

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

THE STATE,

SEP 23 2015
RESPONDENT,
SC Court of Appeals

V.

DEVIN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2014-000766

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State's Exhibit # 55 (CD Surveillance video), # 56 (CD of interview w/defendant), #60 (video still), # 61 (video still), # 62 (video still), #63 (video still), # 71 (cell tower map), #72 (cell tower map), #73 (cell tower map), #74 (cell tower map), #75 (cell tower map)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
v.	)	Case No. 11-GS-10-05207 et al
	)	
Devin Jamal Johnson,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within JURY TRIAL in the above-captioned matter was held on March 31st, 2014 through April 3, 2014, before The Honorable R. Markley Dennis in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

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1 think, to answer that.

2 SOLICITOR SIMPSON: Thank you.

3 THE COURT: Thank you.

4 SOLICITOR SIMPSON: Another
5 housekeeping matter, Your Honor. It's was
6 embarrassing on the side -- on my part.
7 There's a witness we intend to call, a very
8 brief witness, that was not included on our
9 witness lists. Her name is Jennifer Wooley,
10 with CPD. I understand the difficulty that
11 presents with having to repoll the jury but
12 we'd request the Court to allow us to add Ms.
13 Wooley, from the Charleston Police
14 Department.

15 MR. BUTLER: And I don't object as
16 long as we make sure nobody on the jury knows
17 her.

18 THE COURT: We'll make sure when
19 the jury's present. We'll poll the jury.
20 Jennifer Wooley with the Charleston Police
21 Department.

22 SOLICITOR SIMPSON: Yes, Your
23 Honor.

24 THE COURT: Okay.

25 SOLICITOR SIMPSON: From there,

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1 Your Honor, I believe at this time Mr. Butler
2 may have a *Jackson v. Denno* motion.

3 THE COURT: Okay.

4 SOLICITOR SIMPSON: I think to
5 begin with, just for efficiency sake, I was
6 discussing the Motion with Mr. Butler.

7 THE COURT: Sure.

8 SOLICITOR SIMPSON: We want to go
9 ahead and talk about the *Jackson v. Denno*
10 issues, but also go ahead and play for the
11 Court the clips at this time we intend to
12 play in front of the jury so you can rule on
13 any objections, hearsay, etcetera, Mr. Butler
14 might have. And might clean things up since
15 we have the afternoon.

16 I can tell the Court maybe five
17 clips we intend to show, none of which are
18 longer than six or seven minutes. We could
19 do that at the time.

20 THE COURT: Well, since -- I'd
21 appreciate it and it certainly would help
22 expedite. These clips, these are clips that
23 would be in the nature of some confession on
24 the part of the Defendant?

25 MR. BUTLER: An admission.

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1 THE COURT: An admission?

2 MR. BUTLER: Yes. I guess we're
3 still kind of getting use to the technology.
4 There is no written statement from my client.
5 Usually there would be. You know, in the old
6 days, that's what we would deal with and it
7 would just be his words in the written
8 statement.

9 THE COURT: Yeah. I've already
10 had one, so -- and, frankly, I'm glad we've
11 done this because it's helpful in ruling on
12 them.

13 MR. BUTLER: It is. And it is.
14 The thing is that Detective Osborne says
15 things, so there are statements from him too
16 that would not be admissible.

17 THE COURT: I understand. But I
18 can certainly give an indication. The only
19 concern that I have, and I don't -- I mean we
20 do it up all the time in civil matters, the
21 motions *in limine*. And we've done it in
22 criminal cases.

23 I can give you an indication but
24 I've just had too many occasions where once
25 the trial starts, things change of what --

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1 the picture that's painted in the motion in
2 *limine*, changes for me in my ruling. Y'all
3 can't read my mind and I can't read my mind
4 sometimes, but once I hear it, then it
5 becomes a basis for my, either granting the
6 objection or overruling the objection. So
7 certainly can give you as an indication, but
8 it can't be considered as a final ruling
9 before we actually try it.

10 MR. BUTLER: I understand, Your
11 Honor.

12 THE COURT: Okay.

13 MR. BUTLER: I think because of the
14 nature of the objection will be hearsay.

15 THE COURT: I'll be happy to deal
16 with it.

17 MR. BUTLER: Yes, sir.

18 THE COURT: And maybe it --
19 obviously, it gives you a chance to edit or
20 whatever you need to do to the tape.

21 SOLICITOR SIMPSON: Thank you,
22 Your Honor.

23 MR. BUTLER: Okay.

24 THE COURT: And that's primarily
25 what we do on the civil side. We just simply

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1 keep an original and we edit it. And if
2 somebody needs to review later, that's fine.
3 Go ahead.

4 SOLICITOR SIMPSON: Pursuant to
5 that aim, the State calls Detective David
6 Osborne.

7 THE COURT: Okay. Thank you. And
8 gentlemen, again, we were talking about y'all
9 not -- that y'all need any big boost or
10 anything. We were talking at lunch, and I've
11 said it before. As long as I have good
12 lawyers, this trial work is fun. It's nice.
13 And I am blessed with that today, that's for
14 sure. So thank you.

15 (WITNESS TAKES STAND)

16 DAVID OSBORNE, having been duly sworn to
17 tell the truth, and nothing but the truth,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR SIMPSON:

21 Q. David, good afternoon?

22 A. Good afternoon.

23 Q. Where are you currently employed?

24 A. With the Charleston County
25 Solicitor's Office.

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1 Q. How long have you been with us?

2 A. I think I started the beginning of
3 January.

4 Q. Where were you employed before that?

5 A. Charleston Police Department.

6 Q. In what capacity?

7 A. I started as a police officer. I
8 left as a sergeant in charge of the homicide
9 unit.

10 Q. Did you have any law enforcement
11 experience prior to coming to the Charleston
12 Police Department?

13 A. I worked with the New Orleans Police
14 Department for five years.

15 Q. And how many total years in law
16 enforcement?

17 A. About -- well, a little over
18 sixteen.

19 Q. How many?

20 A. Sixteen years.

21 Q. Did you have occasion on June 10th to
22 conduct an interview in this case?

23 A. I did.

24 Q. And who did you interview?

25 A. I interviewed Devin Johnson.

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1 Q. When you commenced that interview,
2 did Mr. Johnson appear to have any mental
3 defects?

4 A. No.

5 Q. Did he appear to be intoxicated in
6 any way?

7 A. No.

8 Q. Did he appear to understand what you
9 were saying to him?

10 A. Yes.

11 Q. Did he answer your questions
12 cogently?

13 A. Yes.

14 Q. Did he express any statements of
15 unwillingness to talk to you?

16 A. No.

17 Q. Did you make any threats of violence
18 to induce him to speak with you that day?

19 A. No.

20 Q. Did you make any promises to him of
21 future leniency if he would speak to you that
22 day?

23 A. No.

24 Q. Could you understand him when he
25 spoke to you?

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1 A. Yeah, I could.

2 Q. Did he seem to you a person of
3 reasonable intelligence?

4 A. He did.

5 Q. And approximately how long was your
6 interview with Mr. Johnson?

7 A. I think the whole interview lasted
8 for just under five hours, four and a half
9 hours, something like that.

10 Q. Did you spend a good deal of time
11 with Mr. Johnson?

12 A. Yes.

13 Q. Did any concerns ever come into your
14 mind during the course of this lengthy
15 interview?

16 A. No.

17 Q. Regarding intoxication -- you
18 thought that he could understand?

19 A. No. No intoxication.

20 Q. Now, how did you begin your inter-
21 view with Mr. Johnson?

22 A. The first thing I did was I advised
23 him of his *Miranda* warnings. I read it from
24 a CPD, a standard *Miranda* Warnings card.

25 Q. And what are those *Miranda* warnings?

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1 A. I don't have a card with me, but
2 basically, 'You have the right to remain
3 silent. Anything you say can and will be
4 used against you in a court of law. You have
5 a right to an attorney. If you wish to stop
6 answering questions at any time during this
7 interview, you can stop answering questions.'

8 Q. And the Charleston Police
9 Department, at this time, did have video
10 recording capabilities?

11 A. It did.

12 Q. Were those utilized in this
13 interview?

14 A. Yes.

15 SOLICITOR SIMPSON: I beg the
16 Court's indulgence?

17 THE COURT: Certainly.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SIMPSON:

20 Q. Did you previously ID for us what's
21 been marked for ID only as State's 56?

22 A. I did.

23 Q. And what is that?

24 A. This is a CD containing the
25 interrogation of Devin Johnson.

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1 SOLICITOR SIMPSON: For the
2 record we're starting the video interview of
3 Devin Johnson at 9:17:30

4 THE COURT: What's the Exhibit
5 number for that?

6 SOLICITOR SIMPSON: State's 56.

7 THE COURT: 56. Thank you.

8 SOLICITOR SIMPSON: Your Honor, I
9 apologize -- 9:19.

10 THE COURT: Okay.

11 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR SIMPSON:

14 Q. Investigator Osborne, did the
15 Defendant waive his right to a lawyer?

16 A. Yes.

17 Q. Did you explain each right to him
18 individually?

19 A. I did.

20 Q. Did you ask him to acknowledge his
21 understanding of each of those rights after
22 you read them?

23 A. Yes.

24 Q. He decided to waive those rights and
25 speak with you?

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1 A. Yes.

2 Q. Sergeant Osborne, how do you
3 typically like to begin suspect interviews?

4 A. The first thing I like to do is just
5 ask them to tell me, you know, in their own
6 words what happened on the night in question.
7 That might involve them giving me a timeline
8 of where they were at.

9 In this case right here, it was more time
10 oriented. So I would asked him where he was
11 at on certain days and he would go on and
12 continue to tell me, you know, his where-
13 abouts and who he was with and what he was
14 doing.

15 Q. Do you give them any hints or
16 inclinations as to what answers you're
17 looking for?

18 A. No, not at first. You know, I
19 wanted to give -- you know, it depends on the
20 case. But, I mean, usually what I try to do
21 is to give the individual an opportunity to
22 tell me their side of the story. And I try
23 to just sit back and listen.

24 And while that's going on, I gauge them,
25 you know, how honest, you know, I feel like

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1 they're going to be. I try not to give too
2 much information right off hand, you know, in
3 hopes that, you know, they might be able to
4 tell me certain things that only the
5 individual that was involved in the crime
6 might know.

7 A lot of times, early on in the
8 interviews, I don't know a whole lot about
9 what's going on in the case. So they may
10 tell me certain things that don't pique my
11 interest at the point, at that moment. But
12 later on, I find out that it's important.

13 SOLICITOR SIMPSON: Your Honor,
14 the purposes of the *Jackson v. Denno*, I'd
15 like to commence showing some of the clips
16 that we intend to show at trial.

17 For the court records and Mr.
18 Butler, we are starting the video at section
19 21:21

20 Your Honor, these are in five-minute
21 clips.

22 THE COURT: Okay.

23 SOLICITOR SIMPSON: This is a
24 five-minute section. The clip is at 9:21:29
25 seconds.

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1 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SIMPSON:

4 Q. Sergeant Osborne, you say you start
5 by sort of giving them the full opportunity
6 to present their version of the story?

7 A. That's right.

8 Q. Is that what you did in this case?

9 A. Yes.

10 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

11 SOLICITOR SIMPSON: For the record,
12 Your Honor, we are moving to section 21:26.

13 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. Now, Sergeant Osborne, do you in
17 that section give the Defendant time to tell

18 ---

19 A. That's right.

20 Q. --- his version that day?

21 A. That's right.

22 Q. And the day you were interested in
23 is what? What day?

24 A. Wednesday, the 8th of June. June the
25 8th, 2011.

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1 Q. And this interview is taking place
2 on what date?

3 A. The 10th, two days later.

4 Q. And not getting outside the scope of
5 our purpose now, but what was your general
6 view on what was just stated to you by the
7 Defendant?

8 A. I didn't believe him. I didn't go
9 into the evidence that we had at that point.
10 I felt we had substantial evidence that put
11 him in the Georgetown Apartments in
12 Charleston. And for him to say that he'd
13 been in Orangeburg, it just didn't seem so.

14 Q. In the course of a long suspect
15 interview, is everything always so calm and
16 conversational?

17 A. No.

18 Q. Is there a point sometimes when
19 things can become confrontational?

20 A. Yes.

21 Q. Is there a point at which you may
22 choose to confront the Defendant with your
23 appraisal of his version of events?

24 A. Yes.

25 Q. You did that in this case?

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1 A. Yes, I did.

2 SOLICITOR SIMPSON: Jumping
3 ahead, Your Honor, for the record to section
4 21:31.

5 THE COURT: All right.

6 SOLICITOR SIMPSON: Starting at
7 9:32:56.

8 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SIMPSON:

11 Q. And Detective Osborne, you're
12 clearly telling him that you're not buying
13 it. Is that a fair assessment of the video?

14 A. Yeah.

15 Q. Does that attitude ever escalate to
16 threats?

17 A. No.

18 Q. Or promises, to 'tell me what I want
19 to hear and it will work out better for you
20 later'?

21 A. No.

22 SOLICITOR SIMPSON: Moving ahead
23 approximately thirty minutes to section
24 22:06.

25 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR SIMPSON:

3 Q. So in that clip, you're giving Mr.
4 Johnson an opportunity to think about things?

5 A. Yes.

6 Q. You're not aggressively in his face
7 making him answer questions?

8 A. No.

9 Q. He has time to think about all your
10 questions.

11 A. Yes.

12 Q. And still at this point in the
13 interview, it's his version that still
14 remains that he was in Orangeburg the whole
15 day on the 8th?

16 A. That's correct.

17 SOLICITOR SIMPSON: Moving on to
18 section 22:11.

19 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SIMPSON:

22 Q. So Detective, you seemed a bit
23 exasperated at this point?

24 A. Yes.

25 Q. Things, you know, volume of voices

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1 are increasing?

2 A. Right.

3 Q. But generally speaking, throughout
4 this prolonged interview, do things ever get
5 past level of what we see here?

6 A. No. I think that's about as
7 aggressive as it ever got.

8 Q. Now, it gets aggressive in a manner
9 we just saw at several times; is that
10 correct?

11 A. Right. Yeah.

12 Q. And just for a frame of reference,
13 when did this interview, what time on the
14 10th, approximately, did it begin?

15 A. I think we started about 9:00 P.M.

16 Q. And where were you at this -- how
17 far into the interview are we at this point?

18 A. Almost quarter after 10:00.

19 Q. And your exasperation is that the
20 story that you're getting from Mr. Johnson is
21 still Orangeburg?

22 A. Yeah. That's part of it. I mean,
23 I'm showing that I'm exasperated, which I was
24 to a certain degree.. But, I mean, a lot of
25 that is show to, you know, just to let them

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1 know that their story's not making any sense.
2 And hopefully that might, you know, encourage
3 them to cooperate.

4 Q. So certain techniques of a police
5 interview is to change tone, volume, ---

6 A. Your attitude a little bit, yeah.

7 SOLICITOR SIMPSON: Moving on,
8 Your Honor to section 23:06. And starting at
9 11:07:05.

10 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SIMPSON:

13 Q. He's still in Orangeburg that day?

14 A. Yes.

15 SOLICITOR SIMPSON: Moving on now
16 to 23:46.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR SIMPSON:

19 Q. Now, Sergeant Osborne, these numbers
20 23:46. Is that the time stamp?

21 A. Yeah. It's just the military time.

22 Q. And you started approximately what
23 time?

24 A. 11:06, I believe.

25 Q. The interview began?

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1 A. Oh, the initial interview began at
2 9:05, 21:00.

3 SOLICITOR SIMPSON: We're moving
4 forward 23, section 23:46. Starting at
5 11:38:14.

6 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR SIMPSON:

9 Q. Sergeant Osborne, still Orangeburg
10 all day?

11 A. Yes.

12 Q. At this point what happened -- well,
13 first of all, how long have you been speaking
14 at this point. That was a clip from 11:46.
15 How long have you been talking to him at this
16 point?

17 A. Almost three hours at that point.

18 Q. Did you decide to kind of take a
19 shift in the interview at that point?

20 A. I did.

21 Q. And explain a little bit to the
22 Court about what you did after three hours of
23 him insisting he was in Orangeburg. How do
24 you go about ---

25 A. Well, I thought that maybe if I

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1 allowed him to call his relatives, his
2 girlfriend Tenika, and his mother, that, you
3 know, maybe that might sort of change things
4 up a little bit. And they might be able to
5 get through to him, and convince him to
6 cooperate with the investigation.

7 Q. And not to get outside the scope of
8 this hearing, but Tenika, the girlfriend, was
9 that a source of information to you at this
10 point in the investigation?

11 A. Yes, she was.

12 Q. And she placed Mr. Johnson, clearly,
13 in Charleston?

14 A. Right. And driving her car.

15 Q. So did you leave the room for these
16 conversations?

17 A. I did. I gave him my cellphone
18 because the phone in that office is
19 monitored. So I gave him my cellphone and
20 stepped out.

21 Q. And following his conversations with
22 his girlfriend, Tenika, and his mother, did
23 you re-enter the room?

24 A. I did.

25 Q. Did he continue to speak with you at

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1 that point?

2 A. Yes.

3 Q. Was there a change in Mr. Johnson's
4 version of events at that point?

5 A. Yes.

6 Q. Yes.

7 SOLICITOR SIMPSON: Moving on to
8 section 12:50.

9 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SIMPSON:

12 Q. So Sergeant Osborne, is that fair to
13 say that's a very different version of events
14 than you had been receiving previously?

15 A. Yes.

16 Q. And, again, that was nearly four
17 hours after the interview commenced?

18 A. That's right.

19 SOLICITOR SIMPSON: Your Honor,
20 for the purposes of our hearing for Mr.
21 Butler's sake, we, in good faith in our case
22 in chief, intend to show the clips that
23 you've just viewed.

24 THE COURT: Okay.

25 SOLICITOR SIMPSON: Documenting

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1 the times. There is going forward from this
2 point, an issue that I believe Mr. Butler is
3 raising, and I'd like to go ahead and play a
4 couple of more clips of that.

5 THE COURT: That's fine.

6 SOLICITOR SIMPSON: I think all
7 of this interview is fair game. I don't
8 intend to go through it but I, at this point,
9 I would like to move ahead.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SIMPSON:

12 Q. Detective Osborne, at some point
13 after all of the portions we've just seen,
14 does Devin Johnson express interest in a
15 lawyer?

16 A. Yes, he does.

17 SOLICITOR SIMPSON: Moving on to
18 section 12:54.

19 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

20 SOLICITOR SIMPSON: Moving ahead
21 to 12:58.

22 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SIMPSON:

25 Q. Detective Osborne, so he expresses

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1 now -- I believe he says, now, "I'm going to
2 need a lawyer."

3 A. I get up and try to leave the room.

4 Q. Does he continue to, seem to want to
5 talk to you?

6 A. He did. He told me to hold up.

7 Q. And how did you respond to him?

8 A. Well, I asked him point-blank,
9 "Do you want a lawyer or do you want me to
10 sit down and listen to you?"

11 SOLICITOR SIMPSON: Now, moving
12 on to 1:39 a.m.

13 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. Now we see Devin alone in this video
17 clip. Is that correct?

18 A. Yes.

19 Q. Have you guys since left the room?

20 A. Right. Yes.

21 Q. Okay.

22 SOLICITOR SIMPSON: Moving on to
23 1:41.

24 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR SIMPSON:

2 Q. Sergeant Osborne, I'm going to stop
3 right there. It's long interview; correct?

4 A. Right.

5 Q. Is he provided -- did have the
6 opportunity to use the restroom when he
7 asked?

8 A. Yes, he was.

9 Q. I see he has a cup in his hand.
10 What was that?

11 A. Water.

12 Q. And when he asked for something to
13 drink, you provided water, soft drink or --
14 with something to drink?

15 A. Yes.

16 Q. On the same clip.

17 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SIMPSON:

20 Q. You just re-entered the interview;
21 correct?

22 A. Yes.

23 Q. At whose request was that?

24 A. Well, I asked him if he wanted me to
25 come in there and he said he did.

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1 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SIMPSON:

4 Q. So, again, the subject of the lawyer
5 comes up in the interview?

6 A. Yes.

7 Q. And what's your response? When you
8 hear that word, "I want a lawyer." How do
9 you respond?

10 A. We shut down the interview.

11 And in this case right here, I mean,
12 I, you know, the first time I shut it down,
13 he told me to sit down, keep talking.14 The second time I shut it down
15 again, I left.16 When he asked to use the bathroom,
17 I brought him out to use the bathroom. And
18 that's when I come back in. It appears that
19 he just wanted me to stay in there with him,
20 so I did.21 Q. Thank you, Detective. Answer any
22 questions Mr. Butler has for you.

23 THE COURT: Mr. Butler.

24 CROSS-EXAMINATION

25 By MR. BUTLER:

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1 Q. The first time he asked for a
2 lawyer, you don't leave the room?

3 A. No, I don't.

4 Q. You don't. And as you're leaving,
5 he stops you?

6 A. Right.

7 Q. But you don't re-Mirandize him?

8 A. I do not.

9 Q. And you've been asking questions up
10 to that point?

11 A. Right.

12 Q. You were done talking to him anyway;
13 right?

14 A. No, no.

15 Q. Well, he did. He kept talking?

16 A. Right.

17 Q. Then what we just saw towards the
18 end, more or less the same thing happens,
19 which is, all right. 'Now, I need a lawyer.'

20 And you don't say, 'Okay, this is
21 twice now. And, you know, we're trying to
22 figure out if you want lawyer or not.' And
23 he doesn't reaffirm that he wants a lawyer.
24 He tries to keep you in there.

25 But you say, 'no, now we're done.'

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1 A. Right.

2 Q. Okay. I'm trying to figure out, at
3 that point, you knew you weren't going to get
4 anything more from him?

5 A. No, I think that's fair.

6 Q. Okay. Well, tell me?

7 A. I mean, I think if he was very clear
8 that he wanted to continue to talk about the
9 case and not just have me keep him company,
10 then I would have been happy to talk to him
11 about it. But it didn't see like he wanted
12 to talk to me as much that second time as
13 much as he just wanted me to keep him
14 company.

15 Q. Did you pose -- because I didn't
16 hear it, maybe you did -- did you pose the
17 question to him, 'do you want to talk or do
18 you want me to leave?'

19 A. I think the question was, 'do you
20 want me to just stay here to keep you
21 company?' And we both kind of laughed.

22 And he said, 'yeah, would you?'

23 I said, 'no, I've got work to do.'

24 Q. Going back to -- you were not
25 talking during the times but 22:11. He's

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1 speaking about, 'I was nowhere near West
2 Ashley.' He'd never left home. And it looks
3 like you're terminating the interview again
4 or this would be the first. And he wants a
5 cigarette, right?

6 A. Uh-huh.

7 Q. And he brought that up more than
8 once. He wanted a cigarette.

9 A. That's right.

10 Q. You just pick back up right where
11 you left off again. Several times he asked
12 for a cigarette and you wouldn't give it to
13 him?

14 A. That's correct.

15 Q. I'm trying to figure out what
16 happened in this situation, if we can get it
17 back up there, it looks like the interview's
18 about to terminate. And he wants a cigarette
19 and you tell him no. And the interview
20 continues anyway.

21 A. Right.

22 Q. All right. Let's ---

23 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

24 CROSS-EXAMINATION CONTINUED

25 BY MR. BUTLER:

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1 Q. So he wants a cigarette and you tell
2 him cigarettes are for people who cooperate?

3 A. That's right.

4 Q. I take that to mean up until that
5 point you didn't really see his, the
6 information he was giving you as cooperating?

7 A. I think that was frustration.

8 Q. So you're telling him if you want a
9 cigarette, you need to tell me something
10 other than what you're telling me?

11 A. I think -- if he wants a cigarette
12 then, yeah, he needs to go ahead and
13 cooperate and tell us what happened. Yes.

14 Q. So it looks like you've ended the
15 interview, right?

16 A. No. I beg your pardon. I'm sorry.

17 Q. Well, why did you leave?

18 A. Well, here's why. Because during
19 the interview there are certain times we take
20 breaks. We stop. We start talking to other
21 detectives who are monitoring the interview.
22 You start to develop strategies and game
23 plans, about ways that we can change things.

24 Q. Why did you stop this time?

25 A. Right then, I don't -- (pause).

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1 Q. Do you know?

2 A. No.

3 (PORTION OF STATE'S EXHIBIT 56 PLAYED)

4 CROSS-EXAMINATION CONTINUED

5 BY MR. BUTLER:

6 Q. So the interrogation picks back up?

7 A. Yes.

8 Q. So I want to talk about some of
9 these other things that you said to him.
10 When you say early on, 'we know for a bunch
11 of different reasons that what you're telling
12 us is wrong', -- right?

13 A. That's correct.

14 Q. And at that point, have you talked
15 to the girlfriend at that point?

16 A. Oh, yes.

17 Q. Have you found out what she said?

18 A. I have.

19 Q. So one of the reasons is the
20 girlfriend says "he dropped me off"?

21 A. That's correct.

22 Q. Okay. But the other reason is the
23 statement from the niece who put him there?

24 A. That's another reason.

25 Q. That's another reason?

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1 A. Could be.

2 Q. What else was it? I mean, at some
3 point you say 'we've got a mountain of
4 evidence'?

5 A. We did.

6 Q. There's the niece and the girl-
7 friend. At this point, what else? Because
8 you don't have the phone records, you don't
9 have the GPS?

10 A. Yeah, the video, I think is probably
11 the most compelling.

12 Q. And you've got the video?

13 A. Yeah. We had that.

14 Q. Have you seen it by the time you
15 talk to him?

16 A. Yes.

17 Q. Later he asked you for a cigarette
18 again, around 12:50; does that sound right?

19 A. Sounds right.

20 Q. And you did not give him one?

21 A. I did not.

22 Q. At some point you tell him, "we know
23 that you didn't shoot him"?

24 A. Yes.

25 Q. All right. Now is that -- at that

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1 point, had you figured out that he was not
2 out there at the time?

3 A. Yes.

4 Q. Because during this interview, you
5 did think that he was?

6 A. That's correct.

7 Q. In the interim, somebody else is
8 interviewing DeAngelo about some other things
9 and they figure out he was not?

10 A. I actually interviewed "D" in the
11 middle of this interview.

12 Q. All right.

13 A. That's correct.

14 MR. BUTLER: Judge, that's all the
15 questions I have.

16 THE COURT: All right. Redirect?

17 SOLICITOR SIMPSON: No, Your
18 Honor.

19 THE COURT: Step down. Thank you,
20 sir.

21 (WITNESS STEPS DOWN)

22 THE COURT: Are there any
23 additional witnesses from the State?

24 SOLICITOR SIMPSON: No, Your
25 Honor.

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1 THE COURT: Okay. Is there
2 anything from the Defendant at this point,
3 Mr. Butler?

4 MR. BUTLER: Judge, I do have
5 Motions. It's not clear to me if the State
6 plans to offer anything after, after the
7 point that he asked for a lawyer. If they're
8 not, then you don't need to hear from me. If
9 they are, then I do need to ---

10 THE COURT: Well, let's assume the
11 worst so that I can give an indication of
12 where I may be going on that and I can make
13 that determination.

14 MR. BUTLER: I think he clearly
15 asked for a lawyer. There's no question that
16 he did.

17 The question then become, did the
18 State have the right to re-engage. And the
19 case on that is the *State v. Franklin*, 549
20 S.E.2d 258. And I've got that. And I'll
21 just -- (tendering).

22 THE COURT: Okay.

23 MR. BUTLER: In *State v. Franklin*,
24 our Supreme Court relying on cases from other
25 jurisdictions gives a list of factors. And

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1 they make it clear that these are just
2 factors to be considered as to whether or not
3 -- a whole whether or not the request was
4 previously honored, right? That's what the
5 standard is, whether it's previously honored.

6 And the considerations are whether
7 the suspect -- and this is on page three of
8 the version I passed up to you and the State,
9 whether the suspect is given *Miranda* warnings
10 at the first interrogation. Yes, he was
11 given them earlier. All right. That leans
12 in favor of it being valid.

13 THE COURT: Sure.

14 MR. BUTLER: But second is whether
15 the police immediately ceased the
16 interrogation of a suspect indicating he
17 didn't want to answer questions.

18 It depends on what that means, you
19 know?

20 If you look at number three -- I
21 think it means they're supposed to leave him
22 alone.

23 Whether the police resume
24 questioning the suspect only after the
25 passage of significant period of time.

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1 Detective Osborne never leaves the room.
2 Whether police provided a fresh set of
3 *Miranda* warnings before the second
4 interrogation. That doesn't happen.

5 And five, whether the second
6 interrogation was restricted to a crime that
7 had not been the subject of the interview.
8 Are they bringing up new stuff? They're not.

9 But the things that I'm bother by,
10 he doesn't leave him alone. He's saying,
11 'all right, you know, it's now or never.'
12 You can still talk or not. And doesn't give
13 him any kind of time to think about it,
14 doesn't re-Mirandize him.

15 And an hour and a half later, more
16 or less the same thing happens.

17 And it seems to me, you know,
18 Detective Osborne doesn't have anything that
19 he wants to get out of him anymore, and so he
20 does walk out on him. He does leave then.

21 And I also ask in the totality of
22 the circumstance, I'm bothered by the
23 cigarette request.

24 THE COURT: Uh-huh.

25 MR. BUTLER: Not just because he

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1 asked for one, but because Detective Osborne
2 specifically says ---

3 THE COURT: --- that it goes to
4 the people who cooperate.

5 MR. BUTLER: Right. Goes to the
6 people who cooperate. Now, I have not --
7 this just occurred to me, so I haven't -- my
8 computer's not up. I don't know whether
9 cigarettes are creature comforts like water
10 and bathroom breaks, probably not. But when
11 he says -- I'm not a smoker.

12 THE COURT: You may be able to
13 create something. Let me just stop you?

14 MR. BUTLER: Yes, sir.

15 THE COURT: Because you played, I
16 assume, everything after he says "I want a
17 lawyer." I mean, what is there in what he
18 says that really is of any value?

19 SOLICITOR SIMPSON: Your Honor,
20 as a help to the Court, he goes over his
21 story a couple of times.

22 THE COURT: I understand that, but
23 he's already done that.

24 SOLICITOR SIMPSON: I'm not
25 planning on ---

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1 THE COURT: Well, I mean, to me --
2 I don't know what it is that is coming out,
3 that contradicts or changes what he's already
4 said. So to me, I don't know why the State
5 wants to run the risk on that in the first
6 place. And just say, 'I'm not going to play
7 that, period.'

8 SOLICITOR SIMPSON: Right.

9 THE COURT: Assuming he doesn't
10 testify. Obviously, obviously, everything
11 changes. If he comes up, then that whole
12 tape is fair game.

13 MR. BUTLER: I agree.

14 THE COURT: I mean, there's no
15 question about that in my mind. But right
16 now, I don't what's to be gained by that,
17 quite frankly.

18 Frankly, I think -- and I don't know
19 this, I want to read it. I want to think
20 about it, too.

21 But while I don't think they're
22 creature comforts, -- I think they're
23 creatures of discomfort to be honest with
24 you, what they do to people. I think it
25 could be construed in that vein of creature

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1 comforts. And also could be construed in
2 promising him something if he says what they
3 want him to say.

4 So, I mean, there are all sorts of
5 little innuendos that flow from that, that
6 really and truly don't need to come into this
7 ballgame, and wouldn't come in anyway without
8 your trying to play it. So, I don't know
9 what ---

10 MR. BUTLER: And that's my concern,
11 Judge.

12 THE COURT: And I'll tell you
13 something else, too. I noted that when he
14 left the room, he puts his head down. This
15 is a long dadgum interview. And I think, you
16 know, you're beginning to see, is he being
17 coerced and being in a threatening situation.
18 He's cold. 'It's not cold to me.'

19 Come on, man. This is a man that
20 you're supposed to be providing everything he
21 wants and needs to make sure he's being not
22 threatened and pressured into anything.

23 I'm not saying you did that. I'm
24 just saying that it just simply -- it could
25 be construed that way. So the bottom line

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1 is, I think there's more to be lost than
2 gained by playing it after he says, "I want a
3 lawyer."

4 I think he changed it, but I don't
5 know if they went through enough steps -- I
6 mean, he's the one who said, 'oh, wait a
7 minute. I want to talk.' I mean, there's no
8 question he initiated that. But I don't know
9 what's said that changes anything anyway.

10 MR. BUTLER: They didn't play stuff
11 that happens after the cigarette request.
12 And my position is when he says, 'I want a
13 cigarette' and he says that's what
14 cooperators get, I think that ---

15 THE COURT: I'll rule on that
16 point, but I ---

17 SOLICITOR SIMPSON: Okay.

18 THE COURT: But, I mean -- but I'm
19 not going to rule on it today. I'm going to
20 read ---

21 MR. BUTLER: Yes, sir.

22 SOLICITOR SIMPSON: If I could
23 -- I will clarify. After the assertion of
24 the lawyer, ---

25 THE COURT: Yeah.

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1 SOLICITOR SIMPSON: I think
2 you're -- I think anything after that
3 assertion -- academically, I would love to
4 make this point, but ---

5 THE COURT: I understand that.
6 But the bottom line is ---

7 SOLICITOR SIMPSON: Everything
8 prior to that.

9 THE COURT: Excuse me, Deb (court
10 reporter), I'm bad about talking at the same
11 time and I interrupted. And he said, 'excuse
12 me for speaking while you were interrupting.'
13 And I was doing that just then, so I
14 apologize.

15 I think it would be interesting
16 question. I'd love to frame some issues.
17 We could make some law here maybe, but I
18 don't know what's to be gained from that.

19 So this is not working. You
20 obviously have something -- the person is
21 given every opportunity to change his story.
22 He doesn't. And then suddenly he changes --
23 after giving him, what I think is pretty
24 significant, an opportunity to talk to
25 somebody. A pretty good tactic on the part

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1 of the interviewer. And then he comes back
2 and he then says, 'oh, by the way, let me
3 tell you this.'

4 And obviously that's perfectly
5 consistent with what my charge is, 'Is it
6 consistent, is it inconsistent?' That's
7 exactly what we're talking about.

8 Now, is he saying anything that
9 implicates himself, only just being there,
10 that's the only change.

11 But he clearly continues to deny
12 being involved in the actual shooting. So --
13 but anyhow, I don't see anything that would
14 be any value. But we'll think about it.
15 I'll read that tonight as well.

16 SOLICITOR SIMPSON: Just so that
17 Your Honor understands and I need to be
18 clear, that the cigarette comment, certainly
19 the State is going to play the portion ---

20 THE COURT: I understand that.
21 I'm going to look at it. Y'all are going to
22 look at it and I'll let you know.

23 Obviously, that's before he says, "I
24 want a lawyer." And there's some conflict of
25 what's being said, but I'll consider it in

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1 its totality, okay?

2 SOLICITOR SIMPSON: Thank you,
3 Your Honor.

4 THE COURT: What else do we have?

5 MR. BUTLER: With respect to the
6 *Miranda* portion, I don't have anything to
7 add. But I do have concerns about hearsay
8 statements that come up in the portions that
9 were played for Your Honor.

10 THE COURT: All right.

11 MR. BUTLER: Mr. Johnson himself
12 says, 'my niece put me in that situation.'

13 What the Court doesn't know, and
14 what I'll tell you is, his niece does give a
15 statement ---

16 THE COURT: Okay.

17 MR. BUTLER: --- that puts him out
18 there. However, the State does not intend to
19 call the niece. That doesn't matter
20 necessarily for hearsay. It's still hearsay.
21 But it makes even -- gives me even greater
22 concern that there's hearsay in
23 confrontation.

24 THE COURT: Well, if they call the
25 niece and the niece testifies before that,

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1 then it's not hearsay because now it's --
2 you've got a statement made which would come
3 in under 801(d)(1), I think.

4 MR. BUTLER: They don't plan to
5 call her.

6 THE COURT: I understand that. No
7 question she'd have to testify.

8 SOLICITOR SIMPSON: We will not
9 be calling the niece. And I will take a look
10 and cut that out.

11 THE COURT: Well, just take that
12 out. I mean, we don't -- I agree with you
13 that's hearsay. Obviously, it's offered for
14 the truth of the matter asserted insofar as
15 getting him to be aware of something. If the
16 niece testifies, we have no problem. But if
17 she doesn't, then I think we do have a
18 problem.

19 SOLICITOR SIMPSON: I will cut
20 that isolated statement.

21 THE COURT: All right.

22 MR. BUTLER: There's another
23 statement that relies on hearsay in that ---

24 THE COURT: Now, he's saying that?

25 MR. BUTLER: Yes, sir.

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1 MR. BUTLER: Yes, sir. Detective
2 Osborne says, "You just made my job easier.
3 It's the easiest story to disprove. We have
4 facts to show that that's not true." That's
5 hearsay.

6 THE COURT: Well, it is and it
7 isn't. I mean, it is if it's offered for the
8 truth of the matter assert. You'll have to
9 -- I understand what you're saying. When do
10 you plan to play this, Mr. Simpson?

11 SOLICITOR SIMPSON: Detective
12 Osborne's testimony will be about two-thirds
13 of the way through. I think that on this
14 issue ---

15 THE COURT: Well, you may have two
16 edited versions, if you want to -- be out of
17 an abundance of caution and have one where
18 you edit that out. I don't know whether it's
19 exactly the same. I granted a PCR in a case
20 involving a murder that took place in the
21 north area. And it was based on some
22 evidence that came to light after the fact.
23 I can't remember the name of it. I think the
24 State's appealed it so we don't know yet.
25 But it will be interesting, because that's

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1 one of the issues. They talk about all these
2 things they have and, in fact, they didn't
3 have. And in doing the research it seems
4 trickery's fair game. And so -- at least
5 that's -- those are my words. That you can
6 say all the things you want to say to prompt
7 someone and the Court has said, yeah, but
8 that's okay. That's fair. So that really is
9 more in the line of that than any specific
10 thing. If he says 'so-and-so says', now
11 we're getting into it, okay?

12 MR. BUTLER: Okay. Then the last
13 statement is "we know that "D" didn't shoot".
14 I think that's also hearsay. "D" is the
15 other person who was out there.

16 THE COURT: I'd agree with that.
17 That's the officer testifying.

18 MR. BUTLER: That's it on that.

19 THE COURT: So we'll take that one
20 out and the other one. I think the other's
21 okay.

22 SOLICITOR SIMPSON: Okay.

23 THE COURT: Okay?

24 SOLICITOR SIMPSON: Thank you.

25 THE COURT: But I'll give every-

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1 body a chance to supplement that if you want
2 to.

3 SOLICITOR SIMPSON: Okay. Judge,
4 may I approach?

5 THE COURT: Sure.

6 (OFF RECORD BENCH CONFERENCE)

7 SOLICITOR SIMPSON: Again, we're
8 not asking anything after the lawyer
9 assertion. I'm just, like this ---

10 THE COURT: All right.

11 SOLICITOR SIMPSON: The fact that
12 Mr. Butler discussing when the police re-
13 approach a person that has already asserted
14 their right to counsel. Now when the person
15 re-approaches the police.

16 THE COURT: I understand it. And
17 as I said, I'm not ruling. I'm just simply
18 asking -- one of the problems I have, I
19 think, I'm not a lawyer. I haven't practiced
20 law in over twenty years now, so it's
21 probably a stupid, this statement is really
22 senseless, but I'm going to make it anyway.

23 It's been probably one of my faults as a
24 trial judge to remember what it was to sit
25 there. And I just don't know -- if I'm

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1 sitting in your chair, I don't know what's to
2 be gained from that.

3 To me it just seems to be the
4 prudent thing. And second, I don't need to
5 fight that battle. I don't need -- as you
6 said, it would suit me to make some law, but
7 I don't know that we need to be worried about
8 it. But thank you for the case. And I
9 appreciate it. I'll be educated, at least.

10 SOLICITOR SIMPSON: Thank you.

11 THE COURT: All right. Anything
12 else, gentlemen?

13 SOLICITOR SIMPSON: One thing.

14 THE COURT: Yes, sir.

15 SOLICITOR SIMPSON: We want to
16 just address and bring out is that I sent the
17 Court an e-mail last week regarding a visit
18 to the crime scene in this case. I think,
19 you know, after hearing some testimony, you
20 may be in a better position to make that
21 determination. I'm aware that that is
22 placing a big burden on both the jury, the
23 court, sheriff's office, and the clerk's
24 office.

25 THE COURT: I think we did that

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1 one time at the College of Charleston
2 shooting. And they took some people -- they
3 took the jury to see it. And then that's the
4 only time I've ever done it. So I understand
5 it can be done.

6 You're correct. I need to hear the
7 testimony before I can rule on it. I don't
8 know what the distance is.

9 As I recall, the rationale for that
10 was -- they were claiming certain things
11 existed in the layout and we had to establish
12 it had not changed significantly. So the
13 jury could just get a visual of where we were
14 talking. I don't know whether that's
15 necessary or not, okay?

16 SOLICITOR SIMPSON: Thank you,
17 Your Honor. I just wanted to bring it up.

18 THE COURT: Sure. No problem.
19 All right. Anything else?

20 MR. BUTLER: The only substantive
21 thing I have deals with -- I have a motion to
22 suppress information that was taken from my
23 client's cellphone and from his cellphone
24 records.

25 THE COURT: All right.

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1 MR. BUTLER: They got -- two days
2 after the interview, CPD got search warrants
3 for my client's -- the data stored in his
4 cellphone. And a separate search warrant for
5 records from his cell provider. I'm going to
6 pass these up.

7 THE COURT: Sure.

8 MR. BUTLER: And it'll be ---

9 COURT REPORTER: Defendant's
10 Exhibit 1.

11 (SO MARKED AS DEFENDANT'S EXHIBIT 1)

12 MR. BUTLER: Defendant's Exhibit 1,
13 Search warrants. There are two of them.

14 Judge, if you look at the reasons
15 for -- the reasons are affiants believe that
16 the property sought is on the subject
17 premises. That's going to be the focus of my
18 argument.

19 THE COURT: Okay.

20 MR. BUTLER: And it's the same,
21 more or less, for both search warrants. And
22 so reading there, (reading): "On June 8th,
23 2011, at approximately 10:15 while at the
24 Georgetown Apartments, officers responded to
25 shots fired. Upon arrival they arrived and

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1 they found the victim, Akeem Smalls, shot.
2 EMS transported Mr. Smalls to MUSC where he
3 later died."

4 And now we go to the probable cause
5 that a crime was committed. That I will
6 concede that. Prior to the shooting the
7 victim had an on-going dispute with Devin
8 Johnson that escalated to the shooting on the
9 2nd story of the apartment building.

10 Devin Johnson was observed by a
11 witness, viewing through her bedroom window
12 moments after hearing the gunshots having
13 been fired.

14 That's a little cumbersome, but the
15 statement is that we saw him outside with a
16 gun. Now, you've probably got probable cause
17 as to his involvement. I concede that.

18 Devin's family members provided
19 investigators with his cellphone number.
20 "Investigators believe the information
21 contained in the cellphone will help further
22 this investigation." That's key. They
23 believe this information contained in the
24 cellphone will further help this
25 investigation. Now, that's the probable

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1 cause for the phone itself.

2 The probable cause for the records
3 is identical, except it goes on to say, the
4 "investigator through his experience and
5 training doesn't know if people who are
6 committing these kind of crimes would have
7 evidence on their cellphone." He goes on to
8 say, "through my experience and training, the
9 company will have these records", which I
10 want to see.

11 What's missing here in both of these
12 search warrants is any nexus. The nexus
13 requirement is not even -- they don't even
14 attempt to make it. There is no connection
15 between the cellphone and the cellphone
16 records and the crime itself.

17 Probable cause for a search warrant
18 is three things. Probable cause that a crime
19 occurred, probable cause that the suspect is
20 involved, and probable cause that evidence of
21 those two things, his involvement in the
22 crime, will be found in the location to be
23 searched. They couldn't just go search his
24 car because of this. They couldn't just go
25 search his house because of this. There had

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1 to be some evidence, some assertion that he
2 had a reason to believe 'if we go to his
3 house, if we go to his car, we're going to
4 find evidence that will support -- further an
5 indictment or support his involvement in the
6 case.' Just because you have probable cause
7 that someone's involved in it doesn't mean
8 carte blanche to search everything that they
9 have.

10 And there are cases that address the
11 nexus issue. The U.S. Supreme Court is --I
12 beg the Court's indulgence.

13 THE COURT: All right.

14 MR. BUTLER: May I approach?

15 THE COURT: Yes, sir.

16 MR. BUTLER: It's a brief in
17 support of my motion. And make this part of
18 the record, too. Defense 2.

19 (SO MARKED AS DEFENDANT'S EXHIBIT 2)

20 MR. BUTLER: The U.S. Supreme Court
21 case is sort of the standard textbook case is
22 *Zucker v. Standard*. It just more or less
23 says what I said. It has to be sufficient
24 evidence of criminal activity will be found
25 in a location specified. There are several

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1 cases where there's more than what's here to
2 justify going into someone's house, for
3 example.

4 Now, the question then is, are cell-
5 phones different? And our position is 'no,
6 they are not.'

7 I would imagine that the State's
8 response is, everybody knows that everybody
9 carries a cellphone. Well, I'm not sure I'm
10 willing to concede that. Up until two years
11 ago, my father didn't even carry one. So --
12 and he still uses most sparingly.

13 But even if you start with the
14 premise 'well, everybody knows that everybody
15 uses cellphones', not everybody knows that
16 people use cellphones for criminal activity
17 with these sorts of allegations.

18 So what is missing? If an event,
19 for example, witnesses place Mr. Johnson on
20 his cellphone right before or right after the
21 shooting, but that's not alleged. Okay?

22 I found no shortage of cases but I
23 didn't cite them because they're not
24 supportive of my position, except in the
25 converse.

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1 Here's what I mean. I found no
2 shortage of cases that said, the nexus
3 requirement is satisfied because witnesses
4 placed the Defendant on his cellphone or
5 someone said that he was texting somebody
6 right before or right after.

7 I did find two cases that support my
8 position and the nexus requirement is close
9 to being satisfied in these two cases. And
10 they are -- I beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. BUTLER: I'm going to make
13 these part of the record too.

14 MR. BUTLER: And, Judge, not only
15 -- I promise, not only am I not going to ask
16 you to read this seventy-page opinion from
17 Rhode Island, *The State of Rhode Island v.*
18 *Michael*. The Superior Court of Rhode Island.
19 It's 2012-RI-139. I'm going to encourage not
20 to read it all and -- but, I'll tell you why.

21 THE COURT: Well, what are you
22 giving it to me for?

23 MR. BUTLER: Well, because there's
24 one paragraph -- I said not the whole thing.
25 Most of that deals with ---

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1 THE COURT: There was one thing I
2 learned when I did the same thing as a lawyer
3 and that is that sometimes you've got to read
4 that. You've got to read it all in the
5 context.

6 MR. BUTLER: Well, I'm happy for
7 you to.

8 THE COURT: All right. Thank you.

9 MR. BUTLER: But I recommend some
10 aspirin.

11 THE COURT: All right. I'll deal
12 with that.

13 MR. BUTLER: And then the other --

14 THE COURT: Maybe some wine.

15 MR. BUTLER: In re: of certain
16 cellphones from District of Columbia, 521 F
17 Supp 2d 1.

18 THE COURT: Okay. Thank you.

19 MR. BUTLER: And I'll make these
20 part of the record as well.

21 COURT REPORTER: Defendant's
22 Exhibit 3.

23 THE COURT: Defendant's 3 for
24 purposes of this Motion.

25 MR. BUTLER: Do you have two of

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1 those from the D.C.?

2 THE COURT: I've got -- I've got
3 the Rhode Island ---

4 COURT REPORTER: The Rhode Island
5 case will be Defendant's 3.

6 MR. BUTLER: I'll bring you the
7 D.C. case and make it part of the record.

8 THE COURT: If you have the cite,
9 I can get it.

10 MR. BUTLER: I handed you a copy
11 and then Chad a copy.

12 THE COURT: Okay.

13 MR. BUTLER: And somewhere I lost a
14 copy.

15 THE COURT: Well, here. I'll
16 write the cite and I can look at it on mine.
17 We'll make it part of the record tomorrow.
18 Is that all right, Deb?

19 COURT REPORTER: Yes, sir.

20 THE COURT: Okay. That's the --
21 research of the cellphones?

22 SOLICITOR SIMPSON: Yes, sir.

23 MR. BUTLER: Okay. All right. And
24 what the cases say is that the nexus
25 requirement extends to cellphones. And in

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1 the long Rhode Island case, that was a
2 situation where, sadly a young boy was
3 injured and ultimately died of his injury.
4 The suspect was the caretaker. I think it
5 was the boyfriend of the mother. And why
6 that thing gets so complicated is police
7 looked at his cellphone at the scene. But
8 when you get way down to the end, where they
9 talk about my issue they say -- and they do
10 say in the search warrant -- that the mother
11 and the suspect were texting each other, and
12 the Rhode Island Court said, that's not
13 enough. And what I've quoted in page five of
14 my brief, the determination of probable cause
15 then rests on the statement that the child's
16 mother exchanged text messages with the
17 Defendant. And they cite a U.S. Supreme
18 Court Case. A warrant is not an independent
19 source for probable cause. It does not
20 pertain. They took out the tainted
21 information. They said, still there's not
22 enough.

23 While this statement, this statement
24 that they were texting each other does
25 introduce the idea of text messages, there's

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1 nothing within it or elsewhere in the
2 affidavit that provides a nexus to the
3 child's death for the defendant's culpability
4 for his death.

5 For this Court to find probable
6 cause it would have to make a significant
7 assumption as to the conduct of the
8 defendant. This court cannot conclude that
9 probable cause exist just because the
10 defendant and the child's mother exchanged
11 text messages relative to the time period
12 when the child became ill. So they had more
13 there. And the Rhode Island Court said
14 that's not enough.

15 The Rhode Island Court cited the
16 D.C. case where accused drug dealers were in
17 a garage and I think they refused to come
18 out. I think that there was some allegation
19 that they had their phones at the time. And
20 the D.C. Court said, they said there wasn't
21 probable cause because there was no
22 connection between the activity and the
23 cellphones. First, the accused drug dealers
24 are asserted to have an ownership interest in
25 the garage, wherein there was later found

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1 substantial quantity of drugs. As noted in
2 my earlier order, the police officer has
3 represented that in his experience narcotics
4 traffickers commonly use cellphones to
5 communicate with each, suppliers and
6 customers.

7 And we don't have that here. It
8 happened in D.C. and even in that experience
9 I would have to conclude in every instance
10 that the ownership where drugs are found in
11 and of itself justifies the search of the
12 entire contents of the owner's cellphone,
13 even though there is no indication that the
14 owner ever used the phone in any way to
15 facilitate drug trafficking.

16 We don't have any information that
17 this cellphone was used in this case.

18 THE COURT: I understand.

19 MR. BUTLER: Because drug dealers
20 were in the garage where drugs were found, I
21 am not ready to conclude that there is a de
22 facto or a reasonable likelihood that they
23 used their cellphones to sell drugs, thus
24 justifying the search of the entire contents.
25 I must, therefore, decline to sign the

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1 warrants herein as presented.

2 Those are the only two cases I
3 found. But like I said, these are the only
4 factual situations -- I couldn't find any
5 other factual situations like this where the
6 warrants themselves tell you what they, why
7 they're seeking information. It's because
8 they don't have what they want. The warrants
9 themselves say, we need to look at cellphones
10 to see if we can find any. I'm paraphrasing.

11 THE COURT: I understand.

12 MR. BUTLER: And that's a general
13 warrant. It's a fishing expedition. And so
14 our position would be that under the Fourth
15 Amendment to the U.S. Constitution, and the
16 comparable provisions of the State
17 Constitution, and our expressed right to
18 privacy in South Carolina, that all of the
19 information that came from these two warrants
20 should be suppressed.

21 THE COURT: Okay. Mr. Simpson, do
22 you wish to respond now?

23 SOLICITOR SIMPSON: There's a lot
24 there. It will take a fair amount time.

25 THE COURT: I understand. You've

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1 already read the Rhode Island case in its
2 entirety?

3 SOLICITOR SIMPSON: Yes, I
4 finished that. I don't think it applies --
5 it does not apply to this situation.

6 THE COURT: That's fine.

7 SOLICITOR SIMPSON: You do have a
8 copy of the actual search warrant, Your
9 Honor.

10 THE COURT: I do. I think it's
11 Defendant's Exhibit 1.

12 SOLICITOR SIMPSON: And it states
13 probable cause linking this specific
14 defendant to the scene.

15 THE COURT: There's no question
16 about that. I guess the biggest thing is, on
17 first blush it appears to be, well, let me
18 see if I can find out something else. And
19 you know what, history -- everybody knows,
20 well, there might have been a chance he made
21 a phone call and we can get a ping. And we
22 can get him located and all those little
23 things. All that would be fine if it's
24 spelled out. But it's not.

25 SOLICITOR SIMPSON: Well, I ---

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1 THE COURT: We don't have any
2 other information beforehand.

3 SOLICITOR SIMPSON: We have him
4 on video -- it is not in the warrant?

5 THE COURT: That's correct.

6 SOLICITOR SIMPSON: It is on
7 video using it at the gas station.

8 THE COURT: I understand that, but
9 he could have put it in the warrant.

10 SOLICITOR SIMPSON: And I would
11 like to draw a quick analogy. Mr. Butler
12 said we couldn't take this information and
13 search the house. He draws that comparison
14 in his brief as well. He cites a case that
15 he's very fond of citing -- because the
16 Federal Circuit Court, the First Circuit in
17 1979, I believe, famously said, when we know
18 there's a crime committed -- 'if you can lead
19 me to it we're allowed then to go in your
20 house and look for evidence.' This is what's
21 supporting Mr. Butler's argument. You
22 haven't drawn that nexus between the crime
23 and this house. You have no information of
24 him running back to the house or fleeing
25 there. It's a bad warrant.

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1 THE COURT: Right.

2 SOLICITOR SIMPSON: Since that
3 opinion came out, in 1979, it has been
4 addressed by at least eleven other courts,
5 including other Federal Circuit Courts.

6 THE COURT: And they've said ---

7 SOLICITOR SIMPSON: They have all
8 come out on this argument and said, 'whoa,
9 what were you guys thinking?' Of course,
10 when they're investigating a crime, you need
11 to go, put forward probable cause and it is
12 natural to assume that evidence of this crime
13 can be found in a person's house. Likewise,
14 in this day and age, especially when the
15 underlying issue -- and I know this isn't
16 outlined perfectly in the warrant -- is, was
17 Mr. Johnson in Orangeburg or was he in
18 Charleston all day?

19 As investigators investigating a
20 crime, they are looking for more information.
21 That's their job to get more information.
22 And as long as they outline the probable
23 cause to believe that the Defendant, who is
24 likely carrying his cellphone, was involved
25 in a crime. And let me speak to that. This

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1 wasn't a guess. He told them that he was
2 carrying that phone. And he said nobody else
3 was using it.

4 THE COURT: Well, I understand
5 that. But that's after the warrant had been
6 taken, correct?

7 SOLICITOR SIMPSON: I don't know.
8 No, Your Honor, that pre-dates -- that
9 interview we saw today predates ---

10 THE COURT: Before the warrant,
11 (affirmative nod). Okay. So he had the
12 benefit of that information.

13 SOLICITOR SIMPSON: When he
14 referenced a specific phone.

15 THE COURT: I understand, okay?

16 SOLICITOR SIMPSON: I believe it
17 is in the warrant. Also, I want to reserve
18 the right -- Officer Kosarko obtained these
19 warrants. In his report, he had said he gave
20 the magistrate details ----

21 THE COURT: That was a thought. I
22 said I don't know what the officer told the
23 magistrate either because that's another --
24 again, I just simply asked you, do you want
25 to respond or do you want to wait and collect

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1 everything?

2 SOLICITOR SIMPSON: I'll wait
3 until in the morning.

4 THE COURT: All right. That's
5 fine. So we'll revisit this. When is this
6 information about like to come in?

7 SOLICITOR SIMPSON: Following the
8 testimony of David Osborne.

9 THE COURT: Which is two-thirds
10 through?

11 SOLICITOR SIMPSON: Approximately.

12 THE COURT: Well, we've got plenty
13 of time.

14 SOLICITOR SIMPSON: Yes, sir.
15 Thank you.

16 THE COURT: I might even get the
17 seventy pages read by that time.

18 SOLICITOR SIMPSON: Thank you.

19 THE COURT: Okay. Mr. Johnson,
20 let me say this because I'm doing things I
21 said I wasn't going to do after my last trial
22 two weeks ago when I made a comment in ruling
23 on a motion that sometimes I should probably
24 keep my opinions to myself. But please
25 understand my jesting with both your counsel

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1 and Mr. Simpson. I take it very seriously.
2 I'm going to read this. Of course, I'm not
3 being flippant about that. I just want that
4 clear.

5 DEFENDANT: Yes, sir.

6 THE COURT: And I hope you under-
7 stand that.

8 DEFENDANT: Yes, sir, I do.

9 THE COURT: Thank you very much.

10 DEFENDANT: Yes, sir.

11 THE COURT: Thank you all.

12 Anything else then before we adjourn? Is Mr.
13 Johnson out on bond? What's the State's
14 position?

15 SOLICITOR SIMPSON: Your Honor,
16 we'd ask that Mr. Johnson's bond be revoked.

17 THE COURT: You don't have to.
18 Given the nature of this crime, and what's
19 alleged, I'm not going to run that risk. Mr.
20 Johnson, I'm not finding anything, but at
21 this point your bond is no longer in effect.
22 You're in custody, sir. Thank you.

23 (COURT IN RECESS)

24 (TRANSCRIPT CONTINUED ON NEXT PAGE)

25

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9:30 A.M.

(DEFENDANT PRESENT)

THE COURT: Let the record reflect
that the defendant is present. Good morning,
Mr. Johnson.

DEFENDANT: Good morning.

THE COURT: Anything before ---

SOLICITOR SIMPSON: Yes, sir,
picking up on where we left off yesterday.

THE COURT: Okay.

SOLICITOR SIMPSON: On the cell
phone search. Secondly, it establishes
probable cause, uncontested that the
Defendant, Devin Johnson, committed that
murder.

Third, it establishes probable cause
that at the time of that murder, that
Defendant was utilizing a specific cellphone.

THE COURT: Where is that in
there, other than the fact that he had his
cellphone number? I see that.

SOLICITOR SIMPSON: It says
"Devin's family members provided
investigators with his cellphone number 843-

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1 217..." ---

2 THE COURT: I don't quarrel with
3 that he had a cellphone. I said, where in
4 the search warrant does it say he was using
5 it at the time of the murder?

6 SOLICITOR SIMPSON: I believe, as
7 I put forward in my brief, Your Honor, that
8 the implication of that statement, saying
9 that we are here days removed, that that
10 sentence "days removed from the murder" is
11 that he was utilizing that cellphone during
12 the time that the murder was committed.
13 There is no specific ----

14 THE COURT: Let me ask you a
15 question. Why in the world, if that's --
16 and you're obviously arguing it, it is
17 significant. We agree, that's significant,
18 is it not? That he was using it at the time
19 of the murder?

20 SOLICITOR SIMPSON: I believe
21 that is put forward in the search warrant.

22 THE COURT: I didn't ---

23 SOLICITOR SIMPSON: Yes.

24 THE COURT: I didn't ask you
25 whether you believed that. I asked you

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1 whether that was a significant factor for
2 issuing the search warrant?

3 SOLICITOR SIMPSON: I believe
4 that he is utilizing the cellphone during the
5 time of the murder is an important ---

6 THE COURT: Mr. Simpson, that
7 doesn't require anything, other than, 'yes, I
8 agree with you.'

9 SOLICITOR SIMPSON: "Yes, I agree
10 with you."

11 THE COURT: Thank you very much.
12 Okay. Then that being significant, please
13 tell me why you leave that out for innuendo
14 and inference?

15 SOLICITOR SIMPSON: Well, Your
16 Honor, we are prepared to call the testimony
17 ---

18 THE COURT: That's what I'd love
19 to hear.

20 SOLICITOR SIMPSON: Okay.

21 THE COURT: Because obviously --
22 I've ruled on a number of these. But it's
23 obvious that with the whole -- with the
24 totality of the circumstances, which I'm
25 required to consider, includes -- these

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1 things are under oath. So, obviously, the
2 Judge -- I don't have to have to presuppose
3 he did put him under oath, because it says
4 he's under oath. I need to just hear what he
5 said.

6 SOLICITOR SIMPSON: Okay. Thank
7 you, Your Honor.

8 MR. BUTLER: Judge, we have a
9 matter relating to that.

10 THE COURT: All right. Be happy
11 to hear from you.

12 MR. BUTLER: Judge, yesterday, Mr.
13 Simpson and I agreed that we would be
14 sequestering witnesses. And that would
15 include Investigator Kosarko.

16 After we broke yesterday, it's my
17 understanding that Detective Osborne phoned
18 Detective Kosarko and informed him that this
19 matter had become relevant. Now, whether
20 that violates a sequestration order, I think
21 I need to at least bring that up. I was not
22 privy to the conversations. Mr. Simpson
23 relayed them to me. I will let him repeat
24 them. But I have to at least raise that
25 concern.

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1 THE COURT: What's your response
2 to violation -- there's been no -- at least
3 to my knowledge, you all may have had an
4 understanding. I don't recall that being
5 placed on the record in this proceeding thus
6 far?

7 SOLICITOR SIMPSON: Correct, Your
8 Honor, but I will confirm ---

9 THE COURT: Oh, I understand.

10 SOLICITOR SIMPSON: Mr. Butler
11 and I, together, said ---

12 THE COURT: Do you believe that
13 violated your agreement to sequester
14 witnesses?

15 SOLICITOR SIMPSON: I absolute do
16 not, Your Honor. It is always proper for us
17 to, you know, discuss issues with witnesses
18 as they arrive in trial, in response to a
19 motion that was dropped on us at the eleventh
20 hour.

21 Detective Osborne is in sort of a
22 unique position now, as he's the lead
23 detective on this case, but also an Assistant
24 Solicitor on my trial team. He has Mr.
25 Kosarko's, Sergeant Kosarko's cellphone. If

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1 I may give you a few of the details. As we
2 were walking back to the office, I said,
3 'David, get Kosarko on the phone.' There was
4 a line in his report provided in discovery,
5 which says, (reading): "Investigator met
6 with the Honorable Judge Gosnell, and gave
7 him the specifics of the case in the search
8 warrant." You know, I wanted some more
9 information on that. That's how we
10 proceeded.

11 I was privy -- once Mr. Butler
12 called me and said, 'hey, don't let him say
13 anything that happened.' So, of course, I
14 wanted to get off the phone and go to his
15 office so I could be there. And in that
16 capacity, I caught two-thirds of the
17 conversation between the two of them, and
18 confirmed that nothing improper had taken
19 place as far as coaching him as to what to
20 say.

21 THE COURT: You know, I appreciate
22 sequestration of witnesses. First of all --
23 first of all, the person we're referencing is
24 in the courtroom now, correct?

25 SOLICITOR SIMPSON: Yes, sir.

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1 THE COURT: The person that made
2 the telephone call.

3 SOLICITOR SIMPSON: And that
4 received that call. I'm sorry, Your Honor.

5 THE COURT: No, but the person
6 that made the telephone call, is here?

7 SOLICITOR SIMPSON: Yes, sir.

8 THE COURT: He's seated at counsel
9 table?

10 SOLICITOR SIMPSON: He is, Your
11 Honor.

12 THE COURT: Will he be seated at
13 counsel table during the trial?

14 SOLICITOR SIMPSON: Uh, ---

15 THE COURT: Is he the person
16 you're going to designate as your witness?

17 SOLICITOR SIMPSON: Yes, Your
18 Honor, as our lead investigator.

19 THE COURT: So then, fine. Bingo.
20 I'm sorry. I understand it. It is
21 preserved.

22 If the Supreme Court wants to say
23 that we can't prepare cases as lawyers, and
24 sequestration, then we've really just gone
25 over the top.

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1 I think that -- I don't fault you
2 for doing it, Mr. Butler. I commend you for
3 doing it. Oddly enough that became a topic
4 in our recent presentation. And I've never
5 -- I don't even know what you call it,
6 whether it's tweeting or twittering or
7 whatever it is, I don't know. But we're
8 living in a different world. I mean, we're
9 talking about now we're going to have to make
10 sure they don't have cellphones. We know
11 what people do on Facebook. We've seen
12 examples of that. It's created all sorts of
13 problems.

14 In this particular situation, as a
15 lawyer, how do you not -- I mean, how does
16 that violate anything? I just don't under-
17 stand.

18 MR. BUTLER: I don't have any
19 problem with him asking him with he told the
20 magistrate. The concern that I have is --
21 well, what was relayed to me was they just
22 raised an issue about the search warrant.

23 THE COURT: Of course. But that's
24 going to come from Mr. Simpson as well. So
25 how does that give anything? The lawyer's

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1 going to say that. We've got a Motion. 'I
2 need to prepare the case but I can't talk to
3 him?'

4 MR. BUTLER: No, I worry that un-
5 intentionally it causes the witness to then
6 say, I need to say as much as I possibly
7 said.

8 THE COURT: But, again, Mr.
9 Butler, just as you would do, you're going to
10 go talk to that person and -- 'tell me what
11 you said, I want to know.'

12 I mean, I get to argue the same
13 thing with you telling the witness what to
14 say.

15 I know lawyers that have done that.
16 And I'm not going to delve into that.
17 Because, my goodness, we're talking about
18 now, what do we do as lawyers and attorneys.
19 I appreciate your position. It's noted. I
20 don't find it violates your sequestration
21 agreement.

22 MR. BUTLER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 SOLICITOR SIMPSON: Thank you,
25 Your Honor. AT this time the State will call

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1 Sergeant Kosarko with the Charleston Police
2 Department.

3 THE COURT: All right.

4 (WITNESS TAKES STAND)

5 CRAIG KOSARKO, having been duly sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BT SOLICITOR SIMPSON:

10 Q. Sergeant Kosarko, what agency do you
11 work with?

12 A. Charleston City Police Department.

13 Q. And how long have you been with
14 them?

15 A. It'll be fourteen years in October.

16 Q. And you've obtained the ranking of
17 Sergeant?

18 A. Yes, sir.

19 Q. And what department within that
20 agency do you work for?

21 A. I work in central investigations,
22 the violent crime unit.

23 Q. Does that department also handle the
24 investigation of homicides?

25 A. Yes.

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1 Q. And did you have occasion to become
2 involved in such an investigation on June the
3 8th, 2011?

4 A. Yes.

5 Q. Involving the Defendant, Devin
6 Johnson?

7 A. Yes, sir.

8 Q. Where here today, as you know, to
9 discuss some search warrants, a specific
10 search warrant that you obtained in this
11 case?

12 A. Okay.

13 Q. Did you have occasion investigating
14 this case to obtain a search warrant for the
15 phone records of Devin Johnson?

16 A. Yes.

17 SOLICITOR SIMPSON: May I
18 approach, Your Honor?

19 THE COURT: You may.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SIMPSON:

22 Q. Sergeant Kosarko, I hand you what's
23 been marked for ID only, as Defendant's
24 Exhibit 1. Can you take a moment to review
25 that?

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1 A. Yes, sir.

2 Q. Can you identify that exhibit?

3 A. That is a search warrant for the
4 cellphone 843-217-3243, which is Devin
5Johnson's cellphone, digital evidence.

6 Q. How did you know, at the time you
7obtained that search warrant, that it was
8Devin Johnson's cell phone?

9 A. We learned through his sister
10Charmaine and then his girlfriend, Tenika,
11that he was utilizing that phone number on
12the day of the murder. And when he was
13arrested, he was in possession of that
14cellphone.

15 Q. So he was in possession of the
16cellphone when he was arrested?

17 A. Correct.

18 Q. When you -- I believe Defendant's
19Exhibit 1, does that encapsulate two separate
20search warrants?

21 A. It does.

22 Q. Can you explain to the Court the
23difference between the two and what you
24asserted?

25 A. Yes. There's one search warrant for

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1 the Cricket -- or for Verizon, which is for
2 the -- from the actual carrier of the
3 cellphone, call detail records, the text
4 messages, any information that the carrier
5 would have in their database. The purpose
6 of the search warrant is to obtain that
7 information and then provide us with either a
8 CD format or an email with that information.

9 The second search warrant is for our
10 digital evidence unit. We utilize a system
11 that can actually hook up to a cellphone and
12 dump all the information that's on the
13 cellphone, to include your call lists, call
14 contact lists, photographs, text messages,
15 voice mail, anything that's actually in that
16 device can be dumped and recorded to a CD for
17 us.

18 Q. What were the ultimate results of
19 the phone dump, as it was, for Mr. Johnson's
20 phone?

21 A. I believe was -- it didn't provide
22 any information. It was incompatible with
23 our software.

24 Q. Okay. So as to the one warrant, no
25 information; correct?

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1 A. Correct.

2 Q. Okay. As to the second warrant, did
3 you receive information from Verizon about
4 Mr. Johnson's call records?

5 A. We did.

6 Q. I want to talk about your warrant.

7 A. Okay.

8 Q. You laid out in the warrant probable
9 cause that a crime has been committed?

10 A. Yes.

11 Q. Do you lay out information that the
12 Defendant -- that there's probable cause to
13 believe the Defendant committed them?

14 A. Yes.

15 Q. Do you lay out -- you were a little
16 more detailed in your testimony, but do you
17 lay out why you believe why this phone is
18 associated?

19 A. Yes.

20 Q. And what was the date the magistrate
21 signed this warrant?

22 A. It would be June 13th.

23 Q. And the date of the murder?

24 A. Would be June 8th.

25 Q. Okay. Do you lay out your reasons

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1 to believe that Verizon may have all of these
2 kind of records?

3 A. Yes.

4 Q. Do you lay out why you believe --
5 you have a reason to believe at the time the
6 search warrant is sought that these records
7 will be helpful and, in fact, the word is
8 "necessary" -- necessary to your
9 investigation?

10 A. Yes.

11 Q. Sergeant Kosarko, I'll get to the
12 point.

13 SOLICITOR SIMPSON: May I
14 approach, Your Honor?

15 THE COURT: You may.

16 COURT REPORTER: State's Exhibit 66
17 for identification.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SIMPSON:

20 Q. Sergeant, I hand you what's been
21 marked for ID Only as State's 66.

22 A. All right.

23 Q. Can you take a minute to review that
24 piece of paper?

25 A. That's my supplemental.

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1 Q. Is that the supplemental regarding
2 these cellphones?

3 A. Yes.

4 Q. There is a marked or underlined line
5 that's at the bottom of the page?

6 A. Okay.

7 Q. Could you read that for the court?

8 A. (Reading): "I/O met with the
9 Honorable Judge Gosnell and conveyed to him
10 the specifics of the case and search warrant.
11 He reviewed and signed the search warrants
12 and I/O faxed them to the respective
13 carriers."

14 Q. Is it proper to infer from that
15 statement in your report -- that report was
16 provided in discovery; correct?

17 A. Yes.

18 Q. Is it proper to infer that there was
19 a conversation about this case that took
20 place with Judge Gosnell?

21 A. Yes.

22 Q. Can you explain to the Court the
23 nature of that conversation of what you
24 stated to Judge Gosnell, including that
25 material that is included in the written

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1 warrant and also that included material
2 included that's not?

3 A. When I met with Judge Gosnell, he
4 read the search warrant.

5 Q. May I interrupt you?

6 A. Sure.

7 Q. Where did this meeting take place?

8 A. In his office.

9 Q. In his office?

10 A. Yes, on a Monday morning.

11 Q. Continue?

12 A. He read the search warrant. When he
13 was done I advised him that Devin had been
14 arrested in this case; that we interviewed
15 his girlfriend and his sister and that they
16 provided his cellphone number. And, also,
17 that he was in possession of that cellphone
18 when he was arrested. I told them that he
19 was using the cellphone, according to his
20 girlfriend during the time period of the
21 murder, that whole day.

22 Q. And let me interrupt you there.

23 A. Okay.

24 Q. Did you participate in the interview
25 of Tenika Elmore?

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1 A. I believe I was there, yes.

2 Q. And that interview was conducted on
3 video?

4 A. Correct.

5 Q. And you just stated that you were
6 aware of specific comments by this witness
7 that ---

8 A. Yes.

9 Q. --- the Defendant was using that,
10 had contacted her via that cellphone on the
11 day of the murder?

12 A. Yes.

13 Q. Okay.

14 A. Yes. I also advised him that Devin
15 during his interview had told us that -- or
16 he admitted to us that he was in Georgetown
17 Apartments that day and that he was the one
18 that was actually captured on video with
19 another individual. Devin identified him as
20 "Creep" to us. But he did not give us any
21 specific information, name, address or
22 anything like that.

23 Q. Did you expect that this individual,
24 Creep -- let me offer some background. Is
25 there video surveillance of this incident

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1 taking place?

2 A. Yes, there is.

3 Q. Is there any indication from that
4 video that the defendant has a cellphone on
5 him?

6 A. I believe he may be looking at the
7 cellphone. You can see him looking down at
8 something in his hand.

9 Q. Does that appear to be a cellphone?

10 A. It does.

11 Q. Is this video surveillance from the
12 actual incident of the crime?

13 A. Yes. Georgetown Apartments.

14 Q. Does this moment on this video when
15 you see this cellphone coincide with the
16 actual murder?

17 A. Yes.

18 Q. Was any of that information conveyed
19 to Judge Gosnell when you briefed him?

20 A. I don't believe I mentioned that
21 part as far as the time of the murder. But
22 I went on to tell him that we were trying to
23 identify Creep and that we believed that his
24 cellphone would have information or contact
25 information of Creep. That's what we were

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1 looking for.

2 Q. At this point, did you suspect Creep
3 was the second individual in the video?

4 A. Yes.

5 Q. You mentioned that Tenika stated the
6 Defendant was using that cellphone the day of
7 the murder?

8 A. Yes.

9 Q. At this point, had the interview
10 been conducted of Devin Johnson?

11 A. When I was speaking to the Judge?

12 Q. Yes?

13 A. Yes.

14 Q. Okay. Does Devin Johnson, in that
15 interview, indicate to you that he had been
16 using that cellphone on the day of before and
17 just after the murder?

18 A. Yes. When he said he had called a
19 family member, something like that.

20 Q. So is it fair to say the use of this
21 cellphone coincided fairly closely with the
22 murder was pretty well established by your
23 investigation at this point?

24 A. Yes.

25 Q. Is that established fact conveyed to

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1 Judge Gosnell in your briefing?

2 A. Yes.

3 Q. And you mentioned that he -- may not
4 have mentioned that the video shows the
5 phone. But, otherwise, was that a fact
6 conveyed to Judge Gosnell?

7 A. Correct.

8 Q. Is it -- have you had a lot of
9 interaction with Judge Gosnell in your role
10 as a major case sergeant?

11 A. Yes.

12 Q. Is it uncommon on major cases for
13 you to go into Judge Gosnell's office and
14 discuss it?

15 A. Is it common?

16 Q. Is it common or uncommon?

17 A. It's very common.

18 Q. Very common?

19 A. Yes.

20 Q. Is it your practice to submit the
21 warrant and also lay out in his office the
22 broader picture of the entire case?

23 A. Yes. I mean, investigations are
24 very fluid. So more information comes to us
25 and I like to convey that to the Judge as

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1 much as is possible.

2 Q. Now, Sergeant Kosarko, you're
3 certain to be asked by Mr. Butler, do you
4 think going forward it may be a good idea to
5 document this conversation with a little more
6 detail?

7 A. Absolutely.

8 Q. Is that something that we've
9 discussed?

10 A. Yes. And I've discussed it with my
11 detectives, as well. Yes.

12 Q. Do you understand that it is
13 completely proper to supplement information
14 to a magistrate when obtaining the search
15 warrant?

16 A. Yes.

17 Q. And going forward will you, even if
18 it's outlining on the warrant or writing a
19 more detailed report ---

20 THE COURT: Mr. Simpson, I've
21 signed arrest -- I've signed search warrants
22 in my career. And I know other judges have.
23 I'm familiar with what happens. I've been in
24 Judge Gosnell's role. I ask questions so I
25 understand there's conversation. I'm well

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1 aware of that. And I think the Court would
2 have to take judicial notice of that, but --
3 okay? Thank you.

4 SOLICITOR SIMPSON: Okay. Thank
5 you.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. Sergeant Kosarko, did you supplement
9 the information specifically tying the use of
10 this phone to the time immediately preceding
11 the murder and the time ---

12 MR. BUTLER: Judge, I'm sorry. I
13 object to leading the witness.

14 THE COURT: I'll allow that.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR SIMPSON:

17 Q. You may answer.

18 A. I told him that we were looking for
19 cellphone towers. And that those cellphone
20 towers would give us Devin's whereabouts
21 before, during and after the murder to help
22 either substantiate or refute his interview
23 with us. So that's what we were looking for,
24 that information as well.

25 SOLICITOR SIMPSON: The Court's

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1 indulgence?

2 THE COURT: Certainly.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. SIMPSON:

5 Q. Sergeant Kosarko, please answer any
6 questions Mr. Butler may have.

7 A. Yes, sir.

8 THE COURT: Cross examine?

9 CROSS EXAMINATION

10 BY MR. BUTLER:

11 Q. Detective, I got confused on some of
12 this. I want to know only what you told the
13 Judge, not what happened. Some of that in
14 your testimony, those started to overlap?

15 A. Sure.

16 Q. For example, you talked about the
17 video but then you clarified you didn't tell
18 Judge Gosnell about the video?

19 A. Uh-huh.

20 Q. What did you tell him? Let me go
21 through it and you tell me if you agree?

22 A. Okay.

23 Q. You told him that he's arrested with
24 the cellphone?

25 A. Yes.

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1 Q. You told him that his girlfriend
2 said he was making calls from the cellphone
3 the day of the murder?

4 A. Yes.

5 Q. All right. Because Mr. Simpson
6 asked you at the time of the murder, but, of
7 course, she wouldn't have known what he was
8 doing right at the time of the murder?

9 A. Correct.

10 Q. So you didn't mean that, did you?

11 A. No.

12 Q. Just that on the day of the murder
13 he was making phone calls with that phone?

14 A. Before and after the murder.

15 Q. Before and after?

16 A. Yes.

17 Q. Okay. And that -- what else did you
18 tell Judge Gosnell?

19 A. I told him that he admitted being on
20 the video, that he was seen with another
21 person named Creep. I told him that we were
22 trying to identify Creep, that we were
23 looking for information in his phone that
24 would help identify Creep. I also told him
25 that we know that -- like I said, he was

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1 arrested with the phone. And that that's the
2 phone that everybody said he's using, that's
3 the phone number that he'd been using
4 throughout the day.

5 And, also, there was also a
6 conversation involving the fact that Creep
7 was in Summerville. Devin said he went and
8 picked up Creep. So we were looking for any
9 kind of conversation, phone calls. Because
10 my experience I know that typically people
11 call or text message when they're setting up
12 meetings.

13 Q. Got it. And did you know at the
14 time that you go and get the search warrant
15 that Detective Osborne had already looked at
16 the phone without a warrant?

17 A. Yes.

18 Q. And did that in any way affect what
19 you did afterwards?

20 A. Effect as far as?

21 Q. Did you do anything as a result of
22 Osborne telling you that he had looked at the
23 cellphone without a warrant?

24 A. No. I mean, that's all basic
25 investigative, what we're looking for in the

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1 cellphones. Most of the information came out
2 of his interview.

3 Q. Got it.

4 MR. BUTLER: I beg the Court's
5 indulgence.

6 THE COURT: Certainly.

7 MR. BUTLER: I don't have anything.
8 Thank you.

9 THE COURT: Redirect?

10 SOLICITOR SIMPSON: Briefly, Your
11 Honor. thank you.

12 THE COURT: Sure.

13 REDIRECT EXAMINATION

14 BY SOLICITOR SIMPSON:

15 Q. Sergeant Kosarko in reference to Mr.
16 Butler's cross that David Osborne had looked
17 physically at the phone.

18 A. Uh-huh.

19 Q. Cut it on?

20 A. (No verbal response).

21 Q. I believe he looked at contact
22 lists?

23 A. That's correct.

24 Q. Was it some, you know, recent calls?

25 A. (No verbal response).

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1 Q. Was any of that information used in
2 either the text of your search warrant or in
3 this briefing with Judge Gosnell to establish
4 probable cause for your search warrant?

5 A. No.

6 SOLICITOR SIMPSON: No further
7 questions.

8 THE COURT: Recross?

9 MR. BUTLER: No, sir.

10 THE COURT: Thank you. You may
11 come down.

12 WITNESS: Yes, sir.

13 (WITNESS STEPS DOWN)

14 THE COURT: Do you have anything
15 further, Mr. Simpson?

16 SOLICITOR SIMPSON: Just some
17 brief argument, Your Honor.

18 THE COURT: Sure. And let me say
19 this. You filed your memo that you
20 submitted?

21 SOLICITOR SIMPSON: I plan to,
22 Your Honor.

23 THE COURT: Make sure you do,
24 submit it conjunction with this Motion and
25 incorporate it fully for purposes of review

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1 and your positions stated.

2 Yours, you gave me ---

3 MR. BUTLER: I made mine part of
4 the record. I didn't file it with the clerk,
5 but I can if I need.

6 THE COURT: Well, it's part of the
7 record.

8 MR. BUTLER: That's all. That's
9 all I usually do.

10 THE COURT: Do you have this
11 motion to suppress?

12 COURT REPORTER: Yes, sir. It's
13 part of Exhibit 2.

14 THE COURT: Okay. It's part of --
15 Defendant's 2 is certainly incorporated for
16 purposes of review.

17 SOLICITOR SIMPSON: Okay. And at
18 our next brief break, I will ---

19 THE COURT: That's fine. There's
20 no problem. I just made the statement that I
21 have it. It's been sent to me by email
22 somewhere. Just make sure it's filed with
23 the clerk. And with the clerk, it's
24 certainly incorporated as part of the
25 pleadings in this case. All right.

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1 SOLICITOR SIMPSON: Thank you,
2 Your Honor. To begin with, and I don't have
3 to be unduly argumentative. But I do think
4 that that's -- it's asserted in my brief and
5 I'll leave it at that. I do think that the
6 actual four corners of the warrant more that
7 satisfies the statements nexus of cellphone
8 possession. And I believe I've cited a line
9 of cases which says it is perfectly fine for
10 a magistrate to make commonsense assumptions
11 about life as he knows it, that people these
12 days carry cellphones, and they use them and
13 a treasure trove of information is completely
14 appropriate to obtain when probable cause is
15 asserted that a certain specific individual
16 committed a serious crime.

17 But furthermore, I think that it's
18 far more strong, the State's position, in
19 light of the testimony we just heard from
20 Sergeant Kosarko about his discussion that he
21 had with the magistrate. In briefing him to
22 obtain these warrants, what was established
23 more clearly in that -- is that nexus that
24 Mr. Butler is searching for. That the
25 magistrate was made aware of the fact, not

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1 that the defendant had a cellphone number,
2 but the defendant had possession of phone
3 leading up to the murder on the date of the
4 murder. And by his own admission, using it
5 that day. And I believe we watched a clip
6 yesterday, where he says in his interview.
7 'Oh, I found out about this murder because I
8 got a phone call' -- in other words, I think
9 with that supplemental information we could
10 firmly tie this crime to this defendant and
11 his cellphone.

12 And I think the Nexus that really
13 Mr. Butler is searching for here is well
14 established. More established by the
15 testimony we heard about the conversations
16 between Sergeant Kosarko and Judge Gosnell.

17 THE COURT: Mr. Butler?

18 MR. BUTLER: Well, I disagree.
19 It's more, but it doesn't get them there.
20 And the fact that he was using the phone that
21 day, making calls -- I want to make sure I
22 get that right. Making calls does not allow
23 them to get his text messages. And that's
24 really what we're concerned about is the text
25 messages. Nobody said anything about the

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1 text messages that -- or any reason to think
2 that he was sending text messages.

3 But I don't think that it gets them
4 anything anyway. The fact that he had it
5 that day and was using it that day, they have
6 to say, look, we're looking for something
7 specific. You can't just say that -- there's
8 two parts to this now that hasn't been
9 addressed. Not only the nexus as to place
10 but -- what are we looking for?

11 And there's nothing you couldn't get
12 out of a cellphone or from records as broad
13 as that search warrant is. It's obvious that
14 they're looking not for anything specific.
15 If they are, all right, his call/contact list
16 -- which by the way Creep is in the contact
17 list, maybe. But there's nothing that would
18 allow them to say, 'we have a reason to think
19 there will be text messages that will be
20 relevant to this case in his phone records.'
21 There's nothing in there that says there will
22 be phone calls that will be relevant to this
23 case, based on the fact that he had it and
24 was using it.

25 So, I mean, I can say more but I would

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1 just be repeating what I said before.

2 THE COURT: Okay. Let me say
3 this. This -- I appreciate your position and
4 I understand the specificity that you're
5 seeking. And certainly the cases, reading
6 them in a narrow sense, they're certainly on
7 point and I have no quarrel with that. There
8 are some cases, though, that have cited and
9 expanded searches. It really and truly, I
10 think, goes to where we are today and
11 specifically with knowledge -- and I don't --
12 we'll find out whether that's wrong. I
13 haven't had the challenge. So -- I confess,
14 if it's wrong, I've done it.

15 But clearly Judges talk to the
16 affiant. Any concerns that we have about
17 'what is it you're doing and why?' Frankly
18 the statement that the testimony was someone
19 had seen him using the phone, his own
20 statement that he was. Clearly -- Creep, he
21 said he didn't know and they're certainly
22 entitled to get that information, to find, to
23 try to ascertain whether they could get a
24 potential very significant witness.

25 And, frankly, when a person denies

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1 where they've been and then says, I was, this
2 is another way to establish where he was.
3 See if there was any -- I think that's good
4 police work. I don't think that's an
5 invasion of anything.

6 I think the search warrant protects
7 him. And I think the Judge was correct in
8 issuing the search warrant, considering the
9 totality of the circumstances presented to
10 Judge Gosnell. So for that reason, I will
11 respectfully deny your motion to suppress.

12 MR. BUTLER: Thank you, Judge.

13 SOLICITOR SIMPSON: Thank you,
14 Your Honor.

15 THE COURT: Thank you.

16 SOLICITOR SIMPSON: Thank you for
17 indulging that issue.

18 THE COURT: Oh, sure. I under-
19 stand. Thank you for being a good -- as I
20 stated, it's great when you have good
21 lawyers. And I have good lawyers. I went
22 home and talked about that. It was a
23 wonderful day. I was worn out, but it was a
24 wonderful day when you're able to have
25 challenging issues and great professionals

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1 presenting some things.

2 MR. BUTLER: And just to clarify,
3 Judge, your ruling extends not just to cell
4 towers and call logs but it extends to text
5 messages as well?

6 THE COURT: Whatever they got out
7 of that, I think there was a legitimacy and a
8 need for it. I think that they specified 'I
9 want the records.'

10 I don't think that violates any --
11 certainly not a Fourth Amendment issue. I
12 just don't see how.

13 MR. BUTLER: Thank you, Judge. I
14 just wanted to be clear. Thank you.

15 THE COURT: Okay. All right. All
16 right. Are we ready to go?

17 SOLICITOR SIMPSON: The State's
18 ready to proceed, Our Honor.

19 THE COURT: Is the Defendant
20 ready?

21 MR. BUTLER: Yes, sir.

22 THE COURT: And let the record
23 reflect -- good morning, Mr. Johnson -- that
24 Mr. Johnson has been present during the
25 entire recitation, and I may have failed to

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1 THE COURT: Oh, yes. Thank you.
2 Thank you very much. I forgot to do that
3 after we talked about it.

4 There was one additional witness
5 that I wanted to ask you about, Jennifer
6 Wooley with the Charleston Police Department.
7 Any jurors know Jennifer Wooley? If so,
8 raise your hand? (No response).

9 We don't have to worry about it.
10 Thank you very much it. Well, we were going
11 to ask you if it would affect you. If you
12 would still be able to be fair and impartial.
13 But since you don't know her, it doesn't
14 change any of your responses, I would assume.
15 Is that correct? (Unanimous affirmative
16 responses from jurors). Thank you. Thank
17 you very much.

18 SOLICITOR SIMPSON: Thank you,
19 Judge. Ladies and gentlemen, good morning.

20 I apologize as well for the delay
21 this morning. I want to start how we start
22 every case by conveying to you on behalf of
23 my office, as the Judge did, my appreciation
24 and thanks to you for your time this week. I
25 know you all have lives. You all have jobs

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1 and this may, at least, at the outset seem
2 like somewhat of an inconvenience to you.

3 I can tell you through experience I
4 don't believe you'll feel that way when
5 everything's said and done and you have an
6 appreciation for how important your work is
7 to us certainly, and to the community also.

8 Ladies and gentlemen, on the evening
9 of June 8th, 2011, a young man Akeem Smalls,
10 was hanging out on the second story breezeway
11 of his girlfriend's, Charmaine Johnson's,
12 apartment enjoying a nice summer evening.
13 He had come to Charmaine's apartment earlier
14 bringing some groceries for Charmaine's
15 girls, ranging in ages of eight, fourteen,
16 sixteen, and some of their friends.

17 He stepped out onto the balcony of
18 the second story courtyard in the Georgetown
19 Apartments. To kind of give you the lay of
20 the land, there are a series of buildings
21 labeled A, B, C, D, E and F, all looking in
22 the center of the courtyard. He'd stepped
23 out, talking on the phone, having a drink,
24 enjoying a nice summer night, when his friend
25 DeAngelo Buncum came through.

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1 DeAngelo and he, like I stated, were
2 friends. They knew each other. There are
3 some family connections there you'll hear
4 about.

5 DeAngelo heard his friend. He said,
6 "Hey, Ace!" That's what Akeem was also
7 called, "Ace." He said, 'hey, how's it
8 going?' Went up, had a drink with Akeem.
9 They hung out together, discuss Akeem's
10 budding music career.

11 DeAngelo tells Ace, 'Hey, I'm going
12 back to some guy's I knows apartment back in
13 Building F. A guy -- Eskimo's house. Why
14 don't you come by, hang out?'

15 DeAngelo leaves. About ten or fifteen
16 minutes later, Ace leaves Charmaine's
17 apartment, presumptively going back to join
18 DeAngelo at Eskimo's apartment. He's on the
19 second floor of the apartments, so he walks
20 down the stairs to head back to that back
21 building F.

22 But at the bottom of those stairs
23 he's met by two males. One with a nine
24 millimeter handgun. Ace knew at least one of
25 them. More importantly, he knew why he was

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1 there.. Because when Ace saw them, he turned
2 to run -- knowing the person's intentions.
3 And at that time Devin Johnson, the man
4 seated here, fired four shots and killed Ace
5 in the most cowardly way possible, by
6 shooting him the back with one of those
7 bullets. It entered the back shoulder and
8 exited the front.

9 Ace was running away at that time.
10 So fast, in fact, that he ran out of his
11 shoes. And who knows if in that moment of
12 such fear and such panic, if he even realized
13 right away he had been shot, because he was
14 moving. And you'll see it in the video.

15 Ace continued to run away from
16 Building C, away from the direction DeAngelo
17 came, as he naturally would. Through
18 Building D and Building E, so afraid in shock
19 and panic, he ran down an alley in Building
20 E, jumped on an air-conditioning unit and
21 jumped the fence. Anything to get away from
22 this person who he recognized.

23 At this point, the injury is
24 beginning to catch up with him. His lungs
25 are filling with blood. He's essentially

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1 internally bleeding to death. That was --
2 the panic set in. We'll see evidence at this
3 point sadly the shock, the fear and panic,
4 alone, in what was a construction site he
5 takes off his clothes and discard them trying
6 to find out the source of these injuries. He
7 lays down alone and afraid on a cheap plastic
8 table at an empty construction site and
9 begins to bleed to death.

10 Sadly, he was so successful in
11 running away from this man, that police and
12 EMS, the first responders, had a tough time
13 locating him when they responded to the
14 scene. They did locate him. He was still
15 alive, but in no condition to talk about what
16 happened. He was still alive, barely. And
17 sadly he passed on the way to the -- after
18 being transported to the hospital.

19 Like I said, police responded.
20 First of all, as you'll hear in a little bit,
21 we have patrol officers. Those are officers
22 that are just in the area patrolling get
23 there.

24 The EMS get there. Their main
25 concern really is, you know, besides solving

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1 something, is to get immediate help to the
2 person who needs help.

3 Quickly followed up by the
4 detectives, the homicide detectives, people
5 in charge of solving this thing. And when a
6 homicide detective arrives to a crime scene
7 like this, it's a blank slate. They know
8 merely, 'oh, my god, somebody's been shot.'
9 And so they seek out piece-by-piece, figure
10 out who committed the offense. And in so
11 doing, they obviously want to answer two
12 initial questions. They're very important.

13 Question number one, who, perhaps
14 had the opportunity to shoot him.

15 Question number two, who out there
16 has a reason, some reason to kill him.

17 The answering of those two questions
18 initially leads to quite a conundrum.
19 Because as to question one, who had the
20 opportunity to kill Akeem? They are, of
21 course, are interested in who is the last
22 person to see him? DeAngelo, right? He'd
23 been hanging out with him, left about ten
24 minutes, fifteen minutes before. And so in
25 answering that first question, who has this

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1 opportunity, who could have been in the area?
2 Who could have been maybe waiting down in the
3 hall? The attention focused on DeAngelo.

4 But then it gets stuck when they
5 start asking the why? Who has the motive?
6 And what on earth would be the reason for
7 DeAngelo, by all accounts a friend, a family
8 member, to do this?

9 Now, let's look at this question and
10 you'll see this initial conundrum. Who has a
11 motive? Who has a reason? Who out there do
12 we find out had a purpose to kill Akeem? And
13 the answer to that question leads to Mr.
14 Johnson; for one of the most age-old reasons
15 these things happen, money.

16 You see, Akeem, it will be well
17 established owed Mr. Johnson a little bit
18 over four hundred dollars at the time, and
19 was refusing to pay him back. And so the
20 answer to who had a reason to be angry at
21 Akeem, who had a reason to kill, was Devin
22 Johnson.

23 But then here comes the conundrum
24 again, what about opportunity. Not Devin
25 Johnson. Devin Johnson, at this time, was in

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1 Orangeburg, almost ninety miles away. What a
2 conundrum. You have one person with
3 opportunity but no reason. One person with a
4 very good reason, the classic reason -- let
5 me suggest to you, the reason's not just
6 money. It's the pride and disrespect one
7 feels when another person won't pay you back
8 what they feel they're owed. But what a
9 conundrum initially, ninety miles away in
10 Orangeburg, and then another guy there with
11 no reason to do it.

12 But what if the evidence solves that
13 conundrum?

14 What if a point in the
15 investigation, piece-by-piece, as we will
16 present to you in this case, solves that
17 problem.

18 What if the evidence shows
19 convincingly that DeAngelo is exactly where
20 he says he was? Back in the back at his
21 friend's apartment that he said, he told
22 Akeem he was going to.

23 And far more interesting than that,
24 what if the evidence clearly show you that
25 Devin Johnson was not ninety miles? That

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1 Devin Johnson was feet away from Akeem when
2 he was killed. The evidence will show that
3 and we'll convince you of that. That the
4 person who had the most obvious reason to
5 kill Akeem was exactly just feet away from
6 him when he was killed.

7 And we're going to play this out,
8 piece-by-piece for you in the coming days.
9 Far more than that, the evidence is going to
10 show you that Mr. Johnson premeditated this.
11 He planned this and intended to do it.

12 I won't get into the law now. We'll
13 do that later. Premeditation could be in an
14 instant, it's just the decision. I decide to
15 kill somebody. There's a lot more premedita-
16 tion than that from Mr. Johnson and we'll
17 prove that to you this week.

18 The evidence will also show that Mr.
19 Johnson most certainly had access to
20 ammunition the same caliber, the same weight,
21 the same name brand as that used to kill
22 Akeem Smalls.

23 In summary, like a jigsaw puzzle
24 where a small portion of the picture comes
25 into view, another portion of the picture

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1 comes into view, another, like that puzzle,
2 we're going to meet our burden that the Judge
3 discussed with you and convince you by the
4 end of this case, leave you firmly convinced,
5 that not only Devin Johnson is guilty of the
6 charged offense, but that DeAngelo Buncum is
7 innocent.

8 So when this trial is complete, you
9 will have an opportunity to not only bring
10 justice long sought by the Smalls family, the
11 family of Akeem that they're waiting for, but
12 also rendering the proper verdict of guilty
13 to clear a cloud of suspicion from an
14 innocent man. That's an opportunity not many
15 people get in life.

16 And so while I'm sure that it's
17 perfectly natural up until perhaps this
18 morning, this moment, what has seemed like an
19 inconvenience perhaps to you this week, will
20 become something that you play a part in that
21 will give you a sense of pride, a sense of
22 doing the right thing for the rest of your
23 life. I thank you very much in advance of
24 this trial for your time and attention this
25 week. Thank you.

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1 THE COURT: Thank you, Solicitor.
2 Mr. Butler.

3 MR. BUTLER: You're about to learn
4 a valuable lesson. It's one is not just
5 valuable to you, it's one that's critical to
6 my client, Devin Johnson. It's one that he
7 is desperate for you to learn. And that's
8 just how rumor, suspicion, gossip and
9 innuendo can substitute for evidence.

10 Akeem Smalls was involved in a
11 dangerous enterprise, one that's rewarding in
12 some ways financially but it is also very,
13 risky. Sometimes the risk is worth the
14 reward and sometimes it's not. And on this
15 night, it wasn't and the chickens came home
16 to roost, as they say.

17 Somebody definitely murdered Akeem
18 Smalls. You will not be asked to decide
19 whether a murder happened. It did.

20 You will not be asked to decide
21 whether the version of events that were just
22 laid out to you were tragic? They were.

23 You will not be asked to decide
24 whether it was senseless? It was. Or sad,
25 it still is.

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1 All of those things you will not be
2 asked. And if you were, I wouldn't be here.

3 I would also agree DeAngelo Buncum
4 is not guilty of anything, and neither is
5 Akeem Smalls.

6 Because here are the facts, not
7 rumor, not suspicion, not any gossip, not
8 innuendo, the facts of this. A picture, the
9 "jigsaw puzzle", part of it is on video,
10 which you're going to get to see.

11 And the person that everybody agrees
12 is the person who is responsible for this
13 murder, doesn't look like Devin Johnson.
14 Devin Johnson today and then had a full head
15 of hair and dread locks. Devin Johnson back
16 then was medium complected. He's still
17 medium complected today. This shooter was
18 neither of those things and you'll see that.
19 Not so clearly and distinct as to the face
20 but you can tell who it was not.

21 Those are facts.

22 The phone records will show that
23 he's not the person responsible for this
24 murder. Those will be facts. There were no
25 phone calls between these two:

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1

2

'Hey, where's that money you owe me?

3

Hey, give me the money you owe me.

4

Where's that money?

5

If you don't give me that money, I'm

6

going to come over there and shoot you.'

7

There are no phone calls between the
two of them for days. That's a fact.

9

10

11

12

13

14

15

16

17

You're also going to hear from two
witnesses who will say that the car that was
used to drive to this shooting, this murder,
two different witnesses told two different
members of law enforcement that the license
plate had an "A" in it. The car that the
state says was used does not have an "A."
Does not have that letter in the license
plate and that's a fact.

18

19

20

There were no animosity or arguments
between these two people. Money was owed
yes, but no animosity between them.

21

22

23

Devin's girlfriend will tell you
that she did not notice anything out of the
ordinary about Devin that day.

24

25

And so what I'm going to ask you to
do at the end of this case is to look beyond

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1 the rumors and the gossip and the
2 innuendo and the suspicion.

3 The suspicion is there. Sometimes,
4 I think that people expect me to, given my
5 job to say, 'oh, well, you know, the cops
6 have rushed to judgment. And the cops
7 decided that my client was guilty. They've
8 ignored everything else, and this is just a
9 farce. And this is just a frame job.'

10 There's plenty of suspicion, but the
11 suspicion ends today. And one of the charges
12 that the Judge will tell you about the law is
13 that you can't reach a verdict on suspicion.
14 You can't.

15 At the end of the day, end of this
16 trial, the facts are going to show and the
17 evidence will show that Devin Johnson did not
18 commit this crime. Thank you.

19 THE COURT: Thank you. You may
20 call your first witness, Mr. Simpson.

21 SOLICITOR SIMPSON: Thank you,
22 Your Honor. The State calls Tenika Elmore.

23 (WITNESS TAKES STAND)

24 TENIKA ELMORE, having been duly sworn to
25 tell the truth, and nothing but the truth,

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR SIMPSON:

4 Q. Good morning, Ms. Elmore.

5 A. Good morning.

6 Q. Could I ask you -- I'm sorry to have
7 to say this, but could you pull that micro-
8 phone up a little?

9 A. (Complies).

10 THE COURT: And pull your chair up
11 a little.

12 WITNESS: (Complies).

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR SIMPSON:

15 Q. And you just stated -- it was a
16 little quiet -- your name is Tenika Elmore?

17 A. It is.

18 Q. Can you tell the jury a little bit
19 about yourself? Where are you from?

20 A. Orangeburg, South Carolina.

21 Q. Okay. Have you lived in South
22 Carolina your whole life?

23 A. I have.

24 Q. Where do you work?

25 A. Verizon Wireless.

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1 Q. How long have you worked there?

2 A. Six years.

3 Q. And the location of that Verizon, is
4 that in Orangeburg?

5 A. It's in North Charleston.

6 Q. Okay. How does that work with your
7 -- that's quite a commute, isn't it?

8 A. About an hour, I think.

9 Q. And you just make that trip weekly
10 (sic) to go to work?

11 A. Yes.

12 Q. Did you work there at Verizon in
13 June of 2011?

14 A. I did.

15 Q. And similarly in 2011 did your life
16 consist often of driving back and forth to
17 Orangeburg?

18 A. It did.

19 Q. Ms. Elmore, do you recognize the
20 gentleman sitting at the end of the table
21 there?

22 A. I do.

23 Q. And who is that?

24 A. Devin Johnson.

25 Q. And how do you recognize him?

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1 A. He was my boyfriend. How do I
2 recognize him?

3 Q. Yes.

4 A. He was my boyfriend.

5 Q. Okay. And approximately when did
6 you and Devin meet?

7 A. I believe it was in March of 2010.

8 Q. Okay. Was that a romantic
9 relationship from the get-go?

10 THE COURT: Excuse me -- can you
11 pull up to the microphone a bit? You're
12 going to have to speak up a little bit make
13 sure we can hear you.

14 WITNESS: That's no problem.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR SIMPSON:

17 Q. Thank you.

18 A. What was the question?

19 Q. Was that a relationship that became
20 romantic right when you met Mr. Johnson?

21 A. Not right when we first met but,
22 yeah, we did.

23 Q. Pretty quickly?

24 A. Not pretty quickly, but right -- are
25 you talking about months or weeks or what?

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1 I'm not sure of the question.

2 Q. I'm asking you how long after
3 meeting Devin Johnson did the relationship
4 become that of boyfriend and girlfriend?

5 A. Oh, about a month.

6 Q. Okay. And if I have your approxi-
7 mate timeframe, that would be about April
8 2010?

9 A. Around April, yeah. Yes, sir.

10 Q. A pretty stable relationship from
11 that point leading up to 2011?

12 A. We had some ups and downs.

13 Q. And did you ever live together?

14 A. Yes.

15 Q. And where was that?

16 A. In Orangeburg.

17 Q. And did he steadily live with you
18 from, say, April of 2010 up until June 2011,
19 throughout that whole time period?

20 A. No. We had a breakup.

21 Q. Okay. One breakup during that time
22 period?

23 A. A few.

24 Q. Okay. Did you have any personal
25 knowledge of where he was staying when you

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1 guys were broken up?

2 A. Sometimes.

3 Q. Okay. And where was that?

4 A. Mostly his mom house or Walterboro
5 or his sister home, his sister's house.

6 Q. And what's Devin's sister's name?

7 A. Charmaine.

8 Q. Charmaine. Her last name?

9 A. Johnson.

10 Q. Have you ever met Charmaine?

11 A. Yes.

12 Q. Okay. And where did Charmaine live
13 in June of 2011?

14 A. West Ashley.

15 Q. Okay. What kind of place?

16 A. Apartment complex.

17 Q. Okay. Do you know the name of that
18 apartment complex?

19 A. I do not.

20 Q. Have you ever been there?

21 A. I have.

22 Q. And you were aware that Mr. Johnson,
23 Devin Johnson, spent some time there while
24 you were broken?

25 A. Yeah. That's where he told me he

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1 was.

2 Q. Even when you were together, do you
3 have any personal knowledge that Devin would
4 visit Charmaine's house?

5 A. Yes. That's his sister's house,
6 yeah.

7 Q. Would he visit that location
8 frequently?

9 A. Not to my knowledge.

10 Q. But you do have some knowledge that
11 he would visit there from time to time?

12 A. Yes.

13 Q. I want to talk about another
14 individual. Did you ever personally meet
15 Akeem Smalls, also known as "Ace"?

16 A. No.

17 Q. Do you have any personal knowledge
18 of who Akeem Smalls or Ace was?

19 A. I did.

20 Q. And what was that?

21 A. Charmaine's boyfriend.

22 Q. So that's the Defendant's sister's
23 boyfriend?

24 A. Yes, sir.

25 Q. At any point in time, did you become

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1 aware of a financial situation between Devin
2 Johnson or Ace or Akeem?

3 A. I did.

4 Q. Okay. And what did you become aware
5 of?

6 MR. BUTLER: I'm sorry. That calls
7 for hearsay.

8 THE COURT: Sustained.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SIMPSON:

11 Q. Did Devin Johnson, the Defendant,
12 inform you of this financial relationship?

13 A. He did.

14 Q. And did he ever convey to you his
15 intentions to look for this person?

16 A. No, sir.

17 Q. Did he ever express to you a
18 financial need that he had?

19 A. Uh, what do you mean? Can you give
20 me an example of "financial need"?

21 Q. Okay. Did you have a personal
22 knowledge that the Defendant was owed money?

23 A. Yes.

24 Q. By whom?

25 A. By Ace.

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1 Q. How did you come about that know-
2 ledge?

3 A. By asking him where his money was.

4 Q. Okay. How long before June 8th of
5 2011 did Devin make you aware of this debt?

6 A. I'm not sure, sir.

7 Q. Can you approximate? I know it's
8 been a long time.

9 A. I can't. I'm sorry.

10 Q. Would it perhaps -- did you later
11 come, Tenika, to give a statement to the
12 Charleston Police Department regarding these
13 events?

14 A. Yes.

15 Q. Would it refresh your recollection
16 of this matter to review the portion of that
17 video where you discussed this financial
18 situation between Devin and the victim?

19 A. As far as me, he told me he was owed
20 the money.

21 Q. Yeah?

22 A. You can. I don't I believe I said
23 it in my statement, but you can -- we can
24 view it.

25 Q. The statement you gave, was it on

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1 video?

2 A. I was advised that it was.

3 Q. Okay. Were you being honest and
4 forthright with the police when you gave this
5 statement?

6 A. I was.

7 Q. Tenika, do you recall telling police
8 on that video interview that you were aware
9 of that debt for a couple of weeks prior to
10 Ace's murder; does that sound correct?

11 A. I was -- I know that I advised them
12 that he was owed money and it was a couple of
13 dollars. But I didn't say anything about the
14 time because I'm not sure -- I'm not sure he
15 told me a time.

16 Q. But you were aware of that prior to
17 Ace's murder?

18 A. Yes.

19 Q. And, again, your testimony today is
20 that you don't remember hearing anything from
21 Devin about his attempts to find Ace?

22 A. No.

23 Q. Or come in contact with him?

24 A. No.

25 Q. Tenika, I would like to move now

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1 over to the day in question that we're all
2 here about. That would be June 8th, 2011.

3 A. Okay.

4 Q. If that helps you, it was the day
5 that Ace was killed. I'd like you if you
6 would, to slowly -- we're going to kind of
7 walk through that whole day for the jury, if
8 that's okay?

9 Q. Okay. Where did you wake up that
10 morning?

11 A. Orangeburg, at my apartment.

12 Q. Okay. And who was with you in that
13 apartment when you woke up on the morning of
14 June 8th, 2011.

15 A. Devin and his daughter.

16 Q. Okay. How old is Devin's daughter?

17 A. At that time?

18 Q. Yeah?

19 A. I think she was around six.

20 Q. Around six. All right. What did
21 you have to do today? What was on your
22 agenda, so to speak?

23 A. Work.

24 Q. And, again, you're work in North
25 Charleston?

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1 A. (Affirmative nod), in North
2 Charleston.

3 Q. Do you recall what shift you were
4 working that day?

5 A. I was working overtime so it was
6 going to be either a ten-hour or twelve-hour
7 shift that day.

8 Q. Okay. And do you recall offhand
9 about what time you had to be at work?

10 A. 11:00, 11:00 a.m. that morning.
11 Eleven (11:00) or 12:00.

12 Q. Okay.

13 A. 11:00 or 12:00.

14 Q. 11:00 or 12:00?

15 A. Yes, sir.

16 Q. So when you woke up that morning,
17 you needed to get to Charleston; is that
18 correct?

19 A. That's correct.

20 Q. And did you drive down to
21 Charleston.

22 A. I did.

23 Q. Who rode with you that morning?

24 A. Devin and his daughter.

25 Q. Okay. When did you get down there

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1 to Charleston? Did you get there on time for
2 your shift?

3 A. I did.

4 Q. Okay. What kind of car did you own
5 at that time?

6 A. A 2008 blue Toyota Camry.

7 Q. Okay. And that was a little quiet.
8 It was a 2008 blue ---

9 A. A blue Toyota Camry.

10 Q. Okay. And that's your car, you
11 owned that?

12 A. Yes.

13 SOLICITOR SIMPSON: The Court's
14 indulgence?

15 THE COURT: Yes, sir.

16 SOLICITOR SIMPSON: May I
17 approach, Your Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SIMPSON:

21 Q. Tenika, I'm showing you what's been
22 marked and entered into evidence by consent
23 of both parties as State's 25, 26, 27, 28 and
24 29. Can you take a moment just to flip
25 through those?

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1 A. (Upon review), okay.

2 SOLICITOR SIMPSON: May I
3 approach?

4 THE COURT: Yes, sir.

5 SOLICITOR SIMPSON: Thank you.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. What do those pictures depict,
9 Tenika?

10 A. My car.

11 Q. Okay. Is that still your car?

12 A. Is that still my car?

13 Q. Yes?

14 A. Yes.

15 Q. And that was the car that you said
16 you drove down to Charleston on June the 8th?

17 A. Yes.

18 Q. When you arrived at work, what was
19 the situation with the car?

20 A. (No verbal response).

21 Q. You obviously had to work a long
22 shift?

23 A. Yeah, I had to work a long shift.

24 Q. Did you -- did someone come pick up
25 Devin and his daughter?

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1 A. No. He drove my car from work after
2 he dropped me off.

3 Q. Was this situation unusual with you
4 or was it common of him coming down with you
5 and then using your car?

6 A. Common.

7 Q. It was common?

8 A. Uh-huh.

9 Q. Do you have any personal knowledge
10 of the typical locations he would go with
11 your car, when he was -- when he borrowed it
12 on occasion.

13 A. Summerville, Walterboro. I don't
14 know specifically like what -- it could be
15 anyplace.

16 Q. And just to recap, I believe you
17 said his mother lives in Summerville?

18 A. I didn't say it, but his mom does
19 live in Summerville.

20 Q. Does he have friends in Walterboro?

21 A. He has family there, his father.

22 Q. And would one of the locations he
23 might go while borrowing your car be
24 Charmaine's place, West Ashley?

25 A. Yes, sir.

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1 Q. Does he have friends as there?

2 A. I don't know. Family, Charmaine's
3 his sister.

4 Q. Tenika, I'm putting up on the
5 projector 26 and 27. I believe you've
6 already identified these as pictures of your
7 car?

8 A. Yes, sir.

9 Q. And are they accurate reflections of
10 how your car appeared in June of 2011?

11 A. It is.

12 Q. In fact, this car was seized from
13 your possession at some point?

14 A. It was.

15 Q. Do you remember if it was around the
16 same time of Ace's murder?

17 A. Yes.

18 Q. I'm going to direct your attention,
19 Tenika, to this. Anything about that back
20 tire, passenger side tire, that's interesting
21 to you?

22 A. Don't have a hubcap on it.

23 Q. We'll just go through these very
24 briefly. State's 26, no hubcap on that tire
25 either?

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1 A. No.

2 Q. 28? And what was your -- can you
3 read the license plate on the screen in front
4 of you?

5 A. L-1207.

6 Q. Is that -- that's a Lander license
7 plate?

8 A. It is.

9 Q. Would State's 29 be a fair
10 representation of your vehicle?

11 A. It is.

12 Q. You think that's -- what's the make
13 and model?

14 A. A 2008 Toyota Camry.

15 Q. What time did you -- you said you
16 worked a long shift that day?

17 A. Uh-huh.

18 Q. And you had to arrive at work at
19 about 11:00 or 12:00; correct.

20 A. Yes.

21 Q. What time does Devin come pick you
22 up?

23 A. About 11:15.

24 Q. And what time did you get off?

25 A. Got off at 11:00.

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1 Q. He was a little late. Is that fair?

2 A. Uh-huh.

3 THE COURT: Is that a "yes"?

4 WITNESS: Yes, it is a "yes."

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SIMPSON:

7 Q. How did you feel about him being
8 late?

9 A. I was upset.

10 Q. Okay. You said that when Devin took
11 your car that morning, he had his daughter
12 with him; right?

13 A. That's correct.

14 Q. Did he have his daughter with him
15 when he came to pick you up?

16 A. No, sir.

17 Q. And he picked you up in his car?

18 A. My car.

19 Q. In your car?

20 A. Uh-huh.

21 Q. Was he alone?

22 A. He was.

23 Q. And this would have been at about
24 11:15 P.M.?

25 A. Yes, sir.

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1 Q. What was Devin's demeanor when he
2 came to pick you up?

3 A. Apologetic.

4 Q. Was that from being late?

5 A. Yes.

6 Q. Now, did he appear to you shaken,
7 upset, rattled?

8 A. No.

9 Q. Do you remember talking to us in
10 preparation for this testimony?

11 A. Yes.

12 Q. Do you remember using the phrase ---

13 MR. BUTLER: Objection.

14 SOLICITOR SIMPSON: May we
15 approach?

16 THE COURT: Yes.

17 (OFF RECORD BENCH CONFERENCE)

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SIMPSON:

20 Q. Do you recall in that meeting using
21 the phrase, he was his same old jokey self?
22 Does that sound like something you recall
23 telling us?

24 A. Yeah, he was the same.

25 Q. Okay. And what do you mean by

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1 jokey?

2 A. Well, when I'm upset, he always try
3 to make me laugh, trying to get over it.

4 Q. And on the night he picked you up
5 and you were mad, you were mad because he was
6 late?

7 A. Uh-huh, (affirmative nod).

8 Q. He was very much consistent with
9 that demeanor?

10 A. Yes.

11 Q. Cracking jokes?

12 A. Well, he's basically -- yeah,
13 basically cracking jokes so I can loosen up
14 so I can talk back to him, because I was not
15 happy with him.

16 Q. What did y'all do when he picked you
17 up?

18 A. Went to Summerville.

19 Q. Okay. And what was the purpose of
20 going to Summerville?

21 A. To pick Denavia up, his daughter up.

22 Q. Okay. And where was Denavia?

23 A. His mom's house.

24 Q. Okay. What did you do following
25 picking Denavia up from Summerville?

1 A. We went to get gas and we went to
2 Orangeburg.

3 Q. You went where?

4 | A. Orangeburg.

5 Q. You said you went to get gas?

6 | A. Uh-huh.

7 Q. He picked you up at about 11:15?

8 A. 11:15. Uh-huh.

9 Q. You went to Summerville to pick up
10 Denavia?

11 A. Yes.

12 Q. And then got gas?

13 A. (Affirmative nod), then got gas.

14 Q. Could you approximate a guess about
15 what time you would have gotten the gas?

16 A. 11:45 close to 12:00. I'm not sure.

17 Q. Sometime around midnight?

18 A. Some time, yeah.

19 SOLICITOR SIMPSON: The Court's
20 indulgence.

21 THE COURT: Okay.

22 SOLICITOR SIMPSON: May I
23 approach Madam Court Reporter, Your Honor.

24 THE COURT: Yes, you may?

25 (SO MARKED FOR ID STATE'S EXHIBIT 67)

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1 (SO MARKED FOR ID STATE'S EXHIBIT 68)

2 THE COURT: 67 and 68.

3 COURT REPORTER: Yes, sir.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SIMPSON:

6 Q. Tenika, I'm handing you what's been
7 marked for ID Only as State's Exhibit 67 and
8 68. Would you take a look at that exhibit?

9 A. Uh-huh.

10 Q. Do you recognize the person depicted
11 in these video stills?

12 A. Yes. That's Devin.

13 Q. The Defendant, Devin Johnson.

14 A. Yes, sir.

15 Q. You stated that y'all went to get
16 gas that night on the way back to Orangeburg?

17 A. Yes.

18 Q. Is the clothing depicted in those
19 videos stills consistent with that he was
20 wearing that night?

21 A. Yes.

22 Q. To the best of your recollection,
23 does that appear to you to be Devin Johnson
24 in that gas station?

25 A. It does.

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1 SOLICITOR SIMPSON: Your Honor,
2 at this time I would move to publish 67 and
3 68.

4 MR. BUTLER: No objection.

5 THE COURT: Without objection,
6 State's 67 and 68 are admitted and may be
7 published.

8 (SO ENTERED AS STATE'S EXHIBIT 67)

9 (SO ENTERED AS STATE'S EXHIBIT 68)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SIMPSON:

12 Q. Ms. Elmore, what is Devin Johnson
13 wearing on that visit to the gas station?

14 A. A white tee shirt and jeans.

15 Q. Are those dark jeans?

16 A. Yeah, they're dark.

17 Q. And that's what you remember him
18 wearing that evening?

19 A. Yeah.

20 Q. To the best of your recollection?

21 A. Yeah, I mean ---

22 Q. Similarly State's 68, who is that at
23 the counter at that time?

24 A. That's Devin.

25 MR. BUTLER: Your Honor, I believe

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1 I've covered this for publication. The State
2 would move 67 and 68 into evidence.

3 THE COURT: It's already in.

4 MR. BUTLER: Thank you.

5 THE COURT: In order to publish
6 it, it had to be in evidence.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR SIMPSON:

9 Q. Where did you go after the trip to
10 the gas station?

11 A. Home. Orangeburg.

12 Q. Home to Orangeburg. So we've got
13 North Charleston, Summerville, Summerville
14 all the way back to Orangeburg?

15 A. Yes.

16 Q. How long approximately is that trip
17 back to Orangeburg?

18 A. About an hour.

19 Q. Tenika, you said Devin was his same
20 old jokey self?

21 A. Uh-huh.

22 Q. At any point did he reveal to you on
23 that long drive back to Orangeburg anything
24 really startling or surprising that he had
25 witnessed that evening?

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1 A. No.

2 Q. At any point in time on that long
3 drive did he say, 'Tenika, you won't believe
4 what I saw tonight'?

5 A. No.

6 Q. At any point on that long drive back
7 to Orangeburg did he say to you, 'I saw -- I
8 witnessed Ace, Akeem, get shot tonight'?

9 A. No.

10 Q. Did he seem personally -- and,
11 again, you've already testified same old
12 jokey self, did he seem upset, distracted in
13 any way within himself?

14 A. No.

15 Q. So, again, from the time you went to
16 work at 11:00 or 12:00 that day, until the
17 time that he picked you up alone in your car
18 at 11:15, to the best of your knowledge,
19 Devin Johnson had possession of your
20 automobile?

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

22 Q. Tenika, when did you find out that
23 Ace had been killed that night?

24 A. The next day.

25 Q. The next day?

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1 A. The next day.

2 Q. Who did you find out from?

3 A. I found out from him, from Devin.

4 Q. From Devin?

5 A. Uh-huh.

6 Q. And how did Devin -- were you
7 present when Devin learned of the killing of
8 Akeem?

9 A. Yes. He received a phone call?

10 Q. From whom?

11 A. It was either his niece or his
12 sister on the phone. Someone was on the
13 phone, one of his family members.

14 Q. And what was Devin's reaction to
15 hearing this?

16 A. He was surprised.

17 Q. Do you remember anything specific-
18 ally he said?

19 A. Not really. I mean, I -- he was
20 just surprised. He was like 'Oh, no.' I
21 don't really remember everything.

22 Q. Did he act as if this was the first
23 time he was learning this information?

24 A. Yes.

25 Q. And we've recounted this, but once

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1 you got back to Orangeburg on the night of
2 the 8th was there any discussion about Ace's
3 death?

4 A. Uh-huh.

5 Q. --- was there a discussion of Ace
6 being killed?

7 A. No.

8 Q. Do you remember your original
9 statement to police stating that you may have
10 learned this late that night or early the
11 next morning?

12 A. Possibly, yeah.

13 Q. But until that phone call -- well,
14 let me ask the question. Before that phone
15 call, had Devin ever said 'I saw Ace get shot
16 last night'?

17 A. No, sir.

18 Q. Did he ever say, maybe a little more
19 generally, 'you won't believe this, I
20 witnessed a murder last night'?

21 A. No, sir.

22 Q. Same old jokey self?

23 A. Same old jokey self.

24 Q. Tenika, you stated earlier you
25 remember meeting with us in preparation for

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1 the trial?

2 A. Yes.

3 Q. And so you remember kind of randomly
4 me asking the question "do you know what the
5 phrase to wet somebody up means"?

6 A. No.

7 Q. Do you remember me asking that?

8 A. You asked me what it was to -- what
9 it meant to lick. That's what you asked me.

10 Q. And do you remember using lick as an
11 example and followed up with, do you know
12 what it means the phrase, "to wet somebody
13 up"?

14 A. I don't remember that. I remember
15 you asking me about licking.

16 Q. You don't remember responding to me
17 in that interview it means to kill somebody?

18 A. No. I remember you asking me about
19 licking. And I remember all that. And I
20 remember you asked me about licking because
21 we talked about it being something to do with
22 gambling. I don't remember about wetting.

23 Q. Okay. Have you ever heard the
24 phrase "wet up"?

25 A. I have.

1 Q. Okay. You've heard that. If you
2 heard me say it in a conversation with you
3 today, "I'm going to wet somebody up", what
4 do I mean in your understanding of that
5 phrase?

6 A. To either shoot someone -- mostly to
7 shoot someone or to intoxicate them,
8 something like that. Get drunk or whatever.

9 Q. Okay. But you're familiar with the
10 use of that to shoot or kill someone?

11 A. Yes.

12 Q. You've encountered that phrase
13 before in your life? You've heard it in that
14 context?

15 A. Through songs, (affirmative nod),
16 but not like a personal conversation.

17 Q. Oh, you said through songs. You've
18 heard that phrase in songs?

19 A. Yeah. You can hear it in songs, in
20 different rap songs, and things of that sort
21 but I haven't had a conversation, like in my
22 personal life about wetting.

23 Q. Okay. And you know in the rap songs
24 when they say "I'm going to wet somebody up"
25 -- what are they meaning in these rap songs?

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1 A. Meaning shooting.

2 SOLICITOR SIMPSON: Courts

3 indulgence?

4 THE COURT: Certainly.

5 SOLICITOR SIMPSON: Ms. Elmore,

6 thank you for your time. Please answer

7 questions from Mr. Butler.

8 THE COURT: You may cross-examine

9 the witness.

10 CROSS-EXAMINATION

11 BY MR. BUTLER:

12 Q. Good morning, Ms. Elmore. How are
13 you?

14 A. Good morning.

15 Q. I've just got a few questions for
16 you. Is it safe to say that Devin and Ace
17 were friendly?

18 A. I mean, I don't really know their
19 relationship. I just know that that was his
20 sister's boyfriend and he was -- he was
21 friendly to everybody.

22 Q. I'm sorry?

23 A. Devin was friendly with everybody,
24 SO -- (pause).

25 Q. Okay. There was no animosity

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1 between them that you're aware of?

2 A. Not to my knowledge.

3 Q. No bad blood?

4 A. Not to my knowledge.

5 Q. No beef between them?

6 A. No, sir. Not to my knowledge.

7 Q. You told police that Devin said Ace
8 was a cool dude?

9 A. I may have said that. It's been two
10 and a half years since I -- I'm sorry.

11 Q. I understand that very well. Does
12 that seem like something Devin would have
13 said about Ace, he was a cool dude?

14 A. Yes.

15 Q. Okay. So you knew about this money
16 that he owed him. It wasn't like there was a
17 tension or friction or animosity or bad blood
18 over it, right?

19 A. Not to my knowledge, sir.

20 Q. Okay. And you'd see Devin every
21 day.

22 A. Did I see him every day?

23 Q. Right?

24 A. Yes.

25 Q. Okay. And he knew he was going to

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1 have to pick you up that night from work,
2 right?

3 A. Yes.

4 Q. And you said he was about fifteen
5 minutes late?

6 A. About fifteen minutes.

7 Q. It was not uncommon for him to be
8 late when he picked you up?

9 A. No.

10 Q. And he didn't have his daughter?

11 A. He didn't.

12 Q. His daughter would have been like
13 six?

14 A. About six.

15 Q. And it was 11:15?

16 A. Uh-huh.

17 Q. And she was with his mama, right?

18 A. Yes.

19 Q. When he normally picked you up,
20 that's where his little girl would be, with
21 his mama?

22 A. Yes.

23 Q. Nothing strange about him picking
24 you up without his daughter?

25 A. No.

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1 Q. And you said that at the times when
2 y'all were broken up, he would stay at his
3 sister's house?

4 A. Yes, sir.

5 Q. And when he picked you up later on
6 that night, he was his normal self; right?

7 A. Yes.

8 Q. In addition to the things that Mr.
9 Simpson asked you about, he didn't say,
10 'you're not going to believe things got
11 really bad. I did something stupid.' Did
12 he?

13 A. No, he didn't.

14 Q. He didn't say, 'You're not going to
15 believe what happened. Things got crazy and
16 I shot somebody', did he?

17 A. No.

18 Q. He wasn't sweating?

19 A. No.

20 Q. Nervous?

21 A. No.

22 Q. Saying 'I've got to get out of
23 town'?

24 A. No.

25 Q. He smokes, doesn't he?

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1 A. He does.

2 Q. He wasn't smoking inordinately or a
3 whole lot, like chain smoking and freaking
4 out, was he?

5 A. No.

6 Q. You didn't notice anything out of
7 the ordinary about him, did you?

8 A. I didn't.

9 Q. And we saw on that picture, at that
10 time, Devin had a full head of hair; correct?

11 A. Yes.

12 Q. And dread locks?

13 A. Yes.

14 Q. Like you can see in that picture,
15 they kind of stick out don't they?

16 A. Yes.

17 Q. And when he learned about Ace being
18 dead, you said he was surprised?

19 A. He was.

20 Q. And genuinely surprised; right?

21 A. Yes.

22 Q. And you say that "get wet" can also
23 mean to get drunk, intoxicated?

24 A. It could.

25 Q. All right. And you've never heard

1 Devin say "get wet" meaning to stab or
2 shoot somebody, have you?

3 A. I haven't.

4 Q. All right. When he uses that, he
5 means to get intoxicated?

6 A. Normally, yeah.

7 Q. Normally that's what he means when
8 he says that?

9 A. Normally, yeah. He doesn't use it a
10 lot.

11 Q. He doesn't use it a lot?

12 A. (Negative gesture).

13 MR. BUTLER: I beg the Court's
14 indulgence. I beg the Court's indulgence.
15 That's all I have. Thank you, sir.

16 THE COURT: Redirect?

17 SOLICITOR SIMPSON: Thank you,
18 Your Honor.

19 REDIRECT EXAMINATION

20 BY SOLICITOR SIMPSON:

21 Q. Tenika, have you ever in your
22 relationship with Devin Johnson known him to
23 wear a hat or anything like that?

24 A. Yes.

25 Q. Now, some people tie a rag around

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1 their head, you know, like a do-rag?

2 A. A do-rag?

3 Q. Yes?

4 A. No, he usually wears a baseball cap.

5 Q. Have you ever seen him with a do-rag
6 on his head?

7 A. I have not.

8 Q. I want to refer again to our meet-
9 ing. You said you do not recall me asking
10 the phrase "what does wet up mean", or your
11 answer?

12 A. (Negative gesture).

13 Q. You have no recollection of that?

14 A. (No verbal response).

15 Q. I believe that you answered that
16 question for us in that meeting?

17 A. No, I didn't say -- I believe that I
18 don't remember you asking me about wet. I do
19 remember you asking me about lick.

20 Q. Okay. A ---

21 SOLICITOR SIMPSON: No further
22 questions, Judge.

23 THE COURT: Recross?

24 MR. BUTLER: No, sir.

25 THE COURT: You may come down.

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1 THE COURT: Thank you. Thank you,
2 ladies and gentlemen. We're ready to
3 continue. Give your attention to the next
4 witness.

5 Solicitor, you may call your next
6 witness.

7 SOLICITOR SIMPSON: Thank you,
8 Your Honor. The State calls Jeff Osborne.

9 (WITNESS TAKES STAND)

10 JEFF OSBURN, having been duly sworn to
11 tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR SIMPSON:

15 Q. Good afternoon, Jeff.

16 A. How you doing?

17 Q. Where do you work?

18 A. The Solicitor's Office.

19 Q. In what capacity?

20 A. I'm the chief investigator.

21 Q. So you and I work together?

22 A. Yes, sir, we do.

23 Q. In the course of that job, do you
24 often find yourself sitting in on my inter-
25 views?

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1 A. I do.

2 Q. Between our office and witnesses?

3 A. That's correct.

4 Q. In that capacity were you present on
5 February 14th of this year in a meeting
6 between our office and the witness Tenika
7 Elmore?

8 A. I was.

9 Q. Were you present when she was
10 presented with the question what does the
11 phrase to "wet up" or "to wet someone up"
12 means?

13 A. I was.

14 Q. Was any context or hints provided to
15 her prior to that question being asked to
16 suggest the answer we were looking for?

17 A. Absolutely none.

18 Q. Was it presented again, just on its
19 own?

20 A. It was presented it on its own.

21 Q. Okay. And what was her answer to
22 that question?

23 A. She replied it means to shoot
24 someone or to kill someone. That's what it
25 means to me.

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1 Q. Okay. Was there any hesitancy when
2 she gave that answer?

3 A. No hesitance at all.

4 Q. Was there a rather quick response to
5 my question?

6 A. It was quick.

7 Q. Any mention from Tenika at that
8 time, with an alternative definition meaning
9 to drink or get drunk?

10 A. No.

11 Q. So when presented with that
12 question, she gave one answer.

13 A. One answer.

14 Q. And what was that answer?

15 A. To shoot someone or to kill someone.
16 That's what it means to me.

17 Q. Thank you, Jeff. Answer any
18 questions Mr. Butler may have.

19 MR. BUTLER: I don't have any
20 questions.

21 THE COURT: Thank you. You may
22 step down.

23 WITNESS: Thank you.

24 (WITNESS STEPS DOWN)

25 THE COURT: Call your next

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1 witness.

2 SOLICITOR SIMPSON: Thank you,
3 Your Honor. The State calls Robert Holmes.

4 (WITNESS TAKES STAND)

5 ROBERT HOLMES, having been duly sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR SIMPSON:

10 Q. Good morning, Robert?

11 A. Good morning.

12 Q. I'm going to start by asking you a
13 couple of very sad questions. Did you know
14 Akeem Smalls?

15 A. Yes, sir.

16 Q. Did you know him well?

17 A. Yes, sir.

18 Q. What was the nature of y'all's
19 relationship?

20 A. He was like my brother.

21 Q. And was he your biological brother?

22 A. No.

23 Q. You guys were friends?

24 A. Yes, sir.

25 Q. For about how long were you friends?

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1 A. Like, you know, ten, twelve years.

2 Q. And you're saying that was a
3 relationship to you, like a brother?

4 A. Yes, sir.

5 Q. Have you also ever met the gentleman
6 seated at the end of the table?

7 A. Yes, sir.

8 Q. And who is that?

9 A. Devin.

10 Q. And how did you come to meet Devin?

11 A. Purchasing marijuana.

12 Q. Purchasing marijuana?

13 A. Yes, sir.

14 Q. Did you met him through ---

15 A. Through Akeem.

16 Q. Through Akeem or Ace?

17 A. Yes, sir.

18 Q. Okay. Prior to -- in the days
19 leading up to Ace's death, did you receive
20 any communications from Devin Johnson?

21 A. Yes. After he stole his stash.

22 Q. Okay. Did -- why did Devin get in
23 touch with you?

24 A. Looking for Akeem.

25 Q. Did he call you?

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1 A. Yes, sir.

2 Q. And did he state -- what did he
3 state to you?

4 A. Asked me if I saw Akeem.

5 Q. Okay. And how much time before you
6 learned of Akeem's death did that phone call
7 take place?

8 A. Like two days.

9 Q. Okay. Robert, you were close
10 friends with Akeem?

11 A. Yes, sir.

12 Q. Y'all spent a lot of time together?

13 A. Yes, sir.

14 Q. He knew Devin?

15 A. Yes, sir.

16 Q. Did you ever spend any time with
17 Devin?

18 A. Only when we like over there
19 purchasing marijuana and we all, like, smoke
20 a Blunt or something.

21 Q. Okay. Robert, uh, in all this time
22 with Akeem, and some limited exposure to
23 Devin, are you familiar with the phrase to
24 "wet up" or "wet somebody up"? Have you ever
25 heard that before?

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1 A. Yes, sir. That means kill them.

2 Q. Okay. If you heard me say, you
3 know, 'tonight I'm going to go wet this dude
4 up', what would that mean to you?

5 A. You going to go shoot them up.

6 Q. Okay. Have you ever encountered
7 that phrase in music?

8 A. Yes.

9 Q. Okay. Have you ever heard that
10 phrase from or heard someone refer to it that
11 way in life, among peers, with you, Akeem,
12 Devin?

13 A. I heard it. But I ain't heard it
14 among them.

15 Q. Mr. Homes, please answer any
16 questions Mr. Butler has of you.

17 THE COURT: Thank you. You may
18 cross-examine.

19 CROSS-EXAMINATION

20 BY MR. BUTLER:

21 Q. Mr. Holmes, I understand your
22 testimony two days before you learned that
23 Akeem was killed, Devin called you looking
24 for Akeem?

25 A. Yes, sir.

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1 Q. What was your phone number then?

2 A. I can't remember the phone number.

3 Q. Was it a cell phone?

4 A. Yes, sir.

5 Q. Your phone number. You don't
6 remember you own phone number?

7 A. No, I've done had too many phones
8 after that.

9 Q. Okay. Got it. You met with the
10 Solicitor about this case today and before
11 today; right?

12 A. Yes, sir.

13 Q. Mr. Simpson and people from his
14 office?

15 A. Yes.

16 Q. You never told them about the phone
17 call, did you?

18 A. No.

19 Q. And if I understood what you said,
20 you never heard the expression "wet up" being
21 used by Devin or Akeem or that group?

22 A. No.

23 MR. BUTLER: I beg the Court's
24 indulgence.

25 THE COURT: Yes, sir.

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1 MR. BUTLER: That's all I have.

2 Thank you.

3 THE COURT: Redirect?

4 SOLICITOR SIMPSON: No redirect.

5 THE COURT: You may come down.

6 (WITNESS STEPS DOWN)

7 THE COURT: Call your next
8 witness.

9 SOLICITOR SIMPSON The State calls
10 Officer Matt Jahngen.

11 (WITNESS TAKES STAND)

12 MATT JAHNGEN, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR SIMPSON:

17 Q. Good morning, Officer Jahngen?

18 A. Good morning.

19 Q. How are you?

20 A. Good. How are you?

21 Q. Good. Thanks. Where are you
22 currently employed?

23 A. With the City of Charleston Police
24 Department.

25 Q. What's your rank there?

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1 A. Police officer..

2 Q. And how long have you been employed
3 by CPD?

4 A. Almost four years. Since June 1st,
5 2010.

6 Q. Okay. What are some of your duties
7 there as a patrol officer?

8 A. Just that, patrol officer.
9 Responsible for handling any and all calls
10 for service that come into the department,
11 particularly for West Ashley, to include
12 traffic collisions and traffic enforcement as
13 well.

14 Q. Have you responded to scenes of
15 shootings?

16 A. Yes.

17 Q. Were you working the night of June
18 8th, 2011?

19 A. I was.

20 Q. Did you respond to the scene of a
21 shooting that night?

22 A. I did.

23 Q. Do you recall where that was?

24 A. Yes.

25 Q. I'm going to refer you to State's

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1 Exhibit 1, which we've submitted into
2 evidence. Do you recognize this exhibit
3 depicts?

4 A. Yes, I do.

5 Q. What do you recognize that to be?

6 A. It's Georgetown Apartments.

7 Q. Is that the scene you responded to
8 on the night of June 8th, 2011?

9 A. Yes.

10 Q. What happened when you arrived on
11 the scene that night?

12 A. Well, when I arrived to the scene,
13 there was a report of, originally a report of
14 gunshots being heard in the area. I
15 responded. And as I responded and I arrived
16 on the scene, I was informed by dispatchers
17 that they had a gentleman on his cellphone
18 saying he'd been shot, did not know where he
19 was.

20 There were a number of officers
21 already on scene so I took it upon myself to
22 begin to walk down the street that goes along
23 the apartments, Balmoral (phonetic) Street.

24 I found a white female who was
25 standing outside on her front porch and went

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1 and spoke with her. She said she had heard
2 what sounded like gunshots and looked out her
3 window. When she did so, she saw an
4 individual running through the courtyard of
5 what turned out to be Building D of the
6 apartment complex.

7 Q. Whereabouts on this map do you know
8 that? If that's Building C, do you know
9 Building D would be?

10 A. It would be -- it's in that next one
11 down.

12 Q. Okay.

13 A. The whole thing, right about here --
14 (indicating).

15 Q. Someone said they saw somebody
16 running through that?

17 A. Running through the courtyard.

18 Q. What did you do next?

19 A. I left that location, which was one
20 of these two houses here and went over to the
21 far side, the parking lot between Buildings D
22 and E, which is the -- E is the next one over
23 here. Came over to approximately this area
24 right here and began to look on the ground.
25 I had heard on the radio another officer had

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1 said they'd seen some blood on the ground.
2 So I started looking on the ground. I did
3 find some blood on the ground. Again, looked
4 around trying to see if there was a direction
5 in which it was leading, which lead me to
6 look from this area here, down in the parking
7 lot a little further.

8 Q. So y'all followed the blood trail in
9 that direction?

10 A. Yes.

11 Q. Where did that blood trail lead you
12 next?

13 A. Lead me pretty much right in that
14 same area right there. I was alerted by
15 another officer who was coming through the
16 courtyard, doing the same as I was doing. So
17 I waited for him. And then we attempted to
18 pick up the trail, which was not very clear.
19 It was not very easily seen. And so we met
20 up right here in the middle of the parking
21 lot.

22 As we were looking around, we were
23 approached by a male party who was actually
24 running towards us from -- in our direction.
25 The male party said he heard what sounded

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1 like someone pleading for help over a fence.
2 So since we'd still not found the individual
3 who was on the phone, I asked the gentleman
4 to lead us to where he's hearing these
5 voices. And he took off running along with
6 us, across the parking lot, through the
7 courtyard where we came to the parking lot
8 between E and F.

9 Q. Okay. And were you able to locate
10 the gentleman that was asking for help?

11 A. I was. Once we made it through
12 Building E, I was able to hear the voices
13 that the gentleman was referring to. I was
14 able to make it over the fence, through the
15 bushes and find the individual.

16 Q. Do you recall from that map where he
17 was located?

18 A. You'd have to move it over a little
19 bit more for me.

20 Q. Okay, (repositioning displayed
21 exhibit).

22 A. I jumped over the fence right back
23 here, went through these bushes and he was
24 right behind this home, right on this side.
25 In this area where the line stops.

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1 Q. What did the victim look like when
2 you made contact with him?

3 A. He was laying on his back. He was a
4 black male laying on his back. He was
5 wearing only boxer shorts and socks. And he
6 had, you know, what appeared to be a
7 significant amount of blood on his upper
8 body, his face and his arms. And I was able
9 to see what there was -- what appeared to be
10 a hole in his chest.

11 Q. Was he conscious?

12 A. He was conscious.

13 Q. Was he responsive?

14 A. He was not responsive to any
15 questions or anything that I may have said to
16 him. He did indicate, however, that he was
17 shot in the back.

18 Q. Shot in the back?

19 A. Yes.

20 Q. And what happened next?

21 A. At that point, myself along with the
22 other officer who had joined me, we just
23 attempted to keep him calm. We could see
24 that he was in not too good a shape.

25 Q. EMS arrived at some point?

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1 A. EMS did arrive.

2 Q. Transported him?

3 A. EMS did arrive. We had to flag them
4 down from the front of the house. They
5 arrived, took him and transported him. And
6 from that point, I remained on the scene
7 until the crime scene technicians had an
8 opportunity process it.

9 SOLICITOR SIMPSON: I beg the
10 Court's indulgence.

11 THE COURT: Yes, sir.

12 SOLICITOR SIMPSON: I don't have
13 any further questions. Please answer any
14 questions Mr. Beattie may have for you.
15 Excuse me. Mr. Butler.

16 MR. BUTLER: I answer to both.
17 That's fine. I don't have any questions for
18 you. Thank you.

19 THE COURT: Thank you. You may
20 step down.

21 (WITNESS STEPS DOWN)

22 THE COURT: Call your next
23 witness.

24 SOLICITOR SIMPSON: Your Honor,
25 may we approach?

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1 THE COURT: Sure.

2 (OFF RECORD BENCH CONFERENCE)

3 SOLICITOR SIMPSON: Your Honor,
4 at this time the State calls Renee Charles.

5 (WITNESS TAKES STAND)

6 RENEE CHARLES, having been duly sworn to
7 tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR SIMPSON:

11 Q. Mr. Charles, good afternoon. Where
12 do you work?

13 A. I work for the City of Charleston
14 Police Department.

15 Q. And in what capacity do you work?

16 A. I work as a crime scene investiga-
17 tor.

18 Q. Okay. And how long have you been in
19 that role?

20 A. I've been working in the crime scene
21 department for sixteen years.

22 Q. And what are some of the jobs, the
23 tasks you're assigned to do when responding
24 to a crime?

25 A. My job as a crime scene investigator

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1 is to document the crime scene, process for
2 fingerprints, take photographs and also
3 collecting evidence as needed.

4 Q. So what typically is the first thing
5 you do when you get to a scene?

6 A. The first thing I do, I meet with
7 the first responding officer and the officer
8 would brief me of the incident. And from
9 there, I would conduct a walk-through of the
10 scene and do my processing.

11 Q. And you said your processing
12 includes taking photographs?

13 A. Yes, sir.

14 Q. Do you recall responding to a crime
15 scene on June 8th, 2011?

16 A. Yes, sir, I did.

17 Q. Okay. And tell the jury a little
18 bit about your response to that scene, where
19 it was, what you did?

20 A. Yes, sir, on June 8th, 2011, I was
21 called to a shooting scene located at [REDACTED]
22 [REDACTED] -- that's the Georgetown
23 Apartments -- in reference to a shooting.

24 Q. And how did you proceed to go about
25 your work?

1 A. Upon arrival, I spoke with the first
2 responding officer and he briefed me about
3 the shooting. And that's when he explained
4 to me what was going on.

5 Q. When you say explained to you what's
6 going on, does that include sometimes
7 officers pointing out what they have already
8 -- think might be relevant evidence?

9 A. Yes, sir. Officer Weisner informed
10 me that several gunshots were fired in the
11 Georgetown Apartments. And he'd located
12 fired shell casings and blood drops in the
13 hallway of Building C.

14 Q. Okay. When you say Building C. Is
15 this an apartment complex with multiple
16 buildings?

17 A. Yes, sir. That's correct. It's
18 multiple apartments.

19 Q. And the first place that you're
20 directed to, to preserve the scene as it lies
21 is to Building C?

22 A. Yes, sir, preserve the area, secure
23 the area surrounding the Building C and all
24 the area that is part of the crime scene.

25 SOLICITOR SIMPSON: Your Honor,

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1 may I approach the witness?

2 THE COURT: Yes, you may.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SIMPSON:

5 Q. You mentioned you take photographs
6 as well?

7 A. Yes, sir, I took pictures.

8 Q. Did you take photographs of that
9 area of Building C?

10 A. Yes, sir, I did.

11 Q. Officer Charles, let's start at
12 State's 1, previously entered into evidence.

13 A. Yes, sir.

14 Q. And I believe you'll see it on the
15 screen in front of you. Officer Charles, do
16 you recognize State's Exhibit 1?

17 A. Yes, sir, I do.

18 Q. And what does that depict?

19 A. That's the complex apartment. The
20 complex apartment of Georgetown, as to
21 Building C, Building D and also Building E.

22 Q. Okay. You stated that upon your
23 arrival you were directed first to a general
24 area in Building C; is that correct?

25 A. Yes, sir.

1 Q. Which building is Building C?

2 A. Building C, that's the building --
3 (indicating).

4 Q. That's a touch screen.

5 A. Yeah. That's Building C. That was
6 the first area I arrived at, is Building C,
7 Building C.

8 Q. And what area of Building C were you
9 directed to?

10 A. I was directed to -- there's the
11 parking lot of Building C and the entrance of
12 Building C. In the hallway, that's where the
13 evidence was located at.

14 Q. I afraid you may be a little
15 disoriented.

16 A. Yeah. I can't really see.

17 Q. Now, you've identified this as
18 Building C?

19 A. Yes, sir. Yes, sir. That's
20 Building D.

21 Q. This is Building D?

22 A. This is Building D.

23 Q. And this is Building E?

24 A. Yes, sir. That's correct.

25 Q. And what area of Building C did you

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1 find evidence relative to the shooting?

2 A. Yes, sir. The fired shell casing
3 what appeared in the hallway in front of
4 parking [REDACTED] and C-54. I don't know if you
5 can see it, but the hallway is between the
6 buildings.

7 Q. Officer Charles, let me direct you
8 to now, previously marked and entered into
9 evidence, State's Exhibit 2. What does this
10 depict?

11 A. That's the, as the vehicle that was
12 parked in the parking lot near the shooting
13 scene. And that's the one black Nike sandal
14 was located underneath the driver's door
15 side.

16 Q. I'm looking at State's Exhibit 3.
17 What are we looking at here?

18 A. That's the entrance of the hallway
19 of Building C. And the hallway, that's where
20 we located the fired shell casings and also
21 the blood drops.

22 Q. Okay. State's 4?

23 A. Yes, sir.

24 Q. What are we looking at here?

25 A. Here you're looking at the evidence

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1 markers one through six.

2 Q. Okay. Placards?

3 A. Yeah, placards. Evidence markers,
4 placards, evidence one, two, three, four,
5 five and six.

6 Evidence one, that's the fired shell
7 casings.

8 Evidence marker number two, that's
9 another fired shell casings.

10 And then number four, that's the one Nike
11 sandal; five and six, that's fired shell
12 casings.

13 Q. State's Exhibit 5? We see the
14 placards and a little better view of the
15 placards you're referring to?

16 A. Yes, sir, that's placards number two
17 and also number three. They both are fired
18 shell casings.

19 Q. And see the corner of the door
20 there?

21 A. Yes, sir.

22 Q. What apartment is that at the Orange
23 Grove, Georgetown Apartments?

24 A. That's Apartment [REDACTED]

25 Q. State's Exhibit 7 previously

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1 entered?

2 A. Yes, sir.

3 Q. What does that depict?

4 A. That's the evidence marker number
5 four. That's the one sandal left at the
6 crime scene.

7 Q. Did that match the previous sandal
8 that you identified?

9 A. Yes, sir. Affirmative.

10 Q. Okay. Anything else of interest in
11 this photo, if we zoom in.

12 A. Yes, sir. And also, we also located
13 blood drops in a different location,
14 different areas, as blood drops at the crime
15 scene.

16 Q. State's Exhibit 8, there is a marker
17 there?

18 A. Yes, sir, that's evidence marker
19 number five, which also is fired shell
20 casings.

21 Q. State's nine?

22 A. That's evidence marker number six.
23 Number six, it's also a fired shell casings.

24 Q. Finally, Building C, State's 6? Is
25 the view of that evidence together?

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1 A. Yes, sir. That's the overall
2 pictures of all the evidence together.
3 That's number four, number five, and number
4 six.

5 Q. You can also see the blood drops you
6 referred to in your previous picture?

7 A. Yes, sir. You can see multiple
8 blood drops at different areas, all the way,
9 a blood trail.

10 SOLICITOR SIMPSON: May I
11 approach the witness, Your Honor?

12 THE COURT: You may.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR SIMPSON:

15 Q. Officer Charles, I'd like to show
16 you what's been marked for ID only. State's
17 49, 50, -- I'm sorry -- 48, 49, 50, and 51.
18 Will you take a minute or as much time as you
19 need to identify those items?

20 A. Yes, sir. Those are the fired shell
21 casings that were recovered from the crime
22 scene.

23 Q. Okay. We just viewed some pictures
24 with markers two, three, five and six?

25 A. Yes, sir. That's items evidence

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1 markers two, three, four, five and six.

2 Q. Were these collected by you from the
3 scene after being document where they were?

4 A. Yes, sir. Affirmative.

5 SOLICITOR SIMPSON: Your Honor,
6 at this time the State would seek to admit
7 48, 49, 50, and 51 into evidence.

8 MR. BUTLER: No objection.

9 THE COURT: Without objection
10 they're admitted.

11 (SO ENTERED AS STATE'S EXHIBIT 48)

12 (SO ENTERED AS STATE'S EXHIBIT 49)

13 (SO ENTERED AS STATE'S EXHIBIT 50)

14 (SO ENTERED AS STATE'S EXHIBIT 51)

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR SIMPSON:

17 Q. Officer Charles, as part of your
18 training and experience as a crime scene
19 officer, have you rudimentary knowledge of
20 firearms and how they work?

21 A. Well, as far as the shell casings,
22 all four of the fired shell casings were a
23 nine millimeter fired shell casing, a Ruger.

24 Q. Okay. And what happens to -- what
25 is a shell casing? What happens when a gun

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1 is fired?

2 A. When a gun is fired, the projectile
3 will hit the target and the fired shell
4 casing will eject from the weapon.

5 Q. So in a gun that's the type of gun
6 that ejects shell casings, they will be shot
7 from the side of the firearm?

8 A. Yes, sir. Affirmative.

9 Q. Do they usually come to rest in some
10 close proximity of where the shooter is
11 standing?

12 A. Yes, sir, most likely. If it's a
13 shooting that occurred in a certain area, we
14 -- most likely if it's an automatic firearm,
15 we'll recover the fired shell casing in that
16 area.

17 Q. Officer Charles, give me just a
18 second here.

19 A. Yes, sir.

20 Q. I'm showing you what's been marked,
21 I believe, as State's 48. Did this fired
22 shell casing contain any information in
23 regard to what type of ammunition we are
24 looking at here?

25 A. Yes, sir. In fact, I believe you

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1 can see the make, the type of fired shell
2 casing, which in this case it's a nine
3 millimeter FC Luger, description of it.

4 Q. In taking a look in Building C,
5 particularly the blood droplets that you've
6 already identified, did anything of interest
7 become clear to you about these blood drops?

8 A. Yes, sir. The blood drops -- we
9 also recovered blood drops between the
10 buildings, and also the parking lot between
11 Building D all the way in the back of
12 Building E. So it was a bloody trail all the
13 way, traveled from two buildings, all the way
14 to the end of Building E. So that's an
15 indication that the shooting victim traveled
16 from the parking lot through the buildings,
17 all the way through.

18 Q. Tell the jury what -- this is
19 State's Exhibit 10, which has been marked and
20 admitted. Do you see anything in relation to
21 your testimony there in that exhibit?

22 A. Yes, sir. As you can see the blood
23 drops all the way in the hallway of Building
24 D, go all the way through and exit out to the
25 parking lot. And item number seven, that's

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1 where we recovered fragments of bullets
2 marked as ---

3 Q. Well, let's move on to -- let's move
4 quickly then to State's Exhibit 11,
5 previously marked and admitted.

6 A. Yes, sir.

7 Q. What is that placard seven denoting?

8 A. Placard seven, that's the bullets
9 fragment that we recovered in the hallway of
10 the building, Building D.

11 Q. Now, Officer Charles I'm handing you
12 what's been marked for ID only as State's
13 Exhibit 52. Will you take a second to look
14 at that?

15 A. Yes, sir, that's the item that I
16 recovered from the crime scene.

17 Q. And that's marked on seven, in the
18 picture above?

19 A. Yes.

20 SOLICITOR SIMPSON: Your Honor,
21 at this time I would seek to admit State's 52
22 into evidence.

23 THE COURT: Any objection?

24 MR. BUTLER: No, sir.

25 THE COURT: Without objection,

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1 State's Exhibit 52 is admitted.

2 (SO ENTERED AS STATE'S EXHIBIT 52)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SIMPSON:

5 Q. Officer Charles, you told us a
6 little bit about the shell casings being
7 ejected from a firearm ---

8 A. Yes, sir.

9 Q. --- which had been part of the
10 bullet ---

11 A. That travels, (affirmative nod).

12 Q. --- shoots off?

13 A. Yes, sir.

14 Q. What is this in seven, marked seven?

15 A. Evidence marker seven, it's the
16 fragment. It's the bullets fragment we
17 recovered in the hallway of Building D, that
18 had dropped from the victims clothing or just
19 traveled from different locations.

20 Q. Okay. And this is in Building D in
21 the hallway, across from ---

22 A. Yes, sir. That's all the way across
23 from the -- also close to the end of Building
24 D.

25 Q. Okay. Quickly now, moving to

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1 State's Exhibit, marked and admitted. What
2 is that?

3 A. We located a blood drop. I located
4 blood drops. That's also in Building D.

5 Q. Okay.

6 A. Going out ---

7 Q. You put an arrow there. What does
8 that mean?

9 A. The arrow that's to me to indicate
10 the directions of the blood drops, going out
11 towards the exit of Building D.

12 Q. Okay. So we're still in Building D
13 here?

14 A. Yes, sir.

15 Q. We'll go quickly to State's Exhibit
16 13, marked and admitted.

17 A. That's still blood drops. That is
18 the hallway of Building D, go all the way,
19 exit out Building D.

20 Q. State's Exhibit 14?

21 A. Still -- and you can see the blood
22 droppings here, all the way out to the end of
23 D. And they go out to Building D to the
24 parking lot.

25 Q. And finally State's Exhibit 16?

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1 A. That's still blood drops. Blood
2 trail all the way out through the parking
3 lot, all the way out, going into Building E.

4 Q. So we have -- is it fair to say we
5 have a pretty clear trail you're following
6 here?

7 A. Yes, sir. The trail start from
8 Building C, all the way through the parking
9 lot, through building D, between building D
10 and Building E, all the way to Building E.

11 Q. It's not for the jury -- so we will
12 speed it up.

13 A. Yes.

14 Q. Moving to State's 17, what building
15 are we in now?

16 A. Now we're at, we've entered Building
17 E. There's a hallway in Building E.

18 Q. Is that Building E?

19 A. Continuing into Building E. The
20 blood drops continuing all the way to
21 Building E.

22 Q. And is it correct what I'm seeing
23 here, the frequency of the blood drops seem
24 to be increasing at this point?

25 A. Yes, sir. Affirmative.

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1 Q. State's Exhibit 19?

2 A. Still the same pattern, same blood
3 trail, continue going all the way to Building
4 E, all the way.

5 Q. State's Exhibit 20?

6 A. Yes, sir, same pattern. Same blood
7 trail all the way down, turn. That's
8 building D -- no, I'm sorry -- Building E, go
9 around Building E and all the way down.

10 Q. And it seemed to take a pretty stark
11 turn around that corner?

12 A. It's clear, around the corner to
13 Building E, all the way down.

14 Q. Now, anything you remember about
15 where this direction leads there?

16 A. At the end of Building E, that's
17 when I took -- I took pictures of a blood
18 drop on the grass behind Building E. I
19 notice on top of AC unit a blood drop was
20 recovered, was found. Was found there, so I
21 took a photograph of it.

22 Q. Does this path lead to an alleyway
23 of sorts?

24 A. Yes, sir.

25 Q. Does that lead to ---

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1 A. Yeah. That's lead to the, the rear
2 of Building E. And that's when I noticed the
3 blood drop continue all the way to the left.

4 Q. That's State's Exhibit 21. State's
5 Exhibit 22, is this that left turn you were
6 referring to?

7 A. Yes, sir. That's the left turn I
8 referring to.

9 Q. And State's 23, what are we doing
10 here?

11 A. Here is -- I noticed the blood drop
12 on top of the AC unit. Right there, in that
13 corner.

14 Q. And is this -- at least as it
15 applies to Georgetown Apartments?

16 A. Yes. That's still part of the
17 Georgetown Apartments.

18 Q. And is this where the trail ends?

19 A. Yes. The blood trail ends right on
20 top of the AC unit.

21 Q. And this AC unit abuts a fence?

22 A. Yes, sir.

23 Q. And what, at the time, was on the
24 other side of that fence?

25 A. And on the other side of the fence,

1 that's where CPD officers searched the area
2 and located the victim in the rear of the
3 residence there on Orange Branch.

4 Q. Now, Officer Charles, I'm showing
5 you what's been marked and entered as State's
6 Exhibit 24. Do you recognize this exhibit?

7 A. Yes, sir, that's an overview
8 pictures of the Georgetown Apartments and,
9 also, that's showing the blood trail from
10 Building C all the way through Building D,
11 Building E, and that's the rear of Building
12 D, and over the fence, that's where the
13 victim was, behind the residence at [REDACTED]

14 [REDACTED].

15 Q. So that exhibit indicates where this
16 blood path started?

17 A. Yes, sir, the blood path leads all
18 the way to the rear of the residence [REDACTED]

19 [REDACTED].

20 Q. And at the beginning of this blood
21 path, we also found the shell casings, the
22 same area?

23 A. I don't recall locating fired shell
24 casings in that location.

25 Q. But this shows this path beginning

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1 right here?

2 A. Yes, sir. Affirmative.

3 Q. Do you remember in earlier testimony
4 saying that perhaps, you believe it began
5 right here?

6 A. In Building C?

7 Q. Yes, sir?

8 A. Yes, sir. The shooting began in the
9 area of Building C. That's where the fired
10 shell casing were located.

11 Q. Okay. Would you have perhaps been
12 confused earlier when you said ---

13 A. Yes, sir. Because on my pictures I
14 always try to ---

15 Q. Okay. I understand. Aerial view.
16 After documenting and collecting that
17 evidence that we've previously referred to,
18 did your involvement in this case continue to
19 June 10th, 2011?

20 A. Yes, sir. On June 10th, 2011, I
21 received a search warrant from Detective
22 Goldstein to process the vehicle.

23 Q. And you're referring to your report?

24 A. Yeah. I received a search warrant
25 to process a 2008 blue-in-color Toyota Camry.

1 Q. Okay. What do you do when you're
2 processing a search warrant on a vehicle?
3 What kind of things are you looking for?

4 A. I'm looking for firearms or fired
5 shell casings and process for any type of
6 evidence connected to the shooting.

7 Q. Would that include fingerprints?

8 A. Yes, sir. I did fingerprints on the
9 vehicle also.

10 Q. And when processing a search
11 warrant, do you also take photographs?

12 A. Yes, sir. I took pictures.

13 Q. Showing you what's been marked and
14 entered as State's Exhibit 30? Does that
15 depict the blue Camry that you performed,
16 that you processed in this case?

17 A. Yes, sir. That's the 2008 Toyota
18 Camry that I did the search warrant on.

19 Q. Okay. Anything interesting about
20 the rear passenger side tire of that blue
21 Camry?

22 A. Yes, sir. The rear passenger side
23 tire, basically the rim cap cover was
24 missing.

25 Q. Okay. We see in that picture --

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1 what do we see on the door there? It looks
2 like tape to me. What is that?

3 A. Yeah. That's the fingerprint
4 latents tapes that, you know, when we process
5 the vehicle for fingerprints, we use, what we
6 call, the fingerprint brush and, also, black
7 powder. So every time we locate or we find
8 fingerprints, we just apply the fingerprints
9 tape lift so that will give us the -- that's
10 a way to mark the area and also be able to
11 lift the fingerprints from the vehicle.

12 Q. So when you pull that -- if I
13 understand, you pull that tape off?

14 A. Off.

15 Q. The fingerprint sticks on the tape?

16 A. Yes, sir, that's correct.

17 Q. And then what do you do with that
18 print once you remove it from the car?

19 A. Once I remove the latent tape, I
20 place it on what we call the fingerprints
21 cards. And then I go to the AFIS, what we
22 call the AFIS department, assuming that AFIS
23 will compare the fingerprints and make an
24 identification comparison.

25 Q. So you pull the prints but someone

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1 else does the analysis?

2 A. Yes. Yes, sir.

3 Q. We won't belabor this point, but you
4 took quite a few fingerprints from this car;
5 is that correct?

6 A. That's correct.

7 Q. Do you recall how many latent lifts
8 were taken from this blue Toyota Camry?

9 A. Yes, sir, I recovered a total of
10 thirty-five latents from this car.

11 Q. And very quickly, just to give us an
12 example, these are two of the lifts you took?

13 A. Yes, sir. That's lift number eight
14 and also lift number nine.

15 Q. So you mark these lifts as you take
16 them with a number system?

17 A. Yes, sir. The number system helps
18 me to identify the location where the latent
19 was recovered from.

20 Q. And when you submit these to the
21 department that you submit fingerprints to
22 FPIS for analysis, ---

23 A. For analysis, yes, sir.

24 Q. --- do you indicate that number?

25 A. Yes, sir, affirmative.

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1 Q. And you also indicate a generic
2 description of where on the car the lift was
3 made?

4 A. On the car, yes, sir.

5 Q. For example eight and nine here
6 would say ---

7 A. Eight and nine would be the exterior
8 from passenger's side. And nine would be the
9 exterior from passenger's side door.

10 Q. So let's sort of walk around the
11 vehicle here and we'll see ---

12 A. Here we'll see ---

13 Q. Lift number ---

14 A. Yes, sir. It's lifts number
15 eighteen, number nineteen, twenty, and
16 twenty-one.

17 Q. Is there another example, twenty-
18 seven?

19 A. Twenty-seven, yes, sir. Twenty-
20 seven, that's a latent fingerprints we took
21 from the exterior of the gas cap.

22 Q. In total from the 2008 Camry, you
23 took how many fingerprints lifts?

24 A. I took thirty-five fingerprints
25 lift.

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1 Q. And were all those submitted for
2 analysis?

3 A. Yes, sir.

4 SOLICITOR SIMPSON: The Court's
5 indulgence?

6 THE COURT: Yes, sir.

7 SOLICITOR SIMPSON: Officer
8 Charles, please answer any questions Mr.
9 Butler has.

10 MR. BUTLER: I beg the Court's
11 indulgence.

12 THE COURT: Certainly. Take your
13 time.

14 CROSS-EXAMINATION

15 BY MR. BUTLER:

16 Q. How are you, sir?

17 A. I'm good, sir. Thanks.

18 Q. I only have a couple of questions.
19 When you find the fingerprint, that doesn't
20 tell you how long it's been there?

21 A. No, sir.

22 Q. And fingerprints can last for long
23 periods of time?

24 A. That is correct, yes, sir.

25 Q. And not necessary on a car but on

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1 some surfaces can last years?

2 A. That is correct, yes, sir.

3 Q. That's all I have. Thank you.

4 A. Yes, sir.

5 THE COURT: Redirect?

6 SOLICITOR SIMPSON: None, Your
7 Honor.

8 THE COURT: Thank you. You may
9 come down.

10 (WITNESS STEPS DOWN)

11 THE COURT: Call your next
12 witness.

13 SOLICITOR SIMPSON: The State
14 calls Jeff Miller.

15 (WITNESS TAKES STAND)

16 JEFF MILLER, having been duly sworn
17 to tell the truth, and nothing but the truth,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR SIMPSON:

21 Q. Good afternoon, Officer, how are
22 you?

23 A. Good.

24 Q. Where do you work?

25 A. Charleston Police Department.

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1 Q. And in what capacity?

2 A. As a crime scene technician.

3 Q. Your duties as a crime scene
4 technician are what?

5 A. We respond to calls. We document
6 scenes and collect physical evidence.

7 Q. Okay. When you say document scenes,
8 how is that traditionally done?

9 A. It can be through photograph, video
10 or through sketching.

11 Q. Do you recall in this capacity
12 responding to a murder scene on June the 8th,
13 2011?

14 A. Yes.

15 Q. And where was that scene?

16 A. I went to [REDACTED]
17 Road.

18 Q. Where -- is that in Charleston
19 County?

20 A. Yes.

21 Q. And where is that, generally speak-
22 ing? North Charleston? Mt. Pleasant?

23 A. South Charleston City.

24 Q. Okay. What scene -- what was that
25 location like when you responded there?

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1 A. That was a house that was under
2 construction.

3 Q. Did you initially respond to the
4 apartment complex itself?

5 A. I don't recall if I actually went to
6 the apartments because the victim was located
7 at the address that I went to. So I went
8 straight there.

9 Q. I'm showing you what's been marked
10 and admitted as State's Exhibit 1. Can you
11 indicate -- I can zoom out, too -- can you
12 indicate the location you're referring to?

13 A. The one I went to or the apartments?

14 Q. Both.

15 A. Okay. Do I just touch this?

16 Q. Yes. Just touch it.

17 A. Okay. That's the house that I went
18 to where the victim was located. And the
19 apartments are just to the left.

20 Q. Could you be a little less shy with
21 your marking? You can erase that and just
22 circle, give us a big circle.

23 A. (Marking on display screen) --
24 that's the house.

25 Q. What was the state of that house

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1 when you responded there at the time?

2 A. Well, it was either a house under
3 construction or under renovation. So there
4 was nobody there. It was unoccupied at the
5 time.

6 Q. And did it appear to you there was
7 some substantial work being done on the
8 house?

9 A. Yes.

10 Q. Did you take photographs of that
11 scene?

12 A. Yes, I did.

13 Q. I'm going to ask you to identify
14 these photographs as we go through them.
15 This is State's Exhibit 34, previously marked
16 and admitted?

17 A. Yeah. This picture shows the front
18 of the house, as you approached from the
19 beginning of the driveway.

20 Q. State's Exhibit 35?

21 A. And this is down the driveway. This
22 is a photograph as you started to go around
23 the right side of the house.

24 Q. State's Exhibit 36?

25 A. These are the clothing items that

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1 were located heading back to the back yard.

2 Q. State's Exhibit 37?

3 A. That's the cellphone that was
4 recovered.

5 Q. State's Exhibit 38?

6 A. Those are the clothing items.

7 Q. State's Exhibit 39?

8 A. And those are the clothing items
9 that were a little bit farther off, into a
10 ditch. It was to the right of that other
11 path.

12 Q. State's Exhibit 40?

13 A. And this is a picture of the back
14 yard.

15 Q. Any particular area of evidentiary
16 interest that you had in taking that
17 photograph?

18 A. The photograph here shows there's a
19 table about right in the center here. There
20 was blood on top of this table. And when the
21 officers found the victim, he was actually on
22 the ground, next to this table.

23 Q. We saw some items of clothing there.
24 Anything done with those after you took
25 pictures of them?

1 A. The items were collected and then
2 they were taken to our office to be dried.
3 And then I took additional photos of the
4 shirts that were found -- in the picture,
5 they were located off farther in the ditch.

6 Q. You said dried. Why would that
7 process be?

8 A. Well, anytime -- if they're bloody
9 or wet from anything, we have drying closets
10 that we place them in. And they have to be
11 dried before we can package them for storage.

12 Q. And the clothing items that you just
13 pointed out in the pictures, did they have
14 blood on them?

15 A. Yes.

16 Q. And you were tying them to the
17 victim?

18 A. Well, we assumed they were the
19 victim's clothes, yes.

20 Q. So State's Exhibit 40, can you point
21 out the items of evidentiary significance in
22 that exhibit?

23 A. Well, in the photograph earlier,
24 there were two shirts together. One was
25 white and one was black. This is the white

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1 shirt. And it was to take a picture of the
2 hole in the shirt.

3 Q. And your response to the scene and
4 collected this evidence, that was on June 8th?

5 A. Yes.

6 Q. Did your involvement in this case
7 end there?

8 A. Well, I did things related to this
9 scene the next day. I just went back and
10 took photos during the day. And I did
11 another search of the area using the sunlight
12 to help. And then on the 14th, I was
13 contacted by a detective to respond to
14 Georgetown Apartments.

15 Q. And again, I think we've indicated
16 Georgetown Apartments being right next to
17 this location?

18 A. Yes.

19 Q. That was on what date then?

20 A. On the 14th.

21 Q. So we are six days after the murder?

22 A. Yes.

23 Q. What was the purpose of your
24 response to Georgetown Apartments again, on
25 June the 14th?

1 A. Detective Goldstein had contacted me
2 to respond there, to Apartment 72-C. And he
3 requested that I take photographs of a bullet
4 that was found in a nightstand drawer and to
5 collect the bullet.

6 Q. 72-C, is that a downstairs or
7 upstairs apartment?

8 A. I believe it was a downstairs. I
9 can't remember.

10 Q. So you're not sure whether it was
11 upstairs or downstairs?

12 A. No, sir.

13 Q. In regard to that, I'm showing you
14 State's Exhibit 44, marked and admitted.
15 What are we looking at?

16 A. This is in the bedroom and a picture
17 of the nightstand here.

18 Q. Here?

19 A. And this is the open drawer you saw
20 in the previous picture with the recovered
21 round right there.

22 Q. (Displaying photograph).

23 A. And this is just a more close-up
24 shot of the bullet.

25 Q. And is that the bullet as it was, as

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1 you found it?

2 A. Yes.

3 Q. I show you State's Exhibit 47.

4 A. This is a ---

5 Q. Go ahead.

6 A. This is a picture of the head stamp,
7 showing the make, which is FC. And it was a
8 9mm Luger.

9 Q. In your role as a crime scene
10 technician, do you have some basis of know-
11 ledge of what these markings mean on the
12 shell casing?

13 A. Yes. The 9mm is the caliber and the
14 type of the gun that would fire it. The FC
15 would be the manufacturer of the round.

16 Q. So is it a proper analogy to say
17 that if we're looking at -- comparing it to a
18 pair of shoes, it'd be like size eleven would
19 be the "9mm" and "Nike" would be the FC?

20 A. I guess. Yes.

21 Q. FC is the maker of that brand of
22 ammunition?

23 A. Yes.

24 Q. So is this a photograph would be of
25 that unfired bullet?

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1 A. Yes.

2 Q. And, I guess this is very basic but
3 how do you know it's an unfired bullet?

4 A. Well, it was all intact. Everything
5 was there.

6 Q. The shell casing, powder and
7 projectile were all still intact?

8 A. Right. And then the primer cap
9 hadn't even been hit.

10 Q. And what did you do with that
11 unfired bullet once it was requested?

12 A. The detective requested that it be
13 processed for prints. So I taped the round
14 and I seal it in an envelope. Then I then
15 submit it into latent recovery. And a person
16 from latent recovery then processes it.

17 Q. So another department will take it
18 from there, once you make that request?

19 A. Yes.

20 Q. Officer Miller, I'm handing you what
21 has been marked for ID Only as State's
22 Exhibit 53. Can you take a moment to review
23 that item?

24 A. Yes, this is the round that I picked
25 up out of that drawer. And this is my

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1 envelope and my writing where I give it an
2 item number, and then the case number and my
3 initials. And then it's sealed and
4 evaluated.

5 Q. Sealed and then submitted to?

6 A. Latent recovery.

7 Q. Latent recovery.

8 SOLICITOR SIMPSON: Your Honor,
9 at this time the State would seek to admit
10 into evidence State's Exhibit 53.

11 THE COURT: Any objection?

12 MR. BUTLER: May we approach?

13 THE COURT: Sure.

14 (OFF RECORD BENCH CONFERENCE)

15 THE COURT: At this point you
16 withdraw the request to have that exhibit
17 admitted into evidence at this point?

18 SOLICITOR SIMPSON: At this
19 point, (affirmative nod).

20 THE COURT: Just for ID?

21 SOLICITOR SIMPSON: For ID only.

22 Thank you.

23 THE COURT: Very good. Thank you.

24 SOLICITOR SIMPSON: Officer
25 Miller, please answer any questions Mr.

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1 Butler has for you.

2 THE COURT: You may cross-examine.

3 MR. BUTLER: I beg the Court's
4 indulgence.

5 THE COURT: Certainly.

6 CROSS EXAMINATION

7 BY MR. BUTLER:

8 Q. I probably missed this, but you
9 found the victim's cell phone on the ground?

10 A. Correct.

11 Q. And that was the night that you went
12 out there?

13 A. Yes.

14 Q. And where was it?

15 A. In one of the photos, you could see
16 the shirts without the numbers?

17 Q. Right.

18 A. It was farther back to the right.

19 Q. Okay. That's all I have. Thank
20 you.

21 THE COURT: Redirect?

22 SOLICITOR SIMPSON: None, Your
23 Honor.

24 THE COURT: Okay. Thank you, sir.
25 You may come down.

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1 deliberations and they wanted to rehear
2 some testimony. Then they asked for the
3 notepads. And it was interesting because
4 they'd already had an opportunity to view the
5 witness and watch them testify. Now, they
6 want to go and focus on what the witness was
7 saying or not saying. And they took notes
8 then. I just -- that's a logical way of
9 dealing with notes. That being said, please
10 feel free to take notes and just make sure
11 that they are left at the end of the day or
12 given to the bailiffs and they will gather
13 them. And we'll keep them and return them to
14 you tomorrow. Thank you so much.

15 I hope you had a good lunch. We're
16 ready to continue.

17 Solicitor, you may call your next
18 witness.

19 SOLICITOR SIMPSON: Thank you,
20 Your Honor. The State calls Jennifer Wooley.

21 (WITNESS TAKES STAND)

22 JENNIFER LYNN WOOLEY, having been duly
23 sworn to tell the truth, and nothing but the
24 truth, testified as follows:

25 SOLICITOR SIMPSON: May it please

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1 the Court, Your Honor?

2 THE COURT: Yes, sir..

3 DIRECT EXAMINATION

4 BY SOLICITOR SIMPSON:

5 Q. Good afternoon, Ms. Wooley. How are
6 you?

7 A. I'm very well.

8 Q. Where are you currently employed?

9 A. At the Charleston Police Department.

10 Q. And what is your position there?

11 A. I currently am the crime scene
12 supervisor.

13 Q. How long have you been with CPD?

14 A. Eleven and a half years.

15 Q. And what was your position in 2011,
16 the summer of 2011?

17 A. I was assigned to the crime scene
18 unit, specializing in latent recovery.

19 Q. And what were your duties there in
20 2011?

21 A. It also, it consisted of responding
22 to crime scenes, but it also consisted of
23 laboratory work and recovering of
24 fingerprints.

25 Q. Okay. So you get evidence and you

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1 process the evidence in-house?

2 A. Correct.

3 Q. Did you have a chance to dust for
4 latent prints on an unfired cartridge in this
5 case?

6 A. I did.

7 Q. And I hand you what's been marked
8 for identification purposes as State's
9 Exhibit 53. Do you recognize that item and
10 what's inside that envelope?

11 A. Yes.

12 Q. What is that item?

13 A. It's an unfired cartridge casing.

14 Q. Okay. And is that the item you
15 received in this case?

16 A. Yes.

17 Q. Do you recall who you got it from?

18 A. Jeff Miller.

19 Q. Okay. Are those your initials on
20 the envelope?

21 A. Yes, sir, they are.

22 Q. And did you pull any latent prints
23 from that cartridge, Ms. Wooley?

24 A. One latent fingerprint was recovered
25 from this unfired round.

1 Q. And how did you go about getting
2 that fingerprint?

3 A. The first thing I do is examine the
4 item to determine the type of surface and the
5 type of processing. So I did a visual exam.
6 And then I used a cyanoacrylate, which is a
7 chemical used to kind of harden the resin to
8 rigidify (sic) that fingerprint for further
9 processing. And then I put a fingerprint
10 powder on it and try to develop any latent
11 fingerprints that may be on it, on the item.
12 And then I lift that with a fingerprint tape.

13 Q. And you said you got one fingerprint
14 lift from this?

15 A. Yes.

16 Q. And what did you do with that lift?

17 A. The lift was turned into a evidence
18 transfer box to be sent to latent print.

19 Q. For analysis?

20 A. Correct.

21 SOLICITOR SIMPSON: I beg the
22 Court's indulgence.

23 THE COURT: Yes, sir.

24 SOLICITOR SIMPSON: Please answer any
25 questions Mr. Butler may have.

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1 MR. BUTLER: I don't have any
2 questions. Thank you.

3 THE COURT: Thank you. You may
4 come down.

5 (WITNESS STEPS DOWN)

6 THE COURT: Call your next
7 witness.

8 SOLICITOR SIMPSON: Thank you,
9 Your Honor. The State calls Dr. Nick
10 Batalis.

11 (WITNESS TAKES STAND)

12 NICK BATALIS, having been duly sworn
13 to tell the truth, and nothing but the truth,
14 testified as follows:

15 SOLICITOR SIMPSON: May it please
16 the Court, Your Honor.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY SOLICITOR SIMPSON:

20 Q. Good afternoon, Dr. Batalis?

21 A. Good afternoon.

22 Q. How are you today?

23 A. Good.

24 Q. Where are you currently employed?

25 A. I am employed at the Medical

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1 University of South Carolina, here in
2 Charleston.

3 Q. And in what capacity?

4 A. I'm employed as a forensic
5 pathologist.

6 Q. What's your educational background?

7 A. I received my Bachelor's Degree from
8 Butler University in Minneapolis, Indiana.

9 I went on to complete medical school at
10 Indiana University.

11 After graduating medical school, I then
12 came down here to Charleston to MUSC for a
13 four-year residency in anatomic and clinical
14 pathology. It's a general pathology.

15 After which, I then moved to Dallas,
16 Texas for a year of fellowship training in
17 forensic pathology.

18 At the end of all that, became board
19 certified in anatomic pathology, clinical
20 pathology, and forensic pathology.

21 MR. BUTLER: Judge, I will
22 stipulate to his qualifications.

23 THE COURT: Very well. You may
24 continue asking him questions as to anything
25 that you deem necessary for the jury's

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1 consideration.

2 SOLICITOR SIMPSON: Thank you,
3 Your Honor.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SIMPSON:

6 Q. Dr. Batalis, what are your duties as
7 a forensic pathologist?

8 A. The primary duty of a forensic
9 pathologist is determining -- is performing
10 autopsies to determine the way and manner in
11 which a person died. So, you know, to
12 determine cause and manner of death.

13 SOLICITOR SIMPSON: And, Your
14 Honor, I apologize. At this time, I'd move
15 to qualify him as an expert in forensic
16 pathology.

17 THE COURT: That's not necessary.
18 I will allow him to render opinions in the
19 area of forensic pathology.

20 SOLICITOR SIMPSON: Thank you, Your
21 Honor.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SIMPSON:

24 Q. Dr. Batalis, did you have an
25 occasion to perform an autopsy on the victim

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1 in this case?

2 A. Yes. I performed an autopsy on
3 Akeem Smalls, June 9th of 2011.

4 Q. And did you determine within a
5 reasonable degree of medical certainty a
6 cause of death of Mr. Smalls?

7 A. Yes, I did.

8 Q. What did you determine that as
9 being?

10 A. The cause of death was a gunshot
11 wound to the trunk.

12 Q. Okay.. Kind of more specifically,
13 what would have been the cause of death --
14 medically, I guess.

15 A. The mechanism of the gunshot wound.
16 So the cause of death is the gunshot wound
17 because it was the event that caused him to
18 die. In the immediate, what would happen in
19 the last two seconds, it would cause
20 excessive bleeding. The gunshot traveled
21 through his lung, which caused excessive
22 bleeding. So in laymen's terms he bled out.

23 Q. And were you able to determine the
24 path of the bullet to cause these injuries.

25 A. I was. By path, do you mean

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1 direction or path through the body?

2 Q. Where it traveled through the body?

3 A. Yes, I was.

4 Q. What was that?

5 A. So the gunshot entered the mid-back
6 just left of center, about a half an inch
7 left of the center of the back, almost
8 straight in the middle. The bullet then
9 traveled through the posterior aspect of the
10 back side of the left sixth rib and continued
11 through the lobes of the left lung, then
12 exited the front of the body through the
13 first rib and the collar bone here, with the
14 exit wound being on the upper left side of
15 the chest.

16 Q. Dr. Batalis, I'm giving you what's
17 been marked for identification purposes as
18 State's Exhibit 54. Do you recognize that?

19 A. Yes, I do.

20 Q. What is that?

21 A. This is a diagram that I -- as I was
22 performing the autopsy, taking notes, that
23 shows some identifying features and also the
24 location of the gunshot wound?

25 Q. And that would have been one you did

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1 for Mr. Smalls?

2 A. Yes, it is.

3 Q. And is this something you would use
4 in the ordinary course of your business in
5 conducting autopsies?

6 A. Yes, this is standard to create a
7 diagram of this on pretty much every case I
8 do.

9 SOLICITOR SIMPSON: And, Your
10 Honor, at this time, I would move to admit
11 State's Exhibit 54 into evidence and publish
12 for the jury.

13 MR. BUTLER: No, objection.

14 THE COURT: Without objection.
15 State's 54 is in evidence.

16 (SO ENTERED AS STATE'S EXHIBIT 54)

17 SOLICITOR SIMPSON: Thank you,
18 Your Honor.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SIMPSON:

22 Q. Dr. Batalis, going back to the path
23 of the bullet. What does this mark on the
24 diagram indicate?

25 A. Sure. So the mark in the middle of

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1 the back, in between my two green dots there,
2 that is the gunshot entrance wound. So
3 that's spot where bullet entered the body.

4 Q. And what about this mark right here?

5 A. So between those two dots there, on
6 the upper left side of the chest, just below
7 the collar, just through the collarbone, is
8 where the gunshot exited. So it's the
9 gunshot exit wound.

10 Q. Dr. Batalis, would it be surprising
11 for someone with an injury like this to have
12 been able to run immediately following the
13 gunshot or injury?

14 A. Not in the immediate phase. You
15 know, how long you can live following a
16 gunshot wound depends on what the bullet
17 traveled through. And if the gunshot goes
18 through the base of the brain, those are the
19 type of wounds that would be immediately
20 fatal. We would expect somebody to quote
21 unquote, drop dead. But otherwise, it just
22 depends how quickly you lose blood. Each
23 individual, even if they have injuries to the
24 same organ, may bleed out a little bit
25 quicker than others, but I've seen

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1 individuals with gunshot wounds of the heart,
2 where the heart's literally in pieces, that
3 oftentimes, he would have been able to run
4 down the street, that sort of thing.

5 SOLICITOR SIMPSON: I beg the
6 Court's indulgence.

7 THE COURT: Yes, sir.

8 SOLICITOR SIMPSON: Thank you,
9 Dr. Batalis. Please answer any questions Mr.
10 Butler may have for you at this time

11 SOLICITOR SIMPSON: I don't have
12 any questions.

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

15 (WITNESS STEPS DOWN)

16 THE COURT: May this witness be
17 excused?

18 SOLICITOR SIMPSON: Yes, sir.

19 THE COURT: Any objection, Mr.
20 Butler?

21 MR. BUTLER: No, sir.

22 THE COURT: You are excused,
23 Doctor.

24 WITNESS: Thank you, Your Honor.

25 THE COURT: Is Mr. Osborne going

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1 to be the next witness?

2 SOLICITOR SIMPSON: Yes, sir.

3 THE COURT: Ladies and gentlemen,
4 there's a matter of law that I need to take
5 up at this point. I'm going to ask you to go
6 to your jury room. And do not begin your
7 deliberations. Don't discuss the case. We
8 will be with you shortly. Thank you.

9 (JURY OUT @ 2:20 P.M.)

10 THE COURT: First of all, as I
11 understand it, we're returning to the couple
12 of objections concerning the video.

13 My recollection is that there's
14 certain parts played after he said "I want a
15 lawyer." And you're not going to play those.
16 You don't intend to play those.

17 SOLICITOR SIMPSON: Correct.

18 THE COURT: And now we're talking
19 about what -- the parts you want excluded is
20 after he first requested a cigarette and was
21 denied it?

22 MR. BUTLER: Yes. And specifically
23 after Detective Osborne said cigarettes are
24 for cooperators.

25 THE COURT: What's the State's

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1 position on that?

2 SOLICITOR SIMPSON: Your Honor,
3 the standard that we're dealing with here on
4 admissibility is, is this coercion to the
5 degree that makes the statement involuntary
6 because.

7 Well, you know, not to engage in
8 hyperbole but I think interview, as lengthy
9 as it is, is a quite good example of proper
10 police work, with the exception of the one
11 statement, I think said with some
12 exasperation, "cigarettes are for
13 cooperators."

14 Is that the best policy, best
15 practices? Perhaps not. But does that arise
16 to a degree of government coercion or
17 anything stated after that request is an
18 involuntary statement against the Defendant's
19 will, I don't think nearly meets the
20 standard.

21 When you look at the *Jackson v.*
22 *Denno*, you know, a laundry list of factors.
23 You know, I think perhaps really taking it to
24 its exaggerated worst.. And I'm a smoker
25 myself, so I don't need to say that that

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1 can't be biased not to have a cigarette. But
2 his position that the government must provide
3 a cigarette upon request, is, I think, not
4 supported by law.

5 And the opinion that a statement
6 given by Detective Osborne over the course of
7 time of a lengthy interviews rises to the
8 degree of making anything said after that
9 involuntary, you know, given as a result of
10 coercion or against the Defendant's will, is
11 just not supported in law and it doesn't meet
12 the standard for excluding the evidence.

13 You know, best practices, perhaps
14 not. But we're here talking about very
15 probative evidence in a murder case and I
16 really don't think that that rises to that
17 standard of coercion. Thank you.

18 MR. BUTLER: The probative nature
19 of the evidence has absolutely nothing to do
20 with this case. That's kind of a way of
21 saying 'Judge, we really need this evidence
22 so it could come in.'

23 But there's two things going on that
24 I don't -- that I'm afraid that Mr. Simpson
25 is not responding to. It's not just the

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1 deprivation. That's part of it. It's the
2 inducement. And to me it's not just a
3 coincidence that the change in story happens
4 after that "cigarettes are for cooperators."

5 And recall, when I asked Detective
6 Osborne -- we didn't watch the whole video,
7 now -- there were several times he asked for
8 a cigarette.

9 THE COURT: Are we going to watch
10 the whole video?

11 MR. BUTLER: No. I don't think
12 they plan to. But I asked Detective Osborne.
13 There were several times he asked for a
14 cigarette, and my recollection from yesterday
15 is that he agreed with me. And that he then
16 -- remember now, Detective Osborne, from what
17 we saw is exasperated because he still
18 perceives that my client is not telling him
19 the full story. He's leaving and Devin says,
20 'What about that cigarette? Can I get a
21 cigarette?' And Detective Osborne says no,
22 that cigarettes are for people who cooperate.
23 And then he leaves. Let's him sit a while,
24 and comes back and brings up -- starts
25 interviewing again.

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1 Your Honor noticed that towards the
2 end he's cold. I think, I think the
3 interview is five and a half hours. Maybe
4 it's five, but I thought it was five and a
5 half. I could be wrong. I thought it was
6 from 9:00 until -- maybe from 9:00 until
7 maybe five.

8 THE COURT: Of course, that part
9 is not being played.

10 MR. BUTLER: Towards the end,
11 that's right. But just the overall context,
12 you know. If he'd said 'can I have a glass
13 of water' and he said water is for
14 cooperators, I mean I think that would be a
15 problem.

16 One of the things that I said
17 yesterday that I was wrong about -- I looked.
18 I did not find a single case where it said
19 this is a depravation that would render it
20 involuntary. But I found dozens, about a
21 hundred cases where cigarettes were listed as
22 things that were provided that made it
23 voluntary. He was given a smoke break. He
24 was offered cigarettes. So that doesn't mean
25 that the converse is true. But I was

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1 surprised at how -- I'm not a smoker so that
2 doesn't jump out at me. But I was surprised
3 at the number of cases that listed cigarettes
4 in with bathroom breaks, smoke breaks, water
5 breaks, did he have enough to eat?

6 And like I said, I think if he'd
7 just asked for a cigarette and be told, no,
8 we might -- it might be different. But he
9 says, 'well, if you want a cigarette you need
10 to keep talking. And I ain't buying what
11 you're selling me right now.' That to me
12 bothers me.

13 THE COURT: Well, let me -- I
14 recall -- certainly there's no question, the
15 statement, cigarettes are for those who
16 cooperate. No question the inference can be
17 drawn from that. Absolutely, and I don't
18 argue with that. I think that's certainly a
19 reasonable argument.

20 But we also have before he changed
21 his story, an opportunity to talk to persons
22 whom he chose to call. And that's when the
23 story changed. It wasn't before that.

24 MR. BUTLER: That's the first
25 change. There's two changes.

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1 THE COURT: I understand. But
2 considering everything, the totality of the
3 circumstances, as I'm required to do ---

4 MR. BUTLER: Yes, sir.

5 THE COURT: --- by a preponderance
6 of the evidence, which is certainly a lower
7 standard than the jury would be instructed to
8 apply, you certainly can argue that. No
9 question about that. But there's no question
10 in my mind that the totality -- while I
11 believe that it certainly could be construed
12 to be coercive, taken in the light of the
13 entire interview I don't find that it was
14 enough, didn't rise to the level of being
15 excluded.

16 MR. BUTLER: Yes, sir. Thank you.
17 Note my objection on *Miranda*, *Denno* and the
18 State and Federal Constitutions.

19 THE COURT: No problem.

20 MR. BUTLER: And do I need to renew
21 it before? I mean, he's going to be the next
22 witness. Do I need to renew it?

23 THE COURT: We can just say --
24 when he starts to play it, you can say "I
25 renew all objections previously made. I

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1 renew my objections." And I'll say those
2 have been completely argued on the record and
3 my ruling is the same.

4 MR. BUTLER: All right. And can --
5 will the State stipulate that that preserves
6 the issue, so that I don't have to go through
7 all the grounds?

8 SOLICITOR SIMPSON: Absolutely.

9 THE COURT: Okay.

10 SOLICITOR SIMPSON: We do also
11 have an issue. Mr. Butler raised several
12 hearsay-styled objections. I think we have
13 done -- there were a couple that Your Honor
14 seemed to us -- you know, we were talking
15 about these yesterday in the sense of where
16 you were leaning on these. We have
17 voluntarily cut, I believe, the objectionable
18 statements. At least those that Your Honor
19 seemed to really want us ---

20 THE COURT: If it's played
21 inadvertently, simply raise an objection.
22 And I'll instruct the jury -- depending on
23 what -- I don't recall anything that I heard
24 played that would be a bell-ringer, so to
25 speak, that would require -- at least the

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1 parts that we talked about you could play.

2 MR. BUTLER: Oh, those, right.

3 Yeah, but you agreed -- I think Your Honor
4 agreed with me that the reference to the
5 niece ----

6 SOLICITOR SIMPSON: We have cut
7 that out.

8 THE COURT: I'm assuming that type
9 of thing has been removed.

10 SOLICITOR SIMPSON: Yes, Your
11 Honor. He's gone through and cut out the
12 list of specific statements he's cut out. If
13 we could go through that, I think that might
14 be helpful.

15 THE COURT: I'm not going to do
16 that. You're presenting it. I'm not going
17 to have -- you're presenting it now. And
18 whatever it is, it is.

19 SOLICITOR SIMPSON: Okay.

20 THE COURT: You play what is
21 consistent with my rulings on certain matters
22 and we'll go from there.

23 But we're not playing it all. We're
24 going to continue to jump. So I'm going to
25 tell them that that's by agreement. That

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1 'they're going to play excerpts from this
2 video, but don't...' -- they're not to read
3 anything or infer anything from the fact that
4 parts are being skipped.

5 MR. BUTLER: Yes, sir. And I may
6 question Detective Osborne about other parts
7 that aren't played.

8 THE COURT: Oh, sure.

9 MR. BUTLER: And I don't
10 necessarily want to go find things either.
11 I think he would agree that he said certain
12 things.

13 THE COURT: That's fine. If he
14 doesn't then we'll find them and we'll play
15 them, but you're certainly at liberty to
16 present in cross-examination any additional
17 parts you want.

18 But I'm going to make that
19 statement, similar to what we do in civil
20 cases where only portions of depositions are
21 published.

22 MR. BUTLER: Yes, sir, that's fine.

23 THE COURT: All right. Are you
24 ready?

25 SOLICITOR SIMPSON: Yes, Your

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1 Honor

2 THE COURT: Okay. Let's bring
3 them back in.

4 BAILIFF: Are you ready, Your
5 Honor?

6 THE COURT: Yes.

7 (JURY IN @ 2:29 P.M.)

8 BAILIFF: All are seated, Your
9 Honor.

10 THE COURT: Thank you very much,
11 ladies and gentlemen. We're ready to
12 continue.

13 Solicitor, you may call your next
14 witness.

15 SOLICITOR SIMPSON: Thank you,
16 Your Honor. The State calls Detective
17 Osborne.

18 (WITNESS TAKES STAND)

19 DAVID OSBORNE, having been duly sworn to
20 tell the truth, and nothing but the truth,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR SIMPSON:

24 Q. Mr. Osborne, where are you currently
25 employed?

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1 A. I'm currently employed with the
2 Charleston County Solicitor's Office.

3 Q. And so you work in the same office
4 as I do. Correct?

5 A. I do.

6 Q. And when did you start there?

7 A. At the end of January, this year.

8 Q. And what is your position at with
9 the Ninth Circuit Solicitor's Office?

10 A. Assistant Solicitor.

11 Q. So essentially the same role I'm
12 performing in this trial?

13 A. That's correct.

14 Q. Have you recently become an
15 attorney?

16 A. I did.

17 Q. Recently passed the bar?

18 A. I did, last year; in July of last
19 year.

20 Q. What was your employment background
21 prior to becoming an attorney and being hired
22 by the Solicitor's Office?

23 A. I was a police officer. I first
24 started in New Orleans. I was a New Orleans
25 police officer for five years.

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1 Q. And please tell me, what departments
2 in the New Orleans Police Department?

3 A. I started off in patrol. I was a
4 patrol officer for a year. And then I worked
5 in the task force unit where we dealt with
6 drugs, guns, did that for two years. Then I
7 worked as a robbery detective for two years.

8 Q. And following your stint with the
9 New Orleans Police Department, where were you
10 employed?

11 A. I came back home to Charleston. I
12 worked for Charleston Police Department for
13 over eleven years.

14 Q. And what were some of the positions
15 you held with the Charleston Police
16 Department?

17 A. I started in West Ashley in Team 4
18 patrol. I did that for two years. Then I
19 was a robbery detective for a couple of
20 years. Then I was a homicide detective for
21 several years, got promoted to sergeant.
22 Then I worked in the field intelligence unit
23 for about a year. That was basically street
24 crime stuff. Then I went back to homicide
25 and became the sergeant in charge of homicide

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1 for a couple of years.

2 Q. And the rank of sergeant, is that a
3 -- forgive me. Is that a pretty high rank in
4 a police department?

5 A. It's right around the middle, I
6 guess. You know, you're not at the bottom;
7 you're not at the top. I was responsible for
8 the homicide unit. I had six guys that
9 worked for me.

10 Q. Do you have a family, Detective
11 Osborne?

12 A. I do.

13 Q. It doesn't bother you if I refer to
14 you as Detective Osborne because of your role
15 in this case, does it?

16 A. No.

17 Q. Children?

18 A. Yes.

19 Q. And did you go to law school and
20 obtain this degree at the same time you were
21 working as a detective for the Charleston
22 Police Department?

23 A. Yes.

24 Q. With a family and all?

25 A. Yes.

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1 Q. How, if I could ask you, did you
2 manage to do that? That seems like a lot of
3 things to juggle.

4 A. Well, it was difficult. But, I
5 mean, it really helped to be working with a
6 good group of guys. And without that, it
7 probably wouldn't have been possible.

8 Q. Well, congratulations on obtaining
9 your law degree and coming to work with us.
10 We're happy to have you.

11 A. Thanks.

12 Q. Let's talk just briefly about your
13 career and any awards that you've won in the
14 course of that law enforcement career?

15 MR. BUTLER: Judge, I'm sorry. At
16 this point I have to object to the relevance.

17 THE COURT: I'll allow limited
18 further qualification -- you've covered that.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SIMPSON:

21 Q. You may continue.

22 A. So I received three awards with the
23 New Orleans Police Department. I was trying
24 to think -- they call it the Tommy Parker
25 Award for Excellence in Investigation.

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1 I also got another award for a Project
2 Exile, which was a joint project between CPD
3 and ATF where we were targeting hardcore
4 criminals, felons.

5 I received four commendations with CPD.

6 I also received the Officer of the Year
7 in 2012 and the violent crimes unit, which I
8 was supervisor of the Violent Crime Team in
9 2012.

10 Q. Moving on now to this case. At
11 which stage, what was your job in June of
12 2011?

13 A. I was a homicide detective then.

14 Q. And in that role did you have
15 occasion to respond to a murder scene on June
16 8th, 2011?

17 A. I did.

18 Q. And did you respond directly after
19 reports came in to you?

20 A. Yeah. I was off that night. I got
21 called by my supervisor informing me that
22 there was a murder. I responded to George-
23 town Apartments first to assess the
24 situation, talk to detectives who were
25 already there, as well as responding.

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1 officers.

2 Q. Where, specifically, in that
3 apartment complex did you respond to?

4 A. The first place I responded was
5 Apartment C-, Charles, 72. There were some
6 individuals who knew the deceased in that
7 apartment who were being interviewed, mainly
8 Charmaine Johnson, and relatives of hers.
9 Charmaine was, at that point, the girlfriend
10 of the deceased.

11 SOLICITOR SIMPSON: May I
12 approach the evidence desk?

13 THE COURT: Yes, you may.

14 SOLICITOR SIMPSON: Your Honor,
15 at this point, the State would move to admit
16 State's Exhibit 53, based on our previous
17 discussions.

18 THE COURT: All right. Subject to
19 the objections previously argued in State's
20 Exhibit 53. That's the video?

21 SOLICITOR SIMPSON: No -- may I
22 approach, Your Honor.

23 THE COURT: Yes, both of you.

24 (OFF RECORD BENCH CONFERENCE)

25 THE COURT: Do you continue your

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1 objection or do you?

2 MR. BUTLER: No, I withdraw it.

3 THE COURT: Very well. Then
4 State's 53 is admitted without objection.

5 SOLICITOR SIMPSON: Thank you,
6 Your Honor.

7 (SO ENTERED AS STATE'S EXHIBIT 53)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR SIMPSON:

10 Q. To get back on track, [REDACTED]

11 [REDACTED] who lived there?

12 A. Charmaine Johnson lived there. She
13 is the deceased's, Akeem Smalls', girlfriend.
14 As well Sonnar (phonetic) Goff, a niece,
15 Adair Williams, Shania Robinson, and Alicia
16 Johnson. And these are all relatives of
17 Charmaine in one way or another, nieces,
18 nephews, whatnot.

19 Q. After replying to the death scene --
20 well, let me ask you this. In close
21 proximity to that apartment, was evidence of
22 this crime documented?

23 A. Yeah, directly underneath it at [REDACTED]
24 -- so it's two stories. [REDACTED] is upstairs and
25 [REDACTED] is right underneath it. That's where

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1 the shell casings and one of the sandals of
2 the deceased, and the blood trail started
3 there.

4 Q. After responding to that scene, how
5 did you proceed?

6 A. The scene was pretty much covered.
7 We had technicians and everybody is there.
8 Responding officers were doing their thing as
9 well as crime scene. So I elected to respond
10 to the hospital to try to talk to the
11 victim's family. Sometimes that's
12 beneficial. They might have an idea of
13 something going on, arguments. We develop
14 suspects like that.

15 Q. By the end of that night, had you
16 developed a person of interest in this case?

17 A. Yes, we had.

18 Q. Had you developed by the end of that
19 evening an automobile of interest in this
20 case?

21 A. Yes, we had.

22 Q. Moving on to the following day, June
23 9th, 2011, did your work on this case
24 continue?

25 A. We had daylight at that point. So

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1 we went back out to the scene, tracked the
2 blood trail again, canvassed the area for
3 witnesses. And also went and viewed the
4 surveillance video. Georgetown Apartment
5 Complex had video surveillance setup.

6 Q. So you actually first viewed that
7 video at the location at the Georgetown
8 Apartments?

9 A. Yes, I did.

10 Q. Did you later also obtain copies of
11 that surveillance video?

12 A. I did.

13 Q. Is that the entirety of the -- well,
14 let me ask, approximately how many cameras
15 does Georgetown Apartments have?

16 A. I know the ones of interest was the
17 office, C and D, in between Building C and D
18 and in between Buildings D and E. There may
19 be one in between Buildings A and B, but that
20 didn't hold any evidentiary value to this.

21 Q. But you collected all of the
22 surveillance?

23 A. We collected everything, yeah.

24 Q. And did you review it as well?

25 A. We reviewed it there.

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1 Q. Any observations regarding the
2 timestamps on that surveillance camera?

3 A. Yeah. One thing I learned early on
4 from working robberies, when you're dealing
5 with those surveillance videos, you've got to
6 look at what is the real time and what is the
7 time on the surveillance video. It's hardly
8 ever the same. So the first thing I noticed
9 was that the time on the video was eight
10 minutes slower than the real time.

11 And if you don't look at that right
12 away, if you don't check it right then, by
13 the time -- you can't figure it out later on.
14 So that was the first thing that I noticed,
15 that we were dealing with a video time that
16 was eight minutes slower than real time.

17 Q. And you mentioned more than one
18 camera. Was the timestamp on the
19 surveillance camera consistent throughout the
20 cameras?

21 A. That it was, thankfully. Each
22 camera system showed the same time, each
23 camera system was eight minutes slow.

24 Q. And that's something you've learned
25 through experience to check right off the

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1 bat?

2 A. Yeah. I've had a few where we
3 didn't do that. And then when you try to go
4 back and figure it out, it's really hard.

5 Q. So on this video, did you see a
6 time?

7 A. Yes.

8 Q. And on all of them they're eight
9 minutes slow?

10 A. Yeah.

11 SOLICITOR SIMPSON: May I
12 approach the witness?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. Now, Detective, I'm handing you
17 what's been marked for ID only as State's 55.
18 Can you take a look at that?

19 A. Yeah. This is the CD containing the
20 surveillance images from the video that
21 night.

22 SOLICITOR SIMPSON: Your Honor,
23 at this time the State would seek to move
24 State's Exhibit 55 into evidence.

25 THE COURT: Any objection?

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1 MR. BUTLER: No objection.

2 THE COURT: Without objection,
3 State's 55 is into evidence.

4 (SO ENTERED AS STATE'S EXHIBIT 55)

5 SOLICITOR SIMPSON: We'd also
6 seek to publish portions.

7 THE COURT: You may publish
8 portions.

9 Now, ladies and gentlemen, this one
10 and any other videos, it's not uncommon in
11 presentation of the case, where one side may
12 publish something, and the other may publish
13 additional, they may just publish portions.

14 The fact that only a portion of the
15 video is published is not to be considered by
16 you. You consider only the part published.

17 You may proceed.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SIMPSON:

20 Q. Detective, I want to begin by
21 viewing again State's Exhibit 1. And if you
22 need to adjust the views ---

23 A. No, that's fine.

24 Q. --- as we go. I need to adjust that
25 slightly down.

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1 A. Okay.

2 Q. You said that three cameras at
3 Georgetown Apartments were particularly
4 interesting to you in this case?

5 A. Yes.

6 Q. Let's start with generally having
7 you show where these cameras are. You
8 mentioned the office camera?

9 A. Yeah. There's an office camera,
10 which would be about right here. And it
11 would be pointing back in this direction.

12 Q. Okay. So at the corner nearest the
13 road?

14 A. Yes.

15 Q. And where is that camera located on
16 the building?

17 A. I mean, it's pretty much right in
18 the center. It's pretty high, pointing down,
19 and opening up in that direction.

20 Q. Does that camera provide one of the
21 -- a pretty expansive view of the parking lot
22 area

23 A. Yeah. I mean, it's not bad. It
24 opens up right here. They're probably
25 interested in their office right here is why

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1 it's positioned there.

2 Q. You mentioned [REDACTED]

3 A. Yes.

4 Q. Can you identify for us on State's
5 1, the location of that apartment?

6 A. It's going to be right here. But
7 again this is upstairs.

8 Q. And again I believe your testimony
9 the shell casings and sandals and the blood
10 trail beginning at where?

11 A. At [REDACTED] which is directly under-
12 neath it.

13 Q. I believe you mentioned a camera at
14 C-D?

15 A. Yeah, those is C, this is D. And
16 then this camera's going to be right about
17 here. And it's going to point off in this
18 direction.

19 Q. Okay. Does camera C-D cover the
20 actual spot where the murder occurred?

21 A. No, it doesn't because the shell
22 casing and all of that, again, they were
23 right underneath here. So there's no camera
24 that's going to show that.

25 Q. Does it, similar to the office

1 camera, give one a pretty expansive view of
2 that parking lot?

3 A. It opens up pretty good, yeah.

4 Q. I think you also mentioned the
5 camera covering the area of Buildings D and
6 E?

7 A. There's another one right here and
8 it does the same thing. It points out in
9 this direction, (indicating), this is E.

10 Q. (Video playing) -- Detective, I'd
11 like to start with camera C/D. Can you just
12 give the ---

13 A. Sure. (Indicating) -- C/D. So what
14 we're going to be looking at here is the
15 camera's right here. And it's going to be
16 coming out in this direction, shooting out in
17 here.

18 Q. I'm going to move -- were you able
19 to determine in your investigation a time of
20 the murder?

21 A. Yeah.

22 Q. Were you able to pinpoint that time
23 of the murder fairly close?

24 A. 10:18 is what we were looking at.

25 Q. And when you refer to 10:18, that's

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1 actual time?

2 A. That's the actual time.

3 Q. So, I mean, ---

4 A. You're going to have to add eight
5 minutes. To whatever you're seeing here,
6 you're going to have to add eight minutes to
7 it.

8 Q. Okay. And how were you able to
9 determine a pretty specific time for this
10 murder?

11 A. Because we see an individual that
12 comes running across the -- well, you can see
13 him running across right here. And that's
14 going to be the victim. And you can base
15 that on the fact that the shell casings and
16 the sandal that he ran out of, is going to be
17 back off in this area, off the camera. So
18 it's not very far at all. So you can -- this
19 happened pretty quick.

20 Q. So again, our actual crime scene of
21 the shooting is off camera to the left?

22 A. Yes.

23 Q. Okay. If I could go ahead and play
24 this portion -- (video playing) -- now we
25 see a man run in a certain direction;

1 correct?

2 A. That's right.

3 Q. You, as the detective on this case,
4 would you sort of have apprised yourself of
5 all the physical evidence observed in this
6 case?

7 A. Yes.

8 Q. And what, again, is it about this
9 direction and place that he runs across at
10 that is significant?

11 A. Well, a couple of things. He runs
12 from the direction of the four shell casings
13 and the sandal. We recovered the other
14 sandal in this direction that he's running.
15 And then the biggest thing was the blood
16 trail starts over here and then you can pick
17 it up, track him right through there in the
18 direction that he's running.

19 Q. Moving out to camera D/E. Where is
20 camera D/E?

21 A. D/E's going to be over on this
22 corner, and it's going to be pointing in that
23 direction.

24 Q. (Video playing) -- and just indicate
25 with a line. Where did we just see ---

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1 A. We just saw Mr. Smalls running this
2 -- well, running this way.

3 Q. So if I'm seeing this accurately,
4 and then according to the camera time -- not
5 the accurate time but the camera time -- we
6 have at 10:10:29 the victim run across the
7 parking lot between C and D.

8 Then a few moments later, the victim
9 running across the parking between D & E?

10 A. That's correct.

11 Q. Was this consistent with the
12 physical evidence that we've already
13 discussed was found?

14 A. Yes.

15 Q. And where did that evidence lead to
16 Building E?

17 A. The blood trail lead through to
18 Building E, and then we're going to see a
19 path. And the blood trail, once he comes up
20 E, through the breezeway, makes a hard right.
21 And then the blood starts to really -- a few
22 drops here and there, but once he hits E it's
23 coming down pretty good then.

24 Q. And, again, the first flight of the
25 victim, you say that camera C/D is -- is

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1 pretty close, right?

2 A. Right.

3 Q. And that first sight of him running
4 is at 10:10:29?

5 A. That's correct.

6 Q. I'd like to move now to the office
7 cam. You know, you've already indicated
8 this, but the office cam covers what parking
9 lot?

10 A. Right here, pointing in this
11 direction.

12 Q. We're here at the camera time of
13 10:07:55; is that correct?

14 A. That's correct.

15 Q. The actual time is what?

16 A. 10:15.

17 Q. 10:15:55?

18 A. Almost 10:16, yeah..

19 Q. The murder time again is what?

20 A. 10:18.

21 Q. Camera time?

22 A. 10:10.

23 Q. Okay. So we're here, just a couple
24 of minutes prior to the murder?

25 A. That's right.

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1 Q. I'd like to proceed from camera time
2 10:07:51 -- (video playing). Detective
3 Osborne, is there anything in particularly
4 interesting to you about the parking job
5 we're witnessing here?

6 A. Backing in -- I mean, backing in, in
7 and of itself, doesn't necessarily mean any-
8 thing. But it is indicative of someone
9 trying to get out ---

10 MR. BUTLER: Judge, I object to his
11 speculation on the parking of ---

12 THE COURT: I will allow it.

13 WITNESS: It is indicative of
14 someone trying to get out in a hurry.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR SIMPSON:

17 Q. Let's be clear. We all know people
18 -- do you know people that park like this
19 always?

20 A. Yes, yes.

21 Q. But it does indicate to you, what?

22 A. Right, someone trying to get out in
23 a hurry.

24 Q. Let's continue -- (video playing) --
25 pause briefly. Is there any characteristic

1 of that car we saw that's on the video, after
2 the first time you viewed it. Anything come
3 to light about what we see here of particular
4 interest?

5 A. Yeah, we were interested early on.
6 I can tell you the -- and this is pretty
7 blurry. But if you -- I think if it were in
8 a smaller window, you could see it better.
9 That appears to be missing the rear passenger
10 hubcap. And we base that on the fact that --
11 I mean, this one is up close, nice and shiny,
12 up close and shiny. But if you look at the
13 other ones, that appears to have the hubcap.
14 And even back here in the back, this one
15 appears to have a hubcap. And you're basing
16 that on the contrast. That one back there's
17 a little bit tougher to see. But we were
18 feeling very comfortable that this vehicle
19 right here was missing its rear -- at least
20 its rear passenger hubcap.

21 Q. And you stated earlier that after
22 your first night that there was a vehicle of
23 interest developed?

24 A. That's correct.

25 Q. And what was the make and model of

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1 that vehicle?

2 MR. BUTLER: Judge, may we
3 approach?

4 THE COURT: Yes, sir.

5 (OFF RECORD BENCH CONFERENCE)

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. Detective Osborne, later was a car
9 sized from a Tenika Elmore?

10 A. Yes.

11 Q. What was the make and model of that
12 car?

13 A. It was a Toyota Camry, '08.

14 Q. And what color?

15 A. Blue.

16 Q. And to the best of your observation,
17 is that consistent with the vehicle we see
18 here?

19 A. It is in black and white, but it is
20 consistent with that vehicle, yes.

21 Q. Okay. And anything about the car
22 that was later seized and searched, anything
23 else consistent with this vehicle?

24 A. Yeah. Tenika's Toyota was also
25 missing its rear passenger hubcap, just like

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1 this vehicle here.

2 Q. Continuing now to the office camera
3 -- (video playing). So what did we just
4 observe?

5 A. Two people exit the car. It looks
6 like they both exited. We've got a driver
7 for sure. And we've got another one, looks
8 like he exited from the front passenger seat.
9 And then they start to walk around, down the
10 breezeway. That's at the front end of
11 Building C, on the opposite end of where the
12 shooting happened, but they're headed in the
13 direction of the shooting.

14 Q. Switch back to State's 1. That
15 might make this a little easier.

16 A. Yeah. So they're parked ---

17 Q. Or not. When we see the two males
18 turn the corner, what corner are they
19 turning, what direction are they headed in,
20 if you could draw that for us?

21 A. Yeah. All right. So they're parked
22 right around here. And then they get out and
23 walk, they walk down this way.

24 Q. In that direction?

25 A. Yes.

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1 Q. And turn that corner, and I believe
2 the time is approximately about 10:08:53
3 camera time?

4 A. That's right.

5 Q. And the camera time of the murder
6 again?

7 A. Well, 10:10:30.

8 Q. Okay. Turning that corner was
9 approximately one minute and thirty-six
10 second prior to that murder?

11 A. That's right.

12 Q. Detective Osborne, have you walked
13 that distance?

14 A. I have.

15 Q. Did you time yourself?

16 A. Walking that distance, average pace,
17 about thirty to forty-five seconds.

18 Q. Thirty to forty-five seconds to get
19 where?

20 A. To get from where the car would have
21 been parked to get to where we found shell
22 casings, where the murder occurred.

23 Q. (Video playing) -- Detective
24 Osborne, at the bottom, my bottom right-hand
25 corner, of this video, what are we observing

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1 here?

2 A. Are you referring to the time?

3 Q. No, I'm sorry, by the car.

4 A. Oh, that's -- well, it's a citizen
5 that's out walking.

6 Q. Does he appear to have anything with
7 him on this video?

8 A. He does. And it comes, I think in
9 the frame, the picture a little bit better in
10 a minute. But he is walking his dog.

11 Q. There it is. Did that become
12 significant later?

13 A. Yes.

14 Q. (Video playing) -- Detective
15 Osborne, are we now at the specific time of
16 the shooting?

17 A. That's correct.

18 Q. As established by the prior videos
19 we've watched?

20 A. That's right.

21 Q. You say it takes about, maybe forty-
22 five seconds approximately to walk to that
23 location?

24 A. Yeah.

25 Q. (Video playing) -- Detective

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1 Osborne, what are we seeing here?

2 A. It appears to be the same two
3 individuals running back to the car,
4 positioning themselves in the same position
5 in the car.

6 Q. And how many seconds was that
7 between the time of the murder and them
8 arriving back?

9 A. Fifteen, sixteen seconds.

10 Q. Anything interesting to know about
11 these individuals' demeanor coming back to
12 that car?

13 A. Yeah. That's what drew our interest
14 to them. I mean, they're moving, they're
15 running. They're trying to get out of there.

16 Q. Again, a quick exit. Would that be
17 a good way to park to make a quick exit?

18 MR. BUTLER: Objection. That's
19 leading.

20 THE COURT: Sustained. Already
21 asked and answered.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SIMPSON:

24 Q. Is this observation -- (video play-
25 ing) -- what we're observing now, was this of

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1 interest to you?

2 A. Yes..

3 Q. What is -- (video playing) -- this
4 isn't the best video, but how would you
5 describe the dress of the driver in this
6 video?

7 A. It appeared as though he was wearing
8 a white tank top, black pants. Again, this
9 is not the best video. But don't maximize it
10 so much, bring it down a little bit, it also
11 appears as though he's wearing something over
12 his head. I base that on the fact that the
13 contrast of his head is different than the
14 rest of his skin. That's the driver.

15 SOLICITOR SIMPSON: May I
16 approach the witness, Your Honor?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION CONTINUED

19 SOLICITOR SIMPSON:

20 Q. The video has been marked for ID
21 Only. I am handing you now State's 60, 61,
22 62, and 63. Take a minute to look at those.

23 A. Okay.

24 Q. (Video playing) -- viewing again
25 their return to the vehicle?

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1 A. Yes.

2 Q. Detective Osborne, you've reviewed
3 the entirety of the surveillance videos at
4 Georgetown Apartments; correct?

5 A. Yes.

6 Q. At the time, you know, going before
7 some distance, going after some distance, and
8 focused on the time of the murder, did we see
9 anyone else enter into the Building C
10 breezeway from this office cam?

11 A. No, other than the individual with
12 the dog.

13 Q. Okay. What about looking at camera
14 C/D, which is the other side of the building;
15 correct?

16 A. Right.

17 Q. Do we see anyone else from that
18 side? I know we see the victim fleeing.
19 Do we see anybody else entering in the
20 moments leading up to this murder?

21 A. The moments leading up to the
22 murder, no.

23 Q. Now, obviously, did you see -- going
24 back to the entirety of the video that you
25 collected, do you see other people walking

1 around?

2 A. Yes.

3 Q. Do they appear to be just going
4 about day-to-day business?

5 A. Yeah, just normally walking around
6 their apartment.

7 Q. But at the time, focused around the
8 time of this murder, which we've pinpointed
9 fairly specifically, has anyone entered from
10 the officer parking lot from the C/D?

11 A. No. These are the only two of
12 interest. That's what jumped out to us.

13 Q. You collected these videos on what
14 date?

15 A. The day after the murder, so June
16 9th, 2011.

17 Q. Did your work on this case continue
18 on June the 10th?

19 A. Yes.

20 Q. And in what way?

21 A. So on June the 10th, we developed,
22 like I said earlier, a car and a person of
23 interest. So at that point, we did a little
24 background research on the individual that we
25 were dealing with and that we wanted to speak

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1 to, Devin Johnson. And we learned that his
2 girlfriend worked at Verizon.

3 MR. BUTLER: Objection. Hearsay.

4 THE COURT: Sustained. Hearsay at
5 this point.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. Did you have an opportunity on the
9 10th to speak, have a conversation with Tenika
10 Elmore?

11 A. I did.

12 Q. Was she cooperative with you?

13 A. Yes.

14 Q. Where did this interview take place?

15 A. At CPD, the station.

16 Q. The police station?

17 A. That's where it ended. It sort of
18 began at her place of employment but it ended
19 at the station.

20 Q. You've been present in the courtroom
21 this week?

22 A. I have.

23 Q. In the general sense, was her
24 statement to you consistent with what we
25 heard this week on the stand?

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1 A. Yeah. It was pretty consistent.

2 Q. In the course of that interview, did
3 you learn Devin Johnson's current location?

4 MR. BUTLER: Objection. Again,
5 hearsay.

6 THE COURT: I'll allow that.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR SIMPSON:

9 A. We did.

10 Q. And where was that?

11 A. That he was in Orangeburg at
12 Tenika's residence.

13 Q. At the time that you spoke to
14 Tenika, did you also seek to get a search
15 warrant for the vehicle?

16 A. We did.

17 Q. And is that the vehicle that we've
18 seen photographs of as well?

19 A. Yes.

20 Q. And what was interesting to you
21 about that vehicle when you saw the vehicle?

22 A. Same make and model as the vehicle,
23 appeared to be the same make and model as the
24 vehicle that we just saw on the video fleeing
25 the scene. And it was also -- Tenika's

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1 vehicle was also missing the rear passenger
2 hubcap, the same as the vehicle that we saw
3 fleeing the scene of the murder.

4 Q. Through the interview with Tenika,
5 what were you able to learn vis-à-vis this
6 vehicle and this suspect, Devin Johnson?

7 A. That Devin had possession of the
8 vehicle on the day of the murder, during the
9 timeframe of the murder, and that Devin was
10 in possession of that vehicle on the day of
11 the murder, in Charleston.

12 MR. BUTLER: Your Honor, I'm sorry
13 to -- it's all hearsay, every bit of that.

14 THE COURT: I sustain the
15 objection.

16 MR. BUTLER: Thank you, Your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR SIMPSON:

19 Q. You did already testify that you
20 came to learn Mr. Johnson's location?

21 A. Yes.

22 Q. And how did you respond to that?
23 What did you do with that information?

24 A. I notified Lane, Jonathan Lane.
25 He's with CPD officer, but he's also assigned

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1 to the U.S. Marshal's Task Force. I notified
2 him of Devin's whereabouts and told him to go
3 try, get some people to go try to apprehend
4 him.

5 Q. And following the interview with
6 Tenika Elmore, what did you do?

7 A. I then learned that he had been
8 apprehended in Orangeburg. So myself,
9 Detective Kosarko and Tenika went to
10 Orangeburg together.

11 SOLICITOR SIMPSON: Your Honor,
12 may I approach the evidence table?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. Detective Osborne, I hand you what
17 has been marked for ID Only as State's
18 Exhibit 64. Take a look at that?

19 A. (Review).

20 Q. Do you recognize that item?

21 A. I do.

22 Q. And what is that?

23 A. This is the cellphone that Devin had
24 in his possession when he was arrested in
25 Orangeburg.

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1 Q. Now, were you physically present
2 when that was taken off his person?

3 A. No, I was not.

4 Q. How did you come to know that? Who
5 conveyed possession of that phone to you?

6 A. Actually Detective Lane. He's the
7 one that took the phone from him upon arrest,
8 and then gave the phone to me.

9 Q. As persons of interest were
10 developed in this case, were any efforts made
11 -- did you talk with the media? Did you
12 inform the public of that?

13 A. Yes.

14 Q. And was Devin Johnson one of those
15 individuals?

16 A. I don't believe we ran Devin's name
17 on the news, although we may have. I don't
18 remember.

19 Q. Did you convey to Devin's family
20 member that he was being actively sought?

21 A. I do remember speaking to Devin's
22 mother and talking to her about that.

23 Q. And at any point in this time, prior
24 to finding him in Orangeburg, were any
25 efforts made -- were any efforts made on

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1 Devin's part to get in touch with you?

2 A. No.

3 Q. Following the apprehension of Devin
4 Johnson in Orangeburg, how did your
5 investigation proceed?

6 A. So, once we were in Orangeburg,
7 Devin's under arrest, Devin was transported
8 back to CPD by Lane and the marshals. We
9 then transported Tenika -- I believe we had
10 Devin's daughter, but we transported the
11 daughter to, I think, his mother's house,
12 took Tenika back to work, then we went to the
13 station to interview Devin.

14 Q. And did you commence this interview
15 with Devin Johnson?

16 A. I did.

17 Q. And who was with you at the time?

18 A. Detective Kosarko.

19 Q. At approximately what time did this
20 interview commence?

21 A. About 9:00.

22 Q. Does CPD ---

23 A. 9:00 p.m.

24 Q. Does CPD maintain video recording
25 capabilities for suspect interviews?

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1 A. Yes.

2 SOLICITOR SIMPSON: Your Honor,
3 may I approach the witness?

4 THE COURT: You may.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SIMPSON:

7 Q. Detective Osborne, I'm handing you
8 what's been marked for ID Only as State's 56.
9 If you could give that a look.

10 A. Okay.

11 Q. Are you familiar with that?

12 A. I am. This is the video recording
13 of the interview with Devin Johnson.

14 Q. And how do you know that's what's
15 contained on that CD?

16 A. Well, I put my initials on it after
17 I viewed it.

18 SOLICITOR SIMPSON: Your Honor,
19 at this time, the State would seek to admit
20 State's Exhibit 56 into evidence, subject to
21 the prior matters discussed.

22 THE COURT: Mr. Butler?

23 MR. BUTLER: Subject to previous
24 objections?

25 THE COURT: State's 61 is in

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1 evidence.

2 COURT REPORTER: Fifty-six (56).

3 THE COURT: Fifty-six (56), I'm
4 sorry. State's 56 admitted subject to the
5 objections, which have been previously heard
6 and argued and rulings have been rendered
7 thereon. It will not be necessary for any
8 further argument or objection to be made.

9 SOLICITOR SIMPSON: Thank you,
10 Your Honor.

11 (SO ENTERED AS STATE'S EXHIBIT 56)

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR SIMPSON:

14 Q. Detective Osborne, did you for lack
15 of better phrasing, kind of lead this
16 interrogation of Devin Johnson?

17 A. Yeah. I would say that's accurate.
18 Yeah.

19 Q. And how do you begin an interview
20 with any suspect?

21 A. Well, when you have a suspect,
22 especially one that's under arrest, I first
23 begin with their *Miranda* warnings.

24 Q. And what does that mean, *Miranda*
25 warnings for the jury's benefit -- though,

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1 I'm sure we've all seen it on TV.

2 A. Yeah. The same stuff you see on TV.

3 'You have the right to an attorney. You have
4 the right to remain silent.'

5 Once I get through with those warnings,
6 after I read each warning to them, I ask them
7 if they understand. They say yes or no. If
8 they don't, I'll explain it to them.

9 If they do, go on and then at the end
10 I'll ask at them, you know, if they want to
11 talk to me or not.

12 Q. So did you conduct those *Miranda*
13 warnings in this case?

14 A. Yes.

15 Q. Did Mr. Johnson appear to understand
16 what you were saying?

17 A. He did.

18 Q. In your preliminary discussions with
19 Mr. Johnson, did he appear to you to be
20 impaired in any way?

21 A. No.

22 Q. Intoxicated in any way?

23 A. No.

24 Q. Prior to being involved in that
25 interview, was he physically threatened in

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1 any way?

2 A. No.

3 Q. Did you make any promises to him of
4 future leniency in order to get him to
5 cooperate in any way?

6 A. No.

7 Q. Are you -- in your long law en-
8 forcement career, have you been trained in
9 interrogation techniques?

10 A. Yes.

11 Q. Have you been trained in the legal
12 parameters of what is allowed in an
13 interrogation room and what is not?

14 A. Yes.

15 Q. Following -- again, you explained
16 each right separately to Devin Johnson?

17 A. Yeah. And I like to just go through
18 them slowly so you're not -- so you can't be
19 giving the -- you don't want to give the guy
20 the belief that you're trying to get one over
21 on him. So you just go through them slowly
22 and make sure they understand.

23 Q. All right. Did Devin Johnson
24 indicate that he understood each right?

25 A. He did.

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1 Q. Did he, following being given all of
2 the *Miranda* rights, did he indicated that he
3 wished to speak with you?

4 A. He did.

5 Q. And, again, is this all on video?

6 A. It is.

7 Q. Was that video provided to us in
8 discovery?

9 A. Yes.

10 Q. After *Miranda*, you know, assuming
11 you've crossed that hurdle, how do you begin
12 an interview with a suspect such as someone,
13 you know, who is under arrest?

14 A. Typically, the way I like to do it,
15 and I think most people do, is when you're
16 interviewing a suspect and they want to talk
17 to you after you get through *Miranda*, then
18 they're going to have a story. They're going
19 to have an idea in their mind what they want
20 to tell you. So I just go ahead and let them
21 tell it, give them an opportunity to open up.
22 I don't challenge them. I let them get
23 through their story, you know from front to
24 end.

25 A lot of times, like, especially in

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1 this case, we're doing the interview early
2 on. So you don't know a lot of things that
3 you will find out later on. So a lot of
4 times they'll say things to you may not seem
5 that important at the time, but you find out
6 later on that it is. So that's one advantage
7 for doing that.

8 The other advantage is, it locks
9 them into a statement. And it's nothing that
10 I said, nothing that I brought onto them.
11 It's their story and it's what they came in.
12 So I offer them the opportunity to go ahead
13 and say that.

14 Q. So you don't begin an interview
15 saying, 'this is what we know about where you
16 were at' such a time?

17 A. No, I try not to. Now, there might
18 be exceptions, you know, but in this case
19 right here and a lot of other cases, it's
20 best just to go ahead to get a story from
21 them.

22 Q. So did you do with that Devin
23 Johnson?

24 A. I did.

25 Q. You opened the floor with him,

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1 'let's hear what you have to say'?

2 A. Yeah. He knew why he was there. So
3 I just asked him, 'Okay, what's your story?
4 Where were you at, doing', you know.

5 Q. Give us the gist of what was that
6 story he gave you as he sat down with you for
7 the interview?

8 A. It was pretty easy. 'I was in
9 Orangeburg the whole day and night. I
10 haven't been down to Georgetown or West
11 Ashley in several days.' Or maybe it was
12 weeks, I think. But 'anyways, the night of
13 the murder, I definitely was nowhere near
14 West Ashley, Charleston or Georgetown. I was
15 in Orangeburg.'

16 Q. Did he persist in this story?

17 A. Yes.

18 Q. For approximately how long?

19 A. I think, if I remember correctly,
20 it's about three and a half hours he stuck to
21 that story.

22 Q. This interview happened at 9:00 p.m.

23 A. That's when it started.

24 SOLICITOR SIMPSON: We are going
25 to start, for the record, at 9:21:29.

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR SIMPSON:

3 Q. (Video of interview with defendant
4 playing) -- Detective Osborne, you, as we
5 discussed, opened the floor with 'let's hear
6 it from' -- 'let's hear it from you.' You
7 gave him that opportunity?

8 A. Right.

9 Q. You obviously watched the video just
10 now. In the video we just watched, are you
11 angry?

12 A. Oh, in this video, no, no. No, I'm
13 just talking to him and getting his story.

14 Q. Okay. Do you listen?

15 A. Yeah.

16 Q. Are you following up with details?

17 A. Yes.

18 Q. Is it fair to say he's pretty
19 unambiguous about his whereabouts on the day
20 of the murder?

21 A. He was pretty clear he was in
22 Orangeburg.

23 Q. At this point, had you already
24 talked to Tenika Elmore?

25 A. I had.

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1 Q. You keep mentioning Wednesday.

2 That's Wednesday, the date of the murder?

3 A. That's correct.

4 Q. And the date for that is what?

5 A. June the 8th?

6 Q. And what is the date of this
7 interview?

8 A. Two days later, June 10th.

9 Q. So you're not asking him to think
10 back to weeks or months?

11 A. That's correct.

12 Q. At one point in the clip we just saw
13 you say, 'Well, you know, we have the phone
14 outside. You saw that phone. Is that your
15 phone?'

16 A. Yes.

17 Q. Are you referring to the phone that
18 was on ---

19 A. Yeah, that's correct.

20 Q. And that's the phone that was on him
21 when he was arrested?

22 A. That's right.

23 Q. And what does he say when you asked
24 him about who uses that phone?

25 A. He said he was the only one that

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1 uses it.

2 Q. Who pays for it?

3 A. I think he said Tenika pays for it,
4 but he uses it.

5 Q. And then what number does he himself
6 give as his own number?

7 A. He gives 843-217-3243.

8 Q. You also asked him about another
9 phone number; is that correct?

10 A. That's correct.

11 Q. And what number was that?

12 A. That was Charmaine's phone number,
13 his sister. And that would be 730-1470.

14 Q. And that's the number he gives you
15 as Charmaine's phone?

16 A. Yes.

17 Q. Is that consistent with the
18 information you already had regarding
19 Charmaine?

20 A. Yeah. We'd already had that.

21 Q. Detective, in that clip does he
22 dispute a debt that he owed to the Kings
23 (phonetic)?

24 A. No. No. He doesn't dispute that.

25 Q. And what was the amount that he said

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1 he owed?

2 A. Four hundred and twenty dollars
3 (\$420).

4 Q. Now, at this time you're sitting
5 there, quite calmly it appears from what we
6 just saw, what were you thinking about this
7 story that he's giving you. What are your
8 personal thoughts about the story that he's
9 giving you at this point?

10 A. Well, I don't believe it and I'm
11 thinking about different ways I might use,
12 different strategies I might use to try to
13 get him to cooperate and tell us the truth.

14 Q. So you do not think that he's
15 telling you the truth?

16 A. No, Not at all.

17 Q. Is that based in part on previously
18 speaking with the girlfriend?

19 MR. BUTLER: Objection to leading.

20 THE COURT: Rephrase your
21 question. I sustain the objection.

22 SOLICITOR SIMPSON: I withdraw
23 it.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR SIMPSON:

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1 Q. At some point -- so at this point,
2 you've given him that open opportunity to
3 give his side of the story?

4 A. Yes.

5 Q. At any point moving forward in this
6 interview -- again, how long was the total
7 interview?

8 A. Let's see -- just under five hours.

9 Q. Okay. Does there come a point in
10 any of your interviews, in this interview in
11 specific, where you start getting a little
12 more confrontational about the facts as you
13 understand them?

14 A. Yes.

15 Q. And the evidence that you have?

16 A. Yes.

17 Q. But you don't do that until giving
18 ample time for them to express their own
19 story; correct?

20 A. Right.

21 Q. And did Devin have plenty of time to
22 tell you what his version of events were?

23 A. Yes.

24 Q. Moving ahead now, and starting the
25 video at 9:32:56 -- (video playing, paused

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1 with Detective Osborne saying, "Well, D, you
2 made my job a lot easier and I do appreciate
3 it." Detective Osborne, at this point, do
4 you begin -- how are things proceeding at
5 this point?

6 A. How do I perceive his statement at
7 this point?

8 Q. Yes?

9 A. It's untruthful.

10 Q. Do you begin expressing that dis-
11 belief a little more aggressively with him at
12 this point?

13 A. Yes.

14 Q. Does that change his story?

15 A. No, that's doesn't work.

16 Q. Moving on to 10:06 -- (video
17 playing). At this point, we're approximately
18 an hour into the interview, have you begun to
19 layout the information you have, contradict-
20 ing the fact that you knew he was not in
21 Orangeburg?

22 A. I don't know whether I had piece-
23 milled any of it out to him yet. But I know
24 it's around this time where I start to
25 divulge to him why I know that his story

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1 isn't true.

2 Q. Is he still being given ample
3 opportunities to answer your questions?

4 A. He is.

5 Q. And was given an opportunity we just
6 viewed to think about his answers?

7 A. He is. And that's why I kept going
8 because you can, you can -- just his body
9 language you can see he was sitting there.
10 You could see it a lot better when he's
11 thinking about what to say. He's thinking
12 about where he wants to go.

13 MR. BUTLER: Your Honor, I object.

14 THE COURT: Sustained.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR SIMPSON:

17 Q. Moving on to section 10:11 -- (video
18 playing). So it's fair to say you're getting
19 a bit exasperated at this point?

20 A. Well, I mean, yes and no. I mean, I
21 know that we need a change of pace here, need
22 to try something different. So I step out at
23 this point to talk to Craig, talk to other
24 detectives who are monitoring, to try to see
25 if we can come up with some other different

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1 sort of strategy to get him to cooperate.

2 Q. We're moving ahead on this -- so at
3 some point you've reentered the room?

4 A. I do.

5 Q. Moving ahead almost an hour to
6 11:06.

7 SOLICITOR SIMPSON: Starting, for
8 the record at 11:07:25 -- (video playing).

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SIMPSON:

11 Q. Was Devin ever able to provide you
12 with an alibi from Orangeburg on the day of
13 the murder?

14 A. No.

15 Q. Did he however continue at this
16 point in the interview to insist that he was
17 in Orangeburg all day?

18 A. Yes.

19 Q. Moving forty-five minutes ahead to
20 section 11:46, beginning at 11:48:13 seconds
21 -- (video playing). So we're, here in this
22 clip, close to midnight; correct?

23 A. Yes.

24 Q. And you said you started at 9:00?

25 A. Yes.

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1 Q. And it appears that he is still
2 insisting that he was in Orangeburg?

3 A. That's right.

4 Q. Now, at times in the interview, and
5 we saw a the video clip, you know, voices get
6 raised in volume; right?

7 A. Yes.

8 Q. At any time, you always have to
9 explain this from clip to clip, at any time
10 did you threaten physical violence?

11 A. No.

12 Q. Do you, in your training and
13 experience, step outside the boundaries of
14 what is proper interrogation techniques?

15 A. No.

16 Q. And promise him future rewards if he
17 would only tell you what you wanted to hear?

18 A. No.

19 Q. If he asked you to go to the bath-
20 room, would you allow him go to the bathroom?

21 A. Yes.

22 Q. I see a cup on the table, what is
23 that?

24 A. At some point he must have asked for
25 water and we gave him water, or we may have

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1 just given it to him.

2 Q. Now there's a few times in the
3 interviews that he asked for cigarettes. Is
4 that correct?

5 A. That's correct.

6 Q. Were those requests denied or
7 granted?

8 A. Denied.

9 Q. At this stage in the interview, do
10 you again decide on somewhat of a strategy
11 change?

12 A. Yes.

13 Q. And could you explain that to the
14 jury?

15 A. So I thought that perhaps if Devin
16 were to call his relatives, either his mother
17 or his girlfriend that might open up a
18 dialogue between us again -- or start a
19 dialogue.

20 Q. And so how did you proceed to go
21 about making that happen?

22 A. I let him use my phone. You can
23 sort of see a phone right there, but that
24 phone, the problem with that phone is, not
25 only does it not work all the time. If

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1 there's anybody in the other interview room,
2 they could pick up the phone and hear it.
3 I didn't know what was going on so we didn't
4 use that phone a whole lot. So I let him use
5 my phone, my cell phone, and I stepped out.

6 Q. Okay. You left the room?

7 A. Yes.

8 Q. The video camera was still going?

9 A. Yes.

10 Q. Who did he call first?

11 A. I think he called Tenika first, if
12 I'm not mistaken.

13 Q. And did he also call his mother as
14 you'd suggested?

15 A. He did.

16 Q. At some point do you reenter the
17 room?

18 A. I do.

19 Q. Does the story Devin Johnson --
20 well, let me ask you this -- this strategy
21 was it, at least to a degree, successful?

22 A. Yes.

23 Q. Does his story change after speaking
24 to Tenika and his mother?

25 A. Yes.

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1 Q. For the record, starting at 12:58 --
2 (video playing). So who do you talk to?

3 A. I'm almost certain that was Tenika.
4 It could have been the mom, but I think it
5 was Tenika.

6 Q. But you were talking -- he's handed
7 you the phone?

8 A. Yes.

9 Q. And you're just speaking to whoever
10 he'd been speaking to?

11 A. Yeah. But I think it was Tenika
12 because I'd been talking to her -- (video
13 continued).

14 Q. So Detective Osborne, after
15 insisting for almost four hours that he was
16 in Orangeburg all day, is it fair to say the
17 Defendant now changes his story?

18 A. Yes.

19 MR. BUTLER: Judge, may we
20 approach?

21 THE COURT: Sure.

22 (OFF RECORD BENCH CONFERENCE)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SIMPSON:

25 Q. Are there any details, Detective

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1 Osborne, in the new version of the statement
2 that were interesting to you in an investiga-
3 tive capacity.

4 A. Yeah.

5 MR. BUTLER: Object to the use of
6 the word "interesting".

7 THE COURT: Sustained. That's
8 leading.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SIMPSON:

11 Q. Were there any statements -- what
12 did you find probative in that version of
13 events that Devin just recounted for us on
14 the video?

15 A. There were a few things. One, when
16 I'm taking the statement, he wanted to try to
17 -- you would like to hear things that only
18 the persons who were there could know, all
19 right?

20 So he said one thing. He said when he
21 got out of the car, 'I did see the guy with
22 the dog.' Well, there was a guy and a dog,
23 so we could corroborate that.

24 He also says that -- he doesn't say he
25 heard five shots. But he says, boom, boom,

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1 boom, boom, boom. We have four shell casings
2 on the scene. So that's pretty interesting
3 too in that it's not like he's saying there
4 were twenty or thirty. I mean, he knows that
5 it was four or five shots.

6 He also says that he was downstairs.
7 Charmaine lived upstairs. So he's putting it
8 downstairs.

9 Now, you know, the downstairs shooting
10 and the number of shots, those are important.
11 But they're not, I though, as important as
12 him seeing the guy with the dog.

13 Q. Did he make any comments about how
14 he parked?

15 A. He also indicated that he had backed
16 in. I can't recall right off-the-hand
17 whether I had told him that we had video of
18 the guy backing in, but I do know that I
19 didn't tell him that there was a guy walking
20 the dog in the video. So that's something
21 only he could have known from having been
22 there. It's not something that I volunteered
23 to him earlier in the interview.

24 Q. We have this entire interview on
25 video; is that correct?

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1 A. That's correct.

2 Q. At any time in the course of this
3 video, do you feed him, purposely or
4 inadvertently, anything about a guy walking a
5 dog?

6 A. That never comes up, no.

7 Q. Did you ask him any further
8 questions about this Creep individual he
9 claimed to know?

10 A. Definitely. I wanted to try to
11 identify Creep.

12 Q. What questions did you ask him about
13 Creep and what were those answers?

14 A. Everything I could think of. What
15 was his name? Where did he work? Phone
16 number? Where did he live? Where did he
17 hang out? Who did he associate with?
18 Tattoos.

19 Q. And what was his answer to most of
20 the questions regarding Creep?

21 A. Everything was 'didn't know.'
22 Didn't know where he lived, didn't know where
23 he worked, where he lived. Didn't know
24 anyone that associated -- well, he did know
25 one person that associated with him. But the

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1 tattoos, he did claim that Creep had two
2 tattoos, hands praying up on his right
3 shoulder and a cross on his right forearm.

4 Q. But did he know a phone number?

5 A. He claimed to not have Creep's phone
6 number.

7 Q. Did he know where Creep worked?

8 A. No.

9 Q. Did he know Creep's name?

10 A. No.

11 Q. Did you later perform any types of
12 follow-ups to pursue the identity of this
13 Creep individual?

14 A. We spent a lot of time trying to
15 identify Creep. We had located an individual
16 that seemed to be the person that he was
17 directing us to, but he did not have the
18 tattoos that he said he would.

19 Q. Detective Osborne, was it your
20 understanding of the clip we just viewed that
21 Devin Johnson was admitting to being the
22 driver in the videos we watched?

23 A. Most definitely, yeah.

24 Q. Detective, I'd like to change gears
25 for a bit if I may and ask you some questions

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1 about an individual named DeAngelo Buncum?

2 A. Okay.

3 Q. Was there any interest on the part
4 of your agency in DeAngelo Buncum as a
5 possible suspect in this murder?

6 A. Yes.

7 Q. Can you explain that interest, the
8 reasons for it to the jury?

9 A. As best we could tell early on,
10 DeAngelo would have been one of the last
11 people that was with the victim prior to him
12 being shot.

13 Q. Did you ever get a chance to inter-
14 view DeAngelo?

15 A. I did.

16 Q. And how did that interview come to
17 be, without stating anything he told you?

18 A. Okay. So while this was going on,
19 there's a break. And if I'm not mistaken, I
20 think the break occurs around 11:38 to 11:48.
21 But when you see Detective Kosarko not in
22 this interview, during that almost five-hour
23 period, Buncum is in the adjacent room.

24 So Craig goes into that other room. He
25 interviews Baucum while this is going on. At

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1 one of the breaks, I meet with Craig Kosarko,
2 Detective Kosarko, and he tells me what's
3 going on with Baucum and how that interview's
4 going. So I -- while he's on the phone, I go
5 in there and I talk to Baucum for about ten
6 minutes.

7 Q. Did the marshals have to go out and
8 find Baucum?

9 A. No.

10 Q. How did it come to be that he was at
11 the police station?

12 A. When DeAngelo saw his name in the
13 news, he called the police or his mom did and
14 we went and picked him up at his house.

15 Q. Sometime later, following the
16 interview with DeAngelo Baucum, did you ever
17 go back to the Georgetown surveillance video?

18 A. Yeah. We did that night, the night
19 of the interview with Baucum.

20 Q. Was there any particular thing you
21 were looking for on that surveillance video?

22 A. Yes. DeAngelo had told us that
23 about ---

24 Q. I'm sorry, you can't talk about what
25 you were told. Was there any time frame on

1 the video that you were interested in?

2 A. Yeah. I think I want to say it was
3 about ten minutes before the shooting.

4 Q. Did you go review that timeframe on
5 the surveillance video?

6 A. Yes.

7 Q. Going back, I'm publishing now the
8 surveillance video, camera time of 10:00:07
9 -- (video playing, State's Exhibit 55),
10 what's the actual time here?

11 A. The actual time is 10:08.

12 Q. Understanding -- of course, we can
13 all see it. Can you identify DeAngelo's face
14 in this video?

15 A. No.

16 Q. But having met DeAngelo, does this
17 seem to you to be a person consistent with
18 his ---

19 A. It's him. It seems consistent,
20 yeah.

21 Q. And, again, this is about ten
22 minutes before the known time of the murder?

23 A. That's correct.

24 Q. And what camera is this?

25 A. So this is the C/D camera. And the

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1 murder would have been off in this direction.

2 Q. We also have a D/E camera that we've
3 already viewed; correct?

4 A. Yes.

5 Q. Were you able to continue to see
6 this individual walk across to that parking
7 lot?

8 A. We did.

9 Q. Back to this building?

10 A. That's correct.

11 Q. This is all about ten minutes before
12 the known time of the murder?

13 A. That's correct.

14 COURT REPORTER: Exhibit number?

15 SOLICITOR SIMPSON: Exhibit 55.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR SIMPSON:

18 Q. And you were very interested in this
19 after speaking with DeAngelo?

20 A. Not until after we spoke to him.

21 Q. Detective Osborne, I'd like to
22 change gears again, if I may. You've already
23 recounted for this jury your long history in
24 law enforcement?

25 A. Yes.

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1 Q. How many years?

2 A. Sixteen and a half.

3 Q. Over sixteen and a half years as a
4 police officer, have you encountered a lot of
5 different types of people?

6 A. Yes.

7 MR. BUTLER: Your Honor, may we
8 approach?

9 THE COURT: Sure.

10 (OFF RECORD BENCH CONFERENCE)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SIMPSON:

13 Q. Detective Osborne, have you ever
14 encountered the term to "wet up" or "wet
15 somebody up"?

16 A. Yes, I have.

17 Q. And what is the -- do you encounter
18 lots of slang in law enforcement?

19 A. Yes.

20 Q. And what is the definition, to your
21 understanding, of that particular slang?

22 A. That's when you're going to shoot
23 somebody.

24 Q. Have you encountered it before in
25 your experience?

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1 A. I have.

2 Q. You've spoken with people and
3 they've used it in that sense?

4 A. Yeah. It means -- you run across
5 different things, different little sayings.
6 And that's one of them that I have heard in
7 my experience. When you're going to wet
8 somebody up, you're going to shoot them.

9 And it's almost like, you know, an
10 analogy might be, you know, 'we're going to
11 go do a lick.' And that's something I never
12 heard prior to law enforcement, but that
13 would mean they're going to do a robbery.

14 A tone or a gap is one of the names for
15 guns.

16 Slang you hear when you're dealing with
17 law enforcement.

18 Q. Okay. In preparation for trial and
19 in consultation with our office, did you do
20 any further research on that term "wet up"?

21 A. I did.

22 Q. And what research was that?

23 A. I looked it up in Urban Dictionary?

24 Q. And is that website?

25 A. It is. It's sort of like -- kind of

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1 like Wikipedia, I guess. You know, people
2 can submit their definitions of words. The
3 editors would review it. And if they approve
4 it, they publish it. And then anybody can go
5 and vote on it thumbs up or thumbs down.

6 Q. Did you search for that term, wet up
7 or wet someone up?

8 A. I did.

9 Q. And how many definitions were given
10 for that term?

11 A. There are five definitions?

12 Q. And did you print the definition
13 page from that website?

14 A. I did.

15 Q. Are you referring to that in front
16 of you now?

17 A. Yes.

18 Q. What is the first definition given,
19 verbatim?

20 A. Okay. The first definition is to
21 *"...shoot or sometimes stab a person several*
22 *times, usually in an attempt to murder them.*
23 *Called "wet up" because there is enough blood*
24 *to soak their clothes, leaving them wet."*

25 Q. And how many uploads does that

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1 particular definition have?

2 A. Okay. That has a hundred and twenty
3 uploads and twenty-eight downloads.

4 Q. And what is the second definition
5 given on Urban Dictionary of the phrase to
6 wet somebody up?

7 A. The second definition is *"to be shot
8 up, stabbed, resulting in death."*

9 Q. And how many uploads does that have?

10 A. That has fifty-five uploads and
11 fourteen downloads.

12 Q. And what is the third definition for
13 wet up given on urbandictionary.com?

14 A. Third definition is *"to be soaked
15 and drenched in your own blood due to
16 gunshots or stab wounds."*

17 Q. So those are the top three answers
18 given on urbandictionary.com and all involve
19 what?

20 A. Gunshots, bleeding, dying.

21 Q. You mentioned earlier there were
22 five definitions given on Urban Dictionary?

23 A. Yes.

24 Q. What's the fourth?

25 A. Okay. The fourth one is *"to take*

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1 shots or drink any alcoholic beverage, mainly
2 vodka/liquor, to the point you are at least
3 tipsy."

4 Q. And the fifth?

5 A. The fifth is "to verbally outline
6 your excited emotions while hang gliding."

7 Q. And, again, all of the first three
8 involved murder in some fashion?

9 A. Yes.

10 Q. In the video of Devin's interview, I
11 think he says I spoke with Alissa. He makes
12 that comment?

13 A. Uh-huh, (affirmative nod)

14 Q. To your knowledge, are Alissa and
15 Tenika the same person?

16 A. No.

17 SOLICITOR SIMPSON: Detective Osborne,
18 please answer any questions that Mr. Butler
19 may have for.

20 THE COURT: All right. Ladies and
21 gentlemen, I'm going to let you go to your
22 jury room at this point, take a break. Do
23 not begin your deliberations. Don't discuss
24 the case. We will be with you in about ten
25 or fifteen minutes. You may leave your

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1 notebooks on the chairs if you like.

2 (JURY OUT @ 4:20 P.M.)

3 THE COURT: All right. Anything
4 from the State before we recess?

5 SOLICITOR SIMPSON: No, Your
6 Honor.

7 THE COURT: Anything from the
8 Defendant?

9 MR. BUTLER: Are we taking a break
10 or ---

11 THE COURT: Yeah. We're taking a
12 break for about ten or fifteen minutes.

13 Detective/Solicitor Osborne, you may
14 step down if you need to take a break. I
15 just ask you not to have any conversation
16 with anyone about the case.

17 WITNESS: Yes, sir.

18 THE COURT: Thank you.

19 (BRIEF RECESS)

20 (DEFENDANT PRESENT)

21 MR. BUTLER: Your Honor, Mr.
22 Johnson has asked about bond, remaining out
23 on bond during the trial.

24 THE COURT: To my knowledge, I
25 don't believe I've ever met Mr. Johnson

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1 before this trial. And he's certainly
2 responded while he's been on bond.

3 The problem, Mr. Johnson, that I
4 have is I have to consider a number of
5 things. And I've been there, done that.
6 I've had people change their minds. It
7 creates problems.

8 The last one, two weeks ago, it
9 wasn't my trial but the defendant came in
10 totally intoxicated. The judge continued the
11 trial.

12 I understand this is an inconven-
13 ience. I would think -- well, how many more
14 witnesses you going to have?

15 SOLICITOR SIMPSON: I believe one
16 very short one, two, three, four. I believe
17 four, Your Honor, at this point -- I mean
18 three at this point.

19 THE COURT: Okay. All right. At
20 this point you're not bound by it. Do you
21 anticipate calling any additional witnesses?

22 MR. BUTLER: Two short ones.

23 THE COURT: I would think that we
24 would have this case to the jury by tomorrow.
25 To me, I understand everything associated

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1 with it -- Gentlemen?

2 MR. BUTLER: I'm sorry, Judge. My
3 apologies.

4 DEFENDANT: The reason why I asked
5 is because -- if you could consider a GPS
6 monitor or -- the reason why I ask is because
7 my mom, she had just caught a stroke. And
8 you know what I'm saying. I just want to be
9 there for her, while at the same time I was
10 going through court in this. You know, I'm
11 not going to back out of a trial. You have
12 my honest word on it.

13 THE COURT: Well, I understand
14 that, Mr. Johnson, and I'm not suggesting
15 that you would. It's probably rare that I
16 allow a person accused of murder to remain
17 out. It's just not prudent, okay. There are
18 all sorts of ramifications. Okay?

19 You're not -- I've seen nothing --
20 you've been very, very courteous to the
21 Court. Very respectful, and I appreciate
22 that very much. You've honored this whole
23 process. And that's a credit to you.

24 Outside of this courtroom who knows what
25 will happen. And I'm not suggesting any ill

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1 will on the part of the victim's family but
2 there's just too many things that could
3 happen and we just need to avoid -- we don't
4 need anything to happen. That's my ruling.
5 And I appreciate it. I don't mean to be
6 harsh, but -- I know how you feel.

7 I went to Roper Hospital -- I was
8 doing this job, went and sat in my father's
9 room for two weeks when he died. He had a
10 massive stroke. He could open his eyes and
11 that was about it. And it's a tough time and
12 I understand that -- but I just can't grant
13 the request. Thank you, sir.

14 MR. BUTLER: Thank you.

15 THE COURT: Thank you for asking,
16 Mr. Butler. I appreciate that. Thank you,
17 Mr. Johnson.

18 DEFENDANT: Yes, sir.

19 MR. BUTLER: And if I may make a
20 request that is a little different. In light
21 of the number of times that I've had to
22 object -- and this always worries me -- I get
23 up and then I lead because I'm on cross. I
24 worry that the jury won't understand that.

25 THE COURT: You can explain that.

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1 You can explain it to them. But, you know,
2 what, I do it every time I charge a jury. I
3 tell them objections are nothing, that's for
4 me. And it gives me an opportunity to
5 explain how we work together.

6 MR. BUTLER: And you can explain
7 that I'm allowed to lead?

8 THE COURT: I'm not going to
9 explain how you're allowed to lead. You can.

10 MR. BUTLER: All right. Thank you.

11 THE COURT: But if there's not
12 going to be an objection, then it doesn't
13 matter.

14 You're anticipating that they have
15 enough legal education to interpret what
16 leading is. I'm not sure if you put all
17 forty-nine judges in here, you'd have an
18 agreement that it's -- you may not even have
19 a consensus of what leading is.

20 MR. BUTLER: Yes, sir.

21 THE COURT: So thank you.

22 SOLICITOR SIMPSON: Judge, I'm
23 not certain if I put 60 through 63 into
24 evidence. But I believe it's without
25 objection.

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1 MR. BUTLER: Yes. It's without
2 objection.

3 THE COURT: Okay, 60 through 63
4 are admitted without objection.

5 SOLICITOR SIMPSON: Thank you,
6 Your Honor.

7 THE COURT: Thank you.

8 (SO ENTERED AS STATE'S EXHIBIT 60

9 (SO ENTERED AS STATE'S EXHIBIT 61)

10 (SO ENTERED AS STATE'S EXHIBIT 62)

11 (SO ENTERED AS STATE'S EXHIBIT 63)

12 THE COURT: All right. Are you
13 ready?

14 MR. BUTLER: Yes, sir.

15 THE COURT: Thank you. All right.
16 I'll try to make that as an example in my
17 discussion about objections.

18 MR. BUTLER: Well, I thought about.
19 Judge Kinard, who I practiced in front of for
20 many years, without even asking, he would --
21 when I would lead -- after my objection. He
22 would tell the jury 'now, he's allowed to
23 lead because he's on cross.' That's the only
24 reason I got into that, Judge.

25 THE COURT: I understand. And I,

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1 you know, one day I aspire to -- I'll
2 never be able to read as fast as Judge
3 Kinard. I would hope that I would aspire
4 to be as intelligent. But, you know, I'm
5 trying to do the best I can with what God
6 gave me.

7 MR. BUTLER: I know.

8 THE COURT: All right. I do the
9 best I can with what I got, but I appreciate
10 that.

11 MR. BUTLER: Thank you.

12 (OFF THE RECORD DISCUSSION)

13 THE COURT: Thank you, Mr.
14 Robinson, you can bring them on.

15 (JURY IN @ 4:40 P.M.)

16 THE COURT: Thank you so much, ladies
17 and gentlemen. We are ready to continue.
18 Thank you, Mr. Butler, for allowing us that
19 recess. You may proceed with your cross
20 examination.

21 MR. BUTLER: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. BUTLER:

24 Q. Good afternoon, sir.

25 A. Good afternoon.

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1 Q. Let's start with this. You said
2 that it was interesting to you that Devin
3 knew about the person walking his dog?

4 A. Yes.

5 Q. And that was because there was no
6 other way that a person could have known
7 about that unless they were out there?

8 A. I don't think that I phrased it
9 quite like that. What I did say is that it
10 would have been a heck of a guess for him to
11 say that there was a person walking a dog at
12 the moment he pulled up.

13 Q. Well, he wouldn't have to guess.
14 There were other ways that he could have
15 known that.

16 A. Sure, I guess.

17 Q. Didn't you say that the person
18 involved with, that their name was run on the
19 news?

20 A. DeAngelo Buncum's name was on the
21 news.

22 Q. Let me show you Defendant's Exhibit
23 13, marked for identification, and ask if you
24 know what that is.

25 A. (Upon review), this is Post &

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1 Courier website newspaper article.

2 Q. And what's the date?

3 A. I assume that it was on June 9th,
4 2011.

5 Q. And the date that you were
6 interviewing Mr. Johnson?

7 A. June 10th.

8 Q. And what does it say right there?

9 A. He says that her husband was walking
10 their dogs.

11 Q. And television covered this story,
12 too; didn't it?

13 A. Again, the only thing that I had is
14 that DeAngelo's name was run as being
15 involved, a person of interest.

16 Q. You've been in law enforcement
17 sixteen years?

18 A. Yes.

19 Q. Different departments?

20 A. Yes.

21 Q. Different things in different
22 departments?

23 A. Yes.

24 Q. You've moved up through the ranks?

25 A. Yes.

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1 Q. I mean, you don't start off as a
2 sergeant?

3 A. Right.

4 Q. You don't start off as a detective?

5 A. That's correct.

6 Q. You start off in New Orleans on foot
7 patrol or ---

8 A. No. I was a patrol officer there
9 and we had a beat or an assignment, assigned
10 area.

11 Q. Then you got a promotion?

12 A. It's not really a promotion like a
13 lot of people thing. It's more like a career
14 track, I'd say.

15 Q. But you don't start off as sergeant?

16 A. No.

17 Q. Can I call that a promotion?

18 A. That is, yes.

19 Q. You got a promotion, you won awards.

20 A. (Affirmative nod).

21 Q. Long before you won awards, you
22 trained at an academy?

23 A. I did.

24 Q. You know about report writing?

25 A. I do.

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1 Q. And you know that report writing is
2 part of being an investigator?

3 A. That's correct.

4 Q. Investigation is going out to seek
5 information, observing crime scenes?

6 A. Yes.

7 Q. The second part of that is
8 documenting the information that you collect?

9 A. Correct.

10 Q. Documenting it means that you put it
11 down somewhere so that you can look back at
12 it, review it at some other time?

13 A. Yes.

14 Q. You take suspects statements?

15 A. Yes.

16 Q. You take witness statements?

17 A. Yes.

18 Q. Now you can video statements?

19 A. Yes.

20 Q. Video crime scenes?

21 A. Depending, yes.

22 Q. You direct photographs be taken?

23 A. Yes.

24 Q. And all of that documents your
25 investigation?

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1 A. That's correct, yes.

2 Q. And one of the reasons that you
3 document -- and you write reports, obviously?

4 A. Yes.

5 Q. You write a lot of reports as a cop?

6 A. A lot of reports, (affirmative nod).

7 Q. There is a class on that at the
8 academy?

9 A. I'm sure that there is. I went
10 through the New Orleans Academy, not the one
11 here, but I am sure that there is.

12 Q. And that's report writing, it's not
13 complicated but it is a specialized kind of
14 writing, isn't it?

15 A. I wouldn't say that it is
16 complicated, but it is specialized, yes.

17 Q. There are certain things that you
18 want to put in a report?

19 A. That's correct.

20 Q. Because you work on more than one
21 case at a time.

22 A. That's correct.

23 Q. And you write things down, because
24 it may be several months or years before you
25 need the information.

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1 A. Sometimes.

2 Q. But you can look back at your report
3 and recall things?

4 A. That's correct.

5 Q. It helps to refresh your memory?

6 A. That's correct.

7 Q. Another reason is because you're not
8 the only one who may work on a case. There
9 is a case file and others may need to review
10 your notes or reports on investigations you
11 have conducted.

12 A. That's correct.

13 Q. All reports go in?

14 A. Yes.

15 Q. All witness statements go in?

16 A. Yes.

17 Q. All photographs, all notes go in?

18 A. Yes.

19 Q. So if somebody wants to know what
20 went on and they can't find you, they can go
21 to a case file?

22 A. Almost always. That's correct

23 Q. And if you can't get in touch with
24 another officer, Detective Charles, ---

25 A. Detective Miller, ---

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1 Q. -- you can go to the file notes and
2 see what their report says.

3 A. That's correct.

4 Q. One of the things that you do when
5 you write a report is that you want to be
6 accurate.

7 A. That's correct.

8 Q. It wouldn't make any sense to write
9 down stuff that would be inaccurate?

10 A. That's correct.

11 Q. Because everyone is sworn to tell
12 the truth, the whole truth and nothing but
13 the truth on ---

14 A. Usually.

15 Q. Because the truth in part can be
16 misleading, right?

17 A. Say again.

18 Q. A part in part -- you've heard the
19 phrase "half truth."

20 A. Yes.

21 Q. A half truth, while true, can be
22 misleading?

23 A. Sometimes.

24 Q. A father asks, 'What did you get on
25 your report card?'

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1 'I get B's, Dad.' But that could
2 mean you got two B's -- and three F's.

3 A. Right.

4 Q. So you not only want to be accurate
5 but complete?

6 A. You try to.

7 Q. And you have a report in this case?

8 A. I have several.

9 Q. Several reports?

10 A. (No verbal response).

11 Q. Okay. Twenty-six pages of reports?

12 A. That I submitted? It wouldn't
13 surprise me if there were more than that.

14 Q. But at least twenty-six.

15 A. (No verbal response).

16 Q And these are typed reports, not
17 handwritten reports. So you've had a chance
18 to look back at your notes where you sat down
19 at a word processor or a typewriter and you
20 typed them out.

21 A. Okay.

22 Q. And some of these are supplemental
23 reports?

24 A. I think all of them are.

25 Q. All of them?

1 A. (No verbal response).

2 Q. A supplemental report is where you
3 learned something new later and you write it
4 down.

5 A. Sort of.

6 Q. Well, then tell me what it is.

7 A. First you have the incident report,
8 and there's only one incident report.
9 Everything after that is a supplemental
10 report.

11 Q. Okay. So the case continues even
12 after an arrest, for example?

13 A. Yes.

14 Q. So you put anything that develops in
15 a report, a supplemental to the incident
16 report.

17 A. Correct.

18 Q. And if you put down something wrong,
19 then you fix it in a supplemental report.

20 A. Well, a lot of times I see typos
21 right up to the date of trial. But, yes.

22 Q. I ain't talking about a typo. I
23 mean factual information. If you found out
24 that you've documented something wrong or
25 incorrectly, you'd supplement it in a report.

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1 A. It depends. Depends.

2 Q. All right. At the right that this
3 shooting first occurred -- this was an ID
4 case, right?

5 A. (No verbal response).

6 Q. Or a whodunit? Are you familiar
7 with that?

8 A. Well, to me those are two different
9 expressions. I think every murder is sort of
10 like a whodunit. An ID case would be, say,
11 an eyewitness says 'I saw who did it.'

12 Q. And every case is not a whodunit
13 case. For example, if a guy comes in and
14 said, 'I did it, it was self-defense', that's
15 not a whodunit?

16 A. That's correct.

17 Q. And in this case we want to find out
18 who the shooter is?

19 A. That's correct.

20 Q. And critical to finding out who the
21 shooter is a physical description of the
22 person who did the shooting, the suspect.

23 A. That's correct.

24 Q. All right. And when you're looking
25 for a suspect, especially before you make an

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1 arrest, you get a physical description;
2 right?

3 A. If you can get a physical descrip-
4 tion. You have to have an eyewitness in
5 order to get a physical description of the
6 shooter.

7 Q. You got a description from the
8 video, in this case; right?

9 A. Not just from the video.

10 Q. Well, I'm asking you about the
11 description you got in the video.

12 A. Okay.

13 Q. And that helped you to figure out
14 who the person was that you were looking for.

15 A. (No verbal response).

16 Q. And you testified today that the
17 person in the video, the driver, had on a
18 blue hat.

19 A. No.

20 Q. You're not saying that?

21 A. What I said was that it appears to
22 me as though he did. Anyone can watch the
23 video and draw their own conclusion. I said
24 that it appeared to me as though he did --
25 and I don't think that I said blue, although

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1 it does look blue. I think what I said was
2 that it appeared to me that he was wearing a
3 cap, but anyone can look at the video and
4 draw their own conclusions.

5 Q. Okay. So there is a difference
6 between 'he had on a blue cap' -- I thought
7 you said blue, but -- but there's a
8 difference between 'it appears that the
9 person had on a cap' and 'the person had on a
10 cap.'

11 A. Absolutely. One is a definitive
12 statement of fact and the other is just my
13 opinion from looking at the video.

14 MR. BUTLER: (Tenders item to be
15 marked as exhibit)..

16 COURT REPORTER: Defendant's
17 Exhibit 14.

18 CROSS EXAMINATION CONTINUED

19 BY MR. BUTLER:

20 Q. Showing you Defendant's Exhibit 14,
21 do you recognize that document?

22 A. This is one of the supplementals
23 that I wrote.

24 Q. And in that you give a description
25 of the driver, do you not?

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1 A. I do.

2 Q. And read that to the jury, if you
3 would.

4 A. (Reading): *"The driver appears to*
5 *be a light skinned black male wearing a wife*
6 *beater tee-shirt and long black shorts."*

7 Q. And there's nothing in there about
8 him wearing a cap or hat?

9 A. No.

10 Q. But you did say that he was light
11 skinned?

12 A. Yes.

13 Q. Wearing a white wife beater tee-
14 shirt?

15 A. Yes.

16 Q. And long black shorts?

17 A. Yes. That's correct.

18 Q. Anywhere in your other supplemental
19 reports, -- do you have them?

20 A. I do.

21 Q. Anywhere in there, do you say
22 anything about a cap?

23 A. Do I say anything about a cap?

24 Q. Yes, sir. Anywhere did you write
25 that it "appears that there may have been a

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1 cap"?

2 A. I don't know that I write a whole
3 lot of opinions in supplemental reports. But
4 I wouldn't have needed to write anything in
5 this case because anyone can look at the
6 video and draw their own opinion.

7 Q. Just like anyone could draw their
8 own opinion about it appeared to be a light
9 skinned black male.

10 A. Right.

11 Q. But you wrote that down?

12 A. I did.

13 Q. Just like anyone could form their
14 own opinion about them wearing a white wife
15 beater tee-shirt.

16 A. They could.

17 Q. But you wrote that down?

18 A. I did.

19 Q. Long black shorts?

20 A. (No verbal response).

21 Q. You wrote all of that down?

22 A. I wrote all of that down, yes.

23 Q. Let's talk about some of the things,
24 that you've told us. You've been trained in
25 interrogation techniques?

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1 A. Yes.

2 Q. Talking to a suspect is not like a
3 friendly conversation at a coffee shop.

4 A. It can be. It floats in and out.

5 Q. You talked to him about his
6 daughter?

7 A. Yes.

8 Q. You told him about how she was six
9 years old?

10 A. Yes.

11 Q. Polite.

12 A. She was, yes.

13 Q. And sweet?

14 A. Yes.

15 Q. You also told Devin that he didn't
16 seem at all like a stone-cold killer, right?

17 A. I did tell him that.

18 Q. Because he didn't, right?

19 A. (No verbal response).

20 Q. Early on, -- I'm trying to figure
21 out which of this is technique and which is
22 -- because you did think that his daughter
23 was polite and sweet.

24 A. Right.

25 Q. Okay. But -- you knew that he

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1 didn't have a criminal record of violence?

2 A. (No verbal response).

3 Q. You'd run a background check on him?

4 A. I did.

5 Q. You knew that he was twenty-seven
6 and didn't have that kind of background, for
7 violence?

8 A. I did.

9 Q. So when you're telling him, 'Look,
10 man, I don't believe that you're a stone-cold
11 killer', that was part of your technique at
12 the time or ---

13 A. What I am trying to do is develop a
14 rapport with Devin, trying to get him to
15 trust me, trying to bring down his guard.

16 Q. And you said that this was a five-
17 hour interview?

18 A. Just about that.

19 Q. And you said that in your opinion
20 that there were no inducements or promises or
21 anything to get him to talk; is that correct?

22 A. That's correct.

23 Q. He, several times, asked for
24 cigarettes; right?

25 A. He did.

1 Q. And at one point -- at one point
2 you're done talking to him. We saw this
3 (video), right up to this point.

4 A. I am not done talking to him.

5 Q. Well, you leave the room.

6 A. I do leave the room.

7 Q. (Video playing) -- all right.

8 *"Cigarettes are for cooperators. Guys who*
9 *don't cooperate don't get cigarettes."*

10 A. Right.

11 Q. What you're telling him is, 'I don't
12 believe what you're telling me, so I'm not
13 going to give you a cigarette.'

14 A. No. Well, I guess you could say
15 that. But I know what I'm thinking. What I
16 am thinking is, 'I'm not going downstairs
17 with this guy to give him a cigarette, where
18 I am to have to go outside of the station,
19 with someone who has been sitting there lying
20 to me for two and half hours, three hours.
21 He can't tell me the truth. So how can I
22 trust him outside the station? We could get
23 in a fight or whatever.'

24 And cigarettes are for cooperators,
25 someone who you feel comfortable with. If I

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1 feel comfortable with someone, yeah, then I
2 will walk outside the station for them to
3 have a cigarette. I am not going to do that
4 with someone that I don't feel comfortable
5 with, who has been sitting there lying to me
6 for the last three or four hours.

7 Q. Got it. That's what you meant. But
8 he's saying he had been cooperation, and he
9 had been cooperating. He'd been talking to
10 you for a couple of hours at that point.
11 Right?

12 A. Talking.

13 Q. But because you determined that he
14 was lying, that was cooperating and he wasn't
15 going to get a cigarette?

16 A. Well, it wasn't just me that
17 determined that he was lying. We had
18 evidence to show that he was lying.

19 Q. But it sounds to me like you're
20 saying, 'If you want a cigarette, you need
21 to come around.' But that's just my
22 interpretation, and not accurate?

23 A. Well, if he felt that way, it
24 certainly didn't work because he continued
25 denying for several hours.

1 Q. Very well. In the video that we saw
2 from the apartment complex, you made it clear
3 that in your opinion that the driver was him?

4 A. Yes.

5 Q. And that's because of the clothes
6 that he had on? Because later at the
7 Kangaroo we see him in a wife beater. In
8 part?

9 A. Along with other stuff.

10 Q. The white wife beater?

11 A. Yes.

12 Q. And what he tells the lady?

13 A. And other stuff, (affirmative nod).

14 Q. Y'all were also interested in his
15 cell phone?

16 A. Yes.

17 Q. And that was because he told you
18 that he use the phone that day?

19 A. That was part of the reason, yeah.

20 Q. And I think his girl told you that
21 she called him on the phone that day?

22 A. Yes, I think so.

23 Q. An also the video shows -- right?
24 Let's go to -- well, let me show you these.
25 What are those?

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1 A. These are individual still shots of
2 an individual walking to and from the Toyota.

3 MR. BUTLER: At this time, we would
4 move Defendant's Exhibits 5 through 10 into
5 evidence.

6 SOLICITOR SIMPSON: No objection.

7 THE COURT: Defendant's Exhibits 5
8 through 10 are admitted, each being a photo-
9 graph.

10 (SO ENTERED AS DEFENDANT'S EXHIBIT 5)

11 (SO ENTERED AS DEFENDANT'S EXHIBIT 6)

12 (SO ENTERED AS DEFENDANT'S EXHIBIT 7)

13 (SO ENTERED AS DEFENDANT'S EXHIBIT 8)

14 (SO ENTERED AS DEFENDANT'S EXHIBIT 9)

15 (SO ENTERED AS DEFENDANT'S EXHIBIT 10)

16 CROSS EXAMINATION CONTINUED

17 BY MR. BUTLER:

18 Q. I want to go backwards.

19 A. Okay.

20 Q. Showing you Defendant's Exhibit 5,
21 the only person in this image is the driver?

22 A. That's right.

23 Q. And in his hand, this illuminated
24 image, is a phone?

25 A. It certainly looks like a phone.

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1 Q. Okay. And this is at 10:08:49, so
2 we know that is 10:16:48, based on the work
3 that you've done?

4 A. That's correct.

5 Q. One second earlier than six
6 (Defendant's Exhibit 6), same person, same
7 white wife beater, with what appears to be a
8 cell phone in his hand?

9 A. That's correct.

10 Q. One second earlier -- and again this
11 is the light skinned male that you described?

12 A. That's correct

13 Q Defendant's Exhibit 7, one second
14 earlier, 10:16:47, you see the person a half
15 step closer?

16 A. That's correct.

17 Q. Defendant Exhibit 8, 10:16:46, a
18 step more and you can see an illuminated
19 object there in his right hand?

20 A. Yes.

21 Q. Defendant Exhibit 9, just a little
22 bit before that, you see the same person?

23 A. Yes.

24 Q. Same clothes?

25 A. Yes.

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1 Q. And you see the object there, right?

2 A. It certainly could be, yeah.

3 Q. Now, Defendant's Exhibit 10, you see
4 here the same person and the object is up
5 here close -- in his right arm (sic), -- up
6 here, close by his face?

7 A. It looks like that, yes.

8 Q. And it looks as if he is extending
9 his left arm here -- almost as if he is on
10 the phone and pointing?

11 A. He could be.

12 Q. Okay. I thought one of the things
13 that y'all used to justify searching for him
14 was from his phone. Not from the video, just
15 that he had a phone.

16 A. Correct.

17 Q. Yeah. Before you got the phone
18 records, you -- you looked through Devin's
19 phone, did you not?

20 A. Looked through his physical phone?

21 Q. Yes.

22 A. Yes.

23 Q. Defendant Exhibit, the time on that
24 again is 10:16.

25 A. That's about right.

1 Q. Do you have your reports, supple-
2 mental reports?

3 A. (No verbal response).

4 Q. So at 10:16 -- Defendant's 10 is at
5 10:16.

6 A. Correct.

7 Q. The last time that he makes a phone
8 call on his phone is at what time?

9 A. There is an incoming phone call from
10 his mother at 10:02 p.m.

11 Q. All right. Mama at 10:02.

12 A. Right.

13 Q. Defendant's Exhibit 10 was 10:16.
14 What is the next phone call?

15 A. (No verbal response).

16 Q. The photograph that I showed you was
17 taking place at 10:16.

18 A. Okay.

19 Q. When did the next call occur?

20 A. The next call was 10:36 p.m., Sha.

21 Q. Okay. Who?

22 A. Sha, S-h-a.

23 Q. So at 10:16, he is neither receiving
24 nor making a phone call, from your review of
25 the records?

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1 A. Correct.

2 Q. Okay. Also from your review of his
3 phone -- sorry, not the records -- he had not
4 called Akeem Smalls that day?

5 A. That's correct.

6 Q. Or the day before?

7 A. That's correct.

8 Q. Or the day before?

9 A. That's correct.

10 Q. You had the call log up to the 5th
11 and no calls either to or from Mr. Smalls.

12 A. That's right.

13 Q. Showing you Defendant's Exhibits 11
14 and 12, do you recognize those?

15 A. I do.

16 Q. Those are of Devin before this
17 crime?

18 A. Yeah.

19 Q. That's what he looked like?

20 A. Yeah, I think so.

21 Q. That is what he looked like when you
22 interviewed him?

23 A. That's correct.

24 MR. BUTLER: We would move to admit
25 Defendant's Exhibits 11 and 12.

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1 THE COURT: Any objection?

2 SOLICITOR SIMPSON: No objection.

3 THE COURT: Defendant's Exhibits

4 11 and 12 are admitted without objection.

5 (SO ENTERED AS DEFENDANT'S EXHIBIT 11)

6 (SO ENTERED AS DEFENDANT'S EXHIBIT 12)

7 CROSS EXAMINATION CONTINUED

8 BY MR. BUTLER:

9 Q. He has a full head of hair and
10 dreadlocks.

11 A. (Pause) -- yes.

12 Q. In your opinion, does it appear that
13 he ---

14 A. No, that's not what I meant. What I
15 meant was the characterization of "dread-
16 locks." I don't know ---

17 Q. Twists?

18 A. Twists, (affirmative nod), sometimes
19 they are referred to as twists.

20 Q. Okay.

21 A. When you think of dreadlocks, I
22 generally think of longer hair.

23 Q. Okay. Does it appear that he has
24 twists in his hair?

25 A. Definitely has a full head of hair.

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1 Q. All right. You're familiar with the
2 concept of corroboration?

3 A. Yes.

4 Q. And corroboration is just when one
5 fact supports the existence of another fact?

6 A. Yes.

7 Q. For example, a guy says, 'Man, it
8 couldn't have been me. I was at work.' You
9 go and talk to his boss, his boss says here
10 is his time card, he was at work.' That
11 corroborates what the suspect said.

12 A. Could be, yes.

13 Q. But if his boss says that he called
14 in sick that day, that's a failure to
15 corroborate?

16 A. Correct.

17 Q. Because investigators look for
18 corroboration?

19 A. Yes.

20 Q. If in fact the driver in Defendant's
21 10 -- in State's 10 is on the phone, the call
22 log does not corroborate that, does it?

23 A. I don't know that he's on the phone
24 just because he has the phone up to his ear.
25 It doesn't mean that he's placing a phone

1 call. It doesn't mean he is talking on the
2 phone.

3 Q. I said "if." You can answer that
4 question. If he is on the phone in State's
5 Exhibit 10, the call records do not
6 corroborate that is in fact Devin on the
7 phone?

8 A. If that guy in that photograph was
9 talking on the phone, then yes. It was not
10 in his phone records. That doesn't mean that
11 it wasn't deleted or something like that, it
12 just means that it wasn't in his phone
13 records.

14 Q. I got it. Maybe he deleted that one
15 call and left all the rest?

16 A. If it was to Akeem, that would have
17 been a good reason to delete it.

18 Q. I gotcha. And of course if it was
19 to Akeem, it would have been in the phone
20 records which we will talk about tomorrow?

21 A. Possibly. Possibly, because there
22 are times when phones do not connect.

23 Q. Because you didn't just look at the
24 phone, you got the record as well?

25 A. That's correct.

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1 MR. BUTLER: Beg the Court's
2 indulgence.

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION CONTINUED

5 BY MR. BUTLER

6 Q. Talking about him about changing his
7 story, you said to him at some point -- and
8 I'm going to paraphrase -- that 'no suspect
9 tells the truth the very first time.' Is
10 that true or did I not hear that?

11 A. Yeah, I think that is part of the
12 process, generally. There are instances
13 where people come in and tell the truth.

14 Q. Generally -- guilty or not, people
15 often don't tell the truth.

16 A. That's true.

17 Q. But for whatever reason you didn't
18 believe that he was telling you the truth?

19 A. Correct.

20 Q. You were confident that he was not
21 in Orangeburg, based on the evidence that you
22 had?

23 A. Correct.

24 Q. You were equally confident that he
25 was lying to you about not knowing DeAngelo

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1 Buncum?

2 A. Initially, yeah.

3 Q. And at some point you tell him that,
4 right?

5 A. Right.

6 MR. BUTLER: Beg the Court's
7 indulgence.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION CONTINUED

10 BY MR. BUTLER:

11 Q. And at one there was -- you told him
12 that there were two things that you didn't
13 want to hear, (video playing) -- it's not
14 that clip, I'll just ask you.

15 You told him that there were things that
16 you didn't want to come out of his mouth.
17 You didn't want to hear that he was in
18 Orangeburg and you didn't want to hear that
19 he did not know Buncum.

20 A. Right.

21 Q. And it turned out that you were
22 wrong about that.

23 A. I was wrong about one of them.

24 Q. 'Say anything else you like but not
25 either of those two things or I am out of

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1 here.' Does that sound familiar?

2 A. I probably said that, yeah.

3 Q. You also -- I guess maybe still --
4 thought that Creep was just a figment of his
5 imagination?

6 A. No

7 Q. Because you say to him, 'You don't
8 know his name, you don't know where he lives,
9 you don't know where he works, you might as
10 well call him T-Rex.'

11 A. Creep is a real person.

12 Q. But you said to him, 'You might as
13 well call him T-Rex.'

14 A. Yeah.

15 Q. And then you called his "Ghost."
16 You kept saying to him, 'Well, Ghost did
17 this', 'Ghost did not.' You didn't think
18 that there was a person named Ghost or T-Rex.

19 A. Are you asking me if Creep is a real
20 person or if he made him up?

21 Q. You were thinking he made him up.

22 A. I was thinking at the time that
23 either he made him up, that he wasn't a real
24 person, or he wasn't giving me the
25 information to find this person.

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1 Q. But he's a real person. He was in
2 his phone.

3 A. There is a real person named Creep,
4 a person from Summerville but that's not the
5 person that he was referring to. Creep is
6 from Summerville, he's a killer. Creep is an
7 easy person to find, to say 'I was with him.'
8 When we found Creep, he didn't have the
9 tattoos that he referred to. Creep alibied
10 out.

11 Q. Detective, when you looked through
12 his cell phone, you made it a point to look
13 at all of his contacts, didn't you?

14 A. I did.

15 Q. And in your official report, which
16 is always complete and accurate, the first
17 person that you listed was Creep.

18 A. (No verbal response).

19 Q. When Devin was arrested by the
20 marshals, he was at his house?

21 A. Tenika's house.

22 Q. Where he stayed?

23 A. He had clothes there.

24 Q. He wasn't hard to find?

25 A. It wasn't until we talked to Tenika.

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1 MR. BUTLER: Beg the Court's
2 indulgence.

3 THE COURT: Certainly.

4 CROSS EXAMINATION CONTINUED

5 Q. That exchange about the cigarettes,
6 when you said "cigarettes are for
7 cooperators", that was before he changed his
8 story. Correct?

9 A. I only recall him changing his story
10 one time and that was certainly before that,
11 two or -- two or three hours before that.

12 MR. BUTLER: Beg the Court's
13 indulgence.

14 THE COURT: Okay.

15 MR. BUTLER: That's all that I
16 have.

17 THE COURT: Redirect?

18 SOLICITOR SIMPSON: Briefly.

19 REDIRECT EXAMINATION

20 BY SOLICITOR SIMPSON:

21 Q. Investigator, you've seen the video?

22 A. Yes.

23 Q. And Mr. Johnson mentioned in an open
24 steam of conversation, before you ever
25 mentioned it, that he saw a man walking a

1 dog?

2 A. Yes.

3 Q. Did your investigation ever include
4 where the defendant went following the
5 murder?

6 A. Yes.

7 Q. Where was that?

8 A. He at some point -- he had to have
9 dropped off the other individual because he
10 was the only individual in the car when he
11 picked up Tenika at her place of employment.

12 From there they went to Summerville, went
13 to a gas station and then picked up his girl,
14 Denavia. Or they got Denavia and then went
15 to the gas station, one of the two.

16 Then they went to Orangeburg, back to
17 Tenika's house.

18 Q. According to the defendant, he was
19 in Orangeburg until the time of his arrest?

20 A. Yes.

21 Q What date was that?

22 A. The murder occurred on the 8th, and
23 he was arrested on the 10th.

24 Q. Does the Post & Courier have a wide
25 circulation in Orangeburg?

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1 A. Not that I am aware of.

2 Q. Showing you what has been marked as
3 ID Only as State's Exhibit 13, how far down
4 in that article is there a mention of someone
5 walking their dog?

6 A. Like the fourth or fifth paragraph
7 down.

8 Q. A detail a ways down in the article?

9 A. Yes.

10 Q. Did -- the comment about the man
11 walking the dog, was that in response to a
12 question from you?

13 A. No.

14 Q. He just offered the comment?

15 A. Yes.

16 Q. What is the person in the video
17 wearing when he gets out of the car, runs
18 back to the car?

19 A. Clothing-wise a white shirt, dark
20 pants, dark colored pants. Again, drawing no
21 conclusions, it looks to me like he was
22 wearing something on his head.

23 Q. Showing you what has been marked and
24 entered as State's Exhibit 67, do you know
25 the source of that?

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1 A. I do.

2 Q. Is it your understanding that --
3 what is that?

4 A. That is a still frame surveillance
5 shot of the Kangaroo gas station, I believe
6 on Central Avenue in Summerville, on the
7 night of the murder, after the murder.

8 Q. And what is the person in that video
9 (sic) wearing?

10 A. White tank top, dark pants.

11 Q Let's talk about -- first, let's
12 watch in real time the stills that were shown
13 to you from this video -- (video playing).
14 Watching that in real time, what does it look
15 like the defendant may be doing with his
16 phone?

17 MR. BUTLER: Objection.

18 THE COURT: I will allow it.
19 Having shown him stills about it, I will
20 permit it.

21 REDIRECT EXAMINATION CONTINUED

22 BY SOLICITOR SIMPSON:

23 Q. What does it appear that the
24 defendant is doing with his phone?

25 A. Looks like he is talking on the

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1 phone -- he could be talking on the phone, he
2 could have flipped open the phone to look at
3 the time, he could have been playing on the
4 phone. He could have been doing anything.

5 Q. And if this unknown -- and if he
6 didn't make a phone call or send a text,
7 would there be a phone record of it?

8 A. No.

9 Q. Mr. Butler went through some records
10 you obtained from looking at the phone, is
11 that correct?

12 A. Yes.

13 Q. Does that look familiar to you?

14 A. Yes.

15 Q. Stepping back, ---

16 MR. BUTLER: Judge, could we
17 approach?

18 THE COURT: Yes.

19 (OFF RECORD BENCH CONFERENCE)

20 REDIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SIMPSON:

22 Q. Let's go from this call after the
23 murder -- if we could, looking at the phone
24 records, let's just read the times calls were
25 made.

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1 A. From 10:36, 10:37, 11:09, 11:10,
2 11:12, 11:15, 11:18, 12:16 -- and let's go
3 back to 10:02.

4 Q. Let's go back to some times when
5 calls were made?

6 A. 10:02, 9:30, 9:32, 9:20, 9:18, 9:15,
7 9:14, ----

8 Q. Let me stop you there. This is a
9 person that uses his phone quite frequently.

10 A. Yes.

11 Q. Where at the time of the murder --
12 what was the time of the murder again?

13 A. 10:18.

14 Q. So, 10:02 -- so we have a gap during
15 the time of the murder that his phone was not
16 in use?

17 A. Right.

18 Q. And you don't know on that video
19 that he's on a phone call?

20 A. No, I don't.

21 Q. You don't know if he is sending a
22 text during the time of that video?

23 A. No.

24 Q. But it is fair to say that his phone
25 records do reflect a gap from 10:02 to 10:30?

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1 A. That's correct.

2 Q. And what was the time of this
3 murder?

4 A. 10:18.

5 Q. Who is the -- who is the call he
6 makes before 10:02 to?

7 A. Mama.

8 Q. The call previously?

9 A. After that? Mama at 9:32, Mama at
10 and 10:02 and Sha at 10:36.

11 Q. Who does he call at 9:30

12 A. Sha.

13 Q. Is there a number associated with
14 Sha?

15 A. There has to be, yeah.

16 Q. And who was "Sha".

17 A. Charmaine.

18 Q. And where was Charmaine, Sha?

19 A. Georgetown Apartments, [REDACTED]

20 Q. And who was Charmaine with?

21 MR. BUTLER: Objection.

22 THE COURT: Sustained.

23 REDIRECT EXAMINATION CONTINUED

24 BY SOLICITOR SIMPSON:

25 Q. What was the location of Ace's last

1 -- the location of where the shell casings
2 were find?

3 A. In the hallway below Charmaine's
4 apartment.

5 Q. Taking the evidence as a whole,
6 would Charmaine be a good person to call if
7 he ---

8 MR. BUTLER: Objection.

9 THE COURT: Sustained. Leading.

10 REDIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SIMPSON:

12 Q. Mr. Butler did go into some things
13 that you said to the suspect.

14 A. Yes.

15 Q. Is everything that you say to a
16 suspect during an interrogation a true
17 reflection of what you think or believe?

18 A. No. We're allowed to use deception
19 or trickery when interviewing a suspect. You
20 know, when you bring in an individual and
21 you're asking them to admit to being a killer
22 or a rapist or a robber, it's kind of silly
23 to think that they're just going to come in
24 there and admit to it.

25 Q. Do you recall how many cell phone

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1 were found in this case that were in the
2 possession of the victim?

3 MR. BUTLER: Objection.

4 THE COURT: Sustained.

5 REDIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SIMPSON:

7 Q. Mr. Butler asked you, Detective
8 Osborne, if you found a cell phone contact in
9 Devin's cell phone for a contact of a person
10 named "Creep"?

11 A. Yes.

12 Q Did you follow up on that contact?

13 A. Yes.

14 Q. Can you explain to the jury how you
15 did that?

16 A. The first thing that I did was I
17 called the contact number, thinking I might
18 get lucky, you know. He answered the phone.
19 I talked to him, trying to get him to meet
20 with us but -- you know, most people don't
21 want to meet and talk with detectives. So,
22 you know, I tried to talk to him.

23 Then when we found the Creep that he
24 directed us to, that tattoos didn't match up
25 and while we were with him I called the

1 contact number, the Creep that he'd directed
2 me to, and the same guy -- well, a different
3 guy answered the phone but somebody did
4 answer the phone while I was with that Creep,
5 so that was not the Creep of the contact
6 list.

7 Q. The Creep that -- you concluded that
8 the information that he'd given to you about
9 Creep was not true?

10 MR. BUTLER: Objection.

11 THE COURT: Sustained.

12 REDIRECTED EXAMINATION CONTINUED

13 BY SOLICITOR SIMPSON:

14 Q. What did he tell you about Creep,
15 how to find Creep?

16 A. He told us to find Creep that we
17 could go to this little small club track side
18 in Summerville. I am somewhat familiar with
19 Summerville, so we went and we found the club
20 -- it was almost a shed, you'd never know
21 that it was a club, but we did find it.

22 We went in, we talked to people that
23 were in there. They said -- they told us
24 that Midget could help us find Creep. We
25 found Midget, he was at the bar. So then we

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1 talked to Midget and Midget directed us to
2 Creep. No one knew him.

3 Q. Did you ever ask Devin directly if
4 he knew Creep?

5 A. Yes.

6 Q. But he didn't have Creep's number?

7 A. No.

8 Q. Didn't know what his name was, other
9 than "Creep"?

10 A. "Creep."

11 SOLICITOR SIMPSON: Your Honor,
12 nothing else.

13 THE COURT: Recross?

14 RE CROSS EXAMINATION

15 BY MR. BUTLER:

16 Q. Between -- the time gap between the
17 call to Mama and the call to Sha, how many
18 minutes?

19 A. Thirty-four minutes.

20 Q. What was the last call to Mama?
21 What time?

22 A. The call to Sha?

23 Q. The one before -- Mama.

24 A. The second mama call, 9:32.

25 Q. So thirty minutes there, and thirty-

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1 four minutes there?

2 A. Yes.

3 Q. When you say that none of those
4 people knew Devin, all you really know is
5 that they said that they didn't know him.

6 A. That's right.

7 MR. BUTLER: That's all.

8 THE COURT: You may come down.

9 (WITNESS STEPS DOWN)

10 THE COURT: All right. Ladies and
11 gentlemen, we will take our recess for the
12 evening.

13 Please remember that you're not at
14 liberty to discuss the case the case among
15 yourselves. And you certainly can't talk to
16 anyone outside the courtroom.

17 And unlike yesterday, I'm sure the
18 first question that somebody interested at
19 home they will say, well, what is the case
20 about? Please tell me. And if you respond,
21 you will have commenced your individual
22 deliberations. You'll have to talk about
23 something else.

24 You'll probably finish it tomorrow,
25 I would think. If not, certainly no later

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1

2

3

APRIL 2, 2014

9:15 A.M.

4

5

(DEFENDANT PRESENT)

6

THE COURT: Mr. Johnson is

7

present. Any matters from the State before

8

we bring in the jury?

9

SOLICITOR SIMPSON: Your Honor,

10

at pre-trial you referenced entering our

11

responses into the record as a Court's

12

exhibit.

13

THE COURT: It'll be Court's

14

Exhibit 1 and that is part of the record.

15

Yes, sir. Thank you very much.

16

(SO ENTERED AS COURT'S EXHIBIT 1)

17

THE COURT: Anything else?

18

SOLICITOR SIMPSON: Not from the

19

State.

20

THE COURT: Anything, Mr. Butler?

21

MR. BUTLER: No, sir.

22

THE COURT: Thank you very much.

23

We'll continue to be at ease. We're waiting

24

on one juror.

25

(COURT AT-EASE AWAITING JUROR)

1 THE COURT: I'm informed the juror
2 has arrived. Please invite the jury to
3 return.

4 (JURY IN @ 9:45 A.M.)

5 THE COURT: Good morning, ladies
6 and gentlemen. I trust that you had a good
7 evening. Ms. Busby, I understand that you
8 have been selected as our presiding juror.

9 JUROR NUMBER 59: Yes, sir.

10 THE COURT: That will be your seat
11 for the balance of the trial. Thank you,
12 ladies and gentlemen, very much for taking
13 care of that. We are now ready to continue
14 with the trial. Solicitor, you may call your
15 next witness.

16 SOLICITOR SIMPSON: Thank you,
17 Your Honor. The State calls Jasmine Tell.

18 (WITNESS TAKES STAND)

19 JASMINE TELL, having been duly sworn
20 to tell the truth, and nothing but the truth,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR SIMPSON:

24 Q. Good morning, Jasmine. How are you?

25 A. Good morning. I'm good, thank you.

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1 Q. Where do you work?

2 A. Verizon Wireless.

3 Q. And what, geographically where is
4 your office located?

5 A. Atlanta, Georgia.

6 Q. Okay. What is your job with
7 Verizon?

8 A. I'm a records custodian.

9 Q. Can you explain to the jury a little
10 bit about the responsibilities of a records
11 custodian with Verizon?

12 A. Yes. As a records custodian I
13 respond to appearance subpoenas. I bring the
14 records that were subpoenaed to court and
15 verify that they're true and accurate.

16 SOLICITOR SIMPSON: May I
17 approach the witness, Your Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SIMPSON:

21 Q. I show you what's been marked for ID
22 Only as Defendant's Exhibit 1. Can you take
23 a minute and look that over?

24 A. (Complies).

25 Q. Do you recognize that exhibit?

1 A. Yes.

2 Q. And what is that?

3 A. This the search warrant received by
4 Verizon Wireless.

5 Q. Okay. And is one of your duties for
6 Verizon, I believe you said, to receive those
7 search warrants?

8 A. Yes.

9 Q. What do you do when you receive a
10 search warrant?

11 A. Well, there's two parts to it. Our
12 law enforcement resource team pulls the
13 actual records and prepares them. Then they
14 provide them to me, and as the records
15 custodian I present the records in court.

16 Q. And essentially do you send the
17 requested data to requesting agencies?

18 A. Yes. We do send them.

19 Q. In what form is that sent?

20 A. It varies. It can be sent in a CD
21 or faxed, FedEx, whatever.

22 Q. Okay. And the particular search
23 warrant you received, marked for ID only as
24 Defendant's Exhibit 1, what number was that?
25 What number was that search warrant sent to

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1 you?

2 A. The target number is 843-217-3243.

3 Q. And did you and your company respond
4 to that search warrant?

5 A. Yes.

6 Q. Did you and your company -- did you
7 respond with the requested phone numbers?

8 A. Yes.

9 Q. Are they fair and accurate records?

10 A. Yes.

11 Q. I'd like to take a minute, Ms. Tell,
12 to talk about what -- first of all, what
13 phone records, types of phone records were
14 requested of your organization in that search
15 warrant?

16 A. They requested call history logs,
17 text messages, photographs, videos and
18 contact lists.

19 Q. Now, you said that you often respond
20 to these requests electronically?

21 A. Yes.

22 Q. Let's start with the phone call
23 records.

24 A. Okay.

25 Q. Did you bring your own copies of

1 those?

2 A. Yes.

3 Q. Of these records?

4 A. Uh-huh.

5 Q. What kind of data is located and
6 provided on those general call records, the
7 spreadsheets?

8 A. On the call records, there are
9 several columns.

10 There is the switch name, which is the
11 switch that processes the call.

12 The mobile directory number, which is the
13 target number that we spoke about.

14 The dialed digit number, meaning the
15 number that was dialed to process or initiate
16 the call. It'll tell you whether it's
17 outgoing or incoming, how long the call
18 is, ---

19 Q. Let me stop you there. In what unit
20 is the -- what do you call that how long the
21 call is?

22 A. It's the duration.

23 Q. And what unit of time is that
24 provided?

25 A. In seconds.

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1 Q. Okay. Continue?

2 A. Okay. And then we have the cellular
3 cell site, which is the cell site for
4 outgoing calls only. And we have the last
5 cellular cell site, which tells the cell site
6 for incoming calls.

7 Q. I'm sorry. When you say cell site,
8 what are you referring to?

9 A. The cell site that processed the
10 call.

11 Q. Is that the same as a cell tower?

12 A. Yes.

13 Q. Does that data -- would that data
14 allow someone else with the requisite
15 expertise to map approximately where that
16 call is made from?

17 A. Yes.

18 Q. Okay. If you would continue,
19 please.

20 A. Okay. And then the call list also
21 shows the calling party number, which
22 basically is who, the person who initiated
23 the call or the number that initiated the
24 call.

25 SOLICITOR SIMPSON: May I

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1 approach the witness, Your Honor?

2 THE COURT: You may.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SIMPSON:

5 Q. I'm handing you what's been marked
6 for ID only as State'57 and 58. And however
7 long it takes you to answer this is fine, but
8 do you recognize those exhibits?

9 A. Yes.

10 Q. And what do those appear to be to
11 you?

12 A. Exhibit Number 57 appears to be call
13 records.

14 And Exhibit 58, that also appears to
15 be call records.

16 Q. And, again, can you verify that
17 those are sample pages from the records
18 provided via this search warrant?

19 A. Yes. Yes, -- (upon review), these
20 are the same records.

21 SOLICITOR SIMPSON: And, Your
22 Honor, at this time, the State would seek to
23 admit into evidence State's 57 and 58.

24 MR. BUTLER: Without objection.

25 THE COURT: Without objection,

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1 other than the objection that it contains
2 certain ---

3 MR. BUTLER: Yes, sir.

4 THE COURT: --- which we've
5 previously heard and the rulings previously
6 made and those rulings still stand and your
7 objection is noted.

8 MR. BUTLER: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (SO ENTERED AS STATE'S EXHIBIT 57)

11 (SO ENTERED AS STATE'S EXHIBIT 58)

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR SIMPSON:

14 Q. Now, Ms. Tell, I'm publishing what's
15 been marked and entered into evidence as
16 State's 57. You've already reviewed this,
17 but can we go over it again?

18 A. All right.

19 Q. Are these columns the information
20 that you just recounted for the jury?

21 A. Yes.

22 Q. The first column again?

23 A. That is the switch that processed
24 the call.

25 Q. The second column? Bottom right.

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1 A. That is the target number.

2 Q. And third?

3 A. Let me look at this. That's the
4 number dialed, the number that receives the
5 call.

6 Q. The number that receives the call.
7 Column D?

8 A. Okay. That is the seizure date and
9 time.

10 Q. And what's Column C again? And you
11 can refer to your record.

12 A. Yeah. Because my notes doesn't have
13 A, B and C, so that's why I'm a little ---

14 Q. Is that something that the tower
15 only has the ---

16 A. Yes. If you don't actually tell it
17 to put the headings, then it won't do it.

18 Q. Okay. You're free to refer your own
19 records if you'd like for that. The third
20 column?

21 A. Okay. The third column is the
22 dialed digit number.

23 Q. Okay. And is that the actual
24 numbers dialed on the phone to make the call?

25 A. Yes.

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1 Q. I want to direct you to the
2 highlighted call here. Can you explain to
3 the jury a little bit about that's going on
4 with this number and the *67 preceding it?

5 A. Yes. When you dial *67 before the
6 ten digit number that you're calling, it
7 blocks the number from the person receiving
8 the call so they don't know who's calling.

9 Q. But it clearly doesn't block the
10 number from Verizon's records; correct?

11 A. Correct.

12 Q. You also mentioned some other
13 information in this search warrant request of
14 your company, what were those?

15 A. We also have the cell tower location
16 information.

17 Q. Okay. And did we also request text
18 messages?

19 A. Yes.

20 Q. Did you provide that cell tower
21 location information?

22 A. I have, yes.

23 Q. Okay. And that was provided via the
24 search warrant?

25 A. Yes. Verizon Wireless provided it.

1 Q. In what form do text message
2 requests in?

3 A. Form? I'm not sure what you're
4 asking.

5 Q. Well, let me rephrase.

6 SOLICITOR SIMPSON: May I
7 approach, Your Honor?

8 THE COURT: You may.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SIMPSON:

11 Q. I'm handing you what's been marked
12 for ID only, State's 59 and 69. Could you
13 take a moment to review those exhibits?

14 A. Yes.

15 Q. Do they look familiar to you?

16 A. Yes.

17 Q. And what are those?

18 A. These are text content records. So
19 they actually tell what the message said when
20 it was sent.

21 Q. Do they provide information about
22 what number the text was sent from?

23 A. Yes.

24 Q. Do they provide what number the text
25 was sent to?

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1 A. Yes.

2 Q. And how are those two bits of
3 information provided on the records?

4 A. There is a section called
5 "originating DM", which means that originated
6 the text, they created it. The terminating
7 DM is where the text was terminated or who
8 received it.

9 Q. Are those two exhibits samples from
10 the records that you provided via that search
11 warrant?

12 A. Yes, they are.

13 SOLICITOR SIMPSON: Your Honor,
14 at this time, the State would seek to move 59
15 and 69 into evidence.

16 MR. BUTLER: Subject only to ---

17 THE COURT: Earlier objection?

18 MR. BUTLER: Yes, sir.

19 THE COURT: Other than the earlier
20 objection, which has been previously argued
21 and ruling made and are contained in the
22 record of this proceeding, Exhibit 59 and 60
23 (sic) are admitted subject to the prior
24 objections also. Thank you.

25 SOLICITOR SIMPSON: Thank you,

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1 Your Honor.

2 (SO ENTERED AS STATE'S EXHIBIT 59)

3 (SO ENTERED AS STATE'S EXHIBIT 69)

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SIMPSON:

6 Q. Ms. Tell, if I could just show you
7 an example. Is that how one text message
8 would appear in the records provided?

9 A. Yes.

10 Q. You mentioned the number dialed, the
11 number from which the text is sent is
12 designated what?

13 A. The originating DM.

14 Q. Is that located here?

15 A. Yes.

16 Q. The number receiving the text is
17 indicated where, as how?

18 A. It's going to be on the right side
19 as the terminating DM.

20 Q. Here?

21 A. Yes.

22 Q. And so where do we find the actual
23 substance of the text?

24 A. Down below it says message text.

25 And in parenthesis it will say, "I need you",

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1 "Be home."

2 Q. Do these records also indicate --
3 where would we find that the text message was
4 sent by the sending phone?

5 A. In the second row. It says log
6 reading.

7 Q. Is that here?

8 A. That would be the date and time the
9 message was sent.

10 Q. And that time as opposed to the
11 others is when the actual ---

12 A. That's correct.

13 Q. --- text was sent?

14 A. (Affirmative nod).

15 SOLICITOR SIMPSON: Court's
16 indulgence?

17 THE COURT: Yes, sir.

18 SOLICITOR SIMPSON: Ms. Tell, thank
19 you for visiting us. Please answer any
20 questions Mr. Butler may have.

21 THE COURT: Cross-exam.

22 CROSS-EXAMINATION

23 BY MR. BUTLER:

24 Q. Good morning, ma'am. How are you?

25 A. Good morning. I'm good. Thank you.

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1 Q. In the Verizon system, when one
2 number appears to be calling its own number,
3 what does that mean?

4 A. If it appears to call its own number
5 then they're probably calling the voice mail.

6 Q. Checking the voice mail. So that
7 shows up?

8 A. Yes.

9 Q. And if a person places a call, but
10 it's not answered, that shows up?

11 A. Yes.

12 Q. Okay. And if a person places a call
13 and then takes it out of their call log, that
14 still will show in your records?

15 A. Yes. As long as we're talking about
16 the Verizon Wireless subscriber, yes.

17 Q. Okay. And if that person also sent
18 a text and then deletes it, it will still
19 show up in your records?

20 A. That's correct.

21 Q. Thank you very much.

22 A. Uh-huh.

23 THE COURT: Redirect?

24 SOLICITOR SIMPSON: No redirect,
25 Your Honor. Thank you. You can come down.

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1 (WITNESS STEPS DOWN)

2 THE COURT: You may call your next
3 witness.

4 SOLICITOR SIMPSON: Your Honor,
5 the Court's indulgence for a moment.

6 THE COURT: Sure.

7 SOLICITOR SIMPSON: Thank you,
8 Your Honor. It was a technical matter. The
9 State calls Sergeant Craig Kosarko.

10 (WITNESS TAKES STAND)

11 CRAIG KOSARKO, having been duly
12 sworn to tell the truth, and nothing but the
13 truth, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR SIMPSON:

16 Q. Sergeant Kosarko, good morning?

17 A. Good morning.

18 Q. Where are you employed?

19 A. Charleston City Police Department.

20 Q. And in what capacity?

21 A. I'm the Sergeant of the violent
22 crime unit.

23 Q. And how long have you been with that
24 unit?

25 A. I just recently was transferred up

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1 there as of January of this year. However, I
2 joined that unit as a detective in January of
3 2010 until my promotion this past July.

4 Q. Were you working in that capacity in
5 June of 2011?

6 A. I was.

7 Q. How long have you lived in
8 Charleston?

9 A. I've been here since 1998.

10 Q. Okay. So you're familiar with your
11 jurisdiction?

12 A. Yes.

13 Q. Did you respond to the scene to a
14 murder scene on June 8th, 2011?

15 A. I did.

16 Q. Where was that scene?

17 A. It was Georgetown Apartments.

18 Q. Are you familiar with -- today, the
19 location of that scene?

20 A. Yes.

21 SOLICITOR SIMPSON: Your Honor,
22 may I approach the witness?

23 THE COURT: You may.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR SIMPSON:

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1 Q. Sergeant Kosarko, I hand you what's
2 been marked for ID Only as State's Exhibit
3 70?

4 A. Okay.

5 Q. Does that look familiar to you?

6 A. It is.

7 Q. What is that?

8 A. That's a map of Charleston, West
9 Ashley area.

10 Q. Does that map contain the location
11 of the scene you responded to on 6/8/11?

12 A. It does.

13 Q. May I ask you to indicate that
14 location?

15 A. Sure.

16 Q. And you're marking is where --
17 what's that location?

18 A. That's Georgetown Apartments.

19 SOLICITOR SIMPSON: Your Honor,
20 at this time, the State would seek to admit
21 State's Exhibit 70 into evidence.

22 THE COURT: Any objection?

23 MR. BUTLER: No, sir.

24 THE COURT: Without objection,
25 State's 70 is admitted.

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1 (SO ENTERED AS STATE'S EXHIBIT 70)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SIMPSON:

4 Q. Detective Kosarko, you said you
5 responded to the scene that night?

6 A. Yes.

7 Q. Any other actions on the 8th?

8 A. I also accompanied Detective Osborne
9 to MUSC.

10 Q. Did your work on this case continue
11 to the 10th?

12 A. Yes.

13 Q. And what did you do on the 10th?

14 A. I assisted Detective Osborne in an
15 interview of the Defendant, Devin. And
16 several other interviews.

17 Q. Okay. Was DeAngelo Buncum one of
18 those interviews?

19 A. Yes.

20 Q. Moving on to the 14th, did you have
21 contact with anyone in relation to this case
22 on June 14th, 2011?

23 A. With anyone? I responded to the
24 Kangaroo up in Summerville.

25 Q. Okay. And what's the location of

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1 that Kangaroo?

2 A. 1210 Central Avenue.

3 Q. And what was the purpose of going to
4 that Kangaroo?

5 A. To retrieve video surveillance from
6 the store.

7 Q. And did you request copies of that
8 video surveillance on that day?

9 A. I did.

10 Q. And what was the date and timeframe
11 for which you requested that video
12 surveillance?

13 A. I requested from June 8th at 11:00
14 p.m. to June 9th, 1:00 a.m., a two-hour
15 window.

16 Q. Moving ahead to June 17th, did you --
17 what occurred on that date in relation to
18 this investigation, particular to that date?

19 A. I picked up the video from the
20 store.

21 Q. Okay. Did you review that video?

22 A. Yes.

23 SOLICITOR SIMPSON: May I
24 approach the witness, Your Honor?

25 THE COURT: You may.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR SIMPSON:

3 Q. Detective Kosarko, I'm handing you
4 what's been marked ID Only as State's Exhibit
5 76?

6 A. Okay. That's the video.

7 Q. Do you recognize that video?

8 A. Yes.

9 SOLICITOR SIMPSON: Your Honor,
10 at this time the state would seek to admit
11 State's Exhibit 76 into evidence.

12 THE COURT: Any objection?

13 MR. BUTLER: No, sir.

14 THE COURT: State's 76 is
15 admitted.

16 (SO ENTERED AS STATE'S EXHIBIT 76)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR SIMPSON:

19 Q. In reviewing that CD is that a fair
20 and accurate representation of what your
21 received from the Kangaroo Gas Station?

22 A. Yes.

23 Q. In reviewing that video, does it
24 show anyone in the store that today is in
25 this courtroom?

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1 A. Yes. The Defendant, Devin Johnson.

4 A. I believe it was around 12:24 a.m.
5 on the 9th.

7 | A. There should be.

10 A. From 11:00 p.m. to 1:00 a.m. The
11 video itself really just has the hour, two
12 hours. So you'd have to fast forward to
13 about an hour and twenty-four minutes into
14 the video to see that.

17	A. No.

19	A. Yes.

21 SOLICITOR SIMPSON: Your Honor,
22 publishing the Kangaroo video entered, at
23 12:27:02.

25	DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR SIMPSON:

2 Q. (Video playing, starting at
3 12:27:02) -- switching now to the cashier.
4 Sergeant does the cashier view. Sergeant,
5 does the cashier's view also contain audio?

6 A. It does.

7 Q. (Video playing) -- going now to
8 12:28:35. Sergeant Kosarko, did you have any
9 other involvement in this case?

10 A. Yes.

11 Q. Did you have any involvement in
12 regards to any cellphones?

13 A. Yes..

14 Q. Sergeant through the course of your
15 investigation, did you come to associate a
16 phone number with the Defendant?

17 A. I did..

18 Q. And what phone number was that?

19 A. It was 843-217-3243.

20 Q. I'm showing you a copy of what's
21 been marked for ID Only as Defense Exhibit
22 1?

23 A. Okay.

24 Q. Can you review that?

25 A. I can.

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1 Q. Sergeant, what did you do with the
2 knowledge of that phone number that you
3 associated with the Defendant?

4 A. I turned that over to the case agent
5 as well as I reviewed it as far as the data
6 base?

7 Q. Did you draft a search warrant?

8 A. Yes.

9 Q. So what agency did you send that
10 search warrant to?

11 A. To Verizon.

12 Q. Okay. Did they respond to that?

13 A. They did.

14 Q. How did they respond, in what
15 format?

16 A. They responded with an email -- or a
17 CD, I'm sorry -- with the information that I
18 requested.

19 Q. Was it very voluminous?

20 A. Yes.

21 Q. Sergeant Kosarko, I hand you what's
22 been marked and entered into evidence as
23 State's Exhibits 57 and 58. If you will,
24 take a moment to review those?

25 A. Sure.

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1 Q. Do you recognize those exhibits?

2 A. Yes.

3 Q. And what are those exhibits?

4 A. This is the data that Verizon
5 provided.

6 Q. Is it the entire data Verizon sent?

7 A. It is not.

8 Q. Are you familiar with how to read
9 those records?

10 A. Yes.

11 SOLICITOR SIMPSON: May I
12 approach?

13 THE COURT: Certainly.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. Starting with State's Exhibit 58.
17 In reviewing those records, what can you tell
18 us about the first and second highlighted
19 number?

20 A. One says Columbia and the second
21 says Charleston.

22 Q. And what was the dialing number?

23 A. The dialing number?

24 Q. (Affirmative nod).

25 A. It appears to be the 843-217-3243.

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1 Q. And who's associated with that
2 number through your investigation?

3 A. The Defendant.

4 Q. And the receiving number?

5 A. 843-926-0378.

6 Q. And is there anyone in particular
7 associated with that number?

8 A. Off-the-top-of-my-head, I believe
9 that might be DeAngelo Buncum. I can't
10 recall off the top of my head.

11 Q. That is to 0378?

12 A. 0378.

13 Q. And what date is that?

14 A. It's June 4th.

15 Q. When you answered who the person
16 receiving that number is, you expressed some
17 hesitancy. Perhaps you were incorrect on
18 whose number that belonged to?

19 A. Yes.

20 Q. Moving on to State's Exhibit 57.
21 Focusing on the highlighted numbers, again,
22 who was the dialing number?

23 A. That's the Defendant's, the 217-
24 3243.

25 Q. And the receiving number?

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1 A. It's The 730-1470.

2 Q. And is there any particular person
3 associated with that number?

4 A. That's Charmaine Johnson, the
5 Defendant's sister.

6 Q. The date of that call?

7 A. June 8th, 2011.

8 Q. And what's the importance of the
9 date there?

10 A. It's the day of the murder.

11 Q. Okay. And the time of that call?

12 A. 21:30, which is 9:30 p.m.

13 Q. Did you also receive from Verizon
14 any information regarding text messages?

15 A. I did.

16 Q. Did you review that information?

17 A. Yes.

18 Q. Are you familiar with how to
19 identify what number is making the text
20 message?

21 A. Yes.

22 Q. And what number is receiving?

23 A. Yes.

24 Q. And the substance of that message?

25 A. Yes.

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1 Q. Focusing on those records in regard
2 to the day of the murder, June 8th, did you
3 closely review those texts?

4 A. Yes.

5 MR. BUTLER: Judge, out of an
6 abundance of caution, I just want this to be
7 subject to the same previously made
8 objections.

9 THE COURT: The previous noted
10 objections stand.

11 SOLICITOR SIMPSON: Thank you,
12 Your Honor.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR SIMPSON:

15 Q. Did any text or series of text have
16 a particular interest to you as far as
17 evidentiary value to your investigation?

18 A. They did.

19 Q. And what text were those?

20 A. There's a series of text between the
21 Defendant's phone and a number 843-801-8768.

22 Q. Did you later come to associate that
23 number with an individual?

24 A. Yes.

25 Q. And who was that?

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1 A. Mr. Terry Stevens.

2 Q. And did you speak with that
3 individual?

4 A. Detective Osborne did.

5 Q. Okay. Let me ask you, not to try to
6 interpret the meaning or anything of those
7 texts, but did you review specifically what
8 they said in the text messages as they were
9 written?

10 A. Yes.

11 Q. Could you identify, did you identify
12 the text message from the Defendant to that
13 number at 11:42 a.m.?

14 A. At 11:42, yes.

15 Q. And what was that text message?

16 A. "What's popping?"

17 Q. What about at 12:08 p.m.?

18 A. Yes.

19 Q. And what was that text message?

20 A. May I refer to my notes?

21 Q. Absolutely? Are your notes direct
22 verbatim reflection of the records that you
23 received?

24 A. Yes. Yes, I took them from the
25 actual printed out text messages.

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1 Q. Okay. 12:08 p.m.?

2 A. This is from the Defendant, "I gonna
3 need that bread today, at least half."

4 Q. 12:10 p.m.?

5 A. That's again from the Defendant, "I
6 on my ass, bra, bra."

7 Q. And it's to a identified friend of
8 his?

9 A. It is. This is to Terry Stevens.

10 Q. 12:15 p.m.?

11 A. Again from the Defendant, "When dat
12 go because I'm almost on E and my girl got to
13 get to work rest of the week."

14 Q. 12:27 p.m.?

15 A. This is from Terry.

16 Q. I'm sorry. 12:27?

17 A. A.M.?

18 Q. Omitting all texts sent by Terry.

19 A. Oh, okay.

20 Q. Is there any text from the Defendant
21 to Terry at 12:27 p.m.?

22 A. That one, I don't have. I may have
23 missed that one.

24 Q. 1:30 p.m.?

25 A. Again, from the Defendant, "What

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1 time you get off? I'm whipping. We can cool
2 it."

3 Q. 12:27 p.m.?

4 A. Okay. "Just hit me up, I be
5 around."

6 Q. 1:41 p.m.?

7 A. From Devin, "Where you at? I be
8 around. I'm driving 5."

9 Q. And 1:54 p.m.?

10 A. That will be from Devin again, "Just
11 hit me up 5."

12 Q. And 4:39 p.m.?

13 A. At 4:39. "I'm about at 5, what time
14 us get off?"

15 Q. That was at 4:39 p.m.?

16 A. Yes.

17 Q. What about 4:44 p.m.?

18 A. 4:44 is "Yeah, I take you back to
19 the Chuck."

20 Q. Have you ever heard that phrase
21 before, "the Chuck", in your experience with
22 law enforcement?

23 A. Yes.

24 Q. And what's that

25 A. Chuck is short for Chucktown.

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1 That's Charleston.

2 Q. 8:33 p.m.?

3 A. It's again from the Defendant, "Just
4 bring your ass down here, because I'll come
5 down there before my 5 work."

6 Q. 8:59 p.m.?

7 A. "I need you. When you gonna be
8 home?"

9 Q. Detective, I want to go now to 4:37
10 p.m. Is this text also from the Defendant to
11 his friend?

12 A. Yes.

13 Q. And what is that text message to
14 Terry?

15 A. It says, "hey, I go wet dude ass up
16 tonight."

17 Q. And this is on, for what date?

18 A. This is June 8th, the day of the
19 murder.

20 Q. At what time?

21 A. It's 4:37 p.m.

22 Q. And this is part of that series that
23 we've been viewing today?

24 A. Yes.

25 Q. Sergeant Kosarko, what was the last

1 text in this series that Devin sent to his
2 friend Terry?

3 A. This was, "I can't wait on you. I
4 gotta handle my biz."

5 Q. And what time did that text, was
6 that text sent?

7 A. About 9:34 p.m.

8 Q. And you responded to the scene that
9 evening, correct?

10 A. Yes.

11 Q. You've played a part in investigat-
12 ing this whole case?

13 A. Yes.

14 Q. What was the approximate time Akeem
15 Smalls shooting?

16 A. About 10:18 p.m.

17 Q. Sergeant Kosarko, in your experience
18 as a law enforcement officer, have you ever
19 encountered the phrase, "wet somebody up" or
20 "wet 'em up"?

21 A. Yes.

22 Q. And what is the common meaning on
23 the streets for that phrase?

24 A. To shoot somebody or kill someone.

25 SOLICITOR SIMPSON: Court's

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1 indulgence?

2 THE COURT: Certainly.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SIMPSON:

5 Q. Sergeant Kosarko, you worked with
6 Detective Osborne in this case?

7 A. Yes.

8 Q. We referred to a phone number and
9 its association to an individual earlier in
10 your testimony?

11 A. Yes.

12 Q. And you expressed some uncertainty.

13 A. Yes.

14 Q. Is there a possibility that that
15 phone number you referred to is associated
16 with the victim, Akeem Smalls?

17 A. It is. Yes.

18 Q. You were unsure at first, that's a
19 possibility?

20 A. That's going to be the phone that
21 was found on him.

22 Q. And the call you referred to earlier
23 in your testimony were on what date; do your
24 recall?

25 A. June 4th.

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1 Q. June the 4th, okay. Thank you,
2 Sergeant. Please answer any questions Mr.
3 Butler has for you.

4 A. Yes, sir.

5 THE COURT: You may cross-examine.

6 CROSS EXAMINATION

7 BY MR. BUTLER:

8 Q. I think we're all on the same page,
9 but just to clarify, there was a phone call
10 from Devin to the phone that was found on Mr.
11 Smalls four days before?

12 A. Correct.

13 Q. But nothing after that?

14 A. That's correct.

15 Q. Okay. From either way, no phone
16 calls between the two of them, no text
17 messages between the two of them?

18 A. That's correct.

19 Q. And you also have -- you also
20 subpoenaed the phone records associated with
21 Mr. Smalls' cellphone, correct?

22 A. Yes.

23 Q. And there's no phone call documented
24 in his own records showing any phone calls
25 between the two of them, other than the one

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1 that you've already testified to?

2 A. That's correct.

3 Q. All right. So if on the off chance
4 that the Verizon records were somehow wrong,
5 they're supported by the records -- I think
6 they're from Cricket; is that right?

7 A. I believe so, yes, sir.

8 Q. Okay. They say the same thing?
9 There's the one contact, two back-to-back
10 contacts on the 4th and nothing between them
11 after that?

12 A. Correct.

13 Q. Okay. Do you have the actual
14 records in front of you for the text
15 messages, all that you got?

16 A. I do not.

17 Q. Let me ask if you recognize these
18 documents as the records of the text
19 messages?

20 A. They are.

21 Q. And just for simplification, you
22 testified that at -- was it 9:34, "I'm gonna
23 handle my business."

24 A. Correct.

25 Q. There's not another text sent from

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1 this phone until when?

2 A. 2241, which is 10:41 p.m.

3 Q. Okay. So no other text message from
4 Devin's phone from 9:34 until 10:41?

5 A. Correct.

6 Q. Thank you. On the Kangaroo video,
7 you notice that Devin has on a white
8 sleeveless shirt, what usually would be an
9 undershirt?

10 A. Uh-huh.

11 Q. And colloquy that is called, perhaps
12 not most politically correct, a "wife
13 beater"?

14 A. Yes.

15 Q. Did you notice what the person that
16 was in line before him had on?

17 A. It's similar. Something similar to
18 that.

19 Q. A light colored sleeveless tee
20 shirt; right?

21 A. Yes.

22 Q. Did you notice what the person
23 behind him had on?

24 A. Something similar, yeah.

25 Q. A light colored sleeveless tee-

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1 shirt. That is a popular shirt amongst some
2 people?

3 A. Uh-huh.

4 THE COURT: Is that a "yes"?

5 WITNESS: Yes, sir. Yes, sir.

6 THE COURT: Thank you.

7 CROSS-EXAMINATION CONTINUED

8 BY MR. BUTLER:

9 Q. And you know from that video there's
10 no reason to think those three people came
11 together; right?

12 A. That's correct.

13 Q. And, as a matter of fact, you can
14 tell that they did not come together?

15 A. Yes.

16 SOLICITOR BUTLER: I beg the Court's
17 indulgence.

18 THE COURT: Yes, sir.

19 SOLICITOR SIMPSON: I beg the
20 Court's indulgence for a moment.

21 THE COURT: Okay.

22 CROSS-EXAMINATION CONTINUED

23 BY MR. BUTLER:

24 Q. Do you have the phone records from
25 -- the entire records from, the call logs

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1 from Devin's phone in front of you?

2 A. I do not.

3 Q. Okay. Let me see -- I know that
4 these all kind of look the same, but if I
5 pointed you to that particular entry ---

6 A. Yes.

7 Q. --- with these numbers. You
8 recognize these as the same records you've
9 testified to?

10 A. Yes, sir, they are.

11 Q. Okay. So if the calls -- let's see.
12 Are there any calls from Devin's phone from
13 10:02 until 10:35?

14 A. No, sir.

15 Q. No calls placed, no calls received?

16 A. Correct.

17 Q. In the records?

18 A. That's correct.

19 Q. So even if what Detective Osborne
20 testified to he got off the phone itself, was
21 somehow inaccurate, that's what these show?

22 A. That's what the records.

23 Q. Got it.

24 MR. BUTLER: That's all I have.

25 Thank you.

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1 THE COURT: Redirect?

2 SOLICITOR SIMPSON: Very briefly.

3 REDIRECT EXAMINATION

4 BY SOLICITOR SIMPSON:

5 Q. Sergeant Kosarko, Mr. Butler asked
6 you about that Kangaroo video?

7 A. Yes.

8 Q. And potentially who Devin did or did
9 not arrive at that Kangaroo with?

10 A. Yes.

11 Q. Did the video reflect that he
12 arrived with another person?

13 A. It did.

14 Q. Were you able to identify that
15 person?

16 A. No.

17 SOLICITOR SIMPSON: Nothing
18 further.

19 THE COURT: Recross?

20 MR. BUTLER: No, sir.

21 THE COURT: Thank you. You can
22 come down sir.

23 (WITNESS STEPS DOWN)

24 THE COURT: Call your next
25 witness, Solicitor?

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1 SOLICITOR SIMPSON: Thank you.

2 The State calls Investigator Lane.

3 (WITNESS TAKES STAND)

4 JONATHAN LANE, having been duly
5 sworn to tell the truth, and nothing but the
6 truth, testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR SIMPSON:

9 Q. Officer Lane, how are you this
10 morning?

11 A. Good, sir.

12 Q. Sorry for the delay?

13 A. That's fine.

14 Q. Where do you work?

15 A. I work for the Charleston Police
16 Department.

17 Q. And how long have you been there?

18 A. Close to eleven years.

19 Q. Did you work in that capacity on
20 June of 2011?

21 A. Yes, sir, I did.

22 Q. What was some of your assignments in
23 2011?

24 A. In 2011 I was assigned to the
25 central detectives division, and specifically

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1 the U.S. Marshal's Fugitive Task Force.

2 Q. Now, the U.S. Marshals, is that a
3 Charleston agency?

4 A. Basically, it is an adoption process
5 that the U.S. Marshal's adopts local officers
6 from different agencies that collectively
7 work on bigger cases to solve them in a
8 quicker manner with a big pool of resources.

9 Q. Okay. And in a nutshell, what is
10 the role of the U.S. Marshal's in all of
11 this?

12 A. Well, specifically, with the
13 fugitive task for, the U.S. Marshall's are an
14 agency that connects the federal government
15 and the local government together to utilize
16 resources. We know the area. We know the
17 people. We have sources of information,
18 other databases and research things. They
19 also have federal resources and experience to
20 solve fugitive cases in a little bit
21 different manner than we would have, just as
22 a local agency.

23 Q. Is it a fair statement to say to
24 find people?

25 A. Yes, sir. To find people. That's

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1 right.

2 Q. Now, in that role did you become
3 involved a case on June 8th, 2011?

4 A. Yes, sir, I did.

5 Q. And who was the target of that case?

6 A. That was Devin Johnson.

7 Q. Okay. And were you able to find
8 Devin Johnson?

9 A. I was, yes, sir.

10 Q. And where did you find him?

11 A. We found him in Orangeburg, South
12 Carolina at an apartment building.

13 SOLICITOR SIMPSON: May I
14 approach the witness, Your Honor?

15 THE COURT: Yes, you may.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR SIMPSON:

18 Q. Officer Lane, I'm showing you what's
19 been marked for ID Only as State's Exhibit
20 64. Can you remove that item and tell me
21 what it is?

22 A. Yes, sir. Yes, sir.

23 Q. Do you recognize that item?

24 A. Yes, sir.

25 Q. And what is it?

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1 A. This is the cellphone I removed from
2 Mr. Johnson's person upon his arrest.

3 Q. Okay. So he was in the possession
4 of that the day he was arrested?

5 A. That's correct, sir.

6 Q. And what date was that?

7 A. That was -- I believe that was
8 February 2nd, 2011, according to my notes, I
9 believe.

10 Q. I'm sorry. February 2nd?

11 A. I'm sorry. (Upon review), I'm
12 sorry. June 10th.

13 Q. Thank you.

14 A. Yes, sir.

15 Q. Thank you.

16 SOLICITOR SIMPSON: I have no
17 further questions of this witness.

18 THE COURT: Cross-examine.

19 CROSS EXAMINATION

20 BY MR. BUTLER:

21 Q. Good morning, Officer Lane.

22 A. Yes, sir.

23 Q. So at the time you were working for
24 the Federal Marshalls?

25 A. Yes, sir. You work with them but

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1 you're still a local police officer. You're
2 paid by the Charleston Police.

3 Q. Okay. And what the Marshalls can
4 do, is they're not restricted by local
5 boundaries as much; is that right?

6 A. That's correct.

7 Q. You can go outside the state if you
8 have to?

9 A. That's correct.

10 Q. Can you go into foreign countries if
11 you have to, Canada and Mexico?

12 A. Exemptions can be made, yes, sir.

13 Q. Okay. You look for somebody from
14 Portland, Oregon to Portland, Maine, if you
15 want; right?

16 A. That's correct, sir.

17 Q. And they'll fly you to those places
18 if you need to catch a fugitive; right?

19 A. If the case is big enough, yes, sir.

20 Q. If the case is big enough. And you
21 found Devin forty-five minutes away in
22 Orangeburg?

23 A. That's correct.

24 Q. Where he is from?

25 A. Yes, sir.

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1 Q. With his girlfriend?

2 A. Yes, sir.

3 Q. And his daughter?

4 A. Yes, sir.

5 Q. His six-year-old daughter. She was
6 there too, right?

7 A. I believe so, yes, sir.

8 Q. Was he asleep?

9 A. That, I don't know. We knocked on
10 the door and Devin then came out to us.

11 Q. He did run? He didn't run out the
12 back?

13 A. No, sir.

14 MR. BUTLER: That's all I have.
15 Thank you.

16 THE COURT: Redirect?

17 SOLICITOR SIMPSON: None, Your
18 Honor.

19 THE COURT: Thank you. You may
20 step down.

21 WITNESS: Thank you.

22 (WITNESS STEPS DOWN)

23 THE COURT: Call your next
24 witness.

25 SOLICITOR SIMPSON: Thank you,

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1 Your Honor. The State calls Willie
2 Walker from Charleston County Sheriff's
3 Office.

4 (WITNESS TAKES STAND)

5 WILLIE WALKER, having been duly
6 sworn to tell the truth, and nothing but the
7 truth, testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR SIMPSON:

10 Q. Good morning.

11 A. Good morning.

12 Q. How are you?

13 A. I'm good. How are you?

14 Q. What agency do you work for?

15 A. I work for the Charleston County
16 Sheriff's Office.

17 Q. Did Charleston County Sheriff's
18 Office investigate the case that we are here
19 trying this week?

20 A. Not to my knowledge.

21 Q. How did you then come to be involved
22 in this case?

23 A. I was contacted by Jeff Osborne.

24 Q. And who does he work for?

25 A. The Solicitor's Office.

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1 Q. What was the purpose of him
2 contacting you?

3 A. I analyzed some phone records on a
4 separate case and was at the office. He saw
5 what I'd done and asked me to help with this
6 investigation.

7 Q. Okay. And what was the nature of
8 that work that you'd done on a previous case?

9 A. I plotted the cellphone records for
10 a defendant.

11 Q. Do you have any training and
12 experience in plotting cellphone records?

13 A. I do.

14 Q. Can you explain to the jury a little
15 bit about that experience?

16 A. Sure. I have almost seventeen years
17 in law enforcement itself, at the state,
18 local and federal level.

19 The majority of my cellphone stuff was
20 learned in the Academy with the Drug
21 Enforcement Administration at Quantico.

22 And I have extensive training in
23 different databases, IT, Penlink, ARC9, which
24 is the mapping of the actual phone records so
25 I can further explain how it works and how I

1 get to my results.

2 Q. And have you ever testified in court
3 before to cellphone records?

4 A. Yes.

5 Q. Were you qualified as an expert in
6 any those cases?

7 A. Yes.

8 Q. About how many times?

9 A. Not a lot as an expert. Twice, I
10 guess, as an expert.

11 SOLICITOR SIMPSON: Your Honor,
12 the State at this time seeks to move Officer
13 Walker as an expert on the limited subject of
14 cellphone mapping.

15 THE COURT: Any objection?

16 MR. BUTLER: I -- (pause).

17 THE COURT: To be frank with you,
18 I don't think he's required to be an expert
19 to give a 701 opinion. I mean, I don't think
20 under the present standard of reviewing
21 science -- he's already testified to his
22 experience. Go ahead and ask him your
23 questions. If there's an objection, then
24 I'll entertain it at that time.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR SIMPSON:

2 Q. Officer, were you requested to view
3 some cellphone records, some specific
4 cellphone records?

5 A. I was.

6 Q. On a specific day?

7 A. I was.

8 Q. Do you recall what day that was?

9 A. I don't. I haven't looked at the
10 records in a while.

11 Q. If you reviewed the work you did,
12 would you be able to do that?

13 A. Yes, sir.

14 Q. That would refresh your recollect-
15 tion?

16 A. Yes, sir.

17 SOLICITOR SIMPSON: Your Honor,
18 I'm handing the witness what's been marked
19 for ID Only as State's Exhibit 71, 72, 73, 74
20 and 75.

21 THE COURT: Okay. 71, 72, 73, 74,
22 and 75.

23 SOLICITOR SIMPSON: Yes.

24 THE COURT: For ID Only.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR SIMPSON:

2 Q. Do you recognize those exhibits?

3 A. I do.

4 Q. And what are they?

5 A. These are the maps with the cell-
6 phone towers and sections that I mapped.

7 Q. Officer, use a sample showing what's

8 ---

9 SOLICITOR SIMPSON: I'm sorry.

10 Your Honor, at this time the State would seek
11 to admit 71 through 75.

12 MR. BUTLER: No objection.

13 THE COURT: Without objection,
14 they're admitted.

15 (SO ADMITTED AS STATE'S EXHIBIT 71)

16 (SO ADMITTED AS STATE'S EXHIBIT 72)

17 (SO ADMITTED AS STATE'S EXHIBIT 73)

18 (SO ADMITTED AS STATE'S EXHIBIT 74)

19 (SO ADMITTED AS STATE'S EXHIBIT 75)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SIMPSON:

22 Q. Starting with 72, when we look at
23 these records, what are we looking at here in
24 the top corner?

25 A. That is the date of the call. The

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1 cell site is the same as the tower.

2 Q. Okay. What does it mean by
3 "sector".

4 A. Let me get into that. Can I use the
5 white board maybe just to go through it?

6 Q. I have no objection to that.

7 A. Any objection?

8 MR. BUTLER: No, sir.

9 WITNESS: Just to kind of show how a
10 cell tower works and how it's broken down?

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SIMPSON:

13 Q. Absolutely.

14 A. Basically, a cellphone is like a
15 fancy walkie-talkie. So when a call is being
16 made or received, a signal is sent out. It
17 is sent to a tower, typically the closest to
18 tower in relation to where the cellphone is
19 itself. So different cellphone companies
20 call it a tower, a site, because technically
21 you could have a ---

22 THE COURT: Now, Mr. Walker?

23 WITNESS: Sir?

24 THE COURT: I know this might be
25 awkward for you, but you're obviously right-

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1 handed.

2 WITNESS: Sir, I am.

3 THE COURT: Turn and face the
4 court reporter so that way we can make sure
5 that she hears you.

6 WITNESS: Yes, sir. I
7 apologize.

8 THE COURT: Thank you so much.
9 And would you open that door?

10 WITNESS: Certainly.

11 THE COURT: Thank you very much.
12 I apologize for interrupting you.

13 WITNESS: That's fine.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. You were saying about sectors, ---

17 A. So the terminology's a little bit
18 different. But essentially a tower covers
19 three hundred and sixty degrees, and off the
20 tower we'll have the sectors.

21 The most common is to have three
22 different sectors off it. So it will total
23 three hundred sixty degrees and each of these
24 -- typically it's going to be, it'll be a
25 little different but this is going to be the

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1 sector.

2 So the phone is over here in this area.

3 If we had a phone there -- it would hit off
4 this tower and it would be in this sector.

5 So I would be able to say that the phone was
6 in this area. Does that ---

7 Q. Yes. Thank you, that was very
8 helpful. Did the phone records provided to
9 you by Verizon indicate both the cell site
10 and the sector?

11 A. Yes, sir.

12 Q. Okay.

13 A. So this would be the cell site
14 itself, the tower that it is. And the sector
15 would be whatever side of the tower
16 essentially that the phone was hitting off
17 of.

18 Q. Thank you. And in the materials
19 provided ---

20 THE COURT: Let's close that.

21 WITNESS: Yes, sir -- (closing
22 door to whiteboard).

23 THE COURT: Thank you.

24 (WITNESS TAKES STAND)

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR SIMPSON:

2 Q. And in the materials provided, in
3 the upper left-hand corner you indicate there
4 are two calls?

5 A. Yes, sir.

6 Q. And these would be made within this
7 sector?

8 A. Yes, sir.

9 Q. And what is this?

10 A. That is the duration of the call,
11 the length of the call.

12 Q. Is the first number when the call
13 was made?

14 A. That is -- the first number the "21"
15 there is going to be the hour. The "01" is
16 going to be the minute. And the "23" is the
17 seconds.

18 Q. Okay. And State's Exhibit 73, the
19 same information?

20 A. Yes, sir. Different tower -- I'm
21 sorry. Different sector.

22 Q. State's Exhibit 75, same informa-
23 tion?

24 A. Yes, sir.

25 Q. And this is the diagram essentially

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1 illustrating what you've been able to tell on
2 the record?

3 A. Correct.

4 Q. Now, State's 74, same information?

5 A. Yes, sir.

6 Q. Can you describe now, State's 71,
7 what we're looking at here?

8 A. These are -- I can't remember the
9 exact timeframe, but these are all the towers
10 the cellphone in question hit off, and the
11 sectors.

12 Q. Okay. And so we have two sectors
13 that appear to be up in the Summerville area?

14 A. Correct.

15 Q. And there's several in -- north of
16 526, the North Charleston area?

17 A. Correct.

18 Q. And then there's one anomaly, which
19 seems to move towards -- in this direction?

20 A. Correct. In the neck area.

21 Q. And in the neck area, that one is
22 reflected in State's 74?

23 A. Yes, sir.

24 Q. And what -- we have one call and
25 what is the time?

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1 A. It's 22:00 hours, which would be --
2 let's see, 22:02, it's basically a thirty-two
3 second call.

4 Q. Okay. And that's at 10:02?

5 A. 10:02, yeah. I apologize. 10:02.

6 Q. And are you familiar with the
7 Charleston area?

8 A. I am.

9 Q. And we have an interchange right
10 here. Do you know what interchange this
11 would be -- with 26?

12 A. That is -- no, I don't know which
13 one that is. It's Cosgrove and ---

14 Q. Cosgrove and I-26?

15 A. Yes.

16 Q. According to your memory?

17 A. Yes.

18 Q. Thank you. Answer any questions
19 that Mr. Butler has for you?

20 A. Yes, sir.

21 THE COURT: Cross-examination

22 CROSS-EXAMINATION

23 BY MR. BUTLER:

24 Q. Good morning, sir.

25 A. Good morning, how are you, sir?

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1 Q. Fine. I hope you're fine. I just
2 have a couple of questions. Of course, what
3 this tracks is the phone itself, not the
4 person?

5 A. True.

6 Q. And you say that when you use a
7 cellphone it operates off the nearest tower?

8 A. Typically.

9 Q. Typically. All right. But not
10 always?

11 A. Not always. There are things like a
12 -- if you're in a very populated city with
13 high rises and stuff like that, they're going
14 to interfere.

15 Q. And tell me if I'm wrong. I thought
16 also if sometimes the tower is receiving
17 maybe too many calls or is overloaded, it
18 will go to the next one?

19 A. Correct.

20 Q. Is that right?

21 A. Correct.

22 Q. Okay. So ideally, it hits off the
23 nearest tower, but not always?

24 A. Correct.

25 Q. And those, I keep wanting to call

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1 them quadrants, but they're not, they're
2 three pieces.

3 A. Sectors.

4 Q. Sectors, thank you.

5 A. There could be more than three, but
6 that's the typical ---

7 Q. Typical. And what's the size of a
8 sector?

9 A. It would be the whole -- a sector
10 typically is -- let's see, a third of three-
11 sixty.

12 Q. Like square mileage?

13 A. Square mileage. The map is a three-
14 mile radius. That's what you're looking at
15 there. So those three maps, it's a three-
16 mile radius from the tower, the cell site.

17 Q. Okay. So they record anywhere from
18 three miles out?

19 A. Correct.

20 Q. Got it.

21 A. And it could be anywhere within that
22 sector.

23 Q. And, of course, if the phone didn't
24 use the nearest cell, then it's farther than
25 three miles?

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1 A. Not ordinarily, no.

2 Q. The sector isn't more than three
3 miles. I'm saying that if the phone isn't
4 operating off of the nearest tower that means
5 it's not -- the phone is not going to be in
6 that sector?

7 A. I guess -- that's interesting. Yes.

8 Q. Thank you very much.

9 THE COURT: Redirect?

10 SOLICITOR SIMPSON: None, Your
11 Honor.

12 THE COURT: Thank you. You may
13 come down.

14 (WITNESS STEPS DOWN)

15 THE COURT: Who will be your next
16 witness?

17 SOLICITOR SIMPSON: I'm calling,
18 the State calls Kathleen Butler.

19 THE COURT: No, how long is it?

20 SOLICITOR SIMPSON: I would ten
21 minutes, Your Honor.

22 THE COURT: All right. Thank you
23 very much.

24 (WITNESS TAKES STAND)

25 KATHLEEN BUTLER, having been duly

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1 sworn to tell the truth, and nothing but the
2 truth, testified as follows:

3 SOLICITOR SIMPSON: May it please
4 the Court, Your Honor.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY SOLICITOR SIMPSON:

8 Q. Good morning, Ms. Butler, how are
9 you?

10 A. I'm fine. How are you?

11 Q. Getting over a cold?

12 A. Laryngitis.

13 Q. Oh, I'm sorry to hear that. Where
14 are you currently employed?

15 A. The Charleston Police Department.

16 Q. And what are your duties at CPD?

17 A. I am the latent print supervisor. I
18 not only do the duties of a latent examiner
19 by evaluate latents. I run the unit. I
20 train examiners and order supplies.

21 Q. How long have you been employed a
22 latent print examiner?

23 A. A little over eleven years.

24 Q. What is your training and
25 educational background?

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1 A. I have approximately seven hundred
2 fifty (750) hours in latent print training.

3 I basically started right out of crime
4 scene, doing an independent study with the
5 previous latent examiners, which were Libby
6 Oliver and Chris Scott. They taught me the
7 basics of fingerprints, how to compare them,
8 and the report, how to write the report, and
9 enter it into the system so that others can
10 access it.

11 Not only doing that, I went to schools.
12 Started out with pattern recognition, basic
13 fingerprint, which is up at SLED, the South
14 Carolina Law Enforcement Division.
15 Ridgeology. I did a palm print symposium.
16 Advanced courses, administrative latent
17 fingerprint and complex latent fingerprint.

18 More recently, because of budget cuts,
19 we're having to look at on-line courses
20 through West Virginia University. And I've
21 taken Fundamentals of Fingerprints and
22 several other courses through them and also
23 the National Institute of Justice.

24 Q. So how many fingerprint analyses do
25 you think you've done over these eleven

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1 years?

2 A. Well over three hundred thousand.

3 Q. Three hundred thousand?

4 A. Yes.

5 Q. Have you been qualified as an expert
6 in court before?

7 A. I have.

8 Q. About how many times?

9 A. Approximately eighteen times,
10 fifteen of those in General Sessions in South
11 Carolina and three Federal.

12 SOLICITOR SIMPSON: Your Honor,
13 at this time, I'd move to qualify Ms. Butler
14 as an expert in latent fingerprint analysis.

15 THE COURT: Do you care to examine
16 her on her qualifications?

17 MR. BUTLER: No, sir, no objection.

18 THE COURT: She will be permitted
19 to render opinions.

20 SOLICITOR SIMPSON: Thank you,
21 Your Honor.

22 DIRECT EXAMINATION CONTINUED BY

23 SOLICITOR SIMPSON:

24 Q. What are latent prints, Ms. Butler?

25 A. A latent fingerprint is invisible

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1 impression frictional images left on the
2 surfaces of objects by perspiration and
3 contaminants. Contaminants can be dirt or
4 blood, sweat, etcetera. And it's through
5 development of these images with chemicals
6 and powders that you can lift them and use
7 them to compare them.

8 Q. So you can't see them with the naked
9 eye until you apply these chemicals and
10 powders?

11 A. Correct.

12 Q. How about known prints?

13 A. A known fingerprint is basically
14 taking printer's ink, applying it to a
15 surface and rolling your finger from nail-to-
16 nail. And then applying that to a hard stock
17 paper, rolling that impression on there.
18 Those are called known fingerprints. And
19 they have identified as to that individual.

20 Q. So you know who the person who
21 provided that sample would be beforehand?

22 A. Correct.

23 Q. And can you kind of briefly describe
24 how fingerprint analysis works?

25 A. I'm not sure what you're asking me?

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1 Q. Would you at some point have an
2 unknown print and compare it to the known
3 print of a person; is that accurate?

4 A. Yes.

5 Q. Okay. And did you have occasion to
6 examine some latent lifts in this case?

7 A. I did.

8 Q. Did you examine a latent lift from
9 an unfired cartridge?

10 A. I did.

11 Q. Did you have the known prints of the
12 Defendant for comparison?

13 A. I did.

14 Q. And what were the results of the
15 analysis on the unknown lift from the unfired
16 cartridge and the Defendant's known prints?
17 Do you need to grab your notes?

18 A. From the item of the unfired
19 cartridge that's identified to the
20 fingerprint card bearing the name of Devin
21 Jamal Johnson.

22 Q. Did you also have occasion to
23 examine some latent lifts from a vehicle in
24 this case?

25 A. I did.

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1 Q. Do you recall approximately how many
2 lifts total from the vehicle?

3 A. There were thirty-five lifts from
4 that vehicle.

5 Q. And do you recall generally where in
6 the car those were taken from? Just kind of
7 generally, you don't have to ---

8 A. Generally?

9 Q. Yes, ma'am?

10 A. Pretty much all over, the doors, the
11 hood, the trunk.

12 Q. This, I guess goes without saying,
13 typically the places where people would touch
14 the vehicle?

15 A. Yes.

16 Q. And, again, you compared those
17 unknown lifts to the know prints of the
18 Defendant in this case?

19 A. I did.

20 Q. And which of those unknown lifts
21 were matched to the Defendant, from the
22 vehicle and where was the locations they were
23 found in/on the car?

24 A. We found -- 26-9 was from exterior,
25 front passenger side door identified to Devin

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1 Johnson.

2 Q. And that would be the outside, the
3 outside of the passenger door?

4 A. Exterior, yes.

5 Q. Okay. Continue, sorry?

6 A. Latent 26-10 was from the exterior
7 front passenger side door. And that was
8 identified to Devin Johnson.

9 Latent 26-11 from the exterior front
10 passenger side door was identified to Devin
11 Johnson.

12 Latent 26-12 was exterior front
13 passenger side door. It was identified to --
14 I apologize. That was not.

15 Latent 26-13 on exterior hood was
16 Devin Johnson.

17 Latent 26-14 from the hood of the
18 car was identified to Devin Johnson.

19 Latent 26-15 from the hood was
20 identified to Devin Johnson.

21 26-17 was from the hood of the car
22 and it was matched to Devin Johnson.

23 Latent 26-18 was from the exterior,
24 the front driver's side panel, and that did
25 not match.

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1 Q. Continue

2 A. Item 26-19 exterior front door of
3 the side panel was identified to Devin
4 Johnson.

5 Q. That was on the driver's side of the
6 vehicle?

7 A. Exterior, front driver's side panel.

8 Item 26-21, which was from the
9 exterior front driver's side panel, was
10 identified to Devin Johnson.

11 Item 26-24, from the exterior
12 driver's side door was identified to Devin
13 Johnson.

14 Item 26-27 from the exterior gas cap
15 was identified to Devin Johnson.

16 Latent 26-28 from the exterior trunk
17 was identified to Devin Johnson.

18 Item 26-29 on the exterior trunk was
19 identified to Devin Johnson.

20 Item 26-30 from the exterior of the
21 trunk was identified to Devin Johnson.

22 Q. And that was ---

23 A. And 26-35, interior front passenger
24 side window was identified to Devin Johnson.

25 SOLICITOR SIMPSON: I beg the

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1 (WITNESS TAKES STAND)

2 DEANGELO BUNCUM, having been duly
3 sworn to tell the truth, and nothing but the
4 truth, testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR SIMPSON:

7 Q. Mr. Buncum, good morning?

8 A. How you doing, sir?

9 Q. I'm doing well. Where do you live
10 currently?

11 A. Currently, right now, I'm in
12 Greenville, South Carolina.

13 Q. Are you working up there?

14 A. Yes, sir.

15 Q. Where do you work?

16 A. Work at MCI.

17 Q. And what is that?

18 A. It's a company with -- I work in
19 logistics.

20 Q. And are you working pretty long
21 hours there?

22 A. Uh-huh, (affirmative nod).

23 Q. And what shift do you work?

24 A. Third shift. I just got on third
25 shift.

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1 Q. And what does that mean, third
2 shift?

3 A. I work from 9:30 to 7:30 in the
4 morning.

5 Q. And you came all the way down here
6 from Greenville?

7 A. (Affirmative nod).

8 THE COURT: Is that a yes?

9 WITNESS: Yes, sir.

10 THE COURT: Excuse me a second.
11 Mr. Buncum, I'd appreciate that. That's
12 conversational, we all do it. Everybody in
13 this room shakes their head and says "uh-huh"
14 "huh-uh", probably.

15 WITNESS: Yes, sir.

16 THE COURT: You need to help us
17 with this. The lady seated next to you is
18 taking down everything we're saying.

19 WITNESS: Okay.

20 THE COURT: So use words and not
21 nod your head or not uh-huh or uh-uh.

22 WITNESS: Yes, sir. No problem.

23 THE COURT: I appreciate it.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR SIMPSON:

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1 Q. So Mr. Buncum you came down from
2 Greenville?

3 A. Yes, sir.

4 Q. Did my office get in touch with you
5 about this?

6 A. Yes, sir.

7 Q. And were you willing to discuss this
8 with us?

9 A. Yes, sir. I didn't have no problem.

10 Q. Okay. Has this been -- from when
11 this happened up to this week, has this been
12 an inconvenience for you?

13 A. Somewhat.

14 Q. But you're here today?

15 A. Yes, sir.

16 Q. And you know why you're here; is
17 that correct?

18 A. Yes, sir.

19 Q. DeAngelo, did you know a young man
20 by the name of Akeem Smalls?

21 A. Yes, I did.

22 Q. And did you know him well?

23 A. Yes, I did.

24 Q. And how did you know him?

25 A. I knew him through my cousin who had

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1 a child with his sister. And when I got to
2 know him, knew who he was, he became family.

3 Q. So there was some family connections
4 by marriage and a child?

5 A. Well, just a bond between his sister
6 and my cousin.

7 Q. Okay. And he was -- you guys were
8 close?

9 A. Yeah. Every time -- we each stayed
10 in the same apartment complex so every time I
11 would get off, we would hang out and talk and
12 hang out together.

13 Q. And what apartment complex was that?

14 A. Georgetown Apartments.

15 Q. And you lived there at one point?

16 A. Yeah. I lived there for like about
17 two years.

18 Q. And during 2011 did you also live
19 with your mother?

20 A. Yeah. When we moved from Georgetown
21 Apartments I stayed around the corner where
22 my grandmother was staying at the time.

23 Q. Okay. Is that in close proximity to
24 Georgetown Apartments?

25 A. It's right around the corner, yes,

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1 sir.

2 Q. And on June 8th, 2011, the day why
3 we're all here ---

4 A. Uh-huh.

5 Q. --- where were you living?

6 A. 2011, I was living in Eastside.

7 Q. On June 8th, did you see Akeem
8 Smalls?

9 A. Yes, I did.

10 Q. Okay. Can you explain a little bit
11 to the jury how that came to be?

12 A. I tried calling him. I decided to
13 go on and, you know, hang out at Georgetown
14 Apartments. And when I was walking through
15 the building he was staying at, I saw him
16 upstairs.

17 Q. Okay. And where were you heading
18 when you saw him upstairs?

19 A. I was going -- Basically, I was just
20 walking around, just hanging out.

21 Q. Did you know anybody else at
22 Georgetown Apartments?

23 A. Yes, I knew a few people that stayed
24 around there.

25 Q. Okay. Did you know anyone in

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1 Building E?

2 A. Building E, the building he was
3 staying in?

4 Q. Or in the back?

5 A. In the back, yes, sir. Yes, sir, I
6 did. Yeah.

7 Q. So you were going to -- I'm going to
8 have you continue. You were walking through
9 and you see Ace?

10 A. I saw him. And I went upstairs and
11 we were just sitting there talking casually.
12 We were drinking. I was drinking. And we
13 was just talking. We was just talking about,
14 you know, basically the things that he was,
15 you know, he was working on a CD, music or
16 whatever.

17 Q. Okay. I'm going to stop you
18 DeAngelo. Again, there's nothing wrong what
19 you're doing but you just can't address what
20 someone else told you. You're fine. Was the
21 conversation friendly?

22 A. Yes, it was.

23 Q. Did it get angry at any time between
24 you?

25 A. No, it didn't.

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1 Q. And at some point did you leave him?

2 A. Yes, I did.

3 Q. Where did you go when you left?

4 A. I went to the back, the back
5 apartments.

6 Q. Did you ever come that evening to
7 find out what had happened to Akeem or Ace?

8 A. I found out later.

9 Q. How did you find out later?

10 A. I was with some associates that was
11 staying in the back apartments and I saw
12 flashlights moving around. And I thought
13 someone was playing with a flashlight. And
14 when I peaked and looked, it was like police
15 officers everywhere. And when I came out of
16 the apartment and I was walking towards, I
17 guess where the crime scene was at, they told
18 me what happened.

19 Q. Okay. And you found out that this
20 was a friend of yours?

21 A. I found out it was the person I just
22 left, Akeem.

23 Q. Okay. And how did you react to
24 that?

25 A. I didn't -- my heart jumped, I felt

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1 shock. I was like, I was just with him. It
2 could have been me.

3 Q. Okay. Did you contact anybody when
4 you found out?

5 A. Yeah. I contacted my cousin, my
6 mother, and my children's mom.

7 Q. So you called a few people.

8 A. Yeah. Three people.

9 Q. Okay. I'd like to show you
10 something that's going to come on the screen
11 in front of you. About how -- approximately,
12 how much later from when you left Akeem did
13 you find out that he had been killed?

14 A. It was just a couple of minutes.

15 Q. Okay. I want you to watch some
16 video. This is, on the camera time 10:03,
17 the camera previously identified as C/D --
18 (video playing).

19 Mr. Buncum -- and I know it's not the
20 greatest video, but to you, does that appear
21 to be you?

22 A. Yes, sir. That's me.

23 Q. Did a time come -- after the killing
24 of Ace, did you come to learn that the police
25 were looking for you?

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1 A. No, sir.

2 Q. Did the police come to your house
3 after ---

4 A. They came like two days after.

5 Q. Okay.

6 A. Yeah.

7 Q. Were you -- how did they know to
8 come to your house?

9 A. Well, they came there they was
10 saying I was a person of interest. They had
11 my face on the news.

12 Q. And when you found out your face was
13 on the news, did you hop in the car and flee
14 Charleston?

15 A. No. My mother -- I told my mother
16 to call the police.

17 Q. Okay. Did you go talk with the
18 police?

19 A. Yeah. They came and apprehended me
20 right there on the spot.

21 Q. Okay. After you were arrested, did
22 you give a statement to police?

23 A. Yeah. I told them what I knew.
24 What I had learned after me leaving Akeem.

25 Q. Okay. And is the statement that you

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1 gave to police ---

2 A. Uh-huh.

3 Q. --- the same as what you're giving
4 to the jury now?

5 A. Yeah.

6 Q. Mr. Buncum, did you have anything to
7 do with the death of Akeem Smalls?

8 A. No, I didn't, sir.

9 Q. What was your emotional reaction to
10 the death of Akeem Smalls, Ace?

11 A. I was hurt. I was crying.

12 Q. Mr. Buncum, thank you for being
13 here. I know it was an inconvenience for
14 you. Please answer any questions that Mr.
15 Butler has.

16 A. Sure.

17 THE COURT: You may cross-examine.

18 CROSS-EXAMINATION

19 BY MR. BUTLER:

20 Q. Good morning, Mr. Buncum?

21 A. Good morning.

22 Q. How are you?

23 A. I'm doing fine.

24 Q. Well, I'm not alone in saying that
25 we're sorry all of this happened to you,

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1 sincerely.

2 A. Yes, sir.

3 Q. You weren't just a suspect, they
4 charged you, didn't they?

5 A. They did.

6 Q. And you were held on a warrant in
7 jail for some time, were you not?

8 A. Yeah. About three months.

9 Q. And the police detectives with the
10 CPD interrogated you in a room at head-
11 quarters?

12 A. Yes, they did.

13 Q. And you told them you had nothing to
14 do with it?

15 A. Yes, sir.

16 Q. And you were telling the truth?

17 A. Yes, sir.

18 Q. And they did not believe you, did
19 they?

20 A. Well -- really the detectives, they
21 were trying to get, you know, all of the
22 leads and the truth.

23 Q. Okay. But after you told them the
24 truth, that you weren't involved, they
25 arrested you anyway?

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1 A. Sure did.

2 Q. They were hostile towards you in
3 interrogation?

4 A. No, they weren't.

5 Q. Fair enough. How long did that
6 last?

7 A. It lasted for a couple of minutes.

8 Q. A couple minutes, that's kind of ---

9 A. It was like, probably like thirty,
10 probably close to thirty minutes.

11 Q. Are you sure it wasn't longer than
12 that?

13 A. (No verbal response).

14 Q. Okay. I want to talk to you --
15 before Akeem left his apartment you were in
16 the apartment with him?

17 A. No. We were on the porch.

18 Q. On the porch?

19 A. Yeah.

20 Q. At some point around that time, he's
21 arguing with somebody on the phone, isn't he?

22 A. Yes, he is.

23 Q. Okay. And you were there for that?

24 A. Yeah. I was there for a couple of
25 minutes. Like -- I'd say like three to four

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1 minutes and then I left.

2 Q. Okay. And how long after that does
3 he leave?

4 A. He was still on the porch. I left
5 him.

6 Q. How long after that do you see the
7 police blue lights?

8 A. I'd say like twenty -- probably like
9 thirty to forty-five minutes.

10 Q. Got it. Thank you very much, sir.

11 A. Got you.

12 THE COURT: Redirect?

13 SOLICITOR SIMPSON: None, Your
14 Honor.

15 THE COURT: Thank you, Mr. Buncum,
16 you may step down, sir.

17 WITNESS: All right. Thank you.

18 THE COURT: Thank you, sir.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next
21 witness.

22 SOLICITOR SIMPSON: Thank you,
23 Your Honor. The State calls Vanessa Buncum.

24 (WITNESS TAKES STAND)

25 VANESSA BUNCUM MORTON, having been

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1 duly sworn to tell the truth, and nothing but
2 the truth, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR SIMPSON:

5 Q. Ms. Buncum, good morning.

6 A. How are you?

7 Q. All right. Thank you for being
8 here. You just passed a person when you were
9 coming in, who was that?

10 A. That's my baby.

11 Q. Okay. You're DeAngelo's mother?

12 A. Yes, I am.

13 Q. I'll be brief with you.

14 A. Okay.

15 Q. Did there come a time when you
16 learned -- did you know Akeem Smalls?

17 A. I knew him by grandnephew's -- he's
18 my grandnephew's uncle..

19 Q. Okay. So you were familiar with who
20 that was?

21 A. Yes.

22 Q. Did there come a time that you
23 learned that he had been killed?

24 A. Yes.

25 Q. And how did you learn this

1 information?

2 A. When my son called me on the phone.

3 Q. What was your son's demeanor when he
4 called you on the phone?

5 A. He was upset.

6 Q. Okay. Upset as in mad or upset as
7 in sad?

8 A. He was sad and sort of mad, also,
9 too. He had the emotions going on.

10 Q. Okay. What did you tell him? What
11 did you tell him when you talked to him on
12 the phone?

13 A. When he called me and he told me
14 what was going on, I said, 'Where are you?'

15 Q. Okay.

16 A. He said, 'Mama, I'm down here at
17 Georgetown.'

18 I said, okay. 'You need to calm
19 down. What's going on?'

20 AK, which is the young man's, my
21 grandnephew's, uncle's ---

22 Q. Okay. Akeem Smalls?

23 A. Yeah. That's his nickname, 'he got
24 shot.' I said ---

25 Q. Okay. Let me stop you at that

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1 point. We can't discuss what DeAngelo told
2 you.

3 A. Oh, okay. Okay.

4 Q. Did you give him any instructions as
5 to where he needed to be?

6 A. Yeah.

7 Q. And what were those?

8 A. I said "bring your -- (pause) --
9 home."

10 Q. Did he follow that instruction?

11 A. Yeah. He did. He -- yeah, he did.

12 Q. Did there come a time when you
13 learned that the police were interested in
14 speaking to DeAngelo?

15 A. I didn't find out until the day
16 after.

17 Q. How did you find out?

18 A. I was looking at TV.

19 Q. Okay. And did you see your son on
20 TV?

21 A. Oh, yes, I did.

22 Q. And what did you, how did you react
23 to seeing that?

24 A. My reaction was 'what is going on?'

25 Q. Okay. And did you contact anyone?

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1 A. Yeah, because my son was sitting in
2 the living room.

3 Q. Okay. And who did you contact?

4 A. I went to him.

5 Q. Okay. And who did you contact after
6 talking with him?

7 A. I called the Charleston Police
8 Department.

9 Q. Did they come to your house?

10 A. Yes, they did.

11 Q. Did DeAngelo know that you were
12 calling the police?

13 A. Yes, he did.

14 Q. Did he run out of the back of the
15 house?

16 A. Oh, no. He sat there like a deer in
17 the middle of the road like, 'What?!?'

18 Q. Did he try to run away?

19 A. No, he did not.

20 Q. Okay. Did he go with the police --
21 I won't say voluntarily?

22 A. Yes, he did. Yes, he did.

23 Q. Did he put a fight in any way?

24 A. Oh, no, he didn't.

25 Q. Did DeAngelo tell you -- he told you

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1 about it the night that it happened?

2 A. He told me what happened. And I'm
3 like, I'm not -- 'You need to calm down.'
4 That's the first thing. 'You obviously need
5 to calm down. When he did get home because
6 he was saying police was around. I just
7 said, I don't care who's around there. Bring
8 your -- (pause) -- home.'

9 Q. Did the police express any interest
10 in obtaining some items of DeAngelo's from
11 home?

12 A. Yes, they sure did.

13 Q. And when they asked, what was your
14 response?

15 A. I said "I got it."

16 Q. If they asked you for something, did
17 you give it to them?

18 A. I gave them the clothes that he had
19 on because that's the first thing they asked
20 for.

21 Q. Okay. Anything they asked, did you
22 ---

23 A. They asked about a weapon.

24 Q. Okay. What was your answer to that?

25 A. "Okay. You can turn the house

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1 upside down." That's exactly what I said.

2 Q. You didn't make them go get a
3 warrant?

4 A. Yeah, they sit around, but I was
5 flipping things. They was like, calm down.
6 They just waiting on a warrant. I said, "no,
7 because we can flip this upside down."

8 Q. Okay. All right. You let them
9 search what they wanted to search?

10 A. Yes, I did.

11 Q. I want to show you something?

12 A. Okay.

13 Q. And for the record, this is camera
14 C/D at camera time 10:00.04 -- (video
15 playing).

16 A. That's my baby.

17 Q. Okay. That's okay. You know that's
18 not the greatest video, but do you have any
19 hesitation that's ---

20 A. No, no, no. I know my baby.

21 Q. Okay. How do you know him?

22 A. His demeanor, his walking -- he's
23 just got a goofy -- he tall, he walks goofy.

24 Q. Any hesitation in your mind that
25 that's your son?

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1 A. That's my baby.

2 Q. Okay. DeAngelo was arrested for
3 this, right?

4 A. Yes, he was.

5 Q. Did that upset you?

6 A. Yeah.

7 Q. Did you think this was something he
8 would be capable of doing?

9 A. Oh, no. He's done some dumb stuff,
10 but this is not one of them.

11 Q. He's made some mistakes?

12 A. Oh, yes.

13 Q. Anything even remotely like this?

14 A. No, no. No.

15 Q. Ms. Buncum, did there come a time
16 where the charges -- did you come to learn
17 that the charges were dismissed against
18 DeAngelo?

19 A. Yes, after he spent some time.

20 Q. And was that -- if you're familiar
21 with it ---

22 A. Okay.

23 Q. --- was that an action taken by the
24 Court or was that an action taken by the
25 prosecutor's office?

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1 A. To be honest with you, I don't know
2 exactly ---

3 Q. Okay. If you don't know.

4 A. --- what action, but it was, you
5 know...

6 Q. Okay. Thank you for coming today.
7 Answer any questions Mr. Butler may have.

8 A. Okay.

9 THE COURT: You may cross-examine.

10 CROSS-EXAMINATION

11 BY MR. BUTLER:

12 Q. Good morning, Ms. Butler.

13 A. I'm fine. How are you?

14 Q. I'm fine. It sounds like a night-
15 mare.

16 A. Yes, it is.

17 Q. Well, I'm sorry for that. And I
18 don't have any questions for you. Thank you
19 for coming.

20 A. Okay then.

21 THE COURT: Thank you. Any
22 redirect?

23 SOLICITOR SIMPSON: No, Your
24 Honor.

25 THE COURT: Thank you, Ms. Buncum,

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1 you may step down.

2 WITNESS: All right.

3 (WITNESS STEPS DOWN)

4 THE COURT: Call your next
5 witness, please?

6 SOLICITOR SIMPSON: Your Honor,
7 at this time, the State rests.

8 THE COURT: All right. Ladies and
9 gentlemen, at this point there are some
10 matters of law that I must take up out of
11 your presence. I'm going to ask you to
12 retire to your jury room.

13 Do not begin your deliberations, do not
14 discuss the case. We will be with you as
15 soon as we can.

16 (JURY OUT @ 11:44 A.M.)

17 THE COURT: Are there any matters
18 from the State?

19 SOLICITOR SIMPSON: None, Your
20 Honor.

21 THE COURT: Mr. Butler?

22 MR. BUTLER: Just out of an
23 abundance of caution, I'd move for a directed
24 verdict. It is a circumstantial evidence
25 case and I think I have to cite that line of

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1 disprove, explain, doesn't have to
2 present anything. And certainly that's, you
3 would never consider that against him. But
4 he still has the right to present any
5 additional witnesses, if he chooses to.

6 Mr. Butler, we're now at that point.
7 Does the Defendant wish to present any
8 additional testimony?

9 MR. BUTLER: Yes, sir..

10 THE COURT: You may proceed.
11 Thank you.

12 MR. BUTLER: Judge, at this time,
13 the Defense calls Robert Watts.

14 THE COURT: Okay.

15 (WITNESS TAKES STAND)

16 ROBERT BLAKE WATTS, having been duly
17 sworn to tell the truth, and nothing but the
18 truth, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BUTLER:

21 Q. Good morning, Mr. Watts?

22 A. Good morning.

23 Q. Where do you currently reside?

24 A. [REDACTED] It's in West
25 Ashley.

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1 Q. Okay. And where do you work?

2 A. Wyndham Select Used Cars.

3 Q. I want to talk to you about an
4 incident that occurred on June 9th of 2011.
5 Are you okay with that?

6 A. Yes, sir.

7 Q. Where were you living in June of
8 2011?

9 A. At Orangeburg Apartments.

10 Q. Okay. And with whom were you
11 living?

12 A. My girlfriend at the time, Alise
13 Buckner.

14 Q. When you say Orangeburg Apartments,
15 do they have another name?

16 A. I don't think so.

17 Q. What was the address?

18 A. It' was -- I can't remember the
19 address off-the-top-of-my-head.

20 Q. Okay.

21 MR. BUTLER: I beg the Court's
22 indulgence.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. BUTLER:

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1 Q. Let me ---

2 A. It was the Georgetown Apartments, I
3 apologize.

4 Q. Okay.

5 A. They're on Orangeburg Road.

6 Q. Orangeburg Road. Georgetown
7 Apartments. Give me one second, please.

8 (SO MARKED AS DEFENDANT'S EXHIBIT 15)

9 DIRECT EXAMINATION CONTINUED

10 BY MR. BUTLER:

11 Q. I'm showing you Defendant's 15. Do
12 you recognize this photograph?

13 A. Yes, sir.

14 Q. And what is that?

15 A. That is the building where I lived.

16 Q. Okay. I'm going to put it up on the
17 screen.

18 MR. BUTLER: Move Defendant's 15
19 into evidence.

20 THE COURT: Any objection?

21 SOLICITOR SIMPSON: No objection.

22 THE COURT: Without objection,
23 Defendant's 15 is admitted.

24 (SO ENTERED AS DEFENDANT'S EXHIBIT 15)

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. BUTLER:

2 Q. I think you -- can you see it on the
3 screen.

4 A. Yes, sir.

5 THE COURT: Is it off?

6 A. Here we go.

7 Q. Okay. And so Defendant's 15, what
8 does that depict? What is that?

9 A. This is our building. I actually
10 lived -- does that show where I point?

11 Q. Yeah?

12 A. Okay. We actually lived right about
13 there in that apartment.

14 Q. Okay. And on the night that we're
15 talking about, what got your attention?

16 A. We were watching television and I
17 heard around about five gunshots. I'm not
18 exactly sure it was five, but it was
19 somewhere around five gunshots.

20 Q. And when you say we, who was "we"?

21 A. Me and Alisa.

22 Q. And who is Alisa?

23 A. That was my girlfriend at the time.

24 Q. Okay. And she lived there with you?

25 A. Uh-huh.

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1 Q. When you heard the gunshots, what
2 did you do?

3 A. I peeked out of my window and I saw
4 two gentlemen running down the walkway. They
5 went straight through there.

6 Q. Okay. All right. And then what did
7 you do?

8 A. I walked out to the balcony to see
9 if I could get a peek at the car.

10 Q. Okay. And did you?

11 A. I did.

12 Q. All right. And then what did you
13 do?

14 A. I called 9-1-1 and told them there
15 had been a shooting.

16 Q. All right. After you called 9-1-1
17 what happened?

18 A. The police showed up. They spoke
19 with me privately.

20 Q. All right. They spoke with you.
21 And where did they speak -- you said
22 privately?

23 A. Uh-huh. They took me to the car,
24 which was parked right in this area over
25 here.

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1 Q. All right. And where was Lisa at?

2 A. She was standing right about where
3 the car was parked at, around that area at
4 the time.

5 Q. All right. Who was she talking to
6 while you were talking to the police?

7 A. I think she was just standing
8 around, waiting for the police to speak to
9 her.

10 Q. Was she with you when you were
11 talking to the police?

12 A. We were talking to the police, that
13 night I actually filed the report, it was in
14 the car. And we were speaking to the police
15 in the area where they were parked at.

16 Q. All right. At some point they
17 separated you?

18 A. Yeah.

19 Q. Okay. And what did you tell them
20 about the license plate if you remember?

21 A. I told them all I saw on it was an
22 "A".

23 Q. An "A" on the license plate. Thank
24 you. Were you ever contacted by members of
25 the Solicitor's Office after you gave your

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1 statement to police?

2 A. No, sir.

3 Q. That's all I have. Thank you, Mr.
4 Watts.

5 THE COURT: Cross-examination

6 MR. BUTLER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY SOLICITOR SIMPSON:

9 Q. Mr. Watts, good morning.

10 A. Good morning.

11 Q. How are you?

12 A. Very good.

13 Q. I think I'd like to continue
14 referring to -- do I have this correct, Mr.
15 Watts, that your apartment is approximately
16 here?

17 A. A little bit farther to the right,
18 but, yes.

19 Q. Right about here?

20 A. Right around there.

21 Q. Okay. Upstairs or downstairs?

22 A. Upstairs.

23 Q. Upstairs?

24 A. Uh-huh.

25 THE COURT: Was that a yes?

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1 WITNESS: Yes, sir.

2 THE COURT: If you would say it,
3 verbalize it, it helps the court reporter
4 know and me know what your answer is, please.

5 WITNESS: Yes, sir.

6 CROSS-EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. And you said you caught a view of
9 the car as it was pulling away?

10 A. I did, sir.

11 Q. Can you indicate about what -- where
12 were you standing when you caught that view
13 of the car?

14 A. It would be on the balcony, which is
15 right there.

16 Q. Right there? You got a look at the
17 car?

18 A. Uh-huh, (affirmative nod).

19 THE COURT: Is that a yes?

20 WITNESS: Yes, sir. I'm sorry.
21 I apologize.

22 THE COURT: That's all right.

23 CROSS-EXAMINATION CONTINUED

24 BY SOLICITOR SIMPSON:

25 Q. And you got a look at the license

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1 tag, license plate; is that correct?

2 A. Yes, sir.

3 Q. Only able to get the one letter; is
4 that correct?

5 A. That's correct.

6 Q. Okay. So am I out on a limb when I
7 say that you just got a quick look at that
8 license plate?

9 A. Very quick, yes, sir.

10 Q. Okay. Would you say very quick?

11 A. Very. They pulled off pretty quick.

12 Q. Okay.

13 A. Because I didn't come outside until
14 I had saw them get in the car.

15 Q. Okay. I don't want to put words in
16 your mouth, just a glance at that license
17 plate; is that fair?

18 A. That's fair, yes.

19 Q. Okay. Was the car in the motion
20 when you got that glance?

21 A. Yes, sir, it was just pulling off as
22 I was looking at it.

23 Q. And you just caught the one letter;
24 correct?

25 A. Yes, sir.

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1 Q. Did you -- well, let me say that I'm
2 not here to argue with you, that you were
3 very helpful to police for what you knew,
4 right?

5 A. As far as I know.

6 Q. Yeah. You were willing to talk to
7 them?

8 A. Uh-huh, (affirmative nod).

9 Q. Willing to tell them what you
10 observed?

11 A. (Affirmative nod).

12 Q. Could you tell them where the "A"
13 was in the license plate? Like, was the "A"
14 in the third position or ---

15 A. I really don't remember where that
16 "A" was.

17 Q. Okay. Mr. Butler asked you -- you
18 also got a view of the individuals, correct,
19 I think you said.

20 A. It was a very slight view and it was
21 dark outside. It was very hard to tell any
22 description.

23 Q. And did the police ever ask you if
24 you think you would be able to pick these
25 guys out of some kind of lineup or anything?

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1 A. I'm not sure if they asked me that
2 or not, but I wouldn't be able to.

3 Q. Okay. So you can't say by looking
4 at someone, that's the person, that's not?

5 A. No, sir.

6 Q. And this happened pretty quickly,
7 right?

8 A. Yes, sir.

9 Q. Okay. You talked with Mr. Butler
10 about the police talking to you in the car?

11 A. Yes, sir.

12 Q. Do you remember if they audio
13 recorded that?

14 A. They did.

15 Q. They did. Do you remember saying, I
16 think one of them was wearing a hat?

17 A. I don't remember off-the-top-of-my-
18 head. I mean, I could have said it, but I
19 don't remember.

20 Q. Okay. But they recorded that. If
21 we listened to the recording you gave them,
22 you think maybe we could, uh, that that would
23 refresh your recollection?

24 A. It could.

25 Q. You'd be able to recognize your

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1 voice on an audio recording?

2 A. Yes, sir.

3 (SO MARKED AS STATE'S EXHIBIT 77)

4 CROSS-EXAMINATION CONTINUED

5 BY SOLICITOR SIMPSON:

6 Q. You don't remember anything about
7 that?

8 A. No.

9 (OFF RECORD BENCH CONFERENCE)

10 THE COURT: Ladies and gentlemen,
11 there's a matter of law I'm going to have to
12 take up. I'll ask you to go to your jury
13 room. Do not begin your deliberations. Do
14 not discuss the case. We'll be with you
15 shortly.

16 (JURY OUT @ 12:05 P.M.)

17 THE COURT: All right.

18 SOLICITOR SIMPSON: Yes, sir.

19 THE COURT: It's going to be
20 proffer?

21 SOLICITOR SIMPSON: Yes, sir.

22 May I proceed?

23 THE COURT: You may proceed.

24 SOLICITOR SIMPSON: Thank you,
25 Your Honor.

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1 PROFFER CROSS-EXAMINATION

2 BY SOLICITOR SIMPSON: .

3 Q. Mr. Watts, now, out of the presence
4 of the jury ---

5 THE COURT: We don't need to -- we
6 just need to get to the point. We don't need
7 to question him. The whole purpose of this
8 for the record is we're trying to comply with
9 the rule, trying to -- the witness is
10 entitled to refresh his recollection of a
11 recorded statement. We have the recorded.
12 It simply has not been transcribed. It's on
13 a CD so that's what we're doing. We're
14 playing it. Is there any way to locate it,
15 do we know where it is?

16 SOLICITOR SIMPSON: Your Honor, I
17 have it right here.

18 THE COURT: You have that part of
19 it?

20 SOLICITOR SIMPSON: It's a pretty
21 brief statement.

22 THE COURT: That's fine.

23 SOLICITOR SIMPSON: (Playing
24 audio recording).

25 (STATE'S EXHIBIT 77 FOR ID PROFFERED)

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1 THE COURT: All right. Do you
2 need to hear it again?

3 WITNESS: No, I'm good.

4 THE COURT: All right. Do you
5 want to ask the questions now out of the
6 presence of the jury and see what his answers
7 are?

8 PROFFER EXAMINATION CONTINUED

9 BY SOLICITOR SIMPSON:

10 Q. Do you recognize what you just
11 listened to?

12 A. Yes, sir.

13 Q. Is there any hesitation that that's
14 you giving an audio statement?

15 A. No, sir.

16 Q. Okay.

17 SOLICITOR SIMPSON: Your Honor,
18 I'm going to seek to admit or play it --
19 after he have refreshed his recollection.

20 THE COURT: All right. Do you
21 want to go bring the jury back?

22 MR. BUTLER: Well, his recollection
23 is refreshed. He can testify to it.

24 THE COURT: Has it been -- for the
25 purpose of the record, you want to ask him

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1 does that refresh his recollection?

2 SOLICITOR SIMPSON: Okay.

3 PROFFER EXAMINATION CONTINUED

4 BY SOLICITOR SIMPSON:

5 Q. Does that refresh your recollection
6 of the statement, that audio statement that
7 you gave?

8 A. It does.

9 THE COURT: Okay. That's fine.
10 Bring in the jury. Thank you.

11 SOLICITOR SIMPSON: Thank you,
12 Your Honor.

13 THE COURT: You bet. And that was
14 done pursuant to Rule 612 of our Rules of
15 Evidence.

16 BAILIFF: Are you ready for
17 them?

18 THE COURT: Yes.

19 (JURY IN @ 12:10 P.M.)

20 BAILIFF: The jury's present,
21 Your Honor.

22 THE COURT: Thank you very much.
23 Thank you, ladies and gentlemen. You may
24 continue.

25 SOLICITOR SIMPSON: Thank you,

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1 Your Honor.

2 CROSS EXAMINATION RESUMED

3 BY SOLICITOR SIMPSON

4 Q. Mr. Watts, did you give an audio
5 recorded statement to police that night?

6 A. Yes, sir.

7 Q. Did you listen to that audio just
8 now?

9 A. Yes, sir.

10 Q. Did that refresh your recollection
11 of some of the details of that statement?

12 A. It did.

13 Q. And is that accurate -- did you
14 listen to an accurate recounting of what you
15 told police that night?

16 A. Yes.

17 Q. I want to ask you something about
18 the details. Did you make any comments to
19 police about hats that were on the two
20 individuals?

21 MR. BUTLER: Object to the form of
22 the question.

23 THE COURT: Sustained as to the
24 form of the question. It's leading, it's
25 cross examination.

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1 MR. BUTLER: May we approach?

2 THE COURT: Yes, sir, Mr. Butler.

3 (OFF RECORD BENCH CONFERENCE)

4 THE COURT: Overrule the
5 objection.

6 CROSS EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. Do you now recollect some comments
9 you gave about what the individuals were
10 wearing?

11 A. Yes, sir.

12 Q. Did you say -- is it true you said
13 one was in dark clothes and one was in white?14 A. I did say that. But I also said I
15 was not very clear because it was very dark.

16 Q. Okay.

17 A. So I'm not very sure.

18 Q. Did you make any comment -- do you
19 have any recollections today about headgear
20 on the two individuals?21 A. I did mention that one of them could
22 have been wearing a beanie. But like I said,
23 I was not sure.24 Q. Okay. And did -- you said in your
25 statement you thought that was the one in the

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1 white?

2 A. I believe that's the one I said.

3 Q. Okay. And when you use the word
4 "beanie", what do you mean by that?

5 A. A toboggan.

6 Q. Okay. Is that like a tight fitting?

7 A. Yeah.

8 Q. Okay. Are you familiar with the
9 phrase of do-rag?

10 A. It could have been a do-rag, as
11 well.

12 Q. Okay. All right. I have no further
13 questions for you. Thank you for your time.

14 A. Yes, sir.

15 THE COURT: Redirect?

16 MR. BUTLER: Nothing further.

17 THE COURT: You may come down
18 thank you.

19 WITNESS: Thank you..

20 (WITNESS STEPS DOWN)

21 THE COURT: Do you have any
22 additional witnesses?

23 MR. BUTLER: The Defense calls
24 Alise Buckner.

25 (WITNESS TAKES STAND)

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1 ALISE BUCKNER, having been duly sworn to
2 tell the truth, and nothing but the truth,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BUTLER:

6 Q. Good afternoon, Ms. Buckner, how are
7 you?

8 A. Doing all right.

9 Q. Where do you currently reside?
10 Where do you live?

11 A. My address?

12 Q. Yes? Generally.

13 A. Off Ashley Hall.

14 Q. And where do you work?

15 A. Paper Dolls Salon.

16 Q. And in June 2011, where did you
17 live?

18 A. I lived in Georgetown Apartments.

19 Q. And with whom did you live?

20 A. Robert Watts.

21 Q. Do you remember the night that there
22 was a shooting and the police were called?

23 A. Yes.

24 Q. I'm showing you Defendant's 15. Do
25 you recognize this photograph?

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1 A. Yes.

2 Q. Tell me what happened when you heard
3 the shots?

4 A. I opened my apartment door and
5 walked to the balcony, the right side of the
6 parking lot.

7 Q. Okay. I think if you touch that, it
8 will mark it. You can use that.

9 A. Oh.

10 Q. So where is your apartment?

11 A. Right here (indicating on digital
12 screen).

13 Q. All right. And you walked to where?

14 A. To right here, (drawing on screen).

15 Q. All right. And when you're standing
16 there, what can you see if you face out?

17 A. You can see all of this.

18 Q. Okay. And what got your attention?

19 A. The gunshots.

20 Q. Okay. And then what did you see
21 after that?

22 A. I saw the doors closing on a Toyota,
23 like a small Toyota, and then it pulling out
24 and then going this way.

25 Q. And what rate were they leaving?

1 A. Pretty fast.

2 Q. Okay. And what did you notice about
3 the car's license plate?

4 A. It had an "A" in the license plate.

5 Q. All right. And was there anything
6 -- was it a normal regular license plate or
7 was it a special, distinct kind of license
8 plate?

9 A. From what I recall, it was just a
10 regular license plate.

11 Q. Okay. And what about the license
12 plate did you notice?

13 A. The A.

14 Q. And you saw that from where? How
15 far away were you?

16 A. Forty, fifty feet.

17 Q. What's the lighting like in the
18 parking lot?

19 A. It's pretty well lit.

20 Q. And do you wear glasses?

21 A. No.

22 Q. Contacts?

23 A. No.

24 Q. How certain are you that that
25 license plate had an "A" in it?

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1 A. A hundred percent.

2 Q. That's all I have. Thank you.

3 THE COURT: You may cross-examine.

4 CROSS EXAMINATION

5 BY SOLICITOR SIMPSON:

6 Q. When you were standing on the
7 balcony, was Robert Watts with you?

8 A. He was for -- it all happened so
9 fast, but ---

10 Q. And that's -- thank you for saying
11 that. This was a quick thing, right?

12 A. Yes.

13 Q. Okay. I think you said very fast;
14 is that correct?

15 A. Yes

16 Q. What you observed. Did it appear
17 to you that these people were leaving in a
18 hurry?

19 A. Yes.

20 Q. Okay. You were forty or fifty feet
21 away?

22 A. Uh-huh.

23 Q. What order was the "A." You know,
24 you typically have like three letters, three
25 numbers. Where was the "A" in all of that?

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1 A. I don't remember.

2 Q. Was it the first letter?

3 A. I don't remember.

4 Q. You don't remember if the was the
5 first second or third?

6 THE COURT: To answer that, she's
7 got to speculate. I am not going to allow
8 you to examine her on that. She said, 'I
9 don't remember.'

10 SOLICITOR SIMPSON: Okay.

11 THE COURT: Thank you.

12 CROSS-EXAMINATION CONTINUED

13 BY SOLICITOR SIMPSON:

14 Q. But you know it was an A; correct?

15 A. Yes.

16 Q. Okay. This was at night; correct?

17 A. Yes.

18 Q. Is it fair to say you got a very
19 quick look at this license plate?

20 A. Yes.

21 Q. As -- and I don't want to put words
22 in your mouth, but it was it was pulling
23 away?

24 A. Yes.

25 Q. Okay. Now, did you see it -- you're

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1 looking down from the second floor; is that
2 correct?

3 A. Yes.

4 Q. Did you see it looking as they're
5 pulling away here or did you see it when
6 maybe they were over here.

7 A. No, it was here. They were still in
8 the parking spot.

9 Q. Okay. And they were leaving in a
10 hurry; correct?

11 A. Yeah.

12 Q. This is nighttime?

13 A. Yeah.

14 Q. Okay. And you have no idea where in
15 the license plate the "A" was?

16 A. No.

17 Q. Okay.

18 SOLICITOR SIMPSON: I have
19 nothing further.

20 THE COURT: Redirect?

21 MR. BUTLER: No, sir.

22 THE COURT: You may step down.

23 Thank you.

24 (WITNESS STEPS DOWN)

25 THE COURT: Call your next

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1 witness.

2 MR. BUTLER: Judge with that, the
3 Defense rests, Your Honor.

4 THE COURT: Very well. Any reply
5 testimony, Mr. Simpson?

6 SOLICITOR SIMPSON: No, Your
7 Honor.

8 THE COURT: Okay. Ladies and
9 gentlemen, at this point, we have completed
10 the evidentiary portion.

11 There still remains two very
12 important parts of this process in the
13 dispute resolution. As I told you, the
14 attorneys will now have an opportunity to
15 speak to you directly, discuss the evidence,
16 and suggest reasonable inferences that you
17 may draw from that evidence. So -- and then
18 following that, of course, I will give you
19 the charge on the law.

20 While you will not hear any evidence
21 in the two remaining portions, it still would
22 be inappropriate for you to begin your
23 deliberations, individually or collectively.
24 So do not discuss this case among yourselves
25 while you're -- I'm going to let you go to

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1 take care of it. Is there anything else, Mr.
2 Butler?

3 MR. BUTLER: No, sir, not from me.

4 THE COURT: Okay.

5 SOLICITOR SIMPSON: Your Honor,
6 the State would request the hand of one
7 charge since we haven't been able to identify
8 a co-defendant.

9 THE COURT: I ---

10 SOLICITOR SIMPSON: Our rationale
11 is two individuals ---

12 THE COURT: Well, that's your
13 rationale. I don't buy that. The whole
14 testimony in this case is he's the shooter.

15 SOLICITOR SIMPSON: Right.

16 THE COURT: I mean, it isn't the
17 hand of one. If the other guy comes in -- I
18 mean, you've got -- let me just put it this
19 way. All the evidence, as I understand it,
20 -- maybe you can help me with this. All the
21 evidence has shown the person who had the
22 gun, according to what you're saying or what
23 you said, is the Defendant.

24 SOLICITOR SIMPSON: Yes.

25 THE COURT: That he had a

1 passenger, but there's no allegation that the
2 passenger had anything to do with it, other
3 than he went with him. No question. The
4 passenger here, clearly he's shown in a white
5 tee-shirt. That's been consistent for him.
6 And the white tee-shirt's driving the car.
7 He finally says, 'I was there.'

8 I disagree with you that the hand of
9 one is the hand of all -- I don't think
10 there's any evidence that -- you're trying to
11 say if he was not the shooter, he was there
12 and, therefore, is guilty of the shooting.

13 SOLICITOR SIMPSON: I would say
14 that I think all the circumstances certainly
15 -- suggest he was the shooter and certainly
16 proved that he was involved in the shooting.
17 We just don't have anything certain saying it
18 was the other guy that pulled that trigger.
19 I don't think it was. I think the jury ---

20 THE COURT: There's got to be some
21 evidence that somebody else other than --
22 there's no evidence of anything that either
23 one of them shot, to be candid. There's
24 evidence that he was shot.

25 But if you take his statements, his

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1 inconsistent statements, which the jury can
2 consider, and his possibly being the person
3 driving the car, pull all of those together,
4 there's probably substantial circumstantial
5 evidence to support a verdict, but there is
6 no evidence to support that he was a -- that
7 someone else shot, other than him if he shot
8 at all. So, thank you, I decline to give
9 that.

10 SOLICITOR SIMPSON: Thank you.

11 THE COURT: All right. I assume
12 you object to that being charged?

13 MR. BUTLER: Yes, sir.

14 THE COURT: Well, I think, a
15 review of the record, there's not any
16 evidence to support that charge at all.

17 Anything else? I will charge the use of
18 a firearm. We don't have any evidence of any
19 self-defense here. So the use of a firearm
20 would allow them to infer malice. I think
21 that's part of the Rule. Okay.

22 (LUNCH RECESS)

23 (DEFENDANT PRESENT)

24 MR. BUTLER: Your Honor, may we
25 approach?

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1 (OFF RECORD BENCH CONFERENCE)

2 THE COURT: Okay. Well, I'm
3 going to say this. If I bring that jury in
4 and he changes his mind, that's going to be
5 in the presence of the jury. So ---

6 MR. BUTLER: Yes, Your Honor.

7 THE COURT: --- as long as you're
8 aware of that?

9 MR. BUTLER: I understand.

10 SOLICITOR SIMPSON: They haven't
11 raised -- there's one quick issue. I'm
12 concerned that -- Beattie can let me know if
13 he believes I'm overthinking if.

14 When we had the charge conference --
15 he knows that that charge conference could be
16 reopened, specifically. You know, that that
17 charge conference would be reopened
18 specifically to the hand of one charge?

19 THE COURT: It depends on what he
20 says.

21 SOLICITOR SIMPSON: You're right.
22 But I mean it's ---

23 THE COURT: Let me tell you
24 something. I thought about it at lunch.
25 You know what that says to me? 'Judge, I

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1 don't give feel good about my case.'

2 SOLICITOR SIMPSON: Well, Judge,

3 I ---

4 THE COURT: No, I'm sorry, because
5 you could have gone with that theory from the
6 get-go, and you haven't done that.

7 SOLICITOR SIMPSON: Okay.

8 THE COURT: That's just boot-
9 strapping, man. And you've presented this
10 case, "I've got my shooter. I let this guy
11 go."

12 But listen, if there's evidence of
13 that -- the reason I'm not charging that is I
14 find that there is absolutely no evidence to
15 warrant it. I don't know what the evidence
16 may be after he testifies.

17 SOLICITOR SIMPSON: Okay. Thank
18 you.

19 THE COURT: Thank you.

20 MR. BUTLER: Did you have the
21 opportunity, Judge to look at ---

22 THE COURT: I did. I didn't look
23 at the reading of it specifically, but I
24 believe my charge covers what Logan is
25 talking about, because Logan is talking about

1 their remarks will be extremely helpful
2 to you when you begin the process of
3 resolving this case. But remember their
4 remarks, while they're extremely important,
5 should never be considered evidence.

6 Following their closing, then I will
7 give you the instruction on the law, which
8 likewise, should not be considered as
9 evidence by you.

10 Also, thank you for honoring the
11 oath and keeping that open mind that you
12 brought into the courtroom when we started.
13 I ask you to continue to maintain that
14 posture, that position or that state of mind
15 until you've been instructed to begin your
16 deliberations. Thank you.

17 Mr. Butler.

18 MR. BUTLER: Thank you, Judge.

19 (Removes suit jacket): *You don't know me.*
20 *You don't know me. I'm nameless and faceless*
21 *and ageless and racist, you know that image.*

22 *You know about me, for sure you do.*
23 *You've seen my work. It's on that table.*

24 *In the light of day, I might even*
25 *walk amongst you, but in the dark of night, I*

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1 leave blood trails and bullets in my wake, in
2 my wake. That's me.

3 I'm on the phone. I called, maybe
4 texted him. I called him to get him outside.
5 I mean, how else would I have known he would
6 be there and where to go. And he argued with
7 me on the phone above God know what, but we
8 know he did because "D" told you. I sure am
9 glad that they didn't look Ace's call log
10 because then you could see my number on
11 there. And you'd have figured out who I was
12 and I would have ceased to be the ghost that
13 I am.

14 'Everything's cool', I told him.
15 'You've got nothing to worry about. Come on
16 out, let's squash this thing.' And he did.
17 And he fell for it. It worked.

18 And I made my getaway, stealthily,
19 unseen by anybody who recognized me, in the
20 dark sedan. And I sure am lucky that that
21 girl and that boy only saw the "A" in that
22 license plate because if they'd seen anything
23 else, they probably would have caught me.

24 And even luckier for me, that slow
25 creampuff of a boy over there, who ain't got

1 the sense God gave a billy goat as my
2 granddaddy would say, he never learned that
3 he had no reason to lie. I'm lucky.

4 Because now I really am a ghost,
5 might as well be. I'm in the wind with my
6 nine and my wife beater and my partner.

7 All right, (puts suit jacket on).
8 You know, can I -- am I going to insult your
9 intelligence and try to convince you that I
10 can prove to you that by any measure, much
11 less beyond reasonable doubt? I'm not.

12 No, and, you know, -- but it
13 certainly does give one pause. And it's
14 every bit as persuasive as what they tried to
15 convince you of over the last -- I guess it's
16 only been a day and a half.

17 I mean, otherwise, if the shooter is
18 that person and he's on his phone at 10:16,
19 how come there were no calls or text from
20 Devin, if Devin's the shooter, or anyone,
21 much less not Ace at 10:16, 10:14, 10:12,
22 10:18 and 10:20, why? Because how else would
23 he have gotten him to come outside.

24 Especially if Ace knows he's looking for
25 him, I guess what they want you to believe

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1 because of this four hundred and twenty
2 dollars (\$420) he supposedly owed him. How?
3 How? Well, he didn't. The other guy did.
4 The real shooter did. The person that you
5 haven't seen, who's neither of these guys.

6 How come there are no calls or texts
7 between Devin and Ace, forget on the day of
8 the murder, but at all, except for two, four
9 days earlier. How come?

10 This is a beef over money. How
11 come? How come the victim's phone -- why
12 didn't they ever look at the victim's phone,
13 Ace's phone? Why not? Why didn't they?
14 Why wouldn't they?

15 You heard Detective Kosarko looked
16 at the calls. Why not get those subscriber
17 information, the known call. What, do you --
18 wouldn't it be interesting if there were
19 five, six, ten calls from the same person
20 right up and to that time? We will never
21 know that now, will we?

22 How is it that DeAngelo hears Akeem
23 arguing with someone just before he leaves,
24 just before he's shot? And we know that
25 that's not Devin because Devin couldn't have

1 called him on the phone. Remember, DeAngelo
2 said, he was arguing with somebody on the
3 phone just before he left.

4 How is it that these two witnesses
5 see the license plate that's got an A on it?
6 And notice that the girl said, it wasn't any
7 kind of special license plate. You notice
8 that the car that they say that is, Tenika's
9 car, has a Lander license plate. It doesn't
10 have six [sic] letters and six [sic] digits.
11 How come? Well, because that's not the
12 plate.

13 And I guess it's just a coincidence
14 that when Devin's, later, at the Kangaroo
15 that he doesn't have this hat on. All right.
16 And he doesn't seem to be drunk, buying beer
17 and not panicking freaking out about
18 anything. That seems odd.

19 And if you haven't figured out where
20 these red herrings are, I'll go ahead and
21 take care of that for you. Well, 'his
22 fingerprints were all over the car.' Well,
23 that's his girlfriend's car. He drove it all
24 the time.

25 Well, you know, 'he wasn't freaking

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1 out about having seen the murder.' He didn't
2 see a murder. I hope that's clear to you.
3 He didn't see a murder. He didn't
4 participate in a murder. He wasn't there.

5 He just didn't know not to tell the
6 police. You know, you don't think that if he
7 committed a murder he'd freak out? I'll talk
8 to you a little bit more about that.

9 The real reason he's here is because
10 he didn't tell the truth to begin with to the
11 police. And if you think that everybody who
12 gets questioned by the police as a suspect in
13 a murder, comes down, starts by telling the
14 truth, that's not always the case. The lead
15 detective, Detective Osborne, told you that
16 is not true -- told him that.

17 If you are asked to decide whether
18 Devin was truthful or honest, I'm right there
19 with you saying, 'no, he's not.'

20 But let's talk about that process.
21 Detective Osborne had a pretty good idea of
22 where he wanted to go, where he wanted that
23 to end up. There's nothing wrong with that.
24 There really isn't, you know, because you're
25 right. I mean, he's right. If you just ask

1 somebody who really was guilty, 'hey, tell me
2 you did it' they're probably not going to
3 tell you. I get that. You have to engage in
4 that process. I know that, right?

5 But he had some very firm ideas
6 about some things for good reason and he had
7 some very firm ideas about some other things
8 without good reason. Let's talk about that.

9 Well, the Defendant says -- Devin
10 says he was in Orangeburg. We know that's
11 not true. But he's going to keep pushing him
12 because he knows that's not true.

13 But he also keeps pushing about
14 something that he doesn't know is not true.
15 Devin kept telling him, 'I don't know
16 DeAngelo. DeAngelo Buncum wasn't with me, I
17 don't know that guy at all.'

18 And what does he say? "There are two
19 things that I don't want to hear from you
20 again, is that you were in Orangeburg and
21 that you don't know that guy."

22 What's he supposed to do? He's
23 trying to get himself out of that situation,
24 you know. And telling him what he thought he
25 wanted to hear wasn't working. "Cigarettes

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1 are for cooperators."

2 Does that tell you someone's going
3 to implicate themselves in a homicide to get
4 a cigarette? No.

5 No. But it tells you that that was
6 the tone of that conversation. 'You're not
7 telling me what I want to hear so now you're
8 going to not get a cigarette. And I'm going
9 to leave you here to think about it.'

10 I guess it's just a coincidence that
11 after that, he tries a different version of
12 what happened.

13 And if he needs a cigarette that
14 bad, then why isn't he smoking like a fiend?
15 I don't smoke, but I can't imagine somebody
16 who's a smoker acting normal, and you heard
17 his girlfriend, not chain-smoking, no matter
18 what they've done if they've been involved in
19 a homicide.

20 Why wasn't he freaking out when he
21 picked her up from work? You know you see
22 him on video at the Kangaroo. It's just like
23 she described him, except that he looks like
24 he's drunk and he's buying beer, which I
25 guess it's just a coincidence, but that's one

1 of the meanings of this whole "wet'em up",
2 even according to Detective Osborne, that's
3 one of the definitions. And Tenika said that
4 that's the way that she's ever known it to
5 mean.

6 This guy's a young man, twenty-seven
7 years old. No record for crimes. Would he
8 kill in cold blood for two hundred dollars
9 and be joking and kidding, like he is in the
10 Kangaroo video? Like his girlfriend said?

11 So Detective Osborne tells him,
12 'You need to cooperate. And this isn't
13 cooperating. What you're telling me now is
14 not cooperating.'

15 Detective Osborne's not satisfied
16 until Devin puts himself there. He wasn't
17 going to accept any other answer until he
18 puts himself there. So Devin tells another
19 lie. He said he was there in Tenika's car,
20 but we know that that's not true because that
21 car is not her car. Be the person is on the
22 phone and -- you know, I don't know how many
23 excuses the State of South Carolina gets when
24 they going to try to convict somebody for
25 murder, but this idea that, 'oh, well unless

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1 how about that Verizon records show' -- and
2 Detective Osborne tried to suggest that they
3 could be wrong too. Well, except then we
4 have Ace's phone records that show the same
5 thing. They can't all be wrong.

6 So here's what they have:

7 Devin, who's never committed a
8 crime of violence in his twenty-seven,
9 twenty-eight years of his life, decides, 'eh,
10 I'm going to execute my sister's boyfriend.'

11 This idea of motive is ridiculous.
12 'I'm going to execute my sister's boyfriend
13 in an apartment complex where tons of people
14 have to know me, because I come and go all
15 the time.'

16 Somehow manages to get Ace outside
17 just as he pulls up, without calling, without
18 texting. And by the way, no one said that
19 Ace's girlfriend, Devin's sister was in that
20 apartment. No one testified to that. So
21 don't let them try to argue, 'well, when he
22 called his sister.'

23 Because DeAngelo Buncum was on that
24 stand and could have and would have said that
25 if that were true. It was not. When that

1 shooting happened, no one's putting her in
2 that that apartment with him.

3 He decides, 'I'm going to execute
4 this person' using, I guess, someone else's
5 car or change the license, has the
6 wherewithal and the foresight to do that.
7 Change the license plate, yet doesn't leave a
8 fingerprint on the license plate, because we
9 know how thorough they were. Because I don't
10 know how many there where, thirty-something
11 prints they took off the car? I can't
12 remember. Ditches his cap, which I guess is
13 supposed to be in there, and keeps on the
14 same clothes. Doesn't use the phone, goes
15 about his business, but keeps on the wife
16 beater, which apparently a lot of people
17 wear. I don't think we could get better
18 proof that's a common attire, because you've
19 got three people in at the Kangaroo and they
20 all seem to have on the same shirt.

21 And if that's evidence on which
22 somebody could be convicted of murder, so be
23 it. God help us all. You may be guilty of a
24 murder if you wear white.

25 It doesn't make any sense because it

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1 just didn't happen. And they will say
2 otherwise, they will. They'll say we that
3 the person I was pretending to be was there.
4 But, guess what? They don't get to decide.
5 They don't get to decide this part, you do.
6 You get to decide. And that's important and
7 I know you know that.

8 You are about to make one of the
9 most important decisions that you're ever
10 going to make even in your own life. Forget
11 that it is the most important decision anyone
12 has ever made in Devin's life. It's one of
13 the most important you've ever made in your
14 own life. And because of that, they needed
15 to have brought you a case not that you
16 assume, not that you can 'live with', not
17 that you can 'tolerate', but that you can be
18 proud of, but they haven't. And they haven't
19 because that case doesn't exist, not in this
20 courtroom.

21 The decision that you're about to
22 make, and the judge will talk about this too,
23 is a collective decision, the twelve of you
24 by the time it gets back there. It's
25 collective but it is also individually.

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1 Collectively as a group. One of the
2 reasons we bring a diverse group of people
3 together to decide these things is because
4 everybody's experience is different. Each
5 one of you has something to contribute that
6 somebody else might not. Each one of you
7 might see things differently. So you get
8 together and you talk about it.

9 But the flip side of that is that
10 each and every one of you, because of the
11 uniqueness of your experience and perspective
12 and your opinions, you're entitled to your
13 own opinion of the evidence. And I say that
14 no matter which way you lean. And no one's
15 allowed to take that from you. And you are
16 perfectly within your rights to stick your
17 guns if you see it one way and everybody else
18 sees it the other way. And, again, that's no
19 matter which you feel.

20 I tell you because -- this happens
21 -- you can't call me tomorrow and say, 'hey,
22 you know, I was thinking about some of those
23 things that you told us, and I want to change
24 my vote.' No. You cannot. You have one
25 chance to get it right. One chance. And

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1 it's today.

2 You can't just assume, and this
3 happens too, 'oh, well, you know, I see on TV
4 all the time where somebody years later gets
5 out because of some mistake.' No, no, no,
6 no, no. Another court might look at the
7 decisions I've made. And another court might
8 look at the decisions that this is Judge is
9 going to make, right here. But once you
10 render -- nobody can go behind your verdict,
11 nobody. It's yours. Nobody can question it,
12 nobody can second guess it. And once you've
13 passed it, it exists forever and a day, with
14 blood in stone and it is yours and it cannot
15 be undone.

16 You know, at his point, a lot of
17 people say, you know, you have no friends to
18 reward or enemies to punish. You just honor
19 the oath that you took, to ensure that
20 justice is done because there are no winners
21 or losers, everybody wins when justice is
22 blind.

23 And your oath did not require you to
24 decide whether this was tragic, it was,
25 profoundly tragic.

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1 I can't believe that that mother is
2 so upbeat after what happened to her kid.
3 Every part of this is tragic. You can't fix
4 that. You can't undo that. You're not asked
5 to decide whether this is senseless, because
6 whoever that person is, their actions were
7 senseless.

8 You will not be asked to decide
9 whether Devin tells the truth when he talks
10 to the police. He didn't.

11 You're only ask one and one thing
12 only, have they proved to you beyond a
13 reasonable doubt -- every once in a while I
14 have to sound like a lawyer. Have they
15 proven to you beyond a reasonable doubt that
16 he is a murderer? And they have not because
17 he is not. That's the verdict that I am
18 asking you to return. Thank you.

19 THE COURT: Solicitor.

20 SOLICITOR SIMPSON: Thank you,
21 Your Honor. Okay.

22 Before I begin, I would like to just
23 take a look at see if my wife has texted me
24 -- (looking at phone) -- turns out she
25 hasn't. I'm pretty constantly looking at my

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1 phone and I'm sure you guys -- if you aren't
2 like that, that you know a lot of people who
3 are. Let me check that, (looking at phone).

4 Is that fact that I just did that
5 going to be on my phone records? No, it's
6 not. Is the fact maybe a camera in this
7 courtroom -- my going like this (looking at
8 phone), is the fact that isn't on my phone
9 records prove I wasn't in this court? No.

10 Thank you. Thank you for your time
11 this week. I'll say that like I said at the
12 beginning. I know you have lives and we
13 appreciate you being here. Mr. Butler has
14 mentioned, 'Oh, my god, is it only the second
15 day?' It feels like a lot longer to me. I
16 hope it doesn't to you, but it may.

17 I'll go ahead and tell you before I
18 begin my closing statement, I have a little
19 more to talk about than Mr. Butler, but it
20 won't be as eloquent as his closing
21 statement. Because I carry the burden, I
22 want to sit here and talk to you. It may not
23 be as exciting to listen to or as well put
24 together as his comments, but it's important
25 and because I have that burden I want to

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1 review some things that we learned in this
2 trial.

3 First, a review of the incident,
4 some of the evidence we've seen. I'm sure
5 you're all familiar with this (aerial
6 photograph) by this point, Georgetown
7 Apartments.

8 (Video playing) -- Mr. Butler has
9 made an issue of this in this trial, and I
10 don't fault him for it, but we see DeAngelo
11 Buncum leaving ten minutes before.

12 And here we are, 10:08:49, a Camry,
13 a Toyota, Camry, as the defense witnesses
14 told you, slowly backing into a car space.
15 And this is a case of many little pieces to
16 put together. And we're here on our first.

17 Have you seen people that always
18 back into car spaces? I'm sure you have.
19 Perhaps you do it. But it's very interesting
20 here, because what's the goal of backing into
21 a parking space? A quick exit.

22 A passenger getting out, walking.
23 The driver, Devin Johnson, getting out and
24 turning this corner.

25 But it can't be Devin Johnson.

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1 because the hair isn't the same. Well, thank
2 goodness the defense called the witnesses
3 they did, the eyewitnesses that we couldn't
4 find, who stated quite clearly that the guy
5 in the white, Devin Johnson had a beanie-like
6 hat on pulling his hair back.

7 You will be able, if you so choose,
8 to re-watch these videos. I want you to
9 watch that as he turns the corner,
10 particularly there -- I submit to you that
11 that looks exactly like Devin Johnson.

12 The scene at the bottom of the
13 stairwell, under [REDACTED] Charmaine
14 Johnson's house, I want to remind you that
15 Detective Osborne testified he talked to
16 Charmaine at that apartment that evening,
17 just after the shooting. So I submit to you
18 this idea that no one put Charmaine Johnson
19 in the apartment is ludicrous.

20 Akeem/Ace, came down those stairs.
21 Saw a person he knew as Devin Johnson and
22 turned to run because he knew this person and
23 he knew why they were there. So fast, that
24 he ran out of his shoes.

25 Shell casings. We'll talk about

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1 these. I'll come back to these shell
2 casings.

3 So ACE is shot, tragically, and runs
4 one minute and forty seconds after Devin
5 Johnson enters that breezeway at Georgetown
6 Apartments. Flees through the parking lots.

7 And here we are, Devin and his
8 companion, whoever that companion may be,
9 fleeing the scene, fifteen to twenty seconds
10 after Ace was shot. They're pulling away.

11 Ladies and gentlemen, the people we
12 see here, those are Ace's killers. Those are
13 the people who shot Akeem Smalls in the most
14 cowardly way possible, in the back.

15 But is that all we have? Not even
16 close. We heard from many different sources
17 about these phone records and I would like to
18 review those for you. Because I submit to
19 you now that these phone records are
20 incredibly important, each individually, but
21 even more interesting and more important when
22 taken together as a whole.

23 We have three types of phone
24 records. Three types of information from
25 these phones. First, the text messages. We

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1 heard about a long series of texts from Devin
2 John beginning that morning to his friend.
3 And what are the gist of these? And I submit
4 to you the gist of this whole line of text
5 is, 'What are you doing? When do you get off
6 work? I need your help. Come immediately.
7 I need your assistance to do something.'

8 11:42, "What's popping? I'll need
9 you that bread tonight, at least half."
10 Something about money, 'I need this money.'

11 Why is that crucial? It's important
12 for one thing, what's going on in Devin's
13 life right there? He's broke. And he needs
14 money and there's a guy out there that owes
15 him four hundred and twenty dollars (\$420)
16 and is refusing to pay.

17 Okay, "Hit me up. What time you get
18 off? Where are you at? Hit me up. What
19 time do you get off?"

20 He now addresses exactly whoever
21 comes to help him, exactly where they're
22 going to go. I'm going to take you back down
23 to Charleston. Take you back down "to the
24 Chuck."

25 "Come here. I need you. When are

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1 you going to be home?"

2 And finally, from multiple sources,
3 you might have well have the defendant's,
4 Devin Johnson's, calendar in front of you
5 right now, his Day Planner. What does he
6 need Terry for? What is he planning that he
7 had to do that night? From how many sources
8 in this trial did we hear about this? "I go
9 wet dude up tonight."

10 What do you know now that that
11 means? I can't imagine a single piece of
12 evidence stronger than that. It might as
13 well, as I stated, his Day Planner that
14 you're taking back with you to the jury room,
15 stating -- oh, 'tonight, well, let's see. I
16 plan on going to shoot someone tonight.'

17 Finally, the last text to Terry at
18 9:34, "I can't wait on you. I gotta handle
19 my biz."

20 Time of the murder? 10:18.

21 The second source of phone records
22 that we have on Devin Johnson's phone, 9:30
23 he calls who? He calls Charmaine. He calls
24 the location of the murder. He calls his
25 sister. And we've got something interesting

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1 on those calls. He dials "*67", what we
2 heard from Verizon is that dialing that star-
3 sixty-seven before you make that call does
4 what? Blocks your number from the recipient.
5 And I've this a lot of thought to this,
6 because certainly Charmaine's going to answer
7 that phone if she recognizes her own brother,
8 right? What would be the purpose of dialing
9 *67? Blocking your identity from Charmaine
10 or the ignorant belief that that *67 blocks
11 that phone number from the records, it
12 doesn't. But that *67 that we can't explain,
13 that makes no sense, certainly does if he was
14 operating on the belief that that blocked
15 that call from the records.

16 And let me address something that
17 Mr. Butler brought out. He didn't call Ace
18 that day. Well, ladies and gentlemen, of
19 course he didn't call Ace that day. Of
20 course he didn't. 'Hey, Ace, just a courtesy
21 call. I'm coming down to wet you up tonight.
22 I've decided I'm going to kill you, so I'm
23 calling your right now just to let you know.'
24 Of course he didn't call Ace that night, but
25 he's still got to find Ace. And in order to

1 do that, where does he call? A likely place
2 he would be, Charmaine's. They have a short
3 conversation. It doesn't need to be long.
4 'Hey, sis, what you doing? Who's with you?
5 Oh, Ace is with you? Interesting.'

6 9:30 that call is made.

7 9:34, hangs up on that

8 9:34, can't wait on you anymore. "I
9 gotta go handle my biz." 'I just found out
10 where the dude I'm going to wet up tonight
11 is.'

12 Look at how this intervals.

13 But that's not it, the third type of
14 phone records, cellphone tower records. As
15 you heard pinpointing the location of that
16 phone.

17 State's 71, Devin spends almost all
18 of his day in Summerville. We know why.
19 He's got -- his mother that lives up there.
20 It seems like most of the day -- you can look
21 at these records -- hanging up in this area,
22 up in North Charleston, except for one little
23 anomaly, right?

24 What's this? Well, State's 70,
25 identified by Kosarko as where Georgetown

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1 Apartments are, right here. If someone's
2 hanging off in North Charleston, where do you
3 go to get to Georgetown Apartments? You
4 drive down I-26 to the Cosgrove/Sam
5 Rittenberg exit, and then it's just a short
6 hop over to Georgetown, right down 26.

7 All day up in North Charleston.

8 9:30 call to the crime scene
9 location to his sister. 'Who's hanging out
10 with you? Ace is.'

11 9:34, text his friend. I've got
12 Ace, "I gotta go handle my biz", can't wait
13 on you anymore.

14 10:02, the only anomaly on those
15 cell records, where is this? Going right
16 down 26, right to the Cosgrove exit, shooting
17 over to Georgetown. Exactly where we
18 expected him to be.

19 These records paint that picture of
20 what he's doing. As if it needed to be
21 painted any more than 'tonight I'm going to
22 shoot someone' these records support that he
23 found out where Ace was, called his buddy
24 said, I can't wait on you anymore, hopped in
25 the car, and was headed down 26 in the very

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1 direction that we expect him to be and then
2 the gap, the thirty minute gap.

3 And the defense, very passionately
4 and eloquently, want you to buy that that
5 means that he couldn't have been there.
6 Don't buy it.

7 What is the defense? 'That's not
8 Devin in the video.' That's not Devin in
9 some grainy, over lit, hard to see video
10 where it's hard to make out his hair even
11 though know from their own witness that he
12 was wearing a beanie that night.

13 He walks about the corner. Look at
14 the facial hair. Look at that head.
15 Detective Osborne was very straight with you,
16 'You know, it looks to me like he's got a hat
17 on.' Take a look. Make the decision for
18 yourself.

19 What else do we hear? 'It can't be
20 him' because two witnesses, girlfriend/
21 boyfriend living together sit down in their
22 talk about this. They all of a sudden heard
23 gunshots, went out of their apartment -- I
24 don't know if that was the wisest thing, but
25 I don't doubt the testimony. They have no

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1 reason to lie. Ran and saw for an instant a
2 license tag. Both were very forthright about
3 that, saw it just for a second. Couldn't
4 even tell where this "A" was on the license
5 tag. Didn't say it was the first, second,
6 third letter. I submit to you that in those
7 circumstances, I'm sure they were afraid.
8 They'd just heard gunshots. They wanted to
9 know what was going on. They both admitted
10 from a second story balcony, down into a
11 parking lot only for an instant and saw that
12 tag? Maybe they were mistaken. I don't
13 know. I don't submit that they took the
14 stand and lied to you. I submit to you that
15 quite simply they're mistaken.

16 'It couldn't be Devin' because of
17 his demeanor that night.

18 You saw him on the Kangaroo video,
19 you hear from Charmaine his demeanor. I
20 submit to you that his demeanor is 'scary.'

21 How does a person react if they did
22 -- it's hard to sort out all the different
23 versions of Devin Johnson's stories. But how
24 does a person act if they saw a murder and
25 had nothing to do with it, and then they see

1 their girlfriend? They say, 'oh, my god,
2 Charmaine (sic), you wouldn't believe what I
3 just saw!'

4 He doesn't do that, not because he's
5 innocent. He doesn't do that because he just
6 committed a murder. And he's not going to
7 make witnesses against him and share that
8 fact with Charmaine [sic], so he's going to
9 act as normal as possible.

10 But 'it's not Devin Johnson' in that
11 video, right? Devin Johnson, the only
12 identified person with a reason to kill Akeem
13 Smalls, the oldest reason in the world, money
14 and the pride and the insult he feels when
15 someone refuses to pay you back four hundred
16 and twenty dollars when you're broke, as it
17 said in the text messages. But that's 'not
18 Devin Johnson in the video.'

19 Devin Johnson was looking for Akeem
20 Smalls. You heard from Robert Holmes that he
21 got the call, a couple of days before,
22 'where's Akeem?' But that's not Devin
23 Johnson in the video?

24 The clothing, the Kangaroo, look at
25 it. Look at how it fits the person in the

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1 video. Looks how it fits in the Georgetown
2 and the Kangaroo. Watch Devin Johnson's gait
3 as he, the way he walks around that corner,
4 compared to how he walked in the Kangaroo
5 video. The same clothing, less a hat, but
6 'that's not Devin Johnson.'

7 The automobile that pulls up, a
8 Toyota Camry, blue, according to the eye-
9 witnesses. Tenika -- Charmaine -- I'm sorry.
10 Tenika, owner, blue Toyota Camry. Hubcap,
11 missing in that surveillance video, missing
12 on his girlfriend's car. Sixteen of thirty-
13 five fingerprints on that car match him.
14 It's the same automobile. He had it. And if
15 it wasn't important, why lie about it for
16 four hours and say he didn't have it, that he
17 was in Orangeburg.

18 Devin Johnson, in the same car that
19 pulls up in that surveillance video. But
20 'it's not Devin Johnson.'

21 Phone records, tower sites, tracking
22 from North Charleston right straight, the
23 most direct route possible to Georgetown
24 Apartments. At that time, he didn't think
25 that he would be trial. But 'that's not

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1 Devin Johnson' on the video.

2 Text messages, Devin's calendar,
3 Devin's day planner. 'I am going to shoot a
4 guy tonight.' I'm going to "wet dude up
5 tonight." But that's 'not Devin Johnson on
6 the video.'

7 Called the scene at 9:30, starts at
8 7:00, pretty interestingly, texted "right now
9 I have to go handle my biz." But 'not Devin
10 Johnson on the video.'

11 The lies. My goodness, ladies and
12 gentlemen, the lies. Three stories, four
13 hours. 'I was in Orangeburg all day.' At
14 least we know that's not true.

15 Why lie about where you were if you
16 had nothing to do with this? That's how a
17 guilty person acts. And his problem was his
18 lie was too big, 'I wasn't even in Charleston
19 on the day of the murder.' So easy to break
20 apart.

21 And then finally, and this is what a
22 guilty person does. They follow the
23 evidence. They don't tell the truth and
24 stick to the truth. That's what an innocent
25 person does. And you've got that great

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1 contrast. That's what DeAngelo Baucum did.

2 'Did you see Ace that night?

3 Yeah, absolutely I saw him. Let me
4 tell you where I saw him. Let me tell you
5 what I did. And then guys go out and find
6 out that I'm telling you the truth.'

7 How does Devin Johnson handle that?

8 'I was in Orangeburg, I wasn't in Charleston.
9 I was in Orangeburg all day.'

10 Are you sure, Wednesday?

11 'All day.' For four hours, 'I was
12 in Orangeburg all day.'

13 Well, Devin, let me tell you why
14 that's not true.

15 What about that clip we saw where he
16 just sit there like this (gestures), 'Oh,
17 boy, you got me on Orangeburg. Where do I go
18 to now? How do I follow this evidence?'

19 And then he tells, says that he was
20 there. Devin Johnson says "that's me in the
21 video", but 'that's not Devin Johnson.'

22 Another contrast, the evasiveness.

23 DeAngelo's mama found out the police wanted
24 to talk to him. You from his mom -- I loved
25 his mom. She said, 'call the police right

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1 away.' Said, 'come talk to me, I'm an open
2 book.'

3 Devin Johnson, tracked by the U.S.
4 Marshals in Orangeburg. And you heard
5 Detective Osborne say, 'We talked to his
6 family. We said, get the word to him. We
7 want to talk to him.' But 'that's not Devin
8 Johnson.'

9 Finally, three days after, four days
10 after the murder, they find a bullet, don't
11 they? An unfired bullet. Where? At the
12 crime scene, in Charmaine, Devin Johnson's
13 sister's apartment, in a bureau. What type
14 of bullet is that? It is an FC 9mm Luger.
15 FC, the brand name, the company that makes
16 it; 9 mm, the caliber, Luger, the
17 manufacturer of the gun. That bullet, ladies
18 and gentlemen, has Devin Johnson's finger-
19 prints on it. And why is that significant?
20 Because the four shell casings found at the
21 scene, the four bullets fired at Akeem
22 Smalls, including the fatal one, FC 9 mm
23 Luger. In your jury room, take the bullet
24 that has the fingerprint on them and hold it
25 next to the shell casings found at the scene.

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1 'That's not Devin Johnson'.

2 What else about Devin Johnson's
3 confession that is on the video, that would
4 lead you to believe that that was true.
5 After he talks on the phone to his
6 girlfriend, when he decides to come out --
7 and not tell the truth, ladies and gentlemen,
8 but to follow the evidence and come up with a
9 story that counters his guilt, but follows
10 the evidence that he's starting to figure out
11 the police have. He comes out in a long
12 phrase, that the Detective let him talk it
13 though, *'All right, that's me. I'm driving*
14 *that. I did that. Oh, I saw the guy with*
15 *the dog and I walked into the building.'*

16 The guy with the dog. The defense
17 put up some evidence. Oh, the reason he said
18 the guy with the dog was that he was browsing
19 the Post & Courier up in Orangeburg and
20 caught that on paragraph five of that
21 article. It just kind of stuck it in the
22 back of his head and in the middle of this
23 whole confession to being the guy in the
24 video, that's me, now. He said 'I pulled up,
25 back in and I saw a guy with a dog' because

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1 he saw a guy with a dog.

2 And what do we know on the video,
3 there's a guy with the dog walking around.
4 A fact not given to him, as you heard, at any
5 point in time in that interview. But 'that's
6 not Devin Johnson.'

7 This is an important decision. I
8 can't address this as eloquently as Mr.
9 Butler can. But it is an important decision
10 for Devin. It's an important decision in
11 your life. And it's an important decision in
12 the life of Akeem Smalls' family. And since
13 the summer of 2011, they've waited for
14 closure. They've waited for justice.

15 I agree with Mr. Butler, make a
16 decision you can feel good about. Make a
17 decision you can be proud of because like I
18 told you in my opening statement, this is a
19 decision that you can be proud of. Like I
20 told you in my opening statement, piece-by-
21 piece, we're going to paint a picture for
22 you, and at this point in the case, it is
23 going to be clear. It is. That picture is
24 that Devin Johnson and his companion killed
25 Akeem Smalls.

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1 One other thing me and Mr. Butler
2 agree on, what happened to Akeem Smalls was
3 murder. There typically comes a point in
4 closing arguments where we have to sit down
5 and break it down, element-by-element. I'm
6 going to spare you that because there is no
7 contesting that what happened to Akeem Smalls
8 was murder, the killing of another with
9 malice aforethought, the purposeful decision
10 to end another's life.

11 Be proud of your decision. Feel
12 good about your decision to find Devin
13 Johnson guilty of murder. I thank you so
14 much for your time.

15 THE COURT: Yes, ma'am?

16 BAILIFF: Got one that needs to
17 use the restroom.

18 THE COURT: If y'all want to take
19 a break, that's not a problem. We'll take a
20 break and let you go to your jury room. When
21 everybody's ready if you'll just knock on the
22 door, we'll return you to the courtroom.
23 Thank you very much.

24 Do not begin your deliberations
25 however. Please leave your notebooks in your

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1 seats.

2 (JURY OUT @ 3:17 P.M.)

3 THE COURT: All right. Anything
4 from the State at this point?

5 SOLICITOR SIMPSON: No, Your
6 Honor.

7 THE COURT: Anything from the
8 Defense?

9 MR. BUTLER: No, Your Honor.

10 THE COURT: We'll be at ease until
11 we hear from the jury.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 BAILIFF: Jury is ready, Your
15 Honor. Ready, Your Honor?

16 THE COURT: Yes, ma'am.

17 (JURY IN @ 3:25 P.M.)

18 BAILIFF: The jury's present,
19 Your Honor.

20 THE COURT: Thank you.

21 Thank you very much, ladies and
22 gentlemen. We are now moving into the final
23 portion of the proceeding where it becomes my
24 responsibility, of course, as the trial Judge
25 to give you the law that you must accept and