

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Jul 12 2024

Appeal from Lexington County
Honorable Debra R. McCaslin, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEREMY SAVOY CORNISH,

APPELLANT.

APPELLATE CASE NO. 2022-001536

RECORD ON APPEAL

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INDEX

INDEX	i
JURY SELECTION TRANSCRIPT DATED OCTOBER 10, 2022	1
TRIAL TRANSCRIPT DATED OCTOBER 11-14, 17-21, 2022	2
PRE-TRIAL MOTIONS	17
TESTIMONY	
ANTHONY ADAM CREECH (IN-CAMERA)	
Direct Examination by Ms. Mayes	19
Cross-Examination by Ms. Wilson	81
Re-Direct Examination by Ms. Mayes.....	98
Recross-Examination by Ms. Wilson	114
COLLOQUY DNA EVIDENCE.....	117
COLLOQUY REGARDING EXCITED UTTERANCE AND DYING DECLARATION	133
COLLOQUY REGARDING PHOTOS AND BODY CAM	144
RULING BY THE COURT.....	149
MOTION IN LIMINE FOR IMPROPER CHARACTER EVIDENCE	152
MOTION REGARDING STATEMENTS	159
MOTION TO REVEAL CONSIDERATION	170
COLLOQUY.....	172
<u>JACKSON V. DENNO</u> HEARING.....	178
JESSE LAINTZ (IN-CAMERA)	
Direct Examination by Ms. Mayes	178
Cross-Examination by Mr. Swerling	209
Re-Direct Examination by Ms. Mayes.....	235
JAMES PRATT (IN-CAMERA)	
Direct Examination by Ms. Mayes	241
Cross-Examination by Mr. Swerling	271
Re-Direct Examination by Ms. Mayes.....	286

COLLOQUY.....	288
TESTIMONY	
ARCADEUS DUBARD (IN-CAMERA)	
Direct Examination by Mr. Swerling.....	291
Cross-Examination by Ms. Mayes.....	300
ANTHONY ADAM CREECH (IN-CAMERA)	
Direct Examination by Mr. Hubbard	304
Cross-Examination by Mr. Swerling	324
Re-Direct Examination by Mr. Hubbard	331
COLLOQUY.....	332
RULING BY THE COURT.....	347
COLLOQUY REGARDING MOTION IN LIMINE.....	351
COLLOQUY REGARDING CHARACTER EVIDENCE.....	367
RULING BY THE COURT.....	370
COLLOQUY REGARDING DNA EVIDENCE	371
OPENING REMARKS BY THE COURT.....	397
RULING BY THE COURT REGARDING DNA EVIDENCE	407
COLLOQUY.....	412
OPENING STATEMENT BY MS. MAYES.....	415
OPENING STATEMENT BY MR. LEVENTIS	427
TESTIMONY	
MELISSA PATRICK	
Direct Examination by Ms. Mayes	437
SCOTT PURDY	
Direct Examination by Mr. Hubbard	446
Cross-Examination by Mr. Swerling	484
NICHOLAS IKE BATALIS	
Direct Examination by Mr. Hubbard	485

BRANNON MARTHERS	
Direct Examination by Ms. Mayes	515
JOHN DONNELLY	
Direct Examination by Ms. Mayes	526
Cross-Examination by Mr. Leventis	542
Re-Direct Examination by Ms. Mayes.....	544
Recross-Examination by Mr. Leventis	545
COLLOQUY.....	547
RULING BY THE COURT.....	550
TESTIMONY	
DONNOVIN HAYNES	
Direct Examination by Mr. Hubbard	552
Cross-Examination by Ms. Leventis	589
Re-Direct Examination by Mr. Hubbard	604
Recross-Examination by Mr. Leventis	609
Re-Redirect Examination by Mr. Hubbard.....	613
COLLOQUY.....	615
PATRICK WARD	
Direct Examination by Ms. Mayes	627
RULING BY THE COURT REGARDING DYING DECLARATION	674
TESTIMONY	
PATRICK WARD (CONT'D)	
Direct Examination by Ms. Mayes	676
COLLOQUY.....	714
TESTIMONY	
PATRICK WARD (CONT'D)	
Cross-Examination by Mr. Swerling	719
Re-Direct Examination by Ms. Mayes.....	736
CHRISTY MENESES	
Direct Examination by Ms. Mayes	742
Cross-Examination by Ms. Wilson.....	757

Re-Direct Examination by Ms. Mayes.....	761
SABAH KADHIM	
Direct Examination by Mr. Norton.....	762
Cross-Examination by Ms. Wilson.....	769
THOMAS ALVIN SMITH	
Direct Examination by Mr. Norton.....	772
Cross-Examination by Ms. Wilson.....	781
Re-Direct Examination by Mr. Norton.....	784
JAMES PRATT	
Direct Examination by Ms. Mayes.....	787
Cross-Examination by Mr. Swerling.....	822
Re-Direct Examination by Ms. Mayes.....	844
ARCADEUS DUBARD	
Direct Examination by Ms. Mayes.....	850
Cross-Examination by Mr. Swerling.....	865
Re-Direct Examination by Ms. Mayes.....	879
JONATHAN BROCK	
Direct Examination by Mr. Hubbard.....	881
NICK BURT	
Direct Examination by Mr. Hubbard.....	899
Cross-Examination by Mr. Swerling.....	925
Re-Direct Examination by Mr. Hubbard.....	935
JESSE LAINTZ	
Direct Examination by Ms. Mayes.....	936
Cross-Examination by Mr. Swerling.....	987
Re-Direct Examination by Ms. Mayes.....	1005
Recross-Examination by Mr. Swerling.....	1009
COLLOQUY.....	1010
CODY WEYANDT	
Direct Examination by Ms. Mayes.....	1013
Cross-Examination by Mr. Swerling.....	1027
Re-Direct Examination by Ms. Mayes.....	1028
MELINDA WORLEY	
Direct Examination by Ms. Mayes.....	1030
Cross-Examination by Ms. Wilson.....	1043

JAMES GREEN	
Direct Examination by Mr. Hubbard	1045
Cross-Examination by Ms. Wilson	1079
Re-Direct Examination by Mr. Hubbard	1085
KIM KERLONG	
Direct Examination by Mr. Hubbard	1087
Cross-Examination by Mr. Swerling	1093
ANTHONY ADAM CREECH	
Direct Examination by Mr. Hubbard	1094
COURTNEY THOMPSON	
Direct Examination by Ms. Mayes	1104
Cross-Examination by Ms. Wilson	1123
Re-Direct Examination by Ms. Mayes.....	1123
SAMUEL STEWART	
Direct Examination by Ms. Mayes	1124
Cross-Examination by Ms. Wilson	1162
Re-Direct Examination by Ms. Mayes.....	1177
Recross-Examination by Ms. Wilson	1179
COLLOQUY.....	1180
TESTIMONY	
ANTHONY ADAM CREECH	
Direct Examination by Ms. Mayes	1183
COLLOQUY.....	1228
TESTIMONY	
ANTHONY ADAM CREECH (IN-CAMERA)	
Direct Examination by Ms. Mayes	1231
BRANNON MARTHERS (IN-CAMERA)	
Direct Examination by Ms. Mayes	1233
RULING BY THE COURT.....	1240
TESTIMONY	
ANTHONY ADAM CREECH	
Direct Examination by Ms. Mayes	1242

MATTER OF LAW	1290
TESTIMONY	
ANTHONY ADAM CREECH	
Direct Examination by Ms. Mayes	1295
Direct Examination by Ms. Mayes (IN-CAMERA)	1302
COLLOQUY.....	1304
TESTIMONY	
ANTHONY ADAM CREECH (CONT'D)	
Direct Examination by Ms. Mayes	1309
Cross-Examination by Mr. Swerling	1317
Re-Direct Examination by Ms. Mayes.....	1385
Recross-Examination by Mr. Swerling.....	1388
BRIAN ZWOLAK	
Direct Examination by Mr. Hubbard	1388
Cross-Examination by Mr. Swerling	1392
Re-Direct Examination by Mr. Hubbard	1394
STATE RESTS	1395
MOTION FOR DIRECTED VERDICT.....	1396
RULING BY THE COURT.....	1397
CHARGE CONFERENCE	1399
RENEWAL OF ALL MOTIONS.....	1413
CHARGE CONFERENCE (CONT'D)	1414
DEFENSE RESTS	1423
CLOSING ARGUMENT BY MR. HUBBARD	1425
CLOSING ARGUMENT BY MR. SWERLING	1448
JURY CHARGE ON THE LAW	1499
VERDICT	1522
MOTION FOR A NEW TRIAL	1523

RULING BY THE COURT.....	1523
SENTENCING	1543
COURT’S EXHIBIT NO 1 (SEARCH WARRANT)	1546
MOTION TO SUPPRESS DNA EVIDENCE FILED OCTOBER 4, 2022	1551
COURT’S EXHIBIT NO. 36 (ORDER ADMITTING DNA EVIDENCE AND SUPPRESSING STATEMENTS	1557
COURT’S EXHIBIT NO. 37 (TRANSCRIPT OF RECORDED INTERVIEWS OF JEREMY CORNISH	1569
STATE’S EXHIBIT NO. 61 (DIAGRAM)	1700
INDICTMENTS AND SENTENCE SHEETS.....	1701
CERTIFICATE OF COUNSEL	1717

THE FOLLOWING EXHIBITS ARE ON FILE WITH THE COURT:

STATE’S EXHIBIT NOS. 206, 209 (AERIAL PHOTOGRAPHS)

State of South Carolina	)	
	)	
County of Lexington	)	
State of South Carolina,	)	2022-GS-32-00267A;
	)	2022-GS-32-00263A;
Plaintiff,	)	2022-GS-32-00262A;
	)	2022-GS-32-00264A
v.	)	
	)	
Jeremy Savoy Cornish,	)	
	)	Transcript
Defendant.	)	
	)	of
	)	
	)	Jury Selection
	)	
	)	
	)	
	)	
	)	

Date: October 10, 2022

Time: 10:19 a.m.

Location: Lexington County Circuit Courthouse

205 E. Main St., Ste. 423

Lexington, SC 29072

Reported by
Amber Payne, CVR

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit

3
4 State of South Carolina,) Transcript of Record
5 vs.) 2022-GS-32-00262
6 Jeremy S. Cornish,) 2022-GS-32-00263
7 Defendant.) 2022-GS-32-00264
8) 2022-GS-32-00267

9 October 11th-14th, 2022
October 17th-21st, 2022
10 Lexington, South Carolina

11 B E F O R E:

12 The Honorable Debra R. McCaslin; and a Jury
13

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

15 Samuel R. "Rick" Hubbard, III, 11th Circuit Solicitor
16 Suzanne Mayes, Deputy Solicitor
17 Bruce H. Norton, II, Assistant Solicitor
On behalf of the State

18 Jack B. Swerling, Esquire
19 Alissa L. Wilson, Esquire
Leigh J. Leventis, Esquire
On behalf of the Defendant
20

21

22 Reported by: Stacy S. Johnson, RPR
23 Circuit Court Reporter
24
25

	<u>I N D E X</u>	<u>PAGE</u>
1	<u>WITNESS</u>	
2		
3	Jury Selection (Reported by Amber Payne on 10/10/2022)	
4	Pre-trial Motions	16
5	Anthony Adam Creech (In-Camera)	
	Direct Examination by Ms. Mayes	18
6	Cross-Examination by Ms. Wilson	80
	Redirect Examination by Ms. Mayes	97
7	Recross Examination by Ms. Wilson	113
8	Jesse Laintz (In-Camera)	
	Direct Examination by Ms. Mayes	179
9	Cross-Examination by Mr. Swerling	209
	Redirect Examination by Ms. Mayes	235
10	James Pratt (In-Camera)	
11	Direct Examination by Ms. Mayes	241
	Cross-Examination by Mr. Swerling	271
12	Redirect Examination by Ms. Mayes	286
13	Arcadeus Dubard (In-Camera)	
	Direct Examination by Mr. Swerling	293
14	Cross-Examination by Ms. Mayes	302
15	Anthony Adam Creech (In-Camera)	
	Direct Examination by Mr. Hubbard	306
16	Cross-Examination by Mr. Swerling	326
	Redirect Examination by Mr. Hubbard	333
17	Opening Statements	
18	By Ms. Mayes	418
	By Mr. Leventis	430
19	Melissa Patrick	
20	Direct Examination by Ms. Mayes	441
21	Scott Purdy	
	Direct Examination by Mr. Hubbard	449
22	Cross-Examination by Mr. Swerling	488
23	Nicholas Ike Batalis	
	Direct Examination by Mr. Hubbard	489
24	Brannon Marthers	
25	Direct Examination by Ms. Mayes	519

1	John Donnelly	
	Direct Examination by Ms. Mayes	534
2	Cross-Examination by Mr. Leventis	549
	Redirect Examination by Ms. Mayes	551
3	Recross Examination by Mr. Leventis	552
4	Donnovin Haynes	
	Direct Examination by Mr. Hubbard	571
5	Cross-Examination by Mr. Leventis	608
	Redirect Examination by Mr. Hubbard	623
6	Recross Examination by Mr. Leventis	628
	Further Redirect Examination by Mr. Hubbard	631
7	Patrick Ward	
8	Direct Examination by Ms. Mayes	647
	Cross-Examination by Mr. Swerling	739
9	Redirect Examination by Ms. Mayes	756
10	Christy Meneses	
	Direct Examination by Ms. Mayes	762
11	Cross-Examination by Ms. Wilson	777
	Redirect Examination by Ms. Mayes	781
12	Sabah Kadhim	
13	Direct Examination by Mr. Norton	782
	Cross-Examination by Ms. Wilson	789
14	Thomas Alvin Smith	
15	Direct Examination by Mr. Norton	793
	Cross-Examination by Ms. Wilson	802
16	Redirect Examination by Mr. Norton	805
17	James Pratt	
	Direct Examination by Ms. Mayes	809
18	Cross-Examination by Mr. Swerling	843
	Redirect Examination by Ms. Mayes	865
19	Arcadeus Dubard	
20	Direct Examination by Ms. Mayes	871
	Cross-Examination by Mr. Swerling	886
21	Redirect Examination by Ms. Mayes	900
22	Jonathan Brock	
	Direct Examination by Mr. Hubbard	903
23		
24		
25		

1	Nick Burt	
	Direct Examination by Mr. Hubbard	921
2	Continued Direct Examination by Mr. Hubbard	948
	Cross-Examination by Mr. Swerling	951
3	Redirect Examination by Mr. Hubbard	961
4	Jesse Laintz	
	Direct Examination by Ms. Mayes	962
5	Cross-Examination by Mr. Swerling	1013
	Redirect Examination by Ms. Mayes	1031
6	Recross Examination by Mr. Swerling	1035
7	Cody Weyandt	
	Direct Examination by Ms. Mayes	1039
8	Cross-Examination by Mr. Swerling	1053
	Redirect Examination by Ms. Mayes	1054
9	Melinda Worley	
10	Direct Examination by Ms. Mayes	1056
	Cross-Examination by Ms. Wilson	1069
11	James Green	
12	Direct Examination by Mr. Hubbard	1074
	Cross-Examination by Ms. Wilson	1108
13	Redirect Examination by Mr. Hubbard	1114
14	Kim Herlong	
	Direct Examination by Mr. Hubbard	1116
15	Cross-Examination by Mr. Swerling	1122
16	Anthony Adam Creech	
	Direct Examination by Mr. Hubbard	1124
17	Courtney Thompson	
18	Direct Examination by Ms. Mayes	1136
	Cross-Examination by Ms. Wilson	1154
19	Redirect Examination by Ms. Mayes	1155
20	Samuel Stewart	
	Direct Examination by Ms. Mayes	1156
21	Cross-Examination by Ms. Wilson	1199
	Redirect Examination by Ms. Mayes	1214
22	Recross Examination by Ms. Wilson	1216
23	Anthony Adam Creech	
	Direct Examination by Ms. Mayes	1223
24	Examination by Ms. Mayes (In-Camera)	1271
25		

1	Brannon Marthers	1274
2	Examination by Ms. Mayes (In-Camera)	
3	Anthony Adam Creech	
4	Continued Direct Examination by Ms. Mayes	1282
5	Examination by Ms. Mayes (In-Camera)	1342
6	Continued Direct Examination by Ms. Mayes	1349
7	Cross-Examination by Mr. Swerling	1357
8	Redirect Examination by Ms. Mayes	1425
9	Recross Examination by Mr. Swerling	1427
10	Brian Zwolak	
11	Direct Examination by Mr. Hubbard	1428
12	Cross-Examination by Mr. Swerling	1432
13	Redirect Examination by Mr. Hubbard	1434
14	Directed Verdict Motion	1436
15	Motions Renewed	1469
16	Closing Argument	
17	By Mr. Hubbard	1472
18	By Mr. Swerling	1496
19	Jury Charge	1547
20	Verdict	1570
21	Motion for New Trial/Motions Renewed	1573
22	Sentence of the Court	1594
23	Certificate of Reporter	1596
24		
25		

E X H I B I T S				
			<u>PAGE</u>	
			<u>ID.</u>	<u>EV.</u>
1	Court's 1	Search Warrant	16	22
2	Court's 2	Aerial Photograph	16	
3	Court's 3	Aerial Photograph	16	
4	Court's 4	Photograph	16	40
5	Court's 5	Photograph	16	52
6	Court's 6	Photograph	16	52
7	Court's 7	Photograph	16	40
8	Court's 8	Photograph	16	37
9	Court's 9	Photograph	16	56
10	Court's 10	Photograph	16	56
11	Court's 11	Photograph	16	60
12	Court's 12	Photograph	16	60
13	Court's 13	Text Message	16	47
14	Court's 14	Text Message	16	47
15	Court's 15	(Not Offered)	16	
16	Court's 16	Audio Recording	16	201
17	Court's 17	Photograph/DMV Paperwork	16	52
18	Court's 18	(Not Offered)	16	
19	Court's 19	(Not Offered)	16	
20	Court's 20	(Not Offered)	16	
21	Court's 21	Photograph	16	49
22	Court's 22	Photograph	16	40

1	Court's 23	Photograph	16	58
2	Court's 24	Photograph	16	151
3	Court's 25	Photograph	16	151
4	Court's 26	Photograph	16	151
5	Court's 27	Full video recording	16	151
6	Court's 28	Audio recording excerpt	178	264
7	Court's 29	Full audio recording	178	206
8	Court's 30	Photograph	178	194
9	Court's 31	Search Warrant/Hopkins	178	184
10	Court's 32	Interview Transcript/Cornish	178	293
11	Court's 33	T-Mobile/Sprint Certification	178	
12	Court's 34	Cell Phone Certification	178	
13	Court's 35	Full Audio 12/23/19 Interview	178	381
14	Court's 36	Judge's Order	409	
15	Court's 37	12/23/19 Transcript	417	
16	Court's 38	Call Records	1273	
17	Court's 39	Dictionary Definitions	1345	
18	Court's 40	Jury Note	1495	
19	State's 1	Search Warrant	398	
20	State's 2	Aerial Photograph	398	810
21	State's 3	Aerial Photograph	398	810
22	State's 4	Photograph	398	775
23	State's 5	Photograph	398	822
24	State's 6	Photograph	398	822
25	State's 7	Photograph	398	775

1	State's 8	Photograph	398	979
2	State's 9	Photograph	398	940
3	State's 10	Photograph	398	940
4	State's 11	Photograph	398	724
5	State's 12	Photograph	398	724
6	State's 13	Text Messages	398	1338
7	State's 14	Text Messages	398	1338
8	State's 15	(Not Offered)	398	
9	State's 16	Audio Clip	398	829
10	State's 17	DMV Paperwork	398	841
11	State's 18-19	(Not Offered)	398	
12	State's 20	Photographs	398	1008
13	State's 21	Photograph	398	990
14	State's 22	Photograph	398	990
15	State's 23	Photograph	398	1000
16	State's 24-27	(Not Offered)	398	
17	State's 28	Audio clip	398	829
18	State's 29	(Not Offered)	398	
19	State's 30	Photograph	398	822
20	State's 31-49	(Not Offered)	398	
21	State's 50	Photograph	398	475
22	State's 51	Photograph	398	475
23	State's 52	Photograph	398	475
24	State's 53	Photograph	398	475
25	State's 54	Photograph	398	475

1	State's 55	Photograph	398	475
2	State's 56	Photograph	398	475
3	State's 57	Photograph	398	475
4	State's 58	Photograph	398	475
5	State's 59	Photograph	398	484
6	State's 60	Photograph	398	484
7	State's 61	Diagram	398	467
8	State's 62	(Not Offered)	398	
9	State's 63	Photograph	398	455
10	State's 64	(Not Offered)	398	
11	State's 65	Photograph	398	475
12	State's 66	Photograph	398	475
13	State's 71	9-1-1 Call	398	445
14	State's 72	Body-worn Camera Video	398	466
15	State's 73	KJ's Video Clip	398	992
16	State's 74	KJ's Video Clip	398	992
17	State's 75	KJ's Video Clip	398	992
18	State's 77	Photograph	398	655
19	State's 78	Photograph	398	541
20	State's 79	Photograph	398	655
21	State's 80	Photograph	398	655
22	State's 81	Photograph	398	720
23	State's 82	Photograph	398	655
24	State's 83-85	(Not Offered)	398	
25	State's 86	Photograph	398	659

1	State's 87	Photograph	398	665
2	State's 88	Photograph	398	665
3	State's 89	Photograph	398	665
4	State's 90	Photograph	398	665
5	State's 91	Photograph	398	665
6	State's 92	Photograph	398	665
7	State's 93	Photograph	398	664
8	State's 94	Photograph	398	665
9	State's 95	Photograph	398	665
10	State's 96	Photographs	398	665
11	State's 97	Photograph	398	665
12	State's 98	Photographs	398	682
13	State's 99	Photograph	398	679
14	State's 100	Photograph	398	679
15	State's 101-102	(Not Offered)	398	
16	State's 103	Ballistics Diagram	398	669
17	State's 104-105	(Not Offered)	398	
18	State's 106	Photographs	398	702
19	State's 107	Photograph	398	699
20	State's 108	Photographs	398	704
21	State's 109	Photograph	398	708
22	State's 110	Photograph	398	598
23	State's 111	Photograph	398	708
24	State's 112	Photograph	398	699
25	State's 113	(Not Offered)	398	

1	State's 114	Photograph	398	689
2	State's 115	Photograph	398	689
3	State's 116	Photograph	398	689
4	State's 117	Photograph	398	917
5	State's 118	Photograph	398	932
6	State's 119	Photograph	398	932
7	State's 120	Photograph	398	932
8	State's 121	Photograph	398	934
9	State's 122	Photograph	398	934
10	State's 123	Photograph	398	934
11	State's 124	Photograph	398	934
12	State's 125	Photograph	398	932
13	State's 126	Lease Renewal Application	398	1119
14	State's 127	(Not Offered)	398	
15	State's 128	Photograph	398	1046
16	State's 129	Photograph	398	1046
17	State's 130	Photographs	398	1046
18	State's 131	(Not Offered)	398	
19	State's 132	Photograph	398	1046
20	State's 133	Photograph	398	1000
21	State's 134	Photograph	398	997
22	State's 135	DMV Video AM	398	979
23	State's 136	DMV Video PM	398	1002
24	State's 137	DMV Video PM	398	1002
25	State's 138	Footwear Impressions	398	1063

1	State's 139	B. Booker Autopsy Diagram	398	494
2	State's 140	S. Livingston Autopsy Diagram	398	501
3	State's 141	D. Williams Autopsy Diagram	398	510
4	State's 142	Photographs	398	1081
5	State's 143	Photographs	398	1094
6	State's 144	Photographs	398	1090
7	State's 145	Photographs	398	1086
8	State's 146	Photograph	398	1092
9	State's 147	Photographs	398	1103
10	State's 148	(Not Offered)	398	
11	State's 149	Photograph	398	784
12	State's 150	(Not Offered)	398	
13	State's 151	Fired Cartridge Casings (11)	398	713
14	State's 152	Fired Projectile	398	718
15	State's 153	Fired Projectiles (3)	398	716
16	State's 154	Touch DNA Swabs	398	719
17	State's 155	Fired Cartridge Casings (2)	398	713
18	State's 156	Touch DNA Swabs	398	1185
19	State's 157	Latent Print Cards	398	698
20	State's 158	Footwear Impressions CD	398	710
21	State's 159	Touch DNA Swabs/Wrapper	398	733
22	State's 160	DNA Swabs	398	723
23	State's 161	DNA Swabs	398	693
24	State's 162-164	(Not Offered)	398	
25	State's 165	Boots/Box	398	1052

1	State's 166	Unfired bullets	398	936
2	State's 167	Best Kit	398	938
3	State's 168	Unfired bullet	398	942
4	State's 169	Buccal Swabs/Cornish	398	1165
5	State's 170	Buccal Swabs/Hopkins	398	1130
6	State's 171	Swabs from T-shirt	398	1154
7	State's 172	Footwear overlays	398	1069
8	State's 173-175	(Not Offered)	398	
9	State's 176	Buccal Swabs/Kadhim	398	529
10	State's 177	Buccal Swabs/Haynes	398	1128
11	State's 178	LG Cell Phone	398	1260
12	State's 179	(Not Offered)	398	
13	State's 180	Projectiles/blood spot S.L.	398	509
14	State's 181	Projectiles/blood spot B.B.	398	499
15	State's 182	Projectiles/blood spot D.W.	398	516
16	State's 183	Photograph	398	597
17	State's 184	Photographs	398	798
18	State's 185	DNA Swabs/Boots	398	1147
19	State's 186	Fired shell casings	398	941
20	State's 187	Cutting from T-shirt	398	1150
21	State's 188	Projectile Fragment	398	716
22	State's 189	Touch DNA Swabs/Bike	398	801
23	State's 190-191	(Not Offered)	398	
24	State's 192	Photograph	398	536
25	State's 193-194	(Not Offered)	398	

1	State's 195	Google Subscriber Info	398	1248
2	State's 196-198	(Not Offered)	398	
3	State's 199	Screen Shot of Phone Calls	398	1318
4	State's 200-202	(Not Offered)	398	
5	State's 203	Facebook Post	398	1318
6	State's 204	Photograph	398	1103
7	State's 205	CD of Facebook Records	398	
8	State's 206	Aerial Photograph	398	764
9	State's 207-208	(Not Offered)	398	
10	State's 209	Aerial Photograph	766	767
11	State's 210	Photograph	792	914
12	State's 211	Photograph	792	914
13	State's 212	Calendar Page	810	810
14	State's 213	Form C Drug Analysis	870	938
15	State's 214	Photograph	870	934
16	State's 215	(Not Offered)	870	
17	State's 216	Photograph	870	932
18	State's 217	Aerial Map	870	
19	State's 218	White T-Shirt	870	943
20	State's 219	White T-Shirt	870	943
21	State's 220	DMV Paperwork	870	998
22	State's 221	DNA Scraper	870	1154
23	State's 222	M-Vac Collection	870	1141
24	State's 223	Photograph	870	1281
25	State's 224	Photograph	870	1302

1	State's 225	Maxi Jacobs Identification	870	1121
2	State's 226	Photograph	870	1302
3	State's 227	Photograph	870	1281
4	State's 228	Google Records	870	1302
5	State's 229	Photograph	870	1311
6	State's 230	Photograph	870	1311
7	State's 231	Photograph	870	1281
8	State's 232	Photograph	870	1248
9	State's 233	Photograph	870	1336
10	State's 234	Text Messages/Verizon	870	1248
11	State's 235	Phone Extraction CD	870	
12	State's 236	(Not Offered)	870	
13	State's 237	Google Records	870	1348
14	State's 238	Text Message	870	1354
15				
16				
17				
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22				
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1 (The following proceedings were held October 11,
2 2022, beginning at 1:08 PM.)

3 (Court's Exhibit Numbers 1 through 27 were marked
4 for identification.)

5 BAILIFF: All rise. Court's now in session. The
6 Honorable Judge Debbie McCaslin presiding.

7 THE COURT: Thank you. Be seated.

8 All right. Good afternoon, everybody.

9 MR. SWERLING: Good afternoon, Judge.

10 THE COURT: Are we ready?

11 MS. MAYES: Yes, Your Honor.

12 THE COURT: All right. How do you-all want to do
13 this? Do you want to go through the State's motions
14 first?

15 MS. MAYES: Judge, I think based on our informal
16 discussions yesterday we were prepared to go forward
17 regarding the process in which buccal swabs were obtained
18 from the defendant in this case, Jeremy Cornish.

19 So the first set of buccal swabs were obtained on
20 December 23, 2019, pursuant to him providing them to law
21 enforcement during a noncustodial interview. The State's
22 position is that those were by consent. In addition, a
23 search warrant was done for swabs September 23, 2022, in
24 which swabs were collected from Jeremy Cornish.

25 The witness on this issue is Adam Creech. Your

1 Honor, we're prepared to offer him at this time on this
2 issue. I do want to just cover that he is also gonna
3 be a subsequent witness later on some Jackson v. Denno
4 issues, and the way we have it laid out is that we would
5 address the Jackson v. Denno issues after the search
6 warrant issue has been resolved.

7 THE COURT: Okay. Hold on just a second.

8 All right. So I just need to make sure I get this
9 straight in my head, Ms. Mayes. This is the defense's
10 motion to suppress the DNA?

11 MS. MAYES: It is, Your Honor. They have filed a
12 motion to suppress regarding the first set of buccal
13 swabs and those were the swabs drawn on December 23, 2019.
14 The State's prepared to address the collection of both
15 buccal swabs and then where statements are concerned,
16 Your Honor, we're gonna have at least four different
17 witnesses pursuant to Jackson v. Denno regarding
18 statements that are made on December 21, 2019,
19 December 23, 2019, and then later there will be a
20 statement on January 23, 2020, that we do not believe is
21 being challenged, but we will be proffering the content
22 of that statement. Because that's gonna be -- involve
23 so many witnesses and a separate issue, we're going to
24 break that out and we'll recall Sergeant Creech on those
25 matters at a later time --

1 THE COURT: Okay.

2 MS. MAYES: -- as to the content of each of his
3 subsequent interviews.

4 THE COURT: Okay. Well, go ahead then and call
5 your first witness.

6 MS. MAYES: The State calls Sergeant Adam Creech.

7 (Whereupon, Anthony Adam Creech was duly sworn by
8 the Clerk of Court.)

9 THE CLERK: If you'll have a seat please and state
10 your name for the record.

11 THE WITNESS: Sergeant Anthony Adam Creech. Creech
12 is spelled C-R-E-E-C-H.

13 ANTHONY ADAM CREECH,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION (In-Camera)

16 BY MS. MAYES:

17 Q. Good afternoon. Can you begin by telling us, in
18 general, what your role was in this investigation, Sergeant
19 Creech?

20 A. Yes, in this investigation, I was the supervising
21 sergeant over the case officer, Detective Hendrix. We
22 were the day call shift the day this happened, which is
23 why we ended up being assigned to work this investigation.

24 Q. Okay. We just need you to speak up a little
25 louder so the court reporter can hear you clearly.

1 Now what was the date in which three individuals were
2 found shot to death here in Lexington County?

3 A. This incident occurred on December the 17th of 2019.

4 Q. All right. And what was the address?

5 A. We were called to respond to [REDACTED] Butternut Lane,
6 located in the Columbia area of Lexington County, South
7 Carolina.

8 Q. All right. And regarding the three victims in this
9 case, what are their identities?

10 A. They were identified as Branton Booker, Sheldon
11 Livingston and Duwan Williams.

12 Q. All right. And can you tell us whether or not the
13 investigation determined that all three had been shot
14 within the residence?

15 A. They did. Our investigation showed that all three
16 were shot in the apartment at that location.

17 Q. Now did you respond to the initial scene that day?

18 A. I did.

19 Q. Were you also aware of any potential witness
20 interviews that were taking place among neighbors or
21 residents near that area?

22 A. I was. We conducted a pretty thorough canvass and
23 then I also interviewed the fourth occupant of the
24 apartment that was not injured during the incident.

25 Q. And can you tell us, in general, what this

1 neighborhood or apartment setting is known as?

2 A. It's known as the Woodland Village Apartment Complex
3 right off of Bush River Road.

4 Q. And when you mentioned Bush River Road, can you tell
5 us within what proximity that is to the St. Andrews area
6 of Lexington County?

7 A. It's within a mile. Woodland Village Apartment
8 Complex runs kind of right between Bush River Road and
9 St. Andrews Road, closer to the Bush River side.

10 Q. Okay. Now you were acting as a sergeant at that point
11 in time for major crimes?

12 A. That is correct.

13 Q. And can you tell us if you retained that role
14 throughout this investigation?

15 A. I did. I retained that throughout that investigation
16 and through all the subsequent follow-up.

17 Q. And ultimately how many individuals were arrested in
18 connection with this case, being the triple homicide of the
19 victims that you just named?

20 A. We arrested two individuals. Justin Hopkins and
21 Jeremy Cornish.

22 Q. All right. What is the date in which Justin Hopkins
23 was arrested and charged with murder?

24 A. He was arrested on December 21th of 2019.

25 Q. And what is the date in which Jeremy Cornish was

1 arrested and charged with murder?

2 A. December 31st of 2019.

3 Q. Now between that time period that you just mentioned,
4 December 17, 2019, when the crime occurred and December 31,
5 2019, when Jeremy Cornish was arrested, was he in custody
6 for any other reason?

7 A. He was not.

8 Q. To your knowledge, was he living at his residence and
9 maintaining an ordinary life?

10 A. As far as I'm aware, yes.

11 Q. Did that include going work?

12 A. Yes, it did.

13 Q. Now I'm gonna show you a document and ask you whether
14 or not you recognize it. This is Court's Exhibit 1. What
15 is that document?

16 A. This would be the search warrant that was obtained
17 for a buccal swab for Jeremy Cornish. It was obtained on
18 September 23rd of 2022.

19 Q. And do you have a duplicate copy of that item there
20 with you?

21 A. I do.

22 Q. And does this appear to be the same document in which
23 you presented it to Judge Buck?

24 A. It is the same document.

25 Q. And does it include the return?

1 A. It does.

2 Q. And whose signature is on the return?

3 A. Mine and Judge Buck's.

4 Q. So you recognize Court's Exhibit Number 1?

5 A. I do.

6 MS. MAYES: Your Honor, at this time we have it
7 premarked and we would ask for it to be admitted as a
8 Court's exhibit at this time.

9 THE COURT: Any objection?

10 MS. WILSON: No objection.

11 THE COURT: It's admitted.

12 Thank you.

13 (Court's Exhibit Number 1, a search warrant, was
14 admitted for pretrial hearing purposes.)

15 BY MS. MAYES:

16 Q. Now, Sergeant Creech, I want to start with the
17 probable cause for this affidavit. You've indicated that
18 it is for buccal swabs of the defendant, Jeremy Cornish?

19 A. Yes, ma'am.

20 Q. And by buccal swab, again, for the record, just for
21 purposes of the record, if you could state what is meant
22 by the term "buccal swab"?

23 A. A buccal swab would be when we take a cotton
24 applicator on a wooden stick and you swab it gently on the
25 inside portion of an individual's mouth for about five to

1 ten seconds. There's usually two swabs in a collection
2 kit, so you'd take a pair of swabs and then seal those up
3 in DNA collection kit.

4 Q. Are you trained in that process?

5 A. I haven't been specifically trained in it, but it's a
6 process I've been conducting on and off for ten years with
7 no issues. It's a pretty easy process to be instructed on.

8 Q. Okay. There is a specific envelope that goes with
9 this kit?

10 A. There is usually.

11 Q. And it's issued routinely by the State Law Enforcement
12 Division?

13 A. It is.

14 Q. To be submitted back to their lab?

15 A. Yes.

16 Q. Does it come with instructions?

17 A. It does come with instructions.

18 Q. All right. So you had that experience prior to 2022?

19 A. I did.

20 Q. Now based upon your observations and your experience
21 in collecting buccal swabs, can it be done without injury
22 to the person?

23 A. Absolutely. It's a incredibly safe and noninvasive
24 process.

25 Q. So I'm gonna take you to this particular search

1 warrant, what is Court's Exhibit 1, and you have indicated
2 that you do have a copy of it. Looking there at the front
3 page, what is listed as the person to be searched? Who is
4 the listed as the person to be searched?

5 A. The person of Jeremy Savoy Cornish, date of birth
6 [REDACTED] of '81, who at the time was currently located at the
7 Lexington County Detention Center at 521 Gibson Road in
8 Lexington, South Carolina. This would be the same
9 Mr. Cornish who's present in the courtroom today.

10 Q. And at the Lexington County Detention Center having
11 already been charged with murder in this case?

12 A. Yes, ma'am.

13 Q. Now what is listed as the Description of property?

14 A. Buccal swab standards for DNA comparison and analysis
15 for Jeremy Savoy Cornish, same date of birth of [REDACTED] of
16 '81, and then, of course, we noted that the method used to
17 collect the standard was known to be medically safe and
18 reliable, not overly intrusive pursuant to the Fourth
19 Amendment.

20 Q. All right. I'm gonna ask you to speak a little more
21 slowly for the court reporter.

22 A. Yes, ma'am. The method involves orally collecting
23 cheek swabs, which are collected without injury or further
24 invasion of the person. It's about -- paramount to someone
25 bushing -- brushing their teeth would be more invasive

1 probably.

2 Q. All right. I'm gonna take you to the next page and
3 for a more specific description of property sought.

4 A. That would be the same verbiage as from the previous
5 page.

6 Q. Okay.

7 A. If you'd like me to read it again, I can.

8 Q. Okay. Regarding the method being medically safe and
9 reliable?

10 A. Correct. I'm sorry if I didn't read that before.
11 Yes, it is a medically safe and reliable process that's
12 used.

13 Q. Okay. And, once again, specifying that the buccal
14 swabs would be orally collected?

15 A. Correct.

16 Q. And, again, as to the premises or person to be
17 searched?

18 A. It would be the same on the previous page. The person
19 of Jeremy Savoy Cornish, date of birth [REDACTED] of '81,
20 currently present at the Lexington County Detention, which
21 is a at 521 Gibson Road in Lexington, South Carolina.

22 Q. All right. Now I'm gonna move forward to page 5.
23 Ordinarily on the search warrant form, is there a location
24 in which probable cause can be set forth on the form?

25 A. Normally that's done on the bottom of page four, but

1 it's a pretty small area and in this case an addendum page
2 was created for the affidavit to be thorough considering
3 the nature of what was being investigated.

4 Q. Okay. Did you -- can you tell us whether or not you
5 had a more descriptive narrative than could be fit in the
6 actual probable cause form on the affidavit?

7 A. Absolutely. It's probably three or four times longer
8 than what could normally fit in that probable cause
9 affidavit.

10 Q. All right. Now for the record, and I'm gonna have
11 to ask you to speak slowly, once again, for our court
12 reporter. Could you state the page 5 affidavit that was
13 presented in this case and let me begin by asking you who
14 actually presented this affidavit to the magistrate?

15 A. I did.

16 Q. All right. And can you tell us you whether or not
17 this entire page was submitted with the search warrant?

18 A. This entire page was submitted with the search
19 warrant.

20 Q. All right. I'm gonna -- and whose signature is on it?

21 A. Mine on the bottom right and Judge Buck's on the
22 bottom left.

23 Q. Okay. I'm gonna ask you to start at the beginning and
24 slowly read into the record the contents of this affidavit.

25 A. Certainly. On 12-17 of 2019, deputies responded to

1 [REDACTED] Butternut Lane, which is located in the Columbia area
2 of Lexington County, South Carolina, in reference to a
3 possible home invasion. Upon arrival, deputies found three
4 individuals with apparent gunshot wounds. Two victims,
5 Branton Booker and Sheldon Livingston, were pronounced
6 deceased at the incident location and another victim, Duwan
7 Williams, was pronounced deceased at the hospital. A
8 fourth individual, Donnovin Haynes, was able to escape the
9 location after hearing gunfire. Based upon multiple
10 projectiles located during the investigation and statements
11 from Donnovin, it was believed that at least two suspects
12 were present inside the victims' residence during the
13 crime. During the subsequent investigation, a person with
14 information, Taquiem Ketter, came forward with information
15 to help lead investigators to the identification of Justin
16 Hopkins as a possible suspect in this case. Hopkins was
17 alleged to have committed the offense with someone referred
18 to as his uncle. Based upon information received by
19 Taquiem Ketter from another person familiar with Hopkins,
20 Janelle Patrick, a former roommate of Hopkins, Janelle
21 Patrick reported that another mutual acquaintance heard
22 this information directly from Hopkins and that Hopkins
23 committed the triple homicide. Justin Hopkins was
24 identified by a witness Dale Galloway via photo lineup as
25 appearing to be the same man seen fleeing [REDACTED] Butternut

1 Lane after the shooting. Two witnesses, Christine and
2 Hannsen Meneses, described seeing a heavysset black male
3 with a bandage on his face believed by law enforcement to
4 be Justin Hopkins leaving the area of the crime scene after
5 getting into the passenger side of a white dually pick-up
6 truck immediately following the timeframe of the crime. On
7 12-21 of 2019, Justin Hopkins was detained during a traffic
8 stop leaving his apartment at Landmark Apartments after
9 being dropped off at his apartment by a white work truck
10 similar to the one described by witnesses who observed a
11 vehicle at the scene following the shooting. The white
12 work truck was stopped and the driver was identified as
13 Jeremy Cornish. Deputies spoke with Jeremy, who was
14 originally believed to be a potential witness regarding the
15 events of 12-17 of '19. Based on conflicting statements
16 from Jeremy Cornish and Justin Hopkins regarding their
17 alleged mutual whereabouts on the morning of December 17,
18 2019, and findings at Justin Hopkins' apartment, Justin was
19 placed under arrest for the incident on 12-17 of 2019.

20 During his initial contact with law enforcement,
21 Jeremy told law enforcement that he went alone to the South
22 Carolina DMV in Columbia, South Carolina. Jeremy told law
23 enforcement that this was after he dropped Justin off that
24 morning in Columbia after the job site got rained out after
25 which time he stayed in the Two Notch Road area and did not

1 see Justin again that day. SCDMV video was later obtained,
2 which showed Jeremy and Justin at the SCDMV together that
3 morning a short time before the incident on 12-17 of 2019,
4 as well as together that afternoon at the same DMV after
5 the incident. Phone records were obtained for Jeremy and
6 Justin -- were also obtained for Jeremy and Justin.
7 Location data associated with Jeremy's phone number placed
8 him in the area of [REDACTED] Butternut Lane during the timeframe
9 of the incident. Text messages obtained from Verizon
10 Wireless for Justin's number documented an exchange between
11 the two individuals on 12-17 of 2019. In this exchange,
12 which is following the crime, Jeremy sends Justin an SMS
13 text message stating, quote, make sure you clean those
14 tools off, end quote, followed by, quote, erase these
15 messages, end quote, all believed by law enforcement to be
16 statements directly attributable to the crime.

17 Surveillance video obtain from the KJ's Supermarket
18 located near the incident location also depicted a person
19 believed by law enforcement to be Jeremy with a heavysset
20 black male in a white T-shirt dropping off Justin who
21 matched the description provided by the Meneseses off at
22 that location in a white dually pick-up truck approximately
23 fifteen minutes after the incident. The black male driver
24 of the white dually truck appears consistent in clothing
25 and appearance to Jeremy's presentation on SCDMV video just

1 prior to the incident. The truck also appeared to be
2 consistent with the vehicle driven by Jeremy on 12-21-2019
3 when he was stopped by law enforcement, which also
4 contained SCDMV paperwork for Justin from 12-17-2019. The
5 individual dropped off at KJ's, a heavyset black male with
6 a bandage on his face, is believed to be Justin, who
7 matched the description of the subject described by the
8 Meneseses getting into the white dually truck. Jeremy
9 was determined to be a potential suspect as opposed to a
10 potential witness and he was arrested as a co-defendant in
11 this case on 12-31-2019.

12 Facebook records obtained for Justin also depicted
13 him in possession of two handguns consistent with the two
14 suspected calibers identified at the crime scene. When
15 arrested on 12-21-2019, Justin was also in possession of
16 ammunition matching both of these calibers.

17 Touch DNA swabs from areas in the apartment that the
18 suspects may have had contact with were among the trace
19 evidence collected by crime scene investigators at the
20 original scene at [REDACTED] Butternut Lane and other physical
21 evidence items obtained in this case, it is reasonably
22 believed that DNA standards obtainable to the defendants
23 are relevant to compare against these samples and that
24 can establish their presence at the incident location or
25 associations with other physical evidence or trace evidence

1 located outside of the initial scene. The method used to
2 collect such standards is known to be medically safe and
3 reliable and not overly intrusive pursuant to the Fourth
4 Amendment. The method involves orally collecting cheek
5 swabs and may be collected without injury or further
6 invasion to the person.

7 Q. All right. Now I'm gonna ask you to take a look at
8 the page of the search warrant where ordinarily the
9 probable cause would be set forth.

10 A. Yes, ma'am.

11 Q. And what do you have written there?

12 A. See page 5 affidavit.

13 Q. All right. And can you tell us whether or not that
14 page also contains the signature of the judge?

15 A. It does.

16 Q. Having been sworn and subscribed before him?

17 A. Correct.

18 Q. And can you tell us whether or not you were sworn
19 prior to presenting this search warrant?

20 A. I did. I -- as with any kind of court testimony, in
21 presenting the search warrant to Judge Buck he asked me to
22 swear to the Court.

23 Q. All right. So I'm gonna ask you about a few questions
24 -- or I'm gonna ask you a few questions about the specifics
25 set forth in your affidavit, Sergeant Creech, beginning

1 with what, if any, indication did law enforcement have that
2 is set forth in this affidavit that there were possibly two
3 shooters within the residence at [REDACTED] Butternut Lane during
4 the commission of this crime on December 17, 2019?

5 A. We had detailed testimony from Donnovin Haynes, the
6 surviving individual from the apartment. He was very
7 explicit that he heard at least two voices in the apartment
8 while he was barricaded inside a closet in his bathroom.
9 While doing so, he stated that he heard what appeared to
10 be two voices interacting with one another who appeared to
11 be looking for something and upon appearing to -- one
12 declaring to the other that they found something, they then
13 -- the shooting stopped and they vacated a short time
14 later.

15 In addition, there were two -- two different
16 projectiles -- types of projectiles located during the
17 crime scene investigation, a 9-millimeter and what was
18 believed to either be .357 or a .38 Special projectiles.

19 Q. All right. And here in paragraph two of the
20 affidavit, do you note that there are multiple caliber
21 projectiles located during the investigation?

22 A. I do. We mentioned that there were multiple caliber
23 projectiles in the affidavit.

24 Q. As well as statements from Donnovin who you had
25 previously identified as the fourth individual who was able

1 to escape the residence?

2 A. Correct.

3 Q. And based on that, did you advise the magistrate that
4 there were at least two shooters or at least two suspects
5 believed to be present inside the victims' residence during
6 the crime?

7 A. The magistrate was advised that of that, yes.

8 Q. Now ultimately you've indicated that Justin Hopkins
9 was identified by law enforcement as a suspect in this
10 case?

11 A. He was.

12 Q. Did that include a first name and a last name?

13 A. It did.

14 Q. And did that include an apartment area in which he
15 resided in Lexington County?

16 A. It did. He was identified as living in Landmark
17 Apartments.

18 Q. Okay. And I said Lexington. I'm not sure actually if
19 that's Lexington or Richland, but it's within that joint
20 area?

21 A. It's in the Lexington area of Richland County, just
22 like the incident location.

23 Q. In addition to that, you had indicated that law
24 enforcement did interview witnesses at the scene?

25 A. They did.

1 Q. And those interviews were conducted on what date?

2 Initial interviews.

3 A. I believe they would have been the incident date of
4 12-17, but let me be sure. Yes, that is correct.

5 Q. Okay. You've indicated that a witness, Dale Galloway,
6 via a photo lineup, did identify someone appearing to be
7 the same man seen fleeing [REDACTED] Butternut Lane?

8 A. That is correct, and that identification was on the
9 morning of December 21, 2019.

10 Q. And then you've named two witnesses, Christy and
11 Hannsen Meneses?

12 A. Correct.

13 Q. And your understanding is they bear what relationship
14 with on another?

15 A. Husband and wife.

16 Q. All right. And you've indicated that they witnessed
17 an event immediately following the timeframe of the crime?

18 A. Yeah. So the 9-1-1 call for this was approximately
19 10:59 AM. At around 11 AM the Meneses said that they saw
20 a heavysset black male on green and black bicycle with a
21 bandage on his face out of breath attempting to head away
22 from the area of Woodland Village Apartments. When he
23 was -- a white dually work truck -- style truck pulled up
24 next to him and he got in the passenger seat.

25 Q. Okay. And so referring here, the third paragraph of

1 your affidavit, you mentioned Christy Meneses and, again,
2 a heavyset black male with a bandage on the face?

3 A. Correct.

4 Q. And that that person was believed to be Justin
5 Hopkins?

6 A. It was.

7 Q. And that he's seen getting into the passenger side
8 of what you note to be a white dually pick-up truck
9 immediately following the time frame of the crime, which
10 you've indicated is approximately 11 AM?

11 A. Correct.

12 Q. Now ultimately were you able to obtain DMV video in
13 this particular case for the date of December 17, 2019?

14 A. We were. We were able to get -- after a couple of
15 days we were able to eventually get DMV video from that
16 morning and that afternoon.

17 Q. Okay. And is that the DMV video that you have
18 mentioned in paragraph 5 of the affidavit?

19 A. Yes.

20 Q. I'm gonna show you what is Court's Exhibit 8 and give
21 you a chance to look at this. Do you recognize Court's
22 Exhibit 8?

23 A. I do.

24 Q. And that is a still shot from what video?

25 A. It's gonna be from the morning DMV video from December

1 17th of 2019.

2 Q. Would that be the morning of the crime?

3 A. Correct.

4 Q. And having actually watched the video, do you
5 recognize any two subjects who are shown seated in this
6 particular still shot?

7 A. I do. I recognize Justin Hopkins. He appears to be
8 wearing maybe an orange or yellow shirt with a dark jacket
9 and blue jeans. And Jeremy Cornish in a white T-shirt.

10 Q. And ultimately was there paperwork also confirming
11 their visit to the DMV on this particular date?

12 A. Correct. We recovered the night Jeremy Cornish was
13 identified on December 21st of 2019 some DMV paperwork for
14 Mr. Hopkins was found in Mr. Cornish's truck.

15 Q. Okay. And so as noted, in addition to the still shot,
16 you've actually watched the video?

17 A. I have.

18 Q. Okay. And you're referring to this individual hear
19 wearing something orange with a dark colored jacket to be
20 -- who do you believe that person to be?

21 A. That's Justin Hopkins.

22 Q. Okay. And do you have a reasonable belief as to the
23 person seated on the right -- to his left?

24 A. Yes, that would be Jeremy Cornish.

25 Q. And that individual is wearing what kind of clothing?

1 A. He's wearing a white T-shirt and I believe it's blue
2 jeans.

3 Q. Okay. What, if anything, did you note about the
4 individual who you believed to be Justin Hopkins as you're
5 watching the video?

6 A. He is a heavyset black male with a fairly distinctive
7 walk and he's got a notable bandage on his face.

8 Q. Was that visible to you even in this video?

9 A. Correct. I can even see the -- see the white speck of
10 it from here.

11 THE COURT: Ms. Mayes, are you introducing this as
12 Court's Exhibit 8?

13 MS. MAYES: Yes. I'm sorry, Judge. Yes, this
14 would be Court's Exhibit 8.

15 THE COURT: Without objection?

16 MS. WILSON: No objection.

17 THE COURT: Thank you. I just wanted to make sure.

18 (Court's Exhibit Number 8, a photograph, was
19 admitted for pretrial hearing purposes.)

20 BY MS. MAYES:

21 Q. And the time in which that morning visit to the DMV
22 occurred, Sergeant Creech, is what time?

23 A. Approximately 9:44 AM that morning.

24 Q. Okay. And law enforcement obtained that video from
25 the Department of Motor Vehicles on what date, if you know?

1 A. It was the afternoon of December 23, 2019.

2 Q. For the morning video.

3 A. Oh, for the morning video. I'm sorry. It was the
4 afternoon video that was on December 23rd. The morning
5 video was --

6 Q. Well, let me just ask you that. Sometime subsequent
7 to that?

8 A. Yes, ma'am. I believe it was the following day. I
9 just didn't want to misspeak without looking because we've
10 gone over a lot of dates.

11 Q. But, of course, prior to you presenting this
12 affidavit?

13 A. Correct. Yes, ma'am.

14 Q. All right. Now having been aware of the individuals
15 there at the DMV in the morning hours, you've indicated
16 that it's approximately 11 AM that the individual with the
17 band-aid is seen getting into the white dually truck?

18 A. Yes, ma'am.

19 Q. And you indicated that the 9-1-1 call was at what
20 time?

21 A. 10:59 AM.

22 Q. What, if any, other evidence did the sheriff's
23 department obtain in this case regarding the whereabouts
24 of Jeremy Cornish and Justin Hopkins on December 17, 2019?

25 A. We obtained phone records from both individuals. For

1 Mr. Cornish and Mr. Hopkins, notably there was location
2 data for Mr. Cornish that showed him in the area during the
3 timeframe of the incident.

4 Q. Would that be the area of St. Andrews?

5 A. Yes, St. Andrews and Bush River Road.

6 Q. All right. And what, if any, video surveillance was
7 obtained from nearby establishments?

8 A. We obtained some video surveillance from KJ's
9 Supermarket, which is located within a mile of the incident
10 location, right across from Landmark Apartments.

11 Q. Okay. So I'm gonna ask you about that. And what is
12 the proximity of this KJ's grocery or KJ's market to the
13 actual crime scene at [REDACTED] Butternut?

14 A. It's very close. It's within a mile.

15 Q. Within a mile?

16 A. Yes.

17 Q. And if the 9-1-1 call is at 10:59, were you able to
18 obtain video surveillance from KJ's within fifteen minutes
19 of that timeframe?

20 A. We were.

21 Q. And what, if anything, of interest did you discover?

22 A. The video surveillance we obtained from KJ's
23 Supermarket shows a white dually work truck consistent with
24 that described by the Meneseses, an individual driving it
25 appears to be consistent with Jeremy Cornish based upon

1 his appearance and clothing description, physical build,
2 an individual that we believed to be Justin Hopkins is seen
3 getting out of the vehicle and entering into the store.

4 MS. MAYES: Okay.

5 MS. WILSON: No objection.

6 THE COURT: They're entered. These are Court's
7 exhibits, Ms. Mayes?

8 MS. MAYES: Yes, Your Honor.

9 (Court's Exhibit Numbers 4, 7, 21 and 22,
10 photographs, were admitted for pretrial hearing
11 purposes.)

12 BY MS. MAYES:

13 Q. And, briefly, Court's 7, 22, 21 and 4, if you could
14 just briefly look at those and tell us if those appear to
15 be the still shots you're referencing from that video?

16 A. Yes, ma'am, they would be.

17 Q. Now starting here you had already indicated the
18 clothing of Jeremy Cornish at the DMV that morning. I'm
19 gonna ask you what we're looking at here in Court's 22.
20 I'll get a little bit closer on that. This is the parking
21 lot area. What are we looking at right here?

22 A. We would be looking at a white dually truck, which is
23 similar to what was described by the Meneses.

24 Q. And I need to ask you, you are referring to it as a
25 dually truck. What do you mean by that?

1 A. A dually truck has kind of a dual axel in the back
2 and you can see how the wheel well flares out and it's,
3 you know, a work truck. You can't see it as good in that
4 picture. In some of the other pictures you can see tool
5 boxes and a gas -- something what looks like a fuel tank
6 in the back.

7 Q. Okay. Watching the video, can you tell us where this
8 individual here wearing the white shirt came from?

9 A. Exits the passenger seat of the vehicle.

10 Q. The passenger seat?

11 A. Front passenger seat, yes.

12 Q. Okay. And now as the vehicle pulls around, I'm gonna
13 refer you to the timestamp here in the top right-hand
14 corner. What time is depicted on that video?

15 A. 11:10 AM.

16 Q. On the 17th?

17 A. On December 17th of 2019. Yes, ma'am.

18 Q. And were you able to make out the clothing and general
19 physical description of the driver watching the video?

20 A. It's a heavier set black male with a white T-shirt.

21 Q. And now in Court's Exhibit 4 we see the -- can you
22 tell us if that's the same truck?

23 A. It is the same truck from the previous two stills.

24 Q. Can you tell us what, if anything, appears to be
25 located in the back?

1 A. Yes. There's a white boxy -- I believe it's some kind
2 of fuel tank and then there's a black, I believe it's a
3 toolbox, situated in front of that.

4 Q. And can you tell us what we're looking at here, this
5 area of the truck?

6 A. That would be that rear wheel well that flares out
7 because it's -- the name dually would refer to the -- I
8 guess the dual tires in the back. I'm not really a vehicle
9 person.

10 Q. Can you tell us whether or not that's consistent with
11 the description of Christy Meneses?

12 A. It is.

13 Q. And can you tell us whether or not Christy Meneses had
14 noted any equipment in the back of the truck?

15 A. They did. They described what -- they used -- I think
16 they used the term "construction equipment" in the back of
17 the vehicle.

18 Q. Some type of heavy equipment?

19 A. Heavy equipment.

20 Q. And as the investigator in this case, what can you
21 tell us about this approximate time on the video in
22 relation to the murders?

23 A. It's within a very short time. It's within eleven
24 minutes of the 9-1-1 call and it's probably within fifteen
25 minutes or so of the actual murders themselves.

1 Q. And you've indicated this area here at KJ's is
2 approximately one mile from the crime scene?

3 A. I believe it's actually a touch less, but, yes, it's
4 very close.

5 Q. And then here as to Court's Exhibit 21, what are we
6 looking at here?

7 A. That would be Justin Hopkins entering the store. As
8 you can see, he's wearing a white T-shirt and blue jeans
9 and he's got a very large visible bandage on his face.

10 Q. Okay. And this is actually inside of KJ's?

11 A. It is.

12 Q. All right. And, again, what time is depicted here on
13 the date stamp and time?

14 A. 11:10 AM on December 17th of 2019.

15 Q. All right. And is this a more clear photo than you
16 were able to determine in the parking lot?

17 A. It is.

18 Q. Does this appear to be the individual that got out of
19 the white dually truck?

20 A. It does appear to be one and the same.

21 Q. Okay. And you've indicated the bandage on the face?

22 A. Correct.

23 Q. And you've indicated that ultimately Justin Hopkins
24 was identified as a suspect in the case?

25 A. Correct, he was.

1 Q. First name and last name?

2 A. Yes.

3 Q. And where was he determined to reside in relation to
4 KJ's grocery store?

5 A. Landmark Apartments, which is within walking distance
6 of KJ's.

7 Q. Within half a mile?

8 A. Oh, probably far less than that.

9 Q. Okay. And all of this, in general, you would estimate
10 to be approximately what location to the crime scene again?

11 A. Less than a mile from the crime scene.

12 Q. Okay. Now can you tell us when you made a reference
13 to the witnesses at the scene observing the heavyside black
14 male with the bandage on his face getting into the white
15 dually truck, were you able to develop that person as a
16 potential suspect in the case?

17 A. We did. That individual, we -- once we gained a
18 suspect identity of Justin Hopkins, we were able to present
19 a photo lineup on the morning of December 21st to a subject
20 named Dale Galloway, who actually lived behind the incident
21 location. He was a different witness from the Meneseses
22 and that he had described noticing a black male fleeing
23 after the incident and he accurately selected Justin
24 Hopkins from the photo lineup.

25 Q. Was that your primary lead heading into December 21,

1 2019?

2 A. It was following the late identification. It was --
3 it was very late in the evening on the 20th that we
4 identified Justin Hopkins as a person of interest and then
5 once we were able to -- as early as we could the next
6 morning we presented the photo lineup to Mr. Galloway and
7 he made the selection and at that point Mr. Justin Hopkins
8 became our prime person of interest in this case.

9 Q. Did that also make the truck of interest to law
10 enforcement?

11 A. It made it of extreme interest because we believed the
12 individual that Mr. Galloway described and identified being
13 the same individual the Meneseses observed on the green
14 bicycle, which we later determined was a stolen bicycle, we
15 believed that was one and the same individual getting into
16 a white work truck.

17 Q. Okay. Immediately following the timeframe of the
18 crime?

19 A. Correct.

20 Q. And then when observing this video from KJ's, can you
21 tell us whether or not the vehicle appears to be entering
22 from what direction?

23 A. It appears to be entering from the general direction
24 of Ashland Road, which runs between -- roughly between
25 St. Andrews and Bush River and it's an adjoining street

1 from Woodland Village Apartments.

2 Q. Okay. Now you've indicated that you had the DMV video
3 of them that morning, which you through your investigation
4 determined to be both Hopkins and Cornish. You've also
5 indicated the similarity between the driver of the white
6 dually truck wearing the white shirt. What can you tell us
7 about any additional video evidence that places Cornish and
8 Hopkins together on the afternoon of December 17th?

9 A. Yes, there was also afternoon video from the same
10 Department of Motor Vehicles office off of O'Neil Court,
11 which also showed them together at that same location,
12 which would have been after the murders.

13 Q. You can actually see the two of them inside the DMV
14 together?

15 A. You can.

16 Q. And that's gonna be later on in the afternoon of the
17 17th?

18 A. Yes, that same day.

19 Q. Now you've indicated that during the course of the
20 investigation law enforcement obtained Verizon phone
21 records for Justin Hopkins?

22 A. That's correct.

23 Q. Have you also been able to determine a phone number
24 for Jeremy Cornish?

25 A. We have.

1 Q. And were you able to identify whether -- any message
2 that existed in those Verizon records of Justin Hopkins to
3 or from Jeremy Cornish?

4 A. There were. There were some messages from December
5 17th of 2019.

6 MS. WILSON: No objection for the purposes of this
7 hearing.

8 THE COURT: Thank you. They're admitted.

9 MS. MAYES: And, for the record, Your Honor, there
10 was the notice of evidence regarding the Verizon records,
11 which has been certified.

12 THE COURT: I've seen those in your motion.

13 BY MS. MAYES:

14 Q. Court's 13 and 14, if you could take a look at those?

15 A. Yes.

16 MS. MAYES: We would offer 13 and 14, Your Honor.

17 THE COURT: They're admitted without objection.

18 (Court's Exhibit Numbers 13 and 14, text messages,
19 were admitted for pretrial hearing purposes.)

20 BY MS. MAYES:

21 Q. And based upon your investigation, you determined that
22 these message were sent from the phone of which party to
23 the phone of which party?

24 A. So the messages are indicated as originating from
25 [REDACTED] which would be the phone number associated

1 with Jeremy Cornish.

2 Q. Okay. And were sent to what phone or device?

3 A. They were sent to the phone number of [REDACTED],
4 which was determined to be the phone number of Justin
5 Hopkins.

6 Q. All right. And the date and time of these messages?

7 A. It would be December 17th of 2019. At 1303 hours or
8 1:03 PM in the afternoon.

9 Q. That's when it's actually sent?

10 A. Correct.

11 Q. Now you are familiar with the Verizon records obtained
12 in this case. Can you tell us whether this is Eastern
13 Standard Time having already been converted from UTC Time?

14 A. Yes, this should be Eastern Standard Time.

15 Q. Okay. So if you could convert that for us.
16 Approximately 1:03 PM?

17 A. 1:03 PM.

18 Q. Okay. And now the message is, if could read this
19 content, please?

20 A. Yes, the message content in this case would be "make
21 sure you clean those tools off".

22 Q. All right. And was there another text message
23 immediately following that one?

24 A. Yes, immediately following on the same date of
25 December 17th of 2019 at 1304 PM -- or 1304 hours or

1 1:04 PM, the follow-up message to the previous was "erase
2 these messages".

3 Q. All right. And, again, that is from which device to
4 which device?

5 A. It is from Jeremy Cornish's number to Justin Hopkins'
6 number.

7 Q. Okay. And that's gonna be 1:04 PM?

8 A. Yes.

9 Q. So within a minute of the previous message?

10 A. Correct.

11 Q. Now as a major crimes investigator, are you familiar
12 with the street term "tools"?

13 A. I am.

14 Q. What do you understand that to be?

15 A. It's a common street vernacular used to refer to a
16 firearm.

17 Q. Now having obtained the Verizon records and the KJ's
18 video, were you also able to conduct a phone extraction of
19 Jeremy Cornish's phone?

20 A. Yes, we -- we eventually did obtain a phone extraction
21 from his phone.

22 Q. Okay. And can you tell us whether or not those
23 messages that we just saw pursuant to the Verizon records
24 still existed and were present on the phone of Jeremy
25 Cornish?

1 A. They were not.

2 Q. They had been deleted?

3 A. That would be my professional opinion, was that they
4 had been deleted.

5 Q. Now you also -- I'm gonna move to the bottom portion
6 of the affidavit.

7 MS. WILSON: Move to strike that in his professional
8 opinion they should have been deleted.

9 MS. MAYES: I can rephrase that.

10 THE COURT: Thank you. I'll let you rephrase it.

11 BY MS. MAYES:

12 Q. Did you examine the phone extraction?

13 A. I did examine the phone extraction.

14 Q. Did you see any indication that those messages were
15 still present?

16 A. They were not present on the device.

17 Q. Now looking at the second to last paragraph, there's
18 a reference to Facebook records. Can you tell us whether
19 the Facebook records of Justin Hopkins were also obtained
20 pursuant to this investigation?

21 A. Yes, we did obtain some Facebook records for Justin
22 Hopkins and in those records it was notable that leading up
23 to the date of the murders and shortly followed afterwards
24 he had a Glock-26 firearm and a Taurus .38 Special that he
25 was posting numerous pictures of and attempting to sell.

1 Q. Did that include within forty-eight hours or two days
2 before the murders?

3 A. It did.

4 Q. And you mentioned in your affidavit possession of
5 two handguns consistent with the two suspected calibers
6 identified at the scene. I believe you just made reference
7 to a Glock-26. What caliber was that?

8 A. Glock-26 would be a 9-millimeter and the Taurus .38
9 Special would be obviously a .38 Special.

10 Q. Okay. And having been familiar with the Facebook
11 records, you were able to identify two guns meeting that
12 description?

13 A. We were.

14 Q. You also have a note that when Hopkins was arrested on
15 December 31st he had in his possession some ammunition.
16 What, if anything, can you tell us in that regard?

17 A. Yes. He had some 9-millimeter ammunition that was
18 intact, as well as some .38 Special ammunition and multiple
19 .38 Special spent shell casings.

20 Q. Okay. Now ultimately were you present for the traffic
21 stop that was conducted of Jeremy Cornish on December 21,
22 2019?

23 A. I wasn't present for the initial stop, but I did show
24 up a short time after it was initiated.

25 Q. That is also addressed in your affidavit. The portion

1 that reads this truck also appeared to be consistent with
2 the vehicle driven by Jeremy on 12-21-19 when stopped by
3 law enforcement, so I'm gonna ask you about that. Did you
4 have an opportunity to come out to the roadside?

5 A. I did and I did see the truck in doing so.

6 Q. Now at this point in time, this particular vehicle I
7 think you've indicated had already been described by
8 eyewitnesses at the scene?

9 A. It had.

10 Q. And when it's stopped on December 21st, did you have
11 a chance to examine it yourself?

12 A. I did.

13 Q. Did you have a chance to photograph that truck?

14 A. I did. I did take some photographs of the truck as
15 it was depicted when I showed up for the traffic stop.

16 Q. I'm gonna show you what is State's 5 and 6. Court's
17 Exhibit. Let me rephrase that.

18 MS. WILSON: No objection.

19 THE COURT: Thank you.

20 MS. MAYES: This will be Court's 5, 6 and 17, Your
21 Honor.

22 (Court's Exhibit Numbers 5, 6 and 17, photographs,
23 were admitted for pretrial hearing purposes.)

24 BY MS. MAYES:

25 Q. And, Sergeant Creech, I'm just gonna ask you, do these

1 appear to be the photographs you took there on the night of
2 the 21st?

3 A. They are.

4 Q. Looking here at this document, are you familiar with
5 that item from the Department of Motor Vehicles?

6 A. This would be the photo taken of Justin Hopkins' DMV
7 paperwork from that day.

8 Q. Okay. I'm gonna ask you some more questions about
9 that. First, beginning here with Court's 6, I'm gonna back
10 up and ask you, you have mentioned that the truck was
11 already of interest to law enforcement?

12 A. It was.

13 Q. On the night of the 21st, where was this truck
14 originally observed by law enforcement officer?

15 A. We had officers staged up at Landmark Apartments
16 waiting to execute a search warrant on Justin Hopkins'
17 apartment. While they were doing so, they observed that
18 truck pull up, drop off an individual we believed to be
19 Justin Hopkins. Since we had identified him, but we had
20 not identified an association with a white dually work
21 truck, this vehicle was of extreme interest and so it was
22 imperative that we identify the vehicle and any additional
23 occupants that it had.

24 Q. And is that the traffic stop you're referencing in
25 the affidavit, which occurred on December 21, 2019?

1 A. Yes, it is.

2 Q. So we're days after the crime?

3 A. Yes, ma'am.

4 Q. And you indicated that this is the physical appearance
5 of the truck on that particular date?

6 A. It is.

7 Q. And I'm gonna show you another photograph, which is
8 Court's Exhibit 5. How does this correlate with the truck
9 that was seen and observed in the KJ's video surveillance?

10 A. It appears to be the same vehicle. It's got the same
11 distinct fuel tank right up against the back glass and what
12 appears to be the same black toolbox situated before that.

13 Q. Okay. You were able to observe both of these items,
14 the black toolbox and the fuel tank with the danger sign in
15 that KJ's video?

16 A. I was.

17 Q. And then looking here at the back of the truck,
18 Court's 6, what, if anything, did you observe along the
19 bumper that also appeared to be consistent with the vehicle
20 in that KJ's video?

21 A. There appears to be a bumper sticker that's largely
22 worn off in the lower left corner.

23 Q. That would be here?

24 A. Yes, ma'am.

25 Q. And I'm gonna ask you what is 17, Court's Exhibit 17?

1 A. So this would be DMV paperwork for Justin Hopkins
2 dated December 17, 2019.

3 Q. And it was recovered from what location?

4 A. From inside that work truck that you just showed the
5 photos of.

6 Q. Okay. And the date on this particular item of
7 paperwork?

8 A. December 17th of 2019.

9 Q. Okay. And then whose name is this paperwork in?

10 A. Justin Tyler Ellaree Hopkins.

11 Q. So paperwork for Hopkins dated the date of the crime
12 located in the truck driven by Cornish?

13 A. Yes, ma'am.

14 Q. In addition to all this information, did you also have
15 a chance to locate any items belonging to Justin Hopkins
16 pursuant to his arrest or detainment?

17 A. We did.

18 Q. And what do you recall in that regard?

19 A. He had two bags of property on him. So Mr. Cornish
20 was stopped leaving Justin's apartment after dropping off
21 an individual we believed to be Justin. A short time after
22 that, a small car pulls up and additional officers see
23 Justin getting into that vehicle with two bags accompanied
24 by some unknown occupants and then they then leave and then
25 he's stopped separate and then we recovered two bags and a

1 cell phone associated with -- with that stop that are were
2 belonging to Hopkins.

3 Q. Okay. I'm gonna show you Court's 9 and 10.

4 MS. WILSON: No objection.

5 (Court's Exhibit Numbers 9 and 10, photographs,
6 were admitted for pretrial hearing purposes.)

7 BY MS. MAYES:

8 Q. You're familiar with these items as well?

9 A. I am.

10 Q. Okay. And these items came into the possession of law
11 enforcement on what date looking here at Court's 10?

12 A. December 21th of 2019.

13 Q. Okay. And was there a search warrant also obtained
14 for the bags containing the items?

15 A. There was. There was a search warrant already
16 obtained for the apartment from prior to him leaving the
17 apartment for those bags and then there was an additional
18 search warrant obtained after seizing them from the
19 roadside traffic stop.

20 Q. We're gonna look here at Court's 9 as well. Can you
21 tell us whether these particular clothing items, including
22 the white shirts similar to the white shirts worn by the
23 subjects depicted in the KJ's video, both the driver of
24 that truck and the person that gets out and goes into the
25 grocery store, can you tell us whether these items were

1 submitted to the State Law Enforcement Division for
2 analysis?

3 A. There were.

4 Q. Okay. And I believe there was more than one white
5 shirt.

6 A. There are. There were two right there in the picture.

7 Q. Knowing that law enforcement had these items,
8 including these particular clothing items -- well, let me
9 ask you this. You mentioned the DMV video from that
10 afternoon. When you see the person you believe to be
11 Jeremy Cornish return to the DMV in the afternoon, is he
12 still wearing the white shirt that was worn the morning of
13 the DMV visit and in what appears to be -- the driver
14 appears to be wearing in the KJ's parking lot video?

15 A. I believe in the afternoon DMV video, he's actually
16 wearing a blue jacket, but I do believe -- it does appear
17 to me he's wearing a white T-shirt underneath the jacket.

18 Q. All right. So in the afternoon regarding Jeremy
19 Cornish -- I'm sorry. Not Justin Hopkins, Jeremy Cornish.

20 A. Yes, that's who I was referring to.

21 Q. Was there any indication that the subjects had changed
22 clothes?

23 A. There were not. Other than possibly putting on
24 additional clothes.

25 Q. Okay. Let me show you this particular item. It's

1 gonna be Court's 23.

2 A. Yes, this would be Mr. Cornish in the afternoon at the
3 DMV.

4 MS. WILSON: No objection.

5 THE COURT: They're admitted.

6 (Court's Exhibit Number 23, a photograph, was
7 admitted for pretrial hearing purposes.)

8 BY MS. MAYES:

9 Q. I'm gonna show you what is Court's 23. Was there any
10 indication of a change in clothing for the afternoon DMV
11 visit?

12 A. Yeah, so in this photo he appears to be wearing a
13 different -- he's wearing a blue and white jacket and I
14 misspoke before. I recall him wearing a different shirt
15 underneath. I thought it was a white T-shirt in that case.
16 It's clearly a black and white polo shirt, which would be
17 different from the white T-shirt from that morning.

18 Q. And the time on this particular still shot from the
19 DMV?

20 A. It will be December 17, 2019, at 1419 hours or
21 2:19 PM.

22 Q. Okay. And, again, the bags of Justin Hopkins
23 contained how many white T-shirts?

24 A. Two white T-shirts.

25 Q. And going back to that KJ's video, how were both of

1 the subjects dressed; both the driver and the passenger?

2 A. In white T-shirts.

3 Q. Based on the recovery of those items from the bags of
4 Justin Hopkins on December 21st, can you tell us whether
5 or not swabs from both Hopkins and Cornish would aid in
6 determining who might have worn those white shirts?

7 A. They would.

8 Q. And is that routine -- a routine portion of your
9 investigation to try and do comparison DNA analysis to
10 determine who those shirts might belong to?

11 A. Certainly. In a case like this, we would attempt to
12 get DNA swabs from all significant parties that we had
13 contact with.

14 Q. As well as any other items that were contained in that
15 bag?

16 A. Correct.

17 Q. The bag of Justin Hopkins?

18 A. Yes.

19 Q. Would that include touch DNA swabs from a powdery
20 substance believed to be narcotics also found in the bags?

21 A. Yes, we were interested in a touch DNA analysis of the
22 bags you described.

23 Q. Now going to the final paragraph where you're noting
24 touch DNA swabs from areas in the apartment that the
25 suspects may have had contact with were among the trace

1 evidence collected by crime scene investigators at
2 Bitternut Lane? I'm gonna ask you specifically what items
3 you're familiar with were swabbed inside that residence to
4 obtain touch DNA.

5 A. Yes, I know that --

6 Q. It doesn't have to be every area, but just some of the
7 areas you recall.

8 A. Yes, there were two doors to the residence. There was
9 a front door and then there was a sliding glass door. The
10 interior portion of both doors, the handle areas with the
11 latches were swabbed for DNA.

12 Q. Okay.

13 MS. WILSON: No objection.

14 MS. MAYES: Court's 11 and 12, Your Honor, I believe
15 without objection.

16 THE COURT: Okay. They're admitted.

17 (Court's Exhibit Numbers 11 and 12, photographs,
18 were admitted for pretrial hearing purposes.)

19 BY MS. MAYES:

20 Q. And you recognize both these, Sergeant Creech?

21 A. I do.

22 Q. I'm gonna start here with Court's 12. Can you tell us
23 whether or not there is a dead bolt lock or latch to this
24 door?

25 A. There is.

1 Q. And your understanding is that is what door of the
2 location?

3 A. That is the front door of the apartment.

4 Q. And based upon your knowledge of the investigation,
5 why is it broken?

6 A. So the doors, as you can see the latch is set, which
7 indicates the door would be locked and we learned from
8 first responding deputies the door was locked when they
9 arrived on-scene and they had to force entry into the
10 apartment.

11 Q. So this door had been locked and law enforcement broke
12 it in order to gain entry?

13 A. They did.

14 Q. All right. Now we're gonna look at Court's 11. What
15 are we looking at here?

16 A. The interior of the door. So you can see that the
17 frame is split where they forced it open where the dead
18 bolt was set and the lower portion would be the doorknob
19 and the upper portion would be the dead bolt itself.

20 Q. All right. This particular dead bolt, what is noted
21 here by Marker D that we see?

22 A. Marker D indicates where they took touch DNA swabs of
23 the dead bolt.

24 Q. Okay. Based upon your knowledge of this scene, it
25 having been locked and law enforcement having to gain entry

1 that way, was there an indication that the intruders had
2 actually locked the door?

3 A. That would be our belief. We know the victim fled out
4 the bedroom window, the surviving victim, so we know he
5 didn't go out the front door. So with the front door being
6 locked when law enforcement arrived on-scene, it was our
7 belief that whoever committed the crime locked the door
8 behind them and --

9 MS. WILSON: Judge, I'm gonna object to this.
10 That's total speculation.

11 MS. MAYES: I can ask a few further questions, Your
12 Honor.

13 THE COURT: Yeah, rephrase it.

14 BY MS. MAYES:

15 Q. You have knowledge of the crime scene yourself?

16 A. I do.

17 Q. And it was locked when law enforcement arrived?

18 A. It was.

19 Q. Would that require it to be locked from the inside?

20 A. It would.

21 Q. And you indicate that D is a touch DNA swab from that
22 particular dead bolt or interior door latch?

23 A. That would be correct.

24 Q. And where the victims are concerned, can you tell us
25 where they were located within the residence?

1 A. Yes. Duwan Williams prior to be transported to the
2 hospital was located on the couch, which is just inside
3 that front door to the left, Brant Booker was located in
4 the hallway area a short distance into the apartment before
5 you get to the first bedroom, which is gonna be on the
6 left. Inside that bedroom on the left would be where
7 Branton Booker {sic} was located and then the second
8 doorway, which would be straight down that hallway, would
9 be where Donnovin Haynes was barricaded in his bathroom.

10 Q. Okay. And you mentioned Donnovin Haynes being the
11 witness who was able to escape the location?

12 A. Yes, ma'am.

13 Q. Can you tell us how law enforcement determined that he
14 escaped?

15 A. His front window was opened. From the outside of the
16 apartment you could actually see where the curtain was
17 pulled out.

18 Q. You actually observed the scene yourself?

19 A. I did.

20 Q. And the window for the bedroom of Donnovin Haynes was
21 open?

22 A. Yes, the bed is right up against it and you can see
23 where it has the appearance that somebody had gone out and
24 pulled the curtains with them because the curtains were
25 partially pulled out the window.

1 Q. Okay. And then you indicated that Duwan Williams was
2 in -- on what area?

3 A. He would have been on the couch prior to getting
4 transported from the scene.

5 Q. All right. And Sheldon Livingston was in what area?

6 A. In the first bedroom on the left.

7 Q. Okay. And do you recall the general area in which
8 Branton Booker was?

9 A. Branton Booker was kind of in a common hallway area
10 next to a closet before you get to the first bedroom.

11 Q. Now in addition to these touch DNA swabs, can you tell
12 us whether or not touch DNA swabs was also done on fired
13 shell casings recovered from the scene?

14 A. They would have been, which would be very standard in
15 a case like this.

16 Q. As well as any other areas of interest to law
17 enforcement where the suspects may have touched or handled
18 items as they're inside the residence?

19 A. Correct.

20 Q. And can you tell us whether or not that includes the
21 second point of entry that you noted, being a patio-type
22 door?

23 A. It would be a patio door that looked like it had been
24 manipulated.

25 Q. Knowing that and that touch DNA swabs were collected

1 by CSI investigators, what's the normal procedure for law
2 enforcement if suspects are determined in a case?

3 A. If suspects are determined on a case, it would be very
4 standard practice to ensure that we get standards for those
5 suspects to run against DNA samples in the case, which we
6 had obtained for all three of the victims, Mr. Haynes and
7 even the owner of the bicycle that Mr. Hopkins was seen
8 fleeing the area on.

9 Q. Okay. So to clarify, Donnovin Haynes, who was the
10 survivor who you indicated went out the window, did you
11 obtain buccal swabs on Mr. Haynes?

12 A. I did.

13 Q. For comparison analysis to any touch DNA recovered
14 from the crime scene?

15 A. Actually while at the scene, yes.

16 Q. Can you tell us whether or not autopsy DNA standards
17 were recovered from Branton Booker, Sheldon Livingston and
18 Duwan Williams?

19 A. They were recovered from all three, yes, ma'am.

20 Q. Also for the purpose of comparison analysis?

21 A. Correct.

22 Q. Can you tell us whether or not buccal swabs were
23 obtained from the co-defendant in this case, Justin
24 Hopkins?

25 A. A buccal swab was obtained, yes.

1 Q. For the purpose of comparison analysis?

2 A. Yes, ma'am.

3 Q. And that went to the State Law Enforcement Division as
4 well?

5 A. It did.

6 Q. And then you mentioned the owner of the bike and
7 you're referencing a bike because who is believed to have
8 handled the bike at some point following the crime?

9 A. Justin Hopkins.

10 Q. Okay. Again, potentially while fleeing the scene?

11 A. Correct, according to the statement from the
12 Meneseses.

13 Q. And were buccal swabs also obtained from that bike
14 owner?

15 A. They were.

16 Q. A Mr. Kadhim?

17 A. Yes, ma'am.

18 Q. And submitted to the State Law Enforcement Division
19 for analysis?

20 A. They were.

21 Q. What is the date in which buccal swabs were first
22 obtained from the defendant in this case, Jeremy Cornish?

23 A. The first set is of buccal swabs obtained from
24 Mr. Cornish on this case were on December 23, 2019.

25 Q. Okay. I'm gonna ask you a little bit about that. On

1 December 23, 2019, was Jeremy Cornish in custody?

2 A. He was not.

3 Q. And where did your contact with him take place?

4 A. We asked him if he would be willing to meet with us
5 at the sheriff's department and he voluntarily responded to
6 that location, which would be 521 Gibson Road, Lexington,
7 South Carolina.

8 Q. Okay. Now on that particular date of December 23,
9 2019, did you yet have the KJ's video which shows the
10 person you believed to be Cornish with Hopkins?

11 A. We didn't have the KJ's video, we didn't have phone
12 records and we didn't have the morning video from the
13 Department of Motor Vehicles.

14 Q. Okay. And the Verizon text messages that we saw that
15 are also dated December 17, 2019, at 1:03 PM and 1:04 PM,
16 "make sure you clean those tools off" and "erase these
17 messages", did you have those yet?

18 A. We did not.

19 Q. So at that point in time all of that information was
20 still gonna be obtained as a later time?

21 A. It was.

22 Q. So on December 23rd did you yet consider Jeremy
23 Cornish to be a suspect in the case?

24 A. We didn't. We felt like he knew something about
25 what happened, but we were still largely considering him

1 a potential witness in this case and we were hoping to
2 glean more information from him following the arrest of
3 Mr. Hopkins.

4 Q. And were you attempting -- can you tell us what,
5 if anything, you were attempting to determine regarding
6 who may have had access to that vehicle on the date of
7 December 17th? Is that information that would have been
8 important to you?

9 A. Yes, ma'am.

10 Q. As well as the full whereabouts of Justin Hopkins as
11 they may or may not have been known to Jeremy Cornish?

12 A. Correct. That would have been very important
13 information for us.

14 Q. And at this point in time what did you understand
15 their relationship to be one to another on December 23rd?

16 A. So it was our understanding that they worked together,
17 but that they did have some prior personal history and that
18 Justin referred to Jeremy as his uncle, although that was
19 not -- we were not told that that was an actual blood
20 relationship.

21 Q. You understood them to be co-workers and
22 acquaintances?

23 A. Correct.

24 Q. And that relationship as co-workers, had law
25 enforcement obtained information at this point that they

1 had been together on December 17th, at least in the morning
2 hours, for the purpose of working together?

3 A. Yes, we'd been told that they were working together
4 that morning, but the job site, which would have been at
5 McEntire Air Base, was rained out very -- very early that
6 day. It was a very rainy day that day.

7 Q. Okay. So law enforcement's understanding is that
8 their job had been rained out and at that job is what type
9 of work?

10 A. It was construction work.

11 Q. And how did you go about contacting Mr. Cornish for
12 this interview on December 23rd?

13 A. So I met him briefly on the evening of December 21,
14 2019, after he was initially in contact with law
15 enforcement. I got his phone number from him then and I
16 mentioned to him then that I may reach out to him for
17 further information and he gave me all indication that he
18 would be willing to speak to me at a future date, so when I
19 contacted him on the 23rd he was willing to come and speak
20 with us.

21 Q. And to backtrack a little bit to the 21st, I don't
22 want to get into -- we're gonna have a separate hearing on
23 that, but let me ask you this. Are you aware from your
24 role as an investigator whether or not portions of that
25 interaction with him were recorded?

1 A. I am aware, yes.

2 Q. Are you aware as to whether or not there was consent
3 or what law enforcement would maintain was consent to
4 search the vehicle on the night of 21st?

5 A. That was my understanding when I arrived on-scene,
6 that he consented to law enforcement searching the truck.

7 Q. As well as whether or not he consented to participate
8 in an interview on that night?

9 A. Yes.

10 Q. And on the 23rd when you follow up, did he appear to
11 freely and voluntarily wish to speak with you?

12 A. Yes, he did.

13 Q. And how does he arrive at the Lexington County
14 Sheriff's Department for this interview?

15 A. I'm not sure if he --

16 MR. SWERLING: Your Honor, I just want to make
17 sure. I spoke with Ms. Mayes about -- they're not going
18 into the statement itself as to the voluntariness of it
19 at this point, this is only for the purpose of the DNA.

20 MS. MAYES: Yes, that's correct, Your Honor.

21 MR. SWERLING: We're gonna have a Jackson v. Denno.

22 THE COURT: Right. Afterwards. That's my
23 understanding.

24 MR. SWERLING: Okay.

25 BY MS. MAYES:

1 Q. You indicated that he got to the sheriff's department
2 by what means?

3 A. Honestly, I don't know if he drove himself or he rode
4 with somebody.

5 Q. Well, let me ask you this. Did law enforcement bring
6 him there?

7 A. No, they didn't.

8 Q. Okay. So he got there of his own volition?

9 A. He did.

10 Q. And then the contact with him takes place in what
11 area?

12 A. In one of our interview rooms.

13 Q. And during the course of your contact with him,
14 again, is he placed into custody at any point in that
15 interaction?

16 A. He is not.

17 Q. Is he placed in custody at any point in that
18 interaction?

19 A. He is not.

20 Q. How does he leave that interview?

21 A. He leaves of his own volition once we're -- we're done
22 with the interview.

23 Q. During the course of your contact with him, did you
24 make any type of request?

25 A. I did ask him if he'd be willing to provide us with a

1 buccal swab that we could check against evidence in the
2 case.

3 Q. Okay. And I believe you have a copy of the transcript
4 regarding that interaction?

5 A. I do.

6 Q. And you're aware that there is a motion in this
7 particular case regarding the initial collection of buccal
8 swabs?

9 A. I am aware of that motion, yes.

10 Q. Now during that interaction with him, at any point
11 does he mention an attorney?

12 A. He does mention an attorney shortly after me bringing
13 up the topic of a buccal swab.

14 Q. Okay. And what, if anything, occurred after that?

15 A. So shortly after he mentions an attorney, he then asks
16 us a series of questions, which I didn't proceed to answer,
17 and it appeared that he was immediately reengaging us, so
18 we continued to speak.

19 Q. And what are some of those questions that he posed to
20 you?

21 A. He asked what the DNA swab would prove and he asked if
22 it would establish that he didn't do this and we proceeded
23 to discuss the nature of DNA swabs some more and what it
24 may or may not show us.

25 Q. Okay. Do you recall any statement that he made to you

1 regarding the purpose of DNA?

2 A. Yes, he -- he was insistent that he hadn't done
3 anything and that he had nothing to hide and he expressed
4 to us that he believed his DNA would prove that he was
5 innocent in this matter.

6 Q. Okay. I'm gonna refer you specifically to page 138 of
7 the transcript provided by defense counsel.

8 A. Yes, ma'am.

9 Q. What, if any, questions does the defendant pose to you
10 regarding the general purpose of DNA?

11 A. He asked why would you need DNA from me. I indicate
12 because we're checking DNA at the crime scene.

13 Q. So he poses a question why do you need DNA?

14 A. Correct.

15 Q. And based upon your interaction with him, can you tell
16 us whether or not he limited it to that one question or did
17 he continue to pose questions?

18 A. He mentions the statement that we referenced about a
19 lawyer just after that, but then he then poses the
20 additional questions to us.

21 Q. Which are?

22 A. Which would be right, will this DNA swab prove this
23 here question mark that -- that I didn't do this question
24 mark.

25 Q. Based upon your observations of that interaction --

1 and let me ask you in addition to it being recorded, was it
2 also video recorded?

3 A. It was.

4 Q. Can you tell us whether or not he appeared to engage
5 with you following the reference to the attorney?

6 A. He did. We had a very lengthy back and forth about
7 the matter that was not questioning in nature I would say,
8 but he certainly asked us questions so we continued to
9 speak with him.

10 Q. All right. Ultimately did he provide DNA buccal swabs
11 to you on that date?

12 A. He did.

13 Q. Does that also occur during the process of this
14 interaction with him?

15 A. It does.

16 Q. Based upon all of your observations during the course
17 of this interview after the statement was made regarding
18 an attorney, did that appear to be voluntarily given?

19 A. It did because we weren't pressing the issue. We
20 were just explaining the purpose of it, what it would
21 effectively establish for us, and then we continued to
22 engage as he finally said I will give my DNA up now.

23 Q. And I'm gonna refer you to page 145. What, if
24 anything, does he say on that page of the transcript
25 regarding voluntariness?

1 A. Come on, man, go get it. I -- it's inaudible -- now
2 anyway, so let's go get it. Let's go get it, man.

3 Q. And he's saying that to you?

4 A. Yes, ma'am.

5 Q. In if reference to what?

6 A. The DNA because I would have to leave the interview
7 room to go get a collection kit.

8 Q. And did you do so?

9 A. I did.

10 Q. And when you returned, did you follow through with the
11 collection while also on video?

12 A. I did.

13 Q. At any time did he ask you to stop?

14 A. He did. He discussed it a little bit more before the
15 interview was actually collected.

16 Q. Before the what?

17 A. We -- we just continued to speak leading up to the
18 collection taking place.

19 Q. Did he ever refuse it?

20 A. He did not.

21 Q. Did you ever coerce him in any way to provide the
22 standard?

23 A. I did not.

24 Q. Did you promise him anything in exchange for the
25 standard?

1 A. I didn't.

2 Q. Did you promise him anything regarding charges not
3 being brought if the DNA was not found to match any
4 evidence recovered?

5 A. I did. He asked if his DNA wasn't found if this would
6 just be a blanket elimination for him and I was trying to
7 be very clear with him that it would certainly help towards
8 his innocence -- that he was innocent; however, that, you
9 know, in the greater picture it would take -- that wouldn't
10 be the only factor we would be taking in.

11 Q. So you refused to promise him --

12 A. Correct.

13 Q. -- that a negative DNA match would be mean that he's
14 cleared?

15 A. Correct.

16 Q. And you believe you indicate that to him verbally?

17 A. I did.

18 Q. Okay. Now following the collection of the DNA, what,
19 if any, statements does he make after that during the
20 course of the interview to, once again, indicate the
21 voluntary nature of that DNA standard? I'm gonna refer you
22 to page 164.

23 A. He states toward the end of page 164 I gave you my
24 DNA.

25 Q. And 167?

1 A. Well, just for context, right after he said I gave you
2 my DNA, he then says I'm giving you my story, I have
3 nothing to hide, and then he goes into a lengthy back and
4 forth where he basically says that if he did anything he
5 wouldn't be giving us his DNA, that he has nothing to hide.

6 Q. And page 167, what, if anything, is noted on that page
7 regarding the voluntariness of providing the DNA buccal
8 swab?

9 A. He states that I didn't do that, I know I had nothing
10 to do with that, that's why I gave him my DNA with no
11 problem.

12 Q. All right. So the statement on page 167 is that's why
13 I gave him my DNA with no problem?

14 A. Correct.

15 Q. And, once again, what, if any, observations have you
16 made regarding the voluntary nature of him providing those
17 buccal swabs to law enforcement?

18 A. It appeared to us that once we answered his questions
19 and concerns about the process that he had no objection to
20 giving that to us.

21 Q. And those initial swabs, did they go to the State Law
22 Enforcement Division for analysis?

23 A. They did.

24 Q. Those swabs collected following that interview?

25 A. They did.

1 Q. And can you tell us whether or not they were included
2 in the DNA reports in this case?

3 A. They were.

4 Q. Dating back to 2020 and 2021?

5 A. They were.

6 Q. And then ultimately with the follow-up buccal swab
7 pursuant to the search warrant, can you tell us whether or
8 not that standard also went to the State Law Enforcement
9 Division for analysis?

10 A. Yes, they went to the State Law Enforcement Division
11 the same day they were collected.

12 Q. All right. And can you tell us whether or not you've
13 also received a DNA report from the State Law Enforcement
14 Division regarding the results of that analysis, being the
15 second set of buccal swabs collected pursuant to the search
16 warrant?

17 A. I have.

18 Q. You're familiar with that -- with those DNA findings
19 as well?

20 A. I'm familiar with both findings, yes.

21 MS. MAYES: I beg the Court's indulgence.

22 BY MS. MAYES:

23 Q. Are you familiar with whether or not among the touch
24 DNA swabs that went to SLED for analysis it included that
25 interior door latch that we've already spoken of inside the

1 residence of [REDACTED] Butternut Lane?

2 A. It did.

3 Q. As well as the clothing items from the bags of Justin
4 Hopkins?

5 A. Yes, those -- those were also sent.

6 Q. As well as other touch DNA swabs in this case?

7 A. Correct.

8 MS. MAYES: Nothing further at this time with
9 Sergeant Creech, Your Honor.

10 THE COURT: Okay. Mr. Swerling, let me ask you.
11 It's 2:30. We've been at it an hour and a half. Are
12 you gonna be short or can I give the clerk and the court
13 reporter a -- I'm gonna give them a break. That's what
14 I'm gonna do. I don't even know why I asked.

15 Let's take a quick 10-minute break.

16 Sergeant Creech, you can't speak to anyone. You're
17 still under oath; however, if you have to go to any
18 facilities just don't talk to anyone.

19 THE WITNESS: Thank you, ma'am.

20 THE COURT: Thank you.

21 Ten minutes.

22 (Recess taken at 2:30 PM.)

23 (Back on the record at 2:41 PM.)

24 BAILIFF: All rise. Court's back in session.

25 THE COURT: Be seated.

1 Okay. We're going back on the record. Sergeant
2 Creech, you're still under oath and, Mr. Swerling, are
3 you gonna do the cross?

4 MR. SWERLING: Ms. Wilson.

5 THE COURT: Ms. Wilson.

6 Go ahead, Ms. Wilson. I apologize.

7 MS. WILSON: Thank you.

8 CROSS-EXAMINATION (In-Camera)

9 BY MS. WILSON:

10 Q. Good afternoon, Sergeant Creech. My name is Alissa
11 Wilson. I'm here with Mr. Cornish and the defense team.
12 You're the lead investigator on this case, correct?

13 A. Well, it was Jacob Hendrix, but he left the agency,
14 so I supervised him in the investigation and so de facto
15 I basically became the lead investigator.

16 Q. Okay. And the search warrant that was completed on
17 September 23rd of 2022 for Mr. Cornish's buccal swab was
18 signed by Judge Buck, who's a magistrate judge, correct?

19 A. Yes, ma'am. That's correct.

20 Q. Did you give him any information that was not included
21 in the affidavit? Any oral information?

22 A. I'm sure I did. I always give oral testimony to
23 what's being presented and I'm sure it -- he's had other
24 search warrants on this case, so he knew more about it by
25 then.

1 Q. Do you know what information was given to him that was
2 outside the affidavit?

3 A. I mean, it should cover what's in the affidavit,
4 but I can't tell you that I may not have had additional
5 information just, you know, telling the story just
6 because I've told it so many times. But to try -- in this
7 particular case, no, we tried to keep it focussed to --
8 to this information. We just may have elaborated on some
9 of this information. It wouldn't include like statements
10 from other interviews or interactions or anything like
11 that, if that's what you're asking.

12 Q. Okay. So as far as you're concerned it was basically
13 the information contained in the affidavit?

14 A. Correct. Yes, ma'am.

15 Q. You had previously obtained search warrants from
16 circuit court judges as well in this case, correct?

17 A. Yes, ma'am, for electronic service providers.

18 Q. From Judge McCaslin and McLeod?

19 A. Yes, ma'am.

20 Q. Is there a reason you went to Judge Buck for this
21 particular search warrant instead of one of the circuit
22 court judges?

23 A. So we usually -- usually only use the circuit court
24 judges for things like Google records or phone records.
25 Back in 2019, we were still occasionally using magistrates

1 for those things, but trying to shift over to just using
2 circuit court judges exclusively and so that's why we used
3 them for some of those types of search warrants on this
4 case, but we wouldn't typically go to a circuit court judge
5 for a buccal swab or a phone extraction for example.

6 Q. Okay. Even though it was just collected two weeks
7 prior to trial?

8 A. Correct.

9 Q. And a prior swab had been collected, correct?

10 A. It had.

11 Q. And multiple testing had been completed by SLED on
12 it?

13 A. SLED had completed quite a bit of testing, yes,
14 ma'am.

15 Q. Okay. So what was the need for the second request
16 for a swab?

17 A. I was contacted and made aware that there was a
18 potential issue with the collection that was done on
19 December 23, 2019, so just out of an abundance of caution
20 and due diligence, even though we felt like this was a
21 debatable issue, we still had plenty of time and we went
22 and got a search warrant right then and there and felt
23 like we could remedy the matter because in a case this
24 important it's too important not to do so.

25 Q. And what was the potential issue?

1 A. I was made aware of concerns about a question of
2 whether or not there was voluntariness given the
3 statement's collection on December 23, 2019.

4 Q. And who made you aware of that issue?

5 A. Ms. Mayes did.

6 Q. Okay. Mr. Cornish was represented at the time of
7 this swab, correct?

8 A. I'm not aware that he had representation at the time,
9 no, ma'am.

10 Q. At the time two weeks ago?

11 A. I'm sorry. My mistake. Yes, ma'am.

12 Q. Did you advise his counsel that you were getting a
13 second swab?

14 A. I did not.

15 Q. Did you ask the circuit court for a Schmerber hearing
16 for the second swab?

17 A. I did not.

18 Q. Is there a reason why not?

19 A. I've only ever done one Schmerber hearing in thirteen
20 years and that was initiated by the State. I've done a lot
21 of search warrants for buccal swabs, so that was just more
22 of a standard practice for me.

23 Q. So the affidavit that you presented to Judge Buck
24 provided that you believed the DNA standards obtained from
25 the defendant could establish his presence at the incident

1 location, but you already actually knew the results of the
2 DNA testing, correct?

3 A. Yes.

4 Q. So why didn't you tell Judge Buck that prior samples
5 had been obtained and tested?

6 A. Because we felt in an abundance of caution if there
7 was a question about the consents on December 23, 2019, we
8 didn't want to base probable cause on knowing the outcome,
9 we wanted to present it as we would have if we hadn't known
10 those results because we still -- the probable cause was
11 not dependent on the fact that we knew what those results
12 were from the previous round of testing, if that makes
13 sense.

14 Q. So you don't think he should have been provided the
15 information that a swab had already been taken and testing
16 had already been completed?

17 A. Well, I -- I told him that this was a -- we were
18 repeating a DNA swab, but I didn't discuss what the results
19 of that swab were.

20 Q. Where did you tell -- you told him that in the
21 affidavit?

22 A. No, that would have been explaining why we were
23 doing the buccal swab so far out from the incident and I
24 explained to him that we were addressing the issue that
25 there was a question under a previous swab collection. I

1 didn't tell him that the DNA -- what those prior DNA
2 results were because I didn't want to influence his
3 decision on that.

4 Q. So you orally told him that swabs had already been
5 completed?

6 A. Yes.

7 Q. So when I asked you that previously, you failed to
8 mention that?

9 A. I maybe just misunderstood.

10 Q. I mean, you don't think that Judge Buck should have
11 known that there could have been -- you told him that
12 there was a potential issue with the voluntariness of the
13 consent?

14 A. I told him there was an issue with the prior
15 collection and that this was determined to be the
16 appropriate remedy, which was to just go ahead and get a
17 search warrant and redo the swabs, and then I explained
18 the probable cause for obtaining the swabs and he had no
19 issue with that.

20 Q. Okay. But you didn't tell him what the potential
21 issue was?

22 A. I don't recall doing that, no, ma'am.

23 Q. Do you think it would have been a better practice to
24 put in your affidavit that there was a potential issue and
25 that prior swabs had been collected without telling him the

1 results of that?

2 A. This affidavit prior to it being presented was
3 reviewed by Ms. Mayes and if she had felt like there was
4 additional information that needed to be included, I would
5 have deferred to her judgment, but --

6 Q. Well, Ms. Mayes isn't the affiant on that search
7 warrant, you are.

8 A. Yes, ma'am, but --

9 Q. So do you think that would have been the better
10 practice?

11 A. I can't say it would have been better or worse. I
12 think it's appropriate as it is.

13 Q. On direct you had mentioned about two -- or you were
14 questioned about two white T-shirts from bags obtained from
15 Justin Hopkins and that part of the, I guess, reason for
16 these new testings were to -- to determine if there was DNA
17 on them that matched anything found at the scene, but these
18 items had already been tested, correct?

19 A. Correct.

20 Q. And actually neither of these shirts contained
21 Jeremy's DNA on them?

22 A. Correct, they don't.

23 Q. In fact, one shirt actually has one of the victim's
24 blood and Justin Hopkins' DNA on it; isn't that true?

25 A. That is correct.

1 Q. So why the -- including these in your affidavit or in,
2 you know, your discussion about probable cause these really
3 aren't even relevant to that because --

4 A. I haven't -- those shirts were not -- Ms. Mayes
5 brought those up in my direct, but we hadn't discussed the
6 relevance of those two white T-shirts at any length prior
7 to that.

8 Q. Well, I mean, the results from the DNA had already
9 shown that they did not contain our client's DNA?

10 A. Correct.

11 Q. So they shouldn't have been included?

12 A. In the first round of testing, yes, ma'am.

13 Q. Actually, in the second round of testing as well;
14 isn't that correct?

15 A. Well, yes, ma'am.

16 Q. So the infer -- on direct you testified a lot about
17 things like the dead bolt and that the fact that it was
18 locked from the inside, how one of the victims escaped out
19 a window, the scene itself --

20 A. Yes, ma'am.

21 Q. -- where the victims were located when police came
22 in, and none of that was provided in the affidavit to the
23 magistrate, correct?

24 A. To go into that kind of detail broke down, no, ma'am,
25 it was not.

1 Q. Also no information was provided about where the touch
2 DNA swabs were found that you testified to on direct?

3 A. No, ma'am.

4 Q. There was also no information provided that the
5 standards were recovered from the victims; isn't that
6 correct?

7 A. Well, that -- that would be implied that we had
8 victims of a homicide and in doing DNA work we always have
9 standards from our victims.

10 Q. But it wasn't -- it wasn't put into the affidavit as
11 well?

12 A. I didn't explicitly state that, no, ma'am.

13 Q. So let's talk about Jeremy's statements on the 23rd --
14 or Jeremy's interview on the 23rd. Isn't it true that he
15 -- he does say to you I'd rather be getting a lawyer
16 involved in here? That's on page 138, line 22.

17 A. He does say that, yes, ma'am.

18 Q. So once he asked for an attorney, as an officer aren't
19 you supposed to stop talking to him at that point once he
20 invoked?

21 A. Well, he wasn't in custody and at the same time I'm
22 still explaining to him -- well, he goes you know what I
23 mean. I simply was addressing his concerns that he was
24 implying that he was worried about some form of trickery
25 and as I was attempting to just explain our stance on that,

1 he then from what we interpreted as reengaged us by saying
2 right, will this DNA swab prove this here question mark
3 that -- that I didn't do this question mark, and then we
4 seem to go on for some time just addressing those questions
5 before he then just says that he'll give us the standard.

6 Q. Well, he actually says I'd rather be getting a lawyer
7 involved in here because I don't, you know, need nothing
8 fishy going on and you say all right and he says you know
9 what I mean. You don't think at that point you should have
10 stopped the -- the interrogation and got -- let him hire
11 counsel?

12 A. Two years ago in hindsight I can certainly see how
13 looking over this it becomes an issue. If we had felt
14 like there was any question of voluntariness at the
15 time, we wouldn't have collected the swab. From my
16 perspective and Detective Hendrix's in that moment we
17 didn't feel like we'd done anything wrong. If we had, we
18 would have remedied this two years ago with a search
19 warrant or a Schmerber if we felt like there was a problem.

20 Q. Well, you obviously feel like there's a problem now
21 because you did go back to get another swab?

22 A. Well, yes, but I was -- I was instructed that that was
23 the path that we were gonna do to make sure there was no
24 issue.

25 Q. So you're admitting that there was a problem here and

1 you should have let -- let him hire an attorney?

2 A. I think it's a debatable issue. There was no -- there
3 was no ill intent or intention to violate anybody's rights
4 in that interaction on December 23, 2019.

5 Q. But you agree that he did ask you for an attorney?

6 A. I would concede that he does say listen, I'd rather be
7 getting a lawyer involved in this here because I don't, you
8 know, need nothing fishy going on.

9 Q. How many times after that did he ask you for an
10 attorney?

11 A. I believe he does mention one one more time to me
12 while I'm in the room.

13 Q. On page 144, I believe he says -- let's see -- line 21
14 through 23; you know, so you guarantee me that I don't need
15 a lawyer present right now for this giving up my DNA?

16 A. Yes. So he's -- he's asking that as a question and we
17 have people ask us things along those lines on a regular
18 basis by people who are not in custody and we tell those
19 kind of people whether they're victims, witnesses, and we
20 get this a lot, that we can't give them legal advice and
21 we're not going to. If he was in custody, it would be a
22 whole different issue. We'd read him his rights right
23 off the bat, but throughout this whole interaction we felt
24 like there was stuff he wasn't telling us, but nobody at
25 the time expected that he was a shooter in that apartment.

1 You know, we thought that at best he was maybe somebody who
2 knew something after the fact and he was scared to come
3 forward, which is one of the reasons we reengaged him on
4 the 23rd having been a few days out after Mr. Hopkins'
5 arrest and maybe he'd feel more comfortable talking if he
6 knew anything and he could tell us. It wasn't until we
7 started to get additional records accumulated in the
8 subsequent days that we realized that his role in this was
9 likely a lot different.

10 Q. Okay. But he had asked you for an attorney now twice
11 and maybe the second question wasn't a direct I want an
12 attorney --

13 A. Yes, I would -- I would argue the first time it's a
14 little bit more direct, but then he reengages us, and then
15 the second time it's a little bit more questionable.

16 Q. Okay. Did you have a conversation with him prior to
17 this meeting, either to him or his uncle, about he asked if
18 he should bring an attorney and was told no?

19 A. I never had a conversation of that nature with him.
20 I did see that that was discussed when I leave the room
21 and going back and watching the video. I don't know what
22 conversation he's referring to, but it wouldn't be a
23 conversation with me.

24 Q. Okay. But you agree he told Detective Hendrix when
25 you left the room that he had asked someone prior to this?

1 A. Yes, and I'll be honest when watching the video I
2 interpret it that he's referring to me, but he doesn't -- I
3 never had that conversation with him and when I come back
4 in the room he doesn't bring it back up.

5 Q. Okay.

6 A. And when we say earlier than that in the conversation,
7 we tell him that we've never lied to him, I would -- I
8 would have hoped that if he'd had some questions about us
9 giving him some kind of false pretenses about anything,
10 that he would have addressed that then, and he didn't, so.
11 That if he had felt like there was some trickery where an
12 attorney was concerned, I'd have hoped that he would have
13 brought it up there.

14 Q. Well, he repeatedly says to you I don't want anything
15 fishy, I don't want you to trick me.

16 A. Correct, he does.

17 Q. He's making those statements, correct?

18 A. Yes. We're telling him that we're not there to trick
19 anybody or to do anything fishy and we just simply try to
20 explain our investigative process and why we're going
21 through the steps we're going through. He actually thanks
22 us at several points in the interview for doing the job
23 that we're doing.

24 Q. Isn't it true that at one point he also said -- you
25 guys were talking about getting his DNA from CODIS because

1 he had been -- his DNA was in CODIS and isn't it true that
2 he said to you he'd prefer if you just got it from CODIS?
3 A. He did, but --
4 Q. And why is that not an option?
5 A. And I don't want to get into stuff I can't explain
6 real well, but it's my understanding -- a laymen's
7 understanding of CODIS that it's just not quite that
8 simple, that we don't just routinely tell them to match
9 individuals in CODIS, that SLED is always gonna want an
10 actual standard to do any kind of DNA comparison.
11 Q. Earlier in the interview isn't it true that he told
12 you he felt pressured? The reference is on page 106.
13 A. Yes, ma'am. If you don't mind giving me a chance to
14 go to that.
15 Q. It says -- lines 18 and 19 and then line 23. He says
16 well, not -- not when you -- when you're being pressured
17 and then later he says I'm saying right now I'm in
18 pressure.
19 A. Which lines do you say, Ms. Wilson?
20 Q. It's 18 and 19 on page 106, and then on the same
21 page, line 23.
22 A. At that time we were -- we were talking about that
23 afternoon DMV visit where he had not mentioned previously
24 that he had seen Mr. Hopkins. My impression going back
25 and watching that that he was basically saying that he

1 was under pressure at the time as far as his initial
2 interaction and that that kind of thing just slipped his
3 mind, you know.

4 Q. Because he felt pressure from you-all questioning him?

5 A. Or I guess nervous certainly from the situation as a
6 whole. Any of the above.

7 Q. You also told him on page 137 that you could have the
8 marshal pick him up; isn't that correct? And that is line
9 -- it's 7 through 12, I guess.

10 A. Uh-huh. I think we're simply just giving the blanket,
11 you know -- I understand in what I do that -- that most
12 people are gonna lie to me about something, whether --
13 regardless of their level of involvement, so I was just
14 simply prefacing that at that point everybody is still --
15 I know that this could go -- people have -- what's the
16 best way to put it? People have fooled me before, so I'm
17 just explaining to him. He says he's innocent, he says
18 he's got nothing to hide, and throughout conversation we
19 just constantly reiterated that well, if you've got nothing
20 to hide, you've got nothing to worry about, which I'll tell
21 anybody; if we do find out you're lying though, this whole
22 -- whole thing could turn into something different and
23 certainly if we ended up -- I hate to just go through this
24 piecemeal.

25 Q. Well, where I'm going with this is you ask -- you tell

1 him you've got some things to -- before you -- you know,
2 before you're gonna call the marshal, you've got some
3 things to address with him, and then the first thing you
4 ask him for is a DNA sample.

5 A. Well, yeah, because it's certainly somewhat of a big
6 overarching act in the investigation. Even though we
7 arrested Justin Hopkins, there's a ton of work to be done
8 on this and so, you know, until that's done there's still
9 a lot we don't understand about what possibly happened and
10 -- and everybody's ultimate role and at that point though
11 we're still hoping that he'll kind of get us closer to the
12 finish line because maybe he just knows something that
13 would help us. We went for days with nothing and then
14 the information about Justin happened very rapidly and we
15 were still kind of in that rapidly developing phase, so
16 we didn't -- I don't think at the time we even realized
17 entirely what we were potentially dealing with as far as
18 what the story would be.

19 Q. Okay. So he -- he's, you know, told the marshals can
20 come pick you up, but you give you us your DNA, you know,
21 maybe they won't have to come; isn't that true?

22 A. Your implying that I threatened him into giving the
23 DNA and if it reads that way, I will agree to disagree,
24 but I would never threaten anybody into complying with an
25 investigation.

1 Q. Okay. Regarding his consent for the DNA, did you ask
2 him to sign a consent form?

3 A. I didn't.

4 Q. Did you read him a consent form?

5 A. I didn't.

6 Q. Did you advise him he had the right to refuse the
7 swab?

8 A. I didn't, but in asking him if he'd be willing to
9 give it, I'm not telling him he has to, so I would assume
10 he would understand that he doesn't have to do that, that
11 that's something he could choose not to do.

12 Q. You'd agree though you didn't tell him he doesn't have
13 to give it?

14 A. I didn't explicitly tell him he didn't have to give
15 it.

16 MS. WILSON: I beg the Court's indulgence.

17 THE COURT: Take your time.

18 BY MS. WILSON:

19 Q. Just a few more questions, Sergeant Creech.

20 A. Yes, ma'am.

21 Q. Just to clarify, on the 23rd you didn't -- at no time
22 prior to that interview did you talk to Jeremy about an
23 attorney whether it was through a phone call or in person?

24 A. I don't recall having any conversation with him about
25 an attorney.

1 Q. Okay. Or his uncle?

2 A. I don't know that I've ever spoke to Mr. Patterson.
3 I know other people involved in the investigation spoke
4 to Mr. Patterson, but I -- I don't believe I ever had any
5 direct dealings with him.

6 Q. Okay. And also when you present to the magistrate for
7 the search warrant, do you do any sort of report about what
8 you told him?

9 A. I don't.

10 Q. You don't do any sort of report?

11 A. Just that I got the search warrant and the date and
12 time. I don't do a lengthy of report about what's being
13 testified to because it's generally represented in the
14 affidavit.

15 MS. WILSON: Okay. No further questions.

16 THE COURT: Any redirect, Ms. Mayes?

17 MS. MAYES: Yes, Your Honor.

18 REDIRECT EXAMINATION (In-Camera)

19 BY MS. MAYES:

20 Q. So, Sergeant Creech, just to go back to the portions
21 of the transcript that were referenced by counsel, when
22 the reference was made to an attorney, did he stop
23 communicating with you?

24 A. He did not.

25 Q. How so? And by "he" I'm referring to Jeremy Cornish.

1 A. He said what he said about the lawyer because he
2 didn't want anything fishy going on. I don't want to get
3 into paraphrasing. He says listen, I'd rather be getting
4 a lawyer involved in this here because I don't, you know,
5 there's nothing fishy going on. I respond all right
6 because you know what I mean question mark.

7 Q. Let me stop you there. When he said the -- made the
8 statement about getting an attorney involved, he said he
9 didn't want anything fishy going on?

10 A. Correct.

11 Q. You responded all right?

12 A. Yes, ma'am.

13 Q. And what did he say in response to that?

14 A. You know what I mean question mark and then I
15 attempted to just explain that nobody was trying to trick
16 him or do anything fishy.

17 Q. Let me ask you this. Was the clarification of the
18 purpose of the DNA swab a question to him? Were you
19 interrogating him at that point?

20 A. I was not.

21 Q. And you clarified the purpose of the DNA swab?

22 A. I did because he then goes on very shortly thereafter
23 that to ask the questions he asked about it and I have
24 with -- with him what I believe is best construed as a
25 clarification dialog with him where we talk back and forth

1 about the issue, but we're not pressing him about the
2 issue.

3 Q. And, again, what question did he pose to you?

4 A. He goes right, will this -- will this DNA prove this
5 here question mark that -- that I didn't do this question
6 mark, and then a short distance later he goes and then
7 it's cleared for me question mark. So he's giving us the
8 indication that the buccal swab is gonna be exculpatory for
9 him and he wants to be done with this investigation based
10 on the results.

11 Q. Did he also initiate further discussion by asking you
12 why the DNA swabs were needed?

13 A. He did. We go on to talk about it a lot.

14 Q. What page does that occur on and what line?

15 A. It's 143. He talks more about needing to be cleared
16 from this, 144 he talks about he'll give his DNA up now.

17 Q. Let me refer you back to page 138.

18 A. 138. Prior to the -- yes, ma'am. He asked why would
19 we need the DNA from him.

20 Q. And was that in response to a question from you?

21 A. Yes, because I'd mentioned that there were several
22 different things in the investigation that we needed to
23 address and one of those things was that he -- would he
24 consent to us getting a cheek swab.

25 Q. Okay. So you asked for consent to get a cheek swab?

1 A. Yes.

2 Q. All right. And then in follow-up to that he states to
3 you what?

4 A. He initially states yeah, I mean, and then I say are
5 you cool with that and he goes of course, yeah.

6 Q. All right.

7 A. And as I attempt to tell him I'm gonna step out of
8 the room to go get one of those kits because I don't
9 like to just get up and go out of the room without an
10 explanation and that's when he stops me and says --
11 expresses his concerns that he doesn't want anything fishy
12 going on.

13 Q. Okay. And makes a reference to the attorney?

14 A. He does.

15 Q. And you say all right?

16 A. Correct.

17 Q. And he states what?

18 A. He states that he feels like he's being targeted. He
19 tells me that he goes to church and that he went to church
20 Sunday. He says he's praying for the young men and the
21 families.

22 Q. All right. So let me stop you right there. After you
23 said all right and he makes the statement about going to
24 church and praying for them and you know what I mean, had
25 you said anything to him to prompt that response other than

1 all right?

2 A. I do not.

3 Q. He states you know what I mean and when you stated on
4 page 139 nobody's trying to do anything, are you able to
5 complete that sentence?

6 A. I'm not. That's when he interrupts me about the
7 statement about church.

8 Q. Okay. And do you clarify to him the purpose of the
9 DNA swabs?

10 A. I do.

11 Q. And does he pose a question to you on page 139?

12 A. He's hoping that the DNA swabs will exclude him
13 because I tell him that if his DNA's not at the scene, it
14 would certainly go toward excluding him, but he's asking
15 for a definitive stance that if his DNA's not at the scene
16 that he's completely excluded and I simply try to explain
17 to him that DNA's one part of the picture, but it's the --
18 the only piece of this that would potentially exclude him,
19 that we're still -- we've got a lot -- again, like I'd
20 mentioned, we have a lot we were still doing. Certainly in
21 the totality of what we were doing, DNA would be one part
22 of that, that overall whole, but DNA was not the only
23 limiting factor here.

24 Q. All right. So on page 139 the question is posed do
25 you know what I mean and then the question is posed will

1 this DNA swab prove this here, that I didn't do this, did
2 you respond to that question that he posed to you?

3 A. I said if your DNA is not at the scene, it would
4 certainly go toward that, yes.

5 Q. Okay. So that is in response to his question?

6 A. Yes.

7 Q. And then at the bottom of page 139, line 24, what, if
8 any, further questions does he pose to you?

9 A. That's when he says and it's over for me then -- or
10 over for me question mark.

11 Q. And did you respond to that question?

12 A. Yes.

13 Q. On page 141, did he pose questions to you about what
14 witnesses at the scene observed?

15 A. Yes, then he starts to ask about the dually truck and
16 he starts asking about cameras at the apartments --

17 Q. Okay.

18 A. -- and he begins to talk more about general
19 information about the case at that point.

20 Q. Based upon the totality of circumstances during the
21 course of this interview, did he appear to be engaging with
22 you?

23 A. From our perspective, yes, he appeared to be engaging
24 and doing so voluntarily and continuing to do so.

25 Q. Did he initiate further discussions following that

1 first reference to an attorney?

2 A. He did.

3 Q. And subsequent references to whether or not he may
4 have wanted an attorney?

5 A. He did.

6 Q. Did he continue to pose questions to you?

7 A. He did.

8 Q. Did you attempt to clarify the purpose of the swab?

9 A. I did.

10 Q. And then ultimately what opinion did you have based
11 upon all of these observations and your interaction with
12 him as to whether or not it was voluntarily given?

13 A. He made some comments towards the end of the interview
14 where he's very clear that he gave us his DNA and is
15 cooperating. Those are certainly -- you know, while we did
16 not directly stipulate to him that he didn't have to do
17 those things or that he had the choice not to do those
18 things, we also didn't tell him that he had to do those
19 things.

20 Q. And you said that he had driven himself there?

21 A. Either he had driven himself or somebody else drove
22 him. I don't -- we weren't waiting on him in the parking
23 lot, we weren't looking out the windows or surveilling. We
24 were just waiting for him to get there.

25 Q. Now this particular interview room, is there anything

1 about it that's different than the room where you would
2 interview any other type of witness in the case?

3 A. We interview victims in those rooms, witnesses,
4 suspects.

5 Q. And ultimately how did he leave that interview?

6 A. He left of his own volition voluntarily. We probably
7 walked him down the hallway just so he could get out of the
8 building in the right direction, but the doors were all
9 unlocked from the interview room all the way out of the
10 building.

11 Q. If he had used the restroom or needed a cigarette
12 break, would you have felt the need to accompany him for
13 any of those purposes?

14 A. Not under those circumstances, no.

15 Q. And he's not arrested until how many days later?

16 A. The 31st, so eight days later.

17 Q. And I believe the full length of the video interview
18 in this particular interaction is how long? Does an hour
19 and a half sound accurate?

20 A. About an hour and a half, hour and forty minutes. No
21 more than that.

22 Q. Is that a normal length of time for interviewing
23 witnesses in case?

24 A. For a case this important that would be very normal.

25 Q. Is that consistent with the timeframe that other

1 witnesses were interviewed such as Donnovin Haynes?

2 A. Yes.

3 Q. And is that location consistent with the location in
4 which other witnesses were interviewed such as Donnovin
5 Haynes?

6 A. I believe I may have interviewed Donnovin on a
7 separate occasion in that same room.

8 Q. Throughout that interaction with him until the time
9 that you collected the swab, did he appear to be initiating
10 further discussion with you?

11 A. He appeared to be.

12 Q. Including questions as to the purpose of it?

13 A. Correct, and if he asked questions I'm gonna oblige
14 him and answer those questions.

15 Q. Now regarding the later review, were you requested or
16 were certain discovery items requested from you if they
17 exist such as a written consent for any DNA swabs?

18 A. If a potential list came through. I'm not saying that
19 couldn't have been part of a request, but if it was I would
20 have said that that was not something that existed and was
21 available.

22 Q. Okay. So ultimately although it was videotaped when
23 he provided the swab to you, he had not actually signed any
24 type of form?

25 A. Correct. I figure a written form doesn't speak to

1 what an audio and video recorded interaction would speak
2 to.

3 Q. Had you received a request from the solicitor's office
4 for any such form if it existed?

5 A. I did.

6 Q. And can you tell us whether or not you responded that
7 there was no form?

8 A. I would have responded, yes, that there was no form.

9 Q. All right. And in response to that, can you tell us
10 about the search warrant that was obtained for the swabs?
11 And specifically I want to ask you laying out that probable
12 cause, why did you feel it important to not mention the
13 original DNA?

14 A. Well, because our probable cause for collecting the
15 DNA was completely -- was not limited to things that he
16 would have told us on the 23rd or later. So if there's a
17 question about debating the voluntariness of that swab on
18 December 23, 2019, I didn't want to murky the matter by
19 establishing probable cause that involved details that may
20 have stemmed from that if there's gonna be a debate over
21 the voluntariness of that, which, you know, while I'll
22 concede that it seems kind of messy, that if we had
23 questioned the voluntariness of it we would have just
24 gotten a search warrant at a later point or if we'd have
25 known there was an issue we would have gotten a search

1 warrant because it doesn't -- the overall probable cause
2 for the search warrant isn't negated, we would had to have
3 regardless, and with him being in custody on this kind of
4 case we would have eventually gotten that in any set of
5 circumstances if we had believed that there was an issue
6 with the consent on the buccal swab.

7 Q. And when you say if we had believed, you're referring
8 to yourself and Detective Hendrix?

9 A. Yes.

10 Q. Who also took part in the video?

11 A. He did.

12 Q. And you had a chance to go back and review that video
13 for purposes of documenting in your supplemental reports?

14 A. Yes.

15 Q. And let me ask you this. When you went back and
16 reviewed the video, even at that time did you consider
17 there to be any issues regarding voluntariness having
18 witnessed it firsthand?

19 A. No, I didn't. If I had felt like there was an issue,
20 I certainly would have brought -- brought it up prior to,
21 but the whole thing's on video, so it's not like it's
22 anything that anybody's gonna avoid if they know there's
23 an issue. You know, the record is what it is.

24 Q. Okay. So your -- your testimony regarding your belief
25 that it was voluntarily in nature concerns the date that

1 the swabs were collected on December 23, 2019?

2 A. Yes.

3 Q. As well as your follow-up review of the video as well?

4 A. Yes.

5 Q. And then ultimately the solicitor's office requested
6 from you any additional items such as a written consent
7 form that would have been signed by Mr. Cornish?

8 A. Yes, ma'am.

9 Q. And you understand that that does not exist?

10 A. Yes, ma'am. It does not exist.

11 Q. And that you would in court ultimately be relying
12 solely on that video?

13 A. Yes, ma'am.

14 Q. And you're also aware of the acoustics in that
15 particular interview room?

16 A. They're pretty terrible.

17 Q. Has that been an on-going issue?

18 A. It has and we've discussed it with information
19 technology and for whatever reason they haven't addressed
20 the issue.

21 Q. Okay. And so moving forward now to the search warrant
22 on September 23rd, had it been brought to your attention
23 the need for a completely independent separate buccal swab
24 draw from Jeremy Cornish separate from the original swabs?

25 A. Yes, ma'am.

1 Q. And the probable cause laid out in that particular
2 affidavit, Sergeant Creech, is that all of the information
3 or a summary of the information available to you on that
4 particular date that was presented to Judge Buck?

5 A. It is.

6 Q. And if ultimately there were to be a contested issue
7 regarding the voluntariness of the original swabs, what, if
8 anything, would be the significance of leaving that out of
9 this independent probable cause set forth in the search
10 warrant?

11 A. It's the probable cause set forth in the search
12 warrant is based on things that were developed prior to
13 that testimony with him on the 23rd or independently
14 obtained without necessarily needing his testimony after
15 that fact, so it's all information we would have had
16 without his cooperation, which we would have gotten
17 long-term and he would still have been developed as a
18 suspect in the case and we ultimately would have obtained
19 that swab without his cooperation and we would have done
20 so under these -- these circumstances.

21 Q. Okay. And so when you say his testimony on the 23rd,
22 you mean his statement during the course of that video
23 interview on the 23rd?

24 A. Correct. If you're stating that at that point we
25 don't -- if there's any dispute over that being voluntary

1 and an invokement of an attorney, let's avoid any confusion
2 and just set that aside and address what independently
3 gives us probable cause for that buccal swab that doesn't
4 bring that issue into play.

5 Q. Okay. So the contents of that interview on
6 December 23, 2019, were omitted from the affidavit for
7 the search warrant?

8 A. Correct.

9 Q. As well as the results of the original DNA analysis
10 linking Jeremy Cornish to the crime scene?

11 A. Correct. And we also omitted statements that he made
12 on December 31st and in January as well.

13 Q. Okay. December 31st, meaning the date of his arrest?

14 A. Yes, ma'am.

15 Q. Okay. And then going back to -- I believe there is a
16 brief reference about him going to the DMV alone and that
17 statement was made on what date?

18 A. That was initially made on December 21st by two other
19 officers, as well as myself.

20 Q. Okay. And that statement was made, again, pursuant
21 to the vehicle being stopped following leaving Jeremy --
22 Justin Hopkins' residence --

23 A. Yes, ma'am.

24 Q. -- on the night of December 21, 2019?

25 A. That's correct.

1 Q. And was he in custody on that date?

2 A. He was not in custody on that date.

3 Q. And then regarding evidentiary items that would
4 potentially be compared to any buccal swabs from Cornish
5 or Hopkins, did that include touch DNA swabs from the crime
6 scene?

7 A. It did.

8 Q. Regardless of where they were collected in the crime
9 scene. I believe you've noted that it would be items to
10 have been touched or potentially handled by the intruders?

11 A. Correct.

12 Q. And does that also include comparison analysis to
13 other physical evidence items?

14 A. It did.

15 Q. Including the items in the bag of Justin Hopkins?

16 A. Correct. Both profiles had been run against all DNA
17 evidence in the case.

18 Q. And potentially does it include any other physical
19 evidence items which still may be recovered in this case?

20 A. It would.

21 Q. So in an on-going investigation like this, is it
22 possible that other physical evidence items are still out
23 there and may potentially be recovered?

24 A. That is certainly the case.

25 Q. Specifically, have the weapons been recovered in this

1 case?

2 A. The weapons have not been recovered either from the
3 -- and there's questions on some things that may be missing
4 from the apartment that have not been recovered.

5 MS. MAYES: I beg the Court's indulgence.

6 THE COURT: Take your time.

7 BY MS. MAYES:

8 Q. Was he in custody on December 23rd when he provided
9 those buccal swabs to you?

10 A. He was not in custody on December 23, 2019.

11 Q. And based upon the totality of circumstances from your
12 review of the video prior to your request for the swabs,
13 during your request for the swabs and following your
14 request for the swabs, did his consent for those swabs
15 appear to be voluntary?

16 A. It did. If there had been any question about it, we
17 wouldn't have done it.

18 Q. The information in the affidavit submitted to Judge
19 Buck in September of 2022, can you tell us whether or not
20 that contains information completely separate and apart
21 from the results of the DNA swabs collected on December 23,
22 2019?

23 A. It does. It's all information that we would have had
24 independently.

25 Q. Does it also exclude any statements made by Jeremy

1 Cornish during that interview on December 23, 2019?

2 A. It does.

3 MS. MAYES: Nothing further.

4 MS. WILSON: Very briefly, Your Honor.

5 THE COURT: Yes, ma'am.

6 RECCROSS EXAMINATION (In-Camera)

7 BY MS. WILSON:

8 Q. Going through this statement where Jeremy is saying
9 that he's praying for the young men and their families --

10 A. Yes, ma'am.

11 Q. -- the next thing you say to him is I'd love -- I'd
12 love to prove you didn't do this; isn't that correct? Page
13 139, lines 10 and 11.

14 A. Yes, ma'am. That is correct.

15 Q. And then you say to him I'm not trying to trick you?

16 A. That is correct.

17 Q. And the next thing he says is well, will this DNA swab
18 prove this here, that I didn't do this?

19 A. Correct.

20 Q. So basically he has invoked -- he's asked for an
21 attorney and then you tell him I'd love to prove you didn't
22 do this --

23 A. Yes.

24 Q. -- at which point he continues talking to you?

25 A. Through all my interactions with Mr. Cornish, he's

1 a very likeable guy that you'd want to believe despite
2 inconsistencies that had come up. At the time I was still
3 leaning really heavily towards wanting to believe that he
4 could be excluded just based on some cooperation. Like I
5 said, at the time we did not consider him a suspect in the
6 case.

7 Q. Okay. And you did testify that in retrospect his
8 invocation could have been a debatable issue?

9 A. Yeah, in hindsight anybody could be Monday morning
10 quarterbacked. I can see how there's a debate to be had
11 and even though at the time I would argue that if we had
12 had any question from our perspective that voluntariness
13 was an issue, we would not have proceeded with this.

14 Q. And Ms. Mayes mentioned some other items that had not
15 been recovered from the scene. If these items happen to
16 be found, you wouldn't request new DNA swabs for those,
17 correct?

18 A. Not at this point having got the December -- I'm
19 sorry, the September 23, 2022, samples, no, we would not
20 seek additional samples at this point.

21 Q. You would just reuse the samples already provided?

22 A. Correct.

23 MS. WILSON: I beg the Court's indulgence.

24 THE COURT: Take your time.

25 MS. WILSON: That's all, Your Honor. Thank you.

1 THE COURT: Thank you, Sergeant Creech.

2 THE WITNESS: Thank you, ma'am.

3 THE COURT: Can I ask just one question? At the
4 time when you took the statement, you testified he
5 voluntarily came at that point?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: He was not a suspect in this case?

8 THE WITNESS: We knew that he had an affiliation
9 with our suspect we had charged and we felt like he
10 might have known more about that individual's involvement,
11 but we were still all leaning -- everybody that dealt
12 with him really wanted to believe him because he's just
13 that kind of guy, so. And he had given us a bunch of
14 verifiable things; you can pull video for this to prove
15 I'm telling the truth, phone records would prove I'm
16 telling the truth. He --

17 MR. SWERLING: I can't hear you. Can you speak a
18 little louder?

19 THE WITNESS: So because he's giving us all these
20 things that he says will absolutely prove he's telling
21 us the truth, from our perspective it's like well, a
22 person who's got nothing to hide that's says absolutely
23 -- like we can chase all these things down and establish
24 that you are telling us the truth, so we're not used
25 to somebody's who's got something to hide being so

1 forthcoming about phone records and DMV video and things
2 like that that ultimately are what changed our perception
3 on him once we did get those records, but as far as the
4 records that really caused him to be questionable, to
5 change his role in this, we didn't obtain until after
6 December 23rd.

7 THE COURT: Which is the date of this interview?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Okay. Can I let Sergeant Creech down?

10 MS. MAYES: Yes, Your Honor.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 MS. MAYES: Solicitor Hubbard is checking with
14 Mr. Swerling regarding the need for some potential
15 additional witnesses who are here from the State Law
16 Enforcement Division regarding the DNA results and
17 reports.

18 MR. HUBBARD: Your Honor, I have let Mr. Swerling
19 know we have our SLED analyst, DNA analyst. In fact, we
20 have two of them here present, one who did both of the
21 reports in this case, and I wanted to ask what we've
22 just gone through, whether -- with Investigator Creech
23 pertaining to the search warrant and then the prior
24 December 23rd of 2019 where there's consent, if that's
25 just the meat of their argument or if they're also

1 wanting to get into the actual test results because they
2 have brought up the different numbers from the two exams,
3 and we're talking about two different results, and so we
4 have analysts here to explain -- we have some different
5 numbers, but the same result, so we have them here to go
6 through that, and my understanding is they're okay not
7 going into that. They will have questions at trial, but
8 they're not necessarily challenging what SLED has done
9 on either test.

10 MR. SWERLING: Right.

11 MR. HUBBARD: Is that --

12 MR. SWERLING: Right. They're not part of the
13 threshold questions, which we're addressing now. It's
14 all about the testimony so far. As far as the actual
15 tests, that is not subject -- that's not part of our
16 motion.

17 THE COURT: Well, I don't see where it would fit
18 into it unless you-all just want to go into it.

19 MR. HUBBARD: Well, no, there were some questions
20 raised about the different results that was raised. I
21 know it was brought up in your chambers, too, and so
22 we've gone over at length with them about what those
23 numbers mean --

24 THE COURT: Right.

25 MR. HUBBARD: -- but what the ultimate conclusions

1 are, and basically it's -- you know, you're always gonna
2 have some different numbers, but it's the same result.

3 THE COURT: Mr. Swerling, do you have any objection
4 to that?

5 MR. SWERLING: No, Your Honor. The purpose of this
6 hearing was --

7 THE COURT: The voluntariness of him --

8 MR. SWERLING: Right. This was two weeks ago.

9 THE COURT: -- giving his DNA on December 23rd and
10 he asked for a lawyer?

11 MR. SWERLING: Right, and then -- but here's why
12 we are here today about this. There was a test done two
13 weeks ago --

14 THE COURT: Right.

15 MR. SWERLING: -- with more swabs and there was
16 no report, so -- there is a report about the results,
17 but there's no report as to why they felt the need to
18 go ahead and get two additional swabs, and that's what
19 we're trying to find out.

20 THE COURT: Well, they said they did a search
21 warrant and got them --

22 MR. SWERLING: Right.

23 THE COURT: -- because they thought there was a
24 problem with the one on the 23rd about -- am I missing
25 something?

1 MS. WILSON: We didn't know that before today is
2 what I'm saying.

3 MR. SWERLING: We didn't know that.

4 THE COURT: Okay.

5 MR. HUBBARD: It's exactly what I brought up in
6 chambers. We knew this would be a potential issue and
7 without conceding that we knew that that firmer ground
8 is go ahead and get the search warrant, so that's what
9 we had to do.

10 THE COURT: To bypass any squeakiness of whether --

11 MR. HUBBARD: Right. Have a clean record.

12 THE COURT: -- it was voluntary or not voluntary?

13 MR. HUBBARD: Correct. Correct. And that's why
14 nothing from that December 23, 2019, conversation was
15 even mentioned in that affidavit. We didn't want to
16 taint that.

17 THE COURT: Right. I guess my question is, just
18 let me clarify this, on 12-23 you-all said you-all were
19 gonna not mention stuff pertaining, I guess, to this DNA.
20 Is that the shirts and --

21 MR. SWERLING: I'm gonna let Alissa. She's my
22 lawyer.

23 THE COURT: -- or did I -- did I just make that up
24 somewhere?

25 MR. HUBBARD: No. I -- I think what -- what we

1 went into yesterday was on statements that -- that's
2 pertaining to the statements that were taken. Now the
3 DNA, what we were prepared to do, is -- particularly
4 specifically as to the door latch that was brought up
5 here, since they had a question on the numbers, there
6 was a question about -- that's why there was in our
7 mind that we had -- we're gonna have quite a little
8 issue with our SLED chemists because the results were
9 what we saw slightly different, but it's the same
10 ultimate result. The numbers were different, but the
11 same results, and that's why we had them here, but...

12 THE COURT: Okay.

13 MS. MAYES: The significance of the shirts, Your
14 Honor, is that both of the shirts were sent to the State
15 Law Enforcement Division for analysis, the white shirts.
16 Victim Duwan Williams' blood was found on one of the
17 shirts. That shirt was tested for ownership and that's
18 where they're gonna scrape the underarms and the collar
19 to determine who it can be attributed to and it's
20 attributed to Justin Hopkins and that is also evidence
21 we intend to present in this case.

22 THE COURT: You're not objecting to that, are you,
23 Mr. Swerling?

24 MR. SWERLING: Can I think about that? Well --

25 THE COURT: You sure can.

1 MR. SWERLING: Some of this stuff we're just finding
2 out, and I'm not saying there's any fault, but it was
3 just two weeks ago, and we just didn't have anything to
4 go back and look at because there was no report. Now we
5 know what -- now we know we're dealing with.

6 THE COURT: Well, you know, but I've got some
7 questions for you-all because I really don't like the
8 December 23rd interview, okay? I'm not saying how I'm
9 ruling. I'm just trying to get some information from
10 you-all.

11 MR. SWERLING: Sure.

12 THE COURT: You know, somebody asks for a lawyer,
13 you get my attention, but let me ask you this. He's
14 already in CODIS?

15 MR. HUBBARD: Your Honor, there's actually --

16 THE COURT: I mean, if you go with the inevitable
17 rule, why doesn't it come in any way?

18 MS. WILSON: I think they have a chain issue with
19 CODIS.

20 MR. HUBBARD: And I think there were some issues
21 with this trying to put him -- with what we got from the
22 latch, trying to put that in CODIS. I don't know that
23 it's CODIS-qualified. Qualified for a CODIS --

24 THE COURT: For the DNA that you got out of the --

25 MR. HUBBARD: It's a mixture, and although I

1 understood that might be CODIS-eligible, based on what
2 we had at that time, it would not have been, we would
3 have had to develop more stuff to make it eligible, so
4 there's a lot more to it as opposed to just saying
5 well, you've got his DNA's in CODIS. There's actually
6 a different protocol for that and so that's why you're
7 usually not gonna see us ever using that. We're usually
8 gonna go ahead and get search warrant consent and get a
9 clean standard to test for whatever was found at a crime
10 scene, and I think SLED typically prefers that, too.

11 That's a long answer to your very short question.

12 THE COURT: Well, I'm -- you know, I'm just
13 wondering if you go back to fix it, which was what the
14 two-week search warrant was --

15 MR. HUBBARD: Right.

16 THE COURT: -- anybody call the lawyer and say hey,
17 will your guy consent? No?

18 MS. WILSON: No, Judge. No one called us.

19 MR. HUBBARD: Your Honor --

20 THE COURT: I was just curious.

21 MR. HUBBARD: Obviously, you know -- here was our
22 thinking. We can get a search warrant, we can get it
23 rapidly, and the result is not gonna be any different
24 because it's DNA, and so there's no surprise. None of
25 the other things that had been already submitted were

1 resubmitted again. We had two different submissions,
2 Mr. Cornish, Mr. Hopkins, that's it. Just being
3 re-analyzed with what they had, the knowns now, so --
4 and that's it. So you didn't have a whole array of new
5 submissions and all it did was put this issue on solid
6 ground, which we felt that's our duty to you as the judge,
7 to the Court, and ultimately it protects the defendant
8 if there is a variation or if there is something wrong,
9 there it is, it's laid out, and we'll address it. But
10 there was no surprise.

11 And I know Ms. Mayes can get much more into this
12 argument, I don't want to be jumping ahead, but ultimately
13 that's in a nutshell where we are. We saw a potential
14 issue that -- we think we can make a very strong argument
15 that what took place, even though the word "lawyer", which
16 rings a red flag with every attorney that does criminal
17 work --

18 THE COURT: Oh, yeah.

19 MR. HUBBARD: -- but if you also look at the law,
20 we think there's a very clear avenue that Edwards doesn't
21 apply because he's not in custody.

22 THE COURT: Yeah, I just pulled up Edwards just a
23 minute ago. We were reading it.

24 MR. HUBBARD: He's not in custody and so I think
25 that's a prerequisite for that, but why -- why even

1 have that clouded issue there? So basically our position
2 is if Your Honor said well, I think the swabs were
3 voluntarily taken, we're on solid ground, but it's gonna
4 be much more easily challenged because there's clearly
5 the attorney issue brought up, so why don't I just put
6 it on solid ground, a search warrant with an abundance
7 of PC, aside from anything that took place on the 23rd,
8 and that's what we did. And so it's really no surprise,
9 it's the same result, and all the PC that was put in
10 there they already have in their discovery. They've had
11 that. There's nothing new. We took what was known,
12 which is PC, and got a known result because they already
13 had that. This wasn't a new item being tested.

14 THE COURT: Let me hear from you.

15 I'm just wondering. You know, I do Schmerber
16 hearings all day long. Why didn't we do one in this?

17 MR. HUBBARD: Your Honor, we -- we rarely do those.
18 It's just because, you know, the -- the search warrants
19 for scheduling with what we do, generally 99 percent of
20 what we do are search warrants.

21 MS. WILSON: Well, that's our question, Judge. I
22 mean, we -- we did question why a Schmerber hearing
23 wasn't done and why we weren't informed about him being
24 retested. You know, it -- they may have similar results,
25 but we still have to have our own DNA expert review

1 those results, which, you know, when we're provided
2 information ten days before trial, it becomes very
3 busy when you're working with a doctor, an expert.

4 Additionally, you know, we -- we now do have a
5 problem with the new search warrant because although
6 the probable cause may have been similar, we don't
7 believe that by not telling Judge Buck what was going
8 on was appropriate. I don't think you can say that he
9 necessarily would have signed that search warrant if he
10 knew that the reason -- you know, the true reason for
11 the retesting. You know, it was a legal issue. I mean,
12 it wasn't just because they -- you know, the search
13 warrant affidavit makes it sound like this was the first
14 time the DNA was taken and that's not the case. It's not.

15 MR. HUBBARD: Your Honor, basically -- you asked
16 about why not a Schmerber? Well, first of all, by law
17 we're not required to. In South Carolina we can get a
18 search warrant. And as much as -- you've seen how
19 scheduling is here, getting a search warrant, we can get
20 it done. We were two weeks out. We thought we could
21 clear something up and that, again, is not without --
22 that's not conceding that we believe that the first
23 buccal swab -- and now SLED tells me that's how you
24 pronounce it, we've pronounced it a couple of ways --
25 that that was voluntarily done. There was a question

1 about well, could we call them up and get consent for
2 that. Your Honor, if they did that, now knowing what
3 they know because everything's known, everything in the
4 affidavit's known, that's a PCR. That wasn't gonna
5 happen.

6 And then, Judge, why in the world would we tell
7 Judge Buck something and automatically taint our affidavit?
8 If there's a question about the December 23rd, '19,
9 consent, and we put that in the affidavit, we've just
10 wasted our time getting an independent search warrant.
11 We absolutely weren't gonna do that. We would have shot
12 ourselves in the foot before we got out the door to go
13 see Judge Buck.

14 MS. WILSON: They could have advised him that
15 samples had already taken and tested without providing
16 the result if they felt like that was gonna taint the
17 affidavit. He's entitled to know that.

18 MR. HUBBARD: Absolutely not. He's entitled to
19 know is their probable cause in the affidavit, that's
20 it, and we fulfilled that duty.

21 Now I think Sergeant Creech mentioned that this
22 is a second -- second set of buccal swabs, that there's
23 an issue with the first, and didn't go into it, but all
24 a magistrate is concerned with is sergeant, do you have
25 probable cause stated in that affidavit and basically we

1 have the whole case dumped in that affidavit minus the
2 questionable activities from December 23rd of 2019.

3 And, again, I'm jumping ahead. I'm arguing what
4 Ms. Mayes, I think, is much more prepared to argue than
5 me. I'm just kind of jumping in.

6 MS. WILSON: Judge, there also was a lot of things
7 testified to on the stand that are not contained in that
8 affidavit, so, you know, we would ask that you don't
9 consider any of those items outside the four corners of
10 the affidavit.

11 THE COURT: I also read the search warrant, but let
12 me ask you, Ms. Wilson, what's the prejudice to your
13 client if I let this in just on the search warrant alone
14 and suppressed everything from the 23rd, this whole
15 statement?

16 MS. WILSON: What's the prejudice to our client?
17 I mean, I don't believe that this search warrant was
18 -- should have been issued. I mean, they -- the judge
19 did not have all of the information provided to him.
20 So, you know, we -- like I said before, we don't know
21 whether or not he would have signed this knowing that
22 information and I don't see how it taints. I don't see
23 how that taints him by telling him that there was a prior
24 test done and prior DNA results were obtained. I mean,
25 the affidavit states that it's reasonably believed that

1 the DNA standards obtainable from the defendant are
2 relevant to compare against these samples -- the samples
3 taken from the crime scene as they could establish their
4 presence at the incident location. They already knew
5 that. I mean, that's not a true statement in the
6 affidavit.

7 MR. HUBBARD: Your Honor, actually it is true that
8 we believe we can get results, we have, and we know it's
9 not a surprise to the defense because it's not and that
10 all the information in the affidavit is already known,
11 so there's no surprise, and Judge Buck only needs to know
12 what is your probable cause. He doesn't need to know why.
13 If he wanted to know why, you know what, like any judge
14 can go, you know what, Sergeant Creech, why? But we're
15 not deceiving the judge. We're going in with a valid
16 search warrant. There's -- there's no deception here,
17 none at all, but what we clearly have done, too, is not
18 tainted that affidavit. If we're -- Sergeant Creech has
19 already said we drew prior buccal swabs and there's an
20 issue with those. Judge Buck didn't ask what they are.
21 To have gone into it, would be getting into supplementing
22 an affidavit with the very stuff we're trying to keep
23 separate because we don't want to taint the affidavit.

24 THE COURT: I've got it.

25 MR. HUBBARD: Okay.

1 THE COURT: Let me ask you this though, Mr. Hubbard.
2 Everything -- are you-all planning on using anything in
3 this December 23rd statement?

4 MR. HUBBARD: No, Your Honor. If Your Honor's
5 keeping that statement out, I think we were already
6 planning on looking at maybe a little bit --

7 THE COURT: If I suppress everything from where I
8 hear "I want a lawyer on December 23rd" --

9 MR. HUBBARD: What we had planned to do, Your Honor,
10 just from that point on, we had already, and I think we
11 expressed to defense and Your Honor in chambers, we
12 weren't gonna mention anything that was said at that
13 point once that word comes up just to keep a clean record
14 for the same reason we got the search warrant.

15 THE COURT: Right.

16 So then the issue becomes, Ms. Wilson, is whether
17 the affidavit that was presented to Judge Buck was
18 truthful. That's your argument.

19 MS. WILSON: I believe it has a glaring omission.

20 THE COURT: And Mr. Hubbard is trying to clean up
21 the record and -- with a search warrant that states
22 probable cause, even though this guy's DNA -- I know
23 you-all aren't gonna like me saying this, you already
24 have it in CODIS long before this crime.

25 MR. HUBBARD: Right.

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

2 MS. WILSON: Thank you, Judge.

3 MR. HUBBARD: Your Honor, and also, again, not being
4 the one who was prepared to argue this, my co-counsel
5 has said under State v. Chisholm, which for the record
6 is 717 S.E.2d 614, our State Supreme Court case from
7 2011, there's several findings that Your Honor would
8 need to make. There's three of those. Three elements.

9 THE COURT: What's the name of the case?

10 MR. HUBBARD: Chisholm. I'm sorry. It's Jerome
11 Chisholm, C-H-I-S-H-O-L-M.

12 MR. SWERLING: What's the page reference?

13 MS. MAYES: We have copies.

14 MR. HUBBARD: And I will point Your Honor to the
15 record what that is.

16 THE COURT: Please.

17 MR. HUBBARD: Well, I will hand this up to you. That
18 way I'm not just reading it.

19 THE COURT: I always love to know what I need to
20 find.

21 MR. HUBBARD: Down in the right-hand corner, there
22 are three elements that need to be found. Probable cause
23 to believe the suspect has committed the crime. Number
24 two, a clear indication that relevant material will be
25 found. And, three, the method used to secure it is --

1 secure it is safe and reliable.

2 THE COURT: And that's for the DNA, but her -- her
3 argument is more the search warrant itself is what it
4 sounds like to me.

5 MR. HUBBARD: Right, and I'll tell you why I bring
6 this up. In our search warrant we have the Schmerber
7 language at the very end and this is also that Schmerber
8 language.

9 THE COURT: That we're to make part of the search
10 warrant itself.

11 MR. HUBBARD: Right.

12 THE COURT: I got it.

13 MR. HUBBARD: Okay. Thank you, Your Honor. I'm
14 sorry I didn't make that clear first because --

15 THE COURT: Yeah, I was gonna say, okay, but now I
16 understand. It's almost like a two-part finding.

17 MR. HUBBARD: Yes. Yes, Your Honor. Thank you.

18 THE COURT: Okay.

19 MR. HUBBARD: Your Honor, can I put one more thing
20 on the record?

21 THE COURT: You can.

22 MR. HUBBARD: Just so the record is complete, if
23 we had put that prior debatable voluntary consent
24 statement and buccal swab --

25 THE COURT: The December 23rd incident?

1 MR. HUBBARD: Right. We would have been looking
2 at fruit of the poisonous tree if it was put into that
3 affidavit, too, so it would have tainted that affidavit
4 and the search warrant, so I just wanted that on the
5 record, and basically the reason why it's out -- outside
6 of it.

7 THE COURT: Okay. Are we ready to proceed on the
8 next motion?

9 MS. MAYES: Yes, Your Honor.

10 I beg the Court's indulgence.

11 I think, Judge, we decided that we would handle
12 Jackson v. Denno tomorrow since we're gonna have a
13 series of witnesses available on that, as well as the
14 traffic stop, so what we can take up now would be the
15 issue of the excited utterance and the dying declaration.

16 We did present our proposed portions of that to the
17 defense. We have a body cam that is gonna have reference
18 to the excited utterance statement of Donnovin Haynes and
19 then we're going to have a portion of audio that's gonna
20 relate to Duwan Williams.

21 I beg the Court's indulgence.

22 And these involve actual Court's exhibits, Your
23 Honor, so we can go ahead and mark them and present them
24 to you. And that's presuming that the defense doesn't
25 have any objection.

1 THE COURT: Well, let me ask. Is the defense
2 objecting to the dying declaration? I'm just trying
3 to shorten things up here and know what I need to be
4 listening for it.

5 MS. WILSON: No, Your Honor. We're just objecting
6 to the excited utterance.

7 THE COURT: Okay. The excited utterance by
8 Donnovin Haynes, who was the person who jumped out the
9 window, the surviving victim?

10 MS. WILSON: Correct.

11 THE COURT: Can somebody tell me what that statement
12 is so I can be on the lookout for it? Because I didn't
13 see it. All it said was --

14 MS. WILSON: It's actually --

15 MR. HUBBARD: I've got them, Your Honor, here because
16 he -- well, I pulled the wrong file.

17 MS. MAYES: And, for the record, there is no
18 objection then to the dying declaration regarding Duwan
19 Williams that is the audio clip that was submitted for
20 review. We will most likely be offering that, Your Honor,
21 through the testimony of John Donnelly, who is going to
22 be one of the first responders there at the scene. Again
23 for the record, that's going to be audio only. It is not
24 the actual body cam footage that's gonna show him. It's
25 only gonna be the sound of his voice. And then --

1 THE COURT: And we're not playing all of the other
2 stuff that I was informed of yesterday?

3 MS. MAYES: That's correct, Your Honor.

4 THE COURT: Okay.

5 MS. MAYES: Then as to Donnovin Haynes, that is
6 gonna be a --

7 MS. WILSON: Suzanne, we would -- we would object
8 to them playing the audio. Are you saying the officer
9 is testifying to what he said? But we have an objection
10 to playing --

11 MR. SWERLING: No, I'm saying who plays the audio as
12 the person's dying? 403.

13 MS. MAYES: So we'll go ahead, Your Honor, and mark
14 that as a Court's exhibit, that particular audio clip,
15 so the Court is aware of it and what is being offered.

16 And then in addition to that, regarding Donnovin
17 Haynes, we have a -- we have body cam footage that is
18 going to show a portion of him speaking with officers
19 and then it's gonna be redacted so that there's no
20 further audio after he makes his statement, and that
21 would potentially come in through Sergeant Scott Purdy,
22 and we'll have a clip of that to go ahead and mark as
23 a Court's exhibit and play for the Court as well.

24 And then in addition to that, he made some verbal
25 statements to Sergeant Purdy that are not captured on

1 the body cam and Solicitor Hubbard can put on the record
2 what the content of those statements are.

3 MR. SWERLING: These are Donnovin's statements?

4 MS. MAYES: Yes, Donnovin.

5 THE COURT: Let's go back to the dying declaration
6 because that's the part of the motion here. The State
7 wants it in. You're telling me, Mr. Swerling, you-all
8 are not objecting. Not objecting to the dying declaration
9 statement itself, you just don't want the video played?

10 MR. SWERLING: Judge, we don't -- I don't think we
11 have a good faith basis to argue that it was not a dying
12 declaration, but it should come in through the person to
13 whom the declaration was made. I've never seen a video
14 -- I mean, an audiotape played when someone's dying.
15 I've never seen it in fifty years. It's always -- it's
16 always the person to who it was told to saying what the
17 person said in a dying declaration.

18 THE COURT: I'm assuming this is an officer who just
19 happened to have in this new technology way that we're
20 going through a body cam?

21 MS. MAYES: Yes, Your Honor.

22 MR. SWERLING: I can't think of anything more
23 prejudicial than a jury knowing that this is a person
24 who died.

25 MS. MAYES: So under 403, Your Honor, the State's

1 position is that the relevance is it's coming directly
2 from the victim, there's no misinterpretation whatsoever
3 of exactly what that officer heard and that he heard it
4 clearly. He is asking Mr. Williams do you know who shot
5 you and Mr. Williams said "No, not at all. I was asleep",
6 and everything else is redacted.

7 Now there are portions of that where he said I know
8 I'm going to die. He is saying that prior to making that
9 statement. We've redacted that. That was significant
10 because that lays the foundation of it being a dying
11 declaration under law, under 804(b)(2), but with that
12 said, we're only offering the portion where the officer
13 says to him "Do you know who shot you" and he says "No,
14 not at all, I was asleep". We believe that the jury is
15 entitled to hear that directly from him. It lays bear
16 exactly what his knowledge is and that knowledge is he
17 did not see the shooters. We don't want there to ever
18 be any misinterpretation in the mind of the jury as to
19 what he saw, whether there had been any type of
20 confrontation with the intruders prior to being shot.
21 He's literally shot as he's sleeping and this way we
22 don't have to rely on the jury wondering if the officer
23 heard it right, if the officer is paraphrasing. This
24 way the jury knows it's coming directly from Mr. Williams,
25 and that's it. Everything else has been redacted.

1 We will mark that as an exhibit for the Court's
2 consideration. And then also as Mr. Hubbard said, we'll
3 address the excited utterances.

4 MR. SWERLING: We're not objecting to it and the
5 jury has no reason to question it and we don't intend
6 to question him about it. I mean, I cannot imagine
7 anything more prejudicial under 403 than someone -- the
8 jury hearing someone dying.

9 THE COURT: So it sounds to me like you-all would
10 stipulate that that's what he said.

11 MR. SWERLING: No, we're not arguing about that.
12 We can't make it clearer.

13 THE COURT: How about a stipulation and let the
14 officer testify and you-all stipulate and I'll tell the
15 jury that's a true fact. That's exactly what he said.
16 Because other than that, it would be for nothing but
17 effect.

18 MS. MAYES: And, Your Honor, we can agree to that
19 stipulation. We just want to make sure that with it
20 being stipulated to that there won't be any further,
21 I guess, challenge to that statement or to the
22 circumstances surrounding that statement later in
23 argument or otherwise. We're all agreeing that he was
24 shot when he -- when he was asleep.

25 THE COURT: How about that, Mr. Swerling?

1 MR. SWERLING: I just didn't get off the boat.

2 MS. MAYES: We're good.

3 THE COURT: Okay. So we're gonna do a stipulation
4 on the dying declaration. The officer is you-all tell
5 me is gonna testify to it and we are not going to play
6 a video. I think that's a good solution to this. I
7 mean, it happened --

8 MR. LEVENTIS: Or audio.

9 THE COURT: Or audio.

10 MR. HUBBARD: Actually that's all we were gonna do
11 is the audio, but if we have a stipulation, that's the
12 extent of it.

13 MR. SWERLING: It's all good to me.

14 THE COURT: Okay. So I think we're good. And I'm
15 gonna tell you-all in my jury charges when I charge a
16 jury is, and I'll sit there and tell them, this is a
17 stipulation, this is an agreement between the parties,
18 you are to treat this as a true fact, and I'll even go
19 back when I charge them and I tell them this is one
20 stipulation that is a true fact in this case.

21 MR. SWERLING: Okay.

22 THE COURT: I always make a list of that so they'll
23 know.

24 MR. HUBBARD: Thank you, Your Honor.

25 Your Honor, if Your Honor's ready for the next

1 issue, I know I'll move on.

2 THE COURT: Okay. Yeah, now I just -- what I want
3 to know is now we've got the survivor who jumped out the
4 window.

5 MR. HUBBARD: Yes, ma'am.

6 THE COURT: And he made some statements to, I think,
7 the police officer.

8 MR. HUBBARD: Officer Purdy from Lexington County,
9 who was the first responder, Your Honor. Some of what
10 -- initially what he said to Officer Purdy was not on a
11 camera. He did not have a body-worn camera. Another
12 officer comes there moments later --

13 THE COURT: With a camera.

14 MR. HUBBARD: And that's Officer Scott Barber with
15 the body cam and then they work as a team at that point,
16 but the initial thing is when he finds Donnovin Haynes,
17 Donnovin Haynes is outside wearing a pair of pants, no
18 shirt, no shoes. It wet, it's cold, it's December, broad
19 daylight, and Purdy goes to him and this guy says I think
20 someone shot my friends and Purdy asks him the question,
21 why do you think that, and he gives the same response, I
22 think someone shot my friends, and he says where and he
23 points to his apartment, in my apartment, and then he
24 says -- he explains that he was sleeping and he heard
25 what he thought was talking and gunshots inside his own

1 apartment and he hid in his closet and he looked out his
2 bedroom and saw someone lying in the hallway and about
3 that time is when Officer Barber comes up now with his
4 body camera, so the rest of this is on -- on a recording.

5 THE COURT: Okay.

6 MR. HUBBARD: And we have a clip of that, but they
7 ask Mr. Haynes how did anyone get in if that front door's
8 locked because by now they're standing at the doorway to
9 that apartment. Officers are getting ready to go in and
10 they see it's locked and Mr. Haynes said he didn't know
11 it was locked, that he didn't have a key, and that he
12 climbed out his bedroom window. That's how he got out.
13 They're like how did you get here if you didn't come out
14 the front door? And they asked him again is somebody
15 shot inside and he says he thinks there is. What he'll
16 end up testifying, Mr. Haynes, he didn't know who all
17 was still in his apartment. He was asleep, too. He
18 heard gunshots, so he didn't walk through that apartment,,
19 he went out his window. So those are statements that he
20 makes to officers. Officer Purdy's gonna describe him as
21 panicky and -- let me make sure I have his words -- upset
22 and panicky, that's in his report from that incident, and
23 you can also see some of that in the video.

24 I'll also say Donnovin Haynes is the one who once
25 he goes out that window he's the one that calls 9-1-1.

1 So he circles around his building instead of going out in
2 the parking lot, he's afraid to, he makes his way around
3 the building and finally goes up a neighbor's stairwell
4 and uses their phone. He doesn't have his phone and he's
5 the one that calls 9-1-1 and that's why Officer Purdy
6 showed up literally three minutes after that call and so
7 he was --

8 THE COURT: Three minutes after the 9-1-1 call?

9 MR. HUBBARD: Yes, Your Honor.

10 THE COURT: And how long --

11 MR. HUBBARD: Or after the dispatch of the call. I
12 think the dispatch was like 11, he shows up at 11:03. So
13 I just wanted to apprise the Court and the defense if
14 there's any issues with those statements, I didn't think
15 there would be, but if there are I want to put it on the
16 record so if we need to talk through those. And they're
17 in the reports of Officer Purdy and also the body-worn
18 cam of Scott Barber.

19 MS. WILSON: Those are the only statements?

20 THE COURT: Are you-all objecting -- are you-all
21 objecting to that?

22 MR. SWERLING: Judge, could we just take a look at
23 that report again? Mr. Purdy's report. Just so I make
24 sure of the context.

25 THE COURT: Sure.

1 Well, why you-all are discussing this, I'm gonna
2 take a break for everybody else; the clerk, Ms. Stacy.

3 MR. SWERLING: I think we're working through it,
4 Judge. We're working.

5 THE COURT: It will be a probably good idea for
6 you-all to work through this.

7 (Recess taken at 4:15 PM.)

8 (Back on the record at 4:31 PM.)

9 MR. HUBBARD: Sorry, Judge.

10 THE COURT: Are we making progress? I don't want
11 to stand in the way of progress.

12 MR. HUBBARD: I think we're gonna have to argue this
13 -- this point.

14 THE COURT: On the excited utterance?

15 MR. HUBBARD: On the excited utterance, I don't think
16 there was an objection, correct?

17 MR. SWERLING: We're all right with that?

18 MS. WILSON: That's fine.

19 THE COURT: Okay. So --

20 MR. HUBBARD: What we broke into, the next thing,
21 Your Honor --

22 THE COURT: Well, hang on. Let me just make a ruling
23 for the record.

24 MR. HUBBARD: Yes. Yes, Your Honor.

25 THE COURT: So the statement to Officer Purdy and

1 Barber by Donnovin Haynes, you-all have agreed that that
2 is an excited utterance?

3 MS. WILSON: Yes, Judge.

4 THE COURT: Is that right, Ms. Wilson?

5 MS. WILSON: Yes, Judge.

6 THE COURT: Thank you.

7 MR. SWERLING: Yes, ma'am.

8 MR. LEVENTIS: I agree, too, Judge.

9 THE COURT: Thank you-all.

10 Okay. Now what is the next thing that we need to
11 hear? Because I didn't know what it is.

12 MS. MAYES: It has to do with the photographs and
13 the body camera of the scene itself, Your Honor.

14 THE COURT: Okay.

15 MR. HUBBARD: And we had engaged in some
16 negotiations, too, over the video versus some photos.
17 They specifically raised some issues about certain photos
18 of the bodies, which I have law to say these are not
19 inflammatory, I have a purpose for putting them in, and
20 I can get into that, but what we have essentially
21 reverted to is just seeing the video of going through
22 and the officers clearing the house --

23 THE COURT: When they first arrived on the scene?

24 MR. HUBBARD: -- when they first arrive and so what
25 you'll see is you'll see two of the three victims, and

1 one who's still alive, you just see some movement, and
2 then one in the back bedroom showing Livingston who is
3 deceased, but it's very momentary, it doesn't just hover
4 on him, and we can play that and show it to you. But it
5 basically shows them clearing the house and why they had
6 to do what they did and why they weren't rendering aid
7 initially, they had to clear it first, and then when we
8 get to the actual photos -- or if we use this, what I
9 want to be able to show is the probative value and all
10 that, and if you want, I can just go ahead and play this
11 -- this part of going into the house.

12 THE COURT: Now let me ask you this before we do
13 that. The photographs, how many photographs are you
14 talking about --

15 MR. HUBBARD: There were -- not to cut you off,
16 Your Honor, there were multiple photos of inside the
17 house, but three particularly showing three different
18 victims, and I was gonna argue why they're probative and
19 why I should be able to get them in, but we also were
20 looking at this video and then seeing if, all right, if
21 you disagree with those three photos, how about this
22 video.

23 So anyway -- and we can play that video for Your
24 Honor.

25 THE COURT: Okay. Can I see the three photos?

1 MR. HUBBARD: Yes, Your Honor.

2 MS. WILSON: These are the ones we're objecting to.

3 MR. HUBBARD: I'm not sure what was presented up
4 there.

5 MS. WILSON: It's the three bodies.

6 MR. HUBBARD: I'm not sure if they're the ones that
7 I chose out of my photos.

8 MS. WILSON: Those were the ones given to us by
9 you-all.

10 THE COURT: Ms. Mayes, you know, the Court's exhibits
11 that I've got here --

12 MS. MAYES: Yes.

13 THE COURT: -- are we gonna do like we do in the
14 other trials; you're gonna make them as a Court's exhibit
15 and then make them an exhibit?

16 MS. MAYES: Yes, Your Honor, and we'll keep the same
17 numbers if that suits everyone.

18 THE COURT: Does that suit you, Stacy?

19 THE COURT REPORTER: Yes, that's fine.

20 THE COURT: Okay. I just wanted to make -- because
21 I was gonna put these in order so when you came to grab
22 them I'd have them in order.

23 MR. HUBBARD: Your Honor, let me -- I'll show you
24 the three that we have. They may be the same, may not
25 be.

1 All right. As to -- that one's gonna be redacted.
2 As to Court's Exhibit 24 and 26, these are two of our
3 victims. This is Branton Booker in the hallway and this
4 is Sheldon Livingston in his bedroom right next to his
5 bed.

6 THE COURT: Uh-huh.

7 MR. HUBBARD: And then this is also Sheldon
8 Livingston, but what we're gonna do is crop it. So this
9 is for a different purpose. This is no longer coming
10 into the house. This is now CSI where items are found,
11 so there's gonna be a different basis for why we want
12 that photo in, and that's Court's Exhibit 25 for the
13 record. That is --

14 THE COURT: Are you objecting to him cropping this
15 for -- because he's got 6 and 7 to show other items that
16 were found at the crime scene.

17 MR. SWERLING: Yeah, I think as long as it's cropped
18 out and it's just the foot.

19 THE COURT: Okay. We're making progress. So now
20 we're down to two photographs.

21 And what's the objection? He's got elements he's
22 got to prove. He's got -- he's got three dead people.

23 MR. SWERLING: Well, I think -- I think color
24 photographs of bodies are under 403.

25 THE COURT: Well, let's make them black and white.

1 MR. HUBBARD: All right. I can do that, but this
2 guy's gonna disappear. I've got them. That's why.
3 I'll be able to see white here. That's my problem.

4 THE COURT: Can I see that in black and while then?

5 MR. HUBBARD: Yeah, I can show you.

6 MR. SWERLING: I don't know what 6 and 7 are, the
7 exhibits numbers.

8 MR. HUBBARD: You can't see anything there, Your
9 Honor. I mean, I'm pointing to blackness. And here
10 there's so much clutter, it -- it takes away from what
11 you're actually seeing.

12 THE COURT: Well, that I can see pretty well
13 considering this --

14 MR. HUBBARD: The reason why -- well, I can get
15 into my rationale, but if you look at the color you start
16 seeing how it all blends, but that's the only thing. I
17 mean, you really have to focus in on the black and white
18 because there I don't see anything, and I'll put that on
19 my lightest setting.

20 THE COURT: We're not on the record right now,
21 Stacy.

22 THE COURT REPORTER: Okay.

23 (Pause in proceedings.)

24 THE COURT: All right, Stacy. We're gonna go on
25 the record.

1 Glad I could help you-all out.

2 MR. SWERLING: Thank you, Judge.

3 MR. HUBBARD: Your Honor, if it's okay, I'd make a
4 Court's exhibit of the -- both the photos we talked about,
5 the two photos and that video, just in case somebody else
6 wants to look at that some day.

7 THE COURT: That -- that will be fine.

8 MR. HUBBARD: And then I'll do duplicates of these
9 exact things with our stickers on them.

10 THE COURT: Okay. So we're moving on then.

11 Let's me just put this motion to the record. This
12 is the State's memo in support of the admission of the
13 photographic evidence that they have and it's my
14 understanding that both the State and the defense have
15 come to an agreement on this, that two of the photos of
16 the deceased victims, which I think you're gonna show
17 us, Mr. Hubbard, are going -- you-all agreed to have
18 admitted. The third victim we can't admit because he'd
19 been moved.

20 MR. HUBBARD: Correct.

21 THE COURT: And there will -- you will not play the
22 video of the officer walking through the home for I do
23 think from what I've heard about the video would be very
24 prejudicial because two of these victims were still
25 breathing --

1 MR. HUBBARD: Right.

2 THE COURT: -- and I do think under --

3 MR. HUBBARD: Well, I tell Your Honor we did redact
4 that part out just for the record, but what I did do
5 just in accordance with your ruling, I'll make Court's
6 exhibits so if anybody wants to know what you looked at.

7 The video is State's -- or Court's 27, and then the
8 two photographs that we've agree will come, but I went
9 ahead and made Court's exhibits so everybody knows what
10 we were discussing up at the bench, is Court's Exhibit 24
11 and 26.

12 THE COURT: And those were the two photographs?

13 MR. HUBBARD: Of our victims as they were seen when --

14 THE COURT: When they were first discovered?

15 MR. HUBBARD: Correct.

16 THE COURT: Okay.

17 MR. HUBBARD: And then Court's Exhibit 25 is a
18 photograph that we're gonna redact, and that comes in
19 under CSI, and the focus will be on two casings found
20 near the victim, casings -- and there's a Marker 6 and 7.
21 And, again, that's Court's Exhibit 25. So those are in
22 if anybody wonders what we've redacted, what it looked
23 like beforehand.

24 THE COURT: Okay.

25 MR. HUBBARD: And the video, Court's Exhibit 27,

1 I'll redact out because the initial part has some of the
2 excited utterance and it goes up to the point of kicking
3 in the door and I can shut it off there.

4 And I'll tell you what I'll do. I'll make sure I
5 show it to them again once we redact that --

6 THE COURT: Before you play it.

7 MR. HUBBARD: Right.

8 THE COURT: I think that would be a good idea.

9 MR. HUBBARD: And, Your Honor, just -- just for
10 the record for a basis, too, obviously these photos are
11 gonna be relevant to malice where the bodies were found,
12 that they were sleeping. Mr. Sheldon Livingston is found
13 in his bedroom wrapped up in his sheets, fell right by
14 his bed. Mr. Booker, whose DNA's gonna be right at the
15 door, ran down the hall, and then someone in searching
16 through that house, which supports our burglary charge,
17 somebody's ransacking the house after these victims are
18 shot, standing right over him. And we're also gonna note
19 this wasn't just a fatal wound instantly or he would have
20 died at the door. And then Mr. Williams, we'll have
21 testimony, in addition to some other photos showing
22 where he was when he was moved, but that he did not die
23 instantly. He was actually transported to the hospital,
24 but his statement, his dying declaration is "I don't know
25 who shot me. I was asleep".

1 THE COURT: And he was the one on the couch?

2 MR. HUBBARD: Correct. All that goes to the element
3 of malice, which is why under 403 it is, you know, very
4 highly probative and it goes to an element of the charge
5 that's been charged here, murder.

6 THE COURT: And that's how the Court has ruled.

7 I know that the defense wanted the two photographs,
8 which is Court's exhibit right now 24 and 26, which is
9 the photos of the deceased victim in black and white.
10 I've looked at the black and white. I can tell you I
11 tend to lean towards a black and white picture in these
12 types of cases, but I don't believe that it shows the
13 detail that needs to be shown, so I'm gonna tell you in
14 this case I'm gonna allow the colored photos to come in.

15 MR. HUBBARD: Thank you, Your Honor.

16 THE COURT: I don't think the black and white would
17 -- the jury would make sense of it.

18 Okay. So we've gone through the photographs.

19 (Court's Exhibit Number 24, 25, 26, photographs,
20 and Court's Exhibit Number 27, a body cam video, were
21 admitted for pretrial purposes.)

22 THE COURT: All right. Let me move onto -- so I
23 can try to get just a couple of more things done.

24 I've got a State's motion in limine for improper
25 character evidence talking about allegations of

1 gang-related ties.

2 Anybody intend to introduce anything about gangs
3 from the State?

4 MR. HUBBARD: From the State, no, Your Honor. In
5 fact, we checked with our gang expert. Nobody in this
6 case is validated. I think if we were to bring that up,
7 this case would get reversed. It would be character
8 evidence if we were to mention it as to Mr. Hopkins
9 because even though he's not the one on trial right now,
10 by association, I think they would say well, Mr. Cornish,
11 you're basically associating him with a gang, I couldn't
12 do that because Mr. Hopkins, even if he himself admitted,
13 is not validated. Then Mr. Donnovin is the only source
14 to say that he brought up in his conversations that he
15 belongs to a gang, but they can't attribute any criminal
16 activity associated with what he's done and that the only
17 other members are the three dead gentlemen in this
18 apartment with him and they belong to some group out of
19 Manning, but we can't even validate that, and there is no
20 evidence that I know of from law enforcement anywhere in
21 this case that says that this burglary, armed robbery,
22 murder -- three murders, were because of a gang-related
23 issue or that it was a gang-related hit. To us, it just
24 looks like it was a moment of opportunity. There were
25 drugs being sold out by someone in that apartment, drugs,

1 money are available, and it was an opportunity, and so
2 it's not a gang-related hit.

3 THE COURT: Okay. Ms. Wilson.

4 MS. WILSON: We do intend to offer evidence that
5 the victims were all part of this Brim set of Bloods.
6 Donnovin does admit to being a Blood to the police. He
7 admits that the other members of the house were Bloods
8 and that they part of this Brim set.

9 THE COURT: Who admits that? The survivor?

10 MS. WILSON: The survivor.

11 THE COURT: Mr. Haynes?

12 MS. WILSON: Yes. The house is filled with red
13 colors. They were all wearing red when they died, which
14 is a known color of the Bloods. There's red curtains,
15 there's red blankets in the house, and there's red all
16 over the house. As far as it being just the four of them,
17 they're called the Fruit Town Brims. If you Google it,
18 it's actually a well-known Blood set in South Los Angeles
19 and Donnovin actually tells one of the -- in one of the
20 interviews tells the police that he learned about it while
21 he was in California and that's when he became a member
22 of it. So although it may not be a large set here of the
23 Bloods, it is well-known across the nation that this set
24 of Bloods does exist called the Fruit Town Brims.

25 R.J., Rodney Peak, also tells Sergeant Creech that

1 Justin has a gang affiliation. He's a member of the GD's
2 and he also knew the victims to be Bloods, so there's
3 evidence there that there were rival gangs involved.
4 There's some evidence from witnesses that Justin Hopkins
5 may have been involved in a fight outside of the apartment
6 with the members -- the victims just the Saturday prior
7 to the incident, the shooting, that may or may not have
8 been gang related, but we just feel that as far as motive
9 that, you know, there were drugs being sold out of the
10 apartment, there is evidence that they were part of rival
11 gangs, and that the jury has a right to consider those
12 facts when they're determining possible motive and the
13 consideration that someone else may have committed these
14 crimes.

15 THE COURT: Okay. Thank you, Ms. Wilson.

16 MR. HUBBARD: Your Honor, if --

17 MS. WILSON: And actually, Judge, I have a case,
18 Johnson v. State where the Court did let in gang evidence
19 in relation to the defendant, and I can hand up a copy of
20 it.

21 THE COURT: I'd like a copy of if you have it.

22 MR. HUBBARD: I believe you have to see motive and
23 intent. It's absolutely irrelevant here. Your Honor,
24 you would have to speculate that the so-called incident
25 that occurred a month or so before, Donnovin is talking

1 about that, nobody could verify that even happened. It's
2 Donnovin Haynes desperately trying to lay out everything.
3 He says I don't believe this is gang related. That's
4 said repeatedly by him. He thinks it's over drugs and
5 so -- but he is -- they're asking him now do you belong
6 to a group, he admits yes, I do and so do these three
7 other guys, but I don't think it has anything to do with
8 that, we don't have any beef with anybody, we haven't
9 had any problem. You would have to speculate. The jury
10 would be asked to speculate that there's some kind of
11 problem brewing that no officer will be able to testify
12 to and certainly no gang expert's gonna be able to come
13 in here and say I can validate Mr. Hopkins.

14 And here's my concern. We get into all of this and
15 then I've got a PCR because now Mr. Cornish is tainted
16 by running with a gang member. I know I won't be able
17 to -- when I prosecute Mr. Hopkins -- when we prosecute
18 Mr. Hopkins, bring up any gang activity on his part. I
19 can't validate it. It would be reversed.

20 So we've got a number of cases here, too. The first
21 one is State v. Sobers, but I'm just gonna hand up a
22 number of cases, but I think they have to show that it's
23 relevant and that it creates the motive. Your Honor,
24 you'd have to speculate. Right now what we're gonna try
25 to establish is -- the motive is there's drugs there that

1 -- not just marijuana, there's heroin, that's cash, and
2 Mr. Hopkins has that cash with him when he leaves.
3 Mr. Cornish is looking up the street value of that heroin
4 as well. That's our motive. I can't go beyond that.
5 That's what we can prove. Going beyond that is
6 speculating.

7 MS. WILSON: Judge, I'm not sure how much you can
8 take into account what Donnovin says. He also told
9 police that there was a small amount of marijuana in
10 the house and they found over a pound of it in his room.
11 So, you know, things that he was telling the police
12 about gangs and drugs, you know, could have been very
13 downplayed.

14 MR. HUBBARD: And that's true, but then they're
15 relying on him to say that they're all gang members
16 because there's nothing else to say they are. So on one
17 hand he's not credible, but please believe him as to the
18 gangs.

19 MS. WILSON: Well, R.J. says they are, too, and
20 there's red items all over their apartment.

21 MR. HUBBARD: R.J. is a person who may or may not
22 be involved in this case, in this trial. He's a different
23 individual. To let Your Honor know, he's the guy that
24 would be able to sell the heroin to somebody else to make
25 it cash for these guys.

1 MS. WILSON: And also admitted to picking up a rifle
2 taken from the apartment by Justin Hopkins after the fact.

3 MR. HUBBARD: Which they've -- they've objected to
4 us even getting into, so we've said we won't. If they
5 open this door, we're creating a whole -- we can go in
6 big, but I think you're gonna have a very unclean record.
7 We've tried to keep it pristine.

8 But going back to the law, Johnson v. State, this
9 evidence not only has to be admissible for motive or
10 intent, but it can't involve speculation, and I believe
11 that one was handed up as well.

12 MS. MAYES: Yes.

13 THE COURT: What, Johnson v. State?

14 MR. HUBBARD: Right.

15 THE COURT: Yes.

16 MR. HUBBARD: I believe that's the one they handed
17 up.

18 THE COURT: They did.

19 MS. WILSON: Judge, I believe there also may have
20 been some video of a gang initiation on Donnovin's phone
21 that was found.

22 MR. HUBBARD: What was that? I'm sorry.

23 MS. WILSON: There was some video on Donnovin's
24 phone regarding some gang initiation.

25 MR. HUBBARD: Your Honor, they asked him about that.

1 It's not anywhere -- it's remote in time. They -- law
2 enforcement cannot tie it to anything involved in this
3 case.

4 Your Honor, ultimately this comes down to third-party
5 guilt is what they're getting into, and I've got a series
6 of cases including State v. Brown.

7 THE COURT: That was gonna be my next --

8 MR. HUBBARD: I think we're just going down the
9 wrong road. I think the only way we can keep this record
10 clear is actually based on what evidence is known and
11 there's no speculation on the part of the jury.

12 THE COURT: Okay. Anything else? I'm gonna take
13 this under advisement and I'll be ready to rule on it
14 in the morning.

15 Now I've got one more thing. I've got another
16 motion for the co-conspirator or statements that you-all
17 want in, let me get to my motion, which is communications
18 between it looks like several people. Justin Hopkins,
19 Rodney Peak, Cornish, on Facebook. These are
20 co-conspirator statements and they must be in furtherance
21 of the conspiracy.

22 Have you-all looked at all of this with the defense?

23 MS. MAYES: Judge, we have. I think we've actually
24 made a lot of progress in that regard in terms of what
25 we're offering and not offering.

1 THE COURT: Okay. I've got like four things in
2 your motion.

3 MS. MAYES: Yes. So, Judge, first of all, let me
4 say outside of this motion, and I know you've heard
5 already, that surviving witness, Donnovin Haynes, reports
6 to law enforcement that he could hear two voices speaking
7 inside.

8 THE COURT: Right.

9 MS. MAYES: And at some point he hears someone yell
10 "where is it" and at another point he hears someone else
11 yell "I got it", and he's specific that he hears two
12 voices speaking to one another. At one point in time he
13 had taken refuge inside of a closet in his bedroom. His
14 bedroom door is kicked open. After his bedroom door is
15 kicked open, he can hear someone trying to get into the
16 closet where he is taking refuge. He can hear a person
17 who seems to be in another room, not the person who's
18 kicking in the closet door yell "I got it". All of that,
19 Your Honor, we think isn't even what would be a statement
20 in furtherance of a conspiracy. It is, but it meets that
21 exception, but beyond that it's present sense impression.
22 It certainly meets every other type of exception out
23 there. And so, Your Honor, I don't think that there's
24 any objection to that, but I just wanted the record to be
25 clear when we're talking about the fact that Donnovin

1 Haynes hears the two voices.

2 THE COURT: I'll be glad to hear from you,
3 Mr. Swerling.

4 MR. SWERLING: The fact that he's -- well, let me
5 just put my thoughts together on that. He tells the
6 coroner there was one -- I believe he said one voice.
7 Couldn't tell whether there was more than one or not, so
8 that's a contradictory statement. The second thing is
9 in the transcript -- excuse me, Your Honor.

10 Judge, on page 5 of Donnovin Haynes' transcript --
11 Judge, I'm sorry. Can you bear with me one second? I'm
12 getting different...

13 THE COURT: That's okay.

14 MR. HUBBARD: Your Honor, may -- maybe I could take
15 this point in time to address this unless you're doing
16 that now.

17 MS. WILSON: I was just giving her copies.

18 MR. SWERLING: We were gonna give you a copy of the
19 transcript.

20 MS. MAYES: And we don't begrudge their opportunity
21 to impeach the witness on that, but as to where we are
22 about the exception it meets, Your Honor, the State's
23 position --

24 THE COURT: The presence sense, so you're not even
25 going with co-conspirators?

1 MS. MAYES: We can, and we certainly make that
2 argument, Your Honor, they're talking to each other, but
3 it certainly would be presence sense impression outside
4 of that, so I just wanted the record --

5 THE COURT: Furtherance in that they're looking for
6 whatever it is and they found it.

7 MS. MAYES: Yes, Your Honor.

8 THE COURT: And then just the present sense
9 impression?

10 MS. MAYES: Impression. And then, Your Honor,
11 beyond that in the bullet points that I had noted in
12 the motion, we have references to Rodney Peak. I think
13 we've already addressed with the defense that we don't
14 anticipate Rodney Peak necessarily testifying in this
15 trial. I don't think that this even needs to be heard
16 at this point unless or until we were to offer Rodney
17 Peak as a witness. One of the --

18 THE COURT: Perfect. We'll hear it if Rodney Peak
19 decides to testify. Other than that, it's kind of a moot
20 issue, right?

21 MS. MAYES: Yes, Your Honor.

22 THE COURT: Good.

23 MS. MAYES: And I believe that one of the things
24 counsel mentioned in our previous argument was a reference
25 to what we believe is an AK rifle that was stolen during

1 the invasion of this home and that AK rifle was identified
2 by Rodney Peak as a rifle that he saw Justin Hopkins with
3 following the home invasion, we believe it was taken during
4 the home invasion, and eventually that rifle makes its way
5 onto Jeremy Cornish's phone.

6 The reason I'm bringing it up is that there was a
7 defense motion to exclude that, to not get into that
8 rifle that is found in a photograph on the phone of
9 Jeremy Cornish. We had in our preliminary discussions
10 with the defense agreed to not offer that unless the
11 door's opened, but in previous argument I believe counsel
12 indicated that they may be opening the door to that rifle,
13 so I just wanted that to be clear that if that door is
14 opened, then it's gonna open the door to those photos on
15 Jeremy Cornish's phone.

16 THE COURT: All right. So let me get this straight.
17 You're prepared not to say a word about the AK --

18 MS. MAYES: Yes, Your Honor.

19 THE COURT: -- unless they open the door?

20 MS. MAYES: Yes, Your Honor.

21 THE COURT: All right. Mr. Swerling, you want --
22 I thought you-all wanted to keep the AK out.

23 MR. SWERLING: Excuse me, Judge.

24 THE COURT: That's okay.

25 MR. SWERLING: Can we -- can we -- I apologize.

1 I'm sorry. Could we address this -- we seem to have a
2 disagreement and -- can we address this in the morning?

3 THE COURT: We can.

4 MR. SWERLING: I apologize.

5 THE COURT: Yeah, let me -- let me see counsel just
6 for a moment.

7 MR. SWERLING: These co-conspirator statements, we
8 need to get our heads together on that.

9 MS. MAYES: And just to be clear, right now if
10 we're not calling Rodney Peak, then the co-conspirators'
11 statements between Hopkins and Rodney Peak, Your Honor,
12 would not need to be heard at this time.

13 MR. SWERLING: And that's the second blurb, right?

14 MS. WILSON: First and the second one.

15 MR. SWERLING: Okay. So you're talking about the
16 first and the second one.

17 THE COURT: The first one where Hopkins and Cornish
18 -- Peak says he heard Hopkins and Cornish committed the
19 crimes of murder and burglary together.

20 MR. SWERLING: So that's a no-no now.

21 THE COURT: That's a no.

22 MR. SWERLING: And then the second one --

23 THE COURT: The second one is the text message from
24 Hopkins and Cornish.

25 MR. SWERLING: And that's a no unless we go into

1 the AK-47.

2 THE COURT: And that one says "my bookbag with the
3 poles in the truck; if you don't mind, can you pick it
4 up". That sounds like it might be in furtherance of
5 something, but I don't know what poles are.

6 MR. HUBBARD: That's what law enforcement --

7 MS. MAYES: Judge, we're prepared to offer law
8 enforcement on --

9 THE COURT: Okay. So you're going forward?

10 MS. MAYES: Yes.

11 THE COURT: So, Mr. Swerling, you-all need to look
12 at Number 2 --

13 MS. WILSON: Three.

14 MR. SWERLING: No, wait a minute. That's why we're
15 confused. Admission by Justin Hopkins to Rodney Peak
16 is --

17 THE COURT: That's out.

18 MR. SWERLING: Right. That's what I just --

19 THE COURT: Number 2 --

20 MR. SWERLING: That's the second one.

21 THE COURT: -- the second one.

22 MR. SWERLING: That's out unless we bring it up.
23 We can bring it up.

24 MS. WILSON: No, she's saying --

25 THE COURT: I'm sorry. I missed Number 1. Number

1 2's out --

2 MR. SWERLING: And, Judge, it's --

3 THE COURT: And Number 1, isn't that --

4 MS. WILSON: 1 and 2 are out.

5 THE COURT: 1 and 2 are out.

6 MR. SWERLING: But 2 is out unless we bring it up.

7 That's what I understand the State's -- their position

8 is.

9 MS. MAYES: Right.

10 MR. LEVENTIS: Yeah.

11 MS. WILSON: About the rifle.

12 MR. SWERLING: About the rifle.

13 MS. MAYES: About the rifle.

14 MR. SWERLING: Because we may want to go into that

15 about the rifle.

16 MS. MAYES: Then that would be an issue.

17 THE COURT: Yes, because there's also stuff in there

18 that says that Peak said that the defendant and Hopkins

19 committed the murders and the burglary.

20 MR. SWERLING: I'm not saying the whole thing would

21 be admitted. Let me ask you this. Can we take this up

22 if and when we decide?

23 THE COURT: Yes.

24 MR. SWERLING: Okay.

25 THE COURT: Yes, if you-all are gonna cross the

1 line and you think you're gonna go into it, then we can
2 stop. If we need to have an in-camera hearing, we can
3 do that to see what the testimony might be.

4 MR. SWERLING: So we'll advise the Court and the
5 State if we intend to go into that.

6 THE COURT: Right.

7 Is that all right with you, Ms. Mayes?

8 MS. MAYES: It is, Your Honor.

9 Now in addition to that, obviously we have
10 independent evidence of the heroin being found on Justin
11 Hopkins. We also have independent evidence of Justin
12 Hopkins posting photographs on Facebook of two weapons we
13 believe to be consistent with the murder weapons. We can
14 offer that without his communications, again, unless the
15 door's open. He's trying to sell those guns, we intend
16 to offer the evidence that he's posting those guns with
17 an intent to sell them, but in terms of the specific
18 communications we don't intend to offer that at this time.

19 And as to the final bullet, Your Honor, the screen
20 caps of the communications between Cornish and Hopkins,
21 we actually, I believe, are satisfied to proceed with the
22 Verizon text messages from the records of Justin Hopkins
23 between he and Cornish on December 17th and those are
24 gonna start with some very benign messages about pick me
25 up in the morning by Richland Village and then you're

1 gonna see the messages that we've already seen where
2 Cornish tells him "make sure you clean those tools off"
3 and "erase these messages". Those come in regardless
4 because they're statements by the defendant.

5 THE COURT: Right.

6 MS. MAYES: And then ultimately I believe there's
7 a final communication that night just -- in some type
8 of follow-up communication, but where Justin Hopkins
9 and Cornish are communicating that day, we do intend to
10 offer that about their whereabouts, puts them together
11 that day.

12 MR. SWERLING: Judge, here's the thing. They have
13 to lay a foundation under 801.

14 THE COURT: They do.

15 MR. SWERLING: And it's got to be during the course
16 of the conspiracy and in furtherance of the conspiracy.

17 THE COURT: In furtherance, right.

18 MR. SWERLING: And we normally deal a lot with this
19 in Federal court, but it's not just automatically
20 admissible. I mean, that's why --

21 THE COURT: That's right.

22 MR. SWERLING: -- one of the reasons why I don't
23 know we can discuss it in the abstract. We may have to
24 actually take it up when they seek to introduce it. I
25 don't know. Whatever the Court's guidance is, but I

1 don't agree to everything that -- those last three bullet
2 points come in.

3 THE COURT: Okay. I didn't know if there were
4 specific text messages that you were gonna get in,
5 Ms. Mayes.

6 If so, Mr. Swerling, you need to look at them and
7 let me know whether you think they're in furtherance of
8 a crime -- of this crime and I'll be glad to hear you
9 on it.

10 MR. SWERLING: I think some of it just -- I think
11 some of them are not in furtherance of the conspiracy.

12 THE COURT: Clearly it's got to be in furtherance
13 of the conspiracy. You just can't say so and so murdered
14 somebody. That doesn't come in under --

15 MR. SWERLING: 801, I think it is.

16 THE COURT: Right. 801(d)(2)(E) or whatever it is.
17 That's clear with State v. Sims. I've read it. I'm on
18 it.

19 So if there's any text messages, photos, pertaining
20 to the co-conspirators, Ms. Mayes, if you will make sure
21 Mr. Swerling has that and if you've got an objection to
22 it, let me know and we'll -- I'll go back over it with
23 you in the morning, okay?

24 MR. SWERLING: Okay. I mean, I have an idea of what
25 they're offering, but we need to actually talk about it

1 first.

2 THE COURT: Right.

3 MR. SWERLING: Because two photos several days
4 before this incident I don't think is in furtherance of
5 a conspiracy.

6 THE COURT: Well, I guess it all depends on what it
7 says. I don't know what it says.

8 MR. SWERLING: I just want them to have an example
9 of what I'm talking about.

10 THE COURT: And if you-all could talk about it, it
11 might would be good.

12 All right. Now let me see. I think I've gone
13 through everything I think I have.

14 Wait a minute. Let me get to it.

15 All right. Mr. Swerling, let me ask you, I've got
16 a motion to reveal consideration given to the State's
17 witnesses.

18 Ms. Mayes, have you-all complied with giving him
19 anything for any of the witnesses? If you've made any
20 promises or agreements with any of the witnesses to
21 Mr. Swerling.

22 MR. HUBBARD: We've let the defense know that we've
23 made no promises, there's no deals. I think specifically
24 they asked about both Rodney Peak and Donnovin Haynes,
25 and there's no deals, no promises.

1 THE COURT: Okay.

2 MR. HUBBARD: And for the record, there was nothing
3 that I could charge Mr. Peak with anyway and Mr. Haynes,
4 he has marijuana or had marijuana in the house. All of
5 them had marijuana. He's gonna testify they all smoked
6 marijuana and, Your Honor, I've told the defense I'm not
7 gonna prosecute somebody who barely survived being the
8 fourth victim in what was a triple homicide.

9 MR. SWERLING: You're talking about Donnovin?

10 MR. HUBBARD: Donnovin, yes. Did I say --

11 MR. SWERLING: I thought you said Peak, but Peak was
12 an accessory after the fact. They didn't make him any
13 promises as he said, but he's an accessory after the fact
14 because he went and picked up the rifle.

15 MR. HUBBARD: Here's what I would have with Peak.
16 I would have -- as far as picking up the rifle, he goes
17 with Hopkins. His only testimony is gonna be -- he's the
18 only one that says anything about picking up the rifle
19 and what he would say is I have no idea what he picked
20 up. I didn't know until the next day. He was brought
21 into this because he was a middleman. If they were
22 gonna get rid of that heroin, he could find a buyer.
23 They never engaged him. He never did an overt act for
24 a conspiracy. I have nothing. I could not walk -- even
25 if law enforcement brought a charge, I couldn't go to a

1 grand jury with it, so I have nothing on Mr. Peak.

2 THE COURT: Okay. So if anything happens, will
3 you please make sure -- if you decide at the ninth hour
4 to make a deal with somebody, please turn it over to
5 Mr. Swerling.

6 MR. HUBBARD: I absolutely will, Your Honor. Thank
7 you.

8 THE COURT: Thank you.

9 All right. Now I've got a motion to suppress the
10 traffic stop, which we're gonna do in the morning. I
11 think your motion in limine referring to the photos of
12 the guns or -- or gun-related activity, that's what
13 you're gonna look at tonight for the co-conspirators in
14 furtherance of the crime. I think that was part of what
15 the State's motion had laid out that they intend to
16 introduce, so we'll discuss that in the morning.

17 And then I've got the Sprint and T-Mobile records.
18 Do you-all want to address that in the morning?

19 MS. MAYES: Yes, Your Honor. That's fine.

20 THE COURT: And then we've got our Jackson v. Denno
21 in the morning.

22 MS. MAYES: Yes, Your Honor.

23 And also I wanted to put on the record that we
24 provided crime scene photos to the defense. I believe
25 roughly eighteen to twenty-one and the three that you saw

1 earlier and ruled upon were the only three that were
2 objected to, so my understanding is that there isn't a
3 further objection regarding the crime scene photos.
4 Obviously we've got --

5 THE COURT: Right. Now two are coming in and you're
6 cropping one for 6 and 7 that was in the photograph for
7 the scene that you need --

8 MS. MAYES: Yes.

9 THE COURT: -- for your crime lab technicians.

10 MR. HUBBARD: And, Your Honor, I believe I've
11 already got a redacted video of Purdy kicking in the
12 door, coming in the door, but we'll -- I believe you-all
13 -- so when we're done, I can show that to them as well.

14 THE COURT: Okay.

15 All right. Does that cover all the motions?

16 MR. HUBBARD: Until the stop, Your Honor, yes.

17 Yes, Your Honor. I believe so unless the defense
18 has more.

19 THE COURT: Okay. And the stop has did you tell me,
20 Ms. Mayes, four witnesses?

21 MS. MAYES: (Nods head.)

22 THE COURT: I've got Jackson v. Denno. How many
23 witnesses do we have there?

24 MS. MAYES: Your Honor, I believe we're down now to
25 three witnesses and that is gonna include both the stop

1 and the Jackson v. Denno. That is contemporaneous with
2 the stop. So those three witnesses should resolve that
3 issue in the morning. Obviously we've got arguments to
4 go with that and that is gonna incorporate both the
5 traffic stop itself and the statements that are made
6 roadside.

7 THE COURT: Okay. And you-all have the video,
8 Mr. Swerling, of the traffic stop?

9 MR. SWERLING: We have the information we need.

10 THE COURT: Okay.

11 MS. WILSON: There is no video.

12 MR. SWERLING: I mean, there's no recording of that,
13 Judge.

14 MS. WILSON: There's an audio recording.

15 THE COURT: An audio.

16 MR. SWERLING: In the -- from the car.

17 MS. MAYES: So, Your Honor, there's probably about
18 an hour of audio. We have cut that down to a very small
19 portion within the first twenty-seven minutes of the
20 statement that's made roadside. I'd say altogether it's
21 ten minutes or less. We did provide that to the defense.
22 That is the extent of what we would intend to offer.

23 MR. SWERLING: What I meant to say, there's no video.

24 THE COURT: But there's no video of the stop itself
25 is what --

1 MR. SWERLING: As far as I know.

2 MS. MAYES: That's correct, Your Honor.

3 MR. SWERLING: Judge, we have -- we have some
4 argument on the stop and -- which, I mean, it's gonna
5 be based on what our examination of the witnesses are
6 that they put up.

7 THE COURT: Right. We're gonna do that in the
8 morning.

9 MR. SWERLING: Right. And then there's also the
10 statement of the 23rd, which you've heard some testimony
11 about already, which was -- went into the DNA testing
12 where --

13 THE COURT: There's another statement besides
14 Creech and Hendrix on the 23rd?

15 MR. SWERLING: Right, the 23rd, where we say he
16 invoked counsel, so that's a Jackson v. Denno issue, and
17 then the December 31st --

18 THE COURT: Is that what I just heard today though?

19 MR. SWERLING: That was not -- that was not part
20 of the Jackson v. Denno, it was part of the DNA, but it
21 depends on -- we can incorporate it into the record.

22 MS. MAYES: And to clarify, we're not offering that
23 statement at all. We're at a point, I think, where --

24 THE COURT: Because I'm gonna tell you the Court
25 is probably inclined to suppress the 23rd.

1 MR. SWERLING: So the 23rd will be out.

2 THE COURT: I'm not ruling. I'm gonna look.
3 There's one thing else I want to look at, but I'm just
4 inclined right now to suppress the 23rd statement.

5 MS. MAYES: So, Your Honor, that would be the 23rd
6 that -- as I stated, we're not offering anything from
7 that. Of course, for the record, not in custody, he was
8 released. He's gonna be arrested eight days later on
9 the 31st. He is re-Mirandized -- or he's Mirandized,
10 gives a statement. We're not offering that.

11 Now my understanding is the defense does not object
12 to the content of his statement that is made with both
13 Mr. Leventis and Deputy Solicitor Graham present on
14 January 23rd of 2020, so that we would proffer. There
15 would be a fourth witness tomorrow who would just proffer
16 the portions of that statement that we intend to offer.
17 It's not recorded, it's not on video, and my understanding
18 is that's not the subject -- we'll put it on the record
19 for Jackson v. Denno purposes, but it's not being objected
20 to. That's our understanding.

21 THE COURT: Okay.

22 MR. SWERLING: That's our understanding. Judge,
23 though there's four different statements. We just
24 need to put on the record the ones that they're not even
25 gonna put in, the fact that it satisfies Jackson v. Denno

1 because I think the Fourth does require that, so.

2 THE COURT: Right. And you're prepared to go forward
3 with that in the morning?

4 MS. MAYES: Yes, Your Honor.

5 So we have three witnesses regarding December 21st,
6 the roadside noncustodial statement, we have a witness
7 regarding the statements made with counsel present and
8 Deputy Solicitor Graham present January 23rd of 2020,
9 and that's solely to proffer for the record what the
10 intended testimony would be, but my understanding is
11 it's not challenged.

12 THE COURT: And then the -- his statements December
13 the 23rd.

14 MS. MAYES: Which are not being offered and December
15 31st is not being offered.

16 MR. HUBBARD: We're seeking two and taking two out.

17 THE COURT: All right. Well, we'll hear them in the
18 morning.

19 Any other motions? I'm wondering if we're gonna get
20 through this by 2:00. So I'm gonna tell you-all we're
21 gonna start early. 9:00. And, I mean, I want to be
22 ready to go because I don't want a jury waiting. We've
23 already put on the record that -- I mean, on the tape
24 that -- to tell the jurors to report at 2:00, so.

25 MR. SWERLING: We'll get done. We'll get it done

1 (Court's Exhibit Numbers 28 through 35 were marked
2 for identification.)

3 BAILIFF: All rise. Court's now in session. The
4 Honorable Judge Debbie McCaslin presiding.

5 THE COURT: Please be seated.

6 I want to apologize for being late. That is
7 certainly not my style, but I will tell you that I was
8 working on this case.

9 All right. Which motion are we gonna take up first,
10 Ms. Mayes?

11 MS. MAYES: Your Honor, we're prepared to go forward
12 with the traffic stop.

13 THE COURT: Okay.

14 MS. MAYES: And the defense filed a motion regarding
15 that particular -- well, the defense filed a motion and
16 then the State filed and supplied to the Court the
17 response. I believe you have a copy of that as well.

18 THE COURT: I do.

19 You can call your first witness.

20 MS. MAYES: The State calls Captain Jesse Laintz.

21 (Whereupon, Jesse Laintz was duly sworn by the Clerk
22 of Court.)

23 THE CLERK: If you would state your name for the
24 record and spell your you last name.

25 THE WITNESS: Jesse Laintz, L-A-I-N-T-Z.

1 JESSE LAINTZ,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION (In-Camera)

4 BY MS. MAYES:

5 Q. Good morning, Captain Laintz. Tell us a little bit
6 about yourself.

7 A. My name is Jesse Laintz. I'm a captain with the
8 Lexington County Sheriff's Department. As a captain, I
9 oversee investigations, which would include major crimes,
10 gang, narcotics, and I also oversee special operations.

11 Q. All right. And specifically what role did you play
12 in this investigation, being the triple murder of three
13 victims at [REDACTED] Butternut Lane on December 17, 2019?

14 A. I was the captain over investigations at that time
15 and during that time I just oversaw or supervised the
16 investigation.

17 Q. All right. So I want to ask you about that regarding
18 your role as a captain of investigations. First, how
19 frequently were you there at the Department having
20 briefings with the sergeants and other individuals in major
21 crimes following that triple murder?

22 A. Phone conversations were very often and I would say
23 we had an in-person briefing almost daily. We might have
24 missed one on a Sunday.

25 Q. Okay. And when you say almost daily, of course, it

1 happens on the 17th, do you recall whether or not you
2 would have been conferring with major crimes officers the
3 following day through the first twenty-four to forty-eight
4 hours?

5 A. Yes, ma'am.

6 MR. SWERLING: Judge, I'm sorry to interrupt, but
7 if we could get the witnesses sequestered since they're
8 all gonna be testifying about this particular issue? If
9 there are any in the courtroom.

10 THE COURT: Any objection?

11 MS. MAYES: Judge, we have no objection. Present
12 in the courtroom is Sergeant Adam Creech, who is the
13 chief investigating officer, so we ask that he remain
14 in the courtroom throughout the proceedings. In the
15 back, we have Detective Dubard, Detective Pratt, and
16 if Investigator Bishop could just take them to the
17 sequestration room.

18 THE COURT: Okay. Thank you.

19 BY MS. MAYES:

20 Q. All right. So going back to where we were, you
21 were having frequent briefings following this murder on
22 December 17th of 2019?

23 A. Yes, ma'am.

24 Q. Tell us what takes place during the course of these
25 briefings amongst members of the Major Crimes Unit?

1 A. Most of the meetings were meetings in person.

2 Everybody who's involved with the case or people who
3 haven't been involved and are coming to join the case.

4 We brief briefly what's happened and what new evidence
5 happened or what new things have happened since the last
6 meeting.

7 Q. Does that include leads involving potential suspects?

8 A. It does.

9 Q. And leading up to the date of December 21, 2019,
10 we're now four days after the murder. If the murder is on
11 Tuesday, we would be on what day for December 21, 2019?

12 A. A Saturday.

13 Q. So by this time on Saturday, had you yourself as a
14 captain of major crimes reviewed specific leads --

15 A. Yes.

16 Q. -- regarding the development of suspects?

17 A. Yes.

18 Q. Can you tell us whether or not Justin Hopkins had been
19 determined a suspect by this point in the investigation?

20 A. At that point in time he was a suspect.

21 Q. And you had a first name and a last name for Justin
22 Hopkins?

23 A. We did.

24 Q. And you had a residence that Justin Hopkins was known
25 to frequent or stay at?

1 A. Yes, ma'am.

2 Q. What was that residence?

3 A. [REDACTED] -- it was in Landmark Apartments.

4 Q. Take your time.

5 A. It's going to take me a second. I've got to go to
6 another one to look that up.

7 Q. And I'm going to show you a document and ask you
8 whether or not you recognize it. This is marked as Court's
9 Exhibit 31.

10 A. Yes. It is [REDACTED] Landmark Apartments and it is -- [REDACTED] is
11 the apartment number.

12 Q. Okay. [REDACTED]?

13 A. Yes, ma'am.

14 Q. And that apartment complex is known as what?

15 A. Landmark Apartments.

16 Q. What can you tell us, Captain Laintz, about the
17 proximity of Landmark Apartments to the crime scene at
18 [REDACTED] Butternut Lane?

19 A. If you go back out the back end of the apartment
20 complex, it's -- I would say it's within a mile.

21 Q. Are both of these locations within the area of
22 St. Andrews Road?

23 A. They are.

24 Q. And Bush River Road?

25 A. Yes, ma'am.

1 Q. So having a residence that Justin Hopkins, who you've
2 identified as a known suspect, was known to reside at,
3 what, if any, actions did law enforcement take on the date
4 of September 21st --

5 A. So at that point --

6 Q. I'm sorry, December 21, 2019.

7 A. So at that point we had obtained a search warrant, was
8 what was shown to me, to search his residence.

9 Q. Okay. And so what I showed you, Court's 31, that is a
10 search warrant for the location you've identified as Justin
11 Hopkins' home?

12 A. Yes.

13 Q. And looking here at this search warrant, can you tell
14 us at what time it was signed by the magistrate?

15 A. It was signed at 8:30.

16 Q. Okay. 8:30 PM on December 21, 2019?

17 A. Yes. It actually says 2030 on there, which is
18 8:30 PM.

19 MS. MAYES: This would be Court's Exhibit 31,
20 Your Honor, being the search warrant for the residence
21 of Justin Hopkins at Apartment [REDACTED] Landmark.

22 Without objection.

23 THE COURT: No objection?

24 MR. SWERLING: No objection.

25 THE COURT: It's admitted.

1 (Court's Exhibit Number 31, a search warrant, was
2 admitted for pretrial hearing purposes.)

3 BY MS. MAYES:

4 Q. So sufficient probable cause had been developed for
5 the search of Justin Hopkins' home?

6 A. Yes.

7 Q. And you've indicated you had both a first name for him
8 and a last name. Did you also have physical description
9 for Justin Hopkins?

10 A. We did.

11 Q. What was that physical description?

12 A. A large male -- a large black male, shorter hair, not
13 overly long hair, and very heavysset.

14 Q. All right. And the very heavy set was a unique
15 identifier?

16 A. Yes.

17 Q. Were you will familiar having followed these briefings
18 now for several days and being a captain of major crimes,
19 of a statement given by Christy Meneses?

20 A. Yes.

21 Q. All right. And, in general, regarding Christy
22 Meneses, had she seen any suspicious vehicles in the area
23 and any potential suspects related to the crime following
24 the homicides at [REDACTED] Butternut?

25 A. So after the incident occurred, she witnessed a white

1 dually pick-up truck. A male was running away from the
2 incident location and a white dually pick-up truck -- I'm
3 sorry, he was on a bike. The bike stops, he gets into a
4 white dually pick-up truck. She didn't know if it was a
5 Dodge or a Chevy. She said it was just white and had dual
6 tires in the back, and they ended up having to move the
7 bike and then they get back in the car, thus the suspect
8 she saw, and they leave the location.

9 Q. All right. And was she able to estimate a time in
10 which she saw that?

11 A. It was right around 11. She said around 11 AM.

12 Q. And you're familiar with the 9-1-1 call being 10:59
13 in this particular case?

14 A. Yes.

15 Q. And are you familiar with whether or not the location
16 in which Christy Meneses had observed the suspect get into
17 the white dually truck was within the general proximity of
18 Woodland Village?

19 A. It was.

20 Q. Now you mentioned the while dually truck. Did you
21 actually get a written statement from -- did law
22 enforcement have a written statement from Christy Meneses?

23 A. We do.

24 Q. And was she able to give a potential description as to
25 the make or model of that truck?

1 A. She did. She said it was a Dodge or a Chevy that fit
2 the exterior.

3 Q. So Chevy was a possibility?

4 A. Yes.

5 Q. And you mentioned the dually and, of course, again,
6 for the record the dually refers to what?

7 A. A total of four tires in the back; two on each side.

8 Q. Now what, if anything, else did she note about the bed
9 of the truck?

10 A. There was some sort of heavy equipment in the bed of
11 the truck.

12 Q. All right. Had law enforcement taken any measures to
13 potentially locate or identify that vehicle leading up to
14 December 21, 2019?

15 A. So there were two things that we did. After the night
16 of the incident, there were three of us that drove around
17 for about four hours looking for -- there was another car
18 that was brought up and that white dually pick-up truck and
19 then we also reached out to SLED and had SLED -- I'm not
20 exactly sure what it's called, but they get all of the
21 surrounding registered dually pick-up truck, either white
22 or Dodge, I think we got Dodge Ram ones at that point in,
23 time and we were looking for those.

24 Q. Okay. Had you at that point in time been able to
25 locate a white dually truck known to be an occupant's truck

1 at [REDACTED] Butternut Lane or nearby?

2 A. No, we were not.

3 Q. So it was -- or what, if any, interest did law
4 enforcement have in identifying or locating that truck?

5 A. We believed that truck was involved with the -- the
6 incident.

7 Q. Okay. What efforts had law enforcement taken on the
8 night of December 21st? I know you mentioned the search
9 warrant's gonna be signed at 8:30 by the magistrate, but
10 what, if any, efforts had law enforcement taken to survey
11 [REDACTED] Landmark leading up to that search warrant?

12 A. I'm also the assistant commander of our SWAT team
13 and part of that aspect is if we have search warrants or
14 arrest warrants that are what we call a score, a matrix
15 score, if it reaches a certain level, then the SWAT team
16 is required to participate or at least a discussion has to
17 take place about the SWAT team doing that, and that night
18 because of the severity of the crime we were looking to
19 have the SWAT team execute the search warrant. In doing
20 so, as soon as the search warrant started to get typed we
21 had surveillance sit at the location so they could watch
22 that location to give us live time information about what
23 was going on.

24 Q. Okay. So they're watching the residence as you're
25 waiting for the search warrant to be signed?

1 A. Yes.

2 Q. What, if any -- how many officers would you estimate
3 were out there in the parking lot area to conduct this
4 surveillance while you're waiting on the search warrant?

5 A. I believe there was. There was at least three.

6 Q. Okay. What, if anything, occurred as you're waiting
7 for that search warrant to be in hand?

8 A. Detective Pratt was on-scene and while he was doing
9 surveillance at the location, a white dually pick-up truck
10 pulled up to that apartment complex. A heavysset black male
11 matching the description of Hopkins gets out and goes into
12 [REDACTED]. This is the suspect's apartment.

13 Q. So law enforcement observes a person matching the
14 description of Hopkins get out of the white dually truck on
15 the night of the 21st?

16 A. Yes.

17 Q. And then walk into [REDACTED]?

18 A. Correct.

19 Q. And what, if anything, happened next?

20 A. The dually pick-up truck started to drive away and at
21 that point in time I started to respond to the scene and I
22 can't -- I can't remember it was me or Sergeant Burt, one
23 of us told Pratt, who was on-scene, that he needs to follow
24 that vehicle and pull it over.

25 Q. Okay. So you actually were in communication with

1 Pratt, who is relaying what he is seeing there at [REDACTED]?

2 A. Yes.

3 Q. Meaning law enforcement?

4 A. So I think there was two conversations taking place.
5 I think he was on the phone with Sergeant Burt and then
6 there was radio communications between everybody that was
7 involved and that was what was being relayed over the
8 radio.

9 Q. Okay. So you're aware now that the vehicle has been
10 -- a vehicle matching that description has been spotted
11 letting out a suspect who's now walking in [REDACTED]?

12 A. Yes.

13 Q. Captain Laintz, what, if any, concerns did you have at
14 that point about the need to stop that vehicle?

15 A. The vehicle, as -- as the communication is continuing,
16 it's a white dually pick-up truck, there's obviously
17 something big in the back, it just dropped the individual
18 whose house we're searching for this murder, that vehicle
19 appears to match our vehicle that the -- Ms. Christina -- I
20 think I said her name right -- was referring to.

21 Q. Okay. And you said that you yourself upon hearing
22 that immediately headed out to the scene?

23 A. Yes.

24 Q. For what purpose?

25 A. To assist with stopping that vehicle, if needed, and

1 to provide more bodies there. At that point in time, it
2 was -- I don't want to say chaotic, it was a little busy
3 because we had a bunch of people getting ready to go do the
4 search warrant on the house, which was still important, and
5 then we also had this vehicle.

6 Q. Okay. And after instructing Pratt to follow the
7 vehicle and stop the vehicle, did you also learn about any
8 type of violation contemporaneous to all of this?

9 A. I believe Pratt said that there was a tag light
10 violation or something like that.

11 Q. Okay. Regardless of the tag light violation, would
12 you have pursued stopping this vehicle?

13 A. Yes.

14 Q. And can you explain why?

15 A. At that time we had probable cause that this vehicle
16 was involved. With everything, the witness's statement,
17 dropping off the main suspect that we had in this at their
18 house and that vehicle being a white dually pick-up truck,
19 when we just spent four hours, three hours looking for that
20 the night after the incident and not seeing one, and it's
21 dropping off there and it's leaving that probable cause
22 exists that we need to search that vehicle.

23 Q. Okay. If that vehicle were to be the same vehicle
24 that had picked up the suspect immediately following the
25 murders, what, if any, type of evidence would you be

1 interested in potentially locating inside that vehicle?

2 A. Starting very small, it could be trace evidence, it
3 could be blood. There could be shell casings, things
4 like that. There was a robbery that took place at that
5 residence, so items that were taken from that residence,
6 or any other evidence that could have been related to that
7 murder and robbery.

8 Q. Can you tell us as a captain of major crimes, how
9 frequently would you be interested in pursuing a search of
10 a vehicle that is connected to a homicide?

11 A. If it's connected to a homicide, we definitely want to
12 search that vehicle.

13 Q. Does that include for items such as blood or DNA?

14 A. Yes, it does.

15 Q. Trace evidence?

16 A. Yes.

17 Q. And as you mentioned, ballistics?

18 A. Yes.

19 Q. Any other investigations, as well as this one, would
20 that be routine to want to search a vehicle if a suspect
21 had fled a crime scene in that vehicle?

22 A. Yes.

23 Q. And are you trained yourself in looking to identify
24 that type of evidence?

25 A. On-the-job training, yes.

1 Q. So under these circumstances, do you believe you had
2 a reasonable suspicion at that point to stop that white
3 dually truck?

4 A. Yeah, I -- I would say we had more than reasonable
5 suspicion. I would say we had probable cause.

6 Q. And upon Pratt stopping the vehicle, how close in time
7 do you think it was for your arrival?

8 A. We --

9 Q. How much sooner did you arrive after he stops the
10 vehicle?

11 A. I believe it as about three minutes or four minutes.
12 It was rather quick.

13 Q. Okay. And who do you recall being present there at
14 that stop when you arrived?

15 A. It was Pratt.

16 Q. Okay. Tell us what happened once you arrived.

17 A. Once we arrived on-scene, Pratt came back and talked
18 to me very briefly. Cornish was still -- the defendant
19 was still inside his vehicle. I asked him to go get his
20 recorder. Pratt was rather new to investigations, so I
21 asked him to get his recorder so we could record the
22 conversation. I walked up to the vehicle, asked Cornish to
23 get out of the vehicle, and I asked if I could search him
24 for weapons.

25 Q. Okay. So I want to cover a little bit about the

1 initial stop. When a vehicle is first stopped, what's the
2 routine process in just reviewing the vehicle registration
3 and things of that nature?

4 A. So in a traffic stop, you ask for driver's license,
5 registration and proof of insurance and then those items
6 are ran through our dispatch, and Pratt had done that. I
7 don't know if he had got -- he got a driver's license or
8 not.

9 Q. Okay. Is that all part of the routine stop of any
10 vehicle?

11 A. It is.

12 Q. And where is the vehicle at this point, Captain
13 Laintz?

14 A. It is -- the exact address is 778 St. Andrews Road.
15 Where that's that is at the Waffle House. When you're
16 going down St. Andrews right before it hits 26, it's right
17 there.

18 Q. Okay. And I think we've got a photograph that is,
19 already a Court's exhibit, this being Court's Exhibit 6,
20 and then I'm gonna show you one more, this being Court's
21 Exhibit 30.

22 A. Yes, ma'am.

23 MS. MAYES: Court's Exhibit 30, Your Honor. Also
24 without objection.

25 THE COURT: Okay. It's admitted.

1 (Court's Exhibit Number 30, a photograph, was
2 admitted for pretrial hearing purposes.)

3 BY MS. MAYES:

4 Q. Now, again, we've spoken about your familiarity with
5 the various leads that had been developed in this case.
6 Were you familiar with the statement of Christy Meneses
7 regarding heavy equipment in the bed of the truck?

8 A. Yes, ma'am.

9 Q. And then here, looking at -- at 30, were you able to
10 determine the make of this vehicle?

11 A. Yes, it has the Chevy bowtie on it.

12 Q. Okay. And then going back here, could you determine
13 whether or not it also had the dual tires?

14 A. It is a dually pick-up truck.

15 Q. So where are we at here, Captain Laintz, looking at
16 Court's Exhibit 30 in relation to this area of St. Andrews
17 Road?

18 A. So if I'm standing there looking at Waffle House right
19 now, St. Andrews Road is directly behind me and to the left
20 will be the entrance to I-26 going towards Columbia. The
21 bridge is -- is right there. There's the Tokyo little
22 restaurant down there and then you down to -- you can turn
23 into Berryhill and it's right there by 26.

24 Q. All right. And the vehicle is now in -- describe
25 where it's at.

1 A. It's in the parking lot.

2 Q. Okay. In a parking lot. And is this where everything
3 occurred?

4 A. It is.

5 Q. Now I'm gonna go back to this photo, being State's
6 Exhibit 6. I'm sorry. Court's Exhibit 6. Whose vehicle
7 is this over here on the right?

8 A. That is my white Chevy Suburban.

9 Q. Okay. Did anybody ever sit in your Suburban that
10 night?

11 A. There was a passenger in the vehicle, the defendant
12 said it was his girlfriend and she was there, and she
13 actually -- in that picture, it's hard to see there, she's
14 sitting in my back seat on that side, my driver's side.

15 Q. Okay. So she was sitting in your vehicle?

16 A. Yes.

17 Q. All right. So following those initial routine
18 questions regarding registration, license, things of that
19 nature, what, if any, contact did you have with the
20 defendant, Jeremy Cornish?

21 A. That is when I went up to him and asked him to step
22 out of his vehicle, he did, and then I asked him if I could
23 search him for weapons.

24 Q. Okay. And a search for weapons, tell us why that was
25 conducted.

1 A. Just because the involvement of the original crimes
2 when weapons are involved and when I pull over the vehicle
3 that we have probable cause to stop being related to this
4 crime, I pulled out the driver and asked him if I could
5 search.

6 Q. Okay. Now at this point in time did you have any
7 knowledge of the defendant, Jeremy Cornish, being directly
8 involved in this crime?

9 A. We did not.

10 Q. You mentioned you had been searching for the vehicle.

11 At this point in time, seeing what you're seeing with the
12 knowledge of what had occurred a few minutes before this
13 stop with it dropping off the suspect believed to be
14 Hopkins, what, if any, concerns did you have about the
15 involvement of the truck in the murders on December 17th?

16 A. The truck itself we believed was involved with the
17 murders.

18 Q. Okay. Now apart from that, regarding the driver that
19 night, Jeremy Cornish, other than knowing that he was the
20 driver, did you have any direct information to link him as
21 a suspect to this case?

22 A. We did not.

23 Q. What interest did you have to potentially interviewing
24 him?

25 A. At that point in time he was the driver of the truck

1 that we believed was involved with the murder. We don't
2 know if he's -- if he's a witness, if he's involved, if
3 he's a suspect now. We don't know his involvement if he
4 is involved. We don't even know if he was driving that
5 vehicle, if that's his vehicle. We don't know anything at
6 that point.

7 Q. Okay. And if he had been driving the vehicle on
8 December 17th, would that necessarily mean that he would
9 have knowledge and participation in the murders?

10 A. It would not.

11 Q. What, if any, interest did you have in determining the
12 whereabouts of Justin Hopkins on that date?

13 A. So Justin Hopkins, being our main suspect, we wanted
14 to know where he was.

15 Q. Can you tell us whether or not that's also information
16 you felt Jeremy Cornish could assist with potentially?

17 A. We did because at -- I don't remember what. In the
18 conversation he said that he dropped him off and provided
19 his name; that that was his house, [REDACTED].

20 Q. Okay. So knowing that they were acquaintances,
21 could he also potentially give information regarding the
22 whereabouts of Justin Hopkins on that date?

23 A. Yes.

24 Q. Including other information as to who may have
25 borrowed the truck on that date?

1 A. Yes.

2 Q. So after you do the Terry frisk, what happens next?

3 A. We -- there's a conversation that's taking place with
4 the defendant. Another investigator shows up on-scene and
5 we ask him if we can search his vehicle and he says yes.

6 Q. All right. Now prior to requesting to search the
7 vehicle, did you request anything else of the defendant
8 such as participation in an interview?

9 A. I asked him if he wanted to sit in my car and have a
10 long talk.

11 Q. Okay. And when you asked about sitting in your car,
12 is that something he was required to do?

13 A. No.

14 Q. Okay. Was he in custody at this point?

15 A. He was not.

16 Q. Was he free to leave?

17 A. He was.

18 Q. If he had wanted to go over to Waffle House, would he
19 have been able to do that?

20 A. He could have left in any way, shape or form. Just
21 wasn't to leave with the vehicle.

22 Q. All right. And when you say wasn't gonna leave with
23 the vehicle, was it the intent of law enforcement to search
24 the vehicle that night?

25 A. It was.

1 Q. And if he had not consented to a search of the
2 vehicle, what, if any, actions would law enforcement have
3 taken?

4 A. We would have either searched it there. If he would
5 have left, we would have went ahead and towed the vehicle
6 and had it taken to headquarters and get a search warrant
7 on it then.

8 Q. Okay. And in just looking ahead hypothetically, if
9 that had happened and you had had to tow the vehicle for it
10 to be searched, would he have been free to leave?

11 A. He would have.

12 Q. So going back to where you have the initial contact
13 with him, and your testimony is that you asked him if you
14 could have a long talk, do you remember the exact words he
15 used?

16 A. I can look at my --

17 Q. Uh-huh.

18 A. If you want to come and sit in my car and we can have
19 a long conversation, we can do that.

20 Q. All right. And what was his response to you?

21 A. Can I, mean, yes, sir, but I know -- no, I just
22 checked in on a military base so they have, but I was at
23 work.

24 Q. Okay. So I'm gonna ask you, first of all, are you
25 referring to the transcript?

1 A. I was.

2 Q. Okay. Is that the transcript that had been provided
3 by defense counsel previously?

4 A. That's my understanding.

5 Q. Okay. Have you found various inaccuracies in that
6 transcript?

7 A. Several.

8 Q. Okay. As well as information that's not included in
9 the transcript?

10 A. Yes.

11 Q. Okay. I'm gonna ask you, Captain Laintz, not to refer
12 to that transcript --

13 A. Okay.

14 Q. -- and refer to your own memory, as well as the actual
15 audiotape recording.

16 A. Okay.

17 Q. Okay. I'm gonna show you what is Court's 16 and ask
18 you whether or not you recognize your signature there
19 anywhere?

20 A. (Nods head.)

21 Q. Okay. Have you had the opportunity to listen to this
22 recording?

23 A. Yes, I have.

24 Q. Does it fairly and accurately reflect the
25 conversations that you recall having with the defendant

1 as he gives consent to search the vehicle?

2 A. Yes.

3 Q. As well as consent to participate in a conversation?

4 A. Yes.

5 Q. Okay. And so you have listened to the audio?

6 A. I have.

7 MS. MAYES: Your Honor, this would be Court's
8 Exhibit 16.

9 THE COURT: Any objection?

10 MR. SWERLING: No, Your Honor.

11 THE COURT: It's admitted as a Court's exhibit.

12 (Court's Exhibit Number 16, a audio recording, was
13 admitted for pretrial hearing purposes.)

14 BY MS. MAYES:

15 Q. All right. We're gonna play the audio tape here,
16 which is Court's 16, Captain Laintz, and I'm gonna ask
17 you specifically about the portion you've referenced
18 where you ask about sitting in your car and having a long
19 conversation. Do you recall whether or not the defendant
20 agreed to do that?

21 A. He -- yes, I do.

22 Q. Okay.

23 (Court's Exhibit Number 16 was played.)

24 Q. All right. Now when the audio begins, were you
25 already engaged in an initial conversation?

1 A. Yes.

2 Q. And the initial conversation concerned who?

3 A. Hopkins.

4 Q. All right. Had he acknowledged at this point that he
5 had come from Landmark Apartments and having dropped Justin
6 Hopkins off?

7 A. Yes.

8 Q. Okay.

9 (Court's Exhibit Number 16 continued playing.)

10 Q. All right. So that's at 49 seconds and you say if you
11 want to come sit in my car and have a long conversation, we
12 can do that?

13 A. Yes.

14 Q. And his response to that was what?

15 A. Yes, sir, we can do that.

16 Q. All right. What happens next?

17 A. We continue to talk. At this point in time,
18 Investigator Dubard also shows up. There's conversations
19 that have taken place there. I'm asking them if they want
20 to interview him and I tell them to interview them and that
21 I'll search the vehicle.

22 Q. All right. And do you specifically ask the defendant
23 for consent to search that vehicle?

24 A. I do.

25 Q. And how do you phrase that?

- 1 A. Can I search your car.
- 2 Q. Okay. And what, if anything else, did you tell him?
- 3 A. I also told him that he can tell me to stop searching
- 4 at any point in time. We were going to move -- we did move
- 5 the vehicle up closer so he could watch me searching and I
- 6 referred to Investigator Pratt, I believe, saying if you
- 7 want me to stop, you tell him and I'll stop searching your
- 8 vehicle.
- 9 Q. Okay. So you made that clear to him that he could
- 10 refuse or change his mind regarding the search of the
- 11 vehicle at any point?
- 12 A. Yes.
- 13 Q. And now as you've already indicated, if he had done
- 14 that was it law enforcement's intent to still maintain a
- 15 pursuit of the search of that vehicle?
- 16 A. We would have.
- 17 Q. Through a search warrant?
- 18 A. We would have.
- 19 Q. But regardless at this point in time is the defendant
- 20 free to leave?
- 21 A. Yes.
- 22 Q. Is he in custody?
- 23 A. Not at all.
- 24 (Court's Exhibit Number 16 continued playing.)
- 25 Q. And I'm gonna refer you specifically to the 1:52 mark.

1 Does the defendant give you consent to search the vehicle?

2 A. He did. His exact words are I promise you can search.
3 You can search my car.

4 Q. All right.

5 A. I think that was it.

6 Q. All right.

7 (Court's Exhibit Number 16 continued playing.)

8 A. Right there it was.

9 Q. All right. And that's at the 1:52 mark?

10 A. Yes.

11 Q. All right. Was there any doubt or question in your
12 mind at this point that he had given consent to search the
13 vehicle?

14 A. Not at all. He -- he was very forthcoming and
15 willingly to talk to us and let us search the vehicle.

16 Q. Who was the first person to search the vehicle?

17 A. It was me.

18 Q. And had anybody began searching the vehicle prior to
19 you having that conversation and getting the response that
20 you just heard?

21 A. No. There was flashlights on the outside of the
22 vehicle, but there was no searching done until I went in
23 there and got that.

24 Q. Okay. And we're gonna continue on now to the initial
25 portion of this audio through the 8:07 mark, but let me ask

1 you this. At any point in time was he placed in cuffs?

2 A. He was not.

3 Q. At any point of time was his freedom of movement
4 restrained?

5 A. No.

6 Q. At any point in time was he treated as a suspect of a
7 crime?

8 A. He was not.

9 Q. Is it routine to interview potential witnesses in a
10 vehicle are such as a Tahoe or Suburban?

11 A. It is.

12 Q. Were there other witnesses in this case interviewed
13 under similar circumstances?

14 A. There was. The girlfriend was in the back of my
15 Suburban, I talked to her there. The day of the incident,
16 Donnovin, the 9-1-1 caller, he was put in a Tahoe that day
17 and we talked to him. It was December. It was cold.

18 Q. So all of this is routine when someone agrees or
19 consents to an interview?

20 MR. SWERLING: Objection. Leading.

21 MS. MAYES: I can rephrase.

22 THE COURT: Thank you, Ms. Mayes.

23 BY MS. MAYES:

24 Q. Was there any different about how he was treated there
25 at the roadside and any other potential witness?

1 A. He was treated as a witness.

2 Q. And we're gonna continue now through about the 8:07
3 mark, this being Court's 29 and a full audio, being 27
4 minutes in length, can you tell us whether you've had the
5 opportunity to review the initial audio of Pratt?

6 A. I have.

7 Q. Okay. And is it a fair and accurate representation
8 of the audio maintained in this case?

9 A. It is.

10 MS. MAYES: This would be Court's 29.

11 MR. SWERLING: No objection under explanation.

12 THE COURT: Okay. And it's admitted as a Court's
13 exhibit.

14 MS. MAYES: Court's 29.

15 THE COURT: And this is a CD of what, Ms. Mayes?

16 MS. MAYES: Your Honor, this is the full audio,
17 which is 27 minutes in length, of the initial interaction
18 with Jeremy Cornish by officers and it's gonna have the
19 voices of Captain Laintz, Detective Pratt, Detective
20 Dubard, and the defendant, Jeremy Cornish.

21 THE COURT: Okay.

22 (Court's Exhibit Number 29, an audio recording,
23 was admitted for pretrial hearing purposes.)

24 BY MS. MAYES:

25 Q. All right. You've already testified regarding the

1 fact that he was not in cuffs. Did anything change at any
2 point during this interaction with him to make this
3 custodial?

4 A. It did not.

5 Q. And ultimately how long would you estimate your search
6 of the vehicle went on?

7 A. Estimated, thirty minutes.

8 Q. Okay. And why -- could it have been even longer?

9 A. Yes.

10 Q. Okay. And -- and why -- so what type of items were
11 you going through as you were doing the search?

12 A. So trace evidence, blood, serological, all of that,
13 and possible bullet casings, things like that. There was a
14 lot of stuff inside this truck. It was a work truck. It
15 was obviously a work truck. It wasn't very clean on the
16 inside, a lot of dirt in the bottom, so searching that
17 entire vehicle took time and it was only me searching it.

18 Q. Okay. And what, if anything, regarding paperwork was
19 of significance?

20 A. There was a DMV piece of paperwork that was that day,
21 the 17th, the day of the murders, and it had Justin
22 Hopkins' name on it.

23 Q. All right. I'm gonna show you an item and ask you
24 whether or not you recognize it, already in evidence, being
25 Court's 17.

1 A. Yes, ma'am.

2 Q. All right. Now you recall this paper being found
3 where?

4 A. Front driver's seat.

5 Q. Okay. So it's already in the vehicle in the front
6 driver's seat?

7 A. Yes.

8 Q. And, again, this being a paper from the Department of
9 Motor Vehicles, but what's the date on it?

10 A. The date on it is December 17th. There it is right
11 there at the very top.

12 Q. And what, if anything, is significant about that date?

13 A. That is the day of the murders.

14 Q. And whose name is the paperwork in?

15 A. Hopkins, Justin Taylor Ellaree.

16 Q. Okay. What, if anything, did this indicate to you as
17 to whether or not Justin Hopkins may have had access to
18 that vehicle on the date of the murders?

19 A. It was picked up the day of the murders and it was
20 still there, so we'd want to believe that he was in the
21 vehicle the day of the murders.

22 Q. And upon that information did you continue the search?

23 A. I did.

24 Q. And did you find it necessary to go through every item
25 of paperwork that you could locate within the vehicle?

1 A. Yes.

2 Q. Including a search for additional DMV paperwork?

3 A. Yes. I want to clarify on that. I can't remember if
4 that was on the dash up top or on the seat next to him, but
5 it was within reach of the driver right there.

6 Q. All right.

7 MS. MAYES: I beg the Court's indulgence.

8 THE COURT: Take your time.

9 BY MS. MAYES:

10 Q. Ultimately did he leave the scene that night?

11 A. He did.

12 Q. And how did he leave?

13 A. Him and his girlfriend left in that truck.

14 MS. MAYES: Thank you. Nothing further.

15 THE COURT: Ms. Wilson or Mr. Swerling.

16 MR. SWERLING: Yes.

17 I was wondering while we're at that point, could
18 you play something at 1:52 again.

19 CROSS-EXAMINATION (In-Camera)

20 BY MR. SWERLING:

21 Q. At 1:52 this is where you asked him may I search your
22 car and just a couple of lines, if we can.

23 MS. MAYES: That's actually gonna start at 1:40 with
24 the cab search.

25 MR. SWERLING: 1:40.

1 (Court's Exhibit Number 27 was played.)

2 BY MR. SWERLING:

3 Q. Did you hear -- or I heard that he said in response
4 to what you said that there's somebody already searching or
5 he's already searching. Who would that have been?

6 A. I did not hear that. So there was nobody else that
7 searched that vehicle, so I didn't hear that. There was
8 no one else that searched that vehicle but me. Sergeant
9 Creech at the time was on another traffic stop and he came
10 down afterwards and actually just looked through the
11 vehicle rather quickly, but no one else searched but me.

12 Q. Okay. And referring to page four of the transcript,
13 and line 13, if you see something -- this is pretty much
14 verbatim.

15 THE COURT: Hold on one second. Let me get it so I
16 can follow this.

17 Okay. Go ahead. I'm sorry.

18 BY MR. SWERLING:

19 Q. Line 13.

20 MR. HUBBARD: What page?

21 MR. SWERLING: This is on page four.

22 BY MR. SWERLING:

23 Q. If you see something and you want me to stop, which is
24 what the detective said, say something and I'll stop
25 searching, and Mr. Cornish says he's already searching and

1 you can hear that, I submit, in the background even though
2 it's a little -- there seems to be several people talking
3 at one time, but I submit that that is -- first of all,
4 it's here. He says he's already searching and you can hear
5 it in the background on the tape. So that means we believe
6 that somebody else had already started the search before he
7 gave consent.

8 What time did the car get stopped? Because I've --
9 I've looked at all of the reports and I can't seem to find
10 what time you-all stopped the vehicle.

11 A. Give me just a second and I'll pull up our CAD notes.

12 Q. Sure.

13 A. Eventually. So the tag itself was called in at 8:23.
14 2023 is what time the information was called in. I would
15 say usually we're calling in the information before the
16 stop itself is done. We are reading the tag and calling
17 into dispatch.

18 Q. So 8:23 you would say would be the time that the car
19 was stopped or around that time?

20 A. Around that time, yes, sir.

21 Q. Within a few seconds or a minute or so?

22 A. Within a minute or so.

23 Q. And, again, what time did the car get released to him
24 so that he could leave?

25 A. So I cleared at 8:58.

1 Q. And when you say you cleared, did that mean that the
2 car was released at that point and he left at that time?

3 A. Yes.

4 Q. 8:58?

5 A. So that's what time it says we all cleared from the
6 scene.

7 Q. Well, I mean just adding up the two different parts of
8 the stop, it appears that it was 52 minutes. How would --
9 how would that be? If you run the tape, 52 minutes.

10 A. And it could be with us clearing the traffic stop and
11 continuing the investigation at the scene. I'm reading off
12 the CAD notes. That all I have. I know that we were there
13 for over thirty minutes.

14 Q. So would this be an hour? Approximately an hour, 52
15 minutes, if that's what the tapes ran?

16 A. I would say that's not unreasonable, yes.

17 Q. Not unreasonable. Okay. I just wanted to check.

18 And the stop was really -- the lawful purpose of the
19 stop was to stop him because his tag lights were out or a
20 tag light was out?

21 A. No, the lawful reason to stop the vehicle was because
22 it was a vehicle that was likely involved with a homicide.

23 Q. So the tag was a pretence?

24 A. Sure. I don't know what Pratt stopped it. I was --
25 he was told to stop the vehicle.

1 Q. Right. Who told him to stop the vehicle for a tag
2 violation?

3 A. I don't know the answer to that.

4 Q. Do you even know whether or not there was a tag
5 violation?

6 A. At this time I know, yes, but at this point I don't
7 know if I did.

8 Q. Did you look at the tag lights to see whether or not
9 they were operational or not?

10 A. I did not.

11 Q. So you don't know whether or not it was out or not?

12 A. No.

13 Q. Okay. And so were you involved in telling the other
14 investigators and deputies that they needed to stop that
15 vehicle? Was that -- did that come from you, that command?

16 A. I don't know if I told that directly to Pratt. I
17 believe I said it over the radio. I think at the time I
18 was communicating with Sergeant Burt, but it was over the
19 radio. Everybody heard it.

20 Q. To stop the vehicle?

21 A. Yes.

22 Q. Okay. And I believe when you -- and I'm confused a
23 little bit. I believe when you were talking or testifying
24 before the initial part of your testimony, you said he was
25 a suspect and --

1 A. No.

2 Q. -- then later on you said he was a witness?

3 A. At that point in time he was not a suspect.

4 Q. He was not a suspect. Even though he was driving a
5 vehicle that you-all had believed or you were believing was
6 the vehicle involved over at the Woodland apartments?

7 A. Correct.

8 Q. Okay. So --

9 A. We -- we didn't think he was driving that vehicle.
10 Well, let me change that. We didn't know whether or not he
11 was or was not driving that vehicle that day. We just --
12 there was a strong likelihood that that vehicle was the
13 vehicle. A white dually pick-up truck, we spent four hours
14 looking for one that night, found zero, is dropping off an
15 individual at that house that matches Hopkins' description,
16 is leaving from there with heavy equipment in the back.
17 Yeah, we believed that vehicle was absolutely involved.

18 Q. And so it was not -- it was not in your mind at all at
19 that point, I guess is what you're saying, or any of the
20 other detectives involved in the case that the person who
21 was driving that vehicle, that dually, was not a suspect in
22 the case?

23 A. Not a suspect, no.

24 Q. Even though he was the driver of that vehicle that
25 night?

1 A. We did not know what he was. That's a -- a work truck
2 could be shared, it could be somebody else's. Maybe he
3 wasn't driving it that day, maybe he -- we didn't know.

4 Q. Well, let's put it this way. Let me ask you this. He
5 could have -- as far as you were concerned, he could have
6 been a suspect at that time. I mean, let's face it. He
7 could have been a suspect.

8 A. As far as we were concerned, he could have been a
9 witness, he would have been a suspect or he could have been
10 a guy that happened to be out driving the truck that night.

11 Q. And so you were gonna find out whether or not the
12 vehicle was, in fact, the vehicle that had been described,
13 correct?

14 A. We had probable cause at that point that that was the
15 vehicle, correct.

16 Q. All right. And you could have gotten a search warrant
17 at that time?

18 A. We could have.

19 Q. Yeah, you said that, for example -- and I guess I'm
20 just a little puzzled. You said you could have -- if he
21 had not consented, you could have taken the car into
22 custody and brought it down to the sheriff's department
23 and gotten a search warrant?

24 A. Correct.

25 Q. Is that what you said?

1 A. Correct.

2 Q. Okay. So that would have been -- if you believed you
3 had probable cause to search the vehicle and you could have
4 done that, why didn't you do that?

5 A. At that point in time, I could have searched it
6 roadside even if he didn't consent with the vehicle
7 exception and we could have towed it. If we would have
8 left, I would have had the vehicle towed and we would have
9 gotten a search warrant, but truly not knowing what he is,
10 we don't want to leave him out of the vehicle and calling
11 an Uber and having them come. We didn't know what he was
12 at that point in time. We didn't want to take it away from
13 him unless we had to.

14 Q. So you were -- I mean, at that point you were
15 intending on detaining him there?

16 A. Detaining him, no. Detaining the vehicle, yes.

17 Q. Okay. Well, it's his vehicle and he's driving the
18 vehicle and he's got no other place to go and you just
19 can't leave him on the side of the road, so you are
20 detaining him as well?

21 A. We would have allowed him to make a phone call and he
22 could have, he had his phone on him. We would have allowed
23 him -- if someone came and picked him up, he could have
24 left at any time. He could have went to Waffle House and
25 had a Gram Slam.

1 Q. Did you tell him that?

2 A. I don't think we told him that directly, no. I didn't
3 tell him that directly.

4 Q. Did you tell him that indirectly?

5 A. I didn't, no.

6 Q. I'm just curious did anybody tell him that he did not
7 have to consent to that search?

8 A. No. I think we gave him a lot of options where we
9 told him he could stop the search at any point in time. We
10 moved the vehicle in position so he could watch and have a
11 clear view and hey, if you see something and you don't want
12 me to go any more, you can stop me.

13 Q. All right. And then you would have just taken his
14 vehicle and left him on the side of the road?

15 A. I would have probably continued to search it.

16 Q. You would have continued anyway. So I'm trying to --
17 he's in a position there where you're talking to him, you
18 stopped his vehicle, you're searching the vehicle, but
19 nobody's ever told him that he had a right not to have --
20 to consent to the search. Nobody told him that. You're
21 not aware of anybody telling him that he had a right to
22 refuse the search of the vehicle?

23 A. We told him that he could stop the search at any time.

24 Q. He could stop, but that's not -- that's not what I'm
25 saying. Nobody told him he had a right to refuse the

1 search of the vehicle?

2 A. So what's the difference?

3 Q. That's a big difference.

4 A. So if -- if he'd tell me to stop at any time point in.
5 time or refuse, isn't that telling me to stop before I
6 start?

7 Q. I don't think so.

8 A. Okay. I guess we differ there.

9 Q. I mean, you want people to make a voluntary decision,
10 a intelligent decision on their part, don't you?

11 A. I think that's fair.

12 Q. I mean, you're a detective and you've been around
13 for a long time and you have command rank. I mean, you
14 certainly want people to make a decision to know what their
15 options are.

16 A. We would like them to make the decision and they make
17 it freely.

18 Q. Freely and voluntary?

19 A. Uh-huh.

20 Q. Okay. Well, if you don't know that you have a right
21 to review a search, then you can make it intelligently and
22 freely and voluntarily?

23 A. But he has the right to stop the search.

24 Q. He has the right to stop the search, but the initial
25 search, your initial going into the car, you didn't tell

1 him that he could refuse that. That's all I'm saying.

2 A. If -- he could have told me to stop right then and
3 there. We told him he could stop at any point in time.
4 When I go to touch the door handle, he could have said
5 stop.

6 Q. Let me just make sure the record's clear. You didn't
7 tell him though that he could refuse the search?

8 A. I never used the word "refuse".

9 Q. You never told him that that was a right of his?

10 A. To refuse? I never used the word "refuse".

11 Q. When you -- so we're talking about at -- what did you
12 say 8? I wrote it down. 8:23. And you were there at
13 8:23?

14 A. I was there at 8:23. I don't believe I was talking
15 to him at 8:23. At that point in time he was in the car
16 with Investigator Dubard and Investigator Pratt.

17 Q. Okay. How many investigators were there at that time?

18 A. At that time, it was us three.

19 Q. Just the three?

20 A. Yes.

21 Q. And that is, what, three units as well?

22 A. It was. We were all go driving separately.

23 Q. And were you marked cars or --

24 A. We were all unmarked.

25 Q. Unmarked?

1 A. Unmarked.

2 Q. Okay. Blue lights?

3 A. At this point in time, no. Eight minutes in, I don't
4 think we were.

5 Q. When the -- when the traffic stop was made, they
6 didn't initiate blue lights?

7 A. When the traffic stop was made, yes, but you're
8 referring to eight minutes in. By then we would not have
9 them on.

10 Q. There were no blue lights?

11 A. I don't believe so.

12 Q. Were you-all in uniform or like suits or --

13 A. Plainclothes, but had on our vests that identified us
14 as sheriff's department. I know I did anyway.

15 Q. And what does that -- what does that appear to be?
16 Does it have on there Lexington County Sheriff's
17 Department, LCSD?

18 A. It says sheriff.

19 Q. Sheriff?

20 A. Yes.

21 Q. Okay. And what is that, an armored vest?

22 A. It is.

23 Q. So you're wearing an armored vest, there's three of
24 you, there's three vehicles out there, he's stopped by the
25 blue lights and he's told he's being stopped for a tag

1 violation?

2 A. Okay.

3 Q. Is that right?

4 A. I don't know about the tag violation.

5 Q. Well, I assume somebody had to tell him why he got
6 stopped?

7 A. If Pratt told him, that's why he got stopped. I
8 believe that -- that's something that came through, but I
9 can't tell you with 100 percent certainty.

10 Q. Did he ask why he got stopped?

11 A. Well, I mean --

12 MR. SWERLING: Excuse me one minute.

13 BY MR. SWERLING:

14 Q. So you don't know what he was told?

15 A. I don't.

16 Q. Okay. But you said you did tell him that his vehicle
17 was identified or something similar to a vehicle that had
18 been identified as being at the Woodlands apartments?

19 A. I believe I told him this vehicle was involved with
20 what happened at the Woodland apartments.

21 Q. And he claimed to have no knowledge of that?

22 A. It sounded like he didn't know.

23 Q. Did you tell him that he -- that you wanted to find
24 out whether or not he was driving the vehicle that day?

25 A. Not those exact words, but, yes.

1 Q. Okay. So in addition to determining about the
2 vehicle, you wanted to know whether or not he was the
3 actual driver of the vehicle that day?

4 A. Yes.

5 Q. Because, I mean, logically you would have thought that
6 he would have been the driver at that time?

7 A. Logically, yes. I mean, I -- if he's driving the
8 vehicle at that point in time, logically is he the driver
9 then? It's a work vehicle. Multiple people use it. I
10 mean, it's possible.

11 Q. But you didn't know any of that?

12 A. No.

13 Q. You just knew that he was driving the vehicle that
14 night and that vehicle had been identified earlier in the
15 day by some witnesses as possibly being the vehicle that
16 was at the Woodland, correct?

17 A. And that the suspect -- the person matching the
18 description of the suspect was just dropped off at the
19 suspect's house --

20 Q. Right.

21 A. -- and so we didn't -- we don't know who the driver
22 is.

23 Q. So you knew a lot more about Mr. Hopkins at that point
24 than you did about Mr. Cornish?

25 A. Yeah.

1 Q. You didn't know anything about Mr. Cornish?

2 A. Yeah.

3 Q. So at that point I believe you said that you had --
4 did you have probable cause to go ahead and stop the
5 vehicle and search it? Do you believe you did?

6 A. Probable cause that that vehicle was involved with the
7 murders, yes.

8 Q. All right. And do you think at that time you had
9 probable cause to go ahead and get a search warrant?
10 Would you have presented that to a magistrate with the
11 information you just presented to the judge?

12 A. Yes.

13 Q. Okay. And you believe you would have gotten a search
14 warrant for that?

15 A. Yes.

16 Q. So back to where we are, you've got three detectives,
17 three vehicles, three of you -- at least one of you is
18 wearing a vest, an armored vest, all three of you had
19 handguns?

20 A. Yes.

21 Q. Okay. And you were inviting him into your car for a
22 long talk?

23 A. Yes.

24 Q. Okay. The fact of the matter is, is this was a
25 traffic stop and not -- it was not supposed to be for

1 investigative purposes about him, it was about

2 investigative purposes about the car?

3 A. We were stopping --

4 Q. That's what you said.

5 A. We were stopping that car because it was evidence in a
6 crime.

7 Q. Right. But what you did was you turned this into an
8 interrogation of him.

9 A. He was a possible witness, a possible suspect,
10 possibly involved, unknowingly involved.

11 Q. Or knowingly?

12 A. Or knowingly involved. We didn't know until we talked
13 to him.

14 Q. So the bottom line, what I'm saying to you is, you
15 turned him in from a witness to a suspect by keeping him
16 there for over an hour.

17 A. I don't think so.

18 Q. You think it's that's normal to go ahead for a traffic
19 violation, a tag violation, to keep somebody on the
20 roadside for over an hour?

21 A. So when you're interviewing a witness or a possible
22 witness, trying to figure out what this person is, of a
23 homicide, I think that's very normal having that long of a
24 talk about -- to determine whether this person is a
25 witness, suspect or otherwise involved with the homicide.

1 I don't think that's unreasonable.

2 Q. Okay. What about for the person who's being
3 interrogated? He may think it's unreasonable.

4 A. But no one was being interrogated.

5 Q. He wasn't being interrogated? There's about a
6 150-page transcript of interrogation.

7 A. There was 150 pages of questions and discussion about
8 what was happening, where that vehicle was, where was he
9 at, and a lot of stuff about Hopkins.

10 Q. Yeah, but an interrogation is questions and answers
11 and that's what you were doing, you were asking him
12 questions and you were hoping he would provide you answers.

13 A. Conversation is a discussion about a topic and it was
14 a discussion about several topics.

15 Q. You-all weren't out there to discuss church activities
16 or, you know, just social things. You were asking him
17 about what he knew about the robbery that day.

18 A. And what he knew about Hopkins and what he knew about
19 that vehicle and what he knew about all that, yes.

20 Q. Okay. And I submit to you that's an interrogation.

21 A. Then we would interrogate every witness that we are
22 involved with.

23 Q. Well, that's possible, but this particular person you
24 had reason to believe might have been driving the truck
25 that day?

1 A. There is.

2 Q. And he would have -- and you believed that he might
3 have information about Mr. Hopkins that could benefit you
4 in your investigation?

5 A. Yes.

6 Q. And it could also implicate him in the investigation?

7 A. If it led that way, yes.

8 Q. All right. So I'm submitting to you that is an
9 interrogation and you continued to do that for over an
10 hour.

11 A. I think we'll have to agree to disagree that -- on the
12 word "interrogation".

13 Q. Well, so, I mean, right now you're under oath, you're
14 talking to the judge, and would you tell the judge whether
15 or not you had any idea at all whether or not he might be a
16 suspect in the case?

17 A. We did not know what he was.

18 Q. I didn't ask you about what you knew. I said did you
19 have any idea in your mind that he could have been a
20 suspect in the case?

21 A. In my mind, is there a possibility he could have been
22 a suspect, yes.

23 Q. Okay. And so let's -- let's go from there. Surely
24 as we talked about before, you would want to make sure that
25 someone who is talking with you or consenting to a search

1 or what have you would make a voluntary and intelligent
2 decision to talk to you or not?

3 A. Yes.

4 Q. Okay. Did you tell him that he did not have to talk
5 with you?

6 A. I asked him if he wanted to talk.

7 Q. No, that's not what I said. I was very careful about
8 what I said. Did you tell him that he did not have to talk
9 with you or answer any questions?

10 A. I did not use those words, no.

11 Q. Okay. Did you tell him that he could stop talking at
12 any time?

13 A. I did not use those words, no.

14 Q. Did you tell him that there's a possibility that he
15 may have -- may be a suspect in the case?

16 A. I did not tell him those words, no.

17 Q. Did you tell him that he was only a witness in the
18 case?

19 A. I did not tell him those words.

20 Q. Did you tell him that he had -- could consult with a
21 lawyer if he wanted to?

22 A. I did not.

23 Q. Did you offer him to be able to call a lawyer?

24 A. I did not.

25 Q. Okay. Did you -- you knew -- obviously you didn't

1 give him Miranda rights then?

2 A. No, we did not.

3 Q. Okay. But not only did you not give him the Miranda
4 rights because you-all are saying he's not in custody and
5 -- is that the reason why you didn't give the Miranda
6 rights?

7 A. We had no reason to at that time.

8 Q. Well, you thought he could be a suspect in the case.

9 A. There was a possibility that he could have been a --

10 Q. Right. So let's be fair.

11 A. -- a suspect, a witness or otherwise involved, yes.

12 Q. Okay. And if you believed that someone -- there's a
13 possibility that someone's a suspect and you already have a
14 vehicle that you believed was involved in the murder at
15 Woodland, it seems like you would want to in a sense of
16 fairness to let him know that he possibly is a suspect and
17 he doesn't have to talk to you. I mean, how could somebody
18 -- let me ask you this. How could somebody make an
19 intelligent decision to talk to a detective in a murder
20 investigation if he doesn't know that he may be connected
21 to it or you believe that he may be connected to it?

22 A. I asked if he wanted to talk and he said he did.

23 Q. Pardon?

24 A. I asked him if he wanted to talk and he said he did.

25 Q. He did?

- 1 A. Yeah.
- 2 Q. But he didn't know he didn't have a right not to?
- 3 A. He could have said no.
- 4 Q. He could say no? You didn't tell him that he had a
- 5 right to say no.
- 6 A. Did I tell him that?
- 7 Q. That's the difference.
- 8 A. No, I did not tell him that.
- 9 Q. Okay.
- 10 A. I didn't tell him he didn't have the right to say no.
- 11 Q. Okay. The -- so we don't know -- well, you have no
- 12 idea and you can't tell the judge like you said with the
- 13 search that he made an intelligent decision to go ahead
- 14 and let you -- talk to you or answer questions from you or
- 15 Mr. Pratt. There's no way to say that he made an
- 16 intelligent decision because he didn't know what the
- 17 possibilities were or what his alternatives were?
- 18 A. He seem to be talking intelligently --
- 19 Q. I didn't ask you that.
- 20 A. -- at the very time I started and I asked him if he
- 21 wanted to talk and he said yes.
- 22 Q. Yeah, but you didn't tell him he didn't have to.
- 23 A. I did not use those words.
- 24 Q. And so this stop for a tag turned into a one-hour
- 25 interview by you and Deputy Pratt basically about him and

1 Justin Hopkins?

2 A. So I talked to him for probably three to four minutes
3 and then he was in a vehicle with Investigator Dubard and
4 Investigator Pratt --

5 Q. For about an hour.

6 A. -- and I was searching the vehicle.

7 Q. Okay. But you were there?

8 A. I was searching the vehicle, yes.

9 Q. Are you their commanding officer?

10 A. I am.

11 Q. Okay. So -- and we already agree it was at least an
12 hour, so obviously they weren't sitting in the car playing
13 cards?

14 A. No, they were talking.

15 Q. And you said he was free to leave at any time with
16 three cars surrounding him, three investigators armed with
17 armored vests and you said he was free to leave?

18 A. So during that entire hour, we did not have our vests
19 on us the entire time. I believe I took my vest off when I
20 started to search because it was cumbersome. I don't know
21 if the other two took their vests off or not when they were
22 talking to him. We weren't surrounding him. He was in a
23 car directly behind his car watching me search and his
24 girlfriend was sitting in my car because it was December
25 and it was cold.

1 Q. All right. But he was in the car behind you?

2 A. Correct.

3 Q. And there was an investigator sitting next to him and
4 there was an investigator behind him?

5 A. Behind the other investigator. Dubard you heard in
6 there said that he sat behind him and he moved over because
7 he wanted to be able to look at him the eye.

8 Q. So what was the seating arrangement? Mr. Cornish was
9 in the front seat?

10 A. Yes.

11 Q. And the two investigators were in the back seat?

12 A. No, one was in the driver's seat and --

13 Q. That's what I said. I'm sorry.

14 A. Well, you said that one was directly behind him. They
15 weren't directly behind him. They were to the --

16 Q. One behind him --

17 A. They weren't directly behind him. They were diagonal
18 behind him.

19 Q. You said he was free to leave and you would have just
20 -- at any time did you tell him he was free to leave?

21 A. I did not.

22 Q. Okay. So he would not know that he was free to leave?

23 A. I don't know if he would know that or not.

24 Q. Well, it seems like he would have to know that from
25 you. I mean, if -- if I've got two armed deputies or

1 investigators with vests on and they're -- they have
2 handguns and they've stopped me, I'm certainly not gonna
3 get out of the car and walk away. You know that.

4 A. I -- I asked him out of the car and asked him if he
5 wanted to talk and --

6 Q. I'm not talking about at that point. I'm talking
7 about if he wanted to leave. You said he was free to
8 leave, you would have taken the car and he could have
9 walked off?

10 A. Yes.

11 Q. What individual would leave that custodial situation
12 with three investigators around armed and with vests and
13 just walk away down the street?

14 A. It happens often.

15 Q. Okay.

16 A. I've had a lot of people ask can I leave and the
17 answer's yes. Passengers get out of the car at a traffic
18 stop. Do I have to be here? No.

19 Q. Okay.

20 A. That happens.

21 Q. However, you didn't tell him that he had a right to
22 leave?

23 A. No.

24 Q. And he would -- he would not have known at that point
25 how he was gonna get home if you didn't tell him that he

- 1 could have his car back?
- 2 A. I don't know what he would have known.
- 3 Q. Well, you didn't tell him that.
- 4 A. I didn't tell him how to get home.
- 5 Q. I'm talking about --
- 6 A. I did not tell him that.
- 7 Q. I'm talking about what you told him.
- 8 A. I did not tell him how to get home, no.
- 9 Q. Are you aware of the fact or aren't you aware of the
- 10 fact that Mr. Creech spoke with Mr. Cornish for a period of
- 11 time after you left?
- 12 A. I know that Creech showed up on-scene and wanted to
- 13 talk to him.
- 14 Q. Okay. And so the answer to that is yes, he did talk
- 15 to him after you left?
- 16 A. Yes.
- 17 Q. And that would be a further extension of the time that
- 18 he was being questioned?
- 19 A. Yes.
- 20 Q. Let me go back one minute. So the purpose of the stop
- 21 was not the tag violation, but the purpose of the stop was
- 22 to investigate the vehicle and the driver?
- 23 A. It was to get the vehicle that was evidence of a
- 24 crime.
- 25 Q. So the answer to my question is yes, it was not --

1 that was not the purpose of the tag violation, it was to
2 find out about the vehicle and him?

3 A. When I told them that vehicle needs to stop, it wasn't
4 stop him because of a tag violation. It was stop that
5 vehicle.

6 Q. And he wasn't told that, was he?

7 A. Who's he?

8 Q. The defendant.

9 A. I don't know. I didn't tell him that.

10 Q. Other than the -- the information from the Department
11 of Motor Vehicles, there's no evidentiary -- other
12 information in that car, was there?

13 A. Not that I found, no.

14 Q. Nothing contraband, nothing connected with the
15 offense?

16 A. No.

17 MR. SWERLING: Your Honor, I'm just about to the
18 end of it.

19 BY MR. SWERLING:

20 Q. What did you mean -- I thought that was kind of
21 curious when you said would you like to have a long
22 conversation? I mean, why would you frame it that way?

23 A. I didn't think we were -- it wasn't gonna be a quick
24 talk. I mean, if were gonna talk about something, as long
25 as he wanted to talk we were gonna talk about it. He was a

1 possible witness, involved, another suspect in a murder,
2 those aren't usually fast conversations if the person is
3 willing to talk to us.

4 Q. So you were anticipating a long conversation?

5 A. I was.

6 Q. And I believe you were the one that told him if we
7 thought you had done something -- is that you or was that
8 Pratt?

9 A. That was not me.

10 Q. Okay. I just wanted to make sure.

11 A. I wasn't in the car at that time. I was searching the
12 vehicle.

13 Q. I just wanted to ask about that.

14 MR. SWERLING: Excuse me one second, Your Honor.

15 THE COURT: Ms. Mayes, any redirect?

16 MR. SWERLING: I'm done.

17 MS. MAYES: Yes, Your Honor.

18 REDIRECT EXAMINATION (In-Camera)

19 BY MS. MAYES:

20 Q. All right. So Mr. Swerling was asking you about the
21 transcript and I think you've already addressed that there
22 are inaccuracies in the transcript?

23 A. There are.

24 Q. And portions of statements not included in the
25 transcript?

1 A. Yes.

2 Q. And then things in the transcript that you don't hear
3 at all on the audio?

4 A. Yes.

5 Q. He was asking you specifically about a portion of the
6 transcript where someone says he's already searching.

7 A. Correct.

8 Q. Do you ever recall hearing a statement in that regard?

9 A. I do not.

10 Q. Do you believe that to be an inaccuracy?

11 A. I do.

12 Q. And was anyone searching prior to you obtaining
13 consent to search that vehicle?

14 A. The only thing that could have happened is when I
15 walked up to the vehicle, I was using a flashlight to
16 lookup and around the inside and the outside and when I
17 asked him to get out of the vehicle and there might have
18 been me walking around with a flashlight on the outside
19 looking, but actual searching, no. When I refer to a
20 search is opening up doors and invading someone's privacy,
21 that -- that was not taking place.

22 Q. All right. So any search of the interior of the
23 vehicle would have been after you obtained consent?

24 A. Yes.

25 Q. Now specifically let me ask you about the content

1 of this interview and these circumstances. I believe
2 Mr. Swerling referred to this as a custodial situation.

3 A. Correct.

4 Q. Did this ever become a custodial situation?

5 A. He was never not free to leave or being held against
6 his will. No, it was not.

7 Q. And prior to you even asking for consent to search
8 the vehicle, what question did you pose to the defendant at
9 49 seconds into your contact with him?

10 A. I asked him if he wanted to come sit in my car and we
11 could have a long conversation.

12 Q. So your request for the long conversation was prior to
13 the request to search the vehicle?

14 A. It was.

15 Q. And prior to the search of the vehicle beginning?

16 A. Correct.

17 Q. And did he agree to the long conversation in your car?

18 A. He did.

19 Q. So he knew where it was gonna happen?

20 A. He did.

21 Q. And he knew that it was gonna be long or of lengthy
22 duration?

23 A. I would think he did, yeah.

24 Q. And he agreed to that?

25 A. He did.

1 Q. And he had already been informed that something bad
2 had happened and law enforcement was concerned that the
3 vehicle was involved?

4 A. Yes.

5 Q. And he had already acknowledged knowing Justin
6 Hopkins?

7 A. He did.

8 MR. SWERLING: Objection, Judge, to the leading.
9 We're down to --

10 THE COURT: If you can rephrase it, Ms. Mayes.

11 MS. MAYES: Yes, Your Honor.

12 BY MS. MAYES:

13 Q. Had he already acknowledged knowing Justin Hopkins as
14 well?

15 A. He had.

16 Q. Now at any point during this contact with law
17 enforcement on that night, did he ever acknowledge his
18 truck being involved in the murders?

19 A. Acknowledge it, no.

20 Q. And did he ever acknowledge being with Justin Hopkins
21 during the timeframe that the murders occurred?

22 A. No.

23 Q. In fact, did he deny that?

24 A. He did. He denied and said that he dropped him off at
25 -- I believe it was Food Lion after work when it started to

1 rain.

2 Q. Okay. And when you say after work, you're referring
3 to what part of the day?

4 A. It was in the morning time when they went to go work
5 on McEntire Air Force Base.

6 Q. Okay. So other than having had contact with Justin
7 Hopkins that morning when they were rained out, did he ever
8 acknowledge being with Justin Hopkins at any other point in
9 the day?

10 A. He did not.

11 Q. And did he ever acknowledge that truck or him being
12 on that side of town, being Bush River Road or St. Andrews
13 Road, at any point during the day of December 17th?

14 A. He said he was on Two Notch and the DMV.

15 Q. Okay. So at any point during the course of the
16 interview, did he ever make any admissions that would have
17 turned him into a suspect?

18 A. No.

19 Q. And based on what you were hearing, did you continue
20 to walk up and communicate with him regarding some DMV
21 paperwork in the car?

22 A. We did.

23 Q. And did he maintain that he had not been with Justin
24 Hopkins at the DMV or on the day of the murders?

25 A. Yes, he said he was not.

1 Q. And did you believe that?

2 A. Yes.

3 Q. Knowing all of this, Captain Laintz, did you believe
4 there was reasonable suspicion to stop that vehicle?

5 A. I believe there was probable cause.

6 Q. And would that vehicle have been stopped pursuant to
7 reasonable suspicion or probable cause with or without the
8 tag violation?

9 A. Yes.

10 Q. And you would have given those instructions to pursue
11 that vehicle?

12 A. I would have or I would have done it myself.

13 MS. MAYES: Thank you. Nothing further.

14 THE COURT: May I excuse the officer?

15 Anything else, Mr. Swerling?

16 MR. SWERLING: I'm sorry, Judge?

17 THE COURT: Do you have any recross?

18 MR. SWERLING: No. I'm sorry.

19 MS. MAYES: Yes, Your Honor. And this may be the
20 time to say we do have to talk about scheduling at this
21 point.

22 THE COURT: Okay. You can be excused.

23 THE WITNESS: Thank you, ma'am.

24 (Witness excused.)

25 (Proceedings held at the bench; not reported.)

1 THE COURT: All right. We're gonna take a
2 fifteen-minute break.

3 (Recess taken at 11:54 AM.)

4 (Back on the record at 12:22 PM.)

5 BAILIFF: All rise. Court's now in session.

6 THE COURT: All right. Please be seated.

7 Can we call the next witness?

8 MS. MAYES: We can, Your Honor.

9 The State calls Detective James Pratt.

10 THE COURT: Okay.

11 (Whereupon, James Pratt was duly sworn by the Clerk
12 of Court.)

13 THE CLERK: Have a seat up there and state your last
14 name for and spell your last name for the record.

15 THE WITNESS: So my name is James Pratt. The last
16 name is P-R-A-T-T.

17 THE COURT: Thank you.

18 JAMES PRATT,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION (In-Camera)

21 BY MS. MAYES:

22 Q. All right. And you were working at the Lexington
23 County Sheriff's Department in 2019?

24 A. Yes, ma'am.

25 Q. In what capacity?

1 A. I was a major crimes detective.

2 Q. Now what role were you playing on the night of
3 December 17, 2019? There is a document that is already
4 admitted as a Court's exhibit in this case, being a search
5 warrant for Apartment [REDACTED] at Landmark Apartments.

6 A. My team was called to assist with the major crimes
7 team that was leading the investigation on this case, so we
8 were called in to assist.

9 Q. All right. How did you assist?

10 A. I was asked to make contact with a witness at
11 [REDACTED] Woodway Lane, Mr. Dale Galloway. I was able to present
12 him with a photo lineup and he was able to positively
13 identify Justin Tyler Hopkins from that photo lineup.

14 Q. And what date did that occur?

15 A. That was on December 21st.

16 Q. Okay. So that was earlier that day before the search
17 warrant at Landmark Apartments?

18 A. Yes, ma'am. That's right.

19 Q. All right. I want to ask you a little bit more about
20 that. So you were actually involved in a photo lineup with
21 potential witness Dale Galloway?

22 A. Yes, ma'am.

23 Q. And that included putting together or requesting
24 that SLED put together what's known as a six-pack or a
25 collection of photographs for identification?

- 1 A. Yes, ma'am.
- 2 Q. And did that allow you to become familiar with the
3 general physical description of the suspect Justin Hopkins?
- 4 A. Yes, sir.
- 5 Q. How so?
- 6 A. Roughly his height, weight, his appearance, facial
7 features, things of that nature.
- 8 Q. Okay. So you had actually seen his photograph --
- 9 A. Yes, ma'am.
- 10 Q. -- having been involved in showing that photo lineup
11 to a potential witness?
- 12 A. Yes, ma'am.
- 13 Q. And what can you tell us about his weight that you
14 were family with and his physical build?
- 15 A. That he was a shorter stature heavysset African
16 American male.
- 17 Q. All right. Now I want to move forward to the night
18 of December 21st, four days after the murder, and this is
19 gonna be after you have shown the photo lineup to
20 Mr. Galloway?
- 21 A. Yes, ma'am.
- 22 Q. You're conducting what or you're in what role on that
23 night?
- 24 A. So I was requested to be -- to do surveillance at
25 ■ Landmark Drive at Apartment ■, which we believed to

1 be where Justin Hopkins was staying. I was staged up
2 nearby that location with a full unobstructed view of his
3 apartment. While sitting there, I observed a white dually
4 truck pull up, which we had gained information to say that
5 a white dually truck by the witnesses was involved in the
6 incident -- seen the day of the incident, so I was able to
7 observe a white dually truck. I saw an individual matching
8 Hopkins' description exit the truck and walk into the
9 apartment that I was surveying.

10 Q. All right. So you yourself as a detective in this
11 case, had you participated in some of the major crimes
12 briefings?

13 A. Yes, ma'am.

14 Q. In the four days between when the murders occurred on
15 the 17th and when you're conducting this surveillance on
16 the night of the 21st?

17 A. Yes, ma'am. We did a briefing prior time going to do
18 surveillance.

19 Q. So you were aware already that a witness had described
20 seeing a person believed to be Justin Hopkins?

21 A. Yes, ma'am.

22 Q. And how -- what was your understanding of how the
23 white truck would have been involved on the day of the
24 murders?

25 A. That the witness observed Mr. Hopkins riding a bike

1 and getting into a vehicle white in color that was a dually
2 truck.

3 Q. And do you have an understanding as to whether or not
4 that occurred close in time to the 9-1-1 call or the
5 incident itself?

6 A. At the time it was my understanding it was right after
7 the incident.

8 Q. Okay. So was the white dually truck -- can you tell
9 us whether or not the dually truck would have been a
10 vehicle of interest to law enforcement?

11 A. Yes, ma'am.

12 Q. And you see the individual get out of it. Can you
13 tell us whether or not that individual appeared to match
14 the description that you have given us already of Justin
15 Hopkins?

16 A. Yes, ma'am, it did.

17 Q. And you saw that individual go where?

18 A. Into the apartment of [REDACTED].

19 Q. And is [REDACTED] the apartment known to be the residence of
20 Justin Hopkins?

21 A. Yes, ma'am. That was the one we were on surveillance
22 for.

23 Q. Knowing that a search warrant was imminent?

24 A. Yes, ma'am.

25 Q. How did you go about notifying any of your command

1 officers once you observed that white dually truck?

2 A. So I contacted Sergeant Nick Burt and advised him what
3 had just occurred and I asked him if he wished for me to
4 stay on the apartment to keep eyes on Mr. Hopkins who was
5 our main focus or to catch up with the vehicle and Sergeant
6 Burt requested that I make contact with the vehicle.

7 Q. All right. And officers were also communicating via
8 radio as well?

9 A. Yes, ma'am.

10 Q. So you were in contact with Sergeant Burt. Would you
11 agree -- or can you tell us whether at this point you left
12 Landmark?

13 A. Yes, ma'am. I saw the vehicle pull out. I was
14 instructed to make contact with the vehicle and then I went
15 -- I went after where the vehicle was last seen exiting.

16 Q. Okay. And how far did you follow the vehicle?

17 A. I caught up with the vehicle maybe within a mile,
18 mile and a half of the incident location. I was instructed
19 to be careful not to initiate the traffic stop immediately
20 out of concerns that it may let Mr. Hopkins know law
21 enforcement's in the area and may cause him to flee.

22 Q. Okay. At this time with the information that you had
23 and while conferring with your sergeant, can you tell us
24 whether or not there was reasonable suspicion to stop that
25 vehicle?

1 A. Yes, ma'am.

2 Q. Would you consider that vehicle potential evidence
3 relating to the murders?

4 A. Yes, ma'am.

5 Q. What, if any, type of evidence may be found within the
6 vehicle?

7 A. Potential trace evidence from the scene, potential
8 weapons.

9 Q. And when you say "trace evidence", can you tell us
10 whether or not that would include blood or blood transfer
11 evidence?

12 A. Yes, ma'am.

13 Q. Or DNA?

14 A. Yes, ma'am.

15 Q. As you're following the vehicle, what, if anything,
16 else did you observe?

17 A. I also observed that the vehicle had a tag light out
18 and when we are initiating a stop even with, you know,
19 other probable cause existing, we make sure to list any and
20 every reason why we would stop this vehicle of interest.

21 Q. Okay. So just to clarify, you had already made the
22 decision to follow the vehicle?

23 A. Yes, ma'am.

24 Q. You already believe there's probable cause to stop the
25 vehicle?

1 A. Yes, ma'am.

2 Q. Reasonable suspicion to stop the vehicle?

3 A. Yes, ma'am.

4 Q. And then you observed the tag light?

5 A. Yes, ma'am.

6 Q. What can you tell us you about the tag light and how,
7 if at all, did that amount to a violation?

8 A. So the lights over the license plate was out, which
9 would constitute a violation of traffic law.

10 Q. Okay. And did you note that in your report?

11 A. Yes, ma'am, I did.

12 Q. Can you tell us whether or not that factor alone would
13 have independently justified the stop of this vehicle?

14 A. Yes, ma'am.

15 Q. And did you stop the vehicle?

16 A. Yes, ma'am, I did.

17 Q. All right. I'm gonna show you some photographs
18 that have already been marked as Court's exhibits. We're
19 gonna take a look here at Court's Exhibit 30 and Court's
20 Exhibit 6. Now going back to 30, can you tell us whether
21 or not that would be the general area in which your stop
22 was conducted?

23 A. Yes, ma'am.

24 Q. And how close in proximity is this to when you were
25 would have first spotted the vehicle back at the Landmark

1 Apartments?

2 A. Approximately within a mile.

3 Q. Okay. Now I want to go back to the CAD sheet. Do you
4 have a copy of that with you?

5 A. The -- just a second. The actual CAD sheet from
6 dispatch? No, ma'am.

7 Q. Okay. You do not?

8 A. No, ma'am.

9 Q. Okay. I'll show you a document and ask you if you
10 recognize it. Okay. I'll come back to that momentarily,
11 but when we make a reference to the CAD sheet, what type
12 of information is noted on a law enforcement CAD sheet?

13 A. When a officer runs a plate, dispatch is trained in
14 what -- when we run a plate they essentially begin a call
15 card for us so they can start documenting where we're at
16 when the call comes in.

17 Q. Okay. Where do you recall being when you first ran
18 the tag?

19 A. As I was at Landmark.

20 Q. Okay. So you would have first run the tag while
21 you're spotting it at Landmark?

22 A. Yes, ma'am.

23 Q. And then from there actually conduct the stop?

24 A. Yes, ma'am.

25 Q. And based upon memory and your previous review of the

1 CAD sheet, what's the general timeframe that you believe
2 that the stop would have been conducted?

3 A. If I remember correctly, excuse me, the initial of
4 me calling out the plate would have been approximately
5 8:23 in the evening and then the stop actually occurring
6 at 8:26.

7 Q. Okay. And would reviewing the CAD sheet help to
8 confirm any of that information?

9 A. Yes, ma'am.

10 Q. And refresh your memory?

11 A. Yes.

12 Q. Okay.

13 MS. MAYES: And, Your Honor, if I may approach?

14 THE COURT: You may.

15 BY MS. MAYES:

16 Q. So, again, upon reviewing that document, you would
17 estimate you ran the tag while seeing the vehicle at
18 Landmark Apartments at what time?

19 A. Yes, ma'am. At approximately 2023 or 8:23 in the
20 evening.

21 Q. Okay. And then you would approximate the time of the
22 actual traffic stop that we see depicted here near that
23 Waffle House, St. Andrews Road exit, at approximately what
24 time?

25 A. 8:26 in the evening.

1 Q. Okay. So 8:26 there is the initial stop. Now take
2 us through that first contact that you have with any
3 individual during the course of a traffic stop?

4 A. I'm sorry?

5 Q. What do you do -- what do you do during a traffic
6 stop?

7 A. Make contact with the driver and request license,
8 registration, proof of insurance and also make them aware
9 of the stop -- the reason for the stop.

10 Q. Okay. And was all of that done in this particular
11 case?

12 A. Yes, ma'am, it was.

13 Q. What, if anything, of significance occurred regarding
14 your request for his driver's license?

15 A. So when I asked Mr. Cornish for his license, he said
16 that he had just had it reinstated, that he'd had issues
17 with the license being suspended, and then he provided me
18 with DMV paperwork to show that he had just had the -- he
19 had just gotten his license straightened out.

20 Q. So he hands you DMV paperwork?

21 A. Yes, ma'am.

22 Q. And is all of this noted in your supplemental report?

23 A. It is.

24 Q. And as he gives you the driver's license and the DMV
25 paperwork, did you review the DMV paperwork?

1 A. I did. The DMV paperwork showed that it belonged to a
2 Justin Tyler Hopkins and that the paperwork was issued on
3 12-17-2019.

4 Q. Okay. So the paperwork he gave you turned out to be
5 in the name of someone else?

6 A. That's correct.

7 Q. I'm gonna show you what is a Court's exhibit and ask
8 you whether or not you recognize this item. This would be
9 State's -- or Court's 17.

10 A. Yes, ma'am.

11 Q. Does that appear to be the same document that was
12 given to you?

13 A. Yes, ma'am.

14 Q. And the same one that you referenced in your
15 supplemental --

16 A. Yes, ma'am.

17 Q. -- receiving from Mr. Cornish during that stop of --
18 that routine aspect of the stop where you were asking for
19 the driver's license?

20 A. Yes, ma'am.

21 Q. Okay. We'll take a look at this. This is already
22 marked as Court's 17. So he hands you this with the
23 driver's license and did you note any particular date on
24 that document?

25 A. Yes, ma'am. It was issued 12-17-2019.

1 Q. And what, if anything, is significant about the date
2 of 12-17?

3 A. It was the date of the incident.

4 Q. The murders?

5 A. Yes, ma'am.

6 Q. And then you said that when you reviewed it whose name
7 was the paperwork in?

8 A. It was in Mr. Hopkins' name.

9 Q. All right. And, again, but he -- may this have just
10 occurred unknowingly --

11 A. Yes, ma'am.

12 Q. -- that he gives you receipt, but didn't realize it's
13 in someone else's name?

14 A. Yes, ma'am.

15 Q. And does he indicate to you that he -- he believes
16 there's also gonna be paperwork with his name on it
17 somewhere in the vehicle?

18 A. That's correct. Yes, ma'am.

19 Q. Did you ask or did you advise him of the purpose of
20 the stop?

21 A. Yes, ma'am.

22 Q. You advised him of the tag light being out?

23 A. Yes, ma'am.

24 Q. And you also advised that the vehicle may have been
25 involved in another incident?

1 A. That's right.

2 Q. All right. Did he ever indicate any knowledge of
3 that?

4 A. No, ma'am.

5 Q. Did he indicate where he had been coming from?

6 A. Yes, ma'am. He stated that he had just dropped off a
7 coworker over at Landmark Apartments.

8 Q. And did he acknowledge who that coworker was?

9 A. Yes, ma'am. He advised it was Mr. Hopkins.

10 Q. Okay. So when we actually hear the audio of the
11 conversation with the defendant, Jeremy Cornish, that
12 conversation is already underway?

13 A. That's correct.

14 Q. Is what you've just summarized the general nature of
15 the conversation that had occurred up to that point?

16 A. Yes, ma'am.

17 Q. As well as asking if he knew the whereabouts of Justin
18 Hopkins on the date of December 17th, which is the date of
19 that DMV receipt?

20 A. Correct.

21 Q. Now when the audio starts and it's already been marked
22 as an exhibit, just so you're aware, it's already been
23 played to -- for the Court --

24 A. Uh-huh.

25 Q. -- at the initial outset of 49 seconds who else do

1 you recall being there with you during this contact with.
2 Mr. Cornish?

3 A. Shortly afterwards I was joined by Captain Laintz and
4 Detective Dubard.

5 Q. Okay. So at 49 seconds, do you recall whether or not
6 there was a question by Captain Laintz as to whether he
7 could have a long conversation?

8 A. Yes, ma'am.

9 Q. With Mr. Cornish?

10 A. Yes, ma'am.

11 Q. And what, if anything, do you recall Mr. Cornish
12 responding?

13 A. He stated that was fine. Yes, sir.

14 Q. Did he ever refuse that request?

15 A. No, ma'am.

16 Q. And based upon your recollection, as well as the
17 recording, did Captain Laintz indicate to him it could be
18 long in duration?

19 A. Yes, ma'am.

20 Q. And where did that conversation take place?

21 A. At the truck.

22 Q. And when you say at the truck, is that inside?
23 Outside?

24 A. I want to say that he was still in the vehicle at this
25 time, yes, ma'am.

1 Q. Okay. Still inside of his own vehicle?

2 A. Yes, ma'am.

3 Q. Okay. When -- when he agrees to take part in --

4 A. Yes, ma'am.

5 Q. -- in the conversation in a separate vehicle?

6 Okay. And do you recall him having any passengers?

7 A. Yes, ma'am. His girlfriend was with him.

8 Q. Okay. And eventually was he questioned as to whether
9 or not the car could be searched?

10 A. Yes, ma'am.

11 Q. And who posed that question to him?

12 A. Captain Laintz.

13 Q. And do you ever recall him refusing the search?

14 A. No, ma'am, he gave consent.

15 Q. And when you say he gave consent, you recall hearing
16 him verbally give consent?

17 A. Yes, ma'am. Something along the lines of there's --
18 there's no problem with you searching the vehicle.

19 Q. And do you recall whether or not Captain Laintz
20 advised him he would stop searching if needed at any point?

21 A. Yes, ma'am.

22 Q. Now at this point in time do you consider that vehicle
23 to be potential evidence itself?

24 A. Yes, ma'am. We also placed the vehicle that we were
25 going to be speaking with Mr. Cornish in in a place so he

1 could still observe the search so if at any point in time
2 he wanted to stop, he could advise and we would stop the
3 search.

4 Q. Okay. If he had refused that search, what efforts
5 would you have taken to pursue a search through other
6 means?

7 A. The vehicle more than likely would have been towed to
8 the sheriff's department awaiting a search warrant.

9 Q. Okay. Would Mr. Cornish have been free to leave under
10 those circumstances?

11 A. Yes, ma'am.

12 Q. Free to find alternative way home?

13 A. Yes, ma'am.

14 Q. Whether that would be a request to law enforcement or
15 Uber or otherwise?

16 A. Yes, ma'am.

17 Q. Now did he still have his phone on him?

18 A. Yes, ma'am.

19 Q. And ultimately where did you-all go to participate in
20 this conversation?

21 A. So initially we were going to sit in my vehicle, but I
22 have a smaller Taurus, so we suggested that we do the
23 conversation in Detective Dubard's vehicle, which is a
24 Tahoe, that's more comfortable.

25 Q. Do you recall where Mr. Cornish sat in the Tahoe?

1 A. Yes, ma'am. He sat in the front passenger seat.

2 Q. Okay. Was he in cuffs?

3 A. No, ma'am.

4 Q. Was he ever placed in cuffs at any point?

5 A. No, ma'am.

6 Q. Would he have been free to walk across the street to
7 the Waffle House if he wanted to?

8 A. Yes, ma'am.

9 Q. Or to just stand outside in the parking lot and smoke
10 a cigarette?

11 A. Yes, ma'am.

12 Q. Was he promised anything in exchange for this
13 conversation?

14 A. No, ma'am.

15 Q. Was he threatened by yourself or any other officers
16 in your presence?

17 A. No, ma'am.

18 Q. Did he at any point pose any questions to you?

19 A. Yes, ma'am.

20 Q. How so?

21 A. He asked questions, especially what would happen if we
22 felt like he was involved, he would ask us well, what was
23 happening, why -- what was the incident about that we were
24 investigating, things of that nature.

25 Q. All right. So just to clarify, something along the

1 lines of what it is that you're investigating?

2 A. Yes, ma'am.

3 Q. Or that you think I might be involved in?

4 A. Yes, ma'am.

5 Q. Okay. And what time do you remember hearing that on
6 the audio where he poses a question to you?

7 A. Four minutes and 33 seconds in.

8 Q. Now had any of the formal questioning began at this
9 point?

10 A. No, ma'am.

11 Q. So he is engaging with you?

12 A. That's correct.

13 Q. And what, if anything, is he told by Detective Dubard
14 to indicate that he is not in trouble or not a suspect?

15 A. So at the time Detective Dubard just assured him that
16 if we were concerned that he was a suspect in this case,
17 that he would not be sitting freely in the front seat.
18 That would be an officer safety issue for us. He wouldn't
19 be allowed to, you know, freely move or enter or exit the
20 vehicle as he wanted to. We wouldn't be as concerned about
21 his comfort as if he was actually a suspect in the case.

22 Q. All right. So he's actually advised of that by
23 Detective Dubard?

24 A. Yes, ma'am.

25 Q. And can you tell us whether or not at any point

1 Detective Dubard informed him that he's not in trouble?

2 A. Yes, ma'am.

3 Q. And you mentioned before that he has a phone, so I
4 want to ask you if he had been a suspect at this point,
5 would you have allowed him to keep his phone?

6 A. No, ma'am.

7 Q. Why or why not?

8 A. It's an officer safety issue. Persons can contact
9 others and have them respond to the scene.

10 Q. And would you have sitting unrestrained in the front
11 passenger side?

12 A. No, ma'am.

13 Q. So at this point in time can you tell us how you
14 regarded him pursuant to this investigation?

15 A. So at the time our -- as I said before, our main
16 person of interest was Mr. Hopkins simply because I
17 observed him getting out of the vehicle, the type of
18 vehicle matching the one that we were looking to find and
19 the subject matching the description of Mr. Hopkins going
20 into the apartment we were surveying, our greatest interest
21 at that time was how he knew Mr. Hopkins and if he had
22 known about Mr. Hopkins' whereabouts. So the more we spoke
23 with Mr. Cornish, the more -- well, I know for myself,
24 speaking for myself specifically, that he was seeming more
25 and more like a witness or a person that had valuable

1 information that could help us understand what happened
2 that day and really led us -- did not lead us to believe
3 that he had any direct involvement in the incident.

4 Q. So I want to ask you a little bit more about that.
5 When you advise him that the date of the -- of the incident
6 was Tuesday, December 17th, did he ever indicate that he
7 had been with Justin Hopkins that day?

8 A. No, ma'am. He stated that after their work got rained
9 out that morning that he had dropped Mr. Hopkins off at the
10 pickup location where he normally gets other workers before
11 they go onto the base and he had not seen him since then.

12 Q. All right. And did he tell you about his whereabouts
13 that day, Mr. Cornish?

14 A. He did.

15 Q. All right. Did he indicate ever being on the
16 Lexington County side?

17 A. No, ma'am.

18 Q. What do you recall him telling you about his
19 whereabouts that day in general?

20 A. That he had been to a BB&T in Five Points, that he
21 had been to a DMV that was also in Richland County. That
22 essentially he had presented his driver's license to the
23 guards there at the base they were working at. They told
24 him that his license was suspended and so he spent the rest
25 of the day trying to get his license reinstated.

1 Q. Okay. Through the DMV in Richland County?

2 A. Yes, ma'am.

3 Q. And throughout that did he ever acknowledge having
4 been with Justin Hopkins after they were rained out on
5 their job that morning?

6 A. No, ma'am.

7 Q. And did he ever acknowledge even being on that side
8 of town, Bush River Road/St. Andrews?

9 A. No, ma'am. He actually made the statement that he
10 doesn't frequent the that area.

11 Q. And was he questioned regarding his truck and who may
12 have borrowed his truck that day?

13 A. Yes, ma'am.

14 Q. At that point in time did you believe him?

15 A. Yes, ma'am, we did.

16 Q. So when he said that he had not been with Justin
17 Hopkins at all that day other than that morning, you found
18 that believable?

19 A. Yes, ma'am.

20 Q. Did he ever say anything during the course of the
21 conversation that led you to believe he was a suspect?

22 A. No, ma'am.

23 Q. Did he continue to deny his truck -- he himself being
24 in the area of the crime scene?

25 A. That's correct.

1 Q. Or any knowledge of his truck being in the area?

2 A. That's correct. Or any knowledge of the incident at
3 all. We'd even asked him if he had seen something on
4 Facebook or on the news involving the incident and he said
5 he had not.

6 Q. Okay.

7 MS. MAYES: I beg the Court's indulgence.

8 THE COURT: Take your time.

9 BY MS. MAYES:

10 Q. I'm gonna show you what is marked Court's Exhibit 28.
11 Now this is redacted and I'm gonna ask you whether or not
12 it has your signature?

13 A. Yes, ma'am, it does.

14 Q. And your initial interview with him on the first audio
15 is approximately what length?

16 A. I believe it was approximately 23 minutes or so.

17 Q. Do you want to refer to any notes regarding that?
18 Would 27 minutes sound accurate?

19 A. Yes, ma'am.

20 Q. The full length of your first audio recording?

21 A. Yes, ma'am.

22 Q. So this particular item being, Court's Exhibit 28,
23 you've mentioned --

24 THE COURT: Are you admitting it?

25 MS. MAYES: Yes, Your Honor.

1 THE COURT: Any objection?

2 MR. SWERLING: Judge, just for this hearing. And
3 this particular version of it, we probably would have
4 an objection if it were offered during the trial.

5 THE COURT: Okay. So I'm going to put on here for
6 hearing -- Court's hearing only, okay?

7 (Court's Exhibit Number 28, an audio recording
8 excerpt, was admitted for pretrial hearing purposes.)

9 BY MS. MAYES:

10 Q. Okay. So the full length audio, I'm gonna show you
11 that, that is Court's Exhibit 29, already in evidence.
12 That is the 27 minute audio. And now this one that was
13 just marked Court's 28 is 9 minutes 57 seconds. Does it
14 contain redacted excerpts from that original 27 minute
15 audio?

16 A. Yes, ma'am, it does.

17 Q. And is it a fair and accurate representation of those
18 excerpts from that full audio recording?

19 A. Yes, ma'am, it is.

20 MS. MAYES: Your Honor, at this time the State
21 would proffer Court's Exhibit 28. This would be the
22 redacted version of the statement that we provided to
23 the defense in advance as our proposed Jackson v. Denno
24 statement to submit to the jury.

25 THE COURT: Okay.

1 MS. MAYES: This is 9 minutes 57 seconds, Your Honor.
2 We will play it in full.

3 (Whereupon, Court's Exhibit Number 28 was played.)

4 BY MS. MAYES:

5 Q. There was just a reference to the receipt I gave you
6 would show what time I'd been there, what is he referring
7 to?

8 A. The DMV receipt.

9 Q. That we previously saw, Court's Exhibit 17?

10 A. Yes, ma'am.

11 Q. And there he indicates that he had given that to you
12 freely at the outset of the traffic stop?

13 A. Yes, ma'am.

14 Q. And he believes that's gonna have the date that he
15 would have been at the DMV?

16 A. Yes, ma'am.

17 Q. Okay. Apparently unknowingly that it was in the name
18 of Justin Hopkins and not in his name?

19 A. Correct.

20 (Court's Exhibit 28 continued playing.)

21 Q. All right. All of that that we just heard in
22 Court's 28, can you tell us whether those redactions --
23 or whether that redacted version is all from the first 27
24 minutes of your audio recording?

25 A. Yes, ma'am, it is.

1 Q. Who is the other voice that we hear taking part in
2 that interview with Mr. Cornish?

3 A. It's Detective Dubard.

4 Q. And did you-all remain there in the vehicle as you
5 described throughout the course of the interview?

6 A. Yes, ma'am.

7 Q. Was he free to leave throughout that time?

8 A. Yes, ma'am.

9 Q. At some point later is he -- is he smoking a
10 cigarette?

11 A. Yes, ma'am.

12 Q. And I believe there was a mention of the search of
13 the vehicle. Who was conducting that?

14 A. Captain Laintz.

15 Q. And can you tell us whether the search of the vehicle,
16 whether or not it continued throughout that audio portion
17 that we just heard?

18 A. Yes, ma'am, I believe so.

19 Q. And into your second audio recording, can you tell us
20 whether or not Captain Laintz is heard during that second
21 audio recording?

22 A. He is.

23 Q. Okay. And what is he doing at this point in time to
24 be heard on the second recording? Do you recall whether or
25 not any paperwork was found?

1 A. Yes, ma'am. That -- Captain Laintz, I believe, was
2 asking him about Mr. Hopkins' DMV paperwork being in the
3 vehicle.

4 Q. And was all of that being in the course of that search
5 by Captain Laintz?

6 A. Yes, ma'am.

7 Q. So can you tell us whether or not that would be an
8 indication that the search of the vehicle went past 27
9 minutes?

10 A. Yes, ma'am.

11 Q. And into the second audio recording?

12 A. Yes, ma'am.

13 Q. Now at any point in time, whether that first 27 minute
14 audio or your follow-up audio -- and what's the approximate
15 length of the follow-up audio?

16 A. 25 minutes and 40 seconds.

17 Q. All right. So let's add that time together.
18 Approximately 52 minutes or so of total audio recorded
19 time?

20 A. Yes, ma'am.

21 Q. At any point during that period of time, does he ever
22 say anything that would make him a suspect in your mind?

23 A. No, ma'am.

24 Q. Does he continue to deny any knowledge of this crime?

25 A. He does.

1 Q. Does he -- can you tell us whether or not he continues
2 to deny any knowledge of the truck being involved?

3 A. He does.

4 Q. Can you tell us whether or not he denies being with
5 Hopkins during the timeframe of the crime?

6 A. He does.

7 Q. Or in the area of St. Andrews and Bush River Road?

8 A. Yes, ma'am. He does.

9 Q. So by the end of this interview at 52 minutes, what,
10 if anything, do you consider Mr. Cornish to be?

11 A. A potential witness. He -- his statements were
12 contradicting what information we were getting from Hopkins
13 when they were talking to Hopkins that occurred. At some
14 point in time during our interview they had made contact
15 with Mr. Hopkins, so what Mr. Hopkins was telling them
16 was conflicting with Mr. Cornish, so we were viewing
17 Mr. Cornish as a witness that was helping us confirm
18 Mr. Hopkins' location or whereabouts.

19 Q. Okay. So just to clarify, I know there's already been
20 testimony about a search warrant being conducted at [REDACTED].
21 Ultimately was there also a traffic stop that night of
22 Justin Hopkins?

23 A. Yes, ma'am.

24 Q. And do you know whether or not Justin Hopkins made
25 statements to law enforcement?

1 A. I believe he did. Yes, ma'am.

2 Q. Okay. And your understanding is that the information
3 being provided by Mr. Cornish was helpful to law
4 enforcement?

5 A. Yes, ma'am.

6 Q. Because at that time it was believed that --

7 MR. SWERLING: Objection. Leading.

8 MS. MAYES: I can rephrase that.

9 THE COURT: Thank you.

10 BY MS. MAYES:

11 Q. Were you aware or were you getting some information
12 regarding the Hopkins interview?

13 A. Yes, ma'am. When Sergeant Creech arrived.

14 Q. Okay. But up and to that point you considered him a
15 witness?

16 A. Yes, ma'am.

17 Q. And did that ever change?

18 A. No, ma'am.

19 Q. And ultimately what did you do regarding the improper
20 tag light?

21 A. Mr. Cornish was given a warning for it.

22 Q. And how did he leave that evening?

23 A. He left on his own accord. I couldn't specifically
24 state how he left the scene, but he left on his own accord.

25 Q. Okay. And to your knowledge would the truck have been

1 released back to him?

2 A. No, ma'am. It would have been considered a piece of
3 evidence.

4 Q. Okay. You considered it to be a piece of evidence?

5 A. Yes, ma'am.

6 Q. So do you actually know then at what point the truck
7 would have been released?

8 A. No, ma'am.

9 Q. But after you gave -- after you concluded the audio
10 and you gave the warning ticket --

11 A. Yes, ma'am.

12 Q. -- what did you do?

13 A. I left the scene.

14 Q. Okay. And are those audio recordings a fair and
15 accurate summary of your contact and conversation with
16 the defendant, Jeremy Cornish, there on the night of
17 December 21st?

18 A. Yes, ma'am.

19 Q. And, again, was he ever in custody at any point?

20 A. No, ma'am.

21 Q. Okay. Your custody or the custody of any other law
22 enforcement officer that you saw?

23 A. No, ma'am. Nor was he detained.

24 Q. If he had refused the interview, what, if any, rights
25 would he have had?

1 A. He would have been free to leave.

2 Q. To do anything he wanted?

3 A. That's correct.

4 Q. Including use his phone?

5 A. Yes, ma'am.

6 MS. MAYES: Nothing further.

7 THE COURT: Mr. Swerling.

8 CROSS-EXAMINATION (In-Camera)

9 BY MR. SWERLING:

10 Q. Did you take a picture of his taillight to -- so we
11 could take a look at it to see what was wrong with it?

12 A. No, sir.

13 Q. Exactly what was wrong with it? Could you not see the
14 license plate?

15 A. The license plate was visible, but the light that
16 illuminates the license plate was out.

17 Q. Was it just one or two lights?

18 A. It was -- I don't recall how many lights. I just know
19 that the light or lights that it had were not functioning.

20 Q. Okay. So back to my original question, could you read
21 the license plate?

22 A. Yes, sir.

23 Q. Without the light?

24 A. Yes, sir.

25 Q. Okay. So what you're saying is that the license plate

1 was visible, it was just that the light was out?

2 A. That's correct.

3 Q. All right. Let me ask a few questions about this.

4 You're saying that this is a situation where this
5 individual was -- admitted this was his truck, that he had
6 the truck all day long, correct?

7 A. Yes, sir.

8 Q. And that at some point during the day he was with
9 Justin --

10 A. Yes, sir. That's correct.

11 Q. -- Hopkins; is that correct?

12 A. Yes, sir.

13 Q. And yet you're telling the Court that he was not -- in
14 no way did you believe he was a suspect in the case?

15 A. That's correct.

16 Q. I mean, you had at some point -- I mean, how long have
17 you been involved in law enforcement?

18 A. Thirteen years.

19 Q. Thirteen years. You had to at some point think this
20 is the guy who has been with Justin that day sometime and
21 this is the truck that we believe was involved in the
22 murder over at Woodland, that it may be a possibility that
23 he was a suspect in the case?

24 A. Well, we couldn't confirm that this was the exact
25 vehicle. It was a vehicle matching the description, so

1 we could not confirm that this was the specific vehicle.
2 The witnesses that observed the vehicle were not able to
3 provide us with a license plate, so we could not confirm
4 that this specific vehicle was the exact one we were
5 looking for.

6 Q. So it was important to go ahead and question him
7 because most of your interview was about him, his
8 activities that day, the vehicle and his relationship with
9 Justin Hopkins, correct?

10 A. Yes, sir.

11 Q. And because you conducted the -- I call it an
12 interrogation, you call it question and answer, but you --
13 because you conducted it in the manner in which you did and
14 he was not under arrest, then you were -- you did not have
15 to give his Miranda warnings, so you could get all the
16 information you needed without having to give him Miranda
17 warnings, correct?

18 A. It was basic factfinding information, yes, sir.

19 Q. But had you placed him under arrest or he was confined
20 and was in custodial or investigative detention, then you
21 would have had to give him his Miranda warnings, correct?

22 A. If we felt that our questions he could answer would
23 directly implicate him, yes, sir.

24 Q. Okay. But what I'm saying is by doing it this way
25 you did not feel like you had to give him at any warnings

1 at all?

2 A. No, sir. He was not a suspect at the time, nor did we
3 feel anything he said would incriminate him.

4 Q. You said he was contradicting what Justin Hopkins
5 said, but Justin Hopkins never made a statement.

6 A. So the -- from what we were told, that he was where --
7 Mr. Hopkins' whereabouts were -- what we were told is that
8 we were -- that Mr. Cornish's statements were conflicting
9 with Hopkins.

10 Q. But he didn't make a statement, so what could be
11 conflicting?

12 A. That is what -- that was my understanding at the time.

13 Q. Where did you get that understanding from?

14 A. Just from trying to recollect from what occurred three
15 years ago, that was my understanding at the time, that
16 there were statements that were conflicting.

17 Q. Basically that's what you're saying now, but you don't
18 really recall them saying that he was contradicting Hopkins
19 because as we know Hopkins didn't give a statement that he
20 could contradict?

21 MS. MAYES: Objection, Your Honor, and we can
22 clarify it later, but there is a statement from Justin
23 Hopkins.

24 MR. SWERLING: Well, I'm asking did he know about
25 it.

1 THE COURT: I'm gonna let him go ahead and ask.

2 THE WITNESS: So, yes, sir. We were -- we were made
3 aware when Mr. Creech arrived that -- or Sergeant Creech
4 arrived that there were statements conflicting, which,
5 like I said, made Mr. Cornish seemed even more-so like a
6 witness that would benefit us in this case.

7 Q. When he arrived, but that was after you had already
8 interviewed him.

9 A. That's correct.

10 Q. So you didn't know that information prior to you
11 interviewing him, correct?

12 A. Yes, sir.

13 Q. I think that's what I was trying to get at.

14 A. I'm sorry. Yes, sir.

15 Q. All right. What time do you have that this interview
16 started? And I think -- well, let me just cut to the
17 chase. You said it lasted 52 minutes?

18 A. Yes, sir. Approximately.

19 Q. All right. And that was from the time that you got
20 him in the car and from the time that you ended your
21 questioning of him?

22 A. Yes, sir.

23 Q. Let me ask you is there anything different about your
24 questioning him under these circumstances or as --
25 questioning him as a suspect in the case?

1 A. Yes, sir. Absolutely.

2 Q. What would be the difference?

3 A. Location of the vehicle. By placing him in the front
4 passenger seat, which having been an investigator for over
5 a year at that time --

6 Q. Let me clarify because I don't -- I'm talking about
7 the questions you were asking. These are the same
8 questions you would ask a suspect, correct?

9 A. No, sir. These were initial just factfinding
10 information.

11 Q. I'm talking about when you actually went into what he
12 did every moment of the day. That's the same questioning
13 you would get from a suspect as well.

14 A. Sometimes. It would be a basic factfinding. Like to
15 start off, it would just be basic factfinding information
16 that we're trying to obtain.

17 Q. Factfinding?

18 A. Yeah.

19 Q. And you're maintaining it was because he's just a
20 witness in the case, but not a suspect?

21 A. That's correct. At that time we had no information
22 that led us to believe he had any direct involvement in the
23 case.

24 Q. But you had information that the car was involved?

25 A. A vehicle matching that description.

1 Q. When you say he was free to leave, how would he have
2 left if you were gonna keep the car?

3 A. He could have called a family member because he still
4 had access to his phone. He could have called for an Uber
5 or something of that nature. He could have requested any
6 kind of transportation and we would have allowed that.

7 Q. Did you tell him that?

8 A. No, sir.

9 Q. Let me ask when you first got there did you tell him
10 that he didn't have to talk with you?

11 A. No, sir.

12 Q. Because he didn't have to talk with you, correct?

13 A. That's correct.

14 Q. So if he does not know that he doesn't have to talk
15 with you, then he never really had the opportunity to say I
16 don't want to talk to you?

17 A. He had already agreed to talk to us when he was asked
18 if he would be willing to do a length -- a long interview,
19 a long interview or a long series of questions, and he said
20 yes.

21 Q. Right. What I'm saying, he did not know there was an
22 option that he didn't have to, correct?

23 A. We never advised him that he could not --

24 Q. You never advised him that he had the option of not
25 talking to you?

1 A. That's correct.

2 Q. There was never an option given to him he didn't have
3 to search -- consent to a search?

4 A. Yes, sir. He was told that he at any point in time
5 could end that and that he specifically gave permission for
6 the vehicle to be searched.

7 Q. Right. But my question was, was he ever told he
8 didn't have to do that?

9 A. Not to my knowledge.

10 Q. Okay. So there was no reason for him to know that he
11 did not have to consent to a search, correct?

12 A. I wouldn't know what he was thinking at that time.

13 Q. Well, based on lack of information given to him,
14 wouldn't one think that he would not have known that? How
15 would he have known that?

16 A. Speaking hypothetically. I mean --

17 Q. What about with him speaking to you? You didn't tell
18 him that he didn't have to talk with you. Why not?

19 A. We were telling him that we were very thankful for his
20 cooperation and he was free to do whatever he wanted.

21 Dubard even made that statement to him, that he was free,
22 he could sit comfortably and do whatever he wanted.

23 Q. I'm sorry, he was -- Dubard told him what?

24 A. That he was -- he was sitting there free and
25 comfortable and -- let's see -- but that, again, if we

1 were more concerned about his involvement in this, we
2 wouldn't just be letting him sit casually in the vehicle,
3 which it was an unmarked Tahoe. It wasn't like he was
4 sitting in the back of a marked patrol car. He was sitting
5 in the front passenger seat of an unmarked Tahoe when we're
6 having this conversation.

7 Q. Well, you-all misled him then. Didn't you tell him
8 that you-all didn't think that he had anything to do with
9 it or you would be treating him differently?

10 A. No, sir. We --

11 Q. I mean, that was misleading.

12 A. No, sir, we did not.

13 Q. I'm sorry?

14 A. No, sir, we were not attempting to mislead him.

15 Q. But you in actuality did because there was a chance
16 and you thought there was a chance that he could have been
17 involved.

18 A. No, sir, we did not.

19 Q. You did not think that?

20 A. We had no reason to believe that. At first we had
21 reason to believe that he could give us more information
22 about Hopkins' possible whereabouts that day.

23 Q. How many of you were there? How many officers?

24 A. At the time that I can best recollect, it was myself,
25 Dubard and Captain Laintz.

- 1 Q. Okay. And you-all were armed?
- 2 A. Yes, sir.
- 3 Q. All wearing vests?
- 4 A. No, sir.
- 5 Q. Were you wearing a vest?
- 6 A. No, sir.
- 7 Q. Was Dubard wearing a vest?
- 8 A. No, sir.
- 9 Q. Was Laintz wearing a vest?
- 10 A. No, sir. He was in a shirt and tie. We were dressed
- 11 similar to this, a polo and slacks.
- 12 Q. Were you driving uni -- marked cars or unmarked?
- 13 A. Unmarked.
- 14 Q. Okay. Carrying a weapon?
- 15 A. Sir?
- 16 Q. Carrying a weapon?
- 17 A. Were the vehicles?
- 18 Q. No. Were you carrying a weapon?
- 19 A. Yes, sir.
- 20 Q. Everybody else was carrying a weapon, too?
- 21 A. Yes, sir.
- 22 Q. And he was invited in to go ahead and have a long
- 23 conversation?
- 24 A. Yes, sir.
- 25 Q. And he agreed to that in your presence?

- 1 A. Yes, sir.
- 2 Q. Okay. To Captain Laintz?
- 3 A. Yes, sir.
- 4 Q. But then he got into your car?
- 5 A. He was about to get into my vehicle, but we felt he
6 would be more comfortable in the Tahoe because it was a
7 larger vehicle. Mine was like a Taurus, so we put him in
8 -- or had him sit in Dubard's vehicle. Like I said, it was
9 larger, more comfortable.
- 10 Q. Did the conversation take place between you and him
11 in the beginning inside or outside of the vehicle?
- 12 A. When I initially made contact on the traffic stop?
- 13 Q. Yeah.
- 14 A. He was inside of his vehicle driving. He was in the
15 driver's seat.
- 16 Q. And what about the phone? Where did he have the
17 phone?
- 18 A. It was in his pocket.
- 19 Q. Okay. And you never removed the phone from his
20 pocket?
- 21 A. No, sir.
- 22 Q. Even after a Terry frisk? Nobody asked him to remove
23 the phone from his pocket?
- 24 A. Captain Laintz performed that. I wasn't watching that
25 when it occurred.

1 Q. Were you there when the Terry frisk was performed?

2 A. I was on-scene, but I wasn't witnessing it.

3 Q. Sir, you said 52 minutes. That's a -- that's a fairly
4 long question and answer; isn't that correct?

5 A. Uh-huh.

6 Q. Between you and a person who you don't think is a
7 suspect?

8 A. I've had longer conversations with witnesses.

9 Q. Did you he tell him he was just a witness?

10 A. No, sir. We were still determining what he knew and
11 what he did not know about the incident.

12 Q. So he could have been a suspect as well? You're not
13 saying that he was a witness. That's what I understand,
14 sir.

15 A. The more -- the more questions we asked him, the more
16 it appeared that he was a witness in this incident. Like I
17 said, we had no idea what his involvement was if there was
18 any.

19 Q. So it took almost an hour for you to decide what he
20 knew even though most of this conversation took place and
21 involved what he knew and what he knew about Justin Hopkins
22 and where his car was and where he was, that took an hour
23 do that?

24 A. Yes, sir.

25 Q. And this was nothing but a -- this was a traffic stop?

1 A. Yes, sir.

2 Q. The traffic stop was a pretext to go ahead and be able
3 to interview him, correct?

4 A. Yes, sir.

5 MR. SWERLING: Excuse me a minute, Your Honor.

6 THE COURT: Take your time.

7 BY MR. SWERLING:

8 Q. He asked you what do you think I'm into. I believe
9 that's the way you said he started the conversation. What
10 do you think I'm into, what do you think I'm involved with.

11 A. I believe his -- well, what happened if you-all feel
12 like I was involved in this. When that's -- we were
13 telling him we were investigating an incident if we thought
14 you were involved this conversation would be handled much
15 differently.

16 Q. And -- but that really is not -- is not an honest
17 answer to him because you knew there was the potential for
18 him being involved?

19 A. We had reason to believe his vehicle may have been
20 involved, but him directly we had no reason to believe he
21 was directly involved, no, sir.

22 Q. If you had told him that he could possibly be a
23 suspect, he wouldn't have talked to you, would he?

24 A. Again, we were doing basic factfinding. We weren't
25 going to be accusing -- it wasn't an accusatory

1 interrogation. It was simply a factfinding interview.

2 Q. But it went into great detail here about where he was,
3 what he did all day long and what his involvement was with
4 Justin, did he see him again after the morning when he got
5 rained out. I mean, you asked him quite a lot of
6 questions.

7 A. Yes, sir, because he admitted during the initial
8 traffic stop -- or the initial questioning during the
9 traffic stop that he had just dropped off Mr. Hopkins at
10 his apartment and so we were simply questioning how do you
11 know Mr. Hopkins, how long have you known him and what, if
12 any, knowledge do you have of what he did that day.

13 Q. The -- strike that. Was there anybody else there
14 searching the vehicle?

15 A. I was more focussed on Mr. -- Mr. Cornish. I didn't
16 witness the -- I wasn't paying attention to the search.

17 Q. As far as you know, there were only three officers
18 there or deputies or investigators?

19 A. Yes, sir. And Captain Laintz was the one conducting
20 it.

21 Q. And Sergeant Creech came up afterwards, correct?

22 A. Yes, sir.

23 Q. Did you remain there when Sergeant Creech was
24 questioning him?

25 A. Yes, sir.

1 Q. And how long did that take?

2 A. I'd have to review.

3 Q. Yeah, if you could.

4 A. I can't recall an exact time of how long that was
5 conducted.

6 Q. At least another half hour, 45 minutes?

7 A. Possibly.

8 Q. Were you present Sergeant Creech was talking to him?

9 A. Yes, sir. I was in the back seat.

10 Q. Okay. That was not recorded?

11 A. No, sir.

12 Q. So whatever 52 minutes where you talked about, you'd
13 have to add onto that another half hour, 45 minutes or so
14 as to when Sergeant Creech was talking to him?

15 A. Yes, sir.

16 Q. So we could be talking about an hour and a half to an
17 hour and 45 minutes, correct?

18 A. Possibly.

19 MR. SWERLING: Excuse me one moment.

20 THE COURT: Take your time.

21 BY MR. SWERLING:

22 Q. Did he ever remove the phone from his pocket or did
23 anybody remove his phone from his pocket?

24 A. During the interview with Sergeant Creech, Sergeant
25 Creech asked him if he had a cell phone and Mr. Cornish

1 said that he did. Sergeant Creech asked if he could -- if
2 he could look at it. Mr. Cornish removed it from his own
3 pocket and showed it to Sergeant Creech.

4 Q. And who did Sergeant Creech give it to or did he
5 just --

6 A. I believe he just looked at it.

7 MR. SWERLING: Okay. Thank you.

8 REDIRECT EXAMINATION (In-Camera)

9 BY MS. MAYES:

10 Q. And were you a witness to that event?

11 A. Yes, ma'am.

12 Q. Okay. And where do you recall that taking place?

13 A. I believe that took place in my vehicle. Yes, ma'am.
14 And he -- Mr. Cornish was allowed to smoke a cigarette, get
15 outside of our vehicle, so it wasn't like he was -- stayed
16 in Dubard's vehicle the whole night. He was allowed to get
17 out and walk around and smoke a cigarette, essentially take
18 a break from us talking with him, and then Sergeant Creech
19 made contact with him.

20 Q. Okay. And when Sergeant Creech asked to look at the
21 phone, what was his response -- Mr. Cornish's response?

22 A. He was very cooperative.

23 Q. Okay. And did he ever refuse that?

24 A. No, ma'am.

25 Q. Okay. And you saw him pull the phone out and hand it

1 to Sergeant Creech?

2 A. Yes, ma'am. He also unlocked the phone for Sergeant
3 Creech.

4 Q. And do you know whether or not Sergeant Creech took
5 photographs from that phone?

6 A. Yes, ma'am. I believe so.

7 Q. Okay. Did all of that appear to be with the consent
8 of Mr. Cornish?

9 A. Yes, ma'am.

10 Q. And you witnessed that yourself?

11 A. Yes, ma'am.

12 MS. MAYES: Nothing further.

13 THE COURT: Mr. Swerling?

14 MR. SWERLING: No questions.

15 THE COURT: May I excuse this witness, please?

16 MR. SWERLING: Yes, ma'am.

17 THE COURT: Thank you.

18 (Witness excused.)

19 THE COURT: All right, you-all. It is 1:30. I'd
20 like to give the clerk and the court reporter a lunch
21 break. If we could come back at 2:30.

22 We've got one more witness concerning this?

23 MR. HUBBARD: Your Honor, we might be able to just
24 not put up Dubard at this point because I think you've
25 heard the full content of the actual statement with what

1 will take care of it.

2 Let's do it. Go ahead and call your witness,
3 Mr. Swerling.

4 MR. SWERLING: Mr. Dubard.

5 (Whereupon, Arcadeus Dubard was duly sworn by the
6 Clerk of Court.)

7 THE CLERK: If you'll have a seat up there. If
8 you'll state your name and spell your last name for the
9 record.

10 MR. SWERLING: Judge, while I'm thinking about it,
11 I'd like for a Court's exhibit or for the purpose of
12 this hearing to put in the transcript of January --
13 December 21st, the -- what we've just been hearing
14 testimony about, the interviews with Mr. Cornish, and
15 so just make it a part of the record.

16 THE COURT: Okay. Any objection?

17 MR. HUBBARD: I understand for Court's exhibit
18 purposes, but obviously we do have real issues with the
19 accuracy of the transcript and believe that the best
20 evidence are the witnesses and the actual audio. But
21 with that -- since it's a Court's exhibit, I think that
22 fine.

23 THE COURT: I agree with you. It seems like we
24 did this all the time in Federal court back then. The
25 audio is the best evidence, but it is just for a Court's

1 exhibit. I'm gonna allow it for a Court's exhibit.

2 That will be defense's Court's Exhibit Number 1.

3 Is that --

4 MR. SWERLING: There's two; part one and part two.

5 THE COURT: Okay.

6 MR. SWERLING: Judge, we can put -- I don't have any
7 objection to the State putting in the recorded part one
8 and two just so there's no question about it.

9 THE COURT: I thought you-all had already put in the
10 recording.

11 MR. HUBBARD: I believe the 12-21 is -- go ahead.

12 MS. MAYES: Your Honor, the 27 minute 15 second
13 original audio from Detectives Pratt and Dubard is in. I
14 think that's either 27 or 28. We also have the redacted
15 version of that that is 9 minutes 57 seconds, which is
16 what the State would be offering for the sake of its case
17 in chief, but that full audio of the first recording of
18 Pratt --

19 THE COURT: I think was numbered 28 and then I think
20 29 was the nine minute one.

21 THE COURT REPORTER: No, I think that's reversed.

22 THE COURT: And the full audio is 29.

23 And is that what this transcript is?

24 MS. WILSON: Judge, you might want to check that
25 because in my notes I had 28 is the full length one.

1 THE COURT: I've got nine minutes.

2 THE COURT REPORTER: I do, too.

3 THE COURT: Because I can tell you because this is
4 in my writing. Ms. Mayes stood up and said this is the
5 full length audio and then she went through to say it was
6 the excerpt of nine minutes and this was for this hearing
7 only and not in anything else is what I wrote down.

8 MS. MAYES: And so, Your Honor, to clarify, the
9 first recording of Pratt, and these came to us in two
10 different recordings, so they were never combined into
11 two recordings. The first recording of Detective Pratt is
12 27 minutes, 15 seconds. That has been offered and entered
13 as a Court's exhibit in full.

14 The second recording is 25 minutes and 40 seconds,
15 also labeled as second interview of Pratt, which follows
16 the first one. We have not offered that one and we are
17 not offering any content from that one.

18 THE COURT: I was gonna say I don't even have that.
19 And 28 is just the nine minute excerpt from 29.

20 MR. HUBBARD: (Nods head.)

21 THE COURT: I want to make sure.

22 MR. SWERLING: Judge, the transcript we offered is
23 actually both of them, so that's a total of 52 minutes.

24 THE COURT: I know, but I need the -- I need the
25 court reporter to mark that.

1 I'm gonna mark it as number -- Number 32 I think is
2 the next one I've got. That is going to be defense's
3 exhibit, which is the transcript --

4 MR. SWERLING: Of December 21st.

5 THE COURT: And that will be for the purposes of this
6 hearing only.

7 MR. SWERLING: That's correct.

8 THE COURT: Okay.

9 (Court's/Defendant's Exhibit Number 32, transcript
10 of Cornish interview, was admitted for pretrial hearing
11 purposes.)

12 ARCADEUS DUBARD,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION (In-Camera)

15 BY MR. SWERLING:

16 Q. Mr. Dubard, good afternoon. Jack Swerling. I think
17 we've met before. I want to ask you just a few questions
18 about this traffic stop on December 21, 2019.

19 A. Yes, sir. If you don't mind, I'll go ahead and state
20 my name and spell my last. I didn't get to do that before.

21 Q. Oh, I'm sorry.

22 A. But I am Arcadeus Dubard. Last name's spelling
23 D-U-B-A-R-D. I'm 1 detective with the Lexington County
24 Sheriff's Department.

25 Q. Okay. Were you a detective on duty on December 21,

1 2019?

2 A. Yes, sir.

3 Q. And did you participate in a traffic stop and
4 interview of the defendant in this case, Jeremy Cornish?

5 A. Yes, sir.

6 Q. Okay. Now I have a few questions. We've gone into it
7 with other witnesses, but I have a few direct questions I
8 wanted to ask you. When -- did you have anything to do
9 with the actual stop or just the interview?

10 A. No, sir. I pulled up later to assist.

11 Q. Okay. So from what I understand there were three
12 investigators there or were there more?

13 A. Three is my understanding.

14 Q. Okay. And were you-all in separate units?

15 A. We're in separate vehicles, yes, sir.

16 Q. All right. And were they marked or unmarked vehicles?

17 A. Unmarked vehicles.

18 Q. Okay. Were you in uniform or plainclothes?

19 A. It's a plainclothes unit.

20 Q. Were you armed?

21 A. Yes, sir.

22 Q. Okay. Were you wearing a vest?

23 A. Yes, sir.

24 Q. Was Mr. -- captain Laintz wearing a vest?

25 A. I don't recall.

- 1 Q. And was, I'm sorry, Mr. Pratt wearing a vest?
- 2 A. Yes, initially.
- 3 Q. All right. Now so when you pulled up after the stop,
- 4 where was Mr. Cornish when you approached the area where he
- 5 was stopped?
- 6 A. When I originally pulled up, he was inside his
- 7 vehicle.
- 8 Q. His vehicle?
- 9 A. Uh-huh.
- 10 Q. And what can you tells about what happened when you
- 11 pulled up and what were the immediate things that happened
- 12 thereafter?
- 13 A. When I first pulled up, he was speaking with Captain
- 14 Laintz and Detective Pratt and then Captain Laintz walked
- 15 over to me and asked me to assist Detective Pratt with an
- 16 interview with Cornish.
- 17 Q. And where did the interview take place?
- 18 A. Inside my unmarked Tahoe.
- 19 Q. Yours?
- 20 A. Yes, sir.
- 21 Q. And it's a Tahoe?
- 22 A. Yes, sir.
- 23 Q. And where were you sitting in the Tahoe?
- 24 A. In the bank seat rear passenger.
- 25 Q. Where was Mr. Cornish?

1 A. He was in the front passenger.

2 Q. Okay. And Mr. Pratt?

3 A. Was in the front driver.

4 Q. And did either one of you give Mr. Cornish any type
5 introduction as to why you had stopped him?

6 A. That would have been done prior to my arrival. When
7 we got into the car, Detective Pratt had initiated kind of
8 talking to him about himself and things like that.

9 Q. Okay. What was your understanding about the purpose
10 of the stop?

11 A. It was initially in association with a location that
12 we were about to do a search warrant at. So the vehicle
13 matched the description of a vehicle associated or -- or
14 thought to be associated with an incident that took place
15 and then was seen leaving that area and then a traffic stop
16 was initiated.

17 Q. Okay. And what information did you have about --
18 well, did you have information about what happened at this
19 place where you were gonna execute the search warrant,
20 Landmark Apartments?

21 A. I -- no, I had no information about any incident at
22 the Landmark.

23 Q. Isn't that where the search warrant was being excused?

24 A. Yes, sir. Yes.

25 Q. And were you told that Mr. -- the person in the white

1 dually, which is what was stopped, correct?

2 A. Yes, sir. A white dually truck.

3 Q. Had dropped off a person at that Landmark apartment
4 address?

5 A. Yes. I wasn't told directly, but I'd overheard that a
6 white dually pulled up and the suspect had possibly gotten
7 out of it.

8 Q. Okay. So you had that information when you began
9 questioning Mr. Cornish?

10 A. Yes, sir.

11 Q. Did you actually do any of the questioning of
12 Mr. Cornish?

13 A. Yeah, it was kind of back and forth conversation
14 between the three of us.

15 Q. And it was about what Mr. Cornish's activities were
16 that day?

17 A. I think it partly had something to do with that they
18 had dropped him up, but then it went into another thing.

19 Q. What other day?

20 A. The day of the incident.

21 Q. The 17th?

22 A. Yes, sir.

23 Q. That's actually what I was talking about. His
24 activities on the 17th.

25 A. Yes, sir.

1 Q. And that's what you and the other investigator was
2 talking to him about; is that correct?

3 A. Yes, sir.

4 Q. All right. No warnings were given that he did not
5 have to talk to you-all?

6 A. Prior to my arrival, my understanding was that he was
7 asked if he wouldn't mind talking to us and he said that he
8 wouldn't mind.

9 Q. But not given any Miranda warnings?

10 A. No, sir.

11 Q. He wasn't told as far as you know or in your presence
12 that he did not have to engage in that conversation; is
13 that correct?

14 A. No, sir.

15 Q. Is that correct?

16 A. Not in my presence, no, sir.

17 Q. Okay. I'm sorry. Maybe I asked it in a double
18 negative.

19 A. Uh-huh.

20 Q. What I'm asking you is in your presence was he told
21 that he did not have to talk?

22 A. No, sir. He was asked if he wanted to talk.

23 Q. Wanted to, but not told that he didn't have to?

24 A. No.

25 Q. That's what I want to make sure I get that out right.

1 A. It's a little confusing the way you're asking the
2 question.

3 Q. I know it is. I'm confused myself. But, in other
4 words, in your presence he was not told that he didn't have
5 to talk?

6 A. He was asked if he wanted to speak with us and said he
7 said that he want to.

8 Q. So the answer to my question is he was not told
9 anything?

10 A. Not told that he did not have to talk?

11 Q. Yes, sir.

12 A. No, sir. Not technically.

13 Q. And was he told that he could stop the interview at
14 any time?

15 A. He was told that he was not in any custody and that he
16 was not under arrest for anything.

17 Q. Okay. But despite the fact that you-all knew that he
18 had allegedly dropped off the suspect in the case at the
19 Landmark Apartments, correct?

20 A. Yes, sir.

21 Q. And how would he have been free to leave if you said
22 it was remarked that he was not in custody?

23 A. I'm -- I'm not understanding.

24 Q. Could he have just left?

25 A. Yes, sir.

1 Q. He could have taken his car and driven away?

2 A. He could have left.

3 Q. In his own vehicle?

4 A. I don't think that he was able to leave in that
5 vehicle that day. I think Captain Laintz was wanting
6 to kind of investigate further into that vehicle's
7 whereabouts, but as far as Mr. Cornish we had no reason
8 to keep him on-scene if he didn't want to be there.

9 Q. So back to my question, how would he have left if the
10 vehicle was being kept there?

11 A. He could have had multiple ways to leave and if he --
12 he had his cell phone. He could have called a ride. I
13 don't know. It would have been up to him as an adult.

14 Q. Let me ask you where was his cell phone when you were
15 in the vehicle?

16 A. It was in his possession.

17 Q. Okay. Never put on the seat, never taken by anybody?
18 Neither one of you?

19 A. I didn't -- we didn't take his cell phone at all.

20 Q. Nobody viewed it?

21 A. Later they viewed it per his request.

22 Q. All right. And so from the time that you started,
23 you -- you say you participated in the interview. From the
24 time that you started in the interview until the time it
25 was finished, how long did that take?

1 A. I can't be sure. Probably around 45 minutes to maybe
2 an hour the entire incident that I was there for.

3 Q. So it could be at least -- as much as an hour; is that
4 correct?

5 A. Possibly.

6 Q. I think we have 52 minutes, but it could have been as
7 much as an hour?

8 A. Possibly.

9 Q. Okay. You wouldn't deny that?

10 A. Well, I couldn't confirm it either, sir.

11 Q. What -- did Sergeant Creech come up after you were
12 finished?

13 A. Yes, sir.

14 Q. And did you remain on the scene?

15 A. No, Sergeant Creech and another detective took over
16 and I was asked to go to another location.

17 Q. And that's what you did?

18 A. Yes, sir.

19 Q. So you don't know how long they were there with
20 Sergeant Creech?

21 A. No, sir.

22 Q. Do you know who the other individual was?

23 A. Detective Pratt was there for a while and then he
24 ended up joining me at the other location, so I don't know
25 who else might have stayed on-scene with him.

1 Q. Do you know who searched the vehicle?

2 A. Captain Laintz was the person searching the vehicle.

3 Q. Was there anybody else there searching the vehicle?

4 A. Not to my knowledge.

5 MR. SWERLING: That's all I have.

6 CROSS-EXAMINATION (In-Camera)

7 BY MS. MAYES:

8 Q. So the search of the vehicle I think you've indicated
9 was taking place during the interview that you conducted
10 along with Detective Pratt?

11 A. Yes, ma'am.

12 Q. And you had a chance to listen to the audio in this
13 case?

14 A. Yes, ma'am.

15 Q. It's already in as a Court's exhibit. Can you tell us
16 whether you heard him give consent to search the vehicle?

17 A. As we were preparing, I overheard him talking to
18 Captain Laintz and he said that he wouldn't mind talking
19 to law enforcement and then they had some further
20 conversation before we moved some vehicles and stuff
21 around.

22 Q. Okay. So you heard both of those questions that were
23 posed to him; would he come sit in the car I think it was
24 put and have a long conversation, can we do that, and he re
25 -- you witnessed that?

- 1 A. Something along those lines. He was advised that it.
2 was gonna be a long conversation and he said okay, no
3 problem.
- 4 Q. All right. And can you tell us whether you also
5 witnessed him agree or consent to the search of the
6 vehicle?
- 7 A. Yes, he did.
- 8 Q. Did he ever at any time indicate that he didn't want
9 to participate in the interview?
- 10 A. No, ma'am.
- 11 Q. Now was he in custody at any point during your contact
12 with him?
- 13 A. No, ma'am.
- 14 Q. I know you indicated on direct that he was free to
15 leave and I know you mentioned that he had a phone, but
16 would he have also been free to just stand around outside
17 the parking lot if he wanted to?
- 18 A. Yes, ma'am.
- 19 Q. To wait on the vehicle search to be completed?
- 20 A. Yes, ma'am.
- 21 Q. Or go into the Waffle House?
- 22 A. Yes, ma'am.
- 23 Q. Any of those things?
- 24 A. Yes, ma'am.
- 25 Q. I'm gonna refer you specifically to two portions of

1 the audio. Who is it who tells him at 5:54 you are not in
2 trouble?

3 A. I don't see it in the transcripts, but I remember
4 telling him that he wasn't in any trouble right now and --

5 Q. Okay. So you remember telling him that yourself?

6 A. Yes, ma'am.

7 Q. Okay. So the statement you're not in trouble you
8 would agree is a statement you made to him?

9 A. Yes, ma'am.

10 Q. And then who is it who says: If I thought you did
11 anything wrong, I would not have you sitting comfortable in
12 the front of my Tahoe; I wouldn't let you be sitting there
13 freely?

14 A. Yes, ma'am. I remember saying that to him.

15 Q. That was you as well?

16 A. Yes, ma'am.

17 Q. And who is it that states this is all factfinding?

18 A. That was me again. We -- we told him that we didn't
19 think that he was in any trouble. We were just trying to
20 figure out what was going on.

21 Q. And based on that, do you have an opinion as to
22 whether or not you advised him that he was comfortable not
23 in trouble and that this was being done freely?

24 A. Yes, ma'am.

25 Q. Is now at any point in time through this interview or

1 the subsequent interview also recorded did he ever at any
2 point implicate himself in this crime?

3 A. No, ma'am.

4 Q. Did he ever acknowledge having been with Justin
5 Hopkins at the time the crime was committed?

6 A. No, ma'am.

7 Q. Did he ever even acknowledge having driven the truck
8 in the area of Lexington County on the date of December
9 17th?

10 A. No, ma'am.

11 Q. Was there ever anything that changed his position in
12 your mind from that of a potential witness to a suspect?

13 A. No, ma'am.

14 Q. Did you threaten him in any way to participate in an
15 interview?

16 A. No, ma'am.

17 Q. Did you hear any other officer threaten him?

18 A. No, ma'am.

19 Q. Did you promise him anything in exchange for an
20 interview?

21 A. No, ma'am.

22 Q. Based upon all the circumstances that you witnessed
23 and observed that day, did his consent to participate
24 appear to be free and voluntarily?

25 A. Yes, ma'am.

1 THE COURT: Nothing further.

2 Any redirect?

3 MR. SWERLING: No, Your Honor.

4 THE COURT: May I excuse this witness?

5 MR. HUBBARD: Yes, Your Honor.

6 THE COURT: Thank you.

7 (Witness excused.)

8 MR. HUBBARD: The State calls sergeant Adam Creech.

9 (Whereupon, Anthony Adam Creech was duly sworn by
10 the Clerk of Court.)

11 THE CLERK: Have a seat up there and if you'll
12 state your name and spell your last name for the record.

13 THE WITNESS: Sergeant Anthony Adam Creech.
14 C-R-E-E-C-H.

15 ANTHONY ADAM CREECH,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION (In-Camera)

18 BY MR. HUBBARD:

19 Q. Sergeant, January 23rd of 2020, did you have an
20 opportunity to interview Jeremy Cornish?

21 A. I did. The interview was conducted with myself, at
22 the time Deputy Solicitor Shawn Graham, Detective Derek
23 Howell, Mr. Leventis, and Jeremy Cornish.

24 Q. Who requested this particular interview?

25 A. That interview was requested by Mr. Leventis.

1 Q. And where did this take place?

2 A. It took place at the Lexington County Sheriff's
3 Department.

4 Q. Now is there any audio or video of that interview?

5 A. There's not. It was agreed amongst all parties that
6 it would just be conversationally only documented and not
7 recorded.

8 Q. Did you read Mr. Cornish his Miranda rights even
9 though Mr. Leventis was there?

10 A. I did. It was one of the first things we did in the
11 interview.

12 Q. Let me ask you when you began talking to Mr. Cornish,
13 what, if anything, did he say about his knowledge of these
14 triple homicides?

15 A. He told us that prior to Justin Hopkins being arrested
16 on December 21, 2019, that he had not heard of them, the
17 murders under investigation.

18 Q. So he said the first indication or knowledge he had or
19 awareness of the triple homicide was when Justin Hopkins
20 was arrested?

21 A. That's correct. He said he found out after -- after
22 that.

23 Q. And that was on the 21st, the very night of the --
24 that he was stopped -- the car stopped?

25 A. Correct.

1 Q. Did you ask him to go into his activities of December
2 the 17th of 2019?

3 A. We did.

4 Q. And what did he say he did that day?

5 A. He told us that he had picked up some employees that
6 morning. He picked up Mr. Hopkins at Richland Village.
7 After that time they went to McEntire Air Base, attempted
8 to start working and it was a very rainy day that day and
9 the job site got rained out fairly quickly and work was
10 cancelled for the day.

11 Q. So he didn't pick him up at Food Lion, but he picked
12 them up at Richland Village?

13 A. I believe he picked up the other two employees at
14 Food Lion and he said he picked up Mr. Hopkins at Richland
15 Village.

16 Q. Okay. Now after it got rained out -- their workday
17 got rained out, did he say it happened early in the day or
18 did they go through a whole day before they got rained out?

19 A. It was pretty much the first thing. They started and
20 stopped about -- about 7:30 that morning.

21 Q. What did he say he did at that point?

22 A. He said he dropped off the other two employees, a
23 Dante and Quinton, and then he dropped off --

24 Q. Did he say where he dropped them off?

25 A. Well, he said that he and Justin then went to the DMV

1 on O'Neil Court in Columbia.

2 Q. So the other two employees, he dropped them off. Did
3 he drop them back off at Food Lion or did he say?

4 A. Yeah, he said he dropped them back off at Food Lion,
5 the other workers.

6 Q. But Justin Hopkins remained with him?

7 A. Correct.

8 Q. And where did he say he went at that point?

9 A. He said they then went to the South Carolina
10 Department of Motor Vehicles located on O'Neil Court.

11 Q. And this is early that morning?

12 A. Correct.

13 Q. Prior to the triple homicide?

14 A. The prior to the murders. Yes, sir.

15 Q. And, again, what was his purpose of going to the DMV
16 at O'Neil Court?

17 A. There were some fines against his license that he was
18 attempting to resolve or take care of.

19 Q. What did he say when he found out what he would have
20 to pay? Who did he contact and what did he do at that
21 point?

22 A. He said he contacted his employer, who he also
23 referred to as his uncle, which was Willie Patterson, and
24 asked to borrow \$425.00 to take care of the fees.

25 Q. Is Willie Patterson or owner or the head person of

1 that construction outfit that Mr. Cornish worked with?

2 A. Correct. PatCon Construction, I believe.

3 Q. And did he go meet his uncle or did he go back to the
4 -- to headquarters to get a check?

5 A. He said he and Justin then went back to his --
6 Jeremy's home address of [REDACTED] Angel Valley Way.

7 Q. And Hopkins was still with him?

8 A. Correct.

9 Q. So he goes by his house with Jeremy -- with Justin
10 Hopkins and then what does he do?

11 A. He says after that they drove back to some apartments
12 in the St. Andrews area and he said while they're on the
13 way Justin asked him he'd like to purchase some marijuana
14 and so he directed him to some apartments in the area near
15 where Justin lived.

16 Q. Let me ask you this. Before they got back over
17 there, does he mention anything about having to drop his
18 girlfriend off after going by his own house?

19 A. Yes, he does. He said they dropped his girlfriend off
20 at her parents' address. I didn't know what that address
21 was.

22 Q. And all this time is Justin Hopkins still with
23 Mr. Cornish?

24 A. Yes, they're still together.

25 Q. After they drop off this girlfriend, there's a

1 conversation of -- you mentioned marijuana. What's that
2 conversation?

3 A. According to Jeremy, he says that Justin asked him if
4 he wanted to purchase some marijuana and then directed him
5 to some apartments close to where he lived in order to
6 purchase some.

7 Q. So Mr. Cornish was interested in getting marijuana as
8 well?

9 A. Correct.

10 Q. Does he mention the name of these apartments?

11 A. He doesn't. He described them as difficult to get to,
12 but he said that Justin directed him and he parked near the
13 entrance while Justin went inside.

14 Q. And this -- it's in the St. Andrews area?

15 A. Correct.

16 Q. Okay. Justin goes inside. Where does Mr. Cornish put
17 himself?

18 A. Jeremy said he stayed in his truck and said he was
19 checking his e-mail when he received a phone call from a
20 friend of his.

21 Q. What, if anything, does he say happens next?.

22 A. He said a little bit of time passed. He wasn't real
23 clear on that passage of time, but he said after some time
24 passed, Justin hadn't come out and he started driving
25 around looking for him and he said he found Justin on a

1 nearby street riding a bicycle.

2 Q. Now is Mr. Cornish when he's saying he's driving
3 around, the driving he did that day is that in that white
4 Chevy dually?

5 A. Correct. The same one they would have taken to work
6 that morning.

7 Q. The same one he was stopped in on the 21st?

8 A. That would be correct.

9 Q. All right. So when he's riding around, he says he's
10 riding around the apartment complex trying to find Justin?

11 A. The complex is just the immediate area.

12 Q. Okay. And what, if anything, does he see when he sees
13 Mr. Hopkins?

14 A. He said he sees him on a bicycle, he stops and picks
15 him up off the bicycle and then he said they drive to KJ's
16 grocery store, which is located nearby, right across the
17 street from Landmark Apartments where Justin lives.

18 Q. Does he volunteer anything about why Justin was so
19 long getting back to the truck and why he's riding a
20 bicycle?

21 A. He doesn't.

22 Q. So he just says I'm sitting there in the parking lot,
23 Justin Hopkins is taking a little while, I'm driving around
24 and I see him on a bicycle, but I don't talk to him about
25 it?

1 A. Correct.

2 Q. Or he doesn't share what they talked about?

3 A. Correct.

4 Q. So after he picks him up and -- and Hopkins is back in
5 the vehicle, where do they go?

6 A. He says they went -- he says he took Justin to the
7 KJ's grocery store, which is across from Landmark
8 Apartments where Justin lived.

9 Q. So the vehicle we see at KJ's on video, he would
10 acknowledge that is his vehicle?

11 A. Correct.

12 Q. And he is the one driving?

13 A. That would be within the timeframe he said he dropped
14 him off over there. It does appear to be the same vehicle
15 and the same occupants.

16 Q. And as an investigator, you now know it's also -- what
17 is it, eleven minutes after the 9-1-1 call?

18 A. Correct.

19 Q. And when he saw Justin on the bicycle, that was about
20 a minute after the 9-1-1 call?

21 A. Yes, according to the witnesses who also saw that
22 interaction, it was about 11 AM, which would have been a
23 minute after the 9-1-1 call.

24 Q. Does he say why he drops Justin Hopkins off at the
25 KJ's?

1 A. Yes. He said Justin was going to purchase some
2 cigarettes and cigars for them to us to smoke marijuana,
3 presumably the marijuana that he just obtained.

4 Q. So he's dropping him off. Well, what does Mr. Cornish
5 do?

6 A. Mr. Cornish said he then went and waited for Justin at
7 the apartment, Landmark, right across the street within
8 walking distance of KJ's.

9 Q. Is that the same one that was searched on the 21st?

10 A. It is.

11 Q. [REDACTED]?

12 A. Correct.

13 Q. How was Mr. Hopkins supposed to make it back to that
14 apartment complex? Was it within walking distance?

15 A. Yes, it's a very short distance away.

16 Q. But Mr. Cornish after all of this goes back and
17 weights at [REDACTED]?

18 A. Correct.

19 Q. Does he say how he gets in?

20 A. He doesn't specify. He doesn't specify whether he's
21 waiting in the apartment or just at the apartment complex.
22 He just says he meets him back at the apartment.

23 Q. Fair enough. When Mr. Hopkins returns to Landmark,
24 and I'm assuming he did --

25 A. Correct.

1 Q. -- what, if anything, does Mr. Cornish say that
2 Mr. Hopkins showed him?

3 A. Jeremy then told us that Justin showed him some heroin
4 and marijuana.

5 Q. And what did Mr. Cornish say about the heroin?

6 A. He -- he didn't seem to like talking about the heroin.
7 He said it was a drug he didn't mess with.

8 Q. Did he at that point head home or did he say what they
9 talked about or if they talked about anything about what
10 had happened at [REDACTED] Butternut Lane?

11 A. He says that he got his -- his share of the marijuana
12 that had just been obtained and he said he went home
13 with it before then going to the home offices of PatCon
14 Construction where he worked. He said he was picking up
15 a check from his boss in reference to the money he asked
16 earlier about borrowing for his reinstatement fees.

17 Q. Well, let's stop there. He says his share of the
18 marijuana?

19 A. Correct.

20 Q. Does he mention that they discuss any of the activity
21 that happened at [REDACTED] Butternut Lane?

22 A. He doesn't mention any discussion of what took place.

23 Q. Nothing about why Justin took so long?

24 A. No, he doesn't.

25 Q. Nothing about why Justin Hopkins is on bicycle?

1 A. He doesn't elaborate on that at all.

2 Q. It's just he took his share of marijuana and left?

3 A. Correct.

4 Q. And so you mentioned after he left he went where?

5 A. He went home before then going to the PatCon

6 Construction offices to pick up a check.

7 Q. And then where did he go?

8 A. Then he says he stopped at the Dollar General to pick

9 up an umbrella and said he drove to the BB&T at Five Points

10 to cash the check he had picked up and then said he drove

11 back to the DMV on O'Neil Court where he just happened --

12 he said he just happened to run into Justin at the same

13 DMV.

14 Q. So this is now after the triple homicide and he just

15 happens to run into Mr. Hopkins there?

16 A. Correct.

17 Q. Do you see at any point in time in your investigation

18 Mr. Hopkins and Mr. Cornish at -- that second time at that

19 DMV off O'Neil Court?

20 A. I'm sorry, clarify the question.

21 Q. In your investigation, were you able to see and

22 confirm that Mr. Cornish did go back to the DMV?

23 A. Yes, we were. We got afternoon surveillance video

24 just like we did for that morning that showed them together

25 both times.

1 Q. And that second time you say Mr. Hopkins was there as
2 well?

3 A. Correct, he was.

4 Q. Now let me ask you this. That second time, was
5 Mr. Cornish still wearing that white T-shirt and jeans?

6 A. No, he was wearing a black and white polo shirt and
7 blue and white jacket.

8 Q. So he changed before he went to the DMV?

9 A. Correct.

10 Q. And was Mr. Hopkins wearing the same clothes or do you
11 remember?

12 A. I don't recall without reviewing the video. We looked
13 at those videos so many times, I don't want to get mixed
14 up.

15 Q. But according to Mr. Cornish he said he went there
16 that second time alone?

17 A. Correct.

18 Q. And he just happened, I think, is what you said?

19 A. Yeah, I believe he said he was there and Justin showed
20 up a short time later.

21 Q. And did he take care of whatever license issue he had?

22 A. Yes. He said while he was getting his license sorted
23 out, he said that Justin then went and got in his truck and
24 waited on him to leave. He said when he got back to the
25 vehicle he said Justin asked him for a ride over to Garners

1 Ferry Road before calling for a ride a few minutes later
2 and then leaving.

3 Q. Okay. And he says that's all his interaction that day
4 with Justin Hopkins?

5 A. Yes, that is.

6 Q. While you're interviewing Mr. Cornish, did you ask
7 permission for Mr. Leventis and Mr. Cornish to see
8 Mr. Cornish's cell phone?

9 A. I did. We had the phone in evidence following
10 Mr. Cornish's arrest and at the beginning of the interview
11 we'd asked for the passcode for it. At this point in the
12 interview we asked if there was any objection to reviewing
13 the contents of the phone and Mr. Leventis said there was
14 no issue with this.

15 Q. What was the passcode? 4123, does that sound right?

16 A. Yes, it was 4123.

17 Q. And you had an opportunity to actually take a look at
18 his cell phone with it open and you could actually peruse
19 it?

20 A. Yes, we looked at it in the interview because he had
21 referenced looking at some e-mails and having some phone
22 calls during the time of the murders, so we were looking to
23 verify information.

24 Q. Is this the first time you had looked at that
25 cellphone?

1 A. No, it was the second time I viewed the phone, but the
2 first time on any kind of in-depth level.

3 Q. The first time you met Mr. Cornish, was that at the
4 road stop on December 21st?

5 A. It was December 21, 2019.

6 Q. And at that time did you ask for permission to look at
7 that cell phone?

8 A. Very limited. I asked if he could show me Justin
9 Hopkins' contact in his phone, which he showed me, and I
10 asked him if it would be okay for me to look at their text
11 messages between them and that was about the extent of
12 that, and that was done right there with him within reach.

13 Q. On this day, January 23, 2020, the interview room,
14 what, if anything, did you notice that was different about
15 those text messages?

16 A. They were missing by the time of January 23rd. They
17 were no longer present on the device.

18 Q. Did you also notice anything as far as activity or
19 inactivity during the -- the timeline of when we know those
20 triple homicides took place?

21 A. Yes, he said he was on a phone call. When we looked
22 at his call logs, there was actually lack of phone call
23 during that time. He mentioned that, then he changed that
24 and said that he was actually, in fact, checking an e-mail
25 rather than on the phone.

1 Q. Did he -- did you pointblank ask him if he was one of
2 the shooters?

3 A. I did.

4 Q. And did he deny that or did he agree to that?

5 A. He denied it. We confronted him with the evidence
6 that we had developed at that point that told us there were
7 likely two shooters in this incident. We asked him if he
8 was one of the shooters and he said no.

9 Q. Did he deny going into the apartment complex or going
10 into the apartment where the triple homicides occurred?

11 A. He did. He said he was at the complex, but he said he
12 stayed in the vehicle and did not go into the apartment.

13 Q. Now I want to ask you about a couple of text messages.
14 Had you noted at some point text messages from Mr. Cornish
15 to Mr. Hopkins?

16 A. I had.

17 Q. And have you gotten phone records since to corroborate
18 those messages were sent?

19 A. I have. In fact, that's how we learned of those
20 messages in the first place were from phone records
21 obtained from Verizon wireless.

22 Q. Let me ask you about two messages in particular.
23 Was there one -- what was the first message he sent
24 Mr. Hopkins?

25 A. Certainly. Both of these messages were from

1 December the 17th of 2019. The first one was at 1:03 PM
2 and the message was, quote, make sure you clean those tools
3 of, end quote.

4 Q. So this is on the date of the triple homicide?

5 A. Correct.

6 Q. Did he give an explanation for what that meant?

7 A. He did. He initially told us that he was referring
8 to masonry tools. We asked him why Jeremy -- I'm sorry --
9 why Justin would be responsible for cleaning the masonry
10 tools, since the tools were, we assume, kept inside the
11 vehicle, it was a company truck, and Jeremy clearly drove
12 the truck outside of business hours, and then he had
13 already also said that Justin didn't ride with him the
14 following day to work on 18th, so it wouldn't make sense
15 for Justin to have those tools to be cleaned in that he
16 didn't ride with Jeremy the following day. As we kind of
17 talked about that further, he tried to explain that Justin
18 was responsible for cleaning the tools because Justin was
19 his apprentice. We mentioned though that the job site got
20 rained out that day so there really wouldn't be anything to
21 clean. At that time Jeremy very specifically said that the
22 tools in question now became a single tape measurer. He
23 said the tape measurer had gotten wet in the rain and he
24 was texting Justin to clean the tape measurer off.

25 Q. So after all this talk about tools we come down to a

1 tape measurer and it's wet?

2 A. Correct.

3 Q. In your perusal of his phone, did you ever see him
4 giving directions to Mr. Hopkins on any other day about
5 cleaning up tools or equipment from a job site?

6 A. No, this would be the singular instance that I
7 observed referring to cleaning any kind of tools.

8 Q. Was there a message almost immediately following this
9 text message from Mr. Cornish to Mr. Hopkins?

10 A. There was. At 1:04 PM, which would be a minute later,
11 there was a second text message sent from Jeremy to Justin
12 that said, quote, erase these messages, end quote.

13 Q. And how much later then was it after the "make sure
14 you clean those tools off"?

15 A. Within a minute.

16 Q. Within a minute. And, again, this is December 17,
17 2019?

18 A. Correct, after the murders.

19 Q. Did you ask him what he meant by that message?

20 A. We did. We asked him what he was referring to by
21 messages that needed to be deleted he said that he was
22 referring to messages about drug activity.

23 Q. And in looking at his phone, did you see other
24 messages involving or mentioning marijuana or other drugs?

25 A. I had previously seen other messages on the 21st

1 referring to drug use between the two of them.

2 Q. Have you -- did you ever see any other message from
3 Mr. Cornish to anyone saying "erase these messages"?

4 A. I didn't, no.

5 Q. So it just happened to be after the message that said
6 "make sure you clean those tools off"?

7 A. Correct.

8 Q. Which just happened to be on December 17th?

9 A. Correct.

10 Q. Which just happened to be after the triple homicide?

11 A. Yes, sir.

12 Q. All right. And, again, you mentioned you had Verizon
13 records. Was it from Mr. Hopkins?

14 A. Correct.

15 Q. And that's -- you can get that information as to these
16 texts off of that?

17 A. Yes. Verizon Wireless is one of the only mobile phone
18 providers that can provide text message content within five
19 days.

20 MR. HUBBARD: I beg the Court's indulgence.

21 THE COURT: Take your time.

22 BY MR. HUBBARD:

23 Q. Just to wrap up, did he mention he had any knowledge
24 whatsoever of the crime?

25 A. He said prior to December 21, 2019, that he had no

1 knowledge of the crimes.

2 Q. Did you have any indication that he had done Google
3 searches?

4 A. Yes. Also present on his phone was his Google
5 account, which would be linked to the e-mail account that
6 we reviewed during the interview, which was I believe
7 [REDACTED]Gmail.com. In his Google history, there
8 were numerous searches relating to the crimes in question,
9 the murders on the 17th.

10 Q. When did those Google searches start?

11 A. Prior to December 21st.

12 Q. Were any of those searches on like the 17th or the
13 18th, the day after?

14 A. They appeared to go -- starting on the 17th and over
15 the course of subsequent days.

16 Q. Did some of those searches about this criminal
17 activity, this triple homicide, did some of those searches
18 even start before the sheriff's department released a press
19 release about those triple homicides?

20 A. Within the hour of the 9-1-1 call before the media had
21 even shown up, there were numerous queries for, I believe,
22 WIS and WLTX, local news sites, and then as the day
23 progressed and in subsequent days the search queries became
24 more specific to the shooting.

25 Q. Prior to the December 17th, did you see any of those

1 type of Google searches about news?

2 A. I did not.

3 Q. Any searches about crime?

4 A. No, not that I recall.

5 Q. It just starts in on the 17th after the triple
6 homicide?

7 A. Correct.

8 Q. Okay.

9 MR. HUBBARD: I think that's all at this time, Your
10 Honor.

11 THE COURT: Thank you, Mr. Hubbard.

12 MR. SWERLING: Judge, can you indulge me one moment?

13 THE COURT: Sure. Absolutely.

14 MR. HUBBARD: Your Honor, while they're talking,
15 may I can ask one more question.

16 THE COURT: Go ahead, Mr. Hubbard.

17 BY MR. HUBBARD:

18 Q. In reference to the phone, did you then go and do a
19 search on the phone? What do you call it when you -- when
20 you do a -- what I would call a dump on the phone? What is
21 that called?

22 A. We did following this a data extraction of the device
23 that we then analyzed further.

24 Q. And you had permission to do that?

25 A. Correct.

1 Q. From that the defendant, Mr. Cornish, with his
2 attorney present?

3 A. Correct. Mr. Leventis indicated he had nothing to
4 hide. They wanted to cooperate fully.

5 MR. HUBBARD: Thank you.

6 CROSS-EXAMINATION (In-Camera)

7 BY MR. SWERLING:

8 Q. Sergeant, I'm Jack Swerling.

9 A. Good afternoon, Mr. Swerling.

10 Q. Good afternoon, sir. So let me ask you something
11 because I don't have a whole lot of questions about what
12 happened in January --

13 A. Yes, sir.

14 Q. -- but we agreed that we would go back to the 21st and
15 ask you some questions about the 21st of December.

16 A. Certainly.

17 Q. You had -- tell me when did you come up on the scene
18 when they were interviewing or interrogating, whatever
19 anybody wants to call it, Mr. -- I'm drawing a blank.

20 A. Mr. Cornish. \

21 Q. Mr. Cornish. Jeremy.

22 A. Yes, sir. I can't tell you exactly what time I got
23 there, but I know I left about 10:30 and I was probably
24 there maybe half an hour.

25 Q. So when you got there and were talking, did you

1 actually talk to Mr. Cornish?

2 A. I did.

3 Q. And was Investigator Pratt still there?

4 A. Yes, sir. I believe --

5 Q. And Dubard?

6 A. -- if I remember correct, Detective Dubard left after
7 I got there and Detective Pratt sat in and I think I spoke
8 with Jeremy for maybe about half an hour give or take. We
9 had attempted to record and had some kind of technical
10 malfunctions, so that recording didn't take place, so I
11 can't tell you exactly how long we spoke, but it wasn't
12 very long and that was mainly because I had bunch of
13 information relayed about what he had said through other
14 people and I just wanted to hear it directly so there would
15 be nothing misconstrued.

16 Q. Okay. Because that -- that was actually my next
17 question. If they had already interviewed him, what was
18 the purpose of you're interviewing him, coming up and
19 interviewing him?

20 A. I had spoken to Mr. Hopkins during his arrest and I
21 also knew more about the overall case than anybody else
22 did, so I actually didn't want to rely on what would
23 effectively be hearsay if I could just run up the street
24 real quick.

25 Q. Mr. Hopkins at that point, had he incriminated

1 Mr. Cornish?

2 A. He had not.

3 Q. Okay. And at that point was -- what was Mr. Cornish's
4 status as far as you were concerned?

5 A. As far as I was concerned, he seemed to be cooperating
6 with detectives who were already out with him. I believe
7 when I got there he might have been outside the car
8 possibly smoking a cigarette, but I don't remember super
9 distinctly.

10 Q. But as far as -- you knew that he had dropped
11 Mr. Hopkins off; is that correct?

12 A. Correct. I did know that. Yes, sir.

13 Q. And you knew that he had been stopped presumably on a
14 tag violation?

15 A. I knew he had been stopped. I know I definitely knew
16 later that it was a combination of a tag violation and that
17 was a vehicle we were looking to identify as possibly
18 involved in this incident, but we had only known about
19 Justin Hopkins for less than twenty-four hours, so we were
20 still trying to kind of piece the overall picture together,
21 but we certainly wanted to know of the vehicle and identify
22 any occupants in case it became relevant later.

23 Q. And based upon your investigation, you knew that a
24 white dually was involved at the Woodland Apartments --

25 A. Correct.

1 Q. -- where the murders happened?

2 A. Indications that that vehicle may have been involved
3 in picking up an individual we believed was Mr. Hopkins.

4 Q. Okay. So here we have a white dually, you have a
5 driver of the white dually who had just dropped off
6 Mr. Hopkins, who you considered a suspect in the case --

7 A. Correct.

8 Q. -- and you still did not consider Mr. Cornish a
9 suspect, but a witness?

10 A. I was relying on the testimony of Captain Laintz,
11 Detective Dubard and Detective Pratt the way they all had
12 been relayed to me and they indicated that Mr. Cornish was
13 very cooperative, very believable. At the time, I -- you
14 know, the brief time I spent with him, I kind of got the
15 same -- the same impression, so at the time we just didn't
16 know enough about Justin Hopkins' potential involvement or
17 any confirmation for sure having true suspects we were
18 looking for. I mean, we had the testimony from Donnovin
19 Haynes that he may have heard two voices, but it wasn't
20 until we got SLED ballistics back to truly confirm that we
21 had two actual shooters that we really started to realize
22 we had another suspect being identified and Mr. Cornish's
23 version of what he had done that day versus what
24 Mr. Hopkins had told us seems pretty reasonable and he
25 seemed believable, so we were giving him the benefit of the

1 doubt that he was just being a good witness.

2 Q. I mean, just so we have a context, what did
3 Mr. Hopkins tell you about that day and Mr. Cornish, if
4 anything?

5 A. Mr. Hopkins said that they went to work that day and
6 spent the whole day at work together.

7 Q. And that's the only information you had from
8 Mr. Hopkins when you went over and talked to Mr. Cornish?

9 A. Correct.

10 Q. And I think I may have asked you this, but it's
11 getting late in the day, there were no rights given, no
12 advice of rights, no discussion about whether or not he had
13 to talk with you or not?

14 A. No, sir, not from me. Like I said, I was the fourth
15 officer to speak with him in that interaction, so if there
16 had been any -- any of those kind of discussions I would
17 have assumed that it would have been had or discussed with
18 previous officers and I certainly didn't see the need to
19 ask him that during my interaction with him.

20 Q. Did you get briefed when you went there by Captain
21 Laintz or Mr. Dubard or the other detective who was there?

22 A. I had already spoken to Captain Laintz over the phone
23 a couple of times and he had kind of relayed what Jeremy
24 had said, so Captain Laintz is relaying it to me from
25 hearing it from Detective Pratt or Detective Dubard, so

1 it's kind of like jumping through several individuals,
2 which is one of the reasons since I was so close I said
3 well I'll just run down there and I'll talk to him
4 firsthand, so that way I'm not making any decisions based
5 on this information. I'm not basing it off of a he said,
6 he said, he said chain of events in case something gets
7 lost in translation.

8 Q. Are there any consent forms to search or to speak
9 signed by Mr. Cornish?

10 A. There are not that I know of.

11 MR. SWERLING: Excuse me one moment.

12 THE COURT: Take your time.

13 BY MR. SWERLING:

14 Q. Yeah, let me -- one thing I wanted to ask you. Did
15 you actually discuss with Mr. Cornish about these Google
16 searches or did you just see the fact that there were
17 Google searches?

18 MR. HUBBARD: Your Honor, just for my clarity, are
19 we talking about January?

20 MR. SWERLING: I'm sorry. I'm going back to January
21 for a second.

22 THE COURT: He's going to January.

23 THE WITNESS: I'm tracking you, Mr. Swerling.

24 MR. SWERLING: I'm sorry to confuse you, Solicitor.

25 MR. HUBBARD: It's easy to do.

1 THE WITNESS: If you'd just give me one second.

2 MR. SWERLING: Sure. Go ahead.

3 THE WITNESS: I don't want to misspeak on a
4 particular statement that may not have been documented,
5 so.

6 BY MR. SWERLING:

7 Q. Please.

8 A. I don't note that in this initial documentation, so I
9 don't want to misspeak. I seem to recall that some of the
10 Goggles searches were discussed and I don't know if it was
11 just with Mr. Leventis in an outside conversation. I do
12 know some searches suggest it may have been attributable to
13 Mr. Hopkins using Jeremy's cell phone after the incident,
14 but I didn't document that in this interview, so I don't
15 want to say that that's attributable to this interview and
16 then would have been a statement that was made directly to
17 me.

18 Q. Fair enough. And the -- when you got the records of
19 the Google searches, it was over -- it was only like a
20 three- or four-day period that you had requested, correct?

21 A. Correct. Yes, sir.

22 Q. So we're not talking about a large universe of getting
23 messages from Facebook concerning that or any of the phone
24 records?

25 A. Correct. Detective Hendrix issued those search

1 warrants and he requested a pretty narrow window. If it
2 was me, I probably would have broadened it a little bit
3 just to --

4 Q. But it was a pretty narrow window?

5 A. But it was a pretty narrow window, yes, sir.

6 Q. Okay.

7 MR. SWERLING: All right. Thank you.

8 MR. HUBBARD: One quick follow-up.

9 REDIRECT EXAMINATION (In-Camera)

10 BY MR. HUBBARD:

11 Q. We bring those up, but I believe you said Mr. Cornish
12 said what -- what was his knowledge as he sat there in that
13 interview on January 23, 2020, when did he say he learned
14 of the murders?

15 A. He was very clear that he'd only heard about the
16 murders on December -- after December 21st of 2019 when
17 we told him about them.

18 Q. Okay. And so that's what he said in the interview,
19 but from your Goggle -- a review of the Google records
20 belonging to Mr. Cornish, it appeared contrary?

21 A. Correct. He actually had searched specific articles
22 relating to this incident prior to the 21st.

23 MR. HUBBARD: Thank you.

24 THE COURT: Anything else?

25 MR. SWERLING: No.

1 THE COURT: Can I let Sergeant Creech down?

2 MR. HUBBARD: Yes, Your Honor. Thank you.

3 (Witness excused.)

4 THE COURT: All right. Anything else?

5 I'll be glad to hear any argument on the stop and
6 the evidence that was received in the stop if you have
7 anything, Mr. Hubbard.

8 MR. HUBBARD: As to the stop, I'll defer to
9 cocounsel.

10 THE COURT: Ms. Mayes.

11 MS. MAYES: Yes, Your Honor. And you already have
12 a copy of the State's response regarding the defense
13 motion --

14 THE COURT: I do.

15 MS. MAYES: -- and we stand, Your Honor, on the
16 content of our response. First and foremost, this
17 particular stop the State maintains was supported by --
18 it only needs to be legally supported by reasonable
19 suspicion, the stop of the vehicle. The State maintains
20 it went well beyond that. There was probable cause and
21 the record is clear as to the fact that a witness at the
22 scene at [REDACTED] Butternut had seen an individual believed
23 to be Justin Hopkins getting into the white dually with
24 heavy equipment in the back and then four days later while
25 they are conducting surveillance at Landmark Apartments,

1 specifically the apartment of Justin Hopkins, they see a
2 truck that matches the identical description pull up,
3 they see an individual get out who is heavysset and appears
4 to match the same physical description of Justin Hopkins,
5 and then most significantly that individual goes to [REDACTED],
6 which they have already identified as the apartment of
7 Justin Hopkins. At that point law enforcement makes the
8 determination that that vehicle is believed to be evidence,
9 potential evidence, to contain potential evidence, and
10 they have reasonable suspicion to stop that vehicle, and
11 that is underway by Detective Pratt shortly thereafter and
12 as noted he also observes for independent justification,
13 of course, the tag light out, but, Your Honor, the State
14 maintains that vehicle was gonna be stopped regardless
15 because they have identified it in plain view as potential
16 evidence of a crime, also may contain potential evidence
17 of a crime.

18 Your Honor, based on all of those factors, they do
19 the routine aspects of a traffic stop. They ask him for
20 a license. While giving his license, he actually hands
21 over a DMV receipt that perhaps unknowingly to him isn't
22 in his name, it's in the name of Justin Hopkins, but
23 only that, it's dated December 17, 2019, which would
24 potentially be verification to law enforcement that
25 Justin Hopkins had been in that vehicle on that date.

1 So regardless of who was the driver or under what
2 circumstances Justin Hopkins may have gained access to
3 that vehicle, it is a work truck, could be a shared
4 vehicle, law enforcement certainly at that point is going
5 to continue their pursuit of searching this vehicle for
6 any potential trace evidence, ballistics evidence or
7 anything else of that nature.

8 You heard on the audio, Your Honor, that the first
9 thing that -- that occurs is Captain Laintz states to
10 Mr. Cornish do you want to come sit in my car and we
11 can have a long conversation, we can do that, and the
12 defendant responds "yes, sir". That's at 49 seconds. So
13 they request permission to have a conversation with him,
14 which he agrees to, with the understanding that it will
15 be long in duration, and it's after he consents to that
16 that Sergeant -- or Captain Laintz follows up with "Can I
17 search the car? If you want me to stop, say something,
18 and I'll stop searching." "Okay."

19 Your Honor, as the State noted, we believe there
20 was firm evidence at 1:52 having heard it repetitively
21 the defendant responds "I promise you, you can search it",
22 and as noted in the transcript there was a reference to
23 the car already being searched. All witnesses will affirm
24 that that did not happen and we maintain that that is not
25 an accurate portion of the transcript.

1 With that said, he gave consent to search. The
2 search of the vehicle is underway. That vehicle is
3 gonna be at the scene and it's not gonna be released
4 back to Mr. Cornish until that search has been completed.
5 If he had not agreed to the search, they would have had
6 other options to pursue a search at that point. Arguably,
7 the automobile exception would be in play, but certainly
8 it could have been towed and taken to the law enforcement
9 department for an actual search warrant.

10 With all of that said, all officers were consistent
11 that Mr. Cornish himself was able to leave. He was not
12 in custody. He could have phoned a friend for a ride.
13 His girlfriend could have phoned a friend for a ride.
14 He could have taken an Uber, a cab. He could have gone
15 across the street. He had many, many options available
16 to him and he did not have to agree to participate in
17 the conversation. It's clear, Your Honor, from his own
18 responses that he gave consent for all of that.

19 The audio that was conducted, Your Honor, is
20 approximately 52 minutes in length. The State is only
21 offering a portion that we played for the record that is
22 9 minutes 57 seconds, excerpts from the original audio,
23 the first portion being the full 27 minutes, also made
24 part of the record in this particular case.

25 Your Honor, pursuant to the Jackson v. Denno factors,

1 the State maintains that there is clear evidence that
2 the defendant voluntarily and freely consented to this
3 interview. He was not in custody. He was not threatened
4 or coerced in any way to participate in this interview,
5 he was not promised anything in exchange for this
6 interview, and based on the totality of the circumstances
7 it certainly appears to be freely and voluntarily given
8 to law enforcement.

9 And that is as to the traffic stop, Your Honor, on
10 December 21, 2019. I do not believe that any portions of
11 the follow-up interview where Mr. Leventis was present,
12 January 23, 2020, is being challenged.

13 In addition, Your Honor, you've heard that while at
14 the scene he gave consent to Sergeant Creech to access
15 his phone. I believe he was termed by Detective Pratt
16 to be very cooperative in that aspect. He unlocked the
17 phone for Sergeant Creech. Sergeant Creech then took
18 photographs of Justin Hopkins as a contact and his text
19 communications with Justin Hopkins, specifically on
20 December 17, 2019. Your Honor, all indications as well
21 is that that was by consent, as well as the follow-up
22 phone extraction and search of the phone that was
23 conducted in January of 2020, again, with the consent
24 and knowledge of counsel.

25 THE COURT: Thank you.

1 Mr. Swerling.

2 MR. SWERLING: Judge, just I -- I have some argument
3 I'd like to make. First of all, I'd like to start off
4 with the issue because Your Honor made a comment before
5 you wanted to know about the license plate. South
6 Carolina Code 56-5-45-30 states that either a tail lamp
7 or a separate lamp shall be so constructed and placed as
8 to illuminate with a white light the rear registration
9 plate and render it clearly legible from a distance of
10 fifty feet to the rear.

11 The testimony here was that the officer or the
12 detective could read the license plate even though he
13 said there was no light illuminating it, he could read
14 it, so we our position would be that there was no
15 violation of 56-5-45-50 because it was clearly legible
16 and they didn't place a limit on the number of feet it
17 was legible from. So we think from the initial stop
18 was unlawful and if Your Honor remembers what they were
19 saying was they -- they're talking about reasonable
20 suspicious or probable cause, but the fact was that they
21 needed something and made it clear that they needed
22 something to go ahead and make a stop -- make the stop
23 and I think that pretextual -- it is pretextual, but it
24 also is not a violation of the statute. So in addition
25 to being pretextual, which I -- unfortunately for us the

1 Supreme Court has said they can have pretextual stops.
2 In this situation, it wasn't even a lawful stop, so we'd
3 object to that.

4 Judge, we think that there was an unlawful seizure
5 in this case and by keeping him there -- and I'm -- you
6 know, we've cited in our motion Arizona versus Johnson,
7 a U.S. Supreme Court case, 555 323 from 2009. And also
8 South Carolina Court of Appeals, State versus Ricardo,
9 at 367 S.C. 84 from 2005. Both of those decisions said
10 that an officer is allowed to inquire into matters
11 unrelated to the initial reason for the stop without
12 converting the stop into something other than a lawful
13 seizure so long as the unrelated questioning does not
14 measurably extend the duration of the stop. An
15 investigatory traffic stop must be temporary and last
16 no longer than necessary to effectuate its purpose.

17 Clearly here they went way beyond what was necessary
18 to go ahead and extend the duration of the stop. We're
19 talking about at least 52 minutes plus probably
20 30 minutes, so you're talking about close to an hour
21 and a half on a stop that all arose out of supposedly a
22 taillight that was out, and that was their -- that was
23 the basis for their stop at that point. So there's no
24 way to say that this particular stop didn't amount to
25 an unlawful seizure in my opinion or what I'm offering

1 to the Court. This is -- they certainly went well beyond
2 asking him about the taillight and they went into the
3 investigation of December 17, 2019, from early morning
4 until the end of the day and after that as well, which
5 had absolutely nothing to do with what their pretext was
6 to go ahead and stop the vehicle. What they really did
7 is -- because they're claiming that there was no custodial
8 interrogation. I submit to the Court that there was the
9 functional equivalent of a confinement under Rhode Island
10 versus Innis, I believe it is, that this amounted to a
11 functional equivalent of a custodial interrogation. There
12 were at one time three police -- or three officers' cars,
13 deputies -- not deputies, detectives who were present in
14 three unmarked vehicles. There's been some discrepancy
15 as to whether or not they -- they didn't have a uniform
16 on but they were in plain clothes. There's a discrepancy
17 as to whether or not there was one person with a vest on
18 or two people with a vest on, but each -- all three had
19 weapons on them. So -- and, of course, the stop had to
20 be initiated by, I'm sure or he wouldn't have stopped,
21 blue lighting. So those circumstances of being around
22 three armed law enforcement officer asking you to go
23 ahead and sit for a long interview, I would suggest is
24 a functional equivalent of a custodial interrogation and
25 he should have been advised of his Miranda warnings or

1 should have at least be advised that he did not have to
2 talk to them, that he could have told them to stop it at
3 any time he wanted to stop, even though you don't have
4 to a give full Miranda supposedly over that kind of
5 situation. He wasn't told that he could refuse to talk.
6 He wasn't told that he could refuse the search, so these
7 factors along with the fact that three were investigators
8 in uniform -- not in uniform, but in plainclothes, with
9 arms, with vests, one or two, at the scene stopping him
10 I think amounts to an unlawful seizure and so the
11 interrogation, which I would submit is an interrogation
12 is unlawful and not voluntary and intelligently given.

13 Now the other thing that I'd like to point out is
14 the -- we've already talked about the length of the stop,
15 which they keep saying he's not a suspect in this case.
16 Well, they know about the dually. They know about the
17 fact that he's just dropped off Justin Hopkins, who they
18 know is a suspect, and I think it just begs credibility
19 that they didn't think when they were talking to him
20 after they stopped him that he wasn't a suspect in the
21 case. I mean, anybody that you would tell this to, it
22 doesn't have to be a law enforcement officer, would tell
23 you, I would believe, that this was not something that
24 was just a mere witness in the case. They were talking
25 to him as if he were a suspect no matter what they say.

1 It just begs credibility that they would know that he
2 dropped off a suspect in the case in a white truck, which
3 they had a description of, and then go ahead and call him
4 a witness and not a suspect in the case. So because he
5 was a suspect, I submit to you under the facts of the
6 case and because they did not give him his warnings and
7 I believe they should have given him his warnings even
8 though he was -- they say he was not under arrest, but
9 there was a functional equivalent of a custodial
10 interrogation, so the warnings should have been given.
11 Let me see if there was --

12 THE COURT: Okay.

13 MR. SWERLING: Not only did we have one interview,
14 we had two interviews because when Sergeant Creech came
15 up he initiated a second interview, so that -- that
16 starts another -- you have that one hour and then go
17 into another half hour. I don't see how it could be
18 justified that they extended this traffic stop into an
19 hour and a half investigation and -- and would be
20 admissible in court and satisfy the criteria of Jackson
21 versus Denno.

22 THE COURT: Okay. Thank you, Mr. Swerling.

23 Anything else?

24 MS. MAYES: Judge, we would just like to respond
25 regarding the statute on the tag light. That statute is

1 56-5-4530 of the South Carolina Code. It requires the
2 tail lamp to be so constructed in place as to illuminate
3 a rear registration plate within a distance of fifteen
4 feet. There's been no indication as to what point or
5 distance it would have been partially illuminated or the
6 illumination would have been affected or faulty, but the
7 bottom line is that officer has indicated that the tail
8 lamp was not working and he had a good faith belief and
9 probable cause to believe that that statute had been
10 violated. That was an independent reason for stopping
11 the car.

12 That said, the State maintains as set forth in our
13 memo that this stop was conducted pursuant to a reasonable
14 suspicion of a connection between that vehicle and this
15 crime. And ultimately that reasonable suspicion was
16 confirmed when the defendant himself later acknowledges
17 that he was, in fact, the person who, in his words, was
18 present there at the scene, Your Honor, at [REDACTED] Butternut
19 Lane. Although he does not admit going into the residence,
20 he does, in fact, acknowledge that it is his vehicle.

21 I'd also like to respond as to Mr. Swerling's
22 categorization of this contact with Mr. Cornish that night
23 as an interrogation. It's clear from the transcript and
24 from the audio and from discovery materials that the
25 questioning is centered around the truck, the whereabouts

1 of the truck, the whereabouts of Justin Hopkins, who he
2 says is a friend and a longtime acquaintance. Where were
3 both of them on December 17th of 2019 and who else may
4 have had access to the vehicle, who may have borrowed the
5 vehicle, where was Justin on that day, what time did he
6 take Justin to work, what time did he let Justin -- or
7 take Justin home from work. All of those are absolutely
8 the questions that you would pose to a witness who would
9 have information as to the whereabouts of a suspect. In
10 this case, Justin Hopkins, who had been identified as a
11 suspect. What we never hear at any portion during these
12 interviews or will be reflected in that transcript is
13 them even identifying this as a triple murder. They
14 never tell him that. They only said that something bad
15 happened. They never tell him where it happened, on
16 Butternut Lane. They never tell him that it involves
17 gunfire or that people were shot. They never ask him
18 does he own weapons, does he see Justin Hopkins with
19 weapons, did he see Justin Hopkins with blood on him.
20 What was Justin Hopkins wearing. They never divulge
21 any facts of this crime that you would expect an
22 interrogation to include where they're actually
23 confronting someone with physical evidence or their
24 knowledge of the crime. All they ask him is does he
25 know about anything that happened that was, as they put

1 it, something bad happened, bad stuff happened. Do you
2 know anything about an incident over here and they
3 reference Bush River Road and he says no and denies being
4 in the area of Bush River Road, and then gives a full
5 accounting for his whereabouts in Richland County on that
6 date. He's very cooperative in accounting for Justin
7 Hopkins being with him that morning and then letting
8 Justin Hopkins off and then most of the interview is
9 centered around what else Justin Hopkins did that day,
10 who his family members are, who else might have picked
11 him up or taken him to or from work, and then about the
12 truck, who else may have borrowed that truck that day.
13 Those are all very valid questions, Your Honor, for a
14 potential witness in the case.

15 THE COURT: All right. Thank you, Ms. Mayes.

16 Mr. Swerling, is there anything that you wanted to
17 add?

18 MR. SWERLING: Yeah, I do, Your Honor. I have one
19 thing. Judge, apparently we miscalculated it. It was
20 about two hours at the interrogation or where the
21 questioning took place because he was still there I
22 believe he said at 10:30, he was leaving, and sent a
23 photograph at that point -- 10:25. So the whole
24 questioning took over two hours, so that's a pretty long
25 period of time, and I'd like to add that to the argument

1 we made.

2 The other -- what offends me in this situation, and
3 not that that is a legal position, but what offends me is
4 that by saying that he was not a suspect, by saying that
5 they ignored the fact that he was in a dually and that
6 dually was possibly identified as being the dually that
7 was at Woodland, knowing that that dually dropped Justin
8 Hopkins, who was a suspect, by not -- by saying it was
9 not a custodial interrogation and he wasn't under arrest,
10 they're circumventing the whole Miranda violation -- the
11 whole Miranda requirement that if you are a suspect and
12 you're in custody that they have to give you Miranda
13 warnings, and it just bothers me that they could do that
14 and it is not -- it's accepted. And that was one of the
15 reasons why we initially adopted the Miranda decision
16 because people should be advised of their rights when
17 their liberty is at stake and clearly in this case his
18 liberty is at stake, so they really just are able to
19 circumvent Miranda by doing it the way they did and making
20 the statements they did and it just doesn't make sense
21 that they didn't think he was a suspect at that time or
22 believed that he could have been a suspect. Because if
23 you're talking about reasonable suspicion and probable
24 cause, well, they had that, too. If they had reasonable
25 suspicion and probable cause about the truck, they also

1 said that about Mr. Cornish, so I'd object to that, too.

2 The other thing is, Your Honor, by arguing this
3 they put into evidence a nine minute tape. We're not --
4 even though Your Honor's gonna rule on this particular
5 situation, and that was on 21st, right -- on the 21st,
6 we're not agreeing that that tape is admissible. We only
7 agreed for this hearing.

8 THE COURT: Just for a Court -- it's only entered
9 as a Court's exhibit.

10 MR. SWERLING: I didn't want any kind of
11 misunderstanding about that.

12 THE COURT: All right. As a matter of fact,
13 everything that's been admitted since Monday has been
14 nothing about a Court's exhibit. Nothing has been
15 admitted as an exhibit itself.

16 MR. SWERLING: The other thing, Your Honor, the last
17 point I wanted to make is that it's the burden of the
18 State to show that he violated that statute, not for me
19 to show that he didn't violate the statute. I asked the
20 detective could you read the license plate and he said
21 yes. Now if they were worried about the distance, which
22 is what's required in the statute, that it be more than
23 fifty feet, then they should have brought out could you
24 see it in a fifty foot period. And I know it's a minor
25 point, but it is the basis for the stop in this case.

1 THE COURT: I understand. I've got the argument.
2 Anything else from the State?

3 MS. MAYES: Nothing from the State, Your Honor.

4 MR. SWERLING: Nothing, Your Honor.

5 THE COURT: All right. I'm looking at the statute.
6 The statute requires that the tail lamp or a separate
7 lamp be constructed and placed as to illuminate with a
8 white light the plate and render it clearly legible from
9 a distance of fifty feet. I'm just gonna tell you, the
10 officer testified. He said there was no lamp. He might
11 could read it. He did not testify as to how far away he
12 was, not at least to my memory, but however he testified,
13 and issued a warning to Mr. Cornish.

14 I've looked at the stop and I don't know if you-all
15 have read State v. Moore. I looked it up. The stop and
16 the evidence obtained, the ruling of the Court is that
17 it's justified and proper under the Fourth Amendment. 'A
18 police officer may stop and briefly detain a person for
19 investigative purposes if he has a reasonable suspicion
20 supported by facts that criminal activity may be afoot.
21 I can't think of anything more perfect than what's been
22 testified to in this court. There is a group of law
23 enforcement officers waiting to serve a search warrant
24 when this vehicle pulls up that matches the description
25 of the vehicle used in the commission of the crime. On

1 top of that, law enforcement at this time had developed
2 a suspect, Mr. Hopkins, and they see this particular
3 vehicle transporting him and then he leaves the suspect's
4 residence minutes before a search warrant was executed.
5 I think that clearly establishes reasonable suspicion
6 regardless of the traffic violation, but the ruling of
7 this Court is the stop is good both under State v. Moore
8 and under the traffic violation.

9 Now let me turn to the statement. He freely
10 consented to both the search of the vehicle and a
11 prolonged discussion with law enforcement. I thought it
12 strange, too, that an officer would say would you like
13 to have a long conversation with me, but he did, and
14 Mr. Cornish readily agreed. They put him in the front
15 seat. He was unrestrained, which, you know, I was a
16 criminal defense lawyer for twenty some odd years. None
17 of my clients ever told me a police officer put him in
18 the front seat. That's not where he would be going, I
19 think, if it was something else. He wasn't cuffed, he
20 wasn't detained. You know, I've thought about it, and
21 as a matter of fact, I caught Mr. Cornish's birthday
22 when I was thinking about this, so I know that he's
23 forty-two years old. And he's forty-two years old. The
24 length of this interview they say is 52 minutes. I think
25 there's -- Mr. Swerling, you just told me you think it

1 was a two and a half hour stop. I think it goes somewhere
2 between the 52 and two and a half hours, but there was no
3 threats or no misrepresentations made by law enforcement.
4 Again, I'm just telling you he was allowed to sit in the
5 front seat and he consented to both the search and -- and
6 to talk to law enforcement, so I'm allowing the statement
7 in, the evidence that was seized and the stop of the
8 vehicle is good, and I think that it is all proper under
9 the Fourth Amendment.

10 MR. HUBBARD: Thank you, Your Honor.

11 THE COURT: Anything from the State on my ruling?

12 MS. MAYES: Nothing from the State, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. SWERLING: Judge, I just wanted to clarify
15 something. What they're telling me is that we have an
16 hour of documented and then there's another half hour
17 with Mr. Creech, so it would be an hour and a half, but
18 they're telling me because of this -- my staff is telling
19 me because of this picture that were sent at 10:30, that's
20 where the two hours comes from. I just wanted to clarify
21 that.

22 Judge, also as far as the interview of January
23 21st --

24 THE COURT: January 21st, I'll be glad to rule on
25 that under Jackson v. Denno.

1 MR. SWERLING: Yeah, we're not really -- as an
2 officer of the Court, I really can't make an argument
3 about it because he had counsel.

4 THE COURT: Right. And, for the record, you know,
5 there was testimony that he was read his Miranda, he
6 also had his lawyer present, and I certainly didn't
7 hear any threats, misrepresentations or anything by law
8 enforcement. I don't think there's any allegations of
9 that since he had his lawyer present, so I find that
10 he voluntarily waived his rights and spoke to law
11 enforcement, so that statement, too, comes in.

12 Now the other statement -- is there another statement
13 or is that it?

14 MR. HUBBARD: That's it, Your Honor. I believe we
15 had the -- what was it? December 23rd and then January
16 23rd as well. No, December 21st, the stop. All these
17 dates are running together.

18 THE COURT: Okay. Now --

19 MR. HUBBARD: Just those two, Your Honor.

20 THE COURT: The one with -- concerning the DNA, the
21 first draw --

22 MR. SWERLING: The 23rd.

23 THE COURT: -- I need to talk to the lawyers about
24 that statement. I am not ruling on that statement right
25 now because I think it is so intertwined with the

1 suppression of the DNA.

2 MR. HUBBARD: Your Honor, this might help. We're
3 not gonna offer anything from December 23rd, that
4 statement.

5 THE COURT: I understand, but I have a motion to
6 suppress from the defense -- or do I not? I think I do
7 because I've been working on it -- on the DNA, and I
8 think the statement that Mr. Cornish gave is very
9 intertwined or going to be intertwined on my ruling on
10 the DNA, so I would like to speak to the lawyers when we
11 finish here today. So I'll wait and rule on that.

12 All right. I'm trying to figure out -- we've done
13 the Jackson v. Denno. Can -- I think we need to talk
14 about the guns.

15 Before we do that, let me ask the clerk, Stacy, do
16 you-all need a break?

17 THE COURT REPORTER: No, I'm fine.

18 THE CLERK: I'm fine.

19 THE COURT: Okay. I've got a motion in limine for
20 the two photos of a black and tan rifle that was found
21 on the phone dump, a text message of a brown and black
22 pistol on December the 22nd, and Facebook messages from
23 November 27th of 2019 -- from 2019 to Darius James
24 regarding an AR-15 for sale.

25 Have you-all talked? This is defense's motion.

1 MS. MAYES: We have, Your Honor. I believe where
2 we stand -- let me turn to that particular motion. There
3 are a lot of guns, so let me preface this by saying that
4 there are a lot of different guns in this case and there's
5 been a discussion about a lot of different guns, but as
6 to these particular items that they have noted in their
7 motion, number one, is two photos of a black and tan rifle
8 found in the defendant's phone dump. The State believes
9 that that is an AK rifle that was stolen from [REDACTED] Butternut
10 Lane during the course of the burglary. Those photos
11 were found on the phone of Mr. Cornish. With that said,
12 based on our prior teleconference, we had an agreement
13 that we would not go into those photographs as long as
14 the door was not opened, and so that means that, you know,
15 no questioning from -- from the defense should be along
16 the lines of what weapon or ammunition was at [REDACTED] Butternut
17 Lane that's gonna relate to this particular AK because
18 the State's theory is the AK was stolen and that's how it
19 ends up on Mr. Cornish's phone potentially for sale and
20 my understanding is both parties are agreeing not to go
21 there, so I do not believe, Your Honor, that issue number
22 one will -- will be before us.

23 THE COURT: All right. Is that correct,
24 Mr. Swerling?

25 MS. WILSON: That's correct, Your Honor.

1 THE COURT: Okay. Done. We will not go into the
2 two photos of the black and tan rifle that was found on
3 Mr. Cornish's phone during the phone dump. That is my
4 ruling.

5 Okay. Let's -- if you open the door, you open the
6 door now.

7 MS. MAYES: Number two, Your Honor, that is actually
8 when Sergeant Creech is searching the phone of Mr. Cornish.
9 He observes a black and brown pistol. That photo had
10 been sent to him by Justin Hopkins. He then sends it
11 from Mr. Cornish's phone to himself with permission. We
12 are not offering that particular text message.

13 The third, there is --

14 THE COURT: Well, hang on just a second, Ms. Mayes.
15 They're not offering that, so is there any
16 disagreement from the defense?

17 MR. LEVENTIS: Which gun is that?

18 MS. MAYES: That is -- it relates back to a text
19 message, I believe, that's gonna be dated December 1st
20 of 2019, and that was a text message sent from Mr. Hopkins
21 to Mr. Cornish with a black and brown pistol that we
22 believe to be the Glock-26 9-millimeter. When Sergeant
23 Creech observes it on the phone on the 21st, he then
24 forwards it to himself, so that would be the number that's
25 referenced in Bullet Point Number 2 and so we're not

1 offering that text message.

2 MS. WILSON: Are you planning to offer the message
3 between Hopkins and Cornish?

4 MS. MAYES: Not the one from December 1st. We do
5 intend to offer photos of that gun that were taken on the
6 15th, very close in time, Your Honor, to the timeframe of
7 our crime. That's gonna be forty-eight hours before our
8 crime. We do have photos from the Facebook records of
9 Justin Hopkins of a black and brown gun that we believe
10 to be a Glock-26 9-millimeter and a black Taurus .38
11 revolver. Those photos we do intend to offer because
12 they're gonna relate to Justin Hopkins having possession
13 of those firearms forty-eight hours before the murder and
14 subsequently when he's arrested on the night of December
15 21st, he is gonna have in his possession fired shell
16 casings from a .38 revolver that we believe was used at
17 the scene and are consistent with projectiles recovered
18 from the scene. He's also gonna have 9-millimeter
19 ammunition, one round being consistent with the headstamps
20 and appearance of ammunition recovered from the crime
21 scene.

22 So we would have him in possession of two firearms
23 on the 15th, two days before the murder, and those
24 firearms are subsequently missing when they search his
25 residence on the night of the 21st. When he is located

1 in a vehicle on the night of the 21st, he has a backpack
2 with him. Inside that backpack are fired casings from a
3 .38 revolver, a missing .38, and then he's also gonna
4 have 9-millimeter rounds, at least one of which is gonna
5 be consistent with ammunition from the crime scene. So
6 the State's position is that all of that will be probative
7 and relevant, although it was not the subject of this
8 particular motion in limine.

9 THE COURT: Okay. The two firearms are missing is
10 what you're saying --

11 MS. MAYES: Yes, Your Honor.

12 THE COURT: -- that's reflected in these pictures?

13 MS. MAYES: Yes, Your Honor.

14 THE COURT: Okay.

15 All right. I don't know how we got off track on our
16 motion, but let me take care of this while Ms. Mayes has
17 said all this.

18 Is there any objection to that, Ms. Wilson?

19 MS. WILSON: There is, and I believe that comes in
20 under their motion for co-conspirator statements, so we
21 can argue it then or --

22 THE COURT: Okay.

23 MS. WILSON: That's accurate, right?

24 MS. MAYES: And to clarify, we're not actually
25 offering any communications from Justin Hopkins. The

1 photos are self-evident and they are found in his
2 Facebook records and they are dated. We know that
3 they're from the 15th. We know they're from forty-eight
4 hours before the murders. He is posting them. He's
5 posting them for sale. We're not offering any
6 communication with others.

7 THE COURT: So you're not trying to get it under the
8 co-conspirator?

9 MS. MAYES: That's correct, Your Honor.

10 THE COURT: You've got somebody who's gonna ID them
11 and you're gonna lay a different foundation to get them
12 in?

13 MS. MAYES: Yes, Your Honor. Through both CSI and
14 our ballistics expert from the State Law Enforcement
15 Division who has examined both of those firearms and we
16 have summarized what his thoughts and opinions are about
17 those weapons being included on his list of potential
18 weapons used in these murders and we have already provided
19 that to the defense pursuant to discovery.

20 THE COURT: Okay.

21 MS. WILSON: I guess I'm a little confused how --
22 because they're pictures. So how did they examine the
23 firearms?

24 MS. MAYES: So he is able to make out, and this is
25 Jamie Green who is the firearms expert, he is able to

1 make out the model. He has identified the one weapon
2 as a Taurus .38 revolver and the other is a Glock-26
3 9-millimeter, and that's because the trademark and
4 insignia is present on both firearms.

5 MS. WILSON: So we would object to that because
6 that's complete speculation.

7 THE COURT: She's got an expert coming to testify
8 to that. She's entitled to do that.

9 MS. WILSON: Okay.

10 THE COURT: That is an expert, right, Ms. Mayes?

11 MS. MAYES: He is, Your Honor. A firearms expert.

12 THE COURT: Thank you. It seems like we've done
13 that before.

14 MS. MAYES: And finally, Your Honor, as to number
15 three, we are not offering that. I believe that's a
16 reference to some type of AR that was in Facebook
17 messages of the defendant. That is dated November 27th.
18 We're not offering that.

19 THE COURT: All right.

20 Ms. Wilson, she's not offering the Facebook messages
21 from November 27th.

22 MS. WILSON: That's fine, Your Honor. And just for
23 the record, our motion does include any other references
24 they may make to selling guns. Those are just three
25 specific ones, but if they are planning on offering other,

1 you know, Facebook posts or texts about selling guns we
2 would object to those.

3 THE COURT: I don't think that they are.

4 Are you, Ms. Mayes?

5 MS. MAYES: Your Honor, we have already noted for
6 the record that it would be those photographs on the 15th
7 that were posted by Justin Hopkins. The officer would
8 testify he has reviewed those records and that the nature
9 of the post was that the item was for sale. We're not
10 offering the content of any communications with others and
11 he communicated with many, many other people about these
12 guns and about them being for sale. We're only offering
13 the photos and the general description or summary from the
14 officer that they were posted from the account of Justin
15 Hopkins for sale on the date of December 15, 2019.

16 MS. WILSON: We do object to all of that, so we
17 would like to take it up before the expert testifies in
18 front of the jury.

19 THE COURT: Okay. That will be fine.

20 All right. Let's talk about this Sprint and
21 T-Mobile.

22 MS. MAYES: Your Honor, we may be at a point --
23 you have already ruled regarding the statement of the
24 defendant being admissible from January 23, 2020. He
25 acknowledges in that statement not only that he was in

1 the area of St. Andrews, but that he was at Butternut
2 Lane. He was there. Of course, his statement is that
3 he didn't go inside, but he acknowledges being there to
4 drop off Justin Hopkins and that he -- -

5 THE COURT: And then found him on a bicycle.

6 MS. MAYES: -- and that he leaves the scene with
7 Justin Hopkins and then, of course, we've got video from
8 KJ's grocery store fifteen minutes after the 9-1-1 also
9 call adjacent to St. Andrews Road. The whole purpose of
10 the Sprint records and the cell tower records was to
11 place the defendant, Jeremy Cornish, potentially in the
12 area of St. Andrews Road around the time of the murders,
13 the phone records do that, but at this point that would
14 be unnecessary and redundant.

15 So as to the cell tower records, we don't need
16 those. We have a map that was prepared by Brannon
17 Marthers. I know the defense has indicated they had
18 several different maps. I'm gonna give them a copy of
19 the most recent exhibit prepared by Detective Marthers,
20 but the bottom line is at most that evidence would only
21 support that he's in the area of St. Andrews Road, which
22 by admission on his own through the statement to Detective
23 Creech, he acknowledges that he was there. So I don't
24 even think that the cell tower data is -- is gonna be
25 relevant in this case.

1 THE COURT: Okay. So you're gonna withdraw the
2 motion to suppress, let me ask you, Ms. Wilson, or --

3 MS. MAYES: Well, we still have the call detail
4 records. We would still be offering those, but not the
5 cell tower data.

6 THE COURT: And is that --

7 MS. WILSON: I believe the certification goes to
8 all of it, so I would still have objection.

9 MS. MAYES: All right. I will give the Court a
10 copy of the certification in this particular case and
11 it is the certification that was provided to us from
12 T-Mobile.

13 I can mark it as a Court's exhibit.

14 THE COURT: Well, I saw the certification from
15 Verizon. All the other phone companies --

16 MS. MAYES: And, for the record, Your Honor,
17 T-Mobile Metro, this certification was dated July 25,
18 2022. The T-Mobile Metro was originally Sprint. They
19 were -- Sprint was bought out by T-Mobile Metro sometime
20 between 2019 and 2022, so they are now -- Sprint is now
21 doing business as T-Mobile Metro, but the corporate
22 headquarters still has access to their records, to their
23 data. This was dated 2022, but they are specifically
24 certifying the records with a state date of November 2019
25 through December 27, 2019, which covers our timeframe,

1 and specifically the records of Jeremy Cornish, which
2 would be Account Number [REDACTED], his phone number
3 known to be in effect at the time. This is going to
4 include both the subscriber information and the call
5 detail records and the call detail records, Your Honor,
6 are gonna be the ingoing and outgoing phone calls,
7 ingoing and outgoing text messages, and so we offer
8 Court's 32, which is the certification of T-Mobile,
9 previously Sprint, but they are certifying those records
10 which are dated 2019 and were obtained pursuant to a
11 search warrant.

12 THE COURT: All right. I already have a 32. I
13 think we need to make this another number, Ms. Mayes.

14 MS. MAYES: 33, Your Honor.

15 THE COURT: 33. Do you mind if that I change this?

16 MS. MAYES: Yes, Your Honor. That's appropriate.

17 THE COURT: All right. Let me hear from you,
18 Ms. Wilson.

19 MS. WILSON: Judge, before I -- do you also have
20 a copy of the objection that was also sent on July 25,
21 2022?

22 THE COURT: The objection?

23 MS. WILSON: From T-Mobile.

24 THE COURT: Is this the -- no, I do not.

25 MS. WILSON: I guess it's a letter that was sent with

1 the original search warrant from 12-30-19.

2 THE COURT: I do have that.

3 Did you see this objection, Ms. Mayes?

4 MS. WILSON: It came from the State, but I have a
5 copy. I can give you one.

6 THE COURT: Okay. Explain it to me because it looks
7 to me back on 12-30-2019 the State asks for records from
8 Sprint and they sent a certain time period along with a
9 letter that does not seem to be a certification letter.

10 MS. WILSON: Correct.

11 THE COURT: Then I see that they requested, again,
12 on July 25th of 2022. This is a certification that looks
13 like is pretty common between all the phone companies that
14 they are business records on this phone number from 11-1
15 of 2019 to 12-27 of 2019, and I would think -- the State
16 says those are the records they are using and then this
17 objection tell me where this came from.

18 MS. WILSON: Okay. So the State reissued a second
19 search warrant for the same Sprint records on July 19th
20 of 2022 and this objection came in response to that
21 search warrant saying that they could not provide any
22 records because they no longer existed. So my issue
23 with this certification is that I'm not sure how T-Mobile
24 can certify these records from '19 when they no longer
25 exist. I mean, it says here on the certification that

1 the records described below and attached are duplicates
2 of the originals and are true and complete copies of the
3 records maintained by the company. Said records consists
4 of several electronic files produced in T-Mobile case
5 number 3920176, in response to a lawful request issued
6 to the company. Now that case number is associated with
7 the 2022 search warrant. The 2019 search number has a
8 totally different case number. So I don't believe that
9 this certification is actually certifying those original
10 records. I mean, it says it is. It says it's certifying
11 duplicates of the originals, but their objection says
12 they don't have the originals, so how are they certifying
13 duplicates?

14 THE COURT: Okay. I'm missing the letter about I
15 don't have the originals.

16 MS. WILSON: That's in the objection. At the very
17 last sentence it says timing and advance records are
18 retained for zero to ninety days. No records were found
19 for your requested timeframe.

20 THE COURT: Ms. Mayes, do you want to explain it to
21 me? Let me just ask this just so I can get this straight
22 in my head. This certification came with records attached
23 to it?

24 MS. MAYES: Your Honor, we're gonna have to pull
25 them up and please -- this is thousands of pages that

1 we get and it comes to us in electronic format, so we're
2 gonna have to pull them up to cross-reference that. That
3 is my understanding and my understanding is that they
4 certified the records that were received pursuant to the
5 first search warrant, which were the Sprint records. Now
6 I realize that they are saying that they don't retain
7 those records, but there must have been some type of
8 account verification that enabled them to give us the
9 certifications. And, again, they're providing this to us
10 from corporate headquarters. We're not actually going
11 over the records with them page by page, so we're gonna
12 take a moment to check that.

13 THE COURT: Well, Ms. Wilson, I'm kind of at a loss
14 until they tell us.

15 While they're checking, let's take a quick break and
16 stretch our legs.

17 (Recess taken at 4:23 PM.)

18 (Back on the record at 4:39 PM.)

19 BAILIFF: Be seated.

20 THE COURT: Did we figure it out?

21 MS. MAYES: Yes, Your Honor. All credit to Your
22 Honor's law clerk, the timing advance records are, in
23 fact, what's known as the PCMD reports, and that is the
24 confusion here. We did not actually receive those
25 records at all.

1 THE COURT: Those are the per call measurement data.
2 I had to go look it up.

3 MS. MAYES: And we did not see those, nor did
4 Detective Marthers for his cell tower mapping, nor did
5 he rely on those, so that is not the subject of anything
6 that we are offering, but we do understand that they only
7 maintain those records for ninety days, hence, the reason
8 we received the letter and their objection noting that
9 those records would not be provided by them, and we
10 understand that.

11 THE COURT: And you're not intending to use any of
12 the location records?

13 MS. MAYES: That is correct, Your Honor, and those
14 PCMD records are separate than what they did provide us,
15 which are the actual cell sites. They provided call
16 details with cell sites and subscriber information. I
17 have grouped all of this together as Court's 34. They
18 have been printed out. This is what they actually
19 certified. With that said, we don't anticipate at this
20 time needing to get into the actual cell tower locations,
21 but the call detail records which are the in-going and
22 outgoing calls received and the ingoing and outgoing SMS
23 or text messages and the dates and times of those may
24 be at issue in this case, as well as the subscriber.
25 information of Account Number [REDACTED], which is the

1 phone of Jeremy Cornish, with his address and that is
2 also subscriber information, which they certified. So
3 we do maintain, Your Honor, that this certification
4 was properly issued and that they did T-Mobile Metro,
5 previously Sprint, did have the authority and knowledge
6 pursuant to their certification by Joe Rico to certify
7 all those records that I have mentioned and printed out,
8 they are not certifying the PCMD records nor are we
9 offering them.

10 THE COURT: All right.

11 MS. WILSON: And if we could just get a copy of that.

12 THE COURT: Ms. Wilson, are you okay with that?

13 MS. MAYES: I'm gonna put it all together, Alissa,
14 and it's gonna be right here in Court's 34 in one big
15 group.

16 MS. WILSON: Yes, as long as they're just the
17 subscriber --

18 THE COURT: They're using what they sent on July 25,
19 2022, that is -- that accompanies a certification letter
20 is what everybody's using.

21 MS. WILSON: That's fine, Judge.

22 THE COURT: Okay. And there is no location data
23 that's going to be used. That -- that makes that easy.

24 Okay.

25 MS. WILSON: And, Judge, just to clarify, that

1 includes this map? Because this was created from
2 location data.

3 MS. MAYES: Based on the Court's ruling a few
4 moments ago regarding the Jackson v. Denno, we do not
5 see the need to present that evidence. You know, I have
6 no idea how things may -- may change beyond that, but at
7 this time we certainly do not foresee the need to offer
8 the cell tower evidence. He's gonna admit being at the
9 area, as well as the KJ's video.

10 MS. WILSON: Thank you, Judge.

11 THE COURT: All right. Mr. Swerling, you had also
12 -- or, no, the State had a motion for gang related --

13 MR. HUBBARD: Right, Your Honor. It's basically
14 about character evidence and it pertains to any issue
15 about gangs in this case. There is zero evidence in
16 this case, zero evidence in our discovery, zero evidence
17 that we provided defense, zero evidence that we have
18 that would even hint that the cause and motive of what
19 occurred on December 17, 2019 was gang related. We only
20 learned about through Donnovin Haynes, the surviving
21 victim, that he belonged to a gang and he volunteered
22 that the three dead guys, his roommates, were all in a
23 gang. They were the only ones of this particular set.
24 It was the Fruit Town Brims and the only other group
25 related to that I think was in Manning or Sumter and

1 California. There was no evidence that they were some
2 active gang, that they were getting a hit, that there
3 was retaliation, there was no social media out there,
4 and we have no evidence that Mr. Hopkins belonged to a
5 gang. There was done.

6 THE COURT: And Mr. Cornish. Mr. Cornish doesn't
7 belong to a gang.

8 MR. HUBBARD: Correct. No one's been validated.
9 We looked and talked to our gang guys. They're always
10 involved right on the front end. Detective Zwolak, who's
11 our gang expert, who validates those who -- there's a
12 process of validation so that someone's not just being
13 stigmatized with that epitaph of being a gang member.
14 They go through this process. Before we call somebody a
15 gang member, we go through this process. None of these
16 people would even meet a validation standard, so -- but
17 more importantly there's just no evidence, so it's not
18 relevant, and to bring up anything that's not relevant
19 about these gentlemen's character is highly prejudicial.
20 So it's not relevant under 402, highly -- highly
21 prejudicial under 403, and there's nothing probative
22 because there is no link and even if everybody involved
23 in this were gang members. The only evidence is this was
24 a burglary, armed robbery and murders.

25 THE COURT: On a gang member's house.

1 MR. HUBBARD: Yes, and that it was -- basically this
2 was an apartment that was just a place of opportunity
3 known to have drugs and money and there was a hit there
4 and that hit was instant. The minute that door open
5 people were killed, but then things were taken and the
6 evidence even what you've heard so far was that things
7 were taken, the place was rampaged through, people pulled
8 stuff out of closets even after everybody were dead, so
9 it wasn't just like we went in there as gang members to
10 kill other gang members. No, what happened is --

11 THE COURT: They actually ransacked it, took some
12 guns, drugs and money I'm assuming.

13 MR. HUBBARD: Right, and said "I got it", and left,
14 so.

15 THE COURT: Okay. I understand the argument.

16 Ms. Wilson, I know you told me yesterday the bedrooms
17 were -- the curtains were red, the comforter's red, they
18 were dressed in red, but tell me do you have any other
19 evidence that shows that this was a gang-related murder?

20 MS. WILSON: We don't have any evidence specifically
21 that it was a gang-related murder. We have the fact
22 that there was an altercation a couple of days prior
23 between Justin Hopkins and the members of this apartment.
24 We have knowledge that, you know, by Donnovin's own
25 admission that him and the other household members were

1 Bloods and we have R.J.'s admission that Justin was
2 involved with the GD's, so just based on that we believe
3 it goes to 404(b) with motive; that, you know, there is
4 motive that it was a gang-related hit and burglary.

5 THE COURT: I don't see that. Because, number one,
6 I just wonder what the relevance is. I mean, what kind
7 of testimony or what's the motive, what's the intent about
8 the fight the day before that this client wasn't even
9 involved in, right?

10 MS. WILSON: Correct.

11 THE COURT: I don't see the relevance. If you-all
12 come up with something else, I'll be more than happy to
13 hear from you. I mean, I just don't see it. I mean,
14 it appears that everybody's gang related except for the
15 people accused of this crime, it's just very bizarre,
16 but I just don't see the relevance that the victims in
17 this case belonged to a gang. I don't. I don't see the
18 relevance that their apartment had red curtains as to
19 this without something else to show the motive, intent.
20 I'm not gonna allow any testimony about gangs.

21 Now, Ms. Wilson, if you have something else that
22 you need to bring to the Court's attention, I'll be more
23 than happy to hear it. We can have an in-camera hearing
24 and go forward that way.

25 MS. WILSON: Thank you, Judge.

1 THE COURT: Thank you.

2 Have I covered everything except for the DNA?

3 MR. HUBBARD: Yes, Your Honor.

4 THE COURT: The DNA, I'm gonna tell you, the jury
5 is coming in at 9:30 in the morning. I'd like to speak
6 with the lawyers if I could, please. Other than that,
7 Court's adjourned.

8 Stacy, I'm going to probably need you just for a
9 minute and then you can go.

10 THE COURT REPORTER: Okay.

11 THE COURT: All right. Do I have just all the
12 lawyers and their staff?

13 MR. HUBBARD: Yes, Your Honor.

14 THE COURT: You know what, Stacy, I don't think I
15 need to put anything else on the record. I'm gonna let
16 you go.

17 THE COURT REPORTER: Okay.

18 (Whereupon, the proceedings were concluded for
19 October 12, 2022, at 4:52 PM.)

20 (The following proceedings were held October 13,
21 2022, beginning at 10:21 AM.)

22 BAILIFF: All rise. Court's now in session. The
23 Honorable Judge Debbie McCaslin presiding.

24 THE COURT: Please be seated. I apologize again
25 that took me longer, but I did read the State's caselaw

1 and the defense's.

2 So on the defense's motion to suppress the DNA, we
3 talked yesterday and I also gave the lawyers a case cite
4 of I think it's U.S. versus Smith.

5 So, Ms. Wilson, I'll be glad to hear any arguments
6 you have for the record since it's your motion and then
7 I'll turn to the State.

8 MS. WILSON: Thank you, judge.

9 Judge, we do the believe that U.S. v. Smith out of
10 Pennsylvania in the Third Circuit is bind -- although it's
11 not binding is on point and it does follow Supreme Court
12 case law and case law here in the Fourth's Circuit.

13 The facts in Smith are on point to this case at bar.
14 Smith requested counsel during a police interrogation.
15 After multiple requests the police finally ceased
16 questioning him, but asked him to consent to a DNA swab,
17 which he did. In that case, however, Smith was read
18 his consent form and signed a consent form unlike the
19 defendant in our case. A little over a year later, Smith
20 filed several motions, including a motion to suppress
21 the DNA. In advance of these hearings, the Government
22 went and obtained a search warrant from a magistrate
23 judge to collect the defendant's DNA again, similar to
24 our case, although it was, I believe, about two and a
25 half years later when they went to collect the DNA

1 through a search warrant.

2 So under the Fourth Amendment, the Court has to
3 consider the factual circumstances surrounding the
4 consent. We believe that it was not voluntary consent
5 when he gave his DNA. He did invoke his right to an
6 attorney, which is a factor to be considered in
7 voluntariness, and a factor that weighs against the
8 finding that his consent was voluntary. He also was not
9 advised of his right to refuse to consent, he wasn't read
10 a consent form, he didn't signed a consent form. He
11 was, you know, in a -- in the police station. He was
12 interrogated.

13 The exclusionary rule would compel suppression of
14 any evidence of the DNA sample and the forensic analysis
15 derived from it unless an exception applies, which the
16 State does have the burden of proving. There's two
17 exceptions that could apply if you don't believe that
18 either of them do pursuant to case law, inevitable
19 discovery. Both the Supreme Court in Nix versus Williams
20 and the Fourth Circuit in U.S. v. Allen, among other
21 courts, have been reluctant to find that inevitable
22 discovery applies when police were not already in the
23 process of obtaining a search warrant prior or either
24 shortly after the illegal search.

25 Here, again, they didn't attempt to obtain the

1 search warrant until approximately two and a half years
2 later. I do believe that they would have had probable
3 cause at the time to get a search warrant. They obtained
4 a search warrant on Justin Hopkins on December 22nd of
5 2019 for his DNA. There were things that they knew about
6 the defendant that would have helped -- would have led to
7 probable cause. He was the driver of this -- the truck
8 that was seen at the crime scene and seen later dropping
9 Hopkins off on 12-21. He admitted to them on 12-23, I
10 believe, that he was the sole driver of that truck. That
11 although it was a work truck, no one else drove it. He
12 didn't loan it to anyone. And by the end of 12-23 the
13 police knew that he lied about being at the DMV later
14 that day with Hopkins. They had seen him there on
15 surveillance. They had seen him at KJ's. I believe
16 they knew that surveillance as well. They knew from
17 Taquiem Ketter, who was a confidential source, that
18 Justin was trying to sell a Glock-26 and through that
19 confidential source they had heard that Justin and Unc
20 at committed those crimes together; that the Glock that
21 they were trying to see had three bodies on it and that
22 Justin and Unc had committed that crime together and
23 knew that Justin called the defendant by Unc. They
24 also saw the defendant drop Justin off at his house on
25 December 21st in the white truck and they also -- Sergeant

1 Creech had access to defendant's phone on 12-21 as well
2 and sent himself a picture of a Glock-26, which Justin
3 had sent to the defendant, and they believed at the time
4 it was a possible murder weapon. So I believe those
5 items would have given them probable cause to get his
6 DNA to compare it to swabs taken from the scene, but
7 they didn't do that. They didn't attempt to get a search
8 warrant. They only went to seek the search warrant
9 because at the time the State prepared for trial they
10 realized that there might have been an issue with his
11 consent and that was testified to yesterday by Sergeant
12 Creech.

13 In Smith, and this is a quote from Smith, this
14 belated search warrant is nothing more than a post hoc
15 rationalization to excuse the failure to obtain a search
16 warrant where police had probable cause but simply did
17 not attempt to obtain a warrant at the relevant time.
18 So to apply inevitable discovery here would render the
19 exclusionary rule a nullity whenever evidence at issue
20 -- the evidence at issue is permanent and unchanging,
21 which would be the case of DNA.

22 Let's see. As far as independent source, we also
23 don't believe that that would apply here. As to that
24 exception, pursuant to Murray v. U.S., which is a Supreme
25 Court case as well, the question that needs to be asked

1 is was the search pursuant to the search warrant in fact
2 a genuinely independent source of the information and
3 the evidence at issue, and Smith lays out a two factor
4 test, which is also set forth in Murray, which is the
5 U.S. Supreme Court case, and an unpublished Fourth
6 Circuit case, U.S. versus Agent.

7 The first question that's asked is whether a neutral
8 magistrate would have issued a warrant authorizing a
9 search even if presented with information -- even if not
10 presented with information that had been obtained during
11 the unlawful search, and here that answer is actually
12 yes. The State did do that. They didn't include any
13 of the information obtained from the unlawful search in
14 their new search warrant on 9-23-22 so that nothing was
15 tainted in that warrant.

16 The second part of that test though asks whether the
17 agent's decision to seek the warrant was not prompted by
18 the initial unlawful search and the State's case would
19 fail here. Sergeant Creech testified that the reason
20 for the search warrant was that -- and this may not be
21 an exact quote, but the State felt as though there was a
22 question or a concern with the consent and the fact that
23 the defendant invoked counsel and so out of an abundance
24 of caution they obtained the search warrant for the DNA.
25 So as in Smith, the decision to seek that warrant was

1 two and a half years later, and it was -- and it was
2 prompted by the unlawful search. If the State would
3 have felt that their search was legal, they would not
4 have gone to that magistrate to get a -- to get that
5 search warrant, and basically they testified to that
6 yesterday.

7 The State has given us the case State versus
8 Simmons. I think this case is able to be distinguished.
9 The objection here was pre-trial. They actually were in
10 pre-trial motions and when -- the handprint was suppressed
11 and so they moved immediately for a Schmerber hearing,
12 which was in front of the circuit court judge who was the
13 trial judge at the time of the trial. It wasn't through
14 a magistrate judge. The South Carolina court only looked
15 at the elements that were required to establish probable
16 cause under Section 17-13-140, which is the search warrant
17 section applicable to bodily intrusion. And they didn't
18 consider the exclusionary rule even reaching to that
19 second search and I do believe that's because there was
20 a Schmerber hearing, it was in front of the trial court,
21 and so I just think it's a different -- it's a completely
22 different situation, you know, where they -- they may
23 have had probable cause for the second search warrant,
24 the South Carolina court never looked at prong number two
25 under independent source and they never got to the point

1 to ask if the search warrant -- or, you know, if this --
2 if the search warrant was prompted by an initial unlawful
3 search.

4 So we would submit that the defendant's consent was
5 not voluntary at the time he gave the consent to search
6 and to -- to get his DNA. He did invoke counsel. He
7 wasn't advised of his rights to consent or his right to
8 refuse consent, he signed no consent form, and so the
9 statement and the DNA taken on 12-23, as well as the DNA
10 obtained from the 9-23-22 search warrant and all of the
11 analysis conducted afterwards should be suppressed as
12 fruit of the poisonous tree under Wong Sun.

13 THE COURT: Mr. Hubbard.

14 MR. HUBBARD: Thank you, Your Honor.

15 Your Honor, I'd like to begin by I've got in my
16 hand a disk of -- I've got it marked as Court's Exhibit
17 Number 33. It is the full interview from December 23,
18 2019, of Mr. Cornish at the sheriff's department. I
19 think that needs to be in this record. I don't know
20 that -- if the full video was, so I'd like to place that
21 in.

22 THE COURT: I think we've already got 33 as a --
23 and 34. It would need to be 35.

24 MR. HUBBARD: It is 35. I'm sorry. I misread it.

25 THE COURT: 35, and that is the full CD --

1 MR. HUBBARD: Of that interview on December 23, 2019.

2 THE COURT: -- on December 23rd.

3 (Court's Exhibit Number 35, full 12/23/19 interview,
4 was admitted for pretrial hearing purposes.)

5 THE COURT: Let me just, out of curiosity, how long
6 does the interview last? Does anybody know?

7 MR. HUBBARD: An hour and 34. About an hour and a
8 half.

9 MS. WILSON: That sounds right.

10 THE COURT: Okay. Go ahead, Mr. Hubbard. I'm
11 sorry.

12 MR. HUBBARD: Thank you. I just wanted to start
13 with that because ultimately that is where you're looking
14 for voluntariness in this case. Now I know you've turned,
15 and you let us know, that you're looking at U.S. versus
16 Smith, out of Pennsylvania, a District Court judge, which
17 has no precedential value, it's just persuasive, I guess.
18 And for the record that's at 575 F. Supp. 3d 542. It's
19 a 2021 case. A district judge out of Pennsylvania.

20 And, Your Honor, I think the facts are also important
21 in that case. The defendant in that case, Mr. Smith, was
22 stopped for an unlawful tint of his windows. They stopped
23 him, they went in his vehicle, he had a gun. He was in
24 unlawful possession of that pistol. That's important
25 because when we look at police behavior, particularly in

1 an interview or whether it's an interrogation, whether you
2 say they're talking or interrogating, you're looking also
3 at the severity of the crime because the Court in looking
4 at totality circumstances weighs police behavior by the
5 severity of that crime. And what really just off the bat
6 distinguishes these two, we're talking about a triple
7 murder. This was an unlawful possession of a pistol.

8 Now this man's placed under arrest and he repeatedly
9 demands he wants his lawyer and he doesn't want to talk,
10 but they get his DNA, he's clearly in custody unlike here.
11 They get his DNA. There's no question they violated his
12 rights and also the DNA they got they turned over and that
13 was the sole basis. The Feds stepped in and said we're
14 gonna prosecute Mr. Smith on that -- that bad DNA. We
15 don't have that here, but what you have in Smith is
16 absolutely outrageous police conduct, and that's what the
17 exclusionary rule is for. Punish bad behavior.
18 Deliberate, intentional misconduct on the part of law
19 enforcement, not good faith behavior. I think that's also
20 very distinguishable from what we have here. In this case,
21 there's no bad behavior. There's pointed questions, but
22 let's get to what Smith says, too. You have to have four
23 separate findings according to this district judge in
24 Pennsylvania. To suppress DNA samples, you need to make
25 four findings. One, the defendant was in custody when he

1 participated in this interview. In custody. Mr. Cornish
2 voluntarily came to the sheriff's department, voluntarily
3 submitted himself to questioning. No one forced him up
4 there. I don't know how much more voluntary you can get.
5 You know, when we're talking about the roadside stop, he
6 didn't choose to be in that truck that night facing law
7 enforcement, they had a better argument then about
8 involuntariness than they do now. He was free to go and
9 he did leave. And I dispute that they had PC to arrest
10 him at the time, they didn't, and they were working that
11 case still getting records in, DNA results. Didn't even
12 -- when they got those buccal swabs, those DNA results
13 that had nothing to do with the arrest.

14 THE COURT: And the telephone records had already
15 been subpoenaed; is that right?

16 MR. HUBBARD: Correct. Correct. They were still
17 searching these things. The big thing was he was not in
18 custody and even the defense in moving to suppress agrees,
19 noncustodial interrogation. Your Honor, Smith doesn't
20 apply right there, but if -- even if you say all right,
21 he's in custody, you've got to move on did the defendant
22 unambiguously invoke his Fifth Amendment right to counsel
23 during the interview. Now in Smith, it was clear. I
24 don't know how you get more clear. I want my lawyer, I
25 don't want to do this. I think a fifth grader, second

1 grader, first grader understands that. I don't want to
2 do this, I want my lawyer, and they didn't care.

3 Here you have when they brought up the issue about
4 a buccal swab, I'd rather have my lawyer, but then the
5 defendant does something in our case he doesn't do in
6 Smith. He reengages. He asks questions. Our case law
7 is clear on that, too. When you reengage, law enforcement
8 can keep talking, and the reengagement dealt with the
9 buccal swab and he ended up agreeing to give it. He's on
10 there saying okay. There's no arm twisting. There's
11 nothing to punish law enforcement about by that behavior,
12 that activity. Nothing. It was not intentional. It's
13 good faith behavior. When law enforcement's taught about
14 Miranda, they're taught two things. And, they're right,
15 you've got to be in custody and there's got to be an
16 interrogation. They knew this man wasn't in custody and
17 they knew they couldn't arrest him. They knew probably
18 even at that point they didn't have PC or a search warrant.

19 Now they mentioned Mr. Hopkins. We had a different
20 case on him. We had an ID at that point. We had ID.
21 We had physical evidence on him. So referring to
22 co-defendant saying that they could arrest him, we
23 couldn't arrest Mr. Cornish right away. You heard law
24 enforcement say initially right out of the gate we
25 didn't know if he was a witness or not and even if he's

1 lying about certain things, that doesn't mean he's guilty
2 of a crime. That means he might be protecting himself.
3 You heard Captain Jesse Laintz say you've got to be
4 upfront, don't protect your friend, but some people if
5 they think they're associated with somebody who's guilty,
6 they'll lie, and law enforcement knows that. They had a
7 duty to keep digging. They couldn't get a warrant then.

8 The other thing is, about the third prong, and I've
9 touched on it, the defendant did not reinitiate further
10 discussion with law enforcement after invoking his right
11 to counsel. He did here unlike Smith. Smith is
12 inapplicable.

13 And the second DNA sample obtained through an
14 independent search warrant should be suppressed as fruit
15 of the poisonous tree. Well, we'll talk about that a
16 little bit more later.

17 Let me go to custody for a minute. Again, the
18 defendant voluntarily submitted himself to law
19 enforcement. He did not have to come there. Law
20 enforcement cannot compel him to come. Law enforcement
21 knew even during this -- if you want to call it
22 interrogation, which fine, that's interrogation, he
23 wasn't in custody and they couldn't put him in custody
24 unless he said you know what, I just murdered those three
25 guys, and that would have been voluntarily giving that to

1 law enforcement.

2 As I mentioned, law enforcement knows you've got
3 to be in custody and interrogated. That's under Edwards.
4 Edwards will make clear there is no Fifth Amendment
5 violation if the person is just being interrogated and
6 mentions he wants a lawyer. Miranda doesn't apply. It
7 does not apply.

8 So then you're just doing a voluntariness analysis.
9 Now Smith, dear God, there is not even a question this
10 was involuntarily done. Here, with a man who's reengaging,
11 with a man who says okay after he gets explanation, it's
12 not. There's not an issue.

13 Now I know you'll also see, and one of the things I
14 know that probably causes Your Honor concern, is when
15 Sergeant Creech walked out of that interview room. You
16 heard the defendant then saying well, I was promised that
17 if I talked without a lawyer -- if I come in here I didn't
18 need a lawyer. You heard Sergeant Creech. No one made
19 that promise to him. No one. You would have to believe
20 law enforcement is just flat-out lying and you have to
21 -- you have to judge credibility just like Simmons that
22 I'm gonna talk about a little bit later because that
23 defendant in that case said that he was coerced, that he
24 was lied to, that they let him eat food, they tried to
25 be nice to him, they used coercion, and the judge had to

1 make a credibility call. Who do you believe? Well, in
2 that case it led to an arrest in Simmons that I'm gonna
3 talk about in a little bit. Here, it didn't. There as
4 no bad behavior to punish.

5 When you get to fruit of the poisonous tree -- well,
6 let me say this. When you're talking about invocation
7 of counsel, it has to be unambiguous, and it was in Smith.
8 Here I would really contest that it is, it's an issue,
9 and for us we have never conceded there's a violation.
10 When they -- when the defense said that we saw there was
11 a problem, we made it clear to Your Honor right out of
12 the gate. We always want to put a case on firm ground.
13 If we know there's a legal issue, of course, this was
14 gonna be an issue, but we think even today we would
15 prevail had we done nothing. But, Judge, we have a duty,
16 a duty, to put a case on the best solid ground we can
17 and if there is a violation, we have a duty to try to
18 fix it.

19 THE COURT: So let me ask you, Mr. Hubbard. If the
20 Court finds that they're gonna suppress the statement
21 does that change your argument in any way about the
22 search warrant done a couple of weeks ago and the DNA?
23 Tell me why that should come in.

24 MR. HUBBARD: Well, I was getting to the next
25 point, fruit of the poisonous tree. If something is

1 independently obtained by the very definition of talking
2 about independent evidence, it can't be fruit of the
3 poisonous tree. The entire doctrine of fruit of the
4 poisonous tree is that one thing led to another thing
5 which led to another thing and, therefore, if it's
6 tainted at the front-end, everything's tainted.

7 Now I know Your Honor honed in on it yesterday,
8 well, the State knew the results, and I'm gonna talk
9 about Simmons again. That's not a factor. In fact,
10 that's a factor in our favor when we tell a judge,
11 whether it's a Schmerber or a search warrant, is there
12 a reasonable belief that we're gonna find evidence, yes,
13 and that's actually in Simmons. The result doesn't
14 matter. But here it's absolutely independent. The
15 defense -- you heard Cap saying well, why didn't you-all
16 tell the magistrate, and Your Honor understood that.

17 THE COURT: You-all really don't want to tell the
18 magistrate.

19 MR. HUBBARD: We can't.

20 THE COURT: That's right.

21 MR. HUBBARD: It would taint our probable cause,
22 so it can't be fruit of the poisonous tree. It can't
23 be.

24 THE COURT: Well, I went and read the affidavit
25 for the search warrant. They used -- and you might want

1 to outline it for the record, but I saw that there were
2 photographs, telephone records, there are was something
3 else, all this that was not in your possession at the
4 time he gave the statement.

5 MR. HUBBARD: Correct, just like in Simmons, which
6 I'm gonna get to again, but you're absolutely correct,
7 and that doesn't matter. The question is did we provide
8 you probable cause. We provided it to a magistrate.
9 Yes. That's the only question, not when did we get it.
10 There is nothing in our law that says when we got it is
11 important, it's not. Just did we have it.

12 The exclusionary rule applies only when officers
13 acted in bad faith. If they're acting in good faith, it
14 doesn't apply. So, anyway, I -- let me get to Simmons.
15 Let me make a little note here though first before I get
16 to Simmons.

17 Your Honor, Simmons that I provided you in chambers,
18 for the record State versus Alfonso Simmons. That is
19 682 S.E. 2d 19. It's a 2009 case out of Richland County
20 with -- G. Thomas Cooper was the trial judge. And, again,
21 I think facts are important because it -- ultimately when
22 you're looking at police conduct, you're weighing it, how
23 serious was his conduct, because the totality of the
24 circumstances you're weighing their behavior by that.
25 That's why a car tint case and they're acting that way,

1 are we kidding? I mean, that's outrageous in Smith.
2 Here you have an armed robbery. McDonald's in Richland
3 County. Defendant takes a sum of money. On his way out
4 he literally strips down a vehicle -- steals a vehicle
5 out of a parking lot, strips it down, takes the rims,
6 the stereo, other things out of that vehicle, and then
7 not long later he's arrested in Kershaw County in a
8 housebreaking and his vehicle has the rims and the stereo
9 and all those other items taken from that vehicle from
10 the parking lot at McDonald's. So he's arrested and they
11 bring him, so he's in custody. Unlike here, he is in
12 custody. They bring him to Richland County for an
13 interview and the palmprint they get in that case is
14 before Miranda's ever read to him. They go through that
15 process of getting his palmprint before Miranda is ever
16 read to him. And as they got to trial the defense made
17 a motion, it's a pre-trial hearing, so they -- this is
18 right like we are right here on the cusp of trial. They
19 had a jury struck and the defense says we move to suppress
20 that palmprint because there was not probable cause at
21 the time it was obtained and the judge goes well, let me
22 hear it. You're right at that time there wasn't probable
23 cause, I'm throwing it out. Well, like here the State
24 said we have probable cause now based on our continuing
25 investigation of this case. We're asking for a Schmerber

1 hearing. The judge granted that Schmerber hearing, he
2 listened to it and he goes I'll give you that order, you
3 can now go take his palmprint. The very same print that
4 he just suppressed. The same judge. The same case.

5 THE COURT: I just read it.

6 MR. HUBBARD: Just like here. And the defense is
7 like well, they already know the results. Yeah, that's
8 one of the questions. Do you think evidence will be
9 obtained? Yeah, we know there will be. We have high
10 confidence now. But it's not prejudicial. What's
11 evidence that was obtained after this violation? Because
12 to take a palmprint with no PC is to violate the man's
13 rights. The judge acknowledged that, but now they have
14 independent PC, probable cause, based on other facts,
15 just like you have here, and our high court, the Court of
16 Appeals, upheld that and said that's fine. Said you can
17 even do that in the middle of a trial. And there's no
18 prejudice because the defense was on notice what the
19 result was. There's no surprise.

20 THE COURT: Which is the same in this case.

21 MR. HUBBARD: The same as we have in this case.
22 Exact same.

23 And, Your Honor, I think that case -- I don't think,
24 that case is controlling. It's a South Carolina case,
25 our Court of Appeals, and it didn't even matter about the

1 fact that Miranda was given later and so then he is
2 arrested following that palmprint. Here when DNA is taken,
3 we don't know the result and he's arrested eight days
4 later. That DNA result is not the basis of his arrest. In
5 Smith, as I mentioned, that Your Honor pointed out to us
6 yesterday, it was the only basis for the arrest. The Feds
7 came in and the only reason why they prosecuted that guy on
8 the gun charge is the DNA that was unlawfully obtained and
9 that man was absolutely saying he's in custody, being
10 interviewed, and said I want my lawyer, I don't want to
11 talk, I don't want to do this. Our case is
12 distinguishable. Our case is much like Simmons.

13 Judge, as prosecutors and law enforcement, too, as
14 we're going along we have an ethical duty to always try
15 to see what's our evidence based on, is there a clear
16 more firmer way to present our testimony, to make sure
17 our testimony and our evidence is collected appropriately,
18 when we get to court that we have a clean record. We owe
19 that to the Court, we owe it to the defendant, that if he
20 gets convicted we put our best foot forward, put the best
21 evidence forward, gave him a clean trial, a clean record,
22 and if we know there's an error we have to address it. If
23 we follow, Smith, there's no way to clean it up. Law
24 enforcement messes up on day two, we just tell them stop
25 investigating, guys. That would be the rationale by a

1 Pennsylvania district judge. Stop, you've got a violation.
2 Everything now it is fruit of a poisonous tree. Everything
3 you do now, even if it's independent according to that
4 judge, which boggles my mind, it doesn't go anywhere near
5 anything any of us learned in law school about independent
6 source being separate from fruit of the poisonous tree. In
7 fact, it's always well, Solicitor, show me how it's not
8 fruit of the poisonous tree. Did you have an independent
9 source? That's always the door you go through if it's
10 available. That's why we have a duty to look for that door
11 and the door was a search warrant and in Simmons the Feds
12 talked about Schmerber as if that is the preferred method.
13 There's not a preferred method. Schmerber or search
14 warrant, both are good, and that case law makes it firm and
15 clear either method's good. We chose the search warrant.
16 Independent PC.

17 So even if Your Honor were to say the buccal swab
18 and statements from December 23rd were bad --

19 THE COURT: I don't like them. Suppress them.

20 MR. HUBBARD: -- don't like them, keep them out,
21 the search warrant is good, we move forward.

22 And, Your Honor, I'll say something else. When it
23 comes to DNA, you know, yesterday there was a lot of --
24 some questions about some of the things we talked about,
25 some of the items that were tested. We have to -- we

1 have to have DNA in cases like this not only to see if
2 the defendant is included, he's only included on one
3 item, that's the door latch, but we also have a duty to
4 let him know you've been excluded on every other item
5 tested. We have a duty to explore that. Not just willy
6 nilly pick a few things, but if evidence is collected is
7 he included or excluded on this? And his position is
8 gonna be different from Mr. Hopkins on what they're
9 included on or excluded from. We had to exclude him
10 from the T-shirt that had one of the victim's blood on
11 it that would have put him inside there at the time of
12 the murder while the blood's being shed. He was excluded.
13 His partner was not. We had that duty. Everybody here
14 is acting in good faith. Everybody's acting in good
15 faith. Law enforcement is.

16 And, Your Honor, I believe if the Smith rule were
17 to become South Carolina's law, and I don't believe it
18 is, it wouldn't matter whether law enforcement's acting
19 in good faith and a prosecutor like me who cares about
20 doing what's right would have a wall built right in front
21 of me saying Solicitor, you can't fix what's broken, we
22 won't give you a door to go through even if one exist.
23 South Carolina has never adopted that. Simmons makes
24 that clear. Simmons is the blueprint, if you will, saying
25 even late in the game, Solicitor, you've got a duty and

1 if it's there, defense, you can't complain.

2 Your Honor --

3 THE COURT: Any difference between DNA and a
4 palmprint?

5 MR. HUBBARD: It's non-testimonial evidence.
6 Non-testimonial. It really -- you know, palmprints
7 and fingerprints are really yesterday's DNA. Remember,
8 it used to be God, if your fingerprint's in there, it's
9 you, but it really carries the same weight and it's the
10 same form of evidence, it's non-testimonial. So even if
11 there's a Miranda in violation, it doesn't necessarily
12 mean non-testimonial is excluded either. The question is
13 gonna be voluntariness.

14 Now, Your Honor, I know I probably missed a bunch of
15 points, but --

16 THE COURT: No, and I'm gonna tell you, I've read,
17 I've talked to the lawyers in chambers, we discussed
18 this yesterday off the record. I mean, we've had a lot
19 of conversation about it.

20 MR. HUBBARD: We have. And, Your Honor, I made it
21 clear from the get-go the reason why we started with the
22 DNA motion was it's dispositive. The defense has filed
23 a motion of alibi saying their guy is actually present
24 sitting in a truck out in that parking lot. I have a
25 duty -- we have a duty as the State to disprove that

1 beyond a reasonable doubt. The only evidence that we
2 have to put Mr. Cornish inside that apartment is his DNA,
3 which is on the door latch. When law enforcement got
4 there, that door was still locked because that man over
5 there locked it, locking the victims in until their deed
6 was done.

7 THE COURT: Well, and stakes are high. There's no
8 doubt about it.

9 MR. HUBBARD: And the bottom line is this. Under
10 14-3-330, Subsection 2, which establishes the right of
11 appeal on the part of the State, there's two cases that
12 also address that, State v. Langford, which is at 810
13 S.C. 2d 868, which is a 2018 case, and State v. McKnight,
14 which is 337 S.E. 2d 208, a 1985 case.

15 THE COURT: I'm familiar with both of them.

16 MR. HUBBARD: If Your Honor is to suppress this
17 DNA evidence, it would significantly -- in fact,
18 substantially impair the prosecution of this case. We
19 would not be able to establish our case. Despite all
20 of the other PC we have, we have a duty now to disprove
21 alibi.

22 And I'll put on the record, too, that the DNA from
23 that search warrant was 510 million probability, verbal
24 scale for SLED, which is the ultimate result, what is
25 the result of that, very strong support that it was

1 Mr. Cornish's DNA. That is our evidence he's inside.

2 THE COURT: I've got it. I've got it.

3 Let me see the lawyers just for a second, please.

4 MR. HUBBARD: Your Honor, one other thing, I guess,
5 just that we're clear, the only way to suppress the DNA
6 -- second DNA sample, too, is that the exclusionary rule,
7 which doesn't apply because officers acted -- not acted
8 in good faith, you have to find that they didn't act in
9 good faith on the second one as well.

10 (Proceedings held at the bench; not reported.)

11 THE COURT: All right. We're gonna be in recess
12 for fifteen minutes. This is gonna be timing for
13 everybody just so you'll know, when I come back I'd like
14 to go ahead and give the jury my opening remarks, we're
15 gonna break for lunch. I'm gonna send the jury out for
16 lunch and have them come back at 2:00, but I want the
17 lawyers back here at 1:30 so I can put my ruling on the
18 record because I'm also submitting a typed order on my
19 ruling. I know that's gonna be looked at at the higher
20 court, so I wanted to submit an order with that, so that's
21 what we're gonna do.

22 We've got fifteen minutes. I'm gonna tell the jury
23 they can stretch their legs.

24 Let the jury know we're starting in fifteen minutes.

25 BAILIFF: All right.

1 (Recess taken at 11:04 AM.)

2 (State's Exhibit Numbers 1 through 208 were marked
3 for identification.)

4 (Back on the record at 11:25 AM.)

5 BAILIFF: All rise. Court's now in session.

6 THE COURT: Please be seated.

7 All right. Is the State ready for me to bring the
8 jury in?

9 MR. HUBBARD: Yes. Your Honor.

10 THE COURT: And how about the defense?

11 MS. WILSON: Yes, Your Honor.

12 THE COURT: Okay. Let me tell you, I want to make
13 sure everybody in the gallery in case you don't know, I
14 do not allow cell phones, not in this type of a case,
15 unless you are a lawyer or working with the lawyer's
16 office. If you have a cell phone, you need to go put it
17 in your car. It is not allowed in this courtroom. If I
18 hear a cell phone, I will take it and donate it to Sister
19 Care. I picked up four in Richland County the other week.
20 But, again, if you are with an attorney's office or you
21 work with the Solicitor's office, you're more than welcome
22 to have your phones. Just please make sure that they are
23 on silent. I've had too many problems in cases like this
24 that I've tried with cell phones.

25 All right. Let's -- have we got all the jurors?

1 BAILIFF: Yes, Your Honor.

2 THE COURT: Well, let's bring them in.

3 Now I'm gonna tell you-all, I ask them every morning
4 when they come in have they heard anything about this case,
5 read about this case, watched any news or talked to anyone
6 about this case.

7 Any objection from the State?

8 MR. HUBBARD: No, Your Honor.

9 THE COURT: Any from the defense?

10 MR. SWERLING: No, Your Honor.

11 THE COURT: Okay. And we've got to swear them.

12 And do I have the indictments?

13 THE CLERK: (Handing.)

14 (Whereupon, the jury enter the courtroom at
15 11:28 AM.)

16 THE COURT: All right. Good morning. You can be
17 seated. Before we begin, I'm gonna get the clerk to
18 swear in the jury, please.

19 THE CLERK: If you'll stand and raise your right
20 hand, please.

21 (Whereupon, the jury was duly sworn by the Clerk of
22 Court.)

23 THE CLERK: Please say I do or I affirm.

24 (Jury responds affirmatively.)

25 THE COURT: All right. Thank you.

1 Let me ask the jury, has anyone read anything,
2 heard anything, received a text, any research on this
3 case, seen anything on TV, has anyone tried to approach
4 you about this case? If so, please raise your hand.

5 Thank you.

6 I will ask you that question every morning just so
7 you-all will know.

8 All right. Before we begin the actual trial of this
9 case, I thought it might be helpful if I explained to you
10 basically how a trial proceeds. First, the State will
11 make an opening statement. An opening statement is not
12 evidence. It is simply an outline to help you understand
13 what the party expects the evidence will show. The
14 defendant may, if he wishes, present an opening statement,
15 but he does not have to for reasons I will explain.

16 Following the opening statements, you will hear
17 testimony and evidence in the case. This will consist of
18 testimony from State's witnesses, as well as any physical
19 exhibits which will be introduced into evidence.

20 Following the completion of the testimony, the
21 attorneys will, again, have a opportunity to make what
22 is called a closing statement. They will summarize the
23 case from their respective points of view. Again, these
24 arguments are not evidence.

25 Following the closing statements by the attorneys,

1 I will instruct you on the law as it pertains to the
2 issues that have arisen in the case. When I have
3 completed my instructions to you, you will then be
4 permitted to begin your deliberations in order to reach
5 a verdict.

6 You are now the jury in this case and I want to take
7 a few minutes to tell you something about your duty as
8 jurors and to give you some instructions. At the end of
9 the trial, I will give you more detailed instructions.
10 Those instructions will control your deliberations.

11 It will be your duty to decide from the evidence
12 what the facts are. You and you alone are the judges
13 of the facts. You will hear the evidence, decide what
14 the facts are and then apply those facts to the law
15 which I will give to you. That is how you will reach
16 your verdict. In doing so, you must follow the law
17 whether you agree with it or not.

18 The evidence will consist of testimony of witnesses,
19 documents and other things received into evidence as
20 exhibits and any facts on which the lawyers agree or
21 which I may instruct you to accept. You should not take
22 anything I may say or do during the trial as indicating
23 what I think of the evidence or what the verdict should
24 be.

25 This is a criminal case brought by the State of

1 South Carolina. The State charges the defendant with
2 three counts of murder and one count of burglary in the
3 first degree. The charges against the defendant is
4 contained in the indictments. The indictment is not
5 evidence of anything. It is simply the description of
6 the charge made by the State against the defendant.

7 The defendant has pled not guilty to the charge
8 and is presumed innocent unless and until proven guilty
9 beyond a reasonable doubt. Proven beyond a reasonable
10 doubt is proof that leaves you firmly convinced of the
11 defendant's guilt. A defendant has the right not to
12 testify and never has to prove his innocence or present
13 any evidence. The burden of proof is always upon the
14 State of South Carolina.

15 The following things are not evidence and you must
16 not consider them as evidence in deciding the facts of
17 this case. Statements and arguments of the attorneys,
18 questions and objections of the attorneys, and testimony
19 that I instruct you to disregard. Evidence may be direct
20 or circumstantial. Direct evidence is testimony by a
21 witness about what that witness personally saw, heard or
22 did. Circumstantial evidence is indirect evidence. That
23 is proof of one or more facts from which one can find
24 another fact. You are to consider both direct and
25 circumstantial evidence. The law permit you to give

1 equal weight to both, but it is for you to decide how
2 much weight to give any evidence.

3 There are rules of evidence which control what can
4 be received into evidence. When a lawyer asks a question
5 or offers an exhibit into evidence and the lawyer on the
6 other side thinks that it's not permitted by the rules of
7 evidence, that lawyer may object. If I overrule the
8 objection, the question may be answered or the exhibit
9 may be received. If I sustain the objection, the
10 question cannot be answered and the exhibit cannot be
11 received. Whenever I sustain an objection to a question
12 or deny a motion to admit an exhibit into evidence, you
13 must ignore the question or the existence of the exhibit
14 and you must not guess what the answer would have been
15 or what the exhibit would have shown.

16 Sometimes it may be necessary for me to request
17 that you leave the courtroom while I discuss with the
18 attorneys legal questions that come up during the trial.
19 If this occurs, you should not speculate about our
20 discussions or the reason that you were asked to leave
21 the room. This is simply a procedure that the law
22 requires when certain legal issues arise.

23 There also may be occasions where I ask the
24 attorneys to approach the bench so that I can discuss a
25 legal issue with them in private. I will do this as

1 often as possible so you will not be required to leave
2 the courtroom more than is necessary. Again, if I ask
3 the attorneys to step up to the bench or if I ask you to
4 leave the courtroom, please do not think anyone is trying
5 to hide anything from you or keep any evidence from you.
6 This is simply a procedure used by all lawyers and by
7 all courts to determine and decide legal questions.

8 In deciding the facts of this case, you may have to
9 decide which witnesses to believe and which witnesses not
10 to believe. You may believe everything a witness says,
11 only part of it or none of it. In deciding what to
12 believe, you may consider a number of factors, including
13 the following. The witness's ability to see, hear or
14 know the things testified to, the quality of the
15 witness's memory, the witness's manner while testifying,
16 whether the witness has an interest in the outcome of
17 the case or any motive, bias or prejudice, whether the
18 witness was contradicted by anything the witness said
19 or wrote before the trial or by other evidence, how
20 reasonable was the witness's testimony when considered
21 in the light of other evidence which you believe.

22 Until I advise you to begin your deliberations, you
23 must not discuss this case with anyone, including your
24 fellow jurors, friends, family members or anyone involved
25 in this case. This includes discussions face-to-face,

1 telephone, e-mail, text, blogs, Twitter, Facebook, Google,
2 LinkedIn or any other method of communication. You may
3 not use a computer, a cell phone or other electronic
4 device with communication capabilities at any time while
5 in the courtroom or during your deliberations. You're
6 happy and welcome to use your telephones during breaks,
7 lunch breaks, however, you may not at any time use these
8 devices to get or send information about this case. This
9 includes information about a party, a witness, an attorney,
10 a court officer, news accounts about the case, research
11 on any topics raised or any topics you may think would be
12 helpful in deciding the case or any testimony presented by
13 any witness.

14 During the trial do not read, listen to or watch
15 any news reports about the case. This includes anything
16 that may be in the newspaper, the Internet, radio or
17 television. You must not consider anything you may have
18 read or heard about the case outside of this courtroom
19 whether before or during the trial. After the case is
20 submitted to you, you must discuss it only in the jury room
21 with your fellow jurors.

22 The attorneys and parties in this case have been
23 advised that they are not allowed to talk to you at all,
24 so if you see anyone involved in the case, they're not
25 rude, they're not gonna say hello. They're not being

1 unfriendly, they are just following my instructions.

2 It is important that you keep an open mind and not
3 decide any issue in the case until all the evidence has
4 been presented, the parties have made their closing
5 arguments and I have instructed you on the law in this
6 case. It is your sole responsibility to determine the
7 guilt or innocence of the defendant and your verdict
8 must be based solely on the evidence as it is presented
9 to you in this trial and on the law as I instruct you
10 during and at the close of trial.

11 Mr. Foreman, it is your extra duty to preside in
12 the jury room and be the jury's spokesperson here in
13 court. It will also be your duty to write the verdict,
14 but I will give you further instructions about that at
15 the conclusion of this case.

16 All right. In order to preserve everyone's rights,
17 I will give the parties an opportunity to object to
18 anything I've said.

19 Any exceptions from the State?

20 MR. HUBBARD: None from the State, Your Honor.

21 THE COURT: Any from the defense?

22 MR. SWERLING: No, Your Honor.

23 THE COURT: Okay.

24 Now let me, Mr. Foreman and ladies and gentlemen
25 of the jury, explain to you our schedule for today

1 because I -- I try to keep you informed. We've gone
2 a little bit over. I know I asked you-all to be here
3 at 9:30. We started a little bit late. I promise you
4 we have been working. We're not just sitting around.

5 I am going to let you take a long lunch. I'm
6 gonna ask that you be back at 2:00. I would imagine
7 we are probably -- how many witnesses can we put up
8 today?

9 MR. HUBBARD: We're looking at at least four, Your
10 Honor.

11 THE COURT: Four?

12 MR. HUBBARD: That's what we think we can do today
13 along with openings.

14 THE COURT: Okay. Are they short witnesses?

15 MR. HUBBARD: Some are, some aren't. That's why
16 we're trying to jostle that, Your Honor, but we'll --
17 whatever Your Honor needs, we'll do whatever we can.

18 THE COURT: Okay. Well, you know, I always hate
19 to keep the jury late. You know, I appreciate you-all
20 being here I know you have lives, so I'll try to get you
21 out of here by 5:00.

22 Now the rest of the schedule is we're gonna start
23 court at 9:30 every morning. This case will go into
24 next week, so if you need to make any arrangements make
25 sure that you do so.

1 I'm trying to think if there's anything else I need
2 to tell the jury.

3 MR. HUBBARD: No, Your Honor. Not that I know of.

4 THE COURT: When you come back, we're gonna start
5 with openings and we'll go straight into testimony, okay?

6 Thank you.

7 Remember -- you're gonna hear me say this a hundred
8 times, you are not allowed to talk about this case at all
9 with anyone, not even amongst yourselves until I tell you
10 to do so, okay?

11 All right. I'm gonna excuse you for lunch. You-all
12 be back in the jury room at a quarter till two and we'll
13 get started.

14 Thank you.

15 (Whereupon, the jury was excused for lunch at
16 11:45 AM.)

17 THE COURT: Okay. I don't know that I've ever
18 started a trial on a Thursday after -- almost afternoon.

19 MR. HUBBARD: And a triple homicide.

20 THE COURT: But I know we have plenty of time next
21 week. We're not gonna be rushed. This case is too
22 important to both sides.

23 MR. HUBBARD: Thank you, Your Honor.

24 THE COURT: All right. So when we come back at
25 -- let's come back at 1:30. I'll -- I will also give

1 you-all a copy of my order. I don't need for anyone
2 to comment on my order because it's my order and I'm
3 putting it in the record. I'm gonna briefly put it on
4 the record. I'm not gonna read the whole thing, but
5 I'm just briefly gonna put it on the record so it will
6 be there if needed, okay?

7 All right. Court's adjourned. I'll see you at
8 1:30.

9 MR. HUBBARD: Thank you.

10 (Whereupon, a luncheon recess was taken at
11 11:46 AM.)

12 (Back on the record at 1:35 PM.)

13 BAILIFF: All rise. The Honorable Debbie McCaslin
14 proceeding.

15 THE COURT: Be seated.

16 All right. Do I have everybody?

17 Where's Mr. Hubbard?

18 MS. MAYES: He's on his way in, Your Honor.

19 THE COURT: All right. I think I've given everybody
20 a copy of my order. I'm gonna add this as a Court's
21 Exhibit Number 36.

22 (Court's Exhibit Number 36 was marked for
23 identification.)

24 THE COURT: Ms. Wilson, I don't think -- I thought
25 I had a copy of your transcript on this. I'm also gonna

1 make that, if there's no objection, just a copy because
2 I've referred to it in my order just to be -- to clarify
3 I've put in here that these transcripts were paid for
4 and provided by the defendant and produced by a court
5 reporter based on audio recordings generated by the
6 Lexington County Sheriff's Department. The Court
7 understands the State has some concerns about the accuracy
8 of the transcript, especially in light of the audio
9 quality; however, for the purposes of this motion the
10 relevant statements are sufficiently established as
11 accurate. I'm gonna add this in here. Obviously the
12 best evidence is the recording itself, which has already
13 been introduced if it's -- right?

14 For the 12-23 has the audio been introduced?

15 She's saying yes, 35.

16 MR. HUBBARD: Number 35.

17 THE COURT: 35. So that -- for any appellate issues,
18 I think that would take care of that.

19 I am not going to read my whole order for the record.
20 As you can see, it is twelve pages long, so. But, for
21 the record, I am just gonna highlight what I have ruled.

22 For the 2019 DNA sample and the statements, I think
23 it was readily apparent that the defendant was being
24 interrogated, so I think the only issue the Court must
25 resolve was whether he was in custody at the time. I

1 did the Williams factors. I went through them in my
2 order and outlined them and find that they weigh in
3 favor of a determination that he was in custody. This
4 means as soon as the defendant requested an attorney,
5 all interrogations and communications which might
6 reasonably lead to interrogation should have ceased.
7 The fact that it continued violated his right to counsel
8 and any statements or evidence obtained as a result
9 should be suppressed. There is no method for the State
10 to cure the defects and the statements obtained, so the
11 evidence is accordingly suppressed and the defendant's
12 Jackson v. Denno motion is granted as to that statement.

13 I also applied the -- and I have a tough time
14 pronouncing this, the Sherlock factors, which I'm just
15 gonna tell you was a very close call, very close, and
16 it appears to the Court that his consent was not given
17 voluntarily. I have also outlined all those factors in
18 my order and ruled that the consent obtained on December
19 the 23rd, 2019, was not voluntarily and the sample was,
20 therefore, obtained in violation of his Fourth Amendment
21 rights and should be suppressed.

22 Now even though the 2019 sample was unlawfully
23 obtained, the State cured such a defect by using the
24 independent source exception to the exclusionary rule.
25 I went through the Hill's two-prong independent analysis.

1 The officer's decision to seek the warrant was not
2 affected by the unlawful search. It was sought merely
3 as a safety valve curative measure. The affidavit
4 attached to the warrant does not include any information
5 which was obtained as a result of the search, so Judge
6 Buck, the magistrate in the case, could not have been
7 affected by the unlawful search either; therefore, the
8 search warrant provided an independent source for the
9 DNA's admission free and clear of any potential defects.

10 The State argues that State v. Simmons controls
11 the present case. I agree with that. In Simmons, a
12 defendant was convicted of kidnapping, armed robbery
13 and grand larceny. In part, the evidence against the
14 defendant in that case included a palmprint. The
15 defense argued that the first palmprint was obtained
16 involuntarily in violation of the defendant's Fourth
17 Amendment rights, which is what I've just ruled in this
18 case.

19 In response to the exclusion of that palmprint, the
20 State had a Schmerber hearing which led to the Court
21 compelling a second -- a second curative it palmprint.
22 In this case, I'm gonna say it's analogous to the search
23 warrant itself I believe is the argument from the State
24 that cures it. The Court held in the Simmons case that
25 regardless of the admissibility of the first palmprint,

1 the Court's order requiring Simmons to submit to a
2 second palmprint was proper as the State established
3 probable cause for the acquisition of the palmprint
4 evidence satisfying the three-prong test for acquiring
5 non-testimonial identification evidence. The DNA is
6 also in comparison to this case is non-testimonial.

7 It is apparent to me that the law in South Carolina
8 regarding the independent source doctrine allows the
9 State to seek curative measures regarding defective
10 searches, so I am going to allow it.

11 So the September '22, search warrant obtained in
12 this case was based on independent information as I
13 previously stated. The fact that it was obtained mere
14 weeks before trial, that the State knew of DNA analysis
15 or the State thought there might be an issue with the
16 initial search is of no consequence; therefore, the
17 independent source doctrine applies and the DNA shall
18 be admitted.

19 That is the sum of -- I go into great more detail
20 because I'm gonna tell you the Simmons case caused me
21 great concern. I looked at it and understand there's
22 got to be a meaningful -- there's got to be some teeth
23 to it. I personally agree, but that's not the law here
24 in South Carolina. That's up for somebody else to change,
25 not me.

1 But I just wrote this order. I thought it might
2 clarify my position the on the appellate level.

3 So any objections from the State?

4 MR. HUBBARD: Your Honor, the only thing for the
5 record is obviously we never -- we never acknowledged
6 that the December 23rd buccal swab collection was
7 involuntary. Just for record purposes, I note an
8 exception there just in case for appellate purposes if
9 they say my search warrant's bad, I want the record to
10 reflect that I felt they would review the first one as
11 well, so that's the only thing. But I understand --

12 THE COURT: You know, I just took into the
13 consideration Sergeant Creech when he went to go get
14 the search warrant was well, I thought there might be an
15 issue with the voluntariness of the statement and the
16 buccal swab. So, you know, I just kind of -- I had that
17 testimony to base my decision on.

18 MR. HUBBARD: And I understand that, Your Honor,
19 and as we had already said, too, that, you know, from
20 the outset just trying to have a clean record, we had
21 determined not to use that December 23rd or December 31st
22 statement, so we, you know --

23 THE COURT: And the State graciously agreed not to
24 use the statement or that sample, that is correct. That
25 was the testimony.

1 Let me hear -- anything from the defense, Ms. Wilson?

2 MS. WILSON: Yes, Your Honor.

3 We would object to the decision to deny the motion
4 to suppress the 9-23-22 DNA seizure based on the Court's
5 ruling that the defendant's initial swab was involuntary
6 and should be suppressed. I submit that the exclusionary
7 rule does apply and that the fruit of the poisonous tree
8 would extend to the 9-23-22 swab obtained via search
9 warrant. I'll just submit that neither exception to the
10 exclusionary rule would apply. Specifically, the Court
11 found that the independent source exception applied.
12 Pursuant to Murray versus U.S., 487 U.S. 533, I submit
13 that it does not. Under Murray, there's a two-factor
14 test that the Court must look at. The first factor is
15 whether a neutral magistrate would have issued a search
16 warrant even if not presented with information obtained
17 during the unlawful search, and the second factor is
18 whether the agency's decision to seek the warrant was
19 prompted by the initial unlawful search.

20 While the State meets factor one in presenting the
21 magistrate with a search warrant that contained probable
22 cause that was not found during the unlawful search, I
23 submit that the decision to seek the 2022 search warrant
24 was prompted by the initial unlawful search and the fact
25 that the voluntariness of the -- the consent may not have

1 been voluntary as testified to by Sergeant Creech. As
2 such, we believe that the fruit of the poisonous
3 tree should reach the 9-23 DNA seizure and should be
4 suppressed.

5 THE COURT: All right. And your objection is so
6 noted for the record, Ms. Wilson.

7 MS. WILSON: Thank you, Your Honor.

8 THE COURT: Anything else from the State?

9 MR. HUBBARD: No, sir, Your Honor.

10 THE COURT: Okay. Are we --

11 MS. HUBBARD: No, ma'am.

12 THE COURT: Listen, I'll answer to anything.

13 MR. HUBBARD: I tell you what, I can tell I'm tired.
14 I apologize.

15 THE COURT: No. No.

16 Let me just commend both sides. I know that we've
17 done a -- this was a crux of an issue for this case and
18 I think both sides have done a wonderful job. I know my
19 law clerk has worked awfully hard. I know you-all have,
20 too, so let me thank you for that.

21 All right. Are we ready for openings?

22 MS. MAYES: (Nods head.)

23 THE COURT: Let's bring in the jury.

24 Oh, they're supposed to be here at a quarter till
25 two. Do I have all twelve of them?

1 gonna, if he could, listen to the openings. He was the
2 original investigator.

3 Is the defense okay with that?

4 MR. SWERLING: That's fine.

5 THE COURT: Okay. All right. Very well.

6 BAILIFF: We have the jurors, Your Honor.

7 THE COURT: Let's bring them in then.

8 Ms. Mayes, are you ready?

9 MS. MAYES: Yes, Your Honor.

10 THE COURT: Thank you.

11 (Whereupon, the jury return to the courtroom at
12 1:54 PM.)

13 THE COURT: All right. Mr. Foreman, is the jury
14 ready?

15 FOREPERSON: Yes, ma'am.

16 THE COURT: All right. Be seated.

17 If at any -- let me tell the jury if at any time
18 you cannot hear any of the lawyers, raise your hand.
19 I promise I'll spot you. They will, too. But it's
20 important that you're able to hear everything. Sometimes
21 it's hard to hear in this courtroom.

22 All right. Let me turn to the State. Ms. Mayes.

23 MS. MAYES: Your Honor, may it please the Court?

24 THE COURT: Yes, ma'am.

25 MS. MAYES: Good afternoon. When you arrived

1 for jury service on Monday, you may have wondered to
2 yourselves what kind of case you may potentially be
3 called to serve on. Probably the furthest thing from
4 your mind would be that you'd end up on a murder case.
5 But not just a murder case. As you heard when the State
6 called those indictments, this is three counts of murder.
7 Three men who were executed in their own home. Three men
8 shot in cold blood, and it came down to one thing pure and
9 simple. Greed. Greed.

10 This was a burglary. This was a home invasion just
11 before 11 AM on December 17, 2019, at an apartment known
12 as Woodland Village, and that's located in the St. Andrews
13 area of Lexington County. Most of you are familiar with
14 it. That St. Andrews area is right there between
15 St. Andrews Road and Bush River Road. This apartment
16 complex, Woodland Village, was just off of Bush River
17 Road.

18 You'll hear that that morning those three men were
19 exactly where they should be. In their own home. They
20 are Branton Booker, Sheldon Livingston and Duwan Williams.
21 You'll hear that Duwan works nightshift. Sheldon works
22 late. Sheldon was in his bed in his bedroom. Duwan was
23 asleep on the couch. There's a knock at the door.
24 Branton goes and answers that door and when he answers
25 that door he's ambushed right there at the entryway. No

1 sooner does he get to that door then there are armed
2 intruders right there waiting on him, and he takes two
3 gunshot wounds right there. Blood shed all over the
4 entryway and in this case the crime scene tells the story.
5 The physical evidence lights the path, it leads the way.

6 And the evidence will show you that Branton couldn't
7 even get that door back shut to protect himself and to
8 protect his roommates. That door is pushed open. He's
9 got blood shed all over that entryway. Having already
10 taken a gunshot wound to the chest and to the arm, he
11 can't keep that door shut. He can't fight off the
12 intruders. He runs for it. He makes it maybe twenty
13 feet maybe to around that doorway and he's gonna collapse
14 right there on the floor.

15 And the intruders force their way in, guns drawn,
16 shooting everyone in their eyesight, and that's going to
17 start with Duwan Williams, who's right there on the couch
18 sleeping. They shoot him four times. And when I say
19 "they", it's because you're gonna hear evidence from the
20 pathologist who did the autopsies in this case and from
21 an expert at the State Law Enforcement Division crime
22 lab, that we call SLED, a firearms expert who's going to
23 explain that those bullet that came out of Duwan's body,
24 they're from two guns, two different calibers. We've got
25 at least two intruders here.

1 And as the State informed you when those indictments
2 were called, Jeremy Cornish, we submit and we will prove,
3 is one of those intruders.

4 And as they make their way past Duwan Williams,
5 who's just taken four gunshot wounds as he lay asleep on
6 that couch, now they head to Sheldon's room. Sheldon's
7 in his bed. The crime scene's gonna tell you the story.
8 Twelve gunshot wounds to Sheldon Livingston. He was shot
9 twelve times. He's able to maybe role a little bit to
10 try and defend himself. He ends up on the floor and
11 takes the bedding with him and you're gonna hear that
12 there's projectiles in the mattress, in the walls.
13 Malice. Pure and simple.

14 And it doesn't stop there. So you've heard about
15 the three men who were executed right there. There's
16 a fourth man, Donnovin Haynes, and he's in that last
17 bedroom. He also works late. He works at a grill in
18 the Cayce area. He wakes up to the sound of gunfire. He
19 wakes up to the sound of his friends being murdered right
20 in his midst. And as he hears those gunshots around him,
21 he takes cover in his bedroom closet and he hides there
22 frantic, distraught, scared for his life. He holds on
23 to that closet door and he hears his bedroom door getting
24 kicked in and he knows he's next. Because when they
25 came in their intent was to murder everyone there and

1 take everything they could of value. They're intent now
2 on killing Donnovin.

3 So he's heard his bedroom door get kicked in and now
4 he can hear an intruder come around to the closet where
5 he's hiding and the intruder starts kicking that door,
6 too, trying to force his way in as Donnovin holds it shut.
7 And you'll hear that Donnovin can hear that intruder
8 talking with the other intruder as they're looking for
9 something in the home, okay?

10 So when we talk about greed, we're talking about
11 cash in that home and there were drugs in that home, and
12 that's the harsh reality of what this came down to.
13 Those intruders were willing to take these lives and
14 murder everyone so that they could take that cash and
15 whatever drugs they could find, take them back out on the
16 street and sell them or flip them, however you want to
17 put it, for more money. And no matter what, I submit,
18 never let the idea that there were drugs inside that home
19 in any way affect the value of these lives. The tragedy
20 of these three men murdered over something so senseless.
21 That in no way affects the value of any human life.
22 That's not the law in the state of South Carolina, nor
23 will it ever be.

24 So as Donnovin hears them talking amongst each
25 other, it's clear now that one of those intruders

1 outside the bedroom he's found what they're looking for
2 and now they're out of there. Donnovin's gonna run out
3 his bedroom window still not knowing how far away the
4 intruders are, only that they're armed, and you'll hear
5 that as he makes his way out of his closet towards his
6 bedroom window to escape, he can look and see, number
7 one, his bedroom door's been kicked in, and, number two,
8 he sees Branton but doesn't know that it's Branton.

9 He can see a body on the floor, but that body is hard
10 to see because these intruders who are burglarizing that
11 home have pulled out all kinds of items and belongings and
12 thrown them on top of Branton as he laid dying. As he's
13 taking his last breath, these intruders are rummaging the
14 home for anything they can find that they want and throwing
15 all these items on top of him, and that's what he sees.
16 That's what Donnovin sees when he goes out that window.

17 You'll hear that he also can hear the sound of
18 breathing. Heavy breathing. He doesn't know it, but
19 that's Duwan. Duwan's dying on the couch and his
20 breathing is loud and it's labored, and you'll hear from
21 one of the first responders, Officer Donnelly, who after
22 Donnovin makes the 9-1-1 call officers are able to get
23 into that house, attempt to render aid to Duwan and as
24 they find him struggling and taking his last breath,
25 Officer Donnelly says to him do you know who shot you

1 and you'll hear the testimony of his response. No. No,
2 I was sleeping. Defenseless.

3 So when we talk about those first responders, I
4 want to talk about how they got in there and you're
5 gonna hear this testimony, but I want to lay it out.
6 When officers arrive to that front door of the home,
7 they're gonna find it locked. And what does that mean?
8 What does that mean when they get there after getting
9 that 9-1-1 call? It's gonna be Scott Purdy with the
10 Lexington County Sheriff's Department, it's gonna be
11 Deputy Barber with the Lexington County Sheriff's
12 Department, and eventually Deputy Barber with the
13 Lexington County Sheriff's Department. Donnovin Haynes
14 is gonna meet them having come out that window and calling
15 9-1-1, he's gonna meet them at the entryway and they're
16 gonna go to that door and they can't get in because it's
17 locked and you'll see and hear in this case how they had
18 to force their way in to render aid. So what does that
19 mean? It means that when the intruders came in, not only
20 did they come in armed with the intent to kill everyone
21 in there, but one of those intruders locked that door
22 after they made their way inside the house. He locked
23 that door. Why? To keep out anybody that might hear
24 gunshots and come to render aid, anybody upstairs, any
25 neighbors around, anybody that might hear gunshots or

1 hear yelling or know that people need aid, they're not
2 gonna be able to get into that front door because the
3 intruders have locked it and they're gonna go out the
4 patio door.

5 And you're gonna hear in this case that when crime
6 scene investigators come to the apartment and process
7 that scene, CSI, just like you've heard about and seen
8 on TV, what they're gonna do is they're gonna take swabs
9 from around that apartment and one of the places they're
10 gonna swab is that dead bolt lock that one of the
11 intruders locked to keep out anybody coming to render
12 aid and so that the victims couldn't get out either.
13 You're gonna hear that he took those swabs. You're
14 gonna hear testimony that those swabs from the crime
15 scene were sent to the State Law Enforcement Division for
16 analysis and you're gonna hear about the DNA evidence in
17 this case, and that brings us to the defendant Jeremy
18 Cornish.

19 So Jeremy Cornish is charged as you've heard with
20 three counts of murder. He's charged with burglary in
21 the first degree, but he's not the only one charged.

22 MR. SWERLING: Judge, I hate to interrupt, but any
23 discussion about that is subject to our objection and
24 we'd renew it.

25 THE COURT: So noted for the record.

1 MS. MAYES: He's not the only one charged. You'll
2 hear about a co-defendant who's also charged in this
3 case and his name is Justin Hopkins.

4 Now the case of Justin Hopkins is not before you
5 this week. His case will be heard another time, another
6 date, by another jury, but I mention that because the
7 evidence you will hear it is that Jeremy Cornish and
8 Justin Hopkins acted together in these crimes, joined
9 together to commit these crimes, and that will be the
10 evidence that the State presents before you. Both
11 charged with burglary first degree, both charged with
12 three counts of murder, and the State maintains that
13 under South Carolina law the hand of one is the hand of
14 all and that will be the evidence that you'll hear in
15 this case. You've heard that Duwan Williams was shot
16 by two different guns with two different calibers.
17 You'll hear that the testimony -- you'll hear testimony
18 in this case from an expert at the State Law Enforcement
19 Division as to the two potential weapons used in this
20 case. I submit that evidence will be a Glock 9-millimeter
21 weapon and I submit a .38 caliber weapon. You'll hear
22 that the evidence and projectiles recovered from the body
23 of Duwan Williams are consistent with both of those.

24 And as I stated, when we talk about the hand of one
25 is the hand of all, ultimately you will hear the law in

1 this case as charged by Your Honor and you will hear all
2 facts and evidence presented in this case, but I submit
3 under the law it does not matter. When two people join
4 together to commit a crime, whether one pulls the trigger
5 or both pull the trigger, under our law both are equally
6 responsible, and as I stated, the evidence here is there
7 were two guns and two shooters.

8 Now in addition to the evidence at the crime scene
9 that you'll hear about, you'll also hear about other types
10 of evidence recovered in this case, specifically as it
11 relates to that co-defendant Justin Hopkins. You'll hear
12 that Jeremy Cornish and Justin Hopkins knew each other
13 for many years, that they were longtime friends, and in
14 addition to that they had been working together at a local
15 masonry office job in Richland County, and that as a result
16 they're often together going and coming to work in a truck
17 that Jeremy Cornish drives. You're gonna hear a lot about
18 that truck because it's that truck, that white work truck
19 driven by Jeremy Cornish, that takes both of them to the
20 crime scene that day on December 17th and you're gonna
21 hear that both of them, Jeremy Cornish and Justin Hopkins,
22 flee the crime scene in that same white work truck.

23 You'll hear that just fifteen minutes or so after
24 the murders Jeremy Cornish will be seen on video
25 surveillance dropping off Justin Hopkins at KJ's grocery

1 in the St. Andrews area in that shame white work truck.
2 Fifteen minutes after the murder. And you'll hear that
3 that location is just a mile or so from Woodland Village.
4 And from there I submit the evidence will show that they
5 maintained contact. You'll hear about text messages sent
6 from Jeremy Cornish to Justin Hopkins after the murders
7 that also connect the two of them to committing this act
8 together; jointly, knowingly and willingly together.

9 And, finally, back to that DNA evidence, as I stated,
10 when that CSI detective comes in and processes that crime
11 scene, and just like you've seen on TV and he's taking
12 DNA swabs from different area all across that apartment
13 that the intruders might have handled, he's gonna take
14 DNA from from that interior door latch when the intruders
15 had locked the door.

16 MR. SWERLING: Judge, can I just have the objection
17 run throughout any time mentioned about the DNA.

18 THE COURT: Yes. Absolutely. The DNA is on the
19 record and so noted throughout this trial.

20 MR. SWERLING: Thank you.

21 MS. MAYES: And you're gonna hear that as he swabs
22 that door latch for that DNA, that swab is gonna go to
23 the State Law Enforcement Division for analysis and
24 ultimately that is going to be consistent with the DNA
25 of Jeremy Cornish inside the crime scene.

1 Now when we talk about murder, I want to end by
2 saying the law when we address murder is actually very
3 simple in South Carolina. It is. We're not like other
4 states where there might need to be some level of
5 premeditation for hours or days that preempts the crime.
6 In South Carolina, murder is defined as the willful and
7 intentional killing of another person with malice
8 aforethought. Malice aforethought. So it doesn't require
9 hours or even minutes of planning. Malice aforethought
10 simply means that that thought of malice is in the mind
11 and the heart of the killer at the time that the trigger
12 is pulled. That's malice aforethought.

13 Malice is defined as hatred, ill will or hostility,
14 but, again, in our law it's very simple because to come
15 into the home of others armed, to repeatedly shoot others
16 who are defenseless, as I stated Sheldon Livingston in
17 his bed, Dewan Williams in his own words "I was asleep",
18 never even saw their faces. That is the very definition
19 of malice.

20 When all is said and done, I submit the State will
21 meet its burden of proof abundantly and that is proof
22 beyond a reasonable doubt that Jeremy Cornish acting
23 together with Justin Hopkins carried out these crimes
24 willingly. Jeremy Cornish is guilty of burglary in the
25 first degree for the murder of Branton Booker, the murder

1 of Sheldon Livingston and the murder of Duwan Williams.

2 Thank you.

3 THE COURT: Thank you, Ms. Mayes.

4 Mr. Leventis.

5 MR. LEVENTIS: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. LEVENTIS: Good afternoon, ladies and gentlemen
8 of the jury. My name is Leigh Leventis. Together with
9 Jack Swerling and Allisa Wilson and our parallels Kelly
10 Reeves and Katie Butler, we represent Jeremy Hopkins --
11 no, Jeremy Cornish in this case. I'm sorry. These
12 names are starting to run together. We, like you, we've
13 been here for four days arguing various issues, but we
14 represent Jeremy Cornish.

15 Jeremy is seated up there in his seat. He's
16 forty-one years of age. He's got three children. He
17 had four. One got -- got killed in a -- his 12-year-old
18 son was run over. He has been working with a construction
19 company called PatCon for the last twenty-two years.
20 He's a supervisor for the construction company. The
21 white dually that Suzanne was talking about is a company
22 truck. He drives every day to the worksite, picks up
23 other employees and takes them to the worksite.

24 Now Monday morning when the indictments were read
25 out to the jury pool, I look at reactions of jurors and

1 it's a tough thing to hear burglary first, murder, murder,
2 murder and think my God, what an awful, awful case that
3 we're gonna be sitting in judgment of and after listening
4 to Ms. Mayes, you know, he's got to be guilty. I mean,
5 it was as impassioned an opening statement as you'll ever
6 hear in a case, but about there is -- there is another
7 side to this case, a few details that Ms. Mayes left out.

8 The State is going to have about twenty-five
9 witnesses I'm guessing and what she accurately described
10 is the crime scene and various things that you're going
11 to see and this is an awful, awful case. I mean, we
12 don't -- we don't have any argument with her about that.
13 It was brutal. But our argument is that this case was
14 committed by one person and that was Justin Hopkins.

15 Justin likes guns. What the State is going to show
16 you from some December 15th photographs is Justin had
17 some guns on Facebook he was advertising to -- to sell.
18 One of them was a 9-millimeter, a Glock, and one of
19 them was a .38. Two days later those are weapons, that
20 may be the weapons, they may be similar weapons, but
21 nonetheless what Ms. Mayes told you, that two weapons
22 were involved, two weapons were involved. What were
23 they? A 9-millimeter and a Glock. Ultimately when
24 Justin Hopkins is arrested, what do they find in a duffle
25 bag he has? A 9-mnillimeter and a .38. They weren't

1 the murder weapons, but he obviously likes 9-millimeters
2 and he likes -- or he obviously likes Glocks and .38
3 millimeters.

4 The back sliding glass door that Ms. Mayes was
5 talking about, you'll hear that it was always unlocked.
6 I would submit to you that that's a big point in this
7 case. Let me tell you about our theory of this. I can't
8 be as impassioned as Suzanne was. I don't represent
9 victims. I will tell you that Jeremy was arrested almost
10 three years ago and he and his family have lived with
11 this for almost three years. I mean no disrespect to the
12 family members of the victims here. None whatsoever.
13 We've got a job to do and our job is to present Jeremy's
14 case and his defense to you.

15 Let me tell you a little bit about the facts. At
16 7 AM on December 17th, Jeremy does what he always does.
17 He gets in that white dually truck and he drives to pick
18 up a couple of workers and he drives to pick -- and picks
19 up Justin, who also worked at PatCon Construction Company,
20 went to pick Justin up and then they proceeded to McEntire
21 Air National Base Guard, which was their website --
22 excuse me, their worksite. They go there and within
23 thirty minutes they get rained out because they work
24 outside and it was a major rainy day that Tuesday,
25 December 17th.

1 So they leave McEntire. They come back. They stop
2 off at Jiffy Lube to change the oil in that dually truck.
3 Jeremy -- and Jeremy's got three people in the car; the
4 two people he brought and Justin. The three people he
5 brought. He takes the two people back to the drop-off
6 spot. He's got an issue with his driver's license. As
7 he's going into McEntire, they tell him your driver's
8 license is suspended. He didn't know it was suspended
9 and it turns out it was suspended for not paying insurance
10 on a truck -- on a vehicle that he was no longer driving.
11 He just hadn't turned the tags in and he finds out -- he
12 goes to the DMV, but Justin wanted to go with him because
13 Justin had an issue with his own driver's license. So
14 they go to the DMV on O'Neil Court, which is near where
15 Jeremy lives. Jeremy finds out that he needs \$425 to
16 reinstate his license. I don't know what Justin found
17 out, but that's what Jeremy found out. So Jeremy calls
18 the boss, who is his uncle for whom he's been working
19 for twenty-two years, and asks Willie if he could borrow
20 \$425.00, which Willie says yeah, come by the office later
21 and I'll get you a check because he needed to get his
22 license reinstated.

23 So he's on the way to take Justin back to his
24 residence at Landmark Apartments, which is about a mile
25 away from Woodland Village, at which point Justin asks --

1 Jeremy said you want to stop by and get some smoke, get
2 some marijuana, said he yeah, I'm in. So Justin -- and
3 so they go to this -- to Woodland Village. Jeremy parks
4 the truck. Justin goes in and Jeremy wonders, you know,
5 I wonder what's taking so long at which point Jeremy then
6 drives his vehicle around the complex looking for Justin.
7 He sees Justin on a bicycle. When Justin sees him. And
8 I'll tell you I'm gonna corroborate this with some
9 independent witnesses in a moment, but Justin says hey,
10 stop. Jeremy stops the vehicle. Justin lays the bike
11 down in the middle of the road, Justin gets in Jeremy's
12 vehicle, Jeremy drives a short distance away, but then
13 parks the vehicle in a parking space at which time Justin
14 gets out and moves the bicycle out of the middle of the
15 road and lays it up against a sign so that it will not
16 obstruct traffic, at which point Justin then gets back in
17 the truck and they leave, okay? That story, you think,
18 yeah, that's made up, that can't be the case, but what
19 you're going to have is three independent witnesses who
20 are going to corroborate that story, three that live in
21 the complex. One is a Dale Galloway and Dale Galloway's
22 testimony is that he saw a large black male run from the
23 back of some apartments in that particular area running
24 with a bag either under his shoulder or over his shoulder,
25 wrapped in something, but running hard towards the back

1 of the complex, which was unusual to him, which would be
2 unusual to anybody. So then when Jeremy drives to the
3 area where he ultimately sees Justin on the bicycle,
4 you've got two people, Christy and Hansen Meneses, a
5 couple, who are getting ready to leave to go somewhere.
6 They both give statements. Hansen says I see this large
7 black male on a bicycle, which was obviously unusual to
8 him, driving from the back of the complex towards --
9 towards the exit of the complex. His wife says I see
10 this large black male on a bicycle. And, by the way,
11 both of them said he no longer -- or did not have that
12 item under his arm or over his shoulder wrapped in a
13 blanket. Something happened to that item and I would
14 submit to you that -- well, something happened to that
15 and you'll -- you'll hear testimony about that item.
16 The wife says -- Christy says I heard -- I saw the white
17 dually approaching the man on the bicycle and I heard him,
18 him being Justin who was later identified as the person
19 being on the bike, I heard him say "hey, stop", and she
20 says at that point I saw him lay down the bike in the
21 middle of the road, I saw him get in the truck, I saw
22 the truck move a little bit and then pull into a parking
23 space and I saw the passenger get out of the passenger
24 side, pick the bicycle up and put it on the side of the
25 road.

1 Now I will ask you if two people commit a crime, a
2 brutal housebreaking or brutal burglary and three
3 cold-blooded murders, are those people going to come
4 out of the complex or come out of the apartment at the
5 same time together? You would assume that that's what
6 they would do if the two of them had gone in there and
7 ransacked and shot -- shot three people in cold blood, but
8 that's not what happened. One person was seen coming out
9 of there. Neither of them -- none of the independent
10 witnesses placed anybody with Justin. None of them. Is
11 that horrific behavior that's alleged to have been
12 perpetrated by two people, Jeremy Cornish being one of
13 them, is that consistent and to -- to stop and park in
14 a parking space and make the passenger get out of the
15 vehicle and get the bike out of the roadway and put it
16 up against a sign, would that be consistent with somebody
17 who was trying to leave the complex?

18 Now that part of the story was left out in the
19 impassioned recitation of the facts that the State has
20 for you. I would submit to you that throughout this
21 case they are going to have a difficult time with those
22 particular issues. I mean, in their twenty-five witnesses
23 that they're gonna present, they're gonna show you a
24 brutal, brutal scene.

25 Now what's also gonna come out in this case is

1 [REDACTED] Butternut was a known drug house. What was found
2 when Justin was arrested, he had 14 grams of heroin on
3 him. Likewise, when the apartment was searched, in
4 Donnovin's room there was a pound of marijuana found.
5 September 15th Justin gives the solicitor's office --
6 excuse me, not Justin, Donnovin gives a statement to the
7 Solicitor's office that said by the way, I had eleven
8 hundred dollars in cash and my wallet that were taken
9 that I never reported that was for my rent and other
10 bills. Now when do people pay rent? What was that
11 eleven hundred dollars from? We don't know, but we do
12 know that lots of heroin and lots of marijuana came out
13 of that apartment that day.

14 What else do we know happened and what else will be
15 presented to you? Within a few minutes after this crime
16 Jeremy starts looking -- he starts Googling news sites to
17 see if there is something about this. Now why would he
18 have done that? I would tell you that he did it because
19 Justin must have told him that he killed three people
20 and he got 14 grams of heroin. I'm just speculating
21 that that's what he must have told them because almost
22 immediately Jeremy is searching news sites to say is
23 this man telling the truth. I mean, I can't believe
24 that Justin would do something like that, and then
25 finally about 3:30 there's a site that says that there

1 were three people murdered at ■■■ Butternut.

2 Though my case cannot be as impassioned as Ms. Mayes'
3 was because she is talking about people who were murdered
4 and somebody who was almost murdered, the reality of this
5 case is that how do you get past -- how do you get past
6 those points where co-defendants did not come out of the
7 apartment together? One's running with a sack towards
8 the back of the complex and then he's seen on a bicycle
9 and then Justin -- Jeremy picks him up and then pulls
10 into a parking place space and makes him get out. I don't
11 know how you -- you get the around those facts.

12 Even though Suzanne talked about there will be some
13 DNA evidence, and that will be discussed, there will be
14 conflicting statements that -- untruths that Jeremy tells
15 because he's a nervous wreck and scared to death because
16 he just is. I mean, he's been accused of three murders
17 and a burglary that he knows he didn't do.

18 The State -- the State has a difficult burden. I
19 mean, it's not -- you know, it's like, you know, well, I
20 hear these facts, I'd convict anybody that the State
21 tells me is guilty of these facts, but Jeremy is presumed
22 innocent until proven guilty beyond a reasonable doubt.
23 If you have a reason that makes you hesitate to act,
24 that's what reasonable doubt is.

25 Additionally, as I told you, the State will probably

1 have about twenty-five witnesses. We may or may not have
2 any witnesses. What I've learned in these four days
3 with our team and with Rick Hubbard and Suzanne Mayes is
4 strategies change every day, sometimes two or three times
5 a day. I don't know if we're gonna present a case or not,
6 but if we choose not to present a case as Judge McCaslin
7 told you, the defendant doesn't have to testify because
8 he is presumed innocent until proven guilty. So, again,
9 depending on how things go we, may or may not present a
10 defense from the witness stand. I would submit to you
11 that our defense will come from the State's presentation
12 of the case with Dale Galloway and Christy and Hannson
13 Meneses. They will -- they will help you. And Jeremy
14 checking out, Googling news sites. I mean, why do you do
15 those things?

16 You're probably tired of listening to me, and, again,
17 mine wasn't quite as impassioned, but I am impassioned
18 for my client Jeremy Cornish who I met January the 1st of
19 2020. My son is friends with his family. I was called
20 and met with the family, I came to the jail and talked to
21 Jeremy, I went back and met with the family, and I've
22 been involved ever since. Jack got involved about two
23 months after that and we have worked diligently in this
24 case. In any case, we've got some problems with the
25 facts, but likewise I think the State has some problems

1 with the facts, and I would submit to you and I hope that
2 you will -- and I'm sure you'll be open-minded to listen
3 to the facts and make that determination hey, I've got
4 a hesitancy here, this doesn't make sense, and murder
5 weapons were the same or at least similar, again, to the
6 ones that Justin had pictured for sale on Facebook and
7 two more different weapons that he had in his backpack
8 on December 21st. He is the bad guy here. He is who
9 did these heinous acts.

10 Thank you very much and we look forward to spending
11 the next week with you.

12 Thank you.

13 THE COURT: Thank you, Mr. Leventis.

14 All right. Is the State ready to call their first
15 witness?

16 MS. MAYES: Yes, Your Honor. The State calls
17 Melissa Patrick.

18 THE COURT: Thank you, Ms. Mayes.

19 THE CLERK: Raise your right hand, please.

20 (Whereupon, Melissa Patrick was duly sworn by the
21 Clerk of Court.)

22 THE CLERK: If you'll have a seat over there, please.
23 If you'll state your name and spell your last name for
24 the record.

25 THE WITNESS: My name is Melissa Patrick. Last

1 name's P-A-T-R-I-C-K.

2 MELISSA PATRICK,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MAYES:

6 Q. Good afternoon, Ms. Patrick. Tell us a little bit
7 about yourself. Where are you employed?

8 A. I'm the Lexington County 9-1-1 Communication Center.
9 I'm currently the training coordinator.

10 Q. All right. And if you could pull that microphone just
11 a little bit closer to you.

12 Tell us a little bit about the Lexington County 9-1-1
13 Center. What type of work do you-all do there?

14 A. We receive 9-1-1 calls from citizens of Lexington
15 County and send assistance.

16 Q. Okay. And does that include emergency calls for
17 police?

18 A. Yes, ma'am.

19 Q. Does it include emergency calls for EMS?

20 A. Yes.

21 Q. And fire?

22 A. Uh-huh.

23 Q. And how do you go about keeping records there at the
24 Lexington County Communications Center of every 9-1-1 call
25 that comes in?

1 A. It's just all recorded.

2 Q. And when you say recorded, do you mean audio recorded?

3 A. Audio, yes, ma'am.

4 Q. Okay. And in addition to 9-1-1 calls being audio
5 recorded, do you have dispatchers?

6 A. Yes, ma'am.

7 Q. And how do dispatchers go about recording and
8 documenting the dates and times of calls?

9 A. It's all done through the CAD. The computer-aided
10 dispatch computer system that we type the calls into.

11 Q. And what you're calling the CAD, do you also keep
12 written documents reflecting those data entries as well?

13 A. Yes.

14 Q. Does that include the nature of calls?

15 A. Yes, ma'am.

16 Q. The time of report and the type of services that are
17 sent out?

18 A. Yes.

19 Q. And can you tell us whether or not you also continue
20 listening and making data entries as law enforcement
21 responds to a scene?

22 A. Yes.

23 Q. And does that include --

24 MR. LEVENTIS: Your Honor, I want to object to the
25 leading questions.

1 MS. MAYES: I can rephrase that.

2 THE COURT: Thank you, Ms. Mayes.

3 BY MS. MAYES:

4 Q. Can you tell us whether or not you keep records when
5 law enforcement arrives?

6 A. Yes.

7 Q. And, for example, how long they may remain at a scene?

8 A. Yes.

9 Q. Now in this particular case, can you tell us whether
10 or not you received a request for a copy of the 9-1-1 call
11 pertaining to December 17, 2019?

12 A. Yes.

13 Q. And specifically around the time of 10:59 AM?

14 A. Yes.

15 Q. I'm gonna ask you whether or not you have any records
16 with you reflecting that call?

17 A. I have the CAD report, which is the printed call from
18 our CAD.

19 Q. So first I want to ask you, are these documents
20 maintained in the ordinary course of your business?

21 A. Yes.

22 Q. Are the audio recordings of 9-1-1 calls also
23 maintained in the ordinary course of your business
24 activity?

25 A. Yes.

1 Q. And is it the regular practice of your business, being
2 the 9-1-1 Communications Center --

3 A. Yes.

4 Q. -- to maintain those records?

5 A. Yes.

6 Q. Including the audio recordings?

7 A. Yes.

8 Q. Can you tell us whether or not you provided to law
9 enforcement and to the Solicitor's office such recordings?

10 A. Yes.

11 Q. And can you tell us whether or not you've provided the
12 records that show the data entry information?

13 A. Yes.

14 Q. I'm gonna show you an item and ask you whether or not
15 you recognize it. It's gonna be State's 71.

16 A. Yes.

17 Q. How do you recognize it?

18 A. It's got my initials and the date that I reviewed it.

19 Q. All right. Can you tell us what is actually on this
20 CD?

21 A. It's the 9-1-1 recorded call.

22 Q. And that would be the audio call?

23 A. Yes, ma'am.

24 Q. Can you tell us whether this audio recording is a
25 fair and accurate representation of the original audio

1 recording?

2 A. Yes, ma'am.

3 Q. In its entirety?

4 A. Yes, ma'am.

5 Q. And can you tell us whether it is, again, maintained
6 in the ordinary course of business?

7 A. Yes.

8 MS. MAYES: Your Honor, this would be State's 71
9 for evidence. We will be publishing at a later time
10 through another witness.

11 THE COURT: Okay. Is there any objection? Are you
12 moving it into evidence now?

13 MS. MAYES: Yes.

14 THE COURT: Any objection, Mr. Leventis?

15 MR. LEVENTIS: No, ma'am, Your Honor.

16 THE COURT: It's admitted.

17 (State's Exhibit Number 71, a 9-1-1 call, was
18 admitted into evidence.)

19 BY MS. MAYES:

20 Q. Now, Ms. Patrick, I want to ask you about some of the
21 details about this particular incident and I think you said
22 you brought with you some of the records related to it?

23 A. Yes, ma'am.

24 Q. And I think I was asking you specifically about the
25 timeframe of December 17, 2019. Can you tell us whether or

1 not you received any type of 9-1-1 call in relation to this
2 particular case?

3 A. Yes, we did.

4 Q. And what was the time of that call?

5 A. It's 10:59 AM.

6 Q. Can you tell us the name of the caller, the person
7 calling 9-1-1 for assistance?

8 A. Donnovin Haynes.

9 Q. Okay. So you noted that the first name's gonna be
10 Donnovin?

11 A. (Nods head.)

12 Q. Can you tell us whether or not that's accurate?

13 A. Yes, ma'am.

14 Q. Okay. So that's the caller?

15 A. Yes, ma'am.

16 Q. And can you tell us the address where 9-1-1 assistance
17 was requested?

18 A. Yes, ma'am. It was [REDACTED] Butternut Lane.

19 Q. Can you tell us, Ms. Patrick, the nature of that call?

20 A. Yes, ma'am. It was a home invasion.

21 Q. Home invasion is the term put on the record before
22 you?

23 A. Yes, ma'am.

24 Q. As the nature of the call?

25 A. Yes, ma'am.

1 Q. And then, finally, let me ask you do your records
2 reflect the time in which your first law enforcement unit
3 responded there?

4 A. Yes, ma'am.

5 Q. What is that time?

6 A. At 11:00 AM. That's when they were dispatched.

7 Q. All right. So I just wanted to clarify that.

8 Dispatched means what?

9 A. That we have given out the call over the radio and the
10 units are going en route.

11 Q. Okay. So the call comes in at 10:59. By 11:00
12 you-all have already sent the out the radio request or
13 dispatch for response?

14 A. Yes.

15 Q. And do your records show the time that the first
16 officer actually arrived at the scene?

17 A. Yes.

18 Q. And what is that time?

19 A. 11:03 AM.

20 Q. So within four minutes?

21 A. Yes, ma'am.

22 Q. And do your records show which officer it was that
23 actually arrived at 11:03 AM, who was that first officer at
24 the scene?

25 A. Yes, ma'am.

1 Q. And what is his name?

2 A. Deputy Scott Purdy.

3 Q. All right. I'm gonna write his name right here to
4 keep track of that. So that is Deputy Scott Purdy. And do
5 you know which agency he's with?

6 A. Yes, ma'am. He's with the Lexington County Sheriff's
7 Department.

8 MS. MAYES: I beg the Court's indulgence.

9 THE COURT: Take your time.

10 MS. MAYES: Your Honor, nothing further of
11 Ms. Patrick at this time.

12 THE COURT: Mr. Leventis? Mr. Swerling? Ms.
13 Wilson?

14 MR. LEVENTIS: Ms. Patrick, I want to thank you for
15 your service and what you do at 9-1-1. I don't have any
16 questions.

17 THE WITNESS: Thank you.

18 THE COURT: May I excuse Ms. Patrick, please?

19 MR. HUBBARD: Yes.

20 THE COURT: Ms. Patrick, you're excused. Thank
21 you for coming.

22 THE WITNESS: Yes, ma'am.

23 (Witness excused.)

24 MR. HUBBARD: The State calls Officer Scott Purdy.

25 THE CLERK: Raise your right hand, please.

1 (Whereupon, Scott Purdy was duly sworn by the Clerk
2 of Court.)

3 THE CLERK: If you'll have a seat, please. State
4 your name and spell your last, please, for the record.

5 THE WITNESS: Scott Purdy, P-U-R-D-Y.

6 SCOTT PURDY,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. Officer Purdy, if you'd speak up just a little bit.
11 You may need to move that microphone.

12 A. It's P-U-R-D-Y.

13 Q. Thank you. Officer Purdy, where do you work?

14 A. I work at the Lexington County Sheriff's Office.

15 Q. How long have you been in law enforcement?

16 A. Just under seventeen years.

17 Q. Have all those years been with Lexington County?

18 A. No, sir. I've been with Lexington County about ten
19 and a half.

20 Q. And prior to Lexington County, where did you work?

21 A. I did some years in Richland County and I also worked
22 in Florida when I lived down here.

23 Q. Now I know today you're here with a goatee, a little
24 facial hair. What do you do with Lexington County?

25 A. So now I'm on the Crime Reduction Unit, which is a

1 plainclothes unit.

2 Q. Okay. So you're allowed to grow some facial hair and
3 dress in plainclothes?

4 A. Now I get paid to not look like police.

5 Q. Okay. Thank you. Back in December, December 17,
6 2019, what were you doing with the County at that time?

7 A. At that time I was a road sergeant.

8 Q. And were you wearing the uniform at that time?

9 A. Yes, sir.

10 Q. You had to shave at that time?

11 A. Yes, sir.

12 Q. So you looked a little different?

13 A. Yes, sir.

14 Q. You looked like police?

15 A. Yes, sir.

16 Q. Do you remember getting a call before noon o'clock
17 December 17, 2019, to go to [REDACTED] Butternut Lane?

18 A. Yes, sir, I do.

19 Q. What was the nature of that call?

20 A. So it was dispatched as a home invasion possibly in
21 progress possibly with people shot inside.

22 Q. And how far out were you from that scene?

23 A. I was actually on the side street that was almost just
24 next door to the apartment complex when it came out. I was
25 very close.

1 Q. What's the name of that apartment complex?

2 A. I believe at the time it was still Woodland Village
3 Apartments.

4 Q. And that is where [REDACTED] Butternut Lane is?

5 A. Yes, that's one of the streets inside.

6 Q. What county is that in?

7 A. That's in Lexington County.

8 Q. Do you recall approximately what time that dispatch
9 call came in or more specifically what time you were able
10 to show up to [REDACTED] Butternut Lane?

11 A. Yes, sir. I was dispatched at 11:00, right around
12 11:00, and I arrived on-scene at 11:03.

13 Q. I want to show you what's marked as State's 67 and see
14 if -- it's an aerial. Is that that apartment complex?

15 A. Yes, sir.

16 Q. Do you see the unit that you responded to?

17 A. Yes, sir.

18 Q. Can you point it out for me to make sure we're talking
19 about the right unit?

20 A. It's this building right here.

21 Q. Okay.

22 MR. HUBBARD: If no objection, the State would
23 like to offer State's 67.

24 THE COURT: Any objection?

25 MR. SWERLING: No objection.

1 THE COURT: Then it's admitted.

2 (State's Exhibit Number 67, a photograph, was
3 admitted into evidence.)

4 BY MR. HUBBARD:

5 Q. Detective, this complex, is this the complex you
6 responded to?

7 A. Yes, sir.

8 Q. And do you have your pointer with you?

9 A. I do.

10 Q. Can you show the jury which unit you actually went to?

11 A. Yes, sir. It was this building right here.

12 Q. All right. And where did you pull up?

13 A. My vehicle was parked about right here just in front
14 of it.

15 Q. And the actual unit you were going into, is this a
16 one-story, two-story, three-story?

17 A. It's two stories.

18 Q. And were you going to the first floor, second floor?

19 A. At the time I didn't know, but [REDACTED] is on the first
20 floor.

21 Q. Okay. And would it be, as we look at this photograph,
22 on the right side of that building or the left side?

23 A. It would be right there and the apartment runs from
24 the front to the back of the building.

25 Q. And the entryway into those apartments is where?

1 A. So there's a common breezeway with a stairwell and you
2 can see the sidewalk right there. You'd walk in that door
3 and it would have the opening to each apartment.

4 Q. Okay. When you got to this apartment complex, were
5 there any other officers there?

6 A. Not yet. No, sir.

7 Q. So it was just you?

8 A. Just me.

9 Q. Now did you have your sirens going or how did you
10 arrive?

11 A. So because I was so close when the first call came out
12 and because it came out as a possible in progress with
13 people -- bad guys still inside, I didn't activate my
14 sirens because I didn't want them to know that I was right
15 there, but I had my lights on.

16 Q. Okay. So you had the blue bar?

17 A. Yes.

18 Q. And a marked car?

19 A. Yes.

20 Q. Who do you recall seeing when you got to that complex?

21 A. So when I pulled up, at the time I didn't -- I didn't
22 know his name, but one of the victims in the case was
23 standing out in front of the apartment on -- on that is
24 stairwell -- well, actually right there on that sidewalk
25 there, I believe it's a step up, and he was standing out

1 and he kind of waved at me and started walking towards me
2 when I pulled up.

3 Q. As you were talking to this individual, did another
4 unit arrive?

5 A. Yes.

6 Q. And who was that?

7 A. That was Officer Barber. Scott Barber.

8 Q. Okay. Is he also uniformed?

9 A. Yes.

10 Q. Did he have a body-worn camera?

11 A. He did, yes.

12 Q. On this particular day, did you have a body-worn
13 camera?

14 A. I did not have a body-worn camera yet.

15 Q. You'd just not been issued that yet?

16 A. That's correct.

17 Q. Okay. I want to show you what's marked State's 63 and
18 see if you recognize the individual -- the officer in that
19 photo?

20 A. Well, I know it to be me.

21 Q. And the unit you see, is that your vehicle?

22 A. Yes.

23 Q. And the individual you're talking to, is that who you
24 met?

25 A. Yes.

1 Q. Did you at some point learn his name as a Donnovin
2 Haynes?

3 A. I did, but not that day.

4 MR. HUBBARD: The State offers State's 63.

5 MR. SWERLING: No objection.

6 THE COURT: It's admitted then.

7 (State's Exhibit Number 63, a photograph, was
8 admitted into evidence.)

9 MR. HUBBARD: I know this is dark and you can barely
10 see it. Is there a way to lighten it?

11 I defer to somebody who knows how to operate it.

12 Thank you.

13 BY MR. HUBBARD:

14 Q. Officer Purdy, right here, is that you and Mr. Haynes?

15 A. It is.

16 Q. Now can you describe how Mr. Haynes was dressed?

17 A. Well, as you can see he was barefoot and he had on a
18 pair of almost like pajama or running pants or thin pants
19 and no shirt on.

20 Q. What time of year was this?

21 A. This was in December.

22 Q. That ground out there looks a little wet. What was
23 going on that day?

24 A. It had been raining. I believe at this point it was
25 just kind of like misting in the air. It ran pretty

1 heavily again, but it was not a pleasant day.

2 Q. Okay. And yet this man's standing out there no shirt.

3 Any shoes?

4 A. No shoes. Barefoot.

5 Q. Just pants?

6 A. Yes, sir.

7 Q. When you got to him, how did he appear to you?

8 A. So he was upset. He was like pan -- I described him
9 in my report as panicky, but he was kind of -- you know, he
10 his arms at me and he was talking very fast and you could
11 see that he was -- something was bothering him.

12 Q. He appeared to clearly be upset?

13 A. Yes, sir.

14 Q. When you got up to him, what, if anything, did
15 Mr. Haynes say to you?

16 A. Well, I asked him -- when I approached him, I said
17 hey, what's going on because even at that point I didn't
18 know good guy or bad guy, you know, but I just made contact
19 and said hey, what's going on and he said someone shot my
20 friends, I think someone shot my friends. I said well, why
21 do you think that and he said I think someone shot my
22 friends. Like he was kind of stuck in that, you know,
23 response.

24 Q. So he couldn't even hear your question?

25 A. Correct. Well, I -- it didn't seem like it.

1 Q. He just breezed past it and he's fixated on someone
2 shot my friends?

3 A. That's right.

4 Q. What did you ask him at that point?

5 A. Well, I asked him where, you know, because I didn't
6 even know what apartment he'd come out of at the time. He
7 said in my apartment and pointed towards, you know, the
8 door that goes into the apartments and I said which
9 apartment and he said [REDACTED].

10 Q. Okay. And did he point out which one that was?

11 A. He just kind of pointed at the door, but you can't see
12 any of the doors from outside.

13 Q. And this photograph, State's 63, are you-all standing
14 right in front of that breezeway?

15 A. Yes. So this door -- this door right here, that
16 enters in that common hallway that I spoke of with the
17 stairwell and there's a door to each apartment in the front
18 and then a door to each apartment on the second floor.

19 Q. Okay. When he was telling you about he believes his
20 friends had been shot and they're inside that apartment,
21 what else did he tell you? What did he tell you about
22 himself?

23 A. Well, at that time he pointed to the -- just to the
24 apartment itself and said that someone had been shot. It
25 wasn't until we approached the door that he told me that

1 he had jumped out his bedroom window to get out of the
2 apartment.

3 Q. Did he say anything about what he was doing when this
4 gunfire started?

5 A. Yes. He told me -- I'm sorry. He told me that he was
6 sleeping when -- when everything had gone on. Again, when
7 I asked him well, why do you think someone was shot in your
8 apartment, he told me that he had been sleeping, he heard
9 what he thought sounded like talking and gunshots, so he
10 got out of his bed and walked to his -- the hall to the
11 bedroom, which opened up into a hallway, and he said he saw
12 someone laying in the hallway, he couldn't say who it was,
13 but he said he thought it appeared that they had been shot
14 and at that point he jumped out of his window.

15 Q. Did he say anything about hiding inside his room?

16 A. He did say for a short time he went and hid in his
17 closet.

18 Q. Is that the closet in his bathroom?

19 A. I believe so, yes. It attaches to --

20 MR. SWERLING: I think I'd have to object this
21 comes under excited utterance, I believe. I don't think
22 any more detail is necessary or it would come under the
23 excited utterance rule.

24 MR. HUBBARD: These are the statements we -- we
25 had a hearing on, Your Honor. I haven't -- I haven't

1 put in any that we haven't.

2 THE COURT: And I ruled that it was excited
3 utterance, so as long as we're sticking to the
4 statements themselves.

5 MR. HUBBARD: Thank you, Your Honor.

6 MR. SWERLING: That's fine. I just wanted to make
7 sure that my objection's preserved and runs throughout.

8 THE COURT: It is. For excited utterance, it is,
9 Mr. Swerling, throughout the entire trial.

10 BY MR. HUBBARD:

11 Q. Now, Officer, as you were talking to Mr. Haynes, you
12 mentioned Officer Scott Barber. Deputy Scott Barber.

13 While you-all were talking, is that when he pulled up?

14 A. Yes.

15 Q. And you mentioned again he had the body-worn cam?

16 A. Yes.

17 Q. When he got there, what did you and Deputy Barber do?

18 A. So he -- he walked up to us and that's actually
19 obviously a picture of him getting out of his car and
20 walking up towards us, but he -- he walked up to us just
21 as I was finishing with Mr. Haynes and him telling me, you
22 know, they're in ■■■, ■■■, so I just kind of grabbed him.
23 I said come on, we're gonna go find -- we're gonna go into
24 ■■■.

25 Q. You said that to who?

1 A. To Deputy Barber.

2 Q. Okay.

3 A. I told him -- you know, I basically just relayed to
4 him what I had been told and then we were gonna move into
5 that apartment.

6 Q. All right. And what did you tell Mr. Haynes to do?

7 A. I asked him to just stay where he was.

8 Q. And when you went in that common area and you went to
9 [REDACTED], were you-all able to go into that apartment?

10 A. No. So we went into the hallway and we tried the door
11 and it was locked and you could turn the doorknob, but you
12 could tell the dead bolt had been locked from the inside.
13 So I asked Mr. Haynes, I said do you have a key, he said
14 no, I don't have a key.

15 Q. Did he know -- did you ask him if he knew why it was
16 locked or how it had been locked?

17 A. Well, that's what I said. Is said well, it's locked,
18 you know, how did you get out if you don't have a key, and
19 he said I don't know why it's locked, but that's when he
20 told me that he jumped out his window.

21 Q. Out his bedroom window?

22 A. Yes, sir.

23 Q. And did you ask him again about who might be inside?

24 A. Well, at that point I realized we were gonna have to
25 kick the door open if we were gonna go inside, so I

1 confirmed one more time before we damaged the property, you
2 know, so you're telling me someone is shot inside and he
3 said yes, I think so.

4 Q. Okay. And at that point between you and Deputy
5 Barber, who actually made the forced entry?

6 A. I did. I kicked the door.

7 Q. You kicked it?

8 A. Yes, sir.

9 Q. Okay. Once that door opened, what was the first thing
10 you saw?

11 A. So right inside the door there was like a -- like a
12 tiled almost entry area inside with carpet just after it
13 and there was blood all over the floor of the tiled area.

14 Q. Now when you go into an apartment like this, Officer
15 Purdy, even if there are injured people that need
16 assistance, what is your first and primary focus when you
17 go into a scene like this?

18 A. Well, with what we had and what was reported that
19 there could be someone inside still shooting, I mean, we're
20 going inside to find the bad guy that could still be
21 hurting people.

22 Q. So are guns drawn?

23 A. Yes, sir. Our guns were out. We kicked the door. We
24 -- we did a clearing of the apartment. We made entry, you
25 know, guns out, methodical. A two-man team moving through

1 the apartment making sure that there wasn't anybody still
2 inside hurting people or trying to hurt us.

3 Q. Can you explain what you saw as you're making entry
4 and then as you walked through that apartment?

5 A. Yes, sir. So, again, we kicked the door. At first,
6 you know, you kick the door, you don't know what you're
7 gonna see, you don't know if -- even if anything happened,
8 you know. You kick the door, blood all over the floor.
9 Okay. This is real, you know, this is something bad
10 happening. We move in. We start -- there was a living
11 room area with a big sectional sofa. I could hear somebody
12 laboring to breathe on the sofa. We kind of moved together
13 over the sofa. I could see that there was a person wrapped
14 in blankets like they were sleeping on the couch, but a
15 good amount of blood coming from I didn't know where, but
16 obviously that person wasn't trying to hurt us, so we had
17 to keep moving. We cleared through that living room and
18 then there was an open hallway to the right. It was kind
19 of like a T intersection with a table. To the right of
20 that was a kitchen, so we could see -- you know, we had one
21 cover the door to the kitchen, one cover down the hall. I
22 could see into the kitchen, it wasn't very big, so you
23 could see everywhere inside the kitchen, there wasn't
24 anybody in there, so we moved together down the hall, and
25 it kind of made almost a zigzag this way. There was a

1 whole bunch of stuff on the floor, piles of clothes and a
2 vacuum cleaner and laundry baskets and so we actually had
3 to climb over that to get to the next opening. So there
4 was the hallway. To the left there were two bedroom
5 doors, to the right was a hallway bathroom, so we kind of
6 positioned ourselves again one covering down towards the
7 bathroom, one covering down the hallway just to kind of
8 see -- take a peek and see what we've got. While we were
9 standing there, we could actually see that there was a limb
10 sticking out from under the pile that we were at, so we
11 knew that there was another victim underneath all that?

12 Q. Basically where you were standing?

13 A. Where we were standing. For a short time I was
14 probably standing on him just trying to climb over the
15 pile. Barb -- I held down the hallway left. I held my
16 gun down the left while he went into that bathroom to make
17 sure there was nobody hiding in the bathtub or you know,
18 came back out, moved down the hallway from. Where we were
19 standing while I was covering down the hallway when he went
20 in the bathroom, I could see all the way down the hallway
21 to the open bedroom door that there was another subject
22 down next to the bed inside there. So we made our way down
23 to that room. As we were doing that, there was an open
24 bedroom again to the right, so Officer Barber kept a gun in
25 that door as we went into the bedroom. I went over. There

1 was a closet. You know, you go through the door and you
2 back behind, you clear to make sure nobody was in there.
3 Went over and looked at that victim briefly, came back,
4 went into the last bedroom together. That door opened up
5 to a -- it was a bedroom. It had a bed, a chair, and then
6 you could tell that that was like the master, if you would,
7 so it had an attached bathroom and a closet that was all
8 part through that bedroom door. So we cleared down that
9 hallway, made sure that that wasn't anybody in the bathroom
10 or anyone hiding in the closet. You know, this isn't --
11 we're not opening cabinets, we're not looking for someone,
12 you know, we're just checking and making sure they're not
13 actively shooting, hiding under a bed, you know, and we
14 backed back out.

15 Q. In that back bedroom, did you notice anything about
16 the window?

17 A. So the window, it was wide open, and the drapes came
18 down and then were out and then down, you know, so you
19 could -- it was obvious that somebody had gone out the
20 window and took the drapes with them. You know, they
21 didn't carefully step out. They, you know, went through
22 it.

23 Q. And, Officer Purdy, after you did this is that when
24 you could then start seeing who's actually been hurt and
25 shot?

1 A. Yes, sir. So once we kind of determined that it
2 didn't appear that there was anyone else still in the
3 apartment that was shooting or a bad person, that's when we
4 started backing back out. We had -- you know, we had kind
5 of noticed as we were -- as you're moving through it, time
6 slows down believe it or not and, you know, as we're
7 approaching each person, they're laying on their back, they
8 not moving, their eyes are wide open, they're not
9 breathing, they not asking for help, they're not -- you
10 know, as I mentioned I think I stepped on one and he didn't
11 make any noise.

12 Q. Let me do this. I'm gonna get in a little bit more
13 detail in that just a minute, but I would like to --

14 A. Okay.

15 Q. -- let's back up now. You've told us what you've
16 done. How you've gone in and how you cleared it. I'm
17 gonna ask you if you recognize a disc, State's 72? Do you
18 recognize that?

19 A. Yes.

20 Q. Do you see your initials and a date?

21 A. Yes, sir.

22 Q. Is this the body-worn cam of your -- your colleague,
23 Deputy Barber?

24 A. I believe it's a portion of it, yes.

25 Q. Of where he arrives, he sees you, you-all talk to

1 Donnovin Haynes and then make initial entry?

2 A. That's right.

3 MR. HUBBARD: Your Honor, I offer 72 into evidence.

4 THE COURT: Any objection?

5 MR. SWERLING: Excuse me one minute.

6 THE COURT: Sure. Take your time.

7 MR. SWERLING: No objection.

8 THE COURT: It's admitted.

9 (State's Exhibit Number 72, body-worn camera video,
10 was admitted into evidence.)

11 (Whereupon, State's Exhibit Number 72 was played.)

12 BY MR. HUBBARD:

13 Q. That was you talking?

14 A. Yes, sir.

15 Q. The individual, again, that you're talking with was
16 Donnovin Haynes -- that you learned to be Donnovin Haynes?

17 A. Yes, sir.

18 Q. And right as you made entry, you mentioned something.
19 What immediately did you see?

20 A. The blood on the floor.

21 Q. Right there in the doorway?

22 A. Yes, sir.

23 Q. On the inside?

24 A. On the inside, yes.

25 Q. I also want to show you a diagram of that apartment

1 complex to see if this is accurate as you found it and
2 cleared it. State's 61, does that look like the general
3 layout?

4 A. Yes.

5 Q. What, if anything, is different about this diagram
6 that's different from when you saw it as far as the number
7 of individuals?

8 A. There was a third person that was still there at the
9 time that was transported.

10 Q. Okay.

11 MR. HUBBARD: Your Honor, I offer State's 61.

12 THE COURT: Any objection?

13 MR. SWERLING: No objection.

14 THE COURT: It's admitted.

15 MR. HUBBARD: State's 61, Your Honor.

16 THE COURT: I got it. It's admitted.

17 MR. HUBBARD: Thank you, Your Honor.

18 (State's Exhibit Number 61, a diagram, was
19 admitted into evidence.)

20 BY MR. HUBBARD:

21 Q. All right. Officer Purdy, can you show us where the
22 entranceway is?

23 A. Yes, sir.

24 Q. The common entranceway in this apartment complex.

25 A. So, again, at the beginning of the video when we're

1 talking, we would be outside, outside this door.

2 Q. Okay.

3 A. We came in this door here.

4 Q. If you'd keep your voice up just a little bit.

5 A. I'm sorry. We came in this door here main, which is
6 the main -- the main hallway into the apartments and this
7 would be the apartment door right here that we set up on.

8 Q. Okay. Now in that video we see -- you say something
9 about blood. Is that where you saw that blood right there
10 at the threshold of the apartment complex?

11 A. Yes, sir. So this kind of shows what I meant with the
12 -- it's like a very small tile, like, you know, you put
13 your shoes when you go in the house or whatever, and there
14 was blood all over that.

15 Q. Now you mentioned three individuals you saw in this
16 apartment.

17 A. Yes, sir.

18 Q. We only see two here. Where was that third
19 individual?

20 A. He was laying right here on the couch with his head
21 towards this end.

22 Q. And that individual, when you mentioned someone was
23 laboring and breathing hard, which individual in that
24 apartment complex was laboring with their breathing?

25 A. That was him. I could hear him breathing from the

1 door. He was gasping.

2 Q. Now you mentioned what you have to do when you're
3 securing a building or a room or a complex or an apartment
4 like this that you have to make sure nobody's bad in there
5 first?

6 A. Right.

7 Q. So were you able to render any type of aid to this
8 individual right here on this sofa when you first came in?

9 A. Not at that time just because he was the first room
10 we came to. Now if he had been, you know, at the end of
11 the chain, you know, then we could have stopped right then
12 and helped, but not knowing if there was someone in here
13 or back in here or how many other people needed help, we
14 had to -- we had to go through and make sure that it was
15 safe for us to be there before we could offer any help.

16 Q. Using this diagram, can you show the path you took
17 and what you saw as you went through?

18 A. Yes. So, as I said, so we kicked this door -- or I
19 kicked this door right here. I could see the blood. We
20 moved inside. Once inside, I could hear him, we went
21 around, making noise and trying to breathe, so I kind of
22 slid down this way just to see what I was looking at. At
23 that point that's where I could see over these cushions and
24 stuff that he was wrapped up in -- in blankets and there
25 was a pillow under him and he was breathing, but I couldn't

1 tell from where.

2 Q. When you say wrapped up in pillows, did it appear he
3 had been sleeping?

4 A. Right. It looked like there was almost like a
5 makeshift bed on the couch.

6 Q. Okay.

7 A. We moved -- we moved back around, you know, made sure
8 there wasn't anyone over here, moved back around, and this
9 was that T intersection that I was talking about. We both
10 set up right here; one covering down this way and one just
11 kind of moving, a quick peek in here, and you could see
12 that this is just an open area, so we could tell that there
13 wasn't anyone in there. We moved down. This was the
14 zigzag kind of hall that I was mentioning. This is a
15 closet right here, like a linen-type closet, the doors were
16 open and everything that was, you know, piled up was right
17 here on top of this gentleman so that we couldn't even tell
18 that there was someone there. We moved across and we set
19 up right here and I was watching down this way and Officer
20 Barber was watching into this bathroom here and that's when
21 -- he was kind of behind me checking out this bathroom when
22 he said hey, there's someone there, there's someone under
23 there, and that's when we could see --

24 Q. And that's the individual right here in the hallway?

25 A. That's right. I don't remember honestly if it was

1 this arm or -- it was something that was just sticking out
2 from under the pile of clothes. Other than that, he was
3 completely covered.

4 Q. Okay.

5 A. We had to leave him and make our way. I was looking
6 down this hallway here where I could see this gentleman
7 here down beside the bed and he cleared this bathroom and
8 made sure no one was in this bathtub. We then came back
9 out. He covered into this room while I moved into this
10 room and cleared this closet right here.

11 Q. And this individual, the room you're in right now, the
12 bedroom with the individual by the bed --

13 A. Uh-huh.

14 Q. -- did it appear he had been sleeping or in his bed?
15 Had he been in his bed?

16 A. I mean, he -- he was on the floor next to the bed,
17 but he was dressed in just a pair of like, I believe,
18 basketball shorts and no other clothes, so. That's how I
19 sleep, I mean.

20 Q. Okay.

21 A. But so he was -- he was on the ground right there and
22 then we -- we reconvenes on this door and made entry into
23 this room. This was that window that had the drapes out.
24 This was the master area that's got a bathroom and like an
25 outside vanity and another big closet. We -- we checked

1 all that came back out and then --

2 Q. Let me ask you about that. Now that you've cleared
3 it, any of these doors -- did you have to kick in any of
4 these doors or were they already open?

5 A. They were all already open.

6 Q. So there was no reason for you to be putting your boot
7 against the door to kick it open?

8 A. Correct. Just the front door.

9 Q. Just this front door is the only you -- you used your
10 foot to kick open?

11 A. That's right.

12 Q. Then as you're coming back through, that's when you're
13 seeing if there's anybody you could render aid to?

14 A. Correct. We pulled everything we could off of the
15 gentleman in the hallway. Again, they were laying, not --
16 didn't appear to be breathing, unresponsive, eyes open, you
17 know, not talking, not responding to any kind of stimuli,
18 if you will. At that point since I could hear still the
19 one gentleman in the front trying to breathe, I went out to
20 my truck and I got my rubber gloves and my CPR mask and
21 anything that might be able to render aid and that kind of
22 thing; however, when I was outside grabbing all that stuff,
23 paramedics started arriving and I was very happy to let
24 them go ahead and do that.

25 Q. Let me ask you this, Officer Purdy. Did you call for

1 other units like those paramedics? What calls did you
2 make?

3 A. Yeah, so when -- once we realized what we had, you
4 know, we -- we actually had a crime scene, we had people
5 that were hurt, we had people that were possibly dead, I
6 got on my radio, I called for EMS to come, I called for
7 major crimes to come, I called for additional units to come
8 because I didn't know how big of a crime scene we were
9 gonna have. That was all done after the initial clearing
10 was done. Now there was already other deputies en route
11 because the call came out as a home invasion, so they were
12 still coming, but, you know, things like, again, EMS and
13 major crimes, they wouldn't normally be dispatched to that
14 kind of call unless it was confirmed that it was a crime.

15 Q. Did you at some point, too, after this scene was
16 secure and other folks were checking these individuals, did
17 you take some photographs, too?

18 A. I did. So, unfortunately, EMS, paramedics, firemen,
19 stuff like that when they get into a scene, they -- you
20 know, they move things and they make room and they try and
21 do everything they can while that's going on and sometimes
22 that disturbs what could be evidence, so I tried to snap a
23 bunch of pictures before anyone else had a chance to move
24 things around.

25 Q. All right. I want to show you some photographs and

1 see if you can recognize these. Do you recognize these
2 photographs?

3 A. Yes, sir.

4 Q. Are these from the crime scene as you found it with
5 maybe some changes as folks were in there?

6 A. Yes, sir.

7 MR. HUBBARD: Your Honor, I offer these into
8 evidence.

9 THE COURT: What numbers are they, Mr. Hubbard?

10 MR. HUBBARD: One moment, Your Honor.

11 MR. SWERLING: Your Honor, subject to the objections
12 we've already made before the Court.

13 MR. HUBBARD: And, Your Honor, these numbers are --

14 THE COURT: I didn't know we had any objections with
15 that, I mean, on the photos. I didn't know we had any
16 objections on the photos.

17 MR. HUBBARD: I'll show you, Your Honor.

18 THE COURT: I remember looking at three.

19 (Proceedings held at the bench; not reported.)

20 MR. HUBBARD: Thank you, Your Honor.

21 THE COURT: And, Mr. Swerling, your objection's
22 noted in our earlier pre-trial as to the three photos
23 in question, okay?

24 MR. SWERLING: Thank you.

25 MR. HUBBARD: And, Your Honor, for the record it's

1 State's Exhibit 50, 52, 51 -- and, like I said, they're
2 not in order -- 53, the two in particular that Mr. Swerling
3 was interested in, 65, 66, preserving the objection on
4 those, 54, 55, 56, 57, 58.

5 THE COURT: Thank you.

6 MR. HUBBARD: I'd like to publish at this time, if I
7 may?

8 THE COURT: You may and they're admitted.

9 (State's Exhibit Number 50, 51, 52, 53, 54, 55,
10 56, 57, 58, 65 and 66, photographs, were admitted into
11 evidence.)

12 BY MR. HUBBARD:

13 Q. State's 50. Are --

14 MR. SWERLING: Judge, can we approach for a moment?

15 THE COURT: You may.

16 (Proceedings held at the bench; not reported.)

17 THE COURT: All right. Mr. Swerling, I do note you
18 had several objections to the photographs, we went over
19 this in pre-trial and for the reasons that we stated
20 earlier, all of those objections are preserved for the
21 record.

22 MR. SWERLING: Thank you.

23 MR. HUBBARD: Thank you, Your Honor.

24 BY MR. HUBBARD:

25 Q. Officer Purdy, this is State's 50. Can you tell the

1 jury what we're looking at right here?

2 A. Yes, sir. So this is a photograph of the entrance
3 door to the apartment taken from the inside looking out.
4 This is the hallway outside, the main hallway, and then
5 this is the -- that area that I mentioned, the small what I
6 thought was tile, I guess it's wood floor looking, just
7 inside the door.

8 Q. And it was -- was it in this area here that you see
9 blood?

10 A. Yes, sir.

11 Q. Now the door obviously is broken. Is that one of the
12 pieces there of the door?

13 A. Yes, sir. I believe that's a piece of the door frame.

14 Q. And when you came in, was the bolt still out? Is that
15 what you had to kick in, the dead bolt?

16 A. Yes, sir.

17 Q. Okay. So when you got there, the dead bolt was
18 engaged and you had to -- that's how you entered, by
19 kicking it in?

20 A. That's right.

21 Q. Okay. States's 52. And this one's dark. I think if
22 you actually look at the photos it's a little lighter.
23 What area is this?

24 A. So that would be that sofa where the other gentleman
25 had been laying when I first had gotten there. The

1 blankets and pillows and stuff that you can see at the top
2 of the photo were what was with him on the couch.

3 Q. These items over here that had been moved?

4 A. Yes, sir.

5 Q. And is this a sliding glass door over here?

6 A. Yes.

7 Q. And is that as you found it as well? Disturbed like
8 that?

9 A. Yes. Yes.

10 Q. Okay. State's 51. Again, that pillow, had it been
11 moved off these pillows? Had they been moved off the sofa
12 since -- after they started working on that individual who
13 was laboring in his breathing?

14 A. I know for sure this one was under him. I can't say
15 if these two were on the couch or not.

16 Q. And, again, this is that sliding glass door?

17 A. Yes.

18 Q. State's 53. Is this that same sofa, but looking back?
19 What's the angle you're looking at here?

20 A. So this would be kind of standing if -- this would be
21 where that area was that you just mentioned, so this would
22 be like the inside the L of the couch and this is looking
23 back towards that -- that's the hallway with the kitchen
24 over here and the bedroom's this way, so -- and then door
25 to the apartment would really kind of be over here.

1 Q. Okay. These folks here, are these some other first
2 responders?

3 A. Yes, sir.

4 Q. I'll refer back to 61. Everything we just saw, was
5 that in this area of the diagram where we have a sofa or a
6 couch?

7 A. Yes, sir.

8 Q. All right. Now as we move down this hallway, you
9 mentioned you had to take off some clothes to see if there
10 was an individual there?

11 A. That's right.

12 Q. I'll show you State's 65. Is this that closet?

13 A. Yes.

14 Q. The clothes you were talking about?

15 A. Yes.

16 Q. Right here, what are we seeing?

17 A. That's the second gentleman that was down the hallway.

18 Q. So when you first got there, he was actually covered
19 up?

20 A. Yes, most of these clothing items were on top of him.
21 We -- we took all that off and kind of threw it aside to
22 try and get to him to see if we could help him.

23 Q. After you cleared this scene and you're coming back
24 through, did you note any kind of signs of life for this
25 individual?

1 A. No.

2 Q. I'll go back to the diagram, State's 61. This
3 bedroom, you went into that bedroom as well?

4 A. I did. Yes, sir.

5 Q. I'll show you State's 66. Is this the individual you
6 saw?

7 A. Yes, sir.

8 Q. And is this the bed you were talking about?

9 A. Yes.

10 Q. All this material here, did that appear to have come
11 off that bed?

12 A. It does appear to be the blankets or comforter or
13 whatnot from the bed. Yes, sir.

14 Q. Was he kind of wrapped in it as he fell?

15 A. I believe he was just --

16 MR. SWERLING: Objection, Your Honor.

17 MR. HUBBARD: I'll rephrase it. I'll rephrase it.
18 I agree.

19 THE COURT: Okay. When you-all object, let me rule.

20 MR. HUBBARD: Yes, Your Honor.

21 THE COURT: So I am assuming you're objecting to
22 leading? Is that what I heard?

23 MR. SWERLING: I'm objecting to him forming a
24 conclusion about what the Solicitor asked.

25 THE COURT: Okay. Mr. Hubbard, please rephrase.

1 Thank you.

2 BY MR. HUBBARD:

3 Q. As you found him, how did he appear?

4 A. He appeared just like that.

5 Q. Okay. And this clothing or this material, where did
6 it appear to have come from?

7 A. It appeared to have come from the bed.

8 Q. Okay. Again, did you check him to see if there were
9 any signs of life or did you-all check him to see if there
10 were any signs of life?

11 A. Just to see if his chest was rising or falling or if
12 he was making any kind of movements or whatnot, but me,
13 myself, I did not check for any pulses or whatever that I
14 remember doing.

15 Q. But as you and Deputy Barber were going through there,
16 there was no aid to be rendered to this individual?

17 A. Correct.

18 Q. Okay. Now I want to show you right here in the
19 doorway, this little thing here, did you see this little
20 shiny object? I'm gonna refer to you now to State's 54.
21 Is this another photograph of that?

22 A. Yes, sir.

23 Q. And you took this photograph?

24 A. I did.

25 Q. What is that?

- 1 A. It's a projectile -- or a bullet.
- 2 Q. Something that's been fired?
- 3 A. I don't believe so. No, sir.
- 4 Q. Is it a casing or a bullet?
- 5 A. It's a full bullet.
- 6 Q. Okay. Then going back to State's 61, this bathroom
- 7 here, is that also one you cleared?
- 8 A. Deputy barber cleared that one.
- 9 Q. Did you take a photograph of that in State's 55?
- 10 A. I did. Yes, sir.
- 11 Q. And that's how you found it?
- 12 A. Yes.
- 13 Q. That drawer open?
- 14 A. Yes.
- 15 Q. State's 56. That last bedroom, is this that bedroom?
- 16 A. Yes, sir. That's the last bedroom on the right.
- 17 Q. Okay. In looking at this bed here, I want to now
- 18 refer you to State's 57. It's a really dark photograph.
- 19 What piece of furniture are we looking at in State's 57
- 20 right there?
- 21 A. That should be his bed.
- 22 Q. State's 57. That's his bed. This window, is that as
- 23 you found it?
- 24 A. Yes.
- 25 Q. These drapes or curtains or whatever they are, when

1 you found it were they on the inside or outside?

2 A. They were on the outside.

3 Q. And you also mentioned a bathroom in the master suite,
4 the master bedroom?

5 A. Yes, sir.

6 Q. State's 58, does that show that?

7 A. Yes.

8 Q. Is that as you found it?

9 A. Yes.

10 Q. All right. Inside, once you step inside that
11 bathroom, to the left of this doorway, again, referring to
12 State's 61, what is right here?

13 A. That's a closet door.

14 Q. A closet door in the bathroom?

15 A. Yes.

16 Q. All right. Once you took these photographs, other
17 responders, were they there at the time you were taking
18 these photographs or arriving as you were taking them?

19 A. Yes.

20 Q. And you mentioned that there was an individual that
21 needed assistance and you just let others handle that I
22 believe you said?

23 A. Yes, the -- the para -- or I believe it was the fire
24 department at that time.

25 Q. Was anybody called in to secure the scene like rope it

1 off, tape it off?

2 A. Yes. So once other deputies started arriving, there
3 was -- I had -- Deputy Donnelly had come next and I asked
4 him to take Mr. -- Mr. Donnovin Haynes to put him in a car,
5 it was raining out and I didn't -- I wanted him to be
6 secured so we could talk to him, so I asked him to put him
7 in a car. Then we -- that's when we went back inside to
8 try to render aid, but that's when the fire department
9 arrived, but once they had kind of taking over the attempts
10 to save lives, that's when I started just kind of managing
11 the scene. I had one start a crime scene log, which is
12 just kind of to keep track of everyone that comes and goes.
13 I had another one start doing crime scene tape around the
14 building just to make sure that we had a secure crime scene
15 and nobody was entering and then I had detectives and
16 supervisors and everyone coming to us.

17 Q. Okay. I want to show you two photographs, State's 59
18 and 60. Is this you outside the building?

19 A. Yes.

20 Q. And the yellow that we're seeing is?

21 A. Crime scene tape.

22 Q. Okay. And State's 60, who are we seeing there on the
23 front stoop?

24 A. That's Mr. Haynes.

25 Q. Okay.

1 MR. HUBBARD: Your Honor, I offer these into
2 evidence.

3 THE COURT: Any objection?

4 MR. SWERLING: No objection.

5 THE COURT: They're admitted.

6 (State's Exhibit Numbers 59 and 60, photographs,
7 were admitted into evidence.)

8 BY MR. HUBBARD:

9 Q. Looking at State's 59, again, it's kind of dark, who
10 is the individual that we see here?

11 A. That is me.

12 Q. In this photo, the window -- I don't know if we can
13 brighten it up at all. Probably not. I'll tell you
14 what. Just leave it like that. I'm gonna go old school.
15 state's 59, how do you find that window?

16 A. Open with the bottom of the drapes hanging out the
17 window.

18 Q. And then looking at the State's 60, again, who are we
19 seeing right here?

20 A. That's Mr. Haynes.

21 Q. And is it from that vantage point that you then said
22 you put him where?

23 A. So, yeah, that was -- I can't say whose body camera
24 that is, but that was when we had gone back outside and
25 started gloving up and protecting the crime scene and I

1 asked Detective Donnelly -- Office Donnelly at the time to
2 put him in a vehicle.

3 Q. You asked who?

4 A. Donnelly.

5 Q. Okay. And, again, all he was wearing even at this
6 point was still those pants?

7 A. That's right.

8 Q. Was he allowed to go back in it at all?

9 A. No, sir.

10 Q. So from the moment you arrived to your knowledge had
11 he ever gone back into that residence?

12 A. No.

13 Q. And once it was secured, was he or anyone else allowed
14 back in that residence other than law enforcement or first
15 responders?

16 A. No.

17 Q. So the scene was secure?

18 A. Yes.

19 MR. HUBBARD: I beg the Court's indulgence.

20 THE COURT: Take your time.

21 BY MR. HUBBARD:

22 Q. The individual that you found laboring in his
23 breathing, were you there when they took him out and put
24 him in an ambulance?

25 A. Yes.

1 Q. And were you aware whether he survived or not?

2 A. No, he did not survive.

3 Q. Okay. But attempts were made either by putting him in
4 the ambulance and transporting him?

5 A. I don't believe they ever actually got to transport
6 him. They put him in the ambulance with intentions of
7 going and then at that time I believe he started to decline
8 and I believe he actually ended up passing in the parking
9 lot while in the ambulance.

10 MR. HUBBARD: Thank you.

11 THE COURT: Are you finished, Mr. Hubbard?

12 MR. HUBBARD: That's all I have at this time.

13 THE COURT: Mr. Foreman, would the jury like a break
14 for about fifteen minutes?

15 Mr. Swerling, do you mind? And then we'll come back
16 and let you cross.

17 MR. SWERLING: No, that's fine.

18 THE COURT: I can just look at them and they look
19 like they need a break.

20 All right. Let's take a fifteen-minute break and
21 stretch your legs. If I've got smokers, please tell the
22 bailiff and they'll let you smoke because I'm a smoker,
23 so thank you.

24 Remember, no talking about this case.

25 (Whereupon, the jury retires to the jury room at

1 Detective Purdy, I'm gonna remind you that you're
2 still under oath.

3 Mr. Swerling.

4 MR. SWERLING: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. SWERLING:

7 Q. Detective Purdy, I just -- I really have only one
8 question, maybe two, but when you got to the apartment the
9 door was closed. You had to bust it open, right? Kick it
10 open?

11 A. Yes, that's correct.

12 Q. Prior to your kicking the door in with your foot, did
13 you notice anything about the door that indicated some
14 forced entry prior to your arrival?

15 A. As far as the door itself, it was secure. It was not
16 open. I did note that there was damage to the outside of
17 the door from I don't know when. It appeared the paint was
18 messed up on it, but the door itself was solid.

19 Q. But you wouldn't say that you saw forced entry that
20 opened the door prior to you getting there?

21 A. No, sir.

22 Q. Okay. And that's why you had to kick the door open?

23 A. Correct.

24 MR. SWERLING: That's all have. Thank you.

25 MR. HUBBARD: No follow-up, Your Honor, and I'd ask

1 that Officer Purdy be excused.

2 MR. SWERLING: No objection.

3 THE COURT: Sure.

4 Thank you for coming.

5 (Witness excused.)

6 MR. HUBBARD: Your Honor, at this time the State
7 calls Dr. Nicholas Batalis.

8 (Whereupon, Nicholas Batalis was duly sworn by the
9 Clerk of Court.)

10 THE CLERK: If you'll have a seat over there,
11 please. If you'll state your name and spell your last,
12 please, for the record.

13 THE WITNESS: My name is Nicholas Ike Batalis,
14 B-A-T-A-L-I-S.

15 NICHOLAS IKE BATALIS,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q. Dr. Batalis, where do you work?

20 A. I work at the Medical University of South Carolina
21 down in Charleston.

22 Q. And what do you do there?

23 A. I'm employed there as a professor in the Department of
24 Pathology and Laboratory Medicine, with my main role being
25 as a forensic pathologist.

1 Q. What is a forensic pathologist?

2 A. Sure. So forensic pathology is a field of medicine,
3 a subspecialty of medicine that deals with medicolegal
4 aspects of medicine, in particular, performing autopsies
5 to determine a cause and manner of death.

6 Q. So you do autopsies?

7 A. Yes.

8 Q. How many autopsies would you say you've done over the
9 years in you can estimate?

10 A. Sure. I'm on my fifteenth year in practice and just
11 roughing it two to three hundred a year, so three to four
12 thousand autopsies in my time.

13 Q. And you said something about cause and manner of
14 death. What are we talking about there?

15 A. So the cause of death would simply be why someone's
16 death; a gunshot wound, a heart attack, a drug overdose,
17 something like that. The manner of death is how that comes
18 about. Is it a natural disease process, is it an accident,
19 is it a suicide where somebody would take their own life
20 or is it a homicide where their death is due to another
21 individual.

22 Q. And have you had education and training in order to do
23 the job you do?

24 A. Yes, I have.

25 Q. What's your background?

1 A. I graduated college from Butler University with a
2 degree in biology. I then went onto the Indiana University
3 School of Medicine. After graduating medical school, I
4 went down to Charleston to MUSC for a residency training
5 program in general pathology. So general pathology would
6 involve examining biopsies and tumors that are taken out by
7 surgeons. So we would then work with them to provide a
8 diagnosis. A general pathologist also oversees the
9 laboratories, so if you have any blood drawn, any cultures,
10 the pathologist is the one behind the scenes coordinating
11 that. After completing that program, which is four years,
12 I passed an examination to become Board-certified in
13 general pathology then went onto a one-year fellowship
14 training program specifically regarding forensic pathology
15 in Dallas, Texas.

16 MR. SWERLING: Your Honor, I'd stipulate to his
17 qualifications.

18 THE COURT: Okay.

19 MR. HUBBARD: Thank you.

20 THE COURT: Let me tell the jury. Ladies and
21 gentlemen of the jury, normally a person cannot give
22 opinion testimony. Normally when a person testifies,
23 they can testify to either what they saw, heard, sensed
24 by smell or something of that nature; however, there
25 is an exception when someone is qualified because of

1 education or experience that they may give them -- give
2 their opinion.

3 And what is this expert being qualified as?

4 MR. HUBBARD: I'm offering him as an expert in
5 forensic pathology, Your Honor.

6 THE COURT: Okay. This witness is qualified in
7 forensic pathology. He can give opinion testimony in
8 that area. That does not mean you must accept the
9 opinion, but it is evidence for you to use in any way
10 you see fit.

11 Thank you, Mr. Hubbard. You can continue.

12 MR. HUBBARD: Thank you, Your Honor.

13 BY MR. HUBBARD:

14 Q. Dr. Batalis, on December 19th of 2019 did you have an
15 occasion to perform three autopsies pertaining to this
16 case?

17 A. Yes, I did.

18 Q. Was the first autopsy -- or if I take them -- I might
19 take them out of order that you did them, but I'd like to
20 talk initially about did you perform one on a Branton
21 Booker?

22 A. Yes, I did.

23 Q. Now when you do an autopsy, can you tell the jury your
24 steps, what you do initially, what you go through?

25 A. Sure. So when a body first comes into our autopsy

1 suite, we'll take photographs of the body before we've done
2 any manipulation, before we remove any clothing, clean the
3 body or anything like that. After we take those
4 photographs, we would note down any evidence, any clothing,
5 any medical therapy, anything that's on the body. We would
6 then remove that and secure that as appropriate, then clean
7 the body and then take another set of photographs overall
8 once the body has been cleaned and de-robed, then we move
9 onto our external examination, which is basically looking
10 at the body from head to toe for basic stuff like height
11 and weight and eye color and hair color, but also any
12 evidence of injury or natural disease that could explain
13 why they're dead. Once we complete that external exam, in
14 certain cases we would utilize x-rays. In cases of a stab
15 wound or gunshot wound, we use x-rays to look for any
16 retained bullets or fragments of a weapon. We would then
17 move onto our internal exam where we use surgical-type
18 incisions to open the body and examine the internal organs
19 one by one, again, looking for any evidence of trauma or
20 natural disease that could explain why the person had died.
21 Then at the completion of the autopsy, we'll then put all
22 of these findings into a report.

23 Q. Doctor, when we turn to the individual that you did an
24 autopsy on, Branton Booker, did you denote about how old he
25 was?

1 A. Sure. At the time of autopsy he was twenty-eight
2 years old.

3 Q. What were the obvious signs of injuries to his body?

4 A. The major findings in the autopsy of Mr. Booker were
5 two gunshot wounds; one on the right side of the chest and
6 one on the right shoulder.

7 Q. Let me show you what's been marked as State's 139 as
8 to Mr. Booker. Is that a diagram with your writing on it
9 denoting where those injuries are?

10 A. Yes, it is.

11 MR. HUBBARD: I offer State's 139 into evidence.

12 MR. SWERLING: No objection.

13 THE COURT: It's admitted.

14 (State's Exhibit Number 139, Branton Booker autopsy
15 diagram, was admitted into evidence.)

16 BY MR. HUBBARD:

17 Q. Doctor, looking at this diagram, is this just a
18 general diagram you use when you do autopsies on a male
19 subject and then mark where the injuries are?

20 A. Yes, this is the -- the basic diagram is one we use
21 during the course of an autopsy. The one I use during the
22 autopsy is much messier because we'd have a lot of other
23 data on there about the height and weight and other
24 findings. This is one I prepared after the case that
25 really simplify things just showing the injuries in the

1 case.

2 Q. I want to hand you a pointer that might be helpful
3 as we go along here. I've got one, too. Mine's in green.
4 Looking at this diagram, I notice you have two round
5 circles there. You have GSW number two, GSW number one.
6 What does GSW mean?

7 A. So GSW stands for gunshot wound.

8 Q. Now when you have one and two, do you know the order
9 in which somebody is shot?

10 A. The vast majority of the time, I do not. The numbers
11 are simply just for descriptive purposes. Number one is
12 the first one I encountered and described.

13 Q. Now looking at number one, I see a line on the front,
14 but then it's also on the back. Can you tell us about that
15 first gunshot wound?

16 A. Sure. So gunshot wound number one is here on right
17 side of the chest. That bullet after entering the chest,
18 it then went through the chest wall, passed through the
19 right lung causing abundant massive bleeding in the right
20 side of the chest around the lung, and then the bullet then
21 continued through the spine and then was recovered in the
22 skin of the back where it has the B. So B stands for
23 recovered bullet. So, again, entered here, through the
24 right side of chest and right lung and then bullet came to
25 rest in the back.

1 Q. So what looks -- is that a B?

2 A. Yes, it is.

3 Q. So B marks where on the inside where you recovered
4 that -- that projectile?

5 A. Correct.

6 Q. And that particular gunshot, gunshot number one, was
7 that a fatal gunshot wound?

8 A. Yes, it would be. In particular, due to the wound
9 to the lung would compromise his breathing and then the
10 massive bleeding that also ensued, so this would be the
11 fatal wound.

12 Q. When individual is shot in the lungs, is it possible
13 for them to still move for a little while?

14 A. Sure. This would not be an immediately fatal injury.
15 With the amount of bleeding, again, it may take, you know,
16 some people several seconds, some people several minutes,
17 but you could certainly have activities. I've seen people
18 go down the streets, jump fences and that sort of thing.

19 Q. But eventually because of the massive blood loss, what
20 happens?

21 A. All the blood that should be, you know, providing
22 oxygen to their brain, their heart and the other organs is
23 now just kind of in the empty space around his left lung,
24 so the organs are starved of that oxygen and blood and
25 death ensues because of that.

1 Q. If you were to find someone like that, would it be
2 unusual to hear belabored breathing -- or labored
3 breathing?

4 A. Not at all.

5 Q. And you noted that you recovered a projectile, what
6 did it look like?

7 A. So the bullet in this case was a jacketed deformed
8 bullet for me, which was a medium caliber, so kind of the
9 middle of the road as far as size goes. So a medium
10 caliber jacketed bullet that had some deformation from
11 striking the tissues.

12 Q. And then looking at gunshot number two, can you tell
13 us about that one?

14 A. Sure. Gunshot wound number two is kind of on the top
15 part of the right shoulder. It's kind of tough on a
16 two-dimensional diagram, but essentially right here that
17 bullet then basically goes kind of straight backwards and
18 into the shoulder capsule and so there's a small B kind of
19 on left side here and the entrance here, so this bullet
20 only travelled a few inches from the front of the shoulder
21 to deeper in the shoulder where it stopped and was
22 recovered.

23 Q. And was it a fatal wound?

24 A. It was not.

25 Q. And, Doctor, I want to show you -- and let me ask you

1 this. When you perform an autopsy like this, do you also
2 do a blood standard or take a blood standard for DNA
3 purposes or for testing purposes for later?

4 A. Yeah, that's pretty much standard on all of our
5 autopsies that we'll take a spot with blood to save for DNA
6 identification.

7 Q. Okay. I want to show you -- first of all, this item
8 here, do you recognize that as something from your office
9 or something you did?

10 A. I did not do that. I believe that was from the -- the
11 office that they were submitted to.

12 Q. Okay. And do you recognize this anything about this
13 as being from your -- if you need to look.

14 A. Not that envelope, no, sir.

15 Q. Okay. But you did do a blood standard?

16 A. Yes.

17 Q. Okay. And I want to show you these two items. Do you
18 recognize those?

19 A. Yes, I do.

20 Q. And what are these?

21 A. These are the recovered bullets that are mentioned;
22 one being from the back and one from the right shoulder.

23 MR. HUBBARD: Your Honor, I offer bullets into
24 evidence.

25 THE COURT: What number?

1 MR. HUBBARD: I don't have numbers on these yet.
2 Hang on. All in one bag, 181.

3 THE COURT: And that would be two bullet fragments?

4 MR. HUBBARD: And, Your Honor, I'm gonna show --

5 MR. SWERLING: I'd object to that. He did not
6 identify the other --

7 MR. HUBBARD: I'm doing that now, Mr. Swerling.

8 MR. SWERLING: Okay.

9 THE WITNESS: Yes, so this is -- you had asked
10 previously about a blood spot, so this would be -- we'd
11 take the blood spot, which is this small filter paper
12 kind of like a coffee filter, we place it into here and
13 seal it with a sticker.

14 THE COURT: Okay.

15 MR. HUBBARD: Your Honor, all of these I'm offering
16 as State's Exhibit 181 in an envelope.

17 THE COURT: Which is the two bullet fragments and
18 the one blood spot; is that right?

19 MR. HUBBARD: Yes, Your Honor.

20 THE COURT: Okay. Any objection?

21 MR. SWERLING: No, Your Honor.

22 THE COURT: Then it's admitted.

23 (State's Exhibit Number 181, Booker blood spot and
24 projectiles, was admitted into evidence.)

25 BY MR. HUBBARD:

1 Q. And, Doctor, these two projectiles you pulled out, do
2 you see brass with these?

3 A. There's certainly a orange metal jacket, yes.

4 Q. Okay. So, again, with Mr. Booker, how many gunshot
5 wounds did you see?

6 A. He had two gunshot wounds.

7 Q. And how many projectiles did you recover?

8 A. Two bullets; one from each wound.

9 Q. Now as to Mr. Booker, you mentioned gunshot number one
10 was fatal?

11 A. Correct.

12 Q. And was that -- in saying that, can you go over the
13 cause of death again?

14 A. Yeah, so the cause of death in this case, simply
15 stated, is just the gunshot wound to the chest. In
16 detail, it would be due to the compromise of the lung and
17 specifically the massive bleeding because of the gunshot
18 wound.

19 Q. And to a reasonable degree of medical certainty, what
20 was the manner of death?

21 A. The manner of death would be homicide as, again, the
22 death was due to another individual.

23 Q. All right. Now I want to ask you about another
24 autopsy you performed that same day on a Sheldon
25 Livingston.

1 A. Okay.

2 Q. How old was Mr. Livingston?

3 A. At the time of autopsy he was twenty-six years old.

4 Q. And let me ask you this how many gunshot wounds did
5 you see on his body?

6 A. Mr. Livingston had twelve gun shot wounds that we
7 identified.

8 Q. Twelve gunshot wounds?

9 A. Correct.

10 Q. Of those wounds, how many projectiles did you recover?

11 A. We recovered three projectiles from the gunshot wounds
12 in Mr. Livingston.

13 Q. I want to show you what's been marked State's 140. Is
14 that the diagram concerning Mr. Livingston.

15 A. It is.

16 MR. HUBBARD: I offer this into evidence.

17 THE COURT: Any objection?

18 MR. SWERLING: No.

19 THE COURT: It's admitted.

20 MR. HUBBARD: Thank you, Your Honor.

21 (State's Exhibit Number 140, Livingston Autopsy
22 Diagram, was admitted into evidence.)

23 BY MR. HUBBARD:

24 Q. Doctor, I may have to have your help on this one in
25 pointing out which is your gunshot number one?

1 A. So gunshot number one in this case is going to be on
2 the left arm. So you can see there is a circle here and
3 almost immediately adjacent to it there's an X, so gunshot
4 wound number one entered the inner surface of the left arm
5 and then exited essentially right in front of it.

6 Q. So would that one be nonfatal then?

7 A. Correct. Just a flesh wound, if you will.

8 Q. Gunshot wound number two, is that this one right here
9 that I'm pointing out on the chart?

10 A. Correct.

11 Q. And can you tell us about that one?

12 A. Yeah. So gunshot wound number two, this is kind of
13 the outer back part of the right arm, so kind of just above
14 and to the outside of the right elbow. That bullet after
15 perforating through the skin here did go through the
16 humerus, so the main bone in the upper part of your arm,
17 and exited on the front part of the right arm where this X
18 is indicated here, so just above the elbow area.

19 Q. Did that gunshot actually break that bone?

20 A. It did. It shattered the humerus.

21 Q. Would that have been a fatal wound?

22 A. Would not have been fatal, but certainly very painful.
23 I guess he could have potentially bleed out from that
24 wound, but, again, that would have taken quite a while.

25 Q. Gunshot number three, right below -- you've got it

1 listed right below number two on your chart, can you tell
2 us about that one?

3 A. Yeah. So two and three, very, very similar pathways.
4 They're both entering the back part of the right arm.
5 Number three is a little bit lower, you can see right over
6 the elbow, and it exits a little bit lower as well. This
7 one also passed through the humerus, so both of those
8 wounds went through and fractured the humerus.

9 Q. And these are on the back of the arm?

10 A. Yeah, the back -- the number two is kind of --
11 actually both of them, yeah, the back outer aspect of the
12 arm.

13 Q. And number four, do you see is that this one that we
14 see down here at the bottom of the chart?

15 A. Yes. Number four is gonna -- the entrance here is on
16 the front part of the right thigh, kind of right on the top
17 of your leg, and then the exit wound was off to the side.
18 So this one, again, just went through kind of the skin, a
19 very superficial wound, just through the skin and the
20 superficial tissues, and then exited a little bit further
21 out on the side of the thigh.

22 Q. Gunshot wound number five, is that this one at the
23 bottom of the chart?

24 A. Correct. So gunshot wound number five is right here
25 kind of the middle, a little bit outer aspect of the shin.

1 This bullet, again, went through and it actually missed the
2 bone, but went through the skin and subcutaneous tissues
3 and deep muscle and then exited right on the back part of
4 the left leg, so mostly a front to back pathway.

5 Q. All right. I'll move this back down. Do you see
6 gunshot wound number six?

7 A. Yes. So gunshot wound number six is gonna be here on
8 the back part of the left thigh just above where your knee
9 would be. So that would -- again, enters the back part of
10 the thigh, goes through the skin and subcutaneous tissues
11 and muscle, so it does not hit any of the bone, but then
12 exits the top part here, so the exit for number six is
13 similar to where the entrance for number four was located.

14 Q. And would that have been a fatal wound?

15 A. No, it would not.

16 Q. Let me ask you at this point all of these have been
17 through and through shots?

18 A. Correct.

19 Q. Bullets entered one section and come all the way
20 through the body?

21 A. Correct.

22 Q. Gunshot wound number seven, what can you tell us about
23 that one?

24 A. Yeah. So gunshot wound number seven is located here,
25 kind of on the left flank, so kind of between the back and