

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAMONTE RIVERA,

APPELLANT

APPELLATE CASE NO. 2015-002292

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED OCTOBER 26, 2015.....	1
MOTION TO SEVER CHARGES.....	19
RULING BY THE COURT.....	29
JURY VOIR DIRE.....	34
JURY SELECTION	59
OPENING REMARKS BY COURT	70
MOTION FOR FRANKS HEARING.....	74
RULING BY THE COURT.....	81
<u>JACKSON V. DENNO HEARING</u>	
TESTIMONY	
JOHN ALBERT GREGORY JR.....	89
OPENING STATEMENT BY MS. RICHARDSON	119
OPENING STATEMENT BY MR. EDGEWORTH	126
TESTIMONY	
ALAYAH W.	129
WALTER DOZIER.....	140
ANTIONETTE WILSON	159
FRED BAKER.....	168
STEPHANIE SUMPTER	174
CRAIG CHESTNUT	181
ANTHONY LAWRENCE	184

VALERIE THOMAS.....	194
JASMINE WILLIAMS.....	208
ANTHONY LAWRENCE	224
MEYON THOMAS	256
SHAKEEM GEATHERS	269
THOMAS EDWARDS DARNELL.....	298
ROBERT KEITH SMALL	330
BLAIR CRIBB	399
KYLE WALTON.....	402
JASEN WADE.....	411
QUANMAINE BROWN.....	424
TROWN DAVIS.....	455
JOHN GREGORY	466
SUSAN ERIN PRESNELL	510
JOANNE CLAREY	523
RICARDO LEAL.....	550
DAMONTE RIVERA.....	583
JENNIFER DALMIDA	588
GAILE HEATH	595
JOSHUA TAYLOR.....	619
BARRY POWERS.....	629
MITAL SHAH	637
MOTION FOR DIRECTED VERDICT.....	659

RULING BY THE COURT	660
COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY	662
RENEWAL OF MOTION FOR DIRECTED VERDICT	674
CLOSING ARGUMENT BY MR. EDGEWORTH.....	677
CLOSING ARGUMENT BY MS. RICHARDSON.....	681
CHARGE ON THE LAW	693
VERDICT	717
MOTION FOR DIRECTED VERDICT OF NOT GUILTY	719
RULING BY THE COURT	719
SENTENCING	721
DEFENDANT'S EXHIBIT #1 (PROFFER AGREEMENT).....	725
INDICTMENTS AND SENTENCE SHEETS	727
CERTIFICATE OF COUNSEL.....	739

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 501
JOHN GREGORY - PROFFER BY EDGEWORTH

1 forensic testing, if any, on the bullet?

2 MS. RICHARDSON: And, Your Honor, a gun was also never
3 recovered so there has been no comparisons or ballistics in
4 that regard. As far as this particular witness is concerned,
5 it's the State's position that he would not have personal
6 knowledge or privy would just be sort of rumor as to what the
7 actual decision by the department was. But it's also my
8 position that it would be more prejudicial than probative and
9 would seek to have the Jury base a decision on improper ground
10 rather than on the evidence that's actually been presented.

11 THE COURT: Well, I do think it goes to the quality of
12 the investigation if a agency loses a single bullet from the
13 murder victim. I mean, the Columbia Police Department melted
14 the murder weapon in *State v. Cheeseboro* before the State
15 could even go to trial. I think that affected the quality of
16 the investigation. Fortunately, they were able to set forth
17 witnesses that were -- whereby they could still present the
18 evidence and the testimony although the gun had been melted.
19 I guess it was an ashtray by the time the case was brought to
20 trial somewhere. And if he has no knowledge -- obviously, you
21 can't ask this witness if he has no knowledge of that.

22 MR. EDGEWORTH: Is there a way if I proffer the question
23 in a different way and just simply to say after the
24 investigation, he was no longer employed there. He doesn't --
25 he knows, he knows that he was no longer employed there.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 502
JOHN GREGORY - PROFFER BY EDGEWORTH

1 THE COURT: I think there's a difference between the
2 investigation of a specific officer and the investigation of
3 this case and the evidence that existed at one time and no
4 longer is available. I think that's different. I think
5 there's a difference there, Mr. Edgeworth.

6 MR. EDGEWORTH: Yes, Your Honor.

7 THE COURT: Well, just to -- not to just go ahead and
8 rule, but as far as this witness' testimony as to the issue
9 unless he has a personal knowledge it's not admissible. I
10 reiterate I think under *Kyles v.* --- whatever that W name is;
11 I can't remember. I think the quality of investigation is
12 always is admissible. I think that's admissible. Now, if
13 there is objections at the time, I'll deal with those
14 objections. But I don't think testimony from this witness is
15 admissible and I think at this point, under 403, I think it's
16 misleading to the Jury from what's been presented in this
17 proffer.

18 MR. EDGEWORTH: And, Your Honor, would that instruction,
19 may I change the line of questioning regarding the absence of
20 the bullet without discussing the ---

21 THE COURT: Well, proffer the testimony and let me hear
22 what you're gonna ask.

23 MR. EDGEWORTH: It would just be simpler, Your Honor,
24 thank you.

25 PROFFER EXAMINATION OF JOHN GREGORY BY MR. EDGEWORTH:

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 503
JOHN GREGORY - PROFFER BY RICHARDSON

1 Q: Mr. Gregory, at some point in time, the bullet that was
2 part of evidence of this case was lost; is that correct?

3 A: Yes.

4 Q: And, and therefore, and to your knowledge there was no
5 other forensic evidence performed on, on the bullet, correct?

6 A: No.

7 THE COURT: Solicitor.

8 PROFFER EXAMINATION OF JOHN GREGORY BY MS. RICHARDSON:

9 Q: And how did you come to know that the bullet was lost?

10 A: Because the course of the investigation about the bullet
11 being lost, I was questioned too as to the whereabouts of the
12 bullet and eventually when I questioned back, I was told the
13 bullet was lost.

14 Q: Okay. Were you his supervisor or superior or anything
15 like that?

16 A: No, we were equals.

17 Q: And so you just basically heard through the department
18 and you were questioned about it and that's how you know about
19 it?

20 A: Yes.

21 BY THE COURT:

22 THE COURT: All right. You have an objection?

23 MS. RICHARDSON: Your Honor, that -- I still think it's
24 -- he still heard about it through hearsay through the
25 department. I mean he was asked about it by -- I just don't

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
BY THE COURT

504

1 think he's the proper witness for this.

2 THE COURT: Well, who is the proper witness for this
3 then, Solicitor?

4 MS. RICHARDSON: It would be a supervisor or Captain
5 Small. He has the personnel file that indicates who was
6 involved in the investigation into that. And what he's saying
7 is he knows it was lost because he was asked about it. I just
8 don't think he's the correct witness to get this information
9 in.

10 THE COURT: All right. Well, based on what's before me
11 at this -- before me at this time, I would sustain the
12 objection.

13 Anything further before we bring in our Jury?

14 MR. EDGEWORTH: No, Your Honor.

15 MS. RICHARDSON: No, Your Honor.

16 THE COURT: Bring our Jury, please.

17 (REPORTER'S NOTE: Jury enters courtroom. 12:55 P.M.)

18 THE COURT: All right. Welcome back. Thank you again,
19 ladies and gentlemen for your patience and attention.

20 Mr. Edgeworth, you may, you may ask your next question.

21 MR. EDGEWORTH: Your Honor, I have no further questions.

22 THE COURT: Thank you, Mr. Edgeworth.

23 Solicitor, anything in redirect?

24 MS. RICHARDSON: No, Your Honor.

25 THE COURT: Thank you. Thank you very much. Thank you,

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
BY THE COURT

505

1 Detective.

2 A: All right. Thank you.

3 THE COURT: You may step down.

4 Ladies and gentlemen, during the presentation of the
5 video tape, State's Exhibit, I believe it was 146; is that
6 correct; 146?

7 MS. RICHARDSON: Yes, Your Honor.

8 THE COURT: During 146, there was a couple of pauses in
9 there where you would hear electronically pause. That's based
10 on rulings that I have made that there were certain statements
11 made that were not relevant to this case whatsoever.

12 Therefore, it's not a fact of anyone the State or the Defense
13 is trying to hide anything from you whatsoever. It was just
14 not relevant. So, as far as during your deliberations, don't
15 -- don't consider that one way or the other. No one cut the
16 tape off, cut it back on. It played through fully and
17 completely for, for me, before me and I ruled that certain
18 things were not admissible. You remember I said I'd rule on
19 admissibility; y'all would decide the credibility.

20 Also, if you recall, I instructed the Solicitor at a
21 certain point to cut the tape from that point on. None of the
22 other was relevant beyond then either. Again, don't speculate
23 on what may or may not have been there that anyone did or did
24 not tamper with the tape. If anyone did, it was me by -- they
25 did it because of my orders and my instructions.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 506
BY THE COURT

1 Perhaps now would be a good time to take our luncheon
2 recess, Solicitor?

3 MS. RICHARDSON: Yes, Your Honor.

4 THE COURT: Mr. Edgeworth?

5 MR. EDGEWORTH: Yes, sir.

6 All right. We will take our luncheon recess, ladies and
7 gentlemen. We'll take -- please remember do not discuss the
8 case. Do not read, watch or listen to any news reports. Do
9 not do any independent investigation or any investigation on
10 the internet. Y'all can probably repeat those back to me by
11 now maybe in unison even perhaps, but, but with that being
12 said, keep an open mind. I hope y'all have a pleasant lunch.
13 If you'd be back promptly at 2:15. Be back promptly at 2:15.
14 Again, I hope y'all have a pleasant lunch. Thank you. Thank
15 you very much.

16 (REPORTER'S NOTE: Jury exits courtroom.. 12:58 P.M. The
17 following takes place outside the presence of the Jury.)

18 THE COURT: All right. Anything further from the State
19 before we take our luncheon recess, Solicitor?

20 MS. RICHARDSON: Your Honor, just about the video that we
21 played. It was my understanding that the Court wanted it
22 turned off at the point where, where Officer Gregory said
23 you've invoked your right and gave the time. That was my
24 understanding; if I misunderstood it, I apologize. I don't
25 have any objection to where it did end but I just wanted the

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 507
BY THE COURT

1 Court to know that was my understanding and that's why I
2 didn't stop it earlier.

3 THE COURT: Well, I had, I had started at the bottom of
4 Page 29 and that, that's all right it's a misunderstanding. I
5 think it just was one, one sentence, well we ain't answering
6 no more questions if you don't like that. And then when you
7 go to Page 130 where Officer Gregory seventh line down says
8 you just invoked your rights and so -- you're -- if that's, if
9 that's a violation of my ruling it's a good faith violation
10 and I think it came up so quick that it -- I think it's fine
11 where it's at with the Jury.

12 MS. RICHARDSON: And that's why I wanted to make sure.
13 I'd even marked it and started at that point but I just wanted
14 to make it -- make the Court aware that that was inadvertent
15 and a misunderstanding.

16 THE COURT: All right. Yes, ma'am. I took it as that.
17 I, I was trying to track it myself and it tracked a little
18 quicker than I thought it would.

19 All right. Anything further?

20 MR. EDGEWORTH: Nothing further from the Defense, Your
21 Honor.

22 THE COURT: From the State?

23 MS. RICHARDSON: Not from the State, Your Honor.

24 THE COURT: All right. 2:15.

25 How many more witnesses do you think you have, Solicitor;

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 508
BY THE COURT

1 you got a count?

2 MS. RICHARDSON: Six.

3 THE COURT: All right. All right. 2:15 it is. Thank
4 you very much. I hope y'all have a pleasant lunch.

5 (RECESS - 1:01 P.M.)

6 *****OFF THE RECORD*****

7 (On the Record - 2:21 P.M.)

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the Jury.)

10 THE COURT: Thank you. Please be seated. Thank you.

11 MS. RICHARDSON: Your Honor, if I may just pre-mark some
12 exhibits just to make it a little bit faster?

13 THE COURT: Yes, ma'am, certainly.

14 (REPORTER'S NOTE: Confers with Court Reporter.)

15 MS. RICHARDSON: We're ready, Judge.

16 THE COURT: You ready, Solicitor?

17 MS. RICHARDSON: Yes, Your Honor.

18 THE COURT: All right. Anything, Mr. Edgeworth?

19 MR. EDGEWORTH: Nothing, Your Honor.

20 THE COURT: All right. I would remind those in the
21 gallery again about my rule as to cell phones. If you're in
22 the gallery and you have a cell phone, it must be -- it must
23 remain in your pocket, it must be off. I have advised all the
24 law enforcement deputies in the courtroom if their eyes even
25 fall on a cell phone in the hands or within the reach or grasp

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 509
BY THE COURT

1 of any individual in the gallery that I would ask you to
2 please seize that cell phone.

3 Additionally, it has come to my attention that there have
4 been individuals in the courtroom that have displayed various
5 types of body languages during the course of the time in which
6 the Jury was in the courtroom, head nods, shakes, hand
7 gestures, perhaps to -- this has been displayed to convey
8 messages to others within the courtroom and perhaps this body
9 language could be viewed by members of the Jury. If a witness
10 is on the stand, you agree or disagree with the witness'
11 testimony, you don't shake your head yes or no. That's not
12 your place, that's not the appropriate conduct to display in
13 the courtroom and you don't have hand gestures to try to
14 convey messages to witnesses or anyone else. That will not be
15 tolerated by this Court. I find that type of conduct to be
16 offensive and a contempt of this Court. I am asking all the
17 sheriffs in the courtroom, if they observe such conduct
18 including any type of body language by head motions, positive
19 or negative, by hand gestures or otherwise, that you remove
20 any of those individuals from this courtroom immediately.

21 Thank you. Thank you very much.

22 If anyone doesn't understand my policy on cell phones or
23 my policy on body language, head nods, hand gestures and the
24 like, my best advice to you is I'm not going to explain it to
25 you. If you don't think you understand it, you probably need

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 510
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 to leave now.

2 All right. And I find that if you remained, you're going
3 to comply with the rules of this Court.

4 (REPORTER'S NOTE: Jury enters courtroom. 2:24 P.M.)

5 THE COURT: Welcome back, ladies and gentlemen, hope you
6 all had a pleasant lunch. As you all know, we're continuing
7 the trial of the case by the presentation of evidence and
8 testimony by the State in its case in chief.

9 Solicitor, you may call your next witness.

10 MS. RICHARDSON: The State calls Dr. Presnell.

11 THE COURT: All right. Doctor, if you'd come around and
12 join us, please.

13 SUSAN ERIN PRESNELL, HAVING BEEN
14 SWORN TESTIFIES AS FOLLOWS:

15 CLERK: Would you please state your name and spell it for
16 the Court?

17 DR. PRESNELL: Susan Erin Presnell, which is P-R-E-S-N-E-
18 L-L.

19 CLERK: Thank you.

20 THE COURT: All right. Solicitor?

21 DIRECT EXAMINATION OF SUSAN ERIN PRESNELL BY MS. RICHARDSON:

22 Q: Would you please tell us where are you employed?

23 A: I'm a Forensic Pathologist at Medical University of South
24 Carolina down in Charleston.

25 Q: And could you give us the benefit of your education and

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 511
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 experience?

2 A: Like I said, I'm a Forensic Pathologist and to get there
3 I went to college at Clemson where I was a Microbiology major
4 and then I went to MUSC, Medical University in Charleston for
5 medical school and that's four years. And then after that, I
6 stayed for my choice of specialty, which was Pathology, that
7 was five years, and then I did a subspecialty in Forensic
8 Pathology so that was one year. And then during this process,
9 you take the boards. So, I'm board certified and I took the
10 boards for Pathology as well so I'm board certified in General
11 Pathology and Forensic Pathology.

12 Q: And let me show you what has been marked as State's
13 Exhibit 150; do you recognize that document?

14 A: This is a copy of my resume'.

15 Q: Okay. And that details all the education and experience
16 that you have and training in this area?

17 A: Yes.

18 MS. RICHARDSON: Your Honor, at this time, I'd move to
19 enter 150, State's 150 into evidence.

20 MR. EDGEWORTH: No objection, Your Honor.

21 THE COURT: State's 150 is in evidence without objection.

22 STATE'S EXHIBIT NUMBER 150

23 ADMITTED INTO EVIDENCE

24 BY MS. RICHARDSON:

25 Q: And obviously as a Forensic Pathologist you perform

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 512
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 autopsies?

2 A: Yes.

3 Q: And can you just briefly explain just the difference
4 between General Pathology and Forensic Pathology?

5 A: Well, actually most Pathologists don't do a lot of
6 autopsies, most are anatomic or clinical pathologist. And
7 well, Pathology in general is the study of disease. So, a
8 Pathologist, they receive tissues that another doctor may take
9 from their patient or a biopsy or, like if someone goes to
10 surgery and has their appendix taken out, that tissue goes to
11 the Pathologist. They look at it, look into the microscope
12 and come up with a diagnosis. So, like it's cancer or it's
13 not cancer or it's infection or it's not infection. So I've
14 been trained in that General Pathology. But then I
15 subspecialized in forensics where we're just not looking at a
16 piece of tissue or an organ that's been removed, we're looking
17 at the entire body of somebody who's passed and that process
18 is called the autopsy so we're -- and during autopsy we'll do
19 an external exam, internal exam, examine all internal organs.
20 We're looking for disease but we're also evaluating trauma and
21 put all of our findings together in the autopsy report with
22 the goal of determining the cause of death and the manner of
23 death.

24 Q: And how many autopsies would you estimate that you've
25 performed?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 513
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 A: It's an approximation; I would say around two thousand,
2 probably a little more.

3 Q: And how many times have you testified in courts in this
4 state?

5 A: As an expert in Forensic Pathology, again an estimate,
6 around a hundred.

7 MS. RICHARDSON: Your Honor, at this time, I'd offer Dr.
8 Presnell as an expert in the area of Forensic Pathology.

9 THE COURT: Thank you, Solicitor.

10 Any questions as to expertise, Mr. Edgeworth?

11 MR. EDGEWORTH: No, Your Honor.

12 BY THE COURT:

13 THE COURT: Thank you. Thank you very much. Again, Mr.
14 Foreman, ladies and gentlemen, you recall, normally a person
15 cannot testify as to opinion testimony. Normally, a person
16 must testify as to either what they saw, heard, sensed by
17 smell, touch or something of that nature. However, there is
18 an exception when a person has a sufficient education,
19 training, experience in a particular art, science, profession
20 or trade. If they're -- if the Court qualifies them that way,
21 they are qualified to testify as to their opinions and the
22 basis for those opinions. This witness, Dr. Susan Presnell,
23 will be qualified as an expert in Forensic Pathology to give
24 her opinions on that subject and also the basis of those
25 opinions. That does not mean you must accept the opinions,

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 514
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 but those opinions are for you, the Jury, to use in any way
2 you deem appropriate. Thank you. Thank you very much.

3 Solicitor, you may continue.

4 BY MS. RICHARDSON:

5 Q: On August 31st of 2012, did you perform an autopsy on
6 Alfonso Thomas?

7 A: Yes, the Coroner of Georgetown County referred us this
8 case and I did the autopsy that day.

9 Q: And basically can you just generally describe the
10 procedure that you use to do an autopsy?

11 A: Like I referenced it earlier with the -- we did a
12 complete external exam; we'll do diagrams, we take pictures.
13 In cases of gunshot wound such as this, we'll do x-rays to try
14 to help locate the bullets so we recover it. Then we do the
15 internal exam. We take samples of tissues, put them under the
16 microscope if we need to and we also collect blood for
17 toxicology to look for drugs and alcohol.

18 Q: And in this case, did you document the injuries to Mr.
19 Thomas?

20 A: Yes.

21 Q: And did you determine the cause of death?

22 A: Yes, Mr. Thomas had a single gunshot wound. That gunshot
23 wound entered into the base of his skull, the neck at the base
24 of the skull and went towards his right and down. It hit --
25 it went through the cervical vertebral column or the neck

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 515
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 backbone in this area and it stopped right here, which is on
2 the side of the -- well, in the bone on the side of the neck,
3 which is where we recovered the bullet. And that is his cause
4 of death is the gunshot wound to the back of the neck.

5 Q: And did that penetrate his spinal column?

6 A: It didn't -- the spinal cord comes down from your brain
7 on your backbone and then you have the bone that's around the
8 spinal cord and it -- it went along the side of the bone, but
9 it fractured that bone and caused -- so it didn't actually hit
10 directly the spinal cord, but it caused it to become disrupted
11 and had some hemorrhage and blood associated with that.

12 Q: So, it was cracked although not physically torn, it was
13 practically damaged?

14 A: It was damaged, yes.

15 Q: And would that have caused immediate death or can you
16 explain how that would have worked?

17 A: Well, yes, so -- well not necessarily immediate death
18 from it. The way I could compare it to is like you've heard
19 of people that might have fallen off of a horse and broken
20 their neck, but as long as they can get some artificial
21 ventilation, then they can survive. So that -- a disruption
22 of the spinal cord way up that high is gonna cause paralysis
23 including paralysis of the, the muscles that you use to
24 breathe. So, it is fatal injury without a medical
25 intervention.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 516
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 Q: And would he have been immediately incapacitated?

2 A: Yes, immediately incapacitated.

3 Q: I'm going to show you what has been previously marked as
4 State's Exhibits 151, 152 and 153. Do you recognize those?

5 A: Yes, these are copies of some of the photographs that we
6 took at the time of autopsy.

7 Q: And is that an accurate depiction of the photos you took
8 and what you observed during the autopsy?

9 A: Yes.

10 MS. RICHARDSON: Your Honor, at this time, I'd move 151,
11 152 and 153 into evidence.

12 THE COURT: All right. Mr. Edgeworth?

13 MR. EDGEWORTH: No objection, Your Honor.

14 THE COURT: State's 151, 152 and 153 is in evidence
15 without objection.

16 STATE'S EXHIBIT NUMBERS 151, 152 AND 153

17 ADMITTED INTO EVIDENCE

18 BY MS. RICHARDSON:

19 Q: And can you explain 151, what that shows to the Jury
20 please?

21 A: Can everybody see it? This is an X-ray from the side of
22 the head. So you can see the skull and here's the neck
23 backbone right here, here's his shoulders. And that white
24 object there is the bullet where I was describing where we
25 recovered it.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

517

1 THE COURT: Show that to me, please, Doctor?

2 All right. Thank you.

3 BY MS. RICHARDSON:

4 Q: And if you can go through the other two as well?

5 A: This is a photograph at the time of autopsy of the back
6 of his neck. We had the autopsy tag right there for
7 identification purposes and you can also see the hole in the
8 back of the neck right at the base of the skull. Something
9 else, I don't know if you can appreciate it from this
10 distance, but there is what we call stippling around the
11 gunshot wound. This next photograph is up closer and if you
12 can perceive those little dots that are -- this hole right
13 here is the gunshot wound and there are a bunch of little dots
14 around it; can you guys see that? All right. This is called
15 stippling.

16 MS. RICHARDSON: If might have a moment, I can actually
17 put that on everyone's monitor.

18 THE COURT: All right. Thank you. Thank you, Solicitor.

19 A: Okay. So this is the photograph from further distance
20 away and, again, the round, the largest round hole in the
21 middle is the entrance gunshot wound and then you can see
22 those dots around that -- around the perforated entrance
23 wound.

24 MS. RICHARDSON: Can you take that down just a minute.
25 Let me make sure I've got that.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 518
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 BY MS. RICHARDSON:

2 Q: Okay. This would be State's Exhibit 152 that's being
3 displayed.

4 A: All right. This is up closer and I just -- I wanted to
5 also point out that we shaved his hair in this area so that we
6 could fully evaluate the extent of the injury, but in this
7 over here (indicating) is the entrance and then around it,
8 that's the stippling. And stippling is -- are actually little
9 scratches and what's causing them is gun powder and when we
10 back up for just a minute to explain what it is we're seeing.

11 Q: And, Doctor Presnell, they're not gonna be able to see
12 the movements that you make. If you wish to demonstrate, I'd
13 ask permission that she come down to my monitor?

14 THE COURT: All right. Yes, ma'am.

15 MS. RICHARDSON: She's pointing at the monitor and they
16 won't be able to see that.

17 THE COURT: All right. Yes, Doctor, you may step down
18 just keep your voice up when you're away from the mic.

19 A: Yes, sir, thank you, Your Honor.

20 All right. I think you probably can appreciate what I
21 was saying earlier with the, the central hole and then around
22 the entrance wound is the stippling. Okay. And the
23 significance of the stippling for Forensic Pathology is to
24 help determine the range of fire or how far away the gun is
25 from the victim. And I apologize if this is too basic, but

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 519
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 when you imagine a gun being fired, the bullet is not the only
2 thing that comes out the end of the barrel. We have some soot
3 that comes out the end of the barrel, but we also have pieces
4 of gun powder particles. The gun powder part -- the gun
5 powder is housed in the cartridge underneath the bullet and is
6 what's ignited to propel the bullet down the barrel. So we
7 have the bullet coming out of the barrel, some soot coming out
8 and these little pieces of gun powder particles almost like
9 sand, sandy type particles. If a gun is right up against a
10 victim's skin, then what you would see at autopsy is an
11 entrance wound and then a dark realm of soot deposited around
12 it. As you pull the gun away from the skin, the soot is this
13 kind of gaseous type, you know, kind of a gas. It may or may
14 not reach the skin. But the gun powder particles will reach
15 the skin and then when they do, they hit it and they actually
16 scratch it. So, I can wipe the soot away that's on the skin,
17 but I cannot wipe these little abrasions or the stipple marks
18 away. As the gun gets further back, the soot is definitely
19 not gonna make it and the gun powder particles once you get
20 back far enough, they're not gonna make it to the skin. And
21 so then all you would have is an entrance wound with no soot
22 and no stippling around it.

23 So, that first example with just the soot is a contact
24 gunshot wound. When we see stippling, that infers that is a
25 close range gunshot wound and then beyond where none of the

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 520
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 extra material reaches the skin, that is a distant gunshot
2 wound.

3 So, in this example, this is a case of a close-range
4 gunshot wound. To really narrow it down, how far away that
5 would be, you, you would have to test fire that gun with the
6 particular ammunition that's used. But in general, you want
7 to include all hand guns, by the time you're out to thirty-six
8 to forty-two inches -- so thirty-six inches being a yard, by
9 the time you're out that far, the soot certainly won't reach
10 and the gun powder particles won't reach. So, from thirty-six
11 to forty-two inches and beyond is a distant gunshot wound and
12 close range is closer than -- than thirty-six inches.

13 BY MS. RICHARDSON:

14 Q: So, is it your opinion to a reasonable degree of medical
15 certainty that he was shot at a range of less than thirty-six
16 inches?

17 A: Yes.

18 Q: And it was not a contact wound?

19 A: Correct.

20 Q: And did he have any sort of defensive injuries to, to his
21 hands or anything of that nature?

22 A: He had a healing abrasion. I do not believe it was
23 related to this incident, on one of his fingers and the only
24 other injuries he had were some, some scratches on the
25 forehead.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 521
SUSAN ERIN PRESNELL - DIRECT BY RICHARDSON

1 Q: And did you -- could you determine a cause for those,
2 those injuries?

3 A: They're non-specific. Just there were some faint
4 scratches on his forehead.

5 Q: And you also determined a manner of death?

6 A: Yes, but the manner of death is classified in a medical
7 legal sense. So, we can choose from four, actually five
8 manners: One is natural; one is accident; suicide; homicide;
9 and undetermined. In this case it was considered homicide or
10 death at the hands of another.

11 Q: And this injury was not consistent with any of those
12 other type manners of death; is that right?

13 A: Yes, this was a homicide.

14 Q: And is that your opinion to a reasonable degree of
15 medical certainty?

16 A: Yes.

17 Q: I'm gonna show you what has been pre-marked as State's
18 Exhibit 154. And can you tell me what that is?

19 A: This is a copy of my autopsy report as well as some of
20 the other documents from the autopsy file.

21 Q: And is that something that you keep in your regular
22 business -- course of business at MUSC?

23 A: Yes.

24 MS. RICHARDSON: Okay. At this time, Your Honor, I'd
25 move State's 154 into evidence; you want to review it?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854

522

SUSAN ERIN PRESNELL - CROSS BY EDGEWORTH

1 THE COURT: No objection?

2 MR. EDGEWORTH: No objection, Your Honor.

3 THE COURT: State's 154 is in evidence without objection.

4 STATE'S EXHIBIT NUMBER 154

5 ADMITTED INTO EVIDENCE

6 BY MS. RICHARDSON:

7 Q: I have no further questions. Would you answer any
8 questions that Mr. Edgeworth may have for you?

9 THE COURT: Thank you, Solicitor.

10 Mr. Edgeworth?

11 MR. EDGEWORTH: Thank you, Your Honor. Briefly.

12 CROSS EXAMINATION OF SUSAN ERIN PRESNELL BY MR. EDGEWORTH:

13 Q: Good afternoon, Dr. Presnell. Am I correct in
14 understanding your testimony that the bullet went into the
15 neck area?

16 A: Yes, at the base of the skull.

17 Q: So, it did not enter into the brain?

18 A: Correct, it did not enter into the cranial vault.

19 Q: And as a result of that finding, it would have been
20 impossible for any brain matter to be discharged as part of
21 the gunshot wound, correct?

22 A: I'm not sure. I mean the, the bullet did not actually
23 enter into the brain. As far as when I was describing
24 injuries before, he did have some hemorrhage along the outside
25 of the brain, but as I, I, I do have document that his brain

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - DIRECT BY BAILEY

523

1 was disrupted at all.

2 Q: Thank you. No further questions.

3 THE COURT: Redirect, Solicitor?

4 MS. RICHARDSON: No, Your Honor, and I'd ask that this
5 witness be excused from her subpoena?

6 THE COURT: Any objection, Mr. Edgeworth?

7 MR. EDGEWORTH: No objection, Your Honor.

8 THE COURT: Thank you. Thank you for being here, Doctor,
9 you may step down and you may be excused.

10 THE COURT: All right. You may call your next witness,
11 Solicitor.

12 MS. RICHARDSON: Your Honor, it's gonna be Joanne Clarey
13 and Ms. Bailey from my office is going to assist with this
14 witness.

15 JOANNE CLAREY, HAVING BEEN SWORN
16 TESTIFIES AS FOLLOWS:

17 CLERK: Would you please spell your last name for the
18 Court?

19 MS. CLAREY: C-L-A-R-E-Y.

20 CLERK: Thank you, Ms. Clarey.

21 THE COURT: All right. Solicitor?

22 MS. BAILEY: Thank you, Your Honor.

23 DIRECT EXAMINATION OF JOANNE CLAREY BY MS. BAILEY:

24 Q: Can you tell us what you do?

25 A: I'm the Classification Lieutenant at the Georgetown

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 524
JOANNE CLAREY - DIRECT BY BAILEY

1 County Detention Center.

2 Q: Generally, what does that entail?

3 A: I handle housing units, I do a lot of things, but mainly
4 housing units, inmate issues, just day-to-day operations of
5 the jail. I mean, I'm the PREA coordinator, which is the
6 Prison Rape Elimination Act. I have a lot of titles.

7 Q: Okay. That's a lot of responsibility out there at the
8 jail for you?

9 A: Yes, ma'am.

10 Q: All right. And tell me again what's your title, like
11 your rank?

12 A: I'm a Lieutenant.

13 Q: Okay. So you're Lieutenant Clarey?

14 A: Yes, I am.

15 Q: Okay. In your capacity out there at the jail, you said
16 you received grievance forms?

17 A: I do.

18 Q: Okay. And can you tell the Jury a little bit about what
19 a grievance form is?

20 A: It's how inmates can communicate with the staff. You
21 know, like they can make requests for things or, you know,
22 they can -- nine times out of ten, what they're wanting us to
23 do is like, you know, get in touch with -- we're kind of the
24 liaison, like if they're having trouble getting in touch with
25 somebody or if they need something or if they're having

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 525
JOANNE CLAREY - DIRECT BY BAILEY

1 problems in the housing units and things like that.

2 Q: So, even if it's called a grievance form, is it always a
3 complaint?

4 A: No.

5 Q: In your capacity, did you receive -- in your capacity at
6 the jail, did you receive any Grievance Forms from the -- from
7 Damonte Rivera?

8 A: Yes.

9 Q: I'm gonna show you what was previously marked as State's
10 Exhibit 142 for ID. All right. This is State's 142, which
11 has already been marked for ID. If you could flip through
12 those for just a moment and let us know if you recognize
13 those?

14 A: Yes, I do.

15 Q: And what is that packet that I handed you?

16 A: These are correspondence I had between Damonte and
17 myself.

18 Q: Okay. So, they're from Damonte Rivera?

19 A: They are.

20 Q: Okay. And how do you know that they were from him?

21 A: Because it says his name up at the top and I know his
22 handwriting also.

23 Q: Okay. And are those records that are kept in the
24 ordinary course of business?

25 A: Yes, they are.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 526
JOANNE CLAREY - DIRECT BY BAILEY

1 Q: And are you the records custodian for grievances that are
2 sent to you?

3 A: Grievances that are sent to me, yes, ma'am.

4 Q: Okay. So, in the ordinary course of business, were you
5 the ones that retrieved these grievance forms from the filing
6 place?

7 A: Yes, ma'am.

8 MS. BAILEY: Okay. At this time, the State would seek to
9 introduce State's Exhibit 142 into evidence?

10 THE COURT: Mr. Edgeworth?

11 MR. EDGEWORTH: No objection, Your Honor.

12 THE COURT: State's 142 is in evidence without objection.

13 MS. BAILEY: Thank you, Your Honor.

14 STATE'S EXHIBIT NUMBER 142

15 ADMITTED INTO EVIDENCE

16 BY MS. BAILEY:

17 Q: I want to show you what's been marked as State's Exhibit
18 143 for identification purposes only. Just take a look at
19 that and I'm gonna ask you a couple more questions before we
20 talk about that piece of evidence ---

21 A: Okay.

22 Q: --- but just want you to glance at it. In your capacity
23 as Lieutenant at the jail, do you ever intercept mail?

24 A: I do.

25 Q: And why do you do that?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - DIRECT BY BAILEY

527

1 A: For the safety and security in the daily operations of
2 the detention center.

3 Q: Okay. Do you, do you screen just one person's mail or
4 ---

5 A: No, quite a few. Uh-huh (affirmative response).

6 Q: So, in your capacity at the detention center, did you
7 have an occasion to intercept -- well, first of all, tell me
8 what it is that you're looking at, State's Exhibit 143.

9 A: I'm looking at a letter that was written from Damonte
10 Rivera to Trown Davis.

11 Q: And how do you know who wrote it?

12 A: Well, because it has his name on it and also I recognize
13 his handwriting.

14 Q: And where -- how did you come in possession of that
15 letter?

16 A: I intercepted this in the mail.

17 Q: Okay. So did that letter ever actually get put in the
18 U.S. Mail?

19 A: No, ma'am.

20 Q: Okay. And instead what did you do with it?

21 A: I put it in Damonte's classification folder.

22 Q: Okay. And so is that a record that you would keep in the
23 ordinary course of business, this intercepted mail?

24 A: Yes, ma'am.

25 Q: Okay. And -- and you would be the records custodian of

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854

528

JOANNE CLAREY - DIRECT BY BAILEY

1 all the mail that you intercept?

2 A: Yes, ma'am.

3 MS. BAILEY: All right. At this time the State would
4 seek to move State's Exhibit -- actually I withdraw that; I'm
5 not gonna move it into evidence.

6 Now, as record custodian for the jail, do you also keep
7 track of who -- which inmates have been housed where?

8 A: Yes, ma'am.

9 Q: I'm gonna show you what's been marked as State's Exhibits
10 155 and 156 for identification only at this point. Can you
11 take a look at those and do you recognize those documents?

12 A: Yes, ma'am.

13 Q: Are those documents that you keep in the ordinary course
14 of business?

15 A: Yes, ma'am.

16 Q: And are those records that you pulled in preparation for
17 testimony today?

18 A: Yes, ma'am.

19 Q: All right. I'm gonna show you what's been marked as
20 State's Exhibit 157 for ID only.

21 A: Uh-huh (affirmative response).

22 Q: All right. Those three documents, are they all kept in
23 the ordinary course of business?

24 A: Yes, ma'am.

25 Q: Okay. You're the records custodian for them?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - DIRECT BY BAILEY

529

1 A: Yes, ma'am.

2 Q: And you pulled them from their place in the records and
3 ran the reports in preparation for testimony today?

4 A: Yes, ma'am.

5 Q: And what are those documents?

6 A: They're housing units. They're where every -- their name
7 is up at the top and then it tells every place they've ever
8 been housed in the jail and the date and the time.

9 Q: Okay. And for which three inmates are you looking at?

10 A: Joshua Taylor, Trown Davis and Damonte Rivera.

11 Q: All right. I'm gonna hand you State's Exhibit 158 and
12 for which inmate is that one for?

13 A: Quanmaine Brown.

14 Q: Okay. And that's a business record, too ---

15 A: Yes, ma'am.

16 Q: --- that you kept? Okay. So, based on your pulling
17 these records and review of the records in your capacity, can
18 you tell me Damonte Rivera and Quanmaine Brown ---

19 A: Uh-huh (affirmative response).

20 Q: Were they ever housed together?

21 A: They were.

22 Q: And where were they housed together?

23 A: In C block on July 18th, 2013.

24 Q: Okay. Damonte Rivera and Joshua Taylor, were they ever
25 housed together?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 530
JOANNE CLAREY - DIRECT BY BAILEY

1 A: They were in the same housing unit two cells down from
2 each other.

3 Q: Okay. And when they're in the same housing unit, do they
4 recess together?

5 A: Yes, they do.

6 Q: Okay. And when was that?

7 A: That would be September 1st, 2012 to September 24th,
8 2012.

9 Q: Okay. And Damonte Rivera and Quanmaine Brown -- I'm
10 sorry, did I already say Quanmaine Brown?

11 A: Uh-huh (affirmative response).

12 Q: Damonte Rivera and Trown Davis, were they ever housed
13 together?

14 A: They were.

15 Q: And when was that?

16 A: That was July 29th, 2012 to September 17th, 2012.

17 Q: And was there a time that three of these folks were in
18 the same room together?

19 A: It looks like Trown ---

20 THE COURT: Just a minute, Solicitor. Step out please,
21 ladies and gentlemen and do not discuss the case during this
22 brief recess.

23 (REPORTER'S NOTE: Jury exits courtroom. 3:00 P.M. The
24 following takes place outside the presence of the Jury.)

25 THE COURT: Maybe, maybe I wasn't tracking, Solicitor,

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 531
JOANNE CLAREY - DIRECT BY BAILEY

1 but I thought her testimony just then was Mr. Rivera and Mr.
2 Davis were cell mates from July 29th, '12 to 9/17/12; was that
3 her answer?

4 MS. BAILEY: Your Honor, I believe -- I'm gonna ask her
5 to look at the records again. I believe she may've been
6 referencing the wrong report at the time she referenced those
7 records.

8 THE COURT: All right. Well, let me track it right now.
9 I -- that's the date I wrote down and that -- that's the -- if
10 you'd look at the record if you can, Lieutenant?

11 A: Well, see Damonte ---

12 THE COURT: Speak up.

13 A: --- Damonte was in -- he was in G6. Okay. This is the
14 times that these inmates were in there with him. It looks
15 like Trown Davis and Joshua Taylor at different -- Damonte was
16 in this room from July -- I mean from -- excuse me. I'm
17 missing one. Can I look at mine or do I -- can I look at
18 mine?

19 THE COURT: Ask -- ask the Solicitor.

20 A: I'm sorry.

21 BY MS. BAILEY:

22 Q: Would it -- if you looked at an additional piece of
23 paper, would it help refresh your recollection?

24 A: Yes, ma'am.

25 Q: I'm gonna ask you to look at that sheet of paper and then

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 532
JOANNE CLAREY - DIRECT BY BAILEY

1 -- and then give that ---

2 A: That says July 6th, I mean G-6 and this says G. Can I,
3 can I show you what I'm looking at on this?

4 THE COURT: Well, here's the issue. In State's Exhibit
5 Number Four, the videotape deposition, it was redacted the
6 part that Mr. Rivera had just got out of jail and if that
7 refers back, I take it that would refer back to the July 29th
8 '12 date. Now, if he was in jail July 29th, 2012 to September
9 17th, 2012, he's got a great alibi; he was in jail. Plus, if
10 you get out and it's a prior arrest, the reason it wasn't in
11 State's Exhibit Four and was redacted by the State, is because
12 it goes to his character that he had a prior incarceration.
13 You can't present a prior incarceration to the Jury unless he
14 puts his character in evidence under -- under the -- under
15 certain rules on top of just putting his character in
16 evidence. So that -- that's what I wasn't tracking, the
17 7/29/12 date.

18 MS. BAILEY: Yes, Your Honor.

19 THE COURT: That, that's the thing I wasn't tracking
20 right there and if it refers back to prior dates of
21 incarceration.

22 MS. BAILEY: My understanding is that Trown Davis was put
23 in on 7/29/12, not Damonte Rivera and that the witness may
24 have misspoke as to that.

25 A: Right. I, I was going by their actual dates in the cell

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - DIRECT BY BAILEY

533

1 -- in that cell, not ---

2 THE COURT: All right.

3 BY MS. BAILEY:

4 Q: Okay. So, the one-page document that we put into
5 evidence for Damonte Rivera begins on September 6th?

6 A: It does.

7 Q: Which was after the crime was committed?

8 A: Right. I'm sorry, I misunderstood because I was giving
9 -- I was giving the dates these individuals were actually in
10 that cell, the timeframe they were in that cell. I
11 misunderstood.

12 THE COURT: Well, when was -- Solicitor, when was Mr.
13 Rivera in that cell?

14 A: September ---

15 MS. BAILEY: Where was he in ---

16 THE COURT: When?

17 MS. BAILEY: When?

18 THE COURT: The question was when was the Defendant
19 housed with Mr. Davis. The answer was from September 29th,
20 2012 till -- excuse me -- from July 29th, '12 to September
21 17th, '12.

22 MS. BAILEY: Right, I believe that was a mistake. I
23 believe she was looking at a different record when she stated
24 that. She was looking at Trown Davis' record. He was -- he
25 began his incarceration 7/29/12.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - DIRECT BY BAILEY

534

1 THE COURT: All right. Bring our Jury back please.

2 (REPORTER'S NOTE: Jury enters courtroom. 3:07 P.M.)

3 THE COURT: All right. Solicitor, you may continue.

4 MS. BAILEY: Thank you.

5 THE COURT: Our Jury is now present in the courtroom.

6 BY MS. BAILEY:

7 Q: Ms. Clarey, did you misspeak earlier?

8 A: I did.

9 Q: Okay. Can you clarify for us at what time or was there a
10 time that Damonte Rivera and Trown Davis were incarcerated
11 together?

12 A: Yes, ma'am.

13 Q: And when was that?

14 A: September the 6th, 2012 until September the 17th, 2012.

15 Q: Okay. And was there a time that Damonte Rivera and
16 Quanmaine Brown were incarcerated together?

17 A: Yes, ma'am. Quanmaine Brown is July 18th, 2013 until
18 July 19th, 2013.

19 Q: Okay. And is there a time that Damonte Rivera and Joshua
20 Taylor were incarcerated together?

21 A: Yes, ma'am.

22 Q: And when was that?

23 A: That's from September, excuse me. September -- September
24 the 6th, 2012 until September the 24th, 2012.

25 Q: So were Joshua Taylor, Damonte Rivera and -- was there a

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 535
JOANNE CLAREY - DIRECT BY BAILEY

1 time that the three of them were in the jail cell together?

2 A: Trown Davis, Joshua Taylor and Damonte Rivera.

3 Q: They were all housed together?

4 A: Yes, ma'am.

5 Q: Okay. At this time, State would seek to move State's
6 Exhibits 157, 158, 156 and 155 into evidence?

7 MR. EDGEWORTH: May I approach, Your Honor?

8 THE COURT: Yes, sir, certainly.

9 MR. EDGEWORTH: No objection, Your Honor.

10 THE COURT: 155, 156, 157 and 158, State's Exhibits in
11 evidence without objection.

12 STATE'S EXHIBIT NUMBERS 155 THROUGH 158

13 ADMITTED INTO EVIDENCE

14 BY MS. BAILEY:

15 Q: At some point, did -- why did Trown Davis get moved away
16 from being housed with Damonte Rivera?

17 A: He put in a request, which is not uncommon.

18 Q: Okay. But he actually requested to be moved away?

19 A: Yes, ma'am.

20 Q: Okay.

21 MS. RICHARDSON: Court's indulgence.

22 THE COURT: Yes, ma'am.

23 MS. RICHARDSON: Thank you, Your Honor.

24 BY MS. BAILEY:

25 Q: I show you what has been marked as State's Exhibits 159

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 536
JOANNE CLAREY - DIRECT BY BAILEY

1 and 160. You want to peek inside of that bag and take a look
2 at that?

3 A: Yes, ma'am.

4 Q: Okay. Can you describe what those are?

5 A: White tennis shoes.

6 Q: Okay. And where -- what was your handling of these
7 shoes?

8 A: I removed them from Damonte's Rivera's property and
9 turned them over to Captain Keith Small.

10 Q: With the City Police Department?

11 A: Yes, ma'am.

12 Q: Okay. And on what date did you do that?

13 A: September the 11th, 2015.

14 Q: I beg the Court's indulgence, Your Honor.

15 So prior to the time that you turned these shoes over to
16 the police department, would Mr. Rivera have had access to
17 them or someone from the public been able to gain permission
18 to come in and have access to them?

19 A: Nobody could have access to them accept staff at the
20 detention center. Now inmates fill out property releases.
21 That's how the public has access -- if they fill out a
22 property release, then we'll release it to whoever they want
23 us to with a ID.

24 Q: All right. So, for -- but there's no restriction on
25 releasing any property that belongs to an inmate as long as

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - CROSS BY EDGEWORTH

537

1 they allow a family member to come in?

2 A: Right. We have a form that they have to fill out and
3 it's called a Property Release and the inmate fills it out and
4 signs it and they have to put it what they're releasing and
5 who they're releasing it to and then they come at a specific
6 time during the week and with their picture ID, we will
7 release these -- these items and -- yeah, that's...

8 MS. BAILEY: No further questions from this witness, Your
9 Honor.

10 THE COURT: All right. Thank you. Thank you, Solicitor.
11 Mr. Edgeworth?

12 MR. EDGEWORTH: Yes, Your Honor. Thank you.

13 CROSS EXAMINATION OF JOANNE CLAREY BY MR. EDGEWORTH:

14 Q: Good afternoon, Ms. Clarey.

15 A: Hi.

16 Q: I just wanted to make sure that I do understand you in
17 your testimony with the housing. Were you referring to any
18 notes where you came up with these time periods or assessed
19 these time periods?

20 A: I -- before I came in here, I kinda tried to look over
21 real quick and -- and write them down. I mean, I have -- I
22 have looked at Damonte's and -- I had looked at Damonte's and
23 Trown Davis' before I came in here.

24 Q: Okay. And -- but from looking at them, you gleaned
25 certain information to which you just testified, correct?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - CROSS BY EDGEWORTH

538

1 A: Correct.

2 Q: So, if I may, I'd like to go back over some of these
3 dates from your notes?

4 A: Okay.

5 Q: You have notes, correct?

6 A: No, I had just written them down on the back of a folder.

7 Q: Right and that's what I mean by notes. You have them
8 right there?

9 A: Uh-huh (affirmative response).

10 MR. EDGEWORTH: May I approach the witness, Your Honor,
11 so I can walk through her notes?

12 THE COURT: Yes, ma'am. Yes, sir, excuse me.

13 BY MR. EDGEWORTH:

14 Q: Okay. We'll just go with the questions here. So, you
15 testified as to Trown and -- Mr. Trown Davis and, and Damonte
16 Rivera were housed from -- well -- what -- when were they
17 housed?

18 A: This is Trown Davis' date right here that he actually
19 entered the jail.

20 Q: Well, when were they together?

21 A: They were together from -- on Damonte's, that's the one I
22 had to go back to was Damonte's. They were ---

23 Q: Well, I wrote down your testimony and I don't mean to
24 interrupt you, but just for -- just see if this reminds you.

25 I wrote down September 6th, 2012 through September 17th, 2012?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 539
JOANNE CLAREY - CROSS BY EDGEWORTH

1 A: That might be the dates I gave -- because that's -- you
2 have to understand I have to go back to both inmates and look
3 at both of them to put them together.

4 Q: I understand.

5 A: Okay.

6 Q: And when ---

7 A: And I did say the 17th, yes, sir.

8 THE COURT: Give her time to look and answer the
9 question.

10 MR. EDGEWORTH: Yes, sir, Your Honor. My apologies.

11 THE COURT: That's fine.

12 BY MR. EDGEWORTH:

13 Q: Okay. So, you had the opportunity to -- do you need the
14 opportunity to review those documents or would it be easier if
15 I kinda walk through the documents with you?

16 A: You can walk through them with me.

17 Q: All right. I'm gonna step back at this time.

18 A: Okay.

19 Q: In review of your documents -- and we'll start with Mr.
20 Rivera and Trown Davis.

21 A: Okay.

22 Q: I have made and I guess I'll ask you the question. Does
23 it appear to you that on September 1st, 2012 that Mr. Rivera
24 or that Mr. Trown Davis was housed in G6?

25 A: On September the 1st?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
JOANNE CLAREY - CROSS BY EDGEWORTH

540

- 1 Q: That's correct.
- 2 A: I don't have the housing unit for Trown Davis anymore.
- 3 Q: Okay. Well, then let me show you what's been marked
- 4 State's Exhibit 156?
- 5 A: Okay.
- 6 Q: And I'll let you refer to that as we'll stick with the
- 7 regular exhibits.
- 8 A: Okay. Okay.
- 9 Q: So, if you'd take a look at that document, Trown Davis
- 10 was housed in G6 on September 1st; is that correct?
- 11 A: Correct.
- 12 Q: And then he was housed on September 17th in G13; is that
- 13 correct?
- 14 A: Correct.
- 15 Q: And then on October 26th, he was housed in G7; is that
- 16 correct?
- 17 A: Yes. Yes, sir.
- 18 Q: And then on November 10th, he was housed in G15; is that
- 19 correct?
- 20 A: Correct.
- 21 Q: And that's where he remained until he was transferred in
- 22 March of 2013; is that correct?
- 23 A: 2013, uh-huh (affirmative response).
- 24 Q: Okay. Now, I'd like for you to, to keep that up there
- 25 with you and I'm gonna show you what's been marked State's

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - CROSS BY EDGEWORTH

541

- 1 Exhibit 157?
- 2 A: Uh-huh (affirmative response).
- 3 Q: And that's Mr. Rivera's housing document, correct?
- 4 A: Correct.
- 5 Q: Okay. Now, on September 1st, Mr. Rivera was housed in
- 6 B2; is that correct?
- 7 A: It's not on here.
- 8 Q: Okay. So, that one starts on ---
- 9 A: September the 6th.
- 10 Q: Okay. Thank you for that. And on September 6th, he was
- 11 housed in G6; is that correct?
- 12 A: Correct.
- 13 Q: And then on September 24th, he moved to G15; is that
- 14 correct?
- 15 A: Correct.
- 16 Q: And then on October 25th, he was moved to D5; is that
- 17 correct?
- 18 A: Correct.
- 19 Q: Okay. And so Mr. Rivera would have been in G6 along with
- 20 Mr. Davis from September 6th, 2012 until September 17, 2012
- 21 when Mr. Davis moved; is that correct?
- 22 A: Davis moved on -- he moved on September 24th to G15. I
- 23 mean -- no, excuse me. I'm looking at the wrong one. Yes, he
- 24 moved on September 17, he moved to G13, correct?
- 25 Q: Correct. September 17th, correct?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - CROSS BY EDGEWORTH

542

1 A: Uh-huh (affirmative response).

2 Q: Now, I'm gonna hand you back State's 155.

3 A: Okay.

4 THE COURT: 150 what?

5 MR. EDGEWORTH: 5, Your Honor.

6 BY MR. EDGEWORTH:

7 Q: And 155 is Mr. Taylor's report, correct?

8 A: Correct.

9 Q: Okay. All right. All right. So, on -- Mr. Taylor was,
10 most importantly in this particular case, was housed in -- on
11 September 1st, he was in G8, correct?

12 A: Correct.

13 Q: And you would agree with me that that's not G6?

14 A: I would agree with you.

15 Q: Thank you. And then he moved to G6 on September 18th,
16 correct?

17 A: Correct.

18 Q: All right. So, you would agree with me that there's no
19 way that Mr. Taylor, Mr. Davis and Mr. Rivera could have been
20 in the same housing unit at the same time?

21 A: No, they were in the same housing unit, yes, sir.

22 Q: In the same room?

23 A: Oh, in the same cell; all of them. That would be
24 correct.

25 Q: Okay. Now in regards to -- my apologies. I'm gonna hand

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
JOANNE CLAREY - REDIRECT BY BAILEY

543

1 you what's been marked State's Exhibit 158.

2 A: Okay. Uh-huh (affirmative response).

3 Q: And that's Mr. Quanmaine Brown, correct?

4 A: Uh-huh (affirmative response).

5 MR. EDGEWORTH: Court's indulgence, Your Honor.

6 THE COURT: Yes, sir.

7 BY MR. EDGEWORTH:

8 Q: I think the, if I'm not mistaken, your testimony was that

9 Mr. Brown and Rivera shared housing; is that correct?

10 A: Yes, sir.

11 Q: And but when you refer to housing, you're meaning the

12 same block, not the same cell; is that correct?

13 A: Right because it's -- it's done in tier separation and

14 they were on the same tier.

15 Q: And I, I appreciate that. So, for the purposes of -- of

16 clarification on the question, Mr. Rivera and Mr. Brown did

17 not share the same room, correct?

18 A: Correct, they were next door to each other, correct.

19 Q: Thank you very much. No further questions.

20 THE COURT: Redirect, Solicitor?

21 MS. BAILEY: Thank you, Your Honor. A couple of things

22 to clarify.

23 REDIRECT EXAMINATION OF JOANNE CLAREY BY MS. BAILEY:

24 Q: Can you describe -- you and I have had the benefit of

25 going out -- being there. Can you describe for the Jury what

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 544
JOANNE CLAREY - REDIRECT BY BAILEY

1 a -- what one of the pods looks like or what one of the tiers?

2 A: Okay. They have a upstairs and a downstairs and in most
3 areas, you have large dayroom area and then on the bottom
4 tier, which would be the bottom floor, there's -- in most
5 housing units there's eight cells and then you go up the
6 stairs and there's eight more cells. And how they come out is
7 the bottom tier comes out together and then the top tier comes
8 out together.

9 Q: So, do they stay in their cells all the time?

10 A: No, ma'am.

11 Q: What -- when they're not in their cells, are they free to
12 move about the inside the units?

13 A: In the rec area, yes, ma'am.

14 Q: Okay. So, in your experience at the jail, do they also
15 -- when they're in their cells they're able to yell to each
16 other or talk.

17 A: All the time. They do it through the vents also, yes,
18 ma'am.

19 Q: So, they also through the vents to each other?

20 A: Yes, ma'am.

21 Q: Okay. And do you personally recall a time when the three
22 of them, Taylor, Rivera and Davis, were housed together?

23 A: I believe they were, yes, ma'am; I believe they were.

24 Q: Based on your memory, and did you work at the jail at
25 that time?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
JOANNE CLAREY - REDIRECT BY BAILEY

545

1 A: Yes, ma'am.

2 Q: And you recall them being housed together?

3 A: Yes, ma'am.

4 Q: Okay. And do -- is it possible to put into the system
5 three people being in one cell?

6 A: Yes, ma'am.

7 Q: Okay. And is that something that y'all do sometimes or
8 ---

9 A: Well, what happens sometimes is inmates can be moved --
10 like on night shift or something like that and we have
11 something that we call a cell check and it's -- it's done
12 periodically but not daily and it's where the officers
13 actually have everybody that's supposed to be in that pod in
14 what room they're supposed to be in and sometimes inmates move
15 on their own and it's not detected right away. I mean, it
16 happens. And sometimes they get moved by officers and the
17 classification or their supervisor, you know, doesn't change
18 it in the computer right away.

19 Q: So the records are not reflected in real time; is that --
20 is that an accurate description?

21 A: That would be an accurate description, yes, ma'am.

22 Q: But overall, it's accurate as a description where people
23 have been generally at different times; is that correct?

24 A: Yes, ma'am.

25 MS. BAILEY: No further questions, Your Honor.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOANNE CLAREY - RECROSS BY EDGEWORTH

546

1 THE COURT: Thank you. Recross, Mr. Edgeworth?

2 MR. EDGEWORTH: Real briefly, Your Honor.

3 RECROSS EXAMINATION OF JOANNE CLAREY BY MR. EDGEWORTH:

4 Q: Lieutenant Clarey, when you answered the question as to
5 housed, you're referring to the block, correct?

6 A: The -- yes, sir.

7 Q: Not the room?

8 A: Correct, unless, unless I'm talking about a cell.

9 Q: Correct. Thank you.

10 A: Uh-huh (affirmative response).

11 Q: And if someone were sleeping, the door would be closed,
12 correct?

13 A: Not always, no.

14 Q: At night time would the door be closed with the inmates
15 in the ---

16 A: Yes, sir.

17 Q: And then also based on what you're telling us about these
18 records, you're -- are you stating to the Court that the
19 records are inaccurate?

20 A: At sometimes they can be off by a cell or a date. Like
21 not everybody has authorization to actually physically in the
22 computer, move the inmate. They don't have the rights. You
23 know, the computer won't let them have that right. And we
24 have a slip that they can fill out as to why they moved an
25 inmate or they'll leave me the cell check where they've done

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 547
BY THE COURT

1 it where the inmate is in a different room than what's listed
2 in and then I have to go in when I come in and go back and
3 change the inmate to that room.

4 Q: But would you not put in the date on which they moved?

5 A: You can do that.

6 MR. EDGEWORTH: Okay. No further questions, Your Honor.

7 THE COURT: Thank you, Mr. Edgeworth. How long is your
8 next witness, Solicitor?

9 MS. RICHARDSON: Your Honor, it may be a good time to
10 take a short break.

11 THE COURT: All right. Thank you. Lieutenant, you may
12 step down.

13 A: Thank you.

14 THE COURT: Thank you. Thank you for being with us.

15 A: Do I just leave this right here?

16 THE COURT: Yes, ma'am.

17 BY THE COURT:

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen, we'll take our afternoon recess about fifteen
20 minutes. Do not discuss the case during this brief recess.
21 Thank you. Thank you very much.

22 (REPORTER'S NOTE: Jury exits courtroom. 3:31 P.M.)

23 THE COURT: All right. Court will be in recess for
24 fifteen minutes.

25 (RECESS - 3:31 P.M.)

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
BY THE COURT

548

*****OFF THE RECORD*****

(On the Record - 3:47 P.M.)

(REPORTER'S NOTE: The following takes place outside the
presence of the Jury.)

THE COURT: Thank you. Thank you very much. Please be
seated. Thank you.

MS. BAILEY: Your Honor, briefly before the Jury comes in

THE COURT: Yes, ma'am.

MS. BAILEY: If I may put something on the record.

State's Exhibit 142 is a collection of just handwriting
samples from Mr. Rivera taken from grievance forms at the
jail. It was put into evidence during the last witness. I
had already gone through and redacted several of these just to
take out any information about Mr. Rivera getting in trouble
at the jail and some racial comments. It has been brought to
my attention the one thing I did not redact on two different
documents is a date referencing his incarceration 2011. It
has not been published to the Jury. I'm happy to redact that
if Defense agrees to those redactions. I just wanted Your
Honor's permission to take it downstairs to my copier and make
that happen before I present it to our handwriting expert.

THE COURT: Mr. Edgeworth?

MR. EDGEWORTH: Yes, Your Honor, I, I consent to that and
request the Court to grant that.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 549
BY THE COURT

1 THE COURT: All right. And let, let's check with the
2 real authority of an exhibit. Ms. Richardson, is that all
3 right with you?

4 COURT REPORTER: With the consent of everybody.

5 THE COURT: All right. Thank you. Thank you very much.
6 You may do so, Solicitor.

7 MS. BAILEY: Thank you, Your Honor.

8 MR. EDGEWORTH: Thank you, Madam Court Reporter.

9 THE COURT: All right. Solicitor, anything further
10 before we bring in our Jury? Do you want to wait on the
11 Solicitor to return?

12 MS. RICHARDSON: No, Your Honor, we'll just call another
13 witness and -- we'll just call another witness in between.

14 THE COURT: All right. Anything from the Defense, Mr.
15 Edgeworth, before bring in our Jury?

16 MR. EDGEWORTH: No, Your Honor.

17 THE COURT: Thank you. Thank you very much.

18 (REPORTER'S NOTE: Jury exits courtroom. 3:49 P.M.)

19 THE COURT: All right. Welcome back, ladies and
20 gentlemen. Our Jury is back present in the courtroom.
21 Solicitor, you may call your next witness.

22 MS. RICHARDSON: Ricardo Leal.

23 THE COURT: All right. Mr. Leal, if I pronounce that
24 correctly, if I don't ---

25 MR. LEAL: Yes, sir.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 550
RICARDO LEAL - DIRECT BY RICHARDSON

1 THE COURT: --- I'll never get it right again, but --
2 please come forward and be sworn. Thank you.

3 RICARDO LEAL, HAVING BEEN SWORN
4 TESTIFIES AS FOLLOWS:

5 CLERK: Thank you. Would you state your full name for
6 the Court Reporter?

7 MR. LEAL: Yes, ma'am. It's Ricardo, R-I-C-A-R-D-O, last
8 name is Leal, it's L-E-A-L.

9 CLERK: Thank you.

10 MR. LEAL: Thank you.

11 COURT REPORTER: I need you to slide to your left and up
12 just as far as you can.

13 MR. LEAL: Thank you, ma'am.

14 THE COURT: All right. Solicitor?

15 DIRECT EXAMINATION OF RICARDO LEAL BY MS. RICHARDSON:

16 Q: Mr. Leal, can you tell us where you are employed?

17 A: Yes, ma'am. I work for Sprint Telecommunications
18 Corporation in Roeland Park, Kansas.

19 Q: And how long have you worked with Sprint?

20 A: I've worked for Sprint for thirteen years.

21 Q: And what's your position there?

22 A: I am a records custodian.

23 Q: And in that capacity, what do you do?

24 A: I testify in court to the records of Sprint all
25 throughout the United States, to aspects of telephony, mostly

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

551

1 what the records reveal.

2 Q: Okay. And so aspects of cell phone ---

3 A: Telephony.

4 Q: Telephony, okay. And how many times would you estimate
5 that you have testified in court?

6 A: Over two hundred times.

7 Q: And how many times do you estimate you've been qualified
8 as an expert?

9 A: A handful of times.

10 Q: Okay. And can you tell me basically what your education
11 and experience is?

12 A: Yes, ma'am. I've worked for Sprint for thirteen years.
13 I have a college degree from Mid-America Nazarene University.
14 It's located in Olathe, Kansas. So, I went to school at
15 junior college prior to that; I went to the University of
16 Kansas; and then I finished up at Mid-America Nazarene with a
17 degree in Human Relations and Management.

18 MS. RICHARDSON: Your Honor, at this time, I'd move to
19 have Mr. Leal qualified as an expert in the area of cell phone
20 telephony?

21 A: Well, it's actually to the records.

22 MS. RICHARDSON: To the records.

23 THE COURT: Can you spell -- spell that word for me, not
24 cell phone, but the other word?

25 MS. RICHARDSON: I have no idea.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

552

1 THE COURT: Spell that word for me, Mr. Leal?

2 A: T-E-L ---

3 THE COURT: Say again?

4 A: T-E-L ---

5 THE COURT: Okay.

6 A: --- E-P-H ---

7 THE COURT: T-E-L ---

8 A: --- E-P-H-O-N-Y.

9 THE COURT: All right. Thank you. Again, ladies and
10 gentlemen, you've heard my charge two previous times as to an
11 individual qualified as an expert. Typically, an individual
12 cannot testify to opinions. However because of education,
13 training, experience with a person that holds expertise in a
14 particular art, science, profession, field, craft, they may
15 testify as to their opinions and as to the basis of their
16 opinions. This witness, Mr. Ricardo Leal, will be qualified
17 as an expert as the custodian of the records in telephony and
18 may give his opinions in that area and also the basis of those
19 opinions.

20 Any objections to that, Mr. Edgeworth?

21 MR. EDGEWORTH: Well, I'll object at the moment, Your
22 Honor, because I haven't heard any testimony regarding skill
23 or knowledge or explanation of exactly what telephony is.

24 THE COURT: Do you, do you -- all right. Solicitor, if
25 you would follow-up on that a little bit, please.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

553

1 BY MS. RICHARDSON:

2 Q: If you would explain to us what that is?

3 A: So, it's the interactions between cell phones and the
4 towers and how that works. Like I said earlier, I've been
5 qualified as an expert to the records. So, in order to
6 disseminate the records, you have to know what you're looking
7 at, but it all is in collaboration with the working pieces of
8 a network, a telephone network.

9 Q: So, would be a better title be an expert in cell phone
10 record ---

11 A: Correct.

12 Q: --- I'm sorry.

13 A: It's okay.

14 MS. RICHARDSON: So we'd modify for that purpose, Your
15 Honor.

16 MR. EDGEWORTH: No objection, Your Honor.

17 THE COURT: All right. Thank you. Thank you very much.
18 You may continue, Solicitor.

19 MS. RICHARDSON: Your Honor, I'm gonna pre-mark some
20 exhibits that Mr. Edgeworth has reviewed.

21 BY MS. RICHARDSON:

22 Q: Let me show you what's been marked as State's Exhibit
23 Number 161. Do you recognize that?

24 A: I recognize it as a disc; yes, ma'am.

25 Q: And have you -- and you were -- have reviewed that and

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 554
RICARDO LEAL - DIRECT BY RICHARDSON

1 the records associated with it?

2 A: I didn't review this actual disc to the best of my
3 knowledge. I did initial a disc earlier today. It has Sprint
4 on it ---

5 Q: Thank you.

6 A: --- but I'm not certain that that's the one that I
7 reviewed because I, I dated it and I initialed it.

8 Q: Well, let me -- we might've stuck that one in the
9 computer. We'll just hold off on that one.

10 A: Yes, ma'am.

11 Q: State's Exhibit Number 162 and 163, can you tell me what
12 those are?

13 A: Yes, ma'am. These are both responses from Sprint with
14 information for certain phone numbers of Sprint, subscriber
15 information for phone number, bear with me here, 843-860-2706
16 and 843-424-9379; that's on Exhibit 162. And then on Exhibit
17 163, it's information, subscriber information for 843-860-
18 2706.

19 Q: And are those records, records that are kept by Sprint in
20 the normal course of business?

21 A: Yes, ma'am.

22 Q: And are those an accurate reflection of the records that
23 were provided in this case by Sprint?

24 A: Yes, ma'am.

25 MS. RICHARDSON: At this time, I'd move State's 162 and

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

555

1 163 into evidence, Your Honor?

2 MR. EDGEWORTH: No objection, Your Honor.

3 THE COURT: State's 162 and 163 in evidence without
4 objection.

5 STATE'S EXHIBIT NUMBERS 162 AND 163

6 ADMITTED INTO EVIDENCE

7 BY MS. RICHARDSON:

8 Q: I'm gonna have you look at State's Exhibit 162 and tell
9 me what phone numbers those are attached to, what phone
10 numbers is that for?

11 A: Yes, ma'am. 843-860-2706, 843-424-9379, those are the
12 two numbers.

13 Q: Okay. And who -- who is the subscriber for those
14 numbers?

15 A: The first one, the 2706 number, it's in the name of
16 Antoinette Wilson.

17 MS. RICHARDSON: Your Honor, at this time, I'm gonna
18 substitute the disc that he initialed for the disc that was
19 initially placed in the package of State's 161 for
20 identification. It's not been moved into evidence.

21 THE COURT: All right. Yes, ma'am.

22 BY MS. RICHARDSON:

23 Q: Now, if you will look back at State's 161. Now do you
24 recognize that disc?

25 A: Yes, ma'am, I do recognize this disc.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

556

1 Q: Okay. And have you reviewed that disc?

2 A: Yes, I have.

3 Q: And how did you know that?

4 A: I reviewed the disc and after I reviewed it, I initialed
5 it and I dated it with today's date.

6 Q: Okay. And what does that disc contain?

7 A: It contains cell phone records.

8 Q: And those are the records that are kept in the normal
9 course of business with Sprint?

10 A: Yes, ma'am.

11 MS. RICHARDSON: And, Your Honor, at this time, I offer
12 State's 161 into evidence as a business record.

13 THE COURT: Mr. Edgeworth?

14 MR. EDGEWORTH: No objection, Your Honor.

15 THE COURT: State's 161 is in evidence without objection.

16 STATE'S EXHIBIT NUMBER 161

17 ADMITTED INTO EVIDENCE

18 A: This one also, the other number as well, still Antoinette
19 Wilson, both numbers.

20 BY MS. RICHARDSON:

21 Q: All right. You had just pointed out to me on the other
22 exhibit, there is another number?

23 A: Yes, ma'am.

24 Q: And would you tell me what that is?

25 A: The other number is 843-424-9379 and it as well is in the

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

557

1 name of Antoinette Wilson.

2 Q: So, two numbers that are subscribed to her?

3 A: Yes, ma'am.

4 THE COURT: The last four is 9279; is that right?

5 A: One moment, Your Honor. 9379, 843-249 -- 843-424-9379.

6 I apologize.

7 THE COURT: Thank you.

8 BY MS. RICHARDSON:

9 Q: And let me show you what's been marked State's Exhibit
10 164 and can you tell me what that is?

11 A: Yes, ma'am, I can. It is a key of a cell tower, three-
12 sector tower layout. It is a key that gives you the basic
13 understanding of how a cell tower will be set up.

14 Q: And is that also kept in the normal course of business at
15 Sprint?

16 A: Yes, ma'am.

17 MS. RICHARDSON: Okay. Your Honor, I'd move this exhibit
18 into evidence, 164.

19 MR. EDGEWORTH: No objection, Your Honor.

20 THE COURT: 164 is in evidence without objection.

21 STATE'S EXHIBIT NUMBER 164

22 ADMITTED INTO EVIDENCE

23 BY MS. RICHARDSON:

24 Q: I'm gonna go ahead and show you the rest of these, State's
25 Exhibit 165, can you tell me what that is?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 558
RICARDO LEAL - DIRECT BY RICHARDSON

1 A: Yes, I can. It is Repoll List 690. It is a list that
2 contains all the towers in a given location and this is --
3 it's named Columbia, but it's all the cell towers for a
4 general area. So, anything that correlates with Repoll, R-E-
5 P-O-L-L, 690, you would need this list to interpret the cell
6 site data, which is contained within the records.

7 Q: And again, that's a record that's kept in the normal
8 course of business at Sprint?

9 A: Yes, ma'am.

10 MS. RICHARDSON: Your Honor, I would move this document
11 into evidence.

12 MR. EDGEWORTH: No objection, Your Honor.

13 THE COURT: 165 is in evidence without objection.

14 STATE'S EXHIBIT NUMBER 165

15 ADMITTED INTO EVIDENCE

16 BY MS. RICHARDSON:

17 Q: And State's 166, can you tell me what that is?

18 A: Yes, I can. It is a map of Georgetown that I did not
19 create, but it has tower locations for the corresponding cell
20 towers that are comprised within the call detail records and
21 cell site information of Sprint.

22 Q: But you have reviewed this and compared it to the records
23 with Sprint?

24 A: Yes, ma'am.

25 Q: Okay. And you are able to verify that this is an

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 559
RICARDO LEAL - DIRECT BY RICHARDSON

1 accurate representation of the general location of those cell
2 towers?

3 A: Correct.

4 MS. RICHARDSON: At this time, I move State's Exhibit 166
5 into evidence.

6 MR. EDGEWORTH: No objection, Your Honor.

7 THE COURT: State's 166 in evidence without objection.

8 STATE'S EXHIBIT NUMBER 166

9 ADMITTED INTO EVIDENCE

10 BY MS. RICHARDSON:

11 Q: All right. And I'm gonna show at one time State's
12 Exhibit 167, 168 and 169. Can you tell me what those are?

13 A: I can. Call detail records with cell site information
14 for phone number 843-860-2706 for the dates of August 23rd,
15 2012 through August 29th of 2012; that's Exhibit 167. Exhibit
16 168 are call detail records along with cell site information
17 for phone number 843-424-9379 for the dates of August 23rd,
18 2012 through August 29th of 2012. State's Exhibit 169 are
19 call detail records for 843-640-6206 for the dates of August
20 1st, 2012 through August September 2nd, 2012 as well as
21 another cell site list that corresponds with those records or
22 repoll list.

23 Q: Okay. And are all of those records kept in the normal
24 course of business at Sprint?

25 A: Yes, ma'am.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 560
RICARDO LEAL - DIRECT BY RICHARDSON

1 MS. RICHARDSON: And at this time, Your Honor, I'd move
2 those exhibits into evidence.

3 MR. EDGEWORTH: No objection, Your Honor.

4 THE COURT: State's 167, 168 and 169 in evidence without
5 objection.

6 STATE'S EXHIBIT NUMBERS 167 THROUGH 169

7 ADMITTED INTO EVIDENCE

8 MS. RICHARDSON: Your Honor, and permission to publish these
9 to the Jury electronically while he refers to the paper
10 documents?

11 THE COURT: Yes, ma'am.

12 MS. RICHARDSON: If we could, Madam Clerk, if we could
13 turn on ---

14 BY MS. RICHARDSON:

15 Q: And if you would refer to State's 162?

16 A: Okay.

17 Q: And that's the document that you testified is subscriber
18 information for two different phone numbers; is that right?

19 A: Yes, ma'am.

20 Q: And that was provided to whom?

21 A: It was provided to Keith Small with Georgetown Police
22 Department.

23 Q: Okay. And it contained the information regarding the
24 subscriber for that phone?

25 A: Yes, ma'am.

STATE V. RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 561
RICARDO LEAL - DIRECT BY RICHARDSON

1 Q: Okay. I'm sorry, we pulled up the wrong exhibit. And
2 that's the one that contained two separate telephone numbers?

3 A: Yes, ma'am.

4 Q: And when you -- if you would refer to State's Exhibit
5 Number 165, which is the repoll list?

6 A: Okay.

7 Q: Can you tell me which towers are located in -- that you
8 used in reference to these records in Georgetown?

9 A: I can. The Cell ID 4, 5, and 221.

10 Q: Court's indulgence. This is pulling in the ---

11 And if I could refer you to -- all right. I'm gonna give
12 up on technology for right now. If you would just shut that
13 down, Madam Clerk, we'll just do it the old fashioned way.

14 Could you tell me where cell tower 4 is located on that
15 list?

16 A: I can. It is located at 503 North Hazard Street. The
17 tower is located in the vicinity of that address.

18 Q: Okay.

19 A: I have latitude and longitude.

20 Q: And can you point out where it is on this map?

21 A: May I stand?

22 THE COURT: Yes, sir.

23 MS. RICHARDSON: Can he come in front of the jury box,
24 Your Honor?

25 THE COURT: Of course. You may step in front of the

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 562
RICARDO LEAL - DIRECT BY RICHARDSON

1 Jury and just keep your voice up when you're away from the
2 microphone?

3 A: Yes, Your Honor.

4 So, it's located here (indicating). In there; you see
5 that?

6 BY MS. RICHARDSON:

7 Q: All right. And Cell Tower 5, can you tell me where
8 that's located?

9 A: I absolutely can. It is located at -- it's in the
10 vicinity of 187 North Boundary Road in Debordieu, which is in
11 Georgetown.

12 Q: Okay. Can you show ---

13 A: Which is located here (indicating).

14 Q: Okay. And it's noted as the Debordieu Tower?

15 A: Yes, ma'am.

16 Q: Okay. And then can you tell me where tower 221 is?

17 A: 221 is located at 474 Penny Royal Road in, in Georgetown,
18 which on the map is located here.

19 Q: Okay. So, we're talking about a Hazard Street Tower,
20 Debordieu and Penny Royal?

21 A: Yes, ma'am.

22 Q: Thank you.

23 A: You're welcome.

24 Q: And let me show you State's Exhibit Number 164.

25 A: Thank you, ma'am.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

563

1 Q: And that describes three sector layouts?

2 A: Yes.

3 Q: Can you describe or explain to the Jury how -- how a
4 sector works with each tower.

5 A: I can. So, the towers are situated so that they get
6 maximum efficiency for telephone usage, handset usage. In a
7 perfect world, they would be set up at zero due north. So
8 zero would be 360 and zero if you looked at it in a circle.
9 Okay. If you looked at it as a clock -- I use the clock as an
10 example -- with 12 being north, that would be zero and 360.
11 But they're not all situated in that fashion. So dependent on
12 the azimuth, which is the mid-point for each sector, that's
13 how the sectors are set up and I would -- you would refer to
14 the information, the azimuth information and how that tower is
15 layed out by looking at the repoll list. So, the repoll list
16 gives you the information that you need in order to
17 disseminate the cell tower or cell ID information as well as
18 the sector and how that sector is placed as the mid-point for
19 each one of those sides of the tower. So sector is the same
20 as a side; typically, it's three-sided. So, you'll have 120,
21 120 and 120 to make up the 360 degrees.

22 Q: Okay. And that just pretty much like you said, it just
23 determines which side of the tower?

24 A: Correct. That the radio frequency from the telephone is
25 receiving either to or from the antennae that is located on

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

564

1 the tower.

2 Q: And how do you generally describe those sectors?

3 A: There is an alpha, a beta, and a gamma.

4 Q: And do you have a directional description for that?

5 A: Yes, ma'am. So, with Sprint, the alpha sector will be
6 the northern sector; the Beta sector will be fashioned in a
7 southeast, okay, so it'll be southeast; and then the Gamma
8 sector will be facing southwest, but it's all dependent on the
9 orientation of each mid-point or azimuth for each sector.

10 Q: So, some of these sectors or this triangle could, instead
11 of being straight up and down on a map, north could be skewed;
12 is that what you're saying?

13 A: Slightly, in order to, to -- I'm trying to give you a
14 visual. So, if I look back at the clock and as I spoke to
15 earlier, and I said in a perfect world zero would be north;
16 well the mid-point would be zero and 360. So, the sector
17 would be split at high noon at 12 o'clock, right? So that
18 would be the northern sector. If the phone was north of that
19 tower, it would be somewhere in the vicinity of the northern
20 piece of that tower. And then if it was southeast, I would
21 use like the 3, the 3 on the clock might be the mid-point or
22 the 4, somewhere in between there depending on the degree that
23 the azimuth or the mid-point of that sector is. And so
24 anything, if the phone was communicating with that tower and
25 it showed a 3 as the first digit of the cell ID information,

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 565
RICARDO LEAL - DIRECT BY RICHARDSON

1 which is on the actual call detail records and cell site that
2 information, the 3 designates a southeast direction. So, the
3 phone would be receiving or sending from somewhere southeast
4 or somewhere in between the 3 and the 5, that's where that
5 mid-point would be and it'd be going in that direction.

6 Q: And so basically what all that means, let me just make
7 sure I'm clear on this, if that -- when you have a tower, such
8 as this one in Georgetown ---

9 A: Yes, ma'am.

10 Q: --- you're able to look at the records and use the sector
11 information to tell whether the tower footprint that was being
12 used was north -- north of the tower, southeast of the tower
13 or southwest of the tower?

14 A: Yes, ma'am.

15 Q: Okay. And that's the Alpha, Beta, Gamma?

16 A: Correct.

17 Q: Okay. I'm gonna try this one more time. (To Clerk) If
18 you can turn on the monitors so that the Jury is able to see
19 what you're talking about. I'm gonna have you refer to this
20 big document, State's Exhibit 169?

21 A: Okay.

22 Q: And just at the top of the document, can you explain to
23 the Jury just basically how cell phone records are organized?

24 A: I can.

25 Q: I want to point to each column if that'll give you ---

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 566
RICARDO LEAL - DIRECT BY RICHARDSON

1 A: Okay.

2 Q: You okay?

3 A: Yes, ma'am. So, the far left column is the calling
4 number; it's the number that's actually doing the calling.
5 The second column from the left is the called number. It's
6 the number that's being called. The third column is the
7 dialed digits column and in that column it gives the actual
8 dialed digits. Whatever was actually dialed. The -- within
9 that same scope, I'm gonna go ahead say and something because
10 it's relevant. The -- if there are no dialed digits and
11 they're -- if it's blank, that is a designation of a text
12 message. Okay. So, when there are no doubt digits and there
13 is zero duration, we'll get that in a couple -- do that in a
14 couple of more columns, but there is no time involved in text.
15 So, when you see duration that means that there was either a
16 call or it went to voice mail or it was -- there was a call
17 that was attached to the network for some amount of time.
18 The fourth column is the MR column. It says and MR# it's the
19 mobile roll column. It designates what type of call is
20 taking place, whether it's an incoming call -- an incoming
21 call is a call that goes to the 6206 number. An outgoing call
22 is a call that is leaving the 6206 number and going to the
23 number that is designated in the called number column. The --
24 the other type of call here is a routed call. And a routed
25 call in these instances is a call that is routed to voice

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 567
RICARDO LEAL - DIRECT BY RICHARDSON

1 mail. In the -- in the 7th and 8th line of the called number
2 column, you'll see some parenthesis and a 6245, that, that
3 6245 designate number spells out mail on your phone. So, if
4 you were to look at your phone at the lettering on your phone,
5 the 6 is an M, the 2 is an A and so on. So, that spells mail.
6 That means that a call went to voice mail. They called into
7 voice mail.

8 The next column is the start date column. It's the date
9 and time. The date and time in military time. So, it is a
10 2400 hour clock. 2300 would be 11:00 P.M., 0600 or 600 would
11 be 6:00 A.M. The end date, same thing, it gives the date of
12 the transaction or call or text, what have you, as well as the
13 end time for that call, text or voice mail. The duration is
14 the time that is involved with each call or voice mail and
15 it's in seconds. So, we bill in minutes, but as a phone
16 company, we designate it by seconds. The repoll number, R-E-
17 P-O-L-L, is the number for the calls and/or text message
18 gateways that are being utilized. In this instance, 690 for
19 the records of 6206 or 843-640-6206. 690 is the repoll list
20 that is utilized in order to disseminate the information for
21 all cell tower information that is comprised by these records.
22 And then the first cell and the last cell, if you look at the
23 first line, it has a number 4005. 4 is the sector for the
24 side of the tower that the call was received from and 005 is
25 the cell ID for that specific initial transaction. So, when

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 568
RICARDO LEAL - DIRECT BY RICHARDSON

1 this call took place, it was an incoming call to the 6206
2 number and cell ID 5 was the tower that was utilized and it
3 was also the tower that was utilized at the end of the call or
4 when the call finalized.

5 Q: All right. I'm gonna refer you now to State's Exhibit
6 Number 167 and then 168.

7 A: Okay.

8 Q: And what -- 167, what number of those records for?

9 A: 167 are records for phone number 843-860-2706.

10 Q: Okay. And you have already testified as to who -- that
11 that was subscribed to Antoinette Wilson?

12 A: Yes, ma'am.

13 THE COURT: Solicitor, can it be rotated?

14 MS. RICHARDSON: I am almost afraid to try.

15 THE COURT: Thank you.

16 MS. RICHARDSON: This, this information will be real
17 brief, if you could just -- if everyone could bear with me on
18 these the records, the more voluminous records, will be in the
19 right direction.

20 THE COURT: All right. Thank you. Thank you, Solicitor.

21 MS. RICHARDSON: And I apologize, but I'm afraid it'll
22 shut down on me again.

23 THE COURT: I didn't mean to interrupt you, Mr. Leal.

24 A: That's fine, Your Honor.

25 BY MS. RICHARDSON:

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 569
RICARDO LEAL - DIRECT BY RICHARDSON

1 Q: If you would flip to the last page of those records
2 please.

3 A: Yes, ma'am.

4 Q: And would you tell me the -- let's discuss this last call
5 on the record. Could you tell me the date and time of that
6 call?

7 A: The last call on the records is a incoming call to 843-
8 860-2706 from phone number 843-543-1400. That call is on
9 8/29/2012 at 19:41:15 or 7:41:15; am I right? And then it
10 finalized at 19:47:39.

11 Q: Okay. And can you tell what tower that call was made
12 from?

13 A: It was utilizing the Tower 4, which is 503 North Hazard
14 Street.

15 Q: Okay. And in what sector or direction?

16 A: It was using the northern sector or the Alpha sector.

17 Q: Okay. So, if you wouldn't mind stepping down at this
18 map.

19 A: I beg your pardon, it was the southeast, southeast.

20 Q: Okay. So that would be ---

21 A: Beta.

22 Q: Okay. So, looking at this map, which tower, Hazard
23 Street?

24 A: Hazard Street is here.

25 Q: Okay. And generally what direction?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 570
RICARDO LEAL - DIRECT BY RICHARDSON

1 A: So, generally -- I'm gonna -- I need to look at the
2 azimuth here, but it's at 1:50. So, it's gonna be in this
3 area over here.

4 Q: Okay. Is everybody able to see that? Okay. So that's
5 basically how you kinda line up the cell phone records with
6 the map and the location of the cell towers?

7 A: Yes, ma'am.

8 Q: Okay. So on August 29th, the last call on the records
9 subscribed to Antoinette Wilson were on the Hazard Street
10 tower?

11 A: Yes, ma'am.

12 Q: Okay. And if you'll refer to the other set of records of
13 Mark Dozier and this is the -- what records of this -- are
14 these for; what cell phone number?

15 A: Okay. Is it 168?

16 Q: Yes. What cell phone number is that for?

17 A: It's for phone number 843-424-9379.

18 Q: And that's also, you previously testified, subscriber
19 information from Antoinette Wilson?

20 A: Yes, ma'am.

21 Q: Both of those numbers. Thank you. And again if you will
22 refer to the end of that document?

23 A: Okay.

24 Q: And the last cell tower used on those records is what
25 cell tower?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 571
RICARDO LEAL - DIRECT BY RICHARDSON

1 A: The last cell tower that was utilized for 843-424-9379
2 was the Tower 30004 which is Tower 4, that's the cell ID
3 number and it's 503 North Hazard Street.

4 Q: Okay. So the same information as the previous set of
5 records?

6 A: Correct.

7 Q: Now, if you will refer to the large exhibit which I
8 believe is State's Exhibit 169?

9 A: Okay.

10 Q: And first of all, let me show you -- let me mark this,
11 what has been marked as State's 170?

12 A: Okay.

13 Q: And do you recognize that document?

14 A: Yes, I do.

15 Q: Okay.

16 A: It's a request that was sent out by Sprint on December
17 5th or October 5th, 2012 to John Gregory with the Georgetown
18 Police Department. It's call detail records and subscriber
19 information for phone number 843-640-6206.

20 Q: Okay. And is that also kept in the normal course of
21 business?

22 A: Yes, ma'am.

23 MS. RICHARDSON: I'd also offer this into evidence, Your
24 Honor, State's 170?

25 MR. EDGEWORTH: No objection, Your Honor.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 572
RICARDO LEAL - DIRECT BY RICHARDSON

1 THE COURT: State's 170 is in evidence without objection.

2 STATE'S EXHIBIT NUMBER 170

3 ADMITTED INTO EVIDENCE

4 BY MS. RICHARDSON:

5 Q: And for that phone number, 843-640-6206, who is the
6 subscriber?

7 A: The subscriber for that phone number, it's in the name of
8 Isaac Geathers.

9 Q: And State's Exhibit 169, the big package of records, if I
10 could refer you back to that?

11 A: Yes, ma'am.

12 Q: Is that the call detail for the phone that -- or the
13 phone number that is subscribed to Mr. Isaac Geathers?

14 A: Yes, ma'am.

15 Q: Okay. And that's the account holder, who the bill comes
16 to basically?

17 A: Yes, ma'am, that is the account holder; that's the name
18 for that specific subscriber.

19 Q: Okay. And I could refer you to Page 233 of those
20 records?

21 A: I think you have those, 233 and 234.

22 Q: Are those missing from your copies?

23 A: Yes, ma'am.

24 MS. RICHARDSON: Permission to substitute the missing
25 pages into this record, Your Honor?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

573

1 MR. EDGEWORTH: No objection.

2 BY MS. RICHARDSON:

3 Q: I apologize.

4 A: No problem. Okay.

5 Q: All right. And if you would, let me just make sure I'm
6 at the right spot on this. Okay. What's the first call on
7 those records?

8 A: Page 233, there is a call from 843-640-6206 and they
9 called number 843-461-7756.

10 Q: Okay. Right here. And what time is that?

11 A: It said 22:53:12.

12 Q: Okay.

13 A: Or 10:53:12.

14 Q: Okay. And looking at the cell information, can you tell
15 what tower and sector that call is made from or which cell
16 tower footprints that call would have been utilizing?

17 A: No, ma'am, there is no cell tower information for that
18 first transaction. The first cell tower information is in the
19 call that is directly underneath that. That incoming call
20 from phone number 843-461-7756 to the number 843-640-6206
21 which is the record holder number.

22 Q: And which cell tower and sector would that have been
23 utilizing?

24 A: It is utilizing the tower that is located at 187 North
25 Boundary Road.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 574
RICARDO LEAL - DIRECT BY RICHARDSON

1 Q: Okay. And what sector of that?

2 A: And it's the southwest side of that tower.

3 Q: All right. And which tower is -- is that the Debordieu
4 Tower?

5 A: Yes, ma'am.

6 Q: Okay. And so can you show the Jury what areas would've
7 been utilizing that tower?

8 A: So, this would be the tower and it would be in this area
9 (indicating).

10 Q: And it could actually go -- it'd be across the water
11 there?

12 A: Yes, ma'am.

13 Q: Okay. Is everybody able to see that? So Number 5 is
14 Debordieu, so it would've been in that area across ---

15 A: Correct.

16 Q: --- it could be across the water there?

17 A: Yes.

18 Q: Okay.

19 A: Possibility.

20 Q: Then let me refer you to this call. Can you identify
21 where the -- the next call that has a different cell tower
22 location?

23 A: Yes, ma'am. There is a outgoing transaction or a call
24 from 6206 to -- pardon me -- 843-532-1458 on 8/29/12 at
25 23:14:55 or 11:14:55 that utilizes the cell tower that's

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 575
RICARDO LEAL - DIRECT BY RICHARDSON

1 located at 503 North Hazard Street.

2 Q: And then the next tower change?

3 A: The next tower change is a call that is outgoing from
4 843-640-6206, which is the phone number for the records to the
5 1458 number at 23:44:03 or 11:43 or 11:44 and 03 seconds and
6 that is utilizing the tower that is located in Debordieu.

7 Q: And again, that same sector as before?

8 A: Yes, ma'am.

9 Q: Now, I gonna point you to a call at 1:03 and that's a
10 different sector, 30221?

11 A: Yes, ma'am.

12 Q: Okay. And which tower and sector would that be?

13 A: So, that tower is the tower that is located at 474 Penny
14 Royal Road in Georgetown. It's the one that's south in the
15 corner of the map and that is the southeast side of that
16 tower.

17 Q: Okay. So, again, the Penny Royal Tower over here?

18 A: Yes, ma'am.

19 Q: Okay. And it would be easterly/southeasterly direction
20 from that tower?

21 A: Correct.

22 Q: Okay. So, back kinda towards the water?

23 A: Correct.

24 Q: All right. And then there's another change from at 1:13
25 and 1:14 and it's between those two, same two towers we talked

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 576
RICARDO LEAL - DIRECT BY RICHARDSON

1 about earlier?

2 A: Yes, ma'am. It's at 1:13 A.M. there's an incoming call
3 to the 6206 number and ---

4 Q: What number is that from?

5 A: That is the subscriber information of Isaac Geathers,
6 call detail records for that phone.

7 Q: And the call is coming in from what number?

8 A: It was coming in from at 1:13, correct, that's where
9 we're at. At 1:13 from 843-315-5366.

10 Q: And then another call at that same time?

11 A: Yes, ma'am.

12 Q: From the same information?

13 A: Directly after at 1:14 in the morning.

14 Q: And that's to a different tower?

15 A: Yes.

16 Q: The Penny Royal Tower. And then if you would refer down,
17 it switches over again to Tower 3004?

18 A: Yes, ma'am.

19 Q: Okay. And could you tell me the time of that?

20 A: So, at 1:38:05 on August 30th, 2012, the first call takes
21 place and that is the tower that is located at 503 North
22 Hazard Street and it's emanating from the southeast side of
23 that tower.

24 Q: Okay. So, just to sort of summarize where we are so far,
25 the cell towers that were being used moved from the southwest

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
RICARDO LEAL - DIRECT BY RICHARDSON

577

1 side of this tower; is that right?

2 A: Correct.

3 Q: To the southeast side of this tower?

4 A: Yes, ma'am.

5 Q: And then into the Hazard Street Tower?

6 A: Yes, ma'am.

7 Q: And that's the southeast side of that?

8 A: Correct.

9 Q: Okay. So, from here, from this, to here, to up here?

10 A: Yes, ma'am, that's pretty much , from what we just spoke
11 of, this entire area in there.

12 Q: Okay. All right. And what time is that first call in
13 this section that utilizes that Hazard Street Tower?

14 A: The Hazard Street Tower first gets -- first gets used at
15 23:14:15 or 23:14:55, which is 11:14 on the August 29th, 2012,
16 and then again at 23:15 and again at 23:23.

17 Q: And then beginning at 1:38 A.M.?

18 A: At 1:38 A.M. it starts back using that same tower located
19 at 503 North Hazard Street and then ---

20 Q: And that is the outgoing call to that number 843-315-
21 5366?

22 A: Yes, ma'am.

23 Q: And is that call to that number repeated and you go over
24 the succession of calls to that number?

25 A: I absolutely can. It's at 1:38:05, these are all

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 578
RICARDO LEAL - DIRECT BY RICHARDSON

1 outgoing calls on August 30th, 2012 or the morning of August
2 30th, 2012. And then there's another one at 1:41 A.M. and 36
3 seconds. There's another one at 1:43 A.M. and 31 seconds.
4 Then at 1:45 and 10 seconds, 1:46, 1:46:05 -- pardon me. The
5 1:46 call is actually a call that goes to another number.
6 It's 843-359-4346. Then immediately after that, at 1:46:05 it
7 resumes calling 843-315-5366; and then at 1:47; 1:47:43;
8 1:48:46; 1:49:29; 1:50:09; 1:51:16; 1:59:28; and then at 2:00
9 A.M. and 6 seconds is the last call.

10 Q: And all of those were to the same number in rapid
11 succession and all using that same tower on Hazard Street?

12 A: Yes, ma'am.

13 Q: And then there is an incoming call?

14 A: There is.

15 Q: And what numbers are the incoming -- I guess there's two
16 incoming calls; what are they to?

17 A: There is a call from 843-315-5366. Actually, there's
18 two; one at 2:00 A.M. and 17 seconds and then another one at
19 2:00 A.M. and 32 minutes and 10 seconds.

20 Q: Okay. And then we shift towers at that point, the next
21 call?

22 A: Yes, ma'am.

23 Q: And what is from?

24 A: The, the tower that's being utilized is the tower that's
25 located ---

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 579
RICARDO LEAL - DIRECT BY RICHARDSON

1 THE COURT: Excuse me just a minute. Sheriff, take care
2 of that back there for me, please. There's too much in and
3 out. If I have to lock the doors, I'll lock the doors.
4 Excuse me for interrupting.

5 A: No problem, Your Honor. So, at 2:32 in the morning and
6 10 seconds, there's an incoming call to 843-640-6206 from 843-
7 315-5366. That call is utilizing the tower that is located in
8 Debordieu at 187 North Boundary Road.

9 Q: And the next few calls are also from that same tower?

10 A: Yes, ma'am.

11 Q: And as far as these, what you described as text messages?

12 A: Yes.

13 Q: Can you tell me if there's anything special about the
14 date on text messages on there?

15 A: So a text message is -- the date and time -- text
16 messages, the date is not -- there's nothing different about
17 the date, but text messages are kept in central time. So, you
18 would have to deduct an hour where calls, phone calls, anytime
19 you see duration, it's wherever the phone is. So, if the
20 phone was operating in Georgetown, it would be eastern time.

21 Q: And there's no cell site information for the text
22 messages; is that right?

23 A: Correct. Text messages travel through text gateway and
24 they don't -- it's a messaging gateway ---

25 Q: Okay.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 580
RICARDO LEAL - CROSS BY EDGEWORTH

1 A: --- for information and there is no cell tower
2 information affiliated with that within our records.

3 Q: Court's indulgence. Thank you. I have no further
4 questions. Please answer any questions Mr. Edgeworth may have
5 for you.

6 A: Yes, ma'am.

7 THE COURT: Mr. -- Mr. Edgeworth.

8 MR. EDGEWORTH: Thank you, Your Honor. Briefly.

9 CROSS EXAMINATION OF RICARDO LEAL BY MR. EDGEWORTH:

10 Q: I apologize for the question, but am I correct in
11 assuming that the records cannot show who is actually using
12 the phone when the telephone call or text is made?

13 A: You're correct, sir.

14 Q: Thank you. No further questions.

15 THE COURT: Redirect?

16 MS. RICHARDSON: None, Your Honor. I'd ask that this
17 witness be excused from his subpoenas?

18 THE COURT: Any objections?

19 MR. EDGEWORTH: No objection, Your Honor.

20 THE COURT: Thank you. Thank you for being with us, Mr.
21 Leal.

22 A: Thank you, Your Honor. I appreciate it.

23 THE COURT: It was a pleasure having you in our court.

24 A: Yes, sir.

25 THE COURT: And have a safe trip back. I guess you're

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 581
BY THE COURT

1 not watching the World Series being from where you're from?

2 A: No, sir. I caught a little -- a couple of glimpses of it
3 last night.

4 THE COURT: All right. Why don't we -- why don't we take
5 about a ten-minute recess and let, let me see where we're at
6 administratively, about a ten-minute recess, ladies and
7 gentlemen, if you'd step to your jury room.

8 (REPORTER'S NOTE: Jury exits courtroom. 4:53 P.M. The
9 following takes place outside the presence of the Jury.)

10 THE COURT: All right. Solicitor, how many more
11 witnesses do you have?

12 MS. RICHARDSON: Your Honor, I've been -- I have one more
13 I'd like to do today and then anybody else I can move to
14 tomorrow morning.

15 THE COURT: How many do you have total left?

16 MS. RICHARDSON: Probably three total I think. Four
17 total.

18 THE COURT: Four total. And what -- give me your
19 estimated length of time it would take for those three, those
20 four -- all of your witnesses?

21 MS. RICHARDSON: Your Honor, I would estimate until --
22 you mean now or in the morning or just in general?

23 THE COURT: Yes, ma'am, in general.

24 MS. RICHARDSON: Probably two to three hours.

25 THE COURT: Are they all present?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 582
BY THE COURT

1 MS. RICHARDSON: No, Your Honor. We had -- because of
2 the late hour, I had some come from -- plan to come in the
3 morning.

4 THE COURT: All right. How many do you have present?

5 MS. RICHARDSON: I believe just one more right now, Your
6 Honor.

7 THE COURT: So, you only have one more present?

8 MS. RICHARDSON: One more present. I believe we've sent
9 the others back if I'm not mistaken because we didn't -- I
10 didn't think we would get to them based on the hour.

11 THE COURT: How long is that witness gonna take?

12 MS. RICHARDSON: It should be pretty brief, Your Honor.

13 THE COURT: Okay. All right. Mr. -- thank you,
14 Solicitor. Mr. Edgeworth, do you want me to go ahead now and
15 advise your client of his right to testify or not to testify
16 so he can have the -- I realize we're not at that stage of the
17 trial when the State has rested but I could still have that
18 colloquy with him and he would have the opportunity to think
19 about it overnight and also perhaps discuss it further with
20 you. He seems to be obviously engaged in assisting in his
21 defense and I would take it he's an intelligent young man.
22 And as I say that, give him over the night hours to think
23 about it.

24 MR. EDGEWORTH: That would be fine, Your Honor.

25 THE COURT: All right. Do y'all usually in this

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 583
DAMONTE RIVERA - BY THE COURT

1 courtroom, they stand where they're at? Is that how you
2 typically do it?

3 MS. RICHARDSON: Yes, Your Honor.

4 THE COURT: All right. If you'd please stand for me, Mr.
5 Rivera.

6 Madame Clerk, would you please place Mr. Rivera under
7 oath?

8 DAMONTE RIVERA, HAVING BEEN SWORN
9 TESTIFIES AS FOLLOWS:

10 CLERK: Thank you.

11 THE COURT: Mr. Rivera, I do this with everyone who is on
12 trial and, therefore, I place you under oath because I place
13 everybody under oath concerning this matter.

14 Can you tell me your full name?

15 MR. RIVERA: Yeah, Damonte Marquez Rivera.

16 THE COURT: All right. Mr. Rivera, and how old are you?

17 MR. RIVERA: Twenty-two.

18 THE COURT: And how much -- how much education do you
19 have?

20 MR. RIVERA: I has no more than the seventh grade.

21 THE COURT: All right. You've heard the Solicitor
22 previously say she has, I believe, about four more witnesses
23 and we'll probably be at the stage of the trial where the
24 State would rest its case in the morning. Of course at point,
25 I would hear motions, I'm sure, from your attorney and rule on

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 584
DAMONTE RIVERA - BY THE COURT

1 those motions. We would -- we may get to the stage, however,
2 where once the State rested, your side, the Defense would
3 present evidence and testimony. Do you understand that?

4 MR. RIVERA: Yes, sir.

5 THE COURT: And of course, I believe your attorney has
6 already presented certain items of evidence perhaps Defense 1
7 and Defense 2 has already been presented into evidence; do you
8 understand that?

9 MR. RIVERA: Yes, sir.

10 THE COURT: Mr. Rivera, you have an absolute right to
11 testify or not testify. If you choose not to testify, I would
12 tell this Jury that they could not hold it against you that
13 you failed to testify in this case. Further, I will tell that
14 Jury they could not even discuss the fact that you did not
15 testify in this case in the jury room. Do you understand?

16 MR. RIVERA: Yes, sir.

17 THE COURT: As I have stated, you have the absolute right
18 to testify or the right not to testify. Additionally, your
19 attorney could call witnesses besides yourself on your behalf;
20 do you understand that?

21 MR. RIVERA: Yes, sir.

22 THE COURT: I take it, Mr. Edgeworth the issue of final
23 closing argument to the Jury is now off the table because
24 you've already offered exhibits into evidence, correct?

25 MR. EDGEWORTH: Yes, Your Honor.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 585
DAMONTE RIVERA - BY THE COURT

1 THE COURT: You agree with that?

2 MR. EDGEWORTH: Yes, Your Honor.

3 THE COURT: Does your client have any prior criminal
4 history, Mr. Edgeworth, that would subject him to impeachment
5 under Rule 609?

6 MR. EDGEWORTH: Yes, Your Honor.

7 THE COURT: And what -- what would that be, either you or
8 the Solicitor could inform me of that?

9 MR. EDGEWORTH: I'm sorry, Your Honor.

10 MS. RICHARDSON: Your Honor, I did not bring those
11 records up here, but I can certainly -- I'm sorry.

12 THE COURT: We'll talk about it more tomorrow. I mean,
13 you can discuss it with your attorney tonight. If you have
14 prior criminal convictions, depending on what they are, in
15 other words, if you've had prior convictions for which you
16 could receive a sentence of more than one year, regardless of
17 what sentence you receive, or if you have prior crime -- if
18 you have crimes of dishonesty or falsehood or the like, or if
19 you other -- there's a time limit on them. If they're over
20 ten years, the State would have to put you on notice. The
21 Prosecutor would be able to, of course your attorney could ask
22 you also if you have that prior criminal history, they could
23 ask you that in front of the Jury. All they could say is
24 whether or not you've been convicted of, of this particular
25 crime or that particular crime. If you took the stand and

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 586
DAMONTE RIVERA - BY THE COURT

1 they ask you those question, I will tell this Jury that they
2 can consider those prior crimes, if they consider at all, only
3 as it goes to your credibility, your believability; do you
4 understand?

5 MR. RIVERA: Yes, sir.

6 THE COURT: We'll, we'll get that -- we'll get that
7 straight before you have to tell me your decision. Now, Mr.
8 Rivera, the decision about whether you testify or not is your
9 decision to make and yours alone. I expect that you have
10 conferred with your attorneys and perhaps others whose
11 opinions you value on life's very important decisions, but the
12 decision about you -- whether you testify or not is your call
13 to make, your decision. Do you understand?

14 MR. RIVERA: Yes, sir.

15 THE COURT: Has anyone exercised any undue influence over
16 you to get you to choose to testify or not to testify?

17 MR. RIVERA: No, sir.

18 THE COURT: Today are you under the influence of any
19 medications, drugs or alcohol or anything that may affect your
20 thinking ability?

21 MR. RIVERA: No, sir.

22 THE COURT: Do you suffer from any physical or mental
23 problems that affect your thinking today?

24 MR. RIVERA: No, sir.

25 THE COURT: Do you have any questions you would like to

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
DAMONTE RIVERA - BY THE COURT

587

1 ask me about your right to testify or not to testify?

2 MR. RIVERA: No, sir.

3 THE COURT: All right. And I'm not -- I'm not gonna ask
4 you to give me or tell me if you made an opinion or what that
5 opinion is tonight or now. Perhaps you could discuss it over
6 the evening hours and even in the morning. All right. Thank
7 you. Thank you very much, Mr. Rivera. You may be seated.

8 MR. EDGEWORTH: Thank you, Your Honor.

9 THE COURT: All right. So, we want to call that next
10 witness, Solicitor?

11 MS. RICHARDSON: Yes, Your Honor.

12 THE COURT: All right.

13 (REPORTER'S NOTE: Jury exits courtroom. 5:03 P.M.)

14 THE COURT: All right. Solicitor, our Jury is back.
15 We're gonna have one more witness for the evening, ladies and
16 gentlemen. So we're gonna press on. I'm not gonna tell you
17 how much it'll take. It's not fair to me, not fair to y'all.

18 Be that as it may, Solicitor, you may call your next
19 witness.

20 MS. RICHARDSON: Your Honor, I forgot that there was
21 actually two out there.

22 THE COURT: All right.

23 MS. RICHARDSON: But they shouldn't take very long.

24 THE COURT: All right. Well, we'll try to -- we'll try
25 to press on a little bit if that's all right with our Jury

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 588
JENNIFER DALMIDA - DIRECT BY RICHARDSON

1 panel.

2 FOREMAN: That's okay..

3 THE COURT: All right. Thank you. Thank you very much.

4 MS. RICHARDSON: The State calls Jennifer Dalmida.

5 THE COURT: All right.

6 JENNIFER DALMIDA, HAVING BEEN SWORN

7 TESTIFIES AS FOLLOWS:

8 CLERK: Would you please spell your name for the Court?

9 MS. DALMIDA: Jennifer, J-E-N-N-I-F-E-R. Dalmida, D-A-L-
10 M-I-D-A.

11 CLERK: Thank you very much. If you'll have a seat.

12 THE COURT: All right. Solicitor?

13 DIRECT EXAMINATION OF JENNIFER DALMIDA BY MS. RICHARDSON:

14 Q: Ms. Dalmida, would you tell us where you're employed?

15 A: With Verizon.

16 Q: And what do you do with Verizon?

17 Q: I'm a Senior Analyst, as part of the appearance team.

18 A: And long have you been with Verizon?

19 A: Going on nine years.

20 Q: And in the normal course of Verizon's records, do they
21 keep cell phone data on their customers?

22 A: Yes.

23 Q: Do they also keep data on track phones? They're some
24 that don't necessarily subscribe to Verizon, can you explain
25 that?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
JENNIFER DALMIDA - DIRECT BY RICHARDSON

589

- 1 A: Well, we have resellers. We don't keep subscriber
2 information on that. We only keep network information.
3 Basically those numbers are leased to smaller companies that
4 use our network to transmit calls and data.
5 Q: So, are you a custodian of records for Verizon?
6 A: Yes.
7 Q: Okay. And did you provide records for cell number 843-
8 315-5366 to the Georgetown Police Department?
9 A: Yes.
10 Q: And do you have any subscriber information for those
11 records?
12 A: No.
13 Q: And why not; was he one of those resell phones?
14 A: It belonged to Star Wireless, correct.
15 Q: Okay. Let me show you what's been marked as State's
16 Exhibit Number 171 for identification. Can you tell me what
17 that is?
18 A: It's the copy of our call detail report.
19 Q: Okay. And it's for which number and for what dates?
20 A: It's for telephone number 843-315-5366 beginning on
21 August 17, 2012 through September 16th, 2012.
22 Q: And those records are kept in the normal course of
23 business?
24 A: Yes.
25 MS. RICHARDSON: At this time, I'd offer this exhibit

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 590
JENNIFER DALMIDA - DIRECT BY RICHARDSON

1 into evidence, Your Honor.

2 MR. EDGEWORTH: No objection, Your Honor.

3 THE COURT: State's 171 is in evidence without objection.

4 STATE'S EXHIBIT NUMBER 171

5 ADMITTED INTO EVIDENCE

6 BY MS. RICHARDSON:

7 Q: And is there a standardized way of reporting cell tower
8 data or does that vary from each company?

9 A: It varies.

10 Q: So, I'm gonna refer you on these records to August 30th
11 of 2012, if you could find that?

12 A: Okay.

13 Q: And on those records there's a column entitled cell site,
14 first serving cell site?

15 A: Yes.

16 Q: And most of those have what value in that column?

17 A: It has cell number 1642.

18 Q: Okay. And what does that tell you, as far as these
19 records are concerned?

20 A: It actually indicates the cell tower that the call
21 initiated on.

22 Q: And do you know the location of that tower?

23 A: We provided data for the location of the tower, yes.

24 Q: Let me hand you what's been marked as State's Exhibit
25 Number 172 and is that a list of the data provided regarding

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 591
JENNIFER DALMIDA - DIRECT BY RICHARDSON

1 cell tower locations?

2 A: Yes.

3 Q: And that's also kept in the normal course of business?

4 A: Yes.

5 Q: And does that data refresh your recollection regarding
6 the location of those towers?

7 A: Yes.

8 Q: Okay. So can you tell me where tower 1642 is located?

9 A: 1642 has a physical address of 120 North Condon Street in
10 Georgetown, South Carolina.

11 Q: Okay. And do you deal with sectors with that tower as
12 well?

13 A: Yes.

14 Q: And how do you determine or how do you identify sectors
15 on your call records?

16 A: On the call detail report, it'll be reflected under the
17 first serving cell base and the last serving cell base.

18 Q: And can you explain what data is put in that, what
19 numbers and how you distinguish?

20 A: So basically under the column for first serving cell
21 base, it will indicate either 0, 1, 2 or 3. That would
22 indicate on the cell tower itself where our subscriber was
23 located in position to that tower or that call to be
24 processed. So, if we take this information, we can refer to
25 the cell site address listed and it has azimuth and degrees

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 592
JENNIFER DALMIDA - DIRECT BY RICHARDSON

1 which basically indicates the location of the antennae on that
2 tower.

3 Q: And so with that, is that also related to Alpha, Beta,
4 Gamma?

5 A: It's -- we identify ours as 1, 2, 3.

6 Q: And what direction are 1, 2, 3 generally?

7 A: For 1642?

8 Q: Right?

9 A: 1642, Sector 1 has an azimuth of 30 degrees so that would
10 be simply covering the northeast position on the tower.

11 Sector 2 has a azimuth of 150 degrees and that would be simply
12 covering southeastern part of the tower. And Sector 3 has an
13 azimuth of 270 degrees so that would cover the western area of
14 the tower.

15 Q: Okay. And on your records, can we tell what -- whether
16 it's a call or text message, what type of contact was made?

17 A: Yes.

18 Q: Okay.

19 A: On these specific records, they would only indicate calls
20 that were either incoming or outgoing or forwarded to voice
21 mail. So, any call that was forwarded to voice mail would
22 indicate under the call direction column the letter F.

23 THE COURT: The letter what?

24 A: The letter F.

25 THE COURT: F. Thank you.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JENNIFER DALMIDA - DIRECT BY RICHARDSON

593

1 A: And ---

2 BY MS. RICHARDSON:

3 Q: Forwarded?

4 A: Correct.

5 Q: Okay.

6 A: And for incoming and outgoing calls, we refer to a
7 calling party number, which is the last column. So, if our
8 subscriber number is listed in that column that indicates our
9 subscriber was making an outbound call. If another number is
10 listed in that column, our subscriber was receiving a call.

11 Q: So, on the early morning of August 30th, 2012, beginning
12 at 1:38 A.M. could you tell me whether that was an incoming or
13 out coming call and who it was to or the number that it was
14 to?

15 A: On let's see, August 30th, 2012 at 1:38, telephone number
16 843-640-6206, let's see, place a call to our subscriber that
17 lasted seventy-five seconds.

18 Q: And then the next call?

19 A: The next call was a call that was actually forwarded to
20 voice mail and it was from 843-640-6206 to our subscriber.

21 Q: And after that, are there a number of calls from that
22 same number to your subscriber?

23 A: Yes.

24 Q: And do you know how many of those there were?

25 A: There were eleven voice mail calls.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 594
JENNIFER DALMIDA - CROSS BY EDGEWORTH

1 Q: Eleven calls from that 640-60 -- 6206 to your subscriber
2 or to the subscriber of these records?

3 A: Right.

4 Q: Okay. That were all forwarded to voice mail?

5 A: Correct.

6 Q: And that was between 1:38 in the morning and ended when
7 -- the last forwarded call?

8 A: The last forwarded call was at 1:59 in the morning.

9 Q: And from 1:38 to 1:59 that number called eleven times and
10 it's forwarded to voice mail?

11 A: Yes.

12 Q: Okay. Thank you. I have no further questions. Answer
13 any questions that Mr. Edgeworth may have for you.

14 THE COURT: Thank you, Solicitor.

15 Mr. Edgeworth?

16 MR. EDGEWORTH: Thank you, Your Honor. Thank you. Real
17 briefly. Thank you, Your Honor.

18 CROSS EXAMINATION OF JENNIFER DALMIDA BY MR. EDGEWORTH:

19 Q: I apologize for the question. Your records cannot
20 demonstrate who actually placed the phone call; is that
21 correct?

22 A: Correct.

23 Q: Thank you. No further questions.

24 THE COURT: Redirect, Solicitor?

25 MS. RICHARDSON: No, Your Honor. No further questions

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
GAILE HEATH - DIRECT BY BAILEY

595

1 for this witness and I'd ask that she be excused?

2 THE COURT: Any objections?

3 MR. EDGEWORTH: No objection, Your Honor.

4 THE COURT: Thank you. Thank you so much for being with
5 us. You may step down and you may be excused.

6 All right. You may call your next witness, Solicitor.

7 MS. RICHARDSON: Ms. Bailey is gonna call this witness,
8 Your Honor.

9 THE COURT: All right. You may call ---

10 MS. BAILEY: The State calls Gaile Heath.

11 THE COURT: All right. Ms. Heath, if you'd come around
12 for us please?

13 GAILE HEATH, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: All right. Ms. Gaile, would you please spell
16 your name for the Court?

17 MS. HEATH: G-A-I-L-E H-E-A-T-H.

18 CLERK: Thank you, Ms. Heath.

19 THE COURT: All right. Solicitor.

20 MS. BAILEY: Thank you, Your Honor.

21 DIRECT EXAMINATION OF GAILE HEATH BY MS. BAILEY:

22 Q: Ms. Heath, where do you work?

23 A: At the South Carolina Law Enforcement Division, commonly
24 known as SLED.

25 Q: And what is your role there?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 596
GAILE HEATH - DIRECT BY BAILEY

1 A: I'm a Forensic Scientist assigned to the questioned
2 documents section. I am a handwriting expert.

3 Q: Okay. Can you tell us a little bit how you got to that
4 current position and what's your education?

5 A: I have two undergraduate degrees from the University of
6 South Carolina; one of them in education and the other one in
7 history. I completed courses by the United States Secret
8 Service, the FBI and I've completed thirty-one years of
9 continuing education. I am Nationally Board Certified by the
10 American Board of Forensic Document Examiners, which is the
11 recognized body for my line of work.

12 Q: Do you do continuing education?

13 A: Yes, I do. I have for the last thirty-one years.

14 Q: Have you ever been qualified as an expert in this state
15 before?

16 A: Yes, I have.

17 Q: How many times roughly?

18 A: 181.

19 MS. BAILEY: At this time, the State would seek to
20 qualify Ms. Heath as an expert in handwriting analysis and
21 questioned documents?

22 MR. EDGEWORTH: No objection, Your Honor.

23 THE COURT: All right. Thank you. Again, ladies and
24 gentlemen, you've heard my charge twice on, on experts and
25 experts' opinions. This witness, Agent Gaile Heath, will be

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 597
GAILE HEATH - DIRECT BY BAILEY

1 qualified as an expert in the field of questioned documents,
2 handwriting -- is that the correct area?

3 MS. BAILEY: Yes, sir.

4 THE COURT: --- to give opinions and the basis of that
5 opinion and you may use those in any way you deem appropriate.
6 Thank you. Thank you very much.

7 Solicitor, you may continue.

8 MS. BAILEY: Thank you, Your Honor.

9 BY MS. BAILEY:

10 Q: Let me show you what has already been admitted as State's
11 Exhibit 142 and have you take a quick look at that. It's
12 rather lengthy, so why you kind of glance through that, could
13 you tell us a little bit about your methodology, just an
14 overview of how your process works when -- regarding
15 handwriting analysis?

16 A: Documents come into the laboratory and we receive two
17 types of documents. We receive something that's known as
18 known writing and that means it's known writing of an
19 individual. We know that that person wrote it and that's what
20 these particular items are. They are known handwriting of
21 Damonte Rivera and all -- they have my laboratory case number
22 on them and my item number on them. They were submitted to me
23 as his known handwriting sample. Then items that are
24 questioned, they don't know who wrote them and they want to
25 know who wrote them, those items are submitted. So, I have

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 598
GAILE HEATH - DIRECT BY BAILEY

1 questioned items and I have known items. Then I
2 microscopically examine the questioned items and the known
3 items comparing them for similarities as well as differences
4 because actually the differences are more important because
5 they -- they let you know that somebody may not have done
6 something. So I'm looking for both similarities and
7 differences microscopically and then I usually make photo
8 copies of the evidence and then I use a highlighter to mark
9 any similarities I see and I use a red ink pen to mark any
10 differences I see and that is called a side by side comparison
11 where actually visually comparing the questioned item to the
12 known item, trying to determine based on the letter forms, the
13 letter formations, the construction of the letters, whether
14 somebody wrote something or they didn't.

15 Q: And when you do this, do the agencies submit copies or
16 originals?

17 A: Sometimes they submit copies; sometimes they submit
18 originals. In this particular case, I have originals.

19 Q: Is that preferable to a copy?

20 A: It is preferable, yes, ma'am.

21 Q: Okay. So in this case you did have originals to work off
22 of?

23 A: Yes, ma'am; that is correct.

24 Q: Okay. I'm gonna hand you what's already been marked for
25 ID as State's Exhibit 143 if you could take a look at that.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 599
GAILE HEATH - DIRECT BY BAILEY

1 Is that a document that you examined?

2 A: Yes, it is. It was two documents that were submitted to
3 me as questioned writing of, of -- just questioned writing.
4 They wanted to know who wrote them. They contain my
5 laboratory case number and my item number and my initials.

6 Q: And so, given the known samples that you got, did you
7 compare those to this document?

8 A: Yes, I did.

9 Q: And in your expert opinion, did you formulate an opinion
10 as to who wrote the questioned document?

11 A: Yes, I did.

12 Q: And what is that opinion?

13 A: My opinion was that Damonte Rivera wrote the questioned
14 letter and the envelope, State's Exhibit Number 143.

15 Q: Now, as to the questioned letter -- at this time, the
16 State would seek to move State's Exhibit 143 into evidence?

17 BY THE COURT:

18 THE COURT: Mr. Edgeworth?

19 MR. EDGEWORTH: Your Honor, I would object, because I
20 don't know what the relevancy of the letter is.

21 THE COURT: I don't either. I don't know the substance
22 of the letter.

23 MR. EDGEWORTH: And I would object to it being admitted
24 into evidence.

25 MS. BAILEY: Your Honor, in order for me to argue the

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 600
GAILE HEATH - DIRECT BY BAILEY

1 relevance of the letter, I would have to indicate what the
2 content is and I hate to do that before this objection is ---

3 THE COURT: Let me see it, please?

4 Step out please, ladies and gentlemen, and do not discuss
5 the case during this brief recess.

6 (REPORTER'S NOTE: Jury exits courtroom. 5:23 P.M. The
7 following takes place outside the presence of the Jury.)

8 THE COURT: All right. Solicitor, if you would have, I
9 don't know if you're gonna publish it through, Agent Heath or
10 if you want to publish it right now and let me hear it and Mr.
11 Edgeworth hear it at the same time.

12 MS. BAILEY: Thank you, Your Honor. I was intending on
13 having Ms. Heath publish it. So I'll have her read it.

14 THE COURT: All right. Thank you.

15 BY MS. BAILEY:

16 Q: Go ahead.

17 A: The letter is dated March 20th, 2013. Trown, man, what's
18 up? I'm good; chillin. They got me permanent till I leave
19 but fuck it, I can't be stressing. I had hurt Larry from H
20 Block when he been in my room up here. I dropped that nigga
21 and bust his shit. Fuck all that. I'm trying to get out in a
22 couple of weeks if my niggas come through and these crackers
23 don't got some funny shit or let me -- or hit me with some
24 more warrants. Me and Mark beefin. Never mind all that bull
25 shit. Yo, I hope you got a nice -- looks like block plea and

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 601
GAILE HEATH - DIRECT BY BAILEY

1 get on through. You so like a cool ass nigga. Please, you
2 know some shit had the -- some shit had that shit. I'm trying
3 to do, take some niggas like you to get me started. Hope you
4 stay in contact. I'm -- it looks like -- serving but what me
5 and you use to talk about, no bull shit. Leave me your info.
6 Holla at me soon. Damonte M. Rivera. 2394 Browns Ferry Road,
7 Georgetown, South Carolina 29440. Tell G I said what's up and
8 to holla at me. And signed, Hammer.

9 THE COURT: All right. And you've objected on relevancy,
10 Mr. Edgeworth?

11 MR. EDGEWORTH: Well, yes, now that I know the further
12 contents of the letter, I would also argue that it's -- well,
13 highly prejudicial based on the uses of the language that's
14 involved in the letter. I think that the prejudicial effect
15 outweighs any type of probative value and also it, it goes to
16 some form of improper use towards my client's character based
17 on the language and comments made in the letter.

18 THE COURT: All right. Thank you.

19 Solicitor, I'll be glad to hear from you.

20 MS. BAILEY: Thank you, Your Honor, we intend to submit
21 the letter to show that Rivera has sufficient relationship
22 with Trown Davis, who was one of our witnesses such that he
23 would have confided in him as Mr. Davis indicated on the stand
24 and it corroborates Mr. Davis' testimony that Mr. Rivera may
25 need to have a close enough relationship the fact that Mr. --

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 602
GAILE HEATH - DIRECT BY BAILEY

1 once Mr. Davis was released from prison, Mr. Rivera continued
2 to write him and indicates that he talked about things. The
3 letter actually indicates that, in the letter itself, you
4 know, just like we used to talk about when they were
5 incarcerated and indicates that, that he, he thinks that he
6 has an ongoing relationship with Mr. Davis.

7 THE COURT: And is who the envelope is addressed to?

8 MS. BAILEY: It is, Your Honor.

9 THE COURT: Trown Davis?

10 MS. BAILEY: Yes, sir. I'm gonna have Ms. Heath, just so
11 I don't misrepresent, I'm gonna have her corroborate that.

12 A: Yes, that is correct, yes.

13 THE COURT: All right. I, I think you have to redact
14 whatever he did to or alleged he did to Larry on H Block.

15 MS. BAILEY: Yes, Your Honor.

16 THE COURT: I think that's perhaps a subsequent -- it
17 would be a subsequent potentially bad act. What about that,
18 Mr. Edgeworth?

19 MR. EDGEWORTH: I would appreciate the redaction, Your
20 Honor.

21 THE COURT: In as far as the -- in as far as the language
22 of -- we all have our own vocabulary and State's Four is
23 already in evidence. So, I don't, I don't see where its
24 prejudicial effect outweighs the probative value. Obviously,
25 Trown Davis was in jail -- well he wasn't. He wasn't a

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 603
GAILE HEATH - DIRECT BY BAILEY

1 jailhouse informant because they actually tracked Mr. Davis on
2 their own, as I recall, Mr. Davis' testimony in that regard.
3 But it does corroborate that they had a friendship and it
4 continued at least to the point where Mr. Rivera felt
5 comfortable contacting and writing him. So, do not -- and
6 you'd have to redact it, but as far as when it's published,
7 none of that about H block and Larry. All right?

8 MS. BAILEY: Thank you, Your Honor. Do you want me to
9 make physical redactions to it now or after the Jury ---

10 THE COURT: No, I want to -- I want to press on.

11 MS. BAILEY: Okay. Can I make sure that the witness
12 understands what to read and what not to read.

13 THE COURT: Yes, ma'am.

14 MS. BAILEY: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MS. BAILEY: Thank you, Your Honor, we're ready.

17 THE COURT: All right. Bring us our Jury, please.

18 (REPORTER'S NOTE: Jury enters courtroom. 5:32 P.M.)

19 THE COURT: All right. Thank you. Our Jury is back in
20 place.

21 Solicitor, you may continue.

22 And thank you, Mr. Edgeworth.

23 MS. BAILEY: Thank you, Your Honor, to be clear, this
24 exhibit is admitted subject to the Court's ruling?

25 THE COURT: Correct.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 604
GAILE HEATH - DIRECT BY BAILEY

1 MS. BAILEY: Thank you, Your Honor.

2 THE COURT: 143?

3 COURT REPORTER: Yes, sir.

4 STATE'S EXHIBIT NUMBER 143

5 ADMITTED INTO EVIDENCE

6 MS. BAILEY: Yes, Your Honor. At this time, the State
7 would seek permission to publish State's Exhibit 143 to the
8 Jury subject to your ruling?

9 THE COURT: Yes, you may.

10 BY MS. BAILEY:

11 Q: Ms. Heath, could you please read the letter for us?

12 A: Okay. It's dated March the 20th, 2013. It's to Trown.
13 Man, what's up? I'm good, chillin. They got me permanent
14 till I have to leave but, fuck it, I ain't stressin. I'm
15 trying to get out in a couple of weeks if my niggas come
16 through and these crackers don't get some other funny shit and
17 hit me with some more warrants. Me and Bart are beefin.
18 Never mind all that bull shit. All I have -- all I hope you
19 get a nice -- looks like lol -- plea and get on through. You
20 seem like a cool ass nigga plus you know some shit. Have the
21 shit I'm trying to do takes some niggas like you to get me
22 started. Hope we stay in contact. I'm serving but what me
23 and you used to talk about, no bull shit. Leave me your info.
24 Holla at me soon. And it's signed Hammer and then over on the
25 left hand corner it says Damonte M. Rivera, 2394 Browns Ferry

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 605
BY THE COURT

1 Road, Georgetown, South Carolina 29440 and then under that
2 it's a sentence that says tell Gene I said what's up and to
3 holla at me.

4 Q: And thank you. And the envelope that's attached to that,
5 who is it addressed to?

6 A: The envelope is attached to Trown Davis, 2394 Browns
7 Ferry Road, Georgetown, South Carolina 29440 and the return
8 address is Damonte M. Rivera 2394 Browns Ferry Road,
9 Georgetown, South Carolina 29440.

10 Q: Thank you. No further questions.

11 THE COURT: Thank you, Solicitor. Mr. Edgeworth.

12 MR. EDGEWORTH: No questions for this witness, Your
13 Honor.

14 THE COURT: Thank you. Thank you very much. Thank you
15 for being with us this afternoon, Agent Heath, you may step
16 down.

17 A: Thank you, Your Honor.

18 THE COURT: Thank you.

19 BY THE COURT:

20 THE COURT: All right. Anything further from the State
21 as far as witnesses or testimony today, Solicitor?

22 MS. RICHARDSON: Your Honor, that would be all for today.

23 THE COURT: Thank you. Thank you very much.

24 All right. Mr. Foreman, ladies and gentlemen of the
25 Jury, perhaps now would be a good time to take our evening

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 606
BY THE COURT

1 recess. Again, I must remind you during this recess, you may
2 not talk with anyone about the case including your fellow
3 jurors, family, friends or anyone else. You may not read,
4 watch or listen to any news accounts of the case, should there
5 be any. Do not do any independent investigation or any
6 investigation on the internet. Remember to keep an open mind.
7 Do not begin your deliberations until you've heard all the
8 evidence, testimony, instruction by -- closing arguments by
9 the attorneys and the instruction on the law by the Court.

10 My, my intent is to complete the evidence tomorrow and to
11 have closings and charges tomorrow. That is, that is my
12 intent. Like I told you before, I don't estimate -- I don't
13 predict anything particularly the future and I can't predict
14 the timing involved but that is my hope.

15 With that being said, why don't we try to get a little
16 bit earlier start and report at 9:00 in the morning. I,
17 having been where these fine attorneys have been years ago in
18 my career, that extra thirty minutes really helps the trial
19 attorneys. It really does because they start, they don't
20 finish when we do and they generally start well before and I
21 generally do that for the attorneys in getting the witnesses
22 there and getting them organized. But we'll try to start, why
23 don't y'all be here by 9:00 in the morning. Report at 9
24 o'clock and we'll try to press on at that time.

25 Thank y'all very much for your focus and thank you for

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 607
BY THE COURT

1 your patience. With that being said, you're now excused for
2 the evening. I hope y'all have a pleasant evening.

3 (REPORTER'S NOTE: Jury exits courtroom. 5:37 P.M. The
4 following takes place outside the presence of the Jury.)

5 THE COURT: Solicitor, how many witnesses do you have
6 left now?

7 MS. RICHARDSON: Your Honor, my list is downstairs -- and
8 I didn't stand up, I'm sorry. Your Honor, three.

9 THE COURT: And give me what you're guestimated
10 timeframe.

11 MS. RICHARDSON: Hopefully less than two hours, maybe
12 between one and two hours depending on cross examination.

13 THE COURT: All right. Thank you.

14 Mr. Edgeworth, you do not have to answer this question if
15 you choose not to, but do you know, discounting or not
16 addressing whether or not Mr. Rivera testifies, do you intend
17 to call any witnesses and, of course, you have -- if you tell
18 me yes or no you have a right to change your mind. I'm just
19 trying to get an idea.

20 MR. EDGEWORTH: Yes, Your Honor. I think that primarily
21 depends on my client's determination as to whether he will be
22 testifying. But, but if so, it would most likely be no more
23 than one witness.

24 THE COURT: No more than?

25 MR. EDGEWORTH: One witness.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 608
BY THE COURT

1 THE COURT: Besides your client if he chooses to testify?

2 MR. EDGEWORTH: Yes, Your Honor.

3 THE COURT: All right. Well, make sure y'all are
4 straight on any prior criminal history that you think would be
5 subject to impeachment under 609 and also any requests to
6 charge. I know I realize I haven't -- the case -- the State
7 hasn't rested, I obviously haven't heard the motions yet, but
8 I start -- my law clerk starts working on my charge when I
9 find out what kind of case I'm trying. So I'd like to ponder
10 any requests to charge that you may have if you'd get those to
11 me.

12 All right. Thank you very much. 9 o'clock in the
13 morning. Thank you.

14 MS. BAILEY: Your Honor, as to that letter?

15 THE COURT: Yes?

16 MS. BAILEY: I need to redact a copy of it which I'm
17 happy to do, but that one has already been marked and moved
18 in. I'm not sure how to handle the numbering. Should we make
19 that a Court's Exhibit then make another one with the same
20 number with an A on it?

21 THE COURT: You got a suggestion, Ms. Richardson?

22 COURT REPORTER: We can do that and then we'll just take
23 this one out of the list.

24 THE COURT: And put the other one in as Plaintiff's 140 -

25 --

STATE V RIVERA - 2012-GS-22-955,956,957; 2013-GS-22-854
BY THE COURT

609

1 COURT REPORTER: It's 143. We'll put it as 143-A.

2 THE COURT: Yes, 143-A. We can do that.

3 MS. BAILEY: Thank you, Your Honor.

4 THE COURT: All right. Thank you..

5 (RECESS - 5:41 P.M.)

6 *****OFF THE RECORD*****

7 END OF DAY FOUR

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STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 610
BY THE COURT

1 **OCTOBER 30, 2015 - DAY FIVE**

2 **(On the Record - 9:20 A.M.)**

3 THE COURT: Thank you. All right. All right. Good
4 morning, Solicitor and Mr. Edgeworth.

5 MS. RICHARDSON: Good morning.

6 THE COURT: Anything before we bring in our Jury?

7 MS. RICHARDSON: Yes, Your Honor. I wanted to bring to
8 the Court's attention some possible issues regarding the Jury.
9 First of all, I've received information that some members of
10 or friends of Mr. Rivera had been in the parking lot, no
11 confirmation they've had any contact with the Jury, but they
12 were asking questions about when's the Jury coming, where do
13 they come in, that sort of thing. So, I'd like to make sure
14 that there's been no contact or intimidation of this Jury just
15 to make sure no one has contacted them or bothered them in
16 regard to this case.

17 THE COURT: Now, the information is who was in the
18 parking lot?

19 MS. RICHARDSON: Our law clerk overheard some things and
20 it's my understanding some of the deputies said people had
21 been asking all week what time did they leave and that sort of
22 thing, the deputies can give some information regarding that.
23 I just want to make sure, you know, just generally, obviously
24 without pointing any fingers in front of the Jury, you know,
25 has there been any sort of improper conduct or contact with

STATE V. RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 611
BY THE COURT

1 them.

2 THE COURT: All right. Mr. Edgeworth?

3 MR. EDGEWORTH: Your Honor, obviously I just head of this
4 just this morning. I, I don't think it's inappropriate to
5 inquire. From what I understand from the Solicitor that they
6 just heard talking amongst individuals, not amongst jurors.
7 So, I don't believe there to be any inappropriate contact.

8 THE COURT: Well, we'll ask. I'll ask.

9 MS. RICHARDSON: Second of all, Your Honor, I received
10 some information that possibly one of the jurors had waved or
11 smiled at Mr. Rivera indicating maybe that they had known him
12 previously or something to that effect. That's a lady on the
13 back row. Maybe that was, you know, perceived wrong, I don't
14 know, but if we just could inquire that their answers are
15 still correct that once they'd gotten into the trial, they
16 still, you know were truthful in not knowing the Defendant or
17 his family or any of the parties.

18 THE COURT: All right.

19 MS. RICHARDSON: It was a female on the back row is what
20 we've been told. That was one of the deputies who observed
21 that.

22 THE COURT: All right.

23 MS. RICHARDSON: The third issue ---

24 THE COURT: Let me ask Mr. Edgeworth. Mr. Edgeworth?

25 MR. EDGEWORTH: Well, Your Honor, I think pointing out

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
BY THE COURT

612

1 that person individually might be a little much.

2 THE COURT: I won't do that.

3 MR. EDGEWORTH: Okay. Thank you, Your Honor.

4 - THE COURT: Yes, sir, I won't do that. I'll do it
5 generally and cast the net entirely over the Jury.

6 MR. EDGEWORTH: Thank you, Your Honor.

7 MS. RICHARDSON: And third, Your Honor, the previously
8 scheduled for this -- for today at lunchtime is a criminal
9 domestic violence silent victims' ceremony on the front steps
10 of the courthouse. Family members of deceased CDV victims
11 will be present. They use silhouettes and some, you know, and
12 some speeches. Just wanted the Court to be aware of that in
13 case the Jury is going out for a break that they wouldn't be
14 around that. Just so there would be no concern regarding
15 prejudice or impropriety in that regard.

16 THE COURT: Well, I plan on making arrangements for the
17 Jury's lunch. So, I'll -- I'll know if you let them go out
18 for a breather, you know, to get fresh air and such, if they
19 do, I assume there is a particular location they go to and
20 that can be managed by the Sheriffs and the Bailiffs I assume.
21 I don't -- I don't know, but Mr. Edgeworth?

22 MR. EDGEWORTH: I believe that's accurate, they would
23 have a separate area so I have no problem with that.

24 THE COURT: All right. Anything further, Solicitor?

25 MS. RICHARDSON: Your Honor, the only other issue that we

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 613
BY THE COURT

1 have is our next witness that we brought from the South
2 Carolina Department of Corrections indicated to us that he has
3 received some, what he perceived as threats while at SCDC from
4 folks who know Mr. Rivera or feels threatened. Yesterday,
5 there was a large contingency here. They would go in and out
6 and the Court made some admonishments. I don't know if that
7 was who that was to yesterday. I wanted the Court to be aware
8 of that. If it appears there's any sort of threatening
9 behavior that we clear the courtroom for his testimony.

10 THE COURT: All right. Thank you.

11 Mr. Edgeworth?

12 MR. EDGEWORTH: Your Honor, again, you know, the first
13 I'm hearing some of these -- these situations. So, certainly
14 in the Court's discretion, whatever -- I have no objection to
15 however the Court may want to handle the testimony.

16 THE COURT: All right. Well, I believe what I'll do is
17 when a witness is on the stand, the doors will be locked.
18 Nobody can enter or leave during that period of time or shut
19 at least, except to staff. In other words, if anyone is
20 assisting Mr. Edgeworth or the Solicitor or any of her staff,
21 as far as that's concerned, they can certainly come and go,
22 but as far as individuals in the gallery, they can leave
23 between witnesses.

24 SHERIFF: Sir, do you not want them in the gallery or
25 they just can't leave.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 614
BY THE COURT

1 THE COURT: It's a public courtroom. They can -- they
2 can certainly be in the gallery, but once the Court starts
3 with a witness, I don't -- I don't want coming and going.
4 Quite frankly, it's distracting to me. If it distracts me, I
5 think distracts the Jury just like that incident yesterday
6 where there was some movement and some talk to where the
7 Sheriffs are doing their job and, you know, I've noticed
8 perhaps one or two jurors focus on that and not focus on the
9 testimony and that could of course affect their ability to
10 determine the true facts of the case in that regard. Now that
11 was handled very, very promptly and efficiently, but that
12 would cut down on that. I don't like locked doors rattling
13 either. So if you don't lock them and just post somebody out
14 there might be best.

15 Anything further, Solicitor?

16 MS. RICHARDSON: No, Your Honor.

17 THE COURT: We ready for our Jury? Anything from the
18 Defense, Mr. Edgeworth?

19 MR. EDGEWORTH: Nothing from the Defense, Your Honor.

20 THE COURT: Thank you. You ready for the Jury?

21 MS. RICHARDSON: Yes, Your Honor.

22 (REPORTER'S NOTE: Jury enters courtroom. 9:29 A.M.)

23 THE COURT: Good morning. Well, I'm nothing if not
24 consistent at least. 9 o'clock in judicial time I guess is
25 9:30. 9:30 is twenty minutes till ten. I apologize for that.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 615
BY THE COURT

1 I have a -- I would like to talk with y'all just a few moments
2 before we get started today. We've come a long way already in
3 this process and perhaps recall back to Monday, roll call,
4 jury selection and that entire process where we go through and
5 select a Jury that will be fair and impartial in the trial of
6 the case to both Mr. Rivera and to the State and as part of
7 that, I asked you quite a number of series of questions.
8 After you were selected to be a fair and impartial members of
9 this Jury, you were sworn and given an oath that you would
10 follow the instructions of the Court under the oath that you
11 took. And I do this in many, many cases and I go back and
12 reiterate again and I ask questions rather than give you
13 directives. During the course of this trial, has any member
14 of the jury panel talked with anyone about the case, whether
15 it's your fellow jurors, family, friends or anyone else? If
16 so, please stand.

17 (REPORTER'S NOTE: No response.)

18 THE COURT: Has any member of the jury panel that has
19 anyone attempted to talk with them or convey to them a message
20 in any manner about this case? If so, please stand.

21 (REPORTER'S NOTE: No response.)

22 THE COURT: In your coming and goings from the Georgetown
23 County Courthouse, have you felt that anyone has wanted or
24 attempted to talk with you about the case? If so, please
25 stand.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 616
BY THE COURT

1 (REPORTER'S NOTE: No response.)

2 THE COURT: Has any member of the jury panel read,
3 watched or listened to any news accounts of the case? If so,
4 please stand.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Has any member of the jury panel done any
7 research on any issue that's been brought before the Court or
8 on any issue that you think is important, that you think may
9 be important in the resolution of the case outside the
10 courtroom and you recall information about a party, a witness,
11 attorney, court officer or subject matter that may have been
12 brought up or prior news accounts of the case, no research on
13 the internet, no research independently?

14 (REPORTER'S NOTE: No response.)

15 THE COURT: You recall that very lengthy list of
16 witnesses that may have been seventy or more. Many times
17 names might not have a meaning to me, you know, somebody may
18 say do you know so-and-so and I don't think so. And then
19 later on, you may see so-and-so and say, oh yeah, I know him,
20 I know her. Now that you've seen these witnesses and, of
21 course, you've been introduced to in the voir dire, you were
22 introduced to Mr. Dozier, Ms. Wilson, young Ms. Wilson, many
23 other individuals, Mr. Thomas' family, Mr. Rivera and many
24 others. After you have seen not only those witnesses but
25 these other witnesses face-to-face and sometime within feet of

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 617
BY THE COURT

1 those witnesses, does any member of the jury panel know any of
2 those witnesses, recognize any of those witnesses? Of course,
3 there's nothing wrong with that whatsoever. It's -- it's just
4 that I want to make sure that I maintain the phrase I heard
5 the other day of purity of purpose with our -- with our Jury
6 to, to do justice in the case, to be fair and impartial. And
7 I'm not implying that it is not being done and has not been
8 done and is not going to be done but, you know, if you, if you
9 recognize somebody thereafter you didn't realize that, oh
10 yeah, I did know him or I did know her, but I didn't even know
11 their name; also that can happen. Has that occurred to any
12 member of the jury panel?

13 All right. Again that is not singular to this Jury. I
14 do it with many, many jurors in many cases.

15 Any objections to anything, any questions I have asked
16 the Jury from either the State or the Defense, Solicitor?

17 MS. RICHARDSON: No, Your Honor.

18 MR. EDGEWORTH: None, Your Honor.

19 THE COURT: All right. Any and I know y'all didn't
20 request that voir dire. That's my procedure that I use. Is
21 there any additional you'd like me to address? If so, I'll
22 take that up outside of the presence of the Jury and will be
23 delighted to do so? Solicitor? Mr. Edgeworth?

24 MS. RICHARDSON: No, Your Honor.

25 MR. EDGEWORTH: I have nothing further, Your Honor.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 618
BY THE COURT

1 THE COURT: All right. Thank you. Thank you very much.
2 All right. We are continuing the trial of the case. Again I
3 remind those in the gallery about my cell phone. If you have
4 your cell phone, it must be off, it must be in your pocket. I
5 have advised the sheriffs if wherever their eyes fall or they
6 see a cell phone in the gallery to seize it. Also, I do not
7 allow coming and goings while a witness is on the stand except
8 among staff that is inside the -- inside -- well, there could
9 be staff outside of the bar, too. But I've posted an officer
10 at the back. No one can come in and out except between
11 witnesses from this juncture in the trial until the -- until
12 the conclusion and it's submitted to the Jury.

13 All right. With that being said, Solicitor, you may call
14 your first witness.

15 MS. RICHARDSON: The State calls Joshua Taylor.

16 Your Honor, they're bringing him up; just the Court's
17 indulgence for just a moment.

18 THE COURT: Yes, ma'am, certainly.

19 Sheriff we need to get a muffle for that elevator,
20 please, sir.

21 DEPUTY: It is annoying, sir.

22 THE COURT: Yes, sir.

23 DEPUTY: It does let you know when it's on its way up,
24 though.

25 THE COURT: Well, that's true.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 619
JOSHUA TAYLOR - DIRECT BY RICHARDSON

1 MS. RICHARDSON: Your Honor, just to update the Court,
2 I'm told he's on the way up. There was some confusion over
3 where -- which floor he was on.

4 THE COURT: All right. Thank you. Thank you, Solicitor.
5 (REPORTER'S NOTE: Joshua Tayler enters courtroom.)

6 All right. If you would stand right there and be placed
7 under oath for us please, Mr. Taylor; is that right?

8 MR. TAYLOR: Yes, sir.

9 CLERK: All right. The Clerk will swear you in.

10 JOSHUA TAYLOR, HAVING BEEN SWORN TESTIFIES

11 AS FOLLOWS:

12 CLERK: Thank you. Please be seated and state your name
13 for the record.

14 MR. TAYLOR: Sure, Joshua Taylor.

15 THE COURT: Would you speak up -- speak up for us in your
16 testimony, Mr. Taylor.

17 MR. TAYLOR: All right. Joshua Taylor.

18 DIRECT EXAMINATION OF JOSHUA TAYLOR BY MS. RICHARDSON:

19 Q: Mr. Taylor, how old are you?

20 A: Twenty-two.

21 Q: And where are you from?

22 A: McClellanville.

23 Q: And you grew up in McClellanville?

24 A: Yes.

25 Q: And where did you go to high school?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 620
JOSHUA TAYLOR - DIRECT BY RICHARDSON

- 1 A: Lincoln High.
- 2 Q: And do you or did you on occasions come to Georgetown?
- 3 A: Yes.
- 4 Q: Okay. And you came from the Department of Corrections
- 5 today; is that right?
- 6 A: Yes, SCDC.
- 7 Q: And you are currently serving a sentence there?
- 8 A: Yes. Twenty years.
- 9 Q: And is it true that you -- your attorney contacted me
- 10 regarding you talking with us about this case?
- 11 A: Yes.
- 12 Q: Do you know Damonte Rivera?
- 13 A: Yes.
- 14 Q: How do you know him?
- 15 A: We were real tight, real cool.
- 16 Q: Does that mean friends?
- 17 A: Yeah, friends, real close.
- 18 Q: Okay. How long had you been friends with him?
- 19 A: Since like 2008.
- 20 Q: And what is his nickname?
- 21 A: Hammer.
- 22 Q: Do you know Anthony Fraser?
- 23 A: Yes.
- 24 Q: What's his nickname?
- 25 A: B.I.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOSHUA TAYLOR - DIRECT BY RICHARDSON

621

- 1 Q: How do you know him?
- 2 A: I ain't gonna say we friends but, you know, we used to
- 3 hang out sometime.
- 4 Q: The three of you?
- 5 A: Yeah, sometime.
- 6 Q: And do you know Shakeem Geathers and Jasen Wade?
- 7 A: Yes.
- 8 Q: How do you know them?
- 9 A: They my family.
- 10 Q: So you're related to both of them?
- 11 A: Yes.
- 12 Q: Okay. And did you ever hang out with them with Damonte
- 13 Rivera and with Anthony Fraser?
- 14 A: Just a few times.
- 15 Q: Okay. And what is Jasen Wade's nickname?
- 16 A: Dro.
- 17 Q: What's your nickname?
- 18 A: Bart.
- 19 Q: Why do they call you Bart?
- 20 A: You know, some people say I look like him, but I had that
- 21 name since I was like three years old.
- 22 Q: You look like who?
- 23 A: Bart Simpson.
- 24 Q: Okay. Was there a time when you, in 2012, when you were
- 25 incarcerated with or at the jail with Mr. Rivera?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
JOSHUA TAYLOR - DIRECT BY RICHARDSON

622

- 1 A: Yes.
- 2 Q: And where were you housed at the jail -- where were you
3 in jail; which pod were you in?
- 4 A: G block.
- 5 Q: Okay. And who -- did you have any roommates?
- 6 A: Yes, I had some roommates.
- 7 Q: Okay. And was Damonte Rivera ever your roommate?
- 8 A: Yes.
- 9 Q: And anybody else?
- 10 A: Trown Davis.
- 11 Q: Was there ever a time when all three of you were in the
12 same cell?
- 13 A: Yes.
- 14 Q: And are they set up for that?
- 15 A: No, sometime it'd be overcrowded.
- 16 Q: So how many beds are in a cell?
- 17 A: How many beds or how many mattress?
- 18 Q: How many beds?
- 19 A: There's two beds.
- 20 Q: Okay. So, if there's three in there, what do they do?
- 21 A: Somebody gotta sleep on the floor.
- 22 Q: Who was that?
- 23 A: Hammer.
- 24 Q: And while you were there, did you have any discussions
25 about why you were in there?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
JOSHUA TAYLOR - DIRECT BY RICHARDSON

623

1 A: Why I was in there?

2 Q: Why all of you were in there?

3 A: Yes.

4 Q: And did you have any conversations with Hammer and
5 Damonte Rivera about that?

6 A: Yes.

7 Q: And regarding -- did you learn anything about a home
8 invasion or the murder of Alfonso Thomas, Terrell Thomas?

9 A: Yes.

10 Q: Tell me what you heard.

11 A: I heard they went to the house.

12 Q: And you heard this from who?

13 A: Rivera.

14 Q: And he told you this?

15 A: Yes.

16 Q: Okay. So go ahead and tell me what he told you.

17 A: They went to the house, they kicked the door in and went
18 in. They tried to rob Walter and he didn't want give up the
19 money. He say he ain't had no money. I remember him saying a
20 little girl in the house. They pointed the gun at that little
21 girl -- they didn't really get nothing, they leave, went
22 across town and that's when I found out they killed him.

23 Q: And did Rivera tell you why they killed him?

24 A: Yeah.

25 Q: Why?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
JOSHUA TAYLOR - DIRECT BY RICHARDSON

624

- 1 A: So he won't tell.
- 2 Q: Why did they think he was gonna tell?
- 3 A: Fingerprints. He was touching some of the stuff.
- 4 Q: And have -- has anybody contacted you about your cousins,
5 Dro or Jasen Wade and Shakeem Geathers?
- 6 A: How you mean being contacted by anybody?
- 7 Q: Anybody talked with you about them; has Rivera talked to
8 you about them?
- 9 A: I only spoke to him in a minute in a long time, but I
10 mean a long time ago I talked to him about them.
- 11 Q: And what was that about?
- 12 A: He didn't want me to talking to them. He didn't want me
13 telling them, you know, keep it real, you know, keep you mouth
14 closed.
- 15 Q: And are you hoping to get something out of your
16 testimony?
- 17 A: How you mean by that?
- 18 Q: Has there been any agreement or promise regarding your
19 testimony?
- 20 A: No.
- 21 Q: And have you had any discussions with your attorney about
22 a downward departure or anything like that?
- 23 A: No.
- 24 Q: So, you weren't aware of any of those discussions?
- 25 A: No, ma'am.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOSHUA TAYLOR - CROSS BY EDGEWORTH

625

1 Q: Okay. So, why are you testifying today?

2 A: Some things, some things just ain't right.

3 Q: I have no further questions. Answer any questions Mr.
4 Edgeworth has.

5 THE COURT: Thank you, Solicitor.

6 Mr. Edgeworth?

7 MR. EDGEWORTH: Thank you, Your Honor.

8 CROSS EXAMINATION OF JOSHUA TAYLOR BY MR. EDGEWORTH:

9 Q: Mr. Taylor, you told us that you were incarcerated for
10 twenty years; what are you incarcerated for?

11 A: Assault and battery high and aggravated nature.

12 Q: Okay. And, and this event took place that we
13 Re here for on or about August 29th or 30th, 2012, were you
14 aware of that?

15 A: Around that time.

16 Q: Okay. And when did you decide, if you can recall, when
17 you wanted to talk or your attorney contacted the Solicitor's
18 office for some conversations?

19 A: If I tell you -- if I try to tell you, I'd be lying, sir.

20 Q: Okay. So, was it before or after you were convicted of
21 assault and battery of a high and aggravated nature?

22 A: It was after.

23 Q: After you were convicted? After you were sentenced?

24 A: (Indicates affirmatively.)

25 Q: Is that a yes?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 626
JOSHUA TAYLOR - CROSS BY EDGEWORTH

1 A: Yes, sir.

2 Q: And although did it -- you stated that you are not aware
3 of any conversations regarding a downward departure; is that
4 correct?

5 A: Yes, sir.

6 Q: Okay. You would agree with me that it doesn't
7 necessarily mean there was a conversation about that?

8 A: I wasn't informed on any conversation about that.

9 Q: Would you agree with me that after this case, you could
10 possibly have a downward departure?

11 A: I can't tell you, it's been a while, sir.

12 Q: You testified that you, you and Mr. Rivera and Mr. Trown
13 Davis were in the same room at Georgetown County Detention
14 Center; is that correct?

15 A: Yes, sir.

16 Q: And you said that Hammer slept on the floor?

17 A: Yes, sir.

18 Q: When's the last time you talked with the Solicitor's
19 office in preparation for this case?

20 A: If I'm not mistaken, January.

21 Q: You haven't talked to anybody in the past couple of days?

22 A: No, not really.

23 Q: Not really or no?

24 A: No. They just ---

25 Q: They brought you here but they didn't sit down and talk

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOSHUA TAYLOR - REDIRECT BY RICHARDSON

627

1 to you about your testimony?

2 A: No, I didn't even know I was coming.

3 Q: Okay. So, you told the Solicitor's office information,
4 but you didn't realize you would be coming here to testify?

5 A: To be honest, no, no one informed me I was coming.

6 Q: Okay. Well, you also stated that, that Mr. Rivera told
7 you to tell other people not to talk; is that accurate?

8 A: Yes, sir.

9 Q: Did you follow those instructions?

10 A: I spoke with them.

11 Q: Okay. So, so you would do whatever Mr. Rivera told you
12 to do?

13 A: No.

14 Q: Okay. Then why did you do it on this occasion?

15 A: All I did was deliver a message.

16 Q: You delivered a message but you're here today testifying
17 about information against Mr. Rivera?

18 A: I don't know if it's against him. I'm just telling the
19 truth.

20 MR. EDGEWORTH: I have no further questions, Your Honor.

21 THE COURT: Redirect, Solicitor?

22 MS. RICHARDSON: Just a follow-up on that line of
23 questioning.

24 REDIRECT EXAMINATION OF JOSHUA TAYLOR BY MS. RICHARDSON:

25 Q: When you said you haven't talked with anybody, you

STATE V RIVERA - 2012-GS-22-955,956,957; 2013-GS-22-854 628
JOSHUA TAYLOR - RECROSS BY EDGEWORTH

1 haven't been re -- formally re-interviewed, is that what you
2 mean?

3 A: Can you break that down, ma'am?

4 Q: Okay. You have spoken with us today ---

5 A: Yes.

6 Q: Okay. But you haven't sat down and had another
7 interview?

8 A: No.

9 Q: Okay. And when you were at the Georgetown County
10 Detention Center you were on G block. Are the rooms locked
11 down all the time or do you have any sort of freedom to move
12 among the rooms?

13 A: We had a few hours to, you know, move around,
14 recreational time.

15 MS. RICHARDSON: No further questions, Your Honor.

16 THE COURT: Recross, Mr. Edgeworth?

17 MR. EDGEWORTH: Briefly, Your Honor.

18 RECROSS EXAMINATION OF JOSHUA TAYLOR BY MR. EDGEWORTH:

19 Q: When you spoke to -- my apologies. When you spoke to the
20 Solicitor's office, did y'all have discussions about your
21 situation or rooming or housing situation at the Georgetown
22 County Detention Center?

23 A: Can you break that down?

24 Q: Certainly. You just acknowledged that you did speak with
25 the Solicitor's office at some point, today or whatever, but

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
JOSHUA TAYLOR - RECROSS BY EDGEWORTH

629

1 you didn't -- you weren't formally re-interviewed; is that
2 correct?

3 A: Yes.

4 Q: Okay. But did the discussion include conversation about
5 your housing at the Georgetown County Detention Center?

6 A: I apologize, but you can -- basically you asking me if I
7 been in the room with them?

8 Q: No.

9 THE COURT: What? I didn't understand, Mr. Taylor.

10 A: I really don't know what he asking me.

11 MR. EDGEWORTH: I'll rephrase.

12 BY MR. EDGEWORTH:

13 Q: When you spoke to the Solicitor's office today or
14 whenever it was, did the conversation talk -- the conversation
15 between you two include your rooming assignments at the
16 Georgetown County Detention Center?

17 A: Yes.

18 Q: Thank you. No further questions.

19 THE COURT: Thank you. Thank you very much, Mr. Taylor.
20 You may -- you may step down. Good luck to you.

21 All right. Solicitor, you may call your next witness.

22 MS. RICHARDSON: The State calls Barry Powers.

23 BARRY POWERS, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Thank you. Please be seated and state your name

26

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
BARRY POWERS - DIRECT BY RICHARDSON

630

1 for the record.

2 COURT REPORTER: Could I get you to slide up?

3 MR. POWERS: My name is Barry Powers.

4 THE COURT: All right. Solicitor.

5 DIRECT EXAMINATION OF BARRY POWERS BY MS. RICHARDSON:

6 Q: Where are you employed?

7 A: I'm employed by the City of Georgetown Police Department
8 in the City of Georgetown. I'm assigned to the Fifteenth
9 Circuit Solicitor's Drug Enforcement Unit.

10 Q: Okay. So, you're a police officer?

11 A: Yes, ma'am.

12 Q: Okay. And how long have you been in law enforcement?

13 A: Sixteen and a half years.

14 Q: And are you familiar with a program called Cellebrite?

15 A: Yes, ma'am. Cellebrite is a -- a program and a device
16 that's used to -- with computers to extract data from cell
17 phones.

18 Q: And were you -- did you receive some search warrants
19 executed in this case using the Cellebrite program?

20 A: Yes, ma'am. Captain Small from the Georgetown Police
21 Department presented me with the search warrants and the cell
22 phones to extract data from.

23 Q: Okay. And was that four telephones?

24 A: Yes, ma'am.

25 Q: Okay. And were you able to extract data from all those

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 631
BARRY POWERS - DIRECT BY RICHARDSON

1 phones?

2 A: From two of the four phones, I was.

3 Q: Okay.

4 A: On two of them I was unable to extract data from. They
5 were inoperable.

6 Q: Broken?

7 A: Broken, yes, ma'am.

8 Q: And was that the two phones that the warrant indicated
9 they were recovered from Mr. Fraser's house?

10 A: Yes, ma'am, they were a blue cell phone, flip phone, and
11 a red flip phone.

12 Q: Okay. So, which cell phones were you able to get
13 information from?

14 A: One of the cell phones was a Samsung cell phone and the
15 other cell phone was a Kyocera cell phone.

16 Q: Okay. And the Kyocera, the information was that it had
17 been recovered Anthony Fraser?

18 A: That's the information I was given, yes, ma'am.

19 Q: On the basis to -- to do the execution. And the Samsung
20 was recovered from Mr. Rivera?

21 A: Yes, ma'am.

22 Q: And just to be clear, this takes information from the
23 phone itself?

24 A: Yes, ma'am, it uses a computer program to take the data
25 that's on the phone and transfer it to a computer where we can

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 632
BARRY POWERS - DIRECT BY RICHARDSON

1 read that data and look through the data.

2 Q: So basically like copying files off -- off of the phone?

3 A: Yes, ma'am.

4 Q: And you don't contact any carrier or anything like that?

5 A: No, ma'am.

6 MS. RICHARDSON: Your Honor, Mr. Edgeworth has reviewed
7 both of these documents if I could mark them for
8 identification. Let me hand you what's been marked State's
9 173 and 174 and tell me if you recognize those and if you can
10 identify them?

11 A: Yes, ma'am, these are the extraction reports. After I
12 extract the data, I generate a report of that data which
13 transfers it into a file and these are the printed out files
14 that I -- that I made of the two cell phones.

15 Q: Okay. And is that an accurate depiction of the
16 information that you collected and provided?

17 A: Yes, ma'am.

18 MS. RICHARDSON: Your Honor, at this time, I'd offer both
19 these exhibits into evidence.

20 MR. EDGEWORTH: No objection, Your Honor.

21 THE COURT: State's 173 and 174 in evidence without
22 objection.

23 STATE'S EXHIBIT NUMBERS 173 AND 174

24 ADMITTED INTO EVIDENCE

25 BY MS. RICHARDSON:

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 633
BARRY POWERS - DIRECT BY RICHARDSON

1 Q: And I need to show you back one 173. Which phone is that
2 for?

3 A: This would be the Kyocera cell phone.

4 Q: Okay. And when you did the download, did you get a
5 telephone number for that?

6 A: Yes, ma'am, the telephone number 843-315-5366.

7 Q: Okay. And if you could look at Exhibit 174, the other
8 exhibit?

9 A: Yes, ma'am.

10 Q: And which phone is that for again?

11 A: This is for the Samsung cell phone and ---

12 Q: Did you get a telephone number for that phone?

13 A: Yes, ma'am, telephone number 843-478-3984.

14 Q: And were you able with that phone to collect text
15 messaging data?

16 A: Yes, ma'am.

17 Q: Okay. And do you -- how many text messages were
18 recovered?

19 A: 397 text messages.

20 Q: And can you tell when they ended?

21 A: The last date appears to be 9/5 of 2012.

22 Q: Okay. And were those -- can you tell if they were read
23 or received or ---

24 A: The listing here shows who they're from and who they're
25 to and they were received because they were on the device.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 634
BARRY POWERS - DIRECT BY RICHARDSON

1 Q: Okay.

2 A: However, I can't tell from this -- from this if they were
3 read.

4 Q: Okay. And can you tell us when they began?

5 A: The first text messages were from the 3rd of September,
6 2012.

7 Q: Can you -- do you see any texts from the day of August
8 30th?

9 A: No, ma'am.

10 Q: And that's in the thicker one?

11 A: Yes, ma'am.

12 Q: Okay.

13 A: I'm sorry. Yes, ma'am, I'm sorry, there is one. They're
14 in backwards order, sorry.

15 Q: Okay.

16 A: The 30th of August, 2012, yes, ma'am.

17 Q: Okay. And what time was that?

18 A: That was at 6:33 P.M. on that date.

19 Q: So they began on, on the afternoon of August 30th and
20 then end the 1st of September, is that what you're telling me?

21 A: Yes, ma'am. There are two kinds of text messages
22 received by a phone. The -- these are MMS messages and SMS
23 messages, multi-media messages and then just plain text
24 messages.

25 Q: If messages were deleted, would they appear on this

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 635
BARRY POWERS - DIRECT BY RICHARDSON

1 report?

2 A: No, ma'am.

3 Q: Okay. How long have you been the Drug Enforcement Unit?

4 A: For two years, ma'am.

5 Q: Okay. And as a part of that, do you arrange undercover
6 street level buys of marijuana, undercover buys of marijuana?

7 A: Yes, ma'am.

8 Q: And other drugs?

9 A: Yes, ma'am.

10 Q: In doing that, do you have to provide money for those
11 purchases through the office?

12 A: Yes, ma'am.

13 Q: Okay. And with your experience in street level sales of
14 marijuana, can you tell me how much marijuana in Georgetown --
15 about a blunt's worth of marijuana would be in Georgetown?

16 A: A typical purchase for a blunt's worth of marijuana is
17 about one gram of marijuana and a typical street value,
18 although it does fluctuate a little bit, is usually around
19 twenty dollars.

20 Q: Okay. And getting back to the cell phone records, do
21 they also include a contact list?

22 A: Yes, ma'am, they do.

23 Q: Okay. And is that just the numbers that a person has
24 stored in their phone?

25 A: Yes, ma'am, it would be the, the -- their contact sheet

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 636
BARRY POWERS - CROSS BY EDGEWORTH

1 that they have saved to the phone.

2 Q: Okay. I have no further questions. Answer any questions
3 Mr. Rivera has -- I mean Mr. Edgeworth may have for you.

4 THE COURT: Thank you. Thank you, Solicitor.

5 Mr. Edgeworth?

6 MR. EDGEWORTH: Thanks, Your Honor.

7 CROSS EXAMINATION OF BARRY POWERS BY MR. EDGEWORTH:

8 Q: Good morning, Mr. Powers.

9 A: Good morning.

10 Q: The text message information that's gleaned from the
11 Cellebrite Report shows that there were messages coming and
12 going as late as September 5th, 2012; is that correct?

13 A: Yes, sir.

14 Q: And it's fair to say that, that this type of report can't
15 tell who was using the phone, right?

16 A: No, sir, I can't tell you who is using the phone.

17 Q: Okay. Were you aware that the Defendant was arrested on
18 September 1st, 2012 as a part of this incident?

19 A: Yes, sir.

20 Q: Thank you. No further questions.

21 THE COURT: Redirect, Solicitor?

22 REDIRECT EXAMINATION OF BARRY POWERS BY MS. RICHARDSON:

23 Q: Do you see any notations by those -- those entries
24 regarding read or not read, could you check regarding the date
25 that you were just asked about? Would you look at all the

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
BARRY POWERS - REDIRECT BY RICHARDSON

637

1 text messages for September 5th?

2 A: On the MMS messages, the MMS text messages, there is a --
3 a status indicator of whether they were read or unread.

4 Q: Okay.

5 A: After the first, the MMS messages were not read. So,
6 they were just being received by the phone, but not looked at
7 by anyone.

8 Q: I have -- I have no further questions.

9 THE COURT: Mr. Edgeworth, recross?

10 MR. EDGEWORTH: No further questions for this witness,
11 Your Honor.

12 THE COURT: Thank you. Thank you very much, officer.
13 You may step down and you may be -- any objections of the
14 officer being excused?

15 MS. RICHARDSON: No, Your Honor.

16 MR. EDGEWORTH: No objection, Your Honor.

17 THE COURT: You may be excused.

18 All right. Solicitor, you may call your next witness.

19 MS. RICHARDSON: Mital Shah.

20 THE COURT: All right. Yes, sir, if you'd come around
21 and be sworn for us please.

22 MITAL SHAH, HAVING BEEN SWORN

23 TESTIFIES AS FOLLOWS:

24 CLERK: Thank you. Please be seated and state your name
25 for the record.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

638

1 MR. SHAH: Mital Shah.

2 THE COURT: All right. Solicitor?

3 DIRECT EXAMINATION OF MITAL SHAH BY MS. RICHARDSON:

4 Q: Mr. Shah, where are you employed? Where are you
5 employed?

6 A: AT&T.

7 Q: And what do you do there?

8 A: I'm the Senior Ran Specialist.

9 Q: And what is your education and experience?

10 A: I've been in telecom for fifteen years and been with AT&T
11 for almost five years now.

12 Q: And your education?

13 A: Electrical Engineer.

14 Q: You are an Electrical Engineer?

15 A: Yes, ma'am.

16 Q: Okay. And I guess that means that you have a college
17 degree?

18 A: Yes, ma'am, four years.

19 Q: Okay. And do you also have professional licensing?

20 A: No.

21 Q: Okay. And have you had any training regarding your job
22 descriptions at AT&T?

23 A: Yes, there's always ongoing training at AT&T, so...

24 Q: Okay. And have you testified previously in courts in
25 this state?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
MITAL SHAH - VOIR DIRE BY EDGEWORTH

639

1 A: Yes, ma'am.

2 Q: Do you know about how many times?

3 A: Three times.

4 Q: And have you been qualified as an expert previously?

5 A: Yes, ma'am.

6 Q: And what areas have you been qualified in?

7 A: Call record details.

8 MS. RICHARDSON: Your Honor, at this time, I'd offer Mr.

9 Shah as an expert regarding cell phone record details.

10 THE COURT: Mr. Edgeworth?

11 MR. EDGEWORTH: Can you -- may I address the Court, Your

12 Honor, I just wanted to ask -- to inquire as to what his

13 descriptions are; I don't think ---

14 THE COURT: Sure, you can question him on voir dire as

15 for as his expertise.

16 MR. EDGEWORTH: Thank you, Your Honor.

17 THE COURT: That's fine.

18 VOIR DIRE OF MIEXAMINATION TAL SHAH BY MR. EDGEWORTH:

19 Q: I understand education -- Mr. Shah, can you please

20 describe for the Court what your job description is?

21 A: Yes, I am the Ran Specialist for AT&T, which is radio

22 network access. Basically by job on day-to-day basis is

23 maintain and optimize AT&T Network for Charleston and Myrtle

24 Beach areas. We look at all this call record details to

25 optimize the network. If there is dropped calls, we have an

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 640
MITAL SHAH - DIRECT BY RICHARDSON

1 access to this database, we can see where the dropped calls
2 are coming from and we try to make it better looking at those
3 records.

4 Q: Thank you very much.

5 A: You're welcome.

6 MR. EDGEWORTH: I have no objection, Your Honor.

7 THE COURT: All right. Thank you. Again, ladies and
8 gentlemen, y'all have heard me say several times, an expert
9 may give his or opinions if it's based on training and
10 experience in a particular art, craft, profession, not only
11 the opinions, but the basis and it is for you, the Jury, to
12 determine whatever value and weight you want to give to it.
13 Mr. Shah will be qualified as an expert in the field of call
14 record details.

15 Is that the correct area of expertise, Solicitor, Mr.
16 Edgeworth?

17 MS. RICHARDSON: Yes, Your Honor.

18 MR. EDGEWORTH: Yes, Your Honor.

19 THE COURT: Thank you. You may continue, Solicitor.

20 DIRECT EXAMINATION OF MITAL SHAH BY MS. RICHARDSON:

21 Q: Are you also a custodian of records; are you able to
22 testify ---

23 A: Yes.

24 Q: --- regarding the records ---

25 A: Yes.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 641
MITAL SHAH - DIRECT BY RICHARDSON

1 Q: --- for AT&T?

2 A: Yes, ma'am.

3 Q: And does AT&T keep cell phone data for its subscribers?

4 A: Yes, they keep it on the central database.

5 Q: And do you sometimes have records for those who are
6 directly subscribers to AT&T?

7 A: Yes, ma'am.

8 Q: Can you explain that?

9 A: We also have the prepaid phone services for AT&T, this
10 company call TracFones. TracFones is basically anyone can
11 walk into the convenience store, pay the money and get the
12 services, but those TracFones is also using AT&T networks.
13 So, we also have the call records for those TracFones.

14 Q: Okay. That's based on an agreement with you TracFone?

15 A: Yes, ma'am.

16 Q: And were you asked to provide or sent a search warrant
17 for records for 843-478-3984?

18 A: Yes, ma'am.

19 Q: After we pre-mark this, and can you tell me what that
20 large document is?

21 A: This is the call record for a particular subscriber for
22 the phone number 843-478-3984.

23 Q: Okay. And what period of time are those records for?

24 A: This one begins from August 1st, 2012 till September 1st,
25 2012, basically for the whole month.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 642
MITAL SHAH - DIRECT BY RICHARDSON

1 Q: And those records are kept in the normal course of
2 business at AT&T?

3 A: Yes, ma'am.

4 MS. RICHARDSON: At this time, I'd offer State's Exhibit
5 175 into evidence, Your Honor.

6 MR. EDGEWORTH: No objection.

7 THE COURT: State's 175 is in evidence without objection.

8 STATE'S EXHIBIT NUMBER 175

9 ADMITTED INTO EVIDENCE

10 BY MS. RICHARDSON:

11 Q: I want to -- let me show you another document and mark
12 it. This is what has been pre-marked as State's Exhibit 176.
13 Do you recognize that?

14 A: Yes, ma'am.

15 Q: Okay. Tell me what that is?

16 A: This is AT&T Tower. The tower has three sectors, Alpha,
17 Beta and Gamma.

18 Q: Okay. First of all, this document, was this -- have you
19 -- have you reviewed or helped prepare this document?

20 A: Yes, ma'am.

21 Q: Okay. And is that an accurate -- you said that's where a
22 cell tower is?

23 A: Yes, ma'am.

24 Q: And this an accurate reflection of the information that
25 you have through the records with AT&T?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

643

1 A: Yes, ma'am.

2 Q: Okay. And is this information that you use in your
3 profession as a cell records -- as an expert and cell record
4 analyst?

5 A: Yes, ma'am.

6 MS. RICHARDSON: Your Honor, at this time, I'd offer
7 State's 176 into evidence.

8 MR. EDGEWORTH: No objection, Your Honor.

9 THE COURT: State's 176 in evidence without objection.

10 STATE'S EXHIBIT NUMBER 176

11 ADMITTED INTO EVIDENCE

12 BY MS. RICHARDSON:

13 Q: Okay. Now, do cell phone records include data over which
14 tower is being used ---

15 A: Yes, ma'am.

16 Q: --- being utilized by the phone?

17 A: Yes, ma'am.

18 Q: Okay. And in particular, this exhibit that you have, the
19 map, can you tell me what that is of?

20 A: This is the AT&T Tower with the three sectors on it.

21 Normally, when we go Alpha, Beta and Gamma, the orientation,
22 the area is 0 degree and 120 degree and 240 degrees.

23 Q: Okay. And is your tower due north?

24 A: Yes.

25 Q: Okay. And if you could refer to Page 217 of those phone

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 644
MITAL SHAH - DIRECT BY RICHARDSON

1 records?

2 Your Honor, permission to publish this -- these pages to
3 the Jury electronically?

4 THE COURT: Yes, ma'am.

5 A: Can I take it off from the stack?

6 BY MS. RICHARDSON:

7 Q: Yes, sir. And is it true that every cell carrier is a
8 little different in how they maintain the records?

9 A: Yes, ma'am.

10 Q: And what they call the towers?

11 A: Yes, ma'am.

12 Q: Okay.

13 A: Yes.

14 Q: So let's get AT&T's language. Can you help explain that?

15 A: Yes, ma'am.

16 Q: I'm gonna point to some areas and if you'll just kinda
17 tell me what they are. This column here ---

18 THE COURT: To your left.

19 THE COURT: Right there.

20 BY MS. RICHARDSON:

21 Q: This tower, this column here?

22 A: These are the -- every time the phone makes an -- this
23 item number basically the steps the phone takes to brings up
24 by making a phone call or data or voice mail or, you know.

25 Q: And just keeps up with how many there are; that keeps up

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

645

- 1 with how many there are?
- 2 A: Yes, ma'am. Yes, ma'am.
- 3 Q: And then this is the date?
- 4 A: This is the date that the phone tried to get on the AT&T
- 5 network basically, yes.
- 6 Q: Okay. And this next one that says time?
- 7 A: This is the time, basically the, the real time when the
- 8 phone was being used with AT&T tower.
- 9 Q: And that's eastern -- eastern time?
- 10 A: This one? The next one?
- 11 Q: No, I mean that's -- using eastern time?
- 12 A: Yes. Yes.
- 13 Q: And then the next one, seizure time?
- 14 A: Seizure time is when the tower calls someone and it's the
- 15 time that it waits for other person to pick up the phone
- 16 basically. So, if I called you and if it rings for like
- 17 twenty seconds, that twenty seconds call is the seizure time.
- 18 Q: Okay. And then originating numbers and terminating
- 19 number.
- 20 A: Yes, ma'am.
- 21 Q: What is that?
- 22 A: The originating number is the person who is calling the
- 23 other person.
- 24 Q: Okay. And time?
- 25 A: Time is once the call has been established, it's the time

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 646
MITAL SHAH - DIRECT BY RICHARDSON

1 they talk or maybe like check voicemail or talk or whatever.

2 Q: This column is self-explanatory, it's just the number
3 dialed; is that right?

4 A: Yes, ma'am.

5 Q: Okay. And these two big -- IM?

6 A: These are the unique number that each cell phone has it.
7 We call it International Mobile Subscriber ID. Each phone has
8 a unique ID on it.

9 Q: Okay.

10 A: And the -- yeah.

11 Q: All right. And the description, what do these numbers or
12 letters indicate?

13 A: Okay. From the description, if you see the small m to --
14 that means the call is incoming to the AT&T phone and we see
15 the one underneath, BM to the small m, it means AT&T phone is
16 trying to call mobile. It could be Sprint, it could be
17 Verizon, it could be T-Mobile.

18 Q: Okay. And this next cell locations, can you tell me what
19 that is?

20 A: Yes, 10396 that is our tower information and this one the
21 digit 3 and 4 is our tower and the last digit is the sector
22 that phone was being used.

23 Q: Okay. So this first one is 8991, is that the tower name.

24 A: That's the location for the Georgetown area.

25 Q: Okay. And the Georgetown tower is 8991?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 647
MITAL SHAH - DIRECT BY RICHARDSON

1 A: Yes.

2 Q: Okay. And then this next number you were saying tells
3 you which sector of that tower; it that Alpha, Beta, Gamma?

4 A: Yes, ma'am.

5 Q: Okay. And then is just latitude/longitude?

6 A: Yes.

7 Q: All right. So, if you look at these records, how do you
8 determine or do you determine when a sector location is
9 changed by the, the last digit of this number here, the 10396?

10 A: Yeah, the last digit, yes. The last one like 6; that one
11 tells me when it's been changed.

12 Q: Okay. So, whenever it changes, for instance, from a 6 to
13 4?

14 A: That telling me that it's going from Gamma to Alpha
15 sector.

16 Q: So it's moving?

17 A: It's moving.

18 Q: And as far as these sectors are concerned, what sort of
19 -- you, you've drawn them on a map here?

20 A: Yes, ma'am.

21 Q: Or have them marked on the map. Your Honor, can I have
22 permission for him to demonstrate to the Jury?

23 THE COURT: You want him to step down?

24 MS. RICHARDSON: Yes, Your Honor, if he can step down.

25 THE COURT: Certainly, you may step down. Please keep

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

648

1 your voice up when you're away from the mic please, sir.

2 MS. RICHARDSON: There's some microphones on this.

3 THE COURT: Thank you.

4 BY MS. RICHARDSON:

5 Q: Okay. So, where is this tower located?

6 A: This tower is north of this Frazier Street?

7 Q: Frazier Street is here?

8 A: Yes.

9 Q: Near the intersection of the church?

10 A: Yes, ma'am.

11 Q: All right. And so the top sector is Alpha, right?

12 A: It is.

13 Q: Beta and Gamma?

14 A: Yes, ma'am.

15 Q: Like A, B, C kinda?

16 A: Yes, ma'am.

17 Q: All right. And you have these three definite wings or
18 blade looking items?

19 A: Yes.

20 Q: How far out can a tower be detected from or a call be
21 detected from this tower?

22 A: For an average, I think it's like -- probably within 1.2
23 miles.

24 Q: Okay. So, further out than that?

25 A: Yes. Basically, if you'll hold for a second.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 649
MITAL SHAH - DIRECT BY RICHARDSON

1 Q: Uh-huh (affirmative response).

2 A: When you see this one, that sector goes this way, you
3 know ---

4 Q: Uh-huh (affirmative response).

5 A: So, basically when you see here Gamma would be covering
6 going that way about 1 mile.

7 Q: Okay. So there is some areas that don't have -- that
8 aren't shaded in ---

9 A: Okay.

10 Q: --- in between each thing ---

11 A: Okay.

12 Q: --- are those -- can we -- can I -- can you hear me now
13 zones?

14 A: No, it's not.

15 Q: No?

16 A: These are the strongest zones. Basically, when you are
17 in this zone, you are very close to this tower.

18 Q: Okay.

19 A: So, your phone has best signal ever. So, for example, if
20 you person is here, he or she could be making call from alpha
21 sector or gamma because this sector is strong.

22 Q: Okay. So ---

23 A: This is not a gray area. So, you can use your phone
24 anywhere around this area.

25 Q: And if you're on -- if you're closest to this ---

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

650

- 1 A: Yes.
- 2 Q: --- side?
- 3 A: Yes, you would be on the Alpha.
- 4 Q: Okay. And if you're down this way you'd be on?
- 5 A: You're getting stronger towards Gamma so, for example, if
- 6 you have a call already working here and if you're walking or
- 7 driving towards this one, this guy to this guy, you know, so
- 8 Gamma would be a strong sector, so when you come this
- 9 direction, you would be served by Gamma sector.
- 10 Q: So if you're moving across, you would switch sectors?
- 11 A: Yes, ma'am.
- 12 Q: Okay. And, and that would be shown if you were in the
- 13 middle of the call?
- 14 A: Yes, ma'am.
- 15 Q: And so this area is just in between the two?
- 16 A: Yes, ma'am.
- 17 Q: Okay. And is the center sort of the dividing line?
- 18 A: Yes.
- 19 Q: Okay. And again it can extend out ---
- 20 A: It depends on the, you know, how flat the area is. But,
- 21 yeah, normally is about one mile.
- 22 Q: Okay.
- 23 A: That's why we've got many towers. You know, within --
- 24 you get another tower.
- 25 Q: Okay. All right. So, do you distinguish between this

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

651

- 1 inner part and the more remote part?
- 2 A: No.
- 3 Q: By number?
- 4 A: Yes, ma'am.
- 5 Q: Okay. Explain that to me?
- 6 A: This inner part is where you won't find any, 7, 8 and 9.
- 7 Q: Uh-huh (affirmative response).
- 8 A: The outer part is more capacity. There's more user when
- 9 you put more sectors onto it. So, if we put more sectors, we
- 10 go 4, 5 and 6, which is the same thing.
- 11 Q: Okay.
- 12 A: So, basically 7 and 4 is still in the Alpha sector; 8 and
- 13 5 is still in Beta sector; 6 and 9 is still in Gamma sector.
- 14 Q: All right. And just to make it easier for the Jury,
- 15 would you be able to label those for us?
- 16 A: Yes, ma'am. You want me to label it here or ---
- 17 Q: I can prop it up here. Okay. And would you put, this is
- 18 an Alpha label; would you put it on which?
- 19 A: Like that?
- 20 Q: Yeah. Okay. And Beta and Gamma. Okay. And could you
- 21 add the numbers that you just demonstrated to me?
- 22 Okay. And that's that last digit ---
- 23 A: Yes, ma'am.
- 24 Q: --- that you were talking about up there?
- 25 A: Yes, ma'am.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 652
MITAL SHAH - DIRECT BY RICHARDSON

1 Q: If you'd return back. And if you could refer back to the
2 records, if you could refer to Item 5263?

3 A: Yes, ma'am.

4 Q: Okay. And what time was that call?

5 A: It is 12:04 A.M.

6 Q: On August 30th, 2012?

7 A: Yes, ma'am.

8 Q: And what sector is that in?

9 A: That is on Sector Alpha.

10 Q: Okay. And another call is made after that at 12:08?

11 A: It is also on Alpha Sector.

12 Q: And then at 12:15, is there a switch in sectors?

13 A: Yes, ma'am.

14 Q: Okay.

15 A: It went from Alpha to Gamma.

16 Q: And then let's skip down. Does it skip back to Alpha
17 again; is that ---

18 A: It went back to Alpha on 1:27 A.M.

19 Q: And is there, I notice that there's a gap between 12:16
20 A.M. and the 1:27 A.M. or that there is no data in there; is
21 that right?

22 A: Yeah, I mean the phone was not used.

23 Q: Okay. And would that also -- and could that also mean
24 the phone was turned off?

25 A: Not in this case because it was -- the phone was just

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

653

- 1 idle.
- 2 Q: Okay.
- 3 A: So, if phone was turned off, I wouldn't see any
- 4 information on this side.
- 5 Q: None at all?
- 6 A: Yes, ma'am.
- 7 Q: And if you go down, you're in Sector Alpha all the way
- 8 until 4:19; is that right?
- 9 A: Yes, ma'am.
- 10 Q: And is there also a period of time between 1:30 and 2:00,
- 11 Item 5272 and 5273, where there is no data?
- 12 A: Which ones, the 5272?
- 13 Q: And 5273?
- 14 A: It was on Alpha Sector at that time.
- 15 Q: Okay. But there is a period of time again where the gap
- 16 is at?
- 17 A: Yes.
- 18 Q: And that simply means the phone was not being used?
- 19 A: Yes.
- 20 Q: Okay.
- 21 A: If you look at 5279 item?
- 22 Q: Uh-huh (affirmative response).
- 23 A: And you don't see any information on the right-hand side
- 24 ---
- 25 Q: Uh-huh (affirmative response).

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 654
MITAL SHAH - DIRECT BY RICHARDSON

1 A: --- that's the time it tells that the phone was turned
2 off, the battery or the phone was completely off the network.
3 That's why it's this -- it comes up as a blank.

4 Q: That means the phone was powered off?

5 A: Yes, ma'am.

6 Q: And what about airplane mode; do you show anything like
7 that?

8 A: Airplane mode you cannot make any phone calls, basically.

9 Q: All right. But would it show no data as well?

10 A: It could be.

11 Q: It could?

12 A: Yes, yes.

13 Q: Okay. And let's talk about that column, item 5278?

14 A: 5278; okay.

15 Q: And what time is that call?

16 A: It is 4:19 A.M. on August 30th, 2012.

17 Q: And on this end there are two different numbers; can you
18 explain what that means?

19 A: Yes, looking at the details on that it looks like the
20 call was made when the person was in Alpha Sector and the
21 caller kept on and he moved from Alpha to the Gamma. That's
22 why you see two sectors, Alpha and Gamma.

23 Q: Okay.

24 A: The person could be traveling from that direction
25 downward.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
MITAL SHAH - DIRECT BY RICHARDSON

655

1 Q: Okay.

2 A: So that's why the call was kept up.

3 Q: Okay. So, if you would step back down. So that
4 particular call -- I need you to move back please. And that
5 would have been at again 4:19 A.M. and if it indicates Sector
6 10394; can you show us where that is?

7 A: (Indicating.)

8 Q: All right. And then the second one is 10396. So, that's
9 more in the outer area?

10 A: This is (indicating).

11 Q: Okay. So, during that call, there was a switch from this
12 sector to this sector?

13 A: Yes, ma'am.

14 Q: And that's that transfer area that you talked about being
15 a little stronger?

16 A: Yes, ma'am.

17 Q: Okay. So, in your expertise, what does that mean?

18 A: That mean it's -- that when the phone was used with AT&T
19 network, that tells this sector was the strongest one. So,
20 this sector -- this tower allows them to make the call in
21 Alpha Sector, but when you move away from this, this way --
22 this strong, this signal gets weaker, this one gets stronger.
23 So, normally the stronger signal -- so this guy hands off to
24 this guy. So, basically the person is walking in this
25 direction or driving in this direction.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 656
MITAL SHAH - DIRECT BY RICHARDSON

1 Q: So, they're moving -- and it can't be this way because

2 ---

3 A: That's the way the ---

4 Q: So, it's got to be this way?

5 A: Yes, ma'am. It has to be, yes.

6 Q: All right. And based on that -- those records, that's
7 what happened with that phone at that time in the morning.

8 A: Yes, ma'am.

9 Q: Okay. Thank you, if you'd return to the jury box.

10 And the time period that we're looking at on August 30th,
11 2012 beginning at the line when we first started, Line 5254 --
12 I'm sorry -- 5263 at 12:00 in the morning?

13 A: Yes, ma'am.

14 Q: Beginning there and ending with that transfer call, can
15 you count up how many times this phone switched sectors
16 including the parts of the sectors? So we're at 10 -- sector
17 10394 at 12:04 A.M.?

18 A: Yes, ma'am, and we switched at 12:15.

19 Q: Okay.

20 A: And then we switched again on 1:27.

21 Q: That's three.

22 A: And stayed there. And we switched again at 4:19.

23 Q: So, at least four times during that time period?

24 A: Yes, ma'am.

25 Q: The sectors were switched. I have no further questions.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
MITAL SHAH - CROSS BY EDGEWORTH

657

1 Answer any questions that Mr. Edgeworth may have for you.

2 THE COURT: All right. Mr. Edgeworth?

3 CROSS EXAMINATION OF MITAL SHAH BY MR. EDGEWORTH:

4 Q: Mr. Shah, I apologize for the question, but is it fair to
5 say that these records cannot show who was using the phone at
6 the time of these calls, correct?

7 A: The phone is prepay, no.

8 Q: Thank you, Your Honor. No further questions.

9 THE COURT: Redirect, Solicitor?

10 MS. RICHARDSON: No, Your Honor.

11 THE COURT: Thank you. Thank you very much. Thank you
12 for being with us.

13 A: No problem.

14 THE COURT: You may step down.

15 Any objections to this gentleman being excused?

16 MR. EDGEWORTH: None, Your Honor.

17 MS. RICHARDSON: No, Your Honor.

18 THE COURT: All right. And you may be excused.

19 A: Thank you.

20 MS. RICHARDSON: Court's indulgence, Your Honor.

21 THE COURT: All right.

22 MS. RICHARDSON: Your Honor, the State neglected
23 yesterday to move some items into evidence. At this time, I'd
24 move to enter State's Exhibit 162 and 159.

25 MR. EDGEWORTH: No objection, Your Honor.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
MITAL SHAH - CROSS BY EDGEWORTH

658

1 THE COURT: State's 162, 169 are in evidence without
2 objection.

3 MS. RICHARDSON: I'm sorry, it's 159 and 160 is the
4 number.

5 THE COURT: 160 wasn't even identified that I recall.
6 What is that 160?

7 MS. RICHARDSON: Your Honor, they were identified by
8 Lieutenant Clarey.

9 THE COURT: 159 was as I recall. Just tell me what 160
10 was?

11 MS. RICHARDSON: Shoes.

12 THE COURT: All right. Any objection to 159 and 160?

13 MR. EDGEWORTH: No, Your Honor.

14 THE COURT: All right. 159 and 160 is -- so 162 and 169
15 is not part of this; is that correct, or do those go in, too?

16 COURT REPORTER: 162 is already in.

17 THE COURT: Okay. And 169?

18 COURT REPORTER: Yes, sir.

19 THE COURT: Thank you. 159 and 160 is in evidence
20 without objection.

21 STATE'S EXHIBIT NUMBERS 159 AND 160

22 ADMITTED INTO EVIDENCE

23 THE COURT: Thank you.

24 MS. RICHARDSON: Your Honor, at this time the State
25 rests.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 659
MOTIONS

1 THE COURT: Thank you. Thank you very much, Solicitor.

2 Mr. Foreman, ladies and gentlemen of the Jury, at this
3 juncture, I must take up a matter outside of your presence
4 and, of course, now would be a good time for you to take your
5 morning recess. So, we will be in recess about fifteen
6 minutes. During that recess, please do not discuss the case.
7 Thank you very much. You may go to your jury room.

8 (REPORTER'S NOTE: Jury exits courtroom. 10:50 A.M. The
9 following takes place outside the presence of the Jury.)

10 THE COURT: All right. Any motions, Mr. Edgeworth?

11 MOTIONS:

12 MR. EDGEWORTH: Yes, Your Honor, at this time, I would
13 like to move for a directed verdict or -- or dismiss the case
14 against my client. Each and every count charged as the
15 evidence that's been submitted into the record, really it
16 merely just raises suspicion as to my client's guilt and the
17 circumstantial evidence does not point to, to anything beyond
18 a reasonable doubt. Primarily, the facts that have been
19 submitted in this case, point to Mr. Fraser and the decedent
20 and then there's also been identified, two other individuals
21 who while they claim involvement, have withdrawn themselves
22 from full involvement and, and, and based on the victims'
23 testimony, there were four individuals, by my count those are
24 four individuals. I believe that in regards to -- so that's
25 in regards to the armed robbery, murder -- excuse me -- armed

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 660
MOTIONS

1 robbery, burglary and kidnapping charges. And then also in
2 the other charge as far as the murder is concerned, again,
3 the, the, the physical evidence that was obtained point to Mr.
4 Fraser, who has already admitted guilt and then again,
5 obviously the decedent was on the path as the State calls it
6 and there's no other evidence pointing to the Defendant in
7 this case in regards to the murder. So I'm asking the Court
8 to, to grant that motion in that regard.

9 THE COURT: Thank you. Thank you, Mr. Edgeworth.

10 MR. EDGEWORTH: Thank you, Your Honor.

11 THE COURT: Solicitor?

12 MS. RICHARDSON: Your Honor, it's the State's position
13 we've submitted sufficient evidence that taken in the light
14 most favorable to the State would support a verdict on each of
15 these charges. There has been direct evidence of statements
16 from Mr. Rivera to multiple individuals admitting his
17 involvement in all of these matters.

18 THE COURT: Thank you. Thank you very much, Solicitor.
19 Anything in response, Mr. Edgeworth?

20 MR. EDGEWORTH: No, Your Honor.

21 THE COURT: Well I'm going to address the charges
22 separately. As far as the burglary, kidnapping, armed
23 robbery, there's clearly evidence and I'm not, I'm not
24 concerned with the weight, but only the presence or absence of
25 the evidence. There's both direct and substantial

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 661
MOTIONS

1 circumstantial evidence as to those charges, both with the
2 testimony of the Anthony Lawrence and Jasmine Wilson putting,
3 putting Mr. Rivera, Mr. Fraser and Mr., Mr. Thomas all
4 together at those apartments before and after the -- before
5 and after the home invasion, I call it, just so I won't have
6 to keep naming the three charges. Further, there is testimony
7 of -- by the codefendants in the case of the home invasion,
8 Mr. Geathers and Mr. Wade, who were present in close proximity
9 aiding and abetting in the commission of the crime by their
10 direct testimony. There is also circumstantial evidence based
11 on the movement of the -- movement of the phone and the timing
12 of the phone, such as that. Further, there is forensic
13 evidence. It's no matter to the -- as far as this juncture
14 whether or not the forensics as far as on the, on the door
15 that was kicked in was only Mr. Fraser and Mr. Thomas and the
16 third party had been placed there by two individuals and the
17 forensics become intertwined with Mr. Rivera's feet, also.

18 As to -- and then there's also testimony throughout the
19 case of both Mr. Davis, Mr. Taylor, Mr. Brown, Mr. Wade
20 looking specifically additionally at the murder, of the three
21 together. Mr. Thomas, Mr. Rivera and Mr. Fraser are leaving
22 the apartment early morning hours of the 30th. The apartment
23 is very close proximity to the beginning of the path of where
24 the body of the victim, Mr. Thomas, was found. There's
25 testimony that Mr. Fraser and Mr. Rivera or both of guns being

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 662
DAMONTE MARQUEZ RIVERA - BY THE COURT

1 passed -- a gun being passed around at various times earlier
2 in the evening. There's one single gunshot wound to the back
3 of the head. There's the officer's description of the crime
4 scene as far as the timing of that with the rain and the
5 dryness of that. Again, there is statements that he has given
6 statements that he has made both to Mr. Brown, Mr. Wade, Mr.
7 Taylor and Mr. Davis. Further there's testimony in the record
8 that the individual that he left that apartment with, there
9 was three of them, one of them is dead, the other one has pled
10 guilty to the murder. So, with that being said, there's ample
11 direct and circumstantial evidence in that regard. So I would
12 respectfully deny the motion for directed verdict.

13 Mr. Rivera, if you'd please stand.

14 Madam Clerk, if you'd please place him under oath for me.

15 CLERK: Please raise your right hand.

16 DAMONTE MARQUEZ RIVERA, HAVING BEEN

17 SWORN TESTIFIES AS FOLLOWS:

18 EXAMINATION OF DAMONTE MARQUZ RIVERA BY THE COURT:

19 CLERK: Thank you.

20 THE COURT: Mr. Rivera, if you recall, we discussed
21 yesterday afternoon your right to testify or not to testify;
22 do you recall that?

23 MR. RIVERA: Yeah.

24 THE COURT: Do you have any questions you would like to
25 ask me about your right to testify or not to testify?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
BY THE COURT

663

1 MR. RIVERA: No.

2 THE COURT: Solicitor, Mr. Edgeworth, have y'all had the
3 opportunity to review his criminal history as far as
4 impeachment under Rule 609?

5 MR. EDGEWORTH: Yes, Your Honor.

6 MS. RICHARDSON: Yes, Your Honor.

7 BY THE COURT:

8 THE COURT: All right. And would you tell me what that
9 would be please, should he take the stand?

10 MS. RICHARDSON: Your Honor, the State would seek to
11 admit juvenile adjudications on petition 2009-JU-22-129 out of
12 Family Court on the conviction October 28th, 2005 of assault
13 and battery of a high and aggravated nature that would be
14 under the common law of which would carry ten years.

15 As to -- there was another juvenile adjudication February
16 27, 2008 on juvenile petition 2007-JU-22-150, armed robbery;
17 2007-JU-22-154, another count of armed robbery; 2007-JU-22-
18 155, attempted armed robbery; 2007-JU-22-157, possession of a
19 deadly weapon during the commission of a violent crime. Also
20 for adult charges a conviction on April 27th, 2011 in
21 Georgetown County on indictment 2010-GS-22-1292 on the charge
22 of assault and battery first degree which carries a penalty of
23 ten years or up to ten years.

24 THE COURT: All right. Mr. Edgeworth, do you agree that
25 that is his prior criminal history?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
BY THE COURT

664

1 MR. EDGEWORTH: Yes, Your Honor.

2 THE COURT: And that he complies with Rule 609?

3 MR. EDGEWORTH: I believe so, Your Honor. Yes, Your
4 Honor.

5 THE COURT: All right. Reading Rule 609(a)(1) concerning
6 for purposes of attacking the credibility of a witness, it --
7 it segregates out on accused -- evidence that an accused has
8 been convicted of such a crime, that being a crime punishable
9 by imprisonment for more than one year, shall be admitted if
10 the Court determines that the probative value of admitting the
11 evidence outweighs its prejudicial effect to the accused.

12 I will find as far as the 2009 assault and battery of a
13 high and aggravated nature, the probative value with meeting
14 this evidence does outweigh any prejudicial effect to the
15 accused.

16 As to the 2008 armed robbery, armed robbery, attempted
17 armed robbery and possession of a weapon during the commission
18 of a violent crime, from both a balancing test and *State v.*
19 *Colf*, C-O-L-F, I would find that the -- there is more
20 prejudicial effect in asking about the armed robberies and the
21 attempted armed robberies and the possession of a weapon
22 during the commission of a violent crime, given the fact that
23 one of the crimes charged as to Mr. Rivera in this case, is
24 armed robbery. So, I would rule that you could ask if he has
25 been convicted of four felonies or a misdemeanor, I'm not sure

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 665
BY THE COURT

1 if possession of a weapon during the commission of a violent
2 crime -- is that a felony, is that a lower class felony?

3 MS. RICHARDSON: It's five -- I think it's five years,
4 Your Honor, I can go check.

5 THE COURT: I think it does carry five years, but you can
6 ask him if he had a conviction for felony crimes, not label
7 them armed robberies. I think that's more prejudicial than
8 probative. Again, given the fact that one of the offenses for
9 which he is on trial for is, is armed robbery.

10 The 2011, I would find the probative outweighs its
11 prejudicial effect and you could ask.

12 So, what all that means, Mr. Rivera, if you were to take
13 the witness stand, the Prosecutor could ask you if you had a
14 conviction or a juvenile adjudication in 2009 for assault and
15 battery of a high and aggravated nature. They could also ask
16 if you have adjudications for felony convictions of -- in 2008
17 and also could ask if you had a conviction in 2011 for assault
18 and battery first degree. Do you understand?

19 MR. RIVERA: Yeah.

20 THE COURT: And in regards to that, I will tell the Jury
21 that, that that testimony as admitted is only admitted as to
22 the issue of your credibility and for no other purpose
23 whatsoever. Do you understand?

24 THE COURT: Today are you under the influence of any
25 medication, drugs or alcohol?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 666
BY THE COURT

1 MR. RIVERA: Nah.

2 THE COURT: Do you have any mental, physical or nervous
3 condition to keep you from understanding what you're doing
4 today?

5 MR. RIVERA: Nah.

6 THE COURT: You understand your right to testify or not
7 to testify?

8 MR. RIVERA: Yep.

9 THE COURT: And again I ask you, do you have any
10 questions you would like to ask me about that?

11 MR. RIVERA: Nah.

12 THE COURT: Have you have the opportunity to speak with
13 your attorney about that matter?

14 MR. RIVERA: So, so.

15 THE COURT: Sir?

16 MR. RIVERA: I say so, so.

17 THE COURT: Do you need more time to talk with your
18 attorney?

19 MR. RIVERA: I need a couple of minutes.

20 THE COURT: All right. Well, I'll ask you after the
21 break what your decision is. Okay?

22 MR. RIVERA: Yeah.

23 THE COURT: Thank you. Thank you very much. Anything
24 further before we take our recess, Mr. Edgeworth?

25 MR. EDGEWORTH: No, Your Honor.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
BY THE COURT

667

1 THE COURT: Solicitor?

2 MS. RICHARDSON: No, Your Honor.

3 THE COURT: All right. Thank you. Court will be in
4 recess fifteen minutes.

5 (RECESS - 11:05 A.M.)

6 *****OFF THE RECORD*****

7 (On the Record - 11:24 A.M.)

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the Jury.)

10 THE COURT: All right. Mr. Rivera, if you would remain
11 standing. You're still under oath. During this recess, did
12 you have an opportunity to speak with your attorney ---

13 MR. RIVERA: Yep

14 THE COURT: Did you have an opportunity to speak with
15 your attorney again?

16 MR. RIVERA: Yeah.

17 THE COURT: Concerning your right to testify or not to
18 testify?

19 MR. RIVERA: Yeah.

20 THE COURT: Have you made your decision?

21 MR. RIVERA: Yeah.

22 THE COURT: And what is your decision?

23 MR. RIVERA: I'll just sit back and chill.

24 THE COURT: And I will try to possibly interpret that,
25 sit back and chill, does that to interpret that you choose not

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
BY THE COURT

668

1 to testify?

2 MR. RIVERA: Yeah.

3 THE COURT: And that is your decision?

4 MR. RIVERA: Yeah.

5 THE COURT: Made of your own free will and accord?

6 MR. RIVERA: Yeah.

7 THE COURT: Thank you. Thank you very much, Mr. Rivera.

8 Thank you for your attention to the Court.

9 All right. Mr. Edgeworth, does the Defense intend to
10 present any additional evidence or testimony?

11 MR. EDGEWORTH: No, Your Honor.

12 THE COURT: Generally, my procedure is when the Jury
13 comes back out, I will advise them, of course, you're
14 presented a Defense One and Two, I believe, into evidence. I
15 would advise them of that and that you can present any other
16 evidence or testimony. I'll further tell them that the
17 Defendant never has to prove himself or herself innocent; that
18 the Defendant, regardless of the seriousness of the charges,
19 is always presumed to be innocent and has no burden whatsoever
20 of proving himself or herself innocent and that the burden of
21 proof is and always remains on the State of South Carolina to
22 prove the Defendant guilty beyond a reasonable doubt. I then
23 say however, we will return our attention to Mr. Edgeworth and
24 ask does the Defendant intend to present any additional
25 evidence or testimony and if you do not, announce that to the

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 669
BY THE COURT

1 Court, and then rest. I've advised that you've heard now all
2 the evidence and testimony you're gonna present and go into
3 the procedure we follow for the closing arguments.

4 I take it the procedures we follow in cases such as this
5 where there have been exhibits presented by the Defense, that
6 the State has the right to open on the law. Do you intend to
7 open on the law, Solicitor?

8 MS. RICHARDSON: Your Honor, just last close.

9 THE COURT: All right. Then the Defense would close
10 followed by the State thereafter followed by my charge. Do we
11 agree on that, that that's the proper procedure, Mr.
12 Edgeworth?

13 MR. EDGEWORTH: Yes, Your Honor.

14 THE COURT: Solicitor?

15 MS. RICHARDSON: Yes, Your Honor.

16 THE COURT: Now do y'all need some time between me
17 instructing the Jury of that and going to closings or I had
18 asked for lunch to be here by one o'clock. We can, we can --
19 we can go into closings and -- what's y'all's preference?

20 MS. RICHARDSON: Your Honor, I'd like just a few moments
21 if nothing else.

22 MR. EDGEWORTH: I'm ready when the Court's ready, Your
23 Honor.

24 THE COURT: How long -- you know, like I was telling -- I
25 spoke to Judge Culbertson just socially this morning and we

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 670
BY THE COURT

1 were talking about closing arguments and trial lawyers. As
2 far as George Bill Timberland, the Honorable late George Bill
3 Timberland, always told me, a good trial lawyer can't tell
4 time, which I have found to be very true. How much time --
5 just give me a feel for it so I can make a decision?

6 MR. EDGEWORTH: Your Honor, I would say fifteen minutes.

7 MS. RICHARDSON: That should be the same for the State,
8 Your Honor. I just wanted to get some exhibits ready so I'm
9 not fumbling around.

10 THE COURT: All right. Fifteen minutes for closing?

11 MR. EDGEWORTH: Yes, Your Honor, fifteen to twenty
12 minutes for closing.

13 MS. RICHARDSON: I thought you meant how long ---

14 THE COURT: I'm gonna give y'all some time.

15 MS. RICHARDSON: Oh.

16 THE COURT: I was just trying to figure out in my mind.

17 MS. RICHARDSON: Probably twenty at least for the State,
18 Your Honor.

19 THE COURT: What I -- what I may do, I'm checking with
20 the Clerk now to see if I bring them back out, tell them where
21 we're at, give them a break for their lunch if we can do that
22 kinda early. Because I don't want to break between his
23 closing and your closing. I don't want to do that. Let me
24 see what the time is and that'll give y'all some time.

25 All right. Well, we'll bring the Jury out and go through

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 671
BY THE COURT

1 this procedure as I said. Thereafter, we'll take about a
2 fifteen minutes recess and then we'll begin on our closings.

3 And, Solicitor, I would like, perhaps one of your
4 assistants or staff members could get a copy of the transcript
5 of the video just to mark as a Court's Exhibit since I have
6 referred to it in some of my rulings and such.

7 MS. RICHARDSON: Yes, Your Honor.

8 THE COURT: Thank you. Thank you very much.

9 (REPORTER'S NOTE: Jury enters courtroom. 11:30 A.M.)

10 THE COURT: Welcome back, ladies and gentlemen of the
11 jury panel, as you have heard, the State has rested. You have
12 heard all the evidence and all the testimony in this case
13 you're going to hear from the State in its case in chief.

14 A criminal defendant in South Carolina has the right to
15 present evidence or testimony in his or her own defense if
16 that Defendant chooses to do so. You may recall the
17 Defendant, through his attorney, has also -- already
18 introduced two exhibits, I believe Defense Exhibit Number One
19 and Defense Exhibit Number Two. A criminal defendant in South
20 Carolina is never required to prove himself or herself
21 innocent. A criminal defendant in South Carolina, regardless
22 of the seriousness of the charges, is always presumed to be
23 innocent under our both State and Federal Constitution.
24 However, a Defendant may present evidence and testimony if the
25 Defendant chooses to do so. The burden of proof in a case

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 672
BY THE COURT

1 such as this is always on the State of South Carolina to prove
2 guilt beyond a reasonable doubt. If a Defendant chooses to do
3 so, he may do so, may present evidence and may present
4 additional evidence, not only Defense One or Two.

5 So, we'll turn our attention now to Mr. Edgeworth and ask
6 Mr. Edgeworth, does the Defendant intend to present any
7 additional evidence or testimony?

8 MR. EDGEWORTH: No, Your Honor, he does not.

9 THE COURT: The Defense rests?

10 MR. EDGEWORTH: Yes, Your Honor.

11 THE COURT: Thank you. Thank you very much.

12 As you -- as you heard announced, the Defense has rested.
13 You have now heard all the evidence, all the testimony you're
14 going to hear from the parties in the trial of this case. The
15 procedure we follow in a case like this as far as closing
16 arguments, that's the point we're at, is Mr. Edgeworth would
17 present closing argument on behalf of his client, Mr. Rivera,
18 first, followed by the State through the Solicitor, Solicitor
19 Richardson, being the party having the burden of proof would
20 have the last closing argument to the Jury, followed
21 thereafter by my charge or instruction to you. The case would
22 then be presented to you for your deliberations and for your
23 verdict.

24 I am -- I have talked with the attorneys prior to your
25 coming back in and I agree they would like about fifteen

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 673
BY THE COURT

1 minutes before we go into closing arguments, about fifteen
2 minutes. So, I know I seem to march or parade you in and out
3 chronically I guess you could say and I -- that's, that's more
4 the rule, quite frankly, than the exception, but I'm gonna
5 give y'all about a fifteen-minute recess so the attorneys can
6 get the exhibits straight, whatever they may choose to use or
7 not use during their closing and thereafter, I'll have you
8 back in the courtroom and we will begin closing arguments. Do
9 not -- do not discuss the case at any time until it has been
10 submitted to you by the Court for your deliberations.

11 The Clerk is -- y'all may know this, I don't know, but
12 have made arrangements for your lunch. I don't know if y'all
13 know that or not. So, lunch will be brought in today as
14 arranged through our Clerk and our Clerk of Court here.

15 With that being said, if you would please step back to
16 your jury room for a fifteen-minute recess.

17 (REPORTER'S NOTE: Jury exits courtroom. 11:35 A.M. The
18 following takes place outside the presence of the Jury.)

19 THE COURT: All right. Any motions, Mr. Edgeworth?

20 MR. EDGEWORTH: No, Your Honor.

21 THE COURT: Step up here a momentarily, Solicitor.

22 (REPORTER'S NOTE: A bench conference was held off the record
23 outside the presence Jury.)

24 THE COURT: Thank you. Thank you, Mr. Edgeworth. Thank
25 you, Solicitor.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 674
MOTIONS

1 All right. Any motions, Mr. Edgeworth?

2 MOTIONS:

3 MR. EDGEWORTH: Yes, Your Honor. At this time, I would
4 like to renew, now that the State has rested -- or, excuse me,
5 the Defense has rested, I'd like to renew our motion for a
6 directed verdict based on the arguments made prior before this
7 Court?

8 THE COURT: Thank you. Thank you very much, Mr.
9 Edgeworth.

10 I would renew my previous trial rulings in that regard
11 and respectfully deny the motions for directed verdict both as
12 to burglary, armed robbery, kidnapping and murder.

13 MR. EDGEWORTH: Thank you, Your Honor.

14 THE COURT: All right. Solicitor, you had one matter
15 that you and Mr. Edgeworth have talked about concerning an
16 item of evidence?

17 MS. RICHARDSON: Yes, Your Honor. The two Cellebrite
18 reports that were submitted into evidence and don't know the
19 number right off, but State's ---

20 COURT REPORTER: 173 and 174.

21 MS. RICHARDSON: 173 and 174, we made some redactions to
22 that report to items that could have been considered
23 inflammatory or prejudicial to Mr. Rivera based on some of the
24 Court's previous rulings. Specifically, there was references
25 to him being in a fight, being jailed, looking for a bondsman,

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 675
BY THE COURT

1 those sorts of things. Mr. Edgeworth did have an opportunity
2 to review that, but I wanted to make the Court aware of that
3 so that that could be included in the Jury's instructions.

4 THE COURT: All right. Mr. Edgeworth.

5 MR. EDGEWORTH: Yes, Your Honor, I had ample opportunity
6 to review those documents and the comments that were redacted
7 and I'm in agreement with the same.

8 THE COURT: All right. Thank you. Thank you very much.

9 All right. Court will be in recess fifteen minutes and
10 upon our re-assembling, it will be time for closing arguments,
11 first presented by Mr. Edgewood -- worth and thereafter by the
12 Solicitor. Thank you very much. Fifteen minutes.

13 (RECESS - 11:44 A.M.)

14 *****OFF THE RECORD*****

15 (On the Record - 11:54 A.M.)

16 (REPORTER'S NOTE: The following takes place outside the
17 presence of the Jury.)

18 BY THE COURT:

19 THE COURT: Thank you. Thank you very much. Please be
20 seated. Thank you.

21 All right. Anything from the State before we bring in
22 our Jury?

23 MS. RICHARDSON: No, Your Honor.

24 THE COURT: Defense?

25 MR. EDGEWORTH: No, Your Honor.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 676
BY THE COURT

1 THE COURT: All right. I remind those in the courtroom,
2 I do allow any movement within the courtroom while the
3 attorneys are presenting their closing arguments to the Jury.
4 You may certainly leave after Mr. Edgeworth's closing argument
5 before the Solicitor starts and you may certainly leave after
6 the Solicitor's closing argument before I instruct the Jury.
7 But again, during the course of the attorneys addressing the
8 Jury, I allow no movement in or out or when I'm addressing the
9 Jury.

10 Also please remember as far as the cell phones, you may
11 them on you, but they should off. If the deputies see any
12 cell phones among members of the gallery, I'm advising the
13 deputies to seize them, that's beyond the bar. Also no body
14 language or movement agreeing with an attorney, disagreeing
15 with an attorney while they're addressing the Jury in any
16 manner.

17 All right. Bring us our Jury please.

18 (REPORTER'S NOTE: Jury enters courtroom. 11:57 A.M.)

19 THE COURT: All right. Welcome back, ladies and
20 gentlemen of the jury panel. As you recall, we're now at the
21 point of the closing arguments by the attorneys. Again the
22 procedure we follow is Mr. Edgeworth would close on behalf of
23 his client first, Mr. Rivera; thereafter, followed by
24 Solicitor Richardson on behalf of the State. After the
25 closing arguments by the attorneys, I will then charge or

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
CLOSING BY EDGEWORTH

677

1 instruct you on the law that you are to apply to the facts of
2 the case. Closing arguments are different from opening
3 statements. In closing arguments, the attorneys may comment
4 on the law, the facts, the reasonable inferences to be drawn
5 from the facts, and how those facts may interplay with the law
6 as I will then tell you the law is.

7 I would ask you to please give the attorneys, please give
8 the attorneys your complete and undivided attention. It will
9 be the last opportunity that those Officers of the Court will
10 have the opportunity to speak with you as a Jury.

11 With that being said, Mr. Edgeworth.

12 CLOSING BY EDGEWORTH:

13 MR. EDGEWORTH: Ladies and gentlemen of the Jury,
14 obviously, no one said this was supposed to be a sprint, but
15 thankfully the marathon that has brought us here is maybe
16 coming to a close. Of course our time is precious and that's
17 what's brought us here to hear some long stories and some
18 short stories. But knowing as we sit here as persons of
19 interest in this case, you being the Jury and the State and
20 myself, the Defense and Mr. Rivera, you have to know that you
21 can't always believe what you hear and as I started out in the
22 opening telling you a little bit of self-deprecating story,
23 I'm gonna tell you one more. When I -- when I first started
24 dating the woman who became my wife, we were going to a, you
25 know, to a fast food restaurant and I had to pause before I

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 678
CLOSING BY EDGEWORTH

1 pulled up to the little speaker box. It's all right to tell
2 you this, mind you, this was like the second or third date
3 maybe. I have a little cross to bear. Every time I go to a -
4 - to a fast food restaurant, they always say thank you, ma'am,
5 yes, ma'am, let me get that for you, ma'am, because I guess I
6 sound like a woman on the other side of the -- of the speaker.
7 And she was laughing, of course, and we pulled through, I make
8 the order and what does the lady say, yes, ma'am, we can get
9 you that. It made it a whole lot funnier I guess, but as I
10 pull around, the disbelief in the woman's face who was taking
11 the order when she saw a man sitting in the driver's seat from
12 whom she just took the order. So again, my cross to bear, it
13 happens every single time, but it just goes to show that you
14 can't always believe what you hear.

15 Now, seeing is believing, correct? We have some victims
16 over here. Someone invaded their home and they told you on
17 the stand that there were four people, unequivocally four
18 people. But it doesn't seem that anyone's believing them.
19 Shouldn't we believe them? They're the ones whose home was
20 invading. Why is no one believing them? They have nothing to
21 gain. Four people, Thomas, Geathers, Wade, all of them have
22 been implicated. Geathers and Wade implicated themselves.
23 They told you right there, oh, we went. We called to get
24 some weed, we were gonna go with them to get some weed, but
25 then they say whoa, whoa, whoa; we didn't go inside. But

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 679
CLOSING BY EDGEWORTH

1 there was four people. Why are we still here? The State has
2 served up those four people on a silver platter, all right
3 there. Wade has admitted to the guilt. Unfortunately, Mr.
4 Thomas passed away, was killed, and the other two came right
5 there and testified in the witness box but they want you to
6 put Mr. Rivera behind bars.

7 THE COURT: No, sir, that's not a proper argument for the
8 Jury. Punishment, if any, is imposed by the Court.

9 MR. EDGEWORTH: My apologies, Your Honor.

10 THE COURT: Yes, sir.

11 MR. EDGEWORTH: So, take the evidence that the State has
12 presented. They've got shoes from Fraser and got shoes from
13 Thomas. They can show that those shoes were at the home
14 invasion. They went and got shoes from Mr. Rivera; they don't
15 match anything.

16 So, what have you been presented? You know these drastic
17 times calls for drastic measures, right? You have Geathers
18 and Wade whose been brought up here. Of course they're gonna
19 say I wasn't there. So we can expect that. One of them took
20 a deal.

21 Then you have these other individuals and let's talk
22 about them. For some reason, an individual, Mr. Rivera, told
23 them about all the facts related to this case. Some, some
24 came forward three years later, two and a half years later.
25 Why did they do that? They had something to gain. You saw

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 680
CLOSING BY EDGEWORTH

1 the gentleman this morning, marched on in here, incarcerated,
2 told you that he was in a jail cell and was told these
3 stories, but you did catch the part where he said who is
4 cousins were? Geathers and Wade, family. Who's he gonna
5 protect? That' who he's going to protect. You heard from Mr.
6 Trown Davis also convicted. He came in here and told you his
7 story. He said he was in a jail cell with Mr. Rivera and Mr.
8 Taylor, the other gentleman that was sitting there in
9 shackles. Said they were hanging out and talking about it
10 again. That's not what the reports say from the detention
11 center. They were never in the same room. How could he
12 sitting there pretending to be asleep listening to a
13 conversation when he's not in the same room. Now ,the State's
14 offered up well, the records were wrong, wrong. These guys
15 weren't here out of the goodness of their heart. Every single
16 one of them had an incentive or motive to be here whether it
17 be trying to get some jail time off or whatever. Those kind
18 of leopards don't change their stripes. They're all convicted
19 felons.

20 So, when you're looking at the evidence that was
21 presented that points to the Defendant, it's words, not seeing
22 anything. There's no shoes, no gun, no bullet, just words.
23 Seeing is believing. If you take up all these stories and put
24 them against the lack of physical evidence and you say to
25 yourself that these unfortunate circumstances that we talked

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 681
CLOSING BY RICHARDSON

1 about before, the unfortunate circumstance that happened to
2 that family. The unfortunate circumstance that happened to
3 Mr. Thomas and the unfortunate circumstance that brings us to
4 trial for Mr. Rivera and all those circumstances surrounding
5 this evidence and stories, the words told to you by those
6 individuals, does that bring you to a conclusion that Mr.
7 Rivera is guilty beyond a reasonable doubt? Thank you.

8 THE COURT: Thank you. Thank you, Mr. Edgeworth.

9 Solicitor?

10 CLOSING BY RICHARDSON:

11 MS. RICHARDSON: May it please the Court?

12 If I don't break this. I'm sorry.

13 First of all, I do want to thank you for your time and
14 attention. I know it's been a long week. At the beginning of
15 this case, I reminded you and tried to take you back to what
16 happened over three years ago, August 30th, 2012 in the City
17 of Georgetown. Like a thief in the night, the lives of two
18 families were changed suddenly and without warning under the
19 cover of darkness. A ten-year-old child was awakened by the
20 sound of her door being kicked in on a school night when she
21 had her little cell phone alarm set, tried to protect her
22 little brother by hiding him. The family was threatened and
23 they were robbed. Later that night or early in the morning,
24 just across town, the life of one of those participants was
25 taken, and you can look at the scene and see, by ambush,

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 682
CLOSING BY RICHARDSON

1 without warning, under a cover of darkness on a dark hidden
2 path.

3 (To Clerk) Can you turn on the monitor?

4 Just to remind you, the charges against Mr. Rivera and
5 you have to make a decision on each and every charge. The
6 charges are burglary in the first degree, kidnapping, armed
7 robbery and murder. The Judge is gonna instruct you that the
8 hand of one is the all. If a crime is committed by people
9 working together, the act of one hand is the act of all hands.
10 It doesn't matter who actually does it. If they're all
11 involved, they're all in agreement, they're working together,
12 they're all guilty. It doesn't matter who pulled the trigger,
13 who held the gun, who grabbed the little girl out of her bed.
14 They're all in it together and they're all guilty together.

15 Just to go over the crimes, the Judge is gonna explain to
16 you what they mean. Basically, burglary first degree, a
17 dwelling, a place where people live, that's easy. Without
18 consent, no question there wasn't consent to enter. You saw
19 the pictures of the splintered door. It was in the nighttime,
20 that's not been in dispute, or someone was armed, you actually
21 have both of those and that's been undisputed.

22 Armed robbery is taking and carrying away property of
23 another, the depriving by using force, threats or intimidation
24 while armed. They took a cell phone, drugs and left while
25 armed with a weapon. That's been undisputed.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
CLOSING BY RICHARDSON

683

1 Kidnapping. They said that the indictment alleges a
2 kidnapping of a child by her initials and date of birth. Many
3 times when we think of kidnapping, we think of somebody being
4 taken away from their home or taken away completely from their
5 family. The Judge is gonna instruct you that that's not what
6 kidnapping necessarily means in South Carolina. It means
7 confining them. It also means those other things, but it also
8 means confining a person by any means. No question that
9 Alayah was moved and confined. She wasn't free to go; she was
10 being held at gunpoint. Just because she was not taken from
11 the house, under our law, the fact that she was held at
12 gunpoint and was not free to leave is confining.

13 And then murder is the unlawful killing of a person with
14 malice and aforethought either expressed or implied. The
15 Judge will instruct you more in that regard, but obviously,
16 you heard the Pathologist testify and you can use your common
17 sense and look at the exhibits. Alfonso Thomas was killed by
18 someone else in a manner that implied that is malicious,
19 ambushed, shot from behind. And again we're talking about
20 August 30th. When the police were called, of course, these
21 things happened a little before that. These are the
22 timelines, so like I said, just a few blocks away.

23 Just for ease, I'm gonna group the crimes of burglary,
24 armed robbery and kidnapping together is define them as the
25 home invasion. Five people were charged in that; Anthony

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 684
CLOSING BY RICHARDSON

1 Fraser, Damonte Rivera in the Alfonso Terrell Thomas, Shakeem
2 Geathers and Jasen Wade. What do we know? What do we know
3 for sure? The victims said they saw four people; that's not
4 in dispute. That's actually agreed upon; the victims saw four
5 people and said that three of those four actively
6 participated, were in the bedrooms with the guns, grabbing the
7 child, threatening and passing the gun back and forth. All
8 were African American, number four was at the door. His
9 descriptions had a tall guy over six foot tall with light
10 complexion. The victim described -- told you his height and
11 it was -- this person was tall or taller than him, someone
12 shorter, with a light complexion and then a guy with an orange
13 shirt on that grabbed the child out of her bed. We didn't get
14 too much of a description of the guy at the door. So, four in
15 the house. But what else do we know. We know there was a
16 getaway driver. We know that and that makes it five. How do
17 we know there was one? You heard Officer Small tell you about
18 the tire tracks and that was the end of the block near Howard
19 School. But also Shakeem Geathers, Shakeem Geathers, who came
20 in here and told you that this was a plan, that they all
21 agreed to do this for marijuana and bond money. That's what
22 they thought they were gone get. He -- and we have his phone
23 records. Those are the records that are from Sprint. He told
24 you, I sat in the car, the getaway driver. He got nervous;
25 what's taking so long, what's taking so long, what's taking so

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 685
CLOSING BY RICHARDSON

1 long. Well, what was taking so long? Think back to what the
2 victim said, demands for money, getting the child, you know,
3 all that was going on in the house. He got nervous and drove
4 off a little bit and they actually had to wave him down. His
5 phone records confirm this. During that period of time from
6 1:38 in the morning on August 30th, 2012, the phone records,
7 the phone that he had the subscriber information was
8 registered to his daddy and those were the records from
9 Sprint. The number again ends in 640 show eleven calls, boom,
10 boom, boom, boom, boom, to this phone. This phone that was
11 recovered from the pocket of Anthony Fraser, that you have the
12 Cellebrite records on that tell you that number, 315-5366. So
13 the Geathers' phone is calling the Fraser's phone, boom, boom,
14 boom, boom, boom, boom, but Fraser is not answering it. We got
15 Fraser's phone records. The lady that came in from Verizon
16 has those -- brought in those phone records. If you look at
17 the Verizon records, those are the records for Anthony Fraser
18 that show those same calls with an F beside them which she
19 testified in Verizon -- on Verizon's records stands for
20 forwarded; voice mail, voice mail, voice mail, voice mail,
21 voice mail; boom, boom, boom, boom, boom. So, from that it's
22 common sense and we know he's not calling him over and over in
23 the house because he's in that car. He's the getaway driver
24 and those records confirm it. Those records also show that
25 the cell tower that he's pinging off of during that time,

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 686
CLOSING BY RICHARDSON

1 during the home invasion, if you'll go back and you want to
2 look and you'll have these records in there, we have the cell
3 phone records for Ms. Wilson. What's the last tower she
4 pinged off of? The same one, the same sector. So, Geathers
5 was in the car.

6 Again, the victims saw four guys and you see their
7 descriptions; who are they? What makes sense? What did
8 everybody say? The tall guy, I don't think anybody can
9 disagree with that; he wears a size twelve shoe, over six-feet
10 tall -- I think they may've said 6'2", 6'3", Anthony Fraser.
11 This is a picture that came of Damonte Rivera's phone of
12 Anthony Fraser. The short guy in the middle, Damonte. Orange
13 shirt, everybody knows who that was. Not the smartest thing
14 to wear to a home invasion, Alfonso Terrell Thomas. The
15 fourth guy, the only thing that makes sense, we don't have a
16 description, the only person left is Jasen Wade.

17 So, how do we know for sure who was involved in that home
18 invasion? Well, they kicked in the door, knocked out that big
19 sheet of Plexiglas, you see it covered a good portion of the
20 hallway. In other testimony, it had been raining that night,
21 shoeprints, more than one, more than two. So, they go to
22 Fraser's house, get some shoeprints and I'm not quite as good
23 about describing them but I'm gonna describe them the way I
24 see them. When you looked at the prints and you looked at the
25 glass and you looked at the pictures, it stood out. There

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 687
CLOSING BY RICHARDSON

1 were shoeprints -- I say they look like the inside of a waffle
2 iron. I think they described them as diamonds. There were
3 swirls, there was a swirl with some writing. And then there
4 were the zig-zags. These came out of Fraser's house and
5 they're size 12. These came off the feet. These came off the
6 feet of Alfonso Thomas as he lay dead on the path. You heard
7 Mr. Darnell from SLED show you how they do it, how they look
8 at the little tears and defects and the little notches --
9 also, as Mr. Thomas lay dead on the path, a phone that was in
10 his pocket. Turn on that phone, it has Alayah's name on it.
11 Also, some foot patterns at the, at the crime scene that got
12 the investigator's attention.

13 So, we know, we know Anthony Fraser did it and we know
14 Terrell Thomas did it. We know that. We know Shakeem
15 Geathers did what he did because he admitted it and his phone
16 records corroborated it. And Jasen Wade, although he was a
17 little hard to get information out of, admits to being there
18 and admits he was with them.

19 So, what about the Damonte Rivera? What puts him there?
20 First of all, there's the witnesses. And you heard, I'm sure
21 much longer than you wanted to, from Anthony Lawrence. And
22 I'll admit, he was all over the place but what was he sure
23 about? He couldn't get all the timeframes. He was sure that
24 Damonte, Anthony Fraser and Alfonso Terrell Thomas came in his
25 house. Jasmine told you they weren't there when she got there

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 688
CLOSING BY RICHARDSON

1 initially but they left and they came back. And when they
2 came back, Jasmine was there and she saw in more ways than
3 one. They spent the rest of the early morning there and three
4 of them left together. They talked about doing a lick and
5 when they came back, they had marijuana with them. Marijuana
6 that they had to get some cigars to fix up that they weren't
7 prepared for.

8 Who else puts him there? His codefendants, Shakeem
9 Geathers and Jasen Wade. He was in the car with the other
10 two. They ran to the house, came back. Did they have
11 something to gain? Maybe. Look at that proffer agreement
12 that's on there. There's no number, there's no charges agreed
13 to and they talked and admitted they were in trouble before
14 they even had any attorneys to help them or to talk with the
15 State. They admitted it to the police, maybe not initially.
16 But I want everybody to remember, we're here on a murder case
17 based on the death of what everybody was worried as gonna be a
18 snitch. Killed because he was gonna be a snitch. He didn't
19 do what he was supposed to. He was the weak link. And here
20 we are bringing people up here to testify against the person
21 that we're saying kills snitches. So, are they gone be
22 nervous? Are they gonna be reluctant to testify? Yeah.

23 The other thing is if you look at it, the lies that he
24 told and the hiding and the evading that he did. It's clear
25 they tried to make this a smart crime scene except for the

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 689
CLOSING BY RICHARDSON

1 orange shirt, I guess. Kicked in the doors and the bedroom
2 door, kicked them in, didn't touch them, kicked them. Had the
3 victims hand them the property. Didn't go digging through the
4 safe and opening the safe; had Mr. Dozier do that so they
5 didn't touch it. Didn't go digging for a cell phone, had them
6 had them the cell phone. Same thing with the keys, limited
7 the amount of touching that was done in the house. But there
8 was concern that Alfonso Thomas hadn't done the same. He went
9 into a bedroom separately.

10 Again, if you'll look at his phone records, he has the
11 AT&T records, the last -- Mr. Shah that testified. That's a
12 month. That's a month of phone records right there. If you
13 look at his Cellebrite report, it's thick -- it's thick, but
14 it's only for three days. Everything but one message is
15 deleted as far as messages from the evening of August 30th.
16 So anything from this -- the time of these crimes back,
17 they're not on here. And we know he was using his phone. How
18 do we know it? Because he was taking pictures. Flip it back,
19 he was taking pictures in August. That's when that stated on
20 his phone. So, we know he was using that phone that month.

21 Also while Geathers is texting or calling, calling,
22 calling Fraser and Fraser is not answering, suddenly his
23 phones not being used at the exact timeframe of the home
24 invasion. If you'll look, there's nothing in between two
25 timeframes for somebody who likes to use a phone that much.

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 690
CLOSING BY RICHARDSON

1 But one of the biggest things is what he said. He also
2 was interviewed; does he seem like the quiet sort? Class
3 clown, center of attention, talking to hear himself heard. So
4 what do you think he did out at that jail?
5 Well you heard what he did. He talked to Quanmaine Brown and
6 Trown Davis. Quanmaine admitted to you, he, he was trying to
7 get some help when he talked about it. He did. Trown, Trown
8 has already finished his jail time and clearly did not want to
9 be here. He was approached by Investigator Gregory and gave
10 his information and a lot has been made about the fact in the
11 confusion with the cells. But look at the records as a whole.
12 They're all in G block and you heard them testify about how
13 they can go between rooms and that sort of thing and the
14 difference is one day. But we know that Damonte talked to
15 Trown besides just Trown telling us. How do we know that?
16 Because Damonte thought enough of him to write him a letter.
17 We got that letter in evidence. The lady from SLED had to
18 read it to you. We know what he thought of Trown and we know
19 that he knew Trown knew Joshua Taylor because they talk about
20 that -- he talks about that in the letter. So he told us
21 through that letter that he had been talking to Trown and
22 Trown and Quanmaine; what do they have in common? They were
23 federal inmates, federal inmates. What did Hammer say on his
24 interview; he's the Big Dog. So, who is he running to. Whose
25 he trying to buddy up with; who's he trying to contact and

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 691
CLOSING BY RICHARDSON

1 whose he trying to work with? Same two types; same two types
2 of charges. And Joshua Taylor, Joshua Taylor, I'll explain to
3 you his situation but he's known him for a very long time.
4 They were close at one point.

5 Mr. Edgeworth talked about protecting his cousins but who
6 actually did he try to protect? What did he tell you?

7 Damonte Rivera asked me to contact my cousin and tell them not
8 to snitch, pretty much and he did. And he did.

9 On the issues with the shoes, we did, at a late date,
10 receive an evidence voucher to get these shoes from Damonte
11 Rivera and they didn't match, they didn't match. They didn't
12 find any shoes at his house, but you can look at these
13 yourself and see. Think back to the photos at Anthony
14 Fraser's house; how many shoes were there? But we know that
15 Damonte wore other shoes, that wasn't his only pair. Again go
16 back to the picture on his own cell phone, look at the date of
17 the picture, a different pair of shoes on.

18 Think about what he said during his interview. Pretty
19 much from the beginning nailed down; I was home; I was home.
20 Walked around during the day; sundown I'm at home. You see
21 his cell phone records for that night; he wasn't at home. He
22 changed cell towers five times. You heard him testify that
23 Officer Gregory note that he lives on Front Street. Anthony
24 Lawrence lives up here. This is where he lives.

25 And then we get to who's charged in that; Anthony Fraser

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 692
CLOSING BY RICHARDSON

1 and Damonte Rivera, same thing. Everybody puts them together.
2 Everybody puts them together. The last people that are seen
3 with Terrell, Alfonso Terrell Thomas, before he is found dead,
4 the last people. They walked out that door together. Alfonso
5 had been in the bedroom with Jasmine leaving Anthony Fraser
6 and Damonte Rivera alone for a while. Look at the pictures.
7 The parking lot of Thornton Hall, walk around the building,
8 there's the path. It's the first secluded area they got to.
9 That's what it looked like from the road. Alfonso is found
10 the next morning before 7 o'clock. You saw the pool of blood
11 and you could tell from that he had not just died. You could
12 tell by the size of the pool and how it had started to
13 coagulate. He had not just died; he had been dead a little
14 while.

15 How do we know that Damonte had something to do with
16 that? You heard that Fraser has admitted part of it. So, how
17 do we know that Damonte was part of that? Again, he told us
18 or he told people that told us. What did he tell Quanmaine
19 Brown? I gave the signal; now it's time. Even if he didn't
20 pull the trigger, the hand of one is the hand of all. He
21 bragged about being involved, used it to try to get some work
22 with Quanmaine Brown. He told Trown Davis, dead men don't
23 talk. He took ownership of it. He took ownership of it.
24 They're both equally guilty.

25 Also interesting thing about these records, we marked on

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 693
CHARGE TO JURY

1 here the location for the Beck School. We learned more about
2 cell phone technology than I probably wanted to and I'm sure
3 you have, too. What we were explained is these two sectors --
4 this is by AT&T who does his phone records. These two sectors
5 right here, this area in the middle is where they switch over.
6 That's where they switch over. 4:19 in the morning, at the
7 upper part of this, Rivera changes from Alpha to Gamma.
8 What's there? Alfonso Thomas was there.

9 What is the only logical reasonable conclusion in this?
10 Five people involved in a home invasion. One of them lost his
11 life that night. Damonte Rivera, everybody has put him there
12 from the start to finish. These records put him there at the
13 finish. His bragging, his admissions put him there from
14 beginning to end. The hand of one is the hand of all.
15 Damonte Rivera is guilty of burglary in the first degree,
16 kidnapping, robbery and the murder of Alfonso Terrell Thomas.

17 I ask that you look at all the evidence and use your
18 common sense and look at the totality and the big picture in
19 rendering this verdict. Thank you.

20 CHARGE TO JURY:

21 THE COURT: Mr. Foreman, ladies and gentlemen of the
22 Jury, my charge or instruction to you will probably take about
23 forty minutes. If anyone wants to take a break, please raise
24 your hand. I generally do not take a break during the course
25 of my instructions to you. However, if during that period of

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 694
CHARGE TO JURY

1 time, you do need a break, please let me know.

2 The way of which I charge or instruct a Jury is I charge
3 the general criminal law that applies to all criminal cases in
4 South Carolina, first, followed by then the specific charges
5 and the indictments. The manner in which I will charge these
6 will be burglary first, armed robbery, kidnapping and then
7 murder. After the murder, I will then charge hand of one hand
8 of all and, finally, I will charge the form of the verdict.

9 As to the general criminal law, generally when I go from one
10 subject matter to another, I will give you the caption or the
11 highlight of the subject matter I'm fixing to cover.

12 Charge, arrest, indictment is not evidence. The
13 indictments charge the Defendant with burglary in the first
14 degree, armed robbery, kidnapping and murder. I remind you
15 that the fact the Defendant was arrested, charged and indicted
16 in this case is not evidence in the case and cannot be
17 considered by you as evidence of guilt in this case, nor does
18 it create any presumption or inference of guilt. These
19 documents are simply the formal written instruments, which
20 contains the charges against the Defendant. They are the
21 formal documents by which the case is brought into this court.

22 Multiple charges. The indictments in this case allege
23 those several different offenses, which I just enumerated to
24 you. Again, burglary first degree, armed robbery, kidnapping
25 and murder. Each indictment charges a separate and distinct

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 695
CHARGE TO JURY

1 offense. You must decide each indictment separately on the
2 evidence and the law applicable to it, uninfluenced by your
3 decision as to any other indictment. The Defendant may be
4 convicted or acquitted on any or all of the offenses charged.
5 You will be asked to write a separate verdict of guilty or not
6 guilty for each indictment.

7 Presumption of innocence. The Defendant has pled not
8 guilty to these indictments and that plea puts the burden on
9 the State to prove the Defendant guilty. A person charged
10 with committing a criminal offense in South Carolina is never
11 required to prove himself innocent. I charge you that it is
12 an important rule of the law that the Defendant in a criminal
13 trial, no matter what the seriousness of the charges may be,
14 will always be presumed to be innocent of the crimes for which
15 the indictments were issued unless guilt has been proven by
16 evidence satisfying you of that guilt beyond a reasonable
17 doubt.

18 This presumption of innocence does not end when you begin
19 your deliberations but it accompanies the Defendant throughout
20 the trial until you reach a verdict or verdicts of guilty
21 based on the evidence satisfying you of that guilt beyond a
22 reasonable doubt.

23 The presumption of innocence has been said to be like a
24 robe of righteousness placed about the shoulders of a
25 Defendant which remains with the Defendant until it has been

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 696
CHARGE TO JURY

1 stripped from the Defendant by evidence satisfying you of the
2 Defendant's guilt beyond a reasonable doubt.

3 The presumption of innocence is not a mere legal theory,
4 it is not just a legal phrase, it is a substantial right to
5 which every Defendant is entitled unless you, the Jury, are
6 satisfied from the evidence of the Defendant's guilt beyond a
7 reasonable doubt.

8 What is a reasonable doubt under the law? A reasonable
9 doubt is the kind of doubt that would cause a reasonable
10 person to hesitate to act. The State has the burden of
11 proving the Defendant guilty beyond a reasonable doubt. Some
12 of you may have served as jurors in the past in civil cases
13 where you were told that it is only necessary to prove that a
14 fact is more likely true than not true, such as by the greater
15 weight or the preponderance of the evidence. In criminal
16 cases such as this, the State's proof must be more powerful
17 than that; it must be beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that leaves you
19 firmly convinced of the Defendant's guilt. There are very few
20 things in this world that we know with absolute certainty and
21 in criminal cases the law does not require proof that
22 overcomes every possible doubt. If based on your
23 consideration of the evidence, you are firmly convinced that
24 the Defendant is guilty of the crime or crimes charged, you
25 must find the Defendant guilty. If on the other hand, you

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 697
CHARGE TO JURY

1 think there is a real possibility that the Defendant is not
2 guilty, you must give the Defendant the benefit of that doubt
3 and find him not guilty.

4 Duties of Trial Jury and Trial Judge. I remind you that
5 during this trial, you and I have certain distinct duties to
6 perform. As the Trial Judge, it is my responsibility to
7 preside over the trial of this case and I also have the duty
8 to rule on the admissibility of the evidence offered during
9 the trial. You are to consider only the competent evidence
10 before you. You are to consider only the testimony which has
11 been presented from the witness stand and any exhibits which
12 have been made part of the record. I have the additional duty
13 to instruct you on the law applicable to this case. As the
14 Presiding Judge, I am the sole judge of the law of this case
15 and it is your duty as jurors to accept and apply the law
16 exactly as I state it to you. If you already have any idea as
17 to what the law is or what the law ought to be and it does not
18 agree with what I now tell you the law is, you must set aside,
19 you must abandon your idea because you are sworn to accept the
20 law and apply the law exactly as I state it to you.

21 In every case tried in this courtroom before a Jury, the
22 Jury becomes the sole and exclusive judge of the facts in a
23 case. A Trial Judge cannot intimate, state, comment on, or
24 make any statement to a trial Jury about the facts in a case.
25 Since you, the Jury, are the sole judge of the facts in this

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 698
CHARGE TO JURY

1 case, you are not to infer from what I have said during the
2 progress of this trial in ruling on the admissibility of
3 evidence or otherwise or anything that I say now to you during
4 the course of this instruction that I have any opinion about
5 the facts of this case. The law does not allow me to have an
6 opinion about the facts in this case. That is a matter solely
7 for you, the Jury. It is your duty to determine as jurors,
8 the effect, the value, the weight, and the truth of the
9 evidence which has been presented during this trial.

10 Direct and circumstantial evidence. There are two types
11 of evidence which are generally presented during a trial;
12 direct evidence and circumstantial evidence. Direct evidence
13 is the testimony of a person who claims to have actual
14 knowledge of a fact, such as an eyewitness or an ear witness.
15 It is evidence which immediately establishes the main fact to
16 be proved. Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating the existence of a fact.
18 It is evidence which immediately establishes a collateral fact
19 from which the main fact may be inferred.

20 Circumstantial evidence is based on inference and not on
21 personal knowledge or observation. The law, our law, makes
22 absolutely no distinction between the weight or the value to
23 be given to either direct or circumstantial evidence, nor is
24 there a greater degree of certainty required of circumstantial
25 evidence than of direct evidence.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 699
CHARGE TO JURY

1 You should weigh all of the evidence in the case. After
2 weighing all of the evidence, if you are not convinced of the
3 guilt of the Defendant beyond a reasonable doubt, you must
4 find him not guilty. If on the other hand, after weighing all
5 of the evidence in the case, you are convinced of the guilt of
6 the Defendant beyond a reasonable doubt, you must find the
7 Defendant guilty.

8 Credibility of witnesses. Necessarily you must determine
9 the credibility of the witnesses who have testified in this
10 case. Credibility simply means believability, as you all
11 know. It becomes your duty as jurors to analyze and to
12 evaluate the evidence and determine which evidence convinces
13 you of its truth. In determining the believability of the
14 witnesses who have testified in this case in using your
15 individual and collective good judgment and common sense. You
16 may believe one witness over several or several witnesses over
17 one. You may believe a part of the testimony of a witness and
18 reject the remaining part of the testimony of that same
19 witness. You may believe the testimony of a witness in its
20 entirety or reject the testimony of a witness in its entirety.
21 You may consider when -- whether any witness has exhibited to
22 you any interest, bias, prejudice or other motive in this
23 case. You may also consider the appearance and the manner, of
24 the witness while testifying on the witness stand. You may
25 consider whether or a witness' testimony was corroborated or

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 700
CHARGE TO JURY

1 made stronger by other witnesses' testimony or other evidence.
2 You may consider whether or not it was uncorroborated or made
3 weaker by other testimony that was presented in the case. You
4 may consider whether or a witness gave prior inconsistent
5 statements or whether a witness gave prior consistent
6 statements, if they were asked. You must determine and
7 evaluate what evidence convinces you of its truth; again, in
8 using your individual and your collective good judgement and
9 common sense and bearing down on the -- on the testimony
10 presented, the evidence presented in determining what the true
11 facts are.

12 A person, I would advise you, ladies and gentlemen, and
13 charge you, who has a past criminal record is competent to
14 testify during a trial. A past record does not affect the
15 ability of that witness to testify. The past record may only
16 be considered by you, if at all, in determining the witness'
17 believability. Again remember, you are the sole judges of the
18 facts in the case and of the believability of any and all
19 witnesses. That includes, of course, also expert witnesses,
20 which I charged you on several times during the course of this
21 trial. Again, normally a witness cannot testify to opinions
22 or conclusions. However, there is an exception for witnesses
23 that are qualified as expert witnesses. If they have by
24 education and experience become expert in some art, science,
25 profession, craft, calling, they may state their opinions as

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 701
CHARGE TO JURY

1 to relevant and material matters in which the witness claims
2 to be an expert and may also state the reasoning for those
3 opinions held. You should consider any expert opinion
4 received in evidence in this case and like any other evidence,
5 give it the weight you think it deserves. If you decide that
6 the opinion of an expert is not based on sufficient education
7 or experience or if you conclude that the reason given in
8 support of the opinion are not sound or that the opinion is
9 outweighed by other evidence, you may disregard the opinion
10 entirely. An expert witness' testimony is to be given no
11 greater weight than the testimony of any other witness simply
12 because the witness is an expert. Further, you are not
13 required to accept an expert's opinion even though it is not
14 contradicted.

15 I instruct you and emphasize that the fact that this
16 Defendant did not testify is not a factor to be considered by
17 you in any way in your deliberations and in your consideration
18 on the question of the guilt or the innocence of the
19 Defendant. It must not be considered by you in any manner
20 whatsoever. A Defendant has the constitutional right to
21 remain silent and the assertion of this right must not be
22 considered by you in your deliberations. I repeat, under your
23 oath, you are to draw no conclusions whatsoever from the fact
24 that the Defendant in this case did not testify. The fact
25 that the Defendant did not testify, Mr. Foreman, ladies and

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 702
CHARGE TO JURY

1 gentlemen of the Jury, should not even be discussed in the
2 jury room. The burden of proof, as I have stated to you, is
3 on the State. The Defendant is not required to prove his
4 innocence. The burden of proof remains on the State to prove
5 guilt beyond a reasonable doubt.

6 Statement offered. A statement alleged to have been made
7 by the Defendant has been admitted into evidence in this case.
8 While the Court has determined that the statement is
9 admissible, I instruct you that you make the ultimate decision
10 of whether or not the Defendant made the statement. If the
11 Defendant did make the statement, you must determine whether
12 the statement was made by the Defendant voluntarily and of his
13 own free will. This means that the statement was not caused
14 by pressure, force, fear, threats, coercion, intimidation or
15 by hope or a promise of leniency or reward of any kind. In
16 your determination of whether or not a statement is voluntary,
17 you should consider both the characteristics of the Defendant
18 and the details of the questioning. Some of the factors that
19 you must consider are the age of the Defendant, the
20 Defendant's education or lack thereof, the Defendant's mental
21 ability or capacity, the Defendant's IQ or intelligence, the
22 Defendant's background and environment, the place and length
23 of detention, the nature of the questioning and the advice or
24 the lack thereof of his constitutional rights, including but
25 not limited to, the right to remain silent, that any statement

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 703
CHARGE TO JURY

1 could be used against him in a court of law, the right to have
2 a lawyer present, that if he could not afford a lawyer a
3 lawyer would be appointed to represent him without cost and
4 that he could stop making a statement at any time. You must
5 carefully consider all of the surrounding circumstances before
6 you give any weight to an alleged statement.

7 The State has the burden of proving beyond a reasonable
8 doubt that the alleged statement was voluntary. If you
9 determine it was, you may give the statement any further
10 consideration you deem proper. You must decide what weight,
11 if any, should be given to the alleged statement. If you
12 determine the alleged statement was not the free and voluntary
13 statement of the Defendant, you should not consider the
14 statement at all.

15 Intent. In order to establish criminal liability,
16 criminal intent is required. For example, the mental state
17 required to be proven by the State for a particular crime
18 could be on a scale. It could be purpose, intent, knowledge,
19 recklessness or criminal negligence. Criminal intent must be
20 proved by the State beyond a reasonable doubt. Criminal
21 intent is always a matter that must be determined by the Jury
22 from the circumstances surrounding the situation. There is
23 no way to prove intent to a mathematical certainty. There is
24 no way medical science can dissect a person's brain and
25 determine what the person had in mind. So, the law, our law

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
CHARGE TO JURY

704

1 says that criminal intent may be inferred from the
2 circumstances shown to have existed. That is how you make a
3 determination of whether or not the element of the crime
4 requiring intent was present. It is not necessary to
5 establish intent by direct and positive evidence, but intent
6 may be established by inference in the same manner as any
7 other fact by taking into consideration the acts of the
8 parties and all the facts and circumstances of the case.

9 Criminal intent is a mental state, a conscious
10 wrongdoing. It is up to you to determine what the Defendant
11 intended to do based on the circumstances shown to have
12 existed. Criminal intent can arise from action or a failure
13 to act. It may arise from negligence, recklessness, or an
14 indifference to duty or to consequences that is considered by
15 the law to be the equivalent of criminal intent.

16 I have partially charged you and instructed you this
17 other charge on a curative instruction and this concerns
18 certain items of evidence. There are -- and also the tape
19 itself. There are pauses in the tape. There are certain
20 items that were introduced that have been redacted in some
21 manner. Those were at my order. The items with pauses or the
22 items, if you look at the documents, have been redacted in
23 some manner, those items were not relevant or not admissible
24 in evidence in this case. Therefore, you know, don't
25 speculate, don't think it had anything whatsoever to do with

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 705
CHARGE TO JURY

1 the case. Don't think anyone is trying to hide anything from
2 you. That is why it's redacted. It would not be relevant,
3 admissible evidence in this case.

4 Ladies and gentlemen, if you'd please continue to give me
5 your complete and undivided attention, I have completed the
6 charge on the general criminal law in South Carolina. I'm now
7 gonna charge you on the specific offenses in the indictment.

8 Burglary in the first degree. The Defendant is charged
9 with burglary in the first degree. The State must first prove
10 beyond a reasonable doubt that the Defendant entered a
11 dwelling without consent. A dwelling is any building or
12 portion of a building in which a person ordinarily sleeps. In
13 order to prove that the Defendant entered the dwelling, the
14 State does not have to show that the Defendant's entire body
15 entered the dwelling, the smallest entry is sufficient.
16 Next the State must prove beyond a reasonable doubt that the
17 Defendant intended to commit a crime either a felony or a
18 misdemeanor at the time of the entry. The mere entry into a
19 dwelling without consent is not burglary. It is the intent if
20 the intent to commit a crime is formed after entry, it is not
21 a burglary. On the other hand, if the Defendant intended to
22 commit a crime at the time of the entry, it is a burglary even
23 if the intent was abandoned after the entry. It does not
24 matter that the intended crime may have not been completed.

25 Intent may be shown by acts and conduct of the Defendant

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 706
CHARGE TO JURY

1 in other circumstances from which you may naturally and
2 reasonably infer intent. Finally, the State must prove beyond
3 a reasonable doubt that when entering, while in the dwelling
4 or while fleeing the Defendant or an accomplice was armed with
5 a deadly weapon.

6 Now this definition of deadly weapon will apply later.
7 I'm only gonna charge it one time. A deadly weapon is any
8 article, instrument or substances which is likely to cause
9 death or great bodily harm. The following are examples of
10 instruments, which may be deadly weapons: a pistol, a shotgun
11 or rifle, dagger, a knife, a gun may be a deadly weapon even
12 if it is not operable. Secondly, the statement armed with a
13 deadly weapon or when entering, while in the dwelling, or
14 while fleeing the Defendant or accomplice caused physical
15 injury to anyone not participating in the crime or when
16 entering, while in the dwelling or when fleeing, the Defendant
17 or accomplice displayed what was or appeared to be a knife,
18 pistol, revolver, rifle, shotgun or machine gun or other
19 firearm or the Defendant entered or remained in the dwelling
20 in the nighttime. Nighttime is defined under our law as the
21 period between sunset and sunrise during which there is not
22 sufficient daylight to recognize a person's face except by
23 artificial light or moonlight. When entering a dwelling
24 without consent with the intent to commit a crime in one of
25 those aggravators, either armed with a deadly weapon, physical

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
CHARGE TO JURY

707

1 injury to a nonparticipant armed with what appeared to be a
2 deadly weapon or occurring in the nighttime.

3 Next, I instruct you on armed robbery. The Defendant is
4 charged with armed robbery. In order to prove this offense,
5 the State must first prove beyond a reasonable doubt the
6 Defendant took personal property from the person or presence
7 of another person. The property is in the presence of a
8 person when it is within that person's reach, inspection,
9 observation or control so that the person could, if not
10 overcome with violence or prevented by fear, keep possession
11 of his or her property. The State must also prove beyond a
12 reasonable doubt that the Defendant carried the property away
13 intending to permanently deprive the owner of the property and
14 to keep the property for the Defendant's own use. The
15 slightest removal of the property or the complete possession
16 of the property even for an instance by the Defendant is
17 sufficient to show a taking and carrying away of the property.
18 The taking and carrying away of the property must have been
19 done with violence or putting the owner of the property in
20 fear of violence.

21 Finally, the State must prove beyond a reasonable doubt
22 that the Defendant was armed with a deadly weapon during the
23 robbery. Again, a deadly weapon is an article, instrument or
24 substance which is likely to cause death or great bodily
25 injury, the examples of which I have previously shared with

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 708
CHARGE TO JURY

1 you.

2 Kidnapping. The Defendant is charged with kidnapping.
3 The State must prove beyond a reasonable doubt that the
4 Defendant knowingly and unlawfully seized, confined, invaded,
5 decoyed, kidnapped, abducted or carried away another person
6 without authority of law. To do a thing unlawfully is to do
7 it willful against the law. To do a thing knowingly means
8 with knowledge, consciously, not accidentally. To seize means
9 to take hold of suddenly or forcefully. To confine means to
10 limit, restrict or enclose within the bounds, imprisonment or
11 shut or keep in. To kidnap is to remove a person against his
12 will by unlawful force. The State does not have to prove that
13 the Defendant did all of these things. Instead, if you find
14 beyond a reasonable doubt that the Defendant did any of these
15 things, you may find the Defendant guilty of kidnapping.

16 Something done without authority of law is something
17 which the law does not sanction, permit, allow, condone or
18 provide justification for. The kidnapping does not have to be
19 for any personal or monetary gain for any illegal purpose, but
20 may be for any reason whatsoever.

21 Finally, as to the charge of murder. The Defendant is
22 charged with murder. The State must prove beyond a reasonable
23 doubt that the Defendant killed another person with malice
24 aforethought. Malice is hatred, ill will or hostility towards
25 another person. It is the intentional doing of a wrongful act

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 709
CHARGE TO JURY

1 without just cause or excuse and with an intent to inflict an
2 injury or under circumstances that the law will infer evil
3 intent.

4 Malice aforethought does not require that malice exists
5 for any particular time before the act is committed, but
6 malice must first exist in the mind of the Defendant just
7 before and at the time the act was committed. Therefore,
8 there must be a combination of the previous evil intent in the
9 act. Malice aforethought may be expressed or inferred. These
10 terms expressed matters, inferred matters, do not mean
11 different kinds of malice, but merely the manner in which
12 malice may be shown to exist. That is either by direct or by
13 inference from the facts and circumstances which are proven.
14 Express malice is shown when a person speaks words which
15 express hatred or ill will for another or when the person
16 prepared beforehand to do the act which was later
17 accomplished. Examples of expressed malice are the lying in
18 wait for a person or any other act of preparation going to
19 show that the deed was within the Defendant's mind would be
20 expressed malice. Malice may be inferred from the conduct
21 showing the total disregard for human life.

22 Finally, ladies and gentlemen, hand of one. If a crime
23 is committed by two or more people who are acting together in
24 committing a crime, the act of one is the act of all. A
25 person who joins with another or others to commit an unlawful

STATE V. RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 710
CHARGE TO JURY

1 act is criminally responsible for everything done by the other
2 person, which happens as a probable or natural consequence for
3 the act done in carrying out the common plan and purpose. For
4 example, two people could be guilty of killing another person
5 when only one of the two had a knife and only one of the two
6 thrust the knife that caused the death. If two or more people
7 were together, acting together, assisting each other in
8 committing the offense, the act of one is the act of all or as
9 it is sometimes said under the law, the hand of one is the
10 hand of all. Prior knowledge that a crime is going to be
11 committed without more is not sufficient to make a person
12 guilty of that crime. Mere knowledge that another person is
13 going to commit a crime, even if the Defendant is present when
14 the crime is committed, is not sufficient to convict a
15 Defendant as a principal. Guilt as a principal is shown by
16 actual or constructive presence at the scene as a result of
17 prior arrangement. Therefore, a finding of a prior arranged
18 plan or common scheme is necessary for a finding of guilt as a
19 principal. The State must prove beyond a reasonable doubt by
20 competent evidence the theory of the hand of one is the hand
21 of all. A principal in a crime is one who either actually
22 commits the crime or who is present, aiding, abetting or
23 assisting with the commission of the crime. When a person
24 does an act in the presence of and with the assistance of
25 another, the act is done by both. Where two or more people

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
CHARGE TO JURY

711

1 acting with a common plan or intent are present at the
2 commission of the crime, it does not matter who actually
3 commits the crime, all are guilty. The hand of one is the
4 hand of all. Present at the commission of the crime means to
5 be sufficiently near to aid, abet and assist in the commission
6 of the crime. However, mere presence at the scene of the
7 crime is not sufficient to convict one as a principal on the
8 theory of aiding and abetting. Intent is also a necessary
9 element, for there must have been a common design or intent to
10 commit the crime and the crime must have been committed
11 pursuant thereto with the person aiding and abetting by some
12 overt act. Intent means the result which actually occurs, not
13 accidentally or involuntarily. Again intent may be shown by
14 acts and conduct of the Defendant and other circumstances from
15 which you may naturally and reasonably infer intent. The
16 State must prove these elements beyond a reasonable doubt.

17 Finally, ladies and gentlemen, that concludes my charge
18 to you except for instructions on the form of the verdict. I
19 assure you the end is in sight.

20 Regarding the charges, as to -- and I'm gonna -- as to
21 both burglary, armed robbery, kidnapping and murder, you would
22 have one of two verdicts you may reach as to each of those
23 charges; guilty or not guilty. The order in which I just
24 stated has no significance whatsoever. It's only that one
25 must be -- one must be stated first. Your verdicts must be

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 712
CHARGE TO JURY

1 unanimous. All twelve of you must agree. Your verdicts may
2 not be based on bias, prejudice, sympathy or any other motive
3 or emotion not in evidence in this case.

4 Mr. Foreman, ladies and gentlemen of the Jury, you'll
5 have this form of verdict. I have put two forms of verdict.
6 The first one contains the charges just chronologically of the
7 burglary, the armed robbery and the kidnapping. When you
8 determine what the facts of the cases are as those charges and
9 after your determination of the facts, apply those to the law
10 as I told you the law is, taking all both the general and the
11 specific, if you find the State has met its burden of proof
12 beyond a reasonable doubt as to the burglary and your verdict
13 unanimously is guilty, Mr. Foreman, I would ask you to please
14 check next to the left of the word guilty and circle both your
15 checkmark and the word guilty.

16 If on the other hand you find the State has failed to
17 meet its' burden of proof beyond a reasonable doubt as to the
18 burglary, you -- and your unanimous verdict is not guilty, I
19 would ask you to check to the left of the two words not guilty
20 and circle that. You decide the facts, you apply the facts to
21 the law and you reach your verdict, your true and just
22 verdict. The same, ladies and gentlemen, as to the armed
23 robbery and as to the kidnapping.

24 Again you will determine the evidence separately and
25 distinctly as to each charge. As to each charge and you will

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 713
CHARGE TO JURY

1 reach a verdict as to each charge.

2 The second form of verdict is the murder. Again on the
3 form of verdict you will find guilty or not guilty. If the
4 State has met its' burden of proof beyond a reasonable doubt,
5 after evaluating the evidence and applying it to the law as I
6 told you the law is and that verdict is unanimous, check to
7 the left of the word guilty, circle the check mark, circle the
8 guilty and of course both of these documents have signature
9 line as to presiding juror and a date line for the date in
10 which you reach a verdict.

11 After you have reached those four unanimous verdicts and
12 the form has been properly executed, I would ask you, Mr.
13 Foreman, well, I was gonna say knock on the jury room door,
14 but they're high tech here in -- in Georgetown, not where I
15 was last week, I forget where I was, but wherever I was.
16 Be that as it may, I think you have a light and such and I
17 think they also have a light if you want -- if you have a
18 question or something of that nature and if you write out the
19 question for me, Mr. Foreman, if the Jury has one, before you
20 switch the light on. I'll certainly try to respond promptly.

21 The law requires I meet with the attorneys one final time
22 outside of your presence in case I have to further instruct
23 you in any manner. So I'm gonna ask you to please step to
24 your jury room. Do not begin your deliberations until you are
25 instructed to do so. If you can begin your deliberations -- I

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 714
BY THE COURT

1 don't know about your lunch and I don't know if you just want
2 to eat lunch before you begin your deliberations or how you
3 want to do it. If you want to eat and deliberate that's fine
4 with me, just -- just give me the preference one way or the
5 other. What'll happen is -- everybody looks great.
6 Everybody looks great which means our alternate, if I don't
7 have to further instruct you to come out of the jury room and
8 then the twelve remaining jurors will begin their
9 deliberations.

10 All right? As I say if you have any questions, please
11 let me know. You may now go with your Bailiff to your jury
12 room.

13 (REPORTER'S NOTE: Jury exits courtroom. 1:20 P.M. The
14 following takes place outside the presence of the Jury.)

15 THE COURT: All right. Any exceptions, additions,
16 Solicitor?

17 MS. RICHARDSON: No, Your Honor.

18 THE COURT: Mr. Edgeworth?

19 MR. EDGEWORTH: No, Your Honor

20 THE COURT: All right. Thank you. If y'all would check
21 the exhibits if you've not already done so and here's the form
22 of verdict. When I send it in, I don't send in any
23 indictments; you can review that and ---

24 MR. EDGEWORTH: Yes, Your Honor, I just wanted to make
25 sure that the record was clear that we -- we did not request

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 715
BY THE COURT

1 charges on lessor included charges based on my discussion with
2 my client and the catch twenty-two in that regard and I didn't
3 know if we -- we briefly talked about it before, but ---

4 THE COURT: Yes, sir. All right. Yes, sir. I
5 understand and -- all right then. As far as the charges are
6 concerned, I understood my law clerk had discussed with y'all
7 what I was going to charge and asked y'all if you had any
8 specific requests to charge and I was informed there were no
9 specific requests.

10 MR. EDGEWORTH: That's correct, Your Honor.

11 MS. RICHARDSON: Yes, sir.

12 THE COURT: And you knew exactly what I was gonna charge;
13 is that correct, Solicitor?

14 MS. RICHARDSON: Yes, Your Honor.

15 THE COURT: That's correct, Mr. Edgeworth?

16 MR. EDGEWORTH: Yes, Your Honor.

17 THE COURT: All right. Yes, sir, I certainly understand
18 and you're protected on the record.

19 MR. EDGEWORTH: Thank you, Your Honor.

20 THE COURT: All right. Thank you. All right. The -- I
21 guess we can -- this is all, correct, the evidence, Solicitor?

22 MS. RICHARDSON: There is one behind the witness box, but
23 that's it.

24 MR. EDGEWORTH: Yes, Your Honor.

25 THE COURT: So, it can now go to the Jury and we can

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 716
VERDICT OF JURY

1 bring our alternate out and they can be advised to begin their
2 deliberations?

3 MR. EDGEWORTH: No objection, Your Honor, thank you.

4 MS. RICHARDSON: Yes, Your Honor.

5 THE COURT: All right. All right. Well, then we'll be
6 awaiting our Jury verdict. This is the form of verdict.
7 Make sure the foreperson gets that. If you'd deliver them and
8 send the alternate to me. Thank you very much.

9 (REPORTER'S NOTE: Deliberations begin. 1:34 P.M.)

10 *****OFF THE RECORD*****

11 (On the Record - 3:14 P.M.)

12 VERDICT OF JURY:

13 THE COURT: Thank you. Thank you very much. Good
14 afternoon. Please be seated.

15 All right. I understand we have a verdict. I would
16 remind those in the gallery that I do not tolerate any display
17 of emotion. I consider emotion disrespectful to the decorum
18 of the Court. I consider it a contempt of Court. I would ask
19 the sheriffs if anybody displays any emotion in any manner,
20 pro or con, to please take them into custody and I will have a
21 contempt hearing shortly thereafter.

22 All right. Anything from the State before we bring in
23 our Jury, Solicitor?

24 MS. RICHARDSON: No, Your Honor.

25 THE COURT: Defense, Mr. Edgeworth?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
VERDICT OF JURY

717

1 MR. EDGEWORTH: Nothing, Your Honor.

2 THE COURT: Thank you.

3 (REPORTER'S NOTE: Jury enters courtroom. 3:14 P.M.)

4 THE COURT: Our Jury has returned.

5 Mr. Foreman, has the Jury reached verdicts in this case?

6 FOREPERSON: Yes, we have.

7 THE COURT: On all four charges?

8 FOREPERSON: That's correct.

9 THE COURT: And are those verdicts unanimous?

10 FOREPERSON: Yes, they are.

11 THE COURT: Would you hand the verdict form to the

12 Bailiff, please?

13 All right. The verdict appears to be in the proper form
14 and properly filled out, signed and dated.

15 Madame Clerk, if you would read the verdict, please.

16 CLERK: The State of South Carolina v. Damonte Rivera,
17 Indictment Number 2012-GS-22-0956 as to first degree burglary,
18 we, the Jury, by unanimous consent, find the Defendant guilty.

19 Indictment Number 2012-GS-22-0955 as to armed robbery,
20 we, the Jury, unanimously find the Defendant guilty.

21 Indictment Number 2012-GS-22-0957 as to kidnapping, we,
22 the Jury, unanimously find the Defendant guilty.

23 Indictment Number 2013-GS-22-0854 as to murder, we, the
24 Jury, unanimously find the Defendant guilty.

25 THE COURT: Mr. Foreman, ladies and gentlemen of the

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 718
VERDICT OF JURY

1 Jury, if those are your verdicts and those are still your
2 verdicts, please so indicate by raising your right hand.

3 All right. All hands are raised. Thank you. Thank you
4 very much.

5 Anything further for the Jury from the State?

6 MS. RICHARDSON: No, Your Honor.

7 THE COURT: From the Defense, Mr. Edgeworth?

8 MR. EDGEWORTH: No, Your Honor.

9 THE COURT: Thank you. Thank you very much.

10 Mr. Foreman, ladies and gentlemen of the Jury,
11 momentarily I'm going to release you from your jury service
12 for what little remains of the remainder of the week. I would
13 like to advise you that I never criticize or commend a Jury
14 for its verdicts. However, I will say during the course of
15 this trial, I have observed each of you from time to time. I
16 have found y'all focused, attentive, engaged with the
17 witnesses, with the attorneys, with the Court. You can't ask
18 for a better Jury than that. You have a very difficult task,
19 probably the most important and most difficult task of any of
20 the parties that are in the courtroom whether it be the State,
21 the Defense, the Bench or the other parties. We would not be
22 able to go about the very important business of administering
23 your criminal and civil justice system without participation
24 of folks just like yourselves day in and day out throughout
25 the courthouses in all the counties in South Carolina. It is

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854 719
MOTIONS

1 my pleasure and privilege to have been with y'all this week in
2 Georgetown County and I have -- I would just commend y'all on
3 your work ethic and your attitude during that period of time.
4 I realize it disrupts your personal and professional lives and
5 I thank you for persevering, enduring and performing tasks
6 that are vital to our system of government and freedom. Thank
7 you. Thank you very much. You are now excused from your jury
8 service.

9 After I hear motions, I will sentence Mr. Rivera. You
10 are certainly welcome to remain. However, you are welcome to
11 leave at this time if you would like to do so.

12 (REPORTER'S NOTE: Jury exits courtroom. 3:18 P.M.)

13 THE COURT: All right. Motions, Mr. Edgeworth?

14 MOTIONS:

15 MR. EDGEWORTH: Yes, Your Honor. On behalf of the -- of
16 Mr. Rivera, I move for the Court to set aside the verdict as
17 entered by the Jury and enter a directed verdict of not guilty
18 based on the fact that the evidence does not comport with the
19 Jury decision.

20 THE COURT: I would respectfully deny that motion. I
21 believe there is not only sufficient but overwhelming evidence
22 of both direct and circumstantial nature as to the finding of
23 the Jury's verdict in this case on the burglary, armed
24 robbery, kidnapping and murder.

25 Any other motions?

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 720
VICTIM STATEMENT

1 MR. EDGEWORTH: Not at this time, Your Honor.

2 THE COURT: Any reason sentence cannot be imposed at this
3 time?

4 MR. EDGEWORTH: None that I'm aware of, Your Honor.

5 THE COURT: All right. Thank you. Anything additional
6 from the State before imposition of sentence, Solicitor?

7 MS. RICHARDSON: Just a moment, Your Honor.

8 Your Honor, one of the -- Ms. Meyon Thomas would like to
9 address the Court.

10 THE COURT: All right. Certainly I'll hear from anyone
11 you would like me to hear from, Solicitor.

12 Tell me your name again for the record, please?

13 MS. THOMAS: Meyon Thomas.

14 THE COURT: All right. Ms. Thomas, I'll be -- I'll be
15 happy to hear from you.

16 VICTIM STATEMENT:

17 MS. THOMAS: As you know I was the victim's sister and
18 this was a very hard week, but I just wanted a few things
19 stated. I'm hearing exactly what I wanted to hear to bring
20 justice for my brother. That's all.

21 THE COURT: Thank you. Thank you very much, Ms. Thomas.

22 MS. RICHARDSON: That's all, Your Honor.

23 THE COURT: All right. And do you -- do you have
24 sentencing sheets?

25 MS. RICHARDSON: Yes, Your Honor.

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854 721
BY THE COURT

1 THE COURT: All right. Mr. Edgeworth, I'll be happy to
2 hear from you. Anything you'd like to say?

3 MR. EDGEWORTH: Your Honor, against my explicit advice,
4 my client would like to address the Court. So I'm asking
5 permission on your behalf, however, I admonished him not to --
6 to speak.

7 THE COURT: All right. Thank you. Thank you, Mr. -- Mr.
8 Rivera?

9 MR. RIVERA: Yes, sir.

10 THE COURT: Anything you'd like to say?

11 MR. RIVERA: Yeah, when you get finished sentencing me
12 and what not, you know, I just want the maximum of everything.
13 I want that thing consecutive.

14 THE COURT: Anything else you'd like to say?

15 MR. RIVERA: That's all I can think of right now.

16 THE COURT: All right. Thank you. Thank you very much,
17 Mr. Rivera.

18 Anything further in mitigation, Mr. Edgeworth?

19 MR. EDGEWORTH: No, Your Honor.

20 THE COURT: Thank you.

21 SENTENCE OF THE COURT:

22 THE COURT: All right. Kidnapping, Solicitor, carries
23 zero to thirty?

24 MS. RICHARDSON: I believe that's right, Your Honor.

25 THE COURT: Burglary first is fifteen years to life?

STATE V RIVERA - 2012-GS-22-955, 956, 957, 2013-GS-22-854
SENTENCE OF THE COURT

722

1 MS. RICHARDSON: Yes, Your Honor.

2 THE COURT: Armed robbery is zero to twenty-five?

3 MS. RICHARDSON: Ten to thirty, Your Honor.

4 THE COURT: Ten to thirty. All right. Thank you.

5 Not less than ten, not more than thirty?

6 MS. RICHARDSON: Yes, Your Honor.

7 THE COURT: All right. As to the sentence in this case,
8 I take into account that there are four violent, most serious
9 offenses; and they were perpetrated against multiple victims
10 and during the hours of darkness; they were perpetrated with
11 the use of deadly weapon; that one of the named victim was a
12 minor child; that there were also other minor children within
13 the Dozier residence that evening; that the sanctity of the
14 home is -- should be not violated in any manner, certainly not
15 in the manner that as violent and as illegal as this was.
16 I also take into account that the murder, the homicide was
17 perpetrated with a deadly weapon; that the fatal round was
18 inflicted by shooting from the back of the unsuspecting victim
19 in this case; and that it was just a complete and total
20 tragedy both to the Dozier family and, of course, to the
21 Thomas family.

22 2012-GS-22-00956, indictment for burglary in the first
23 degree, the Defendant is committed to the State Department of
24 Corrections for determinate term of thirty years.

25 2012-GS-22-00955 as to armed robbery, the Defendant is

STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
SENTENCE OF THE COURT

723

1 committed to the State Department of Corrections for a
2 determinate term of thirty years.

3 2012-GS-22-00957 as to kidnapping, the Defendant is
4 committed to the State Department of Corrections for a
5 determinate term of thirty years.

6 Thirty years on each of those charges are concurrent one
7 with the other.

8 2013-GS-22-00854, Damonte Marquez Rivera as to murder,
9 the Defendant is committed to the State Department of
10 Corrections for a determinate term of life without the
11 possibility of parole. As to that charge, the thirty years on
12 each of the previous preceding charges are concurrent one with
13 the other. However, that thirty-year concurrent sentence is
14 consecutive to the life without parole sentence.

15 Good luck to you, Mr. Rivera.

16 MR. RIVERA: All right. I appreciate it.

17 THE COURT: Yes, sir.

18 Anything further, Solicitor?

19 MS. RICHARDSON: No, Your Honor.

20 THE COURT: Anything further, Mr. Edgeworth?

21 MR. EDGEWORTH: Nothing further, Your Honor.

22 THE COURT: Thank you. Thank you very much.

23 Court will be in recess.

24 (ADJOURNED - 3:31 P.M.)

25 **END OF DAY FIVE.**

26

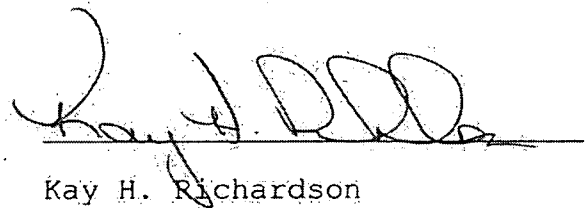
STATE V RIVERA - 2012-GS-22-955,956,957, 2013-GS-22-854
CERTIFICATE OF COURT REPORTER

724

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Damonte Marquez Rivera, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Conway, South Carolina, on October 26-30, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

January 15, 2016.

725

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



Scott R. Hixson
Chief Deputy Solicitor

REPLY TO ☐

P.O. BOX 1276
CONWAY, SC 29528
843-915-5460
FAX: 843-915-6461



JIMMY A. RICHARDSON, II
Solicitor

Alicia A. Richardson
Deputy Solicitor

REPLY TO ☒

P.O. BOX 1688
GEORGETOWN, SC 29442
843-545-3169
FAX: 843-545-3268

August 25, 2015

Charles Barr
P.O. Box 83
Kingstree, SC 29556

RE: State v. Shakeem Isiah Geathers

Warrant Number(s): 2013A2220200385, 2013GS2200870-874

Charge(s): Accessory before the fact (3 counts)
Accessory after the fact (3 counts)

Dear Mr. Barr:

By this letter, the State extends to your client the opportunity of a Proffer in this matter subject to the following material terms:

1. Shakeem Isiah Geathers shall submit himself to agent(s) of the State for the purpose of debriefing regarding this matter and all other matters materially bearing on this matter. He shall be completely truthful concerning his involvement in this matter, and completely truthful concerning the involvement of all other individuals in this matter. He shall truthfully and completely answer all questions posed by agent(s) of the State bearing materially on this matter, and shall provide without prompting all information concerning this matter in a complete and truthful manner even if such information is not elicited by agent(s) of the State by direct question. Any and all information provided by Shakeem Isiah Geathers under the terms of this Proffer may be recorded in any fashion at the election of the State;

2. Shakeem Isiah Geathers shall submit himself to polygraph examination(s) to verify all information provided to the State at the election of the State. The polygraph examiner(s) shall be selected by the State and, for the purpose of this Proffer, are designated agent(s) of the State; upon examination(s) by polygraph, if Shakeem Isiah

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the public's trust in the pursuit of justice and enforcement of the law.

Geathers responses show deception, the terms of this Proffer are null and void at the election of the State. Any statements made by Shakeem Isiah Geathers may be used against him by the State for any purpose;

3. Shakeem Isiah Geathers shall appear as a witness in the trial(s) of all individuals in this matter who are designated as defendants by the State through indictment; and Shakeem Isiah Geathers shall testify truthfully, completely, and consistently with prior statements made to the State upon being called upon to do so; failure to testify in the manner specified above will render the terms of this Proffer null and void. Use of his statement(s), should Shakeem Isiah Geathers violate this term of the Proffer, are the same as are provided in paragraph 2 of this Proffer; *No statements given today will be used against him unless he refuses to testify or is untruthful.*

4. Shakeem Isiah Geathers shall submit major case prints;

5. The State shall consider the extent and degree of cooperation of Shakeem Isiah Geathers in the election of charges and at the sentencing of Shakeem Isiah Geathers, and shall advise the Court of Shakeem Isiah Geathers's extent and degree of cooperation in connection with this matter;

6. Violation of any term of this Proffer renders all terms null and void; and

7. This Proffer is the entire agreement between the parties; any agreement reached between the parties prior to the date of acceptance of this Proffer is made null and void by this Proffer; the terms of this Proffer may be amended only in writing and only by agreement of the parties.

Should your client wish to accept the terms of this Proffer, please indicate by affixing your signatures on the signature lines provided below.

Sincerely,

[Signature]
Alicia Richardson
Deputy Solicitor

[Signature]
SHAKEEM ISIAH GEATHERS
DEFENDANT

[Signature]
CHARLES BARR
ATTORNEY FOR DEFENDANT

9-10-15
DATE

9/10/15
DATE

727

WITNESSES

Georgetown Police Department

ARREST WARRANT NUMBER

2012A2220200131

CDR: 0139 §16-11-0330(A)

DOI: 8/30/2012

ACTION OF GRAND JURY

TRUE BILL

C. Anderson

Foreperson of Grand Jury

Date: 11/14/12

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS2200955 ✓

The State of South Carolina

County of Georgetown

Scott R. Hixson

12G00659

COURT OF GENERAL SESSIONS

NOVEMBER, 2012 TERM

THE STATE

vs.

DAMONTE MARQUEZ RIVERA

GEORGETOWN. SC 29440-3049

DOB:

SSN:

B / M

ATTORNEY: Hazzard, Ronald W.

Indictment for

ARMED ROBBERY

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on November 14, 2012, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Damonte Marquez Rivera did in Georgetown County on or about August 30, 2012, while acting in concert with others and while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Walter D. from or in the immediate presence of Walter Dozier with intent to deprive Walter D. of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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 PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
 STATE VS.
Damonte Marquez Rivera

AKA:

Race: BLACK Sex: M Age: 22DOB: SS#:

Address:

City, State, Zip: Georgetown, SC 29440-3049DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2200955A/W#: 2012A2220200131Date of Offense: 8/30/2012S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

Richardson, Alicia

SCB8880

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: With 13652200854
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 188.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 20.00 beginning 1mo after release\$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Georgetown Police Department

REST WARRANT NUMBER

2012A2220200132

CDR: 0079 §16-11-0311

DOI: 8/30/2012

ACTION OF GRAND JURY

TRUE BILL

C. Anderson
eperson of Grand Jury

Date: 11/14/12

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS2200956 ✓

The State of South Carolina

County of Georgetown

Scott R. Hixson

12G00659

COURT OF GENERAL SESSIONS

NOVEMBER, 2012 TERM

THE STATE

vs.

DAMONTE MARQUEZ RIVERA

GEORGETOWN, SC 29440-3049

DOB:

SSN:

B / M

ATTORNEY: Hazzard, Ronald W.

Indictment for

BURGLARY, FIRST DEGREE

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

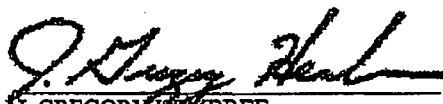
At a Court of General Sessions, convened on November 14, 2012, the Grand Jurors of Georgetown County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Damonte Marquez Rivera did in Georgetown County, on or about August 30, 2012, while acting in concert with others, enter the dwelling of Walter Dozier without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, the entering or remaining occurred in the nighttime while armed with a deadly weapon, he or another participant in the crime, in violation of Section 16-11-0311(A), 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 PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
 STATE VS.
Damonte Marquez Rivera

AKA: _____
 Race: BLACK Sex: M Age: 22
 DOB: _____ SS#: _____

Address: _____
 City, State, Zip: Georgetown, SC 29440-3049
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary, 1st Degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2200956A/W#: 2012A2220200132Date of Offense: 8/30/2012S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Richardson, Alicia SCB8880 SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 13 65 22 00 854
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐
☐ Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ 20.00 beginning 1mo after release

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Shawanna Wilson
Kay Richardson

30 Oct 13

733

WITNESSES

Georgetown Police Department

ARREST WARRANT NUMBER

2012A2220200133

CDR: 0095 §16-03-0910

DOI: 8/30/2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 1-11-12

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS2200957 ✓

The State of South Carolina

County of Georgetown

Scott R. Hixson

12G00659

COURT OF GENERAL SESSIONS

NOVEMBER, 2012 TERM

THE STATE

vs.

DAMONTE MARQUEZ RIVERA

GEORGETOWN, SC 29440-3049

DOB:

SSN:

B / M

ATTORNEY: Hazzard, Ronald W.

Indictment for

KIDNAPPING

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on November 14, 2012, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Damonte Marquez Rivera did in Georgetown County on or about August 30, 2012, while acting in concert with others, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one A.W., date of birth _____ without authority of law, in violation of Section 16-03-0910, 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

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Georgetown

VS.

Damonte Marquez Rivera

AKA:

Race: BLACK Sex: M Age: 22

DOB: SS#:

Address:

City, State, Zip: Georgetown, SC 29440-3049

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2200957

A/W#: 2012A2220200133

Date of Offense: 8/30/2012

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

SCB8880

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*, the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: with 13 65 22 008574
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 20.00 beginning 1mo after release\$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Georgetown Police Department

DOCKET NO. 2013GS2200854 ✓

The State of South Carolina

County of Georgetown

Alicia Richardson

13G00518

COURT OF GENERAL SESSIONS

SEPTEMBER, 2013 TERM

TEST WARRANT NUMBER

1A2220200383

0116 §16-03-0010, 0020
8/30/2012

THE STATE

vs.

DAMONTE MARQUEZ RIVERA

GEORGETOWN, SC 29440-3049

DOB:

SSN:

B / M

ION OF GRAND JURY

TRUE BILL

Don Culbertson
person of Grand Jury
9-18-2013

ATTORNEY: Hazzard, Ronald W.

Indictment for

DICT

MURDER

Jimmy A. Richardson, II, Solicitor

person of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on September 18, 2013, the Grand Jurors of Georgetown County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Damonte Marquez Rivera did in Georgetown County, on or about August 30, 2012, along with a co-defendant, willfully, feloniously, and intentionally kill the victim, Alphonso Thomas, with malice aforethought, either express or implied, by means of gunshot wound to the head/neck area, and the victim did die as a proximate result thereof on or about August 30, 2012 in Georgetown 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.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Georgetown

VS.

Damonte Marquez Rivera

AKA:

Race: BLACK Sex: M Age: 22

DOB: SS#:

Address:

City, State, Zip: Georgetown, SC 29440-3049

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2200854

A/W#: 2013A2220200383

Date of Offense: 8/30/2012

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor lat or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson, Alicia

SCB8880

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life 40 PAROLE days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

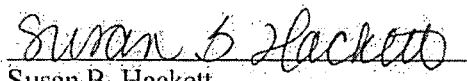
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

are covered on with the other; however, that covered 30 year sentence is covered on 4/11/13

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 20th day of July, 2016.


Susan B. Hackett
Appellate Defender

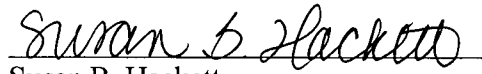
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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This 20th day of July, 2016.


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