Exhibit 47). During portions of the interrogation, Cheeks and other officers urged Appellant to "get right with his heart and do the right thing." R. 286, ll. 1-23. Despite the intense pressure applied by investigators, Appellant maintained that he did not kill Southern. Appellant was arrested at the end of the interrogation.

At trial, the State sought to play the entirety of the interrogation before the jury. Defense counsel objected citing to our Supreme Court's opinion in *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656 (2015). Defense counsel argued that the constant misrepresentation of evidence of by the interrogating officers and their repeated accusations that Appellant was a liar, impermissibly shifted the burden of proof to Appellant to prove that he was innocent. R. 284, l. 10 – 308, l. 12.

Many of the officers that took part in the interrogation did not testify at trial, including Investigator Cheeks who was responsible for the most egregious misrepresentations and threats. In addition, the vast majority of the statements in the interrogation were made by the investigators, not Appellant, thus constituting hearsay and violated Appellant's right to confront adverse witnesses. *Id.*

Oddly, the State countered that the defense should be happy that the State was trying to enter the interrogation into evidence because it showed the police being “overly aggressive, foaming at the mouth, acting like a jerk, you and there [Appellant] is being cool, calm, and [collected]. R. 289, l. 8 – 291, l. 5. The solicitor noted that he did not recall the police calling Appellant a liar, but that he certainly planned to call him a liar during closing arguments. The State further argued that it was unfair to hold the solicitor responsible for the manner in which the police interrogated Appellant. *Id.*

The court conceded that police, led by Investigator Cheeks, had told Appellant at least fourteen times that he was a liar. R. 302, ll. 6-12. Nevertheless, the court agreed with the State and allowed the video into evidence. R. 302, l. 20 – 303, l. 17. However, the court ordered that the threat to have Appellant executed for Southern’s murder and the end of the interrogation where Appellant is placed in handcuffs had to be redacted. *Id.* The court also instructed the jury that “anything that the police officers say during the course of this interview is not evidence and is not to be considered whatsoever as evidence.” R. 304, ll. 18-25.

Additional Evidence

At trial, the State introduced Appellant and Southern’s cellular account records that law enforcement obtained during their investigation. Appellant had an account with Verizon. R. 611 - 620. Southern has an account with Sprint. R. 608 – 611.

From these cell carrier records, the State compiled a summary of calls made by Appellant, including several calls to Hi-Point’s factory, the Simpsonville BI-LO, and Southern. R. 531, l. 2 – 537, l. 20. The State also collected into a spreadsheet all of the communications (text and phone calls) between Appellant and Southern from August 16th through August 19th. R. 460, L. 2 – 487, L. 14; R. 621 – 629.

Finally, the State utilized historical cell site data contained in the Sprint and Verizon records in an effort to determine the approximate locations of Appellant and Southern on August 18-19, 2013. R. 531, l. 2 – 537, l. 20. Using a law enforcement mapping program, the State alleged that the historical cell site data showed that Appellant's cell phone connected to a cell tower near I-385 and Gray Court at 7:38 pm on August 18, 2013.

Appellant and Southern's cell phone both connected with towers around Simpsonville near mid-niight when Southern's shift at Charter Communications ended on August 18, 2013. *Id.* Southern's phone next connected with a tower outside of Woodruff at 12:57 a.m. on August 19, 2013. *Id.*

Appellant's phone next connected with a tower in downtown Greenville at 3:30 am followed by connections to towers in the Berea area near Appellant's house. *Id.* The last connection by Southern's cell phone was to a cell phone tower in downtown Greenville at 4:05 am. *Id.*

The State argued that the historical cell site data contradicted Appellant's statements to law enforcement and showed that he was near Southern's place of work when she was about to finish her shift. The defense countered that none of the historical cell site data established that Appellant was with Southern's phone in the Woodruff area around 1:00 – 1:30 am when the State alleged that Southern was shot. R. 543, l. 14 – 546, l. 5.

The law enforcement officer who mapped the historical cell site data conceded that the coverage area for cell towers varied widely and that historical cell site data is not designed to accurately track customers' movements, but rather to insure adequate network coverage. *Id.* The officer further admitted that cell phones connect to the tower with the strongest signal and that the strongest tower is not necessarily the closest tower. *Id.*

In addition to the cellular records, the State also called a series of Appellant's friends and former girlfriends who testified regarding Appellant's brief relationship with Lisa Hamlett. R. 379, l. 21 - 386, l. 20. Lisa Hamlett took the stand and explained that she had a brief sexual relationship with Appellant, but broke up with him when she discovered he was still married and had gotten a co-worker pregnant. R. 403, l. 5 - 413, l. 5.

Hamlett also detailed Appellant's increasingly eccentric and troubling efforts to re-establish their relationship, such as driving around her neighborhood at odd times. *Id.* She testified that, shortly before Southern went missing, she had received a Facebook message from Southern – whom she did not know – stating that Hamlett's current boyfriend had cheated on her with Southern. R. 416, l. 25 - 424, l. 13. Hamlett would recall that Southern had, during the message exchange, suggested that Hamlett break-up with her current boyfriend. *Id.*

Discussion

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (*internal quotations omitted*). Here, admitting the video tape of Appellant's second interrogation without redacting the investigator's statements was an abuse of discretion. The questions, statements, and accusations lodged against Appellant during the interrogation constituted inadmissible hearsay that unfairly prejudiced Appellant.

Leaving investigators' statements unredacted impermissibly shifted the burden of proof by intimating to the jury that Appellant had to somehow refute the State's evidence, much of it actually non-existent, in order to prove his innocence. Compounding the unfair prejudice to Appellant, he was denied the opportunity to confront many of the officers involved in the interrogation because the State did not have them testify at trial.

This case is on “all fours” with our Supreme Court’s opinion in *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656 (2015). In *Brewer*, the defendant was arrested following two separate shootings at a night club in Beaufort. 411 S.C. at 403-404, 768 S.E. at 657. The first shooting occurred when the night club owner confronted Brewer over the gun he was carrying. *Id.* Brewer responded by pulling out his pistol and pointing it at the owner’s head. *Id.* Brewer then fired a shot inside the night club, hitting a nearby bystander. *Id.*

The second shooting occurred while Brewer and his friends fled the night club. Shots were fired by at least two individuals, including Brewer and one other identified person. *Id.* Another bystander was struck during the second shooting and killed. For unknown reasons, police only pursued Brewer for the second shooting. *Id.* at 405, 768 S.E.2d at 658.

Beaufort County Sheriff’s Deputies interrogated Brewer. He waived his *Miranda* rights and denied any involvement in the shootings. *Id.* Investigators repeatedly told Brewer that numerous witnesses had identified him as the shooter in what the Court decribed as “hearsay-laden questions and comments.” *Id.* Brewer attempted to stop the interrogation on several occasions, but the police persisted. During the interrogation, investigators repeatedly urged Brewer to “prove his innocence” and to produce his gun so that they could clear him from suspicion. *Id.*

The Court reversed Brewer’s conviction for the fatal, second shooting holding that the investigators repeated references to eyewitness identifying Brewer as the shooter constituted inadmissible hearsay. *Id.* at 406-407, 768 S.E.2d at 659. “During the interrogation, investigators frequently referenced *and quoted* many purported eyewitnesses This evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing Brewer’s guilt to all charges.” *Id.*

The Court specifically rejected the State's argument that the investigators questions were necessary to understand the context of the interrogation. *Id.* While not creating a categorical rule against allowing investigators' questions to be played before the jury, the Court stressed that "caution must be exercised in the admission of such evidence to ensure that all out of court statements" are properly admissible. *Id.*

Despite not being raised by the defense on appeal, the Court made clear that the admission of investigator's repeated insistence that Brewer prove his innocence was a "grave Constitutional error." *Id.* at 408, 768 S.E.2d at 659.

The Court also rejected the State's contention that the admission of the interrogation video was harmless error with respect to Brewer's murder conviction. *Id.* at 409-410, 768 S.E.2d at 660. The Court held that the evidence of Brewer being the second shooter was circumstantial and there were at least two shooters. Under these circumstances, the improper admission of the interrogation was not harmless.

In a concurring opinion, Justice Beatty held that the admission of the interrogation video constituted a structural error, rendering harmless error analysis improper. *Id.* at 410-412, 768 S.E.2d at 661-662. "[T]he jury was repeatedly bombarded with the unconstitutional notion that Brewer had to prove that he was innocent." *Id.*

In Appellant's case, the jury was "repeatedly bombarded" with the accusation that Appellant was a liar. (State's Exhibit # 47). Cheeks never testified, nor did many of the other unidentified officers who spoke during the interrogation. Admitting their questions via the interrogation video violated Appellant's right to confront adverse witnesses. *State v. Gillian*, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct.App.2004) ("The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered

through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence.”).

Moreover, the State was clearly offering Cheeks accusations, that Appellant was a liar, for the truth of the matter assert. See *Ezell v. State*, 345 S.C. 312, 315, 548 S.E.2d 852, 853 (2001) (finding out-of-court statements on an audiotape identifying the defendant as a drug dealer were inadmissible hearsay.) The State wanted to convince jurors that Appellant’s explanations for his actions were untrue and that he killed Southern. *Brewer*, 411 S.C. at 406-407, 768 S.E.2d at 658. The repeated accusations by the officers that Appellant was liar when coupled with the flagrant misrepresentation of the evidence against Appellant improperly shifted the burden of proof from the State to Appellant. *Id.*

Any distinction between the police calling Appellant a liar and misrepresenting evidence in this case and the police urging Brewer to prove his innocence, is a distinction without a difference. Cheeks’ accusatory questions challenged Appellant to explain how incriminating evidence – that did not actually exist – was consistent with him being innocent. Obviously, under those circumstances crafting a coherent explanation was impossible.

The admission of the interrogation video without redacting the investigators’ hearsay questions could not have been harmless. The interrogation lasted over an hour and half, and the trial court’s instructions – that jurors ignore the police officers’ questions – could not adequately cure the unfair prejudice of admitting the tape largely unredacted. R. 284, l. 10 – 308, l. 12.

The video of Appellant’s interrogation was crucial to the State’s circumstantial case against Appellant. No witnesses placed Appellant and Southern together at the time that she disappeared. The State had no evidence that Appellant was even in Laurens County on the night that they alleged Southern had been killed. The historical cell site data could only establish the

general proximity of Appellant to Southern and, crucially, never placed Appellant south of Simpsonville on the night the State alleged Southern was shot.

The make and model of the .380 pistol owned by Appellant was extremely common and the specific gun owned by Appellant at the time of Southern's disappearance could not be linked to the bullet recovered from Southern's body. R. 354, l. 15 - 355, l. 25. No DNA or fingerprints were recovered from the .380 magazine found several feet away from Southern's body. R. 181, ll. 3-19; R. 309, l. 10 - 310, l. 13

DNA tests on scrapings taken from the fingernails of Southern's right hand excluded Appellant as a contributor. R. 505, l. 4 - 506, l. 17. The State presented no evidence Southern had ever been in Appellant's truck. In contrast, Shawn Southern's volatile behavior and weak alibi presented the jury with an alternative possible suspect that the police utterly failed to investigate. R. 109, l. 7 - 115, l. 22; R. 459, ll. 2-11.

Finally, the State presented no obvious, rational motive for Appellant to kill Southern. Appellant had no prior criminal record. All of the witnesses called by the State to testify about his purported obsession with Lisa Hamlett, including Hamlett, stated that Appellant was not a violent person. Under the facts of Appellant's case, the trial court's error in admitting the almost completely unredacted video of Appellant's interrogation could not have been harmless as there was not overwhelming evidence of Appellant's guilt. *Brewer*, 411 S.C. 401, 768 S.E.2d 656.

II.

The trial court erred in admitting texts messages purportedly sent by Myranda Southern to Appellant where the text messages purportedly sent by Myranda Southern constituted inadmissible hearsay, not fitting within any exceptions.

Relevant Facts

The State sought to introduce a series of text messages they alleged were sent between Appellant and Southern in the days leading up to her disappearance and murder. R. 235, l. 15 – 246, l. 9; R. 459, l. 9 – 479, l. 23; R. 621 - 629. The police discovered the text messages between Appellant and Southern after Appellant handed over his cell phone. Several of the messages had been deleted by Appellant. *Id.*

However, law enforcement conceded that deleting messages seemed to be Appellant's regular practice. R. 491, l. 4 – 493, l. 24. Southern's cell phone was never recovered and the State produced no witnesses who could testify that Southern had sent the text messages the State was seeking to introduce. R. 480, l. 1 – 482, l. 22.

Prior to the messages being admitted into evidence, the defense objected on the grounds that Southern's text messages were inadmissible hearsay. R. 238, l. 3 – 239, l. 23. In response, the State argued that none of the texts were being offered for the truth of the matter asserted. *Id.* Rather the State, like the prosecution in *Brewer*, maintained that texts were necessary to provide the jurors with the larger context of the crime. 411 S.C. at 406-407, 768 S.E.2d at 659.

"It all fits into a larger theory that the State is trying to show. None of this, Your Honor, is really being offered for proof of the contents." R. 241, l. 9 – 242, l. 2. The defense then posited that "I don't know what it would be offered for except for the truth of the matter asserted." R. 242, ll. 22-23.

The court agreed with the State that the texts messages purportedly from Southern were admissible. The court ruled that the texts were not hearsay and were needed by the State establish their theory that Appellant was using Southern's cell phone and Facebook accounts to cover-up the murder. R. 242, l. 3 – 243, l. 14.

In its ruling, the Court attempted to use a text from Southern to Appellant complaining about her computer having a low battery to illustrate its reasoning. However, the example failed to show how the text messages were not hearsay:

“[T]hey talked about her computer going dead and then recharging it. I mean, because I don't know where – how that is really helpful to the State's case. But, you know, offered for – it's not offered for the truth of the matter asserted that she had a dead computer. You see what I'm saying.

R. 243, ll. 1-6. The text messages spanned from August 16, 2013 until Appellant texted Southern at 11:55 pm on August 19, 2013 stating that he was worried about Southern's disappearance. R. 621 – 629.

Some of the most relevant texts to the State's case were those discussing Appellant's desire to buy a gun. *Id.* The State also stressed messages regarding the two's plan to help Appellant win back Hamlett that included having Appellant send Hamlett a Facebook message from Southern's account claiming to have slept with Hamlett's current girlfriend. R. 417, l. 7 - 424, l. 15; R. 453, l. 8 - 471, l. 24.

Discussion

The text messages purportedly sent by Southern to Appellant constituted inadmissible hearsay not fitting within any exception. Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the

truth of the matter asserted.” Rule 801(c), SCRE. Hearsay is inadmissible except as provided by the South Carolina Rules of Evidence, by other court rule, or by statute. Rule 802, SCRE.

On appeal, evidentiary rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant. *State v. Rice*, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct.App.2007); *see also State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). The trial court abuses its discretion when the ruling is based on an error of law or factual conclusion that is without evidentiary support. *Id.* at 315, 652 S.E.2d at 415;

Furthermore, “[i]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice.” *State v. Garner*, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct.App.2010). Such error is deemed harmless when it could not have reasonably affected the result of trial, and an appellate court will not set aside a conviction for such insubstantial errors. *Id.*; *see also Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

Clearly, the text messages at issue constituted written assertions by their sender, who never testified. *Com. v. Koch*, 39 A.3d 996, 1005 (Pa. 2011) (holding that text messages constituted hearsay in a drug distribution case as the “only relevance of the text messages and precisely the reason the Commonwealth sought to introduce them was because they demonstrated an intent to deliver.”).

The State argued that it was not offering the text messages to prove the truth of the matter asserted in the messages, rather the text messages provided the context surrounding the crime. R. 238, l. 3 – 239, l. 23. This argument mischaracterized how the State used the text messages sent from Southern’s phone to Appellant’s phone when arguing its case to the jury.

Notwithstanding the solicitor’s claim to the contrary, the State argued that the content of the text messages sent from Southern’s phone should be accepted by the jury as true. *Brewer*,

411 S.C. at 406-407, 768 S.E.2d at 659. For example, the State theorized that Appellant had access to Southern's Facebook password and had used her account to send a message to Hamlett stating that her current boyfriend had cheated on her with Southern. R. 461, l. 9 - 477, l. 8; R. 621 - 629.

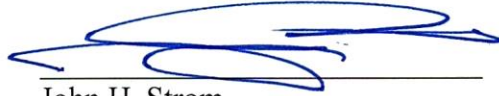
In support of this theory, the State cited to text messages that they claimed showed Appellant and Southern discussing Hamlett's reaction to the Facebook message sent from Southern's account. *Id.* More generally the State alleged that the text messages were proof that Appellant was obsessed with Hamlett and that he only used Southern, who was vulnerable because of the dissolution of her marriage, in an effort to rekindle his relationship with Hamlett.

Accordingly, the text messages sent from Southern's phone to Appellant constituted inadmissible hearsay and the trial court reversibly erred in admitting a summary of the messages into evidence. *See State v. King*, 412 S.C. 403, 412, 772 S.E.2d 189, 193-194 (Ct. App. 2015) (holding that police officer's testimony as to number of gunshots fired was hearsay in prosecution for attempted murder, testimony was based on statements made by witnesses and state offered testimony to prove truth of witnesses' statements.).

CONCLUSION

By reason for the forgoing arguments, Appellant Darrell Raines respectfully requests this Court reverse his convictions and remand his case for a new trial.

Respectfully Submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of June, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL ERWIN RAINES JR.,

APPELLANT

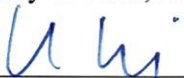
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief in the above referenced case has been served upon Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of June, 2017.



John H. Strom
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SUBSCRIBED AND SWORN TO before me
this 1st day of June, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

The Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL ERVIN RAINES ,

APPELLANT

Appellate Case No. 2016-000142

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

I. The trial court erred reversibly by admitting the unredacted video tape of Appellant's interrogation by law enforcement during which investigators, several of whom did not testify at trial, repeatedly called Appellant a liar, misrepresented or fabricated evidence of Appellant's guilt during the interrogation, and urged Appellant to confess to Myranda Southern's murder; all of which constituted inadmissible hearsay.

II. The trial court erred reversibly in admitting texts messages purportedly sent by Myranda Southern to Appellant where the text messages purportedly sent by Southern constituted inadmissible hearsay, not fitting within any exception.

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

I. The trial court did not abuse its discretion in admitting the interrogation video because the statements of the officers were not offered for the truth of the matter asserted, Appellant had the opportunity to confront the witnesses against him, and the video evidence was not unfairly prejudicial to Appellant.

II. The trial court did not abuse its discretion in finding text messages from the victim's phone admissible because the messages were not introduced to prove the truth of the matter asserted. Moreover, Appellant offered an overly broad objection to the identification of the texts and then withdrew his objection to the texts at their introduction into evidence. The issue is procedurally barred by the withdrawal of the objection.

III. Any error in the admission of the interrogation video and/or the text messages from the victim before her death is harmless beyond a reasonable doubt in light of the overwhelming evidence of Appellant's guilt.

RESPONDENT'S STATEMENT OF THE CASE

A Laurens County Grand Jury indicted Appellant, Darrell Raines, in November of 2013 for murder and possession of a weapon during the commission of a violent crime. (R. p. 604.) On December 7, 2015, Appellant's case was called to trial before the Honorable Donald B. Hocker. (R. p. 1.) Appellant was represented by Brian Able, Esquire. (R. p. 1.) Solicitors Dale Scott and Margaret Boykin represented the State. (R. p. 1.) At the conclusion of the five-day trial, the jury returned a verdict of guilty on both charges. (R. p. 1; p. 591, lines 14-24.) Judge Hocker sentenced Appellant to life imprisonment for murder and a consecutive term of five years' imprisonment for the weapons charges. (R. p. 602, lines 13-22.) Appellant's sentence on the weapons charge was later vacated in order signed by Judge Hocker on April 26, 2016. (R. p. 633.) Thereafter, Appellant filed this appeal.

RESPONDENT'S STATEMENT OF FACTS

Around 12:00 a.m. on August 19, 2013, Myranda Southern left her job at Charter Communications in Simpsonville, South Carolina. This was the last time anyone, except Darrell Raines, would ever see Myranda alive. On August 23, 2013, Myranda's decomposing body was found in the middle of a grassy field off Bramlett Church Road in Gray Court, South Carolina. Killed by a gunshot to her neck, Myranda's death was ruled a homicide. A thorough investigation by the Greenville County Sheriff's Office, Laurens County Sheriff's Office, and South Carolina Law Enforcement Division (SLED) ultimately led to Myranda's killer.

Background

The weeks leading up to Myranda's disappearance were troubling times for her. Myranda was a mother of two young children and recently separated from her husband, Shawn Southern. (R. p. 57, lines 16-25; p. 79, lines 2-10.) Myranda was living paycheck to paycheck and pawning her jewelry to pay bills. (R. p. 119, line 22 – p. 120, line 1.) Myranda joined an online dating website, Plentyoffish.com, in an effort to find companionship. (R. p. 59, lines 8-13.) In the beginning of August 2013, Myranda began chatting with Darrell Raines online. (R. p. 59, line 19-25.) Raines was going through a similar break up of his marriage. (R. p. 79, lines 10-20; p. 621, State's Ex. #32, and #47.) He had recently moved into to his mother's house in Berea, South Carolina after separating from his wife. (State's Exhibit #47.) Raines' inability to obtain steady work led to financial difficulties. (State's Exhibit #47.) In fact, multiple text messages from August 2013 reveal that Raines was desperate for a gun but could not afford one. (R. p. 621, State's Exhibits #32.)

Raines and Myranda talked online for about a week before they met in person. (R. p. 60, lines 14-16.) On Tuesday, August 13, 2013, Myranda drove to Georgia to meet her mother,

Penny Smithers. (R. p. 79, line 21 – p. 80, line 10.) Myranda's two children were going to visit with Penny in Florida until Tuesday, August 20, when Myranda would retrieve them. (R. p. 80, lines 18-22.) When Myranda returned from meeting Penny that Tuesday night, she finally met Raines in person. (State's Exhibit #47.) The two spent the night together and from there began dating. (State's Exhibit #47.) They would frequently call and text one another. (R. p. 621, State's Exhibits #32.). During this time, Raines was able to gain extensive access to Myranda's life. Raines obtained a copy of Myranda's apartment key and was given access to her computer. (R. p. 278, lines 20-21; p. 71, lines 22-24.) Times seemed to be improving for Myranda.

Myranda's Disappearance

On Sunday, August 18, 2013, Myranda left for work at 2:00 p.m. (R. p. 63, lines 15-22.) Myranda worked the evening hours at Charter Communications in Simpsonville. (R. p. 55, line 21 – p. 56, line 20.) She would usually leave around 2:00 p.m. and return home between 12:30 and 1:00 a.m. (R. p. 56, lines 7-9.) Around 6:30 p.m., Myranda spoke to Penny on the phone and confirmed they would meet on Tuesday, August 20 to exchange the kids. (R. p. 82, lines 10-14; p. 83, lines 2-4.) At 8:00 p.m., Myranda had her dinner break. (R. p. 111, lines 7-10.) She left Charter and drove to a gas station in Taylors, South Carolina where she used her debit card at 8:03 p.m. to purchase coffee and cigarettes. (R. p. 217, lines 15-19; p. 218, lines 18-24; State's Exhibit #36.) Myranda briefly met with her estranged husband, and then drove back to Charter Communications. (R. p. 112, lines 1-2.) At 12:00 a.m. on August 19, Myranda left work. (R. p. 362, line 17 – p. 363, line 4.)

On the morning of Monday, August 19, Myranda's neighbor, Lauren Searcy, became worried when she did not see Myranda's car parked outside her apartment. (R. p. 65, lines 2-17.) Concerned for Myranda's safety, Lauren sent a text message to Raines asking if he had heard

from Myranda. (R. p. 67, lines 1-9.) When Raines responded that he had not spoken to Myranda, Lauren checked Myranda's Facebook account for any information. (R. p. 67, lines 10-19.) Lauren saw that a message had been posted from Myranda's Facebook account on August 19 at 4:07 a.m., stating that Myranda was leaving for Florida to pick up her kids. (R. p. 68, lines 10-19; State's Exhibit 3.) The message troubled Lauren because she knew Myranda was not supposed to leave until Tuesday August 20. (R. p. 68, lines 10-15.). Furthermore, as Lauren would explain to the police, she did not believe the message was written by Myranda because that was "not the way Myranda would talk." (R. p. 69, lines 20-25.) That afternoon, Penny contacted Lauren. (R. p. 85, lines 11-12.) Penny had been trying to call Myranda all day and received no answer. (R. p. 85, lines 9-10.) This was especially worrisome to Penny because August 19 was Myranda's daughter's 8th birthday. (R. p. 80, line 25 – p. 81, line 2.) Penny became even more concerned when she received a strange Facebook message from Myranda's account at 5:16 a.m. on August 19, claiming she was on the way to Florida. (R. p. 84, lines 5-11; p. 86, lines 11-17; State's Exhibit 5.) Another Facebook message posted from Myranda's account at 7:29 p.m. on August 19 claimed Myranda was going to Savannah, Georgia to be with some friends. (R. p. 69, line 14 – p. 70, line 15; State's Exhibit 4.) Because Myranda did not know anyone in Savannah and the message did not sound like Myranda, Lauren filed a missing persons report later that night on Monday, August 19. (R. p. 70, line 16 – p. 71, line 5; p. 87, lines 5-7.)

Investigation

In an effort to locate Myranda, investigators obtained her financial records from BB&T to determine if there were any recent transactions. (R. p. 188, lines 13-18.) Bank records showed Myranda used her card twice on Sunday, August 18. (R. pp. 216-218.) The first transaction was

at 1:20 p.m. at 3301 Wade Hampton Boulevard in Taylors. (R. p. 219, lines 2-18.) The second transaction was at 8:03 p.m. at a 7-Eleven in Taylors. (R. p. 217, lines 15-19; p. 218, lines 18-24.) The last transaction made with Myranda's debit card was a \$500 cash withdrawal from an ATM at the Berea BB&T in Greenville on August 19 at 3:36 a.m. (R. p. 212, lines 14-17; p. 213, lines 15-17; p. 214, lines 5-7.) The bank records showed that two balance inquiries were made on Myranda's account directly before the cash was withdrawn. (R. p. 220, lines 2-20.) Surveillance from the ATM showed Raines, alone in his truck, withdrawing the maximum daily withdrawal amount of \$500 from Myranda's account. (R. p. 188, lines 13-18; p. 220, lines 21-25; p. 390, lines 21-24; State's Exhibit #26 and #29.)

Upon discovering the suspicious ATM transaction, Investigator Tracy King of the Greenville Sheriff's Office decided to interview Raines on Thursday, August 22. (R. p. 187, lines 7-10.) Raines told King he met Myranda on PlentyofFish.com and they met in person about a week later. (R. p. 189, lines 17-21.) Raines said Myranda called him Sunday night around midnight and told him she was "still dealing with Shawn." (R. p. 192, lines 9-11.) Raines said Myranda gave him her bank card and pin number on Saturday, August 17, the night before she went missing. (R. p. 190, lines 9-10; p. 192, lines 11-16.) Raines claimed Myranda was giving him \$200 for a car payment. (R. p. 192, line 24 – p. 193, line 2.) Raines explained that after Myranda said she was dealing with Shawn, he suddenly remembered he still needed to make the withdrawal so he drove to the bank. (R. p. 193, lines 2-5.) While at the bank, Raines claimed he was on the phone with Myranda and she told him to withdraw \$500. (R. p. 193, lines 5-8.) At the end of the interview, Raines voluntarily gave the officer's his cell phone. (R. p. 194, lines 11-15.) Officers then requested cell tower site locations and phone records on Raines' and Myranda's phones from the cell phone providers. (R. p. 195, line 6-12.)

On Friday August 23, a severely decomposed body was discovered in a field on Bramlett Church Road in Gray Court. (R. p. 217, lines 7-19; State's Exhibits #12 and #37.) The Laurens County Sheriff's Office, Greenville County Sheriff's Office, and SLED responded to the crime scene and began processing the evidence. (T. pp. 228-229, pp. 331-332; pp. 531-533.) During a search of the field, officers located a magazine of a Hi Point .380 pistol next to the body. (R. p. 162, lines 5-13; p. 164, lines 16-17; p. 171, lines 2-12; p. 355, lines, 8-17; p. 370, lines 11-15.) While on scene, Officer's spoke with Christian Yates, a woman who lived next door to the field on Bramlett Church Road. (R. p. 142, lines 6-9; p. 143, lines 5-15.) Christian said she was awakened by the sound of two gunshots between 1:00 and 1:30 a.m. on Monday, August 19. (R. p. 144, lines 2-20.) She got out of bed and looked out her window but was unable to see anything because it was too dark. (R. p. 144, lines 10-24.)

That same day, investigators located Myranda's abandoned car. Using the information obtained from Raines' and Myranda's cell phone records, investigators determined that Raines' and Myranda's phones pinged off cell phone towers in very close proximity to each other at 12:03 a.m. on August 19. (R. p. 200, lines 2-15; p. 201, lines 12-14). On August 23, investigators with the Greenville Sheriff's Office drove to the general area where the two cellphones pinged in Simpsonville. (R. p. 200, lines 11-19.) In searching the area, investigators discovered Myranda's car in the parking lot at the Simpsonville BI-LO grocery store. (R. p. 200, line 19 – p. 201, line 3.)

On Saturday, August 24, Dr. Janice Ross performed an autopsy of the body. (R. p. 250, line 21 – p. 251, line 1.) Due to the level of decomposition, Dr. Ross took multiple x-rays to determine what injuries the body sustained. (R. p. 251, lines 8-23.) The x-rays revealed a bullet lodged in the upper neck of the body. (R. p. 252, lines 2-4.) Dr. Ross concluded that the cause of

death was a gunshot wound to the neck and the manner of death was homicide. (R. p. 256, lines 7-10.) Using tissue samples taken from the autopsy and known DNA samples from Myranda's personal belongings, the body was positively identified as Myranda Southern. (R. p. 502, lines 2-6.) The bullet retrieved from Myranda's neck during the autopsy was most consistent with a bullet fired from a Hi Point .380 auto caliber pistol. (R. p. 351, line 25 – p. 352, line 3; p. 352, lines 13-20.)

After learning that Raines had used Myranda's debit card in the early morning hours of August 19, claiming he received the card on August 17, Investigator Keith McIntosh of the Laurens County Sheriff's Office began investigating the purchases made with Myranda's card on August 18. (R. p. 263, line 16 – p. 264, line 5.) McIntosh was able to obtain video surveillance that coincided with the two transactions on August 18. (R. p. 264, line 21 – p. 266, line 1.) Both videos from the gas stations in Taylors depicted Myranda using her debit card to make the purchases. (R. pp. 266-268.) Upon discovering that Myranda had possession of her debit card mere hours before she was believed to have been murdered, McIntosh decided to bring Raines in for another interview.

On August 29, Investigators McIntosh and Bryant Cheek interviewed Raines. (R. p. 269, lines 22-24.) Raines told investigators that he was the last person to talk to Myranda while she was alive. (R. p. 274, lines 2-4.) Raines stated that he was home on Sunday night and left only to go to the bank early Monday morning. (R. p. 275, lines 16-18.) Raines explained that the last time he saw Myranda was Sunday morning when he left her apartment. (R. p. 275, line 21 – p. 276, line 1; p. 307, lines 16-18.) Raines then explained Myranda gave him her debit card that morning on Sunday, August 18 so he could withdraw \$200 for a truck payment. (R. p. 274, lines 9-23; p. 307, lines 18-20.) Raines told investigators that they could find the money and

Myranda's debit card in an end table at his mother's house. (R. p. 277, lines 6-11.) However, when officers executed a search warrant on Raines' mother's home, the money and debit card were nowhere to be found. (R. p. 277, lines 15-20; p. 337, line 20 – p. 338, line 7) During the interview, investigators asked Raines if he owned any guns. (R. p. 277, lines 21-24.) Raines responded that he owned a Hi Point 9 millimeter. (R. p. 278, line 1.) Raines told investigators that he had purchased the 9 millimeter from Traders Gun Shop in Greenville on Tuesday, August 20. (R. p. 279, lines 1-3.)

After Raines was arrested, investigators drove to Traders Gun Shop to inquire about Raines' purchase of the 9 millimeter Hi Point on August 20. (R. p. 279, lines 5-23.) They discovered Raines had returned to Traders on August 29 to inquire about returning the gun because it was malfunctioning. (R. p. 322, lines 12-15.) An employee had advised Raines that the warranty on the pistol was through the manufacturer, Hi Point. (R. p. 322, lines 23-25.) The employee offered to send the pistol back to Hi Point for Raines but Raines declined and said he would take care of it himself. (R. p. 323, lines 3-7.) Raines explained he was familiar with Hi Point's warranty policy because he had just sent back a .380 Hi Point to the manufacturer for modifications. (R. p. 323, lines 3-7.)

Investigators then contacted Hi Point and discovered Hi Point received a .380 from Raines on Friday, August 23. (R. p. 367, lines 1-3). However, by the time investigators contacted Hi Point, the .380 had already been fixed and was en route to be delivered to Raines' mother's house. (R. p. 330, line 24 – p. 331, line 16.) Officers obtained a search warrant for the residence and retrieved the packaged .380 pistol directly after it was delivered on September 3. (R. p. 331, line 16 – p. 332, line 2; p. 344, lines 17-23.) Inside the package, investigators found a .380 Hi

Point pistol, a copy of Raines' driver's license, and a note from the Hi Point explaining the modifications that were done to the pistol. (R. p. 333, lines 11-25.) Specifically, the note stated:

Reamed chamber, replace live clip, firing pin and springs. Test fired, no problems. Sent extra clips.

(R. p. 334, lines 1-3.)

During the course of the investigation, officers discovered Raines had in fact purchased the .380 Hi Point pistol at a gun show in Greenville on the evening of Saturday, August 17. (R. p. 318, lines 20-25.) At trial, postmaster Garland Blue testified to the policies for shipping pistols in the mail. (R. pp. 440-441.) He explained pistols could only be shipped priority mail or overnight express mail. (R. p. 440, lines 5-6.) Blue testified that if Raines' gun was received by Hi Point on August 23, it would have been mailed by Raines on August 22 if he used overnight express mail. (R. p. 441, lines 2-9). If Raines shipped the pistol using priority express mail, then the pistol would have been mailed on August 20 or 21. (R. p. 441, lines 9-11.)

Using Raines' cell phone, investigators were able to piece together information regarding the whereabouts of Myranda and Raines during the hours before and after Myranda's death. Officer Dan Kelly of the Greenville Sheriff's Office was able to determine Raines' and Myranda's locations during Sunday, August 18 and Monday, August 19 by cross referencing cell phone records with the tower keys provided by Verizon and Sprint. (R. pp. 511-539.) Additionally, Investigator James Perry of the Greenville Sheriff's Office was able to obtain information from Raines' phone by performing a cell phone extraction. (R. p. 230, lines 13-20.) The extraction included information regarding Raines' phone calls, text messages, and internet activity. (R. p. 233, line 21 – p. 234, line 2, p. 621, 630, State's Exhibits #32 and #38.) The extraction also provided information that Raines attempted to delete from his phone. (R. p. 231, lines 17-21.)

A review of both reports revealed that on Sunday, August 18, Raines's phone pinged off a cell tower in Greer at 3:59 p.m. (R. p. 531, lines 17-22.) At that time, Myranda's phone was pinging from a cell tower near Charter Communications in Simpsonville. (R. p. 531, line 23 – p. 532, line 8.) Between 6:45 and 6:48 p.m., the following conversation took place between Myranda and Raines:

Raines:	Awesome :-) you get off at 12 right?
Myranda:	:-) yes 12
Raines:	Good. :-)
Myranda:	Will I be seeing you sir?
Raines:	Who knows.... Lol

(R. p. 628.)

Moments before this text message exchange, Raines told Myranda to call her at 11:00 p.m. to wake him up from a nap. (R. p. 628). However, Raines, who lived in Greenville, was not taking a nap, but rather was driving to Gray Court. At 7:29 p.m., Raines's phone traveled to Laurens County and pinged off a cell tower in the Gray Court area. (R. p. 532, lines 16-21.) Raines's phone then traveled back towards Greenville around 8:00 p.m., pinging off cell towers on Interstate 385. (R. p. 533, lines 11-17.) Next, Raines' phone pinged off a cell tower in downtown Greenville at 11:03 p.m., while Myranda's phone still transmitted from the cell tower near Charter Communications. (R. p. 533, line 22 – p. 534, line 8). At 11:49 p.m., the following text messages were exchanged:

Raines:	You off?
Myranda:	Hey you
Myranda:	10 minutes
Raines:	K. :-)

(R. p. 629.)

At 12:03 a.m. on August 19, Myranda called Raines. (R. p. 629.) At that moment, Raines' phone pinged off a cell tower in Simpsonville near Charter Communications. (R. p. 534,

lines 9-17.) At 12:09 a.m., Miranda's phone pinged off a cell tower near Charter Communications. (R. p. 534, lines 17-23.) Raines' phone stopped moving while Miranda's phone traveled to Laurens County and pinged off a cell tower at 12:51 a.m. (R. p. 534, line 24 – p. 535, line 6.)

Between 2:56 and 3:27 a.m., an hour and a half to two hours after Christian Yates heard gunshots, the following suspicious text messages were sent between Miranda's and Raines' phones:

Raines:	I can't sleep. You?
Miranda:	I'm still with shawn. Hes being an ass. I'm not giving him what he wants. Ill call you tomorrow.
Raines:	OK. Just let me know when you make it home. I'm headed to bed. Goodnight.
Miranda:	Ok goodnight :-)
Raines:	Oh I forgot to run by the bank like you asked. I'm gonna do it real quick before I go to bed.
Miranda:	Thsts fine and thank you so much for doing that. I'm heading home now.
Raines:	Your'ee welcome. What are friends for.
Raines:	Be careful

(R. p. 639 (errors in original).)

Miranda's and Raines' phones then both pinged off cell towers in downtown Greenville at 3:30 a.m. when Miranda's phone called Raines'. (R. p. 535, line 23 – p. 536, line 4.) From there, Raines' phone traveled back up to Berea and Miranda's phone never moved again. (R. p. 536, lines 5-17.) Later that afternoon on Monday, August 19, Raines' phone pinged again off a cell tower in the Gray Court area of Laurens County at 3:56 p.m. (R. p. 537, lines 3-8.)

The phone extraction also revealed multiple suspicious phone calls that Raines had made the week of August 18. The extraction showed that Raines placed two calls on August 19, to the BI-LO where Miranda's car was ultimately located. (R. p. 340, line 19 – p. 341, line 5; p. 485, lines 16-18; p. 630, State's Exhibits #33.) The phone extraction indicated that Raines attempted

to delete these calls from his phone. (R. p. 560, lines 16-18.) The phone extraction also showed that Raines called numbers associated with Hi Point thirty times between August 18 and August 21. (R. p. 484, line 14 – p. 486, line 23; State's Exhibits #33 and #38). Again, Raines attempted to delete all of these calls from his phone. (R. p. 487, lines 10-12.)

Motive

At trial, the State theorized Raines' motive for murdering Myranda revolved around his infatuation for Lisa Hamlett. (R. pp. 40-48, 548-575.) During 2013, Raines had become increasingly obsessed with Lisa, a woman he had known since childhood. Lisa had gone on two dates with Raines in 2012 and then broke off contact with him. (R. p. 403, line 23 – p. 405, line 14.) However, Raines was unwilling to let Lisa go. The State presented multiple witnesses that testified to Raines' unhealthy obsession with Lisa. (R. pp. 378-386, 387-391, 394-397, 399-439.) Raines told numerous friends that he and Lisa were in love and lived together. (R. p. 382, lines 3-4; p. 487, lines 21-25; p. 389, lines 1-4.) At trial, Lisa testified to disturbing letters and presents that Raines' would leave for her on her doorstep. (R. pp. 408-414.) She testified that Raines would text and Facebook message her regularly, sometimes even having his mother to reach out to Lisa on his behalf. (R. p. 416, lines 4-8.)

Raines' fixation grew as Lisa began dating Jason Gillespie. At trial, the State presented text messages sent between Myranda and Raines discussing Lisa. (R. p. 621 and State's Exhibit #32.) Many of the text messages revolved around a Facebook message sent from Myranda's Facebook account to Lisa on Saturday, August 17. (R. p. 631). The message claimed that Myranda had recently slept with Lisa's boyfriend, Jason. (R. p. 631.) It was clear from the text messages Raines instigated the ruse to break up Lisa and Jason. (R. p. 630, State's Exhibits #32.) Before the message was sent, Raines texted Myranda:

Thought... If he isn't there tonight (he's home right now), and we send the messages tonight, and she confronts him, I know how I'd react to something like that and want to drive over immediately. Think we should plant phase 2 either way?

(R. p. 621.) On Saturday night, after the message was sent, Raines asked Myranda to drive by Lisa's house to see if the message had made any impact. (R. p. 627.) On Sunday, Raines commented that he believed the message had an impact on Lisa as she was more active on Facebook than she previously had been. (R. p. 627.) During this time, Raines would log into his Facebook account, using the password "All4Lisa", and perform multiple searches for Lisa and Jason on Facebook. (R. p. 234, lines 8-22; p. 621, State's Exhibits #32.) Lisa testified at trial that she had never met Myranda and immediately reported the message to the police when she saw on the news that Myranda was missing. (R. p. 423, lines 22-24; p. 424, lines 7-13.)

Because of the complexities of this case and the number of witnesses who testified, Respondent has compiled a calendar of events, with endnotes citing the record, to aid the Court in its explanation of the facts.

(Calendar Attachment on Following Pages)

August 2013

Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.
11	12	13 - Miranda dropped her kids off with her mom in Georgia ¹ - Raines and Miranda met in person for the first time ²	14	15	16	17 - Miranda's Facebook (FB) account sends message to Lisa at 6:38 a.m. ³ - Raines buys .380 from gun show ⁴ - Raines claims received card from Miranda in 1 st interview ⁵
18 - Raines claims received card from Miranda in 2 nd interview ⁶ - Miranda leaves for work at 2:00 p.m. ⁷ - 8:03 p.m. uses credit card at gas station ⁸ - Miranda gets off work at 12 a.m. ⁹	19 - Christian Yates hears 2 gun shots between 1-1:30 a.m. ¹⁰ - Raines withdraws \$500 from ATM at 3:36 a.m. ¹¹ - 4:07 am FB post ¹² - 5:16 AM FB message to Penny ¹³ - 7:29 pm FB post ¹⁴ - Miranda reported missing ¹⁵	20 - Miranda supposed to pick up her kids ¹⁶ - Raines buys 9 MM ¹⁷ - Possibly sent off .380 ¹⁸	21 - Possibly sent off .380 ¹⁹	22 - 1 st statement from Raines ²⁰ - Possibly sent off .380 ²¹ - Investigators request phone records on Raines' and Miranda's cell phones ²²	23 - Miranda's body Found off Bramlett Church Road ²³ - Hi-Point receives .380 from Raines ²⁴ - Miranda's car found at BI-LO ²⁵	24
25	26	27	28	29 - Raines interviewed and arrested for murder ²⁶ - Search Raines' home ²⁷	30	31

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- ¹ (R. p. 79, line 21 – p. 80, line 10; State’s Exhibit 47).
² (State’s Exhibit 47).
³ (R. p. 416, line 22 – p. 417, line 15; p. 631).
⁴ (R. p. 318, lines 20-25; Supp. R.O. A. p. 1, lines 10-21).
⁵ (R. p. 190, lines 9-10; p. 192, lines 11-16).
⁶ (R. p. 274, lines 9-23; p. 307, lines 18-20; State’s Exhibit 47).
⁷ (R. p. 63, lines 15-22).
⁸ (R. p. 217, lines 15-19; p. 218, lines 18-24; State’s Ex. 36).
⁹ (R. p. 362, line 17 – p. 363, line 4).
¹⁰ (R. p. 144, lines 2-20).
¹¹ (R. p. 212, lines 14-17; p. 213, lines 15-17; p. 214, lines 5-7).
¹² (R. p. 68, lines 10-19; State’s Exhibit 3).
¹³ (R. p. 84, lines 5-11; p. 86, lines 11-17; State’s Exhibit 5).
¹⁴ (R. p. 69, line 14 – p. 70, line 15; State’s Exhibit 4).
¹⁵ (R. p. 70, line 21 – p. 71, line 130).
¹⁶ (R. p. 80, lines 18-22).
¹⁷ (R. p. 320, line 6 – p. 321, line 7).
¹⁸ (R. p. 441, lines 9-11).
¹⁹ (R. p. 441, lines 9-11).
²⁰ (R. p. 187, lines 7-10).
²¹ (R. p. 441, lines 2-9).
²² (R. p. 195, line 6-12).
²³ (R. p. 159, line 25 – p. 160, line 13).
²⁴ (R. p. 367, lines 1-3).
²⁵ (R. p. 200, line 11 – p. 201, line 3).
²⁶ (R. p. 269, lines 22-24; p. 282, lines 12-21).
²⁷ (R. p. 277, lines 15-20; p. 337, line 20 – p. 338, line 7).

ARGUMENT

I. The trial court did not abuse its discretion in admitting the interrogation video because the statements of the officers were not offered for the truth of the matter asserted, Appellant had the opportunity to confront the witnesses against him, and the video evidence was not unfairly prejudicial to Appellant.

The trial court properly admitted the video interrogation of Raines by Laurens County investigators because the video was not unfairly prejudicial to Appellant and was relevant to the State's theory of the case. The statements of the investigators were not hearsay because the officers did not quote unavailable declarants implicating Raines in the commission of the crime but instead attempted an investigatory technique of misrepresenting evidence which ultimately failed to produce a confession. Because the officers testified the misrepresented evidence did not exist, Appellant suffered no confrontation clause violation with the admission of the statements. Moreover, the officers' questions provided context for Raines' explanation of the events leading to Myranda's death. Because the statements were not offered for the truth of the matter asserted, the statements were not impermissible hearsay. Moreover, despite the accusations Raines was lying during his statement, the jury was entitled to consider the context of Raines' answers to the officers in evaluating his credibility.

How the Issue Was Presented at Trial

Laurens County Investigator Keith McIntosh testified he became involved in the investigation after the discovery of the victim's body in the field in Gray Court. (R. p. 259, lines 14-24.) McIntosh consulted investigators from Greenville who were looking into the Myranda Southern missing persons report (R. pp. 261, line 16 – p. 263, line 19.) McIntosh watched videos from two different stores, one at 1:20 pm, and a second at 8:03 pm on August 18, 2013, in which Myranda used her debit card to make purchases. (R. p. 263, line 16 – p. 269, line 1.) On August

29, 2013, McIntosh and investigator Brian Cheeks interviewed Raines about the video of Raines using the Myranda's debit card to withdraw \$500 from her account, and Raines told the investigators Myranda gave him the card sometime early Sunday morning or possibly even late Saturday night. Raines claimed she gave him the card so he could borrow some money for himself and withdraw some cash for her. (R. p. 274, line 9 – p. 275, line 15.) The State offered the video recording of the interview into evidence, and the defense objected. (R. p. 284, line 7 – pp. 284-305; States Ex. 47.)

Appellant objected to the admission of the video for two reasons. First, he argued the statements made by different the investigators in the room were hearsay because the State did not call all the investigators in the video as witnesses, and second, he argued that when the investigators called Appellant a "liar," they shifted the burden of proof to Appellant to prove his innocence. (R. p. 284, line 10 – p. 286, line 1.) Appellant also argued the investigators misrepresented evidence and referred to seeking the death penalty in the case against him. (R. p. 286, lines 15.)

Before the State argued in response, the trial court said, "On a purely hearsay objection, I don't think anything that the officers say are being offered to the truth of the matter asserted," and later saying, I'm not so certain that it's going to be a hearsay situation." (R. p. 286, line 25 – p. 287, line 14.) The court then clarified whether Appellant was claiming the statement was coerced, to which Appellant replied:

Yes. I mean, them calling him a liar repeatedly. That's something that wouldn't -- if they were-- if they were being taking life testimony that wouldn't be allowed. That's exactly what my point is. The manner about which they asked these questions. The comments they make to him I think would be inappropriate and would cause the jury to be -- it would be highly prejudicial of him.

(R. p. 288, line 25 – p. 289, line 6.)

In response, the solicitor pointed out he was not interested in anything the investigators were saying during the interview, saying “I want to focus on what [Appellant]’s talking about, and I think that is what the jury is going to do as well.” (R. p. 289, lines 17-20.) The solicitor offered to ask McIntosh on direct about the police interrogation procedures, such as “good cop, bad cop” and ultimately tell the jury “there really wasn’t any confession.” (R. p. 290, lines 1-5.)

The trial court, reserving ruling until he could view the video, suggested the abrasive manner of the investigators might work to Appellant’s advantage before a jury because ultimately the tactics failed to produce a confession. (R. p. 291, lines 15-19.) The court also noted he would instruct the jury “that anything said by the police officers during the entire interview are not evidence, because they are to –the interview is – their consideration of the interview is what the Defendant either said or did not say.” (R. p. 292, lines 10-16.)

Following the viewing of the video, Appellant renewed his objections to its admissibility on the basis of what he deemed was hearsay by Investigator Cheeks and burden shifting by the officers when they called Appellant a liar. (R p. 296, line 5 – p. 297, line 13.) Appellant also objected to the misrepresentations of the evidence to Appellant during the interview and any references by the officers to the death penalty. (R. p. 297, line 14 – p. 298, line 22.) In support of his position, Appellant offered *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656(2015). Appellant acknowledged *Brewer* was a cautionary opinion instructing the trial courts to be vigilant in guarding against the admission of hearsay or prejudicial material. (R. p. 299, lines 2-25.)

The court distinguished the case at hand, in which investigators called Appellant a liar, from *Brewer*, in which the interviewer repeatedly told the suspect he had to prove his innocence. The solicitor argued that despite Appellant’s assertions otherwise, the questions presented during the interview would have been appropriate during live testimony on the stand. For example, the

State could impeach a witness with a previous statement, asking when or if the witness was lying. However, any demand for a production of evidence to prove his innocence would be impermissible, either in court or by the police, as in *Brewer*. The solicitor argued:

Judge, let me answer that. If Raines takes the stand tomorrow and he gets up there and tells his side of the story and I go to him and say that's just not the truth though, is it. That's not the truth. You're telling me that's the truth. That's not the truth, is it. I can cross-examine him all day long saying -- that's not shifting the burden. And that would be a proper cross-examination.

(R. p. 302, lines 13-19.)

After reviewing the video, the court denied the motion to suppress it. (R. p. 302, lines 20-21.) Judge Hocker ordered the redaction of the video to exclude any reference to the death penalty and redacted the arrest of Appellant at the end. (R. p. 302, line 22 – p. 375, line 3.) The Court also explained he would give a jury instruction on how they should view the statements by the officer. (R. p. 303, lines 10-17.) When the jury returned, the court instructed the following:

In just a moment the State is going to, as far as their case, play a video of an interview that was conducted by law enforcement with Mr. Raines. And let me explain several things to you. One, by agreement there's a portion at the very end of this video that was what we call redacted or taken out. So at the very end if it looks like it just kind of stops at a funny place, that is the reason for that. You are to place absolutely so significance in the fact that a portion -- a small portion, but nonetheless a portion of that video was taken out and not for your viewing.

Secondly, anything that the police officers say during the course of this interview is not evidence and is not to be considered whatsoever as evidence in this case.

Thirdly, I'll remind you, and we'll explain this in great detail at the conclusion of this case, but it's already been mentioned at the outside, **the State has the burden of proof to prove each and every element of these two offenses beyond a reasonable doubt** is standard. The Defendant has no obligation whatsoever to prove anything. It's to the State to prove each and every element beyond a reasonable doubt. Keep that in your mind as we continue through this case. Okay?

(R. p. 304, line 8 – p. 305, line 4 (emphasis added).)

McIntosh resumed the stand following the publishing of the video to the jury. (R. p. 306, lines 19-24.) On cross-examination McIntosh acknowledged the information they told Appellant in the interview about having video footage of his car traveling down the highway was not true. (R. p. 312, lines 8-23.) The testimony was as follows:

Q And on the video you're telling my client, you and him both, about -- you know, we got you going down 385 coming and going on these Highway Department cameras that are on these poles on the interstate. There's no such videos, are there?

A There is video out there but it's not recordable. There is cameras on the interstate but it's not recordable.

Q My point is, you all are saying we've got videos of you going up and down the highway. You all don't have those videos of my client going up and down the highway?

A No, sir. There's no video there.

Q And you mentioned a moment ago about the Bi-Lo video. There's nothing on that Bi-Lo video, is there? Surveillance video?

A Only at one part we did see headlights and that's all. You couldn't see anything or make anything out as far as car or truck.

(R. p. 303, lines 4-20.)

Standard of Review

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006); *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001). "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011) (citation omitted).

Analysis

Appellant contends that the investigator's interview statements referring to video surveillance evidence of Appellant's guilt constituted inadmissible hearsay. Rule 801 of the Rules of Evidence defines "[h]earsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." S.C. R. Evid. 801(c). A statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay. *See State v. Blackburn*, 271 S.C. 324, 247 S.E.2d 334 (1978) (statement implicating defendant in alleged prior crimes, which was not offered to prove the truth of the matter asserted, that is, that defendant in fact committed the prior crimes, but to establish motive, was not "hearsay" and its admission was not error); *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395 (Ct.App.1998) (allowing admission of letters, an anniversary card, and video to show close familial bond between the decedent, her husband, and her children in a malpractice action). In particular, statements of one person to another to explain subsequent actions taken by the person to whom the statements were made are admissible as non-hearsay evidence. *State v. Coffey*, 326 N.C. 268, 282, 389 S.E.2d 48, 56 (1990). "The reason such statements are admissible is not that they fall under an exception to the [hearsay] rule, but that they simply are not hearsay—they do not come within the ... legal definition of the term." *Long v. Paving Co.*, 268 S.E.2d 1, 5 (N.C, App. 1980).

Appellant argues *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656 (2015) compels this Court to find the trial court erred in admitting the interrogation interview. However, his objection to the video is comprised of varying arguments against its admissibility, all of which were considered by the trial court and rejected as distinguishable from *Brewer*. First, the misrepresentation of the evidence to Appellant is not a hearsay issue, nor is the failure to call all

the investigators who took part in the interview to the stand. As was fully developed on cross-examination, the statements by the investigators were not offered for the truth of the matter asserted. The “matter asserted” was that video footage placed his car on the highway and in the BiLo parking lot where the victim’s car was found. McIntosh explained they had no such evidence of Appellant’s car on any video surveillance cameras. Indeed, his testimony specifically discredited the **truth** of the matter asserted. The trial court made a specific finding that the statements of the investigators in the video were not being offered for the truth of the matter asserted. (R. p. 286, line 25 – p. 287, line 14.) The trial court’s finding is consistent with other jurisdictions that have allowed out of court statements offered to show context or to show the reaction of one to whom the statement is made. *See, e.g. State v. Ninci*, 936 P.2d 1364, 1385 (Kansas 1997)(video tape interrogation not offered for truth of matter asserted but to place suspect’s answers in context); *Lehman v. State*, 926 N.E.2d 35, 38 (Ind. Ct. App. 2010) (informant’s statements recorded in the course of a controlled drug buy were not offered by the State to prove the truth of the matter asserted and, therefore, were not hearsay.)

Second, in *Brewer*, “investigators frequently referenced and quoted many purported eyewitnesses to Brewer shooting both victims.” *Brewer*, at 406, 768 S.E.2d at 659. Here, investigators refer to capturing Appellant on video surveillance; they did not refer to statements by human beings. **Video surveillance is not a statement, nor is it made by a declarant.** And specifically, in this case, no video existed. Thus, as distinguished from *Brewer*, the investigators were not referring to out of court statements by anonymous declarants offered for the truth of the matter asserted. Moreover, the South Carolina Supreme Court’s recent decision in *State v. Davis*, (Opinion No. 5476, Filed March 29, 2017), in which the testimony of a SLED agent about the activities and statements of a non-testifying confident informant during a controlled buy were

inadmissible hearsay, does not change this analysis. In *Davis*, a confidential informant was a declarant who necessarily informed the agent about the details of the purchase of drugs from the defendant's house. This scenario is vastly different from the suggestion video surveillance placed Raines near the victim's abandoned car, particularly when the testimony at trial informed the jury the video did not exist.

Apparently recognizing this distinction, Appellant then makes much of the State's election not to call to the stand Investigator Cheeks, who also took part in the interview. He suggests the unavailability of Cheeks creates the hearsay issue because he could not confront the declarant (Cheeks) about the truth of the matter asserted (the video surveillance placing Appellant at incriminating locations). Appellant certainly had the opportunity to raise this issue at the pre-trial motions hearing and to confront Cheeks when he testified at the *Jackson v. Denno*¹ hearing on November 19, 2015, but he elected not to raise the matter then. (R. p. 27.) Hearsay testimony is inadmissible because the adverse party is denied the opportunity to cross-examine the declarant. *State v. James*, 255 S.C. 365, 179 S.E.2d 41 (1971); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 150–51 (1985). Appellant's opportunity to cross-examine Cheeks at a preliminary hearing on this very issue was sufficient to avoid a confrontation clause violation.

Regardless, Appellant was not prejudiced by Cheeks' unavailability because he could adequately confront McIntosh about the same matter asserted. "[R]eversal is not required unless appellant was prejudiced by the error." *Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150 (1985). Even if the court deems Cheeks' statements to be hearsay, improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless. *State v. Blackburn*, 271 S.C.

¹ *Jackson v. Denno*, 378 U.S. 368 (1964),

324, 329, 247 S.E.2d 334, 337 (1978). Had Cheeks testified at trial, his testimony would have been cumulative to that of Investigator McIntosh. To the extent Appellant argues the State improperly admitting the out of court statements of Cheeks accusing Appellant of lying to prove the truth of the matter asserted—that Appellant was indeed lying—Appellant similarly could confront McIntosh about his statements to the same effect. All three of the investigators in the room with Appellant noted inconsistencies in his story. Appellant centers on Cheeks to make his hearsay argument because he did not testify at trial. However, under this theory, McIntosh's statements, which were not hearsay, would be admissible because he **did** testify at trial. Under either theory of the matter asserted, Appellant had the opportunity to confront the witnesses who accused him of lying, and he did so. Appellant's argument concerning the unavailability of Investigator Cheeks is merely a red herring, designed to create the impression of a hearsay violation without fully explaining how Appellant's rights were actually violated.

The other facet of Appellant's argument the interrogation video is inadmissible draws upon the portion of the *Brewer* opinion in which the Court cautioned against presenting to the jury any statements that appear to shift the burden of proof to the defendant. *See Brewer* at 408, 768S.E.2d at 659. Appellant argues that because the investigators called him a liar or accused him of lying during the interrogation, they impermissibly shifted the burden to Appellant to prove his innocence. Appellant confuses the hearsay argument with the burden shifting argument, neither of which is applicable here. In *Brewer*, the defendant was told to "prove" his innocence to the police. Here, the police questioned Appellant's credibility. That is a distinction with a very big difference. Challenging a witness's credibility is not a demand for proof of innocence. Witness credibility is frequently challenged on the stand through cross-examination and impeachment. In fact, in this particular case, Raines was questioned by the officers and the

officers were questioned by defense counsel on the credibility of the video surveillance evidence. The bottom line is investigators did not demand Raines to prove anything or produce any evidence. Neither the burden of production, nor the burden of persuasion, was shifted to Raines when the investigators challenged his credibility on certain statements he made during their interview. In fact, Raines appeared unfazed by the questions. In contrast with Brewer, who attempted to end the interview numerous times but was instead told he had to prove his innocence to cease the questioning, Appellant pushed back against the interviewers, remaining firm in his answers and apparently unwilling to take their bait. Appellant certainly understood during the interview that he had no obligation to prove his innocence. His current attempt to equate the accusations of deceit to warnings against burden shifting in *Brewer* does not make it any more applicable.

Appellant claims the State impermissibly shifted the burden of proof to the defendant when the jury saw the repeated accusations from the investigators that Raines was not telling the truth. (IBOA at 14.) As discussed above, *Brewer* is not on point with the facts of this case. Other jurisdictions, however, have decided the admissibility of such an interrogation video, but framed the question differently. Although Appellant did not base his objection on this ground and it is not preserved for review, other states have examined these statements as testimony concerning the credibility of other witnesses. To the extent this Court construes his argument similarly, Respondent submits the interrogation video, when preceded by the trial court's clear instruction to the jury, was properly admissible.

Admissibility of Video Evidence To Assess Credibility As a Matter of Policy

As a general rule, "the assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012) (citing

State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). A witness may not give an opinion on whether he or she believes another witness is telling the truth or comment on another witness' veracity. *State v. Kromah*, 401 S.C. 340, 358–59, 737 S.E.2d 490, 499–500 (2013); *State v. Smith*, 411 S.C. 161, 170, 767 S.E.2d 212, 217 (Ct. App. 2014). These rules provide guidance for the permissible boundaries of witness testimony on the stand before a jury. In a trial, however, the jury observes the precise questions and the tone presented by counsel when the questions are asked. The jury assesses the witness' response in that context. With the introduction of a defendant's out of court statement, however, the court must balance the probative and prejudicial impact of showing the jury the context in which the statement is made. After all, how can the jury assess the credibility of the statement if it does not know the question, tone, or statements of the interviewer immediately preceding it? The video recording has inherent indicia of reliability because it is a contemporaneous and completely accurate narrative of the context of the defendant's statement. It is clear from the record the trial court considered the potential prejudicial impact, as well as the benefit to the defense, of showing this particular recording² to the jury.

The *Brewer* Court directed the trial courts to “be vigilant in redacting problematic portions of law enforcement’s investigatory questions,” but did not create a “categorical rule that any statement by an investigator during an interrogation is inadmissible.” *Brewer*, at 407-408, 768 S.E.2d at 659. Thus, the finding of admissibility is a fact specific inquiry. Accordingly, and in consideration of that language, the trial court redacted the impermissible references to capital

² The State cannot stress enough the importance of the Court’s review of the interrogation video. Frankly, the obnoxious interrogation technique employed by one of the investigators arguably portrayed Raines as calm and nonreactive under pressure. The investigator’s accusations should not be taken out of the context of the entire video, in which the tone, posture, and other statements of the investigators also play a part of the Rule 403 analysis.

punishment as well as Raines' arrest. The court then considered that the admission of the remaining video could actually benefit the defense, given Appellant's demeanor throughout the interrogation. Judge Hocker, apparently unimpressed with the investigators' efforts, said "I'm not necessarily real concerned about police tactics. I almost have to, to some extent, agree with Solicitor Scott that that might be working in your advantage. The police give you some arguments to make to the jury to really cast some – something against the police." (R. p. 291, lines 11-19.) Though not explicitly stated as a Rule 403, SCRE analysis, Judge Hocker clearly wrestled with whether the video unfairly prejudiced Raines or, in fact, helped him.

The video's admissibility for the benefit of the defense is not without support in current and emerging law. In 2009, South Carolina began to require law enforcement to video record the behavior at the scene of a person suspected of driving under the influence. *See* S.C. Code Ann. §56-5-2953. In 2015, the General Assembly passed legislation requiring State and local law enforcement agencies to develop procedures for the use of body-worn cameras. *See* S.C. Code Ann. § 23-1-240. According to §23-1-240(G)(5)(a) and (b), the subject of the recording or a criminal defendant is entitled to the data upon his request. Further, recent proposed state legislation reflects the trend towards a *preference* for a video or audio recording of interaction between a suspect and police. In December 2016, a South Carolina State legislator pre-filed Senate Bill No. 166, which proposes that certain custodial interrogations must be audio or video recorded. The Bill includes a provision that a court must instruct a jury it may draw an adverse inference for a law enforcement officer who fails to do so. 2017 S.C. Sen. Bill No. 166, SC 122 Session General Assembly – 1st Reg. Session. Similarly, a 2017 South Carolina House Bill proposes to make it unlawful for a law enforcement officer to knowingly obstruct or render inoperable a law enforcement vehicles recording equipment of a body camera. 2017 SC House

Bill No. 3268, SC 122 Session General Assembly – 1st Reg. Session. Video recordings are becoming so commonplace that the absence of a video appears suspicious to a layperson. For example, even the American Civil Liberties Union of Massachusetts has produced a report entitled “No Tape, No Testimony,” in which it argues jurors should be told to devalue an officer's testimony, or--in extreme cases--disregard it altogether when police fail to turn on their body-worn cameras.³

In a current culture in which attitudes toward interactions between law enforcement and civilians are in flux, the availability of a tool to aid the trier of fact by providing reliable evidence of the interaction, whether for the benefit of law enforcement or for the benefit of the suspect, weighs heavily in favor of its admission. In other words, if no rule of evidence prohibits the video's admission, sound public policy supports its publication to the fact-finder.

Ultimately, this Court must consider whether Judge Hocker abused his discretion in finding the investigators comments that Raines was lying were not unfairly prejudicial to Appellant's case. Numerous jurisdictions have held this particular police tactic is not so prejudicial as to preclude its submission to the jury. In *State v. Casteneda*, 715 S.E.2d 290 (2011), the North Carolina Court of Appeals upheld the admission of a transcribed video in which the investigators told defendant parts of his story were not true, finding:

The majority of appellate courts of other jurisdictions that have considered such statements have held them admissible based on the rationale that such “accusations” by interrogators are an interrogation technique and are not made for the purpose of giving opinion testimony at trial. *See, e.g., Dubria v. Smith*, 224 F.3d 995, 1001 (9th Cir.2000) (rejecting, in habeas corpus case, defendant's argument that detective's “comments and questions contained statements of disbelief of [defendant] ‘s story, opinions concerning [defendant]’s guilt,

³ Found on the ACLU Massachusetts website: <https://aclum.org/our-work/aclum-issues/police-accountability/no-tape-no-testimony/#report> and available for download here: https://aclum.org/wp-content/uploads/2016/11/ACLU_BodyCameras_11.21_final.pdf (Last viewed June 2, 2017.)

elaborations of the police theory of [victim]'s death, and references to [defendant]'s involvement in the crime" should have been redacted from tape and transcript because "[t]he questions and comments by [the detective] placed [defendant]'s answers in context");

Castaneda, 715 S.E.2d at 294 (2011). In *Lanham v. Com.*, 171 S.W.3d 14 (2005), the Kentucky Supreme Court advised the admission of statements by the police that a defendant is lying should include a limiting admonition to the jury before its publication. *Lanham*, 171 S.W.3d at 28.

In *State v. Boggs*, 185 P.3d 111 (Az. 2008), the Arizona Supreme Court found the accusations by law enforcement that the defendant was lying were part of an ordinary interrogation technique, were not offered for the purposes of giving opinion testimony, and provided a necessary context for the defendant's responses. *Boggs*, at 121. In *State v. O'Brien*, 857 S.W.2d 212 (1993), the Missouri Supreme Court upheld an officer's testimony in which he recalled accusing the defendant of lying during an interrogation. The court found that reading the testimony and challenged statement in their respective contexts, the admission was not error. *O'Brien*, at 221.

Moreover, the courts in Georgia have allowed latitude given police interview question that are admitted into evidence. *Windhom v. State*, 729 S.E.2d 25 (Ga. App. 2012), citing *Axelburg v. State*, 616, 669 S.E.2d 439 (Ga. App. 2008); *DeYoung v. State*, 493 S.E.2d 157 (Ga. 1997) (trial court did not err in denying motion to suppress statement obtained through police trickery or deceit); *Carroll v. State*, 408 S.E.2d 412 (Ga. 1991) (trial court, which redacted other portions of interview, did not abuse discretion in not redacting interrogator's argumentative comments).

In the instant case, after performing the Rule 403 analysis, the trial court found the video admissible and fashioned an appropriate instruction preceding its publication to the jury on how, as a matter of law, the jury was to consider the evidence. Judge Hocker's instructed the jury that

anything said by the officers was not evidence and was not to be considered as evidence. He followed that with a reminder of the State's burden to prove every element of the offense beyond a reasonable doubt and told the jury the defendant was required to prove nothing. (R. p. 304, line 8 – p. 305, line 4.) This instruction, combined with the testimony of McIntosh that the video surveillance referenced by the investigators did not exist, properly protected Appellant's rights to Due Process and protection under the Confrontation Clause. Because the video contained no impermissible hearsay and was not unfairly prejudicial, the jury, as the trier of fact, was entitled to view the relevant, probative, and contemporaneous representation of Raines' statement to law enforcement. As a matter of policy, such sunshine on the police tactics should be encouraged.

II. The trial court did not abuse its discretion in finding text messages from the victim's phone admissible because the messages were not introduced to prove the truth of the matter asserted. Moreover, Appellant offered an overly broad objection to the identification of the texts and then withdrew his objection to the texts at their introduction into evidence. The issue is procedurally barred by the withdrawal of the objection.

Appellant withdrew his objection to the admission of the texts from Myranda to Raines in the days before she died after the State produced numerous witnesses to provide context for the texts between Myranda and Raines. To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court. *See State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Thus, the issue is not properly before the court.

In his initial objection to the identification of the summary of the text exchanges, Appellant broadly objected to admission of any text from Myranda before she died as impermissible hearsay. After Appellant failed to cite to a specific text offered to prove the truth of the matter asserted, the trial court agreed to the identification of the summary because it did not appear to contain hearsay. The court later admitted the summary after receiving no objection

from Appellant. Regardless, the text messages sent from Myranda, to the extent any were offered for their truth, were insubstantial and cumulative to the overwhelming testimony of Raines' obsession with Lisa Hamlett.

How the Issue Was Presented at Trial

James Perry, an investigator from the Greenville County Computer Crime Investigations Unit, testified he performed a search of the content of Myranda's phone while it was still a missing persons case. (R. p. 229, line 16 – p. 230, line 20.) Perry also obtained the content of Raines' cell phone when he voluntarily submitted it to law enforcement on August 22. (R. p. 231, lines 2-18.) The report generated from the extraction of the cell phone was admitted into evidence without objection. (R. p. 233, lines 1-15.) The report reflected calls, text messages, internet searches, and Facebook searches. (R. p. 233, line 18 – p. 234, line 1.) State's Exhibit #31 contained an excerpt from the report, focusing on the particular days surrounding the murder. (R. p. 237, lines 12.) State's Exhibit #31 also adjusted the time zone to conform with Eastern Standard time and adjusted to reflect the conversation between Myranda and Raines. The State offered the exhibit as "a summary of a voluminous report under Rule 1006, Rules of Evidence." (R. p. 237, line 24 – p. 238, line 1.)

Defense counsel acknowledged the text messages from Raines were admissible, but objected to the messages from Myranda as impermissible hearsay. (R. p. 238, lines 3-6.) The following exchange occurred:

MR. SCOTT: I'm not finished. None of it -- none of it is to the truth of the matter asserted. I guess we could review it in-camera if we needed to, but --

THE COURT: Well, I guess probably what I need to do is to not review the entire report but just review a sampling to kind of get an idea of what is there for me to determine whether or not it's being offered for the truth of the matter asserted or not. So Mr. Foreman, ladies and gentlemen of the jury, be patient with us, but this is something I want to review with the lawyers to make a ruling whether or not this will come in in full or not. Consequently, that means you'll have to go back to

your jury room. And again, please be patient with us. Don't begin any discussions about this case. Thank you.

(Whereupon, the jury exited the courtroom at 3:30 p.m.)

THE COURT: Solicitor, if you will just give me several examples of what this report shows these text messages.

MR. SCOTT: Yes, sir. And this is just kind of the same thing but in a blown up, I guess, version of it. What we have undertaken to do to make it, I guess, reader friendly, blue would be Darrell Raines, pink would be Myranda Southern.

THE COURT: Okay.

MR. SCOTT: The yellow indicate deleted texts. And again, this is from a phone extraction of Mr. Raines' phone. And this is going to make sense with subsequent witnesses. But here's what Darrell text on August 16th around 9:33 p.m. "Thought. If he isn't there tonight, he's home right now, and we send the messages tonight and she confronts him. I know how I'd react to something like that and went to drive over immediately. Think we should plant phase two either way." She says, "I know. I can't -- I can't use my computer." He says, "Huh". She says, "I can't use my computer here to plug in the charger, and I need to think about that," referencing his thought. He goes, "Only two more hours before you get off. If your battery is low, turn your data off and it might save some battery." She says, "Yea." And then he says, "If you go under settings and then under networks, mobile networks, uncheck data," that turns off the Internet portion." Then she says, "Are you anxiously awaiting me to get off - lol." He says, "Yes - lol." And she says "Lol. I will when I get a sec." Then he says, "Will what A-M-A-O." And then she says the thing about my battery. It goes on. It's just really kind of laying the groundwork. You ultimately get down to -- if I could fast forward. I'm going to start about August 17th, 10:08. He's out, I think, downtown drinking liquor or something, and she says, "Wow, sounds like quite the party." 10:08 he says, "Not really." And then she does a Emoticon. It looks like a frowny face. He says, "Oh, well. Maybe one more drink and that's it for me. The slushies suck. The waitress is cute though. Too bad she looks a lot like Lisa." As you know, Lisa is going to be a name you're going to be hearing a lot of. She says, "Geez. I could possibly get out at 11:00 if you need or want company." He says, "I don't know." She says, "Maybe you need some alone time. Try a different type of slushy," and he says, "The slushies are 750 each - lol -- or \$7.50 each."

Here you have Myranda calls Darrell and the call lasts 24 seconds. That's August 18th, 11:03 p.m. 11:49 p.m. he says, "You off?" And she says, "Hey, you, 10 minutes." And then he does a smiley face.

Now, here's the critical time right here, Judge. 12:03 a.m. there's an outgoing call from Myranda to Darrell's phone and it lasts six minutes and 12 seconds, and then it just goes off. And we're going to have like -- what we intend to show as some animation. What her phone -- the location she's traveling after she gets off work. Regarding her testimony, between 1:00 and 1:30 there's a gunshot. Then you heard testimony at 3:30 a.m. he's at the bank using her card. 2:56 a.m. his phone sends a text message to hers. "Can't sleep. You," question mark. What we now know, or what the State's proposition is, this is him using her phone to text back, because she's dead. 3:00 a.m. from her phone you get, "I'm

still with Shawn. He's being an ass. I'm not giving him what he wants. I'll call you tomorrow." Then Darrell says, "Okay. Just let me know when you make it home. I'm headed to bed. Good night." It all fits into a larger theory that the State is trying to show. None of this, Your Honor, is really being offered for proof of the content or proof of what --

THE COURT: Well, and I'm going to -- I'm going to allow it in. Two grounds, one is it does not appear from -- we didn't go through the entire record. But you gave me a sampling, and based upon the sampling it does not appear it's being offered for the truth of the matter asserted, which would make it hearsay. And two, the comment is similar to that of the Face book postings wherein the State's theory is that the Face book postings were created by the Defendant and not by Myranda. And so, their theory, as far as these last texts from Myranda's phone, is based upon their theory that the Defendant created those text messages.

MR. ABLE: And I understand that, Judge.

THE COURT: Right.

MR. ABLE: I mean, but if over my objection you're wanting to allow the last few lines into that, I could understand that based upon -- but my objection is to the whole thing.

THE COURT: Right. I understand.

MR. ABLE: I don't know what it would be offered for except for the truth of the matter asserted.

THE COURT: Well, just for example. I mean, they talked about her computer going dead and then recharging it. I mean, because I don't know where -- how that is really helpful to the State's case. But, you know, offered for -- it's not offered for the truth of the matter asserted that she had a dead computer. You see what I'm saying? So based upon the sampling that the Solicitor gave me -- and it's the same kind of stuff, correct, throughout this whole --

MR. SCOTT: Yes, sir. I mean, Your Honor, I'm not going to introduce it now. I want him to ID it, because there's still a lot of information that needs to come in to make some of this stuff relevant. I was telling you some of this stuff that hadn't been testified to yet. So I don't want to publish this to a jury yet. What I can do -- let me get him to ID it and I'll provide Your Honor with a copy to sort of review.

(R. p. 238, line 22 -- p. 243, line 14.) The exhibit was offered for identification only by James Perry. (R. p. 245, line 8- p. 246, line 12.) Following Perry's testimony, the State called 1) the pathologist; 2) a chain of custody witness; 3) Laurens County investigator Keith McIntosh (during which the video of the interrogation was introduced); 4) two employees of a pawn shop; 5) the Lauren's county investigator who interviewed the pawn shop employees and searched Raines' house; 6) the SLED firearms examiner; 7) a co-worker of Myranda's at Charter Communications; 8) a consultant for Hi-Point firearms who testified about re-tooling Raines'

.380 caliber firearm on August 23, 2013; 9) a friend of Raines who testified about his infatuation with Lisa Hamlett and his computer savvy; 10) another friend of Raines who characterized his feelings for Lisa Hamlett as obsessive⁴ and testified Raines told her Myranda was in the car with him when he withdrew money from her account hours after she was killed, 11) a young woman who testified Raines initiated a romantic relationship via Facebook and text messages beginning when she was 17 years old but Raines also spoke of Lisa Hamlett; and 12) Lisa Hamlett, who testified she and Raines were friends in school who caught up later in adulthood, had a brief romantic encounter one night, and then she broke it off with him when she learned he was seeing multiple women. (R. pp. 247-438.) Lisa Hamlett, who gave the most insight into Raines' frame of mind, testified about the unusual and disturbing efforts Raines made to speak to her following that night. (R. pp. 408-417.) Hamlett also testified about the numerous Facebook messages she received from Raines, Raines' mother, and a woman she did not know named Myranda Southern, who claimed to have had a sexual relationship with Hamlett's then boyfriend. (R. pp. 414-417.)

The State then offered State's Exhibit #52, the Facebook message purportedly sent from Myranda to Hamlett, into evidence. (R. p. 417, lines 7-18.) The trial court specifically asked Appellant if he had any objection, and he declined. (R. p. 417, lines 16-22.) Hamlett then read the entirety of the Facebook conversation between her and Myranda's account. (R. pp. 419-422.) Hamlett was confused at the time because she was not friends with Myranda on Facebook and her privacy settings would have prevented a person who was not friends with her from seeing the type of information mentioned in Myranda's messages. (R. p. 423, lines 1-24.) Hamlett testified

⁴ R. p. 38, lines 21-25.

when she saw the news Miranda was missing, she explained the strange Facebook message exchange to the Greenville County Sheriff's Department. (R. p. 424, lines 2-20.)

Lastly, the State called Antonio Bailey, a homicide investigator with the Greenville County Sheriff's Department, who testified about the timeline of their investigation. Bailey detailed the investigation of Darrell Raines as a suspect because of his use of Miranda's debit card the morning of her disappearance. (R. pp. 443-446.) Raines turned over his phone, and the investigators performed an extraction of its content. (R. p. 447, lines 2-12.) The solicitor asked Bailey if he spoke to Lisa Hamlett and "found out about the Facebook posts supposedly from Miranda Southern." (R. p. 457, lines, 9-14.) The solicitor later showed Bailey State's Exhibit #31, or, the summary of the phone extraction already entered into evidence as State's Exhibit #30. (R. p. 459, lines 12-25.) After Bailey's positive identification of State's Exhibit #31, the solicitor then moved the exhibit into evidence and asked to publish the summary to the jury. (R. p. 460, lines 2-5.) The trial court asked Appellant if he needed to see anything about the exhibit. Appellant responded, "I do. Without objection." (R. p. 460, lines 6-8.) State's Exhibit #31, the summary of the text messages and phone calls between Miranda and Appellant, was then admitted without objection.

Analysis

In his second issue on appeal, Appellant challenges the admissibility of State's Exhibit 31, the summary of the texts from the victim to Raines as impermissible hearsay. Appellant argues the texts were offered to prove the matter asserted by directing this Court's attention to the State's closing argument, in which the solicitor reminded the jury Raines had access to Miranda's Facebook account and sent messages from Miranda to Lisa Hamlett. (IBOA at p. 19.) Appellant also claims the defense objected to State's Exhibit 31 "prior to the messages being

admitted into evidence.” (IBOA at p. 16.) The record before this Court, however, clearly tells a different tale.

Appellant did indeed object to State’s Exhibit #31, but only after State’s Exhibit #30 was already introduced into evidence. State’s Exhibit #30 was the content of Appellant’s cell phone dump, while State’s Exhibit #31 was a summary of a portion of that information. At the time Appellant objected to the summary, the text messages contained in the summary were already admitted into evidence. To properly preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Appellant offered no contemporaneous objection when the text messages were first introduced into evidence, and therefore the issue is unpreserved for review.

Additionally, Appellant only offered a preliminary objection to State’s Exhibit #31 when the State first discussed the summary with the investigator who created it, James Perry. Following the exchange about the admissibility of the text messages and whether they were being offered for the truth of the matter asserted, the solicitor informed the trial court he was not moving the summary into evidence, but was only offering the exhibit for identification only. The trial court indicated it was not making a final determination, but would rule on the motion when the exhibit was actually moved into evidence. (R. p. 244, lines 6-10.) Approximately fourteen witnesses later, after the State more substantially developed Raines’ obsession with Lisa Hamlett as a possible motive for the murder, the solicitor actually moved the summary into evidence and intended to publish the summary to the jury. At this critical point, even when prompted by the trial court for any response to the motion, Appellant did not object. Appellant did not renew his objection to this evidence at the time the evidence was introduced.

Even if this Court were to construe Appellant's objection as timely, the objection was overly broad. An objection must be sufficiently specific to inform the trial court of the point being urged by the objector. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory. *In the Matter of the Care and Treatment of McCracken*, 346 S.C. 87, 551 S.E.2d 235 (2001); *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. Cutro*, 332 S.C. 100, 504 S.E.2d 324 (1998) (a one sentence argument is too conclusory to present any issue on appeal); *Solomon v. City Realty Co.*, 262 S.C. 198, 203 S.E.2d 435 (1974).

Although Appellant specifically argued the text messages from the victim were impermissible hearsay, he did not point out to the court the specific texts he argued were offered for the truth of the matter asserted. According to Appellant's brief, he now takes issue with the admissibility of the text messages tending to prove Raines sent messages from Myranda's Facebook account to Hamlett. Out of approximately two hundred fifty entries in State's Exhibit #31, which summarized the phone and text exchanges between Myranda and Raines in the few days leading to her death, only one text (at line 56), when Myranda texts Darrell, "You didn't tell me you msgd her back," is **arguably** proof of the matter asserted. (*But see* discussion below). However, when the solicitor and the trial court considered the content, the judge commented on texts not offered for their truth, such as recharging a dead computer or texts the State contended were sent by Raines from Myranda's phone. (R. p. 242, line 3 – p. 243, line 6.) Had Appellant cited that particular text to the trial court when the parties discussed how the texts were being offered, the trial court could have considered Appellant's objection to that specific entry and ordered the State to redact the Exhibit excluding the impermissible texts. Instead, Appellant objected to the entirety of the exhibit, arguing all the texts were offered for their truth. (R. p. 242,

lines 22-23.) The court suggested the solicitor mark it for identification, then call more witnesses to show the context of the messages, and then Appellant would have the opportunity to renew his objection at its introduction into evidence. (R. p. 244, lines 6-10.) Of course, as discussed earlier, Appellant did not renew his objection; he withdrew it instead and allowed State's Exhibit #31 in without objection.

Lastly, even if Appellant did properly and timely object to the texts from Myranda as impermissible hearsay, the State did not rely on that particular text from Myranda to Raines to prove their theory of the case. The State argued Raines manipulated, took advantage of, and then murdered Myranda Southern, possibly as part of some bizarre plan to win Lisa Hamlett's affections. The text exchanges were simply part of the narrative, and not offered for the truth of the matter asserted. When Myranda texted Raines, "You didn't tell me you msgd her back," it was not relevant to the State's theory of the case that Raines messaged Lisa Hamlett instead of Myranda. The evidence had previously shown Raines had access to her apartment and her computer. Lisa Hamlett testified about Raines' unusual and disturbing behavior, as well as the series of Facebook messages. It made no difference whether Raines sent follow up messages, even if Myranda sent the initial message at Raines' request. He was clearly using her in his deception of Lisa Hamlett. The text is not as significant for its truth – that Raines messaged Lisa – as it is for its reflection of Raines' fascination with this other woman. Raines' own texts to Myranda, which were certainly admissible, are more probative of this theory. (R. p. 621: "Thought... If he isn't there tonight (he's home right now), and we send the messages tonight, and she confronts him, I know how I'd react to something like that and want to drive over immediately. Think we should plant phase 2 either way?") See *United States v. Walter*, 434 F.3d

30, 35 (1st Cir. 2006) (“statements introduced solely to place a defendant’s admissions into context are not hearsay, and as such, do not run afoul of the Confrontation Clause”);

Myranda’s texts before her death, by and large, gave perspective to this unusual relationship with Raines and gave context to his responses. Myranda’s texts in response to his were admissible for this purpose. *See United States v. Wills*, 346 F.3d 476, 490 (4th Cir. 2003) (witness statements made in conversation with defendant properly admitted to show context of incriminating admissions); *United States v. McDowell*, 918 F.2d 1004, 1007 (1st Cir. 1990) (“McDowell’s own statements could, of course, be used against him; his part of the conversations was plainly not hearsay. Nor can a defendant, having made admissions, keep from the jury other segments of the discussion reasonably required to place those admissions into context.”). Collectively, the texts were not offered for the truth of the statements but as the context to Raines’ statements against interest; consequently, they were not hearsay.

Even assuming *arguendo* that the content of Myranda’s text message was hearsay, harmless error can apply to this narrow issue. *See State v. Armstead*, 432 So.2d 837, 839 (La.1983) (“[C]omputer printouts which reflect computer stored human statements are hearsay when introduced for the truth of the matter asserted in the statements.”), *State v. Salkil*, 820 N.W.2d 159 (Iowa Ct. App. 2012) (finding the messages themselves were cumulative and noting the court will not find prejudice in the admission of hearsay evidence if “substantially the same evidence has come into the record without objection”). Lisa Hamlett testified to the content of the unusual Facebook messages before State’s Exhibit #31 was moved into evidence. At that point in the trial, the single text message from Myranda to Raines was unsubstantial and cumulative.

III. Any error in the admission of the interrogation video and/or the text messages from the victim before her death is harmless beyond a reasonable doubt in light of the overwhelming evidence of Appellant's guilt.

The precise motive for Myranda's death is unclear, but the State presented witness after witness who offered evidence of Raines' obsession with Hamlett, his access to Myranda's belongings, Myranda's inexplicable trust of Raines, and the efforts Raines made to execute and then conceal Myranda's murder. In fact, in denying the Raines' motion for a directed verdict, the trial court said, "Yeah, I've kept a lot of notes and I made a list of what I consider -- what I considered to be substantial circumstantial evidence in this case, and I've got it numbered at up to 21 different things." (Supp. R.O.A. p. 2, lines 6-9). On a broader scale, any errors in the admissions of the interrogation video, in which Raines admitted nothing, or the text message from Myranda to Raines, which were less significant than those of Raines, were harmless beyond a reasonable doubt.

"To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof." *State v. Commander*, 396 S.C. 254, 263, 721 S.E.2d 413, 418 (2011). "An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result." *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996) (citing *Chapman v. California*, 386 U.S. 18 (1967)). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."

State v. Chavis, 412 S.C. 101, 109–10, 771 S.E.2d 336, 340 (2015). The factors for consideration in any harmless error analysis include:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecutions' case.

Delaware v. Van Ardsall, 475 U.S. 673, 684 (1986).

In Appellant's case, the remaining evidence of his guilt conclusively proved Raines murdered Myranda Southern. Notwithstanding the video of his interrogation and the text messages from the victim's cell phone, the jury considered the following evidence presented at trial:

A) Incriminating information on Raines' access to Myranda's life:

- Met Raines in person for the first time about a week before her death. (R. p. 60, lines 3-16.)
- Raines had a copy of Myranda's apartment key and was given access to her computer. (R. p. 278, lines 20-21.)
- Raines convinces Myranda to participate in a Facebook scheme to deceive Lisa Hamlett (R. p. 418, lines 4-17.)
- Raines has a computer science background. (R. p. 382, lines 10-19.)

B) Incriminating information of Raines' possession of the debit card:

- At 8:00 p.m., Myranda took her dinner break and is seen using her debit card at a gas station at 8:03 pm the night of August 18. (R. p. 217, lines 15-19; p. 218, lines 18-24; State's Ex. 36.)

- At 12:00 a.m. on August 19, 2013, Myranda left work. (R. p. 362, line 17 – p. 363, line 4.)
- The last transaction made from Myranda's debit card was a \$500 cash withdrawal from an ATM at the Berea BB&T on August 19, 2013 at 3:36 a.m. (R. p. 212, lines 14-17; p. 213, lines 15-17; p. 214, lines 5-7.)
- Surveillance from the ATM showed Raines, alone in his truck, withdrawing \$500 from Myranda's account. (R. p. 188, lines 13-18; p. 390, lines 21-24; State's Ex. 26 and 29.)
- Raines told investigators Myranda gave him her debit card and pin number on August 17, 2013, the night before she went missing. (R. p. 190, lines 9-10; p. 192, lines 11-16.)

C) Incriminating cell tower information from the night of the murder:

- Contrary to his claims he was taking a nap on the evening of August 18, Raines' phone pinged off a cell tower in downtown Greenville at 11:03 p.m., while Myranda's phone is still being traced to the cell tower near Charter Communications. (R. p. 533, line 22 – p. 534, line 8.)
- An hour later, at 12:03 a.m. on August 19, 2013, Raines' phone pinged off a cell tower in Simpsonville near Charter Communications. (R. p. 534, lines 9-17.)
- At 12:09 a.m., Myranda's phone pinged off a cell tower near Charter Communications. (R. p. 534, lines 17-23.)
- Raines' phone stopped moving while Myranda's phone traveled to the Gray Court area of Laurens County (where her body was located) and pinged off a cell tower at 12:51 a.m. (R. p. 534, line 24 – p. 536, line 6.)

- The witness who lived next door to the field where the body was found in Gray Court was awakened by the sound of two gunshots between 1:00 and 1:30 a.m. on August 19, 2013. (R. p. 144, lines 2-20.)
- Myranda and Raines' phones then traveled towards Greenville, where they both pinged off cell towers downtown at 3:30 a.m. (R. p. 535, line 23 – p. 536, line 4.)
- From there, Raines' phone traveled back up to Berea, and Myranda's phone never moved again. (R. p. 536, lines 5-17.)
- Later the afternoon of the 19th, at 3:56 p.m., Raines' phone pinged again off a cell tower in the Gray Court area of Laurens County, the location where Myranda's body was found. (R. p. 537, lines 3-8).
- In searching the area where the two cell phones pinged, investigators discovered Myranda's car in the Simpsonville BI-LO grocery store parking lot. (R. p. 200, line 11 – p. 201, line 3.)

D) Incriminating phone calls:

- Myranda calls Darrell minutes after she leaves work on the night she is murdered. (R. p. 629.)
- Myranda's phone calls Raines at 3:30 am, approximately two hours after the estimated time of death, and the call lasts for thirty-five minutes. (R. p. 629.)
- On Monday August 19, 2013, Raines made two calls to the BI-LO where Myranda's car was located. (R. p. 292, lines 16-18.)
- Raines called numbers associated with Hi Point thirty times between August 18, 2013 and August 21, 2013. (R. p. 484, line 14 – p. 486, line 23.)

E) Incriminating gun purchases:

- Raines lied about owning a Hi Point .380 caliber weapon, believed to be the murder weapon. (R. p. 318, lines 20-25; Supp. R. O. A. p. 1, lines 10-21.)
- Raines returned the .380 to the manufacturer for re-tooling, and it was received on August 23, 2013. (R. p. 367, lines 1-3.)
- According to postmaster shipping policies, pistols could only be shipped priority mail or overnight express mail. (R. p. 440, lines 5-6.)
- If Raines' gun was received by Hi Point on August 23, 2013, it would have been mailed by Raines on August 22nd if he used overnight express mail. (R. p. 441, lines 2-9) or on August 20th or 21st if Raines shipped the pistol using priority express mail. (R. p. 441, lines 9-11.)

F) Raines' suspicious obsession with Lisa Hamlett, giving rise to a possible motive:

- The Facebook message from Myranda to Lisa. (R. p. 418, lines 2-17.)
- His Facebook password was All4Lisa. (R. p. 234, lines 8-12.)
- His numerous Facebook searches for Lisa and her boyfriend, Jason Gillespie. (R. p. 234, lines 16-22.)
- Raines sent numerous, bizarre communications to Lisa, including letters, Facebook messages, call from his mother on his behalf, a request to rent a room from her, hundreds of jolly ranchers candies and a Build a Bear stuffed teddy bear left on her front porch. (R. pp. 407-421.)
- Raines talked to other women about Lisa, asking them to proof read letters he wanted to send her. (R. p. 389, lines 3-13; p. 396, lines 7-25.)
- Raines' continued plot to make Lisa break up with her boyfriend. (R. p. 621.)

Considering the totality of the evidence presented by the State, the admission of the interrogation video and text message of Myranda to Raines, if the Court were to find error, could not have affected the outcome of the trial and was harmless beyond a reasonable doubt. Given the amount of circumstantial evidence linking Appellant to the murder, any testimony concerning the video or text messages are unnecessary to reach the same conclusion. *State v. Brockmeyer*, 406 S.C. 324, 356, 751 S.E.2d 645, 662 (2013) (“Because the improper admission of hearsay constitutes reversible error only when it results in prejudice, it is our view [defendant] has failed to show he was prejudiced, and thus, has failed to show reversible error.”) As a result, any error in the admission of the video and messages prove harmless.

Thus, even if the Court were to determine the trial court abused its discretion in admitting all or part of the investigators’ statements in the interrogation video or all or part of Myranda’s text messages to Raines before her death, Appellant’s guilt is clear from the all the other State’s evidence proving Raines murdered Myranda Southern.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

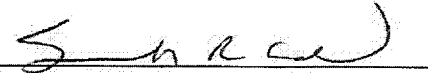
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ATTORNEY(S) FOR RESPONDENT

June 5, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

The Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL ERVIN RAINES ,

APPELLANT

Appellate Case No. 2016-000142

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 Order of the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully submitted,

ALAN WILSON
Attorney General

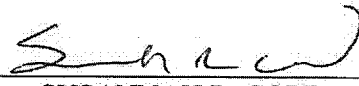
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THE STATE,

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V.

DARRELL ERVIN RAINES ,

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Appellate Case No. 2016-000142

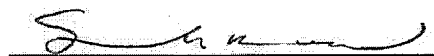
CERTIFICATE OF SERVICE

I, Susannah Cole, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record:

John Strom, Esquire
SCCID/Div. of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 5th day of June, 2017.



Susannah R. Cole
Assistant Attorney General
SC Bar No. 68383

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Darrell Raines, Appellant.

Appellate Case No. 2016-000142

Appeal From Laurens County
Donald B. Hocker, Circuit Court Judge

Unpublished Opinion No. 2019-UP-188
Heard April 2, 2019 – Filed May 29, 2019

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Meoldy Jane Brown, Assistant
Attorney General Susannah Rawl Cole, all of Columbia;
and Solicitor David Matthew Stumbo, of Greenwood, all
for Respondent.

PER CURIAM: Darrell Raines appeals his convictions for murder and possession of a weapon during the commission of a violent crime. On appeal, Raines argues the trial court erred in (1) admitting a recording of his interrogation by law enforcement without redacting investigators' hearsay statements and (2) admitting text messages purportedly sent by the victim when such messages constituted hearsay. We affirm.

1. We find the admission of the investigators' numerous statements accusing Raines of lying was erroneous because the statements constituted inadmissible hearsay. *See* Rule 801(c), SCRE ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); *State v. Brewer*, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015) (holding the admission of an "unredacted audiotaped interrogation was an abuse of discretion"); *id.* at 406, 768 S.E.2d at 658-59 ("We acknowledge the propriety of law enforcement interrogation techniques, including misrepresenting the existence and strength of the evidence against an accused, as well as asking the accused to produce evidence voluntarily. . . . But such evidence will rarely be proper for a jury's consideration."); *id.* at 406-07, 768 S.E.2d at 659 (holding when "investigators frequently referenced *and quoted* many purported eyewitnesses" to the crime during the interrogation, such "evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing [the defendant's] guilt to all charges" (emphasis in original)); *id.* at 407-08, 768 S.E.2d at 659 (declining to establish "a categorical rule that any statement by an investigator during an interrogation is inadmissible at trial" but noting trial courts should exercise caution "to ensure that all out-of-court statements are either 'admissible for a valid nonhearsay purpose or as an exception to the hearsay rule'" (quoting *State v. Miller*, 676 S.E.2d 546, 556 (N.C. Ct. App. 2009))); *id.* at 408, 768 S.E.2d at 659 (noting "questions police pose during suspect interviews may contain false accusations . . . and inflammatory remarks that constitute legitimate points of inquiry during a police investigation, but that would otherwise be inadmissible in open court" (quoting *Miller*, 676 S.E.2d at 556)); *id.* at 407, 768 S.E.2d at 659 (finding "no support in the law for the State's argument that the interrogators' statements were admissible for purposes of context or for the effect the statements had on" the defendant).

Nevertheless, we find the admission of the hearsay statements was harmless beyond a reasonable doubt due to the overwhelming evidence of Raines' guilt. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the [c]ourt should not set aside a conviction because of

insubstantial errors not affecting the result."); *Brewer*, 411 S.C. at 408, 768 S.E.2d at 660 ("The '[i]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice.'" (alteration in original) (quoting *State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011))); *State v. Daniels*, 401 S.C. 251, 263, 737 S.E.2d 473, 479 (2012) (holding, in a circumstantial evidence case, there was overwhelming evidence of the defendant's guilt when "the circumstances proven [were] consistent with each other, and when taken together, point[ed] conclusively to the guilt of [the defendant] to the exclusion of every other reasonable hypothesis").

2. We find Raines' argument concerning the victim's text messages is unpreserved for appellate review. *See State v. Simpson*, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.").

AFFIRMED.

LOCKEMY, C.J., and SHORT and MCDONALD, JJ., concur.

STATE OF SOUTH CAROLINA)

County of Laurens)Darrell Ervin Baines Jr. #366420)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2020 CP30-046

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Department of Corrections,
Perry Correctional Institution
2. Name and location of Court which imposed sentence Laurens County General
Sessions, 100 Hillcrest Square Suite B Laurens, S.C. 29360
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-65-30-1932
 - (b) 2013-65-30-1933

LAURENS COUNTY
 CLERK OF COURT
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 ILEN W. LANCASTER

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December 11, 2015 - Life

(b) December 11, 2015 - 5 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. May 29, 2019

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2019-UP-188

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment A
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

Attachment A

11.

- (a) The defense counsel, Bryan Able, provided ineffective assistance of counsel to the applicant, Darrell Raines, by:
- 1) Failing to impeach a witness incarcerated at the time of the applicant's trial.
 - 2) Failing to object to or motion to exclude the testimony of a witness not listed on the witness list
 - 3) Failing to provide the applicant with information gathered from his phone.
 - 4) Failing to hire a qualified independent researcher to provide data analysis of the information gathered from the applicant's cell phone.
 - 5) Making inappropriate and inflammatory statements during the closing arguments of the applicant's trial
 - 6) Failing to reargue the objection to a witness testifying how cell phones and cell towers operate
 - 7) Failing to reargue the objection to the introduction of state's exhibits into evidence.
 - 8) Failing to do due diligence and adequately prepare for applicant's trial.

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel - Because this is the
 (b) first time I've filed for Post Conviction Relief.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Bryan C. Able
P.O. Box 428 916 W. Main St. Laurens, S.C. 29360
 ii. David Alexander
P.O. Box 11589 Columbia, S.C. 29211
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial State of S.C. vs. Darrell Raines
Case No: 2013-65-30-1932, 2013-65-30-1933
 ii. Appeal: State vs. Darrell Raines
Case No: 2016-000142
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of Sentence and a new trial

20. Are you now under sentence from any other court that you have not challenged?

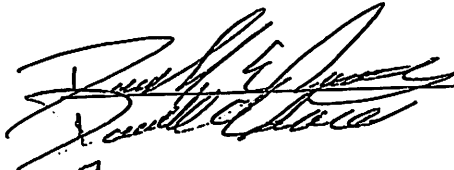
No

STATE OF SOUTH CAROLINA)

County of Laurens)

VERIFICATION

I, Darrell E. Reines Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 7th
day of January, 2020.

Jamaica Conwell (L.S.)
Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

RECEIVED

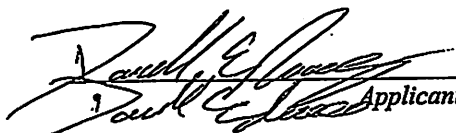
JAN 07 2020

P.C.I. MAILROOM

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

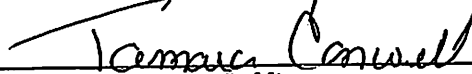
I, Darrell E. Raines Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

7th day of January, 2020.


Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

RECEIVED

JAN 07 2020

P.C.I. MAILROOM

LAURENS COUNTY
CLERK OF COURT
2020 JAN 13 PM 4:10
LYNN W. LANCASTER

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Darrell E. Raines, #366420	)	Case No.: 2020-CP-30-046
	)	
Applicant,	)	
	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (“Respondent”), making its Return to the application for Post-Conviction Relief filed on January 13, 2020, would respectfully show this Court:

I. Procedural History

Darrell Raines (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During its November 2013 term, the Laurens County Grand Jury indicted Applicant for murder (13-GS-30-1932) and possession of a weapon during a violent crime (13-GS-30-1933). Bryan C. Able, Esquire, (“Counsel”) represented Applicant. Deputy Solicitor Dale Scott of the Eighth Circuit Solicitor’s Office prosecuted the case.

On December 7-11, 2015, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. The jury found Applicant guilty on both counts. Applicant was sentenced to life imprisonment for murder and a consecutive sentence of five years for possession of a weapon during a violent crime.

Applicant subsequently timely filed a notice of appeal. A brief was filed by John H. Strom, former Appellate Defender, on Applicant’s behalf. By an unpublished Opinion, the South

Carolina Court of Appeals dismissed Applicant's appeal. State v. Wise, Op. No. 2019-UP-141 (S.C. Ct. App. filed April 17, 2019). The Remittitur was sent June 14, 2019.

II. Factual Background

Victim joined an online dating website, PlentyofFish.com, in an effort to find companionship. (Trial Tr. 118). In the beginning of August 2013, Victim began chatting with Darrell Raines online. (Trial TR. 118). Raines was going through a similar break up of his marriage. (Trial Tr. 138.) He had recently moved into to his mother's house in Berea, South Carolina after separating from his wife. (State's Exhibit #47.) Raines' inability to obtain steady work led to financial difficulties. (State's Exhibit #47.) In fact, multiple text messages from August 2013 reveal that Raines was desperate for a gun but could not afford one. (State's Exhibit #32.)

Raines and Victim talked online for about a week before they met in person. (Trial Tr. 119). On Tuesday, August 13, 2013, Victim drove to Georgia to meet her mother, Penny Smithers. (Trial Tr. 138.) Victim's two children were going to visit with Penny in Florida until Tuesday, August 20, when Victim would retrieve them. (Trial Tr. 138.) When Victim returned from meeting Penny that Tuesday night, she finally met Raines in person. (State's Exhibit #47.) The two spent the night together and from there began dating. (State's Exhibit #47.) They would frequently call and text one another. (State's Exhibits #32.). During this time, Raines was able to gain extensive access to Victim's life. Raines obtained a copy of Victim's apartment key and was given access to her computer. (Trial Tr. 350).

Victim's Disappearance

On Sunday, August 18, 2013, Victim left for work at 2:00 p.m. (Trial Tr. 122.) Victim worked the evening hours at Charter Communications in Simpsonville. (Trial Tr. 114.) She would

usually leave around 2:00 p.m. and return home between 12:30 and 1:00 a.m. (Trial Tr. 115.) Around 6:30 p.m., Victim spoke to Penny on the phone and confirmed they would meet on Tuesday, August 20 to exchange the kids. (Trial Tr. 114.) At 8:00 p.m., Victim had her dinner break. (Trial Tr. 170.) She left Charter and drove to a gas station in Taylors, South Carolina where she used her debit card at 8:03 p.m. to purchase coffee and cigarettes. (Trial Tr. 286; State's Exhibit #36.) Victim briefly met with her estranged husband, and then drove back to Charter Communications. (Trial Tr. 171.) At 12:00 a.m. on August 19, Victim left work. (Trial Tr. 441-442.)

On the morning of Monday, August 19, Victim's neighbor, Lauren Searcy, became worried when she did not see Victim's car parked outside her apartment. (Trial Tr. 123-124.) Concerned for Victim's safety, Lauren sent a text message to Raines asking if he had heard from Victim. (Trial Tr. 123.) When Raines responded that he had not spoken to Victim, Lauren checked Victim's Facebook account for any information. (Trial Tr. 126.) Lauren saw that a message had been posted from Victim's Facebook account on August 19 at 4:07 a.m., stating that Victim was leaving for Florida to pick up her kids. (Trial Tr. 127.) The message troubled Lauren because she knew Victim was not supposed to leave until Tuesday August 20. (Trial Tr. 127.) Furthermore, as Lauren would explain to the police, she did not believe the message was written by Victim because that was "not the way Victim would talk." (Trial Tr. 128.) That afternoon, Penny contacted Lauren. (Trial Tr. 144.) Penny had been trying to call Victim all day and received no answer. (Trial Tr. 144.) This was especially worrisome to Penny because August 19 was Victim's daughter's 8th birthday. (Trial Tr. 139.) Penny became even more concerned when she received a strange Facebook message from Victim's account at 5:16 a.m. on August 19, claiming she was on the way to Florida. (Trial Tr. 143; 146; State's Exhibit 5.) Another Facebook message posted from Victim's account

at 7:29 p.m. on August 19 claimed Victim was going to Savannah, Georgia to be with some friends. (Trial Tr. 128; State's Exhibit 4.) Because Victim did not know anyone in Savannah and the message did not sound like Victim, Lauren filed a missing persons report later that night on Monday, August 19. (Trial Tr. 146.)

Surveillance from the ATM showed Raines, alone in his truck, withdrawing the maximum daily withdrawal amount of \$500 from Victim's account on several occasions. (Trial Tr. 257; 289; 469; State's Exhibit #26 and #29.) Raines claimed Victim gave him her bank card and pin number on Saturday, August 17, the night before she went missing. (Trial Tr. 259; 261.) Raines claimed Victim was giving him \$200 for a car payment. (Trial Tr. 261-62.)

On Friday August 23, a severely decomposed body was discovered in a field on Bramlett Church Road in Gray Court. (Trial Tr. 531-32; State's Exhibits #12 and #37.) That same day, investigators located Victim's abandoned car. Using the information obtained from Raines' and Victim's cell phone records, investigators determined that Raines' and Victim's phones pinged off cell phone towers in very close proximity to each other at 12:03 a.m. on August 19. (Trial Tr. 269-70). Ultimately, it was determined that Victim died of a gunshot to the back of her neck.

III. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant makes several allegations, which Respondent interprets as the following:

- (1) Ineffective Assistance of Trial Counsel as to Bryan Able:
 - a. "Failing to impeach a witness incarcerated at the time of the applicant's trial.
 - b. "Failing to object to or motion to exclude the testimony of a witness not listed on the witness list."
 - c. "Failing to provide the applicant with the information gathered from his phone."
 - d. "Failing to hire a qualified independent researcher to provide data analysis of the information gathered from the applicant's cell phone."
 - e. "Making inappropriate and inflammatory statements during the closing arguments of the applicant's trial."

- f. “Failing to raise the objection to a witness testifying how cell phones and cell towers operate.”
- g. “Failing to raise the objection to the introduction of State’s exhibit into evidence.”
- h. “Failing to do due diligence and adequately prepare for applicant’s trial.”

As requested relief, Applicant requests a new trial.

Attached to this Return and incorporated by reference are the records of the Laurens County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the appellate record including the trial transcript, and the PCR application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegation of Ineffective Assistance of Trial Counsel

Respondent submits Applicant’s allegations of ineffective assistance of trial counsel are without merit. In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442,

334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test for any of Applicant’s allegations of ineffective assistance of trial counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. General Denial and Response to All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held as to the allegations of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: s/ Brianna L. Schill
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 10, 2020

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS OF
2) THE EIGHTH JUDICIAL CIRCUIT
3) 2020-CP-30-00046
4)
5 COUNTY OF LAURENS)
6)
7 DARRELL E. RAINES, JR.,)
8) Applicant,
9) TRANSCRIPT OF RECORD
10 vs.)
11)
12 STATE OF SOUTH CAROLINA,)
13)
14 Respondent.)

15 December 2, 2022
16 Abbeville, South Carolina

17 B E F O R E:

18 HONORABLE R. SCOTT SPROUSE, JUDGE

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

20 Don A. Thompson, Esquire
21 Attorney for the Applicant

22 Zachary W. Jones, Esquire
23 Attorney for the State

24 Lisa G. Amick
25 Court Reporter

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E X H I B I T S

(NO EXHIBITS INTRODUCED.)

1 THE COURT: Yes, sir?

2 MR. JONES: May it please the Court. This is the
3 matter of Darrell Raines versus the State of South Carolina,
4 case number 2020-CP-30-46. My name is Zachary Jones for the
5 State of South Carolina; Mr. Raines is present along with his
6 counsel Don Thompson. Mr. Raines was indicted by the Laurens
7 County Grand Jury during its November 2013 term for murder,
8 case number 2013-GS-30-1932, and possession of a weapon during
9 a violent crime, case number 2013-GS-30-1933. He was
10 represented by Bryan Able and Deputy Solicitor Dale Scott of
11 the Eighth Circuit Solicitor's Office prosecuted the case. On
12 December 7th, 2015, Mr. Raines proceeded to a jury trial before
13 the Honorable Donald B. Hocker. The jury found him guilty on
14 both counts, and he was sentenced to life imprisonment for
15 murder and a consecutive sentence of five years for possession
16 of a weapon during a violent crime. He subsequently filed a
17 notice of appeal, and by unpublished opinion that appeal was
18 dismissed by the South Carolina Court of Appeals. The
19 remittitur was sent on June 14th, 2019, and this application
20 for post conviction relief followed on January 13th, 2020.
21 Your Honor, I'll turn it over to Mr. Thompson now to begin his
22 case.

23 THE COURT: Alright. Mr. Thompson?

24 MR. THOMPSON: Your Honor, we would call Mr. Raines
25 to the stand. The issues he intends to go forward on are the,

1 simply the ones that he does have listed in his post conviction
2 relief application, there will be no others.

3 THE COURT: Okay.

4 CLERK: Put your left hand on the Bible, raise your
5 right. Do you swear or affirm that the testimony you're about
6 to give the Court will be the truth?

7 MR. RAINES: Yes, ma'am.

8 CLERK: You may be seated.

9 MR. THOMPSON: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 **DIRECT EXAMINATION**

12 BY MR. THOMPSON:

13 Q Mr. Raines, will you give us your full name, please?

14 A Darrell Ervin Raines, Jr.

15 Q Okay. And how old are you?

16 A I am 43.

17 Q Alright. And prior to, you're incarcerated I can tell by
18 the orange suit. Where are you incarcerated?

19 A McCormick.

20 Q Okay. Is it on a murder charge, a weapon charge as
21 relayed by the attorney general?

22 A It is.

23 Q Okay. When were you convicted?

24 A December of 2015.

25 Q Okay. Was this a guilty plea or jury trial?

1 A A jury trial.

2 Q Alright. Laurens County?

3 A Yes, sir.

4 Q And where did you live?

5 A I lived in Greenville County.

6 Q You lived in Greenville County, okay. Were you
7 represented by counsel at this trial?

8 A I was.

9 Q And who was that attorney?

10 A Mr. Bryan Able.

11 Q Okay. And how did you get Mr. Able?

12 A He was assigned to me.

13 Q He was an appointed attorney?

14 A Yes, sir.

15 Q Okay. Now, you have filed a post conviction relief
16 application, is that correct?

17 A Yes, sir.

18 Q And you've itemized some issues in there that you wish to
19 proceed on?

20 A Yes, sir.

21 Q Alright. Let's take them, I guess from the top. Start
22 with, at the beginning, your first item is, well, let me ask
23 this. Are you alleging that Mr. Able was ineffective, provided
24 ineffective assistance of counsel?

25 A Yes, sir.

1 Q Okay. Your first item is that he failed to impeach a
2 witness incarcerated at the time of Applicant's trial. What --
3 -

4 A Yes, sir.

5 Q --- are you talking about there, who was the witness?

6 A The witness was Kristian Yates. On the trial transcript
7 it's pages 210 to 226.

8 Q Okay.

9 A When I arrived at the Courthouse there was an inmate from
10 the women's prison who was brought in and was allowed to go
11 into Court in plain clothing, that was Ms. Yates.

12 Q Ms. Yates? Did you learn that she had been convicted of
13 something?

14 A Yes.

15 Q Do you know what that conviction was for?

16 A Off the top of my head I do not remember.

17 Q Okay.

18 A I want to say it was something with checks or credit card
19 fraud.

20 Q Well, was, let me ask this question. Would it have been
21 accessory before the fact to a felony?

22 A I can't remember. That was many years ago and I didn't
23 write it down unfortunately.

24 Q Okay. When she testified, did Mr. Able raise the issue of
25 her conviction to impeach her?

1 A No.

2 Q Alright. You feel he should have?

3 A I do.

4 Q The second thing on your list is failing to object to or
5 motion to exclude testimony of a witness not listed on the
6 witness list. Who are you talking about there?

7 A That would be Penny Smithers, the victim's mother.

8 Q I was about to say who is Penny Smithers.

9 A The victim's mother. She testified under the trail dated
10 136 to 148 ---

11 Q Okay.

12 A --- of the transcript, sorry.

13 Q Do you feel that her testimony was important to the
14 State's case?

15 A I do. Please give me a moment to look at my notes.
16 Through her they introduced State's Exhibit 5 into evidence ---

17 Q Okay.

18 A --- which was used obviously against me.

19 Q Alright. Do you recall what State's Exhibit 5 was?

20 A Let's see. It was a Facebook message sent by the victim
21 to the witness, her mother. The State put forth this and
22 several posts on Facebook were made by myself, it's not the
23 victim.

24 Q Okay. Now, during the course of your trial, was Facebook
25 messages important, an issue that the State relied on?

1 A Yes, sir.

2 Q Okay. And you say that she was not listed on the State's
3 witness list?

4 A Correct. We had a short conversation ---

5 Q We, who is we had a short conversation?

6 A Mr. Able and I.

7 Q Okay. Did he raise the issue to the Court that she had
8 not been disclosed as a witness?

9 A I'm not certain who, whether it was the prosecution or
10 the, I think it might have been the Judge that said, that
11 brought up the issue when he noticed it or something.

12 Q Okay. Did Mr. Able object to her testimony?

13 A He did not.

14 Q Okay. Do you feel it would have been important for him to
15 have done so?

16 A I do.

17 Q Okay. Third thing you got listed is failure to provide
18 the Applicant with information gathered from your phone. Tell
19 me what went on with your phone.

20 A My phone was, they did forensics on the phone, they did a
21 data dump, text messages, phone call logs, pictures, passwords
22 to applications that were stored on the phone, things like
23 that. And it was put on a CD and some of it was printed out
24 which some of it was given to me in my discovery, some of the
25 text messages, I believe, and I don't believe the phone call

1 logs, the pictures, or the fact that passwords were stored or
2 anything like that was included.

3 Q Okay. Let me ask you this question. Did a large part of
4 your trial consist of phone texts, phone calls that they had
5 received, or had obtained and the Facebook messaging?

6 A It did.

7 Q Okay. Did you discuss the phone dump with your
8 attorney?

9 A We did.

10 Q And did he tell you anything concerning that?

11 A He said that it was a voluminous or large amount of data
12 that he couldn't print out altogether, it would just be a lot
13 was his reasoning.

14 Q Okay. Did he tell you anything about him going through it
15 and his understanding of it?

16 A He said that he did not understand most of it and that he
17 was going to try to get a independent researcher, but he never
18 did.

19 Q I was about to say did he get an expert?

20 A He did not get an expert.

21 Q Okay. Do you know whether or not he tried to?

22 A I do not know off the top of my head. I know that, or
23 actually, I do, I'm sorry. He said that he spoke to one and
24 the amount that he wanted to testify or go over it was a large
25 sum and he, that was the last of that.

1 Q Okay. Do you know whether or not he petitioned the Court
2 to be allowed to hire the expert?

3 A I do not.

4 Q Okay. Now, I'm going to skip down just a minute because
5 we're dealing with the phone. Number 6 in your thing, failing
6 to reraise an objection to a witness testifying how cell phones
7 and cell towers operate. Was the testimony concerning location
8 of cell towers and where your phone was located during that
9 time period, was that important in your trial?

10 A It was.

11 Q Okay. And who is it you're talking about that testified
12 that he should have objected to?

13 A Officer Dan Kelly.

14 Q And who is Officer Dan Kelly?

15 A Dan Kelly was an officer with Greenwood County Police.
16 They had done something with a software called Cellebrite, I
17 believe, a software, it basically plotted where all the phone
18 towers were that my phone connected to and did a pseudo map
19 and, you know, location, that kind of thing.

20 Q Okay. Was he qualified as an expert in cell phone and
21 cell tower?

22 A He was qualified as an expert in the software that
23 Cellebrite, GeoTime, whatever it was, only, he was not
24 qualified as, in cell towers and how cell phones
25 operate.

1 Q But did he testify as to how cell towers and cell phones
2 operate?

3 A There was lines where he testified this is how the towers
4 do this, this is how the cell phone does this, I believe
5 transcript pages 619, line 16 to 25, and page 620, lines 1 to
6 13 and 23 to 25. And then transcript 621 lines 1 to 6.

7 Q Did your attorney object to this testimony?

8 A He did not object to that testimony.

9 Q Okay. Do you feel it's important he should have?

10 A I do.

11 Q Now, let's go back to your fifth, number 5, you allege
12 that there was inappropriate and inflammatory statements during
13 closing arguments of your trial. Tell me what you mean by
14 that.

15 A Let's see. The statements in the transcript page 669,
16 line 16 to 20, pages 670, lines 11 to 12, 15 to 16, 19 to 20,
17 and page 670, lines 23 to 25 to page 671, lines 1 to 13, he
18 made the ---

19 Q Who's he?

20 A My lawyer, Mr. Able.

21 Q Okay.

22 A He made, the way he was saying when he opened the closing
23 arguments, he said, I actually have that here, I believe. He
24 starts out, good afternoon, Darrell Raines murdered then
25 there's a pause, sorry, Miranda Southern because of his desire

1 for someone else. And that pause was lengthy, and I believe
2 one of the reasons it probably could have been, the jury could
3 have felt a certain way about that. They could have ---

4 Q So -- go ahead.

5 A I'm ---

6 Q So he opened his closing argument by saying that you
7 murdered this young lady?

8 A Correct.

9 Q And that's your attorney?

10 A Yes, sir.

11 Q Okay. Now, just so we have a little bit of perspective,
12 was the State's theory, because you brought it up, was the
13 State's theory that this young lady was killed because you were
14 trying to get back with another woman?

15 A Correct.

16 Q Alright. And the last thing you have listed on there is
17 failing to do due diligence and adequately prepare for trial.
18 Tell us what you mean by that.

19 A He failed in at least three ways, by failing to research
20 the backgrounds of the witnesses, obviously Ms. Yates, you
21 know, she could have been an impeachable witness. By failing
22 to research the data contained in the State's Exhibit 30, the
23 data dump and the information regarding the cell phone.

24 Q Okay. In other words, you're saying failing to get an
25 expert to look at it?

1 A Correct.

2 Q Okay.

3 A And by failing to properly and carefully review the
4 documents submitted to the Court going back to Ms. Smithers
5 being allowed to testify.

6 Q Okay.

7 A If he had reviewed that, obviously, he could have brought
8 it up a little earlier.

9 Q Is there anything on your, in your PCR application that we
10 have not covered?

11 A I believe, I believe there was another objection issue,
12 number 7.

13 Q Number 7? Failing to reraise objection to the
14 introduction of State's Exhibits into evidence?

15 A Correct.

16 Q What are you talking about there?

17 A The Defense's, I'm sorry. Defense's original objection,
18 he objected to exhibits 31 and 32 being published and being
19 introduced and it was resolved when it was, they were both
20 offered for ID at the time. The trial Judge stated right,
21 well, let's see, if you're going to ID that, why don't you ID
22 31 for right now then at least that resolves the objection
23 right now and then once you get some other witnesses in, that
24 certainly, the objection will be renewed, okay.

25 Q Okay.

1 A Because it was 31 and 32 which 32 was a smaller version of
2 31. I will later publish into evidence, page 539 of the trial
3 transcript, lines 2 to 21, however, Defense counsel failed to
4 object and reraise the previous objection. They were used
5 against me throughout the trial, to further his theories by
6 regarding the Applicant's theorized obsession with, his
7 obsession of owning a handgun, and certain messages sent by the
8 victim were instead sent by the Applicant.

9 Q Okay. So what you're saying, let me see if I can
10 paraphrase that. Are you saying that when the exhibits were
11 offered for identification, they were allowed in by the Court?

12 A They were ---

13 Q And that wasn't put in front of the jury for
14 identification, is that correct?

15 A They were, he objected, and they were ID'd to put in as ID
16 at the time ---

17 Q Okay.

18 A --- but then later ---

19 Q But when they were actually put in as evidence for the
20 jury, you're saying there was no objection at that point?

21 A Correct.

22 Q He did not renew his objection?

23 A Correct.

24 Q Okay. Good. Thank you. Answer any questions that
25 counsel may have for you.

1 THE COURT: Mr. Jones?

2 MR. JONES: Thank you, Your Honor.

3 **CROSS EXAMINATION**

4 BY MR. JONES:

5 Q Thank you, Mr. Raines. I only have a few brief questions.

6 A Sure.

7 Q Do you recall the testimony of Kristian Yates?

8 A Some of it. I do have a copy of ---

9 Q Alright.

10 A --- her testimony here.

11 Q Alright. Correct me if I'm misstating to your
12 understanding, but I believe her testimony was that she heard
13 gunshots between 1:00 and 1:30, but that she looked out her
14 window and couldn't see anything because it was dark?

15 A Correct.

16 Q Alright. Was there anything else in her testimony that
17 you believe was relevant to the issues of your guilt or
18 innocence?

19 A I do not believe so.

20 Q Alright. Now, you just finished speaking with Mr.
21 Thompson about the objection to 31 and 32 being admitted for
22 identification ---

23 A Yes.

24 Q --- and that objection not being reraised. Do you
25 remember what those exhibits were?

1 A Let's see.

2 Q I do have a citation to the transcript for ---

3 A I do, I have this transcript right here.

4 Q Alright.

5 A One was a posterboard, and I believe there were text
6 messages, I'm sorry, I didn't bring the first page of the, that
7 had all the exhibits listed.

8 Q Alright. I believe Mr. Thompson has shown me, he has
9 that, and I have that. So do you recall the content of those
10 exhibits?

11 A Off the top of my head at the moment I don't. I've read
12 so much over the past few days ---

13 Q Alright.

14 A --- it's all kind of blurred together. I'm going to say
15 it's text messages, off the top of my head.

16 Q Alright. Primarily text messages?

17 A I believe so, I could be mistaken.

18 Q Mr. Raines, I think that's all the questions I have for
19 you at this moment, thank you.

20 THE COURT: Any redirect?

21 MR. THOMPSON: No redirect, Your Honor.

22 THE COURT: Thank you, Mr. Raines, you can step down.

23 MR. THOMPSON: Oh, I'm sorry. That would be the
24 Petitioner's, Applicant's case.

25 THE COURT: Applicant rests. Alright. Mr. Jones?

1 MR. JONES: Thank you, Your Honor. The State would
2 call Mr. Bryan Able to the stand.

3 CLERK: Put your left hand on the Bible, raise your
4 right. Do you swear or affirm that the testimony you're about
5 to give the Court to be the truth?

6 MR. ABLE: Yes, ma'am.

7 CLERK: You may be seated.

8 **DIRECT EXAMINATION**

9 BY MR. JONES:

10 Q Thank you, Mr. Able. How long have you been practicing
11 law?

12 A 35 years.

13 Q Alright. And about how much of that has been criminal
14 practice?

15 A Percentage wise, 15 percent, maybe.

16 Q Alright.

17 A 15, 20 percent.

18 Q And the, could you just very briefly recount to your
19 history of being appointed or of being assigned to Mr. Darrell
20 Raines' case?

21 A Well, at the time, I had a contract with the public
22 defender's office and that's how I got to represent Mr. Raines
23 was through that appointment.

24 Q Alright. And what was, how did the progress of your
25 representation go? How many times did you meet with him,

1 did you go over discovery with him?

2 A Yes. I couldn't say exactly how many, but I visited the
3 jail many times.

4 Q Did you do any independent investigation in this case?

5 A Yes, sir. As a matter of fact, I rode to, a couple times
6 up to Branham Church Road where this incident occurred. I
7 walked down the hill and talked with the people on the road; I
8 talked to the people who live in the house next to the field.
9 I drove the alleged route that would have been taken from
10 Travelers Rest where Mr. Raines lived at the time down to that
11 area to see just what the timings were and the mileage and
12 everything. Did a lot of research on my own as far as cell
13 towers, cell phones, things of that nature.

14 Q Alright. Could you summarize the State's evidence
15 regarding the murder of the victim?

16 A I'm sorry, I don't, what do you want me...

17 Q Well, I was just, the, well, I suppose I'll go piece by
18 piece through Mr. Raines' issues here.

19 A Okay.

20 Q First the issue of the witness, Kristian Yates. Do you
21 recall that witness?

22 A I recall Kristian, Kristian was the first, really, the
23 first witness I had spoken to, she lived in the house next to
24 the lot where they found Ms. Southern's body. And the first
25 time I went up there, I met with her, and I don't know if it

1 was her mother or her grandmother, I can't remember exactly,
2 and talked with her about what she had seen the incident night
3 and what her testimony was going to be and that nature. As far
4 as her having a police record, I was not aware of that, she was
5 not in jail at that time I spoke to her and I don't believe at
6 the time of the trial she was in jail. So I was never made
7 aware of that or don't know that that's right.

8 Q Alright. And would you say the, the substance of her
9 testimony was as Mr. Raines summarized it?

10 A Yeah. All she testified to was basically she heard
11 gunshots, didn't know where they came from, looked out her
12 window, it was dark and she didn't identify anybody, didn't
13 identify a car, vehicle on the road, anything of that nature.
14 So that was the substance of the testimony, she heard gunshots
15 and looked out the window.

16 Q Right. And was there any dispute that the victim had been
17 shot?

18 A Oh, no, there was no, that was not disputed.

19 Q And that the body was found in that lot across from Ms.
20 Yates' ---

21 A Correct.

22 Q --- outside ---

23 A Correct, that was undisputed.

24 Q Okay. As far as Penny Smithers, do you recall that
25 witness?

1 A The mother of Ms. Southern, yes, I do. I don't think she
2 was listed on the trial list when Mr. Scott handed it to me the
3 day of trial. But Dale and I met a time or two prior to trial,
4 and, you know, Dale was very open, he had like an open file
5 policy, we talked about witnesses. I knew Ms. Smithers was
6 going to testify, I had a file made up for her as to what I
7 anticipated her testimony to be. And there was no, never any
8 doubt that Ms. Smithers was going to testify.

9 Q Was her testimony consistent with what you had prepared
10 for her testimony to be?

11 A Sure. It was, I knew what she was going to say.

12 Q And could you summarize her testimony?

13 A Well, a lot of it was basically she had made plans to meet
14 with her daughter, drop the children off for visitation or
15 something, I can't remember the name of the town in Georgia,
16 she had met her, they had met in Georgia. And then she started
17 trying to reach out to her daughter and couldn't get a hold to
18 her, the phone would go directly to voice mail. She had
19 gotten, I don't remember, I think it was a Facebook post, maybe
20 an email saying she was going, the daughter was going to
21 Savannah and the mother testified I knew something was wrong
22 because she didn't have anybody in Savannah, she would not
23 leave her children and not come pick them up when she was
24 supposed to. She was supposed to pick them up a week later, it
25 caused great concern. She started contacting, the mother

1 started contacting friends that she knew, had phone numbers
2 for, see if they'd seen Ms. Southern. Contacted Mr. Raines,
3 talked with him about if he had seen her, and that was about
4 it.

5 Q Alright.

6 A She did testify about some text messages that she received
7 from allegedly Miranda.

8 Q Right. And those messages, would those have been, you
9 said allegedly Miranda, was there a question about who the
10 actual author of those messages was?

11 A Yeah, there was.

12 Q Alright. In other words, and stop me if I'm misstating
13 your understanding, but wasn't the State's theory that after
14 the murder, Mr. Raines had taken over Ms. Southern's accounts
15 and had been posting messages in her name to try and delay any
16 investigation into her ---

17 A That was part of the State's case.

18 Q Alright. Thank you. The, now, do you remember the cell
19 phone information resulting from the data dump of Mr. Raines'
20 cell phone?

21 A It was provided to me on a disc. I can't specifically say
22 that I provided him with a copy or not. My practice, my custom
23 in 35 years has been to provide to my client a copy. It may
24 have been that it was too voluminous, I don't remember. But I
25 had, like I said, I had it on a disc, he couldn't have used a

1 disc, I would have had to print them out. But it's always been
2 my practice to try to do that, at least somehow to get them a
3 copy of it. I can't say, it's been such a long time ago, I
4 can't say that I did or didn't.

5 Q Alright. And the cell site location information that was
6 used to monitor the locations of what you pieced together with
7 the locations of Mr. Raines' cell phone and the victim's cell
8 phone on the night of the murder, did you receive a copy of
9 that in advance of the trial?

10 A The, Officer Kelly's, Officer Kelly testified, yes, I did.
11 And reviewing it, reading it, I'm pretty sure I provided a copy
12 of that to Darrell because we talked about it. But in looking
13 at what I anticipated Mr. Kelly's testimony to be, Officer
14 Kelly's testimony to be from the information that I received,
15 and he did testify to it was the fact that they could put Mr.
16 Raines or the information that he provided as an expert, the
17 Court did qualify him as an expert, but that, the cell tower
18 information that was provided to me said that Mr. Raines was no
19 closer than Simpsonville and Ms. Southern's phone was pinging
20 off a tower in Woodruff. And that, Simpsonville's 15, 10, 15
21 miles from the area, and Mr. Kelly continued to testify that he
22 could only testify about the general area, he couldn't testify
23 about putting anybody in Laurens County, couldn't put them in
24 Laurens County or on Branham Church Road, so the closest he
25 could put him was Simpsonville.

1 Q So in other words, the location did not specifically put
2 Mr. Raines at Branham Church Road, the site of the murder?

3 A Right. And that's, that was one of the reasons, you know,
4 I did reach out to an expert in that area as far as trying to,
5 if they were able to pinpoint that kind of information. And
6 once I read the information provided to me about what Officer
7 Kelly's testimony was going to be, I was kind of hesitant to
8 talk to anybody else, somebody might put him closer to this
9 lot. So I was able to have, during cross examination of
10 Officer Kelly and him, you know, saying we could not put him
11 any closer than Simpsonville, his phone off that tower, not
12 him, but the cell phone off that tower, couldn't put him in
13 Laurens County, couldn't put him on Branham Church Road, so I
14 really didn't see the necessity if a State's expert couldn't
15 put him where they wanted him to be in that field on Branham
16 Church Road.

17 Q Alright. And did you ever tell Mr. Raines that the
18 reason you didn't request an expert to independently go over
19 the cell phone information was because it would have cost too
20 much?

21 A No, I didn't. The one that I talked with, and it may have
22 been another one, but I remember at least one, a lot of experts
23 don't like to work with the public defender's office, that was
24 the reason that the one guy I did talk to, he wasn't going to
25 take a job for the public defender's office.

1 Q Nevertheless, your primary reason was because the
2 uncertainty as to the location, you perceived that as
3 beneficial to your client?

4 A I thought it was very beneficial, they couldn't put him in
5 Laurens County.

6 Q Alright. And did you have any grounds to object to the
7 qualification of Officer Dan Kelly and cell site location
8 information?

9 A Well, I did object.

10 Q Yes.

11 A The Judge, he took a good bit of in-camera testimony
12 outside of the presence of the jury and thereafter Judge Hocker
13 qualified him as an expert over my objection.

14 Q Now, as for the closing argument, would it be fair
15 to say that one of the questions in this case was what the
16 motive would have been for Mr. Raines to commit this
17 murder?

18 A Right, that's true. I understood what Mr. Raines was
19 reading is the first few lines of my closing argument, you have
20 to read them in context, you have to go down the page and
21 continue to read it as to what I was saying. I wasn't pointing
22 a finger at him saying he murdered her, I just pointed my
23 finger saying they're saying he murdered her because of this,
24 and I don't think you can cherry pick. I reread the argument
25 yesterday, it was a pretty good argument in my opinion, I don't

1 think you can cherry pick it like that and not read it in
2 context and read the whole argument.

3 Q So in context, you were summarizing the State's theory
4 that he murdered her because of this other ---

5 A Relationship ---

6 Q --- woman?

7 A His relationship with this other woman.

8 Q Right. And was the substance of your argument that, that
9 the State's theory of motive didn't make any sense?

10 A It never made any sense to me, that's what I argued to the
11 jury.

12 Q Alright. And that's the context in which those statements
13 were made?

14 A Yes, sir.

15 Q Now, the text messages, number, exhibits 31 and 32, do you
16 recall those?

17 A No, I don't, not specifically.

18 Q Alright. Was the, was the murder weapon or punitive
19 weapon ever found in this case?

20 A No.

21 Q Was ---

22 A Oh, no, no, no, I'm sorry, the murder weapon?

23 Q Yes.

24 A Yes, they had a gun, yeah, they were able to ---

25 Q Alright.

1 A They had a search warrant to pick the gun up when it was
2 redelivered to Mr. Raines' house, yes.

3 Q Alright. And was that the Hi-Point 380?

4 A Yes.

5 Q Was that consistent with the gunshot wound that killed the
6 victim?

7 A I think that's what was testified to, yes, sir.

8 Q Was, you said it was delivered to his house, was that as a
9 result of him sending it off to be repaired in the, after,
10 shortly after the murder was committed?

11 A That's correct.

12 Q And wasn't there a magazine that would have fit a 380 Hi-
13 Point pistol found at the scene of the murder?

14 A Yes.

15 Q Was the, do you recall the information relating to the ATM
16 withdrawals on the night of the murder?

17 A As far as what now?

18 Q As far as Mr. Raines being captured on the surveillance --
19 -

20 A Oh, yeah, there was a very legible picture of him using
21 her card at the ATM machine.

22 Q Alright.

23 A In Greenville, I believe.

24 Q Was there anyone else who testified as to, apart from
25 Penny Smithers who testified as to the Facebook messages or

1 text messages sent allegedly from Miranda Southern that
2 disputed that it sounded like her?

3 A I can't remember right off.

4 Q Alright. How prepared did you feel that you were for this
5 trial?

6 A I think I spent more hours preparing for this trial than I
7 ever had on any other trial.

8 Q I think that's all the questions I have for you right now,
9 Mr. Able, thank you.

10 THE COURT: Cross examination?

11 MR. THOMPSON: Thank you, Your Honor.

12 **CROSS EXAMINATION**

13 BY MR. THOMPSON:

14 Q Mr. Able, from the time that you were appointed to
15 represent Mr. Raines until the date of trial, how long was that
16 period of time, can you estimate that?

17 A Let's see, we tried the case in December of '15, a couple
18 years maybe.

19 Q So you had plenty of time to talk with him, is that
20 correct?

21 A Oh, yes, sir.

22 Q And did you meet with him more than once during that
23 time?

24 A Yes, sir. He was incarcerated at the detention center,
25 yes, sir.

1 Q Okay. Now, on the issue of whether or not you impeached
2 Kristian Yates, she testified did she not? She was the next
3 door neighbor to the field where the body was found.

4 A Yes, sir.

5 Q And I believe her testimony was not only that she heard
6 gunshots, but she could put the time of the gunshots, is that
7 correct? That she heard.

8 A I'll accept your saying that, yes, sir.

9 Q Would that not have been important when you put that in
10 opposition to the cell tower dumps and things like that? Would
11 her testimony as to not only gunshots, but time of gunshots not
12 had been important?

13 A I don't know that the time would have been as important as
14 her being able to testify who she saw or a vehicle she saw or
15 anything of that nature.

16 Q Okay. Prior to trial, did you check the witnesses to see
17 if any of them had records?

18 A I know I did, I'm sure I did, but I don't remember seeing
19 anything on Ms. Yates.

20 Q Okay. Wasn't she incarcerated at the time?

21 A I don't believe that, no, sir.

22 Q Okay.

23 A No, I don't believe that. She didn't come from the back
24 when she testified, she came, she walked through the doors in
25 the back of the Courtroom.

1 Q Well, the trial was in 2015, correct?

2 A I think it was December of 2015, yes, sir.

3 Q Did you not know that she had been convicted of accessory
4 before the fact to a felony in November of 2014?

5 A No, sir, I did not know that.

6 Q As to Penny Smithers, did you know she was going to
7 testify?

8 A Yes, sir, I did.

9 Q Alright. Well, now, when the Judge during jury
10 qualifications read off the list of witnesses, her name was not
11 on the list of witnesses, was it, that he read off?

12 A The list that Mr. Scott provided to me at the time of
13 trial, no, sir, it was not.

14 Q Okay. So the jury wasn't aware that she was going to
15 testify?

16 A I don't recall that, I don't know.

17 Q Alright.

18 A I mean, I don't know what list the Judge got, I'm assuming
19 it was the same list I got.

20 Q So I guess the question I'm getting to is during the
21 voir dire process, the Judge basically questions jurors, gives
22 them the name of witnesses so they can know whether or not they
23 know the people or have any connection or anything,
24 right?

25 A Yes, sir.

1 Q And Ms. Smithers' name was not given to the jury to make
2 that determination, is that correct?

3 A That's correct.

4 Q Well, why didn't you raise that issue with the trial
5 Judge?

6 A I don't know. I knew she was going to testify, and I had,
7 like I said I was prepared for her testimony.

8 Q Now, you say that, you're not an expert in cell phones or
9 cell towers, are you?

10 A No, sir.

11 Q Neither am I. When you get a case like this, don't you
12 normally hire your own expert to look back over what the State
13 has to see if they've missed anything or made any errors?

14 A Well, yeah. In this case, like I said, the information
15 that was provided to me, the cell phone information was that
16 Mr. Raines' cell phone pinged off a tower in Simpsonville and
17 that was as far, as close as they could put him on his cell
18 phone was that tower in Simpsonville, not in Laurens County,
19 not on Branham Church Road. That's what Mr. Kelly testified
20 to.

21 Q Do you know where Interstate 385 is?

22 A Yes, sir, I do.

23 Q Does it go down through Laurens County?

24 A Yes, sir, it does.

25 Q Does it go close to Gray Court?

1 A Yes, sir, it does.

2 Q So it would be close to Branham Church Road, is that
3 correct?

4 A Yeah.

5 Q Do you have a copy of the transcript?

6 A Not with me, no, sir.

7 MR. THOMPSON: May I approach?

8 THE COURT: Yes, sir.

9 Q This is the transcript. I want you to look at page 612
10 starting there. Does that indicate that it pinged off of
11 Interstate 385 down near Gray Court?

12 A I'm sorry, now, give me a moment. Okay. What was your
13 question?

14 Q Does that not indicate that testimony of Mr. Kelly
15 indicate that there had been pings on the cell phone at 385
16 near Gray Court?

17 A That was at 8:02 pm.

18 Q Okay.

19 A This allegedly occurred around 1:00.

20 Q Pm?

21 A This is 8:02 pm.

22 Q Okay. That would be the evening, right?

23 A Yes, sir.

24 Q And the murder occurred somewhere around, according to the
25 witnesses somewhere around 1:00 in the morning?

1 A Right.

2 Q About five hours difference?

3 A Yeah, right.

4 Q But it does indicate that Mr. Raines was in the Gray
5 Court area early that evening, is that correct?

6 A Right. That was not at the time of the alleged
7 occurrence.

8 Q But it does put him in the area within a few hours,
9 right?

10 A Five hours prior, yes, sir.

11 Q Okay. Now, the gun, your testimony to the attorney
12 general, the gun that they alleged was used, they could
13 not specifically pinpoint that gun to this case, could
14 they?

15 A No, sir.

16 Q And why was that?

17 A Because it had had repairs done to it.

18 Q It had repairs made?

19 A Right. The barrel had been bored out.

20 Q Okay. And the gun had been sent back to Hi-Point factory
21 to have it done, right?

22 A Yes, sir.

23 Q So it wasn't something that he did on his own to try to
24 hide the gun, it was, it was a factory job?

25 A I'm sorry now?

1 Q It wasn't something that, their allegations were not that
2 Mr. Raines took it home, took a drill and tried to bore out the
3 chamber?

4 A I think the paperwork he said it was jamming ---

5 Q Okay.

6 A --- and I argued that as a matter of fact that, in my
7 final argument that it wasn't, he didn't tell them to bore out
8 the barrel, he said it was jamming.

9 Q Right.

10 A And ---

11 Q And they bored out the barrel and cleaned it?

12 A He was the one who had sent it off to the factory after
13 the incident date to have work done on it and it was sent back.

14 Q Okay. Did you determine whether or not it's standard
15 practice for Hi-Point, do you know anything about guns?

16 A A little bit, not ---

17 Q Alright.

18 A --- a lot. I hunt a lot, but I don't know a lot about
19 them.

20 Q Okay. When a gun jams and it's sent back to the factory,
21 do you know whether or not they would, in trying to correct
22 that jam maybe bore out the cylinder?

23 MR. JONES: Objection, Your Honor. This is, it
24 requires some sort of expertise in gunsmithing.

25 THE COURT: I'll allow the question.

1 MR. JONES: Alright. Thank you.

2 Q Well, that gets exactly to my question, did you get an
3 expert to deal with the gun?

4 A No.

5 Q Okay. Thank you. I think maybe the last point is your
6 opening sentence in the closing arguments. Did you realize
7 what you were saying when you said that Mr. Raines was guilty
8 of murder?

9 A Yeah, I knew exactly what I was saying. Like I said I
10 don't think you can cherry pick ---

11 Q I'm sorry, I can't hear you over the leaf blower.

12 A I'm sorry. Can you hear me now?

13 Q Yeah.

14 A Okay. Like I was saying, I don't think you can cherry
15 pick those few lines out of there. The State's theory of the
16 case was he killed Ms. Southern for this other woman, he wanted
17 to make this other woman jealous or come back to him somehow,
18 and that was the statement I made that he killed this woman for
19 this other woman, and I didn't understand the State's theory.
20 I was trying to impress upon the jury that I don't know how
21 they could have understood the State's theory; it made no sense
22 to me. You have to read the whole argument to understand it.

23 Q Could you have opened or crafted your opening sentence a
24 little bit better than what you did?

25 A I could have done a lot of things, but I, I don't ---

1 Q Okay.

2 A No. I think the argument was a good argument. I reread
3 it yesterday.

4 Q Thank you.

5 A Thank you.

6 THE COURT: Any redirect?

7 MR. JONES: Just very briefly.

8 **REDIRECT EXAMINATION**

9 BY MR. JONES:

10 Q The, so the Hi-Point pistol, your understanding is Mr.
11 Raines sent that in after the incident to have it retooled by
12 the Hi-Point factory?

13 A Yeah. My understanding is that he sent it back saying
14 that it had been jammed or jamming, and that was the
15 understanding.

16 Q Alright. And then they are the ones who bore out the
17 chamber and sent it back, and as a result it couldn't be used
18 forensically?

19 A Correct.

20 Q Alright. And then it was seized when it came back to his
21 residence, I believe?

22 A I believe they were waiting on it with a search
23 warrant.

24 Q Right.

25 A And it got redelivered and that's, like I said, that's

1 the reason I didn't have an expert about the gun because the
2 gun couldn't be connected to the crime, the State couldn't
3 connect it to the crime.

4 Q Alright. Thank you. I think that's the only question I
5 have for you.

6 THE COURT: Anything further from this witness?

7 MR. THOMPSON: No, sir.

8 THE COURT: Thank you, Mr. Able.

9 MR. ABLE: Thank you, sir.

10 MR. JONES: Your Honor, the State rests.

11 THE COURT: Any reply?

12 MR. THOMPSON: No, sir.

13 THE COURT: Alright. Well, I will allow each side to
14 make a summation. The State can go first and then Mr. Thompson
15 make the last argument.

16 MR. JONES: Thank you, Your Honor. First of all, as
17 to the failure to impeach Kristian Yates. The, Mr. Able's
18 testimony was that she was not incarcerated at, according to
19 his understanding at the time of the trial and that he had, his
20 general practice was to check the records for everybody and if
21 he had noticed that then things might have been different. But
22 the, but the, his understanding was that she showed no
23 indication of being incarcerated and as a result, the State
24 submits that there was no deficiency in failing to impeach her.
25 However, even if, or even if he had been aware of this reported

1 prior conviction, the substance of her testimony was just that
2 the, the victim was shot on the location where she was shot at
3 some point on the night of the murder, that 1:00 to 1:30
4 timeframe. And as Mr. Able testified, the only time the State
5 had Mr. Raines' cell phone information in that vicinity with
6 any specificity as to Gray Court was the prior evening at
7 around 8:00. So the fact that five hours later the, four or
8 five hours later the gunshot was heard at that scene and again,
9 this witness could not see anything, could not see any vehicles
10 or any people out there, the State submits that that was not
11 likely to have changed the outcome even if he had been able to
12 impeach her. The, it's worth pointing out that the main thrust
13 of the State's case in this was the, you know, after a short
14 period of, a short relationship between Mr. Raines and the
15 victim, the victim disappeared. Mr. Raines' first statement to
16 the police, he stated to them that I suspected you wanted to
17 talk to me because I was the last person to see her. The,
18 there were, prior to the discovery of her body, there were
19 mysterious messages from her Facebook and, her Facebook account
20 that the other people in her life did not believe, testified
21 that they did not believe she sent those messages, that they
22 were out of character for her, and saying things like don't
23 worry about not knowing where I am, I went to Savannah to be
24 with friends or things of that nature. And it was established
25 also that Mr. Raines had access to her Facebook account. I

1 believe on the night of the murder, Mr. Raines was captured on
2 surveillance video withdrawing \$500.00 from her ATM account
3 with her ATM card. And then of course, the, when the body was
4 found, the Hi-Point 380 magazine was found at the scene as
5 well, which would have fit the Hi-Point 380 pistol that Mr.
6 Raines sent away for repairs shortly after the incident
7 occurred. That was the thrust of the State's case. So the
8 fact that these witnesses such as Ms. Yates who could not even
9 identify anybody, the cell phone information which couldn't
10 even put Mr. Raines at the exact scene at the time that the
11 murder was allegedly committed, the testimony of Penny
12 Smithers, the, one of the Facebook messages she received, she
13 personally thought was suspicious, those were not, the State
14 submits those were not material to the outcome of this case.
15 The, as for Penny Smithers, the contention that the Defense was
16 in any way prejudiced by not knowing she would be a witness was
17 refuted by Mr. Able who said he knew well in advance of the
18 trial that she would be a witness and that she testified in,
19 consistently with what he had prepared and expected her to
20 testify about. The objection raised later by Mr. Thompson that
21 the failure to include her in the witness list meant that a
22 juror could not, that jurors could not have been properly voir
23 dired with their relationship to her is purely speculative,
24 there is no evidence that any of the jurors had any
25 relationship to Penny Smithers or that their impartiality could

1 be called into question as a result of her testimony. The,
2 similarly, the objection is purely speculative as to what an
3 independent cell phone tower expert would have testified. But
4 I think that regardless of the prejudice angle, there was
5 clearly no deficiency because Mr. Able, as Mr. Able testified,
6 the cell phone information was too equivocal and vague to put
7 Mr. Raines any closer than Simpsonville at the time of the
8 murder. As for the closing argument issue, the State submits
9 Your Honor can read the argument for yourself. As a rhetorical
10 flourish it's true that Mr. Able repeats the State's theory of
11 the case at the beginning, but then he goes on to explain why
12 in his view it's ridiculous and does not provide a proper
13 motive for murder. So the State would submit that there's no
14 deficiency in that. With that said, I'll turn it over to Mr.
15 Thompson. I believe that covers everything.

16 THE COURT: Thank you, Mr. Jones. Mr. Thompson?

17 MR. THOMPSON: Thank you, Your Honor. Judge, I'm
18 going for the most part let the testimony speak for itself. I
19 do want to raise just a couple things. As to the failure to
20 impeach Ms. Yates, her testimony dealt with hearing gunshots
21 and time. Time was important in this case. It goes back to
22 when Mr. Kelly testified about Mr. Raines being down in the
23 Gray Court area five hours earlier. Time would have been an
24 important factor. Her credibility would have been something
25 for the jury to weigh, but her conviction for accessory before

1 the fact never was brought to their attention. And I realize
2 Mr. Able said he wasn't aware of that, but that would have been
3 an important factor for the jury to have weighed in her
4 testimony, and the main part of her testimony being time and
5 gunshots. As to Ms. Smithers not being on the witness list,
6 again, that is of importance, even though Mr. Able says he knew
7 she was going to testify and he knew what she was going to
8 testify to, the Court wasn't allowed to voir dire the jury in
9 that matter because the State left that witness off of its
10 witness list that it gave to the Court. And Mr. Able should
11 have been aware of that and objected to it and had it added to
12 the witness list. As to the expert, Mr. Able testified he
13 wasn't an expert, and I understand that, gosh, when they give
14 us phone dumps, we get stacks of paper with just numbers on it
15 basically. There may have been something even though it says
16 that the phone, the closest hit was Simpsonville and Woodruff,
17 and I don't know if Your Honor's familiar with that area or
18 not, but as Mr. Able testified, that's 10 to 15 miles away.
19 There was, Mr. Kelly was allowed to testify basically as an
20 expert not only to, how to operate the machine, but as to the
21 phone towers and where the hits were without objection. And he
22 did testify that earlier that evening, Mr. Raines' phone hit
23 down in the Gray Court area on a couple of occasions. So I
24 think having an expert to look at those records and assess what
25 went on would have been important in Mr. Raines' case. As to

1 the opening sentence of the closing argument, Your Honor can
2 read the closing argument and read what was said. I submit to
3 you that it could have been phrased differently or phrased
4 somewhat better because it sounds like it's, it's a blatant
5 allegation that Mr. Raines is guilty of murder. Given that,
6 Judge, I think we've presented the Applicant's case, and I'll
7 sit down and be quiet.

8 THE COURT: Thank you, Mr. Thompson. Well, counsel,
9 I want to review the transcript and the materials that have
10 been submitted, so I'm going to take this under advisement, and
11 I will have my law clerk email you with my decision.

12 MR. THOMPSON: Thank you, Judge.

13 THE COURT: Thank you, counsel.

14 MR. JONES: Thank you, Your Honor.

15 (Whereupon the hearing ended at 10:34 am.)
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6)
7)
8)
9 COUNTY OF LAURENS)
10
1112 I, the undersigned Lisa G. Amick, Official Court Reporter
13 for the Eighth Judicial Circuit of the State of South Carolina,
14 do hereby certify that the foregoing is a true, accurate, and
15 complete transcript of record of all proceedings had and
16 evidence introduced in the trial of the captioned case,
17 relative to appeal, in the County of Abbeville, South Carolina,
18 on the 2nd day of December 2022.19 I do further certify that I am neither of kin, counsel,
20 nor interest to any party hereto.21 May 15, 2025
2223 Lisa G. Amick
24

25 Lisa G. Amick

Court Reporter

My commission expires: June 30th, 2025

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) FOR THE EIGHTH JUDICIAL CIRCUIT

Darrell E. Raines, #366420) Case No.: 2020-CP-30-00046

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

K. MICHELLE E. ...
2025 SEP 29 P 51
LAURENS COUNTY
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Darrell E. Raines ("Applicant"), on January 13, 2020. The Court convened an evidentiary hearing into the matter on December 2, 2022, at the Abbeville County Courthouse. Applicant was present at the hearing and represented by Don A. Thompson, Esq. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has failed to establish that he is entitled to post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. During its November 2013 term, the Laurens County Grand Jury indicted Applicant for murder (13-GS-30-1932) and possession of a weapon during a violent crime (13-GS-30-1933). Bryan C. Able, Esquire, ("Counsel") represented Applicant. Deputy Solicitor Dale Scott of the Eighth Circuit Solicitor's Office prosecuted the case.

On December 7-11, 2015, Applicant proceeded to a jury trial before the Honorable Donald

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B. Hocker. The jury found Applicant guilty on both counts. Applicant was sentenced to life imprisonment for murder and a consecutive sentence of five years for possession of a weapon during a violent crime.

Applicant subsequently timely filed a notice of appeal. By an unpublished opinion, the South Carolina Court of Appeals dismissed Applicant's appeal. *State v. Raines*, Op. No. 2019-UP-188 (S.C. Ct. App. filed May 29, 2019). The Remittitur was sent June 14, 2019.

Factual Summary

Victim joined an online dating website, PlentyofFish.com, in an effort to find companionship. (Trial Tr. 118). In the beginning of August 2013, Victim began chatting with Darrell Raines online. (Trial TR. 118). Raines was going through a similar break up of his marriage. (Trial Tr. 138.) He had recently moved into to his mother's house in Berea, South Carolina after separating from his wife. (State's Exhibit #47.) Raines' inability to obtain steady work led to financial difficulties. (State's Exhibit #47.) In fact, multiple text messages from August 2013 reveal that Raines was desperate for a gun but could not afford one. (State's Exhibit #32.)

Raines and Victim talked online for about a week before they met in person. (Trial Tr. 119). On Tuesday, August 13, 2013, Victim drove to Georgia to meet her mother, Penny Smithers. (Trial Tr. 138.) Victim's two children were going to visit with Penny in Florida until the following Tuesday, August 20, when Victim would retrieve them. (Trial Tr. 138.) When Victim returned from meeting Penny on August 13, she finally met Raines in person. (State's Exhibit #47.) The two spent that night together and from there began dating. (State's Exhibit #47.) They would frequently call and text one another. (State's Exhibits #32.). During this time, Raines was able to

gain extensive access to Victim's life. Raines obtained a copy of Victim's apartment key and was given access to her computer. (Trial Tr. 350).

Victim's Disappearance

On Sunday, August 18, 2013, Victim left for work at 2:00 p.m. (Trial Tr. 122.) Victim worked the evening hours at Charter Communications in Simpsonville. (Trial Tr. 114.) She would usually leave home around 2:00 p.m. and return between 12:30 and 1:00 a.m. (Trial Tr. 115.) Around 6:30 p.m., Victim spoke to Penny on the phone and confirmed they would meet on Tuesday, August 20, to exchange the kids. (Trial Tr. 114.) At 8:00 p.m., Victim had her dinner break. (Trial Tr. 170.) She left Charter and drove to a gas station in Taylors, South Carolina, where she used her debit card at 8:03 p.m. to purchase coffee and cigarettes. (Trial Tr. 286; State's Exhibit #36.) Victim briefly met with her estranged husband and then drove back to Charter Communications. (Trial Tr. 171.) At 12:00 a.m. on August 19, Victim left work. (Trial Tr. 441-442.)

On the morning of Monday, August 19, Victim's neighbor, Lauren Searcy, became worried when she did not see Victim's car parked outside her apartment. (Trial Tr. 123-124.) Concerned for Victim's safety, Lauren sent a text message to Raines asking if he had heard from Victim. (Trial Tr. 123.) When Raines responded that he had not spoken to Victim, Lauren checked Victim's Facebook account for any information. (Trial Tr. 126.) Lauren saw that a message had been posted from Victim's Facebook account on August 19 at 4:07 a.m., stating that Victim was leaving for Florida to pick up her kids. (Trial Tr. 127.) The message troubled Lauren because she knew Victim was not supposed to leave until Tuesday August 20. (Trial Tr. 127.) Furthermore, as Lauren would explain to the police, she did not believe the message was written by Victim because that was "not the way Victim would talk." (Trial Tr. 128.) That afternoon, Penny contacted Lauren. (Trial Tr.

144.) Penny had been trying to call Victim all day and received no answer. (Trial Tr. 144.) This was especially worrisome to Penny because August 19 was Victim's daughter's 8th birthday. (Trial Tr. 139.) Penny became even more concerned when she received a strange Facebook message from Victim's account at 5:16 a.m. on August 19, claiming she was on the way to Florida. (Trial Tr. 143; 146; State's Exhibit 5.) Another Facebook message posted from Victim's account at 7:29 p.m. on August 19 claimed Victim was going to Savannah, Georgia to be with some friends. (Trial Tr. 128; State's Exhibit 4.) Because Victim did not know anyone in Savannah and the message did not sound like Victim, Lauren filed a missing persons report later that night on Monday, August 19. (Trial Tr. 146.)

Surveillance from the ATM showed Raines, alone in his truck, withdrawing the maximum daily withdrawal amount of \$500 from Victim's account on several occasions. (Trial Tr. 257; 289; 469; State's Exhibit #26 and #29.) Raines claimed Victim gave him her bank card and pin number on Saturday, August 17, the night before she went missing. (Trial Tr. 259; 261.) Raines claimed Victim was giving him \$200 for a car payment. (Trial Tr. 261-62.)

On Friday, August 23, a severely decomposed body was discovered in a field on Bramlett Church Road in Gray Court. (Trial Tr. 531-32; State's Exhibits #12 and #37.) That same day, investigators located Victim's abandoned car. Using the information obtained from Raines' and Victim's cell phone records, investigators determined that Raines' and Victim's phones pinged-off cell phone towers in very close proximity to each other at 12:03 a.m. on August 19. (Trial Tr. 269-70). Ultimately, it was determined that Victim died of a gunshot to the back of her neck.

Present Application

In his post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:

- a. "Failing to impeach a witness incarcerated at the time of the applicant's trial.
- b. "Failing to object to or motion to exclude the testimony of a witness not listed on the witness list."
- c. "Failing to provide the applicant with the information gathered from his phone."
- d. "Failing to hire a qualified independent researcher to provide data analysis of the information gathered from the applicant's cell phone."
- e. "Making inappropriate and inflammatory statements during the closing arguments of the applicant's trial."
- f. "Failing to raise the objection to a witness testifying how cell phones and cell towers operate."
- g. "Failing to raise the objection to the introduction of State's exhibit into evidence."
- h. "Failing to do due diligence and adequately prepare for applicant's trial."

As relief, Applicant requests a new trial.

An evidentiary hearing was held at the Abbeville County courthouse on December 2, 2022.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Laurens County Clerk of Court regarding the subject convictions and sentences, Applicant's appellate records, and Applicant's application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based-upon all of the probative evidence presented: _ _ _

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable

probability is “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In some cases, overwhelming evidence of guilt will preclude a finding of prejudice. “A reasonable probability of a different result does not exist when there is overwhelming evidence of guilt.” *Hillerby v. State*, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2020) (citing *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991)). An applicant’s failure to prove prejudice necessarily defeats an allegation of ineffective assistance, and a reviewing court need not even reach the deficiency prong. *See Strickland*, 466 U.S. at 697 (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.”).

In this case, the South Carolina Court of Appeals has already determined that the evidence against Applicant was overwhelming. *See Raines*, Op. No. 2019-UP-188 (S.C. Ct. App. filed May 29, 2019). The court of appeals held the overwhelming nature of the evidence against Applicant rendered any error harmless. *Id.* The standard for finding “harmless error” on direct appeal is far more favorable to appellants than the prejudice analysis for ineffective assistance of counsel claims is to PCR applicants. A reviewing court cannot pronounce an error “harmless” unless it concludes,

beyond a reasonable doubt, that the error did not contribute to the verdict. *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002). “The question a reviewing court must ask is this: absent the [alleged error], is it clear beyond a reasonable doubt that the jury would have returned a verdict of guilty?” *United States v. Hasting*, 461 U.S. 499, 511 (1983). In contrast, a court applying the ineffective assistance of counsel standard may only find prejudice if the applicant shows a reasonable probability that the alleged error *did* lead to a different result. *Strickland*, 466 U.S. at 696 (holding “a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.”).

In light of the court of appeals’ holding that the evidence against Applicant was “overwhelming,” such that it rendered harmless the errors committed by the trial court, it will not be easy for Applicant to convince this Court that the result of his trial would likely have been different but for Counsel’s alleged errors. Nevertheless, it is conceivable that Counsel’s conduct contributed to the “overwhelming” nature of the evidence in the record before the court of appeals, so this Court cannot find that court’s holding, by itself, dispositive of the prejudice issue. Therefore, this Court proceeds to examine the individual allegations of ineffective assistance raised by Applicant:

A. Failure to impeach testimony of Christian Yates

Applicant claims Counsel was ineffective for failing to impeach one of the State’s witnesses, Christian Yates, with evidence that she was incarcerated at the time she testified at Applicant’s trial. The Court finds Applicant has failed to meet his burden of proof as to this allegation.

At trial, the State called Yates, who testified that she was awakened by two gunshots around

1:00 or 1:30 in the morning on August 19, 2013. At the time, Yates was living on Bramlett Church Road. Several days later, after a friend of the family came to cut bushes on her property, Yates was told "that something had been found" in a nearby field. Yates went to investigate on Friday, August 23, 2013, and discovered a human body. (Tr. pp.210-18).

On cross-examination, Counsel elicited from Yates that she had "no idea whatsoever" as to how long the body had been lying in the field. She also explained that, after hearing the gunshots, she looked out the window but could not see anything or anybody. (Tr. pp.218-25).

At the PCR hearing, Applicant claimed Yates was brought to the courthouse from the women's prison and changed into street clothes prior to testifying. Applicant could not remember what she was convicted for, but he claimed Counsel should have impeached her with evidence of her conviction.

Counsel testified Yates was the first witness he spoke to during his investigation of the case. He testified she was not in jail at the time he spoke to her, and he was not aware of her having any police record. He also explained that her testimony concerned only the undisputed facts that the Victim had been shot and her body had been found in the lot near Yates' property; Yates was not able to see anything out of her window and could not identify anybody. He explained that the State was able to use cell site location data to put Applicant in the Gray Court area around 8:00 p.m. on August 18th, 2013, but Yates testified she heard the gunshots at approximately 1:00 a.m. on the 19th, so Yates' testimony as to the timing of the gunshots was not particularly harmful to his client.

The Court finds Applicant has failed to meet his burden of proving that Counsel was ineffective as to this issue. Even if Counsel had attempted to impeach Yates with her criminal record, Yates' credibility was not a significant factor in Applicant's trial. Her testimony primarily

concerned the location where Victim's body was found and the fact that Victim was shot, neither of which were disputed. Her testimony did nothing to implicate Applicant as the culprit. Applicant argues that, because Yates was able to testify that the shooting occurred around 1:00 a.m. on August 19th, that information tends to suggest Applicant was the shooter because the State used cell site location data to prove Applicant was in the Gray Court area at 8:00 p.m. the previous day. The Court finds this tenuous connection—between Applicant's presence in the approximate area of Gray Court at 8:00, and the shooting near Yates' property *five hours* later—was not so damning that the jury would likely have reached a different verdict if Counsel had impeached Yates' testimony.

Applicant has failed to prove he was prejudiced by Counsel's failure to impeach Yates. This allegation is, therefore, denied and dismissed with prejudice.

B. Failure to object to or move to exclude Penny Smithers' testimony

Applicant also claims Counsel was ineffective for failing to object to, or move to exclude, the testimony of Penny Smithers, the Victim's mother, on the ground she was not included on the State's list of anticipated witnesses. The Court finds Applicant has failed to prove this allegation.

At the evidentiary hearing, Counsel explained that he was not surprised by Penny Smithers being called as a witness. He testified that the solicitor had an "open file" policy, that he knew well in advance that Smithers was going to be a witness, and that her testimony was consistent with what he had prepared for her to testify.

Applicant has not asserted that Smithers' omission from the State's witness list caused any unfair surprise or deprived Counsel of a full opportunity to investigate and prepare for Smithers' testimony. However, Applicant complains that the jury was not asked about Smithers on *voir dire*; therefore, he argues one or more jurors might have known Smithers and harbored some kind of

bias as a result. This argument is purely speculative. Applicant has presented no evidence of actual juror bias; in fact, Applicant has not proved, or even asserted, that any juror actually knew Smithers at all.¹ Therefore, this Court finds Applicant has not met his burden of proving prejudice. This allegation is, therefore, denied and dismissed with prejudice.

C. Failure to provide Applicant with information from his cell phone

Applicant contends Counsel was ineffective for failing to provide him with information gathered from the “dump” of his cell phone because it was too voluminous. The Court finds this allegation is meritless.

To prove prejudice from his attorney’s failure to provide or review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by further review of the discovery. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Furthermore, the applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* at 76 (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced the applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here, Applicant has not articulated any beneficial evidence he might have discovered or any new defenses he might have raised had he more thoroughly examined the cell phone data prior to his trial. Accordingly, the Court finds Applicant has not met his burden of proving that

¹ While the trial court did not ask jurors if they knew Penny Smithers by name, the judge did ask whether anyone on the jury panel knew “the family of Myranda Southern,” the Victim. (Tr. p.32, lines 9–11). No jurors responded.

Counsel's performance prejudiced him as to this allegation. This allegation is, therefore, denied and dismissed with prejudice.

D. Failure to hire an expert to analyze cell phone data

Applicant also claims Counsel was ineffective for failing to hire an independent expert to analyze the data from his cell phone. Once again, Applicant has failed to present any expert testimony at the evidentiary hearing to meet his burden of proving prejudice.

In addition, as Counsel pointed out in his testimony at the evidentiary hearing, the State's own expert could only testify as to the general location of Applicant's phone and could not testify as to his specific location; in fact, the State's expert could not put Applicant any closer than Simpsonville at the time of the crime, which is several miles away from where the body was found. Counsel testified he preferred to focus the jury's attention on the weakness of the State's location data, rather than counter it with an expert of his own. Counsel also stated he was worried that an independent expert might be able to put Applicant *closer* to the scene of the crime than the State's expert was able to, which would obviously have been harmful to the defense's case. Since Applicant has not provided any independent expert testimony, the Court cannot say that Counsel's fears were unfounded. Therefore, the court finds Counsel had a valid strategic reason for proceeding as he did; Applicant has failed to prove either deficiency or prejudice as to this issue. Accordingly, this allegation must be denied and dismissed with prejudice.

E. Making "inappropriate and inflammatory" statements during closing argument

Applicant next complains that Counsel made "inappropriate and inflammatory" statements in his closing argument to the jury. Specifically, Applicant complains about Counsel beginning his argument by reciting the State's theory of the case: "Darrell Raines murdered Myranda Southern because of his desire for Lisa Hamlett." (Tr.p.669, lines 16-20). This allegation is

patently meritless. Applicant has merely taken this portion of Counsel's closing argument out of context and presented it as if Counsel were conceding his guilt. *In context*, however, Counsel was clearly *attacking* the State's theory of the case at arguably its weakest point—Applicant's motive for committing the murder. Counsel followed up this statement by repeatedly saying, "It doesn't make sense." (Tr.p.670, lines 5–6). Counsel then ably attacked the rest of the State's theory of the case, pointing out that Yates never saw who committed the shooting outside her window; that the State had no video, DNA, or fingerprint evidence putting Applicant at the scene of the crime; that there were tens of thousands of Hi-Point pistols produced in that year alone, and fifty dealers selling them in the State of South Carolina; that the State's cell phone expert could only put Applicant's phone in the "general area," not specifically the neighborhood where the crime occurred; that the State's ballistics expert could not testify that Applicant's gun fired the bullet recovered from the body; and many other arguments.

The Court finds the challenged comments, viewed in their proper context, were clearly part of Counsel's well-constructed argument that the State's theory of the case did not make sense. The Court finds Applicant has failed to prove either deficiency or prejudice as to this allegation. Accordingly, this allegation is denied and dismissed with prejudice.

F. Failure to object to testimony by the State's cell site location data expert

Applicant next argues that Counsel should have objected when the State asked Officer Dan Kelly to testify as to how cell phones and cell towers operate, which Applicant claims was outside the scope of Officer Kelly's expertise. This allegation is meritless. The transcript of Applicant's trial reflects that Counsel *did* object to the State's questioning of Officer Kelly on the ground "I think it requires an expert's testimony for him to describe how a cell phone works and how they connect to a tower. There's been no information provided as to this gentleman's expertise in that

area.” (Tr. p.592, lines 17–21). The trial court stated, “I’m not sure this is a situation where I necessarily have to qualify him as an expert”; however, the court asked the Solicitor to “lay a little bit of foundation” as to Officer Kelly’s qualifications. (Tr. p.592, line 23–p.593, line 2).

The solicitor agreed, and the questioning of Officer Kelly continued. Officer Kelly explained that he was able to use cell tower information to determine the general location of a cell phone during a specified period of time, using a software program called GeoTime. (Tr. pp.593–97). Shortly thereafter, Counsel again objected that Officer Kelly “has crossed into the field of interpreting the results.” (Tr. p.598, lines 2–5). The parties were then permitted to examine Officer Kelly, outside the presence of the jury, concerning his qualifications and training in interpreting cell site location data. (Tr. pp.601–05). The trial court also questioned Officer Kelly. (Tr. pp.605–06). Ultimately, the court ruled Officer Kelly was “an expert in the limited area of cell phone tower location as it relates to the use and interpretation of the GeoTime software program.” (Tr. p.609, lines 18–21).

Clearly, Counsel did raise the issue and obtain a ruling. Applicant’s current claim—that Officer Kelly was qualified only to give an opinion on the results of the GeoTime cell site location data software program, rather than on how cell phones interact with cell towers—is without merit. As an expert in the use of GeoTime software to interpret cell site location data, Officer Kelly would obviously also be more qualified than the average layperson to give an opinion on how cell phones interact with cell towers to create cell site location data in the first place. Counsel cannot have been deficient for failing to waste the trial court’s time with pointless hair-splitting after he had already raised the issue of Officer Kelly’s expertise and obtained a ruling. Moreover, as already discussed, Counsel correctly observed that the content of Officer Kelly’s expert testimony was not particularly harmful to his client, since Kelly could only testify as to the “general location” of

Applicant's phone at the time of the shooting and could not put Applicant any closer to the crime scene than Simpsonville, several miles away. For these reasons, this Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this issue. Accordingly, this allegation is denied and dismissed with prejudice.

G. Failure to object to the introduction of State's exhibits 31 and 32 into evidence

Applicant also claims Counsel was ineffective for failing to object to State's exhibits 31 and 32 at the time those exhibits were offered into evidence. The Court finds this allegation is without merit.

Applicant has not explained how he was prejudiced by State's exhibits 31 and 32 being introduced into evidence. State's exhibit 31 was an excerpt from State's exhibit 30, the report generated from Applicant's cell phone extraction. (Tr. p.301, line 23–p.302, line 15; p.305, line 15–p.306, line 7). State's exhibit 31 consisted of text messages and phone call information over a few particular dates in August, near the time of Victim's disappearance. State's Exhibit 32 had the same content as State's exhibit 31, printed on a poster board for use as a visual aid. (Tr. p.315, lines 10–12).

Counsel objected to the introduction of this evidence, on the ground that the exhibits contained text messages from Victim, which would be hearsay. (Tr. p.307, lines 4–6). The State countered that the messages were not being offered for the truth of the matter asserted, but to show that Applicant and Victim were talking to each other on the phone around the "critical time" of 12:03 a.m. to 1:30 a.m. on August 19th. (Tr. p.307, line 14–p.311, line 2). The trial court agreed that it was not being offered for the truth of the matter asserted and stated, "I'm going to allow it in." (Tr. p.311, line 3–p.312, line 6). The solicitor then explained that he did not intend to introduce the exhibits into evidence yet, but simply to mark the exhibits for identification. (Tr.

p.312, lines 7–14). The trial court stated, “that resolves the objection for now,” but indicated that Counsel could renew his objection when the State did offer to enter the exhibits into evidence. (Tr. p.313, lines 6–10).

Counsel did not renew his hearsay objection when State’s exhibits 31 and 32 were later admitted into evidence. (Tr. p.539, lines 2–21). However, this Court finds Applicant has failed to prove that Counsel’s failure to renew his objection was deficient, or that he was prejudiced thereby. As the trial court observed, the cell phone extraction report was not being offered to prove the truth of the matters asserted in Victim’s text messages; it was being offered to show that Applicant was communicating with Victim until just after midnight on August 19th—the last time anyone saw Victim alive—and that Applicant had deleted a large number of text messages between him and Victim before turning his phone over to law enforcement. The actual content of Victim’s text messages to Applicant does not appear to have been relevant to the State’s case.

Applicant bears the burden of showing that Counsel would have been successful if he had renewed his objection on hearsay grounds. Similarly, Applicant has the burden of proving that the result of his trial probably would have been different had Counsel succeeded in suppressing the content of Victim’s text messages. Applicant has made neither of these showings. Therefore, the Court finds this allegation of ineffective assistance of counsel must be denied and dismissed with prejudice.

H. Failure to do due diligence and adequately prepare for trial

Applicant concludes his application with a general allegation that Counsel failed to do “due diligence” and to make adequate preparations for trial. At the evidentiary hearing, Applicant clarified that this allegation was merely a restatement of his other issues relating to Counsel’s failure to impeach Christian Yates, failure to address the cell phone extraction report, failure to

hire an independent expert, and failure to challenge Ms. Smithers being allowed to testify. These allegations have already been addressed and found meritless, so this redundant allegation must likewise be denied and dismissed with prejudice.

III. CONCLUSION

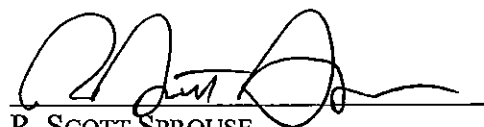
Based on all the foregoing, this Court finds and concludes that Applicant has not met his burden of proof as to any of his allegations. Accordingly, this application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 8 day of September, 2025.


 R. SCOTT SPROUSE
 Presiding Judge
 Eighth Judicial Circuit

Waltham, South Carolina

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

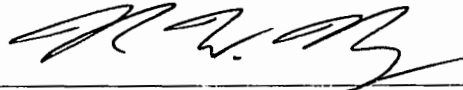
COUNTY OF LAURENS

Murder
§16-03-0010

At a Court of General Sessions, convened on the 1st day of November, 2013, the Grand Jurors of Laurens County present upon their oath:

That Darrell Ervin Raines Jr., in Laurens County, on or about August 19, 2013 willfully, feloniously, and with malice aforethought kill Myranda Southern by means of shooting her in the back of the neck and that Myranda Southern did die in Laurens County as a proximate result thereof on or about August 19, 2013, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Deputy Solicitor

871

WITNESSES

Keith McIntosh

Laurens County Sheriff

WARRANT NUMBER

2013A3010101185

True Hill

Randall S. Hill

Foreman of the Grand Jury

Date: *11-1-13*

VERDICT

Guilty

Herrett Wright

Foreman

12-11-15

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

November Term, 2013

Indictment # 13GS30-1932

THE STATE

vs.

Darrell Ervin Raines Jr.

INDICTMENT FOR

Murder

§16-03-0010

CDR: 0116

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

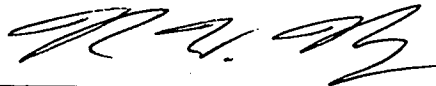
INDICTMENT FOR

Possession of Weapon During the
Commission of a Violent Crime
§16-23-0490

At a Court of General Sessions, convened on the 1st day of November, 2013, the Grand Jurors of Laurens County present upon their oath:

That Darrell Ervin Raines Jr., in Laurens County, on or about August 19, 2013 possess a firearm or visibly displayed what appeared to be a firearm, during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Deputy Solicitor

873

WITNESSES

Keith McIntosh
Laurens County Sheriff

WARRANT NUMBER

2013A3010101186

True bill
Randall Spauld

Foreman of the Grand Jury

Date: *11-1-13*

VERDICT

Guilty
Spenneth Wright
Foreman *12-11-15*

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

November Term, 2013

Indictment # 13GS30-1933

THE STATE

vs.

Darrell Ervin Raines Jr.

INDICTMENT FOR

Possession of Weapon During the
Commission of a Violent Crime
§16-23-0490

CDR: 0549