

**VOL II OF II**

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Thomas A. Russo, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SHAWN WILLIAM SHARPE,

APPELLANT

APPELLATE CASE NO. 2013-001915

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RECORD ON APPEAL

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1. A Correct.

2 Q And the records that you're talking about, the ones  
3 that we put into evidence, that's recording the tower that  
4 a particular call was hit; is that correct?

5 A That it's initiated on, yes.

6 Q Can you describe what a tower is? We all drive by  
7 them every day. What are they?

8 A Generally, on top of the tower there are sets of  
9 antennas. We normally break it up into three sectors  
10 they're called, or cells. Each cell, generally, is  
11 pointed in a different direction. Normally we use  
12 azimuths of 0-degrees, 120-degrees and 240-degrees. But  
13 depending on trends we may change that.

14 Q Is there a way just to think about it in our heads?  
15 You're saying there are three cell faces or three antennas  
16 up there on the tower?

17 A The best way to maybe kind of think of it is a pie  
18 chart with triangle-shaped pieces going out in those  
19 directions.

20 Q When you're talking about the strongest signal and  
21 optimization, what does what you're talking about there  
22 have to do with where a tower is located?

23 A Generally, if you're directly in front of the cell  
24 site, the one in that direction will be your strongest.

25 Q Did you, at our request, look through the records

1 that we just put into evidence, the two that you're the  
2 custodian for?

3 A Yes, sir.

4 Q Particularly, for approximately a 24-hour period, did  
5 we ask you to go through and help us identify the cell  
6 tower sites and the actual sectors that the phone calls  
7 for (803) -5429 and (803) -8598 were using?

8 A Yes.

9 Q And did you, in fact, make us some maps?

10 A Yes.

11 Q Let me show you these and ask if you recognize these  
12 as being the maps that you created. This is State's 65  
13 and 66.

14 A Yes, those are the maps created.

15 Q Would that help you explain the cell tower coverage  
16 that we're talking about?

17 A Yes, sir.

18 MR. GRAHAM: Your Honor, the State would move  
19 these into evidence.

20 MS. ZMROCZEK: Subject to my previous objection.

21 THE COURT: Subject to that objection,  
22 overruled. They're admitted.

23 (WHEREUPON, STATE'S Exhibits Nos. 65-66 were  
24 admitted into evidence.)  
25

1 BY MR. GRAHAM:

2 Q Referring to 66 --

3 MR. GRAHAM: Your Honor, if I could have the  
4 witness step down.

5 THE COURT: Yes, sir. If you would, since  
6 you're going to be away from that microphone, keep your  
7 voice up loud and allow the witness to be on that side so  
8 he's facing the court reporter.

9 MR. GRAHAM: Yes, Your Honor.

10 BY MR. GRAHAM:

11 Q Mr. Wetherell, what are we looking at?

12 A We are looking at the best coverage plots that we've  
13 created for some specific cell sites here in the Lexington  
14 area.

15 Q What does this represent? Can you speak up a little  
16 bit?

17 A Yes. So this here is a cell site. We plotted two  
18 sectors, approximate best coverage location. So what that  
19 means is most likely if you are in this area and you  
20 initiate a call, you're going to be served by this cell,  
21 off this cell site.

22 Q So the dots that we're looking at here that have the  
23 four-digit numbers, for instance, 2197, what does that  
24 represent?

25 A That is a cell site ID.

1 Q Is that a tower?

2 A Yes, it's a tower.

3 Q When I'm looking above it there is a blue shaded area  
4 called 21973. What does that mean?

5 A That is a sector ID. It's one of the three sectors  
6 on the site or the tower.

7 Q That's sector 3, really?

8 A Yes.

9 Q Below that a purple section, 21972, that would be  
10 sector 2. And then sector 1 wasn't used, apparently, in  
11 the records that you reviewed?

12 A That's correct.

13 Q And that's the same for each of these. There's a  
14 tower for 2451, a tower for 2429 and 2201; is that  
15 correct?

16 A That's correct.

17 Q Now, you talked about it being in a pie shape. What  
18 are we seeing here? What is this?

19 A This one's kind of coming out like this, but due to  
20 terrain issues, the coverage will drop off near the edges.  
21 So I would guess that probably right in here is a slight  
22 valley where it travels a little bit further than it does  
23 in this area.

24 Q And how is this created? How do you figure out the  
25 coverage area?

1 A We have a propagation analysis tool, and it uses  
2 models, terrain that we tune based on real world drive  
3 testing to estimate this coverage.

4 Q And what did you call this?

5 A A propagation model.

6 Q And what's the purpose of a propagation model?

7 A It shows the approximate coverage of what the cell  
8 site actually covers in the real world.

9 Q Now, is this for any coverage or good coverage or the  
10 best coverage?

11 A This is showing the best coverage. So like in this  
12 white area here, you may be able to get a call out, but  
13 it's going to be probably poor quality.

14 Q Well, looking at a particular record, let me ask you  
15 to look on State's 54, which is phone number -8598. If  
16 we're looking at call detail 307 -- let's say 308.

17 A Okay.

18 Q Tell me what the records show, how it translates over  
19 here.

20 A Okay. It shows the originating number (803) -8598,  
21 and the terminating number, so that's the number dialed.  
22 (803)33 -- I'm sorry, -2114. It shows various call  
23 times. Five seconds, 15 seconds. It shows information  
24 about the mobile. And then it shows cell ID 25 -- 24511,  
25 which would be this area here.

1 Q 25411, so Sector 1 of this?

2 A Yes.

3 Q And what time was that one -- that call made? Time  
4 and date on that one?

5 A The date is 9/21/11. The time is 10:05 p.m. The  
6 second call on the same day, 10:36 p.m.

7 Q And what about -- tell me about the 10:36 call.

8 A That is also showing on that same cell.

9 Q Up here?

10 A Yes.

11 Q There is some colors that look like two colors  
12 bleeding over. What does that represent?

13 A It's kind of boundary area between the two cells  
14 where it's hard to determine which site or which cell  
15 you'd be on if you were on the ground.

16 Q So the records are indicating which cell face that  
17 call was processed on; is that fair to say?

18 A Yes, initiated on.

19 Q Initiated on?

20 A Yes, the cell one face.

21 Q What does that tell us about where the physical  
22 device was located when the call initiated?

23 A The device was most likely located in this coverage  
24 area here.

25 Q So if a person was standing up here and called, and

1 the record shows that it was down here, could they be up  
2 here?

3 A Probably not.

4 Q Most likely they would be in the coverage area which  
5 your map shows using the propagation tool that you use to  
6 lay out towers and to provide coverage?

7 A Yes, sir.

8 Q And does that apply for or is that the same for every  
9 call and every text that we have records for, for both  
10 cell phones?

11 A Yes.

12 Q You had also produced a map, which is State's 65.  
13 This is the same map, just different towers and different  
14 physical locations; is that correct?

15 A That's correct.

16 Q And this would be red and the same that we discussed  
17 on the previous map?

18 A Yes.

19 MR. GRAHAM: I believe that's it, Mr. Wetherell.  
20 If you would answer any questions that Ms. Zmroczek has.

21 You can have a seat.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q And I know he just told you to sit down. I'm going  
25 to have you -- and maybe you can see it from here so you

1 don't have to come down.

2 A I can stand if you need me to.

3 Q If you don't mind just stepping down real quick.

4 Hypothetically, I'm standing on this road right  
5 here. So, hypothetically, I'm standing right here.

6 A Yes.

7 Q Which tower am I pulling from?

8 A I don't know.

9 Based on this map my guess would be, generally,  
10 there would be another sector here pointing in that  
11 direction? That would be the one you should be on.

12 Q But if this one is busy or has a bad signal or it's  
13 having maintenance done, could I pull from this one?

14 A Potentially, yes.

15 Q Can I pull from this one?

16 A Yes.

17 Q And this one? Wherever it went. This one?

18 A Yeah. You could be on this one here.

19 Q And when I'm standing right here?

20 A Yes.

21 Q I could be on any of those?

22 A Yes.

23 Q And there's no way to determine which tower I'm going  
24 to hit off of?

25 A No. Only by when you do initiate your call, it's

1 going to tell you what tower you're on.

2 Q It's going to tell me -- tell y'all what tower I'm  
3 on?

4 A Yeah.

5 Q But can you then reflect back and say where I'm  
6 standing?

7 A Not specifically.

8 Q But it will be in this general area?

9 A Yes.

10 Q How big are your general areas?

11 A It depends. In a suburban area, it could be a couple  
12 of blocks, or a city are. In a rural area, it could be a  
13 mile or up to two to three miles, possibly.

14 Q Up to two to three miles?

15 A In a very rural area with a very tall cell site.

16 Q Same question. If I'm standing in the middle of your  
17 best coverage area, you can't tell me which tower I'm  
18 going to ping off of?

19 A I can't predict that, no.

20 Q And if I ping off of this tower, which is a  
21 possibility if I'm standing here, correct?

22 A Yes.

23 Q Could it also be a possibility if I'm standing here?

24 A Almost certainly not because, as you can see, it cuts  
25 off pretty dramatically here. The antennas face forward

1 and there's almost no backwards range of the radio waves.

2 Q They have three sectors on the tower?

3 A I'm sorry, you're talking about the site?

4 Q Yes.

5 A I'm sorry. There should be a sector point here. You  
6 would be on that.

7 Q So I could be on here?

8 A Yes.

9 Q I could be here and I could be here?

10 A Well now -- ask the question again, I'm sorry.

11 Q I'm talking about the sectors --

12 A Okay.

13 Q -- and trying to figure out site location of the  
14 phone.

15 A So if you're saying if you registered off this  
16 cell --

17 Q Off this cell tower.

18 A Tower or cell?

19 Q Cell.

20 A It's very doubtful you'd be down here, because there  
21 is almost no back radiation.

22 Q But it's possible I could be here?

23 A Yes.

24 Q And here?

25 A Yes.

1 Q And here?

2 A Yes.

3 Q Or here?

4 A Yes.

5 Q Or here?

6 A Yes.

7 Q Okay. You can have a seat.

8 So when you're using words like "most likely"  
9 and "best coverage", is there any scientific data to back  
10 that up?

11 A I don't have any of that, no.

12 Q When you were talking about going through the records  
13 and you were analyzing the phone numbers and it was sector  
14 2 and sector 3, and it was asked -- apparently, there were  
15 no calls off of sector 1?

16 A No calls of interest.

17 Q No calls of interest?

18 A Those maps were only made for the ones pointed out by  
19 the State.

20 Q Do you have any information about sector 1's  
21 maintenance on September 21st, 2011?

22 A I do not. But, that being said again, the call was  
23 initiated on sector 1, so it was up and running.

24 Q What are some of the factors that can affect a  
25 signal?

1 A Terrain, antenna height, azimuth, weather can affect  
2 it slightly, ground clutter, trees, buildings.

3 Q The busyness of the phones?

4 A Yes.

5 Q Whether someone is inside or outside?

6 A Yes.

7 Q So when you're looking and you're analyzing sectors  
8 based on the historical data, it's not very accurate, is  
9 it?

10 A It's fairly accurate, under normal conditions.

11 Q But if it were raining, it could be different; if  
12 somebody was inside, it could be different?

13 A That map was a propagation of good coverage, so good  
14 outdoor coverage. Really, indoors isn't taken into  
15 account on that map. But the difference would only be a  
16 loss of signal, it's not going to change the whole  
17 propagation pattern. Also, if it decreased the signal  
18 from one site, it's also going to decrease that same  
19 signal from the neighboring site.

20 Q So at that point either you would have to start  
21 pulling from another tower --

22 A I mean -- yes.

23 MS. ZMROCZEK: Beg the Court's indulgence.

24 (Pause.)

25 MS. ZMROCZEK: I have no further questions.

1 THE COURT: Anything on redirect?

2 MR. GRAHAM: Just a few questions, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q Mr. Wetherell, Ms. Zmroczek was just asking about  
6 weather and the effect that weather would have on cell  
7 towers. You said it would reduce signal strength,  
8 correct?

9 A It can.

10 Q If it did, that would be on all the towers?

11 A That's correct.

12 Q So the coverage area would get smaller on every  
13 tower?

14 A On all towers --

15 Q If -- I'm sorry.

16 A The signal you would receive at your location would  
17 be less from all sites, so it wouldn't just reduce one.

18 Q So if the records indicate that a call was served by  
19 a particular tower in sector, for instance, 21973, and  
20 there was a bad storm, for a good signal your predicted  
21 coverage area would be smaller even; is that correct?

22 A Slightly.

23 Q You might lose some of that out part and the edges  
24 and it might be a little smaller?

25 A Yes.

1 Q So the area that you were in is more defined, a  
2 smaller area closer to the tower itself?

3 A Probably, yes.

4 Q And I understand that it's not an exact science, and  
5 you can't tell us exactly where somebody was standing.  
6 And that's not what you're here for, is it?

7 A No.

8 Q To a reasonable degree of professional certainty as a  
9 radio engineer, when the records that you reviewed  
10 indicate that a call was initiated on a particular tower  
11 in a particular sector, is it most likely as they're  
12 identified in the records and identified on the map that  
13 they're in the coverage area shown on that map?

14 A Yes.

15 MR. GRAHAM: Thank you.

16 MS. ZMROCZEK: I have one follow-up question.

17 RECROSS-EXAMINATION

18 BY MS. ZMROCZEK:

19 Q I'm standing right here --

20 A Uh-huh.

21 Q -- in the midst of all your sectors.

22 A Yes.

23 Q In this area I can pull off of any of those towers,  
24 correct?

25 A Yes.

1 Q And regardless of which tower I pull off of, you  
2 still couldn't tell me more than a general direction of  
3 where I'm standing, correct?

4 A That's correct.

5 MS. ZMROCZEK: No further questions.

6 THE COURT: Thank you very much, sir. You may  
7 step down.

8 MR. GRAHAM: The State calls Lieutenant Mayrant.

9 CAIN MAYRANT, after being duly sworn, testified  
10 as follows:

11 THE CLERK: Have a seat, sir.

12 Once you're seated, state your full name,  
13 spelling your last on the record, please.

14 THE WITNESS: Lieutenant Cain Mayrant,  
15 M-A-Y-R-A-N-T.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q Lieutenant, where are you employed, sir?

19 A Lexington County Sheriff's Department.

20 Q And what do you do there?

21 A I am the booking and support services division  
22 manager at the Lexington County Detention Center.

23 Q As part of your job, are you over here today as a  
24 records custodian regarding specific records for Ashley  
25 Vasquez?

1 A Yes, sir.

2 Q And those records were created in the regular course  
3 of your business and you all maintain those records?

4 A Yes, sir.

5 Q And they're made by somebody who had knowledge of the  
6 information that was provided to them; is that correct?

7 A That's correct.

8 MS. ZMROCZEK: Your Honor, I'm sorry to  
9 interrupt. May we approach?

10 THE COURT: Sure.

11 (A bench conference was held with the judge and  
12 attorneys in the presence of the jury but out of the  
13 hearing of the jury.)

14 BY MR. GRAHAM:

15 Q Lieutenant, in the records that you have, do you have  
16 records regarding Ashley Vasquez?

17 A Yes, I do.

18 Q What do you show for her age?

19 A Her age is twenty-two years old.

20 Q What is her home address?

21 A Her home address is Mimosa Drive, Gaston, South  
22 Carolina 29053.

23 Q And her phone number?

24 A Her phone number is (803) -1694.

25 MR. GRAHAM: That's the only questions that the

1 State has.

2 Thank you, Lieutenant.

3 THE COURT: Ms. Zmroczek.

4 MS. ZMROCZEK: Beg the Court's indulgence one  
5 moment, Your Honor.

6 (Pause.)

7 CROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q You get that information that you provided when  
10 someone is booked into the jail?

11 A That's correct.

12 Q You also say that you were the records custodian?

13 A That's correct.

14 Q Are you aware of an incident between -- are you  
15 familiar with inmate Charles Plumley?

16 MR. GRAHAM: Objection, Your Honor. I'm not  
17 sure of the relevancy. She cannot just start asking  
18 questions like this.

19 THE COURT: I need you to step up.

20 (A bench conference was held with the judge and  
21 attorneys in the presence of the jury but out of the  
22 hearing of the jury.)

23 MS. ZMROCZEK: I have no further questions.

24 THE COURT: Thank you, sir. You may step down.

25 THE WITNESS: Thank you, sir.

1           MR. GRAHAM: Your Honor, if we could take a  
2 short break. I think we have two more witnesses that we  
3 can do to, but we need to see where they are.

4           THE COURT: Ladies and gentlemen, if you would,  
5 short break. And I know I've told you that and don't do  
6 it, but I'll try to keep it short. If you need anything  
7 while you're back there, please let us know. Please have  
8 no conversation about the case.

9           (The jury left open court at approximately  
10 3:54 p.m.)

11           (A break was taken.)

12           (The jury came into open court at approximately  
13 4:16 p.m.)

14           THE COURT: By a show of hands, who's seen the  
15 Wizard of Oz? You remember the part in the Wizard of Oz  
16 where the big Wizard head says "pay no attention to that  
17 man behind the curtain"? Pay no attention to the guy  
18 wearing this robe when he tells you we're going to take a  
19 short break, or when we're going to start back, or when  
20 you need to be back. Obviously, I don't have a clue of  
21 what I'm saying. I intended this to be a short break. It  
22 was much longer than I intended it to be. But, anyway,  
23 it's just all a best guess. Things come up, we try to  
24 resolve it. You know, you try to be as economical with  
25 time as you can and you say, well, you know what, if we

1 take up this issue and then we won't have to deal with it  
2 later. I apologize. We are ready to start back and we  
3 recognize the State for your next witness.

4 MR. GRAHAM: Thank you, Your Honor.

5 By stipulation, Dr. Ross who performed the  
6 autopsy isn't going to testify. Instead we are going to  
7 put in the photographs of her autopsy report. This will  
8 be State's 48, 49, 51, and I need a number.

9 THE COURT: You said 48, 49, 51?

10 MR. GRAHAM: Yes, Your Honor.

11 THE COURT: And then 84. Those are without  
12 objection?

13 MS. ZMROCZEK: Without objection.

14 THE COURT: All right.

15 (WHEREUPON, STATE'S Exhibits Nos. 48, 49, 51  
16 were admitted into evidence.)

17 (WHEREUPON, STATE'S Exhibit No. 84 was marked  
18 for identification and received into evidence.)

19 MR. GRAHAM: The State will call its next  
20 witness, Lieutenant Scott McDonald.

21 SCOTT MCDONALD, after being duly sworn,  
22 testified as follows:

23 THE CLERK: Have a seat.

24 Once you're seated, please state your full name,  
25 spelling your last for the record, please.

1 THE WITNESS: Scott McDonald. M-C-D-O-N-A-L-D.

2 DIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q Lieutenant McDonald, where are you employed, sir?

5 A Employed by the Richland County Sheriff's Department.

6 Q How long have you worked for the Richland County  
7 Sheriff's Department?

8 A Twenty-five years.

9 Q And currently, as a lieutenant, what are you doing?

10 A I'm a lieutenant over the major crimes unit, which is  
11 homicides, suicides, robberies, assaults.

12 Q What experience have you had using cell phones to  
13 prosecute crimes?

14 A Over the last 12 years, extensive experience in this  
15 field. Kind of fell into it by accident back in November  
16 of 2001 on one of the first murder cases I worked where  
17 the phone records became an issue. Over that time I've  
18 attended numerous schools and seminars, a lot of hours on  
19 the phone with the technicians and engineers at the cell  
20 phone carriers getting a better understanding about how a  
21 cell phone works and learning about towers and sectors and  
22 how to plot these points on the map.

23 Q How many years have you spent then interpreting cell  
24 phone records and making maps to explain what they mean?

25 A Twelve years now.

1 Q How many times have you been qualified as an expert  
2 in the state of South Carolina as a cell phone  
3 investigator?

4 A You mean as an expert or as --

5 Q As an expert. I'm sorry.

6 A Five times, as an expert.

7 MR. GRAHAM: Your Honor, the State would offer  
8 Lieutenant Scott McDonald as an expert in cell phone  
9 investigation.

10 MS. ZMROCZEK: I just have a few questions, Your  
11 Honor.

12 THE COURT: Yes, ma'am.

13 VOIR DIRE EXAMINATION

14 BY MS. ZMROCZEK:

15 Q You have been qualified five times as an expert?

16 A Yes, ma'am.

17 Q In what capacity?

18 A Cell phone investigations.

19 Q Cell phone investigations?

20 A Yes.

21 Q Can you tell me a little bit, and the jury a little  
22 bit, about what a cell phone investigation expert's  
23 knowledge covers?

24 A We cover not only the tracking of the cell phone due  
25 to the records and all, but also downloading of the cell

1 phones, which is over the last few years, information  
2 gathered from downloads of cell phones are very important  
3 in investigations as far as identifying defendants,  
4 co-defendants, text messages, things like that that help  
5 build the case.

6 As far as the cell phones records themselves,  
7 those are very instrumental. When we get those in, we  
8 often start with the victim on a murder, seeing who he was  
9 talking to, where those people may have been at the time  
10 of the incident, that kind of thing. We try to identify  
11 defendants or co-defendants from that, start working it  
12 backwards. So they are a very integral part of just about  
13 every major case now.

14 Q How much of that expertise is used in putting the map  
15 together and plotting out sectors?

16 A It's basically very simple. The phone company  
17 provides me with the information, they provide me with the  
18 phone calls, the date and the time they took place, the  
19 duration of the phone call, the tower that the phone call  
20 hits off, the beginning and sometimes the ending tower,  
21 which can be different sometimes if the phone is in  
22 motion, and the sector. From there, it's basically  
23 putting that location onto a map, importing that  
24 information. Nowadays with computers, we can do a rapid  
25 input of all that data at once and then just focus on the

1 specific time frame we're interested in, which is very  
2 helpful in illustrating a general area where a phone was  
3 during a specific time.

4 MS. ZMROCZEK: Your Honor, beg the Court's  
5 indulgence.

6 (Pause.)

7 MS. ZMROCZEK: I agree he is an expert in cell  
8 phone investigations, but I guess I'm hesitant on the  
9 plotting and charting.

10 THE COURT: Well, I don't know what his  
11 testimony is going to be with regards to that. We'll just  
12 have to let it go and see where it goes.

13 MS. ZMROCZEK: Okay. I guess what I want to say  
14 is that if it turns more scientific than just the basic  
15 evidence presented, I may have a few more questions to ask  
16 him in cross.

17 THE COURT: All right.

18 MR. GRAHAM: Thank you, Your Honor.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q Lieutenant, specifically to this case, did I ask you  
22 to help us review some Verizon phone records?

23 A Yes, you did.

24 Q Let me show you State's 53 and 56 and ask if you  
25 recognize those.

1 A Yes. These are the Verizon records you provided to  
2 me, number 360-2114, along with the accompanying tower  
3 information.

4 Q So State's 56 is the tower information. When you say  
5 that, what does State's 56 tell you?

6 A That is a listing of all the towers, I believe it was  
7 for South Carolina or maybe for the Columbia switch, any  
8 towers that may have popped up during this search of these  
9 cell phone records so we'd have a location to refer to.

10 Q So that tells you the street address for where the  
11 tower is?

12 A It gives a street address and also a longitude --  
13 latitude and longitude address.

14 Q Which allows you to plot it on a map?

15 A That's right. And it also provides an azimuth of the  
16 particular tower.

17 Q When you say an azimuth, what does that mean?

18 A Azimuth is somewhat the tilt of the tower, the side  
19 of the tower. Tower is broken down into 360 degrees, it's  
20 a circle. And each sector, in general, is 120 degrees  
21 most of the time. Sometimes that changes and we have  
22 azimuths in there to tell us when that changes. So the  
23 azimuth is just merely the middle of that particular  
24 sector. So if you have a 120-degree wide sector and your  
25 azimuth was 60 degrees, you'd go 60 degrees either side of

1 that for zero to 120 degrees to make up that first sector,  
2 and there's three sectors around that tower. And based on  
3 that sector information is how we can tell in general  
4 where the phone was, generally, around that tower.

5 Q You have had an opportunity to review what is State's  
6 53?

7 A These are called call detail records, provided by  
8 Verizon, with a number of (803) -2114, beginning on  
9 September 1st, 2011, and ending on September 8th, 2011.  
10 I'm sorry, September 20th -- September 27th.

11 Q And I believe the last page is text information?

12 A Okay. That is text information.

13 Q Specifically, did I ask you help us look at that  
14 phone on September 21st, 2011, two calls; specifically a  
15 call at 10:05 p.m. and another call at 10:36 p.m.?

16 A One at 2206, which is 10:06 p.m., and one at 2236,  
17 which is 10:36 p.m. That's correct.

18 Q 10:06 and 10:36 --

19 A That's correct.

20 Q -- on the night of the murder of Mr. Leon Justice on  
21 September 21st, 2011?

22 A That's correct.

23 Q Let me show you two maps and ask if you created these  
24 maps. You're looking at State's 60 and 61.

25 A Yes, I did.

1 Q And will these maps help you explain where the  
2 records indicate which cell tower and which sectors were  
3 used in the coverage of those sectors?

4 A Yes, it would.

5 MR. GRAHAM: Your Honor, the State would move  
6 both of these into evidence.

7 MS. ZMROCZEK: Subject to my previous objection.

8 THE COURT: And those are numbers --

9 MR. GRAHAM: Those will be 60 and 61, Your  
10 Honor.

11 THE COURT: All right. Overrule the objection,  
12 but note that exception.

13 (WHEREUPON, STATE'S Exhibits Nos. 60-61 were  
14 admitted into evidence.)

15 BY MR. GRAHAM:

16 Q Lieutenant McDonald, looking at the Verizon records  
17 that you have in your possession, what can you tell me  
18 about those calls, the two calls that I asked you to look  
19 at?

20 A They were from two different towers. The initial  
21 call that you asked me to look at, which is the one at  
22 2206 or 10:06 p.m., it's from tower number 534 on the  
23 Columbia switch, which I have a lat and longitude address  
24 that was entered onto this map. And I was also provided  
25 with a sector number, sector number 1.

1 Q So the records themselves give you the number for the  
2 person who was calling; is that true?

3 A Yes. You have a -- what we call the target number or  
4 the number we're inquiring about. And it also has the  
5 number that either was called by that party or received a  
6 call from that party.

7 Q So it tells you who, what number was calling, what  
8 number got called, the date and time, the amount and  
9 length of the call and it also tells you the tower and the  
10 sector that processed the call?

11 A That's correct.

12 Q And that takes us to these maps?

13 A That's correct.

14 MR. GRAHAM: Looking at State's Number 61 --  
15 Your Honor, if Lieutenant McDonald could step  
16 down.

17 THE COURT: Yes, sir. Put him on that side.  
18 Keep your voice up and face the court reporter. Keep your  
19 voice up. Thank you.

20 BY MR. GRAHAM:

21 Q Looking at State's 61, there are red thumb tacks on  
22 this map. In general, what do they represent?

23 A These are all the Verizon towers in this general area  
24 of Lexington as illustrated on this map. When I dumped  
25 all these towers on here, it was for the state of South

1 Carolina. But all these indicated Verizon towers. That  
2 is a Verizon tower and this is a Verizon tower. And this  
3 is the Verizon phone we are dealing with. So this is just  
4 to illustrate all the Verizon towers in this general area.

5 Q You have got on here labeled that these are the  
6 towers as of September, 2011, the date of this incident  
7 that is where the towers were?

8 A Right. That is important, because towers don't move  
9 a whole lot but azimuths sometimes do. An azimuth, like I  
10 said, is a center point of that sector. Sometimes due to  
11 population, trying to increase coverage, to carry as many  
12 calls as possible they may actually expand for or detract  
13 from these sectors to gather more calls on there. So if I  
14 were to look at September, 2013, these could be tilted  
15 just slightly one way or the other, or expanded. So we  
16 want to go back to the date of this incident, which is  
17 September, 2011, to see the orientation of those towers  
18 back on that day.

19 Q There's also another red thumb tack that's in the  
20 middle of the board that has a call out box. What does  
21 that represent?

22 A That's the incident location on this murder,  
23 Victor Road. I just put a thumb tack there to illustrate  
24 where the incident location is in reference to these two  
25 towers.

1 Q There are two red thumb tacks with pie-shaped areas  
2 and circles around them. What do those represent?

3 A This is the actual cell phone tower. This is tower  
4 534. And what is illustrated or -- it's highlighted on  
5 here as sector number 1. They're numbered 1, 2, 3,  
6 sometimes A, B, C. Just depends on the company. In this  
7 particular case it's sector number 1. And based on the  
8 information given to me by Verizon, the azimuth, which I  
9 have written down over there, that's the way it would  
10 reflect, the 120-degree azimuth.

11 The actual azimuth for that sector 1 right there  
12 is going to be 60 degrees. So 360 degrees or 0 to 120  
13 degrees is going to be the range of sector 1 is what's  
14 illustrated there.

15 Q When you're talking about degrees, you're talking  
16 about due north and going clockwise?

17 A That's correct.

18 Q So this is sector 1?

19 A That is sector 1.

20 Q So the call records that you looked at, specifically  
21 the call at 10:06 p.m. on 9/21/11, from your map then, it  
22 used tower 534, sector 1?

23 A That's correct.

24 Q And you've indicated that area by the yellow area  
25 labeled tower 534, sector 1?

1 A That's correct.

2 And not to confuse you, this is just when we  
3 highlight this on the program used, sometimes these  
4 numbers appear. This has nothing to do with anything.  
5 The 112 and 103, that's supposed to all be shaded  
6 together.

7 Q The actual coverage area of the tower is the circle  
8 itself, not the five lines but the circle; is that  
9 accurate?

10 A No. And I've got a disclaimer here: The actual  
11 coverage areas may vary by towers. This illustration is  
12 for demonstrative purposes only.

13 Basically, I don't know where this outer band  
14 is. It could be a couple of miles, it could be four or  
15 five miles. Only the phone company knows that. So you  
16 have the engineers that process that kind of information  
17 via propagation maps, things like that, and they're  
18 looking for the best coverage for the most citizens --  
19 customers that they can serve.

20 The thing you can kind of tell, though, just  
21 from a commonsense standpoint, if this were to extend up  
22 here, that probably wouldn't make a lot of sense because  
23 you've got this tower here, which would be a lot of  
24 overlap. It's extra cost for them. So, if you had to  
25 guess, this is just an approximation, it could be anywhere

1 in this general area. You got all these towers around  
2 this particular incident location, but the phone company  
3 is telling us when this call was placed, it was hitting on  
4 this tower and in this sector right here. I just don't  
5 know how far out that goes.

6 Q The other tower, tower 9, what are you illustrating  
7 up here?

8 A That was tower 9, sector 1, also. That call was at  
9 2236 hours, which is 10:36 p.m. I believe the information  
10 I was provided there was a 911 call at 2237 or 10:37 p.m.  
11 And kind of the significance of this particular call is  
12 based on the sector this phone is hitting on and the  
13 location of the incident location, which we have another  
14 map that's going to show you the distance, it's very hard  
15 to believe that this phone could be at this incident  
16 location at the time of the incident.

17 Q Looking at State's 60, is that the other map that you  
18 were referring to?

19 A Yes.

20 Q What is this map showing?

21 A This is basically the same tower. It doesn't have  
22 the full circle, just the sector highlighted. This is  
23 sector 1, tower number 9, at the time of the incident.  
24 And as the crow flies, when you measure that distance,  
25 it's 4.28 miles. So, literally, when that 911 call was

1 made, essentially this phone is somewhere in this general  
2 area up here, a minimum of 4.28 miles away.

3 Q As you've illustrated on State's 61, how many sectors  
4 are there from a tower?

5 A There's three.

6 Q The blue on 60 indicates sector 1?

7 A That's correct.

8 Q So that's tower 9, sector 1, and that's the call at  
9 10:36, this is the tower and the sector that processed  
10 that call?

11 A That's correct.

12 Q What, if any, opinion do you have to a reasonable  
13 agree of certainty as an expert in the field of cell phone  
14 investigations as to whether the physical device that hit  
15 this tower and sector are where its location was at the  
16 time the call was initiated at 10:36 p.m. on the 21st?

17 A It was somewhere in this general area. Don't  
18 consider this necessarily as an absolute barrier. It  
19 could be further out, closer in. It's just for  
20 illustrative purposes. But somewhere in this general  
21 area. Not down here, not over here; somewhere in this  
22 general area.

23 Q Thank you, Lieutenant. You can have a seat.

24 MR. GRAHAM: Your Honor, that's all the  
25 questions the State has for Lieutenant McDonald.

1 CROSS-EXAMINATION

2 BY MS. ZMROCZEK:

3 Q Lieutenant, you based all your research and  
4 information off of documents that were provided to you,  
5 correct?

6 A That's correct.

7 Q You don't do any independent investigation into their  
8 accuracy?

9 A I don't have those means. The information is  
10 provided by the carrier. The carrier has propagation maps  
11 of actual coverage areas. All I'm given is the location  
12 and the sector.

13 Q You're not given the propagation maps?

14 A I'm not provided with the propagation maps.

15 Q You said that you worked major crimes?

16 A Yes, ma'am.

17 Q And part of your expertise I think you said that some  
18 of the first -- some of the first things that you do is  
19 get the victim's cell phone, or people that are around, to  
20 see with whom they may have been speaking?

21 A One of the first things we do when we have a murder  
22 and it's a whodunit, not a domestic situation, but it's  
23 like a murder and we don't know who the suspect is  
24 readily, one of the first things we do, or my duties is  
25 not only getting the appropriate personnel there to begin

1 investigation, is to see if there's any cell phones on the  
2 victim or anyone else, or any cell phones that were  
3 discarded anywhere in the crime scene. If not, we try to  
4 get with family members and other witnesses who may know a  
5 cell phone number for a particular party that may have  
6 been involved as a victim and/or a possible suspect. From  
7 there, we contact the carriers of those particular cell  
8 phones, get those records in as soon as we can to begin  
9 looking at them and seeing who was talking to who, who was  
10 texting, text messaging; anything that may relate to this  
11 particular crime.

12 Q When were you hired or brought in as an expert on  
13 this case?

14 A When?

15 Q When.

16 A I was called early last week.

17 Q Prior to early last week you had not created any of  
18 these -- none of these maps had been created?

19 A Not the maps that I just pointed out, no.

20 Q And none of the information that was provided to you,  
21 besides the historical data, was dated from back then?

22 The records that you reviewed, do you have the  
23 dates that you received those or the date that they were  
24 received?

25 A Received by myself or by --

1 Q No, no. By the Sheriff's Department in Lexington.

2 A I don't have the dates they received them, no.

3 Q You described that you're only provided the sectors.

4 If you were provided the propagation maps as well, would  
5 that help make it more clear or be able to be a little bit  
6 more certain?

7 A I think even with propagation maps, the ones I've  
8 seen, there's some question about actual boundaries on  
9 that, because due to topography, you know, a number of  
10 different factors, sometimes the range can ebb and flow.  
11 In the summertime when there are full leaves in a forested  
12 area, the coverage isn't quite as great as it would be in  
13 the wintertime when there are no leaves. Just little  
14 things like that can affect the actual range.

15 Q Being indoors, outdoors?

16 A Indoors, outdoors. That's correct.

17 Q So without knowing all of that information, or  
18 knowing all that information, that could vary the location  
19 that the phone can be?

20 A It could, yes. Yes.

21 Q And all that does is simply provide you or an  
22 investigator with the phone, it doesn't say who was on the  
23 phone?

24 A No. I mean, in general, my experience has been a  
25 phone is kind of like a wallet, you don't go anywhere

1 without it. Not too many people are using my phone, not  
2 to say it couldn't happen but, in general, wherever that  
3 phone is, generally that person is.

4 Q In major crimes in Richland County, do you have a lot  
5 of interaction with drug crimes?

6 A Yes, we do.

7 Q Are cell phones a common tool in drug crimes?

8 A They are very common, yes.

9 Q And TracPhones are the phones that get passed around  
10 amongst a lot of people?

11 A Not so much that. They do get a lot of what we call  
12 throwaway phones, and trying to put those into a  
13 particular person's hands sometimes is difficult. But  
14 oftentimes you can get those phone records and start  
15 looking at the calls that were made, cross-referencing  
16 those phone calls, let's see who that party was calling,  
17 and then you go knock on their door. Who called you last  
18 night at 10:00 o'clock? Oh, that was so-and-so. And you  
19 can do that two or three or four times and you know who  
20 had that phone, in general.

21 Q And those are important tools early on in the  
22 investigation, correct?

23 A Yes.

24 Q Because they can provide valuable information?

25 A Right.

1 MS. ZMROCZEK: I have no further questions.

2 MR. GRAHAM: Nothing else, Your Honor.

3 THE COURT: Thank you very much, sir. You may  
4 step down, sir.

5 All right. Ladies and gentlemen, we're going to  
6 adjourn for the afternoon. And if you would please be  
7 back at 9:00 in the morning, we'll get started soon as we  
8 can. I will leave it at that.

9 But I will tell you, and I don't want to make  
10 light of it because your time is valuable, and we  
11 certainly have every intention of starting when I tell  
12 you, but if things come up that we have to deal with, we  
13 deal with them, but we will absolutely try to get started  
14 as soon as possible. You'll be here at 9:00 o'clock, I  
15 will be here at 9:00 o'clock, we'll try to get this thing  
16 started in a timely fashion.

17 And please ask folks to continue to be patient  
18 and don't have any conversation with anyone about the  
19 case, okay?

20 We'll see you back here at 9:00 o'clock tomorrow  
21 morning.

22 (The jury left open court at approximately 4:42  
23 p.m.)

24 THE COURT: All right. Anything we need to take  
25 up before we adjourn?

1 MR. GRAHAM: Your Honor, the State has one more  
2 witness. We should rest tomorrow morning.

3 And I need Ms. Zmroczek to provide me -- other  
4 than law enforcement, I need names and dates of birth and  
5 Social Security numbers to check potential rap sheets for  
6 witnesses.

7 MS. ZMROCZEK: Your Honor, every witness was on  
8 their witness list, except for one, Robin Campbell. You  
9 have her information. I will get that to you today.

10 THE COURT: Now, let me do this, though, just so  
11 that the record is clear, okay? We had talked off the  
12 record about the exhibits that were in and out and all  
13 this stuff. Let me make it clear and update -- the  
14 questions that we had regarded Number -- State's 54 and  
15 55, which were phone records. And I think you agree those  
16 were moved in, and so I've marked those.

17 MS. ZMROCZEK: I did.

18 (WHEREUPON, STATE'S Exhibit No. 55 was admitted  
19 into evidence.)

20 THE COURT: And then I had a question regarding  
21 numbers 48 through 52. And from what I can gather from  
22 what we have done here, 48, 49 and 51, along with 84, were  
23 entered into evidence earlier by stipulation. Okay.

24 So just so the State's clear, I have 50 and 52,  
25 State's 50 and 52 are not in evidence at this time. You

1 can look through and make sure. Again, we'll recap it.  
2 We'll do the same thing before we close. All right?

3 MR. HUBBARD: Thank you, Your Honor.

4 (The proceedings were concluded for the day, to  
5 be reconvened on August 29, 2013.)

6 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

7 VOLUME 3 OF 4

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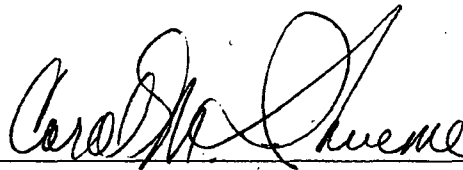
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1 CERTIFICATE OF REPORTER  
2  
34 STATE OF SOUTH CAROLINA )  
5 COUNTY OF LEXINGTON )  
6  
78 I, CAROL M. THUEME, RPR, Official Court Reporter for  
9 the 11th Judicial Circuit of the State of South Carolina,  
10 do hereby certify that the foregoing is a true, accurate  
11 and complete Transcript of Record of the proceedings had  
12 and evidence introduced in the trial of the captioned  
13 case, relative to appeal, in the Court of General Sessions  
14 for Lexington County, South Carolina, on the 28th day of  
15 August, 2013.16 I do further certify that I am neither of kin,  
17 counsel nor interest to any party hereto.  
18  
1920 March 21, 2014  
2122   
2324 CAROL M. THUEME, RPR  
25 Circuit Court Reporter

|                         |    |                           |
|-------------------------|----|---------------------------|
| STATE OF SOUTH CAROLINA | )  |                           |
|                         | )  | COURT OF GENERAL SESSIONS |
| COUNTY OF LEXINGTON     | —) | 2011-GS-32-02448          |
|                         |    | 2011-GS-32-02449          |
|                         |    | 2011-GS-32-02450          |

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|-------------------------|----|----------------------|
| STATE OF SOUTH CAROLINA | )  |                      |
|                         | )  |                      |
| vs.                     | )  | TRANSCRIPT OF RECORD |
|                         | )  | VOLUME 4             |
| SHAWN WILLIAM SHARPE    | )  |                      |
| DEFENDANT               | —) |                      |

August 29-30, 2013  
Lexington, South Carolina

B E F O R E:

HON. THOMAS A. RUSSO, Judge and a jury.

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Official Court Reporter

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1 THE COURT: Anything we need to take up before  
2 we start?

3 MR. HUBBARD: Your Honor, I understand the  
4 defense is going to stipulate to four exhibits, Exhibit  
5 62, 63, 64 and 67. These are summary charts, telephone  
6 summary charts.

7 THE COURT: Is that correct, Ms. Zmroczek?

8 MS. ZMROCZEK: Yes, Your Honor.

9 THE COURT: All right. Those are 62, 63, 64,  
10 and 67 in without objection.

11 Anything else?

12 MR. HUBBARD: No, sir, Your Honor.

13 THE COURT: Anything from the defense before we  
14 get started?

15 MS. ZMROCZEK: No, sir, Your Honor.

16 THE COURT: All right. Let's bring the jury  
17 out.

18 (The jury came into open court at approximately  
19 9:12 a.m.)

20 THE COURT: Good morning, ladies and gentlemen.  
21 Welcome back.

22 Before we get started today, I'm going to do a  
23 little something here if you don't mind.

24 Mr. Hardin, would you be so kind as to serve as  
25 the foreman for the jury? I will explain to you what this

1 entails.

2 Ladies and gentlemen, when a person serves as  
3 foreperson of a jury, the reason we do that, first of all,  
4 is because when you have a group of folks, it's much  
5 easier to deal with one individual if anybody on the jury  
6 has a question about anything, or whatever, and needs to  
7 address that question to the Court, it's much easier to  
8 just deal with one person on behalf of the whole jury as  
9 opposed to dealing with everybody individually. So the  
10 main role of the foreperson is to be a communication  
11 person between the jury panel and the Court. So at any  
12 time during the trial if there's any questions about  
13 anything or you need to ask me about anything, the  
14 foreperson would write that question out and pass it out  
15 to me and I would respond, either by writing back or  
16 bringing you back out as a panel and responding to it.

17 The other role that foreperson does is when you  
18 have a group of folks, it's always -- it's better to have  
19 one person to start and stop the discussion. Now, that  
20 doesn't mean that the foreperson has to begin the  
21 discussion, but you just have to be somebody who says,  
22 okay, let's go ahead and begin our deliberations.

23 I will tell you that when you deliberate,  
24 everyone must be present during the deliberations. So  
25 that if any member of the jury panel needs to excuse

1 themselves to use the restroom, or whatever, then the  
2 foreperson would stop the discussions, stop deliberations  
3 until that person returns, and then you can start back.  
4 And that's because everyone has to have the benefit of any  
5 conversations or any deliberations that go on. That's  
6 essentially the role of the foreperson.

7           When you do deliberate, and I will tell you now  
8 that in this and in all cases, your verdict must be  
9 unanimous. So because it needs to be a unanimous verdict,  
10 the foreperson's opinion or vote or thoughts carry no more  
11 weight than anyone else on the jury. You are all equal  
12 members of the jury. But it's just important, it's easier  
13 to have one person that the Court can look to in dealing  
14 with the jury.

15           So having said all that, would you be willing to  
16 serve in that capacity for me?

17           THE FOREPERSON: Yes, sir.

18           THE COURT: All right. And this is the only  
19 time I'll ask you to disrupt everything. If I could get  
20 you to come up and have a seat in this first chair.

21           And then, ladies and gentlemen, I didn't tell  
22 you this at first, I probably should have, but you all  
23 have been very good about it so it doesn't matter. I  
24 usually have to tell the jury because when they go out and  
25 come back in, if I don't say anything, many times

1 everybody is kind of crawling all over each other like you  
2 just had to do to get to the seat that they occupied when  
3 they were drawn on the jury.

4 Well, there's no assigned seating in the jury  
5 box other than the foreperson and the alternates. Those  
6 folks occupy the seats they're in. Everyone else just as  
7 you flow in and out of court, just sit naturally where you  
8 flow in and out. But you all have done that from the  
9 get-go, so that's great.

10 Now, when we adjourned yesterday, we were on the  
11 State's case and we're going to continue now and recognize  
12 the State for their next witness.

13 MR. HUBBARD: Thank you, Your Honor.

14 The State calls Detective Doug Novak.

15 DOUG NOVAK, after being duly sworn, testified as  
16 follows:

17 THE CLERK: Have a seat.

18 Once you're seated, state your full name,  
19 spelling your last on the record, please.

20 THE WITNESS: Douglas Novak, N-O-V-A-K.

21 DIRECT EXAMINATION

22 BY MR. HUBBARD:

23 Q Sergeant Novak. I called you as Detective Novak.  
24 What are your duties today?

25 A I'm sergeant over forensic services. I was promoted

1 August. I officially took over about August 6th of this  
2 year.

3 Q And that's with Lexington County Sheriff's  
4 Department?

5 A Yes, sir.

6 Q What do you do in that capacity?

7 A I oversee the drug lab, evidence, and CSI.

8 Q So all the stuff that we have been bringing in, all  
9 the physical items, you're in charge of that?

10 A Yes, sir.

11 Q All the guys that testified about what they did, CSI  
12 stuff, you're in charge of that?

13 A Yes. Now I am. At the time of this incident I was  
14 not.

15 Q That was my next question. What were doing back in  
16 September of 2011?

17 A I was a major crimes investigator.

18 Q We have heard a little bit about what major crimes  
19 investigation is. What do we mean by major crimes?

20 A Major crimes are basically crimes that are committed  
21 against a person, armed robbery, murder, assaults, violent  
22 crimes. As a major crime investigator, what my duties  
23 would be if I were assigned a case or called out to a  
24 case, I go out and interview people that are there that  
25 the road deputies already have on scene that have been

1 interviewed, re-interview them. Talk and canvas the  
2 neighborhood, what we call canvas, which means go door to  
3 door to neighbors, anybody in the area, find out what they  
4 know, what they heard, what they saw, what they didn't see  
5 and talk to everybody in the area. From there we  
6 re-interview, do search warrants, we do -- start looking  
7 at evidence statements and putting the puzzle, as  
8 Investigator Ross said before, put the puzzle together and  
9 put the pieces together so at the final outcome is where  
10 we are now.

11 Q Were you the lead investigator on this case? You've  
12 been sitting at our table.

13 A Originally no, I was not the lead investigator.

14 Q Were you involved in this case from the get-go?

15 A Yes, sir.

16 Q Now, about how many investigators were actually  
17 working this case at that time?

18 A When a major crime happens such as a murder, there is  
19 what you call the supervisor or the sergeants or a team  
20 leader. Everybody on that team will be involved. Each  
21 team has approximately four members to it, so you'll have  
22 each one of those four involved.

23 Since this happened at nighttime, we do need  
24 sleep, so you're going to have another team that comes in  
25 in the morning, so you could have up to eight

1 investigators that are working the case, or even more,  
2 depending what's going on, or less.

3 Q The original investigator, is he still with the  
4 department?

5 A No, he is not.

6 Q Is that why you got bumped up to take over this case,  
7 to help us?

8 A Yes, sir.

9 Q Since you've come aboard as the lead, about what time  
10 did the incident take place?

11 A The end of February, beginning of March, I believe.  
12 I'm not sure of the exact date.

13 Q What, if anything, in particular were you tasked with  
14 for our office?

15 A Cell phone records.

16 Q Specifically, did we ask you to actually go through  
17 all those records that we put in yesterday?

18 A Yes, you did.

19 Q How many companies were we having to deal with when  
20 it came to phone records?

21 A Two, Verizon and AT&T.

22 Q State's 54 and 55, are these the AT&T records?

23 A Yes, sir.

24 Q State's 53 and 56, are these the Verizon records?

25 A Yes, sir.

1 Q Now, Detective, looking at these records, there are  
2 just tons of phone numbers and other kind of numbers and  
3 lettering on these documents, page after page after page.  
4 Were you tasked with trying to figure out what in the  
5 world all this meant?

6 A Yes, sir.

7 Q And in doing that, were you able to compile a  
8 shorthand list of what we were looking for?

9 A Yes, sir.

10 Q And did you, in fact, do some summary boards for us  
11 to show us what information that we needed?

12 A Yes, sir.

13 Q And in doing these summary boards, where did you draw  
14 the information for all the stuff we see on these boards?  
15 And I'm holding, for example, State's 64, which says  
16 Charlie Plumley, and has his phone number.

17 A The numbers, like the daytime initiated number, the  
18 number dialed and tower section came directly from the  
19 records that were sent to us by in this case would be the  
20 AT&T carrier. They came right off the phone records. The  
21 final column which has names on it came from testimony,  
22 search warrants, looking at pictures and looking in  
23 databases through our jail system, through our records  
24 that law enforcement has to come up with associating names  
25 with phone numbers.

1 Q Let me get this straight. None of this information  
2 on these boards is something you just came up with on your  
3 own?

4 A No, sir.

5 Q There had to be a factual basis for it?

6 A Yes, sir.

7 Q As we sit here today, all the information -- and I  
8 count four boards -- is all this information contained in  
9 either the records I just had in my hands, photographs  
10 from telephones, information from phones, or testimony  
11 itself in this trial?

12 A Yes, sir.

13 Q All of this?

14 A Yes.

15 Q It's not opinion information?

16 A No, sir.

17 Q All right. I'm going to ask you to step down. We're  
18 going to look at some of these boards. If you could,  
19 stand on the far side and speak loud so our court reporter  
20 can hear you.

21 State's 64. Now, this board, which individual  
22 are we looking at as far as phone records?

23 A We're looking at Charlie Plumley, which his phone  
24 number is (803) -8598. I got that through testimony  
25 directly through Charlie from -- and other records that

1 are in evidence already, that you've already heard.

2 Q Let me ask you about his layout and why it looks the  
3 way it looks. Is this pretty much how the records are  
4 laid out?

5 A Yes.

6 Q You have date, time, initiating number. Is that --

7 A That's the person actually -- if you pick up your  
8 cell phone and I dial you, it's going to come up that I  
9 dialed you. If you call me, on the records it's going to  
10 show the opposite way around. That's your -- for example,  
11 on line 305, Angela Plumley called Charlie.

12 Q Now, we have white and green. What does that stand  
13 for?

14 A Green is the outgoing calls and white is the incoming  
15 calls.

16 Q Okay. I believe we've done that consistently  
17 throughout?

18 A Sir?

19 Q We've done that consistently throughout the boards?

20 A Yes, sir.

21 Q Right here where it says tower or sector, what are  
22 those numbers?

23 A Those are the tower locations that were put in by  
24 AT&T or when we get to Verizon, put in testimony. These  
25 will be the tower location. The first four numbers are

1 the tower number. The last number is your sector.

2 Q That's the little pie area that the engineer was  
3 discussing yesterday?

4 A Yes, sir.

5 Q Again, the last column where you have names, is that  
6 who -- what is that?

7 A These are names that associate -- if you look at the  
8 numbers, number dialed, the first one right here  
9 (803) -5429, through testimony, looking at pictures,  
10 search warrants, that number is established to Shawn  
11 Sharpe. As you go down the list, I can go down through  
12 each one of them. The next one --

13 Q Use the laser. Step back so you --

14 A I'm dangerous with lasers.

15 Q That's all right. Just don't hit me in the eyes.

16 A Okay. I'm going to start from the first.

17 Through testimony it was said and in statements  
18 it was said that Charlie got his phone that night from a  
19 black female that he considered a crack head at Rose's  
20 house. The first number on here that was called, if you  
21 recall was, he said that he called Shawn's number to  
22 determine what his phone number was from that phone.  
23 That's where Shawn comes in.

24 The reason I do not have anything prior to this  
25 entry right here, I can't figure out from that time on

1 whose phone numbers those are.

2 Q Let me ask you this. This starts at 8:39 p.m., this  
3 record. Now most phone records, you'd just have  
4 arbitrarily picked a time that we were looking at,  
5 correct?

6 A Yes, sir.

7 Q 8:39 here, why is that significant to you?

8 A The time of the day in listening to the testimony, it  
9 comes in nighttime. When the phone is put into Charlie's  
10 possession, he gets it from a black female at Rose's house  
11 which comes up very significant to me for the time that's  
12 been testified for when he came in custody of this phone.

13 Q Okay. Let me ask you this. If you step back just to  
14 make sure they can see.

15 State's Exhibit 73, this is Charlie's phone,  
16 correct, the one he bought?

17 A Yes, sir.

18 Q This is the one he said he got from somebody,  
19 correct?

20 A Yes, sir.

21 Q Now, did you all actually go on to this phone as  
22 well?

23 A Yes, we did.

24 Q And that was represented in these photographs, was it  
25 not, State's Exhibit 27 and others?

1 A Yes, sir.

2 Q When you look at contents, what, if anything, did you  
3 see?

4 A The contents that were on there were contacts and the  
5 contacts that were put into his phone had Shawn's number  
6 in there; Debra, his mother's number in there; Angela's  
7 number in there; I believe "Chuc" D's number in there. He  
8 had erased all the other contacts to whoever the phone  
9 belonged to and had his family members or his friends as  
10 the contacts.

11 Q Now, most cell phones also have another set of  
12 information in them about call history, who you call, who  
13 you receive calls from. Was that on this phone as well?  
14 Did you see any names that you didn't realize or recognize  
15 on the phone?

16 A No.

17 Q Okay. Now, in looking at the records that we got on  
18 this phone, did you see names before this time, names that  
19 had no bearing whatsoever in the investigation of this  
20 case?

21 A No, sir.

22 Q Names of anybody that had no bearing?

23 A I didn't recognize -- none of the numbers that were  
24 prior to this time here were anybody that I recognized  
25 that were in play here.

1 Q Let me ask another question. Did you see numbers  
2 that had no bearing prior to this time?

3 A Oh, there were plenty of other numbers on there.

4 Q In the call history?

5 A Yes.

6 Q That's what I was getting at. So it only becomes  
7 apparent around 8:39 that this phone is being used by  
8 Charlie Plumley?

9 A Yes, sir.

10 Q And the date is what date?

11 A September 21, 2011.

12 Q Now, the first call you pointed out again is to who?

13 A Shawn Sharpe.

14 Q Now, who is Debra Plumley?

15 A That is Charlie's mother.

16 Q Raymond Plumley, Sr.?

17 A That is Charlie's father.

18 Q Angela Griffin Plumley?

19 A His wife.

20 Q Michael Sharpe?

21 A That is Shawn Sharpe's brother and friend of  
22 Charlie's.

23 Q And I notice in parentheses it says "Chuc" D.

24 A That's his street name.

25 Q Is that how it was in the phone?

1 A Yes.

2 Q Danny, who is Danny?

3 A Danny is Charlie's brother.

4 Q And it says Patsy on the side. What's up with that?

5 A Testimony has come up that Danny was using Patsy's  
6 phone that night and for other times. And if you look  
7 through the records and different text messages off of  
8 Danny's original phone, it shows his phone was dropped in  
9 water and no longer used. It's in one of the phone  
10 extractions.

11 Q So let me back you up.

12 So Danny at this point is no longer using the  
13 phone that he used to have?

14 A No, sir.

15 Q So he's using another phone, too, now?

16 A Yes, sir.

17 Q And when it says Patsy, is that whose phone he's  
18 using?

19 A Yes.

20 Q Who is Patsy?

21 A Patsy is the next-door neighbor.

22 Q These Verizon records, State's 56 and 53 that we  
23 have, are these records on her phone?

24 A Yes, sir.

25 Q When you see calls from Charlie to that number, it's

1 to Danny?

2 A Yes, sir.

3 Q Who is Phil?

4 A Phil Helms. That's where they borrowed the truck  
5 from the night of the incident.

6 Q Is that where the meth house was?

7 A Yes, that's a meth house.

8 Q I think that's all the names on there.

9 And is this the time and sequence in which these  
10 folks were called or they called Charlie?

11 A I'd note one other thing on here. If you look -- and  
12 from testimony you talk -- Charlie said about 10:30 --

13 Q I was about to get to that part right now. But this  
14 is the sequence?

15 A Yes.

16 Q Now let's go and talk about, roughly what time was  
17 this crime committed?

18 A Roughly 10:30. The 911 call came into our dispatch  
19 at -- I believe it was 10:37.

20 Q Let me ask you something. There was some talk about  
21 Danny calling Rose sometime around ten-ish?

22 A Yes, sir.

23 Q You see a call at 10:05 here.

24 A Yes, I do.

25 Q Is that a call to or from an individual?

1 A That is -- this 10:05, Charlie is calling Danny.

2 Q So if Danny makes a call, the next thing you know  
3 Charlie, who testified yesterday, is calling his brother?

4 A Right.

5 Q That's at 10:05. This murder is roughly at what  
6 time?

7 A We got the 911 call about 10:37, so approximately  
8 from Charlie's and everybody's estimate, about 10:30,  
9 10:33, somewhere around that time.

10 Q The next call for him is at what time?

11 A 10:36.

12 Q And who is he calling or is he calling somebody?

13 A Charlie is the initiating number and he is at 10:36  
14 calling his brother Danny. And as you recall from  
15 testimony, that's when he's calling and asking Danny to  
16 come pick him up after this has happened.

17 Q What's the implication for you as an investigator --  
18 if he's calling somebody to pick him up from a crime  
19 scene, what's the implication as to Danny?

20 A He was not at the crime scene. He was not there.

21 Q Now, Shawn Sharpe, up here what's the last call up on  
22 the early part of the day, and when I say early part, up  
23 here at the top, at 9:21, at 9 o'clock a.m., is that a  
24 call to Shawn Sharpe?

25 A That's actually Shawn Sharpe calling Charlie.

1 Q Okay. So there's communication between those two  
2 there?

3 A Yes, sir.

4 Q When is the next time there is communication between  
5 Shawn Sharpe and Charlie Plumley?

6 A At 12:48 a.m. And it's Shawn Sharpe calling Charlie.  
7 And if you --

8 Q All right. Let me ask you this. So that's almost 1  
9 o'clock in the morning?

10 A Yes, sir.

11 Q November (sic) 22nd, this is after the murder,  
12 correct?

13 A Yes, sir.

14 Q All throughout the day they're not calling one  
15 another, are they?

16 A No, sir.

17 Q It's only early in the day before the murder, say  
18 early, about an hour or so before the murder, correct?

19 A Right, yes, sir.

20 Q And then 12:48. Where -- by evidence presented,  
21 where is Shawn Sharpe around midnight?

22 A Around midnight he goes -- I go to the time frame --  
23 around midnight he's being dropped off or on the way back  
24 to his girlfriend, Ashley Vasquez's house.

25 Q Okay. So all throughout the day they're not calling

1 one another and then it's around midnight or after  
2 midnight he's at his girlfriend's house?

3 A Yes, sir.

4 Q Testimony is he's dropped off?

5 A Yes, sir.

6 Q And then there's more calls to Danny using Patsy  
7 Anz's phone?

8 A This, if you recall from testimony, Charlie and  
9 Angela got dropped back off at Phil Helms' house. They  
10 called -- if you look at the phone number here, initiating  
11 calls, they are calling -- Charlie is calling Danny to  
12 come back over to Phil's and pick them up after they were  
13 dropped back off over there.

14 Q And there's multiple calls -- was there testimony  
15 that they got dropped off several times?

16 A Yes.

17 Q Okay. And then we end this at what time?

18 A 8:18.

19 Q That's the following morning?

20 A Yes, sir.

21 Q What's happening that following morning on  
22 November (sic) 22?

23 A We've got the information and we were outside the  
24 Plumley's house.

25 Q So Charlie's getting arrested about that time?

1 A About that time, give or take.

2 Q Now, all this stuff we're seeing here, is this phone  
3 calls or phone calls and text messages?

4 A This one right here are phone calls.

5 Q All phone calls?

6 A Yes, sir.

7 Q No texting?

8 A No, sir.

9 Q I want you to look at State's 66. And I think you've  
10 got a pointer either in your pocket -- there you go.

11 Now using the sectors, can you tell us where --  
12 what sector Shawn Sharpe is calling and where he is  
13 sector-wise using State's 66?

14 A This is Charlie's phone records, so this would be  
15 where Charlie is at this point in time.

16 Q I'm sorry. I had it backwards.

17 A Tower number 2451 is here. See how it says 2451.  
18 The first four digits is the tower number. The last one's  
19 going to be the sector. The fifth number in this time is  
20 sector two. So it's somewhere in this beige/tan color.

21 Q And we see there's some bleeding out going out  
22 Blackville Court Road with that sector; is that right?

23 A Yes, sir.

24 Q Okay. And whereabouts is Charlie at about 2:05?

25 A He's on tower 2451.

1 Q Right here?

2 A Which is here in sector 1. So he could be anywhere  
3 in that red section.

4 Q Where is Victor Road where the crime scene is?

5 A Victor Road is right there. I'm sorry, my hand's a  
6 little shaky. Right here is Victor Road.

7 Q 10:36 when he makes that call to his brother, where  
8 is he, what sector?

9 A He is in 2451, tower 2451, sector 1.

10 Q Okay. So he's in this sector at that point?

11 A Yes.

12 Q And again, is that same sector right on the line with  
13 Victor Road?

14 A Yes, it is.

15 Q Now, Phil's house, where is Phil's house on this  
16 board?

17 A Phil's house -- here is Blackville Court right here.  
18 Phil's house is -- not a very, very long street. It's  
19 right -- when you make the left on -- the right on  
20 Blackville Court, it's the first or second double wide or  
21 house on the right.

22 Q And basically in a two-sector area, one from this  
23 tower and over in this tower kind of catches it a little  
24 bit?

25 A Yes, sir.

1 Q Let's look at Shawn Sharpe. What number was Shawn  
2 Sharpe using?

3 A (803) -5429. And I know that through testimony  
4 through court, through evidence that's put in, he's given  
5 that number to investigators as being that number, mom has  
6 given it to us as being his number, phone dumps has put it  
7 down with his contacts and his family members as being his  
8 phone number and being his phone.

9 Q State's Exhibit 78, is this the actual phone?

10 A Yes, sir.

11 Q So this is the phone where all this information comes  
12 on this chart?

13 A That was the phone that Investigator Chappell took  
14 off of Shawn Sharpe the night he was arrested.

15 Q So it's actually in his pocket when he got arrested?

16 A Yes, sir.

17 Q No one else had that phone?

18 A No, sir.

19 Q Now, I notice there is a lot more activity here.  
20 When did you start this chart?

21 A I started approximately the same time as Charlie's  
22 was started. He got -- it's a little bit smaller because  
23 there's a lot more activity on his phone. You got the  
24 initiating number which is Charlie's phone, 409-8598,  
25 going to Shawn Sharpe. If you look records that's

1 coinciding to the time, that's through testimony is when  
2 they're checking to find out what the phone number was.

3 Q Now, let me ask you this: I see a new color here, a  
4 pinkish-cinnamon red?

5 A Those are text messages.

6 Q I'm given it kind of -- it's pink or red.

7 All right. So you got multiple colors. Is the  
8 white and green consistent with what's going on on this  
9 chart?

10 A Yes, sir.

11 Q All right. So when we see this pink color, that's  
12 texting?

13 A Yes, sir.

14 Q Now, starting through the day, who's the first name  
15 up at the top that either he's calling or he's getting a  
16 call from?

17 A We'll start with the first number. That initiated  
18 call was 409-8598, which through the record is Charlie  
19 Plumley's phone number. And it shows Charlie calling  
20 Shawn Sharpe at 8:48. At 8:49 p.m., the next call was  
21 Shawn Sharpe, phone number (803) -5429 who was calling  
22 -0722, which is Michael Sharpe a/k/a "Chuc" D, who is  
23 his brother.

24 Q Okay. Now, who is Ashley Vasquez also known as Taco?

25 A That is Shawn Sharpe's girlfriend.

1 Q Are those text messages here?

2 A Yes, sir.

3 Q And then a phone call to Michael Sharpe?

4 A Yes.

5 Q And then you see some phone calls to Taco as well?

6 A Yes, sir.

7 Q The time of this crime is when?

8 A Approximately 10:30. We got the call at 10:37, so  
9 usually put a couple of minutes before that for the call  
10 to get to us.

11 Q Let's go down to this line item 3960.

12 A Yes, sir.

13 Q The last text was to who?

14 A His girlfriend, Ashley Vasquez.

15 Q This is at what time?

16 A 10:10 p.m. on September 21, 2011.

17 Q After this initial call at 8:45 with Charlie Plumley,  
18 is there any contact by phone between Shawn Sharpe and  
19 Charlie Plumley?

20 A No, sir.

21 Q Now, when we get down to 10:10, that's the last text  
22 to Taco, correct?

23 A Correct.

24 Q I see times here 10:23, 10:23, 10:34, but I don't see  
25 any activity and their names and tower. What's going on

1     there?

2     A     This line here when looking at the records, it says  
3     it was call forwarded. So usually what happens on that,  
4     if you have a phone -- like I have a phone and if it goes  
5     off right now, I have it turned off. If it goes off, I  
6     push a button that automatically sends it to voice mail.  
7     These two here never went through. That's why you don't  
8     have any tower information. The phone was off or not in  
9     use at that time.

10    Q     But all this other time it's being used?

11    A     Yes, sir.

12    Q     At that time -- now, the murder obviously you say was  
13    about what time?

14    A     10:30.

15    Q     So from 10:23 -- or actually from 10:10 to 10:45,  
16    there's no phone activity on Shawn Sharpe's phone?

17    A     No.

18    Q     And this is the phone that was found on him?

19    A     Yes, sir. And if you look at this, these are numbers  
20    that are trying to call him. These aren't where he's  
21    picking up the phone and calling somebody else. This is  
22    somebody that I could not identify who that number  
23    belonged to that was calling him.

24    Q     So he's unavailable around the time of the murder; is  
25    that correct?

1 A Yes, sir.

2 Q The first call immediately after the murder is what  
3 time?

4 A 10:45 p.m. from Shawn Sharpe's phone number, which is  
5 210-5429 to (803) -0722, which is his brother, Michael  
6 Sharpe.

7 Q According to the testimony, who did Shawn Sharpe call  
8 right after this murder when they're in the car?

9 A His brother, Michael Sharpe, "Chuc" D.

10 Q The purpose for which?

11 A Let's figure out what to do with the gun.

12 Q Are there more than one call?

13 A There are multiple calls.

14 Q And a text?

15 A Yes, sir.

16 Q There's one text to Ashley Vasquez. About what time  
17 is that?

18 A 11:36 p.m., and that was Ashley texting him.

19 Q Now, I see some phone calls to and from them. What  
20 times are we talking about there?

21 A You got 11:42, 11:45, 11:48, 11:48, 11:49.

22 Q And then once you get to 11:52 --

23 A Yes, those are numbers I could not determine whose  
24 numbers they were or they weren't pertinent to evidence.

25 Q During this time period right around midnight, who is

1 he not calling then?

2 A He's not calling Charlie Plumley.

3 Q Who else is he not calling?

4 A Taco.

5 Q Where was he by testimony around midnight?

6 A He was then dropped off at Taco's house.

7 Q He's sitting in her house, he doesn't need to use his  
8 phone to call her?

9 A No, sir.

10 Q He doesn't need to text her?

11 A No, sir.

12 Q Now, this goes on to what time?

13 A 9:22 in the morning.

14 Q And that was just kind of an arbitrary cut there?

15 A Yes.

16 Q Now, he's arrested later in the day on the 22nd?

17 A Much later.

18 Q So it's dark?

19 A It's evening time by the time he's arrested.

20 Q Okay. So it's almost 24 hours after the incident?

21 A Yes, sir.

22 Q Okay. Now, tower sectors. At the time right before  
23 this murder, at 10:10, what tower is that?

24 A He's in 2451 tower, sector 1.

25 Q And again, this is where Victor Road is?

1 A Yes, sir, it's right on the line.

2 Q That is 10:10?

3 A Yes.

4 Q Looking at Charlie Plumley, where is he at 10:05?

5 A 24511, same sector, same tower.

6 Q 10:36, where is Charlie going?

7 A He is in -- he's in sector 1 -- I mean tower number  
8 24511 and he's moving to --

9 Q I moved it out of your way.

10 A He's now moving to tower number 2201.

11 Q Which is up here?

12 A Which is up here. And it looks like sector 3 on  
13 that.

14 Q Okay. If you look at the sectors with Charlie and  
15 with Shawn, at the time there's no phone calls between  
16 them, do they correlate?

17 A Yes, sir.

18 Q So they're following one another in these same  
19 sectors?

20 A Yes.

21 Q And these sectors also follow the hotel we heard  
22 about?

23 A Yes, sir.

24 Q That's closer towards Columbia?

25 A Yes.

1 Q So if the jury wants to find out where these guys  
2 are, they can look at the sectors, we just go back over to  
3 the AT&T boards?

4 A Right.

5 Q Both of these phones are AT&T phones?

6 A Yes.

7 Q And these are the AT&T sector maps, correct?

8 A Yes, sir.

9 Q Okay. Now I want to look at -- is there something  
10 else we need to point out on sectors?

11 A Yes. The testimony shows after the crime that they  
12 went to the Pit Stop, the McDonald's, and the hotel. As  
13 you follow the sectors at those times, you will see the  
14 phones going through different sectors to get to where  
15 they're at.

16 The hotel is located in -- the hotel on Airport  
17 Boulevard is right up here in 24953 or 52. That's right  
18 here near the line, too. So you'll see that. The Pit  
19 Stop is located -- the McDonald's is here on I-26 at exit  
20 119, I believe is the exit number, and the McDonald's is  
21 right about here. As you go through the phone records,  
22 you'll see where they're coinciding with each other.

23 Q Let's do this. Let's look at Danny's cell.

24 State's 62, now what phone company does this  
25 information come from?

1 A Verizon.

2 Q These charts that we saw yesterday, State's 60 and  
3 61, that Lieutenant Scott McDonald testified about, what  
4 company do these correlate with?

5 A Verizon.

6 Q And what phone are we looking at?

7 A This is Danny's phone, which is 803- -2114, which  
8 is Patsy.

9 Q Is this the Patsy Anz that we heard about yesterday?

10 A Yes.

11 Q The phone that he was borrowing?

12 A Yes.

13 Q Or using?

14 A Yes.

15 Q Now, looking at that, we've still got the same color  
16 scheme; is that correct?

17 A Yes, sir.

18 Q Any texting?

19 A No texting.

20 Q Still have the same break down time, initiating  
21 number, dialed number, cell site?

22 A Yes, sir.

23 Q Now, I notice their tower numbers are different. Is  
24 that because it's a different company?

25 A Different company, the way they number their towers.

1 Q All these names we have from the far column closest  
2 to you, the right-hand side, where do those names come  
3 from?

4 A From testimony, from pictures, from phone  
5 extractions, from evidence that's put in -- been put in.

6 Q Now, who is Danny Plumley's mother?

7 A Debra Plumley.

8 Q What's the first name you see up here at 7:24 p.m. on  
9 September 21?

10 A Debra Plumley.

11 Q Do you see multiple calls to and from Debra Plumley?

12 A Yes.

13 Q What's the next name you see?

14 A Michael Sharpe.

15 Q Then Debra Plumley again?

16 A Debra Plumley again. Michael Sharpe. Charlie.

17 Q So Charles Plumley's first call is at what time?

18 A 10:06.

19 Q P.M.?

20 A Yes.

21 Q Does that correlate with Charlie's phone records with  
22 Danny?

23 A Yes, it does.

24 Q What is the next call at 10:36?

25 A 10:36 is from Charlie to Danny.

1 Q So at 10:06, Charlie calls Danny. And at 10:36,  
2 Charlie calls Danny?

3 A Yes.

4 Q Who did Charlie call to come pick him up right after  
5 the murder?

6 A Charlie. I'm sorry, Charlie called Danny.

7 Q Okay. Don't need another Charlie.

8 All right. Then you see phone calls with who  
9 right here at 1:21 a.m., who is that?

10 A Shawn Sharpe.

11 Q So that's after midnight?

12 A 1:21, yes, a.m.

13 Q So from 10:36, the first call that Charlie made after  
14 the murder was to Danny?

15 A Yes, sir.

16 Q Right?

17 A Yes, sir.

18 Q Right after that there's some phone calls to Shawn  
19 Sharpe. What time is that?

20 A 12:13 and 12:18. That would have been after he was  
21 dropped off at his girlfriend's.

22 Q What did Charlie say Danny did after he dropped Shawn  
23 off and after he dropped Charlie later in the day?

24 A His brother Danny ended up going back over to Shawn  
25 Sharpe and getting some more crack off of him.

1 Q Okay. I don't want to interrupt. What were you  
2 going to say?

3 A This phone call here at 10:36 p.m., and you might be  
4 getting to this, testimony has it when Charlie called his  
5 brother Danny, he was on the way to Wal-Mart, the Red Bank  
6 Wal-Mart.

7 MS. ZMROCZEK: Objection, Your Honor, that's  
8 hearsay. Charlie has not testified to that.

9 MR. HUBBARD: We're getting to it.

10 THE COURT: All right. Ladies and gentlemen,  
11 what I'm going to do is I'm just going to rule that,  
12 ladies and gentlemen, you have to go by your recollection  
13 on the testimony of the witness. Obviously, you're the  
14 ones that are going to decide the facts between the  
15 witnesses.

16 BY MR. HUBBARD:

17 Q All right. State's 61, State's 62, what are these?

18 A These are the cell tower locations -- this is where  
19 Lieutenant McDonald drew up a map from Verizon's phone,  
20 the records that he got from Verizon to put the tower in  
21 and sector locations.

22 Q Okay. Now, specifically I want to go to the phone  
23 call at 10:36, which is right after this murder when  
24 Charlie calls Danny. What cell tower is he calling on?

25 A He's on cell tower nine, which is this tower here in

1 sector 1, which is the highlighted area.

2 Q Where is the murder site on State's 61?

3 A Right here, Victor Road, which would have been  
4 another tower in a different sector.

5 Q Looking at State's 60, is this a blowup of that tower  
6 nine?

7 A Yes, sir.

8 Q The murder site's listed on here?

9 A Yes, sir, Victor Road.

10 Q What is shaded in blue? What is that?

11 A That is the area, the sector area, which is sector 1  
12 of cell tower number 9 that Danny's phone was somewhere in  
13 that sector right there and it was not at Victor Road.

14 Q As an investigator, looking at whose involved, who  
15 might be charged, what did this tell you about Danny?

16 A He was not at the murder scene.

17 Q Did Danny get arrested in this case?

18 A Yes, he did.

19 Q And charged with what?

20 A Accessory after the fact to murder.

21 Q And the reason for that was?

22 A He went and picked up Charlie, Shawn and Angela after  
23 the murder. He had knowledge of what happened and he  
24 assisted them in covering up what had happened.

25 Q Now, let me ask you this. You're subjective looking

1 at everything. Do you have any suspicious whether he was  
2 involved prior to that?

3 A Prior to? I got suspicions.

4 Q Do you have any evidence?

5 A No evidence.

6 Q Now, yesterday for the first time, or yesterday we  
7 heard Charlie mention that his brother knew there was  
8 going to be an armed robbery. Prior to his testimony had  
9 he ever get let you know that?

10 A No, sir.

11 Q What information did we have about Danny's  
12 involvement coming in here yesterday?

13 A That Danny was call at 10:30, around 10:30 to come  
14 pick up Angela, Shawn and Charlie from Phil Helms' house  
15 after the murder had taken place.

16 Q So when Charlie said Danny was involved or knew what  
17 was going on prior to this, when he said that yesterday,  
18 was he helping or hurting his brother?

19 A He was hurting his brother.

20 Q He wasn't protecting his family?

21 A No, he was not.

22 Q Let me show you one more chart, 67. What is this  
23 chart?

24 A There is a chart that if you look on the top, you  
25 have Shawn Sharpe's phone number, which is (803) -5429,

1 Charlie Plumley's number at the time in the center, and  
2 Charlie Plumley's phone number which is (803) -8598.  
3 This call here, you see the tower information and sector  
4 numbers. Same thing that goes on Charlie's side, the  
5 tower and sector numbers. Here are the time the phone  
6 calls came through. And you can go through the first two  
7 charts of Danny and Sharpe's phone calls and that's how we  
8 came up with the phone numbers here.

9 The white section, when you see phone numbers  
10 here where the brown is, those are phone calls being made  
11 by Shawn Sharpe. There are no phone calls being made  
12 during that time from Charlie's phone.

13 Q Let me slow you down a little bit. If I can get this  
14 pointer to work now.

15 Looking at Shawn Sharpe's column, this tannish  
16 color, Charlie's column, when he is making phone calls,  
17 what color are we seeing?

18 A I call that a tan.

19 Q Okay. Does that correlate with State's 66 and  
20 State's 65 as far as the way we have color coded the AT&T  
21 map?

22 A Yes, it does.

23 Q So when we see the tan and it has a sector number, it  
24 correlates with the tan sector number we see on this map  
25 over here?

1 A Yes, sir.

2 Q And again, if you go through this time, there's no  
3 phone activity between these two, correct?

4 A The only phone time between the two of them would  
5 have been that 8:48 one, which was the initial -- let me  
6 make sure I got the right time.

7 Q It's 8:00 something, correct?

8 A Yes, was the initial phone call between the two of  
9 them, figuring out what the phone numbers were.

10 Q All right. And at some point you see a little bit of  
11 green. Is that this green over here, 220113?

12 A Yes, sir.

13 Q And then what color do we see it go back into?

14 A 24512, which is the tan -- gray -- the tannish color.

15 Q Who lives over in this area?

16 A Phil Helms.

17 Q We see this cinnamon color we were talking about with  
18 Shawn Sharpe. What tower is that?

19 A 2451 in sector 1, which is here.

20 Q Again, is this Victor Road on this map?

21 A Yes.

22 Q So it's right between 2451 and 24512?

23 A Yes.

24 Q And again, does this State's 67 show that they're in  
25 the same sector?

1 A Yes.

2 Q Charlie and Shawn?

3 A Yes.

4 Q At the time of the murder, from 10:23 to 10:34, no  
5 activity?

6 A That's correct.

7 Q First phone call's at what time?

8 A 10:36.

9 Q By who?

10 A By Charlie.

11 Q Then do we see them get back into the tan area?

12 A Yes, sir.

13 Q Which is again 24512?

14 A Yes, sir.

15 Q Where did these fellows live?

16 A The Plumleys live in -- off of Highway 6, which would  
17 be right about here, Pelion Road, which is in 24511. You  
18 want me to go through each person?

19 Q No, no, no. That's fine.

20 They don't go immediately home, though, do they?

21 A No.

22 Q That's what I'm getting at. Then you see some new  
23 colors right here?

24 A Yes.

25 Q Are they still running together?

1 A Yes, sir.

2 Q And do those correlate with State's 65, going to the  
3 hotel, going to Pit Stop, and all that?

4 A Yes, sir.

5 Q Now, what time again -- I know you said it before.  
6 What time did Shawn Sharpe get dropped off?

7 A Sometime after midnight. Around midnight. Somewhere  
8 right around here.

9 Q Where is -- looking at map 66, where is Taco's house?

10 A Taco's house is Mimosa Drive, which is here. Then it  
11 comes over to -- her house is right around here somewhere.  
12 Can't get exact on this, but it's on the Fish Hatchery  
13 side.

14 Q And you see these colors correlate with what we're  
15 seeing at that time?

16 A Yes. If you look at the towers, they're bouncing off  
17 of two towers, which is 24293 and 21972, because again,  
18 Taco's -- Ashley's residence is in a dual sector area.

19 Q And Charlie, is he in a completely different sector  
20 at that point?

21 A He's back in 2451, sector 2.

22 Q So at this time they have split up?

23 A Yes.

24 Q So looking at 67, you've got these guys tracking  
25 together basically all day or at least from 8:40, 8:39 on

1 through the murder?

2 A Yes.

3 Q To roughly about midnight?

4 A Yes.

5 Q Does that correspond to the testimony and the  
6 evidence that we've been presenting?

7 A Yes, sir.

8 Q Were you going to point something out?

9 A No, sir.

10 Q Okay. Didn't want to stop you.

11 MR. HUBBARD: Beg the Court's indulgence, Your  
12 Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. HUBBARD: Your Honor, that's all that I have  
16 at this time. If you'll answer any questions the defense  
17 has.

18 THE COURT: All right. Come back and have a  
19 seat for cross-examination.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Good morning, Detective Novak. You were present  
23 yesterday when both the engineers testified as to the  
24 general and approximations of those colors on their  
25 charts, correct?

1 A Yes, sir.

2 Q You've been to the Gaston area?

3 A Ma'am?

4 Q You have been to the Gaston area?

5 A Yes, ma'am.

6 Q Phil's house isn't that far from Rose's house, is it?

7 A No, ma'am.

8 Q Everything in Gaston is kind of clumped together in  
9 different areas. It's a lot of nothing, but the areas  
10 that are populated are clumped together, correct?

11 A It's a rural area, but you get places where there's  
12 homes and then there's places where it's farm land.

13 Q Let's pull out this little chart one more time. It  
14 looks like it's missing a few numbers based on the  
15 testimony and the evidence that's been provided.

16 These are the pictures from Charlie's phone that  
17 he identified yesterday. Well, these are the State's. I  
18 don't know where the defense went. They're right here.  
19 All right. Bear with me a second.

20 I'm showing you what's marked Defense  
21 Exhibit 55. What number is that? What telephone number  
22 is that?

23 A (803) -5857.

24 Q And that phone number, that phone was identified  
25 yesterday as being the phone of Charlie Plumley, he

1 identified that. What's the contact associated with that?

2 A Sever.

3 Q Could it be serve? Is that one letter off of serve  
4 spelled incorrectly?

5 A Yes.

6 Q And that number again was what?

7 A (803) -5857.

8 Q -5857. And on that picture I think that reflects  
9 a 5:00 o'clock phone call?

10 A 5:01.

11 Q 5:01. But it also -- if you want to come down.

12 A Thank you.

13 Q If you look at call number 324, what number is that  
14 associated with?

15 A Sever.

16 Q So you have serve or sever called at 1:12 and at  
17 5:01, correct?

18 A Correct.

19 Q Okay. So we can fill in a few more of those blanks.

20 You can have a seat.

21 Tell me, how many years before you started CSI  
22 were you working the field?

23 A Sorry, ma'am?

24 Q Before you started working at CSI, how many years  
25 were you in the field in major crimes?

1 A Approximately three years..

2 Q Serve is the name for a drug receiver?

3 A I'm not familiar with that.

4 Q But I believe that's what was in testimony.

5 You had a lot of involvement in this case,  
6 correct?

7 A I started off involved in it, got out of it,  
8 Derrenbacher was the lead, then I was brought into it  
9 approximately March of this year.

10 Q When were all of these numbers subpoenaed, downloaded  
11 and charted?

12 A Ma'am?

13 Q When were all of these numbers subpoenaed? This  
14 information with the maps and the numbers did not become  
15 available until this month, correct, or were not generated  
16 until this month?

17 A The charts that I just did? I generated them in the  
18 last week or so.

19 Q Let me ask it this way: You never used these as an  
20 investigatory tool to find out where people were?

21 A I used -- when I went through the phone records, it  
22 would be telling me where people were, yes.

23 Q And you did that after everyone was in jail for two  
24 years, almost two years?

25 A Yes.

1 Q Okay. Also, on the phone records -- let me make sure  
2 I have the little chart here -- we have the Cellebrite,  
3 it's Defense Exhibit 60.

4 A Yes, ma'am.

5 Q And that reflects the phone examination from Angela  
6 Plumley?

7 A Yes, ma'am.

8 Q And in there you will see text messages, right?

9 A Yes, ma'am.

10 Q And conversations?

11 A Yes, ma'am.

12 Q And then you also find contacts. What are the two  
13 phone contacts listed for Phil?

14 A For Phil? You have 529-3356 and 509-2768.

15 Q 2768?

16 A 2768.

17 Q And you have Phil's cell phone listed on here,  
18 correct? We assume the other one is a home number?

19 A Yes, I have.

20 Q Okay. You can set those down. We don't need to use  
21 them right this second.

22 In Danny's phone, and I think in this extraction  
23 report, number -- or it's Patsy's phone really, correct?

24 A Yes.

25 Q It's Patsy's phone --

1 A That Danny was using.

2 Q Danny was using it. Was Patsy using it also?

3 A Yes.

4 Q Did she have two phone numbers associated with that  
5 phone?

6 A I don't follow you.

7 Q There's only one phone number associated with one  
8 phone. So if two people are using it, they have to be  
9 together, correct, or drop it off?

10 A Not necessarily.

11 Q Explain to the jury how two people can use that  
12 phone.

13 A Two people can use it?

14 Q If they're not together.

15 A You let the other person use your phone.

16 Q Right. But if they're not together then how are they  
17 using it? One has the phone, one doesn't?

18 A Oh, if they're not together they're not both using  
19 it.

20 Q So that was my question.

21 A Okay.

22 Q So if you look at his phone records, or her phone  
23 records, and you'll find text messages and contacts and  
24 incoming calls. Were you able to correlate -- the  
25 testimony was that he called Rose at 10 o'clock?

1 A Give or take.

2 Q And where does that show up on his chart here? Which  
3 number would be associated with that Rose?

4 A May I step down?

5 Q Please.

6 THE COURT: Yes, sir.

7 THE WITNESS: You pointing to the 10 o'clock  
8 call?

9 BY MS. ZMROCZEK:

10 Q He said he called her at 10 o'clock.

11 A This would reflect in this one.

12 Q And that was the testimony, right, that he called her  
13 at 10?

14 A I believe so, yes.

15 Q Okay. You recognize this number up here?

16 A Yes.

17 Q Whose number is that?

18 A If you're saying -- that's Rose's number.

19 Q So he also called her at what time?

20 A 8:28.

21 Q Okay. So there are a few gaps in here that are  
22 missing names that we have numbers that are associated  
23 with them?

24 A Uh-huh. Yes, ma'am.

25 Q Okay. I was just trying to clarify that I wasn't

1 missing something. You can have a seat.

2 Tell me about the interviews that you took in  
3 this case. When you first started investigating, tell the  
4 jury with whom you spoke with?

5 A Patsy Anz.

6 Q How many times did you speak with Patsy Anz?

7 A I believe twice.

8 Q As a result of your conversations with Patsy Anz,  
9 when did you arrest Patsy Anz?

10 A I think she ended up being arrested about 3:00 or  
11 4:00 that afternoon.

12 Q On September 22?

13 A Yes, ma'am.

14 Q And you arrested her and charged her with accessory  
15 to murder?

16 A She was arrested for accessory, yes.

17 Q And that was based on information that you received,  
18 right?

19 A Yes.

20 Q You had probable cause to arrest people?

21 A Yes..

22 Q So the probable cause that you had to arrest Patsy  
23 based on your investigation was what?

24 MR. HUBBARD: Objection, Your Honor.

25 Your Honor, may we approach?

1 THE COURT: Yes, come on up.

2 (A bench conference was held with the judge and  
3 attorneys in the presence of the jury but out of the  
4 hearing of the jury.)

5 THE COURT: All right. Sustained.

6 BY MS. ZMROCZEK:

7 Q You had an occasion to go to the Traveler's Inn, I  
8 think you said?

9 A Yes, ma'am.

10 Q And you received records as to what time Angela  
11 checked in, correct?

12 A I got records from that night, yes.

13 Q And your investigation -- I'm not going to ask the  
14 time -- but in the investigation report that you wrote did  
15 you not receive a time that she checked in?

16 A Yes, ma'am.

17 Q In reviewing your report, does that correlate exactly  
18 with your time charts, with your color maps?

19 A No, ma'am, but the clerk was approximate on his time  
20 that he gave me. It was not an exact time. That's why it  
21 says approximate in my report.

22 Q So it was generally or an approximate time?

23 A Yes, ma'am.

24 Q Since you have been involved more recently and you  
25 have been the lead investigator, have you come across

1 information that it was Charlie in the video, Charlie and  
2 Danny in the video?

3 MR. HUBBARD: Your Honor, I'm not sure I  
4 understand the question. Is she asking for his opinion?

5 MS. ZMROCZEK: No.

6 MR. HUBBARD: Or is she asking for what other  
7 people have said? If that's it, I'm going to object.

8 THE COURT: She's asking if his investigation  
9 revealed the identity of the folks in the video.

10 BY MS. ZMROCZEK:

11 Q Not your opinion. Has your investigation revealed  
12 the identity of the people in the video?

13 A Yes.

14 Q As Danny and Charlie?

15 A I'm sorry?

16 Q And Danny and Charlie?

17 A Yes.

18 MS. ZMROCZEK: I have no further questions.

19 REDIRECT EXAMINATION

20 BY MR. HUBBARD:

21 Q Detective Novak, did anyone come into this courtroom  
22 looking at that Pit Stop video and say that they saw  
23 Charlie Plumley in that video?

24 A No, sir.

25 MR. HUBBARD: Thank you. No more questions.

1 THE COURT: Thank you, sir. You may step down.

2 MR. HUBBARD: Your Honor, at this time the State  
3 rests.

4 THE COURT: Ladies and gentlemen, the State has  
5 rested their case. At the conclusion of the State's case  
6 in all criminal actions the Court has to take up some  
7 matters of law with the attorneys before we proceed. So  
8 I'm going to ask if you would to step back into your jury  
9 room while I do that. I don't anticipate that will take  
10 terribly long. If you need anything while you're back  
11 there just let the bailiffs know and we'll get started  
12 shortly. Please have no conversation about the case.

13 (The jury left open court at approximately 10:21  
14 a.m.)

15 THE COURT: At this time I'll take up any  
16 motions at the close of the State's case.

17 MS. ZMROCZEK: Your Honor, at this time we have  
18 a motion for a directed verdict under Rule 19.

19 Especially in light of the circumstantial  
20 evidence case that recently came out, Your Honor, we do  
21 not feel that they have provided enough evidence for a  
22 conviction of guilty on any of the three charges that's  
23 charged, and for that reason we ask for a directed  
24 verdict.

25 THE COURT: I'm going to respectfully deny that

1 motion at this stage, Ms. Zmroczek. You know, as you're  
2 well aware, the Court does not concern itself with the  
3 weight of any evidence that is presented, just simply the  
4 existence of evidence. I think it's a jury call as to  
5 what weight to give the testimony. And I think there is  
6 testimony in the record, depending on how the jury views  
7 that testimony, that would support a possible sentence on  
8 any of these charges. And so I think it's a factual issue  
9 and weight issue for the jury to decide and I'm going to  
10 respectfully deny your motion.

11 Anything further?

12 MS. ZMROCZEK: No, sir.

13 THE COURT: All right. Let me ask you all to  
14 step up here real quick.

15 And just for the other folks in the audience,  
16 we're going to be in recess for a few minutes, so if you  
17 all want to move around, that's fine. I just wanted to  
18 get the lawyers up here.

19 (A bench conference was held with the judge and  
20 attorneys.)

21 (WHEREUPON, Defendant's Exhibits Nos. 65-66 were  
22 marked for identification only.)

23 THE COURT: At this time I'm going to speak with  
24 Mr. Sharpe.

25 Mr. Sharpe, if I can have your attention, sir.

1           We're to the part of this trial where I'm going  
2   to recognize your attorney for the defense. And it is my  
3   understanding, am I right, Ms. Zmroczek, you all do have  
4   witnesses and testimony to present?

5           MS. ZMROCZEK: We do, Your Honor.

6           THE COURT: Okay. Well, Mr. Sharpe, a person  
7   who is charged with a criminal offense has certain rights  
8   that regard -- that go toward their right to remain silent  
9   as well as their right to testify. And you have talked  
10  with your attorneys about that?

11          THE DEFENDANT: Yes, sir.

12          THE COURT: Okay. I'm just going to go over  
13  that with you, okay?

14          In every trial, a person charged with a criminal  
15  offense has the right to testify in their behalf if they  
16  choose to do so or to put up witnesses in their behalf,  
17  but they also have the right to remain silent.

18          Now, let me first cover the right to testify.  
19  You understand that if you choose to, you could take the  
20  stand, be placed under oath just as all the other  
21  witnesses have done, and then you'd have the right to  
22  testify in your behalf. Do you understand that?

23          THE DEFENDANT: Yes, sir.

24          THE COURT: If you chose to do that, obviously  
25  you would answer questions from your attorney, but then

1 you would also be required to answer questions from the  
2 State's lawyers. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, I don't know if you have any  
5 criminal history or anything of that nature that would be  
6 subject to cross-examination, but let me just say that if  
7 you had a criminal record that would be subject to  
8 discussion, you understand that the only thing that I  
9 would allow is for the -- for anyone to ask you simply  
10 whether or not you had been convicted of a particular  
11 charge. I would not allow them to go into any details or  
12 any sentence or anything like that. Do you understand  
13 that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: But you would have to answer those  
16 questions. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Now, a person also has a  
19 constitutional right to remain silent. And -- in other  
20 words, what that means is this: You're not required to  
21 take the witness stand. You don't have to do that unless  
22 you choose to do that. If you decide that you want to  
23 exercise your constitutional right to remain silent, you  
24 can do that. And if you do that, then I have -- in my  
25 instructions to the jury, I would instruct them that the

1 fact that you chose to remain silent could not be used  
2 against you in any way. I would instruct the members of  
3 the jury that you have a constitutional right to remain  
4 silent and that the exercise of that right cannot be  
5 considered by them at all in their determination of your  
6 guilt or innocence. As a matter of fact, I would take it  
7 a step further and I would tell them that the fact that  
8 you choose to remain silent could not even be discussed in  
9 a jury room at all. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, as I asked earlier, have you  
12 talked to your attorneys about whether or not you're going  
13 to take the stand?

14 THE DEFENDANT: Yes, sir, I have.

15 THE COURT: Okay. And that's a good thing. I  
16 encourage everyone to always talk with their counsel  
17 because they can give you their thoughts, they can give  
18 you their advice, they can tell you what they think. But  
19 you understand, Mr. Sharpe, that we're dealing with a  
20 constitutional right of yours. So even though your  
21 lawyers can give you their thoughts and their opinions,  
22 the only person that can really make the decision is you.  
23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Have you decided whether

1 or not you're going to take the stand?

2 THE DEFENDANT: Yes, sir, I've decided I'm not  
3 going to take the stand.

4 THE COURT: Okay. You're going to exercise your  
5 right to remain silent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, has anyone forced you or  
8 coerced you or threatened you in any way to make that  
9 decision?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has that been a decision that you've  
12 made of your own free will, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right, sir. Thank you very  
15 much. You may have a seat.

16 All right. Is the defense ready to proceed?

17 MS. ZMROCZEK: We are, Your Honor.

18 THE COURT: Is the State ready to proceed?

19 MR. GRAHAM: Yes, Your Honor.

20 THE COURT: All right. Let's bring the jury in,  
21 please.

22 (The jury came into open court at approximately  
23 10:56 a.m.)

24 THE COURT: Thank you. Please have a seat,  
25 ladies and gentlemen.

1 I have taken up the matters of law I need to  
2 take up with the attorneys. Before we proceed, you'll  
3 recall when we broke that the State has rested their case  
4 and so now I would recognize Ms. Zmroczek on behalf of  
5 defense.

6 Yes, ma'am.

7 MS. ZMROCZEK: Thank you, Your Honor.

8 At this time we'd call Detective Grant.

9 THE COURT: All right. Detective, please come  
10 forward and be sworn.

11 SHAWN GRANT, after being duly sworn, testified  
12 as follows:

13 THE CLERK: Have a seat, sir.

14 Once you're seated, state your full name,  
15 spelling your last on the record, please.

16 THE WITNESS: Shawn Grant, G-R-A-N-T.

17 DIRECT EXAMINATION

18 BY MS. ZMROCZEK:

19 Q Mr. Grant, were you under subpoena by the State for  
20 this case?

21 A Yes.

22 Q Have you had an opportunity -- tell the jury what  
23 your job is.

24 A I'm a criminal investigator with the Lexington County  
25 Sheriff's Department.

1 Q For how long have you been a criminal investigator?

2 A Past six years.

3 Q What kind of crimes do you investigate?

4 A I investigate crimes against persons, major crimes,  
5 and also investigate crimes against property.

6 Q During the course of your investigations do you also  
7 interview witnesses and take statements?

8 A Yes.

9 Q Tell the jury about your involvement in this case,  
10 when it began.

11 A I was contacted on the morning of September 22 to  
12 assist with the ongoing investigation.

13 Q Did you secure search warrants for this  
14 investigation?

15 A Yes, I did.

16 Q And the search warrants are based on information that  
17 you receive throughout your investigation, correct?

18 A Yes.

19 Q Did you receive information that Charlie Plumley  
20 carried a 45?

21 A During the initial part of the investigation.

22 Q During the initial part of the investigation?

23 A Yes.

24 Q Did you receive information that -- in the later part  
25 of the investigation that Larry and Charlie were supposed

1 to commit this robbery the night before?

2 A I don't recall anything about Larry.

3 Q Oh, that's a different investigator.

4 I was confused. It's a different investigator.

5 A That's okay.

6 Q Sorry.

7 Did you have information in your investigation  
8 that Danny and Charlie were upset because they couldn't  
9 get drugs?

10 A Initially.

11 MS. ZMROCZEK: Beg the Court's indulgence.

12 (Pause.)

13 MS. ZMROCZEK: I have no further questions.

14 Please answer any questions that the State would have.

15 THE WITNESS: Yes, ma'am.

16 MR. GRAHAM: No questions, Your Honor.

17 THE COURT: Thank you very much, sir. You may  
18 step down. Appreciate you being here.

19 THE WITNESS: Thank you, sir.

20 MS. ZMROCZEK: Your Honor, we would call  
21 Investigator Ross.

22 THE COURT: Investigator Ross, if you would come  
23 around.

24 GLENN ROSS, after being duly sworn, testified as  
25 follows:

1 THE CLERK: Have a seat, sir.

2 Once you're seated, state your full name,  
3 spelling your last on the record, please

4 THE WITNESS: Glenn Ross, R-O-S-S.

5 DIRECT EXAMINATION

6 BY MS. ZMROCZEK:

7 Q Investigator Ross, I know you've testified several  
8 times in this case. I'm going to show you what's been  
9 marked as Defense Exhibit 20, 21 and 22, and ask you if  
10 you recognize those.

11 A Photographs of a cell phone, but I'm not sure which  
12 LG.

13 Q I can give you some time to look it up if you would  
14 like.

15 A I will need the serial number. That's the only  
16 thing.

17 Q Okay. I know you're looking that information up, but  
18 I don't want the jury waiting.

19 A Okay.

20 Q But you do recognize that you took these pictures?

21 A I took several photographs of LG phones. It looks  
22 like photographs I may have taken.

23 Q And you're familiar with the symbols of incoming and  
24 outgoing calls?

25 A Not with each particular phone. Each phone has a

1 different symbol. Half the time I don't keep up with my  
2 own.

3 Q Can you let the jury know, just read the numbers out?

4 A To each one?

5 Q Just for the top one. And that's Defense Exhibit 22,  
6 I believe. It is.

7 A The top number?

8 Q Yes.

9 THE COURT: Hold on. That's Defense No. 22?

10 MS. ZMROCZEK: Yes.

11 THE COURT: That's not in evidence.

12 MS. ZMROCZEK: Your Honor, at this time I'd like  
13 to move these into evidence.

14 THE COURT: Any objection? Do you need to look  
15 at them?

16 MR. GRAHAM: I don't know -- I'd like at the  
17 officer to say that he took the pictures, he knows what  
18 phone it belongs to.

19 THE WITNESS: And at this time I can't without  
20 the serial number.

21 It looks like pictures I may have taken, but  
22 without the serial number to the exact phone with the  
23 search warrant, I'm not sure.

24 MR. GRAHAM: Let me look at it for a second.

25 Your Honor, the State will stipulate that

1 Detective Ross took these photographs and they're  
2 photographs of Rose Lucas's phone.

3 THE COURT: All right. If you'll just give me  
4 the number of the photographs you're using.

5 MS. ZMROCZEK: 20, 21, and 22.

6 THE COURT: All right. Those are in without  
7 objection, right?

8 MR. GRAHAM: Yes, sir.

9 THE COURT: Okay. 20, 21, 22 without objection.

10 (WHEREUPON, DEFENDANT'S Exhibits Nos. 20, 21, 22  
11 was admitted into evidence.)

12 BY MS. ZMROCZEK:

13 Q Now that the State's stipulated, those are pictures  
14 that were taken of Rose Lucas's phone. What does Defense  
15 Exhibit No. 22 show?

16 A You want the number?

17 Q The number and the time.

18 A The number is (803) -2114. It's got the date of  
19 9/21, and the time is 8:27.

20 Q Is that a.m. or p.m.?

21 A It says p.m.

22 Q And for the next one, Defense No. 21?

23 A The top number is (803) -2114. And the date, 9/21  
24 at 10 p.m.

25 Q At 10 p.m. And that's the number through testimony

1 associated with Patsy or Danny Plumley correct?

2 A I'd have to look to keep all the numbers straight.

3 Q Yeah, there are a lot of numbers.

4 And Defense No. 20?

5 A (803) -4106, 9/21 is the date and it's 10:45 p.m.

6 Q What time?

7 A 10:45.

8 Q And does that indicate how many attempts to either --  
9 coming in or going out?

10 A It does have a symbol about that says five times  
11 zero. I'm not sure what that means for this particular  
12 phone.

13 Q Investigator Ross, I'm going to show you Defense  
14 Exhibits marked for ID 23, 24, 25, 26, 27, 28, 29, 30, and  
15 31. Can you identify those?

16 MR. GRAHAM: Your Honor, there is one of them in  
17 that the State has a concern about that we'd like to  
18 address the Court on. I can come up to Your Honor.

19 THE COURT: All right. You all come up.

20 (A bench conference was held with the judge and  
21 attorneys in the presence of the jury but out of the  
22 hearing of the jury.)

23 MR. GRAHAM: Without objection, Your Honor.

24 THE COURT: All right. 23 through 31 in  
25 evidence without objection.

1 (WHEREUPON, DEFENDANT'S Exhibits Nos. 23-31 were  
2 admitted into evidence.)

3 BY MS. ZMROCZEK:

4 Q Investigator Ross, I'm going to ask you to look at  
5 Defense Exhibits 23 and 24. If you'll read the name, the  
6 number and the date and time and how many times it was  
7 called if you see it.

8 A You want 23 first?

9 Q Yes, sir.

10 A The number's (803) -0445 to Billy three times. It  
11 has the date 9/22/11 at 9:19 a.m.

12 Q And for No. 24?

13 A (803) -0445, two times to Billy. It's on 9/22/11  
14 at 8:51 a.m.

15 MS. ZMROCZEK: Thank you, Your Honor. I have no  
16 further questions for this witness.

17 THE COURT: Any cross?

18 CROSS-EXAMINATION

19 BY MR. GRAHAM:

20 Q Detective Ross, you know who was using that phone?

21 A At the time we collected it?

22 Q Can you tell from the numbers?

23 A No, you can't tell who's using the phone.

24 Q Could have been anybody, couldn't it?

25 A Could have been anybody, yes, sir.

1 Q Are there any phone calls in any of the pictures --  
2 let me see what she handed you. The photographs that just  
3 got put into evidence, you don't have them anymore?

4 A No, I do not.

5 THE COURT: There's a grouping starting with 23,  
6 24.

7 BY MR. GRAHAM:

8 Q Defense 29, the time on that one was what? What's  
9 the date and the time?

10 A Date, 9/21/11 at 04:15 p.m.

11 Q Defense 28, the date and time on that call?

12 A Date, 9/21/11 at 05:11 p.m.

13 Q Defense 27?

14 A 9/21/11 at 06:35 p.m.

15 Q Defense 26?

16 A 9/21/11 at 9:10 p.m.

17 Q Defense 25?

18 A 9/21/11 at 9:23 p.m.

19 Q Defense 24?

20 A 9/22/11 at 8:51 a.m.

21 Q Defense 23?

22 A 9/22/11 at 9:19 a.m.

23 Q Looking at all the photos that we just went over, and  
24 specifically 24 to 25, do you have photographs of any  
25 pictures that depict any call activity on this phone after

1 9:23 p.m. on September 21st until 8:51 a.m. the following  
2 morning?

3 A Not that it shows in this series of photographs.

4 Q So the last photograph you have shows 9:23 p.m. on  
5 the 21st, correct?

6 A Yes.

7 Q And the next time period is 8:51 the next morning?

8 A Yes, sir.

9 MR. GRAHAM: No other questions, Your Honor.

10 MS. ZMROCZEK: I just have a few follow-up  
11 questions.

12 REDIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q Obviously looking at the phone records would provide  
15 the full call details; is that correct?

16 A Yes, ma'am.

17 Q And were you able -- do you know -- do you know that  
18 those phone records were subpoenaed?

19 A I have no idea. It's not in my scope of the  
20 investigation.

21 Q All right. And I believe -- I just wanted to  
22 clarify. There's no -- what is the inherent nature of  
23 cell phones? Are they mobile? Do people use them?

24 A The best I understand they're mobile. We use them  
25 all the time.

1 Q By various persons?

2 I believe the question was asked or the answer  
3 was stated it could be anybody using this phone; is that  
4 correct?

5 A Yes, ma'am.

6 MS. ZMROCZEK: Thank you. I have no further  
7 questions.

8 THE COURT: Thank you very much, sir.

9 You may step down.

10 (WHEREUPON, Defendant's Exhibit No. 67 was  
11 marked for identification only.)

12 MS. ZMROCZEK: Your Honor, the defense would  
13 call Officer Mayrant.

14 CAIN MAYRANT, after being duly sworn, testified  
15 as follows:

16 THE CLERK: Have a seat, sir.

17 Once you're seated, state your full name,  
18 spelling your last on the record, please.

19 THE WITNESS: Lieutenant Cain Mayrant,  
20 M-A-Y-R-A-N-T.

21 DIRECT EXAMINATION

22 BY MS. ZMROCZEK:

23 Q Lieutenant, I know that you testified yesterday. Can  
24 you remind the jury what it is you do?

25 A I'm the booking and support services division manager

1 for the Lexington County Sheriff's Department. I'm also  
2 the records custodian.

3 Q Describe what the records custodian is.

4 A That's the person who keeps the records for the  
5 detention center and confirms that those records are true  
6 and correct.

7 Q I'm going to show you what's been marked as Defense  
8 No. 67 and ask you if you recognize that.

9 A It's an incident report.

10 Q Is that one of your regularly kept reports?

11 A It is.

12 MS. ZMROCZEK: Your Honor, at this time I'd move  
13 Defense 67 into evidence.

14 MR. GRAHAM: Your Honor, if I could look at the  
15 document, please.

16 THE COURT: Yes.

17 MR. GRAHAM: We would object to this, Your  
18 Honor.

19 THE COURT: All right. Do we need to send the  
20 jury out?

21 MR. GRAHAM: Either that or I could approach.

22 THE COURT: Come on up.

23 (A bench conference was held with the judge and  
24 attorneys in the presence of the jury but out of the  
25 hearing of the jury.)

1 THE COURT: Ladies and gentlemen, I'm going to  
2 get you all to step back to the jury room while I take up  
3 this matter.

4 Please have no conversation about the case.

5 (The jury left open court at approximately 11:22  
6 a.m.)

7 THE COURT: All right. First of all, there's a  
8 lot of problems with this document coming in. There's a  
9 lot of stuff on here that's not evidence in this case and  
10 is not really relevant to the issues in this case.  
11 However, even having read this, you all can correct me or  
12 we can go back in the record, what I recall from the  
13 testimony of Mr. Plumley was that he did an unprovoked  
14 assault on Mr. Sharpe.

15 Don't shake your head until I get done talking.  
16 That's very rude.

17 MS. ZMROCZEK: It's a bad habit.

18 THE COURT: It is. It's a very rude habit. And  
19 you're going to be embarrassed if we go back on the record  
20 to see that I'm right.

21 MS. ZMROCZEK: And I apologize.

22 THE COURT: I believe there was some testimony  
23 that he admitted to hitting him or assaulting him, not in  
24 self-defense, but that he actually did that. Obviously  
25 we're going to have to go back on the record to see

1 because defense counsel is confident that I'm wrong, and I  
2 might be. So we're going to be at ease while Carol and I  
3 try to find that portion.

4 I believe it may have been -- well, we'll look  
5 at everything we need to look at, but I believe it may  
6 have been on redirect. Because I think you actually  
7 questioned him about it. And then I may be wrong, but I  
8 think there was a redirect and in the redirect he admitted  
9 that, well, I did hit him, not in self-defense, I did hit  
10 him. But let's look at it.

11 (A discussion was held off the record.)

12 (A break was taken.)

13 (The jury came into open court at approximately  
14 11:40 a.m.)

15 THE COURT: All right. Ladies and gentlemen,  
16 thank you very much for your patience.

17 Ms. Zmroczek, you may continue with your  
18 examination, ma'am.

19 MS. ZMROCZEK: Thank you.

20 BY MS. ZMROCZEK:

21 Q Officer Mayrant, does your report reflect a fight  
22 between Charles Plumley and Shawn Sharpe?

23 A Yes.

24 THE COURT: Hold on now. It's not his report.

25 MS. ZMROCZEK: Yes, and it's not coming in.

1 THE COURT: He's just a custodian.

2 BY MS. ZMROCZEK:

3 Q Not your report, just the report.

4 And does the report reflect that Charlie Plumley  
5 taunted Shawn Sharpe before he hit him?

6 A Does it reflect that Sharpe taunted Plumley? Is that  
7 your question?

8 Q No, the other, that Plumley taunted Sharpe?

9 A That's correct.

10 MS. ZMROCZEK: I have no further questions.

11 THE COURT: Cross?

12 MR. GRAHAM: No questions, Your Honor.

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

14 MS. ZMROCZEK: Defense would call Detective  
15 Derrenbacher.

16 THE COURT: All right. Sir, if you'd please  
17 come around.

18 WILLIAM DERRENBACHER, after being duly sworn,  
19 testified as follows:

20 THE CLERK: Have a seat, sir.

21 Once you're seated, state your full name,  
22 spelling your last on the record, please.

23 THE WITNESS: William Derrenbacher.

24 Derrenbacher is spelled D-E-R-R-E-N-B-A-C-H-E-R.

25 DIRECT EXAMINATION

1 BY MS. ZMROCZEK:

2 Q Detective Derrenbacher, what was your role -- where  
3 do you work now?

4 A County of Lexington.

5 Q In what role?

6 A I am the director of Animal Services for the County  
7 of Lexington.

8 Q How long have you been there?

9 A About a year and a half.

10 Q What did you do prior?

11 A I was a major crimes investigator for Lexington  
12 County Sheriff's Office.

13 Q Did you have the occasion to investigate a murder at  
14 Victor Road?

15 A I did.

16 Q Tell the jury what your duties involved in that.

17 A I was the lead investigator at that particular time.  
18 I actually responded to the call when it occurred. I was  
19 out and about working that evening and responded upon the  
20 request of patrol for major crimes.

21 Q Based on your response to the scene, can you describe  
22 what sort of perpetrators you were looking for?

23 A Initial information provided by witnesses on scene  
24 indicated there was two masked men that had come to the  
25 incident location and fired one shot at the victim in this

1 matter and then fled the scene.

2 Q Did later information reveal any other potential  
3 suspects or any differences?

4 A Information obtained later on in the evening was  
5 provided by Ms. Rose Lucas that potentially Mr. Plumley or  
6 the Plumleys, I'll put it that way, Charlie and Danny may  
7 have information connected with this crime.

8 Q Were you ever provided any information about the race  
9 of any of the suspects?

10 A I was not provided from anyone that I interviewed.  
11 The witnesses that I spoke with indicated that the  
12 suspects were basically clothed all the way down wearing a  
13 suit and masks, so they initially did not provide any  
14 gender or race when they provided that.

15 Q As the case investigator, do you generate reports and  
16 review other investigator's reports?

17 A I do. As the lead investigator you're receiving a  
18 lot of reports from a lot of other individuals. As you  
19 have heard, in a case of this magnitude there's a lot of  
20 folks involved, whether it be investigators from the  
21 sheriff's office, from SLED, from municipal police  
22 departments, other departments within departments. So  
23 yes, we receive a lot of information and try to review as  
24 of that information, corroborating statements as much as  
25 you can.

1 Q Did the investigation, did the major investigation  
2 ever reveal that someone identified as an African-American  
3 perpetrator?

4 A There was a statement from an individual that, to my  
5 knowledge, never actually had visual contact with any one  
6 of these suspects as listed. At some point in time during  
7 their statement, they provided that potentially one of the  
8 suspects may have been black.

9 Q If you don't know the exact answer, you can  
10 proximate.

11 How many witnesses were interviewed the night of  
12 September 21 and September 22, approximately?

13 A Well, if you can -- if you want to break it down for  
14 witnesses or do you want to -- because that's kind of wide  
15 open. There's a lot of people that were spoken to that  
16 may or may not have had any firsthand knowledge of this  
17 case that -- when you're asking witnesses, I would assume  
18 you're meaning someone that was either there at the  
19 incident location when it occurred or within close  
20 proximity when it did occur; is that correct?

21 Q Yes.

22 A I would say approximately six.

23 Q Based on that information, you then left -- or the  
24 investigation spread out to other people who may have more  
25 information; is that correct?

1 A That's correct.

2 Q And you were led to -- who did Rose lead you that may  
3 know the Plumleys?

4 A Rose had indicated that -- because when she  
5 mentioned -- she didn't mention the Plumleys because  
6 initially she didn't know their last name I don't think.  
7 She mentioned Danny and Charlie. The brothers is what she  
8 referred to. When inquired as far as how to get in touch  
9 with these individuals, she could only provide us with the  
10 name of Billy, which is William Hinson, that knew these  
11 individuals and potentially could put us in contact with  
12 them.

13 Q When you take statements from witnesses, are there  
14 forms that you use to get identifying information?

15 A If you're asking if there's a certain type of form  
16 that we use when we take statements from witnesses, there  
17 are. There's multiple forms that we use. Both are  
18 considered statement forms. However, the difference is  
19 whether that person is under arrest or whether that person  
20 is not under arrest.

21 Q And all I need to know from this form is, did you  
22 interview Barbara Bailey, and if you did, if she was  
23 interviewed, what was her telephone number?

24 A If I can look back on my notes I can tell you if I  
25 have something.

1 Q Right. And just identify the number if you want.

2 A Okay. Well, I can identify it from her statement  
3 form which I did not write nor was present when it was  
4 written; however, the number listed for Barbara Bailey as  
5 recorded by Master Deputy McCaw is (803) -0894.

6 Q Who is Ms. Bailey in this investigation? How was she  
7 related to the investigation?

8 A She is related to Ms. Rose Lucas.

9 Q Where does she live?

10 A She lives right beside to the -- if you're front  
11 facing the Victor Road address where the incident  
12 occurred, she lives right beside her to the left.

13 Q Detective Derrenbacher I'm going to show you what's  
14 already in evidence marked as Defense Exhibit No. 49, the  
15 phone of Charlie Plumley. Can you read for the jury the  
16 telephone number and date and time of that call?

17 MR. GRAHAM: Objection, Your Honor. I have no  
18 idea what she's showing him. I would like to see it,  
19 please.

20 MS. ZMROCZEK: It's already in evidence.

21 THE WITNESS: The photograph that I have  
22 indicates a picture of an LG phone. There is no name at  
23 the beginning or on the screen. The number is  
24 (803) -0894. The date provided is September 22, 2011.  
25 The time recorded is 2:04 a.m.

1 BY MS. ZMROCZEK:

2 Q That would be the number for Barbara Bailey?

3 A It was one taken previously on the voluntary  
4 statement form.

5 Q Let me show you what's marked for ID as Defense No.  
6 65.

7 A Okay.

8 Q The numbers that --

9 MS. ZMROCZEK: Your Honor, at this time I'd like  
10 to move Defense 65 into evidence. It's a summary. It's  
11 just a continuation of their summary.

12 MR. GRAHAM: If I could look at it again, Your  
13 Honor.

14 No objection, Your Honor.

15 THE COURT: Without objection. That is Defense?

16 MS. ZMROCZEK: Sixty-five.

17 (WHEREUPON, Defendant's Exhibit No. 65 was  
18 admitted into evidence.)

19 BY MS. ZMROCZEK:

20 Q So the numbers that you -- information that's  
21 provided to law enforcement regarding calls made in and  
22 around the time of the occurrence, why are they  
23 significant?

24 A I think all phone calls are of significance because  
25 it ties them back to potentially who the user is.

1     However, phone calls during or around the time of the  
2     incident are significant because it would show activity on  
3     that particular phone line.

4     Q     And what we have marked and now is in evidence is  
5     just filling in the blanks of the chart based on the  
6     numbers that are in evidence, correct? Again, there's no  
7     way of knowing who's using the phone, but these are the  
8     phone numbers that were called; is that your  
9     understanding?

10    A     According to the information provided to us of who  
11    was using those phones at those particular times, yes,  
12    ma'am.

13    Q     Do people tend to lie to police?

14    A     All the time.

15    Q     How many different statements were you given in this  
16    case by any number of witnesses?

17    A     Well, without having them in front of me I couldn't  
18    tell you.

19    Q     Okay. Were there -- was information given to you in  
20    a written format and you reviewed that and based on that,  
21    is that the investigation that you all -- is that the  
22    investigation trail that you all take?

23    A     Are you able to ask me that question a little  
24    differently because I'm not following you.

25    Q     When you take statements and you receive information,

1 what's the next thing you do?

2 A You follow up. You follow up, you speak with the  
3 individuals, you -- a lot of times when an individual  
4 provides you with a statement, they provide you with  
5 additional names and information that you're able to make  
6 contact with additional individuals, phone records  
7 potentially, phone numbers, things to expand your  
8 investigation from that point on to follow leads.

9 Q Was Phil Helms ever arrested in connection with this  
10 case?

11 A Not to my knowledge.

12 Q In connection with this case, do you recall all of  
13 the people arrested?

14 A I do.

15 Q Will you tell the jury who they are?

16 A Obviously Mr. Sharpe. You had Danny Plumley; Charlie  
17 Plumley; Debra Plumley, their mother; their father,  
18 Raymond Plumley, Sr.; Angela Plumley, Patsy Anz.

19 MS. ZMROCZEK: Beg the Court's indulgence.

20 (Pause.)

21 BY MS. ZMROCZEK:

22 Q Apart from Ms. Lucas, were you ever provided  
23 information that Danny Plumley was involved in the  
24 robbery?

25 MR. GRAHAM: Objection, Your Honor. It's not

1 relevant. He was charged with an accessory after the  
2 fact. That's already been testified to.

3 THE COURT: Overruled. She can ask it.

4 THE WITNESS: To my knowledge there was never  
5 any information that -- can you ask me the question again  
6 and let me answer it again? We had a little bit going on.

7 BY MS. ZMROCZEK:

8 Q I'm sorry. Through the course of your investigation,  
9 did anyone other than Rose Lucas provide you information  
10 that Danny was in the house or at the robbery/murder scene  
11 at the time?

12 A There was other information provided indicating other  
13 suspects involved.

14 Q Specifically Danny Plumley?

15 A Yes, ma'am.

16 MS. ZMROCZEK: Thank you. No further questions.

17 CROSS-EXAMINATION

18 BY MR. GRAHAM:

19 Q Detective Derrenbacher, former Detective  
20 Derrenbacher, in your opinion, was there any credible  
21 information regarding Danny Plumley being a suspect?

22 A There was not.

23 Q Ms. Zmroczek asked you about maybe -- she just asked  
24 you about Danny Plumley being involved, but she also asked  
25 you about an unidentified black male being involved, too;

1 is that correct?

2 A That's correct.

3 Q Did you find any other evidence that a black male,  
4 unidentified black male was involved other than the  
5 statement of Lillian Yon?

6 A We want to follow up on everything we can follow up  
7 on because we don't leave any stone unturned, and there  
8 was absolutely no evidence in this case where a black male  
9 was involved.

10 MR. GRAHAM: Thank you.

11 MS. ZMROCZEK: I have a few follow-ups.

12 REDIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q What are some of the things that help you determine  
15 the credibility of a witness?

16 A That's kind of open ended. There's a lot that goes  
17 into determining whether or not you can believe what a  
18 witness is telling you. A lot of times credibility is  
19 going to be determined by corroboration of statements that  
20 they make, things that they provide you with, whether it's  
21 not necessarily one hundred percent, but something that  
22 they tell you can corroborate with someone else or you  
23 have firsthand knowledge of it or you can see it, feel it,  
24 touch it, that sort of thing. So credibility I think  
25 would begin with being able to be provided with good

1 information that you can actually see and you can see that  
2 it adds up to something that they're telling you.

3 Q Did Rose Lucas provide you good information?

4 A She did.

5 Q Did Angela Plumley provide you good information?

6 A She did.

7 Q Angela Plumley told you that she was -- they went to  
8 the Traveler's Inn. Was that information that was  
9 provided to you?

10 A That is.

11 Q I'm sorry?

12 A Yes.

13 Q I'm sorry. I didn't hear you.

14 And through the course of your investigation,  
15 you followed up with that lead, correct?

16 A Correct.

17 Q Did your investigation reveal what time Angela  
18 Plumley checked into the Traveler's Inn?

19 A I believe we were provided with a handwritten sign-in  
20 form of sorts. I do not recall whether or not the  
21 handwritten form provided by the clerk had any time  
22 indicated on it.

23 Q I'm just reviewing your report. Because when you  
24 write reports, you incorporate all the investigator's  
25 reports into yours?

1 A I do not.

2 Q So your report is simply information that you have?

3 A My report contains information -- potentially may be  
4 collective of what some of the other investigators may  
5 have experienced or found out, something that their  
6 interviews may have included; however, my report alone,  
7 just my portion of what I wrote in this matter is 25, 30  
8 pages long. So in an effort not to congest a report and  
9 not reiterate a lot of other informations provided,  
10 generally other investigators that provide their services  
11 in an investigation provide their own supplemental  
12 investigative report that will accompany the master  
13 report.

14 MS. ZMROCZEK: Beg the Court's indulgence.

15 (Pause.)

16 BY MS. ZMROCZEK:

17 Q Just one last question for you, Detective  
18 Derrenbacher, former Detective Derrenbacher. Were you  
19 subpoenaed by the State to testify in this case?

20 A I was.

21 MS. ZMROCZEK: Thank you. I have no further  
22 questions.

23 MR. GRAHAM: Nothing else, Your Honor.

24 THE COURT: Thank you, sir.

25 MS. ZMROCZEK: Your Honor, the defense rests.

1 THE COURT: All right. Thank you, ma'am.

2 Ladies and gentlemen -- before -- let me get the  
3 lawyer to step up here and I'll speak to them quick.

4 (A bench conference was held with the judge and  
5 attorneys in the presence of the jury but out of the  
6 hearing of the jury.)

7 THE COURT: All right. Ladies and gentlemen,  
8 here's what -- here's where we're at.

9 What happens in cases -- we have heard that the  
10 defense has rested. That's the close of the evidence in  
11 the case. Now I will take up motions, legal matters at  
12 the close of all the evidence, which is what I will do in  
13 just a moment. And then we would be at the portion of the  
14 trial where the attorneys would have an opportunity to  
15 address you with what we call their closing arguments.  
16 Once they have concluded those comments I would then give  
17 you the law that is applicable in this case. And then  
18 once you have all that, you'll be in a position to then  
19 begin talking about the case and deliberating.

20 Now, it's going to take me a little bit of time  
21 to take up the matters of law and I also have to go over  
22 the charge on the law with the lawyers, and that may take  
23 a little bit of time. I'm not about wasting your time,  
24 okay? I know you may not think that the way things have  
25 gone this week, but I'm really concerned about your time.

1           So here's what I've decided to do. And here's  
2 another thing. Once you get the case for your  
3 consideration, there's no way anyone can predict how long  
4 a jury will deliberate. It's just however long you need  
5 is what I'm going to give you. And so by the time we do  
6 the things we need to do, we do the lunch break and the  
7 case gets to you, it would be probably mid to late  
8 afternoon before you got case.

9           What I'm going to do is I'm going to excuse you  
10 for the balance of today. We're going to come back in the  
11 morning. And we're going to -- in the morning, we're  
12 going to start the case off with hearing from the  
13 attorneys with their closing arguments, I'll give you the  
14 charge on the law, and so you'll have the case early in  
15 the day tomorrow, probably sometime tomorrow morning, and  
16 then you'll have whatever time you need to deliberate  
17 without the concern of being under a time restraint. So  
18 we're going to do that.

19           Now here's the thing, and it's important.  
20 You've done it all week long. I need you to really stand  
21 by it. All of the evidence in this case is in that you're  
22 going to use. You've got the testimony from the witnesses  
23 and all of these exhibits, which you will have all of  
24 these in the jury room with you when you come back to  
25 deliberate. I also will send back a copy of my charge

1 back there, so you'll have that as well.

2 Take the afternoon off. Let your minds rest.

3 If you're interested in the ball game, go to the ball game  
4 or watch it on TV. If not interested in the ball game,  
5 just have a good afternoon so that when you come back in  
6 the morning you're well rested to listen to the parties  
7 with their remarks and then you'll be in a position to  
8 receive the law and deliberate the case.

9 Ask anyone who is concerned in your family about  
10 what's been going on to ask them to be patient for one  
11 more day and that you're not allowed to talk about it, but  
12 that we're nearing the end and that more than likely, I  
13 can't imagine a situation that you wouldn't have a break  
14 at some point tomorrow. So tell those folks to be patient  
15 and then when it's all over, you'll spend the entire Labor  
16 Day weekend sharing with them what occurred here this  
17 week. But until that time, you're to have no  
18 conversation, as you've done all week long. I just want  
19 to reiterate that to you, okay?

20 Now, tomorrow morning we're going to start just  
21 a tad later. I have to do a roster meeting for civil  
22 court tomorrow morning at 9:30. That usually takes me  
23 about 15 minutes, maybe 20 minutes to do. So I'm going to  
24 ask you to be here tomorrow morning at 10 o'clock, okay?  
25 So if you would be back in the jury room at 10 o'clock

1 we'll be ready for you to hear the attorneys with their  
2 closing remarks and then I will give you the law. Okay?

3 So if everybody will remain seated, ladies and  
4 gentlemen, I'm going to excuse you for the balance of the  
5 day and we'll see you at 10 o'clock in the morning.

6 (The jury left open court and was excused for  
7 the day at approximately 12:10 p.m.)

8 THE COURT: At this time I'll take up motions at  
9 the close of the evidence.

10 MS. ZMROCZEK: Your Honor, at this time I would  
11 like to renew my objections to specifically the experts in  
12 this case and move for a directed verdict.

13 THE COURT: And I certainly will note your  
14 renewing of those objections and I believe there was the  
15 objections regarding the folks that testified as an expert  
16 and then there was also your objections with regards to  
17 certain exhibits which came in. And I will let the record  
18 reflect what that is, but if I'm -- I kept a good chart  
19 here, that was with the defense had objected to State's  
20 60, 61, 65, 66, 68, 82, and if there were any others that  
21 the record reflects, those would be noted as well.

22 With regards to the motion for directed verdict,  
23 I think I'm going to respectfully deny that motion, again,  
24 for the same reason. I think that what we have here is a  
25 factual issue that is more appropriate for the jury to

1 determine, and I'm going to let them do that.

2 Anything else?

3 MR. HUBBARD: Nothing from the State, Your  
4 Honor.

5 THE COURT: Now, let me -- maybe more so for you  
6 all, but you as well, Aimee, I've had Hope print out what  
7 is my typical hand of one charge. How about compare it to  
8 your felony murder charge and see if it doesn't cover  
9 that, or if it doesn't, if there's a way we can  
10 incorporate that into this. But let me give you this to  
11 look at. Because other than mentioning the term "felony  
12 murder," I think that's almost verbatim what you have  
13 here. I mean there's more to it, but go ahead and look at  
14 that for a moment before we go over the charge. And we'll  
15 go over the charge in just a little bit after you all have  
16 had time to look at that.

17 (Pause.)

18 THE COURT: Let me hear from the State first.

19 MR. HUBBARD: I have two questions on page two.

20 THE COURT: All right.

21 MR. HUBBARD: Page two, second paragraph, the  
22 last sentence, I just had a question. "The State must  
23 prove beyond a reasonable doubt by competent evidence the  
24 theory of the hand of one is the hand of all." I'm just  
25 concerned that it sounds like we're having to prove the

1 law. I understand maybe if it's stated a little  
2 differently. I don't want the jury to think that, all  
3 right, Mr. Hubbard, Mr. Graham, you all need to prove what  
4 that is. I think the law is hand of one hand of all,  
5 ladies and gentlemen, the State has to prove facts  
6 sufficient to establish their case, you know, or maybe  
7 just a sentence, you have to proof all facts beyond a  
8 reasonable doubt. But I think it's confusing to me. It  
9 almost sounds like we're having to prove that theory of  
10 law when I think what the charge really means is, all  
11 right, you stated what it is, the State has to prove all  
12 facts beyond a reasonable doubt. If it just says  
13 something that short instead of that last sentence, The  
14 State must prove beyond a reasonable doubt, maybe if it  
15 just said the State must prove all facts beyond a  
16 reasonable doubt, I would have no problem with that.

17 MS. ZMROCZEK: I'm fine with that. I don't have  
18 an issue with the other.

19 THE COURT: Let me address one at a time. The  
20 State must prove beyond a reasonable doubt -- must prove  
21 all facts beyond a reasonable doubt?

22 MR. HUBBARD: Yes, sir.

23 And, Judge, the thing I have you alluded to  
24 earlier, but it's the third page when you talk about  
25 intent. And this is why I think that felony murder charge

1 is important, because the second to the last sentence  
2 says, "Intent means intending the result which actually  
3 occurs." Well, the whole point of felony murder is you  
4 can end up being responsible for the result even if you  
5 didn't intend that result. So it's a direct conflict.  
6 Felony murder is the one exception to that.

7 THE COURT: Well, yes, and that's always  
8 bothered me, even though that's in there.

9 MR. HUBBARD: Judge, I think in most cases you  
10 don't have a felony murder charge because it just doesn't  
11 come up. So this is fine in most cases, but I would  
12 suggest and respectfully ask that we change that or  
13 somehow incorporate the felony murder charge in because  
14 that becomes confusing. I'd hate for a jury to be back  
15 there saying, well, that Solicitor talked about felony  
16 murder, but we're seeing here that they clearly didn't  
17 intend to kill this guy, it just happened, so he can't be  
18 guilty of murder. Well, I think we'd all agree under the  
19 law he can be based on these facts, and we might dispute  
20 the facts, but in the light most favorable to the State,  
21 if you just took our facts, these guys went in not  
22 necessarily planning to kill anybody, but they did, and  
23 under felony murder they bought the whole thing. With  
24 that charge I think we bring the jury to a screeching halt  
25 and they go, holy cow, they had to intend the result.

1 They didn't. Even the State admitted that. And then  
2 we're done and get an acquittal on a murder because of  
3 confusion.

4 THE COURT: Aimee, do you want to be heard on  
5 that?

6 MS. ZMROCZEK: Thank you, Judge.

7 And Mr. Bank is looking it up so I'm not  
8 confused, but Shawn was indicted for murder, burglary 1st  
9 and armed robbery.

10 THE COURT: Right.

11 MS. ZMROCZEK: And I don't believe -- I may be  
12 wrong, but I don't believe that felony murder is a lesser  
13 included offense of murder. And I think that by taking  
14 that intent away, that you're giving -- it's a corpus  
15 delicti argument. They went on the theory that Shawn shot  
16 him, that it was murder, and now that some evidence has  
17 been presented that maybe it's an accident, if they wanted  
18 to, I'm not requesting an involuntary or some sort of  
19 voluntary charge, but they want to take the intent out of  
20 it.

21 THE COURT: No. Well, you got to understand,  
22 and I believe it says it in my charge on murder, you know,  
23 to be guilty of murder, you don't have to intend to kill  
24 the person.

25 MS. ZMROCZEK: Right. And that's why I was

1 confused with taking these words --

2 THE COURT: That's why I think I tend to agree  
3 with Mr. Hubbard when I look at the law, because in our  
4 law, there's case law that says that you can be guilty of  
5 murder and not intend to kill anybody. So the actual  
6 killing of another, the intent didn't have to be you  
7 intended to kill them, but they died as a result and  
8 you're still guilty of murder.

9 And I think I know what this means, the intent  
10 here, because it's talking about the intent to commit a  
11 crime, that you have to go in with the intent to commit a  
12 crime, but this flies -- in my opinion, this flies in the  
13 face of the hand of one is the hand of all because it says  
14 intent means intending the result which actually occurs.  
15 And I think that flies in the face of exactly what we're  
16 talking about.

17 MR. HUBBARD: Your Honor, just to chime in and  
18 not to step on Ms. Zmroczek, but I think when we talk  
19 about hand of one hand of all, it makes a lot more sense  
20 when we're talking about armed robbery, about burglary,  
21 and usually it would make perfect sense in a murder case,  
22 Judge. But since there is evidence that -- and that's to  
23 the benefit of the defense that that wasn't the intended  
24 plan going in, I'm almost thinking you still need to have  
25 that felony murder charge just -- and it doesn't have to

1 be as long as the one former Judge Ralph King Anderson  
2 wrote, but one that just clearly maybe with that murder  
3 charge so that they understand that that doesn't have to  
4 be the intended consequence.

5 And obviously as far as the indictment issue,  
6 the State has never ever had to have a special indictment  
7 for felony murder. There's murder in South Carolina and  
8 felony murder is just how we get there, and so there's  
9 never been an indictment -- no law on that at all.

10 THE COURT: Well, I was explaining to Hannah  
11 when she and I were talking, that was the reason that I  
12 think you asked for the felony murder charge, because the  
13 hand of one the hand of all would be -- maybe fits as well  
14 with like if we go in there and we're going -- our plan is  
15 to I'm going to get the clerk to open the cash register  
16 and get the change, and when I do that, you snatch the  
17 cash and we're going to snatch and run, but when we get in  
18 there you pull a gun on the clerk and now all of a sudden  
19 we've gone from common law robbery to armed robbery, it  
20 doesn't matter that I didn't know you were going to do  
21 that. That's the hand of one hand of all in that  
22 situation.

23 MR. HUBBARD: Yes, sir.

24 THE COURT: Well, let me --

25 MR. HUBBARD: I would just suggest, Judge, I

1 know these charges have gotten a lot longer over the  
2 years.

3 THE COURT: They have.

4 MR. HUBBARD: Maybe this one point is just so  
5 important that we have a little extra verbiage where we  
6 need it. But it is incredible, Judge. I know when I  
7 started as a law clerk, the hand of one hand of all charge  
8 was one little paragraph. That was it. And felony murder  
9 was a little paragraph. I know it's evolved, but, Judge,  
10 maybe it's just so important in this case that we can just  
11 have a little verbiage at least on this point.

12 THE COURT: Well, here's my -- and it may be  
13 that it needs to be done with my original hand of one hand  
14 of all charge, but in the charge on the law involving  
15 murder, include just that portion you underlined in that  
16 charge because that sets forth that it may not have been  
17 the intent to kill or murder, but if it was unlawful, as  
18 for instance, breaking in and in the execution of this  
19 common purpose a homicide is committed, it just seems to  
20 flow in the hand of one hand of all charge. It just seems  
21 to flow because now we're getting into common plan and  
22 scheme and common purpose.

23 MR. HUBBARD: Yes, sir. Judge, that would be  
24 fine with us. I underlined the common purpose may not  
25 have been to kill, that's where I started?

1 THE COURT: Yes.

2 MR. HUBBARD: That would be perfectly fine with  
3 us, Judge.

4 THE COURT: There needs -- that's what I'm  
5 sitting here thinking. If you have the murder charge and  
6 then you all are at a disadvantage, but in my charge I  
7 have headings like murder and then the law defining  
8 murder. If I do under that another heading felony murder  
9 and do that, it's going to sound like a separate charge.  
10 So if I incorporate that, I think it needs to be  
11 incorporated in the murder charge under the heading of  
12 murder so that it doesn't appear that -- well, I guess  
13 South Carolina has murder and then they have felony  
14 murder, which is something different.

15 MR. HUBBARD: Right. I agree with you, Judge.

16 Judge, I do have a question about -- I know  
17 you're still working on it -- what's your malice charge?  
18 What is your charge on that?

19 THE COURT: I will read it to you.

20 MR. HUBBARD: I know you've got everything up  
21 there working on it piecemeal, so kind of got you at a  
22 disadvantage, I think, asking you that.

23 THE COURT: It's a little lengthy.

24 Malice is -- I'll just read it verbatim: Malice  
25 is hatred, ill will, or hostility towards another person.

1 It is the intentional doing of a wrongful act without just  
2 cause or exercise and with the intent to inflict an injury  
3 under circumstances that the law will infer an evil  
4 intent. Malice aforethought must exist in the mind of the  
5 defendant just before -- hang on -- malice aforethought  
6 does not require that malice exist for any particular time  
7 before the act is committed, but malice must exist within  
8 the mind of the defendant just before and at the time the  
9 act is committed; therefore, there must be a combination  
10 of the previous evil intent and the act.

11 Malice aforethought may be express or inferred.  
12 These terms "express" and "inferred" do not mean different  
13 kinds of malice but merely the manner in which malice may  
14 be shown to exist; that is, either by direct evidence or  
15 by inference from the facts and circumstances which are  
16 proved. Express malice is shown when a person speaks  
17 words which express hatred or ill will for another or when  
18 the person prepared beforehand to do the act which was  
19 later accomplished; for example, lying in wait for a  
20 person or any other acts of preparation going to show that  
21 the deed was within the defendant's mind would be express  
22 malice. Implied malice or inferred malice may be found to  
23 exist when circumstances demonstrate a wanton or reckless  
24 disregard for human life or when a person -- when a  
25 reasonably prudent person would have known that according

1 to common experience, there was a plain and strong  
2 likelihood that death would follow the contemplated act.

3 MR. HUBBARD: Thank you, Judge. I appreciate  
4 that.

5 THE COURT: And I think at that point would be  
6 important under the murder heading to just continue with  
7 if two or more combine together to commit an unlawful act  
8 and do your charge.

9 MR. HUBBARD: Yes, sir.

10 THE COURT: That's thinking out loud.

11 MS. ZMROCZEK: And I just want to make sure that  
12 there will be no separate hand of one hand of all charge?

13 THE COURT: No, no, no. Well, I don't know. Do  
14 you want one or not want one?

15 MR. HUBBARD: I think so, Judge. I think it's  
16 still applies.

17 THE COURT: Because the testimony in this case  
18 with regards to armed robbery and burglary was they went  
19 over there to do those two things.

20 MR. HUBBARD: Yes, sir.

21 THE COURT: So I don't know that you need the  
22 hand of one hand of all.

23 MR. HUBBARD: I guess I just didn't want Charlie  
24 being the only one nailed with that. You know what I'm  
25 saying, Judge?

1           THE COURT: With what, armed robbery or  
2 burglary?

3           MR. HUBBARD: Yes, sir.

4           THE COURT: Well, here's the thing. And I'm  
5 just speaking out loud. I don't see how a jury could  
6 possibly -- well, I don't know.

7           MR. HUBBARD: My question --

8           THE COURT: I know what you're saying because  
9 there's testimony from Rose that the guy with the Scream  
10 mask ordered her to give over the drugs.

11          MR. HUBBARD: And so if they thought  
12 Mr. Sharpe --

13          THE COURT: Stayed outside or something?

14          MR. HUBBARD: -- stayed outside or he didn't  
15 have a gun, what would that mean for him, I think it might  
16 be just to save confusion, after those two charges are  
17 read about what the law is, that maybe put it in right  
18 after that.

19          THE COURT: That's where I've got it. And you  
20 know what? If Hope doesn't mind, if she doesn't get upset  
21 with me because I'm killing trees, I was going to give  
22 both of you all a copy of this charge.

23          MS. ZMROCZEK: Your Honor, for the record, I  
24 just need to preserve my objection to the record.

25          THE COURT: Right, back to the felony murder?

1 MS. ZMROCZEK: I mean, I feel like either felony  
2 murder, if they want to bring that charge in, then the  
3 hand of one hand of all in my opinion is more redundant.  
4 With hand of one hand of all they'd have to have the  
5 intent that they conspired, they had a meeting of the  
6 minds to commit the crime. And then felony murder is the  
7 result. You see what I'm saying? To me it's confusing  
8 because felony murder says if they went in there to arm  
9 rob or burglarize and then a murder happens, well, then  
10 you're guilty of murder, and I understand that. But I  
11 just -- I'm afraid that the intent is going to be --

12 THE COURT: Well, here's what I think they're  
13 saying and I understand where they're coming from. That  
14 deals with the murder charge. But in this case,  
15 Mr. Sharpe is charged with also burglary 1st and armed  
16 robbery. And if the jury -- I mean, and I'm not saying  
17 this is your position because I know your position is it  
18 wasn't Mr. Sharpe, period, but you've got a witness, Rose,  
19 who testified that a guy with a Scream mask came in, held  
20 a gun to her, ordered her to give over the stuff and the  
21 money, and she did, and then they left. Felony murder  
22 doesn't involve -- doesn't address that issue. It doesn't  
23 address the burglary and the armed robbery issue. Hand of  
24 one hand of all does. In other words, if -- and all of  
25 this is obviously based on what the jury believes, but if

1 they believe that it was Charlie Plumley who fired the gun  
2 and stuck it in Rose's face and robbed her, but they also  
3 believe that Mr. Sharpe was there, then that's what hand  
4 of one hand of all deals with. Then if you believe he was  
5 there when this went down, then you could find under the  
6 hand of one hand of all that he's also guilty of burglary  
7 and armed robbery.

8 MS. ZMROCZEK: And I agree. And I guess so  
9 would the hand of one charge go back to the one that you  
10 had and take out --

11 THE COURT: Originally, the original one.

12 MS. ZMROCZEK: Okay.

13 THE COURT: Yes. And I would put that -- to put  
14 separation between that and the murder charge, I would put  
15 that at the end of the -- I will charge them on burglary,  
16 I'll charge them on armed robbery and then I'll put that  
17 at the end of those.

18 All right. Let me do this. And I hate to keep  
19 delaying, folks, but I think it might help you. I wasn't  
20 going to give you a copy of this, and I'll tell you why.  
21 And I'll tell you why but I'm going to ask you not do it  
22 and hopefully you'll listen.

23 I've always given both sides a copy of my  
24 charge. Well, lately, all of a sudden and not just here  
25 in Lexington but anywhere I'm at, I'm sitting here

1 listening to y'all's closing, sitting here listening, and  
2 next thing I know, I'm hearing my charge being read  
3 verbatim, and I look over and either the defense lawyer or  
4 the State or the plaintiff depending on whether it's a  
5 civil case, they've got my charge in their hand and  
6 they're reading a portion of it to the jury. Don't do  
7 that. That would highly upset me that you're stepping on  
8 my thunder. You can talk about the law, you can do that,  
9 but -- so I thought to myself, I'm going to stop giving my  
10 charge, because I'm trying to be helpful to everybody, but  
11 if you're going to take my charge and go up there and read  
12 it to the jury, I'm not going to do that.

13 But I think it's helpful to you to have it; for  
14 example, as you prepare your closing arguments this  
15 evening, you'll know the law that I'm going to charge  
16 them. And so I think it's going to be helpful for you to  
17 have it. So I'm going to give you a copy of what I've  
18 done. I just ask that you not when you do your closings  
19 take my charge up there and read it to them.

20 MR. HUBBARD: That will be no problem with the  
21 State, Your Honor. We do appreciate it, we really do.

22 THE COURT: Although I don't blame you because  
23 charges are inherently boring to me, I guess, because I do  
24 it all the time.

25 MS. ZMROCZEK: And you do can give a copy to the

1 jury, right?

2 THE COURT: And that's why I need to have it in  
3 a final form because I do put it in a notebook and it goes  
4 back to the jury room with them. And I read it verbatim  
5 so that I don't change anything. So I'm going -- Hope,  
6 I'm going to send you this charge in just a moment.

7 THE CLERK: Yes, sir.

8 THE COURT: And if you don't mind making me two  
9 copies, one for each side.

10 THE CLERK: You don't need one yourself?

11 THE COURT: Well, I want to make sure it's in  
12 final form.

13 THE CLERK: Okay, sir.

14 THE COURT: Now, so we're going to do that. Now  
15 let me go back, though. And, Aimee, you may have had some  
16 other dealings with the charge, I don't know, but if you  
17 had any other issues you wanted to take up.

18 MS. ZMROCZEK: No, sir, that was it.

19 THE COURT: Well, let me get this to you then.  
20 I got to put back the hand of one hand of all charge.

21 My charge I'm going to read to the jury ends up  
22 being 22 pages because I do like 16 point font and I do  
23 like double spacing all this.

24 MR. HUBBARD: That's great.

25 THE COURT: Okay. That is not what you're

1 getting. You're going to get it is with 14 point font and  
2 you're not going to have double spacing. I'm trying to  
3 conserve paper because it took it from 22 pages down to  
4 11, cut it in half. And I also do all caps. It's just  
5 the blind man in me. So if you all will take this and  
6 review it, look it over.

7 MR. HUBBARD: Thank you, Judge.

8 THE COURT: Let's do this so we don't have all  
9 court personnel sitting around. If you have any issues  
10 with anything, I'm available via email. Email me, let me  
11 know.

12 MS. ZMROCZEK: Around 6 o'clock, would that be a  
13 good time?

14 THE COURT: You can send it. I won't be getting  
15 it, but you can send it. I'll get it later on, about 9:30  
16 probably. But if you do, just let me know. And, again,  
17 we're going to have to get together and talk about it if  
18 there are any issues. If there's not, great. We'll just  
19 come at 10 o'clock in the morning and go. If there are,  
20 you all need to be here a little early and as soon as I  
21 get finished with the civil lawyers, then we'll talk about  
22 if there needs to be anything changed, okay? I'm not  
23 going to keep everybody here this afternoon while you look  
24 at this.

25 MS. ZMROCZEK: And I'll try to get here a little

1 bit early, too, but I need some of the evidence.

2 THE COURT: So if there's nothing else, see you  
3 all around 9:30 in the morning.

4 MR. HUBBARD: Yes, Judge. Thank you very much.

5 MS. ZMROCZEK: Thank you, Judge.

6 (The proceedings were concluded for the day, to  
7 be reconvened on August 30, 2013.)

8 THE COURT: Unless I just didn't get it, I'm  
9 assuming the charge is okay? Because I got no email.

10 MS. ZMROCZEK: Judge, I thought I sent it.

11 THE COURT: What's the problem?

12 MS. ZMROCZEK: I just have one question about  
13 the -- and it may be that I just need to preserve the  
14 argument for appeal, but I just had a question about the  
15 last sentence of the murder charge. And I think we  
16 discussed it yesterday, about the one that encompasses the  
17 felony murder charge.

18 THE COURT: Go ahead and tell me because I don't  
19 know that we covered it.

20 MS. ZMROCZEK: The concern that I have, Your  
21 Honor, is that felony murder doesn't require any intent.

22 THE COURT: Neither does murder. Am I  
23 incorrect? Murder doesn't require an intent to kill.

24 MS. ZMROCZEK: With malice aforethought, but it  
25 requires malice and I would argue that malice would be the

1 intent.

2 THE COURT: All the felony murder charge says  
3 essentially is that if a murder occurs during the  
4 commission of a crime and you're part of that criminal  
5 activity, it's kind of a hand of one hand of all, you're  
6 just as guilty as the person who pulled the trigger.

7 MS. ZMROCZEK: Right. And my concern is that --  
8 I believe that the reason they said that, testimony came  
9 in that Charlie said there was -- or Charlie testified  
10 that they maybe wrestled over the gun, so he maybe kind of  
11 was talking about an involuntary manslaughter, and my  
12 concern is that Charlie could be found guilty of an  
13 involuntary manslaughter, but since another person was  
14 with him, that person would be guilty of murder.

15 MR. HUBBARD: We've never made that  
16 representation. We always said with malice, what happened  
17 was malice, what happened was murder. Our only concern  
18 was to make sure that regardless of who had the gun,  
19 they're guilty, and that's the felony murder rule, that  
20 even if this murder was not an intended consequence of the  
21 planned action, all parties involved that intently joined  
22 this action, they are guilty of the outcome, they bought  
23 the whole bag of goods whether they knew what would be in  
24 there or not.

25 THE COURT: Doesn't the felony murder charge,

1     though -- in other words, there's no -- at least I haven't  
2     gotten one -- there's no request for any lesser included  
3     offense to murder.

4             MS. ZMROCZEK: No, Your Honor.

5             THE COURT: So they're not going to find  
6     involuntary or voluntary. They're either going to sign  
7     murder or not.

8             MS. ZMROCZEK: Correct.

9             THE COURT: So I don't think that's an option  
10    here. But even if it was, all this felony murder charge  
11    says is that whatever you find on the shooting -- in this  
12    case a shooting -- is what you would find for all those  
13    who participated, or you could find.

14            MS. ZMROCZEK: Right. And I have no problem  
15    with that hand of one hand of all. I just -- I just --  
16    and it may not make sense. It's just something that keeps  
17    coming back to me so I wanted to make sure I preserved the  
18    record.

19            THE COURT: And I understand what you're saying.  
20            Here's what I'm going to do. I'm going to note  
21    your objection to the felony murder charge being given and  
22    note that exception to that portion of the charge. Is  
23    there anything else in the charge?

24            MS. ZMROCZEK: Nothing else.

25            THE COURT: Anything from the State?

1 MR. HUBBARD: No, sir, Your Honor.

2 THE COURT: Okay. All right. Well, is there  
3 anything else we need to take up before we bring the jury  
4 out?

5 MR. HUBBARD: Oh, there is, Judge.

6 Ms. Zmroczek was showing me some of her  
7 demonstrative charts.

8 MS. ZMROCZEK: Just to prevent any objections  
9 during the closing.

10 MR. HUBBARD: The one is describing guilt beyond  
11 a reasonable doubt. I think she's got a lot of language  
12 in here that's confusing. I think it's highly misleading.  
13 It goes guilt beyond a reasonable doubt, the next level.  
14 The next level is a strong belief, guilt likely, probably  
15 guilty, possibly guilty, suspected, perhaps, maybe not  
16 being, possibly not, unlikely, probably not, less than  
17 likely, highly unlikely, believe not guilty.

18 I think there's two problems. One is, Judge,  
19 it's a total misrepresentation of what a reasonable doubt  
20 is. You have to be firmly convinced that the evidence the  
21 State presented is what it is. If you're not, you're not  
22 guilty.

23 The second concern about guilt, though, also  
24 applies to not guilty. With this flow chart, if this jury  
25 has a real genuine doubt under the law, with her flow

1 chart, they might not think so. So either way, I think  
2 it's highly misleading. I think the jury needs to hear  
3 what the law actually is, not an opinion like this that  
4 can mislead. And ultimately, we yield to you. But I  
5 think this could really take that jury out in the weeds,  
6 Judge. And as much as you try to correct that, this is an  
7 image they see, not just hear, and you can't get rid of  
8 that.

9 THE COURT: Let me look at it. It confuses me  
10 just looking at it.

11 I don't know. You've got these things listed  
12 over here and you've got not guilty listed over here.  
13 It's almost like the only way they could find not guilty  
14 is if they find it somewhere here in the middle.

15 MS. ZMROCZEK: No, Your Honor.

16 THE COURT: Up here you've got possibly guilty,  
17 probably guilty. Those under the law would render a not  
18 guilty verdict.

19 MS. ZMROCZEK: Right. That's why I have the  
20 arrows saying all of those under the law would render a  
21 not guilty. And then the only one that would be a guilty  
22 verdict is the one on top.

23 MR. HUBBARD: Judge, if we're having to discuss  
24 this to figure out what it means --

25 THE COURT: I'm not going to allow it. This is

1       incredibly confusing right here.

2               MR. HUBBARD: Thank you, Your Honor.

3               MS. ZMROCZEK: Your Honor, my question then  
4       becomes --

5               THE COURT: You can argue to them all you want  
6       to, you know, ladies and gentlemen, if you think he's  
7       possibly guilty, that's a not guilty. If you think he --  
8       pretty sure he might not, but not sure, that's a not  
9       guilty. I mean, you can argue that all you want, but that  
10      chart in looking at it is incredibly confusing and it  
11      looks like -- I mean, it would have been easy if you had  
12      put up there beyond a reasonable doubt, guilty, and then  
13      everything below that would be not guilty. But here  
14      you've got it listed over here and you've got not guilty  
15      in the middle and you've got arrows and I just -- it --  
16      and obviously I'm going to charge them on the law and  
17      they're to take the law as I charge it to them. You all  
18      can talk about the law all you had want to, but it needs  
19      to -- maybe, you know, there's many a lawyer that's  
20      confused a jury by talking to them. But again, that  
21      visual is very difficult to follow. I just think it would  
22      be very misleading to the jury. So I will not allow that.

23              MS. ZMROCZEK: Thank you, Your Honor. And that  
24      objection is noted for the record.

25              THE COURT: Your objection to that ruling is

1 noted.

2 MS. ZMROCZEK: One thing, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. ZMROCZEK: And I'm sure you're going to do  
5 this, but just out of an abundance of caution.

6 THE COURT: Don't be sure, because I make  
7 mistakes all the time.

8 MS. ZMROCZEK: I assure you not as many as I  
9 make.

10 You're going to let the jury know that they  
11 don't have to be finished by 5 o'clock today, that they  
12 can take as long as they need?

13 THE COURT: I don't put a restriction on it at  
14 all. I don't address that. I just tell them that their  
15 verdict in this case must be unanimous.

16 MS. ZMROCZEK: My concern is just that it's  
17 Friday, they'll get the case around 1:00 and my concern is  
18 that they think we have to be done by 5 o'clock.

19 THE COURT: I mean, I'll be happy to tell them  
20 to take as long as they need.

21 MS. ZMROCZEK: Because there's a lot of evidence  
22 in this case to go through.

23 MR. HUBBARD: No objection to that.

24 Judge, I do have a request. Once Ms. Zmroczek  
25 is done, if we could have a moment to kind of reconfigure

1 the floor before I step on it. Maybe the jury might want  
2 to step out and use the bathroom at that point and come  
3 back in fresh, that would certainly be -- I would  
4 certainly appreciate it.

5 THE COURT: Let me ask you this: How long do  
6 you all anticipate your arguments going? I'm not going to  
7 have two and a half hour arguments, I can tell you that  
8 right now.

9 MR. HUBBARD: I don't think I can talk that  
10 long.

11 THE COURT: Well, I wouldn't think so, but I've  
12 seen folks that try.

13 MS. ZMROCZEK: I anticipate 45 minutes.

14 THE COURT: That's fine. But if you think --

15 MS. ZMROCZEK: But I did pull some evidence out  
16 to lay out.

17 THE COURT: That's fine.

18 MS. ZMROCZEK: And I know they probably want the  
19 same, and I wouldn't object to a break.

20 THE COURT: Well, we'll do that then. We'll do  
21 that. And that will give them and you all an opportunity  
22 to refresh.

23 Okay. Let's bring the jury out.

24 (The jury came into open court at approximately  
25 10:35 a.m.)

1           THE COURT: All right. Folks, you all have a  
2 seat. Thank you very much.

3           All right. Ladies and gentlemen, as you recall  
4 from yesterday, both the State and defense had rested  
5 their cases and I've taken up the matters of law that I  
6 need to take up with the attorneys and we have resolved  
7 those.

8           So now we have reached the portion of this trial  
9 where the lawyers are going to have an opportunity to  
10 address you with what we call closing arguments or what's  
11 sometimes called final summation. It's during this time  
12 that they're going to have an opportunity to talk to you  
13 about what they believe the evidence in this case has  
14 shown.

15          Now, as I told you when we started the case, as  
16 I told with regards to their opening statements, what the  
17 lawyers tell you in their closing arguments is not  
18 evidence. The evidence is closed. It is the testimony  
19 from the witnesses who were placed under oath and  
20 testified here as well as the exhibits which came in. So  
21 that's the evidence. But it is important that you listen  
22 carefully to the attorneys as they talk to you about what  
23 they believe that evidence has shown. And when they have  
24 had the opportunity to do that, I will then give you the  
25 charge on the law; I will give you the law that is

1 applicable to this case. Once that's done, at that point  
2 then you'll be in a position to go back into the jury room  
3 and actually for the first time be able to talk about the  
4 case, talk about the facts, talk about the evidence and  
5 deliberate and decide this case. Okay?

6 Now, what I intend to do is Ms. Zmroczek is  
7 going to present to you her closing remarks and then we're  
8 going to take a very short break so that we can rearrange  
9 exhibits in the court here. So you'll go back to the jury  
10 room very briefly, maybe use the restroom or grab  
11 something to drink and then we'll come back out and then  
12 you'll hear from the State and then I'll give you the  
13 charge on the law. That's what I anticipate we'll be  
14 doing. So, if you would, please give the lawyers your  
15 undivided attention as they address you with their closing  
16 arguments.

17 Ms. Zmroczek.

18 MS. ZMROCZEK: Thank you, Your Honor. May it  
19 please the Court.

20 THE COURT: Yes, ma'am.

21 MS. ZMROCZEK: The State got it wrong. They got  
22 the wrong man. Shawn Sharpe did not rob Rose Lucas, he  
23 didn't burglarize Rose Lucas's home, he did not murder  
24 Leon Justice.

25 The issue in this case has always been who is

1 the second masked man with Charlie. And the answer is, it  
2 wasn't Shawn Sharpe.

3 Charlie Plumley has a terrible problem. You  
4 heard him on the stand. He's a crack addict. Angela  
5 Plumley out of the mouth of her husband is a crack addict,  
6 out of her mouth is a meth addict. These are terrible  
7 drugs. And what they do to people is terrible. But that  
8 does not justify their actions.

9 On September 21, 2011, their habit caught up  
10 with them. Looking for crack, desperate for crack, they  
11 go to the house where they can get crack, that everyone  
12 wants to rob, according to Charlie, and he shoots that  
13 man. And he realizes he's made a mistake.

14 At 2:00 in the morning, some three hours after  
15 this happened, he called the phone of Barbara Bailey, the  
16 sister of Rose Lucas. Two o'clock in the morning he finds  
17 out that Leon Justice has died, and he has to fix it.  
18 Remember his testimony? Until his lawyer told him, he  
19 didn't know about hand of one hand of all. So if he can  
20 put the gun in someone else's hands, then he and his  
21 family are all free.

22 And who do they pick? They pick the little  
23 brother, a 20-year-old, 7th grade education, the little  
24 brother of their crack friend and the guy that has drugs  
25 and the guy that has guns. And maybe they owe him money,

1 maybe they have a vendetta, maybe they have a lot of  
2 reasons to put the gun in someone else's hand.

3 They said a lot of things on that stand. They  
4 said a lot of things to the police. You're the ones who  
5 determine their credibility. The stories that they told  
6 on the stand to you within the course of direct and  
7 cross-examination were inconsistent. Think about what  
8 motive they have.

9 The evidence in this case, the items, the  
10 testimony has all been presented. It's been presented to  
11 you in a way to help to try to explain and to give credit  
12 to Charlie and Angela's testimony.

13 Before we talk about the evidence, I want to  
14 talk about the law. And please understand that the judge  
15 already told you he's going to give you the law. He's  
16 actually going to give you a copy of the charges that he  
17 reads. So my interpretation or whatever I say, just as  
18 whatever they say, it's simply that, it's my  
19 interpretation, but it's a way to help me help you to  
20 understand.

21 Our criminal justice system is the best in the  
22 world. People are envious of this, because we give people  
23 the opportunity to stand and face the 14 of you, and  
24 eventually 12, if you're wrongfully accused of a crime.  
25 You are the people that are insured with protecting the

1 constitution, protecting what we fight for every day.  
2 People over Iraq fighting for it right now.

3 Your job is a very difficult one in some ways.  
4 You have the life and the liberty of Shawn Sharpe in your  
5 hands now. In some ways it's an easy one. Because you  
6 can look at the evidence and you can determine whether or  
7 not it meets the burden.

8 You hear a lot of talk about reasonable doubt.  
9 Reasonable doubt is a legal concept, and the judge will  
10 tell you what that is. But it's an individual and moral  
11 concept for you. Reasonable doubt doesn't have to be the  
12 same for all of you. Something doesn't make sense, it  
13 just doesn't fit, then that can be reasonable doubt.

14 The judge will tell you this, and you know, the  
15 burden is on the State. The burden is on the State to  
16 proof to you through the witnesses and through the  
17 evidence, the hard evidence, that he is guilty. If you  
18 have any questions about what happened the night of  
19 September 21st, 2011, you cannot look to Shawn.

20 MR. HUBBARD: I object to that, Your Honor.  
21 That is a misstatement of law. Any question is not --

22 THE COURT: Sustained. Sustained.

23 MS. ZMROCZEK: If you have some question --

24 MR. HUBBARD: I object.

25 THE COURT: That is an incorrect statement of

1 law.

2 MS. ZMROCZEK: If you have doubt as to what  
3 happened the evening of September 21st --

4 MR. HUBBARD: I still object.

5 THE COURT: The standard is reasonable doubt.

6 MS. ZMROCZEK: If you have reasonable doubt?

7 THE COURT: Correct.

8 MS. ZMROCZEK: Thank you.

9 If you have reasonable doubt as to what happened  
10 the night of September 21, 2011, you can't look to Shawn  
11 to answer those questions. It's the responsibility of the  
12 State to clear up that reasonable doubt for you.

13 If you wanted to hear from Phil Helms or Todd  
14 Thomas or Larry Bruh, the people who gave the truck,  
15 traded it for crack or let people drive because they  
16 didn't trust other people, it's not Shawn's responsibility  
17 to bring that in. If you wanted to hear from Patsy Anz  
18 explaining why she was arrested for these crimes, did she  
19 always have her cell phone, when did she let Danny use it,  
20 when did she use it. Lilly Yon told the police she saw  
21 one of the suspects was African-American. They told you  
22 that wasn't credible evidence. That's something you want  
23 to decide for yourself. It's the burden of the State to  
24 bring in those witnesses. Billy Hinson, the man who  
25 introduces Danny and Charlie to Rose Lucas, he's the one

1 that makes that connection. Serve or Sever, if you want  
2 to know who this person is constantly called from -- at  
3 least three times called from Charlie's phone after the  
4 murder, the burden is on the State to produce that.

5 The unidentified witnesses. You may have  
6 wondered, sit here and wondered, you asked all the police  
7 officers what their roles were in this case. You put some  
8 police officers on the stand and asked them to whom did  
9 they speak, did they take statements. You may wonder who  
10 were the unidentified witnesses at Rose Lucas's house that  
11 night, what impact do they have. We already discussed  
12 Barbara Bailey.

13 Danny Plumley, why didn't we hear from him  
14 explaining his role and when he had a phone. Why didn't  
15 we hear from the Travelers Inn clerk or the Walgreen's  
16 pharmacist. When you purchase Sudafed because of meth,  
17 you're required to give an ID and sign, and they track  
18 that. Why don't we know what time and who bought Sudafed?  
19 Why don't we know what time approximately the clerk tells  
20 the police that Angela walks in and gives a fake ID? Why  
21 don't we know how many people he identified with her?

22 Why didn't we hear from Raymond and Debra  
23 Plumley? Why did they flush the crack, burn the Scream  
24 mask?

25 Charlie Plumley, Angela Plumley, Danny Plumley,

1 Raymond Plumley, Debra Plumley, Patsy Anz, and Shawn  
2 Sharpe, that was who was arrested in connection with this  
3 case.

4 The Constitution allows Shawn to sit back and  
5 make the State prove their case against him. He does not  
6 have to call any witnesses, he does not have to testify,  
7 and the Judge will explain all that to you. We did call  
8 some witnesses. We called the chief investigator of the  
9 case. We called one of the primary investigators from the  
10 major crimes squad. They were called to ask what else did  
11 you do, and they told you, and they did a lot. These  
12 police officers worked a lot. The evidence that you've  
13 been presented by the State in proof of this claim is what  
14 you see.

15 In a criminal case, you may think or have a  
16 strong suspicion that a defendant is guilty. But if you  
17 do, that's not -- that's not enough. That's reasonable  
18 doubt. He must be found not guilty under the law.

19 You may feel fairly certain that he's guilty of  
20 these crimes.

21 MR. HUBBARD: Your Honor, I'm going to object at  
22 this point because I think these is floating out there,  
23 that the term is firmly convinced. I'm okay if she uses  
24 that term. If you're not firmly convinced, you're not  
25 guilty. If you are, he is.

1 THE COURT: I'm going to charge the jury on the  
2 law.

3 You may proceed.

4 MS. ZMROCZEK: Thank you.

5 Whatever the judge tells you is the law. But  
6 you're the ones who make the decision. And it's not a  
7 decision that you should rush to because if you wrongly  
8 convict someone, you can't take it back. If you go home  
9 tomorrow and you're going through your daily routine, been  
10 here all week, you wake up in the middle of the night and  
11 you think I made a terrible mistake.

12 MR. HUBBARD: Judge, I'm going to object. She  
13 can just -- this is absolutely inappropriate.

14 THE COURT: Sustained. Sustained.

15 MS. ZMROCZEK: If you have a question, if you  
16 meet the standard, if the evidence they present has met  
17 the standard, then find him guilty. But if it does not  
18 and cannot beyond a reasonable doubt, then you must find  
19 him not guilty.

20 I want to talk about the evidence in this case,  
21 the evidence that you do have in front of you.

22 You had reasonable doubt walk in the very first  
23 day and sit on that stand and raise her hand and say, my  
24 name is Angela Griffin Plumley. She promised to sit up  
25 there and tell you the whole truth, Tuesday's whole truth.

1 She gave several statements, three statements to the  
2 police, two of which she did not implicate herself in.  
3 She told you that she had been at Rose Lucas's house, sat  
4 in her stinky living room. She told you at the hotel  
5 Danny and Charlie split the crack. The things that she  
6 told you don't add up. And they're going to tell you and  
7 the judge is going to tell you when you judge the  
8 credibility of a witness, you can believe all of their  
9 testimony or none of their testimony or parts of their  
10 testimony.

11 So let's consider her testimony with Charlie  
12 Plumley's testimony and what motive, what bias would they  
13 have to sit on that stand and to look you in the face and  
14 to not tell you the truth? She came up with an amazing  
15 detailed story of how Shawn ran ahead of him and the old  
16 man wrestled for the gun and it went off. If you remember  
17 where the ejected bullet cartridge was found, not right  
18 outside the front door, it was on a lumber pile. It's  
19 absolutely possible that that could have happened, but how  
20 would Charlie know that unless it happened to him?  
21 Remember, Charlie doesn't think that if he's the shooter  
22 that he can get in trouble. His brother, his mother, his  
23 father and his wife all have been arrested in connection  
24 with this case. And they have not been offered any deals,  
25 and they have not been given any promises, and they

1 certainly expect it.

2 Charlie, Angela, Olivia, and possibly Rose  
3 described in great detail putting on the knit cap. You'll  
4 take that knit cap back with you. The eyes are cut out.  
5 Remember the testimony of the SLED agent. Shawn Sharpe is  
6 excluded as a match to that cap. The two hairs that were  
7 found on that cap excluded Shawn Sharpe as a match.

8 Rose Lucas's testimony. Bless her heart, she's  
9 a perfect example of what crack does to you. And she's  
10 trying to get better. But what can she remember? She  
11 told you. And if your memory is different than mine, go  
12 with yours. What I remember is she said Shawn and Danny  
13 were there four to five times that day purchasing crack.  
14 Excuse me, Shawn and Charlie. Charlie said he did go by  
15 crack from her earlier before he went to go get the gun  
16 with Shawn, but Shawn was in the truck. She tells you the  
17 one thing she's certainly consistent about is the Scream  
18 mask. The man with the Scream mask bursts through the  
19 door, holds a gun to my head, takes me back to the room.  
20 She said they both go back to the room. Charlie says  
21 Shawn is the lookout.

22 You heard Agent Ross testify of having to stand  
23 under his car trunk hood because it was raining so much.  
24 You have pictures of the home in evidence. They run  
25 97 feet across a yard in pouring down rain in Gaston,

1 South Carolina, and there's not one footprint?

2           Rose tells you about the amount of money and the  
3 amount of crack that was stolen from her that night. A  
4 different value than what Charlie tells you he took from  
5 her house that night. No crack was ever recovered because  
6 Charlie had his parents flush it and some was used in the  
7 Traveler's Inn by Charlie and Danny if you listen to  
8 Angela or by Charlie and Danny and Angela if you listen to  
9 Charlie. I didn't hear any testimony of Shawn doing  
10 crack.

11           The hunting outfits, the camouflage and the  
12 blue. That description doesn't come from Rose Lucas. She  
13 couldn't describe anything but the Scream mask. The  
14 testimony is that they drove to McDonald's after the Pit  
15 Stop to throw those clothes in the dumpster. But we don't  
16 have any McDonald's video. Were the boots thrown away?  
17 Why would you keep the Scream mask, the most identifiable  
18 part of this crime? Why would you keep that with you and  
19 not the coveralls? Why not throw it all away?

20           The bandanna and the gun -- I assure you, it's  
21 not loaded -- the testimony of Ashley Jeffcoat, the  
22 ex-girlfriend of Taco. To be sure I wasn't  
23 misunderstanding her, I even showed her and she described  
24 putting the bullets, putting the bullets into the  
25 magazine, putting the magazine in the gun, cocking the

1 gun, and Taco's DNA is nowhere, nowhere on this gun?

2 I hope that you're not confused about the  
3 bandanna because there were several bandannas in this  
4 case. Charlie told you his house is full of bandannas.

5 Ashley Jeffcoat, the clearly upset and jealous  
6 ex-girlfriend of Taco, is called by the police to bring  
7 the gun back to Taco's because the police need it, and she  
8 wrapped it in a blue bandanna. And that's the bandanna,  
9 that dark colored bandanna, that's the bandanna from which  
10 they find the DNA. But that DNA wasn't tested against  
11 Danny Plumley, and it wasn't tested against "Chuc" D,  
12 Shawn's brother. And they didn't tell you it was tested  
13 against Taco. We asked that question. Why does that  
14 matter? It raises questions as to who had that gun and  
15 who touched it. The testimony was that it was touched and  
16 there's expected to be some DNA on it. And DNA is not an  
17 exact science, but I assure you that it's more exact and  
18 more scientific than cell phone towers.

19 You heard from two different experts. You heard  
20 from the -- and I know they have names and I do not want  
21 to pronounce them so I'm going to call them the AT&T  
22 expert and the Verizon expert, and they give you phone  
23 charts tracking Shawn Sharpe and Charlie Plumley. But  
24 what they don't give you in these charts are how long  
25 these calls lasted. But you have the phone records and

1 you can look through that, and I encourage you to look  
2 through those. Because what you'll see is a full picture  
3 of if people were actually talking or trying to get in  
4 touch with each other.

5 This was the propagation map from the AT&T  
6 expert. I found it interesting that the very next expert,  
7 the Verizon expert said that he didn't put a lot of  
8 credibility in the propagation map and he didn't need  
9 propagation. And when I asked him if I'm standing here  
10 can you tell me which tower my phone is pulling from, he  
11 said no. When I asked him when you draw these colors and  
12 you say that someone's in a sector, can you give me some  
13 scientific basis or background for that, no. It's most  
14 likely. It's approximate. They have several maps with  
15 lots of different colors with Victor Road where Charlie  
16 shot Leon Justice. Three and a half miles down the road  
17 is Mimosa Drive where Taco lives. But they can't be in  
18 the same sector, or can they? Victor Road is right here  
19 on the -- on the -- melding of these two colors. Can you  
20 tell me that that phone wasn't at Mimosa? The answer is  
21 no. But the evidence is trying to show you that it's  
22 possible that Charlie's story could add up. It's  
23 possible. It's possible that it doesn't add up. All of  
24 these different testimonies regarding the cell phone  
25 tracking just gives the State's case more reasonable

1 doubt, more reason to question.

2 Why is it perfectly acceptable for Danny and  
3 Charlie to use other peoples' cell phones and have other  
4 peoples' cell phones, but to have Shawn's cell phone  
5 connected to him only?

6 Obviously Taco can't come and testify. Why  
7 can't we say for sure that it wasn't Taco or the person  
8 who dropped Shawn off that day to get arrested whose phone  
9 he was using? Why are they trying so hard to match these  
10 numbers, some of the numbers. They didn't match Barbara  
11 Bailey's number. They didn't match Billy Hinson's number.  
12 They will be in there on the chart that will be submitted  
13 later.

14 Why were these forms and these maps and these  
15 inquiries created the month of August 2013? Why weren't  
16 these investigatory? The Verizon expert who's also the  
17 major crimes lieutenant in Richland County, he said it's  
18 so important to get -- it's so helpful to get the phone  
19 calls right around the time. It helps you understand,  
20 maybe give you some insight. Who was Rose Lucas talking  
21 to? Who was Leon Justice talking to? Why don't we know  
22 that?

23 Ladies and gentlemen, Mr. Foreman, Mr. Bank and  
24 I have relinquished our responsibility in the defense of  
25 Shawn Sharpe. We want to thank you for your service. You

1 sat here all week and you've been very attentive and  
2 you've dealt with our delays, some of which were caused by  
3 me, but you've been patient because I believe you  
4 understand how important this role is.

5 In a minute I'll be sitting down. The  
6 determination of the facts will not rest with me. It will  
7 sit squarely on your shoulders. And the solicitors will  
8 have a chance, Mr. Hubbard will have a chance to come up  
9 and make his arguments because they have that burden. But  
10 I ask of you every time they say guilt or show you  
11 something that leads to his guilt, you ask yourself is  
12 that beyond a reasonable doubt and promising to lift the  
13 mask of the second defendant and wondering if it's Danny  
14 or "Chuc" D or Larry Bruh. If we don't know, that's  
15 reasonable doubt. You must find Shawn Sharpe not guilty  
16 of murder, burglary 1st, and armed robbery.

17 Thank you.

18 THE COURT: Thank you, ma'am.

19 Ladies and gentlemen, I'm going to get you to  
20 step back into the jury room for just a moment. Please  
21 have no conversation about the case, about anything you've  
22 heard at this point and I'll get you right back out, okay?

23 (The jury left open court at approximately 11:13  
24 a.m.)

25 THE COURT: All right. Go ahead and do whatever

1 changes you need to make.

2 (A break was taken.)

3 THE COURT: Bring the jury in.

4 (The jury came into open court at approximately  
5 11:21 a.m.)

6 THE COURT: All right. Ladies and  
7 gentlemen, we've got things arranged and set up now, so at  
8 this time I would recognize Mr. Hubbard on behalf of the  
9 State.

10 MR. HUBBARD: Yes, sir.

11 Two masked men go to the home at Victor  
12 Road, burst in that home with a gun, hold it to Rose Lucas  
13 and rob her. Two masked men go into that home at night  
14 without consent with the intent to commit a crime, a  
15 theft, and they end up hurting and killing someone, that's  
16 burg 1st. Two masked men, a knock at the door, two masked  
17 men are there when Leon Justice opens the door to the home  
18 he lives in and he is met with a gun and he is met with  
19 malice.

20 Mr. Graham at the beginning of the trial said we  
21 know who one of those people is right out of the get-go is  
22 Charlie Plumley and he would testify. And that's exactly  
23 what we did. We said at the end of the trial that mask  
24 would be removed from the second person. Folks, it has.  
25 It has been.

1           We put Charlie Plumley up who took that stand  
2 and said, I was the one in that weird looking mask picture  
3 the defense had, that Scream mask. That was me. I am  
4 guilty of armed robbery, of burg 1st, of murder. Even  
5 though I didn't have the gun, I'm guilty.

6           We put his wife up, who initially we had no idea  
7 the level of her involvement. She came to us. I am  
8 guilty of armed robbery, burglary 1st degree and murder,  
9 even though I didn't get out of the car.

10           Two masked men. Shawn Sharpe is the one both of  
11 them point to. And why pick Shawn Sharpe? Is he just so  
12 doggone unlucky that he gets fingered by two people?

13           When Charlie took that stand you heard him say,  
14 listen, Solicitor, I didn't have the gun, Shawn did. He  
15 pulled the trigger, but I know I'm still guilty. The hand  
16 of one is the hand of all. His wife had to say the same  
17 thing. I didn't handle the gun, I didn't pull the  
18 trigger, I didn't go into the home; the hand of one is the  
19 hand of all.

20           The judge is going to tell you that about law.  
21 That's something you've taken an oath to follow as he  
22 gives it. I'll give you a rundown on it, but his words  
23 are the words you hang on to. He is the law in this  
24 courtroom.

25           Hand of one hand of all. Two people decide to

1 rob a bank. One person takes a gun and goes into the  
2 teller, makes everybody lie down, gets the money bag, runs  
3 out. The next person is out there in the car with the car  
4 running, the getaway driver. They're both guilty under  
5 the law of armed robbery. Both. No question. If they're  
6 in it, they're in it together. The hand of one is the  
7 hand of all. They act as one.

8           The law of armed robbery is fairly simple:  
9 Using a deadly weapon to take something from someone that  
10 is not yours. That is what happened in this case. A  
11 pistol was used. Rose Lucas gave up money and drugs. You  
12 might ask, but, Solicitor, can he be guilty of armed  
13 robbery stealing drugs? The law's got an answer, and the  
14 answer is yes. Yes, you can. There was an armed robbery.  
15 And if Shawn Sharpe wasn't there, are they disputing that?  
16 Who cares how much money was taken or how much crack?  
17 There was an armed robbery. That's what we're here about.  
18 We're not accountants, we're prosecutors. There was a  
19 crime. It didn't involve money, there was a crime that  
20 involved a gun.

21           Burg 1st, going into someone's home, a dwelling,  
22 without consent. You don't have to kick the door in,  
23 break a window. What makes it 1st degree is any number of  
24 things. Was it at night? Was somebody hurt inside?  
25 There was a burg 1st in this case.

1           Murder. Murder is described as killing, an  
2 unlawful killing of another human being with malice  
3 aforethought. Now if you watch a lot of TV, you hear  
4 about murder one, murder two, premeditation. In some  
5 states that's true. Every state defines murder. South  
6 Carolina has the oldest law in the country. And what's  
7 good about our law is we don't just look at what's  
8 intended in the head, we look at the human heart by their  
9 actions. In this world today, few people even admit there  
10 is a heart. We look at the heart. What was the heart of  
11 the person committing the crime.

12           Malice aforethought, the unlawful killing of  
13 another human being with malice aforethought. What is  
14 malice? Malice is basically wickedness, evil, evil in  
15 your heart. Some of the old law says a heart bent on  
16 mischief, a malignant heart, a cancerous heart, a heart  
17 that is bent on doing wrong. Aforethought means that  
18 malice was there right at the time of the crime. It could  
19 have been there like that, just for one second, or it  
20 could have been brewing and bubbling for years. It  
21 doesn't matter. Aforethought means that malice was there  
22 when the crime was committed.

23           Folks, you got a heap of malice in this case.  
24 This case is oozing with it. Set aside your masked men  
25 and who they are. Let's just say two masked men go to a

1 mobile home. That mobile home belongs to Rose and Leon  
2 Justice.. Who needed a gun? Seriously. Two young men, do  
3 they need a gun to rob an old man and an older lady. They  
4 didn't know anyone else was in that mobile home, remember?  
5 They waited and thought the last customer had left, the  
6 last visitor had left. The law says that you can infer  
7 malice when someone decides to take a gun to a crime.

8 But it gets more than that, there's more malice  
9 than that. These guys, if they decided to take a gun,  
10 they could have taken an unloaded one, scared the old man  
11 that you heard Charlie talking about, scare Rose  
12 Plumley -- Rose Lucas, excuse me -- scare her. They chose  
13 to put bullets in that gun. They racked them in the  
14 bottom. One was in the chamber.

15 But it gets worse than that. When Mr. Leon  
16 Justice does what any person living in an apartment, home,  
17 trailer, a cave has a right to do is what, defend himself  
18 and where he lives. Two young thugs come to his door at  
19 night with a gun, he reaches out for the gun, God bless  
20 him. He had a right to do that.

21 The person with the gun -- and we don't care who  
22 it was, whether it was Charlie or Shawn Sharpe -- that  
23 person pulled away. Was that enough for that person? No.  
24 They made sure, they made sure that this gun had bullets  
25 not just loaded in the bottom, but one was up here ready

1 to fire. That person pulled away, pulled this slide back.  
2 like you see it now. If you release that slide, there's  
3 one in the chamber. All you have to do after that is pull  
4 the trigger.

5 Malice, an intent to make sure that gun's loaded  
6 and then it gets worse. He pulls the trigger. Not like  
7 this, but in the direction of Leon. That is malice.

8 There's two ways to commit a murder in South  
9 Carolina. I can take a gun like that and I can point to  
10 one person and say I'm going to kill this person and shoot  
11 them, with wickedness in my heart, just shoot that one  
12 person. Or I can say there's a whole bunch of people, I'm  
13 taking the gun and I'm firing in the crowd and I don't  
14 care if it hurts anybody or if it kills anybody. That's  
15 malice. Those two routes take you to murder. It's the "I  
16 don't give a you know what," I don't care. I don't care.

17 A reckless disregard for human life. To fire a  
18 warning shot doesn't cut it. If you're breaking in a  
19 home, intent on robbing somebody, whenever you pull the  
20 trigger, you buy what you get. You kill someone, you're  
21 guilty of murder. There was a murder that night.

22 Now, there's been a lot of talk about, you know,  
23 whether it was murder, whether it was something else, who  
24 was there, blah, blah, blah. But if Shawn Sharpe wasn't  
25 there, what's the issue? Are we really fighting over

1 whether there's a murder? Of course there is. Of course.  
2 If Shawn Sharpe's not there, why does he care? Yeah,  
3 there's a murder. But he was there.

4 Reasonable doubt. The judge will give you the  
5 jury charge, but it's a doubt, it's evidence, we have to  
6 overcome reasonable doubt, okay? We present evidence,  
7 evidence that leaves you firmly convinced of someone's  
8 guilt. If we don't meet that, there's a reasonable doubt.  
9 It's not whether you know everything about the case. It's  
10 not do you know everybody's phone numbers or who did what.  
11 It goes to the guilt of the defendant. The question of  
12 reasonable doubt is answered by have we shown this man  
13 committed armed robbery, burg 1st and murder. It's not  
14 whether Barbara Bailey used her phone that night. Who  
15 cares? You all weren't here for Barbara Bailey. You all  
16 are here on charges involving this man.

17 Something jurors always have a question about  
18 but rarely get an answer is, well, if you've got people  
19 who are involved in a murder, three people, and one's got  
20 a gun and one pulls the trigger and then there's one out  
21 in the car, Solicitor, that just -- is there any place in  
22 our justice system that kind of balances people's roles?  
23 The answer is yes, it's up on the bench. That place is  
24 right there. It belongs to the man in the black robe,  
25 Judge Russo. He's the only one, the only one who can

1 punish. When you talk about someone's life's in your  
2 hands, the facts are in your hands. He is the one that  
3 can punish. But only he can have mercy. Jurors don't  
4 have mercy. You all are fact finders. That takes that  
5 burden off you all. The law separates those two things  
6 because as you all dig through those facts, we don't want  
7 you to be troubled by what you're finding. We want an  
8 honest to goodness give-us-the-truth answer. Then the  
9 burden shifts to him, a heavy burden that is. Find the  
10 facts. He can't do your job. He's going to tell you, you  
11 can't do his.

12 Now, Charlie and Angela. I'm not going to ask  
13 to you like them. They're murderers. They really are.  
14 It is interesting when you walk into a courtroom and you  
15 meet people, you start seeing, well, they are human, no  
16 question. That's what makes it bad. Humans hurt humans.  
17 We're not supposed to. And I'm not asking you, we're not  
18 asking you to like anybody. That's not what we're here  
19 about. This is about justice.

20 Charlie and Angela took the stand and admitted  
21 they're guilty of murder, armed robbery, burg 1st. What  
22 more could they do? There was talk throughout the trial  
23 that oh, they're colluding, they're talking, they're  
24 conspiring, getting their testimony straight. Well, how  
25 did that conversation go? Did Charlie call his wife and

1 say hey, honey, listen I got a wild idea. I know we're  
2 caught up in all this mess, but how about we go down to  
3 the Solicitor and tell him we're guilty of armed robbery,  
4 burg 1st -- and this is a wild one -- murder, and I know  
5 we'll probably never see each other again, but honey, why  
6 don't we just go do that? How about that? Folks, if  
7 that's collusion, I'll take it on any every case I got.  
8 When those two people walked in this courtroom, they may  
9 be scumbags. But if you want to tighten somebody up, put  
10 them on that stand, let them look at spending the rest of  
11 their life in prison. They know we know what the facts  
12 are, so brother, they better drive straight. They don't  
13 have a deal. They don't have a deal. They're trying to  
14 earn their goodness, their mercy from the man who gives  
15 it.

16 The phones, you heard a lot about the phones.  
17 Now, we put the phone records in. And our boards don't  
18 have all that information, you know, how long somebody's  
19 talking. If you want to look in the phone records, all  
20 that's in there. Why did you need it? For us it was  
21 whose phone was it, who were they calling, and whereabouts  
22 were they. That was the big information.

23 You all paid wonderful attention yesterday.  
24 There was several boards we showed you. One is Shawn  
25 Sharpe's board. Look at all those calls and text

1 messages. He was tearing it up. You know how many of  
2 those they found on his phone when they seized his phone?  
3 Zero. A man that the defense says wasn't involved in less  
4 than 24 hours of a murder that he didn't know about just  
5 happened to wash his phone out and delete everything you  
6 see on this board. This information comes from the phone  
7 company. They said, well, you know, Shawn Sharpe, he was  
8 at his girlfriend's house, he was in that sector. How do  
9 we know he wasn't there? Well, folks, look at this board  
10 again. Ashley Vasquez, Taco, last call, 10:10. That's a  
11 text. To who? Taco. Now why would he be calling or  
12 texting somebody if he's at her house? Because he's not.

13 And when he told the cops he didn't run with  
14 Charlie Plumley that night, he lied. When he said now  
15 wait a minute, no, it was from 7:00 to 9:00 and then I  
16 went to Taco's, folks, you can look at this board. Phones  
17 don't lie.

18 And isn't it an incredible coincidence that at  
19 the time of the murder, the time of the murder, his phone  
20 gets -- all of a sudden there's no activity. He's  
21 forwarding calls. What was he doing that he was so busy  
22 he couldn't take a call? A man that's tearing up his  
23 phone like that and texting like crazy and the first call  
24 he makes when he's done with that murder is calling his  
25 brother just like Charlie said.

1           Charlie's been incredibly consistent in this  
2 case, folks, incredibly consistent. Everything from the  
3 bullet at the scene that was found -- and that SLED agent  
4 didn't like calling it a bullet, but, folks, this is a  
5 bullet, unfired cartridge, the spent casing showing that  
6 there was a shot, this underfired bullet at the scene.  
7 Charlie's been incredibly consistent. When you look and  
8 put those two fellows together -- now yesterday we talked  
9 about them running together. Actually, it's their phones.  
10 But you can use your good common sense. Who's using their  
11 phones? Charlie bought his phone from a woman he called a  
12 crack head, washed out her contacts, made it his own. He  
13 didn't go as far as his compadre and wash out the entire  
14 phone, but you see there and we showed you the sectors on  
15 the boards. We've color coded them. You all have seen  
16 how we do it. You all can follow this board along with  
17 the sector maps from AT&T. You folks can follow that.  
18 Compare it to the testimony. We don't have anything to  
19 hide. It's consistent with Charlie and Angela's testimony  
20 that at some point they do go their separate ways. And  
21 where does Shawn go? He goes to Taco's house. What does  
22 he take with him? He takes a gun. He takes this gun,  
23 this pistol.  
24           Ashley Jeffcoat came in and testified about this  
25 pistol. She says Taco's upset, she sees her with the

1 pistol, she's never seen her with a pistol. Before,  
2 folks, we know this is the killing weapon. SLED matched  
3 it to the bullet, the piece of lead pulled out of Mr. Leon  
4 Justice's head. This pistol, this pistol that they seized  
5 over at Mimosa Drive at Taco's, the sheriff's detective  
6 went over there, is the same pistol that killed Leon  
7 Justice. It is the same one. This pistol, Ashley  
8 Jeffcoat testifies to it, says she was distraught, she's  
9 suicidal. In fact, Taco sometime later did commit  
10 suicide. I see her going to kill herself with it, I  
11 wrestled it from her, I take it, I put it in the trunk of  
12 my car, I leave. The detective was Joseph Chappell. He  
13 shows up a couple of hours later, he calls Ashley  
14 Jeffcoat, come to Mimosa, come to Taco's, he says you got  
15 that gun, bring it. It's in her trunk. But this time  
16 it's wrapped not in a blue bandanna that defense talked  
17 about, it was a black one. It wasn't the blue bandanna  
18 that becomes more important later in this case. It's a  
19 black one.

20           How did that get there? I didn't bring out that  
21 out of Ashley Jeffcoat. I'm going to tell you why: It  
22 doesn't matter. That's the murder weapon. The murder  
23 weapon is now linked very clearly to that man, Shawn  
24 Sharpe.

25           Charlie didn't take home the gun. She was

1 talking about not getting rid of a mask. Why not get rid  
2 of the gun? It went home with the guy who brought it.  
3 That's not saying he used it, because we don't really care  
4 about that either, we just know it was used. But of all  
5 the places that gun could have gone, it just shows up at  
6 his girlfriend's house. What a horrible coincidence. Is  
7 this the most unlikely man over there? People picking on  
8 him, pointing him out, gun showing up at his girlfriend's,  
9 just happened to be a murder weapon? Horrible. Horrible.

10 DNA on that gun. It's questionable. Where is  
11 Ashley Jeffcoat's DNA, where's Taco's? I don't know. I  
12 don't know. Did Ashley Jeffcoat wipe it down out of fear?  
13 I don't know. I have no idea. But I can tell you what.  
14 When the defense lawyer said one thing that is certain is  
15 DNA, the only DNA on it comes from her client, the man  
16 sitting right next to her. And who cares how much. It's  
17 another connection to a murder weapon in a crime.

18 When you look where this man has been before,  
19 during and after, throughout the day, who he's with and  
20 what those people admitted to and you link him to the  
21 murder weapon itself, folks, you still have a reasonable  
22 doubt? You don't have any doubt.

23 But there's more. There's the blue bandanna  
24 that they find in the truck that was used. The truck that  
25 was used at that murder is where the blue bandanna's

1 found, and the mask. Now, I know defense wanted to say  
2 look they excluded Shawn Sharpe. That's not true. They  
3 found no DNA. That doesn't mean it didn't come in  
4 contact -- do you remember what the DNA expert said? It  
5 has to be a testable amount, whatever that is. He wasn't  
6 excluded.

7 MS. ZMROCZEK: Your Honor, I object to that  
8 testimony. There was testimony that --

9 MR. HUBBARD: I'm going to argue facts, Judge.  
10 I think that's -- I mean we're arguing --

11 MS. ZMROCZEK: It's a misstatement of facts.

12 THE COURT: All right. Overruled. The jury,  
13 you recall the facts as you remember the facts from the  
14 testimony.

15 MR. HUBBARD: The blue bandanna found in that  
16 same truck, same truck, had his DNA. It wasn't Charlie's.  
17 It wasn't Danny Plumley's. It wasn't anybody else's. It  
18 linked to him. And who said he was wearing that?  
19 Charlie. Charlie's telling the truth.

20 Folks, you know, with all the phone stuff and  
21 the insinuation someone else did it, you just got to use  
22 your common sense. When you talk about this phone, this  
23 is Shawn Sharpe's phone. Was he the one in possession of  
24 that phone? Well, folks, if he wasn't, somebody was  
25 calling his girlfriend and texting her using his phone all

1 day right up to the point of the murder. Someone calls  
2 his brother on his phone right after the murder, just like  
3 Charlie Plumley and Angela Plumley said. I mean, what's  
4 the story here? Did that phone, this phone grow a pair of  
5 legs and run off like a dog at night leaving his master,  
6 had a wild time out on the town, got involved in some  
7 pretty serious crimes and then sometime September 22nd  
8 it's getting dark again, it comes crawling home with its  
9 tail between its legs to its master, crawls in his pocket  
10 just in for law enforcement to reach in there and pull it  
11 out?

12           Folks, you got to use your common sense.  
13 Everything points to this man. All these other names,  
14 Danny Plumley, who cares? He's not on trial right now.  
15 He is charged with helping after this murder. Do we  
16 suspect more? Yes, we do. Can't bring 12 people like you  
17 on suspicion. You got to bring evidence like we have on  
18 that man right there. "Chuc" D, that name was mentioned,  
19 his brother. No evidence he's involved. None. A black  
20 man. Really? What evidence have you heard about that?  
21 What? Any? Any? Zero. From a woman, that it was late  
22 at night, they're dressed in dark. But you give that  
23 whatever credence you believe it deserves.

24           Was it Taco? Was she the one running around?  
25 Well, if she was, folks, she's calling herself and Shawn

1 Sharpe.

2 She wants to you chase rabbits, I want you to  
3 focus on the truth. The truth is, when Leon Justice  
4 opened that door, when he heard that knock on that door,  
5 he opened it up and two men acting as one, when he opened  
6 that door, he looked into the face of malice.

7 In a little bit the judge is going to read you  
8 the law and you're going to go back to the jury room.  
9 Twelve of you will walk into that room and something's  
10 going to happen. As you go back there and shut that door  
11 and your faces are hidden from us, your voices are hidden  
12 from us, you're going to slowly become one. You will act  
13 as one, you will speak as one. You're going to do  
14 something else. You're going to knock on the door and  
15 when you do, we ask one thing and one thing only, we want  
16 justice.

17 THE COURT: Thank you, Mr. Hubbard.

18 Ladies and gentlemen, before I busted up my knee  
19 and had to have it operated on, I used to come down and be  
20 with you to give you the charge on the law, and the reason  
21 being is that as I told you when we started the case,  
22 you're the sole judges of the facts in this case. And so  
23 while the attorneys have been presenting to you the  
24 evidence or the facts, it's been appropriate for me to be  
25 up here and out of the way and let them do their work.

1 But we've reached the portion in this trial where you and  
2 I are in this together, you as the judges of the facts and  
3 me as the judge of the law, and so typically what I do is  
4 come down and be with you to give you the charge on the  
5 law. It's not quite as easy for me to get around and  
6 toddle around with this stupid cane, so I'm going to  
7 remain up here, but I am going to give you the charge on  
8 the law.

9 As I told you before, I am going to have this --  
10 this is in a notebook that is going to be back in the jury  
11 room with you and I'm going to read it verbatim so that I  
12 don't leave anything out or misstate anything. If you'd  
13 please give me your attention as I give you the charge on  
14 the law.

15 Mr. Foreman, and members of the jury, you've  
16 heard all of the evidence and the arguments of both  
17 parties. I will now explain to you the law which applies  
18 to this action.

19 These indictments charge the defendant, Shawn  
20 William Sharpe, with the offenses of murder, burglary in  
21 the 1st degree, and armed robbery. I remind you that the  
22 fact that the defendant was arrested, charged and indicted  
23 in this case is not evidence in this case and it cannot be  
24 considered by you as evidence of guilt in this case, nor  
25 does it create any presumption or inference of guilt. The

1 indictments are simply the formal written instruments  
2 which contain the charges made against the defendant.  
3 They are the formal documents by which this case is  
4 brought into this court.

5 Now, as I told you, I'm going to give you a copy  
6 of these instructions in written form to have with you in  
7 the jury room during your deliberations. You may refer to  
8 these instructions to guide you in your decision-making.  
9 You must consider these instructions as a whole and not  
10 follow some and ignore others.

11 Now, the defendant has pled not guilty to these  
12 indictments and to these charges, and that plea puts the  
13 burden on the State to prove the defendant guilty. A  
14 person charged with committing a criminal offense in South  
15 Carolina is never required to prove him or herself  
16 innocent.

17 I charge you that it is an important rule of law  
18 that the defendant in a criminal trial, no matter what the  
19 seriousness of the crime or the charge may be, will always  
20 be presumed to be innocent of the crime for which the  
21 indictment was issued unless guilt has been proven by  
22 evidence satisfying you of that guilt beyond a reasonable  
23 doubt. This presumption of innocence does not end when  
24 you begin your deliberations but it accompanies the  
25 defendant throughout the trial until you reach a verdict

1 of guilt based on evidence satisfying you of that guilt  
2 beyond a reasonable doubt.

3 Presumption of innocence is not a mere legal  
4 theory, it's not just a legal phrase, but it's a  
5 substantial right to which every defendant is entitled  
6 unless you, the jury, are satisfied from the evidence of  
7 the defendant's guilt beyond a reasonable doubt.

8 Now the State has the burden of proving the  
9 defendant guilty beyond a reasonable doubt. So what is a  
10 reasonable doubt in the law?

11 Some of you may have served as jurors in civil  
12 cases where you were told that it is only necessary to  
13 prove that a fact is more likely true than not true, such  
14 as by the greater weight or the preponderance of the  
15 evidence. In criminal cases, the State's proof must be  
16 more powerful than that. It must be beyond a reasonable  
17 doubt.

18 Proof beyond a reasonable doubt is proof that  
19 leaves you firmly convinced of the defendant's guilt.  
20 There are very few things in this world that we know with  
21 absolute certainty, and in criminal cases the law does not  
22 require proof that overcomes every possible doubt. The  
23 State's burden simply requires proof beyond any reasonable  
24 doubt.

25 I remind you that during this trial, you and I

1 have certain duties to perform. As a trial judge, it is  
2 my responsibility to preside over the trial of this case  
3 and I also had the duty to rule on the admissibility of  
4 the evidence offered during the trial. You are to  
5 consider only the competent evidence that is before you.  
6 You are to consider only the testimony which has been  
7 presented from the witness stand, any exhibits which may  
8 have been a part of this record, and any stipulations or  
9 agreements of counsel.

10 I have the additional duty to charge you the law  
11 that is applicable in this case. As the presiding judge,  
12 I am the sole judge of the law in this case, and it is  
13 your duty as jurors to accept and apply the law as I now  
14 state it to you. If you already have an idea as to what  
15 the law is or what you think the law ought to be and it  
16 does not agree with what I now tell you the law is, you  
17 must abandon your idea because you are sworn to accept the  
18 law and to apply the law exactly as I state it to you.

19 In every case tried in this court before a jury,  
20 the jury becomes the sole and the exclusive judge of the  
21 facts in the case. A trial judge cannot intimate, state,  
22 comment on, or make any statement to a trial jury about  
23 the facts in a case. Since you, the jury, are the sole  
24 judge of the facts in this case, you are not to infer from  
25 what I have said during the progress of this trial in

1 ruling on the admissibility of evidence, or otherwise, or  
2 anything that I say now during the course of this  
3 instruction to you that I have any opinion about the facts  
4 of this case. The law does not allow me to have an  
5 opinion about the facts of this case. This is solely a  
6 matter for you, the jury, to determine. As jurors, it is  
7 your duty to determine the effect, value, weight, and  
8 truth of the evidence presented during this trial.

9 Now, there are two types of evidence which are  
10 generally presented during a trial. There is direct  
11 evidence and there is circumstantial evidence.

12 Direct evidence is the testimony of a person who  
13 claims to have actual knowledge of a fact, such as an eye  
14 witness. It is evidence which immediately establishes the  
15 main fact to be proved.

16 Circumstantial evidence is proof of a chain of  
17 facts and circumstances indicating the existence of a  
18 fact. In other words, it's evidence which immediately  
19 establishes collateral facts from which the main fact may  
20 be inferred. Circumstantial evidence is based on  
21 inference and not on personal knowledge or observation.

22 Now crimes may be proven by circumstantial  
23 evidence. The law makes absolutely no distinction between  
24 the weight or the value to be given either to direct or  
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than of  
2 direct evidence. You should weigh all of the evidence in  
3 this case and give it whatever consideration you find  
4 appropriate.

5 To the extent the State relies on circumstantial  
6 evidence, all of the circumstances must be consistent with  
7 each other and when taken together, point conclusively to  
8 the guilt of the accused beyond a reasonable doubt. If  
9 these circumstances merely portray the defendant's  
10 behavior as suspicious, the proof has failed.

11 The State has the burden of proving the  
12 defendant guilty beyond a reasonable doubt. This burden  
13 rests with the State regardless of whether the State  
14 relies on direct evidence, circumstantial evidence, or  
15 some combination of the two.

16 Necessarily, you must determine the credibility  
17 of the witnesses who testified in this case. And  
18 credibility simply means believability. It becomes your  
19 duty as jurors to analyze and to evaluate the evidence and  
20 determine which evidence convinces you of its truth.

21 In evaluating eye witness testimony, you should  
22 remember that the State must prove the identity of the  
23 defendant as the person who committed the crime beyond a  
24 reasonable doubt.

25 In determining the believability of witnesses

1 who have testified in this case, you may believe one  
2 witness over several witnesses or several witnesses over  
3 one witness. You may believe a part of the testimony of a  
4 witness and reject the remaining part of that testimony.  
5 You may believe the testimony of a witness in its entirety  
6 or reject that testimony in its entirety. You may  
7 consider whether any witness has exhibited to you any  
8 interest, bias, prejudice or other motive in the case.  
9 You may consider whether a witness is seeking a personal  
10 gain as well the appearance and the manner of a witness  
11 while on the witness stand.

12 Now there's been evidence presented that a  
13 witness has made prior statements which are not consistent  
14 with the witness's present testimony. You may use this  
15 evidence to decide whether to believe the witness. You  
16 may also use evidence of the earlier contradictory  
17 statements to determine the truth of their statements.  
18 It's up to you to decide whether to believe the earlier  
19 statements or the testimony given at trial.

20 If a witness is shown to have knowingly  
21 testified untruthfully concerning any material matter, you  
22 may consider this in determining whether to trust the  
23 witness's testimony as to other matters. You may accept  
24 or reject all testimony of that witness or give all or  
25 part of the testimony the weight that you think it

1 deserves.

2           Now the rules of evidence ordinarily do not  
3 permit witnesses to testify to opinions or conclusions.  
4 An exception to this rule exists for witnesses that we  
5 call expert witnesses, a witness who by education and  
6 experience has become an expert in some art, science,  
7 profession or calling may state an opinion as to relevant  
8 and material matter in which the witness claims to be an  
9 expert and may also state the reasons for that opinion.

10           You should consider any expert opinion received  
11 into evidence in this case, and like any other evidence,  
12 give it the weight that you think it deserves. An expert  
13 witness's testimony is to be given no better weight than  
14 that of another witness simply because the witness is an  
15 expert. Further, you're not required to accept an  
16 expert's opinion even though it's not contradicted.

17           Now, a statement alleged to have been made by  
18 the defendant has been admitted into evidence in this  
19 case. While the Court has determined that the statement  
20 is admissible, I instruct you that you, the jury, make the  
21 ultimate decision of whether or not the defendant made the  
22 statement. If the defendant did make the statement, you  
23 must determine whether the statement was made by the  
24 defendant voluntarily and of his own free will. This  
25 means that the statement was not caused by pressure,

1 force, fear, threats, coercion or intimidation or by hope  
2 or a promise of leniency or a reward of any kind. In  
3 determining whether the statement was voluntary, you  
4 should consider both the characteristics of the defendant  
5 and the details of the questioning.

6 The State has the burden of proving beyond a  
7 reasonable doubt that the alleged statement was made by  
8 the defendant and that it was voluntarily given. You must  
9 carefully consider all of the surrounding circumstances  
10 before you can give any weight to an alleged statement by  
11 the defendant.

12 Now I instruct you and I emphasize that the fact  
13 that the defendant did not testify in this case is not a  
14 factor to be considered by you in any way in your  
15 deliberations and in your consideration on the question of  
16 guilt or innocence of the defendant. It must not be  
17 considered by you in any manner whatsoever. A defendant  
18 has the constitutional right to remain silent, and the  
19 assertion of this right must not be considered by you in  
20 your deliberations. I repeat, under your oath, you are to  
21 draw no conclusion whatsoever from the fact that the  
22 defendant in this case did not testify. The fact that  
23 this defendant did not testify should not even be  
24 discussed in the jury room. The burden of proof, as I  
25 stated to you, is on the State. The defendant is not

1 required to prove his innocence. The burden of proof  
2 remains on the State to prove guilt beyond a reasonable  
3 doubt.

4 Now there are multiple times or charges in this  
5 case. Each charge is a separate crime. You must consider  
6 each charge separately; that is, you must decide  
7 separately what the evidence in the case shows about each  
8 crime charged. Your decision on one charge should not  
9 affect your decision on another charge. You should take  
10 each indictment or charge on its own merit. The defendant  
11 may be convicted or acquitted on any or all of the  
12 offenses charged. You will be asked to write a separate  
13 verdict of guilty or not guilty for each charge.

14 Now, Mr. Sharpe is charged with the crime of  
15 murder. The following are the elements that the State  
16 must prove beyond a reasonable doubt to prove murder.  
17 First, that defendant killed another person, and second,  
18 that he did so with malice aforethought.

19 Malice is hatred, ill will or hostility towards  
20 another person. It is the intentional doing of a wrongful  
21 act without just cause or excuse and with the intent to  
22 inflict an injury or under circumstances that the law will  
23 infer an evil intent.

24 Malice aforethought does not require that malice  
25 exist for any particular time before the act is committed,

1 but malice must be in the mind of the defendant just  
2 before and at the time the act was committed. Therefore,  
3 there must be a combination of the previous evil intent  
4 and the act.

5 Malice aforethought may be express or implied.  
6 These terms "express" and "implied" do not mean different  
7 kinds of malice but merely the manner in which malice may  
8 be shown to exist; that is, either by direct or -- by  
9 direct evidence or inference from the facts and  
10 circumstances which are proved. Express malice is shown  
11 when a person speaks words which express hatred or ill  
12 will for another or when the person prepared beforehand to  
13 do the act which was later accomplished. For example,  
14 lying in wait for a person or any other act of preparation  
15 going to show that the deed was within the defendant's  
16 mind would be express malice.

17 Implied malice may be found to exist when  
18 circumstances demonstrate a wanton or reckless disregard  
19 for human life or when a reasonably prudent person would  
20 have known that according to common experience there was a  
21 plain and strong likelihood that death would follow the  
22 contemplated act.

23 If two or more combine together to commit an  
24 unlawful act, such as a robbery, and in the execution of  
25 that criminal act a homicide is committed by one of the

1 actors, as a probable and natural consequence of the acts  
2 done and pursuance of the common design, all present  
3 participating in the unlawful undertaking are as guilty as  
4 the one who committed the fatal act. The common purpose  
5 may not have been to kill and murder, but if it was  
6 unlawful, as for instance, to break in and steal, and in  
7 the execution of this common purpose a homicide is  
8 committed by one, as a probable or natural consequence of  
9 the acts done pursuance of the common design, then all  
10 present participating in the unlawful common design are as  
11 guilty as the slayer.

12 Now the defendant is also charged with 1st  
13 degree burglary. The State must prove beyond a reasonable  
14 doubt that the defendant entered a dwelling without  
15 consent.

16 A dwelling is any building or portion of a  
17 building in which a person ordinarily sleeps. But a  
18 building is a dwelling even if the residents are  
19 temporarily absent from the building.

20 The State does not have to proof that force was  
21 used to gain entry. If a person enters a building by  
22 using deception, artifice, trick, or misrepresentation to  
23 get consent to enter, this entry is without consent.

24 Next, the State must prove beyond a reasonable  
25 doubt that the defendant intended to commit a crime,

1 either a felony or a misdemeanor, at the time of the  
2 entry. The mere entry into a building without consent is  
3 not a burglary. If the intent to commit a crime is formed  
4 after the entry, it is not a burglary. On the other hand,  
5 if the defendant intended to commit a crime at the time of  
6 the entry, it is a burglary even if the intent was  
7 abandoned after entry. It does not matter that the  
8 intended crime was completed.

9 Now intent may be shown by acts and conduct of  
10 the defendant and other circumstances from which you may  
11 naturally and reasonably infer intent.

12 Finally, the State must prove beyond a  
13 reasonable doubt that, one, when entering, while in the  
14 dwelling, or when fleeing, the defendant or an accomplice  
15 caused physical injury to anyone not participating in the  
16 crime, or, two, the defendant entered or remained in the  
17 dwelling in the nighttime. Nighttime is the period  
18 between sunset and sunrise during which there is not  
19 enough daylight to recognize a person's face except by  
20 artificial light or moonlight.

21 Finally, the defendant is charged with armed  
22 robbery. In order to prove this offense, the State must  
23 first prove beyond a reasonable doubt that the defendant  
24 took personal property from the person or presence of  
25 another.

1           Property is in the presence of a person if it is  
2 within the person's reach, inspection, observation, or  
3 control, so that the person could, if not overcome with  
4 violence or prevented by fear, keep possessing the  
5 property.

6           The State must also prove beyond a reasonable  
7 doubt that the defendant carried the property away,  
8 intending to permanently deprive the owner of the property  
9 and to keep the property for the defendant's own use. The  
10 slightest removal of the property or the complete  
11 possession of the property, even for an instant, by the  
12 defendant is sufficient to show that a taking and a  
13 carrying away of the property.

14           The taking and carrying away of the property  
15 must have been done with violence or by putting the owner  
16 of the property in fear of violence.

17           Finally, the State must prove beyond a  
18 reasonable doubt that the defendant was armed with a  
19 deadly weapon during the robbery. A deadly weapon is any  
20 article, instrument, or substance which is likely to cause  
21 death or great bodily harm. Whether an instrument has  
22 been used as a deadly weapon depends on the facts and  
23 circumstances of each case.

24           The following are examples of instruments which,  
25 under South Carolina law, may be considered deadly

1 weapons: A pistol, a shotgun, a rifle, a dirk, a dagger,  
2 or a knife.

3 Now, if a crime is committed by two or more  
4 people who are acting together in committing the crime,  
5 the act of one is the act of all. A person who joins with  
6 another to commit an unlawful act is criminally  
7 responsible for everything done by the other person which  
8 happens as a possible or natural consequence of the acts  
9 done in carrying out the common plan and purpose. For  
10 example, two people could be guilty of killing another  
11 person when only one of the two had a gun, there was only  
12 one bullet, and only one of the two fired the shot that  
13 caused the death. If two or more people are together,  
14 acting together, assisting each other in committing the  
15 offense, the act of one is the act of all, or as it is  
16 sometimes said, the hand of one is the hand of all. The  
17 State must prove beyond a reasonable doubt by the  
18 competent evidence the theory of the hand of one hand is  
19 the hand of all.

20 A principal in a crime is one who either  
21 actually commits the crime or who is present aiding,  
22 abetting or assisting in the committing of the crime.  
23 When the person does an act in the presence of and with  
24 the assistance of another, the act is done by both. Where  
25 two or more acting with a common plan or intent are

1 present at the commission of a crime, it does not matter  
2 who actually commits the crime, all are guilty. The hand  
3 of one is the hand of all. Present at the commission of a  
4 crime means to be sufficiently -- let me back up.

5 Present at the commission of a crime means to be  
6 sufficiently near to aid and abet and assist in the  
7 commission of the crime. However, mere presence at the  
8 scene of a crime is not sufficient to convict a person as  
9 a principal on the theory of aiding and abetting. Intent  
10 is also a necessary element, for there must have been a  
11 common design or intent to commit a crime and the crime  
12 must have been committed pursuant thereto with the person  
13 aiding and abetting by some overt act. Intent means  
14 intending the result which actually occurs, not  
15 accidentally or involuntary. Intent may be shown by acts  
16 and conduct of the defendant and other circumstances from  
17 which you may naturally and reasonably infer intent. The  
18 State must prove these elements beyond a reasonable doubt.

19 Now, Mr. Foreman and ladies and gentlemen, as  
20 you retire to begin your deliberations, I want to express  
21 to you the hope that each of you will be mindful of the  
22 importance of your responsibility. You're not called upon  
23 to serve as jurors very often, and the proper performance  
24 of the duty requires each of you to reach the height of  
25 freeing your mind of all improper influences. As the

1     presiding officer of this court, I'm vitally concerned  
2     that whatever verdict you find will be the result of going  
3     into the jury room, confining your consideration to the  
4     evidence and to the law that you've heard in this  
5     courtroom, weighing it fairly and impartially as I have  
6     every confidence you will do. Your verdict in this case  
7     cannot be based on sympathy, compassion, prejudice, or  
8     emotion or some other consideration that's not found in  
9     the evidence. And remember, ladies and gentlemen, your  
10    verdict in this case must be unanimous.

11           Now, Mr. Foreman, as I said, this notebook will  
12    be back in the back with you. In the front cover of the  
13    notebook is a verdict form. The verdict form is a simple  
14    form. It just at the top has the caption of the case and  
15    then it just takes each indictment and says as to  
16    indictment and gives the indictment number, charge of  
17    murder, we the defendant (sic) either find the defendant  
18    guilty or not guilty. Then it goes to burglary 1st  
19    degree: We, the jury, find the defendant either not  
20    guilty or guilty. And then the third is armed robbery and  
21    those are the same two options. As I said in the  
22    instructions, you'll consider each indictment and write a  
23    verdict for each indictment based on your decision.

24           Now, one last thing. I'm going to send you back  
25    into the jury room, but, Mr. Hardin, I'm going to ask that

1 you do not begin deliberations until you receive all of  
2 the exhibits and you receive this notebook. I'm going to  
3 send you back there and ask you to not discuss the case  
4 yet. I'm just going to review with the lawyers to make  
5 sure I didn't leave anything out. If I need to change  
6 anything or recharge you on anything, I'll bring you back  
7 out. But if everything is fine, I'll send the exhibits  
8 back along with this notebook and then that will be your  
9 cue to begin the deliberations.

10 The other thing I'm going to leave you with is  
11 this: There is no way any of you or anyone here can  
12 determine how long it will take a jury to reach a verdict.  
13 All I will tell you is this: You will have all the time  
14 you need. There is no time limit, there's no time frame.  
15 We don't keep a clock. All of us work as long as it takes  
16 to work. So you have all the time you need to consider  
17 all of the evidence in reaching your verdict, okay?

18 So if you would, please, step back into the jury  
19 room and don't begin your deliberations until you receive  
20 these items.

21 (The jury left open court at approximately  
22 11:20 a.m.)

23 THE COURT: Any objections or exceptions to the  
24 charge from the State?

25 MR. GRAHAM: No, Your Honor.

1 THE COURT: From the defense?

2 MS. ZMROCZEK: Other than previously noted.

3 THE COURT: All right. I'm going to note those  
4 objections have been renewed from the defense.

5 Also, Aimee, let me -- if you would, let me get  
6 your chart that you had prepared that they objected to.  
7 Let me make that a Court's exhibit because I noted your  
8 objection and so if this has to be considered at some  
9 other time, the Court will have that. So let's --

10 MS. ZMROCZEK: I'll make that available.

11 THE COURT: Let's just have that marked as a  
12 Court's exhibit. And while you're doing that -- so we've  
13 renewed the objections to the charge from the defense.  
14 Those are on the record.

15 Let me get the State to come up with the defense  
16 and go over with Carol -- take a few minutes -- all of the  
17 exhibits that should be in and that we've got them  
18 together, okay?

19 MR. HUBBARD: Yes, sir.

20 (WHEREUPON, The Court's Exhibit No. 3 was marked  
21 for purposes of the record.)

22 (Counsel conferred on exhibits.)

23 (WHEREUPON, the jury began deliberations at  
24 approximately 12:35 p.m.)

25 (A break was taken while the jury deliberated.)

1 THE COURT: Come to order, please.

2 They've passed out this note that says, "May we  
3 have a copy of the court transcript?"

4 This is what I propose to respond and just say  
5 there is no written court transcript, you must use your  
6 collective memories in recalling the evidence.

7 MR. HUBBARD: We're okay with that, Judge.

8 THE COURT: I don't know what else to tell them.

9 MS. ZMROCZEK: Honestly, I thought that was  
10 probably going to be what the question was.

11 THE COURT: Did you?

12 MS. ZMROCZEK: Yes.

13 THE COURT: Okay. All right. Now, I'm going to  
14 send this back and then I'll tell them to continue their  
15 deliberations.

16 (WHEREUPON, The Court's Exhibit No. 4 was marked  
17 for purposes of the record.)

18 (A lunch recess was taken while the jury  
19 continued to deliberate.)

20 THE COURT: Ladies and gentlemen, my  
21 understanding is the jury has reached a verdict. I don't  
22 know what that verdict is. I just was told that they had  
23 a verdict. So I would say to everyone, and I say this in  
24 every case, whether it's a criminal or a civil case, and  
25 that is that no matter what the case is, the jury deserves

1 to have their verdicts received in a respectful manner. I  
2 don't ever ask anyone to agree with the jury's verdict, I  
3 just ask that they understand that that was the jury's  
4 decision, whether you agree with it or not, and just  
5 receive it in a professional manner.

6 So I know when you have a situation in a case  
7 where folks have lost a loved one or whatever, that it can  
8 be emotional. And I'm not a robot. I realize that people  
9 have emotions and feelings, and I don't expect you to be  
10 robots either. However, I do ask that if you don't think  
11 you can control your emotions, depending on the verdicts,  
12 whether you agree with the verdicts or don't agree with  
13 the verdicts, if you don't feel you can control your  
14 emotions and that you may have an outburst or cause a  
15 scene, it would be best for you to remove yourself from  
16 the courtroom, because if there is any type of outburst or  
17 any disrespect towards the jury's verdict, wherever that  
18 comes from, I will lock you up for contempt. I don't want  
19 to do that, I don't want to do that to anybody, so let's  
20 just receive the verdict, whatever it may be, whatever it  
21 is, whether you agree with it or not, and just do it in a  
22 respectful manner, okay?

23 Is the State ready to proceed with the jury's  
24 verdict?

25 MR. HUBBARD: Yes, Your Honor.

1 THE COURT: Defense ready?

2 MS. ZMROCZEK: Yes, sir.

3 THE COURT: Let's bring the jury in, please.

4 (The jury came into open court at approximately  
5 2:40 p.m.)

6 THE COURT: All right. Thank you. You all have  
7 a seat.

8 Mr. Hardin, has the jury reached a unanimous  
9 verdict, please, sir?

10 THE FOREMAN: Yes, sir.

11 THE COURT: If you would please pass that to the  
12 bailiff and I'll pass it on to the clerk.

13 All right. Madam Clerk, if you would please  
14 publish the verdicts.

15 THE CLERK: Yes, sir.

16 Indictment 2012-GS-32-2448, 2012-GS-32-2449,  
17 2012-GS-32-2450, the State versus Shawn William Sharpe:  
18 We, the jury, on Indictment 2448, charge of murder, we,  
19 the jury, find the defendant, Shawn William Sharpe, guilty  
20 of murder.

21 As to Indictment 2012-GS-32-2449, burglary in  
22 the 1st degree: We, the jury, find the defendant, Shawn  
23 William Sharpe, guilty of 1st degree burglary.

24 As to Indictment 2012-GS-32-2450, armed robbery:  
25 We, the jury, find the defendant, Shawn William Sharpe,

1 guilty of armed robbery. And they are so signed by the  
2 foreperson, Charles Hardin, August 30th, 2013.

3 THE COURT: Thank you, ma'am.

4 Ladies and gentlemen of the jury, you've heard  
5 Madam Clerk publish the verdicts. If those verdicts are  
6 in fact your verdict, if they do agree with your verdict,  
7 would you please signify by raising your right hand?

8 (All hands raised.)

9 THE COURT: All right. Thank you very much,  
10 ladies and gentlemen.

11 Anything further from the defense?

12 MS. ZMROCZEK: Nothing, Your Honor.

13 THE COURT: Anything from the State?

14 MR. HUBBARD: No, sir, Your Honor.

15 THE COURT: Ladies and gentlemen, I want to  
16 thank you for your service this week. You know, jury  
17 service is never easy. And, of course, when you couple  
18 that with having a case that involves a lot of exhibits  
19 and a lot of factual evidence that comes in, it's a lot.  
20 I know it's taxing on your mind, and all of you have been  
21 very attentive during the course of the trial. I've  
22 watched and observed you and I appreciate that very much.

23 Now, as I told you when we started off on  
24 Monday, state law only requires you to perform your jury  
25 service once every three calendar years. So you have

1     earned an exemption for the balance of this year and for  
2     the next two years. So if you get a jury summons for  
3     circuit court during that time frame and you wish to be  
4     exempt or excused from that service, you may claim that  
5     exemption. But I tell people all the time it is just an  
6     exemption. It doesn't mean you're not qualified to serve.  
7     So that if you do receive that summons and you would like  
8     to serve again, I certainly would encourage you to do  
9     that.

10           Now, as I sort of joked about on Monday, you  
11     don't get paid a lot for jury service, but there is some  
12     money that state law allows and the clerk will be sending  
13     that out, so you should get that early next week. If you  
14     need a work excuse --

15           THE CLERK: I have them, Your Honor.

16           THE COURT: Good. You've got that.

17           See, I love working in Lexington. It's an  
18     outstanding clerk's office. They keep everything going  
19     well. So that sounds very well then.

20           Thank you again for your service this week,  
21     ladies and gentlemen. You are free to go.

22           I would ask everyone remain seated while the  
23     jury is excused, please.

24           Mr. Hardin, if you don't mind, I have you come  
25     around and she just needs to get your signature on those

1 three indictments, sir.

2 (The jury was excused at approximately 2:45  
3 p.m.)

4 THE COURT: All right. At this time I will take  
5 up any motions from the defense.

6 MS. ZMROCZEK: Thank you, Your Honor.

7 At this time we make a motion to set aside the  
8 verdicts and request a new trial based on the following:  
9 There was the first question from the jury when they  
10 retired where they asked for a copy of the transcript.  
11 Your Honor, that reflects to me that they did not remember  
12 all the testimony, that they couldn't remember the  
13 testimony prior to deliberating and they couldn't make a  
14 fair and just verdict.

15 THE COURT: I'm kind of making a note and I will  
16 address them.

17 MS. ZMROCZEK: Secondly, Your Honor, we would  
18 again object to the jury charge regarding felony murder.

19 Thirdly, I would object to defense counsel not  
20 being able to explain my version of reasonable doubt or  
21 give an explanation as to my -- the circumstances the I  
22 believe --

23 THE COURT: All right. Okay.

24 MS. ZMROCZEK: -- and then we would, of course,  
25 again renew the cell phone and the chain of custody -- the

1 cell phone tower evidence, the chain of custody on the  
2 gun. And, Your Honor, there were 124 total exhibits  
3 submitted to the jury. They did not even request to play  
4 the video. There was no equipment back there for them to  
5 play the video. It leaves me with the impression that  
6 they did not review the evidence sufficiently before  
7 rendering a verdict.

8 THE COURT: All right. Thank you very much,  
9 ma'am.

10 With regards to them asking for the transcript,  
11 as I recall, they went back to deliberate. I told them  
12 not to begin their deliberations until they received the  
13 exhibits and the charge. That note was sent out almost  
14 immediately after they received those items. And the note  
15 simply said, May we have a copy of the court transcript.  
16 I don't know that it in any way indicated that -- I mean,  
17 they had not even begun deliberations. So I don't even  
18 know that they had time to sit around and talk and then  
19 come up and say, we can't remember anything. As a matter  
20 of fact, it would be quite the contrary. Before they had  
21 time to sit down and deliberate they sent that note out.  
22 And so I don't think that note means that they could not  
23 remember the testimony. I think they were just asking if  
24 that was available, it would be helpful to them. And so,  
25 of course, we responded that we didn't have that and that

1 they were going to have to recall the evidence from their  
2 collective memories.

3 The felony murder charge, this case is a -- I  
4 thought was a textbook case for that charge. That charge  
5 has been approved by our Supreme Court if the facts  
6 support it, and I think the facts in this case certainly  
7 did support that.

8 The reasonable doubt issue regarding your  
9 closing, I didn't mean to and I don't think I precluded  
10 you from explaining reasonable doubt to the jury. It's  
11 just when there was an objection that it was being done  
12 improperly, that I sustained the objection because the law  
13 is beyond a reasonable doubt and I think you were telling  
14 the jury if they had any doubt then they would have to  
15 find the defendant not guilty, and that's just an improper  
16 statement on the law, and so I wasn't going to allow that  
17 to continue, and I basically responded to the jury that  
18 they are to take the law from the Court as the Court  
19 charges it.

20 With regards to exhibits, there were 124  
21 exhibits, one of those being a video. They didn't ask to  
22 view the video. I don't know that that has any bearing  
23 that they considered the exhibit or did not. They  
24 deliberated -- Hope, do you have the time frame -- at  
25 least two hours.

1 THE CLERK: I have them marked down at 12:35  
2 going out.

3 THE COURT: And their verdict was somewhere  
4 around 2:30 or 2:40-something, so a little over two hours.  
5 And again, I don't know how they considered the exhibits,  
6 I wasn't back there. It certainly gave them time, though,  
7 to go through everything.

8 And then, of course, your other objections are  
9 certainly noted for the record.

10 MS. ZMROCZEK: And, Your Honor, I'm sorry to  
11 interrupt, but I forgot to say one of them I had written  
12 down in pink and continued read it.

13 THE COURT: All right.

14 MS. ZMROCZEK: And that would be improper  
15 statement, misstatement on the facts by the Solicitor  
16 regarding the DNA on the knit cap.

17 THE COURT: Again, I don't know that he  
18 misquoted the facts because I have to go back and look. I  
19 think he indicated something about what a witness had  
20 testified to or something. And again, I don't know that  
21 he misstated it. I mean, the record can bear that out.  
22 But the defense has the opportunity and the State as well  
23 has the opportunity to argue the facts as they view the  
24 facts. And as I told the jury in overruling the  
25 objection, they are to recall the facts from their

1 collective memory and not from what the attorneys say.

2 Having said all that, I'm going to respectfully  
3 deny your motion. I think all of the questions involving  
4 this case were questions of fact for a jury to decide.

5 And I don't make any comment as far as agreeing or  
6 disagreeing with their verdict. I just feel that the  
7 facts, depending on how they viewed the facts, would  
8 support the verdict, and I think that's the case here. So  
9 I'm going to respectfully deny your motions.

10 All right. Is the State ready to proceed to  
11 sentencing?

12 MR. GRAHAM: Yes, Your Honor.

13 THE COURT: Is the defense ready?

14 MS. ZMROCZEK: Yes, Your Honor.

15 THE COURT: All right. I will be happy to hear  
16 from anything regarding -- let me ask first about Mr.  
17 Sharpe, if he has any prior record and what is his prior  
18 history if he has one?

19 MR. GRAHAM: He does, Your Honor. He was  
20 convicted of shoplifting in July of 2009. I don't know  
21 the conviction dates, but in April of 2010, he was  
22 received into the Department of Corrections on a breaking  
23 into auto or tanks where fuel is stored, a grand larceny  
24 one to five thousand, and a burglary non-violent 2nd  
25 degree. On all of those sentences he received a YOA not

1 to exceed six years.

2 THE COURT: That was in 2010?

3 MR. GRAHAM: Yes, Your Honor.

4 THE COURT: Was that like one case and they  
5 all --

6 MR. GRAHAM: I'm assuming. He was received into  
7 the Department of Corrections -- I believe the plea date  
8 was all the same, yes, sir.

9 THE COURT: All right.

10 MR. GRAHAM: He was released from the Department  
11 of Corrections on a YOA parole on June 15, 2011, and this  
12 crime was committed on September 21, 2011, so he was out  
13 three months and a week before this happened.

14 While he was incarcerated, the jail records  
15 indicate that he self-admitted that he was a gang member.  
16 The victims have asked me to share some information to you  
17 as well, Your Honor.

18 He had a younger brother, Ronald Justice, and  
19 shortly after Leon Justice was killed and the case was  
20 transferred to the Solicitor's office, he came up here and  
21 fought on behalf of his brother numerous times, talking to  
22 me about the case and how it would be handled. He died  
23 July 2013 in a car accident. So he is not here. He would  
24 be here standing in front of you speaking but for that.

25 They wanted me to share with you that Leon was a

1 kind-hearted man; that he had grown up and had a -- by  
2 trade he was a roofer; that he had never married and had  
3 no children; that he was a good brother and an uncle; that  
4 he did fight addiction, first to alcohol and then crack  
5 cocaine later; that his brother, younger brother tried to  
6 help him, to get him into rehab numerous times. His  
7 family loved him but hated his addiction. And they said  
8 at the time of his death he was 64 years old and in poor  
9 health and they described him as a walking bean pole. And  
10 they asked me to tell you that he did not deserve to die  
11 violently the way he was killed, no matter what was going  
12 on.

13 He has relatives in the courtroom. His younger  
14 brother's wife, Linda Justice, that his youngest brother  
15 Ronald's wife is present in the courtroom today. A family  
16 friend is present as well. And a niece of Leon and her  
17 husband is here as well.

18 Leon Justice, Your Honor, may have been and was  
19 dealing drugs. I don't think there's a question about  
20 that. But I don't think that gives anyone the right or  
21 lessens what happened to him. Everybody should be safe in  
22 their home, and Mr. Sharpe took that away from Rose Lucas  
23 and in the process killed Leon Justice. And we'd ask that  
24 you take all the case that you heard and what I've just  
25 said into consideration and give him a sentence that fits

1 his crimes.

2 THE COURT: Thank you, sir. All right.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 I know that you have heard a little bit just  
5 through the testimony, but Shawn Sharpe was 20 years old  
6 at the time with a 7th grade education. He's got an older  
7 brother who is trouble. He has no father. His father  
8 passed away. His sister passed away. He's got a mother  
9 who has been in the courtroom every day. The whole  
10 family, Your Honor, struggles with addiction. And I'm not  
11 blaming drugs, but if you appropriately listened -- if you  
12 would have appropriately listened to the -- I think that  
13 Charlie said it actually correctly, this all happened  
14 because of drugs and needing money. And the jury's  
15 verdict is what it is and I think that the circumstances  
16 surrounding it are probably still somewhat confusing. But  
17 Your Honor, I can assure you that Shawn Sharpe, if he had  
18 any role, would have been as a follower and would have  
19 been as someone who at 20 years old with an older brother  
20 who has friends that are like Charlie and Danny who run  
21 around and do drugs, and that's all he knows in Gaston,  
22 and he knows it's wrong to hang out with them, and I told  
23 him to stay away from his brother, and he knows that.

24 And at this time he does not wish to address the  
25 Court, but he does wish for the Court to know that he

1 doesn't -- he just because he takes a trial, it doesn't  
2 mean that he -- he knows that he's made some poor  
3 decisions in his life, especially with regards to who he  
4 hangs out with. Had he not ever known these people, his  
5 name would have never been brought into this.

6 THE COURT: Thank you, ma'am.

7 Well, Ms. Zmroczek, you're very kind when you  
8 say, you know, I'm not blaming drugs. I know what you  
9 meant. You're not making excuses, but I'll say it, I'm  
10 blaming drugs for it. You know, here's the thing. And I  
11 don't want to sound cold because I haven't walked in  
12 Mr. Sharpe's shoes or anyone else's, only mine obviously.  
13 But, you know, we don't have any control over who our  
14 parents are. We can't select that. Our parents are  
15 whoever we're born into that union. We don't have any  
16 control as we're growing up when we're little about the  
17 environment we grow up in. That's decided for us as well.  
18 But at some point as we reach our teen years and start to  
19 head toward adulthood, that's when we start being able to  
20 make choices. And I would caution any young person to  
21 never allow -- in other words, you choose your friends,  
22 don't let your friends choose you. I don't know if  
23 there's any truth at all into the gang allegation. It  
24 doesn't matter. Because the situation here is, I don't  
25 know if Mr. Sharpe chose these friends or if they chose

1 him, but that's what I tell my kids all time. I've got  
2 three young kids and I tell them all the time, don't let  
3 your friends choose you, you decide who you want to be  
4 friends with, and choose wisely. He may have had no  
5 choices in his early upbringing, but he had choices as he  
6 got older. And I agree, he's made some bad ones.

7 I'm curious, how does somebody get no further  
8 than 7th grade? Because you're not allowed to quit school  
9 at that age. Did he just remain in school until he was 16  
10 and just didn't past courses?

11 MS. ZMROCZEK: That's my understanding, Judge.

12 THE COURT: Unfortunately, the choices he's made  
13 since he's been what we legally call adulthood -- if he  
14 was 20 years old at the time of this happening, he's 22  
15 now. So if you go back to 2009 so that he's 18, you know,  
16 from the time he's 18, he's shoplifting, B & E auto, grand  
17 larceny, burglary, and then this. Just one bad choice  
18 after another, and it's all because of drugs.

19 I get so tired of preaching about that, but I'll  
20 never stop. I don't understand why folks get involved in  
21 it. It kills people. Like in this case, it's killed  
22 Mr. Sharpe. It hasn't stopped his heart from beating, but  
23 it's taken away his freedom, it's taken away anything good  
24 in his life. It's a tragedy -- it's a tragedy that  
25 Mr. Justice was taken from his family and now Mr. Sharpe's

1 going to be taken from his and the Plumleys from theirs.  
2 You know, it's just -- all of this over, from what I  
3 gather from the evidence, about \$300 worth of crack and  
4 about \$300 in cash.

5 I do believe this, not that it matters. I don't  
6 believe anybody went over there with the intention of  
7 killing somebody. That doesn't -- as the law says, that  
8 doesn't relieve the responsibility, nor does it mitigate  
9 it.

10 On Indictment 2012-GS-32-2449, burglary in the  
11 1st degree, the sentence of the Court is that you be  
12 committed to the State Department of Corrections for a  
13 period of 15 years.

14 On Indictment 2012-GS-32-2450, the sentence of  
15 the Court is that you be committed on the armed robbery  
16 charge to the State Department of Corrections for a period  
17 of 15 years. Those are to run concurrent with each other.

18 On Indictment 2012-GS-32-2448, the charge of  
19 murder, the sentence of the Court is that you be committed  
20 to the State Department of Corrections for a period of 30  
21 years. That sentence is to run consecutive to the 2449  
22 and 2450 charges.

23 You are to be given credit for any time that you  
24 have served up to this point.

25 Good luck to you, sir.

1 MS. ZMROCZEK: Thank you, Your Honor.

2 (The proceedings were concluded.)

3 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

4 VOLUME 4 OF 4

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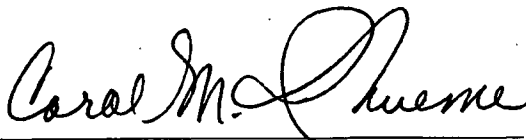
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1 CERTIFICATE OF REPORTER  
2  
34 STATE OF SOUTH CAROLINA )  
5 COUNTY OF LEXINGTON )  
6  
78 I, CAROL M. THUEME, RPR, Official Court Reporter for  
9 the 11th Judicial Circuit of the State of South Carolina,  
10 do hereby certify that the foregoing is a true, accurate  
11 and complete Transcript of Record of the proceedings had  
12 and evidence introduced in the trial of the captioned  
13 case, relative to appeal, in the Court of General Sessions  
14 for Lexington County, South Carolina, on the 29-30th days  
15 of August, 2013.16 I do further certify that I am neither of kin,  
17 counsel nor interest to any party hereto.  
18  
19

20 March 21, 2014

21   
2223 CAROL M. THUEME, RPR  
24 Circuit Court Reporter  
25

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3  
4  
5 State )

6 v. )

7 Shawn Sharpe )

8 Defendant. )

Transcript of Record

12-GS-32-448

12-GS-32-449

12-GS-32-450

9  
10 May 8, 2013

11 Lexington, South Carolina

12  
13 B E F O R E:

14 The Honorable William P. Keesley, Judge.

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

17 D. Shawn Graham, Deputy Solicitor  
Attorney for the State

18 Aimee J. Zmroczek, Esquire  
19 Attorney for the Defendant

20  
21  
22  
23  
24 Stacy L. Sheppard, RPR  
25 Circuit Court Reporter

1

## I N D E X

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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## EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
|------------|--------------------|------------|-------------|
|------------|--------------------|------------|-------------|

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(There were no exhibits.)

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1                   (The following proceedings were held on May  
2                   8, 2013.)

3                   **THE COURT:** What do y'all have?

4                   **MR. GRAHAM:** Your Honor, this is a motion for  
5                   -- it's a Schmerber motion to collect DNA samples  
6                   from Mr. Sharpe. The warrant numbers are N-30328289  
7                   and 90. They were indicted on Monday. And the  
8                   indictment numbers are 2012-GS-32-448, 449 and 450.  
9                   Those are indictments for murder, burglary in the  
10                  first degree and armed robbery, Your Honor. And  
11                  I've got a copy of Detective Doug Novak's affidavit  
12                  that he prepared for this hearing that I'll pass up.  
13                  The original is filed down in the clerk's office,  
14                  Your Honor.

15                  (Pause.)

16                  **THE COURT:** All right. What is suspected of  
17                  being present on these items that have DNA profile  
18                  from more than one individual?

19                  **MR. GRAHAM:** The -- item 2.1 is a handgun, Your  
20                  Honor, that's human DNA, that's a mixture of at  
21                  least two people. If they are able to have known  
22                  standards, they can potentially exclude somebody.  
23                  The numbers on the handgun itself are low, so they  
24                  probably won't be able to include anybody.

25                  On item 2.2, that's swabs from the magazine of

1       that pistol. There is a mixture of at least three  
2       individuals. It's a partial profile. And if they  
3       have known suspect standards, they can potentially  
4       include or exclude someone. So if they're included,  
5       they ought to be able to give some kind of a number  
6       of probability.

7             The other items, Your Honor, are all cuttings  
8       from a sweat pant. Those are all blood. 15.1 is a  
9       mixture of two people. The major person is an  
10      unidentified male, but it is, I believe, a full  
11      profile on that one. And then 15.2, 3 and 4 are  
12      also blood that are cuttings from the same  
13      sweatpants that are a full profile, so they should  
14      be able to include or exclude someone. And they  
15      probably will be -- if it is a person, they should  
16      be able to match those, that should be a match in  
17      the identifier or whatever the term they use to  
18      identify it.

19            **THE COURT:** Is there any indication that this  
20      man was bleeding?

21            **MR. GRAHAM:** The victim was shot in the head,  
22      so one possibility --

23            **THE COURT:** I understand the victim, but go  
24      ahead.

25            **MR. GRAHAM:** As far as Mr. Sharpe, there's no

1       indication that Mr. Sharpe was bleeding. Very  
2       likely on the blood, it may turn out to be Mr.  
3       Plumley, who's the co-defendant, who signed a  
4       consent agreement. The sweatpants were found at his  
5       house and he stated that he had a nosebleed. I  
6       don't know whether it was that night or earlier or  
7       after.

8               **THE COURT:** Ms. Zmroczek.

9               **MS. ZMROCZEK:** Thank you, Your Honor.

10              I have several problems with this case, and the  
11              first is I understand that under 17-19-90, if I  
12              don't raise the issue now, then it's not preserved.  
13              So, like Mr. Graham said, the -- my client was  
14              indicted on Monday, 5/6/2013, which is 21 months  
15              after this incident happened. The indictment -- I  
16              would move to quash the indictment based on the  
17              violation of Rule 3(c), also that it fails to allege  
18              there are circumstances that -- that are plain  
19              language and easily to understand.

20              Your Honor, the reason for that motion is that  
21              it says, Shawn William Sharpe, my client, along with  
22              Angela Griffin and/or Charles Plumléy, and/or  
23              Charles Plumley. And it says that for all of the --  
24              it says that for all of the indictments, Your Honor,  
25              for murder, armed robbery and burg first.

1           And now they want to go on a fishing expedition  
2       with my client's DNA based on an indictment that I  
3       rule is not timely -- or I assert is not timely.  
4       And then two statements in this affidavit are -- I  
5       mean, I question whether the admissibility of the  
6       gun is even going to come in because they base, on  
7       the last paragraph of the -- the second last  
8       paragraph of the second page, Ashley Vasquez, now  
9       deceased, told law enforcement. Well, Your Honor, I  
10      have no way of confronting her about what she did or  
11      didn't tell law enforcement. And if they get -- if  
12      that's how -- it seems to me that's how they got the  
13      gun and how they're trying to connect my client to  
14      it. Your Honor, there's no way for me to confront  
15      or attack that.

16           And, lastly, Your Honor, my client was in  
17      Kirkland R&E in 2010, so his DNA is in the CODIS  
18      database. From what I heard the State say, all they  
19      can do is exclude. They can't -- with regards to  
20      the gun. They can't even include -- they can't  
21      include anyone. All they're looking to do is  
22      exclude, which makes me question the reliability of  
23      that testing anyway.

24           **THE COURT:** Mr. Graham.

25           **MR. GRAHAM:** Your Honor, there hasn't been any

1 kind of speedy trial motion. I think the order, the  
2 administrative order, asked us to indict cases in 90  
3 days. I don't believe that there's any penalty for  
4 not indicting them. I don't believe that has any  
5 bearing on whether her client gives a DNA sample or  
6 not or whether there's probable cause or not.

7 The second item I think she brought up was  
8 Ms. Vasquez. I would agree that Ms. Vasquez will  
9 not be testifying at trial, but I don't know that  
10 that has anything to do with probable cause. It is  
11 what happened. Regardless, she's not the only  
12 person that identified Mr. Sharpe as being involved  
13 or being the shooter in the case. There's other  
14 evidence in the affidavit as well.

15 Thirdly, the fact that he was at Kirkland R&E  
16 and may or may not have given a DNA sample that  
17 would put him in CODIS is irrelevant. CODIS -- all  
18 of these -- none of these samples were CODIS  
19 eligible. There are guidelines for SLED regarding  
20 profiles that are developed of what can be submitted  
21 or run against CODIS database and none of these  
22 items are eligible to be sent to CODIS for one  
23 reason or another, and I can go through and explain  
24 why that is if Your Honor wants to know.

25 **THE COURT:** Go ahead.

1           **MR. GRAHAM:** On the gun, Your Honor, it's my  
2           understanding that it is not CODIS eligible because  
3           it is a mixture of two people and it's a weak  
4           profile.

5                   On the magazine, which is 15.2, it is not CODIS  
6           eligible because there are three -- potentially  
7           three or more people involved in the mixture.  
8           Although it would be able to include or exclude  
9           someone, the fact that that was one of the -- the  
10          low side, which is one of the points on the DNA  
11          chain where they analyze, they developed five  
12          different numbers off of there which I guess could  
13          be up to as many as ten different individuals at  
14          that point.

15                   But the guidelines, as it was explained to me,  
16          don't allow -- there's too much information is how  
17          the analyst described it. And that profile is  
18          submitted because you could potentially get a large  
19          number of people who would be included and it would  
20          -- it doesn't meet their guidelines, that's how it  
21          was explained to me.

22                   On the other ones, the blood cutting, the  
23          cuttings from the sweatpants, although a full  
24          profile was developed, apparently the CODIS  
25          guidelines state that if it's found -- the way they

1 read the report, I guess, or whatever they have,  
2 Your Honor, was that it was Mr. Plumley's pants  
3 found at his home, so there wasn't -- for whatever  
4 reason, it didn't meet their guidelines for  
5 submission.

6 **THE COURT:** Do you have anything else,  
7 Ms. Zmroczek?

8 **MS. ZMROCZEK:** No, Your Honor. I just want to  
9 make sure that the motion to quash the indictment  
10 was timely preserved, and just citing Rule 3(c) of  
11 criminal procedure and the statute under 17-19-30.

12 **THE COURT:** All right. It appears that on the  
13 issue of the Schmerber sample, I'm looking at some  
14 notes from State versus Baccus from 2006, Warrant  
15 which allows the government to procure evidence from  
16 a person's body may only be issued upon the showing  
17 that, one, there is probable cause to believe a  
18 crime has been committed, that's met here; Two,  
19 there's probable cause to believe that it has been  
20 committed by a particular suspect, that's present  
21 here; Three, there is a clear indication that  
22 material elements relevant to the question of the  
23 suspect's guilt will be found; and, four, that the  
24 method used to secure the evidence is safe and  
25 reliable.

1           Additional factors are the seriousness of the  
2           crime -- here you got murder, armed robbery and  
3           burglary in the first degree. Two of those offenses  
4           carry life imprisonment, the other one carries a  
5           mandatory minimum of ten years. They're about as  
6           serious as we have in our jurisprudence -- and the  
7           importance of the evidence to the investigation.

8           The judge must balance the necessity for  
9           requiring involuntary nontestimonial identification  
10          evidence against the constitutional safeguards  
11          prohibiting unreasonable bodily intrusion searches  
12          and seizures.

13          In another case, there's some notes I have  
14          indicating that the court is to determine that the  
15          character of the requested search is appropriate.  
16          In that regard, the court balances the seriousness  
17          of the crime, the importance of the evidence to the  
18          investigation and the unavailability of an  
19          alternative less intrusive means of obtaining the  
20          evidence on the one hand against concern for the  
21          potential witness' constitutional right to be free  
22          from bodily intrusion on the other.

23          Well, as far as the degree of intrusion, my  
24          understanding is you want to take a swab of his  
25          mouth --

1           **MR. GRAHAM:** Yes, Your Honor.

2           **THE COURT:** -- which is -- it's not a  
3 particularly invasive procedure at all. The  
4 seriousness of the crime, I've already discussed.

5           The unavailability of an alternative means,  
6 it's talking about less intrusive, but I think the  
7 Court should also look at whether the fact that he  
8 has a DNA profile on record is another available  
9 means of getting this information.

10          The use of the language about -- that I  
11 mentioned earlier about there being a clear  
12 indication of material elements relevant to the  
13 question the suspect's guilt would be found may be a  
14 little problematic when you're talking about  
15 excluding people as opposed to including people, but  
16 I still think that would apply. It seems that it  
17 would be relevant to the question of the suspect's  
18 guilt.

19          Safe and reliable means of securing the  
20 evidence. The importance to the investigation. In  
21 this scenario, the Court is satisfied that the State  
22 has established that various people were present,  
23 some are with us, some are not any longer. It seems  
24 to be very important to the investigation of the  
25 crimes.

1           And as far as balancing the necessity of  
2           requiring a sample as against the constitutional  
3           safeguards related to unreasonable bodily intrusion,  
4           searches and seizures, it appears to the Court that  
5           in balancing those things is a relatively minor  
6           intrusion and it seems to be very important in a  
7           very important crime. It may wind up helping him.

8           The motion to quash the indictment is noted and  
9           denied. The motion to grant the Schmerber sample is  
10          granted.

11          Mr. Graham, you need to draft me an order.

12          **MR. GRAHAM:** I'll do that, Your Honor, and copy  
13          Ms. Zmroczek on it.

14          **MS. ZMROCZEK:** Do we want to talk about  
15          scheduling since we're here?

16          **MR. GRAHAM:** We do, Your Honor, would like to  
17          talk about scheduling this case for trial.

18          **THE COURT:** Y'all said it happened in 2011?

19          **MS. ZMROCZEK:** Yes, Your Honor.

20          **MR. GRAHAM:** '11, yes, Your Honor. It was  
21          right around Halloween in 2011.

22          **MS. ZMROCZEK:** We're right at, almost at 21  
23          months.

24          **THE COURT:** It was just indicted?

25          **MS. ZMROCZEK:** Monday, yes.

1           **THE COURT:** Okay. Ms. Zmroczek, we set you for  
2 November earlier today.

3           **MS. ZMROCZEK:** That case had some interesting  
4 issues. I believe that there was a September date.  
5 And since my other case has ended up pleading...

6           **THE COURT:** Your federal case?

7           **MS. ZMROCZEK:** No. I wish, but that's in July.  
8 And I think what -- Shawn, what did you say? We had  
9 eight weeks that we figured?

10          **MR. GRAHAM:** My understanding is that you're  
11 starting a federal trial July 9th. It's scheduled  
12 to go six to eight weeks.

13          **MS. ZMROCZEK:** Yeah, and I think eight is a  
14 long time.

15          **MR. GRAHAM:** So that would put you till  
16 September 9th. The next -- I mean, there's a  
17 September 9th term, but you wouldn't be able to be  
18 ready. The next term that would give you three  
19 weeks to get ready will be September 30th. And if  
20 not that week, then potentially October 14th. We  
21 would like to do it earlier, but my understanding is  
22 that Ms. Zmroczek is booked.

23          **THE COURT:** September the 30th is fine with me.  
24 We've got two judges, looks like, Judge Hood and me  
25 right now.

1           **MR. GRAHAM:** Yes, Your Honor.

2           **THE COURT:** All right. Anything else I can  
3 help you folks with?

4           **MS. ZMROCEK:** No.

5           **MR. GRAHAM:** Thank you, Your Honor.

6           **THE COURT:** September the 30th then.

7

8                           END OF PROCEEDINGS

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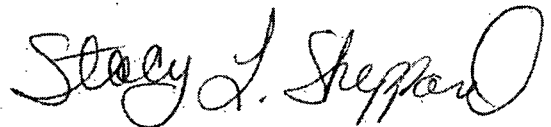
## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 8th of May, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 28, 2014



Stacy L. Sheppard, RPR  
Circuit Court Reporter

|                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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## IN THE COMMON PLEAS / GENERAL SESSIONS / FAMILY COURT

JUDGE Russell

CT. REP. Carol Thorne

DATE 8/26/2013

CLOCK - IN AREA

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_

Court

PLAINTIFF

State

VS.

DEFENDANT

NDANT  
Shawn W. Sharpe

Atty.

R. Hubbard / S. Graham

Atty.

A. Gmorszyk / 12.12.2017

[illegible]

CT. REP

Carol M. Shyeme

REC. BY

Hope Luck

TITLE

Deputy Clerk

TITLE

LCF 661 (1/05)

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, )  
)

V. )  
)

SHAWN SHARPE, )  
)

Defendant. )  
)

Case No's.: 2011-GS-32-2448-50

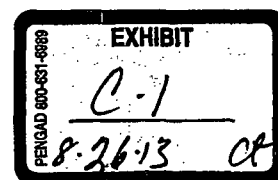
**MEMORANDUM OF LAW IN SUPPORT OF**  
**DEFENDANT'S MOTION IN LIMINE TO PRECLUDE**  
**ADMISSION OF CELLULAR TELEPHONE TOWER "PING" EVIDENCE**

**I. INTRODUCTION**

Pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article First, Sections Three, Ten, and Fourteen of the South Carolina Constitution, and State v. Jones, 273 S.C. 723, 732, 259 S.E.2d 120, 124-25 (1979), the defendant, Shawn Sharpe, by and through undersigned counsel, hereby respectfully moves this court to preclude the admission of cellular telephone tower "ping" evidence.

**II. FACTS**

On September 21, 2011, during the evening hours at the address of Victor Road in the Gaston area of Lexington County, Leon Justice was shot in the head and died as a result of that gunshot wound. Information provided from an eyewitness, Rose Lucas, within hours of the shooting led police to investigate co-defendants, Charlie and Raymond "Danny" Plumley, Jr., specifically stating that Charlie had shot the victim. An additional witness, Billy Hinson, stated Charlie Plumley was known to have a 45 caliber



pistol. Charlie, Danny, and Angela Plumley (wife of Charlie and sister-in-law of Danny) were arrested on September 22, 2011, after the S.W.A.T. team surrounded their residence for over an over. Danny and Angela provided information that Charlie Plumley and Shawn Sharpe committed the robbery. Cell phones can be tracked by authorities as long as they are turned on. If an abduction victim has her cell phone on, her location can be tracked and she can be rescued. Police can look at the last phone calls made and received on a missing person's cell phone through the carrier's records. By finding what cell towers picked up these calls, officials will have a starting point for a missing person's last known location. Cell phone records have been used in solving murders and other crimes. In a 2006 article, Law Enforcement.com reports that cell phone records were able to place a criminal at the scene of a fatal shooting, leading to his conviction for the crime. The New York Times reports in a 2009 article that the cell phone tracking has been used for more than a decade and has helped in solving numerous crimes.

## **II. AN UNDERSTANDING OF CELL PHONE TRACKING DATA**

### **A. Cell Site Location Data**

Cell site location data provides information of a cell phone user's location based on the particular cell phone tower the user's cell phone is communicating with. At any given time, a cellular telephone communicates with cell phone towers in its vicinity. This occurs even when the cell phone is turned on but not in use.<sup>1</sup> The distance of a cell phone from a given tower can be determined by the amount of time it takes for the phone to receive a signal from the tower and send a return signal.<sup>2</sup> The time it takes to send and receive a signal is directly affected by signal strength, which is in turn affected by the cell

<sup>1</sup> Phil Karn, Cell Phone Tracking, <http://www.ka9q.net/papers/tracking.html> (last visited Nov. 30, 2008).

<sup>2</sup> Chris Smith, Cell Phone Location Accuracy is All Over the Map, <http://searchengineland.com/cell-phonetriangulation-accuracy-is-all-over-the-map-14790.php> (last visited Nov. 30, 2008)

phone user's proximity to the cell tower it is in communication with.<sup>3</sup> Cell phones transfer to the cell sites providing the best reception while in use as the user's location changes.<sup>4</sup> Cell phone companies maintain records of the cell towers which a particular subscriber's cellular phone has communicated with, allowing a person's location to be tracked retroactively.<sup>5</sup> Consequently, cell site location data can provide information regarding the general location of a cell phone user.

### **B. Triangulation**

A cell phone user's location can be more specifically determined by using a process called triangulation. When a phone is communicating with multiple towers, the phone's location can be determined based upon its distance from each tower it is communicating with.<sup>6</sup> Triangulation compares the distance of the cellular phone to each tower it communicates with to obtain a more precise location. The more towers it is able to communicate with, the more accurately the location can be determined.<sup>7</sup> Triangulation allows one to determine a cell phone's location to within one hundred feet.<sup>8</sup> Triangulation is typically performed on a given cellular phone while a call is in progress. The State, however, has used the process of triangulation to track a user's location by "pinging" the user's cellular phone. Pinging occurs where a signal is sent to a specific

<sup>3</sup> Scott Harrell, Locating Mobile Phones Through Pinging and Triangulation, PURSUIT MAGAZINE, July 1, 2008, available at <http://pursuitmag.com/2008/07/locating-mobile-phones-through-pinging-andtriangulation/#more-45> (last visited Nov. 30, 2008).

<sup>4</sup> In the Matter of the Application of the United States of America for an Order Authorizing the Installation and Use of a Pen Register and a Caller Identification System on Telephone Numbers [sealed] and [sealed] and the Production of Real Time Cell Site Information, 402 F.Supp.2d 597, 599 (D.M.D. 2005) [hereinafter D.M.D. 2005].

<sup>5</sup> am Berreras and Amit Mathur, Wireless Location Tracking, <http://www.ethicapublishing.com/inconvenientorinvasive/2CH18.pdf> (last visited Nov. 30, 2008).

<sup>6</sup> Smith, supra note 3.

<sup>7</sup> Id.

<sup>8</sup> Harrell, supra note 4.

cellular phone and the cell phone provides requested data, thereby revealing its location.<sup>9</sup>

This allows law enforcement to determine a user's location when a call is not in progress.<sup>10</sup> The specificity of information obtained through triangulation is affected by whether the cell phone has Global Positioning System (GPS) capabilities. The location of GPS enabled phones can be triangulated to within as little as several feet.<sup>11</sup>

The State alleges that the signal hits the nearest cell tower invariably, and invariably the person must have been in the vicinity of the cell tower while using the phone. Unfortunately, that's not the way it works, nor has the State laid a foundation for representing that's the way it works.

### III. DISCLOSURE OF CELL PHONE TRACKING DATA

The statutory scheme employed to obtain cell phone tracking data various federal statutes address the ability of the government to obtain records and information generated from electronic communications. Although the Fourth Amendment mandates that no warrant shall issue except upon a showing of probable cause, the government has conjunctively exploited several statutes in order to advance its argument that court orders authorizing the disclosure of cell phone tracking data should be issued on a showing of less than probable cause. The statutes that the government uses include the Electronic Communications Privacy Act, the Pen Register and Trap and Trace Statute, and the Communications Assistance for Law Enforcement Act.

Electronic Communications Privacy Act (ECPA) – 18 U.S.C. § § 2701-2712 The Electronic Communications Privacy Act provides the government with a procedure for

<sup>9</sup> Id.

<sup>10</sup> Ellen Nakashima, Cell Phone Tracking Powers on Request: Secret Warrants Granted Without Probable Cause, WASHINGTON POST, Nov. 23, 2007, available at [http://www.washingtonpost.com/wpdyn/content/article/2007/11/22/AR2007112201444\\_pf.html](http://www.washingtonpost.com/wpdyn/content/article/2007/11/22/AR2007112201444_pf.html) (last visited Nov. 30, 2008).

<sup>11</sup> Harrell, supra note 4

obtaining the contents of wire or electronic communications held in an electronic storage. Information that has been in storage one hundred and eighty days or less requires a warrant issued upon a showing of probable cause.<sup>12</sup> Information stored for more than one hundred and eighty days can be obtained without notification of the subscriber only by a warrant and with notification of the subscriber by either an administrative subpoena or a court order.<sup>13</sup> In order to obtain a court order, the government must set forth “specific and articulable facts showing there are reasonable grounds” to a criminal investigation.”<sup>14</sup> This is precisely the language the government has used to claim that it can obtain cell phone location data on a showing of less than probable cause. It is difficult to dispute the notion that the Electronic Communications Privacy Act grants the government access to historical cell location data, which is considered “stored information.” The greater difficulty arises as applied to prospective cell location data where the government seeks to track a cell phone user’s location in real time. Under the statute, real time data would require a warrant issued upon a showing of probable cause. Tracking devices, however, are expressly excluded from within the reach of the Electronic Communications Privacy Act and its specific and articulable facts standard.<sup>15</sup> 18 U.S.C. § 2510(a) defines an electronic communication as the “transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system” but expressly excludes communication made by a tracking device from within the definition of an electronic

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<sup>12</sup> 18 U.S.C. § 2703(a) (2008).

<sup>13</sup> 18 U.S.C. § 2703(b)(1) (2008).

<sup>14</sup> 18 U.S.C. § 2703(d) (2008).

<sup>15</sup> 18 U.S.C. § 2510(12)(C) (2008).

communication.<sup>16</sup> 18 U.S.C. 3117(b) provides a definition for the term “tracking device” as “an electronic or mechanical device which permits the tracking of the movement of a person or object.”<sup>17</sup> Cellular phones are now more than capable of tracking a person’s movement, thus falling within the statutory definition of a tracking device. In effect, tracking devices and cellular phones have converged with the advent of E911 tracking requirements.<sup>18</sup>

#### **IV. EVIDENTIARY OBJECTIONS ATTACKING THE ADMISSIBILITY OF CELL PHONE TRACKING DATA**

##### **A. Cell Phone Tracking Data Records Cannot Be Authenticated**

The admission of cell phone tracking records requires authentication, which is established by evidence sufficient to support a finding that the matter is what its proponent claims it is.<sup>19</sup> Such evidence can be established through a witness with knowledge such as a custodian of records or through the distinctive characteristics of the records if such characteristics exist.<sup>20</sup> Cell phone records can also be self-authenticated as a record of regularly conducted activity under South Carolina Rule of Evidence 902(11). Self-authentication through admission as a business record, however, requires that the record be accompanied by a written certification that the record was made at or near the time of the event recorded and was made and kept in the normal course of regularly conducted business activity.<sup>21</sup> The government must also provide defense counsel with written notice of its intention to use cell phone location records under Rule 902(11) and

<sup>16</sup> 18 U.S.C. § 3117(b) (2008).

<sup>17</sup> 18 U.S.C. § 3117(b) (2008).

<sup>18</sup> In the Matter of the Application of the United States of America for an Order Directing a Provider of Electronic Communication Service to Disclose Records to the Government at 29 (W.D.P.A. 2008), available at [http://blog.wired.com/27bstroke6/files/original\\_cell\\_site\\_ruling.PDF](http://blog.wired.com/27bstroke6/files/original_cell_site_ruling.PDF) [hereinafter W.D.P.A. 2008].

<sup>19</sup> SCRE 901(a).

<sup>20</sup> SCRE 901(b)(1); SCRE 901(b)(4).

<sup>21</sup> SCRE 902(11).

make the records available for inspection sufficiently in advance of offering them into evidence. Id.

Here, defense counsel asserts the State's failure to comply with any the requirements of 902(11).

**b. Cell Phone Tracking Data Records as Hearsay**

Cell phone tracking records are hearsay documents. That is, they are out of court statements admitted for the truth of the matter asserted, the matter asserted being the location of the cell phone user. Thus in order to be deemed admissible, cell phone tracking records must fall within a hearsay exception. The most applicable exception is the exception for business records pursuant to South Carolina Rule of Evidence 803(6).

In order to be admissible as a business record, the following must be established: the cell phone records were made at or near the time of the event they record, made by or from information transmitted by a person with knowledge and kept in the normal course of regularly conducted business activity. SCRE 803(6) It must also be established that it was the regular practice of the business to make such records. Id. Such records can only be introduced through the testimony of the custodian of records or other qualified witness or through a certification. Id.

Since cell site data obtained from cell phone the State's postulation implies that the only factor upon which utilization of a particular cell phone tower depends on is the distance between the cellular handset and the cellular tower. This has recently been ruled upon in Federal court. U.S. v. Evans, 892 F.Supp.2d 949 (2012). This is simply untrue. Not only is location of the cell tower not indicative of the caller's location, the ability of a

cell phone handset to “ping” off a cell tower depends on a multitude of factors, completely independent from distance, including but not limited to

- the make and the model of the cellular phone
- the wattage output of the cellular phone
- the generation of the phone
- the bandwidth of the cellular phone
- whether the phone call was made inside or outside
- whether the phone call was made in an urban or rural environment
- the topography of the area a cell phone tower is located
- whether the cell tower is located in an urban or rural environment
- the number of antennas on the cell tower
- the height of the antennas on the cell tower
- the location of the antennas on the cell tower
- the direction of the antennas on the cell tower
- the angle of the antennas on the cell tower
- the number of cones on a cell tower
- the height of the cones on the cell tower
- the direction of the cones on the cell tower
- the angle of the cones on the cell tower
- the height of the cellular tower
- how high the cellular tower is above sea level
- the fractional percentage of channel assignments of the cell tower
- the number of cellular phone providers utilizing a tower

- the number of cellular phone providers within a call region
- the performance of maintenance on the cellular towers
- the wattage output of the cellular tower
- the range of the cellular tower
- the weather conditions

## **V. ARGUMENT**

### **A. Cell Phone Records are Not Relevant Evidence**

The expert's expected testimony is not relevant. Evidence is relevant if it tends to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. Rule 401, SCRE. All relevant evidence is admissible. State v. Douglas, 369 S.C. 424, 429–30, 632 S.E.2d 845, 848 (2006). Relevant evidence may be excluded if the prejudicial effect of its admission substantially outweighs the probative value of the evidence. Rule 403, SCRE. The trial court has broad discretion in determining the relevancy of evidence and its decision to admit or exclude evidence will not be reversed on appeal absent an abuse of that discretion and a showing of prejudice. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

### **B. This is a case of first impression regarding the Qualification of an expert**

Trial courts should be cautious in conferring an expert label upon a witness because juries may accord excessive or undue weight to “expert” testimony. Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169, Prod. Liab. Rep. (CCH) P 18485 (2010). Thus, the trial court must examine the substance of the testimony to determine if it is reliable, regardless of whether the expert evidence is scientific, technical, or other

specialized knowledge. Watson v. Ford Motor Co. All expert evidence must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter. Watson v. Ford Motor Co., citing Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238, 50 U.S.P.Q.2d 1177, Prod. Liab. Rep. (CCH) P 15470, 50 Fed. R. Evid. Serv. 1373, 29 Env'tl. L. Rep. 20638 (1999) (holding that in determining the admissibility of evidence pursuant to Rule 702, FRE, the same reliability requirements apply to all types of expert evidence); State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009); State v. Tapp, 387 S.C. 159, 691 S.E.2d 165 (Ct. App. 2010), cert. granted, (Apr. 20, 2011) and rev'd, 398 S.C. 376, 728 S.E.2d 468 (2012) (all expert testimony must satisfy Rule 702, SCRE, regardless of whether it is scientific or nonscientific).

A party must request that the court qualify a witness as an expert. Zaragoza v. Zaragoza, 309 S.C. 149, 420 S.E.2d 516 (Ct. App. 1992). The qualification of a witness as an expert and admissibility of his testimony are matters largely within the discretion of the trial judge. Creed v. City of Columbia, 310 S.C. 342, 426 S.E.2d 785 (1993); Strange v. South Carolina Dept. of Highways and Public Transp., 307 S.C. 161, 414 S.E.2d 138 (1992), judgment aff'd, 314 S.C. 427, 445 S.E.2d 439 (1994); Doe by Doe v. Greenville Hosp. System, 323 S.C. 33, 448 S.E.2d 564, 9 I.E.R. Cas. (BNA) 858 (Ct. App. 1994). See also Love v. Gamble, 316 S.C. 203, 448 S.E.2d 876 (Ct. App. 1994) (the admission or exclusion of evidence, including the decision to qualify a witness as an expert, resides in the sound discretion of the trial judge); State v. McConnell, 316 S.C. 272, 449 S.E.2d 778 (Ct. App. 1994) (the admissibility of expert testimony on a fact in issue is largely within the discretion of the trial judge). There is no error in the exclusion of opinion evidence where all the facts are capable of being clearly detailed so that the jury may

form the correct conclusion therefrom. State v. McConnell, 316 S.C. 272, 449 S.E.2d 778 (Ct. App. 1994). A party must raise an issue at trial regarding a witness's qualification as an expert for the issue to be available on appeal. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993). See also Bodiford v. Spanish Oak Farms, Inc., 317 S.C. 539, 455 S.E.2d 194 (Ct. App. 1995) (by failing to challenge a witness's qualifications at trial, appellant waived the right to present that argument on appeal).

The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. Wilson v. Rivers, 357 S.C. 447, 593 S.E.2d 603 (2004). The term "expert" has many lights and shadows. It can denote a person who is a recognized authority and, perhaps as accurately, a person who once went to the city. At what point between those two extremes he or she will be allowed to express an opinion on the witness stand will be for the trial judge to decide in the first instance. But whatever the person's status in life may be, the person's qualifications cannot be assumed; they must be established by evidence. The quality or quantity of that evidence occasionally may require some adjustment, depending upon the exigencies of the moment, and in such circumstances, the trial judge will need to exercise the full measure of his judgment, skill, and discretion. Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 563 S.E.2d 109, 156 O.G.R. 216 (Ct. App. 2002).

To be competent as an expert, a witness by reason of study or expertise or both must possess such knowledge or skill in a business, profession, or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony. Hall v. Clarendon Outdoor Advertising, Inc., 311 S.C. 185, 428 S.E.2d 1 (Ct. App. 1993); State v. Peer, 320 S.C. 546, 466 S.E.2d 375 (Ct. App. 1996). See also Rule 43(m)(1),

SCRCP; Rule 24(a), SCRCP. Stated differently, if the witness through education and experience is able to draw inferences that could not be drawn by a layman, the witness should be qualified as an expert. O'Tuel v. Villani, 318 S.C. 24, 455 S.E.2d 698 (Ct. App. 1995) (overruled on other grounds by, I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)).

The party offering the expert has the burden of showing his witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony. Generally, however, defects in the amount and quality of education or experience go to the weight of the expert's testimony and not its admissibility. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); McMillan v. Durant, 312 S.C. 200, 439 S.E.2d 829 (1993); O'Tuel v. Villani, 318 S.C. 24, 455 S.E.2d 698 (Ct. App. 1995) (overruled on other grounds by, I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)). See also Waters v. South Carolina Land Resources Conservation Com'n, 321 S.C. 219, 467 S.E.2d 913 (1996) (a witness's admitting he was not an expert in the field of radioactive mineral migration through hydrologic systems did not render him incompetent to testify as an expert witness; this fact went to the weight of the testimony).

The State will not meet the burden under Rule 702 and State v. Council, and the evidence should be excluded. The evidence is not reliable and properly conducted in this case, and the evidence meet the factors under State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979). Admissibility of this type of scientific evidence should be analyzed under Rules 702 and 403, SCRE and the Jones factors. State v. McHoney, 344 S.C. 85, 94, 544

S.E.2d 30, 34 (2001). See also Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008) (discussing Council).

## VI. CONCLUSION

The evidence and methodology purported by the State and used to substantiate the conclusion that a “ping” off a cell tower is indicative of the defendant’s location is faulty and misleading. To permit its admission would be a clear violation of the defendant’s constitutional rights.

Respectively Submitted,



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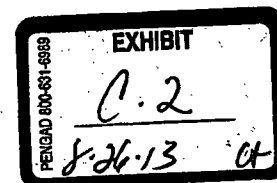
Columbia, South Carolina.  
August 26, 2013

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF GENERAL SESSIONS |
| COUNTY OF LEXINGTON      | ) | ELEVENTH JUDICIAL CIRCUIT        |
| STATE OF SOUTH CAROLINA, | ) |                                  |
|                          | ) | DEFENDANT'S MEMORANDUM           |
|                          | ) | IN SUPPORT OF HIS MOTION         |
| V.                       | ) | IN LIMINE TO SUPPRESS            |
|                          | ) | INTRODUCTION OF GUN,             |
|                          | ) | DNA EVIDENCE RELATED TO          |
| SHAWN SHARPE,            | ) | THE GUN, AND ANY STATEMENTS      |
|                          | ) | MADE BY ASHLEY VASQUEZ           |
| Defendant.               | ) | Case No's.: 2011-GS-32-2448-50   |

COMES NOW, the Defendant, Shawn Sharpe, by and through his attorney, Aimee J. Zmroczek, and asks this Court prevent introduction and evidence or comment on the gun, specifically the Taurus 45 caliber pistol, any DNA evidence related to the gun, and any statements made by Ashley Vasquez.

#### BACKGROUND

On September 21, 2011, during the evening hours at the address of Victor Road in the Gaston area of Lexington County, Leon Justice was shot in the head and died as a result of that gunshot wound. Information provided from an eyewitness, Rose Lucas, within hours of the shooting led police to investigate co-defendants, Charlie and Raymond "Danny" Plumley, Jr., specifically stating that Charlie had shot the victim. An additional witness, Billy Hinson, stated Charlie Plumley was known to have a 45 caliber pistol. Charlie, Danny, and Angela Plumley (wife of Charlie and sister-in-law of Danny) were arrested on September 22, 2011, after the S.W.A.T. team surrounded their residence for over an over. Danny and Angela provided information that Charlie Plumley and Shawn Sharpe committed the robbery. Shawn Sharpe was interviewed and provided alibi information from his girlfriend, Ashley Vasquez.



Ashley Vasquez was interviewed at her house by Investigators (Chappell and Grant) on September 22, 2011. She confirmed the alibi but stated she was intoxicated. It should be noted that Ashley Vasquez suffered from chemical addiction among other problems. She told investigators that Shawn Sharpe came to her house at 21:00 hours and confessed to committing a robbery and murder (factually this is impossible because the victim was murdered at 22:37). Ashley Vasquez stated that Shawn Sharpe had left a gun in her drawer. She stated she was no longer in possession of the gun at the time of the interview because when she awoke on September 22, 2011, her car was towed and she was upset about Shawn and she told her sister, Heather Vasquez and friend, Ashley Jeffcoat, she was going to kill herself and that she and Ashley Jeffcoat wrestled over the gun and Ashley Jeffcoat took the gun (it is undocumented as to the time this occurred). Ashley Jeffcoat was contacted by investigator s and brought the gun to them wrapped in a black bandana. Ashley Jeffcoat provided a written statement which only states that Vasquez was mad about her car and stated she was going to kill herself and upon following her into her room, saw she had a gun (there is no mention of Shawn Sharpe or the alleged robbery/murder). Investigator Chappell took custody of the gun although, in an apparent clerical error, stated on the property and evidence voucher that he took possession of the gun and black bandana on September 21, 2011, at 22:37 and submitted them into evidence September 23, 2011, at 16:10:53, listing owner and seized from "unknown".

The Lexington County Sheriff's Department (LCSD) chain of custody indicates it was released on September 29, 2011, to the State Law Enforcement Division (SLED) the chain is a bit confusing with the dates, but appears to have been at SLED at least twice

for testing. SLED's chain reveals the gun and magazine (items 2.1 and 2.2 respectively) were forensically tested for DNA. The black bandana (item 21) was sent to SLED apparently on August 12, 2013. It was processed by SLED on August 16, 2013, and swabs were forwarded to the DNA section (21.1) and debris was forwarded to the DNA section (21.2)

On April 9, 2013, a partial DNA profile was developed on items 2.1 and 2.2. SLED forensic scientist Catherine Leisy reported the partial DNA profile developed from item 2.1 is a mixture of at least two individuals. This partial DNA profile was suitable for comparison purposes but was not suitable for CODIS entry. The partial DNA profile developed from item 2.2 was a mixture of at least three individuals. This partial DNA profile was suitable for comparison purposes but was not suitable for CODIS entry.

On May 6, 2013, 1 year, 7 months, 14 days (592 days) after Shawn Sharpe was arrested and booked into the Lexington County Detention Center. On May 8, 2013, Shawn Sharpe was transported to the Lexington County Courthouse for a hearing on the State's request for an Order requiring the defendant to submit to the taking of Buccal (sic) swabs for DNA comparison and an Order was signed by Judge Keesley on May 9, 2013. On May 21, 2013, approximately 19 months of pretrial detention, Investigator Chappell collected a buccal swab from Shawn Sharpe.

On June 27, 2013, SLED forensic scientist Catherine Leisy issued her supplemental report. The partial DNA profile from 2.1 was a mixture of at least two individuals. No conclusive statement could be made regarding the inclusion or exclusion of Ashley Vasquez as a possible contributor to the DNA profile developed from that item. Charles Plumely, Shawn Sharpe, and Angela Griffin (Plumley) were excluded as

possible contributors to the DNA profile developed from that item. This partial DNA profile was suitable for comparison purposes but was not suitable for CODIS entry. The partial DNA profile from 2.2 was a mixture of at least two individuals. Shawn Sharpe could not be excluded as a possible contributor to the DNA profile developed from that item. The probability of randomly selecting an unrelated individual who could have contributed to that profiles was approximately 1 in 4,000. Charles Plumely, Angela Griffin (Plumley), and Ashley Vasquez were excluded as possible contributors to the DNA profile developed from that item. This partial DNA profile was suitable for comparison purposes but was not suitable for CODIS entry.

On August 20, 2013, a DNA analysis was conducted evidently without developing a known profile first. The DNA profile developed from item 21.1 was a mixture of at least three individuals. Shawn Sharpe could not be excluded as a possible contributor to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately 1 in 1,300. Charles Plumely, Angela Griffin (Plumley), and Ashley Vasquez were excluded as possible contributors to the DNA profile developed from that mixture. The Y-STR profile develop from item 21.1 was a mixture of at least three individuals. The partial DNA profile developed from the major contributor to this mixture matches the DNA profile of Shawn Sharpe. Paternal male relatives of Shawn Sharpe may not be excluded as the major contributor to this mixture. This profile is found 15 times in a population database of 22, 371 male individuals. No conclusive statement can be made regarding the inclusion of Charles Plumley as a possible minor contributor to this mixture. No DNA profile was developed from item 21.2.1.

### ARGUMENT

The gun, any DNA evidence related to the gun, and any statements made by Ashley Vasquez should be suppressed from being introduced in this trial. DNA evidence may be admitted in judicial proceedings in this State in the same manner as other scientific evidence, such as fingerprint analysis and blood tests. State v. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001); State v. Ford, 301 S.C. 485, 392 S.E.2d 781 (1990). However, the admissibility of DNA evidence remains subject to traditional attack, such as attacks based on relevancy or prejudice. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001). Traditional challenges to the admissibility of DNA evidence such as the contamination of the sample or chain of custody questions may be presented. These issues relate to the weight of the evidence. The evidence may be found to be so tainted that it is totally unreliable and, therefore, must be excluded. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001).

#### I. Admissibility pursuant to the Sixth Amendment to the United States Constitution, confronting the issues regarding the chain of custody

Not conceding the apparently clerical errors made by Investigator Chappell and the Lexington County Sheriff's office, defendant Sharpe asserts his right to confront the chain before the evidence is presented to a jury. Sadly, Ashley Vasquez died on January 9, 2012. Upon information and belief, she was struggling with several illegal substance addictions. Shawn Sharpe met her through his brother, Michael Sharpe, also known as "Chuck D". Chuck D is a known drug dealer and a felon and supplier to both Charles and Danny Plumley. Some of the numerous statements given provide information that Chuck D and Charley committed this offense. The purpose for this back ground

information is that Danny and Angela are the first to finger Shawn as a suspect and it is unknown at this time what influence or connection they had with Ashley Vasquez and/or Chuck D.

In Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the Supreme Court unanimously ruled that the defendant's Confrontation Clause rights had been violated by the admission into evidence of his nontestifying wife's statement to the police. The opinion of the Court, authored by Justice Scalia, overruled Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980), which had permitted statements of unavailable witnesses to be admitted at trial insofar as they bore "adequate indicia of reliability," meaning that they satisfied a "firmly rooted hearsay exception" or were otherwise bolstered by "particularized guarantees of trustworthiness." Roberts, 448 U.S. at 66, 100 S.Ct. 2531. Crawford changed the law to condition the admission of such statements on (1) the witness being unavailable at trial, and (2) the defendant having had the prior opportunity to cross-examine the witness. Crawford applies whenever "testimonial evidence is at issue." 541 U.S. at 68, 124 S.Ct. 1354. Inasmuch as it was the result of formal police interrogation, the evidence at issue in Crawford plainly met the Court's criterion, although it elected to "leave for another day any effort to spell out a comprehensive definition of 'testimonial.'" Id. The Court did distinguish "nontestimonial hearsay," however, noting that "an approach that exempted such statements from Confrontation Clause scrutiny altogether" would be consistent with the Framers' intent. Id.; cf. United States v. Cabrera-Beltran, 660 F.3d 742, 753 (4th Cir.2011) (holding that border crossing records not created for trial are nontestimonial and admissible under public records exception to hearsay rule). The distinction between

testimonial and nontestimonial statements came to the forefront in Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), in which the trial court had admitted a recording of a 911 call from a woman to prove, in the absence of the woman's testimony, that the defendant, her former boyfriend, had assaulted her. The Supreme Court unanimously ruled that the woman's statement was Scalia:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.... This is not to imply, however, that statements made in the absence of any interrogation are necessarily nontestimonial.... And of course even when interrogation exists, it is in the final analysis the declarant's statements, not the interrogator's questions, that the Confrontation Clause requires us to evaluate. Davis, 547 U.S. at 822 & n. 1, 126 S.Ct. 2266.

The Court assumed, for the sake of argument, that the questions posed by the 911 operator eliciting the incriminating responses were the acts of the police, constituting "interrogation." See Id. at 823 n. 2, 126 S.Ct. 2266. Notably, Justice Thomas concurred only partially in the judgment, concluding that the responses were admissible because they were not part of a "formalized dialogue" resembling testimony. See Id. at 840, 126 S.Ct. 2266 (Thomas, J., concurring in the judgment in part and dissenting in part).

In Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), the Supreme Court considered whether sworn certificates from forensic analysts, admitted to attest that the substance seized from the defendant was cocaine, were "testimonial" for Confrontation Clause purposes. The Court, by a 5-4 vote, held in the affirmative and vacated the defendant's conviction, with Justice Scalia observing for the majority that the certificates were "functionally identical to live, in-court testimony,

doing ‘precisely what a witness does on direct examination.’ ” Melendez-Diaz, 129 S.Ct. at 2532 (quoting Davis, 547 U.S. at 830, 126 S.Ct. 2266). The Court pointed out that “the sole purpose of the affidavits was to provide prima facie evidence of the composition, quality, and the net weight of the analyzed substance,” and that it could be safely assumed “that the analysts were aware of the affidavits’ evidentiary purpose.” Id. (internal quotation marks omitted). Because the analysts could have been available to testify (or, at least, there was no showing to the contrary) and because there had been no opportunity for them to be cross-examined, Crawford demanded that the defendant’s conviction be overturned. Justice Thomas, providing the determinative fifth vote, wrote a concurring opinion noting his adherence to the position that extrajudicial statements implicate the Confrontation Clause “only insofar as they are contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions.” Id. at 2543 (Thomas, J., concurring). Justice Scalia cautioned, however, that “we do not hold, and it is not the case, that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution’s case.” Melendez-Diaz, 129 S.Ct. at 2532 n. 1. Rather, “[i]t is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence; but what testimony is introduced must (if the defendant objects) be introduced live.” Id.

Most recently, the Supreme Court issued its opinion in Bullcoming v. New Mexico, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011). Bullcoming was another 5–4 case, and this time Justice Ginsburg delivered the opinion of the Court, which attracted the concurrence of Justice Thomas in everything but Part IV and footnote 6 (reiterating

Justice Scalia's "primary purpose" test in Davis for evaluating whether a statement is testimonial). Bullcoming involved a drunk-driving trial in which the state introduced a lab report certifying the results of a blood-alcohol test performed on a sample taken from the defendant. The signatory analyst did not testify, "having very recently [been] put on unpaid leave," 131 S.Ct. at 2711-12 (alteration in original), but another analyst familiar with the lab's procedures did. The testifying analyst had not participated in or observed the defendant's blood test, however. The Supreme Court vacated the defendant's conviction: "As a rule, if an out-of-court statement is testimonial in nature, it may not be introduced against the accused at trial unless the witness who made the statement is unavailable and the accused has had a prior opportunity to confront that witness." Bullcoming, 131 S.Ct. at 2713. The Court stressed that the first analyst's certification "reported more than a machine-generated number," in that it also verified that the lab had received the blood sample intact, that the sample was in fact the defendant's, that the analyst performed a particular test in accordance with a specific protocol, and that the process had not been compromised. Id. at 2714. Although the report was in this case unsworn, it was yet testimonial because it was "created solely for an 'evidentiary purpose,' " Id. at 2717 (quoting Melendez-Diaz, 129 S.Ct. at 2532), and was "formalized" in a signed document," Id. (quoting Davis, 547 U.S. at 837 n. 2, 126 S.Ct. 2266 (Thomas, J., concurring in the judgment in part and dissenting in part)). Writing separately, Justice Sotomayor pointed out that Bullcoming "is not a case in which the person testifying is a supervisor, reviewer, or someone else with a personal, albeit limited connection to the scientific test at issue." 131 S.Ct. at 2722 (Sotomayor, J., concurring in part). According to Justice Sotomayor, "[i]t would be a different case if, for example, a

supervisor who observed an analyst conducting a test testified about the results or a report about such results.” Id. In addition, Bullcoming “is not a case in which an expert witness was asked for his independent opinion about underlying testimonial reports that were not themselves admitted into evidence.” Id. (citing Fed.R.Evid. 703). Finally, Justice Sotomayor noted that Bullcoming, “is not a case in which the State introduced only machine-generated results, such as a printout from a gas chromatograph,” and that the Court did not decide “whether ... a State could introduce (assuming an adequate chain of custody foundation) raw data generated by a machine in conjunction with the testimony of an expert witness.” Id.

When the issue is palpable, as it is here, it is up to the defense to advise the prosecution in good faith such that the attendance of appropriate witnesses may be secured. See Moon, 512 F.3d at 361 (“A defendant who sincerely wants live testimony should make the demand, so that the declarant can be produced. The lack of a demand for testimony by an available declarant leads to the conclusion that the appellate argument is strategic rather than sincere.”); cf. Washington, 498 F.3d at 230 (“The value of cross-examination might relate to authentication or to a description of the machines or to the chain of custody, but none of these were issues at trial.”). Of course, the duty to produce necessary witnesses and, it necessarily follows, the consequences of their absence, is always assumed by the prosecution. See Melendez-Diaz, 129 S.Ct. at 2540 (declaring that “the Confrontation Clause imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court”).

The witness who begins the chain of custody in this case, Ashley Velasquez, is dead. This case is bursting with numerous and inconsistent statements, including that

very witness. Even if her statements would somehow fall within a hearsay exception, there would still be a confrontation problem under Crawford. This Court must consider the Vasquez's live testimony, a circumstance that could cast substantial doubt upon the importance of the report in establishing Sharpe's guilt.

More fundamentally, however, defense counsel cannot help but note that the State's decision to introduce DNA evidence (to be discussed in more detail below) derived from the gun had the unintended collateral effects of rendering a significantly more complex case into a straightforward. With respect to proving ownership and apparently handling of the gun, the evidence sought to be introduced presumably through Investigator Chappell will be scarcely more than the thin glaze on a dense cake baked to doneness by the conflicting co-defendants' largely shakable testimony that: (1) Sharpe brought the gun; (2) he fired the gun; and (3) the gun is the gun used in this crime.

Ashley Vasquez's "testimony" in her written statement and her testimonial turning over the gun is ripe for cross-examination. The defense has never, nor will it ever have the opportunity to challenge this witness and evidence. These exhibits (gun and bandana) and the resulting examinations should not be admissible because their origins and chain of custody cannot strongly suggest the whereabouts of the evidence at all times. The State cannot give reasonable assurances from the property originated or that the property has not passed through various hands in an undisturbed condition without a material alteration and should therefore be suppressed.

## **II. Admissibility under Rule s 403 and 703, SCRE**

If the Court decides that the gun should not be admitted, that is dispositive on this issue. If the gun is admitted, counsel would argue that the testimony is more prejudicial

than probative. In the context of the rule allowing the exclusion of evidence if its probative value is substantially outweighed by the danger of unfair prejudice, the determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case. State v. Stokes (S.C. 2009) 2009 WL 367581; State v. Martucci (S.C.App. 2008) 380 S.C. 232, 669 S.E.2d 598, rehearing denied; State v. Gillian (S.C. 2007) 373 S.C. 601, 646 S.E.2d 872. When evidence's prejudicial effect outweighs its probative value, it should be excluded, even if otherwise relevant. State v. Lyles (S.C.App. 2008) 379 S.C. 328, 665 S.E.2d 201, rehearing denied; Jamison v. Ford Motor Co. (S.C.App. 2007) 373 S.C. 248, 644 S.E.2d 755, rehearing denied, certiorari granted. "Unfair prejudice," as used in the rule allowing the exclusion of evidence if its probative value is substantially outweighed by the danger of unfair prejudice, means an undue tendency to suggest decision on an improper basis. Stokes (S.C. 2009) 2009 WL 367581; State v. Owens (S.C. 2001) 346 S.C. 637, 552 S.E.2d 745, rehearing denied, appeal after new sentencing hearing 362 S.C. 175, 607 S.E.2d 78, appeal after new sentencing hearing 378 S.C. 636, 664 S.E.2d 80, certiorari denied, certiorari denied 129 S.Ct. 1004; State v. Saltz (S.C. 2001) 346 S.C. 114, 551 S.E.2d 240, rehearing denied. For purposes of determining whether challenged evidence is unduly prejudicial, prejudice that is unfair is distinguished from the legitimate impact all evidence has on the outcome of a case; "unfair prejudice" does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence, but rather refers to evidence which tends to suggest a decision on an improper basis. State v. Lee (S.C.App. 2012) 399 S.C. 521, 732 S.E.2d 225, rehearing denied. Criminal Law Key Number 338 (7)DNA: DNA print testing and RFLP (Restrictive Fragment Link Polymorphism)

analysis are admissible in South Carolina. State v. Ford, 301 S.C. 485, 392 S.E.2d 781 (1990). See Wedlock, "DNA Goes Round and Round," South Carolina Lawyer, Mar/Apr 1993 at 9.

DNA evidence may be admitted in judicial proceedings in this State in the same manner as other scientific evidence, such as fingerprint analysis and blood tests. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001); Ford, 301 S.C. 485, 392 S.E.2d 781 (1990). However, the admissibility of DNA evidence remains subject to traditional attack, such as attacks based on relevancy or prejudice. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001). Traditional challenges to the admissibility of DNA evidence such as the contamination of the sample or chain of custody questions may be presented. These issues relate to the weight of the evidence. The evidence may be found to be so tainted that it is totally unreliable and, therefore, must be excluded. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001). DNA population frequency statistics assist the jury in determining whether the defendant perpetrated the crime, and the jury should be allowed to make its own determination as to whether it believes the statistics are reliable. State v. Dinkins, 319 S.C. 415, 462 S.E.2d 59 (1995). Therefore, DNA population frequency statistics are admissible and, as with DNA test results, they are subject to attack for relevancy and prejudice. Dinkins, 319 S.C. 415, 462 S.E.2d 59 (1995). See also State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996) (DNA print testing and the process of RFLP analysis have been recognized as reliable and admissible without first holding a hearing on admissibility under State v. Jones, subject to attack for relevancy or prejudice; for DNA evidence to be excluded, the trial court must find that it was so tainted as to be totally unreliable).

In State v. Register, the Supreme Court noted that even though it is debatable whether the "binning" process SLED used for calculating statistical probabilities has general acceptance in the scientific community, the judge used material presented and his own research to conclude SLED's techniques for developing the database and determining the probability of finding Register's particular DNA pattern were based on generally accepted scientific principles. The Court concluded there was no error in leaving reliability of this to the jury. 323 S.C. 471, 476 S.E.2d 153 (1996). In State v. Ramsey, the Court held the defendant did not establish the expert's DNA testing procedure was unreliable, much less so unreliable as to warrant exclusion. Second, the testimony concerning the DNA evidence complied with the requirements for the admission of expert evidence as set forth in State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). See Chapter 15. Any evidence concerning contamination, therefore, went to the weight of the testimony, not its admissibility. Finally, the Court held the mixture of DNA evidence is not a basis for the exclusion of polymerase chain reaction evidence. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001).

However, here, the DNA mixture evidence is material to the preparation of a defendant's defense. There are several potential problems beginning with the chain but also with the material condition of the items as they were submitted. Additionally, defense counsel has great concern regarding the Y-STR DNA profiles identified in 21.2.1. Michael Sharpe, Shawn Sharpe's brother by the same parents, has been implicated as having something to do with these crimes. Sgt. Collins even attempted to get Michael Sharpe to willingly give a sample, but when he declined, the police never

required one. Y-STR profiles are exactly the same among related males within patrilineal lines.

DNA has proven to be a powerful exclusionary tool its ability to inculpate is less powerful. Far short of identifying a particular person as the source of a Y-STR profile, observing that a suspect profile is consistent with an evidence sample does no more than reduce the population of possible contributors to the defendant plus all patrilineal related male relatives and an unknown number of unrelated males as being the donor of the evidence sample. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). Rule 403 balances prejudice against probity to determine admissibility. This profile was also considered mixtures of DNA. Three or more alleles at a locus indicate the presence of more than one contributor. It is often difficult to tell whether the sample originated from 2, 3 or 4 people. Statistical models can help analysts work out the probabilities of more than two contributors however a number of possible combinations could be consistent with the findings. Despite this, unless more than five alleles are found at a locus, the government analyst's generally assume that only two people contributed to a mixture. This presumption has been proved correct in most cases. However, if this assumption is false it can lead to a part of a mixture being matched wrongly to a suspect. We can see no reason why partial profile DNA evidence should not be admissible provided that the jury are made aware of its inherent limitations and are given a sufficient explanation to enable them to evaluate it. There may be cases where the match probability in relation to all the samples tested is so great that the judge would consider its probative value to be minimal and decide to exclude the evidence in the exercise of his discretion, but this gives rise to no new question of principle and can be left for decision on a case by case basis.

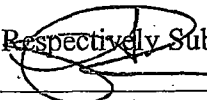
However, the fact that there exists in the case of all partial profile evidence the possibility that a "missing" allele might exculpate the accused altogether does not provide sufficient grounds for rejecting such evidence. In many there is a possibility (at least in theory) that evidence exists which would assist the accused and perhaps even exculpate him altogether, but that does not provide grounds for excluding relevant evidence that is available and otherwise admissible, though it does make it important to ensure that the jury are given sufficient information to enable them to evaluate that evidence properly"

In mixed samples alleles may simply be undetectable or indistinguishable from background "noise". Alternatively, as mentioned above, alleles can simply "drop out" and not appear on the graph or stutters can be confused with alleles from a minor contributor. There is an additional concern of one 2.2 being a partial profile, this is DNA evidence that does not yield identifiable results in all 13 core loci.

DNA profiling can inculpate a criminal suspect by comparing the suspect's genetic material with genetic material obtained from evidence left at the crime scene. DNA profiling involves two distinct procedures. First, RFLP analysis determines if there is a "match." A "match" does not mean that the suspect was definitely the source of the genetic material found at the crime scene, however, but simply that the suspect cannot be eliminated as the potential source. Even if there is a perfect match, there is a possibility that the two samples came from different people whose DNA patterns at the targeted loci are indistinguishable. Thus the second procedure, population frequency calculation, generates a ratio which accompanies a match in order to express the statistical likelihood that an unrelated individual chosen at random from a particular population could have the same DNA profile as the suspect.

When a crime-scene DNA sample matches a profile in the database at most, but not all loci, the individual from the database is excluded. However, it is very likely that a close relative is the source of that DNA rather than a random, unrelated individual. These partial matches can be used by investigators to find the individual who left the DNA at the crime scene, providing potentially valuable information in an ongoing investigation. The RMP approach for mixture calculations expresses the DNA match in far more incriminating terms than other available approaches. Even use of a modified random match probability statistic (MRMP) helps to temper use of this statistical approach. However, as several individuals may share many alleles, it is difficult to say with absolute certainty just how many contributors there are in a mixed DNA profile. That was not done here, in fact, there wasn't even a profile developed prior to testing.

Finally, Rule 703, SCRE allows an expert to rely on information not in evidence if it is the type of information upon which experts in the field generally rely. But the expert assumes the information is true, and the information is only relevant if in fact it is true, so facts made known to the expert are offered for their truth and should have to be independently proven to satisfy confrontation argued above under Crawford. Based on these facts and arguments, Defendant is moving to suppress any and all DNA related to the gun or bandana.

  
Respectfully Submitted,

---

Aimee J. Zmroczek  
1330 Lady Street Suite 400  
Columbia, SC 29201  
(803) 400-1918  
Counsel for Defendant

Columbia, South Carolina.  
August 26, 2013.

1 of 4

COUNTY OF LEXINGTON  
BETH A. CARRIGG  
CLERK OF COURT

Page 2  
Linkers Box  
Tube w/10 posters  
1-Def. Hand Poster

IN THE COMMON PLEAS / GENERAL SESSIONS / FAMILY COURT

CASE NO. 2012-GS-32-2448, 2449 + 2450JUDGE T RussoCT. REP. C ThumeDATE 8/26-30/2013

CLOCK - IN AREA

(NOTES)

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

States

PLAINTIFF

VS.

DEFENDANT

StateShawn W. SharpeAtty. R. Hubbard / S. HeelanAtty. A Zmorschek

| NO.     | ID. | EV. | DESCRIPTION          | NO. | ID. | EV. | DESCRIPTION                |
|---------|-----|-----|----------------------|-----|-----|-----|----------------------------|
| S 1     | ✓   | ✓   | Miranda              | 69  | ✓   | ✓   | mask                       |
| S 2     | ✓   | ✓   | map                  | 70  | ✓   | ✓   | Buccal swab C. Sharpe      |
| S 3     | ✓   | ✓   | map                  | 71  | ✓   | ✓   | Buccal swab Sharpe         |
| S 4-6   | ✓   | ✓   | photos               | 72  | ✓   | ✓   | DNA not used               |
| S 7-14  | ✓   | ✓   | photos & 14 not used | 73  | ✓   | ✓   | Rec Phone / Verizon phone  |
| S 15-16 | ✓   | ✓   | map & 20 not used    | 74  | ✓   | ✓   | LG cell phone              |
| 17-19   | ✓   | ✓   | photos               | 75  | ✓   | ✓   | DNA card                   |
| 48-52   | ✓   | ✓   | photos & 50 & 52 not | 76  | ✓   | ✓   | Buccal swab Angela Griffin |
| 53-56   | ✓   | ✓   | phone records        | 77  | ✓   | ✓   | Bordana                    |
| 57      | ✓   | ✓   | CD cassette          | 78  | ✓   | ✓   | cell phone Sharpe FT       |
| 58-61   | ✓   | ✓   | fingerprints         | 79  | ✓   | ✓   | #45 cartridges             |
| 68      | ✓   | ✓   | gun                  | 80  | ✓   | ✓   | fixed projectile & jacket  |

CT. REP

Carol M. Thume

REC. BY

Hope Turch

VERIFIED

TITLE

TITLE

WHITE: COURT RECORDS \* YELLOW: EVIDENCE VAULT \* PINK: FILE

LCF 661 (1/05)

\* See attached sheet. Objects were pre-marked  
but never admitted or used during trial.

H

*State v. Sharpe*  
 Exhibits admitted are circled + checked

## EXHIBIT LIST

## STATE'S EXHIBITS

|                 |                 |                 |                 |                 |                 |                |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------|
| <del>1</del> ✓  | <del>1</del> ✓  | <del>21</del> ✓ | <del>21</del> ✓ | <del>41</del> ✓ | <del>51</del> ✓ | <del>1</del> ✓ |
| 2 ✓             | <del>2</del> ✓  | <del>22</del> ✓ | <del>22</del> ✓ | <del>42</del> ✓ | 52 ✓            | <del>2</del> ✓ |
| 3 ✓             | <del>3</del> ✓  | <del>23</del> ✓ | <del>23</del> ✓ | <del>43</del> ✓ | <del>53</del> ✓ | <del>3</del> ✓ |
| <del>4</del> ✓  | 14 ✓            | <del>24</del> ✓ | <del>24</del> ✓ | <del>44</del> ✓ | <del>54</del> ✓ | <del>4</del> ✓ |
| <del>5</del> ✓  | 15 ✓            | <del>25</del> ✓ | 35 ✓            | <del>45</del> ✓ | <del>55</del> ✓ | <del>5</del> ✓ |
| <del>6</del> ✓  | 16 ✓            | <del>26</del> ✓ | 36 ✓            | <del>46</del> ✓ | <del>56</del> ✓ | <del>6</del> ✓ |
| <del>7</del> ✓  | 17 ✓            | <del>27</del> ✓ | <del>37</del> ✓ | <del>47</del> ✓ | 57 ✓            | <del>7</del> ✓ |
| <del>8</del> ✓  | <del>18</del> ✓ | <del>28</del> ✓ | <del>38</del> ✓ | <del>48</del> ✓ | <del>58</del> ✓ | <del>8</del> ✓ |
| 9 ✓             | 19 ✓            | <del>29</del> ✓ | <del>39</del> ✓ | <del>49</del> ✓ | <del>59</del> ✓ | 69 ✓           |
| <del>10</del> ✓ | 20 ✓            | <del>30</del> ✓ | <del>40</del> ✓ | 50 ✓            | <del>60</del> ✓ | 70 ✓           |
| 71 ✓            | <del>81</del> ✓ | 91              |                 |                 |                 |                |
| 72 ✓            | 82 ✓            | 92              |                 |                 |                 |                |
| 73 ✓            | 83 ✓            | 93              |                 |                 |                 |                |
| 74 ✓            | 84 ✓            | 94              |                 |                 |                 |                |
| 75 ✓            | 85 ✓            | 95              |                 |                 |                 |                |
| 76 ✓            | 86 ✓            | 96              |                 |                 |                 |                |
| 77 ✓            | 87 ✓            | 97              |                 |                 |                 |                |
| 78 ✓            | 88 ✓            | 98              |                 |                 |                 |                |
| 79 ✓            | 89 ✓            | 99              |                 |                 |                 |                |
| 80 ✓            | 90 ✓            | 100             |                 |                 |                 |                |

*Uncircled were pre marked  
 but not used.*

*See ~~under~~ exhibit sheet  
 rec'd 6/18/74  
 MFK*

## IN THE COMMON PLEAS / GENERAL SESSIONS / FAMILY COURT

CASE NO. 2012-CR-52-2448, 2449 + 2450

JUDGE

CT. REP. \_\_\_\_\_ DATE \_\_\_\_\_

CLOCK - IN AREA

(NOTES)

(1)

(2)

(3)

PLAINTIFF

VS.

DEFENDANT

Atty.

Atty.

[illegible]

CT. REP

REC. BY-

**VERIFIED**

TITLE

TITLE

**WHITE: COURT RECORDS \* YELLOW: EVIDENCE VAULT \* PINK: FILE**



# Lexington County Sheriff's Department Statement Form



DATE 9/22/2011 PLACE Gibson Rd TIME STARTED 1734 P M

I, the undersigned, Shawn William Sharpe, am 20 years of age, my date

and place of birth being the      day of     , 19 91, at Lexington

My present address is 000 S 11th St

I completed 7 grade(s) in school. I can read and write. SS (Initials)

CONTACT NUMBERS: H)      W)      C) 603-    

ALTERNATE CONTACT: Name      Phone Numbers:     

Before answering any questions or making any statements, J. Chappell

a person who identified him/herself as a Investigator, LCSD

duly warned and advised me that:

- 1) I HAVE THE RIGHT TO REMAIN SILENT. SS
- 2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. SS
- 3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. SS

- 4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. SS
- 5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. SS

I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. SS I MAKE THE FOLLOWING STATEMENT:

Witness

Notary Public

Person giving Statement

Date

My Commission expires

Pg 1 of      pgs



# Lexington County Sheriff's Department Statement Form



DATE 9-22-11 PLACE LCSD TIME STARTED 4:30P M

I, the undersigned, Angela Plumley, am 31 years of age, my date and place of birth being the day of 19 79, at Lexington Hospital

My present address is Highway 6, Gaston, SC 29053

I completed 10<sup>th</sup> grade(s) in school. I can read and write. ARP (Initials)

CONTACT NUMBERS: H) \_\_\_\_\_ W) \_\_\_\_\_ C) \_\_\_\_\_

ALTERNATE CONTACT: Name Cindy McGee Phone Numbers: (803) -7078

Before answering any questions or making any statements, Detective C. Etheredge, a person who identified himself as a Lexington County Sheriff's Detective, duly warned and advised me that:

- 1) I HAVE THE RIGHT TO REMAIN SILENT. ARP
  - 2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. ARP
  - 3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. ARP
  - 4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. ARP
  - 5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. ARP
- I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. ARP I MAKE THE FOLLOWING STATEMENT:

1:34pm On September the 21<sup>st</sup> Around 1:00pm I woke up I had stayed the night at Phil Helms on Blackville Ct. At that time Charlie Plumley (my husband) was there with his friend Shaun. they had been running errands all day. After I woke, Shaun & Charlie drove to Lexington to the store - this was around 8:00pm, I asked Charlie to stop by our house & grab me some jeans - He got back to Phils around 9:15 or so - the clothes he brought me were too small so I asked Phil if I could go back to the house to

C. Etheredge  
Witness

Notary Public



Angela Plumley  
Person giving Statement

Date September 22, 2011

## VOLUNTARY STATEMENT

Page 2 of 2 pages.

got something that would fit. We got to my house, me Charlie & Shaun and I grabbed a cpl. of things that fit & headed back to Phil's after. We got there, Phil was in the bed & Charlie & Shaun left to go pick up something for somebody. They were gone about 40 minutes when they got back Charlie called his brother to come pick us up. After we got in the car Shaun was talking about firing the gun off at the house they pulled a "tick" on. He also said a woman tried to pull his mask off - Shaun called his brother Chuck D & asked him what he should do with the gun. We dropped Shaun off at his girlfriend's house & then we went home - me & Charlie went to bed after walking next door a cpl. of times. Then I woke up with the police there ~~ARP~~ <sup>ARP</sup> ARP

End of Statement  
9-22-11  
5:00 PM  
(COP)

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Angela Plummer  
Signature of person giving voluntary statement

Det. C. Etheredge

## VOLUNTARY STATEMENT

Page 1 of 1 pages.

Q: Who was next door that you went to see?

A: Danny &amp; Patsy

Q: What were they doing?

A: Getting High &amp; drinking Beer.

Q: Did you see a gun?

A: I never actually saw the gun

Q: Did Shaun still have the gun on him?

A: Even though I didn't see it, I know he had it on him by the conversation he had with his brother.

Q: What did you hear Shaun saying to his brother on the phone?

A: He asked his brother what he should do with the gun - His brother must have said get rid of it. B/c Shaun wasn't sure if he meant permanently so he called his brother back &amp; asked him if he wanted him to make it disappear.

Q: After Shaun spoke with his brother, what did he want Shaun to do with the gun?

A: To permanently make it disappear.

Q: While you are hearing this conversation, how did you feel about this?

A: I was freakin out but I wanted to stay calm so they wouldn't think I would say anything &amp; do something to me to keep me from saying anything.

have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Angela Plummer  
Signature of person giving voluntary statement

Det. C. Eckerdt

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WITNESSES

Lexington County Sheriffs Department

DOUG NOVAK

Law Enforcement Case #: 11029963

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DSG

ARREST WARRANT NUMBER

M303282

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ACTION OF GRAND JURY

*Ron Brossington*  
Foreperson of Grand Jury  
Date: 5-6-13

VERDICT

*Guilty*

*Charles J. Hank*  
Foreperson of Petit Jury  
Date: 8/30/13

DOCKET NO. 2012GS3202448

The State of South Carolina

County of Lexington

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COURT OF GENERAL SESSIONS

MAY TERM 2013

---

---

THE STATE

vs.

Shawn William Sharpe

---

---

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

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DONALD V. MYERS, SOLICITOR

050720  
STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
)

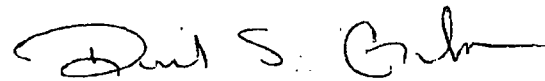
INDICTMENT FOR  
MURDER

§ 16-03-0010

At a Court of General Sessions, convened on MAY 2013, the Grand Jurors of Lexington County present upon their oath:

That **Shawn William Sharpe along with Charles Plumley and/or Angela Griffin**, did in Lexington County on or about September 21, 2011, unlawfully kill one Leon Justice with malice aforethought, by shooting the victim and the victim died as a proximate result thereof, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DEPUTY SOLICITOR

---

---

WITNESSES

Lexington County Sheriffs Department

DOUG NOVAK

Law Enforcement Case #: 11029963

DSG

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---

ARREST WARRANT NUMBER

M303289

---

---

ACTION OF GRAND JURY

*Ron Braasington*

Foreperson of Grand Jury

Date: 5-6-13

---

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VERDICT

*Guilty*

*Charles H. H.*

Foreperson of Petit Jury

Date: 8/30/13

DOCKET NO. 2012GS3202450

**The State of South Carolina**

**County of Lexington**

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---

**COURT OF GENERAL SESSIONS**

**MAY TERM 2013**

---

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**THE STATE**

**vs.**

**Shawn William Sharpe**

---

---

**CDR #: 0139**

**Indictment for**

**ROBBERY/ARMED ROBBERY**

**§ 16-11-0330(A)**

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**DONALD V. MYERS, SOLICITOR**

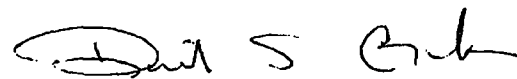
STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

INDICTMENT FOR  
ROBBERY/ARMED ROBBERY  
§ 16-11-0330(A)

At a Court of General Sessions, convened on ~~NOVEMBER 2012~~ <sup>MAY 2013</sup>, the Grand Jurors of Lexington County present upon their oath:

That **Shawn William Sharpe along with Angela Griffin and/or Charles Plumley** did in Lexington County, South Carolina on or about September 21, 2011 knowingly and willfully while armed with a deadly weapon, to wit: a firearm, feloniously take from the person or presence of Rose Lucas and/or Leon Justice, by means of force, threats or intimidation goods or monies being described as follows: U. S. currency with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
DEPUTY SOLICITOR

---

**WITNESSES**

Lexington County Sheriffs Department

DOUG NOVAK

Law Enforcement Case #: 11029963

---

DSG

---

**ARREST WARRANT NUMBER**

M303290

---

**ACTION OF GRAND JURY***Ron Brasington*  
Foreperson of Grand Jury

Date: 5-6-13

---

**VERDICT***Guilty**Charles G. White*  
Foreperson of Petit Jury

Date: 8/30/13

**DOCKET NO. 2012GS3202449****The State of South Carolina**

County of Lexington

---

**COURT OF GENERAL SESSIONS****MAY TERM 2013**

---

**THE STATE****vs.****Shawn William Sharpe**

---

**CDR #: 0079**

---

**Indictment for****BURGLARY FIRST DEGREE****§ 16-11-0311**

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**DONALD V. MYERS, SOLICITOR**

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )

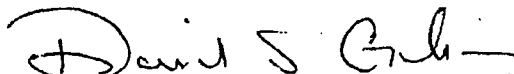
INDICTMENT FOR  
 BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on MAY 2013, the Grand Jurors of Lexington County present upon their oath:

That **Shawn William Sharpe along with Charles Plumley and/or Angela Griffin**, did in Lexington County, South Carolina on or about September 21, 2011 knowingly and willfully enter a dwelling, to wit: Victor Road, Gaston, SC, and being the dwelling of Leon Justice and/or Rose Lucas, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime (1) was armed with a deadly weapon, and/or (2) caused physical injury to a person who is not a participant in the same, and/or (3) the entering or remaining occurred at nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

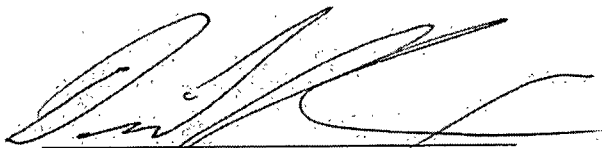
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 DEPUTY SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 12th, 2014



David Alexander  
Appellate Defender

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

ATTORNEY FOR APPELLANT

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 12th, 2014

  
David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
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PO Box 11589  
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ATTORNEY FOR APPELLANT