

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 31<sup>st</sup>, 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 10<sup>th</sup> 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 8<sup>th</sup> of June. June the  
25 8<sup>th</sup>, 2011.

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

3 A. The 10<sup>th</sup>, 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 8<sup>th</sup>?

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 10<sup>th</sup>, 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 8<sup>th</sup>,  
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 2<sup>nd</sup> 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 8<sup>th</sup>, 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 13<sup>th</sup>.

23 Q. And the date of the murder?

24 A. Would be June 8<sup>th</sup>.

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 8<sup>th</sup>, 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 8<sup>th</sup> 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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup>?

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 8<sup>th</sup> 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.

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 14<sup>th</sup> 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 1<sup>st</sup>,  
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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 8<sup>th</sup>, 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 10<sup>th</sup>, 2011?

20 A. Yes, sir. On June 10<sup>th</sup>, 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.

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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 8<sup>th</sup>,  
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 8<sup>th</sup>?

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 14<sup>th</sup>, 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 14<sup>th</sup>.

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 14<sup>th</sup>?



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.



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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 9<sup>th</sup> 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

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

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 8<sup>th</sup>, 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 9<sup>th</sup>, 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 9<sup>th</sup>, 2011.

17 Q. Did your work on this case continue  
18 on June the 10<sup>th</sup>?

19 A. Yes.

20 Q. And in what way?

21 A. So on June the 10<sup>th</sup>, 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 10<sup>th</sup> 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

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 8<sup>th</sup>?

6 Q. And what is the date of this  
7 interview?

8 A. Two days later, June 10<sup>th</sup>.

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.

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 9<sup>th</sup>,  
4 2011.

5 Q. And the date that you were  
6 interviewing Mr. Johnson?

7 A. June 10<sup>th</sup>.

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?

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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 5<sup>th</sup>  
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

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 8<sup>th</sup>, and  
23 he was arrested on the 10<sup>th</sup>.

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-



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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Case No. 11-GS-10-5207 and 5208

Jury Trial of 3/31/14 through 4/3/2014 - Redirect Examination of David Osborne  
Before The Honorable R. Markley Dennis

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)

## State of South Carolina v Devin Jamel Johnson

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Case No. 11-GS-10-5207 and 5208

Jury Trial of 3/31/14 through 4/3/2014 - Direct Testimony of Jasmine Tell  
Before The Honorable R. Markley Dennis

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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Jury Trial of 3/31/14 through 4/3/2014 - Direct Testimony of Jasmine Tell  
Before The Honorable R. Markley Dennis

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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?

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Case No. 11-GS-10-5207 and 5208

Jury Trial of 3/31/14 through 4/3/2014 - Direct Testimony of Jasmine Tell  
Before The Honorable R. Markley Dennis

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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Case No. 11-GS-10-5207 and 5208  
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Before The Honorable R. Markley Dennis

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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Before The Honorable R. Markley Dennis

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 8<sup>th</sup>, 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 8<sup>th</sup>?

8 A. I also accompanied Detective Osborne  
9 to MUSC.

10 Q. Did your work on this case continue  
11 to the 10<sup>th</sup>?

12 A. Yes.

13 Q. And what did you do on the 10<sup>th</sup>?

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 14<sup>th</sup>, did you have  
21 contact with anyone in relation to this case  
22 on June 14<sup>th</sup>, 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 8<sup>th</sup> at 11:00  
14 p.m. to June 9<sup>th</sup>, 1:00 a.m., a two-hour  
15 window.

16 Q. Moving ahead to June 17<sup>th</sup>, 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 9<sup>th</sup>.

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 4<sup>th</sup>.

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 8<sup>th</sup>, 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 8<sup>th</sup>, 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?

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 8<sup>th</sup>, 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

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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 4<sup>th</sup>.

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1 Q. June the 4<sup>th</sup>, 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 4<sup>th</sup> 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 8<sup>th</sup>, 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 2<sup>nd</sup>, 2011, according to my notes, I  
9           believe.

10          Q.    I'm sorry.  February 2<sup>nd</sup>?

11          A.    I'm sorry.  (Upon review), I'm  
12          sorry.  June 10<sup>th</sup>.

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 8<sup>th</sup>, 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 8<sup>th</sup>, 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?

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 9<sup>th</sup> 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

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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

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