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ORIGINAL
ANDERS

STATE OF SOUTH CAROLINA

In The Court of Appeals

VOLUME I OF III

ANDERS RESPONSE BRIEF
RECEIVED

APPEAL FROM RICHLAND COUNTY

R. Knox McMahon, Circuit Court Judge

APR 13 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY M. PORTERFIELD

APPELLANT

APPELLATE CASE NO. 2015-000631

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT # 23 (PHONE CALLS)**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
2012-GS-40-5294--5297

3
4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Anthony Markale Porterfield,)
8 Defendant.)

9 February 23-27, 2015
10 Columbia, South Carolina

11
12 B E F O R E:

13 THE HONORABLE R. KNOX MCMAHON, JUDGE; and a jury.
14
15

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21 Attorneys for the Defendant
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Official Court Reporter

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STATE EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1-18	Photographs	283	283
19	Photograph	298	298
20	Lineup	201	201
21	Lineup	251	251
22	Advice of Rights	477	477
23	Jail Phone Calls	335	335
24	9-1-1 Call	200	200
25	Drawing	192	192
26	Booking Photo	497	497
27-30	Photographs	393	393
31	Blow-Up	392	392
32	Discovery Sheet	359	359
33	Phone Calls	435	435
34	Phone Calls	437	437

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1-15	Photographs	180	
1	Photograph		294
2	Photograph		294
4	Photograph		294
9	Photograph		294
12	Photograph		294
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17	DNA Report	417	423
18	Time Card	829	829
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1	CD-Phone Calls	95	
2	Jury Note	1004	
3	Jury Note	1004	
4	Jury Note	1006	

FEBRUARY 23, 2015

THE COURT: All right, this is
2012-GS-40-5294, 5295, 5296, and 5297, State v.
Anthony M. Porterfield: Burglary first degree;
armed robbery; kidnapping, two counts.

Mr. Porterfield is present, along with his
attorneys, Ms. Walker and Mr. Banks. Have I got
that right? Bank. Excuse me, Mr. Bank.

MR. BANK: Yes, sir.

THE COURT: And the Solicitor's Office is
present represented by Ms. Campbell and Ms. Walker.

Now, are there motions that you want me to
hear before we strike the jury? Have we decided
whether you want to strike the jury this afternoon
or tomorrow? Solicitor? Ms. Walker?

MS. A. WALKER: Your Honor, I do have two
issues I would like Your Honor to hear before we
strike the jury, but I am happy to accommodate
however Ms. Campbell would like to strike a jury
beyond that.

MS. CAMPBELL: If she tells me what the issues
are, I might have a better idea if it will take any
time.

MS. A. WALKER: Your Honor, I do have an issue
regarding -- I am requesting them to turn over the

1 list of the potential jury pool rap sheets. I have
2 some argument regarding that, that they have run
3 through NCIC. And then Mr. Bank has a motion
4 regarding referring to us as Public Defenders
5 instead of counsel. A very brief motion.

6 THE COURT: I'm sorry. Solicitor?

7 MS. CAMPBELL: Your Honor, we aren't going to
8 refer to them as Public Defenders. I don't know if
9 they are asking the Court not to refer to them as
10 Public Defenders.

11 MR. BANK: Judge --

12 THE COURT: I will be glad to refer to you
13 however you want me to; although, quite frankly, I
14 think being a Public Defender is a high, very
15 honorable position, quite frankly, but members of
16 the bar, however.

17 MR. BANK: Our concern is, Your Honor, we
18 don't want the jury to have any inference that he
19 is indigent, would have had any motive to try to
20 rob anybody or steal anything. It might be
21 something that they would never think about. It is
22 just an alternative. We would just prefer
23 attorney, counsel, lawyer, whatever it might be.
24 We would just ask the Solicitor's Office and the
25 Court to refer to us as those terms, if nobody

1 minds.

2 THE COURT: All right. I will grant that
3 motion.

4 MR. BANK: Thank you, Your Honor.

5 THE COURT: You have no objection to that,
6 Solicitor?

7 MS. CAMPBELL: I have no objection.

8 THE COURT: All right. Now, the NCIC?

9 MS. CAMPBELL: Your Honor, I believe there is
10 case law on point, State v. Casey, State v. Childs.
11 If I can approach. You are familiar with these
12 cases, I'm sure, where the same issue came up.

13 (Complies.)

14 THE COURT: All right. And, again,
15 Ms. Walker, tell me again what it is you want.

16 MS. A. WALKER: Thank you, Your Honor. May it
17 please the Court?

18 Your Honor, I am merely asking -- as you know,
19 the State, prior to picking a jury, runs each
20 potential member of the jury panel's NCIC record.

21 Your Honor, that record is something that they
22 have access to; whereas, I don't.

23 NCIC is a database maintained by the FBI. It
24 is used to -- and I researched using their own
25 website exactly the purpose for it -- but it is

1 used to apprehend fugitives, locate missing
2 persons, recover stolen property, identify
3 terrorists, things of that nature, Your Honor.

4 They are able to run that free of charge.
5 They have access to that. I don't.

6 That being said, Your Honor, I could ask the
7 Court for funding to run a SLED rap sheet on each
8 and every member of the jury panel at \$25 per
9 person; however, I don't think the Court would be
10 inclined to do so.

11 Your Honor, basically my argument is just
12 based on fairness, reasonableness, judicial
13 economy. I don't see any way that the State is
14 prejudiced in any way in giving it to me. They
15 give a copy to the Clerk of Court. Your Honor used
16 it in qualifying the jury in order to determine
17 which members of the jury were disqualified in
18 participating in the judicial process.

19 I am only requesting those criminal entries.
20 I am not requesting any notes they took during
21 qualifications or any further research that they
22 have done outside of that.

23 I don't believe that this counts as work
24 product. In fact, in fairness, Your Honor, it
25 seems that everybody in the courtroom has a copy

1 except for me and the Defense.

2 I don't think that they should be put in a
3 position where they can have more information that
4 I don't have any possible access to so that they
5 could pick a jury, a better jury than I can. I
6 think that that just puts us at an uneven playing
7 field.

8 That being said, I don't think that they are
9 documents prepared in anticipation of litigation.
10 NCIC is a database that is not designed for this
11 purpose, Your Honor. They have access to it, and I
12 don't. And I think fundamental fairness would
13 just -- should allow me to also have a copy of that
14 list. And that is all I'm asking.

15 I think everybody else in the courtroom has
16 it. I don't see why it puts them in any less of a
17 position to give me a copy of it.

18 THE COURT: Thank you, Ms. Walker.

19 Ms. Campbell?

20 MS. CAMPBELL: May it please the Court, Your
21 Honor? I just handed up State v. Casey and State
22 v. Childs, which are both on point. We would just
23 ask you to follow the law as the Supreme Court -- I
24 believe those were Supreme Court cases -- excuse
25 me, Court of Appeals -- the Supreme Court, Your

1 Honor, has ruled on. There is no right of
2 discovery I think as far as it goes to the rap
3 sheets. And we would just ask you to follow the
4 law.

5 THE COURT: All right. I am going to alter it
6 a little bit, Solicitor. If a juror's name comes
7 up, No. 7, and No. 7 has a rap sheet, at that time
8 give it to Ms. Walker.

9 In other words, you don't have to give them
10 the whole rap sheets, but if a particular juror
11 comes out of the box and has a rap sheet, give it
12 to her at that time.

13 MS. CAMPBELL: Yes, sir.

14 MS. A. WALKER: Thank you, Your Honor.

15 THE COURT: You got me?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: And you can certainly -- if you
18 have any notes on it, you can exclude your notes.

19 MS. CAMPBELL: I don't have the rap sheets,
20 Your Honor.

21 THE COURT: You do not?

22 MS. CAMPBELL: I do not have the rap sheets
23 with me. I'm sure they are somewhere in my office.
24 I don't keep those. Generally I rely on the notes
25 that are transcribed by a paralegal. We don't

1 print the rap sheets.

2 THE COURT: The Clerk's Office handed me rap
3 sheets this morning.

4 MS. CAMPBELL: Those are notes transcribed by
5 our office onto the rap sheet -- onto the jury
6 list, excuse me. There is no rap sheet.

7 THE COURT: Oh, there is no rap sheet. Well,
8 if you don't run a rap sheet, then --

9 MS. CAMPBELL: They run the information and
10 then they type up the pertinent information. A
11 paralegal does that in my office.

12 THE COURT: Does the clerk have that?

13 MS. CAMPBELL: We give it to the clerk to
14 expedite things for the purpose of jury
15 qualification.

16 THE CLERK: I can print it.

17 THE COURT: It was already printed. And they
18 showed it to me this morning.

19 THE CLERK: I don't have a copy of it right
20 now, but I can get you a copy.

21 THE COURT: Well, if one comes up and they
22 have got information, give it to Ms. Walker.

23 MS. CAMPBELL: Judge, could we -- I'm
24 following what you are saying, I am just
25 considering my options. I am just trying not to

1 set new precedent.

2 Beg the Court's indulgence.

3 (Pause.)

4 MS. CAMPBELL: Your Honor, may I go check on
5 the rap sheet situation and see if any of them are
6 printed to make sure I'm not misrepresenting
7 anything?

8 THE COURT: Sure. Do you have other motions?

9 MS. A. WALKER: Your Honor, not before the
10 jury is struck, Your Honor.

11 THE COURT: Do you want to strike the jury
12 now, this afternoon, or in the morning?

13 MS. CAMPBELL: We would like to do it in the
14 morning, Your Honor.

15 THE COURT: All right. Are there any other
16 motions, pre-jury strike?

17 MS. CAMPBELL: Yes, sir. There are some
18 statements, and as well as there are some photo
19 lineups.

20 THE COURT: All right. Well, check on the rap
21 sheets. And, as I understand it, you want me to
22 hear the other motions this afternoon?

23 MS. CAMPBELL: Yes, sir, with the Court's
24 permission.

25 THE COURT: What time do y'all want to start?

1 MS. CAMPBELL: 2:00, 2:30?

2 MS. A. WALKER: That's fine, Your Honor.

3 THE COURT: All right, we'll start back at
4 2:30?

5 MS. A. WALKER: Yes, sir, Your Honor.

6 THE COURT: That will give you an opportunity
7 to check on --

8 MS. CAMPBELL: That gives us plenty of time.
9 And, Judge, is it okay if I'm excused for this
10 afternoon?

11 THE COURT: Yes. I have no objection. You
12 have no objection, do you, Ms. Walker?

13 MS. A. WALKER: No, Your Honor.

14 Thank you, Judge.

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

16 (WHEREUPON, a lunch break was taken at
17 12:30 p.m.)

18 (WHEREUPON, the proceedings continued at
19 2:32 p.m.)

20 THE COURT: State v. Anthony M. Porterfield.
21 You have a motion, Ms. Walker?

22 MS. A. WALKER: I do, Your Honor. Before I
23 begin, I would like to take up a couple of
24 scheduling matters with the Court.

25 I believe that Ms. Campbell and I discussed

1 the matter of a plea tomorrow morning, starting
2 around 10:30 with striking the jury.

3 I understand that Your Honor said that on
4 Wednesday morning that you may have an appointment
5 and you will be here probably about 10:00 o'clock,
6 I believe Your Honor said?

7 THE COURT: Yes, ma'am.

8 MS. A. WALKER: My expert witness is only
9 available on Wednesday morning and on all day
10 Friday. That being said --

11 MS. M. WALKER: I misheard what you said?

12 MS. A. WALKER: My expert witness is traveling
13 from Spartanburg. She is a professor at Wofford
14 College. She teaches all day on Tuesday and
15 Thursday, and has an engagement that she has to
16 attend on Wednesday afternoon, so she is only
17 available Wednesday morning and Friday afternoon --
18 or Friday all day of this week.

19 So that may cause a problem on Wednesday
20 morning because we are starting late on Tuesday.
21 I'm not sure if the State will be finished with
22 their case by Wednesday morning, is my only
23 concern.

24 And we also have an out-of-town witness that
25 is flying in on Wednesday night, and he will be

1 here first thing Thursday morning, which I don't
2 believe should cause a problem with how things look
3 or the timing. But he is leaving Thursday night,
4 but I don't think there is an issue of getting him
5 in Thursday.

6 THE COURT: How long do you think the case
7 will take, Solicitor?

8 MS. M. WALKER: Your Honor, I think our
9 case -- if we are picking the jury in the morning
10 and start our case shortly thereafter, I guess we
11 will probably start around 10:30 because of the
12 plea that we have before then. So I would imagine,
13 Your Honor, that we would probably be close to
14 closing early Wednesday afternoon -- or not
15 closing, resting our case Wednesday afternoon.

16 THE COURT: And how long do you think the
17 presentation of the Defense case will take,
18 Ms. Walker?

19 MS. A. WALKER: Your Honor, I believe we have
20 four alibi witnesses. Should our client testify,
21 he will be another witness. And then our expert
22 witness. So probably about a full day, Your Honor,
23 I would guess.

24 THE COURT: If they finish Wednesday -- did
25 you say Wednesday afternoon?

1 MS. M. WALKER: Yes, Your Honor. That is
2 my -- that is a very broad guess, without knowing
3 exactly how lengthy cross-examination of her
4 witnesses may be.

5 THE COURT: Did the expert witness receive
6 funds from the State of South Carolina?

7 MS. A. WALKER: Your Honor, Judge Barber
8 approved funds once she submits a bill.

9 THE COURT: She may need to be available
10 Thursday afternoon.

11 MS. A. WALKER: I can certainly speak with her
12 about that, Your Honor.

13 THE COURT: You can speak with her about it if
14 you prefer, but if she is under subpoena and if she
15 has accepted funds from the State of South
16 Carolina, I'm not going to break down court and I'm
17 not going to send jurors home because an expert
18 witness, who has been engaged, makes other
19 commitments. Court is a priority unless she is
20 hospitalized, has a family emergency, or something
21 of that nature. I don't quite get it.

22 MS. A. WALKER: I understand that, Your Honor.
23 As I said, she is a college professor and she just
24 teaches class all day on Thursday. That is her
25 only conflict.

1 THE COURT: Well --

2 MS. A. WALKER: She hasn't received funds as
3 of yet.

4 THE COURT: Well, if she is doing it pro
5 bono --

6 MS. A. WALKER: No, Your Honor.

7 THE COURT: -- you know, I'll be glad to make
8 other arrangements.

9 MS. A. WALKER: No, she is certainly not, Your
10 Honor.

11 THE COURT: I mean, we can see where we are at
12 tomorrow afternoon.

13 MS. A. WALKER: Certainly.

14 THE COURT: It may be that you end up Friday
15 morning naturally. That is fine. But just keep
16 that in mind.

17 MS. A. WALKER: I will, Your Honor.

18 And, Your Honor, if I may, I will just move on
19 with the motions, if you like.

20 THE COURT: Yes, ma'am.

21 MS. A. WALKER: Thank you, Judge.

22 Your Honor, at this time I would renew Rule 5,
23 and as well as my Riddle motions that I have
24 already filed. I have a copy if Your Honor would
25 like a copy of that motion.

1 Your Honor, it is my understanding after
2 speaking to one of our witnesses that Investigator
3 Clarke went out and spoke with her on Friday of
4 last week and took a new statement from her. That
5 information was turned over to me this morning. I
6 don't know if he has taken an opportunity to go
7 speak with other witnesses, whether he wrote it
8 down or not.

9 I think that information needs to be turned
10 over to me as soon as possible if they have spoken
11 to any other witnesses that have added to or
12 changed their statements in any way, including
13 anybody from the Nathani family.

14 I would just ask that be revealed on record at
15 this very moment, especially considering the fact
16 that they have taken statements from new witnesses.

17 THE COURT: All right. Solicitor?

18 MS. M. WALKER: Your Honor, I spoke with
19 Ms. Walker this morning. I gave her a copy of the
20 statement that was taken over the weekend. And
21 that would be the extent of any new information
22 that the State has regarding any witnesses.

23 THE COURT: All right. Thank you.

24 Anything further in that regard, Ms. Walker?

25 MS. A. WALKER: No, Your Honor. If the State

1 is confirming that they have not interviewed any
2 further witnesses, I certainly take them at their
3 word.

4 THE COURT: All right. And next?

5 MS. A. WALKER: And, Your Honor, just to
6 settle any of the State's witnesses, or any of
7 their fact witnesses, I believe that Ms. Campbell
8 told me this morning that she ran records on all
9 the Nathanis and they have no rap sheets
10 whatsoever, so I don't believe that there are any
11 other witnesses that they will be calling that have
12 anything on their rap sheet, but I just put that on
13 the record at this time.

14 THE COURT: All right. Is that correct,
15 Solicitor?

16 MS. M. WALKER: Yes, Your Honor.

17 MS. A. WALKER: And then, Your Honor, at the
18 appropriate time, we -- I'm not sure when you would
19 like to go over the potential records of our
20 witnesses. I don't believe there is anything
21 impeachable regarding our witnesses. I'm not sure
22 if you want to address that now or before our case
23 in chief, but we do have a motion regarding our
24 client's prior record and admissibility to use as
25 impeachment should he decide to testify.

1 THE COURT: I typically don't go over Rule 609
2 until such time as I advise your client of his
3 right to testify.

4 MS. A. WALKER: We can take that up then, Your
5 Honor, if you prefer.

6 And, Your Honor, at this time Mr. Bank -- I
7 think we would move to suppress --

8 THE COURT REPORTER: I'm sorry, you need to
9 speak up. I can't hear you.

10 MS. A. WALKER: I apologize. I said Mr. Bank
11 will take up the motion regarding suppression of
12 the jail phone calls made by Mr. Porterfield.

13 THE COURT: All right. Thank you.

14 Mr. Bank?

15 MR. BANK: Thank you, Your Honor. May it
16 please the Court?

17 Your Honor, Mr. Porterfield was arrested in
18 July of 2012. Just for some context, he was
19 arrested about three weeks after this incident
20 occurred on June 27th of 2012.

21 After being arrested, he was incarcerated at
22 Alvin S. Glenn Detention Center for about three
23 months before he was released on bond, and he has
24 been out on bond ever since.

25 During those three months, it appears that

1 there are about 250 jail calls. The State at this
2 point has handed all of those over to us and
3 assures us those 250 -- about 250 -- I think there
4 may be 247 exactly -- are the extent of all the
5 calls, and we have no reason to think that they are
6 not.

7 Just to give you an idea, Your Honor, these
8 jail calls last about -- no more than about 11
9 minutes apiece. Oftentimes -- I think you are
10 probably aware -- some of the jail calls might be a
11 little shorter if the phone conversation ends or if
12 they have some kind of technical problems with the
13 phone.

14 I think conservatively we have estimated that
15 there is probably about 20 hours' worth of actual
16 recording within these 250 calls. That is
17 averaging about 250 times about five minutes rather
18 than the max of 11 minutes. I don't have an exact
19 number on it.

20 My -- and I guess to put it in a little bit of
21 context also what is going on in these calls, they
22 are all about, as I said, in a three-month window,
23 pretty close in time. That is a lot of phone calls
24 for three months.

25 Mr. Porterfield never makes any admissions on

1 the jail calls, never says a magic word, "I did
2 it," or, "I can't believe I did something so stupid
3 such as commit this crime," or anything like that.

4 In fact, you can hear him for the first, I'd
5 say about two weeks -- because it had been three
6 weeks between the time of the incident and his
7 arrest -- trying to figure out what date June 27th
8 actually fell on, you can hear him trying to figure
9 out whether it was a Tuesday or a Wednesday.

10 And the reason that he is concerned in these
11 jail calls is he is trying to figure out whether he
12 is at work and what time the incident occurred
13 because he had a regular routine work schedule.

14 It is our position that throughout the course
15 of these many weeks of him talking almost entirely
16 to his girlfriend where he is saying things such
17 as, "Please go to my boss and get my time card,"
18 or, "Tell my lawyer to go to the boss and get the
19 time card," or, "Please talk to X, Y and Z
20 employees who would have been working with me that
21 day. I'm pretty sure that was a Wednesday." What
22 he is doing is establishing his alibi.

23 What the Government is I think trying to
24 portray the case as -- and I will let them speak
25 for themselves -- is rather than establishing his

1 alibi, they think -- and I think it is their
2 position that he is making up an alibi, that he is
3 trying to have people lie for him and say that he
4 was at a place at a certain incident or a certain
5 time when, in fact, he wasn't.

6 The State I believe wants to introduce three
7 calls. At least that is what they wanted to
8 introduce two weeks ago.

9 One of the statements and one of the calls
10 they want to introduce says -- and please let me
11 know if y'all -- or if I'm wrong about these being
12 the three y'all want -- the first one says
13 something to the extent of, "I didn't do this.
14 This isn't even my MO." I presume modus operandi
15 is what he meant by that.

16 The second statement is something along the
17 lines of, "I knew dealing with this Arab --
18 A-R-A-B -- would come back and bite me."

19 The father of the two victims I believe is
20 from Pakistan. It is a derogatory term that was
21 used referring to the father of the two victims,
22 Mr. Nathani.

23 The third statement I believe they are trying
24 to get in on a third phone call is where he is
25 talking to his girlfriend about talking to various

1 people that he worked with and who he might have
2 been with on the 27th, specifically speaking about
3 a fellow named TK, TK being his nickname. He says:
4 "Talk to TK and ask..."

5 THE COURT: TK?

6 MR. BANK: TK is the nickname.

7 THE COURT: TK.

8 MR. BANK: Yes, sir. He says, "Talk to TK and
9 ask him if I was with him that day." And he says
10 something along the lines of, "As a matter of fact,
11 don't ask him, tell him I was with him that day."

12 Now, putting that it into a little bit of
13 context, TK is actually not his alibi witness. TK
14 is not a fellow that he works with. He was
15 actually at his job. Mr. Porterfield was actually
16 at his job. So TK is not even a true alibi witness
17 in this case, but it was someone he saw earlier in
18 that day that could help piece together his entire
19 course of events that day.

20 The problem that I'm seeing with these three
21 statements are the first two I really -- I almost
22 don't even have a problem with them. I think they
23 are a little irrelevant. The "This isn't my MO"
24 statement, that is almost a self-serving statement
25 saying, "This isn't something I would normally do."

1 Dealing with him using the derogatory term,
2 "It is going to come back and bite me," again, I
3 think that he is in jail, he has done business with
4 Mr. Nathani before. I don't think that there is
5 really anything that is incriminating about that
6 statement. I'm not quite sure of the relevance on
7 that either.

8 On the "Tell TK I was with him that day," I
9 understand what their point is, and their point is
10 he is trying to make up an alibi.

11 The problem that we have is -- the context
12 with all these phone calls and all these other
13 times that he is piecing together what he is doing
14 three weeks later, I think the problem with them
15 putting that in could be easily fixed legally just
16 by applying Rule 106 and putting in other jail
17 phone calls or the rest of that conversation where
18 he is speaking about these others things, and the
19 Defense would be able to present to the jury, No,
20 he is not.

21 If they took one line out of 250 calls, if you
22 listen to the rest of the calls, he is actually not
23 making up an alibi, he is trying to figure it out,
24 he is trying to establish it, he is trying to
25 remember exactly what he was doing three weeks

1 before. I think that is what Rule 106 is there
2 for.

3 The problem with the tactical application of
4 Rule 106 in this context is, one, there is 250 jail
5 calls. I mean, I don't believe that Your Honor is
6 very inclined to have the jury listen to 250 jail
7 calls and the impracticality of that. But more
8 importantly, Your Honor, these jail phone calls,
9 even if we didn't take all 250 and just took the
10 rest of the phone calls they are specifically
11 putting in or other phone calls around those calls,
12 they are filled with evidentiary issues.

13 There is issues of hearsay in each of these
14 calls. There is an issue of criminal history in
15 each of these calls. There is issues in here about
16 Mr. Porterfield saying, "Hey, I can't talk about
17 this on the phone, my lawyer told me not to."
18 Issues that will be dealing with his right to
19 remain silent. Any slew of problems that we will
20 be able to see on the phone calls.

21 Your Honor, with all those problems, I don't
22 think it makes 106 really a viable option for us to
23 put these calls in context.

24 I think that what the State is trying to
25 introduce is really not that probative of an issue

1 for them. I think there is other ways that they
2 can prove it. I think that they can call his
3 girlfriend who he was on the phone with, Diana
4 Addison, to the stand if they want to question her
5 about it. There is any number of ways they could
6 do it.

7 But it is just not that -- if there was a
8 statement where he said, "Diana, I'm so sorry I did
9 it, I can't believe I did it," I don't believe
10 there is any way for us to get around it. I think
11 it would be coming in. And no amount of context
12 would be able to help that statement.

13 But this is basically us just arguing about
14 linguistics and what he means by "tell" or "ask."
15 And I think with all that said and with all the
16 problems we have with admissibility of jail calls
17 in the beginning, I think that it should be kept
18 out. It is incredibly prejudicial or it is
19 incredibly impractical to deal with. And there is
20 just a slew of evidentiary problems in applying
21 Rule 106. And we would ask for it to be kept out.

22 There is alternative ways for them to get this
23 in. They can call in the other person from the
24 conversation, Ms. Addison, to the stand and
25 question her.

1 I think that even if Ms. Addison denied that
2 that statement was made to her, they may at that
3 point be able to impeach her with that recording,
4 but just simply playing one line from a recording
5 out of 250 calls in the course of three months, it
6 is cherry-picking. I don't think it is
7 appropriate. I think there is other ways for them
8 to do it. And I think it presents a lot of
9 problems for the Defendant to be able to deal with
10 evidentially. And we agree to have any jail calls
11 suppressed and not played. Specifically I think
12 those are the three they want to get in.

13 THE COURT: Thank you, Mr. Bank.

14 Solicitor?

15 MS. M. WALKER: Thank you, Your Honor.

16 Just to clear up one thing, because I don't
17 want anybody to be under a misconception. The way
18 the jail phone call system worked when this
19 particular Defendant was incarcerated -- we're now
20 in a new system where we can look up jail phones by
21 each Defendant -- on the other system we looked
22 them up by phone number. So when I told them that
23 these are the extent of the phone calls he made, I
24 was telling them -- and I think that they
25 understand that -- that those are the extent of the

1 phone calls he made to that number. Any phone
2 calls he may have made to a number that he called
3 which I'm not aware of, there is no way for me to
4 pull or to have access to. Those are just -- we
5 were able to figure out the girlfriend's number and
6 pull those jail phone calls. And those have all
7 been turned over to them, a number of which I did
8 pull and tell them specifically that we intend to
9 introduce at trial.

10 In order to put these phone calls in a little
11 bit more context, Your Honor, there are certain
12 admissions that he makes on the phone calls that we
13 plan to introduce, some of which opposing counsel
14 mentioned and some of which he didn't, and I don't
15 necessarily know that at this point it would be
16 appropriate for me to illustrate, you know, We want
17 to put this in because we find this to be
18 important. We turned them over, but I don't know
19 if we necessarily have to reveal what our theory is
20 at this point.

21 Your Honor, he does make a statement on there,
22 and it is not, "I did this with Mr. Nathani and now
23 it is going to bite me." What he said is, "That
24 thing I did with that Arab is coming back to bite
25 me."

1 Our contention would be he is talking about
2 the armed robbery and the home invasion that he did
3 of this house.

4 There are other statements, Your Honor, he
5 makes in terms of knowledge about this particular
6 incident, Your Honor, that the State believes he
7 would -- only the person who committed the crime
8 would be aware of. We would like to introduce that
9 as him having knowledge of what was happening at
10 that point in time.

11 And there are statements about this alibi that
12 he has in which he tells his girlfriend, "You go
13 tell so-and-so that I was with them on that day.
14 You tell him. Don't ask him. Tell him. And tell
15 him to do it for them -- T-H-E-M. Tell him he
16 needs to say it for them."

17 So when he is feeding his alibi from jail
18 through his girlfriend to the potential alibi
19 witnesses in the case, then, Your Honor, I think
20 that is extremely probative of the truthfulness of
21 the alibi.

22 In terms of us calling his girlfriend to the
23 stand and asking her about the conversation they
24 had, I think the Best Evidence Rule would have us
25 put in the actual conversation that they had. They

1 are admissions that he makes on those phone calls.

2 And I can -- we have a minimum of two disks
3 upstairs. If Your Honor would like to hear those
4 phone calls, I would be more than happy to make
5 them a Court's Exhibit at this point so you could
6 actually hear the phone calls. But there is
7 nothing in the admissions from this Defendant on
8 recorded jail phone calls that we make every day --
9 that we introduce in every trial.

10 At this point, Your Honor, I think the
11 argument he is making is he doesn't like it. And
12 he has an argument as to what context to put them
13 in. And they are free to do that at closing
14 argument if he thinks that we are not putting them
15 in a correct context and he has a different context
16 or explanation for that. They are free to do that
17 throughout the trial. But I don't know that that
18 makes them necessarily inadmissible.

19 THE COURT: And there are three phone calls,
20 Solicitor?

21 MS. M. WALKER: I'm sorry, Your Honor?

22 THE COURT: There are three phone calls?

23 MS. M. WALKER: The exact numbers on -- there
24 are --

25 THE COURT: That you want to introduce?

1 MS. M. WALKER: At this point, Your Honor, I
2 think we emailed a number of potential ones to
3 them. I can't remember exactly how many there are.
4 I have to go upstairs and doublecheck.

5 THE COURT: Okay.

6 MS. M. WALKER: But I am not quite certain
7 exactly how many there are.

8 THE COURT: Do you agree with the information
9 Mr. Bank provided the Court on A, B, and C? Not
10 that you agree with the characterization of it, but
11 the information itself? He said in Phone Call A,
12 "I didn't do this. It is not even my MO."

13 MS. M. WALKER: That is a portion of what he
14 said, Your Honor, but he does say, you know, "I
15 didn't do this. I wouldn't even go into
16 somebody's, you know, house in the middle of the
17 afternoon or at 2:00 o'clock in the afternoon," or
18 something to that effect, Your Honor.

19 And we find that, you know, relevant and
20 probative on a number of different issues,
21 specifically because he had knowledge of the date
22 and time of the incident that he didn't commit.

23 THE COURT: And then B was, "I knew dealing
24 with that Arab would come back to bite me"?

25 MS. M. WALKER: I think, Your Honor, the exact

1 quote is, "That thing I did with that Arab is
2 catching up with me," or something along that
3 nature.

4 THE COURT: And then C would be on TK, "Ask
5 him -- no tell him to tell them that I was with him
6 that day"?

7 MS. M. WALKER: "Ask him if I was with him
8 that day -- no tell him. As a matter of fact, you
9 tell him I was with him that day and tell him he
10 needs to say that when the investigator comes to
11 talk to him. Tell him to do it for them --
12 T-H-E-M -- them."

13 THE COURT: And I take it there is an
14 individual that might be identified directly or
15 circumstantially as an Arab?

16 MS. M. WALKER: Your Honor, I'm assuming that
17 he is talking about the victims in this case, who
18 are present in the courtroom, when he says, "That
19 thing I did with that Arab." The victims in this
20 case are immigrants. And our contention would be
21 that he is talking about going in their home and
22 robbing them would be the thing that is coming back
23 to catch up with him.

24 THE COURT: And that is a derogatory term?

25 MS. M. WALKER: Well, I have never known it to

1 be derogatory --

2 MR. BANK: Your Honor --

3 THE COURT: Please don't interrupt. Please
4 don't interrupt her.

5 MS. M. WALKER: I'm sorry, Your Honor, I
6 didn't mean to interrupt.

7 THE COURT: You didn't, I was asking you a
8 question.

9 MS. M. WALKER: I have never known it to be
10 derogatory. If it is derogatory in any way, I
11 apologize for using it. But I can doublecheck and
12 see.

13 THE COURT: No, no. I'm just asking the
14 lawyers right now.

15 MS. M. WALKER: Yes, I don't think it is a
16 derogatory -- I mean, I don't think being Arab is
17 an insult in any way.

18 THE COURT: Thank you, Solicitor. All right.
19 Anything further, Solicitor?

20 MS. M. WALKER: Nothing, Your Honor.

21 THE COURT: All right. I will be glad to hear
22 from you, Mr. Bank.

23 MR. BANK: Sorry about that. And I thought
24 you were looking at me is why I was standing up.

25 THE COURT: I apologize.

1 MR. BANK: I think that the clear issue with
2 the Arab -- I don't know if it is derogatory or
3 not. When he says "the Arab," I don't know if it
4 is derogatory, but I want to be careful and not
5 offend anybody in case it was.

6 THE COURT: All right. Thank you.

7 MR. BANK: Our issue with that statement is
8 Mr. Porterfield and Mr. Nathani had done business
9 before. Mr. Nathani is actually in the business of
10 buying, selling, and repairing used electronics.
11 He has, from what I understand, a business at the
12 flea market and a business that he runs out of his
13 home. It was his home/business that was the
14 incident location in this case on June 27th.

15 What we would ask the Court to do is to at
16 least listen to these three phone calls. It seems
17 like we are tripping up a little bit on the
18 language of what was used or how it was referenced
19 or what the exact language was.

20 Our belief with the Arab comment was that he
21 is saying, "I have dealt with this guy before. I
22 always knew this was kind of a shady business. I
23 knew it would eventually come back and hurt me."
24 "Hurt me" being he is in jail because he has been
25 involved with this guy before.

1 Obviously that may just be an issue for the
2 jury to decide. But, again, Your Honor, I don't
3 know that -- I don't mean to be saying that I want
4 the motion to suppress because I don't like it. I
5 think that is how my argument was characterized.

6 My issue is that -- specifically with the
7 making up an alibi, the kind of -- the third
8 statement that I talked about, making up the alibi.

9 106 I think legally applies. I think
10 practically it is very difficult. We're going to
11 end up having jail calls that every five seconds
12 are going to have to be redacted or going to have
13 to be -- I think it is going to be -- for the State
14 too -- I think the State needs to be clear whether
15 they are just getting in this one statement or
16 whether they are going to try to do the whole
17 11-minute phone call, whatever that is, because if
18 they are doing that, the hearsay problem that we
19 have, the other people that might be talking on the
20 phone, the conversations about what the attorney
21 might be instructing him to not say on the phone,
22 those are going to be all issues that are
23 completely inappropriate for a jury to hear.

24 THE COURT: I don't quite understand what
25 y'all are asking me to decide. Preparation is the

1 key to victory. I'm not going to disallow evidence
2 in just because it hasn't been screened by the
3 attorneys for hearsay and evidentiary matters.

4 I'm not above listening to 20 hours of tape.
5 I have done 12 hours of tape, probably in this very
6 courtroom, in the past. If I have to do eight more
7 hours of tape, I'll be delighted to do that.

8 But I'm not going to suppress -- if there is
9 valid evidentiary value in it, I'm not going to
10 suppress it, because it is hard for the lawyers to
11 do it. I'm just not going to do that.

12 But, let me back up. I'll be delighted to
13 listen to the tapes. Solicitor, I believe Mr. Bank
14 would like for me to listen to it. And you are
15 offering. So if you will have them marked as a
16 Court Exhibit the ones you want to offer, I'll be
17 delighted to do so.

18 MS. M. WALKER: Thank you, Your Honor. And
19 that is also one of the reasons why we pulled the
20 ones that we intend on introducing -- because I
21 listened to all of them -- pull the ones that we
22 intend on introducing and send them to them so that
23 if there are issues that they have with it we can
24 deal with these before now. So we can try.

25 THE COURT: I'll be happy to listen to them,

1 Solicitor, and Mr. Bank, withholding judgment in
2 that regard.

3 And, as I say, if anyone wants to invoke
4 Rule 103, y'all can read it as well as I can, State
5 v. Jackson. And I'm going to comply with the
6 evidentiary rules. That is not the only
7 evidentiary rule that I have found to be
8 impractical over the course of time. But I'll be
9 glad to listen to them, and we will kind of go from
10 there.

11 MR. BANK: Thank you, Judge. And just one
12 last thing for the record, because I think she is
13 trying to figure out which calls.

14 I have the emails. We were sent four emails
15 with four different phone calls about three and a
16 half weeks ago.

17 THE COURT: Okay.

18 MR. BANK: They told us that they were
19 intending to introduce three of them.

20 It was at that point that we asked for the
21 rest of the phone calls and said, "Well, look, if
22 you are just going to pick three or four out of it,
23 we need to have all of them."

24 After some technical issues they were going
25 through -- and I believe they said that they

1 actually are held in the custody of a private
2 company, Pay-Tel, and they were having issues with
3 burning the disks -- they were able to get all 247
4 to us by the end of that week.

5 But, again, we have four emails and another
6 conversation where she says, "These are the three
7 that we're putting in."

8 If they are wanting to put in other ones, we
9 would ask just for us to be able to prepare which
10 one. We have listened to all the tapes as well.
11 But if they are planning on putting in any other
12 than those three rather than us searching through
13 200 -- I mean, we have transcripts and everything
14 of each of the phone calls. I don't know which
15 ones they are wanting to do. And therefore it is
16 hard for us to be able to pick out our own that we
17 might want to put in to put everything in context.

18 THE COURT: All right.

19 MS. M. WALKER: And I'll -- at the next break,
20 Your Honor, I'll go upstairs and make sure we have
21 all of the jail phone calls and equipment.

22 THE COURT: All right. Well, then I'll
23 withhold judgment and take this under advisement
24 until I have heard the phone calls, and then
25 revisit the arguments as to the phone calls.

1 MR. BANK: Thank you, Your Honor.

2 THE COURT: Yes, Mr. Bank, thank you.

3 And, thank you, Solicitor.

4 Do we have other motions?

5 MS. M. WALKER: I think they still have more.

6 MS. A. WALKER: Your Honor, I think all we
7 have left at this point is the Biggers and the
8 Denno.

9 THE COURT: All right. All right, Solicitor.

10 MS. M. WALKER: Thank you, Your Honor. The
11 State calls Investigator Clarke.

12 THE COURT: All right. If you would come
13 around and be sworn for us, please.

14 (Witness approaches.)

15 THE BAILIFF: Place your left hand on the
16 Bible, and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you solemnly swear or affirm
19 that the testimony you are about give in this case
20 will be the truth, the whole truth, and nothing but
21 the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Please have a seat.

24 (Witness complies.)

25 THE CLERK: State your full name for the

1 record.

2 THE WITNESS: Joseph Clarke.

3 JOSEPH CLARKE,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION(IN-CAMERA)

6 BY MS. M. WALKER:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Can you tell me where you are currently employed?

10 A Richland County Sheriff's Department.

11 Q And what division of the Sheriff's Department are
12 you in?

13 A I'm in the CID Division. Right now I am currently
14 working in the Special Victims Unit.

15 Q And how long have you been in the -- is that the
16 Criminal Investigative Division?

17 A Uh-huh.

18 Q How long have you been in CID?

19 A I have been in CID since '06.

20 Q I want to take your attention back to 2012. I ask
21 you if you had the opportunity to become involved
22 in the case that we are here for today?

23 A I was.

24 Q And how did you become involved?

25 A I was assigned a report with the information that a

1 burglary and robbery had occurred in Richland
2 County at Broad River Road.

3 Q And upon getting that report, did you become aware
4 of a certain phone number that became important in
5 this case?

6 A I did. During a statement, speaking with the
7 victim, a phone number was given to me. We ran
8 that phone number, and it came back to a particular
9 person.

10 Q And who was that person?

11 A Anthony Porterfield.

12 Q And did you attempt to make contact with
13 Mr. Porterfield?

14 A Not -- not immediately, but I did reach out to him
15 several days later. I tried to get hold of him.

16 Q And were you able to speak with him?

17 A I spoke with him on the phone, briefly.

18 Q And what, if anything -- or tell us about the
19 nature of that conversation.

20 A I called him and explained who I was and what
21 capacity I worked for at the Sheriff's Department
22 and asked if he would like to come in and talk to
23 me about an incident that occurred in the county,
24 as I normally do. Try to be -- give him as much
25 information as I can, but also get him to come in

1 so we could talk to him.

2 Q And at that point was he under arrest?

3 A No.

4 Q And did he inform you whether or not he was coming
5 in to speak to you?

6 A He initially did state he would come in. He needed
7 to talk to somebody. He would call me back. And
8 when he called back -- or when I called him back,
9 rather,, he stated he had talked to somebody and
10 just didn't want to come in anymore, didn't want to
11 talk to me.

12 Q Did he mention probable cause to you at that point?

13 A He did.

14 Q And what did he say about that?

15 A Something to the effect that he had talked to a
16 friend who explained to him what probable cause
17 was, and he didn't feel comfortable or didn't want
18 to come in and talk to me at that point.

19 Q And at some point did you have another contact with
20 this Defendant?

21 A Yes. After his arrest.

22 Q And were you actually present for his arrest?

23 A I wasn't.

24 Q Where did you make contact with this Defendant?

25 A I made contact with him at the hospital where he

1 was being treated for a dog bite from one of our
2 K-9s.

3 Q And when you made contact with him, was your goal
4 to speak with him?

5 A It was. To give him an opportunity to come and
6 talk to me about it.

7 Q And he was under arrest?

8 A He was under arrest. He was actually handcuffed at
9 that moment, being treated on a hospital gurney.

10 Q And did you speak with him -- before speaking with
11 him, did you advise him of his rights?

12 A I did.

13 Q I would like to show you what has been marked as
14 State's Exhibit No. 22 and ask if you recognize
15 this?

16 A I do.

17 Q What is that?

18 A That is a Richland County Sheriff's Department
19 form, the Interrogation/Advice of Rights.

20 Q How did you present that form to this particular
21 Defendant?

22 A As is my custom, as has been my policy, I explain
23 to the person that I would like to talk to them.
24 They certainly know at that point they are under
25 arrest. I usually tell them what charges are

1 available. If they don't ask, I usually tell them.

2 And at that point I say, "If you do wish to
3 speak to me and you want to go forward, I need to
4 advise you of your constitutional rights."

5 Q And did this Defendant want to speak to you at that
6 point?

7 A He obviously gave me the inclination he wanted to
8 talk to me because I went forward with an Advice of
9 Rights form, and he signed it.

10 Q Can you please advise or let the Court know of the
11 Advice of Rights that you advised the Defendant on
12 that date?

13 A Certainly. It has a place for his name. It has a
14 place where we were. That was the ER at Richland
15 Memorial. It was in the presence of myself and
16 Investigator Caldwell, who is a sergeant. It was
17 7/18, so July 18th, 2012, at 4:00 o'clock in the
18 afternoon.

19 And it basically lists Your Rights as:

20 "Before we ask you any questions, you
21 must understand your rights.

22 You have the right to remain silent.

23 Anything you say can be used against you
24 in court.

25 You have the right to talk to a lawyer

1 for advice before we ask you any
2 questions and have a lawyer with you
3 during any questions.

4 If you cannot afford a lawyer, one will
5 be appointed for you before any
6 questioning if you wish.

7 If you decide to answer questions now
8 without a lawyer present, you still have
9 the right to stop answering at any time.
10 You also have the right to stop
11 answering at any time until you talk to
12 a lawyer."

13 And normally what I always do is I stop and
14 say, "Do you understand that?"

15 I also check off the boxes. I usually do that
16 in front of the person so there is no question as
17 to what I'm reading to them.

18 And then I have them -- if they want to
19 continue and speak with me, I have them affix their
20 signature.

21 If they want to talk to me without a lawyer
22 present, I also explain they are waiving their
23 rights to counsel, meaning they don't have an
24 attorney with them.

25 And I read that part that says:

1 "I have read this statement of my
2 rights. I understand what my rights
3 are, and I am willing to talk and answer
4 questions. I understand and know what I
5 am doing. No promise has been made to
6 me and no pressure or coercion of any
7 kind has been used against me."

8 And then again I have them affix their
9 signature.

10 Sometimes I have to explain what coercion
11 means. In this case, Mr. Porterfield was an
12 educated man, and he understood what coercion
13 means.

14 Q When you were going over this Advice of Rights, did
15 the Defendant appear to understand what you were
16 saying to him?

17 A He did.

18 Q Did he appear confused in any way?

19 A I'm sorry?

20 Q Did he appear confused in any way?

21 A No, he did not seem confused.

22 Q Was he threatened with -- forced to speak with you?

23 A No.

24 Q Did you withhold any sort of creature comforts from
25 him, food or water, or anything of that nature?

1 A He was under doctor's care at that point he was
2 being detained. He was allowed anything he needed
3 for his medical care or nourishment.

4 Q Okay. And at that point, after going over the
5 Advice of Rights, he did sign and waive those
6 rights?

7 A He did.

8 Q And what, if anything, did he say to you after
9 that?

10 A At that point he had a series of questions he was
11 asking me. He was quite animated. He was upset.
12 Understandably. He had suffered from a dog bite.

13 And we talked briefly for a minute. And as I
14 started to kind of relate what I was talking to him
15 about, he became dismissive, a little verbally --
16 you know, using rough language. It was nothing out
17 of the ordinary I can't handle.

18 And at that point I realized he didn't want to
19 go forward and say anything at that point.

20 Q What was he saying when he was using rough language
21 that indicated to you that he --

22 A I don't know the specific words, but there was
23 profanity. And it was, you know, "This is all --
24 this is not true," and, you know, that kind of
25 thing. So.

1 Q Did he deny any involvement in the robbery at that
2 point?

3 A He did.

4 MS. M. WALKER: Your Honor, at this point the
5 State doesn't have any other questions for this
6 witness on this particular issue. He is the
7 witness for the Biggers issue as well, but I don't
8 know if you want me to ask him those questions now
9 or if you want me to recall him to the stand for
10 the identification issue.

11 THE COURT: Well, let me ask you something,
12 Ms. Walker or Mr. Bank, do y'all want to
13 cross-examine him as to this issue independent of
14 Neil v. Biggers?

15 MS. A. WALKER: I would, Your Honor.

16 THE COURT: All right. You may do so.

17 MS. A. WALKER: Thank you, Judge.

18 CROSS-EXAMINATION(IN CAMERA)

19 BY MS. A. WALKER:

20 Q Good afternoon, Investigator Clarke.

21 A Good afternoon.

22 Q You said that you reached out to Mr. Porterfield
23 several days later. Is that right after you had
24 got his phone number?

25 A After I had his phone number, I did reach out to

1 talk to him.

2 Q And was that on July 17th?

3 A I'm not familiar when the actual date was.

4 Q Do you have your report in front of you?

5 A I should have it in front of me.

6 Q Okay.

7 (Pause.)

8 A If I'm reading it correctly, it was the 17th.

9 Q On the 17th? Okay.

10 A Yes.

11 Q So on July 17th you reached out to Anthony
12 Porterfield by phone?

13 A That is correct.

14 Q Okay. And you said that you wanted to give him as
15 much information as you can as to why you wanted to
16 speak with him?

17 A Correct.

18 Q And at that time you had warrants for his arrest,
19 did you not?

20 A I'm pretty sure I did, yes.

21 Q Okay. And at first he said he would come speak
22 with you?

23 A Let me review here for a second, if I could.

24 Q Sure.

25 (Pause.)

1 A Right. He could not understand why he needed to
2 speak to me. He then began repeating outloud the
3 questions I was asking him.

4 In my experience I have had people do that
5 where they were reciting literally every word I'm
6 saying outloud as if they are saying it to
7 themselves to think about it or saying it to
8 someone else so they can hear what is being talked
9 about.

10 He said he would meet me --

11 Q So originally he said he would come speak with you?

12 A He would meet me at the local Exxon station off of
13 Shakespeare.

14 Q And he eventually called you back, said, "No, I'm
15 not coming to meet with you"?

16 A Correct.

17 Q "I know what probable cause is"?

18 A Right. Five minutes before I was supposed to meet
19 him, he called me back and told me he wasn't
20 coming.

21 Q He says, "I'm not coming, I know what probable
22 cause is"?

23 A Yes. He offers the excuse, things in his life
24 being what they are, he does not feel comfortable
25 speaking with me. He claims he has talked to a

1 friend that explained probable cause to him.

2 Q Okay.

3 A Yes.

4 Q And then the second statement, he's at the
5 hospital? The second statement that Ms. Walker
6 questioned you about, he is at the hospital;
7 correct?

8 A Correct.

9 Q And he is handcuffed; is that correct?

10 A Correct.

11 Q And he is under arrest?

12 A Yes.

13 Q And he is being medically treated?

14 A Correct.

15 Q And at this point you do Mirandize him?

16 A I do.

17 Q And he denies involvement?

18 A Correct.

19 Q And that is the extent of your conversation?

20 A That's it. He invoked. And I said, "We're done."

21 MS. A. WALKER: Thank you, Your Honor. I have
22 no further questions regarding this.

23 THE COURT: All right. Any redirect,
24 Solicitor?

25 MS. M. WALKER: None, Your Honor. Not

1 regarding this.

2 THE COURT: Any other witnesses regarding the
3 Jackson v. Denno?

4 MS. M. WALKER: None from the State, Your
5 Honor.

6 THE COURT: Any on behalf of the Defense,
7 Ms. Walker?

8 MS. A. WALKER: No, Your Honor.

9 THE COURT: All right, thank you.
10 Would you now want to go into Neil v. Biggers,
11 Solicitor?

12 MS. M. WALKER: Yes, Your Honor.

13 MS. A. WALKER: Would Your Honor like to hear
14 my argument?

15 THE COURT: Yes, ma'am.

16 MS. A. WALKER: If it would make it easier,
17 Your Honor, I actually don't have any challenges
18 regarding voluntariness regarding Denno, but I
19 would make an argument regarding admissibility of
20 the first statement in this case, but outside of
21 Denno, so I can do that after the Biggers hearing.

22 THE COURT: All right.

23 MS. M. WALKER: May it please the Court?

24 THE COURT: Yes, ma'am.

25 MS. M. WALKER: Thank you, Your Honor.

1 JOSEPH CLARKE,
2 having been previously sworn, testified as follows:

3 DIRECT EXAMINATION(IN CAMERA)

4 BY MS. M. WALKER:

5 Q As part of your investigation of this case,
6 Investigator, did you meet with the victims of the
7 case?

8 A I did.

9 Q And where were you when you met with the victims of
10 the case?

11 A At their home on Broad River Road.

12 Q And tell us the circumstances surrounding those
13 meetings. Where were the -- how old are the
14 victims? Were they young teenagers?

15 A Yes. At the time the older daughter, Rabia, was
16 18, and the youngest girl was -- I think she was 14
17 at the time -- 14.

18 Q And at that point, once you made contact with them,
19 where in the home were y'all?

20 A When I went into the home -- the home is off Broad
21 River Road, the 1700 block and -- or 1200 block,
22 rather -- and when I went in -- this is a home, but
23 also a business. And when you enter into the
24 kitchen area, kind of the family room area, there
25 was equipment and tools and whatnot. And then I

1 gathered the family resided primarily in the back
2 part of the house.

3 So when I arrived there, Mr. Nathani and his
4 two daughters were there, as well as his son were
5 there at the time.

6 I then spoke to Mr. Nathani in private, if you
7 will. I had the children excused so I could speak
8 to him and tell me kind of what is going on here,
9 what he has heard, what he was told, that kind of
10 thing.

11 I wanted to make sure that both children could
12 understand what I was going to say to them and if
13 he felt comfortable with me talking to them. He
14 was certainly welcome to be in the room at the same
15 time.

16 Q And when you spoke with the girls who were actually
17 present for the home invasion, where were they?

18 A It was in that same room, kitchen area. And I
19 spoke to them privately -- separate, you know, each
20 time. I spoke to the older girl first, Rabia. And
21 then the younger child was in the other room.

22 Q So when you were initially speaking to them, was it
23 just the two of you in the room?

24 A Yes.

25 Q It would be you and whichever daughter you were

1 speaking to?

2 A Whichever daughter, right.

3 Q Was part of the reason you were going there showing
4 them a series of photos?

5 A It was.

6 Q I want to show you what has been marked as State's
7 Exhibit No. 21 and ask if you recognize that?

8 A I do. It is an affidavit for a photo lineup with a
9 photo lineup behind it.

10 Q And to which daughter was this shown?

11 A This would have been to Sobia.

12 Q Okay. And when you present this photo lineup, how
13 was the photo lineup presented to Sobia. N

14 A The way I always do it, and even -- and I always
15 have done it -- is I tell the person, Try to think
16 back to what you remember. Okay? And I am going
17 to set it down in front of you. And I always tell
18 them just as a general rule, Even if you know that
19 is the person, you instinctively just want to put
20 your finger on it, take a second and look at all
21 the pictures. Okay? And then work your way
22 through it. And if you feel confident that is the
23 person, I want you to pick -- make a pick. And I
24 usually lay it in front of them. And then I go on
25 to do notes or something else. I do not want to be

1 in any way involved in this.

2 And then if I say, you know, Do you feel --
3 can you pick out a picture? And they'll say, Yes,
4 it is Number So-and-So. Then they pick it out.

5 I say, Are you certain? And sometimes I do a
6 1 to 10 scale too, on 1 to 10, you know. This
7 young girl -- both these young ladies were
8 absolutely certain who that person was.

9 Q And in cases in which the victims know the
10 Defendant by both name and sight like this one, do
11 you still go over that part of the --

12 A Absolutely.

13 Q -- showing them the photo lineup?

14 A Absolutely.

15 Q And at this point, were you aware that they knew
16 him by name and sight?

17 A Yes. They knew -- well, they knew him -- I knew
18 they knew his name. They knew him as Amp. The
19 children did. And then through the phone number
20 and the other things, we understood that was
21 talking about Anthony Porterfield at that point.
22 So I did know they were familiar with him. They
23 would know him if they saw him on the street.

24 Q Okay.

25 A Okay.

1 Q But you still showed them the photo lineup?

2 A Absolutely.

3 Q And once you showed this particular photo lineup to

4 Sobia. N did you influence her in any way?

5 A No.

6 Q Did you tell her that she had to pick someone?

7 A No.

8 Q Did you tell her that the person who committed the
9 crime was definitely in this photo lineup?

10 A No.

11 Q Exactly what were you asking her to point out in
12 the photo lineup?

13 A Simply said, Is the man -- do you see a man on
14 these pictures that came in your house on that day
15 and did this crime? Do you see that person?

16 Q And then what happened?

17 A And she picked that person. She picked Anthony
18 Porterfield.

19 Q Did she hesitate?

20 A No.

21 Q Did she seem uncertain or unsure in any way?

22 A No, in no way.

23 Q And this is the younger daughter?

24 A It is.

25 Q And turning your attention to State's Exhibit 20.

1 Do you recognize that?

2 A I do. Another photo lineup affidavit, with a photo
3 lineup behind it.

4 Q And whose photo lineup is that?

5 A Rabia.

6 Q Rabia Nathani?

7 A That's it.

8 Q And can you please explain to us how you went about
9 presenting this photo lineup?

10 A Same thing. I had -- it would have been in the
11 sequence of, you know, who came first. The other
12 child would have been in the other room. There
13 would have been no other outside influence. Same
14 thing.

15 You know, I just say, Do you see the person
16 that did this? You know. And laid it in front of
17 them. And there was no hesitation.

18 Q And did she in fact make a selection?

19 A She did. She picked No. 2. And we identified him
20 as Anthony Porterfield.

21 That is a DMV/SLED lineup, by the way.

22 Q DMV?

23 A DMV lineup. It is not selected by us. It is
24 picked randomly by computer by SLED.

25 Q Okay. I'll get to that in one second.

1 A Okay.

2 Q At that point in time, did she seem uncertain or
3 hesitant in any way?

4 A No.

5 Q Did you influence her in any way?

6 A No.

7 Q Did you tell her that she had to pick someone?

8 A No.

9 Q In terms of generating these photo lineups, how are
10 these photo lineups generated?

11 A Those are -- we submit a name and there is a
12 computer program at SLED they use, and they use the
13 DMV files where all of our pictures are, and they
14 pick it in a random sequence. They pick facial
15 characteristics, facial hair, age, race, gender,
16 obviously. And then they make a selection and they
17 send it to us at that point.

18 Q So there is no way for you to control or influence
19 which picture is in which position on these photo
20 lineups?

21 A No.

22 MS. M. WALKER: I don't have any further
23 questions.

24 THE COURT: Thank you, Solicitor.

25 Ms. Walker?

1 MS. A. WALKER: Thank you, Your Honor. May it
2 please the Court?

3 CROSS-EXAMINATION(IN CAMERA)

4 BY MS. A. WALKER:

5 Q You said SLED generates these lineups?

6 A That's correct.

7 Q And do they always generate these lineups in black
8 and white?

9 A They do color and black and white. I always use
10 black and white.

11 Q That is just your personal preference?

12 A We don't have it in policy, but I just always use
13 black and white. I would say my personal
14 preference.

15 Q And you did these lineups on July 2nd; is that
16 correct?

17 A I believe that -- from the children? Yes.

18 Q I will just leave it just in case. So both on
19 July 2nd?

20 A That is correct.

21 Q And you went to their house to do these lineups?

22 A I did.

23 Q And who was at the house when you did these
24 lineups?

25 A I believe -- I made contact with Mr. Nathani. He

1 was there. Both of the children were there. And
2 his son was there.

3 Q And you said that you did these lineups in the
4 kitchen?

5 A That is correct. What I would describe as the
6 kitchen.

7 Q Okay. And you said that you did these lineups in
8 private?

9 A I did.

10 Q And that at the time it was just you and the child?

11 A That is correct.

12 Q Or the young lady at this point?

13 A Uh-huh.

14 Q And you said that the other party would have been
15 in another room?

16 A That is correct.

17 Q The room next-door? Any other part of the house?
18 Outside?

19 A Keeping in mind, I'm trying to recollect the layout
20 of the house. I remember there distinctly being a
21 family type room to the right with a door that you
22 could go in and actually close. And I remember the
23 young ladies being excused. And that is where they
24 would go, behind a closed door.

25 Q Okay. And you took a statement from Rabia; is that

1 correct?

2 A Rabia.

3 Q Rabia; is that correct?

4 A I'm trying -- yes, Rabia. Yes.

5 Q You took a statement from her?

6 A I did.

7 Q And you showed her a photo lineup?

8 A I did.

9 Q And you showed Sobia a photo lineup?

10 A I did.

11 Q You did not take a statement from her?

12 A I did not.

13 Q And you indicated earlier when you were speaking
14 with Ms. Walker that you indicate that you tell
15 them on a scale of 1 to 10 to indicate how sure
16 they are?

17 A It is one of the things I do say. I will say that,
18 "On a scale of 1 to 10, how certain are you?"

19 And --

20 Q And -- I apologize. Go ahead.

21 A And in this case, both of them said, "No question,
22 it is 10."

23 Q Both of them indicated a 10?

24 A A 10.

25 Q That is your testimony?

1 A That is my testimony.

2 Q Thank you.

3 A Uh-huh.

4 MS. A. WALKER: Beg the Court's indulgence.

5 (Pause.)

6 MS. A. WALKER: Thank you. No further
7 questions.

8 THE COURT: Thank you, Ms. Walker.

9 Redirect, Solicitor?

10 MS. M. WALKER: I don't have any more
11 questions, Your Honor.

12 THE COURT: All right, thank you. Thank you,
13 Detective. You may step down.

14 (Witness steps down.)

15 THE COURT: Next witness, Solicitor?

16 MS. M. WALKER: Your Honor, the State calls
17 Rabia Nathani.

18 THE COURT: All right. If you would come
19 around and be sworn for us, please.

20 (Witness approaches.)

21 THE BAILIFF: Place your left hand on the
22 Bible, and raise your right hand, please.

23 (Witness complies.)

24 THE CLERK: Do you solemnly swear or affirm
25 the testimony you are about to give in this case

1 will be the truth, the whole truth, and nothing but
2 the truth, so help you God?

3 THE DEFENDANT: I do.

4 THE CLERK: Please have a seat.

5 (Witness complies.)

6 THE CLERK: And state your full name for the
7 record.

8 THE WITNESS: My name is Rabia Nathani.

9 RABIA NATHANI,

10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION(IN CAMERA)

12 BY MS. M. WALKER:

13 Q Will you spell that for the court reporter, please?

14 A My name?

15 Q Yes.

16 A Okay. R-A-B-I-A.

17 Q And your last name?

18 A N-A-T-H-A-N-I.

19 Q I want to ask you some questions about what
20 happened back in July of 2012.

21 Did you know Anthony M. Porterfield? Did you
22 know Anthony Porterfield?

23 A Yes. Before the robbery?

24 Q Yes?

25 A Yes.

1 Q Before the robbery? And did you know him by a
2 nickname?

3 A Yes.

4 Q And what nickname was that?

5 A Amp.

6 Q And how did you know him?

7 A Because he used to come to our house. And he have
8 a business with my dad. He used to bring laptop,
9 broken things. That is how I remember his name,
10 because my dad told me.

11 Q Your dad told you. He told you what his name was?

12 A Yes, because we all knew him in our family.

13 Q And had he been to your house on more than one
14 occasion?

15 A Yes.

16 Q I want to take your attention back to the day that
17 you were actually robbed.

18 A Uh-huh.

19 Q Where were you the first time you saw the Defendant
20 in this case on that day?

21 A Me and my sister, we went to Chick-fil-A to eat.

22 THE COURT REPORTER: I'm sorry, where?

23 A Chick-fil-A. To -- for food. And when we came
24 back, I parked my car on the side because there was
25 already cars parked in our -- on our driveway.

1 Q What time of day was this?

2 A I think it was around 1:30, between 2:00 --

3 Q So it was in the afternoon?

4 A Yes, it was in the afternoon.

5 Q Okay. So was the sun out?

6 A Yes.

7 Q Could you see clearly?

8 A Uh-huh.

9 Q And did you have glasses back then?

10 A No.

11 Q Okay. You have glasses now, but you --

12 A Yes.

13 Q You could see this person?

14 A Yes.

15 Q And tell me about what happened.

16 A So we parked the car. Me and my sister got out of
17 the car. And then he was there. So I -- there was
18 two men. So I asked him, like, "Why you are here?"

19 So he was like, he wanted to talk to my dad.

20 At that time I didn't have my cell phone so I
21 couldn't call my dad outside the house, so I have
22 to go inside to call him.

23 Q And so you talked to this person?

24 A Yes.

25 Q And he said he wanted to talk to your dad?

1 A Yes. Because -- I think I told him too that he is
2 at flea market.

3 Q Okay. And what happened once you talked to him
4 outside?

5 A Me and my sister went inside. We opened the door
6 and went inside to get the cordless phone to call
7 my dad. I was at the door. And my sister -- I
8 was -- the door was open. I was holding the door.
9 And my sister, she ran in to get the phone.

10 And so then, like -- yes. So then we start
11 walking upstairs, because we have stairs. So he
12 was on our porch. And then he had the laptop bag.

13 Q Uh-huh.

14 A And there was a gun inside it. He took out the
15 gun. I was -- when I saw the gun, I tried to close
16 the door, but he took out the gun and he pushed the
17 door open. And then he put the gun on me.

18 And then my sister, she came back with the
19 cordless, because our cordless phone is in the
20 other room --

21 Q All right. I know you are -- are you nervous?

22 A I am kind of.

23 Q Take a deep breath and slow down, because she is
24 going to type down everything you say, okay?

25 A Okay.

1 Q So speak a little bit slower than you usually would
2 so she can type it down.

3 A Okay.

4 Q Okay? So at that point there is a gun on you. And
5 who has the gun, the same person you talked to
6 outside?

7 A Uh-huh.

8 Q And what was that person's name?

9 A Amp.

10 Q Okay. And what did you do once the gun was
11 presented?

12 A I was just shocked. And then my sister, when she
13 came back with the cordless, she almost dialed the
14 number, but she didn't dial the number because it
15 happened so quick.

16 And then I was sitting there. And then when
17 he started to run in our house -- in our attic, he
18 was like, "Drop the phone." And then he made us to
19 sit on our -- where was it -- like the attic. It
20 was in the corridor. And we were sitting at the
21 door. He told us to sit on our stomach and just
22 sit there very quiet, he would not hurt us if we
23 were quiet. So we were just sitting in there.

24 Q And at that point, how many people were in your
25 house?

1 A Two.

2 Q The other person, the second person, did you know
3 that person?

4 A No. I saw his face, but he hide his face with his
5 shirt. And then -- he was the one who was holding
6 the gun on us, and the other one, Amp, he was
7 taking all the stuff.

8 THE COURT REPORTER: He was what, I'm sorry?
9 Taking all the stuff?

10 A Taking all the stuff.

11 Q Who was taking all the stuff?

12 A The guy, Amp.

13 Q Amp was taking all the stuff. And at that point,
14 the other guy had the gun on you?

15 A Uh-huh.

16 Q How many guns were there?

17 A Only one.

18 Q So they passed it back and forth?

19 A Yes.

20 Q Okay. Now, once you were on the ground and Amp was
21 taking all of your stuff, what happened next?

22 A Um --

23 Q Did they eventually leave your house?

24 A Yes.

25 Q Okay. And did you call 9-1-1?

1 A Yes.

2 Q At some point did you talk to Investigator Clarke
3 about this case?

4 A Yes.

5 Q And I want to ask you about a photo lineup. Did he
6 show you this photo lineup?

7 A Uh-huh, yes.

8 Q And when he showed you this photo lineup, did he
9 tell you you had to pick somebody out of that?

10 A No.

11 Q Did he tell you who to pick out of that?

12 A No.

13 Q And when you circled this -- did you circle this?

14 A Yes.

15 Q And write that date?

16 A Yes.

17 MS. M. WALKER: And, for the record, I am
18 showing her State's Exhibit No. 20.

19 Q And why did you circle this picture?

20 A Because I recognized him.

21 Q Recognized him as who?

22 A As the person who robbed us.

23 Q And on the day when the robbery happened, you
24 actually spoke to the person who robbed you?

25 A Yes.

1 Q And it was somebody that you knew at that point by
2 name and sight? You knew their name and you knew
3 who he was by looking at him?

4 A Yes.

5 MS. M. WALKER: Your Honor, I don't have any
6 further questions.

7 THE COURT: Thank you, Solicitor.

8 Ms. Walker?

9 MS. A. WALKER: Thank you, Your Honor. May it
10 please the Court?

11 CROSS-EXAMINATION(IN CAMERA)

12 BY MS. A. WALKER:

13 Q Hi, Rabia. How are you?

14 A I'm good.

15 Q It is Rabia; is that right?

16 A Yes.

17 Q Okay. And you said the reason you knew his name
18 was Amp was because your dad told you his name was
19 Amp?

20 A Yes.

21 Q Okay. And your dad did business with Amp, is that
22 what you said?

23 A Yes.

24 Q Okay. And Ms. Walker asked you if you had glasses
25 back then. You said you didn't?

1 A No.

2 Q When did you get glasses?

3 A I think it was around 2013. Yes, it was 2013.

4 Q And you were 18 about when this happened?

5 A Yes.

6 Q Was that, I guess, right after your senior year or
7 right before your senior year in high school?

8 A Right before my senior year.

9 Q Okay. So you got glasses when you were a senior in
10 high school?

11 A Yes.

12 Q Okay. And you said -- I'm sorry if I'm repeating
13 things. You said you didn't have your cell phone
14 at the time; is that right?

15 A Yes, I didn't have my cell phone at the time.

16 Q Okay. Go ahead. I didn't mean to interrupt.

17 A I already lost my phone and somebody stole it, so I
18 never -- he never -- my dad never gave me one
19 again.

20 Q Didn't give you another one?

21 A Yes.

22 Q Okay. And so you said that you spoke to the guy.
23 He had a gun. He came inside. And then you
24 indicated when they came inside they told you to
25 sit where?

1 A I don't know how to explain it to you, but there
2 was -- when you get into the house, there is a door
3 up there to lead you to the kitchen and to the
4 other rooms. And right on that corridor there was
5 an iron stand. He made us just sit right there.

6 Q In the corridor?

7 A Yes.

8 Q Like a hallway?

9 A Yes. Hallway.

10 Q Okay. So you are sitting -- he made you sit down
11 in the hallway. And he said, "Lay on your
12 stomach." So were you laying down?

13 A No, we were just doing this(indicating).

14 Q So you are kind of sitting down and hunched over?

15 A Yes.

16 Q Okay. And then you indicated that there was only
17 one gun?

18 A Yes.

19 Q Okay. And you saw the gun?

20 A Yes.

21 Q Because it was pointed at you?

22 A Yes.

23 Q And it was pointed at your sister?

24 A Yes.

25 Q Okay. And you said at some point that the other

1 man had it?

2 A Yes.

3 Q And so you saw the other man with the gun?

4 A Yes.

5 Q Okay. And --

6 MS. A. WALKER: Hold on just a second. Beg
7 the Court's indulgence.

8 (Pause.)

9 Q Thank you, Rabia.

10 MS. A. WALKER: No further questions, Judge.

11 THE COURT: Thank you.

12 Redirect?

13 MS. M. WALKER: No, Your Honor.

14 THE COURT: Thank you. Thank you very much,
15 Ms. Nathani. You may step down.

16 THE WITNESS: Thank you.

17 (Witness steps down.)

18 THE COURT: All right, Solicitor, you may call
19 your next witness.

20 MS. M. WALKER: Your Honor, the State calls

21 Sobia. N

22 THE COURT: All right. If you would come
23 around and be sworn for us, please.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the
4 testimony you are about to give in this case will
5 be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 THE DEFENDANT: I do.

8 THE CLERK: Thank you. Have a seat in the
9 witness stand, please.

10 (Witness complies.)

11 THE CLERK: And state your name for the
12 record.

13 THE WITNESS: Sobia. N

14

15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION(IN CAMERA)

17 BY MS. M. WALKER:

18 Q Is it Sobia?

19 A Yes, ma'am.

20 Q Okay. I want to talk to you about what happened
21 back July of 2012.

22 A (Nods affirmatively.)

23 Q Did you know Anthony Porterfield before the
24 robbery?

25 A Yes.

1 Q How did you know him?

2 A He used to come to our house. He had business with
3 my dad. So -- and whenever somebody comes to our
4 house, after he leave, or whatever, my dad tells us
5 that -- what is his name is, who is it, so we know
6 who is it.

7 Q So you know who is coming and going from your home?

8 A Yes.

9 Q Okay. And at that point had he been -- had Amp
10 been in your house more than once?

11 A Yes.

12 Q And I want to talk to you about the day you
13 actually got robbed. Did you -- where were you
14 before the robbery?

15 A Like --

16 Q Like were you home? Were you coming home?

17 A Oh.

18 Q Or what?

19 A I was coming home with my sister from Chick-fil-A.
20 And we parked. The car was already in the
21 driveway, so we parked on the side. And --

22 Q There was a car in your driveway?

23 A Uh-huh.

24 Q Okay. Go ahead.

25 A And my sister -- me and my sister got out. We had

1 food in our hand. And my sister talked to Amp.
2 And he was like -- he was like, he wanted to talk
3 to my dad and stuff.

4 Q I am going to tell you the same thing I told your
5 sister. Take a deep breath and slow down so she
6 can type down everything you all say, okay?

7 A Okay.

8 Q When you said it was Amp, did you recognize him
9 when you saw him?

10 A Uh-huh.

11 Q And you recognized him from what?

12 A Before he came -- like before the robbery he came
13 to our house, so I had seen his face before.

14 Q Okay. So you knew him as Amp?

15 A Uh-huh.

16 Q And what did Amp say when you first saw him?

17 A Like on the day of robbery?

18 Q On the day of the robbery, yes, that day?

19 A He was like, he wanted to talk to my dad and stuff.

20 Q Okay. And at that point, once he said he wants to
21 talk to your dad, what did y'all do?

22 A My sister was like, He at the flea market. And
23 then we went to get phone from the house so we can
24 call our dad.

25 Q To let him know that Amp was there?

1 A Yes.

2 Q Once you got inside, what happened?

3 A My sister unlocked the door. Me and her went
4 inside. And I went to my room to get the home
5 phone, the cordless. And by the time I got back,
6 he had a gun on my sister.

7 Q Who is "he"?

8 A Amp.

9 Q Amp had a gun on your sister?

10 A Yes.

11 Q And what -- was he saying anything?

12 A I don't remember, but --

13 Q If you don't remember --

14 A I don't remember.

15 Q Was your main focus the gun?

16 A He had a gun on my sister.

17 Q On your sister?

18 A Then he was like, he told me to drop the phone,
19 because I had the phone in my hand, and I dropped
20 the phone.

21 Q Okay. And did you do that?

22 A Yes.

23 Q Once you dropped the phone, what did you do?

24 A I was just standing there. And he was like, "We
25 are not going to do nothing. Just lay on your

1 stomach by the living room or TV room." And that's
2 it.

3 Q Okay. And once -- did you actually -- did you get
4 on the ground?

5 A Yes.

6 Q Okay. At that point how many people were in your
7 house?

8 A Two.

9 Q And did you recognize the second person?

10 A No, because he had a T -- I seen his face, but he
11 pulled the T-shirt like on his head.

12 Q So you couldn't really see him as well?

13 A (Nods affirmatively.)

14 Q Okay. And at that point in time, are they still
15 both in your house?

16 A Yes.

17 Q Okay. At some point did they eventually leave
18 after the robbery?

19 A (Nods affirmatively.)

20 Q And you have got to say yes or no so she can type
21 it down.

22 A Oh, yes.

23 Q Okay. And at that point did you call -- did y'all
24 call 9-1-1?

25 A Yes.

1 Q And who actually made the 9-1-1 phone call?

2 A My sister.

3 Q Now, after a while, did you end up meeting with
4 Investigator Clarke?

5 A Yes.

6 Q And when you met with Investigator Clarke, did he
7 show you a series of pictures?

8 A Uh-huh.

9 Q Once he showed you these pictures, did he tell you
10 you had to pick somebody?

11 A No.

12 Q Did he influence you in any way?

13 A No.

14 Q Did you circle this one?

15 A Yes.

16 Q And are those your initials there?

17 A Yes.

18 Q Okay. And why did you circle No. 2?

19 A Because I recognized him, like he was the person
20 who robbed.

21 Q Who robbed you?

22 A (Nods affirmatively.)

23 Q And no one told you you had to pick someone or who
24 to pick?

25 A No.

1 MS. M. WALKER: Your Honor, I don't have any
2 further questions of this witness at this time.

3 THE COURT: Thank you, Solicitor.

4 Ms. Walker?

5 MS. A. WALKER: Thank you, Your Honor. May it
6 please the Court?

7 CROSS-EXAMINATION(IN CAMERA)

8 BY MS. A. WALKER:

9 Q Hi, Sobia. How are you?

10 A Good.

11 Q You were 14 when this happened?

12 A Yes.

13 Q Okay. And you were out with your older sister
14 right before this happened; right?

15 A Yes.

16 Q Okay. And you went into the house first?

17 A Yes.

18 Q And so by the time you came back out you -- the gun
19 had already been pulled; is that correct?

20 A Yes.

21 Q Okay. And so you have indicated that you did a
22 photo lineup with Investigator Clarke; is that
23 right?

24 A Yes.

25 Q And you were 14 years old at the time?

1 A Yes.

2 Q And when you spoke with Investigator Clarke when
3 you did the lineup, did he ask you questions about
4 what happened during the event, what happened with
5 the robbery, anything like that?

6 A I don't remember.

7 Q You don't remember?

8 A (Nods negatively.)

9 Q Okay. That was about two and a half years ago;
10 right?

11 A Yes.

12 Q And how old are you now?

13 A Sixteen. Sixteen.

14 Q Okay. And you said the reason that you knew his
15 name was Amp was because your father had told you
16 his name was Amp?

17 A Yes.

18 Q And you recognized him as doing business with your
19 father?

20 A Yes.

21 Q Okay.

22 MS. A. WALKER: Beg the Court's indulgence.

23 (Pause.)

24 BY MS. A. WALKER:

25 Q And you indicated that you didn't recognize the

1 second guy?

2 A No.

3 Q Okay. Thank you so much, Sobia.

4 A You are welcome.

5 MS. A. WALKER: I have no further questions,
6 Judge?

7 THE COURT: Redirect, Solicitor?

8 MS. M. WALKER: No, Your Honor.

9 THE COURT: Thank you. Thank you very much.
10 You may step down.

11 (Witness steps down.)

12 THE COURT: All right, Solicitor, you may call
13 your next witness.

14 MS. M. WALKER: Your Honor, we don't have any
15 more witnesses for the Biggers hearing.

16 THE COURT: Thank you.

17 Ms. Walker, does the Defense intend to present
18 any evidence or testimony?

19 MS. A. WALKER: No, Your Honor.

20 THE COURT: All right. Thank you. I'll be
21 glad to hear from you, Ms. Walker.

22 MS. A. WALKER: Your Honor, I have no
23 challenges regarding the lineup procedure being
24 unduly suggestive, the photo lineup procedure.

25 THE COURT: All right. Thank you.

1 Do you want to revisit the Jackson v. Denno?

2 MS. A. WALKER: Not exactly, Your Honor. I
3 don't have any challenges regarding voluntariness,
4 but I do -- I would move to exclude the statements,
5 specifically -- beg the Court's indulgence.

6 THE COURT: That was a statement, a phone
7 statement, so to speak?

8 MS. A. WALKER: Yes, Your Honor.

9 (Pause.)

10 MS. A. WALKER: Your Honor, Investigator
11 Clarke testified that on July 17th that he reached
12 out to Anthony in order to speak with him, give him
13 as much information as he could, and then said that
14 he would try to give him an opportunity to speak
15 with him.

16 At this point essentially what Anthony says
17 is, "I'm not coming to speak with you. I know what
18 probable cause is."

19 Your Honor, I think that this is essentially
20 the only reason that the State would be trying to
21 get this statement in is to show that Mr.
22 Porterfield didn't want to speak with Investigator
23 Clarke and was asserting his right to remain
24 silent.

25 At this point Investigator Clarke had warrants

1 out for Anthony. Had Anthony come to the Exxon
2 station, or wherever to meet him. It would have
3 been a non-custodial situation. And I think this
4 was just an effort to circumvent his Miranda
5 requirements.

6 That being said, Your Honor, I think that this
7 statement has absolutely no relevance: "I know
8 probable cause is. I'm not coming."

9 I think all that would be is, as according to
10 Edmond v. State, is the State improperly commenting
11 on the Defendant asserting his constitutional
12 rights to choose not to speak with law enforcement.

13 THE COURT: What is that cite?

14 MS. A. WALKER: Edmond v. South Carolina.

15 THE COURT: Inman, I-N-M-A-N?

16 MS. A. WALKER: Edmond, Your Honor.

17 Beg the Court's indulgence? And I will pass
18 it up.

19 (Complies.)

20 THE COURT: Thank you.

21 MS. A. WALKER: Yes, sir.

22 Your Honor, and specifically Page 2 under
23 "Discussion":

24 It is improper for the State to reserve
25 comment upon a Defendant's exercise of

1 his constitutional rights.

2 "I'm not coming. I know what probable cause
3 is."

4 That is the only way that statement can be
5 interpreted, and it has no other relevance
6 whatsoever.

7 The only way the jury would take that is as an
8 inference that Mr. Porterfield had something to
9 hide.

10 (Pause.)

11 THE COURT: All right. Thank you, Ms. Walker.
12 Solicitor?

13 MS. M. WALKER: Your Honor, we are not
14 commenting on his right -- his exercising a right.
15 He was Mirandized and actually waived his right.
16 So this is pre-Miranda.

17 The purpose of the statement, Your Honor, is
18 at this point in time he has no information about
19 the case. The only thing that anyone has said to
20 him is, "Hey, I would like to talk to you about the
21 case." That was the testimony elicited from
22 Investigator Clarke was, "Hey, I would like to talk
23 to you about this case."

24 At which point he said, "Yes, I'll see you
25 then." And then upon thinking about it says, "I

1 know what probable cause is, you know, I'm not
2 coming."

3 He then later waives his Miranda rights, but
4 at that point in time, Your Honor, it was not
5 custodial in any way. I don't think he -- and
6 says he wants a lawyer. As this case states, where
7 he says that he wants a lawyer or that he is
8 exercising any of his other rights advised under
9 Miranda.

10 So that is not the purpose of the statement,
11 Your Honor. The statement is -- we're seeking to
12 admit the statement because it is -- as an
13 acknowledgment of guilt on this Defendant's part,
14 that he knows that he is caught and he knows what
15 he has done, despite no one offering to talk to
16 him -- or offering any information about the case.

17 He is already aware of his guilt. I don't
18 think anyone ever said, "We need to arrest you for
19 this." They told him that they want to talk to
20 him.

21 THE COURT: All right. In reviewing what was
22 handed up, Edmond v. South Carolina, 534 S.E.2d
23 682, that of course is a post-conviction relief
24 case where the Defendant Edmond was convicted of
25 burglary first degree and grand larceny.

1 In that case the detective testified he told
2 Petitioner in response to Petitioner's question
3 following his arrest several days after the
4 burglary that someone had told police where to find
5 him.

6 Petitioner, who had been drinking shortly
7 before his arrest, replied, quote, "She called in.
8 I know she did. She is out there free. My wife
9 was with me. I didn't do this alone." End quote.

10 The detective acknowledged that Petitioner in
11 a more sober condition later denied making such a
12 statement.

13 The detective testified, "I did pull him out
14 of jail the next day to interview him. However, he
15 invoked his right to counsel."

16 On cross-examination the officer testified
17 that the Petitioner invoked his right to remain
18 silent and he honored that right.

19 The post-conviction relief case cites Doyle v.
20 Ohio, that the State may neither comment upon nor
21 present evidence at trial of a Defendant's decision
22 to exercise his right to remain silent or to be
23 represented by an attorney. Citing Doyle v. Ohio.
24 The due process clause, 14th Amendment, is violated
25 when the State Prosecutor seeks to impeach the

1 Defendant's exculpatory story told for the first
2 time at trial by cross-examining them about the
3 post-arrest silence after receiving Miranda
4 warnings.

5 Going to Doyle v. Ohio, in that case the
6 Defendant was charged with felony marijuana. And
7 the Supreme Court held that although Miranda
8 warnings contained no express assurance that
9 silence will carry no penalty, such assurance is
10 implicit to any person who receives the warnings.

11 Four Defendants were given the Miranda
12 Warnings on arrest. Did not complain to arresting
13 officers that they had been framed, but gave
14 exculpatory stories for the first time at trial.
15 Prosecutor's cross-examination of the Defendants as
16 to why they had not told the frame-up story on
17 arrest violated due process and the
18 cross-examination as to the Defendant's post-arrest
19 silence was not justified on grounds of necessity.

20 And the factual setting here, Mr. Porterfield
21 was not under arrest. He was not subject to
22 custodial examination or custodial interrogation.
23 He had not been Mirandized. So Edmond and Doyle
24 would not apply.

25 I would further find it is not a comment on

1 his post-arrest silence. He does make a statement.
2 And it would be for the jury to determine weight
3 and value, if any, it being appropriate as to that
4 statement.

5 So the phone statement -- call it the phone
6 statement -- phone statement with Detective Clarke
7 as opposed to the jail phone statements -- would be
8 admissible.

9 All right. Any other matters, Ms. Walker?

10 MS. A. WALKER: I believe that is all the
11 matters other than the issue of the jail calls. As
12 I said before, I believe they indicated there were
13 six calls. We have only received three that they
14 were intending to use. So we would like to
15 reconcile that.

16 THE COURT: All right, certainly. Well, we'll
17 take about a 15-minute recess. And, Solicitor, if
18 you'll get the calls, I'll be happy to listen to
19 the tape upon my return. All right?

20 MS. M. WALKER: Okay. Thank you, Your Honor.

21 THE COURT: Thank you. Thank you very much,
22 Solicitor, Ms. Walker, Mr. Bank.

23 MS. A. WALKER: Thank you, Judge.

24 (WHEREUPON, a break was taken at 3:52
25 p.m.)

1 (WHEREUPON, the proceedings resumed at
2 4:20 p.m.)

3 (WHEREUPON, Court Exhibit No. 1 was
4 marked for identification only.)

5 MS. M. WALKER: I have already played State's
6 Exhibit 23 in the computer, which are jail phone
7 calls we have been discussing. I don't know if you
8 want me to play it from there or give it to Your
9 Honor to review closer to you where you can hear
10 it? Whatever works best.

11 THE COURT: What works best? Just play it
12 from there.

13 (Tape played in open court.)

14 MS. M. WALKER: Your Honor, that is the first
15 one. I'm not sure if you want to take them
16 individually or if you just want me to play all of
17 them right now.

18 THE COURT: Mr. Bank, do you have a
19 preference?

20 MR. BANK: I don't have a preference.
21 Whatever is easiest for you. If it is easier to do
22 it now while it is fresh on your mind I am more
23 than happy to take them one by one.

24 THE COURT: All right. We can take this one
25 then. Let's take them one by one.

1 MR. BANK: Okay. This one, I think that the
2 rule of completeness will cover this and that as
3 long as we are permitted to require the State to
4 introduce other tapes that are around this time
5 that talk about him trying to get his lawyer go get
6 his time card or having the investigator or whoever
7 talk to different witnesses, I think that as long
8 as we're allowed to make the State put that in
9 under 106, I think that should cover it.

10 My biggest concern, or slight concern anyway,
11 is some of the language that is in there. I would
12 ask for the Court to consider making the State
13 redact -- I think maybe there is three or four cuss
14 words in there. I think basically the "F" word.
15 But other than that, as long as we're -- and I know
16 that we don't have the exact ones we want to put
17 in, but as long as the Court is willing to consider
18 requiring the State to put in additional tapes that
19 we'll review with the State under 106, I think we
20 should be covered for that call.

21 THE COURT: All right. Solicitor?

22 MS. M. WALKER: Thank you, Your Honor. In
23 terms of the cursing that is on the phone call, I'm
24 not quite sure why we need to redact that. That is
25 what he said. This isn't in any way inflammatory.

1 There is no -- I guess I don't understand what way
2 it wouldn't be admissible because he cursed. I
3 mean, he cursed. There are curse words entered
4 into and said on the record in just about every
5 trial here.

6 In terms of the Rule 106, Your Honor, I think
7 Rule 106 is covered if we play this complete phone
8 call. It requires us to play: When a part of a
9 recorded statement is introduced, the opposing
10 party may require the admission of other portions
11 to ensure that partial statements are not taken out
12 of context.

13 In this case we're not pulling out just one
14 part of this phone call and trying to play that.
15 We are going to in fact play the phone call in its
16 entirety. So I'm not quite sure how we would be
17 running afoul of Rule 106 by introducing that phone
18 call.

19 The only portion or remainder of any statement
20 which explains or clarifies previously admitted
21 portion should be allowed into evidence. I don't
22 know there is anything that needs to be further
23 clarified or explained. He has -- he wants someone
24 to contact his alibi witnesses. He is having
25 someone contact his alibi witnesses and tell them

1 what to say under that phone call. So I'm not
2 quite sure what additional phone calls he would
3 request or how this phone call in its entirety runs
4 afoul of Rule 106.

5 THE COURT: Mr. Bank?

6 MR. BANK: Your Honor, 106 doesn't limit
7 putting things into context with a singular phone
8 call or a singular letter, or whatever it might be.
9 The actual language in the rule is an adverse party
10 may require introduction at that time of any other
11 part or any other recorded statement which ought in
12 fairness to be considered contemporaneously with
13 it, which leads me to believe if the Court finds it
14 appropriate to find another phone call that is made
15 maybe somewhere in time with this that can give
16 some context with what Mr. Porterfield is actually
17 instructing his girlfriend on the first phone call,
18 Diana, to do, then I think it would be appropriate
19 to introduce it.

20 My co-counsel, Ms. Walker, just indicated that
21 we do actually have two phone calls in mind we
22 would be happy to play that talk -- that have
23 Mr. Porterfield talking about having Diana go talk
24 to his boss to get a time card. A time card is not
25 really something that can easily be manipulated. I

1 mean, what he is also doing is asking for them to
2 be talking not to friends with nicknames, which is
3 what the tape implies, but his co-workers, who all
4 have nicknames. He actually doesn't have personal
5 relationships with these folks. I think all the
6 phone calls would indicate that. And give the jury
7 an understanding that even though they have this
8 one line, "Tell TK, don't ask him, go tell him,"
9 that that is more of a desperate Defendant in jail
10 not using words the right way rather than him
11 actually trying to manipulate or instruct Diana to
12 go tell anybody to go lie, or anything like that.

13 I don't believe 106 limits other jail phone
14 calls from coming in. I don't think 106 means you
15 can only listen to that one writing or that one
16 phone call. You can have anything as long as the
17 Court considers it appropriate.

18 THE COURT: I don't disagree with you
19 partially, Mr. Bank. I guess what I disagree with
20 is -- what I would have to think through is if you
21 have other phone calls that you want to fall under
22 106, then the Court would initially be the
23 gatekeeper to have to determine if those other
24 recorded statements ought to in fairness be
25 considered contemporaneous with that. So I would

1 have to listen to those other phone calls to make
2 that determination I think initially. I do agree
3 with you if you read the strict reading of the rule
4 is that an adverse party may require the
5 introduction at that time of any other part or any
6 other writing or recorded statement, which are in
7 fairness to be considered contemporaneous with it.

8 So if there is others that you want me to
9 consider, if in fairness they ought to be
10 considered contemporaneous with what we're saying,
11 number one, I'll be glad to listen to those also.

12 MR. BANK: Yes, sir. And, like I said, we've
13 got -- Oh, I'm sorry.

14 THE COURT: That's all right. And if you
15 would advise the Solicitors of which ones those are
16 so, who knows, maybe you could agree to it.

17 You know, as far as cursing, to put it into
18 context, I guess, quite frankly, I think if I was
19 in the Alvin S. Glenn Detention Center talking on
20 the phone and was charged with serious felony
21 charges, my language would not be any better than
22 Mr. Porterfield's.

23 I don't -- I don't see where that is
24 necessarily prejudicial, Mr. Bank. It is obviously
25 his voice, the tone of his voice. He seems to be

1 an intelligent young man. He seems to be tracking
2 with the situation appropriately and reaching out
3 to individuals that he thinks that if not help him
4 best, has his best interest at heart from the
5 outside. So I will deny redacting that in that
6 regard. But if you will let the Solicitor know,
7 perhaps that issue will be resolved. And if not, I
8 will be glad to hear those other tapes.

9 MR. BANK: Yes, Your Honor. And we'll, I
10 think, tonight try to pick out which ones we would
11 like and provide copies to the Solicitor, and then
12 have them available for the Court if necessary.

13 MS. M. WALKER: I just need the number, I
14 don't need a copy.

15 MR. BANK: We will provide the number.

16 THE COURT: All right. Thank you, Solicitor.
17 Thank you, Mr. Bank.

18 So now we are going to No. 2?

19 MS. M. WALKER: Yes, Your Honor.

20 THE COURT: Do you have four or six now?

21 MS. M. WALKER: Three.

22 THE COURT: Three. All right. The math keeps
23 changing. So now we are on No. 2?

24 MS. M. WALKER: Yes, Your Honor.

25 (Tape played in open court.)

1 THE COURT: All right. Mr. Bank?

2 MR. BANK: I think our position on this -- and
3 I think there may be some initial confusion about
4 whether he said the word "MO" or not in this case.
5 I have gone back and forth with it. And I just
6 haven't heard it the last couple of times. I
7 didn't hear it again here. So I might have
8 misstated that to the Court earlier, the statement
9 included some kind of statement about "MO."

10 I think what the ruling on the first statement
11 we listened to with TK, if that is coming in, we
12 want to have this tape in anyway under completeness
13 under 106, so we are going to withdraw the
14 objection on this tape for the State putting that
15 in.

16 I'm not -- and I have been trying to come up
17 with a way to word my concern about this. I do
18 have a little bit of concern of them talking about
19 things they are doing with a lawyer, hiring a
20 lawyer, talking to a lawyer.

21 I believe they are referencing Randy Hough, an
22 attorney you might be familiar with, a very good
23 lawyer. And there is one point in the phone call
24 that says, "Don't talk about this on the phone,
25 just tell all this to your lawyer."

1 That concerns me a little bit. Again, I
2 don't -- I have been struggling to come up with a
3 way to kind of express those concerns. It just
4 seems to me that, you know, there is not a
5 privilege. He is not talking to the lawyer on the
6 phone, he is talking to his girlfriend on the
7 phone, but they are speaking about advice the
8 lawyer is giving him about not talking on the
9 phone. And I think that might give some confusion
10 to the jurors' insight into the relationship that
11 they are not actually trying to waive. I think
12 they are saying -- she is reminding him, "Hey, your
13 lawyer gave you advice not to talk." And he is
14 just going, "Yes, you are right, I don't want to
15 talk about that." And then moving on to the next
16 subject.

17 It concerns me that by him following the
18 instructions of whatever attorney he may have been
19 trying to hire or whatever Public Defender he may
20 have had at the time, that the jury may come across
21 with the impression that there is something that he
22 is trying to hide, when really he is just trying to
23 follow the advice of his attorney, which he should
24 be allowed to do without fear of it coming back to
25 be used against him.

1 But other than those concerns about, "Tell
2 your lawyer, don't talk on the phone," then him
3 moving on, the rest of context of the conversation
4 we're fine with.

5 THE COURT: Solicitor?

6 MS. M. WALKER: I don't understand the
7 objection if he is acknowledging that there is no
8 privilege. This is a conversation that he is
9 having with a third party on a phone call that he
10 knows is recorded. And that that person isn't --
11 it is not a lawyer, it is not an employee of a
12 lawyer, which could lend some sort of cover of
13 privilege to that. I guess I don't understand how
14 to respond to what he is saying because I'm not
15 quite sure what he is saying.

16 THE COURT: I think Mr. Bank somewhat admitted
17 that by saying, I'm not sure exactly what context
18 to put it in, Solicitor.

19 MS. M. WALKER: I got you.

20 THE COURT: Not admitted. Perhaps that is not
21 properly worded, Mr. Bank.

22 MS. M. WALKER: I guess I'm confused.

23 MR. BANK: Maybe I can expound. I think that
24 what he is essentially doing is he is taking his
25 attorney's advice and invoking his right to not

1 talk about certain things about the case and then
2 talking about how the attorney advised him not to
3 do that. So he hasn't waived his privilege in the
4 sense that he is still following the attorney's
5 advice also on whatever that statement or thing he
6 is about to say is.

7 So I believe what the Government essentially
8 is getting into evidence that he's been advised of
9 his right about whatever point he may have been
10 able to start talking about, but then he stopped
11 himself, therefore not violating the privilege and
12 talking about it with anybody else. And that that
13 is what concerns me, is that by simply following
14 the advice of his attorney, saying, "Hey, my
15 attorney told me, yeah, he told me not to talk
16 about it, so I will not talk about it, and move
17 on," that now is kind of being used against him. I
18 don't know if that would be that much trouble to
19 redact that one line out of there. I don't know if
20 the State has any reason they are actually trying
21 to get that in. I think they are trying to get in
22 other comments. It is just a concern I want to
23 bring to the Court's attention.

24 When I say that there is no privilege, what I
25 meant by that is he is not specifically speaking

1 with his attorney on that phone conversation. But
2 I think what he is doing is talking about how his
3 attorney told him what his rights are, explains
4 what his rights are, and then stops him talking.
5 And then that is what is being brought up in front
6 of the jury and used against him.

7 And I'm sorry if that does not make a little
8 bit more sense. I'm trying to get it together.

9 THE COURT: It makes sense. I'm going to deny
10 your motion in that regard. Whatever wound is
11 inflicted is self-inflicted. He is talking to a
12 third party. He knows it is being tape-recorded.
13 So in that regard, I think it would be admissible.

14 MS. M. WALKER: Thank you, Your Honor.

15 THE COURT: All right, now, are there other --
16 other than that issue, as far as Tape 2, you have
17 no objection?

18 MR. BANK: That's correct, Your Honor. And on
19 the first tape, since the first tape is coming in,
20 we want this one in.

21 THE COURT: All right. Thank you.

22 MS. M. WALKER: One more, Your Honor?

23 THE COURT: Yes, ma'am.

24 MS. M. WALKER: This is the last one.

25 THE COURT: All right.

1 (Tape played in open court.)

2 THE COURT: All right. Is that the end of the
3 third one, Solicitor?

4 MS. M. WALKER: Yes, Your Honor.

5 THE COURT: Yes, sir, Mr. Bank?

6 MR. BANK: Thank you, Your Honor. Very
7 similar to the last call, with the ruling that any
8 of the tapes are going to come in, we are actually
9 fine with this coming in minus one small concern
10 again.

11 I mentioned earlier the language. He uses
12 "the Arab." Your Honor, I don't believe the word
13 "Arabic" is offensive, I don't believe the word
14 "Arab" is offensive, but just doing quick Google
15 searches and listening to the way that it is
16 pronounced and adding the word "the" to it, almost
17 intentionally mispronouncing it, "the Arab," I have
18 to take the position that I think it is offensive.

19 I guess it is difficult to explain the
20 definition of what makes it offensive except for
21 the fact that he adds the word "the" to it and it
22 sounds like he pronounces it in such a way that it
23 is meant to be offensive. And we're concerned for
24 the jury hearing anything about that specific line.

25 Again, if it is something that can be

1 redacted, we'd ask for the Court to ask the
2 Government to do that.

3 And also, Judge, I think on top of it, I don't
4 want to get into exactly what constitutes Arabic,
5 or whatnot. My understanding is -- I believe his
6 family is originally from Pakistan. I don't
7 believe that that is considered Arabic. The State
8 might be able to give us a little bit more
9 information about that because they spent obviously
10 a lot more time with this family than we had any
11 contact with. That would be my concern with that
12 line, is that someone on the jury might find that
13 racially insensitive or offensive.

14 THE COURT: All right. I find that it is not
15 offensive. If it is offensive it would still have
16 an appropriate value. That if the victim is
17 Pakistani and that that is not Arabic, then that
18 would go to the issue of identification and it
19 would go to the weight and the value that the jury
20 gave to that statement.

21 I would further find under State v. Cason,
22 C-A-S-O-N, 454 S.E.2d 888, a case that was tried by
23 then Circuit Court Judge Pleicones and appealed to
24 our Supreme Court in the opinion penned by now
25 Chief Justice, then Justice Toal. It was a case

1 that happened out on Hunt Club Road off of Decker
2 Boulevard in Richland County in the early '90s.
3 The body of an African-American female was found,
4 having been killed by a blow to the head by a blunt
5 instrument.

6 Cason's statement was, quote, "He killed an
7 f'ing N bitch," unquote. Part of that had to do
8 with voir dire as far as the racial epitaph. That
9 was upheld on appeal.

10 So, with that being said, Conversation No. 3
11 is admissible.

12 Are there any others?

13 MS. M. WALKER: Your Honor, at this point
14 those are the only ones we are seeking to admit in
15 our case in chief. I'm not sure with whatever case
16 they put up if something else may become relevant
17 down the line.

18 THE COURT: All right. And as I recall, Mr.
19 Bank is going to give you numbers of ones that he
20 may want, one or ones that he may want under 106 to
21 be admitted hand-in-hand with the first one that
22 you played.

23 MS. M. WALKER: Yes, Your Honor. That's fine.

24 THE COURT: Correct, Mr. Bank?

25 MR. BANK: Yes, sir.

1 MS. M. WALKER: And, Your Honor, the State
2 doesn't have any other motions. My only concern at
3 this point is that we haven't picked a jury. The
4 bond is still in place should that become an issue
5 tomorrow.

6 THE COURT: What now?

7 MS. M. WALKER: We haven't picked a jury yet,
8 so the bond -- my understanding is that the bond
9 for Mr. Porterfield is still in place.

10 THE COURT: It is in place until the jury is
11 sworn.

12 MS. M. WALKER: So just --

13 THE COURT: We will then visit it at that
14 time.

15 MS. M. WALKER: Okay. The last time we were
16 on the record, Your Honor, when this case was
17 continued, I think two weeks ago, the Defendant was
18 advised that even if he were to not show up
19 tomorrow, once we start the trial, that the trial
20 would proceed in his absence. So I just wanted to,
21 out of an abundance of caution, make that clear,
22 that we would not intend on not calling the case
23 due to him not showing up.

24 THE COURT: All right. Thank you.

25 Ms. Walker?

1 MS. A. WALKER: And, Your Honor, I just --
2 addressing that issue in itself, I did call Robins
3 and Brad's Bail Bonding, which was the bond that he
4 posted back in October of 2012. Pardon me, Your
5 Honor. They indicated -- I spoke with Mr. Steve
6 Thompson. He indicated that Mr. Porterfield is in
7 good standing with the company. He has paid off
8 his bond. They have had absolutely no problem with
9 him. He is living in the same residence with his
10 fiancée, Diana Addison, who is in the courtroom.
11 They have been living there since he bonded out.

12 Mr. Bank and I have been to his residence a
13 number of times to meet with Mr. Porterfield. They
14 have one car, so their transportation was a little
15 difficult to meet at the office sometimes, so we
16 had to meet at their residence. I have no doubt
17 that he will be present. When he was in trial last
18 time, he came both days. He has been present for
19 every court date. And I have no doubt that he will
20 be present for it. And he certainly understands
21 the importance of being here, Your Honor.

22 THE COURT: Thank you. Thank you, Ms. Walker.

23 Please stand for me, Mr. Porterfield.

24 (Defendant complies.)

25 THE COURT: Would you place him under oath for

1 me, Madam Clerk?

2 THE CLERK: Raise your right hand, please.

3 (Defendant complies.)

4 THE CLERK: Do you swear or affirm to tell the
5 truth, the whole truth, and nothing but the truth,
6 so help you God?

7 THE DEFENDANT: I do.

8 THE CLERK: Thank you.

9 THE COURT: Tell me your full name.

10 THE DEFENDANT: Anthony Markale Porterfield,
11 Jr.

12 THE COURT: And how old are you, Mr.
13 Porterfield?

14 THE DEFENDANT: I'm 28 years old.

15 THE COURT: How much education do you have?

16 THE DEFENDANT: I got my GED and I took some
17 college courses.

18 THE COURT: You understand the State has
19 called your case to trial?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand that we're
22 going to recess for the day and start back at 10:30
23 in the morning?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand we'll be going
3 forward with the trial of the case by jury
4 selection and the presentation of testimony? You
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand, Mr. Porterfield,
8 that should you fail to appear, the trial will
9 continue in your absence?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: Further, a bench warrant will be
12 issued for your arrest and perhaps an arrest
13 warrant for failure to appear. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions about
16 that?

17 THE DEFENDANT: No, sir.

18 THE COURT: You will be here by 10:30 in the
19 morning?

20 THE DEFENDANT: I will be here before 10:30.

21 THE COURT: Or by whatever time your attorney
22 may want you to be present, but as far as the Court
23 is concerned, by 10:30 in the morning?

24 THE DEFENDANT: Yes, sir.

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

1 Anything else you would like me to advise him
2 of, Ms. Walker?

3 MS. A. WALKER: This Ms. Walker?

4 THE COURT: Yes.

5 MS. A. WALKER: No, sir.

6 THE COURT: That is why I keep referring to
7 her as Solicitor.

8 Anything further, Solicitor, you would like me
9 to advise Mr. Porterfield?

10 MS. M. WALKER: Nothing, Your Honor. Thank
11 you.

12 THE COURT: All right. Thank you. Thank you
13 very much.

14 Anything further, Ms. Walker, whatsoever?

15 You may be seated.

16 (Defendant complies.)

17 MS. A. WALKER: Nothing further, Your Honor.
18 Not today.

19 THE COURT: Court will be in recess until 9:30
20 in the morning for that other matter.

21 MS. M. WALKER: Yes, Your Honor.

22 THE COURT: And 10:30 for this trial?

23 MS. M. WALKER: Yes, sir.

24 MS. A. WALKER: Thank you.

25 THE COURT: Thank you very much. Hope you

1 have a pleasant evening.

2 (WHEREUPON, the proceedings concluded
3 at 5:18 p.m.)

4 (WHEREUPON, the proceedings resumed at
5 11:34 a.m.)

6 FEBRUARY 24, 2015

7 THE COURT: All right. Solicitor, anything
8 you need to put on the record before we send for
9 the jury?

10 MS. CAMPBELL: Yes, sir. Your Honor, as far
11 as the indictments go, I did notice some minor
12 changes. In one kidnapping indictment, the
13 victim's name is a typographical error. It should
14 be Sobia rather than Sabia, so Sobia N.

15 And then, Your Honor, just to amend the armed
16 robbery indictment. The goods and monies of -- it
17 would be both Rabia and her father and/or Gulzar
18 Nathani.

19 THE COURT: All right. Any objection to that,
20 Ms. Walker?

21 MS. A. WALKER: No objection, Your Honor.

22 THE COURT: All right. I have ruled -- based
23 on our conversation in chambers, I have ruled that
24 the parties may have access and may be given a copy
25 of the jury strike list to comply with my ruling

1 yesterday concerning the criminal histories for any
2 of the jurors.

3 And, Solicitor, you may certainly redact any
4 social security or any other identifiers that may
5 be associated with any particular juror.

6 All right. Anything further before we send
7 for our jury? From the State?

8 MS. M. WALKER: Beg the Court's indulgence,
9 Your Honor.

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 MS. M. WALKER: Do you have the proposed
13 witness list?

14 THE COURT: State's potential witnesses?

15 MS. M. WALKER: Yes, Your Honor.

16 THE COURT: I do.

17 MS. M. WALKER: Okay. I think there is one
18 additional witness. His name is Tyrue.

19 THE COURT: Would you spell the first name for
20 me?

21 MS. M. WALKER: Your Honor, I think it is
22 T-Y-R-U-E.

23 THE COURT: And last name?

24 MS. M. WALKER: I think his last name is
25 Ruffin, R-U-F-F-I-N.

1 THE COURT: Tyrue Ruffin?

2 MS. M. WALKER: Yes, Your Honor.

3 THE COURT: Do you have that, Ms. Walker?

4 MS. A. WALKER: Yes, Your Honor.

5 MS. M. WALKER: I apologize for leaving that
6 off.

7 (Pause.)

8 MS. CAMPBELL: Your Honor, there are four
9 jurors that I'm handing over the information that
10 have anything that comes up on a possible rap
11 sheet. If anything else comes to my attention, I
12 will be glad to turn it over. But that is just
13 quickly checking the list.

14 THE COURT: Thank you. Thank you, Solicitor.
15 Are we ready for our jury panel?

16 MS. CAMPBELL: The State is ready.

17 THE COURT: Ms. Walker?

18 MS. A. WALKER: Yes, Your Honor.

19 THE COURT: All right. Would you give us our
20 panel, please?

21 (WHEREUPON, the jury came into open
22 court at 11:49 a.m.)

23 THE BAILIFF: The jury is seated, Your Honor.

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

25 Solicitor, would you call your first case for

1 trial, please?

2 MS. CAMPBELL: May it please the Court? The
3 State calls the case of State of South Carolina v.
4 Anthony M. Porterfield.

5 He is charged in Indictments No.
6 2012-GS-40-5295, 5294, 5297, and 5296. He is
7 charged with the crimes of burglary in the first
8 degree, armed robbery, and kidnapping, two counts,
9 Your Honor.

10 THE COURT: Thank you. Thank you, Solicitor.

11 All right, Ms. Walker and Mr. Bank, is the
12 Defendant present?

13 MS. A. WALKER: Yes, Your Honor.

14 THE COURT: And is he ready for trial?

15 MS. A. WALKER: Yes, Your Honor.

16 THE COURT: All right. Thank you. Thank you
17 very much.

18 Ladies and gentlemen of the jury pool, if you
19 will please give me your complete and undivided
20 attention.

21 The State has now called for trial the case of
22 the State v. Anthony M. Porterfield.

23 Mr. Porterfield, the Defendant, seated to my
24 front right, he is charged by indictment with
25 burglary first degree, armed robbery, and

1 kidnapping, two counts.

2 We are going to go through a process whereby
3 we select a jury for the trial of this specific
4 case.

5 As you recall yesterday morning, you went
6 through that process whereby you were qualified as
7 jurors to serve in this court. Now we go to that
8 next phase to qualify you as a member of an actual
9 jury panel.

10 The purpose of this procedure is to select a
11 fair and impartial jury for the trial of this case
12 for both Mr. Porterfield and the State.

13 As a result of that, I will ask you certain
14 questions to determine your qualification and your
15 eligibility to serve as members of that trial jury.

16 Because of certain questions that I will ask
17 you during this procedure, I will publish or read
18 to you the indictments.

19 Ladies and gentlemen, the indictments are not
20 evidence. The indictments are the formal charging
21 documents by which an individual is placed on
22 notice of charges that have been brought against
23 him or her. They contain mere allegations and in
24 no way are they evidence of any of the allegations
25 contained therein. I would ask you also to please

1 consider yourselves still under oath as you were
2 placed under oath yesterday morning by the Clerk of
3 the Richland County Clerk of Court. Please
4 consider yourselves still under oath for purposes
5 of this proceeding. And I would ask that your
6 responses that you give to me, if anyone needs to
7 respond, be full, complete, and accurate,
8 consistent with that oath.

9 Indictment 2012-GS-40-05295, the indictment
10 reads that: Anthony M. Porterfield, and/or another
11 Co-Defendant, did, in Richland County, on or about
12 June 27th, 2012, enter the dwelling of Rabia G.
13 Nathani -- that is N-A-T-H-A-N-I -- located at
14 without consent, and with the
15 intent to commit a crime therein, and when, in
16 effecting entry or while in the dwelling or
17 immediate flight therefrom, the Defendant displayed
18 what was, or appeared to be, a firearm, in
19 violation of 16-11-311(a) of the South Carolina
20 Code of Laws, (1976), as amended. That is an
21 indictment for burglary in the first degree.

22 The next indictment, 2012-GS-40-05296, alleged
23 that: On that same date, Anthony M. Porterfield,
24 and/or another Co-Defendant, did commit robbery by
25 feloniously taking from the person or presence of

1 Rabia G. Nathani and/or Gulzar Nathani -- that is
2 G-U-L-Z-A-R -- goods and/or monies, such goods
3 and/or monies being described as electronics and/or
4 TVs and/or computers, with the intent to deprive
5 the owner permanently of such property, while armed
6 with a deadly weapon or using or while alleging
7 either by actions or words that he or she was armed
8 while using a representation of a deadly weapon or
9 any object which a person present during the
10 commission of the robbery reasonably believed to be
11 a deadly weapon. That is an indictment for armed
12 robbery.

13 The next indictment, 2012-GS-40-5294, alleged
14 that: Anthony M. Porterfield, and/or another
15 Co-Defendant, did, in Richland County, on that same
16 date, June 27, 2012, unlawfully seize and/or
17 confine and/or inveigle and/or decoy or kidnap or
18 abduct or carry away one Sobia.N without the
19 authority of law in violation of 16-3-910.

20 And the last indictment, 2012-GS-40-5297,
21 alleged on that same date that: Anthony M.
22 Porterfield, and/or another Co-Defendant, did
23 unlawfully seize and carry away one Rabia Nathani
24 without authority of law.

25 Both of those are true-billed indictments for

1 the crimes of kidnapping.

2 He has burglary first degree, armed robbery,
3 two counts of kidnapping.

4 Again, ladies and gentlemen, the indictments
5 are not evidence. The indictments are the formal
6 charging documents by which an individual is placed
7 on notice for charges that have been brought
8 against him or her.

9 The State is represented by Assistant
10 Solicitors Campbell and Walker.

11 If you will please stand and introduce
12 yourself to the jury panel, Solicitors.

13 (Ms. Campbell and Ms. M. Walker stand.)

14 MS. CAMPBELL: My name is Luck Campbell. I'm
15 Assistant Solicitor here in the Fifth Judicial
16 Circuit.

17 MS. A. WALKER: My name is Meghan Walker. I
18 am also an Assistant Solicitor here in the Fifth
19 Circuit.

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

21 (Ms. Campbell and Ms. M. Walker are seated.)

22 THE COURT: Mr. Porterfield is present, along
23 with his attorneys, Ms. Walker and Mr. Bank. If
24 you would please stand and introduce yourselves to
25 the jury panel and your client.

1 (Ms. A. Walker, Mr. Bank, Mr. Tate, and
2 the Defendant stand.)

3 MS. A. WALKER: Good morning. I'm Anastasia
4 Walker.

5 MR. BANK: My name is Robert Bank. I practice
6 here in Columbia.

7 THE DEFENDANT: My name is Anthony Markale
8 Porterfield.

9 MS. A. WALKER: And this is Mr. John Tate.

10 THE COURT: Thank you. Thank you very much,
11 Ms. Walker, Mr. Bank, Mr. Porterfield. You may be
12 seated.

13 (Ms. A. Walker, Mr. Bank, Mr. Tate, and
14 the Defendant are seated.)

15 THE COURT: Is any -- well first let's start
16 with the attorneys. Ms. Campbell, Ms. Walker,
17 Ms. Walker, Mr. Bank. Is any member of the jury
18 panel related by blood or marriage, close personal
19 friends, know, have any personal, social, business,
20 professional relationship with any of the attorneys
21 involved in this matter? If so, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Has any member of the jury panel
24 or any member of your immediate family ever been
25 represented by Ms. Campbell, Ms. Walker,

1 Ms. Walker, Mr. Bank -- or Mr. Tate, I would add?

2 If so, please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: The Solicitors are employed by the
5 Fifth Judicial Circuit Solicitor's Office. Is any
6 member of the jury panel related by blood or
7 marriage, have any close personal friends or
8 business, social, professional relationship with
9 any individual employed with the Fifth Circuit
10 Solicitor's Office? If so, please stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Is any member of the jury panel
13 related by blood or marriage, have any close
14 personal friends that practice criminal defense law
15 or work with the Public Defender's Office in the
16 Fifth Judicial Circuit? If so, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: You were also introduced to Mr.
19 Porterfield. Is any member of the jury panel
20 related by blood or marriage, have any personal,
21 social, know him in any way, professional, business
22 relationship with Mr. Anthony M. Porterfield? If
23 so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: The case alleges a burglary at

Does any member of the jury panel have any knowledge about the case from any source whatsoever? If so, please stand.

THE COURT: Does any member of the jury panel have any bias or prejudice towards the parties -- that being Mr. Porterfield or the State of South Carolina -- or towards the subject matter involved in the case? If so, please stand.

THE JUROR: 217.

(WHEREUPON, the following was out of the hearing of the jury panel.)

THE JUROR: Peters.

THE JUROR: I work at the Attorney General's Office. I would be biased towards the State.

THE COURT: Do you feel like you could be a fair and impartial juror in the trial of this case

1 for the State and Defense?

2 THE JUROR: Probably not.

3 THE COURT: All right. I will set you aside
4 for the trial of this case. Thank you. Thank you
5 very much.

6 THE JUROR: Okay.

7 THE COURT: Do not say anything to your fellow
8 jurors.

9 THE JUROR: Of course.

10 THE COURT: No. 217 is set aside.

11 (Juror 217 excused.)

12 (WHEREUPON, the following is within the
13 hearing of the jury panel.)

14 THE COURT: Has any member of the jury panel
15 heard or know anything about the case from any
16 source whatsoever, if there were news accounts of
17 the case, if there has been any radio, television,
18 newspaper, hearsay, internet, any source
19 whatsoever? If you have heard anything about the
20 case, please stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: I'm going to call a list of
23 potential witnesses in the trial of this case,
24 ladies and gentlemen. The question of course would
25 be: Is any member of the jury panel related by

1 blood or marriage, know, or a close personal
2 friend, have any social, business, professional
3 relationship with any of these individuals whose
4 names I call? If you do, I would ask you to please
5 stand.

6 The witnesses do not have to be present during
7 this proceeding. Therefore, you may have -- I may
8 call names and no one stands. I would advise if
9 the witnesses are present, if you would please
10 stand and face the jury panel when your names are
11 called.

12 The first five potential witnesses:

13 Jacqueline Richburg, 9-1-1 custodian.

14 (Stands and seated.)

15 THE COURT: The next four witnesses of the
16 first five are employed with the Richland County
17 Sheriff's Department.

18 Deputy James Stone.

19 (Stands.)

20 THE COURT: Investigator Shawn Schroder.

21 Is this Deputy Stone?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. To my front right.

24 Thank you very much.

25 (Seated.)

1 THE COURT: Investigator Shawn Schroder there
2 in the back.

3 (Stands.)

4 THE COURT: Thank you very much.

5 (Seated.)

6 THE COURT: Warren Cavanaugh.

7 Captain Scott McDonald.

8 The next five names.

9 Investigator Joe Clarke, to my front left,
10 with the Richland County Sheriff's Department.

11 (Stands and seated.)

12 THE COURT: Sergeant Robert Waters, Alvin S.
13 Glenn Detention Center.

14 Donna Vivod, V-I-V-O-D, with the Richland
15 County Clerk of Court's office.

16 Theresa Cribb, Richland County Clerk of Court.

17 Custodian of the records unnamed at this time
18 with AT&T. I assume that is the telephone company;
19 is that right?

20 MS. M. WALKER: Yes, Your Honor.

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

22 The next five names.

23 Dana M. Outen, Richland County Solicitor's
24 Office, to my front left.

25 (Stands and seated.)

1 THE COURT: Sobia. N also in the upper
2 part of the courtroom to my front left.

3 (Stands and seated.)

4 THE COURT: Thank you. Thank you very much.
5 Rabia Nathani.

6 (Stands and seated.)

7 THE COURT: Thank you.

8 Gulzar Nathani..

9 (Stands and seated.)

10 THE COURT: Thank you, Mr. Nathani.

11 Nazirah Gale.

12 Adrian Deberry.

13 Hakeem Coffeail, C-O-F-F-E-I-L.

14 Tyrue Ruffin.

15 Diana Addison. Ms. Addison in the upper right
16 side of the courtroom.

17 (Stands and seated.)

18 THE COURT: Thank you, Ms. Addison.

19 Aaron Griffin.

20 Dr. Dawn McQuiston, M-C-Q-U-I-S-T-O-N.

21 Russell Dean.

22 Sherry1 Bryant.

23 Of those names called, ladies and gentlemen,
24 and those whose names were called and/or who stood
25 before you, again, is there any member of the jury

1 panel related by blood or marriage, know, have any
2 social, business, personal, professional
3 relationship with any of those individuals whose
4 names I just called? If so, please stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: Any additional voir dire requested
7 from the State, Solicitor?

8 MS. M. WALKER: Nothing from us, Your Honor.

9 THE COURT: From the Defense, Ms. Walker?

10 MS. A. WALKER: Beg the Court's indulgence.

11 (Pause.)

12 MS. A. WALKER: May we approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 THE COURT: Has any member of the jury panel
18 been a victim of a violent crime and/or accused of
19 a violent crime? If so, please stand.

20 Your number and name, sir?

21 THE JUROR: 238.

22 THE COURT: Would you step down here for me,
23 please?

24 (WHEREUPON, the following was heard out
25 of the hearing of the jury panel.)

1 THE COURT: This is Mr. Sandler?

2 THE JUROR: Yes.

3 THE COURT: Thank you. Would you tell me your
4 situation?

5 THE JUROR: I own a jewelry store.

6 THE COURT: All right.

7 THE JUROR: I have been robbed with a gun like
8 this. Actually two.

9 THE COURT: So you have been robbed twice?

10 THE JUROR: Yes. No, once, but another gun.

11 THE COURT: Once?

12 THE JUROR: No, no, it was several years ago.

13 THE COURT: That happened in Richland County?

14 THE JUROR: Yes.

15 THE COURT: Was anyone ever charged?

16 THE JUROR: Yes.

17 THE COURT: Did you have to come to court?

18 THE JUROR: No, I actually didn't, but I know
19 that they came, you know.

20 THE COURT: But given the fact that you have
21 been a victim of an armed robbery in Richland
22 County, do you feel like you could be a fair and
23 impartial juror in the trial of this case for both
24 Mr. Porterfield and the State?

25 THE JUROR: No, I don't think so. No, huh-uh.

1 THE COURT: Because of your personal
2 experiences?

3 THE JUROR: Yes, absolutely.

4 THE COURT: Well, thank you. Thank you very
5 much. You may return to the back where your fellow
6 juror is sitting.

7 (Juror 238 excused.)

8 THE COURT: 294. Ms. Williams?

9 THE JUROR: Yes.

10 THE COURT: And tell me your situation.

11 THE JUROR: Victim of domestic violence and
12 burglary.

13 THE COURT: And was the burglary in the same
14 incident?

15 THE JUROR: No.

16 THE COURT: So separate. Can you give me a
17 timeframe?

18 THE JUROR: Probably about 2006.

19 THE COURT: Did it occur in Richland County?

20 THE JUROR: No, Newberry.

21 THE COURT: Newberry. And the domestic
22 violence?

23 THE JUROR: 2000.

24 THE COURT: Did that occur in Richland County?

25 THE JUROR: Newberry.

1 THE COURT: Given the fact that you were a
2 victim of those crimes, burglary and domestic
3 violence, can you be a fair and impartial juror in
4 the trial of this case?

5 THE JUROR: Yes.

6 THE COURT: Could you make a decision based on
7 the evidence and testimony here in the courtroom?

8 THE JUROR: Yes.

9 THE COURT: Any doubt in your mind about it?

10 THE JUROR: No, sir.

11 THE COURT: She will stay.

12 (Juror 294 returns to seat.)

13 THE COURT: 295. And this is Ms. Wilson?

14 THE JUROR: Yes, sir.

15 THE COURT: And tell me your situation.

16 THE JUROR: I have been involved with two
17 armed robberies at the Credit Union and had to seek
18 psychological help.

19 THE COURT: So you are employed at the Credit
20 Union?

21 THE JUROR: Yes, sir.

22 THE COURT: And can you give me a timeframe?

23 THE JUROR: It has been, I would say, about
24 seven to ten years ago.

25 THE COURT: And you said you got some

1 psychological --

2 THE JUROR: Yes.

3 THE COURT: -- counseling as a result of that?

4 THE JUROR: Yes, sir.

5 THE COURT: Given those facts, can you be a
6 fair and impartial juror in the trial of this case
7 for both the State and the Defense?

8 THE JUROR: No, sir.

9 THE COURT: You do not think you can?

10 THE JUROR: No.

11 THE COURT: And that is based on personal
12 events that occurred?

13 THE JUROR: Yes.

14 THE COURT: All right. I will set you aside
15 for the trial of this case.

16 So you may set her aside, Madam Clerk.

17 (Juror 295 excused.)

18 (WHEREUPON, the following is within the
19 hearing of the jury panel.)

20 THE COURT: Any additional voir dire from the
21 Defense?

22 MS. A. WALKER: I'm sorry, Judge, no. No
23 additional.

24 THE COURT: Thank you, Ms. Walker.

25 MS. A. WALKER: I apologize.

1 THE COURT: From the State, Solicitor?

2 MS. M. WALKER: None, Your Honor.

3 THE COURT: And, finally, ladies and gentlemen
4 of the jury panel, you have heard the indictments
5 being published to you, the charges in the
6 indictment, you have been introduced to the
7 attorneys, you have been introduced to Mr.
8 Porterfield, to the various witnesses, either that
9 stood before you and/or whose names are called, so
10 you know generally and briefly what the case is
11 about. And you know yourselves best.

12 Is there any member of the jury panel that
13 knows any reason whatsoever why you feel like you
14 could not be a fair and impartial juror in the
15 trial of this case for both the State and
16 Mr. Porterfield?

17 If there is something in your mind that
18 concerns you, it concerns me. As I said, our
19 purpose is to select a fair and impartial jury for
20 the trial of this case. So if you know any reason
21 whatsoever while you feel like you could not be
22 fair and impartial to the parties, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. No one stands. I find
25 our panel is qualified.

1 The strikes are ten for the Defense and five
2 for the State. Is that correct, Solicitor?

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: Is that correct, Ms. Walker?

5 MS. A. WALKER: Yes, Your Honor.

6 THE COURT: All right. Thank you. Thank you
7 very much.

8 Madam Clerk, if you will give us a panel.

9 THE CLERK: Ladies and gentlemen of the jury
10 panel, as I call your name, please come to the
11 microphone located here at the center of the
12 courtroom.

13 At this microphone, please restate your number
14 and your place of occupation.

15 Juror No. 288..

16 And if you have any personal items, if you'll
17 bring them with you, please.

18 (Juror approaches.)

19 THE JUROR: My name is Julie Whitney. And I
20 am a school counselor at Pontiac Elementary School.

21 THE COURT: What says the State?

22 MS. M. WALKER: Please present this juror.

23 THE CLERK: What says Defense?

24 MS. A. WALKER: Please present the juror.

25 THE CLERK: Please have a seat in the jury

1 box.

2 (WHEREUPON, Juror 288, a white female,
3 was seated on the jury.)

4 THE CLERK: Juror 201.

5 (Juror approaches.)

6 THE JUROR: My name is Clifford Nordeen. I'm
7 a farmer's helper at CD Handy and Company.

8 THE CLERK: What says the State?

9 MS. M. WALKER: Please present the juror.

10 THE CLERK: What says the Defense?

11 MS. A. WALKER: Please present the juror.

12 THE CLERK: Please have a seat in the jury

13 box.

14 (WHEREUPON, Juror 201, a white male, was
15 seated on the jury.)

16 THE CLERK: Juror No. 171.

17 (Juror approaches.)

18 THE JUROR: I'm Gail McLemore. I work in
19 medical records at Palmetto Health, Palmetto Senior
20 Care Administrative Associates.

21 THE COURT: What says the State?

22 MS. M. WALKER: Please present the juror.

23 THE CLERK: What says the Defense?

24 MS. A. WALKER: Please excuse this juror.

25 THE CLERK: Please return to the back of the

1 courtroom.

2 (WHEREUPON, Juror 171, a white female,
3 was excused by the Defense.)

4 THE CLERK: Juror No. 4.

5 (Juror approaches.)

6 THE JUROR: I'm John Allison. I work at White
7 Crane Company as a mechanic.

8 THE CLERK: What says the State?

9 MS. M. WALKER: Please present this juror.

10 THE CLERK: What says Defense?

11 MS. A. WALKER: Please excuse this juror.

12 THE CLERK: Please return to the back of the
13 courtroom.

14 (WHEREUPON, Juror 4, a white male, was
15 excused by the Defense.)

16 THE CLERK: Juror No. 33.

17 (Juror approaches.)

18 THE JUROR: My name is James Campbell. I'm a
19 life board administrator at the University of South
20 Carolina.

21 THE CLERK: What says the State?

22 MS. M. WALKER: Please present this juror.

23 THE CLERK: What says the Defense?

24 MS. A. WALKER: Please seat this juror.

25 THE CLERK: Please have a seat in the jury

1 box.

2 (WHEREUPON, Juror 33, a white male, was
3 seated on the jury.)

4 THE CLERK: Juror No. 141.

5 (Juror approaches.)

6 THE JUROR: My name is Ella King. I am a
7 retired human resource assistant.

8 THE CLERK: What says the State?

9 MS. M. WALKER: Please present this juror.

10 THE CLERK: What says the Defense?

11 MS. A. WALKER: Please seat this juror.

12 THE CLERK: Please have a seat in the jury

13 box.

14 (WHEREUPON, Juror 141, a black female,
15 was seated on the jury.)

16 THE CLERK: Juror No. 278.

17 (Juror approaches.)

18 THE JUROR: I'm George Warren. I work at
19 Sysco Food Service.

20 THE CLERK: What says the State?

21 MS. M. WALKER: Please excuse this juror.

22 (WHEREUPON, Juror 278, a black male, was
23 excused by the State.)

24 THE CLERK: Juror No. 244.

25 (Juror approaches.)

1 THE JUROR: Angela Sheppard. I work for
2 Pearson Education as a textbook sales rep.

3 THE JUROR: What says the State?

4 MS. M. WALKER: Please present this juror.

5 THE CLERK: What says the Defense?

6 MS. A. WALKER: Please excuse this juror.

7 THE CLERK: Please return to the back of the
8 courtroom.

9 (WHEREUPON, Juror 244, a white female,
10 was excused by the Defense.)

11 THE CLERK: Juror No. 143.

12 (Juror approaches.)

13 THE JUROR: My name is Rawlings Lamotte. I'm
14 a real estate broker with Bollin Ligon Walker
15 Realtors.

16 THE CLERK: What says the State?

17 MS. M. WALKER: Please present this juror.

18 THE CLERK: What says the Defense?

19 MS. A. WALKER: Please seat this juror.

20 THE CLERK: Please have a seat in the jury
21 box.

22 (WHEREUPON, Juror 143, a white male, was
23 seated on the jury.)

24 THE CLERK: Juror No. 94.

25 (Juror approaches.)

1 THE JUROR: Marchelle Gouvin. I am a hospice
2 social worker at Palmetto Health Hospice.

3 THE CLERK: What says the State?

4 MS. M. WALKER: Please present this juror.

5 THE CLERK: What says the Defense?

6 MS. A. WALKER: Please excuse the juror.

7 THE CLERK: Please return to the back of the
8 courtroom.

9 (WHEREUPON, Juror 94, a white female,
10 was excused by the Defense.)

11 THE CLERK: Juror No. 47.

12 (Juror approaches.)

13 THE JUROR: My name is Loretta Cummings. I
14 work for Publix Supermarket. I'm a produce clerk.

15 THE CLERK: What says the State?

16 MS. M. WALKER: Please present the juror.

17 THE CLERK: What says the Defense?

18 MS. A. WALKER: Please seat this juror.

19 THE CLERK: Please have a seat in the jury
20 box.

21 (WHEREUPON, Juror 47, a black female,
22 was seated on the jury.)

23 THE CLERK: Juror No. 181.

24 THE JUROR: Jaimie Mobley. I'm the head
25 bartender at Old Chicago Pizza and Taproom, and a

1 dance instructor with NXS Dance Studio.

2 THE CLERK: What says the State?

3 MS. M. WALKER: Please present this juror.

4 THE CLERK: What says the Defense?

5 MS. A. WALKER: Please seat this juror.

6 THE CLERK: Please have a seat in the jury

7 box.

8 (WHEREUPON, Juror 181, a white female,

9 was seated on the jury.)

10 THE CLERK: Juror No. 186.

11 THE JUROR: Christopher Moody. Customer

12 service director for Long's Drugs.

13 THE CLERK: What says the State?

14 MS. M. WALKER: Please excuse this juror.

15 THE CLERK: Please return to the back of the

16 courtroom.

17 (WHEREUPON, Juror 186, a black male, was

18 excused by the State.)

19 THE CLERK: Juror No. 256.

20 (Juror approaches.)

21 THE JUROR: Lee Stillinger. Missionary with

22 Child Evangelism Fellowship.

23 THE CLERK: What says the State?

24 MS. M. WALKER: Please excuse this juror.

25 THE CLERK: Please return to the back of the

1 courtroom.

2 (WHEREUPON, Juror 256, a white male, was
3 excused by the State.)

4 THE CLERK: Juror No. 247.

5 (Juror approaches.)

6 THE JUROR: Bob Sircy. I work for CMC Steel
7 in Cayce. I'm a maintenance safety coordinator.

8 THE CLERK: What says the State?

9 MS. M. WALKER: Please present this juror.

10 THE CLERK: What says the Defense?

11 MS. A. WALKER: Please excuse this juror.

12 THE CLERK: Please return to the back of the
13 courtroom.

14 (WHEREUPON, Juror 247, a white male, was
15 excused by the Defense.)

16 THE CLERK: Juror No. 294.

17 (Juror approaches.)

18 THE JUROR: I'm 294, Rhonda Williams. Project
19 Team League, PWC DVO.

20 THE CLERK: What says the State?

21 MS. M. WALKER: Please present this juror.

22 THE CLERK: What says the Defense?

23 MS. A. WALKER: Please excuse this juror.

24 THE CLERK: Please return to the back of the
25 courtroom.

1 (WHEREUPON, Juror 294, a black female,
2 was excused by the Defense.)

3 THE CLERK: Juror No. 16.

4 (Juror approaches.)

5 THE JUROR: My name is Cheryl Bolchoz. I am a
6 statistical analyst at Palmetto GBA.

7 THE CLERK: What says the State?

8 MS. M. WALKER: Please present this juror.

9 THE CLERK: What says the Defense?

10 MS. A. WALKER: Please excuse this juror.

11 THE CLERK: Please return to the back of the
12 courtroom.

13 (WHEREUPON, Juror 16, a white female,
14 was excused by the Defense.)

15 THE CLERK: Juror No. 241.

16 (Juror approaches.)

17 THE JUROR: My name is Adam Scott. And I'm a
18 facilities manager at the City of Columbia.

19 THE CLERK: What says the State?

20 MS. M. WALKER: Please present the juror.

21 THE CLERK: What says the Defense?

22 MS. A. WALKER: Please seat this juror.

23 THE CLERK: Please have a seat in the jury
24 box.

25 (WHEREUPON, Juror 241, a white male, was

1 seated on the jury.)

2 THE CLERK: Juror No. 43.

3 (Juror approaches.)

4 THE JUROR: My name is Barry Crabtree. I'm
5 retired from AT&T.

6 THE CLERK: What says the State?

7 MS. M. WALKER: Please present this juror.

8 THE CLERK: What says the Defense?

9 MS. A. WALKER: Please seat this juror.

10 THE CLERK: Please have a seat in the jury
11 box.

12 (WHEREUPON, Juror 241, a white male, was
13 seated on the jury.)

14 THE CLERK: Juror 304.

15 (Juror approaches.)

16 THE JUROR: Juror 304. Arthur Dunn. Mail
17 handler with the United States Postal Service.

18 THE CLERK: What says the State?

19 MS. M. WALKER: Please present this juror.

20 THE CLERK: What says the Defense?

21 MS. A. WALKER: Please present this juror.

22 THE CLERK: Please have a seat in the jury
23 box.

24 (WHEREUPON, Juror 304, a black male, was
25 seated on the jury.)

1 THE CLERK: Juror No. 173.

2 (Juror approaches.)

3 THE JUROR: Atiya McPherson. Director of the
4 Boys and Girls Clubs.

5 THE CLERK: What says the State?

6 MS. M. WALKER: Please present this juror.

7 THE CLERK: What says Defense?

8 MS. A. WALKER: Please seat this juror.

9 THE CLERK: Please have a seat in the jury
10 box.

11 (WHEREUPON, Juror 173, a black female,
12 was seated on the jury.)

13 THE CLERK: Juror No. 101.

14 (Juror approaches.)

15 THE JUROR: William Haggwood. IT manager with
16 the South Carolina Budget and Control Board.

17 THE CLERK: What says the State?

18 MS. M. WALKER: Please present this juror.

19 THE CLERK: Defense?

20 MS. A. WALKER: Please seat this juror.

21 THE CLERK: Please have a seat in the jury
22 box.

23 (WHEREUPON, Juror 101, a black male, was
24 seated on the jury.)

25 THE COURT: Two alternates. The strikes are

1 two for the State and one for the Defense per
2 alternate, is my understanding.

3 THE CLERK: Juror No. 151.

4 (Juror approaches.)

5 THE JUROR: Angela Lewis. City bus driver.

6 THE CLERK: What says the State?

7 MS. M. WALKER: Please present this juror.

8 THE CLERK: What says the Defense?

9 MS. A. WALKER: Please seat this juror.

10 THE CLERK: Please have a seat in the jury
11 box.

12 (WHEREUPON, Juror 151, a black female,
13 was seated as the First Alternate.)

14 THE CLERK: Juror No. 65.

15 (Juror approaches.)

16 THE JUROR: I'm Constance Fair. I'm retired
17 from the unemployment office.

18 THE CLERK: What says the State?

19 MS. M. WALKER: Please present this juror.

20 THE CLERK: What says Defense?

21 MS. A. WALKER: Please seat this juror.

22 THE CLERK: Please have a seat in the jury
23 box.

24 (WHEREUPON, Juror 65, a black female,
25 was seated as the Second Alternate.)

1 THE COURT: Any motions regarding the jury
2 selection process from the State?

3 MS. CAMPBELL: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 MS. CAMPBELL: None from the State, Your
7 Honor.

8 THE COURT: From the Defense?

9 MS. A. WALKER: Nothing from the Defense, Your
10 Honor.

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

12 Ladies and gentlemen that were selected as
13 members of the trial jury for the trial of this
14 case, momentarily I am going to ask you to step to
15 your new temporary home, your jury room, while I
16 give instructions to your colleagues concerning
17 their jury service for the remainder of the week.

18 I would remind you, during this brief recess
19 and throughout the trial of the case, you are not
20 to discuss this case with anyone, that includes
21 your fellow jurors or anyone else.

22 You would not be authorized to discuss the
23 case until you have heard all the evidence, all the
24 testimony, and closing arguments by the attorneys
25 and the instructions on the law by the Court and

1 then directed by the Court to begin your
2 deliberations with your fellow jurors in your jury
3 room.

4 So if you would please momentarily go with
5 your bailiff. That would be to your right here.
6 He will show you to your jury room. And I'll have
7 you right back out shortly.

8 (WHEREUPON, the jury retires to the jury
9 room at 12:35 p.m.)

10 THE COURT: The panel reports back downstairs?

11 THE CLERK: Yes, Your Honor.

12 THE COURT: Ladies and gentlemen of the jury
13 panel that were not fortunate enough to be selected
14 as trial jurors for the trial of this case, please,
15 please do not give up hope. The week is young.
16 There are many cases to be tried. So please keep
17 that in mind.

18 Thank you for being with us this morning. I'm
19 going to ask you to please return to your jury
20 assembly room -- your JAR, if you will -- and you
21 will receive further instructions there concerning
22 your jury service for the remainder of the week.

23 Thank you. Thank you very much.

24 (WHEREUPON, the remaining jury panel was
25 excused at 12:36 p.m.)

1 THE COURT: All right, Solicitor, Ms. Walker,
2 do you want to do opening before lunch?

3 MS. CAMPBELL: Sure. Unless they don't. I
4 don't care.

5 MR. BANK: We're fine with that, yes.

6 THE COURT: All right. Are y'all ready?

7 MS. CAMPBELL: I'm ready.

8 (WHEREUPON, the jury came into open
9 court at 12:38 p.m.)

10 THE BAILIFF: The jury panel is seated, Judge,
11 Your Honor.

12 THE COURT: Madam Clerk, would you swear our
13 jury, please?

14 THE CLERK: Yes, Your Honor.

15 Ladies and gentlemen of the jury, please stand
16 and raise your right hands to be sworn.

17 (Jury complies.)

18 THE CLERK: At the end of the statement I am
19 about to give you, please respond by saying, "I
20 do."

21 Do you swear or affirm you shall well and
22 truly try and true deliverance make between the
23 State of South Carolina and the Defendant at bar,
24 whom you shall have in charge, and a true verdict
25 give, according to the law and the evidence, so

1 help you God?

2 THE JURY: I do.

3 THE CLERK: You may be seated.

4 (Jury complies.)

5 THE COURT: Ladies and gentlemen of the jury,
6 the case we're about to try is the case of the
7 State v. Anthony M. Porterfield, seated to my front
8 right.

9 What I will now say is intended to serve as an
10 introduction to the trial of this case. These
11 remarks are not an instruction or charge on the law
12 in this case. I will instruct you on the law
13 applicable to this case during and at the end of
14 the trial before you retire to consider your
15 verdict.

16 This is merely an explanation of the procedure
17 that we will follow so that you may better
18 understand what may be happening.

19 The Defendant, as you know, is charged with
20 indictments filed in this court with the crimes of
21 burglary in the first degree, armed robbery, and
22 two counts of kidnapping, the elements of which
23 will be explained to you later.

24 Again, ladies and gentlemen, the indictments
25 are simply the charges by which the case is brought

1 into court and they are not in any sense evidence
2 of any of the allegations contained therein.

3 The Defendant has pled not guilty to these
4 indictments. The State, to my front left,
5 therefore has the burden of proving each of the
6 elements of the indictment beyond a reasonable
7 doubt. And it would be your duty, ladies and
8 gentlemen, to determine whether the State has met
9 its burden.

10 Your purpose as jurors is to find and
11 determine the facts. You are the sole judge of the
12 facts of this case. If at any time I make any
13 comment regarding the facts, you must disregard it.

14 You are to determine the facts from the
15 testimony you hear and any other evidence
16 introduced in court. It is up to you to determine
17 what inferences you feel may properly be drawn from
18 the evidence.

19 It is especially important that you perform
20 your duty of determining the facts diligently and
21 conscientiously, because ordinarily there is no way
22 to correct an erroneous determination of the facts
23 by a jury.

24 On the other hand, and with equal emphasis,
25 the same law that makes you the judge of the facts

1 makes me the judge of the law. The law as given by
2 the Court is the only law you may consider. You
3 must accept it and follow it even though you may
4 disagree with it. I cannot tell you what the facts
5 are. You cannot disagree with me about what the
6 law is or what the law should be. Your job is to
7 take the law as I give it to you and to apply it to
8 the facts as you find them to be from the testimony
9 of the witnesses and any other evidence that is
10 introduced.

11 After doing that, you will then render your
12 verdicts, true and just verdicts, under the solemn
13 oath that you have just taken as jurors.

14 During the trial, ladies and gentlemen, it is
15 important that you keep an open mind and not decide
16 any issue in the case until all of the evidence has
17 been presented, the parties have made their closing
18 arguments to you, and I have instructed you on the
19 law in this case.

20 It is your solemn responsibility to determine
21 the guilt or the innocence of the Defendant. And
22 your verdicts must be based solely on the evidence
23 as it is presented to you in this trial and on the
24 law as I instruct you during and at the close of
25 the trial.

1 And in just a moment the Solicitor will make
2 what is called an opening statement in which the
3 Solicitor will explain to you what the issues are
4 in the case, or at least what the Solicitor thinks
5 the issues are in this case.

6 Ms. Walker and Mr. Bank, one of the attorneys
7 for the Defendant, may also make an opening
8 statement, although they are not required to do so.
9 The Defendant is always presumed to be innocent.
10 The Defendant never has a responsibility for
11 proving himself or herself innocent of the crime
12 charged. The State always bears the burden of
13 proving its case beyond a reasonable doubt.

14 What the attorneys tell you during their
15 opening statements is not evidence in the case.
16 What they say during their closing arguments is not
17 evidence in the case. The questions by the
18 attorneys of the witnesses is not evidence in the
19 case. It is the framework by which the evidence is
20 extracted, the testimony from the witnesses that
21 take that oath before you and sit in that witness
22 stand before you that is the evidence in the case,
23 that, and any other items of physical evidence, or
24 the like, that may be presented.

25 What the attorneys tell you is important. I

1 would ask you to pay close attention to their
2 statements to you, their opening states, closing,
3 questions. But it is their contention as to
4 what -- in opening it is what their contention as
5 to what the issues are.

6 From time to time during the trial you may
7 hear one of the attorneys say something like, "Your
8 Honor, I believe we have a question of law or a
9 matter of law to discuss with you," or, "Your
10 Honor, may we approach the bench?"

11 I don't use that term, "Your Honor," referring
12 to me personally. It is not my habit to do that.
13 That refers to the printed word that I read to you
14 and to this robe, regardless of who may wear that.
15 It is nothing personal to me, I will assure you of
16 that.

17 Sometimes I myself might find it necessary to
18 excuse you from the courtroom for a short while so
19 the attorneys and I can discuss a matter of law.
20 The reason for this is not to hide anything from
21 you. You are the judges of the facts in this case.
22 And sometimes when I am discussing matters of law
23 with the attorneys, it may be necessary for me to
24 make some comment as to the facts in connection
25 with ruling whether or not a particular law

1 applies. I am not supposed to tell you what I
2 think the facts are. So I will excuse you from the
3 courtroom while these discussions take place so
4 that in no way will you be influenced by anything
5 that I might say or do in connection with the
6 facts.

7 In determining what the true facts are in this
8 case and in using your individual and collective
9 good judgment and common sense, you must decide
10 whether or not the testimony of the witnesses is
11 believable. It will be my responsibility to rule
12 as a matter of law as to whether certain testimony
13 is admissible or not. In other words, whether or
14 not you hear it or not. But once the testimony is
15 admitted, whether or not you believe it, is solely
16 for you to determine.

17 In deciding whether to believe a witness, you
18 have the right to consider the interest of any
19 witness, the bias of any witness, the prejudice of
20 any witness, the opportunity for the witness to
21 have seen the matters and things about which the
22 witness may testify, and the demeanor, the manner,
23 the way a witness acts on the witness stand. You
24 have a right to consider anything that is in the
25 record that will help you evaluate the testimony of

1 the witnesses. That means that it will be your
2 duty to pay close attention to these witnesses, to
3 observe them, to listen to them, to pay close
4 attention to the attorneys and to the Court. Don't
5 let your thoughts wander, but give strict attention
6 to the testimony in this case so that at the end of
7 all the testimony, after the arguments of the
8 attorneys, and the instructions on the law by the
9 Court, you will then be in that position to
10 determine what the true facts are and to apply the
11 law to those facts as you have found them to be and
12 thus render true and just verdicts.

13 Administrative -- I have not, but I will have
14 an election probably over lunchtime for the
15 foreperson of the jury panel. At this time I have
16 not selected that individual. I would ask that our
17 two alternates, 151 and 65, always maintain those
18 two seats for me, please. I need to keep up with
19 14 folks. If y'all will always maintain those two
20 seats. Once I have made the selection of the
21 foreperson, I will have him or her sit in this
22 chair closest to the bench. He or she will be the
23 jury spokesperson here in the courtroom and
24 responsible for writing and signing the verdicts.
25 Otherwise, you may sit wherever you would like as

1 far as the primary jury in these first three rows.
2 I have studied jurors for many years, both sitting
3 out there and sitting up here, and I found many
4 times jurors are very territorial. They like to
5 sit in the same seat every time. They want the
6 same view of the courtroom. That is fine with me.
7 I respect that very much. I'm very much myself a
8 creature of habit. However, you do not have to sit
9 in the same seat, but just one of the seats in the
10 first three rows.

11 Just administratively, if items of evidence
12 are introduced, photographs, diagrams, charts,
13 something of that nature, many times it will be
14 handed to your foreperson and passed among members
15 of the jury while you are out here in your jury
16 box. You may look at those items all you wish.
17 Please keep in mind, if I allow an item into
18 evidence, you will also have it with you in your
19 jury room at the time of your deliberation. So
20 that wouldn't be the only time, nor the last time
21 you will have the opportunity to see any physical
22 items in evidence.

23 If you cannot hear or see a particular
24 witness, we have a speaker system. Just get my
25 attention, the attention of the clerk, one of our

1 fine bailiffs, and we'll have that person speak up
2 as best we can.

3 Finally, what am I in charge of? I'm in
4 charge of taking breaks. That is what I'm in
5 charge of. And I have a real simple rule. Anybody
6 wants to take a break, we take a break. Everybody
7 is happy like that. Well, I know our Juror
8 No. 304, if you need a break at any time, you
9 discussed with me on Monday, you just please raise
10 your hand. And that goes for any member. If you
11 sit out here too long and listen too long and your
12 thoughts start to wander, you won't be able to
13 determine what the true facts are. Raise your
14 hand. This is not a judicial marathon. Please
15 raise your hand. Y'all will take y'all's break.
16 We will take our break. Please keep that in mind.

17 All right. Any objection to anything I told
18 the jury from the State?

19 MS. CAMPBELL: No, sir.

20 THE COURT: Defense?

21 MS. A. WALKER: No, Your Honor.

22 THE COURT: All right. Solicitor, you may
23 address the jury.

24 MS. CAMPBELL: May it please the Court?

25 THE COURT: Yes, ma'am.

1 OPENING STATEMENT

2 MS. CAMPBELL: On June the 27th of 2012, two
3 men, armed with a gun, forced their way into a
4 house on Broad River Road. And once inside, they
5 forced 18-year-old Rabia Nathani and her
6 14-year-old sister Sobia to the floor as they went
7 through the house and systematically robbed them of
8 electronics, computers, TVs, held them at gunpoint.

9 Once they had what they came for, both of the
10 men fled, leaving Rabia and Sobia crumpled on the
11 floor with their heads buried, praying they would
12 survive.

13 One of the men participating in this home
14 invasion was a man they had seen before on several
15 occasions through their father's business. They
16 knew him by sight, they knew him by nickname. The
17 man that had the gun that day was Anthony Markale
18 Porterfield, to his friends by the nickname Amp.
19 And, ladies and gentlemen, this is Anthony Markale
20 Porterfield.

21 And my name is Luck Campbell. And I'm an
22 Assistant Solicitor here in the Fifth Judicial
23 Circuit. And you will be hearing from me and
24 Meghan Walker, who is also an Assistant Solicitor
25 in the Prosecutor's Office here.

1 As the judge has told you in this case,
2 Mr. Porterfield has been charged with four
3 different indictments. And what is an indictment?
4 As he has also told you, it is not evidence of
5 anything, but the purpose of the indictments in
6 this case, ladies and gentlemen, is very important,
7 because it kind of serves a twofold purpose. It
8 puts the State on notice as to the elements of each
9 and every crime we have this Defendant charged
10 with. And in addition to that, it gives notice to
11 the Defendant of exactly what the State intends to
12 prove as far as the crimes that were committed back
13 on June the 27th of 2012.

14 Now, as the judge has also indicated to you,
15 the burden of proof, as it should be, is upon the
16 State of South Carolina to prove each and every
17 element as defined, as the judge will give you in
18 these indictments, beyond a reasonable doubt. That
19 is the highest level of doubt of any courtroom in
20 these United States. And as it should be, the
21 burden is on the State. And I submit, ladies and
22 gentlemen, in this case, with this evidence, and
23 these facts, that is a burden the State welcomes.

24 Now, the judge has already read to you the
25 four indictments. And, very simply, ladies and

1 gentlemen, although these all arise out of the same
2 events; different actions that this Defendant chose
3 to do that day give rise to different charges.

4 The first charge -- and I'm just taking them
5 in any order, random order -- that is charged with
6 is burglary in the first degree. And, very simply,
7 ladies and gentlemen, it is the unlawful entry into
8 a dwelling of another. In this case, while armed
9 with a weapon. It doesn't have to be breaking down
10 of the door, climbing onto a roof, coming in
11 through the chimney. It is an unlawful entry, an
12 unwanted entry. And there will be no dispute in
13 this case that there was an unlawful entry made
14 back on June the 27th of 2012.

15 And the second of these charges is the armed
16 robbery indictment that the judge has already read
17 to you. And, very simply, ladies and gentlemen --
18 and we'll talk about all this later on after the
19 evidence is presented -- what are the elements of
20 armed robbery? It is very simply the unlawful
21 taking of goods -- it can be money, it can be
22 electronics, it can be anything, it doesn't even
23 have to be a dollar amount, in this case it was
24 electronics -- from the person or presence of
25 another while armed with a deadly weapon or even a

1 representation of a deadly weapon. Those are the
2 elements of armed robbery.

3 And the final two indictments, ladies and
4 gentlemen, allege kidnapping, because, very simply,
5 once someone in this case, as in this case,
6 Mr. Porterfield chooses to arm himself to force
7 these young women back into the back part of their
8 home and hold them at gunpoint while his cohort
9 goes through their things and takes what he wants,
10 that is kidnapping. It is unlawful to inveigle,
11 seize, confine, or in any way restrict the movement
12 of another person. It doesn't have to be for any
13 set amount of time. It can be for a second, it can
14 be for five minutes, it can be for an hour. But if
15 someone's freedom is taken from them in this
16 country against their will and they are held for
17 any amount of time, that constitutes the crime of
18 kidnapping. And, as I said, the burden of proof is
19 on us to prove this Defendant's guilt beyond a
20 reasonable doubt.

21 It was the summer. June the 27th. The girls
22 weren't in school that day. Their father had left
23 that morning and gone to work. He often worked in
24 different areas around town. This day I believe it
25 was a flea market. Around lunchtime they decided

1 to leave the house and go to Chick-fil-A to get
2 some food. And, in fact, that day as they were
3 returning to their home on Broad River Road where
4 they lived with their mother, their father, their
5 brother -- and it also -- that home also held a
6 business within it, because Mr. Nathani, their
7 father, often worked -- he repaired electronics for
8 a living and that is what he did -- so he would
9 often work from the home, so customers often would
10 come by and drop off things, pick up things. They
11 were in and out. So the home kind of served not
12 only as a home for this family, but it also served
13 as one of the places of business Mr. Nathani had at
14 the time.

15 It was around 2:00 o'clock in the afternoon
16 when the girls came back from Chick-fil-A. They
17 still had their milkshakes in their hand. When
18 they came up upon the driveway, they noticed a gold
19 or kind of champagne-colored sedan in the driveway.
20 And at first they didn't know who it was because
21 there were two men sitting in the car. But as they
22 approached, one of the men, one of the occupants,
23 got out of the car. And once he got out of the
24 car, he approached the young women because they
25 were right there. And he asked about their father.

1 Asked them information.

2 They indicated to him that he wasn't there.
3 And both of them went inside the house. In fact,
4 one of the one young women even went and got the
5 phone because they were going to call their father
6 that day and tell them that the person was looking
7 for him.

8 Before they got a chance to do that, when they
9 looked up at the front door were the two men. One
10 of them had the gun. He had it out. The one with
11 the gun was Porterfield.

12 They forced their way in, even though Rabia
13 tried to shut the door. And once inside, they used
14 their gun, they forced them into the back part of
15 the house, into a hallway or back room area, told
16 them to get down on the floor, hide their faces,
17 and if they cooperated maybe nothing would happen.

18 While Mr. Porterfield sat there with the gun
19 on them to make sure they didn't resist, this
20 14-year-old and 18-year-old girl -- Sobia had just
21 finished the 8th grade at St. Andrews Middle, Rabia
22 had just finished her junior year, getting ready to
23 start her senior year in high school -- he held the
24 gun on them as his friend went through and took
25 TVs, other items through the home. You'll hear

1 that. And once they got what they wanted, what
2 they needed, they left.

3 The girls were still facedown on the floor
4 praying. As soon as they thought they were safe
5 enough, they got the phone. They called 9-1-1.
6 And you'll hear that 9-1-1 tape. And they tell the
7 police, or they tried to, as best they can, what
8 had just happened. People had forced their way in.
9 They told the police immediately, Yes, we knew who
10 one of them was. The police responded.

11 You'll hear how Mr. Nathani came back to the
12 scene after the police got there. Information was
13 exchanged. The girls were able to tell officers
14 that his nickname was Amp. And once Mr. Nathani
15 heard that, he is like, Wait a minute, that is the
16 guy who has been calling me today wanting to know
17 where I was, because he was away from the house,
18 where many of the electronics were kept.

19 He gave the officers -- Investigator Clarke
20 was able to get a phone number associated with this
21 person. He was able to run information on that
22 phone number. And it came back registered to
23 Anthony M. Porterfield, or Amp.

24 And based on that information he was able to
25 develop what is known as a photo lineup, because

1 before he went any further in accusing anyone of
2 this, he wanted to make sure he had the right
3 person.

4 And once he got those photo lineups developed,
5 he went back and met with the young women, not
6 knowing if they would be able to identify anyone,
7 but he showed each of them separately, by
8 themselves, the photo lineup. And each one, both
9 the girls, independently, identified the same
10 person as the person with the gun during the home
11 invasion robbery. Anthony Porterfield.

12 With that information, Investigator Clarke
13 went and got a warrant -- warrants actually, in
14 this case, four warrants, four charges -- for
15 Mr. Porterfield. He tried to find him. Time
16 passed. It had been a couple of weeks. He
17 actually was able to make contact with him through
18 the phone. Talked to him. Told him that he had a
19 situation he needed to talk to him about. A
20 robbery that had occurred. He made an appointment
21 with Anthony Porterfield to meet him.

22 But five minutes before Mr. Porterfield was
23 supposed to show up and meet Investigator Clarke,
24 he called him back, or there was a call exchanged.

25 And Porterfield told him, Huh-uh, you can't

1 make me meet with you. I know my rights. I know
2 what probable cause is. I'm not coming to meet
3 you.

4 At that point Investigator Clarke turned his
5 warrants over to what is known as the Fugitive
6 Team, who specializes in apprehending people who
7 are avoiding apprehension. The Fugitive Team
8 checked at his home address. They couldn't find
9 him. They went by his work. No luck. But they
10 were able to get information and went to an
11 address, I think it is called Luvalie Street.

12 And once they got there, they made contact
13 with a young woman, talked to her. And as a result
14 of that conversation they called in other people.
15 And when everyone got there, eventually they found
16 Anthony Porterfield hiding underneath the house as
17 law enforcement begged him to come out. He
18 refused. And finally they sent in a dog, who I
19 think actually bit him, in order to apprehend him
20 safely so that no shots were fired or exchanged.

21 And, ladies and gentlemen, that is just some
22 of the evidence you will hear.

23 Now, after you hear all the evidence in the
24 case, the judge will tell you what the law is that
25 you are to apply. He will instruct you on the law.

1 And then you will return to your jury room. And
2 each of you individually -- and once you get back
3 there -- collectively will be asked to reach a
4 verdict on each and every one of these indictments
5 separately as to the guilt or innocence of the
6 Defendant.

7 And the word "verdict," ladies and gentlemen,
8 comes from the Latin phrase, "veredicto." And,
9 very simply, through interpretation, it means "to
10 speak the truth."

11 And all we ask is that once you have heard all
12 the evidence in this case is that you do reach a
13 verdict that speaks the truth and holds
14 Mr. Porterfield responsible for his choices, his
15 actions back in June of 2012.

16 Thank you.

17 THE COURT: Thank you. Thank you, Solicitor.
18 Ms. Walker? Mr. Bank?

19 MR. BANK: Thank you, Your Honor. May it
20 please the Court?

21 THE COURT: Yes, sir.

22 OPENING STATEMENT

23 MR. BANK: Good afternoon, ladies and
24 gentlemen.

25 My name -- I was introduced as Robert Bank.

1 Actually I go by Bobby Bank, although it doesn't
2 quite matter. This is Anastasia Walker. Here to
3 my right is John Tate. And we represent Anthony.
4 Anthony Porterfield.

5 Now, before I get started with what I want to
6 talk to y'all about and before the case is going to
7 go forward and witnesses are going to get up and
8 evidence is going to come in and you all are going
9 to hear all about this, I want to be absolutely
10 clear about one thing. That I agree, and we agree,
11 with 90 percent of what Ms. Campbell just said.

12 She might have been a little off on some of
13 the facts, but essentially on June 27th, 2012, two
14 fellows came over to the Nathanis' house and
15 business, came into that house, had a gun, took
16 those two girls and scared them to death. Had them
17 crouch down, took their father's electronics, and
18 left in a car.

19 That happened, folks. Nobody is in dispute
20 about that.

21 Where we start to get in dispute and we start
22 to get in an argument is when we are asking who are
23 the two folks.

24 Well, one of them we don't know. The
25 Government -- and you'll hear -- there has never

1 been anybody arrested for it. Nobody on trial for
2 it. Nobody pled guilty to it. Nobody knows who
3 the other fellow is..

4 Where we obviously disagree is whether
5 Anthony -- right here -- whether he was the other
6 fellow.

7 They, of course -- you just heard them say he
8 is. And we'll tell you he is not.

9 Now, the Government spent a good amount of
10 time -- and not totally inappropriately -- on the
11 fact that these two girls -- these two young women
12 now -- back in 2012 identified Anthony.

13 And that is something we're going to address.
14 That is something we have to address. That is
15 something we are going to talk about.

16 Well, the Government would have you think that
17 is all that matters. They will tell you the fact
18 that Mr. Porterfield wasn't contacted by law
19 enforcement or arrested until three weeks later
20 doesn't matter. The fact that there isn't another
21 fellow ever arrested doesn't matter. They'll tell
22 you the fact that DNA was taken at the house that
23 didn't match Anthony. Doesn't matter. They will
24 tell you the fact that they never had a car --
25 found a car registered to Anthony, or I think even

1 bothered to look. It doesn't matter. The fact
2 that they didn't bother to get the search warrant
3 for Anthony in his house, even though they knew his
4 name on Day 1, to see if they could find a gun,
5 which they didn't even bother looking, they never
6 found, belonging to Anthony in 2012. They never
7 found any electronics that Mr. Nathani was missing
8 in the possession of Anthony. They never found the
9 clothing description that the girls gave. They
10 didn't bother looking. They certainly don't have
11 it. But it doesn't matter. The fact that on the
12 9-1-1 call the girls don't say Anthony's name. It
13 doesn't matter.

14 All that matters is the identification. From
15 the Government you will hear evidence. You are
16 going to hear evidence about how this was a
17 cross-racial identification and how that could have
18 affected that ID. Y'all are going to hear evidence
19 about how these girls were scared to death and how
20 that can affect ID. And you are going to hear
21 evidence about suggestibility, familiarity, how
22 they have known Anthony before, had seen him
23 briefly, and how that can affect ID and what you
24 remember seeing.

25 Now, the Government spoke about their burden

1 of proving guilt beyond a reasonable doubt. I
2 don't want to spend an enormous amount of time on
3 it. I want to talk about it, though. We're going
4 to spend a lot of time talking about that later.
5 The judge and both the Government and us will too.
6 I think it is enough to say for right now that when
7 y'all are hearing these witnesses and when y'all
8 are seeing this evidence, if things aren't adding
9 up to you, things are not making sense, you are
10 starting to have questions, things aren't lining
11 up, you are starting to head in that direction of
12 reasonable doubt. And I think that is sufficient
13 for you to know right now.

14 Now, I think people hear about attorneys
15 having themes or catch phrases, maybe words they
16 use over and over again to try to get you to stick
17 in your mind. I don't really have one of those in
18 this case. I was trying to think of one. And the
19 best one I could come up with -- I don't know if it
20 will stick or not -- but it is actually one that I
21 can agree with the Government about. Scared to
22 death. These girls, young ladies now, were scared
23 to death when two folks run in the house with a gun
24 and robbed them. They are scared to death to such
25 a degree that we have got to question and you've

1 got to ask yourself the question whether their ID,
2 and their ID alone, is sufficient to convict
3 Anthony of these awful charges. And I think you'll
4 see at the end of the day after the witness --
5 after the evidence I keep speaking about -- you'll
6 see the Government, they are scared to death, and
7 if not they should be scared to death, that they
8 got the wrong guy.

9 Now, I'll tell you right now, they are taking
10 note of that and they will come back later and tell
11 you, We assure you we are not scared to death we
12 have the wrong guy. I don't want them to think
13 about it. I want y'all to think about it.

14 I appreciate y'all's time today, y'all's
15 attention. I believe the judge told y'all
16 yesterday and today, this is a very important duty.
17 I believe the Government mentioned it too. I can't
18 say enough about that. This system doesn't work
19 without y'all. None of this would be happening
20 without y'all. I appreciate y'all's attention.

21 Thank you, Your Honor.

22 THE COURT: Thank you. Thank you very much,
23 Mr. Bank.

24 Ladies and gentlemen of the jury panel,
25 perhaps now would be a good time to take our

1 luncheon recess.

2 I remind you again, as we said, you may not
3 discuss this case with others. That includes your
4 fellow jurors, lunch mates, family, friends, or
5 anyone else. You may not read, watch, or listen to
6 any news reports about the case should there be
7 any. You may not use your computer or cellular
8 phone or any other electronic device of
9 communication capabilities while in attendance at
10 trial or during deliberations. You may use these
11 devices during lunch breaks. And of course you'll
12 have them over the evening hours. But you may not
13 use them to obtain or disclose prohibited
14 information.

15 Prohibited information includes, but is not
16 limited to, the following: Information about a
17 party, a witness, an attorney, or a court officer,
18 news accounts of the case, past or present,
19 information collected through juror research on any
20 topics raised or testimony offered by any witness,
21 or information collected through juror research on
22 any other topic the juror might think would be
23 helpful in deciding the case.

24 Remember, you decide the case based on the
25 testimony and the evidence presented before you,

1 the witnesses testifying under oath in this
2 courtroom, and the reasonable inferences you think
3 may possibly be drawn from the evidence. Don't do
4 any independent investigation or any investigation
5 on the internet.

6 With that being said, we are now going to take
7 our luncheon recess. I would ask you to please be
8 back at 2:30. That is an hour and 15 minutes.
9 Please be back promptly at 2:30. The bailiff will
10 show you the way out and show you how to return.

11 With that being said, I hope y'all have a
12 pleasant lunch. Thank you very much. You now may
13 go with the bailiff.

14 (WHEREUPON, the jury is excused for
15 lunch at 1:13 p.m.)

16 THE COURT: Anything from the State,
17 Solicitor?

18 MS. CAMPBELL: No, sir.

19 THE COURT: Defense?

20 MS. A. WALKER: Nothing.

21 MS. CAMPBELL: I'm sorry, Your Honor, at this
22 point his bond is down?

23 THE COURT: Correct.

24 MS. CAMPBELL: We would ask that he be taken
25 into custody at this point.

1 THE COURT: All right. Ms. Walker?

2 MS. A. WALKER: And, Your Honor, we would
3 simply request that he not be taken into custody.
4 He's been out on bond since he made bond back in
5 October of 2012. He has lived at the same
6 residence. He has made all his court dates. He
7 has not made any contact with the Nathanis or made
8 any trouble whatsoever. He has come to all court
9 dates. He has come through inclement weather
10 today. He's been on time. As we said yesterday,
11 we know where he lives." We have been to his house
12 multiple times. He has not missed a court date at
13 all. And this is his day in court and he is
14 anxious to be here for it.

15 I would ask Your Honor -- as we called his
16 bond company. They indicate he is in good
17 standing. He is paid up on his bond. And he has
18 given them no trouble whatsoever. His fiancée is
19 in the courtroom. She is -- they live together
20 with their children. I have no doubt that he will
21 be here, as he has in the past, and has
22 demonstrated that.

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

24 MS. CAMPBELL: Your Honor, if I might correct
25 one thing. He did have a bench warrant issued at

1 one point for not showing up. Ms. Walker was able
2 to produce him later on. As a result of that I
3 believe the bench warrant was never served and was
4 withdrawn. But it is not that he made every court
5 appearance.

6 In addition to that, Your Honor, he is facing
7 life.

8 MS. A. WALKER: And, Your Honor, I believe for
9 some reason his mail keeps going to his brother's
10 house. We provided his correct address as

11 29223. For some reason it keeps
12 going to his old brother's address and he has never
13 lived there. I have no idea why that keeps
14 happening. But, as I said before, we know his
15 address. He knows he is facing a life sentence and
16 has still -- when we were about to start trial last
17 time, he appeared on both those court dates that we
18 were going to start the trial on those court dates.
19 He had no reason to believe that we weren't
20 starting it those dates either.

21 THE COURT: All right. Thank you. Thank you
22 very much.

23 Do you have a copy of his bond? Does anyone
24 have a copy of his bond?

25 MS. A. WALKER: I believe I spoke to Steve

1 Thompson with Robbins Bail Bonding yesterday.

2 MS. CAMPBELL: Your Honor, I've got a copy of
3 his bond form, but at this point he has no bond.

4 THE COURT: At this point what?

5 MS. CAMPBELL: The jury has been sworn, so he
6 doesn't have a bond.

7 THE COURT: Well, I wanted to see the address.

8 MS. CAMPBELL: And that was the address that
9 was on the original bond form, which was the
10 address he missed his notice on.

11 THE COURT: What address has his mail been
12 going to?

13 MS. A. WALKER: Your Honor, the address that
14 is on his bond form is the correct address. That
15 is the address that Mr. Bank and I have gone to.

16 THE COURT: What address is that?

17 MS. A. WALKER: This
18 That is the address they currently reside at on the
19 address that Mr. Bank and I have personally gone
20 to. The other address the mail keeps going to is a
21 Colonial Drive address.

22 THE COURT: All right. Anything further,
23 Ms. Walker? Solicitor?

24 MS. CAMPBELL: No, sir.

25 MS. A. WALKER: No, Your Honor.

1 THE COURT: All right. The four charges,
2 burglary first, armed robbery, and two counts of
3 kidnapping, all are most serious, violent offenses
4 defined by our legislature. He is facing life plus
5 90 years. His bond is revoked. He is in the
6 custody of the Alvin S. Glenn Detention Center.

7 Sheriff, if you would you please take
8 Mr. Porterfield into custody, and he is to remain
9 in custody throughout the course of these
10 proceedings. Make him available to his attorneys
11 at breaks, recesses, and every morning and late
12 afternoon.

13 Thank you. Thank you very much. Court will
14 be in recess until 2:30.

15 MS. CAMPBELL: Thank you, Your Honor.

16 MS. A. WALKER: Thank you, Your Honor.

17 (WHEREUPON, a lunch break was taken at
18 1:18 p.m.)

19 (WHEREUPON, the proceedings resumed at
20 2:35 p.m.)

21 (WHEREUPON, Defendant's Exhibit Nos.
22 1-15 were marked for identification
23 only.)

24 THE COURT: All right. Anything from the
25 State?

1 MS. CAMPBELL: Over lunch I went down to the
2 canteen. There were a number of jurors in there.
3 I intentionally avoided them like the plague. I
4 just didn't want them to think I was being so rude.
5 If you could just -- I know you have already
6 instructed them somewhat on this, instructed them
7 we are not trying to be rude or anything, just we
8 aren't going to talk to them.

9 THE COURT: All right. Mr. Bank?

10 MR. BANK: We have no problem with that.

11 I did have one other issue I wanted to bring
12 up, if this is the appropriate time. I'm not sure
13 which of the witnesses they are going to put up
14 first, but just in case it is the lead
15 investigator, Investigator Clarke -- I brought this
16 up to the State earlier and they seemed to indicate
17 they were going to have an objection to it.

18 Your Honor, this is a calendar we drew out
19 from June 27th when this incident happened to cover
20 the weeks of the investigation from pretty much the
21 incident to arrest. The intention of it is to be a
22 demonstrative display that I can put up there while
23 Investigator Clarke is on there and have him go
24 through the dates that he went through. I might
25 mark, This is the day you got the report, This is

1 the day you did the ID, just to give the jury some
2 perspective on which days these fall on rather than
3 saying, The 18th here and the 2nd here and the 3rd
4 here. We don't really have an intention to
5 introduce it into evidence, but I think it would be
6 helpful, one, through examination as far as
7 Investigator Clarke. And then, one, to help the
8 jury be able to have kind of a display or calendar
9 showing the course of events.

10 THE COURT: All right. Solicitor?

11 MS. CAMPBELL: Your Honor, I mean, as long as
12 it is authenticated, I have no problem with it. I
13 haven't had a chance to see this to see if it is
14 accurate. Or if he has got one that he can use
15 like an actual calendar.

16 MR. BANK: Judge, I am more than happy to look
17 up and make sure the dates fall on the actual days.
18 I didn't have -- the reason behind it being on
19 paper here, one, it is large, and, two, we can kind
20 of write on it. This was -- I didn't foresee there
21 being any problem. I am more than happy to talk
22 with them and look at a calendar from my phone.

23 MS. CAMPBELL: We may be able to work this
24 out. I don't think it is something we need to take
25 up now since Investigator Clarke is not our first

1 witness.

2 THE COURT: All right. Thank you. Thank you
3 very much, Solicitor. Thank you, Mr. Bank.

4 Anything further before we bring in our jury?

5 MS. CAMPBELL: No, sir.

6 THE COURT: Do you want me to tell the jury
7 that you are not being rude and not being
8 unmannerly? And most folks in the courtroom would
9 be able to identify when you are being rude or
10 unmannerly? Would that be the appropriate charge?

11 MS. CAMPBELL: No.

12 THE COURT: No?

13 Ms. Shirley, will you bring us our jury,
14 please?

15 THE BAILIFF: Yes, sir.

16 (WHEREUPON, the jury came into open
17 court at 2:38 p.m.)

18 THE BAILIFF: The jury panel is present,
19 Judge.

20 THE COURT: Thank you, Madam Bailiff.

21 (Jury note presented.)

22 THE COURT: All right. Juror No. 151, I'll
23 address that before the end of the day, okay?

24 All right. Thank you. Thank you very much.

25 Ladies and gentlemen of the jury panel,

1 welcome back. I hope you all had a pleasant lunch.
2 We're fixing to begin the taking of testimony in
3 the case by the presentation of witnesses by the
4 State in its case in chief.

5 However, before we do that, I would like to
6 revisit one issue that I discussed with you Monday
7 during qualifications of the entire jury panel.

8 When you are at the courthouse and you are
9 coming and going, both in the morning and afternoon
10 and lunchtime, you may see some of the parties that
11 are involved in the case, some of the attorneys
12 perhaps, or potential witnesses, litigants, and the
13 like.

14 As I advised you Monday, I would ask you to
15 have absolutely no interaction whatsoever with any
16 of those individuals. Don't even say hello. I
17 advised those individuals, the attorneys, the
18 parties, the same thing. I tell them that. And
19 they are not being rude or unmannerly in any
20 manner. They are following my direction, my
21 instruction. Even innocent conversation can be
22 easily misconstrued.

23 This is to protect the process. It is not
24 intended to identify any particular individual that
25 I think there is or may be any wrongdoing, but it

1 is just giving the full and complete process the
2 opportunity to work.

3 Also, Juror No. 304, Mr. Dunn, I had an
4 election in your absence. We voted. It was a vote
5 you were unanimously elected foreperson of this
6 jury. The vote was one to nothing. If you would
7 serve as the foreperson of our jury. Mr. Dunn, if
8 you would come down and take the first seat for me,
9 please. You would be the jury spokesperson here in
10 the courtroom and responsible for signing and
11 writing and dating the verdicts.

12 Thank you. Thank you very much for that
13 spirit of volunteerism, Mr. Foreman. Thank you
14 very much.

15 With that being said, if you will please give
16 the parties your complete and undivided attention.

17 Solicitor, you may call your first witness.

18 MS. M. WALKER: Thank you, Your Honor. At
19 this time the State calls Rabia Nathani.

20 THE COURT: All right. If you would come
21 around and be sworn for us, please.

22 (Witness approaches.)

23 THE BAILIFF: Place your left hand on the
24 Bible, and raise your right hand, please.

25 (Witness complies.)

1 THE CLERK: Do you solemnly swear or affirm
2 that the testimony you are about to give in this
3 case will be the truth, the whole truth, and
4 nothing but the truth, so help you God?

5 THE DEFENDANT: I do.

6 THE CLERK: Please have a seat.

7 (Witness complies.)

8 THE CLERK: And state your full name for the
9 record.

10 RABIA NATHANI,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. M. WALKER:

14 Q Will you state and spell your name for the court
15 reporter, please?

16 A Okay. My name is Rabia Nathani. R-A-B-I-A
17 N-A-T-H-A-N-I.

18 Q Good afternoon.

19 A Good afternoon.

20 Q How old are you?

21 A Right now I'm 21.

22 Q 21?

23 A 21. I'm not sure. Yes, 22, I think.

24 Q Okay. And where were you born?

25 A Pakistan.

1 Q And about how old were you when you moved I guess
2 to Columbia?

3 A I was 16.

4 Q You were 16?

5 A Uh-huh.

6 Q And what part of town did you move to? Do you
7 remember?

8 A Yes. Like, do you want to know the city?
9 Columbia. Or Parklane? Richland 2 District?

10 Q In Parklane? In the Parklane area?

11 A Uh-huh.

12 Q And at some point did you and your family move over
13 to the Broad River Road area?

14 A Yes.

15 Q And who all was living with you when you moved over
16 there?

17 A Me, my dad, my sister, my brother, and my mom.

18 Q And were you -- how old were you around that time?

19 A I think I was --

20 Q If you don't remember, that is fine too.

21 A 17.

22 Q Were you still in high school?

23 A Yes. I was -- I started my junior year when I
24 moved to Broad River Road.

25 Q And what high school did you go to?

1 A Columbia High.

2 Q And is that where you graduated?

3 A Yes.

4 Q And what did you do after graduation?

5 A I went to Midlands Tech for college for a few
6 classes so I can transfer to USC.

7 Q Is that where you are in school now?

8 A Right now I'm at Midlands Tech. Next year maybe or
9 in two years I will move to USC.

10 Q Now, when you were living over on Broad River Road,
11 who lived there with you?

12 A Me, my dad, my mom, and my sister, and brother.

13 Q And what is your sister's name?

14 A Sobia. N

15 Q And is she older or younger than you?

16 A Younger.

17 Q And what about your brother?

18 A He is younger than me. He is like one -- yes, two
19 years younger than me.

20 Q In addition to living on Broad River Road, was
21 there something else that your house served as a
22 purpose for?

23 A Yes. There was -- like my dad, he needed like a --
24 it was commercial and house both together. So we
25 had --

1 Q It was a commercial building and a house together?

2 A Yes.

3 Q What kind of business was there in the home?

4 A Okay. It was -- my dad, he works with electronics
5 and he sells, trade, repair, everything with the
6 electronics, consoles, computers, cell phones,
7 everything.

8 Q Now, keep your voice up and speak slowly so that
9 they can hear you and understand you and so that
10 she can take everything down, okay?

11 A Okay.

12 Q And in terms of selling the computers, were there a
13 lot of people coming in and out of your house to
14 bring the computers by there?

15 A Yes.

16 Q And did you get to know some of them by their face?

17 A Most of them I know by their face and by name too.

18 Q I want to ask you about Anthony Porterfield. Did
19 you know him by his name and face?

20 A Yes.

21 Q How did you know him?

22 A He came to our house a couple of times before the
23 robbery, like more than ten times.

24 Q You said more than ten times?

25 A Yes.

1 Q Okay. And what name did you know him by?

2 A Amp.

3 Q Spell that for me.

4 A A-M-P.

5 Q Amp. And this was before the robbery that he was
6 coming by the house?

7 A Yes.

8 Q And what kind of things would he do when he came by
9 the house?

10 A He would usually bring broken laptops, like the
11 ones they do recycle, no hard drive, nothing, just
12 a body piece.

13 Q Like a shell?

14 A Yes, like a shell.

15 Q I want to take you back to the day of the robbery.
16 This was I guess the summer going into your senior
17 year of high school?

18 A Yes.

19 Q Who were you with that day?

20 A Me and my little sister was alone that day at home.

21 Q At home?

22 A Uh-huh.

23 Q Where was your father?

24 A He was at the flea market. He usually --

25 THE COURT REPORTER: I'm sorry, I didn't hear

1 you.

2 BY MS. M. WALKER:

3 Q You have got -- yes. I didn't even catch that one.

4 You have got to slow down for me, okay?

5 A Okay. He is usually at the flea market on

6 Wednesday, Saturday, and Sunday.

7 Q At the flea market on Wednesday, Saturdays, and

8 Sundays?

9 A Uh-huh.

10 Q And make sure when you speak you speak loud enough

11 so the very back person back there can you hear

12 you, okay?

13 A Okay.

14 Q And on this Wednesday was he at the flea market?

15 A Yes.

16 Q So you and your sister were alone. At some point

17 did y'all leave the house?

18 A Yes.

19 Q Where did y'all go?

20 A We went to the Chick-fil-A to get some food.

21 Q And when you got back to Chick-fil-A -- got back

22 from Chick-fil-A -- did you notice anything?

23 A Yes. There was a car parked in our -- on our

24 driveway.

25 Q Okay. I want to show you what has been marked as

1 State's Exhibit No. 25.

2 MS. A. WALKER: Okay.

3 BY MS. M. WALKER:

4 Q And ask you if you recognize this?

5 A Yes. This is our house street.

6 Q This is the street your house is on?

7 A Yes.

8 MS. M. WALKER: Your Honor, at this point the
9 State seeks to move Exhibit No. 25 into evidence.

10 MS. A. WALKER: No objection, Your Honor.

11 THE COURT: State's 25 is in evidence, without
12 objection.

13 (WHEREUPON, State's Exhibit No. 25 was
14 marked for identification and received
15 into evidence.)

16 MS. M. WALKER: Your Honor, may the witness
17 step down?

18 THE COURT: Yes. Please keep your voice up
19 when you are away from the microphone, please,
20 ma'am.

21 (Witness steps down.)

22 BY MS. M. WALKER:

23 Q I am going to ask you to stand over here and speak
24 that way so the court reporter and the jury can
25 hear you, okay? I'll show you. Stand on this

1 side. And that way she should be able to hear you.

2 Okay, which one is your house on State's

3 Exhibit 25?

4 A (Indicating.)

5 Q Right here?

6 A Uh-huh.

7 THE COURT: Will you say yes or no for me?

8 THE WITNESS: Oh, okay.

9 A Yes.

10 Q Where in the driveway was the car parked when y'all
11 got there?

12 A Right over here in front of our porch.

13 Q And this porch, is this -- is there an entryway
14 into your home there?

15 A Yes, there is stairs.

16 Q And is this the one that was -- is this the one you
17 use most, or do you use the front door?

18 A We don't use the front door, we just use the side
19 door because we have stuff over there, so we use
20 the side door.

21 THE COURT REPORTER: I'm sorry, I can't hear
22 you.

23 Q You said you use the side door?

24 A Yes, we use the side door. We didn't use the front
25 door because there was stuff in that room, so we

1 can't go in that room.

2 Q So you can't actually get in the front door?

3 A No.

4 Q Now, once you saw that there was a car there, what
5 did you do?

6 A We parked the car right here on the side, and me
7 and my sister, we got out of the car and went to
8 the person that was --

9 THE COURT REPORTER: I'm sorry, I can't hear.
10 The board is in the way.

11 Q Here, stand right here then. Stand right here and
12 keep your voice up and see if she can hear you now.

13 You said you and your sister went to the
14 person?

15 A Yes. And we asked him, What are you doing here?
16 And he said he wants to talk to my dad.

17 Q Okay, slow down. Did you know the person?

18 A Yes.

19 Q Who was the person in your driveway?

20 A Do you want me to name him?

21 Q Yes, tell me his name.

22 A Amp.

23 Q It was Amp?

24 A Uh-huh.

25 Q You have to say yes or no.

1 A Yes.

2 Q Are you nervous?

3 A No.

4 Q Okay. So once you asked Amp what he was doing
5 there, what did he say?

6 A He said he wants to talk to my dad. I told him
7 that my dad is at flea market. And I didn't have
8 phone, so I was like, You want to talk to him, so I
9 didn't have a phone, so I went -- I told him that
10 I'll get the phone from the inside.

11 So me and my sister, we had food in our hand,
12 so we went to the -- we went inside the house. I
13 was actually at the door holding the door open.
14 And then my sister, she went inside the house and
15 she was finding -- she was trying to find the
16 cordless phone so we can call my dad.

17 Q Did you say cordless phone?

18 A Yes.

19 Q Okay. And while your sister is inside, are you
20 still standing by the door?

21 A Yes.

22 Q What happened next?

23 A When I was standing by the door holding it open, he
24 was standing by his car. But then he came upstairs
25 and he had a bag in his -- like a laptop bag in his

1 hand.

2 Q Okay.

3 A And he took out the gun. And I saw the gun. I was
4 trying to close the door, but --

5 Q Now, when you say "he," who are you talking about?

6 A Amp.

7 Q And the gun came out of the laptop bag?

8 A Yes.

9 Q Had you ever seen Amp with a gun before?

10 A No.

11 Q And so were you surprised at this point?

12 A Yes.

13 Q And I guess y'all are in this area right here on
14 Exhibit 25?

15 A Yes.

16 Q Okay. What happened once the gun came out?

17 A He pushed the door open and he forced in. And then
18 my sister, she came back with the phone. She --
19 when she saw the gun, and he saw the cordless in
20 her hand, he told her to drop the phone. And when
21 she dropped it, he was like, he want us to sit
22 inside the house where our hallway is.

23 Q Okay.

24 A To the kitchen and the living room. So he made us
25 sit over there. And he said, If you don't shout or

1 yell he is not going to hurt us.

2 Q That you wouldn't be hurt you if you didn't shout
3 or yell?

4 A (Nods affirmatively.)

5 Q When you said you were sitting in the hallway about
6 like this wide?

7 A Yes. Like this is the door. When you -- like this
8 is the door entrance as far as living room. And
9 there is a kitchen right there.

10 Q Okay. Once he -- I guess how close are you to him
11 at this point?

12 A When he want us to sit down?

13 Q When the gun comes up, how close did he get to you
14 with the gun? If I'm him with the gun?

15 A That right there.

16 Q There is a gun pointed at you?

17 A Yes.

18 Q Then you are told to get on the ground?

19 A Yes.

20 Q How did you get on the ground? What position was
21 your body in? Can you show? Step out here so that
22 everyone can see you. Show me what position. Face
23 them and show the jury what position you were in.

24 A (Witness indicates.)

25 Q Like that. Before that did Amp have a mask on?

1 A No. No. I said the other guy was hiding his face.
2 But Amp wasn't.

3 Q You got this close to him?

4 A Yes, that close.

5 Q And about -- do you remember how long -- I'm sorry,
6 you can step back up there. Do you remember how
7 long you were -- you can sit back down.
8 (Witness returns to witness stand.)

9 Q How long were you on the ground in that position?

10 A Like by the time he was done we were like -- by the
11 time we heard the car was -- he turned around -- we
12 made sure we was still on the ground. When we
13 heard that he was going away, then we stood up. So
14 it was like 20 minutes.

15 Q Felt like three minutes?

16 A Fifteen to 20 minutes.

17 Q You said it felt like 15 to 20 minutes?

18 A Uh-huh. Because he was -- all the time when he was
19 collecting the stuff we were sitting down there.

20 Q And it felt like a very long time?

21 A Yes.

22 Q When you said the car, what did the car look like?

23 A It was a sedan, gold or champagne.

24 Q Gold or champagne --

25 A Yes, it was like --

1 Q -- color? And sedan, like a four-door --

2 A Yes.

3 Q -- car? Did you see him when he left or were you
4 still on the ground with your head down?

5 A No, we saw -- when we heard that he turned on the
6 car, we went up to the door and we saw him leaving
7 and he made a right turn towards the I-20.

8 Q Towards I-20?

9 A Uh-huh.

10 Q Now, at that point, once -- could you tell what
11 they were taking from your house?

12 A Yes. Like the stuff that was missing is like
13 chargers, laptop, there were some people repairs,
14 like lap -- repair laptops, gaming consoles and
15 everything; yes.

16 Q Now, at some point after he left, did y'all call
17 9-1-1?

18 A Yes.

19 MS. M. WALKER: Your Honor, at this point the
20 State seeks to admit Exhibit No. 24 in evidence,
21 the 9-1-1 call.

22 MS. A. WALKER: Without objection.

23 THE COURT: State's 24 is in evidence, without
24 objection.

25

1 (WHEREUPON, State's Exhibit No. 24 was
2 marked for identification and received
3 into evidence.)

4 BY MS. M. WALKER:

5 Q I want to play a phone call. You tell me if you
6 remember this, okay?

7 (Played in open court.)

8 Q Is that the phone call you made that day?

9 A Yes.

10 Q And on that particular call, you didn't give a name
11 of the person, but when the cops got there, did you
12 actually give them a name?

13 A Yes.

14 Q What name did you give them?

15 A A-M-P, Amp.

16 Q Did you know Amp's actual full name before then?

17 A No.

18 Q You only knew him as Amp?

19 A Uh-huh, yes.

20 Q Thank you. And at some point did you speak with
21 law enforcement, specifically Investigator Clarke
22 here?

23 A Yes.

24 Q Did he ask you about what happened that day?

25 A Yes.

1 Q And did he show you a series of pictures?

2 A Yes.

3 Q I want to show you what has been marked as State's
4 Exhibit No. 20 and ask you if you recognize this?

5 A Yes.

6 Q How do you recognize this? Are these pictures that
7 were shown to you?

8 A Yes.

9 MS. M. WALKER: At this time we seek to move
10 No. 20 into evidence.

11 MS. A. WALKER: No objection, Your Honor.

12 THE COURT: State's 20 is in evidence, without
13 objection.

14 (WHEREUPON, State's Exhibit No. 20 was
15 marked for identification and received
16 into evidence.)

17 BY MS. M. WALKER:

18 Q When this photo lineup was shown to you, did
19 anybody tell you who to pick?

20 A No.

21 Q Did anybody tell you that you had to pick anyone?

22 A No.

23 Q Did you in fact identify someone in that photo
24 lineup?

25 A Yes.

1 Q And how did you let the investigator know which
2 person you were identifying?

3 A I marked a circle on No. 2.

4 Q On No. 2?

5 A And wrote the date too.

6 Q And who is No. 2?

7 A Amp, A-M-P.

8 Q The person who robbed you?

9 A Yes.

10 Q Any doubt in your mind about that?

11 A No.

12 MS. M. WALKER: Beg the Court's indulgence,
13 Your Honor.

14 THE COURT: Yes, ma'am.

15 (Pause.)

16 BY MS. M. WALKER:

17 Q Now, in y'all's house, do you and your sister share
18 a bedroom?

19 A Yes.

20 Q Was there anything taken from your bedroom?

21 A Our TV.

22 Q Your television was taken?

23 A Yes. And we had an iPad over there. It was taken
24 too.

25 Q And the whole time, I guess, are the two people,

1 Amp and the other guy, are they going back and
2 forth inside the house? Are they moving around a
3 lot?

4 A Yes.

5 Q And what are you doing while they are moving around
6 your house?

7 A We were sitting.

8 Q With your head down?

9 A Yes.

10 Q Were you able to speak to each other?

11 A Yes.

12 Q What did you say?

13 A To my sister or --

14 Q Or to any of them?

15 A Me and my sister were sitting there. We were just
16 saying, Don't hurt us, don't hurt us, please.

17 Q The man who you talked to outside of your house and
18 then came in your house with a gun, do you see him
19 in this courtroom?

20 A Yes.

21 Q Can you point him out for me?

22 A (Indicating.)

23 Q What is he wearing?

24 A Yellow T-shirt.

25 Q A yellow shirt?

1 A Yellow shirt.

2 MS. M. WALKER: Your Honor, may the record
3 reflect she has identified the Defendant?

4 THE COURT: So reflected.

5 BY MS. M. WALKER:

6 Q I don't have any further questions. The Defense
7 attorney is going to have some questions for you,
8 though.

9 A Okay.

10 THE COURT: Thank you, Solicitor.

11 Ms. Walker?

12 MS. A. WALKER: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MS. A. WALKER:

17 Q Hi, Rabia. How are you?

18 A I'm good.

19 Q Now, is it Nathani or Natani?

20 A Natani.

21 Q Natani. Okay. I just want to make sure I say that
22 right.

23 In 2012 you were living at
24 right?

25 A Yes.

- 1 Q And you lived there with your family?
- 2 A Yes.
- 3 Q Your whole family?
- 4 A Yes.
- 5 Q And that was your dad, your brother --
- 6 A Yes.
- 7 Q -- and your sister?
- 8 A My mom.
- 9 Q And your mom too?
- 10 A Yes.
- 11 Q And that was your immediate family?
- 12 A Yes.
- 13 Q And you said you were 18 at the time?
- 14 A Yes.
- 15 Q And that was right before you were going to start
- 16 your senior year at Columbia High School?
- 17 A Yes.
- 18 Q And at the time you didn't have glasses; right?
- 19 A No.
- 20 Q You didn't get glasses until the following, I guess
- 21 the school year?
- 22 A Yes.
- 23 Q Okay. And did you work part-time at the business
- 24 with your father?
- 25 A I was just helping him.

1 Q You would help him?

2 A Yes.

3 Q And your father had the business at the house?

4 A Yes.

5 Q And he had a business at the flea market?

6 A Yes.

7 Q And those were the only two places that he operated
8 his business from?

9 A Yes.

10 Q Okay. And he repaired electronics?

11 A Yes.

12 Q And he sold electronics?

13 A Yes.

14 Q And he bought electronics?

15 A Yes. Like trade.

16 Q Okay. And you saw various people that your father
17 did business with?

18 A Yes.

19 Q And you learned the names of those people through
20 your father?

21 A Yes.

22 Q Right. And there were people coming and going from
23 your house to do business with your father?

24 A Yes.

25 Q And did you also go to the flea market with your

1 father?

2 A Sometimes.

3 Q And there were people coming and going at the flea
4 market to do business with your father?

5 A Yes.

6 Q So there were a lot of people doing business with
7 your father?

8 A Yes.

9 Q And you would learn their names through your dad?

10 A Yes.

11 Q Okay. And one of those people was Anthony
12 Porterfield?

13 A Yes.

14 Q Okay. And so let's talk a little bit about June
15 27th, which is what we have been talking about
16 today. And this was summertime, so you weren't in
17 school?

18 A Yes.

19 Q And you and your sister went to Chick-fil-A?

20 A Yes.

21 Q And when you came back there was a
22 champagne-colored car in your driveway?

23 A You could say gold and champagne because I'm not
24 sure, but, like I said before, I can't -- if I saw
25 the car again I would recognize it, but, yes, it

1 was gold and champagne car.

2 Q That is kind of what you remembered, something like
3 that?

4 A Yes.

5 Q Okay. And you remember there is two black males in
6 the car?

7 A Yes.

8 Q Okay. And the driver gets out?

9 A Yes.

10 Q He has a laptop? Or a laptop bag?

11 A Yes. At first he was standing on our porch by the
12 door when we parked. When we get out he came
13 down -- he came downstairs. And he was like, he
14 wants to talk to my dad. And I told him that my
15 dad is at the flea market.

16 And he -- then me and my sister went inside
17 the house to get the phone. Then he had the laptop
18 bag. He -- yes, then he had the laptop bag.

19 Q So did he go back to the car?

20 A Yes.

21 Q At some point?

22 A Yes.

23 Q Okay. So when you drive up he is already standing
24 at the door?

25 A Yes.

1 Q Okay. And then you say he goes back to the car?

2 A Yes.

3 Q And then has the laptop bag?

4 A Yes.

5 Q Okay. And then your sister Sobia goes inside to
6 get the cordless phone?

7 A Yes.

8 Q That is what you are saying when -- you just call
9 it "the cordless;" right?

10 A Yes.

11 Q Okay. I'm just checking to make sure. And the
12 door that you go in is located on the side of the
13 house; right?

14 A Yes. It is by the swing.

15 Q This is the front of the house; right? This is the
16 front --

17 A Yes.

18 Q -- facing Broad River Road here?

19 A Yes, that is the front.

20 Q And right here is a porch; is that right?

21 A Yes.

22 Q And there is a porch swing and a door; right?

23 A Yes.

24 Q Okay. And that is the door you went in?

25 A Yes.

1 Q And you said you go to close the door?

2 A Yes.

3 Q And the driver pulls out a gun?

4 A First he pulls the door open, and then he pulled
5 out the gun.

6 Q And he pulls out a gun. And he points it at you?

7 A Yes.

8 Q And you are scared?

9 A Yes.

10 Q Because you have a gun pointed at you?

11 A Yes.

12 Q And you were looking at the gun?

13 A Both of them.

14 Q You are looking at the gun?

15 A Yes.

16 Q You are terrified? You are upset?

17 A Yes.

18 Q And then at this point the other guy comes in the
19 house?

20 A Yes.

21 Q Okay. And the driver tells you to be quiet?

22 A Yes.

23 Q He leads you to what you call the hallway or the
24 corridor, is that what you call it?

25 A Hallway, yes.

1 Q Is that what you say?

2 A Uh-huh.

3 Q Okay. And I believe in your statement you say he
4 tells you to lie on your stomach, but what you
5 meant is that he tells you -- you get hunched over;
6 right?

7 A Yes.

8 Q And then you put your head down?

9 A Yes.

10 Q And then they say, If you don't do anything we are
11 not going to hurt you?

12 A Yes.

13 Q And so you look down?

14 A Yes.

15 Q And the other guy has the gun actually; right?

16 A Yes.

17 Q And the guy that you say is Amp goes and removes
18 things from the house?

19 A Yes.

20 Q So the other guy has the gun while you and your
21 sister sit with your heads down?

22 A Yes.

23 Q Is that right?

24 A (Nods affirmatively.)

25 Q I'm sorry, can you hear me? And the whole time you

1 are very scared?

2 A Yes.

3 Q You are asking them not to hurt you?

4 A Yes.

5 Q Okay. And you say that they are inside for about
6 10 to 15 minutes total?

7 A 10, 20, I'm not sure. But, yes.

8 Q Okay. And they leave?

9 A Yes.

10 Q And you had just had a gun pointed at you?

11 A Yes.

12 Q There was just a gun pointed at your baby sister?

13 A Yes.

14 Q You were very scared?

15 A Yes.

16 Q As soon as you can you call 9-1-1?

17 A Yes.

18 Q But first you call your dad?

19 A Yes.

20 Q So before you call 9-1-1 you call your father?

21 A Yes.

22 Q And your father tells you to call 9-1-1?

23 A Yes.

24 Q Okay. So you call 9-1-1?

25 A Yes.

1 Q And you tell them everything you can?

2 A Yes.

3 Q Because you want them to know who robbed your
4 house?

5 A Yes.

6 Q And so you tell them two black guys robbed your
7 house?

8 A Yes.

9 Q And they tell -- there is a little bit of
10 confusion, but you tell them basically they robbed
11 your home/business with a gun?

12 A Yes.

13 Q And eventually they get to understand that. You
14 tell 9-1-1 that both of them were regular
15 customers?

16 A Yes.

17 Q And you tell 9-1-1 that they took electronics?

18 A Yes.

19 Q And you tell 9-1-1 it took about 10 to 20 minutes?

20 A Yes.

21 Q You are still scared?

22 A Yes.

23 Q This just happened?

24 A (Nods affirmatively.)

25 Q This is fresh in your memory?

- 1 A Uh-huh.
- 2 Q When you are on the phone with 9-1-1?
- 3 A Yes.
- 4 Q And your father actually tries to call you while
- 5 you are on the phone with 9-1-1?
- 6 A Yes.
- 7 Q But the operator tells you, No, no, no, don't get
- 8 off the phone?
- 9 A Yes.
- 10 Q Okay. And you don't, you stay on the phone?
- 11 A Yes.
- 12 Q And you tell 9-1-1 it was a gold sedan?
- 13 A Yes.
- 14 Q Okay. And you said one was wearing a gray shirt
- 15 and had braids?
- 16 A Yes.
- 17 Q And you said the other one had a black shirt and a
- 18 red hat?
- 19 A Yes.
- 20 Q And that they were 5'7", 5'8" and skinny?
- 21 A I'm not sure about the height because I'm not good
- 22 at that. I know they were skinny. But, yes.
- 23 Q But that is what you said?
- 24 A Five -- it was five, yes, that is what I told them.
- 25 Q Okay. And you said one had a gun?

1 A Yes.

2 Q There is only one gun. And it was wooden?

3 A There was a small piece for the wooden, so, yes.

4 Q So it was wooden and black?

5 A Yes.

6 Q You said wooden and black?

7 A Yes.

8 Q And you give 9-1-1 your name?

9 A Yes.

10 Q And you spell it out because he has a hard time
11 hearing you?

12 A Yes.

13 Q And you agree not to touch anything?

14 A Yes.

15 Q And they tell you they are sending someone?

16 A Yes.

17 Q And at that time you don't tell them their names?

18 A On the phone, no.

19 Q No?

20 A But I told my dad that it was him.

21 Q But you don't tell 9-1-1?

22 A No, I didn't tell them.

23 Q And you didn't tell 9-1-1 his name?

24 A I just said that we know him.

25 Q You said that they were both regular customers?

1 A Yes.

2 Q And you -- but you never said the word Amp?

3 A No.

4 Q And the phone number at your house, you said -- you
5 used the cordless phone to call 9-1-1?

6 A Yes. The same phone I was trying to use to call my
7 dad first.

8 Q Okay. And you didn't have a cell phone at the
9 time?

10 A No.

11 Q Okay. And the phone number at the house was -- and
12 correct me if I'm wrong -- it is 803, the area
13 code, ?

14 A Yes.

15 Q Okay. And as I said before, before you called
16 9-1-1 you called your dad?

17 A Yes.

18 Q And then after you talked to 9-1-1 you also talked
19 to your dad?

20 A After the 9-1-1 call I didn't call my dad. I don't
21 remember. But, yes, I told him that -- I'm not
22 sure. But first I called him, then I called the
23 9-1-1, then I talked to my dad somehow. I don't
24 remember that.

25 Q You are not sure if he called you --

1 A Yes.

2 Q -- or if you called him?

3 A Yes.

4 Q But you talked to him again?

5 A Yes.

6 Q Before the police arrive?

7 A Police came first, then he came to our house -- or
8 then he came back. First police was there.

9 Q So you are saying you did not talk to your father
10 before the police came, other than before you
11 called 9-1-1?

12 A I'm not sure.

13 Q Okay. That's fine if you don't remember.

14 And let's talk a little bit about you
15 eventually spoke to Investigator Clarke about this
16 case; right?

17 A Yes.

18 Q And this happened on June 27th?

19 A 2/27/2012.

20 Q And then you spoke to Investigator Clarke on
21 July 2nd, 2012; is that right?

22 A I'm not sure what date.

23 Q Do you still have the photo lineup in front of you?

24 A No.

25 MS. A. WALKER: Did it make its way to the

1 back there?

2 Q The same day you talked to Investigator Clarke did
3 you view the photo lineup the same day?

4 A Yes.

5 Q And this is the same photo lineup that Ms. Walker
6 just showed you?

7 A Yes.

8 Q And that is the same photo lineup that you went
9 over with Investigator Clarke?

10 A Yes.

11 Q And the date on that is July 2nd, 2012?

12 A Yes.

13 Q So that would have been the date you talked to
14 Investigator Clarke?

15 A Yes.

16 Q Okay. So on that date you gave him a statement.
17 He wrote it down, but you gave him the information?

18 A Yes.

19 Q And then you signed it?

20 A Yes.

21 Q Saying that that was the information you had to
22 give. And you told him that neither man touched
23 you?

24 A Yes.

25 Q And you told him that you knew one of them?

1 A Yes.

2 Q And you told him that you knew one of them as Amp?

3 A Yes.

4 Q And you told him that you had seen him at the
5 business more than ten times?

6 A Yes.

7 Q And you don't give him the name of the other guy?

8 A Yes, because I'm not sure who he was. I saw his
9 face, but I'm not sure, because he was hiding his
10 face.

11 Q But you told 9-1-1 he was also a regular customer?

12 A No.

13 Q That is not what you said to 9-1-1?

14 A No, because -- I was in a hurry. That is why I
15 said -- I saw him, so I said that they were regular
16 customers. But the other guy, he was -- I just saw
17 his face. I didn't really see -- like it was just
18 a quick second or something. That is why I didn't
19 really see it for a long time. So I just saw his
20 face. That is how I remember he was our customer.

21 Q And before you gave your statement you did the
22 photo lineup?

23 A Yes.

24 Q Okay. And that lineup was just in black and white;
25 right?

1 A Yes.

2 Q It wasn't in color?

3 A No.

4 Q That is the same exact lineup you looked at?

5 A Yes.

6 Q And you picked out the person you recognized in
7 that lineup; right?

8 A Yes.

9 Q And you did that before you gave your statement?

10 A Not sure.

11 Q Okay. And you did that on -- we talked about that
12 was on July 22nd -- or, excuse me, July 2nd, not
13 22nd.

14 Do you remember walking in a courtroom like
15 this about two weeks ago?

16 A Yes.

17 Q And do you remember speaking with your sister as
18 you were walking into the courtroom?

19 A You want to know what I was speaking of or
20 something?

21 Q Do you recall talking to your sister as you were
22 walking into the courtroom?

23 A I'm not sure.

24 Q Do you recall having doubts being able to pick out
25 Anthony Porterfield as the person?

1 A Oh. We -- it was been a long time we didn't see
2 him.

3 Q Uh-huh.

4 A But once when -- the first time I saw him I could
5 recognize it was him. It was just that his hair
6 style was different other -- before. Now it is
7 different. So we were confused a little bit.

8 Q And when you saw him, you saw him sitting at that
9 table; right?

10 A Yes.

11 MS. A. WALKER: Beg the Court's indulgence?

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 BY MS. A. WALKER:

15 Q And you said that the reason that you said that you
16 helped out with the business, you didn't really
17 work part-time, you just helped out with the
18 business, and that the reason you knew the people
19 that your father did business with was because your
20 father would tell you who those people were?

21 A Everybody in our family was like, if somebody came
22 we would automatically ask -- it is a business and
23 a house together -- so we would ask who was it. So
24 we knew him. And a couple of times I saw him
25 calling out his name and he responded by that name,

1 so I knew it was him. And he told me that too.

2 Q Okay. So your father told you that his name was
3 Amp?

4 A Yes.

5 Q And that is the reason you knew his name was Amp
6 because your father told you?

7 A Not only that -- yes.

8 Q Thank you.

9 MS. A. WALKER: I have no further questions,
10 Your Honor.

11 THE COURT: Redirect?

12 MS. M. WALKER: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. M. WALKER:

15 Q I think you got cut off. You said you also heard
16 him respond to the name Amp?

17 A Yes.

18 Q Okay. And when you saw him a couple of weeks ago,
19 you were concerned that he may have changed his
20 appearance?

21 A Yes.

22 Q And has he changed his appearance?

23 A Yes.

24 Q Is this what he looked like closer to back then?
25 Is that how his hair was different?

1 A He had two big like ponytails he had.

2 Q Were they still in braids?

3 A Yes.

4 Q Okay. Now, even though he has changed his
5 appearance, do you still recognize the person who
6 robbed you?

7 A Yes.

8 Q And are they in this courtroom?

9 A Yes.

10 Q Where is he?

11 A (Indicating.)

12 Q No, you are fine.

13 MS. M. WALKER: I don't have any further
14 questions. Thank you.

15 THE COURT: Recross?

16 MS. A. WALKER: None, Your Honor. Thank you.

17 THE COURT: Thank you. Thank you very much.
18 You may step down.

19 (Witness steps down.)

20 THE COURT: All right, Solicitor, you may call
21 your next witness.

22 MS. CAMPBELL: May it please the Court? The
23 State could call Sobia. N

24 THE COURT: Come around and be sworn for us,
25 please.

1 (Witness approaches.)

2 THE BAILIFF: Place your left hand on the
3 Bible, and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you solemnly swear or affirm
6 that the testimony you are about to give in this
7 case will be the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 THE DEFENDANT: I do.

10 THE CLERK: Please have a seat.

11 (Witness complies.)

12 THE CLERK: And state your full name for the
13 record.

14 Sobia. N

15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 Q Can you state your name for the court?

19 A Sobia. N

20 Q Sobia, how old are you now?

21 A Sixteen.

22 Q And are you in school?

23 A Yes.

24 Q Where do you go to school?

25 A Irmo High.

1 Q How old were you when y'all came here from
2 Pakistan?

3 A Ten.

4 Q You were ten years old?

5 A Ten, eleven.

6 Q And where all have you been in school here while
7 you have been here?

8 A First I went to Joseph Keels Elementary School.
9 Then I went to Dent Middle School. Then we moved
10 to Richland One and I went to St. Andrews Middle
11 School. And then I went to Columbia High. And now
12 I'm at Irmo High School.

13 Q Okay. So between the time you went to Columbia
14 High and Irmo High School, did y'all move?

15 A Yes.

16 Q And why did y'all move?

17 A Because it wasn't safe.

18 Q I want to turn your attention back to the summer of
19 2012 when the robbery happened. How old were you
20 then?

21 A Fourteen.

22 Q And where were y'all living, do you remember?

23 A Broad River.

24 Q Broad River Road?

25 A Yes.

1 Q In the house where y'all were living, that is where
2 your family lived?

3 A Yes.

4 Q Who all was living with you there then?

5 A My dad, mom, brother, and sister and I.

6 Q And your brother and sister, are they older or
7 younger than you or what?

8 A They are older than me.

9 Q Both of them?

10 A Yes.

11 Q Was it unusual for you and your sister to stay
12 alone in the house during the daytime if your
13 parents were at work?

14 A No.

15 Q I want to turn your attention to that Wednesday of
16 June the 27th when the robbery happened. That day
17 who all was at the house?

18 A Me and my sister.

19 Q Were y'all the only ones there?

20 A Yes.

21 Q Do you know where everybody else was?

22 A My dad, mom, and brother went to the flea market.
23 They always go on Wednesday, Saturday, and Sunday.
24 So it was a Wednesday, so they went to the flea
25 market.

- 1 Q So the two of y'all were at the house?
- 2 A Yes.
- 3 Q And at some point that day did y'all decide to
- 4 leave?
- 5 A Yes.
- 6 Q Why were y'all leaving the house that day?
- 7 A Because there was no food in the house, so we went
- 8 to Chick-fil-A to eat.
- 9 Q How did y'all get to Chick-fil-A?
- 10 A Car. My sister drives.
- 11 Q Your sister drives?
- 12 A (Nods affirmatively.) Yes.
- 13 Q So your father had driven one car to the flea
- 14 market?
- 15 A Yes.
- 16 Q And then your sister would have been driving the
- 17 other car?
- 18 A Yes.
- 19 Q And were there any other cars in the driveway, or
- 20 anything like that?
- 21 A No.
- 22 Q So if the two cars were gone, it would appear that
- 23 no one was there?
- 24 A Yes.
- 25 Q Did y'all in fact go to Chick-fil-A and eat that

1 day?

2 A We went to Chick-fil-A and brought food back to our
3 house.

4 Q Okay. And, specifically, did you get any drinks
5 that day?

6 A Yes.

7 Q And what kind of drink did you get?

8 A Cookies and cream milkshakes.

9 Q As you were pulling up to the house, did you notice
10 anything?

11 A Yes. There was a car in our driveway.

12 Q And was it a car that you actually knew?

13 A No.

14 Q And could you tell how many people were in the car
15 as y'all were driving up?

16 A Wait. How many people were by the car?

17 Q Were they in or out of the car at that point?

18 A They were in the car. Two men. Two black males.

19 Q Two men were in the car?

20 A Yes.

21 Q And what did y'all do? Like, where did your car
22 go?

23 A I can't explain, but it is like beside the driveway
24 on the grass. On the grass.

25 Q On the grass?

- 1 A Yes.
- 2 Q Is where y'all parked?
- 3 A Yes.
- 4 Q Was it unusual for y'all to park there?
- 5 A Not really, because my dad like parked his car in
- 6 the driveway, so we usually parked at the grass.
- 7 Q Where the other car was parked that day?
- 8 A Yes.
- 9 Q And do you remember what the car looked like that
- 10 was parked in your driveway?
- 11 A It was a sedan.
- 12 Q A sedan?
- 13 A Yes.
- 14 Q And what does that mean to you?
- 15 A Like a small car, four-door.
- 16 Q Four-door?
- 17 A (Nods affirmatively.)
- 18 Q And do you remember what color it was?
- 19 A It was golden. Gold or champagne color.
- 20 Q And as y'all pulled up and pulled in next to --
- 21 would y'all be next to where the car was in the
- 22 driveway?
- 23 A No.
- 24 Q In a different part of the yard?
- 25 A It was -- I can't explain it.

1 Q Have you had an opportunity to look at this
2 diagram?

3 A Our car was -- I mean, their car was parked right
4 there. And my sister parked right here.

5 Q Okay. I notice that there is a car parked here on
6 the grassy area right in front of your house?

7 A Yes.

8 Q Is that where y'all had pulled that day?

9 A Yes.

10 Q Right where this little blue car is? And then the
11 car, he would have been -- actually would have been
12 in the driveway?

13 A Yes.

14 Q So you would have had to pull over to the side to
15 get around him?

16 A Yes.

17 Q Once y'all pulled into the grassy area, what did
18 you see?

19 A There was like -- it was a guy by the door.

20 Q By which door?

21 A Huh?

22 Q By which door?

23 A Side door.

24 Q And when you say the side door, is that the door to
25 your car, to your house, or what?

1 A To our house.

2 Q And you say that there was a guy up on the porch
3 there?

4 A Yes.

5 Q And do y'all ever go in the front door?

6 A No.

7 Q Why not?

8 A Because it was like the inside of the front -- like
9 by the -- like inside it was stuff, like TVs and
10 stuff by the door, so the door wouldn't open.

11 Q So the normal way y'all went in and out, even for
12 the business, was to go through the door?

13 A Yes.

14 Q And that day when you saw somebody up on the porch,
15 where were they?

16 A Like right by the side door. But when we pulled
17 up, like we were like -- my sister parked and we
18 got out of the car. He came downstairs. And he
19 talked to my sister.

20 Q Where were you?

21 A I was like behind my sister, like walking with her.

22 Q What did you have in your hand, do you remember?

23 A Milkshakes and strips, chicken strips.

24 Q And as you approached the house, you said your
25 sister was actually talking to him at the foot of

1 the stairs?

2 A Not foot of the stairs, like in front of the car.

3 Q In front of the car?

4 A Right.

5 Q So he had come off the porch at that point?

6 A Yes.

7 Q Okay. Sorry. Did you ever hear what their
8 conversation was about?

9 A He asked where my dad was. And my sister
10 responded, He is at flea market. And he said he
11 wanted to talk to my dad, so.

12 Q And the person that was speaking to your sister
13 that had come off the porch, did you recognize him?

14 A Yes.

15 Q And how did you know him?

16 A He came to our house before. He had business with
17 my dad.

18 Q And was it unusual for you to get to know some of
19 your dad's customers?

20 A No.

21 Q And do you remember how many times you had actually
22 seen him prior to that day?

23 A Can you repeat that?

24 Q How many times before the day of the robbery,
25 before that, had you actually seen him? Do you

1 know?

2 A More than ten times.

3 Q And when you saw him that day, were you scared
4 because there was a stranger in your driveway?

5 A He wasn't a stranger and I wasn't scared, but it
6 was unusual to like expect somebody at your house
7 or business when your dad is not there.

8 Q But you weren't scared at that point because you
9 know him?

10 A Yes.

11 Q And he was a customer?

12 A Yes.

13 Q And he was asking your sister, I believe you
14 testified to, about where your dad was?

15 A Yes.

16 Q And that is when she told him?

17 A He is at flea market.

18 Q Okay. And so as a result of that conversation,
19 because he was asking for your dad, what did y'all
20 do?

21 A My sister told me like to get the phone so we can
22 call our dad and tell him that he is here.

23 Q Okay. And why were you doing that? Was that at
24 his request?

25 A I don't remember, but we -- I remember getting the

1 phone.

2 Q And where did go to actually get the phone that
3 day?

4 A It was in my room.

5 Q In your room?

6 A Yes.

7 Q And did you have your own room in the house?

8 A No. Me and my sister shared bedroom.

9 Q Where was your sister when you went inside the
10 house to get the phone?

11 A She was by the door.

12 Q And did you in fact go inside and get the phone
13 from your room?

14 A Yes.

15 Q And did you walk then back towards the front of the
16 house?

17 A Wait. You mean walk back outside?

18 Q No, not outside. Inside. I'm sorry. Just inside?

19 A Yes.

20 Q And what were you trying to do with the phone?

21 A I dialed my dad's number and I was about to call
22 when I saw the gun pointed at my sister. And he
23 told me to put the phone down. So I did.

24 Q And do you remember what room you were in when you
25 put the phone down?

- 1 A The business.
- 2 Q The front room?
- 3 A Yes.
- 4 Q Where you come in?
- 5 A Uh-huh.
- 6 Q And do you remember what you did with your drink?
- 7 A We had put them by the printer, like when you enter
- 8 it is a printer right beside it, and we put our
- 9 drinks right there.
- 10 Q You said he told you to put it down. Who was
- 11 talking to you at that point?
- 12 A Amp.
- 13 Q You knew him as Amp?
- 14 A Yes.
- 15 Q And you actually knew him by that name?
- 16 A Yes.
- 17 Q Did you know his full name?
- 18 A No.
- 19 Q Did you do what he told you to do?
- 20 A Yes.
- 21 Q Why?
- 22 A He had a gun on my sister, and I was scared.
- 23 Q And at that point was he already inside the house?
- 24 A Yes.
- 25 Q What happened next?

1 A After he told me to put the phone down, the other
2 guy walked in. And he put a shirt over his head.
3 And he told us to like go in the hallway and sit
4 up, like sit down and don't say nothing and they
5 won't hurt us. So we sat down and we just saying,
6 Don't hurt us, don't hurt us.

7 Q What was going through your mind?

8 A I was about to die.

9 Q You said you went into a hallway?

10 A Not a hallway, but it is like a corridor.

11 Q In between all the other rooms?

12 A Yes.

13 Q And where was -- at that point did Amp still have
14 the gun?

15 A Yes.

16 Q And what was he doing with the gun as he escorted
17 y'all into the hallway or corridor?

18 A He made -- he gave the gun to the other guy and it
19 was pointed to my -- to me and my sister.

20 Q So both of them had the gun at some point?

21 A Yes.

22 Q Were you looking up at that point?

23 A First I had my face down, but when I heard they was
24 like taking stuff and they was outside for once and
25 I looked up. He came back to the room where we

1 were sitting down and he tried to take the TV from
2 that room, but he couldn't. So he went back. But
3 I looked up at some point.

4 Q Just briefly?

5 A Yes.

6 Q But you were keeping your eyes down for the most
7 part?

8 A Yes.

9 Q Why were you doing that?

10 A Because he asked us and he was literally pointing a
11 gun at us, so.

12 Q You mentioned that you could tell they were taking
13 stuff?

14 A Uh-huh.

15 Q Could you tell what kind of stuff they were taking?

16 A I could hear -- when I was sitting down, when I
17 like looked up for one second, I seen one guy
18 taking the TV from my room. And then I was just
19 hearing stuff they was like taking.

20 Q Were they saying anything?

21 A No, they just -- their phone was ringing.

22 Q Then did y'all stay in that area, the corridor, the
23 hallway?

24 A Yes.

25 Q And do you recall how long passed before they

1 finally left?

2 A Like 10 to 20 minutes. It felt a long time.

3 Q It felt like a long time?

4 A Yes.

5 Q Do you know exactly how long it was?

6 A No.

7 Q How could you tell they had finally left?

8 A First he turned on the car. And then you can hear
9 this -- like the car speeding in the driveway. So
10 I was like, I think they left, let's go look. And
11 then -- and they had shut the door so we knew they
12 had left the house. And they got in the car. And
13 they was like rushing -- speeding. So we went
14 outside and seen them take the right turn to I-20.

15 Q What did you do next?

16 A I told my sister -- I called my dad and I was like,
17 somebody like robbed us and stuff.

18 And he was like, Call 9-1-1. Then my sister
19 called 9-1-1 and --

20 Q Did the police come?

21 A Yes.

22 Q Did your dad come home after the police got there?

23 A Yes.

24 Q Was your mom with him?

25 A Yes.

1 Q And your brother?

2 A Yes.

3 Q Before your dad even got home, did you talk to the
4 police about who had robbed you?

5 A I don't remember.

6 Q And do you remember whether -- did you know either
7 of the people that robbed you that day?

8 A Yes.

9 Q And did y'all tell the police that?

10 A I don't know. It was my sister talking to the
11 cops.

12 Q Was there any doubt in your mind about the one
13 person you recognized?

14 A The other person?

15 Q Were you able to recognize the second person?

16 A No.

17 Q Why was that?

18 A Because he had a T-shirt over his head.

19 Q Did you ever get a good look at his face?

20 A It was a glimpse, like.

21 Q A glimpse?

22 A Yes.

23 Q Okay. But the person you knew as Amp, did you get
24 a good look at his face that day?

25 A Yes.

1 Q And when you saw it, did you immediately recognize
2 him?

3 A Yes.

4 Q And is that why you went in the house and got the
5 phone and did all that?

6 A Yes.

7 Q Did you think he was about to rob you?

8 A No.

9 Q A few days later did an investigator come back and
10 talk to you and your sister?

11 A Yes.

12 Q And when he talked to you and your sister, did he
13 talk to y'all separately?

14 A Yes.

15 Q And at some point did he show you some photographs?

16 A Yes.

17 Q And was your sister with you when you were shown
18 photographs, or were you by yourself?

19 A By myself.

20 Q I am going to show you State's Exhibit No. 21, the
21 second page of that, and ask if you recognize that?

22 A Yes.

23 Q And what is that?

24 A The photo lineups that --

25 THE COURT REPORTER: I'm sorry. I didn't hear

1 it.

2 A The photo lineups that the investigator showed me.

3 Q And when you looked at those six photographs, did

4 he tell you who to pick?

5 A No.

6 Q Did he influence you in any way?

7 A No.

8 Q Did you pick somebody just because you recognized
9 them from seeing somebody in the past, or why was
10 that person significant to you?

11 A Because I knew he was the person who robbed us. I
12 could recognize him.

13 Q You could recognize him?

14 A Uh-huh.

15 Q And which one did you recognize?

16 A No. 2.

17 Q And did you tell the police officer that?

18 A Yes.

19 Q And then did you actually put your initials here
20 and date it?

21 A Yes.

22 Q And is that the person you recognized?

23 A Yes.

24 Q Where my finger is?

25 A Yes.

1 Q And did you recognize him from just seeing him
2 before, or is that the person that robbed you?

3 A He is the person that robbed us.

4 Q Did anybody tell you who to pick?

5 A No.

6 Q Did anybody influence you in any way?

7 A No.

8 Q Do you have any personal grievance against Anthony
9 Porterfield?

10 A No.

11 Q Well, before he robbed you?

12 A No.

13 Q That day the items they took, did they take any of
14 y'all's items, you and Rabia's?

15 A Yes. A TV and an iPad that was on our bed.

16 Q Did they take any other items that were around the
17 house, some of your father's and customers' things?

18 A Yes.

19 MS. CAMPBELL: Beg the Court's indulgence.

20 (Pause.)

21 BY MS. CAMPBELL:

22 Q When you called your dad that day and said you had
23 been robbed --

24 A Yes.

25 Q -- did you tell him who had robbed you?

- 1 A Yes.
- 2 Q Who did you tell him?
- 3 A Amp.
- 4 Q And the person that robbed you, do you see him here
- 5 in the courtroom?
- 6 A Yes.
- 7 Q Has his appearance changed a little bit?
- 8 A Yes.
- 9 Q What has changed about him?
- 10 A His dreads got longer.
- 11 Q His dreads got longer?
- 12 A Yes.
- 13 Q But can you point him out for the jury?
- 14 A Yes.
- 15 Q Can you do that?
- 16 A (Indicates.)
- 17 Q And what is he wearing?
- 18 A Yellow shirt.
- 19 Q Is there any doubt in your mind that that is the
- 20 person that robbed you that day?
- 21 A No.
- 22 Q And you never got to see the second person?
- 23 A No.
- 24 Q Good enough.
- 25 MS. CAMPBELL: Your Honor, may the record

1 reflect she has identified the Defendant?

2 THE COURT: So reflected.

3 MS. CAMPBELL: Thank you. I don't have
4 anything further.

5 THE COURT: Ms. Walker?

6 MS. A. WALKER: May it please the Court?

7 CROSS-EXAMINATION

8 BY MS. A. WALKER:

9 Q Hi, Sobia. How are you?

10 A Hi. Good.

11 Q All right. So at the time this happened you were
12 14?

13 A Yes.

14 Q And you are 16 now or 17?

15 A 16, about to be 17.

16 Q You are about to be 17. Okay. So you are about to
17 be a junior or you are a junior right now?

18 A Yes.

19 Q All right. And I guess a lot like your sister, did
20 you just kind of help out with the business?

21 A Not really, but --

22 Q You did even less? You didn't even work part-time
23 or help out really, you just were there when
24 business was going on?

25 A Yes.

1 Q Okay. And the reason that you became accustomed
2 with people that your father did business with was
3 because your father told you who these people were?

4 A Yes.

5 Q And there were a lot of people in and out of your
6 father's business?

7 A Uh-huh. Yes.

8 Q Lots of different types of people?

9 A Yes.

10 Q Okay. And let's talk specifically about the day of
11 the robbery. You just testified that when you got
12 home there were two males in the car?

13 A Not -- one was in the car and then the other one
14 was like at the door.

15 Q Okay. And there was two black males?

16 A Yes.

17 Q And you said that you went inside first?

18 A I don't remember. But I remember getting in the
19 house and getting the phone and my sister staying
20 by the door.

21 Q Okay. And the first thing you remember is when you
22 came back out that you saw a man holding a gun to
23 your sister?

24 A Yes.

25 Q Okay. And that scared you?

1 A Yes.

2 Q A lot?

3 A Yes.

4 Q Obviously. So at that point he told you to drop
5 the phone?

6 A Yes.

7 Q And you do it?

8 A Yes.

9 Q Because you don't want anything to happen to your
10 sister?

11 A Yes.

12 Q And you don't want anything to happen to you?

13 A Yes.

14 Q So he tells you to go to the corridor, this place
15 that kind of I guess attaches all the rooms --

16 A Yes.

17 Q -- in the house?

18 A Yes.

19 Q And you all sit?

20 A Uh-huh.

21 Q And is it accurate that you kind of sit hunched
22 over?

23 A Yes.

24 Q And you and your sister I guess sit close to each
25 other?

1 A Yes.

2 Q And at that point the other guy puts the gun on
3 you?

4 A Yes. On us.

5 Q Okay. He puts the gun on both of you. And you
6 both sit there and you are both very scared?

7 A Yes.

8 Q And I believe you just told Ms. Campbell that you
9 thought you were going to die?

10 A Yes.

11 Q You were that scared?

12 A Yes.

13 Q And you even said, Please don't hurt us, please
14 don't hurt us?

15 A Yes.

16 Q And you saw the gun?

17 A Yes.

18 Q Okay. And the two men are inside about 10 to 15
19 minutes, or do you remember?

20 A 10 to 15 minutes.

21 Q Okay. And when they leave -- you said you are able
22 to tell when they leave -- your sister calls your
23 father, or you call your father?

24 A Either one of us called my father.

25 Q You're not sure?

1 A I'm not sure.

2 Q Somebody called your father?

3 A Yes.

4 Q And then your sister called 9-1-1?

5 A Yes.

6 Q Because we heard the tape. Okay. And the phone
7 number at house was (803) ?

8 A Yes.

9 Q And that was the cordless number; right?

10 A Yes.

11 Q The landline? Okay. And so this incident happened
12 on June 27th, 2012. And Investigator Clarke talked
13 to you on July 2nd?

14 A I think.

15 Q Okay. Do you still have the photo lineup in front
16 of you?

17 A Yes.

18 Q Here is one. Is that the one that you signed?

19 A Yes.

20 Q That has your name on it -- signature on it?

21 A Yes.

22 Q Okay. And so that was about five days after the
23 incident happened?

24 A Yes.

25 Q And these photos are in black and white; right?

1 A Yes.

2 Q Okay. And let's go to the front page here. On the
3 front page Investigator Clarke notes what picture
4 that you picked out and where the incident location
5 is; is that right?

6 A Yes.

7 Q And you sign your name and where you live?

8 A Yes.

9 Q And he also writes down that you are 14 years old,
10 U.S. resident, you go to St. Andrews Middle School
11 at the time?

12 A Yes.

13 Q And that you can read and write?

14 A Yes.

15 Q Okay. At the time did he ask you any questions
16 about what happened at the robbery?

17 A I don't remember.

18 Q You don't remember. Did you give a statement or
19 anything?

20 A No.

21 Q You don't have any written account of anything
22 about what happened?

23 A No.

24 Q Because there were a couple of times when
25 Ms. Campbell and I have asked you questions and you

1 said, well, you don't remember.

2 A (Nods affirmatively.)

3 Q And that is honest, you just don't remember?

4 A I don't remember.

5 Q Because it did happen a while ago. But if you had
6 a statement, you might remember some of those
7 things?

8 A Maybe.

9 Q Okay. And on the photo lineup, the only thing that
10 you write is your signature and the picture that
11 you pick out; right? That is the only thing that
12 you wrote on the photo lineup?

13 A Yes.

14 Q Okay.

15 MS. A. WALKER: Beg the Court's indulgence.

16 (Pause.)

17 MS. A. WALKER: Thank you, Your Honor. I have
18 no further questions at this time.

19 THE COURT: Thank you. Thank you, Ms. Walker.
20 Solicitor?

21 MS. CAMPBELL: May it please the Court?

22 REDIRECT EXAMINATION

23 BY MS. CAMPBELL:

24 Q She asked you what you don't remember. Do you
25 remember who robbed you --

1 A Yes.

2 Q -- at gunpoint? And who was that?

3 A Amp.

4 Q The person you have identified here in court?

5 A Yes.

6 Q Any doubt in your mind?

7 A No.

8 Q Will you ever forget that?

9 A No.

10 MS. A. WALKER: Your Honor, this has been
11 asked and answered on direct.

12 THE COURT: I will allow it. It is redirect.

13 MS. CAMPBELL: Your Honor, as a housekeeping
14 matter, at this point the State would offer State's
15 21 in evidence.

16 THE COURT: State's 21, Ms. Walker?

17 MS. A. WALKER: No objection, Your Honor.

18 THE COURT: State's 21 is in evidence, without
19 objection.

20 MS. CAMPBELL: Thank you, Your Honor. I have
21 nothing further.

22 (WHEREUPON, State's Exhibit No. 21 was
23 marked for identification and received
24 into evidence.)

25 THE COURT: Recross, Ms. Walker?

1 MS. A. WALKER: No, sir, Your Honor.

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

3 You may step down.

4 (Witness steps down.)

5 THE COURT: Perhaps now would be a good time
6 to take our afternoon recess.

7 Mr. Foreman, and ladies and gentlemen of the
8 jury, please remember my instructions to you. Do
9 not discuss the case during this recess with your
10 fellow jurors or anyone else.

11 We'll take about, what, 15 minutes? It is ten
12 minutes till 4:00. So about 4:05 we will get
13 started back up.

14 (WHEREUPON, the jury retires to the jury
15 room at 3:48 p.m.)

16 THE COURT: All right. Court will be in
17 recess 15 minutes. Thank you. Thank you very
18 much.

19 (WHEREUPON, a break was taken at 3:48
20 p.m.)

21 (WHEREUPON, the proceedings resumed at
22 4:06 p.m.)

23 THE COURT: Is there anything before we bring
24 the jury in? For the State?

25 MS. CAMPBELL: No, sir.

1 THE COURT: Defense?

2 MS. A. WALKER: Nothing, Your Honor.

3 MS. CAMPBELL: As far as scheduling, we have
4 two more witnesses available here today. We have
5 been moving a good bit quicker than we thought, but
6 we should finish fairly -- our case by tomorrow
7 afternoon.

8 THE COURT: All right. How long do you think
9 these two witnesses will be, Solicitor?

10 MS. CAMPBELL: Less than an hour.

11 THE COURT: All right. That will be fine.

12 MS. CAMPBELL: Or an hour. Something in
13 there.

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

15 (WHEREUPON, the jury came into open
16 court at 4:07 p.m.)

17 THE BAILIFF: The jury panel is present,
18 Judge.

19 THE COURT: Thank you. All right. We are
20 continuing the trial of the case by the
21 presentation of evidence and testimony by the State
22 in its case in chief. If you would please continue
23 to give all the parties your complete and undivided
24 attention.

25 Solicitor, you may call your next witness.

1 MS. M. WALKER: Thank you, Your Honor. The
2 State calls Gulzar Nathani.

3 THE COURT: All right. If you would come
4 around and be sworn, please.

5 (Witness approaches.)

6 THE BAILIFF: Place your left hand on the
7 Bible, and raise your right hand, please.

8 (Witness complies.)

9 THE CLERK: Do you solemnly swear or affirm
10 that the testimony you are about to give in this
11 case will be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 THE DEFENDANT: I do.

14 THE CLERK: Please have a seat.

15 (Witness complies.)

16 THE CLERK: State your full name for the
17 record.

18 GULZAR NATHANI,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. M. WALKER:

22 Q State your name, please. And spell it for the
23 court reporter.

24 A My name is Gulzar Nathani. G-U-L-Z-A-R
25 N-A-T-H-A-N-I.

1 Q Good afternoon, sir.

2 A Good afternoon.

3 Q Can you tell me where you currently live? You
4 don't have to give me an address. Are you still
5 here in Columbia?

6 A I live in the Harbison area.

7 Q I'm sorry, go ahead.

8 A Harbison area.

9 Q In the Harbison area. And who do you live with?

10 A My family. My wife, my son, and my two daughters.

11 Q And how long have you lived here in the Columbia
12 area?

13 A In -- like -- since I moved, I have lived in
14 Columbia.

15 Q Okay. That was the first place you came in the
16 United States?

17 A Yes, ma'am.

18 Q And where were you before then?

19 A In my country, Pakistan.

20 Q What made you move here?

21 A My employer. He used to come -- he was from -- he
22 is from Pakistan, so I was --- basically I was in
23 jewelry repair. Computer, as well, is my side
24 business. So he used to come to us, our jewelry
25 store, to meet my owner. Then from there he get to

1 know me. So he sponsor me or he offered me a job
2 here in the United States.

3 Q So about what year did you and your family come
4 here to South Carolina?

5 A In April 2009 -- '9, yes.

6 Q And since then have y'all -- you and your wife --
7 started the citizenship process?

8 A Citizenship process will start -- normally, you
9 know, they have like after five years then you can
10 apply for the citizenship, but when we got here we
11 already have our permanent residence.

12 Q Okay.

13 A Green card.

14 Q So you are a permanent United States resident?

15 A Yes, ma'am.

16 Q And what type of job did you start when you started
17 working here in South Carolina?

18 A Okay. I started job at Great American Jewelers at
19 Columbia Mall, and I worked for them for two years.

20 Q Do you still work there?

21 A No. But sometimes when they need my help I go
22 there and I work for them.

23 Q That is the jewelry repair you were talking about?

24 A Yes, ma'am.

25 Q And what is your other job here or what is your

1 current job?

2 A My current job is I have an electronic business
3 like selling computers, cell phones, and repairing
4 TVs.

5 Q And where is that business located?

6 A I started my business first at the Green Street at
7 Five Points by the name of -- my business name was
8 Comp Mart.

9 Q Comp?

10 A C-O-M-P M-A-R-T.

11 Q Comp Mart?

12 A Yes, ma'am.

13 Q And over the course of running your business did
14 you become acquainted with Anthony Porterfield?
15 Did you get to know Anthony Porterfield?

16 A Yes, ma'am.

17 Q And how did you know him?

18 A I get to know him at the flea market. First time
19 he came to me he said that -- he showed me some
20 broken or like a shell computers. At that time I
21 was barely into computer business. So that stuff
22 was helping me just for like if somebody come to me
23 with a broken screen so I can replace the good
24 screen. But those laptops never had any memory or
25 battery or hard drive or like that. Like a shell

1 or baseboard.

2 Q So through the business, that is how you got to
3 know him?

4 A Yes, ma'am.

5 Q And you said he was bringing in shells of
6 computers?

7 A Yes, ma'am.

8 Q Did he ever come to your home for business?

9 A More like -- I can say sometime four times -- four
10 days in a week or sometime two days in a week.
11 Like because he -- what he say that he works for
12 the recycle company. And those -- I asked him
13 where did you get those stuff. He said when they
14 dump those stuff, so I bring them for you.

15 Q Okay. From the recycling he would bring in those
16 things?

17 A Yes, ma'am.

18 Q Several times a week?

19 A Several times a week, yes.

20 Q Before he held your little girls at gunpoint, how
21 many times had he been to the house?

22 A As I say, like more than like 30, 40 times.

23 Q Okay?

24 A It is countless.

25 Q Countless times?

1 A Yes, ma'am.

2 Q On some of those occasions, were your daughters
3 there?

4 A Most of the time my family is there because I told
5 him, just come to me on that time when I'm at home.

6 Q Okay. And is it important for you to be home when
7 there are people coming in and out of your house?

8 A Yes, ma'am.

9 Q Why is that?

10 A Okay. Like, see, I work three days at the flea
11 market: Wednesday, Saturday, and Sunday. Where
12 people left their stuff to fix. So I don't -- I
13 don't have time to fix there because I don't have
14 enough space there. So I bring them at home.
15 Sometimes like a laptop comes, a customer brings a
16 laptop, it has some virus issue, or something like
17 that, so I give it to my daughter or my son to fix
18 it. But some has a hardware issue, which I have to
19 take apart everything, so I work on them. So rest
20 of days I work like whole night. I work -- because
21 I had big exposure at the flea market because when
22 they come to know that, oh, he fix the TVs, he fix
23 the laptops, he do everything, so they leave their
24 stuff to fix.

25 Q Okay. Now, when people were coming in and out of

1 your house to do business, would you tell your
2 family members who they were?

3 A Yes. Like especially -- not like those customers
4 like who just come and leave the laptop, because I
5 have a copy. I write their name, number, and what
6 is left for repair.

7 Q Okay.

8 A But people like Anthony, so they know everybody.
9 Like there are two or three or four more people who
10 works for me, but they would come only on that time
11 when I'm home, especially after 4:00 or 5:00. So
12 my son must be at home when they come. So most of
13 the time me and my son, we fixing them.

14 Q Okay. But the regular customers like Anthony
15 Porterfield, your family knew?

16 A Yes, ma'am.

17 Q I want to take your attention back to June 27th,
18 the day of the robbery.

19 A Uh-huh.

20 Q Where were you that day?

21 A I was at the flea market.

22 Q That was a Wednesday, so that was your normal day
23 to be there?

24 A Yes.

25 Q Now, did -- at some point did you talk to Anthony

1 Porterfield on the phone?

2 A He called me first.

3 Q Was it uncommon for him to call you?

4 A Not uncommon. He called me. He said, Hey, Nate, I
5 got some stuff for you. I said, you know where I
6 am. It is Wednesday, I work at the flea market.
7 So you bring it here or you can come to my house
8 after 4:30 or 5:00. Because normally Wednesday is
9 slow, so 3:00 or 3:30 we done, so we get back home
10 around 4:00, something like that.

11 Q Okay. And did you make arrangements for him to
12 actually come meet you at the flea market?

13 A Yes, ma'am.

14 Q Did he ever show up to the flea market?

15 A No.

16 Q Did you talk to him again that day?

17 A I call him. I said, Where are you at? You are
18 supposed to come to meet me.

19 He said, I'm on my way.

20 Q Okay. But did he show up?

21 A No.

22 Q At some point did you get a phone call from your
23 daughter?

24 A Only on that time when they got robbed.

25 Q At that point when they got robbed?

1 A Yes.

2 Q And when they called you, did they sound scared?

3 A They were (indicating shaking).

4 Q Shaking?

5 A Yes.

6 Q What did your daughter say?

7 MS. A. WALKER: Objection, Your Honor.

8 Hearsay.

9 MS. M. WALKER: Excited utterance. Your
10 Honor, we are offering it as excited utterance.

11 THE COURT: Why wouldn't it be under
12 803(1),(2), or (3), I think, Ms. Walker?

13 (Pause.)

14 MS. A. WALKER: I'm sorry, Your Honor. Are
15 you waiting on my response under 803(2)?

16 THE COURT: Yes, I think I am.

17 MS. M. WALKER: I apologize, Your Honor.
18 Under 803(2), Your Honor, I don't believe any time
19 has been established by counsel to establish
20 excited utterance.

21 THE COURT: I would overrule that objection.

22 Solicitor, it is admissible. Thank you.

23 BY MS. M. WALKER:

24 Q I'm sorry, sir. You said they called you after
25 they got robbed?

1 A Yes, ma'am.

2 Q And what did they say to you?

3 A Papa, Amp, he came with another guy at home and he
4 robbed us.

5 Q And at that point --

6 A He put a gun on us, that's what they said.

7 Q He put a gun on us?

8 A Yes.

9 Q And at that point, did you know if they had called
10 9-1-1 yet?

11 A I said, Did you call 9-1-1? Said, No, we just call
12 you. I said, Call 9-1-1, and called them.

13 Q Did you start making your way home?

14 A Yes. I had no choice because I had to go back to
15 home.

16 Q Now, once you realized that Amp had just come in
17 and put a gun on your daughters, did you go back to
18 those phone calls? Did you remember those phone
19 calls then?

20 A I called him.

21 Q Okay.

22 A But he didn't answer my call.

23 Q And did you eventually get back to the house?

24 A Yes.

25 Q And who was at the house when you got there?

1 A The police was there. And my kids. My both
2 daughters.

3 Q And did you provide a phone number that you had for
4 Anthony Porterfield to the police?

5 A Yes, ma'am.

6 Q You said earlier that he would come there multiple
7 times a week before the robbery?

8 A Yes, ma'am.

9 Q After the robbery did Anthony Porterfield ever come
10 back to your house to do business?

11 A No.

12 Q Did he ever return any of your phone calls?

13 A No. Oh, he called me. He called me and he left a
14 voice message, which -- because on that time I was
15 on AT&T and somebody stealed my phone, so I didn't
16 get that voicemail again. But that was the only --

17 Q You couldn't save the voicemail, but he called you
18 and left a voicemail?

19 A Yes, ma'am.

20 Q Was the voicemail about coming to drop off
21 computers?

22 A No, it was about, I didn't do anything to your
23 daughters or at your house, I didn't do anything,
24 or, blah, blah, blah.

25 Q Okay. He called you and denied any involvement?

1 A Like it was -- he called after two or three days,
2 but I really don't remember, but he called me in
3 the daytime.

4 Q Okay. And it was a couple of days later?

5 A Yes, ma'am.

6 Q You said that phone was stolen after that?

7 A Yes, ma'am.

8 Q The man that you talked to and said he was on his
9 way to the flea market?

10 A Yes.

11 Q Do you see him here in the courtroom?

12 A Yes, he is right in front of me.

13 Q What does he have on?

14 A He is wearing a yellow shirt(indicating).

15 Q Thank you. I don't have any further questions. I
16 think the Defense attorney will have some
17 questions.

18 THE COURT: Thank you. Ms. Walker?

19 MS. A. WALKER: Thank you, Your Honor. May it
20 please the Court?

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MS. A. WALKER:

24 Q Good afternoon, Mr. Nathani. How are you?

25 A I'm good. And you?

1 Q Good.

2 (WHEREUPON, Defendant's Exhibit No. 16
3 was marked for identification only.)

4 BY MS. A. WALKER:

5 Q And, Mr. Nathani, do you currently have Comp Mart
6 still?

7 A Yes, ma'am.

8 Q Okay. And is that the name on the business license
9 is Comp Mart?

10 A Yes, ma'am.

11 Q And you repair electronics?

12 A Yes, ma'am.

13 Q And you also buy parts of electronics; is that
14 right?

15 A After that incident I don't buy any stuff from
16 local people or from anybody except eBay.

17 Q But you used to buy parts?

18 A Before that incident.

19 Q And you used to buy parts from different people and
20 you would use them to repair electronics?

21 A Yes, ma'am.

22 Q Okay. And one of your business locations was at
23 your house where you lived with your family?

24 A Yes.

25 Q And one of your business locations was at the flea

1 market?

2 A Yes, ma'am.

3 Q That flea market, was that on Highway 1? Is that
4 the one? Is that right?

5 A It is August Road.

6 Q August Road?

7 A Augusta Road.

8 Q Okay. I'm not familiar with that area.

9 A US 1, August Road.

10 Q Okay. And those were two locations in 2012 where
11 you did business?

12 A Yes, ma'am.

13 Q Through Comp Mart?

14 A Yes, ma'am.

15 Q Okay. And at the time your family would have been
16 around the business?

17 A Yes, ma'am.

18 Q Okay. And you had different business dealings with
19 different people?

20 A Yes, ma'am.

21 Q Whether it be repairing electronics or, as you said
22 before, buying parts and selling, trading?

23 A Yes, ma'am.

24 Q Whatever it might be. And you said one of those
25 people was Anthony?

1 A Yes, ma'am.

2 Q And you met him at the flea market?

3 A Yes, ma'am.

4 Q And you actually met him because he needed his
5 laptop repaired; is that right?

6 A No. He came to me to sell me broken laptops.

7 Q Okay. But he never asked you to repair a laptop,
8 that is your testimony?

9 A Sometimes he came to me and like, if it is his
10 personal, he says that, Can you do me a favor, that
11 is my personal laptop, can I fix it.

12 Q Okay. And let's talk about June 27th. That was
13 the day your home was robbed, your home business?

14 A Yes.

15 Q Was robbed. And your daughter Rabia called you?

16 A Yes.

17 Q And she told you a guy with braids robbed the
18 house?

19 A Yes.

20 Q And you came home?

21 A Yes.

22 Q And you said the police were there?

23 A Yes, ma'am.

24 Q And you told the police that Rabia told you that
25 Amp was the culprit?

1 A Yes.

2 Q Okay. And you gave the police a phone number for
3 who you knew as Amp?

4 A Yes, ma'am.

5 Q And that phone number, do you recall it? It's been
6 a while.

7 A I erased his number, everything.

8 Q You don't remember it?

9 A No.

10 Q Would you remember it if you saw it?

11 A I think I still -- like if he called me I could
12 remember his voice, but I don't remember his
13 number.

14 Q Okay. Hold on just one second.

15 (Pause.)

16 Q Do you remember your phone number back in 2012?

17 A (803)

18 Q And that was with AT&T?

19 A Yes, ma'am.

20 MS. A. WALKER: And may I approach the
21 witness, Your Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. A. WALKER:

24 Q I'm going to show you what has been marked as
25 Defendants Exhibit No. 16. Can you see the phone

1 number? I know it is very tiny. Is that your
2 phone number?

3 A Yes, ma'am, (803

4 Q And that is your phone number?

5 A Yes.

6 Q And is that still your phone number?

7 A Still my phone number.

8 Q Okay.

9 MS. A. WALKER: Your Honor, at this time I
10 would seek to enter into evidence Defendant's
11 Exhibit No. 16.

12 MS. M. WALKER: Your Honor, that is a small
13 portion of those phone records. If they are going
14 to admit those phone records in evidence, I ask
15 that they admit the complete record that they have.

16 THE COURT: All right. Do you have the
17 complete record?

18 MS. A. WALKER: Your Honor, I'm only seeking
19 to enter in the day in question, which is
20 June 27th. And that is the only day I'm going to
21 question him about.

22 THE COURT: If I understood your response,
23 that is the full and complete record from
24 June 27th?

25 MS. A. WALKER: Yes. This entire record

1 includes the entire day of June 27th.

2 MS. M. WALKER: We can put it in the record
3 later, Your Honor. That's fine.

4 THE COURT: Defendant's 16 in evidence,
5 without objection.

6 MS. A. WALKER: Thank you, Your Honor.

7 (WHEREUPON, Defendant's Exhibit No. 16
8 was admitted into evidence.)

9 BY MS. M. WALKER:

10 Q Okay. I'll try to get through this as quickly as
11 possible. And the number at your home at the time
12 was (803 ?

13 A Yes, ma'am.

14 Q Okay. So just for brevity's sake, we'll go
15 . And I am just going to put GN, for
16 Gulzar Nathani, okay?

17 A Uh-huh.

18 Q And then I am going to put your home number, which
19 is?

20 A (803)

21 THE COURT: , isn't it? ?

22 MS. A. WALKER: , yes. Beg the Court's
23 indulgence. I am getting to the right time.

24 A And it is still the same at home.

25 Q I am going to just call that home, okay?

1 A Okay.

2 Q All right. So on the day in question -- and I
3 apologize for where I am standing in relation to
4 everybody. You said that before the girls called
5 9-1-1 they called you?

6 A Yes.

7 Q Okay. And if we'll look at the record, and we can
8 look at it together here, at 2:20 the home number
9 called your cell phone number and it lasts 37
10 seconds at 2:20?

11 A Yes.

12 MS. M. WALKER: What page are you referring
13 to?

14 MS. A. WALKER: Page 21.

15 A Yes.

16 THE COURT: Have you got a copy of this, Mr.
17 Bank, that I can look at?

18 MR. BANK: I believe we do, Your Honor. Do
19 you have one, Solicitor?

20 MS. M. WALKER: I have the one I'm looking at,
21 but I can --

22 May I approach?

23 THE COURT: Thank you, Ms. Walker. Thank you,
24 Ms. Walker.

25 MS. A. WALKER: 27th?

1 MS. M. WALKER: I don't have it anymore.

2 MR. BANK: I'll have the clerk make a copy
3 real quick.

4 MS. A. WALKER: Take a short break, Your
5 Honor?

6 THE COURT: No, ma'am.

7 MS. A. WALKER: I apologize, Your Honor.

8 THE COURT: Quite all right.

9 BY MS. A. WALKER:

10 Q 2:20 a phone call to you?

11 A Okay. Yes.

12 Q Okay.

13 A Uh-huh.

14 Q Okay. So that is at 2:20. And then at 2:23 you
15 call home?

16 A Yes.

17 Q But the lapse time -- nobody answers?

18 A Because they were outside I guess.

19 Q Or they could have been on the phone with 9-1-1?

20 A Okay.

21 Q And then let's see. At 2:27 home calls you and
22 y'all speak for a minute and 41?

23 A Because they called me and tell me that, like,
24 don't worry, police will be coming.

25 Q Okay. And then at 2:32 you call (803

1 Does that number sound familiar?

2 A That is his number.

3 Q That is Amp's number?

4 A Yes.

5 Q That is at 2:00?

6 A Didn't answer.

7 Q There is a five-second duration. Maybe he didn't
8 answer. And then at 2:33 you call home and it
9 looks like another no answer, about five seconds;
10 is that right?

11 A Uh-huh.

12 Q Okay. And then at 2:36 you call home and talk for
13 about 34 seconds?

14 A (Nods affirmatively.) Right.

15 Q Okay. And then 34 seconds.

16 A 26.

17 Q And then the next phone call is 2 -- 3 --

18 A 57.

19 Q I assume you made it home by then. Were the police
20 there?

21 A Okay.

22 Q So these are the records that include June -- all
23 of June 27th. And that was the day of the
24 incident?

25 A Uh-huh.

1 Q And you indicated that the number, , that
2 was Amp's number, right, the person you called Amp?

3 A That's it. I told him to call this number because
4 my phone was stolen and after that I never ever
5 tried.

6 Q Okay.

7 A Besides same day of incident I call him. After
8 that I never make any call, any -- I never tried to
9 contact him.

10 Q Okay. So right now you don't recall if that was
11 Amp's number?

12 A Uh-huh.

13 Q But you do remember calling Amp in between talking
14 to your girls with 9-1-1 call when the incident
15 happened? You do?

16 A At that time I had my phone with me so I showed --
17 because I set up his name on my cell phone, so I
18 can recognize that is Amp. And I show them I think
19 twice I spoke with him on that day of the incident.

20 Q Okay. And while this incident is occurring, the
21 only other number you call other than home is the
22 629 number; is that right?

23 A Because I think I had his number. I don't remember
24 if I dialed anybody else's number or not on that
25 day.

1 Q Okay. Just to be clear, you said you did dial his
2 number?

3 A Yes.

4 Q Okay. And then but you are not sure if this is his
5 number?

6 A I'm not sure.

7 Q Okay.

8 A Like almost three years.

9 Q You also dialed this number at 1:04 -- or I
10 apologize. This number dials you at 1:04 p.m. that
11 day; is that correct? Just look right here
12 1:04 p.m., ?

13 A Yes.

14 Q That calls you?

15 A Yes.

16 Q That call lasts about 53 seconds; is that right?

17 A Yes.

18 Q And on -- this incident happened on June 27th;
19 correct?

20 A Uh-huh.

21 Q And you eventually get a phone call from
22 Investigator Clarke asking about it; correct?

23 A Yes.

24 Q Did you tell Investigator Clarke that Amp called
25 you multiple times on the 27th?

1 A I don't remember, but I told him that he called me
2 once that he was coming to see me at the flea
3 market. Like, I'm not sure multiple times, but all
4 I remember there was two calls on that day when I
5 was at the flea market. First call I got from him
6 and then I called him.

7 Q So you remember there was a call from him and then
8 you called him?

9 A Yes, ma'am.

10 Q Both times, you spoke?

11 A Yes.

12 MS. A. WALKER: Beg the Court's indulgence.

13 (Pause.)

14 MS. A. WALKER: Thank you. No further
15 questions.

16 THE COURT: Thank you. Redirect, Solicitor?

17 MS. M. WALKER: No, sir.

18 THE COURT: Thank you very much. Sir, you may
19 step down.

20 (Witness steps down.)

21 THE COURT: All right. Solicitor?

22 MS. CAMPBELL: We would call Shawn Schroder.

23 (Witness approaches.)

24 THE BAILIFF: Place your left hand on the
25 Bible, and raise your right hand, please.

1 (Witness complies.)

2 THE CLERK: Do you solemnly swear or affirm
3 that the testimony you are about to give in this
4 case will be the truth, the whole truth, and
5 nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Have a seat.

8 (Witness complies.)

9 MR. BANK: State your full name.

10 THE WITNESS: Shawn Schroder.

11 SHAWN SCHRODER,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL:

15 Q Investigator Schroder, where are you employed?

16 A Richland County Sheriff's Department.

17 Q What do you do there, sir?

18 A Currently investigator.

19 Q And have you ever worked with the Crime Scene Unit?

20 A I do still do that part-time as well.

21 Q As well as do investigations now as well?

22 A Correct.

23 Q Tell the jury a little about your education and
24 training for purposes of this trial and as a crime
25 scene investigator?

1 A Sure. I originally received my four-year degree at
2 Louisville State University. At that time I took
3 about a year forensic science classes. From there
4 I -- in 2007 came to Richland County Sheriff's
5 Department. Went on the road. Processed hundreds
6 of scenes on the road. And approximately 2010,
7 December 2010, I went up to the Crime Scene Unit.
8 Went into about a year and a half long training
9 program where I went through everything from crime
10 scene processing, latent print examinations, crime
11 scene reconstruction, numerous other things, as
12 well as a lot of complex latent print examinations,
13 latent print reading class, et cetera, et cetera.
14 From there a couple of years later in 2003 I became
15 a certified crime scene investigator through the
16 International Association for identification.

17 Q And in 2000 when became?

18 A January 23rd, 2013.

19 Q 2013?

20 A That's correct.

21 Q And as a crime scene investigator you mentioned the
22 words you would process a crime scene. Typically
23 when you go to a crime scene, what does that
24 entail?

25 A Processing a crime scene, most importantly, it is

1 through photography, documentation of evidence that
2 has to deal with that scene.

3 Q When you process a crime scene at times is it
4 prudent for you to try to look for what is known as
5 latent prints?

6 A Correct.

7 Q And are those prints maybe left by someone at a
8 crime scene if they are in --

9 MR. BANK: Objection. Objection. Leading.

10 THE COURT: Overruled. You may continue. You
11 may continue, Solicitor.

12 BY MS. CAMPBELL:

13 Q Sorry. Typically that's what you do?

14 A Yes. Search for latent prints.

15 Q In addition to that, are there times when it is
16 appropriate to also try and collect other types of
17 evidence?

18 A Correct.

19 Q Such as?

20 A It could be physical evidence, as well as DNA
21 evidence, collect swabs, any type of physical
22 evidence.

23 Q Typically DNA evidence in a case such as assault
24 where there may be blood involved, or things of
25 that nature?

1 A That's correct.

2 Q I want to turn your attention back to June 27th of
3 2012. Did you respond to a crime scene on Broad
4 River Road that day?

5 A I did.

6 Q Approximately what time was it when you got there?

7 A I arrived at approximately 3:08 p.m.

8 Q What area did you respond to, actual address?

9 A

10 Q Here in Richland County?

11 A It is.

12 Q When you got there, what were your duties?

13 A Again, my duties as a crime scene investigator are
14 documentation of the scene, so photographs and
15 evidence, primarily.

16 Q Prior to entering the residence there at -- on
17 Broad River Road, did you get some type of history
18 about kind of what happened?

19 A When I arrived on the scene, the deputy, Master
20 Deputy Stone, and he filled me in a little on the
21 scene before I started taking photographs.

22 Q Why is that helpful as far as you processing the
23 scene?

24 A It gives you an initial -- you have an initial
25 expectation kind of how to search the scene for

1 physical evidence and not to destroy any evidence
2 as you are going through on your initial
3 investigation.

4 Q That day when you observed the house, what were
5 your observations?

6 A When I observed the house, it was, you know, when I
7 went through to photograph, it was a
8 business/residence. You could tell from the side
9 of the entrance where I started taking photographs
10 from.

11 Q Once you did your initial, called walk-through, did
12 you then photograph or try to collect evidence?

13 A Yes. I always photograph first.

14 Q I show you a number of photographs, State's No. 1
15 through 18, and first ask just for you to look
16 through these.

17 A (Complies.)

18 Q Are those photographs you took that day?

19 A They are.

20 Q Do they accurately represent the scene that you
21 photographed that day?

22 A Yes, it was.

23 MS. CAMPBELL: We would offer State's Exhibit
24 1 through 18 into evidence. They have been turned
25 over.

1 MR. BANK: Without objection.

2 THE COURT: State's 1 through 18, in evidence,
3 without objection.

4 (WHEREUPON, State's Exhibit Nos. 1-18
5 were marked for identification and
6 received into evidence.)

7 MS. CAMPBELL: May the witness step down?

8 THE COURT: Yes.

9 (Witness steps down.)

10 BY MS. CAMPBELL:

11 Q And keep your voice up, please. Come down here.
12 Stand on the other side so the court reporter, if
13 you face her, you are louder.

14 Sir, State's 1, State's Exhibit No. 1 -- face
15 kind of this way, she will hear you better -- what
16 does this show, sir?

17 A That is the address location,

18 Q It memorializes where you were that day?

19 A Yes.

20 Q I show you State's Exhibit 2 and 3. What portion
21 does that show?

22 A Just the exterior of the residence/business. And
23 this would be the side entrance.

24 Q The side entrance that has been discussed?

25 A Correct.

1 Q Put your finger over here. Point out the side
2 entrance you are talking about.

3 A That's correct.

4 Q Front of the actual house?

5 A Correct.

6 Q View from what road?

7 A This is a view from Broad River Road.

8 Q The side entrance, State's Exhibit No. 4 and 5,
9 what does that show?

10 A It is just a closer-up of the side entrance.

11 Q Here is State's Exhibit No. 2, a little off. Is
12 there a driveway over on the side?

13 A There is. Just to the right there is a driveway.

14 Q A grass area on the side of that?

15 A I don't recall.

16 Q I want to show you State's Exhibit No. 6. Was this
17 significant as far as you doing some further
18 testing for any evidence?

19 A It was. This is the front door of the residence,
20 which I did process with black powder.

21 Q You say the front door. You mean that is the door
22 used most often or the front door?

23 A That's correct. This is the door to their entrance
24 to their residence they use.

25 Q The front door shown here in State's Exhibit No. 3?

1 A That's correct, the actual front door.

2 Q When you walked into the front room -- I show you
3 State's Exhibit No. 7 -- is that what you observed?

4 A The first thing I observed when I walked in were
5 two milkshakes actually lying on the floor there.
6 This was the entrance of their business section as
7 they described.

8 Q That's how it appeared when you got there that day?

9 A That's correct.

10 Q Further on State's Exhibit No. 8, State's Exhibit
11 No. 9, what area do they show?

12 A Again, this is just an overall photograph of the
13 business portion. And this would be a close-up
14 over here towards Broad River Road.

15 Q Okay. Different angle, State's Exhibit No. 10?

16 A Again, just a different angle of the --

17 Q State's 11 is all -- which room in the house?

18 A All business area of the residence.

19 Q Coming from that side entrance they use, is that
20 the room you walk into?

21 A That's correct.

22 Q That is the hallway area that has been referred to?

23 A Yes.

24 Q State's Exhibit No. 12, what does that show?

25 A This is what they are calling a corridor where all

1 the doors are connected. That was taken from the
2 business portion.

3 Q From the living area of the business portion?

4 A Yes.

5 Q And there were certain rooms in the back which
6 appear to be occupied for living?

7 A That's correct.

8 Q State's Exhibit No. 13 and 14?

9 A This is -- you can see where the bedrooms are back
10 that direction, or one of the bedrooms.

11 Q One of the bedrooms. Specifically, State's Exhibit
12 15 shows an entrance to another bedroom?

13 A It does. This is the -- I believe the girls
14 referred to this as their bedroom on the right.

15 Q You see some writing?

16 A That's right.

17 Q That door. State's Exhibit 16 and 17 as well as
18 18, what does this show?

19 A All inside of the bedroom.

20 MS. CAMPBELL: Your Honor, may the witness
21 take the stand?

22 (Witness returns to witness stand.)

23 BY MS. CAMPBELL:

24 Q Once you photographed the interior, exterior of the
25 home, the business and the home itself, did you

1 then proceed to try to process for latent prints?

2 A I did.

3 Q And how do you go about doing that, sir?

4 A We process latent -- for instance, we have
5 different types of powders with a brush. I'm sure
6 you guys have seen it on television. And we just
7 go through and we see any -- look for signs of
8 visible prints that appear from that powder.

9 Q Are there typically certain areas of the home where
10 you try to find latent prints?

11 A Typically, areas that we believe where victims may
12 suggest or touch during the time of the crime.

13 Q Let me ask you this. Even, like you say, if I walk
14 up to somebody's front door and put all fingers on
15 the front door, pull it open, is it necessarily
16 going to leave prints?

17 A No, absolutely not.

18 Q Not even one or ten fingers?

19 A No.

20 Q Why not?

21 A There is no way to accurately predict when a latent
22 print is going to be left.

23 Q What are some of the factors that factor into
24 whether or not you can actually get a latent print
25 to be lifted to be identifiable?

1 A There are several factors. It can be the condition
2 of your hand. It can be the pressure applied. It
3 can be environmental factors. There are several
4 things that go into whether a latent print is left.

5 Q In high traffic areas -- let me ask, are you
6 familiar with the term "smudge" talking about
7 prints?

8 A Sure.

9 Q What does that mean, sir?

10 A A smudge would be possibly a latent print that
11 appears to be visible but there is no ridge detail
12 and no friction ridge detail and would be a smear,
13 no visible detail.

14 Q And we heard the term "identifiable print" when
15 talking about ridge detail. Explain to the jury
16 exactly what has to be left at a crime scene in
17 order to get what you call identifiable prints in
18 order to compare it to somebody else.

19 A Identifiable print is we look at certain
20 characteristics to the fingerprint. They are
21 called minutia. Particularly bifurcation ending
22 ridges and forks as well as ducts. With those we
23 go through -- and everyone is individual in those
24 prints. And if we have the quality and quantity of
25 these prints, we'll be able to do some type of

1 comparison with them.

2 Q If you get a quality print?

3 A Correct.

4 Q Is it usual when you go to a scene such as where a
5 burglary or any type of home to get what is known
6 as identifiable print?

7 A We are very fortunate to get a print at all.

8 Q In this case were there certain areas of the house
9 that you did attempt to get a latent print?

10 A That's correct, I did.

11 Q And what was the first area you proposed attempting
12 to get a latent print?

13 A I processed the front door with black powder.

14 Q When you say front door, the door on the side of
15 the house?

16 A That is the side door, yes, entrance.

17 Q What process did you use to process that door?

18 A That would be with black powder and brush checking
19 for prints on that front door.

20 Q What were the results you were attempting to get
21 prints on the front door -- or side door actually?

22 A They were negative.

23 Q When you say negative, what does that mean?

24 A Negative is just a term we describe that we got no
25 identifiable -- no print, actually, whatever, to

1 take back to do a comparison.

2 Q Even if four or five different people had gone in
3 the front door that day, is it unusual to get a
4 negative result?

5 A It is not unusual.

6 Q Did you also process areas inside the house?

7 A I did.

8 Q And specifically, taking whatever order, where did
9 you process? How did you do it?

10 A I processed the front room table with magnetic
11 powder.

12 Q Uh-huh.

13 A Processed the bedroom doorframe.

14 Q Uh-huh.

15 A With magnetic powder. The front room, the corridor
16 frames, magnetic powder, and bedroom TV stand.

17 Q Victims' rooms?

18 A Victims' room? Yes.

19 Q Was the bedroom TV stand significant as far as
20 observation?

21 A That was -- well, obviously there was areas
22 disturbed when I arrived on the scene, and also the
23 victims stated that items were missing from that
24 location.

25 Q But you were not able to, in this case, of course,

1 get any of the items that were missing, were you?

2 A That's correct.

3 Q Taken?

4 A Correct.

5 Q What were the results of your attempt to get prints
6 from those four different areas?

7 A All attempts were negative from where I tried to
8 find them.

9 Q Again, when you say negative, what do you mean?

10 A No identifiable prints to go and search for.

11 Q That day did you also try to collect any possible
12 DNA evidence?

13 A I did.

14 Q In your information, your history that you got, was
15 any evidence that either Defendant was bleeding at
16 the scene?

17 A There was no indication that anyone was bleeding.

18 Q Or left any other body fluids there at the scene?

19 A Nothing that was obvious.

20 Q Did you try to collect DNA swabs just to be
21 hopeful?

22 A I did.

23 Q And where did you collect swabs from?

24 A I collected a swab from the front room table on the
25 right corner, a swab from the TV stand in the

1 bedroom on top of the TV stand, and as well as the
2 audio visual cables on the chair in the bedroom.

3 Q Again, as with even more so than fingerprint
4 evidence, if I go up and even if I touch something
5 and move it in order to take another item, am I
6 going to leave DNA?

7 A Not necessarily.

8 Q And in this case you collected swabs?

9 A I did.

10 Q But there was no blood or bodily fluids there at
11 the scene?

12 A Correct. Not that I was aware of, no.

13 Q Once you had photographed the scene and tried to
14 get fingerprints and even tried to get swabs of
15 DNA, is that the extent of your involvement in this
16 case?

17 A That was the extent of any involvement.

18 Q Again, your findings, or lack of findings in this
19 case, is that unusual?

20 A It is not unusual.

21 Q Thank you, sir.

22 MS. CAMPBELL: Nothing further.

23 THE COURT: Mr. Bank?

24 MR. BANK: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. BANK:

2 Q Investigator Schroder, correct? Just about to
3 look. Investigator Schroder?

4 A Yes, that's correct.

5 Q How are you doing today?

6 A Good, thank you.

7 Q You took pictures that we just reviewed with the
8 Government; that's correct?

9 A Yes.

10 Q I'm going to show the Government a couple more of
11 these. We are going to add them in. I don't
12 believe we have duplicates. If they are, I
13 apologize.

14 MS. CAMPBELL: That's fine.

15 MR. BANK: May I approach the witness?

16 Q It's a little confusing. You took a lot of the
17 same kind of pictures, different angles. You can
18 glance through the photos and tell the jury if it
19 is a fair and accurate representation of the scene
20 when you arrived?

21 A It is.

22 MR. BANK: Your Honor, at this time we will
23 move these pictures into evidence. I believe they
24 are already marked as Defense Exhibits 1, 2, 4, 9,
25 and 12.

1 THE COURT: Defense 1, 2, 4, 9, and 12 is in
2 evidence, without objection.

3 (WHEREUPON, Defendant's Exhibit No. 1
4 was admitted into evidence.)

5 (WHEREUPON, Defendant's Exhibit No. 2
6 was admitted into evidence.)

7 (WHEREUPON, Defendant's Exhibit No. 4
8 was admitted into evidence.)

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

11 (WHEREUPON, Defendant's Exhibit No. 12
12 was admitted into evidence.)

13 MR. BANK: Do you mind if he steps down? I
14 don't think it will take quite as long as last
15 time.

16 (Witness steps down.)

17 BY MR. BANK:

18 Q Would you just kind of go through each of the
19 pictures and tell the jury what exactly you see?

20 A Sure. This is a view from the other direction
21 facing that side entrance business center. This is
22 from this side entrance. This would be the far
23 wall. This was a chair in the back bedroom. Audio
24 visual, AV cables that I took the swab from. And
25 this is the driveway that was leading up to the

1 residence. And, again, this is another picture
2 from the front, milkshakes.

3 Q Thank you, Investigator.

4 (Witness returns to stand.)

5 Q So when you got to the scene, there were basically
6 two types of crime scene evidence that you were
7 trying to collect; is that correct?

8 A Physical.

9 Q Physical?

10 A Yes, that's correct.

11 Q The first being latent prints; is that correct?

12 A Correct.

13 Q And those are in fact evidence you can find them or
14 you can't, so if you can't find them you don't send
15 them off; is that correct?

16 A Correct. You can send off what you find.

17 Q Exactly. That was the case here, that you were not
18 able to find any prints; right?

19 A I didn't locate any latent prints.

20 Q I believe you said that is not uncommon; is that
21 correct?

22 A That is correct. Yes.

23 Q But you do still regularly go out to every scene
24 that y'all can send somebody out to to try to
25 collect prints?

1 A Absolutely.

2 Q And the second type of evidence that you were
3 looking for was DNA; is that correct?

4 A That's correct.

5 Q You were able, unlike the latent prints, able to
6 find some type of DNA; right?

7 A Well, I swabbed for areas that were possible for
8 DNA.

9 Q Okay. But that would be sent off for testing.
10 That is not something on scene you would know
11 whether or not you actually got something?

12 A Correct.

13 Q And those results, those were sent off to somebody
14 else to determine those results; is that correct?

15 A That's correct.

16 Q And you said that it would not be unusual if the
17 DNA results wouldn't come back with something; is
18 that correct?

19 A That's correct.

20 Q But all the places you searched you thought were
21 good ideas to search for DNA; is that right?

22 A That's right.

23 Q And that is because in all your experience and
24 training and crime scene education you learned
25 where a person might be most likely to touch; is

1 that correct?

2 A Correct. You just try to locate the best areas and
3 collect them. You concentrate down to areas where
4 you believe were touched or most likely touched.

5 Q In light of your understanding of the scene and
6 information you had in your investigation what you
7 thought could be tested?

8 A Yes, sir.

9 MR. BANK: That's all. Actually, beg the
10 Court's indulgence.

11 (Pause.)

12 MR. BANK: No further questions, Your Honor.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q One quick thing so the jury understands. I show
17 you State's Exhibit 19 and ask if this is a
18 photograph you took that day?

19 A It is.

20 Q Does that show the entrance area and the area where
21 the TV was taken?

22 A Yes, ma'am.

23 MS. CAMPBELL: I offer State's Exhibit No. 19
24 in evidence.

25 THE COURT: State's 19 in evidence, without

1 objection.

2 (WHEREUPON, State's Exhibit No. 19 was
3 marked for identification and received
4 into evidence.)

5 BY MS. CAMPBELL:

6 Q Again, that shows the back bedroom; is that
7 correct?

8 A That's correct.

9 MS. CAMPBELL: Thank you, Your Honor. I don't
10 have anything further.

11 THE COURT: Recross-examination?

12 MR. BANK: No, sir.

13 THE COURT: Thank you. Thank you very much.
14 Thank you, Detective Schroder. You may step down.

15 (Witness steps down.)

16 THE COURT: Solicitor, any further witnesses
17 for the day?

18 MS. CAMPBELL: No, sir. No, sir.

19 THE COURT: All right, thank you.

20 Mr. Foreman, and ladies and gentlemen of the
21 jury, we're now going to take our evening recess.

22 I remind you during this recess you may not
23 discuss this case with others. That includes your
24 fellow jurors, family, friends, or anyone else.
25 You may not read, watch, listen to any news reports

1 about the case, should there be any. You may not
2 use your computer, cellular phone, or any other
3 electronic device with communication capabilities
4 to obtain or disclose information which is
5 prohibited. Information which is prohibited
6 includes information about a party or witness, an
7 attorney, court officer, news accounts of the case,
8 past or present information collected through juror
9 research only, any tapings raised or testimony
10 offered by any witness or information collected
11 through juror research on any other topic the juror
12 might think would be helpful in deciding the case.
13 Remember, you decide the case based on the evidence
14 and the testimony presented to you from the witness
15 stand from the witnesses testifying under oath and
16 any physical items of evidence, or the like.
17 Remember to keep an open mind. Do not begin your
18 deliberations until you have heard all the
19 evidence, all the testimony, closing arguments by
20 the attorneys, and the instruction on the law by
21 the Court and directed by the Court to begin your
22 deliberations with your fellow jurors.

23 I am going to excuse you and ask you to please
24 be back -- I have another matter earlier in the
25 morning, so I ask you to please be back at

1 10:00 o'clock in the morning. If you will please
2 be back promptly at 10:00 a.m. Perhaps if the
3 weatherman says, we will have a two-hour delay.
4 10:00 o'clock. Hope you have a pleasant evening.

5 Thank you. Thank you very much.

6 (WHEREUPON, the jury is excused for the
7 day at 5:03 p.m.)

8 THE COURT: Madam Clerk, Solicitor, Mr. Bank,
9 Juror 151, I received a note.

10 Your Honor, will lunch be provided this week?
11 The answer to her question is yes, it will be, and
12 perhaps does not have the funds to provide for
13 herself or himself.

14 So, Madam Clerk, in the morning would you make
15 arrangements for the jury --

16 THE CLERK: Yes.

17 THE COURT: -- to be fed? Typically that is
18 not my habit; however, in this case, with that
19 request, I think it will be appropriate.

20 Anything further from the State before we take
21 our evening recess?

22 MS. CAMPBELL: No, sir.

23 THE COURT: Defense?

24 MS. A. WALKER: No, Your Honor.

25 THE COURT: Somebody have me a copy of 16?

1 MS. A. WALKER: Yes, sir.

2 THE COURT: Make a copy of 16 for me.

3 Court will be in recess until 10:00 o'clock in
4 the morning.

5 (WHEREUPON, the proceedings concluded at
6 5:05 p.m.)

7 (WHEREUPON, the proceedings resumed at
8 10:02 a.m.)

9 FEBRUARY 25, 2015

10 THE COURT: Anything from the Defense before
11 we bring in our jury, Mr. Bank?

12 MR. BANK: Just a couple of things.

13 THE COURT: Sure.

14 MR. BANK: And some of this depends on, I
15 guess, the order of who they are about to call, but
16 I felt like it might be appropriate to just bring
17 up a couple of issues now instead of having the
18 jury coming back in and out.

19 THE COURT: Sure.

20 MR. BANK: The first thing that I want to
21 bring to the Court's attention is that while we
22 have given alibi notice to the State properly, and
23 we have certainly talked about with the State on
24 our witness list possible alibi witnesses, it has
25 still not been a defense that we presented to the

1 defense yet -- or to the jury yet. We didn't bring
2 it up in opening. We haven't brought it up with
3 any of the witnesses. We haven't mentioned it. We
4 haven't asserted it or opened the door in any way.

5 I understand that the State hasn't even
6 mentioned trying to anticipate our defense and
7 anticipate our alibi.

8 What we would ask is that they be prevented
9 from doing so so that no unnecessary burden
10 shifting occurs. And what I mean by that is, I
11 don't think it is appropriate for the jury to hear
12 for the first time that there may be an alibi
13 defense from the Government and then they have some
14 type of expectation of, one, whether we will
15 present an alibi defense or, two, who we are going
16 to call or not call.

17 I believe it would be more appropriate if we
18 can continue not to bring up alibi defense until we
19 decide to. At that point, even if it is our case,
20 the Government will still be able to introduce
21 evidence or impeach witnesses or something that
22 might be in our case anyway, they would also have a
23 chance to rebut if need be. But until we bring up
24 alibi, we would ask that the Court prevent them
25 from doing any burden shifting by bringing up alibi

1 in the case.

2 THE COURT: I'm not sure I'm tracking you. It
3 appears to me that the State in any case has to
4 prove the Defendant guilty beyond a reasonable
5 doubt, and in most cases has to prove that the
6 Defendant was at the scene of the crime before the
7 offense occurred, or at least a case where the
8 Defendant is being charged as a principal.

9 Coincidentally with that, the State could
10 prove that by both direct and/or substantial
11 circumstantial evidence.

12 Direct evidence, of course, would be, for
13 example, the testimony of Sobia and Rabia -- I
14 apologize if I have got either one of those names
15 incorrect -- but they could also prove that
16 circumstantially by proving that he wasn't -- or a
17 Defendant wasn't where he would normally be during
18 the period of time in which the offense occurred.

19 I don't see that as burden shifting. I have
20 no idea how the Defense -- or, excuse me, the State
21 is going to present its case. But I just don't see
22 that as burden shifting.

23 You can prove a person present at a location,
24 as I say, by direct, and then further
25 circumstantially prove he is there, or she is

1 there, because -- where she should be or he should
2 be, he is not present.

3 So unless you can show me a case where that is
4 burden shifting -- and, as I say, maybe that is
5 just an advisory opinion because I don't know what
6 the State may or may not present. I'm not sure I'm
7 tracking that, Mr. Bank.

8 MR. BANK: Well, Your Honor, I think one of
9 the biggest things that they are going to -- the
10 thing that concerns -- there is two things that
11 concern me with their evidence that may potentially
12 come in.

13 The first is specifically Joe Clarke,
14 Investigator Joe Clarke's testimony. I know
15 that -- I understand that he went to go interview
16 one of our alibi witnesses less than a week ago.
17 But him bringing anything up about that interview,
18 specifically talking about one of our alibi
19 witnesses, before we have even decided to call her
20 as an alibi witness, that is the first thing I am
21 concerned with.

22 The thing I am most concerned with, though, is
23 the jail calls, with them basically getting --
24 trying to get in evidence that he is making up an
25 alibi and then naming the people he was working

1 with, therefore creating a burden with the jury to
2 see, Oh, well, we're going to see all these people,
3 these 12 people he says to call or these 13 people
4 he says that can show he is at work or not at work.

5 And once that happens, the Defense is
6 basically forced into presenting some type of alibi
7 defense, when we may not have decided to do that at
8 that time or not.

9 And I'm not trying to prevent that evidence to
10 come in. I understood your pretrial ruling that it
11 comes in. And if we want to have some type of 106
12 argument for the case, that would be fine, but I
13 think it would be more appropriate for that to be
14 brought up, like I said, either through our case or
15 if, by need be, during a rebuttal case, which I
16 believe is the purpose of having a rebuttal case is
17 that as soon as they start putting in alibi stuff
18 through these jail calls, it is going to create a
19 burden on us to present some type of thing that has
20 now been set up in the jury's mind.

21 That is what we are fearful of, and that is
22 what I believe the burden shifting would be. It is
23 going to require us to present a defense at that
24 point.

25 THE COURT: All right. Solicitor?

1 MS. M. WALKER: Your Honor, regarding
2 Investigator Clarke's testimony, I think that an
3 investigator can testify about the thoroughness of
4 his investigation and the person -- the people that
5 he spoke to regarding all of the evidence in this
6 case. Whether it was someone that was brought to
7 the attention of the investigator through either
8 the Defendant or the victims in the case I don't
9 think is really of any concern. I think the
10 investigator can speak about his investigation and
11 the actions he took to determine whether or not he
12 was arresting or had arrested the right person for
13 the right crime.

14 Regarding the jail phone calls, Your Honor,
15 we're not attempting to burden shift. I think
16 we -- it is probative, once we have a Defendant who
17 is, I guess, in our theory, who is manufacturing
18 evidence that can be refuted over the presentation
19 of our case, I think we have a right to put that
20 in.

21 I don't see how putting in the Defendant's own
22 statement is burden shifting. I don't think it is
23 any different than if he gave a written statement
24 and he said, I was at such-and-such at the time of
25 the incident, and we put that into evidence. I

1 don't think that that is burden shifting.

2 THE COURT: I think the officer can testify to
3 the thoroughness and the quality of his
4 investigation. Now, of course, that is without
5 getting into the issue of hearsay, that he spoke to
6 this individual or that individual, and such as
7 that.

8 At this time I just have to wait and see how
9 the testimony unfolds or develops. And if at some
10 point in time you want to object, I'll be glad to
11 send the jury out.

12 I don't see where it is burden shifting. If a
13 Defendant, whether he directly or through
14 conversations, telephone, tape, or otherwise, says,
15 Well, I didn't commit this crime, I was at -- I was
16 with Darla Moore at the Masters, I think they would
17 be -- only because I heard a friend of mine
18 happened to go to the Masters with Darla Moore last
19 night, I heard that -- and I think it would be
20 incumbent upon an officer to say, Well, I wonder if
21 that Defendant was with Darla Moore at the Masters.
22 You know, that they would be derelict in their duty
23 not to check that out. And I don't see where that
24 is burden shifting.

25 But, again, I take this as a motion in limine.

1 So it is not the final ruling of the Court. And if
2 during the course of their presentation you object,
3 I'll certainly take it up then. And even if I have
4 to send the jury out.

5 MR. BANK: Absolutely. We will revisit it
6 then. And not to continue, I understand you ruled,
7 and I just want to be clear that when it does come
8 up, we are not objecting to that evidence being
9 able to come in, just kind of an order which it
10 comes in.

11 THE COURT: All right. Sure.

12 MR. BANK: The second matter that I have --
13 and this may just may depend on, again, the order
14 of witnesses that they bring up -- but my
15 understanding -- they certainly brought it up here
16 in opening -- is that the State can go forward with
17 evidence of flight, that evidence being that they
18 were unable -- or able to locate Mr. Porterfield at
19 the house on the day that he was arrested. When
20 they knocked on the door, he ran out the back
21 window and hid under a deck, I think is the extent
22 that Ms. Campbell addressed that in opening.

23 Flight is pretty standard law in South
24 Carolina, I think from what I have seen. It
25 essentially proves the nexus between the warrants

1 in the case the client is being tracked for and him
2 running. We have basically done enough and it is
3 admissible. There is some case law that says you
4 can't have a jury charge. I know we're not to that
5 point yet.

6 What we have here is nobody disputes that
7 Mr. Porterfield ran when the police were at the
8 house. What has been a little confusing to me in
9 terms of how it is going to come forward in their
10 case is, during pretrial arguments, the
11 conversation -- the only conversation I know of
12 that Mr. Porterfield had with Investigator Joe
13 Clarke as presented by the State was that
14 Mr. Porterfield really wasn't told anything about
15 the case, that he wasn't -- presumably -- if I can
16 find the notes on what exactly was said, I spoke to
17 the court reporter and I think she has the page
18 marked -- they told him as little about the case as
19 they could. We just told him -- called him and
20 told him -- asked him if he would like to come in
21 and talk to us, at which point he said no.

22 We presume that as being he was not told about
23 any warrants, he is not told about the robbery, he
24 is not told about X-Y-Z specifically with this
25 case.

1 Then the next day, the Fugitive Task Force
2 comes in -- and I see a few Fugitive Task Force
3 witnesses now -- the Fugitive Task Force comes in
4 and knocks on the door. There are several people
5 in the house. Mr. Porterfield runs.

6 I don't understand how they can establish or
7 build a foundation for flight with what the
8 arguments presented so far have been, those
9 arguments being, Mr. Porterfield was apparently
10 never told about the warrants or told anything
11 about this case and simply ran when he saw police
12 at the house trying to come in with dogs and
13 multiple police officers.

14 Obviously, if that position of the State is
15 going to change and it is now that on that phone
16 call with Investigator Clarke and Mr. Porterfield,
17 Mr. Porterfield was told there were warrants, he
18 was told all about this case, and knew that they
19 were looking for him, if that is going to be the
20 shift so that they can get in the flight evidence,
21 I think we need to go back to whether he was
22 actually under some kind of custodial situation
23 with the statements in the first place. So that is
24 kind of the dilemma.

25 THE COURT: I am not going to revisit that.

1 He was not in custody when he was talking on the
2 telephone with an officer at a remote location. I
3 mean, it is just -- that is inconsistent with not
4 only the law, but reality. You cannot be in
5 custody in that setting.

6 MR. BANK: I understand, Your Honor. I might
7 be jumping a step ahead on that anyway. But I just
8 wanted to bring it to the Court's attention in case
9 they are just simply going to put up the Fugitive
10 Task Force witnesses at this time. I just don't
11 believe they have laid the foundation for it yet.

12 THE COURT: All right. Well, I'm sure you,
13 Mr. Bank, and I'm sure the Solicitor is familiar
14 with the line of cases, both Beckham, Pagan, and
15 the like.

16 In that regard, I never charge -- if flight
17 evidence is admitted, I never charge -- give a
18 charge to the jury on the issue of flight. And,
19 again, it would depend on how the evidence develops
20 in that regard.

21 MR. BANK: Thank you, Your Honor.

22 THE COURT: Anything further? Solicitor?

23 MS. M. WALKER: Your Honor, just relevant to
24 what is actually going to take place this morning,
25 I know that they had some phone calls that they

1 wanted to come in. We are going to introduce those
2 phone calls through -- our phone calls through our
3 first witness. I don't know if they want to take
4 up their phone calls now. I think we brought it up
5 yesterday in chambers. And I don't know if they
6 provided those phone calls to you so you could view
7 them.

8 MS. A. WALKER: Beg the Court's indulgence.

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

10 MR. BANK: We did provide those phone calls to
11 the Solicitor as we were instructed to do last
12 night, that we may be considering putting them
13 in -- or requesting to be put in under the rule of
14 completeness.

15 My understanding in chambers yesterday is that
16 you would rather take up the issue with the phone
17 calls at a later time.

18 MS. A. WALKER: And, Your Honor, we do have
19 the -- we actually originally, in considering what
20 phone calls that we wanted to put in, originally we
21 selected three. And, mulling over it, we pared it
22 down to two. I have the three phone calls on CD,
23 and I have the file number that we don't wish to
24 use on the CD. So I do have three phone calls, and
25 then I can tell you which phone call that we are

1 not wishing to use. So I have the phone calls. I
2 don't know how you feel about that.

3 THE COURT: And those are -- the State's are
4 coming in with your next witness?

5 MS. M. WALKER: Yes, sir, Your Honor.

6 THE COURT: Well, I guess I need to listen to
7 them now, the ones that the Defense wants, that
8 they are wanting to come in through 106.

9 MS. A. WALKER: Certainly, Your Honor.

10 THE COURT: If you want them to come in under
11 the rule of completeness and 106, I need to listen
12 to them now.

13 MS. A. WALKER: Do you want to do it the same
14 way that the State did it?

15 THE COURT: Yes, ma'am.

16 MS. A. WALKER: Do you mind if I use yours?

17 MS. M. WALKER: I'll do it.

18 MS. A. WALKER: And I think we have one
19 concern -- one minor concern with one of the phone
20 calls. And we can bring that up after you listen
21 to the entirety of the phone calls, Your Honor.

22 THE COURT: Thank you. Thank you, Ms. Walker.

23 (Played in open court.)

24 MS. A. WALKER: Your Honor, that is the first
25 call we seek to introduce. We do have one issue

1 with that call. As you heard, about at the
2 8-minute mark, he does make some reference to his
3 record, which, should he testify, we do have a
4 motion regarding what should be admissible, what
5 shouldn't be admissible. And also there is some
6 reference to character evidence. So that would be
7 our one concern.

8 But we do think that the phone call is crucial
9 as far as Rule 106, mainly there is a line where
10 Ms. Addison says, Things are looking up the more we
11 find out.

12 I think that is relevant because the State in
13 these jail calls are characterizing this as a
14 manufactured story. That Mr. Porterfield is at the
15 jail and that he is trying to come up with calling
16 people and forcing them to remember things that
17 aren't true and manufacturing an alibi, where we
18 characterize this as a man that is in jail and just
19 trying to put together the events of a date that is
20 weeks before.

21 So, that being said, I think that that is
22 crucial in that her statement of, The more we find
23 out things are looking up, and that they are not
24 manufacturing things, they are not making up
25 things, we are finding out actual facts.

1 And also Mr. Porterfield says something in the
2 nature, I don't want to depend on any of those
3 boys, meaning, I'm not depending on anybody, I just
4 want facts, I want to depend on facts. And that's
5 it. And that's, again, against their contention of
6 the story of manufacturing.

7 All the calls that we're seeking to introduce
8 are all within a three-day period. I believe the
9 calls that they are seeking to introduce are the
10 20th, the 21st, and the 22nd. The two that we're
11 seeking to introduce are the 20th and the 21st. So
12 they are all contemporaneous. They are all around
13 the same time. Some of the calls he even says, I
14 am going to call you right back. So I think that
15 the rule of completeness does lend itself to put
16 these calls into context.

17 As I said, my only concern is, it does bring
18 up his record, and I do not want to open the door
19 to that considering that we do have concerns about
20 that, as well as character evidence.

21 THE COURT: Thank you. Thank you, Ms. Walker.
22 Solicitor?

23 MS. M. WALKER: Your Honor, my understanding
24 of the rule is that the other statement has to shed
25 more light or put into a better context the

1 statement that we're seeking to introduce.

2 Your Honor, this is a self-serving statement
3 where he basically says -- you know, he talks about
4 loving one of his girlfriends at that point in time
5 a lot. He then goes into saying, you know, I
6 didn't do it, I didn't do it, I didn't do it.

7 And then he talks about making phone calls to
8 people, but then he asks her to call those people
9 to help him get money.

10 So I don't understand how calling a group of
11 people to help him get money puts into a better
12 context or sheds more light on him wanting her in
13 the other phone calls to get in contact with people
14 and tell them what the alibi is. I just don't
15 understand the greater context that this call
16 provides.

17 And there are issues with it that make it
18 problematic if they want it in, that they did
19 themselves bring up, about him putting -- or I
20 guess his girlfriend putting his character into
21 play as a part of that phone call. He also, I
22 guess, he also puts his character into play during
23 that phone call as well.

24 So I just don't think it is admissible under
25 Rule 106. I understand why they want it in. I

1 would want it in too. But I think it is a
2 back-door way for them to get in a self-serving
3 statement.

4 THE COURT: All right. Thank you, Solicitor.
5 Ms. Walker?

6 MS. A. WALKER: Your Honor, certainly it is
7 not my intention to circumvent a way to get in a
8 self-serving statement. My intention is to further
9 explain the calls. Certainly we are on two
10 different pages as to what these calls mean.

11 I think that those calls further explain that
12 the gentleman is trying to put together events and
13 find out further facts as he is somebody behind the
14 jailhouse walls that just has access through a
15 telephone to one person.

16 That being said, I think that this call does
17 open up some information and clears some of that
18 up. He doesn't want to depend on other people, he
19 wants to depend on facts, and that things are
20 looking up as they find out more information.

21 And certainly I think that sounds less like
22 anything is trying to be manufactured. Certainly
23 my contention in all this is that none of this
24 sounds like it is being manufactured. I know the
25 State holds a different opinion. But that would be

1 my contention, Your Honor.

2 And certainly I feel like the last three
3 minutes of the phone call are fairly irrelevant
4 anyway. They do talk about getting money together
5 to get a lawyer. But, Your Honor, regarding the
6 record and the character evidence, I think that the
7 last three minutes of the phone call can be easily
8 redacted and still get in the bulk of the phone
9 call that provides the context to the rest of the
10 phone conversation that the State didn't put in.

11 THE COURT: All right. Thank you very much.
12 I would find this phone call is not admissible
13 under Rule 106. Parts of it are not admissible
14 because of Rule 401, it is not relevant, which
15 obviously the Defense recognizes that, but part of
16 it is not admissible as far as prior record and the
17 character evidence, which the Defense also
18 recognizes.

19 I do not think it is such a recording that
20 ought in fairness to be considered contemporaneous
21 with the phone calls the State is offering.

22 Further, as far as Ms. Addison is identified
23 as the other party, her comment that, We're finding
24 out more information, or what have you, as we talk
25 to those people, the issue of finding more

1 information and determination of credibility of
2 witnesses rests solely and exclusively with the
3 jury.

4 And that is kind of a -- if not a first
5 cousin, at least within a pretty close degree of
6 blood kinship to commenting on the credibility of
7 witnesses that have not testified. And even if
8 they do, that issue would be for the jury itself to
9 determine their credibility.

10 So this phone call is not admissible under
11 Rule 106 in that regard.

12 Now, there is another phone call, Ms. Walker?

13 MS. A. WALKER: Yes, Your Honor.

14 THE COURT: All right. I'll be glad to hear
15 it.

16 (Played in open court.)

17 MS. A. WALKER: Beg the Court's indulgence so
18 I can get back to my notes.

19 THE COURT: Yes, ma'am.

20 MS. A. WALKER: This call was made on
21 July 20th. Specifically -- I'm pretty sure it is
22 labeled the 20th.

23 MS. M. WALKER: Okay.

24 MS. A. WALKER: And in that phone call I
25 believe there is -- prior to that phone call he

1 says, Hold on. In one of the phone calls that the
2 State seeks to introduce he says, I am going to try
3 to call you right back.

4 Immediately when he starts this phone call, he
5 gives a number of names for Diana to call. I think
6 this phone call shows that he also gives names not
7 just to establish alibi, but he also gives names
8 for various other reasons. So not only is he
9 giving information to do one thing, which they say
10 that he only gives names to try to establish an
11 alibi, but he is giving her other names just for a
12 support system.

13 Furthermore, it shows that they are trying to
14 put together exactly when the 27th was. You know,
15 what day did we go walking? What day did we go to
16 the beach? When was Father's Day? They are trying
17 to put together exactly when these events happened.

18 I think that that is just something to put
19 this in context, that this isn't something that is
20 threatening to be manufactured, this is something
21 where they are trying to put together the events
22 and trying to recall them, which is something
23 that -- as you know, according to the facts, he is
24 arrested quite a few weeks later after the
25 incident. He is trying to remember what day it

1 happened, what he would have done on that day, and
2 where he would have been. And so he is trying to
3 put together those things. And I think that is
4 relevant to put everything in context with the
5 State's phone calls, Your Honor.

6 THE COURT: Thank you.

7 Solicitor?

8 MS. M. WALKER: Thank you, Your Honor.

9 I think this particular phone call is even
10 less relevant than the previous one that they
11 played.

12 This phone call, Your Honor, the fact that he
13 is calling other people for a support system is not
14 relevant to any fact or issue in this case, Your
15 Honor. And them putting together what he did for
16 Father's Day, I don't think it is relevant to this
17 case either.

18 In the first call that we played, Your Honor,
19 yesterday, he clearly knows that it is a Wednesday.
20 He acknowledges that it is a Wednesday. He says
21 that he was at work that day, and even people that
22 he had talked to.

23 What he did at Bike Week or for Father's Day
24 or when he took a walk, I don't see how that is
25 relevant, Your Honor, or how that puts the phone

1 calls that we want to play into any greater
2 context.

3 THE COURT: Thank you, Solicitor.

4 Ms. Walker?

5 MS. A. WALKER: Your Honor, and if I can just
6 respond.

7 When she says that he talks in a phone call
8 that they seek to introduce, I believe she is
9 talking about a phone call on the 22nd, which is
10 two days later, that maybe two days later he is
11 able to piece together that it is a Wednesday.

12 This phone call, that is labeled that it is
13 the 20th, if the way that I read these file numbers
14 is correct, once you get to the file number it has
15 the year 201207 would be the month, and then 20
16 would be the day. And then they have the time in
17 military time. So this call would be on the 20th.

18 He is trying to put together the times. He
19 also -- I believe in this phone call, Your Honor,
20 he also mentions a time card, which is an actual
21 piece of evidence that is something that can't be
22 manufactured, or it is something that can be picked
23 up and is an actual thing that can't be put
24 together through any of his homeboys or friends, or
25 anything of that nature.

1 I think that putting together a support system
2 is relevant, and that the only thing that -- that
3 is what I believe Mr. Bank was trying to make a
4 point in having 247 phone calls it is problematic,
5 the jury only hears three of them, that they think
6 that Mr. Porterfield spends his time scheming,
7 according to the State, when our position is he is
8 spending his time behind the jailhouse walls
9 screaming for help.

10 It is just hard to put things in context. I
11 think that this phone call would put it a little
12 bit in context that he also uses the time for a
13 support system for trying to get actual physical
14 evidence of where he was, that he is trying to put
15 together and piece together the timeline of events
16 and not just get a bunch of people to say, Hey, I
17 was here, and tell them where I was, which is what
18 the State's contention is, and obviously it is not
19 ours.

20 THE COURT: Yes, ma'am?

21 MS. M. WALKER: If I may, Your Honor? If she
22 goes on and says that they want to get it in
23 because he is talking about his time card, then I
24 think what we have here is a self-serving statement
25 that they are trying to get in without the

1 Defendant taking the stand about the time card. So
2 I think that makes the phone call even more
3 problematic.

4 THE COURT: All right. Thank you.

5 The fact that he may be putting together a
6 support system is not relevant. That is not
7 relevant to guilt or the innocence of the
8 Defendant.

9 The fact that he wants everybody to come
10 together to talk with y'all first about the money
11 in the canteen and Tyrone bringing money, and
12 stuff, for y'all talk it over first, that is not
13 relevant.

14 Nor does any of that meet the Rule 106 that it
15 ought in fairness to be considered contemporaneous
16 with the calls that the State has offered.

17 However, I think the timeline itself where
18 they are discussing when Father's Day was, walking
19 that Wednesday, and such as that, that may be
20 admissible. That is admissible if you redact it to
21 just that part about Sunday being Father's Day. I
22 think the date ultimately comes out the 17th is
23 Father's Day, ten days later would be that
24 Wednesday of when the event allegedly occurred.

25 If the Defense wants to offer that, it is

1 admissible -- let me rephrase that. The Defense
2 does not have to offer it, but it can come in under
3 106, the timeline, for whatever weight and value
4 the jury wants to give it.

5 It appears to me -- well, it doesn't matter
6 how it appears to me. The timeline out of this
7 second phone call is admissible on the discussion
8 of when Father's Day was and when that Wednesday
9 was, when they went walking, when they went to the
10 beach. So if you want to redact that, it is
11 admissible under 106, that part of the phone call.

12 MS. A. WALKER: And, Your Honor, what about
13 any mention of the time card? What is your ruling?

14 THE COURT: What about what?

15 MS. A. WALKER: Any mention of his time card?
16 I believe he asked her to go get a copy of the time
17 card in that call.

18 THE COURT: Is that part of the timeline? Is
19 that part of that conversation?

20 MS. A. WALKER: Yes. I believe right before
21 they start talking about Father's Day and the beach
22 and going walking she talked about getting the card
23 and then pulling the other time card of the other
24 co-workers.

25 THE COURT: So that is part and parcel of the

1 part of the phone conversation having to do with
2 the timeline?

3 MS. A. WALKER: Yes. I believe it is right --

4 THE COURT: It is admissible. I mean, that
5 would be admissible.

6 MS. A. WALKER: Certainly, Your Honor.

7 THE COURT: Under 106.

8 MS. M. WALKER: I just don't know when they
9 are going to redact it. We are going to put it in
10 through our first couple of witnesses, so I
11 don't --

12 THE COURT: I don't know the answer to that
13 question.

14 MS. M. WALKER: I just wanted to let them know
15 that so that they can prepare.

16 MS. A. WALKER: If you would allow us just a
17 short recess, Your Honor, we can either just play
18 that portion at this point and then redact it later
19 so when it goes back to the jury so that they only
20 have that part and that is not an issue and just
21 for time's sake, efficiency's sake, since we have
22 obviously left the jury waiting for an hour at this
23 point, but -- or we can take a short time and
24 attempt to redact it. I don't think that should be
25 that difficult. But, again, I'm not that computer

1 savvy.

2 THE COURT: Solicitor?

3 MS. M. WALKER: Your Honor, our concern is
4 that we had this problem come up before with
5 Defense counsel -- or with -- even sometimes with
6 us trying to play just a small portion of a call or
7 a small portion of a recording and stopping it, it
8 always seems to go wrong and that inadmissible
9 stuff is relayed to the jury, inadmissible evidence
10 relayed to the jury. So our preference would be if
11 they are going to redact something they do that
12 before they send it to the jury.

13 THE COURT: Well, that is the safest way, I
14 guess.

15 MS. A. WALKER: Certainly, Your Honor.

16 THE COURT: We will take a few minutes. How
17 long will it take somebody to -- this doesn't mean
18 anything about you, Ms. Walker or Mr. Bank, or
19 anyone.

20 MS. A. WALKER: Certainly, Your Honor.

21 THE COURT: How long does it take someone to
22 redact this if that person knows what they are
23 doing?

24 MS. A. WALKER: I believe that we have a
25 computer savvy gentleman in the office that can do

1 it fairly quickly.

2 THE COURT: Well, let's take about a 15-minute
3 recess.

4 MS. A. WALKER: Thank you, Your Honor.

5 MR. BANK: And, Judge, just something that
6 might clear it up. I understand their fear of
7 playing something and then getting -- playing it
8 towards a certain section and trying to stop it.

9 The part that you ruled admissible about the
10 time cards and about Father's Day and the 30th and
11 the 20th, that is literally like the last minute
12 and a half of the call. So we would just have to
13 find out where to start it, and then the phone call
14 would just run out.

15 MS. M. WALKER: I understood that.

16 THE COURT: Then it shouldn't take him but a
17 second to --

18 MS. CAMPBELL: Redact it.

19 THE COURT: That will be the safest, Mr. Bank.
20 Thank you.

21 (WHEREUPON, a break was taken at 10:59
22 a.m.)

23 (WHEREUPON, the proceedings resumed at
24 11:17 a.m.)

25 THE COURT: Have we accomplished the task of

1 redacting the second phone call?

2 MR. BANK: What we have been able to do, Your
3 Honor, is redact it on the program from the
4 computer. And I can go ahead and play the redacted
5 version to make sure it is exactly what
6 everybody -- or what you ruled on.

7 THE COURT: All right.

8 MR. BANK: And then I don't want to fiddle
9 with it too much because I want to burn it to disk
10 after the jury leaves, if that makes sense. I am
11 having trouble burning the redacted version from
12 the computer, but I have it redacted on the
13 computer.

14 THE COURT: All right.

15 MR. BANK: For the purposes of them having
16 evidence at the end of the case.

17 We will go ahead and play what I would play in
18 front of the jury right now.

19 (Played in open court.)

20 MR. BANK: That would be the extent of it,
21 Your Honor.

22 THE COURT: As far as the redaction is
23 concerned, Solicitor, any objection?

24 MS. M. WALKER: Your Honor, beg the Court's
25 indulgence.

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 MS. M. WALKER: Your Honor?

4 THE COURT: Yes, ma'am?

5 MS. M. WALKER: I am not sure that the
6 complete first sentence, that the first line in
7 that phone call is the complete first sentence of
8 what he said. If I can hear like the previous 30
9 seconds just to make sure that I'm understanding
10 the phone call correctly?

11 MR. BANK: Absolutely.

12 MS. M. WALKER: Thank you.

13 THE COURT: I thought the first -- go right
14 ahead.

15 MR. BANK: Let's see if I can find it. Can we
16 maybe play it off of your copy since it was already
17 redacted off of your --

18 THE COURT: I thought right before they
19 started talking about Father's Day, he was saying,
20 Check lawyer has full understanding and I will be
21 out. It is bogus. That was not part of the
22 timeline. I think that is just --

23 MS. M. WALKER: Yes.

24 THE COURT: It is part of -- the last part of
25 the sentence that leads into the timeline.

1 MS. M. WALKER: Okay.

2 THE COURT: I think that is a change in
3 topics.

4 MS. M. WALKER: Okay. I misunderstood what
5 was happening.

6 THE COURT: That is what I think. You listen
7 to it first.

8 MS. M. WALKER: Yes, Your Honor..

9 (Played in open court.)

10 THE COURT: As far as the redaction, then do
11 you have any objections to just the redaction where
12 it is at, Solicitor?

13 MS. M. WALKER: Your Honor, I think they have
14 gone back a little bit further to put the call into
15 a better context, and we have no problem with that
16 coming in.

17 THE COURT: Mr. Bank?

18 MR. BANK: We are totally -- we are in total
19 agreement, Your Honor.

20 THE COURT: All right. Thank you. Thank you
21 very much.

22 Anything further before we bring our jury?

23 MR. BANK: No, Your Honor. I think just
24 whenever they admit their case, we will probably
25 move under 106 to go ahead and have ours introduced

1 too. And, like I said, as long as they don't mind,
2 I might just bring this computer up since it is
3 redacted here, and then I can burn a copy later if
4 that is all right with the Court.

5 THE COURT: Any objections to that, Solicitor?

6 MS. M. WALKER: That redaction that is on that
7 computer is on this one now?

8 MR. BANK: It has been on this one. It is
9 backed up to 725 on this one.

10 MS. M. WALKER: That is perfect. We can play
11 them at the same time.

12 THE COURT: All right.

13 (WHEREUPON, the jury came into open
14 court at 11:31 a.m.)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Thank you. Thank you very much,
17 Mr. Bailiff.

18 Good morning. I apologize for the delay. I
19 had certain matters I had to take up prior to
20 having y'all come into the courtroom this morning
21 that I hope will allow the case to move along more
22 efficiently.

23 I will say this had nothing to do with the
24 parties whatsoever as far as their presence or
25 their work ethic. They were not here on time, they

1 were early, and they were working very diligently
2 to get this case in the posture to where we would
3 be able to spend more time in the courtroom with
4 you, with the jury, in the presentation of the
5 testimony.

6 I hope you all had a pleasant evening, of
7 course. We're continuing the trial of the case by
8 the presentation of evidence and testimony by the
9 State in its case in chief.

10 If you would please continue to give the
11 parties your complete and undivided attention, as
12 you have done throughout the trial of this case.

13 Solicitor, you may call your next witness.

14 MS. M. WALKER: Thank you, Your Honor. The
15 State calls Sergeant Robert Waters.

16 THE COURT: All right. If you would come
17 around and be sworn for us, please.

18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, and raise your right hand, please.

21 (Witness complies.)

22 THE CLERK: Do you solemnly swear or affirm
23 that the testimony you are about to give in this
24 case will be the truth, the whole truth, and
25 nothing but the truth, so help you God?

1 THE DEFENDANT: Yes, ma'am.

2 THE CLERK: Please have a seat.

3 (Witness complies.)

4 THE CLERK: State your full name.

5 ROBERT WATERS,

6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. M. WALKER:

9 Q Good morning.

10 A Good morning.

11 Q Will you state your name for the record, please?

12 A Robert Waters.

13 Q Sir, where are you currently employed?

14 A At the Alvin S. Glenn Detention Center.

15 Q And how long have you been at the Detention Center?

16 A Fifteen years.

17 Q What do you do at Alvin S. Glenn?

18 A I work in the Professional Standards, which is more
19 or less Internal Affairs.

20 Q In terms of life at the jail, are inmates allowed
21 to make phone calls?

22 A Yes.

23 Q And are those phone calls recorded?

24 A They are.

25 Q And is the inmate made aware of the fact that his

1 phone call is being recorded?

2 A Yes.

3 Q And in preparation for today, have you had the
4 opportunity to review certain phone calls?

5 A Yes.

6 Q And are those phone calls from Alvin S. Glenn?

7 A They are.

8 Q Once those phone calls are made, can anyone at the
9 Detention Center alter them in any way?

10 A No, ma'am.

11 MS. M. WALKER: At this point, Your Honor, the
12 State seeks to admit Exhibit 23 into evidence.

13 THE COURT: All right. Mr. Bank?

14 MR. BANK: Under -- we would just re-raise our
15 prior objections pretrial and burden shifting, Your
16 Honor.

17 THE COURT: Certainly. State's 23 is in
18 evidence, subject to the previous Defense
19 objection.

20 MR. BANK: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (WHEREUPON, State's Exhibit No. 23 was
23 marked for identification and received
24 into evidence.)

25 MR. BANK: Your Honor, I think under Rule 106,

1 if they want to play their recordings first, then
2 ours will be put into evidence. Is that what you
3 are asking, Ms. Walker?

4 MS. M. WALKER: I don't know if it matters
5 which order, but yours was first chronologically,
6 so. We can play these first, though.

7 (Played in open court.)

8 MR. BANK: At this point we move under
9 Rule 106 to have the July 20th -- or at least the
10 portion thereof that has been approved -- to be
11 played at this time.

12 THE COURT: All right.

13 (Played in open court.)

14 MS. M. WALKER: Your Honor, I don't have any
15 other questions of this witness.

16 THE COURT: Thank you. Thank you very much.
17 Mr. Bank?

18 MR. BANK: Just a couple, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BANK:

21 Q Sergeant Waters, how are you doing today?

22 A All right.

23 Q I'm sure you get called in court for this a lot,
24 don't you?

25 A I do.

1 Q Now, your understanding is that is phone calls
2 Mr. Porterfield made from Alvin S. Glenn?

3 A Say that again?

4 Q Is it your understanding that these are jail phone
5 calls made from -- made by Mr. Porterfield while he
6 was at Alvin S. Glenn?

7 A Yes.

8 Q And we just heard three full jail calls and then
9 part of another one. Is that what you just heard?

10 A Yes.

11 Q Do you have any idea how many jail calls Mr.
12 Porterfield made all together?

13 A No, sir.

14 Q You have no idea whether it was three and a half or
15 whether it was 247 jail calls?

16 A No, sir.

17 Q Okay. But you were only asked to be here for these
18 three jail calls; right?

19 A Correct.

20 Q Now, when these jail calls are saved as a piece of
21 data, could you explain how that data reads out?
22 Does it indicate what date it is so it doesn't read
23 something like 2012 and a month and a year and a
24 time? Is that generally how it is labeled?

25 A Yes.

1 Q And at the beginning of the jail calls, as I think
2 we all heard, both sides, both the person making
3 the call and the person receiving the call, are
4 made aware that this is being recorded and people
5 are listening to it; is that correct?

6 A That's correct.

7 Q And each of these jail calls are generally -- is
8 there any limit on how long the jail calls are?

9 A I'm not sure. That is more or less with the
10 company, but as long as we have access to the
11 company files, from my understanding we can
12 retrieve them calls if we have a number.

13 With this particular company here, without the
14 phone number we are unable to pick them calls up.
15 However, with the new company we have, it is easy
16 to pick up the calls. But with this particular
17 company; if you don't provide us with the number we
18 can't retrieve the calls.

19 Q I understand. And I understand what you are
20 getting at. My question actually was, is there any
21 limit on how long the call is? Is there like a 10
22 or an 11-minute limit on --

23 A Oh, the limit of calls? With this particular
24 company, it was 10 minutes per call.

25 Q 10 minutes per call?

1 A Right.

2 Q So somebody could have a 10-minute conversation and
3 then the phone call would end; is that correct?

4 A Right. It will alert them just like it did
5 previously when you get down to 15 seconds that the
6 call is about to end.

7 Q And then after you hung up, unless there was some
8 kind of disciplinary rule or something, the person
9 could conceivably then call back and have another
10 10-minute phone call?

11 A That's correct.

12 Q Right? And outside of any kind of internal policy
13 or disciplinary thing in terms of limiting an
14 inmate's calls, is there any amount of limitation
15 to the amount of phone calls a person at Alvin S.
16 Glenn can make a day?

17 A As long as they have money on their account they
18 can make calls.

19 Q They can make calls all day long?

20 A Yes.

21 Q And you said something about a company. These
22 companies, the old one and the new one, are those
23 the folks that actually maintain these tapes?

24 A They are.

25 Q Okay. And they are the ones that have access to

1 the originals?

2 A From my understanding, yes.

3 Q Okay. All right, thank you.

4 MR. BANK: That is all the questions I have.

5 THE COURT: Redirect, Solicitor?

6 MS. M. WALKER: None, Your Honor.

7 THE COURT: Thank you. Thank you very much
8 for being with us today, Sergeant. You may step
9 down. And you may be excused.

10 (Witness steps down and is excused.)

11 THE COURT: All right, Solicitor, you may call
12 your next witness.

13 MS. CAMPBELL: May it please the Court? The
14 State would call Dana Outen.

15 THE COURT: All right. If you would come
16 around and be sworn for us, please.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the
19 Bible, and raise your right hand, please.

20 (Witness complies.)

21 THE CLERK: Do you solemnly swear or affirm
22 that the testimony you are about give in this case
23 will be the truth, the whole truth, and nothing but
24 the truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Please have a seat.

2 (Witness complies.)

3 THE CLERK: State your full name.

4 THE WITNESS: Dana Outen.

5 DANA OUTEN,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q Ms. Outen, where are you employed?

10 A Fifth Circuit Solicitor's Office.

11 Q That's my office?

12 A Yes.

13 Q And what do you do for the Fifth Circuit
14 Solicitor's Officer?

15 A I'm a paralegal.

16 Q And as a paralegal, does part of your duties
17 involve getting discovery to Defense attorneys?

18 A Yes.

19 Q And when I say getting discovery to a Defense
20 attorney, can you explain to this jury what I mean?

21 A Discovery is essentially the case jacket that the
22 Police Department or the investigators make to
23 essentially make the arrest.

24 MS. A. WALKER: Your Honor -- I object, Your
25 Honor, on relevance at this point.

1 THE COURT: All right, Mr. Foreman, and ladies
2 and gentlemen, step out momentarily. Do not
3 discuss the case within this brief recess.

4 (WHEREUPON, the jury retires to the jury
5 room at 12:19 p.m.)

6 THE COURT: All right. Ms. Walker?

7 MS. A. WALKER: Your Honor, I just cannot
8 think of a conceivable reason why Ms. Outen's
9 process of giving Defense counsel discovery would
10 have any bearing on the trial..

11 THE COURT: All right. Solicitor?

12 MS. CAMPBELL: May it please the Court, Your
13 Honor? As you just heard in the phone calls, the
14 Defendant repeatedly, in two different calls,
15 refers to this event occurring on the 27th at
16 2:00 p.m.

17 The only information he had at that point were
18 the warrants in the case. The warrants do not
19 indicate what time of day this occurred. No one
20 had given him any information about what time of
21 day this occurred, but miraculously this event that
22 he didn't know about, he knew what time of day it
23 occurred.

24 He didn't receive discovery until September,
25 which is two months, or six weeks at least, two

1 months actually, after this event occurred, so it
2 is very significant to the State that when he calls
3 his girlfriend and talking about when this event
4 occurred on two different phone calls that on
5 July 20th, 21st, I believe, he mentions the exact
6 time of day, about 2:00 o'clock.

7 So that is the reason to show that this
8 Defendant had no way of knowing about the time that
9 this occurred other than if he had been involved.

10 THE COURT: All right. Thank you, Solicitor.
11 Ms. Walker?

12 MS. A. WALKER: Beg the Court's indulgence.
13 (Pause.)

14 MS. A. WALKER: My concern here is that -- I
15 think that this testimony would be misleading that
16 the only place that -- in order for the Defendant
17 to get any information whatsoever about this
18 incident -- this incident occurred on June 27th,
19 2012. Investigator Clarke had a wealth of
20 information on June 28th, 2012. To tell the jury
21 that the only way that the Defendant could have
22 received any information about this case is through
23 the discovery process I think would be misleading
24 the jury.

25 Mr. Porterfield had other counsel prior to me.

1 The State has alleged that Mr. Clarke tried to
2 engage in multiple conversations with him, both
3 over the telephone and at the hospital.

4 I'm not sure where he got the information, but
5 to tell the jury that the only place he could have
6 got it is through the discovery process is
7 misleading.

8 And according to Mr. Shealey's notes, who was
9 the lawyer that had the case originally, he had
10 this information when he reviewed the case. Do I
11 know where that information came from? No. But I
12 don't believe that to tell this jury that it came
13 only from the discovery process --

14 MS. CAMPBELL: And it is noted I think on the
15 piece of paper in her hand that information that
16 Mr. Shealey got any information was not until the
17 24th. She has got all the discovery documents.

18 And in that information that was given to Mr.
19 Shealey, those were warrants, Your Honor, which I
20 will be bringing out the fact that warrants do not
21 reflect the time. And I'll be glad to let Your
22 Honor review those.

23 THE COURT: If I'm tracking the timeline, you
24 have telephone calls in evidence.

25 MS. CAMPBELL: Yes, sir.

1 THE COURT: Which the Defendant,
2 Mr. Porterfield, is referring to the date of the
3 27th. Ms. Outen is testifying as a paralegal with
4 the 11th[sic] Circuit as to the discovery process.

5 MS. A. WALKER: Yes, Your Honor.

6 THE COURT: And that discovery was not given
7 to Mr. Porterfield or Mr. Porterfield's attorneys
8 until September of 2012, some month and a half, two
9 months after the event, whatever period of time,
10 however many weeks.

11 The issue is not necessarily if he got it in
12 some other manner. The issue is that on the dates
13 and times of the phone calls he knew the date. And
14 it goes to the weight, not the admissibility of the
15 testimony.

16 You can cross-examine perhaps Detective Clarke
17 if he testifies, Did you tell him that in that
18 phone conversation that he had. I think that was
19 weeks after -- I think that was -- or days after,
20 at least, when he talked to -- when his testimony
21 was he talked to Mr. Porterfield.

22 But it is no more than the police -- it is kin
23 to the police withholding information about a crime
24 that occurred and then the individual that
25 committed the crime would be the one with the

1 knowledge.

2 So I think it goes to the weight, not the
3 admissibility. It is not misleading. It does not
4 mean there is not an alternate source. But that is
5 up to the jury to decide in that regard.

6 MS. CAMPBELL: And, Your Honor, specifically
7 it is not even just the date, it is also he refers
8 to the 2:00 p.m. time period, which is very
9 significant, which is --

10 THE COURT: The date and the time?

11 MS. CAMPBELL: The time.

12 MS. A. WALKER: And, Your Honor, if Ms. Outen
13 is going to testify that she, under the discovery
14 and what discovery materials are -- as long as she
15 is not discovering that is the only source of this
16 information --

17 THE COURT: Y'all can ask that on cross.

18 MS. A. WALKER: Certainly, Your Honor.

19 THE COURT: Certainly y'all could ask, Do you
20 know if he gained that -- well, you know what you
21 can ask. Y'all are very good trial lawyers. Mr.
22 Bank knows and Ms. Walker knows. So you can ask.
23 And she can answer.

24 MS. A. WALKER: Certainly, Your Honor.

25 MS. CAMPBELL: Your Honor, if we would go

1 ahead and take up this matter. This is the
2 discovery sheet. I will let you review that.
3 State's Exhibit Number 32. It just reflects the
4 date and what material was turned over at that
5 point.

6 THE COURT: I would request perhaps,
7 Solicitor, you redact Number 9, the 10-year driving
8 record; and Number 13, rap sheet of
9 Mr. Porterfield.

10 MS. CAMPBELL: Yes, sir. Sorry.

11 THE COURT: Number 14, you have a mug shot. I
12 don't know if you are referring to the mug shot of
13 the date he was arrested or a prior mug shot. That
14 would be my request. Perhaps the Defense wouldn't
15 want that redacted.

16 MS. A. WALKER: I would request that that be
17 redacted, Your Honor.

18 THE COURT: At least the rap sheet and the
19 10-year driving record.

20 MS. CAMPBELL: We can do that right away, Your
21 Honor.

22 (WHEREUPON, a break was taken at 12:27
23 p.m.)

24 (WHEREUPON, the proceedings resumed at
25 12:42 p.m.)

1 THE COURT: If you will bring me Number 151
2 out. Just Juror 151.

3 (WHEREUPON, Juror 151 enters courtroom
4 at 12:42 p.m.)

5 THE COURT: Good afternoon. This is
6 Ms. Lewis; is that correct?

7 THE JUROR: Yes, sir.

8 THE COURT: Ms. Lewis, you may recall,
9 yesterday, I believe, when I qualified the jury I,
10 asked a series of questions, including if you knew
11 Mr. Porterfield.

12 I'm going to ask you this question. Do you
13 know Sampson Wise?

14 THE JUROR: Yes, sir.

15 THE COURT: All right. And is he or was he a
16 friend of yours?

17 THE JUROR: Yes, sir.

18 THE COURT: Do you know what relationship, if
19 any, there is between Sampson Wise and Anthony
20 Porterfield?

21 THE JUROR: I think it is his brother.

22 THE COURT: You think it is his brother?

23 THE JUROR: Yes.

24 THE COURT: All right. At the time I asked
25 you those questions and at the time I had

1 Mr. Porterfield stand -- I believe he introduced
2 himself to you -- did you realize that
3 Mr. Porterfield was Mr. Wise's brother?

4 THE JUROR: No, I didn't know until later on
5 yesterday evening after I -- well, this morning
6 when I saw his sister in here.

7 THE COURT: All right. So you know -- you
8 know Mr. Porterfield and his brother, Mr. Wise, and
9 you know other members of Mr. Porterfield's family?

10 THE JUROR: Yes.

11 THE COURT: And did you recognize them
12 yesterday?

13 THE JUROR: No, I didn't recognize them
14 yesterday, no.

15 THE COURT: Did you recognize them today?

16 THE JUROR: Yes.

17 THE COURT: And what members of his family do
18 you recognize?

19 THE JUROR: His sister and his mom. I think
20 it is mom over there.

21 THE COURT: His sister and his mother?

22 THE JUROR: Yes.

23 THE COURT: And do you know their names?

24 THE JUROR: Katrell Porterfield is his
25 sister's name, and his mom's name is Lorraine.

1 THE COURT: And you recognized Mr. Porterfield
2 this morning as Mr. Wise's brother and --

3 THE JUROR: Yes, but I didn't know him as
4 Anthony Porterfield. I didn't recognize his first
5 until somebody said Amp.

6 THE COURT: Until what?

7 THE JUROR: I didn't know his real name was
8 Anthony Porterfield.

9 THE COURT: All right. I'm not tracking that
10 answer. Explain that answer to me, please.

11 THE JUROR: I didn't know him by his birth
12 name.

13 THE COURT: All right. What did you know him
14 by?

15 THE JUROR: Markale.

16 THE COURT: All right. But you recognize him
17 as Mr. Wise's brother?

18 THE JUROR: Yes.

19 THE COURT: And you recognized him this
20 morning?

21 THE JUROR: Yes.

22 THE COURT: Why didn't you tell me?

23 THE JUROR: I was going to tell someone today.

24 THE COURT: Ma'am?

25 THE JUROR: I was going to tell someone today.

1 THE COURT: When? When were you going to tell
2 someone?

3 THE JUROR: When we go on break.

4 THE COURT: Have you said anything to any
5 other members of the jury panel?

6 THE JUROR: No, sir.

7 THE COURT: Have you said anything to any of
8 the bailiffs?

9 THE JUROR: No.

10 THE COURT: But, to be clear, you did not
11 recognize Mr. Porterfield yesterday?

12 THE JUROR: No.

13 THE COURT: You did not recognize him as
14 Mr. Wise's brother?

15 THE JUROR: No.

16 THE COURT: And did not recognize -- and I
17 don't know if his mother or sister was here
18 yesterday or not, but did not recognize them?

19 THE JUROR: I didn't see them yesterday
20 until -- when they left, I thought I saw them, and
21 then this morning when I saw them again, I -- you
22 know, I recognized them, and I was going to say
23 something to them -- to someone today.

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

25 All right. Would you just step outside of the

1 door just momentarily, Ms. Lewis?

2 (Juror 151 exits courtroom.)

3 THE COURT: All right. Ms. Walker?

4 MS. A. WALKER: Your Honor, I think we
5 obviously have to excuse the juror. She -- I am
6 concerned that she didn't tell anybody. I am
7 concerned that she indicated she would tell
8 somebody and still hasn't and is still indicating
9 that she hasn't told anybody else.

10 My only concern is that the other jury members
11 hopefully haven't been tainted by any knowledge of
12 her knowing the family, is my concern.

13 THE COURT: All right, thank you.

14 Solicitor?

15 MS. M. WALKER: Your Honor, we're in agreement
16 she needs -- that she should be excused.

17 THE COURT: That what?

18 MS. M. WALKER: We are in agreement that this
19 particular juror should be excused. And I'm not
20 quite sure if you want to somehow question to see
21 if she has tainted the jury in any way. I'm not
22 quite sure how to go about that. But we are
23 definitely in agreement that she should not be
24 sitting on this jury.

25 THE COURT: I'm not exactly sure where she

1 should be sitting, but I know it shouldn't be in
2 here.

3 MS. WALKER: I understand, Your Honor. And I
4 agree.

5 THE COURT: Of course, she was very diligent
6 in requesting lunch yesterday, which was duly
7 counseled with my session with myself last night,
8 and will remain counsel for the remainder of my
9 term.

10 All right, would you bring Juror 151 back out
11 for me, please, Mr. Bailiff?

12 (Juror 151 enters courtroom.)

13 THE COURT: All right. Again, Ms. Lewis, I
14 would ask you, you have not discussed and not said
15 anything about you knowing Mr. Porterfield,
16 Mr. Porterfield's family, or his brother, his
17 mother, or his sister with any other member of the
18 jury panel; is that correct?

19 THE JUROR: No, sir.

20 THE COURT: All right. I am going to excuse
21 you from further service on this jury panel.

22 THE JUROR: Okay.

23 THE COURT: You have told me, and I'm going to
24 ask you again, you did not recognize
25 Mr. Porterfield yesterday?

1 THE JUROR: No, sir.

2 THE COURT: You did not recognize any member
3 of his family?

4 THE JUROR: Until today.

5 THE COURT: During the trial yesterday?

6 THE JUROR: No, sir.

7 THE COURT: You thought upon leaving yesterday
8 you might have seen members of his family?

9 THE JUROR: Right.

10 THE COURT: Is that correct? You did
11 recognize members of his family today?

12 THE JUROR: Yes.

13 THE COURT: And you tell me under oath you
14 were going to report that to the Court at the
15 break?

16 THE JUROR: Yes.

17 THE COURT: All right. Madam Clerk, is the
18 jury instructed to call back today?

19 THE CLERK: I'm not certain. But if you will
20 have her report downstairs, Sheila will give her
21 further instructions.

22 THE COURT: She would report to the jury
23 assembly room?

24 THE CLERK: Yes, Your Honor.

25 THE COURT: All right, thank you. Thank you,

1 Ms. Lewis. You are excused. Please report to the
2 jury assembly room.

3 (Juror 151 excused from the jury.)

4 THE COURT: Anything before we bring in our
5 jury, from the State?

6 MS. M. WALKER: No, Your Honor.

7 THE COURT: From the Defense?

8 MS. A. WALKER: No, Your Honor.

9 THE COURT: Is the document redacted?

10 MS. CAMPBELL: The document is redacted, Your
11 Honor. I think the Defense has had time to review
12 it. I will hand it up to the Court if you would
13 like to review it.

14 THE COURT: If the State and Defense have
15 reviewed it and y'all are fine with it, I don't
16 need to review it, Solicitor.

17 MS. A. WALKER: I reviewed it, Your Honor.

18 THE COURT: Bring us our panel, please, Mr.
19 Bailiff.

20 (WHEREUPON, the jury came into open
21 court at 12:52 p.m.)

22 THE COURT: Mr. Foreman, and ladies and
23 gentlemen, thank you. Thank you very much for your
24 patience with the Court.

25 I have excused one of your number. And I

1 would ask -- as you recall, the purpose of jury
2 selection, the procedure we go through to select a
3 fair and impartial trial jury in the trial of this
4 case for both Mr. Porterfield and the State of
5 South Carolina, I give you certain instructions
6 throughout the course of the case and perhaps by
7 the end of the case you'll be able to repeat them
8 to me, but I ask: Has any member of the jury panel
9 had any discussions whatsoever about this case
10 since you have been on the jury, on this jury
11 panel, about this case, whether it is with fellow
12 jurors, family, friends, or anyone else? If you
13 have had any discussions whatsoever about the case
14 since being seated as a juror on the case, please
15 stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: Is there any member of the jury
18 panel at this time that feels like he or she could
19 not continue to serve as a fair and impartial juror
20 in the trial of this case for both Mr. Porterfield
21 and the State? If so, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Has any member of the jury panel
24 heard anyone else, whether a fellow juror, a member
25 of the jury panel, or anyone at all, discuss the

1 case or any individual involved in the case? If
2 so, please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: All right. All my questions to
5 the jury, no one stands. I find that the jury
6 takes their individual and collective oath very
7 seriously and they remain as fair and impartial
8 jurors in the trial of this case.

9 Thank you. Thank you very much, Ms. Walker.
10 Thank you, Solicitor.

11 You may continue.

12 MS. CAMPBELL: Thank you.

13 DIRECT EXAMINATION CONTINUES

14 BY MS. CAMPBELL:

15 Q Ms. Outen, prior to the break, we were talking
16 about you providing what is called discovery to
17 Defense counsel?

18 A Yes.

19 Q And typically in a case, once an arrest is actually
20 made, does it take a while for the actual
21 information from the Sheriff's Department to get to
22 our office?

23 A It does.

24 Q And then is there also a period of time that it
25 takes for our office to turn it over to the

1 Defense?

2 A Yes.

3 Q I want to turn your attention to State's Exhibit
4 Number 32. Do you recognize this document?

5 A I do.

6 Q And was that the initial discovery checklist that
7 was provided to the Defense in this case?

8 A Yes.

9 Q It has been redacted, but that is the admissible
10 part?

11 A Yes.

12 Q And was that the first time any discovery in this
13 case or any of the documents from the Sheriff's
14 Department or any other thing were turned over to
15 the Defense by you in this case?

16 A Yes.

17 Q And you would have been responsible for turning
18 over discovery in this case?

19 A I was.

20 MS. CAMPBELL: Your Honor, at this time we
21 would offer the redacted version of State's Exhibit
22 32.

23 MS. A. WALKER: Without objection, Your Honor.

24 THE COURT: State's 32 is in evidence, without
25 objection.

1 (WHEREUPON, State's Exhibit No. 32 was
2 marked for identification and received
3 into evidence.)

4 THE COURT: And, ladies and gentlemen, I would
5 advise you that you are being provided a copy of
6 State's 32. The copy instead of the original has
7 been provided because I have determined that
8 certain portions of State's 32 is not proper
9 evidence. Being so, I have directed that it be
10 redacted so the improper portions would not be part
11 of the exhibits.

12 You should not consider the fact that it has
13 been redacted for any purpose whatsoever during
14 your deliberations.

15 Thank you, Solicitor. Thank you, Ms. Walker.

16 You may continue.

17 MS. CAMPBELL: Thank you, sir.

18 BY MS. CAMPBELL:

19 Q In this report it indicates certain items. And
20 this was the first time certain items were turned
21 over by you from our office to the Defense?

22 A Yes.

23 Q And included in those items, in addition to the
24 warrants, was there also the incident report?

25 A Yes, the incident report.

1 Q And investigative summary?

2 A Yes.

3 Q And things of that nature?

4 A Yes.

5 Q And those would have been the types of the things
6 that would have reflected the actual time this
7 event occurred; is that correct?

8 A That's correct.

9 Q What was the date you actually turned over those
10 items?

11 A They were sent September 12th, 2012.

12 Q September the 12th, 2012?

13 A Yes.

14 Q So that would have been some two months after he
15 was -- if he had been arrested on July 18th?

16 A Yes.

17 Q And that would have been the first time they got
18 that information, specifically the incident report
19 and those items?

20 A Yes.

21 Q Thank you.

22 THE COURT: Thank you, Solicitor.

23 Ms. Walker?

24 MS. A. WALKER: Thank you, Your Honor. May it
25 please the Court?

1 THE COURT: Yes, ma'am.

2 CROSS-EXAMINATION

3 BY MS. A. WALKER:

4 Q Good afternoon, Ms. Outen.

5 A Good afternoon.

6 Q That would have been the first time they got the
7 information from you?

8 A From my office, yes.

9 Q Well, not necessarily from your office, from you?

10 A From me, yes.

11 Q You don't know what other documents they had, that
12 the Defense had?

13 A No, I don't.

14 Q Those are the first time that you know that you
15 turned over that information?

16 A Yes.

17 Q You are unaware of any other conversations that
18 took place?

19 A No.

20 MS. A. WALKER: Beg the Court's indulgence?

21 THE COURT: Certainly, yes, ma'am.

22 (Pause.)

23 MS. A. WALKER: No further questions, Your
24 Honor.

25 THE COURT: Thank you, Ms. Walker.

1 Redirect, Solicitor?

2 MS. CAMPBELL: Thank you.

3 REDIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q In this case, as in every case, when the case is
6 assigned to me, you are the one that provides the
7 information; is that correct?

8 A I am. I work for you.

9 Q And other than the warrants, which would have been
10 provided by investigators upon arrest, all that
11 information would have come from you?

12 A Yes.

13 Q And that is what happened in this case?

14 A Yes.

15 Q On what date?

16 A September the 12th, 2012.

17 Q Thank you.

18 THE COURT: Ms. Walker?

19 MS. A. WALKER: No re-cross, Your Honor.

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

21 Is it Ms. Outen?

22 THE WITNESS: Yes.

23 THE COURT: Thank you very much, Ms. Outen.

24 (Witness steps down.)

25 THE COURT: All right. It doesn't seem like

1 it, but perhaps now would be a good time to take
2 our luncheon recess. You haven't been out here
3 that long, but since it is the middle of the day,
4 we'll take our luncheon recess.

5 Please remember my instructions. Do not
6 discuss the case with anyone during this recess,
7 including your fellow jurors, lunch mates, family,
8 friends, or anyone else.

9 Do not read, watch, or listen to any news
10 accounts about the case. Do not do any independent
11 investigation or any investigation on the internet
12 concerning the various areas that I have told you
13 and instructed you are prohibited.

14 With that being said, we will be in recess
15 until 2:30. I hope y'all have a pleasant lunch.
16 Thank you. Thank you very much. 2:30.

17 (WHEREUPON, the jury is excused for
18 lunch at 12:58 p.m.)

19 THE COURT: All right, Solicitor, how many
20 more witnesses do you have?

21 MS. CAMPBELL: We have four to five more
22 witnesses. We will finish this afternoon.

23 THE COURT: And you think you'll complete
24 those this afternoon?

25 MS. CAMPBELL: We hope -- well, based on this

1 morning, I should say.

2 THE COURT: Ma'am?

3 MS. CAMPBELL: Based on this morning, yes,
4 sir, we should finish this afternoon.

5 THE COURT: I assume when you say based on
6 this morning, the clock will move quicker this
7 afternoon?

8 MS. CAMPBELL: We are very hopeful.

9 THE COURT: You are hopeful.

10 Anything before we take our luncheon recess
11 from the State?

12 MS. CAMPBELL: No.

13 THE COURT: Defense?

14 MS. A. WALKER: Your Honor, my only concern is
15 my expert. She is an hour and a half away. I can
16 call her at a moment's notice.

17 THE COURT: What day were you wanting her
18 here? Refresh my memory. She couldn't be here?

19 MS. A. WALKER: I got her to reschedule her
20 schedule today so that she could be here this
21 afternoon, but -- and I think the State was
22 originally hoping that we could -- and I know that
23 court is just never what we expect it to be -- so
24 she rearranged her schedule so she could be
25 available this afternoon at a moment's notice, but

1 it sounds like with these witnesses that we may
2 probably finish the State's case probably at the
3 end of the day.

4 THE COURT: You want to have her here in the
5 morning then?

6 MS. M. WALKER: Your Honor, she teaches class
7 all day tomorrow. We do have a number of witnesses
8 tomorrow that should take up most of the day, but
9 if -- and I understand Your Honor's concern. If
10 there is any way that we could end a little early
11 tomorrow and have her here Friday morning, then
12 that way --

13 THE COURT: I thought tomorrow was Friday,
14 Ms. Walker.

15 MS. A. WALKER: Tomorrow is Thursday.

16 THE COURT: It is, Ms. Walker. You can have
17 her here Friday morning.

18 MS. A. WALKER: Thank you so much, Your Honor.

19 THE COURT: Anything further?

20 MS. A. WALKER: Nothing, Your Honor.

21 THE COURT: All right. Thank you. Thank you
22 very much. Court will be in recess until 2:30.

23 (WHEREUPON, a lunch break was taken at
24 1:00 p.m.)

25 (WHEREUPON, the proceedings resumed at

1 2:34 p.m.)

2 THE COURT: Anything from the State before we
3 bring the jury?

4 MS. CAMPBELL: No, Your Honor. I just wanted
5 to put on the record, John Barron is one of our
6 next witnesses, and he was inadvertently left off
7 of our witness list. I have informed Defense
8 counsel of that, and they don't have a problem with
9 it.

10 THE COURT: All right. So you want me to ask
11 the jurors?

12 MS. CAMPBELL: I don't think she really cares
13 about that.

14 THE COURT: All right. Ms. Walker?

15 MS. A. WALKER: We can ask the jurors if they
16 know him, but I have no problem with him being left
17 off the jury list. No problem. I don't want him
18 excluded, or anything like that.

19 THE COURT: All right, thank you.

20 Do you have anything before we bring in the
21 jury, Ms. Walker?

22 MS. A. WALKER: I don't, Your Honor.

23 THE COURT: All right, thank you.

24 (WHEREUPON, the jury came into open
25 court at 2:35 p.m.)

1 THE COURT: Mr. Foreman, ladies and gentlemen
2 of the jury, I hope y'all had a pleasant lunch.

3 I understand the next witness for the State is
4 an individual, John Barron.

5 Would you stand for me, please, Mr. Barron?

6 (Witness complies.)

7 THE COURT: Mr. Barron to my front.

8 Thank you. You may be seated.

9 (Witness complies.)

10 THE COURT: He is employed with the Richland
11 County Sheriff's Department. I did not call his
12 name during jury selection. So I would ask you
13 now, is any member of the jury panel related by
14 blood or marriage, close personal friends, have any
15 social, business, or professional relationship with
16 Mr. Barron? If so, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: All right. No one stands.

19 Solicitor, you may call your witness.

20 MS. CAMPBELL: Your Honor, we may call him
21 after one or two witnesses.

22 THE COURT: Oh, yes, ma'am.

23 MS. CAMPBELL: Thank you.

24 The State would call Agent Drew Caldwell.

25 THE COURT: All right. If you would come

1 around, Agent Caldwell.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand, please.

5 (Witness complies.)

6 THE CLERK: Do you solemnly swear or affirm
7 that the testimony you are about to give in this
8 case will be the truth, the whole truth, and
9 nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Have a seat.

12 (Witness complies.)

13 THE CLERK: And state your full name for the
14 record.

15 THE WITNESS: Andrew Caldwell.

16 ANDREW CALDWELL,
17 after being duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q Sergeant Caldwell, where are you employed?

21 A Richland County Sheriff's Department.

22 Q And what do you do there, sir?

23 A I'm a sergeant of investigations.

24 Q I want to turn your attention back to December of
25 2012. What did your duties include at that time?

1 A 2012, I was the sergeant of the Sheriff's
2 Department Fugitive Task Force.

3 Q As sergeant over the Fugitive Task Force, what were
4 your duties?

5 MR. BANK: Objection, Your Honor. Matter of
6 law.

7 THE COURT: All right. Mr. Foreman, ladies
8 and gentlemen, if you would step out momentarily.
9 Do not discuss the case during this brief recess.

10 (WHEREUPON, the jury retires to the jury
11 room at 2:37 p.m.)

12 THE COURT: All right. Mr. Bank, I will be
13 glad to hear from you.

14 MR. BANK: Yes, Your Honor. May it please the
15 Court? My understanding is the only reason they
16 would be calling him is because -- Mr. Caldwell --
17 because he is a member of the Fugitive Task Force.
18 Presumably he will enter evidence of
19 Mr. Porterfield's flight when he was being
20 arrested.

21 I believe under the flight cases which I
22 referenced earlier, I tried to bring this to the
23 attention of the Solicitor's Office earlier, I'm
24 not saying that flight can't be relevant or
25 admissible in this case, but I don't believe they

1 have laid the foundation for it. Flight cases
2 essentially require that there be some foundation
3 laid between the Defendant having some knowledge
4 that there were warrants out for him or they were
5 searching for him for the case that he is currently
6 on trial for, so these four warrants, and the fact
7 that he fled.

8 At this point they haven't entered any
9 evidence. And I don't believe that this witness
10 can testify. At least any of the notes that I have
11 seen or the reports that I have seen that he has
12 written, that Mr. Porterfield had any knowledge
13 that any warrants were out for him.

14 So I think at this point they haven't laid the
15 foundation to be able to have this testimony be
16 admissible.

17 THE COURT: I can't call the name of it right
18 now, but it is a breaking and entering a motor
19 vehicle case out of Charleston County that is the
20 furthest back in history case that I personally
21 know of -- I'm sure there is many others further
22 back in history -- where an individual was breaking
23 into a motor vehicle and the officers attempted to
24 apprehend him and he ran. There is no requirement
25 that I know of that warrants have to be issued.

1 Now, that aside, there may be requirement that
2 the Defendant has to have some knowledge of what he
3 is running from. I mean, if you go back to State
4 v. Sloan, I guess it was, all he knew was that the
5 people at the Department of Corrections wanted to
6 talk to him, he being a trustee at the time -- I
7 would add, not a very trustworthy trustee -- but he
8 was a trustee at the time. There were not warrants
9 for him. The police or the officer wanted to talk
10 to him, and he fled. I mean, he fled in the DOC
11 van.

12 Tell me what you are referring to beyond the
13 warrant issue.

14 MR. BANK: Well -- and I understand -- and I
15 don't think there necessarily has to be a warrant.
16 I think he just has to have some knowledge that
17 they are seeking him for this charge.

18 The case -- if I can approach. I'll hand a
19 copy to the Solicitor. One of the most recent
20 cases in South Carolina on flight is State v.
21 Martin. If I can approach, Your Honor?

22 THE COURT: Certainly.

23 (Complies.)

24 MR. BANK: State v. Martin references a Fourth
25 Circuit case on Page 3 about two-thirds of the way

1 down the second column.

2 The relevance of flight evidence is
3 premised on a nexus between the flight
4 and the offense charged.

5 I think the distinct point -- the
6 distinguishment as the case with the breaking into
7 a motor vehicle is that the Defendant in that case
8 was quite aware of what he was being chased after.
9 He was running because the officer wanted to talk
10 to him about the case that was being charged, the
11 case involving that motor vehicle.

12 In this situation, where we are three weeks
13 later, there is any number of reasons that
14 Mr. Porterfield could have been running from law
15 enforcement, including just his discomfort with law
16 enforcement.

17 I believe the cases are clear that the
18 Defendant has to have knowledge, not only are they
19 running from the police, but that he is running
20 from the police that are trying to apprehend him
21 for the crime that he is currently on trial for.

22 And it doesn't necessarily have to be
23 warrants. I think if they had told him there were
24 warrants it would have just made it clear. It
25 could be anything. Warrants are just an easy

1 example.

2 MS. CAMPBELL: Judge, if I may be heard on
3 this matter?

4 In discovery that was turned over to the
5 Defense, Investigator Clarke, who was our last
6 witness -- it is just a matter of who you have to
7 put up first -- had a conversation with
8 Mr. Porterfield on the phone on July the 17th and
9 they set up a meeting. He then called back and
10 said he wasn't going to come to the meeting. And
11 at that point he informed the Defendant that there
12 were warrants for his arrest for these charges.

13 And then it was the next day where the
14 Fugitive Team -- and this has all been turned
15 over -- went in and tried to apprehend him.

16 Also in the reports that have been turned over
17 to them, that they entered into the residence where
18 he was hiding. They announced they were there.
19 They were looking for Mr. Porterfield. That they
20 had warrants for his arrest.

21 And at that point he exited the actual home
22 and dove underneath the foundation into the crawl
23 space, and that is where he was apprehended.

24 So for him to get up here and represent that
25 he didn't have any knowledge is just disingenuous.

1 MR. BANK: Your Honor, I didn't say that it
2 couldn't be admissible, I just said they haven't
3 built a foundation for it yet.

4 THE COURT: Well, as Judge George Bell
5 Timmerman used to say, You can't prove everything
6 on a pencil point. It takes -- and that is what
7 circumstantial evidence is -- it takes perhaps
8 multiple witnesses to prove that. That doesn't
9 mean they have to call Detective Clarke at this
10 juncture for this issue and have him come down and
11 then lay the foundation for Sergeant Caldwell.

12 But it is not like proof aliunde. They can do
13 this. And then if they fail to tie it up with
14 Detective Clarke, then you can make a motion to
15 strike at that time, perhaps, and I can give a
16 curative instruction.

17 I would further point out in State v. Martin,
18 a Court of Appeals case, and State v. Beckham,
19 that:

20 Evidence of flight has been held to
21 constitute evidence of guilty knowledge
22 and intent.

23 State v. Thompson.. Citing Thompson.

24 The critical factor to the admissibility
25 of the evidence is whether the totality

1 of the evidence creates an inference
2 that the Defendant has knowledge that he
3 was being sought by the authorities.

4 State v. Brown.

5 The Solicitor has stated as an officer of the
6 Court that she intends to call Detective Clarke.
7 He has actually already testified in-camera. That
8 she intends to call him in front of the jury to
9 complete the foundation, so to speak.

10 It is sufficient that circumstances
11 justify inference that accused's actions
12 were motivated as a result of his belief
13 that officers were aware of his
14 wrongdoing and were seeking him for that
15 purpose. Flight or invasion of arrest
16 is a circumstance to go to the jury.

17 Citing State v. Turnage.

18 That case happened to be a little before my
19 time, having been cited in 1917.

20 Again, I would point out that Martin is a
21 Court of Appeals case. Beckham was a State Supreme
22 Court case.

23 And I think it is proper to offer this
24 evidence at this time.

25 Again, if they don't lay the proper

1 foundation, you can make a motion to strike.

2 MR. BANK: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 Anything further before we bring our jury back
5 in?

6 MR. BANK: No, sir, not from the Defense.

7 (WHEREUPON, the jury came into open
8 court at 2:46 p.m.)

9 THE BAILIFF: The jury panel is present, Your
10 Honor.

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

12 Thank you, Mr. Bank. Thank you, Solicitor.

13 You may proceed.

14 MS. CAMPBELL: Thank you, Your Honor.

15 DIRECT EXAMINATION CONTINUES

16 BY MS. CAMPBELL:

17 Q Sergeant, I believe we were talking about that you
18 were sergeant over the Fugitive Team back in the
19 summer of 2012; is that correct?

20 A Yes, ma'am.

21 Q And what did your duties include as a sergeant of
22 that team?

23 A Our main responsibilities for this unit were to
24 identify and apprehend wanted individuals, most of
25 whom were wanted for dangerous or violent felonies.

1 Those were the individuals that we tried to target
2 and to serve those warrants.

3 Q And in the course of your duties that summer, was
4 it unusual for you to receive warrants that were
5 outstanding in order for you to effect the arrest
6 of a certain person?

7 A No, it was not unusual. We worked very closely
8 with investigations. Those were the investigators
9 that were working the cases that would obtain the
10 warrants and then would contact us for assistance
11 in locating those fugitives.

12 Q That summer, specifically on July, I believe it was
13 the 17th -- this arrest was made on the 18th; is
14 that correct?

15 A Yes, ma'am.

16 Q Did you get some information from Investigator Joe
17 Clarke, with the Richland County Sheriff's
18 Department?

19 A I did.

20 Q And did you actually obtain copies of warrants for
21 Mr. Anthony Markale Porterfield?

22 A I did.

23 Q Once you got those warrants, what, if anything, did
24 your team do as far as on the -- I believe you
25 started looking for him on the morning of the 18th?

1 A We did.

2 Q Can you tell the jury what you did?

3 A Our general course of action at that point is to
4 try to develop as much of a background information
5 as we possibly can about an individual that we're
6 looking for: Family, friends, jobs, associations.
7 Anything to try to narrow down the location of
8 somebody.

9 At some point we had received some information
10 about a possible place of employment, which was
11 located off of Commerce Drive off of Farrow Road,
12 near Farrow Road and I-20 intersection. And that
13 was the first location that we went in an attempt
14 to locate the Defendant.

15 Q Approximately what time of the day was it on
16 July the 18th that you went there?

17 A That was sometime probably right around 11:00 in
18 the morning, maybe slightly a little bit before.
19 That at one time used to be the old Mayflower
20 moving warehouse. It is a big, huge concrete
21 warehouse structure. I'm not sure what it is now.

22 Q Okay. Once you got there, what, if anything, did
23 you observe?

24 A Soon as we entered the complex we observed some
25 individuals off to our right. It was at a, like a

1 picnic table area. I think I remember one of those
2 portable basketball goals that appeared to be an
3 area that maybe the employees took their breaks.
4 And to the left was what looked like an office,
5 supervisor's office area. And that is where I went
6 in to make contact with somebody on-site.

7 Q And were you able to make contact with the
8 supervisor there on-site that day?

9 A I did.

10 Q And what, if any, information were you able to get
11 about the Defendant's whereabouts there at that
12 location?

13 A I was told that he was an employee there. And
14 unfortunately for us we just missed him by 10 or 15
15 minutes. He had left with another individual to go
16 to lunch. They took lunch a lot earlier than what
17 we were expecting.

18 Q And as you were leaving that business there, did
19 you observe anything that caught your attention?

20 A Several of the individuals at the -- it was
21 probably maybe around four to six individuals still
22 at this picnic table area that was off to the side
23 by the fence of the complex.

24 I'd like to add, when we got out -- although
25 our cars are unmarked, they were plain cars. We

1 got out tactically dressed to make an arrest. We
2 had a tactical vest on, Sheriff's Department in
3 large gold lettering on the front and the back,
4 guns visible. No mistake that we are the police
5 and law enforcement.

6 Obviously that drew the attention of everybody
7 in that area. They are all staring at us. A lot
8 of them were on phones, texting, I guess.

9 Q Once you left there, did you try any other
10 locations to try to find the Defendant?

11 A Later on that day we did.

12 Q And what location was that, sir?

13 A That was -- I may be mispronouncing this --
14 Street in Columbia. That is in
15 the Columbia College area.

16 Q Uh-huh.

17 A Richland County.

18 Q Okay. And what type of structure was this? Was
19 this a business?

20 A No, this was a residence.

21 Q And when you got to the residence on -- I don't
22 know how to say it -- it is ?

23 A One of the reports had correct.

24 Q Okay. Once you got to that residence, what, if
25 anything, did you observe when you first pulled up?

1 A This is one of those large older homes down in that
2 Columbia College area. Probably been there 100
3 years or more. It is huge. We received
4 information that led us to believe the Defendant
5 was located inside that home.

6 One of the first things I noticed that kind of
7 caused me some concerns is from the outside it
8 appeared that maybe this home -- which is typical
9 in this area -- has now been converted to a
10 multi-residence home and is no longer just a single
11 residence home.

12 It appeared to have a side entrance separate
13 from the front entrance. It appeared to have a
14 newer or more modern addition onto the back. You
15 could tell it didn't match the architectural style
16 of the home. It was different.

17 So right there that kind of threw us off. We
18 really weren't sure which door to go to where we
19 are dealing with multiple residences. And then, if
20 so, which one -- if he was there, which residence
21 would he be in.

22 Q And what did you do?

23 A Tried to surround the house as best we could. It
24 was surrounded by at least a 6-foot high privacy
25 fence. Tried to maintain as best we could visual

1 on the back. And myself and other officers started
2 knocking on what would be considered the front
3 door, the door of the front porch.

4 Q And to be clear, you had other officers with you
5 that day?

6 A Yes. Somewhere in the neighborhood of maybe six to
7 eight; to include a marked K-9 Unit.

8 Q And including a K-9 Unit?

9 A Including a K-9 Unit.

10 Q Once you approached the front door -- and I believe
11 you said you knocked -- what happened?

12 A We were eventually -- the door -- a female
13 eventually came to the door. We identified
14 ourselves as law enforcement officers. Told her we
15 were looking for the Defendant, Mr. Porterfield.
16 Asked her if he was there.

17 She first stated no, although her body
18 language suggested otherwise. Based on my
19 experience, she seemed to be extremely nervous.
20 She kept -- her eyes kept glancing in -- she's got
21 the door to her back -- the entrance to the home to
22 her back. She keeps glancing back into the back of
23 the house as she is telling us he is not there.

24 This is when we -- we always -- this is
25 standard with us -- we always tell the individuals,

1 We have a warrant for this person's arrest. We are
2 looking to serve this warrant. If you are
3 withholding information or we find that you are
4 hiding him, you can possibly be charged too.

5 Usually, and in this case, this was at this
6 point -- and this went on for maybe three or four
7 minutes -- she did admit that he was inside the
8 home.

9 Q Once she admitted that he was inside the home,
10 what, if anything, did you and the other officers
11 do?

12 A There were a couple of other people in the home
13 that I recall. We called them out. Got them out.
14 Got them secured on the porch. Our K-9 Unit came
15 to the front door. We advised him of what had
16 happened. And then we began to do what we call a
17 call-out. We loudly announce our presence. We
18 tell them, It is the Sheriff's Department. Come
19 out with your hands up. We announce we have a K-9
20 ready. We tell them if you don't come out we are
21 going to send the K-9 in. And we are just
22 constantly yelling these commands, and then we wait
23 to see what happens.

24 Q And did anyone emerge after you had yelled these
25 commands for a period of time?

1 A No.

2 Q So what did you do next?

3 A At that point then the K-9 -- the tactical standard
4 procedure is the K-9 takes the lead. And we began
5 basic -- a basic room-to-room search. Throughout
6 the entire time, before we enter whatever the next
7 room is, again, yelling out commands: Sheriff's
8 Department, Sheriff's Department, let's see your
9 hands, let's see your hands, come out with your
10 hands up, K-9 -- we are going to send a K-9 in.
11 And this goes on from room to room to room to room
12 until we clear whatever structure it is that we're
13 clearing at that time.

14 Q And when you say the words "you cleared whatever
15 structure," what does that mean?

16 A Meaning that we didn't find anybody in whatever
17 that specific room is. We search one room at a
18 time. And when we clear it and we know that there
19 is no one there that poses a threat to us, we will
20 then proceed on to the next room.

21 Q And y'all did that room-by-room in this house?

22 A Correct.

23 Q And were you able to find the Defendant?

24 A Not at that point. Not inside any of the rooms.

25 Q So what did you notice on your going through room

1 to room?

2 A At some point we came to a bathroom, which was
3 located -- if you are looking at the front of the
4 house at the front porch, which was located on the
5 right side of the home, you notice that the window
6 was open and up. And I remember seeing the screen,
7 or a portion of the screen, lying on the ground
8 outside of the home.

9 Q Was that significant to y'all at that point?

10 A It is an indication to me in my experience that
11 somebody had jumped out that window very recently.

12 Q With that information, what did y'all do?

13 A We did finish clearing the house and came back out
14 to the front porch area and began to speak to
15 several of the individuals there, asking them again
16 if they knew where he was at.

17 K-9 Officer Cavanaugh took his K-9 to the
18 backyard area to have him examine that area where
19 the screen was to see if the dog could establish a
20 track, his dog, Chico.

21 One of the other agents informed me that he
22 saw what he believed was one of the females looking
23 or speaking towards one of the foundation vents
24 that provide ventilation under homes, so we left
25 some officers there to stay with those individuals.

1 Myself and several other officers ran around
2 the back and immediately began to crawl under the
3 home.

4 Q And did you actually crawl under the home yourself?

5 A I did.

6 Q Were other officers with you?

7 A It was myself, Officer -- K-9 Officer Cavanaugh,
8 Investigator Justin Britt, and Agent Mike Robinson,
9 with SLED.

10 Q Once you got under the home, did y'all continue to
11 say anything?

12 A Yes. Yelling the same commands we were saying
13 inside. We initially entered underneath the home
14 under the crawl space for what I would call this
15 newer addition, because it was more of a modern
16 crawl space, kind of -- we were on our hands and
17 knees maybe just a few inches lower, but it is
18 still very accessible without much effort.

19 We completely went through that and got to
20 what I would call the original foundation of the
21 home. And there was a very small entrance,
22 maybe -- I don't know, maybe a foot and a half,
23 two feet at the most wide entrance, and the crawl
24 space for the original part of the home was maybe a
25 foot and a half -- if that -- high. It was very

1 confined.

2 K-9 Officer Cavanaugh was the first officer,
3 along with his dog, Chico, was the first officer to
4 go in. All the time yelling commands: Come out.
5 Come out. Let us see your hands. We are going to
6 release the dog.

7 I believe it was Investigator Britt was next.
8 And Agent Robinson was in the process of just about
9 starting to go underneath the original foundation
10 when I believe it was Investigator Britt started:
11 Back up, back up, get out, because K-9 Officer
12 Cavanaugh had released his dog, he was off the
13 leash. And so for safety purposes. The dogs don't
14 realize and they don't recognize uniforms, they
15 just recognize their one handler and that's it, so
16 we needed to leave the crawl space.

17 Q And once the dog is released, what is the purpose
18 in that?

19 A To achieve an apprehension and to try to make sure
20 that we can get an apprehension on whoever it is in
21 the safest possible manner.

22 Q Prior to releasing the dog, were any -- did you
23 inform anyone or try to inform anyone that may be
24 under the house that the dog was there.

25 A Yes.

1 Q And in fact --

2 A Many, many, many times. And the dog is barking.

3 He is going crazy at the same time.

4 There is no possible way that anybody inside,
5 outside on the street, or underneath that home
6 could not know we had a K-9 with us that day.

7 Q Once the dog was released, what area did he go to?

8 A He immediately went under the house. It was more
9 towards what would be the front area of the home,
10 the front porch area of the home, and contacted the
11 Defendant, who I think had crawled just about as
12 far as you could physically crawl under that home.

13 Q At some point is the Defendant retrieved from
14 underneath the house?

15 A He was. At this point, since we had backed out due
16 to the dog being released off the leash, it is my
17 understanding he yelled to Cavanaugh something to
18 the effect of: I'm coming out, I'm coming out, get
19 him off me.

20 The dog was retreating, taking issues of
21 commandments, which that dog will then come back to
22 its owner, its handler, which he did. He secured
23 him on his leash, and then we -- everybody backed
24 out.

25 Q And the Defendant actually eventually emerged on

1 his own?

2 A He did.

3 Q After the dog was sent out?

4 A Correct. Made contact --

5 Q Did the dog hurt him in any way?

6 A He bit him on -- I think it is the left arm. I
7 remember the arm/elbow area. It was not a severe,
8 significant bite. It didn't require stitches. It
9 is standard procedure we did call EMS to the scene
10 and he was just treated at the scene for the dog
11 bite puncture.

12 Q So y'all did get him care for any wounds?

13 A Yes, we did.

14 Q For the dog bite?

15 A Uh-huh.

16 Q And it was treated at the scene by EMS?

17 A Correct.

18 Q So he did not require to be transported to the
19 hospital for that wound?

20 A Not for that specific wound, no.

21 Q But later, after EMS got there, did the Defendant
22 then request to be transported for other reasons?

23 A He did. He stated he was having chest pains. So
24 obviously we're not doctors. He was transported to
25 the emergency room for treatment or examination by

1 a physician under our custody.

2 Q And did anyone escort him -- at some point was he
3 formally placed under arrest? How did that occur?

4 A He was placed under arrest as soon as we could get
5 our hands on him out from underneath the crawl
6 space. Handcuffed, placed under arrest.

7 Q And at that point he is lawfully arrested?

8 A Yes, sir.

9 Q Did anyone accompany him to the hospital when he
10 was transported by EMS?

11 A Myself and I believe Investigator Britt and Agent
12 Robinson. I'm not positive on those two.

13 Q Okay.

14 A I know I went -- I remember I went to the hospital.

15 Q And once you got to the hospital, was the Defendant
16 treated for these chest pains?

17 A He was.

18 Q And was he kept for a period of time at hospital?

19 A I believe he was released later on that night. I'm
20 not sure because I did not have -- at this point I
21 was -- I did not have to stay with him until the
22 conclusion of his medical treatment. He was turned
23 over to another officer, and I eventually left the
24 hospital.

25 Q While you were there at the hospital, though, still

1 accompanying him, did Investigator Joe Clarke show
2 up?

3 A He did. En route to the hospital, I, of course,
4 contacted Investigator Clarke, who was the chief
5 case agent in this case, and informed him we had
6 made the arrest of the individual in his case.
7 Told him what had happened about the chest pains
8 and that we were en route to the hospital. And he
9 later met me down there at Richland Memorial ER.

10 Q And once Investigator Clarke got there, did he make
11 contact with the Defendant in the case?

12 A He did. We were in like a little triage area.

13 Q Like in the emergency room part?

14 A Yes, ma'am.

15 Q And once he got there, did he advise the Defendant
16 of any rights, or anything of that nature?

17 A He did.

18 Q And did the Defendant acknowledge what his rights
19 were?

20 A He did.

21 Q And at that point, Investigator Clarke briefly
22 questioned him?

23 A I'm sorry?

24 Q Investigator Clarke briefly questioned the
25 Defendant?

1 A Yes. Yes.

2 Q And you were present for all that?

3 A I was.

4 Q The area where you said the house was where you
5 found the Defendant -- I want to show you what has
6 been marked as State's Exhibit No. 31. Do you
7 recognize this?

8 A Yes, ma'am.

9 Q And does this fairly and accurately show -- this
10 came off the internet actually -- the address on
11 the Luvalie -- I call it Luvalie, I don't know how
12 to say it --

13 A Yes, it does.

14 Q -- Street?

15 MS. CAMPBELL: Your Honor, at this time we
16 offer State's Exhibit 31.

17 THE COURT: 31?

18 MS. CAMPBELL: Yes, sir.

19 MR. BANK: Without objection.

20 THE COURT: State's 31 is in evidence.
21 (WHEREUPON, State's Exhibit No. 31 was
22 marked for identification and received
23 into evidence.)

24 BY MS. CAMPBELL:

25 Q Before I get you down, there are some photographs

1 actually taken of the same area. State's Exhibit
2 27, 28, 29, and 30, do these fairly and accurately
3 represent the area of the house where you found
4 him?

5 A Yes, ma'am, it does. It is the house, as well as a
6 photo of the corner street sign for that street
7 that runs off Charlton.

8 Q And I believe those were taken by Investigator
9 Clarke, but that is the area where you went that
10 day?

11 A Yes, ma'am. That is the house.

12 MS. CAMPBELL: Your Honor, at this time I
13 would offer these into evidence. They are in black
14 and white, but they are the same ones I handed over
15 earlier.

16 They are the same ones you have.

17 MR. BANK: Without objection.

18 THE COURT: States 27, 28, 29, 30, in
19 evidence, without objection.

20 (WHEREUPON, State's Exhibit Nos. 27-30
21 were marked for identification and
22 received into evidence.)

23 MS. CAMPBELL: Your Honor, may the witness
24 step down?

25 THE COURT: Yes, sir, you may.

1 (Witness steps down.)

2 BY MS. CAMPBELL:

3 Q And if you can just come over on this side for the
4 court reporter and just speak fairly loudly.

5 State's Exhibit Number 31, what does this
6 show, sir?

7 A This is an aerial view. I guess I would commonly
8 refer to it as kind of a Google Map aerial view of
9 the house where we located the Defendant.

10 Q And you mentioned that as a corner. I show you
11 State's Exhibit Number 27. That is a street sign?

12 A Correct.

13 Q And is that the corner where the house is located?

14 A It is. This is Charleston -- I'm sorry, Charlton
15 here. This is a long street coming here. This
16 Luvalle[sic] Street is the small cross street. And
17 you'll notice this is -- it is a corner lot. So
18 the street -- you've got one street in front of the
19 house with the front porch area, and then going
20 on -- if you are looking at the house, it would be
21 the left side of the house had the side street.

22 This is also the side entrance I was
23 discussing that appeared to me at least to look
24 like maybe they had separated that home into
25 multiple residences.

1 Q I am going to show you what has been marked as
2 State's Exhibit Number 28. What area -- and these
3 are in black and white?

4 A Yes.

5 Q All right. What area does this show?

6 A That is -- you are -- the perspective of that is
7 more of a corner. It is someone standing in the
8 street more taking a picture this way of that home.

9 Q And you mentioned a side entrance, I believe,
10 State's Exhibit No. 29?

11 A Yes. This is -- from -- the perspective of this
12 photo now is somebody standing pretty much right
13 here taking a picture of the house this way. It
14 shows more of a side. This is that large privacy
15 fence. This went all the way down the side, back,
16 and then this side too, and then hooked back into
17 the corner of the house as well. So the entire
18 back yard was surrounded by this privacy fence.
19 That kind of gave us a little problem without
20 making sure -- when somebody came out there it made
21 it difficult for us to see.

22 Q State's Exhibit No. 30, does that show the fence as
23 well as the addition you were talking about?

24 A It does. And this is -- again, if you -- when you
25 look at the house in its whole, this really sticks

1 out as being different. It is a two-story. The
2 rest of the house is not as tall. It seems or
3 appears from the street as you drive by to be a
4 newer addition. And this is where we originally
5 entered at the extreme back near the steps. We
6 crawled under the crawl space. With the original
7 home foundation is where it really got tight.

8 Q And y'all made entrance under the home where?

9 A At the true back of the house, kind of around where
10 these steps would come down.

11 Q In this area?

12 A Yes.

13 Q And, again, the area under this was fairly easy to
14 navigate?

15 A Fairly easy.

16 Q But then the lower part of the house --

17 A Yes, the lower part of what I would call the
18 original house, if you are coming up to it from the
19 street to the front porch, that crawl space is
20 extremely tight and low.

21 Q And I believe the front porch, you are talking
22 about where people were standing over here?

23 A That is part of it, yes.

24 Q Part of it. The corner?

25 A You can see the edge of it.

1 Q Thank you.

2 (Witness seated.)

3 Q And you have already testified, once he got to the
4 hospital, he was then turned over to other
5 officers?

6 A I believe it was Investigator Clarke. At that
7 point I don't believe we had actually begun what we
8 refer to as a hospital rotation where we will
9 actually set uniform patrol officers to guard
10 prisoners that are receiving care.

11 Q And the person that you found hiding underneath the
12 foundation near where the window was pushed out, or
13 the screen, do you see him here in the courtroom?

14 A It is the Defendant seated at the Defense table.

15 Q Has his appearance changed somewhat?

16 A Somewhat. His hair is a little longer.

17 Q And that day when he came out from underneath the
18 foundation, what was his appearance like as far as
19 how he appeared?

20 A Well, it is July in Columbia, so we are all soaking
21 wet at this point. We are completely drenched in
22 sweat. We have been underneath this house. Of
23 course it is a dirt foundation. The Defendant, as
24 well as all of my officers, were just completely
25 covered in sand and dirt. It was like glitter and

1 glue. We were all stuck to it. It was in his
2 hair. Cobwebs. We were all a mess.

3 Q Thank you. Thank you, sir.

4 MS. CAMPBELL: I don't have anything further.

5 THE COURT: Thank you, Solicitor.

6 Mr. Bank?

7 MR. BANK: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BANK:

10 Q Sergeant Caldwell; is that correct?

11 A Yes, sir.

12 Q How are you today?

13 A Doing good.

14 Q Now, what you are testifying to today is just off
15 of memory; is that correct?

16 A Memory and several notes.

17 Q You do have notes?

18 A Yes.

19 Q That you took down?

20 A No. These are Investigator Clarke's notes and
21 Agent -- or K-9 Officer Cavanaugh's notes.

22 Q Okay. So you didn't take any notes in this case?

23 A No.

24 Q And this incident -- or this arrest happened about
25 two and a half years ago, July of 2012?

1 A Correct.

2 Q And, just to be clear, you weren't involved with
3 the investigation or anything, your role was just
4 to -- you were told you need to arrest somebody and
5 y'all go out and find that person?

6 A That is correct. The only details of a case that
7 we are interested in would be the details of maybe
8 associations that would help us locate somebody.
9 Rarely do the specific facts of a case or an
10 incident involve anything that would be of use to
11 me in my specific job at that time.

12 Q Now, on this case Mr. Porterfield was under the
13 house, but he hadn't left the property; right?

14 A No, sir, he had not.

15 Q He hadn't tried to leave the jurisdiction of, say,
16 Richland County or anything; right?

17 A Not from the moment we got to the home.

18 Q Right. Well, y'all were looking for him within
19 Richland County; correct?

20 A Yes.

21 Q That is where this house was that you went to;
22 correct?

23 A It was.

24 Q And y'all's search had begun just that morning;
25 right?

1 A Yes, sir.

2 Q And y'all found him by the afternoon?

3 A Yes, sir.

4 Q So it wasn't anything that took days and days or
5 weeks to find him?

6 A No, no, no.

7 Q Are there situations like that when you run into
8 that?

9 A Yes.

10 Q Where it takes weeks to find somebody?

11 A Yes.

12 Q Now, you said there were multiple officers and at
13 least one K-9 Unit at the scene; is that right?

14 A Well, there was one K-9 Unit.

15 Q Okay. And about how many officers would you say
16 all together, both inside and outside the house?

17 A Somewhere in the neighborhood of six to eight. It
18 is a task force, so there were a combination of
19 Richland County sheriff's deputies, like myself, as
20 well as the SLED's Fugitive Team. We work as one
21 team with a common goal of locating a wanted
22 individual. So we're working together as partners
23 even though we are from different agencies.

24 Q And in these kind of situations -- because you
25 don't know what you might be walking into -- y'all

1 were fully prepared with vests and guns and all the
2 equipment you can use to -- in case something goes
3 wrong; is that right?

4 A Yes, sir.

5 Q It is very apparent that y'all are police officers?

6 A Yes, sir.

7 Q Would you say that you looked more like the
8 wardrobe of a police officer in a patrol car or
9 more like what we might think of as like a SWAT
10 Team?

11 A No, we're more -- I wouldn't go so far as SWAT
12 Team. We don't wear helmets and we are not in
13 uniform. And we are all wearing blue jeans. It is
14 more of what you would commonly see, if I have to
15 relate it to a TV scenario, would be the narcotics
16 officers. We are blue jeans, but from the waist up
17 we're fully marked, tactical RAID gear, Deputy
18 Sheriff in large gold letters front and back.
19 Weapons are visible, thigh or waist holsters. They
20 are not concealed in any way.

21 Our cars not being unmarked I still don't
22 think are truly unknown to a lot of people. When
23 you get a lot of guys like us dressed the way we
24 are in Tahoes and Suburbans, it is pretty clear
25 that we're somebody from the government and

1 somebody from law enforcement.

2 Q And you mentioned something about not just guns on
3 holsters. So y'all don't just have like a normal
4 patrol officer might have, the one that fits on a
5 holster, y'all might have guns that require two
6 hands? Are the guns pulled? Or what kind of guns?

7 A As far as -- I'll just speak to -- there were no
8 long weapons that I can recall on this scene this
9 day.

10 As far as Richland County Sheriff's
11 Department, the only long guns that we would ever
12 utilize -- and it is very rarely -- would be
13 shotguns.

14 Q Okay. Did SLED have any longer --

15 A Not that I can recall. They do have them. They
16 are issued to them. I don't recall any of the SLED
17 agents that I was with that day having out long
18 guns.

19 This is one of the specific reasons why we
20 generally don't carry long guns. In this
21 environment it wasn't needed. We're close. Close
22 combat. We are crawling under houses. You can't
23 really do much with a rifle. It is more of a
24 takeaway at that point. Your pistol is your best
25 find.

1 Q And, just to be clear, nothing in this day or
2 event -- y'all might have been prepared for it, but
3 there was no actual combat on this day with
4 officers physically having to restrain or fight
5 with anybody?

6 A No. As a result of the K-9, there was not.

7 Q So back to the weapons. Whatever weapons y'all do
8 have, whether it was the long ones or the short
9 ones, they are out; is that correct?

10 A Yes .

11 Q And I think you testified that everybody was
12 yelling; is that right?

13 A Correct.

14 Q And dogs were barking?

15 A Dogs were barking.

16 Q Excuse me, the one dog was barking?

17 A Dog.

18 Q That would be apparent to anybody in the house,
19 under the house, anywhere around, that law
20 enforcement was clearly there to anybody that was
21 inside or around the house; right?

22 A We generally attract a crowd if there is neighbors
23 around.

24 Q A great deal of attention?

25 A Uh-huh.

1 Q Thank you, sir.

2 MR. BANK: No further questions.

3 THE COURT: Redirect, Solicitor?

4 REDIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q To be clear, everyone else that was in the house,
7 once you went up and knocked on the front door and
8 said who you were, came out willingly?

9 A Correct.

10 Q And that was more than one person?

11 A Yes, ma'am. I believe -- I believe it was three.
12 It was the initial female that opened the door that
13 I spoke to. And I believe there were two -- and
14 then we found out that there were two other
15 individuals in what I will refer to as the living
16 room or great room area of the home that came out.

17 Q And he also talked to you about what you actually
18 said to the Defendant that day. Did you know any
19 details of the case to give him any information?

20 A No. Well, other than what was in the warrants.

21 Q Other than that was in the warrants. And
22 specifically that was the only information you had,
23 so you never had -- you never related to him any
24 kind of time of day this occurred?

25 A No. In fact, at that point I wouldn't have known.

1 Q And, in fact, while you were with Investigator
2 Clarke, he never relayed what time of day this
3 occurred?

4 MR. BANK: Objection, Your Honor.

5 MS. CAMPBELL: You asked questions about
6 details.

7 MR. BANK: I don't believe I asked about
8 anything about the 2:00 o'clock or anything. I
9 just asked if he was involved in the investigation
10 or if he was involved in the arrest. He said he
11 was involved in the arrest, and that was the end
12 of -- that was the extent of that question.

13 THE COURT: I sustain the objection.

14 BY MS. CAMPBELL:

15 Q You weren't able to give him any information?

16 A No, I was not.

17 THE COURT: Recross?

18 MR. BANK: No, Your Honor.

19 THE COURT: Thank you.

20 Thank you, Sergeant. You may step down.

21 (Witness steps down.)

22 THE COURT: All right. You may call your next
23 witness.

24 MS. CAMPBELL: The State would call John
25 Barron, Your Honor.

1 THE COURT: All right. Mr. Barron, if you
2 would come around and be sworn, please.

3 (Witness approaches.)

4 THE BAILIFF: Place your left hand on the
5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you solemnly swear or affirm
8 that the testimony you are about to give in this
9 case will be the truth, the whole truth, and
10 nothing but the truth, so help you God?

11 THE WITNESS: Yes, I do.

12 THE CLERK: Please have a seat.

13 (Witness complies.)

14 THE CLERK: And state your full name for the
15 record.

16 THE WITNESS: My name is John Barron,
17 B-A-R-R-O-N.

18 JOHN BARRON,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. CAMPBELL:

22 Q Sir, where are you employed?

23 A Richland County Sheriff's Department.

24 Q And what do you do there, sir?

25 A I'm a DNA analyst.

1 Q As a DNA analyst, what do your duties include?

2 A My duties include taking evidence in that has been
3 collected at crime scenes or from individuals and
4 process them for DNA, extract it, quantitate it,
5 develop DNA profiles, and do comparisons, enter it
6 into the offender -- or combined offender database
7 that is both statewide and national to see if any
8 DNA that is developed may hit someone who has
9 already committed a crime, and to report back any
10 results to our investigators, and to write reports
11 as of our findings, and submit them.

12 Q Can you tell this jury a little bit about your
13 education and training?

14 A Yes. I have a bachelor of science degree in
15 microbiology from Clemson University. I began my
16 career in forensic science at the State Law
17 Enforcement Division, otherwise known as SLED,
18 where I was qualified in various forms of forensic
19 science.

20 In 1999 I began training in the present
21 technology in DNA analysis. And subsequent to
22 that, or as part of that training, I received -- or
23 attended and successfully completed two graduate
24 level courses at the University of South Carolina.
25 One in statistics and one in molecular biology as

1 it related to DNA.

2 I became court qualified at SLED and testified
3 several times as a DNA expert. In 2004 myself and
4 another DNA expert from SLED came to Richland
5 County and set up a DNA laboratory for Sheriff
6 Lott. About nine to ten months later we became a
7 nationally accredited DNA laboratory. And in 2005
8 we began doing DNA analysis and reporting the
9 results and testifying on them since.

10 Since that time, I have probably testified on
11 my results of DNA as a DNA expert approximately 60
12 times.

13 MS. CAMPBELL: Your Honor, at this time I
14 would offer him as an expert in DNA analysis.

15 MR. TATE: Without objection, Your Honor.

16 THE COURT: Mr. Tate.

17 Mr. Foreman, and ladies and gentlemen of the
18 jury, normally a person cannot give opinion
19 testimony. Normally when a person testifies they
20 must testify as to what they either saw, heard, or
21 smelled, or something of that nature.

22 However, there is an exception when someone is
23 qualified because of education, experience, and
24 training in a particular area, subject, art, or
25 profession. If the Court qualifies them that way,

1 they may give their opinion testimony and the basis
2 of their opinion.

3 This witness, Agent John Barron, will be
4 qualified in the area of DNA analysis to give
5 opinion testimony in that area. It does not mean
6 that you must accept the opinion. It is evidence
7 for you to use in any way you deem appropriate.

8 Thank you, Solicitor. You may continue.

9 MS. CAMPBELL: May it please the Court?

10 BY MS. CAMPBELL:

11 Q I want to turn your attention to this case. Did
12 you receive certain evidence in this case?

13 A Yes, I did.

14 Q And what items did you receive for testing?

15 A I received three swabs from the scene of the crime,
16 I assume. One from the table, one from the TV
17 stand, and one from an AV cable, an audio/video
18 cable, probably used to connect some electronic
19 equipment.

20 Q And did you also later receive what is known as a
21 buccal swab from the Defendant in this case,
22 Anthony Porterfield?

23 A Correct. Subsequent to submitting notification
24 that I had found DNA on the evidence, a buccal swab
25 from the Defendant, Anthony Porterfield, was

1 submitted for comparison.

2 Q And when you say a buccal swab and I use the term
3 "known standard," basically tell the jury what a
4 buccal swab is, how it is collected, and what the
5 purpose is.

6 A Yes. A sterile swab is used to collect DNA from
7 the inside of your mouth from the buccal cells
8 inside your cheek and gum area.

9 This is just a non-intrusive way of collecting
10 your known DNA sample so we can develop your known
11 DNA profile rather than drawing blood, which is
12 much more intrusive.

13 And so since DNA is the same throughout your
14 body whether it comes from your blood or whether it
15 comes from skin cells or tissue or hair or any part
16 of your body that contains nucleated cells, it
17 doesn't matter, it is still going to be consistent
18 with who you are.

19 Q All right. I also ask you, typically in talking
20 about crime scenes, traditionally -- kind of like
21 the old way they did DNA -- traditionally how
22 was -- what type of information at a crime scene
23 did you have to have before you were able to test
24 for DNA?

25 A In the original DNA technology developed in the

1 late '80s and used at SLED up until the year
2 1999/2000, it required a lot of DNA. Typically we
3 needed a fairly large blood stain, say about the
4 size of a quarter, or a seminal stain that
5 contained a lot of DNA from sperm cells to get a
6 profile, as well as a blood standard from the
7 people involved.

8 Q And at a crime scene, you were talking about what
9 we refer to as body fluids that are left at a crime
10 scene?

11 A That's correct.

12 Q And since then, though, has technology become a
13 little more sensitive?

14 A Extremely more sensitive.

15 Q And has that aided in your investigation as well as
16 some ways can -- I don't want to say mislead a
17 jury, but -- how can you test for it now?

18 A Like I said, DNA can be developed from any
19 nucleated cell in your body since your skin cells
20 have nucleated cells.

21 The test, the DNA testing that we do now, is
22 so sensitive that approximately six to eight cells
23 of your body left at a crime scene can develop a
24 DNA profile.

25 And so now we can take samples such as in this

1 case, you know, swabs from tables and tables where
2 people have touched and possibly develop a DNA
3 profile from a suspect involved in a crime..

4 Q And whenever you are testing for DNA, can you tell
5 how long -- if you find DNA, can you tell how long
6 it has actually been there when it is collected?

7 A In case of a touch DNA, absolutely not. With
8 blood, perhaps if it is still wet, you might
9 consider the fact that it has been deposited
10 recently.

11 Q Say, though, that if I own something and install
12 something, say, a year ago and it remains
13 undisturbed, can my DNA still be there?

14 A Yes, it can. DNA is a very stable molecule.

15 Q And in addition to that, you also mentioned that
16 touch -- called touch DNA -- if I go up and touch
17 something, you said there is a possibility I may
18 leave DNA there. What are the factors involved
19 with that?

20 A Well, there is a lot of factors involved. It
21 depends on the surface area, how slick it is, how
22 long you stay in contact with it, how often do you
23 touch it, how often do you rub up against it. Some
24 people have a tendency to shed more skin cells than
25 others. For instance, some people have a lot more

1 dandruff than other people. That is skin cells.

2 So all those factors are basically unknown.

3 Simply the officers collecting evidence at a
4 crime scene are going to attempt to collect
5 anything that might possibly have been touched by
6 the perpetrator in the crime. Or if there is any
7 body fluids, of course they are going to collect
8 that as well. And if they leave any material that
9 they have worn, skin cells can be left there as
10 well. Or if they smoke a cigarette, drink a drink
11 out of the refrigerator and leave it. Anything you
12 put your mouth on possibly could have DNA profiles
13 on it.

14 And so in this case, evidently the only thing
15 they thought was probative would be swabs from
16 these three areas.

17 Q Was there any evidence that any of these swabs had
18 any type of body fluid such as semen or blood, or
19 anything like that?

20 A Nope.

21 Q So these were merely an attempt to get touch DNA?

22 A Well, based upon the quantity of DNA that I found
23 on these samples, it was consistent with touch DNA
24 and nothing more.

25 Q And, again, as a fingerprint, if I go up and touch

1 something or even grab an object, am I necessarily
2 going to leave my DNA there?

3 A Not necessarily, no.

4 Q And am I going to eradicate anyone else's DNA that
5 is already there?

6 A No. You are going to add to it.

7 Q And in this case, what were the results needed for
8 testing on these three swabs?

9 A All three swabs did have sufficient DNA that
10 developed some results. And they were all three
11 mixtures. In other words, multiple people had left
12 their DNA on these objects, which is consistent
13 with these types of objects: Tables, TV stands,
14 cables.

15 Q And if a family of five lives in a home, would you
16 expect to find what we are referring to as
17 mixtures?

18 A I would.

19 Q And also in this case, if one or more persons are
20 involved in committing the crime, one person's DNA
21 may be there while the other one is not?

22 A Yes.

23 Q And in this case was Anthony Porterfield's DNA
24 excluded as being a possible contributor to the DNA
25 samples that were submitted?

1 A That's correct. I developed a DNA profile for
2 Anthony Porterfield and excluded him as a possible
3 donor of the DNA found on each of these items.

4 Q Which meant either that if he touched it, he didn't
5 leave DNA, or that he never touched the item?

6 A That's correct.

7 Q And that would be possible for anyone committing
8 this crime?

9 A Yes.

10 Q Thank you.

11 MS. CAMPBELL: I have no further questions.

12 THE COURT: All right. Mr. Tate?

13 MR. TATE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. TATE:

16 Q Mr. Barron, thank you for coming out this
17 afternoon.

18 A Uh-huh.

19 Q When you talked about the technique -- if you don't
20 mind, I am going to walk up and look at a few
21 exhibits that are already introduced while I speak.

22 I believe when you talked about the changes in
23 technology, that would be very similar to PCR
24 technique?

25 A PCR technique is the technique that was -- came on

1 board in DNA analysis in 1999/2000 at SLED. Some
2 agencies got it a little earlier than that. That
3 is when it was developed and confirmed to be a
4 viable DNA analysis tool at SLED, where I was
5 trained.

6 Q Developed by Dr. Kary Mullis, I believe, a Dreher
7 High School graduate?

8 A Yes, he went to Dreher High School. Originally he
9 was from North Carolina.

10 Q And won a Pulitzer Prize in '93, if I remember
11 correctly?

12 A Uh-huh.

13 Q As to -- I believe it was your testimony that touch
14 or contact DNA is the same thing, when we use those
15 terms as lay people or police officers?

16 A Yes. We can use various terms, but basically it is
17 skin cells left when you handle an object or touch
18 an object.

19 Q And you would agree with me that neither blood,
20 saliva, nor semen are necessary for a sufficient
21 sample to be left for you to -- using one of these
22 approved techniques -- find DNA?

23 A That is good news that we can now find DNA on just
24 a few cells.

25 Q And I believe you prepared a report, did you not?

1 A I did.

2 Q Okay.

3 MR. TATE: And I will have to beg the Court's
4 indulgence to get an exhibit sticker and see where
5 we are as to how far we have gotten up to in the
6 Defense exhibits. I apologize.

7 THE COURT REPORTER: It is Number 17.

8 MR. TATE: Thank you very much.

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

11 BY MR. TATE:

12 Q Mr. Barron, I hand you what has been marked as
13 State's[sic] Exhibit 17 for the purposes of
14 identification. I ask you if you recognize that?

15 A Yes. It is a copy of the original that I'm holding
16 in my hand.

17 Q Okay. And did you prepare that report?

18 A I did.

19 Q And your -- is that your signature on the bottom?

20 A Yes.

21 Q And is that report accurate as to your findings in
22 this investigation?

23 A It summarizes the results, yes.

24 Q Yes.

25 MR. TATE: Okay, Your Honor, I would move for

1 Defense Exhibit Number 17 into evidence.

2 MS. CAMPBELL: Objection, Your Honor.

3 THE COURT: Objection?

4 MS. CAMPBELL: Yes, sir. To the admission of
5 the actual -- his testimony, of course, is
6 admissible, but the actual report itself is not.

7 THE COURT: All right. Step out, please, Mr.
8 Foreman, and ladies and gentlemen.

9 (WHEREUPON, the jury retires to the jury
10 room at 3:30 p.m.)

11 THE COURT: May I see the offered exhibit? Is
12 it marked?

13 MR. TATE: Yes, Your Honor.

14 (Complies.)

15 THE COURT: On this document there is also
16 three words, a hyphenated word, and another word
17 underlined. Is that part of the report?

18 MR. TATE: I'm sorry, I am trying to see where
19 you are pointing, Your Honor.

20 THE COURT: It has got "non-probative
21 evidence."

22 MR. TATE: No, that was not.

23 THE COURT: And tell me your objection,
24 Solicitor.

25 MS. CAMPBELL: Your Honor, I believe that the

1 Defense -- I mean, the witness's testimony, of
2 course, is admissible. I think a summary of his
3 testimony that would use to aid in his presentation
4 to the jury would be admissible, but I do not
5 believe under the rules that the actual report
6 itself is admissible.

7 THE COURT: Typically I would agree with that,
8 Solicitor, except State v. Taylor, if you have a
9 copy of that, a case out of Charleston, Judge
10 Young.

11 MR. TATE: I'm not familiar with it, Your
12 Honor.

13 THE COURT: March 22, 2013. Do you have a
14 copy of that, Solicitor?

15 MS. CAMPBELL: No, sir, I do not. If you can
16 give me the cite, I can get it quickly.

17 THE COURT: If I can give you what?

18 MS. CAMPBELL: The cite. I will get it.

19 THE COURT: I can give you the opinion number.
20 The way I look it up is -- of course, I look them
21 up by judges. I can remember the judges, but not
22 the counties. I can't remember anything else.

23 It is an appellate case. It is Opinion
24 Number 5084, South Carolina Court of Appeals.
25 Basically the State offered the report of a

1 ballistics agent in that case. I believe 404 S.C.
2 506.

3 The State offered the admission of the SLED
4 report arguing it constituted impermissible
5 bolstering of trial testimony of the SLED firearms
6 tool mark examiner.

7 The judge allowed it, and then later said it
8 wasn't impermissible bolstering because it was the
9 officer's report.

10 I know that is not the foundation of your
11 objection, but I found that case interesting.

12 MS. CAMPBELL: That is interesting.

13 THE COURT: Well, we agree that that is an
14 interesting case. Do you have an opinion about it,
15 Solicitor?

16 MS. CAMPBELL: I'm not familiar with the case,
17 Judge, which is my fault, but as soon as I read it
18 I will have an opinion.

19 THE COURT: Do you want to take a minute to
20 read it?

21 MS. CAMPBELL: Yes, sir.

22 THE COURT: Take just a minute to read it.

23 MR. TATE: Your Honor, if I could, since there
24 was an extraneous mark on that, could I ask the
25 clerk to mark a clean copy? There was an

1 underline. I just want to make sure we are being
2 absolutely --

3 THE COURT: Let's take about a ten-minute
4 recess. Will that give you enough time, Mr. Tate,
5 and Solicitor?

6 MR. TATE: Yes, it should.

7 THE COURT: You may step down, Mr. Barron. Do
8 not discuss your testimony during this brief
9 recess.

10 (Witness steps down.)

11 (WHEREUPON, a break was taken at 3:34
12 p.m.)

13 (WHEREUPON, the proceedings resumed at
14 3:47 p.m.)

15 THE COURT: All right. Solicitor?

16 MS. CAMPBELL: Your Honor, I had a chance to
17 review that case. They do argue the inference of
18 bolstering. They say it is not bolstering. I
19 would argue that it is hearsay. I don't know any
20 exception under which the statement, or the report,
21 which was a statement by this witness, could be
22 offered other than to -- because any prior
23 consistent statement with him would not be
24 admissible pursuant to the rule. If it were a
25 prior inconsistent statement, Your Honor, I think

1 that would be a different matter. Even with a
2 prior inconsistent statement, extrinsic evidence of
3 that would only be admissible if in fact he denied
4 it. And under Rule 613.

5 THE COURT: All right. Thank you.

6 MR. TATE: May it please the Court, Your
7 Honor? The case the Court pointed out is rather
8 interesting because it talks about permissible
9 bolstering of a State's witness.

10 In this case the Defense is using a document
11 provided by the Government to introduce through a
12 Government witness. It is a Government document.
13 The authenticity has not been properly identified.
14 And I think it comes in, Your Honor.

15 THE COURT: All right. I realize that was the
16 argument, improper bolstering, in Taylor. Who knew
17 that the State could offer the report of a witness
18 while the witness is on the stand.

19 I mean, obviously I realize your argument is
20 different, that it would be hearsay, it would be a
21 prior consistent statement.

22 I try to follow the rules as best I can track
23 them and not be a judicial activist. However, I
24 think in this particular instance, since the State
25 was allowed to put it in in that case, although it

1 was a very limited objection, I am going to allow
2 it in this case.

3 So Defense -- what number is it?

4 MR. TATE: I believe it is Number 17, Your
5 Honor. And for the record, during the break we had
6 the report with the extraneous pencil mark removed
7 and a clean copy placed in as Defendant's Exhibit
8 17, Your Honor.

9 THE COURT: Defendant's 17 is entered, subject
10 to objection.

11 (WHEREUPON, Defendant's Exhibit No. 17
12 was admitted into evidence.)

13 THE COURT: For whatever weight and value the
14 Appellate Court may have, should this case ever be
15 appealed for any particular reason, I think it
16 violates State v. Gullledge, and that line of cases,
17 which is impermissible bolstering cases, which are
18 not even cited in Taylor. It puts undue influence
19 on that particular item of evidence. I then don't
20 see why you can't put in a non-expert's report,
21 quite frankly. I don't see why you don't end up
22 trying cases by affidavits.

23 But, be that as it may. Anything further?

24 MS. CAMPBELL: Nothing, Your Honor.

25 THE COURT: Oh, one note. Wait just a minute.

1 I just wanted to share this with you. Here is a
2 note I received when I walked out of the courtroom
3 from our clerk. It is not really a question, but
4 it is a statement from the jury. I will share it
5 with y'all. Since it is not a question, I will not
6 answer it.

7 It is dated 2/25/15. The jury has
8 received expired sodas up to six months.
9 Numbered and signed by the foreperson.
10 For whatever weight and value any of you find
11 as a trial attorney to put on that.

12 MR. TATE: Your Honor, just to make sure I
13 understood, you overruled the objection?

14 THE COURT: I did. I am going to allow it in
15 evidence.

16 MR. TATE: Thank you, Your Honor.

17 THE COURT: Defense 17 is in evidence, subject
18 to objection.

19 Since this isn't a question, I do not intend
20 to answer it. I will advise them that -- I will
21 advise the bailiff, the clerk of court.

22 Thank you very much.

23 Bring us our jury, please.

24 (WHEREUPON, the jury came into open
25 court at 3:53 p.m.)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Thank you, Mr. Bailiff.

3 Thank you, Mr. Tate. Thank you, Solicitor.

4 You may proceed.

5 MR. TATE: Thank you, Your Honor.

6 CROSS-EXAMINATION CONTINUES

7 BY MR. TATE:

8 Q Mr. Barron, we were discussing your report, which
9 is marked as Defendant's Exhibit 17. And there is
10 some language in your conclusion.

11 You say that Anthony Porterfield is excluded
12 from these DNA results. What does that mean? I
13 assume you have copies of the report you are
14 referring to there?

15 A Yes, I have got a copy of that.

16 Q And your bench notes and other such?

17 A Right here.

18 Q Thank you.

19 A You don't need it.

20 Q You got it.

21 A What they mean is the DNA profile from Anthony
22 Porterfield is not included in the DNA result in
23 any of these items. So there is a statistical
24 methodology that we use to determine a likelihood
25 that someone is in a mixture. The likelihood that

1 Anthony Porterfield is in any of these mixtures is
2 zero, which means he is excluded.

3 Q And the last line of your report you said
4 "non-probative evidence." What does that mean to a
5 scientist?

6 A Are you talking about in the footnotes?

7 Q Is that a footnote? Yes, sir.

8 A Yes. That would apply to specific evidence in
9 which you have an asterisk beside it. That is not
10 the case here.

11 Q So there is no reference to that anywhere in the
12 body of your report?

13 A No. Those are general footnotes that we include on
14 all of our reports in case there is a DNA profile
15 developed that is developed that is non-probative,
16 such as DNA from the blood of a victim around the
17 wounds. There would be no need to develop a
18 statistical analysis from that because it is not
19 probative.

20 Q Thank you. Thank you. Is part of your
21 responsibilities also training crime scene
22 technicians in the collection of DNA at crime
23 scenes?

24 A We were involved in that initially back in
25 2004/2005. But they have sufficient training and

1 they are certified nationally as a crime scene
2 laboratory.

3 Q Wow.

4 A They do not need our assistance anymore. If
5 they -- they are free to call us at any time if
6 they have a question. But, other than that, I
7 haven't been to a crime scene in probably eight
8 years.

9 Q Wouldn't you agree with me that police officers and
10 crime scene technicians are trained to search for
11 contact DNA in places where suspects have been,
12 touched, or disturbed articles?

13 A Yes. I'm sure that as part of their investigation
14 of crime scene, interviewing the victims, and
15 things that are disturbed, left behind, identified
16 as not theirs. For instance, a cigarette butt and
17 they don't smoke would be advised to the crime
18 scene person, and of course they are aware of what
19 contains DNA or what could potentially contain DNA,
20 and they would collect it and submit it to the
21 laboratory.

22 Q And you would agree with me that crime scene
23 technicians are also, while in those areas, are
24 asked to search for things that hold DNA evidence
25 better than others based on porosity, textures?

1 A Well, they are advised as to what is best for DNA
2 such as blood, anything that the mouth touches or
3 anything that is warm that is left behind and they
4 assume that it is potential to collect DNA from
5 objects that may have been touched.

6 Q And in this case there are three things on your
7 report, I understand, where samples were taken.
8 And, again, referring to your report, one says a
9 television stand, I believe; one says a table; and
10 one says PV cable, I believe?

11 A That is an AV cable, an audio/visual cable, which
12 could be hooked up to a computer or TV, DVR.

13 Q And if a TV or computer was stolen, it would be
14 consistent with police officer training that that
15 is a good place to look?

16 A Correct.

17 Q Correct? As to the officer's collection, from what
18 you can tell from your bench and your samples, the
19 officers followed good established crime scene
20 procedure when they collected these samples, so you
21 would have a good test?

22 A Well, I got DNA off of each one of them, so I would
23 assume they collected what was there, or most of
24 what was there.

25 Q And, again, referring to the three samples -- and

1 please use your report to refresh your recollection
2 if you need to -- as to Swab 1, taken from the
3 table in the home of the victim, Anthony
4 Porterfield's DNA has a zero percent chance of
5 probability of being present; correct?

6 A That is correct.

7 Q As to Swab 2 on the television stand from the
8 stolen television in the victim's home, the DNA of
9 Anthony Porterfield has a zero percent
10 probability -- none -- of being present in that
11 sample; correct?

12 A That is correct.

13 Q And the same with Swab 3 for the AV cable, Anthony
14 Porterfield's DNA was not collected from the
15 television cable either, was it?

16 A That is correct.

17 Q Thank you, sir.

18 MR. TATE: I don't have any further questions
19 of this witness, Your Honor.

20 THE COURT: Redirect, Solicitor?

21 MS. CAMPBELL: Just a couple of questions,
22 Your Honor.

23 I'm sorry, Mr. Tate, are you through?

24 MR. TATE: Yes.

25 MS. CAMPBELL: Thank you, Your Honor.

1 THE COURT: All right. Solicitor?

2 REDIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q Sir, I think we have gone over this, but just
5 because someone handles an object does not mean
6 that they are necessarily going to leave DNA?

7 A No. They may not leave DNA. Some perpetrators
8 wear gloves, which preclude them from leaving DNA.

9 Q And if their Co-Defendant handled an object --
10 even if they handled an object, they may not leave
11 DNA even if they don't have gloves?

12 A That is correct. We get swabs like this pretty
13 consistently now in the laboratory because of
14 potential, but the vast majority of the time we
15 don't find any suspect's DNA. A lot of times DNA
16 can be attributable to people in the home.

17 Q In the home?

18 A Uh-huh.

19 Q And even if, say, the Co-Defendant handled the
20 item, you wouldn't expect to find his DNA?

21 A Pardon me?

22 Q If the Co-Defendant handled the item, his DNA would
23 be different from Mr. Porterfield's?

24 A Yes, it would.

25 MS. CAMPBELL: Thank you, Your Honor. I don't

1 have anything further.

2 THE COURT: Recross?

3 MR. TATE: Very briefly, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. TATE:

6 Q Mr. Barron, we know whose DNA was not there. Were
7 you submitted any other person's known DNA -- and I
8 will mispronounce this word if I try to do it
9 myself -- but buccal swabs?

10 A That's pretty good.

11 Q Thank you.

12 A You pronounced it correctly.

13 Q Did you check --

14 A No, I did not.

15 Q -- for any other suspect?

16 A I did not.

17 Q Did you check --

18 A The only buccal swab submitted or a known DNA
19 standard from an individual that was submitted was
20 Anthony Porterfield and as to whether or not he was
21 included or excluded from the DNA results I had.
22 And I excluded him.

23 Q Thank you.

24 MR. TATE: I don't have any further questions.

25 THE COURT: Thank you. Thank you, Mr.

1 Barron -- Agent Barron. You may step down. You
2 may be excused.

3 (Witness steps down and is excused.)

4 THE COURT: All right, Solicitor, you may call
5 your next witness.

6 MS. M. WALKER: Your Honor, the State would
7 call Captain Scott McDonald.

8 THE COURT: All right. If you would come
9 around and be sworn for us, please.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the
12 Bible, and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you solemnly swear or affirm
15 that the testimony you are about to give in this
16 case will be the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Please have a seat.

20 (Witness complies.)

21 THE CLERK: Please state your full name for
22 the record.

23 THE WITNESS: Scott McDonald.

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

DIRECT EXAMINATION

BY MS. M. WALKER:

Q Good afternoon.

A Good afternoon.

Q Sir, can you tell me where you are currently employed?

A The Richland County Sheriff's Department.

Q And what do you do at the Sheriff's Department?

A I'm a captain in the Major Crimes Unit.

Q And what do your duties involve?

A The supervision and investigation of all violent crimes short of sex crimes: Homicides, shootings, assaults, robberies, kidnappings, that type thing.

Q Part of your particular duties at the Sheriff's Department, do you deal a lot with phone records of parties to a crime that is located here in Richland County?

A That is correct.

Q And is that for both the City of Columbia Police Department and the Richland County Sheriff's Department?

A I have done some for the city and other agencies as well, yes, I have.

Q And why are phone records so important to investigators when they are investigating crimes?

1 A Because in today's world, communication amongst
2 people is on cell phones, either texting, emailing,
3 calling, and all these things leave a trail that
4 assist in investigations.

5 Q In terms of the case that we are here for this
6 week, were you asked to review certain phone
7 records regarding -- relating to the individuals
8 involved?

9 A I was. I was asked to look at the victim's cell
10 phone records and the Defendant's cell phone
11 records in this case.

12 Q And did you do that?

13 A I did.

14 Q Let me show you what --

15 MS. M. WALKER: Beg the Court's indulgence,
16 Your Honor.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 BY MS. M. WALKER:

20 Q Let me show you what has been marked as State's
21 Exhibit Number 33 and ask you if you recognize
22 that?

23 A Yes. These are the cell phone records of the
24 victim in this case, Mr. Gulzar Nathani.

25 Q Nathani?

1 A Nathani, yes.

2 Q And what number is associated with that?

3 A (803)445-8598.

4 Q And for what month are those records?

5 A The month of June, 2012.

6 MS. M. WALKER: Your Honor, at this time the
7 State seeks to admit Exhibit Number 33 into
8 evidence.

9 MR. BANK: No objection at this time, Your
10 Honor.

11 THE COURT: All right. And this is June?

12 MS. M. WALKER: June of 2012, Your Honor. I
13 handed a copy up to your law clerk.

14 THE COURT: I was just making sure I had the
15 right one.

16 MS. M. WALKER: Yes, sir.

17 THE COURT: 33 is in evidence, without
18 objection.

19 MS. M. WALKER: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit No. 33 was
21 marked for identification and received
22 into evidence.)

23 BY MS. WALKER:

24 Q I think a small portion of these records have
25 already been entered as Defense Exhibit Number 16,

1 but in order to give a more complete understanding,
2 were you able to review that entire month?

3 A Yes, I was.

4 Q Approximately how many phone calls prior to the
5 home invasion were exchanged between this Defendant
6 and the victim in this case?

7 A Approximately 12 calls.

8 Q Before the home invasion?

9 A That's correct.

10 Q On the day, I guess, after the home invasion, from
11 the day -- that day on, are there any phone calls
12 made between the Defendant and the victim in this
13 case?

14 A Not after that date.

15 Q Not after that date. And does that become
16 significant to you as an investigator when you are
17 looking at that level of dropoff?

18 A It appears odd because you have this dialogue back
19 and forth, 12 phone calls, in the days leading up
20 to this event, and then all of a sudden these calls
21 stop, which is kind of odd if you are an
22 investigator. Why do these calls stop, would be my
23 question.

24 Q I understand. And next I want to show you what has
25 been marked as State's Exhibit Number 34 and ask if

1 you recognize that?

2 A Yes. These are the phone records of the Defendant.

3 Q And what number is associated with that?

4 A (803)629-8172.

5 MS. M. WALKER: Your Honor, at this point the
6 State seeks to admit State's Exhibit 34 into
7 evidence.

8 MR. BANK: Without objection.

9 THE COURT: States 34 is in evidence, without
10 objection.

11 (WHEREUPON, State's Exhibit No. 34 was
12 marked for identification and received
13 into evidence.)

14 BY MS. M. WALKER:

15 Q And did you review these phone records as well?

16 A I did.

17 Q I want to turn your attention specifically to the
18 date of this incident and this particular
19 Defendant's phone records.

20 A I'll try.

21 MS. M. WALKER: Your Honor, may the witness
22 step down?

23 THE COURT: Yes, ma'am, he may.

24 (Witness steps down.)

25 BY MS. M. WALKER:

1 Q Starting on Page 64 of the phone records -- and the
2 jury will have a copy of these in the jury room --
3 starting on the 27th, what time do the phone calls
4 start on that particular date?

5 A On this particular page?

6 Q On the 27th, yes.

7 A At 12:43 a.m.

8 Q And there are a number of calls that take place
9 into the early morning hours at that time?

10 A That's correct. These are the Defendant's phone
11 records here.

12 Q And then continuing on to Page 65?

13 A That's correct. Throughout the day.

14 Q And I want to turn your attention first to Page 65.
15 The phone call that starts at 1:38 p.m., this phone
16 call, were you able to associate a phone number or
17 a name with the phone number (803)979-0447?

18 A Yes. That is Nazirah Gale.

19 Q And that is going to be at 1:38?

20 A Yes.

21 Q And would this name become relevant in this
22 investigation?

23 A It would. That is the girlfriend of the Defendant.

24 Q One? A girlfriend?

25 A A girlfriend.

1 Q Now, continuing through -- down here, going -- I'm
2 sorry going back up. Were you able to associate a
3 number of phone calls between the victim and the
4 Defendant in this case?

5 A Yes. At 1304 hours right here, this is the
6 Defendant's phone calling the victim's phone. It
7 is a 53-second phone call.

8 Q This is the Defendant's phone calling the victim's?

9 A That's correct.

10 Q And was there an additional phone call between the
11 two of them that day?

12 A Yes, at 1338 hours.

13 Q That is military time?

14 A That is correct.

15 Q So --

16 A Right here?

17 Q Uh-huh. Here.

18 A On this particular record it is 1432, 2:32 p.m.,
19 the victim in this case calls the --

20 Q The Defendant's voicemail?

21 A Gets voicemail right here.

22 Q Okay. Additionally, other phone numbers that
23 became relevant, between this initial call from the
24 Defendant to the victim -- I want to take your
25 attention to a phone call that comes in at 1:13. I

1 think that is right here. It is 865-8600 number.

2 Were you able to associate a particular phone
3 number or a business with that phone number?

4 A Yes. That is North American Title Loans.

5 Q And were you able -- I guess how many phone calls
6 per page?

7 (Pause.)

8 Q About 38 phone calls per page?

9 A Correct.

10 Q And just in terms of the relevant time to this
11 particular investigation, were these the phone
12 numbers and phone calls that you concentrated on?

13 A Yes.

14 Q Thank you. You can -- oh, I'm sorry. Going --
15 continuing to Page 66. So at this point during
16 this day, probably some 50 phone calls, then an
17 additional 38 phone calls here?

18 A Right.

19 Q And are we still on the 27th?

20 A Yes.

21 Q And are there any more phone calls from this --
22 between the victim and the Defendant?

23 A No.

24 Q And another 38 phone calls -- my math isn't great,
25 but I think that takes it to 126 phone calls?

1 A Right.

2 Q On that day?

3 A No contact.

4 Q Any contact between the victim and the Defendant?

5 A No.

6 Q And the additional 38 phone calls are -- additional
7 phone calls on Page 68, 27 stopping here. And were
8 you able to associate any of these numbers with
9 either -- phone calls between the victim and the
10 Defendant?

11 A None of these calls are between those two.

12 Q Thank you. You can take the stand.

13 (Witness returns to witness stand.)

14 Q And taking you back to -- even with the high volume
15 of phone calls that day, between the hours of 1:38
16 and 2:26, are there any phone calls that the
17 Defendant makes that day? I'm sorry, 1:38 and
18 2:26.

19 A No, there is no calls in between.

20 Q That is a little under an hour?

21 A Right.

22 MS. M. WALKER: Beg the Court's indulgence,
23 Your Honor?

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 MS. M. WALKER: I don't have any further
2 questions.

3 THE COURT: Thank you.

4 Mr. Bank?

5 MR. BANK: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BANK:

8 Q Captain McDonald?

9 A Yes, sir.

10 Q How are you doing today?

11 A Good.

12 Q I want to move this a little closer for a second.

13 I just want to make sure we have all the dates and
14 numbers right.

15 You reviewed all the phone records from the
16 Defendant and the victim for June 2012; right?

17 A I looked -- yes. I looked at them, but the primary
18 focus was on the day of the incident, around the
19 time of the incident.

20 Q Okay. Did you look at any records in July?

21 A No.

22 Q Did you look at any records in May?

23 A No.

24 Q I guess the month before? And what you found --
25 and phone records are important because in terms of

1 calls receiving and -- I mean, there is no way to
2 lie about it; right?

3 A Right.

4 Q That phone called this other phone?

5 A Right.

6 Q Correct? And what we have is, by the 27th of June,
7 you see 12 calls between the Defendant's phone and
8 Mr. Nathani's phone; is that right?

9 A Twelve between them, yes. Some were incoming and
10 some were outgoing, but 12 phone calls.

11 Q Okay. So it was phone calls back and forth between
12 the two?

13 A Correct.

14 Q So that is 12 calls out of 27 days. That fraction
15 would be a little more than they are talking to
16 each other maybe every other day, a little bit
17 more?

18 A Right.

19 Q Twelve times two is 24; right?

20 A Uh-huh.

21 Q So if it was 24 days it would be every other day,
22 but since we are at 27 days, it is a little bit
23 less frequent than that; is that correct?

24 A Right.

25 Q Now, how many days are left in the month of June

1 after you get past the 27th?

2 A Three.

3 Q Three. So it actually wouldn't be that outside of
4 a pattern for there to be a two- or three-day gap
5 between when calls are made, according to the
6 previous days of that month; correct?

7 A Depending on how -- depending on the dates that
8 these calls were made, that's correct.

9 Q Just mathematically they would actually line up?

10 A Right. There may be calls that go several days
11 without, and then there may be a flurry in one day
12 with more than one call.

13 Q So there could be -- so out of these 12 to 27,
14 there is some days where there is a bunch of calls;
15 right?

16 A There could be, yes.

17 Q Well, you looked at the records; right?

18 A Right.

19 Q And then you said that there were gaps that were
20 more than three days in the course of June;
21 correct?

22 A Correct.

23 Q So, again, it is not that unusual, at least looking
24 at these records, that you are seeing gaps of
25 around two or three days; right?

1 A Right:

2 Q Now, on the date of the incident, there was one
3 phone call made from Anthony to Mr. Nathani;
4 correct?

5 A That's correct, at 1:04 p.m.

6 Q Okay.

7 A It was a 53-second phone call.

8 Q And there was a call from Mr. Nathani to Anthony
9 later -- I'll get to that in a minute -- but just
10 going to the one that Anthony made to Mr. Nathani,
11 that was one phone call that he made; right?

12 A That's correct.

13 Q Didn't make any other phone calls to Mr. Nathani
14 that day; right?

15 A No.

16 Q So it would be completely inaccurate to say that
17 Anthony had called Mr. Nathani multiple times that
18 day; right?

19 A He did not call him but once that day; that's
20 correct.

21 Q Now, getting to the phone call from Mr. Nathani to
22 Anthony -- I believe when I was up there, maybe
23 there was a little bit of confusion about what time
24 that exactly was. I think at first we said it was
25 at 1:38 and then maybe the record said 2:32. Do

1 you remember when -- I don't know if the board was
2 different than what you have. I think the board is
3 just a blow-up of what you have.

4 A Right. Just a second. 1432 hours is the correct
5 time.

6 Q Which would be 2:32 p.m.?

7 A Right.

8 Q So any indication of there being a call at 1:38
9 from Mr. Nathani to Anthony would be inaccurate?

10 A That is inaccurate. That call was actually the
11 Nazirah Gale phone call, the 1338, 1:38.

12 Q And that is what the records reflect?

13 A Right.

14 MR. BANK: Beg the Court's indulgence.

15 (Pause.)

16 BY MR. BANK:

17 Q Very briefly. There was quite the -- the
18 Government was speaking with you about how there is
19 about an hour gap that coincides with the time that
20 this alleged incident occurred where Mr. -- where
21 Anthony wasn't making any phone calls; is that
22 correct?

23 A That's correct.

24 Q Were there other times in that day where there was
25 about an hour gap or a significant length of time?

1 A I could review the entire day, but he is quite
2 active on his phone every couple of minutes, from
3 what I'm seeing here, just looking at the times
4 around before and after that event.

5 Q Okay.

6 A But, yes, he is on the phone quite often.

7 Q Could you look to about 10:27 a.m. Do you have
8 that?

9 A Yes, 10:27 there is a gap until 12:13.

10 Q About -- and that is a two-hour gap?

11 A Correct.

12 Q And we don't know of any crime that was committed
13 during that two-hour gap, do you?

14 A Not that I'm aware of.

15 Q Thank you. That all the questions I have.

16 THE COURT: Redirect, Solicitor?

17 MS. M. WALKER: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. WALKER:

20 Q In terms of his activity that day -- I know he was
21 at work, but the number -- is there a call at
22 1:00 o'clock?

23 A There is.

24 Q And in fact there are three calls at 1:00 o'clock?

25 A Right.

1 Q Then what are the times that he is making phone
2 calls that day? And if it is easier you can look
3 on your shorter -- or your list that is closer to
4 you.

5 A Beginning on this page here, at 1:00 o'clock you
6 have these calls: 1:01, 1:04, 1:13, 1:14, 1:14,
7 1:15, 1:17, 1:19, 1:23, 1:38, 2:26, 2:32, 2:41,
8 2:45, 2:45, 2:46, 2:46, 2:48, 2:48, 2:49, 2:52,
9 2:52, 2:53, 2:53, 2:53, 2:54, 3:00 o'clock, 3:11,
10 4:07, 4:21, 4:26, 4:28, 4:30, and 4:33, and 4:43.

11 Q So a significant number of calls?

12 A Significant number of calls back-to-back pretty
13 much, yes.

14 Q And throughout the rest of the day -- and you don't
15 have to go through all of these, I'll do that
16 later -- does that pattern continue?

17 A It appears to, yes. Every few minutes he is on the
18 phone.

19 Q And in terms of you being able to determine the
20 number of phone calls the Defendant made to the
21 victim, if the Defendant used a friend's phone
22 would you be able to recognize that number if it
23 wasn't given to you?

24 A Not if it wasn't given to me. All I can go on is
25 the records provided to me.

1 Q So are you able to analyze a number of phone calls
2 the Defendant made to the victim or are you able to
3 analyze the number of phone calls the Defendant
4 made from his phone to the victim?

5 A The number of calls made from his phone.

6 Q And, lastly, just in terms of general telephone
7 communication, the time stamps on different cell
8 phone records, are they necessarily going to
9 correlate to, let's say, a time stamp from 9-1-1?

10 A No, they could be off a minute or two here and
11 there. Every clock is a little bit different.

12 Q But you would expect them to be close in time?

13 A Fairly close, yes, but not exact always.

14 Q Thank you, Captain.

15 MS. M. WALKER: I don't have any further
16 questions.

17 THE COURT: Redirect? Excuse me, recross.

18 RECROSS-EXAMINATION

19 BY MR. BANK:

20 Q Two quick points to address. There was some
21 speculation about whether Anthony could call
22 Mr. Nathani on a mobile phone. You also had
23 Mr. Nathani's phone records; right?

24 A Correct.

25 Q And you reviewed those and the phone numbers that

1 came there; right?

2 A Uh-huh.

3 Q And if there was any indication from the Government
4 of Mr. Nathani, you would have been able to look at
5 what numbers were calling when because you had his
6 records; right?

7 A I did.

8 Q As to the long list of calls that were just made,
9 were some -- were all of those numbers you just
10 listed going through there -- I think there were, I
11 have no idea, maybe 30 of them you just went
12 through -- do you have any idea which amount of
13 those were calls that he made versus calls that
14 were coming in?

15 A I could look at the records and tell, yes, I can,
16 which ones were in and which ones were outbound.

17 Q Captain McDonald, maybe it will save some time.
18 Can you explain -- because the jury is going to get
19 these records -- can you explain to the jury how
20 they can tell when they are looking on these
21 records how to tell when something is incoming or
22 not?

23 A The originating number is the number that is
24 initiating the call. If it is (803)629-8172, that
25 is going to be the Defendant's phone initiating the

1 call. The terminating number will be the number
2 called. So sometimes you are going to see his
3 number first, sometimes you are going to see it
4 second where someone is calling him. Whoever's
5 number is in the originating number, that is going
6 to be who initiated the call.

7 Q And, Captain McDonald, could you also, under the
8 same line of thinking, explain to the jury what it
9 might mean if they see on those records when they
10 are looking at them what a three-second call or a
11 five-second call duration, what might that
12 indicate?

13 A That could be going to voicemail.

14 Q So if there is a bunch of calls coming in to
15 Anthony's phone and there are only about three or
16 four seconds, five seconds maybe, that would
17 indicate to you that people are calling, Anthony is
18 not picking up; is that correct?

19 A That could be one of the causes, yes.

20 Q Do you know any other common cause that a record
21 would read that way?

22 A The only other thing, if he saw the call coming in
23 and swiped or hung up the phone, whatever mechanism
24 he might have on his phone to get rid of the phone
25 call.

1 Q Right. There is no indication he had any kind of
2 mechanism to try to do anything fraudulent with his
3 phone or hide -- or change any of these records to
4 make them inaccurate, is there?

5 A There is no way he can change these records. These
6 are kept by the phone company themselves, so there
7 is no way he can change them.

8 Q Thank you.

9 MR. BANK: No further questions.

10 THE COURT: Thank you.

11 Thank you, Captain. You may step down.

12 Captain, you may not be excused at this time. If
13 you will please remain. Thank you.

14 (Witness steps down.)

15 THE COURT: Solicitor, you may call your next
16 witness.

17 MS. CAMPBELL: The State calls Investigator
18 Joe Clarke.

19 THE COURT: Come around and be sworn, please.

20 THE BAILIFF: Place your left hand on the
21 Bible, and raise your right hand, please.

22 (Witness complies.)

23 THE CLERK: Do you solemnly swear or affirm
24 that the testimony you are about to give in this
25 case will be the truth, the whole truth, and

1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please have a seat.

4 (Witness complies.)

5 THE CLERK: State your full name for the
6 record.

7 THE WITNESS: Joseph Clarke.

8 JOSEPH CLARKE,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. CAMPBELL:

12 Q Investigator Clarke, where are you employed?

13 A At the Richland County Sheriff's Department.

14 Q What do you do there, sir?

15 A I am an investigator in the CID Division, currently
16 work in the Special Victims Unit at this time.

17 Q Back in the summer of 2012, where were you working
18 at the Sheriff's Department?

19 A In the Criminal Investigation Division as an
20 investigator, and I was working major crimes.

21 Q Major crimes, does that include home invasions,
22 armed robberies, burglaries, things of that nature?

23 A Yes, ma'am.

24 Q When did you become involved with this case, sir?

25 A On the morning of the 28th I was assigned the case

1 by a supervisor.

2 Q And when you are assigned a case, typically how
3 does the assignment come? How do you get the
4 information?

5 A I review the report, the incident report, and then
6 gather what information may have been gathered
7 before I received it. And then I start making
8 phone calls, if necessary, to either victims or
9 witnesses or to other officers that may have
10 responded before me to the scene, that kind of
11 thing.

12 Q Once you had received the initial report, did you
13 try to make contact with any of the victims in the
14 case?

15 A I did.

16 Q And who did you make contact with?

17 A I spoke to Mr. Nathani.

18 Q And you can't say to the jury what he said to you,
19 but did you have a conversation where he gave you
20 some background information?

21 A He did.

22 Q Once you had had conversation with him, did you
23 further look into any other possible information as
24 to the identity of the people that had done this?

25 A I did.

1 Q And were you aware of any other investigators that
2 had responded to the scene?

3 A I was.

4 Q And who was that, sir?

5 A Investigator Joey Bass had actually responded to
6 the scene. This happened in the afternoon, so he
7 would have been the ongoing -- we have
8 investigators that work around the clock, and so
9 you will have investigators that will come on at
10 3:00, 4:00, 5:00 in the afternoon and work into --
11 well into the early morning of the next day. And
12 then I was on day shift at the time. So
13 Investigator Bass would have been there initially
14 that afternoon and made the first approach, if you
15 will, by investigators in that situation.

16 Q Was Investigator -- you can't say what it was, but
17 was Investigator Bass able to get some information
18 there at the scene to pass along to you?

19 A He was. He got a phone number of a potential
20 suspect.

21 Q And was there any identifying information in
22 addition to the phone number that was collected
23 there at the scene?

24 A Yes. They were saying quite clearly they knew who
25 the person was, and they identified him as Amp.

1 Q Was that information forwarded to Captain McDonald
2 before you ever even actually came in possession of
3 that information?

4 A Correct. When I was given the report, I made
5 contact -- I was actually summoned by Captain
6 McDonald to come over to his office, and there I
7 was told that the phone number that Investigator
8 Bass received the night -- or the afternoon of the
9 incident when he responded -- had been already run
10 and analyzed, and it came back to an Anthony M.
11 Porterfield of Columbia.

12 Q And the phone number that was given to you, or that
13 number was what number?

14 A I have the number -- I may not have it directly in
15 front of me. Stand by.
16 (Pause.)

17 A That number was area code (803)629-8172.

18 Q And that was the number that came back to Anthony
19 M. Porterfield?

20 A Yes, ma'am. That is what I was told by Captain
21 McDonald, that had been verified.

22 Q Once you got that information and made contact with
23 the victim in the case, did you start following up
24 on this information?

25 A I did. I spoke to Mr. Nathani by phone at length,

1 discovered the nature of his business, discovered
2 who lives in the home with him, was given the names
3 of his daughters, and what he knew of the incident.
4 He wasn't present when this happened, but what he
5 had been told of the incident.

6 Then I start up the situation where I need to
7 figure out when I can go and speak to the witnesses
8 in this case, both Sobia and Rabia. I know I'm
9 saying their names wrong, and I apologize, and they
10 know that. I have been saying it badly ever since.
11 So I apologize for that. But I needed to speak
12 with them and I needed to coordinate a time with
13 either their school schedule, their work schedule,
14 his schedule, whether or not that he could be
15 present, because I knew in one particular case I
16 would be talking to a minor, a 14-year-old.

17 Q Once you got the information about the identity of
18 the person that was connected to that phone call as
19 well as -- did it corroborate what the victim had
20 given officers there at the scene?

21 A It did.

22 Q And once you got that information, did you take any
23 steps to develop what is known as a photo lineup?

24 A I did.

25 Q And what is the purpose of getting a photo lineup,

1 sir?

2 A Well, someone can tell you, I know so-and-so did
3 it. Or in some cases where, say, a supermarket has
4 been robbed, we will ask witnesses, Could you
5 identify this person again if you saw them?

6 Some people say, Absolutely, I could. Some
7 people say, No way.

8 In this case we had a name, we had a phone
9 number, and we had someone they were familiar with.

10 Taking that on face value, one might say,
11 Well, then you're good, you can just stop there.

12 But in an investigation it is important that I
13 make sure we identify the correct person. So at
14 that point I'm going to put together a photo
15 lineup.

16 Q And in this case did you actually request and
17 receive a photo lineup from SLED?

18 A I did.

19 Q I've got them. Thank you. And did you then make
20 plans to meet with the victims, the two actually
21 young ladies in this case?

22 A I did.

23 Q And when did that meeting take place, sir?

24 A That would have taken place on the 2nd of July,
25 2012.

1 Q And that was actually the same day you actually
2 received the lineups that you requested?

3 A Correct. We put that information in, into the SLED
4 unit that does that. It is a random selection. We
5 have no ability to select pictures, other than the
6 person that we feel may be a good subject.

7 Once it -- and it takes a day or two to get
8 that back. And the day I actually received it, on
9 the 2nd, I then made contact with the Nathani
10 family to meet with them.

11 Q And prior to going to meet with the Nathanis, did
12 you also make multiple copies of the lineup that
13 had been provided to you?

14 A I did.

15 Q And was that provided in black and white?

16 A It was.

17 Q And I am going to show you State's Exhibit 20 and
18 21. Are those the lineups that were actually
19 provided to you?

20 A Yes, ma'am, both of them.

21 Q Tell the jury, where did you meet with the young
22 women that day?

23 A I went to their home. This would be the incident
24 location on Broad River Road. And I made contact
25 with them actually in the house.

1 Q And who did you speak with first?

2 A I spoke with -- I spoke with Mr. Nathani first,
3 kind of explained what I was going to do. And then
4 I excused the younger daughter, the other witness,
5 to another room. And then me and Rabia just sat
6 down. And I showed her the photo lineup.

7 Q Prior to showing the photo lineup, though, did you
8 get a written account from Rabia?

9 A I did. I did.

10 Q And once you had gotten that written account, was
11 Sobia present?

12 A No, she was in the other room.

13 Q At that point did you then show her the photo
14 lineup?

15 A I did.

16 Q And I notice what has been marked as State's
17 Exhibit 20 actually has a sheet attached to the
18 front of it; is that correct?

19 A That is correct.

20 Q When you showed her this lineup, did it have the
21 sheet attached on the front?

22 A Probably not. No, it did not.

23 Q And, in fact, the second page of this exhibit,
24 would that be what you would have presented?

25 A Yes, ma'am.

1 Q And when you presented it, did it have any
2 handwriting on it, or anything like that?

3 A No, it was clean.

4 Q And tell the jury exactly how you presented this
5 lineup to her and what you said to her.

6 A As a matter of doing this over a number of years,
7 one of the things I do with a lineup is I try to
8 keep myself out of it as much as possible. And I
9 explain to them, I'm going to show you a series of
10 pictures. And the most I will ever go forward with
11 is, Do you see the person that did this particular
12 event? Did you see this person that entered your
13 house? Did you see this person that entered the
14 store? Et cetera. In this case, Did you see the
15 man that came in and had a gun and came in your
16 house? And I leave it at that.

17 And I also tell the person when I'm talking to
18 them, Even if you just immediately know that is the
19 person, I want you to slow down and look at these
20 pictures, because I want to be certain and you want
21 to be certain, and have them slow down and look at
22 the pictures, then they make a pick -- if they can
23 make a pick.

24 Q When you say "they," in this case it was Rabia, the
25 oldest one?

1 A Correct.

2 Q And when you showed her these photographs, did you
3 tell her she had to pick someone?

4 A No.

5 Q Did you tell her he would definitely be in here?

6 A No.

7 Q And, in fact, did you just tell her what you just
8 told this jury?

9 A That is exactly what I told her.

10 Q And what was her reaction when she saw these
11 pictures?

12 A Almost instantaneously she made an identification.

13 Q And who did she identify in the photos?

14 A The person we have included in that lineup as
15 Anthony M. Porterfield.

16 Q And that is the person that is Position No. 2?

17 A That's correct.

18 Q And how did she indicate that was person she
19 recognized?

20 A I let her do it. She puts her initials, circles
21 that number, and explains -- and I usually have
22 them date it and have them explain, Is that the
23 person that you in fact saw?

24 Q And she was the one that actually dated when this
25 occurred, dated this, and circled the number?

1 A That is correct.

2 Q And then on the front, after she has done that, do
3 you do this affidavit as to the photo lineup?

4 A I do.

5 Q And that was filled out by you, I believe?

6 A That would be, and then she would affix her
7 signature there.

8 Q And that indicates which one she picked out?

9 A Yes, ma'am.

10 Q As to who committed the crime? On this I note that
11 you put some things that you got information about
12 Rabia?

13 A Yes.

14 Q And what information did you feel was proven in the
15 case?

16 A Two things I do, particularly with a photo lineup
17 affidavit, and also when I'm usually taking a
18 statement from either a witness or a potential
19 subject in a crime is I will ask, one, their age,
20 their level of education. I usually ask the
21 question, What is the highest level of education
22 you completed? And, Are you a resident? That
23 always helps sometimes when we are dealing with
24 immigrant issues. And the other thing is, Can you
25 read and write? Because I want to kind of in a way

1 know who -- what am I dealing with here. Because
2 some people in this world we live in can't read and
3 write, but they still have good eyes and they have
4 good memory. And so I like to establish what we
5 are dealing with.

6 Q And in this case, once she had identified the
7 person you memorialized with the affidavit, did you
8 then make contact with the younger sister?

9 A I did.

10 Q And that would be Sobia?

11 A Yes, that would have been.

12 Q And where did that contact take place?

13 A In the same room. I basically asked Rabia if she
14 would go in the other room. And this is a room
15 where she would be going and actually close the
16 door. So she is behind a closed door. And then I
17 had Sobia come out.

18 Q And so it is just you and Sobia at this point?

19 A That is correct.

20 Q And, again, prior to showing her the photo lineup,
21 did you speak with her?

22 A I did.

23 Q Did you get a written statement from her?

24 A I did not.

25 Q Why not?

1 A In this case it is a situation where I had a good
2 written statement from Rabia. In addition, you
3 know, and in an element of the crime, these two
4 people are no more than a few inches away from each
5 other and seeing almost similar things. I spoke
6 with her, but I didn't record it in a written form.
7 And that is what she was relating almost the exact
8 same thing had happened that her sister had told.

9 Q Once she had related to you what had happened, did
10 you then show her a photo lineup?

11 A I did.

12 Q And is that State's Exhibit 21?

13 A It is.

14 Q And, again, when you showed her the photo lineup in
15 State's Exhibit 21, her sister wasn't present?

16 A No, ma'am.

17 Q Did you tell her she had already identified anyone?

18 A I did not.

19 Q Did you give her any information about that, This
20 person has to be in here?

21 A No.

22 Q What, if anything, did you say to her when you --
23 and you handed her just the second sheet?

24 A I handed her the second sheet.

25 Q What, if anything, did you say to her prior to

1 showing her this photo lineup?

2 A I am going to show you a series of pictures. Then
3 I want you to take your time and look at these
4 pictures. And even if you instantly know who the
5 person is, I want you to slow down and look at
6 these pictures. And then I want you to indicate if
7 you see the person here. And do you see the person
8 that entered your house with a gun?

9 Q And what did she indicate to you?

10 A She made an indication of No. 2, and that was
11 identified as Anthony M. Porterfield.

12 Q At that point she had not been told that her sister
13 had already identified the person?

14 A Certainly not.

15 Q And you were careful not to get that information
16 out to her?

17 A That's correct.

18 Q In talking to the two girls, were either one able
19 to say they could identify the second person
20 involved?

21 A They were not able. And when speaking with them,
22 they had not -- they had not seen that person
23 before. That was -- they were telling me. They
24 also said this person was trying to disguise their
25 face by pulling their shirt up or over.

1 Q Did you also get at that point a list of items that
2 had been stolen from the business?

3 A Yes, I did.

4 Q And some of those belonged to the sisters as well
5 as to Mr. Nathani?

6 A That is correct. Things were taken from their
7 bedroom and from Mr. Nathani, his personal
8 property.

9 Q And also some customers' items?

10 A Yes, quite a bit of things from customers.

11 Q And, again, this is on July 2nd of 2012?

12 A That is correct.

13 Q Over the next week, did you proceed with the
14 investigation of this case?

15 A I did.

16 Q And what types of things were you doing to follow
17 up?

18 A One of the main things you do in a situation like
19 this is, as the lead investigator you are kind of a
20 manager and a collector of information. And you
21 try to keep it in an order. You reach out and talk
22 to the victim. You leave your card, obviously. If
23 they have any questions they can call you. They
24 can reach out to you if they need to.

25 I have statements that I need to review. I

1 have the lineups that I need to review. You are
2 going to run records checks on the named subject,
3 in this case Anthony Porterfield. You do make some
4 sense and attempt to locate. You do that with
5 phone records, and things like that. And then you
6 try to run all phone numbers, if you have them.

7 And then, in a case like this, we are dealing
8 with a burglary, and I used to be a burglary
9 investigator for four years, and I have many
10 informants, and I have contacts in the street.
11 More importantly, I have got a lot of pawn shop
12 workers who will call us and reach out to us. And
13 we also have some databases where we can track
14 stolen goods being brought into a pawn shop. And
15 so if there is an identification on a particular
16 item, a specific item, a Sony TV, Model Number
17 such-and-such, 36-inch, et cetera, if that, a day
18 or two after an event, suddenly shows up with no
19 apparent explanation, that is something you want to
20 look into. So you give yourself a little time to
21 let that kind of percolate and see if that will
22 come into a local pawn shop.

23 Q Were you able to recover any of the stolen items in
24 this case?

25 A I was not.

1 Q At any point? I'll get to that later.

2 A Yes.

3 Q On July the 10th, what steps did you take as far as
4 securing warrants in this case?

5 A In this case I went in and secured warrants. And
6 that is a process where we have to actually make a
7 warrant and then forward it to a local magistrate.
8 And I was able to secure warrants at that time.

9 Q And what were the warrants for, sir?

10 A That would have been for armed robbery, burglary in
11 the first degree, due to the fact a weapon was
12 allegedly used, and kidnapping of the victims.

13 Q At that point had you been able to locate in your
14 check of different records Mr. Porterfield in any
15 of your attempts to find him?

16 A We were not able to locate his known whereabouts up
17 to that point.

18 Q Was there an address that was associated with him,
19 I believe on a Norman Street. Were you able to
20 check that out?

21 A There was one address, and that is from a DMV file,
22 but we were not able to locate him there as well.

23 Q However, you did have his phone number?

24 A I did.

25 Q And at some point did you think it was prudent to

1 try to contact him that way?

2 A I did.

3 Q And is that ideal as a first step, or is that kind
4 of a backup plan?

5 A That wouldn't be the first thing I would do, but I
6 certainly am going to reach out to him, certainly
7 after I secured warrants.

8 Q And how did you reach out to Mr. Porterfield on his
9 phone?

10 A I called him on the phone from my desk phone, from
11 a county phone, and I spoke with him briefly.

12 Q Did you speak with him at first, or did you leave a
13 message?

14 A I left a message first.

15 Q And did he get back in contact with you?

16 A He called me fairly quickly back after he received
17 a voicemail.

18 Q Tell the jury what conversation you had with him.

19 A In this situation, using the last known phone
20 number, I made attempt to contact. I left a
21 message by voicemail. And within minutes Mr.
22 Porterfield called back.

23 I made sure I was speaking to Anthony
24 Porterfield. And I explained who I was, introduced
25 myself, and what capacity I work for the Sheriff's

1 Department. And I explained it would be in his
2 best interest and my interest if he would like to
3 come in and talk to me.

4 And at that point he started kind of repeating
5 what I was saying verbatim, and that kind of thing.
6 And then he said he would meet with me at a local
7 Exxon station on the corner of Shakespeare and
8 Risdon Way, I believe the exact word is. It is
9 about a -- as the crow flies, about a mile from the
10 back of the Sheriff's Department. He would meet me
11 in the parking lot.

12 Q When was this meeting -- when was it supposed to
13 take place?

14 A We had agreed at 11:00 a.m.

15 Q And what date was that?

16 A That would have been the 17th.

17 Q Of July?

18 A Yes, ma'am.

19 Q And, again, during this time period, between the
20 time that you met with the girls and you finally
21 made contact with him, had you made attempts to
22 find him?

23 A That's correct.

24 Q Did you then start to make -- to proceed to meet
25 him at that gas station that morning?

1 A I did. And before I left, I was called back by
2 Mr. Porterfield who told me about five minutes
3 before we were to meet that he was not going to
4 meet with me.

5 Q And what did he say to you?

6 A He stated that things in his life being what they
7 are, quote, unquote, He does not feel comfortable
8 with speaking to me. He claims he had talked to a
9 friend and they, quote, They explained what
10 probable cause was to him, unquote.

11 I told him that was fine, he had a right to
12 refuse meeting with me. I then informed him that I
13 had warrants for his arrest.

14 Q Other than telling him he had warrants -- you had
15 warrants for his arrest, did you tell him any other
16 information at that point?

17 A No, ma'am.

18 Q After he refused to show up for the meeting and
19 said he did not want to talk to you at that point,
20 did you take steps to secure his arrest?

21 A I did.

22 Q And what were those?

23 A I made contact with the Fugitive Team. That is --
24 I took the warrants down to our warrant division,
25 which is at 1400 Huger Street here in town. Made

1 contact. They put a packet in. And they basically
2 make entry in the NCIC. That is National Crime
3 Investigative Computer -- Information Computer,
4 rather -- and it basically means, for lack of a
5 better word, that an all-points bulletin is going
6 to be put out on him and that he is pending an
7 arrest.

8 Q And did the Fugitive Team then take steps in order
9 to find him?

10 A They did.

11 Q And were they able to find him at his known address
12 on Norman Street?

13 A They were not.

14 Q Were they able to find him at his work address?

15 A They were not.

16 Q And where did they actually end up finding him, to
17 your knowledge?

18 A They found him on Luvalie Street -- Luvelle Street.
19 I don't know if I'm saying that right. I was not
20 present, and this was told to me after the arrest,
21 so.

22 Q Did you become aware that on the 18th he was
23 arrested?

24 A I was.

25 Q And did you make contact with him that evening?

1 A I did.

2 Q And where did that take place?

3 A That was at the hospital, the ER.

4 Q When you got to the hospital, tell the jury where
5 he was when you made contact with him.

6 A He was at a triage treatment room. He was
7 suffering from a dog bite during the apprehension.
8 He was physically -- there was a nurse in the room
9 or a medical person of some sort tending to him. I
10 made contact with him at that point. That
11 obviously would be the first time we had seen each
12 other face-to-face. Introduced myself. Obviously
13 he knew at that point who I was. And I asked him
14 if he wanted to speak to me.

15 Q And at that point had the warrants been served on
16 him?

17 A They had.

18 Q Prior to initiating any kind of conversation with
19 the Defendant when you met with him at the
20 hospital, did you advise him of his rights?

21 A I did.

22 Q I am going to show you what has been marked as
23 State's Exhibit Number 22 and ask if you recognize
24 that?

25 A I do.

1 Q And what is that, sir?

2 A That is a Richland County Sheriff's Department
3 form. It is an interrogation Advice of Rights
4 form.

5 Q And is that the form you used in advising him of
6 his rights that day at the hospital?

7 A Yes, ma'am.

8 Q And who was present when you advised him of his
9 rights?

10 A Obviously Mr. Porterfield, myself, and Sergeant
11 Drew Caldwell.

12 Q Tell the jury using that form exactly how you went
13 through advising him of his rights that day.

14 A At the top of the form it has an area where you can
15 fill in the person's name, date, and time. And
16 then it has, much like you may have seen on
17 television before, it has your rights pursuant to
18 waiving Miranda, or being able -- if you want to
19 speak with the police, it says:

20 Before we ask any questions, you must
21 understand your rights.

22 You have the right to remain silent.

23 Anything you say can be used against you
24 in court.

25 You have right to talk to a lawyer for

1 advice before we ask you any questions
2 and to have a lawyer with you during any
3 questions.

4 If you cannot afford a lawyer, one will
5 be appointed for you before any
6 questioning if you wish.

7 And if you decide to answer questions
8 now without a lawyer present, you still
9 have the right to stop answers any time.
10 You also have the right to stop
11 answering at any time until you talk to
12 an attorney or a lawyer.

13 And then there is a place for him to sign and
14 a witness to sign.

15 I witnessed it, and Sergeant Drew Caldwell
16 witnessed it, and then Mr. Porterfield affixed his
17 signature.

18 Q And once he was advised of his rights, did he agree
19 to sign off on this waiver?

20 A He did.

21 Q And that was witnessed by you and Sergeant
22 Caldwell?

23 A That's correct.

24 Q And then after that, you go a step further and
25 advise him if he wants to waive his rights?

1 A If he wants to waive his rights.

2 Q And did he acknowledge that as well?

3 A He did.

4 MS. CAMPBELL: Your Honor, at this time we
5 would offer State's Exhibit 22 into evidence.

6 THE COURT: State's 22?

7 MS. CAMPBELL: Yes, sir.

8 MR. BANK: Without objection.

9 THE COURT: State's 22 is in evidence, without
10 objection.

11 (WHEREUPON, State's Exhibit No. 22 was
12 marked for identification and received
13 into evidence.)

14 BY MS. CAMPBELL:

15 Q Once he was advised of his rights, tell the jury
16 what, if any, conversation you had with him.

17 A The conversation went no more further than I
18 remember saying, Do you want to talk about an
19 incident that took place on Broad River Road, a
20 robbery on Broad River Road?

21 And there was some expletives thrown about.
22 He was upset. Noticeable, obviously. He was hot
23 and sweaty and he was suffering from a dog bite.
24 And he decided not to talk to us at that point.

25 Q Did he give you -- did he say anything about

1 what -- being involved in the robbery?

2 A He -- no, he did not.

3 Q Did he deny being involved in the robbery?

4 A He didn't.

5 Q But did he give you any other information?

6 A He did not.

7 Q After this, did you go back to the place on
8 Luvalie -- I believe -- Street where he was found?

9 A I did.

10 Q And when you were there, did you take some of these
11 photographs?

12 A I did.

13 Q They were actually in black and white?

14 A I did.

15 Q And when did you go back, do you remember?

16 A I don't remember the exact date. It was maybe a
17 day or two after.

18 Q And what was the purpose in you going back to
19 Luvalie Street?

20 A Well, at this point we wanted to look into this
21 location to see if this was somewhere he had
22 actually been spending some time or laying his
23 head.

24 I made contact with a man there that was not
25 very helpful. He was actually in the back part of

1 the house -- I think Drew Caldwell spoke about
2 that -- where there is an addition to the back of
3 his house. He really didn't like me being there.
4 Made that quite clear. A lot of expletives were
5 thrown around. I took some photographs to kind of
6 memorialize that I had gone there.

7 The intention of going there was is in case
8 this is somewhere he had been staying, I would like
9 to get a consent to search any of--

10 MR. BANK: Objection, Your Honor. This is all
11 information that has never been provided to the
12 Defense.

13 THE COURT: Never what?

14 MR. BANK: Never been provided to the Defense.
15 We would object under Brady and Rule 5.

16 THE COURT: Excuse me. Step out, please, Mr.
17 Foreman, and ladies and gentlemen of the jury.

18 (WHEREUPON, the jury retires to the jury
19 room at 4:51 p.m.)

20 THE COURT: All right, tell me your objection,
21 please, Mr. Bank.

22 MR. BANK: Objection under Brady and Rule 5.
23 We have been provided pictures that were taken of
24 the Luvalie Street house, but we were never
25 provided anything in any report, any investigation

1 that he had ever gone back, asked for a consent to
2 search, had talked to anybody. This is -- again, I
3 have seen the pictures, but I don't have any
4 report. The Solicitor's Office has never told us
5 anything about this part of the investigation.

6 THE COURT: Tell me under Rule 5 specifically
7 what subdivision of Rule 5 are you saying that the
8 officer should have advised you of this
9 information?

10 MR. BANK: And beg the Court's indulgence.
11 Let me get the rule in front of me.

12 (Pause.)

13 MR. BANK: And, Judge, we may have jumped --
14 let me let Co-Counsel look at Rule 5. It may be
15 better to focus in on Brady and the fact that this
16 could potentially be any type of exculpatory or
17 inculpatory evidence, something that can mitigate
18 the Defense's case, something that we are entitled
19 to be prepared for and --

20 THE COURT: All right. So there is no
21 subdivision under Rule 5 that would apply to this
22 information, is there, as far as disclosure? And
23 there may be. I'm just asking. I want to make
24 sure I analyze it properly.

25 MR. BANK: Your Honor, in compliance with Rule

1 5 and our standard Brady motions that were made in
2 this case, these incident reports were all handed
3 over to us. It was presented to us that these are
4 all the incident reports and statements and
5 investigation by the officers.

6 We have since filed a Riddle motion basically
7 saying, Hey, look, if you have anything new to add
8 to the stuff that you have already handed over,
9 please hand it over. They assured us that there is
10 nothing.

11 But my guess in all of this is there probably
12 isn't a report. There probably isn't any
13 documentation of any of this. But, again, it is
14 information that we haven't been provided. And it
15 is impossible to prepare for them. Talking about
16 going to a house and having a statement from a
17 witness where they aren't able to get consent to
18 search the place. It is just -- Anthony is facing
19 a long time in prison, Your Honor, and I think he
20 has a right to be prepared for -- to question and
21 anticipate whatever the lead investigator on a case
22 may have done.

23 THE COURT: All right, Solicitor?

24 MS. CAMPBELL: May it please the Court, Your
25 Honor? The documentation of this was the

1 photographs that were turned over to the Defense.

2 In addition to that, Your Honor, I even asked
3 Sergeant Caldwell, These weren't pictures you took,
4 these were taken later by Investigator Clarke?

5 I know they have spoken to Investigator
6 Clarke. I wasn't trying to hide anything, or
7 anything, but merely he is showing what he did as
8 part of the investigation. I don't see how this
9 could be exculpatory in any way. He went back
10 after the Defendant was under arrest and merely
11 tried to follow up on that.

12 That is the extent of what he did, what he has
13 just testified to.

14 THE COURT: Well, I don't think an officer has
15 a requirement to write a report. And if something
16 doesn't exist, it can't be turned over.

17 MR. BANK: Your Honor, I agree that -- I agree
18 that there is no requirement for him to make a
19 report. There has been several officers that
20 testified that haven't made reports. Just whatever
21 they did was noted by Investigator Clarke. But
22 we're allowed to have knowledge of what their
23 investigation entailed. Whether that is just by
24 the Solicitor's telling us, or something. That
25 happens all the time where the Government or us

1 might have statements where we talk to victims or
2 witnesses and we have to turn that over to the
3 other side basically the substance of whatever
4 those conversations are.

5 A great example is when Sobia and Rabia came
6 to court two weeks ago and said, I don't know if we
7 can identify the Defendant anymore. They don't
8 have a written statement for that, but the
9 Government did what they are supposed to, and they
10 did so promptly before this case. We don't have a
11 statement, but this is what these girls said.

12 Now, the rest of that statement was, Once we
13 got to court, we recognize it is him. But the
14 point is, is I don't think there has to be a
15 report. And that is not my argument. But I think
16 that we're entitled to be able to prepare and
17 understand the full nature of Mr. Clarke's
18 investigation. We have not been provided an
19 opportunity to do so.

20 THE COURT: Well, I think that is the crux of
21 your argument under Rule 5, there has got to be a
22 report. I can't order an officer to talk to you
23 and tell you his full and complete knowledge of the
24 case. There is no way of doing that. Y'all may
25 have your own way of doing it. I've got my own way

1 of doing it. This, and the case law, under Brady
2 v. Maryland. And I just -- I just don't -- I don't
3 see it as a Rule 5 violation because there is
4 nothing under Rule 5 that directs this Court to say
5 this information that this officer has within his
6 memory, within his knowledge, has to be reduced to
7 a report and turned over.

8 I'm sitting here trying to think of the name
9 of a case Judge Westbrook tried where he ordered
10 the Defense to prepare a report by an expert so it
11 could be turned over to the State, and that was
12 reversed on appeal. And that is somewhat akin to
13 this.

14 Now, Brady of course is a different issue.
15 And the testimony of the young ladies is a
16 different issue. And that would go to State v.
17 Green, when you have a victim or a witness that
18 shows hesitancy at a later point in time.
19 Obviously that is exculpatory. That has to be
20 turned over.

21 Just like in Green where the witness is going
22 to testify, I saw this, and the Prosecutor goes out
23 there to prepare that witness for trial and where
24 the witness says he or she was standing when she
25 observed this, it would have been impossible to see

1 because of -- I don't know -- it is a juke joint --
2 juke boxes, or whatever was in there, that he
3 couldn't, you know, couldn't see.

4 So I think Brady is a different material, a
5 different matter. But let me cut to the chase.
6 How is it relevant -- him taking pictures may be
7 relevant, but how is it relevant that some party,
8 third party, when he is in jail -- he is already in
9 jail when he takes these pictures; right?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Then how is it relevant what some
12 third party does, whether he curses the officer,
13 which he shouldn't do, but if he did or, you know,
14 and puts these expletives out, how is that relevant
15 to Mr. Porterfield's guilt or innocence?

16 MS. CAMPBELL: The only place it is relevant,
17 Your Honor, is in their opening statement they
18 talked about what all wasn't done in this case,
19 specifically search warrants. And I'm just trying
20 to -- it is in response to their opening argument
21 trying to respond to -- he was trying to find this
22 Defendant. And that is the only reason I am going
23 there. Because I agree with you, otherwise it is
24 not very relevant. And certainly I didn't mean to
25 go into the expletives, but --

1 THE COURT: Well, I don't want Mr. Porterfield
2 shackled with the lack of consent of a third party.
3 I mean, he -- it is kind of like those witness
4 intimidation cases when a Defendant is in jail and
5 the family goes out and tries to intimidate
6 witnesses. I don't -- that shouldn't shackle
7 Mr. Porterfield.

8 I guess to sum it up, the officer can testify,
9 I went out there, I attempted to search it, and I
10 was unable to search it.

11 MS. CAMPBELL: And we can limit it to that.

12 THE COURT: And if you want to examine him
13 in-camera, Mr. Bank, you may certainly do so.

14 MR. BANK: The extent of him going to this
15 location, asking to search it, and being told --
16 and being unable to do so, is it -- then I don't
17 believe I need to be told anything else. I think,
18 again, there becomes a separate argument as well,
19 though, of whether it is even relevant in the first
20 place. I don't think that they ever established
21 that this was even his house. He had his own
22 apartment at that time. That was never --

23 THE COURT: His house where he was arrested?

24 MR. BANK: The house where he was arrested was
25 not his house.

1 THE COURT: And it may not be established, but
2 it is pretty good circumstantial evidence you may
3 have some connection with a location where you are
4 found up under it. And the jury could infer that.
5 I mean, they can connect those dots or they can say
6 those dots don't exist, is all I'm saying.

7 But I think -- of course, opening statements
8 isn't evidence, but if it goes to -- if it is
9 focused just on the quality or the lack of quality
10 of the investigation, I think they have a right to
11 show that this officer conducted -- to show
12 whatever investigation he conducted and it would be
13 up to the jury to determine if it was a full,
14 complete, and thorough investigation.

15 MR. BANK: I understand. And I fully intend
16 to ask him about the search warrants at the house.
17 And closing argument was no accident, Your Honor.

18 I understand your ruling, but we would still
19 leave as an objection on the record for Brady to
20 show we were not provided the information. And I
21 just maybe ask the Court to instruct the
22 Prosecution if they have any other information
23 about this investigation that we haven't been told,
24 if they can turn that over to us at this point.
25 And renew the objection under federal law, Your

1 Honor.

2 THE COURT: And if I can ask Captain McDonald
3 one question, I will let him leave. I didn't want
4 to ask him this question in front of the jury, but
5 since I'm the one that is ruling on the directed
6 verdict motions, in State's 33 -- excuse me,
7 State's 32, and State's 34, Captain, if I was
8 tracking your testimony, the originating number is
9 the number calling in, the terminating number is
10 where the call ends up?

11 CAPTAIN MCDONALD: The originating number is
12 the initiating number. The terminating number --
13 you understand?

14 THE COURT: Yes, sir. Well, why is there a
15 difference between sometimes a terminating number
16 and the number dialed? That's what I want to know.

17 CAPTAIN MCDONALD: Different companies call it
18 different things.

19 THE COURT: Sir?

20 CAPTAIN MCDONALD: Different companies call it
21 different things.

22 THE COURT: Well, what I'm saying is, you've
23 got different columns here. You've got
24 originating, terminating, number dialed.

25 CAPTAIN MCDONALD: Oh.

1 THE COURT: And why is there sometimes a
2 terminating number that is not the same, if I
3 put -- if I get my ruler -- and of course if I get
4 my microscope here -- and I look at it, why is
5 there a difference between a terminating number
6 and --

7 CAPTAIN MCDONALD: That is a voicemail.

8 THE COURT: And you may step down.

9 (Witness steps down.)

10 CAPTAIN MCDONALD: That number is a voicemail
11 number that AT&T uses. So that number went to
12 voicemail. And that is a separate number. He
13 didn't dial it.

14 THE COURT: All right. So the terminating
15 number, if it goes to voicemail, may be different
16 from a dialed number?

17 CAPTAIN MCDONALD: Correct.

18 THE COURT: I just wasn't tracking that.

19 Thank you.

20 And you may be excused.

21 CAPTAIN MCDONALD: Thank you, sir.

22 (Captain McDonald steps down.)

23 THE COURT: Anything further before we bring
24 our jury back in, Mr. Bank?

25 MR. BANK: Just leaving our objections on the

1 record.

2 THE COURT: All right. Certainly.

3 I guess I have to rule, if the objection is on
4 the record.

5 I will further find that under Brady v.
6 Maryland -- from the testimony and manner it is
7 being presented at this point, I would find that it
8 would not be exculpatory and mitigating to the
9 accused under Brady v. Maryland.

10 All right. If you would bring us our jury,
11 please.

12 MR. BANK: Judge, that is overruling Riddle v.
13 State?

14 THE COURT: Overruling what?

15 MR. BANK: Riddle v. State as well?

16 THE COURT: May I see Riddle v. State, please?

17 MS. A. WALKER: I have a copy of my Riddle
18 motion, Your Honor. I don't believe I have the
19 actual real case. I can give you the cite.

20 THE COURT: Court will be in recess 15
21 minutes. Thank you. Thank you very much.

22 (WHEREUPON, a break was taken at 5:05
23 p.m.)

24 (WHEREUPON, the proceedings resumed at
25 5:19 p.m.)

1 THE COURT: I have got a copy of Riddle. I
2 apologize. I went back there and read the most
3 recent one.

4 MR. BANK: Yes, sir.

5 THE COURT: Quite hopeless.

6 MR. BANK: Judge, it has been a long day. I
7 apologize --

8 THE COURT: I know it is been. That is why
9 sometimes I have to take a break. It has nothing
10 to do with you or any of the attorneys, just
11 sometimes old guys need to get up and walk the
12 hall, do you know what I'm saying? It is nothing
13 to do with you or Ms. Walker or Ms. Walker or
14 Ms. Campbell. And certainly not Mr. Porterfield.

15 Go right ahead, Mr. Bank.

16 MR. BANK: All I was trying to do is just
17 basically put kind of the corresponding South
18 Carolina Brady case on the record. I understand
19 that you have already ruled essentially on the
20 Brady issue. We just wanted to cite Riddle for
21 basically South Carolina, being a South Carolina
22 corresponding case and it being an ongoing duty. I
23 understand on substantive issues regarding Brady
24 and Riddle you have already ruled on that.

25 THE COURT: I just didn't want y'all to be in

1 a position that should the case be appealed that
2 you would be hamstrung by my failure to rule and
3 by -- sometime the lawyers -- they blame the
4 lawyers when the judge is not ruling. And, you
5 know, I don't know how a lawyer is supposed to,
6 quote, force, unquote, a judge in ruling if he is
7 not going to rule. And I wanted to make sure you
8 were protected on the record.

9 MR. BANK: And I appreciate that. I have
10 actually noticed that you really give us a chance
11 to put everything on the record and rule on
12 everything, and I appreciate it.

13 THE COURT: One other thing I would like to
14 revisit before we bring the jury back out. The
15 telephone conversation between Sergeant Clarke and
16 Mr. Porterfield, what was the date of that? I know
17 he testified to it. I didn't write it down.

18 MS. CAMPBELL: The telephone conversation was
19 July 17th of 2012.

20 THE COURT: July 17th of '12. And that is the
21 conversation where they had made the
22 arrangements --

23 MS. CAMPBELL: To meet.

24 THE COURT: -- to meet. And then it would
25 have been July 18th when the meeting was canceled?

1 MS. CAMPBELL: July 17th when the meeting was
2 canceled. The same day.

3 THE COURT: Oh, same day?

4 MS. CAMPBELL: Yes, sir. I'm sorry.

5 THE COURT: So the 17th the meeting was
6 canceled. And that would have been the date --
7 that would have been the conversation when the
8 Sergeant told Mr. Porterfield that they had
9 warrants for him? Correct? That second
10 conversation about that?

11 MS. CAMPBELL: Yes. That was the date.

12 THE COURT: All right. I wanted to revisit
13 that issue of flight while the jury is still out.

14 And I read. And I read -- and I will just go
15 back to Williams -- excuse me, Martin -- that you
16 handed up, 742 S.E.2d 42.

17 In Martin the facts are somewhat different in
18 that the armed robbery of the bank in Aiken,
19 April 23, 2009, and he was arrested by DeKalb
20 County police officer April 13th, 2010. It would
21 have been ten days prior to one year. Actually it
22 is not really evidence of flight, but they use
23 flight to analyze the fact that he gave the wrong
24 name and wrong date of birth.

25 And I would find that based on this officer's

1 testimony now and linking it to Sergeant --
2 Lieutenant -- what have you -- Caldwell's
3 testimony, that under the totality of the
4 circumstances there would be evidence that creates
5 an inference the Defendant had knowledge that he
6 was being sought by the authorities, that they had
7 warrants for him, he had been told by this officer.
8 And that flight evidence is relevant when there is
9 a nexus between the flight and the offense charged.

10 I think when you review Martin -- and they
11 indicate that it was a critical factor to the
12 admissibility of the evidence of flight is whether
13 the totality of the evidence creates an inference
14 the Defendant had knowledge that he was being
15 sought by the authorities and his actions were
16 motivated as a result of his belief that officers
17 were aware of his wrongdoing and were seeking him
18 for that purpose, he was told they had warrants by
19 this officer and the fugitive recovery team, or
20 whatever their name is -- the testimony would be
21 admissible.

22 Our Court also in Martin cites the Orozco
23 case, which indicates that evidence of unexplained
24 flight is admissible as indicated consciousness of
25 guilt, for it is not to be supposed that one who is

1 innocent and conscious of that fact would flee.

2 So I think that link has been connected
3 between the nexus and the flight evidence, Mr.
4 Bank.

5 And you may certainly put whatever you choose
6 to put on the record in that regard.

7 MR. BANK: No, sir. We just maintain what we
8 have already said, and we have nothing to add to
9 it, Your Honor.

10 THE COURT: All right. Thank you, Mr. Bank.
11 If you will bring us our jury, please.

12 (Witness returns to witness stand.)

13 (WHEREUPON, the jury came into open
14 court at 5:25 p.m.)

15 THE COURT: Please continue to give the
16 parties your complete and undivided attention.

17 Thank you, Mr. Bank. Thank you, Solicitor.
18 You may continue.

19 MS. CAMPBELL: Thank you, Your Honor.

20 DIRECT EXAMINATION CONTINUES

21 BY MS. CAMPBELL:

22 Q When you went back to the house at Luvalie Street,
23 were you able to search that residence?

24 A I was not.

25 Q The photographs that have been entered that show

1 that address and the house there, those are in
2 black and white. Can you explain why those are in
3 black and white?

4 A The way they print -- this was taken with my
5 county-issued cell phone, which has a photo or a
6 camera attachment, and I just snapped some pictures
7 while I was there at the scene.

8 Q In this case did you ever get any search warrants
9 in this case?

10 A I did not.

11 Q Why not?

12 A We were never able to verify where he was staying
13 in a permanent sense of the word.

14 Q Were you ever able to recover any of the items that
15 were stolen?

16 A No.

17 Q Were you ever able to identify the Co-Defendant in
18 this case?

19 A No, ma'am.

20 Q Is that investigation still ongoing?

21 A It is.

22 Q The Defendant's appearance here in court this week,
23 has it changed?

24 A Somewhat. Just I think the length of his hair.

25 THE COURT: Say that again. I couldn't quite

1 hear you.

2 THE WITNESS: Just the length of his hair,

3 Your Honor.

4 BY MS. CAMPBELL:

5 Q I want to show you State's Exhibit 26. Do you
6 recognize that?

7 A I do.

8 Q And what is that?

9 A That would be a booking photo.

10 Q Of the Defendant on the date he was arrested?

11 A Yes, ma'am.

12 MS. CAMPBELL: Your Honor, at this time we
13 would offer State's Exhibit 26 in evidence.

14 MR. BANK: No objection, Your Honor.

15 THE COURT: 26?

16 MS. CAMPBELL: 26, Your Honor.

17 THE COURT: State's 26 in evidence, without
18 objection.

19 (WHEREUPON, State's Exhibit No. 26 was
20 marked for identification and received
21 into evidence.)

22 BY MS. CAMPBELL:

23 Q And would this have been taken -- how long did he
24 stay at the hospital that night?

25 A I'm not 100 percent certain. I do not think he was

1 admitted. I think he went from that night to Alvin
2 S. Glenn Detention Center.

3 Q And this was taken shortly thereafter?

4 A Yes, ma'am.

5 Q So this is how he appeared?

6 A Yes.

7 Q And that is how he looked back then?

8 (Exhibit shown to jury.)

9 A (WHEREUPON, there was no response.)

10 Q In this case I notice there were some cameras on
11 the interior of the house. Did you try to attempt
12 to retrieve video?

13 A I did. And those cameras I was told were
14 inoperable, they were not working.

15 Q So there was no video to be retrieved?

16 A No, ma'am.

17 Q I want to backtrack for a minute and make sure I
18 got something straight. The conversation you had
19 on the phone with the Defendant in this case, what
20 date did that first conversation take place?

21 A That conversation would have been on July 17th of
22 2012.

23 Q And then when he called back, when was the meeting
24 set up for, was it that same day?

25 A That very same day.

1 Q And then he called back that same day to cancel?

2 A Yes, ma'am.

3 Q And that is when he gave you that additional
4 information?

5 A Correct.

6 Q At any point -- and I want you to review the
7 warrants that were served on the Defendant in this
8 case. In the body of the warrant does it give
9 information about what happened?

10 A It does.

11 Q Does it say the date?

12 A It does.

13 Q Does it give the address where it happened?

14 A It does.

15 Q Does it describe the offense?

16 A It does.

17 Q And does it talk about the victims identifying him?

18 A Yes, it does.

19 Q At any point in any of those four warrants -- and
20 review all of them -- does it ever say this
21 happened at 2:00 o'clock in the afternoon?

22 A No, it does not.

23 Q At any point in your conversations with the
24 Defendant, either on the phone or after you
25 Mirandized him that day, did you ever tell him this

1 happened at 2:00 o'clock in the afternoon or any
2 time?

3 A Tell him that it happened 2:00 o'clock? No, I
4 would not have told him that.

5 Q So that information was not provided to him?

6 A No, ma'am. Not by me.

7 Q And it is not on the warrants?

8 A No, ma'am.

9 Q You are aware of the description of the car in this
10 case?

11 A I am.

12 Q A gold-colored sedan?

13 A Gold-colored sedan is what the two witnesses spoke
14 of.

15 Q And did you recently have an opportunity to
16 interview a young woman named Ms. Gale, Nazirah, I
17 think?

18 A Nazirah.

19 Q Nazirah. And what kind of car did she have back in
20 the summer of 2012?

21 A She had a four-door champagne goldish-colored
22 Chevrolet.

23 Q And, finally, you were also aware of the victims
24 giving a description of the gun that was produced
25 by the Defendant that he pulled from a case?