

VOLUME II OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARNAIL MARCHINDLA GRAHAM,

APPELLANT

APPELLATE CASE NO. 2014-002336

AMENDED RECORD ON APPEAL

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KEIR JOHNSON-DIRECT BY MS. LIVESAY

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1 what was going on.

2 Q Okay. So did you sign that voluntarily?

3 A I signed it because they told me to sign it, or I
4 was going to keep getting in fights. And they were
5 going -- they were threatening me.

6 Q Okay. But did you write it?

7 A No. You can see that's two different
8 handwritings.

9 Q Okay.

10 MS. LIVESAY: Your Honor, at this time the State
11 wishes to put in 77 into evidence.

12 THE COURT: Any objection?

13 MR. FREDERICK: Not at all, judge.

14 MR. CANTY: None, Your Honor.

15 THE COURT: It's in evidence without objection.

16 (WHEREUPON, State's Exhibit No. 77 was admitted in
17 evidence.)

18 Q Now, that statement there, is that true?

19 A No, ma'am.

20 Q Okay. Since you've been able to get out of jail,
21 have you ever changed your story from that it was Dubba
22 and Cutty that went in that mobile home?

23 A No, ma'am.

24 Q Okay. And during the time all this was going on,
25 were you close friends with these boys?

1 A Yes, at first.

2 Q Okay. And your name is on --

3 A Yes, ma'am.

4 Q -- Dubba? And so is Cutty's?

5 A Yes, ma'am.

6 Q Okay. Now, since you have come forward and told
7 the truth, has anything else happened?

8 A Just one time when I got into it when the dude had
9 pulled -- one time I had gotten into it when a dude had
10 pulled a gun out on me. But it wasn't -- it was just
11 like the police just told like me just go in the house
12 or whatever, they had a lock -- they were trying to
13 lock me up. The landowner had came outside, outside
14 the office, but he was watching me the whole time on
15 video.

16 Q Now, earlier in this trial you've be sequestered;
17 is that right?

18 A What's that mean?

19 Q You haven't been able to sit in the courtroom
20 while witnesses have been testifying?

21 A No, ma'am.

22 Q Okay. And you didn't even get to see opening
23 statements; is that right?

24 A No, ma'am.

25 Q Okay. Are you in fear from testifying to this

KEIR JOHNSON-DIRECT BY MS. LIVESAY

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1 information today?

2 A No, ma'am.

3 Q Okay. Is there anyone that you're afraid of?

4 A No, ma'am.

5 Q Okay. And is what you're telling me today the
6 truth?

7 A Yes, ma'am.

8 Q Okay. Now, earlier before you got in here,
9 Mr. Frederick said that you were being dishonest.

10 MR. FREDERICK: Objection, Your Honor.

11 THE COURT: Solicitor, rephrase your question.

12 Q Were you scared to tell the truth?

13 A Yes, ma'am.

14 Q Okay. And is that why you originally lied to the
15 police?

16 A Yes, ma'am.

17 Q Okay. And since then have you told the truth?

18 A Yes, ma'am.

19 Q Okay. Now, since this charge, have you been in
20 any trouble?

21 A Yes, ma'am.

22 Q Okay. And since that point, has anybody promised
23 you anything in return for your testimony?

24 A No, ma'am.

25 Q Has anybody done anything since the day you made

1 this statement in return for your testimony?

2 A No, ma'am. Just my lawyer; he was getting my
3 charges dismissed. Like it wasn't the solicitor, my
4 lawyer was going to court and getting them dismissed.

5 Q Okay. And you are still currently charged with
6 murder?

7 A Yes, ma'am.

8 Q And you understand that?

9 A Yes, ma'am.

10 Q Okay. And you haven't been promised anything?

11 A No, ma'am.

12 Q Mr. Johnson, I'm showing you State Evidence No.
13 56. Does that look familiar to you?

14 A That was my girl van, the van I was driving.

15 Q Okay. So that was the car or van you were driving
16 that night?

17 A Yes, ma'am.

18 Q Okay.

19 MS. LIVESAY: I'm going to publish this to the
20 jury, State's Evidence No. 56.

21 Q Now, Mr. Johnson, a lot of names have been brought
22 up in this trial, Billy Freshley, a guy named Lil
23 Manzy, all these different names. Were any of those
24 people in that van that night in Brown Swamp?

25 A No, ma'am.

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 Q Okay. And are those people your friends?

2 A Them like my family.

3 Q Okay. And have you got any reason other than it's
4 the truth to say that it was Dubba and Cutty?

5 A I'm telling the truth, it was the truth.

6 Q Okay.

7 MS. LIVESAY: No further questions of this
8 witness, Your Honor.

9 THE COURT: Cross-examination, Mr. Frederick.

10 MR. FREDERICK: Yes, sir. Just a minute, judge,
11 I'm almost ready.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. FREDERICK:

15 Q Keir, you don't need to look at these yet, I'm
16 just setting them there in case we need them, okay.

17 Keir, am I pronouncing your name right?

18 A Yes, sir.

19 Q Okay. Can you just think back for a minute.

20 A Yes, sir.

21 Q And tell us how many times since this began just
22 dealing with this case, that you have talked with
23 either investigators or solicitors or employees of the
24 solicitor's office.

25 A I don't know.

1 Q You don't know?

2 A I don't -- I can't recall how many times I talked
3 to them. Ask my lawyer, he right there.

4 Q Was it more than one?

5 A About -- I don't know -- he's right there, I can't
6 recall.

7 Q Have you ever talked with investigators?

8 A Yes, sir.

9 Q Okay. So at least once?

10 A Yes, sir.

11 Q Okay. Was it less than ten or more than ten?

12 A I don't know. Like I say, ask my lawyer.

13 Q Okay. Before testifying today, I know that you've
14 been sequestered. Have you spoken with the solicitor
15 about your testimony?

16 A What? Rephrase that.

17 Q I could not hear what you said.

18 A I said can you rephrase that. I can't understand
19 you, sir.

20 Q Have you spoken with this lady here or this lady
21 here (indicating) or anybody sitting back there or
22 anyone from their office this week?

23 A They just told me that I had -- they wanted me to
24 come to court. That's all that we talked about. Like
25 they said they wanted me to come to court and testify,

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 and we didn't really -- that's all they talked about to
2 me.

3 Q Okay. And I just want to clarify one thing from
4 your direct examination. The prosecutor asked you a
5 question which was, at some point did you tell the
6 police the truth, and your answer was, yes, ma'am,
7 after I talked to my lawyer?

8 A Yes, sir.

9 Q Then you told them the truth?

10 A Yes, sir.

11 Q When did you get a lawyer?

12 A Probably about three months after I been in jail.

13 Q So about three months after you were charged?

14 A No. It was about two, two and a half months, two
15 and a half months. Ask him, he right there.

16 Q And I want to make sure that I heard this right
17 too. The solicitor's office, I think you said, has not
18 offered you any deals?

19 A No, sir.

20 Q But your attorney told you that he was going to
21 get your case dismissed?

22 A Yes, sir. Now, won't you try to get your client's
23 case dismissed?

24 Q Yes.

25 A All right.

1 Q Okay. That is what you said?

2 A Yes, sir.

3 Q Okay. Whose van was it?

4 A It was my ex-girlfriend, Tiara Brown.

5 Q Okay. Did it actually belong to her mother?

6 A That's what she said, but she was driving it all
7 the time.

8 Q Okay. Do you know who that van went to after the
9 police released it?

10 A No, sir.

11 Q You have --

12 A No, sir, I didn't see them after that.

13 Q You never seen the van since then?

14 A I never seen the girl after that.

15 Q Haven't seen the van since then?

16 A No, sir.

17 Q Haven't driven it, not once?

18 A No, sir.

19 Q Okay. Also on direct examination, I think that
20 you said that you and Cutty and Dubba dropped off the
21 van and left it in somebody's yard?

22 A Yes, sir.

23 Q Was it just a yard, or did you know the person
24 whose yard --

25 A I didn't know the people.

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 Q You never met them?

2 A No, sir.

3 Q Okay. And something else from your direct
4 examination. You did say Mike Pyatt came to pick you
5 up; right?

6 A Yes, sir.

7 Q Okay. And just to be clear, this is the first
8 time that you said that; right?

9 A No, sir. I been telling my lawyer, I been telling
10 my lawyer about it.

11 Q Did you also tell that to the investigators?

12 A No, sir.

13 Q You didn't tell that to the investigators?

14 A No, sir. I don't think -- I can't recall did I or
15 not. That was three years ago. I know that I told my
16 lawyer, and he talked to the solicitor about it.

17 Q Okay. And let me caution you because we really
18 can't talk about what your lawyer does or says. That's
19 covered by what's called attorney/client privilege;
20 okay? I'm not asking you any questions about what your
21 lawyer is doing.

22 A Well, you asked me a question, I told you the
23 truth.

24 Q Okay. Now, on direct examination you also said,
25 Carnail Graham called me from that number. Do you

1 remember saying that?

2 A Yes, sir.

3 Q You have never said that before today; have you?

4 A Yes, I did. I did say that today.

5 Q Before today.

6 A Oh. Yeah, I said that plenty of times before
7 today.

8 Q You told the investigators that?

9 A Yes, sir.

10 Q Are you positive about that?

11 A I'm positive I told them.

12 Q Okay. And you didn't pick anyone else up in the
13 van?

14 A No, sir.

15 Q Okay. Now, Billy Freshley's phone number is
16 205-1307?

17 A That was three -- like I told you before, that was
18 three years ago, I don't know his number, what the
19 number was. I can't recall.

20 Q Okay. On April the 24th, 2012, did you meet with
21 Detective Vescovi?

22 A I don't know.

23 Q Detective Vescovi is, I'll represent to you,
24 that's this man here (indicating).

25 A Yes, sir.

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 Q And did you tell him that Billy Freshley's number
2 was 205-1307?

3 A It was three years ago, I should -- yeah, I might
4 have told them. I don't -- I can't recall right now
5 because it was three years ago. But if I did, then
6 yes.

7 Q Okay. The prosecutor covered this briefly in the
8 direct examination, but what I've just handed to you
9 is --

10 A I know what it is.

11 Q -- State's Exhibit 77?

12 A Yes, sir.

13 Q In that letter that is now in evidence, did you
14 say that you wanted to recant your statement because
15 that statement was partial truth, bear with me, and the
16 reason for your change of heart is because Carnail
17 Graham was not the shooter, nor was he at the scene of
18 the incident while it took place. And the only reason
19 I was told to put Graham into the situation is because
20 I was told --

21 MS. LIVESAY: Your Honor, is there a question, or
22 are we just reading the transcript?

23 MR. FREDERICK: It's a question, did he say it.
24 And it's in evidence, judge.

25 THE COURT: I appreciate it's in evidence. Is it

1 one sentence or two sentences?

2 MR. FREDERICK: I'll break it up.

3 THE COURT: All right, very good.

4 Q Did you say that you wanted to recant your
5 statement?

6 A I didn't say nothing, Capone there wrote that.

7 Q And what is his real name?

8 A I don't know.

9 Q Say it again.

10 A I do not know, sir.

11 Q Say the nickname again.

12 A Capone.

13 Q Like Al Capone?

14 A (Shrugging shoulders.)

15 Q Okay. Did you say that the reason for your change
16 of heart is because Carnail Graham was not the shooter?

17 A I just told you, sir, I didn't write nothing.

18 Q I understand. Did you say that Carnail Graham was
19 not at the scene of the incident?

20 A I didn't say anything, sir. I didn't write that
21 letter.

22 Q Did you say that you were told to put Graham into
23 the situation?

24 A I didn't say anything, sir. I didn't write that
25 letter.

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 Q Did you say that the reason you were told to do
2 that is because your family wouldn't live to see the
3 next day?

4 A I didn't write that, sir. Somebody else wrote
5 that letter.

6 Q Did you say your family wouldn't live to see the
7 next day if you gave the actual suspect's names?

8 A I didn't write that, sir, somebody else wrote that
9 letter.

10 Q Did you say that the person who told you, who
11 forced you to do that was the actual suspect?

12 A I didn't write that letter, somebody else did,
13 sir.

14 Q Did you say, I, Keir Lamont Johnson, make this
15 statement --

16 MS. LIVESAY: Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. LIVESAY: I'm confused. Is this from an
19 interview, or is this from the affidavit?

20 THE COURT: He says he is reading from State's-77
21 a sentence.

22 MS. LIVESAY: Okay, so that's the affidavit. I'm
23 just making sure, Your Honor.

24 THE COURT: All right, go ahead. Go ahead,
25 Mr. Frederick.

1 MR. FREDERICK: Yes, sir.

2 Q Did you say, I, Keir Lamont Johnson, make this
3 statement on my own account with no pressure?

4 A I didn't write that, sir, somebody else wrote that
5 letter.

6 Q Did you say, Mr. Carnail Graham did not have
7 anything to do with the death of Ms. Keia Pertelle?

8 A I didn't write that, sir, somebody else wrote that
9 letter.

10 Q Did you say, he is very much innocent of the
11 charges placed on him?

12 A I didn't write that, sir, somebody else wrote that
13 letter.

14 Q Did you sign that letter?

15 A Yes, sir.

16 Q You did?

17 A Because I was threatened.

18 Q Okay. Was Henry McElveen your cellmate at J.
19 Reuben Long?

20 A We was in the same part, he wasn't my cellmate.

21 Q Is that Capone?

22 A Who?

23 Q Is he Capone?

24 A No. That's Splurge.

25 Q That's somebody different?

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 A Yes, sir.

2 Q Okay. Did you tell --

3 A I'm sorry, I think -- yeah, that's Splurge.

4 Because I remember the last name McElveen.

5 Q Henry McElveen.

6 A I just know last name McElveen.

7 Q There's also a Rodney McElveen who is Splurge.

8 A No. I told you I didn't know of a McElveen.

9 Q Okay. Was an individual named Henry McElveen, not
10 Rodney, Henry McElveen your cellmate at J. Reuben Long?

11 A I don't know who that is, sir.

12 Q Do you not know the name of your cellmate?

13 A I do not know who that is, sir.

14 Q The question is, do you know the name of your
15 cellmate?

16 A I just told you I do not know who that is, sir.

17 THE COURT: Are you asking him who his cellmate
18 was?

19 Q Who was your cellmate?

20 A I had so many cellmates that I don't know who that
21 is, sir.

22 Q Okay. Did you tell Henry McElveen that you lied
23 about Thomas and Carnail?

24 A I didn't say nothing about no case, sir.

25 Q Oh, you didn't talk to anybody at the jail?

1 A No, sir.

2 Q About the case?

3 A No, sir. Well, except my lawyer.

4 Q You weren't asking people, how much time do I get
5 for just being the driver?

6 A No, sir.

7 Q You didn't tell people that you thought you had a
8 plea deal for 12 years?

9 A No, sir.

10 Q Okay.

11 A Why I'm going to say that if I know I ain't got no
12 plea deal.

13 Q Did you tell Henry McElveen that you lied because
14 the people you were with would kill your family?

15 A No, sir.

16 MR. FREDERICK: Will you mark this, please.

17 (WHEREUPON, Defendant's Exhibit No. 4 was marked
18 for identification only.)

19 MR. FREDERICK: Thank you.

20 Q Keir, I'm showing you what's marked Defense
21 Exhibit 4. Do you recognize that?

22 A Not that I recall, sir.

23 Q Okay. Did you have Henry McElveen, your cellmate,
24 write your letters for you?

25 A Sir, I just told you I didn't -- I do not know who

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 that is. I had nobody write my letters. I know how to
2 read, I know how to write.

3 Q What kind of classes were you in in school?

4 A Sir, that ain't -- just that ain't got nothing to
5 do with --

6 Q Answer the question.

7 THE COURT: Let's stop right here, all right.

8 MR. FREDERICK: Yes, sir.

9 THE COURT: If you have a problem, I'll take care
10 of it. You do not.

11 MR. FREDERICK: I understand.

12 THE COURT: Sir, unless there's an objection, you
13 need to respond to the question. If you know the
14 answer, answer the question. If you don't know the
15 answer, you say that.

16 THE WITNESS: I don't know the answer.

17 Q Were you in special education classes in school?

18 A When I was little, sir.

19 Q Okay. Did you have your roommate, Henry McElveen,
20 write your letters for you?

21 A No, sir.

22 Q After he wrote those letters, did you sign them?

23 A No, sir. Not that I recall.

24 Q Did you have your roommate, Henry McElveen, write
25 a motion for bond revocation hearing for you in July of

1 last year?

2 A No, sir. I know how to do that myself.

3 Q Okay. Did you have him write for you that you
4 were given a proffer agreement, and the solicitor gave
5 you a bond?

6 A No, sir.

7 Q Did you have him write for you that you went to
8 court on June 14th, last year, and neither the
9 solicitor or your lawyer showed up?

10 A No, sir.

11 Q Did you have him write for you that the judge said
12 you'd have to stay in jail until you could get back
13 into court?

14 A No, sir.

15 Q Did you have him write for you in this motion that
16 you would like to reschedule the hearing?

17 A No, sir. My lawyer was always in court with me.

18 Q Did you file with the clerk's office --

19 A Let me see that, sir.

20 Q -- this motion? I'm showing you --

21 A If that's the same motion right there --

22 Q It is the same motion.

23 A -- then no, sir.

24 Q Defendant's Exhibit 4.

25 MR. FREDERICK: Judge, I would move this in the

KEIR JOHNSON-CROSS BY MR. FREDERICK

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1 record into evidence as a public record. It is filed.

2 THE COURT: All right, hold on a second. Any
3 objection, solicitor?

4 MS. LIVESAY: I don't, Your Honor.

5 THE COURT: Without objection.

6 MR. FREDERICK: Defense Exhibit 4. And judge I,
7 assume Mr. Canty has no objection.

8 MR. CANTY: Without objection, Your Honor.

9 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
10 in evidence.)

11 Q I'm going to show you one more time Defense
12 Exhibit 4 and ask you if that is your signature.

13 A No, sir. I know how to write my own.

14 Q In April of 2012, were you released on a \$30,000
15 bond?

16 A I don't know, sir. My sister and -- my two
17 sisters that sitting in the back, they pulled the one
18 that going to sign my bond paper, my bond, so I don't
19 know.

20 Q You don't know how much your bond was?

21 A No, sir. You going to have to ask my lawyer. My
22 lawyer is right there (indicating).

23 Q Did the judge tell you how much your bond was?

24 A I didn't go in front of no judge, sir.

25 Q Very good. Is the reason you didn't go in front

1 of a judge because your --

2 A My lawyer is right there, he went for me.

3 Q Mr. Johnson, please let me finish the question
4 before you answer.

5 THE COURT: Sir, again, I don't need to cover this
6 again. If you got a problem, let me take care of it.

7 MR. FREDERICK: Judge, would you?

8 THE COURT: Thank you. Yes, sir. Again, sir, you
9 listen to the question. You let the lawyer answer, or
10 ask the question fully.

11 THE WITNESS: Yes, sir.

12 THE COURT: Then you answer it. If -- he will not
13 interrupt you and you can give your complete answer,
14 whatever it is. If you need to explain your answer,
15 you can explain your answer; okay?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. Go ahead and ask your
18 question again, Mr. Frederick.

19 Q Is the reason that you did not go in front of a
20 judge because your attorney and the prosecutor
21 consented, meaning agreed to, let you out on that bond?

22 A Sir, I do not know. My lawyer went and got me my
23 bond, sir.

24 Q Okay.

25 (WHEREUPON, Defendant's Exhibit No. 5 was marked

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1 for identification only.)

2 MS. LIVESAY: Can I see what he's showing him,
3 Your Honor?

4 MR. FREDERICK: Yes, I'm sorry.

5 Judge, I would move into evidence what has been
6 marked Defendant's Exhibit 5 as a public record.

7 THE COURT: Any objection to Defendant's-5?

8 MS. LIVESAY: Yes, sir, Your Honor. It appears
9 that has got a --

10 THE COURT: All right, hold on a second. Let me
11 look at it, please.

12 MR. FREDERICK: Yes, sir.

13 THE COURT: All right. What's your objection,
14 solicitor?

15 MS. LIVESAY: Your Honor, this is -- appears to be
16 some sort of agreement with Mr. Hazzard and Ms. von
17 Herrmann. I'm not sure that I see Keir Johnson's
18 signature on it or any indication how he would be aware
19 of this agreement other than through his attorney.

20 THE COURT: Well, I appreciate that. I'm going to
21 allow it into evidence for whatever consideration the
22 jury wants to give it, if any.

23 MR. FREDERICK: Thank you. Again, that's
24 Defendant's Exhibit 5.

25 THE COURT: Any objection, Mr. Canty?

1 MR. CANTY: None, Your Honor.

2 THE COURT: All right, it's in evidence. Thank
3 you.

4 (WHEREUPON, Defendant's Exhibit No. 5 was admitted
5 in evidence.)

6 (WHEREUPON, Defendant's Exhibit No. 6 was marked
7 for identification only.)

8 Q Keir, and am I pronouncing your name right?

9 A Yes, sir.

10 Q Okay. I'm handing you what's been marked for
11 identification purposes only as Defense Exhibit 6. Did
12 you have your roommate, Henry McElveen, write this
13 motion for you?

14 A No, sir.

15 Q Did you write this motion?

16 A No, sir.

17 Q Keir --

18 A I did write letters, but I didn't write that one.

19 Q Did you file pro se -- do you understand what that
20 means, pro se?

21 A For -- for like a motion, motion to something.

22 Q Did you file on your own, meaning your attorney
23 did not file it --

24 A Yes, sir.

25 Q -- this motion?

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1 A This one right here that's in front of me?

2 Q Yes.

3 A Yes, sir.

4 Q You did?

5 A Yes, sir.

6 Q Who wrote it?

7 A I did.

8 Q You just said you didn't a minute ago.

9 A You said this one right here (indicating). You
10 asked -- you talking about a whole different other one.
11 I thought you were talking about a whole different
12 other one.

13 Q Okay. I'm not trying to confuse you, Keir.

14 A I'm not, I ain't -- I'm not confused, sir.

15 Q Okay.

16 THE COURT: So let's be clear which exhibit
17 number, which one we're talking about.

18 Q Look at it. Keir, did you file Defense Exhibit
19 No. 6?

20 A Yes, sir.

21 Q Okay. And in this motion did you say -- well, let
22 me say this, in this motion are you asking the Court to
23 let you out on bond?

24 A Yes, sir.

25 Q And in this motion, March of 2012, do you see

1 that?

2 A Yes, sir.

3 Q In this motion did you say you're not a flight
4 risk?

5 A Yes, sir.

6 Q Did you say that you never miss a court date?

7 A Yes, sir.

8 Q And stop there for a minute. Have you ever missed
9 a court date?

10 A No, sir. I came down here one time when I just
11 forgot, my lawyer right there and he say the same
12 thing, I just haven't got -- I had came to court, but I
13 just haven't gotten the -- you know how you sign in and
14 sign out in the little book out front. I forgot to
15 sign in, that's the reason why they gave me the bench
16 warrant.

17 But when I got in court the next month they had it
18 lifted. Well, my lawyer's got it lifted because he
19 told the judge that I was here, and he showed him the
20 paperwork where I was here.

21 Q Okay. So the Court issued a bench warrant for
22 failure to appear?

23 A Yes, sir.

24 Q Is that what you're saying?

25 A Yes, sir.

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1 Q And you were arrested on it?

2 A Yes, sir.

3 Q And then you straightened it out later and you got
4 back out; right?

5 A Yes, sir.

6 Q That was last year?

7 A I was locked up -- I was already incarcerated,
8 that's why they gave me a bench warrant too. Which one
9 is you talking about, the trespassing or the like the
10 burglary or what? What you talking about, what charge
11 you talking about on there?

12 THE COURT: Answer the questions that are asked;
13 all right?

14 THE WITNESS: I don't know which --

15 THE COURT: I appreciate that. Just listen to the
16 question asked by the attorney. And if you don't
17 understand it, then you ask him to repeat it or ask it
18 differently.

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Just listen to the
21 question asked.

22 THE WITNESS: Yes, sir.

23 Q Keir, in this motion which is Defense Exhibit 6,
24 did you say, also, I know that my charges are extremely
25 serious?

1 A Yes, sir.

2 Q And did you say, but I'm innocent?

3 A Yes, sir.

4 Q And I hope the courts and the solicitor give me an
5 opportunity to prove myself guilt free?

6 A Yes, sir.

7 Q Of these following charges, murder?

8 A Yes, sir.

9 Q Okay. And you said you never missed a court date?

10 A I said I never missed a court date, yes, sir.

11 Q But you were picked up on a bench warrant for
12 failure to appear?

13 A Yes, sir. Because I didn't sign -- I didn't sign
14 in or sign out. That's the only reason why. The
15 solicitor had it lifted because she say she remember me
16 talking to her.

17 Q And do you understand that this is a sworn
18 statement, you had it notarized?

19 A Yes, sir.

20 Q Okay.

21 MR. FREDERICK: Your Honor, I'd move Defense
22 Exhibit 6 into the record as a public record. It was
23 filed with the clerk's office.

24 THE COURT: Any objection with Defendant's-6?

25 MS. LIVESAY: I haven't seen it, Your Honor, I'm

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1 not sure. Is that the motion?

2 MR. FREDERICK: Didn't I hand it to you? Judge, I
3 just need a drink of water, please.

4 THE COURT: Yes, sir. Any objection?

5 MS. LIVESAY: No, sir, Your Honor.

6 THE COURT: Mr. Canty?

7 MR. CANTY: None, Your Honor.

8 THE COURT: All right. Defendant's-6 is in
9 evidence without objection.

10 (WHEREUPON, Defendant's Exhibit No. 6 was admitted
11 in evidence.)

12 THE COURT: You may proceed, sir.

13 MR. FREDERICK: Thank you.

14 Q Do you know Brandon Wells?

15 A No, sir, not that I recall.

16 Q You never met him?

17 A Not that I recall, sir.

18 Q Do you know B-Wells?

19 A Who?

20 Q B-Wells.

21 A No, sir.

22 Q You never met him?

23 A No, sir.

24 Q Do you know a Donavan Johnson?

25 A No, sir.

1 Q 110?

2 A No, sir.

3 Q Never met him?

4 A I heard of him, but I don't know him like that.

5 Q You heard of him?

6 A Yes, sir.

7 Q But you never met him?

8 A No, sir. You had -- this is Conway, you hear
9 about a lot of people.

10 Q Okay. Do you know Sha McCray?

11 A No, sir.

12 Q Migo?

13 A No, sir.

14 Q Lil Manzy?

15 A Yes, sir. I know him.

16 Q You know Lil Manzy?

17 A Yes. That's my cousin.

18 Q Lil Manzy is your cousin?

19 A Yes, sir.

20 Q And you don't know what his name is?

21 A Yeah, I know his. But you said -- you said the
22 whole name wrong.

23 Q Say it for us.

24 A Sha'Rah McCray. You said the whole name wrong.

25 Q Okay. Sha'Rah, you don't ever call him Sha, which

1 is short for Sha'Rah?

2 A No, sir.

3 Q Okay. I didn't mean to confuse you, Keir. Do you
4 know Sha'Rah McCray?

5 A Yes, sir.

6 Q And he goes by Lil Manzy?

7 A Yes, sir.

8 Q Migo?

9 A Yes, sir.

10 Q Lil Deep?

11 A No, sir.

12 Q In 2013, that's last year --

13 A Yes, sir.

14 Q -- you had a burglary first degree charge?

15 A Yes, sir.

16 Q That charge was dismissed?

17 A On my lawyer behalf. My lawyer went to court and
18 got it dismissed for me.

19 Q So the charge was dismissed?

20 A Yes, sir.

21 Q And you were charged with murder in 2011?

22 A Yes, sir.

23 Q Does that sound right?

24 A Yes, sir.

25 Q And then last year your burglary first degree

1 charge was dismissed?

2 A Yes, sir.

3 Q You understand that burglary first degree carries
4 a mandatory minimum of 15 years?

5 A No, sir.

6 Q And up to life in prison?

7 A No, sir.

8 Q Last year also while this case is pending, you had
9 an assault and battery first degree charge dismissed?

10 A All that was together, the burglary first, assault
11 and battery and all that. The petty larceny, all that
12 was together in court at the one time.

13 Q The burglary first degree?

14 A All that was together.

15 Q There was also an assault and battery first
16 degree, yes?

17 A Third degree, petty larceny, yeah, all that was
18 together.

19 Q I didn't ask you about the third degree. Were you
20 charged with assault and battery first degree?

21 A Yes, sir.

22 Q Okay. Was that dismissed last year?

23 A Yes, sir.

24 Q And you understand that that charge carries up to
25 ten years in prison?

1 A No, sir.

2 Q Last year while this case was pending, you were
3 convicted of petty larceny?

4 A Yes, sir. I pleaded guilty to it.

5 Q That's stealing?

6 A Huh?

7 Q Right?

8 A What?

9 Q Petty larceny means stealing?

10 A No. That wasn't -- I didn't steel nothing.

11 Q You were innocent?

12 A Yes, sir.

13 Q Okay.

14 A I pleaded guilty so I can make bond.

15 Q Okay. Last year --

16 MR. FREDERICK: Beg the Court's indulgence.

17 Q In 2012 you had another charge for possession of a
18 weapon during the commission of a violent crime?

19 A Yes, sir.

20 Q And it was dismissed?

21 A Yes, sir.

22 Q You understand possession of a weapon during the
23 commission of a violent crime carries up to five years
24 in prison?

25 A No, sir.

1 Q That charge was dismissed right after you gave
2 your statement to the detective; wasn't it?

3 A To tell you the truth, that happened after this
4 murder charge, sir.

5 Q It happened after the murder charge?

6 A That burglary first and all happened after this
7 murder charge, so how could I give a statement if it
8 happened after this murder charge, sir.

9 Q I want to make sure I'm not confusing you. The
10 statement I'm referring to is about the murder charge,
11 after the murder charge.

12 A No. The murder charge happened -- how did this
13 happen -- the murder charge happened in 2011, I quote
14 that when you said 2013, so how did I have the burglary
15 first before the murder.

16 Q Okay. And I don't want you to misunderstand me, I
17 don't want you to get into the details. But just to be
18 clear, possession of a weapon during commission of a
19 violent crime was dismissed in 2012?

20 A Yes, sir.

21 Q You say yes?

22 A Yes. It couldn't have been. No, because this
23 happened in 2000 -- 2013. The burglary first and all
24 that happened 2013, so I don't see -- your paperwork
25 messed up, sir.

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1 Q Okay. And on all these cases, you have some
2 experience with plea bargaining with the prosecutor's
3 office; don't you?

4 A No, sir.

5 Q You know how to get yourself out of trouble?

6 A Get a lawyer.

7 MS. LIVESAY: Your Honor, at this point I'm going
8 to ask --

9 THE COURT: I'm going to allow that particular
10 question and answer.

11 Q You know how to get yourself out of trouble?

12 A Yes, sir. Get a lawyer.

13 Q You got a good lawyer?

14 A Yes, I do.

15 Q I agree. You're charged with murder?

16 A Yes, sir.

17 Q You know that murder carries no less than 30
18 years?

19 A No, sir. You just asked me that same question,
20 though.

21 Q It wasn't me.

22 A Yes, you did, sir.

23 THE COURT: All right. Let's not have a
24 discussion. Please just listen to the question, and
25 answer the question again. If you can't answer the

1 question, just say you can't answer it.

2 THE WITNESS: I can't answer it, sir.

3 Q Then you know that if you're convicted of murder,
4 you can get up to life in prison the rest of your life?

5 A I know now.

6 Q Okay. Everything that you do from the beginning,
7 everything that you say is calculated to save yourself;
8 isn't that true?

9 A No, sir. Because I don't got no agreement on
10 nothing.

11 Q You don't want to get killed; do you?

12 A No, sir.

13 Q You don't want your grandmamma's house to get shot
14 up; do you?

15 A No, sir. Would you?

16 Q And you don't want to go to prison for the rest of
17 your life; do you?

18 A I know that I had a part in it, and if it happened
19 it happened. But at the same time, I'm not going to go
20 down for nothing I didn't do. I take my part.

21 Q You're innocent?

22 A Yes, sir.

23 Q If you go to prison, you're not going to see your
24 girl again; are you?

25 A I'll be able to see her, she can come visit.

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1 Q If you go to prison, you won't ever be a father to
2 your children; will you?

3 A I don't have any kids, sir.

4 Q That's interesting.

5 A I have step kids.

6 Q I'm going to come back to that in a minute.

7 A Yes, sir.

8 Q Is that your answer?

9 A I don't have no kids, sir.

10 Q You know what jail is like; don't you?

11 A Yes, sir.

12 Q You want to be free; don't you?

13 A Anybody would want to be free. Yes, I want to be
14 free, sir.

15 Q Okay. You don't care who you hurt or who you lie
16 about, so long as you save yourself?

17 A I'm not -- I don't lie.

18 Q You don't lie?

19 A No, sir, not about this.

20 Q We're going to come back to that in a minute.

21 A I ain't going to sit here and lie about it.

22 Q We'll come back to that again in a minute.

23 MR. FREDERICK: Beg the Court's indulgence.

24 (WHEREUPON, Defendant's Exhibit No. 7 was marked
25 for identification only.)

1 Q I'm handing you what's been marked for
2 identification purposes only Defense Exhibit 7. Do you
3 recognize the letter?

4 A Yes, sir. Yes, sir.

5 Q Tell us what it is.

6 A It's me writing my ex-girlfriend from jail.

7 (Court reporter asks for clarification.)

8 THE WITNESS: It's me writing my ex-girlfriend
9 from jail.

10 Q And did you or do you, either way, care about this
11 woman?

12 A Yes, sir.

13 Q Okay. Did you say to her you would do absolutely
14 anything and everything to show her she's the one and
15 only woman for you?

16 A Yes, sir.

17 Q You're ready to get on your knees for her?

18 A Yes, sir.

19 Q Take a bullet for her?

20 A Yes, sir.

21 Q You want to protect her?

22 A Yes, sir. Wouldn't you want to protect your wife?

23 Q (Nodding affirmatively.) God is going to make you
24 a better man for her?

25 A Yes, sir.

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1 Q You were ready to conquer the world with her?

2 A Yes, sir.

3 Q Okay. At that time you had been in jail for a
4 little while; right?

5 A Yes, sir. If you don't mind me asking, what do
6 this have to do with me --

7 THE COURT: Sir, I appreciate that. I appreciate
8 that. Thank you. Just answer the questions that are
9 asked. Thank you.

10 Q In that letter, and I'm not asking you all the
11 details, but in this letter you briefly talked about
12 one of your pending charges; right?

13 A I don't -- I can't -- I don't know. I would have
14 to look and see, sir.

15 THE COURT: Can you point it out to him.

16 MR. FREDERICK: Yes.

17 THE COURT: Can you point it out where it is that
18 you want him to look at.

19 Q Keir, if you want to just flip to page three.

20 MS. LIVESAY: Your Honor, I'm not sure how this is
21 relevant in this particular case.

22 MR. FREDERICK: Two more questions and she'll see.

23 THE COURT: Let me see what it is.

24 MR. FREDERICK: Yes, sir. Really it will only
25 take one more question, judge.

1 THE COURT: All right, thank you. You probably
2 need to point out to him where you want.

3 MR. FREDERICK: Yes, sir.

4 Q Keir, page two, I apologize for that. Did you
5 tell Deed (phonetic) the only reason you were leading
6 on this other woman was so you could get your charges
7 dismissed in the case against her?

8 A Yes, sir. Because my cousin had wrote me in jail,
9 and I was writing her.

10 (Court reporter asks for clarification.)

11 THE WITNESS: Yes, sir. Because my cousin --

12 MS. LIVESAY: Your Honor, at this time, I just
13 need to note it for the record that I am objecting
14 that --

15 THE COURT: Thank you, ma'am. I'm going to allow
16 it.

17 MR. FREDERICK: I'm not moving it into evidence.

18 THE COURT: All right. Thank you, sir. It's for
19 identification only.

20 MR. FREDERICK: Just a procedural matter, should I
21 leave this up there?

22 THE COURT: Yes. With the court reporter. It's
23 for identification only, not in evidence.

24 Q Keir, have you ever shot a gun?

25 A No, sir.

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1 Q Okay. And on April 24th, 2012, did you tell
2 Detective Vescovi you know about guns, I'm not going to
3 lie to you, I know about guns?

4 A I know -- I do know about a guns. I don't have to
5 shoot no gun, sir.

6 Q I understand.

7 MR. FREDERICK: And judge, I apologize, but I got
8 to get a drink of water.

9 THE COURT: Yes, sir.

10 Q Now, according to your story, Cutty had a .38
11 revolver and Dubba had a .45?

12 A Yes, sir. That's the gun that I seen passing out
13 the -- that's the gun that I seen passing out the
14 window.

15 Q I just want to be clear.

16 A Yes, sir.

17 Q Cutty had a .38; is that right?

18 A Yes, sir.

19 Q And Dubba had a .45?

20 A I just -- I know both -- I know Cutty was passing
21 a gun through -- passed the gun through -- Dubba threw
22 the gun out the first time. Cutty passed the gun to
23 Dubba, and he threw the other gun out.

24 Q My question is a .38 and a .45?

25 A I know it was a .38 and a .45, sir.

1 Q Thank you. Now, I'm going to ask you this
2 question. Have you ever seen Dubba with a gun?

3 A No, sir. I don't -- I don't recall.

4 Q Okay. And in May 15th of this year, did you tell
5 this lady here, Ms. Ginger Pop, Dubba carries a gun?

6 A He did that night.

7 Q I'm not talking about that night, neither was she.

8 A Well -- well, yes. If you say did I know him
9 having a gun, yes, I knew him having a gun. But I
10 didn't know him for having no gun any other day.

11 Q Okay. You know Billy Freshley?

12 A I heard of him, sir.

13 Q You heard of him?

14 A I don't know him like that.

15 Q Well, let's be clear. Have you just heard of him,
16 or do you know him?

17 A I met him a couple times, sir. I do not know him
18 like that, sir.

19 Q When you say, I don't know him like that --

20 A I do not hang around him.

21 Q Okay. So do you talk to him?

22 A If I don't hang around nobody, dude, that mean I
23 don't talk to nobody if I don't hang around people.

24 Q Is that your answer?

25 A Yes, sir.

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1 Q Okay. On April 24th, 2012, when Detective Vescovi
2 interviewed you, did he ask you, when you get back to
3 this who else did you talk to. And you answered, I was
4 talking to Billy the whole time, I was down here and in
5 the investigation room I was talking to Billy, telling
6 Billy, man, I'm not trying to go down for nothing.

7 A I don't recall that, sir.

8 Q I'm going to refer you to what's bates stamped
9 1893, line 25. Did the detective ask you, when you get
10 back to this detective, who else did you talk to? And
11 did you respond, I was talking to Billy the whole time
12 I was down here, and in the investigation room I was
13 talking to Billy telling Billy, man, I'm not try going
14 to down for nothing?

15 A I don't recall that, sir.

16 Q Did the investigator ask you, now, why is that?
17 And you respond, cause Billy, he really, really, Billy,
18 he, he -- do really --

19 MS. LIVESAY: Your Honor, is this a question, or
20 are we just reading from the transcript?

21 MR. FREDERICK: This is impeachment by prior --

22 THE COURT: Stop. The question was not asked of
23 you, Mr. Frederick.

24 MR. FREDERICK: Okay.

25 THE COURT: It was directed to the Court.

1 Solicitor, I'm allowing Mr. Frederick to read in the
2 form of a question. You may continue, Mr. Frederick.

3 MR. FREDERICK: Yes, sir.

4 Q And was your response, Keir, cause Billy, he
5 really, really Billy, he, he do, really do like sell
6 drugs and all, but he keep me out of trouble. He be
7 trying to keep me out of trouble and everything. Cause
8 there could have been a lot of times I've been in
9 stuff, but he was telling me, man, don't do this, don't
10 do that.

11 But like really every time I get in -- I get in
12 trouble, he always put money up and all for my bond.
13 So I was telling him, like I'm not trying to go down
14 for something I, me, my girl ain't do. So he's like,
15 you ain't going to go to jail, man, you ain't going to
16 go to jail, stuff like that.

17 A What you say now? Can you repeat that.

18 Q Would you like to refer to the bottom of page --

19 THE COURT: Well, why don't you ask him the
20 question, if he said that.

21 MR. FREDERICK: Well --

22 THE COURT: All right, go ahead. Do it again,
23 read it again.

24 Q Would you like me to repeat it?

25 A No, sir. Like I said before, I don't recall

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1 talking to no Billy. And I was at the homicide office,
2 and the homicide just was talking to me. I do not
3 recall talking to nobody that evening.

4 Q On May 15th of this year -- well, let me ask you
5 this question. What time did Dubba call you?

6 A I told you already like around 1:43, something
7 like that, 1:43, something like that.

8 Q 1:43, is that what you said?

9 A Yes, sir, around one something.

10 Q Okay, 1:43. On May the 17th of this year did you
11 tell Ms. Ginger Pop that Dubba called you at 1 o'clock?

12 A Well, I might have did, sir. I don't recall, sir.

13 Q Okay. On April 24th of 2012, did you tell
14 Detective Vescovi that Dubba called you at 2 o'clock?

15 A 1:43 is like 2 o'clock, sir. That's around
16 2 o'clock.

17 Q Fair enough. On April 24th, 2012, I believe this
18 is the same interview I referenced a moment ago, did
19 you tell Detective Vescovi -- I'll withdraw that
20 question.

21 You said you got out there about 2:30, 2:35; is
22 that what you told him?

23 A It was three years ago, sir, I cannot -- it was
24 three years ago, I cannot recall, sir. I don't know.

25 Q I understand. Now, today you told the jury that

1 Mike Pyatt came and picked you up; is that true?

2 A Who came and picked me up?

3 Q Mike Pyatt.

4 A Yes, sir.

5 Q Okay. And I asked you, is this the first time you
6 said that, and you said, no, it wasn't; right?

7 A Yes, sir.

8 Q Okay. On November the 8th of 2011, did you tell
9 Detective Freebowitz that your grandmother, her
10 boyfriend, came and picked you up?

11 A I told you, sir, I was lying about the whole
12 situation, so you should know I was lying. Yes, sir, I
13 said that.

14 Q Okay. And you were lying?

15 A Yes, sir.

16 Q Okay. You told him that your grandmother's
17 boyfriend's name was Samson Miller; is that right?

18 A Spencer Miller.

19 Q Spencer?

20 A Spencer.

21 Q You told Detective Freebowitz that Spencer Miller
22 came and picked you up?

23 A Yes, sir.

24 Q And that was a lie?

25 A Yes, sir.

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1 Q Do you know if Detective Freebowitz confirmed
2 that, called Spencer Miller?

3 A I don't know.

4 Q Okay. And that was November the 8th, 2011;
5 correct?

6 A I don't know, sir. It's been -- I told you this
7 was -- a minute ago, if it ain't relation (phonetic), I
8 cannot recall, sir.

9 Q I understand. On April the 24th, 2012 -- let me
10 back up for a minute. November 8th, 2011, that's the
11 night the murder happened; right?

12 A I know it was in November.

13 Q Okay. And then in April 24th, 2012 you met with
14 Detective Vescovi and found out that he had your phone
15 records; is that true?

16 A I met with who?

17 Q Detective Vescovi.

18 A No, I ain't meet with nobody no more that year. I
19 got locked up December the 1st. I didn't meet with no
20 -- I only talked to one detective one time, that's when
21 he's had -- the last time I had talked to -- the first
22 time I talked to this detective was the night that all
23 this had happened. That's when he tried to lock me up
24 for driving without permission and taking property. I
25 never talked to no detective until I got my lawyer.

1 Q And then April 24th, 2012 you talked to Detective
2 Vescovi, and he let you know that he had your phone
3 records?

4 A Yes, sir. Then by then my lawyer was -- I already
5 had a lawyer by then.

6 Q I understand. And he let you know that he had
7 analyzed your phone records?

8 A Yeah. I don't remember that because I ain't the
9 one who talked to him at first.

10 Q And he let you know that when he analyzed them,
11 you were at the murder scene?

12 A He just -- he just was saying he had some -- some
13 phone records, something about some towers or
14 something. That's all he really said. And then I just
15 cut the phone call -- the investigation short and told
16 my lawyer I ain't going to talk to him.

17 Q And then in April of 2012 you came clean with the
18 investigator and told him, I'm telling you the truth
19 now, it was Dubba and Cutty that were with me?

20 A Yes, sir. Yes, sir.

21 Q Okay. And coming clean and telling them the truth
22 on April 24th 2012, did the detective ask you again how
23 you got back after you abandoned the car, and your
24 answer was you walked?

25 A Little Mike Pyatt came and picked me up, sir. I

1 don't recall that.

2 Q You don't remember telling the detective that you
3 walked?

4 A No, sir.

5 Q Okay. And on the same date, April 24th, 2012, do
6 you recall telling him that you walked all the way back
7 to Conway?

8 A I recall saying that I got a ride from Mike Pyatt.
9 Detectives lie.

10 Q Is the detective lying?

11 A I said they do. That's -- ain't that their job,
12 to lie to you; right?

13 Q You said detectives lie. Is he lying?

14 A Well, he got to be because I know I called Mike
15 Pyatt and told him to come pick me up.

16 Q Just to be clear, your answer is you did not tell
17 Detective Vescovi that you walked in April of 2012?

18 A No, sir. I probably did around the first time the
19 beginning of it when I was lying about the situation.
20 But I know that Mike Pyatt came and picked me up, and I
21 told my lawyer which is what I told the solicitor too.

22 Q In April 24th, 2012, did you say to Detective
23 Vescovi, and like when I got about like five, I think
24 about five because we about like about by Wal-Mart and
25 all that. Cause when you come down Juniper Bay Road,

1 you can like come out, you come out it, you bring it
2 out by a car wash. And Wal-Mart be across the street
3 and all that. So when I got about like right there,
4 daggone, I had call -- I had called my granddaddy come
5 get me.

6 A That's when I was lying, sir.

7 Q And my granddaddy had come. But the whole time I
8 was telling the police, I was like, I was by, um,
9 Applebee's lying. And he was like, I come pick you up.
10 I was like, no, my granddaddy's going to come get me.
11 Granddaddy drop me off right there by my grandma house,
12 and I walked.

13 April 24th, 2012, when you were coming clean
14 telling the truth, is that what you told Detective
15 Vescovi?

16 A No, sir. I told the detective that I had -- I
17 ain't -- I told him I was lying about the situation
18 about when my granddaddy came and picked me up.

19 Q April 24th, 2012, did you also tell him that Cutty
20 and Dubba walked with you?

21 A No, sir.

22 Q On April 24th, 2012, did the investigator ask you
23 the question, where did Cutty and Dubba go after y'all
24 got out of the van, did they -- y'all walk together?
25 And did you respond, yeah?

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1 A No, sir.

2 Q Did he then ask you, back to the projects or what?

3 And you respond, them boys got like as we can --

4 MS. LIVESAY: Your Honor, at this point are we
5 just again reading from the transcript, or is there a
6 question?

7 THE COURT: He's asking a question. Go on, Mr.
8 Frederick.

9 MR. FREDERICK: Thank you, judge.

10 Q At that point did you respond, April 24th, 2012,
11 Detective Vescovi, did you respond, them boys, them
12 boys got like as we can up as we was going down the
13 road, as we was going down the road them boys caught
14 them a cab, they caught them a cab. And I was like,
15 man, I'm not about to get in that cab because at the
16 same time we get pulled over in the cab, them boys --
17 cause they threw the guns out on the road, out on the
18 road.

19 A I did say I'm not getting in no cab. But we was
20 in the woods by then, we wasn't walking down no street.

21 Q Okay. And on April 24th, 2012, did you then tell
22 Detective Vescovi, maybe it was a cab, maybe it was
23 somebody else?

24 A What?

25 Q On April 24th, 2012, did you then tell Detective

1 Vescovi, maybe it was a cab, maybe it was something
2 else?

3 THE COURT: Y'all come up and come talk to me for
4 a second.

5 (WHEREUPON, a bench conference was held off the
6 record in the presence of the jury but out of the
7 hearing of the jury.)

8 THE COURT: Ladies and gentlemen, you go to your
9 jury room for about ten minutes, we'll come back and
10 finish this witness.

11 (WHEREUPON, the jury exited the courtroom at
12 12:43 p.m.)

13 (WHEREUPON, a brief recess was taken at 12:43
14 p.m.)

15 THE COURT: Thank you very much, you may be
16 seated. All right, solicitor, you ready for the jury?

17 MS. LIVESAY: Yes, sir.

18 THE COURT: Mr. Frederick?

19 MR. FREDERICK: Yes, Your Honor.

20 THE COURT: And Mr. Canty?

21 MR. CANTY: Yes, Your Honor.

22 THE COURT: Very good. Ask the jury to come in,
23 please.

24 (WHEREUPON, the jury came into open court at
25 approximately 12:54 p.m.)

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1 THE COURT: You may continue, Mr. Frederick.

2 MR. FREDERICK: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 Q Keir, in April 2012, did you tell Detective
5 Vescovi, it might have been a van, or it might have
6 been somebody else? I mean, a cab, I'm sorry. It
7 might have been a cab, or it might have been somebody
8 else?

9 A Yes, sir.

10 Q I'm sorry --

11 A Yes, sir.

12 Q -- you did tell him that?

13 A Yes, sir.

14 Q Thank you. Today under direct examination I
15 believe what you said is that Dubba called you and you
16 were going to -- taking Dubba to get some drugs; right?

17 A Yes, sir.

18 Q Okay. In April of 2012 you also told Vescovi it
19 was just Dubba was getting some drugs; right?

20 A Yes, sir. And me too. Me too.

21 Q Yeah, I was coming to that. In April 2012, you
22 said it was just Dubba getting some drugs; didn't you?

23 A I don't recall that, sir.

24 Q In May of this year, you told Ms. Ginger Pop that
25 you were also getting some drugs?

1 A Yes, sir. I've been telling my lawyer. He...

2 THE COURT: Go ahead, Mr. Frederick.

3 MR. FREDERICK: Okay.

4 Q Today you said that you've known Dubba since
5 school, I think?

6 A No, I didn't, sir.

7 Q What did you say?

8 A I say I knew Dubba since probably around 2008,
9 2009 when he came home from prison.

10 Q Okay.

11 MR. FREDERICK: Court's indulgence.

12 THE COURT: Yes, sir.

13 Q In April 2012, did you tell Detective Vescovi that
14 you had never hung out with Dubba and them before that
15 day?

16 A What you -- can you repeat that question, sir.

17 Q In April of 2012, did you tell Detective Vescovi
18 that you had never hung out with Dubba and them before
19 that day?

20 A I don't recall, sir.

21 Q And throughout these interviews you had you
22 repeatedly swore to Detective Vescovi that you weren't
23 lying to him, you wouldn't sit up there and lie, you
24 were telling him the truth?

25 A That was -- this charge is three years -- this

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1 charge is three years old, you think I can remember
2 back everything I -- that what happened.

3 Q And each time he interviewed you and confronted
4 you with something you were lying about, you would say,
5 yeah, I was lying about that, but I'm telling you the
6 truth about this?

7 A I been telling them I was lying about it
8 before when it first -- when it first happened I told
9 them I was lying.

10 Q Every time you get caught in a lie and you know
11 you're caught in a lie, you admit to it?

12 A I don't know, sir.

13 Q But you swear you're telling the truth about
14 everything else?

15 A I don't know, sir.

16 Q You were telling him some pretty detailed lies;
17 weren't you?

18 A What, sir?

19 Q You were telling him some pretty detailed lies;
20 weren't you?

21 A I lied before when it first happened, but I ain't
22 lying when I talked -- when I talked to my lawyer.

23 Q The first time you talked to him when you were
24 lying about how you got robbed; right, you lied about
25 how you got robbed?

1 A Yes, sir.

2 Q And when you told them that lie about how you got
3 robbed, that was pretty detailed; wasn't it?

4 A I don't know, sir.

5 Q You told him that --

6 MS. LIVESAY: Your Honor, is he going to ask
7 Mr. Johnson a question, or just read from the
8 transcript?

9 THE COURT: He is asking a question, solicitor.
10 I'm going to allow him to do it. Go ahead,
11 Mr. Frederick.

12 MR. FREDERICK: Thank you, judge.

13 Q You told him that it was a light-skinned, tall,
14 skinny dude that robbed you; is that true?

15 A Yes, sir.

16 Q Did you tell him he was seven foot tall?

17 A No. I don't -- I don't know, sir.

18 Q Did you tell him that if he came into the store
19 where you got robbed, he'd have to duck his head to go
20 in?

21 A I think so, sir. Like I said before, that was
22 three years ago, I don't know.

23 Q Did you tell him that the seven-foot-tall skinny,
24 light-skinned black dude that robbed you had a gold
25 tooth?

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1 A Yes, sir.

2 Q Did you tell him that he was missing a tooth?

3 A I think so, sir. I don't know, sir.

4 Q Did you tell him that the gold tooth had this
5 little star in the tooth?

6 A You -- excuse me, not trying to be rude or
7 anything, but like I said before, I cannot remember
8 back no three years what really happened. Only thing I
9 know what happened that what happened before the girl
10 getting killed. I don't know about all that other
11 stuff you talking about, sir, because I cannot remember
12 that. I told the truth about what really happened
13 after when I got my lawyer.

14 Q Did you tell him that you had parked your car in
15 the gas station, you were waiting to get gas when you
16 got robbed?

17 A Yes, sir.

18 Q Did you tell him that the car was kind of part way
19 in the road because you couldn't quite get up to the
20 gas station?

21 A Yes, sir.

22 Q Did you tell him that this guy asked you if he
23 could wash the car for \$2?

24 A I don't remember that, sir.

25 Q Did you tell him that you said, no, so you went to

1 get some gas?

2 A Like I said before, I don't remember that, sir.

3 That was three years ago. I remember telling him that

4 I got robbed for the van, though.

5 Q Did you tell him, there's a video at the

6 convenience store; if he just goes and gets it and

7 looks at it, he'll see this seven-foot-tall guy with

8 the gold tooth with the little star in it robbing you?

9 A No, sir. I said, you can go look at that video to
10 see that the van was right there at this gas station.

11 Q You lied about -- you lied about getting robbed?

12 A Yes, sir.

13 Q And then they confronted you with your phone
14 records that they analyzed that showed you at the crime
15 scene?

16 A I still didn't say nothing then, sir.

17 (Court reporter asks for clarification.)

18 Q I can't hear you.

19 A I said I still didn't say nothing then, sir.

20 Q And then when they confronted you with that
21 evidence, you told them you were lying about getting
22 robbed, and you told them Dubba and Cutty were the
23 people in the car with you?

24 A Like I said before, sir, when that man right
25 there, that detective, came to J. Rueben Long, he --

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1 him and my lawyer was up there, and he wanted to talk
2 to me. And I told my lawyer I did not want to talk to
3 him. After he showed me the phone records, I cut the
4 investigation or whatever you call it, I cut that
5 short. I say I didn't want to talk to him.

6 Q In April 2012 after you were confronted with your
7 phone records after you told them --

8 A I don't --

9 Q Wait, let me finish the question, please.

10 THE COURT: All right. Sir, let's talk about it
11 one more time.

12 THE WITNESS: Yes, sir.

13 THE COURT: Let the attorney ask the question, let
14 him finish, then you can answer fully, you can explain
15 your answer; all right?

16 THE WITNESS: Yes, sir.

17 THE COURT: Very good. Go ahead, Mr. Frederick.

18 Q In April of 2012 after you were confronted with
19 the phone records, after you told them, okay, I lied
20 about the robbery, after you told them, Cutty and Dubba
21 were in the car with me, then you also told them that
22 you walked?

23 A Yes, sir. I don't remember that.

24 Q You didn't tell them that you were picked up by
25 Mike Pyatt?

1 A No. I -- I told my lawyer, sir.

2 Q After you were confronted with the fact that Mike
3 Pyatt picked you up, after they found out on their own
4 that Mike Pyatt picked you up, then you told them you
5 lied about walking?

6 A They didn't find out on their own, I told them.

7 Q Okay.

8 MR. FREDERICK: Thank you, Keir. I don't have any
9 more questions.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Canty, cross-examination.

12 MR. CANTY: Thank you Your Honor. May it please
13 the Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. CANTY:

17 Q Good afternoon, Mr. Johnson. Let me ask you, have
18 you ever been diagnosed with or treated for memory
19 loss?

20 A No, sir.

21 Q The morning that Keia died, you had a lengthy
22 interview with this detective; correct?

23 A The morning that what?

24 Q Keia died, when she was shot to death --

25 A Yes, sir.

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1 Q -- remember, you were there; do you remember that?

2 A Yes, sir.

3 Q Okay. And that morning you had a lengthy
4 interview with this detective about what happened.

5 A Yes, sir.

6 Q And you lied through your teeth; didn't you?

7 A Yes, sir.

8 Q Tell the jury whether you've ever been charged
9 with giving false information to the police?

10 A No, sir, I never been charged with that.

11 Q And earlier there was an exhibit where you wrote,
12 notarized under oath to the Court, and you said to the
13 Court that you were innocent and you were guilt free;
14 do you remember that?

15 A Yes, sir.

16 Q And you intend to plead guilty to murder; is that
17 correct?

18 A I mean, I'm not -- I ain't killed nobody, so I
19 know I'm innocent, so --

20 MS. LIVESAY: Your Honor, I'm not sure that that's
21 an appropriate question.

22 THE COURT: Sustained. Move along, Mr. Canty.

23 Q Is that going to be your position, that you are
24 guilt free?

25 A I didn't kill nobody, sir, so I'm innocent on

1 that. But I know as far as like driving the van, yes,
2 I admit to that.

3 Q So you were driving the van that was in the
4 trailer park when Keia was killed?

5 A Yes, sir.

6 Q Okay. Now, you gave a total of five statements;
7 correct?

8 A I don't know, sir.

9 Q You don't know?

10 A No, sir.

11 Q Well, we talked about the one on the morning that
12 Keia was killed; do you remember that? November
13 the 8th, 2011, do you remember that?

14 A Yes, sir.

15 Q Pack of lies?

16 A Yes, sir. And I admit to that.

17 Q Okay. Then you gave a statement to the Court in
18 writing under oath saying you're innocent and guilt
19 free.

20 A That was for a bond, that was a motion for a bond.
21 I can't write the Supreme Court for a motion of a bond?

22 Q You said in writing under oath to this Court --

23 A I'm innocent, sir.

24 Q -- that you were innocent and guilt free?

25 A I'm innocent for not killing nobody, I didn't kill

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1 nobody, sir.

2 Q You maintain that you are guilt free; is that
3 correct?

4 THE COURT: You asking him a legal question, Mr.
5 Canty?

6 MR. CANTY: I'm asking if he's maintaining his
7 innocence, Your Honor.

8 THE COURT: It's already asked and answered.

9 THE WITNESS: I'm innocent, I didn't kill nobody,
10 sir.

11 THE COURT: It's asked and answered. Continue on.

12 Q And then you had an epiphany after you'd sat in
13 the jail house for five and a half, six months, and you
14 said, I'd like to talk to a prosecutor or detective;
15 correct?

16 A Yes. Because I talking to my lawyer, and my
17 lawyer told me to tell the truth.

18 Q Okay. So it came upon you to reveal the truth on
19 April the 24th of 2012?

20 A Can you repeat that, sir.

21 Q It came upon you to tell the truth on April
22 the 24th of 2012?

23 A Yes, after I talking to my lawyer. Just as well,
24 if you was my lawyer and you tell me you got me to the
25 end and tell the truth, I'm going to do what I have to

1 do.

2 Q And you gave a statement on that day to this
3 detective; correct?

4 A Took a couple days later to -- it was after I
5 talked to my lawyer, it took probably about a couple
6 days later for me to go talk to him.

7 Q You got the transcript of your statement; don't
8 you?

9 A What?

10 Q You have the transcript of your statement; don't
11 you?

12 A Do I have the transcript; what you mean by that,
13 sir?

14 Q Typewritten out the questions and your answers.

15 A Yes, sir.

16 Q Okay. Now, you say -- you said in that statement
17 that Carnail called you and he wanted to re-up;
18 correct?

19 A Yes, sir.

20 Q And you interpreted that to mean he wanted to go
21 get some drugs from Splurge?

22 A Yes, sir.

23 Q And specifically crack cocaine?

24 A Yes, sir.

25 Q And you were willing to accommodate him on that;

1 is that right?

2 A Yes, sir. I sell -- I was selling drugs myself.

3 Q Okay. And your testimony is that you don't know
4 where Splurge lived?

5 A I sure don't, sir.

6 Q But you were going to go buy an ounce of crack
7 cocaine from him to resell?

8 A Yes, sir.

9 Q Wherever he might have lived?

10 A Yes, sir.

11 Q Okay. And I think you told Mr. Frederick that you
12 didn't know who 110 was; is that correct?

13 A I don't know him like that, sir, I do not know
14 him.

15 Q And when that detective looked in your cell phone
16 in your directory --

17 A You think it's more than -- you think it's only
18 one 110 or one Little D or something? It's more than
19 him, one person. Just like it's more than -- there's
20 more than one Bootsie.

21 Q Okay. So when that detective opens your cell
22 phone and he looks at your directory and the first
23 thing that pops up, the first name is 110, you're
24 telling this jury that was a different 110?

25 A Yes, sir.

1 Q That was not --

2 A It ain't the 110 you talking about.

3 Q It was not Donavan Johnson?

4 A It ain't the 110 you talking about.

5 Q Okay. How do you know which 110 I'm talking
6 about?

7 A Because you just said his name.

8 Q Who's the other one?

9 A That he -- his name is 110, sir.

10 Q Who?

11 A His name is 110.

12 Q Who?

13 A I don't know that. I don't know no Donavan
14 Johnson, sir.

15 Q And you said you didn't know Billy Freshley;
16 correct?

17 A I don't know.

18 Q But you did tell this detective what Billy
19 Freshley's telephone number was; didn't you?

20 A I don't recall, sir.

21 Q You don't recall. Now, April the 27th of 2012 is
22 when you came clean with the detective and you gave the
23 statement, and you said it was Carnail and Cutty was
24 with you when you drove out to the trailer park where
25 Keia was shot to death; correct?

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1 A Yes, sir.

2 Q And on that morning when Keia died, you were out
3 on bond; weren't you?

4 A Yes, sir.

5 Q And that was for robbery and possession of a
6 weapon during a crime of violence.

7 A That's all been dismissed. He represent me on
8 that too.

9 Q Let's talk about that, robbery and possession of a
10 weapon during a crime of violence. And that charge had
11 been pending for some time the morning that Keia died?

12 A They had no evidence on me. They were going to --
13 they been was going to dismiss it.

14 Q That charge had been pending for some time on the
15 morning that Keia died; correct?

16 A Yes, sir.

17 Q Okay. And during the six months that you sat in
18 the jail house until you implicated Carnail Graham,
19 those charges were still pending; isn't that right?

20 A Yes, sir. But I was out on bond on it.

21 Q And when you had your epiphany on the 24th of
22 April and you decided to come clean and tell the truth,
23 tell the jury what happened to those charges 20 days
24 later, if you know.

25 A My lawyer went to court for me, got them

1 dismissed, sir.

2 Q After you sat in jail six months --

3 A I been having a court date just like you have a
4 court date for him, sir. I been having a court date
5 that was set, and he went to court and got them
6 dismissed for me, sir.

7 Q And the charges were from 2009?

8 A Yes, sir.

9 Q Been pending two years?

10 A Yes, sir.

11 Q And then you implicated my client. And then 20
12 days later what happened? They went away; didn't they?

13 A If you say so, sir.

14 Q And that's not the only charges that have gone
15 away since then; are they?

16 A I got a good attorney, sir.

17 Q You do. I will stipulate to that, you have an
18 excellent attorney. Now, at some point, as I
19 understand, I guess it would be statements number three
20 and number four, when you contend now that number three
21 was at least partially true and number four was true,
22 and you're saying number one was false?

23 A A lie.

24 Q Pack of lies. Number five was false also, the
25 letter where you said Dubba wasn't involved, number one

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1 false, number five false. Number two, you still say
2 you're innocent. Number three, believe part of it,
3 number four, believe all of it.

4 Okay, but three and four when you -- what you now
5 say is the truth, see if I understand this correctly.
6 You are leaving the scene where Keia has been killed,
7 and your testimony or your statement was Carnail put a
8 gun to your head and said, drive --

9 A Yes, sir.

10 Q -- go, go?

11 A Yes, sir.

12 Q And then he threw that gun out the window?

13 A What would you do if a person put a gun in your
14 head, sir?

15 Q Here's my question, he then threw the gun out the
16 window; isn't that what you said?

17 A He threw the gun when I was losing the police,
18 sir.

19 Q He threw the gun out the window; is that correct?

20 A Yes, sir.

21 Q That's what you told him?

22 A Yes, sir.

23 Q Okay. And then Cutty gave his gun to Dubba?

24 A Yes, sir.

25 Q And he threw it out the window?

1 A Yes, sir.

2 Q Did he point it at you before he threw it out the
3 window?

4 A No, sir.

5 Q Okay. So you told the detective that the murder
6 weapon thrown out the window?

7 A Yes, sir.

8 Q And everybody knows where that Horry County police
9 officer passed the van, you saw his brake lights in
10 your rearview mirror, he turned it around and he came
11 after you; correct?

12 A Yes, sir.

13 Q He had his blue lights on?

14 A Yes, sir.

15 Q It was a high speed chase?

16 A Yes, sir.

17 Q And because Dirty Branch Road has a couple of dog
18 legs in it --

19 A It went like this, sir (indicating).

20 Q -- you were able to get out of his sight?

21 A Yes, sir.

22 Q And you pulled into that -- some lady's yard?

23 A Yes, sir.

24 Q A lady who is a Facebook friend of Billy Freshley?

25 A I don't know that.

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1 Q You don't know anything about that?

2 A No.

3 Q Okay. So did the police say, well, that's a
4 pretty narrow strip of real estate there, and he could
5 only have thrown the guns so far, why don't you show us
6 where the guns were thrown out; did that happen?

7 A What?

8 Q Did the police ask you to show them where the guns
9 were thrown out?

10 A Why you acting like you getting an attitude, sir?

11 THE COURT: All right. Let's stop, okay. Each
12 side is going to treat each other with respect. The
13 questions will be asked with respect. The answers will
14 be given with respect. Any question about that?

15 Proceed on, Mr. Canty.

16 THE WITNESS: No, sir.

17 MR. CANTY: Your Honor, I apologize to the Court.

18 THE COURT: It's all right. Go ahead, you just go
19 on. And you answer the questions, sir.

20 THE WITNESS: Yes, sir.

21 Q Would you tell the jury, please, whether or not
22 you ever showed the police where the guns were thrown
23 out.

24 A I told them where it was at, but I ain't -- I
25 didn't show them, like I told them where it was at,

1 I like where they threw them out at.

2 Q Okay. And do you or do you not know Billy
3 Freshley?

4 A I know of him. I don't know him like that, sir.

5 Q Do you remember telling this detective Billy
6 Freshley's street address?

7 A No, sir.

8 Q You don't have any recollection --

9 A I don't even know a street address.

10 Q

11 A I don't know.

12 Q You didn't tell the detective that?

13 A I don't know where it's at. Yeah, I know where
14 Cottage Park at.

15 Q And if that transcript indicates otherwise, then
16 the transcript must be mistaken?

17 A (Nodding affirmatively.)

18 Q And in statements three and four where you say you
19 came clean, at least partly in three and all the way in
20 four, there's no mention of Mike Pyatt; is there?

21 A Can you please say that again, sir.

22 Q In statement three and four, you say part of
23 statement three is true and all of statement four is
24 true, there's no mention of Mike Pyatt; is there?

25 A I know -- I remember I told my lawyer and my

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1 solicitor that Mike Pyatt came and picked me up. So I
2 don't really know what you're trying to get at, sir.

3 Q And at some point you became aware that Mike Pyatt
4 was under subpoena to be in court this week?

5 A I became aware when this happen, when it start --
6 this trial started.

7 Q Okay.

8 A I didn't know he was coming here.

9 Q And you testified that Mike Pyatt came and picked
10 you up?

11 A Yes, sir, if you ask me.

12 Q But statement number three and statement number
13 four don't make any reference whatsoever to Mike Pyatt;
14 correct?

15 A Right.

16 Q And if you told the police about Mike Pyatt
17 before, there's no record of it; is there?

18 A I do not know, sir.

19 (Court reporter asks for clarification.)

20 THE WITNESS: I don't know, sir. I know he came
21 and picked me up.

22 Q Statement number three, you said that you and your
23 girlfriend were watching TV till 2 a.m. This is when
24 you first came clean. Don't have any recollection of
25 that?

1 A Can you please repeat that. Can you please repeat
2 that, sir.

3 Q April 24, 2012, when you first came clean, you
4 said, me and my girlfriend were watching TV till 2 a.m.

5 A Yes, sir.

6 Q Okay. And then statement number four, this lady,
7 Ms. Pop, the investigator for the solicitor's office,
8 she came and got another statement from you this year;
9 correct, 2014?

10 A Yes, sir.

11 Q About two years later. And you told her that you
12 were sleeping at your girlfriend's house; correct?

13 A Yes, sir.

14 Q All right.

15 A I told you I lied about the situation the first
16 time, sir.

17 Q Okay. We've established that you lied in
18 statement number one.

19 A I received a call, sir.

20 Q And you said you lied in statement number five,
21 statement number two you still say you're innocent?

22 A I am innocent. I didn't kill nobody.

23 Q Okay. Statement number three, part true,
24 statement number four all the way true?

25 A Yes, sir.

KEIR JOHNSON-CROSS BY MR. CANTY

619

1 Q Okay. In statement number three you gave to this
2 detective, statement number four you gave to this
3 investigator two years later?

4 A I'm going to tell you the truth --

5 Q I understand. If you --

6 A -- I don't trust no polices, I'm not going to --
7 if my lawyer's not around, I'm going to lie.

8 Q When you say that you tell me the truth, I believe
9 you. Now, between --

10 THE COURT: Was that a question, Mr. Canty?

11 MR. CANTY: I apologize to the Court, Your Honor.

12 THE COURT: All right, sir.

13 Q You said you were -- got a call at 2 a.m. from
14 Carnail in your first truthful statement.

15 A If you say that's 2 o'clock, 1:40 something, 1:43,
16 that's around 2 o'clock, yes, sir.

17 Q Two years later. And this case was supposed to go
18 to trial in July; right, of this year? Two years
19 later, that 2 a.m. actually got moved back to 1 a.m.;
20 is that correct?

21 A I don't know what you're talking about, sir. I
22 just know it was 2 o'clock, sir.

23 Q So --

24 A Or 1:43.

25 Q -- if you said it was 2 o'clock, and then two

1 years later you said it was 1 o'clock, it's just a
2 misunderstanding or...

3 A Sir, it was around 1:43 which is putting it in the
4 range around 2 o'clock.

5 Q Okay. So between the 2012 statement and the 2014
6 statement --

7 A I told the truth when my lawyer came and he told
8 me to tell the truth, I told the truth. I lied the
9 first time.

10 Q And you saw some phone records too; didn't you?

11 A That phone records, I didn't care about no phone
12 records. Look, sir, I told you, I done explained that
13 to that man right there, sir. He came with -- that man
14 right there behind my solicitor came with the phone
15 records, sir, and I told the man straight up I didn't
16 want to talk to you. My lawyer right there, he'd say
17 the same thing.

18 Q And was it the 2012 statement or the 2000 and --

19 A I don't know, sir.

20 Q -- 14 statement when you said you were surprised
21 when you went to pick up Carnail to see that Cutty was
22 with him?

23 A It was this statement that's -- the recently
24 statement.

25 Q The 2014 statement?

KEIR JOHNSON-CROSS BY MR. CANTY

621

1 A Yeah.

2 Q And the fact is that that telephone call at 1 a.m.
3 to you from Cutty was on Cutty's telephone?

4 A Yes, I said that --

5 Q Um-hum.

6 A -- sir.

7 Q When you opened up your phone, the phone rang and
8 it said it was Cutty, and you answered the telephone;
9 right?

10 A Yes, sir.

11 Q Okay. And --

12 A A 855 number.

13 Q Now, you're telling this jury, even though it was
14 Cutty's phone, that --

15 A And I told you the same thing.

16 Q -- it was Dubba?

17 A Dubba was the one talking to me.

18 Q All right. And that was at 1 a.m.?

19 A I didn't have no idea Cutty was going over there.

20 Q And at the scene you drove down Colletta Court and
21 you parked?

22 A I'm not -- I'm not familiar with the streets out
23 there, sir. I'm not familiar.

24 Q Here is an aerial photograph of the trailer park.

25 A When you...

1 Q Why don't you tell the jury exactly where you
2 drove in what sequence that night.

3 A You got to tell me where Splurge's house is, and
4 I'll tell you where Conswella's house at.

5 Q Did you go on 501?

6 A No, sir. I went --

7 Q You didn't go down 501?

8 A I left.

9 Q I'm not talking about when you let out of there,
10 I'm talking about when you drove there to get yourself
11 some cocaine and to get Carnail some cocaine.

12 A Yes, sir.

13 Q You went on 501?

14 A I came the back way through like coming by like
15 you know where Conway Middle School at, that little
16 road right there, I think it's Oak Street. I don't
17 know, but going straight down, I came through the back
18 way like behind Hardee, on Oak Street. I went straight
19 to Oak Street and came up, made a left. That's when
20 501 -- I -- when I came to like it was a little gas
21 station right on the left-hand side, that's 501 right
22 here.

23 Q So you arrived at the trailer park. Show the jury
24 where you went in what sequence.

25 A Like I said before, sir, can you point out where

1 Splurge is on Conswella street.

2 Q See, this is Splurge's house (indicating).

3 A I was on this road backed up right here, sir,
4 where the woods -- like the grass and stuff at.

5 Conswella -- Conswella stay right here (indicating).

6 Q Do you know her?

7 A I know of her, sir. I talked to her a couple
8 times, sir.

9 Q You called her by name?

10 A Yes, sir.

11 Q Okay. She know you?

12 A Yes, sir.

13 Q So all you did was pull it back in?

14 A Yeah.

15 Q At the end of that road?

16 A Yes, sir. And backed in, backed in right there,
17 came like I came facing -- like the car was facing --

18 THE COURT: You got to speak up, sir. You got to
19 be behind the microphone, I'm sorry.

20 THE WITNESS: The car was facing this way right
21 here (indicating). Like I was coming down. That's
22 when I pulled right here, backed the car right there
23 (indicating). That's when some dude, I don't know what
24 house it was right there, but he came out to the road
25 right there and start looking.

1 That's when I pulled up, I was starting the car,
2 that's when I pulled off, made this left turn right
3 here, came down, came around, went back to the parking
4 and then Conswella was there standing right there. By
5 then I see Cutty and Dubba coming from that way, so I
6 pulled up, they get in the van, and we made a left.

7 Soon as we get like down some, then on Swella
8 street by the way, soon as we get down some, that's
9 when the police officer -- we was on this side of the
10 road, police officer came this way. That's when they
11 turned behind us. That's when Dubba was like drive,
12 drive, so I hit the gas and made a right. And it was a
13 little slant road, so like when I made that right. So
14 I just hit the gas, and I lost the police.

15 Q And you never drove down this road and back up,
16 you never drove down that road and back up
17 (indicating)?

18 A No, sir.

19 Q So you were parked with the back of your van to
20 these woods?

21 A Yes, sir.

22 Q You saw a man out here looking at you
23 (indicating)?

24 A Yes, sir.

25 Q While you were talking to Conswella?

1 A Yes, sir.

2 Q You drove up here, went over there (indicating),
3 turned around and came back?

4 A Yes, sir.

5 Q Why did you do that?

6 A To make it seem -- don't -- all right, if somebody
7 out in front of y'all house, it looks suspicious. So I
8 would try to stay hide, I went that way and I turned
9 around and came back.

10 Q Well, you're friends with Conswella, you have a
11 conversation with Conswella; right?

12 A That don't matter, sir. That do not matter.

13 Q Okay. Well, let me ask you this. Did you tell
14 the police that Dubba and Cutty came and got in the
15 van, and then you cranked up the van and you left?

16 A I told them that -- I told them what exactly I
17 just told you. They came out the house. I was already
18 pulling up when I seen them coming out the house, sir.
19 I never said they got in no -- came back to no lady and
20 got in. I say I crank the car and was driving up,
21 that's when Dubba and him was coming out, I seen them
22 coming out.

23 Q And I think you indicated also, let me be clear
24 about this, you never heard any gunshots?

25 A No, sir.

1 Q And --

2 A Conswella never heard no gunshots either.

3 Q Conswella never heard any gunshots. And you
4 didn't know that anything out of the ordinary had
5 happened?

6 A Hear me, sir, can I ask you a question, sir?

7 THE COURT: No. I'm sorry, but that's not the way
8 it works. You can't ask a question. You have to
9 answer the question that he asked --

10 THE WITNESS: No, sir.

11 THE COURT: -- if you can. All right?

12 THE WITNESS: Yes, sir.

13 THE COURT: Go ahead, Mr. Canty.

14 MR. CANTY: Thank you, Your Honor.

15 Q You didn't hear any gunshots, and Conswella will
16 say she didn't hear any gunshots; correct?

17 A No, sir.

18 Q And did Carnail and Mr. James, they come casually
19 walking out of the trailer, and you pulled up and met
20 them?

21 A Fast walking. They weren't running or anything.

22 Q They were not --

23 A That's why I didn't think nothing of it.

24 Q Not running?

25 A No. That's why I didn't think anything of it.

KEIR JOHNSON-CROSS BY MR. CANTY

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1 Q Nothing to make you suspicious --

2 A No, sir.

3 Q -- that anything had gone wrong?

4 A No, sir.

5 Q Okay. So when you drove up to that highway,
6 Highway 548, here sometimes called Brown Swamp Road,
7 when you left the trailer park and got up onto that
8 road, nothing out of the ordinary, you thought you'd
9 just score some cocaine?

10 A Can you talk into the mike because I can't hardly
11 hear you, sir.

12 Q You thought nothing out of the ordinary happened,
13 you just scored some cocaine?

14 A Yes, sir.

15 Q And you were getting an ounce of crack?

16 A Yes, sir.

17 Q Did you ask Carnail or Mr. James, where's my
18 crack?

19 A No.

20 Q Can I see my ounce of crack?

21 A No, sir. Because I didn't have time to ask. Soon
22 as we turned off the road, the police was coming up.

23 Q So you didn't have any curiosity --

24 A No, sir.

25 Q -- about whether or not they were successful --

1 A No, sir.

2 Q -- in buying crack for you?

3 A No, sir.

4 Q Okay. And the first hint that you had that
5 something was wrong was Carnail -- the police car goes
6 by -- Carnail pulls out a gun which you'd not seen --

7 A He told me to, drive, drive, drive, and I hit the
8 gas.

9 Q And you described that gun as a .40 or a .45;
10 correct, .40 or a .45, isn't that what you told the
11 detective?

12 A Yes, sir.

13 Q And after he said, drive, drive, drive, you saw
14 the county policeman's brake lights. And you saw him
15 in your rearview mirror turning around, and you saw
16 those blue lights; didn't you?

17 A Yes, sir. Tell you the truth, I wasn't even
18 paying them blue lights no attention. I just hit the
19 gas when he told me to drive.

20 Q Okay. Carnail puts the gun to your head, says,
21 drive, drive, go, go?

22 A All right. Somebody got some gun to your head,
23 and all that just happen, you going -- you going to
24 drive; right?

25 Q And then he throws the gun out the window?

KEIR JOHNSON-CROSS BY MR. CANTY

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1 A After we -- when we left -- like when we was on
2 the high speed chase, he threw the gun out the window.
3 I had the police for a distance, sir.

4 Q That's what you told the detective; correct?

5 A Yes, sir.

6 Q Okay. And then, well, Mr. James, he's got a
7 revolver?

8 A Yes, sir.

9 Q He passes it to Dubba. And correct me, I don't
10 know, did you say he pointed at you before he threw it
11 out the window, or he just threw it out the window?

12 A Threw it out the window, sir.

13 Q Okay. And up till that point you didn't know that
14 there were any guns in the van?

15 A No, sir.

16 Q Okay. So you're an innocent victim in this, you
17 were just going to buy some -- an ounce of crack?

18 A I'm not all the way innocent because I drove over
19 there, sir.

20 Q Okay. But you only drove over there to get an
21 ounce of crack?

22 A But if I would have never took them over there,
23 none of this would have never happened, sir.

24 Q And you didn't know that there was going to be a
25 home invasion and armed robbery?

1 A No, sir. No, sir.

2 Q And you certainly didn't know that Keia was going
3 to get shot?

4 A No, sir.

5 Q Did you know Keia?

6 A Yes, sir.

7 Q Now, in your third statement did you say you
8 picked up Carnail and Cutty on Ninth Avenue?

9 A I don't remember that, sir.

10 Q In your fourth statement did you say you picked
11 Carnail up at his house and that you were surprised to
12 see Cutty with him?

13 A Yes, sir. I remember that.

14 Q Now, in the third statement did you say Carnail or
15 Dubba said that he had shot a dog?

16 A Yes, sir.

17 Q And did you testify earlier that Carnail said that
18 he had to shoot the bitch?

19 A Yes, sir.

20 Q And then subsequently you said Carnail said, I had
21 to shoot that MF'er?

22 A I said it.

23 Q Did he say all of those things or one of those
24 things?

25 A He said, I think I just shot that motherfucker.

KEIR JOHNSON-CROSS BY MR. CANTY

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1 Q Either of them have masks on?

2 A Sir, I didn't see no masks, sir.

3 Q Either of them have gloves on?

4 A Blue latex gloves.

5 Q They had blue latex gloves?

6 A (Nodding affirmatively.)

7 Q Where are they?

8 A I don't know. You say where they at now, I don't
9 know where they at.

10 Q Were they still -- was he still wearing them when
11 he pointed the gun at you?

12 A No, sir.

13 Q Did they have the gloves on when they got out of
14 the van to go buy the crack?

15 A They didn't have no gloves on. They had gloves
16 on -- they had -- like they were throwing the gloves --
17 it was dark. Like they were throwing the gloves while
18 we was in the woods.

19 Q Say that again, I'm sorry.

20 A They threw the gloves while we was in the woods,
21 sir.

22 Q Okay. So when you abandoned the van at the place
23 where it was abandoned, they still had the gloves on?

24 A I don't -- I didn't see -- I didn't see them in no
25 car with no gloves, sir. I didn't see them get out no

1 car with no gloves.

2 Q Okay. So the gloves must have still been in the
3 van?

4 A Only thing must have been.

5 Q In your third statement did you say, I've never
6 seen Dubba with a gun prior to this? And in your
7 fourth statement did you say, Dubba is known to carry
8 guns?

9 A I don't recall -- I don't recall saying that. I
10 ain't even know him carry a gun. I just said never
11 seen that man with no gun, that man ain't usually have
12 no gun. That man don't want to fight you. That man
13 don't -- I never seen him have no gun.

14 Q In your third statement did you say that you
15 stopped to get gas on the way to Splurge's house?

16 A Like I said before, I can't remember. I know that
17 I -- I can't remember if I said I stopped to go get gas
18 or not. I know that I was at the gas station, sir.

19 Q Did you get --

20 A Before all this happened.

21 Q Do you remember in the fourth statement you said
22 that you got yourself a cigar?

23 A Yes, sir. Because I smoke weed.

24 Q And I think you said that Conswella and your
25 grandmother are best friends; is that right?

KEIR JOHNSON-CROSS BY MR. CANTY

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1 A My grandmother know Conswella, yes, because she
2 used to come at Mr. Call house, dude that just talk to
3 my cousin.

4 (Court reporter asks for clarification.)

5 THE WITNESS: She used to come to the dude name
6 Mr. Call house, Conswella, she used to talk to Mr.
7 Call. That's how my grandmom know who she is.

8 Q In your third statement you said you saw Billy
9 Freshley earlier that day, but he has nothing to do
10 with this?

11 A The man don't got nothing to do with it.

12 Q And the phone records indicate that you had a
13 phone conversation with Billy at 2:48 a.m.,
14 approximately 17 minutes before Keia was shot; is that
15 correct?

16 A I don't remember no -- I don't remember, sir. If
17 the phone records say it, then maybe I did.

18 Q And the third and fourth statement you have
19 maintained consistently that there were three people in
20 the van; correct?

21 A Three people, yeah, me, him and Cutty.

22 Q Okay. And you've never told anyone there was a
23 fourth person that law enforcement has never
24 interviewed?

25 A I don't know a fourth person.

1 Q Do you know what kind of gun killed Keia?

2 A No, sir.

3 Q In your third statement when you first came clean,
4 did you tell the detective, I haven't talked to Cutty,
5 you can look at my phone records?

6 A Huh?

7 Q I haven't talked to Cutty, you can look at my
8 phone records.

9 A Didn't talk to Cutty, sir.

10 Q Okay. But there is a telephone connection between
11 Cutty's phone --

12 A This dude, I just said that, sir.

13 Q -- and your phone at 1 a.m., and then a second
14 call at 12 minutes after one; does that sound right?

15 A I don't know, sir.

16 Q You don't know, okay. And how were they dressed?

17 A Can you repeat that question.

18 Q How were they dressed?

19 A I just told that man the same thing, a black
20 shirt, blue shorts -- blue jeans, sir.

21 Q And you were wearing shorts, you said, cargo
22 shorts?

23 A Yes, sir. Dark blue cargo shorts and a black
24 midnight shirt.

25 Q And this was November and the temperature was in

KEIR JOHNSON-REDIRECT BY MS. LIVESAY

1 the fifties; is that correct?

2 A I'm from Baltimore, we get snow up there.

3 Q Okay. Well, that explains it.

4 MR. CANTY: Court's indulgence.

5 THE COURT: Yes, sir.

6 Q So when Dubba called you, you looked at your
7 phone, it said Cutty?

8 A Yes, sir.

9 Q And you told the detective that when you went and
10 picked up Dubba, you were surprised to see Cutty with
11 him?

12 A Yes, sir.

13 MR. CANTY: Okay, that's all I have.

14 THE COURT: Redirect, solicitor?

15 MS. LIVESAY: Just a few, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. LIVESAY:

18 Q Mr. Johnson, they've asked you about several
19 statements. I just want to clarify.

20 A Yes, ma'am.

21 Q I know you're tired, I'm going to make it brief.
22 I'm going to show you two statements. These were the
23 ones, and correct me if I'm wrong, that you gave after
24 you had an attorney?

25 A Yes, ma'am.

1 Q Okay. And your attorney, is he here today?

2 A Yes, ma'am. Right there (indicating).

3 Q Okay. Mr. Hazzard?

4 A Yes, ma'am.

5 Q And you talked to Damon Vescovi on April 24th,
6 2012.

7 A I don't know who that is.

8 Q Okay. Is this -- can you breeze through this for
9 me real quick and see if that sounds familiar to you.

10 A Yes, ma'am, that's what I'm saying, I had picked
11 Dubba up from Ninth Avenue.

12 Q Okay. So that -- does that sound familiar?

13 A Yes, ma'am.

14 Q Okay. Now, I'm going to show you this one, this
15 is the interview from May 15th, 2014. Do you want to
16 breeze through it and see if this sounds familiar and
17 you remember it. Thank you.

18 A Yes, ma'am. That's what I had on.

19 Q Does that refresh your memory?

20 A Yes, ma'am.

21 Q Okay. And in both those statements, who did you
22 say the two boys were that went into that trailer in
23 Brown Swamp?

24 A Cutty and Dubba.

25 Q Who?

KEIR JOHNSON-REDIRECT BY MS. LIVESAY

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1 A Cutty and Dubba.

2 Q Okay. And who today are you saying went into that
3 trailer in Brown Swamp?

4 A Cutty and Dubba.

5 Q Okay. Now, you testified earlier about the guns
6 that you saw?

7 A Yes, ma'am.

8 Q Okay. You said a .38?

9 A A revolver. I know it was a revolver, .38, .357,
10 whatever.

11 Q Okay.

12 A It was a revolver.

13 Q I'm going to show you what's State's Evidence No.
14 64. Do you know what kind of gun that is?

15 A It look like a .357 to me. It look like a .357 to
16 me.

17 Q Okay. And how about this gun?

18 THE COURT: What number is that?

19 THE WITNESS: I don't know what kind of gun that
20 is.

21 MS. LIVESAY: I'm sorry.

22 Q I'm showing you State's Evidence No. 65.

23 A What, that's a .22 caliber, what, a .44, .357, I
24 don't know what it is.

25 Q Okay. So you don't know this type of gun?

1 A Because it can be --

2 Q Okay.

3 (Court reporter asks for clarification.)

4 THE WITNESS: It can be a -- it can be a bullet
5 .22 caliber or it can be a .357 or a .44 or something
6 like that.

7 Q Okay. So you wouldn't say you were an expert
8 exactly when you saw a gun what type it would be?

9 A Yes, ma'am.

10 Q You got a little knowledge but not a whole lot?

11 A Yes, ma'am.

12 Q Okay.

13 MR. CANTY: Object to the leading, Your Honor.

14 THE COURT: Don't lead your witness, ma'am.

15 Q Now, they've asked you a lot of questions about
16 you didn't mention Michael Pyatt; do you remember them
17 asking about that?

18 A No, ma'am.

19 Q Okay.

20 A I don't remember. No, say that again because I
21 didn't really catch the whole thing.

22 Q Okay. Did you give Damon Vescovi and Ginger Pop
23 the information you thought was important about that
24 night?

25 A Yes, ma'am.

KEIR JOHNSON-REDIRECT BY MS. LIVESAY

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1 Q Okay. And that was that these two boys went into
2 the mobile home?

3 A Yes, ma'am.

4 Q Okay. So you gave them the information you
5 thought was important?

6 A Yes, ma'am.

7 Q And you told them both times that you drove the
8 van?

9 A Yes, ma'am.

10 Q Okay. Did you go in the mobile home?

11 A No, ma'am.

12 Q Did you have a gun?

13 A No, ma'am.

14 Q Did you throw a gun away?

15 A No, ma'am.

16 Q Okay. Now, who called you that night --

17 A It was --

18 Q -- to come pick them up?

19 A -- Dubba, but it was off of Cutty phone.

20 Q Who did?

21 A Dubba, but it was off of Cutty phone.

22 Q Okay. Now, which one is Dubba?

23 A The one with the tie on.

24 Q Okay. And he's the one with the tattoos of your
25 name and Cutty's name?

1 A Yes, ma'am.

2 MR. CANTY: Object to the leading, Your Honor.

3 THE COURT: Solicitor, don't lead your witness.

4 MS. LIVESAY: I'm sorry, Your Honor.

5 Q And who is the guy sitting here in the green
6 shirt?

7 A Cutty.

8 Q Okay. And when you are talking about the two guys
9 going in the mobile home, are these those two guys?

10 A Yes, ma'am.

11 MS. LIVESAY: No further questions, Your Honor.

12 THE COURT: Mr. Frederick?

13 MR. FREDERICK: No, sir.

14 THE COURT: Mr. Canty?

15 RECROSS-EXAMINATION

16 BY MR. CANTY:

17 Q You gave them all the information you thought was
18 important except the part about how you got from the
19 van to where the detective met you, you left that part
20 out?

21 A No, I didn't, sir. I said Michael Pyatt came and
22 got me, sir.

23 Q Except --

24 A Yes.

25 Q -- there's no record of that up till now?

KEIR JOHNSON-RECROSS BY MR. CANTY

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1 A I don't know, sir. I just know Mike Pyatt came
2 and picked me up.

3 MR. CANTY: That's all.

4 THE COURT: All right. You may step down, sir.

5 (Witness excused.)

6 THE COURT: Would you like to release him from the
7 subpoena, solicitor?

8 MS. LIVESAY: Yes, sir, Your Honor.

9 THE COURT: Any objection?

10 MR. FREDERICK: No objection.

11 THE COURT: Mr. Canty?

12 MR. CANTY: None, Your Honor.

13 THE COURT: You are released from the subpoena,
14 sir. All right, ladies and gentlemen, I appreciate
15 your patience with the Court in allowing us to finish
16 this witness in its entirety without breaking it up. I
17 appreciate that.

18 With that, I'm going to give you a break and ask
19 you to be back at 3 o'clock. It's a quarter of two
20 now, so I know up to -- as much as I appreciate that --
21 but quarter to two, be back at 3 o'clock. Thank you
22 very much. Everyone else remain seated while the jury
23 retires.

24 (WHEREUPON, the jury exited the courtroom at
25 1:46 p.m.)

1 THE COURT: Sure.

2 MR. FREDERICK: Judge, also, for purposes of the
3 proffer, may I mark this.

4 THE COURT: Okay, yeah, sure.

5 MR. FREDERICK: Just for identification only.

6 (WHEREUPON, Defendant's Exhibit No. 8 was marked
7 for identification only.)

8 (WHEREUPON, the jury came into open court at
9 approximately 3:35 p.m.)

10 THE COURT: All right, solicitor, your next
11 witness, please, ma'am.

12 MS. LIVESAY: Thank you, Your Honor. At this time
13 the State calls Mrs. Heather von Herrmann to the stand.

14 THE COURT: Please come around and be sworn,
15 ma'am.

16 HEATHER VON HERRMANN, after being duly sworn,
17 testified as follows:

18 CLERK OF COURT: Please be seated. State your
19 full name, spell your last name for the Court, please.

20 THE WITNESS: My name is Heather von Herrmann,
21 H-E-A-T-H-E-R, little V-O-N, capital H-E-R-R-M-A-N-N.

22 THE COURT: Go ahead, solicitor.

23 DIRECT EXAMINATION

24 BY MS. LIVESAY:

25 Q Ms. von Herrmann, where are you currently working?

HEATHER VON HERRMANN-DIRECT BY MS. LIVESAY

1 A I am self-employed. My husband and I are both
2 attorneys.

3 Q Okay. And where were you working prior to private
4 practice?

5 A At the Horry County solicitor's office.

6 Q Okay. And how long had you worked at the
7 solicitor's office?

8 A I was there for about 13 years.

9 Q Okay. And where did you work prior to the
10 solicitor's office?

11 A I was in private practice in Columbia, South
12 Carolina, and I was also a judicial law clerk.

13 Q Okay. And while you worked at the solicitor's
14 office, what were your responsibilities?

15 A I handled the criminal prosecution of various
16 cases. The policy in the office is that most
17 solicitors in the office handle a wide variety of
18 cases, and I was no exception. I handled a wide
19 variety of cases during the time that I was there.

20 Q Okay. And did you handle Mr. Keir Johnson's
21 pending charges?

22 A I did.

23 Q Okay. And were some of those charges dismissed?

24 A Yes, they were.

25 Q And if you don't mind, tell the jury why those

1 charges were dismissed.

2 A Well, he had a -- I'll start here. He had a
3 charge that he was arrested for on April the 28th of
4 2013. That was a burglary first and an assault and
5 battery first. The victim in that case was a Ladesha
6 Hill. She was the girlfriend of Mr. Johnson.

7 And at the time that this case was pending, she
8 came to our office and asked that the case be
9 dismissed. She told me that she and Mr. Johnson had
10 been in an argument, that it was a mutual combat type
11 situation and that he had not broken into that house.

12 So based on the victim's assurances to me that it
13 was not what it initially appeared to be, that case was
14 dismissed. And I sent a letter to the police officer
15 and also to her indicating that it was being dismissed
16 because the victim requested it.

17 There was also an armed robbery case and a
18 possession of a weapon, and that was a case that was
19 handled by another solicitor, Bo Bryan, previous to me.
20 It happened in October -- on October 14th of 2009. The
21 victim in that case was -- let me check real quickly,
22 want to make sure I'm telling you the right thing -- a
23 Kamisha Dolly.

24 After we looked into this case, we found out that
25 Ms. Dolly was someone who had some affection for

1 Mr. Johnson which was not reciprocated. Mr. Johnson
2 had another girlfriend at the time. She had reported
3 to the police that he had struck her and taken \$7 out
4 of her pocket. She gave a description of the clothing
5 that he was wearing, alleged to be wearing on that
6 particular day.

7 The police came and executed a search warrant at
8 his grandmother's house. It was alleged that he had a
9 gun with him, and this search happened very shortly
10 after the alleged crime. And when they got there, they
11 found that Mr. Johnson was asleep in his bedroom, that
12 the clothing that he was wearing did not match the
13 description that had been given, and they searched the
14 house and there was no weapon recovered. They searched
15 outside as well. It was just not a prosecutable case.

16 We try to do our best as solicitors to go through
17 and to look at these cases and find the ones that we
18 feel like are prosecutable and carry those cases
19 forward. And ones that we, you know, don't feel like
20 there's sufficient evidence to bring to a jury, we
21 dismiss.

22 Q Did you --

23 A And so I believe those are the charges that were
24 dismissed on Mr. Johnson. Of course, at that time the
25 murder charge was pending, and obviously I did not

1 dismiss that. And there was a use of a vehicle without
2 permission, I believe, that was pending as well.

3 Q So the dismissals on the other case didn't have
4 anything to do with any statement Keir Johnson gave?

5 A No.

6 Q Okay.

7 A No. They were dismissed on their own merit for
8 lack of evidence.

9 Q Okay. And were you also the prosecutor on Carnail
10 Graham, Dubba, and Thomas Booker James, Cutty's, cases
11 as well?

12 A I was for a period of time.

13 Q Okay. And when did you get those cases?

14 A I was called out to the scene when the murder took
15 place. I was there on that particular date, and then
16 the file came in sometime subsequent to that. It
17 normally takes, you know, about a month to actually get
18 the file in. But I had the file from that time until
19 when it was transferred out when I left the solicitor's
20 office.

21 Q And when did you leave the solicitor's office?

22 A It was, I believe, October of last year.

23 Q Okay. So you only had the case about a year?

24 A I think that's correct.

25 Q Year and a half, okay. Have you had any --

HEATHER VON HERRMANN-CROSS BY MR. FREDERICK

1 A Well, actually, I would have had it for two years.

2 Q Okay. And have you had anything to do with this
3 case whatsoever since you left our office in October
4 of 2013?

5 A No, no.

6 Q Okay. Have you made any decisions regarding the
7 preparation for this trial?

8 A No.

9 Q Okay. Have you been consulted on any issues as to
10 any aspect of the preparation for the trial we're here
11 for today?

12 A No, I have not.

13 MS. LIVESAY: Okay. No further questions, Your
14 Honor.

15 THE COURT: Cross-examination.

16 MR. FREDERICK: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. FREDERICK:

19 Q Ms. von Herrmann?

20 A Yes.

21 Q The assault and battery charge against Mr. Keir
22 Johnson?

23 A Yes.

24 Q Did you state that was dismissed because, I guess,
25 lack of cooperation from the victim?

1 A Dismissed at the request of the victim, yes.

2 Q Okay. And in that case, it was alleged that

3 Mr. Keir Johnson cut her with a knife?

4 A It was.

5 Q And she was running, screaming, covered with blood
6 to a police officer?

7 A Correct.

8 Q And immediately after she ran to the police
9 officer covered with blood screaming, they went to find
10 him and he ran from the police?

11 A He ran from the police and he was cut as well,
12 which would substantiate her later coming to me and
13 saying it was a mutual combat situation, I'm the one
14 who started it. You know, I did whatever it was that I
15 did, we got into an argument. I did something to him,
16 he did something to me.

17 Q There wasn't any problem with the police officer
18 as a witness; was there?

19 A With the?

20 Q The police officer who she ran to.

21 A I could have -- I could have certainly used that
22 police officer as a witness. But being a defense
23 attorney yourself, Mr. Frederick, I know that you would
24 be the first one to tell me that where your victim is
25 non-cooperative that it's very, very difficult to get a

HEATHER VON HERRMANN-CROSS BY MR. FREDERICK

1 conviction on those type cases.

2 Q I understand that. You were the prosecutor
3 beginning at the date of the incident?

4 A Yes.

5 Q And that was in November of 2011?

6 A Yes, it was.

7 Q And you were the prosecutor for Thomas Booker
8 James as well as Keir Johnson?

9 A That's right.

10 Q And Carnail Graham?

11 A Right. I think they were arrested later. But
12 yes, Mr. Johnson was the first defendant arrested.

13 Q Yes. Until, I think you said, October of last
14 year?

15 A I believe that's correct, sometime in October.

16 Q Okay. And in this case, while you were the
17 prosecutor, as the prosecutor in the case did you
18 receive returns from search warrants for cell phone
19 records?

20 A I don't. I'm sure that if that was done during
21 the time that I had the file, that the police would
22 have provided us a return or should have provided us a
23 return which would have gone in the file. But as to a
24 specific recollection, I don't have a specific
25 recollection of receiving that return.

1 Q Do you have any knowledge as to whether Keir
2 Johnson's records were analyzed specifically?

3 A No, not specifically. Although it does seem to me
4 that there was some issue that they used the cell
5 phones in some way to place him near that crime scene.
6 I do have some memory of that.

7 Q Right. That's -- and that's part of the probable
8 cause on the warrant; would that sound right?

9 A That -- yes.

10 Q Okay. Were -- do you know if any other cell
11 phones were analyzed, cell phone records?

12 A I don't recall.

13 Q Okay. Do you know, if they were analyzed, what
14 expert would have been used to analyze them?

15 A It depends. It may be they may have somebody at
16 the local police department who does it. They could
17 have sent it out to SLED. I mean, there are a variety
18 of people who do that type of analysis, and I don't
19 know who was used in this case.

20 Q Or if anyone was used?

21 A Or if anyone was used.

22 Q Okay. While you were the prosecutor on the case,
23 if you recall, were the cell phone records received in
24 response to the search warrants provided to us, the
25 defense?

HEATHER VON HERRMANN-CROSS BY MR. FREDERICK

1 A That I don't know.

2 Q I'm assuming you did not ask the detective to
3 analyze the records?

4 A I don't -- I don't believe that I asked the
5 detective to do it. I know that -- let me -- let me
6 say this. There was a detective over there who had
7 done some training with cell phone records, and I
8 believe that he may have taken a look at Mr. Johnson's
9 records there initially before the warrant was obtained
10 for him. I do not know about either your client or
11 Mr. Canty's client.

12 Q Okay. And would that be Detective Vescovi?

13 A Yes.

14 Q Okay. Were you a responder at the crime scene in
15 this case?

16 A I was not an official responder, I don't think,
17 but one of my duties at the solicitor's office was to
18 go to those scenes. And I did report to that
19 particular scene, yes.

20 Q And that's normal; right?

21 A Yes, it is.

22 Q Yes. Are you aware whether there were shoe
23 impressions taken at the crime scene?

24 A I don't remember whether shoe impressions were
25 taken or not.

1 Q And I'm assuming you don't know if shoe
2 impressions were analyzed that were taken from the
3 crime scene?

4 A No, I don't. I don't.

5 MR. FREDERICK: Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: Mr. Canty?

8 MR. CANTY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CANTY:

11 Q Do you recall in March of last year when we
12 appeared before Judge Cottingham on a motion hearing?
13 If you don't, that's fine.

14 A I do not recall the specifics of it. I do know
15 that we -- that you and I had some hearings in this
16 matter. It looks like you have a transcript, and I'll
17 be happy to review that if that will help me to answer
18 any questions you have.

19 Q Certainly. And I direct your attention to the
20 bottom of page eight.

21 MS. LIVESAY: Your Honor, if you don't mind, I'd
22 like to take a look at it.

23 THE COURT: All right. Sure.

24 MS. LIVESAY: Your Honor, at this time I'm going
25 to have to object. I'm not sure the relevancy of

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1 bringing up a hearing that appears to be from --

2 THE COURT: Well, how about letting me look at the
3 transcript, please.

4 MR. CANTY: (Indicating.)

5 THE COURT: Mr. Canty, this is a bond hearing and
6 a decision by the Court on the bond. Is that what
7 you're going to be asking Ms. von Herrmann about?

8 MR. CANTY: As I indicated, I was going to direct
9 her attention to the bottom of page eight, and I don't
10 want to offer the entire transcript into evidence. I
11 think it would probably have to be redacted in some
12 portion, but solely for the proposition regarding the
13 witness against my client.

14 THE COURT: Well, I appreciate that. But there
15 was no ruling by the Court. The matter was never
16 addressed by the Court.

17 MR. CANTY: Well...

18 THE COURT: It's -- nowhere in the transcript is
19 that matter addressed by the Court. You made a
20 statement, Ms. von Herrmann made a statement, the Court
21 never ruled on it.

22 MR. CANTY: I just want to ask her if there was a
23 witness against my client. And I assume her answer
24 would be the same.

25 THE COURT: Okay. So you want to ask her, and she

1 can say yes or no, and that's it?

2 MR. CANTY: Correct.

3 THE COURT: All right. Very good, I'll let you
4 ask the question.

5 MR. CANTY: Very good.

6 THE COURT: Why don't you just ask her the
7 question. She may or may not need this to answer the
8 your question. Why don't you ask the question.

9 Q You opposed bond for my client; correct?

10 A Yes.

11 Q And you've indicated to the Court that there was a
12 witness against my client?

13 A There were a number of witnesses, yes.

14 MR. CANTY: Your Honor, I think we need the
15 transcript, then. Can I ask her to refer to the bottom
16 of page eight of the transcript.

17 THE COURT: All right.

18 THE WITNESS: Sure, thank you. Okay, I'm looking
19 at it.

20 Q And one of those witnesses obviously was Bootsie;
21 correct?

22 A Yes, that's correct.

23 Q And you refer at the bottom of page eight there to
24 a witness, singular?

25 A Yes.

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1 Q That is March of 2013?

2 A Right.

3 Q And in the matter of Kamisha Dolly, do you know
4 when in 2009 she alleged that Bootsie had attacked her
5 and robbed her, what date or even what month in 2009?

6 A The indictment reflects that it would have been
7 October the 14th of 2009.

8 Q And I think your testimony was that your
9 recollection from reviewing the file was that the
10 police had promptly executed a search warrant?

11 A Let's see. It appears in looking at what I have
12 here that they went immediately to the grandmother's
13 house. And she stated that her grandson was inside the
14 residence, and consent was given by the grandmother to
15 enter that residence. So it may -- it may -- initially
16 they may have gone in just via consent. But it does
17 seem to me like there was a -- there was a search
18 warrant as well on that same date.

19 Q But it was an immediate search?

20 A It appears from the report that it was. I wasn't
21 there, obviously.

22 Q And there was no weapon found that matched the
23 weapon described by the victim?

24 A I don't see that they recovered any weapon.

25 Q Okay. Well, I thought you indicated on

1 examination by Mr. Frederick that the reason that you
2 dismissed the robbery and possession of a weapon during
3 a violent crime was because the search reflected no
4 weapon matching the description, and the clothing did
5 not match that he was wearing?

6 A Right, I think that's correct.

7 Q And that was in October of 2009?

8 A Yes.

9 Q Now, Bootsie flipped and gave his statement April
10 the 24th of 2012; correct?

11 A April 24th of 2012, yes.

12 Q And 20 days later on the 17th of May, that robbery
13 and weapons charge was dismissed?

14 A That's correct.

15 Q And I don't think there's any question but that
16 when Bootsie was initially arrested on the morning of
17 the shooting that he gave a story that was a fairytale?

18 A I don't recall. I wasn't there when they took his
19 statement and I -- I recall in very general terms what
20 his statement was. But I can't tell you point by point
21 what he -- what he said.

22 Q Detective Vescovi got a warrant for his arrest for
23 use without permission that morning?

24 A That's correct.

25 Q And he handcuffed him and put him in jail?

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1 A Yes.

2 Q Okay. And the April 24th statement when he
3 flipped, that completely contradicted the statement he
4 gave the morning of November the 8th about being
5 carjacked, that he was carjacked, somebody took the
6 van?

7 A Yes.

8 Q Okay.

9 A Yes, it did.

10 Q Was he -- was he charged with giving false
11 information?

12 A Not that I recall.

13 Q Did he agree to plead?

14 A I -- I don't know that we ever got to the point
15 where we discussed plea deals. It -- he certainly did
16 give a confession, for lack of a better term, to his
17 participation in these activities when he entered into
18 that proffer agreement. And the terms of the proffer
19 agreement are that we wouldn't -- that we wouldn't
20 dismiss that charge or anything like that.

21 We don't -- we don't give cooperating
22 defendants -- it's not a quit pro quo -- if you
23 cooperate, you don't get your charges dismissed.
24 That's not the way that it works.

25 The way that it works is that you provide -- as a

1 cooperating codefendant, if you provide information
2 that we can go back and verify, then we take that
3 information into account. And at the time that that
4 person pleads guilty -- and when they sign that proffer
5 agreement, it is contemplated that they are going to
6 plead guilty. And so the only thing that we promise
7 them is that at the time that you plead guilty to this
8 charge, we will inform the judge of your level of
9 cooperation.

10 Because the fact of the matter is that we as
11 prosecutors don't sentence defendants, judges sentence
12 defendants. And so we tell them that we will provide
13 the judge information about their lack of
14 cooperation -- I mean, about their level of cooperation
15 and what we were able to do to advance the case as a
16 result of that level of cooperation.

17 Q Were you aware that he had filed a pro se motion
18 that included a written, sworn statement, a notarized
19 statement, wherein he said, I am innocent and I am
20 guilt free?

21 A I don't recall that.

22 Q Okay. And you indicated that Carnail and Thomas
23 James were arrested sometime later, that would have
24 been after Bootsie flipped on April 24th and gave that
25 statement?

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1 A Yes. Their names were provided to the police by
2 Mr. Johnson, and that's what caused, initially caused
3 the police to look at those two as possible suspects.

4 Q In fact, they got warrants and served warrants on
5 them, charged them with murder a few days after they
6 had the statement from Bootsie?

7 A I don't -- I can't tell you what the dates.
8 Obviously they were subsequently charged.

9 Q And at least in March of 2013, you were opposed to
10 any bond for Carnail, and you were successful in that
11 opposition?

12 A Yes.

13 Q But after April at 24th when Bootsie flipped, did
14 you enter into a consent order for bond?

15 A I did.

16 Q And as a consequence of that, was Mr. Bootsie
17 shortly thereafter released from the detention center?

18 A Right. That was -- I believe that -- that you're
19 referring to a bond that would have been given to him
20 on that burglary first and the assault and battery
21 first. Is that the bond that you're referring to?

22 Q I thought that crime didn't occur until after he
23 had been released on bond for the murder.

24 A Okay, I'm sorry. I'm just not familiar with
25 what -- which bond you're referring to.

1 Q Murder.

2 A Okay.

3 Q You entered in a consent order with his attorney
4 for bond, he made bond, he got out of jail --

5 A Yes.

6 Q -- in May, the following month?

7 A Right.

8 Q And May was also when the robbery and weapons
9 charge were dismissed by you?

10 A The?

11 Q Robbery.

12 A And the weapons charge.

13 Q Weapons charge.

14 A That charge, yeah, let's talk -- I'll tell you a
15 little bit about that particular charge. As I said, we
16 had -- we had some issues from a prosecution
17 standpoint, as I mentioned earlier, on this particular
18 case.

19 At that time the Supreme Court had issued sort of
20 an edict to prosecutors and had established something
21 called cooperative case management that required us to
22 -- it was -- there was a large push in our office to
23 dismiss cases that were sort of dead weight that were
24 not prosecutable cases.

25 And a number of cases that were old cases like

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1 this one that we didn't feel like were prosecutable
2 were dismissed around that period of time. This was
3 one of them, and of course there were a number of other
4 defendants that were -- whose cases were dismissed as
5 well. That did not have anything to do with his --
6 with Mr. Johnson's proffer.

7 The bond, on the other hand, did have something to
8 do with Mr. Johnson's proffer. Because at that point
9 he had come forward, he had cooperated, we were able to
10 verify some things that he had told us, and as a result
11 of that we believed that he was not a principal, that
12 he was not someone who had entered the house, that he
13 was not responsible for the things that happened in
14 that house. And as a result of that, although he was
15 still charged with the murder, we didn't feel like his
16 culpability was equal to the culpability of these
17 defendants, for instance.

18 And so as a result of that, his lawyer,
19 Mr. Johnson's lawyer, who is Ron Hazzard from the
20 public defender's office, and I talked about the case
21 and how -- what we were going to do going forward. And
22 I consented at that time to allow him to be released
23 from the J. Reuben Long Detention Center on a surety
24 bond that was a \$15,000 surety bond. So that he did
25 have to post that, it wasn't a -- he didn't just walk

1 out. And he had a bondsman who he'd have to report to
2 and that sort of thing.

3 But I think in answer to your question was, yes,
4 that that bond, my consenting to that bond certainly
5 had something to do with his level of cooperation.

6 Q The police immediately investigated the claims of
7 Kamisha Dolly back in 2009, didn't find the weapon she
8 described, he wasn't wearing matching clothing?

9 A Right. I believe that's correct.

10 Q Fast forward to 2011; and that robbery and
11 possession of a weapon during a violent crime charge is
12 still pending. He was out on bond for that at the time
13 Keia was killed?

14 A That's right. That's right.

15 Q And he was charged with use without permission the
16 morning Keia was killed?

17 A Correct.

18 Q Released on bond?

19 A Yeah. In this case, let me say this. This
20 particular case, the armed robbery and the possession
21 of a weapon, at that time was not my case. This -- it
22 was a case that was being prosecuted by another
23 prosecutor by the name of Bo Bryan. And so this case
24 was actually transferred to me once Mr. Johnson --
25 well, so I didn't have this file until 2012.

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1 So it had been sitting on Mr. Bryan's desk from
2 2009 from the time that, you know, they were arrested
3 until it was transferred to me because of -- I'm
4 assuming because of the other case. And Mr. Bryan left
5 the office as well at that time.

6 Q And the morning Keia was killed, Detective Vescovi
7 got Bootsie's cell phones?

8 A Yes.

9 Q And he got cell phone data?

10 A I believe that he did get some cell phone data.

11 Q And he saw where those cell phones had been and
12 who Bootsie had been talking to?

13 A That I'm not sure of. But I know he did get -- I
14 don't know that he saw who he was talking to. They did
15 do something to sort of determine or triangulate that
16 cell phone and determine whether he was at the -- at
17 the location where this took place.

18 Q And you said there were two things that resulted
19 in my client being charged. Now, the first charging
20 decision, Detective Vescovi went to a magistrate first
21 week in December and said, I've got probable cause --

22 MS. LIVESAY: Your Honor, at this time I'm going
23 to object. I'm not sure -- we're kind of almost going
24 into a preliminary hearing.

25 THE COURT: All right. I appreciate that. And I

1 MS. LIVESAY: Yes, sir.

2 THE COURT: All right. Mr. Frederick?

3 MR. FREDERICK: Yes, sir.

4 THE COURT: And Mr. Canty?

5 MR. CANTY: Yes, Your Honor.

6 THE COURT: Please ask the jury to come in.

7 (WHEREUPON, the jury came into open court at
8 approximately 4:29 p.m.)

9 THE COURT: Okay, Mr. Canty, you may resume, sir.

10 MR. CANTY: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 Q Ms. von Herrmann, I think you will remember saying
13 that there were a number of witnesses against my
14 client; correct?

15 A I think -- I think that's correct. I think that's
16 fair.

17 Q And one of those obviously is the codefendant,
18 Bootsie?

19 A Correct.

20 Q And you indicated at that hearing that there was a
21 witness in addition to Bootsie?

22 A Well, I think what I said was on that particular
23 day there's -- there is another witness, which...

24 Q Okay. And would that refer to Howard Parker, do
25 you know?

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1 A I don't -- I don't recall.

2 Q Do you recall if Howard Parker said he saw Cutty
3 in the van, but he didn't say anything about Carnail?

4 MS. LIVESAY: Your Honor, I'm going to have to
5 object. Ms. von Herrmann, like I say, has not
6 participated in the preparation of this trial. So I'm
7 uncertain how that question is relevant at this point.

8 THE COURT: Well, based upon her response to the
9 prior question, Mr. Canty, she cannot respond to the
10 second question. Move along.

11 MR. CANTY: Very good. That's all I have, Your
12 Honor. I would, however, ask that this matter which
13 was discussed be marked for identification in case that
14 person should take the stand. I would like to
15 cross-examine him on that.

16 THE COURT: Very good. So just mark it, this can
17 be Defendant's identification what number?

18 COURT REPORTER: Nine.

19 THE COURT: Nine, Defendants for identification
20 only 9.

21 (WHEREUPON, Defendant's Exhibit No. 9 was marked
22 for identification only.)

23 MR. CANTY: Thank you. That's all I have.

24 THE COURT: All right, very good. Solicitor,
25 anything else?

1 MS. LIVESAY: No, sir, Your Honor.

2 THE COURT: All right, very good. Ms. von
3 Herrmann, you are released from your obligations. You
4 may go back to your private practice.

5 THE WITNESS: Thank you, Your Honor.

6 (Witness excused.)

7 THE COURT: All right. Solicitor, your next
8 witness please, ma'am.

9 MS. LIVESAY: Yes, Your Honor. At this time the
10 State calls Lynn Baker to the stand.

11 THE COURT: All right. Ms. Baker, come all the
12 way around, please, ma'am. Meet the clerk up here,
13 please, ma'am.

14 LYNN BAKER, after being duly sworn, testified as
15 follows:

16 CLERK OF COURT: Please be seated. State your
17 full name, spell your last name for the Court, please.

18 THE WITNESS: Lynn Baker, B-A-K-E-R.

19 DIRECT EXAMINATION

20 BY MS. LIVESAY:

21 Q Ms. Baker, if you don't mind, tell me where you're
22 currently employed.

23 A Since April of 2013 I'm employed with Horry County
24 Police Department.

25 Q Okay. And how long -- where were you employed

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1 before the police department?

2 A From 1996 until 2006 with the sheriff's
3 department. Then in 2006 from 2013 I was the sergeant
4 over the gang investigations for the sheriff's
5 department.

6 Q Okay. And what are your current responsibilities
7 for the Horry County Police Department?

8 A As an investigator, I'm out on the road more with
9 our street crimes unit, our narcotics unit. I help
10 detectives in any cases they may need where they see
11 that there may be some gang activity going on.

12 Q Okay. And if you don't mind, tell the jury a
13 little bit about what kind of training you've had in
14 gang identification.

15 A I have over 175 hours of classes including gang
16 graffiti, symbols, clothing, trends, tattoos. I've
17 attended conferences in South Carolina, North Carolina,
18 Delaware, Virginia, Texas and Florida. I just
19 completed a 40-hour course at the University of North
20 Florida on street gang terminology.

21 Q And have you ever been qualified as an expert in
22 gang identification?

23 A I have back in January of this year by Judge
24 Cottingham.

25 Q Okay. And was that in general sessions court?

1 A Yes, ma'am, it was.

2 MS. LIVESAY: Your Honor, at this time the State
3 offers Lynn Baker as an expert in gang identification.

4 THE COURT: Do you wish to voir dire the witness
5 or challenge the State's offer, Mr. Frederick?

6 MR. FREDERICK: Briefly judge.

7 THE COURT: Very good, sir.

8 CROSS-EXAMINATION

9 BY MR. FREDERICK:

10 Q Ms. Baker, where did you go to college?

11 A Coastal Carolina University.

12 Q And what was your degree?

13 A I majored in biology just two years.

14 Q Okay. So you have an associate's degree?

15 A Yes, sir.

16 Q Okay. And did you graduate with an associate's
17 degree?

18 A Yes, sir.

19 Q Okay. Any other college apart from that?

20 A No, sir. Everything since I been 21, I been in
21 law enforcement for the last 28 years.

22 Q And your time at the sheriff's department, again,
23 how long was that, the dates?

24 A Started in 1990 -- I'm sorry, 1986. In 2006 I
25 started doing the gang stuff. But until 2013, that

LYNN BAKER-CROSS BY MR. FREDERICK

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1 entire 27 years I was with the sheriff's department.

2 Q Okay. And in Horry County, unlike the rest of the
3 counties in the State, the sheriff's department is not
4 responsible for law enforcement; is that correct? They
5 are responsible for J. Reuben Long and courthouse
6 security; correct?

7 A I wouldn't say that's right. I mean, they do do
8 some stuff out on the road, work events and stuff.
9 That's whatever the sheriff let's them do, to be
10 honest.

11 Q So your job with the sheriff's department was at
12 the jail; right?

13 A My job with the sheriff's department, yes, sir,
14 was at the jail gathering gang intelligence from in
15 2006 until 2013.

16 MR. FREDERICK: Okay, I understand. No other
17 questions, Your Honor.

18 THE COURT: Mr. Canty?

19 MR. CANTY: Your Honor, none provided the witness
20 fully comprehends the Court's previous ruling.

21 THE COURT: All right. Very good, sir. Anything
22 else, Mr. Frederick?

23 MR. FREDERICK: No objection, judge.

24 THE COURT: All right, very good. You may
25 proceed, solicitor.

1 MS. LIVESAY: Thank you, Your Honor.

2 THE COURT: I'm qualifying her to give her opinion
3 in the field of gang identification. Go ahead.

4 REDIRECT EXAMINATION

5 BY MS. LIVESAY:

6 Q And Investigator Baker, if you don't mind, are
7 there regulations that you have to adhere to regarding
8 who you can give an opinion to as a member of a certain
9 gang?

10 A You're talking about as far as the criterias?

11 Q Yes.

12 A There is. And I don't want to -- and I don't know
13 if I said it when we did it yesterday, but I want to
14 make one thing clear so that there's no
15 misunderstanding. South Carolina GangNET and NCIC
16 requires that you have two identifications to enter
17 somebody in these databases for law enforcement.

18 At your time of arrest or while you're
19 incarcerated, if you admit that you're a gang member, a
20 self-admission in itself is a stand alone. Everything
21 else has to be two criterias. And I don't think we
22 discussed that yesterday, we were trying to be brief
23 and short. I just wanted to make that --

24 Q Okay.

25 A -- sure.

LYNN BAKER-REDIRECT BY MS. LIVESAY

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1 Q And are you aware of the gangs that are in the
2 area of Conway, Horry County?

3 A Yes, ma'am, I am. I probably documented over
4 2,000 of them myself.

5 Q Okay. And if you don't mind, address the gangs
6 that are in Conway, Horry County.

7 A There's actually over 44 different gangs in Horry
8 County. That includes North Myrtle Beach, Myrtle
9 Beach, the city of Conway. You want me to try to go
10 through a list by memorization or are you --

11 Q No, ma'am, 44 is probably too many to name.

12 A Okay.

13 Q Have you had an occasion to look into Thomas
14 Booker James?

15 A Yes, ma'am, I have.

16 Q Okay. And as part of your duties as -- and an
17 expert in gang identification, have you been able to
18 identify him and enter him as a member of a gang?

19 A Yes, ma'am. Do you want me to go through the
20 criteria for it?

21 Q If you don't mind, give us your expert opinion as
22 to what gang he his a member of.

23 A He was a documented as a Crip.

24 Q Okay. So he has been entered into the database as
25 a member of the Crip gang?

1 A Yes, ma'am.

2 Q Okay. Now, does he have a name other than Thomas
3 Booker James that's associated with him?

4 A Cutta.

5 Q Okay. And if you don't mind, tell the jury a
6 little bit about the Crips as a gang.

7 A Your Crips started back in 1960 in Chicago,
8 Illinois. One of your founders was Stanley Tookie
9 Williams. We'll talk a little bit about their colors.
10 For your Crips would be blue, of course there are some
11 other colors that they use, it's always was six. They
12 do use a six-pointed star, they use a six-pointed
13 crown.

14 There's some other identifiers that they use. And
15 some of these identifiers that they use their
16 affiliates, which would be say your Folk Nation, some
17 of those groups that also represent with the
18 six-pointed star. Sometimes these groups have common
19 things that they use together.

20 For the rivals it would be five-pointed stars and
21 possibly five-pointed crowns, and that would be like
22 your Bloods, your Latin Kings. And so that's one of
23 the distinctions that we use.

24 Q Okay. And do you have access, and don't tell me
25 how, to pictures of tattoos on different individuals,

LYNN BAKER-REDIRECT BY MS. LIVESAY

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1 defendants, suspects, etcetera?

2 A Yes, ma'am.

3 Q Okay. And can you tell me whether or not there
4 are any names tattooed on Carnail Graham.

5 A Yes, ma'am.

6 MR. CANTY: Your Honor, did I misapprehend the
7 Court's ruling?

8 MS. LIVESAY: I'm just corroborating Keir
9 Johnson's testimony.

10 THE COURT: I appreciate that, but the matter has
11 already been allowed in evidence, that particular
12 issue. As far as -- well, that's already in evidence
13 by another witness.

14 MS. LIVESAY: Yes, sir, Your Honor.

15 THE COURT: So...

16 MS. LIVESAY: I'm sorry.

17 THE COURT: That particular -- that one particular
18 issue is already in evidence in this case, the names
19 that he might have tattooed on him. The Court has not
20 changed its ruling in any other fashion, solicitor.
21 You understand that?

22 MS. LIVESAY: Yes, sir.

23 THE COURT: Very good.

24 MS. LIVESAY: Okay.

25 Q Ms. Baker, Investigator Baker, can you tell me,

1 yes or no, whether or not the names Bootsie and Cutty
2 are tattooed on Carnail Graham.

3 A Yes, ma'am. His right inner arm.

4 Q Okay. So both of those names are tattooed on Mr.
5 Graham?

6 A Yes, ma'am.

7 MS. LIVESAY: No further questions, Your Honor.

8 THE COURT: All right, very good.

9 Cross-examination.

10 RE CROSS-EXAMINATION

11 BY MR. FREDERICK:

12 Q The identifiers, people who are Crips, include the
13 six-pointed star?

14 A Yes, sir.

15 Q Star of David, which has six points also?

16 A Yes, sir.

17 Q And in prior testimony, I believe you had also
18 said a pitchfork?

19 A I did. There's a bunch of different identifiers.
20 I just didn't go through a list of, you know, the
21 hearts, the wings, all -- I just kind of narrowed it
22 down to just a couple basic things.

23 Q So winged hearts?

24 A Yes, sir.

25 Q And a pitchfork, those as well?

LYNN BAKER-RE CROSS BY MR. FREDERICK

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1 A Yes, it's called a devil's tail, yes, sir. It's a
2 pitchfork.

3 (Court reporter asks for clarification.)

4 THE WITNESS: A devil's tail, it's a pitchfork.

5 Q It's called a devil's tail?

6 A Um-hum.

7 Q Okay.

8 THE COURT: Is that a yes or a no, ma'am?

9 THE WITNESS: Yes.

10 THE COURT: All right, thank you.

11 THE WITNESS: I'm sorry.

12 THE COURT: Well, if you say "um-hum" or something
13 like that, the court reporter has no idea what that is.

14 THE WITNESS: I apologize.

15 THE COURT: That's all right. Go ahead.

16 Q Thomas doesn't have any of those tattooed on him;
17 does he?

18 A Give me one second. He doesn't have a six-pointed
19 crown or six-pointed star, no, sir.

20 Q Okay. One of the things that you had also said is
21 if a person says they are in a gang, then automatically
22 you include that person as being in that gang; right?

23 A It would be if -- if I was entering that person
24 while they were under arrest or incarcerated, a
25 self-admission is a stand alone that I wouldn't have to

1 have another criteria to enter that person into our
2 database, yes, sir.

3 Q Right. That doesn't apply to Thomas; does it?

4 A No, sir.

5 Q Okay. Is it your opinion that every person that
6 has been identified as a member of a particular gang is
7 actually a member of that gang?

8 A Everyone that I have entered in the database with
9 my experience, yes, sir, are gang members.

10 Q You have never entered a person in your database
11 and identified them as a gang member in your entire
12 career at J. Reuben Long in error?

13 A No, sir.

14 Q Your opinion is you are never wrong?

15 A I didn't say I was never wrong, but I'm never
16 wrong about entering people into that database.

17 Q You have never been wrong, that's your opinion?

18 A Never wrong --

19 Q About entering people in the database?

20 A I have never not entered a person into the
21 database that did not deserve to be in there.

22 Q That doesn't deserve to be in there. Are all the
23 persons who hang around the local Crips, in your
24 opinion, a part of that gang?

25 A You are guilty by association is one of the

LYNN BAKER-RE CROSS BY MR. FREDERICK

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1 criterias that we also can use. If you hang out in a,
2 say, a known drug area, you associate with these
3 people, you wear their clothing, you continue to
4 associate with different members, then, yes, sir, those
5 are criterias that will put you in that database.

6 Q Can you leave room for the possibility that you
7 may have someone in your database who is identified as
8 a Crip who may be a gang member but not a member of
9 that particular gang?

10 A It's very uncommon for -- I mean, it's common for
11 a person to switch gangs. But once we've identified
12 them in that group, unless we go -- unless we find out
13 that that person is also a possibility of another gang,
14 then we can go back in and add that criteria under
15 them. But if not, we don't.

16 Q And different gangs -- and let me ask you this.
17 There are many different local gangs; right?

18 A There are many different local gangs. There's --
19 there's 4 million in the United States, 33,000
20 different gangs across. I mean, and they're transit,
21 they move.

22 Q And I believe it may be fluid and change over time
23 and may be different in different localities, but some
24 gangs affiliate themselves with other gangs?

25 A Yes, sir.

1 Q And those gang members from different gangs are
2 probably hanging out together; right?

3 A Yes, sir, that's very possible. We -- we have
4 hybrid gangs here in Horry County that are from Bloods,
5 from Folk, from Crip, that all hang out together.
6 Because one of the things with the hybrid gangs is
7 you're covering a geographical area. I'm protecting my
8 little city or I'm protecting my block.

9 For us to enter those people in the database or
10 those hybrid gangs, they meet the same criterias as the
11 other, even though they may only use one or two signs
12 or symbols from our national gangs.

13 Q Okay. And, I mean, let's just talk plainly about
14 what these guys are doing. For the most part, they are
15 dealing drugs; right?

16 A Yes, sir, drugs, armed robberies, murders, I mean,
17 a lot of the violent crime stuff, yes, sir.

18 Q Okay. And part of the purpose for the gangs is
19 for them to protect each other and to protect their
20 territory; is that fair to say?

21 A Yes, sir. And to make money.

22 Q Yeah. And to make money?

23 A Yes, sir.

24 Q Okay.

25 MR. FREDERICK: Thank you.

1 approximately 9:32 a.m.)

2 THE COURT: Thank you very much. You may be
3 seated, let's have order. All right. The first
4 witness, solicitor, who is that?

5 MS. LIVESAY: Yes, sir, Your Honor.

6 THE COURT: Who is it?

7 MS. LIVESAY: Sedieka McClam.

8 THE COURT: All right. Have y'all agreed on the
9 NCIC?

10 MS. LIVESAY: Yes, sir, I believe we have. For
11 him as well as --

12 THE COURT: Any problems, Mr. Frederick, on the
13 NCIC, y'all in agreement with what's going to be asked?

14 MR. FREDERICK: Did you guys go over it?

15 MS. LIVESAY: Sedieka McClam and --

16 MR. FREDERICK: The NCIC.

17 MS. LIVESAY: Yeah, we gave it in that stack.

18 (Discussion off the record.)

19 MR. FREDERICK: No issues, judge.

20 THE COURT: All right. Mr. Canty?

21 MR. CANTY: I apologize, Your Honor, I was under a
22 misapprehension that Mr. Spain was going to be the next
23 witness. But I will -- I will defer to Mr. Frederick
24 on the NCIC.

25 THE COURT: All right. So all right, well, y'all

1 are -- y'all are telling me you have no problems,
2 assuming we don't have any. Do you want to put on the
3 record what the crimes are, that we're going to be
4 asking him about or not?

5 MR. FREDERICK: We can if you want, judge. I
6 handed my copy to your clerk.

7 THE COURT: Okay. Well, here, I'll be glad for
8 you to have it back.

9 MR. FREDERICK: If you want to. Do you want us to
10 put it on the record?

11 MR. CANTY: Your Honor, I think I handed a
12 judicial department database printout to your clerk,
13 but that was in reference to Mr. Spain, one page.

14 THE COURT: Um-hum. And?

15 MR. CANTY: We're discussing Mr. McClam, if I
16 could...

17 THE WITNESS: Okay. Now, Mr. Spain, is he a
18 codefendant?

19 MR. CANTY: No, Your Honor.

20 THE COURT: All right. So the leeway that I
21 granted you on the codefendant, I'm probably not going
22 to be granting that on a regular witness. It will be
23 governed by 609.

24 MR. CANTY: I'm not sure I would characterize him
25 as a regular witness, Your Honor. We would

1 characterize him as a compensated witness.

2 THE COURT: Why?

3 MR. CANTY: Our information is that he is a
4 federal prisoner, and under the federal substantial
5 assistance statute --

6 MR. FREDERICK: He's under a federal proffer,
7 judge.

8 THE COURT: Okay. A federal proffer on this case?

9 MR. FREDERICK: Yes, sir. The way that works
10 is --

11 THE COURT: All right. Well, let me see it.

12 MR. FREDERICK: See what, judge?

13 THE COURT: A written proffer.

14 MR. FREDERICK: Judge, we don't have his proffer.
15 He has --

16 THE COURT: Well, then how do we know he's under
17 one then?

18 MR. FREDERICK: Because the interview that we
19 received was an interview that was a part of his
20 federal discovery materials in his federal case. It
21 was an interview that was conducted by an FBI agent, a
22 Vince Splenini (phonetic). And the way they do that is
23 the federal agent in charge of the case debriefs the
24 defendant in the federal case.

25 And then there's a state agent sitting in the room

1 with them as well. They give information on everybody,
2 state or federal, they've ever had dealings with. And
3 then if that information is used, whether in state or
4 federal court, he receives a downward departure in
5 sentencing.

6 THE COURT: Okay. And so you have something in
7 writing from the Assistant US Attorney that's in
8 agreement with this?

9 MR. FREDERICK: Judge, we don't get that ever.
10 It's in the -- his interview, it shows that it is a
11 federal proffer in the interview.

12 THE COURT: All right. Well, let me see it.

13 MR. FREDERICK: I think we already provided that
14 to you, judge. Do you have a copy?

15 THE COURT: No, I don't have his interview.

16 MR. FREDERICK: Yes, sir. That was the one that
17 was redacted that we were looking at yesterday.

18 THE COURT: And which I do not have.

19 MR. FREDERICK: Could somebody give me that,
20 please.

21 MS. LIVESAY: Can I see that, whatever you're
22 handing up.

23 (Discussion off the record.)

24 MR. FREDERICK: Judge, let me make one correction.
25 This was an interview by an investigator in regards to

1 this case that was then provided to Assistant Solicitor
2 Heather von Herrmann. They were -- that was an issue
3 for a little while yesterday.

4 THE COURT: Okay. Okay. But you were telling me
5 there's something about some federal proffer, and he's
6 getting some kind of credit on his federal crime for
7 testifying here. What I'm trying to do is find some
8 documentation that tells me that.

9 MR. FREDERICK: I apologize, judge. McClam,
10 Sedieka McClam, is the federal inmate.

11 THE COURT: Okay. All right. So --

12 MR. FREDERICK: Kachief Spain was in jail, I
13 believe, and he was being interviewed by an agent of
14 the solicitor's office --

15 THE COURT: Brad Townsend.

16 MR. FREDERICK: -- in connection with this case.

17 THE COURT: Okay. So?

18 MR. FREDERICK: If he has pending charges, has
19 received a benefit, judge, I mean, we don't ever have a
20 proffer in our hands from any of these witnesses.

21 THE COURT: Okay. Well, I appreciate it. But,
22 again, I mean, certainly you are going to be able to
23 ask him, is he getting some kind of benefit from, did
24 he enter into negotiations with the State, did they
25 indicate to him in any way we're going to help you out

1 if you testify. You're certainly going to be able to
2 ask him that. I don't -- what I was asking about was
3 something that Mr. Canty handed to me, and I looked at
4 it, now he has it back. But it was something about
5 some kind of bond or something.

6 MR. CANTY: No, Your Honor. There were a whole --

7 MR. FREDERICK: I'll defer to Mr. Canty.

8 MR. CANTY: -- series of criminal charges against
9 Kachief Spain that were all dismissed on the same date,
10 failure to stop for a blue light, two counts of
11 distributing drugs; etcetera, etcetera, etcetera.

12 THE COURT: On the same date as what?

13 MR. CANTY: All on the same day.

14 THE COURT: Okay, they were all dismissed. But, I
15 mean, when was that?

16 MR. CANTY: March the 1st of 2012.

17 THE COURT: Okay. And he talked to Brad Townsend
18 of the solicitor's office on October 4th, 2012?

19 MR. CANTY: That's correct, Your Honor.

20 THE COURT: And when were they dismissed?

21 MR. CANTY: March 1st.

22 THE COURT: Of? March the 1st of?

23 MR. CANTY: 2012.

24 THE COURT: Okay. And so then a number of months
25 later, March to October.

1 MR. CANTY: Yes, sir.

2 THE COURT: Then he talks to the solicitor's
3 office?

4 MR. CANTY: That's correct, Your Honor.

5 THE COURT: All right. So?

6 MR. FREDERICK: Judge, I would also point out that
7 under The Omnibus Crime Bill, whatever that was called,
8 now they can receive credit after they've been
9 sentenced. If they provide substantial assistance,
10 they can bring them back to court and reduce their
11 sentence which is similar to the federal system.

12 THE COURT: Okay. And, again, be glad for you to
13 ask him if he's in a -- had any arrangement or
14 agreement with the State to do that.

15 MR. FREDERICK: It might --

16 THE COURT: Look, can we get back to this one,
17 okay. You're bringing up something completely
18 different.

19 MR. FREDERICK: My position, judge, is if the
20 charges were dismissed before he was interviewed, I'm
21 not going to ask about those.

22 THE COURT: Okay.

23 MR. FREDERICK: I will only ask about anything
24 that has been dismissed or is pending while he was
25 cooperating.

1 THE COURT: That's what I'm trying to get at,
2 Mr. Canty.

3 MR. CANTY: Thank you, Your Honor. What this
4 shows since there is one, two, three, four, five, six,
5 seven felonies with three different arrest dates, and
6 all these charges were dismissed on the same date,
7 typically that is a result of one of two things.
8 Either an agreement has been reached for cooperation,
9 or the case has been taken over by the federal
10 government, and he's being prosecuted in under federal
11 statutes in federal court. It also shows a familiarity
12 with the process of bargaining.

13 THE COURT: Okay. Again, you can ask him and
14 Mr. Frederick can ask him if he's entered into any kind
15 of arrangement, has some kind of understanding, he
16 hopes he's going to get some kind of leniency or reward
17 from his testimony.

18 You can't ask him about those because it's
19 apparent from the date that they took place a number of
20 months before he was interviewed. Unless he says, I
21 talked to them and they dismissed a bunch of charges,
22 and because of that I agreed to testify in this case.

23 All right, if he brings it up. You can ask him
24 did you enter into any kind of arrangement, did you
25 enter into any kind of discussion, did you have any

1 discussion, did your lawyer have any discussion so that
2 you can testify in this case. I don't know what his
3 answer is going to be. But you can't ask him about
4 something that was dismissed in March and he didn't
5 talk to them until October. That's not covered by the
6 rules nor any expansive reading of the cases or the
7 rules. So no, we can't do that. All right.

8 I assume you want this back, Mr. Frederick?

9 MR. FREDERICK: Yes, sir, for my file.

10 THE COURT: Yes, sir.

11 MR. FREDERICK: Yes, sir, just for my file.

12 THE COURT: Okay, great. So all right. Who's the
13 first witness?

14 MS. LIVESAY: Sedieka McClam.

15 THE COURT: Okay. What is it that we're going to
16 be asking her about from the NCIC?

17 MR. FREDERICK: Judge, I can go through them.

18 THE COURT: Okay, please. Thank you.

19 MR. FREDERICK: The convictions or charges that
20 apply...

21 THE COURT: You looking at your NCIC, solicitor?
22 See here, I mean, we've only got one?

23 MS. LIVESAY: Your Honor, I'm waiting for a copy
24 of his NCIC to come up for me. I gave my copy to Mr.
25 Canty so he could use it.

1 THE COURT: Okay. Go ahead, Mr. Frederick.

2 MR. FREDERICK: Judge, I have marked some on here
3 that I'm not going to use. A letter was sent from
4 Sedieka McClam to the solicitor's office, and it's
5 clocked on April of 2013. So there are a number of
6 dismissals that are before that, and I'm going to take
7 those off of my list.

8 THE COURT: All right. All right, go ahead. All
9 right.

10 MR. FREDERICK: Just flipping -- just flipping
11 through, judge. There are some more.

12 THE COURT: Okay.

13 MR. FREDERICK: He has a conviction which resulted
14 in a five-year sentence, and the conviction was June of
15 2004. He went to prison for five years. At the same
16 time he was convicted for failure to stop for a blue
17 light which is a -- both of which -- I'm sorry, the
18 first one was for PWID or distribution of crack
19 cocaine.

20 THE COURT: All right.

21 MR. FREDERICK: The second one that was at the
22 same time, the conviction, was failure to stop for a
23 blue light.

24 THE COURT: All right. And he got a -- well, on
25 the PWID he got a five-year sentence?

1 MR. FREDERICK: Yes, sir, five and three for --

2 THE COURT: And that it was 2004?

3 MR. FREDERICK: Yes, sir, five and three years
4 concurrent.

5 THE COURT: Well, whether or not he spent the five
6 years in, he was still released on parole.

7 MR. FREDERICK: Yes, sir.

8 THE COURT: So it would -- so we don't have a
9 problem with the ten years.

10 MR. FREDERICK: It's only a matter of a few
11 months.

12 THE COURT: Right. I mean, yeah, we don't have a
13 problem with the ten years. Certainly ask him about
14 that.

15 MR. FREDERICK: Right. And then in September
16 of 2011 is a conviction for possession of cocaine. He
17 was three years suspended to two years probation. But
18 that penalty is two years.

19 THE COURT: Yes, yes, three years, right. That's
20 correct.

21 MR. FREDERICK: In 2011 he was charged with
22 possession with intent to distribute prescription
23 drugs, possession of a stolen weapon times two. And
24 those, as far as I know, are currently pending.

25 THE COURT: Okay.

1 MR. FREDERICK: If they are dismissed, it's not
2 reflected.

3 THE COURT: All right. So they have not yet been
4 dismissed?

5 MR. FREDERICK: Yes, sir. As far as I know, those
6 are still pending.

7 THE COURT: All right.

8 MR. FREDERICK: That's all that I have.

9 THE COURT: All right. Do you have anything else,
10 Mr. Canty?

11 MR. CANTY: I concur with Mr. Frederick.

12 THE COURT: All right, very good. All right --
13 I'm sorry.

14 MR. FREDERICK: Judge, just one more issue briefly
15 regarding scheduling. Our cell phone expert, he's been
16 here since Wednesday, he's just waiting outside. And
17 he has informed us that he must leave the courthouse
18 before 3 o'clock this afternoon.

19 And so just as a matter of scheduling, you know,
20 we've had him here, but if we lose him, he says he has
21 engagements this weekend and he is going to be in court
22 next week, I believe. And he is going to get on a
23 plane if we do not call him, I would say, before 1
24 o'clock this afternoon.

25 THE COURT: Well, I don't know how many witnesses

SEDIEKA McCLAM-DIRECT BY MS. LIVESAY

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1 SEDIEKA McCLAM, after being duly sworn, testified
2 as follows:

3 CLERK OF COURT: Please be seated. State your
4 full name and spell your last name for the Court,
5 please.

6 THE WITNESS: Sedieka McClam.

7 THE COURT: All right. And you need to speak up
8 right into the microphone, please. All right.

9 THE WITNESS: Sedieka McClam.

10 DIRECT EXAMINATION

11 BY MS. LIVESAY:

12 Q Okay. If you don't mind, spell your name for the
13 court reporter.

14 A S-E-D-I-E-K-A, M-C-C-L-A-M.

15 Q Okay. And Mr. McClam, if you don't mind, where
16 are you currently being housed?

17 A Williamsburg Correctional Facility.

18 Q Okay. And what are you in there for?

19 A Drugs.

20 Q Okay. Have you been in trouble before that time,
21 this time you're in?

22 A Yes.

23 Q For what kind of stuff?

24 A Drugs.

25 Q Okay. So drug charges?

1 A Yes.

2 Q Okay. Now, about how old are you?

3 A 34.

4 Q Okay. And where are you currently from?

5 A From Kingstree, South Carolina.

6 Q Kingstree, South Carolina. Now, where were you
7 living in 2011?

8 A Myrtle Beach.

9 Q And about how long had you been living in Myrtle
10 Beach?

11 A Since 2008.

12 Q Okay. And do you know anything about the case
13 we're here today for with the victim being Keia
14 Pertelle?

15 A Yes.

16 Q Okay. If you don't mind, tell the jury what you
17 know about this case and how you came in contact with
18 that information.

19 A All right. One night I was --

20 Q Make sure you speak into here because this guy
21 even all the way to the end has got to be able to hear
22 you.

23 A One night I was at Third Avenue Bar and Grill on
24 Myrtle Beach, and I met a young lady. And the next --
25 and when I met the young lady. So we exchanged

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1 numbers, and the next day she gave me her phone
2 number -- and that night she gave me her phone number.
3 The next day I got in touch with her and whatnot. She
4 gave me a address where she was staying.

5 And when it was -- the address was -- not the
6 address, but it was Huckabee Heights. Once I got
7 the -- she told me, I got there, once I got to Huckabee
8 Heights, that's when she told me she had a friend that
9 was in the kitchen by the name of Dubba.

10 Q Had you ever seen Dubba before?

11 A No.

12 Q Okay. Describe to the jury what he looked like.

13 A He's about six-two, about two -- to me, I believe
14 he's about two or 220.

15 Q Black or white?

16 A Black.

17 Q Or Hispanic?

18 A Black.

19 Q Okay. Did he have any identifying marks on his
20 arms, face, anything like that?

21 A Yes. Some tattoos on his arm.

22 Q Okay. Tattoos on both arms?

23 A Yes.

24 Q Okay. And where was this apartment that you went
25 to and he was at?

1 A Huckabee Heights.

2 Q Okay. And is that in Myrtle Beach or Conway?

3 A Conway.

4 Q Okay. And once you get over to the apartment and
5 you meet him, what happens?

6 A We sat down and we smoked a couple blunts, blunts
7 of reefer.

8 Q Okay. And then what happens?

9 A Then his phone rang.

10 Q Okay.

11 A And once the phone rang, that's when he got up and
12 started talking to someone, I don't remember exact. I
13 think once he started talking, that's when he said he
14 was sorry for what had happened to Keia.

15 Q Okay. Did he say anything else?

16 A That he panicked when he went through the door and
17 just started shooting.

18 Q Okay. And about when was this in 2011 you saw
19 him; do you remember?

20 A It had to have been like the middle of December.

21 Q Okay. So December of 2011?

22 A Yes.

23 Q Okay. And did you write a letter to the
24 solicitor's office with this information?

25 A Yes.

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1 Q Okay. And I'm going to show you that letter to
2 make sure you recognize it. I want you to look at this
3 letter and make sure this is what you wrote.

4 A Yes.

5 Q That's your letter?

6 A Yes, ma'am.

7 Q Okay. And in that letter did you tell me or write
8 to the solicitor's office what you're telling the Court
9 today?

10 A Yes.

11 Q Okay. And when you overheard him talking on the
12 phone, was he just right next door in that apartment?

13 A Yeah. It was a living room and a kitchen, so it
14 was no door right there.

15 (Court reporter asks for clarification.)

16 THE WITNESS: It was a living room and a kitchen.
17 There was no door or nothing, so he was close by.

18 Q Okay. And did he say where he was when he went in
19 the house or what area?

20 A I believe he said Brown Swamp.

21 Q Okay. And did he ever name the girl that he shot?

22 A Yes. He said Keia. He said Keia.

23 Q Okay. And did he say why?

24 A No.

25 Q Okay. And did he mention whether or not anybody

1 else was in the house?

2 A No.

3 Q Okay. Did you ever see him again after that day?

4 A Yes. I saw him on, I think it was Christmas Eve
5 at a club called Crush in Myrtle Beach.

6 Q Okay. And have you ever seen him since?

7 A No.

8 Q Did you ever see him before that day you saw him
9 in Huckabee Heights?

10 A No.

11 Q Do you know him from any other way other than that
12 one time in Huckabee Heights --

13 A No.

14 Q -- and at Club Crush?

15 A No.

16 Q Okay. Now, he said the name Keia. Do you -- did
17 you know her?

18 A No.

19 Q Okay. Did you know anything about this incident
20 that had gone on in Brown Swamp?

21 A No, not at the time.

22 Q Okay. And you didn't know the victim at all?

23 A No.

24 Q Okay. Or anybody in her family?

25 A No.

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1 Q Okay. Now, and is this what you said in the
2 letter, what you're telling this jury today?

3 A Yes.

4 Q Okay. Now, tell the jury why you wrote this
5 letter giving this information.

6 A I wrote the letter because in federal prison if
7 you cooperate with the government, the federal
8 government or state, they will give you time back.

9 Q Okay. And after you heard this conversation, when
10 were you ultimately locked up for what you're in there
11 for now?

12 A Again.

13 Q When were you arrested for these charges?

14 A I was arrested, I believe, January 3rd, 2012.

15 Q Okay. So you were arrested shortly after you
16 heard this conversation?

17 A Yes.

18 Q Okay. And have you been in contact with Dubba
19 since then at any point?

20 A No.

21 Q Do you know anybody in his family?

22 A No.

23 Q Okay. So shortly after this incident,
24 January 2012 you were incarcerated?

25 A Yes.

1 Q Have you been out since that day?

2 A No.

3 Q Okay. Have you had any means to know this
4 information other than that one conversation?

5 A No.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: All right. Cross-examination,
8 Mr. Frederick.

9 MR. FREDERICK: Thank you, judge. Just a moment,
10 please.

11 CROSS-EXAMINATION

12 BY MR. FREDERICK:

13 Q Sedieka; right?

14 A Yes.

15 Q Tell the jury how long you've been up here this
16 week.

17 A I been here for about -- you talking about in the
18 courthouse?

19 Q The courthouse, J. Reuben Long, Conway.

20 A About three weeks now.

21 Q Okay. Tell the jury who you spoke to this week.

22 A Who I spoke with?

23 Q Yeah, from the solicitor's office or investigators
24 or anyone. Tell them who met with you.

25 A Solicitor.

SEDIEKA McCLAM-CROSS BY MR. FREDERICK

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1 Q This woman?

2 A Yes.

3 Q Okay. This week?

4 A Yes.

5 Q What day?

6 A I would say, I believe, Tuesday or Monday. Monday
7 or Tuesday, I'm not sure.

8 Q Okay. Now, and she asked you on direct, is this
9 what you said in the letter?

10 A Yes.

11 Q All right. Again, I want you to take a moment and
12 review this and just tell us, is that the same letter
13 that she was showing you?

14 A Yes.

15 Q Okay. Look at the second page; there's two pages.
16 Maybe three, one's a envelope.

17 A Okay.

18 Q That's your letter?

19 A Yeah.

20 Q Okay.

21 (WHEREUPON, Defendant's Exhibit No. 10 was marked
22 for identification only.)

23 MR. FREDERICK: And, Your Honor, what's been
24 marked as Defendant's Exhibit 10 I would move into
25 evidence at this time.

1 THE COURT: Mr. Canty, do you want to join in that
2 or?

3 MR. CANTY: Yes, Your Honor.

4 THE COURT: Solicitor, any objection to
5 Defense-10?

6 MS. LIVESAY: I don't have any objections, Your
7 Honor, if Mr. Canty doesn't.

8 THE COURT: He doesn't. So he's joined in the
9 motion to have it in evidence. So it's in evidence by
10 agreement.

11 (WHEREUPON, Defendant's Exhibit No. 10 was
12 admitted in evidence.)

13 Q And I'm going to let you hold this for a minute,
14 okay, Defense Exhibit 10. Just keep it right there.

15 Now, we're going to come back to that, okay.

16 Let's just go over a couple of details. In June
17 of 2004 were you convicted of distribution of crack?

18 A Yes.

19 Q Okay. And sentenced to five years, that was in
20 state court; right?

21 A Yes.

22 Q And at the same time, were you convicted of
23 failure to stop for a blue light?

24 A Yes.

25 Q And sentenced to three years concurrent?

1 A Yes.

2 Q In 2011, you were charged with possession with
3 intent to distribute pills; is that what that is?

4 A Yes.

5 Q Okay. And also one too, possession of a stolen
6 weapon; is that right?

7 A Yes.

8 Q Okay. You were also charged in federal court?

9 A Yes.

10 Q Okay. And you talked a little bit about how that
11 works in federal court?

12 A Um-hum.

13 Q What were you charged with in federal court?

14 A Possession with intent to distribute marijuana,
15 cocaine and crack cocaine and a firearm.

16 Q Okay. So was that, and I'm guessing, it's federal
17 court, was it a drug conspiracy?

18 A No.

19 Q They didn't charge you with conspiracy?

20 A No.

21 Q Okay. So drug charges and then the gun charge?

22 A Yes.

23 Q Is that right? Okay. And had you ever been
24 charged in federal court before, is that your first
25 time?

1 A No, first time.

2 Q Okay. And you did have an attorney, and I don't
3 want to ask what he said or anything, but you had an
4 attorney --

5 A Yes.

6 Q -- Scott Joye?

7 A Huh?

8 Q Scott Joye?

9 A No.

10 Q Not Scott, who? It doesn't matter who it was.

11 MR. FREDERICK: I withdraw the question.

12 Q So in federal court, as you testified, you know
13 how sentencing works; right?

14 A Yes.

15 Q Okay. And essentially what happened is you sat
16 down with the case agent --

17 A Yes.

18 Q -- and probably your attorney; right?

19 A (Nodding affirmatively.)

20 Q And they want you to name every person that you
21 ever knew that you've dealt drugs with, like they call
22 it debriefing?

23 A Yes.

24 Q Okay. And you name someone and they use the
25 information, then you get a time cut?

1 A Yes.

2 Q Okay. And if you testify, you get a big time cut,
3 it's better than if they just use it to charge someone;
4 right?

5 A Yes.

6 Q Okay. Then when you're sentenced, you get a
7 downward departure. If they use the information or you
8 testify, you get a downward departure time cut; right?

9 A Yes.

10 Q Okay. And then after sentencing, even after
11 sentencing, there's really two shots at that; right?

12 A Yes.

13 Q After sentencing you've already been sentenced,
14 you go to prison. If they use you, meaning if you
15 testify, then they're going to give you a second
16 downward departure; right?

17 A Yes.

18 Q Okay. And it's 35(b)?

19 A Yes.

20 Q Okay. The bigger the case, the bigger the
21 downward departure; fair to say?

22 A I'm pretty sure.

23 Q Yeah. Have you gotten your second downward
24 departure yet?

25 A Never got the first one.

1 Q You haven't gotten the first one yet?

2 A No, never got it.

3 Q Okay. You're hoping you will get a downward
4 departure, I assume?

5 A Yes.

6 Q Okay. You'd rather get out of prison sooner than
7 later?

8 A Yes.

9 Q Not a -- not a nice place to be; right?

10 A No.

11 Q I understand. In federal prison, and if you know,
12 please just tell the truth about this, people are
13 selling discovery materials and passing around
14 discovery materials. I'm not saying that you are, I'm
15 saying you know that that that happens; right?

16 MS. LIVESAY: Your Honor, at this time I have to
17 object.

18 THE COURT: Y'all come and talk to me.

19 (WHEREUPON, a bench conference was held off the
20 record in the presence of the jury but out of the
21 hearing of the jury.)

22 Q Mr. McClam, have you specifically, don't tell me
23 about everybody else, but you specifically, have you
24 looked at other people's discovery while you were in
25 federal prison?

1 A No.

2 THE COURT: All right. All right, thank you.

3 Q In your case, people wrote statements on you;
4 didn't they?

5 A No.

6 Q Nobody wrote a statement on you?

7 A No.

8 Q They didn't have any evidence?

9 A No.

10 Q How did you get convicted?

11 A I was caught red-handed.

12 Q I'm sorry?

13 A I was caught with the drugs and the gun.

14 Q Okay, I understand. Now, you would have no way of
15 knowing -- let me ask you this question. Did you read
16 about the facts of this case in their discovery
17 materials, or Bootsie's?

18 A No.

19 Q Okay. You would have no way of knowing that that
20 van doesn't belong to Bootsie; is that right?

21 A Say this question again.

22 Q Describe the van that they were driving.

23 A It was an Astro, Astro van.

24 Q What color was it?

25 A I believe it was -- it was kind of dark when the

1 van rolled off, so it was probably blue or brown, to my
2 knowledge.

3 Q Okay. So, let's go to that. Now, this prosecutor
4 asked you, what you testified to, this is what you said
5 in the letter; right, and you said that's true. Yes?

6 A Yes.

7 Q Okay. Let's look at the letter. Because for some
8 reason you didn't testify to everything in the letter;
9 did you?

10 A As far as the van, I mean, I'm...

11 Q You just didn't, you forget about that on your
12 direct examination?

13 A Yes. I mean, it's true, yeah. But what I'm
14 saying in the letter is true.

15 Q Okay. Let's look at your letter.. You were in a
16 bar one night?

17 A Yes.

18 Q Is that true? On Third Avenue Bar and Grill?

19 A Um-hum.

20 Q Okay.

21 THE COURT: You need to answer yes or no, please.

22 THE WITNESS: Yes.

23 Q Okay. You met a girl from Conway?

24 A Yes.

25 Q She gave you her phone number?

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- 1 A Yes.
- 2 Q She told you to give her a call sometime?
- 3 A Yes.
- 4 Q Okay. You called her up the next morning?
- 5 A Yes.
- 6 Q Okay. She told you she wanted to chill for a
- 7 while and smoke some blunts?
- 8 A Yes.
- 9 Q Okay. You asked her where she stays at?
- 10 A Yes.
- 11 Q She said she stays in Huckabee Heights in Conway?
- 12 A Yes.
- 13 Q Okay. You got directions from her?
- 14 A Yes.
- 15 Q Okay. When you got to the projects in Huckabee
- 16 Heights, you went in; right?
- 17 A Yes.
- 18 Q When you went in, she said that a friend of hers
- 19 named Dubba was in the kitchen?
- 20 A Yes.
- 21 Q Okay. You sat down in the living room, rolled up
- 22 some blunts?
- 23 A Yes.
- 24 Q And then Dubba came in the living room?
- 25 A Yes.

1 Q Okay. And have you looked at a picture of Dubba
2 recently?

3 A No.

4 Q Okay. He shook your hand, he started asking you
5 some questions, chatting with you, did you live in
6 Myrtle Beach?

7 A Yes.

8 Q Okay. Passed around a blunt?

9 A Yes.

10 Q Okay. He got on his phone and was talking on his
11 phone; right?

12 A Yes.

13 Q And he said, what's going on, Cutty, on the phone?

14 A Yes.

15 Q Okay. Then he said he feel bad for what had
16 happened to Keia?

17 A Yes.

18 Q Okay. Isn't this pretty much identical to your
19 direct examination; right?

20 A Yes.

21 Q Yes. You didn't think anything of it until he
22 said that they should have never went to Brown Swamp;
23 right?

24 A Yes.

25 Q And then he said he panicked when he went through

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1 the front door and saw Keia jump up, and he started
2 shooting?

3 A Yes.

4 Q Okay. He went on, said he didn't mean to shoot
5 his gun six or seven times?

6 A Yes.

7 Q Okay. He said they went to rob Keia's boyfriend,
8 Splurge?

9 A Yes.

10 Q Okay. It's a little bit more detail in here;
11 right?

12 A Yes.

13 Q Okay. Then he asked Cutty to tell Lil Bootsie to
14 come pick him up in about an hour?

15 A Yes.

16 Q Okay. We didn't get to that part on direct
17 examination; did we?

18 A No.

19 Q No. Then a blue Astro van pulled up. Yes?

20 A Yes.

21 Q Okay. A blue Astro van pulled up in Huckabee
22 Heights, Dubba want went outside; right?

23 A Yes.

24 MS. LIVESAY: Your Honor, are we asking him a
25 question or just reading the letter?

1 THE COURT: He's asking him if that's in the
2 letter, and I'm going to allow him to do that. You may
3 continue, Mr. Frederick.

4 Q And as he was going to leave, he opened the side
5 door of the van; is that true?

6 A Yes.

7 Q They got into the van and drove off; is that true?

8 A Yes.

9 Q Okay. So let's keep going. Lil Bootsie was
10 driving the van; is that true?

11 A Yes.

12 Q Cutty was in the passenger seat of the van; is
13 that true?

14 A Yes.

15 Q And he said, let me get up front, and then he got
16 into the van through the side door; is that true?

17 A Yes.

18 Q Okay. So I just want to be crystal clear, you're
19 at this girl's house; yes?

20 A Yes.

21 Q And Dubba calls Lil Bootsie and says, come pick me
22 up; right?

23 A No, that's not what I said.

24 Q Well, they had the conversation about I'm sorry I
25 killed Keia and all that, and then he said, come get us

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1 in an hour later?

2 A No. I said that he said, told Cutty to tell Lil
3 Bootsie to come get him.

4 Q Okay. Detail, okay. And then Bootsie pulls up in
5 a blue Astro van; right?

6 A Yes.

7 Q And you don't know who that blue Astro van
8 actually belongs to; do you?

9 A No.

10 Q No. You don't know that that blue Astro van
11 belonged to Bootsie's girlfriend; do you?

12 A No.

13 Q You don't know that really it was Bootsie's
14 girlfriend's mother's van; do you?

15 A No.

16 Q You don't know that that blue Astro van was never
17 seen or driven by Bootsie after his arrest?

18 A No.

19 Q Do you?

20 A No.

21 Q No. Because that's not in his discovery
22 materials. And for some reason we didn't cover that on
23 your direct; right?

24 A No.

25 Q Okay.

1 MR. FREDERICK: I got no more questions, judge.

2 THE COURT: Mr. Canty?

3 MR. CANTY: Thank you, Your Honor. May it please
4 the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. CANTY:

8 Q Tell the jury again when you heard this
9 conversation.

10 A When I heard it?

11 Q Yes, sir.

12 A In December of 2011.

13 Q Middle of December; isn't that what you said, is
14 that what you said?

15 A Yes, sir.

16 Q And you didn't have any way of knowing in the
17 middle of December that Bootsie was in jail; did you?

18 A No.

19 Q Now, when you were arrested with drugs and guns,
20 the feds came and got you under the Safe Streets
21 program; correct?

22 A I don't know nothing about no straight -- straight
23 street program, anything.

24 Q Well, they scooped you out of the State system,
25 and they took you up to the federal court in Florence;

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1 didn't they?

2 A Out of the State system, no. I was on the
3 streets.

4 Q You were arrested, you were in jail; right, on
5 drugs and guns?

6 A Yeah. I bonded out of jail. I was on the
7 streets.

8 Q Okay. And you didn't plead guilty in state court,
9 you pled guilty in federal court; didn't you?

10 A Yes.

11 Q And, in fact, you pled guilty in federal court in
12 Florence, South Carolina; didn't you?

13 A Yes, sir.

14 Q And you spent some time in the federal lock-up in
15 Florence, South Carolina; didn't you?

16 A Yes.

17 Q And tell the jury what you know, if anything,
18 about the practice of selling cases in the federal
19 prison system.

20 A I don't know nothing.

21 Q Don't know anything about that?

22 A No.

23 Q And in your letter you said it was a blue van;
24 correct?

25 A Yes.

1 Q And you met with the solicitor this week; correct?

2 A Yes.

3 Q And on your direct testimony you didn't say what
4 color it was; did you?

5 A No.

6 Q And when you were cross-examined by Mr. Frederick,
7 you said it was blue or brown; didn't you?

8 A Yes.

9 Q And you know now that the van was brown; correct?

10 A I don't. I just believe that it was -- I don't
11 remember whether it was a blue or brown van the night
12 that it run up.

13 Q It was blue or brown except you put blue in your
14 letter, you didn't say what color it is on direct, and
15 on cross you said, well, it was blue or it was brown
16 because you know now it was brown; correct?

17 A No.

18 Q And you didn't know that Bootsie was in jail in
19 the middle of December?

20 A No.

21 Q And you didn't know that after the night Keia was
22 shot, he never drove that van again, you didn't know
23 that; did you?

24 A No.

25 Q Okay. How high were you when you heard this

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1 conversation?

2 A Smoked one, one, one blunt.

3 Q Is that medium high, very high, slightly high?

4 A High enough to know what I heard.

5 Q Okay. Now, this conversation was with Cutty;

6 right, Cutty?

7 A Yes.

8 Q He told Cutty, tell Bootsie come pick me up?

9 A Yes.

10 Q And he told Cutty over the phone, shouldn't have
11 gone to Brown Swamp, panicked when he went through the
12 front door and saw Keia jump up, didn't mean to shoot
13 his gun six or seven times, came there to rob Keia's
14 boyfriend, Splurge, then tell Lil Bootsie to come pick
15 him up. Correct?

16 A Yes.

17 Q Now, your understanding of this crime is that it
18 was Dubba and Cutty who committed the crime?

19 A Yes.

20 Q And aside from the people who were in that trailer
21 before the crime was committed, there are only two
22 people on this planet that know exactly what happened
23 inside that trailer once the door was kicked in;
24 correct?

25 A Can you repeat the question.

1 Q There are only two people on this planet that know
2 what happened after the door was kicked in in that
3 trailer besides the people who were already in there;
4 correct?

5 A Yes. I mean --

6 Q And that's Dubba and Cutty?

7 A Yes.

8 Q Those are the only two people that know besides
9 the people in the trailer?

10 A Yes.

11 Q And low and behold, manna from heaven, you're in a
12 federal prison, federal lock-up, and you can get your
13 time cut if you give substantial assistance in another
14 case and you come and testify. And your testimony is
15 that one person of those two people on the planet who
16 knew what happened in your presence, a complete
17 stranger, told the only other person on the planet that
18 knew what happened all of the details of what happened.
19 And you overheard it; correct?

20 A Yes.

21 Q And you get locked up by the feds, and it's your
22 lucky day, isn't it? You're going to get a time cut;
23 aren't you?

24 Did it seem unusual to you that one perpetrator of
25 this crime would relate all of the facts to the other

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1 perpetrator of this crime in your presence?

2 A No.

3 Q It happens all the time; correct?

4 A Yes.

5 Q It seemed unusual to you that he would relate all
6 of the facts of this crime in front of a complete and
7 total stranger; did it seem unusual to you?

8 A No.

9 Q So around the 1st of January you get locked up on
10 drugs and guns. And the federal court is in Florence,
11 South Carolina; correct?

12 A Yes.

13 Q Okay. And after you're in that federal lock-up is
14 when April the 15th you write this story, this letter,
15 to the solicitor?

16 A Yes.

17 Q And you conclude the letter, I was told that this
18 case belongs to you. I hope that this information is
19 of some good to you, thank you. Correct?

20 A Yes.

21 Q Who told you that the case belonged to this
22 solicitor?

23 A I got my brother to call to the solicitor's
24 office.

25 Q Your brother told you that?

1 A Yes.

2 Q Okay. On your direct examination you left out the
3 part about who he was talking to, Cutty; correct?

4 A Yes.

5 Q It would sound a little strange; wouldn't it, that
6 he would relate all these facts to the only other
7 person who already knew all these facts? That sounds
8 strange; wouldn't it?

9 A No.

10 Q Perfectly normal?

11 A To me.

12 Q Okay. But you didn't say it was Cutty on your
13 direct testimony; did you?

14 A No.

15 Q And when Mr. Frederick asked you about is it blue
16 or a brown van -- you didn't say that on direct -- it
17 was a blue or a brown van, you said it was too dark to
18 see the color of the van; correct?

19 A I mean, it was dark and it was a while ago, so
20 that's what I said, blue or brown van. I believe it
21 was blue or brown. I know it was an Astro van.

22 Q It's dark, dark, too dark to see the color of the
23 van. Actually, it could have been blue like you wrote
24 in your letter or brown like you said in
25 cross-examination, blue or brown; correct?

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1 A Yes, sir.

2 Q Too dark. And in your letter, when did you --
3 what time of day did you say that you were over at that
4 apartment?

5 A What time, I never said what time of day.

6 Q She told me to give her a call sometime, so the
7 next morning I call her up.

8 A I said the next morning I called her up.

9 Q Okay.

10 MR. CANTY: Okay. That's all I have, Your Honor.

11 THE COURT: Redirect, solicitor.

12 MS. LIVESAY: Yes, sir, Your Honor, just a couple.

13 REDIRECT EXAMINATION

14 BY MS. LIVESAY:

15 Q Mr. McClam, have you been promised anything for
16 your testimony today?

17 A No.

18 Q Okay. Have you been guaranteed anything from your
19 testimony today?

20 A No.

21 Q Okay. Now, Mr. Frederick asked you some questions
22 about discovery; do you remember that?

23 A Yes.

24 Q Okay. Are you familiar with what discovery is?

25 A Yes.

1 Q And have you received discovery in your cases?

2 A No, not in the federal system. They won't allow
3 you to have it.

4 Q Okay. Have you ever seen any discovery with
5 people's -- pictures of people's tattoos on it?

6 A No.

7 Q Okay. You've never seen that?

8 A No.

9 Q Okay. And would you have any way of knowing that
10 Dubba had tattoos but for seeing him that day?

11 A No. Not before that day.

12 Q Okay. And he had them on both arms?

13 A Yes.

14 Q Okay. And you would have had no way of knowing
15 that through any documentation other than seeing him?

16 MR. CANTY: Your Honor, this is not
17 cross-examination. She is leading her witness, I
18 object.

19 THE COURT: Thank you, sir. I would ask you to
20 not make an argument, but do not lead your witness,
21 solicitor. This is redirect, you need to ask questions
22 and get an answer. Thank you, ma'am.

23 MS. LIVESAY: Okay.

24 THE COURT: Continue on.

25 Q Do you remember Mr. Frederick on cross-examination

1 asking you about discovery?

2 A Yes.

3 Q Asking you about what you could see in discovery?

4 A Yes.

5 Q Okay. I'm asking you now on redirect from that
6 question, have you seen anything about either one of
7 these people's tattoos in any sort of discovery?

8 A No.

9 Q In their discovery or any kind?

10 A No.

11 Q In any of the cases you've had on your discovery,
12 have you ever gotten pictures of your tattoos or
13 anybody else's?

14 A No.

15 Q Okay. So there would be no way for you to know
16 about it, but for actually seeing him in person?

17 A Yes.

18 MS. LIVESAY: Your Honor, I would like to ask Mr.
19 Graham to roll up his sleeve, and let's see if those
20 tattoos are there.

21 MR. CANTY: We'll stipulate he has tattoos, Your
22 Honor.

23 THE COURT: Y'all come and talk to me.

24 (WHEREUPON, a bench conference was held off the
25 record in the presence of the jury but out of the

1 hearing of the jury.)

2 THE COURT: There's been a stipulation by counsel.

3 Move along.

4 Q Now, Mr. Canty asked you some questions about how
5 high you were that day; do you remember that?

6 A Yes.

7 Q Okay. And you're in there for drug charges now;
8 is that correct?

9 A Yes.

10 Q Okay. And where were you when you met this girl;
11 do you remember the apartment complex?

12 A Yes.

13 Q What was it?

14 A Huckabee Heights.

15 Q Okay, Huckabee Heights in Conway. Who else was in
16 that apartment smoking with you?

17 A All three of us was.

18 Q I'm sorry?

19 THE COURT: I'm sorry, sir, I did not hear you.

20 THE WITNESS: All three of us. All three of us.

21 Q All three of y'all were?

22 A Yes.

23 Q Okay. Okay. And did it -- were you so impaired
24 you couldn't recollect what happened?

25 A No.

SEDIEKA McCLAM-RECROSS BY MR. FREDERICK

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1 Q Okay. And that day you remember the general
2 description of the guy you met as Dubba?

3 A Yes.

4 Q Okay. And how long were you at the J. Reuben Long
5 before you went to federal prison?

6 A A day. Not even a whole day.

7 Q I'm sorry?

8 A Not even a day.

9 Q Okay.

10 A Something like that. Then I was transported to --

11 Q Okay.

12 A -- to Florence County.

13 Q Okay. While you were out there, did you ever come
14 in contact with these two boys at J. Reuben Long?

15 A No.

16 Q Okay. So you never came in contact to see any of
17 the documentation they received?

18 A No.

19 MR. CANTY: Your Honor, she's still leading.

20 Objection.

21 MS. LIVESAY: No further questions, Your Honor.

22 THE COURT: Mr. Frederick, questions on the
23 questions asked by the solicitor?

24 RECROSS-EXAMINATION

25 BY MR. FREDERICK:

1 Q Why don't they want you to have discovery in the
2 federal system; do you know the answer to that
3 question?

4 A Yes.

5 Q Tell us.

6 MS. LIVESAY: Your Honor, what does that -- how is
7 that relevant to the questions --

8 THE COURT: Solicitor, you brought it up again, so
9 I'm going to allow -- Mr. Frederick?

10 MR. FREDERICK: Yes, sir.

11 THE COURT: That's the second time you've done
12 that, I let it go the first time.

13 MR. FREDERICK: I apologize, judge.

14 THE COURT: You will not do it again; you
15 understand me?

16 MR. FREDERICK: I will not.

17 THE COURT: Thank you much. Ask the question
18 again.

19 Q Why don't they want you to have discovery
20 materials in the federal system? Tell them.

21 A Because a lot of people get hurts buying other
22 people discovery. They find out what kind of charge,
23 what they in prison for, like child molesting and all
24 that, that's the reason why they don't have discovery.

25 Q You think that's the only reason?

SEDIEKA McCLAM-RECROSS BY MR. FREDERICK

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1 A No. That's the reason I was told.

2 Q Okay.

3 MR. FREDERICK: Nothing more, judge.

4 THE COURT: Mr. Canty?

5 MR. CANTY: Nothing, Your Honor.

6 THE COURT: Step down, sir. Thank you very much.
7 He's released from his subpoena to go back to the
8 custody of the federal authorities.

9 (Witness excused.)

10 THE COURT: All right, ladies and gentlemen, we'll
11 take a very short break, five minutes. We'll come
12 back, a short break. Everyone else remain seated,
13 please.

14 (WHEREUPON, the jury exited the courtroom at
15 10:35 a.m.)

16 THE COURT: All right. We'll take a short break,
17 five minutes. Okay. Thank y'all.

18 (WHEREUPON, a brief recess was taken at
19 10:36 a.m.)

20 THE COURT: Thank you very much, you may be
21 seated. Thank you. You ready for the jury, solicitor?

22 MS. LIVESAY: Yes, sir.

23 THE COURT: Mr. Frederick?

24 MR. FREDERICK: Yes, sir.

25 THE COURT: Mr. Canty?

1 MR. FREDERICK: Yes, Your Honor.

2 THE COURT: Ask the jury to come in.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:47 a.m.)

5 THE COURT: All right, solicitor, your next
6 witness, please, ma'am.

7 MS. LIVESAY: Your Honor, at this time the State
8 calls Kachief Spain to the stand.

9 KACHIEF NAHEEM SPAIN, after being duly sworn,
10 testified as follows:

11 CLERK OF COURT: Please be seated. State your
12 name, spell your last name for the Court, please.

13 THE WITNESS: Kachief Naheem Spain, S-P-A-I-N.

14 DIRECT EXAMINATION

15 BY MS. LIVESAY:

16 Q If you don't mind, spell your name for the court
17 reporter.

18 A K-A-C-H-I-E-F.

19 Q And make sure you speak into the microphone.

20 A K-A-C-H-I-E-F, Naheem, N-A-H-E-E-M, Spain,
21 S-P-A-I-N.

22 Q Okay. And Kachief, where are you -- and
23 Mr. Spain, where are you currently being housed?

24 A Edgefield Federal Corrections Institution.

25 (Court reporter asks for clarification.)

KACHIEF SPAIN-DIRECT BY MS. LIVESAY

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1 THE WITNESS: Edgefield Federal Corrections
2 Institution.

3 Q Okay. And what are you in there for now?

4 A Possession of a firearm.

5 Q Okay. And have you been in trouble before this?

6 A Yes, ma'am.

7 Q And tell the jury what you've been in trouble for.

8 A Second degree burglary and strong arm robbery and
9 armed robbery.

10 Q Okay. Are you familiar with some information
11 about the case we're here today for?

12 A Yes, ma'am.

13 Q Okay. And where were you when you came into
14 information about this case?

15 A In J. Reuben Long.

16 Q Okay. And is that the county prison here in Horry
17 County?

18 A Yes, ma'am.

19 Q Okay. Now, when you were in there, how did you
20 come into information about this case? Tell this jury.

21 A I was in the pod with Ace Graham, and they brought
22 Carnail into the next pod over from us. I was on the
23 -- I was on the phone one day, and I seen Dubba come to
24 the rec field and call Ace to the door. And the phone
25 I was at was about maybe five feet from the door.

1 So I ended my phone call, and I'm just focussing
2 on the conversation they was having. So he had a
3 folder, a manila folder, with him. So I figured some
4 information about, you know, something going on in his
5 case. And he was like, they don't got nothing on me,
6 bro, they don't got nothing on me, I'm good. So they
7 sat down and he slid some papers through the door to
8 Ace.

9 So Ace asked him what happened. So he said, we
10 got to the house, kicked the door in, we kicked the
11 door in, the alarm went on. Keia was on the couch, she
12 jumped up, started running, screaming for Splurge.
13 Everything happened so fast, he just started shooting.
14 She seen his face. He started shooting, you know, he
15 didn't have a choice because she seen him. At that
16 time I thought I heard enough information. I got up
17 from the phone and went to my room.

18 Q Okay. And how do you know Ace Graham?

19 A I know that I used to talked to his sister a long
20 time ago, so I been knowing since she was little.

21 Q Okay. And how long had you known Dubba?

22 A Since about '92, '93, since he was little.

23 Q How long?

24 A Since about '92, '93.

25 Q Okay.

KACHIEF SPAIN-DIRECT BY MS. LIVESAY

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1 A I moved to Conway.

2 Q And Mr. Spain, tell this jury, where are you from?

3 A From Conway.

4 Q Okay. So you -- do you know Keia, the victim in
5 the case?

6 A No. I know some of her family members.

7 Q Okay. You just knew Dubba and Ace?

8 A Yes.

9 Q Okay. Now, have you been promised anything for
10 your testimony today?

11 A No.

12 Q Okay. Have you been guaranteed anything for your
13 testimony today?

14 A No.

15 Q Okay. Now, while you were in jail, did you see
16 any discovery that belonged to Dubba or Cutty?

17 A No, ma'am.

18 Q Okay. And who was he showing the discovery to?

19 A Ace.

20 Q Okay. And what did he say about it?

21 A Just like he didn't really say too much of
22 nothing.

23 MR. CANTY: Objection. Hearsay, Your Honor.

24 THE COURT: Make it clear that this is a
25 conversation he overheard, please, ma'am.

1 Q What did Dubba say to Ace about his documentation?

2 THE COURT: You need to establish where he was and
3 that he actually heard the conversation.

4 Q Okay. Where were you when you heard this
5 conversation?

6 A In a pod.

7 Q Okay.

8 (Court reporter asks for clarification.)

9 THE WITNESS: In a pod, in a pod.

10 Q Okay. In the pod in J. Reuben Long?

11 A Yeah, the pod at J. Reuben Long.

12 Q Okay. And who was Dubba talking to?

13 A Ace.

14 Q Okay. He was not talking to you?

15 A No.

16 Q What were you doing?

17 A Sitting at the phone.

18 Q Okay. And who was he showing the documentation
19 to?

20 A Ace.

21 Q Okay. Did you ever see it?

22 A No, ma'am.

23 Q Okay. And what did he tell Ace about it?

24 A He say, I'm good, they don't got nothing on me.

25 Q Okay.

KACHIEF SPAIN-DIRECT BY MS. LIVESAY

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1 A He slid some papers through the door, and Ace was
2 reading them. And while he was reading them -- yeah,
3 Ace was just glancing over the papers. And he was
4 like, what happened. And he told him what happened.
5 Kind of stayed for the whole thing.

6 Q Now, since you've been down at J. Reuben Long,
7 have I promised you anything since you been down here?

8 A No.

9 Q Okay. Since you've been down there, has anybody
10 threatened you or pressured you about your testimony?

11 A Yes.

12 Q Tell the jury about that.

13 A Well, there's a lot of people in there from Conway
14 in the city. So every time they see me they like, you
15 know, why you doing this, why you doing this, now you
16 can't come back to Conway no more.

17 MR. CANTY: Object to any hearsay, Your Honor.

18 THE COURT: That's not -- on that ground your
19 objection is overruled. Continue on.

20 THE WITNESS: So I seen like one guy yesterday.
21 He was like, man, I don't fuck with you, man, you know,
22 I don't fuck with you. That's fucked up, that's fucked
23 up, man. You know, we never -- we went to school
24 together, we grow up together.

25 MR. FREDERICK: Judge, this is hearsay.

1 THE COURT: Sustained.

2 Q Were you afraid to testify today?

3 A It was getting to that point because, you know,
4 it's just I'm seeing so many people and, you know, it
5 -- it just a lot of pressure.

6 Q Okay. After your testimony, where are you going?

7 A Back to the federal.

8 Q Okay. Do you want to go back to the J. Reuben
9 Long?

10 A No.

11 Q Mr. Spain, do you know Dubba?

12 A Yes.

13 Q Okay. Can you point him out in the courtroom.

14 A Yes, ma'am.

15 Q Okay. If you don't mind, is he wearing a tie or
16 not wearing a tie?

17 A Wearing a tie.

18 Q Okay. He's the guy wearing a tie?

19 A Yes.

20 Q Okay. And you saw him out at the jail?

21 A Yes.

22 Q Okay.

23 THE COURT: Was that -- I didn't hear that answer,
24 I'm sorry.

25 THE WITNESS: Yes.

KACHIEF SPAIN-CROSS BY MR. FREDERICK

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1 THE COURT: Okay.

2 Q Okay. When you saw him, did you see any tattoos
3 on him?

4 A I seen him from across the pod so, you know, I
5 wasn't face to face with him.

6 Q Okay. So you don't really remember?

7 A No.

8 MS. LIVESAY: No further questions, Your Honor.

9 THE COURT: Mr. Frederick?

10 CROSS-EXAMINATION

11 BY MR. FREDERICK:

12 Q You didn't see the discovery in the case; right?

13 A Right.

14 Q But if I understand you right, what you overheard
15 was Dubba going over his discovery with Ace; is that
16 what you said on direct?

17 A He said, they don't got nothing on me. That's all
18 he said. He slid some papers through the door to him.
19 I'm assuming it's his discovery.

20 Q Okay. And so the only thing that he said apart
21 from going over the discovery is they ain't got nothing
22 on me; correct?

23 A Until Ace asked him what happened.

24 Q Ace asked him what happened?

25 A Yeah.

1 Q And they were going over his discovery. You did
2 say that on direct; didn't you?

3 A He slid couple papers through the door to him.
4 Ace was looking at the papers.

5 (Court reporter asks for clarification.)

6 THE WITNESS: Ace was looking at the papers. And
7 he was like, what happened, you want to tell me what
8 happened. He started talking to him about it.

9 Q Okay.

10 MR. FREDERICK: And may I ask, judge, that we
11 instruct him to answer yes or no, and then explain his
12 answer.

13 THE COURT: If the question calls for a yes or a
14 no response, if it's not an open-ended question, if it
15 calls for a yes or no, please respond first by
16 answering yes or no.

17 But you may then explain your answer. You can go
18 on and explain your answer after that. So if you just
19 listen to the question, and then answer to the best of
20 your ability.

21 Go ahead, Mr. Frederick.

22 Q On your direct testimony, did you say that Dubba
23 was going over his discovery with Ace?

24 A No.

25 Q In your interview, you were interviewed by, I

KACHIEF SPAIN-CROSS BY MR. FREDERICK

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1 think his name was Townsend, and that was a
2 investigator from this solicitor's office; right?

3 A Right.

4 THE COURT: All right, you have to speak up.

5 THE WITNESS: Yes.

6 THE COURT: You can just move closer to the
7 microphone. Thank you, sir.

8 Q In your interview, you gave him a whole lot more
9 detail; didn't you?

10 A I don't remember.

11 Q Okay. Did you tell the investigator that the
12 victim was on the couch sleeping?

13 A Yes.

14 Q That she heard them coming in?

15 A Yes.

16 Q That she was running down the hall?

17 A Yes.

18 Q That he shot her?

19 A He started shooting.

20 Q Did you tell the investigator that she was calling
21 Splurge's name?

22 A Yes.

23 THE COURT: Speak up, please.

24 THE WITNESS: Yes.

25 Q Did you tell the investigator Dubba and the victim

1 were distant cousins?

2 A Yes.

3 Q Did you tell the investigator about the blue Astro
4 van?

5 A No.

6 Q Did you tell the investigator that there were
7 eight people in the van?

8 A No. I don't know.

9 Q You didn't say that to him?

10 A I don't know.

11 Q Kachief, I'm going to hand you this only to
12 refresh your recollection.

13 MS. LIVESAY: Your Honor, what he's asking about,
14 is this --

15 THE COURT: All right. Are you raising an
16 objection?

17 MS. LIVESAY: I am, Your Honor.

18 THE COURT: Let me see the document, please,
19 first.

20 MR. FREDERICK: Only to refresh recollection,
21 judge.

22 THE COURT: All right, I appreciate that. Let me
23 just look at it real quick. Okay, the third page?

24 MS. LIVESAY: Your Honor, my objection is he's
25 asking about what somebody else said about the van.

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1 THE COURT: I appreciate that.

2 MS. LIVESAY: All right.

3 THE COURT: All right. What page do you want to
4 show him?

5 MR. FREDERICK: I was just handing him the entire
6 document because -- but really, judge, bottom of page
7 one of two and page three is the only part that's
8 relevant to this case.

9 THE COURT: All right, all right. So just direct
10 his attention to the very bottom of page one and then
11 page two, so --

12 MR. FREDERICK: Yes, sir.

13 THE COURT: I'm going to allow him to read it, the
14 bottom of page one, very bottom of page one, and then
15 page two. When you're done reading, let Mr. Frederick
16 know.

17 THE WITNESS: Want me to read?

18 THE COURT: No; just to yourself, not out loud.
19 Just read it to yourself, the bottom of page one and
20 then all of page two. When you're done reading it, let
21 Mr. Frederick know you're done. Thank you.

22 THE WITNESS: All right. All right.

23 Q When you're done, just set it to the side. Are
24 you done?

25 A Yeah.

1 Q Okay. Did you tell the investigator there was a
2 blue Astro van?

3 A Yes.

4 Q Did you tell the investigator that you had talked
5 with Lil Bootsie?

6 A Briefly.

7 Q Did you tell the investigator there were eight
8 people in the van?

9 A Yes.

10 Q Did you tell the investigator Dubba went in the
11 front door?

12 A Yes.

13 Q Did you tell the investigator that Dubba and Cutty
14 put a gun to Lil Bootsie's head and told him not to
15 tell?

16 A Yes.

17 Q Did you tell the investigator that Dubba had
18 threatened Lil Bootsie's grandmother?

19 A Yes.

20 MS. LIVESAY: Your Honor, anything that he's
21 talking about that Little Bootsie told him would be
22 hearsay. The only way I'm allowed to get in a
23 statement against Dubba is because it's against a party
24 opponent.

25 MR. FREDERICK: Judge --

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1 MS. LIVESAY: Once we start talking about what
2 other people told him, that's --

3 THE COURT: All right. Let's stop right here.

4 MR. FREDERICK: Judge, I will stipulate that it's
5 not true. It is not for the truth of the matter
6 asserted.

7 THE COURT: Well, I appreciate -- I appreciate you
8 want to testify about whether it's true or not. You
9 can't do that, that's not your job. That's struck from
10 the record. Please stop.

11 MR. FREDERICK: Yes, sir.

12 THE COURT: Ladies and gentlemen of the jury, go
13 to the jury room. Thank you very much.

14 (WHEREUPON, the jury exited the courtroom at
15 11:05 a.m.)

16 THE COURT: All right, solicitor, your objection
17 is hearsay; is that correct?

18 MS. LIVESAY: Yes, sir, Your Honor.

19 THE COURT: All right. Mr. Canty, you stood up,
20 you would like to say something?

21 MR. CANTY: Not offered for proof of the fact
22 asserted.

23 MR. FREDERICK: Truth of the matter asserted.
24 That was what I meant.

25 THE COURT: So you object also?

1 MR. CANTY: Not at all. What I'm saying, Your
2 Honor is --

3 THE COURT: Okay. Well, then, all right.

4 MR. FREDERICK: May I, judge?

5 THE COURT: Just a second. Let me be clear about
6 this. I appreciate you making the comment, but you
7 don't object to his testimony or the questions
8 Mr. Frederick's asking.

9 MR. CANTY: That's correct. And I'm saying that
10 that it is an exception because it is not offered to
11 prove the facts asserted.

12 THE COURT: All right, sir. You were trying to
13 help Mr. Frederick?

14 MR. CANTY: Yes, Your Honor.

15 THE COURT: All right. Go ahead, Mr. Frederick,
16 I'll be glad to hear from you.

17 MR. FREDERICK: Judge, it's not even an exception
18 to the hearsay rule. It doesn't come under any of the
19 exceptions because if it's not offered for the truth of
20 the matter asserted, it doesn't even fall under the
21 hearsay rule. And that's what I meant when I said I'll
22 stipulate it's not true. It's not offered for the
23 truth of the matter asserted, it's not hearsay, judge.

24 THE COURT: Well, but who is going to prove it's
25 not true? I assume you want to say it's not true. I

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1 don't know.

2 MR. FREDERICK: No, sir.

3 THE COURT: Nobody knows whether it's true or not.

4 MR. FREDERICK: No, sir. The point is it's not
5 even offered for the truth or falsity.

6 THE COURT: That's the point. It's not the point
7 of whether you think it's true or not.

8 MR. FREDERICK: Yes, sir.

9 THE COURT: It's not offered for that. I'm going
10 to allow it. I'm going to continue to allow it,
11 solicitor.

12 MR. FREDERICK: Yes, sir.

13 THE COURT: All right. Go ahead, bring the jury
14 back in. Thank you.

15 (WHEREUPON, the jury came into open court at
16 approximately 11:08 a.m.)

17 THE COURT: Go ahead, Mr. Frederick.

18 MR. FREDERICK: Yes, sir.

19 Q You told that investigator Stump-man, Quinton
20 Smith's brother, was in the van too?

21 A I said that I heard that.

22 Q You told the investigator Splurge was trying to
23 flush the drugs down the toilet, but it wouldn't all
24 flush?

25 A Yes.

1 Q And you told the investigator Splurge gets his
2 drugs from JJ?

3 A Yes.

4 Q But you didn't read or overhear any of that from
5 Dubba's discovery?

6 A Didn't hear what?

7 Q Everything we just went through, Kachief.

8 A I never seen Dubba's discovery.

9 MR. FREDERICK: Thank you.

10 THE COURT: All right, Mr. Canty,
11 cross-examination.

12 MR. CANTY: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. CANTY:

16 Q Mr. Spain, how long a sentence are you serving?

17 A 15 years.

18 Q 15?

19 A Yes.

20 Q And prison is not a nice place; is it?

21 A No.

22 Q And if you had a hundred thousand dollars in the
23 bank, would you write a check for \$10,000 to get out a
24 year early?

25 A Probably.

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1 Q Would you write a check for \$10,000 to get out six
2 months early?

3 A Six months early. I mean, what's six months in
4 ten years.

5 Q Well, you would know better than I. Now, when did
6 you overhear this conversation?

7 A In April of 2012.

8 Q And what pod were you in at that time?

9 A D-3, D-2, D-3. I'm not positive if it was D-1,
10 D-2, D-3 or D-4. I was in one pod, maybe it was D-1,
11 Dubba was in D-2. I might have been in D-3, he was in
12 D-4. He was in the pod beside me while I was there.

13 Q You talked to the solicitor about this case this
14 week?

15 A Yes.

16 Q And you know at the J. Reuben Long Detention
17 Center they have records of housing; correct?

18 A Correct.

19 Q And whether or not you and Dubba were in the same
20 pod --

21 A I never said we was in the same pod.

22 Q You never said --

23 A I said we are side by side. That pod was right
24 here, both pods here. We share the same rec field.

25 Q So if the records showed that you were never in

1 the same pod, that would cover that; wouldn't it?

2 Wouldn't it?

3 A Yeah.

4 Q Okay. Have you ever been treated or diagnosed for
5 memory loss?

6 A No.

7 Q You've known Dubba all his life or nearly so?

8 A Yes.

9 Q Name any of his children.

10 A I don't know any of his kids.

11 Q Tell the jury what his address was.

12 A He stayed at Crane Creek.

13 Q And you didn't see that in the discovery?

14 A No.

15 Q Okay. Now, do you remember when you spoke with
16 the investigator about this?

17 (Discussion off the record.)

18 MR. CANTY: May we have it marked strictly for
19 identification.

20 THE COURT: Any objection?

21 MS. LIVESAY: Not to just marking it.

22 THE COURT: For identification. All right. Do
23 you have any objection, Mr. Frederick?

24 MR. FREDERICK: No, sir.

25 THE COURT: All right. What number would it be,

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1 please, ma'am?

2 COURT REPORTER: 11, judge.

3 THE COURT: Defendant's-11 for identification
4 only, not for evidence.

5 (WHEREUPON, Defendant's Exhibit No. 11 was marked
6 for identification only.)

7 MR. CANTY: Thank you.

8 Q And do you still have your copy?

9 A Yes.

10 Q And under the federal substantial assistance
11 rules, if you give testimony that results in a
12 conviction, your sentence would be reduced; is that
13 right?

14 A It's not a guarantee.

15 Q Isn't that why you are here today?

16 A Yes.

17 THE COURT: I'm sorry, sir?

18 THE WITNESS: Yes. Yes.

19 Q Now, you recall the date when that investigator
20 came and spoke to you?

21 A No.

22 Q If it was indicated that that was October the 4th,
23 would that seem about right?

24 A Yes. Yes.

25 Q So you had this information for five or six months

1 before you spoke to the investigator?

2 A That's when they finally came and saw me.

3 Q And tell the jury, please, where the investigator
4 came to interview you.

5 A At Effingham in Florence.

6 Q In Florence, South Carolina; is that correct?

7 A Yes.

8 MR. CANTY: That's all I have, Your Honor.

9 THE COURT: Very good. Any redirect?

10 MS. LIVESAY: Yes, sir, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. LIVESAY:

13 Q Mr. Spain, do you remember Mr. Frederick and Mr.
14 Canty asking you about what you told Brad Townsend?

15 A Yes.

16 Q Okay. And some of that stuff you told him you
17 didn't learn from Dubba; did you?

18 A No.

19 Q Okay. You learned from talking to other people?

20 A Yes.

21 Q Okay. And did you also tell Detective Townsend
22 that Dubba had threatened Bootsie's grandma?

23 A Yes, ma'am.

24 Q Okay. And did you also tell Detective Townsend
25 that Dubba and Cutty had threatened Bootsie as well not

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1 to talk?

2 A Yes, ma'am.

3 Q Are you promised or guaranteed anything for your
4 testimony today?

5 A No, ma'am.

6 Q Okay. Has anybody at all guaranteed you anything
7 as far as any kind of reduction in time?

8 A No, ma'am.

9 MS. LIVESAY: No further questions, Your Honor.

10 THE COURT: Mr. Frederick?

11 RECROSS-EXAMINATION

12 BY MR. FREDERICK:

13 Q Kachief, you still got this?

14 A Yes.

15 Q Take a minute, take as long as you need, look at
16 it carefully, read it through, and let me know when you
17 find the place where it says Dubba and Cutty threatened
18 Bootsie not to testify. Just let me know when you find
19 it. And if you don't see it, let us know that too.

20 MS. LIVESAY: Your Honor, I'm not sure if that is
21 responsive to my redirect. I think my question was
22 whether or not they had threatened him not to talk.
23 And I believe --

24 THE COURT: All right, I appreciate that. I'm
25 going to allow the question, Mr. Frederick. Thank you.

1 Go ahead.

2 THE WITNESS: Can you repeat the question again.

3 Q Listen carefully. When you see the spot where it
4 says Dubba and Cutty threatened Bootsie not to talk,
5 let me know.

6 A I see it.

7 Q Okay. Point me to it.

8 A On the last page, the eighth paragraph, the eighth
9 line.

10 Q The part about the grandmother. That's not what I
11 asked you.

12 A No. It says, Lil Bootsie said that Dubba and
13 Cutty put a gun to his head and said, don't tell.

14 Q Oh. You're right. Okay. Let me have that back.
15 Lil Bootsie said that. And we did cover that on my
16 cross-examination; didn't we?

17 THE COURT: Was that a yes or a no, the answer to
18 the question?

19 Q Earlier when I questioning you we covered that;
20 didn't we?

21 A What was the question?

22 Q What you just said, when I was cross-examining
23 you, we covered that; didn't we? I read it to you.

24 A I don't know what the question was.

25 MR. FREDERICK: Whatever the question was, I

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1 withdraw it, judge.

2 THE COURT: All right, sir. Mr. Canty?

3 MR. CANTY: Nothing further, Your Honor.

4 THE COURT: You may step down, sir. He is
5 remanded to the custody of the federal authorities.

6 Thank you very much.

7 (Witness excused.)

8 THE COURT: All right, solicitor, your next
9 witness, please, ma'am?

10 MS. LIVESAY: Your Honor, at this time the State
11 rests.

12 THE COURT: Very good. Are there matters of law
13 at this point in time from the defense, Mr. Frederick?

14 MR. FREDERICK: Yes, sir.

15 THE COURT: Mr. Canty?

16 MR. CANTY: Yes, Your Honor.

17 THE COURT: All right, very good. All right,
18 ladies and gentlemen of the jury, in any criminal case
19 at the end of the State's case there are matters of law
20 that the Court must take up at that point in time.
21 This case is no different, that's in every case.

22 I'm going to do that. I will do it as quickly and
23 expeditiously as I can so we can move along and
24 continue on with the case. It will probably take
25 about, and I will give them a short break also, let's

1 say 15 minutes, say 15 minutes. And then we'll come
2 back in and continue on with the case at that point in
3 time. So go back to your jury room. Thank you very
4 much, and everyone else remain seated. Thank you.

5 (WHEREUPON, the jury exited the courtroom at
6 11:20 a.m.)

7 THE COURT: All right. Mr. Frederick, I'll be
8 glad to hear from you, sir.

9 MR. FREDERICK: Frankly, judge, despite the
10 impeachment, Keir Johnson's testimony was that these
11 two were in the van. And I'm not going to make a
12 motion at this time.

13 THE COURT: All right, sir. And, again -- Mr.
14 Canty?

15 MR. CANTY: We'd move for a directed verdict based
16 on the insufficiency of the evidence, Your Honor.

17 THE COURT: All right. I appreciate that. And
18 I'm going to say for the record that, and just I'm set
19 forth the standard, counsel knows what the standard is,
20 defendant would be entitled to a directed verdict when
21 the State fails to produce evidence of the offense
22 charged.

23 The trial judge is concerned with the existence of
24 evidence. It is not my job to judge credibility and
25 believability, whether the witness is to be believed or

1 not. That is the jury's job. My only job is to decide
2 whether or not the evidence exists. Is there direct
3 evidence and/or substantial circumstantial evidence
4 reasonably tending to prove the guilt of the accused.
5 That's the Court's standard.

6 Again, jury standard is beyond a reasonable doubt.
7 Mine is reasonably tending to prove the guilt of the
8 accused. I find in this particular case that there is
9 direct evidence and substantial circumstantial evidence
10 reasonably tending to prove the guilt of both of the
11 defendants. The evidence exists in this case.

12 It will be up to the jury to judge credibility and
13 believability. There's no question, there is more than
14 sufficient evidence if that evidence is believed by the
15 jury to convict both of these defendants beyond a
16 reasonable doubt. That evidence is in the record.
17 Credibility, believability, that's up in the air.

18 All right. With that, the motion for a directed
19 verdict is denied. I'll deny it as to both defendants
20 in this particular matter.

21 I assume since we're at this stage, Mr. Frederick,
22 we're probably not going to have a problem with your
23 witness, then, I would guess.

24 MR. FREDERICK: I think we're okay, judge.

25 THE COURT: Okay. So we'll take a short break,

1 Kelley.

2 ERIN KELLEY, after being duly sworn, testified as
3 follows:

4 CLERK OF COURT: State your name and spell your
5 last name for the Court, please.

6 THE WITNESS: It's Erin Kelley, K-E-L-L-E-Y.

7 THE COURT: Your first name? I'm sorry, ma'am.

8 THE WITNESS: Erin, E-R-I-N.

9 THE COURT: K-E-L-L-E-Y?

10 THE WITNESS: Correct.

11 THE COURT: All right. Counsel, can y'all come
12 over and talk to me for one second, please.

13 MR. FREDERICK: Yes, sir.

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury but out of the
16 hearing of the jury.)

17 THE COURT: Go ahead, Mr. Frederick.

18 DIRECT EXAMINATION

19 BY MR. FREDERICK:

20 Q Ms. Kelley, where do you work?

21 A Frederick Law Office.

22 Q Okay. You work in my office?

23 A I do.

24 Q And when you're not sitting at counsel table in a
25 trial, what do you do?

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1 A Part of what I do everyday, we have a branch of
2 our office that does process serving. It's very high
3 capacity process serving. On a daily basis I'll go in
4 and we have papers upward of 200 at any given time that
5 need to be served on defendants throughout Horry
6 County.

7 Every morning when I come in, I have to take those
8 papers that we have and I will plot them, most of which
9 are in downtown Conway. And I will plot them on maps
10 and develop optimized routes for our process servers,
11 so they can take as many papers as they need and go
12 deliver for the day.

13 Q Okay. Lean in just a little bit, couple inches
14 towards the microphone. And when you say defendants,
15 is that civil cases, is it our cases; how does that
16 work?

17 A It's civil cases. It's civil cases.

18 Q For us or other law firms?

19 A For other law firms.

20 Q Okay. Do you recognize this map?

21 A I do.

22 Q And what can you tell us about it; did you make
23 it?

24 A I did.

25 Q Okay.

1 A It's actually a downloaded still picture from
2 Google Earth that is inclusive of the downtown Conway
3 area and the suburbs to the west, north and east.

4 Q And are you familiar with the Conway area?

5 A Yes, I am.

6 Q Why?

7 A Because I plot routes doing process serving
8 everyday.

9 Q Okay. Is this an accurate depiction of the Conway
10 area?

11 A Yes, it is.

12 Q Okay. And have you studied this map?

13 A Yes, I have.

14 Q Okay. And on this map I see there are a few
15 stickies, some of which need some Scotch Tape on them.
16 Did you place those there?

17 A I did.

18 Q Okay. And can you tell us, and I'm just referring
19 to these little house looking things, why and how did
20 you place those there?

21 A Well, those houses, I've actually got houses here
22 that need to be placed still.

23 Q Okay.

24 A Throughout everything that's happened in this
25 trial there have been several locations that have been

ERIN KELLEY-DIRECT BY MR. FREDERICK

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1 incredibly pertinent.

2 Q Lean into the microphone.

3 A Off those places I have obtained the street
4 address for, I think, three or four different
5 locations. The little houses will effectively
6 represent where they are on that map.

7 Q Okay. So do you want to put yours on here. I
8 know I'm rushing you, I was rushing you. Do you have
9 some Scotch Tape?

10 A I do.

11 Q Okay. When you come down here, speak loud for the
12 court reporter, for the record; okay?

13 A All right.

14 Q And as you place the house, just tell us what that
15 address is and how you know that's the address; okay?

16 A Okay. The first house that I have is the address
17 for Billy Freshley. It is located on Collins Park
18 Street in Conway.

19 THE COURT: The jury can't hear her when she's
20 bending down. Do your work and then stand up next to
21 the microphone and say what you what you did.

22 THE WITNESS: Okay.

23 MR. FREDERICK: Yes, sir.

24 Q Are you done?

25 A I am.

1 Q Okay. And you've got one labeled Keia?

2 A That's correct.

3 Q And what is that?

4 A That is the location of the victim Keia Pertelle's
5 house on Brison Court.

6 Q Okay. And you've got one named Tiffany Oliver; is
7 that right?

8 A That's correct.

9 Q Can you tell us about that one.

10 A That's the woman whose yard the van was left in
11 after it was abandoned.

12 Q Okay. How did you determine the location, the
13 address?

14 A It was identified in the discovery documents that
15 we received, and I also confirmed it through other
16 sources.

17 Q Okay. And I see Carnail Graham; how did you
18 determine his address?

19 A Again, in the discovery documents that we received
20 that had his address actually spelled out.

21 Q Okay. Bill Freshley?

22 A Bill Freshley's house, his house is in his name,
23 and throughout interviews that we received with
24 detectives and suspects, each one of them identified
25 that his house was listed in his girlfriend's name, her

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1 name is Carmella. Subsequent to that they also
2 identified his house as being on the street directly
3 across from Conway Middle School.

4 Q Based on prior testimony is what you're saying?

5 A Correct, correct.

6 Q Okay. Is there another way that you confirmed
7 this?

8 A I did. We use a system called TLO in part of our
9 process serving. Basically it allows you to put in
10 somebody's name, and it will give you just about all of
11 their information, address histories and criminal
12 records, basically anything you could want to know
13 about the person.

14 When searching for Billy Freshley himself, nothing
15 came up. But when I searched for his girlfriend
16 Carmella, it did confirm the address. I believe it was
17 in Conway.

18 Q Okay. Kel's house, tell us how you found that
19 one.

20 A Markel Rush, he and his girlfriend, his girlfriend
21 was -- her name is Kirstan, K-I-R-S-T-A-N, West, using
22 the same program, the TLO program, when I typed their
23 name in it gave me an address history on both of them.
24 Through the pertinent time that's relevant here, for
25 the months of November, I think, October and December

1 of 2011, both of them showed a residence at

2

3 Q Am I missing any?

4 A No. I believe that's all.

5 Q Okay. You don't have to say it, don't talk about
6 what it is, but do you recognize this?

7 A I do.

8 Q Is this a photo -- who took this photo?

9 A I did.

10 Q Okay.

11 THE COURT: What?

12 MR. FREDERICK: I'm sorry. We're referring to
13 Defense Exhibit 14.

14 THE COURT: All right.

15 Q All right. And this is a photo that you took?

16 A I did.

17 Q Okay. Where did you take the photo; do you
18 remember?

19 A It's on Church Street in downtown Conway.

20 Q Okay. Do not say what this is or talk about it --

21 A Okay.

22 Q -- in any details, but is this a document that you
23 created?

24 A It is.

25 Q And in general terms, how did you create the

ERIN KELLEY-DIRECT BY MR. FREDERICK

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1 document, the document, in very general terms?

2 A Understood. Within discovery documents, as noted
3 in the New Times Roman writing underneath of the
4 highlighting there, it identifies the page specifically
5 that -- in reference to the discovery documents. I
6 just took screen shots and cropped them down to include
7 the information that we needed and then placed the one
8 on top of each other and created a photograph.

9 Q And it's Defense Exhibit 13 that we're referring
10 to marked for identification only. And was this part
11 of the phone records?

12 A It was.

13 Q Okay.

14 THE COURT: And the big board that she was
15 referring to earlier is?

16 MR. FREDERICK: Defendant's Exhibit 12, judge.

17 THE COURT: Thank you.

18 Q This is a silly question, but did I miss anything?

19 A I don't think so.

20 Q Okay.

21 MR. FREDERICK: No more questions.

22 THE WITNESS: Oh, the towers, I'm sorry. They're
23 indicated on the map.

24 Q That's right. Glad I asked. There are some
25 little pictures of cell towers on the map. Did you

1 place these here?

2 A I did.

3 Q And what did you -- what information -- based on
4 what information did you place them in those places?

5 A Actually, the physical location of each one of
6 them I placed under the direction of a man named Roger
7 Boyell that corresponded with -- he and I both looked
8 at the map at the same time, and when you zoom in very
9 closely to where he told me the towers marked were, you
10 can physically see the actual tower on the Google Earth
11 program. So those were pinned with the cell phone
12 tower photographs.

13 Q So you actually can see the towers?

14 A You can.

15 Q That's cool. Anything else?

16 A No. That's all.

17 Q Okay.

18 MR. FREDERICK: Please answer any questions that
19 Ms. Livesay or Mr. Canty have.

20 THE COURT: Mr. Canty?

21 MR. CANTY: None, Your Honor.

22 THE COURT: Solicitor?

23 MS. LIVESAY: Yes, sir, Your Honor. Just a
24 couple.

25 CROSS-EXAMINATION

1 BY MS. LIVESAY:

2 Q Erin, you may have told us and we didn't hear it.

3 What did you have noted as Cutty's address?

4 A I believe it's written down as

5

6 Q It was what?

7 A I believe it's on the sticky, it's

8 G

9 Q And that's what you had for Cutty's address?

10 A That's what I have for Carnail Graham's address.

11 Q Okay. And what do you have for Cutty's address,

12 Thomas Booker James?

13 A We didn't place that on the map.

14 Q So you do not have an address for him?

15 A Not in front of me, no. I believe, if memory
16 serves correctly, it's , but it's not on
17 the map.

18 Q Okay. And Carnail Graham is

19

20 A That's correct.

21 Q Okay. And did you go out there to verify that
22 that was indeed his correct address?

23 A I did not physically drive out to the location,
24 no. But the address is indicated in all of the police
25 reports that are relevant to this case. Furthermore,

1 in TL0, again, I cross referenced it, it is the only
2 address that pulls up for him. Public index searches
3 show that that's his current address, and I verified
4 its location using the same program, Google Earth,
5 which is where I placed it on the map.

6 Q Okay. But you didn't actually go to
7 to see if that's where he lived?

8 A No, I have not.

9 Q Okay. Now, you also gave the addresses for the
10 towers; is that correct, you marked them?

11 A I pinned them on the map.

12 Q Okay. Where did you get those addresses from?

13 A Again, that was something that I did with
14 Mr. Roger Boyell. In the return for the phone records
15 on -- excuse me -- on Mr. Thomas James' phone, it had a
16 spreadsheet, an Excel document, that was, I don't know,
17 upwards of 26 or so thousand pages in length. Each one
18 had a stamp, if you will. 1679 would be one. And it
19 gave not only a physical street address but also a
20 latitude and longitude.

21 In cross referencing those with Mr. Boyell as
22 accurate, we both zoomed into the Google Earth, and you
23 can physically see the tower location because it's a
24 satellite image.

25 Q Okay. And Robert Boyell is who?

ERIN KELLEY-CROSS BY MS. LIVESAY

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1 A Roger Boyell? I believe he's our next witness.

2 Q Okay. Does he work for Verizon?

3 A I don't know.

4 Q Okay. And you did ride out to see if those towers
5 were at those addresses?

6 A That's where I took that photograph, yes, ma'am.

7 Q Okay. And Billy Freshley's address was what
8 again?

9 A Billy Freshley's address is technically listed
10 through Carmella's address which is

11 in Conway. When Howard Parker was up here
12 testifying, he did make mention and confirm what he had
13 already done in his interviews with investigators,
14 which that the studio, or Billy's house being the same
15 place, were located in the street directly across from
16 Conway Middle School, which is consistent with
17 in Conway, South Carolina.

18 Q Okay. So Billy Freshley lives at the place he
19 calls his studio?

20 A That's correct.

21 Q Okay. And did you drive out there to verify that
22 that was indeed his residence?

23 A No, I did not physically drive to that place.

24 Q Okay. Now, I saw Kel's house.

25 A That's correct.

1 Q What is his full name?

2 A I believe it's Markel Rush.

3 Q Okay. And what did you get for his address?

4 A

5 Q Okay.

6 A And that, again, was confirmed through not only
7 himself but his girlfriend, Kirstan West. Kirstan West
8 shows that was her address all the way through 2012.

9 The TLO program that we use, it collects data such
10 as addresses by utilities that are -- so if you have a
11 phone registered in your name, that home phone is going
12 to show with your name and the address associated.

13 A lot of times when you have somebody's address
14 who lives in the house, but say none of the bills are
15 in their name, you can correspond and confirm that
16 address by using other people that they live with.

17 Q Okay.

18 A Well, we know that Kirstan West being Markel
19 Rush's girlfriend lives with him. I believe, I might
20 be mistaken, but I think they have children together.
21 They've been dating for a very long time from my
22 understanding.

23 Q Okay. Since 20 -- before 2011?

24 A Yes.

25 Q Okay. And did you drive out to Markel's house and

ERIN KELLEY-CROSS BY MS. LIVESAY

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1 confirm that he lived there?

2 A No, I did not.

3 Q Okay. But you did drive out to all the towers?

4 A Yes, we drove to the towers.

5 Q Okay. But we have no, as far as put our eye on
6 identification for any of the residences?

7 A The residences we -- one of my process servers did
8 have subpoenas for a couple of these people and did
9 physically go out, some of which he did serve, some of
10 which he didn't for reasons that I can't speak of. But
11 when he arrived at those addresses, they were confirmed
12 through him. I mean, I can't speak for him, no.

13 Q So you did lay -- your eyes did see that they
14 indeed lived at these addresses?

15 A Personally, no.

16 Q Okay, you did not?

17 A No.

18 Q Okay. Now, you said you found Markel Rush through
19 his long-time girlfriend?

20 A Well, I found him through himself as well.

21 Q Okay. And that's who, Kirstan West?

22 A Kirstan, yeah, K-I-R-S-T-A-N.

23 Q And who all lives in that house?

24 A The only two people that I show registered were
25 those two individuals.

1 Q Okay. And did you find out who all lived at Billy
2 Freshley's house?

3 A Her name was Carmella, I want to say the last name
4 was Onely, O-N-E-L-Y, don't hold me to that, but if I'm
5 remembering correctly. Again, and I believe it was in
6 Howard Parker, his interview with, I believe, Detective
7 Vescovi, he acknowledged that none of the bills were in
8 Billy Freshley's name, that it was all registered to
9 his girlfriend, which is why I looked for her.

10 Q So they both live at the studio, just the two of
11 them?

12 A I don't know if they still currently live there.

13 Q But they did in November 8th, 2011?

14 A That's correct.

15 Q Okay. And who lived in the house that you had for
16 the residency for Carnail Graham?

17 A The only person that I verified that through was
18 Carnail.

19 Q Okay.

20 A I didn't check any of his family members or
21 anything like that.

22 Q So to your knowledge, the only person that lived
23 in that residence was Carnail Graham?

24 A That's the only one I can confirm, yes.

25 Q Now, Thomas Booker James, you got him at

ERIN KELLEY-CROSS BY MS. LIVESAY

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1 ?

2 A He's not on the map.

3 Q Okay. So we don't have an address for him?

4 A If memory serves correctly, his address is

5 but it wasn't relevant to any of the

6 locations in this matter, so I did not place it on the

7 map.

8 Q Okay. And did any -- does anybody live at that
9 residence?

10 A I don't know.

11 Q Okay.

12 MS. LIVESAY: Thank you.

13 THE WITNESS: You're welcome.

14 THE COURT: Any redirect?

15 MR. CANTY: None, Your Honor.

16 MR. FREDERICK: Me either.

17 THE COURT: Great. Step down, ma'am.

18 (Witness excused.)

19 THE COURT: Your next witness.

20 MR. FREDERICK: The defense calls Roger Boyell.

21 And, judge, for Mr. Boyell's testimony we would like to
22 turn this map.

23 THE COURT: Certainly.

24 MR. FREDERICK: Actually, Erin, can you help me
25 move that, or David.

1 THE COURT: Come around all the way up here, sir,
2 up and meet the clerk of court right up here.

3 ROGER L. BOYELL, after being duly sworn, testified
4 as follows:

5 CLERK OF COURT: Please be seated. State your
6 full name and spell your last name for the Court,
7 please.

8 (Discussion off the record.)

9 DIRECT EXAMINATION

10 BY MR. FREDERICK:

11 Q Mr. Boyell, good morning.

12 A Good morning.

13 THE COURT: All right, sir, you got to scoot up
14 real close to the microphone. Get right directly on
15 top of that microphone.

16 THE WITNESS: Yes, Your Honor.

17 Q People have trouble hearing maybe.

18 A You asked for my name. I'm Roger L. Boyell,
19 B-O-Y-E-L-L.

20 Q Mr. Boyell, what is your occupation?

21 A I'm an electronics engineer. More specifically,
22 I'm licensed by the State as a licensed professional
23 engineer with a specialty in electrical and electronics
24 engineering.

25 Q Okay. And can you tell the jury a little bit

ROGER BOYELL-DIRECT BY MR. FREDERICK

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1 about your education.

2 A I was brought up in Miami, I attended the
3 University of Florida where I obtained a degree, a
4 bachelor of electrical engineering. Since then I've
5 been employed in the northeast part of the United
6 States, mostly in the defense industry. In the course
7 of that I obtained the Master's Degree in Applied
8 Science from Adelphi University in Long Island and a
9 Master of Business Administration from Monmouth
10 University in New Jersey.

11 I've taken courses outside the curriculum and
12 seminars and given lectures in the course of
13 professional development that are not necessarily
14 associated with a degree.

15 Q Okay. And Mr. Boyell, what is your experience in
16 your field of expertise? And can you tell us what the
17 field of expertise is, and then what is your
18 experience.

19 A My area of specialty is electronic communications.
20 And I was employed, as I say, in the defense industry
21 for about 30 years with different companies where I
22 designed, developed systems for electronic
23 communication, navigation and tracking.

24 By way of example, I would -- I worked for
25 Computer Sciences Corporation who had the contract with

1 the Federal Aviation Administration to investigate
2 methods of tracking aircraft on runways. This is
3 because although air traffic control was fairly
4 refined, there had been a number of crashes between
5 airplanes landing and taking off and running on taxi
6 ways, and they needed a method of tracking the aircraft
7 on the runways and taxi ways so the control tower could
8 perform the same control on the ground as they did for
9 the air traffic.

10 I was the technical lead on that project for, as I
11 say, a company who's had the contract with the federal
12 government. That was a matter of comparing the
13 capabilities and limitations of different methods for
14 performing this tracking of aircraft. One of the
15 methods was, in effect, a miniature cell phone system
16 in which the aircraft would communicate with base
17 stations which would be spotted around the airport. So
18 but the various radial base stations could keep track
19 of the aircraft location through radio communication.

20 Since leaving the defense industry, I've
21 established myself as a private consultant where I do
22 work essentially evaluating the capabilities and
23 limitations of electrical and electronic equipment for
24 navigation and communication. This includes in
25 particular cell phone communication.

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1 And if I may continue, I'll reflect some of my
2 experience in that area.

3 Q Sure. Yes, sir.

4 A Some of my work had to do with localization of
5 cell phone towers, that is antenna sites, which were
6 required for communication with AMSYS, that is the
7 phone that you normally use for wireless communication,
8 generally called mobile communication systems.

9 And I work for several townships as a consultant
10 to evaluate the locations at which their base stations
11 could be placed to get the best coverage for
12 communication with handsets without being intrusive on
13 the community. There are people, for example, who
14 don't want towers in their backyard, so they want a
15 either very short tower or a tower located somewhere
16 outside their municipality; whereas the municipality
17 frequently wants to give communications coverage to the
18 users in the municipality, and for that purpose they'd
19 like to erect an antenna or an antenna site in the
20 community.

21 And there are different interests that are
22 involved, people concerned with migratory birds and
23 people concerned with land use and real estate values.
24 My role was the evaluation of the technical
25 capabilities of alternative locations for base.

1 stations, so as to achieve the balance among these
2 conflicting goals.

3 One noteworthy project was for a township in
4 Vermont in which the cellular carrier wanted to put
5 a -- an antenna site on the top of a mountain to cover
6 the area of the town which was in a river valley. The
7 antenna site was going to be at the top of the
8 mountain, and it would have line of sight coverage to
9 the entire valley so that everybody there could operate
10 their cell phone.

11 Unfortunately, there was a group in the community
12 who wanted nothing on the skyline because in this
13 particular area of Vermont, the skyline was trees and
14 pristine nature, and they didn't want antenna towers
15 sticking up. So they objected to the idea of the
16 wireless site at the top of the mountain.

17 They contracted with me to find alternatives that
18 would provide communication coverage but not be on the
19 mountain top. And after considerable analysis, I found
20 that with two cell sites, that is antenna locations,
21 one on the side of the mountain not at the top and
22 another across the river, they'd have coverage of the
23 entire town without having to intrude on the skyline.

24 The communications carrier was happy that they
25 were permitted to provide coverage for the town and

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1 thereby gained the cellular revenue. And the township
2 was happy that they had the communications coverage
3 without spoiling the scenery.

4 I've worked several projects like that for
5 townships and municipalities, and also a number of
6 projects having to do with the localization of the
7 users of cell phones.

8 Q Tell us about that.

9 A There was a case in Pennsylvania in which I was
10 retained by the prosecution because there were a series
11 of burglaries at various malls in suburban
12 Philadelphia. And they believed that a particular
13 individual was committing the burglaries. They had
14 obtained the records from the cellular carrier, Verizon
15 or Sprint or T-Mobile, whoever it was, for this
16 particular individual.

17 And they asked me to localize the individual, that
18 is to track him, on the days that the burglaries were
19 committed. What I found by examining the records and
20 interpreting the technological detail from the
21 computers was that the track of the individual was from
22 his home to the -- near the location of burglary on one
23 day and back home, and another day from his home to the
24 location of the second burglary and home.

25 It sort of formed a W on the map in which the

1 locations of his home corresponded to the tracks
2 between his house and the locations of the burglaries.
3 We were able to do that because he kept making phone
4 calls while he was in transit, and every time he made a
5 call the communications carrier recorded the location
6 of the cell site that served him. That is, as you go
7 from one location to another, your cell phone picks up
8 different cell sites.

9 The communications company, Verizon, Sprint,
10 T-Mobile, whoever it was, kept the -- keeps the records
11 for two purposes. One, so they can collect the
12 revenue, that is the minutes that you pay for. And,
13 two, so they can manage the network and put sites in
14 the appropriate locations to cover the areas that
15 people want cellular phone coverage.

16 As I say, I worked for the prosecution on that
17 case, and my information enabled the Court to determine
18 whether the defendant was or was not the individual who
19 committed those burglaries on the basis of his cell
20 phone tracks.

21 Q So Mr. Boyell, do all of the cases you work in go
22 to court?

23 A Would you say that again.

24 Q Do all of the cases that you work in, do they go
25 to court, do they go to trial?

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1 A No. Most of the cases I work in, particularly in
2 cellular communications, do not go to trial because
3 what I find is usually dispositive. In some cases --
4 let me take an example. I worked for the defendant in
5 a Cleveland case, which the defendant was accused of
6 sexual assault. And the prosecutor had found cell
7 phone records which through proper interpretation
8 portioned the defendant at the location of the assault
9 at the time it took place.

10 Well, the defendant contracted with me to look at
11 the phone records. And I went a little bit farther, we
12 were able to subpoena the phone records of the alleged
13 victim of the assault. And it turns out that at the
14 time of the alleged assault, the victim was more than
15 half an hour away on the other side of town, the other
16 side of Cleveland, couldn't possibly have been at the
17 location where the assault occurred.

18 And this was because she was making calls, and her
19 phone was accessing cell sites which were completely
20 out of range of the location of the assault.

21 THE COURT: Mr. Frederick, Mr. Canty, solicitor,
22 come talk to me.

23 (WHEREUPON, a bench conference was held off the
24 record in the presence of the jury but out of the
25 hearing of the jury.)

1 Q Mr. Boyell, so don't give us any details of cases
2 that you worked on. But in general, you're saying that
3 you have worked for prosecutors, you've worked for the
4 defense; right?

5 A Yes. In civil and criminal cases both.

6 Q Civil cases as well?

7 A Yes.

8 Q Have you ever been qualified as an expert in
9 court?

10 A Yes. Many times and many jurisdictions I've been
11 qualified as an expert in electronic communications and
12 in particular in cell phone technology.

13 Q Approximately how many times?

14 A Approximately 15 times.

15 Q Okay. Mr. Boyell, why do you do what you do?

16 A Again, please.

17 Q Why did you choose this field?

18 A I'm sorry, I can't hear you because of the echo.

19 Q Why did you choose this field to work in?

20 A Why did I choose this field?

21 Q Yes, sir.

22 A Because it's very satisfying to be able to
23 investigate questions of fact in the physical world and
24 interpret computer-generated data and how electronic
25 equipment works and be able to explain it to the fact

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1 finder.

2 Sometimes my client is an individual or a company,
3 and sometimes my client is a jury or a judge. It's
4 gratifying to be able to explain how things work and
5 resolve cases that come to -- that are involved in
6 litigation.

7 Q Yes, sir.

8 MR. FREDERICK: Judge, I move to qualify
9 Mr. Boyell as an expert in the field of electronic
10 communications, specifically cell phone tracking.

11 THE COURT: All right. Solicitor, do you wish to
12 voir dire the witness or challenge the defense's
13 offering?

14 MS. LIVESAY: No, sir, Your Honor.

15 THE COURT: Very good. He is qualified to give
16 his opinion in the field of electronic communications
17 and cell phone tracking. Mr. Canty, do you wish to
18 question him or challenge it?

19 MR. CANTY: Stipulate to his qualifications,
20 judge.

21 THE COURT: Very good. You may proceed.

22 MR. FREDERICK: Okay.

23 Q Mr. Boyell, can you explain to the jury how cell
24 phones work.

25 A You know that when you carry a phone with you, it

1 communicates with a base station. And it does this
2 because it's a two-way radio and a computer in your
3 pocket. This -- the phone you carry is descended from
4 mobile telephones of 50 years ago, which were large
5 pieces of equipment carried in the trunk of a car or a
6 truck with a handset that was bulky on the dashboard
7 and a big antenna sticking up out of the roof.

8 They are effectively miniature versions of that
9 with a couple of differences. It used to be that
10 mobile communication required base stations on the tops
11 of tall buildings with big antennas. In New York, for
12 example, it was on the Empire State Building. And from
13 those antennas, you can have coverage 25 or 30 miles
14 out to Long Island, because the equipment carried in
15 the car was big and heavy and produced a lot of power
16 and was able to cover that distance.

17 One of the major developments was to make the base
18 station smaller and have more of them, so instead of
19 every hundred miles they might be every 10 or 12 miles
20 on a major highway. That way the mobile equipment
21 didn't have to have so much power to communicate either
22 to transmit or to receive.

23 And eventually the mobile systems became handheld
24 systems with a miniature transmitter and receiver that
25 instead of a hundred miles or even ten miles

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1 communicates with an antenna that might be one or two
2 miles away. Now, that antenna could be on a tower
3 which you've seen towers scattered around the
4 landscape. Could be on a smokestack or a water tower
5 or sometimes just on the side of a building.

6 It's radio equipment with antennas that are
7 frequently directional, they point toward a particular
8 orientation to concentrate the signal in the location
9 where the cell phone users are. Typically up and down
10 major highways, you'll find on interstate highways you
11 have almost continuous cell phone coverage. And in
12 towns like Conway or Myrtle Beach where the population
13 is heavy, you have a choice of several different
14 carriers or providers, again, Sprint, T-Mobile,
15 Verizon.

16 They are in competition with each other, and they
17 all try to offer the best possible service, so that you
18 will use their service and pay them for the minutes of
19 communication. That means that when you turn on your
20 cell phone, it looks around for what base stations are
21 within its range. And it will try to establish
22 communication with the base station that has the most
23 favorable signal provided it's acceptable.

24 For example, if your phone is on the T-Mobile
25 network and there's an AT&T tower next door, it will

1 reject that tower and look for the nearest T-Mobile
2 tower because that's how the system is set up.

3 It used to be that every phone had a home
4 location, and outside of that home location more than
5 50 or so miles it would be roaming, R-O-A-M-I-N-G. And
6 the roaming rate was higher, cost you more for minutes,
7 when you were roaming than it cost you for minutes in
8 your home location.

9 Nowadays, most phones are usable almost everywhere
10 in the country, so you just turn on your phone and it
11 finds the nearest cell site and establishes itself as
12 being accessible through that cell site. When you make
13 a call, you dial a number and press the send key, the
14 phone transmits a signal to the cell site that it is
15 registered with, the cell site being the geographic
16 location where the base station, radio and antennas
17 are.

18 It goes -- the signal goes through a building or
19 the atmosphere and to a radio station which then
20 connects to the public switched telephone network and
21 completes your call. It used to be that you'd have to
22 go through an operator, but now it's all automatic,
23 it's all done by computers. When you dial the number,
24 it's just like dialing a landline number, the switching
25 center routes the call to the appropriate destination.

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1 Conversely, when a call is made to the handset, to
2 your mobile phone, the system network, the provider,
3 has kept track of what cell site your phone is
4 registered with. And it tells that cell site to
5 transmit a signal to your phone to ring the phone. And
6 of course, it's all transparent, this is done in
7 fractions of a second. But behind the scenes there's
8 very complicated computer programming to be able to
9 keep track of every phone in the country all the time,
10 so as to know what cell sites to tell to ring that
11 phone.

12 At the moment there are about 300,000 cell sites
13 in the country, and there are about a hundred million
14 phones. So there are a lot of calls going on at the
15 same time. It takes a lot of computer equipment behind
16 the scenes to keep track of all these, and that's what
17 the carriers do. When you pay 25 cents a minute,
18 you're paying only for pennies for use of the phone.
19 But with a hundred million users and maybe a dozen
20 calls a day, these mount up to substantial revenue.

21 There are different generations of phones. They
22 used to be analog, now they are digital. There used to
23 be what was called cellular telephone service. This
24 was a -- this is the 1990's. The service provided by
25 the -- or licensed by the federal government would use

1 certain frequencies and have a limited number of
2 channels.

3 So you'd have a number of users, and beyond that
4 number of users nobody could make or receive calls.
5 Sometimes you would be on a call and the call would be
6 dropped because the system didn't have enough capacity.
7 And that system was generally known as cellular
8 telephone service, CTS.

9 In the 1990's, the federal government set up a new
10 category of frequencies called personal communication
11 services, PCS, which operates the same way, but it's a
12 different frequency band and has the capability of many
13 more channels. So when the personal communication
14 service was organized, there are a number of carriers
15 who jumped in and built new cell sites. Manufacturers
16 provided new mobile phones with different capabilities
17 including now text messaging and data handling
18 capabilities, to be able to use the new generation of
19 cellular service technology.

20 Now, the reason it's called cellular is not
21 because there's anything cellular about the phone
22 you're using. The idea was that instead of having one
23 large communication site in a major city, they'd have a
24 large number of small sites called cells, and each cell
25 would have a base station. When you move to five or

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1 ten miles, there would be another cell with its base
2 station, and the phone would operate within a cell at a
3 time.

4 This was important because it enabled what's
5 called frequency reuse. The same frequency that's used
6 in the cell in, let's say, Conway could be used in
7 Charleston or in Wilmington. And they're sufficiently
8 far apart that there's no interference among the phones
9 in those distant locations.

10 These are very low-powered equipment, they are
11 sort of like walkie talkies, the range is only a couple
12 of miles. But with the -- the number of cell sites
13 that are provided and the spacing, it enables the user
14 to be within one or more cell sites almost continuously
15 at least everywhere in the eastern USA.

16 And as I say, it's computer equipment that handles
17 this. You dial a number, and it seems like magic
18 happens, the phone rings at the other end. It works
19 much like a landline telephone except that there's a
20 radio link. And that radio link is what you're paying
21 for when you buy minutes on your mobile phone.

22 Q Okay. Mr. Boyell, I'm showing you what's been
23 marked for identification as Defense Exhibit 14. Do
24 you recognize this photo?

25 A Yes.

1 Q And can you tell us what this is.

2 A That's a particularly large cell phone tower. It
3 has a number of antennas on it, and I think it's the --

4 Q Let me interrupt you. Have you actually seen
5 this?

6 A Yes. I think that is the tower on Church Street
7 in Conway.

8 Q Okay. And did you see it yourself?

9 A Yes, I did.

10 Q Okay. And is this an accurate depiction of that
11 tower?

12 A As far as I can tell, it's a photograph of the
13 tower fairly recently. Currently it has about six
14 decks of equipment on it. Back when the incident
15 occurred --

16 Q Give me just a moment.

17 A -- I think it had less.

18 Q Okay. But this is a recent photo of that tower?

19 A It's a recent photo of the tower, yes.

20 Q Give me just a moment.

21 MR. FREDERICK: Your Honor, I move Defense Exhibit
22 14 into evidence.

23 THE COURT: Any objection, solicitor?

24 MS. LIVESAY: No, sir, Your Honor.

25 THE COURT: In evidence without objection.

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1 (WHEREUPON, Defendant's Exhibit No. 14 was
2 admitted in evidence.)

3 Q What can you tell us about --

4 THE COURT: I'm sorry, Mr. Canty, you have no
5 objection?

6 MR. CANTY: No, Your Honor.

7 THE COURT: All right. Thank you, sir.

8 Q What can you tell us about these cell towers?

9 A That cell tower is one of the largest and oldest.
10 On the basis of its construction, you notice it's made
11 of a lattice, lattice work of steel. The newer towers
12 are a single cylinder, they're called monopoles. This
13 one is called a lattice structure, and it's designed to
14 hold antennas at a considerable height above ground,
15 200 or 250 feet.

16 The idea is that the antennas will be able to
17 communicate by radio with the handsets in the vicinity
18 of two or three miles in all directions. The higher
19 the antenna is on the -- on the tower, the greater the
20 range. So the favorite position is at the top of the
21 tower.

22 Q Okay.

23 A Usually a cell phone carrier will build a tower
24 and put his antennas at the top and then rent out space
25 at lower levels for other carriers. And in the case of

1 this site, which I think is the one on Church Street,
2 there are six decks corresponding probably to six
3 different carriers, all of whom have the same
4 geographic location and all have equipment on the
5 ground but use the tower to support their antennas.

6 Q Okay. For this map that we're looking at,
7 Mr. Boyell, have you seen this before?

8 A Yes. Yes, sir.

9 Q And on this map, there are some little pictures of
10 cell towers. And they have numbers and letters next to
11 them. Can you explain those to us.

12 And if you need to, you can step down. If you do,
13 make sure you speak loudly enough that the jury and the
14 court reporter can hear you; okay?

15 THE COURT: Do you need to speak -- step down,
16 sir? Do you need to step down?

17 THE WITNESS: Yeah, please.

18 THE COURT: All right. And identify the exhibit,
19 please.

20 MR. FREDERICK: Sorry about that.

21 THE COURT: Identify the exhibit, please.

22 MR. FREDERICK: Defense Exhibit 12.

23 THE COURT: All right. Mr. Boyell, there is a
24 microphone right there. You stand right next to it and
25 speak up.

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1 THE WITNESS: I'm referring to Defense Exhibit 12;
2 am I audible?

3 THE COURT: Yes, sir. Go ahead.

4 THE WITNESS: All right. We were just talking
5 about the cell phone antenna site on Church Street.
6 And I'm pointing to it here, it has the number 1679.
7 We're calling that site A and site B. Those letters
8 are just convenient designations. The cell sites
9 actually have long strings of numbers identifying them,
10 ten digits in some cases, because each cell site has a
11 unique identification number.

12 We just call them letters A, B, we've got C and G
13 up here, a D here. These are the locations of the cell
14 sites that are of interest in this case.

15 Q Okay.

16 A They have official numbers likes 1679, which is
17 part of the -- that's a Verizon number for this
18 particular cell site. But co-located there is a Sprint
19 cell site that has some ten-digit number that I can't
20 remember.

21 Q Is that the one we have a photo of?

22 A Yes.

23 Q Okay.

24 A That's Exhibit 14 depicts the fact that there are
25 multiple antennas. Now, sometimes you'll find a

1 structure with only one antenna or two. And that's
2 because the carriers have combined their resources, or
3 the carriers don't have any service in that area.

4 As an example, the cell phone, the cell site which
5 we call 215 and I've called C or G, has two carriers on
6 it. And if you look at that cell site out near -- on
7 Church Street near South Carolina Route 22, you can see
8 it above the terrain with two decks on it.

9 Q Have you looked at that cell site?

10 A Yes, looked at that. It has two decks. One is
11 Sprint or Verizon, the other is AT&T or T-Mobile.

12 Q Okay.

13 A We've identified them for the purposes of this
14 case as cell site C and cell site G because they're --
15 there's two different carriers. But they are both
16 located at the same point, as shown on the map near
17 South Carolina 22.

18 Q Are all of these cell towers directional, are some
19 multi-directional; how does that work?

20 A Some cell sites are directional. In particular,
21 the one shown in Exhibit 14, you can see that there are
22 antennas on struts in different directions, they point
23 in different directions. Typically there are three
24 sectors of about a 120-degree width. And when an
25 antenna points east, for example, it covers northeast,

1 east and southeast.

2 Then there are other antennas that point in the
3 other direction to have communications with cell phones
4 that are in the other direction. This gives them two
5 advantages. One, it allows the carrier to put more
6 power into one direction to cover greater distance,
7 penetrate buildings and get better signal. And also it
8 provides the capacity to have multiple conversations
9 because this antenna looks one direction, another
10 antenna looks a second direction and a third direction.

11 With three antennas sectorized like that, you can
12 have three times as many conversations going on at the
13 same time. And remembering that the carriers get money
14 for the minutes, they'd like to have more conversations
15 because they bill for more minutes.

16 Q Okay.

17 A Oh, some sites are not directional. For example,
18 the one we've called C or G is not directional. It
19 doesn't have antennas strung out on -- on struts.
20 They're just mounted on a pole, and they look in all
21 directions. They are called omnidirectional or
22 nondirectional. They don't have quite the same range,
23 but they are a lot less expensive to maintain.

24 Q Okay. Now, Mr. Boyell, I'm going to ask you a few
25 questions, you can take a seat again for a moment.

1 A (Complied.)

2 Q Mr. Boyell, did you receive phone records in
3 connection with this case for your analysis?

4 A Yes.

5 Q And the phone records that you received, are those
6 the type of information that you would reasonably rely
7 upon in your field in forming your opinion on this
8 subject?

9 A Yes. They are typical cell phone records supplied
10 by the communications carriers of calls made and
11 received by certain telephone numbers.

12 Q Okay. And how do you know that those are cell
13 phone records from the provider?

14 A They're complicated machine-readable records
15 usually in an Excel spreadsheet format, and they have
16 all the codes and information that only the cell phone
17 provider knows. You couldn't construct these, you'd
18 have to know how the cell phone network of that
19 provider works. And -- and there's just no way of
20 developing it other than by the computer which records
21 the actual calls made and received by actual callers at
22 the time.

23 Q Okay. How many cell phone numbers did you analyze
24 in connection with this case?

25 A There were six numbers corresponding to five

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1 individuals.

2 Q Okay. Can you tell us what those numbers were.

3 A There were two phones assigned to Keir Johnson,
4 and those numbers are 443 --

5 Q And bear with me for a minute because I'm going to
6 write this at the top. You said Keir Johnson?

7 A Keir Johnson.

8 Q And we're going to call this Keir Johnson-1; is
9 that okay?

10 A All right.

11 Q And what is that number?

12 MS. LIVESAY: Your Honor?

13 THE COURT: Ma'am?

14 MS. LIVESAY: I'm not sure what numbers that he's
15 going to ask about, but I'm going to assume this
16 witness has no knowledge as to whose phone number
17 belongs to who, other than Mr. Frederick telling him
18 that. So I'm not sure how we're authenticating that
19 phone number to that individual.

20 THE COURT: Mr. Frederick?

21 MR. FREDERICK: Do you want me to answer that?

22 THE COURT: Rather than send the jury out, y'all
23 come and talk to me.

24 MR. FREDERICK: Yes, sir.

25 THE COURT: Well, since y'all decided to go out,

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury but out of the
3 hearing of the jury.)

4 THE COURT: All right. You may continue,
5 Mr. Frederick.

6 Q Mr. Boyell, the number that we have identified as
7 Keir Johnson-1, what is that phone number?

8 A That number is (443) 913-2940.

9 Q What would the second number be?

10 A Johnson's second phone was (443) 463-2636.

11 Q And I'm going to label that, Mr. Boyell, as Keir
12 Johnson-2; is that okay?

13 A Yes.

14 Q Was there a third?

15 THE COURT: Sir?

16 Q A third phone number, Mr. Boyell?

17 A Not for Johnson.

18 Q Okay. What is the next one?

19 A We have a phone for -- identified as belonging to
20 Sha'Rah McCray. McCray, and that phone number is...

21 Q Okay, go ahead.

22 A (843) 655-5765.

23 Q What would the fourth number be, Mr. Boyell?

24 A Carnail Graham, Graham. Number associated with
25 him is (843) 503-9720.

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1 Q And the fifth number, Mr. Boyell?

2 A Associated with Michael Pyatt, P-Y-A-T-T, that
3 number is (843) 246-0870.

4 Q And you said there was six. What is the sixth
5 number, the sixth number?

6 A Let me -- let me try again. There were two phones
7 for Johnson, one phone for McCray; did we miss Thomas
8 James?

9 Q Yes, sir.

10 A Oh, I'm sorry. He's -- the phone number for
11 Thomas James is (843) 855-3238.

12 Q Okay. Mr. Boyell, what can you tell us -- let's
13 just start at the top, is that okay -- what can you
14 tell us about the first phone number that you've
15 associated with Keir Johnson? And if you need to, you
16 can step down from the stand. If you do, just stand
17 next to this microphone here; okay?

18 A All right. For the moment I think I can see it
19 from here.

20 Q Okay.

21 A In order to say something about that phone, I have
22 to report that I was asked to localize that phone on
23 the morning of 2011, November 8th, around 3 a.m., and
24 that's where I concentrated my attention.

25 Q During what times, Mr. Boyell?

1 A Around 3 a.m.

2 Q Okay.

3 A The hour before and the hour after. But it was on
4 the morning of November 8th. So those were the records
5 that I looked at in particular for this phone and the
6 others.

7 Q You just focussed the records that you looked at,
8 you didn't look at the next day, the day prior, you
9 focussed it for the time range that you understood was
10 around the incident --

11 A That's correct.

12 Q -- in this case?

13 A Because these records are computer-generated
14 records, there are pages and pages of detailed
15 information. I'm holding a sample page. This is the
16 kind of thing that appears on the screen of the
17 computer. And you need either a practice eye or a
18 pretty good computer program to dissect it and figure
19 what the various columns mean.

20 Well, I did that in the case of all these phones
21 for the times of interest. And I reported my findings
22 as to the location of the phones with regard to the
23 cell sites that the phone accessed when making or
24 receiving calls at this time of this day.

25 Q Yes, sir. What can you tell us about

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1 (443) 913-2940 during the relevant times?

2 A I found that that phone made four calls between
3 midnight and 1:30 in the morning to cell site A.

4 Q Okay.

5 A Which I'm pointing to. This is the big cell site
6 on Church Street.

7 Q Okay, stop there for just a moment. You said --
8 those times again?

9 A There were four calls between 12:23 and 1:25 a.m.

10 Q Okay. And --

11 A Cell site A.

12 Q All right. Now, tell us what that -- what that
13 tells us; what is the coverage of cell site A? And
14 what's the difference between A and B, it's the same
15 tower; isn't it?

16 A A and B, by the way, are two different carriers on
17 the same tower.

18 Q Okay.

19 A Two different decks on the -- on the Church Street
20 tower.

21 Q Okay.

22 A I didn't know that at the time. I just looked at
23 them. I called them cell site A because that was the
24 geographic coordinates, the latitude and the longitude,
25 at which the provider reported the location of that

1 site.

2 Q Okay.

3 A And later when I looked at another phone, I found
4 that it was at the same geographic coordinates. So
5 then I used a Google Earth map to determine that it was
6 the same actual tower.

7 Q Okay.

8 A Which later somebody photographed to verify it.

9 Q Yes, sir. So looking at this tower that you just
10 pointed to, can you give us an idea of what the
11 coverage area is --

12 A Right.

13 Q -- for cell site A?

14 A That's one of the older, larger sites that had
15 been built, and it covers essentially metropolitan
16 Conway. I'm drawing a circle here of a radius of about
17 two miles, that's the approximate coverage. Now, it
18 doesn't mean that --

19 Q Mr. Boyell, would it help if you stepped down
20 here?

21 A Yes. Thank you. It doesn't mean that every phone
22 that's within that coverage area will access that site.
23 It just means that that site gives a good signal for
24 about two miles in all directions because of its height
25 and location.

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1 Q Okay.

2 A There are other cell sites that might give a
3 locally better signal. So if a phone, for example, is
4 over here (indicating), it's probably closer to this
5 site which will give a number later and not cell site A
6 or B.

7 Q Now, let me show you this, what I've created. It
8 just says Johnson with the times that you just told us.

9 A Yes.

10 Q And where -- you tell me where to place this.

11 A Put it, let me refer to my notes.

12 Q Okay.

13 A Cell site A is actually cells 0069, sector two,
14 facing 140 degrees, which means that it was facing
15 about southeast.

16 Q Okay. So --

17 A 90 degrees would be east, 180 degrees would be
18 south, so 140 degrees would be southeast. I would say
19 that it covers this area (indicating).

20 Q So it could have been anywhere in here
21 (indicating)?

22 A Anywhere in here, probably around here
23 (indicating).

24 Q And just on that note, Mr. Boyell, this is -- you
25 cannot give an exact location; can you?

1 A No. We can't locate the phone itself. All we
2 know is the location of the cell site it accessed. And
3 when it did so, that was the most favorable signal for
4 that phone for that call.

5 Q Okay. What else can you tell us about this first
6 number for Keir Johnson?

7 A I find there were six calls made between 4:12 and
8 4:33 a.m.

9 Q 4:12?

10 A And 4:33.

11 Q And 4:33 a.m.

12 A Which also accessed cell site A. So the phone
13 would be in the same area at that time.

14 Q And is this consistent with your findings?

15 A Yes.

16 Q Now, is there anything else that's relevant with
17 this first phone?

18 A No.

19 Q Okay. What can you tell us about Keir Johnson-2,
20 which would be (443) 463-2636?

21 A Well, there were 28 calls made by -- made to or
22 from that phone during that morning.

23 Q Okay.

24 A And when I was able to plot the locations on a
25 map, I found that we could pretty well localize the

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1 travels of the user of that phone because the first 20
2 calls were between 12:18 and 2:27 accessing cell site
3 B.

4 Q Can you -- can you say that again, the times.

5 A 12:18 to 2:27 a.m. They accessed cell site B,
6 which is, as I say, a different carrier but the same
7 location. And it's in the same location generally as
8 the tabs you've placed on -- on Exhibit, was that 17?

9 Q Defense Exhibit 12.

10 A On Defense Exhibit 12. You're placing the third
11 tab in approximately the same location.

12 Q Is that consistent with your findings?

13 A Yes.

14 Q Okay. What else can you tell us about this second
15 number?

16 A There were two calls placed through cell site C,
17 at 2:48 and 2:49 a.m. And cell site C is the one in
18 the upper left corner of Defense Exhibit 12.

19 Q You said 2:48 and?

20 A And 2:49.

21 Q Point to it again.

22 A (Indicating.)

23 Q Okay. What is the coverage area of that cell
24 site?

25 A That site is at the intersection of Church Street,

1 which is 501, and South Carolina 22. It's designed to
2 cover road traffic near that intersection. It's a
3 nondirectional site, so it doesn't have the same
4 coverage range as the Church Street site. But
5 generally it covers the area on Church Street and to
6 the northwest of Conway, and I'm drawing sort of a
7 circle around it here (indicating).

8 Q Okay. So when a phone accessing cell site C,
9 would it be consistent with this location at
10 Brison Court?

11 A Yes. And in particular, when the phone had
12 accessed cell site B down in Conway and then for
13 this -- these two calls access this site, it would have
14 to have traveled up or near 501 toward the cell site G.

15 Q Okay.

16 A And, yes, it would be consistent in this location
17 or anywhere else in this general area. We know the
18 exact location of the site, we just don't know which
19 radio waves went which direction to the phone itself.

20 Q So it could have been anywhere up in here at that
21 time, but this location is consistent with your
22 findings?

23 A Yes. It might have been on the road nearby or at
24 that location.

25 Q Okay.

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1 A That was between 2:48 and 2:49. Then, to continue
2 with the answer to your question, the phone made six
3 calls between 3:15 and 3:26.

4 Q Okay.

5 A And they would access cell site B. So he had to
6 have left the area covered by cell site C and back in
7 the area covered by cell site B, which would be
8 somewhere around, we don't know exactly, but it's
9 somewhere in this (indicating).

10 Q So 3:15 to 3:26?

11 A Yes.

12 Q You tell me, is this consistent --

13 A Well --

14 Q -- with your findings? If it's not, tell me where
15 to put it.

16 A We don't know exactly where to put it. I put it
17 somewhere on 378 near El Bethel Road.

18 Q So this is -- this would be consistent with your
19 findings?

20 A That -- that would be quite likely.

21 Q Okay.

22 A The reason that I'm saying that is that if the
23 user of that phone were up in area and came back down
24 501 towards cell site B, he may have diverted down El
25 Bethel Road to 378 and taking 378 in. We don't know

1 exactly what route he might have taken. All we know is
2 when he made or received these six calls, he was within
3 the coverage area of cell site B.

4 Q Okay. So, and it could have been pretty much
5 anywhere in here (indicating); right?

6 A Right.

7 Q Okay.

8 A But we don't know which way he was traveling, if
9 he was moving. All we know is he accessed that cell
10 site, so the phone had to be within radio range of that
11 site.

12 Q Is there anything else you can tell us about this
13 second phone?

14 A No.

15 Q Okay. What can you tell us about the third phone,
16 Sha'Rah McCray, (843) 655-5765?

17 A We have to point out cell sites E and K, and we
18 haven't done that yet.

19 Q Okay. Go ahead.

20 A I'll have to refer to my notes to --- let's see,
21 we -- yeah, we have, okay. Here we have E, right, I'm
22 sorry. We have located E. Again, that's an alphabetic
23 letter for my convenience rather than trying to
24 remember the ten-digit phone number for the cell site.
25 It's the location E, which is just south of the center

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1 of Conway.

2 Q Okay.

3 A And it is Verizon site 369 and Sprint site some
4 other number which I don't recall. The point is that
5 the McCray phone accessed cell sites E and K between
6 2:04 and 2:21.

7 Q 2:04 and 2:21?

8 A Right. E and K, which are generally in this area
9 (indicating).

10 Q And is this consistent with your findings?

11 A Yes.

12 Q Okay.

13 A You notice there are several sites that cover
14 downtown Conway because that's where the population is,
15 that's where the phones are, that's where people want
16 the coverage.

17 Q Yes.

18 A And the sites are sparser out in the country.

19 Q What else can you tell us about this phone,
20 McCray?

21 A At 2:58 and 3:04, that McCray phone accessed cell
22 site G, which is the same location as the previous cell
23 site C, which is nine miles northwest of Conway.

24 Q Okay.

25 A So I say it's cell site G.

1 Q Does it have the same coverage?

2 A We don't know exactly what the coverage is, but
3 it's in the area of Church Street toward South Carolina
4 22. The point is it's not -- the phone is not downtown
5 Conway anymore at site E, it's up at site G for those
6 calls --

7 Q Right.

8 A -- as I say, between 2:58 and 3:04.

9 Q Is this location consistent with your findings?

10 A It is consistent, yes.

11 Q Okay. What else can you tell us about the McCray
12 phone?

13 A Well, it returned to Conway at 3:22. That is, it
14 moved to cell sites J and L which are down in this
15 general direction. The point is that it left the
16 coverage area of cell site G and returned to the
17 coverage of J and L which are one of these or...

18 Q Look at it carefully, Mr. Boyell, and tell us what
19 they are.

20 A Oh, L is down here on Cates Bay Highway, and J --
21 oh, excuse me. Thank you. It left the coverage area G
22 and entered the coverage area of J and L. Now, J is on
23 378 west of Conway, and L is on Cates Bay Highway
24 southwest.

25 Q What does that tell you about the location of the

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1 phone?

2 A It moved among cell sites J and L, so it was
3 probably in the area which on the map is shown as Dirty
4 Branch Road.

5 Q So is this consistent --

6 A Yes.

7 Q -- with your findings?

8 A Yes.

9 Q Okay.

10 A We don't know exactly where it was when it
11 accessed J or when it access the L, but it had to be in
12 the coverage area of both of them in order to select
13 one or the other.

14 Q So in your opinion, then, that phone was moving
15 between J and L?

16 A It was probably moving, yes, sir.

17 Q Okay.

18 A If a phone stays in one place, it typically
19 accesses the same site for all calls. But if you move
20 it a little bit, it might find another site which gives
21 a more favorable signal. So when you find something
22 like this that is move -- that's transitioning from one
23 site to another, the phone is most likely in motion.

24 Q What else can you tell us about the McCray phone,
25 if anything?

1 A Well, again, it returned to cell site E at 3:39,
2 3:45 and 3:46. So this is just a few minutes later.
3 If -- if it was out here on 378 or Cates Bay Highway,
4 it came back into Conway at about 3:45.

5 Q So just somewhere in here (indicating)?

6 A Somewhere in there, yes.

7 Q Okay. Is there anything else you can tell us
8 about the McCray phone?

9 A No. But what we found is that at the times of
10 interest, the phone started in downtown Conway, went
11 out to the northwest, came down to what I'm calling
12 Dirty Branch Road because that's what's labeled on the
13 map, and then went back into Conway. And all that was
14 between 2:04 and 3:46 a.m.

15 Q Okay. The next one, can we look at Carnail
16 Graham, (843) 503-9720. What can you tell us about
17 that phone, if anything?

18 A Most of the time that phone was silent. There
19 were calls at 2:16 and 2:18 in the morning and at 6:24
20 and 6:28 in the morning, but nothing in between.

21 Q What can you tell us about 2:16 to 2:18?

22 A This is the cell site which we don't have a number
23 for. It's a mile and a half southwest of Conway on --
24 yeah, I referred to a diagram, and it faces east
25 northeast. That would be this cell site here

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1 (indicating). And it faces east northeast, so the
2 phone would have to be somewhere along Cates Bay
3 Highway or Ninth Avenue.

4 Q Which of these cell towers is it again? Look at
5 it carefully.

6 A Read the numbers here. 62863, it is this one
7 (indicating).

8 Q Okay. And you said east northeast, and this is
9 east northeast?

10 A Right.

11 Q So --

12 A Let me read that into the record. The -- excuse
13 me, I'm trying to read my notes here which were --

14 Q It's okay.

15 A -- not prepared for a map like this, it was
16 prepared for a desktop. I had everything spread out on
17 the desk.

18 Q A small map. I understand.

19 A We're looking for 1894 and 1897 for Graham.

20 Q This is 18.

21 A And that would be this one (indicating).

22 Q Okay.

23 A So for the Graham phone, it would be east
24 northeast of this site which is on -- where Fourth
25 Avenue takes a turn, this is Fourth Avenue takes a turn

1 to the south.

2 Q Okay.

3 A And that --

4 Q And you said east northeast, so would this be
5 consistent with your findings?

6 A Yes. Let me give you the number of that site.

7 Q Go ahead.

8 A The LACCID, which is the provider's abbreviation
9 for local area code and cellular identification number,
10 is 89975, slash, 1894.

11 Q Okay. And that was between 2:16 and 2:18; right?

12 A Right.

13 Q Okay. What else can you tell us about Graham's
14 phone?

15 A At 6:24 and 6:28 it accessed the site 89975/1897
16 which is the same location, it's just a different
17 radio -- a different piece of equipment at the same
18 location.

19 Q So same spot? Would somewhere in here be
20 consistent with --

21 A Somewhere east or northeast, yes. East is that
22 direction, north is that direction, so northeast toward
23 the center of Conway.

24 Q And if there are no calls between 2:18 and 6:24
25 actually, the fact that you don't have a result for

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1 those times, what does that tell us?

2 A The phone was silent. It made or received no
3 calls. It may have been turned off or it may have been
4 left on or put aside, but there was no record because
5 no call was made.

6 Q If it was on, it just means nobody was calling?

7 A Right. Now, there is a possibility that there --
8 we've got a lot of the possibility that there was a
9 call which is not on the record, because sometimes the
10 records do have errors. And indeed, I found errors in
11 phone records, calls that were misrouted.

12 When you get your bill for the phone, you can
13 sometimes dispute the call and say, I didn't make that
14 call, you shouldn't charge me for it. The phone
15 company will go back and look up the record and either
16 agree with you or disagree.

17 Q Mr. Boyell, did you find errors in these phone
18 records?

19 A No, I find no errors. I'm just allowing the
20 possibility that there may have been a call which is
21 not on the record.

22 Q Okay. Is there anything else you can tell us
23 about Carnail Graham's phone?

24 A No.

25 Q Okay. What can you tell us about Michael Pyatt's

1 phone, (843) 246-0870, if anything?

2 A We find a lot. Between 3:22 and 3:28, there were
3 six calls by the Pyatt phone. And the cell site number
4 is 31206, slash, 62642, which I think we found was this
5 one (indicating). Am I reading that correctly, 62642?

6 MS. KELLEY: That was the one that we --

7 THE WITNESS: 86, No, I'm sorry.

8 THE COURT: Ma'am?

9 MS. KELLEY: Sorry.

10 MR. FREDERICK: Don't talk, Erin, please.

11 Q Say the number again, Mr. Boyell.

12 A 62642. Near Main Street and Fourth Avenue in
13 Conway.

14 Q Will you take a look at this and confirm that's
15 the one you're looking for.

16 A Right.

17 Q This one?

18 A This one which is the same site as 369 or E that
19 we found previously. It's the same physical location
20 but a different provider.

21 Q And is that tower direction?

22 A I don't know.

23 Q Okay.

24 A All we know from this information is that it was
25 within radio range of that tower, which we previously

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1 called E. And that was between 2:22 -- I'm sorry, 3:22
2 and 3:28.

3 Q Would this area through here be within that
4 coverage area (indicating)?

5 A Yes.

6 Q Okay. And you're sure about that?

7 A Well...

8 Q If I put this here (indicating), is that
9 consistent with your findings?

10 A No. I'd say it's probably up here at that time
11 (indicating).

12 Q Right here (indicating)?

13 A Somewhere in there, yes.

14 Q Okay.

15 A Because --

16 Q I'm just going to put it right on that tower,
17 okay, because -- there you go.

18 A Okay. But then a few minutes later, between 3:34
19 and 3:47, there were five calls to site 62863, and
20 that's the one we found here (indicating).

21 Q Okay.

22 A Which is on Cates Bay Highway.

23 Q So --

24 A And that means that the phone had to move.

25 Q This would be consistent with that finding?

1 A Yes. The phone had to move between 3:28 and 3:34
2 from the site E down Cates Bay Highway to this site.

3 Q Okay.

4 A In order to register with that site and make these
5 five calls, the phone would have to be within the
6 coverage area of that site.

7 Q Okay. Is there anything else that you can tell us
8 about that phone?

9 A One more thing. There were 14 calls made or
10 received by that phone between 4:14 and 4:55, 4:14 and
11 4:55, which is back up near cell site E back up in
12 Conway.

13 Q Okay.

14 A So what we know is the phone was in Conway, except
15 it moved down Cates Bay Highway and then went back up
16 into Conway.

17 Q So somewhere in here it really --

18 A Somewhere in here.

19 Q It could be anywhere in here (indicating); right?

20 A Right. Probably here (indicating), because of
21 what's farther north would be picked up by this site
22 (indicating). It was farther east it would be picked
23 up by that site (indicating).

24 Q Okay.

25 A The phone has to choose which site it accesses

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1 depending on how strong the signal is, whether the site
2 is working or down for maintenance. At three in the
3 morning, some sites are typically taken down for
4 maintenance so the phone will access another site,
5 which might not be the closest site but the closest
6 working site at that time of day.

7 Q And, Mr. Boyell, if it seems like I'm rushing you,
8 it's because I'm -- do you have to get on a plane
9 today? You have to get on a plane today; don't you?

10 A I will take care of that, yes, whatever you have
11 to do.

12 Q And also we have to get to lunch. So if I seem
13 like I'm rushing you, that's why.

14 A No.

15 THE COURT: If you can just listen to his
16 questions and answer his questions. Thank you.

17 MR. FREDERICK: Thank you, judge.

18 Q Mr. Boyell, what else, if anything, can you tell
19 us about the Pyatt phone?

20 A Nothing else.

21 Q Okay. The last phone we have here, Thomas James,
22 (843) 855-3238, what can you tell us about that phone?

23 A That's an interesting one because the cell sites
24 it accessed were all directional. And we know the
25 approximate direction in which the phone was from the

1 base station.

2 Q Okay.

3 A Calls at 1:01, 1:12 and 1:14.

4 Q So 1:01 to 1:14.

5 A Were made through cell site D; which is up here
6 and toward Homeland.

7 Q Okay.

8 A And that site, according to my diagram, which I'm
9 looking at part of my notes, faces south. So the phone
10 would have to be somewhere on this area that is south
11 of cell site D toward Conway. It would be outside of
12 Conway proper because it did not access one of the
13 sites in Conway, but not far enough to be beyond cell
14 site D since it was the south facing sector.

15 Q Okay. So --

16 A And I've drawn it on my diagram, which is sort of
17 an area like this, a triangle like that (indicating).

18 Q Okay. So if I place this here, is that consistent
19 with your findings?

20 A Well, probably a little farther north up there.

21 Q Here (indicating)?

22 A Yes.

23 Q Okay.

24 A Not saying that it was there, it was near there.

25 Q Within that coverage area?

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1 A Right.

2 Q I understand.

3 A And that was between 1:01 and 1:14. At 1:27 it
4 accessed cell site A. And it happened to be the east
5 facing site of cell site A, which means it was over
6 here (indicating).

7 Q And 1:27 just that one phone call, or were
8 there --

9 A One call, yes, at cell site A, which would be
10 somewhere in this area (indicating).

11 Q Is this consistent with --

12 A Yes.

13 Q Okay.

14 A And it may or may not have moved a block or two.
15 We don't know if it was exactly here or exactly here
16 (indicating), but it was in that area because it was
17 east of cell site A, the east facing sector.

18 Q Okay.

19 A And then --

20 Q What else can you tell us about Mr. James' phone?

21 A And then there were several calls from 2:35 onward
22 through cell site E.

23 Q Mr. Boyell, can you tell us, 2:35 through what
24 time?

25 A They were 2:35, 2:50, 3:18, 3:22, 3:23, 4:44 and

1 4:46.

2 Q All of those --

3 A All of those were through cell site E which is
4 South Conway, and that was a sector facing north. So
5 it would -- a phone would have to be in the area, this
6 no man's land area that I'm pointing to (indicating),
7 north of 369, north of E and south of D and east of A.
8 It would be in the area of Conway city proper.

9 Q And can I ask you to repeat the times, I didn't
10 catch the last one.

11 A 2:35, 2:50, 3:18, 3:22, 3:23, 4:44 and 4:46. That
12 was all through cell site E.

13 Q So this would be, and I don't want to cover up
14 anything else --

15 A Yes, somewhere north of cell site E.

16 Q This would be consistent with the findings?

17 A Right.

18 Q Okay. Is there anything else that you can tell us
19 about the James phone?

20 A Yes. We find that in all these calls it accessed
21 sites in Conway but did not access site G or J or L.
22 That is, there's no information, there's no record of
23 this -- of that phone having been in the area covered
24 by C, J or L. I infer from that that it was not out at
25 the Brison Court area, but --

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1 Q And that it was not at the -- down here off the
2 Dirty Branch Road; right?

3 A No, it was not down there, it was in Conway
4 because these sites are all directional, and they all
5 cover the area up and down Main Street in Conway.

6 Q Okay.

7 A And there were enough calls there that pretty much
8 the time is all covered.

9 Q Can I ask you to go ahead and have a seat again
10 for just a minute.

11 A (Complied.)

12 Q And continue, I'm sorry.

13 A The time is pretty well-covered. For example,
14 between 2:50 and 3:18, the phone, the James phone, was
15 in Conway. It was not out here where some of the other
16 phones were at about 3 a.m. I think that's important
17 to the matter at hand.

18 Q Okay. Mr. Boyell, then can you summarize your
19 findings for the jury. Just a summary briefly.

20 A We find that phones of Johnson, McCray were
21 northwest of Conway at about three in the morning. The
22 phone of Graham and James was not.

23 Q Okay. Is there anything else that you want to
24 tell this jury about --

25 THE COURT: That's not a proper question. Just

1 ask him specific questions, not an opened-ended
2 dissertation, please. Thank you.

3 Q Okay. Mr. Boyell, I think that concludes your
4 direct examination. Please answer any questions that
5 Ms. Livesay or Mr. Canty have for you; okay?

6 A Yes, sir.

7 MR. FREDERICK: Thank you.

8 THE COURT: Mr. Canty?

9 MR. CANTY: Thank you, Your Honor. And I believe
10 there is an exhibit with two cell phones in it. Can I
11 see those.

12 CROSS-EXAMINATION

13 BY MR. CANTY:

14 Q Mr. Boyell, in this material you're including
15 hardened electronic communications, I'm assuming?

16 A Yes, sir.

17 Q Including cellular telephones?

18 A Yes.

19 Q Can you give the jury a general description of
20 what those telephones are, describe them and what they
21 are capable of.

22 A Well, looking at State's Exhibit 76, and it's a
23 feature phone made by Sanyo on the Sprint network,
24 without operating it I can't tell exactly what features
25 it has. But it's typical it has -- probably has voice

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1 communication, probably text messaging and maybe
2 something like weather reports or calendar.

3 Q Would that be what a layman would call a flip
4 phone?

5 A Yes. Well, it's a flip phone because you open and
6 close it. Hold it up to your head like this, it's
7 typically a flip phone, yes.

8 Q And that would be distinguished from a smartphone?

9 A Well, it's -- yes. A smartphone is not
10 necessarily not a flip phone. A smartphone usually has
11 a keyboard with alphabetic keys on it, and it's a
12 little larger than this. It may have a flip or a slide
13 to open, but it would be called a smartphone because of
14 its smart features such as data communication with
15 websites that the feature phone would not have.

16 Q And State's Exhibit 75, can you describe what that
17 phone does or is capable of.

18 A State's Exhibit 75 is a --

19 Q Motorola?

20 A It's a Motorola phone. But I'm looking for the
21 network.

22 Q Does it have a keyboard?

23 A It's has an alphabetic keyboard. This would be a
24 smartphone. And you have to refer to the instruction
25 manual to find out how to operate it. It doesn't turn

1 on, so the battery's dead. But with the alphabetic
2 keyboard it probably is a smartphone with all of the
3 capabilities of a small computer for web browsing and
4 e-mail.

5 Q And something like an iPhone 5 would also be a
6 smartphone?

7 A Yes, the iPhone is a smartphone.

8 Q Do you know whether or not that Motorola, State's
9 Exhibit 75, has GPS capability?

10 A I don't know. I don't know whether it has GPS
11 capability. We'd have to put a battery in and exercise
12 the phone to determine that. But it's -- it's likely,
13 because most smartphones these days do have GPS
14 capability.

15 Q GPS stands for global positioning system?

16 A Yes.

17 Q And you've talked --

18 MR. CANTY: And by the way, Your Honor, I'd move
19 to enter Defense-12 into evidence.

20 THE COURT: Any objection, solicitor?

21 MS. LIVESAY: To move it into evidence?

22 THE COURT: Yes.

23 MS. LIVESAY: No, sir.

24 THE COURT: All right, so -- and Mr. Frederick?

25 MR. FREDERICK: No objection.

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1 THE COURT: All right. So on behalf of both
2 defendants, Defendant's-12 is in evidence without
3 objection. You may proceed.

4 (WHEREUPON, Defendant's Exhibit No. 12 was
5 admitted in evidence.)

6 MR. CANTY: And if it's not been previously moved
7 into evidence, I'd move Defendant's-14, the photograph
8 of the cell --

9 THE COURT: 14 is in evidence.

10 Q And these are what would be described as
11 terrestrial transceivers; that is, they are on the
12 earth?

13 A That's correct.

14 Q They receive and transmit electronic signals?

15 A Yes. They're terrestrial as distinguished from
16 satellite.

17 Q And global positioning system is a collection of
18 lower orbit satellites that any particular time we
19 would have 6 to 12 or 15 visible above your horizon
20 that emit a signal that your smartphone would pick up?

21 A Yes.

22 Q And based on timing in microseconds of those
23 frequencies and comparison of the frequencies, it tells
24 you precisely where you are?

25 A What the GPS chip in the phone tells you is the

1 difference in distance from one satellite to the other
2 and that the calculation within the phone or a computer
3 that calculates the latitude and longitude on the
4 surface of the earth and displays that to the user.
5 There's a complex calculation in there between range
6 differences measured in fractions of microseconds and
7 yards or meters on the earth.

8 Q And by calculating however many satellites are
9 visible above the horizon -- let me ask you this. Up
10 until the late 1990's, was there something called GPS
11 scrambling?

12 A Yes.

13 Q And that meant that the signal was degraded, it
14 wasn't as accurate?

15 A That's right.

16 Q And for a noncommercial use, your GPS would be
17 accurate within what, 50 feet, a hundred feet?

18 A About a hundred meters.

19 Q 300 feet.

20 A Roughly a hundred meters.

21 Q Okay.

22 A It's called circular error probability, and that
23 means half the time you're within the circle and half
24 the time you're error is outside the circle. And it's
25 in the order of a hundred meters before the precision

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1 GPS was enabled.

2 Q So that was for national defense purposes so
3 missiles wouldn't come in and hit their target
4 within inches?

5 A That's right. The signal was intentionally
6 disrupted so that an enemy could not use the GPS to
7 precisely target a location on the earth. There would
8 be some ambiguity.

9 Q And in the late '90s at some point there was a
10 policy decision to do away with that and every
11 noncommercial use of GPS was accurate to within how
12 far? Depending on the number of satellites but --

13 A The accuracy was increased by an order of
14 magnitude, typically I found the GPS tracks are
15 accurate to about ten meters. That means less than a
16 city block.

17 Q And assuming that the GPS function exists in this
18 Motorola telephone and assuming that it has not been
19 turned off by the operator, this telephone would be
20 receiving signals from those satellites; correct?

21 A It would attempt to, so yes. It would have to
22 have a clear view of the sky.

23 Q And with sufficient data it would have a record of
24 precisely where it was, within ten meters?

25 A Yes. In the phone itself.

1 Q And so if that phone traveled from downtown Conway
2 out to Brison Court, down Dirty Branch Road and then
3 back up into Conway, all that information would be in
4 that telephone?

5 A Well, it may be in the phone. It depends if the
6 user has the tracking functions of the phone enabled.

7 MR. CANTY: I don't think I have anything further.

8 THE COURT: All right, thank you.

9 Cross-examination, solicitor?

10 MS. LIVESAY: Thank you, Your Honor. Just a few
11 questions.

12 CROSS-EXAMINATION

13 BY MS. LIVESAY:

14 Q Mr. Boyell, I didn't catch, where are you
15 currently employed?

16 A I'm a private consultant.

17 Q Okay.

18 A I work for myself, my own business.

19 Q Okay, wonderful. So you don't work for Verizon or
20 for T-Mobile?

21 A No, I don't work for any of the communications
22 carriers.

23 Q Okay. But you feel like you can testify to how
24 far their towers can reach?

25 A From my experience, yes. I've actually run

ROGER BOYELL-CROSS BY MS. LIVESAY

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1 experiments to determine the range of cell sites and
2 how a phone is handed off from one site to another.

3 Q Okay. Let me ask you this, have you ever worked
4 for Verizon or T-Mobile or any cell company?

5 A No.

6 Q Okay.

7 A I have no allegiance to the carriers.

8 Q Okay. And your testimony today is that neither
9 one of these phones, 855 which -- let me ask you this
10 too. Is this the only phone number you got for Thomas
11 Booker James?

12 A Yes..

13 Q Okay. So if he had two phones, you wouldn't know
14 where that other phone was?

15 A That's right.

16 Q Okay. And do you have any evidence that he had
17 this phone on him on November 8th, 2011?

18 A I don't know that.

19 Q Okay. And were you informed that we had two
20 people come in here and testify and say they got phone
21 calls from this number, and it wasn't Thomas James on
22 the other end?

23 A No.

24 Q Okay, you weren't told that. And this is Carnail
25 Graham's phone number?

1 A Yes.

2 Q Okay. How do you have that information?

3 A That information was on a CD provided to me by
4 defense counsel, which I believe was obtained from the
5 solicitor's office and was merely a copy of the records
6 that the solicitor had compiled.

7 Q Okay.

8 A And it associated the names and the numbers.

9 Q Okay. And do you have --

10 A As indicated on your chart.

11 Q Okay. Do you know when we recovered this phone
12 from him?

13 A I don't know if the phone was recovered.

14 Q Okay. So it wouldn't shock you when you I tell
15 you, since it came from me, that we didn't even recover
16 this phone from him in November of 2011; did you know
17 that?

18 A I didn't know that.

19 Q Okay. Now, I'm going to ask you some questions
20 regarding the phone records first on this one phone
21 number from Thomas James; okay?

22 A Yes.

23 Q If you don't mind, we've talked a little bit and
24 you weren't in here, were you notified that 911 was
25 called at 3:08?

ROGER BOYELL-CROSS BY MS. LIVESAY

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1 A I understood the incident occurred about 3
2 o'clock.

3 Q Okay, around 3 o'clock?

4 A And the 911 call followed it.

5 Q Okay.

6 A So I don't know the precise time of the 911 call.

7 Q But sometime around that area?

8 A Around 3 o'clock, yes.

9 Q Okay. Now, can you tell me where this phone
10 number was at 2:51?

11 A Thomas James at...

12 Q This is the one that you have noted for Thomas
13 James, one of his numbers.

14 A At the time, you said, 2:51?

15 Q Yes.

16 A I have a record at 2:50, it accessed --

17 Q I'm not asking about 2:50. 2:51.

18 A The closest I have is the call that began at 2:50.

19 Q Okay.

20 A It may have continued through the minute of 2:51,
21 but --

22 Q Okay.

23 A -- the record shows the call started at 2:50.

24 Q Okay.

25 A And it was cell site E which is downtown Conway.

1 Q Okay. How about 2:51?

2 A Let me look at records for James. There was a
3 call at 2:50 which lasted for 123 seconds --

4 Q Okay.

5 A -- which would go into 2:52 a.m.

6 Q Okay.

7 A And it was initiated and terminated at site 369 --

8 Q Okay.

9 A -- which is I think what we've given the
10 designation E. It's the one down here (indicating).

11 Q Okay. And how about --

12 A So the phone would have to be within the range of
13 site 369 for that entire two-minute period.

14 Q And Verizon told me this is a 15-mile range; is
15 that your understanding? That's what they told me.

16 MR. FREDERICK: Judge, is she testifying or
17 cross-examining?

18 THE COURT: Solicitor, you need to ask a question.
19 You cannot testify.

20 MS. LIVESAY: I'm sorry, Your Honor. I'm going to
21 ask a leading question if that's okay.

22 THE COURT: I appreciate that, but you cannot --
23 all right. You have to rephrase the question, your
24 question was not proper.

25 MS. LIVESAY: Okay.

ROGER BOYELL-CROSS BY MS. LIVESAY

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1 THE COURT: Rephrase your question.

2 Q This is a 15-mile radius, correct, 369 gives you a
3 15-mile radius of service?

4 A No. The typical range of a cell phone antenna to
5 a user of a hand cell phone like this is two, three or
6 four miles depending on the obstructions, it's not 15.
7 The most range I've ever gotten is 12 miles, and that
8 was between mountain tops in Pennsylvania.

9 Q Okay.

10 A So while the system is -- allows for the
11 capability of another cell site 15 miles away at the
12 same frequency, the range is not 15 miles. That's a
13 tolerance allowed to prevent interference between
14 sites.

15 Q And that's from your personal test, that's not
16 from Verizon Wireless?

17 A That's right.

18 Q Okay. And who does this tower belong to
19 (indicating), who uses this tower?

20 A I'm sorry, I don't have that with me.

21 Q Okay. So you don't know if this tower is serviced
22 by Verizon Wireless or who?

23 A Well, 369 is the Verizon number --

24 Q Okay.

25 A -- we know that.

1 Q Okay.

2 A Then there was another fellow that accessed the
3 same geographic site with another carrier. I think it
4 was AT&T, because it has one of these complicated
5 ten-digit numbers associated with it.

6 Q Okay. But you don't work for either AT&T or
7 Verizon?

8 A No.

9 Q Okay. Now, where was the phone at 2:53?

10 A We don't know.

11 Q Okay. Where was the phone at 2:54?

12 A We don't know.

13 Q Where was the phone at 2:55?

14 A We don't know.

15 Q Where was the phone at 2:56?

16 A We don't know.

17 Q Where was the phone at 2:57?

18 A We don't know.

19 Q What was the phone at 2:58?

20 A We don't know.

21 Q Where was the phone at 2:59?

22 A We don't know.

23 Q Where was the phone at 3 o'clock?

24 A We don't know.

25 Q Where was the phone at 3:01?

ROGER BOYELL-CROSS BY MS. LIVESAY

- 1 A We don't know.
- 2 Q 3:02?
- 3 A No, don't know.
- 4 Q 3:03?
- 5 A Don't know.
- 6 Q 3:04?
- 7 A Don't know.
- 8 Q 3:05?
- 9 A Don't know.
- 10 Q 3:06?
- 11 A Don't know.
- 12 Q 3:07?
- 13 A Don't know.
- 14 Q 3:08?
- 15 A Don't know.
- 16 Q 3:09?
- 17 A Don't know.
- 18 Q 3:10?
- 19 A Don't know.
- 20 Q 3:11?
- 21 A Don't know.
- 22 Q 3:12?
- 23 A Don't know.
- 24 Q 3:13?
- 25 A Don't know.

1 Q Okay. So during that time period you don't know
2 where the phone was?

3 A That's correct.

4 Q Okay. How about 3:15?

5 A Don't know.

6 Q Okay. So we're talking at least a 20 to 25 time
7 period that you have no idea where that phone was?

8 A That's right.

9 Q Okay. And we're talking that timeframe was when
10 you -- you were told the murder was around 3 o'clock?

11 A Yes.

12 Q Okay. And during that timeframe you have no idea
13 where that phone was?

14 A Well, we have an idea that before and after, it
15 was stationery and not accessed --

16 Q But do you know where that phone was at 2:55?

17 A No.

18 Q Do you know where that phone was at 3:15?

19 A No.

20 Q Okay. That's all I wanted to know. And you were
21 told the murder happened at 3 o'clock?

22 A Approximately 3 o'clock.

23 Q Approximately --

24 A I wasn't told --

25 Q -- 3 o'clock, okay.

ROGER BOYELL-CROSS BY MS. LIVESAY

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1 A I wasn't told it was a murder. I was told it was
2 an event at that location. And I was to track the
3 phones around the time of the event.

4 Q Okay. And this here is Carnail Graham's number
5 (indicating); is that correct?

6 A Yes.

7 Q That's the information you have. Now, were you
8 given all his records? This what you got?

9 A What I got was a CD which had...

10 Q This information?

11 A Information of that type, yes. Here is a printout
12 of mine which you compare it with yours.

13 Q Okay.

14 A But it's all in computer readable form, and I read
15 it on the computer screen.

16 Q Did you ever get this directory off his phone?
17 You can look at it, sure.

18 A No, I did not. I did not access this information
19 from the phone.

20 Q Okay. Did you get it?

21 A No.

22 Q Okay. So that -- the phone directory was never
23 handed to you?

24 A That's right.

25 Q Okay.

1 A My information was based on the records of the
2 provider, not a memory dump off the phone itself.

3 Q Okay. But you -- you do understand that we can
4 get this information from dumping that phone number?

5 A Oh, yes.

6 Q Okay. So and if Mr. Frederick gave it to you,
7 like he did the phone records, you would assume it was
8 correct information?

9 A I -- I would.

10 Q Okay.

11 A I would assume it's correct subject to
12 verification, yes.

13 Q Now, when was the first -- when was the -- I just
14 wanted to verify. I've got a phone number so we can
15 make sure we're on the same page, at 2:18 a.m.; am I
16 right, on November 8th, 2011, 2:18 a.m., Carnail Graham
17 at 503-9720 is making a phone call?

18 A That's correct.

19 Q Okay. And the next phone call he makes is at 6:23
20 a.m.?

21 A I have it at 6:24.

22 Q Okay.

23 A But it was the same call.

24 Q Okay. So you have one phone call at 2:18 a.m. and
25 another one at 6:24?

ROGER BOYELL-CROSS BY MS. LIVESAY

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- 1 A And nothing in between.
- 2 Q Okay. So where was he at 2:45?
- 3 A We don't know.
- 4 Q Where was he at 2:50?
- 5 A We don't know.
- 6 Q Where was he at 3 o'clock?
- 7 A We don't know.
- 8 Q When was he at 3:05?
- 9 A We don't know.
- 10 Q Where was he at 3:10?
- 11 A We don't know.
- 12 Q Where was he at 3:15?
- 13 A We don't know.
- 14 Q How about 3:20?
- 15 A We don't know.
- 16 Q Okay. How about 3:30?
- 17 A We don't know.
- 18 Q Okay. How about 3:45?
- 19 A Don't know.
- 20 Q Okay. And you would -- you were given information
- 21 that the incident happened around 3 o'clock?
- 22 A That's correct.
- 23 Q Okay. Can you tell me where either one of these
- 24 phone numbers were at 3 o'clock?
- 25 A No.

1 Q Okay. Now, I'm going to hand you what we dumped
2 off of Mr. Carnail Graham's phone to go with these
3 phone records. If you don't mind, tell me what that
4 first -- first phone number is on the directory.

5 A The first number is (843) 516-4693.

6 Q Okay. And who does that phone number belong to?

7 A I don't know. It is listed here as Keema,
8 K-E-E-M-A.

9 Q Okay. And if you don't mind, do you see that
10 phone number on his -- on his phone records on November
11 8th? I'll let you hold that, I'm sorry.

12 A I'd have to go to the computer and pull up those
13 records and search for that number to see if it
14 appears.

15 Q Could you just briefly look now and tell me
16 between maybe one and the last phone call at two.

17 A We're looking at the Graham phone?

18 Q Yes, sir.

19 A Which is 9720?

20 Q It is, yes, sir.

21 A And let me see if I have that here.

22 MR. CANTY: Your Honor, do we know which exhibit
23 she is referring to? Do we know which exhibit she's
24 referring to?

25 THE COURT: Is it exhibit number, is it an exhibit

ROGER BOYELL-CROSS BY MS. LIVESAY

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1 that you're looking at?

2 MS. LIVESAY: No, sir, Your Honor.

3 MR. CANTY: Objection, Your Honor. There's been
4 no foundation laid for this.

5 THE COURT: Solicitor?

6 MS. LIVESAY: Your Honor, this came off of Dubba's
7 phone. This came off Carnail Graham's phone.

8 THE COURT: I appreciate that. But it has not
9 been properly --

10 MS. LIVESAY: I'm just -- I can ask him just if he
11 sees that number, Your Honor.

12 THE COURT: No, ma'am. You can't use the records
13 because they haven't been properly identified yet. So
14 no, you can't right now. All right. Put the document
15 down, sir.

16 Q Let me ask you one question. Do you see a phone
17 number up there on those records for 516-4693?

18 MR. CANTY: Your Honor, may I ask what records she
19 is referring to?

20 MS. LIVESAY: I'm asking about a phone number,
21 Your Honor.

22 THE COURT: All right.

23 MR. CANTY: She referred to records.

24 MS. LIVESAY: I just want to know if they are on
25 the records.

1 THE COURT: You may ask him in the records he has
2 about the phone number you're asking, ask that
3 question.

4 MS. LIVESAY: Okay.

5 Q Do you have any phone records for 516-4693?

6 A I don't know. I was not prepared to answer
7 questions about that number. But if the information is
8 on the CD, I could at my office search for that number
9 and see where it comes up.

10 Q Okay.

11 A I can't do it on the witness stand.

12 Q Okay. Could you just look at the records you have
13 and tell me if that number appears on there, just for
14 that short period of time on November 8th between one
15 and 3 o'clock?

16 A I do not have the records for the Graham phone in
17 front of me.

18 Q Okay. So you don't have the records for this
19 503-9720?

20 A What I have with me is what I was testifying to
21 and some of the records that back it up. I do not have
22 the original data for that phone. I have it for
23 Johnson's phone and McCray's phone and James' phone,
24 but not Graham. Because -- I believe because there
25 were no calls made around the time of interest, there

ROGER BOYELL-CROSS BY MS. LIVESAY

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1 was no printout made of the calls.

2 Q Okay.

3 A Would be a blank sheet of paper.

4 Q Okay. But you did testify earlier about the phone
5 calls on 503-97 -- on this phone number here. I mean,
6 I could be misunderstanding.

7 A Yes.

8 Q I thought you were testifying about this phone
9 number?

10 A Right. The Graham phone, that number.

11 Q Okay.

12 A But I don't have the records as to who it called
13 or when because there were no calls around the time of
14 the incident.

15 Q Okay. So how did you know that there was a phone
16 call around 2:30 something and then the next one was
17 wasn't until 6 o'clock?

18 MR. CANTY: Object to the form. That was not the
19 testimony.

20 THE COURT: I'm going to allow the question.

21 THE WITNESS: Because when I reviewed the records,
22 those were the times that the records showed calls were
23 made or received.

24 Q Okay. But you --

25 A Again, I don't have the records with me.

1 Q Okay.

2 A I referred to them on the computer and I prepared
3 my report based on the records which showed no calls
4 were made by that phone during that time.

5 Q Okay. So you didn't really -- so you didn't bring
6 the printout of the records?

7 A No. Bringing the printout of the records would be
8 volumes of material.

9 Q Right. But you did testify about where this phone
10 was, you said this phone and this phone could not have
11 been in that area, you just said that earlier.

12 A I think I said there is no information pointing
13 those phones to the area of the incident, where there
14 is information pointing the McCray and Johnson phones
15 to the area of the incident.

16 Q Okay. So you're taking it from the fact this guy
17 didn't have any information on his phone during the
18 pertinent time --

19 A Right.

20 Q -- that that means that there's no way he could
21 have been in that area?

22 A No. I said there is no way that the phone records
23 would show he was at that area.

24 Q Okay. Well, where was he during 3 o'clock?

25 A I think I've got to answer that with the same

ROGER BOYELL-CROSS BY MS. LIVESAY

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1 answer, we don't know from the phone records.

2 Q Okay. Well, if you don't know, how can you say he
3 wasn't in this area?

4 A We know where he was at times before and after.
5 And I am drawing the inference that during the
6 intervening time when the phone was not used, the user
7 was not active on the phone. He might have been
8 sleeping for all I know, or the phone may have been
9 turned off.

10 Q Okay. So he may have been sleeping?

11 A But he stayed in the Conway area both before and
12 after the incident --

13 Q Okay.

14 A -- except for the times that you've outlined.

15 Q Okay. Here's what I'm going to ask you, do you
16 have any idea or any indication where that phone was at
17 3 o'clock?

18 A No.

19 Q Okay. So the truth is you have no idea if he was
20 here or not?

21 A That's right.

22 Q Okay. But earlier you testified that it was your
23 opinion that the phone records showed he wasn't here;
24 isn't that correct?

25 A The phone records did not show he was there.

1 Q Do you know if he was here or not at 3 o'clock?

2 A You're right, we don't know he was there at 3
3 o'clock, we don't know he was not there at 3 o'clock.

4 Q Okay.

5 A We know that at two and at 4 o'clock he was in
6 Conway.

7 Q Okay. Which is a two-hour span?

8 A Right.

9 Q Okay. But you will admit that earlier you said
10 your opinion was he wasn't in this area around
11 3 o'clock; do you remember that?

12 A I'm sorry, I don't remember, but the record will.
13 What I would have meant to say is that there was no
14 information suggesting that that phone was in the area
15 of the incident at 3 o'clock.

16 Q Okay. Okay. So you don't know, there's no
17 information about Carnail Graham's 503 number, which is
18 the only number we've got, whether or not he was in the
19 area?

20 A At 3 o'clock there's no information.

21 Q Okay, okay. That's all I wanted to know. I got
22 one more question. Now, we also talked about this
23 phone number here; do you remember that, 855-3238?

24 A Yes.

25 Q Okay. And I just asked about 2:55, 2:56, all the

ROGER BOYELL-REDIRECT BY MR. FREDERICK

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1 way to 3:15; is that right?

2 A Yes.

3 Q Okay. So you have no idea from these phone
4 records where that phone was between 2:55 and 3:15, a
5 20-minute timeframe?

6 A That's correct.

7 Q Okay.

8 A But before and after that timeframe we know it was
9 stationery in Conway.

10 Q Okay. Do you know where he was between a
11 20-minute timeframe that encompasses the time the girl
12 was shot?

13 A No.

14 Q Okay.

15 MS. LIVESAY: No further questions, Your Honor.

16 THE COURT: Redirect, Mr. Frederick?

17 MR. FREDERICK: Very briefly, judge.

18 REDIRECT EXAMINATION

19 BY MR. FREDERICK:

20 Q I just want to clarify something. The Thomas
21 James phone, the very next call made or received after
22 3 o'clock, what was the time again; was it 3:13 or
23 3:15?

24 A 3:18.

25 Q 3:18?

1 A It was a 56-second conversation beginning sometime
2 at 3:18.

3 Q Okay. I just wanted to clarify that.

4 MR. FREDERICK: Judge, that's -- that's all.

5 THE COURT: All right. Mr. Canty?

6 MR. CANTY: Thank you, Your Honor. May it please
7 the Court, very briefly.

8 RE CROSS-EXAMINATION

9 BY MR. CANTY:

10 Q Mr. Boyell, you were retained by Mr. Frederick to
11 analyze cell phone records; correct?

12 A Yes.

13 Q You're not here to testify about anybody getting
14 shot?

15 A That's correct...

16 Q You're not here to testify about who owns which
17 cell phone?

18 A Other than the information provided to me of the
19 association of names and numbers.

20 Q You have a series of telephone numbers, and you
21 have a collection of data for each telephone number?

22 A Right.

23 Q And you analyzed that data?

24 A Yes.

25 Q And one of those you are informed and believe is

ROGER BOYELL-RE CROSS BY MR. CANTY

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1 Carnail Graham?

2 A Yes.

3 Q And tell the jury, please, after the analysis of
4 the 26,000 pages of data, what information that you
5 found in there that would indicate that Carnail Graham
6 was anywhere near Brison Court anywhere near
7 3 a.m.

8 A No such information.

9 Q And if I understand your testimony correctly, your
10 information is that that phone was in Conway when it
11 made its last call at 2:18, and in the same location or
12 a certainly very nearby location when the next call was
13 made at 6:24?

14 A Yes.

15 Q A.M.?

16 A A.M.

17 MR. CANTY: That's all I have.

18 THE COURT: All right, sir. Do you wish the
19 witness to be excused, Mr. Frederick?

20 MR. FREDERICK: Yes, please, judge.

21 THE COURT: Any objection, solicitor?

22 MS. LIVESAY: No, sir.

23 THE COURT: Mr. Canty?

24 MR. CANTY: No, Your Honor.

25 THE COURT: All right, sir. You're released from

1 CHRISTINE SNYDER, after being duly sworn,
2 testified as follows:

3 CLERK OF COURT: Please be seated. State your
4 full name, spell your last name for the Court, please.

5 THE WITNESS: Christine Snyder, S-N-Y-D-E-R.

6 THE COURT: And your first name, does it start
7 with a C or a K?

8 THE WITNESS: It starts with a C.

9 THE COURT: All right. Thank you, ma'am. Go
10 ahead, Mr. Frederick.

11 MR. FREDERICK: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. FREDERICK:

14 Q Ms. Snyder, I'm going to hand you these --

15 MS. LIVESAY: May I see what he's showing her,
16 Your Honor, just so I can...

17 THE COURT: Yes, ma'am.

18 MR. FREDERICK: Sorry, judge.

19 THE COURT: That's all right.

20 Q I'm handing you these for reference only, okay.

21 On or about September 24th of this year, was there an
22 incident that you were made aware of at the jail?

23 A Yes, there was.

24 THE COURT: Could you establish just real briefly
25 who she is and where she's employed.

CHRISTINE SNYDER-DIRECT BY MR. FREDERICK

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1 MR. FREDERICK: Yes, sir.

2 THE COURT: Thank you very much.

3 MR. FREDERICK: Sorry.

4 THE COURT: That's all right.

5 Q Can you tell us where you work and what you do for
6 a living.

7 A I work at J. Reuben Long Detention Center. I am a
8 gang intelligence officer.

9 Q Okay. On or about September 24th of this year,
10 was there a particular incident that you were made
11 aware of?

12 A Yes, there was.

13 Q Can you tell us about that.

14 A I was made aware --

15 MS. LIVESAY: Your Honor, I'm sorry, I've got an
16 objection, and I hate to do it this early on.

17 THE COURT: All right. Come over here and talk to
18 me, please.

19 (WHEREUPON, a bench conference was held off the
20 record in the presence of the jury but out of the
21 hearing of the jury.)

22 THE COURT: Go to your jury room, please. Thank
23 you.

24 (WHEREUPON, the jury exited the courtroom at
25 3:37 p.m.)

1 THE COURT: You may continue, Mr. Frederick.

2 MR. FREDERICK: Thank you.

3 Q Ms. Snyder, on or about September 24th of this
4 year, did you receive any information regarding a
5 threat against Thomas James?

6 A Yes, I did.

7 Q Okay. Can you lean into the microphone.

8 A Yes, I did.

9 Q Okay.

10 MR. FREDERICK: I have no further questions.

11 THE COURT: Thank you. Mr. Canty?

12 MR. CANTY: None, Your Honor.

13 THE COURT: Solicitor?

14 CROSS-EXAMINATION

15 BY MS. LIVESAY:

16 Q Ms. Snyder, where you you employed?

17 A J. Reuben Long Detention Center.

18 Q Okay. So any information you get, who's it from;
19 inmates?

20 A Yes, ma'am.

21 Q Okay.

22 MS. LIVESAY: No further questions, Your Honor.

23 THE COURT: Do you wish the witness to be excused?

24 MR. FREDERICK: Yes, Your Honor, please.

25 THE COURT: Any objection, Mr. Canty?

CHRISTINE SNYDER-CROSS BY MS. LIVESAY

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1 MR. CANTY: None, Your Honor.

2 THE COURT: Solicitor?

3 MS. LIVESAY: No, sir.

4 THE COURT: All right, very good. Ma'am, you're
5 released from the subpoena, you may go back to your
6 duties.

7 (Witness excused.)

8 THE COURT: Next witness, Mr. Frederick.

9 MR. FREDERICK: Defense rests, judge.

10 THE COURT: All right, very good. Mr. Canty?

11 MR. CANTY: Nakeema Crooms.

12 THE COURT: All right. Is she outside the
13 courtroom?

14 MR. CANTY: Yes, Your Honor.

15 THE COURT: All right, very good. Do you want to
16 come all the way up here, ma'am, and meet the clerk,
17 please.

18 NAKEEMA CROOMS, after being duly sworn, testified
19 as follows:

20 CLERK OF COURT: Please be seated. State your
21 full name and spell your last name for the Court.

22 THE WITNESS: Nakeema Crooms, C-R-O-O-M-S.

23 THE COURT: Spell your first name, too, please,
24 ma'am.

25 THE WITNESS: N-A-K-E-E-M-A.

1 THE COURT: Very good. Mr. Canty.

2 MR. CANTY: Thank you, Your Honor. May it please
3 the Court.

4 DIRECT EXAMINATION

5 BY MR. CANTY:

6 Q Nakeema, do you know Carnail Graham?

7 A Yes, sir.

8 Q How long have you known Carnail Graham?

9 A Six years.

10 THE COURT: Can you speak up, ma'am. I'm sorry.

11 THE WITNESS: Six years.

12 Q And do you have two children with him?

13 A Yes, sir.

14 Q And did you know Keia Pertelle?

15 A Yes, sir.

16 Q How long had you known her?

17 A Since I was in eighth grade.

18 Q And how would you describe your relationship with
19 Keia?

20 A She was one of my best friends.

21 Q Do you remember November the 8th of 2011?

22 A Yes, sir.

23 Q And where was Carnail with -- where were you
24 living at that time?

25 A In Crane Creek.

1 Q Is that both of you?

2 A Yes, sir.

3 Q And did you have both children at that time?

4 A Yes, sir.

5 Q And did you have any communication with Keia on
6 that day?

7 A I did.

8 Q And what time was that, if you remember?

9 A I'm not sure.

10 Q Was it after midnight?

11 A Well, my last text from her was after midnight.

12 Q And at some point during that morning, did you
13 become aware of what had happened to her?

14 A Yes, sir.

15 Q Would you tell the jury, please, where Carnail was
16 at that time.

17 A Home.

18 Q Where in your home, if you know?

19 A In the room sleeping on the floor.

20 Q Was he sleeping with anybody else?

21 A My daughter, my oldest daughter.

22 Q And who was how old at the time?

23 A Three.

24 MR. CANTY: That's all I have. Thank you.

25 THE COURT: Very good. All right, solicitor,

1 cross-examination.

2 MS. LIVESAY: Thank you, Your Honor. Just very
3 briefly.

4 CROSS-EXAMINATION

5 BY MS. LIVESAY:

6 Q Keema, you said originally, I think, when you
7 talked to somebody that you called him and told him to
8 bring some medicine home for your children?

9 A Yes, ma'am.

10 Q Okay. And what time did you call him?

11 A Well, when I woke up it was about 1:15.

12 Q What time?

13 A About 1:15.

14 Q Okay. Now, we've got his -- you've been
15 sequestered; is that right, you have not been in the
16 courtroom during all this testimony?

17 A No, ma'am.

18 Q Okay. Well, earlier we had a phone guy come in
19 that said Carnail Graham --

20 MR. CANTY: Objection, Your Honor. This is
21 testimony by the solicitor.

22 MS. LIVESAY: I can ask leading questions.

23 THE COURT: No, ma'am, you can't -- you can ask a
24 question, but you can use facts that would already be
25 in evidence. You can't testify as or tell her where

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1 they came from. You just ask the question based upon
2 facts you believe are already been developed in the
3 trial.

4 MS. LIVESAY: Okay.

5 Q Keema, is or was Dubba's phone number
6 (843) 503-9720?

7 A Yes, ma'am.

8 Q And that was on November the 11th -- I'm sorry,
9 November 8th, 2011?

10 A Yes, ma'am.

11 Q And we got some contacts; and they call you Keema?

12 A Yes, ma'am.

13 Q K-E-E-M-A?

14 A Yes, ma'am.

15 Q Okay. So at that time was your phone number
16 (843) 516-4693?

17 A I don't remember what my number was.

18 Q Okay. Well, if I showed you this, would it
19 refresh your memory?

20 MR. CANTY: Objection, Your Honor.

21 THE WITNESS: I guess.

22 THE COURT: Well, I'm -- objection to her showing
23 the witness?

24 MR. CANTY: Those documents, yes, sir. If she
25 neglected to put them in evidence, it's late.

1 THE COURT: Well, no, it's -- if you're going to
2 refresh somebody's memory, it's not ultimately
3 necessary to put it in evidence. There might be some
4 other objection, but that's not an objection.

5 MR. CANTY: There's no foundation has been laid.

6 THE COURT: Very good. Sustained.

7 Q Is your name here, Keema?

8 THE COURT: Ma'am, I said sustained. Solicitor?

9 MS. LIVESAY: I cannot show it to her?

10 THE COURT: No, ma'am. I said sustained.

11 MS. LIVESAY: To refresh her memory, Your Honor?

12 THE COURT: It's not her document.

13 MS. LIVESAY: I understand, Your Honor.

14 THE COURT: All right. And you have not
15 established the basis for the document yet by proper
16 means. No, you cannot show it to her.

17 MS. LIVESAY: Okay.

18 THE COURT: Sustained.

19 Q So do you know what your phone number was in
20 November 11th, 20 -- I'm sorry, November 8th, 2011?

21 A No, ma'am.

22 Q But you remember his phone number?

23 A I do.

24 Q But you don't remember your own phone number?

25 A Correct.

NAKEEMA CROOMS-CROSS BY MS. LIVESAY

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- 1 Q What's your phone number now?
- 2 A 843 -- I don't know.
- 3 Q So you don't know your phone number now either?
- 4 A No.
- 5 Q Okay. Have you got a phone now?
- 6 A No.
- 7 Q So you don't even have a phone now?
- 8 A I have a phone, but it's been off for a while.
- 9 Q Okay. So when was the last time you had a phone?
- 10 A Last month sometime.
- 11 Q Ma'am?
- 12 A Last month sometime.
- 13 Q Okay.
- 14 A My phone is not always on.
- 15 (Court reporter asks for clarification.)
- 16 THE WITNESS: My phone is not always on. It's on
- 17 when I can have it on.
- 18 Q Okay. And you're saying -- tell me again that
- 19 night, where did you live?
- 20 A Crane Creek.
- 21 Q Okay. And he lived with you?
- 22 A Yes, ma'am.
- 23 Q And how many children did y'all have at that time?
- 24 A Two.
- 25 Q Okay. And was it a one-bedroom or a two-bedroom?

1 A A two-bedroom.

2 Q Okay. And what time did you go to bed that night?

3 A I'm not sure. I went out -- when I noticed I -- I
4 had missed Keia's last text, the text at 12:15. That's
5 why when I woke up at 1:15, I realized I missed her
6 text, so I must have dozed off in between those texts.
7 I'm not sure what time I went to sleep.

8 Q Okay. Do you remember texting the victim in this
9 case, Keia Pertelle?

10 A Yes, ma'am.

11 Q Okay. Do you remember the last time you texted
12 her that night?

13 A No, ma'am.

14 Q Okay. And what was your relationship with Keia?

15 A She was like one of my best friends.

16 Q Okay. And had you ever been to her house?

17 A No, ma'am.

18 Q Okay. Okay. And you don't remember your phone
19 number?

20 A No, ma'am.

21 Q But you do remember his phone number?

22 A Yes, ma'am.

23 Q Okay. Okay. Let me ask you this. These are his
24 phone records. If you looked through them and you saw
25 your phone number, you think you could recognize it?

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1 MR. CANTY: Objection, Your Honor.

2 THE WITNESS: No, ma'am.

3 MR. CANTY: These are the same documents.

4 THE COURT: It's the same ruling. No, ma'am, you
5 cannot show him those -- show her those records. It's
6 the same reason I told you before.

7 MS. LIVESAY: I understand, Your Honor. I just
8 want to put on the record that these were the records
9 that the expert testified about.

10 THE COURT: Ma'am, now you're testifying. That's
11 not your job. If you want to put something on the
12 record outside the presence of the jury, I'll allow you
13 to do that. Do you want to do that?

14 MS. LIVESAY: No, sir. I think it's been
15 established.

16 THE COURT: Thank you, ma'am. Any redirect, Mr.
17 Canty?

18 MR. CANTY: No, Your Honor.

19 THE COURT: You wish the witness to be excused?

20 MS. LIVESAY: Actually, Your Honor, I had a couple
21 more questions.

22 THE COURT: I'm sorry, I thought you said you were
23 done.

24 MS. LIVESAY: No, sir.

25 THE COURT: All right, go ahead.

1 MS. LIVESAY: I just didn't want to put --

2 THE COURT: All right, go ahead.

3 MS. LIVESAY: I just didn't want you to excuse the
4 jury.

5 THE COURT: Continue on.

6 Q All right, where are you living now?

7 A At EME Apartments.

8 (Court reporter asks for clarification.)

9 THE WITNESS: EME Apartments.

10 Q Okay. And is that a different place than 2011?

11 A Yes, ma'am.

12 Q Okay. And do you have children with anybody else?

13 A No, ma'am.

14 Q Okay. So both you your kids are with Dubba?

15 A Yes, ma'am.

16 Q Okay. And who lives in the house with you now?

17 A Just me and my girls.

18 Q Okay. You and your two kids?

19 A Yes, ma'am.

20 Q Okay. Are you working anywhere?

21 A Yes, ma'am.

22 Q Where are you working?

23 A McDonald's in Carolina Forest.

24 Q Okay. And where were you working in 2011?

25 A I wasn't.

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1 Q Okay. And where was he working?

2 A Nowhere.

3 Q Okay.

4 MS. LIVESAY: No further questions, Your Honor.

5 THE COURT: Mr. Canty, redirect?

6 MR. CANTY: None, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MR. CANTY: Please, Your Honor.

9 THE COURT: All right, ma'am, you're released from
10 your subpoena, and you may go back to your regular
11 life. Thank you, ma'am.

12 (Witness excused.)

13 THE COURT: Further witnesses by the Defendant
14 Graham?

15 MR. CANTY: We rest, Your Honor.

16 THE COURT: All right, very good. Any reply
17 testimony by the State?

18 MS. LIVESAY: No, sir.

19 THE COURT: Very good. All right, ladies and
20 gentlemen, as when the State rested its case, there are
21 matters of law that the Court has to take up with the
22 lawyers when the defense rests its case. Happens in
23 every case, it's going to happen in this case. I'm
24 going to do that. I'm also going to talk about some
25 other things with the lawyers.

1 about it, but that's not evidence. You can't use that
2 to make your decision on the facts and the evidence on
3 the case because that's not what it is. Might make you
4 think about something, but you can do that.

5 The closing arguments are important, though. They
6 are each side's summary of what they believe the
7 evidence has shown to you during the course of the
8 trial, remembering of course that you are the judges of
9 the facts of this particular case.

10 When we get done with the closing arguments, I'll
11 probably take a very short break for about five
12 minutes. And then we'll do the charge on the law. I
13 will give you the law that you will apply to the facts
14 and evidence you find to be true in this particular
15 matter.

16 So with that, I'll turn it over to the lawyers for
17 their opening state -- or closing arguments, I'm sorry.
18 All right, Mr. Frederick.

19 MR. FREDERICK: Thank you, judge.

20 So I was trying to think of how to encapsulate
21 this case and this trial and what it's about. I think
22 it's about fear, it's about apathy, and it's about
23 incompetence. Fear because nobody wanted to talk.
24 Nobody wanted to talk about certain people in this
25 case. Apathy because no matter what the evidence

1 showed, the people who mattered just didn't care,
2 apathy. And incompetence from the beginning of this
3 case, the police and the solicitor's office has handled
4 it incompetently.

5 I have done everything that I can from the
6 beginning of this trial to bring you the truth. I
7 haven't tried to hide anything. There are some things
8 that I shouldn't have talked about in any ordinary
9 trial and in a normal trial the defense attorney would
10 not talk about, they would fight tooth and nail to keep
11 it from you. And I've done everything I can to make
12 sure that I brought that truth to you and showed you
13 that we are not hiding anything. The truth is like a
14 lion. When you set it free, it will defend itself.

15 Let's talk about fear for a minute. When Howard
16 Parker took the stand last week, he did not want to
17 admit what he had told the police. He denied
18 everything that he had told the police before. And
19 what did he tell them, he told them that Lavena
20 Jackson, Keia's cousin, set up the robbery. We heard
21 from other witnesses that Lavena Jackson went to the
22 house that day and had dinner with them.

23 We heard from Howard Parker that he was at Billy
24 Freshley's house in the yard sitting in a car with
25 Terry Bease, Lil Papi, when Lavena called him and set

1 up this robbery. She said, Splurge has got the drugs,
2 he's got the money, and he's an easy target, go get
3 him.

4 Then remember when I asked Howard Parker and I
5 asked Keir Johnson, do you know Donavan Johnson, 110,
6 do you know Brandon Wells, B-Wells, do you know Sha
7 McCray, Lil Manzy, do you know Billy Freshley? And
8 they said, no, I don't know them. I never heard of
9 them or I didn't know them like that, and continued to
10 deny that they knew these people even when Mr. Canty
11 confronted them with the fact that Keir Johnson's cell
12 phone had Donavan Johnson's number programmed into it
13 as 110. Still continued to deny it.

14 And did you see where they were looking when they
15 were testifying? They weren't looking at me and they
16 weren't looking at you, and they weren't looking at the
17 prosecutor. They were looking over us at the audience.

18 Fear. I called Lance Corporal Snyder to the stand
19 to talk about a threat that was made to Thomas James.
20 And that's all we got to say. We didn't get into the
21 details. We could not have her testify as to the
22 details, who made the threat, what the threat was. But
23 you can fill in the blanks. A threat was made to
24 Thomas weeks before this trial. Who threatened him and
25 what were they threatening him about?

1 Keir Johnson, why does Keir Johnson lie? It's
2 fear. On one hand, you know, Keir, he either borrowed
3 or stole this van from his girlfriend or his
4 girlfriend's mother, and then he drove the van with his
5 friends to do this robbery. He ditched the van, he
6 panicked. And immediately the cops caught up to him.

7 He was caught, he was cold busted because he
8 ditched the van, and then he called his girlfriend and
9 said, call the police, tell them I've just been robbed,
10 they stole my van, at the same time that the police
11 were looking for that very van because a robbery and
12 murder had just happened.

13 The same night they caught up to him and they
14 interrogated him. And he gave them this long, detailed
15 lie about how he was robbed, about how he was at a
16 convenience store and this man came up. It was a
17 seven-foot-tall man, he had to duck to get through the
18 door of the store. The seven-foot-tall black man had a
19 missing tooth, he had a gold tooth, he had a little
20 star on his gold tooth. And I don't know if he's
21 making all this up, or maybe that's someone that
22 describes a rival gang member, I don't know. But it
23 was awfully detailed.

24 He pulls the car in, he can't get into the gas
25 tank, so he's waiting half out -- half out of the

1 parking lot, half in the street, waiting for his turn
2 to get gas. Guy comes up, puts a gun to his head and
3 says, give me your car and I'm taking your cell phone.

4 The first night he lied, he thought he was going
5 to get out of this with a lie, somebody stole the van.
6 Until they came back to him because someone got the
7 phone records in this case, and they at least analyzed
8 Keir Johnson's phone records placing him in the area of
9 the murder at the time of the murder, placing him in
10 the area where the van was dumped at the time the van
11 was dumped. And they confronted him with that.

12 And when he's confronted with conclusive proof
13 that he's lying, he changes history about that. He
14 gets a lawyer, and he said his lawyer told him that he
15 would get the murder case dismissed. All he's got to
16 do is talk to him and give him somebody.

17 And so he goes back and he talks to the lead
18 investigator, Detective Vescovi, and he tells him,
19 everything I told you the first time was a lie. It was
20 all a lie. But now I'm telling you the truth. Now,
21 I'm going to tell you that Cutty and Dubba were in the
22 van with me. And then we just we ditched the van, and
23 then I walked, I walked back to Conway.

24 Cutty and Dubba, maybe they got a taxi. At first
25 they got a taxi, then maybe it wasn't a taxi, I don't

1 know, maybe it was some other kind of car. How can you
2 be confused about what a taxi looks like.

3 And then he sticks with that story until sometime
4 recently he's confronted with the fact that Mike Pyatt
5 picked him up down here. And now at trial for the
6 first time he says, Mike Pyatt picked me up and he took
7 me back to Conway. I been telling my lawyer that all
8 along. I didn't tell anybody else, though, I didn't
9 tell the police. Still lying. When he's confronted
10 with evidence that we know he's lying, then he changes
11 his story, only as to what we've got proof of. And he
12 keeps lying about the rest.

13 Fear. He knew -- when they confronted him with
14 these records, he knew and he got charged with
15 murder -- he knew that he is now looking at spending
16 the rest of his life in prison. Fear. He's got to
17 talk, he's got to do something to get out from under
18 this. And he's in a tough spot.

19 On the other hand, he sends this letter to the
20 former prosecutor in this case, telling her, I lied, I
21 lied because the actual suspects told me if I name them
22 I won't live to see another day. He says in that
23 letter, they told me to put Carnail Graham into it.
24 And that letter is in evidence, and his signature is at
25 the bottom of it.

1 There are three signatures that I put into
2 evidence of Keir Johnson. On the letter, in the pro se
3 motion he filed, and there was another one. Two are
4 cursive signatures, one is printed. I put those into
5 evidence so you can look at them and see, did he or did
6 he not sign that letter whether he wrote it out himself
7 or not.

8 Incompetence. From the beginning they have
9 handled this case incompetently. And I'm sitting over
10 there at the defense table, and I'm just hoping, hoping
11 that you all are seeing the same thing that I'm seeing
12 and hearing the same thing that I'm hearing.

13 They had these cell phone records from the
14 beginning. Detective Vescovi got the cell phone
15 records with search warrants from the phone companies,
16 put them in the solicitor's office. I got them from
17 the solicitor's office and had to get my own expert to
18 analyze these records. Mr. Boyell testified that these
19 are phone records, they are consistent, they can't be
20 fixed. And the records that he analyzed identify the
21 subscriber.

22 The prosecutor put Thomas' phone records into
23 evidence identifying the subscriber. With the same
24 witness I put Sha McCray's phone records into evidence
25 which identified the subscriber. All of the phone

1 numbers I established through the testimony of their
2 witnesses during the trial, carefully.

3 What do the phone records show? We got Keir
4 Johnson's first phone that doesn't really tell us
5 anything relevant to this case other than before the
6 relevant time and after the relevant time he was using
7 that phone in downtown Conway. We got Keir Johnson's
8 second phone that he was using, steady making phone
9 calls during the relevant times, that shows him
10 traveling up, at the time of the robbery and murder
11 travelling up to the area of Brison Court, and then
12 immediately after traveling back down towards Conway
13 along Dirty Branch Road.

14 Sha McCray's phone records show Lil Manzy at the
15 exact same time on the exact same night traveling from
16 downtown Conway up to the area of Brison Court and then
17 down to Dirty Branch Road where that van was dumped,
18 and then back to Conway.

19 Carnail Graham's phone tells us nothing about the
20 relevant times except when he was using that phone he
21 was in this area of downtown Conway, which is
22 consistent with what his girlfriend told us.

23 Mike Pyatt, his phone number shows us and confirms
24 that he drove down here and picked up Keir Johnson and
25 his friends after they ditched the van. Thomas,

1 Thomas' cell phone puts him in downtown Conway the
2 entire night. At no point did Thomas travel up here or
3 down here.

4 And this is critical, this is important. Remember
5 the prosecutor was cross-examining Mr. Boyell about the
6 times between 2:51 and 3:18, when no phone calls are
7 made on Thomas' phone. And she went through it ad
8 nauseam. Where was he at 2:52, I don't know. Where
9 was he at 2:53, I don't know, 2:54, I don't know, 2:55,
10 on and on. Well, all of the testimony in this case
11 says, and it is undisputed by anyone, that there was
12 one van, one vehicle that was used by Keir Johnson and
13 his friends.

14 Keir Johnson at 2:48, at 2:48 Keir Johnson is
15 already up here in the area of Brison Court. The last
16 phone call made from Thomas' phone was at 2:51, three
17 minutes later. Thomas is down here in downtown Conway.
18 2:48 Keir Johnson is up here, 2:51 Thomas is down here
19 (indicating). So unless she's going to say there was a
20 second vehicle and Thomas jumped in it and was racing
21 to catch up with him, that doesn't make sense.

22 And she keeps trying to say that -- I think what
23 she was trying to say is that Thomas and Carnail
24 switched phones. Keir Johnson says that his phone rang
25 and it came up as Cutty. And he answered it, but it

1 was Dubba talking. And then when they came or when he
2 picked them up in the van, he was surprised that they
3 were together.

4 But what if that was true, what does it tell us?
5 If Carnail had Thomas' phone that exonerates Carnail.
6 Carnail was in downtown Conway when Keir Johnson was at
7 the crime scene. The only other thing I think she's
8 trying to say is that shows they were together. Well,
9 if they were together, it exonerates both of them in
10 downtown Conway while Keir Johnson is up here at the
11 murder scene. This is the only objective evidence that
12 we have in this case, the only evidence that we know
13 doesn't lie.

14 Howard Parker told the police that between 1 and 2
15 a.m. he was at Billy Freshley's house in a car with
16 Terry Bease talking to Lavena Jackson on the phone
17 between 1 and 2 a.m., and that is consistent with the
18 phone records that Thomas during that time period is at
19 Billy Freshley's house too.

20 And then the fingerprints in the case also tell
21 the same story. Because remember, she put all these
22 other fingerprint cards into evidence. One of those is
23 Letitia Freshley, Freshley.

24 And then, Howard Parker told the police that
25 Thomas, when he saw him, got into that van with a bunch

1 of people, people unrelated to the case, people that
2 have nothing to do with this case. I went through the
3 names with him just to show what he had told the police
4 when he first talked to them, that all these people, a
5 van full of people, piled into the van at Billy
6 Freshley's house and left.

7 And where did they go? They went to Kel's house,
8 Markel Rush, which is consistent with the phone records
9 that show Thomas James here in the area of Kel's house.
10 And the fingerprints, again, who else's fingerprint did
11 she put into evidence? You got a fingerprint card for
12 Markel Rush.

13 There was one witness who was uniquely situated to
14 tell us who went into that house, and that was Rodney
15 McElveen, Splurge, who they did not call to the stand
16 to testify, who apparently had a shoot-out with these
17 guys, and is the one person who could have told us who
18 was in his house. Why didn't she put him on the stand?

19 We heard about Conswella Smith who was an eye
20 witness at the scene who saw the people in the van, who
21 saw the people running out of the house. They didn't
22 put Conswella Smith on the stand; why not? Instead,
23 she gives you Terry Bease, who helped set up the
24 robbery. Instead, she gives you Howard Parker.
25 Instead, she gives you Sedieka McClam.

1 Let's talk about Sedieka McClam for a minute.
2 Because when he testified, he went halfway through his
3 statement and then stopped on direct examination. On
4 purpose when Keir Johnson was on the stand, I made
5 certain that I asked him about that van and what
6 happened to it because I knew Sedieka McClam was
7 coming. And he says, it wasn't my van, it was my
8 girlfriend's mother's van. I never saw that van again,
9 I never drove that van again. I don't know what
10 happened to that van.

11 And then, at some point during the trial the
12 prosecutor meets with Sedieka McClam, and you would
13 think that if you just found out for sure that one of
14 your witnesses is lying, you would not put them on the
15 witness stand, you would not have them swear on the
16 Bible to tell the truth and take an oath.

17 But instead she puts him on the stand and leaves
18 out the parts that he got busted on. And that's why I
19 took him through his letter line by line, so you could
20 hear what he said and see what happened when she put
21 him on the stand. Because he said he met this girl,
22 and he went over to her house the next morning, and
23 Dubba just happened to be sitting there at the house.

24 And Dubba just happened to be talking to Cutty on
25 the phone, which was terribly awful convenient for

1 Sedieka. And he just happened to confess to the murder
2 and the crime. And then just for the icing on the
3 cake, a blue Astro van pulls up with Bootsie driving
4 and Cutty in it, and Dubba gets in the van and they
5 drive off.

6 Except he got his information from someone's
7 discovery materials at the federal prison. He knows
8 that the only way that he gets a downward departure, a
9 time cut, is if he testifies at someone's trial. And
10 his information came solely from that discovery packet.
11 And he had no way of knowing that Bootsie never drove
12 that van again, that that van went back to Bootsie's
13 girlfriend's mother, the person who owned the van. And
14 most importantly, he had no way of knowing that at the
15 time he said all of this happened, Bootsie was still in
16 jail.

17 They called the original prosecutor as a witness,
18 which I decided not to object to, because I wanted you
19 guys to hear the truth and I wanted you to see what's
20 been happening in this case. That prosecutor had this
21 case for almost two years. From time it happened until
22 October of last year she had this case, a murder case,
23 probably the most important case that she had during
24 that time.

25 And she's sitting on the witness stand with the

1 file right in front of her on the stand. And when I
2 asked her, did you have cell phone records, I don't
3 know, I can't recall. Did someone analyze cell phone
4 records, I don't know, I can't recall. Did you ask
5 somebody to analyze the cell phone records, I don't
6 know, I can't recall. If you had, what expert would
7 you have used? I don't know, I don't know anything
8 about that. Was there a shoot print mold in evidence
9 in this case? I don't know, I don't know anything
10 about that. I don't know, I can't recall. Two years.

11 Investigator Caulder who processed the crime
12 scene, I think, was the most credible witness in this
13 case, and I appreciated it. He said, I made a mold of
14 a shoe print. And I said, where is it, and he said,
15 it's right there, right there sitting at the
16 prosecutor's table. And I asked him, is there anything
17 else that you did not put into evidence in this case,
18 that they didn't put into evidence in this case, that
19 you collected at the crime scene. No, nothing else but
20 the SKS assault rifle which clearly wasn't relevant.

21 Well, we learned through Howard Parker that that
22 shoe impression is a size six and a half. He's a size
23 six and a half. Who else might be a size six and a
24 half? He says that Lil Manzy, the short, light-skinned
25 man is the same size as him, which is same height as

1 him, five-foot-four. Why didn't they give you that
2 shoe print, why?

3 Investigator Caulder talked about the fingerprint
4 evidence, and he was as honest and straightforward as
5 he can be. Fingerprints in some cases can be critical
6 evidence. If they're on a murder weapon, if they're on
7 a gun or a knife, they can be very important evidence.
8 But when you have fingerprints on a car, what it can
9 tell you is limited. It can't tell you what time the
10 fingerprints got there, or it can't tell you where they
11 got there, when they got there.

12 What it can tell you in this case, because they
13 put all of the fingerprints into evidence, it
14 corroborates and it is consistent with Thomas being at
15 Bill Freshley's house getting into a van full of
16 people, remember Letitia Freshley's fingerprints there
17 too, going down to Kel's house and getting dropped off
18 there. And remember, Markel Rush's fingerprints are on
19 that van too. And it doesn't tell us anything else.

20 They called Lynn Baker to the stand as a gang
21 expert. And the reason -- and the reason they put her
22 on the stand was to say Thomas is a Crip. And the
23 reason they wanted to say that is because in my opening
24 statement I told you he's not a Crip. I said that the
25 other guys in that van are Crips, and that's why Thomas

1 got thrown under the bus, because he is not. And they
2 put her on the stand solely to tell you -- to
3 contradict what I had said and say Thomas is a Crip.

4 Well, Ms. Baker has a two-year biology degree, and
5 she has worked at the jail for years and years and
6 years. And when she was talking about her
7 qualifications, she said for all these years, thinking
8 13, I might be wrong, a lot of years, I was a part of
9 the gang unit for the Horry County Sheriff's office.

10 What she didn't tell you is that in Horry County,
11 the only county in the State, the sheriff's office is
12 not law enforcement. They are in charge of the jail
13 and courthouse security. We are the only county in the
14 State that has a county police department that is in
15 charge of law enforcement. Her job at the jail was in
16 booking, taking photographs of people as they came in.

17 And she took some classes about gangs, some CLE's,
18 whatever we call them. And I asked her, what are the
19 indications, what are the indicia that a person is a
20 Crip. And we went through them. They have tattoos
21 that they get to identify themselves as a Crip.
22 There's a six-pointed star, the star of David, a
23 six-pointed crown, a pitchfork, I think she said it's
24 called the devil's tail, a winged heart.

25 And I asked her, does Thomas have any of those

1 tattoos, no. How does she know that? She photographed
2 his tattoos when he went down to the jail and got
3 booked. She says another way that we place somebody in
4 a particular gang is if they identify themselves as
5 being in the gang. And I asked her, has Thomas ever
6 identified himself as being a Crip. No.

7 And so I'm standing here and I'm thinking, all of
8 the indicators that a person is a Crip, Thomas doesn't
9 apply to a single one of them that she's listed. So I
10 tried to help her out some, and I said, in your opinion
11 if a person hangs out with or hangs around Crips, are
12 they a Crip. And she says, yes, absolutely, guilty by
13 association.

14 She acknowledges there are a lot of local gangs
15 and that they work with the Crips sometimes, and they
16 hang out at the same places. But from what I heard of
17 her testimony, I'll say that she helped establish he is
18 not a Crip.

19 Something else that she did when she's testifying,
20 she didn't say Cutty. Now, you heard every witness say
21 that his name is Cutty. She called him Cutta. And I
22 don't know if you caught that or not. But, I mean,
23 it's one of two things, she doesn't know his name, or
24 that just sounds a whole lot more scary, Cutta. His
25 name is Cutty.

1 I want to talk about the firearms for just a
2 minute. Five shots fired from Splurge's gun in his
3 bedroom, five cylinders, five shell casings in the
4 cylinder of a .357 Magnum gun that belonged to Splurge,
5 and everybody agreed with that. Coming from the other
6 direction down the hallway, Investigator Caulder said
7 two shots, one in the ceiling, one went into the floor.
8 Neither bullet recovered.

9 A .357 Magnum bullet killed Keia. Their own
10 ballistics expert told you that a .38 caliber gun
11 cannot shoot a .357 Magnum. For what it's worth, if
12 you believe anything he said, Keir Johnson says there
13 was a .38 caliber and a .40 or a .45 were the guns that
14 they had that were thrown out the window. The only
15 person that a .357 Magnum is associated with is
16 Splurge. The only gun that was talked about that is a
17 .357 Magnum is Splurge's gun.

18 In opening statement, and I suppose this is their
19 theory of the case, the prosecutor told you that these
20 guys kicked in the door, they went in. Carnail saw
21 Keia, said, oh, my gosh, she knows who I am, and shot
22 her immediately right there in the living room. The
23 medical examiner told us that that bullet had hit the
24 heart, it hit the aorta, it hit the lungs. It lodged
25 in the spinal column, and there was massive

1 hemorrhaging, hemorrhaging.

2 And he said -- he was trying to help her out as
3 much as he could, but he's not going to lie -- he said,
4 it's possible, it's possible she could have ran down
5 the hall all the way from the living room, squeezed
6 through that door, left side first probably, that was
7 blocked by an end table, and jumped onto Splurge's bed
8 after she was shot in the living room. He said, it's
9 possible but it is not likely.

10 And if that did happen, where's the blood all the
11 way down the hallway and into the bedroom.
12 Investigator Caulder told us that there were no bullet
13 holes in the walls in Splurge's room, there were no
14 bullet holes anywhere in Splurge's room, there were no
15 spent shell casings, and that Keia was found on
16 Splurge's bed against the wall. We can figure that
17 out, I think.

18 The burden of proof is always on the prosecution
19 in a criminal case, always. And the reason that the
20 burden of proof is on them is because the founding
21 fathers, when they wrote the Bill of Rights, when they
22 wrote the Constitution, they knew from their own
23 experience that the crown, now the government, has all
24 of the power.

25 They've got police departments full of police

1 officers, detectives, investigators. They've got
2 access to any kind of expert that they want. They've
3 got SLED where the firearms expert came from as a
4 resource. They've got a bunch of prosecutors in this
5 office alone with support staff, with investigators
6 working in their office. They've got the power to
7 threaten a witness with prosecution or prison, and
8 they've got the power to promise a witness freedom. We
9 don't have that. So the burden of proof is always on
10 the prosecution.

11 The two most important constitutional rights that
12 we have are, in my opinion, the right to a trial by
13 jury and the right to proof beyond any reasonable
14 doubt.

15 In talking about the burden of proof, they have to
16 bring the witnesses. Even if I put up a witness or I
17 put in some evidence, and sometimes we do and sometimes
18 we don't, even then that burden does not shift. We
19 don't have to prove anything. They have the burden to
20 bring the evidence to you. And they didn't do it, they
21 couldn't do it.

22 And the cell phone expert, they didn't give you a
23 cell phone expert. Why not? Those records came from
24 them. We don't know if they analyzed them or not or
25 what it said. One of two things happened. They looked

1 at those records, they analyzed Keir Johnson's and they
2 didn't look at the rest of them. If that's what
3 happened, that is incompetent. Or they looked at those
4 records and they analyzed them, and then they ignored
5 it. That is malicious and unforgiveable.

6 I want to talk for a minute about the standard of
7 proof, the standards of proof. We have different
8 standards of proof in different courtrooms and
9 different types of cases. And I'm going to go through
10 them just to put reasonable doubt into context, so we
11 know what we're talking about.

12 The first and the lowest burden of proof is what's
13 called a scintilla of evidence. A scintilla of
14 evidence is not really evidence of anything. It's not
15 enough to prove anything in any courtroom anywhere in
16 the country. It's nothing more than a mere suspicion.

17 Next is a reasonable suspicion. A reasonable
18 suspicion is enough evidence for a police officer to
19 pat you down, not feel in your pockets, just to pat you
20 down, if he thinks that you have a weapon. A
21 reasonable suspicion is enough evidence for a police
22 officer to pull you over and hold you on the side of
23 the road just long enough to write a ticket and run a
24 computer check, a license check, and then let you go.
25 A reasonable suspicion is not enough to convict a

1 person of a crime.

2 Next is probable cause. Probable cause is enough
3 evidence for an officer to actually go in your pockets
4 and search you or to search a car if he has reason to
5 believe that something is in the car, there's evidence
6 of a crime. That's probable cause. Probable cause is
7 what the grand jury finds when they indict a person.
8 It means there's some evidence. Probable cause is
9 enough to get you here, but it's not enough to convict
10 a person of a crime.

11 Next, and this is one that most people are
12 familiar with, is what's called preponderance of the
13 evidence. And preponderance of the evidence is 50/50.
14 If one side's evidence weighs even slightly more than
15 the other side's, then you find in that person's favor.
16 Preponderance of the evidence means more likely than
17 not. Preponderance of the evidence is the standard of
18 proof that we use in civil cases. If all we were
19 fighting about here was money, this would be the
20 standard of proof that we use.

21 The next one is clear and convincing evidence.
22 And this is a standard of proof that we use in some
23 family court cases. If the State wants to permanently
24 take your children away from you, they have to prove by
25 clear and convincing evidence that you are an unfit

1 parent. Even clear and convincing evidence is not
2 enough to convict a person of a crime.

3 The last and the highest standard of proof in any
4 courtroom, in any courtroom anywhere in the world, is
5 beyond any reasonable doubt. And that is the standard
6 of proof that we have to use in every criminal case.
7 It doesn't matter if it's a speeding ticket or murder.
8 A reasonable doubt is the kind of doubt that would
9 cause a reasonable person to hesitate to act. It's a
10 doubt for which you can give a reason.

11 I gave the first closing argument. The way that
12 works is if we put up no evidence whatsoever, then the
13 prosecutor has to go first, and we get to respond to
14 what they say. Because I called some witnesses and we
15 put some evidence in, I have to go first. That means
16 that I don't get to respond to anything that they say.

17 When I sit down, I cannot get back up again. I
18 can't answer what they say, I can't respond to it. I
19 won't get to talk to you again. And I ask each of you,
20 when you hear the prosecutor's closing argument and you
21 have questions, answer them for me. I've tried to
22 bring you the truth, I've tried to give you everything
23 that you need to respond to what they say.

24 And this is the hardest part in the trial, because
25 for three years I've been responsible for Thomas. And

1 when I sit down, I have to hand that responsibility to
2 each of you. There is nothing else I can do at that
3 point.

4 There's a story that I like to tell that I think
5 captures this moment. It's a story about a young boy
6 and a wise old man. And the boy wanted to show up the
7 old man for a fool, and so he came up with a plan. He
8 would go out into the woods, the forest, and he would
9 catch a small bird, and he would carry it cupped in his
10 hands back to the old man. And he would say, old man,
11 what do I have in my hands, to which the old man would
12 reply, why you have a bird, my son.

13 And then the boy would say, old man, is the bird
14 alive or is it dead? And if the old man said, why the
15 bird is dead, then the boy would open his hands and
16 that bird would fly freely back to the forest. But if
17 the old man said, the bird is alive, my son, then the
18 boy would crush the bird and crush it until it was
19 dead.

20 So the boy goes out into the forest and he catches
21 a small bird, and he carries it cupped in his hand to
22 the old man. And he says, old man, what do I have in
23 my hands. The old man replies, why you have a bird, my
24 son. And the boy with an evil grin says, old man, is
25 the bird alive or is it dead. And the old man replies,

1 the bird is in your hands, my son. Thank you.

2 THE COURT: Mr. Canty?

3 MR. CANTY: Your Honor, may I approach?

4 THE COURT: Yes, sir. Solicitor.

5 (WHEREUPON, a bench conference was held off the
6 record in the presence of the jury but out of the
7 hearing of the jury.)

8 MR. CANTY: May it please the Court.

9 THE COURT: Yes, sir, Mr. Canty.

10 MR. CANTY: Ladies and gentlemen of the jury,
11 thank you again for your time and attention for the
12 week that you have devoted to the trial of this case.
13 Your service as a juror is the highest service that a
14 civilian can render to the government and to your
15 community. Carnail Graham has been waiting 920 days
16 for this trial. Mr. Pertelle has been waiting three
17 years for this trial.

18 I was rehearsing my closing this weekend, and my
19 wife began rolling her eyes and she looked at her watch
20 and she says, you know you're at an hour and 45
21 minutes. The judge is not going to let me talk for an
22 hour and 45 minutes, and you don't want to listen to me
23 for an hour and 45 minutes. So I had to boil it down,
24 distill it down, get to just the important things that
25 I want to mention to you.

1 First, burden proof is on the State. Carnail
2 Graham comes into court cloaked in innocence just like
3 the judge's black robe. The State has to strip away
4 that cloak of innocence, and they have to do it with
5 proof, with evidence, beyond a reasonable doubt. And
6 what proof do they offer?

7 First witness was Dontrell Lamonte Watts, one of
8 the occupants of the mobile home, one of the two who
9 survived this incident in the mobile home. He told me
10 four things that I would like to remind you of. Number
11 one, he heard voices of the people who kicked in the
12 door. He said, where is it at, we ain't playing, where
13 is it at. He heard that very distinctly.

14 Now, I asked him, do you know Carnail. No, I
15 don't know Carnail. You sure? I know of him. But the
16 State put up a couple other witnesses, Lil Papi, who
17 said Mr. Watts and Carnail were childhood friends. The
18 State put up Howard Parker who said Mr. Watts and
19 Carnail have known each other since they were little.
20 I will submit to you that if Mr. Watts heard Carnail's
21 voice, he would have said so. And the reason that he
22 didn't say so is he didn't hear Carnail's voice.

23 Second thing Mr. Watts established, 3 o'clock in
24 the morning, Splurge, the other occupant of the mobile
25 home, he was sound asleep when the door was kicked in.

1 After the home invaders left, after Mr. Watts left out
2 the same back door, Officer Singleton arrives, the
3 crowd is gathering, the second officer arrives to cover
4 the front. He has his weapon drawn and he says, come
5 out with your hands up. He has to clear the mobile
6 home. There was a delay, a two or three-minute delay,
7 before Splurge comes to the door. You have to ask
8 yourself what's going on.

9 He also established, and I think this is quite
10 important, where Keia was in the mobile home. Keia on
11 the sofa watching TV, that's where he said she was. We
12 don't have any reason to doubt that. And the fourth
13 thing that he said that was important is that Lavena
14 Jackson was in the home earlier that evening.

15 Next we heard from David Grissett. Now,
16 Mr. Grissett, he sat pretty low down in the witness
17 chair. He was trying to make himself as small as he
18 possibly could. He did not want to be here. He is
19 afraid. He knows what kind of people these are. He
20 did not want to have to say anything other than what he
21 had to.

22 Number one, he heard and saw the suspicious van
23 had a bad muffler, made a lot of noise, that drew his
24 attention. If you look at this aerial photograph, this
25 is Colletta Court here, here is Conswella Smith's

1 trailer, here is Mr. Grissett's trailer (indicating),
2 and you see those bushes, those shrubbery in front of
3 his trailer. He heard the van, saw it pulled out of
4 here back to the woods, and then pulled out and went
5 over here, down here (indicating).

6 He's watching it, he can see the lights, he's
7 suspicious, he's out in his front yard watching this.
8 Comes back up 548, back down Colletta Court and returns
9 to the previous position back into the woods. He knows
10 Conswella, he knows she goes to work at four. It's
11 3 o'clock. He calls Conswella, he says, there's a van
12 in your front yard, it's suspicious.

13 Conswella goes out and she talks to the people in
14 the van. Now, he's standing here (indicating), he can
15 see without being seen because he's got this shrubbery
16 in his yard. And he hears gunshots, and he sees two
17 men running from this trailer, and he sees the van come
18 up the street, pick up the two men, get to the highway,
19 take a left.

20 Officer Singleton, first law enforcement officer
21 on the scene. There was a delay in responding. When
22 he was clearing the trailer, come out with your hands
23 up, there was a delay. He says he was told the van
24 came from the end of Colletta Court and picked up two
25 men running from the scene. That's what he learned

1 from that scene.

2 Next witness, Dr. Proctor; what are the chances
3 that we get a forensic pathologist who is board
4 certified and has 32 years of experience examining the
5 bodies of murder victims to determine how they died? I
6 submit to you that he's eminently qualified. He was
7 also in the military, he had firearms training, and he
8 also said he was a sportsman. And I'll bet you that
9 he's probably shot a deer or two in his life.

10 He described the injury as catastrophic, a lethal
11 injury, shot through the heart, the aorta, the lung,
12 into the spine, on a horizontal plane just slightly
13 left of center. Struck between the fourth and fifth
14 rib through the heart.

15 I asked him, keep in mind this is a 65-foot
16 trailer, what are the chances that somebody with an
17 injury like that -- and keep in mind it's not just the
18 hole that the bullet makes, the bullet has a lot of
19 energy. And when it strikes something, whatever medium
20 that is, that canopy from that bullet spreads out, it's
21 a shockwave. It's just like a motorboat going through
22 the water leaving a wake. It isn't just the hole that
23 the bullet makes, it's the impact, the shockwave that
24 is being released into that medium.

25 What are the chances that she -- I said 30 to

1 35 feet, this is 13 feet and this is 32 feet, it's
2 actually more like 45 feet -- what are the chances that
3 this girl, shot through the heart, and I didn't put it
4 this way, but she then ran towards the people that shot
5 her, ran past the people that shot her, covered about
6 45 feet, and then jumped over Splurge on the bed.

7 I will never forget the look on his face. He
8 said, I guess it's possible, but it's unlikely. What
9 is far more likely is when you get shot through the
10 heart with a .357 Magnum, especially if you're about
11 five foot two, that you're going to lose consciousness
12 almost immediately. You're not going to run 45 feet
13 and then jump over somebody.

14 How close was she when she got shot. There was a
15 shirt, there's no residue on the shirt. What did he
16 say that meant? She was at least two feet away from
17 the gun.

18 Then we have Tiffany Oliver. I think the
19 solicitor put Tiffany Oliver up because she could say
20 that her cousin has two children by Carnail. Maybe you
21 can infer that's why they abandoned the van there,
22 because this is Carnail's girlfriend's cousin.

23 Remember, I asked Tiffany Oliver, do you know
24 Billy Freshley? Nope, I don't know belly Freshley.
25 Aren't you Facebook friends with Billy Freshley? What

1 was her answer? Probably. I think she was being less
2 than candid about that.

3 Next witness was Seraphim Haftoglou, the SLED
4 fingerprint expert. What did Seraphim tell you? No
5 fingerprints from Carnail nowhere. He had 19 examples,
6 no fingerprints from Carnail.

7 Next we have Robbie Caulder who is the CSI guy,
8 the crime scene investigator. What did he tell you?
9 Admittedly there was two shots fired by the intruders.
10 One shot down the hall towards Splurge's bedroom that
11 went into the floor before he got to his bedroom. As
12 they're exiting the back door, there's another shot,
13 entered this wall, exited this wall (indicating), hit
14 the television. No question but that those two shots
15 came from the intruder's gun.

16 Where are the bullets? Did they mysteriously get
17 transported off into another dimension, where are the
18 bullets? We would know what kind of gun they had if we
19 had those bullets.

20 He made a plaster cast of the shoe print that was
21 pointed out by Conswella. Conswella says, I talked to
22 the guys, I came out, I talked to the guys right here.
23 That's the tire tracks and that's the footprint of the
24 guy who got out of the van right there. And Robbie
25 Caulder had plaster casts of that tire track, which is

1 not in evidence because there's no dispute about which
2 van it was. Everybody agrees that was the van.

3 He made a plaster cast of the footprint, the
4 person who got out of that van and came around and
5 talked to the driver when Conswella came out. Now,
6 where is this plaster cast of that footprint? It was
7 under the solicitor's table. It's not there now, it's
8 not in evidence.

9 They knocked the dresser over and they knocked the
10 night table over in Mr. Watts' room looking for drugs,
11 looking for money, looking for guns. Did you get
12 fingerprints off of those? No. Well, why not? Well,
13 they were masked men wearing gloves. No point in
14 getting fingerprints.

15 The van picked up two running men, that was his
16 information. He thought the .357 revolver -- where is
17 that weapon -- he thought that this weapon was found
18 two weeks later. Actually, it was found eight days
19 later, and it was found by Mr. Pertelle. And they
20 don't have a chain of custody on this weapon. They
21 don't know who was in that trailer at any time during
22 those eight days. They don't have a chain of custody
23 on the shell casings, the five empty shells in the
24 revolver, because they don't know who was in that
25 trailer.

1 He did say that they found three and a half ounces
2 of powder cocaine and one ounce of crack in Splurge's
3 bedroom along with an assault rifle, a .44 Magnum long
4 barrel revolver with a trigger lock. And he also found
5 a box of .357 Magnum ammunition.

6 And he was at the autopsy that day, he saw a
7 bullet that was found, it's in -- it's in evidence
8 there. He knew it was a .357 Magnum that killed Keia.
9 He had a box of .357 ammunition. Did you send it to
10 SLED? No. Why not? They didn't ask for it.

11 I asked Mr. Green, do you ordinarily ask if
12 there's more evidence that hasn't been provided? No.
13 We rely on the police to send us the evidence that they
14 want evaluated. It still hasn't been evaluated. It's
15 been three years, it still hasn't been evaluated.

16 Lynn Baker, she said Carnail has tattoos. I'll
17 stipulate to that, Carnail has tattoos. Lil Papi, Lil
18 Papi is a gentleman of no particular place of
19 employment, who self-identifies as a drug dealer. He
20 didn't know where Splurge lived, he drove there right
21 after the shooting. He admitted he spoke to Lavena
22 Jackson that night. And Howard Parker said she had set
23 up the robbery. And then Mr. Parker said, oh, I must
24 have been speculating when I said that.

25 Lil Papi also said Dontrell Watts is a childhood

1 friend of Carnail. And then the Verizon records
2 custodian, I think her name is Tiffany Tell, solicitor
3 calls the Verizon representative to say these are
4 Bootsie's cell phone records.

5 And what do they show? They show, just as Bootsie
6 testified, before the crime Bootsie was in Conway.
7 There we go. At the time of the crime -- Bootsie was
8 traveling up 501 -- at the time of the crime he's in
9 the vicinity of the trailer park in Brown Swamp where
10 the shooting occurred. And at the time the van is
11 abandoned, he is in the vicinity of the place where the
12 van was abandoned. He perfectly corroborates Bootsie's
13 story. That's why she put her up.

14 And Mr. Frederick says, oh, Verizon is also the
15 service provider for Sha'Rah McCray. We want to put
16 those records in. Solicitor doesn't want those records
17 in, but the judge let's the records in. And what do
18 they show? Sha'Rah McCray, this is the guy that
19 Bootsie said he didn't know, hadn't heard of him. And
20 then moments later he says, well, yeah, he is my
21 cousin.

22 And Sha'Rah McCray, where did his records put him?
23 In Conway before the crime, at Brison Court at the time
24 of the crime, and on Dirty Branch Road at the time the
25 van was abandoned. Now, why doesn't the solicitor want

1 those records in? The whole case hangs on Bootsie
2 saying Carnail and Thomas James, nobody else, just
3 three men. Sha'Rah McCray makes four. That means
4 Bootsie's lying, again. We know Bootsie's a liar.

5 Jamie Green, ballistics expert, I think he was a
6 pretty sharp fellow, pretty qualified. What did we --
7 there are four things that we learned from Jamie Green.
8 Number one, there is no such thing as a .40 caliber
9 revolver, they do not exist. And that's important
10 because Bootsie says after they had left the trailer
11 park, all of the sudden -- he had no suspicion anything
12 had gone awry -- police car passes, my client pulls out
13 a gun, points it at him.

14 What kind of gun? It was a .40 or a .45. That
15 would be a semi-automatic pistol. What was Keia shot
16 with? A revolver. He says Cutty had a revolver, my
17 client had a semi-automatic pistol. He's got the guns
18 backwards if he's even telling the truth. No such
19 thing as a .40 caliber. He's seen thousands and
20 thousands of pistols in his experience, his years at
21 SLED. Now he's in charge, he's a supervisor. He
22 evaluates the analysis of the people under him. He
23 used to do it himself, thousands and thousands of
24 pistols.

25 How many .357 Magnum semi-automatics have you

1 seen? One. It's a very rare, very expensive gun. You
2 don't find it in trailer parks in Brown Swamp, you
3 don't find them with crack dealers. She was killed
4 with a revolver.

5 He also said automatic pistols work differently
6 from revolvers. You fire a revolver, the cylinder
7 rotates, the cartridge lines up, the firing -- hammer
8 hits the firing pin, hits the primer, discharges, the
9 bullet goes down the barrel, and that's it.

10 A semi-automatic, that's not all. After that
11 bullet goes down the barrel, part of that energy forces
12 the slide back that's spring loaded. And as it comes
13 back it mechanically ejects the spent cartridge. The
14 spring in the magazine forces the next cartridge up, and
15 as the spring and the slide brings it forward, it
16 chambers the next cartridge. The shell is expended.

17 Where did they go? Well, they roll around, they
18 tend to go under things. Now, if my client's got an
19 automatic pistol and he shot Keia, his shell got
20 ejected somewhere in that trailer. Now, pitch dark.
21 Either one of two things happened, either my client did
22 not shoot Keia with an automatic pistol, or in the dark
23 he felt around while Splurge is emptying his .357
24 Magnum in his direction down the hallway, and he found
25 that shell casing and he stuck it in his pocket and

1 left it there because he didn't want it to be found. I
2 submit that that's preposterous.

3 And what else did he say? He had a ballistics
4 report from 2012 that another SLED expert had done.
5 Years rolled by, this case has to go to trial. 2014,
6 he does another, a second ballistics report. Three
7 differences between the first one and the second one,
8 and I think they are important.

9 The first ballistics report refers to a
10 projectile, singular, in example number four, Exhibit
11 No. 4. Didn't have that in the second report. The
12 second report says the bullet that killed Keia was not
13 fired by, boldface and underlined. That was not in the
14 original report.

15 The original report said the bullet that killed
16 Keia, that the markings on it, the striations were of
17 such poor quality that it was not suitable for the IBIS
18 system, the International Ballistics Information
19 System. It wasn't good enough to be entered. Well, we
20 don't do that anymore, so that was omitted.

21 What was the point of putting it in boldface, what
22 was the point of omitting projectile singular and not
23 sufficient quality for the IBIS report? I'll get to
24 that in a minute, but there's no murder. The bullet
25 that came from -- that killed Keia came from Splurge's

1 gun. There's no murder.

2 Bootsie. I don't have to go on about Bootsie,
3 he's a liar, he's a thief, he's a dope dealer. His
4 story has changed over and over and over again. Every
5 time he's confronted with a lie his story changes. Two
6 different locations where he picked Carnail up. He
7 said, and I thought this was remarkable, he said he was
8 going to get himself an ounce of crack cocaine to
9 resell, and he didn't hear any gunshots.

10 And the two men that came walking out of the
11 trailer, he said they were fast walking, but they
12 weren't running. And they got in the van, and he
13 started up the van. He had a very pleasant
14 conversation with Conswellia, they knew each other. And
15 he drove up to Highway 548, Brown Swamp Road, he took a
16 left, and nothing out of the ordinary, just scored some
17 dope.

18 Police car comes by, my client pulls out an
19 automatic pistol, that's the first he suspected that
20 something had gone awry. Didn't hear any gunshots. I
21 don't need to go in -- I counted 192 lies that Bootsie
22 told, and I don't -- you don't want to hear 192 lies.
23 But he's one of the rare people you can tell that
24 they're lying because their lips are moving.

25 What did he get? He's sitting in jail for six

1 months thinking, how am I going to get out of jail.
2 They got me here for murder. I don't even have a bond.
3 How am I going to get out of jail? Contacts his
4 attorney, and Mr. Hazzard's a very good attorney. Then
5 he has an interview, and he speaks to Ms. von Herrmann
6 and the investigator. No consideration, wasn't
7 promised anything, wasn't guaranteed anything.

8 But what did he get? At the time of the shooting
9 he was out on bond for robbery and use of a weapon in a
10 violent crime from, you know, 2009. He was out on bond
11 when he's arrested, first, for use without permission
12 the morning of the shooting. After Vescovi gets the
13 cell phone records, he's arrested for murder three
14 weeks later. He's out on bond, and two and a half
15 years later in May of 2012, that robbery and weapons
16 charge, after he gives his statement, gets dismissed.

17 What else did he get? He got a consent order for
18 bond on the murder charge, and he got out on bond.
19 That's what he was interested in. After he's out on
20 bond, he gets arrested for first-degree burglary, which
21 carries up to life in prison, and assault and battery
22 of the first degree, serious bodily injury, closest you
23 can get to killing somebody without killing them.
24 Dismissed, dismissed why? Because without his
25 testimony, Keia Pertelle's case, they don't have a

1 case. That's why.

2 He was proud that he outran the police. You see
3 him smile and say, I outran the police. He was proud
4 of that, he smiled about that. And then he had to
5 slither down off of that witness stand, and he had to
6 walk past Mr. Pertelle, the only person everyone agrees
7 was involved in the death of his daughter. He had to
8 walk past Mr. Pertelle.

9 He did say he hadn't seen the van since the day
10 Keia died, and that's important when we get to the
11 professional snitches later. He said he didn't know
12 Billy Freshley, but he identified his telephone number
13 to Detective Vescovi. And he recited to Detective
14 Vescovi Billy Freshley's street address from memory,
15 when he didn't know Billy Freshley.

16 Did he ever offer to take the police to the place
17 where the guns were thrown out of the window? When
18 that patrolman turned around and chased that van, it's
19 a pretty short distance, Dirty Branch Road, pretty
20 short distance there where the guns could have been
21 thrown out the window. Did the police go look for the
22 guns, they did not. Was there any evidence that he
23 helped police tell them where the guns were, no.

24 Maybe that's because the police knew there weren't
25 any guns thrown out the window. That was BS, we'll

1 call it BS. That Detective Vescovi is an experienced
2 veteran police officer, he's been doing this a long
3 time, he has a finely tuned BS detector. And when he
4 had Bootsie in the box and he's the one holding the
5 tweezers, every time Bootsie opened his mouth,
6 Detective Vescovi's BS detector was pegged. It was all
7 the way over in the red. BS detector going off because
8 Bootsie wasn't telling the truth.

9 Heather von Herrmann, former prosecutor, had the
10 case two years. Five things she said that I'd like you
11 to remember. First of all, she got the letter from
12 Sedieka McClam in October of 2012. Dear Ms. von
13 Herrmann, I hope this information is of help to you. I
14 just happened to be in this apartment, this fellow just
15 happened to be there. He just happened to confess all
16 of the details of the crime to the only other person on
17 the planet who already knew those details. And low and
18 behold, the third co-conspirator showed up in the very
19 same van.

20 Now, Heather did not take the bait. March 2013
21 she's in Court on the record, and she says, it's not
22 just Bootsie that's going to testify against these two,
23 we have another witness that walked into the police
24 station and gave information. And she's talking about
25 Howard Parker.

1 And she's had Sedieka's letter for six months.
2 She doesn't turn it over the to defense, she doesn't
3 say anything to the Court. Because when she looks at
4 that letter, her BS detector is pegged. She knows that
5 that's a complete fabrication, a falsehood. She has no
6 intention of using him as a witness, she didn't take
7 the bait.

8 She dismissed the robbery charge, the weapons
9 charge, the burglary charge, the assault charge against
10 Bootsie. He was never charged with giving false
11 information to the police for this fantasy that he made
12 up for Detective Vescovi about the guy missing a tooth
13 with a gold tooth that carjacked him. And he wasn't
14 parked at the gas pump because the surveillance video
15 covers the gas pump. He was over on the side, and
16 somebody else was at the gas pump.

17 And after he gets carjacked, instead of going to
18 other person at the gas pump, I've been robbed, call
19 the police, instead of going into the convenience
20 store, I've been robbed, call the police, they went
21 that away, he says, I took a leisurely mile-and-a-half
22 stroll over the next hour and a half out to Applebee's.
23 And low and behold, there was a fellow who let me use
24 his cell phone. And I didn't call the police, I called
25 my girlfriend and told her to the call the police. BS

1 detector is pegged.

2 Never charged with false information. He's the
3 only witness who implicates Carnail. And the robbery
4 and weapons charge, why was that dismissed? It's just
5 coincidence that it was in May of 2012 that those
6 charges were dismissed. We looked at the evidence, the
7 police did not find the weapon that the victim
8 described. He was not wearing the clothing that the
9 victim described.

10 Well, when did the police learn that? They
11 learned that in October of 2009. In May of 2011 right
12 after he gives his statement, that charge is dismissed
13 because of the inadequacy, the insufficiency of the
14 evidence resulting from the police investigation in
15 October of 2009.

16 Then you have Sedieka. He's doing 21 years in
17 federal lock-up. And what did he and Kachief Spain
18 have in common? They were both sentenced in the United
19 States District Court in Florence, South Carolina, and
20 they were both held in federal lock-up in Florence,
21 South Carolina.

22 He knows all about substantial assistance. That's
23 the federal law that says if you're doing time in
24 federal prison and you give substantial assistance that
25 results in a conviction, you get a sentence reduction.

1 And I asked Kachief, how much is that sentence
2 reduction worth? Would you write a check for \$10,000
3 to get a year off of your 15-year sentence? Yep. How
4 about six months? He didn't want to go into details.
5 We already established what it was, we were just
6 negotiating on a price at that point. He knows all
7 about substantial assistance.

8 And this is perhaps the most disturbing part of
9 this whole trial. We've been in here a week, and this
10 is perhaps the most disturbing part of the whole trial.
11 He's on the witness stand, and Ms. Livesay is examining
12 him. And we got his letter, the one that Heather von
13 Herrmann completely disregarded, we've got his letter.

14 And on direction examination Ms. Livesay -- maybe
15 she'll explain this in her closing, listen for it --
16 Ms. Livesay never says, what color was the van. Why
17 not? Because he says in the letter the van was blue.
18 Doesn't ask him about the color of the van. Well, Mr.
19 Frederick on cross-examination, he says, what color was
20 the van. And his answer says more about this case than
21 anything else all week. What color was the van? Blue
22 or brown. The letter says blue. He met with Ms.
23 Livesay Monday or Tuesday to review for the testimony.
24 It went from blue to blue or brown, most telling thing
25 in this whole case.

1 When this happened middle of December, he didn't
2 know Bootsie had been in jail for two weeks at that
3 point, and he was in jail for six months. Bootsie
4 shows up in the blue Astro van with Cutty at Carnail's
5 request. Carnail goes and gets in the van. He didn't
6 know that according to Bootsie he never saw that van
7 again after November the 8th. And here Mr. Sedieka
8 says he shows up driving it five weeks later.

9 Kachief, federal lock-up in Florence, can't say --
10 neither one of them say Carnail was at the crime scene.
11 The only thing they say that he admitted it in their
12 presence. Kachief says a blue van, there was eight
13 people in the van. Said he was in the -- in jail with
14 Carnail, and then he sees what I've got in my hand.

15 And then he knows he can't say he was in jail with
16 Carnail. I wasn't in the pod, I was in another pod. I
17 overheard him through the door. I submit that that was
18 because he knew that he was not in jail in the same pod
19 as Carnail.

20 And I could say this because I went to junior high
21 school with Vanna White, Wheel of Fortune. These guys
22 are sitting up in federal prison, and they send these
23 letters out. And if they can find a prosecutor who
24 will take the bait, it's like a vacation. They get to
25 leave the federal prison, maybe in a van or a bus, I

1 don't know. They get to see new scenery, they get to
2 go to a new jail, meet new people, they get new,
3 different food at this new jail. It's like a vacation
4 from prison.

5 And if they sit here on the witness stand and you
6 folks take the bait, if you folks believe what they
7 have to say, Vanna, tell us what our contestant has
8 won. Well, you have your choice, \$10,000 in cash or a
9 year off your sentence. They are playing Let's Make A
10 Deal. They are already ahead of the game because they
11 got the vacation, and you have to decide whether you're
12 going to give them the grand prize.

13 Witnesses who were called, there's one guy was out
14 of that trailer before daylight, and he has sat here
15 everyday up front. He's got that shield, he's a
16 detective, and he's a determined detective, he's a
17 dogged detective, and he has a well-tuned BS detector,
18 and he knows more about this case than anybody else in
19 this room. And they didn't put him on the stand. And
20 you have to ask yourself, why is that. And I feel
21 confident that Ms. Livesay will address that in her
22 remarks.

23 And if these words pass her lips, they could call
24 him too, I want you to remember what the judge said at
25 the beginning of this case and what the judge is going

1 to say after she gives her closing. The judge has said
2 and he will say it again, that the defense doesn't have
3 to prove anything. The defense does not have to prove
4 anything. So when she says they could have called him
5 too, if that's her response to why she did not call the
6 chief detective in this murder case that took a week to
7 try that's been pending for three years, why she didn't
8 put him on the stand, think of what the judge said.

9 The lead investigator had been working on this
10 case all year went out to federal prison, interviewed
11 Sedieka, interviewed the fifth interview with Bootsie,
12 was Ginger Pop. She's been here all week, she's been
13 sitting at the table with the prosecutor. She knows a
14 lot about this case. She's seen the phone records.
15 Didn't put her on the stand. Well, they could have put
16 her on the stand too.

17 Splurge, he's an eye witness who survived besides
18 Mr. Watts in that trailer. He heard the voices, too.
19 He knows Carnail, he knows Thomas James. He could have
20 said whether or not it was their voices. They didn't
21 call him.

22 Records custodians for every cell phone except
23 Bootsie's they didn't call. We had to get into
24 evidence through Mr. Boyell 26,000 pages of cell phone
25 data that Detective Vescovi and Investigator Pop had

1 acquired through search warrants in this case.

2 Who else did they not call? A cell phone expert,
3 somebody who could look at that 26,000 pages of data
4 and explain what it meant. Not only did they not call
5 someone, they tried to keep those records from getting
6 into evidence. And I would submit that the reason that
7 they did that is it did not conform to their theory of
8 the case.

9 Conswella Smith spoke to the men in the van, heard
10 the gunshots, pointed out where Rodney Caulder should
11 take the shoe print cast. We didn't get to hear from
12 her.

13 Tiara Brown, Bootsie's girlfriend at the time
14 whose mother owned the van, she could have set up the
15 timeline. She could have said what Bootsie was doing,
16 what time he left, who he was communicating with, her
17 conversations with him. No Tiara Brown.

18 Lavena Jackson, what did she see and hear in the
19 trailer when she was over there earlier that evening,
20 who did she talk to? Between leaving at 6:30 and the
21 death of Keia just after 3 a.m., who did Lavena Jackson
22 talk to? I don't know.

23 And the one law enforcement officer in a uniform
24 with a badge and a gun in a marked car with blue light
25 and camera who actually saw the perpetrators fleeing

1 the scene, Patrolman Deiter, he had video of the high
2 speed pursuit. The one law enforcement officer who saw
3 the perpetrators, didn't put him on the stand.

4 We called Mr. Boyell. I went to college at a
5 place that had an engineering school. In an
6 engineering school you've got chemical engineers,
7 you've got civil engineers, you've got material science
8 engineers, all kinds of engineers. And then there's
9 the electrical engineers, the double E's we call them.
10 And you can spot an electrical engineer from a hundred
11 yards away. And Mr. Boyell is an electrical engineer.

12 These are the people, I hate to stereotype, but
13 they got the coke bottle glasses, they got the pocket
14 protector, they got the slide rule on their belt. Now
15 it's a calculator, back then it was a slider. That's
16 an electrical engineer. That guy was an electrical
17 engineer. He told you about his experience.

18 26,000 pages of cell phone data. Three things
19 that I want you to remember that he determined. One,
20 Carnail, where was Carnail? Now, what he determined
21 was that Carnail Graham was right there when he made a
22 phone call at 2:18 a.m., and he was right there when he
23 made a phone call at 6:24 a.m. (indicating).

24 The second thing I would like you to remember from
25 his testimony, Bootsie made phone calls from the crime

1 scene at 2:48 and 2:49. And Bootsie says Cutty was
2 with him. 2:50 Cutty uses his telephone. And where is
3 Cutty? Cutty is in Conway, he's not in Brown Swamp at
4 2:50.

5 Third thing I would like you to remember, Lil
6 Manzy, Bootsie's cousin whom he said he'd never heard
7 of, Lil Manzy, his phone's in Conway, it's at the crime
8 scene, and it's at the scene where the van is
9 abandoned. And Lil Manzy makes two calls from the
10 crime scene, one is at 2:58 and one is at 3:04.

11 First 911 call was at 3:08. Four minutes before
12 that first 911 call Lil Manzy was at the crime scene.
13 That's where his phone was, that's what Mr. Boyell
14 established. And she pounded, where was Dubba, where
15 was Cutty at 2:54, I don't know, 2:55, I don't know,
16 2:56, I don't know.

17 He didn't know where any of these people were.
18 All he does is analyze data. He didn't know it was a
19 murder, he didn't know it was a shooting. He said it
20 was an event and that we were interested in this
21 timeframe around this event. So he couldn't say where
22 anyone was.

23 Now, in your deliberations, I didn't get to tell
24 you the whole story about the time when I got served on
25 a jury. I said, when we go back and deliberate, I'm

1 not going to say anything, I'm going to be the last one
2 to speak. I do this for a living, this is a valuable
3 opportunity for me to see the dynamics, to see how the
4 deliberation goes. I'm not going to express any
5 opinion, I'm going to be the last one to speak.

6 Boy, was I frustrated and I was disappointed. It
7 was an assault and battery case in city court. We go
8 back to deliberate, and I'm ready to just soak up the
9 experience to see what happens, see how it's done. And
10 the forelady looks around, there's only six of us in
11 city court, the fore -- we all sit down -- the forelady
12 says, does anybody think he's guilty. Nobody thought
13 he was guilty. That was the end of the deliberation.

14 Now, let me give you a chance to abbreviate your
15 deliberation. The State has to prove each element of
16 the offense beyond a reasonable doubt. Burglary is not
17 charged, attempted armed robbery is not charged.
18 There's only one charge, murder. And the judge will
19 tell you that an element of murder is that it is the
20 intentional killing of another human being with malice,
21 either express or implied, intentional killing.

22 If you accidentally kill someone and you're
23 negligent, that's involuntary manslaughter. If you are
24 enraged by something someone does or says and you kill
25 them, then that's voluntary manslaughter. If you go

1 there with the intention of killing that person and you
2 bring a gun with you and you take that person out,
3 that's murder. And it's intentional killing of another
4 human being with malice, express or implied. They have
5 to prove intentional.

6 Let me give you my top ten list of why the State
7 has failed to prove an intentional killing. Number
8 one, Keia was killed by a .357 Magnum running down the
9 hallway that Splurge was firing a .357 Magnum wildly
10 down at the time in the dark while he was sleeping.
11 Bullet in the ceiling, bullet in the door, bullet in
12 the kitchen cabinet, bullet in Keia's heart.

13 Number two, shot through the heart, the aorta, the
14 lung, the spine. It's likely that she fell almost
15 immediately. She did not run 45 feet and jump over
16 Splurge after she was shot through the heart.

17 Number three, the solicitor was very dramatic in
18 her opening statement that Carnail executed her. As
19 soon as he realized she could identify him, he executed
20 her on the spot. Maybe she hadn't read the file.
21 Maybe she didn't know that the men were wearing masks
22 and that she couldn't have identified him.

23 But her theory is she's shot right here
24 (indicating). She then has to run towards the people
25 who shot her, pass the people who shot her, down the

1 hall and jump -- get through that half open door and
2 jump over Splurge. She has to run towards the people
3 who shot her and then past the people who shot her, if
4 the solicitor's dramatic opening statement is accurate.

5 Number four, no other guns were recovered, nor did
6 the police look for them. Number five, the intruders
7 fired two shots, one to the floor towards Splurge's
8 room, one through the wall into the TV. The bullets
9 have mysteriously evaporated.

10 .357, where is that weapon, it's number six, was
11 never found by the police. Mr. Pertelle found it eight
12 days later. There's no chain of custody on the gun,
13 there's no chain of custody on the shells.

14 Number seven, the State said that Carnail shot and
15 killed Keia. That's what their only witness says,
16 Bootsie. Quotes my client as saying, I -- first he
17 said, I had to shoot that MF-er. Then he changed his
18 testimony on the stand and he said my client said, I
19 had to shoot the bitch. Then he said, well, yeah,
20 earlier what I said was he said, I had to shoot the
21 MF-er. So he changed the gender of the victim from
22 when he first gave the statement. That's their only
23 witness that says Carnail had anything to do with it.

24 And what does Bootsie say, he had a .40 or a .45,
25 semi-automatic pistols. Cutty had the revolver, the

1 .38. He didn't know Keia had been shot with a
2 revolver, and he got the guns backwards. Not that the
3 .38 was fired the .357, but he had the guns backwards.

4 Number eight, SLED's ballistics guy, no such thing
5 as a .40 caliber revolver. Thousands and thousands of
6 pistols, he saw one .357 Magnum automatic. Number
7 nine, three differences in the ballistics report from
8 2004 to 2014.

9 Number ten, if Splurge was sure that he had not
10 accidentally shot Keia, he wouldn't have hidden the
11 gun. Caulder found the cocaine, he found the crack, he
12 found the .44 Magnum revolver, he found the SKS assault
13 rifle, he found the box of ammunition all in that
14 bedroom. He didn't find the gun. If Splurge was sure
15 that he had not accidentally shot Keia, he wouldn't
16 have hid the gun.

17 That's the top ten reasons. And if you're in
18 deliberation and you think there's a reasonable doubt
19 that Keia was intentionally killed, if you have a
20 reason to think she may have been accidentally shot,
21 your deliberations are over. The only charge is
22 murder. If they haven't proven an intentional killing
23 beyond a reasonable doubt, your deliberations are over.

24 I want to talk brief -- and I'm almost through --
25 I want to talk to you very briefly about justice. When

1 you bring back the verdict of not guilty, I want you to
2 think about Mr. Pertelle. He's been here every minute
3 of this trial. He's been told that Carnail and Thomas
4 are responsible for the death of his daughter.

5 I would submit to you that during the week that he
6 has sat here and listened to this evidence, he has
7 learned some things that he didn't know before. And I
8 would submit to you that perhaps he's been misled to
9 some extent, and I would submit to you that he now
10 knows that Carnail and Thomas had nothing to do with
11 the death of his daughter. He does not want innocent
12 people convicted.

13 And when you bring back your verdict of not
14 guilty, there's going to be another trial, there's
15 going to be some more charges. Hopefully the State is
16 going to use the information they have to go after the
17 people who are involved.

18 Now, the first degree burglary, nighttime burglary
19 of a residence while armed, that carries a life in
20 prison. If they can convict those people of first
21 degree burglary, life in prison. You got an attempted
22 armed robbery to go along with it. Maybe they'll find
23 the two missing bullets. Maybe they'll analyze this
24 box of ammunition. Maybe they will look for the guns
25 that were used.

1 Maybe they will analyze the cell phone records of
2 Lavena Jackson and Lil Papi and Billy Freshley and 110,
3 also known as Donavan Johnson, and B-Wells also known
4 as Brandon Wells. Maybe they'll have some questions
5 for Bootsie's cousin, Sha'Rah McCray. Maybe they'll
6 have some questions for him, Lil Manzy.

7 And let me say this. When you render justice in
8 this case, when you bring back your verdict of not
9 guilty in this case, you won't just have brought
10 justice to this case. You're going to send a message.
11 There's 20 more assistant solicitors in the office.
12 There's something like 60 murder cases pending in Horry
13 County. And another assistant solicitor that has a set
14 of facts, a mountain of objective evidence, none of
15 which implicates the defendant, all they have is a
16 codefendant who says -- first of all, he's a liar.
17 That's the only evidence they got against this guy.

18 Then that assistant solicitor is going to say, you
19 better analyze those cell phone records, you better
20 find those bullets, you better find those guns. I'm
21 not going to put that liar up there as my only proof
22 that this person committed this crime. And I'm surely
23 not going to take a couple of professional liars to
24 corroborate the professional liar who told the first
25 lie.

1 Heather didn't take the bait, Ms. Livesay took the
2 bait. She had to, the case is three years old. Got to
3 dismiss it or try it. She chose to try it. She got
4 nothing but Bootsie to put Carnail at the crime scene,
5 nothing but Bootsie who says he's a liar and a thief
6 and a drug dealer. How can she bolster Bootsie's
7 testimony? Well, we got these guys in federal prison,
8 try to overlook the part about the blue van, and it
9 kind of jives. And we'll throw it against the wall and
10 we'll see if it sticks.

11 If you do justice in this case, you won't just
12 have done justice for these defendants, for
13 Mr. Pertelle, for his family, you will be like -- like
14 throwing a rock in a pond, a ripple effect, it spreads
15 out in the solicitor's office. You're going to be
16 causing the other assistant solicitors to reevaluate
17 cases like this, and you're going to bring about more
18 and more justice. And your week will have been well
19 spent. I thank you.

20 THE COURT: All right. Ladies and gentlemen of
21 the jury, I'm going to give you a short break. You can
22 go to your jury room for about five, ten minutes, and
23 we'll come back and resume. Just leave your note pads
24 on your seats. Thank you. Everyone else remain
25 seated.

1 (WHEREUPON, the jury exited the courtroom at
2 11:25 a.m.)

3 THE COURT: All right, we'll take a short break
4 for about five, ten minutes. Thank you.

5 (WHEREUPON, a brief recess was taken at 11:25
6 a.m.)

7 THE COURT: Thank you. All right, solicitor, are
8 you ready for the jury?

9 MS. LIVESAY: Yes, sir.

10 THE COURT: Mr. Frederick?

11 MR. FREDERICK: Yes, sir.

12 THE COURT: Mr. Canty?

13 MR. CANTY: Yes, Your Honor.

14 THE COURT: Very good. Ask the jury to come in,
15 please.

16 (WHEREUPON, the jury came into open court at
17 approximately 11:36 a.m.)

18 THE COURT: All right, solicitor, your closing
19 argument.

20 MS. LIVESAY: Thank you, Your Honor.

21 Ladies and gentlemen of the jury, again, I'm Nancy
22 Livesay, I'm a prosecutor for the solicitor's office in
23 Horry and Georgetown County. I was thinking yesterday
24 when I was talking to my boss on the phone, he called
25 and said, you've taken notes, you writing your closing

1 down? Notes, I know what this case is about.

2 It reminded me of something my mom told me years
3 and years ago when I first started this job. I told
4 her, I said, a lot of people write down notes for their
5 closings, I never do. And she told me something that I
6 still remember. She said, don't. This ain't law
7 school, this is real life. Put your pen down and open
8 your eyes.

9 And that's what's going on in this courtroom, real
10 life. And if you don't open your eyes and see what's
11 going on, you will be tricked, you will be tripped up.
12 You got to be aware of everything that's going on in
13 this courtroom and what evidence is being told to you
14 from the witness stand and what the evidence is. If
15 you don't, you will be tricked.

16 I'm here to tell you, first of all, we are here
17 for a murder case. A 19-year-old girl was shot and
18 killed in her own home while she is sitting at home
19 watching TV in her own home. Now, they have told you
20 so much about Splurge. Did you know his nickname is
21 Splurge, did you know he was in the house, did you know
22 he's a drug dealer?

23 Here's what I'm here to tell you, who the hell
24 cares. Splurge was in his house that night, in his
25 bedroom. This isn't about Splurge or what he was

1 doing. They want to draw the attention away from why
2 we're here. We're not here for Splurge, we're not here
3 for a drug case. We are here for a murder case.

4 I don't care that Splurge had drugs in his house,
5 I don't care that he had guns. Splurge was in his
6 house on a Tuesday night at 3 o'clock. Splurge and
7 Keia and their cousin Carlton Watts, they were all in
8 the house they live in on a Tuesday night at 3 o'clock.

9 They want you to focus on those people like they
10 are the bad guy. They were in their home. They
11 weren't out at 3 o'clock or 2:30 or 2 a.m. running the
12 streets of Conway. That's not what they were doing.
13 Those people were sitting at home.

14 Now, what's important is what was going on while
15 they were in their house. They want you to focus so
16 much on Splurge, that is not why we're here. We're
17 here for what was going on while those people were
18 laying in their own homes. What was going on? I can
19 tell you, plotting and planning, that's what was going
20 on. While those people were in their house sleeping,
21 watching TV, snakes were crawling because what's that
22 they do at night.

23 Now, who was moving around? Bootsie, Keir
24 Johnson, there's no doubt about it. Who else was
25 moving around, Howard Parker. Who else was moving

1 around, Carnail Graham. Who else was moving around,
2 Thomas Booker James, Cutty. These are the people that
3 were moving around that night plotting and planning.

4 Now, something else that's been overlooked while
5 they've been telling you how awful Splurge was. This
6 was a well-planned out murder, that's what this was.
7 They knew where they were going. They were making
8 arrangements for a getaway car, transportation, a ride
9 there, a ride away from the scene.

10 This was planned out. They did not show up to a
11 random trailer and bust in on Tuesday night. They
12 busted into a trailer where they knew who lived there.
13 They knew what was in that house. This was planned
14 out, don't be fooled. This is not a random murder.
15 They knew where they were going. They made
16 arrangements for transportation.

17 Now, what else did they do? They loaded weapons,
18 that's what they did. They didn't just go in there to
19 bust in, they went in there to kill who was ever in
20 there and take from them whatever they wanted. How do
21 you know that, how do I know that? Because when they
22 rolled up to that trailer, there were two cars parked
23 out back.

24 Who did Keir tell you those cars belonged to?
25 Keia and Splurge. Well, they didn't roll up and say,

1 well, damn, two people are home, let's come back
2 another time. They had something for those people,
3 they had something for them. One of them had a .357,
4 and the other one had a handgun. Don't be fooled.

5 When you roll up to a house at 3 o'clock in the
6 morning with two cars home, the lights out, you are
7 going in to kill and take whatever's in that house.
8 They knew those people were home. That's why they went
9 in armed.

10 Folks, we have burglaries all the time, people go
11 in unarmed, nobody's home, take their stuff and leave.
12 I know, I've come home, my house been broke in, TV
13 gone. So I know something about that, I know that goes
14 on.

15 That's not the case here. They didn't go in when
16 nobody was home, they didn't go in unarmed for a
17 television. They went in to kill. They went in with
18 loaded weapons. They knew those people were home, they
19 knew it. They knew she was home and they knew he was
20 home. And they went in at 3 o'clock to catch them off
21 guard, to get the jump on them. They wanted to get in
22 there and immediately trap those people so they
23 couldn't get away.

24 Now, how do you know that? Look at the setup of
25 this mobile home. They knew these people lived here,

1 okay. They knew enough to know this was Splurge's room
2 because they came in through the front door. Once they
3 went in through this front door, there is no denying
4 these people were trapped down at the end of this
5 trailer. There is no denying you can't get out without
6 passing this door from that bedroom. They went in with
7 two guns through the front door to trap those people so
8 they couldn't get out. This was planned out.

9 Now, they want you to believe, oh, well, attempted
10 robbery, burglary, you can't find them, that's not what
11 kind of case this is. I'm here to tell you, you're
12 damn right that ain't what kind of case this is. Those
13 people went in there with loaded weapons, and they went
14 through the front door and trapped those people off.
15 They didn't go in there to threaten, they went in there
16 to kill, and they did, and they did.

17 Now, what caught them off guard was she was on the
18 couch. I'm sure they assumed everybody was going to be
19 back in that bedroom. So she jumps up, she's shot.
20 Once they bust through that door and they shoot her,
21 the alarm goes off. Splurge is up, he immediately
22 starts shooting down from the bedroom, from this
23 bedroom right here (indicating), bam, bam, bam.

24 Now, there's something else that is at the least
25 disturbing. They want to tell you, well, Splurge was

1 in there firing his gun off, he shot five shots. He
2 had a gun in his house, he was shooting, that's all
3 they want to tell you. I'm here to tell y'all, if
4 somebody breaks in your house at 3 o'clock in the
5 morning and you hear, bam, bam, bam, grab a weapon.
6 That's what I'm here to tell you. This saved his life.
7 This gun firing back saved his life.

8 I'm here to tell you he was well within his
9 rights. If somebody breaks in your house at 3 o'clock
10 in the morning, you hear the alarm, the door is busted
11 in, and you hear bam, bam, bam, my suggestion is if you
12 have a gun, shoot back. He was well within his rights
13 to defend his home and his self.

14 They are so busy trying to make him out the
15 criminal, they want to convince you that that's not
16 okay. They want to convince you that he's the bad guy
17 for firing back. That's not the case, folks. You have
18 a right when somebody such as Dubba and Cutty break
19 into your house armed, I'm here to tell you, fire back.
20 You have a well within your right to fire back.

21 And that's something else that's disturbing, to
22 say the least. They want to convince you that Splurge
23 shot her. I don't know, they said it in openings, now
24 they have worked up some way to tell you that in
25 closing. The only problem with that is that is

1 absolutely impossible, absolutely impossible.

2 And here's why. These are gun fragments we
3 collected from the scene. Now, I don't know how many
4 people know what about guns, but Agent Green told you
5 every gun leaves a specific marking. You can have two
6 Tauruses, .360s, .357s, .45s, .40, same caliber, same
7 manufacturer. Every gun leaves a different marking on
8 the bullet that it shoots. It's like a fingerprint,
9 every gun makes their own markings on that bullet.

10 What he told you was this bullet, Evidence 70,
11 that came from the autopsy, was the only bullet that
12 was not fired from this gun, the only bullet that was
13 not fired from this gun.

14 You have two fragments here, two, three, four,
15 five. Here are the five bullets that were fired from
16 this weapon. This was the only one that did not match
17 the weapon, this one. This is the only bullet that was
18 not fired from a gun within that house. So please put
19 your mind to rest, he did not shoot her, somebody else
20 did.

21 And ask yourself, why are they trying to tell me
22 that, why? They are trying to trick you to think that
23 Splurge shot her. Splurge is a drug dealer, now he's
24 the killer. There's nothing to that. Put your mind at
25 ease. If you need to re-listen to that testimony of

1 Agent Green, re-listen to it. Because I'm telling you
2 he said it two or three times, this bullet did not come
3 from this gun.

4 That means somebody brought a gun into the house
5 and shot it. And here is the bullet that was
6 recovered. So put your mind at ease, somebody from
7 outside that house brought a weapon in and shot her.

8 Now, the question is, who shot her? Here she is,
9 this is the woman. They don't want to show you this
10 picture. Here she is, killed, no shoes on, no socks.
11 Who loaded up that van with Keir Johnson, with Bootsie,
12 who was it?

13 Well, you heard from Howard Parker. He told you
14 he had no pending charges then and none now. What did
15 he tell you? He told you he saw three people in that
16 van, Bootsie and, oh, Cutty and a guy he didn't know, a
17 third male he couldn't see. So we already know we got
18 the brown van that showed up and Cutty in the van and a
19 third, unidentified male.

20 Well, who is that third unidentified male? Well,
21 the person to tell you would be Keir Johnson, Bootsie.
22 And he told you who was in that van, Dubba, him and
23 Cutty. He told you who went into that house, Dubba and
24 Cutty.

25 Now, like all people when they do something or

1 something's going on, they like to talk about it. So
2 how else do we know that Dubba went in that house? You
3 heard from two people, Sedieka McClam and Spain,
4 Kachief Spain. Now, they want to tell you, oh, Sedieka
5 McClam, he found out through the discovery process.

6 Well, folks, there was no tattoos or physical
7 description in the discovery. So how did he know about
8 that. The only way he could have known about that was
9 to see them on Dubba's arms. That's how he knows. He
10 wants you to believe this discovery crap, and that's
11 what it is, crap.

12 Sedieka McClam saw Dubba in December. Dubba had
13 not been arrested, he was not arrested until months
14 later. And he saw those tattoos, and he was able to
15 identify him. There was nothing in that discovery
16 about tattoos, and he knew about it.

17 Spain told you, I overheard him talking to Ace.
18 What he tell Ace? They don't have nothing on me, they
19 don't have nothing on me, but, yeah, I shot her, in
20 there talking to his cousin in the jail.

21 Now, I would love to have somebody other than
22 Sedieka McClam and Spain. But unfortunately, people
23 hang around people they have something in common with.
24 Dubba, Cutty, Bootsie, Howard, Terry Bease, these
25 people hang around together, because they all have

1 something in common. So obviously to collect evidence
2 and to collect information, you have to get it from the
3 people that are around these people.

4 Now, they're telling you these people have made
5 some sort of deal. Y'all saw them, they came out in an
6 orange suit cuffed up, and they walked out of here in a
7 orange suit cuffed up. Did they look like they were
8 getting some wonderful deal to you, having their feet
9 and their hands shackled, shuffling in here and
10 shuffling back out?

11 They wanted to tell you that's a great deal for
12 these people, what a great deal they are getting. You
13 didn't see when they got done them walk out that door,
14 you saw them walk right back into lock-up. That's what
15 you saw.

16 Now, Mr. Frederick got up here and told you, my
17 client was threatened. And Christine Snyder from the
18 jail came up here and told you he was threatened.
19 Well, I came up here and asked her, where did you get
20 that information? Inmates, that's where I get my
21 information.

22 So hold up, hold up, hold up. So now what an
23 inmate says is true. If an inmate tells Ms. Snyder
24 that he's being threatened, it must be true. But don't
25 believe these other inmates, they are lying. Just

1 believe the inmate that says my guy was being
2 threatened.

3 I want you to think about that, too. Who did you
4 hear that information from, who, who did you hear it
5 from? You didn't hear it from the inmate. You heard
6 it from Christine Snyder who said she received that
7 information. Who did she receive it from, what is he
8 in jail for, what is his prior record, what does he
9 have to gain by telling Ms. Snyder that?

10 Not even that, what was he threatened about? We
11 have no idea. What was he threatened about at the
12 jail? We don't know. We're given this limited
13 information that he was threatened. We don't know who
14 told her the information.

15 MR. FREDERICK: Judge, I'm not sure she can object
16 to that and then argue it in her closing argument.

17 THE COURT: I allowed you to make inferences and
18 comments, Mr. Frederick. I'm going to allow the same
19 leeway to the State.

20 MR. FREDERICK: Yes, sir.

21 THE COURT: Thank you. You may continue, ma'am.

22 MS. LIVESAY: Thank you, Your Honor. We don't
23 know. We don't know, do we. We were given this little
24 bit of information, and we don't know anything else
25 about it. How convenient is that, how convenient is it

1 for that. I would love to have brought you an
2 investigator to come up here and say, yeah, I received
3 information that Carnail Graham, Dubba, confessed at
4 the jail and said he did it. But that's not what I
5 did. Here is the guy who says that, here.

6 MR. FREDERICK: Got to object to facts not in
7 evidence, judge. That is not a reasonable inference to
8 be drawn from the testimony.

9 THE COURT: I appreciate that. Solicitor, you'll
10 confine yourself to the record. Thank you. Continue
11 on.

12 MS. LIVESAY: You heard from the people who gave
13 us that information. That's who you heard from,
14 Sedieka McClam and Spain. Now, they keep telling you
15 about a guy named Little Manzy, Little Manzy, 110,
16 throwing out all these street names. I could probably
17 name 50 off the top of my head, street names, Jeezie,
18 Giz, Murder, Big Bad, there's probably a thousand of
19 them in Conway, a thousand.

20 Now, they want you to believe that Little Manzy is
21 the killer. First, first, you got to get past Splurge
22 shot her. They first wanted to get up here and tell
23 you Splurge shot her. But if you don't believe that,
24 if you don't believe Splurge shot her, then now we're
25 going with my guy wasn't even there, Little Manzy shot

1 her. That's what -- that's what -- if you don't
2 believe that Splurge shot her, we're going with game
3 plan number two, and that's that Little Manzy shot her.

4 The problem with that is we didn't hear one shred
5 of evidence that put Little Manzy in that van, not one
6 witness. Not Howard Parker, not Keir Johnson, not one
7 witness said they even saw Little Manzy that night.
8 There is not one shred of evidence that brings up his
9 name other than Mr. Frederick and David Canty. There
10 wasn't one witness that was out that entire night that
11 ever saw a Little Manzy, nobody. Nobody saw him.

12 And now, they want to come up here and tell you
13 Little Manzy's the shooter, and we don't have one
14 witness that saw him in the van or even saw him out
15 that night, period. Don't believe that. That is them
16 trying to trick you. There is not one shred of
17 evidence. I want you to think back from every witness.
18 There is not one shred of evidence that he was in that
19 van, none.

20 Now, the second thing they want to tell you is the
21 phone records, the phone records, why -- why my guy was
22 not there with the phone records. That's what both of
23 them are saying. Well, that is a great argument, it
24 really is.

25 The only problem with that argument is, one, Cutty

1 had two phones, he had two phones. Keir Johnson told
2 you that, and Keir had two phones. And not only do we
3 know that Cutty had two phones, but we know that he
4 wasn't using that 855 number.

5 Now, how do we know that? For one, Keir Johnson
6 told us, yes, I never heard from Cutty. Yes, his
7 number's on the records, but I never heard from him.
8 Those were all the calls leading up. Then, I brought
9 the guy in, Terry Bease, AKA Little Papi, slash, Butta
10 One. He was the call at 3:18. Now, he was friends
11 with these people, he told you that. I'm friends with
12 these people, I been friends with them a long time, and
13 I'm a drug dealer.

14 I mean, he is up here telling you, I'm a drug
15 dealer and I know these people. But what he also told
16 you was, yeah, that's my number at 3:18, that was the
17 call, I see that on the phone records. But I never
18 talked to Cutty. Whoever had that phone was not Cutty,
19 he was not on the other line.

20 Now, these are his friends. If he wanted to help
21 them out, he could have. He could have walked in here
22 and said, yes, that is my number, that is Cutty's
23 number and I talked to Cutty on the other end of the
24 line. That was Cutty I talked to that night. He would
25 have had since 2012 to get that story straight.

1 These boys have been sitting in there, I think
2 David Canty said, waiting for a trial 900 days. Well,
3 you've had 900 days to tell Lil Papi to come in here
4 and say that was you on the other end of the line. But
5 that's not what he told you. Keir Johnson told you, I
6 never talked to him, the guy at 3:18, the next phone
7 call. Let's get it straight, let's talk to the people
8 that -- that was talking to that 855 number.

9 That's the evidence. Who was that person? We
10 don't know. But what we do know is it was not Thomas
11 Booker James, it was not Cutty. I'm here to tell you
12 them boys knew they were going to commit a murder.
13 They were planning, they were loading that gun, it was
14 a revolver, bullet by bullet, planning, plotting,
15 thinking.

16 I can guarantee you they were not dumb enough to
17 take their phones to Brown Swamp. I can tell you,
18 Cutty did not take that phone with him, and we know it
19 because everybody that talked to that phone number says
20 it was not him.

21 Dubba's phone was dead, or at least one of them
22 was dead from 2:30 until six in the morning. They were
23 thinking. That's why these -- that's why these people
24 have two phones, they are thinking all the time. They
25 are planning all the time, and these boys were as well.

1 They had two phones. Cutty did not take that phone out
2 there with him and neither did Dubba.

3 The only one that took and was caught with both
4 his phones and, for some reason, drove the van out
5 there, the same van he uses everyday, was Bootsie, the
6 one that was in special ed when he was a kid. He the
7 only one that got caught with both of his phones on him
8 and drove the van out of there that he drives all the
9 time. He was the only one.

10 These two boys were too smart for that. No, they
11 wanted to tell you when they got up in here in
12 openings, they wanted to tell you, oh, yeah, and you're
13 going to talk to Keir Johnson, guess what, his street
14 name is Bootsie and Splurge, and you're going to hear
15 about 110 and Little Manzy. The two people they left
16 out, the two people they left out was this boy here,
17 his name is Cutty. They didn't want to tell you that
18 in opening. Everybody is a piece of crap with a street
19 name. What they didn't tell you is, oh, this one right
20 here is called Cutty.

21 Something else Mr. Frederick told you in opening,
22 yeah, and there was two Crips in the car. That's what
23 he told you, two Crips in the car with Bootsie. Well,
24 what he didn't tell you was, you're right, you're right
25 about that, there was a Crip in the car. And guess who

1 it was, this one right here. You notice he didn't tell
2 you that in opening. He was so busy up there trashing
3 Splurge, he forgot to tell you, by the way, my guy's
4 name is Cutty and, by the way, he's in the Crips. He
5 didn't tell you that.

6 And when Mr. Canty was up here so flustered that
7 his guy had been charged with anything, he forgot to
8 tell you, oh, yeah, Lil Bootsie, he's a piece of trash,
9 Splurge is a piece of trash, this guy's name Cutty,
10 he's a Crip. And by the way, their names are tattooed
11 on my client's arm. Bootsie's name is tattooed on my
12 client's arm. He's such a piece of crap, such a piece
13 of trash, he's a liar, but yet his name is tattooed on
14 my guy's arm.

15 And guess who else's name is up there? Oh, Cutty,
16 his name is on there too, his street name is up there.
17 He didn't tell you that. He didn't tell you that. And
18 that's key information.

19 Because here's the deal, there are 44 gangs in
20 Conway, 44. Bootsie is extremely close to these two
21 boys. This boy has his name tattooed on his arm.
22 Think about that, think about how many men you see
23 walking around with another man's name tattooed on
24 their arm. That is a close relationship, that is a
25 close bond.

1 If you're going to break into a house and kill
2 somebody, you are going to take the people that are
3 close to you. You're not going to pick up some random
4 guy, you are going to take somebody that you're close
5 to that you can trust is going to drop you off and be
6 right there to pick you back up after it's over with.
7 These boys were close.

8 They want to tell you that Bootsie wants to tell a
9 lie. Bootsie could have told any two names. If he
10 wanted to tell you Little Manzy, he could. If he
11 wanted to tell you 110, he could. These boys are his
12 friends. He could have told you two people that he had
13 no relationship to, or two people that he didn't like,
14 or two people anything. He could have told you
15 anybody, but he didn't. He told you these two people.

16 He has no reason to lie on these people. They are
17 all friends, and they have been friends a long time.
18 He's here telling on these people because it's the
19 truth. Howard saw Cutty get in that car. The three of
20 them rode out there with their weapons at 3 o'clock on
21 a Tuesday night. That's what they're thinking about,
22 that's what they're worried about.

23 And they shot a innocent girl. And then when they
24 are ultimately arrested, Dubba is out there in the
25 jail, they ain't got nothing on me, they ain't got

1 nothing on me. Out there telling people that,
2 bragging, yeah, I shot her, but look at this discovery,
3 they ain't got nothing on me.

4 Folks, he was out there telling that because he
5 knew what happened. The one thing they brought up,
6 there's only three people, three people that know what
7 happened in that room, three people. Because they were
8 the only ones in the room when she got shot. Dubba,
9 Cutty and Keia. That victim and those two boys are the
10 only ones that know what happened.

11 Dubba was the one that knew she jumped up off that
12 couch, and he knows that he shot her. That's why he
13 told that guy that. He's the only one that would know
14 that. He didn't say Cutty shot her, he didn't say
15 Little Manzy shot her, he didn't say any of that. He
16 said she jumped up and I saw her, and she saw me and I
17 shot her.

18 And there's something even worse than that. He
19 knew he shot her, he knew he shot her. And instead of
20 backing out of that house saying, oh, my God, I've made
21 a terrible mistake, oh, my God, he goes to the bedroom
22 down the hall and starts looking through it. This
23 shooting her came no shock to him. It didn't shock his
24 conscience, it didn't veer him away from the goal while
25 they were there..

1 Look at this room. This is State's Evidence No.
2 19, look at it, bedside table turned over, drawers all
3 out of it. Shooting her was merely a step to get to
4 what they wanted, which was whatever drugs and money
5 they could find in that house.

6 They knew they shot her. Immediately they could
7 have backed out of that house, but they didn't. And
8 I'm here to tell you they didn't because that didn't
9 come as a shock to them. They were ready for that to
10 happen. They shot her and kept moving through that
11 house, looking for whatever it was they wanted, drugs,
12 money, guns, whatever it is they wanted.

13 They want to tell you everybody in here has got a
14 reason to lie, everybody. If these people had a reason
15 to lie, they could have blamed it on anybody. But they
16 didn't. Ironically, they blamed it on the same guy
17 that Howard Parker saw out that night. Ironically,
18 they blamed it on that same guy that's out at the jail
19 bragging that we ain't got nothing on him and that he
20 shot that girl. Bootsie had no reason to lie.

21 They want to tell you that he's scared of a Crip,
22 there are Crips in the car. This guy is a Crip. If he
23 was going to blame it on somebody, it wouldn't be
24 somebody in the Crip that is a close friend of his. He
25 came up here and told you the truth.

1 There's not one shred of evidence that points to
2 anybody else. And they want to get up here and tell
3 you that I took the bait, I took the bait. I'm the
4 only one that believes this horrendous story, I'm the
5 only one that's listening to these people. That's what
6 Mr. Canty wants to tell you.

7 Heather von Herrmann didn't fall for it, nu-uh.
8 The guy that had it after me, or after Heather, he
9 didn't fall for it. But yet here we are. Here we are.

10 Heather von Herrmann dismissed some cases against
11 Bootsie, and she told you why. But the one she didn't
12 dismiss was the murder case. She has discretion to
13 dismiss it, to plead it, to charge it with anything she
14 wants to. She has that power. She told you that
15 sitting from this stand right here. She's not only a
16 witness, she's a attorney for our office at one time
17 and still a lawyer. She told you, these are the
18 reasons why I dismissed it, but what I didn't dismiss
19 was that murder case.

20 Now, he wants you to believe, oh, she didn't think
21 anything of it, she didn't think anything of it. Well,
22 she did not dismiss that case, folks, I'm here to tell
23 you. The ones she thought there was nothing to she
24 dismissed. She had the authority and she did it. But
25 the one she did not dismiss was that murder case.

1 And they want to tell you, well, he wasn't charged
2 with filing a false police report. That's what --
3 that's what Mr. Canty came up here and told you. Did
4 you notice that, did you notice he wasn't charged with
5 filing a false police report? I got some news for you
6 folks. These two boys back here, right here, you're
7 going to get an indictment from her, that's what you're
8 going to get, whether or not they are guilty.

9 And guess what, you are not going to get a charge
10 for littering. They threw them guns out of the car,
11 didn't they throw those guns out of the car? But we
12 didn't charge them with littering. Didn't they get out
13 at Tiffany Oliver's house, but we didn't charge them
14 for trespassing. Do not fall for such ridiculous
15 nonsense of he wasn't charged with filing a false
16 police report.

17 He is carrying a murder charge, folks. They want
18 to get up here and tinker with a filing a false police
19 report on a man that is charged with murder. We also
20 didn't charge them with littering, we also didn't
21 charge them with trespassing. Think about that. When
22 they're up here telling you that kind of stuff, think
23 about it, it's ridiculous. The man is charged with
24 murder. These two guys are charged with murder.

25 And I'm not putting on a bunch of littering and

1 trespassing charges. They trespassed on Tiffany
2 Oliver's land, they threw the guns out the window, but
3 we didn't charge them for that because they are charged
4 with murder. The same reason Bootsie didn't get
5 charged with that, he is carrying a murder charge. We
6 don't need to charge him with that. That's not what
7 we're here for.

8 A woman has been killed. We are not here to worry
9 about some trespassing or littering or filing a false
10 police report charge. These people have killed
11 somebody. That's what we're working on. Don't be
12 fooled by that, don't be fooled by that. They want to
13 tell you that Bootsie, we're up here playing make a
14 deal. Bootsie is charged with murder, murder. And
15 they want to tell you that he's been given some deal.

16 That charge is still pending. He got up here and
17 told you he was the driver in a murder charge. And
18 they want you to believe he's getting some sort of
19 deal. Don't believe them, do not believe that. If we
20 wanted to do something for Bootsie, we could, we could.
21 But yet he is still charged with murder. That has not
22 been dismissed. If he wanted to get a deal, he would
23 not be carrying a murder charge, I can tell you that
24 much. It is ridiculous to think that we are giving
25 some guy a deal, and he is walking around charged with

1 murder. That is nonsense, folks. Don't believe it, do
2 not believe it.

3 They want to tell you, well, that shoe print they
4 got by the van, that is just key, key evidence. That's
5 what they want you to believe. The problem is the van
6 was parked back here on Colletta Court. David Grissett
7 tells you that those boys, and so does Keir Johnson,
8 came running out from Splurge's house here and jumped
9 in the van right here (indicating). The footprints
10 they want you to worry about are back here
11 (indicating).

12 We know who was in the van, we know who was back
13 here. Keir Johnson was back here. Those boys were
14 dropped off, he pulls the van up here (indicating). He
15 sees them running, he starts the van back up, goes up
16 here and picks them up along in this area (indicating).

17 This is where the evidence is, but there were no
18 footprints collected from this area. But they want you
19 to worry about some footprints back here (indicating).
20 With the only guy that we got saying, yes, I was back
21 here, I was in the van, we got that covered. But
22 that's what they want you to focus on, some tire prints
23 and footprints on a guy that's already up here telling
24 you, I parked the van back here, this is where I was.
25 And when I'm driving through here, I picked them up.

1 There's no footprints along in here to collect.

2 But they want to fool you, they want to act like
3 this footprint along in here is the seal, the breaking
4 moment of the case. But that's not the case. We've
5 already got that guy, that's Keir Johnson. But that's
6 what they want you to believe, some footprint back
7 here, some tire print back here, a tire print we
8 already told you from Keir Johnson, I'm driving the
9 van. There's the brown van I was driving. What do we
10 need a tire print for? He's told you, I'm driving that
11 van.

12 They want to get off on these things that are
13 nothing but rabbit holes for you to go down. They want
14 you to believe first Splurge shot her. She, I mean, it
15 was loud, I mean, it was a reenactment up here of how
16 she ran down the hallway, and they knew that she turned
17 to the left and she was shuffling through that door. I
18 mean, it was a complete reenactment. Think about that,
19 think about what you've been told.

20 Now think about the evidence. The evidence tells
21 you this bullet didn't come from that gun, Splurge did
22 not shoot her. So ask yourself, why are they telling
23 me that, why are they trying to convince me of this
24 reenactment of her running down the hallway, turning to
25 the left, shuffling in and, bam, Splurge shoots her,

1 when we know by the very bullet that came out of her
2 that it did not come from Splurge's gun. Why are they
3 trying to tell you that?

4 And then if you don't believe that, well, then
5 believe Little Manzy shot her. Again, go back through
6 the testimony, go back through the evidence. Not one
7 person saw him out here. They want you to let that guy
8 go and believe that Little Manzy went in that house
9 when there is not one shred of evidence that points to
10 Little Manzy, not one. Not one witness saw him out
11 that night.

12 And then they want to point you to the phones.
13 Well, if you don't believe Lil Manzy shot her, at least
14 believe that my guy wasn't out there. Nobody talked to
15 Cutty that night. No witness that I put up or that
16 they put up, no witness that either side put up said
17 that I talked to Cutty from that phone, not one. Think
18 about that, not one witness that anybody put up said
19 that.

20 And the only person that says, I called Dubba that
21 night was Keema Crooms, his girlfriend that he has two
22 children with, who ironically could not -- here, look
23 at these, what time did you call him, we got the phone
24 records, let's get it straight, what time did you call
25 him. Oh, I can't --

1 MR. CANTY: Objection, Your Honor. There was no
2 testimony that she ever called my client. There's
3 nothing in the record to support that, nor anything
4 from which it could be inferred.

5 THE COURT: Mr. Canty, you're not here to testify.
6 If you have an objection, you state there's an
7 objection. And if I need to, I'll send the jury out.
8 Thank you, sir.

9 MR. CANTY: Outside the scope of the record, Your
10 Honor.

11 MS. LIVESAY: Thank you, Your Honor.

12 THE COURT: Solicitor, again, let's stick with the
13 record, please. Thank you, ma'am.

14 MS. LIVESAY: Thank you.

15 THE COURT: Continue on.

16 MS. LIVESAY: The one phone number she couldn't
17 give you was her own phone number. She knew without a
18 doubt what his phone number was on November the 8th,
19 2011. But what does it tell you, she didn't know her
20 own phone number? Think about that, does that make
21 sense?

22 They had made such an issue over these phone
23 records. They had a great big board up here, all of
24 them listed out. Y'all saw that. And this great big
25 tremendous map, all these sticky notes on them. The

1 phone records is the way to go, the phone records, the
2 phone records. Well, let's see where this woman
3 called, oh; no, no, no, we don't want to hear that,
4 nu-uh. Don't show her those phone records, we don't
5 want to hear that. All of that, nobody wanted to hear
6 it then.

7 MR. FREDERICK: Judge?

8 MS. LIVESAY: After we just got through hearing --

9 THE COURT: Yes, sir.

10 MR. FREDERICK: I object to facts not in evidence.
11 It wasn't phone records she was trying to show her. It
12 was a phone dump.

13 THE COURT: Y'all come over here and talk to me
14 for just a second, please.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury but out of the
17 hearing of the jury.)

18 MS. LIVESAY: She didn't know her own phone. What
19 does that tell you, what does that tell you? She
20 remembered his phone number from 900 days ago but
21 couldn't remember her own.

22 They want to talk about bias testimony. This is
23 his girlfriend with two kids, has two kids with this
24 man, and those are the only two kids she has is with
25 this man. Think about it. Think about it, think about

1 that testimony. She wants you to believe she made some
2 phone call that night. And it's so important to her,
3 but yet she can't even remember her own phone number
4 that she called from. Why is that? Think about it.

5 I'm going to suggest to you, all the evidence, all
6 of it, points to Keir Johnson, Bootsie. I'm not going
7 to deny that. I called him, but don't let -- don't let
8 me tell you anything other than he participated in a
9 murder, and he is charged with murder. And they all
10 acted together which ultimately ended in her life --
11 ended her life. So don't -- don't let me get up here
12 and tell you anything other than he's guilty.

13 Don't be fooled by that, okay. Bootsie is charged
14 with murder and he gave them a ride and he
15 participated, and it's hand to one is hand of all.
16 Whether he went in that house or not, he gave them a
17 ride and he gave them a ride away from the scene. Key
18 point, no doubt about it.

19 But I'm also here to tell you he didn't act alone.
20 He was sitting in that car while the two of them, Cutty
21 and Dubba, close friends, been close friends, got his
22 name tattooed on them, got Lil Bootsie's name tattooed
23 on them. They saw those two cars, went to the front
24 door. Didn't go through the back door, went through
25 the front door. Dogs back there, they didn't want the

1 dogs barking, I'm sure, they didn't want anything to
2 alert these people that they were coming.

3 So they busted through the front door pitch dark
4 at night and shot a girl, and after kept looking
5 through that house. Then they got in that car and they
6 dumped those guns and they took off. No doubt about
7 it, no doubt about it.

8 I'm going to ask you today to find them guilty.
9 Beyond a reasonable doubt is not beyond anything.
10 Nobody knows without any doubt what happened except the
11 people that were there. Beyond a reasonable doubt is
12 if you are firmly convinced that these boys did it,
13 firmly convinced. And I'm here to tell you that every
14 piece of evidence points to them. There is not one
15 piece that points to anybody else because there was
16 nobody else in that van.

17 They want to tell you, well, Lavena Jackson
18 planned it, this person did that, this person did this.
19 That may all be true. But at the end of the day these
20 boys are on trial because they are ultimately the ones
21 that went in, that pulled the trigger. They are
22 ultimately the ones that kicked in that door and pulled
23 the trigger. That's what we're here today for.

24 And I'm here to tell you Splurge didn't do it.
25 I'm here to tell you Lil Manzy didn't do it. I'm here

1 to tell you the only people that did it are Dubba and
2 Cutty and Bootsie. Those were the three that went out
3 there. And I'm going to ask you to find them guilty of
4 murder because that's what this is.

5 Please review all the evidence. If you need to
6 hear any testimony again, please listen to it. Because
7 all of it is key in this case, because all of it points
8 to Dubba and Cutty. They want to lead you down a road
9 that there is no end to because there is no truth in
10 that road.

11 Those boys planned this thing out. They loaded
12 those weapons, they got transportation. This phone is
13 nothing but a rabbit hole. Nobody you've heard from
14 out of all the testimony said that Cutty called from
15 that phone, none of them. Not one witness that anybody
16 put up said he called from that phone. Don't be
17 fooled. Those boys are running around at night with
18 two or three phones. They do it for a reason. They
19 are too smart for that. Don't let that fool you.
20 Don't let this stuff fool you.

21 I'm going to ask you today for a verdict that
22 speaks the truth, and that verdict is guilty. That
23 young girl was killed unarmed in her own home. Ask
24 yourself, why are they trying to turn it on Splurge,
25 why are they trying to turn it on anybody else. Don't

1 fall for that, don't. He didn't shoot her, that bullet
2 didn't even come from his gun. Ask yourself these
3 questions.

4 They tell you he's been waiting 900 days, he has.
5 And so has Ronnie Pertelle. He's waited 900 days, he's
6 waited 900 days for justice. And we're here today to
7 get it. And I'm asking you to find them guilty of
8 murder. Thank you for your time.

9 THE COURT: All right, ladies and gentlemen, we
10 are almost at the stage where I'm going to give the
11 case to you for your deliberations and your unanimous
12 decision. We've been in here, again, for a while. I
13 want you to take a very short break for five minutes,
14 clear your minds because you need to know the law that
15 you have to apply to the facts and evidence you find to
16 be true. Take a short break, five minutes, and we'll
17 finish that up. Thank you very much.

18 (WHEREUPON, the jury exited the courtroom at
19 12:32 p.m.)

20 THE COURT: Take a short break, five minutes.
21 When we come back, the doors will be locked. Thank
22 you.

23 (WHEREUPON, a brief recess was taken at
24 12:32 p.m.)

25 THE COURT: Thank you very much. Ask the jury to

1 come in, please. Ask the jury to come in, please.

2 MR. FREDERICK: We're ready, judge.

3 (WHEREUPON, the jury came into open court at
4 approximately 12:39 p.m.)

5 JURY CHARGE

6 THE COURT: All right, ladies and gentlemen, it's
7 now my duty and responsibility to give you the law that
8 you will apply to the facts and evidence you find to be
9 true. I told you at the very beginning that I would
10 not indicate to you in any way what I believe the facts
11 of this case are because that's not my job. It is your
12 job and your responsibility to look at the facts and
13 evidence in this case and find that evidence which
14 convinces you it's true.

15 Now, in that same vein, if you came into this
16 courtroom with any preconceived ideas of what the law
17 is, what it ought to be, what it should be, what you
18 hoped it would be, you'll disregard that. You will
19 take the law that I now give to you and apply it to the
20 facts and evidence you deem to be true.

21 I told you at the very beginning that one of your
22 jobs, duties and responsibilities was to judge the
23 credibility, and that is the believability of the
24 witnesses that have come before you and testified in
25 this case. And I told you that if you thought about it

1 for a second, it's something you do every single day of
2 your life because you use your good common sense and
3 your good judgment. And we're going to be asking you
4 to do that now, use your good common sense, use your
5 good judgment. Find that evidence which convinces you
6 it's true.

7 Looking at the witnesses that have testified in
8 this case, you could believe one against several, you
9 could believe several against one, you could believe a
10 portion of what a witness says and disregard the
11 remaining portion of it. If you've got a good and
12 sound reason for doing so, you can disregard in its
13 entirety the testimony of a particular witness.

14 You look at whether or not the witness has
15 exhibited to you any kind of interest, motive, bias,
16 prejudice they might have in giving you the testimony
17 they gave you from the witness stand. And obviously
18 you consider the opportunity for knowledge, how did
19 they come about that information that they gave you
20 from the witness stand.

21 In your examination of the facts and evidence, you
22 don't have any friends to reward, you don't have any
23 enemies to punish, and your result of your examination
24 must be a full and complete examination, find that
25 evidence which convinces you of its truth.

1 Two types of evidence that are generally portrayed
2 in every single case that's tried, this one's no
3 exception, direct and circumstantial evidence.

4 Direct evidence, that's a type of evidence that's
5 testimony of a person who asserts or claims actual
6 knowledge of a fact. Circumstantial evidence, that's
7 proof of a chain of facts indicating the existence of a
8 fact. The law doesn't make any distinction between
9 those two. A greater degree of certainty is not
10 required of one over the other.

11 But to the extent that the State relies on
12 circumstantial evidence, all of the circumstances must
13 be consistent with each other and when taken together
14 conclusively point to the guilt of the accused beyond a
15 reasonable doubt. The State, as always, has the burden
16 of proof to prove the defendants guilty beyond a
17 reasonable doubt.

18 In this case I qualified more than one witness to
19 give their opinion. Sometimes they're called expert
20 witnesses. What we're actually allowing them to do is
21 give their opinion. Normally we don't allow people to
22 give their opinion, they got to tell you what I saw,
23 what I heard, what took place in my presence.

24 But some witnesses by their education, experience,
25 training, we'll allow them to give their opinion in a

1 certain particularized field. Now, just because the
2 Court did that does not give them any special status
3 over some other witness. You judge all of the
4 witnesses the same, you judge all of their credibility
5 and believability. You find out evidence from wherever
6 it comes that convinces you of its truth.

7 In this case the defendants did not testify. I'm
8 telling you and assert to you that this cannot be
9 considered by you in any way in deciding this case. It
10 is not part of this case. You cannot use it mentally,
11 obviously you cannot talk about it in the jury room. I
12 told you at the very beginning defendants are presumed
13 innocent of the crime charged, and the State has to
14 prove the defendants guilty beyond a reasonable doubt.

15 These defendants, no defendants are required to
16 prove anything to the jury. The State must prove its
17 case to you beyond a reasonable doubt.

18 The testimony of a witness can be discredited or
19 impeached by showing that the witness previously made
20 statements which are inconsistent with their present
21 testimony. Earlier contradictory statements are
22 admissible in that vein. It is your job, again, to
23 judge credibility and believability. And the weight
24 you give, if any, to any earlier statements is up to
25 you. You can consider this in determining whether or

1 not to believe a witness' testimony in any of its
2 particulars.

3 The prior record of a witness. Our rules of
4 evidence allow that testimony of a witness can be
5 discredited or impeached by showing the witness has
6 been convicted of a crime for which they could have
7 been imprisoned for more than one year or the crime
8 involved dishonesty. Now, as to this evidence, it's
9 only offered on the issue of credibility.

10 A person who has a past criminal record can
11 testify during a trial. Their past record does not
12 affect their ability to testify. The past record may
13 be only considered by you if it is to be considered by
14 you, in determining their credibility or their
15 believability, that being one of your jobs and
16 responsibilities.

17 The credibility of a witness, again, being up to
18 you to determine, you could consider whether a
19 particular witness has a motive or exhibited any amount
20 of motive to testify. You can consider, if you choose,
21 again, it's your choice, whether a particular witness
22 may gain some reward, personal advantage, reduction in
23 sentence or vindication through their testimony.

24 I told you this at the very beginning, there are
25 two defendants in this case. Each of them is charged

1 with murder. The case of each defendant and the
2 evidence and the law concerning that defendant must be
3 considered by you separately and individually. Your
4 verdict does not have to be the same for both
5 defendants.

6 The fact that you find one defendant guilty or not
7 guilty does not control your verdict on the other.
8 When more than one person is charged with a crime, if
9 the evidence warrants, that is the evidence you believe
10 to be true in accordance with the law, you can convict
11 one, acquit the other, you could acquit both or you can
12 convict both. It depends upon your view of the
13 testimony and the evidence as to each defendant
14 considered separately.

15 Defendant Graham has raised the defense of alibi.
16 Alibi means the defendant was at another specified
17 place and time when the crime was committed, and
18 therefore being impossible for the defendant to have
19 been at the scene of the crime. Mere denial of
20 presence at the scene of a crime does not constitute an
21 alibi.

22 Now, even though this has been raised by the
23 defendant, again, there is no burden on the defendant
24 to prove alibi. Can't switch the burden. The burden
25 of proof is always on the State of South Carolina to

1 prove the defendant guilty beyond a reasonable doubt.

2 The issue has been raised, the State must prove the
3 guilt of the defendant beyond a reasonable doubt.

4 The defendants are presumed innocent. That
5 presumption of innocence didn't end at the beginning of
6 the trial, it hasn't ended now. It only ends if and
7 until you believe as to that defendant for the facts
8 and evidence you find to be true, the State has proven
9 the defendant guilty beyond a reasonable doubt. This
10 is an important rule of law that no matter what the
11 charge may be, whatever defendant is charged with, they
12 are presumed innocent of the crime for which the
13 indictment, the charge, was issued unless and until
14 guilt has been proven to you beyond a reasonable doubt.

15 This presumption of innocence is not just some
16 legal theory, it's not just some legal phrase that's
17 thrown around. It's a substantial right to which every
18 defendant is entitled unless and until the State proves
19 the defendant guilty beyond a reasonable doubt.

20 What is reasonable doubt? The kind of doubt that
21 would cause an ordinary, reasonable person to hesitate
22 to act. Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt.
24 Now, there are very few things that we can know in this
25 world with absolute certainty. The law does not

1 require the State of South Carolina to give you that
2 kind of proof.

3 What is required is based upon your view of the
4 evidence, the evidence you find to be true, you are
5 firmly convinced the defendant is guilty of the crime
6 charged, you must find the defendant guilty.. On the
7 other hand, based upon the evidence you find to be
8 true, you are not firmly convinced of the guilt of the
9 defendant beyond a reasonable doubt, you must give the
10 defendant the benefit of the doubt and find him not
11 guilty.

12 The defendants are charged with the crime of
13 murder. The State must prove to you beyond a
14 reasonable doubt that the defendant killed another
15 person with malice aforethought. Malice, that's some
16 kind of hatred or ill will or hostility towards another
17 person. It's the intentional doing of a wrongful act
18 without just cause or excuse and with an intent to
19 inflict an injury or under circumstances that the law
20 would infer an evil intent.

21 Now, malice aforethought, it's not required that
22 this kind of malice exists for any particular time
23 before the act is committed. But it has to exist in
24 the mind of the defendant just before and at the time
25 the act is committed. It has to be this combination of

1 the evil intent and the act.

2 It can be express or inferred, express when
3 somebody says or does something that expresses that
4 kind of intent. Inferred means that you can look at
5 the conduct showing a total disregard for human life.
6 Inferred malice, this kind of inferred malice, can also
7 arise when a deed is done with a deadly weapon.

8 What's a deadly weapon? Deadly weapon is any kind
9 of article or instrument or substance of any kind which
10 is likely to cause death or great bodily harm if used.
11 Whether an instrument has been used as a deadly weapon
12 depends on the facts and circumstances of each case.

13 In the law of the State of South Carolina there's
14 a principal that if a crime is committed by two or more
15 people who are acting together in committing the crime,
16 the act of one is the act of all. A person who joins
17 with another to commit an unlawful act is criminally
18 responsible for everything done by the other person
19 which happens as a probable or natural consequence of
20 the acts done in carrying out that common plan and
21 purpose. The act of one is the act of all, or it is
22 sometimes classified the hand of one is the hand of
23 all.

24 Prior knowledge that a crime is going to be
25 committed without more, just the knowledge a crime is

1 going to be committed, is not sufficient to make a
2 person guilty of that crime. Mere knowledge that
3 another person is going to commit a crime even if the
4 defendant is present is not sufficient. Guilt must be
5 shown by actual or constructive presence at the scene
6 as a result of a prior arrangement.

7 The State must prove beyond a reasonable doubt by
8 the evidence you believe this theory of the hand of one
9 is the hand of all. A principal in a crime is somebody
10 who either actually commits the crime or who is
11 present, aiding, abetting or assisting in some way in
12 committing the crime. When a person does an act in the
13 presence of another and with the assistance of another,
14 the act is done by both.

15 Where two or more acting with a common plan or
16 intent are present at the commission of a crime, it
17 does not matter who actually committed the crime. The
18 hand of one is the hand of all. Present at the
19 commission of a crime means to be sufficiently near to
20 aid or abet or assist in the commission of the crime.

21 Now, mere presence at the scene of a crime is not
22 sufficient to convict somebody under this theory of the
23 hand of one and the hand of all. Defendant's presence
24 where a crime is being committed or association with a
25 person who commits a crime does not make them an

1 accomplice or an aider or abetter. The burden, again,
2 is on the State of South Carolina to prove every
3 element of the crime.

4 If you find after reviewing all of the evidence
5 the State has proved regarding a defendant that that
6 defendant was only present at the scene and did not
7 aid, abet or assist in any way, they have not proved
8 beyond a reasonable doubt this theory of the hand of
9 one, the hand of all. There must be some kind of
10 participation in some way other than mere presence.

11 There has to have been some common design or
12 intent to commit a crime, and the crime must have been
13 committed with the person aiding and abetting or
14 assisting. Intent means intending the result which
15 actually occurs, not involuntarily. Intent may be
16 shown by the acts and conduct of each defendant or
17 other circumstances from which you could infer intent.

18 That, ladies and gentlemen, is the law that you
19 will apply to the facts and evidence you find to be
20 true. There being two cases, there are two verdict
21 forms, very straightforward. We have State of South
22 Carolina versus Thomas Booker James. On the charge of
23 murder we, the jury, by unanimous consent find the
24 defendant, Thomas Booker James -- there's two choices,
25 I put one before the other, don't assign anything to

1 that, I got to put one before the other -- not guilty
2 or guilty.

3 The other verdict form, State of South Carolina
4 versus Carnail Marchindla Graham. On the charge of
5 murder we, the jury, by unanimous consent find the
6 defendant Carnail Marchindla Graham not guilty or
7 guilty. Those are the two verdict forms.

8 You heard me use the term unanimous. I said at
9 the beginning and I said it now, it means exactly what
10 you think it means. Whatever your verdict is, whatever
11 verdict you reach, it must be unanimous, twelve zero.
12 Not eleven one, ten two or any combination thereof.
13 Whatever the verdict is, it must be the verdict of each
14 and every member of the jury.

15 Madam forelady, when you take the verdict form,
16 you check the appropriate block, you sign your name,
17 put today's date, you are telling the Court, every
18 single member of the jury agrees that is their verdict.
19 So if called upon in the courtroom to say that is their
20 verdict, they would be able to affirm that.

21 What I'm going to ask that you do, madam forelady,
22 is take the regular members of the jury. And, madam
23 alternate, you'll stay with us, please, now. Take the
24 other members of the jury to the jury room. Do not, do
25 not begin your deliberations until the bailiff brings

1 in to you the exhibits and the verdict forms.

2 Thereafter, you can begin your deliberations.

3 Now, clerk of court's office has got together
4 hopefully a fairly nice lunch for you which they'll
5 bring in to you shortly. My suggestion would be to
6 enjoy that, then you begin your deliberations. You can
7 do whatever you want to. But don't begin any
8 deliberations until the bailiff hands to you the
9 verdict forms and all of the exhibits.

10 Madam forelady, take the jury to the jury room.

11 (WHEREUPON, the jury exited the courtroom at
12 1:01 p.m.)

13 THE COURT: Is there any reason at this time that
14 the Court should not excuse the alternate from the
15 State?

16 MS. LIVESAY: No, sir.

17 THE COURT: From the defense, Mr. Frederick?

18 MR. FREDERICK: No, sir.

19 THE COURT: And Mr. Canty?

20 MR. CANTY: No, Your Honor.

21 THE COURT: All right, very good. In this case,
22 ma'am, I appreciate very much your hard work, your
23 dedication and your sacrifice to be a member of this
24 jury as the alternate. I can't tell you how many
25 times, and you saw in here just by choice, another

1 this case you have done everything that the Court
2 expected and beyond to represent the interest of your
3 clients. You were very -- you were knowledgeable about
4 the case, and you represented each respective party
5 with a great deal of diligence and fervor, and I
6 appreciate that. Please examine with the court
7 reporter that we have all of the proper exhibits going
8 to the jury. Thank you very much.

9 MR. FREDERICK: Thank you, judge.

10 THE COURT: We'll be at ease until the jury needs
11 us.

12 (WHEREUPON, a luncheon recess was taken at
13 1:04 p.m.)

14 (WHEREUPON, Court's Exhibit No. 4 was marked for
15 identification only.)

16 THE COURT: Thank you very much, you may be
17 seated. Thank you. All right. Counsel, the jury has
18 asked to rehear some testimony of Keir Johnson, so I'm
19 going to bring the jury in to do that.

20 Ask the jury to come in, please.

21 (WHEREUPON, the jury came into open court at
22 approximately 3:14 p.m.)

23 THE COURT: All right. Madam forelady, ladies and
24 gentlemen of the jury, I understand that you want to
25 hear some of Keir Johnson's testimony. The way that we

1 do that is the court reporter playing back the actual
2 testimony of the witness. I'm sure you remember this,
3 from beginning to end, from the start of the direct
4 examination through all of the cross and redirect, it's
5 two and a half hours.

6 And so we're here at your pleasure. You can hear
7 every single second of it if you want to. You can stop
8 at any time. If there's a particular part or something
9 that you were wanting to hear, the court reporter can
10 try and find that and play that portion for you. It's
11 at your direction.

12 So I wanted to make that clear first. How much or
13 how little of it we hear is completely guided by your
14 directions, all right. So with that, madam forelady,
15 would you like us to start right at the very beginning
16 of that, or do you need to talk about it some more?

17 THE FOREPERSON: We will go back.

18 THE COURT: You want to talk about it more? Sure,
19 absolutely. Why don't you go ahead and do that. And
20 then you just send me a note and let me know what you
21 want to do; all right? Thank you, ma'am.

22 (WHEREUPON, the jury exited the courtroom at
23 3:16 p.m.)

24 THE COURT: We'll be at ease until the jury needs
25 us. Thank you very much.

1 (WHEREUPON, a brief recess was taken at 3:16 p.m.)

2 THE COURT: Thank you very much, you may be
3 seated. Thank you. All right. Counsel, the jury
4 indicated they want to start with the
5 cross-examination. So ask the jury to come in, please.

6 (WHEREUPON, Court's Exhibit No. 5 was marked for
7 identification only.)

8 (WHEREUPON, the jury came into open court at
9 approximately 3:36 p.m.)

10 THE COURT: All right. Madam forelady, you've got
11 in your note about starting with the cross-examination
12 of the witness, and the court reporter is ready to
13 start with that. Again, we're here at your
14 convenience. If at any point in time you indicate that
15 you've heard what you want to hear, you can just
16 indicate that to the Court, and we will stop at that
17 time; all right?

18 THE FOREPERSON: All right.

19 THE COURT: All right. Go ahead.

20 (WHEREUPON, the court reporter played back the
21 requested portion of testimony.)

22 THE COURT: Madam forelady, you indicated that you
23 have heard the portion of the testimony you wanted to
24 hear?

25 FORELADY: Yes, sir.

1 THE COURT: Very good. You can go back and resume
2 your deliberations. Thank you very much.

3 (WHEREUPON, the jury exited the courtroom at
4 4:10 p.m.)

5 THE COURT: All right counsel, we'll be at ease
6 until the jury needs us. Thank you very much.

7 (WHEREUPON, a brief recess was taken at 4:11 p.m.)

8 (WHEREUPON, Court's Exhibit No. 6 was marked for
9 identification only.)

10 THE COURT: Thank you very much. You may be
11 seated, thank you. All right. Before we bring the
12 jury in to receive the verdict, let me talk to
13 everybody for a second, please.

14 We will soon receive the verdict in this case. I
15 do not know what it is, we will all receive the verdict
16 at the same time. Whatever the verdict is, it will be
17 received with respect, and it will be received with
18 silence. I will not tolerate any kind of showing of
19 emotion, reaction of any kind to the verdict.

20 If you find this to be a problem, you can leave
21 the courtroom. But understand, if you violate my
22 directions, you will be detained by an Horry County
23 sheriff's deputy. Whenever these proceedings are over
24 with, I will hold a contempt of court proceeding and
25 decide what sentence will be imposed upon you.

1 We have asked this jury to do a very difficult
2 thing, and we will respect their job and their verdict.

3 Further understand that after the verdict is read
4 and whatever court proceedings may follow, if any,
5 please understand that no one, no one, will be allowed
6 to leave the courtroom for some period of time which
7 could be up to 30 minutes. You will stay in the
8 courtroom. No one will be going anywhere. If you
9 cannot follow any of these directions, please leave the
10 courtroom now.

11 You are now bound by the Court's order. Thank you
12 very much. Ask the jury to come in.

13 (WHEREUPON, the jury came into open court at
14 approximately 7:35 p.m.)

15 THE COURT: All right, madam forelady, has the
16 jury reached a verdict in these matters?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: All right. Could you hand the verdict
19 forms to the clerk, please, ma'am.

20 THE FOREPERSON: (Complied.)

21 THE COURT: Please publish the verdicts.

22 CLERK OF COURT: In the general -- in the Court of
23 General Sessions, 15th Judicial Circuit,
24 2014-GS-26-2361, State of South Carolina, County of
25 Horry, State of South Carolina, Thomas Booker James on

1 the charge of murder, we, the jury, by unanimous
2 consent find the defendant Thomas Booker James guilty.
3 Signed by foreperson Deborah Shofner, October 20th,
4 2014.

5 In the Court of General Sessions, 15th Judicial
6 Circuit, 2012-GS-26-3077, State of South Carolina,
7 County of Horry, State of South Carolina, Carnail
8 Marchindla Graham on the charge of murder, we, the
9 jury, by unanimous consent find the defendant Carnail
10 Marchindla Graham guilty. Signed by foreperson Deborah
11 Shofner, October the 20th, 2014.

12 Ladies and gentlemen of the jury, if this is your
13 verdict, so signify by raising your right hand.

14 (WHEREUPON, All jurors' hands were raised.)

15 THE COURT: Thank you very much. All jurors
16 having affirmed their verdict, does the State wish the
17 jury polled?

18 MS. LIVESAY: No, sir.

19 THE COURT: Does the defense regarding Mr. James
20 want the jury polled?

21 MR. FREDERICK: Yes, Your Honor.

22 THE COURT: Mr. Canty also?

23 MR. CANTY: Please, Your Honor.

24 THE COURT: Roll by number, please.

25 CLERK OF COURT: Please stand when I call your

1 THE COURT: Solicitor, do you have sentencing
2 sheets?

3 MS. LIVESAY: I'm getting them, Your Honor, yes,
4 sir.

5 THE COURT: Yes, ma'am, I need for you to please
6 tell me your name, and then I'll be glad to hear from
7 you, ma'am.

8 MS. PERTELLE-GOFF: Your Honor, my name is Shelan
9 Pertelle-Goff.

10 THE COURT: Yes, ma'am.

11 MS. PERTELLE-GOFF: I'm the sister of Keia.

12 THE COURT: Yes, ma'am.

13 MS. PERTELLE-GOFF: I do thank the justice system
14 for the verdict that they came upon. And also I want
15 to say it's not only Keia life that is gone today, it's
16 also gone two lads over here as well. And I want y'all
17 to know I forgive y'all, and I will be praying for
18 y'all. And I just wish the best for everybody who had
19 anything to do with this, because it was just injustice
20 and just senseless. And for that I want to tell the
21 Court thank you.

22 THE COURT: Thank you, ma'am.

23 MS. LIVESAY: That's all from the State, Your
24 Honor.

25 THE COURT: Very good. Mr. Frederick?

1 MR. FREDERICK: As to sentencing, judge?

2 THE COURT: Yes, sir.

3 MR. FREDERICK: Judge, if we believe Keir
4 Johnson's testimony, which was the only testimony,
5 competent testimony against these two, and apparently
6 the jury did, then Thomas was not the shooter. And in
7 Keir Johnson's statements, one of his many statements,
8 judge, he said that when they left the house that
9 Thomas was in the back seat of the car with his head in
10 his hands crying.

11 Keir Johnson, if we believe anything he said, he
12 said that he didn't think that Thomas knew what was
13 going to happen and that he didn't think that Thomas
14 was responsible. That's in Keir Johnson's statements,
15 if we believe anything that he said, judge. Any
16 leniency that you can show Thomas, I appreciate it.

17 THE COURT: Thank you very much, sir.

18 MR. FREDERICK: Do you want to say anything?

19 DEFENDANT JAMES: I just want to let these people
20 know, that God as our witness, we had nothing to do
21 with that at all. We been telling them that from the
22 beginning. They know as well as the detectives know
23 who really done that. Our lawyer showed them the proof
24 of who really done it. We innocent, and we going to
25 keep fighting because we didn't do nothing. We didn't

1 have nothing to do with it at all, we was never at the
2 people house, we never been there in our life. And I
3 just want y'all to know that.

4 THE COURT: Thank you very much, sir. Yes, sir.
5 Anything else, Mr. Frederick?

6 MR. FREDERICK: No, Your Honor.

7 THE COURT: Thank you, sir. Mr. Canty?

8 MR. CANTY: Your Honor, Mr. Graham has five
9 children. Your Honor heard all of the evidence, and
10 Your Honor has heard the jury's verdict. To my
11 knowledge, his position is unchanged. My view of the
12 evidence is that it was far weaker against my client
13 than it was against Mr. James. I thought it as an
14 absence of evidence.

15 I've come to know Carnail during the course of the
16 past two and a half years, and I see him as a very
17 humane individual. I see him as a conscientious
18 individual, and I do not see him -- this is completely
19 beside the point at this point -- I do not see him as
20 the type of person capable of doing what has now been
21 attributed to him.

22 I would ask the Court to take into consideration
23 paucity of the evidence, the quality of the evidence
24 and his five children. Thank you.

25 THE COURT: Thank you, sir.

1 DEFENDANT GRAHAM: How you doing today, Your
2 Honor. First of all, they did a good job, they did
3 whatever they felt best for them to do. For 32 months
4 I stayed incarcerated, and I ain't said nothing, I
5 ain't spoke about the situation. I just took and took
6 and took and took and took and took.

7 I know that man. I know that woman right there.
8 I know that dude right there. I know that dude with
9 the glasses on. I practically know the whole family.
10 I stressed my point over and over and over again. I
11 ain't had nothing to do with that girl getting killed.
12 I never went to that girl house.

13 I ain't -- I mean, to be honest with you, the girl
14 was like my family. A lot of people got on the stand,
15 they said their piece. They said whatever best for
16 them to say. Some of them say they didn't know me,
17 some of them said they didn't see, some of them
18 whatever. I'm a man, I accept responsibility. This is
19 not a responsibility I'm going to accept.

20 Like I said, I know that man, I know that girl. I
21 would never hurt you, man. I would never hurt him.
22 For 32 months I fought this case, I fought and I fought
23 and I fought. I couldn't get through to nobody for
24 them to get the truth. Names start popping up, people
25 start coming up. Nobody wanted, nobody wanted to take

1 it.

2 I talked to that lady right there, I talked to
3 that lady sitting right there, Ms. Baker and Ms. Pop, I
4 talked to them. I advised them to go get the phone
5 records. I told Ms. Baker to go get the phone records.
6 I asked her to tell her to go get the phone records. I
7 requested it. They came and talked to me about my
8 tattoos.

9 Your Honor, I'm going to be honest, yeah, I got
10 Bootsie name tattoo on me. Yeah, I got him tattoo on
11 me. But what they didn't tell you, I got 32 more names
12 tattoo on me. I got 34 people names tattooed on my
13 arms, Your Honor, because I say he was my friend.
14 Yeah, I consider Bootsie as a friend, I did. By the
15 end of the day I have more love for that man. I do.

16 And that girl right there, if nobody else, I have
17 more love for them two. They're my friends. I knew
18 Keia since this big (indicating), I knew her since this
19 big (indicating). Ain't no money in the world would
20 make me go in no house and kick no door. I didn't need
21 the money. I could have borrowed money from her if I
22 needed the money. If I needed money, I could have went
23 to her and got the money. I could have went to him and
24 got the money. I ain't need no money. I ain't had to
25 kick that door. I didn't even know where the girl

1 stayed at. That's all I got to say, man.

2 THE COURT: Thank you, sir. Anything else, Mr.
3 Canty?

4 MR. CANTY: No, Your Honor.

5 THE COURT: Thank you, sir. Mr. Frederick, do you
6 know the date of incarceration regarding your client
7 for credit?

8 MR. FREDERICK: Judge, I don't.

9 THE COURT: All right, very good. Mr. Canty, do
10 you know that?

11 MR. CANTY: I believe April of 2012. It could
12 have been earlier.

13 THE COURT: All right. Well, I'm not going to put
14 a -- unless we know the exact date, then I will reflect
15 the credit for time served to be calculated according
16 to the records.

17 SENTENCE

18 THE COURT: Having listened to the evidence in
19 this case, the first thing that stands out is just the
20 absolute tragedy regarding the loss of the victim in
21 this matter, who by all accounts was a good person and
22 did not deserve the fate that life handed to her.

23 Based upon the Court's observation of the
24 testimony in this matter, the potential sentences for
25 murder being 30 to life, in 2014-GS-26-2361, the State

1 of South Carolina, County of Horry versus Thomas Booker
2 James, the sentence of the Court is defendant is
3 committed to the State Department of Corrections for a
4 determinate term of 32 years, defendant given credit
5 for the time he has already served.

6 Regarding 2012-GS-26-3077, the State of South
7 Carolina, County of Horry versus Carnail Graham, the
8 sentence of the Court is defendant's committed to the
9 State Department of Corrections for the determinate
10 term of 32 years. Defendant's given credit for the
11 time he has already served.

12 Defendants are remanded to the custody of the
13 Horry County sheriff's office. Thank you very much.

14 These proceedings are now at an end. Everyone
15 will remain in the courtroom until discharged by the
16 Horry County sheriff's office. Thank you.

17 MR. CANTY: Thank you, Your Honor.

18 (The hearing concluded at approximately 7:55 p.m.)

19 (End of Transcript of Record.)

20 - - -

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**NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS**

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

Case No. 2014-GS-26-

The State of South Carolina, Respondent,

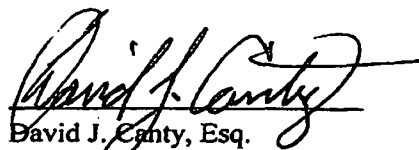
v.

Carnail Marchindla Graham, Appellant.

NOTICE OF APPEAL

Carnail Marchindla Graham appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Steven H. John on October 20, 2014.

October 27, 2014


David J. Canty, Esq.
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apccounsel@frontier.com

Other Counsel of Record:
Nancy Livesay, Esq.
P.O. Box 1276
Conway, S.C. 29528

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
 FIFTEENTH JUDICIAL CIRCUIT
 14166GB, I219226, I219227,
 M972397, M972398, M972399 and
 2013A2610202106

State of South Carolina,)
)
 vs.)
)
 Carnail Marchindla Graham,)
Defendant.)

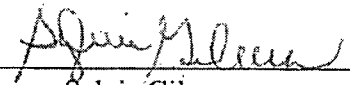
CERTIFICATE OF MAILING

I, Sylvia Gilmore, as an employee of David J. Canty, P.A., 4612 Oleander Drive, Myrtle Beach, South Carolina 29577, certify that I have this day mailed a copy of the document(s) described below, in the above-titled action to the following with the proper postage affixed thereto:

TO: Nancy Livesay, Esq.
 P.O. Box 1276
 Conway, S.C. 29528

DOCUMENT(S): Notice of Appeal

Myrtle Beach, S.C.
 October 29, 2014


 Sylvia Gilmore

WITNESSES

Paul Vescovi Horry County Police Department

DOCKET NO. 2012-GS-26-

3077

The State of South Carolina

County of Horry

Heather von Hermann
12H01973

COURT OF GENERAL SESSIONS

JULY, 2012 TERM

ARREST WARRANT NUMBER

M972397

CDR: 0116 16-03-0010, 0020

DOA: 4/30/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

JUL 26 2012

VERDICT

Foreperson of Petit Jury

Date:

ATTORNEY: Canty, David James

Indictment for

MURDER

J. Gregory Hembree, Solicitor

2012 JUL 26 10:31:16
COURT DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

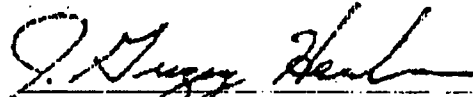
At a Court of General Sessions, convened on JULY 26, 2012, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Carnail Marchindla Graham, while acting in concert with another, did in Horry County, on or about November 8, 2011, willfully, feloniously, and intentionally kill the victim, Shaquille Shante Pertelle, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about November 8, 2011 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 19th, 2016

Susan B. Shackett for

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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ATTORNEY FOR APPELLANT

RECEIVED

FEB 19 2016

SC Court of Appeals