

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM ANTHONY WALLACE,

APPELLANT

APPELLATE CASE NO. 2014-001786

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) COURT OF General Sessions
County of Kershaw) 2013-GS-40-04551
) 2013-GS-40-04553
) 2013-GS-40-04554
) 2013-GS-40-04547
) 2013-GS-40-04548
) 2013-GS-40-04549
) 2013-GS-40-04550
)
The State)
) PRETRIAL
vs.) TRANSCRIPT OF RECORD
)
William Wallace,)
)
Defendant)

July 31, 2014
Camden, South Carolina

BEFORE:

The Honorable Robert E. Hood, Judge

APPEARANCES:

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KAREN AMBROZIAK
Official Court Reporter

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EXHIBITS:

STATE'S EXHIBITS:

No.	Description	ID	EV
1	Miranda Advice of Rights	54	56

DEFENDANT'S EXHIBITS:

(There were no Defense exhibits introduced.)

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1	Memo Motion	118	

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1 THE COURT: All right. We're on the record in
2 the State of South Carolina vs William Wallace. Does
3 somebody have the indictment numbers? If you can give
4 those to us, Ms. Sampson.

5 MS. SAMPSON: The first one is kidnapping
6 2013-GS-40-04551, there's another kidnapping that ends
7 in 53, murder 54, attempted murder 47, murder 48,
8 armed robbery 49, and another kidnapping 50.

9 THE COURT: All right. Now this is a Richland
10 County case. The court is hearing this case today as
11 a pretrial matter. This case is scheduled for the
12 week of August 11th. In the issues of efficiency and
13 trying to get the case resolved that week, we're doing
14 pretrial hearings today to try to resolve some issues
15 that we know are going to arise or that we will have
16 to do so that we can go directly into the trial that
17 week.

18 Present for the State is April Sampson and Vance
19 Eaton, Daniel Coble from the solicitor's office.
20 Mr. Wallace is present. He has been transported from
21 Richland County to Kershaw County this morning, and
22 he's represented by Stephen Krzyston, Kris Hines and
23 Lucas Hawks. Okay. Ms. Sampson.

24 MS. SAMPSON: Thank you. There's just a couple
25 of housekeeping matters that we need to address for

1 the record. Prior to this hearing I asked the defense
2 what issues they had to bring up to Your Honor, for
3 this pretrial so I could have the proper witnesses
4 here. I was told by the defense they did not have a
5 challenge to the identifications made by Raquel Weston
6 and Mr. Diggs, the codefendant as they knew the
7 defendant prior to this incident and so I do not have
8 them here for Neil vs. Biggers hearing. I just wanted
9 to make sure that is correct, they are not challenging
10 the identification and requesting a Biggers hearing.

11 MR. KRZYSTON: That's correct, Your Honor.

12 THE COURT: Very well.

13 MS. SAMPSON: Based on their assertions as to
14 what we did need to address today, Your Honor, there
15 was a motion to compel filed by the defense, and I
16 don't remember the date, but it's in reference to some
17 records that they believe exist. They want to be
18 heard on that motion to compel. We're also going to
19 be having a Jackson vs. Denno hearing in that they are
20 attacking the admissibility of any statements made by
21 their client as to their voluntariness of knowingly
22 and intelligently given, and the advice of rights and
23 we have the proper witnesses for that to go forward
24 with that hearing. I believe the defense today ----
25 as of yesterday, they told me this, but as of today

1 handed you a motion to limit the testimony of the RCSI
2 investigator in terms of the ballistics and the gun
3 match. They want to be heard of that. Those are the
4 only three motions that I know of pretrial that would
5 need testimony. There are some housekeeping matters,
6 but those are the only three that I know of that need
7 testimony.

8 THE COURT: All right.

9 MR. KRZYSTON: Yes, Your Honor, that's correct so
10 far as we understand it.

11 THE COURT: Okay.

12 MS. SAMPSON: I would like to start, if it's okay
13 Your Honor, with the motion to compel so we can let
14 the witnesses go.

15 MR. KRZYSTON: Before we call that motion to
16 compel, we do have other motions that we wish to raise
17 before the court this afternoon, but as far as what
18 she said with other motions, that's correct.

19 Your Honor, I see ---- we can move forward with
20 the motion to compel first.

21 THE COURT: Do you have any other motions that
22 need witnesses?

23 MR. KRZYSTON: I do, Your Honor. My motions ----
24 my motion to limit to exclude the defendant's
25 statement to the police would also require a witness

1 or some witnesses.

2 MS. SAMPSON: That's a Jackson vs. Denno hearing.

3 MR. KRZYSTON: She just said she wanted to let
4 the witnesses go.

5 MS. SAMPSON: There's less for the motions to
6 compel.

7 THE COURT: What other motions need witnesses?

8 MR. KRZYSTON: The Denno, the motion to compel,
9 the tool mark evidence, and I believe that is it.

10 THE COURT: Okay. So who's been up all night or
11 who has to be up all night? Let's start with that.

12 MS. SAMPSON: That's going to be --- the officers
13 in the front row are here for everything else.

14 THE COURT: All right. I don't know your
15 schedule, but if anybody has been up all night and
16 needs to get out of here and go to sleep or has be up
17 all night and needs to go --- Major Smith, why don't
18 you tell me which part of it do you want to do first?

19 MR. SMITH: Your Honor, probably the motion to
20 compel.

21 THE COURT: All right. Very well. Let's start
22 with the motion to compel.

23 MS. SAMPSON: Thank you, Your Honor. I just want
24 to outline so there would be a record. We had had a
25 hearing with Your Honor in terms of what we needed to

1 turn over. You had given us a date of July 30th to
2 turn over any discovery issues.

3 THE COURT: That wasn't a hearing. That was a
4 pretrial conference.

5 MS. SAMPSON: Conference, I'm sorry, a conference
6 to discuss that. After we had that conference, I
7 received a motion to compel from the defense in terms
8 of some records they believe we had not turned over or
9 we may not even be aware of. At that time, we did
10 meet again with Your Honor Thursday to talk about
11 that. Based on that, you had asked that I find out
12 information as to how the defendant was tracked.

13 It was our understanding that the phone records
14 ended at about 1:45, 1:50 on the incident date, which
15 was June 28th, 2012, and the defendant was picked up
16 some three to four hours later at a different
17 location. It was our understanding at that time that
18 due to tracking. Based on that, you asked me to find
19 out what had happened in that time period and turn
20 over any hard records or hard evidence to the defense.
21 Based on that, I then contacted all of the parties
22 necessary to get that information.

23 It is my understanding, and I them here, but
24 there are no hard records. Mr. --- it's my
25 understanding that the defense believes that equipment

1 known as a Stringray may have been used to find this
2 defendant.

3 I have the officers who were involved, Corporal
4 Hayhurst and Investigator --- Agent Diego Nova here.
5 Based on what they told me, I provided a written
6 outline to Your Honor, as well as to the defense that
7 it is our understanding, and it will be their
8 testimony, that no Stingray or no other machine was
9 used, and that they were able to get the information
10 from T-Mobile and they explained to them that he was
11 pinging --- his phone was pinging off a particular
12 tower that is close to Dutch Square Mall.

13 They got information that he may be with Kimberly
14 Conway, his girlfriend, and they had information of
15 her license plate number. They then, being good
16 investigators, go to that area and start looking for
17 that particular car. They do find that car in the
18 parking lot. It's the middle of the day, and they
19 find the car. They are surveilling the car and
20 putting out calls for people to come help them search
21 for the defendant based on the information they
22 received from T-Mobile. As they are doing, that the
23 defendant and Ms. Conway come out and get into the
24 car.

25 They then follow the car and arrest him down the

1 road at the Shell gas station. I do have the officers
2 here to discuss that with Your Honor if you want to
3 put them on the record to confirm what I just said. I
4 believe they should be limited to only being able to
5 ask them about T-Mobile records and not go into some
6 fishing expedition about some machine they think may
7 or may not exist since it was not used in this
8 particular matter.

9 MR. KRZYSTON: Judge, it's not our intent to go
10 into a fishing expedition. I don't think we should be
11 limited to ---

12 THE COURT: Well, let's just make the motion.
13 Stop talking about perfunctory things and make your
14 motion.

15 MR. KRZYSTON: We're moving for full disclosure
16 of any records associated with the cell phone location
17 and location of the defendant that the State has yet
18 to disclose and any records that may have been
19 produced as a result of tracking through an IMSI
20 Catcher or some similar technology. I don't want to
21 limit it to, again, just the Stingray because Harris
22 Corporation manufactures a number of these devices
23 under different names, so to the extent that an IMSI
24 Catcher device was used or created any relevant
25 documents, we would move that those be disclosed.

1 In addition to that, Your Honor ---

2 THE COURT: They just told you there are no
3 records.

4 MR. KRZYSTON: Okay, Your Honor, simply I just
5 wanted to ask the investigators on the stand whether
6 or not they used that and if they had used that ---
7 That's all we want to ask them.

8 THE COURT: All right. So ---

9 MR. KRZYSTON: --- with regards to that. With
10 regards to the second part of that motion, because I
11 believe it was just a bit broader than the inquiry
12 concerning the IMSI Catcher. It was our understanding
13 from discovery that SLED served an exigency request on
14 T-Mobile for the defendant's cell phone records on or
15 about the incident date. We have yet to receive that
16 exigency request that was furnished to T-Mobile from
17 SLED or the State. So to the extent that that exists
18 we would also move to compel for that, as well.

19 Your Honor, I have spoken with T-Mobile and they
20 do require that any agency requests are in writing, so
21 it is our understanding that a writing does exist,
22 which would --- I believe, be akin to some type of
23 warrant indicating to T-Mobile that there is an
24 emergency that they do need those records. So we
25 would again ask that the exigency request that was

1 served to T-Mobile be disclosed, as well.

2 MS. SAMPSON: Your Honor, I believe that the only
3 thing we received in that regard, and this is the only
4 thing that we have, but it's a faxed copy from
5 T-Mobile saying that they got the request. That's all
6 that I have. I don't have anything else to give them.

7 MR. KRZYSTON: Yes, Your Honor. We do have this.
8 There is no contending that. What we are seeking is
9 the actually exigency request furnished to T-Mobile by
10 SLED or the Richland County sheriff's department. I
11 have spoken with T-Mobile, and I am --- they can't
12 tell me one way or another without some type of legal
13 process served upon them whether they have the
14 document in hand, in their offices, but they have told
15 me that it is their routine practice to keep copies of
16 these requests.

17 THE COURT: All right. So who do you want to
18 call first?

19 MR. KRZYSTON: Your Honor, I believe Sergeant
20 McDonald probably would be a good place to start, sir.

21 THE COURT: All right. Come on up, Sergeant
22 McDonald.

23 SCOTT MCDONALD,
24 after being duly sworn, testified as follows:

25 THE COURT: State your full name for the record.

1 THE WITNESS: Scott McDonald.

2 THE COURT: All right. Go ahead.

3 MR. KRZYSTON: Thank you, Your Honor. May it
4 please the court.

5 DIRECT EXAMINATION:

6 BY MR. KRZYSTON:

7 Q Investigator McDonald, you testified at
8 Mr. Wallace's pretrial hearing; is that correct?

9 A Pretrial hearing?

10 Q I'm sorry. Preliminary hearing.

11 A Yes, I did.

12 Q Okay. At the time that that hearing took place,
13 Mr. Wallace was represented by Doug Strickler. Do you
14 remember that?

15 A I believe that's correct.

16 Q And in that hearing, Mr. Strickler asked you
17 towards the end of the hearing or pretty much at the
18 end of the hearing, how you found the defendant. Do
19 you remember that?

20 A Not entirely, no.

21 Q Do you have a copy of your --- did you take any
22 notes from the prelim?

23 A No.

24 Q Okay. Do you need a --- would a copy help you to
25 remember what went on at the preliminary hearing?

1 A Yes, it would.

2 Q Okay.

3 MR. KRZYSTON: Permission to approach, Your

4 Honor.

5 THE COURT: Granted.

6 Do you have a page number for him?

7 MR. KRZYSTON: It's the last page on there, I

8 believe that's page 17.

9 BY MR. KRZYSTON:

10 Q Page 17.

11 A And what's your question?

12 Q The question would be, Lieutenant McDonald ---

13 excuse me, Captain McDonald, do you remember when

14 Mr. Strickler asked you how you found the defendant?

15 A Yes, I do.

16 Q And what was your response?

17 A Magic.

18 Q Magic. Okay, and what did you mean by that

19 response?

20 A There are some techniques that we use in law

21 enforcement to find people, fugitives and things like

22 that.

23 Q Would one of those techniques be an IMSI Catcher

24 or Stingray?

25 A I'm not sure what that is, but there are

1 technologies out there.

2 Q Do you have access of that type of technology?

3 A Not at my department, but through SLED I do.

4 Q In locating Mr. Wallace, was that type of
5 technology ever used?

6 A It's my understanding that it was in the process.
7 I don't know if it was ever utilized.

8 Q It was in the process of being used?

9 A They were trying to get an order to go up on the
10 phone, that type of thing.

11 Q So they were trying to have an order signed by
12 the court?

13 A I don't know about that end of it. I know that
14 morning I contacted Corporal Hayhurst with our
15 fugitive team. Told him what we had going on. Told
16 him that we had an identification of one of the
17 suspects involved in this incident to begin research
18 and to see what see what we could do about finding
19 him. We were in the process of getting warrants, et
20 cetera.

21 Q Who headed up SLED's involvement of the
22 apprehension of Mr. Wallace?

23 A You'd ask have to ask Corporal Hayhurst.

24 Q Okay.

25 A He was my contact at our department and he works

1 with SLED on a daily basis.

2 Q So in locating Mr. Wallace, Mr. Hayhurst would
3 have been the point man?

4 A Yes.

5 Q To your knowledge, was an IMSI Catcher ever used
6 during the location of Mr. Wallace or the attempts to
7 locate him?

8 A I don't know, to my knowledge.

9 Q Okay.

10 MR. KRZYSTON: I don't have any further, Judge.

11 THE COURT: You can step down.

12 Call your next witness.

13 MR. KRZYSTON: Corporal Hayhurst.

14 THE COURT: All right. Corporal, please come
15 forward and be sworn.

16 RAYMOND HAYHURST,

17 after being duly sworn, testified as follows:

18 THE COURT: All right. Have a seat right there.

19 Is McDonald needed for the ---

20 MS. SAMPSON: Yes.

21 THE COURT: Okay.

22 DIRECT EXAMINATION:

23 BY MR. KRZYSTON:

24 Q Good afternoon. You were involved in the
25 apprehension of Mr. Wallace on or about

1 June 28th, 2012; is that correct?

2 A Yes, sir.

3 Q And your role in that was as, I guess, head of
4 the fugitive task force assigned to finding him,
5 correct?

6 A I was the person contacted, as I am the
7 supervisor of our task force, to begin tracking of
8 Mr. Wallace.

9 Q Okay. And the fugitive task force, that is a
10 task force which is designed to find and serve people
11 who have open warrants on them, correct?

12 A Yes, sir.

13 Q And the reason that those units are developed are
14 to suppress threats to law enforcement, say in
15 apprehending a criminal because it's a dangerous
16 process, so there is a unit that specializes in doing
17 so, correct?

18 A Yes, sir.

19 Q And in apprehending Mr. Wallace, you were
20 contacted by Sergeant McDonald, correct?

21 A Yes, sir.

22 Q And Sergeant McDonald requested that you find
23 Mr. Wallace, correct?

24 A Yes, sir.

25 Q And what --- how did you go about finding

1 Mr. Wallace? How do you start the process?

2 A We start the process by just your basic knowledge
3 of court records, any records DMV, anything we can
4 pull up on, prior arrests, prior reports, probation
5 and parole reports, just hard intel that we get in to
6 try to determine who he's connected to family-wise,
7 associates, etc.

8 Q Okay. And you received the request from Captain
9 McDonald around noon or thereabouts on June 28th,
10 correct?

11 A I belief so. It was sometime after lunch.

12 Q As part of your, I guess organizing this task
13 force, you contact SLED in order to help locate the
14 defendant, correct?

15 A I actually went to one of the buildings with
16 their analyst and was trying to gather intel and put
17 together --- and connect the dots between our intel to
18 get our information.

19 Q And who was that analyst?

20 A There's multiple analysts up there. I know I
21 worked with one gentleman from probation and parole
22 because Mr. Wallace had a monitor on his ankle.

23 Q Correct.

24 A We were trying to find out information on that.
25 When they go on the monitoring system, they put family

1 history and information on that. We were trying to
2 ascertain those records.

3 Q Did you ever have contact with a special agent
4 Nova with SLED?

5 A Yes.

6 Q And what did your contact entail?

7 A Well, I first contacted his supervisor, which was
8 Cal Reighley, which was the supervisor over there in
9 their unit. When we received phone information,
10 numbers, I contacted him with that information and
11 then we had contact with Mr. Diego.

12 Q Okay. Where did you obtain those phone numbers?

13 A Just off of records.

14 Q From probation?

15 A I can't tell you probation or what, but off of
16 hard information coming in from records.

17 Q Okay. And once you touched base with Mr. Nova,
18 you were learning information related to defendant's
19 location, correct?

20 A I give him an information phone number to try to
21 locate the individual.

22 Q Okay. Did he furnish you with live updates as to
23 the defendant's location?

24 A I was still in the middle of getting more intel
25 in when we were notified by the agents to respond over

1 to the area of Bush River, Broad River, Dutch Square
2 area to start looking in that area.

3 Q Which agent specifically notified you that he was
4 at that location?

5 A I want to say it was Mr. Reighley and Mr. Diego
6 together. One of them called me. I then called our
7 other units. We were on the radio.

8 Q Okay.

9 A We spread out. We've worked fugitives for a long
10 time. Normally when we get to an area, we spread out
11 and start looking in the most common areas, parking
12 lots, hotels looking for information.

13 Q Okay. And did either Mr. O'Riley or Mr. Nova
14 indicate the source of their information when they
15 told you to look in the area of Dutch Square Mall?

16 A They just told us to go to this area and start
17 looking.

18 Q Okay. And what were you looking for at that
19 point, just the defendant's physical description or
20 what?

21 A We're looking for --- we had vehicle information,
22 which was an older Crown Vic and a tag number. I
23 cannot recall the tag number just off memory.

24 Q Okay.

25 A And we had pictures of him.

1 Q And do you recall who the car, the Crown Vic, was
2 registered to?

3 A It was a girlfriend. I can't remember her name
4 right off the bat.

5 Q Would it be Shirley Conway, would that sound a
6 about right?

7 A I'm not sure right off from memory.

8 Q And do you know if those tags were South Carolina
9 tags?

10 A If I remember right, it was a South Carolina tag.

11 Q Okay, and the information --- so the only
12 information that you received from SLED was that he
13 was in this area?

14 A Correct.

15 Q Were SLED personnel accompanying the fugitive
16 task force personnel?

17 A Yes, we commonly work together.

18 Q So there were SLED agents out in the field with
19 the task force that was assigned to locate
20 Mr. Wallace?

21 A Yes, sir.

22 Q And who were those agents?

23 A Cal, Diego, and I believe, Lieutenant Johnson was
24 also out there and Mike Robinson, I believe, was on
25 there also and several of my agents were --- several

1 of my officers were out there.

2 Q And who were your officers that were out there?

3 A I know Investigator Bell. I believe Investigator
4 Hall, and I believe also my captain, Captain Robert
5 Lanier was there, too. It's hard to recall.

6 There's a lot of information coming in real
7 quick. It's a very, very short period of time from
8 the time that we got information to go there that we
9 also received by radio information that they spotted
10 him as I was turning into the parking lot, and I just
11 kind of followed in. We followed in the back of the
12 parking lot out on Bush River a short distance and
13 then we stopped the vehicle.

14 Q Before you went out to the Dutch Square area, did
15 grow to any other incident locations that were
16 reflected Mr. Wallace's records?

17 A No, sir, I was focusing on getting the
18 information about everything. Like I said, everything
19 moved ---

20 Q Relatively quickly?

21 A Pretty quick, yes, sir.

22 Q But the fugitive task force never went to any
23 other place other than the area around Dutch Square
24 Mall?

25 A My guys work various cases.

1 Q But in relation to this case?

2 A Not that I can remember, sir.

3 Q Are you familiar with an IMSI Catcher or Stingray
4 technology?

5 A I'm familiar with the technology as far as, I've
6 heard about it.

7 Q And it's your testimony that that was not used in
8 this location?

9 A I did not use it. I cannot attest to --- I
10 cannot testify to whether it was used or not.

11 Q Okay. And nobody told you they used it?

12 A No, sir.

13 Q When you're responding to a location about --- so
14 there are about six to eight people --- how many cars
15 were out there?

16 A I do not remember. We stopped him on Bush River
17 Road. There's a lot of traffic. We called out on the
18 radio. We pulled out of Dutch Square, made a right on
19 to Bush River, called out on the radio. I had units
20 coming. I was actually at a building on Bush River
21 when I come to Dutch Square just down the Road. I
22 mean, I barely made it into the parking lot and had a
23 spot on the subject. I just basically drove through
24 the parking lot, around by Burlington and Belks and he
25 was in front of us, so we just followed him out back

1 on to Bush River, got down to Bush River towards I-26
2 where the Shell station is, and we stopped the vehicle
3 and vehicles came in.

4 Q So when you say you stopped the vehicle, it was
5 kind of like areas --- all units converged?

6 A We told them where we were at, gave them the
7 location, vehicle's stopped in traffic. Boom,
8 everybody comes out and takes control of the vehicle.

9 Q And when you approached the vehicle, were your
10 service weapons out?

11 A My weapon, when I got out of my vehicle was out
12 and to my side. Other officers approached him from
13 the front, got him out of the vehicle. It was an
14 arrest without incident.

15 Q Right.

16 A We had no problems out of him. We just cuffed
17 him.

18 Q But initially you did pull your service weapon
19 out and directed it at the defendant?

20 A It depends on the situation. I did not --- I
21 never pointed my weapon at him. I can't attest to the
22 other officers.

23 Q Did anybody else?

24 A I can't attest to them.

25 Q Did you see ---

1 A It was 2012. You're asking me to recall
2 something that I was more focused on the fact they had
3 him. He was cuffed. He was safe. Get him up. We
4 contacted investigations and they came to the scene
5 and took him away from us.

6 Q What weapons are typically issued to the task
7 force

8 MS. SAMPSON: Your Honor, I'm going to object.

9 THE COURT: Sustained. You don't have to answer
10 that. Next question.

11 MR. KRZYSTON: No further questions, Judge.

12 THE COURT: Questions?

13 CROSS-EXAMINATION:

14 BY MS. SAMPSON:

15 Q Okay, to be clear, to the best of your knowledge,
16 there are no records from any IMSI machine or anything
17 in reference to this case?

18 A Correct, ma'am.

19 MS. SAMPSON: All right. Thank you.

20 THE COURT: Thank you very much.

21 THE WITNESS: Thank you, sir.

22 THE COURT: Call your next witness.

23 MS. SAMPSON: Can Corporal Hayhurst go?

24 THE COURT: Yes.

25 MR. KRZYSTON: Is O'Riley here?

1 MS. SAMPSON: Who?

2 MR. KRZYSTON: O'Riley.

3 THE WITNESS: Reighley.

4 MS. SAMPSON: That's why I said that. I didn't

5 know who you were talking about.

6 MR. KRZYSTON: Riley, Reighley. I'd call Agent

7 Reighley.

8 THE COURT: Please come around to be sworn, sir.

9 SAMUEL C. REIGHLEY,

10 after being duly sworn, testified as follows:

11 THE COURT: Please state your full name for the

12 record when you sit down.

13 THE WITNESSA: It is Samuel C. Reighley,

14 R-E-I-G-H-L-E-Y.

15 MR. KRZYSTON: Thank you, Your Honor. If it

16 please the court.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION:

19 BY MR. KRZYSTON:

20 Q Agent Reighley, your role in the apprehension of

21 Mr. Wallace was kind of an overseer for SLED's

22 involvement, correct?

23 A I was also present for it, too, yes, sir.

24 Q Okay. So you were actually out there at the

25 scene of the arrest?

1 A Correct.

2 Q And in so doing, who --- were there any
3 additional people that haven't already been named who
4 were involved in the apprehension of Mr. Wallace?

5 A As I recall, the ones that have been mentioned
6 were the primary people that were out on the scene
7 from our agency.

8 Q Okay. What is your role at SLED?

9 A Currently I'm the captain over the South Carolina
10 information and intelligence center at SLED. At the
11 time of this incident arrest, I was the lieutenant
12 over one of our fugitive units.

13 Q Okay. And as lieutenant of one of the fugitive
14 units, would you have had access to the IMSI Catcher?

15 MS. SAMPSON: I'm going to object, Your Honor,
16 again. The question is whether it was used in this
17 instance, not whether they have one or any of that.

18 THE COURT: Sustained.

19 BY MR. KRZYSTON:

20 Q Have you --- what information led you to capture
21 Mr. Wallace? Was it records from a cell phone
22 company?

23 A We were contacted by Richland County to obtain
24 records and information associated with the subject's
25 phone. As spoken before, it was an exigent request

1 that was placed with T-Mobile in order to get the
2 records and GPS location for that device and that's
3 what we utilized in this case.

4 Q Do you know if a written exigency request was
5 served on T-Mobile for these records?

6 A The company requires an exigency form, through
7 the company, be provided to them for information to
8 lead to why it's an exigent, yes.

9 Q When you concluded your arrest of Mr. Wallace, I
10 assume you would you have the document in your file
11 somewhere?

12 A We would have the original exigent request and we
13 would have had a case number and the reason why we did
14 it in our file, yes.

15 Q And you would have furnished that to the
16 solicitor's office, correct?

17 A The exigent paperwork was --- as far as I know is
18 what you have now, yes.

19 Q And who served the exigent request on T-Mobile?

20 A That would have been Agent Diego Nova.

21 Q And were you in contact with Mr. Nova while you
22 were out in the field?

23 A We were together, yes.

24 Q So you'll were together?

25 A Yes.

1 Q Were you on the phone to T-Mobile asking for live
2 updates from Mr. Wallace's cell phone?

3 A I was not.

4 Q Was Mr. Nova?

5 A As I recall, he would have been on the phone with
6 them, yes, sir.

7 Q Was there any technology, an IMSI Catcher, used
8 in this incident?

9 A We used GPS location is what we used for this
10 incident.

11 Q So the answer to that would be no?

12 A No, we didn't use anything like that.

13 Q Okay. Where did you obtain the GPS location of
14 Mr. Wallace?

15 A That would have been from T-Mobile.

16 Q And in your apprehending Mr. Wallace, did you go
17 to any additional locations other than Dutch Square
18 Mall?

19 A We were in that general area, so I can't say ---
20 I mean, other locations.

21 Q But you weren't across town Rosewood or near the
22 stadium?

23 A No.

24 Q Or going down the highway or anything like that?

25 A No.

1 MR. KRZYSTON: Court's indulgence, Your Honor.

2 (Pause.)

3 BY MR. KRZYSTON:

4 Q Did you have an IMSI Catcher in the car?

5 A Do I have a what?

6 Q Did you have an IMSI Catcher in the car?

7 MS. SAMPSON: Again, Your Honor, they just said
8 they didn't use it.

9 THE COURT: Sustained.

10 MR. KRZYSTON: Your Honor, that's all I have for
11 this witness. Thank you.

12 THE COURT: Thank you, sir. You can step down.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness.

15 MR. KRZYSTON: Diego Nova, please.

16 DIEGO NOVA,

17 after being duly sworn, testified as follows:

18 THE COURT: If you will please have a seat.

19 State and spell your full name for the record.

20 THE WITNESS: Diego, D-I-E-G-O Nova, N-O-V-A.

21 THE COURT: Yes, sir.

22 MR. KRZYSTON: Thank you, Your Honor. May it
23 please the court.

24 DIRECT EXAMINATION:

25 BY MR. KRZYSTON:

1 Q Mr. Nova, what is your role with SLED?

2 A I work with the fugitive division.

3 Q What was your role in June of 2012?

4 A I was working with the fugitive division, which
5 is when I was contacted to try to assist in locating
6 Mr. Wallace.

7 Q Okay. And did you meet with any Richland County
8 Sheriff's Department people prior to getting into the
9 field?

10 A I believe I did. We met at the fugitive center.

11 Q Did they provide you with Mr. Wallace's, give you
12 some hard information, cellular numbers, something
13 like that?

14 A I believe so.

15 Q Did you serve an exigency request on T-Mobile on
16 or about that day?

17 A I believe I did.

18 Q What records did you receive?

19 A Last 48 hours and outgoing calls.

20 Q Do you remember at what time the last --- did
21 T-Mobile furnish you records?

22 A They did.

23 Q And were they up to date? Were they up to the
24 minute records?

25 A Up to the minute, yes.

1 Q Okay. So those would all be reflected on paper?

2 A I believe so, yes, or on a computer, email.

3 Q And do you remember --- I mean, I know this is
4 two years ago, but do you remember at what time the
5 last location that Mr. --- the last published location
6 of Mr. Wallace's phone?

7 A I was calling for live updates.

8 Q Who were you speaking to at T-Mobile?

9 A I don't recall.

10 Q Does Andrew Diaz ring a bell?

11 A Who, excuse me?

12 Q Andrew Diaz.

13 A Diaz, I believe I've heard or seen that name on
14 T-Mobile correspondence.

15 Q And your exigency request, you would obviously
16 document that request, right?

17 A Yes.

18 Q And when you were finished with the operation,
19 you would obviously turn that over to Richland County
20 or the solicitor's office in a complete case jacket;
21 is that correct?

22 A We have a case management system. I'm sure it's
23 kept in there.

24 Q But part of your routine practice would obviously
25 be to furnish the documents you used to the

1 prosecuting agencies, correct?

2 A I haven't had much experience with that. We keep
3 it in our files.

4 Q And you would still have that in your case
5 management system, correct?

6 A I believe so.

7 Q Have you checked for it?

8 A I did.

9 Q You did?

10 A Yes. In the case --- in our case management
11 system.

12 Q Was that in preparation for today's hearing or
13 when did you do that?

14 A When I was told of this case last week just to
15 verify the information.

16 Q Did you verify the existence of a written
17 exigency request that you serve on T-Mobile on or
18 about June 28th, 2012?

19 A I did. I just wanted to make sure that case
20 existed in our case management system.

21 Q So you didn't look at any of the hard documents
22 that you submitted to T-Mobile?

23 A No.

24 Q But there are documents that exist in the case
25 management system?

1 A I'm sure there are.

2 Q And, Mr. Nova, you were out at the scene of
3 Mr. Wallace's apprehension, correct?

4 A Correct.

5 Q And in apprehending Mr. Wallace or effecting his
6 arrest, did you or SLED or any agent with whom you had
7 contact use an IMSI Catcher or a Stingray as it's
8 commonly known?

9 A No.

10 Q And were you contacted by the solicitor's office
11 last week?

12 A I was.

13 Q Did you send them any kind of documents or
14 information? Did they request any documents or
15 information?

16 A No.

17 MR. KRZYSTON: All right. Thank you. I have
18 nothing further.

19 MS. SAMPSON: Your Honor ---

20 THE COURT: Sure. Hold on, hold on.

21 CROSS-EXAMINATION:

22 BY MS. SAMPSON:

23 Q He asked you about providing any information.
24 You did give us the T-Mobile fax that you had received
25 from T-Mobile.

1 MS. SAMPSON: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MS. SAMPSON:

4 Q Do you recognize that?

5 A I do. That's the same information that T-Mobile
6 gave us.

7 Q That's what T-Mobile gave you and what you
8 provided to our office?

9 A Yes.

10 Q Have you provided us any other information in
11 terms of what you got from T-Mobile or what you
12 provided T-Mobile?

13 A No.

14 MS. SAMPSON: No further questions, Your Honor.

15 MR. KRZYSTON: Judge, just a brief follow up.

16 THE COURT: Yes.

17 REDIRECT EXAMINATION:

18 BY MR. KRZYSTON:

19 Q But you do have to provide T-Mobile with a
20 written request for records when you seek them and
21 serve them with a request?

22 A Yes.

23 Q That would be in the case management system?

24 A Yes.

25 Q Thank you very much.

1 MR. KRZYSTON: I believe there is one other SLED
2 agent, John --- no, never mind, I believe that's it.

3 THE COURT: All right.

4 MR. KRZYSTON: I have no further witnesses.

5 THE COURT: Okay.

6 MR. KRZYSTON: So with regard to my motion to
7 compel, I think it's pretty clear from the testimony
8 that an exigency request does exist and it was served
9 on T-Mobile. It is within the possession, custody,
10 and control of the Fifth Circuit solicitor's office
11 and/or their agency through the State Law Enforcement
12 Division, and we would move to compel disclosure of
13 that at this point.

14 THE COURT: How is it relevant?

15 MR. KRZYSTON: It is relevant because it lays out
16 the foundation upon which they found Mr. Wallace and
17 any information that they knew about these allegations
18 at that time.

19 THE COURT: What does that have to do with the
20 State's case?

21 MR. KRZYSTON: It's basically a search warrant,
22 Your Honor. I mean, I think we should have an
23 opportunity to see upon what grounds the State sought
24 to seize Mr. Wallace's information without a warrant.
25 Fourth Amendment obviously prohibits just any general

1 search and seizure and it requires a warrant. I think
2 unless the State is able to prove that an exigency
3 existed and that it was a legitimate exigency, then I
4 think that material could potentially be the subject
5 of a motion to suppress or exclude.

6 THE COURT: Motion to suppress what?

7 MR. KRZYSTON: The arrest and the --- the
8 information that they obtained from T-Mobile,
9 specifically with regard to any and all location
10 information that they seized.

11 THE COURT: What does any of that have to do with
12 the case? That's what I don't understand.

13 MR. KRZYSTON: They used that information to
14 circumstantially tie Mr. Wallace to the prior incident
15 location at Garner's Ferry Road.

16 THE COURT: What?

17 MR. KRZYSTON: The information garnered from the
18 exigency request is used to circumstantially place
19 Mr. Wallace at or near the scene of 8100 Garners Ferry
20 Road, which is the location where the two decedents,
21 Jamal Pratt and Athell Johnson were found.

22 THE COURT: Is that true?

23 MS. SAMPSON: I'm not sure I understand what he's
24 saying, but if ---

25 THE COURT: What he's saying is that the

1 information that SLED obtained from T-Mobile, being
2 the exigency order is used to show that Mr. Wallace
3 was at the incident location.

4 MS. SAMPSON: At some point that information was
5 used by Investigator McDonald, but he gets it --- he
6 gets the law enforcement data and he uses that to do
7 the cell phone towers and at some point that is used
8 later. Mr. --- as you will find out later,
9 Mr. Wallace admits to being there when they talk to
10 him about it.

11 Again, I don't know how any of this has to do
12 with the exigency --- about any records he did
13 receive. I don't know how it's relevant to how it was
14 found.

15 THE COURT: Here is the question: is the
16 information that was obtained from the exigency order
17 used by the State to put Mr. Wallace at or near the
18 incident location, not where he was arrested, not
19 where the fugitive people seen him, but where --- but
20 the incident location where the crimes allegedly
21 occurred?

22 MS. SAMPSON: In part, yes, Your Honor.

23 THE COURT: Okay, then the exigency order and any
24 records obtained from T-Mobile need to be turned over.

25 MS. SAMPSON: We've given them the ---

1 THE COURT: No, no, no. I'm sorry. I see Diego
2 almost every single day of my life almost, but Agent
3 Nova just testified that the exigency request and the
4 records obtained from it are in the CMS system, not in
5 the fax that you just gave them.

6 MS. SAMPSON: Those are two different things.
7 There's the records which we had given him and then
8 there's the exigent request that was made.

9 THE COURT: Okay. And where is the exigent
10 request?

11 MS. SAMPSON: In their computer system that he
12 just stated. They didn't ask for that. He asked
13 specifically how he was tracked and I gave him that
14 information as far as ---

15 THE COURT: Okay. We are not going to parse
16 words today.

17 MS. SAMPSON: I'm not trying to ---

18 THE COURT: Law enforcement --- no, ma'am. Law
19 enforcement used an order which they are allowed to
20 use. The law expressively provides that in certain
21 situations SLED or whoever can get an exigency --- I
22 deal with this every single day of my life. That
23 information that was obtained was used --- is going to
24 --- was used by the State to put him at or near the
25 incident location. The exigency request and any ---

1 the records obtained from T-Mobile pursuant to the
2 exigency request are going to be turned over, period.

3 MS. SAMPSON: I just wanted the record to ---

4 THE COURT: I mean, I don't know how we made it
5 from last week. I mean, the idea that the State
6 believes that there's no records associated with this
7 is ludicrous. There is an exigency request that SLED
8 fills out. Agent Nova does them all the time. I sign
9 orders for him almost every single day of my life and
10 for Lieutenant Johnson and all these other people it's
11 a normal functioning system of the court.

12 Now, if it's just used to find him, that's really
13 not relevant in my opinion, but if it's used to put
14 him at the incident location, then that is relevant
15 and were that information going to be introduced by
16 the State at trial, then it would be required to be
17 produced to the defendant. It's required to be
18 produced to the defendant whether the State is going
19 to use it or not because it could potentially include
20 or possess exculpatory information about his location.

21 So, Agent Nova, how do you get this exigency
22 request off your CMS system --- or Captain Reighley,
23 either one.

24 THE WITNESS: We just go back and search it and
25 pull it. If he has it, it's in his records.

1 THE COURT: Okay. I mean, you keep all this
2 stuff, right, Agent Nova? We need the exigency
3 request that went to T-Mobile and any hard records
4 they sent you, and I need that --- how long will it
5 take you to get that, reasonably?

6 THE WITNESS: Tomorrow afternoon.

7 THE COURT: Can you get it to the solicitor's
8 office by Monday morning?

9 THE WITNESS: Sure.

10 THE COURT: Okay. There you go.

11 MS. SAMPSON: Your Honor, I just want the record
12 to be clear, we were not keeping anything from them.
13 I was just trying to answer the specific questions
14 they asked.

15 THE COURT: But you know --- I'm sorry. You
16 know, this is a very simple issue. There is a very
17 simple --- I mean, one phone call with Corporal
18 Hayhurst in this whole process, he could have said
19 listen, captain, sergeant or captain, did you get
20 promotion today?

21 THE WITNESS: Captain. I was lieutenant.

22 THE COURT: Okay, it's one call to Corporal
23 Hayhurst that says how did you all find William
24 Wallace, and Corporal Hayhurst says I went and started
25 gathering information on him, we went to the Fusion

1 Center, we put in all the hard detail we had. They
2 have all this data that's online now. It's not like
3 it's some big secret from anything. We developed a
4 phone number based on that, I picked up the phone and
5 called SLED and they went up on an exigency order.
6 It's just that simple. I mean, it's literally two
7 phone calls and we would have known every single thing
8 that we just learned in this hearing, so the exigency
9 request and the records obtained from it need to be to
10 the solicitor's office by, you know, ten o'clock
11 Monday morning. I'm not fussing at law enforcement in
12 any way, shape, or form.

13 I mean, but this is a very simple request that,
14 you know, we could have avoided the past 35 minutes of
15 my life by turning this over.

16 MR. KRZYSTON: Thank you, Judge.

17 THE COURT: Next issue.

18 MR. KRZYSTON: Since we're going over discovery
19 issues, I'm going to go ahead and renew our Rule 5
20 disclosure motion. We do have some evidence that we
21 think has yet to be discovered, specifically a video
22 of 8100 Garners Ferry at the apartment location there.
23 The State has repeatedly disclosed a CD to defense
24 that does not work. I have spoken to the State. They
25 have told me that their copy of the video also didn't

1 work, and that was last Friday, but that they were
2 working on getting an additional copy of that video,
3 one that worked, from Richland County Sheriff's
4 Department.

5 THE COURT: All right. Who in the sheriff's
6 department knows about this video, raise your hand?

7 All right. Captain --- you're on the hot seat
8 today. Stand up. Okay. Can you play this video at
9 your office?

10 THE WITNESS: We can. I believe it's a software
11 issue.

12 THE COURT: No, we don't have to go buy software
13 for people. They need a time next week when they can
14 come to your office at the sheriff's department and
15 watch it. Can you --- if Mr. Krzyston or one of the
16 other lawyers contacts you, would you be able to
17 arrange that some time next week for them to view that
18 video?

19 THE WITNESS: Certainly.

20 THE COURT: Okay. Thank you very much.

21 MR. KRZYSTON: Just one more brief housekeeping
22 matter in regards to Brady and Brill, we would also
23 move to have the State disclose updates on the
24 substance of any and all lay witness's testimony. It
25 is defense's understanding that Ms. Weston has

1 furnished additional information that is either
2 additional or inconsistent with her original statement
3 to police. We were notified of that last week.
4 However, I have yet to receive any copy of that
5 information. I believe there may be some other
6 discrepancies with what some of the other lay
7 witnesses said so to the extent that exists, we would
8 also move for disclosure of that.

9 THE COURT: All right. The State is obligated to
10 turn over any new information obtained from any
11 witness or any potentially impeachment material or
12 anything else that has to do with the witness that's
13 going to say something different than what they
14 testified to before, and that needs to be complied
15 with. Is that understood?

16 MS. SAMPSON: Yes, sir, Your Honor. To be clear,
17 I already told him I would do that, but since I was
18 with Your Honor Monday and have been dealing with all
19 these other matters, I have not had an opportunity to
20 type that up.

21 THE COURT: Wonderful, thank you.

22 MS. SAMPSON: It's not that I didn't plan to do
23 it; I told him I would try to get it to him.

24 THE COURT: Wonderful. Thank you very much.
25 What's next?

1 MR. KRZYSTON: Judge, the next matter I'd like to
2 take up is the issue of some information that was
3 obtained from Mr. Wallace's cellular telephone. I'm
4 sorry, Jackson v. Denno.

5 THE COURT: Yes. Denno.

6 Let's start with basic information. How many
7 statements were taken?

8 MS. SAMPSON: Your Honor, there were no written
9 statements taken at all, they were oral.

10 THE COURT: Okay, so there were oral statements?

11 MS. SAMPSON: Yes, Your Honor.

12 THE COURT: And how many oral statements are we
13 talking about?

14 MS. SAMPSON: He spoke to --- we have four
15 officers here to discuss that because he spoke to them
16 at different times. He gave one version of events in
17 front of Investigator McDonald and Investigator
18 Robinson. He gave another one to just Major Smith and
19 then he comes back and talks to Robinson, Isenhoward,
20 Smith and McDonald.

21 THE COURT: Is that three statements or four? Is
22 that three statements?

23 MS. SAMPSON: The last time he --- they ask him
24 to put the statement that he gave to Major Smith in
25 writing and he decided not to do so. I believe it

1 would be more that he didn't want to talk to them the
2 last time.

3 THE COURT: Okay, so the first time he's
4 interviewed --- the first statement that the State
5 would intend to introduce was given to Captain
6 McDonald and Sergeant Robinson; is that correct?

7 MS. SAMPSON: That's correct. That's when he was
8 initially arrested.

9 THE COURT: Okay. So then Major Smith talks to
10 him and that's the substance of the second, we'll call
11 it a second statement?

12 MS. SAMPSON: Correct.

13 THE COURT: Okay and then Sergeant Robinson and
14 Investigator Isenhoward --- are you a Sergeant yet,
15 Isenhoward?

16 MS. SAMPSON: Yes, sir, he is.

17 THE COURT: And Sergeant Isenhoward talked to him
18 again and that's the third statement, right?

19 MS. SAMPSON: They are all present by the third
20 time. All four of them were present.

21 THE COURT: So on the third statement, Robinson,
22 Isenhoward, McDonald and Smith are present? Is that
23 right?

24 MS. SAMPSON: Correct.

25 THE COURT: I just wanted the broad picture for

1 my mind as I process through witnesses individually.
2 Are there any other statements of the defendant that
3 the State intends to introduce?

4 MS. SAMPSON: No.

5 THE COURT: Okay. Are these the statements that
6 you're challenging?

7 MR. KRZYSTON: They are, Your Honor.

8 THE COURT: Okay. All right. Whoever wants to
9 go first.

10 MR. COBLE: The State would call Investigator Don
11 Robinson, Your Honor.

12 MS. SAMPSON: Before we start, can he be excused,
13 Your Honor?

14 THE COURT: Yes, thank you, sir. Lieutenant
15 Johnson, I don't want to see you this weekend, okay.

16 THE WITNESS: All right.

17 DON ROBINSON,
18 after being duly sworn, testified as follows:

19 THE COURT: All right. Have a seat right here.

20 And it's Don Robinson, Richland County Sheriff's
21 Department. Are you still a sergeant?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Let's hear it, Coble.

24 DIRECT EXAMINATION:

25 BY MR. COBLE:

1 Q Mr. Robinson, can you briefly describe your
2 involvement in this case?

3 A Initially I was involved because when the call
4 went out, I believe it was Deputy Taylor, I think that
5 was the first deputy to make contact with this victim.
6 Received some information and forwarded it over the
7 radio for officers to respond to the apartment complex
8 on Deer Meadow. I heard the call on the radio. I let
9 them know that I was pretty much immediately in the
10 area, so I went there, responded there fairly quickly
11 along with a couple other investigators.

12 Once we determined through his radio transmission
13 which apartment to go to, we arrived and we head to
14 the apartment. We get there. There are two other
15 deputies there is at the door. I believe that would
16 have been Lieutenant Pritchett and there's a couple
17 other deputies. It was, I think, Deputy Metz was
18 maybe one of them there and a few others.

19 Q And after all that where did you end up in
20 connection with apprehending the defendant? Where did
21 you end up?

22 A To move forward, I was with --- in the office
23 with Lieutenant McDonald. At that the time we had
24 learned that the victim, that we had made contact,
25 found him. We jumped in the car together and rode to

1 Bush River Road to go speak to them.

2 Q And once you got to Bush River Road, was the
3 defendant already in custody?

4 A He was already detained by the fugitive team.

5 Q What did you when you got to the scene at that
6 point?

7 A When we got to the scene, the first thing they
8 did is they brought him over, introduced the defendant
9 to Lieutenant McDonald and myself. We all get there.
10 There's several people around, so it's an active area
11 at the moment. They bring him over, Lieutenant
12 McDonald takes custody of him, brings him over and
13 puts him in the front passenger seat of his vehicle.

14 Q What kind of vehicle is this? It a marked car or
15 unmarked?

16 A No, it's unmarked vehicle. It might have been a
17 Chevy Tahoe. It was a larger SUV.

18 Q Now, you said he was in custody. Was he
19 handcuffed?

20 A He was handcuffed, and I believe he might have
21 been handcuffed in the front, if I'm not mistaken.

22 Q You said he got in this vehicle. Who else got in
23 the vehicle?

24 A I was in the back seat. Lieutenant McDonald was
25 in the front in the driver's seat. The defendant was

1 in the front passenger seat. At that point it was
2 just the three of us there in the car when we were
3 working on ---

4 Q Can I stop you right there? I'm sorry. When
5 just the three of you are in the car, are there people
6 around you all or are you kind of separate?

7 A From the crowd of folks, we were probably 15 feet
8 away.

9 Q Okay.

10 A I mean, there were cars and people walking and
11 milling around.

12 Q Nobody is peering through the window?

13 A No, they're not close.

14 Q I'm sorry. You can continue.

15 A So at that point I'm in the back seat. At that
16 the point, Lieutenant McDonald and I issued him his
17 Miranda warning.

18 Q Let me pause you there. You said is it you or
19 Lieutenant McDonald?

20 A Lieutenant McDonald was doing the speaking with
21 him and I was more witnessing and observing and making
22 sure everything was --- I'm the second person to hear
23 the witness and everything.

24 Q Where were you --- I know you're sitting right
25 behind the defendant or right behind Lieutenant

1 McDonald, do you recall?

2 A I was kind of almost in the hump in the middle of
3 the back seat.

4 Q In the middle?

5 A Yes, in the middle. That way I could observe and
6 hear a little bit closer.

7 Q You said Lieutenant McDonald began the Miranda
8 warnings. What did he say to the defendant, do you
9 recall?

10 A I mean, it was the Miranda warning. I don't know
11 --- I mean, the way I read them may be a little
12 different than way he announced it, but he announced
13 them all. He would probably be the best one to
14 testify to the actual verbiage he used.

15 Q But from your training and experience in law
16 enforcement, it was the Miranda warning?

17 A It was the Miranda warning that I have used for
18 20 years.

19 Q Okay, and then after Lieutenant McDonald read
20 these --- as he was reading these to the defendant,
21 did the defendant acknowledge these?

22 A He acknowledged that he understood the rights.
23 He was ready to talk. He was wanting to offer
24 information that he was not involved. I mean, he was
25 trying to give up some factors about why he wasn't

1 involved. I think he had mentioned something about
2 that he was, I think, driving his mom's car or
3 something like that, getting brakes for the car or
4 some story like that.

5 Q Now, at any point did the defendant say that he
6 was done talking or that he wanted to leave?

7 A Oh, no.

8 Q Or did he use the bathroom?

9 A He continued. We weren't there long. We were
10 there ---

11 Q Approximately how long, do you recall?

12 A Five minutes, maybe. It was enough to get there,
13 get the quick presentation, quick announcement, get
14 him ready. Before we left, I think Sergeant
15 Isenhoward walked to the front of the car and I was
16 present for ---

17 MR. KRZYSTON: Objection. Hearsay.

18 THE COURT: Overruled. This is a pretrial
19 hearing.

20 BY MR. COBLE:

21 Q You were present. Also, let's go back to what
22 McDonald did. At any point when he read the Miranda,
23 did he force the defendant to speak or tell him
24 anything, or hold out any promise or reward of
25 anything?

1 A No, it was very causal, a very causal
2 conversation in the front seat, no pressure or
3 anything. He was very calm when he presented the
4 Miranda to him. It was pretty clear and then he says,
5 "Well, we're going to headquarters and then we'll talk
6 further." We didn't maintain a lengthy conversation
7 there. It was very brief. We went back to our
8 headquarters where we started the interview process.

9 Q Still back to this vehicle, what was the
10 emotional demeanor or the demeanor in general of the
11 defendant?

12 A It's a ---

13 Q You said earlier ---

14 A What was his emotional state?

15 Q For instance, you said earlier that it was
16 casual. I didn't know if you were talking about
17 Lieutenant McDonald or the defendant.

18 A McDonald was very causal about it. The defendant
19 wasn't riled up or anything. He was fairly calm. He
20 was inquisitive about what was going on. I think he
21 might have been a little concerned about what was
22 going on, but of course, he had just been arrested, so
23 that was it.

24 Q And where did you go after that?

25 A When we left that location, we went to our

1 headquarters on Two Notch Road. We go there. And
2 when we get back to headquarters, we go to Lieutenant
3 McDonald's office and that's where the actual
4 interview process started.

5 Q Now, who was in the office with you at this time?

6 A At that point, it was just Lieutenant McDonald
7 and myself.

8 Q Was the defendant still handcuffed, if you
9 recall?

10 A I do recall. He was still cuffed in the front,
11 which is the normal process.

12 Q And then what did you all proceed to do when it
13 was just you three in that office?

14 A Then we presented him with a written Miranda.
15 You should have a copy of that.

16 MR. COBLE: Your Honor, I'd like to mark this.

17 THE COURT: Yes.

18 (WHEREUPON, State's Exhibit 1 was marked for
19 identification only.)

20 BY MR. COBLE:

21 Q What is this, do you recognize this?

22 A Yes, it's a copy, but it's our form here at the
23 Richland County Sheriff's Department. It's our
24 interrogation interview form, the Advice of Rights.
25 What it is here, it shows the rights that we actually

1 go through, and then we go through --- at that point,
2 we stop, make sure he acknowledges that the Miranda
3 rights have been read to him and the advisement is
4 done and then it's witnessed. Once he signs here that
5 he's been advised of his rights, then we move to the
6 waiver of rights. That's where we go down here to the
7 second section of the form, and the whole time I read
8 to him, I read verbatim on this form. The only thing
9 I veer from a little bit is at the bottom here on this
10 last statement where it says, "No promises have been
11 made to me or pressure or coercion of any kind has
12 been used against me." At that point, I underscore
13 the word coercion. At that point, I discuss what the
14 word coercion means. I may provide an example of what
15 coercion means.

16 Q Do you recall what it says or what your did say?

17 A For the example?

18 Q Yes.

19 A Of coercion, it's usually I'm not forcing you
20 here. I'm not putting a gun to your head and making
21 you say something against your will. Usually that is
22 the typical example I would use. Right beside that I
23 initial and I circle there as my initial that I went
24 over that and I have discussed that term coercion and
25 what it means.

1 Q Now, that form right there, does that fairly
2 represent how it was when he signed that on
3 June 28th, 2012?

4 A That's exactly how it was and then you'll see
5 here he signs. I'm signing here. Scott McDonald
6 signs it there. Then all three of our --- well, on
7 the bottom down here, the decline part.

8 Q We'll get into that.

9 MR. COBLE: Your Honor, I'd move to move State's
10 Exhibit Number 1 into evidence for this pretrial
11 hearing. I have shared a copy with Mr. Krzyston.

12 THE COURT: State's number 1. What's your
13 position?

14 MR. KRZYSTON: No objection, Your Honor.

15 THE COURT: All right. State's number 1 without
16 objection.

17 MR. COBLE: Thank you, Your Honor.

18 (WHEREUPON, State's Exhibit Number 1 was admitted
19 into evidence.)

20 BY MR. COBLE:

21 Q All right. So were talking about when you ---
22 when Lieutenant McDonald and yourself were in the
23 room. What did you do then?

24 A Once we started the interview?

25 Q Correct.

1 A Lieutenant McDonald was asking all the questions.
2 He knew more about this thing than I did. He went
3 over the details of, first he had mentioned Wallace
4 talking about getting the brakes and stuff, going to
5 the parts store and all that stuff. We went through
6 those little bits of details. Then he was --- as he
7 was --- we were talking about locations where he was
8 and stuff. Then at that point, we felt that he was
9 not involving himself in it and it wasn't going very
10 far, so then I stepped out and then at that time Major
11 Smith, Captain Smith came in and had a little word
12 with him and then later on after they had their talk,
13 which I was not privy to, he called us back and as
14 he's coming back in, had William go back over a little
15 bit of what he said.

16 I walked back in there and for my purpose of
17 being there was just to be as a witness. Then he went
18 over some details. I don't recall exactly what all
19 those details were, and then I stepped out. They
20 continued. I think maybe --- they came in, talked a
21 little bit more because he had talked to the victim
22 and knew more details than I knew. So then I was kind
23 of --- they moved out and I wasn't involved in the
24 process.

25 Q So when you first --- to the beginning of this,

1 when you first got to Lieutenant McDonald's office,
2 there was a conversation taking place between the
3 defendant, McDonald and yourself?

4 A There was a little bit --- are you referring to
5 in the car?

6 Q Yeah, was there discussion in the car?

7 A Yeah, there was a little bit of discussion in the
8 car. Like I said, all that was him talking about the
9 stuff that he had --- I think his mother's car about
10 the brake issue that he was ---

11 Q Was he ---

12 A It wasn't much more detail than that.

13 Q Was he voluntarily speaking?

14 A Yeah, yeah, yeah.

15 Q Now, we got into the office. Was this the first
16 thing you did, the signing the waiver?

17 A I offered him some water to drink or something
18 like that. We wanted to get him settled in the office
19 before we go through that.

20 Q Did he ask to leave at all when you were in the
21 room with him?

22 A Not that I recall.

23 Q Okay. Now, back to this form, where did you sign
24 this form?

25 A Here on the witness line basically.

1 Q Did the defendant sign this form?

2 A That's the defendant's signature there.

3 Q What is --- okay. I see that. What is that?

4 A That's my handwriting.

5 Q What does that say?

6 A Declined.

7 Q Why did you write that?

8 A Because he didn't want to talk to me anymore. I
9 don't know if he talked to others, but that's when he
10 --- I think Major Smith or Captain Smith talked to
11 him.

12 Q So you did that at the request of the defendant,
13 wrote declined?

14 A Yes.

15 MR. COBLE: Beg the Court's indulgence.

16 (Pause.)

17 Thank you. Nothing further, Your Honor.

18 THE COURT: Cross?

19 MR. KRZYSTON: Beg the court's indulgence, Your
20 Honor.

21 (Pause.)

22 CROSS-EXAMINATION:

23 BY MR. KRZYSTON:

24 Q Sergeant Robinson, you just testified that you
25 were initially at the 8100 Garners Ferry location and

1 then responded out towards the arrest location?

2 A Yes.

3 Q And when you arrived at the arrest location, if
4 you will, was Mr. Wallace already detained?

5 A He was already detained by the fugitive team or
6 another officer. He wasn't detained by myself or
7 McDonald.

8 Q Right, but the Fugitive Task Force?

9 A Yes.

10 Q About how long after Mr. Wallace's apprehension
11 did you arrive?

12 A I have no idea. I mean, probably ten minutes
13 maybe, right around there.

14 Q Because did you ---

15 A I mean, once they arrested him, the phone call
16 was made to Lieutenant McDonald immediately, I would
17 presume. We went straight from our office
18 headquarters straight to Bush River, so that's
19 probably twelve minutes, maybe fifteen.

20 Q Okay. So you were HQ; you weren't at Garners
21 Ferry?

22 A No, I wasn't at Garners Ferry at that moment.

23 Q So you were at HQ when you left?

24 A Yes.

25 Q Do you remember what time Mr. Wallace was

1 arrested?

2 A What time he was arrested?

3 Q Uh-huh.

4 A I have no idea.

5 Q Would 3:40 sound correct to you?

6 A It could. It very well possibly could be. I
7 wasn't part of the arrest procedures, so I don't know.
8 I'd have to defer to ---

9 Q And upon your arrival to the scene, Mr. Wallace
10 was in cuffs, correct?

11 A Yeah, I would guess.

12 Q And there was a relatively strong or large law
13 enforcement presence, correct?

14 A Well, I mean, if you're talking about just
15 meandering around the parking lot...

16 Q Well, I mean, law enforcement had the scene
17 secured, correct?

18 A There were --- I'm sure there were several
19 deputies around there, officers of some sort. It was
20 a big team effort.

21 Q SLED was involved, you guys were involved.
22 Anybody else involved other than SLED and Richland
23 County?

24 A I have no idea. I mean, they would have to
25 elaborate on that. When we arrived, it was just the

1 three of us.

2 Q Okay.

3 A We sat in the car. I never really got out of it.
4 I don't know who all was there, just who I saw through
5 in the windows.

6 Q And when you arrived, again, he was already
7 detained and you didn't witness any Miranda rights
8 prior to your arrival, I guess?

9 A No, that's correct.

10 Q And you talked on direct about a crowd that had
11 gathered. Is that a crowd of civilians or law
12 enforcement?

13 A A crowd?

14 Q Yeah.

15 A At which location?

16 Q I said there were other deputies around. I don't
17 know about public citizens, no. It was an open
18 parking lot. It was on the side of the this gas
19 station. It was kind of wide open. So was there a
20 crowd of citizens there, no.

21 Q Okay. So you said you were 15 feet away from the
22 crowd?

23 A Well, I meant the other deputies and other
24 officers that were around.

25 Q Okay. And about how large would that crowd of

1 deputies and law enforcement had been if you had to
2 guess?

3 A I don't know. Six or seven maybe.

4 Q In addition, obviously to yourself, Captain
5 McDonald and who else?

6 A I was in the car, McDonald was in the car, Kevin
7 Isenhoward came to the scene probably either when we
8 came or just right after us. He was momentarily right
9 there.

10 I believe I saw Hall and Bell, I think it is,
11 Bell and Hall. I saw those two and Hayhurst there.
12 There were other people I didn't know, so I don't know
13 all the members of the fugitive team or the SLED team.
14 There are could have been other people there that I
15 just didn't know.

16 Q And you're the actual officer who filled out the
17 arrest on Mr. Wallace right, excuse me the advice of
18 rights?

19 A I did the Miranda advise of rights, yes.

20 MR. KRZYSTON: Okay. That's all I have, Judge.

21 MR. COBLE: Nothing further.

22 THE COURT: Thank you.

23 THE WITNESS: Thank you, Judge.

24 MR. COBLE: Captain Scott McDonald.

25 SCOTT MCDONALD,

1 THE COURT: You've been previously sworn. You're
2 still under oath.

3 DIRECT EXAMINATION:

4 BY MR. COBLE:

5 Q Okay. Captain McDonald, when did you first make
6 contact with the defendant?

7 A I got notified about 3:40 p.m. that he was in
8 custody by the fugitive team. I believe I was
9 probably in Major Smith's office when I got that
10 notification. At that time, myself, Robinson,
11 Isenhoward, and Sergeant McDaniels responded to the
12 scene.

13 Q And we've heard about scene. Could you just
14 briefly describe it in your words?

15 A Members of the Fugitive Task Force and SLED
16 agency were present. The defendant was in custody.

17 Q And who is in the Tahoe?

18 A I was in the Tahoe. I'm not sure I'm following
19 what you ---

20 Q Who all was in the Tahoe initially with the
21 defendant?

22 A It was myself in the driver's seat. The
23 defendant was sitting next to me and Sergeant Robinson
24 in the back seat.

25 Q Was he under the influence of alcohol or drugs to

1 the best of your ability to ascertain?

2 A To the best of my ability, he was not.

3 Q Did he appear to have any physical or mental
4 disabilities ---

5 A No, he did not.

6 Q --- that would have impaired his ability to
7 understand what was going on?

8 A No, he did not.

9 Q How long were you there?

10 A In my Tahoe?

11 Q Right.

12 A Maybe a total of 15 minutes or so.

13 Q Okay. Did you give him the Miranda warning?

14 A I did. Right after we got in the car and I
15 introduced myself, I gave him a verbal Miranda
16 warning.

17 Q Can you tell us what you said?

18 A I can. I told him he had the right to remain
19 silent. Anything you say can and will be used against
20 you in a court of law. You have the right to an
21 attorney before and during any questioning if you
22 wish. If you cannot afford an attorney, one will be
23 appointed for you. You can stop answering any time ---
24 I'm sorry, you can stop answering questions at
25 anytime. Then I asked him, "Do you understand these

1 rights?" He indicated that he did.

2 Q Did he have any questions about those?

3 A About the rights, no.

4 Q Okay. What did he say?

5 A He wanted to know why he was here, why he was
6 being arrested. I said, "This is --- you're here
7 because of the incident that happened this morning
8 with the shooting of the two, of Athell and Jamal
9 Pratt.

10 Q And did he go on with anything else?

11 A He denied any involvement. He said, "I don't
12 know what you're talking about. I wasn't there."

13 Q Did he say where he was?

14 A Eventually he claimed he had taken his aunt to
15 work that morning, returned home to 1203 Denny Terrace
16 and had remained there until his girlfriend, Kimberly
17 Conway, came by sometime after noon and picked them up
18 and they made their way over there from the Bush River
19 area.

20 Q Right did they say anything else in the car?

21 A Not at that time. I had a gentleman from the lab
22 come to do gunpowder residue testing on his hands.
23 After that was completed, we transported him to
24 headquarters to interview him further.

25 Q Can you describe what happened at headquarters?

1 A Once we got to headquarters, he was still under
2 his verbal Miranda rights. We continued to talk with
3 him. He continued to deny any involvement, didn't
4 know why he was there. He kept asking why am I here.
5 While we're interviewing him, literally the records
6 from T-Mobile, his phone records, came in from SLED.
7 As we continued to talk to him, I started looking at
8 the phone records and pulling up the tower information
9 which ultimately would place him in close proximity to
10 the crime scene around the incident time. I was
11 straight on this program called streets and trips for
12 him, so it would be very easy for him to understand
13 and pointing out that his phone had been in that area.

14 He still had his phone with him at the time of
15 his arrest. He never said that he didn't have his
16 phone or that it had been lost or stolen. I told him,
17 you know, this is very incriminating that he was in
18 that general area around the time of this incident, as
19 well as confronting him of the rest of the facts of
20 the case that he had been positively identified by the
21 surviving witness to this incident.

22 Q How long did all this questioning take?

23 A It may have gone --- I don't know, 45 minutes or
24 an hour or more.

25 Q Did he --- I think somebody mentioned he got a

1 glass of water or something?

2 A Yeah, traditionally when we come in, we ask them
3 if they have to go to the bathroom, if they need
4 anything to drink, anything like that. Throughout the
5 interview process, we let them know it's available.

6 Q Did he ever take you up on those?

7 A Not that I recall.

8 Q I mean, throughout this whole thing, did he seem
9 rational, responsive, was he emotional or out of it in
10 anyway?

11 A No, he was very responsive to questioning. He
12 just kept denying it and saying he wasn't involved.
13 Once I showed him the cell phone information on the
14 map, he kind of ducked his head and said he didn't
15 want to talk to me anymore. About this time is when
16 Major Smith had come around to check on the progress
17 of the interview. He indicated at that point he
18 wanted to speak to on Major Smith.

19 Q Did you or any of the other investigators
20 threaten or coerce him in any way?

21 A No.

22 Q Did you promise him anything?

23 A No.

24 Q Did he ever --- did he change his mind at some
25 point about wanting to keep talking?

1 A Well, he never told us he didn't want to talk.

2 Q Okay.

3 A He continued to talk. He didn't want to --- he
4 just kind of put his head down after I presented the
5 cell phone information to him and said, you know ---
6 he didn't want to talk to me anymore. Once Major
7 Smith came to the office, said how are we doing,
8 something to that effect, and checking on the
9 progress. That's when he indicated I don't want to
10 talk to them. I want to talk to you, speaking of
11 Major Smith. At that point, Sergeant Robinson and
12 myself exited my office and Major Smith went in there
13 to talk to him further.

14 Q At what point did Sergeant Robinson do the
15 written form?

16 A After Major Smith had talked to him, I don't
17 know, 20 to 30 minutes probably, we were summoned back
18 to my office to hear the story that Mr. Wallace had
19 given to Major Smith at that point. We listened to
20 it. We challenged him on some of the issues, some of
21 the things he was saying, and told him we would like
22 to get this down on paper as his written statement.
23 He was placing himself at the scene at this point,
24 which was important to the case. At that point, Major
25 Smith exited and myself and Robinson came back into

1 the office and sat down. We were standing in the
2 office --- or just outside the office. At that point
3 Sergeant Robinson gave him his written Miranda rights,
4 started to fill out the form that was presented here
5 earlier. When we got down to the waiver of rights,
6 that's where he refused or declined. He said he
7 wasn't going to give us a written statement about what
8 he told us.

9 Q What did you do at that point?

10 A All questioning ceased. He was placed in a
11 holding cell.

12 Q So there may be some confusion. The written one
13 was done after interrogation had been going on?

14 A Yeah, a couple more hours, probably close to two
15 hours of interrogation and interviewing.

16 Q But he had been advised initially on the scene?

17 A He had been verbally advised on the scene, at
18 approximately 15:58 hours, 3:58 p.m.

19 Q To the best of your knowledge were his statements
20 freely and voluntarily given?

21 A Yes, they were.

22 MR. EATON: Thank you. No further questions.

23 THE COURT: Yes, sir.

24 MR. KRZYSTON: Thank you, Your Honor. May it
25 please the Court.

1 THE COURT: Yes.

2 CROSS-EXAMINATION:

3 BY MR. KRZYSTON:

4 Q Sergeant --- or excuse me, Captain McDonald, you
5 were a lieutenant back in June when you were involved
6 in all this, correct?

7 A That's correct.

8 Q But you testified earlier you were at
9 headquarters and were notified of Mr. Wallace's
10 apprehension and you responded out to the arrest
11 location?

12 A That's correct.

13 Q At the time that you responded to the arrest
14 location, you had already developed Mr. Wallace as a
15 suspect in the shooting of Ms. Weston and the
16 subsequent murders of Mr. Pratt and Mr. Johnson; is
17 that correct?

18 A That's correct.

19 Q So from the time Richland County laid hands on
20 Mr. Wallace, he was going to be arrested, correct?

21 A We already had a warrant in hand for his arrest,
22 when he was arrested, so yes, we did.

23 Q So he was quite assuredly a suspect, quite
24 assuredly in custody and your intentions were to
25 interrogate him, correct?

1 A Yes, he was under arrest. We were going to give
2 him an opportunity to tell his side of the story,
3 interview him.

4 Q And about how long did it take for you to get
5 down from headquarters to the arrest location?

6 A Fifteen minutes maybe.

7 Q No more?

8 A I mean ---

9 Q Yeah.

10 A Fifteen, 20.

11 Q Mr. Robinson and yourself both testified that you
12 were at the arrest location for a relatively short
13 period of time?

14 A Not more than 15 or 20 minutes.

15 Q Okay.

16 A Main thing, we were waiting on a representative
17 from the lab to come do a residue test on Mr. Wallace.
18 He came to the scene, so we awaited his arrival and
19 then as soon as he finished, we went to headquarters,
20 correct.

21 Q Long enough to fill out a written report,
22 correct?

23 A He was given his verbal Miranda.

24 Q In obtaining GSR tests on Mr. Wallace, did you
25 obtain any other forensic evidence, maybe a DNA swab

1 off his bag or gun powder residue off his bag?

2 A I didn't complete any of that, no.

3 Q But did you see anybody else?

4 A I was talking to other investigators. He was
5 being watched and was being secured by other deputies
6 while the gun powder residue testing was being done.
7 Other than doing sticky tabs on his fingers, I didn't
8 really pay close attention to anything that may have
9 been done.

10 Q And the department --- you responded to the scene
11 in a department issued vehicle, correct?

12 A Yes.

13 Q At this point, you were head of the fugitive
14 division?

15 A No, I was a lieutenant in the major crime unit.

16 Q But you had involvement?

17 A I had solicited the assistance of the fugitive
18 team, which we often do in these situations to assist
19 in the capture of Mr. Wallace.

20 Q Was there a camera in your department issued
21 vehicle?

22 A No, there was not.

23 Q Did you have a body mic on you?

24 A No.

25 Q Did any of the Fugitive Task Force have a camera

1 on them?

2 A Not that I'm aware of.

3 Q So it's not common practice for the Fugitive Task
4 Force to have video recording systems on them or in
5 their cars?

6 A Not that I'm aware of.

7 Q And you detained Mr. Wallace, put him in the
8 Tahoe, cuffed him in the car, and assert that you
9 Mirandized him at that point, correct?

10 A That's correct.

11 Q Did you inform him --- obviously you informed him
12 why he was arrested and you began a communication,
13 channel of communication?

14 A Yes, I told him he was under arrest. He wanted
15 to know what this was all about. I informed him what
16 it was all about.

17 Q And when you arrived there, you saw the fugitive
18 team out there. You saw Richland County Sheriff's
19 Department deployed out there. It was kind of a
20 hodgepodge of law enforcement, correct?

21 A Well, it was agents from SLED and agents from our
22 fugitive team.

23 Q Okay. Then given the allegations with which
24 Mr. Wallace is charged, you guys went in there pretty
25 heavy handed to make sure Mr. Wallace didn't do

1 anything else, correct?

2 A I'm not sure I'm following your question.

3 Q In apprehending him, you guys approached the
4 vehicle, had guns pointed and took him into custody?

5 A I wasn't there during the apprehension. I can't
6 tell you what transpired.

7 Q Okay. So you guys get the G.S.R. testing done on
8 him, tie up loose ends there and about fifteen minutes
9 later you start heading back to Two Notch headquarters
10 up there?

11 A That's correct.

12 Q Then when you get to headquarters, what time
13 would you say it was, about 4:00, 4:15, 4:30?

14 A Probably closer to 4:30, 4:45, quarter to five in
15 that range, depending on traffic.

16 Q When you arrived at headquarters, you went to
17 your office with Mr. Wallace and not an interrogation
18 room, correct?

19 A We don't have an interrogation room.

20 Q Are there any audio or video capabilities with
21 which to record interrogations?

22 A No.

23 Q Is it Richland County's policy not to record such
24 interrogations?

25 A That's correct.

1 Q Right, and you didn't feel the need to record
2 either, correct?

3 A It is against our policy to record, so I was not
4 going to break policy, no.

5 Q So you continue with the interrogation in your
6 office and you received records from SLED at that
7 point, right?

8 A Right.

9 Q Which you hadn't received up to that point?

10 A That's correct.

11 Q And you showed Mr. Wallace where his phone was
12 pinging in regards to the incident location?

13 A That's correct.

14 Q At some point Major --- now, Major Smith, I
15 guess, comes across or comes in front of your office
16 and Mr. Wallace wants to stop talking, correct?

17 A Mr. Wallace indicates he wants to stop talking to
18 Robinson and myself when he saw Major Smith. I think
19 Major Smith may have stuck his head in, said how is it
20 going, introduced himself, and when he heard Major
21 Smith, that's when he indicated he wanted to speak to
22 Major Smith.

23 Q Do you remember his exact words?

24 A I don't remember his exact words.

25 Q And we obviously don't have a record of that.

1 You testified that Mr. Wallace didn't show any
2 outward signs of stress or any type of outward
3 emotion, correct?

4 A I didn't testify to that.

5 Q Did Mr. --- okay. After you've ceased discussing
6 this situation with Mr. Wallace, Major Smith then
7 comes in, correct?

8 A That's correct.

9 Q But before Major Smith comes in, Mr. Robinson
10 advised --- was it Mr. Robinson or was it Mr. Smith or
11 maybe --- was it Mr. Smith who advised my client of
12 his Miranda warnings?

13 A The written Miranda?

14 Q Yes.

15 A It was Sergeant Robinson and that would have been
16 after the interview by Major Smith. After we were
17 summoned back to my office, Major Smith said he had
18 further information to share with us. He had
19 Mr. Wallace tell us this information. After that we
20 said we would like to get this down on paper. As we
21 sat down and prepared to do that that's when we pulled
22 out the written Miranda rights. That's when Sergeant
23 Robinson advised him of his written Miranda rights at
24 that points.

25 Q And he refused to ---

1 A When we got down to the waiver of rights, he did
2 refuse at that point.

3 Q But again, he had already been developed as a
4 suspect. It was your intent to take custody of him
5 regardless of what information he shared in his
6 subsequent interrogation?

7 A With the evidence we had at the time, yes.

8 MR. KRZYSTON: Thank you. That's all I have.

9 REDIRECT EXAMINATION:

10 BY MR. COBLE:

11 Q In the Tahoe, did you or anybody have their gun
12 out?

13 A No.

14 Q Did he seem scared?

15 A No.

16 Q Back at headquarters, did anybody use a gun or
17 any kind of threat towards him?

18 A No.

19 Q Did he seem scared there?

20 A No.

21 Q He had been Mirandized initially?

22 A Yes.

23 Q And you all ceased when he said he didn't want to
24 put it in writing?

25 A That's correct.

RECROSS-EXAMINATION:

MR. KRZYSTON:

Q You would just agree that people show and exhibit fear in different ways, correct?

A They can, yes.

THE COURT: Now, you said that Robinson wrote the word declined on there, on that Advice of Rights form?

THE WITNESS: Declined or refused, something to that effect.

THE COURT: How long have you been a law enforcement, officer?

THE WITNESS: Twenty-six years now.

THE COURT: What do you believe he was declining or refusing to do?

THE WITNESS: To waive his rights at that point.

THE COURT: And do what?

THE WITNESS: Give us a written statement.

THE COURT: A written statement.

THE WITNESS: Right.

THE COURT: Okay.

THE WITNESS: At that point, we had the statement that he had orally given to us. We were wanting to reduce that to paper. That's when he declined and we stopped the questioning.

THE COURT: Okay, and that's when you stopped

1 questioning.

2 THE WITNESS: That's correct.

3 THE COURT: Okay. Thank you very much.

4 MR. COBLE: Stan Smith.

5 THE COURT: All right. Major Smith, please come
6 forward.

7 STAN SMITH,

8 after being duly sworn, testified as follows:

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

10 THE WITNESS: Yes, sir.

11 DIRECT EXAMINATION:

12 BY MR. COBLE:

13 Q Major Smith, can you describe your initial
14 contact with Mr. Wallace?

15 A Yes, on June 28th of 2012, I was aware that
16 Mr. Wallace had been placed into custody by
17 five o'clock that afternoon. I'm not sure of the
18 exact time. I knew that he was brought to
19 headquarters and was interviewed by Sergeant Robinson
20 and then Lieutenant McDonald. I have on my notes that
21 I went in and checked on the interview around 5:30 to
22 see how things were going. He had not confessed to
23 his involvement in this crime at all. He had been
24 presented with the information that his phone was in
25 the area, in the Garners Ferry Road area not too far

1 from the incident location. He was not really adding
2 much more information other than that he was not
3 involved.

4 Basically, I just sort of interjected myself and
5 asked how it was going. I think I introduced myself.
6 At that point in time he asked to speak to me alone.
7 Sergeant Robinson and Lieutenant McDonald then exited
8 the office. That's not an unusual occurrence in
9 interviews for that to take place, especially when
10 they're introduced to maybe a person of higher rank or
11 supervisor. I've had that happen before.

12 Q So you were not there where he was apprehended?

13 A No, sir.

14 Q Do you know how long they had been in there when
15 you poked your head in?

16 A I think probably 45 minutes maybe. I don't know
17 the exact time that he was arrested. I just have in
18 my notes that I know he was in custody by 5:00, and I
19 entered the office at 5:30.

20 Q And when you poked your head in, what did you
21 see?

22 A Sergeant Robinson and Lieutenant McDonald were
23 seated to the side of Mr. Wallace. I think he sort of
24 had his head hung as was testified to earlier. They
25 were sort of at an impasse as far as him acknowledging

1 even being in the Lower Richland or Garners Ferry Road
2 area where his phone clearly stated that he had been
3 around the time the double murder took place.

4 Q What was the demeanor of McDonald and Robinson?

5 A They were seated. Obviously there had been a
6 give and take, I assume prior to my entry. By the
7 time I got there they were sort of --- again, there
8 was not a whole lot of talking going on at that point.

9 Q And what was Mr. Wallace's demeanor at that
10 point?

11 A Again, as was testified to, I sort of recall him
12 hanging his head, sort of a resigned demeanor. He
13 wasn't jumping up and down or screaming I'm innocent,
14 I'm innocent or anything like that. He sort of had a
15 calm, sort of resigned to his fate type of demeanor.

16 Q So as soon as you introduced yourself, what does
17 he say exactly?

18 A He basically said I want to talk to you alone.
19 He made it clear that he wanted McDonald and Robinson
20 to exit. They got the cue and they exited.

21 Q Okay. Were you aware that he had been Mirandized
22 that the point?

23 A I was.

24 Q So then after they leave could you describe your
25 conversation?

1 A Right. Having known about this phone information
2 and that it was significant, he was apprehended in the
3 Bush River area, and I think he had given some sort of
4 statement about being in Northern Columbia. His
5 statement so far didn't indicate any involvement in
6 the Garners Ferry Road area. That he was extremely
7 significant especially compared to the timeframe of
8 the event that was earlier that morning. I sort of
9 challenged him about that discrepancy, and it wasn't
10 too long after that he came up with a story that would
11 account for his phone being in that area.

12 Q And when you say you challenged him, what do you
13 mean?

14 A Basically I told him I didn't believe him and the
15 phone he was in possession of at the time of his
16 arrest was definitely on Cheval Street in the Garners
17 Ferry Road area about the time of the incident.

18 Q What story did he tell you then?

19 A He wound up explaining why his phone was in the
20 area. He said that he had been in that area because
21 he had seen an individual known to him as Charlie G
22 and that Charlie G was with some other guys in a Buick
23 Park Avenue, a silver Buick Park Avenue, and he knew
24 that Charlie G and Athell did not get along and had
25 sort of a feud going. He knew about the prior

1 conflict between the two of them. He explained his
2 knowledge of that prior conflict. He said he
3 actually --- they waved each other down. He got out
4 and started talking to him and the place that they
5 pulled over was Cheval Street, which is where the
6 phone hit that we knew about was listing --- it was
7 specifically saying Cheval Street. So he indicated
8 that where they met was Cheval Street.

9 At some point, he said they actually pulled out a
10 gun on him and ordered him to get in the car with
11 them. Basically, he was saying that they wanted him
12 to direct them to Athell's apartment because they knew
13 generally where it was, but they didn't know
14 specifically where it was. Basically he said he was
15 kidnapped at that point.

16 He then went on to explain that --- explained
17 this Charlie G story and that we could find out
18 Charlie G's real identity by contacting Athell's
19 attorney who he knew his name, Jason Holloman and we
20 later learned it was Jason Hall, not Holloman. He
21 used the word discovery. He said we could get from it
22 Athell's discovery on a case that Athell had been
23 charged with involving Charlie G.

24 He went on to explain that as they pulled up to
25 Athell's apartment complex that's when they spotted

1 the surviving witness, Raquel, pulling up ahead of
2 them. He said he actually pointed out that that was
3 Athell's girlfriend. As Raquel saw him, they waved at
4 each other, him and Raquel waved at each other. They
5 entered the complex behind her and when they got to
6 Athell's building, Charlie G got out and held her at
7 gunpoint, actually now kidnapping Raquel.

8 Charlie G and a second gunman used her to get
9 into the apartment, which would be the incident
10 location, while the third gunman he said stayed in the
11 car with him, basically holding him there. He said at
12 some point he saw the door to Athell's apartment open,
13 but no one exited. He said he then heard shots. The
14 suspect with him then drove him after the shots were
15 fired back to Cheval Street where he was released, he
16 said.

17 He said he was going to tell Athell what happened
18 later. Of course, when he is explaining this, he said
19 he doesn't realize that Athell has been murdered. His
20 intent was to tell Athell about leading these guys to
21 his apartment later. He was actually going to use his
22 brother as a go between to have his brother tell
23 Athell and he didn't know again that Athell and Pratt
24 had been shot until he was advised of that fact when
25 he was actually arrested. That's when he said he had

1 first learned that they had been shot.

2 At that point, in time I asked McDonald and
3 Robinson --- by this time Sergeant Isenhoward had
4 arrived. He was significant to this situation because
5 he is the one that interviewed Raquel, so he had her
6 account, her first hand account, at the hospital.

7 I had William go over his story once again that
8 he had just told me to these other three supervisors.

9 Q So he tells that story?

10 A Right.

11 Q How long did that take?

12 A It took probably 15, 20 minutes.

13 Q And then you go back out and get them?

14 A They were nearby. I opened the door, summoned
15 them back in, said we have some progress here as far
16 as acknowledging a reason why his phone would be in
17 the Garner's Ferry Road area.

18 Q While he is telling you this story, how is he
19 coming across? What is his demeanor?

20 A He is now in an explaining mode. He has come up
21 with this reason why his phone is in the Garners Ferry
22 Road area.

23 Q Did he seem upset, scared, anything like that?

24 A No, he was --- the best way I can explain it is
25 that he is in an explanatory type mode trying to

1 account for the reason his phone was in that area.

2 I had him repeat the story again. At that point
3 in time, he was challenged a little bit by Sergeant
4 Isenhoward, who again had just come off the interview
5 with the surviving witness who had identified him as
6 one of the two individuals involved in this double
7 homicide.

8 At some point in time, I left the office to
9 handle some other matters. Our normal protocol is
10 that if he has now given a story, ultimately we're
11 going to try to get him to put it on paper. Within a
12 little bit of time, I was informed that he had refused
13 to put the story on paper. I reentered the office. I
14 was told that he wasn't going to give a written
15 statement. Then I basically remember sort of saying
16 to him why he wouldn't want it on paper if it's not
17 the truth. You know, why wouldn't you want your side
18 of it on paper.

19 That's when he asked me for my card and said he
20 might call me later. That was basically the end of
21 it.

22 Q When they brought do you the form, were you there
23 that moment?

24 A No.

25 Q Okay. How much time elapsed between stepping out

1 and coming back in?

2 A I got in my notes that I started about
3 5:30 talking to him. I believe the Miranda form is
4 about quarter after six or so, probably just a few
5 minutes.

6 Q To the best of your knowledge and ability to
7 ascertain, was this statement free and voluntary?

8 A Oh, yes. To me it was free and voluntary, yes,
9 sir.

10 Q Thank you. I beg your indulgence.

11 (Pause.)

12 When you did step back in at the very end, did
13 you continue interrogating him anymore at that point?

14 A No, sir.

15 Q You just asked ---

16 A I told him I didn't understand why he didn't want
17 to put what he told me on paper because he said that
18 was the truth. I certainly would think he would want
19 that, you know.

20 Q Uh-huh.

21 A That's when he asked for my card and said he
22 might give me a call later.

23 Q But you didn't continue your line of questioning?

24 A No.

25 MR. COBLE: Thank you, Your Honor.

1 THE COURT: Cross?

2 MR. KRZYSTON: Thank you, Your Honor. May it
3 please the Court.

4 CROSS-EXAMINATION:

5 BY MR. KRZYSTON:

6 Q Major, when you arrived --- you said that you had
7 heard either from somebody at the Richland County
8 Sheriff's Department or perhaps Captain McDonald
9 himself that Mr. Wallace had been apprehended,
10 correct?

11 A I don't know who I heard it from. I mean, you
12 have a double homicide and the shooter is caught, it's
13 pretty significant news, so you could hear it from
14 multiple sources.

15 Q You were notified and responded and then came
16 back to work to talk to him?

17 A I don't think I ever left the office.

18 Q I thought you said that you had returned to the
19 office by about 5:30?

20 A No, sir. I returned --- I went to Lieutenant
21 McDonald's office where they were talking to
22 Mr. Wallace.

23 Q When you --- you got involved in this
24 interrogation because you passed by Lieutenant
25 McDonald's door, correct? You saw Mr. Wallace in

1 there with Sergeant Robinson and Captain McDonald,
2 correct?

3 A I got involved in the interview because I'm
4 involved in --- I was involved in the case. I
5 certainly had an interest in this double homicide.

6 Q But you got involved when you saw that he was
7 there and they were talking to him when you walked by,
8 right?

9 A Yes, I did observe that, yes, sir.

10 Q At that point Mr. Wallace told you that he didn't
11 want to talk to McDonald and Robinson. He wanted to
12 talk to you, correct?

13 A I think I stuck my head in, introduced myself.

14 Q Right.

15 A That's when he said, "I want to talk to you
16 alone."

17 Q And then Robinson and McDonald left?

18 A That's right.

19 Q And then you proceeded to question Mr. Wallace?

20 A That's right.

21 Q Who told you he was Mirandized?

22 A Scott McDonald.

23 Q At what point?

24 A I don't know. I have it in my notes that I knew
25 that he was verbally Mirandized by the time I entered

1 the office. That's standard protocol. Sometimes that
2 happens. You get multiple people that get involved in
3 an interview at different times. One of the first
4 things we know to verify is that the individual has
5 been Mirandized.

6 Q So you spoke to Mr. McDonald at some point before
7 you entered the room?

8 A I knew that he had been verbally Mirandized and
9 he was agreeing to talk, yes, sir.

10 Q That was Scott McDonald over there?

11 A Yes, I don't have that, exactly how or when he
12 told me, but I have in my notes that I knew he was
13 verbally Mirandized.

14 Q Do you have handwritten notes?

15 A These are my typed notes.

16 Q And you weren't present for the arrest of
17 Mr. Wallace?

18 A No, sir.

19 Q And by the time that you had reached Mr. Wallace,
20 it was around some two hours since he had been
21 arrested?

22 A I don't know exactly what time he was arrested.

23 Q If he was arrested at 3:40 as is prior testimony,
24 it would be around two hours, correct?

25 A Maybe around two hours or an hour and fifty

1 minutes, something like that, yes, sir.

2 Q Two hours. And you ended up getting to talk with
3 him a little bit and then when you asked him to put it
4 on paper, and you actually brought out the written
5 waiver of Miranda, he refused?

6 A No, sir. No, I talked to him. He gave me this
7 account explaining why his phone was in that area. I
8 called the other individuals back in the office. At
9 that time it included Sergeant Isenhoward who had just
10 interviewed the survivor, so he knew that him denying
11 involvement was not true, so he was challenged about
12 that after he gave them the same story that he had
13 given me. I wanted him to repeat that story in front
14 of them and then he was challenged a little bit, I
15 left the office at that point in time. They went to
16 put that story on paper. By that time I think it was
17 Lieutenant McDonald and Sergeant Robinson. At that
18 point, in time he declined.

19 Q Before you even went in the room, before you even
20 started talking to Mr. Wallace, before you were even
21 advised that he was Mirandized, you knew that you were
22 going to arrest him or that Richland County was going
23 to arrest Mr. Wallace in connection with these
24 allegations, correct?

25 A I knew we were going to arrest him after he was

1 identified as one of the murderers earlier that day.

2 Q So before Richland County even knew where
3 Mr. Wallace was?

4 A That's why we were looking for him.

5 MR. KRZYSTON: That's all the questions I have,
6 Your Honor.

7 THE COURT: Redirect?

8 MR. COBLE: Nothing, Your Honor.

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

10 MS. SAMPSON: State calls Kevin Isenhoward.

11 THE COURT: Please come forward, Mr. Isenhoward.

12 KEVIN ISENHOWARD,

13 after being duly sworn, testified as follows:

14 THE COURT: Thank you very much. Have a seat.

15 His name is spelled like the president.

16 DIRECT EXAMINATION:

17 BY MS. SAMPSON:

18 Q What is your status now, Sergeant?

19 A Sergeant, below all these guys.

20 Q All right. Sergeant Isenhoward, how did you
21 become involved in this case?

22 A I actually responded out to part of the incident
23 location on Bluff Road where the victim, surviving
24 victim, had been located by a passerby, and I
25 interviewed that young man and then would later

1 respond out to a couple of different locations, spoke
2 with the victim, got an initial story from her and
3 also responded to the arrest location, and I witnessed
4 part of interaction, but ultimately my job was to
5 secure the vehicle.

6 Q I want to write that down. You said you went to
7 the arrest location. What did you see when you got
8 there?

9 A Well, obviously he was in custody. There were
10 several --- and I wouldn't call a whole bunch, but
11 there were several SLED agency and fugitive members,
12 team members there, sort of standing off to the side
13 with their vehicles. He was turned over I believe to
14 me initially and then when Scott McDonald and Don
15 Robinson arrived, I sort of put him with them in the
16 vehicle.

17 As I recall, the door there, it was cracked open
18 and I was speaking with someone else, but I could hear
19 them advising him of his Miranda rights.

20 Q When you got custody of him initially, did you
21 advise him of his Miranda rights?

22 A I did not.

23 Q Did you ask him any questions?

24 A I did not.

25 Q Did you talk to him at all about what happened?

1 A No.

2 Q And then you gave him to McDonald or Robinson?

3 A Right, McDonald was the case officer so I gave
4 him over to him to handle it.

5 Q And you overheard them giving him his Miranda?

6 A Yes.

7 Q Were your part of that interview process at all?

8 A Not at that location.

9 Q Not at that location. Right. I want to back up a
10 little. You've said you spoke with the victim?

11 A Yes.

12 Q What information were your able to gather from
13 her?

14 A She told me the story, but as it pertains to
15 this, basically she indicated that Mr. Wallace was one
16 of the main perpetrators of the crime. She described
17 his involvement in the two murders.

18 Q And was she able to name --- did she know him by
19 name?

20 A Yes.

21 Q So with that information, you then went to
22 headquarters at some point?

23 A Right.

24 Q And what did --- what was your involvement with
25 speaking with the defendant?

1 A You know, I was kind of just standing around
2 waiting on --- they were already interviewing him.

3 Q By they --- did you know who was interviewing
4 him?

5 A I knew that both McDonald and Robinson, since
6 obviously I had turned him over to them. I knew they
7 had initially spoken to him. At this point, I wasn't
8 present when Major Smith went in, but I knew he was in
9 there because he opens the door and he wants us to
10 hear the story that he was now providing, and I
11 understood from speaking with Robinson and McDonald
12 that initially he had denied anything do with it or
13 even being around there. Now, obviously this was
14 changing. He was giving another story.

15 Q Okay. So at the time that you go to speak with
16 him, it's your understanding that he has been
17 Mirandized?

18 A I know he had, yes.

19 Q When you speak to him, what happens at that
20 point?

21 A When I --- when we're called in, you know, he
22 repeats the story, which, you know, clearly is not
23 what the victim told me.

24 Q What do you mean by that?

25 A He is saying that he, you know, he stayed out in

1 the car, I believe, that he was kidnapped basically is
2 what he is saying and that he was outside when
3 everybody, these other people, he named them, when
4 these other people went inside. He is not real sure
5 what happened in there.

6 Obviously after having spoken with the young lady
7 who had been shot and she has identified him as one of
8 the perpetrators, I told him that. I told him I knew
9 what he was saying was a lie.

10 Q Do you remember specifically what you told him?

11 A I don't recall specifically. I know that I just
12 told him that his story was not true. I, at least,
13 knew he was inside that house and he was involved with
14 the murders.

15 Q And what was his response?

16 A He obviously --- he had committed some
17 significant energy providing this story over this
18 time. Now, somebody else with some direct knowledge
19 is telling him they know he is lying. You could see
20 that he --- it was registering with him that, you
21 know, this wasn't going well for him.

22 Q How do you know that? Why do you feel that?

23 A I've been an investigator for 15 years. I've
24 worked a lot of homicide cases. Sometimes we have to
25 speak to people without knowing a lot of details.

1 When you do know the details and you've got witness
2 information from witnesses, it makes it a lot easier
3 to question somebody and challenge what they're
4 saying. That's what was going on here. I was the
5 only one there who actually had spoken to her. I'm
6 sure I seemed pretty confident that I knew he was
7 involved with it.

8 Q Did he respond to what you said?

9 A He didn't change his story. You know, I went
10 around and around with him a little bit. Obviously
11 when I say that I'm accusing him of doing that.

12 Q I was going to ask you were you asking him
13 questions?

14 A No, I'm telling him I knew what he had done and
15 he needed to tell us the truth about it, which is he
16 was involved in this, in these murders. It was clear
17 to me that we weren't going to get any further because
18 he ---

19 Q I'm going to stop you for just a minute. When
20 you say you would challenge him by saying, "I know
21 what you've done," did he respond to that at all?

22 A No, he wasn't saying, you know --- he would say
23 no, no, no, he would deny it as far as responding.
24 His response would just be a denial, but like I said,
25 it wasn't going to get any further in my opinion. I

1 turned it back over to Don Robinson and McDonald who
2 were the initial interviewers.

3 And at some point, what you do at that point is
4 if this is the story that he is maintaining, we're
5 going to reduce it to paper, and it was my
6 understanding, I don't remember actually witnessing
7 this, but it was my understanding that he did not want
8 to reduce it to writing.

9 Q Okay. To the best of your knowledge, did he want
10 to talk to you when you were speaking with him?

11 A It was clear --- first of all, I know he was
12 advised of his rights as it pertains to this hearing.
13 It was clear to me that he was engaging in
14 conversation, based on my experience, and he is
15 providing information freely and voluntarily. There
16 is an exchange. There is a question and answer, so
17 from what I observed, he was participating in this
18 interview freely and voluntarily.

19 Q Did he ever ask you to stop?

20 A No.

21 Q Did he ever ask for a lawyer?

22 A No.

23 Q Did you force him to speak?

24 A No, I did not.

25 Q Did you in any way compel his talking to you?

1 A No.

2 MS. SAMPSON: No further question.

3 THE COURT: Cross-examination.

4 MR. KRZYSTON: Thank you, Your Honor. May it
5 please the Court.

6 CROSS-EXAMINATION:

7 BY MR. KRZYSTON:

8 Q Sergeant Isenhoward, so you responded out to
9 Beckham Swamp Road, Bluff Road about where Ms. Weston
10 was found, correct?

11 A Obviously it was a long road back into the
12 country, but I did go back to the location where she
13 was actually dumped and shot, but my initial response
14 was to Bluff where a young man had picked her up and
15 called for assistance.

16 Q Okay. And Ms. Weston was obviously taken from
17 Bluff Road to PMHR, Palmetto Health Richland?

18 A Yes.

19 Q Did you follow the ambulance there or go back to
20 headquarters?

21 A No. First of all, I spoke with the young man had
22 located her. Then he had to take us back to where he
23 found her, and then we had to look for our crime
24 scene, which we ultimately found. You have to summons
25 a crime scene unit out there. I'm handling all of

1 this and then later I go and speak with her.

2 Q About how long was it, 45 minutes to an hour?

3 A I had to wait on a property owner, Kirkman
4 Finley. I was out there over an hour probably.

5 Q So then you respond to the hospital. You talk to
6 Ms. Weston, right?

7 A Yeah, I spoke to her after this, as well.

8 Q Right.

9 A But I spoke with her.

10 Q Did you return back to headquarters or did you
11 respond right to the incident --- excuse me, the
12 arrest location?

13 A I believe I went back to headquarters and was
14 there briefly and then got the word that they had
15 located him so I responded out there.

16 Q Okay. That was about 3:30 on the 28th?

17 A You know, I've heard that time. It's about
18 right, I guess.

19 Q Sounds about, right?

20 A Yeah.

21 Q And you say --- you actually arrived quickly
22 enough to hear the initial advisement of Miranda,
23 correct?

24 A Oh, I was there, and I took --- I was the first
25 officer as far as the investigators to take custody of

1 him and all that was, was walking him from fugitive
2 investigators over to where McDonald --- I believe it
3 was Scott McDonald's Tahoe was, you know, waiting for
4 them. I believe they might have been a little bit
5 behind me, so when they get there, we get him situated
6 in the car, and obviously make introductions and the
7 doors open, and I heard them provide him with the
8 advice of rights, which was verbal.

9 Q So you took possession of him from the Fugitive
10 Task Force, you pulled him out of there and put him in
11 McDonald's Tahoe?

12 A Yes.

13 Q Which door was cracked open?

14 A It was the driver's side --- I mean, excuse me,
15 excuse me, the passenger's side door because he was
16 placed up front.

17 Q Okay. Was any doors cracked open when he ---
18 when the Fugitive Task Force ---

19 A No. I don't know. I don't even know if that was
20 a Tahoe.

21 Q Okay.

22 A I don't think it was. Based on my experience,
23 they don't typically speak to them other than to make
24 sure they're okay. They're not going to interrogate
25 them about the crime.

1 Q So you were not a part of the interview. You
2 just overheard an advisement or what was alleged to be
3 an advisement of Miranda at the arrest location?

4 A Yes, yes.

5 Q And then you responded back to headquarters?

6 A Right, but they had been talking to him. I was
7 dealing with the car he was in. We had to have that
8 towed. I had to wait on a wrecker and then I went
9 back to the sheriff's office.

10 Q But he was completely in custody at the point you
11 left him?

12 A Oh, yeah, he was under arrest.

13 Q Is it Richland County policy to leave a door open
14 to a secured person who is in custody? Why was the
15 door open?

16 A So people could hear. So I could hear, so other
17 people could hear him being advised of his rights.
18 The more witnesses the better.

19 Q Who closed the door?

20 A I probably closed it when they were getting ready
21 to leave. I don't remember that specifically.

22 Q And then you go back to headquarters and now you
23 take a crack at Mr. Wallace by himself or you just sit
24 in the interrogation room?

25 A When I go in the room, I believe Major Smith is

1 there. The other two investigators, McDonald and
2 Robinson are standing outside the door. So it's an
3 office. I go in the office with Major Smith. They
4 are just right outside the door. Does that make sense
5 to you?

6 Q Uh-huh.

7 A Okay.

8 Q There's no interrogation rooms down there at
9 headquarters?

10 A No. It's just an office.

11 Q And when you respond to the arrest location, you
12 had already developed Mr. Wallace as a suspect,
13 correct?

14 A Yes, they had, yes.

15 Q And you had planned to arrest him no matter what
16 Mr. Wallace told you?

17 A If there is an arrest warrant, we going to ---

18 Q His arrest was imminent regardless of what he
19 conveyed to law enforcement?

20 A Yes, he was going to be under arrest.

21 MR. KRYZSTON: The court's indulgence, Your
22 Honor.

23 BY MR. KRYZSTON:

24 Q When you were talking with Mr. Wallace and Smith
25 was in the room, were you there when they attempted to

1 advise him of Miranda in written form?

2 A I don't remember. I don't remember if I was
3 standing right there. I just know that he, you know,
4 maybe I learned immediately afterwards, but I knew he
5 didn't want to provide a written statement.

6 Q Other than the notes that you --- do you have any
7 notes regarding your interrogation of Mr. Wallace?

8 A No.

9 Q Do you have any handwritten notes regarding your
10 interrogation of Ms. Weston in the hospital?

11 A No, just we would later get, I believe, a
12 photographic lineup together and do that. That was
13 obviously documented.

14 Q And McDonald would come to you for that?

15 A Yes.

16 MR. KRZYSTON: I have no further questions,
17 Judge.

18 THE COURT: Redirect?

19 MS. SAMPSON: No, sir.

20 THE COURT: Thank you very much.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. EATON: Your Honor, those are all the law
24 enforcement officers for the State.

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

1 call your next witness or call your first witness.

2 MR. KRZYSTON: Beg the court's indulgence, Your
3 Honor.

4 (Pause.)

5 Judge, I don't have any witnesses to call, but I
6 would go ahead and make my argument if you're so
7 inclined.

8 THE COURT: All right.

9 MR. KRZYSTON: Judge, at this point we've heard
10 from all of the law enforcement officers that pretty
11 much responded to the arrest location in an
12 investigatory capacity. Jackson v. Denno and Woodrow
13 v. Williams and State v. Goodwin tells us that when
14 we're looking at a statement made by a defendant, the
15 touchstone really is whether or not that statement was
16 voluntary and whether or not the defendant was
17 Mirandized. Certainly there is testimony on the
18 record to indicate that the defendant was Mirandized
19 pretty much contemporaneous with arrest. In looking
20 at whether or not a statement is voluntary, the courts
21 have instructed us to consider approximately eight
22 circumstances.

23 Those would be the background of the accused, his
24 age, intellect, education, et cetera. His experience
25 and conduct, the totality of the circumstances

1 surrounding the arrest, police coercion if anything
2 suggests that police had coercive behavior, the
3 location of the interrogation, the continuity of the
4 interrogation, the defendant's maturity, and any
5 mental health issues. Judge, additionally in State v.
6 Navy and Missouri v. Seibert, the South Carolina US
7 Supreme Court courts have held that the practice of
8 questioning first is unconstitutional.

9 In this scenario, we are alleged to have Miranda
10 given to Mr. Wallace. This Miranda was affected again
11 contemporaneous with arrest. Mr. Wallace's arrest was
12 not a typical arrest. Typically when you think of an
13 arrest we are talking about one or two officers
14 approaching a defendant, placing him in cuffs and say
15 you're under arrest. In the incident case we have
16 Richland County Sheriff's Department task force,
17 excuse me, Richland County Sheriff's Department
18 Fugitive Task Force. This for lack of a better term
19 is a militarized unit that is designed to obtain and
20 apprehend fugitives with older arrest warrants. They
21 go into a location. They go in heavy-handedly and
22 they go in there to suppress threats to law
23 enforcement.

24 THE COURT: All right. Let's stick to evidence
25 in the record.

1 MR. KRZYSTON: Okay. Well, judge --- that's ---
2 that's fine.

3 When he was initially Mirandized, he had just
4 come off the stress of that event.

5 THE COURT: Again, let's stick to evidence in the
6 record. There is no evidence that he was stressed in
7 that event.

8 MR. KRZYSTON: I believe Corporal Hayhurst
9 testified earlier that a number of law enforcement
10 officers seized Mr. Wallace's car on a public access
11 Road and forced his vehicle over into a parking lot.

12 THE COURT: They also said he took him custody
13 without incident and he presented no problem in any
14 way, shape, or form.

15 MR. KRZYSTON: Correct.

16 THE COURT: So there's no evidence in the record
17 that he was stressed. Keep going.

18 MR. KRZYSTON: Okay, Judge. If you --- being
19 that the advisement of Miranda was contemporaneous
20 with the arrest.

21 THE COURT: It's not --- contemporaneous means
22 automatic. There is no evidence that the advisement
23 was contemporaneous. The evidence is that the
24 fugitive team took him into custody, picked up the
25 phone, called the investigators, the investigators

1 showed up. He was placed into a car with Sergeant
2 Robinson and Captain McDonald and with Sergeant
3 Isenhoward there listening and was then advised of his
4 Miranda warnings and that it took them at least 12 to
5 15 minutes to get there.

6 MR. KRZYSTON: That's correct. He has to make a
7 knowing, intentional and voluntary waiver of his
8 rights pursuant to Miranda and that requires a full
9 awareness of the nature and consequences of the
10 situation, okay. Mr. Wallace was under arrest in a
11 parking lot in Columbia with no knowledge of what was
12 going on. He was quickly advised of Miranda within
13 about 15 minutes of his apprehension. He was then
14 rushed to a car and within half an hour of being
15 apprehended, he was back not in an investigator's
16 office, not in an interrogation room.

17 THE COURT: There is no interrogation room.

18 MR. KRYZSTON: I understand there. There
19 additionally is no video or no audio evidence of Mr.
20 Wallace's apprehension. There is no video or audio or
21 video evidence of the Miranda. There is simply the
22 statements of the officers that we had sworn before us
23 today.

24 Judge, I don't think the State's burden on
25 voluntariness is met for a number of reasons.

1 The basis of my objection is --- the basis of my
2 assertion is that when Miranda is issued that quickly
3 on somebody that law enforcement knows to be a
4 suspect, somebody that law enforcement already has an
5 arrest warrant sworn on and that advisement is verbal
6 as opposed to written, I don't think that provides the
7 defendant an opportunity to become fully aware, fully
8 conscious and fully knowing the consequences that his
9 conduct may have.

10 Again, a very quick arrest, a very quick verbal
11 advisement, a very quick transportation to
12 headquarters. He was placed in the investigator's
13 office. He was contacted by three or four different
14 law enforcement officers in that office and then when
15 he is eventually advised of Miranda, away from the
16 incident --- excuse me, the arrest location, and when
17 he is advised of Miranda in a written forum, he
18 refuses to waive his rights and then invokes his
19 rights pursuant to that waiver.

20 Judge, I think given the circumstances of the
21 arrest, given the circumstances of the interrogations
22 and given the fact that police knew they were going to
23 arrest Mr. Wallace, I think the failure to give a
24 written Miranda at the scene is dispositive on the
25 issue of voluntariness.

1 It basically leads to a scenario where the police
2 question him quickly --- excuse me, advise him
3 extremely quickly, then start questioning him with
4 pointed interrogation-like questions designed to
5 elicit incriminatory information. Then at the end of
6 it when they had gotten all the information they
7 wanted out of him, they fully advise him in a written
8 format that he refused, that to me sounds a lot like
9 the question of the first scenario that the courts
10 have ruled unconstitutional.

11 I think, at a minimum, for his statement to have
12 been voluntary, that they should have advised him in a
13 written form at the outset of the interrogation in the
14 investigator's office at headquarters. Certainly they
15 had time to provide a written waiver at the scene.
16 There was fifteen minutes that they were getting GPR
17 or GSR residue off him. He was seated and secure in
18 the sheriff's department vehicle and he was then
19 transported to headquarters.

20 An advisement of Miranda in the fog of war, I
21 think, if you will, the fog of his arrest, I think is
22 probably a better analogy, I think is insufficient to
23 make that voluntary waiver --- excuse me, that waiver
24 voluntary. I think it fails to fully advise him and
25 make him aware of the circumstances that are

1 surrounding him and his rights.

2 THE COURT: Who is arguing?

3 MR. EATON: Me, Your Honor. Vance Eaton. Your
4 Honor, verbal Miranda warning is sufficient. We heard
5 testimony that Mr. Wallace was calm in the car when
6 they gave him the warning. It's irrelevant that they
7 intended to arrest him. It has nothing to do with
8 whether his statement was voluntary and everything
9 about it indicates that it was.

10 No one threatened him. No promises were made.
11 Miranda was described to him line by line. He had no
12 questions about it. He didn't appear to be
13 intoxicated. He is of full maturity. He had no
14 questions about it.

15 He didn't appear to have any disabilities. He
16 was described as calm. Then in the office, he was
17 resigned, and then later he was animated, explanatory
18 about his role.

19 He voluntarily asked to speak to Major Smith when
20 he saw him, was introduced to him. Videos or audio
21 are not necessary. It's of little surprise that they
22 used a lot of resources to apprehend someone accused
23 of murdering two people that day. That doesn't change
24 the requirement that a verbal Miranda suddenly become
25 written. A verbal Miranda is sufficient.

1 The other officers there on the scene were, there
2 were about six or seven. It wasn't a big crowd, but
3 it sounded like it was a few officers that were
4 several feet away from the car and taking two hours is
5 a reasonable amount of time for him to be
6 interrogated, Your Honor. Everything about this would
7 indicate that there was no coercion; that everything
8 he said was voluntary and that he was adequately
9 advised of his Miranda rights before he gave a
10 statement, Your Honor.

11 THE COURT: All right.

12 MR. KRZYSTON: And Judge, certainly voluntary ---
13 or excuse me, verbal warnings may be appropriate and
14 may be enough. However, the defendant has to have the
15 opportunity to be fully aware of the consequences and
16 the nature of the activity surrounding that.

17 I think in this scenario where he is seized on a
18 public road, there are a number of law enforcement
19 officers that converge upon him at the instance of a
20 radio call and then he is verbally advised of Miranda
21 very near thereafter, I think that defeats the
22 voluntariness aspect because there is so much going on
23 that he can't really comprehend what's going on. He
24 has just been snatched out of everyday life and
25 arrested.

1 I think what law enforcement knew prior to going
2 out to that arrest location is material because in
3 Seabrook, the police responded the respondent with
4 incriminatory information in their mind. They knew
5 of the autopsy results prior to questioning the
6 respondent. When they questioned respondent, they
7 were evoking and eliciting the same exact
8 incriminatory statements that they sought to invoke
9 and elicit from Mr. Wallace.

10 I think the fact they went out there with the
11 purpose of arresting him, they had already sworn an
12 arrest warrant. He was not fully aware of the
13 circumstances surrounding that. They didn't advise
14 him of the arrest warrant when they got out there.
15 They should have advised him that they had an arrest
16 warrant and that his rights --- here they are in
17 paper, one, two, three, so he can sit there and read
18 them. All they said was, "You're under arrest. We're
19 taking you back. Here are your rights."

20 THE COURT: That's not an accurate representation
21 of the testimony. Captain McDonald said, "He asked me
22 what was going on, and I told him." There is no
23 evidence to the contrary before this court.

24 MR. KRZYSTON: Perhaps I misspoke in my argument.

25 THE COURT: You just said he wasn't aware of what

1 was going on. He wasn't aware of the gravity of the
2 situation. That is not a factual record before this
3 court. There is no evidence of that.

4 MR. KRZYSTON: I don't believe there --- also I
5 don't believe there is any evidence that he knew the
6 circumstances surrounding the arrest, and I think
7 that's material.

8 THE COURT: But you have a witness who said, "He
9 asked me what was going on, and I told him."

10 MR. KRZYSTON: All right, Judge, I just raised my
11 objections, and I mean --- I don't ---

12 THE COURT: I mean, do you have any law that
13 supports the proposition that a verbal Miranda is
14 insufficient?

15 MR. KRZYSTON: I think it's well settled law that
16 even if he is advised verbally, if he is not fully
17 aware of the circumstances and consequences of his
18 actions and the circumstances surrounding the arrest
19 that that waiver is ineffective as to the
20 voluntariness and knowing its aspects of that.

21 THE COURT: What case stands for that
22 proposition?

23 MR. KRZYSTON: Moran v. Burbin.

24 THE COURT: What's the cite for that one?

25 MR. KRZYSTON: Did you ask for a cite?

1 THE COURT: Yes.

2 MR. KRZYSTON: It's 475 US 412.

3 THE COURT: What were the facts of that case?

4 MR. KRZYSTON: Judge, I'm sorry. I just have
5 the quick snippet for that. Here it says that if the
6 suspect has waived his rights, was the waiver knowing
7 and intelligent. Assuming he has waived it, I don't
8 think he is fully aware of the nature and consequences
9 of the surrounding his arrest.

10 THE COURT: All right. Your motion to suppress
11 the statement is denied. Number one, he is clearly in
12 custody. That's not an issue. I don't hear anybody
13 arguing that he is not. He is clearly in custody. He
14 is clearly in handcuffs. There is an arrest warrant
15 for him. He is not free to leave. That is not up for
16 discussion.

17 However, he was given his verbal Miranda warnings
18 in the presence of at least one other officer. He
19 stated that he understood them. He wished to talk to
20 them. He was not under the influence of alcohol or
21 drugs. There is no evidence that he was under any
22 stress. He didn't appear to know what he was doing.
23 He was out of his mind. He was so shocked that he
24 couldn't make any kind of decision or comprehend what
25 was going on. There is no evidence of any of that in

1 any way, shape, or form in the record. The evidence
2 is that he was taken into custody without incident. I
3 mean, I think Corporal Hayhurst even went as far as to
4 say it was almost a non-event. Once they got to the
5 car, they were able to get him out of the car. There
6 was no fight. There was no struggle. There was no
7 argument. It's not like he was tased or beaten down
8 or the ambulance was there or anything like that was
9 going on in any way, shape, or form. He was put into
10 the vehicle. He was given his proper Miranda warnings
11 by Captain McDonald.

12 He stated that he understood those. He wanted to
13 go forward and all that was --- he said what's going
14 on. Captain McDonald explained it to him as to what
15 was going on. So the statements are admissible.

16 They are freely and voluntarily, knowingly and
17 intelligently given after his advice of his proper
18 Miranda warnings, after he was in custody and all the
19 statements will be admissible.

20 All right. Next legal issue. Do we need a
21 break?

22 MS. HINES: We have several other motions.

23 All right. We'll take a ten minute break. Court
24 will start back at ten till four.

25 (WHEREUPON, a short break was taken.)

1 MS. HINES: Judge, I would submit a written
2 memorandum, which is quite long. I'd be glad to make
3 a copy of it to make it a part of the court's record,
4 if I can hand it to the court reporter.

5 THE COURT: Okay.

6 (WHEREUPON, Court's Exhibit 1 was marked for
7 identification only.)

8 MS. HINES: Basically what this memorandum is,
9 there were a lot of, well, several scientific studies
10 that have come out over the past several years that,
11 what they found is with regards to tool marks that
12 basically would look back to 2008, and the National
13 Academy of Science has put out a ballistics imaging
14 report and then that was followed up a year later by
15 the --- by a report that is about 700 pages long.

16 Basically, they had --- the committee was formed
17 to study the sciences of --- it was a committee that
18 included members from the forensic sciences community,
19 the legal community and other scientists to become
20 familiar with scientific methods, to study how
21 forensic science has progressed. What they found was,
22 as far as tool marks and firearms, is that there's
23 no --- the validation studies that do exist, and there
24 are a few, they are a very small sampling size and not
25 enough --- they don't meet scientific --- scientific

1 standards for reliability. It's not using a
2 scientific method.

3 I laid all this out in detail in written form,
4 but basically what I'm asking the judge, basically
5 what the report from 2009 said was that the
6 fundamental assumptions of firearms, tool marks is
7 that a particular gun barrel is going to make the same
8 marks as is unique across all --- to every other gun.

9 The problem with that is there haven't been
10 enough studies to determine that was actually unique,
11 whether they are unique, but whether those tool marks
12 could possibly be reproduced with other --- it's an
13 assumption that the firearms and tool marks is found
14 to be as a subjective methodology for identifying
15 these individual characteristics. We have class
16 characteristics and individual characteristics on each
17 firearm.

18 What the report ultimately concluded was that
19 there is not a scientific basis for tool marks, and
20 firearms testing is not --- has not advanced enough,
21 is not sufficiently reliable under scientific methods
22 for a firearms examiner to say that conclusively that
23 this gun produced --- this bullet was fired from this
24 gun or this shell casing or cartridge came from this
25 gun to the exclusion of every other gun in the world.

1 There haven't been enough testing. What the
2 report said is that a more accurate way to portray
3 that would be that this gun cannot be excluded. If we
4 compare to it DNA, DNA has statistics of one in four
5 quadrillion, whereas with this, those studies have not
6 been done. Counsel is required to look at
7 publications and peer review of the technique, prior
8 application of the method to the type of evidence
9 involved in a case, quality control procedures used to
10 ensure reliability and consistency, method to
11 recognize scientific laws and procedures, and I
12 believe the NAS report is one such publication that
13 the two reports of the NAS and some of the articles
14 that are cited in this brief are some of the
15 publications that we need to look at.

16 I believe the problems have been pointed out by
17 the groups of distinguished scientists before,
18 remember. The quality control procedures used to
19 ensure reliability and the consistency of the method
20 with recognized scientific laws and procedures, I
21 think what we have here, and what I'm asking the
22 judge --- what I'm asking the court to do, Your Honor,
23 is to limit Mr. Collins' testimony to set --- not to
24 set --- to not allow him to say that this is a match,
25 but to say that this is --- this gun cannot be

1 excluded as, you know, that this --- these bullets
2 cannot be excluded as having been fired from this gun.
3 It would be like --- or, and I don't have this
4 particular verbiage in my motion, but it's consistent
5 with having been fired from this gun, but not it's
6 definitely was fired from this gun because I don't
7 think that the scientific basis for that is there.

8 I understand that these tool marks and firearms
9 marks have been admitted by the courts in the past,
10 but we now have new information, and I believe it's a
11 novel issue in South Carolina. To my knowledge, I
12 don't think anyone --- I don't know of anyone in South
13 Carolina that has raised this since 2008, 2009 when
14 these scientific reports came out, but I don't think
15 that we should continue to ignore that because, just
16 because it's always been admitted doesn't mean that we
17 don't need to continually re-evaluate whether it meets
18 scientific standards. Now, we have evidence in the
19 form of publications from the National Academy of
20 Science that were --- the committee was put together
21 by congress to study this. We now have that
22 information.

23 I'm asking the court to limit exactly what
24 Mr. Collins can say in his testimony as to whether
25 it's a match or it definitely was fired from this gun

1 or whether he can only say that it was --- cannot be
2 excluded.

3 THE COURT: Who is talking?

4 MS. SAMPSON: I am. Thank you, Your Honor. May
5 it please the Court. Having just been handed the memo
6 before this hearing started, I don't have a response
7 in writing to Your Honor, however, I would point out
8 that I was able to come up with --- like what
9 Ms. Hines just said, cases where ballistics and tool
10 mark evidence have been allowed by the courts since
11 this particular case. In particular, State v. Stokes
12 381 S.C. 390, 673 S.E.2d 434 is a Supreme Court case
13 from 2009, it was done in April or May 2009, but this
14 came out in February. In that case, the SLED's
15 forensics were allowed to testify that the bloody
16 bullet found in the bedroom definitively matched the
17 defendant's pistol. I would also point the court to
18 State v. Taylor, which was a Court of Appeals case
19 that came out in 2013. Cite is 404 S.C. 506 and 745
20 S.E.2d 124. It's from 2013 and it also allowed the
21 admission of this evidence, and lastly State v. Young.
22 It's a Court of Appeals case, its cite number is 2014
23 WL 2580062 and it allowed the admission of expert
24 testimony on tool mark identification and states
25 specifically that it's within the discretion of the

1 court.

2 I don't think that what Ms. Hines handed up to
3 the court, her version of what the reports say, is
4 enough to challenge. If she is making a State v.
5 Council challenge, then she has to bring in testimony
6 to show us how this is not reliable. I have
7 Investigator Collins here. He can discuss how he came
8 to his conclusions.

9 I think what she is wanting to do is challenge
10 the evidence. She can do that as much as she wants to
11 in front of a jury. I don't think she should be able
12 to limit what he is going to say. If he can back up
13 what his findings are with reliable science and this
14 has been allowed in our court, and there is no case I
15 could find that did not allow it, then I think he
16 should be allowed to do so.

17 THE COURT: So what was --- what would his
18 testimony be, that it's a match? I don't want to put
19 words in people's mouths.

20 MS. SAMPSON: I can read what the report said.
21 She quoted that, right. He matched --- individual
22 identifying characteristics were found and concluded
23 that items 5, which is a cartridge that was fired ---

24 THE COURT: A shell casing.

25 MS. SAMPSON: The shell casing, cartridge and

1 bullets, bullets specifically from --- I think that's
2 probably the one that she is most concerned with, the
3 bullet that is found in victim Athell Johnson and the
4 bullet that is found in Jamal Pratt were all fired
5 from item 94, a pistol, and that pistol was found in
6 the individual who states that Mr. Wallace left that
7 in her home.

8 So that's all his report says, that they were all
9 fired from that pistol. It's not 100 percent. He can
10 explain how he came to this. He can explain how he
11 feels it's consistent. I don't think, and I asked him
12 about this yesterday, he is never going to say
13 100 percent, just like you can't say with DNA that
14 it's 100 percent. He is going to give the testimony
15 that based on his scientific knowledge. He has been
16 doing this since 1988.

17 THE WITNESS: Ninety.

18 MS. SAMPSON: 1990, I'm sorry. I have his CV if
19 the court wants to see it. He can testify today if
20 you like, but he has done this, I mean, I don't know
21 how many times. Even when I was on the other side, I
22 had to cross him on this, so she has not provided
23 anything, for the courts have said this type of
24 testimony has neither been limited or that this type
25 of testimony has not been allowed.

1 MS. HINES: Judge, as I said, it is a novel issue
2 in South Carolina, but there are some cases from other
3 states that are cited in my brief where the courts
4 have said it's limited.

5 The solicitor says he is not going to say it's
6 100 percent, But if he is going to say this gun fired
7 this bullet, that is a conclusion to which there is
8 no --- there is no other possibility. I mean, that is
9 a conclusion. It's just the same as saying
10 100 percent or --- I mean --- and that's --- and I
11 understand he has been doing this since 1990. I'm not
12 challenging him as an expert witness. I'm not
13 challenging his ability to get up and testify about
14 what he can say to a scientific degree of accuracy,
15 which is that this bullet could have been fired from
16 this gun, that this bullet --- that he cannot exclude
17 this gun and this bullet as having come out of this
18 gun or that this bullet is consistent with having been
19 fired from this gun, but when he says this bullet was
20 fired there this gun, I don't think the science backs
21 up that to the exclusion of every other gun in the
22 word, and that's what the implication is, and there is
23 a section in this brief that does address that, but
24 just because this has been done and this has always
25 been done doesn't mean that we don't have to continue

1 to look at scientific --- the foundation for it.
2 We've had advances in the way the guns are made.
3 We've had advances --- I mean, there are some guns
4 that are made through boring where they are taking a
5 long length of barrel and they're boring a rod through
6 it to remove metal. There are others now, I
7 understand and I'm sure Mr. Collins could testify to
8 this, as well, but I understand that there is some
9 when the metal is shaped around a piece of an internal
10 board, where they're not taking metal away, there's
11 also handcrafted guns, but the older guns used to all
12 be handcrafted.

13 Now we have machines that are doing it. As
14 technology changes how we're making guns and how we
15 are doing this, we need to keep continuing to
16 reevaluate. Just because this was allowed in --- I
17 know that there are cases and these cases that
18 Ms. Sampson cites too, and I don't know if this
19 particular argument was made or brought up, but in the
20 courts --- and I'm making this argument here and now
21 because I do think it's relevant and I do think it is
22 the future of where this science is headed as far as,
23 you know, as we learn more about the methodology and
24 about the --- and, you know, there are some validation
25 studies. I've spoke with Mr. Collins ahead of this

1 time for this hearing. There are some validation
2 studies. He has participated in at least two if not
3 three validation studies where they take ten guns and
4 send them out to firearms examiners all over the
5 country. Part of the problem with that is they're
6 only talking about ten guns, a ten gun sample as
7 opposed to 100 guns or 1,000 guns.

8 Looking at science, when you look at medical
9 science for example, you're looking at a test group, a
10 control group of thousand of people if they can get
11 them. If you look at statistics, the bigger the
12 control group is, or the bigger the group is, the more
13 reliable it becomes. That's one of the founding
14 principles of science and scientific method. That's
15 what we don't have here. So I'm just asking --- it's
16 not that I'm saying it shouldn't be admissible or that
17 he shouldn't be allowed to testify or that he's not
18 qualified. He is imminently qualified. I'm not
19 challenging his qualifications as an expert, I'm just
20 challenging the limit of the science that he is doing
21 and to say --- to make an absolute --- a conclusion,
22 an absolute matter without having those --- the
23 science just isn't there to back it up. I
24 understand ---

25 THE COURT: Do you want to question him?

1 MS. HINES: I can question him.

2 THE COURT: Well, that's up to you.

3 MS. HINES: I would like to question him, but I
4 understand that the --- I don't have a witness here,
5 but I do believe that the Court can take recognition
6 of these reports that have scientific studies. I
7 think the Court can take recognition of that. It's
8 the 2009 report from the National Academy of Science
9 associated with the National Research Council was ---
10 this committee was put together by the United States
11 Congress. It's not a --- just a random organization.
12 It's a --- the FBI has addressed it. There's a
13 footnote in here about --- from the FBI. Just a
14 second.

15 (Pause.)

16 The FBI published an article in the Journal of
17 Forensic Science regarding the semantics of forensic
18 conclusion, addressing the need to properly convey
19 evidentiary weight and that is Footnote 22 that's
20 cited in here, Your Honor. I do believe that these
21 are things that the Court can take judicial notice of
22 as opposed to bringing all of the people that wrote
23 these reports to Columbia, South Carolina, which we
24 can certainly get a funding order to do that, but
25 that's why I've written this all out because these are

1 treatises, all of the cites are here. I can, if you'd
2 like for me to, question Mr. Collins, I'll do that.

3 THE COURT: That's up to you. That's up to you.

4 MS. HINES: Okay. I would like to --- if I could
5 call Mr. Collins.

6 THE COURT: All right. Come on up, Mr. Collins.

7 DAVID COLLINS,

8 after being duly sworn, testified as follows:

9 THE COURT: Have a seat.

10 THE WITNESS: David Collins, C-O-L-L-I-N-S.

11 THE COURT: All right.

12 MS. HINES: Thank you, Your Honor. May it please
13 the Court.

14 THE COURT: Yes, ma'am.

15 DIRECT EXAMINATION:

16 BY MS. HINES:

17 Q Mr. Collins, you've been a firearms examiner
18 since 1990?

19 A I began my training in 1990 and began testifying
20 in court in 1993.

21 Q You use the methodology of the American Forensics
22 and Tool Mark Examiners, the AFTE?

23 A The Association of Firearms and Tool Mark
24 Examiners provides much of the guidance that we use,
25 especially in the conveyance of our conclusions in

1 court and the methodologies that we use to render our
2 conclusions.

3 Q And you're aware of the Ballistics Imaging report
4 from 2008 that you've heard referenced?

5 A I have read portions of it, specifically those
6 that related to the science of firearms and tool mark
7 identification as opposed to its primary focus, which
8 was that of forensic imaging.

9 Q Right, and also, one of the things that that
10 report --- you mentioned that --- the primary focus of
11 that report was to determine the feasibility of coming
12 up with a database for firearms similar to the CODIS
13 database for DNA or the AFIS database for
14 fingerprints?

15 A That is correct.

16 Q In order determine that feasibility, the members
17 of the committee that put that report together then
18 also looked into the science behind --- to a small
19 extent, the science behind firearms and tool marks,
20 correct?

21 A As I recall, there was a brief mention of their
22 take on the science behind what we do.

23 Q Right. In addition to that, you're aware of the
24 2009 report strengthening forensic science in the
25 United States?

1 A Correct.

2 Q That also addressed forensic science and the
3 feasibility of, you know, the science and validation
4 studies behind what you do?

5 A In part, yes.

6 Q In part, okay. So it --- you have actually
7 participated in several validation studies?

8 A I have participated in as many as I had time to,
9 yes.

10 Q How many was the that?

11 A At least two. There could be more, but we
12 actually have some in the laboratory now that we have
13 not started working on that have been provided to us,
14 but due to case work and the time constraints of that,
15 I've not dug into those yet.

16 Q Right. The two that you participated in that you
17 have on your resume came out of the Miami Dade?

18 A I believe so.

19 Q And those were ten gun studies?

20 A Ten consecutively manufactured firearms.

21 Q Right. And so --- they sent them out to
22 forensics examiners all over ---

23 A Yes.

24 Q --- to fill out a questionnaire, correct?

25 A What they did, in brief, they provided test fired

1 samples from the ten consecutively manufactured
2 firearms.

3 Q Uh-huh.

4 A As well as other --- in some cases other items
5 that may or may not have been fired by those firearms,
6 and those were blinded. You did not know which sample
7 went with which firearm, but you were asked to make
8 the association using your laboratories and processes.
9 That is a blind type study where you don't know which
10 firearm you're looking at when it goes out. The
11 reason they use consecutively manufactured firearms,
12 it is --- in those types of situations is where you
13 expect to find the most similar markings because the
14 same tool is being used consecutively for the
15 manufacturing.

16 Q Right. In your --- one of those studies in your
17 resume was the EBIS. Do you know what --- can you
18 tell us what that is?

19 A That was a type of barrel system that was
20 manufactured for Glock firearms that was designed to
21 try to improve the ability to identify or match
22 bullets fired from Glock firearms to one another.

23 Q Okay.

24 A The way that the Glock currently manufacturers
25 the barrels, it makes it difficult to identify one to

1 other. They undertook that study to try to make it
2 less of a problem in the forensics field.

3 Q Okay, and basically what they have done --- with
4 that study that was specific to Glock, and they put
5 almost like a serial number type thing in there to try
6 to make it more like a bar code?

7 A Essentially what they did was they placed defects
8 in the barrels of the firearms in a random fashion
9 that were designed to impart more markings on the
10 bullet going through that barrel. A standard Glock
11 barrel, when it's manufactured it has very smooth
12 surfaces. The bullets do not engage in them when they
13 are fired through that barrel and it makes it
14 difficult to make an identification.

15 Q Okay. And let's see --- are you aware of the
16 FBI's response to the 2009 report? It was a --- it
17 was an article by Bruce Budowle, "A Perspective on
18 Errors, Bias, and Interpretation in the Forensic
19 Sciences and Direction for Continuing Advancement" in
20 the Journal of Forensic Science?

21 A I'm not sure if I've read that document or not.

22 Q Are you --- you're aware of the Journal of
23 Forensic Science?

24 A Yes.

25 Q And that's a journal that's relied upon by people

1 in your field?

2 A Yes, it is a peer review and a recognized
3 publication.

4 Q And also the --- beg the Court's indulgence just
5 a moment --- the AFTE Journal?

6 A Yes.

7 Q It's also a journal that's relied on by people in
8 your ---

9 A It is another peer review and a recognized
10 journal specific to our field of expertise.

11 Q Okay. And in your report this case, you made the
12 conclusion that the cartridges --- two cartridges, one
13 bullet, fired bullet, and one fired bullet jacket were
14 all fired from the pistol that was submitted to you,
15 correct?

16 A Yes, two fired cartridge cases ---

17 Q Uh-huh.

18 A --- and one projectile and one projectile jacket
19 that I concluded, in my opinion, were fired by this
20 firearm.

21 Q Okay, and so in your conclusion that this was
22 fired by this firearm, to what degree of certainty are
23 you...

24 A To the degree of certainty as stated by the AFTE
25 theory of identification, which simply states ---

1 because I could read it in its entirety if the judge
2 would like or you would like or I could just give you
3 the short version of it. I would prefer to read it in
4 its entirety.

5 Q Okay. If you could read it in its entirety, that
6 would be great.

7 A The AFTE theory of identification --- let me find
8 the correct page. I apologize to the court.

9 It reads first that, "The theory of identification
10 as it pertains to the comparison of tool marks
11 enables opinions of common origin to be made when
12 the unique surface contours of two tool marks are
13 in sufficient agreement. This sufficient
14 agreement is related to the significant
15 duplication of random tool marks as evidenced by
16 the correspondence of a pattern or combination of
17 patterns of surface contours. Significance is
18 determined by the comparative examination of two
19 or more sets of surface contour patterns comprised
20 of individual peaks, ridges and furrows.
21 Specifically, the relative height or depth, width,
22 curvature and spatial relationship of the
23 individual peaks, ridges and furrows within one
24 set of surface contours are defined and compared
25 to the corresponding features in the second set of

1 surface contours. Agreement is significant when it
2 exceeds the best agreement demonstrated between
3 tool marks known to have been produced by
4 different tools and is consistent with agreement
5 demonstrated by tool marks known to have been
6 produced by the same tool. The statement that
7 sufficient agreement exists between two tool marks
8 means that the agreement is of a quantity and
9 quality that the likelihood another tool could
10 have made the mark is so remote as to be
11 considered a practical impossibility."

12 It goes on to say, "Currently, the interpretation
13 of individualization and identification is
14 subjective in nature, founded on scientific
15 principles and based on the examiner's training
16 and experience."

17 And that is the theory that I base my
18 identifications or other conclusions on.

19 Q Okay. So you're doing a comparative examination
20 --- I'm going to break that down. You're doing a
21 comparative examination of a --- I'll say a projectile
22 for example, that's fired from a known gun to the
23 unknown and they're side by side on a comparison
24 microscope, correct?

25 A In this case, yes.

1 Q In this case. Okay. And the definition that you
2 read to us talks about height and depth of these tool
3 marks?

4 A Yes. It's essentially a three dimensional
5 surface that you're looking at, so you're looking at
6 raised surfaces and ---

7 Q And your comparison microscope renders a 3D?

8 A I'm able to determine to a certain extent, the
9 depth of them. There is a difference between a 2D
10 mark and a 3D mark. A 2D mark is so shallow that one
11 cannot visually determine the differences in depth. A
12 3D mark would be one where you do have sufficient
13 differences in depth to be able to determine. You're
14 not doing a measurement of the depth. You're doing a
15 visual analysis of the depth.

16 Q That depth shows up as shadow?

17 A Yes, as a shadow and the raised portions are
18 usually illuminated as more light ---

19 Q Shadow and light?

20 A Yes.

21 Q As opposed to an actual 3D image. You're not
22 looking at a 3D image, you're looking at a 2D image
23 and attributing shadow and light to determine height
24 and depth, correct?

25 A That would be one way of interpreting it.

1 Q It is --- you mentioned that it's so remote as to
2 create a practical impossibility. Can you define
3 practical impossibility?

4 A To me a practical impossibility would indicate
5 that the chances that another firearm would create
6 markings that are identical to those found on this
7 particular item in question would be so remote that it
8 is simply impossible. The same way that DNA is able
9 to use in their studies --- they're able to use a
10 ratio, if you will --- the chances of one in say
11 30 quadrillion.

12 Q Right.

13 A So that, to them, that indicates that it exceeds
14 the population of the earth, therefore it must be the
15 person. In firearms there is no means of doing that
16 type of statistical analysis because we do not have a
17 fixed number of variables that we're dealing with.
18 DNA is looking at studies that they conducted on 16 to
19 24 different genetic markers, whereas we have --- the
20 markings we're looking at are random in nature. By
21 virtue of that, the chances of obtaining the same
22 markings would be as remote, in my mind, as perhaps a
23 DNA match, but there is no way of quantifying that
24 statistically with a percentage or ratio.

25 Q So you --- so then in comparing it to DNA, and

1 with DNA we have numbers and we have statistics and we
2 have ratios, and there have been studies that say
3 it's --- that back up those numbers. In firearm
4 marks, there are no numbers like that, so there are no
5 statistics as to that.

6 A Well, the only way that I could think of that
7 they could generate a statistical study would be to
8 examine and quantify test results from every nine
9 millimeter firearm manufactured by a particular
10 company and then determine if there are any two of
11 those that match one another. Obviously, that is
12 something that can't be done. What we do is we look
13 at these bullets during a training procedure,
14 comparing known bullets. Your training officer will
15 provide you with bullets that are multiples that are
16 fired by the same gun and will provide other bullets
17 fired by guns of the same make and model. It is up to
18 the trainer to --- trainee to be able to determine
19 which of those were fired by that gun and which of
20 them were not. What you end up with over the course
21 of two to three years of training is the ability to
22 discern which markings are unique to a particular
23 firearm, which markings fall into what we call a sub
24 class category, and are then able to make a conclusion
25 that, based on our experience, the quantity and

1 quantity of the markings that we are looking at are
2 unique to that particular firearm or not.

3 It's very common that we reach a conclusion that
4 the markings we're looking at were simply not created
5 by that firearm or perhaps are inconclusive due to
6 either the condition of the evidence or the poor
7 quality of the markings left by the gun on the bullet
8 in question. What is important for the firearms
9 examiner to be able to do is understand the
10 manufacturing process behind the markings that he is
11 looking at. That determines the weight that he gives
12 those markings.

13 Q Okay. Is there any --- okay. You say that
14 determines the weight that it gives those markings.
15 Is there any guidance in the field about how to give
16 weight to certain markings and other markings --- what
17 markings to give more weight to than others or is that
18 just based on you-know-it-when-you-see-it?

19 A It goes beyond you-know-it-when-you-see-it.
20 There are some instances where manufacturing processes
21 may leave similar markings from multiple different
22 firearms that were manufactured on a surface.

23 When that is encountered, that type of
24 information is disseminated to the field through the
25 Association of Firearms and Tool Marks Examiners

1 journal. There are cases where one particular
2 manufacturing process, for instance the cutting
3 process that you mentioned before for cutting rifling
4 into a barrel is more likely to leave behind what we
5 call sub class characteristics that may be present on
6 tests from more than one firearm versus what we call
7 button rifling where a rifling button is drawn through
8 the barrel of a firearm where you're much less likely
9 to get a sub class characteristic.

10 Some companies even go so far as to use
11 additional methodology in their manufacturing process
12 to add additional markings to the working surfaces of
13 the gun to make it so that we can make a more positive
14 identification of this firearm under the microscope.

15 Q Okay. And now to go back to the definition that
16 you gave us about identification: "...agreement of a
17 combination of individual characteristics and all
18 discernible class characteristics where the extent of
19 agreement exceeds that which can occur in the
20 comparison of tool marks made by different tools."

21 Can you explain to the court what that means?

22 A What that means is it goes back to your training
23 and experience. Where you're looking at multiple
24 bullets, multiple cartridge cases that are fired from
25 perhaps the same caliber, for instance I'll use a Hi

1 Point nine millimeter firearm as an example. You may
2 look at multiple cartridge cases fired from different
3 nine millimeter Hi Point firearms. What you're
4 looking at --- what you're seeing are differences.
5 You're able to determine that the markings on these do
6 not match versus when you have markings that you are
7 provided by your training officer that --- or test
8 cartridge cases that are provided by your trainer that
9 are fired by the same gun where you see they do match.

10 So over the course of your training, you learn to
11 identify what to expect to see from two different guns
12 versus what to expect to see from test cartridge cases
13 or evidence cartridge cases fired from the same gun.
14 It's the same theory. What you end up with over ---
15 you develop this skill over time. You identify what
16 markings are unique to a particular firearm and you
17 can also identify what markings --- how they differ.

18 Q And as you said earlier, there hasn't been a
19 study where they took like say for example --- well,
20 the example you used was all nine millimeter guns
21 produced by a certain manufacturer and looked at them
22 all to see if there was actually uniqueness throughout
23 the entire sample?

24 A To my knowledge, that would not be possible or
25 practical to do that. There have been studies. The

1 best studies that we have are where we are provided
2 test samples fired by or produced by consecutively
3 manufactured firearms from, for instance, Hi Point or
4 some other manufacturer where you would expect to find
5 the most similarities because the same tool is being
6 used consecutively to manufacture the same part of the
7 firearm. In each of those cases, we are able to
8 determine or to differentiate between them which gun
9 produced which item.

10 Q Right, but again, in those cases, are you aware
11 of any settings such as that that used a sample of
12 larger than ten guns?

13 A I believe there are studies out there with
14 considerably more than ten guns.

15 Q Have you read those studies?

16 A I'm sure I have at some point. I've been doing
17 this for a long time. I don't remember everything
18 I've read.

19 Q So you think there are other studies or you're
20 sure that there are those studies?

21 A If I could refer to some documentation I probably
22 with me.

23 Q Uh-huh. If I could see a copy of that, as well.

24 A Sure, I actually prepared one for you.

25 Q Okay. Great. Thank you.

1 A This is a paper written by Ronald Nichols and
2 it's called "The Scientific Foundation of Firearm and
3 Tool Mark Identification - A Response to Recent
4 Challenges." And this is not the most recent document
5 that has been produced.

6 Q And this is basically a response to the reports
7 from the National Academy of Science that I referred
8 to earlier, correct?

9 A This was prepared in response to one of the
10 challenges, but that may not have been one of those.
11 It may have been a previous challenge by a specific
12 author as opposed to a group.

13 Q Okay. Oh, this is the challenges of
14 Dr. Schwartz, correct?

15 A That's correct.

16 Q It's a response to Dr. Schwartz.

17 A And as his information is provided directly in
18 response to her allegations, it may not contain all of
19 the information on all of the studies that are out
20 there.

21 Q Uh-huh.

22 (Pause.)

23 A The studies that he mentions in particular
24 involve groups of ten. I do believe that there are
25 some other studies. I can get that information at a

1 later date that involves groups of larger than ten.

2 Q Uh-huh.

3 A He refers to a 1992 study with ten consecutively
4 broach or cut barreled, cut rifled nine millimeter
5 barrels where tests were provided to --- I'm on page
6 25, I'm sorry.

7 Q Go ahead.

8 A He provided those tests to 30 different
9 laboratories, and 294 different examiners from 15
10 countries examined and compared the bullets. There
11 were not any --- there were not any misidentifications
12 made and that was blind study.

13 There was another study using cartridge cases
14 from Glock pistols and an additional number of 360
15 comparisons were made with no errors reported.

16 These are just examples of some of the studies
17 that have been produced.

18 Q Right. Those were ten Glock pistols used. The
19 360 number is the number of firearms examiners that
20 looked at the samples?

21 A It's hard for me to look at this document and
22 interpret if that is what he means or if that he was
23 how many comparisons were actually made.

24 Q Another way that we use to exam the accuracy, if
25 you will, of our discipline is in our error rate

1 study, which right now, we get much of that from our
2 proficiency testing programs that we undergo. There
3 have been some issues with that because some of those
4 proficiency tests have been provided to and reports
5 gathered from them from people who are not fully
6 trained firearms examiners. For instance, a trainee
7 might have submitted one so the results from that
8 person would be considered invalid. More recently
9 they have been conducting the proficiency testing and
10 gathering the information and being able to discern
11 whether the individual is a fully qualified examiner
12 in most cases, and the error rate is extremely low
13 when it comes do that type of study.

14 Q This --- in addition to that, this paper that
15 you've given me refers to a study that was done by
16 Kirby. I think Kirby and Hamby both did studies back
17 in the 90s and page 13, where they fired the accepted
18 firing of cartridges through the same resolver and
19 whether they could make a determination that this
20 bullet came from this gun after a number of them had
21 been fired through ---

22 A Uh-huh.

23 Q --- and that they found that on the 75th bullet
24 fired it could not be determined to match from the
25 first bullet fired, so they did determine there was

1 not necessarily consistency within the same gun,
2 correct?

3 A That is true. It is not uncommon for a firearm
4 that has just come off the factory line. There is a
5 break-in period. As the bullets are fired through the
6 barrel ---

7 THE COURT: Tool markings change over time.

8 THE WITNESS: Tool markings do change over a
9 period of time and then they settle in and become
10 reliable. If they --- during that break-in period, I
11 would expect to see some of those initial markings,
12 tool markings that were left by the manufacturing
13 process are going to be ironed out to a certain extent
14 and then they reach point, like I said, of stability
15 where they intend to remain more or less the same.

16 BY MS. HINES:

17 Q Okay.

18 A An example of that would be in the same page,
19 Hamby tested 501 bullets fired from an M-16 A1 rifle
20 that ---

21 Q Right.

22 A --- that previously had 40,000 rounds fired
23 through it. They examined the first bullet and every
24 100th bullet. They were able to match the first and
25 last bullets as coming from the same firearm, so at

1 some point in time that firearm had settled in and the
2 markings became consistent.

3 Q All right. You say at some point it becomes
4 reliable. At some point, it settles in and becomes
5 reliable. At what point --- how many bullets have to
6 be fired through a gun before it reaches that point?

7 A It's going to vary from firearm to firearm. I
8 have not seen a study that specifically addresses
9 that. I have talked individuals who have done
10 unofficial unpublished studies where usually they see
11 any changes to kind of iron out in the first 25 or so
12 rounds.

13 However, I mean, it's still possible that you
14 could have sufficient individual characteristics in
15 the first round to be able to match it to the 500th
16 round, it's not to say there is going to be such a
17 significant change during that ironing-in period, if
18 you will, that it's ---

19 Q Uh-huh.

20 A --- going to preclude the ability to make
21 identifications.

22 Q So it might change to the point where you can't
23 make an identification, but it might not?

24 A It may not.

25 Q There is no scientific basis to say it's one way

1 or the other way or one way with the certain guns and
2 one way with other guns. It just depends, right?

3 A Much of this goes to the --- again, the type of
4 manufacturing process that's used to manufacture the
5 firearm. The example that I used earlier with the
6 Glock manufactured barrels, the process that they
7 used, in many cases, our ability to identify a bullet
8 back to a specific Glock firearm would be less than
9 5 percent, and probably less than 1 percent of the
10 cases that I have encountered that I been able to
11 identify a bullet back to a Glock firearm. The
12 manufacturing process that they use for their slides
13 however leave very vivid and very unique marks on
14 cartridge cases so we're usually very easily able to
15 match a cartridge case back to a gun.

16 It depends on the type of manufacturing process
17 that's involved in that specific area that you're
18 looking at on the bullet. What does the bullet come
19 in contact with, the internal surfaces of the barrel,
20 and how that is produced has significant impact on
21 your ability to make an identification.

22 Q Okay. And you keep mentioning --- you mentioned
23 class characteristics and individual characteristics.
24 There is also sub class characteristics, correct? Can
25 you just explain to the judge what those are so that

1 he knows? I probably should have done that at the
2 outset?

3 A Starting off with class characteristics, class
4 characteristics would be, for instance, the number of
5 rifling grooves in a barrel. Just for instance, Smith
6 and Wesson manufacturers most of their revolver
7 barrels --- with a 38 Special, they have five grooves
8 with a right twist. They have a certain width that
9 you can measure under a microscope. These are
10 filtering processes, filtering information, that we
11 can use in the examination of a case. If we receive a
12 bullet from, for instance, a victim and we look at a
13 test fired bullet from a firearm and the class
14 characteristics are different, we can automatically
15 exclude that bullet as having come from that firearm.

16 Sub class characteristics are markings that may
17 be present or may be placed on bullets or cartridge
18 cases by a small subset of firearms from the same
19 manufacturer. There may be a transient defect, for
20 instance, in the coating tool that leaves a large
21 defect that may leave the same marking on, say just
22 for example, three or four consecutively manufactured
23 barrels, and it is part of our training to be able to
24 identify when you might be looking at a sub class
25 characteristic versus an individual characteristic.

1 An individual characteristic would be that
2 marking that is unique, in our opinion, to that
3 specific firearm and would not be caused by a sub
4 class characteristic and it's definitely not caused by
5 a class characteristic.

6 Class characteristics are of great use to us
7 because sometimes we can use those to greatly narrow
8 the field of possible guns. If you look at all the
9 guns in the world as a universal group and you have a
10 fired bullet that, for instance, has in this case had
11 nine left rifling --- has nine grooves with a left
12 hand twist, you can eliminate virtually all guns
13 except for one particular brand of firearm. Then you
14 can use that as the starting point of your
15 examination. If you have something more generic, six
16 grooves with a right hand twist, then you have a
17 larger group of firearm manufacturers to deal with and
18 you have to go deeper into your microscopic
19 examinations.

20 Q And there are beginning to be data bases or at
21 least information being collected and disseminated
22 about class characteristics and which guns. Like you
23 said this one is nine grooves with a left twist?

24 A Yes.

25 Q So there's the Hi Point. The Hi Point used to be

1 --- actually that he is on older Hi Point. The new
2 ones are three grooves, correct?

3 A Yes. They're manufacturing them with three
4 grooves now.

5 Q So you know that if that information as to class
6 characteristics says this is the type of gun that
7 could have fired --- and some of them like you say,
8 some manufacturers the same type of class
9 characteristics than different manufacturers, you
10 can't narrow that down, and that's class
11 characteristics. Then sub class characteristics ---
12 there is no way --- there is really --- is there ---
13 there is no way other than seeing it to distinguish
14 sub class characteristics and individual
15 characteristics is there?

16 A If you see a mark that you suspect may be sub
17 class characteristic, it might be because it is very
18 corrosive, very obvious part. One way you can
19 determine whether it is sub class is to actually take
20 a silicone cast of the entire length of the barrel and
21 examine that under a microscope to see if you can
22 often find that defect in the cast. You can see if it
23 actually tracks through the entire length of the
24 barrel. If it does so, then you have to be concerned
25 that it may also be in the barrel that was cut ---

1 that was manufactured prior to or just before that.
2 That would be a mark that I would exclude from my
3 considerations for microscopic comparisons.

4 Q That wasn't done in this case, correct?

5 A I didn't see anything that I detected or
6 determined to be potential sub class characteristics
7 in this case.

8 Q But absent the casting, is there any way to
9 determine that it is a sub class or an individual? Is
10 there any way to distinguish?

11 A Yeah, if I see a very gross, very obvious mark
12 that appeared, that may be caused due to damage to the
13 rifling tool, I may, based on my training and
14 experience, exclude that from all microscopic
15 comparisons.

16 Q You would know it when you see it?

17 A It's one of those, you would know it when you see
18 it and you would attempt, to the extent possible, to
19 further research that mark by examination of the
20 barrel of the firearm if possible to determine if it
21 is a sub class characteristic.

22 Q But there is no data base or there no gathering
23 of information about sub class --- the sub class
24 characteristics don't lend themselves to gathering
25 information in the same way that class characteristics

1 would?

2 A They certainly do not.

3 Q To gather any information about --- so that's not
4 something that can be done?

5 A That is not and the class characteristics data
6 base that you're referring to we use frequently when
7 we have a bullet from a scene and don't have a firearm
8 to compare it with. We can use that to draw up a list
9 of possible manufacturers or brands or a list of
10 possible firearms to use. In this particular case, it
11 wasn't necessary.

12 Q Okay, now, when you're looking at a --- when
13 you're looking at a --- when you're doing a comparison
14 with a firearm collected from this scene and a
15 projectile collected from this scene, in order to make
16 that comparison, do you need to know any information
17 about the case itself?

18 A There are times when it is useful to know
19 something about the case, depending on what you're
20 seeing with the evidence. If you're seeing damage to
21 the evidence that may indicate a ricochet or some
22 other information, it's useful to know. Is there any
23 indication from the scene that the bullet struck
24 something else before it struck the victim, for
25 instance. Often it is really in our best interest to

1 know as little as possible about the case because you
2 just want to look at the evidence based on scientific
3 merit alone and not based on any other facts from the
4 actual scene itself.

5 Q Yet in your bench notes that were provided by the
6 State, you have the incident reports?

7 A Yes.

8 Q And all of the supplemental incident reports, as
9 well. Did you read those prior to this comparison?

10 A I don't know if I read them prior to the
11 comparison or not. We typically place the incident
12 report in the case jacket, as it is required by SLED
13 to have that document with anything that we send to
14 them. So we include all that data in our case jacket
15 so that we have everything. For instance, if we
16 provide it to anyone else, it would all be in the case
17 jacket.

18 Q Okay.

19 MS. HINES: Beg the Court's indulgence for just a
20 moment.

21 (Pause.)

22 BY MS. HINES:

23 Q Can you just go back --- I know I'm jumping
24 around here. Can you go back and explain sufficient
25 agreement again?

1 A As it is related in the AFTE theory of
2 identification?

3 Q As --- yes. When you ---

4 A Yes, sufficient agreement is related to --- is
5 related to the significant duplication of random tool
6 marks as evidenced by correspondence of a pattern or
7 combination of patterns of surface contours. In other
8 words, you're looking at --- it's essentially pattern
9 recognition. You're looking at --- on the surface of
10 the bullet would best be described as almost a bar
11 code, a scratch mark, and trying to identify that to
12 another similar --- trying to find the same bar code
13 on another test fire because we do try to --- we do
14 examine test fires versus each other to make sure the
15 gun is duplicating the marks.

16 We were looking at that pattern of marks that
17 include ridges, furrows, individual peaks. There may
18 be some curved lines, their spatial relationship with
19 one another and comparing it with each other until we
20 can determine --- again, this is stated in the final
21 part of AFTE theory of identification of a subjective
22 analysis that where we are making the determination
23 that what we are seeing surpasses anything that we
24 would expect to find on two separate firearms and is
25 consistent with what we expect to find on the same

1 firearm based on our training and experience.

2 Q So what you're doing is you're looking back in
3 your mind to the closest you've seen on two non-
4 matching firearms and saying well, it's more than
5 that?

6 A Yes, to me it's something --- it's not like it's
7 this, this is your match, this is your no non-match.
8 It's considerably --- I look for considerably more
9 than what I would expect to find on two non-matched.

10 Q How do you define can considerably more?

11 A That is again a subjective analysis, based on my
12 training and experience.

13 Q So there is no ---

14 MS. HINES: Beg the Court's indulgence just a
15 moment.

16 (Pause.)

17 MS. HINES: I have no further questions for this
18 witness, Judge.

19 THE COURT: All right. Anything else?

20 MS. SAMPSON: If I can ask him a couple of
21 questions briefly.

22 THE COURT: Yes.

23 CROSS-EXAMINATION:

24 BY MS. SAMPSON:

25 Q Just to wrap up briefly and bring us back to this

1 case. You examined the evidence in this case?

2 A Yes.

3 Q You came to a conclusion?

4 A Yes.

5 Q The tests that you used to make this conclusion,
6 are they the same techniques that are used by your
7 peers?

8 A They the same techniques that are used by my
9 peers and our internal qualify control measures, I
10 believe, are the same as used by our peers.

11 Q Are they the methods and the applications that
12 you always used in making these tests?

13 A Yes, we didn't do anything different in this
14 particular test. I might --- as I brought up quality
15 control, I might --- each of our examinations
16 regardless of the conclusion reached is confirmed by a
17 second qualified analyst who looks at the evidence
18 blindly. I don't tell the analyst what my results
19 are. I give the evidence to them. They look at it,
20 and they are required to tell me --- we report that
21 verification, as well.

22 Q That was done in this case?

23 A That was done in this case, as well.

24 Q Is that method typical in your field that that's
25 what is done?

1 A To various degrees. Some laboratories only
2 require if there is a match or an identification made.
3 We do it whether we make a match or we make an
4 elimination or an inconclusive or unsuitable.
5 Whatever it is, we look at it. At this point, we are
6 doing it with all our examinations.

7 Q So your equality control goes even above the
8 standard necessary?

9 A I believe it exceeds what is being done by many
10 labs, yes.

11 Q Your methods that you use are consistent with the
12 recognized scientific laws of evidence in your field?

13 A My methods and the methods used in the laboratory
14 are consistent with those used across the country and
15 the world.

16 Q What is your conclusion in this particular case?

17 A My conclusion in this particular case is that it
18 is my opinion that speaking of the items of evidence
19 that have been mentioned today, that the two fired
20 nine millimeter cartridge cases, the fired bullet and
21 the fired bullet jacket were fired by the Hi Point C9
22 firearm that was submitted.

23 Q And you have gone over this to the degree of
24 certainty you can mention that, that phrase and
25 terminology that you used, is that supported by peer

1 review and publications in your field?

2 A Yes. If you look at the AFTE theory of
3 identification, is the match absolute? The match
4 cannot be absolute in any case just like it cannot be
5 in a DNA case, but it is my opinion, based on my
6 examination of these items that that gun is the
7 origin.

8 Q Stating it in the way, the manner that you've
9 stated it, and I'm not going to repeat the whole
10 language, but in that manner, that is consistent with
11 the peer review and what others in the field state
12 that you should do if you have a match to this gun?

13 A That's the way I've seen it reported, yes.

14 Q Have you seen anything stating you should not
15 state it in the manner you stated it?

16 A I have seen it stated that you should not --- we
17 should not state --- the verbiage that we are trying
18 avoid now is to state that it is fired by that gun to
19 the exclusion of all others. Again, because we don't
20 have, based on the AFTE theory of identification, that
21 absoluteness --- that absoluteness simple cannot be
22 there, you know, from scientifically, just like it
23 can't be for a DNA analyst to make the same conclusion
24 for a positive identification.

25 Q So in this case you are not saying to the

1 exclusion of all others?

2 A I am not saying to the exclusion of all others,
3 no.

4 MS. SAMPSON: Nothing further, Your Honor.

5 MS. HINES: If I could just briefly, Judge.

6 THE COURT: Briefly.

7 REDIRECT EXAMINATION:

8 BY MS. HINES:

9 Q So you cannot say that it was fired --- those
10 items were fired by this gun to the exclusion of all
11 others?

12 A I'm saying it is not possible for me to say to
13 the exclusion of all others. However, I can say that
14 the chance of it being another gun are so remote for
15 it to be a practical impossibility as stated by the
16 AFTE theory of identification. How to quantify that
17 statistically that has not been determined by our
18 field of how to do that. That may not be something
19 that can be determined due to the fact that we're
20 looking at a random number of unknown variables, and a
21 statistician will tell you that you cannot render a
22 statistic based on that.

23 Q Right. So you cannot render a statistic based on
24 --- in your field, based on what you're looking at,
25 correct?

1 A That is correct.

2 Q And you cannot be absolute, correct?

3 A No more than a DNA analyst or other
4 identification specialist could be.

5 Q But a DNA analyst is able to put a statistic on
6 it.

7 A Yes, they can, but that's based on the nature of
8 the way their science works.

9 Q Right.

10 MS. HINES: I have no further questions, Your
11 Honor, but I do have additional argument?

12 THE COURT: Thank you very much.

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Anything else on this
15 issue?

16 MS. HINES: Yes, Judge. If I could just briefly.
17 I think this very last bit that we are hearing from
18 the examiner is exactly what I'm talking about. If
19 you can't say to the exclusion of all others, they
20 shouldn't be able to say it's a match. It's like
21 saying the walls are brown to the exclusion of every
22 other color. You don't need that part if it means the
23 same thing. To the exclusion of all other guns, I
24 mean, if that --- if he is saying this a match, that
25 this bullet was fired from this gun ---

1 THE COURT: I didn't hear him say the word match.

2 MS. HINES: Matching characteristics are found,
3 but this bullet was fired from this gun, this
4 projectile was fired from this gun. What they're
5 saying is they're trying to get away from saying that
6 this was fired from this gun to the exclusion of all
7 others. That is an unnecessary qualifier. He is
8 making a conclusion that his --- that it is --- when
9 you make a factual statement that this gun was fired
10 from this --- this bullet was fired from this gun,
11 that gives the impression that it is absolute. He has
12 testified that it was not.

13 In addition to that, I would ask that it not ---
14 I had asked him about these journals that are cited in
15 my memo where this research is --- that points to the
16 research that I'm making my motion based on. Judge, I
17 would ask that the firearms examiner be limited to
18 either cannot exclude or it's consistent and not be
19 able to make a conclusionary statement.

20 THE COURT: All right. I'll take that matter
21 under advisement so I can read your brief and memo and
22 look all that up before I make any decision.

23 All right, next.

24 MS. SAMPSON: Your Honor, just on that issue, if
25 you're going to withhold your ruling, could I have

1 until Monday if I want to write a memo in response?

2 THE COURT: Sure.

3 MS. SAMPSON: Thank you, Your Honor.

4 THE COURT: All right. Thank you very much,
5 Mr. Collins. Does he know the trial date?

6 MS. SAMPSON: Yes, we've gone over that.

7 THE COURT: August 11th is the trial date.

8 THE WITNESS: Thank you, sir.

9 THE COURT: All right. Next.

10 MS. HINES: Well, Judge at this point we have a
11 motion for --- we actually have two motions under
12 404(b), I guess. There is a prior manslaughter on
13 Mr. Wallace's record.

14 THE COURT: Conviction?

15 MS. HINES: Yes, sir.

16 THE COURT: Voluntary or involuntary?

17 MS. SAMPSON: Voluntary.

18 MS. HINES: We would ---

19 THE COURT: What year is that from?

20 MS. SAMPSON: 2007.

21 MS. HINES: 2007.

22 THE COURT: Okay.

23 MS. HINES: Under 404(b) we would move --- and I
24 don't think the State is seeking to introduce that,
25 but there may be some testimony from some of the

1 witnesses. Prior to the incident in question, several
2 days prior, there was a confrontation, there may have
3 been some things said by some of the witnesses that
4 the victim, Athell Johnson, was at a get together for
5 a Horace Mack who had died, and there may have been
6 some mention of that prior conviction or him having
7 been in prison at that. I would ask that that --- any
8 mention of that would be kept out, you know, excluded
9 as it may be a violation of 404(b). It wouldn't be
10 admissible under 404(b) and also would be more
11 substantially prejudicial than probative.

12 THE COURT: What's the scoop?

13 MS. SAMPSON: I have no intention of bringing up
14 his prior convictions unless he were to testify.

15 THE COURT: What about the witnesses? Are they
16 going to say something about there being ---

17 MS. SAMPSON: We are instructing the witnesses
18 that incident and the discussion, that they can't ---
19 it's a comment made by the victim that he said
20 something to the effect of you just got out of prison,
21 the dead victim, so that wouldn't ---

22 THE COURT: Okay.

23 MS. SAMPSON: We have already instructed the
24 witnesses not to bring up anything Athell Johnson may
25 have said no relation to him --- in relation to Mr.

1 Wallace having the prior conviction.

2 THE COURT: All right.

3 MS. HINES: And then, there was also --- in the
4 process of trying to locate Mr. Wallace, Corporal
5 Hayhurst got information from the probation office
6 that he was on that leg monitor. I think that if the
7 jury is told that they got information from the
8 probation office that he is on leg monitor, that that
9 implies a prior bad act. I would ask to exclude that
10 under 404(b), as well.

11 I think that under State v. Simmons, which was
12 tried in 2006, in that case, the prior evidence was
13 limited, and I think that we can limit what they say
14 about how they got the information to exclude the fact
15 that he was on a leg monitor and was being monitored
16 by probation. I think that they can very simply say
17 that.

18 THE COURT: Are you even calling Hayhurst?

19 MS. SAMPSON: In an abundance of caution because
20 I don't know what they're going to say as far as
21 witnesses go, I would probably put him up, but I have
22 instructed him during the trial that he is not to
23 mention that he spoke with Probation, Pardon, and
24 Parole and that he is just to say that he got
25 information, but whatever information he did get from

1 Probation, Pardon, and Parole not tell where he got it
2 from.

3 However, I would ask that they be limited to not
4 bring up that we didn't say where he got the
5 information from.

6 THE COURT: Well, it cuts both ways.

7 MS. HINES: That would be opening the door.

8 MS. SAMPSON: I'm talking about in closing more
9 than anything else, because I've had that happen where
10 we limit something and then they bring it up in
11 closing. I can't fix it at that point.

12 THE COURT: So, Hayhurst can say he went to the
13 Fusion Center. He gathered intel from their different
14 sources about how to get the number or how to find him
15 or whatever. I'm not really even sure why he would be
16 a witness, but that's neither here nor there. He
17 doesn't need to be saying that Mr. Wallace was on the
18 leg monitor for probation. Likewise, the defense
19 doesn't need to be saying that they can't even tell
20 you how they found him. It cuts both ways.

21 MS. HINES: Thanks, Judge.

22 THE COURT: All right. Next?

23 MR. KRZYSTON: Judge, I have a motion to exclude
24 evidence that the State obtained from Mr. Wallace's
25 cell phone. I suppose I need to call Captain McDonald

1 to the stand for one question and I can be done.

2 THE COURT: All right. What's your motion?

3 MR. KRZYSTON: My motion would be to exclude
4 evidence downloaded from Mr. Wallace's cell phone,
5 which was seized incident to arrest under --- or
6 pursuant to United States Supreme Court decision in
7 Riley v. California, United States v. Wurie.

8 THE COURT: And what are those cites?

9 MR. KRZYSTON: Judge, I don't actually know that
10 they actually have been put in the US Supreme Court
11 recorder at a certain page yet. I have --- it's 573
12 US and then I have blank on the Supreme Court's
13 opinion.

14 THE COURT: What's the Westlaw say?

15 MR. KRZYSTON: They granted cert at 134 Supreme
16 Court 999 ---

17 MS. SAMPSON: Your Honor, it's 134 S.C. 34273.

18 THE COURT: Are you pulling that up?

19 THE CLERK: Yes.

20 THE COURT: Okay. What's the other one?

21 MR. KRZYSTON: United States v. Werther. They
22 are companion cases.

23 THE COURT: What was the basis of the motion?

24 MR. KRZYSTON: The basis of the motion is that
25 Richland County seized Mr. Wallace's cell phone

1 incident to the arrest. Riley v. California and U.S.
2 v. Wurie is very clear that when a cell phone is
3 seized incident to arrest, a warrant is needed to
4 search information from the actual phone. Here no
5 such warrant was obtained. The information was
6 downloaded and it seems likely that the information
7 downloaded could potentially be admitted against
8 Mr. Wallace in trial. I would obviously move to
9 excludes all evidence downloaded from the cell phone
10 that was seized incident to arrest.

11 MR. EATON: And I mean, we can probably skip ---
12 we acknowledge that they downloaded this phone number.

13 THE COURT: He probably wants him to acknowledge
14 that he did it without a warrant, too.

15 MR. EATON: Without a warrant, yes.

16 MR. KRZYSTON: If the State is willing to
17 acknowledge they seized the phone incident to the
18 arrest without a warrant, then I think we can work out
19 --- we acknowledge that, but ---

20 MS. SAMPSON: We have an argument.

21 THE COURT: I'm not making you give up your
22 argument. I'm just trying to --- what word am I
23 looking for? Streamline this.

24 Okay. Go ahead. Are you pulling that case up?

25 MS. SAMPSON: If Your Honor would like, I can

1 provide you with a copy of Riley, if I might approach.

2 THE COURT: All right. So your argument is the
3 Supreme Court just said you can't do that; is that
4 right?

5 MR. KRZYSTON: The gist of it, yes.

6 THE COURT: What's the response?

7 MR. EATON: Your Honor, there is another case
8 that we'll direct you to that I'm going to talk to you
9 little bit. Davis v. United States. That came in the
10 wake of Gant. It spoke to the retroactivity of Gant,
11 which was about, you know, whether a person could ---
12 whether law enforcement could search incident to
13 arrest the reachable area of a car or where they could
14 only search the reachable area. If a person was
15 further than a reachable area, they could not search a
16 car incident to arrest. While Gant itself was on
17 appeal, a case out of Georgia, the Davis case, came up
18 in which law enforcement did a search incident to
19 arrest of an area of the car which was outside of the
20 reachable area.

21 He was convicted, then Gantt was decided. So the
22 Supreme Court --- I guess, the strange thing about
23 calling this retroactivity is that they say that that
24 was within our interpretation of what the Fourth
25 Amendment actually means. It is a right now. In a

1 sense it was always a right even though it wasn't
2 stated at the time. So ---

3 THE COURT: Your argument is it doesn't apply
4 because it was two years ago and they didn't know that
5 at the time, so therefore they didn't violate
6 anything, so it's still ---

7 MR. EATON: Right, so it's a good faith
8 exception. Davis holds that when law enforcement acts
9 in good faith under the law as it existed at that
10 time, suppression is not the remedy, so yes, the right
11 may exist. In some strange sense it may have been
12 required in violation of what would have been a right,
13 but suppression is not the remedy. It's still
14 admissible. If I could just briefly read from Davis,
15 it says, "It is one thing for the criminal to go free
16 because of the constable's blunder. It's quite
17 another to set a criminal free because the constable
18 has scrupulously adhered to governing law. Excluding
19 evidence in such cases deters no police misconduct and
20 imposes substantial social costs." We therefore hold
21 that the police conducted the search in objective
22 reasonable reliance on binding decisions and the
23 exclusionary rule does not apply. So that ---

24 THE COURT: Your argument is, in their theory,
25 every case that was decided prior to Miranda vs.

1 Arizona has to be overturned.

2 MR. EATON: Exactly.

3 THE COURT: Because the Supreme Court changed the
4 law in Miranda vs. Arizona.

5 MR. EATON: Yes, sir, exactly. And so, because
6 there is no deterrent effect, even though that has
7 been declared to be within the scope of the Fourth
8 Amendment that now provides that search warrants are
9 required to search a phone incident to arrest,
10 exclusion is not the remedy and because they acted in
11 good faith, it's admissible.

12 THE COURT: All right. Mr. Krzyston.

13 MR. KRZYSTON: Just to be clear, Judge. If a
14 case is pending when Miranda was decided, that
15 standard did apply to those cases.

16 THE COURT: If the case was on appeal.

17 MR. KRZYSTON: Correct. Well, I believe Crawford
18 v. Washington cites retroactivity as a case that's
19 filed ---

20 THE COURT: And we don't believe anything. We
21 need to have a case and a cite.

22 MR. KRZYSTON: Okay. Again, I'm blanking on
23 Crawford v. Washington. I left a number of the cases
24 at ---

25 THE COURT: Do you have a copy of the case with

1 you?

2 MR. KRZYSTON: I do not. I left number of the
3 cases at the office on the way up here, but Crawford
4 v. Washington states that retroactivity or retroactive
5 application is an application of the law where the
6 Supreme Court's decision is applied to a case that is
7 already final on direct appeal. This case is still
8 pending before the circuit court and as such isn't
9 even in the line of the appellate cases --- of the
10 appellate courts yet. So this is an example of
11 prospective application, and ---

12 THE COURT: But I thought Crawford was a
13 confrontation case. That would be confrontation at
14 trial, not a search by the police. Crawford v.
15 Washington is a United States Supreme Court 2004, but
16 I thought that Crawford was a confrontation case.
17 Therefore that would be an issue that actually arises
18 at trial, which would be completely unrelated to this
19 incident which arose at the time of the arrest.

20 MR. EATON: And the distinction is whether it's
21 currently pending at the trial level or appeal is
22 irrelevant as to whether law enforcement acted
23 objectively and in good faith on existing precedent at
24 that time.

25 THE COURT: I'm listening.

1 MR. KRZYSTON: Judge, I would just stress that
2 this case was pending at the time Riley and Wurie were
3 recited. It is a statement on the law and it is
4 showing --- it is affirming a right that Mr. Wallace
5 had to be free from search and seizure under the
6 Fourth Amendment.

7 THE COURT: At the time they searched his phone,
8 it didn't exist.

9 MR. KRZYSTON: But the right existed. The right
10 has always existed and that's what the Supreme Court
11 has affirmed. If the Supreme Court didn't intend ---

12 THE COURT: Where is the bad faith on the police?
13 If they don't know --- now, if they went and did it
14 tomorrow, that's a different story, but I mean, what
15 else are they --- so the police are supposed to create
16 their own law and their own rules because they think
17 that some Fourth Amendment right may exist?

18 MR. KRZYSTON: Well, what the police have done
19 here is basically ignore the warrant requirement.
20 They have ---

21 THE COURT: No, no, no. That's not an accurate
22 statement, Mr. Krzyston. When they searched this
23 phone, Riley was not the law.

24 MR. KRZYSTON: But the Fourth Amendment still
25 existed, and Riley ---

1 THE COURT: How are they supposed to know that
2 can't search the phone.

3 MR. KRZYSTON: Because the Fourth Amendment has
4 always been in place. The Fourth Amendment requires a
5 warrant to search the property of Mr. Wallace. The
6 incriminatory nature of the phone itself was not
7 readily apparent.

8 THE COURT: So the Richland County Sheriff's
9 Department is suppose to read the mind of the United
10 States Supreme Court?

11 MR. KRZYSTON: No, but they are supposed to be
12 held to the Fourth Amendment and the limits prescribed
13 therein and assuming that you buy the retroactivity
14 argument, you ---

15 THE COURT: It's not buying an argument. I mean,
16 I need you to argue why Davis doesn't apply.

17 MR. KRZYSTON: I believe because the Supreme
18 Court reversed the conviction in Riley.

19 THE COURT: What does that have to do with Davis?

20 MR. KRZYSTON: That the relief granted to the
21 petitioner in Riley was given to him because the
22 police violated the Fourth Amendment. The police ---

23 THE COURT: You're not arguing Davis. You're
24 arguing Riley.

25 MR. KRZYSTON: Perhaps.

1 THE COURT: Davis said that, based on Mr. Eaton's
2 argument, that because this search happened prior to
3 Gant going into effect it's still good.

4 MR. EATON: That's right. It's suppression.
5 That's why it's a strange place we find ourselves in
6 because ---

7 THE COURT: Well, you're in Camden.

8 MR. EATON: In addition to that.

9 THE CLERK: I live across the river.

10 THE COURT: Where is Catoe? All right.

11 MR. EATON: But yes, in some strange sense we
12 would have said that it is acquired in violation of
13 Fourth Amendment perhaps, but the remedy is not ---
14 there is no remedy. It wasn't in effect, so it cannot
15 be excluded and become suppressed. That is the
16 holding in Davis. It squarely covers the situation
17 where they acted in good faith. If, you know, Davis'
18 convictions would have been overturned if it had been
19 a different situation.

20 If Davis' situation had been overturned, then we
21 would have said, yeah.

22 MR. KRZYSTON: And Judge, my argument is that the
23 Supreme Court intended for Davis to apply to the
24 situation highlighted in Riley's verdict, they would
25 not have overturned the conviction ---

1 THE COURT: So do they say in Riley every phone
2 that was seized and searched prior to this is not
3 admissible in court?

4 MR. KRZYSTON: I don't know that every ---

5 MR. EATON: They did not.

6 MR. KRZYSTON: I would say that ---

7 THE COURT: Is the answer to that question yes or
8 no?

9 MR. KRZYSTON: No.

10 THE COURT: Okay.

11 MR. EATON: Riley didn't speak to it. Davis was
12 decided just in 2011 so it's pretty fresh.

13 THE COURT: Does Riley even address
14 retroactivity?

15 MR. EATON: It does not.

16 MR. KRZYSTON: It does not, Judge, but I contend
17 that is a prospective application of the law because
18 this case is pending before the circuit court and not
19 in the appellate court. I would note to the court
20 that Riley does not address Davis and had again ---
21 excuse me, Davis does not address Riley. The factual
22 similarities between Riley and Mr. Wallace's case are
23 much greater than that of Davis. I think that Riley
24 was pulled over for an incorrect traffic tag, if I'm
25 not mistaken. He was then searched incident to

1 arrest. They took his phone. They looked at
2 pictures, audio, video content of Riley's phone. In
3 that case, they eventually charged him with weapons
4 charges and perhaps a crime against person, but I know
5 they charged him with weapons charges. What the court
6 said was that that seizure of Mr. Riley's phone and
7 that incursion into the phone was barred by the Fourth
8 Amendment.

9 Again, had they intended Davis to apply to this
10 situation, the situation that is before this court, as
11 well as what was before the court in Riley, they would
12 have applied it. They would not have overturned
13 Riley's conviction.

14 MR. EATON: And I think that this --- the court,
15 you know, just as a basic rule of jurisprudence does
16 not answer questions before them and none of the cases
17 in which they have determined to be Fourth Amendment
18 have they answered the retroactivity if it's not
19 before them. Davis --- that was the question before
20 the court at that time.

21 THE COURT: The retroactivity?

22 MR. EATON: Yes, Your Honor, or whether
23 suppression was the remedy.

24 MR. KRZYSTON: And then.

25 MR. EATON: And then there's a whole line of

1 cases looking at a good faith exception. I can give
2 the court my copy of Davis.

3 THE COURT: Yes, if you have one.

4 MR. EATON: I didn't know we were going to go
5 into it. I'm sorry I don't have a copy for y'all.

6 MR. KRZYSTON: And, Judge, if I may.

7 THE COURT: You may.

8 MR. KRZYSTON: I would also argue that South
9 Carolina's right to privacy is higher than that which
10 is granted by the State, excuse me, the US
11 Constitution. I think that you have a heightened
12 privacy interest in your cell phone simply because,
13 again, the incriminatory nature of the device itself
14 is not readily apparent. I mean, in Riley, in Wurie,
15 the court expounds upon the fact that in common day we
16 carry our lives on these devices. This is more akin
17 to the general warrant that was looked and frowned
18 heavily upon the courts, you know, during and leading
19 up to the founding of the country.

20 I think in this case, again, the police seized
21 Mr. Wallace's phone, didn't have a warrant, could have
22 obtained a warrant. There was certainly no time
23 sensitive issue. Again, as the courts highlight in
24 Riley and Wurie, there is no time sensitive issue.
25 The proper course, again, given the Fourth Amendment,

1 would be to secure the warrant and then proceed with
2 the search of the phone, but since they neglected to
3 do that, I would again argue that.

4 THE COURT: So why can't they just go get a
5 warrant now and search the phone?

6 MR. EATON: They could, but they don't need to
7 because suppression is not a remedy, which is --- it's
8 so on point in Davis that when they act in good faith,
9 which they did, they didn't neglect to do anything so
10 there is no requirement that they do it. Suppression
11 is not the remedy.

12 MR. KRZYSTON: And, Judge, I would just say that
13 the Fourth Amendment jurisprudence is well
14 established. If the Supreme Court --- I'm not going
15 to say that, but again, Fourth Amendment jurisprudence
16 is well established. I don't think this is a case of
17 retroactive application. I think it's a case of
18 prospective application. It's a pending case at the
19 circuit level that is yet to be decided finally on
20 appeal, hasn't even been decided finally at the
21 circuit level. I think as such, the Supreme Court
22 cases of Riley should apply.

23 THE COURT: Okay. I'll read all these cases.
24 What else?

25 MR. KRZYSTON: Judge, I think we have three more

1 motions.

2 THE COURT: You have seven minutes.

3 MR. KRZYSTON: All right. Why don't we do
4 Mr. Hawk's motion and then my motion and then ---

5 THE COURT: All right. Go ahead and start,
6 Mr. Hawks.

7 MR. HAWKS: Thank you, Your Honor. May it please
8 the Court. My motions are pretty simple. First is to
9 reveal any grants, proffers or promises of immunity in
10 exchange for testimony for any of the State's
11 witnesses. That would include any plan to grant
12 immunity, any already granted immunity, any agreements
13 for charge reductions. Any agreements for sentence
14 concessions. Any discussions concerning things the
15 State might be willing to do, not necessarily
16 promises, but, you know, if you do this, we might be
17 able to do that for you. Any trustee agreements.
18 What I mean by that is ---

19 THE COURT: I know what you mean by that.

20 MR. HAWKS: Thank you, Your Honor. Express or
21 implied offering to help the witness for their
22 testimony or any trustee agreements offering not to
23 prosecute. There are some witnesses in this case that
24 perhaps may have been charged and were not, perhaps
25 still could be charged. I just want to make sure we

1 get everything out on the table here as far as what
2 was offered or not offered to them.

3 THE COURT: All right.

4 MS. SAMPSON: Your Honor, there has been no
5 promises made to anyone about anything in terms of
6 their testimony or any charges. We're not intending
7 to charge anyone else involved in this case. All
8 charges that we're making have been made.

9 Co-defendant Diggs has not been promised anything
10 in exchange for any testimony he may or may not give.
11 I have not made any promises. I have made any
12 reductions. I have not even talked about whether he
13 is going to get anything out of testifying if he so
14 chooses to.

15 THE COURT: All right. The State is on notice
16 that if anything does happen in the future or there is
17 any change regarding any of that, you are required to
18 immediately notify the defense.

19 MS. SAMPSON: I will do so.

20 THE COURT: Next.

21 MR. HAWKS: Thank you, Your Honor. My next
22 motion is to simply settle the records of all State's
23 witnesses.

24 THE COURT: All right. Have you provided them
25 criminal histories?

1 MS. SAMPSON: No, sir. I usually do that
2 literally the day of, but since they didn't ask for
3 it, I had not done so. This was not one of the ones
4 they told me.

5 THE COURT: When do you need time to get that
6 done?

7 MS. SAMPSON: I just need to get with my
8 paralegal. She does all that.

9 THE COURT: How about next Wednesday?

10 MS. SAMPSON: Wednesday is great.

11 THE COURT: How about next Wednesday, Mr. Hawks?

12 MS. SAMPSON: Thank you, Your Honor.

13 MR. HAWKS: Thank you, Your Honor.

14 THE COURT: What is next?

15 MR. KRZYSTON: Judge, I would just have a motion
16 to limit and/or exclude some of the photographs that
17 the State would seek to admit. However, obviously I'm
18 not a mind reader. I don't know which photographs the
19 State is intending to admit, so perhaps if we could
20 have the State expound upon that, I can truncate my
21 argument to the appropriate photographs.

22 THE COURT: By next Friday, tell him what photos
23 you're going to use, show him what photos you're going
24 to use. We'll discuss those at trial.

25 MS. SAMPSON: And can I --- is it possible --- I

1 understand what they're saying. They have all the
2 photographs. My concern is that we go over the list
3 and then during trial they want to use another one.
4 Could we just revisit the issue at that time?

5 THE COURT: Yes.

6 MS. SAMPSON: The other thing, I stood up in the
7 middle of when he was asking about it, and you said
8 prior records. I can provide the prior records of
9 witnesses we may or may not call. I don't know who
10 they may or may not call, so I --- I don't want to be
11 in trouble for not providing that.

12 THE COURT: No, it's just State's witnesses. All
13 right. What is next?

14 MR. KRZYSTON: I believe we may be finished as
15 long as we renew Rule 5, Brady, Riddle, which I
16 believe we did. I believe we're finished, Judge, with
17 the exception obviously of the photograph arguments
18 which are yet to be heard.

19 THE COURT: All right. What's the plea offer on
20 this case?

21 MS. SAMPSON: I offered a range of 50 to 60. It
22 was rejected.

23 THE COURT: All right. Mr. Wallace, stand up.
24 Raise your right hand.

25 WILLIAM WALLACE,

1 after being duly sworn, testified as follows:

2 THE COURT: Okay. Have you been made aware of
3 that plea offer?

4 THE DEFENDANT: No, sir.

5 THE COURT: Your lawyers haven't told you about
6 that plea offer?

7 THE DEFENDANT: He told me a range, but he ain't
8 told me a specific number.

9 THE COURT: What range did he tell you?

10 THE DEFENDANT: Between like 55, 60.

11 THE COURT: Okay. So the range is officially
12 what?

13 MS. SAMPSON: Fifty to 60, Your Honor.

14 THE COURT: All right. Is that a negotiated
15 range or a recommended range?

16 MS. SAMPSON: A negotiated range.

17 THE COURT: All right. So there's three
18 different kinds of pleas in South Carolina. Okay.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: One is --- I'm going to use my words
21 for it because it makes the most sense, I think, and
22 I hope it does to you --- is a straight up plea. You
23 can plea to whatever and whatever you get you get.
24 Okay. It's completely in the judge's discretion.

25 The second kind of plea is called a

1 recommendation. That's where the State comes in and
2 they say, we recommend the defendant should get a \$100
3 fine, okay. Now, the judge can follow that
4 recommendation or the judge can do away with it
5 completely and do whatever the judge wants to do.
6 Okay. Do you understand that so far?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. The third kind is called a
9 negotiated plea. A negotiated plea, the way I look at
10 it, is that the judge's hands are tied, okay. So if
11 they're going to negotiate a plea and negotiated is a
12 legal term, that means they're willing to negotiate a
13 sentence between the range of 50 and 60 years, okay.
14 What that would mean is this: Even if the judge
15 wanted to, he couldn't give you any more time than
16 that. That's your maximum exposure. That's a lot of
17 exposure. I'm not saying it's not a lot, but you
18 couldn't get --- so you couldn't get life. Does that
19 make sense?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: The other thing that means is that
22 you couldn't get any less than that. So even if the
23 judge heard your case, whether it's me or somebody
24 else on a plea, the judge heard your case and, you
25 know what, I think Mr. Wallace deserves 30 years or I

1 think Mr. Wallace deserves ten years, the judge
2 couldn't give you that either. He or she would have
3 to give you somewhere between 50 and 60 years. Does
4 that make sense?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, this is not an attempt to talk
7 you into doing that as much as it is me convincing
8 myself that you now understand what the plea offer is.
9 Does that make sense to you what it is?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I don't need you to --- I mean, I'm
12 never going to do anything to coerce you or anything
13 else to try to get you to plead guilty. I just want
14 to make sure you understand what the offer is. Is
15 that fair?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you understood what I've said to
18 you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, is there an expiration on that
21 offer?

22 MS. SAMPSON: Your Honor, yes, because if we're
23 going to do that, I would need to do it by Monday of
24 next week. I would need to know the Monday before.

25 THE COURT: Okay.

1 MS. SAMPSON: The other thing is he has currently
2 been served with notice of life without parole. I
3 would be withdrawing that.

4 THE COURT: The only way that would plea offer
5 would go into effect is if they would remove notice of
6 life without parole. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: They would have to say we're going to
9 withdraw our notice of life without parole, allow him
10 to plea for a range of 50-60 years, and the judge
11 would have to give you something in that range. Does
12 that make sense?

13 THE DEFENDANT: Makes perfect sense.

14 THE COURT: Okay. Now, you need to make a
15 decision on that by Monday of next week or otherwise
16 they don't have to offer you that anymore. Does that
17 make sense?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: They can withdraw a plea offer
20 whenever they want to as long you have not
21 detrimentally relied on it, but the general timeframe
22 is Monday of next week. If you want to take that, you
23 need to let your attorneys know so they can get you
24 over to the courthouse for a plea. Okay?

25 THE DEFENDANT: Okay.

1 THE COURT: Have you understood everything I've
2 said?

3 THE DEFENDANT: Fully understood.

4 THE COURT: Thank you very much, Mr. Wallace. I
5 appreciate that.

6 Anything further from the State?

7 MS. SAMPSON: No, sir.

8 THE COURT: All right. From the defense?

9 MR. KRZYSTON: Judge, we would ask for Monday for
10 close of business on Monday for consideration.

11 THE COURT: Yes, that's fine.

12 MS. SAMPSON: Of course, no problem.

13 MR. KRZYSTON: Thank you, Judge.
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

I, Vicki Everhart, Transcriptionist for Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the pretrial hearing of the captioned case, relative to appeal, in the Court of General Sessions for Kershaw County, South Carolina, on the 31st day of July, 2014.

October 20, 2014

/s/ Vicki Everhart

Vicki Everhart,
Transcriptionist for

Karen Ambroziak,
Circuit Court Reporter

1 (WHEREUPON, the jury left the courtroom at 1:33
2 P.M.)

3 THE COURT: All right. We're going to come back
4 at 2:30. Go ahead and take him out. He has to go to
5 the bathroom. At 2:30, we'll take up the remaining
6 legal issues. Put Juror Number 13 on the record and
7 start with the legal issues left over from last week
8 and anything else pretrial, 2:30.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: All right. What pretrial matters are
11 outstanding?

12 MR. KRZYSTON: Judge, I believe you have yet to
13 decide the cell phone suppression issue, which we do
14 have some additional argument on, and I would like to
15 argue an additional motion regarding an exigency
16 request that was disclosed to us early last week. I'd
17 like to do that before the suppression on the cell
18 phone is denied because I believe it will play into
19 the suppression motion for the cell phone. We also
20 have the firearms motion with ---

21 THE COURT: Right.

22 MR. KRZYSTON: --- with David Collins that
23 Ms. Hines made that's still under advisement. I
24 believe we do have some additional discussion to be
25 had on 404(b) issues.

1 And we also --- I'm sorry, Judge, have a motion
2 regarding photographs that we're supposed to get with
3 the State.

4 THE COURT: Right.

5 MR. KRZYSTON: And discuss further this
6 afternoon.

7 THE COURT: What's the issue on the --- let's go
8 back on Juror Number 13, that was the juror who stated
9 that he had read the article this morning. I believe
10 his words were he skimmed it and he doesn't really
11 remember anything in it. I asked him if he could be
12 fair and impartial. He stated that he could. I asked
13 if he could base his decision solely off the evidence
14 and the law in the case. He stated he would. The
15 defense moved to exclude him. He was the --- let me
16 find that. At that point we were on Juror Number 8
17 and the defense had already --- had only used four of
18 their strikes, so I denied their motion to strike him
19 for cause. He answered the questions correctly, and
20 stated that he could be fair and impartial to both
21 sides and had no other connection to the case at all.
22 That issue was raised when Juror Number 13 was called.
23 The defense brought it to my attention at sidebar. I
24 told them that I was not going to strike the juror for
25 cause and that they could put on the record why later.

1 Anything you want to put on the record about that now,
2 you can.

3 MR. HAWKS: Yes, sir, Your Honor. We would
4 object to having to use a strike for Juror Number 13.
5 Your Honor, we had a motion about the news release
6 that came out this morning. If you'd like me to
7 include that in my reasoning right now, I could do
8 that.

9 THE COURT: Sure.

10 MR. HAWKS: Your Honor, I don't know if you read
11 the report that came out this morning. Just a few of
12 the troubling things that are in it, there is a quote
13 from Sheriff Lott that describes the crime. There's a
14 quote about the prosecutors seeking life without
15 parole, another quote from Lott about the defendant
16 being a career criminal, about his prison stint, about
17 the fact that he is on probation. There are even some
18 facts of the case, and there's even a line in here,
19 and I believe Your Honor has already heard this issue,
20 that Diggs may testify for the prosecution at the
21 trial in return for a lighter sentence.

22 Your Honor, we believe that this media attention
23 so close to trial is --- although none of the jurors
24 were sat that said they read the article, it almost
25 seems impossible for him to get a fair trial in this

1 county, so we were planning to move for a change of
2 venue.

3 THE COURT: Have you read the Manning case out of
4 the Fourth Judicial Circuit and the Supreme Court
5 decision?

6 MR. HAWKS: Yes, Your Honor.

7 THE COURT: What does it say?

8 MR. HAWKS: Extraordinary circumstances.

9 THE COURT: It says you have to go through the
10 entire jury pool and be unable to find 12 jurors that
11 don't know anything about the case and are not willing
12 to set aside their bias or prejudice.

13 MR. HAWKS: Yes, Your Honor. I do believe that
14 his case is same basic concept because of the content
15 of the article. Those cases, and I also read a couple
16 of other cases, State v. Kelsey and Sheppard v. State.
17 The media attention in those cases were more about
18 when the crime occurred. There was attention for this
19 crime, as well, but in none of those cases it rises to
20 the level of what was in this article, including his
21 prior record, which was the most egregious thing.

22 Your Honor, we would use that for the reason why
23 we object to using strike number 13 and also our
24 motion to a change of venue.

25 THE COURT: Your motion to change venue is

1 denied. There is no juror that's even on the panel
2 that has read the article. I specifically mentioned
3 the article this morning and said anybody that has
4 even read it needs to come forward. Those jurors came
5 forward. Only one of those jurors was called in the
6 selection process who had stated that he could be fair
7 and impartial, and that he really didn't remember the
8 article and that he only skimmed it.

9 Furthermore, the point in time when the strikes
10 were used for that person, the defense only used five
11 --- I mean, had only used four of their strikes.
12 Furthermore, the defense only used six strikes total,
13 so they in no way, shape or form were prejudiced by
14 the use of that strike. It was not a situation where
15 they had used all their strikes or they were out of
16 their strikes or anything else to get to that point.

17 On the motion for a change in venue, there is
18 absolutely no evidence that this one article which
19 appeared in this morning's newspaper, which the
20 majority, and by majority I mean probably 95,
21 96 percent plus of the jury panel that was in here
22 this morning testified or informed this court under
23 oath that they had not even seen it or read it. So
24 there is no basis in a motion for a change in venue.

25 All right. What is it on the 404(b)?

1 MS. HINES: Well, Judge, on 404(b), we did
2 discuss the party ---

3 THE COURT: Where is she?

4 MR. EATON: Your Honor, Ms. Sampson had to run to
5 the doctor real quick. She is on the way back. She
6 will probably come in any minute.

7 THE COURT: Okay. I'm sorry. Go ahead,
8 Ms. Hines.

9 MS. HINES: That's okay. There's two things that
10 we didn't bring up. I think we did talk about the
11 prior disagreement with --- between Athell Johnson and
12 Mr. Wallace that occurred several days before this
13 incident. Also, where --- what we did talk about was
14 that Mr. Johnson mentioned Mr. Wallace's prior
15 record, but also there are allegations that Mr.
16 Wallace pulled a gun out. That would be 404(b), and
17 then also the gun that was found at Tashonda Toatley's
18 house was reported stolen. We would ask the court to
19 exclude mention of the firearm being stolen. He
20 hadn't been charged with possession of a stolen
21 firearm and there was no indication that that was
22 related to this incident.

23 THE COURT: All right. The State's position on
24 that?

25 MR. EATON: As to the gun being stolen, I mean, I

1 know that one of the documents that was used in the
2 chain of custody of the weapon does state it was
3 stolen. The State would not object to redacting that
4 it was stolen ---

5 THE COURT: Okay.

6 MR. EATON: --- on that document. I believe that
7 was the only mention of that, Your Honor.

8 THE COURT: Okay.

9 MR. EATON: As to the other prior bad acts of the
10 defendant, I mean, we already instructed all witnesses
11 not to refer to the fact he had just gotten out of
12 prison. I think the reciprocal of that is, of course,
13 the victim's records also be off limits, Your Honor.

14 As to the incident at the way he pulled the gun,
15 I don't believe the State has any intention of going
16 into that, but I think under --- to the res gestae, it
17 could potentially be admissible just because of the
18 fact it occurred with Athell Johnson.

19 THE COURT: And how close was it in proximity to
20 the crime?

21 MS. HINES: Two days.

22 THE COURT: Two days before?

23 MR. EATON: Two days prior, Your Honor.

24 THE COURT: Are you attempting to offer it under
25 res gestae or not?

1 MS. SAMPSON: I think the testimony that I
2 understand it to be --- and I'm sorry, Your Honor, let
3 me apologize first of all, I had to go do some testing
4 this morning.

5 THE COURT: That's fine.

6 MS. SAMPSON: My understanding is that we weren't
7 going to go into the guns being pulled by anyone, but
8 that there was an altercation between the two ---

9 THE COURT: All right.

10 MS. SAMPSON: --- or that we planned on the
11 witnesses not going into --- that they did not ---

12 THE COURT: That words were exchanged.

13 MS. SAMPSON: Correct.

14 THE COURT: Okay.

15 MS. HINES: Just so I understand, the only
16 testimony they were going to illicit was that words
17 were exchanged?

18 THE COURT: Right. There is an altercation and
19 words were exchanged. Nothing about a gun.

20 MS. SAMPSON: Correct.

21 THE COURT: Or the stolen gun.

22 MS. SAMPSON: Correct.

23 THE COURT: Does that resolve that issue,
24 Ms. Hines?

25 MS. HINES: Yes, sir.

1 THE COURT: Okay.

2 MS. SAMPSON: And my co-counsel just asked me
3 something about that stolen gun, the gun that was
4 taken from Toatley? We can redact that it was stolen
5 if that's what ---

6 THE COURT: That was the plan, yes.

7 All right. So now what's your motion on the
8 exigency request?

9 MR. KRZYSTON: Judge, I'm moving to suppress the
10 exigency request, and I actually do have a witness to
11 testify. If we can take that up now before we rule on
12 the firearms motion.

13 THE COURT: Yes.

14 MS. HINES: Judge, I'm sorry, I failed to mention
15 something else while we're waiting on that, Mr. Eaton
16 said the reciprocal of not mentioning the defendant
17 had a prior record ---

18 THE COURT: I think he meant victims.

19 MS. HINES: Yeah, the ---

20 THE COURT: Okay, we'll take those up as they
21 come.

22 MS. HINES: Yeah, I would object to not being
23 able to mention that.

24 THE COURT: Well, I mean, we can take it up ---

25 MS. HINES: We can take it up.

1 THE COURT: You're talking about the deceased
2 victims or the alive victims?

3 MS. HINES: The deceased victims.

4 THE COURT: Okay, and under what theory do you
5 think that's admissible?

6 MS. HINES: Well, I'm not sure that it is, but
7 what I'm not agreeing to is to not try to bring it up
8 if it becomes relevant in exchange for having a 404(b)
9 suppression.

10 THE COURT: I wasn't going to do that.

11 MS. HINES: Okay.

12 MR. KRZYSTON: The defense calls Amber Lawson.

13 THE COURT: All right. Come forward and be
14 sworn, ma'am.

15 AMBER NICOLE LAWSON,
16 after being duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State your full
18 name for the record.

19 THE BAILIFF: Watch your step.

20 THE WITNESS: My name is Amber Nicole Lawson.

21 DIRECT EXAMINATION:

22 BY MR. KRZYSTON:

23 Q And Ms. Lawson, were you employed with Deer
24 Meadow Village Apartments on June 28, 2012?

25 A Yes, sir, I was.

1 Q And what was your role for Deer Meadow Village
2 Apartments?

3 A I was the property manager.

4 Q Okay. As part of your job as property manager,
5 do you generate incident reports for the purposes of
6 the property management company when events go down on
7 the property?

8 A Uh-huh. Yes, sir, I do.

9 Q Did you generate a report on the events that took
10 place on June 28, 2012?

11 A Yes, sir, I did.

12 Q And did you bring those reports with you?

13 A I did.

14 Q And let's see, would you pull the 28th --- the
15 report of the 28th out?

16 A Sure. Okay.

17 Q And in --- there's a narrative section. There is
18 a section up at the top where it states your name,
19 right?

20 A Uh-huh.

21 Q And you wrote your name there?

22 A I did, uh-huh.

23 Q And you create these things as part of your job?

24 A Yes, I do.

25 Q And you do this routinely?

1 A Uh-huh.

2 Q You make them fairly contemporaneous with the
3 events, meaning they happen within about a day or so,
4 correct?

5 A I do, it's a company policy.

6 Q On the 28th, what did you write in your report?

7 A Do you want me to read it line by line or just
8 give you a general ---

9 Q Just the narrative part.

10 A All right.

11 MS. SAMPSON: Your Honor, if I may, I have no
12 idea what this is or this report. I'd at least like
13 to see what she is reading from.

14 THE COURT: You haven't shown this to the other
15 side?

16 MS. SAMPSON: No.

17 MR. KRZYSTON: It was generated as part of the
18 defense investigation, Your Honor.

19 THE COURT: Why haven't you shown it to the other
20 side? You have somebody testifying about a document
21 that the other side hasn't seen.

22 MR. KRZYSTON: Well, I ---

23 THE COURT: And in a pretrial motion.

24 MR. KRZYSTON: Yes, sir, Your Honor. I'm sorry.

25 Can I see that?

Direct of Lawson by Krzyston
(Pre-trial)

1 (Pause.)

2 THE COURT: Have you told them what this motion
3 is?

4 MS. SAMPSON: Your Honor, I heard from Ms. Hines
5 at 1:58, she calls me on my cell phone, and asked me
6 could I have Mr. Diego Nova here for an exigent
7 records suppression issue.

8 THE COURT: 1:58 today?

9 MS. SAMPSON: Today.

10 THE COURT: Is this true?

11 MR. KRZYSTON: We did ask for Diego Nova to be
12 here, yes.

13 THE COURT: Have you filed this motion in
14 writing?

15 MR. KRZYSTON: We have not filed it in writing.

16 THE COURT: Have you put anybody on notice for
17 this motion?

18 MR. KRZYSTON: Just standard --- no, Your Honor.

19 THE COURT: Well, what makes you think this
20 motion can go forward?

21 MR. KRZYSTON: It's pretrial and is properly
22 brought pretrial.

23 THE COURT: You haven't told anybody about it.
24 Nobody even knows what it is.

25 MS. SAMPSON: Prior to the motions that we argued

1 on Thursday, nobody knew what they were either.

2 THE COURT: Well, that was wrong, too, then. You
3 have to file motions. You have to put the other side
4 on notice of what the motions are, so what is this
5 motion?

6 MR. KRZYSTON: This is a motion to exclude the
7 exigency request, and, Your Honor, I'll remind you
8 that we did not receive the exigency request until
9 last week.

10 THE COURT: You were supposed to receive it
11 Monday. Did you?

12 MS. SAMPSON: I did give it to them Monday.

13 MR. KRZYSTON: Well, like I said, we got it
14 Monday.

15 THE COURT: So you had it Monday, Tuesday,
16 Wednesday, Thursday, and Friday, and you waited until
17 two o'clock today to tell the State about a motion to
18 exclude it?

19 MS. SAMPSON: Correct.

20 MR. KRZYSTON: Yes, correct, Your Honor, and I'm
21 sorry. It's my fault. I mean, we've been receiving a
22 lot of discovery e-mails and everything happening
23 relatively quickly last week.

24 THE COURT: So what is the motion?

25 MR. KRZYSTON: It is a motion to exclude the

Direct of Lawson by Krzyston
(Pre-trial)

1 records that was obtained by T-Mobile.

2 THE COURT: Based upon what?

3 MR. KRZYSTON: Based on the fact the exigency was
4 not sought.

5 THE COURT: What evidence do you have of that?

6 MR. KRZYSTON: I have SLED's --- the exigency
7 request that SLED filled out and transmitted to
8 T-Mobile. I also have Ms. Lawson's testimony to
9 supplement what Richland County told Ms. Lawson about
10 the exigency of the situation.

11 THE COURT: Okay. Keep going.

12 MR. KRZYSTON: Thank you, Judge.

13 THE COURT: Is Agent Nova coming?

14 MS. SAMPSON: No, sir, Your Honor. I couldn't
15 get hold of him this quickly, literally at
16 two o'clock. I had no intentions of calling him as a
17 witness today, so I had no need to tell him to be
18 here.

19 BY MR. KRZYSTON:

20 Q Now, Ms. Lawson, on the 28th, did you receive or
21 did you generate ---

22 THE COURT: Stop it. Somebody go and call the
23 SLED hotline and tell them that I need Agent Nova up
24 here.

25 MS. SAMPSON: I have texted him, I have called

1 him, and e-mailed him at two o'clock.

2 THE COURT: Okay. I want the SLED hotline
3 called. There is a phone boy sitting there. There's
4 been one for 50 years, and you tell them, Ms. Walker,
5 that Judge Hood wants Agent Nova up here unless he has
6 somebody in handcuffs or is in hot pursuit.

7 MS. WALKER: Yes, Your Honor.

8 THE COURT: Go ahead.

9 MR. KRZYSTON: Thank you, Judge.

10 BY MR. KRZYSTON:

11 Q Now, Ms. Lawson, you generated a report on or
12 about the 28th in regards to the incidents we're here
13 today about?

14 A Yes.

15 Q In your report, what did you know?

16 A I basically noted that there had been two people
17 shot at the apartment community that I manage. When
18 Richland County got there, I saw all the cars pull in,
19 so I went down there. They asked me to go back and
20 get the key to Apartment 412, which I did. I went and
21 got the key and gave them the key to make entry into
22 Apartment 412. Throughout --- I was down there for a
23 little while, and then I went back up to the office.
24 There were numerous officers in and out of the office
25 during that day during the time this was going on.

Direct of Lawson by Krzyston
(Pre-trial)

1 At one point an officer came in, and I told him
2 obviously that I needed to let my residents know
3 something because the phones were ringing off the hook
4 and people were coming in. They saw the police cars
5 and the ambulance. I said, "Do I need to tell people
6 to make extra precaution, you know, was this a random
7 thing?"

8 His exact words were, "The way it's looking now,
9 this was not a random act. This was an isolated event
10 and the people here were targeted, so we don't have a
11 serial killer on the loose."

12 Q And, again, you asked him about that because you
13 need to furnish information to your residents?

14 A I did, yes.

15 Q At that point, again, he told you that this was a
16 targeted event?

17 A Uh-huh.

18 Q And there was no ongoing threat to the community?

19 A He said at this point that's how it appeared.

20 THE COURT: Who said that?

21 THE WITNESS: It was an officer there. I can't
22 recall which officer it was.

23 THE COURT: Do you recognize any of them in the
24 courtroom today?

25 THE WITNESS: Not really.

1 THE COURT: Okay.

2 THE WITNESS: It was about two years, over two
3 years ago. I don't really recall.

4 BY MR. KZRYSTON:

5 Q Was he in uniform?

6 A Yes, there were numerous officers that came in
7 because the video surveillance was in the office, so
8 there were officers coming in and out of there.

9 Q The officer that told you there was no longer an
10 ongoing threat to the community, he was dressed in
11 typical Richland County gear?

12 A Yes, he was.

13 Q That's a black suit with a gold badge there?

14 A Yes, he was, and that I do recall 100 percent.

15 Q Thank you.

16 MR. KZRYSTON: No further questions for the
17 record.

18 THE COURT: Cross?

19 MS. SAMPSON: Your Honor, for the record, I just
20 got a text from Diego Nova that he's in Fairfield at
21 this moment.

22 THE COURT: Okay.

23 CROSS-EXAMINATION:

24 BY MS. SAMPSON:

25 Q And it's Ms. Lawson?

1 A Yes, ma'am.

2 Q You didn't make any communications with T-Mobile,
3 did you?

4 A No, ma'am.

5 Q Okay, and you don't know what information was
6 given to T-Mobile, do you?

7 A No, ma'am.

8 Q The officer that talked to you that said there
9 was no threat, did you ask him about whether the
10 defendants who had done this had been apprehended?

11 A I don't recall. At that time I did not.

12 Q Was there any conversation about where they were
13 located?

14 A Where who was located?

15 Q The people who had done this were located?

16 A No, ma'am.

17 Q Was there any communication about whether they
18 were actively looking for those people?

19 A No, ma'am.

20 Q So you have no idea what happened in terms of
21 going to look for those particular people?

22 A No, ma'am, that's correct.

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

24 (Pause.)

25 BY MS. SAMPSON:

1 Q The person who told you there was no threat, did
2 you ask him what he meant by that?

3 A Yes, I did. Well, he was basically answering my
4 question when I said I need to know what to notify my
5 residents, you know, is there possibly a serial
6 killer, someone going down Garners Ferry Road.
7 Basically, what do I need to tell them.

8 A Yes, ma'am.

9 Q So your concern was your residents, not the
10 community of Columbia?

11 A Yes, ma'am. Well, No. I was asking because I
12 needed something to immediately respond to my tenants
13 that were calling my phone and coming in.

14 Q Just your tenants?

15 A Just my tenants.

16 Q Not Richland County?

17 A Just my tenants.

18 THE COURT: Redirect examination?

19 REDIRECT EXAMINATION:

20 BY MR. KRZYSTON:

21 Q Your questions to the officers was more generally
22 directed?

23 A Was what?

24 Q More generally directed.

25 A What do you mean by that?

1 Q You asked the officers if there was somebody
2 going up and down Garners Ferry Road?

3 A Yes, uh-huh.

4 Q The questions were not just about residents, but
5 people in general?

6 A My reason for that question was do I need to
7 notify my residents that there is a possible, you
8 know, serial killer on the loose, or did they just
9 randomly come there. That's was why I asked that
10 question.

11 MR. KRZYSTON: Thank you, Ms. Lawson.

12 THE COURT: Have a nice day, ma'am.

13 THE WITNESS: Thank you.

14 THE COURT: All right. What else?

15 MR. KRZYSTON: Permission to approach. We have a
16 copy of the exigency request.

17 THE COURT: Okay. This is being marked as a
18 Court's exhibit.

19 (WHEREUPON, Court's Exhibit Number 1 was marked
20 for identification only.)

21 MR. KRZYSTON: We just ask that this exigency
22 request that was disclosed to me by the State on
23 Monday and just handed up to Your Honor be marked as a
24 Court's Exhibit.

25 THE COURT: Okay. All right.

1 MR. KRZYSTON: Judge, I would just --- I am
2 moving to exclude this exigency request based on a
3 number of grounds. First, I believe that the exigency
4 request is properly sought where officers have a
5 reasonable belief that evidence is in imminent fear of
6 destruction, where there is a need or a public safety
7 issue potentially and the facts and the request that
8 was furnished to T-Mobile from SLED, the cover letter
9 would provide that or request that GPS location
10 information on Mr. Wallace's phone be furnished to
11 SLED agent Nova every 15 minutes by email. Looking
12 past the cover page to that fax letter, we have the
13 actual exigent circumstances request form that was
14 furnished to SLED from T-Mobile and then back to
15 T-Mobile from SLED if that makes sense.

16 In the narrative, the document states the
17 emergency which exists is as follows: suspect is armed
18 and dangerous, has shot, killed one victim and struck
19 female victim on the head with handgun, escaped and
20 has threatened the life of surviving victim and family
21 members.

22 Judge, this request was sent to SLED --- excuse
23 me, sent to T-Mobile around 2:30 in the afternoon ---
24 excuse me, 1:50 in the afternoon on the day --- excuse
25 me, on June 28th.

1 I think if you take a look at the circumstances
2 laid out by SLED, they do not match anything that law
3 enforcement knew at the time. They did know that one
4 person was in the process of dying. However, there
5 was an additional victim and the circumstances really
6 don't speak to --- or really, the circumstances don't
7 speak to the situation. There was an additional
8 person that was in the process of dying. Ms. Weston
9 had talked with police.. The police had obtained a
10 statement from Ms. Weston. Ms. Weston had identified
11 subjects.

12 Nobody --- the police had not furnished any
13 information to us alleging at that point there were
14 threats to anybody's family.

15 And because the exigency request is basically an
16 exception or is used as an exception to the warrant
17 requirement, then ---

18 THE COURT: I think there is a statute on this.
19 Have you found that?

20 MR. KRZYSTON: I have not, Judge.

21 THE COURT: Have you looked for it?

22 MR. KRZYSTON: I have, Judge.

23 THE COURT: I'm pretty sure there is a statute
24 that defines when they can do an exigency for phone
25 orders and when they can't.

1 MR. KRZYSTON: Well, Judge, again, I guess my
2 objection to this evidence is based on the fact that
3 the information provided to T-Mobile is not accurate.
4 Law enforcement told Ms. Lawson, as we just heard,
5 that there was not a situation where somebody was out
6 killing people at random. They indicated at that
7 point, at that early stage in the game that this was a
8 targeted event; that the decedents likely knew the
9 people who were involved. In fact, the police knew
10 there was a prior relationship between all the victims
11 in this incident and the suspect.

12 So on the basis that it does not appear that good
13 faith was relied upon by virtue of what's espoused
14 here in the statement, I would move that this be
15 dismissed.

16 Certainly, it goes without mentioning --- it
17 doesn't go without mentioning, but it's certainly
18 worth pointing out that a warrant was signed, sought
19 and issued prior to the police entering that
20 residence. So clearly the State, the government had
21 time to seek a warrant for these telephone records and
22 chose not to do so. It appears it's an N-1 --- end
23 runaround around the warrant requirement.

24 THE COURT: Okay. So do you have any evidence to
25 back up what you just said?

1 MR. KRZYSTON: Ms. Lawson's testimony with ---

2 THE COURT: Besides Ms. Lawson's testimony. The
3 only thing Ms. Lawson said is that somebody in the
4 sheriff's department in uniform told her it was a
5 targeted event, not a random act, essentially. Of
6 course, the exigency request says the suspect is armed
7 and dangerous, has shot/killed one victim and struck
8 female victim on the head with handgun, escaped and is
9 threatening the life of surviving victim and family.

10 I don't know what Ms. Lawson really has to do
11 with anything. I mean, I understand why you called
12 her, but what one deputy says to a property manager in
13 the midst of working a crime scene and a man hunt, you
14 know, those are two totally different things.

15 MR. KRZYSTON: Judge, I would also ask to call
16 Captain McDonald.

17 THE COURT: All right. Captain. I can't keep up
18 with your rank. Is captain right?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Captain, come on up.

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

23 THE CLERK: Please have a seat. State your full
24 name for the record.

25 THE WITNESS: Scott McDonald.

DIRECT EXAMINATION:

BY MR. KRZYSTON:

Q Captain, on the 28th, you were out at Deer Meadow Village Apartments, correct?

A I was later in the day. I took the search warrant out there for the residence.

Q Okay. But you were in, and I won't say constant, but relatively quick contact with the individuals from your department who were out at 8100 Garners Ferry?

A Yes, I was.

Q At the time that your deputies had responded to 8100 and at the time that you had talked to them, did you have any credible information that suspects were contacting Ms. Weston's family?

A Not at that time.

Q And did you have any credible information that suspects were contacting Mr. Johnson's family?

A Not at that time that I was aware of.

Q Did you have any credible information that suspects were contacting Mr. Pratt's family?

A Not at that time.

MR. KRZYSTON: Thank you. No further questions.

THE COURT: Okay. So, of course, you don't know what's in Agent Nova's mind. Do you know who contacted him about obtaining the exigency order?

1 THE WITNESS: I contacted Hayhurst for their
2 assistance. They typically go through SLED to get the
3 orders to go up on these phones.

4 THE COURT: Right.

5 THE WITNESS: What I translated to Hayhurst was
6 the facts of the crime as I knew them at that time.

7 THE COURT: And was that that the suspect was
8 armed and dangerous?

9 THE WITNESS: Armed and dangerous. We had three
10 shot, two gravely, something along those lines.

11 THE COURT: Had you ---

12 THE WITNESS: That he was a threat to the
13 community and we needed to get him off the streets
14 A.S.A.P., something along those lines.

15 THE COURT: And that he was out on the run.

16 THE WITNESS: Yes.

17 MS. SAMPSON: Could I just ask one question?

18 THE COURT: Sure.

19 CROSS-EXAMINATION:

20 BY MS. SAMPSON:

21 Q At that point, did you know there were two
22 suspects involved, not just one?

23 A Yes.

24 THE COURT: Anything else, Mr. Krzyston?

25 MR. KRZYSTON: No, Judge, I just would point out

1 that the request for location records was specifically
2 requested to be given by email, and to the extent that
3 the State has those, I know they said they had no
4 further records from SLED, but to the extent that they
5 have them, we would ask that in addition to
6 suppressing the information learned by the exigency
7 request that that information be compelled to be
8 disclosed.

9 THE COURT: I assume that's everything that's
10 attached to this.

11 MS. SAMPSON: I missed part of what he said, but
12 I have given them everything that I have been given,
13 that I know of, that could possibly exist at the last
14 hearing you asked us to have Mr. Nova to give us
15 everything he had. I forwarded the email he sent me
16 to him.

17 THE COURT: All right. Let's go back to this
18 phone while you're up here so I don't have to do this
19 later.

20 Where was the phone found, Mr. Wallace's phone?

21 THE WITNESS: On his person upon his arrest.

22 THE COURT: All right. So --- you were with him
23 soon after he was originally arrested. Am I
24 remembering that correctly?

25 THE WITNESS: Within about 15 minutes of his

1 arrest, yes.

2 THE COURT: You're at headquarters, somebody from
3 the department --- somehow you learn they have him
4 over near Dutch Square Mall.

5 THE WITNESS: That's correct.

6 THE COURT: You immediately leave headquarters
7 and go that way.

8 THE WITNESS: That's correct.

9 THE COURT: And within getting there --- and I'm
10 not looking for an exact time, but within a little
11 while after being there, he comes in to your custody
12 and in your vehicle; is that right?

13 THE WITNESS: Within a minute or two, he was in
14 my vehicle, yes, sir.

15 THE COURT: So when does the phone come off of
16 him?

17 THE WITNESS: The phone was secured, I believe,
18 by fugitive officers that were there on the scene.

19 THE COURT: Okay.

20 THE WITNESS: They had secured it when they
21 patted him down.

22 THE COURT: What did they do with it?

23 THE WITNESS: They held it at that point.

24 THE COURT: Did you end up in possession of it?

25 THE WITNESS: Yes.

1 THE COURT: So when is it searched?

2 THE WITNESS: Subsequent --- either later that
3 day --- on the day we actually do it, it will have a
4 time stamp on it. I made a request to Investigator
5 Metz in technical services to download this phone
6 incident to arrest.

7 THE COURT: Okay.

8 THE WITNESS: So it was probably done on the
9 afternoon of the 28th, while we were interviewing him,
10 I requested it be downloaded.

11 THE COURT: And what was the purpose in searching
12 the phone?

13 THE WITNESS: Trying to identify any codefendants
14 that might be involved in this incident. We knew
15 there was at least one other involved, any text
16 messages, anything like that that could help further
17 the investigation, the planning of this incident, that
18 type of thing.

19 THE COURT: So was the phone seized --- the phone
20 was seized by the sheriff's department as what we
21 would call a search incident to arrest, correct?

22 THE WITNESS: Incident to arrest, that's correct.

23 THE COURT: And tell me what the overall purpose
24 of searching the phone was. What's the big picture in
25 the sheriff's department searching the phone?

Further Cross of McDonald by Sampon
(Pretrial)

1 THE WITNESS: Like I previously stated, looking
2 for text messages leading to possible codefendants,
3 that we knew at least one was involved, recent phone
4 calls either right before or after this incident.
5 That type thing, just anything that could help us. We
6 don't know what we're going to find until we search
7 these, but typically what we find are phone
8 conversations, text messages back and forth, things
9 like that is what we're looking for.

10 THE COURT: Okay. Do you want to ask any
11 questions about that, Mr. Krzyston?

12 MR. KRZYSTON: I don't, Judge. I'm through.

13 THE COURT: Okay.

14 MS. SAMPSON: If I may offer more, Your Honor.

15 FURTHER CROSS-EXAMINATION:

16 BY MS. SAMPSON:

17 Q Just to be sure of any other information you
18 received, what did Mr. Wallace ask you to do before
19 going to the detention center?

20 A He requested to have his phone back briefly to
21 write some phone numbers down from the contacts on his
22 phone.

23 Q Did you allow him to do that?

24 A We did.

25 Q What did you do with the information once he had

1 gotten them?

2 A I made a copy of all the phone numbers he wrote
3 down myself.

4 Q Is that the same information you got off the
5 phone, as well?

6 A Yes.

7 REDIRECT EXAMINATION:

8 BY MR. KRZYSTON:

9 Q Captain McDonald, you had obtained search
10 warrants prior to searching Mr. Wallace's cell phone,
11 correct?

12 A Search ---

13 Q Not for the phone, but for other locations and
14 other stuff?

15 A We had obtained a search warrant for 8100.

16 Q Okay. Thank you.

17 THE COURT: That's the residence?

18 THE WITNESS: The residence where this happened,
19 yes.

20 THE COURT: All right. Anything else?

21 MR. KRZYSTON: No, Judge.

22 THE COURT: Okay. Thank you, Captain. You can
23 step down.

24 All right. What else, Mr. Krzyston?

25 MR. KRZYSTON: Judge, I believe when we left off

1 from the cell phone issue, the State had cited Davis
2 in saying that US v. Riley and Wurie v. --- Riley v.
3 California and US v. Wurie had established a new rule.
4 Since Mr. Wallace had been arrested prior to that
5 decision occurring that this was an example of
6 retrospective application of the law and if you read
7 further in Davis, the court notes that the argument
8 that the availability of exclusionary rule to new
9 Fourth Amendment precedent is a retroactivity issue is
10 not persuasive. The court noted because Davis'
11 conviction had not become final when the rule Gant was
12 announced, that Gant applied retroactively in this
13 case and Davis may invoke it's newly announced rule as
14 a basis for seeking relief. Because Mr. Wallace is
15 still in the middle of trial and has --- his case has
16 not been decided finally on direct appeal, I again
17 think it's appropriate to apply Riley and Wurie and,
18 Judge, I --- the court and the police in Davis were
19 relying on a then existing precedent of New York v.
20 Belton when they conducted a search, that issue in
21 Davis.

22 In this incident, there was no binding precedent
23 that allowed the police to search Mr. Wallace's cell
24 phone without ---

25 THE COURT: You obviously haven't read United

1 States v. Murphy, United States Court of Appeals,
2 Fourth Circuit, January 15th, 2009, that states that a
3 cell phone can be searched incident to arrest.

4 MR. KRZYSTON: Judge, my position would be that
5 Davis and Riley would control ---

6 THE COURT: Well, your statement about Davis is a
7 complete misapplication of Davis. I spent hours, and
8 I mean, literally three plus hours reading Davis and
9 Riley with a fine tooth comb, and what Davis says is
10 this, the United States Supreme Court is very clear.
11 They say when the search occurred in Davis' case, law
12 enforcement was relying on established precedent to
13 make that search.

14 The Supreme Court changed their mind and they're
15 allowed to change their mind. When they did that
16 search, they're allowed to rely on the precedent
17 that's established when they make that search. That's
18 why in Davis, the search was deemed fine and the
19 evidence was admitted because when they made that
20 search, they did so based upon the law at that time.

21 They go into great detail, great detail in
22 explaining the difference between the Fourth Amendment
23 and the exclusionary rule. They go into great detail
24 talking about when these new cases come out from the
25 Supreme Court, they are for future application. In

1 explaining the way that works --- so what I did, I
2 went to figure out is there any binding precedent in
3 this jurisdiction that the police could have searched
4 that phone without having a warrant. In United States
5 v. Murphy, which is a Fourth circuit court of appeals
6 case from January 15th of 2009, which predates the
7 search in this case, states very clearly that at that
8 point in time, based upon the law in the Fourth
9 Circuit, which is where we reside that the police may
10 search a cell phone incident to arrest.

11 So the police in this case, when they searched
12 this cell phone in 2012, they had legal authority to
13 do so.

14 MR. KRZYSTON: Judge, and I believe Murphy is
15 distinguishable from the situation before us. It's
16 distinguishable from Davis because in Davis, New York
17 v. Dalton was a Supreme Court case and that was
18 certainly binding upon the land.

19 The case Murphy that we're talking about was a
20 Fourth Circuit case and to go further, that's an
21 opinion on the state of the federal constitution.
22 State Court is free to allow or provide additional
23 protection from unreasonable search and seizure.

24 THE COURT: So can you show me a South Carolina
25 case that says you can't do it?

1 MR. KRZYSTON: That says I can't do it?

2 THE COURT: That they couldn't search the phone
3 in 2012.

4 MR. KRZYSTON: No. The search incident to arrest
5 issue in South Carolina, I believe, is a novel issue,
6 and because Murphy was a Fourth Circuit case, a lower
7 court opinion in the federal scheme, I would argue
8 that again it should be suppressed because in Davis
9 they were relying on Belton, which was an established
10 Supreme Court precedent from the United States Supreme
11 Court.

12 Furthermore, Murphy is not binding.

13 THE COURT: The Fourth Circuit Court of Appeals
14 is not binding in this court?

15 MR. KRZYSTON: I believe that's with regard to
16 the federal constitution, but not with regard to the
17 South Carolina state constitution.

18 THE COURT: Can you show me where the federal
19 constitution and the South Carolina constitution are
20 different?

21 MR. KRZYSTON: No, but the South Carolina
22 constitution and South Carolina in general is free to
23 again provide an enhanced degree of protection to the
24 defendant.

25 THE COURT: And does any exist?

1 MR. KRZYSTON: Again, no, sir. It's a novel
2 issue.

3 THE COURT: Right. What was taken off the phone?
4 For the record, Davis was based upon existing 11th
5 circuit precedent, not United States Supreme Court
6 precedent. That's a misquote from the case. In Davis
7 --- the officers in Davis complied with existing 11th
8 circuit Court of Appeals precedence, not Supreme Court
9 precedent. What was taken off the phone?

10 MS. SAMPSON: We downloaded --- one second, Your
11 Honor. We downloaded the contacts ---

12 THE COURT: What was taken off that phone that
13 you intend to introduce?

14 MS. SAMPSON: We don't actually plan on
15 introducing what was taken off the phone so much as
16 what he got off the card that the defendant spoke with
17 and the information that he got from the T-Mobile
18 phone records.

19 THE COURT: So there is no information from the
20 phone that you intend on introducing other than the
21 information that the defendant wrote down, Captain
22 McDonald made a copy of, and the information that came
23 from the exigency orders?

24 MS. SAMPSON: I'm going to check before I say yes
25 to that with Investigator McDonald.

1 (Pause.)

2 There is information from the phone, information
3 taken from the defendant as to the codefendant being
4 named Gottie. That led them to look into him because
5 later on Mr. Wallace on the phone is talking about
6 Gottie and that's a whole separate issue, but we did
7 get that information from the dump of the phone.

8 THE COURT: So the codefendant's street name?

9 MS. SAMPSON: Correct.

10 THE COURT: Okay.

11 MS. SAMPSON: We did look at recent calls, but
12 we're not introducing that information.

13 THE COURT: So if they're not introducing any of
14 it, why does any of this even matter?

15 MR. KRZYSTON: Because until now judge, that's
16 first that we have heard that they're not intending to
17 introduce anything from the phone.

18 THE COURT: Okay. All right. What else?

19 MR. KRZYSTON: Just the phone records that were
20 retrieved from the exigency request and then a
21 discussion on the photograph search.

22 THE COURT: What else on the phone records?

23 MR. KRZYSTON: We don't have ---

24 THE COURT: Okay. All right. And then the
25 photos?

1 MR. KRZYSTON: Your Honor, after reviewing the
2 photographs, we reviewed approximately 300 to 500
3 photographs with the State last Friday. Of these
4 photographs we find approximately 43 objectionable
5 based on the gruesome nature of those photographs.

6 In breaking it down a little bit, we have 16
7 autopsy photos. We have two photos of victim Pratt in
8 the bathtub. We have one photo of Athell Johnson on
9 the floor. We have eight photos of the bedroom in
10 which Athell Johnson was found and the blood and
11 whatnot depicted in that room, and we have an
12 additional 16 photos of the bathroom which depicts a
13 large amount of blood.

14 THE COURT: All right. Have you shown him the
15 pictures you plan on introducing?

16 MS. SAMPSON: Your Honor, they came and looked at
17 all the photos that I had thought we might introduce
18 that Friday, I believe it was. So yes. Even when I
19 talked to them I told them I did not know at this
20 point exactly which ones, but I wanted to put, out of
21 an abundance of caution, how many I might.

22 THE COURT: So how many do you think you intend
23 on introducing?

24 MS. SAMPSON: In total or just the ones that he
25 has a problem with?

1 THE COURT: Let's start with the latter.

2 MS. SAMPSON: I'm sorry? Start with ---

3 THE COURT: The ones they have an issue with.

4 MS. SAMPSON: We don't have these marked yet.

5 THE COURT: Here is what we need to do. When
6 court is over tonight, we need to get the photos
7 marked that you intend on introducing, and then let
8 Mr. Krzyston or whoever see them so that somebody can
9 give me a stack of the ones that are objectionable.

10 MS. SAMPSON: Okay. Your Honor. We can do that.

11 THE COURT: That way I can look at them.

12 All right. So on the --- let's do this one at a
13 time. So the change of venue motion is denied as
14 previously stated. The motions on the photos will be
15 held until I can view the photos. I'm going to tell
16 you, on the photos, I'm going to have to hear more
17 about case to understand the photos so nobody show
18 anybody any photos until I've seen them. The defense
19 can tell me which ones they object to, and I can make
20 a ruling on each of those.

21 The 404(b) issue that Ms. Hines brought up, the
22 State has agreed that the word "stolen" will be
23 redacted from the form and that the incident a couple
24 days prior is only going to be about an altercation
25 with words.

1 As to the issue of the firearms motion that was
2 made two weeks ago in Kershaw County, that motion is
3 denied. I believe that the information contained in
4 there is proper if the defense wishes to use it during
5 cross-examination of the expert, but the main
6 information that they were looking to exclude, which
7 was really just in the way something was phrased, they
8 will be allowed to cross-examine the expert on that
9 testimony. I believe that --- I think it's well
10 establishing law in this state of what that expert can
11 testify to.

12 As to the exigency request, I don't believe there
13 is enough evidence in the record to determine that the
14 exigency request was not appropriate. The testimony
15 of a witness who says that some deputy told her what
16 was going on doesn't fully encompass the exigency
17 circumstances based upon the information contained in
18 the exigency request and the lack of any evidence to
19 the contrary as to what was in Agent Nova's mind at
20 that time.

21 The motion to suppress the exigency request is
22 denied, and the motion to suppress the cell phone is
23 denied.

24 Now, I don't think that there's going to be any
25 evidence that's admitted as to the cell phone. If

1 there is admitted evidence as to the cell phone, for
2 the record, this is my ruling.

3 All right. There is a big difference between the
4 Fourth Amendment and the exclusionary rule. I think
5 that's a common misapprehension in the practice of
6 criminal law. The Davis case goes into great detail
7 of explaining that fully and the difference between
8 the two and what the Supreme Court of the United
9 States is truly trying to do in fashioning --- they
10 have taken the Fourth Amendment, which is a
11 constitutional provision, and they created a rule. In
12 creating that rule, they have created exceptions to
13 the rule.

14 So the exclusionary rule and the suppression of
15 evidence is completely a creature of United States
16 Supreme Court precedent, but this Davis case is very
17 clear and had there not been a Fourth Circuit case on
18 point, I'm not sure that I would be relying on Davis
19 as much as I am.

20 I think Davis is very well tailored. What it
21 says is that the officers at the time of the search in
22 Davis were relying on precedent, binding precedent,
23 upon them to conduct that search, and therefore they
24 conducted that search in good faith. The United
25 States Supreme Court later said that that search was

1 illegal and I understand that and under Arizona v.
2 Gant, but that's almost the identical situation that
3 we have here. In 2009 the Fourth Circuit Court of
4 Appeals, which is as far as I'm concerned and I've
5 been taught my entire legal career is binding
6 precedent upon this court, says that the officers are
7 allowed to search a phone incident to arrest taken off
8 the defendant for the purposes of preserving evidence.

9 That's the issue. The issue is preservation of
10 evidence. This phone was taken off Mr. Wallace
11 incident to arrest and was searched very shortly
12 thereafter. Most of the information obtained off of
13 it was information that Mr. Wallace actually wrote
14 down himself because the officers gave the phone back
15 to him, and they copied on to their own notes.

16 If any information is obtained from this phone
17 that is admitted from this trial, I deem it is
18 admissible because at the time of this search, which
19 is June 28th, 2012, these officers had a right to rely
20 on then existing precedent in this jurisdiction that
21 you could search a cell phone incident to arrest.

22 Now, the United States Supreme Court in June
23 of 2015 said that's not the law and you must have a
24 search warrant to search a phone. However, this is
25 not a situation of the police abusing some power.

1 This is not a situation of something going on that was
2 clearly improper or everybody knew was improper or was
3 well settled that it was improper. Therefore, the
4 phone was searched based upon binding Fourth Circuit
5 precedent and in good faith by the officers.

6 You know, if the officers made a search next week
7 of a phone without a warrant, that would be a
8 completely different situation. That would be
9 completely and totally improper, but as they sit there
10 on June 28, 2012, they're not on any notice that
11 they're doing anything illegal or violating anybody's
12 rights in any way, shape, or form as they search that
13 phone, so the cell phone search to the extent that it
14 is admitted by the State is in the exigency order and
15 the contents obtained therein are in.

16 I believe that's it. I'll review the photos and
17 make a decision as to those once I know a little bit
18 more about case. All right. Anything further?

19 MR. KRZYSTON: That's all we've got, Judge.

20 THE COURT: All right. Ms. Sampson?

21 MS. SAMPSON: That's it from the State, Your
22 Honor.

23 MS. HINES: Judge, at this time, we want to renew
24 our Rule Five motion and motion that we made
25 previously under Riddle, Kyles v. Whitley and Brady

1 and also we would ask to sequester witnesses.

2 THE COURT: To sequester witnesses?

3 MS. HINES: Yes, Judge.

4 THE COURT: So the sequestration of witnesses
5 goes both ways. Let me say this about sequestration
6 of witnesses. I don't know who these people are. I
7 need staff to help me out or lawyers to help me out.
8 If you see somebody that walks in that is a witness
9 absent the lead investigator --- and where are you on
10 victim's family? Are any of them witnesses?

11 MS. SAMPSON: None of the ones who are here are
12 witnesses.

13 THE COURT: Okay.

14 MS. SAMPSON: The only problem I foresee is the
15 Wallace family. I don't know what they look like.
16 I've talked to them on the phone. I'd actually have
17 to ask for the defense's help in terms of who is on
18 the witness list, since I don't know them.

19 THE COURT: All right. If anybody sees a
20 witness, we need to shoo them out of the courtroom.
21 That applies to both sides and both sets of witnesses.
22 All right. Anything further from the State?

23 MS. SAMPSON: The only other thing, Your Honor,
24 we needed to renew our reciprocal Rule Five. Given
25 especially now that we just got this paperwork.

1 THE COURT: I thought you did that last week or
2 two weeks ago. All right. Everybody needs to comply
3 with the discovery rules.

4 All right. Anything else from the defense?

5 MS. HINES: Nothing further.

6 THE COURT: All right. Let's talk about a
7 timeline for this week before we bring in the jury.
8 Today my plan is to give an opening on the law and to
9 get through opening statements. Does anybody else
10 have any major issues this week that they have to
11 contend with?

12 MS. SAMPSON: No. I'm sorry. I see just making
13 sure. Did you want to get to testimony today or just
14 opening? I have my witness, the first one is
15 upstairs. I was just going to get them brought down.

16 THE COURT: If it goes fast enough, we can do one
17 or two.

18 MS. SAMPSON: The first one we plan to call is
19 Sturm. I don't think that's a long one.

20 THE COURT: All right. Any scheduling issues for
21 you two?

22 MS. HINES: No, I just want to clarify
23 sequestration. You said everybody but the lead
24 investigator; is that right?

25 THE COURT: Do you want law enforcement in or

1 out.

2 MS. HINES: I would say they should be out.

3 THE COURT: Based on what? Are they fact
4 witnesses.

5 MS. HINES: Some of them are fact witnesses.
6 They show up and they start talking about what they
7 saw at the scene.

8 THE COURT: Okay. That's fine. All right.
9 Anybody need to take a break before we get started?
10 You can stay in for opening statements, but you ---
11 just go ahead and go. It's easier that way. Anybody
12 need to take a break before we do opening statements?

13 MS. SAMPSON: Can I? I just came straight over
14 here.

15 THE COURT: All right. Let's do five minutes and
16 then we'll go.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: All right. State ready?

19 MS. SAMPSON: Yes, sir.

20 THE COURT: Is the defendant ready?

21 MS. HINES: Yes, sir.

22 MS. SAMPSON: You don't have the defendant.

23 MS. HINES: Oh. We need the defendant, yes, I'm
24 sorry.

25 THE COURT: That's okay.

1 THE COURT: Okay. From the defense?

2 MR. KRZYSTON: No, sir, Your Honor.

3 THE COURT: Okay. Now, the one question that I
4 have a lot a is about note taking. I generally do not
5 allow note taking in cases. I have done it before. I
6 have done it one time, but I generally do not allow
7 it. What happens is when you start writing, you stop
8 listening, okay. The other thing is even if you had
9 taken a note, your note would not be controlling
10 because the only true record that is in this case is
11 what the court reporter takes down, so if you wrote
12 something down and you went in the back, you could be
13 basing your entire decision on something that isn't
14 even a controlling document. At this point in time
15 I'm not going to allow any notes to be taken in this
16 case.

17 All right. Is the State ready to present their
18 opening statement?

19 MR. EATON: Yes, sir, Your Honor.

20 THE COURT: Okay. Mr. Eaton, you have the floor.

21 MR. EATON: Thank you, Your Honor.

22 OPENING STATEMENT:

23 MR. EATON: Athell Johnson thought that William
24 Wallace was his friend. He thought that William
25 Wallace was someone he could trust. He thought they

1 were boys, but he was wrong because on June 28, 2012,
2 William Wallace robbed, tied up and shot execution
3 style Athell Johnson.

4 That day William Wallace and DeAndre Diggs set
5 out to rob Athell of drugs and money. You see,
6 Wallace knew that he had drugs and money because they
7 were close friends. Wallace, who you will hear called
8 Bumbee, picks up DeAndre Diggs who you will hear
9 called Gottie, from the chicken farm where DeAndre
10 works. They drove to Wallace's brother's house where
11 they pick up an AK-47 and a nine millimeter handgun.
12 From there they go to Athell's apartment. In the
13 breezeway of the apartment, they run into Jamal Pratt,
14 Athell's friend. Pratt knows Wallace and he knows
15 something is up, but he doesn't know the extent of it.

16 He let's him into the apartment. They
17 immediately pull out their guns, put Jamal and Athell
18 on the floor, tie them up with trash bags, grocery
19 bags. For Athell this is pretty easy because Athell
20 is in a wheelchair. He is paralyzed from the waist
21 down. He has been shot before. They demand the drugs
22 and the money. They find a good bit of marijuana in
23 the house.

24 The money it turns out is with Athell's
25 girlfriend, Raquel Weston. Wallace forces Athell to

1 call his girlfriend to bring the money over, and she
2 does. She shows up, opens the door, finds her
3 boyfriend and Jamal tied up on the floor and finds
4 herself staring down the barrel of a gun. She hands
5 over the money. They have now gotten what they came
6 for.

7 At some point, Diggs walks outside and Pratt and
8 Athell are dragged to the bathroom and the bedroom
9 respectively.

10 Raquel knows what's happening at this point. All
11 she can say to Wallace is, "Don't do it in front of
12 me." He walks back, and he shoots Pratt in the head
13 point blank execution style edges in the bathtub, and
14 he shoots Athell Johnson in the head, point blank,
15 execution style.

16 Wallace takes Raquel. They go get in the car
17 with Diggs. The problem at this point is there is
18 still another witness to the murders that have just
19 taken place, so they drive up to Beckham Swamp in a
20 lower part of Richland. Diggs and Raquel get out of
21 the car, step into the woods. Diggs shoots her in the
22 head twice, gets back in the car, and they drive off
23 leaving her for dead.

24 Jamal and Athell didn't expect to get robbed that
25 day. They didn't expect to get tied up, and they

1 didn't expect to get shot in the head, but they were
2 not the only ones who were surprised on June 28th.
3 William Wallace was surprised because Raquel survived.
4 By the grace of God, she survived being shot in the
5 head twice. She stumbled out into the road where a
6 good Samaritan picked her up, found her bleeding from
7 the head with a gunshot wound. Raquel goes to the
8 hospital where she immediately identified William
9 Wallace, who she knew as Athell's friend who had
10 killed Jamal and Athell.

11 Law enforcement goes to begin looking for
12 Williams and they find him that very day based on his
13 cell phone.

14 Wallace sits down to talk to them. He initially
15 says that he was nowhere near Athell's apartment that
16 day --- earlier today. He is then confronted with
17 evidence from his cell phone where it shows he was
18 pinging off a cell phone tower right next to Athell's
19 apartment building. That the point he comes up with a
20 bizarre story about seeing some guys who held him at
21 gunpoint and made him ride over there to Athell's
22 apartment who may have gone into inside and done this
23 themselves.

24 He is transported on to the jail, and law
25 enforcement continues to try to determine who the

1 other person was who was with Wallace.

2 Well, before Wallace was apprehended, I had gone
3 to a friend's house and put the handgun under her
4 mattress that he used in these crimes. She found the
5 handgun and called law enforcement.

6 You're going to hear from an expert witness about
7 the match between the bullets in Athell's and Jamal's
8 brains and the gun that William Wallace put under his
9 friend's mattress.

10 You're also going to hear phone calls that
11 Wallace made in jail to his brother in which he asked
12 him to get rid of evidence. He says there is
13 something at my friend's house that you need to get.
14 You will hear him say, "You need to call our cousin,
15 Diggs, and tell him to handle business. That girl has
16 to get done.

17 Based on his cell phone and those calls, law
18 enforcement identifies DeAndre Diggs as the person who
19 was with Wallace. When they find Diggs, he sits down
20 with them and tells them everything and you're going
21 to hear from him, as well, in this case.

22 Ladies and gentlemen, Athell and Jamal were no
23 choir boys, and we're not going to pretend they were.
24 They had drugs and money, but they didn't deserve to
25 get held up at gunpoint, tied up and executed by

1 William Wallace. It's not on Wallace to decide who
2 lives and who dies, and our community, our society
3 cannot expect his willingness to be violent and to
4 take the lives of other people. We would be here no
5 matter who these victims were.

6 Wallace and Diggs committed armed robbery when
7 they used a weapon to take Athell's money. They
8 committed kidnapping they confined and restricted the
9 movement of Athell and Jamal by tying them up on the
10 floor. They kidnapped Raquel when they took her out
11 to the woods against her will, and William Wallace
12 murdered Jamal and Athell.

13 Both Diggs and Wallace are charged identically
14 because we have a concept in South Carolina law called
15 the hand of one is the hand of all, so when they
16 combine together to go and rob Athell of his money and
17 go out into the woods and shoot Raquel in the head,
18 they are both guilty of actions of one another.
19 That's why Wallace is also charged in the attempted
20 murder of Raquel Weston.

21 You're going to become very familiar with this
22 case. You did not check your common sense at the
23 door. When you hear that girl has got to get done,
24 you can determine what that means.

25 This is a thorough investigation. It's an

1 important case to the State, to the victim's families,
2 to Mr. Wallace himself.

3 If witnesses seem redundant, I'm sorry. I just
4 ask you to do your best to bear with us through those
5 witnesses, but at the end of everything, you're going
6 to have one conclusion, which is that William Wallace
7 murdered Jamal and Athell, that he kidnapped them and
8 Raquel and that he's guilty of the armed robbery of
9 Athell and the attempted murder of Raquel Weston.

10 So at the end of this case, the State will come
11 back and ask you to deliver a verdict of guilty. We
12 welcome the burden in this case, the State has the
13 burden of proof of proving this beyond a reasonable
14 doubt and we welcome that.

15 At the end of this case, you will find William
16 Wallace guilty. Thank you.

17 THE COURT: Thank you, Mr. Eaton.

18 MR. HAWKS: Thank you, Your Honor. May it please
19 the Court.

20 THE COURT: Mr. Hawks, the floor is yours.

21 OPENING STATEMENT:

22 MR. HAWKS: That man is innocent. Mr. William
23 Wallace as he sits before you today is innocent, and
24 he will remain innocent until the State has proven
25 beyond a reasonable doubt that he is guilty and until

1 each and every one of you agree that he is guilty.

2 By law, by tradition, by right, he is innocent
3 until that point. No matter what they say, your job
4 is not to convict anyone. It is to give Mr. Wallace a
5 fair trial. My name is Lucas Hawks and I, along with
6 Stephen Krzyston and Kris Hines, represent Mr. Wallace
7 in this case, and we trust that you will do exactly
8 that, to give Mr. Wallace a fair trial.

9 Part of your job here today is to heavily
10 scrutinize the witnesses that get on this stand, swear
11 an oath and testify in this courtroom. A couple of
12 them have already been talked about. DeAndre Diggs,
13 the man that we know shot Raquel Weston, he admits it.
14 It's the State's belief. It's our belief, and that's
15 not really in doubt. He admitted to it.

16 He has a very big interest in this case. That
17 cannot be denied. He is not on trial, but his life
18 hangs in the balance because what happens to
19 Mr. Wallace will have an affect on what happens to
20 Mr. Diggs.

21 He has chosen to cooperate. I want you to keep
22 that in mind when he gets on that stand, and how
23 interested he is in the outcome of this case.

24 This is a man who we know, again, shot Ms. Weston
25 and admitted to it and now when things look dire for

1 him, he has thrown his friend under the bus and agreed
2 to help the State.

3 You're also going to hear from Ms. Weston. I
4 know it can be difficult to scrutinize her testimony
5 because of what she went through. What she went
6 through is terrible. You wouldn't wish it on your
7 worst enemy, but the fact of the matter is it was
8 traumatic, and those type of events can affect your
9 memory, and it can affect your perception of events,
10 and there is no doubt that Ms. Weston has suffered
11 some of those results from the gunshot wound.

12 You will see through her statements that some
13 things are not clear to her. You'll also need to
14 critique the way the State has handled this case.
15 They have a lot on their plate that's for sure, but
16 they have the entire power of this state. Every law
17 enforcement agency, SLED, Richland County Sheriff's
18 Department. They're all involved and they're at their
19 beck and call, so pay attention to everything they do,
20 everything they didn't do.

21 Take note of anything that they could have done.
22 Did they speak to everyone they could have spoken to?
23 Did they test everything that they could have tested?

24 Now, the State has given you their theory. Based
25 on the information that they have, that's pretty much

1 all they can do. They looked at the surface and they
2 have gone with that. You can't blame them for it, but
3 I'm going to ask you to look a little deeper
4 throughout this trial.

5 Consider alternative theories. When I was in 6th
6 and 8th grade, I had an English teacher who was very
7 eccentric. We didn't really do much in her class.
8 She read to us or told us stories, but she had one
9 underlying theme that she always wanted us to come
10 away with, and it was this theory that everything you
11 read had a deeper meaning, that the author always
12 wanted you to look deeper and find something else.

13 I remembered that my whole life. I'm an avid
14 reader so I always try to do that when I read. I try
15 to do that in my career when I examine my own cases
16 and other cases that I help out on, such as this one.
17 I want you to try to do that today because there are
18 alternate theories in this case. If those alternate
19 theories are plausible, then there may be a reasonable
20 doubt that Mr. Wallace is guilty.

21 Our theory is a little different as you can
22 imagine. We believe that this was a drug deal that
23 had gone wrong. A drug deal between Mr. Diggs and the
24 victims. Diggs had weed. Athell wanted weed. Athell
25 didn't have all the money that Diggs wanted, so he

1 made him call Ms. Weston. She brought over some
2 money, but it was not enough and Diggs flipped out and
3 started shooting people.

4 Ms. Weston is simply mistaken, and I think the
5 reason is because she knew Wallace before this event.
6 She did not know Diggs. In fact, you're going to hear
7 in her testimony and in some of the statements she
8 gave that she refers to Diggs as Darryl or D or maybe
9 even some other names.

10 That's because she didn't know him. She knew
11 Wallace, and when she had to recall these events, that
12 was all she could think of was Wallace because that's
13 who she knew. She didn't know Diggs.

14 Now, I have no doubt that when we ask questions,
15 pointed questions, that you will begin to see there
16 are problems with this case. There are problems with
17 the witness's statements and the prosecution, and once
18 you see that our theory is plausible and that Diggs
19 could have done this crime, that is reasonable doubt,
20 and once you find reasonable doubt, you must find
21 Mr. Wallace not guilty. Thank you.

22 THE COURT: Thank you, Mr. Hawks.

23 All right. Are you ready to call your first
24 witness?

25 MR. EATON: Yes, sir, Your Honor. The State

1 calls James Sturm.

2 THE COURT: All right.

3 THE BAILIFF: Put your left hand on the Bible,
4 raise your right hand, face the clerk.

5 JAMES STURM,
6 after being duly sworn, testified as follows:

7 THE CLERK: Please have a seat. State your full
8 name for the record.

9 THE BAILIFF: State your full name.

10 THE WITNESS: James Richard Sturm.

11 DIRECT EXAMINATION:

12 BY MR. EATON:

13 Q Mr. Sturm, where do you live?

14 A Columbia, 1711 Bannockburn Drive.

15 Q That's fine. Did you live in Columbia in 2012?

16 A Yes, sir.

17 Q And what's your occupation?

18 A I sell dog food right now.

19 Q Okay.

20 A But I used to work on a farm.

21 Q On a farm, what farm?

22 A Kirkland Finley's property off of Bluff Road.

23 Q Okay. Did you work there in 2012?

24 A Yes, sir.

25 Q Do you remember June 28, 2012?

1 A Yes, sir.

2 Q Can you tell the jury what you were doing that
3 day?

4 A I was going to spray weeds out on the farm.

5 Q About what time?

6 A Mid-afternoon.

7 Q Okay. And were you driving?

8 A Yes, sir.

9 Q What do you drive? What did you drive at the
10 time?

11 A Jeep Grand Cherokee.

12 Q So which way do you go to get to the farm?

13 A You take a left on Bluff Road, I guess, past
14 Heathwood and take a right onto Beckham Swamp. All
15 that lands is where I work.

16 Q Is that the way you went that day?

17 A Yes, sir.

18 Q So what happened as you were going to work?

19 A While I was going down Beckham Swamp Road, the
20 lady came out waving her hands covered in blood just
21 begging me to take her to the hospital.

22 MS. HINES: Objection. Hearsay.

23 THE COURT: Overruled.

24 MR. EATON: It's --- thank you.

25 BY MR. EATON:

1 Q Go ahead.

2 A She was begging me to take her to the hospital,
3 so I stopped. She got in my car and then I turned
4 around ---

5 Q I'm sorry, let me stop you. About how fast were
6 you going?

7 A When she waved me down?

8 Q When you saw her.

9 A 25 miles an hour, if I had to guess, maybe 30.

10 Q Where was she in relation to you and your car?

11 A She ran out of the woods. I guess probably when
12 I first saw her, ten to 15 yards in front of me.

13 Q And as soon as you saw her, what did you do?

14 A Uh ---

15 Q Did you stop your car?

16 A Yes, sir, I came to a stop.

17 Q That's fine. Did you get out?

18 A No, I stayed in my car.

19 Q Okay.

20 A I had my windows down, so I could hear her
21 talking to me.

22 Q Okay. Now go on with what she was saying?

23 A Well, she first --- she got in my car, and she
24 was just --- kept saying to take her to the hospital.
25 I said that I would. I asked her if --- I asked her

1 if she had gotten hit by a car because that was my
2 first thought. She said no, that she had been shot.

3 MS. HINES: Objection. Hearsay.

4 THE COURT: Sustained. The jury will disregard
5 that statement.

6 THE WITNESS: So then she said that someone had
7 tried to ---

8 MS. HINES: Objection.

9 BY MR. EATON:

10 Q Well, what did she look like?

11 A A black lady, a little bit taller.

12 Q You mentioned blood. Can you describe that a
13 little more for us?

14 A She showed me her wrist which was bleeding and
15 her head, her forehead.

16 Q Okay. And so at that point, what did you then
17 do?

18 A Well, I was trying to figure out what was
19 happening, so I start driving back towards Bluff Road.
20 I got on the phone with 9-1-1. As I was talking to
21 them, when I got to Bluff Road, a cop happened to
22 drive by. I was supposed to turn left to go to the
23 hospital, but the cop was going the opposite
24 direction, so I turned right and I honked the horn
25 just until he stopped. He pulled up beside me and he

1 kind of took care of things from there.

2 Q Okay. So y'all pulled over?

3 A Yes, sir.

4 Q Did you get out then?

5 A We actually stayed in the car, both of us, I
6 guess until the ambulance got there, and then they
7 pulled me aside. I told them what I saw.

8 Q Was she still bleeding at that time?

9 A Yes, sir.

10 Q Did you do any kind of aid or anything?

11 A I gave her my shirt so she could keep the
12 pressure on her head, I guess.

13 MR. EATON: Beg the Court's indulgence one
14 moment.

15 MR. EATON: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 BY MR. EATON:

19 Q James, I'm going to give you what's being marked
20 for identification as State's Exhibits 1 through 6.
21 Can you just take a look at those real quick, please?

22 (Complies.)

23 Q Could you tell the jury what those pictures are?

24 A That's my car.

25 Q Where is it?

1 A On the side of Bluff Road.

2 Q Is it where this happened?

3 A Well, that's where I --- where I saw the cop, and
4 I stopped.

5 Q Do those pictures fairly and accurately represent
6 what that scene looked like in your car and
7 everything?

8 A Yes, sir.

9 Q Okay.

10 MR. EATON: Your Honor, I would offer these as
11 evidence, State's Exhibits 1 through 6.

12 MS. HINES: No objection.

13 THE COURT: All right. State's Exhibits 1
14 through 6 without objection.

15 MR. EATON: Permission to publish these to the
16 jury, Your Honor.

17 THE COURT: Are you good?

18 THE COURT REPORTER: Yes.

19 (WHEREUPON, State's Exhibit Numbers 1 through 6
20 were admitted into evidence.)

21 THE COURT: All right. Ladies and gentlemen,
22 anything that's admitted into evidence like that, some
23 lawyers choose to pass them around, some lawyers
24 choose to put them on boards, everybody does it
25 differently, okay. What you need to know is that you

1 will have these pictures back in your room, back in
2 your jury room, at the time of deliberations, okay.

3 Go ahead.

4 BY MR. EATON:

5 Q And so how long did you stay there on the side of
6 the Road?

7 A Two hours.

8 Q Was she there the whole time?

9 A No, sir, she probably left within 15 minutes, 20
10 minutes.

11 Q As you were driving down the road, did you see
12 any other cars?

13 A Before I got to her, there was a blue car in
14 front of me that I --- he worked on the farm, as well,
15 but not as I was --- not when she was in the car, no,
16 sir.

17 Q Okay. So when y'all were in the car together,
18 did you --- other than the cop, did you see any other
19 cars?

20 A She claimed that she saw ---

21 MS. HINES: Objection.

22 MR. EATON: Present sense impression that we're
23 going into, Your Honor, something she saw in that
24 moment?

25 THE COURT: That's not present sense impression.

1 Sustained.

2 MR. EATON: Thank you, Mr. Sturm, if you would
3 answer defense questions.

4 THE COURT: Cross?

5 MS. HINES: Thank you, Your Honor. May it please
6 the Court.

7 CROSS-EXAMINATION:

8 BY MS. HINES:

9 Q How are you doing today?

10 A Good. How are you doing?

11 Q Good. I just have one --- maybe one or two
12 questions for you. After law enforcement arrived, did
13 you go back down to Beckham Swamp with law
14 enforcement?

15 A Yes, ma'am.

16 Q And what did they want you to go back down there
17 for?

18 A They just wanted me to show them where I picked
19 up the girl and where she ran out.

20 Q Have you been back down there with law
21 enforcement or with anyone from the solicitor's office
22 since then?

23 A No.

24 MS. HINES: Okay. I have no further questions.

25 Judge, may we approach?

1 THE COURT: Yes.

2 You all stand up, stretch, talk among yourselves,
3 but don't talk about the case.

4 (WHEREUPON, a bench conference was held in the
5 presence, but not within the hearing of the
6 jury.)

7 THE COURT: You can continue with your cross
8 examination.

9 MS. HINES: No further questions, Judge.

10 THE COURT: All right. Redirect?

11 MR. EATON: No, Your Honor.

12 THE COURT: All right. Thank you, Mr. Sturm.
13 Any objection to this witness being excused?

14 MS. SAMPSON: None from the State.

15 THE COURT: Defense?

16 MS. HINES: No.

17 THE COURT: Okay. From now on I'm assuming
18 witnesses --- thank you very much. Have a nice day,
19 Mr. Sturm.

20 I'm assuming that witnesses are excused unless
21 somebody tells me that I want them excused.

22 Call your next witness.

23 MR. COBLE: The State would call Deputy Matthew
24 Taylor, Your Honor.

25 THE COURT: Okay.

1 MATTHEW TAYLOR,
2 after being duly sworn, testified as follows:

3 THE CLERK: Please have a seat. State your full
4 name.

5 THE WITNESS: My name is Matthew Taylor.

6 DIRECT EXAMINATION:

7 BY MR. COBLE:

8 Q Deputy Taylor, where do you currently work?

9 A Richland County Sheriff's Department.

10 Q How long have you been working there?

11 A I've been there four years.

12 Q What are your duties as an employee there?

13 A Currently I'm a traffic safety officer. I do
14 traffic enforcement, particularly DUI enforcement.

15 Q Now, at the time of this incident in June 2012,
16 you were employed in the same capacity?

17 A That's correct.

18 Q And what are some of your duties in that
19 capacity?

20 A I was still traffic safety officer, routine
21 patrols, I mean, traffic enforcement, any kind of
22 criminal behavior.

23 Q Now, what area do you work? Do you work a
24 specific area or the whole county?

25 A Whole county.

1 Q Do you recall this day, this incident?

2 A I do.

3 Q Where were you working when this incident
4 occurred?

5 A On that day, I was on --- at the time I was on
6 Bluff Road.

7 Q And you were on duty at the time of this?

8 A I was.

9 Q Now, how did you get involved in this incident?

10 A On the day of the incident, I was on Bluff Road
11 and was driving down Bluff near the intersection of
12 Beckham Swamp at which point in time I observed the
13 Jeep --- let me look at this real quick. I observed a
14 brown in color Jeep that was blowing the horn
15 numerous, numerous times. Based on my experience,
16 they were trying to get my attention, at which point
17 in time I turned around with blue lights initiated and
18 got behind them, at which point in time I observed a
19 white male that was driving the vehicle that had
20 picked up a victim at the time later identified as
21 Ms. Weston.

22 Q Let me stop you right there. When they got your
23 attention, what did you --- did you know what was
24 happening?

25 A I didn't know. There was a female passenger in

1 the front that was screaming and yelling.

2 Q Did you pull up beside them and immediately get
3 out of your vehicle or were you with somebody?

4 MR. HAWKS: Objection, Your Honor, leading.

5 THE COURT: Overruled.

6 BY MR. COBLE:

7 Q Go ahead.

8 A I immediately hit my blue lights and got of my
9 vehicle to make contact with him.

10 Q And then who got out of the vehicle first of the
11 occupants in the car, do you recall?

12 A As I recall, it was driver. The passenger ---
13 the female victim had been shot. As I recall she
14 stayed seated in the vehicle while I rendered aid and
15 called for EMS.

16 Q Now, the male who --- the driver, was that
17 Mr. Sturm who just testified?

18 A That's correct.

19 Q When you first made contact with him, what was
20 his emotional state?

21 A He was very ---

22 MR. HAWKS: Objection. Evidence?

23 THE COURT: Overruled.

24 THE WITNESS: He was very distraught at the time
25 and being as young as he was --- as I gathered

1 information obviously to see why that he had picked
2 Ms. Weston up, didn't know her. She flagged him down
3 after she had been shot.

4 BY MR. COBLE:

5 Q Now, after you saw Mr. Sturm, did you make
6 contact with Ms. Weston next?

7 A I did.

8 Q What was her emotional state?

9 A She was very traumatized. She was in tears and
10 she was screaming.

11 Q What was her physical description?

12 A Black female. I would say medium, medium build.

13 Q Any injuries?

14 A She had longer hair. Yes, she was bleeding from
15 the front of her head and bleeding from her hand. At
16 that point in time, that appeared to me to be a bullet
17 wound right between her eyes.

18 Q Are you trained in any type of medical training
19 as a deputy?

20 A CPR.

21 Q Did you --- what was your reaction to her medical
22 needs?

23 A My reaction to that was, when I first saw her,
24 was to get something to stop the bleeding and to also
25 call EMS.

1 Q Now, when you say stop the bleeding, how did you
2 --- would you describe it as a serious injury?

3 A Yes.

4 MR. COBLE: Beg the Court's indulgence, Your
5 Honor.

6 (Pause.)

7 May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 BY MR. COBLE:

10 Q Deputy Taylor, would you look at those photos for
11 me?

12 A Sure.

13 Q Could you just flip through them? Do you
14 recognize those photos?

15 A I recognize them all.

16 Q What do those photos depict? Keep them there,
17 please.

18 A This is vehicle that I initially saw blowing the
19 horn.

20 Q Keep them down, please.

21 A Oh, okay. The first vehicle, the Jeep Cherokee
22 was the vehicle that I saw that was blowing the horn
23 that I got behind. The second photo in this picture
24 shows Bluff Road and Beckham Swamp Road. That was the
25 initial incident where the incident began where I made

1 contact with the victim when I was first informed of
2 what was going on. That was at that same
3 intersection.

4 The photo of the Jeep Cherokee, the front
5 passenger's seat appears to be black leather, looks
6 like leather and there's blood on the back of the
7 seat. I do recall that's where the victim was seated
8 at the time. The next photo is of the driver's seat
9 and Mr. Sturm's keys and there was also some blood on
10 that side of the seat, which was from the victim and I
11 believe it was her hand possibly and then more photos
12 of the vehicle where she was seated.

13 Q Do all those photos fairly and accurately
14 represent the scene on that day as you saw it?

15 A Absolutely.

16 MR. COBLE: Your Honor, I would now move State's
17 Exhibit 7 through 12 into evidence.

18 MR. HAWKS: No objection.

19 THE COURT: State's 7 through 12 without
20 objection.

21 (WHEREUPON, State's Exhibit Numbers 7 through 12
22 were admitted into evidence.)

23 MR. COBLE: May I publish, Your Honor?

24 THE COURT: You may.

25 BY MR. COBLE:

1 Q How long were you on the scene, Deputy Taylor, do
2 you recall?

3 A It seemed like several hours. It was at least an
4 hour.

5 Q Now, you said you were a road deputy. Is it your
6 duty to investigate?

7 A That was my primary investigation. You know,
8 we're always trained as law enforcement officers that
9 you are primary investigators when you are on the
10 scene. Preliminarily, you have to ask questions to
11 find out what was going on. In that sense, yes, but
12 as far as the role of investigator, my job was not to
13 actually investigate the incident.

14 Q Now, you told us that you spoke with both the
15 victim and the driver, and you said that you --- you
16 were the primary investigator. What type of
17 information did you get from the victim, Ms. Weston?

18 A When she was screaming, I immediately asked her
19 who did the shooting. She told me that she had been
20 basically dropped off down Beckham Swamp Road and that
21 there were two black males that had dropped her off
22 there, and one black male had shot her. I asked her
23 who that was. She told me his name was William
24 Wallace. She mentioned his names several times.

25 MR. HAWKS: Objection, hearsay.

1 MR. COBLE: Your Honor, this was a state of
2 excited utterance. We heard her emotional state
3 described by the officer earlier. She was bleeding
4 profusely. Her emotional demeanor had been described
5 earlier.

6 THE COURT: Overruled under 803(2).

7 BY MR. COBLE:

8 Q Now, you spoke with the victim as well as the
9 driver. After you spoke with him, what was his
10 testimony, without going into specifics?

11 A If I recall right, he was doing some type of work
12 down Beckham Swamp Road. I believe he may have been
13 spraying for plants or something like that with some
14 type of chemical. He made contact with her a mile or
15 so down Beckham Swamp Road.

16 MR. HAWKS: Objection. It's more hearsay.

17 MR. COBLE: I'll move on, Your Honor.

18 THE COURT: Okay.

19 MR. COBLE: Nothing further from this witness,
20 Your Honor.

21 THE COURT: Cross?

22 MR. HAWKS: Thank you, Judge.

23 CROSS-EXAMINATION:

24 BY MR. HAWKS:

25 Q Good afternoon, Deputy Taylor.

- 1 A Good afternoon.
- 2 Q What was that you pulled out of your pocket there
- 3 during direct?
- 4 A This is just an incident report.
- 5 Q Can I see it?
- 6 A Sure.
- 7 Q Did you write this?
- 8 A That was written by a different deputy. The
- 9 information there I can basically testify to ---
- 10 Q Do you know who wrote it?
- 11 A --- because I saw what happened.
- 12 Q Do you know who wrote it?
- 13 A Deputy Laurita.
- 14 Q So when you were flagged down by this man, you
- 15 said you pulled --- you actually pulled behind him.
- 16 Were you in the car or outside the car?
- 17 A I was in the patrol car. When they began ---
- 18 when the horn was blown, I initially --- I pulled up
- 19 beside him. Immediately afterwards I got up behind
- 20 with blue lights to avoid anybody else from coming up
- 21 behind me.
- 22 Q So you had a blue light?
- 23 A I was behind them.
- 24 Q You did activate your blue lights?
- 25 A That's correct.

1 Q So since you are a DUI, primarily DUI, your video
2 recorder was also activated when you switched on the
3 blue lights?

4 A I don't recall that at the time. I was in a
5 Crown Victoria. It wasn't my normal vehicle.

6 Q Does the video normally turn on when the blue
7 lights turn on?

8 A It normally does.

9 Q But you don't know if it was turned on in this
10 case?

11 A I don't remember.

12 Q Did you ever check afterwards?

13 A I don't remember.

14 Q Earlier Ms. Hines was questioning Mr. Sturm about
15 going back into the crime scene. Did you take him
16 back in there?

17 A I did not. I never left the victim. The victim
18 went with EMS. I stayed with the vehicle until crime
19 scene got there.

20 Q Okay. So you stayed at that location. You never
21 went back to ---

22 A I stayed there the entire time.

23 MR. HAWKS: Okay. Beg the court's indulgence.

24 (Pause.)

25 MR. HAWKS: Nothing further, Judge.

1 THE COURT: Redirect?

2 MR. COBLE: Nothing further, Your Honor.

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

4 Have a nice day.

5 Call your next witness.

6 MS. SAMPSON: May we approach, Your Honor?

7 THE COURT: Yes.

8 (WHEREUPON, a bench conference was held in the
9 presence, but not within the hearing of the
10 jury.)

11 THE COURT: All right. Ladies and gentlemen, we
12 are going to go ahead and break for the day. You will
13 see that as each day goes, we break at different
14 times. So if the next witness was approximately the
15 length of the two witnesses that you just heard, I'd
16 go ahead and do them, but the next witnesses are going
17 to be lengthier than that. What I don't want to get
18 into is a situation --- sometimes it happens, but I
19 try to avoid where you do the direct examination, and
20 then I send you home and the person has to come back
21 the next morning to be cross-examined. That certainly
22 happens, but I try to avoid that. In the spirit of
23 avoiding that, the next witness will take at least 30
24 minutes on direct examination so I'm going to go ahead
25 and let you go. You've had a long day. You've been

1 MR. EATON: The State calls Nancy Person.

2 THE COURT: All right.

3 NANCY PERSON,

4 after being duly sworn, testified as follows:

5 THE CLERK: Please have a seat. State your full
6 name for the record.

7 THE WITNESS: Nancy Person.

8 DIRECT EXAMINATION:

9 BY MR. EATON:

10 Q Good morning, Ms. Person.

11 A Good morning.

12 Q Ms. Person, where do you live?

13 A I live in Columbia.

14 Q Okay. And did you live in Columbia in 2012?

15 A I did.

16 Q What address?

17 A It was 8100 Garners Ferry Road, Apartment 411.

18 Q Does this apartment complex have a name?

19 A Deer Meadow.

20 Q Deer Meadow. Do you remember June 28, 2012?

21 A I do.

22 Q What were you doing that day?

23 A I work at home, and I was on the phone taking
24 phone calls, and the alarm went off in the building,
25 and I called my supervisor and I told her the alarm

1 was going on. I couldn't have the noise in the
2 background while I take phone calls. She said okay,
3 so I went on not-ready on the phone. I went outside
4 and looked around and a gentleman came out of the
5 apartment behind me and put his hands ---
6 Q I'm sorry. If I could stop you.
7 A Uh-huh.
8 Q Could you tell the jury again your apartment
9 number apartment and which apartment that was?
10 A I think it was 413. I'm not sure.
11 Q Okay. That's fine, but your apartment is?
12 A 411.
13 Q Thank you. So you saw someone come out?
14 A Someone came out of the apartment behind me and
15 put their hands over their ears and walked past me
16 over to the stairs and looked around and turned around
17 and went back into the apartment.
18 Q Why would he have put his hands over his ears?
19 A The fire alarm was right there. The fire alarm
20 was going off.
21 Q Did you get a good look at this person?
22 A Not a good look.
23 Q What happened after that?
24 A I stood there, and the maintenance man walked up
25 from around the corner of the building. I asked him

1 how long the alarm would be on because I needed to go
2 back to work. He said it wouldn't be that long, that
3 it was a test or something they were doing.

4 Q Okay.

5 A And I went back into the apartment.

6 Q And did you hear any gunshots that day?

7 A No.

8 Q Did law enforcement talk to you about that day?

9 A Yes.

10 Q Did they ask you to identify the person you saw?

11 A They did.

12 Q And were you able to do that?

13 A Based on the description of the person that I
14 saw, it was the only person in the lineup that I could
15 identify, but as to say 100 percent sure, I couldn't.

16 Q Okay. Thank you. And the apartment that you saw
17 the guy come out of, where in relation to your
18 apartment was it exactly?

19 A It was right behind me.

20 Q Did you know the people that live there?

21 A I didn't know them. I knew of them just in
22 passing, but that's about all I could tell you.

23 Q Okay. Thank you. If you could answer questions
24 the defense has, please?

25 A Okay.

1 MR. HAWKS: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION:

4 BY MR. HAWKS:

5 Q Good morning, Ms. Person.

6 A Good morning.

7 Q I just have a few questions for you.

8 A Okay.

9 Q The alarm, it was going off several times or was
10 it one continuous alarm?

11 A It was one continuous alarm.

12 Q Okay. So it didn't turn off and then come back
13 on?

14 A No.

15 Q Okay. How close would you say your door is to
16 the door you saw the man come out?

17 A Not too far.

18 Q 10 feet, 20 feet?

19 A About 10 feet.

20 Q And do you share walls with the apartment he came
21 out of?

22 A We do.

23 Q But you didn't hear gunshots?

24 A No, not from the position I was in. I was all
25 the way in the front in the sun room facing the

1 street.

2 Q Okay. So what time do you think you went
3 outside?

4 A I am going to guess around --- it was somewhere
5 between ten and 10:30.

6 Q Okay. Were you home before that?

7 A I was.

8 Q All morning?

9 A I was.

10 Q Were you home after that?

11 A I was.

12 Q All afternoon?

13 A I was.

14 MR. HAWKS: Beg the Court's indulgence.

15 (Pause.)

16 I just have one or two more questions. May I
17 approach the witness, Judge?

18 THE COURT: Yes.

19 BY MR. HAWKS:

20 Q Is this the lineup that the officer showed you?

21 A I don't remember, but that looks like some of
22 them.

23 Q Looks about right?

24 A Yes.

25 Q Okay. Did you notice at the time that the

1 picture you selected has a different number. It
2 starts with a different number than the other ones?

3 A No. I didn't pay attention to the number.

4 Q You didn't look at the numbers?

5 A No. I didn't pay attention to the numbers.

6 Q But you notice now that they all start with a
7 three and the one you selected starts with a seven?

8 A Yes.

9 MR. HAWKS; I have nothing further, Judge.

10 THE COURT: Redirect.

11 MR. EATON: Can I just see what we're using here?

12 Thank you.

13 REDIRECT EXAMINATION:

14 BY MR. EATON:

15 Q So, Ms. Person, at the time you looked at the
16 lineup, did you notice the numbers?

17 A I did not.

18 Q And then as far as these apartments, if you're in
19 the front where your home office is, would you be able
20 to hear what was happening in the apartment next door
21 in the bedroom?

22 A Not at all.

23 MR. EATON: No further questions.

24 THE COURT: Anything further, Mr. Hawks?

25 MR. HAWKS: Just very briefly.

Recross of Person by Hawks
Direct of D'Antoni by Eaton

1 THE COURT: Go ahead.

2 RECROSS-EXAMINATION:

3 BY MR. HAWKS:

4 Q Ms. Person, how large is your apartment?

5 A It was a two bedroom.

6 Q Two bedroom?

7 A Uh-huh.

8 Q Do you know how many square feet?

9 A No, I don't.

10 Q Okay.

11 MR. HAWKS: Nothing further.

12 THE COURT: Have a nice day, ma'am. Thank you
13 very much.

14 Call your next witness.

15 MR. EATON: The State calls Andrew D'Antoni.

16 THE COURT: All right. Please come forward and
17 be sworn, sir.

18 THE BAILIFF: Place your left hand on the Bible,
19 raise your right.

20 ANDREW D'ANTONI,

21 after being duly sworn, testified as follows:

22 THE CLERK: Please have a seat. State your full
23 name for the record.

24 THE BAILIFF: Watch your step.

25 THE WITNESS: Andrew Joseph D'Antoni, last name

1 is D 'A-N-T-O-N-I.

2 DIRECT EXAMINATION:

3 BY MR. EATON:

4 Q Good morning, Mr. D'Antoni.

5 A Good morning.

6 Q Mr. D'Antoni, what do you do?

7 A I'm an attorney.

8 Q How long have you been an attorney?

9 A About a year-and-a-half.

10 Q What did you do in June of 2012?

11 A In June of 2012, I was a road deputy with the
12 Richland County Sheriff's Department.

13 Q And what area of the county were you assigned to?

14 A Region I.

15 Q What is Region I?

16 A Region I, is about when looking at the sheriff's
17 department map out from Gervais Street out to the
18 Sumter County line.

19 Q Were you working June 28, 2012?

20 A That's correct.

21 Q Do you remember what happened that day?

22 A June 28 2012, I believe I was in --- it was some
23 time ago, but I believe I was either dispatched or
24 traveling on Bluff Road when I saw Deputy Taylor. He
25 was in the vicinity of Beckham Swamp Road and Bluff

1 Road.

2 He was --- again, I can't remember if I was
3 dispatched or if he flagged me down. At that point, I
4 made contact with Deputy Taylor. He explained to me
5 what was going on.

6 Q And what kind of scene did you come upon there
7 with him?

8 A Deputy Taylor was there. There was a young man,
9 a college age kid that was there, as well, and there
10 was a victim with a gunshot wound to the head.

11 Q And what was her appearance?

12 A Hysterical, blood. It was --- that pretty much
13 sums it up.

14 Q What did you do once you got there?

15 A I made contact with Deputy Taylor. He explained
16 to me the situation; that the young man had picked
17 up ---

18 MS. HINES: Objection, hearsay.

19 THE COURT: Overruled, not offered for the truth
20 of the matter asserted.

21 THE WITNESS: That the young man had picked up
22 the victim somewhere on Beckham Swamp Road. We were a
23 little unclear at that time; that he had flagged down
24 Deputy Taylor. Deputy Taylor informed me that she had
25 a gunshot wound to the head, informed me that she had

1 told him that there were two other victims at the Deer
2 Meadow Apartments, which is off ---

3 MS. HINES: Objection hearsay.

4 THE COURT: Overruled, not offered for the truth
5 of the matter asserted. He is doing it to explain the
6 information that he obtained when he showed up.

7 THE WITNESS: Going back, Deputy Taylor informed
8 me there were two additional victims at the Deer
9 Meadow Apartments. They supplied a name, William
10 Wallace. At that time ---

11 MS. HINES: Objection, hearsay.

12 THE WITNESS: I believe ---

13 THE COURT: Overruled.

14 THE WITNESS: At that time, I believe other units
15 from the sheriff's department would be going to the
16 Deer Meadow Apartments. We had Deputy Taylor there
17 with the victim. I ran the gentleman's name William
18 Wallace on my MDT, actually ran it on the Alvin S.
19 Glenn ---

20 BY MR. EATON:

21 Q I'm sorry. If I could stop you. The MDT ---

22 MS. HINES: Objection.

23 THE COURT: Sustained.

24 BY MR. EATON:

25 Q Just ---

1 A In our parole cars, we have a computer, we just
2 call it an MDT. It also has internet access.

3 MS. HINES: Objection.

4 THE COURT: Sustained. Approach. Talk amongst
5 yourselves.

6 (WHEREUPON, a bench conference was held in the
7 presence, but not within the hearing of the
8 jury.)

9 THE COURT: All right. Here we go.

10 BY MR. EATON:

11 Q Mr. D'Antoni, if we could just move ahead.

12 A Sure.

13 Q Beyond your terminal, did you go somewhere from
14 there?

15 A Yes, I did. I traveled to an address on Palmland
16 Road. I had reason to believe, based on information I
17 obtained, that that may have been the residence of
18 Mr. William Wallace.

19 MS. HINES: Objection.

20 THE COURT: Basis?

21 MS. HINES: The --- can we approach?

22 THE COURT: Yes.

23 (WHEREUPON, a bench conference was held in the
24 presence, but not within the hearing of the
25 jury.)

1 THE COURT: Overruled.

2 BY MR. EATON:

3 Q You went to this address?

4 A Yes, it was an address off Palmland. It's very
5 close to the intersection of Beckham Swamp and Bluff
6 Road, so as soon as I acquired the information about
7 that address, I moved out fairly quickly.

8 Q And what was your intention?

9 A The intention was to locate, if possible,
10 Mr. William Wallace at this particular address off
11 Palmland. I can't recall who exactly I made contact
12 with at the address. I do recall doing a consent
13 search with negative results.

14 MS. HINES: Objection, Judge. Can we approach?

15 THE COURT: Yes, ma'am.

16 (WHEREUPON, a bench conference was held in the
17 presence, but not within the hearing of the
18 jury.)

19 THE COURT: All right. Keep going.

20 BY MR. EATON:

21 Q So did you find Wallace there?

22 A No.

23 Q Did you go to any other scenes that day?

24 A I can't recall if it was --- I believe it was
25 that day. We attempted to locate the actual incident

1 location where the victim had stated where she was
2 shot.

3 Q And what did you find there?

4 A I did not find anything. We attempted to locate
5 Sergeant Moreland, then Corporal Moreland.

6 MS. HINES: Objection.

7 THE COURT: Basis?

8 MR. EATON: We can move on.

9 MS. HINES: Personal knowledge.

10 THE COURT: All right.

11 BY MR. EATON:

12 Q If you'll just stick to your role.

13 A Sure. My role was assisting in trying to locate
14 the actual incident scene where the shooting had taken
15 place. Other deputies found what they believed to be
16 at that time was the incident scene.

17 MR. EATON: Okay. Thanks, Mr. D'Antoni. If you
18 would answer questions of the defense.

19 THE WITNESS: Sure.

20 THE COURT: Cross?

21 MS. HINES: Thank you, Judge.

22 CROSS-EXAMINATION:

23 BY MS. HINES:

24 Q How are you doing?

25 A Good morning.

1 Q So were you riding with anyone?

2 A No.

3 Q Were you ---

4 A I was by myself.

5 Q And you went to --- did you secure the crime
6 scene on Beckham Swamp?

7 A I was part of the deputies that were out there
8 attempting to locate it. I wouldn't characterize
9 myself --- I can't recall if I secured it, per se.

10 Q So you weren't the one that roped it off?

11 A I can't --- I can't recall exactly.

12 Q Okay. Did you stay at the spot on Bluff Road
13 until the EMS arrived?

14 A I can't recall.

15 Q Did you take any notes?

16 A I don't think so.

17 Q What time was it that you went to the Palmland
18 address?

19 A It had to happen fairly quickly. We, you know,
20 received the name of William Wallace. I believe it
21 was Deputy Taylor who provided me that name. I went,
22 I put the name into the Alvin S. Glenn Detention
23 Center.

24 MS. HINES: Objection.

25 THE COURT: You asked the question.

1 MS. HINES: I asked about the time, Judge. What
2 time did he go.

3 THE COURT: You asked the question. Nothing
4 about the Alvin S. Glenn Detention Center,
5 Mr. D'Antoni.

6 THE WITNESS: There is a website, the Alvin S.
7 Glenn ---

8 THE COURT: Nothing.

9 THE WITNESS: Oh, my apologies, Judge.

10 MS. HINES: Can I restate the question, Judge?

11 THE COURT: Sure.

12 BY MS. HINES:

13 Q What time did you go to Palmland?

14 A I can't recall the exact time.

15 Q And when you went to Palmland, were there any
16 vehicles there?

17 A I can't recall.

18 Q And you received consent to search for a person?

19 A I believe so, yes.

20 Q From --- and you don't know who you received the
21 consent from?

22 A I don't recall.

23 Q Was it a male or a female?

24 A I don't recall.

25 Q But you did not find William Wallace there?

1 A No, ma'am.

2 Q How many people were there?

3 A At the address?

4 Q Palmland.

5 A I can't recall. I got the address. That's what
6 I recall. It was some time ago. I remember feeling a
7 bit excited given the nature of the incident, the
8 proximity of the address to where we were at the time,
9 and I remember moving out to the address to do --- to
10 try to locate Mr. Wallace.

11 MS. HINES: All right. No further questions.

12 THE COURT: Redirect?

13 MR. EATON: Nothing further from the State, Your
14 Honor.

15 THE COURT: All right. Thank you. Have a nice
16 day.

17 THE WITNESS: Sure.

18 THE COURT: All right. Ladies and gentlemen of
19 the jury, you will disregard any information that was
20 stated by this witness in regards to any type of
21 website or the Alvin S. Glenn Detention Center. That
22 has absolutely no bearing on this case and is to be
23 disregarded by you, and you are not to consider it in
24 any way, shape, or form.

25 Call your next witness.

1 MR. EATON: Investigator Michael Laurita.

2 MS. HINES: Judge, can we approach?

3 THE COURT: Yes, ma'am.

4 (WHEREUPON, a bench conference was held in the
5 presence, but not within the hearing of the
6 jury.)

7 (WHEREUPON, State's Exhibit Numbers 22, 23 and 24
8 marked for identification only.)

9 MICHAEL LAURITA,

10 after being duly sworn, testified as follows:

11 THE CLERK: Please have a seat. State your full
12 name for the record.

13 THE WITNESS: Investigator Michael Laurita.

14 DIRECT EXAMINATION:

15 BY MR. EATON:

16 Q Good morning, Investigator Laurita. Investigator
17 Laurita, where do you work?

18 A Currently, I work in the CID division in Richland
19 County.

20 Q And what's CID?

21 A Criminal investigators division.

22 Q And how long have you been there?

23 A I've been working there almost two years. I've
24 been with the department about seven.

25 Q And in June of 2012, were you with the county?

1 A Yes.

2 Q Where did you work at that time?

3 A I was a Master Deputy in Region I, which is the
4 Bluff Road, Shop Road area.

5 Q Okay. So what's a Master Deputy?

6 A Essentially it's second in command of a shift.
7 Shift is --- you have a corporal in command of a
8 shift, a Master Deputy is under him and a regular
9 deputy is after that.

10 Q Briefly what does Region I cover?

11 A It covers everything from Bluff Road down by the
12 stadium all the way out to 601 back down to Leesburg
13 Road and basically, essentially back down Leesburg
14 Road into the city.

15 Q And on June 28, 2012, what were you doing that
16 day?

17 A I was on patrol.

18 Q Where were you on parole?

19 A I was in District 1, which is --- consisted at
20 the time of Bluff Road, Shop Road, Olympia area,
21 stadium area.

22 Q And what happened that day?

23 A I was on --- I was actually on Shop Road and
24 Deputy Taylor called out, said that he was out with a
25 female who had been shot in the head, and he was at

1 Beckham Swamp at Bluff Road, which is almost literally
2 around the corner from where I was at. It took me
3 less than probably two minutes to get over there.
4 When I was over there, Deputy Taylor was out with a
5 younger white male and a black female who appeared to
6 have several gunshot wounds. I talked to the
7 individual that picked her up. He said he picked her
8 up down Beckham Swamp Road, saw her --- that he had
9 been coming back from working down there, and he saw
10 her on the road covered in blood, picked her up, came
11 back to the roadway at which time he saw Deputy Taylor
12 driving down the road, was able to flag him down.

13 Q So how long --- how much time elapsed once you
14 got there?

15 A From when the call came out, it would be less
16 than five minutes. I'd say probably about two. I was
17 literally right around the corner.

18 Q And so what did you do when you got there?

19 A Called for EMS, made sure they were coming. I
20 spoke with the female to find out further information
21 of what happened, what was going on. We just had a
22 female who had been shot. She had made some
23 statements. She was obviously hysterical and crying.
24 She said something about two ---

25 MR. HAWKS: Objection, hearsay.

1 THE COURT: We need to move on from this issue,
2 Mr. Eaton.

3 MR. EATON: Yes, sir.

4 BY MR. EATON:

5 Q So what did you do next?

6 A I stayed with the vehicle most of the time. I
7 did walk down Beckham Swamp Road, and attempt to find
8 a crime scene. I actually didn't find it. Another
9 deputy did. It's a long dirt Road. There is a hunt
10 club down at the end of it. It was hard to tell where
11 it actually happened.

12 MR. EATON: May I approach the witness?

13 THE COURT: Yes.

14 BY MR. EATON:

15 Q Investigator Laurita, if you would just look at
16 those pictures real quick, please. Do you recognize
17 those?

18 A Yes.

19 Q What do those show?

20 A This is down Beckham Swamp Road. It's actually a
21 dirt road that leads off of it that goes back into
22 some hunting property back in there.

23 Q And were those taken of the scene that day?

24 A Yes.

25 Q Okay. Do they fairly and accurately represent

1 the way things looked that day?

2 A Yes.

3 MR. HAWKS: I would offer these as State's
4 Exhibit 22 through 24.

5 MR. HAWKS: Without objection.

6 THE COURT: State's 22, 23, 24 without objection.

7 (WHEREUPON, State's Exhibit Numbers 22, 23 & 24
8 were admitted into evidence.)

9 BY MR. EATON:

10 Q And if you could just kind of show those to the
11 jury and explain exactly what each one is, please?

12 A This one here is basically --- the paved part
13 here is ---

14 Q I'm sorry, Investigator Laurita, we're going to
15 use the technology here.

16 A Okay.

17 THE COURT: You can step down, Investigator
18 Laurita.

19 THE WITNESS: Okay.

20 THE COURT: There's a stick right there.

21 THE WITNESS: Okay.

22 BY MR. EATON:

23 Q Okay. Investigator, so what does this picture
24 show?

25 A The paved part here is actually Beckham Swamp

1 Road. This is about a mile, mile-and-a-half down
2 Beckham Swamp Road. This here is a dirt road that
3 leads off of Beckham Swamp Road. That goes back into
4 the, basically back into the woods.

5 Q And for clarification, this is Exhibit 24. So is
6 this the scene --- which scene is this, exactly, where
7 you found them?

8 A This is where the female, we believe, was shot
9 down there. They found some --- what they believe
10 blood back in this area.

11 MR. HAWKS: Objection, personal knowledge.

12 THE COURT: Overruled.

13 BY MR. EATON:

14 Q Who taped off the road?

15 A I believe Corporal Moreland, now Sergeant
16 Moreland, taped it off.

17 Q This is State's Exhibit 23. Just briefly what
18 does this show?

19 A This is a closer picture of it. This right here
20 is Beckham Swamp Road, and this is dirt trail down
21 where they believe the female was shot at.

22 Q Okay. And then how about this one, which is
23 State's Exhibit 22?

24 A This is an actual shot down that dirt road that
25 you saw on the last picture. You see it just kind of

1 goes off into the woods.

2 Q Okay. Thank you. Have a seat.

3 So that day, did you do anything further?

4 A No. I basically held that at the area that I
5 stayed at while the female was being transported and
6 the other deputies went over to the secondary crime
7 scene.

8 Q Did you have something to do with this case at a
9 later time?

10 A Yes. On the 3rd of July, 2012, I responded to a
11 call where a woman by the name of Ms. --- I believe
12 her last name is --- how you say it is Toatley. She
13 called about a gun she found in her apartment, which
14 was at 1432 Aralia Drive, Apartment R-2. When I got
15 there, she stated she found a gun underneath her
16 mattress.

17 MR. KRZYSTON: Objection, hearsay.

18 THE COURT: Sustained.

19 BY MR. EATON:

20 Q What did you do once you got there?

21 A I made contact with her. I recovered a gun
22 underneath her mattress.

23 Q Let's just slow down a little bit. This was an
24 apartment?

25 A Yes.

1 Q And was she there?

2 A Yes.

3 Q Was there anyone else there?

4 A No.

5 Q Did she let you in?

6 A Yes.

7 Q Did you take you straight to the bedroom or what
8 exactly happened at that point?

9 A Basically, she told me the circumstances around
10 how she found it.

11 MR. KRZYSTON: Objection, Your Honor, hearsay.

12 BY MR. EATON:

13 Q Let's just go with what you did.

14 A She took me back there and showed me where it is.

15 Q Where was it?

16 A Back in the back bedroom.

17 Q Where in the bedroom?

18 A Underneath the box spring and the mattress of the
19 bed.

20 Q And when you went in the bedroom, is that where
21 it was?

22 MR. HAWKS: Objection, he's leading.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25 MR. EATON: Okay.

1 BY MR. EATON:

2 Q And did you collect the gun?

3 A Yes.

4 MR. EATON: May I approach?

5 THE COURT: Yes.

6 BY MR. EATON:

7 Q If you'll just take a second to look at that. Is
8 this the gun?

9 A Yes.

10 Q Do you recognize it?

11 A Yes.

12 Q How do you know it's the gun?

13 A It's the same gun, same model, same serial number
14 as the gun I was shown underneath the bed.

15 Q Does it appear to be --- what else is in here?

16 A It's a white Food Lion grocery bag, which is what
17 the gun was actually in when I found it.

18 Q Okay. So does --- do all three of these things
19 look the same as when you found them?

20 A Yes.

21 Q And what did you do with them?

22 A I took photos of them. I collected them and
23 placed them into evidence.

24 Q And what's the process for placing something into
25 evidence?

1 A I physically take it. I take it up to our
2 headquarters at which time we render the gun safe by
3 zip tying it, then we box it up as it's shown here.

4 Q You box it up and what do you do with it?

5 A I place it in a locker. At this time it was
6 placed in a locker because it was after hours. The
7 locker is locked and can't be opened again other than
8 by an evidence technician who comes in the next
9 morning.

10 Q Okay. I would offer these as State's Exhibit 25
11 and 26?

12 THE COURT: Are they separate?

13 (WHEREUPON, State's Exhibit Numbers 25 and 26
14 were marked for identification only.)

15 MR. HAWKS: Without objection.

16 THE COURT: Admitted without objection.

17 (WHEREUPON, State's Exhibit Numbers 25 and 26
18 were admitted into evidence.)

19 BY MR. EATON:

20 Q Investigator Laurita, if you would safely show
21 these to the jury, please.

22 THE COURT: Is that gun secure, Investigator
23 Laurita?

24 THE WITNESS: Yes, the gun is secured. It has a
25 zip tie on it. It can't be loaded.

1 THE COURT: Thank you.

2 THE WITNESS: This is the Hi-Point nine
3 millimeter which I found. The serial number is under
4 there, on that silver plate and it's the same serial
5 number as the one I found that day.

6 This here is the magazine that goes inside of it.
7 It just slides in the bottom of it. It locks in.

8 BY MR. EATON:

9 Q Were there rounds in it?

10 A I can't recall if there were rounds in it or not.

11 MR. HAWKS: Your Honor, I think he's reading off
12 his report. He can refresh his memory, but there's
13 been no foundation.

14 THE COURT: Do you have a question?

15 MR. EATON: If we need to --- if there's an
16 objection, I don't know how to respond to it, unless
17 it's stated.

18 MR. HAWKS: My objection is that he's reading
19 from his report.

20 THE COURT: Ask him a question.

21 BY MR. EATON:

22 Q Did --- was this gun under the mattress when you
23 found it?

24 A Yes.

25 Q Okay. And did it appear that Ms. Toatley had

1 moved it?

2 A No.

3 Q Okay.

4 Q Were you able to determine if the gun was
5 registered to Ms. Toatley?

6 A I did run the firearm. It did not come back
7 registered to Ms. Toatley.

8 MR. EATON: Thank you. That's all I have.

9 THE COURT: Cross?

10 MR. HAWKS: Beg the Court's indulgence.

11 CROSS-EXAMINATION:

12 BY MR. HAWKS:

13 Q Good morning, Deputy Laurita.

14 A Good morning.

15 Q Deputy, documentation plays a crucial role in
16 investigation.

17 A Sir?

18 Q And part of what it means to be a cop is that you
19 document certain facts during the course of an
20 investigation, right?

21 A Yes, sir.

22 Q Sometimes there is a lapse of time between when
23 witnesses recall something and when you actually take
24 that down.

25 A I don't follow.

1 Q When you --- it's important to take notes because
2 sometimes a witness is telling you something. Maybe
3 it happened a few days later, maybe months later?

4 A Okay. Yes, sir.

5 Q You work on one case at a time?

6 A Actually, at this time I wasn't an investigator.
7 I was on the road, so I don't know how to answer.

8 Q But you have other things going on?

9 A Yes.

10 Q And from the time of this incident until now, you
11 probably worked on dozens of cases.

12 A Yes.

13 Q And to keep track of all that stuff, you got to
14 write stuff down?

15 A Yes, sir.

16 Q And you use your reports like you just did in
17 direct to refresh your memory and to remember what you
18 did in an investigation?

19 A Yes.

20 Q So the report must be accurate?

21 A Yes.

22 Q And complete so that you can tell the complete
23 truth?

24 A Yes.

25 Q And that's part of the oath you take as a

1 witness?

2 A Yes.

3 Q Because --- and the reason you want to take
4 complete notes is sometimes information if it's only
5 given in parts, it may not be understood.

6 A Okay.

7 Q And you weren't the lead investigator on this
8 case, right?

9 A No.

10 Q So when your not the lead, you want to take notes
11 so that you can give those notes to the lead
12 investigator?

13 A Yes.

14 Q And to the solicitor who prepares the case for
15 trial?

16 A Yes.

17 Q And to the defense attorney who gets it through
18 discovery?

19 A Yes.

20 Q Okay. So it's safe to say that you want your
21 reports to be fair, accurate, complete and the truth?

22 A Yes.

23 Q And they're supposed to be objective, right?

24 A Yes.

25 Q So let's go back to when you first got on the

1 scene. Did you actually talk to Weston?

2 A Did I talk to who?

3 Q Ms. Weston.

4 A Ms. Weston, yes, I actually did talk to her.

5 Q At first she only told you that the other
6 victims, Johnson and Pratt, may be shot?

7 A Yes.

8 Q So she didn't know that they were shot at that
9 time?

10 A At that time, no.

11 Q And at first, she described them only as two
12 males?

13 A She did give the name of one of them who she said
14 was her boyfriend.

15 Q I'm sorry. I mean, the assailants. She
16 described them as two males.

17 A Yes.

18 Q She tells you some of the stuff that happened,
19 and then she states, according to your report, the
20 next thing she remembers is being taken in the white
21 Buick, so she didn't give you a lot of details.

22 A I mean, she gave us a good bit of detail.

23 Q And did you take some handwritten notes?

24 A No.

25 Q You did not?

1 MR. HAWKS: May I approach the witness?

2 THE COURT: Yes.

3 BY MR. HAWKS:

4 Q These aren't your notes?

5 A (No response.)

6 Q Is that your handwriting?

7 A Yes.

8 Q So you did take some notes?

9 A Yes, sir.

10 Q Could you tell me what that top note says? I

11 can't really read that.

12 A Medium size ---

13 Q That's okay.

14 A Yeah. I'm not sure what that last word is. The

15 line there --- normally when I take notes like that

16 and draw a line, it's whole separate idea and doesn't

17 pertain to ---

18 Q Okay. At the bottom there, that says Jamal

19 Pratt?

20 A Yes.

21 Q Okay. Who gave you that name?

22 A I don't recall where that name came from. It

23 could have come from after they already been to the

24 apartment.

25 Q So Weston didn't give you that name?

1 A Not to my recollection.

2 Q Now, you said that --- on direct you said that
3 the only thing you did that day was respond to the
4 scene on Beckham Swamp?

5 A Uh-huh.

6 Q But you also generated a report about the Garners
7 Ferry scene?

8 A Yes.

9 Q So you did do something else?

10 A I never went out to that scene.

11 Q But you did generate the report?

12 A Yes.

13 Q And you also filled out the report from when you
14 went out to Ms. Toatley's house?

15 A Yes.

16 Q And how many days after the incident?

17 A The incident took place on the 28th, and I went
18 out there --- it was actually around midnight on the
19 3rd, I believe.

20 Q You went out at midnight?

21 A Let me refer to my report. It has --- sorry,
22 July 3rd, 2012, at 0019 hours, which is 12:19 at
23 night.

24 Q And you said she called it in on direct. Did she
25 call you?

1 A She called our dispatch, and I was dispatched to
2 the location.

3 Q Okay. And you actually filled out two reports?

4 A Yes, I did, a report for the gun. Then I
5 actually did what we call a supplemental for the
6 original incident.

7 Q Meaning?

8 A It's the same ---

9 Q I understand. I understand.

10 A Yeah.

11 Q In your first report, you mention Ms. Toatley
12 stating that Mr. Wallace had been arrested?

13 A Yes.

14 Q But you already knew that?

15 A Yes.

16 Q You didn't suggest that to her?

17 A No.

18 Q And when you first came up to the weapon, did you
19 safety check the weapon?

20 A I did. I have to safety check it before I put it
21 into evidence.

22 Q Was there a round in the chamber?

23 A I don't recall.

24 Q How many rounds were in the magazine?

25 A I don't recall.

1 Q It's an eight shot magazine?

2 A I'm not 100 percent on how many rounds it holds.

3 Q Did you work the action, dry fire the trigger,
4 check for function?

5 A No, all I did was pull the slide back to make
6 sure it was unloaded and make sure it was safe, lock
7 the slide back to the rear.

8 Q Are you responsible for cleaning and caring for
9 your duty weapon?

10 A Yes.

11 Q Do you own weapons as a civilian?

12 A Yes.

13 MR. EATON: Your Honor, I don't think this is
14 relevant.

15 THE COURT: Sustained.

16 BY MR. HAWKS:

17 Q So you clean and care for guns?

18 A Yes.

19 Q And it is --- you can visibly tell that a gun is
20 dirty?

21 A If I was to look into it close enough.

22 Q Sometimes you can even smell it?

23 A I don't know. Depends on how long ago it had
24 been cleaned.

25 Q It can have powder residue and carbon filing?

1 A I'm not an expert on this kind of stuff.

2 Q If you inspect the barrel, sometimes there can be
3 material in the barrel that gets into the rifling?

4 A I can't tell. I'm not an expert.

5 MR. EATON: Your Honor, I'm not sure of the
6 relevance at this point.

7 MR. HAWKS: Your Honor, I'm asking about the
8 condition of the firearm when he found it.

9 THE COURT: Okay. Keep going.

10 BY MR. HAWKS:

11 Q None of the stuff you just testified to about the
12 gun is mentioned in your report.

13 A Yes. It's not normally the way --- we don't test
14 it to see if we --- we personally don't test it when
15 we find a gun to see if it has been fired or when it's
16 been fired --- that's all done by lab techs in our
17 crime lab.

18 Q But you looked at it?

19 A All I did was take it, make sure it was clear and
20 place it into evidence. I didn't take a close look at
21 it, I didn't take it apart. I didn't smell it, none
22 of that.

23 Q Did Ms. Toatley give you consent to search or did
24 she let you in?

25 A She let me in.

1 Q Do you look around anywhere else or just where
2 she told you?

3 A Just where she told me. She took me back to the
4 bedroom and that's where I looked at.

5 Q On direct you answered a question of whether or
6 not she had moved a gun. You wouldn't have knowledge
7 of that if she did, though, right?

8 A It didn't appear that it had been moved.

9 MR. HAWKS: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 BY MR. HAWKS:

13 Q How could you know that it doesn't appear to have
14 been moved?

15 A It was in that plastic bag. The plastic bag
16 didn't look like it had been manipulated in anyway, or
17 like it had been moved. It was still wrapped up in
18 that plastic bag.

19 Q But if it had been moved, I mean, you only
20 encountered it the first time right there, so how
21 would you have known that it had been moved?

22 A I would have assumed if it had been moved, it
23 would be out of the bag or the bag would be in some
24 way, shape or form disheveled.

25 Q Okay.

1 Beg the Court's indulgence.

2 (Pause.)

3 Just --- I just want to clarify that a little bit
4 more. You didn't see it before?

5 A No.

6 Q This is the first time you saw it?

7 A Yes.

8 Q So I'm curious how could you know that it had
9 been --- if you hadn't seen it before?

10 A I never said I knew it hadn't been moved. I said
11 it didn't appear to have been moved.

12 MR. HAWKS: Nothing further.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION:

15 BY MR. EATON:

16 Q Investigator Laurita, on cross, Mr. Hawks was
17 asking how you knew about the gun's placement. Did
18 she tell you anything about finding it?

19 A She said that she was looking around.

20 MR. HAWKS: Objection, Your Honor.

21 MR. EATON: I think he went into this, Your
22 Honor.

23 THE COURT: What's your objection?

24 MR. HAWKS: Hearsay.

25 THE COURT: You opened the door. Go ahead.

1 (laughing.)

2 THE COURT: No laughing. If you can't control
3 yourself, leave my courtroom now. Otherwise, you will
4 be taken into custody.

5 Continue.

6 BY MR. EATON:

7 Q What did she tell you about that?

8 A She said that she was looking around the
9 apartment because she had received several phone calls
10 from Mr. Wallace's family members saying they needed
11 to come.

12 MR. HAWKS: Okay, that's more hearsay.

13 THE COURT: Overruled. You opened the door on
14 this. You asked him multiple questions about how he
15 knew whether or not the gun had been moved or not
16 moved. It's directly relevant. The door has been
17 opened.

18 Continue.

19 THE WITNESS: She said that she had received
20 several phone calls from Mr. Wallace's family where
21 they were telling her that they had to come over to
22 her house to retrieve something of Mr. Wallace's. She
23 said Mr. Wallace was an ex-boyfriend of hers. She
24 knew that Mr. Wallace didn't have any property at her
25 house, so she became curious as to why some of the

1 family members were wanting to come over there. She
2 starting looking around her house as to why --- she
3 said that actually the day of the incident, the first
4 incident on the 28th, that Mr. Wallace came to her
5 house, and said he needed to get into her apartment.
6 She was on her way out, but she let him into her
7 apartment and told him to lock up the apartment on the
8 way out.

9 Q So to your knowledge, did she find it underneath
10 the mattress?

11 A Yes.

12 Q Thank you. On cross, Mr. Hawks was asking you
13 about what Ms. Weston said on the scene. Now, just to
14 clarify, did she say it was William Wallace?

15 A Yes.

16 MR. EATON: Thank you. No further questions.

17 THE COURT: Recross?

18 MR. HAWKS: Briefly, Your Honor.

19 RECROSS EXAMINATION:

20 BY MR. HAWKS:

21 Q Did you think it was odd, her story about the
22 gun, how it had gotten there?

23 A All I can tell you is what she told me. I don't
24 have any personal feelings about it.

25 Q You didn't think it was odd that she allowed him

1 to come in just when she was leaving?

2 A I have worked in law enforcement long enough that
3 nothing is really odd to me anymore.

4 MR. HAWKS: Nothing further.

5 THE COURT: Thank you very much. Have a nice
6 day.

7 Call your next witness.

8 MS. SAMPSON: Your Honor, may we approach?

9 THE COURT: Yes, ma'am.

10 Talk amongst yourselves, stand up, stretch.

11 (WHEREUPON, a bench conference was held in the
12 presence, but not within the hearing of the
13 jury.)

14 THE COURT: All right. Ladies and gentlemen,
15 what we're going to do at this time, due to the length
16 expected on the next witness, we're going to take our
17 mid morning break. That will allow you to go back to
18 the jury room, use the facilities. Do not discuss the
19 case. Keep an open minds. We'll see you back in
20 about 15 minutes or so. Thank you very much.

21 Everyone remain seat while the jury is dismissed.

22 (WHEREUPON, the jury left the courtroom at 10:57
23 AM.)

24 THE COURT: All right. At the conclusion of
25 Mr. D'Antoni's testimony, the defense made a mistrial

1 motion based upon his testimony, so I'm happy to hear
2 that motion from you now.

3 MS. HINES: Thank you, Judge. May it please the
4 Court. Mr. D'Antoni on my question of, "What time did
5 you go to Palmland?" started talking about the Alvin
6 S. Glenn website and looking my client up on the Alvin
7 S. Glenn website. I think the natural response to
8 what time did you go to Palmland would not elicit
9 naturally that type of testimony.

10 I would move for a mistrial because the jury did
11 hear that the deputy had looked up our client on the
12 Alvin S. Glenn website. He was --- we objected on
13 direct. He got into it. He --- I don't think it's a
14 natural response to my question. I don't believe that
15 I opened the door to that by asking him what time he
16 went to an address. To open the door to him saying
17 that he had looked up my client on the Alvin S. Glenn
18 website --- I don't think that's a natural response.

19 I would ask for a mistrial based on that because
20 the jury has now heard our client has a prior record.
21 On 404(b) that would be ---

22 THE COURT: How has your jury heard that he has a
23 prior record?

24 MS. HINES: They heard that he's been in the
25 Alvin S. Glenn Detention Center.

1 THE COURT: No, they didn't. They heard that he
2 went to the Alvin S. Glenn Detention Center website.

3 MS. HINES: That's correct, but ---

4 THE COURT: They didn't hear that they found him
5 there, that they found an address there, that he was
6 on there, that they found his picture on there, any
7 type of charge, any type of conviction or any type of
8 history.

9 MS. HINES: The logical assumption would be that
10 that is where he found that information because they
11 have heard that he went to that website and that based
12 on the information that he obtained, he then went to
13 Palmland, found out that William Wallace may be living
14 at Palmland and he went to that address.

15 THE COURT: All right.

16 MS. HINES: The logical assumption there would be
17 that our client has been to the Alvin S. Glenn
18 Detention Center, which means the logical assumption
19 is that our client has been arrested before. That's
20 inadmissible under 404(b). I would ask that --- I
21 would ask for a mistrial on that basis.

22 THE COURT: All right. The State's response?

23 MS. SAMPSON: Our response is, again as Your
24 Honor has already stated, the only information that
25 got out is that he went to the website. He didn't say

1 he found him on there. He didn't say he had any
2 convictions. He didn't say anything. He could have
3 been looking up a relative at that particular address.
4 He didn't say anything. He was stopped before he was
5 able to say that information. Secondly you gave a
6 curative instruction. It would be the State's
7 position that that instruction would be enough to cure
8 any prejudice that there would have been if the jury
9 makes the connection that Ms. Hines is making. We'd
10 ask that we continue.

11 THE COURT: All right. Your motion for a
12 mistrial is denied. It has not reached the level of
13 manifest necessity. For the defense theory to be
14 proved true, the jury would have to make assumption on
15 top of another assumption on top of another assumption
16 to get to the fact that Mr. Wallace has some form of a
17 criminal conviction on his record or criminal history
18 and that's just not the status of things that sits
19 before the jury at this point in time. Further, I
20 told them to ignore any information about any website
21 dealing with the Alvin S. Glenn Detention Center. All
22 right.

23 MS. HINES: Judge, I would ask --- I know that we
24 brought up 404(b) in pretrial. We've been sure to
25 that the witnesses have been told what they cannot

1 bring up. I would reiterate the need for the State to
2 discuss that with their witnesses as to what they
3 cannot talk about. This witness, Mr. D'Antoni, was a
4 former law enforcement, member of the bar, should have
5 known what he shouldn't have been talking about in
6 court, familiar with the Rules of Evidence, and
7 brought it up anyway. I would ask that the State
8 actually discuss that with their witnesses one more
9 time to make sure they understand what they cannot be
10 talking about with regard to 404(b) evidence.

11 MS. SAMPSON: I just want to be clear. We did
12 tell him, and after you instructed him not to say it,
13 he said it again. I cannot control what he does once
14 he's up there. We have instructed all the witnesses
15 not to bring this stuff up. We were embarrassed as
16 soon as they asked about it not being stolen and when
17 we couldn't control it, such as with Investigator
18 Laurita as far as the box is stolen, not only was it
19 not shown to the jury, we didn't introduce the box.
20 We're doing everything that we can. I cannot control
21 what they do once they're seated.

22 THE COURT: All right. Let's start back at
23 11:15.

24 MS. SAMPSON: Thank you, Your Honor.

25 (WHEREUPON, a short break was taken.)

1 (WHEREUPON, State's Exhibit Numbers 27 through 37
2 were marked for identification only.)

3 MS. HINES: We do have an issue with the
4 photographs. These photographs, there are four
5 pictures of blood up close, and we think three of them
6 are ---

7 MS. SAMPSON: It's 34 through 37, State's
8 Exhibits. What they show, and I can --- what I
9 explained to Ms. Hines, I would probably use two, one
10 of the close-up and one of the wide angle.
11 Investigator Moreland is the next witness, and they're
12 just going to show why they believes this is where she
13 was shot.

14 THE COURT: I think you just need one of each
15 angle.

16 MS. SAMPSON: I just put too many in versus too
17 little.

18 THE COURT: Okay.

19 MS. SAMPSON: I know she is objecting in general,
20 but I would like to keep then, 34, 36, and I just need
21 to ask Investigator Moreland something real quick to
22 confirm and I will keep 37 for the person who took the
23 pictures so he can tell me if it's the same branch or
24 not.

25 THE COURT: Okay.

1 MS. SAMPSON: So I would just want to introduce
2 at this point, 36, 34 and I will agree to keep out 35.

3 THE COURT: Okay. All right. Bring them in.

4 (WHEREUPON, the jury entered the courtroom at
5 11:20 A.M.)

6 THE BAILIFF: The jury is seated, Your Honor.

7 THE COURT: Thank you very much. Call your next
8 witness.

9 MS. SAMPSON: Thank you, Your Honor. The State
10 calls Corporal Moreland to the stand.

11 ROBERT MORELAND,
12 after being duly sworn, testified as follows:

13 THE CLERK: Please have a seat. State your full
14 name.

15 THE WITNESS: Robert Moreland.

16 DIRECT EXAMINATION:

17 BY MS. SAMPSON:

18 Q Good morning, Corporal Moreland.

19 A Good morning. Sergeant now.

20 Q Sergeant. You guys change?

21 A Corporal then.

22 Q Speaking of that, why don't you tell us how you
23 went through the ranks, and how long you've been with
24 the sheriff's department?

25 A Okay. I've been with the sheriff's department

1 for a little over nine years now. I started out, you
2 know, as a deputy. Moved up to Master Deputy. Then I
3 was an FTO trainer for three years. Then I got
4 promoted to corporal, which is when I was down in
5 Region I for this particular case and got promoted to
6 sergeant. Now, I'm up in the Blythewood area.

7 Q What's the difference between a corporal and a
8 sergeant?

9 A Well, sergeant deals more with, I guess you would
10 say, a lot more can administrative type jobs. With a
11 Corporal you're in there with your guys working the
12 shift, taking care of them, making sure they're okay,
13 out taking calls mostly.

14 Q Okay. As a corporal, which is what you were back
15 in 2012 ---

16 A Yes, ma'am.

17 Q Do you still receive training as a corporal?

18 A Yes, ma'am, we receive training continuously.

19 Q What kind of training do you get yearly?

20 A In fact, I have training next week. We go
21 through all our weapons. Everything that we're
22 certified on, we have to go back and get recertified
23 on.

24 Q Are you certified on anything?

25 A As far as our weapons. We have to get certified

1 in that, our baton. We go through every type of
2 weapon we carry on our belt, we have to go through
3 training and recertify every year.

4 Q I'm going to take you back to June of 2012. You
5 were a corporal then?

6 A Yes, ma'am.

7 Q I believe you already said it, but you were in
8 Region I?

9 A Yes, ma'am.

10 Q Okay. How did you become involved in this case?

11 A Okay. The particular day when the actual call
12 first went out, I was patrolling down on Bluff Road.
13 In fact, I'm going to say probably about four or five
14 miles from where officer Taylor initially called this
15 incident in. So I responded from there going to the
16 8100 block of Garners Ferry at the apartments is where
17 I responded to.

18 Q So initially you didn't go to Bluff Road?

19 A I did not go to Bluff Road. He was there. I was
20 heading toward Bluff Road. Whenever he came back, he
21 said hey, there may be some other people involved at
22 this apartment complex so that's where I went to.

23 Q So what was your purpose in going to the
24 apartment complex?

25 A To make sure if we had any further crime at that

1 location.

2 Q And what did you find when you first got there?

3 A When I first got there, like I said, I was kind
4 of out of bounds. I was one of the --- I guess you
5 would say one of the latter units to actually get
6 there. When I arrived on the scene, a number of my
7 guys had already arrived. They had set up a perimeter
8 around that particular apartment, and I made contact
9 with the lieutenant that was actually at the door, and
10 we were debating on whether we were going to kick the
11 door in, but someone let us know that someone was on
12 their way with a key.

13 Q I'm going to stop you for ---

14 A Okay.

15 Q Was the door locked or unlocked when you got
16 there?

17 A The door was locked.

18 Q Okay. Do you remember what apartment block this
19 was?

20 A It was four --- I believe the apartment number is
21 412 as you go in the facility. I don't have a map of
22 the facility. When you go in the facility, it's about
23 middle ways on the right-hand side.

24 Q Were you able to make entry?

25 A Yes, ma'am.

1 Q I'm going to show you what's been marked as
2 State's Exhibits 27, 28, 29, 30, 31, 32, and 33, I
3 just want you to look at them right now.

4 A Yes, ma'am.

5 Q Are those pictures of the apartment?

6 A Yes, ma'am.

7 Q Do they fairly depict what you saw that day?

8 A Yes, ma'am.

9 MS. SAMPSON: At this time, we'd ask that State's
10 Exhibits 27 through 33 be introduced into evidence.

11 MS. HINES: No objection.

12 THE COURT: All right. No objection, 27, 28, 29,
13 30, 31, 32, 33 without objection.

14 (WHEREUPON, State's Exhibits 27 through 33 were
15 admitted into evidence.)

16 BY MS. SAMPSON:

17 Q If you need to step down, you can.

18 All right. I want to go through. I'll say them
19 as we go through. Can you tell the jury what is
20 depicted ---

21 THE COURT: Sergeant Moreland, come up closer to
22 the screen if you would, please. You can actually
23 stand on the other side so your voice faces the court
24 reporter.

25 THE WITNESS: Okay.

1 BY MS. SAMPSON:

2 Q What is that?

3 A Okay. That is building 400, which is the actual
4 apartment building that room 412, the apartment
5 number, is actually at. It's on the bottom, right
6 through here.

7 Q I'm going to ask you, it's a little hard to see,
8 but right here. Do you remember what that is?

9 A Its should be a stairwell.

10 Q The doors are under that stairwell or where would
11 they be if was on the first floor or the second floor?

12 A It was on the first floor, yes, ma'am.

13 Q And State's Exhibit Number 27, what is that?

14 A Okay. That's going to be the front door into ---
15 I guess I would call it a breezeway, but where you
16 could see the stairwell, this is standing right out
17 there looking at the main front door to Apartment 412.

18 Q Is Apartment 412 where this incident occurred?

19 A Yes, ma'am.

20 Q Is Apartment 412 in Richland County?

21 A It is.

22 Q I know it's a little hard to see because of the
23 glare, but what is that, State's Exhibit 29. You can
24 look on the pictures.

25 A Yeah, you can't see them. That's going to be the

1 front door, and this is after, I think, we had made
2 entry, a photo was taken of the key in the doorway.

3 Q There was --- you had to get a key?

4 A Yes, ma'am. I don't remember which officer
5 actually picked the key up, but they brought a key to
6 us to go in.

7 Q Okay. State's Exhibit 30?

8 A Okay. That's going to be going down the hallway.
9 As you come in the front door, you got kind of what I
10 would call a dog leg. You have to kind of loop
11 around. Then once you make that little move to the
12 left, it's looking straight down the hallway.

13 Q I'm sorry. The computer fell asleep. Go ahead.

14 I think you were just talking about this. This
15 is State's Exhibit 31. I think you called it a ---

16 A A dog leg. You have to kind of come in and make
17 a left. This would be looking right in the main door
18 from the outside. You have a little living room area
19 to your right, and it makes a dog leg. Then it just
20 goes straight down the hallway.

21 Q And again, you can you see the key in the door in
22 this photograph?

23 A You can.

24 Q And this is State's Exhibit 32. What is that?

25 A Okay. That's the living room area. You would

1 actually come in the main door like this, and this is
2 what you're looking at.

3 Q And ---

4 A Over to your left.

5 Q There is a wheelchair in that photograph?

6 A There is.

7 Q Were you ever able to determine whose wheelchair
8 that was?

9 A That I'm not 100 percent sure. I believe it was
10 the victim that was ---

11 MS. HINES: Objection, speculation.

12 THE COURT: Don't speculate.

13 BY MS. SAMPSON:

14 Q Do you know if it was one of the victims in this
15 particular incident?

16 A Yeah, the first victim that I got, that I found
17 going down the hallway is the individual --- that was
18 in the wheelchair.

19 Q Was he in the wheelchair when you got there?

20 A He was not in the wheelchair.

21 Q And this is State's Exhibit 33.

22 A Okay. And that's the living room again.

23 Q And that's the couch?

24 A Yeah, that's couch.

25 Q You can go back and have a seat for a moment.

1 Q Okay. So once you were able to make entry, what
2 did you do at that point?

3 A All right. That initial point, two things
4 concerned us. One was making sure, you know, we
5 didn't have any bad guys still in the area and see if
6 there were any individuals that needed, you know,
7 medical assistance.

8 Q So what did you do once you got there?

9 A We stacked up ---

10 Q Let me interrupt you for just a second. You say
11 we. How many do you think there were?

12 A I'm going to say there's probably four or five
13 guys that's stacked up behind me.

14 Q What does stacked up mean?

15 A It means we are all lined up behind each other.

16 Q And you made entry?

17 A Right. One of the individuals, and I don't
18 remember who it was, he turned the key, pushed the
19 door. We had our weapons drawn.

20 Q Why?

21 A In case, you know, we had a bad guy in there that
22 was wanting to shoot us. I mean, we had already had a
23 shooting incident, so we were expecting that if the
24 information that was received from that individual was
25 true, that, you know, we may have issues.

1 Q So you go in?

2 A Yes, ma'am.

3 Q And what happens upon entry?

4 A Went in, quick scan, didn't see anything to my
5 left or right. I went --- I was the lead guy in, went
6 straight down the hallway. Everybody else headed, you
7 know, straight off into the back and noticed an
8 individual lying there by the bed in the back bedroom
9 straight down the hallway.

10 Q What did you find in the back bedroom?

11 A An individual ---

12 Q Yes.

13 A An individual laying, leaning back against the
14 bed and appeared to have a gunshot to the head.

15 Q And could you tell if he was alive at that point?

16 A That's a tough question. The best I could
17 describe is that there was a --- what I call a death
18 gurgle. You know, it's not really anything but just a
19 little bit of a gurgling sounds. I'm not a doctor.
20 I'm not EMS.

21 Q Were you able to speak to the individual?

22 A No, ma'am, he was ---

23 Q Was he responsive?

24 A He was not responsive.

25 Q So what did you do after seeing that?

1 A I immediately got on the radio, notified, said we
2 need EMS out here, one gunshot wound to the head. As
3 I went in, the other guys spread out into the house
4 searching all the rooms. The second victim was found
5 in the bathroom.

6 Q Did you go to the bathroom?

7 A I did.

8 Q What did you find in the bathroom?

9 A The individual was lying face down in the
10 bathroom. He also had the death gurgle as I call it.

11 Q Were you able to tell if there was any blood on
12 the toilet seat at that time?

13 A I did not --- I did not observe that. I couldn't
14 tell you if there was or wasn't.

15 Q Okay. I'm going to show you what's been marked
16 as State's Exhibit 15.

17 MS. HINES: Ms. Sampson.

18 MS. SAMPSON: Oh, I'm sorry. I thought you were
19 there.

20 MS. HINES: Sorry.

21 MS. SAMPSON: Thirteen, 15, 17.

22 MS. HINES: Judge, we have previously objected to
23 these photographs, and I would like to renew those
24 prior objections that we made.

25 THE COURT: All right. It's renewed and

1 protected for the record.

2 BY MS. SAMPSON:

3 Q I'm going to show you 13, 15 and 17 and ask you
4 to look at those. Do you recognize those?

5 A Yes, ma'am.

6 Q Do those accurately reflect the way they appeared
7 the day of the incident?

8 A Yes, ma'am.

9 Q I'm going to ask you some more questions about
10 those. I believe one of them --- two has bodies and
11 one does not. Does the one without accurately reflect
12 the way it looked like after the victim had been
13 removed?

14 A That --- I can't answer that question, because I
15 did not go back into the crime scene after they ---

16 MS. SAMPSON: I'm only going to ask to introduce
17 13 and 15 through Corporal Moreland, Your Honor.

18 THE COURT: Okay. Those are admitted over
19 defense objections.

20 (WHEREUPON, State's Exhibit Numbers 13 and 15
21 were admitted into evidence.)

22 MS. SAMPSON: Okay. If you could step down. I'm
23 first going to show you State's Exhibit Number 15, and
24 if you could --- I'm sorry --- if you actually could
25 keep the light on. It works better that way.

1 THE COURT: Do you want the light on or the light
2 off?

3 MS. SAMPSON: There's a glare on it with the
4 light on.

5 THE COURT: Mr. Foreman, would you ask everybody?

6 THE FOREMAN: On.

7 MS. SAMPSON: I'm sorry.

8 THE FOREMAN: On.

9 BY MS. SAMPSON:

10 Q Could you tell us what that is?

11 A That's the victim that was in --- as you go down
12 the hallway, that first bedroom I went into, this is
13 the individual that was laying there kind of up
14 against the bed.

15 Q Is that the way you found him?

16 A Yes, ma'am.

17 Q So you didn't move him in any way?

18 A I didn't touch him at all.

19 Q That was State's Exhibit 15. State's Exhibit 13,
20 can you tell us what that is?

21 A That's the individual that was lying in the tub.

22 Q Is that the way that you found them?

23 A Yes, ma'am.

24 Q He does not have any --- does he have any clothes
25 on?

1 A No, ma'am, except for the shorts.

2 Q Did you remove his clothes?

3 A I did not.

4 Q That's the way you found him. You can go back
5 up.

6 So I believe you said at some point you called
7 EMS?

8 A Yes, ma'am.

9 Q How long did it take EMS to arrive after you got
10 there?

11 A It was pretty quick. I'm going to say probably
12 within two minutes.

13 Q Two minutes. Okay, and what happened once EMS
14 got there?

15 A I kind of directed them to, you know, the actual
16 412 and they --- I think they already knew ahead of
17 time because I radioed in what we were dealing with,
18 gunshot wounds to the head, so they came in. Like I
19 said, I didn't go back in with them, but it was a
20 quick, you know, snatch and grab and let's go to try
21 to get them to the hospital.

22 Q So what was your next step after that?

23 A My next step was I went back and made sure that
24 everybody on the scene was good at the 8100 Garners
25 Ferry Road at room 412. The guys were good.

1 Everybody was good. Crime scene had been notified and
2 was responding, so I left that area and went back down
3 to Bluff Road.

4 Q I'm going to interrupt you. You said you wanted
5 to make sure everybody was good. What did you mean by
6 that?

7 A Everybody was good. It was a hot day. Make sure
8 they didn't need any water, they were good. We were
9 going to get a crime rotation going, crime scene
10 rotation going, just the normal things as a corporal I
11 would ensure is happening for my guys that are on duty
12 with me.

13 Q So then what did you do?

14 A Then I went down to check on the guys that were
15 out on the crime scenes down on Bluff Road.

16 Q And what did you do when you got there?

17 A Okay. The first place I stopped at the ---
18 where, I guess, the individual that actually found the
19 lady, their car was still out there. I stopped and
20 spoke with the deputy there, that he was good. I
21 spoke with parents were there with the kid. They had
22 showed up, so everybody was good there. Then I went
23 down Beckham Swamp.

24 Q When you say the kid and the parents are talking,
25 you're talking about the owner of the car?

1 A Yes, ma'am.

2 Q Go ahead.

3 A The vehicle, yes. Then I went down to Beckham
4 Swamp to where they believed that the shooting
5 incident had occurred with the victim that they had
6 found on that road.

7 Q Why did you do that?

8 A Just to try to assist as best as possible.
9 That's a large, large area out there. It's a big
10 farming area, so it's just a matter of, when I got out
11 there, there was Deputy D'Antoni was there and the
12 crime scene guy, Deputy Schroeder, those two were on
13 the scene when I actually got there.

14 Q So what did you do?

15 A Well, I got out, you know, signed in on the crime
16 scene log and started kind of looking to see what he
17 had.

18 From what I understand or what was put out over
19 the radio and all that, it had occurred on the dirt
20 road to the left. Well, that dirt road actually goes
21 way back into the woods, so I just started walking it,
22 looking, trying to see if I saw any tracks or trails
23 or paths that may go off that I might could find the
24 actual location.

25 Q And did you find anything?

1 A Well, I did. And I didn't observe it actually
2 when I walked down it, but when I came back up, I
3 noticed a --- going down the road, I guess it would be
4 on my left-hand side, after I walked down and was
5 coming back, it would actually be on my right, but I
6 noticed --- I don't know if you know that bamboo cane
7 that grows out in the swamp area. Well, one that was
8 off to the side, was broken in half, and I was like
9 that's kind of odd because that stuff doesn't break
10 real easy, something has to break that. I kind of
11 investigated and walked off the trail down to where it
12 was. I observed what was thought to be blood on the
13 foliage right there on that area, on that bamboo cane.

14 A So.

15 Q I'm going to show you what's been marked as
16 State's Exhibit 34 and 36 and ask if you recognize
17 those?

18 A Yes, ma'am.

19 Q And what do those depict?

20 A They depict the bamboo or the cane. I'm not sure
21 what the actual proper name for that is, but it's
22 showing it with the blood on that.

23 Q Do those photographs fairly and accurately depict
24 the way it looked when you saw it on June 28th?

25 A Yes, ma'am.

1 MS. SAMPSON: At this time we'd ask to introduce
2 State's Exhibit 34 and 36 into evidence. Yes, 34 and
3 36.?

4 MS. HINES: No objection.

5 THE COURT: State's 34 and 36 without objection.

6 (WHEREUPON, State's Exhibit Numbers 34 and 36
7 were admitted into evidence.)

8 BY MS. SAMPSON:

9 Q This will be the last time I make you get your
10 exercise today. And State's Exhibit Number 34, what
11 is that?

12 A That's a piece of that bamboo with, what was
13 believed at the time, to be at the time blood stain.

14 Q Is that what you saw?

15 A It is.

16 Q And what is State's Exhibit 36?

17 A That's basically the same thing, it's a peace of
18 the cane with blood spatter on it.

19 Q You can have a seat. Is that what you saw that
20 day?

21 A Yes, ma'am.

22 Q And I think you said this, but why did you stop
23 there?

24 A There was a piece of cane or bamboo, whichever
25 you want to call it, that was bent over, none of the

1 other cane around it was broken. I'm thinking if
2 animals tracked over there, it would be more than just
3 one piece. It sparked my curiosity. I went down
4 there. I guess it kind of paid off because we found
5 what we found.

6 Q What did you do once you found that?

7 A I notified Deputy Schroeder, which was our CSI
8 guy that was out there on that particular crime scene
9 of what I found and he responded over there and
10 basically took control of the situation and gathered
11 up the evidence.

12 Q And was that the end of your involvement in this
13 case?

14 A Yes, ma'am.

15 Q And even though you're a corporal, is it part of
16 your job to take a report in this particular case?

17 A I guess you --- sometimes you can. I had other
18 guys that had done the initial report so I think they
19 added in what I had come up with.

20 Q Is that out of the ordinary for that to happen?

21 A No.

22 Q Did you do a report in this case?

23 A I'm not sure if I did a supplemental or not. I
24 guess you would have a copy of it if I did.

25 Q I was going to ask you that question. What would

1 you do with a report if you made one?

2 A Well, it would have been sent up to, you know,
3 records.

4 Q Would it go to the lead investigator? Would he
5 have a copy of it?

6 A Oh, yeah. He would have a copy of it.

7 Q Do you know who the lead investigators were in
8 this case?

9 A I'm not sure who the actual lead investigator
10 was. I think Sergeant Robinson was the one I saw out
11 on the scene at the 8100 block.

12 Q What about Sergeant McDonald, was he involved?

13 A I'm sure he was. I didn't particularly see him.

14 Q Since you brought that up, I'm going to talk a
15 little bit about how that works. Are there different
16 people assigned to do different things when there is a
17 case that occurs?

18 A Yes, ma'am.

19 Q Can there be more than one investigator involved
20 in a case?

21 A There could be lots, you know.

22 Q Is that out of the ordinary for there to be
23 multiple investigators?

24 A I'm not an investigator, but I would say no, I
25 wouldn't think so.

1 Q No further questions at this time, Your Honor?

2 THE COURT: Cross?

3 MS. HINES: Thank you, Your Honor. May it please
4 the Court?

5 CROSS-EXAMINATION:

6 BY MS. HINES:

7 Q Hey.

8 A Hey.

9 Q Sergeant Moreland, how are you?

10 A Yes, ma'am. I'm good.

11 Q So the first place that you went is the 8100
12 Garner's Ferry Road?

13 A Yes, ma'am.

14 Q Apartment 412?

15 A Yes, ma'am.

16 Q In the photographs shown to you, there were two
17 locks, correct? On this photograph?

18 A Uh-huh.

19 Q It's State's Exhibit 29.

20 A Right.

21 Q There are two locks, correct?

22 A Yes, ma'am.

23 Q And that's a deadbolt at the top?

24 A Yes, ma'am.

25 Q And a regular lock at the bottom?

1 A Yes, ma'am.

2 Q Were both of those locked?

3 A I believe both of them were. I didn't use the
4 key to get into it, but I believe while we were
5 sitting there trying to determine if we could kick it
6 in and we felt that both of them were locked because
7 you couldn't turn the doorknob.

8 Q Right.

9 A You could feel that the deadbolt was in there.

10 Q And was the deadbolt --- that would have had to
11 have been locked. It wasn't just something that could
12 have happened? You didn't close the door?

13 A No, you can't close the door.

14 Q You whoever closed that door before you arrived
15 used the key to lock that deadbolt?

16 A Yes, ma'am.

17 Q Or locked it from the inside, but presumably
18 since there was no one inside, that wouldn't have been
19 the way, correct?

20 A Yes, ma'am.

21 Q So you left there, left Garners Ferry and when
22 EMS arrived --- okay, EMS arrived and you described it
23 as a quick snatch and grab. So EMS arrived, they go
24 in. Did you --- were you in the apartment when EMS
25 was in the apartment?

1 A No, ma'am.

2 Q So you had already left the apartment at that
3 point?

4 A Yes, ma'am.

5 Q And didn't go back in after that?

6 A I did not.

7 Q Okay. When you went in to --- initially into the
8 apartment ---

9 A Yes, ma'am.

10 Q --- did you see any shell casings?

11 A I did not.

12 Q But you did see blood?

13 A Oh, yeah. Yes, ma'am.

14 Q Did you touch either of the ---

15 A No, ma'am.

16 Q --- people that were there in anyway? Did
17 anybody before EMS arrived?

18 A Not as far as I know.

19 Q And then you went to Bluff Road?

20 A Yes, ma'am.

21 Q And talked to Deputy Taylor?

22 A Yes, ma'am.

23 Q Okay. And then you went out to Beckham Swamp?

24 A Yes, ma'am.

25 Q Now, when you --- you arrived at Beckham Swamp

1 according to the crime scene log at 2:05?

2 A Sounds about right.

3 Q Okay. According to the crime scene log, you were
4 at Garners Ferry Road at twelve o'clock objection from
5 twelve o'clock to 12:52?

6 A Yes, whenever that initial response time was.

7 Q And that would be accurate, the crime scene lot
8 would be accurate as to what times, right?

9 A Yeah.

10 Q So you arrive at Beckham Swamp at 2:05 p.m. ---

11 A Okay.

12 Q --- according to the crime scene log, and you
13 said Schroeder and D'Antoni were on the scene. Were
14 they the only two other officers on?

15 A There may have been other people there. Those
16 were the ones I actually made contact with.

17 Q Okay. And the length of road, it's a ways back?

18 A It's a long road.

19 Q A long road, so you have deputies, presumably
20 D'Antoni, is looking for the location. Schroeder has
21 been there looking for the location. You arrive. You
22 start helping look for the location?

23 A Right.

24 Q Were you together, were you separate, were you
25 fanned out?

1 A We were, I guess, you could say close proximity
2 to each other. When I got there, they were up at the
3 front and the reed and all was found just down the
4 road on the left-hand side.

5 Q How far down the road?

6 A I'm going to estimate, say 40 yards, maybe, 30,
7 40 yards.

8 A It could have been a little further than that,
9 but that's what I am estimating.

10 Q Okay. And you didn't take any of the
11 photographs?

12 A No, I did not.

13 Q Do you know who was taking photographs?

14 A It should have been Deputy Schroeder,
15 Investigator Schroeder.

16 Q Okay. And when you found the bamboo cane that
17 you described, where were Schroeder and D'Antoni at
18 that point?

19 A They were still on the main road toward the
20 entrance where it comes off Beckham Swamp onto the
21 dirt road.

22 Q Okay. So they were down at least 30, 40, could
23 have been farther ---

24 A Yes, ma'am.

25 Q --- yards down the road when you found that?

1 A Right.

2 Q Okay. Were you riding with anyone that day?

3 A No, ma'am.

4 Q And did you take any notes of anything that day?

5 A No, ma'am.

6 Q Do you normally carry a note pad with you?

7 A Yes, ma'am.

8 Q And a pen?

9 A Uh-huh.

10 Q That's so you can take notes if you need to in

11 order to remember things?

12 A Yes, ma'am.

13 Q But this day you didn't take any notes?

14 A I didn't take any.

15 Q You didn't write anything down?

16 A Not that I'm aware of.

17 Q Okay. But if you had, you would have turned it

18 over to the investigators?

19 A Yes, ma'am.

20 Q Correct?

21 A Yes, ma'am.

22 Q And you testified that you --- what was on the

23 reed here?

24 A Uh-huh.

25 Q It appeared to you to be blood?

1 A It did.

2 Q But you don't know for sure if it was tested?

3 A I have no clue.

4 Q And you don't know for sure if it was human
5 blood?

6 A I have no clue. It just appeared to be that's
7 what it was, so it was it was turned over to the crime
8 scene investigator.

9 MS. HINES: Thank you. No further questions.

10 THE COURT: Redirect?

11 MS. SAMPSON: Briefly, Your Honor.

12 REDIRECT EXAMINATION:

13 BY MS. SAMPSON:

14 Q So Ms. Hines asked you did you see any shell
15 casings at the apartment. Were you looking for shell
16 casings?

17 A No, ma'am.

18 Q Would that have been your job that day?

19 A No, ma'am.

20 Q Whose job would that be?

21 A CSI.

22 Q What was your intention when you went to the
23 apartment?

24 A To make sure we didn't have any bad guys in there
25 and if anybody needed medical attention, that we could

1 get medical attention to them.

2 Q To the best of your knowledge while you were
3 there, did anybody shoot a gun?

4 A No, ma'am.

5 Q She asked you about taking notes. Did you need
6 notes to remember this?

7 A No, ma'am.

8 Q Do you remember it?

9 A Yes, ma'am.

10 Q Do you remember what you told the jury today?

11 A Yes, ma'am.

12 MS. SAMPSON: No further questions, Your Honor.

13 MS. HINES: I just have one follow-up.

14 THE COURT: Yes, ma'am.

15 RECROSS-EXAMINATION:

16 BY MS. HINES:

17 Q So you didn't remember testifying on direct that
18 you didn't remember who the lead investigator was on
19 the case, correct?

20 A No, ma'am.

21 MS. HINES: That's all the questions I have.

22 THE COURT: Have a nice day.

23 Call your next witness.

24 MS. SAMPSON: The State will call Latora
25 Willingham.

1 (Pause.)

2 Apparently, Your Honor, I don't know if she is in
3 the bathroom or what, but we're going to move on to
4 the next one.

5 MS. HINES: Can we approach, judge?

6 THE COURT: Sure.

7 MS. HINES: Mr. Eaton.

8 THE COURT: All right. Talk amongst yourselves.

9 (WHEREUPON, a bench conference was held in the
10 presence, but not within the hearing of the
11 jury.)

12 THE COURT: All right. Who is next?

13 MS. SAMPSON: Beg the Court's indulgence.

14 (Pause.)

15 Beg the Court's indulgence. I just need to see
16 if he is outside.

17 (Pause.)

18 MS. SAMPSON: The State calls Corporal Hayhurst.

19 RAYMOND HAYHURST,

20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION:

22 BY MS. SAMPSON:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Where do you work?

1 A I work for the Richland County Sheriff's
2 Department, Fugitive Task Force.

3 Q How long have you worked there?

4 A I've been in fugitives approximately 17 years out
5 of my 20 year career.

6 Q So three years before going to fugitive, you
7 were?

8 A Road deputy.

9 Q What did you do as a road deputy?

10 A Normal patrol reports.

11 Q So 17 years ago you went to fugitive?

12 A Yes, ma'am.

13 Q What do you do as parts of the Fugitive Task
14 Force?

15 A I track down people on older warrants, different
16 type of warrants.

17 Q What, if anything, do you do if contacted to find
18 someone who is missing?

19 A We pull all of our resources together, pull hard
20 copies of reports, anything we can get our hands on to
21 lead us to the subject.

22 Q Now, I want to move you to June 28, 2012. So you
23 were working in the fugitive department at that point?

24 A Yes, ma'am.

25 Q What did you do there at that point? You were

1 doing what you just talked about, I assume?

2 A Yes, ma'am, we work cases. I make sure --- I'm
3 the corporal over our unit, so we were working cases
4 as they come in.

5 Q As a corporal, what's different between you and
6 say someone below you? What do you do that's
7 different?

8 A I'm the supervisor of the unit. Usually, well, I
9 do most of the administrative stuff, gather
10 information, track down individuals.

11 Q How did you become involved in this case back in
12 June of 2012?

13 A I was contacted by Captain Scott McDonald.

14 Q And what were you asked to do?

15 A I was asked to locate the subject.

16 Q And who were you asked to locate?

17 A William Wallace.

18 Q So when --- in general, when you're asked by
19 someone to locate --- I think you said you go and
20 gather information?

21 A Yes, ma'am, do as much intel as possible.

22 Q Did you do that in this case?

23 A I did. I actually went over to SLED because we
24 typically work with other fugitive units, and I
25 started gathering information.

1 Q I want to stop you. You said you went over to
2 SLED?

3 A Yes, ma'am.

4 Q What is SLED? Just ...

5 A South Carolina Law Enforcement Division.

6 Q Okay. And you went there, why again?

7 A We typically work with them on getting
8 information together and their fugitive team usually
9 works with us hand in hand.

10 Q Do you physically go to SLED, do you call them,
11 or what?

12 A When I received the phone call, I was already
13 over there at South Carolina Law Enforcement Division
14 on another case.

15 Q So just so I understand, you got their help in
16 trying to find Mr. Wallace?

17 A Yes, ma'am.

18 Q Without going to what the information was, were
19 you guys able to find him?

20 A Yes, ma'am.

21 Q What was your role once he had been found?

22 A My role ended. I called Captain McDonald and
23 told him we had him in custody and he sent
24 investigators over to ---

25 Q You skipped a whole lot. At some point you were

1 notified that he had been located.

2 A Yes.

3 Q Where were you when you received that
4 notification?

5 A Ask that one more time, please.

6 Q Where were you physically when you were told that
7 he had been found or located?

8 A I was on the scene.

9 Q On what scene?

10 A On Bush River Road.

11 Q There you go. Why were you on Bush River Road?

12 A That is where we ended up apprehending him at.
13 We got information that he was in the area, and we
14 ended up, as I was pulling into Dutch Square off of
15 Bush River Road, he was spotted coming out of
16 Burlington with a female, getting into a Crown Vic
17 that we had information on. As I was pulling through,
18 I actually drove through the parking lot in between
19 another SLED vehicle and followed the suspect vehicle
20 out, called it in on the radio, took a right onto Bush
21 River and as soon as that vehicle stopped in traffic,
22 officers responded and apprehended him.

23 Q Okay. Now, I'm going to back you up a little
24 bit. You said you received information while you were
25 in the Bush River area. Who, did you receive the

1 information from that he was in that area?

2 A The information came from SLED Agent Diego and
3 SLED agent Reynolds, I believe, is the last name.

4 Q Are they partners or do they work together? Do
5 you know?

6 A They're all a part of SLED's unit.

7 Q So you received that --- you didn't find that
8 information out yourself, right? They gave to it you?

9 A No, ma'am. We were told over the radio basically
10 to go to this area, fan out and start looking for the
11 Crown Vic.

12 Q Is that normal procedure to receive a call and
13 then you said fan out and look?

14 A Yes, ma'am. Typically we work fugitive so
15 depending on what area we're in working, we know to
16 check hotels, certain hotels, certain parking lots.
17 We cover as much ground as possible, especially when
18 we're looking for a vehicle. We start riding in
19 parking lots, looking at tags, looking at vehicles to
20 try to determine if our vehicle is there or not.

21 Q I skipped over this, but you had information that
22 he might be in a particular vehicle?

23 A Had a vehicle, the vehicle was a Crown Vic. I do
24 not remember the tag. I believe it belonged to a
25 girlfriend.

1 Q Did you determine that information or did someone
2 else determine that information?

3 A They have analysts over there who pulled stuff
4 from me from probation.

5 MS. HINES: Objection.

6 MS. SAMPSON: I can clear it up, Your Honor.

7 THE COURT: Okay.

8 BY MS. SAMPSON:

9 Q You don't know where the information came from,
10 correct?

11 A No, ma'am, it was given to me.

12 Q And you were stating it comes from different
13 places?

14 A Yes, ma'am.

15 Q You have no idea where it came from?

16 A No, ma'am.

17 MS. SAMPSON: Can I proceed, Your Honor?

18 THE COURT: Yes.

19 BY MS. SAMPSON:

20 Q So you got that information that there was a car?

21 A Yes, ma'am.

22 Q And that he may be in that particular car?

23 A Yes, ma'am.

24 Q So you guys are looking for that car?

25 A Yes, ma'am.

1 Q I believe you said --- and I need to clarify
2 this. Did you find the car or did another agent find
3 the car?

4 A Another agent spotted the car and the individuals
5 were walking out of --- they actually spotted the
6 individuals walking out, Mr. Wallace walking out with
7 a female and they got into the car and was pulling out
8 of the parking lot when I came into the parking lot.

9 Q Okay, and then at that point you followed the
10 vehicle?

11 A Yes, ma'am. I called my unit on the radio to let
12 them know that we were making the turn and give them
13 step by step where we were at so we could have the
14 people in place.

15 Q Once he is pulled over, who did you notify at the
16 sheriff's department that you had him?

17 A I notified Captain Scott McDonald.

18 Q Were you the one who actually takes him out of
19 the car or does someone else do that?

20 A Other officers took him out of the car.

21 Q Were you able to see that?

22 A I was several vehicles behind. I know they got
23 him out of the car and had him cuffed by the time I
24 got actually down to him. I basically picked up my
25 phone, dialed Scott McDonald, told them that he was in

1 custody and he sent investigators.

2 Q And you saw --- he wasn't fleeing, was he?

3 A No.

4 Q He was cooperative?

5 A It was a total peaceful arrest. He did not give
6 us no problems, didn't say anything to me at all. I
7 just picked up the phone and called them, called Scott
8 McDonald. He sent the investigators to take him down
9 from the scene.

10 MS. SAMPSON: Okay. Beg the Court's indulgence.

11 (Pause.)

12 No further questions, Your Honor.

13 THE COURT: Cross?

14 MS. HINES: Thank you, Your Honor, may it please
15 the Court?

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION:

18 BY MS. HINES:

19 Q Now, you're saying it was a Crown Vic, but could
20 have been a Grand Marquee?

21 A Yes, ma'am. That's possible. Same body style.

22 Q Okay. You didn't take any notes?

23 A No, ma'am.

24 Q Okay, and how many people were involved in the
25 apprehension? How many cars, law enforcement?

1 A It was 2012. I do not know the exact number. It
2 was several vehicles. I couldn't tell you exactly how
3 many, but there were several vehicles.

4 Q There were vehicles from SLED?

5 A Yes, ma'am.

6 Q And from the Fugitive Task Force?

7 A Yes, ma'am.

8 Q Were there any road deputies?

9 A Not that I can recall, ma'am.

10 Q Was it just SLED and the Fugitive Task Force?

11 A To the best of my knowledge, yes, ma'am.

12 Q Okay. And how many people were --- how many
13 people are on the Fugitive Task Force or were at that
14 time?

15 A Approximately 11, but most of them have desk
16 duties and some of them are supervisors like my
17 captain.

18 Q Was your supervisor out there?

19 A Yes, ma'am, I believe he was.

20 Q And there were at least four people from SLED out
21 there, correct?

22 A I believe so, ma'am. I don't remember the exact
23 number, but I believe so.

24 Q Okay. But you ---

25 A We typically work with certain people.

1 Q Right. You testified at an earlier hearing in
2 this case that Cal Reighley, Diego Nova, Lieutenant
3 Johnson, and Mike Robinson from SLED were there?

4 A Yes, I believe that is correct.

5 Q And then from the Fugitive Task Force it could
6 have been Investigator Bell, Investigator Hall,
7 Captain Leonard and yourself?

8 A Yes, ma'am, that's all I remember. There may
9 have been one or two more.

10 Q There may have been more?

11 A Yes, ma'am.

12 Q So there were at least eight. There may have
13 been more?

14 A Yes.

15 Q Okay. And when the car was stopped, did one of
16 the law enforcement vehicles pull in front of it to
17 get it to stop?

18 A They stopped in traffic, ma'am. When they
19 stopped in traffic, cars from multiple directions
20 pretty much kept the car from moving. That's
21 typically what we'll do is if they're stopped in
22 traffic, then the car will --- they get out, get the
23 subjects out of the car.

24 Q So the car was completely surrounded by law
25 enforcement vehicles?

- 1 A I don't know about completely surrounded by
2 vehicles, but there was one in the front, and one in
3 the back and then officers were coming out of the
4 cars.
- 5 Q When they came out of the cars, they were armed,
6 had their guns drawn?
- 7 A I assume so. I was farther back. I don't
8 remember, but would assume they would have their
9 firearms out.
- 10 Q The typical procedure would be to have the
11 firearms drawn in that certain situation and come out
12 completely surrounded, guns drawn until they know what
13 they're looking, correct?
- 14 A Yes, ma'am, I'd say so.
- 15 Q Do you have a camera in your car?
- 16 A Ma'am?
- 17 Q Do you have a video camera in your car?
- 18 A No, ma'am.
- 19 Q Does anyone on the Fugitive Task Force have a
20 video camera in their car?
- 21 A No, ma'am.
- 22 Q Do you know if SLED has cameras in their cars?
- 23 A I can't testify to what SLED has in their
24 vehicles.
- 25 Q And you didn't take any notes?

1 A No, ma'am.

2 MS. HINES: No further questions.

3 MS. SAMPSON: Briefly, Your Honor.

4 THE COURT: Briefly.

5 REDIRECT EXAMINATION:

6 BY MS. SAMPSON:

7 Q Corporal Hayhurst, she asked you about the number
8 of people that were there. Is it out of the ordinary
9 to have that many people there?

10 A No, ma'am, absolutely not.

11 Q Why not?

12 A Typically most of our major cases are violent
13 crimes. It takes a good many people to locate any
14 believed suspects.

15 Q Was there an arrest warrant at the time that you
16 were trying to find him?

17 A Yes, ma'am.

18 Q And what was the arrest warrant for that you were
19 trying to find him?

20 A I believe it was homicide.

21 Q Did you know at that time when you were looking
22 for him whether he was armed or not?

23 A No, ma'am.

24 Q Let me ask you this. You said part of what you
25 do, and I think you said this on cross, was to look

1 for people as part of fugitive?

2 A Yes, ma'am.

3 Q You also looked for DeAndre Diggs, the
4 codefendant?

5 A Yes, ma'am, I have.

6 Q Did you find him eventually?

7 A Yes, ma'am.

8 MS. SAMPSON: No further questions, Your Honor.

9 MS. HINES: Nothing further.

10 THE COURT: All right. Have a nice day.

11 MS. HINES: Judge, may we approach?

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, a bench conference was held in the
14 presence, but not within the hearing of the
15 jury.)

16 MS. SAMPSON: The State calls Latora Willingham.

17 LATORA WILLINGHAM,

18 after being duly sworn, testified as follows:

19 THE CLERK: Have a seat. State your full name
20 for the record.

21 THE COURT: Is that phone off, ma'am?

22 THE WITNESS: Yes.

23 THE COURT: Okay. Thank you.

24 DIRECT EXAMINATION:

25 BY MS. SAMPSON:

1 Q Good afternoon, Ms. Willingham.

2 A Good afternoon.

3 Q Can you spell your first name, please?

4 A L-A-T-O-R-A.

5 Q Do you live in Columbia?

6 A Yes, ma'am.

7 Q I'm going to try to keep you short. Are you
8 related to the defendant?

9 A Yes.

10 Q How are you relate to him?

11 A That's my brother.

12 Q Brother. Back on June 28, 2012, did you receive
13 any phone calls from your brother?

14 A Yes.

15 Q You received those after he had been arrested?

16 A Yes.

17 Q And what did he want you to do?

18 A Go to Tashonda Toatley's house and pick up his
19 money.

20 Q Go to Tashonda Toatley's house and pick up his
21 money?

22 A Yes.

23 Q Did he tell you what he want you to do with that
24 money?

25 A Yes.

1 Q He called you from the jail when he did that?

2 A I believe so, I'm not sure.

3 Q But it was after he was arrested?

4 A Yes, ma'am.

5 Q Did you do that?

6 A No, ma'am.

7 Q Did you call Ms. Toatley?

8 A Yes.

9 Q Several --- how many times do you think you
10 called her?

11 A Probably a few times and also tried to contact
12 her through Facebook.

13 Q Did you leave her a Facebook post?

14 A Yes.

15 Q What did it say in general? Do you remember?

16 A No.

17 Q Would looking at your statement refresh your
18 memory?

19 A Uh-huh.

20 Q You can look at it, and I'm going to point you to
21 the second page of it, and do you see --- let me ask
22 you a couple of questions. You spoke with
23 investigators on, it says July 12th; is that correct?

24 A That would be right, yes.

25 Q You did speak with investigators?

1 A Yes.

2 Q Do you remember speaking with Sergeant McDonald?

3 A Yes.

4 Q And he asked you to give him a statement?

5 A He asked me some questions.

6 Q Okay.

7 A Just some questions.

8 Q Some questions, and then did you write this

9 statement or did he write it?

10 A He did.

11 Q He did. Did he read it to you afterwards?

12 A I don't remember.

13 Q That's okay. Did you read it?

14 A No, ma'am, I just answered his questions.

15 Q But you signed it on the bottom?

16 A Uh-huh.

17 Q I'm sorry. Is that a yes or no?

18 A Yes.

19 Q Okay. And when you were talking to him, was he

20 writing this down as you talked?

21 A Yes.

22 Q Okay. On the second page --- you know what, I

23 might have lied. It's on the first page, I'm sorry.

24 It says, "I also posted on Facebook." Do you see

25 that?

1 A (There was no response.)

2 THE COURT: Answer out loud please, ma'am.

3 THE WITNESS: Yes.

4 BY MS. SAMPSON:

5 Q What did you post according to this?

6 A I would see her soon. I would see her soon.

7 Q Is that what you remember posting?

8 A Yes.

9 Q And that was because you wanted to come get the
10 money?

11 A Right.

12 Q Okay.

13 MS. SAMPSON: No further questions, Your Honor.

14 THE COURT: Cross?

15 MR. KRZYSTON: Thank you, Judge.

16 CROSS-EXAMINATION:

17 BY MR. KRZYSTON:

18 Q How are you doing, Ms. Willingham?

19 A Doing good.

20 Q Okay. Now, you never threatened Tashonda
21 Toatley?

22 A No, sir.

23 Q In fact, not only did you give a Facebook post
24 and tell her you would see her soon to get the money,
25 you also called, right?

1 A That's correct.

2 Q And in that message you said that you hoped she
3 still had his money?

4 A That's correct.

5 Q And that you would be by soon to get it?

6 A Correct.

7 Q In fact, on July 1st of you attended church, you
8 actually stopped by Tashonda's house?

9 A Yes, sir.

10 Q Was she there?

11 A No, sir.

12 Q You knew everybody involved in this, right?

13 A Yes, sir.

14 Q You knew Athell?

15 A Yes.

16 Q You knew his brothers?

17 A Yes.

18 Q You knew Jamal?

19 A Yes.

20 Q You knew his brother?

21 A Yes.

22 Q And you knew that they were dangerous?

23 MS. SAMPSON: Objection, Your Honor.

24 MR. KRZYSTON: Basis?

25 THE COURT: Can you all go back to your jury room

1 just a moment. Do not discuss the case. Keep an open
2 mind.

3 (WHEREUPON, the jury left the courtroom at 12:20
4 P.M.)

5 THE COURT: What's your objection?

6 MS. SAMPSON: Your Honor, he asked her did she
7 know if they were dangerous talking about Athell
8 Johnson and Jamal Pratt.

9 THE COURT: I heard the question. What's the
10 objection?

11 MS. SAMPSON: That it's irrelevant. It's
12 prejudicial for the State. We have two people who are
13 dead. We can't prove whether they are dangerous or
14 not. It's irrelevant if she thought they were
15 dangerous or not. It's not relevant. She was not
16 involved in this.

17 MR. KRZYSTON: Judge, I believe it's very much
18 relevant. The State has asserted that William Wallace
19 brought a gun to Mr. Johnson's house and it --- for
20 the express purpose of killing him. Mr. Johnson and
21 Mr. Pratt's reputation are both at issue. His
22 decision to bring a gun could have been related to
23 that. I believe we have the right to bring that out,
24 show that to the jury.

25 MS. SAMPSON: But that would be his knowledge,

1 not her knowledge.

2 MR. KRZYSTON: Judge, I believe the community's
3 knowledge and their reputation about Mr. Johnson,
4 Mr. Pratt again, I think we're entitled to show that
5 they had a reputation in the community for
6 dangerousness under gang activity.

7 THE COURT: Under what theory of evidence are you
8 allowed to do that?

9 MR. KRZYSTON: I believe --- because again, Your
10 Honor, they are asserting that he brought a weapon
11 with the intent ---

12 THE COURT: I need a rule. A rule. There's
13 Rules of Evidence. Let's use the Rules of Evidence.

14 MR. KRZYSTON: Rule 405, Judge, okay, in all
15 cases in which evidence of character or a trait of
16 character of a person is admissible, proof may be made
17 by testimony as to reputation or by testimony in the
18 form of opinion on cross-examination inquiry is
19 allowed --- excuse me, is allowable to relevant
20 specific instances of conduct. We aren't even getting
21 into specific instances of conduct, just community
22 reputation.

23 MS. SAMPSON: Again, I would ask how are the
24 victims who are dead, their character, an essential
25 element of the charge?

1 MR. KRZYSTON: We aren't charged to prove any
2 essential elements of charge. They're asserting that
3 Mr. Wallace took a gun with the intent to kill
4 Mr. Johnson and Mr. Pratt and that puts Mr. Johnson's
5 and Mr. Pratt's character at issue.

6 MS. SAMPSON: And the rule he is talking about,
7 is he doing 404 or 405?

8 MR. KRZYSTON: 405.

9 MS. SAMPSON: 404 --- 405, is specific instances
10 of conduct. It says specifically: "In cases where a
11 character or a trait of character of a person is an
12 essential element of the charge, claim, or defense,
13 proof may also be made of specific instances of that
14 person's conduct."

15 First of all, he didn't ask for specific instance
16 of a person's conduct, he asked for reputation. So
17 that's not even the correct rule. Secondly an
18 essential element of their defense, if it's self
19 defense, perhaps, but we have not heard anything about
20 that. In fact, he said the exact opposite this
21 morning that they weren't when talking about the
22 photographs. So I don't know under what charge, claim
23 or defense the evidence of the victim's specific
24 instances of conduct, which we're not talking about,
25 so I don't know how he is getting this into that rule,

1 first.

2 MR. KRZYSTON: And judge, we're simply --- they
3 are trying to show malice aforethought, and we are
4 simply trying to refute that. 404(a)(2) evidence of a
5 pertinent trait or character of the victim of a crime
6 offered by the accused --- other rather --- oh, I can
7 skip that.

8 MS. SAMPSON: And then that one ---

9 MR. KRZYSTON: Or evidence of the character trait
10 of peacefulness of the victim offered to
11 (unintelligible).

12 THE COURT REPORTER: I'm sorry, I can't
13 understand what you're saying.

14 MR. KRZYSTON: I'm sorry. I believe 404(a)(2)
15 specifically allows us to get into this type of
16 information when the situation is ---

17 THE COURT: 404 deals with proving action and
18 conformity therewith on a particular occasion.

19 MS. SAMPSON: And ---

20 THE COURT: So what does that have to do with
21 what is her knowledge --- this doesn't have anything
22 to do with you, ma'am, do you understand that?

23 THE WITNESS: (Nods in the affirmative.)

24 THE COURT: What is her knowledge of whether or
25 not she knew that the victims were allegedly dangerous

1 have anything to do with the victim's behavior on a
2 particular --- on this particular occasion on June 28,
3 2012, or their action and conformity therewith.

4 MR. KRZYSTON: Because they possibly could have
5 guns in the apartment, Judge.

6 THE COURT: So could have possibly is the issue?

7 MR. KRZYSTON: I mean, his character is directly
8 at issue whether or not he had guns in there, whether
9 he was likely to have guns in there, I believe, is at
10 issue.

11 THE COURT: So how is the evidence of a person's
12 character or a trait of character, but you just ask
13 her were they dangerous, were the victims dangerous,
14 did you know the victims to be dangerous, to which she
15 replied yes. It says evidence of a person's character
16 is not admissible for purposes of proving action and
17 conformity therewith on a particular occasion unless
18 it is evidence of a pertinent trait of a character of
19 a victim offered by an accused.

20 So I need you to make another jump to get that
21 in.

22 MR. KRZYSTON: And Judge, we're not trying to
23 prove action --- conduct on Mr. Johnson's part in
24 conformity with a character trait. We're offering it
25 to prove what the community knows about Mr. Johnson,

1 and it can go to negate the fact that Mr. Wallace had
2 intent when he went there when he armed himself prior
3 to getting to the apartment.

4 THE COURT: So what do you know about these
5 people being dangerous?

6 THE WITNESS: Athell, he has a --- he's known in
7 the neighborhood with the shoot you. Either you shoot
8 him --- either you shoot him or you going to get shot,
9 basically. That's what I know about Athell. I also
10 grew up with Athell, due to the community, Starlight.
11 That's where I had knew him from.

12 THE COURT: Starlight off 48 before you get to
13 Bluff Road.

14 THE WITNESS: Yes, near Bluff Road.

15 THE COURT: Okay.

16 THE WITNESS: Mr. Pratt, don't know much about
17 Mr. Pratt. Most of what I know about Mr. Pratt is
18 hearsay. I really can't speak on Mr. Pratt's part of
19 his character.

20 THE COURT: Okay.

21 THE WITNESS: And...

22 MS. SAMPSON: Can I ask her a follow-up based on
23 what she said?

24 THE COURT: Sure.

25 MS. SAMPSON: Based on what you said, you said

1 you didn't know anything about Pratt because it was
2 based on hearsay. Had you ever seen Athell Johnson
3 shoot a gun?

4 THE WITNESS: No, ma'am.

5 MS. SAMPSON: You never saw him shoot anyone?

6 THE WITNESS: No, ma'am.

7 MS. SAMPSON: So what you said about his
8 reputation as being somebody who ---

9 THE WITNESS: That's hearsay, yes.

10 MS. SAMPSON: So that's hearsay, as well.

11 THE COURT: So you have no firsthand knowledge,
12 no personal knowledge, about either one of these
13 people being dangerous that you have seen with your
14 own eyes.

15 THE WITNESS: Never seen him pull a gun, no, sir.

16 THE COURT: So word on the street is Athell
17 Johnson will shoot you?

18 THE WITNESS: Yes, sir.

19 MR. KRZYSTON: And you're obviously aware of his
20 reputation?

21 THE WITNESS: Yes, due to we all grew up in the
22 same neighborhood. Athell also hung out at my
23 grandparent's house.

24 (Pause.)

25 THE COURT: I think 404(a)(2) allows you to get

1 into the character of a victim to prove action and
2 conformity therewith on a particular occasion, but
3 this witness doesn't possess that knowledge. She
4 doesn't know that. She has no first hand --- and this
5 doesn't have anything to do with you, ma'am. This is
6 not me attacking you, I promise.

7 THE WITNESS: Yes, sir.

8 THE COURT: But she has no personal --- I mean,
9 did you know Mr. Krzyston that she had no personal
10 knowledge of all this?

11 MR. KRZYSTON: Of what?

12 THE COURT: That she has no personal knowledge
13 that the victims are dangerous?

14 MR. KRZYSTON: That --- obviously not.

15 THE COURT: So you just asked her that question
16 and you never asked her that question before?

17 MR. KRZYSTON: We had talked about his reputation
18 in the community before, yes.

19 THE COURT: You never thought to ask her how did
20 you know that?

21 MR. KRZYSTON: Well, because it was specifically
22 directed at community reputation and opinion, so no, I
23 did not ask her. I was not intending to illicit
24 specific instances of conduct.

25 THE COURT: You didn't ask her whether or not she

1 truly knew that stuff or whether or not that was just
2 stuff that she heard in the community?

3 MR. KRZYSTON: Again, no, because my question was
4 directed specifically at what she knew and what the
5 community knew and that the community --- what was his
6 reputation was in the community.

7 THE COURT: So do you have any case that says you
8 can ask this question?

9 MR. KRZYSTON: No, Judge. I was just
10 specifically relying on 404 and 405.

11 THE COURT: Do you have any case that says they
12 can't ask this question?

13 MS. SAMPSON: I'm sorry, did you say can or
14 can't? I'm sorry.

15 THE COURT: That they can't ask this question.

16 MS. SAMPSON: I would go straight back to the
17 case, Your Honor. Again --- hold on one second, I
18 would point you to --- give me one second. I would
19 point you to State v. Lyle which talks about that and
20 how the rule works.

21 THE COURT: I thought Lyle was a 404(b) case.

22 MS. SAMPSON: I'm sorry. Yes. I had my head
23 down. I wasn't sure if I said that loud enough.

24 MR. KRZYSTON: Judge ---

25 MS. SAMPSON: It outlines when you can and can't.

1 And, again, I would --- in this particular case, she
2 has no first hand knowledge. She did not see them.
3 She specifically said that she didn't see them pull a
4 gun.

5 THE COURT: She has no information about Pratt at
6 all.

7 MS. SAMPSON: At all.

8 THE COURT: So that question was completely
9 inappropriate.

10 MS. SAMPSON: Then the only information that, I
11 believe, she has given us at this point about Johnson
12 is she has heard that if you don't shoot him, he will
13 shoot you first or something to that effect, but when
14 asked, she does not know that and she never saw that.
15 That is just what she heard. As you already pointed
16 out, 404 is to get into the specific acts except to
17 offer --- I'm not saying it, right. I'm sorry. It's
18 a rule of exclusion. It says you cannot do that
19 unless it is to proving action and conformity
20 therewith, so even if somehow she did, they have to be
21 able to make that second step that that's proving a
22 character trait and their actions are in conformity
23 therewith. The only actions we have is that they did
24 get shot. They're not going to be --- unless they
25 know something I don't know, their action whether they

1 had a gun at the beginning --- I don't know, maybe
2 they are. At this point, we haven't heard anything
3 that would support, especially not from this
4 particular witness, that information.

5 MR. KRZYSTON: And, Judge, I would know that in
6 Re: Greenfield Estate, which is 245 S.C. 595, Rule 405
7 (a) allows evidence of character to be in the form of
8 an opinion or reputation as evidence.

9 MS. SAMPSON: And then again, 405 is when you've
10 already gotten into the reputation or the opinion
11 being of a particular essential element of the crime,
12 charge, or offense, so he's going back and forth
13 between the two rules, but they are for two different
14 purposes.

15 405 is for when you went to get it in because
16 it's an essential element of the crime of their
17 defense. 404 is when you want to get it back to the
18 victim for action and conformity therewith.

19 THE COURT: But what evidence does the defense
20 have that Mr. Johnson or Mr. Pratt did anything
21 dangerous on June 28, 2012?

22 MR. KRZYSTON: There is none, Judge.

23 THE COURT: Okay. So you have to have --- the
24 purpose of 404 is proving action and conformity
25 therewith on a particular occasion. That particular

1 occasion in this case is June 28, 2012, so is there
2 any evidence that you intend on introducing that says
3 they did anything that was dangerous on June 28, 2012?

4 MR. KRZYSTON: Judge, I believe in the statements
5 disclosed by the State to us, DeAndre Diggs, the
6 codefendant's statement indicates that Mr. Johnson did
7 have a firearm.

8 THE COURT: Well, having a firearm doesn't
9 necessarily make you dangerous.

10 MR. KRZYSTON: But that in conjunction with the
11 community reputation information would lead to that
12 supposition.

13 MS. SAMPSON: Your Honor, ownership of a gun is
14 not an action. If he had picked up the gun, done
15 something with a gun. Otherwise ---

16 THE COURT: I mean, is Diggs going to come in and
17 say one of the victims pointed a gun at him?

18 MS. SAMPSON: No. I gave them all that
19 information. It's in his written statement. They're
20 tied up almost as soon as they get there. Nobody
21 pointed a gun at Mr. Diggs.

22 THE COURT: Okay. I'm going to deem at this
23 point that that testimony is inadmissible. It doesn't
24 have anything to do with proving action and conformity
25 therewith on a particular occasion. That particular

1 occasion being the incident date of this crime. In
2 addition, further as to Mr. Pratt, she has no personal
3 or firsthand knowledge of anything about Mr. Pratt,
4 which is what she told me under oath, so the question
5 shouldn't have even been asked of Mr. Pratt period.

6 It should have been strictly related to Athell
7 Johnson, but she has no basis to make a statement as
8 to their reputation in the community because she has
9 no firsthand knowledge of it.

10 I mean, character evidence --- to come in and say
11 somebody has a character evidence or their reputation
12 in the community, you have to have firsthand
13 knowledge, and then based upon that firsthand
14 knowledge, you are allowed to form an opinion. I
15 mean, I have firsthand knowledge about Ms. Hedgeco's
16 reputation. She has worked with me for the past 18
17 months. I have seen her, I have dealt with her, I
18 have come in contact with her. Therefore I can form
19 an opinion about her reputation based on what I have
20 seen with my own eyes.

21 This young lady has heard things on the street
22 about Mr. Johnson that she has no firsthand knowledge
23 of, and then she is forming an opinion based upon
24 information that she has heard that she doesn't have
25 any way to know if it is true or not true.

1 MR. KRZYSTON: And judge, she ---

2 THE COURT: That's your disconnect, right there.
3 Just because someone heard something on the street
4 doesn't mean it's reputation character. For
5 reputation --- for character evidence like this to
6 come in, the generalized form of what's their
7 reputation in the community, you have to establish how
8 the person knows what the reputation is, like your
9 preacher comes in and says, I've seen him at church
10 every Sunday for the past five years and I have seen
11 him at meetings on Sunday night and Wednesday night
12 and based on that have you been able to form an
13 opinion about his reputation in the community? Yes, I
14 have. What is it? It's good. It's bad. Whatever it
15 may be, but letting someone testify to information
16 that she what his no firsthand knowledge of in any
17 way, shape, or form is just inappropriate. I'm not
18 going to allow it. I'm going to order that stricken,
19 and I'll tell the jury to disregard that information.

20 What else?

21 MR. KRZYSTON: Okay. Judge.

22 MS. HINES: Judge, while we have the jury out, I
23 need to make a motion for a mistrial which I objected
24 to on the record during Corporal Hayhurst's testimony.
25 Again, it's the same issue that we had with Deputy

1 D'Antoni. Corporal Hayhurst testified in front of the
2 jury that he got information from probation. We
3 brought this up at pretrial two weeks ago in Camden.
4 We were told that the officers had been told that they
5 cannot say they got it from probation and they
6 wouldn't be testifying to that. He brings it up
7 again. So again, I'm moving for a mistrial on that
8 basis. This the second time that the officers in this
9 case have brought up the fact, or trying to get in
10 front of the jury, the fact that Mr. Wallace has prior
11 dealings with law enforcement. We now have them
12 carrying information about probation having his
13 contact information, and I'm moving for a mistrial
14 again.

15 I asked not three hours ago that the court order
16 the State to instruct their officers, once again, that
17 they can't get into that 404(b) testimony. For that
18 reason, I am moving for a mistrial.

19 MS. SAMPSON: Your Honor, he never once said he
20 got any information from probation, pardon and parole.
21 What he started to say was someone got information and
22 he started to name the different places where they get
23 the information. He said the word probation. She
24 objected. That's the only word that got said. I then
25 asked some clarification questions: do you know where

1 the information comes from, no. We clarified all of
2 that, that he had no idea where the information came
3 from, and we moved on. He never once said the
4 information was gotten from probation or from anybody,
5 and we specifically went back over that.

6 THE COURT: I thought he said they got
7 information from probation.

8 MS. SAMPSON: And then he stopped and I clarified
9 it that he doesn't ---

10 THE COURT: The problem, Ms. Sampson, is you were
11 15 questions past what was even necessary to ask him.
12 It didn't even matter.

13 MS. SAMPSON: I didn't --- I'm sorry.

14 THE COURT: I mean, the State --- you lead all
15 these witnesses down this path where they virtually
16 have no choice but to say something that I've said is
17 inadmissible. I mean, the information from Corporal
18 Hayhurst, besides the fact that it was overkill for
19 lack of a better term, I mean, you just kept leading
20 him down this road where he had nowhere left to go but
21 to say they got information from probation. I mean,
22 it was a complete --- the question that was asked of
23 him was completely and totally unnecessary just like
24 the question of Mr. D'Antoni, completely and totally
25 unnecessary.

1 MS. SAMPSON: She asked that.

2 THE COURT: I mean, you have to --- no. That's
3 not true. Mr. Eaton asked the first question that
4 elicited the ---

5 MS. SAMPSON: I'm sorry.

6 THE COURT: --- Alvin S. Glenn Detention Center
7 website response. When you all are dealing with these
8 witnesses that you know has information that I've told
9 you is not admissible, you have got to maneuver around
10 the facts. You have got to say, based upon the
11 information that you received after you went to SLED
12 and met with the fugitive center, did you eventually
13 find him. I mean, you left Corporal Hayhurst
14 virtually no choice but to say they got information
15 from probation.

16 MS. SAMPSON: I believe my question was about the
17 car, not about him. I was asking him about the car.

18 THE COURT: What if he got the car information
19 from probation?

20 MS. SAMPSON: He didn't. Well, and I knew that.
21 He did not get that information from probation. He
22 got that from Diego Nova.

23 THE COURT: What did it matter where they got the
24 car information from?

25 MS. SAMPSON: Your Honor, we were talking about

1 the car. I can't let the jury think we just magically
2 pulled this information out of the air when their
3 whole thing is that the officers didn't do what they
4 were supposed to. That was part of their opening. I
5 needed to at least establish that he got that
6 information from someone at SLED. I didn't ask him
7 that.

8 THE COURT: You had already established that. I
9 went to SLED to gather information. I got the
10 information. We learned he was in the Bush River Road
11 area.

12 MS. SAMPSON: And then I asked only about the
13 car. I didn't ask about him --- that's specifically
14 why I said the car, because the car was not his. The
15 car was Ms. Conway's.

16 THE COURT: All right. Your motion for a
17 mistrial is denied. It does not reach the level of
18 manifest necessity. There is a case on point State
19 vs. Creech that says the mention of probation does not
20 warrant a mistrial and it does not in this case, nor
21 does the cumulative facts and circumstances rise to
22 the level, but I am warning the State right now, this
23 man has been sitting in jail for over two years
24 waiting on this trial. Waiting on his day in court.
25 If you know that there is a witness that has

1 information that I have deemed inadmissible and they
2 are not gently taken around those issues, and I will
3 allow you to lead around those issues, then it's going
4 to be dealt with accordingly.

5 MS. SAMPSON: If we can lead, Your Honor, we can
6 keep that from happening.

7 THE COURT: You can lead in those circumstances
8 where you're gathering information or collecting
9 information that I have deemed inadmissible.

10 MS. SAMPSON: Thank you, Your Honor.

11 THE COURT: All right. As to the dangerous
12 comment, I'm telling the jury to disregard that
13 comment and to not consider it.

14 If you want to put in reputation, character of
15 the evidence of the victims on the particularly date,
16 you're going to have to have at least somebody that
17 has some kind of firsthand knowledge, and you need to
18 proffer it ahead of time.

19 MR. KRZYSTON: Certainly, Judge.

20 THE COURT: All right. Bring them back in.

21 (WHEREUPON, the jury entered the courtroom at
22 12:45 P.M.)

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, you
25 will disregard any comment about Mr. Johnson or

1 Mr. Pratt being dangerous.

2 You can continue, Mr. Krzyston.

3 MR. KRZYSTON: Thank you, Judge. May it please
4 the Court.

5 MR. KRZYSTON: Ms. Willingham, I have no further
6 questions for you. Please answer anything Ms. Sampson
7 has for you.

8 THE COURT: Redirect?

9 MS. SAMPSON: No, sir.

10 THE COURT: Thank you very much. Have a nice
11 day.

12 How long is your witness?

13 MS. SAMPSON: We have one short one.

14 THE COURT: Okay. Let's do one short one and
15 then take a lunch break.

16 MR. COBLE: Okay. The State would call
17 Investigator --- Sergeant Brian Metz.

18 THE COURT: Have a nice day, Ms. Willingham.

19 THE WITNESS: Thank you.

20 MS. SAMPSON: May we approach?

21 (WHEREUPON, a bench conference was held in the
22 presence, but not within the hearing of the
23 jury.)

24 THE COURT: Who is this; is this witness Metz?

25 MS. SAMPSON: Yes, sir.

1 THE COURT: Is this Metz?

2 Investigator Metz, please come forward and be
3 sworn.

4 BRIAN METZ,

5 after being duly sworn, testified as follows:

6 THE CLERK: Please have a seat. State your full
7 name.

8 THE WITNESS: Brian Metz.

9 DIRECT EXAMINATION:

10 BY MR. COBLE:

11 Q Investigator Metz, where are you currently
12 employed?

13 A At the Richland County Sheriff's Department.

14 Q How long have you been there?

15 A Thirty-two years.

16 Q And in what capacity, in the relatively recent
17 times, what's your role?

18 A I'm an investigator assigned to the technical
19 services unit, which is part of the criminal
20 investigative division.

21 Q And what are some of the things you do in that
22 division?

23 A The technical services units does a large number
24 of things. There are two of us, and we both do
25 computer forensics. We've been trained through the

1 Secret Service to do computer forensics. We do cell
2 phone downloads, pull videos from incident locations,
3 and at times will clip those videos for media release
4 and make what you normally see on the news at night
5 and have that distributed to the media. We will at
6 times place cameras and video systems at areas that
7 are having crime problems and then collect the videos
8 from there also.

9 We also have alarms that we can place at
10 different locations that are having problems and then
11 a lot of our time would be involved with some of the
12 investigators and anything they have computer related
13 or anything such as that.

14 Q I apologize. Is it investigator or sergeant?

15 A Investigator.

16 Q Were you in that same capacity and role in June
17 of 2012?

18 A I was.

19 Q And what was your involvement with Captain Scott
20 McDonald in this case?

21 A My first involvement with him, and I think I was
22 actually on the road, but he instructed me to go to
23 some apartments off Garners Ferry Road. They were
24 looking at video, but having problems downloading it.

25 Q Did you go help download it?

1 A I went and downloaded the video from the machine
2 at the apartment complex.

3 Q And who did you go to speak to about that? Do
4 you recall?

5 A When I got there, there were several
6 investigators. I don't recall if Captain McDonald was
7 there, but there were several investigators there.

8 Q Was there somebody there from the property
9 management?

10 A There was. The actual person was in the main
11 office and I spoke with the property manager that were
12 there on the scene.

13 Q Did you get a chance to view the video of that
14 date?

15 A I did.

16 Q Did it fairly and accurately reflect what
17 happened in that scene from what you could have seen
18 outside?

19 A It did.

20 MR. COBLE: Beg the Court's indulgence.

21 (WHEREUPON, State's Exhibit Numbers 38 and 39
22 were marked for identification only.)

23 BY MR. COBLE:

24 Q Investigator Metz, did you have a chance to
25 review this video when has been marked as State's 38?

1 A I did.

2 Q Does that video fairly and accurately reflect
3 what you saw on June 28th?

4 A It does.

5 Q Your Honor, I would now move ---

6 MS. HINES: Objection, Judge. May we approach?

7 THE COURT: Yes, ma'am.

8 (WHEREUPON, a bench conference was held in the
9 presence, but not within the hearing of the
10 jury.)

11 BY MR. COBLE:

12 Q Investigator Metz, let me clarify this, does that
13 fairly and accurately reflect the video that you
14 watched and secured with property management on
15 June 28th?

16 A It does.

17 MR. COBLE: Your Honor, I would now move State's
18 Exhibit 38 into evidence.

19 MS. HINES: No objection.

20 THE COURT: Without objection, State's Exhibit
21 Number 38.

22 (WHEREUPON, State's Exhibit Number 38 was
23 admitted into evidence.)

24 BY MR. COBLE:

25 Q Did you get a chance to watch any other videos

1 that day, Investigator Metz?

2 A Not that day.

3 Q Did you get to the next day?

4 A The next day, the next afternoon.

5 Q What video did you watch then?

6 A It was from the Dollar General store off Broad
7 River Road.

8 Q How did you get involved to go to the Dollar
9 General store?

10 A Again, it was requested by the investigators,
11 specifically by Captain McDonald to go to that store
12 and download some video from there.

13 Q Did you download that video?

14 A I did.

15 Q Did you watch the video that had been --- excuse
16 me, what day --- what video had been recorded, what
17 timeframe, do you recall?

18 A I would have to look at the video, I don't
19 remember offhand.

20 Q It wasn't ---

21 A It was --- if I recall correctly, it was from the
22 28th that was the timeline on the video.

23 Q Did you have a chance to view that video with the
24 store manager?

25 A I did.

1 Q Did you record that video?

2 A I did.

3 Q Have you had a chance --- I'm going to show you
4 what's been marked as State's Exhibits 39.

5 Have you had a chance to view this video?

6 A I have.

7 Q Does that video fairly and accurately represent
8 the video as you saw it with the store manager on
9 June 29th?

10 A That's correct.

11 MR. COBLE: Your Honor, I would now move to offer
12 State's Exhibit 39 into evidence.

13 MS. HINES: Without objection.

14 THE COURT: State's Exhibit 39 without objection.

15 (WHEREUPON, State's Exhibit Number 39 was
16 admitted into evidence.)

17 BY MR. COBLE:

18 Q Now, going back to June 28th, did you have any
19 more involvement with Captain Scott McDonald?

20 A I believe it was --- not after the video.

21 Q Did you help him with a phone?

22 A I believe that was on the morning of the 29th.

23 MS. HINES: Objection. We have previously
24 objected. I'd like to renew my objections at this
25 time.

1 THE COURT: All right. Fair enough. The
2 objection is overruled.

3 THE WITNESS: The captain had brought me a cell
4 phone and asked me to download the information so that
5 they could then review it.

6 Q Did you then do that?

7 A I did.

8 Q What is the process for downloading a cell phone?

9 A In this case, we used a piece of hardware that is
10 made by a manufacturer that specialized in cell phone
11 forensics. The company is called Cellebrite. They
12 have a device called a UFED, a forensics device, and I
13 used that device to download the information.

14 Q What type of information --- when you normally do
15 this, what type of information is taken off of a cell
16 phone?

17 A It depends greatly on the cell phone, not only
18 the type of operating system that's on the cell phone,
19 whether it's Android or Apple. It depends on the
20 model, but it can be anywhere from the contact list
21 that's on the phone, the call logs that are on the
22 phone, text messages and on some of the newer phones
23 you get into much more information. You could get
24 into what access points were being accessed by the
25 location of those access points, pictures that were

1 taken, of course, on there, with some of those you can
2 get those, and of course, you can actually get
3 location information, so there's a large amount of
4 information you can get off a cell phone.

5 Q And after you download this information, how do
6 you --- what type of form do you get it in?

7 A When I download it, I'll have it into a PDF form,
8 which is a document that most people can read on their
9 computers. Then I'll put it on a CD. It will have a
10 PDF and all the files that go with it that the PDF
11 reads, and then I get that CD to the investigator.

12 Q Is that what you did in this case?

13 A It is.

14 Q Did you go through and look at all this
15 information after you downloaded it?

16 A I will look at it to make sure, of course, the
17 machine actually tells me whether it was successful in
18 the download, but then I'll look at it to make sure it
19 appears that everything was correct, but not as far as
20 going through it and reading all the text messages. I
21 wouldn't know enough about the case to do that anyway.

22 Q And that's what you did in this case?

23 A That's correct.

24 MR. COBLE: Beg the Court's indulgence.

25 (Pause.)

1 Now, Investigator Metz, just briefly, the video
2 at 8100 Garners Ferry Road, the security footage, you
3 had a chance to view that, correct?

4 A I did.

5 Q Did it work properly?

6 A It did.

7 Q Does the time work correctly?

8 A The time on the D.V.R. was incorrect. It was
9 actually 13 minutes fast, but other than that, it
10 worked correctly. There was one camera that appeared
11 that it was either shorting or having a power problem.
12 It was flickering on and off.

13 Q But beyond that, it was normal?

14 A Beyond that it was normal.

15 MR. COBLE: Thank you. That's all.

16 THE COURT: Cross?

17 MS. HINES: Yes, I have a few questions.

18 CROSS-EXAMINATION:

19 BY MS. HINES:

20 Q Hello, Investigator Metz, how are you doing?

21 A Fine. How are you?

22 Q I'm good. I remember you back from cold case
23 days.

24 A Uh-oh.

25 Q Okay. So when you got this video from 8100

1 Garners Ferry Road how many camera angles do they have
2 out there?

3 A I would go to the video to be sure, but I believe
4 that system has 16. I'm not --- I think they were all
5 working. I'm not positive.

6 Q And did you view all 16 angles?

7 A On that system, you have a screen that shows all
8 of the different video screens in smaller blocks, so I
9 could see that they were all there.

10 Q Was there a camera that shows the front of the
11 400 building, the parking lot in front of the 400
12 building?

13 A I don't recall.

14 Q The cameras are basically showing --- what all do
15 the cameras show, the 16 cameras?

16 A I would have to look at each one, and some of the
17 areas when I look at it, I can tell what it was, but I
18 don't know where it is. For instance, in that one,
19 there was one that was showing like a back office or
20 something such as that. It shows just about where the
21 employees and the company decided to put cameras,
22 front parking lot, office areas, that type of thing.

23 Q But there were 16 cameras?

24 A I'm not positive on that. I believe. I'm sure
25 that machine had at least 16, but you'd have to look

1 at the video to be sure.

2 Q Okay. And how many angles were at the Dollar
3 General?

4 A I know there were multiple angles, but I don't
5 recall exactly how many. That's another machine that
6 was an ADT machine that is similar where you can look
7 at either each --- view each independently or you have
8 a screen that shows you all the videos.

9 Q Okay.

10 MS. HINES: I have no further questions of this
11 witness, Judge.

12 THE COURT: All right.

13 MR. COBLE: Nothing further.

14 THE COURT: Have a good day, Investigator.

15 All right. Ladies and gentlemen, we're going to
16 break for lunch now. It's one o'clock. The plan is
17 to start back at 2:30. Remember that you are not to
18 discuss the case with anybody. Keep an open mind.
19 You may go out, enjoy your lunch. Be back in your
20 jury room at 2:30 ready to go.

21 Everyone remain seated while the jury is
22 dismissed.

23 (WHEREUPON, the jury left the courtroom at 1:01
24 P.M.)

25 THE COURT: All right. Anything further before

1 we break for lunch?

2 MS. HINES: Yes, Judge. We have another
3 discovery issue. When we went to the sheriff's
4 department to view the video that Investigator Metz
5 just testified to, we saw that there were maybe just
6 four --- Investigator Metz, could you just wait,
7 please? Hold tight real quick. There were four or
8 five angles were weren't shown 16 different cameras.
9 We were shown the video that played in the office and
10 the front gate. We weren't shown anything in the
11 parking lot. We definitely weren't shown 16 cameras.
12 There were a number of the little screen things that
13 were black that didn't have any movement showing in
14 it. Investigator Metz just testified that he thought
15 there were 16 cameras. We certainly weren't shown 16
16 camera angles and there's potentially exculpatory
17 information on there. We weren't shown any camera
18 from the parking lot that would show them going in or
19 going out. We were shown no camera angle of the
20 parking lot of 8100 Garners Ferry Road, any other part
21 of the parking lot other than the right at the front
22 gate, one camera showing cars going in the front gate
23 and one camera showing cars going out. That wasn't in
24 the parking lot. There is the potential to have
25 other --- to see witnesses, people who could have been

1 a witness to this that we could have explored. We
2 just weren't shown that. So we --- it may have
3 corroborated his original statement to the police. We
4 just don't know. We're --- so based on the discovery
5 of yet another discovery issue that we have, we move
6 to ---

7 MS. SAMPSON: Your Honor, my understanding is
8 they were --- none of the State's attorneys were at
9 that showing of the video. They just went to the
10 sheriff's department. We weren't there. I can't
11 testify to what they were shown or not shown. You
12 asked that they be allowed to see it and they were.
13 My understanding briefly from looking at McDonald's
14 and I'll ask Investigator Metz to make sure, there
15 were only four or five cameras that were on that video
16 that they're shown because that's all we have on the
17 download.

18 INVESTIGATOR MCDONALD: I showed the video to the
19 defense. There were four or five screens that had
20 videos on it and that was it. The rest were black.

21 THE COURT: Is that what's in evidence now?

22 MS. SAMPSON: Yes, sir.

23 THE COURT: Okay.

24 MS. HINES: Again, Investigator Metz just
25 testified to 16 cameras, and ---

1 THE COURT: No, that's not what he testified to
2 Ms. Hines. That's not, correct. What he said was, "I
3 don't remember how many cameras were on there. I
4 would say, I'm guessing, that there were at least 16."

5 MS. HINES: Judge, my notes indicate something
6 different. My first question I asked him was, "How
7 many different camera angles were there? The system
8 has 16 camera angles. I think that they were all
9 working."

10 MS. SAMPSON: He didn't say they were all
11 recording and that's what we're talking about is
12 whether we have four or five recordings. All we have
13 are the four or five that she has seen. That's all
14 that's on there. That's all we can provide them.

15 THE COURT: Investigator Metz, do you have any
16 camera angles that show something that you haven't
17 turned over to the solicitor's office?

18 THE WITNESS: No, sir.

19 THE COURT: Okay. Captain McDonald, do you know
20 of any ---

21 THE WITNESS: No.

22 THE COURT: --- camera angles of 8100 Garners
23 Ferry Road that you have not turned over to the
24 solicitor's office?

25 THE WITNESS: No, sir.

1 THE COURT: Did you show the defense all the
2 camera angles that you had of 8100 Garners Ferry Road?

3 THE WITNESS: I did. I showed them the two
4 camera angles coming in the gate and going out the
5 gate. I didn't show the other two or three that were
6 there. They appeared to be of the office area and
7 things like that.

8 THE COURT: Okay.

9 THE WITNESS: We can show that to them if you
10 like.

11 THE COURT: All right. What else, Ms. Hines?

12 MS. HINES: Judge, that's all I have. I would
13 ask for a mistrial on the basis of the information
14 that we have.

15 THE COURT: There's just no basis for that. I
16 mean, they have turned over everything that they have.
17 They showed it to you. You just allowed it to go into
18 evidence without objection. So the fact that
19 Investigator Metz was wrong or right or your questions
20 or you're wordings were wrong or right does not
21 necessitate a mistrial nor does it necessitate or even
22 come close to a discovery violation. Investigator
23 Metz may have been wrong. That's why he didn't answer
24 the question definitively and gave the caveat in there
25 that it's been a long time since I've seen it and I

1 doesn't remember it exactly. And, he said, "I think."
2 That's not a discovery violation and it's certainly
3 not anywhere close to grounds for manifest necessity
4 of a mistrial.

5 All right. What next?

6 MS. SAMPSON: Nothing from the State, Your Honor.

7 THE COURT: All right. 2:30.

8 (WHEREUPON, a lunch break was taken.)

9 (WHEREUPON, State's Exhibit Numbers 40 through 81
10 were marked for identification only.)

11 MS. HINES: Judge, we have a legal issue to
12 address.

13 THE COURT: Okay.

14 MS. HINES: I believe the State intends to
15 introduce pictures with the next witness, which --- I
16 think it's with the next witness. At the scene, at
17 Beckham Swamp, basically what happens is they go out,
18 they find six shell casings at one location?

19 THE WITNESS: That's correct.

20 MS. HINES: Labeled (A) through (G) on the
21 evidence markers. They determined --- Investigator
22 Schroeder in his report determines that those ---
23 those were determined to not be related to this
24 incident. They then find the ones that they believe
25 are related to this incident on down the road about

1 300 yards, 250, 300 yards away from the initial ones
2 they found. They were tested by David Collins, and
3 they were the ones that were found not to be related
4 to the gun that we had an issue with at pretrial. I'm
5 objecting based on relevance, because if they have
6 been determined not to be related to this incident, I
7 don't understand what the relevance is to introducing
8 photographs of the shell casings.

9 THE COURT: All right. You just completely
10 confused me. Are there two sets of shell casings?

11 MS. HINES: Yes.

12 THE COURT: Are either one of them connected to
13 this case?

14 MS. HINES: One is.

15 MR. EATON: One is.

16 MS. HINES: The other is not. I'm objecting to
17 the ones that are not.

18 THE COURT: Good. That makes sense. Okay.

19 MR. EATON: Your Honor, that is correct. There
20 were shell casings found near the scene where she was
21 shot that were excluded, and these pictures just show
22 markers of where they found those. I believe it's
23 relevant to the extent that it shows the investigation
24 was thorough. One of the things that stated in
25 opening is that perhaps law enforcement didn't do

1 everything they should have done, so this shows they
2 did a thorough job here, that these were looked at and
3 ruled out, and that the correct one was taken into
4 evidence and analyzed.

5 THE COURT: They did find shell casings off
6 Beckham Swamp Road that were a match to a firearm?

7 MR. EATON: They were not. There was one that
8 was matched.

9 THE COURT: Okay.

10 MR. EATON: It's rural area. People may be
11 shooting around there.

12 THE COURT: I don't know why we need pictures of
13 ones that were not, so...

14 MR. EATON: And some of these pictures depict the
15 entire scene. They just have these markers on them.

16 MS. HINES: And judge, as to the photo that
17 depicts the road, the housing markers on it, there are
18 photographs of the road without the markers.

19 THE COURT: There was a photograph of the road
20 already in.

21 MS. HINES: Correct.

22 THE COURT: I don't know why we need to confuse
23 the issue about other shell casings found which we
24 know don't have a connection to the case. It's
25 confusing.

1 MS. SAMPSON: The only thing I would add, Your
2 Honor, as long as they're not limited to say anything
3 about those or anything. That is our concern.

4 THE COURT: Well, if they stand up and say
5 something along the lines of they didn't go out and
6 test all those other shell casings, that's a different
7 story, but putting in shell casings that are not
8 connected to this case, even though they were found
9 there --- and I understand why law enforcement took
10 them, and they should have taken them and they should
11 have tested them and all that was appropriate. It's
12 just 403 confusion as to, you know, what those shell
13 casings really have to do with anything, so unless
14 they open the door, nothing about --- they don't need
15 to be talking about other shell casings.

16 MR. EATON: Yes, Your Honor.

17 MS. HINES: Judge, we have another issue.

18 THE COURT: Okay.

19 MS. HINES: It's come to my attention just about
20 ten minutes ago that there may be some audience
21 members who are wearing shirts that have photographs
22 of the deceased or maybe a memorial to the deceased in
23 this case.

24 THE COURT: Okay.

25 MS. HINES: I believe it's more prejudicial ---

1 it's prejudicial, but I think it's a violation of the
2 Fourteenth Amendment right to have a fair trial. I
3 think it prejudices the jury to have those in the
4 audience. I believe that their --- I'm waiting on
5 case law on point.

6 THE COURT: Oh, there's case law directly on
7 point.

8 MS. HINES: I know there is. Yes, sir.

9 THE COURT: If anybody --- there is no buttons or
10 shirts or anything like that and the young lady that's
11 leaving the courtroom now, that's the first time I've
12 seen her in the audience the entire trial or seen that
13 shirt. I appreciate you're bringing that to my
14 attention.

15 You don't need to go find that case.

16 MS. HINES: Okay.

17 THE COURT: There is a case directly on point
18 that says anything --- this is no disrespect to
19 anybody's family in any way, shape, or form, but any
20 shirts, buttons, anything like that are completely and
21 totally inappropriate in the courtroom. She is
22 welcome. That young lady, I see a victim advocate in
23 the back of the room. That young lady is welcome to
24 go turn that shirt inside out and come back into the
25 courtroom. I'm not trying to exclude her from the

1 courtroom, but nothing like that will be allowed or
2 permitted.

3 Mr. Dye, will you keep an eye out for that for
4 me.

5 MS. SAMPSON: Your Honor, will you instruct?
6 That's the first I've seen ---

7 THE COURT: I don't believe anybody is trying to
8 do anything, but that will be the rule. So, Mr. Dye
9 or Mr. Tolbert, if you see anything like that, just go
10 ahead and escort them out. They can turn their shirt
11 inside out or choose not to come in, whichever one
12 they want to do.

13 Thank you for bringing that to my attention,
14 Ms. Hines.

15 MS. HINES: Thank you, Judge.

16 THE COURT: Anything else?

17 MS. SAMPSON: Your Honor, we just need to be
18 clear. I don't know which numbers she is objecting
19 to. I don't think they were all the same thing.

20 THE COURT: Why don't you let me see them.

21 MR. EATON: It was 40 through 44.

22 THE COURT: Okay. Why don't you just let me see
23 them.

24 MR. EATON: Okay. You want to see them, Your
25 Honor?

1 THE COURT: Yeah.

2 Which one is of the shell casing that matches?

3 MR. EATON: None of those, Your Honor.

4 THE COURT: Okay. All right. So 44, 43, 42,
5 that's not a match.

6 MR. EATON: No, sir.

7 THE COURT: And 41 and 40 are out. They confuse
8 the issue, and the picture of the road in the area is
9 already in. I'll keep these. Hand me that stack
10 there.

11 MS. HINES: Thank you, Judge.

12 MS. SAMPSON: And one more at issue.

13 THE COURT: Yes, ma'am.

14 MS. SAMPSON: Are you objecting to this? I think
15 she is.

16 MS. HINES: No.

17 MS. SAMPSON: I'm sorry. I misunderstood.
18 Thanks.

19 THE COURT: All right. Bring them in.

20 (WHEREUPON, the jury entered the courtroom at
21 2:45 P.M.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: All right. Thank you very much.
24 Welcome back. I hope you enjoyed your lunch. Call
25 your next witness.

1 MS. SAMPSON: Thank you, Your Honor. The State
2 calls EMS Kinzer.

3 THE COURT: All right. Mr. Kinzer, please come
4 forward and be sworn.

5 JONATHAN KINZER,
6 after being duly sworn, testified as follows:

7 THE CLERK: Please have a seat. State your full
8 name for the record.

9 THE WITNESS: My full name is Jonathan Paul
10 Kinzer.

11 DIRECT EXAMINATION:

12 BY MS. SAMPSON:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Mr. Kinzer, you live in Columbia?

16 A No. I live in --- well, yes, I'm sorry. I live
17 in Columbia, but the Irmo part of Columbia.

18 Q And what are you doing now?

19 A I am currently a first year medical student at
20 the University of South Carolina.

21 Q Now, I don't know whether to say that's good or
22 bad. What were you doing back in June of 2012?

23 A I was a full time college student, but I was
24 working also part time at Richland County Emergency
25 Medical Services.

1 Q And what did you do? Were you called an EMS or
2 EMT tech?

3 A Paramedic.

4 Q What did you do as a paramedic?

5 A I treated the sick and injured as they were
6 called. We would render whatever aid we could and
7 then transport them to the hospital.

8 Q Were you working back on June 28th of 2012?

9 A I was.

10 Q And do you remember that day in particular?

11 A No, ma'am, I do not.

12 Q Would showing you a record that you create as
13 part of your job help refresh your memory?

14 A Yes, ma'am.

15 Q I'm going to show you this and ask you to take a
16 look at it. Do you recognize that?

17 A Yes, ma'am, I do.

18 Q What is that?

19 A That is a patient care report.

20 Q And just to be clear, do you remember any details
21 of June 28th at all in your mind?

22 A Unfortunately I do not.

23 Q How many calls do you get in a day when you are
24 at EMS?

25 A Probably the average would be seven to eight, but

1 it could be as busy as 12 or 13.

2 Q So without this report, can you even remember
3 what happened?

4 A No, ma'am, I cannot.

5 Q Based on this report, did you pick up Raquel
6 Weston?

7 A Yes, I did.

8 Q And does it tell you in this report where you
9 picked her up from?

10 A It does. Let's see. At the corner of Bluff Road
11 at Beckham Swamp Road in Hopkins.

12 Q In order for --- were you called by 9-1-1? I
13 mean, how are you guys told to go down there?

14 A Our dispatcher would come on the radio, tell us
15 where to go and give us the location, and we would go
16 to that location.

17 Q When you go, do you know what you're going for?
18 Do you know what ---

19 A Oftentimes we have a general complaint, but you
20 really never know until you get there.

21 Q So when you arrived --- according to your report,
22 what happens at that point?

23 A Let's see, upon arrival, we saw a patient seated
24 in a vehicle. On the report it says AOx3, which means
25 she is alert and oriented times three ---

1 Q I need you to slow down?

2 A I'm sorry.

3 Q It says AOx3; what does that mean?

4 A That means she is alert and oriented times three.

5 That means person place and time.

6 Q Okay.

7 A So in short, it's a way of saying she was up and
8 looking at me and responding appropriately.

9 Q Thank you. Did she have any complaints?

10 A Yes, she was complaining of pain to her head and
11 also to her right forearm.

12 Q So what did you all do based on that?

13 A Based on that, she said --- let's see. Let's
14 see. We would have done a basic exam. I noted wounds
15 on her forearm, one to her forehead, and one to her
16 temple. Bleeding was controlled when we got there.
17 She stated that she was shot twice. At that point, we
18 placed her on an LBB, which means a long back board
19 which is just like a full body splint if you've seen
20 someone picked up and carried.

21 Q Like on the stretcher?

22 A Yes, it goes on the stretcher. The C-spine is
23 the collar around her neck and then across her head to
24 mobilize everything. If somebody is involved in any
25 kind of trauma, we assume there is a chance of a

1 spinal injury, so we take all the precautions. We
2 started an I.V. en route, an intravenous line en
3 route. We then transported her to Richland Memorial
4 Hospital. Gave her a report to the R.N. there and
5 transferred all the care to the staff at Richland
6 Memorial.

7 Q This report that you made, that's made shortly
8 after the incident?

9 A Yes, usually unless I get another call
10 immediately. If I have time, I'll start it en route.
11 Otherwise I'll do it immediately after the call.

12 Q The injuries that you saw her with were the
13 injuries you saw when you arrived?

14 A Yes, ma'am.

15 Q And when you dropped her off at the hospital,
16 that's what she had when you left her there?

17 A Affirmative, yes, ma'am.

18 MS. SAMPSON: No further questions, Your Honor.

19 THE COURT: Cross?

20 MS. HINES: Thank you, Judge. May it please the
21 Court.

22 CROSS-EXAMINATION:

23 BY MS. HINES:

24 Q As you testified, you have no memory of this
25 incident?

1 A Correct.

2 Q That's why you make your report, correct?

3 A That's correct.

4 Q And that's why you put all the information in
5 here that needs to be in here?

6 A Yes, ma'am.

7 Q And have it thorough, accurate and complete?

8 A Yes, ma'am.

9 Q No further questions.

10 THE COURT: Have a nice day, sir.

11 Call your next witness.

12 MR. EATON: The State calls Investigator
13 Schroeder.

14 THE COURT: All right.

15 SHAWN SCHROEDER,

16 after being duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State your full
18 name for the record.

19 THE WITNESS: Shawn Schroeder.

20 DIRECT EXAMINATION:

21 BY MR. EATON:

22 Q Good afternoon, Investigator Schroeder.

23 A Good afternoon.

24 Q Investigator Schroeder, where do you work?

25 A I'm employed at the Richland County Sheriff's

1 Department.

2 Q And what's your capacity there?

3 A I am currently a crime scene investigator and
4 latent print examiner.

5 Q And what are your duties as a crime scene
6 investigator?

7 A As a crime scene investigator, my duties include
8 identifying, documenting, collecting, processing
9 evidence related to any crime, completing crime scene
10 sketches, obtaining autopsies, and testifying in
11 court.

12 Q And you received training on these things?

13 A Yes.

14 Q Just briefly what would some of that training
15 cover without going through your whole CV, just
16 briefly, please.

17 A Approximately a year-and-a-half of in-house
18 training, which you go over all different types of
19 forensics, anywhere from crime scene processing,
20 latent print examinations, crime scene reconstruction,
21 footwear and tire track examinations, pretty much the
22 whole gamut, a year-and-a-half of that. Also attended
23 numerous classes, crime scene reconstruction, 40 hour
24 courses. I'm also a certified crime scene
25 investigator through the International Association for

1 Identification.

2 Q Okay. And in June of 2012, were you doing the
3 same stuff?

4 A Yes, sir.

5 Q And what was your first encounter with the
6 William Wallace case?

7 A My first encounter was when I was notified and
8 met with Sergeant Isenhoward at Bluff Road and Beckham
9 to meet with a Jeep Grand Cherokee where an incident
10 had occurred.

11 Q And what did you do there?

12 A At that time when I arrived on the scene, I
13 received a signed consent to search.

14 MS. HINES: Judge, he is reading from a report.
15 I don't believe the foundation has been laid for that.

16 BY MR. EATON:

17 Q Did you produce any reports in the course of your
18 investigation?

19 A I have.

20 Q Did you make those contemporaneously? Did you
21 make those while you were doing stuff?

22 A Absolutely.

23 Q Okay. And would you have step by step written
24 down things?

25 A Yes.

1 Q And after you memorialize that, do you keep it
2 somewhere?

3 A Yes, bench notes.

4 Q Bench notes. Is that what you're referring to
5 right now?

6 A That's correct.

7 MR. EATON: Judge, is this a sufficient
8 foundation for him to refer to his notes?

9 THE COURT: No, you have to show that he doesn't
10 have an independent memory of it to begin with before
11 he can use his notes to refresh his recollection.

12 THE WITNESS: That's fine. I don't need my
13 notes.

14 BY MR. EATON:

15 Q Okay. So after you arrive at the scene, what do
16 you start to do?

17 A At that scene when I arrived I was actually at
18 multiple different locations at this. As I recall,
19 there were several reddish brown stains in the
20 passenger's side of the vehicle. After I received the
21 signed consent to search, I went ahead, photographed,
22 documented the vehicle.

23 Q And which vehicle are we talking about?

24 A This is the Jeep Grand Cherokee.

25 Q Okay.

1 A Like I said, it was right there at Bluff Road and
2 Beckham parked right on the side of the Road. At that
3 time, I had photographed multiple stains, reddish
4 brown strains, on the vehicle, on the doorway, the
5 seats. I also collected swabs from the vehicle later
6 for DNA analysis and some gold in color sandals that I
7 also collected from that vehicle.

8 Q And did you go to any other scenes down on
9 Beckham Swamp?

10 A After that I was notified there was another scene
11 approximately a mile down Beckham Swamp Road, which is
12 just off Bluff Road, again down on the left-hand side.
13 The deputies had --- they had established a crime
14 scene there, so I responded there next.

15 Q And what did you find there?

16 A I met with Deputy D'Antoni. He had established a
17 crime scene, which consisted of a crime scene log, and
18 he restricted entry at that point, and there was crime
19 scene up in front of the gate. Then I proceeded from
20 there.

21 Q Okay. And go on with what you did next?

22 A What I did next was Deputy D'Antoni explained to
23 me how he had found some fired cartridge casings.

24 MS. HINES: Objection, relevance.

25 THE COURT: Overruled.

1 THE WITNESS: He had explained to me how he found
2 some fired cartridge casings at the front of the
3 entrance.

4 BY MR. EATON:

5 Q Let me stop you real quick.

6 Can we approach real quick, Your Honor?

7 THE COURT: Sure.

8 (WHEREUPON, a bench conference was held in the
9 presence, but not within the hearing of the
10 jury.)

11 BY MR. EATON:

12 Q Investigator Schroeder, did you find a cartridge
13 that was related to this case?

14 A I did.

15 Q Could you speak to that, please?

16 A Sure. Approximately 300 feet away from the road,
17 I observed a fired nine millimeter cartridge casing
18 which was --- I actually have photos of and marked.

19 Q Okay. Did you collect that?

20 A I did.

21 Q And did you find anything else related to what
22 allegedly happened to Ms. Weston at the scene?

23 A I did. Near the fired cartridge casing off the
24 road a little ways, it was a dirt path or a driveway,
25 I also found a black in colored mesh cloth and

1 numerous reddish brown stains believed to be blood
2 back there.

3 Q Did you take photos of those?

4 A I did.

5 Q Did you collect the mesh cloth?

6 A I did.

7 Q And did you take pictures of --- did you say you
8 found anything else at that particular point?

9 A I collected swabs from the reddish brown stains.
10 I collected the black in color mesh cloth and the
11 fired cartridge casing.

12 Q When you say the reddish brown stains, what do
13 you mean?

14 A Believed to be blood.

15 Q Okay. And then later did you process another
16 scene in the course of investigating this case?

17 A I did. Next --- it was the next day, which was
18 June 28, 2012. I was notified at 8:30 in the morning
19 by Sergeant Richards that there was a vehicle, a Grand
20 Marquee, that needed to be processed that was waiting
21 in our forensic garage.

22 Q And what did you do on the Grand Marquee?

23 A Again, as I go through with my documentation, I'm
24 going to photograph the entire exterior, interior of
25 the vehicle and go through and search for evidence

1 which I did have a signed consent to search at that
2 point.

3 MR. EATON: May I approach the witness, Your
4 Honor?

5 THE COURT: Yes.

6 BY MR. EATON:

7 Q Okay. Investigator Schroeder, if you would
8 please, look through those pictures for me.

9 (Pause.)

10 A These are all photos that I took from the
11 separate scenes.

12 Q Okay. Do those photos --- do they look like the
13 scenes did when you were there?

14 A Yes, they are an accurate representation of the
15 scenes.

16 Q When you took the photos?

17 A That's correct.

18 MR. EATON: I would offer those as State's
19 Exhibits --- I'm sorry, if you would indulge me --- 46
20 through 81.

21 MS. HINES: Can I see those?

22 MS. HINES: No objection.

23 THE COURT: All right. State's 46 through 81
24 without objection.

25 (WHEREUPON, State's Exhibit Numbers 46 through 81

1 were admitted into evidence.)

2 BY MR. EATON:

3 Q Investigator Schroeder, if I could just --- if
4 it's okay with the court, if I could just get you to
5 step down here ---

6 THE COURT: Keep your voice up.

7 MR. EATON: --- with this pointer here.

8 THE COURT: It will work better if you stand on
9 the other side so the court reporter can hear you and
10 so you don't block the juror's views.

11 Lights on, okay?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Okay. Everybody, okay?

14 BY MR. EATON:

15 Q Can you tell the jury what we are looking at
16 here?

17 A Sure. This is going to be little difficult to
18 see here, but these are actually what I'm marking with
19 markers. This is (A) through (C) here, which are the
20 reddish brown stains that I'm referring to and this is
21 inside of the Jeep Grand Cherokee that was found at
22 Bluff and Beckham.

23 Q State's Exhibit 65, 66?

24 A Again, this is just going to be a close-up of the
25 reddish brown stains, Marker (A).

1 Q Sixty-seven?

2 A I can't see actually what angle this is. This is
3 alpha, as well. Just as crime scene investigators,
4 you would generally do an overview picture of an
5 overall and then a midrange and then get closer and
6 close-up. That's what you see here.

7 All right. This is going to be the dirt path
8 that I was referring to on Beckham Swamp, off of
9 Beckham Swamp, and this is going to be Marker Zulu, I
10 believe, which is the fired nine millimeter cartridge
11 casing.

12 Q What's State's Exhibit 51, 52?

13 A This is going to be Marker (Z) again, a little
14 closer in reference to Marker (Y), Yankee, which is
15 going to be reddish brown stains and where the black
16 mesh cloth is going to be back here, as well.

17 Q Exhibit 53?

18 A All right. And here is marker Y, Yankee, a
19 little closer. It's a midrange photo.

20 Q Fifty-four?

21 A Again, (Y) and also, I believe that this is going
22 to be the reddish brown stains that were marked
23 closer.

24 Q Exhibit 55?

25 A All right. Again, just a little closer on that

1 photo. You see the broken branch, as well, as the
2 marker back here.

3 Q And 56?

4 A There is a close --- a close-up. This is going
5 to be (Y-1), which is the reddish brown stain on one
6 of the branches.

7 Q Exhibit 57?

8 A All right. Again, this is just a little further
9 away. The reddish brown stains that you can see on
10 the branch.

11 Q Fifty-eight?

12 A All right. This is going to be Y-2 in the same
13 vicinity.

14 Q Fifty-nine?

15 A All right. This is going to be both Y-1 and 2
16 together.

17 Q Sixty.

18 A All right. This is a photo in reference to Y-1
19 and 2 were, the reddish brown stains. X is actually
20 going to be marking the black in color cloth back
21 here.

22 Q Is there anything else over near X?

23 A Without looking at my notes --- there may be some
24 stains back there, as well.

25 Q All right. Sixty-one?

1 A All right. You can --- actually with 1, this is
2 going to be numerous reddish brown stains in this
3 area.

4 Q And 62?

5 A All right. Again, just showing that area, and
6 down here, this --- can I look at that photo real
7 quick just to make sure I'm saying it correctly?

8 (Complies.)

9 Without --- I'm not 100 percent sure if this is
10 the black in color mesh cloth, but it's possible.
11 It's going to be in that area. It should be on one of
12 the photos, as well.

13 Q What does this show?

14 A This is the general GPS location where we were at
15 right off of Beckham Swamp or right off Beckham Swamp
16 Road.

17 Q I'm sorry. We're going back in time here.

18 A All right. This is going to be back at the Jeep
19 Grand Cherokee, Marker Charlie, reddish brown stains
20 on the passenger's side door handle.

21 Q Fifty?

22 A This is going to be another mid-range photo of
23 the nine millimeter cartridge casing.

24 Q Fifty-six?

25 A All right. Again, just an overall area of that

1 photo you can see right there. It's common for us to
2 take photos without markers to show the scene before
3 we put anything in. That's what this is doing,
4 showing the scene as I found it.

5 Q Forty-seven and this is 48.

6 A Same, showing the general area there.

7 Q And 49.

8 A That's going to be Marker Zulu showing the
9 overall area.

10 Q Exhibit 68?

11 A All right. This was --- actually, when I came
12 back to the lab, it's common what we do is we're going
13 to go ahead and take the evidence and process it
14 further, so at this time, I took that cartridge
15 casing, Marker Zulu, that you saw out in the brush
16 there, and I photographed it a little closer.

17 Q Okay. Exhibit 69?

18 A All right. This is going to be closer yet. You
19 can see it's a Ruger nine millimeter RP fired.

20 Q Seventy?

21 A Again, just another different range photograph on
22 that one.

23 Q Seventy-one?

24 A This is just the laid down portion of the same
25 fired cartridge casing.

1 Q I'm sorry, 72 --- 74?

2 A Now referring --- I also collected that black in
3 color --- I call it a black in color mesh cloth. I'm
4 not sure exactly what this is. You can see numerous
5 reddish brown stains on it, and this is just some
6 closer up photos.

7 Q Seventy-two?

8 A All right. Here is a closer up photo. There was
9 actually a hole in the center of this cloth. I
10 believe we'll have a better picture here of that, but
11 this is a very, very close-up photo of that. You can
12 see the reddish brown stains.

13 Q Seventy-three?

14 A All right. I ended up marking this.

15 Q Okay.

16 A That's the next photograph. Just a photograph
17 that's a little ways away.

18 Q Seventy-five?

19 A All right. This is where I'm specifically
20 marking the hole right there with Marker (A).

21 Q What does Exhibit 76 show?

22 A All right. When I was talking in reference to
23 the vehicle the next day on June 28th when I went back
24 to the forensic garage, this would be the silver in
25 color Grand Marquee, and you'll see what I did here is

1 I'll go through and I'll photograph the exterior and
2 the interior as I found it. It's just a different
3 angle of the vehicle.

4 Q Seventy-seven and then 78?

5 A The other side.

6 Q Seventy-nine?

7 A All right. When I was searching the vehicle, I
8 did find a receipt. As you can see, this is from the
9 Dollar General store. It was approximately on
10 June 28th, 2012, at 2:07 in the afternoon, and this
11 was also for Hanes men three pack crew shirts.

12 Q And 80?

13 A This is going to be one of the shirts located in
14 a Dollar General bag with it, which was in the bag
15 with the receipt.

16 Q And 81?

17 A Just another photograph that was further away
18 taken of the Hanes t-shirt.

19 Q Thank you. If you could hold tight one second
20 for me, Investigator. What does this image show?

21 A This image is going to show Beckham Swamp Road.
22 This is Beckham Swamp running this direction. Up a
23 little further is going to be Bluff Road. This runs
24 kind of near where the jail is at, the Richland County
25 jail. It's right over in that vicinity, so Beckham

1 Swamp, approximately one mile down the road, there is
2 this cut right here. This is actually a private
3 driveway. That's what I'm referring to. The initial
4 crime scene was established right here.

5 You'll go and you'll see many of my photographs,
6 I have actually probably walked three quarters of the
7 way down there because the scene was so large. It's
8 very, very difficult to instantly go find, you know,
9 something in the woods like that, so it took a little
10 while.

11 Anyways, so when we got here, this is where
12 Deputy D'Antoni was parked, approximately right here.
13 This is where I parked. Here, there is actually a
14 gate. This is approximately 70 feet from the road, so
15 what I had done was I actually created a sketch a
16 little while later. I came back out here and created
17 a sketch and took approximate measurements where
18 everything took place at.

19 That's how I know this is approximately 70 feet
20 and approximately 300 feet, which would be in this
21 general area is where the fired nine millimeter
22 cartridge casing along with the reddish brown stains
23 and black in color mesh cloth were located so around
24 the left-hand side.

25 Q And Investigator Schroeder, did you make a

1 diagram ---

2 A I did.

3 Q --- of the scene?

4 MR. EATON: Beg the Court's indulgence.

5 (Pause.)

6 BY MR. EATON:

7 Q And Investigator Schroeder, what is this right
8 here?

9 A This is going to be my final sketch that was
10 created from a rough sketch that I created.

11 Q Does this look the same as when you made it?

12 A It is the same.

13 MR. EATON: I would offer ---

14 THE WITNESS: Just a copy of it.

15 MR. EATON: I would offer this as State's
16 Exhibit 45.

17 THE COURT: Any objection?

18 MS. HINES: No objection.

19 THE COURT: Forty-five without objection.

20 (WHEREUPON, State's Exhibit Number 45 was
21 admitted into evidence.)

22 THE WITNESS: All right. I just --- for this
23 case, I went through and took measurements. It was a
24 little while later. I just went to this location
25 again. These are not to scale, obviously, but this is

1 going to be a general vicinity. In fact, I found some
2 of my same markers when I went out there. I left them
3 out there so I could do that.

4 You'll see here from Beckham Swamp Road that you
5 can see on the other image, that it's marked
6 approximately 70 feet, the gate. From there this
7 stretch was approximately 300 feet where you could
8 see.

9 Now, I also went the distance off the roadway of
10 the items. The fired nine millimeter cartridge casing
11 that was recovered was approximately one foot from the
12 drive, and these were Y-1 and Y-2. These were
13 approximately 13 feet, which were the reddish brown
14 stains, from the drive and approximately 18-and-a-half
15 feet, this was the black in color mesh cloth along
16 with another reddish brown stain, and these were ---
17 there was a depression in the ground, which was --- it
18 was approximately 3 feet deep.

19 BY MR. EATON:

20 Q Thank you. You can take a seat again,
21 Investigator Schroeder.

22 A Okay.

23 MR. EATON: May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. EATON:

1 Q Investigator Schroeder, would you take a look at
2 that, please?

3 A Sure.

4 Q What did I hand you?

5 A When we collect evidence, it's usually in what
6 the crime scene investigator --- it's going to be in
7 an envelope very similar to this.

8 MS. HINES: Judge, objection, this hasn't been
9 admitted.

10 THE COURT: The question is what is it.

11 THE WITNESS: This is a nine millimeter fired
12 cartridge casing marked as Z that you saw on the
13 diagram.

14 BY MR. EATON:

15 Q And did you collect that?

16 A I did. This was collected by me. The way that
17 we know that is my name is on here, which I collected
18 it June 28th, 2012.

19 Q And the Z, you mentioned, that corresponds to the
20 Z we saw?

21 A That's correct. That's the marker number that I
22 used to mark the photograph and I used on the
23 evidence, as well.

24 Q And when you collected this, what did you do with
25 it?

1 A At this time, when I collected this, I brought it
2 back to the lab, photographed it and I also fumed it,
3 which is a processing term for cyanoacrylate.
4 Basically I'm looking for fingerprints on it at that
5 point. It was negative for fingerprints, and I
6 collected a DNA swab at that point.

7 Q And then what did you do with it?

8 A And then I returned --- I submitted it to
9 evidence at that point.

10 Q And what was the process for doing that?

11 A After I'm completed with it, somebody else may
12 need it so I submitted this to evidence so somebody
13 else may follow-up.

14 This time I had marked firearms, so the firearms
15 examiner would come behind me, collect this and do his
16 work to it.

17 Q Can you tell from looking at that if it is in the
18 same condition when you put it into evidence?

19 A Can I open it?

20 Q Certainly. Does anything about the packaging
21 tell you that?

22 A If it's in the same condition?

23 Q That it's the same as when you put it into
24 evidence on the outside?

25 A It is. The way that we mark that is you can tell

1 that I went through and I had this because my initials
2 and the date were actually marked on here. That's how
3 we track that. Then somebody did come behind me, as
4 well, but initials and date at a separate time. I
5 assume that's the firearms examiner.

6 Q Anyway, if you would go ahead and look at it.

7 A Sure. Also, you'll notice from the photograph
8 that I had the envelope in it, which was --- it says
9 fired cartridge casing Marker (Z). that was in my
10 photograph. That is what I had used. It's in the
11 same condition.

12 Q Okay. I don't know what number we're on right
13 now, I'm sorry.

14 THE COURT REPORTER: Eighty-two.

15 MR. EATON: I would offer this as State's Exhibit
16 Number 82.

17 (WHEREUPON, State's Exhibit Numbers 82 was marked
18 for identification only.)

19 MS. HINES: No objection.

20 THE COURT: Without objection. Thank you.

21 (WHEREUPON, State's Exhibit Number 82 was
22 admitted into evidence.)

23 BY MR. EATON:

24 Q Okay, 82.

25 A This is going to be the black in color mesh cloth

1 that I had collected.

2 Q To save time, the procedures you used on the
3 casing, did you use those for collecting this?

4 A The same collection procedures, and you saw the
5 photography procedures, all that I did separately with
6 this was that I submitted this for DNA, so I didn't
7 actually process this for fingerprints, but I did
8 photograph it.

9 Q Okay. If you could pull it out the back of this?

10 A Sure. Do you have gloves? This is actually a
11 biohazard.

12 Q Yes, we do.

13 A I like to bring my own.

14 MS. HINES: Judge, if this hadn't been admitted,
15 I would ask that it be admitted prior to it being
16 published.

17 THE COURT: He is not publishing it. He is
18 looking to see what it is. Don't publish it.

19 MR. EATON: Just keep it below the counter.

20 THE COURT: Just look at it to see what it is.

21 BY MR. EATON:

22 Q Please tell us what this is.

23 A This is the same black in color mesh cloth.

24 Q Is it in the same condition as when you put it
25 into evidence?

1 A It is.

2 Q I would offer this as State's Exhibit 83?

3 MS. HINES: No objection.

4 THE COURT: All right, without objection.

5 (WHEREUPON, State's Exhibit Number 83 was marked
6 for identification and admitted into evidence.)

7 THE WITNESS: Can I show this?

8 MR. EATON: Please do.

9 THE WITNESS: What I'd like to show here is ---
10 you can see it better, which is the hole in the center
11 of it. Can I step down?

12 THE COURT: Yes.

13 THE WITNESS: If everyone can see that.

14 BY MR. EATON:

15 Q Does it still have red stains?

16 A Yes, still reddish brown stains on it.

17 Q Okay. I'm going to trade with you.

18 I'm going to hand you this, Investigator
19 Schroeder.

20 A All right.

21 Q If you could just put it down here for right now,
22 please. I'm marking this as 83.

23 Could you tell us what you see in that box,
24 please?

25 A This is the Dollar General bag that I had

1 collected from the Grand Marquee from --- with the ---
2 this is what had the light in color t-shirt and the
3 receipt in it.

4 Q Could you just look in the bag for us without
5 showing it to the jury, please?

6 A There is a receipt and at least one white in
7 color t-shirt in there, possibly two.

8 Q Do these look the same as when you entered them
9 into evidence?

10 A They do.

11 Q Okay.

12 MR. EATON: I would offer the bag and its
13 contents as State's Exhibit 84?

14 MS. HINES: I'm sorry to get too close to you.

15 Let me make sure there is nothing --- no
16 objection.

17 (WHEREUPON, State's Exhibit Number 84 was marked
18 for identification and admitted into evidence.)

19 BY MR. EATON:

20 Q If you could just show that to the jury, please?

21 THE COURT: That's State's Exhibit Number 84
22 without objection, for the record.

23 MR. EATON: Thank you, Your Honor.

24 THE WITNESS: You'll notice from the photograph
25 there are two standard white in color Hanes t-shirts

1 and also the Dollar General receipt that I had
2 photographed up close. That's what this is referring
3 to from June 28, 2012, at 2:07 p.m. for Hanes men's
4 three pack, three extra large shirts.

5 BY MR. EATON:

6 Q Did you do any further analysis on those shirts?

7 A I did not.

8 Q Thank you Investigator, that's all my questions.
9 If you would please answer questions of the defense.

10 THE COURT: Cross?

11 MS. HINES: Yes, Judge. Thank you.

12 CROSS-EXAMINATION:

13 BY MS. HINES:

14 Q How are you doing?

15 A Good. Thank you.

16 Q No, I don't want it turned on. I just want this
17 maybe pushed down.

18 MS. SAMPSON: Is that good?

19 MS. HINES: Thank you.

20 BY MS. HINES:

21 Q How are you doing? Sorry about that.

22 A Good. Thank you.

23 Q I get distracted when there is something
24 blocking.

25 A True.

1 Q Okay. So on the --- when you arrived at Bluff
2 Road and Beckham Swap at the Jeep Cherokee?
3 A Yes, ma'am.
4 Q You were just there to photograph? The victim
5 was gone, right?
6 A The victim was gone, yes.
7 Q Okay.
8 A And I was there just to document the scene as it
9 was found.
10 Q Okay. And you took swabs of these reddish brown
11 stains?
12 A Correct, from the Jeep, from the inside.
13 Q Okay. And then you arrived down at Beckham Swamp
14 down the second --- in the woods?
15 A Yes.
16 Q At 1:36 according to the crime scene log?
17 A Can I refer to my notes, just to double check?
18 Q Yes. Would it ---
19 A Oh.
20 Q --- help you to refresh your recollection to
21 refer to your notes?
22 A Absolutely, with all the time.
23 Q Okay.
24 (Pause.)
25 A Yes. According to the crime scene log, yes,

1 13:36.

2 Q Can I see your notes?

3 A Sure. The bench notes will be further down.

4 Q I'll give you those back. Okay. And you
5 actually --- it was Corporal Moreland that found the
6 --- you were there looking for the local --- the local
7 area, and it was actually Corporal Moreland that found
8 that?

9 A That's correct.

10 Q Where the (Z) marker, (X), (Y), and (Z) markers
11 that you talked about earlier were?

12 A The general area, correct, he did find that.

13 Q' He found the general area, and he arrived
14 actually at 2:05, correct?

15 A If that's what's on the crime scene log, correct.

16 Q So there had been several other people there
17 looking for, walking the road or ...

18 A No. What had happened was once the crime scene
19 was secured, nobody went past it at that point. When
20 I arrived, I did a preliminary walk through of the
21 scene. It was such an extensive scene that I walked,
22 like I said, approximately three quarters of a mile
23 down to a corn field and there were some bends in the
24 road looking for the scene, and there was quite some
25 time that had passed so I came up probably

1 approximately when Corporal, Sergeant now, Moreland
2 arrived. I recruited their help. I said, hey can you
3 help me maybe look for something. We were in a very
4 close vicinity together looking together.

5 Q Okay. And he was the one that actually found it?

6 A He found a broken branch. He hunts a lot. He
7 noticed this branch that was broken. He said let's
8 go, Schroeder, I think I found something over here,
9 and then I came over.

10 Q And did you find the cartridge?

11 A The cartridge --- I observed the cartridge. Like
12 I said, we were all together, but yes. I was the only
13 one that went to the cartridge.

14 Q Okay. But it's possible that somebody else
15 actually spotted it before you?

16 A Sure. It's possible.

17 Q If it was in another report that Skipper ---
18 that.

19 I don't know the correct --- Officer Skipper, I
20 guess?

21 A Sure, Sergeant Skipper.

22 Q Sergeant Skipper ---

23 A Uh-huh.

24 Q --- was out there and actually located the
25 cartridge, you would not disagree with that?

1 A I don't disagree with that.

2 Q Okay.

3 A Like I said, we were all very, very close
4 together, probably within ten, 20 feet of each other,
5 so looking, you know just scanning the area for
6 different evidence.

7 Q And you testified on direct that you take an
8 overall picture --- try to take an overall picture, a
9 midrange picture, and a close-up picture?

10 A Try to when possible, yes.

11 Q But there's not a close-up picture of Marker (Z),
12 correct?

13 A Not that I saw, no.

14 Q And there's not a close-up picture of the
15 cartridge on the ground, unless I'm mistaken.

16 A The close-up --- well, it depends on what you
17 refer to as close-up. I mean, there are several
18 photos of it and then, of course, the photos when I
19 took it back to the lab. It was actually buried in
20 the grass, as well, so with a close-up from directly
21 above, it makes it kind of hard to see, you know, a
22 fired cartridge casing.

23 Q Excuse me. Okay. And let me just show you the
24 pictures that appear to me to be showing Marker (Z).

25 A Okay.

- 1 Q And have you look at those.
- 2 A Sure. All right.
- 3 Q There's not really a close-up where you can
- 4 actually see the cartridge case itself, correct?
- 5 A It's not a direct down shot. I think that's what
- 6 you're referring to.
- 7 Q Yeah.
- 8 A There is no direct down shot, that's correct.
- 9 Q So you just kind of see where it was from there?
- 10 A Well, when you have a scene with so many
- 11 cartridges, generally what you'll do is down in the
- 12 grass, you're trying to get like dimensions of space
- 13 basically, so what you do is refer markers to each
- 14 other.
- 15 Q Uh-huh.
- 16 A That's what I was specifically trying to do here.
- 17 Now, there is --- if you --- if you look here, there
- 18 is --- this would probably be what I would consider an
- 19 overall photograph of that area.
- 20 Q Uh-huh.
- 21 A It would be something like that, midrange.
- 22 Q All right.
- 23 A And a close-up.
- 24 Q Okay. So this is the close-up?
- 25 A Right. It is not a direct down shot, probably

1 because there was a lot a lot of grass over it.

2 Q Okay. Where exactly on that is the cartridge?

3 A If I could zoom in the photo, I could tell you.

4 It's in the grass in there.

5 Q Okay.

6 A I mean, that's why I put the marker down so we
7 can see it and photograph it.

8 Q Okay.

9 A Here are these, as well.

10 Q Oh. And then you swabbed all of this stuff for
11 DNA swabs, correct?

12 A That's correct.

13 Q The reddish brown stains?

14 A The reddish brown stains.

15 Q The reddish brown stains, you swabbed the stains
16 that were on the broken reed bamboo shoot thing?

17 A That's correct.

18 Q You swabbed the mesh, the black mesh cloth?

19 A I did not swab the black mesh cloth. I just
20 submitted it.

21 Q You submitted that directly so that they could
22 extract what they needed and still have the whole
23 thing?

24 A That's correct.

25 Q And you swabbed the cartridge casing?

1 A That's correct.

2 Q And the car seat of the Jeep Cherokee?

3 A The markers that I marked, which was one
4 through --- or Alpha through Charlie, if I remember
5 correctly.

6 Q Okay. And in your report, when you processed the
7 car, one of the things you were looking for was
8 weapons and ammunition, correct?

9 A That's just standard, but yes, that's correct.

10 Q That's what you noted?

11 A Just any type of evidence that would possibly be
12 related to a crime.

13 Q Right. And you did note in your report, though,
14 that you were looking --- searching, conducted a
15 search for possible weapons and ammo with negative
16 results?

17 A Correct.

18 Q So you did not find any kind of weapons,
19 ammunition, anything related to firearms in the Grand
20 Marquee that you processed?

21 A That is correct.

22 Q Beg the Court's indulgence.

23 (Pause.)

24 No further questions. Thank you.

25 THE COURT: Redirect?

Redirect of Schroeder by Eaton
Direct of Boland by Eaton

REDIRECT EXAMINATION:

BY MR. EATON:

Q Investigator Schroeder, you took a lot of
photographs at Beckham Swamp?

A I did.

Q Were there photographs that you took that we
didn't introduce?

MS. HINES: Objection.

THE COURT: Sustained.

MR. EATON: I nothing further, Your Honor.

THE COURT: All right. Have a nice day.

Call your next witness.

MR. EATON: State calls Investigator Hal Boland.

JAMES HAL BOLAND,

after being duly sworn, testified as follows:

THE CLERK: Please have a seat. State your full
name for the record.

THE WITNESS: James Boland.

DIRECT EXAMINATION:

BY MR. EATON:

Q Good afternoon, Investigator Boland.

Investigator Boland, where do you work?

A Richland County Sheriff's Department.

Q And what do you do there?

A I am currently a criminal investigator with the

1 Criminal Investigative Division.

2 Q And in June of 2012, what were you doing?

3 A I was an investigator then also.

4 Q And how did you first come into contact with the
5 William Wallace case?

6 A If I recall, Captain McDonald had instructed me
7 to come by the office; that there was a victim in the
8 case that had gone to the hospital to be treated and
9 that I was to meet with Captain McDonald, retrieve a
10 photo lineup, and then go down to the hospital and
11 meet with one of the victims.

12 Q Okay. Did you go get the lineup?

13 A I did.

14 Q What did you then do?

15 A I then proceeded down to Richland Memorial
16 Hospital and met with Ms. Weston, the victim.

17 Q Do you remember about when this was, at the time?

18 A You're talking about day or year?

19 Q Day and time.

20 A It was probably afternoon, I believe.

21 Q And did you go to the hospital?

22 A I did.

23 Q And what did you do?

24 A I went over to Ms. Weston. She was laying on a
25 gurney. Her head was bandaged. Obviously, there was

1 some blood that was still visible. I had introduced
2 myself, told her who I was. I asked her then if she
3 know who did this to her. She answered yes.

4 MR. HAWKS: Objection, hearsay.

5 THE COURT: Sustained.

6 BY MR. EATON:

7 Q Did you show her the lineup?

8 A I did.

9 Q Was she able to identify anybody in the lineup?

10 A Yes.

11 Q Who did she identify?

12 A She indicated William Wallace.

13 Q How did she identify him? How did she indicate
14 this?

15 A She pointed to the picture.

16 Q Was she able to write at that time?

17 A At that time, no.

18 Q Why not?

19 A She was being treated. She was on a gurney, had
20 a C-spine immobilized. She was restricted in her
21 movement.

22 Q She was able to point?

23 A Right.

24 Q Who did she point to?

25 A William Wallace.

- 1 Q Did you do anything else there?
- 2 A I may have asked her, you know, what had
3 happened.
- 4 Q How many pictures would you normally put on the
5 lineup?
- 6 A We typically put six.
- 7 Q Did she hesitate?
- 8 A No.
- 9 Q Was she emotional?
- 10 A She was coherent. I was able to speak with her,
11 understand her. I don't remember if --- I mean, she
12 wasn't hysterical where she couldn't communicate with
13 me.
- 14 Q Did you have contact with Ms. Weston later?
- 15 A Yes.
- 16 Q And what was that?
- 17 A I assisted Captain McDonald a second time showing
18 the photo lineup.
- 19 Q And what was that lineup for?
- 20 A That was for the other individual that was
21 involved.
- 22 Q And what happened when you presented her with
23 that?
- 24 A She was able to indicate who the other person was
25 and she signed it.

1 Q You were with Captain McDonald?

2 A Right.

3 MR. EATON: Beg the Court's indulgence, please.

4 (Pause.)

5 BY MR. EATON:

6 Q Did you relay information to Captain McDonald
7 that you learned from Raquel?

8 A Yes.

9 MR. EATON: No further questions.

10 THE COURT: Cross?

11 MR. HAWKS: May it please the Court.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION:

14 BY MR. HAWKS:

15 Q Good afternoon, Investigator Boland.

16 A Yes, sir.

17 Q That first time you went to see her, she was
18 lucid?

19 A Yes.

20 Q Were there nurses in the room?

21 A I'm sure there were.

22 Q Was there family in the room?

23 A I don't remember seeing her family at that time,
24 no.

25 Q Do you know if she was administered anesthesia?

1 A I do not.

2 Q Did she have an I.V.?

3 A I don't recall.

4 Q Do you know about how long she had been at the
5 hospital at that point?

6 A No. I mean, within hours.

7 Q Hours.

8 Q Did you take any notes or write a report?

9 A I did do an investigative follow-up.

10 Q And you referred to the victim as Beverly Weston?

11 A Right.

12 Q And then later on in the report and on direct you
13 said that she had mentioned the person involved was
14 William Wallace?

15 A Yes.

16 Q And she only said the person involved?

17 A I asked her, "Do you know who did this to you?"

18 Q But your report says you asked her if she knew
19 the name of the person involved?

20 A Okay.

21 Q So yes?

22 A Yes. It's in there.

23 Q And did --- I'm not sure of his title,
24 Isenhoward?

25 A Yeah, he's a sergeant.

Redirect of Boland by Eaton
Recross of Boland by Hawks

1 Q Sergeant. Did he go with you the first time?

2 A No.

3 Q Did anyone go with you?

4 A No.

5 MR. HAWKS: Beg the Court's indulgence.

6 (Pause.)

7 MR. HAWKS: Nothing further.

8 MR. EATON: Very briefly, Your Honor.

9 REDIRECT EXAMINATION:

10 BY MR. EATON:

11 Q On cross just now, you were asked about what you
12 had asked Ms. Weston and what she said?

13 A Uh-huh.

14 Q What did you ask her exactly?

15 A I asked her, "Do you know who did this to you?"

16 Q What did she say?

17 A She said, "Yes." I said, "Who was it?" She
18 said, "William."

19 MR. EATON: Thank you. No further questions.

20 MR. HAWKS: Very briefly, Your Honor.

21 RECROSS-EXAMINATION:

22 BY MR. HAWKS:

23 Q But in your report, you didn't write it that way?

24 A Okay.

25 Q I need a yes or no.

1 A You mentioned earlier that I had used the word
2 involved.

3 Q Yes.

4 A Okay.

5 Q In your report, you wrote, "... the person
6 involved," and she answered, "William"?

7 MR. EATON: If I may, Your Honor, I think the
8 investigator probably should see the notes.

9 MR. HAWKS: Yeah.

10 THE COURT: Show it to him.

11 MR. HAWKS: Certainly.

12 (Pause.)

13 BY MR. HAWKS:

14 Q Is that what you wrote?

15 A Yes.

16 Q Thank you.

17 A Uh-huh.

18 MR. HAWKS: Nothing further.

19 THE COURT: All right. Have a good day.

20 How long is the next one?

21 MS. SAMPSON: It will be short. I just need to
22 see if their out there. She went to get them. I'm
23 not sure.

24 THE COURT: Okay. Call the next witness.

25 MR. COBLE: Your Honor, the State would call

1 Sandra Wallace.

2 SANDRA WALLACE,

3 after being duly sworn, testified as follows:

4 THE CLERK: Please have a seat. State your full
5 name for the record.

6 THE COURT: All right. Tell us your full name,
7 ma'am.

8 THE WITNESS: Sandra Wallace.

9 THE COURT: Thank you.

10 THE WITNESS: Uh-huh.

11 DIRECT EXAMINATION:

12 BY MR. COBLE:

13 Q Ms. Wallace, where are you from?

14 A Columbia.

15 Q Are you related to the defendant?

16 A That's my nephew.

17 Q On your brother's or your sister's side?

18 A My sister.

19 Q Did you speak with an investigator last July
20 about this case?

21 A Yes.

22 Q Do you recall what you told him?

23 A Yes.

24 Q Did you speak with your nephew on
25 June 28th, 2012?

1 A Yes, yes, I did.

2 Q Did you speak --- how was it, via phone or in
3 person?

4 A By phone.

5 Q Do you know where he was calling from?

6 A From the jail.

7 Q And what did he tell you?

8 A Well, when he called, he said --- he was telling
9 me to get in touch with his brother. Now, I know it
10 was something. It was more that he was saying --- but
11 I wanted him --- I was asking him like, Bubby, what
12 happened. He was saying like no, you know, just I
13 don't know. He said, "I didn't do anything." He said
14 to get in touch with Pooh or his brother B-Mack. It's
15 one of the two.

16 Q You said Bubby; is that the defendant? Is that
17 what you call him?

18 A We call him Bubby.

19 Q And who is Pooh?

20 A Pooh is his brother.

21 Q And you also said B-Mack?

22 A Yes.

23 Q What is the relation to B-Mack to the defendant?

24 A That's the brother on his dad's side.

25 Q The defendant wanted you to get in touch.

1 A Yeah.

2 Q What did he want to get in touch with them about?

3 A I think he wanted me to tell Pooh to come to my
4 house. You see, you got to understand that I really
5 was trying to talk to him because I wanted to know
6 what happened only because seven months before that, I
7 lost a soon.

8 MS. SAMPSON: Objection.

9 MS. HINES: Objection.

10 THE WITNESS: I'm just saying, you know, just so
11 you understand ---

12 THE COURT: Stop. Stop. When I talk, you don't
13 talk.

14 THE WITNESS: Uh-huh.

15 THE COURT: Do you understand that?

16 THE WITNESS: Yes.

17 THE COURT: Okay. You need to just answer the
18 question directly.

19 THE WITNESS: I'm trying to answer the question
20 directly.

21 THE COURT: Okay. We don't need any extraneous
22 information.

23 THE WITNESS: Okay.

24 MR. COBLE: Beg the Court's indulgence.

25 THE WITNESS: What did he say?

1 MR. COBLE: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes.

4 BY MR. COBLE:

5 Q Ms. Wallace, would it help to refresh your memory
6 if you had a written copy of the statement that you
7 gave?

8 A Yes..

9 Q Now, Ms. Wallace, do you see on the front page
10 down at the bottom. Is that your signature?

11 A Yes. It's my signature. Yes, yes.

12 Q Now, do you see the first question where it said,
13 "Did you answer a call at your house on June 28th to
14 talk to William Wallace aka Bumbee?"

15 A Yeah.

16 Q What did you say?

17 A I said that yes, he had called, and he was asking
18 did Pooh got to my house yet because he --- he wanted
19 to talk to Pooh. That's why he wanted me to call
20 Pooh.

21 Q Yes, ma'am.

22 A And I couldn't get in touch with Pooh, so he was
23 saying that I could get in touch with his other
24 brother to see if he could get in touch with Pooh.

25 Q Yes, ma'am, if you could keep reading where you

1 left off where it says, "I asked him..." Could you
2 finish that sentence for me?

3 A "I hear from ---"

4 Q Could you read that out loud?

5 A No. Okay. Now, this thing say, "I told him to
6 tell Pooh to get something from my neighbor house."
7 Let me tell you something, sir, I didn't say that. I
8 did not.

9 Q All right. Could you read that next sentence?

10 A "And I got off the phone with Bumblebee and called
11 B-Mack, yeah, and Bumblebee had ---"

12 Q We skipped ahead a little bit. Let me take you
13 back a little bit.

14 A Okay.

15 Q Where it says, "He then told me about some
16 things..." Could you read that sentence?

17 A He then told me about --- he needed Pooh to get
18 some things from the little house, Vernell house, he
19 mentioned a --- "no, I did not say none of this.

20 Q Is this not your statement, ma'am?

21 A Sir, I don't know how this thing works, but I
22 know exactly what I said. I said nothing about this,
23 nothing. I did not told that man none of that. I
24 talked to Investigator McDonald.

25 Q Ma'am.

1 A I know exactly what I talked to. I didn't tell
2 him nothing like that.

3 Q Who is Vernell?

4 A Vernell is my sister.

5 Q That's also the defendant's, your nephew's aunt,
6 as well?

7 A Yes.

8 Q Now, do you see the second question on this,
9 still on page 1?

10 A Yes.

11 Q Do you know who Gottie is?

12 A Yes.

13 Q Could you read what you answered?

14 A Yeah. "Gottie's name is DeAndre Diggs, the
15 picture you put in front of me, Alvin S. Glenn, yeah,
16 yeah," but he asked me did I know a Gottie. I said,
17 "Yes." The Gottie I know, his name is DeAndre Diggs."
18 I said maybe Whitmore. That's the family name. I
19 know exactly what I told him.

20 Q Ms. Wallace, did you see DeAndre Diggs and your
21 nephew ---

22 A No.

23 Q --- on June 28th?

24 A No, I didn't.

25 Q You didn't see them together?

1 A No.

2 Q Now, could you read down to this second question
3 where it says, "I knew then..." Do you see where that
4 sentence begins?

5 A Yeah.

6 Q Could you read that sentence out loud please,
7 ma'am?

8 A Okay. "I knew then Gottie was seeing Bumbee
9 earlier that day. I called you, and he let me know
10 Friday."

11 Q Could you --- I'm sorry, that sentence you just
12 skipped over a piece?

13 A I don't understand that.

14 Q Beg the Court's indulgence?

15 A Okay. No. In other words, you're saying that I
16 said that, that I saw them together?

17 Q I'm trying to get you to read your statement.

18 A But, sir ---

19 MR. COBLE: Your Honor, beg the Court's
20 indulgence.

21 THE WITNESS: I ain't said none of that.

22 BY MR. COBLE:

23 Q Back to this sentence where it says, "I knew then
24 that since Gottie was seen with Bumbee earlier in the
25 day, that day he must be involved. I called you and

1 left a message to call me on Friday." Did you say
2 that?

3 A No. I did not. How did I know that Bumble and
4 Gottie was together when I was at work.

5 Q Ma'am?

6 A How would I know they was together. You can pull
7 my record --- I mean, how would I know they was
8 together.

9 Q It says, "I used to live down on Palmland and
10 Marathon Drive and I knew Gottie's sister, Angela
11 Whitmore, from school. We all grew up together.
12 Gottie is a little bit younger than I am."

13 A Yeah.

14 Q Did you not say that as well?

15 A Yeah, I sure did.

16 Q So you did say that?

17 A Yeah, I said that.

18 Q And then the third question it says, "Is there
19 anything else you can think of that might help us that
20 I haven't asked you?" You answered, "Gottie hangs
21 around Bailey Street and has a girlfriend down there
22 somewhere." Did you say that, as well?

23 A Yes, that is true. That is so much true.

24 Q Okay. Now, ma'am, let me jump back to the first
25 question where it says, "Did you answer a call at your

1 house on June 28th around 10:14 P.M. and talk with
2 William Wallace aka Bumbee." You were asked that
3 question, correct?

4 A Yes.

5 Q And it says, "Yes, he called and was asking if
6 Pooh had gotten to my house yet. I asked him was he
7 supposed to come to my house."

8 A Yes.

9 Q You said that, correct?

10 A Yes, because he said that he wanted to talk to
11 him.

12 Q And then you go on to say "Bumbee then asked if
13 Little Charles was there. I told him he wasn't there
14 at the time. He then told me about some things he
15 needed Pooh to get from the little house behind
16 Vernell's house." You said that, too, correct?

17 A No, I did not.

18 Q Did you not say then, "He mentioned a white trash
19 bag, a Gucci bag and a clear tone one on the tread
20 machine. He told me to call Pooh or B-Mack to handle
21 this. He gave me a number to call B-Mack." You
22 didn't say that?

23 A No, I sure didn't.

24 Q Did you also not say, "After I got off the phone
25 with Bumbee, I called B-Mack who is Bumbee's half

1 brother on his daddy's side."

2 A I did call B-Mack. I tried to call Pooh, too,
3 but this white bag, Gucci bag, I didn't say none of
4 that, none.

5 MR. COBLE: Beg the Court's indulgence.

6 THE WITNESS: Uh-huh.

7 BY MR. COBLE:

8 Q Just finally, Ms. Wallace, on page one, you said
9 that is your signature?

10 A Yes, sir.

11 Q What about on page two, as well?

12 A Yes, sir.

13 Q Thank you.

14 MR. COBLE: Nothing further.

15 THE COURT: Cross?

16 MR. HAWKS: I have no questions for this witness,
17 Judge.

18 THE COURT: Have a nice day.

19 THE WITNESS: Thank you.

20 MR. EATON: Vernell Wallace.

21 THE COURT: Come on down, Ms. Wallace.

22 VERNELL WALLACE,

23 after being duly sworn, testified as follows:

24 THE CLERK: Please have a seat. State your full
25 name.

1 THE WITNESS: Where do I sit? Okay. Thank you.

2 THE BAILIFF: Watch your step. Watch your step.

3 THE WITNESS: Thank you.

4 DIRECT EXAMINATION:

5 BY MR. EATON:

6 Q Good afternoon, Ms. Wallace.

7 A Hi, how are you?

8 Q Fine. Thank you. Ms. Wallace, what do you do?

9 A Do I have to say what I do?

10 Q What do you do?

11 A I work for the State of South Carolina.

12 Q Are you related to William Wallace?

13 A Yes.

14 Q How are y'all related?

15 A He is my nephew.

16 Q Did he live with you in 2012?

17 A Yes.

18 Q Okay. What car did you drive?

19 A I had a white Buick, 1999 LeSabre.

20 Q And was there anything odd about it at all?

21 A Yes.

22 Q What was that?

23 A It was banged up real bad.

24 Q Banged up?

25 A Yes.

1 Q Anything in particular that you remember?

2 A Well, one time --- one day --- it was the
3 passenger's side mirror and maybe I hit a couple
4 things somewhere down the way.

5 Q And did William ever use the car?

6 A Oh, yes, uh-huh.

7 Q And do you remember on June 28th did he borrow
8 the car from you?

9 A Yes, he took me to work.

10 Q He took you to work?

11 A Uh-huh.

12 Q In the morning?

13 A Uh-huh.

14 Q Dropped you off?

15 A Uh-huh.

16 Q And how long did he have the car, to your
17 knowledge?

18 A I don't remember because he always gets the car.

19 Q Okay.

20 A I mean, it wasn't nothing out of the ordinary.

21 Q And did he pick you up that day?

22 A No, I believe Courtney came and picked me up that
23 day.

24 Q Okay. Do you remember what time he dropped you
25 off at work?

1 A Oh, it was pretty early. I have to be at work at
2 8:30. No, during that time it was eight o'clock, so
3 it had to be early.

4 Q And where was your office?

5 A Off Two Notch Road.

6 Q Two Notch?

7 A Uh-huh.

8 MR. COBLE: Thank you, Ms. Wallace.

9 THE WITNESS: Oh, you're quite welcome.

10 THE COURT: Cross?

11 MR. KRZYSTON: Thank you, Judge. May it please
12 the Court.

13 CROSS-EXAMINATION:

14 BY MR. KRZYSTON:

15 Q How are you doing today, Vernell?

16 A I'm fine. How are you?

17 Q Pretty good. Now, when William took the car, you
18 don't know where he went, do you?

19 A No, did not, huh-uh.

20 Q And when you rode to work, the car was pretty
21 messy, wasn't it?

22 A Yes, I'm sorry. I work two jobs, so my second is
23 home health. I kept my --- lots of my information in
24 there.

25 Q So there was a lot of laundry and a lot of other

1 things in the car?

2 A Yeah, I had bag of clothes that belonged to me,
3 and there's some stuff my daughter Courtney had in
4 there. It was a lot of paperwork and junk, so yes.

5 Q Okay. Now, you were at the time living on Denny
6 Road, right?

7 A Yes, I was.

8 Q Now, were you still living there?

9 A Uh-huh.

10 Q Why is that?

11 A I'm afraid for my life.

12 Q How come?

13 MR. EATON: Objection.

14 THE WITNESS: Why I'm afraid of my life is
15 because ---

16 THE COURT: Stop, stop, stop. Approach.

17 Stand up, take a few moments for yourself. We're
18 about to take a break in a few minutes.

19 (WHEREUPON, a bench conference was held in the
20 presence, but not within the hearing of the
21 jury.)

22 All right. That was a quick one. You may
23 continue. That last question is withdrawn.

24 MR. KRZYSTON: All right. That's all I have for
25 you.

1 THE WITNESS: Thank you so much.

2 THE COURT: Whoa, whoa. Wait a minute, please.

3 Do you have any redirect?

4 MR. EATON: No, sir.

5 THE COURT: Okay. Thank you. Now you can leave.

6 Have a nice day.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Ladies and gentlemen,
9 we're going to take an afternoon break for about 15
10 minutes. It's about 4:10, 4:08 somewhere around
11 there. We will probably push through to about
12 5:30 tonight and stop. I won't be going any longer
13 than that. I'm actually required to go to the
14 statewide grand jury tonight for chief administrative
15 judge duties so the latest we will be here is 5:30.
16 If we can finish up with a witness and get out
17 earlier, we will, but just for you're planning
18 purposes, 15 minute break. Everyone remain seated
19 while the jury is dismissed.

20 (WHEREUPON, the jury left the courtroom at 4:08
21 P.M.)

22 THE COURT: All right. 15 minute break.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: All right. Bring them in,
25 Mr. Tolbert.

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: All right. Call your next witness.

3 MR. COBLE: The State would call Courtney
4 Wallace.

5 THE COURT: Courtney Wallace?

6 MS. SAMPSON: Yes, sir.

7 THE COURT: Okay.

8 THE CLERK: Place your left hand on the Bible,
9 raise your right.

10 COURTNEY WALLACE,
11 after being duly sworn, testified as follows:

12 THE COURT: Please have a seat. State your full
13 name for the record.

14 THE BAILIFF: Watch your step.

15 THE COURT: All right. State your full name.

16 THE WITNESS: Courtney Antonisha Wallace.

17 THE COURT: Thank you.

18 Go ahead, Mr. Coble.

19 DIRECT EXAMINATION:

20 BY MR. COBLE:

21 Q Ms. Wallace, where are you from?

22 A Columbia, South Carolina.

23 Q Are you related to the defendant?

24 A Yes.

25 Q How so?

1 A He my cousin.

2 Q Who is Vernell Wallace?

3 A My mother.

4 Q Who just testified?

5 A Yes.

6 Q Do you recall this incident in June 2012?

7 A Yes.

8 Q Did you end up speaking with law enforcement
9 about this?

10 A Yeah.

11 Q Now, where did you live at this time?

12 A 1210 Denny Road.

13 Q Is that where your mother lived, as well?

14 A Yeah.

15 Q Now, on the day of this incident, did you talk to
16 your cousin?

17 A Yeah, he came over with the keys.

18 Q Do you recall --- I apologize. What did you say?

19 A He came and brought me the car keys.

20 Q What car was that for?

21 A My mom's car.

22 Q The white Buick?

23 A Yeah.

24 Q Did he have that car that day?

25 A Yeah.

1 Q What time did he come bring you the car?

2 A I would say it was like afternoon, noonish.

3 Q Would having your statement help refresh your
4 memory?

5 A Sure. I guess. Yeah, that sounds about right,
6 like, twelve, one, 1:30.

7 Q Is that when the defendant came by your house?

8 A Uh-huh.

9 THE COURT: Is that a yes?

10 THE WITNESS: Yeah, I'm sorry, I like to say
11 uh-huh, and uh-huh a lot.

12 THE COURT: Try to say yes or no for us, okay?

13 BY MR. COBLE:

14 Q Now, when he came by with the key, what did he do
15 at the house?

16 A Now, I was in the room. I heard him say that he
17 was going to put the keys on the table and I was ---
18 cause I didn't have no bottoms on and I was in the
19 room the whole time just about.

20 Q Now, how do you know that it was around 12:00,
21 12:30?

22 A Because I'm watching like Roseanne. Like what it
23 says on the statement. I was watching TV. That's
24 what I did every summer because it was pretty boring.

25 Q Now, after you got the keys from your cousin,

1 what did you do next?

2 A I think I stayed in the room for a minute and
3 then went out to like the living room area.

4 Q Did you see your cousin there with anybody else?

5 A Yeah.

6 Q Who did you see him there with?

7 A I don't remember, really remember his name, but
8 it was what it says right here on the paper.

9 Q What does that name say?

10 A Gottie.

11 Q Do you not know his real name?

12 A I really don't know him.

13 Q Do you know who DeAndre Diggs is?

14 A No, I don't know him.

15 Q Now, when you saw your cousin with Gottie, did
16 your cousin say what he was doing there?

17 A No.

18 Q Did he say if he was --- now, did you have a
19 chance to read your statement again?

20 A What's your question?

21 Q Did your cousin say --- while he was waiting
22 there with Gottie, did he say what he was about to do?

23 A No, like we never even really spoke like
24 face-to-face about anything, not anything.

25 Q Did you not tell Captain Scott McDonald that

1 Bumbee was waiting for Kimberly, his girl friend, to
2 come pick them up?

3 A He always was telling me like that. It's not
4 saying that I said that. I just told them like what I
5 thought he was doing. That he was waiting on
6 Kimberly.

7 Q Did you also tell Investigator --- Captain Scott
8 McDonald that Kimberly came in a short time later in a
9 gray car and picked up Gottie and Bumbee?

10 A I don't know when she picked them up. I don't
11 know how long it was or whatever. She would always
12 come pick him up. That was like a day-to-day thing
13 just to spend time together.

14 Q Did you see your cousin or Gottie unload anything
15 from that white Buick?

16 A No, not at all.

17 Q Thank you.

18 MR. COBLE: Nothing further, Your Honor.

19 THE COURT: Yes, sir.

20 MR. KRZYSTON: Thank you, Judge. May it please
21 the Court.

22 CROSS-EXAMINATION:

23 BY MR. KRZYSTON:

24 Q How are you doing this afternoon, Courtney?

25 A I'm okay.

1 Q Now, you're over there at Carolina, right?

2 A Yeah.

3 Q Doing good lately?

4 A (There was no response.)

5 Q All right. Let's talk a little bit about the
6 statement you gave. Okay. So you saw William and
7 DeAndre mid afternoon at some point, right?

8 A Uh-huh.

9 (crying.)

10 Q Are you all right?

11 A Okay. Yeah.

12 Q Don't worry about it. You're fine.

13 A I'm fine.

14 Q Do you need to take a minute?

15 THE COURT: Do you want some water, Ms. Wallace?

16 MR. KRZYSTON: May I approach, Judge?

17 THE COURT: Sure.

18 THE WITNESS: I need some tissues.

19 MR. KRZYSTON: It's okay.

20 THE WITNESS: I need some tissues.

21 MR. KRZYSTON: I'll get you...

22 THE WITNESS: I'm such a big baby.

23 BY MR. KRZYSTON:

24 Q It's all right. Take your time.

25 A I'm nervous.

1 Q Okay. Go back to it. So you saw William and
2 Gottie about mid afternoon?

3 A Yeah.

4 Q You didn't know where they had been?

5 A No, sir.

6 Q They didn't tell you where they had been?

7 A No, sir.

8 Q It's pretty early in the afternoon, right, like
9 you told Mr. Coble, it was about 12:30, thereabouts?

10 A Yes, sir.

11 Q Gottie was drinking a beer out there, was he?

12 A Yes, sir.

13 Q But William wasn't drinking a beer, right?

14 A No, sir.

15 Q Are you all right?

16 A Yeah, I'm fine. I'm just nervous.

17 Q All right. And again, they didn't tell you where
18 they had been and nothing was wrong with William,
19 right?

20 A Know.

21 Q Okay. Now, one last question, you said you
22 hardly knew Gottie, right?

23 A I knew --- like I went to school. I went to
24 school with his daughter. I had seen his daughter in
25 school before.

1 Q You had interaction with them once or twice
2 before, right?

3 A Yeah.

4 Q You don't have to say how, but you had at least
5 had face-to-face contact with them at least once?

6 A It was more like I was a bystander listening to a
7 conversation.

8 Q That he was having?

9 A Uh-huh.

10 Q Okay. All right. Thank you Courtney. That's
11 all I've got.

12 A Thank you.

13 REDIRECT EXAMINATION:

14 BY MR. COBLE:

15 Q Ms. Wallace, just one brief question, when you
16 spoke with Captain McDonald, he presented a lineup,
17 correct?

18 A Yeah.

19 Q A photo lineup. Do you remember that?

20 A Yeah.

21 Q Did you pick out DeAndre Diggs as Gottie?

22 A Yes, sir.

23 MR. COBLE: Thank you.

24 MR. KRZYSTON: Nothing further, Your Honor.

25 THE COURT: Have a nice day, ma'am. Thank you.

1 MR. COBLE: State calls Dayle Blackmon.

2 DAYLE BLACKMON,

3 after being duly sworn, testified as follows:

4 THE CLERK: Have a seat. State your full name
5 for the record.

6 THE BAILIFF: Watch your step.

7 THE WITNESS: Dayle Blackmon.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION:

10 BY MR. COBLE:

11 Q Ms. Blackmon, where are you currently employed?

12 A Richland County Sheriff's Department.

13 Q Are you a deputy, investigator or what's your
14 title?

15 A I'm a class three deputy.

16 Q Deputy Blackmon. How long have you been employed
17 with the sheriff's department?

18 A Almost three years.

19 Q In what capacity are you there in?

20 A Right now I'm doing asset forfeiture.

21 Q Back in 2012, you were employed there, correct?
22 What were you doing at that time?

23 A I was a supervisor down in the evidence room.

24 Q What was your role in the evidence room at that
25 time?

1 A Supervise the people that work for me and took in
2 evidence and signed out evidence, made sure we follow
3 the policy, et cetera.

4 Q Now, did you receive evidence in this case?

5 A Yes.

6 Q Did you get a chance to look over your property
7 report?

8 A I did.

9 Q Do you have a copy?

10 A I left it out in the lobby. I'm sorry.

11 Q That's fine. Do you recall receiving evidence
12 from this case?

13 A Yes, sir.

14 Q How did you receive that evidence? What's the
15 process?

16 A Well, it depends on which particular item we're
17 talking about. There are two ways to receive
18 evidence. If the evidence room is closed, we can ---
19 we have a drop box or we have a locked locker that
20 they can leave evidence in. The only people that can
21 get in that locker, which would be me or one of the
22 people that worked for me, or we will take it directly
23 through the window from the person bringing the
24 evidence in. We also return evidence or --- not
25 return it, but we sign out evidence to any officer

1 that may request it for testing and so on.

2 Q Now, would it help refresh your memory from 2012
3 to have a property report of this incident?

4 A It would, because I have several items on there.

5 MR. COBLE: May I approach the witness, Your
6 Honor?

7 THE COURT: Yes, sir.

8 MR. COBLE: Thank you.

9 BY MR. COBLE:

10 Q Now, if you could --- I believe on page three, do
11 you see the items ending in numbers 50, 51 and 52?

12 A Yes, sir.

13 MR. COBLE: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. COBLE:

16 Q Deputy Blackmon, what is this? Without showing
17 it to the jury, please.

18 A This is an evidence bag that --- we have several
19 different ways of entering evidence. We have boxes,
20 we have envelopes, and we have plastic bags. It
21 depends on what we're entering into evidence. This
22 evidence bag is one that they utilize with a label on
23 the front that sticks on and then the red tape is
24 where they seal it, any area where it glues so in case
25 it come unglued, we will know.

1 Q Can you please --- there are several items in
2 there, can you describe what those items are?

3 A One is a projectile for Pratt, a lead projectile
4 for Johnson. Lead, I'm sorry, and a jacket with
5 Johnson written on it.

6 Q Are all three of those envelopes, are those in
7 the same manner and process how they normally are when
8 you were talking about being taped and glued?

9 A Yes, yes, they are.

10 Q How can you tell if that's how you normally do
11 the process?

12 A This is the standard in our policy that when they
13 seal them, they seal them with the evidence tape.
14 They initial them off the evidence tape, and then they
15 drop them --- they keep them all together in one bag.
16 They are sealed. Then they seal this bag. Then with
17 the label on --- again, they initial off on the
18 evidence tape, and then on the label, they will fill
19 it out completely for us, and then they will sign it,
20 date, and time it whenever they drop it or hand it
21 over to us.

22 Q Now, based on your property report on that
23 evidence, can you tell us where you obtained or who
24 you obtained that property from, that evidence room?

25 A Okay. This evidence came from Beeler, I believe,

1 if I can read his writing.

2 Q Do you know who Beeler is?

3 A Yes, he is one of the crime scene investigators.

4 Q Can you tell what type of condition you received
5 that? What the condition of the evidence was when you
6 received that?

7 A The only way --- we won't accept it if it's not
8 sealed like it's supposed to be, properly. We have
9 a --- not a basket, but a way of if there's something
10 improper, if they forget to initial off on the
11 evidence tape or whatever, we will put it in the
12 officer update and have them come in and repair it,
13 but they would be listed on here.

14 Q That didn't happen in this instance?

15 A No.

16 Q Now, when you received that evidence, what did
17 you do with it?

18 A We take it from them. This one was taken from
19 Mr. Beeler and we log it in to our computer system.

20 Q Where was all this evidence stored and where are
21 you handling it?

22 A In the evidence room.

23 Q This is at headquarters?

24 A Yes, sir. The time and date that we actually
25 take it from the investigator or the officer, we

1 initially off on it, the date and the time.

2 Q Was that done on this instance?

3 A Yes, sir.

4 Q What is that date and time?

5 A July 2nd of 2012 at 10:56.

6 Q Did you end up transferring that evidence
7 somewhere else?

8 A Yes, yes.

9 Q Where did you transfer it to?

10 A I ended up with the same three items in this one
11 envelope to David Collins, who is our ballistics
12 expert.

13 Q And when you transferred it to him, was its in
14 the same condition?

15 A Yes, sir.

16 Q How long did you --- do you recall how long you
17 had that in your custody before you transferred that
18 to Collins?

19 A I can tell you from the paper, but I can't tell
20 you off the top of my head.

21 Q Okay.

22 A I want to think it's the same day, but...

23 Q You can look at your report.

24 A Pardon me?

25 Q You can look at your report.

1 A It was the same day, and it was at 1:38.

2 Q Now, based on it processing and your procedures,
3 how can you be absolutely sure that's the same items
4 of evidence that you received and transferred?

5 A We place items of this nature in boxes and
6 they're in the numerical order of the case number, and
7 when we --- of course, it's in the computer system.
8 We put a label on each item that's in there. There
9 are three labels on this and it has three items on it
10 that correspond. When we go to pull them, we go back
11 to the computer, look it up by case number, see which
12 items Mr. Collins wanted to have out. So we go in.
13 We pull them. You don't handle these. Once we file
14 them, we don't bother them until they are either given
15 to the officer that requests it or a later time when
16 you may request it or when it's time for destruction.

17 Q And that evidence appears the same as we
18 requested it?

19 A Yes, sir.

20 MR. COBLE: Thank you.

21 Nothing further, Your Honor.

22 THE COURT: All right. Does that have an exhibit
23 number on it yet?

24 MR. COBLE: No.

25 THE COURT: It needs an exhibit number for ID

Cross of Blackmon by Hines
Direct of McDaniels by Coble

1 purposes only.

2 (WHEREUPON, State's Exhibit Number 85 was marked
3 for identification only.)

4 THE COURT: So that's 85 for ID only.

5 Cross?

6 MS. HINES: Just briefly.

7 CROSS-EXAMINATION:

8 BY MS. HINES:

9 Q Deputy Blackmon, if you'll refer to your property
10 report on page 19, you aren't the deputy who actually
11 took those from Investigator Beeler?

12 A No, ma'am. He was not an employee. He was an
13 evidence custodian. That was Will Cedarstaff who
14 actually took it from Beeler.

15 Q And then you are the person who actually gave it
16 to David Collins?

17 A Yes, ma'am.

18 MS. HINES: Thank you. Nothing further.

19 THE COURT: Have a good day.

20 THE WITNESS: Thank you very much.

21 MR. COBLE: State calls Shawn McDaniels, Your
22 Honor.

23 SHAWN MCDANIELS,

24 after being duly sworn, testified as follows:

25 THE COURT: Yes, sir.

DIRECT EXAMINATION:

2 BY MR. COBLE:

3 Q Sergeant McDaniels, yes, can you spell your name
4 for the court reporter?

5 A M-C-D-A-N-I-E-L-S.

6 Q Now, you're currently employed at the sheriff's
7 department?

8 A Yes, I am.

9 Q What's your role there?

10 A I'm currently a sergeant as a school resource
11 officer.

12 Q You've been employed how long with the sheriff's
13 department?

14 A Sixteen years.

15 Q What was your role at the sheriff's department in
16 June of 2012?

17 A I was a sergeant within the criminal
18 investigative division.

19 Q Do you recall this incident?

20 A Yes, I do.

21 Q How did you become involved?

22 A I received a phone call from Sergeant Strange
23 asking me to assist Sergeant Robinson at the time with
24 this matter.

25 Q And then how did you ends up assisting Sergeant

1 Robinson? Where did you go?

2 A I recall meeting with him on Bush River Road and
3 at that time, I made contact with, I believe, Kimberly
4 Michelle Conway.

5 Q Now when you arrived --- let me back up just a
6 little bit. When you arrived on this incident
7 location, what was happening there?

8 A There was an arrest being made.

9 Q Of Ms. Conway?

10 A No, sir.

11 Q Okay.

12 A She wasn't under arrest.

13 Q By the time you arrived there, where was
14 Ms. Conway?

15 A She was actually standing on the outside of the
16 vehicle when I got there.

17 Q She wasn't under arrest?

18 A She wasn't under arrest at all.

19 Q Where did you end up going with her?

20 A We went back to headquarters, and I got a
21 statement from her, a written statement.

22 Q Where was she --- you spoke with investigators on
23 the scene, correct?

24 A I did.

25 Q Did they explain to you what her role in this

1 arrest was?

2 MR. KRZYSTON: Objection, hearsay.

3 THE COURT: The question is, did they explain,
4 not how did they explain it. Overruled.

5 THE WITNESS: Yes.

6 BY MR. COBLE:

7 Q And then from there you took her to headquarters?

8 A That is correct.

9 Q And you said she gave you a statement?

10 A She did.

11 Q What was her demeanor at this point when she gave
12 you the statement?

13 A She was cooperative. Yeah, she was --- she was
14 bit uneasy and there was a lot going on, I mean,
15 outside of just she had questions, you know. She was,
16 you know, cooperative. She answered all my questions.

17 Q She came with you voluntarily, correct?

18 A She did, yes.

19 Q Did you answer all her questions?

20 A I did. At the time I was in assistant mode, so I
21 didn't have a lot of the answers. It wasn't my case.

22 Q Now, when you go back to headquarters, where did
23 you take her to interview her?

24 A I interviewed her in my office at headquarters,
25 which is located in the rear of the investigations

1 division.

2 Q And you said she came to you voluntarily. Did
3 she go voluntarily at headquarters to your office?

4 A She did.

5 Q Approximately how long did this interview last?

6 A It was couple of hours. I initially made contact
7 with her, if I may refer to my notes, approximately
8 somewhere between 3:30 and 4:00. It wasn't until
9 approximately 5:12 that we started memorializing her
10 statement.

11 Q And when you say memorializing, what do you mean
12 by memorializing her statement?

13 A To actually type it up.

14 Q Did you do that by yourself or did she help?

15 A She assisted. It's in a Q and A format. I asked
16 her questions. Whatever her answer is, I type up
17 exactly what she says.

18 MR. COBLE: Beg the Court's indulgence, Your
19 Honor.

20 THE COURT: Yes, sir.

21 MR. COBLE: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes, sir.

24 MR. COBLE: Thank you.

25 BY MR. COBLE:

1 Q Sergeant. I'm going to show you, do you
2 recognize those two items?

3 A These are copies of the statement that I took
4 from Kimberly Michelle Conway.

5 Q Now, on page one of --- now these are two
6 separate statements?

7 A They are actually the same statement, and if I'm
8 not mistaken, they...

9 The only difference between the statements is
10 that on the second statement, it's the same statement,
11 but when I'm actually going over the statement with
12 the witness, I read it to them.

13 I asked them is there anything you would like to
14 add or subtract from the statement. It --- oftentimes
15 in conducting the interview, you realize that you need
16 to ask another question while you're reading back that
17 statement. So in this particular case, in reading the
18 first statement back to her, I then decided to ask an
19 additional question. So I added that question to her
20 original statement. So it wasn't completed until the
21 second statement, until that final question was
22 inputted.

23 Q Now, at the very bottom of both front pages,
24 whose signature is that?

25 A Kimberly's.

1 Q And then right above it --- right below it, whose
2 signature is that?

3 A That is my signature.

4 Q Now, why did Kimberly Conway sign that?

5 A Again, signifying that those were her words and
6 that this was, in fact, her statement.

7 MR. COBLE: All right. Thank you. Nothing
8 further.

9 THE COURT: Cross?

10 MR. KRZYSTON: Thank you, Judge. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION:

14 BY MR. KRZYSTON:

15 Q Sergeant McDaniels, so you were called by
16 Sergeant Don Robinson to go out to the arrest scene at
17 Bush River Road?

18 A I was contacted by Sergeant Strange.

19 Q I'm sorry. Sergeant Strange. It's been a long
20 afternoon. When you got there again, there was an
21 arrest in process. You saw Ms. Conway, correct?

22 A That is correct.

23 Q And she was in handcuffs, correct?

24 A I don't recall her being in handcuffs.

25 Q Okay. And then after you met up with her, you

1 took her down to headquarters and proceeded to get a
2 statement from her in your office?

3 A That is correct.

4 Q And is there any video recording equipment in
5 your office?

6 A No, sir.

7 Q And is there any audio recording equipment in
8 your office?

9 A No, sir.

10 Q Do you have a cell phone?

11 A I do have a cell phone.

12 Q And did you record any of the interrogation of
13 Ms. Conway?

14 A It's not our practice at the Richland County
15 Sheriff's Department to record. It's just not what
16 we --- we don't do that.

17 Q Actually, you don't even get to make that
18 decision, do you?

19 A What do you mean by that?

20 Q I mean, if you wanted to record the conversation,
21 you couldn't?

22 A It's not our practice to do so.

23 Q Right. So your bosses tell you not to record it?

24 A They don't tell us not to. It's just not our
25 common practice. It's not, as a matter of fact, the

1 lead investigating agency in this nation doesn't
2 record it. The FBI doesn't record their
3 interrogations.

4 Q Yes or no?

5 A Do you want me to repeat my answer?

6 (cross talking.)

7 Q Well, Richland County ---

8 THE COURT: Stop talking.

9 MR. KRZYSTON: I'm sorry.

10 THE COURT: Repeat your answer.

11 THE WITNESS: Okay. My answer was it's not our
12 common practice to record --- at the sheriff's
13 department, it's not the common practice not just for
14 us, but for also the leading investigating agency of
15 this nation. They don't record their interviews.

16 THE COURT: Now, you may ask your question.

17 MR. KRZYSTON: Thank you.

18 BY MR. KRZYSTON:

19 Q And are you a member of that investigating
20 agency?

21 A No, but I worked with them on several different
22 occasions and worked with them on several different
23 homicides.

24 Q But you are a Richland County investigator?

25 A I am.

1 Q And Richland County tells you not to record those
2 statements?

3 A It is a known fact that it is not our common
4 practice to record that.

5 Q Okay. And when you record these statements, you
6 write them down, if you will, and when I say record, I
7 just mean that you just make a record of them?

8 A We memorialize them, yes, sir.

9 Q And you do that on a computer, correct?

10 A That is correct.

11 Q And when you're talking to Ms. Conway, do you
12 write notes, handwritten notes?

13 A When I'm talking to her?

14 Q Yeah, like when you're in the interrogation room,
15 do you take handwritten notes?

16 A No, not always.

17 Q And do you have your computer there?

18 A We do.

19 Q Do you type the statement as she asks it or ---
20 as you ask a question, do you say "Ms. Conway, how are
21 you doing today?" and then do you type, "Ms. Conway,
22 how are you doing today?"

23 A No, generally there is a conversation and there
24 is an interview. There are questions I asked her on
25 the interview, and then when that portion of the

1 interview is over, we then --- we memorialize what we
2 discussed to a written statement.

3 Q Right. Because as the trained interrogator, you
4 have to build a rapport with somebody, correct?

5 A I don't have an answer to that.

6 Q Well, you have to build a relationship. You have
7 to establish who you are, how that person is so they
8 open up and talk to you?

9 A That's --- I'm not sure what you're asking. Are
10 you saying that I'm a trained interrogator?

11 Q Well, you're an investigator, right?

12 A I used to being an investigator, yes.

13 Q And you're trained to talk to people?

14 A That is correct.

15 Q And part of that training is to help you obtain
16 statements from people?

17 A Part of the training is to ask the appropriate
18 questions in order to get all the information that we
19 need at the time. That's our training.

20 Q But you can't just go in there cold turkey and
21 let's say your in an armed robbery. You can't just go
22 in there cold turkey and ask somebody if they did
23 this, right?

24 A We're not trained to manipulate people.

25 Q But you're trained to talk to people?

1 A That's what you're asking.

2 Q Absolutely not. What I'm asking is are you
3 trained to go in there, build a relationship, build a
4 rapport with the person you're questioning?

5 A We're trained to go in there and hold a
6 conversation that consists of questions and answers.

7 Q And you would have done that as part of your
8 interrogation of Ms. Conway, would you not?

9 A I would have done what?

10 Q Held a conversation?

11 A Sure, of course.

12 Q But you don't type that down because that's not
13 relevant to the investigation?

14 A Clearly it's relevant. It's memorialized and on
15 her statement just to make sure that we have
16 everything, if you read the last question, "Is there
17 anything that you would like to add or subtract from
18 this statement?" Her answer was --- do I need to read
19 that.

20 Q You absolutely don't, but ---

21 A Okay.

22 Q But what ---

23 A If I may --- the final question, "Is this
24 statement the whole truth?" so clearly these were her
25 words. She signed it on each page indicating that

1 after reading it back to her and after giving it to
2 her to read, that this was, in fact, her words, her
3 recollection of ---

4 Q Now --- an investigator, but my question to you
5 was, when you talk to somebody, you engage in a
6 conversation, okay, how was your day Ms. Conway, how
7 are you doing? You don't write that stuff down, do
8 you?

9 A (There was no response.)

10 Q Just yes or no.

11 A Considering the circumstances, I don't recall
12 asking her asking her how was her day, how are you
13 doing.

14 Q Okay. So you just went in cold turkey with your
15 interrogation?

16 A Considering the circumstances, considering what
17 we were dealing with, generally you get right to the
18 questions.

19 Q Right. But you were in assist mode, so you
20 didn't really know a whole lot of what was going on,
21 did you?

22 A I knew the basics.

23 MR. KRZYSTON: No further questions.

24 THE COURT: Redirect?

25 MR. COBLE: Just briefly, Your Honor.

1 REDIRECT EXAMINATION:

2 BY MR. COBLE:

3 Q Sergeant McDaniels, you said that you all have a
4 policy at Richland County Sheriff's Department for
5 interviewing witnesses?

6 A Yes, this is not our common practice to do that.

7 Q How long have you been at the sheriff's
8 department?

9 A Sixteen years.

10 Q Did you follow all the standard procedures and
11 policies that are in place at the sheriff's department
12 on that day?

13 A Yes, sir.

14 MR. COBLE: Nothing further.

15 THE COURT: Recross?

16 MR. KRZYSTON: Just briefly. Beg the Court's
17 indulgence, Your Honor.

18 (Pause.)

19 RECROSS EXAMINATION:

20 BY MR. KRZYSTON:

21 Q And as part of the common practice that we just
22 talked about that you do and all that, you read the
23 statement back to the person, right?

24 A I read the statement back to them, and I give it
25 to them to read for themselves.

1 Q And then they sign it, correct?

2 A After answering the last two questions, is there
3 anything you want to add or subtract from it and is
4 this statement the truth," they then sign it.

5 Q It's okay to say yes.

6 A I'm just answering your question.

7 Q Now, you read Ms. Conway the statement both
8 times, correct, and then you gave it to her to read?

9 A I did.

10 Q And she signed both copies?

11 A She signed one copy.

12 Q Okay. So she didn't sign both copies?

13 A One copy had an additional question on it.

14 MR. KRZYSTON: Beg the court's indulgence, Your
15 Honor.

16 (Pause.)

17 THE WITNESS: I stand corrected, she --- it was
18 printout. She signed it. Signed the first copy. I
19 then thought about an additional question, and I can
20 read that question. It was an additional question
21 that was pertinent to the circumstances, and then I
22 added that question to the same written format on the
23 computer. I printed out a second copy and she signed
24 that copy, as well.

25 MR. KRZYSTON: Thank you, Investigator.

1 THE COURT: Have a nice day.

2 THE WITNESS: Thank you.

3 THE COURT: All right. Call your next witness.

4 MS. SAMPSON: The State calls Diego Nova.

5 DIEGO NOVA,

6 after being duly sworn, testified as follows:

7 THE WITNESS: Diego Nova.

8 DIRECT EXAMINATION:

9 BY MS. SAMPSON:

10 Q Good afternoon.

11 A Good afternoon.

12 Q What is your official title?

13 A Special agent.

14 Q I just wanted to make sure I call you the right
15 thing?

16 A You can call me Diego.

17 Q Where do you work?

18 A SLED.

19 Q Can you tell us what SLED is?

20 A South Carolina Law Enforcement Division.

21 Q What do you do there?

22 A I work in the fugitive unit.

23 Q What does that mean, working in the fugitive
24 unit?

25 A Okay. We assist local departments trying to

1 apprehend fugitives, sometimes it's missing persons.

2 Sometimes it's amber alerts or missing persons.

3 Q I'm going to ask you to speak up just a little
4 bit. Is it only --- do you work with, you said, all
5 different agencies?

6 A The entire state.

7 Q Not just Richland County?

8 A Not just Richland County.

9 Q And I want to move you back to June 28th of 2012.
10 Were you working in that capacity back then?

11 A I was.

12 Q And you were contacted by someone from Richland
13 County to look for William Wallace; is that correct?

14 A Yes, yes.

15 Q And as part of that, did you then use information
16 to get cell phone records?

17 A I did.

18 Q And I'm going to talk to you a little bit about
19 when you request those from a cell phone company. Are
20 you allowed to get records from a cell phone company
21 if there is not an arrest warrant?

22 A Yes.

23 Q How do you go about that?

24 A We get a court order signed, or if it's a life
25 and death situation, we get an exigent form.

1 Q What is an exigent warrant?

2 A An exigent form, it's a life and death situation.
3 It's a simple form, you call up the cell phone company
4 and then you fax them that form.

5 Q Did you do that in this case?

6 A I did.

7 MS. SAMPSON: Beg the Court's indulgence.

8 (Pause.)

9 (WHEREUPON, State's Exhibit Number 86 and 87 were
10 marked for identification only.)

11 BY MR. COBLE:

12 Q I'm going to show you what's been marked as
13 State's Exhibit Number 86 and see if you recognize
14 that?

15 A I do.

16 Q What is that?

17 A That is the fax cover sheet of the exigent form
18 that I sent to T-Mobile.

19 Q Is that for this case?

20 A Yes, it is.

21 Q Does that fairly and accurately depict what you
22 served to T-Mobile that day?

23 A Yes.

24 MS. SAMPSON: At this time we'd ask to move
25 State's Exhibit Number 85 into --- 86, I'm sorry, into

1 evidence.

2 MR. KRZYSTON: Judge, we would object to anything
3 that we discussed in our pretrial rulings.

4 THE COURT: Overruled.

5 MR. KRZYSTON: We would ask again to look at the
6 exigency request.

7 (WHEREUPON, State's Exhibit Number 86 was
8 admitted into evidence.)

9 MR. KRZYSTON: No objection, Judge. I'm sorry.

10 MS. SAMPSON: So, I'm sorry, is it in?

11 THE COURT: Eighty-six, without objection.

12 MS. SAMPSON: Thank you, Your Honor.

13 BY MS. SAMPSON:

14 Q I'm going to ask you some questions and I'm going
15 to stand here because you have my only copy. On this,
16 what do you from them?

17 A On this one I requested subscriber information,
18 call detail records, cell sites and real-time
19 location, mobile device GPS.

20 Q I'm going to ask you about that on the real-time.
21 What does that mean?

22 A That means that the cell phone company --- it
23 gives me a tower and a sector or a GPS coordinate
24 latitudes and longitude where the device is located.

25 Q Did they do that in this case?

1 A Yes.

2 MR. KRZYSTON: Judge, we would object to this
3 based on our previous objection.

4 THE COURT: All right. That objection is
5 overruled.

6 BY MS. SAMPSON:

7 Q I'm going to ask you to review what is marked as
8 State's Exhibit 87?

9 A Yes.

10 Q Do you recognize that?

11 A I do.

12 Q Is that what you received from T-Mobile?

13 A Yes.

14 Q Is that a fair and accurate representation of
15 what you received back on June 28, 2012?

16 A It is.

17 MS. SAMPSON: At this time, we'd move to
18 introduce 87 into evidence.

19 THE COURT: All right. Eighty-seven over defense
20 objection.

21 (WHEREUPON, State's Exhibit Number 87 was
22 admitted into evidence.)

23 BY MS. SAMPSON:

24 Q So what's what you received?

25 A Yes.

1 Q Based on this information, what did you do?

2 A I forwarded those records. What was most
3 important to me however, were the real-time --- and
4 when I say I forwarded the records, I forwarded them
5 to Richland County, and I started to receive the
6 real-time GPS coordinates.

7 Q And what did you receive in reference to where
8 Mr. Wallace's location --- or the location of his
9 phone?

10 A Yes, I received the locaters that put his device,
11 his phone, somewhere around the Bush River Road area.
12 I think it's Dutch Fork Mall.

13 Q Dutch Square Mall?

14 A Dutch Square Mall.

15 Q And my understanding at that time, you guys had
16 information that he was in a particular car?

17 A Yes, we had ---

18 Q I'm going to ask you specific questions about
19 that, if you don't mind.

20 A Yes, okay.

21 Q He was in a specific car and you had gotten that
22 information, correct?

23 A Yes.

24 Q Therefore, you were looking not only for Wallace
25 but also for that car?

- 1 A Yes.
- 2 Q Based on that, you gave information to the
- 3 Richland County Sheriff's Department to look for the
- 4 car and for Mr. Wallace?
- 5 A We did.
- 6 Q Did you tell them to look in that particular
- 7 area?
- 8 A Yes.
- 9 Q Did you yourself look in that area?
- 10 A I did. I was in the area myself.
- 11 Q So were you with anyone?
- 12 A I was with Lieutenant Cal Reighley. He was the
- 13 lieutenant of the fugitive division at the time.
- 14 Q So where did you all look?
- 15 A We looked --- we drove up Bush River Road and
- 16 then turned into Dutch Square Mall.
- 17 Q And what happened when you got to that area?
- 18 A When we got to that area, right when we drove ---
- 19 right when we made that left turn from Bush River,
- 20 when we were in the parking lot, we were able to see
- 21 Mr. Wallace coming out of Burlington Coat Factory.
- 22 Q How did you know it was --- well, let me rephrase
- 23 that. Did you see him get into the vehicle you were
- 24 looking for?
- 25 A We did. I had a picture of Mr. Wallace in my