

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Oconee County
Court of General Sessions
R. Lawton McIntosh, Circuit Court Judge

RECEIVED
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SC Court of Appeals

Appellate Case No. 2013-001895

The State,

Respondent,

v.

James Richard Bartee, Jr.,

Appellant.

RECORD ON APPEAL
VOLUME I OF II

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State's Exhibit 1 (CD-Audio Recording) is omitted from this printed Record on Appeal and counsel are seeking to have it transported to the South Carolina Court of Appeals pursuant to court order.

WITNESSES

M B Sloan, SLED

[Signature]
M.B. Sloan

ARREST WARRANT NUMBER

N130838

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: JUL 9 2012

VERDICT

[Signature]
Foreperson of Petit Jury
Date: 7-3-13

DOCKET NO. 2012GS37 00597

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUL 09 2012

Term

THE STATE

vs.

James Richard Bartee Jr.

DRW

Indictment for

Solicitation / Solicitation To Commit A Felony

SC Code: , 17-25-0030
CDR Code: 0795

2012 JUL 10 P 2:00

FILED
CLERK OF COURT
BEV
OCONEE, SC
JUL 10 2012

ENTERED
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

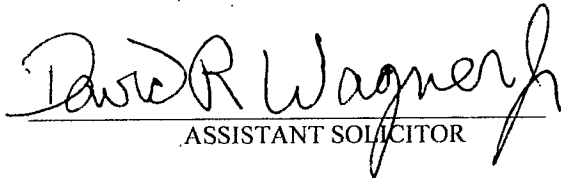
INDICTMENT

At a Court of General Sessions, convened on JUL 09 2012, the Grand Jurors of Oconee County present upon their oath:

Solicitation / Solicitation To Commit A Felony

That James Richard Bartee Jr. did in Oconee County, on or about May 27, 2012, solicit the agency of another, to wit: defendant did solicit an individual to commit the act of kidnapping upon retired Circuit Court Judge James C. Williams, Jr., by counseling, enticing, or inducing the individual to commit the felony hereby stated. This is in violation of the Common Law of South Carolina Code of Laws

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

ARREST WARRANT

N-130838

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

THE STATE

against

James Richard Bartee, Jr

Address: 104 Island Pt

Seneca, SC 29672-2490

Phone: _____ SSN: _____
 Sex: M Race: W Height: 5'8 Weight: 120 lbs
 DL State: SC DL #: 007420760
 DOB: _____ Agency ORI #: SCLED0000
 Prosecuting Agency: State Law Enforcement Division
 Prosecuting Officer: M B Sloan - 278
 Offense: Solicitation / Solicitation to commit a Felony

Offense Code: 0795

Code/Ordinance Sec: C/L, 17-25-0030

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

Anderson The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

[Signature] (L.S.)
 Signature of Judge

Date: 5-30-12

RETURN

A copy of this arrest warrant was delivered to

defendant James Richard Bartee Jr.
 on May 30, 2012

[Signature]
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Westminster Magistrate
 106 East Windsor Street
 Westminster, SC 29693

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Personally appeared before me the affiant M B Sloan whobeing duly sworn deposes and says that defendant James Richard Bartee, Jrdid within this county and state on or about 5/27/2012State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee)

in the following particulars:

DESCRIPTION OF OFFENSE: Solicitation / Solicitation to commit a Felony

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

The defendant did, between the dates of May 27 and May 30, 2012, encourage and solicit an individual to commit the act of kidnapping upon retired Circuit Court Judge James C. Williams, Jr., by counseling, enticing, or inducing the individual to commit the felony hereby stated. Further, the defendant was given funds to buy items that would aid in the commission of said act. Evidence of the agreement was obtained by audio recording. Incident did occur in Oconee County and was investigated by SLED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Affiant's Address 4400 Broad River RoadColumbia 29210-Affiant's Telephone (864)467-8111

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 5/27/2012defendant James Richard Bartee, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Oconee

) as set forth below:

DESCRIPTION OF OFFENSE: Solicitation / Solicitation to commit a Felony

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
 Sworn to and subscribed before me
 on 5/30/2012

[Signature] (L.S.)
 Signature of Issuing Judge

William F. Derrick Jr.

Judge Code: 5054

Judge's Address 106 East Windsor StreetWestminster, SC 29693-2126Judge's Telephone (864)647-5998Issuing Court: ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

FILED OCONEE, SC
 DEVEREAUX WHITEFIELD
 CLERK OF COURT
 2012 JUN - 1 P 2:10

ENTERED
 08
 ORIGINAL
 Oconee

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Oconee

VS.

James Richard Bartee Jr

AKA:

Race: W Sex: M Age: 55

DOB: SS#:

Address: PO Box 1410

City, State, Zip: Seneca, SC 29679

DL#: 007420760 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Solicitation / Solicitation to commit a Felony.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3700597

A/W#: N130838

Date of Offense: 5/27/2012

S.C. Code § : 17-25-0030

CDR Code #: 0795

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0795
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS, ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: David Rhys Wagner 064068 James Richard Bartee Jr W. David Rhys 68798
Wagner, David Rhys SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act, not to exceed 15 years
and/or to pay a fine of \$ 250; provided that upon the service of 5 years and/or payment
of \$ 5; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 250 plus 20% fee: \$ 50

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

250 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25 beginning\$ 250 paid to Public Defender FundOther: Defendant shall undergo psychiatric
evaluation & shall adhere to any treatment
recommendations☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

Copy to:
Det
Sol
Prob

County of Oconee

State of South Carolina,

Plaintiff,

-VS-

James Bartee,

Defendant.

2012-GS-37-597

February 8, 2013

Transcript of Record

The Honorable J. C. "Buddy" Nicholson, Jr., Judge

Christina Adams, Esquire
Solicitor for Tenth Judicial Circuit

David Wagner, Esquire
Deputy Solicitor for Tenth Judicial Circuit
Attorney for the State

S. Jahue Moore, Esquire
Attorney for the Defendant

-5-

1 MR. MOORE: That is all of the statements.

2 THE COURT: All right. So that leaves -- hold
3 on just a second. I'm sorry.

4 (Off record discussion)

5 THE COURT: All right. That gets us to the
6 tape recording. Now, you have a copy of the tape
7 recording, I think; is that correct?

8 MS. ADAMS: Yes, sir.

9 MR. MOORE: We don't know.

10 MS. ADAMS: He does.

11 MR. MOORE: We don't know.

12 THE COURT: Well, do you have a copy of it?

13 MR. MOORE: We don't know.

14 THE COURT: Well, have you been given a
15 purported something on a tape?

16 MR. MOORE: I've been given something ---

17 THE COURT: That's what I asked you. Do you
18 have a tape from the Solicitor's office?

19 MR. MOORE: I do have -- okay. Those are two
20 separate questions.

21 THE COURT: Do you have a tape from the
22 Solicitor's Office?

23 MR. MOORE: I do.

24 THE COURT: All right. Solicitor, do you have
25 an original tape?

1 MS. ADAMS: Yes, sir.

2 THE COURT: All right.

3 MR. MOORE: No, sir, they don't.

4 THE COURT: She says she has the original tape.

5 MR. MOORE: They have the original tape, but
6 they don't have the original recording.

7 THE COURT: Well.

8 MR. MOORE: And that's a difference.

9 THE COURT: What's the difference between
10 original tape and the original recording? If it's an
11 original tape it came from a original recording.

12 MR. MOORE: No, sir. And you're going to have
13 to listen to me on this.

14 THE COURT: All right.

15 MR. MOORE: You're going to have to listen to
16 me on this because it took me a long time to understand
17 why this is so ---

18 THE COURT: Will you have that gentleman behind
19 you to sit down, please?

20 MR. MOORE: Sit down, please.

21 THE COURT: Okay?

22 MR. MOORE: Your Honor, this is -- Mr. Heiss
23 (phonic). He's my investigator.

24 THE COURT: That's fine. But just have him sit
25 down. It's very distracting and interferes with me from

1 THE COURT: All right.

2 MR. MOORE: We do not want to compare our copy
3 against their copy. We want to compare our copy against
4 the original. Now ---

5 THE COURT: Which was digital? And I assume
6 you're saying the digital was transferred to a DVD.

7 MR. MOORE: Right.

8 THE COURT: And you want to look at the
9 original digital?

10 MR. MOORE: Yes, sir.

11 THE COURT: Okay.

12 MR. MOORE: And the problem is with the
13 documents they have given to us, there is nothing they
14 have in their possession which accounts for the location
15 of the original from the time it was made until today.

16 THE COURT: Well, that -- you know, Mr. Moore,
17 that's not -- on a tape you don't have to have a chain.
18 All you've got to do is identify the voices. That
19 doesn't -- they don't have to establish a chain of
20 custody. Okay? You know that.

21 MR. MOORE: The problem though is ---

22 THE COURT: Don't you know that, Mr. Moore,
23 when it comes to admissibility in court, you I.D. the
24 voices?

25 MR. MOORE: Yes, sir.

1 THE COURT: Okay.

2 MR. MOORE: But that doesn't mean that the I.D.
3 of the voices has not been modified from the original.
4 And we believe there may have been -- we believe based
5 upon what has -- we've already had that's been modified
6 and edited, we believe we either don't have a complete
7 version of the tapes or ---

8 THE COURT: But won't the digital recording
9 tell you that?

10 MR. MOORE: The original device as recorded
11 will tell us. Yes, sir. That's what I want.

12 THE COURT: Wouldn't that tell you that?
13 Solicitor, what were you going to say on the tape?

14 MS. ADAMS: Judge, Anderson County narcotics
15 officers are the ones that did the recordings. Mr. Moore
16 ---

17 THE COURT: Did they do it digitally, or did
18 they do it on a DVD?

19 MS. ADAMS: Well, they used their narcotics
20 devices. I believe the original is probably on a
21 computer and Mr. Moore is more than welcome to go and sit
22 and listen. It's the same thing that he has. What he's
23 referring to is we did a transcript of what was on the
24 tape ---

25 THE COURT: All right. Is the original

1 recordings on the digital device still available?

2 MS. ADAMS: Yes, sir. We can ---

3 THE COURT: Okay. Then make that available for
4 you ---

5 MS. ADAMS: Absolutely.

6 THE COURT: --- and Mr. Moore to sit down and
7 listen to it and compare it to what he has, okay?

8 MS. ADAMS: Absolutely.

9 THE COURT: Has it been transcribed?

10 MS. ADAMS: We did transcribe it, Judge, yes.

11 And that's what I think he's talking about ---

12 THE COURT: Have you given him a copy of the
13 transcription?

14 MS. ADAMS: I mean, we did that as an aid to
15 help make it easier to ---

16 THE COURT: Have you given him a copy of the
17 transcript?

18 MS. ADAMS: Yes, sir.

19 THE COURT: You have?

20 MS. ADAMS: Yes, sir. We've given him

21 everything that we have.

22 THE COURT: Okay. All right.

23 MR. MOORE: They haven't given me a copy of the
24 transcription.

25 THE COURT: Mr. Moore?

1 State of South) In the Court of General
 Carolina) Sessions
 2)
 County of Oconee) Indictment No: 2012GS3700597
 3

4 State of South)
 5 Carolina)
)
 6 Plaintiff,) Transcript of Record
) Trial - Volume 1
 7 -vs-) (Pages 1 through 171)
)
 8 James Richard Bartee,)
 Jr.,)
 9)
 Defendant.

10 August 26, 2013
 11 Walhalla, South Carolina
 12

13 B e f o r e:
 14

The Honorable R. Lawton McIntosh, Judge; and a jury.
 15
 16

17 A p p e a r a n c e s:

18 Christina T. Adams, Esq.
 10th Circuit Solicitor
 19 David Rhys Wagner, Esq.
 Deputy Assistant 10th Circuit Solicitor
 20 Lindsey Satterfield Simmons, Esq.
 Assistant 10th Circuit Solicitor
 21 Attorneys for the State

22 N. Douglas Brannon, Esq.
 Attorney for the Defendant
 23
 24

25 Robin Sue Hild, FCRR, RPR
 Circuit Court Reporter

1 THE CLERK: What says the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What says the Defense?

4 MR. BRANNON: Excuse this juror, please.

5 THE CLERK: Ma'am, you have been excused in this
6 case, you may be seated.

7 Number 194, James Reed.

8 (Whereupon, a White male approaches.)

9 THE CLERK: What says the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What says the Defense?

12 MR. BRANNON: Seat the juror, please.

13 THE CLERK: Sir, if you would please take a seat in
14 the jury box.

15 Number 70, Micayla Capps.

16 (Whereupon, a White female approaches.)

17 THE CLERK: What says the State?

18 MR. WAGNER: Present the juror.

19 THE CLERK: What says the Defense?

20 MR. BRANNON: Seat the juror, please.

21 THE CLERK: Ma'am, if you would please take a seat
22 in the jury box.

23 Number 253, Felicia Williams.

24 (Whereupon, a Black female approaches.)

25 THE CLERK: What says the State?

1 MR. WAGNER: Present the juror.

2 THE CLERK: What says the Defense?

3 MR. BRANNON: Seat the juror, please.

4 THE CLERK: Ma'am, if you would please take a seat
5 in the jury box.

6 Number 294, Carlton Groomes.

7 (Whereupon, a White male approaches.)

8 THE CLERK: What says the State?

9 MR. WAGNER: Present the juror.

10 THE CLERK: What says the Defense?

11 MR. BRANNON: Seat the juror, please.

12 THE CLERK: Sir, if you would please take a seat in
13 the jury box.

14 Number 88, Jennifer Harbin.

15 (Whereupon, a White female approaches.)

16 THE CLERK: What says the State?

17 MR. WAGNER: Please excuse the juror on this case.

18 THE CLERK: Ma'am, you have been excused in this
19 case, you may be seated.

20 Number 2, Maggie Ables.

21 (Whereupon, a White female approaches.)

22 THE CLERK: What says the State?

23 MR. WAGNER: Present the juror.

24 THE CLERK: What says the Defense?

25 MR. BRANNON: Seat the juror.

1 in the jury box.

2 Number 34, Samantha Campbell.

3 (Whereupon, a White female approaches.)

4 THE CLERK: What says the State?

5 MR. WAGNER: Please excuse the juror on this case.

6 THE CLERK: Ma'am, you have been excused from this
7 case, you may be seated.

8 Number 46, Joy Cobb.

9 (Whereupon, a Black female approaches.)

10 What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the Defense?

13 MR. BRANNON: Seat the juror, please.

14 THE CLERK: Ma'am, if you would please take a seat
15 in the jury box.

16 Number 260, Tim Alexander.

17 (Whereupon, a White male approaches.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the Defense?

21 MR. BRANNON: Seat the juror, please.

22 THE CLERK: Sir, if you would please take a seat in
23 the jury box.

24 Number 239, Timothy Vaughn.

25 (Whereupon, a White male approaches.)

1 MR. BRANNON: No, not at all, Your Honor, thank
2 you.

3 THE COURT: Mr. Wagner, do you agree with that?

4 MR. WAGNER: Yes, sir.

5 THE COURT: Okay. All right.

6 Motions:

7 THE COURT: We now have seven various motions.

8 I'll do them in any order and whose ever motion you want
9 to go with. It doesn't matter to me.

10 MR. BRANNON: Do you want to get the big one out of
11 the way first?

12 THE COURT: Okay.

13 MR. BRANNON: That would be my motion to suppress
14 the audio recording.

15 THE COURT: Okay.

16 MR. BRANNON: Your Honor, I'm aware that there are
17 some witnesses in here. I'm gonna ask them to step out.
18 It was my motion to sequester, okay?

19 THE COURT: That will be fine. That will be
20 granted.

21 MR. BRANNON: All right. The first witness that I
22 do need is Officer Gregory, Anderson County Sheriff's
23 Department.

24 MS. SIMMONS: Your Honor, may we approach?

25 THE COURT: Yes, ma'am.

1 (Discussion at sidebar.)

2 THE COURT: Are there any representatives from the
3 media here? Would all the members of the media step
4 back over with me here, please, for a second.

5 (Whereupon, two men confer with the Court outside
6 of the courtroom.)

7 THE BAILIFF: Court come to order. Remain seated.

8 THE COURT: Would you call your first witness,
9 Mr. Brannon.

10 MR. BRANNON: Officer Gregory.

11 (Whereupon, the witness, Mark Gregory, was sworn by
12 the Clerk of Court.)

13 MR. BRANNON: May it please the Court?

14 THE COURT: Yes, sir.

15 Whereupon,

16 Mark Gregory

17 Having first been duly sworn, was examined and testified
18 as follows:

19 Direct Examination by Mr. Brannon:

20 Q. Sir, please state your full name for the record.

21 A. Can you hear me?

22 Q. I can.

23 A. Mark Gregory.

24 Q. Okay. And are you still employed with Anderson
25 County?

1 A. Yes, sir, I am.

2 Q. And in what -- what is your role, what is your
3 title?

4 A. I'm a gang investigator and formerly with the
5 narcotics division.

6 Q. Okay. Would it be fair to say that you primarily
7 work undercover?

8 A. I don't think that's an accurate representation,
9 no, but there are times where I do.

10 Q. Okay. So you do work undercover from time to time;
11 is that correct?

12 A. That is correct.

13 Q. Okay. Do you also from time to time audiotape or
14 maybe even videotape certain maybe transactions or
15 conversations or something like that?

16 A. Yes, sir, I do.

17 Q. Okay. On or about May 29 of 2012, were you
18 contacted by Oconee County law enforcement officials?

19 A. No, sir. Not Oconee County.

20 Q. Who contacted you?

21 A. My boss, Lieutenant David Baker.

22 Q. With SLED?

23 A. No, sir.

24 Q. Okay. Sorry. All right. How did you get involved
25 in the Bartee case?

1 A. My boss called me ---

2 Q. Lieutenant Baker?

3 A. Lieutenant Baker called me, sir, and I was at home,
4 and he asked me to come in and support, in a support
5 role for an investigation that was being conducted by
6 SLED.

7 Q. Okay. All right. And, what, what did you -- what
8 were you asked to do by SLED or by your boss or
9 whatever?

10 A. I was asked to go get our equipment, when I say
11 equipment I mean audio recording devices, from our
12 office and meet Agent Sloan with SLED ---

13 Q. Okay.

14 A. --- at a location on Clemson Boulevard.

15 Q. Okay. Before the phone call from your boss, had
16 you ever seen James Richard Bartee, Junior?

17 A. Personally?

18 Q. Yes.

19 A. No, sir.

20 Q. Had you ever had a conversation with him over the
21 telephone?

22 A. No, sir, I have not.

23 Q. Had you ever heard him speak publicly?

24 A. No, I did not.

25 Q. Okay, fine. So you meet up with I guess it's SA

1 Sloan, correct?

2 A. That is correct, sir.

3 Q. Where did you meet?

4 A. We met at Clemson Boulevard in a parking lot. I
5 don't know the name of the restaurant right now, but it
6 used to be the old Charlie T's. It's right there on the
7 Lake near Interstate 85.

8 Q. Got you. Okay. All right. And what were you
9 asked to do?

10 A. I was asked to provide audio equipment for this
11 investigation, which I did, and I was asked to be the
12 agent in charge of the audio equipment because I knew
13 how to work it and operate it.

14 Q. You knew how to work it and operate it. Okay. All
15 right. Now, tell me, what equipment did you use?

16 A. It's equipment that's issued by the Anderson County
17 Sheriff's Office, they own the equipment. And basically
18 it's a transmitter, a recording device, and a monitoring
19 device.

20 Q. Okay. So the transmitter is like the microphone,
21 right?

22 A. That's accurate, yes, sir.

23 Q. Okay. And the monitoring device allows you to
24 listen to it, kind of like a third party, right?

25 A. It allows you to listen to it, yes, sir.

1 Q. Okay. And then the recording device is the tape
2 recorder, right?

3 A. It's essentially the listening device.

4 Q. Okay. But it also records it, right?

5 A. Yes, sir; that is correct.

6 Q. Okay. All right. And now, I'm a lot older than
7 you. Is this reel-to-reel?

8 A. No. Reel-to-reel meaning like old film?

9 Q. Yes.

10 A. No, sir.

11 Q. Well, what did you record this conversation to?

12 A. I recorded it to a micro SD card.

13 Q. An SD card. How big is that SD card?

14 A. Can you clarify what you mean? Do you mean by like
15 actual physical size?

16 Q. Physical size, yes.

17 A. About as big as a penny.

18 Q. About as big as a penny. So this is a card, a
19 little device that slides into that recording mechanism,
20 correct?

21 A. That is correct.

22 Q. Okay. And without an SD card that machine doesn't
23 record anything, correct?

24 A. That is correct.

25 Q. Okay. So it's a blank recorder, and you put a card

1 in it, which would be like the tape in a reel-to-reel,
2 right?

3 A. I believe you are comparing apples to oranges when
4 you're talking about ---

5 Q. I might be. I might be.

6 A. And I don't believe that's an accurate
7 representation.

8 Q. Okay. But without an SD card that thing isn't any
9 good. Right?

10 A. You can still monitor it.

11 Q. Right. You could hear it, but you wouldn't be able
12 to save it, right?

13 A. Correct.

14 Q. Okay. Where is that SD card?

15 A. It's in our equipment.

16 Q. Okay. Can you show it to me today?

17 A. I cannot.

18 Q. Why not?

19 A. Because our equipment is in Anderson.

20 Q. Okay. But you knew you were coming today to
21 testify about this, right?

22 A. Yes, sir.

23 Q. Do you have anywhere, written down anywhere which
24 SD card that you used that night?

25 A. There's only one, sir.

1 Q. There's only one SD card?

2 A. Yes, sir.

3 Q. Anderson County only uses one SD card?

4 A. Yes, sir.

5 Q. Do you know how much they cost?

6 A. No, I don't.

7 Q. About ten bucks. And you are telling me they've
8 got one?

9 A. That is correct.

10 Q. Okay. How many conversations can be recorded on
11 that one SD card?

12 A. As far as battery life goes? Can you clarify that
13 question?

14 Q. Storage. How much data can be stored on that SD
15 card?

16 A. I don't know.

17 Q. So, are you telling me that every conversation that
18 you have ever audio taped is still on that SD card?

19 A. No, sir.

20 Q. Okay. All right. Now, if I told you I have never
21 been arrested before, would you believe me?

22 A. I wouldn't have any reason to doubt you, sir.

23 Q. Okay. So, if I do that right there (putting
24 fingers on board), what am I leaving on this board?

25 A. Fingerprints.

1 Q. Okay. And if I do that right there (putting
2 fingers on board), what am I leaving on this board?

3 A. Fingerprints.

4 Q. Okay. Now, if you had somebody from SLED or
5 somebody from your office and they came in here and they
6 took these prints, what are they called?

7 A. Latent fingerprints.

8 Q. Latent fingerprints. Okay. And so you've got two
9 sets -- you've got -- you've got my fingerprints, right?

10 A. Yes, sir.

11 Q. But, if I've never been arrested, you don't have
12 anything to match them to, do you?

13 A. To my understanding, you are correct.

14 Q. So what you got is two -- you know that that print
15 is probably gonna match that print because it came off
16 of my hands, right?

17 A. I don't believe so.

18 Q. Okay. So what you got is nothing. Right?

19 A. We -- we have evidence.

20 Q. Okay. Well, what are you gonna compare it to?

21 A. That's a very broad question, sir, because evidence
22 can be coupled with many other things to investigate a
23 case.

24 Q. I got you. But -- and I understand that you don't
25 want to say certain things. I understand that. But

1 you've got two sets of prints. And if you sent somebody
2 from SLED or a forensic tech from Anderson County to
3 take those two sets of prints and you didn't tell them
4 that they belonged to Doug Brannon, you just said get
5 those two sets of latent prints, what good would those
6 prints be to that evidence tech?

7 A. They would be great for the investigator; they
8 would not be great for the evidence tech.

9 Q. Okay. Then I need you to explain how they would be
10 great for the investigator.

11 A. Because it's evidence, and an investigator collects
12 evidence and uses that evidence to investigate cases.

13 Q. Right. And I see where you're going. Because if
14 you take this print and then, based on your
15 investigation, it leads you to me, and you get my
16 fingerprints, then you can match it, right?

17 A. That's correct.

18 Q. Okay. Now, with that example in mind, what are
19 those prints (puts hands on table)?

20 A. Evidence.

21 Q. Original evidence. Right?

22 A. Yes.

23 Q. Okay. Now, what is the recording that's on that SD
24 drive?

25 A. It is evidence.

- 1 Q. It's original evidence, isn't it?
- 2 A. Yes. May I clarify?
- 3 Q. Please do.
- 4 A. At no point in time would we ever take this wall
- 5 into evidence.
- 6 Q. Correct.
- 7 A. We would take your fingerprints.
- 8 Q. I got you.
- 9 A. It's not feasible to take the wall.
- 10 Q. Right. But there's a huge difference between my
- 11 latent prints collected by SLED and a digital recording,
- 12 isn't there?
- 13 A. Can you, can you say that again? I'm sorry.
- 14 Q. There's a huge difference between my prints lifted
- 15 by some qualified technician and a digital recording,
- 16 isn't there?
- 17 A. There's many differences.
- 18 Q. But the one big difference is, if the evidence tech
- 19 takes my latent prints and puts them on that card that
- 20 we've all seen, the original card that's maintained by
- 21 SLED, and then somebody wants to hurt this case and they
- 22 go and they deface that print, you know they've been
- 23 defaced, don't you? You may not know by whom, but you
- 24 know they have been defaced, right?
- 25 A. I would assume so.

1 Q. Okay. If all you show me is a copy of a digital
2 recording and I don't have anything to compare it to,
3 how do I know if it's been defaced?

4 A. I would equate that to the same way you would know
5 that fingerprints had been defaced. It's mathematically
6 impossible for us, that I know of, for anybody to
7 ultimately move a swirl mark in a fingerprint to deface
8 a fingerprint. I know it is plausible for somebody to
9 deface a fingerprint so it cannot be read anymore.

10 What I can tell you is you can delete, you can do
11 anything you want to a recording; however, you can't
12 change the swirl marks. And by that I mean there's a
13 time stamp at the beginning of the recording ---

14 Q. Right.

15 A. --- and a time at the end of the recording.

16 Q. Got you.

17 A. Which mathematically, especially by me, cannot be
18 altered.

19 Q. Okay. But let's go back to the fingerprints.
20 We've already established that without having anything
21 to compare my fingerprint to, it's good for the
22 investigator, but until you find me, you can't match it
23 to anything. Right?

24 A. That's my understanding, yes.

25 Q. Okay. If you show me a disk and you allege that it

1 is a copy of the original, but you don't have the
2 original, how can I compare it?

3 A. I have the original.

4 Q. Where?

5 A. It's on my hard drive. Somebody from your office,
6 sir, they inspected it.

7 Q. And somebody from my office, somebody involved in
8 this investigation, said that it was the original?

9 A. I don't know his name.

10 Q. His name is Al Johnson.

11 A. Yes, sir.

12 Q. And you know he's gonna testify in a minute?

13 A. Yes, sir.

14 Q. Okay. What Al Johnson said to you was the copy
15 that you have and the copy that Sloan has are the same.
16 Correct?

17 A. That is correct.

18 Q. Okay. Why did he say they were the same?

19 A. I'm getting out of my realm here. But something
20 that had to do with the hash ---

21 Q. Right.

22 A. --- which is a digital, if you will, DNA ---

23 Q. Right.

24 A. --- of the recordings.

25 Q. Right.

1 A. If I have -- if you have two recordings, you
2 compare both those recordings together and you come up
3 with the same digital hash. Had one been altered, not
4 only could you tell by listening to it, but you could
5 tell by the digital DNA that's associated with that
6 file.

7 Q. Okay. I'm looking for that original hash. Do you
8 have it?

9 A. I do.

10 Q. Where is it?

11 A. It's on my hard drive.

12 Q. You have the hash for your computer, for your copy.
13 I want the one from that SD card. Do you have it?

14 A. Yes. Because I cut from the SD card onto my hard
15 drive the recording.

16 Q. Okay. So you are telling me that you can show me
17 someplace the original hash from the SD card?

18 A. No, not from the SD card.

19 Q. Thank you. Now, the way the audio was handled in
20 this, in the Bartee case, is that the way you handle all
21 of the recordings in Anderson County?

22 A. Yes.

23 Q. Okay. So let's say this is an Anderson County
24 case. After you make a recording, what do you do with
25 it?

1 A. I take the SD card out of the transmitter recording
2 device.

3 Q. Right.

4 A. I place that SD card into a thumb drive that is
5 part of the equipment that Anderson County bought.

6 Q. Got you.

7 A. It all comes in one package.

8 Q. Uh-huh.

9 A. I take the thumb drive and I place it into a
10 computer, normally mine, but any computer would be
11 sufficient.

12 And, after that, there's two things you can do with
13 the audio file. You can cut it when you right click on
14 the audio file, if you highlight the audio file, then
15 right click on that, cut it, use the cut function from
16 the computer, or the copy function.

17 Now, the difference, if you use the copy function,
18 it leaves the original recording ---

19 Q. On the SD card?

20 A. --- on the SD card.

21 Q. Right.

22 A. If you use the cut function, it takes the original
23 recording and transfers it to whatever device you are
24 transferring it to. Therefore, the original recording
25 is now on another device that can be used for numerous

1 purposes, you know, court ---

2 Q. Got you.

3 A. --- and whatnot.

4 Q. Got you. Okay. I moved -- I've moved beyond the
5 hash and stuff like that now. But, after you've copied
6 or cut, what do you do with it then?

7 A. It depends on the case I suppose. You could make,
8 you know, one disk, two disks, three disks for case
9 files, for discovery, things of that nature. Maybe the
10 investigation hasn't gone anywhere or it's a long-term
11 investigation, so you place that onto a computer or a
12 hard drive or multiple disks so that multiple agents
13 involved in the case would have some access to what's
14 going on with the case.

15 Q. Okay. And I like your word "access." But whether
16 you have made one copy or three copies -- and I'm using
17 the word "copy" lightly here -- they may be copies, they
18 may be originals, I'm not disputing that at this point,
19 what do you do with them?

20 A. They usually stay with the case file until the case
21 file is turned in to the jurisdiction that's gonna
22 prosecute the case.

23 Q. Okay. When does chain of custody come into play?

24 A. The chain of custody belongs with the case agent.

25 Q. Okay.

1 A. And to me, then goes to the prosecuting agency
2 that's gonna prosecute the case.

3 Q. All right. So are you telling me that in Anderson
4 County you may cut or copy an audiotape, and if it's
5 your case, it might sit in your case file in the back
6 seat of your car for a period of time?

7 A. No, sir, I don't keep them in my car.

8 Q. Okay. Where do you keep them?

9 A. In my office.

10 Q. Okay. And how do I know, as a defense attorney if
11 I'm on one of your cases, that that's where that disk
12 is?

13 A. I don't have an answer for that, sir.

14 Q. Okay. Do you know what chain of custody is?

15 A. I do know what chain of custody is.

16 Q. Okay. Well...

17 MR. BRANNON: One second, Your Honor.

18 By Mr. Brannon:

19 Q. When was Mr. Bartee arrested?

20 A. I don't remember.

21 Q. Okay. Well, what day did you make this audio
22 recording?

23 A. The 29th and the 30th kind of rolled into one day
24 there.

25 Q. Of May?

1 A. Of May 2012.

2 Q. 2012?

3 A. Yes, sir.

4 Q. And you said you copied this to two computers,
5 right, the audio recording to two computers, right?

6 A. Copied it to a computer and copied it to a disk,
7 and I used the cut function to transfer it to my hard
8 drive.

9 Q. Okay. So you copied it to a disk, and then when
10 you downloaded it to your computer you used the cut,
11 correct?

12 A. To my hard drive, yes, sir.

13 Q. Which erased it from the SD; correct?

14 A. It transferred it. It didn't erase it. It
15 essentially -- essentially moves it.

16 Q. Right. It physically moves it from one media to
17 another media; correct?

18 A. That is correct.

19 Q. Okay. But didn't you also give SA Sloan a copy or
20 a disk?

21 A. Two times. One disk, and I -- then I used the copy
22 function to put it onto his computer.

23 Q. Okay. All right. Now, what did you do with your
24 disk and your copy on your computer?

25 A. Ultimately I only made one disk and that disk

- 1 ultimately got transferred to Agent Sloan.
- 2 Q. When?
- 3 A. I don't recall.
- 4 Q. Well, but isn't that chain of custody?
- 5 A. It would be, yes.
- 6 Q. Okay. Shouldn't I have a document that says on X
- 7 day you did this with this disk, and shouldn't there
- 8 be -- like this right here. See, right here on August
- 9 the 15th Sloan gave it to somebody named Kindley.
- 10 Right?
- 11 A. It appears he gave something to Agent Kindley ---
- 12 Q. Well, you know, a disk containing recorded phone
- 13 calls and recorded meeting between suspect and witness.
- 14 Okay. That's it, right?
- 15 A. It should be, yes, sir, I think so.
- 16 Q. Okay. And you made that disk, you made that
- 17 recording on May 29/May 30, 2012, right?
- 18 A. Yes.
- 19 Q. And you said you gave SA Sloan a copy of it, a
- 20 disk, right?
- 21 A. I did.
- 22 Q. Okay. How come I don't know where any of it was
- 23 until August the 15th?
- 24 A. I don't have an answer for that, sir.
- 25 Q. All right. Let's just say that is a, this case,

1 it's a drug deal, -okay? And you've got audiotape and
2 videotape of some guy selling crack to some other guy.
3 Right?

4 A. Yes.

5 Q. And in that case you got audio and visual of the
6 guy selling the crack and then you got the dope off of
7 the CI. Okay?

8 A. Fair enough.

9 Q. All right. So let's change this from an audio
10 recording on a disk to the crack that you took off your
11 snitch.

12 A. Absolutely.

13 Q. You took it off of him on May 30, 2012, and I don't
14 know where the crack went until August 15, 2012. Do you
15 reckon that drugs -- those drugs are coming in?

16 A. I would venture to say they would not be.

17 Q. Okay. What's the difference? If you got to have a
18 chain of custody on dope, why don't you have to have a
19 chain of custody on an audiotape?

20 A. Well, you know, dope can come from many places, but
21 when you're involved in what I would consider a
22 clandestine-type of operations, you don't just
23 haphazardly put audio transactions or video transactions
24 into your local evidence locker for anybody to see. I
25 mean, they just don't, they just don't do that.

1 Q. For anybody to see? Do you mean that guy in the
2 green shirt could walk to Anderson County evidence
3 locker and say, I want to see all the videos you got in
4 the dope cases?

5 A. No.

6 Q. Okay. So it's not that anybody can see it, right?

7 A. No.

8 Q. Okay. Now, what did you -- what did you record on
9 May 29, 2012? Who did you record? And forgive me. You
10 recorded some phone calls and then you recorded a
11 meeting between Blackwell and who?

12 A. Bartee.

13 Q. Okay. Remember early on I asked you, had you ever
14 had a conversation with Bartee, and you said no. Had you
15 ever seen him? And you said no. Had you ever heard him
16 speak publicly? And you said no.

17 How do you know you recorded a conversation between
18 Nick Blackwell and Rick Bartee? How do you know?

19 A. Based on the investigation that was ongoing and
20 then that the informant knew who he was speaking to.

21 Q. So your snitch told you that it was Rick Bartee?

22 A. I believe that he told Michael Sloan and then
23 Michael Sloan told me.

24 Q. So, in other words, your knowledge of who you
25 recorded is hearsay on hearsay.

1 A. Just because at first you don't necessarily know
2 who is speaking on one end of it, that's part of the
3 investigation, so...

4 Q. Okay. Can you tell me now that that recording is
5 that man sitting over there in the red checked tie?

6 A. Based on the totality of the investigation, yes.

7 Q. How? What totality?

8 A. That we were at his house, that that informant and
9 my boss, David Baker, were at his house as such at a
10 time during the day between May 29th and May 30th, 2012.
11 They were speaking with a gentleman inside the house.

12 And I believe during the conversation, you know, the
13 informant says things that would lead a reasonable
14 person to believe he was speaking to James Bartee.

15 Q. Okay. Do you know how many other people were in
16 the house?

17 A. No, sir.

18 Q. Do you know if there were any males, other males in
19 the house?

20 A. No, sir.

21 Q. And can you recall verbatim that conversation from
22 May 29 and May 30, 2012, can you recall it verbatim?

23 A. No, sir.

24 Q. Okay. All right.

25 MR. BRANNON: One second, Your Honor, I think I'm

1 almost done.

2 THE COURT: Yes, sir.

3 (Discussion off the record.)

4 By Mr. Brannon:

5 Q. Okay. What else have you done in this
6 investigation?

7 A. I went to a meeting at the Anderson County
8 Sheriff's Office.

9 Q. On March 6th, right?

10 A. That sounds accurate. This year, yes.

11 Q. Yes. On March 6th there was a lawyer other than
12 me; Pete Heist (phonetic), the investigator was there,
13 and Al Johnson was there, right?

14 A. They were speaking with the attorney by telephone?

15 Q. Yes.

16 A. That's the day.

17 Q. March 6th. Okay. What else have you done?

18 A. Of course I've had meetings here with the attorneys
19 in Ocone.

20 Q. Okay. And forget that crap. I'm talking about as
21 far as investigating, what else have you done?

22 A. To my recollection, on May 29th and May 30th was
23 the only investigation that I did ---

24 Q. Okay.

25 A. --- unless I'm missing something here.

1 Q. When did you give Sloan the disk?

2 A. I don't recall the date.

3 Q. Did you do it that day?

4 A. No. I gave him the -- I transferred the audio onto
5 his computer at the end of the operation on May 30th.

6 Q. Okay. And then sometime later you gave him a disk?

7 A. That's correct.

8 Q. Can you see how as a defense attorney it would be
9 nice to know when you gave him that disk?

10 A. Sure, yes, sir.

11 Q. Okay. But, because there's no chain of custody
12 until August 15th, I -- I can't ever know that, can I?

13 A. There is a chain of custody on his computer at the
14 exact date and time that I transferred the audio onto
15 his computer. It's time-stamped for you right there.

16 Q. I got you. I'm -- I don't -- I don't dispute that
17 I can tell when you downloaded it. But I can't tell who
18 else read it or listened to it, can I?

19 A. I think that's accurate.

20 Q. Okay. Because there's no chain of custody, right?

21 A. I don't believe that's accurate.

22 Q. Well, okay, fine, you don't believe it. Now, there
23 is one other thing you did, though. You created a
24 report.

25 A. That's correct.

1 Q. Okay. My recollection is that that audiotape ended
2 at 12:16 p.m. on -- it may have been 12:46. I know it's
3 got a 6 in it. It's after midnight on May the 30th,
4 right?

5 A. Yes.

6 Q. How did you produce a report dated May 29?

7 A. Sir, that's a typo.

8 Q. Is it? Okay. I'll trust you on that,
9 Where's -- did you sign this report?

10 A. No, sir.

11 Q. Why not?

12 A. I printed it out.

13 Q. Okay. Did you have your supervisor review it?

14 A. No, sir.

15 Q. Is it standard policy in Anderson to prevent -- to
16 produce incident reports without your signature or any
17 supervising agent approving it?

18 A. We don't sign our incident reports anyway because
19 they are generated by the computer, and our supervisors
20 do approve all incident reports that we generate.

21 Q. Okay.

22 A. This is a supplemental incident report to an agency
23 which I don't have access to their computing system.

24 Q. Okay. All right. And one thing that I want to
25 clear up. In your incident report you state that you

1 went to the Anderson County Sheriff's Department, you
2 picked up the audio recording equipment and some funds
3 from the drug account or something like that, right?

4 A. That's correct.

5 Q. And you -- you wrote down the serial numbers of the
6 money, right?

7 A. Yes.

8 Q. Okay. When you got that money from Anderson
9 County, who'd you sign it out -- where did you get it?
10 How -- you let somebody know you got it, didn't you?

11 A. I keep it in my safe.

12 Q. Okay. Did you mark down that you took it out?

13 A. No.

14 Q. There's no record of how much money you took out of
15 that safe?

16 A. There's a record of how much money that Lieutenant
17 Baker gives me when I, in lack of better terms, re-up my
18 money, you know, I get my money from him.

19 Q. Uh-huh.

20 A. There's a record of that and there's a record of
21 what I pay out to informants or make buys and, you know,
22 when I need more money I ask him for more money ---

23 Q. Okay.

24 A. --- and the process starts over.

25 Q. Where is the record of you taking the \$138 out of

1 the drug funds in your office in your safe, where is
2 that record?

3 A. It would be in my bookkeeping book, my record book.

4 Q. Okay. And why haven't I been given a copy of that?

5 A. I don't know, sir.

6 Q. Okay. But that's -- sir, that's evidence in this
7 case, isn't it?

8 A. (No response.)

9 Q. Let -- let -- let me make it easier for you. You
10 know why I'm making a big deal out of this? Is because
11 you say that you took the money from the Anderson County
12 Sheriff's Department, you wrote down the serial numbers,
13 you knew whose money it was and who it came from, and
14 that you gave it to Blackwell to return to Mr. Bartee.

15 I've got another report from that SA right there
16 that says he gave him the money. I just want to know
17 who gave him the money or where it came from. Should I
18 believe your report or his report?

19 A. I can only testify to what I wrote.

20 Q. Okay. What you wrote and what you did?

21 A. That's correct.

22 Q. And you're telling me that there's a document that
23 verifies what you did, right?

24 A. There's a document that verifies that obviously I
25 take X amount of money from my money bag and use it for

1 whatever type of investigation I'm working on at the
2 moment.

3 Q. And you never produced that receipt in this case,
4 did you?

5 A. No, I did not.

6 MR. BRANNON: Okay. Nothing further.

7 THE COURT: Any questions?

8 MS. SIMMONS: Yes, Judge.

9 Cross-Examination by Ms. Simmons:

10 Q. Agent Gregory, did you follow standard procedure
11 for downloading from this device to the computer hard
12 drive?

13 A. Yes, ma'am, I did.

14 Q. Is that what you do in every single case?

15 A. Yes, ma'am, it is.

16 Q. Why do you -- why do you reuse SD cards?

17 A. I'm gonna go based off what the attorney said a
18 minute ago, that they run around ten dollars apiece.
19 There's seven agents in our narcotics division and gang
20 unit. We use that equipment with multiple other
21 agencies. I couldn't tell you how many different
22 transactions or audio recordings were made on -- you
23 know, during any given year. But it just doesn't seem
24 very responsible for us to buy a ten-dollar SD card for
25 every audio transaction that we make. I mean, you would

1 be upwards of thousands of dollars by the end of the
2 year.

3 Q. In your case file, in your standard operating
4 procedure, what do you maintain as your original disk,
5 for purposes of your case file?

6 A. The original stays on the hard drive.

7 Q. And what stays with your case file?

8 A. A transfer, a copy that we make.

9 Q. And explain to me one more time this
10 cut-and-copy -- or cut-and-paste function that you used.

11 A. Yes, ma'am. Where do you want me to begin, after
12 the audio is actually captured?

13 Q. When you cut it and paste it, what exactly do you
14 do?

15 A. When you actually put the SD card into the thumb
16 drive and you place the thumb drive into a computer, you
17 can then highlight the audio transaction and also the --
18 the what we consider a receipt of the audio which is
19 generated by the equipment, so there's two files for
20 every one audio file.

21 There's an audio file and the receipt. The receipt
22 and the audio file are then either, one, copied by right
23 clicking on both and going to whatever media you want to
24 put this onto, and then you would click "paste."

25 If you hit -- you do this by copying the file, it

1 leaves that file on the SD card that's in the thumb
2 drive. To clear the SD card from the thumb drive, you
3 would cut it. So you would highlight the file, you
4 would right click and hit "cut," you would go to
5 whatever media that you are transferring this, this to,
6 and hit "paste" and it takes the recording and puts it
7 onto that medium.

8 Q. Okay. I show you what has been premarked as
9 State's Exhibit 1.

10 MS. SIMMONS: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes, ma'am.

13 By Ms. Simmons:

14 Q. Is this the disk that you generated during the
15 course of your investigation?

16 A. Yes, ma'am.

17 Q. And is that the first disk that you generated from
18 your, from your hard drive of your computer?

19 A. Yes, ma'am.

20 Q. And have you had a chance to review that prior to
21 court today?

22 A. Yes, ma'am.

23 Q. And how can you prove that you've done that?

24 A. It's got my handwriting on it plus my signature.

25 Q. Did you sign that disk when you reviewed it?

1 A. Yes, I did.

2 Q. And is that disk a fair and accurate representation
3 of what you simultaneously heard on the night of May
4 29th into May 30th?

5 A. Yes, ma'am, it is.

6 Q. Have you made any alterations, deletions, or
7 changes to this audio recording in any way?

8 A. No, ma'am.

9 Q. And the money that you used in this case, the \$138,
10 were you present with Agent Sloan when that was given to
11 Blackwell or were you separate?

12 A. I was present.

13 Q. So everybody was in the same place?

14 A. That is correct.

15 Q. Okay. Thank you.

16 MS. SIMMONS: Beg the Court's indulgence for one
17 moment.

18 THE COURT: Yes, ma'am.

19 (Counsel confer.)

20 By Ms. Simmons:

21 Q. And the disk and the money, who did you turn it
22 over to?

23 A. Agent Sloan.

24 Q. Thank you.

25 Redirect Examination by Mr. Brannon:

1 Q. I thank Madam Solicitor for this because it's
2 something I needed to follow up on.

3 Tell me the order that you transferred the audio
4 from the SD card. Where did -- where did you move it
5 first?

6 A. First was to Agent Sloan's computer.

7 Q. Okay.

8 A. I used the copy function.

9 Q. Copy, okay. All right. And then where?

10 A. And then obviously it left it on the SD card.

11 Q. Right.

12 A. The next place that I transferred it to would have
13 been my hard drive and I would have used the cut
14 function.

15 Q. Okay. So you went Sloan copy, yours cut. Right?

16 A. Correct.

17 Q. Okay. And then -- and then when did you make this?

18 A. I would have made that May 30th, I believe.

19 Q. Okay.

20 A. Don't hold me to that. I don't recall, but I
21 believe it would have been May 30th.

22 Q. Okay. But you don't know?

23 A. I don't have my notes in front of me to check.

24 Q. Do you have 'em?

25 A. No, sir. You would have to get the report that I

1 furnished.

2 Q. Yeah, yeah. That would be the one dated the 29th,
3 right? Right?

4 A. That would be correct.

5 Q. Okay. What -- just overly broad, what is this
6 (handing)?

7 A. That is a CD, DVD.

8 Q. No. You are thinking too specifically. Is this
9 evidence?

10 A. Yes, it is.

11 Q. Okay. These are Anderson County Sheriff's Office
12 General Orders, Property and Evidence Control. Okay?

13 A. Yes.

14 Q. See them?

15 A. I do.

16 Q. Have you ever seen them before?

17 A. I have.

18 Q. Okay.

19 A. I signed for them.

20 Q. Okay. This is evidence, right?

21 A. That's correct.

22 Q. And at some point on the morning of May 30, 2012,
23 you came into possession of evidence, didn't you?

24 A. Yes.

25 Q. Okay. I'm just gonna read:

1 Policy. As soon as practical before going off
2 duty, comma, officers will deliver all evidence and any
3 found, confiscated, or recovered property coming into
4 their possession to the custody of the evidence officers
5 or drop box at the Anderson County Sheriff's Office,
6 comma, along with an evidence property report.

7 And then the last line of this says (reading):

8 There are no exceptions to this rule without
9 supervisory approval. (End of reading).

10 I didn't make that up, did I?

11 A. No, sir, you did not.

12 Q. Is this evidence (showing disk)?

13 A. It is.

14 Q. Where is the evidence property report?

15 A. To get technical, the evidence property report
16 would be the receipt that the equipment manufacturer
17 installed on the equipment so that when you create a
18 file, it time and date stamps what happened.

19 Q. Okay. Did you give that to the evidence
20 property -- did you give that to the evidence officer?
21 Did you give that to him?

22 A. In this case I am the evidence officer because it's
23 an audio recording.

24 Q. Well, possession to the custody of the evidence
25 officers.

1 Now, I may be -- I may be overly reading this, but
2 you took into evidence this (holding the disk).
3 According to this policy you are supposed to give it to
4 somebody for protection. And there's no excuse, no
5 exceptions. Who did you give it to?

6 A. I gave it to myself.

7 Q. Okay. Show me a document that says that.

8 A. I don't have a document to show you.

9 Q. Okay. Thanks.

10 All right. I asked you earlier if you could recall
11 verbatim the conversation that you overheard on the 29th
12 and you told me "no." Remember that?

13 A. I do.

14 Q. How do you know that this is it?

15 A. I listened to it.

16 Q. Okay. But if you can't recall it verbatim out of
17 memory, how do you know that this is it and only it?

18 A. Because I made that.

19 Q. Uh-huh.

20 A. And I was present during the audio recording.

21 Q. That's a good point. There's a start time and a
22 stop time, right?

23 A. Yes.

24 Q. Okay. And if you just reviewed that, then you know
25 your start time and your stop time is 14 minutes, don't

1 you?

2 A. 14 -- can you clarify that?

3 Q. When you -- when he pulls in the driveway, the
4 officer in the car says, Start now. And when he pulls
5 out of the driveway, he says, End tape. It's 14
6 minutes. Right?

7 A. I would have to listen to that.

8 Q. Okay. I think I'm quoting you. The math is the
9 math.

10 A. Yes.

11 Q. You said that on March 6th. The math is the math.
12 Why is there a gap of a minute and 15 seconds on that
13 tape?

14 A. I don't believe there is.

15 Q. Okay.

16 MR. BRANNON: Nothing further. Thank you.

17 THE COURT: May this witness step down?

18 MR. BRANNON: Yes.

19 MS. SIMMONS: Yes, Judge.

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

21 THE WITNESS: Thank you.

22 (Whereupon, the witness left the witness stand and
23 exited the courtroom.)

24 MR. BRANNON: I call SA Sloan.

25 (Whereupon, the witness, Michael Sloan, was sworn

1 by the Clerk of Court.)

2 THE CLERK: Please be seated.

3 MR. BRANNON: May it please the Court?

4 THE COURT: Yes, sir.

5 Whereupon,

6 Michael Sloan

7 Having first been duly sworn, was examined and testified
8 as follows:

9 Direct Examination by Mr. Brannon:

10 Q. State your full name for the record.

11 A. Michael B. Sloan.

12 Q. Okay. And you are employed by SLED?

13 A. That's correct.

14 Q. And your rank, sir?

15 A. Special Agent.

16 Q. Okay. How did you come to be involved in this
17 Bartee matter?

18 A. Well, I was in Anderson County working on the 29th
19 on something unrelated, and Sheriff Singleton called me
20 and told me that someone had come to him telling him
21 that Bartee wanted him to kidnap Judge Williams.

22 Q. Okay. Who was that someone?

23 A. Nick Blackwell.

24 Q. Okay. Had you ever worked with Nick Black- -- Nick
25 Blackwell before?

1 A. No, sir.

2 Q. Did you know him?

3 A. No, sir.

4 Q. Had you ever heard his name?

5 A. There's a possibility I've heard his name, but I
6 did not know him.

7 Q. Okay. What does CI stand for?

8 A. Confidential informant, basically, as in
9 confidential informant.

10 Q. But isn't there another word in the legal
11 description of a CI?

12 A. I don't know what you're getting at.

13 Q. Isn't it supposed to be confidential and reliable
14 informant?

15 A. I don't know. I don't know. Possibly.

16 Q. Okay.

17 A. I don't know the answer to that.

18 Q. How did you know that Rick -- that Nick Blackwell
19 was telling the truth?

20 A. I didn't.

21 Q. Okay. All right. Tell me about -- when did you
22 meet up with Nick Blackwell?

23 A. It seems like myself and Agent Kindley got done
24 working in Anderson seven, eightish p.m. that night, and
25 I had already called Blackwell because I believe the

1 sheriff -- or either the sheriff or David Smith had
2 given me his number. I called Blackwell and told him
3 what time to get to the sheriff's office in Anderson
4 because we were already there, and he met me there.

5 Q. Okay. So Blackwell comes to Anderson County?

6 A. That's correct.

7 Q. Okay. All right. And were you present when he was
8 fitted with the recording device?

9 A. I was.

10 Q. Okay. Let's clear this first thing up. The money.
11 Who gave him his money?

12 A. Who physically handed?

13 Q. Yes.

14 A. I don't know if I physically handed him the money
15 or if Mark physically handed -- Mark, Mark Gregory and
16 myself were together and one of us physically handed him
17 the money. I'm not sure which one it was.

18 Q. Okay. But would you agree with me in your report
19 you state, I handed him money?

20 A. Yeah, I do agree with that because I'm the case
21 agent. And we gave him the money. I know what you are
22 getting at. But I'm not sure who actually physically
23 put the money in his hands.

24 Q. Okay. All right. And then let's go down that
25 road. What, what -- according to Blackwell, what was

1 the story with the money?

2 A. That Bartee had given him some money to buy some
3 supplies to assist him in kidnapping Judge Williams.

4 Q. Okay. What were the supplies that were allegedly
5 to be purchased?

6 A. I believe there were duct tape and zip ties and
7 maybe some gas money.

8 Q. Okay. Did you find any zip ties?

9 A. He never went and bought any because he never --
10 because Bartee told him not to go through with it. He
11 actually never went and bought any.

12 Q. Bartee told him not to do what?

13 A. After they were talking about kidnapping the judge.

14 Q. When?

15 A. One of the prior meetings before I got involved.

16 Q. He told him not to do it?

17 A. Well, Nick never went and bought the duct tape or
18 zip ties based on a conversation that they had.

19 Q. So the whole thing was off?

20 A. I think to Nick that he finally -- I think there
21 was a prior meeting where ---

22 Q. You think?

23 A. --- he acknowledged -- well, I'm trying to get to
24 tell you -- that Bartee says that his lawyer told him
25 that it wouldn't do any good if Judge Williams didn't

1 show up because Stoudemire was going to continue on with
2 it.

3 Q. But that's hearsay. Right? You don't have any
4 evidence of that in here today. Right?

5 A. I mean, unless that's in the statement, I don't
6 have the statement in front of me.

7 Q. Okay. All right. That's a different motion.
8 Different motion.

9 Okay. So where were you when this audio recording
10 was made?

11 A. I was in Mark Gregory's county vehicle ---

12 Q. Okay.

13 A. --- monitoring it.

14 Q. So you were listening, right?

15 A. Yes.

16 Q. But you didn't go to Bartee's house, right?

17 A. I went into the cul-de-sac or the subdivision. I
18 think we could see -- I can't -- we were very close,
19 within a hundred or 200 yards, not very far.

20 Q. I got you. I got you. Okay. But you wouldn't --
21 you didn't go to Bartee's house?

22 A. No, sir, we didn't ---

23 Q. Okay, fine.

24 A. --- go there.

25 Q. All right. Prior to that day had you ever had a

1 personal conversation with Rick Bartee?

2 A. No, sir.

3 Q. Had you ever seen him?

4 A. I might have seen him on TV but not that I would
5 ever recognize him.

6 Q. Okay. Had you ever heard him speak publicly?

7 A. No, sir.

8 Q. Okay. Then how did you know that's who was talking
9 on that audiotape?

10 A. Based on my investigation.

11 Q. Based on what?

12 A. Based on the informant, based on what I heard being
13 talked about. And then after that I did have a chance
14 to speak with Mr. Bartee, very limited, and his voice
15 was the same one on the audio.

16 Q. Okay. All right.

17 A. Can I grab my water real quick?

18 (Discussion off the record.)

19 By Mr. Brannon:

20 Q. (Handing.)

21 A. Thank you.

22 Q. Okay. Do you know how many people were in the
23 house that night, in Mr. Bartee's house that night?

24 A. I don't know exactly how many, no.

25 Q. Okay. Do you know if there was -- excluding Nick

1 Blackwell because we know he went in. Other than Nick
2 Blackwell, do you know how many men were in the house
3 that night?

4 A. I know that there was none where Blackwell could
5 see. I mean, I can't tell you if there was anybody
6 upstairs ---

7 Q. Okay. All right.

8 A. --- or anyone else in his house.

9 Q. Did Nick tell you that he looked at the furniture
10 to see -- you know, did he look in the chairs to see if
11 somebody was sitting there or anything like that?

12 A. Nick Blackwell didn't say, I looked in every chair
13 and there wasn't anybody sitting there. I would assume
14 that he could tell if somebody was sitting in a chair.

15 Q. Okay. All right. So sometime after midnight, so
16 that would be the early morning hours of May 30, 2012,
17 the recording ends, correct?

18 A. I believe it was at 12:44 if I'm not mistaken.

19 Q. And what -- I thought it was 12:46.

20 A. It was 12:44.

21 Q. Okay. Okay. And, after the recording ends, where
22 do you go, what do you do?

23 A. The actual recording still records from the ride
24 from Mr. Bartee's house all the way to the Walgreens in
25 Clemson. The recording doesn't stop, it goes the ride.

1 So we meet at the Walgreens in Clemson. We have to let
2 Gregory take care of the recording device from there.
3 We have to do some car swapping, and we go to Pendleton
4 High School just to get in a location where everybody
5 does not see us sitting out in the parking lot.

6 Q. Okay. And is it at that time that that SD card or
7 the conversation is downloaded to your computer?

8 A. Yes, sir.

9 Q. Okay. All right. And then after that, what did
10 you do with your computer?

11 A. My computer stays with me.

12 Q. Okay. Do you today have the same computer that you
13 had in May, the end of May of last year?

14 A. Not the physical computer, but I have the data that
15 was on my computer.

16 Q. Okay. What happened to the physical computer?

17 A. It just crashed. I don't know what you call it.
18 It crashed.

19 Q. Okay. Because on March 6 in that evidentiary
20 meeting you informed Mr. Bartee's team that your
21 computer had crashed, right?

22 A. That's correct. But I had all of my -- we have a
23 server. And I don't want to get into IT stuff because I
24 don't understand it. We have a server that captures all
25 of what I do on my SLED computer. When my computer

1 crashes, IT gives me a new computer and puts my material
2 back on my computer.

3 Q. Okay. How does -- how does the stuff that's on
4 your laptop get to the server?

5 A. When you plug into the office, it, I call it syncs.
6 It syncs to the server.

7 Q. Okay. Do you have a specific code that you got to
8 type in?

9 A. Huh-uh. You can just plug it into the office.

10 Q. So I could walk in and plug in my computer and
11 download ---

12 A. You couldn't get in my office.

13 Q. Okay. So that's the security, though, right? That
14 I couldn't just get in your office?

15 A. I have to have a log-in to get in my computer.

16 Q. Okay.

17 A. I mean, I don't really understand what you are
18 asking, I guess.

19 Q. Well, I mean, I've just -- I've dealt with SLED for
20 15 years, and it seems to me that every time a SLED
21 agent sneezes there's a paper document to verify it.
22 And in this case I got nothing.

23 A. There is no paperwork for when I walk into my
24 office and plug into the server.

25 Q. Okay. All right. But yet you are downloading an

1 audio document that is evidence in a case, you're moving
2 it from your computer to another computer, correct?

3 A. I never did that, no, sir.

4 Q. You just said it synced.

5 A. No. It stays on -- no, no, no. It stays on my
6 computer, but the server at SLED also captures
7 everything, every report, and everything I do. They --
8 if SLED wanted to access my computer, they can do it
9 from headquarters I guess is the easiest way.
10 Everything is still on my computer, but they have access
11 to it because it's on the server.

12 Q. Okay. All right. When did -- when did you get
13 this disk from Gregory?

14 A. The day after the arrest.

15 Q. The day after, okay. Where is the chain of
16 evidence document that supports that?

17 A. Well, I have a chain of custody over there. That
18 disk remained with me until the 15th of August, it
19 remained in my possession after I took it from Gregory.

20 Q. Okay. Now, you are claiming -- you didn't --
21 Investigator Gregory complains [sic] that this is the
22 original, right? He says, This is the original.
23 Correct?

24 A. If that's what he said, yeah.

25 Q. Okay.

1 A. That's the first disk I was provided with.

2 Q. All right. And you said you got it on the 30th or
3 something like that, right?

4 A. The 31st.

5 Q. Okay. All right. But yet I don't know where it's
6 at until August 15th, right?

7 A. I'm testifying to you where it was at. That's
8 where I took it from Gregory, and on the 15th is around
9 about the same time that the report was turned in and I
10 had written, I've been using the disk for the report,
11 um...

12 Q. Okay. What's SLED policy about chain of custody?

13 A. That it has to remain in a secure location.

14 Q. Okay. Was it in a secure location?

15 A. Yes, sir, it was.

16 Q. Where?

17 A. It had been in my lock box in my vehicle.

18 Q. In your lock box in your vehicle?

19 A. Uh-huh.

20 Q. Does that fall under the definition of a secure
21 location?

22 A. It does.

23 Q. Okay. All right. Have you ever -- have you ever
24 known -- I won't ask you because it's a crime, but have
25 you ever known of anybody to pirate a movie?

1 A. Do I know somebody or do I know what you're talking
2 about?

3 Q. Yeah. Do you know what I'm talking about? You
4 know, like you watch it on HBO and you record?

5 A. Yeah.

6 Q. Okay. Have you ever seen a copy of a movie before?

7 A. If I did, it was a good one, I didn't know it was a
8 copy.

9 Q. Okay. All right.

10 MR. BRANNON: Give me a moment, Your Honor, please.

11 THE COURT: That would be good.

12 MR. BRANNON: Thank you. Okay.

13 By Mr. Brannon:

14 Q. All right. You didn't have anything to do with the
15 making of the audio other than being present. Correct?

16 A. I mean, no, not physically. I don't know how to,
17 to work the equipment, no, sir.

18 Q. Okay. And, in fact, you didn't even download it to
19 your own computer, right? Gregory did that, right?

20 A. That's correct, because he had the provided thumb
21 drive, so he downloaded it to my computer. It was in my
22 truck with me.

23 Q. Okay. If you had it downloaded to your computer,
24 why would you need that disk for the development of your
25 report?

1 A. To use and make a copy to put in the case file or
2 provide to the solicitor in discovery.

3 Q. Okay. Now, did you use that disk to physically
4 make copies, or did you download what was on your
5 computer to a disk?

6 A. No. I believe I made copies with that disk to
7 provide to the solicitor's office and to you, I would
8 assume.

9 Q. Okay. And isn't there supposed to be a trail so
10 that everybody ---

11 A. May I see that, please?

12 Q. Sure, sure. (Hands document to the witness.)

13 A. On the 15th, do you want to look at it here?

14 Q. I've pretty much got it memorized.

15 A. Me, too. This is where the solicitor wanted it
16 then. Evidently, I couldn't deliver it. Andy Tribble
17 went and got it and he brought it to the solicitor's
18 office and gave it to John Zamberlin who works for the
19 solicitor's office. The same day John Zamberlin gave it
20 back to Andy Tribble. The next day Andy Tribble
21 returned it back to evidence. And when we had a meeting
22 come up, I went and got it out and kept it in my
23 possession since then.

24 Q. Okay. So we know everybody who touched it from
25 August 15th until July 19 of this year?

1 A. Uh-huh.

2 Q. But we don't know anything about where it was from
3 the 30th or the 31st until August the 15th?

4 A. No, sir. We know everything about it. I'm telling
5 you right now it's been in my possession since I got it
6 from Mark Gregory until I turned it in with the report
7 on the 15th of August.

8 Q. Shouldn't there be a document that says you
9 received it from Mark Gregory?

10 A. I think I could have put the date here when I
11 received it from Mark Gregory. If I didn't put the
12 date, you know, that's a typographical error. But what
13 I'm telling you is I received it from Mark Gregory.
14 It's been in my possession, no one else's, it's been
15 stored in a secure location until I turned it in this
16 date, and I still had it until today when I went and got
17 it for a meeting.

18 Q. For what?

19 A. A meeting.

20 Q. You went and got it from where?

21 A. Evidence.

22 Q. Where?

23 A. Greenville. Well, I didn't go -- yeah, I did get
24 it right here. They used it. Look ---

25 Q. But no -- no, no, no, no, no. You just said two

1 different things.

2 A. Because you are confusing me, that's what you're
3 doing. I'm trying to show you right where it's written
4 on the paper here. You are trying to confuse me.

5 Jeff Kindley took it out of evidence and gave it to
6 me on the 19th of July and I have had it ever since for
7 review.

8 Q. Okay. So you didn't just go get it today, then?

9 A. No, I didn't say I just went and got it today. I
10 said I've had it until I just put it on this thing
11 today.

12 Q. Okay. Okay.

13 A. You're trying to get me.

14 Q. I'm really not.

15 A. Well, there's a little confusion. I'm sorry.

16 Q. Okay. All right. And one other thing. You said
17 it was a typo that you didn't put that. This is
18 handwritten, right?

19 A. It is.

20 Q. So it's basically an omission, correct?

21 A. I could have put the date where I got it from Mark
22 Gregory on a sheet of paper. I'm telling you the day I
23 got it and I've had it in my possession the entire time.

24 Q. All right. Did you ever ask Nick Blackwell who he
25 was having the conversation with?

1 A. On the recording?

2 Q. Or afterwards.

3 A. Absolutely.

4 Q. You did?

5 A. Did I, did I ask Nick Blackwell who he was talking
6 to?

7 Q. Yes.

8 A. Of course.

9 Q. And it's on the recording?

10 A. No, I didn't ask him on the recording. You just
11 asked me have I ever asked him.

12 Q. Okay. Why isn't that in your report?

13 A. Because he says in his statement, he says where he
14 went and who he spoke to.

15 Q. Okay. Did you make an exit interview with
16 Blackwell?

17 A. I wouldn't call it an exit interview. I mean, we
18 met with Blackwell, yeah. I don't really refer to it
19 as ---

20 Q. You met, you met with Mr. Blackwell after the
21 recording?

22 A. He was with us. Yeah. I mean, he ---

23 Q. Okay.

24 A. --- remained with us. I had to get him home.

25 Q. Did you meet with him after the 31st?

1 A. I met with him several times since the 31st.

2 Q. Okay. Did you take any notes from those meetings?

3 A. There was one time that myself and Blackwell went
4 to the Clemson Police Department, we listened to the
5 recording, he told me some words that were inaudible on
6 the first transcript, which I don't know if you want to
7 talk about that, and I put those notes on the transcript
8 and gave it back to the solicitor's office.

9 Q. Okay. Do I have a report that details that?

10 A. You did, yes. It was, it was provided, yes.

11 Q. Okay. All right. Um, can SLED access your laptop
12 when it's not plugged in?

13 A. No, sir. I mean, I can log onto the VPN in the
14 account, yes.

15 Q. Okay. Where is the lock box in your car?

16 A. Well, at the time I had a truck and our toolbox is
17 our secured location.

18 Q. Toolbox in the back of the, in the bed of the
19 truck?

20 A. Yes, sir. That's where we carry evidence, we carry
21 money, and other items that are issued to us.

22 Q. Okay. Tell me about this toolbox. What's it look
23 like?

24 A. It's a chrome Cam-Locker. I no longer have it, but
25 it was a chrome Cam-Locker toolbox that all SLED agents

1 that have trucks that are issued that have this storage,
2 and that's a very secured storage location and still is.

3 Q. Okay. Is it -- is it bolted into the bed of the
4 truck?

5 A. It is.

6 Q. Okay. All right. So tell me about how you made
7 copies of that (points to disk).

8 A. I didn't make copies of it. Andy Tribble took it
9 out of evidence, brought it to John Zamberlin. I assume
10 John Zamberlin made copies of it, gave it back to Andy
11 Tribble and Andy Tribble took it back to SLED.

12 Q. Okay. All right. I promise you, SA Sloan, I'm not
13 trying to trick you. But earlier I asked you why you
14 needed that if you had it on your computer and you said
15 to make copies.

16 A. I did. I needed them to make copies of it and I
17 also used the recording for the report. I've listened
18 to it. I've listened to it to make sure it's working,
19 to listen to clarify things. I mean, I don't -- I don't
20 really understand what you are getting at.

21 I never physically made a copy of that. Andy
22 Tribble went and got it for the solicitor's office to
23 make a copy of it and then took it back. That might
24 have been what I misunderstood you say. We did use that
25 disk to make a copy, probably a couple of copies for

1 you.

2 Q. Okay. See, now you are digging a hole here that
3 I'm not comfortable going down.

4 A. How about clarify what you are asking me and I'll
5 try to ---

6 Q. Okay. I've had a copy of -- I've had a copy of an
7 audio since months before August of last year. Okay? I
8 believe I got my copy sometime in June.

9 A. Okay.

10 Q. Okay?

11 A. Okay. Sometime during that time I could have made
12 a copy of that. If I made a copy of it, I don't -- I'm
13 not gonna document made copy of disk. If you've got it,
14 then that's where it came from. I mean, I can't sit
15 here and tell you if I made a copy or not. I don't
16 know.

17 Q. But, see, here's my -- that's my problem, SA. I
18 need to know those. I need to -- from August 15th until
19 July 19th I can tell everybody who's touched this. I
20 don't know what happened between March 30 and August 15,
21 but what I know is there were copies made.

22 A. If the copy was made I was present. If somebody
23 physically took it and put it into the copying device,
24 it might have -- I might have been standing here and
25 somebody could have physically took it and put it into

1 the copying device. I would have been present.

2 Q. Are you telling me that it's SLED procedure for you
3 to give a piece of evidence like an audiotape to some
4 technician or some assistant solicitor to manipulate it,
5 to make a copy of it and there's no document to back
6 that up?

7 A. They wouldn't be manipulating anything, they would
8 be placing it in a copier to make a copy.

9 Q. I'm just -- I should know everybody who touched
10 this original. Correct?

11 A. I'm telling you I was present with that disk at all
12 times. Nobody else. Unless somebody picked it up and
13 put it in here while I'm standing here has had the disk.
14 I don't know. I mean, I can't answer it much clearer
15 than that.

16 MR. BRANNON: I don't have anything further.

17 THE COURT: Cross-Examination?

18 MR. BRANNON: Your Honor, there's -- this -- this
19 witness is going to be, is necessary in a couple of
20 other motions. Do you want me to go into those motions
21 now or ---

22 THE COURT: No. Let's keep going with that.

23 MR. BRANNON: Okay. Thank you.

24 THE COURT: Cross-Examination?

25 Cross-Examination by Ms. Simmons:

1 Q. Briefly, Agent Sloan. I show you what has been
2 premarked as State's Exhibit 1. Is this the disk that
3 you received from Mark Gregory subsequent to James
4 Bartee's arrest?

5 A. It is.

6 Q. And have you reviewed that since you received it
7 from Mark Gregory?

8 A. I have.

9 Q. And did you sign for it when you received it?

10 A. I did.

11 Q. And have you listened to it in its entirety?

12 A. Numerous times.

13 Q. And you were present and listened to it
14 simultaneously as the conversation occurred?

15 A. Yes, ma'am.

16 Q. And is that a fair and accurate representation of
17 what you heard the night of May 29th into May 30th,
18 2012?

19 A. Absolutely, 100 percent.

20 Q. Have there been any alterations been made to it?

21 A. No, ma'am.

22 Q. Have you tampered with it?

23 A. No, ma'am.

24 Q. Have there been any additions?

25 A. No, ma'am.

1 Q. Have there been any deletions?

2 A. No, ma'am.

3 Q. And you recognize both voices on that tape, as
4 belonging to Nicholas Blackwell and James Bartee?

5 A. I do.

6 MS. SIMMONS: Thank you, Agent Sloan.

7 Redirect Examination by Mr. Brannon:

8 Q. I may have missed it, but where did you sign it?

9 A. Right there where it says M.B. Sloan. Right there,
10 M.B. Sloan.

11 Q. I see it. But it creates yet another problem, sir.

12 A. What's that?

13 Q. When did you sign for it?

14 A. I didn't sign for it. I signed that I have
15 actually reviewed it and that is exactly what I listened
16 to the night that Nick Blackwell, in its entirety, went
17 to Bartee's house.

18 Q. On what day?

19 A. The twenty- -- I signed that on 7-23 of this year,
20 and that's just because when I actually went to the
21 solicitor's office and played it in front of them and
22 verified, this is it. That's just the date that I
23 signed it on.

24 Q. Okay. So, but you were asked by that lady
25 solicitor if you signed for it when you got it from ---

1 A. That's not -- that's not what she asked me.

2 MR. BRANNON: Can you read back the question?

3 THE COURT REPORTER: I have to go back; it might
4 take a minute or so, Judge.

5 THE COURT: (Nodded head.)

6 THE COURT REPORTER: And that the question was?

7 MR. BRANNON: She asked him if he signed for -- is
8 this the disk that he received from Gregory and she
9 said -- and you signed for it.

10 THE COURT REPORTER: Hold on.

11 (The requested portion of the record was read back
12 by the court reporter.)

13 THE COURT REPORTER: Do you want more?

14 MR. BRANNON: That's fine. Thank you, ma'am. Tell
15 me when you're ready to go again.

16 THE COURT REPORTER: I am. Thank you.

17 MR. BRANNON: Okay.

18 THE WITNESS: I misunderstood your question. I
19 thought she was talking about where I signed it right
20 here. I mean...

21 By Mr. Brannon:

22 Q. I'm looking for chain of custody, sir, that's all.

23 A. I understand that. I thought that's what she was
24 asking me, did I sign the disk on 7-23-13, and I said
25 yes.

1 MR. BRANNON: Okay. I don't have anything else,
2 Your Honor, thank you.

3 THE COURT: Done?

4 MR. BRANNON: I'm done.

5 THE COURT: You may step down, Mr. Sloan.

6 (Whereupon, the witness left the witness stand.)

7 THE COURT: Call your next witness.

8 MR. BRANNON: Your Honor, may we approach briefly,
9 just one second?

10 THE COURT: Yes.

11 (Discussion at sidebar.)

12 THE COURT: Just to make sure. Any other potential
13 witnesses -- I know the alleged victim is here and he
14 has a right to be. Other than that, any other witnesses
15 here in the courtroom?

16 (There was no response.)

17 Very good. Thank you.

18 MR. BRANNON: My next witness is Al Johnson. Would
19 you like me to step out and get him?

20 THE COURT: Yes, sir.

21 (To Deputy): Al Johnson.

22 (Whereupon, the deputy left the courtroom and
23 returned with the next witness, Mr. Alfred
24 Johnson.)

25 (Whereupon, the witness, Alfred Johnson, was sworn

1 by the Clerk of Court.)

2 THE CLERK: Please be seated.

3 Whereupon,

4 Alfred Johnson

5 Having first been duly sworn, was examined and testified
6 as follows:

7 Direct Examination by Mr. Brannon:

8 MR. BRANNON: May it please the Court?

9 THE COURT: Yes, sir.

10 By Mr. Brannon:

11 Q. Sir, please state your full name for the record.

12 A. Alfred L. Johnson.

13 Q. Mr. Johnson, by whom or how are you employed?

14 A. I am right now self-employed as the CEO and chief
15 investigator of JLA Investigations and Securities, LLC,
16 an investigations and security firm operating and
17 licensed here in South Carolina.

18 Q. Okay. And, before starting your own business,
19 where did you work?

20 A. Before I started JLA Investigations and Security --
21 I'll just give you a little chronology. I was the
22 director of the National Law Enforcement Center,
23 Southeast Region of the United States, which covers 13
24 states. That was about four, four years, from 2005
25 until about 2009.

1 Prior to that I was a supervisory special agent for
2 the FBI, and I served 21 years as supervisory -- as an
3 agent, and then later 10 years as a supervisory special
4 agent for the FBI.

5 Prior to that I was a United States Army captain,
6 and I flew covert attack helicopters and gunships after
7 graduating from South Carolina State University.

8 Q. Thank you. Now my next question, you may have
9 already answered it. Tell me about your education.

10 A. I have a master's degree from Central Michigan
11 University in Mount Pleasant, Michigan. I had a
12 bachelor's degree from South Carolina State University
13 here in South Carolina. At the time I went through, it
14 was South Carolina State College.

15 Q. Okay. The Central Michigan Chippewas. What's your
16 master's degree in?

17 A. My master's degree was in business and information
18 systems.

19 Q. Business and information systems. Okay. Is that
20 computers?

21 A. It involves computers, but during that particular
22 time frame, information systems were not necessarily a
23 computer. It was how an organization or a company was
24 set up to show flow of information. It's more
25 management, information management.

1 Q. Got you. All right. And then after you became
2 employed by the federal Bureau of Investigation, what
3 were your duties?

4 A. My duties initially, as an agent right out of the
5 academy, were some of the what we would call normal
6 crimes, kidnapping, bank robberies, what have you.
7 Because I was a veteran with 13 years of military
8 experience, I also did undercover work, serious
9 undercover work, for at one time two full years under.

10 After that, I started utilizing my formal degrees
11 and worked white collar-type crimes, specifically in the
12 computer and digital evidence areas.

13 Q. Okay. And, along those lines, in the computer and
14 digital evidence areas, did you take any specific or
15 specialized courses or seminars or training?

16 A. Yes.

17 Q. And can you please tell the Court about that.

18 A. Sure. The training was pretty extensive in that I
19 was also a, what was called CART examiner, a computer
20 analysis and response team. In that training you are
21 required to take numerous courses. My primary courses
22 started off in an operating system called UNIX, the
23 Microsoft operating system. Most of the work that I
24 did -- I'm sorry -- most of the training that I did was
25 done by the manufacturers of the various machines paid

1 for by -- by the FBI.

2 I continue that training to this day. Every year I
3 get a total of 32 continuing education credits because I
4 either gain another certification or accreditation or I
5 follow up with follow-up training. If I had to amass
6 the number of years, I would say I've been training in
7 the area of computer forensics probably for about 15 or
8 more years.

9 I also forgot to mention one other thing concerning
10 employment. I'm also an adjunct professor at the
11 technical college in Charleston, teaching computer
12 forensics, crime scene investigations, and digital
13 evidence forensics.

14 Q. Okay. All right. Now, have you ever been admitted
15 as an expert witness in the area of computer forensics
16 in the State of South Carolina?

17 A. Yes, on several occasions.

18 Q. Okay. Have you ever been admitted or accepted as
19 an expert witness in the area of computer forensics
20 outside of the State of South Carolina?

21 A. Yes. Approximately seven other states, if I
22 remember correctly.

23 Q. Okay. How about in the federal court system?

24 A. Yes.

25 Q. Okay. Would you have been accepted or admitted as

1 an expert in computer forensics in the 4th Circuit?

2 A. I believe I have. I testified quite a bit in South
3 Carolina so I'm gonna say yes to that. I'm not so
4 necessarily familiar with all of the circuits.

5 Q. Okay. All right. Now, during some of your time
6 at -- oh -- while employed by the FBI, were you an
7 instructor of computer forensics?

8 A. Yes. As a result of a particular case, I was
9 designated as an instructor at the FBI Academy,
10 Quantico, Virginia, and in between what we would call
11 our relatively high-profile cases, White House
12 independent counsel cases, I instructed FBI agents,
13 state and local law enforcement, and other individuals
14 from around the world in digital evidence forensics,
15 computer forensics, and intrusions.

16 Q. Okay. Now, you have instructed obviously federal
17 agents and you said some state and local people, right?

18 A. That is correct.

19 Q. Did you ever teach anybody from South Carolina
20 computer forensics?

21 A. Yes. They came through the academy, several of
22 them have come through my courses. Some of them, some
23 SLED. I won't call the names, but they -- they know me.
24 And an individual who designed the computer lab in
25 Charleston, South Carolina, my hometown.

1 Q. All right. Now let's get to SLED for just a
2 minute. You don't work for SLED, do you?

3 A. No, I do not.

4 Q. But is it true that you work at SLED?

5 A. From time to time I do work at SLED, primarily
6 because some of the cases that I take and accept are
7 cases that involve contraband. Contraband, if I cannot
8 get a protective order, or if the defense cannot get a
9 protective order to allow me to maintain the contraband
10 in my own lab, SLED has graciously given me space there
11 in SLED space wherein I do all of the forensics
12 analysis. I believe I've got about ten or more cases
13 there presently.

14 Q. Okay. Along those lines, say you are working at
15 SLED and you got your laptop there. Have you ever taken
16 a cord and hooked it into the SLED server and downloaded
17 something to the SLED server?

18 A. Absolutely not. That's prohibited even by the --
19 the mandate that I'm given when I go there.

20 Q. Okay. Do you know if SLED agents do it?

21 A. I don't know that they do, but I would doubt it,
22 but I don't know.

23 Q. Okay. All right.

24 MR. BRANNON: Your Honor, at this point I would ask
25 the Court to accept Mr. Johnson as a expert in computer

1 forensics.

2 THE COURT: Any voir dire?

3 MR. WAGNER: No, sir.

4 THE COURT: Do you stipulate that Mr. Johnson is an
5 expert ---

6 MR. WAGNER: Yes. I met Mr. Johnson before. I
7 will stipulate that he is an expert.

8 THE COURT: Thank you. Very good. He will be
9 so -- he is admitted.

10 MR. BRANNON: Thank you. Forgive me, Your Honor.
11 I could have just asked that and I could have saved 20
12 minutes. I'm sorry.

13 By Mr. Brannon:

14 Q. All right. You've had an opportunity to be
15 involved in this case, correct?

16 A. That's correct.

17 Q. You were present on March the 6th of this year when
18 you were to review an audio recording, correct?

19 A. That is correct.

20 Q. All right. Now, you don't know this, probably, but
21 there was a hearing in front of Judge Nicholson sometime
22 before March the 6th when the State was ordered to
23 provide you and Mr. Bartee's team the opportunity to
24 review the original. Do you remember that?

25 A. I remember -- yes, I do remember that I was

1 supposed to be there reviewing the original, yes.

2 Q. Okay. Did you do that?

3 A. I was unable to view or analyze an original.

4 Q. Okay. All right. Now I'm gonna backtrack. You
5 haven't been in the courtroom. But I do this (putting
6 hands on table), I put my fingerprints down, right?

7 A. That is correct.

8 Q. Somebody, some qualified technician comes in and
9 lifts what are called latent prints, right?

10 A. That is correct.

11 Q. If I've never been arrested or had my fingerprints
12 taken such that they would go into some database
13 somewhere, what good is that print?

14 A. That print would come back as a not on file, so the
15 print in and of itself could identify no one because it
16 hasn't been authenticated by a known original subject
17 print.

18 Q. Okay. Now, how do you authenticate my latent
19 print?

20 A. Your latent print would be authenticated once the
21 print has been lifted and sent to the lab. They would
22 run it through AFIS, and if there is a match, in other
23 words, a set of fingerprints that are already on file,
24 then that print would come up as a match. That law
25 enforcement agency would then be notified that there is

1 a match and this is the name of the individual who has
2 the match.

3 If the person is not within that database, then you
4 don't have a match. You've got to have an original,
5 you've got to have what would be called an original.

6 Q. Right. And, in other words, you can't authenticate
7 that?

8 A. You cannot authenticate that.

9 Q. And the only way to authenticate my prints is to
10 match them to another set of my known prints, correct?

11 A. That is correct. That and also with DNA. It's all
12 the same type of identification process. It is a
13 comparative process.

14 Q. Okay. Now, on March the 6th, what did you look at?

15 A. On March the 6th, when I arrived, I was given a
16 briefing on the, on the equipment. And I was then shown
17 copies, what were said to be copies, of sound files.
18 And asked specifically for the original of the sound
19 file. Of course, I was told that there was no original,
20 meaning there was no longer a file on the SD card.

21 Q. Okay. Let me stop you and back you up a little
22 bit. Please explain to the Court how you were -- how
23 the recording series was done. Can you do that? In
24 other words, it was recorded to what and then moved to
25 what? Can you do that?

1 A. And I'm speaking now from what I -- my best
2 information and belief when it comes down to where it
3 was recorded from because I was not there.

4 But, with regard to that, my understanding is this.
5 The recording to the SD card was done in a covert manner
6 wherein an informant or a cooperating witness was
7 speaking with another individual. That particular
8 conversation was recorded digitally to the SD card on
9 the device or within the device that the individual was
10 wearing.

11 The SD card and the device was then turned over to
12 the authorities who the confidential informant was
13 working for, and at that point in time the device was
14 placed into a machine, a computer, and specialized
15 software, Toker, copied from the SD card to a computer
16 or another hard drive, another piece of media, the
17 actual original or a copy of the original.

18 Q. Okay. Now, is there a difference between cut and
19 copy?

20 A. Technically, yes. Most people use the terms
21 relatively generically. But a copy for a forensics
22 examiner is not necessarily a forensic duplicate. It is
23 only a copy that can be used. But in order for it to be
24 a forensics duplicate, accepted practices in the
25 industry, it must be authenticated with the original.

1 Q. Okay. All right. But just, let's go back to cut
2 and copy.

3 A. Okay.

4 Q. What's the difference between if I use this device
5 and I hit the cut button, is it different than if I hit
6 the copy button?

7 A. Well, you are talking about a file transfer?

8 Q. Yes.

9 A. In a file transfer if I copy a file from point A to
10 point B, I've got two copies in the file.

11 Q. Right.

12 A. The file is wherever it came from, which we'll call
13 point A, and there would also be a copy of it where we
14 send it to point B.

15 Q. Right.

16 A. The cut command or when you cut, normally a lot of
17 people do it in word processing, you actually take from
18 a point, put it somewhere else, and it's gone from that
19 point. Normally not so much associated with files as it
20 is word processing stuff, but the term is valid. It is
21 more -- it is better called in computer language a move
22 command.

23 Q. Okay. So, in other words, a copy you end up with
24 two. A cut, you just have one and it's in a different
25 location, correct?

1 A. That's correct.

2 Q. Okay. All right. Now, you said that the copy can
3 be used if it can be authenticated with the original,
4 correct?

5 A. Correct.

6 Q. Okay. So it's matching these latent prints to this
7 hand ---

8 A. That's right.

9 Q. --- correct?

10 Okay. How do you know technically, computer
11 forensically, what's the original?

12 A. The original. The accepted definition for the
13 original in the industry is the first entity in which
14 the item is recorded to.

15 Q. Okay.

16 A. That is the original. And since you bring that up,
17 I've had a brief opportunity to look at the SOP of
18 Anderson County. They -- even though they don't
19 directly address sound recording, that's exactly the
20 definition that they use for picture-type recording.

21 Q. Do you happen to know how long ago that SOP was
22 drawn?

23 A. I think it was 2005 if I remember correctly.

24 Q. And have there been giant strides in computer
25 forensics and digital equipment since 2004-2005?

1 A. Absolutely, yes.

2 Q. Okay. All right. So -- all right. We'll get back
3 to that.

4 But when we're talking about a digital file that is
5 an audio recording, how do you -- how do you as a
6 computer forensic expert identify the original? What's
7 its DNA?

8 A. When you authenticate an original, because the
9 original -- let's just take this particular case -- is
10 sitting on the SD card, and it's sitting on the SD card
11 in what is called a digital format, zeros and ones.
12 That's not necessarily important, but no one can
13 understand that except a computer.

14 In order to demonstrate that that original is what
15 it is, to later compare it against a copy, you must do
16 what is called a hash.

17 Just to explain a hash. The algorithm, or the
18 method in which a program runs against another program,
19 the protocols that it uses, a piece of software runs
20 against the file that's let's say on the SD card. That
21 software then produces a number. There are two types of
22 hash methods that are used predominantly in the field.
23 One is called MD5, Message Digestive 5, 5 accepted
24 worldwide. The other is called SHA, specifically SHA1,
25 Secure Hash Algorithm, used by every agency that I know

1 of, every intelligence agency that I know of. The
2 number that is produced by the MD5 system is a 128-bit
3 mathematical number unique to that file. That file and
4 that file only in the world will have that number.

5 The SHA1 algorithm will produce an even greater
6 value, 160-bit value, that is also unique to that file
7 just like my DNA or your DNA is unique to you. Any file
8 coming back with that number is an exact replica
9 forensically unchallenged of the original.

10 Q. Okay. Now, so if you run this, this recording on
11 this SD card against that software, either one, the SHA
12 or the MD5, it's gonna give it its DNA?

13 A. That is correct.

14 Q. And then, if you move it from that SD card, that
15 DNA is gonna go with it, correct?

16 A. That is correct.

17 Q. So you are moving the original?

18 A. If you move it, that's correct, yes, sir.

19 Q. Okay. And, when you move the original, it takes
20 its DNA with it, correct?

21 A. That's correct.

22 Q. All right. And so, then, if you make a copy of the
23 original, what's gonna go to that copy?

24 A. If you make a copy -- let me ask this question. Is
25 it a forensics copy or just a copy?

1 Q. It's a forensics copy..

2 A. A forensics copy, we don't call it copy.

3 Q. Okay..

4 A. We call it export.

5 Q. Okay.

6 A. If it is exported out forensically, there is first
7 what is called an acquisition hash; in other words, the
8 forensic software does a hash against the file and gives
9 you, once again, its DNA. When the forensics software
10 has completed its export, it does what is called a
11 verification hash and it matches the verification hash
12 with the acquisition hash.

13 If that export is successful, or let's say if that
14 export exported accurately, the two numbers should match
15 perfectly.

16 There are times when copying and moving do not take
17 the file exactly correctly.

18 Q. Okay. But if you -- if you produce, if you export
19 forensically a data file, you have created a duplicate
20 original?

21 A. That is correct.

22 Q. Okay. Now, you were shown two disks on March the
23 6th. Correct?

24 A. Correct.

25 Q. And you did your forensic magic stuff, and you

1 determined that this disk and this disk were copies.

2 They were -- they were identical copies, correct?

3 A. One file and the other file were copies. The disk
4 itself, a different entity; but the files on the disk
5 that were given to me as the sound files between the two
6 computers, the two laptops, the disks go on the laptops,
7 these files were identical within themselves.

8 Q. Okay. And how do you know that?

9 A. I know that because I ran a hash ---

10 Q. You ran a hash?

11 A. I ran a hash on each ---

12 Q. So, when -- let me stop you. Did you use software
13 that identified the audio file on this computer?

14 A. That, yes. In other words, you are asking me if I
15 used software hashing?

16 Q. Yes.

17 A. Yes.

18 Q. So you created a hash for whichever computer you
19 touched first, correct?

20 A. Sure. That is correct.

21 Q. And you compared it to the one on this computer,
22 correct?

23 A. That's correct.

24 Q. And did you give it a hash or did the software say
25 its hash would be the same?

1 A. It's -- it gave the identical hash as the other
2 value.

3 Q. Okay. So the two computers had identical copies?

4 A. That is correct.

5 Q. Okay. All right. Now, where's the DNA?

6 A. If we stated the DNA are the hash values, then each
7 of those two files are identical. However, if we're
8 trying to compare them with the original, hashing those
9 two copies is a waste of time.

10 Q. Okay. But, but wait a minute. I asked you where's
11 the DNA. And the truthful answer is you gave it DNA,
12 didn't you?

13 A. I won't say I gave it DNA. The algorithm
14 produced ---

15 Q. Okay. Your computer program produced DNA for this
16 one and this one?

17 A. Correct.

18 Q. Which proved the two of them were the same,
19 correct?

20 A. Exactly; correct.

21 Q. Did anything you do, or did on March the 6th, prove
22 where they came from?

23 A. No.

24 Q. Is it possible for you to prove where it came from?

25 A. Not scientifically, not mathematically, no.

1 Q. Is it possible for you to prove that this disk is
2 an accurate copy of the original?

3 A. If I had the original I could ---

4 Q. Okay.

5 A. --- because I would need to run a hash against the
6 original or accept a previously run hash.

7 Q. Right. But on March the 6th, did they give you the
8 original?

9 A. No.

10 Q. Do you believe that the original exists today?

11 A. Well, I was told that it does not.

12 Q. Okay. So is there any way to confirm the
13 authenticity of this, of this recording?

14 A. Scientifically, mathematically I know of no way to
15 prove the authenticity of that recording or any
16 recording without the original, going back to the
17 fingerprint model.

18 Q. Okay. Now I want to go to FBI procedures. FBI is
19 involved with the recording of a conversation between
20 the State's snitch in this case and someone allegedly
21 called James Richard Bartee, Junior. Okay?

22 A. And this is a hypothetical?

23 Q. This is a hypothetical. FBI is involved. Give me
24 the procedure.

25 A. The procedure would be after -- first of all, all

1 of the approvals to even conduct the operation, we're
2 gonna make, be sure that's done. The procedure would be
3 the recording would be made between the two individuals.

4 Once the recording is made between two individuals,
5 the case agent on scene, the agent on scene who is
6 handling it, would remove -- well, first of all, there
7 is an actual authentication of the recording itself, the
8 date, the time, who is wearing it, what it's all about,
9 that kind of thing; the preamble, so to speak.

10 Q. Right.

11 A. So let's say all of that's done.

12 Once the recording is made, the device is removed
13 from the cooperating witness, the SD card would have
14 been taken out of the device, the SD card would then
15 have been placed into a unit called a 1-A, or it would
16 be placed in an envelope. It would now -- it now
17 becomes evidence. It in and of itself it is evidence.
18 And I did notice in the SOP for the photographic stuff
19 they did the same thing.

20 Q. Right. So, in other words, Anderson County saves
21 the SD card for photographs?

22 A. That is correct. In fact, it's specifically stated
23 that the SD card and the primary original will be
24 retained and will not be compressed or it will not be
25 altered. It actually says the primary and the original

1 will be retained.

2 Q. Okay. All right. So you, FBI has now taken,
3 removed the SD card from the recording device and placed
4 it into an evidence envelope?

5 A. Into an evidence envelope. That chain of custody
6 is immediately started at the point in time that ---

7 Q. Who is the first name on the chain of evidence?

8 A. Normally the case agent.

9 Q. Okay. The guy who took, removed the SD card out of
10 the machine, correct?

11 A. Correct.

12 Q. I'm sorry. Keep going.

13 A. Yes. Once that is done, the case agent will take
14 that particular card and contact the lab, or if the
15 office has a digital forensics field examiner, that
16 would have been -- before that it would go to the
17 evidence room and be processed as evidence, and at that
18 point in time the digital evidence forensics field
19 examiner would sign it out.

20 Everyone that touches or signs out that particular
21 entity signs for it with the reason at the time that it
22 is actually taken. A forensics examiner would then
23 conduct a hash of the file on the SD card before it's
24 exported out.

25 Q. Okay.

1 A. You now have the DNA.

2 Q. So we've put it into evidence, we've produced a
3 chain of custody, and each person who touches it, signs
4 it in, signs it out?

5 A. Correct.

6 Q. And at some point there's a specialized person who
7 creates its DNA?

8 A. Correct.

9 Q. And then in the future, if it needs to be exported,
10 the DNA is there?

11 A. Correct.

12 Q. And it can always be traced back to that SD card?

13 A. That is correct.

14 Q. Okay. All right. Is that FBI policy?

15 A. That is policy, that is procedures, that's what the
16 Department of Justice National Institute of Justice put
17 out in its guidelines in two particular documents. And
18 again, going back to the SOP that I read from Anderson
19 County, when it comes to photos, it pretty much follows
20 those same guidelines.

21 Q. Okay. If this were a federal case and there was a
22 recording made on May 29 into the early morning hours of
23 May 30, and nobody knew where that recording was until
24 July 23, 2013, or maybe August 15 of 2012, if there was
25 a hole in the chain of custody from May 30 to August 15,

1 would that case be prosecuted in the federal court
2 system?

3 A. Let me make sure I understand you correctly.
4 You've got a piece of evidence that spent almost two
5 weeks unaccounted for?

6 Q. No. Almost three months unaccounted for.

7 A. Unaccounted for?

8 Q. Yeah.

9 A. Without a chain of custody?

10 Q. Yeah.

11 A. Without being in an evidence room?

12 Q. Yeah.

13 A. You are asking what would happen in the FBI?

14 Q. Yeah.

15 A. That would be a real problem.

16 Q. Okay. All right. Now ---

17 A. I don't -- now let me caveat that by saying this.
18 I don't know if that ever happened in the FBI, but that
19 would be a real problem. I personally -- and I've taken
20 cases to Assistant U.S. Attorneys -- I personally do not
21 believe, and this is me not believing, that a case like
22 that would be looked on very favorably.

23 Q. Okay. All right. Now, are you familiar with SLED
24 policies concerning the same scenario?

25 A. I can't say that I'm that familiar with SLED policy

1 concerning the same scenario. Again, my work utilizing
2 the SLED lab is on the tail end of it when they produce
3 for me a disk drive with an image that has been
4 authenticated.

5 Q. Okay. All right. Now, you were shown this disk or
6 two computers, and they had this on it. Okay? And you
7 were able to tell them that they were duplicates of one
8 another?

9 A. Of each other, correct.

10 Q. Okay. Did you ever tell them that they were
11 accurate originals?

12 A. No.

13 Q. Have you ever heard or seen the original?

14 A. No.

15 Q. Okay. Now, I've been told that this is the piece
16 of evidence that the State intends to introduce, that
17 this is the document or this is the disk upon which the
18 recording was downloaded from Gregory's computer or from
19 SA Sloan's computer and that this is what they want to
20 introduce.

21 But now I've also been told that this disk rode
22 around in the back of a pickup truck in a toolbox --
23 now, it may have been a locked toolbox, but in a toolbox
24 in the back of a pickup truck from May 31 of last year
25 until August 15 of last year. Okay? That's what we

1 were told.

2 Are these disks potentially affected by heat?

3 A. Potentially, they can be, yes.

4 Q. Are they potentially affected by cold?

5 A. Yes.

6 Q. By rain?

7 A. Not so much rain.

8 Q. Okay. How about by humidity?

9 A. It depends on the humidity. It is possible.

10 Q. Okay. Is this disk, even if it's locked, secure in
11 the toolbox in the back of a pickup truck?

12 A. For evidentiary purposes?

13 Q. Yes.

14 A. I would have to say no to that.

15 Q. Okay. Does the original recording in this matter
16 exist?

17 A. To my knowledge, no, it does not.

18 Q. Okay. All right. Now, I showed you the State's
19 Brief in opposition to my motion to suppress this
20 audiotape, correct?

21 A. Yes.

22 Q. And they talk about Rule of Evidence 1001, correct?
23 Do you remember that?

24 A. I do.

25 Q. If you would look at Subparagraph 3 ---

1 MR. WAGNER: Your Honor, objection. He's going
2 into legal matters here and ---

3 THE COURT: I sustain the objection unless you can
4 lay some foundation for it.

5 MR. BRANNON: Thank you. That's fine.

6 By Mr. Brannon:

7 Q. Are you familiar with the Rules of Procedure?

8 A. Yes.

9 Q. Okay. Do you use them in your profession
10 regularly?

11 A. Yes.

12 Q. Okay. Were you taught the Rules of Procedure at
13 Quantico?

14 A. Yes.

15 Q. And did you teach the Rules of Procedure at
16 Quantico?

17 A. Yes.

18 Q. Okay. Is it true that South Carolina Rule 1001 and
19 1004 are duplicates of the federal rule?

20 A. It pretty much mirrors it, yes.

21 Q. Okay. All right. Does this (pointing to disk)
22 meet the standard set forth in that rule, in either of
23 those rules?

24 A. Not the best evidence rule, no.

25 Q. As far as you know, does the FBI destroy SD cards?

1 A. No.

2 Q. Do they reuse them?

3 A. No.

4 Q. As far as you know, does SLED destroy SD cards?

5 A. I -- again, that would be the front end, and I do
6 not know SLED's procedure in that regard. I would think
7 not.

8 Q. All right. How much does an SD card cost?

9 A. You can probably get them on sale for, you know,
10 between five and ten bucks. Some of the larger ones,
11 maybe 19, 20 dollars or more.

12 Q. Okay. I mean, we're talking about the State of
13 South Carolina trying to deprive somebody of their
14 liberty and they can't afford to spend ten dollars?

15 A. (No response.)

16 MR. BRANNON: Nothing further.

17 THE COURT: Okay. Cross-Examination.

18 Cross-Examination by Mr. Wagner:

19 Q. Mr. Johnson, have you ever listened to the tape in
20 this case?

21 A. I'm sorry?

22 Q. Have you ever listened to the tape in this case?

23 A. No, I did not.

24 Q. Okay. So you don't know what's on the tape?

25 A. I do not.

1 Q. The only thing you've done as far as understanding
2 what's on this tape is you ran the hash marks, what you
3 call the hash marks, off of Agent Sloan's computer and
4 Mark Gregory's computer ---

5 A. That is correct.

6 Q. --- and they matched?

7 A. Yes, sir.

8 Q. Okay. So, if you were to think about it, if you go
9 with what they say happened, that at roughly at 2:00 in
10 the morning after this interaction with the Defendant
11 went down between him and the informant and the tape was
12 made, and they downloaded it onto SLED's computer, to
13 Michael Sloan's computer, and then they downloaded it to
14 Mark Gregory's, whichever way it happened, that if they
15 did that the way they say it did, it wouldn't match,
16 wouldn't it?

17 A. I don't know what they say they did.

18 Q. Okay. If they said they downloaded to one
19 computer, or they copied it to Agent Sloan's
20 computer ---

21 A. Uh-huh.

22 Q. Okay -- and then they cut it from the SD card onto
23 Mark Gregory's computer, would you expect those two hash
24 marks to match if they did it that way?

25 A. No, I -- I can't say that I would. I can't say

1 that I would. Because for me empirical proof comes in a
2 scientific way, the mathematical hash. So, no, I would
3 not, primarily because I have seen copies like that made
4 and the hashes do not match, which means that there was
5 an issue in the transfer process and you have to do it
6 all over again. It does happen forensically.

7 Q. Okay. But in this case they matched?

8 A. No, no, no. Matching against the original. You've
9 got to have the original. The only thing that matched
10 in this case were the two copies matching each other.
11 What I'm -- what I'm trying to say is this. In order
12 for me to say that they would match, I would have to
13 have to have had the original hash value from the file
14 on the SD card, and at that point in time I would be
15 able to say, this copy is a match to the SD card or this
16 copy is a match to the SD card. But the two of them
17 matching each other without an authentication back to
18 the SD card is basically worthless.

19 Q. Not if you have four agents that testified that
20 that's exactly what was said and that that's an exact
21 and true and accurate recording of what was recorded?

22 A. Okay. If we're talking about the voice, if we're
23 talking about authentication through the law enforcement
24 officer being there, that's not what I evaluate, that's
25 not what I am an expert in, so that's a whole different

1 matter. But it's not a scientific approach, it's just
2 an approach.

3 Q. But hypothetically speaking, if you have four
4 agents that were there as well as an informant who was
5 there and they all listened to it and they all said
6 that's exactly what went down and we didn't tamper with
7 it and we didn't mess with it, and they downloaded it to
8 the two computers, cut it, take the exact same, the
9 exact same file, and remove the SD card, remove it from
10 there and put it on the other one, you still -- if the
11 four or five of them that listened to it, and it's the
12 exact same, it still would be authenticated by their
13 testimony as well as the fact that they're saying that's
14 what happened?

15 A. I'm sorry. I -- I cannot agree with that if we're
16 talking scientific. If we're talking the law
17 enforcement officers verifying that what they hear on a
18 recording is what they heard when it was being made,
19 then I would say, okay, they've verified what they heard
20 to what they're hearing now, but I would stop short of
21 saying that that's an authentication back to an original
22 that I don't have.

23 Q. Then when we're talking about possible tampering of
24 the audio, are you saying that anything has been
25 tampered with?

1 A. Oh, no. No. I have not said at any point in time
2 that anything was tampered with, primarily because I
3 don't have an original to prove that. That's not what I
4 did.

5 Q. Okay. But you have no evidence that anything was
6 tampered with or not?

7 A. No, I do not.

8 Q. And what you call the original the officers
9 necessarily don't call the original. They call the
10 original copy of the download of the computer, they call
11 that the original, that's their term for it. You just
12 have a different term as to what you call the original?

13 A. Well, the term that I have is the term that is
14 accepted throughout the industry and it's the same
15 definition. In fact, on page 11 and 12 of the Anderson
16 County SOP they define the primary, they define the
17 original, and then they define copies.

18 So, and those definitions with regard to the photos
19 are exactly what I've just said to you, which may be a
20 little bit different from what the officers think, in
21 all due respect, to what the officers think an original
22 is.

23 Q. How many hours -- or what kind of time frame would
24 it take to, I guess, edit a file on an SD card? What
25 kind of equipment would you have to have?

1 A. Do you want to know the equipment or the time or
2 both?

3 Q. Both.

4 A. Time, time depends upon what you are getting.
5 Equipment, you could probably go on the internet and
6 download something for about twenty-nine or thirty
7 dollars and do it at home.

8 Q. Okay. And how much time would that take?

9 A. It depends what it is you are doing. If you are
10 doing complete overdubs and things like that, it could
11 take hours. If you're just doing a cut-and-paste job,
12 anywhere from maybe a few minutes to as long as it takes
13 for you to accomplish what you want to accomplish.

14 Q. So, if this recording was started at 11:54 on the
15 night that it occurred and it ended at 12:44, would you
16 expect the actual tape, if you actually had to listen to
17 the recording, would you expect it to be 50 minutes
18 long?

19 A. If it was recorded for 50 minutes, if I listened to
20 it for 50 minutes, I would expect to hear something,
21 even if it's just background noise, for 50 minutes, yes.

22 Q. Right. Okay.

23 A. Yes.

24 Q. So, if Officer Gregory says we're starting this
25 recording at 11:54, and then at the end of the tape,

1 after the guy's run the wire in, everything has been
2 done, he says we are stopping this tape at 12:44, and
3 there's 50 minutes there, and if you listen to the
4 recording, the CD that you are holding there, State's
5 Exhibit number 1, and it's 50 minutes long, would you
6 say it's likely that anything was taken out or put in?

7 A. I would not be able to answer that question just
8 based on listening to the recording over a period of
9 time. That digital forensics, no, I would not be able
10 to say that, to be quite honest with you. The only
11 thing I could say is that I listened to a recording for
12 50 minutes. Whether or not something changed on it, I
13 do not know.

14 Q. Okay. So, if they finish it at 12:44 and they
15 download it onto Agent Sloan's computer at 2 a.m.,
16 according to SLED records, would they have had time,
17 with your knowledge of computers, to go doctor this SD
18 card and take stuff out or add stuff?

19 A. Keep in mind I'm not saying that law enforcement
20 doctored anything. But depending on what it is you want
21 to do, the answer is I don't know.

22 Q. I guess I'm asking your opinion. Do you think they
23 could have done it that quick?

24 A. Give me the time frame again, please.

25 Q. Basically an hour and 15 minutes.

1 A. In an hour and 15 minutes --

2 Q. Yes.

3 A. Could a video recording -- I'm sorry, could an
4 audio recording be doctored in an hour and 15 minutes?

5 Q. Out on the side of the road.

6 A. In an hour and 15 minutes?

7 Q. Yes.

8 A. Absolutely, yes.

9 Q. And, if these four or five officers, they would
10 have the kind of equipment there on the side of the road
11 if they wanted to do that?

12 A. First of all, I want to make one point clear. I am
13 not saying that any law enforcement officer doctored
14 anything.

15 Q. I understand.

16 A. But, if you are asking is it possible, can it be
17 done on the side of the road? Yeah.

18 Q. When we're talking about tampering with an audio,
19 are you talking about adding time or adding something to
20 it or deleting it?

21 A. Either/or.

22 Q. Which would be easier?

23 A. It is always easier to destroy than it is to build
24 up, so the deletion would be the easiest.

25 Q. Okay. And, then again, I ask you and I relate that

1 back to the question, too, about the time frame. If the
2 officer is on the -- on the tape, and he says it's
3 starting the recording now and it's inaudible at 11:54,
4 and then when they end it, he ends it, at 12:44, a
5 50-minute time frame now, you listen to the tape and you
6 start a stopwatch, and it's 50 minutes long, does that
7 tell you whether anything has been -- more likely has
8 anything has been added or taken out of it?

9 A. No, it doesn't tell me that, primarily because when
10 we -- when you look at digital evidence forensics in and
11 of itself, subtle changes, subtle changes in a
12 background noise that may not be necessarily audible by
13 one person but is audible by another person, subtle
14 changes in certain background noises that may not be
15 heard by any human ear because of whatever compression
16 that's being used by the software that's actually
17 created the recording, this is when you take these kinds
18 of things to a laboratory. So, listening to it and
19 trying to gauge whether something occurred because of a
20 time frame is probably not the best way to determine
21 whether or not something changed.

22 Q. But it would be a good tool under the circumstances
23 if it's still 50 minutes long; what do you think the
24 odds are of something being added or taken out?

25 A. It would -- it would tend to show that if you have

1 a deletion or an addition, it would tend to show that.

2 But it may not, also.

3 Q. Okay. But it's your testimony today, other than
4 what you say the FBI would consider the original?

5 A. And keep in mind I'm not representing the FBI at
6 this point.

7 Q. I understand. When you were there, that's what
8 you've done?

9 A. Yes.

10 Q. Do all federal agencies do it that way?

11 A. The ones that I have come in contact with and
12 worked with, they pretty much follow the guidelines and
13 the standards of the Department of Justice National
14 Institute of Justice guidelines and standards, and most
15 of the local police agencies that I've worked with
16 pretty much utilize the same thing with a few
17 modifications based upon their own unique condition.

18 Q. Would you be surprised to learn that there is an
19 ATF agent out there in the hallway who was present and
20 heard everything?

21 A. I wouldn't be surprised, no.

22 Q. Would you be surprised if he told you that they do
23 their wires the exact same way? As a matter of fact,
24 they don't use an SD card, they use an actual unit that
25 digitally records and then they cut from the digital

1 unit onto the same thing, the same thing that Agent
2 Sloan did?

3 A. Would I be surprised is the question?

4 Q. Yes.

5 A. I wouldn't be surprised, no.

6 Q. Would you say that they're doing it wrong if that's
7 the way they do it?

8 A. I wouldn't say that anyone is doing anything wrong
9 until I've had an opportunity to evaluate their entire
10 protocol. What I've just heard from you, with all due
11 respect, is a sound bite of a partial procedure. When I
12 go in to inspect procedures, I need to see everything
13 from the SOP all the way to the actual practice. I am
14 not sure that an ATF agent who is a digital evidence
15 forensics examiner would say that they don't use hash
16 values to show authenticity and verification of files.
17 If there is such an examiner in the ATF that advocates
18 that, that would surprise me.

19 Q. Because they don't use a ten-or-15-dollar chip over
20 and over, they don't get a new one every time they do
21 it, do you understand that state agencies don't have
22 unlimited budgets such as the federal people do?

23 A. I truly understand that. And -- and one of the
24 things that I advocated and taught is this. If budget
25 is an issue, if you were to hash the file while it is on

1 the chip, verify that hash value, image that file out,
2 export that file out and reverify the hash, that is
3 acceptable by any examiner and any agency that I know
4 and you can do whatever you want with the chip because
5 you have authenticated, you have validated, you have
6 verified, and all of the courts that I've ever testified
7 in use that image and that hash value just like it would
8 be an original. That complies with the Federal Rules of
9 Evidence which is mirrored by the South Carolina State
10 Rules of Evidence.

11 Not having the hash value, not having an
12 exported-out image with hash contemporaneous with the
13 export kind of puts into question as to whether or not
14 you have an original or you have a copy that you can't
15 authenticate with an original.

16 Q. Let me ask you, then. If ATF, DEA, Anderson
17 County, SLED, Oconee County, five off the top of my
18 head, if they all do it the exact same way that Agent
19 Sloan and Mark Gregory did it that night, are they
20 all -- are they all wrong? Does that make their
21 evidence...

22 A. I would never say that. Let me comment, just a
23 little bit on SLED. Because each and every time I go to
24 SLED to start a case or to work a case in continuance,
25 they provide me with a hard drive, with the image that

1 has been authenticated with the hash value that has been
2 verified. They don't give me an original. They give me
3 the hard drive with the image that's been authenticated
4 and verified, and when I run my hash against what they
5 gave me, 100 percent of the time it's come up a match.
6 So I know that SLED does it based upon the Federal Rules
7 of Evidence and the South Carolina State Rules of
8 Evidence.

9 The other agencies I have had no recent contact
10 with them to know how they do what they do. But again,
11 if an examiner tells you that they don't use hashing to
12 verify and authenticate, that would surprise me.

13 Q. I'm not trying to put words in your mouth. But the
14 bottom line. Your testimony here today basically is
15 that when you were at the FBI y'all have a different
16 version of the original versus what the guys in this
17 case do?

18 A. That is not my testimony. We do not have a
19 different version. In fact, as I said, on pages 11 and
20 12 of 24, along with page 15 of 24 of the Anderson
21 County SOP, they pretty much say the same thing that I'm
22 saying right now, but it is in conjunction with photos.

23 And keep in mind a digital photo is just another
24 digital file, no real differences with a sound file. In
25 fact, the same relative kinds of compression that you

1 would use on one you would use on the other.

2 And examiners look at things as a file. It's a
3 file. It doesn't matter whether if it's an image of a
4 picture or a sound. It is still a file, it still has
5 its own electronic DNA.. It still needs to be verified,
6 it still needs to be authentic, and if you don't have
7 the original; you have to have the next best thing under
8 the rules of evidence, and that is an authenticated
9 copy, because the rules of evidence state that you must
10 be able to show that the copy is an accurate
11 representation of the original and you can't show an
12 accurate representation if it's not scientific.

13 Q. If you have five officers that can authenticate it,
14 do you understand that ---

15 THE COURT: Let's move forward. I got it.

16 MR. WAGNER: Yes, sir.

17 That's all I've got, Judge.

18 MR. BRANNON: Just a few.

19 THE COURT: Guys, we are not even done with one
20 motion and it is 20 minutes till five.

21 MR. BRANNON: I understand.

22 THE COURT: Okay.

23 MR. BRANNON: Okay.

24 THE COURT: I'm just telling you we'll be out of
25 time is what I'm saying, so just be careful.

1 Redirect Examination by Mr. Brannon:

2 Q. Can you change the date on that computer?

3 A. Yes.

4 Q. Okay. And, if you change the date on that
5 computer, does it change the date that it displays when
6 you manipulated or manufactured a document on that
7 computer?

8 A. If I change the date on that computer, every
9 document after that date has been changed will have the
10 changed date as reflected for the creation date and the
11 last modified date and possibly the last access date.
12 There are three dates associated, all of which will
13 change to -- and when I say change, they will adopt the
14 date that I changed it to. Existing files should retain
15 their original dates.

16 Q. Right. But anything going forward would, would,
17 would -- okay.

18 A. That's correct.

19 Q. All right. And FBI deals with the federal rules of
20 evidence, correct?

21 A. Correct.

22 Q. The South Carolina rules of evidence are based on
23 the federal rules of evidence, correct?

24 A. They're pretty much mirrored.

25 MR. BRANNON: Thank you.

1 Nothing further.

2 **THE COURT:** Thank you.

3 Thank you, sir. You may step down.

4 (Whereupon, the witness left the witness stand.)

5 **MR. BRANNON:** Nothing further. I ask you to
6 exclude the audiotape.

7 **THE COURT:** Let me ask you to explain something to
8 me, if you could.

9 Go ahead, Mr. Johnson.

10 (Mr. Johnson left the courtroom.)

11 **THE COURT:** I understand the scientific basis of
12 what your testimony is -- at least I believe I do --
13 but, you know, until the time that we had -- that we
14 looked at hash marks and assigned hash marks, things
15 like that, there have been recordings, recordings have
16 been verified and authenticated without the existence of
17 hashing being done. That may be protocol, but that
18 doesn't mean admissibility to me.

19 And it looks like the factors that you look at is
20 in Am. Jur. Evidence Number 122 -- and tell me if you
21 disagree with me, that's what I'm asking -- that the
22 witness testifies on the basis of having heard the
23 person, the conversation recorded; the recording fairly
24 and accurately reproduces the conversation and
25 identifies participants in the conversation. The

1 witnesses who participated or overheard the
2 tape-recorded conversation can testify to accuracy and
3 can authenticate it.

4 Do you agree with those factors?

5 MR. BRANNON: I do.

6 THE COURT: Okay. Now, one of your concerns is
7 that there's been no chain of custody as to this ---

8 MR. BRANNON: Correct.

9 THE COURT: --- recording.

10 MR. BRANNON: Correct.

11 THE COURT: Now, there's a case that my clerk gave
12 me, the State v. Aragon, 254 S.C. 224 (reading):

13 ...if it appears otherwise in proximity where a
14 recording which has been found to be properly
15 authenticated, there is no chain of custody necessary.
16 (End of reading)

17 MR. BRANNON: I've read Aragon. And, Your Honor,
18 again, my chain of custody arguments goes to other
19 things, but I thought it was useful I think to bring up
20 the chain of custody problems here because of problems
21 throughout the -- throughout the other evidentiary
22 issues.

23 THE COURT: Right.

24 MR. BRANNON: I'm familiar with Aragon.

25 THE COURT: Okay.

1 **MR. BRANNON:** Okay. But, Your Honor, if you will
2 read the rule back that's from Am. Jur., it says tape
3 recording. I would ask you to consider when that rule
4 was written.

5 **THE COURT:** It's still the rule in South Carolina.

6 **MR. BRANNON:** I -- well, I agree that it's still --
7 I mean, it hasn't been overturned, I understand that.

8 **THE COURT:** Right.

9 **MR. BRANNON:** But it says tape recording. I mean,
10 that's what -- you heard me talk about reel-to-reel.
11 We're not talking about tape recording here.

12 Your Honor, when we were talking about tape
13 recording, you could tell if the tape had been spliced,
14 you could tell if the tape had been, had been erased.
15 But we're talking about digital information here now.

16 And, Your Honor, the federal rules and even -- even
17 the State's rules of evidence require that a copy has to
18 be authenticated.

19 **THE COURT:** Right.

20 **MR. BRANNON:** Now what you are talking about is
21 authenticating by having, I heard them say, four
22 witnesses get on the witness stand and say, yeah, this
23 sounds like it.

24 The two that have already testified said, Your
25 Honor, they never heard Rick Bart- -- I call him Rick,

1 I'm sorry, sir -- they never heard Mr. Bartee speak
2 before this, they never met him before this. How can
3 they authenticate a conversation that they -- I mean,
4 they knew that it was Blackwell. They don't know that
5 was Rick Bartee speaking.

6 And, I mean, I'm talking about the requirement for
7 these people to be audio experts. All they know is that
8 that may be something like what they heard, but they
9 don't even know that it was Bartee. They never met him,
10 they never heard his voice.

11 Now, Your Honor, they've had an opportunity to
12 listen to it multiple times since the arrest. They've
13 probably heard him speak since then. But on that date
14 they didn't even know who Rick Bartee was. How can they
15 authenticate a conversation between Nick Blackwell and
16 Rick Bartee when they didn't even know who Rick Bartee
17 was?

18 THE COURT: All right. Let me just tell you, I'm
19 gonna look at it. I believe that it has been
20 authenticated. I'm gonna think about it tonight
21 further. Right now that's where I'm heading with it,
22 but I'm not making that ruling yet. I think it probably
23 has been authenticated, which means that the chain of
24 custody is irrelevant at this stage. But I will give
25 you my definitive ruling in the morning.

1 When the informant testified this is the card I
2 received and who I received it from, it was the exact
3 same, in the exact same form as it was when I received
4 it. The officer would testify to that. Judge, I don't
5 think the chain of custody is required because it is not
6 something that can be easily altered.

7 **THE COURT:** We'll just -- we'll cross that bridge
8 when we get there. I don't think it is, either, but do
9 it in camera, okay, so I can hear it and get a better
10 feel for what the testimony is and make a determination
11 of that.

12 Do you see any difference in the money? What about
13 the money?

14 **MR. BRANNON:** No. In fact, Your Honor, I'm not
15 even gonna make the argument about the money. I mean,
16 there is no chain of custody. Your Honor, for the
17 record I'm arguing that there is no chain of custody on
18 the money. Do I understand you're gonna let it in?
19 Absolutely, because they've got the serial numbers. I
20 understand that.

21 **THE COURT:** Okay. All right. So that leaves us --
22 let's see -- the motions are the business card, the
23 money. How about the transcript?

24 **MR. BRANNON:** Yeah. Your Honor, I would ask the
25 Court -- you know, you are telling me that you are

1 leaning toward letting the audiotape in. But, I mean,
2 if the audiotape come in -- doesn't come in, then
3 clearly the transcript of it doesn't come in.

4 THE COURT: All right.

5 MR. BRANNON: But ---

6 THE COURT: Yeah. The converse isn't necessarily
7 true.

8 MR. BRANNON: I understand that. If you let the
9 audiotape in, I think the audiotape needs to stand on
10 its own and there doesn't need to be a transcription.
11 Okay? In fact, I heard from Ms. Adams that they
12 produced the -- keep in mind, Your Honor, they produced
13 two different transcriptions. One was I guess somebody
14 in their office typed it and they let Nick Blackwell and
15 some of the other officers fill in some of the
16 inaudibles, and it's my understanding that that's ---

17 You are not trying to get that in?

18 MR. WAGNER: No.

19 MR. BRANNON: It's just the one that was
20 transcribed by Ms. Williams, correct?

21 MR. WAGNER: Yes.

22 MR. BRANNON: Okay. Your Honor, just on its face,
23 if you let the audio in, Your Honor, it stands on its
24 own, let the jury hear what they hear. They don't need
25 to see it. And with that, in my opinion, Your Honor, it

1 would be akin to the directive that you gave them not to
2 do any investigation on their own. You are letting them
3 read the transcript when clearly they can simply listen
4 to the audiotape.

5 Here is my biggest problem with the transcript,
6 Your Honor.

7 THE COURT: Okay.

8 MR. BRANNON: All right. One moment, please.

9 (Discussion off the record.)

10 MR. BRANNON: Mr. Bartee lived on Summit Drive or
11 Summit Road. It's prevalent throughout the audiotape
12 and the transcription. About six months ago Mr. Bartee
13 moved to a road called Stillwater. He sold his house
14 and moved to Stillwater. In the transcript, Your Honor,
15 they got Stillwater.

16 If it's an actual transcription of an audiotape
17 that was made on May 29 of 2012, that's a big Freudian
18 slip.

19 THE COURT: Mr. Wagner? Or Ms. Simmons, I'm sorry.
20 Do you agree with that?

21 MS. SIMMONS: I'm sorry. Judge, on the tape we do
22 believe that the informant said Stillwater. Quite
23 frankly, he is from a socioeconomic background that he
24 would not be incredibly familiar with all these
25 lakefront subdivisions. I think he was in error. He

1 was in error when he stated Stillwater. Stillwater and
2 Summit are within a few miles of each other. What he's
3 not telling you is the rest of the audiotape gives
4 explicit directions on how to get to Mr. Bartee's house,
5 and if you follow the directions, it lands you to the
6 Bartee house and Summit.

7 THE COURT: Would you give me a copy of that
8 transcript?

9 MS. SIMMONS: Yes.

10 MR. BRANNON: And, Your Honor, I'll be happy to do
11 that, but it's highlighted and written on. I mean...

12 THE COURT: That's all right.

13 MS. SIMMONS: That's fine.

14 MR. WAGNER: We've got a clean copy.

15 MR. BRANNON: That's fine.

16 THE COURT: That's fine. I think that it goes
17 either way on that one. I mean, the State v. Tiner
18 (phonetic) said the Court didn't use its discretion by
19 allowing the transcript in. The other cases seem to say
20 what seems to be most appropriate in the circumstances.
21 So I'm gonna read this tonight and I'll let you know.
22 Okay.

23 MS. SIMMONS: May I approach, Judge? (Handing).

24 Thank you, sir.

25 THE COURT: Now, there's motions from the State

1 State of South) In the Court of General
 Carolina) Sessions
 2)
 County of Oconee) Indictment No: 2012GS3700597
 3)

4 State of South)
 5 Carolina)
 6 Plaintiff,) Transcript of Record
) Trial - Volume 2
 7 -vs-) (Pages 172 through 408)
)
 8 James Richard Bartee,)
 Jr.,)
 9)
 Defendant.

10 August 27, 2013
 11 Walhalla, South Carolina

12

13

B e f o r e:

14

The Honorable R. Lawton McIntosh, Judge; and a Jury.

15

16

17 A p p e a r a n c e s:

18

Christina T. Adams, Esq.
 10th Circuit Solicitor

19

David Rhys Wagner, Esq.
 Deputy Assistant 10th Circuit Solicitor

20

Lindsey Satterfield Simmons, Esq.
 Assistant 10th Circuit Solicitor

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Attorneys for the State

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N. Douglas Brannon, Esq.
 Attorney for the Defendant

23

24

25

Robin Sue Hild, FCRR, RPR
 Circuit Court Reporter

State v. Bartee -- August 27, 2013

1 State v. James Richard Bartee, Jr.

2 Day 2 of Trial, August 27, 2013

3 Morning Proceedings

4 9:01 a.m.

5 THE COURT: Please be seated.

6 Let's go back on the record.

7 Rulings on motions:

8 THE COURT: As to the motions we left with
9 yesterday regarding the audiotape, I'm gonna find that
10 that is admissible. My reasons for that, one, under the
11 case of State versus Mitchell, I believe that that
12 probably -- what is, what is before the Court would
13 qualify as an original.

14 If you recall, the Mitchell case was where you had
15 a deer camera that was downloaded by the victim and the
16 photographs were deemed to be originals.

17 MR. BRANNON: Right.

18 THE COURT: But, even if this is not an original, I
19 find that under 103 and 104 they would be admissible as
20 duplicates, and I think that by transferring from the
21 card you may well -- you may have lost the original in
22 104.

23 Notwithstanding, based on the testimony of the
24 witnesses, that the proper foundation has been laid for
25 the admissibility of the tape itself based on the Am.

1 Jur. cite I gave you yesterday, and I'm looking for it
2 in my notes. It's Am. Jur. Evidence 1222. It has the
3 different factors. I found that all those have been
4 properly met for the admissibility and authenticity of
5 the video and audio. Under State v. Tiner (phonetic)
6 I'm gonna let the transcript come in as well.

7 The business card, I'm finding that it does not,
8 the chain of evidence is not involved in that. I may be
9 incorrect in that assessment. I just don't find that
10 the chain of evidence is involved in this business card,
11 so I'm gonna find that that would be admissible.

12 Money has been admitted to be admissible. Isn't
13 that correct, Mr. Brannon?

14 MR. BRANNON: No. I know it's admissible, but I'm
15 not agreeing is what I'm saying. I mean, I want the
16 motion on the record, Your Honor.

17 THE COURT: Good. Okay. Well, I'm gonna find the
18 money is admissible, too.

19 As to the civil litigation, I'm gonna find that
20 that is relevant and material to this case. If the
21 witness has made three different stories up, then that
22 would go directly to his credibility in this matter, and
23 I'm gonna allow Mr. Brannon to get into that.

24 Now, one question I have as I was reading through
25 this last night. The motions *in limine* as to extrinsic

1 THE COURT: That was my ruling based on that case.

2 MR. BRANNON: Right.

3 THE COURT: And based on the civil litigation. I
4 think it is probative and I think it is material because
5 this witness has three different versions, it goes to
6 the issue of credibility and should be subject to
7 cross-examination, subject, of course, to a
8 contemporaneous objection at the time. All right? So
9 it is not my intent to try to limit you at this stage.
10 Now, I may end up doing that. I just don't know.

11 MR. BRANNON: I understand.

12 THE COURT: Now, let me just say for the record,
13 Mr. Brannon, I note your objections on the record to my
14 rulings as to your motions, and I note the State's
15 objections to my ruling on their motions. Okay?

16 Go ahead.

17 MR. BRANNON: Yes, Your Honor. And this gets back
18 to the audiotape recordings. Your Honor, I understand
19 your ruling. Again, that was a lengthy motion, and I
20 probably should have said this early on. But on
21 February the 8th of this year there was a hearing before
22 Judge Nicholson, and it was basically an evidentiary
23 motion hearing. And on that date Judge Nicholson says
24 the following (reading):

25 All right. Is the original recordings on the

1 digital device still available?

2 Madam Solicitor Adams said: Yes, sir, we can.

3 The judge said: Okay. Then make that available
4 for ---

5 And Madam Solicitor says: Absolutely.

6 The judge follows up with: And Mr. Moore can sit
7 down and listen to it and compare it to what he has.

8 (end of reading)

9 So the judge ordered them on February, on that date
10 in February, to produce the original, the original
11 digital device, and they were told -- the Court was told
12 it was available. Obviously we now know that that is
13 not available. I don't expect that to change your
14 ruling. However, they were ordered to produce it, they
15 said they had it, and they haven't done so.

16 THE COURT: Well, and I'll note that for the
17 record. Let me just say this. My understanding, and
18 granted, I learned about hash-tagging and different
19 things that I had never heard of before until yesterday,
20 but my understanding of what the testimony was is that
21 when we cut it, effectively we are transferring the
22 original from this card to the computer. So, therefore,
23 that is in their contention the original. Whereas when
24 we copied it to Officer Sloan's that is a copy, or a
25 duplicate under the rules. I may be wrong. That's the

1 way I understood it.

2 I also understood your expert who was obviously
3 well versed in the area he testified in, he didn't say
4 anything in regards to his testimony to indicate that
5 this tape had been altered or manipulated, the audio, in
6 any form or fashion. In fact, he said I can't say that
7 nor would I say that law enforcement would do that.

8 The only thing I can say is -- and you all correct
9 me if I'm wrong on this -- is that there's no way to
10 tell that we had the original because it was not
11 hash-tagged before it was transferred to the computer
12 from the car.

13 Do you disagree with that as far as dealing with
14 what he said?

15 **MR. BRANNON:** Well, I -- I don't disagree with the
16 Court's summary of Mr. Johnson's testimony at all. But
17 you -- you pointed out -- the glaring problem in my mind
18 is he said I can't testify that this tape has been
19 manipulated or obliterated, but I can never know that
20 because I haven't heard what it was before.

21 **THE COURT:** Well, why doesn't that fall under the
22 same auspices as the State v. Mitchell where you have a
23 deer camera where they download the pictures from the
24 camera into a computer from which those were downloaded
25 and used in court and in that case they found that they

1 were, in fact, originals?

2 MR. BRANNON: Your Honor, I can't differentiate
3 that. I'm -- I'm -- I'm -- I'm stating my position, but
4 I understand ---

5 THE COURT: Okay.

6 MR. BRANNON: --- I've read that case and I know
7 about the deer camera.

8 THE COURT: All right. I mean, I looked at that,
9 and although we're dealing with audio evidence as
10 opposed to photographic evidence, it seems to me that
11 they would be originals just looking at the cases and
12 the definitions under the rules of evidence.

13 I note your objection. I think you have adequately
14 covered your record. If you feel like you need any
15 more, though, I would be glad to let you put it on the
16 record now.

17 MR. BRANNON: No, sir. As long as the record is
18 covered, and I believe it is, I'm good.

19 You asked me a question yesterday, under what rule
20 did I think that evidence, that my eliciting that
21 testimony about the shooting incident would come in. I
22 understand you've already said I could do it. But it
23 would be Rule 401 and 402, Your Honor, so ---

24 THE COURT: Very good. Now, there is an issue.
25 And I read these emails last night. As long as the

1 THE COURT: I understand. And that doesn't
2 surprise me at this juncture from the Defense side. I'm
3 only curious about the State's.

4 MS. SIMMONS: Judge, I'm organizing them right now.

5 THE COURT: Okay.

6 (Defendant's Exhibit No. 1, property records, was
7 marked for identification.)

8 THE COURT: Okay. Does the Defense intend to give
9 an opening statement?

10 MR. BRANNON: Yes.

11 THE COURT: I would think no less.

12 MR. BRANNON: Your Honor, I -- a point of
13 clarification.

14 THE COURT: Yes, sir.

15 MR. BRANNON: Okay. You've determined that this
16 transcript is admissible. Are you going to allow it
17 into evidence or are you simply going to allow the jury
18 to have it while the audio is being played for their
19 review?

20 THE COURT: I am going to let it into evidence.
21 Okay? Now, here is my practice just for FYI. Anytime
22 we have audio or some type of visual aids in here that
23 need to be played to the jury in the jury room, they
24 will be required to come out to the courtroom to review
25 those. Because, unless the computer has been wiped

1 totally clean, there's a chance that they can get in to
2 some other things that shouldn't be looked at. So I
3 have no problem limiting them to view it, to having this
4 transcript at their disposal when they are viewing -- or
5 not viewing, listening to the audio if that's requested,
6 and I'm sure it probably will be.

7 MR. BRANNON: It would be. But I wanted to know if
8 they were gonna have the transcript during
9 deliberations. That was the basis for that question.

10 THE COURT: No. What I was trying to say to you is
11 it will be out here in the courtroom.

12 MR. BRANNON: Oh, I understand that.

13 THE COURT: Okay.

14 MR. BRANNON: So, if they want to listen to it
15 again, they've got to come back out here? But ---

16 THE COURT: Again, somebody would have to get up
17 there on the thing and follow, track it with the
18 overhead monitor and that would be on the screen while
19 they are listening to it.

20 MR. BRANNON: Okay.

21 THE COURT: Now, there is other aspects of that
22 transcript that did cause me some concern, quite
23 frankly, and that is some of these conversations this
24 person allegedly had with some third party.

25 First, I'm not sure who that person was, but he

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1 (The jury entered the courtroom at approximately
2 9:54 a.m.)

3 **THE COURT:** All right. Ladies and gentlemen of the
4 jury, before we get started in this case, let me make a
5 follow-up question to my question to you this morning as
6 to whether or not you heard, saw or listened to anything
7 about this case.

8 After you were picked or selected as jurors but
9 prior to your being sworn in this morning, has anyone on
10 the jury heard anyone who was talking about this case or
11 purports to be saying something about their testimony in
12 this case? If so, raise your hand.

13 (There was no response.)

14 Any additional questions from the State?

15 **MR. WAGNER:** No, sir.

16 **THE COURT:** From the Defense?

17 **MR. BRANNON:** No, thank you.

18 **THE COURT:** Thank you. All right.

19 Now we'll go into opening statements.

20 Mr. Wagner.

21 **MR. WAGNER:** Thank you, Judge.

22 Opening Statement on Behalf of State:

23 **MR. WAGNER:** The Defendant is charged with
24 solicitation to commit a felony. The charge itself is
25 very simple. Counseling, enticing or inducing another

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1 person to commit a crime. In this case the Defendant,
2 James Bartee, is charged with counseling Nick Blackwell,
3 who was a supporter of his at that time, to kidnap
4 Judge, former Judge Jimmy Williams who filed a lawsuit
5 against the Republican Party and the State Ethics
6 Commission for a determination on Mr. Bartee's
7 qualifications to run for sheriff. This all occurred
8 back in May 2012, a little over a year ago.

9 It started in May of 2011. It started when
10 Mr. Bartee contacted the Criminal Justice Academy,
11 Brandy Duncan, who was -- who is the chief counsel,
12 she's a lawyer and is chief counsel down there, for
13 basically a ruling on whether or not she thought he was
14 qualified to run. She responded that he was not, he had
15 things that he needed to meet to meet the statute.

16 Now, there's a difference in South Carolina law.
17 There's a difference between being qualified to be
18 sheriff, for being a certified officer, and actually the
19 qualifications for being qualified to run for sheriff.
20 To run for sheriff, if you have a four-year degree, no
21 matter what your experience is, no matter if you have
22 many years in the federal system as a law enforcement
23 officer with the Secret Service, is what the Defendant
24 had, you still have to have a year of service. If you
25 have a four-year degree, you still have to have a year

1 of service as a state officer, whether it be sheriff's
2 department, city police, you have to have that by State
3 law to run for sheriff. And he didn't have that year of
4 experience. He had prior years as a federal officer,
5 but he did not have, he did not meet the State's law,
6 and that's what Brandy Duncan and Judge Williams will
7 tell you, that he had problems with that.

8 Brandy Duncan told him what he needed to do to
9 clear that up back in March, May of 2011. He didn't do
10 it.

11 So fast-forward almost a year later. He's running
12 for sheriff. You are talking about April of 2012.
13 Judge Williams, being a student of the law -- I'm
14 calling him Judge, he's a retired judge, but he's
15 referred to in this case a lot as Judge Jimmy
16 Williams -- realized that he had a glaring deficiency
17 there in his qualifications to run for sheriff.

18 He tried to clear that up with Mr. Bartee by
19 contacting the campaign. He couldn't get a
20 clarification. And I think in his mind he's gonna tell
21 you that he saw that the problem on that down the road,
22 the problem was basically embarrassment to the
23 Republican Party, embarrassment to Mr. Bartee,
24 unnecessary expensive litigations, which is what
25 transpired, and possibly, the ultimate possibility that

1 there was gonna have to be a second election, because if
2 Mr. Bartee was successful and won the election as the
3 Republican nominee for the sheriff of Oconee County,
4 somebody was gonna file a suit. If the guy is not
5 qualified, he's not qualified.

6 Jimmy Williams filed a motion in Circuit Court to
7 try to get a determination on whether or not he was
8 qualified.

9 That court case was going on. James Williams --
10 let me back up. On May 24th Nick Blackwell, Donnie
11 Fricks, another candidate for sheriff -- it's in the
12 papers, Mr. Bartee distanced himself from that. He
13 later ends up asking Nick Blackwell to kidnap Judge
14 Williams and that's basically why we're here.

15 You will hear from Jimmy Williams. And he's gonna
16 tell you that he saw the deficiencies in the
17 qualifications and he saw trouble on the horizon as far
18 as what would happen if he did get elected. A second
19 election, problems going down the road, that would be
20 expensive and it would be a pain in the neck for
21 everybody including a black eye for Oconee County to
22 have to go through it again. He wanted somebody to make
23 a decision on that to clarify.

24 Brandy Duncan is going to be here, she's the chief
25 counsel for the Criminal Justice Academy. She is gonna

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1 tell you that she told him he was not qualified and she
2 told him what he had to do.

3 You're gonna hear from Cathy Hazelwood. She works
4 for the State Ethics Commission as their attorney. She
5 is gonna tell you that around the time frame this all
6 happened Mr. Bartee was personally in the hole and had
7 loaned his campaign roughly seventy-five, seventy-six
8 thousand dollars plus change, so he had a huge monetary
9 investment in what was going on, and it was all hinging
10 in his mind at the time on whether or not Jimmy Williams
11 was gonna be successful or not, whether or not he would
12 be on the ballot or not. Okay? If he was successful to
13 get him kicked off the ballot. If he was successful, he
14 could have run for sheriff. But I submit to you that
15 Brandy Duncan and Jimmy Williams will tell you that he
16 wasn't, he wasn't qualified.

17 Late that night Mr. Bartee called Mr. Blackwell to
18 his house, took him outside, talked to him one on one,
19 Blackwell didn't know why he was out there. He
20 basically asked him to kidnap the judge. He will tell
21 you that. He's gonna tell you what happened and he's
22 gonna tell you what the Defendant said and say how that
23 transpired.

24 Read about it the next day he had to go to work.
25 He's gonna say that he saw David Smith, who was a local

1 sheriff's deputy, in the parking lot over at Applewood
2 Center. He was eating lunch at Subway with his wife.
3 He decided that he had to tell somebody. He went over
4 and told David Smith. David Smith will tell you he
5 referred it to Sheriff Singleton at the time who
6 referred it to SLED.

7 SLED assigned it to Michael Sloan, Special Agent.
8 He was with the Anderson County Sheriff's Office working
9 on another matter at the time, and he's gonna tell you
10 that he involved some guys locally there to help. It
11 was an Oconee case, so he went out of county and he got
12 Mark Gregory and David Baker who were narcotics agents
13 with the Anderson sheriff's office.

14 They specialized with people wearing wires, things
15 like that, is one of their specialties. They wired up
16 the Defendant. They also got Shawn Stallo, an Alcohol,
17 Tobacco and Firearms federal agent, they called him in
18 to assist because he does all that kind of stuff, too.

19 They were all present when they sent Nick Blackwell
20 to talk to James Bartee and they got the conversation on
21 tape. And what had transpired between that time -- and
22 that's all roughly the 29th of May in the late night,
23 27th, 28th, in that time frame, and at that time
24 Mr. Bartee talked with his attorney and found out it
25 really didn't matter if Judge Williams showed up at the

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1 hearing on the 30th the next day, it didn't matter if he
2 was gonna be there or not because the case was gonna go
3 on anyway.

4 Upon hearing that, Mr. Bartee called Mr. Blackwell
5 back and basically said that let's wait for now,
6 something to that effect. They decided to hold off on
7 it temporarily to see what happened.

8 The problem was a crime had already occurred. He
9 had already solicited Mr. Blackwell to kidnap the judge
10 and basically tried to set it in motion. When he did
11 it, Mr. Blackwell told him he didn't have any money, any
12 gas money, he needed money. Mr. Bartee gave him \$200
13 cash to buy zip ties and pay for gas.

14 He told him he wanted to take him, knock him in the
15 head, tie him up, take him to Asheville, take him out
16 somewhere to where it would take a long time to get back
17 so he wouldn't make the hearing the next day.

18 He changed his mind later and wanted to wait and
19 called Mr. Blackwell and told him that.

20 You're gonna hear from the lady from Verizon
21 Wireless who got Mr. Blackwell's phone records. A lot
22 of what Mr. Blackwell's testimony is gonna be is gonna
23 be backed up by phone calls between him and the
24 Defendant, Mr. Bartee, between him and Joe, Mr. Milbert,
25 who was a Bartee supporter all through the month of May.

1 You will see those phone records and have access to
2 those phone records to back up what Mr. Blackwell says.

3 You're gonna hear from Laurieanne Fletcher who
4 drove Mr. Blackwell over to Mr. Bartee's on the night
5 this happened. She's gonna tell you that they went out
6 and talked by themselves, came back in and Mr. Blackwell
7 was very upset, later told her what had happened.

8 You're gonna see some news footage from Fox-21 of
9 the Defendant when he got bonded out of here in the
10 local magistrate's office across the street. Basically
11 what he said was it wasn't what SLED was saying, it was
12 the exact opposite of that, and that he was trying to
13 prevent the situation. So he was convinced that he knew
14 about it.

15 You're gonna hear from Judge Williams. You're
16 gonna hear from James Singleton and David Smith, two
17 local officers. Singleton was the sheriff at the time.
18 David Smith still is the detective. Singleton was the
19 sitting sheriff who was backing another candidate, Terry
20 Wilson, he felt like he didn't need to be involved in
21 that. He turned it over to SLED and Michael Sloan got
22 involved that way.

23 So you will have phone records to consider, you're
24 gonna have Blackwell's testimony, you're gonna hear the
25 tape that he wore, you're gonna hear that tape where he

1 talked to Bartee in person and Bartee made the
2 incriminating comments.

3 Joe Harden was a friend of Blackwell's -- I mean,
4 of Bartee's, you're gonna hear from him, he's a retired
5 law enforcement officer. He will tell you that Bartee
6 called him, asked him to try to contact the sheriff to
7 see if he could make it all go away if he could leave
8 now. And you will hear from him, too.

9 There may be a couple other witnesses that I've
10 missed for whatever reason, some may testify and some
11 may not. The bottom line is at the end of this case we
12 will be asking for a guilty verdict, we will be asking
13 that you will find that on the late night of May 27th,
14 early morning May 28th, midnight, Blackwell, the
15 informant, did go over to James Bartee's house late at
16 night, and Mr. Bartee asked him to kidnap Judge Williams
17 and solicited the kidnapping. It doesn't matter if he
18 called it off and the crime wasn't committed. We'll be
19 asking for a guilty verdict on that count.

20 Like I say, you will hear a lot of stuff about
21 possibly the election laws as far as sheriff and stuff
22 like that because it all goes to his motive of what he
23 was thinking that day. If he really thought that he had
24 a chance to lose that court case, Judge Williams was the
25 only thing basically standing in his way in his mind of

1 becoming sheriff, and he had a huge financial interest
2 at that time, and that's why he did what he did. He
3 made a mistake.

4 I ask for your attention. We'll try to move it
5 along as quick as we can and we'll try not to have you
6 here any longer than you have to be. We appreciate your
7 service.

8 THE COURT: Does the Defense wish to have an
9 opening statement?

10 MR. BRANNON: May it please the Court.

11 THE COURT: Yes.
12 Opening Statement on behalf of Defendant:

13 MR. BRANNON: Good morning, ladies and gentlemen.
14 My name is Doug Brannon. I introduced myself to you
15 yesterday.

16 In this trial I have the privilege to represent
17 James Richard Bartee, Junior. Mr. Bartee, as you've
18 heard, is a retired Secret Service agent, worked for
19 many years with the Secret Service.

20 And most of us think of the Secret Service as the
21 guys with the things in their ears who protect the
22 President and other high-ranking elected officials, and
23 that's what they do. They also investigate white collar
24 crimes and other important things. The Secret Service
25 agency is a law enforcement agency, so one of their many

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1 duties is to protect elected officials but the other is
2 to investigate crime. Mr. Bartee did that for many
3 years, and when he retired, he chose Oconee County to
4 make his retirement home in. He owns his own
5 businesses, some local businesses here in Oconee County,
6 and he and his wife and their daughters have lived here
7 for about ten years.

8 Sometime, you know, six or seven years after he's
9 lived here and he's built his business, he comes to know
10 that Sheriff Singleton is not gonna run for re-election,
11 and Mr. Bartee is asked to run for sheriff and he does,
12 he announces his candidacy.

13 And, while I can't tell you who would have won that
14 election had Mr. Bartee been a candidate throughout this
15 process, but what I can tell you is if you put any
16 weight or credibility in political polls that are done,
17 he was gonna win. The polls indicated that he was gonna
18 get 80 to 90 percent of the vote in the Republican
19 primary. Now, who knows if that holds water? I don't
20 know. But that's what the polls say.

21 Mr. Wagner made mention of the qualifications to be
22 sheriff and mentioned a lawsuit that was filed by His
23 Honor, Jimmy Williams. Now, there is a difference
24 between being qualified to serve as sheriff and being
25 qualified to be a candidate. To be a candidate for

1 political office in Oconee County you have to be of a
2 certain age and you have to be a resident of the county.
3 And, if you meet those two qualifications, you are
4 qualified to be on the ballot. You will hear terms like
5 exhaust all administrative remedies and those kinds of
6 legal terms, and hopefully those will be explained to
7 you.

8 What this is gonna boil down to is, you've got a
9 snitch named Nick Blackwell. The legal term for that is
10 confidential informant. And this confidential informant
11 says that my client said something to him, and my client
12 says, no, he didn't. That's it. That's -- that's as
13 boiled down as you can make it.

14 Now, I'm pretty sure all of you have seen one of
15 the three versions of CSI on TV, and typically I stand
16 in front of a jury and say, Well, this ain't it.
17 Because on the TV shows they take some blood off of the
18 floor and about 32 minutes later they've got some DNA
19 already compared and they know whose it is. Well, I can
20 tell you in South Carolina, dealing with DNA, it takes
21 six or eight months to find out whose blood that is.

22 But in this case we're not dealing with biological
23 forensics. We're gonna deal with audio forensics and
24 computer forensics; and we're gonna deal with police
25 procedures, law enforcement procedures, and we're gonna

1 deal with laws.

2 Now, can you imagine on CSI if they had that sample
3 of blood that I'm talking to you about and that officer
4 took and put it in an envelope and then he put it in the
5 toolbox in the back of his pickup truck and it stayed in
6 the toolbox from May of 2012 until August of 2012 before
7 he handed it in to somebody to test it?

8 That's what happened in this case. There's
9 procedures that weren't followed, there's evidence that
10 was mishandled, and all of it, all of it is to support
11 the snitch who says my guy said something.

12 Early on the judge told you that the State has the
13 burden to prove its case beyond a reasonable doubt. All
14 crimes in South Carolina have elements. For instance,
15 speeding, a police officer has to prove two things:
16 that you were driving the car and that you were driving
17 it in excess of the posted speed limit. Those are the
18 two elements. You were driving too fast. Well, this
19 case has elements, and the judge is gonna tell you what
20 those elements are. And the State has to prove each
21 element beyond a reasonable doubt.

22 And you heard the judge say that a reasonable doubt
23 is that type of doubt that would make a reasonable
24 person hesitate to act. He's gonna tell you what the
25 law is. So it doesn't matter if I misspeak, he's gonna

1 tell you exactly what it is. But I was pretty close: a
2 reasonable person, hesitate to act.

3 I'd like to change that. Well, first off, all of
4 you are reasonable people because you are in the jury.
5 That's why we went through all of those questions
6 earlier on yesterday to determine if you were
7 reasonable. Well, you are. So, if anything in this
8 courtroom, any of this evidence makes you go "Hmm,"
9 that's reasonable doubt. If, at the end of this case,
10 you go "Hmm," that's a reasonable doubt.

11 One thing the judge said earlier on is the
12 indictment and all of those documents and the fact that
13 he's been charged, that Mr. Bartee has been charged,
14 that's not evidence. None of that's evidence. The
15 evidence is gonna come from that witness stand in the
16 form of people talking or in things that the Court
17 accepts into evidence. That's what you base your
18 decision on:

19 But right now today he's not guilty. And he stays
20 not guilty forever unless you come back in after
21 deliberations and you change that. Right now he's not
22 guilty. And if you go "Hmm" at the end, he stays not
23 guilty. Thank you very much.

24 THE COURT: Call your first witness, please.

25 MR. WAGNER: I call Jimmy Williams.

1 A. I am, yes.

2 Q. Okay. And your law license is still current?

3 A. Yes.

4 Q. Do you keep abreast of legal matters, attend
5 continuing CLE classes, continuing education classes?

6 A. Well, I'm exempt because of my age. I've taken so
7 many, they say there's not much hope of teaching me
8 anything new, so I don't have to take the CLEs to
9 maintain my license. I did that until I -- as long as I
10 had to. But I keep up. I read about legal matters. I

11 read the Advance Sheets, which are reports of Opinions
12 from our Supreme Court, but I haven't taken any CLEs.

13 Q. Has your interest even though you retired in the
14 law continued?

15 A. Yes, very definitely.

16 Q. Now, so you currently live here in Oconee County?

17 A. Yes.

18 Q. Okay. Now, do you know the Defendant in this case,
19 Mr. Bartee?

20 A. Do I know him?

21 Q. Yes.

22 A. No. I never met Mr. Bartee. I shook his hand one
23 time at a public meeting and said, Hello, Mr. Bartee.
24 I've never had any conversation. When all of this
25 started, I had never seen him as far as I know.

1 Q. As a resident of Oconee County did you have an
2 interest in the sheriff's race back in 2012?

3 A. Yes, very much. It was probably the most active
4 political campaign going on in the county.

5 Q. And did you have some concerns about the sheriff's
6 race? Explain what was your interest in the sheriff's
7 race, and how did you perceive it?

8 A. Well, I think everybody is interested in who the
9 sheriff of the county is, and me being involved in law
10 enforcement and having presided over this courtroom many
11 times, I was very interested in who was the sheriff of
12 Oconee County. I didn't have any background knowledge,
13 I wasn't born and raised here, so I didn't know like, in
14 that sense that you local people who have been here all
15 of your life might know all the individuals involved.

16 But according to all the newspaper articles and
17 everything, there were four candidates running. And
18 there was some news articles that questioned
19 Mr. Bartee's eligibility to run for sheriff. And I hope
20 I can use that word "eligibility" rather than
21 "qualifications" because that's really what we're
22 talking about.

23 And I got interested in that. I said, well, surely
24 the man is not running for sheriff, he's not eligible to
25 serve under South Carolina law. So I did my own

1 research. I didn't think about what was in the
2 newspapers, I did my own research and got the law, and
3 it was very clear to me that he was not eligible to run
4 for sheriff.

5 There are very few things in the law which are
6 black and white. The law is mostly gray areas. But
7 there are some things that are black and white, and this
8 was one that was black and white. The law says to be
9 sheriff in South Carolina, if you have a four-year
10 degree, you have to have a one-year's experience as a
11 South Carolina certified law enforcement officer. Just
12 one year, but it has to be as a South Carolina officer.

13 And Mr. Bartee had no experience as a South
14 Carolina officer. So I never questioned Mr. Bartee's
15 qualifications to serve as sheriff and do a good job. I
16 questioned his eligibility to be elected sheriff.

17 But three of the candidates had ties to the local,
18 to the present sheriff who had elected to retire. If
19 you keep up with politics in Oconee County there was a
20 lot of criticism of that office. Justified or not, I
21 don't know. I didn't get into that.

22 But each of those three candidates had been
23 employed by that office at one time, one was still
24 there. Each of them had some what I would call
25 political baggage that distracted from their viability

1 as a candidate. On the other hand, the way I looked at
2 things, here's Mr. Bartee, he's a retired Secret Service
3 agent, he's got to be smart, he's got to have knowledge
4 of the law. Maybe he's the man they need for sheriff of
5 Oconee County and maybe he would be attractive to most
6 of the people in Orangeburg County as an outsider coming
7 in -- I mean Oconee, excuse me. It looked to me like
8 that he had an extremely good chance of winning the
9 primary.

10 And then I said, if he wins the primary and gets
11 elected sheriff, we could have a man elected sheriff in
12 Oconee County who is not legally eligible to serve as
13 sheriff. The sheriff is the person that deputizes every
14 one of these deputies. They act on his authority. He
15 would not have the authority to deputize a single
16 person. We wouldn't have a single person in Oconee
17 County who would be able to make a legal arrest. And
18 that's -- that's just not an acceptable situation. I
19 mean, that would be complete chaos.

20 So the party, whether Democrat or Republican, has
21 to certify the candidacy to the Election Commission in
22 order for somebody to be placed on the ballot. So I
23 first went to the party and said I've investigated this
24 and he is not eligible, he cannot serve if elected,
25 please reconsider your certification of this candidacy

1 and take him off the ballot to keep this from happening.
2 And they refused.

3 So I went to some of their forums thinking I might
4 be able to stand up and ask the questions that I needed
5 the answer to myself, and that's how Mr. Bartee expected
6 to get around his one-year experience requirement.

7 I didn't question that he could have been certified
8 to serve as a law enforcement officer in South Carolina.
9 I think he could have been certified. But he wasn't,
10 that was a fact. And had he been certified the day of
11 the election, he wouldn't have had one year's experience
12 so he could not meet the legal requirements, the
13 one-year eligibility requirements to serve as sheriff.

14 I didn't get a chance to ask the questions at the
15 public forum, so I emailed Mr. Bartee. I tried to be as
16 polite as I could. I said -- I cited the law to him.
17 And I said, Please tell me how you are going to get
18 around the requirement for one year's experience.

19 And I did not -- I did not hear from Mr. Bartee.

20 A week later there was another forum, and he was
21 asked about his eligibility, and his answer was, I'm
22 overqualified to be sheriff. I can be, I can be
23 certified.

24 That's not the question. The question was his one
25 year's experience. Where is he gonna manufacture one

1 year's experience? We're talking about in June and the
2 election is in November and he takes office in January.
3 That's -- he can't do it.

4 So I emailed him the second letter, and I said
5 (reading):

6 Mr. Bartee, I saw your statements in the paper, and
7 I said, but you have answered the wrong question. You
8 still haven't answered the question, how are you gonna
9 deal with the one year's eligibility, the one year's
10 experience? And I said, Maybe I've missed something.
11 Please show me what I've missed. (end of reading)

12 So he emailed me back very promptly the same day
13 and he said, I'm overqualified to be sheriff. Never
14 mentioned the one year's experience that was necessary
15 for him to serve as sheriff. And he made some other
16 statements about that if he won the primary he would be
17 a State employee and he could get certified at that
18 time. Which was not true. I mean, he had some bad
19 information about that.

20 So I emailed him back again and told him I thought
21 he had gotten some bad advice and maybe he needed to get
22 a lawyer and get some advice about the viability of his
23 candidacy.

24 And I didn't hear anything else from Mr. Bartee.
25 So I had to decide whether I was gonna sit and do

1 nothing or whether I was gonna be active and try to
2 prevent what I thought would have been a terrible
3 disaster later in the year had he been elected, which I
4 thought was likely.

5 And, after a long deliberations, I decided the only
6 way I could prevent that disaster from happening was to
7 file a lawsuit against the Republican Party to have him
8 taken off the ballot. I'm not against Mr. Bartee, I
9 didn't sue Mr. Bartee. I sued the Republican Party
10 after I couldn't get them to take any action.

11 And that's kind of how we got involved in it.
12 That's where we went from there. The lawsuit was
13 proceeding and all these other things happened.

14 Q. Was the lawsuit scheduled to go to court on the
15 30th of May, 2012?

16 A. It was. We had a short hearing here before that
17 and the primary hearing was on that afternoon, I think.
18 I believe it was on a Monday, but I think that's the
19 right date, yes.

20 Q. When did you find out that there had been -- and
21 I'm calling it a plot to kidnap you, but when did you
22 find out anything about that?

23 A. I got a call the morning of the hearing from
24 Mr. Keel, who was the head of SLED down in Columbia, and
25 he told me ---

1 MR. BRANNON: Object, hearsay.

2 THE COURT: Sustained.

3 THE WITNESS: That's how I found out.

4 By Mr. Wagner:

5 Q. Okay. That morning?

6 A. Yes, sir.

7 Q. Okay. Let me show you what's been marked State's
8 Exhibit for identification 5A.

9 THE COURT: Admitted without objection, 5A.

10 (State's Exhibit No. 5A was received in evidence.)

11 THE WITNESS: Yes, I could identify it. It's the
12 first email that I sent to Mr. Bartee. It was at 9:00
13 on April the 10th, 2012.

14 By Mr. Wagner:

15 Q. And is that a true and accurate copy of the email
16 that you sent him?

17 A. Yes, sir. That's exactly the email.

18 Q. Are you familiar with the email address that you
19 sent it to, James Bartee at barteeforsheriff.com?

20 A. I got it off his campaign literature, yes, sir.

21 Q. And what exactly did you say to him?

22 A. Well, I cited the law to him. I gave him the Code
23 references, section, cited the section which appears to
24 apply to you, you have to have a four-year degree, that
25 you have to have, quote, one year's experience as a

1 certified law enforcement officer to be qualified to
2 serve as sheriff. Section 23-23-10(E)(1) defines law
3 enforcement officer, and when read with Section 23-23-60
4 makes it clear that one cannot be a certified law
5 enforcement officer unless currently employed by the
6 State or its political subdivisions.

7 Assuming you could be issued a certificate under
8 23-23-70(C), in 23-23-70(C) there's a provision in the
9 law that allows a federal law enforcement officer to be
10 certified upon certain conditions by the Criminal
11 Justice Academy, which they certify every police officer
12 in the State of South Carolina, whether they are a
13 highway patrolman, deputy sheriff, chief of police,
14 sheriff or anybody else. That agency has to certify
15 you.

16 And this section says they can certify an officer,
17 but he has to convince them of certain things, and
18 generally speaking they have to take a basic course in
19 South Carolina law. There's no question that a
20 federal -- retired federal officer can be certified.

21 But I told him, I said, Assuming that you could be
22 issued a certificate under this section, that could only
23 occur at the request of a public law enforcement agency
24 of this State.

25 And that's true. To be a law enforcement officer

1 and to be certified as a law enforcement officer, you
2 have to be employed by some law enforcement agency. You
3 just can't have a certification and put it in your shelf
4 and say, I'm a certified law enforcement officer.

5 The academy certifies that officer to serve with a
6 particular agency at the request of the agency. If that
7 officer leaves that agency, then the agency, say it's
8 the sheriff's office, notifies the Law Enforcement
9 Academy, you know, Mr. Smith left our employ. His
10 certification is kind of suspended.

11 MR. BRANNON: Objection. I believe that's hearsay.

12 THE COURT: Just one second. I'm gonna sustain
13 that objection.

14 Go ahead.

15 THE WITNESS: Anyhow, I went on to say that
16 (reading):

17 Under that section, even if you get certified, it
18 could only be effective once you get certified. Please
19 explain how you would meet the one year's experience
20 requirement to allow you to serve as sheriff. What have
21 I missed? Sincerely, Jimmy Williams. (End of reading)

22 That was on April the 10th.

23 MR. WAGNER: Your Honor, at this time we would move
24 State's 5A into evidence.

25 THE COURT: That will be admitted without

1 objection.

2 MR. WAGNER: Yes, sir.

3 (State's Exhibit No. 5A was received in evidence.)

4 By Mr. Wagner:

5 Q. Mr. Williams, let me show you State's Exhibit 5B.

6 MR. BRANNON: No objection.

7 THE COURT: Okay. 5B will be admitted without
8 objection.

9 (State's Exhibit No. 5B was received in evidence.)

10 By Mr. Wagner:

11 Q. Do you recognize that, Mr. Williams?

12 A. Yes. This is the second email I sent Mr. Bartee.

13 It was sent on -- one week later, exactly one week

14 later, on Tuesday, April the 17th, at 8:15 in the

15 morning. As I said, I note -- I said in here and as I

16 testified (reading):

17 I note in the newspaper your response to the
18 question about your qualifications for sheriff. Your
19 answer did not address the real question. The important
20 question is not whether or not you could be qualified to
21 be certified -- to be a certified officer in South
22 Carolina, but how you intend to deal with the
23 qualifications for sheriff, which include a minimum of
24 one year's experience as an officer in South Carolina.
25 Would you be willing to sit down with me to discuss this

1 case? Jimmy Williams.

2 MR. BRANNON: No objection.

3 By Mr. Wagner:

4 Q. Let me show you what's been marked as State's
5 Exhibit 5C.

6 A. Well, there are two emails on this sheet. The one
7 at the bottom is dated April the 17th at 11:46. On that
8 date my email to Mr. Bartee the 17th of April was at
9 8:15.

10 At 11:46 he responded to me. (Reading): Would
11 love to sit down and talk with you. I am overqualified
12 to be sheriff. 23-23-70(C) -- which is the one I just
13 mentioned about certification of a retired federal
14 officer -- is attached, that states that all federal
15 agents must be certified upon presentation to the head
16 of the Criminal Justice Academy.

17 What this means is that since I have not worked for
18 the State and do not currently work for the State, they
19 will not accept my presentation until I win the primary.
20 At that time the academy has advised they will certify
21 me because I then will be a State employee. Also,
22 qualifications are not examined until after the election
23 in November.

24 For your information, or FYI, lots of former and
25 current SLED agents, police chiefs, police and sheriffs'

1 employees in South Carolina are retired federal agents.
2 In fact, the Kershaw sheriff, a retired DEA agent of 25
3 years, was elected sheriff not long -- period. Hope
4 this helps. (end of reading)

5 Q. That was his response to your email?

6 A. That was his response at 11:46 to my 9:15 one --
7 8:15.

8 Then at 2:56 I responded the same day, April the
9 17th, 2012. (Reading):

10 Thank you for your response. I believe you have
11 received some misinformation. You would not become an
12 employee of the State if you win the primary. You would
13 simply become the Republican candidate on the general
14 election in November. However, even if you were and
15 qualifications are measured on election day, how would
16 you gain the one year's experience listed in the
17 attachment you sent me? Section 23-23-70(C) does not
18 address the qualifications for sheriff.

19 As you know, they are found in 23-11-110 and
20 require that you have one year's experience as a
21 certified law enforcement officer. The definition of
22 certified law enforcement officer makes it quite clear
23 that it means certified in South Carolina.

24 Mr. Bartee, my only interest is in trying to
25 prevent expensive litigation, further embarrassment to

1 you and the Republican Party, and the possible expenses
2 of a second election.

3 I have forwarded your request to the South Carolina
4 Criminal Justice Academy and to the South Carolina
5 Sheriffs Association. When I receive a response, maybe
6 we can arrange a personal meeting. Meanwhile, I urge
7 you to seek your own legal opinion from your own
8 counsel. Sincerely, Jimmy Williams. (end of reading)

9 Q. In Mr. Bartee's email to you, the response you got
10 on the 17th of May at 11:46 a.m. that same day, did he,
11 by his own words, admit that he did have, did not
12 currently work for the State and that he had not worked
13 for the State?

14 A. Yes. He said, What this means is that since I have
15 not worked for the State and do not currently work for
16 the State.

17 Q. So, by his own admission, he admitted that he had
18 never worked for the State of South Carolina?

19 A. Exactly.

20 Q. Did that put him in a quandary as far as
21 eligibility to run for sheriff under Section 23-11-110?

22 MR. BRANNON: Objection. I think that's -- it's
23 either calling for a legal conclusion ---

24 THE COURT: Let's stop for one second.

25 Mr. Foreman, would you take your jury to the jury

1 Q. Okay. And what is 23-11-110?

2 A. That's the qualification to serve as sheriff.

3 Q. Okay. Once again, what does that require of a
4 person with a four-year degree ---

5 A. Well, it lists all the requirements, has to be a
6 citizen and resident of the county and eligible to vote,
7 at least 21 years old. And then there's four options,
8 either one of which could apply, but that only the third
9 one applies to him and that says that he's obtained a
10 four-year baccalaureate degree and one year's experience
11 as a certified law enforcement officer. If he had a
12 two-year degree, he would have to have three years'
13 experience, that doesn't even apply to him.

14 And then it says right under that (reading): A
15 certified law enforcement officer is a person who has
16 been issued a certificate as a law enforcement officer
17 pursuant to Section 23-23-10, which is the Criminal
18 Justice Academy statute which gives them the authority
19 to certify police officers.

20 Q. Okay. And what was the definition of the certified
21 law enforcement officer?

22 A. Has to be certified in -- here in South Carolina
23 and work for a law enforcement agency in the State of
24 South Carolina after having been certified by the
25 Criminal Justice Academy.

1 Q. So Mr. Bartee, in his own words, told you that he
2 had never worked for the State or didn't currently work
3 for the State. What did that tell you?

4 A. That he was not eligible to run.

5 Q. At that point in time when you got no response,
6 what did you do then?

7 A. I filed a lawsuit against the party, which was the
8 proper procedure, because the party certified him to the
9 Election Commission to put him on the ballot as they are
10 required to do by law. Only the party could take him
11 off voluntarily. That's the Republican Party.

12 Q. Was there ever anything personal by you ---

13 A. No ---

14 Q. --- towards the Defendant?

15 A. --- no. I mean, he appeared to me to be highly
16 qualified to serve as sheriff. He just wasn't eligible.
17 Legally he just couldn't serve.

18 Q. Okay. Let me show you the last one, which is
19 State's Exhibit 5D.

20 A. 5D is the same thing as the bottom on 5C.

21 MR. WAGNER: Okay. I think I got them out of
22 order.

23 THE WITNESS: Right.

24 MR. WAGNER: Your Honor, we would move State's
25 Exhibits 5A, B, C and D. C is not, is not objected to,

1 Your Honor.

2 MR. BRANNON: C is not objected to, Your Honor.

3 It's just that one email is now in twice.

4 MR. WAGNER: It's kind of the same thing as, but
5 she had them marked, and I got them out of order.

6 THE COURT: I'll admit 5D. That means 5A, B, C and
7 D are admitted under Exhibit 5.

8 (State's Exhibits No. 5A, 5B, 5C, and 5D were
9 received in evidence.)

10 MR. WAGNER: Mr. Williams, answer any questions
11 Mr. Brannon may have.

12 Cross-Examination by Mr. Brannon:

13 Q. You have to forgive me because I'll get confused
14 here a little bit, okay?

15 Good morning, Your Honor.

16 A. Good morning, sir.

17 Q. You were in the courtroom when I gave my opening
18 statement, right?

19 A. Yes, sir.

20 Q. Did you hear me say that there's a difference
21 between qualified to be on the ballot and qualified to
22 serve in a given office?

23 A. I did.

24 Q. That's factually correct, isn't it?

25 A. No. Well, technically, I say no because the party

1 has to certify to the Election Commission that this
2 candidate is qualified for the office for which he is
3 running, as far as to certify to the Election Commission
4 that the candidate the party is certifying is legally
5 qualified, and I say legally eligible, to be elected to
6 that office. The party has based that as they said on
7 their affidavit that was filed by Mr. Bartee that said
8 he was eligible. So it's not the same thing.

9 I mean, it is the same thing in final analysis. If
10 you are not eligible to serve in the office, you
11 cannot -- you are not eligible under the law to be
12 certified by the party to be placed on the ballot. And
13 I could find it in this stack right here that says they
14 have to take it off the ballot when somebody calls it to
15 their attention.

16 Q. Let me rephrase the question.

17 A. All right.

18 Q. Who was the head of the Republican Party in April
19 and May of 2012?

20 A. Mr. Adams.

21 Q. Mr. Adams. He's the husband of the current
22 solicitor, correct?

23 A. As far as I know, I think so.

24 Q. All right. Now, and he certified Mr. Bartee to
25 serve on the ballot?

1 A. He did.

2 Q. His name was actually on the ballot, wasn't it?

3 A. I never saw a ballot.

4 Q. Okay. But the truth of the matter is they didn't
5 even have the primary, did they?

6 A. No. For other reasons.

7 Q. I understand.

8 A. Okay.

9 Q. But his name was to have appeared on the ballot?

10 A. I believe it would have been on the ballot, but I
11 never saw the ballot, but based on the party's
12 certification, yes, I think it would have been on the
13 ballot.

14 Q. Okay. And -- and based on your lengthy testimony
15 and the results thereof, you filed a civil lawsuit
16 against the Republican Party and I believe the Oconee
17 County Election Board or something like that?

18 A. Yes, that's right.

19 Q. Okay. And I believe your testimony was that on May
20 30 you received a phone call from Director Keel?

21 A. That's right.

22 Q. All right. At any point on May 27th did you have
23 law enforcement come to your home and offer you
24 protection?

25 A. I don't think so.

1 Q. Okay. At any time on May 28th of 2012 did you have
2 law enforcement come to your home to provide protection
3 for you?

4 A. On the 28th?

5 Q. Yes.

6 A. No.

7 Q. I'll ask you the same question but change the date
8 to the 29th. Did anybody from law enforcement, SLED,
9 ATF, Oconee County, Anderson County, did any agency of
10 law enforcement come to your home to offer you
11 protection?

12 A. No.

13 Q. Okay. What about on the 30th of May? The date
14 that Director Keel called you and asked -- and told --
15 and -- and said whatever he said, did he offer you
16 protection?

17 A. Yes.

18 Q. On the 30th?

19 A. Yes. He said he would be glad to send somebody to
20 my house to stay with me until the hearing and drive me
21 to the hearing.

22 Q. And did they do that?

23 A. I told them it was not necessary.

24 Q. Okay. So you didn't -- you refused it?

25 A. Yes.

1 Q. Okay.

2 A. I mean, the danger was over then so I didn't want a
3 SLED officer hanging around my house.

4 Q. So you refused it?

5 A. Yeah. I didn't need him. I mean, I didn't feel
6 like I needed him at that point in time.

7 Q. Got you. All right. So isn't there a line in one
8 of those statutes that you quoted that says all federal
9 agents must be certified?

10 A. It does. But it's conditional, now, it's not just
11 automatically.

12 Q. But that line is in the statute: must be
13 certified. Right?

14 A. Exactly. If they do thus and so.

15 Q. Okay. All right. Now, is it also true that there
16 are sheriffs in counties in South Carolina serving right
17 now that didn't meet that statute?

18 A. No.

19 Q. You are telling me that the sheriff in ---

20 A. Kershaw County, who was a DEA agent for 25 years.
21 Before he went to DEA he had one year's experience as a
22 certified officer in South Carolina.

23 Q. Oh, before, before he worked at the DEA.

24 A. Yes.

25 Q. I got you.

1 A. He had it. He had the one year and he still has it
2 today.

3 Q. I know this is kind of talking about apples and
4 oranges, but who was the director of SLED before the
5 current guy?

6 A. I don't know. If you'd give me some time ---

7 Q. Well, let me help you. Wasn't it Reggie Lloyd?

8 A. I think you're right. I don't think there was
9 anybody between Reggie Lloyd and Mr. Keel. I -- now, I
10 wouldn't swear to that, but I think you're right.

11 Q. I think I'm right, too.

12 A. Okay.

13 Q. What did Reggie Lloyd do before he became the
14 director of SLED?

15 A. He was a federal -- I think he was a federal
16 prosecutor, but then he served as a Circuit Court judge.

17 Q. Yes. But wasn't he on the Circuit Court bench
18 right before he went to SLED?

19 A. Yes. He left the bench and went to SLED.

20 Q. All right. And, as a Circuit Court judge, do
21 you -- are you a certified law enforcement officer?

22 A. No.

23 Q. So SLED hired a judge, right?

24 A. Well, the governor appointed him, I think. But,
25 yeah, it's the same thing. Well, it's not the same

1 thing. The governor appointed a SLED agent, but she
2 appointed a man who was a judge, yes.

3 Q. Who wasn't a law enforcement officer?

4 A. That's right.

5 Q. Okay. All right. So, if -- just to close, you
6 were offered no protection at all by any law enforcement
7 agency until Director Keel called you on the 30th?

8 A. That's right. Do you want to know why?

9 Q. No. You've answered that question. But you turned
10 that down, correct?

11 A. I did.

12 MR. BRANNON: Thank you. Nothing further.

13 THE COURT: Redirect?

14 Redirect Examination by Mr. Wagner:

15 Q. Does the head of SLED have anything to do with
16 being the sheriff?

17 A. With being a sheriff?

18 Q. The same -- is being the head of SLED, is that an
19 appointed job?

20 A. Yeah, I think it's appointed by the governor, it's
21 part of the governor's cabinet.

22 Q. Okay. Is it covered -- is it covered anywhere in
23 23-11-110 that covers qualifications?

24 A. Well, you would not have to be a certified law
25 enforcement officer to be head of SLED. That's a --

1 Whereupon,

2 Brandy Duncan

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Mr. Wagner:

6 Q. Ms. Duncan, could you give us your full name and
7 spell your last name for the record, please.

8 A. Yes, sir. My name is Brandy Ann Duncan, my last
9 name is spelled D-u-n-c-a-n.

10 Q. Where are you from?

11 A. Lexington, South Carolina.

12 Q. And where do you work?

13 A. The South Carolina Criminal Justice Academy.

14 Q. And what do you do there?

15 A. I'm the chief general counsel.

16 Q. Okay. Give us a little bit about your background,
17 any education you have, what you do as the chief counsel
18 for the Criminal Justice Academy.

19 A. Certainly. I attended high school in Irmo, South
20 Carolina; went to Midlands Technical College for two
21 years, earned an associate's there. Then I went on to
22 USC in Columbia and earned a bachelor of science in
23 criminal justice.

24 And then at that point I had already met my husband
25 and loved him. So I decided to go to law school and

1 promote me to the general counsel position. In that
2 position I handle a number of things, the number one
3 priority being certification issues for law enforcement
4 officers throughout South Carolina, whether that is an
5 issue of misconduct for that officer, whether that is an
6 issue of them not meeting the prerequisites to be
7 certified, that sort of thing.

8 I also handle all of our Freedom of Information Act
9 requests that come in. Also employee issues, if there
10 are legal issues that come up with our employees, maybe
11 they need some sort of an accommodation under the
12 Americans with Disabilities Act, something like that;
13 and I also assist with student issues dealing
14 specifically with the ADA, helping our instructors to
15 figure out how can we accommodate a student without
16 lessening our standards.

17 Q. I think you just said it, but do you deal with law
18 enforcement qualifications as far as qualifications to
19 run for sheriff?

20 A. Yes, sir.

21 Q. Okay. Have you talked with the Defendant in this
22 case, James Bartee?

23 A. Yes, sir, I have.

24 Q. And have you spoken to him on the phone?

25 A. Yes, sir.

1 Q. Did he contact you back in May of 2011?

2 A. Yes, sir, I believe so.

3 Q. And what did you all talk about?

4 A. Generally he had contacted me -- and, you know,
5 obviously this conversation is about two years old so
6 it's a little rusty -- but the general basis of the
7 conversation was that he was considering running for
8 sheriff in Oconee and that he wanted to know if he would
9 be qualified or if he would have problems under the
10 qualifications statutes to run for sheriff.

11 I then informed him that it was my belief based on
12 my understanding of that statute and the Training Act,
13 which is under 23-23-10, and continuing on through our
14 South Carolina Code, that I did not think that he would
15 meet the qualifications right then. I then explained to
16 him how I thought he could remedy that problem and that
17 the first step would be to start applying with local law
18 enforcement agencies and then eventually attend some
19 bridge training with us at the academy through our
20 special basic training program.

21 Q. Okay. And, based on your conversation with him,
22 did you understand him to have a four-year degree?

23 A. Yes, sir, I did.

24 Q. Okay. With a four-year degree, what also would he
25 have had to have to be eligible to run for sheriff?

1 A. With a four-year degree he would also had to have
2 had one year of law enforcement experience under what
3 the definition for a law enforcement officer in South
4 Carolina, which is under 23-23-10(E)(1). Although
5 Mr. Bartee had been a federal officer for a number of
6 years, he had never been certified in South Carolina
7 under that Code section.

8 The other way he could have perhaps qualified is if
9 he had had ten years' experience as a magistrate court
10 judge, which Mr. Bartee told me he did not have that
11 experience.

12 Q. Okay. So did you see -- to your understanding did
13 he have that year as a state officer under a -- one of
14 the State's agencies?

15 A. No, sir, he did not. We have no record of
16 Mr. Bartee at all until he made that phone call.

17 Q. What did you tell him to do?

18 A. To go apply with law enforcement agencies and
19 attend the bridge training with us so that he could
20 become certified and get that year under his belt.

21 Q. If he had applied with a law enforcement agency, is
22 that the first step to getting that year as an officer
23 under one of the State agencies?

24 A. Yes, sir, it is.

25 Q. What would qualify as a State agency, what would

1 qualify for a State job?

2 A. Um, well, it doesn't even necessarily have to be
3 with the State. It could be with any of our State law
4 enforcement agencies like SLED or working the Department
5 of Natural Resources, one of those groups. But he also
6 could have worked for any of the county sheriff's
7 offices throughout the State of South Carolina, of which
8 there are 46 of those. He could have worked for any
9 municipal police department, of which we have hundreds
10 throughout the State of South Carolina, in fact a number
11 of them up here in this area of the State. So any of
12 those would have qualified him for that certification.

13 Q. Ms. Duncan, let me show you what's been marked as
14 State's Exhibit 6A. Do you recognize that?

15 A. Yes, sir.

16 Q. And what are those?

17 A. This is the email correspondence that I had with
18 Mr. Bartee shortly after our telephone conversations in
19 May of 2011.

20 Q. And are those a true and accurate copy of the email
21 conversations that you had between you and Mr. Bartee?

22 A. Yes, sir.

23 Q. And how did you know it was Mr. Bartee?

24 A. Basically through my conversation with him. Also,
25 I noticed the notation of his Aikido studio that was on

1 here and that email address that was associated with
2 that website, so I felt fairly confident that the person
3 I was talking to and the person I was emailing with was
4 James Bartee. Even if it had shown anybody different, I
5 based it off of the facts being presented to me over the
6 telephone.

7 Q. What email address were you corresponding with?

8 A. To jbartee1@bellsouth.net.

9 Q. And does he sign, does he sign his emails? Does it
10 show a notation?

11 A. Yes, sir, it does. He signs it with his name,
12 James R. Bartee, Junior, and then a business card on the
13 bottom of that email with his name, his title, U.S.
14 Secret Service, Senior Special Agent, Retired, and then
15 an address, telephone numbers, and his email address,
16 and then it adds on the information about the Aikido
17 studio.

18 MR. WAGNER: Your Honor, at this time we would move
19 State's 6A into evidence.

20 THE COURT: Any objections?

21 MR. BRANNON: No.

22 THE COURT: Admitted without objection.

23 (State's Exhibit No. 6A was received in evidence.)

24 By Mr. Wagner:

25 Q. Going back to 6A, when is the first day and time

1 that you first heard from Mr. Bartee and year?

2 A. Through the emails or through the telephone call?

3 Q. Well, both, but particularly the emails. But if
4 the telephone call was earlier, when was that?

5 A. I don't know the exact day that the telephone call
6 came in. It would have been on or about May the 25th.
7 That's when his first email came in to me. And then my
8 response email sort of documenting and outlining what we
9 had discussed during that telephone conversation was
10 sent back to him on May the 26th, so it was right around
11 those two days.

12 MR. BRANNON: I'm sorry, Your Honor. Would you --
13 I just want to know what year.

14 THE WITNESS: Oh, 2011, I'm sorry.

15 MR. BRANNON: Thank you.

16 By Mr. Wagner:

17 Q. Okay. And did you respond to him with a fairly
18 lengthy email?

19 A. Yes, sir, I did.

20 Q. And in that email did you tell him that he -- what
21 he needed to do to become, I guess, a certified law
22 enforcement officer and start gaining his year of
23 experience?

24 A. Yes, sir, I did.

25 Q. Okay. And that was in 2011?

1 A. Yes, sir.

2 Q. And that was also accompanied with a phone call?

3 A. Yes, sir. And the phone call, of course, happened
4 before my lengthy response back to him. The response
5 was to document what we had discussed.

6 Q. Okay. Let me just also show you what's been marked
7 State's Exhibit 6B.

8 (Counsel confer.)

9 MR. WAGNER: Your Honor, I'll go ahead and ask --
10 I think there's no objection to State's 6B being
11 put into evidence?

12 MR. BRANNON: There are no objections.

13 THE COURT: 6B is admitted without objection.

14 (State's Exhibit No. 6B was received in evidence.)

15 By Mr. Wagner:

16 Q. Do you recognize that, Ms. Duncan?

17 A. Yes, sir.

18 Q. And what is 6B?

19 A. 6B is an email that was forwarded to me originally
20 from the South Carolina Sheriffs Association regarding
21 an inquiry they had received from somebody who
22 identified themselves as Steven Rushton. They called me
23 and asked me to respond to this, so they forwarded the
24 email to me and I did respond to the email address that
25 the inquiry had come from and then received a response

1 Jimmy Williams. Basically it contains some
2 correspondence back and forth between himself and
3 Mr. Bartee.

4 Q. And did he ask you to respond to anything on that
5 or was it just for your information?

6 A. No. It was my understanding that it was just for
7 my information.

8 Q. The email to Judge Williams, who was it from?

9 A. That was from James Bartee at barteeforsheriff.com.

10 Q. And what date was that on?

11 A. April 17th of 2012.

12 Q. Okay. And what was Mr. Bartee's response to
13 Mr. Williams?

14 A. Basically that it was his belief that because he
15 had been a federal agent that he would not have any
16 issue of being elected sheriff and that he could correct
17 any deficiencies he had in his qualifications after the
18 election.

19 Q. Would you read it verbatim?

20 A. Certainly.

21 It says (reading):

22 Would love to sit down and talk with you. I'm
23 overqualified to be sheriff. 23-23-70(C) is attached.
24 That states that all federal agents must be certified
25 upon presentation to the head of the Criminal Justice

1 Academy. What this means is that since I have not
2 worked for the State and do not currently work for the
3 State, they would not accept my presentation until I win
4 the primary. At that time the academy has advised they
5 will certify me because I will then be a State employee.
6 Officer qualifications are not examined until after the
7 election in November. FYI, a lot of former and present
8 SLED agents, police chiefs and sheriffs in South
9 Carolina are retired federal agents. In fact, a sheriff
10 who was a retired DEA agent with 25 years' experience
11 was elected sheriff not long ago. Hope this helps.
12 (end of reading)

13 Q. Starting with the part with 23-23-70(C), does that
14 apply as far as whether the Defendant was eligible to
15 run for sheriff of Oconee County?

16 A. Not directly. It could apply to the level of
17 training he would have to do to become certified under
18 the Training Act in South Carolina to become a certified
19 officer under 23-23-10. And basically what it does is
20 it functions to tell us that whatever training they did
21 as a federal officer, that we can take that training and
22 compare to the training we do during basic training and
23 give them credit for that so that we cut down on their
24 overall 12 weeks that they would normally do.

25 Now, having said that, the training council had

1 decided approximately two years ago, two and a half
2 years ago, that under no circumstance would they allow
3 anybody who is being transferred in under 23-23-70 to
4 earn a certification without doing what we call our
5 special basic training, and that's been the case for
6 about 30 or 40 years. About two and a half years ago
7 our training enlarged from nine weeks to 12 weeks and
8 our special basic went from three weeks to six weeks.

9 So, even if we -- even if we could give Mr. Bartee
10 credit for everything that happens from week seven on in
11 training, he at least would have had to do the first six
12 weeks of basic training that all officers do in South
13 Carolina.

14 Q. Okay. And has he ever done that training?

15 A. No, sir, he did not.

16 Q. Has he applied to get that training?

17 A. No, sir.

18 Q. What would he have had to do to get -- to get down
19 to the academy and do that six weeks? Why do you all
20 require six weeks? If he's got 15 years, and I'm
21 throwing that number out there, maybe more or less as a
22 Secret Service agent, a federal officer, if he has got
23 that kind of time, why does he have to go to the academy
24 for six weeks? What does he have to do? Explain that.

25 A. Okay. The first step for anybody to attend

1 training in South Carolina as a law enforcement officer
2 is that they do have to have a law enforcement employer.
3 Now, we don't train anybody without them having that.
4 Once they have their employer, the employer will walk
5 them through the steps of getting them registered to
6 attend training with us. During that first six weeks of
7 training, which everybody does, even if you've got prior
8 law enforcement experience, whether that be on the
9 federal level, whether that be an MP in the military, or
10 whether or not even somebody transferring from North
11 Carolina, we make them do that six weeks because we
12 cover a lot of things that are specific to South
13 Carolina.

14 For example, we're gonna go back over all their
15 basic legals with them to make sure that they understand
16 when it is appropriate to conduct warrantless searches.
17 We're gonna go over all of our South Carolina specific
18 criminal offenses that they will routinely see. We will
19 go over all of their criminal domestic violence laws.
20 We will go over all of our juvenile laws because
21 juvenile laws can be very different from other states.

22 And the reason, that you all are, quite frankly, on
23 that federal level, on that military level, and then
24 other states, their laws are different, and what we
25 don't want is somebody coming down from, you know,

1 another state or the federal level and applying what
2 they learn on the federal level to South Carolina
3 because it may not be right, it may get them and their
4 agency in a very bad position and it may potentially
5 result in an unlawful arrest or an unlawful detention,
6 something like that, and we would want to prevent that
7 from happening.

8 Q. Okay. So the bottom line is he would have had to
9 put in with a State agency or any State or local?

10 A. Yes, sir.

11 Q. Okay. And then do the six weeks of training?

12 A. Yes, sir.

13 Q. And then do a year?

14 A. Yes, sir.

15 Q. Then he would be qualified to run for sheriff?

16 A. Yes, sir.

17 Q. Okay. And had he done any of that when you talked
18 to him again in April of 2012 or when this occurred?

19 A. No, sir.

20 Q. Okay.

21 A. Not according to our records.

22 Q. He also mentions the fact that the Kershaw sheriff
23 is a retired DEA agent of 25 years. Can you explain why
24 the sheriff in Kershaw County could be sheriff but
25 Mr. Bartee wouldn't be qualified to run for sheriff?

1 A. Yes. I believe he represented Mr. Williams in his
2 lawsuit to try to stop the election.

3 Q. Okay. All right. Now I want to get back to
4 something that Mr. Wagner brought up. If I get hired by
5 Ocone County Police Department and I just graduated
6 from high school, I have up to a year? If I -- if they
7 certify me with a weapon and they tell you the things
8 that they have to tell you, I have up to a year before I
9 have to go to the academy. Correct?

10 A. That's correct.

11 Q. And, during that period of time of up to 365 days,
12 I can still arrest you, can't I?

13 A. As long as you've met those requirements under
14 23-23-40, yes.

15 Q. Okay. And what are those requirements? Certified
16 with a gun. Right?

17 A. Yes. You have to qualify.

18 Q. Right. You have to qualify.

19 A. You have to qualify to show you to be proficient to
20 be able to hit what you're aiming at.

21 Q. Got you.

22 A. That is on our web page that we can access that at
23 any local gun range.

24 Q. Got you.

25 A. And then they also have to notify us that they had

1 actually hired the person, by filling out something that
2 we call a personnel change in status form, hire; and
3 basically, you know, name, date of birth, driver's
4 license number, we've checked these couple of things
5 like criminal history and driver's license and we're
6 hiring this person because we think they're good to go.

7 Q. Okay. What else?

8 A. That's it. Those are the two things that they have
9 to do.

10 Q. So the law enforcement agency that hires me, a
11 recent high school graduate, has to tell the academy
12 that they hired me, and my name, and my date of birth,
13 and my driver's license number, and they checked my rap
14 and I don't have any felony convictions, and that I can
15 hit a target with a gun. Right?

16 A. Yes, sir.

17 Q. And if I -- if that law enforcement agency verifies
18 that, I can arrest somebody?

19 A. Up to a year, yes, sir.

20 Q. For up to a year. And then after that year, or
21 whatever period of time passes, I can go to the academy,
22 and assuming that I passed the courses or whatever, I'm
23 a certified law enforcement agent -- officer, right?

24 A. Yes. They can attend the training at any point in
25 time after they're hired.

1 Q. Got you.

2 A. They only get that one year's work without having
3 that training. If they go to day 366 ---

4 Q. They're done.

5 A. They're done, unless a special circumstance like
6 being deployed in the military or perhaps getting
7 injured or being medically unable to perform for a
8 period of time.

9 Q. Okay. And then let's say that high school kid has
10 worked for a couple of years and then gets a job with a
11 bigger law enforcement agency for more pay. Okay?

12 A. Uh-huh.

13 Q. When that bigger agency checks, that officer is
14 gonna be certified, according to your records, from the
15 day the first agency hired him, right?

16 A. That's correct. It shows in our file that they
17 were certified that whole time as long as they do the
18 training within the one year as required by the statute.
19 It will show that whole employment time as being
20 certified time.

21 Q. All right. And...

22 A. Can I clear up one thing? You have to be 21 to be
23 a police officer in South Carolina, so it wouldn't
24 normally be a high school kid. It might be somebody
25 fresh out of college.

1 Q. Got you.

2 A. I just wanted to be clear about that.

3 Q. All right. Do you have -- now, this is part of the
4 emails. It's a copy of 23-23-70. Do you have that with
5 you?

6 A. Yes, sir.

7 Q. Okay. And I would ask you to read Sub (C), so it's
8 3(C) all the way on the back page. Do you see that?

9 A. Yes, sir.

10 Q. All right.

11 A. (Reading): A retired federal law enforcement
12 officer must be issued a certificate pursuant to Section
13 23-23-60 authorizing him to serve as a certified law
14 enforcement officer if the officer provides evidence
15 satisfactory to the director that he has received law
16 enforcement training and experience sufficient to
17 qualify him to serve as a certified law enforcement
18 officer. (End of reading)

19 Q. Okay. All right. To a lawyer, what does the word
20 "must" mean?

21 A. That it's mandatory. However, it does have the
22 qualifier down below that if they provide evidence
23 satisfactory to the director ---

24 Q. I got you. I got you.

25 A. So, yeah, it's a mandatory phrase.

1 Q. "Must" means "shall," it will be done. Correct?

2 A. Yes, sir.

3 Q. Okay. All right. And do you have any reason at
4 all to question that Mr. Bartee has a four-year college
5 education?

6 A. No, sir.

7 Q. Okay. And do you have any reason whatsoever to
8 doubt that he served as a federal agent for the United
9 States Secret Service?

10 A. Yes.

11 Q. You do?

12 A. Yes, sir. It's my understanding that he was
13 essentially a secretary for the agency for about ten
14 years and then spent about 15 years as an agent, so he
15 does not have 25 years as an agent.

16 Q. But do you have any reason to doubt that he retired
17 as a federal agent, a member of the United States Secret
18 Service?

19 A. No, I don't doubt that at all.

20 Q. Okay. Did he retire as a federal agent?

21 A. That's my understanding, yes.

22 Q. Okay. So it would -- he would work under (C) as a
23 retired federal law enforcement officer. Right?

24 A. Yes. If he provided evidence satisfactory to the
25 director that he had received law enforcement training

1 and experience sufficient to qualify him to serve.

2 And if you look at our regulations that go along
3 with these statutes, they specifically talk about them
4 being required to partake of certain courses that are
5 included in our special basic course.

6 Q. I understand that. I'm going there.

7 A. Okay.

8 Q. I'm going there. How often are those special
9 courses offered during a year?

10 A. Every three weeks.

11 Q. Every three weeks?

12 A. 18 times a year.

13 Q. Okay. Every three weeks. You may or may not know
14 this, but did you know that the primary for this
15 sheriff's race was actually cancelled? Did you know
16 that?

17 A. I did not know that.

18 Q. Okay. Did you know there was a primary scheduled
19 sometime in the month of June 2012?

20 A. I, yeah, I think there was, yeah.

21 Q. Okay. And I know this is gonna sound like a stupid
22 question, and quite frankly it is. Are there more than
23 six weeks between the middle of June and the first
24 Tuesday in November?

25 A. Yes.

1 Q. Okay. So it's possible that he could have gone and
2 taken that six-week class between the primary and the
3 general election? From a time standpoint he could have,
4 right?

5 A. Yes. But he would not have been able to get his
6 year of required service done.

7 Q. Okay. And now, do you agree that as lawyers we
8 often have different opinions?

9 A. Certainly.

10 Q. Okay. And did you know that Mr. Bartee was
11 represented by a lawyer in that civil case?

12 A. Yes, Jake Moore.

13 Q. Okay. And -- well, let's back up. You were not in
14 the courtroom, but Judge Williams didn't even sue
15 Mr. Bartee, did he?

16 A. I don't know, I don't remember who he sued. I
17 think it was the local party that was ---

18 Q. Right.

19 A. --- that had certified him.

20 Q. Okay. And, now, if you're not sued, that means
21 you're not a party, right?

22 A. No. I believe Mr. Bartee intervened in that
23 lawsuit.

24 Q. There you go.

25 A. Yes.

1 Q. Mr. Bartee hired a lawyer to make himself a party
2 to that lawsuit, didn't he?

3 A. I believe so.

4 Q. Okay. So he spent -- assuming -- I mean, he hired
5 him so he probably paid him money, right?

6 A. I'm not -- I would have no way of knowing that.

7 Q. Okay. But you have to file something to intervene
8 in a lawsuit, don't you?

9 A. Sure.

10 Q. It's called a motion to intervene, isn't it?

11 A. Yes, sir.

12 Q. Okay. And if you file a motion to intervene and
13 it's granted, you become a party to that lawsuit, right?

14 A. Yes, sir.

15 Q. Okay.

16 A. If it's granted.

17 Q. All right. Now just think about this for a minute.
18 If I'm that 21-year-old kid fresh out of school and I
19 get hired by the Oconee Police Department, I have up to
20 a year to go get that academy training, right?

21 A. Yes, sir.

22 Q. And the minute I get that academy training, I have
23 been a certified law enforcement officer for one full
24 year, haven't I?

25 A. It depends on when they actually attend the.

1 MS. SIMMONS: Yes, Judge, and we'll certainly give
2 you appropriate notice and not surprise you with
3 Lieutenant Harris.

6 THE CLERK: Do you want me to go ahead and swear
7 the witness?

9 (The next witness, Mr. David Smith, entered the
10 courtroom and was sworn by the clerk of court.)

12 (Discussion off the record.)

15 MR. WAGNER: Your Honor, we would call David Smith.

17 Whereupon,

19 After first having been previously sworn, testified as
20 follows:

22 Q. Officer, would you give us your full name and spell
23 your last name for the record.

25 Sheriff's Office.

- 1 Q. S-m-i-t-h? I know it's easy.
- 2 A. Yes, sir, S-m-i-t-h.
- 3 Q. Yes, sir. Where do you work?
- 4 A. Oconee County Sheriff's Office Investigations
- 5 Division.
- 6 Q. How long have you worked for the sheriff's office?
- 7 A. I worked there about 25, 26 years.
- 8 Q. How long have you been in investigations there?
- 9 A. Since 1995, August.
- 10 Q. What portion of the county are you from?
- 11 A. I'm assigned and I live actually in the lower part
- 12 of the county, which would be considered Townville, Fair
- 13 Play. I live in the Westminster area, but in that
- 14 general area of Crossroads.
- 15 Q. Do you know the Defendant in this case in any
- 16 manner, James Bartee?
- 17 A. I've only met him at one of the sheriffs academy
- 18 things, that's the only time I ever met him.
- 19 Q. Do you know the -- the fellow who's been mentioned
- 20 in this case, Nick Blackwell?
- 21 A. Yes, I do.
- 22 Q. How do you know Nick?
- 23 A. He lives in the area where I live. I've known him
- 24 for several years, talked to him in passing mostly
- 25 around the store.

1 Q. Okay. Back on May 29th, 2012, do you recall
2 approximately where you were around 3:00, 3:30, sometime
3 midafternoon?

4 A. Yes, sir. That particular day, I believe it was a
5 Tuesday, I was at the Applewood Shopping Center at
6 Turner's Jewelry. I was working on a case. I'm not
7 sure I remember which case I was working on, but it was
8 theft of some jewelry. I left Turner's Jewelry. I went
9 outside and met an individual I knew from the lower part
10 and I spoke to him for a little bit, and as I was
11 getting into my truck, or patrol vehicle, I heard
12 somebody hollering, "Hey," and I turned around and
13 looked and Mr. Blackwell was walking up the parking lot.

14 Q. Okay. How was he dressed?

15 A. I believe he was wearing jeans and a shirt. I
16 don't remember exactly what he was wearing.

17 Q. Okay. What was his demeanor?

18 A. He -- when he approached me, you could tell that
19 something was on his mind and he looked sort of nervous,
20 like he was wanting to say something.

21 Q. Okay. And did you all talk?

22 A. We did. We spoke -- well, actually the first thing
23 he said ---

24 MR. BRANNON: Object.

25 THE COURT: Sustained.

1 **MR. WAGNER:** Okay.

2 By Mr. Wagner:

3 Q. What did you all talk about, without saying what he
4 said?

5 A. We spoke about Mr. Bartee.

6 Q. Okay. And, as a result of your conversation with
7 him, what did you do?

8 A. I notified -- I told him I had to make a phone call
9 and I contacted Sheriff Singleton at the time and met
10 with him.

11 Q. Okay. And what did you tell Sheriff Singleton?

12 A. I told him the same thing that I was told by
13 Mr. Blackwell, and ---

14 Q. Without saying what Mr. Blackwell said, what did
15 you tell ---

16 **MR. BRANNON:** Your Honor, objection. What he told
17 the sheriff is what he was told by Blackwell.

18 **THE COURT:** I overrule your objection. He
19 specifically instructed him not to relay the specifics
20 of the conversation, so I overrule your objection.

21 By Mr. Wagner:

22 Q. What was your concern with the sheriff and what did
23 you ask the sheriff to do?

24 A. I spoke to the sheriff and, like I said, he -- what
25 Mr. Blackwell had said, about the conversation that we

1 had, and through that he made a decision to contact SLED
2 and for an investigation.

3 Q. Okay. And what's the number for -- just off the
4 wall, what's the number for Ocone County Sheriff's
5 Office dispatch?

6 A. (864) 638-4111.

7 MR. WAGNER: Thanks, Officer Smith. That's all the
8 questions that I have.

9 THE COURT: Cross-Examination?

10 Cross-Examination by Mr. Brannon:

11 Q. Based on the conversation that you had with
12 Mr. Blackwell, and maybe even later the sheriff -- the
13 conversation you had with the sheriff, did you ask
14 anyone to do anything to protect a third party?

15 A. No, sir.

16 Q. Why not?

17 A. Because I, I gave my information to the sheriff and
18 he relayed it to SLED, and that's where I was out of it.

19 Q. Okay. All right. As far as you know -- withdraw
20 that question.

21 MR. BRANNON: Your Honor, I don't have any more
22 questions at this time. But I do reserve the right to
23 call this witness in my case, so I would ask the Court
24 to leave him under the subpoena, please.

25 THE COURT: Okay.

1 Q. Mr. Singleton, tell us a little bit about your
2 background. I think probably everybody knows who you
3 are. Who are you, what do you do, and what have you
4 done?

5 A. Well, I went to work in law enforcement about 38
6 and a half years ago. I worked numerous things from
7 road patrol, chief investigator, last 20 years as
8 sheriff and then retired the end of the year, December.

9 Q. Were you sheriff back in the end of May 2012?

10 A. I was.

11 Q. And on May 29th did you get a call from David
12 Smith?

13 A. I did.

14 Q. And, as a result of that call, where did you meet
15 David?

16 A. I had him meet me at Bounty Land Church, and after
17 the conversation he had with me, I told him for him not
18 to get involved in it but that I would call SLED and
19 that for him not to say anything to anybody.

20 And I called a SLED agent, told him, he said he
21 would check with his superiors or whatever to come up
22 and do an investigation. And David did a report, as far
23 as I know it was turned over to SLED. And then I never
24 had any more contact with the case.

25 Q. Did -- did what you told the SLED agent involve

1 investigator there.

2 I left the Marine Corps in 2001, was employed by
3 the Pendleton Police Department in South Carolina in
4 2003, and employed by the Anderson County Sheriff's
5 Office.

6 Q. What specialized training have you received during
7 the course of your employment?

8 A. Various, various types of training that a lot of
9 the investigators and police officers do get; however,
10 I've concentrated that to be gangs, criminal
11 conspiracies, narcotics, and then working with
12 informants.

13 Q. Does that include cooperation with the South
14 Carolina Law Enforcement Division and other agencies
15 from time to time?

16 A. It does. I was a TFO, which is a task force
17 officer with the FBI, and I work currently with other
18 agencies such as ATF, DEA and SLED.

19 Q. Were you involved in an undercover operation back
20 in May 2012?

21 A. Yes.

22 Q. What was the nature of the operation and your
23 involvement with it?

24 A. The nature of the operation. I had limited
25 knowledge at the beginning. From my understanding, it

1 was a kidnapping-for-hire type of case. The nature of
2 the operation was to place recorded phone, phone calls,
3 telephone calls and wire up the informant. And I use
4 the word "wire," it means it's a recording device, it's
5 place a recording device on a human being informant and
6 send that person to go speak with somebody.

7 Q. And did you get involved on the same day that this
8 conversation occurred?

9 A. Yes, I did.

10 MS. SIMMONS: Judge, may I approach the witness?

11 THE COURT: Yes, ma'am.

12 MS. SIMMONS: (Shows exhibit to Counsel and hands
13 to witness.)

14 By Ms. Simmons:

15 Q. I gonna show you what has been marked as State's --
16 as State's Exhibit 3. Did you, during the course of
17 your investigation, provide documented funds?

18 A. Yes, I did.

19 Q. And explain that.

20 A. The sheriff's office narcotics division and gang
21 unit are issued U.S. currency in various denominations.
22 It could be \$20 or it could be \$10,000 depending upon
23 the type of investigation that we're doing. That money
24 doesn't necessarily always get turned back to your
25 supervisor at the end of each investigation. We just

1 hold onto it and maintain that, those funds in your safe
2 until you run out basically.

3 So I had on me money. I don't recall how much
4 money I had, but I did have money that was issued to me
5 from the Anderson County Sheriff's Office. In this case
6 the informant needed X amount of money for this case,
7 from my understanding at the given time that I was
8 involved, to repay somebody.

9 Q. And did you document the serial numbers of that
10 money that you gave to that informant during the course
11 of your investigation?

12 A. Yes, we did.

13 Q. And where did you meet up when you got involved in
14 this investigation?

15 A. Initially I received a telephone call. I was asked
16 to meet at a location on Clemson Boulevard near
17 Interstate 85. I don't know the name of the restaurant
18 now. It used to be the old Charlie T's. We met up in
19 the car down in the parking lot where I met Agent Sloan,
20 Agent Kindley from SLED, and my boss, Lieutenant David
21 Baker, and the informant.

22 Q. Who was the informant that you met up with?

23 A. Nick Blackwell.

24 Q. And did you know him prior to this date?

25 A. I had never met him before this date.

1 Q. And then for that matter did you know the
2 Defendant?

3 A. I did not.

4 Q. Describe how you were involved in the wiring of
5 Blackwell.

6 A. The initial time, ma'am?

7 Q. Yes. When you wired him.

8 A. Just to clarify, for the phone call or the actual
9 placing of the device?

10 Q. Both.

11 A. When I first reached the -- the parking lot there
12 at the old Charlie T's, a phone call was placed to a
13 person. I -- I took all our equipment out, which
14 basically comes in three pieces. You have a
15 transmitter/recording device, an antenna that you would
16 plug into a monitoring box, and then the monitoring box
17 itself that you would put into a patrol vehicle.

18 So I placed the recording device and microphone in
19 Nick Blackwell's hands, showed him where he needed to
20 place the device on the telephone to basically give the
21 best type of conversation recorded onto the device.

22 Q. And how many calls were there involved?

23 A. There were two calls, one that was made and one
24 that was received. Both of them were captured on the
25 recording device.

1 Q. And tell me about actually the recording device as
2 to Mr. Blackwell's person.

3 A. The recording device was obviously left to the
4 imagination of the investigator or the person trying to
5 hide something on a person. This device can be placed
6 virtually anywhere on a person. You can put it in a
7 shoe, you could put it in a pocket, in a jacket. This
8 device during this operation was taped to their body, to
9 the skin of Nick Blackwell. We used actual tape to tape
10 this device to make sure the microphone didn't move and
11 that the device didn't fall down or fall out of a
12 pocket.

13 Q. And what media does the device record to?

14 A. The wiring device records to an SD card, it's a
15 micro SD card that is housed inside of the
16 transmitting/recording device.

17 Q. And in this case is that standard practice for the
18 Oconee County -- Anderson County Sheriff's Office?

19 A. To record on that media device?

20 Q. Yes.

21 A. Yes, it is standard operating practice that we
22 conduct at Anderson County.

23 Q. And what is subsequently done with the original of
24 that recording once the operation is complete?

25 A. Once an operation is complete, the investigator,

1 the case agent in charge of the wiring equipment would
2 take the SD card out of the transmitting/recording
3 device and place that into a thumb drive that is
4 obviously provided by the manufacturer of this equipment
5 that the Anderson County Sheriffs bought.

6 The SD card is placed into a thumb drive, the thumb
7 drive is then placed into a computer, and from there it
8 can be transferred to whatever media the investigator
9 likes; it might be a CD, DVD, a computer, hard drive,
10 thumb drive, whatnot.

11 Q. Is the SD card subsequently reused?

12 A. The SD card is reused, yes. The Anderson County
13 Sheriff's Office owns one SD card for this equipment.

14 Q. And how much is an SD card?

15 A. I've heard it range from ten dollars to twenty
16 dollars, I guess depending on the amount of storage that
17 one would buy it for.

18 Q. If you were to estimate how many SD cards your unit
19 would use per year if you did not reuse them, do you
20 have an estimate for that?

21 A. The math can be complicated so I try to use some
22 terms that are fairly easy. If the sheriff's office in
23 Anderson County investigates 70,000 calls for service a
24 year, 50,000 of those are generated into actual cases,
25 for instance, if 15 to 20 -- if we used 20,000,

1 essentially 20,000, would be used as case management and
2 then there's some sort of media attached to it, be it a
3 picture, a video or an audio that would be turned into
4 evidence or used as evidence in the case. If we had to
5 buy an SD card for every single time that a picture was
6 taken for a specific case and not reuse them, then spend
7 ten dollars on an SD card and multiply by 20,000 cases,
8 then I'd say, yeah, ten to twenty thousand dollars a
9 year roughly that the sheriff's office would have to
10 budget for SD cards alone. And that's why we reuse SD
11 cards. I think it's fiscally responsible on our part.

12 Q. Okay. Is it standard practice to download the SD?
13 What do you download the SD card to?

14 A. I physically download the SD card to my computer,
15 to my hard drive, external hard drive that's issued by
16 the sheriff's office. From there I can then copy a --
17 whatever media that I obtained during the investigation
18 onto a CD that's then issued to the solicitor's office
19 for criminal proceedings.

20 Q. You mentioned that you had worked with the FBI; is
21 that correct?

22 A. Yes, ma'am.

23 Q. Was that in an undercover capacity?

24 A. I never did actual undercover; however, I was in a
25 plain clothes unit.

1 Q. And what was the standard practice in this regard
2 at the FBI when you were on loan to them?

3 A. The FBI obviously has their own equipment.
4 However, the task force that I worked for and with was
5 made up of FBI agents and other agents and deputies from
6 the Upstate of South Carolina. So, when in Anderson, we
7 would use our equipment. The FBI would be there, it
8 would be a federal case, we would use our equipment;
9 therefore, it is standard operating procedures for the
10 FBI Greenville Field Office that allowed us to use our
11 equipment for various cases.

12 Q. And when you were done using your equipment, what
13 would you provide them?

14 A. I provided them a disk, a CD or a DVD depending on
15 what type of media, be it video, audio or pictures.

16 Q. When you -- the transmitter that we have been
17 discussing that is on Mr. Blackwell's body; is there the
18 capability to listen to it simultaneously?

19 A. Yes. That's the reason why it costs so much money
20 versus a recorder that you could buy in any department
21 store for twenty dollars. This equipment allows the
22 audio to be captured and recorded and simultaneously
23 also be transmitted to the monitoring box which is
24 housed in the police vehicle that is within a distance
25 of the transmitter. So it records and it transmits,

1 which allows the investigators the opportunity to hear
2 realtime what is going on.

3 Q. And did you do that in this case?

4 A. I did.

5 Q. I'm gonna show what has been premarked as State's
6 Exhibit 1.

7 MS. SIMMONS: May I approach the witness, Your
8 Honor?

9 THE COURT: Go ahead.

10 By Ms. Simmons:

11 Q. Do you recognize this disk?

12 A. I do.

13 Q. Can you identify it for me?

14 A. It houses the recordings for this investigation in
15 this trial, it's signed by me.

16 Q. And have you reviewed State's Exhibit 1 prior to
17 trial?

18 A. Yes, I have.

19 Q. And is it a fair and accurate representation of the
20 conversation you heard between Nick Blackwell and the
21 Defendant on May 29th, 2012?

22 A. It is.

23 Q. Where were you while you were listening to the
24 recording realtime?

25 A. Keep in mind I'm not from Oconee County. I don't

1 know the roads. I was in a subdivision, I don't know
2 where, in Oconee County. I do know that I was in a --
3 my police vehicle is equipped with GPS. I was near the
4 lake. I could see the lake on the GPS. I could see
5 various different roads in a subdivision. It's a lake
6 subdivision that basically from my understanding we had
7 one entrance, one way in, one way out. And what I had
8 to be aware of was not to get too close to the house.
9 Obviously the hour we were at, not too much traffic
10 would be going in and out of this neighborhood at the
11 hour that we were conducting this operation.

12 Q. What hour was that?

13 A. I don't recall the exact time. I know it was dark
14 and it was after 10:30, 11:00 at night.

15 Q. How far did you go into the subdivision?

16 A. Again, not knowing the terrain or the roads in
17 Oconee County, I must have gone in the subdivision far
18 enough to get lost, that I needed the GPS to exit out of
19 there so I could figure out what road I was on.

20 Q. Did you follow somebody there or did you use your
21 GPS?

22 A. We did. We followed a police -- an undercover
23 police vehicle that the Anderson County Sheriff's Office
24 owns. The driver of that vehicle is my boss, Lieutenant
25 Dave Baker. We followed him from a Walgreens in the

1 Clemson area to this subdivision. The -- the informant,
2 my boss, and the wiring equipment or transmitter and
3 recording device were in that vehicle so we could hear
4 what was going on. We followed that vehicle to a
5 subdivision and that's when the informant and my boss,
6 Lieutenant Dave Baker, told us do not come down this
7 road, this road is a dead-end cul-de-sac and this is the
8 house that we are going to. So I looked for the road
9 that they were speaking of and I didn't go down it and I
10 just parked somewhere else in the subdivision to conduct
11 the audio surveillance.

12 Q. And without saying what people said on this audio
13 surveillance, what were your thoughts as you listened to
14 this audio unfold in realtime?

15 A. I was in awe. There was no other way to explain
16 what I was hearing. I couldn't believe it. I couldn't
17 believe what I was hearing.

18 Q. What happened after Blackwell left Bartee's house?

19 A. He got back in the vehicle that my boss, Lieutenant
20 Dave Baker, was driving, and that's the vehicle that was
21 owned by the Anderson County Sheriff's Office. Drove
22 out of the subdivision and back to the Walgreens.

23 Once we had reached the Walgreens, talked for a few
24 minutes, a very short amount of time, unwired the wiring
25 equipment off of the informant, Nick Blackwell. Agent

1 Sloan and Agent Kindley, they got back in their vehicles
2 and we drove to Pendleton High School from there.

3 Q. What happened at Pendleton High School?

4 A. Pendleton High School, again, a small what you
5 consider a debrief happened. What went on, you know, go
6 over notes. And at that time we put back the equipment,
7 get the antenna off the car, put back the monitoring
8 equipment. And from there Agent Sloan had his computer,
9 so I took the SD card out of the transmitter, of the
10 recording device that was on Nick Blackwell, and I
11 placed that SD card on the thumb drive that was issued
12 by the company that we bought this equipment from, and I
13 placed the thumb drive into Agent Sloan's computer and
14 used the copy function, highlighted all files that were
15 made that -- that day, and night, and I placed those
16 files onto Agent Sloan's computer.

17 Q. What did you subsequently do with the SD card?

18 A. The SD card gets put back into the wiring
19 equipment, into the actual device, the transmitter and
20 the recording device. We do that because if you don't
21 put it back in there, then the next person in our unit
22 will go to make a buy of some sort or conduct an
23 undercover operation, and the nature of our work, they
24 won't check the bars that are left, they won't check the
25 slot where the SD card has been given, they won't obtain

1 any audio. So I placed that SD card back into the slot
2 of the transmitting/recording device and put all that
3 equipment back up properly and in the boxes that they
4 come in.

5 Q. And when did you download to your computer?

6 A. This night finished at, you know, an unusual hour I
7 would consider so I went straight home. The next
8 morning I went to work and downloaded the recording
9 device -- the SD card, excuse me, I downloaded the SD
10 card onto my external hard drive. I used the cut
11 function at this point to cut the audio recordings that
12 we had obtained the night prior and the morning prior
13 onto my hard drive, my external hard drive that's owned
14 by the sheriff's office.

15 The reason I used the cut function is because if I
16 do that, it automatically cleans the SD card of any
17 audio files, thus allowing the next user to have a clean
18 SD card to capture as much conversation as they need to
19 for the next operation.

20 Q. And explain cut versus copy.

21 A. Obviously I'm not a computer person, but I know how
22 to work a computer somewhat. I know that if I highlight
23 audio files, video files, pictures that are pulled up on
24 a computer, if you click on those, you can right click
25 on them and a small rectangular box shows up with a

1 bunch of prompts. Some of those prompts would be cut,
2 copy, delete, send to, if you are familiar with what I'm
3 speaking of.

4 There's two ways to remove the files from the SD
5 card, one is copy and one is cut, and obviously cut
6 allows you to clean the SD card. If you only copy the
7 files, that leaves the files on the SD card; however,
8 you have transferred those files to whatever media you
9 are trying to transfer them to.

10 Q. And when did you make this download, this cut and
11 copy, cut and paste?

12 A. The copy was at Pendleton High School the night
13 where everybody was together. The next morning when I
14 returned back to work is when I cut the files, cleaning
15 the SD card.

16 Q. And did you just cut or generate a disk?

17 A. I did.

18 Q. When did you do that?

19 A. I don't recall the exact date. I'm pretty sure it
20 was that day, that next morning I made a disk of the
21 audio files that we had captured the night and the
22 morning previously.

23 Q. And is that disk what has been premarked State's
24 Exhibit 1?

25 A. It is.

1 Q. At any point did -- during your possession of this
2 disk or this audio recording, did you alter or tamper
3 with it in any way?

4 A. I did not.

5 Q. Did you make any additions?

6 A. I did not.

7 Q. Did you make any deletions?

8 A. I did not.

9 Q. Would you know how to do that?

10 A. I would not.

11 Q. And what happened after leaving Pendleton High
12 School that night, to backtrack a little bit?

13 A. After we left Pendleton High School, everybody left
14 in their own police vehicle. Agent -- Agent Sloan --
15 excuse me, Agent Stallo rode with my boss, Lieutenant
16 David Baker, and Agent Kindley left in his police
17 vehicle. Agent Sloan and I took Nick Blackwell home,
18 going back to another county, I don't know if it's
19 Pickens or Anderson -- excuse me, Pickens or Oconee. We
20 took him, it was a pretty lengthy ride considering the
21 time of morning it was.

22 Q. And were any items received from him at the time?

23 A. On the way there Agent Sloan was speaking to Nick
24 Blackwell about the case, about what was going on. And
25 at some point in time a business card got brought up.

1 Agent Sloan asked if he still had -- asked Nick
2 Blackwell if he still had the business card, and Nick
3 Blackwell said yes. So Nick Blackwell said when we get
4 to my house ---

5 MR. BRANNON: Object to hearsay, Your Honor.

6 THE COURT: I'll sustain that objection.

7 By Ms. Simmons:

8 Q. Try to -- avoid anything anybody told you.

9 A. When we got back to Nick Blackwell's house, I
10 observed Nick Blackwell returned to my police vehicle
11 with a business card looking item, and he handed that
12 business card to Agent Sloan.

13 MS. SIMMONS: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, ma'am.

16 By Ms. Simmons:

17 Q. I'm gonna show you --

18 Pardon me, Judge, I'm holding the wrong exhibit
19 (laughs).

20 I'm gonna show you what has been premarked as
21 State's Exhibit 2. Do you recognize this item?

22 A. I do.

23 Q. And tell me what that is.

24 A. That is the business card that was handed to Agent
25 Sloan from Nick Blackwell.

1 Q. And is it in the same condition as it was on the
2 night of the 29th/30th of 2012?

3 A. It is.

4 Q. Have any additions, alterations or deletions been
5 made to it?

6 A. No, they have not.

7 MS. SIMMONS: Beg the Court's indulgence for one
8 moment.

9 (Counsel confer.)

10 MS. SIMMONS: Please answer any questions
11 Mr. Brannon may have.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Mr. Brannon?

14 MR. BRANNON: Beg the Court's indulgence one
15 second.

16 Cross-Examination by Mr. Brannon:

17 Q. Investigator, how are you doing today?

18 A. I'm doing well. And you, sir?

19 Q. I'm good. I'm good.

20 You have said a couple of times during your direct
21 testimony images that are downloaded or uploaded or
22 whatever, but you used audio/video photos. Do you
23 remember using those, those terms?

24 A. I do.

25 Q. Okay. When you download a video to an SD card or

1 whatever media you are downloading it to, what is
2 downloaded -- what exactly goes on the media?

3 A. The item that you are transferring, whatever that
4 may be, be it a picture, an audio, video.

5 Q. Okay. But it's an image of it in 1's and 0's,
6 right?

7 A. I'm not -- you are out of my realm. I don't
8 necessarily know what that would be called.

9 Q. Okay. Let's make it -- and I don't really know,
10 either. So let's make it more simple. Is there any
11 difference in downloading a picture than there is an
12 audio as far as the computer is concerned? Do you know?

13 A. To my knowledge, no.

14 Q. Okay. That -- all right. Now I'm gonna show
15 you --

16 May I approach the witness, Your Honor?

17 THE COURT: Sure.

18 By Mr. Brannon:

19 Q. Would you agree with me that these are general
20 orders, they are standard of practice that are created
21 by the Anderson County Sheriff's Department? Okay?

22 A. I would agree.

23 Q. Okay. All right. And -- and you already testified
24 that downloading a picture is the same thing as
25 downloading a video, correct, or an audio?

1 A. Yes.

2 Q. Okay. All right. So would the SD card in a camera
3 then be the same thing as an SD card in a -- in a
4 recorder?

5 A. I believe it would.

6 Q. Okay. What's chain of custody?

7 A. It's having a -- basically a ladder, if you will,
8 for other lack of terms, but one person obtaining a
9 piece of evidence, turning it over to the next person,
10 and then it's shown on paper.

11 Q. Okay. All right. And theoretically every
12 individual that touches the evidence should have his or
13 her name on a chain-of-custody document, correct?

14 A. Yes, theoretically.

15 Q. Now, there's all kinds of dates --

16 MR. BRANNON: May I remove this, Your Honor, from
17 the envelope?

18 THE COURT: Yes, sir.

19 By Mr. Brannon:

20 Q. I -- I don't know where -- is that your name there?

21 A. Yes.

22 Q. Okay. And what is the date right above your name?

23 A. July 23rd, 2013.

24 Q. Okay. What does that date mean to you and to this
25 jury? What happened on July 23, 2013?

1 A. I reviewed that disk.

2 Q. You mean you listened to it?

3 A. Yes.

4 Q. Okay. (Puts disk back in sleeve.)

5 What is that document?

6 A. It's a property -- evidence and property sheet and
7 it appears it's from the State Law Enforcement Division.

8 Q. Okay. And is it -- it's part of that ladder, isn't
9 it?

10 A. Yes.

11 Q. Okay. It's a chain-of-custody document. Right?

12 A. Yes.

13 Q. Okay. And also up here it says Anderson County
14 Sheriff's Department, Mark Gregory, correct? And it's
15 got a check on that box, right?

16 A. That is correct.

17 Q. And then SLED Piedmont Evidence, and it's got four
18 disks identified, correct?

19 A. Yes, it does.

20 Q. Okay. And this is -- this right here is one of
21 those disks, correct?

22 A. I -- I don't know.

23 Q. Okay. Well, but -- I'm sorry. Don't you -- don't
24 you have to know?

25 A. The issue that I have with this form is I didn't.

1 fill it out. I don't necessarily know what it means to
2 the person that filled it out.

3 Q. Okay. I got you. It's not your form. I
4 understand that.

5 A. Yes.

6 Q. When did you give this -- this disk -- when did you
7 give this disk to Agent Sloan?

8 A. I don't recall the exact date.

9 Q. Okay. But chain of custody, according to you,
10 means that you touched some evidence and then you gave
11 it to somebody else, and there should be a ladder.
12 Right?

13 A. In most cases. In most cases.

14 Q. Okay. All right.

15 MS. SIMMONS: Your Honor, I would object to the
16 relevance of this line of questioning, line of
17 testimony, because a chain is not required for that type
18 of item.

19 THE COURT: I'll sustain that objection.

20 MR. BRANNON: Okay. Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 By Mr. Brannon:

23 Q. Okay. I'm looking now at your SOP for Anderson
24 County. And you told me that downloading a picture is
25 the same as downloading a video or an audio, right?

1 A. That is correct.

2 Q. Okay. If you would just read that one line right
3 there.

4 A. Storage of images?

5 Q. Yeah.

6 A. (Reading): Crime Scene Unit will be responsible
7 for processing and storage of digital images. The
8 original and primary image will be retained and will not
9 be subjected to compression or retention. (End of
10 reading)

11 Q. Okay. Now, and keep in mind right up here: Each
12 camera kit will contain a memory card, right?

13 A. Yes.

14 Q. Okay. So the original, according to that line
15 (reading): The original and primary image will be
16 retained and will not be subjected to compression or
17 retention. (end of reading) Right?

18 A. Yes.

19 Q. Okay. Whose policy is this?

20 A. It's the Anderson County Sheriff's Office.

21 Q. Who do you work for?

22 A. The Anderson County Sheriff's Office.

23 Q. Where is the original SD card?

24 A. The original SD card is housed in the narcotics
25 division with the equipment that's provided for it.

1 Q. Okay. Are you a member of the crime scene unit?

2 A. Technically, no, I'm not.

3 Q. Okay. All right. Okay. Right there, what's that
4 one say?

5 A. (Reading): Any officer that utilize a digital
6 camera will remove the memory card or cards used. They
7 will place the card in an digital photo card envelope
8 and complete the required form printed on the envelope.
9 (end of reading)

10 Q. Okay. All right. Now, according to this Anderson
11 County policy, they use more SD cards than just one,
12 right?

13 A. That is correct. There's many SD cards at the
14 sheriff's office.

15 Q. Okay. How many?

16 A. I have no clue.

17 Q. But, according to your own sheriff's department
18 policy, you take the card out and you place it into
19 evidence. And it even says that there's a report due.
20 Okay? Right? I mean, you got to do paperwork because
21 you put it in an envelope and you fill out that
22 envelope, right? It says it right there.

23 A. You do this for SD cards that are turned in from
24 other divisions.

25 Q. Okay. But, according to this (reading): The crime

1 scene unit will be responsible for processing and
2 storage of digital images. (end of reading)

3 A recording, a vocal recording is a digital image,
4 isn't it?

5 A. It is.

6 MS. SIMMONS: Judge, I object. The witness for the
7 State is not part of the crime scene unit. I would
8 object on relevance.

9 THE COURT: Overruled.

10 By Mr. Brannon:

11 Q. Okay. You didn't abide by your department's
12 policy, did you?

13 A. I believe that this policy doesn't necessarily
14 include the narcotics division.

15 Q. Okay. Here's the whole policy right here. Show me
16 where it says you're not included. Please show me that.

17 A. In my line of work you have two policies, one
18 that's written and another that's implied. And in this
19 case when the sheriff's office issues only one SD card
20 for the equipment for a total of seven to eleven people
21 that would use this equipment, they can't expect us to
22 turn in this SD card into evidence every single time
23 that we would need to download the SD card. It's not
24 possible. Because we all have to use the same
25 equipment, all employees of the narcotics division and

1 all other agencies that we are working with at that
2 time.

3 Q. Okay. So there's two rules, right?

4 A. I would consider there is written policy and
5 implied policy.

6 Q. Okay. Well, I need to know, then, when I sent a
7 FOIA request for this information and this is the only
8 set they sent me, why didn't I get a note that said, oh,
9 by the way, there's another set of rules that aren't
10 written?

11 A. I can't answer that.

12 Q. Would you admit or would you agree that you did not
13 abide by this policy?

14 A. May I read it one more time?

15 Q. Sure (handing). And I'm sorry. I flipped pages,
16 so I'll help you find it.

17 A. That's fine. I'll find it.

18 (Witness reads document.)

19 May I ask you to restate the question?

20 Q. In this investigation -- it's the same question,
21 but I'm using different words. Okay?

22 A. Yes, sir.

23 Q. In this investigation where you audio taped a
24 conversation between Nick Blackwell and someone else,
25 did you follow that policy?

1 A. Yes. Because we only talk about photographs and
2 images on this.

3 Q. Yes. But you admit to me that the downloading of
4 an audio image is the same as downloading a photo.

5 A. It is the same. I would consider it the same.

6 Q. Okay. All right. Now, at some point you produced
7 this disk. Correct?

8 A. That is correct.

9 Q. Okay. What is this disk in this courtroom?

10 A. It is evidence.

11 Q. It is evidence. Okay.

12 Back to this policy again. This is just property
13 and evidence control. Okay? It says (reading):

14 As soon as practicable, before going off duty,
15 officers will deliver all evidence and any found,
16 confiscated or recovered property coming into their
17 possession to the custody of the evidence officers or
18 drop box at the Anderson County Sheriff's Office along
19 with an evidence property report. There are no
20 exceptions to this rule without supervisory approval.
21 (end of reading).

22 MS. SIMMONS: Your Honor, I would object again as
23 to chain of custody. He's going down the
24 chain-of-custody route again.

25 THE COURT: Are you going into chain of custody?

1 MR. BRANNON: I'm going into policy, that's all.

2 THE COURT: All right. I overrule your objection.

3 Go ahead.

4 MR. BRANNON: Okay.

5 By Mr. Brannon:

6 Q. Do you agree that's what it says?

7 A. I do agree.

8 Q. Okay. Did you put this in a drop box anywhere?

9 A. No, I did not physically put it in a drop box.

10 Q. Can you show me your supervisory approval for not

11 having done that?

12 A. I cannot.

13 Q. Okay. When did you give that to Agent Sloan?

14 A. I do not recall the exact date.

15 Q. Did you listen to it -- I know that you were

16 listening to the recording simultaneously as it was

17 being made, I understand that. Did you play it back at

18 any point after Mr. Blackwell was driven away from the

19 incident location?

20 A. I don't -- I don't believe we played it that night

21 at all.

22 Q. Okay. Would it be fair to say that the next time

23 you heard what's on this disk was July 23 of this year?

24 A. That would not be fair.

25 Q. Okay. So you listened to it more?

1 A. I listened to it the next morning and I downloaded
2 it to the hard drive.

3 Q. Okay. All right. A technical question. Did you
4 listen to this or did you listen to what was on your
5 computer?

6 A. Both. I listened to both.

7 Q. So you listened to the same conversation twice, two
8 different medias?

9 A. Not in its entirety.

10 Q. Okay. Why did you sign on July 23rd of this year
11 to indicate that you had reviewed it?

12 A. All agents that were involved in this investigation
13 signed the disk on July 23rd.

14 Q. Okay. But you reviewed at least a portion of this
15 disk on what would have been May 30 or 31 of 2012.

16 Right?

17 A. It would have been May 30th.

18 Q. Okay. But you listened to at least a portion of
19 this disk according to your testimony, right?

20 A. That is correct.

21 Q. And you didn't put your name on it, did you?

22 A. I did not. However, I put the date and there's my
23 handwriting on the disk that I placed on there on May
24 30th when I made the disk.

25 Q. Well, yeah, I got you. (Takes disk out of

1 package). What date's on there?

2 A. It says May 29th.

3 Q. May 29th. The audio that is captured on this disk
4 wasn't even complete on May 29, was it?

5 A. The investigation started on May 29th and went into
6 May 30th. Therefore, I put the start date, I suppose,
7 on the disk.

8 Q. I thought you put the date on there the day you
9 made it. I thought when you made this disk you put ---

10 A. I put May 29th down on May 30th.

11 Q. Okay. You also produced a written report of your
12 involvement in this matter, didn't you?

13 A. That is correct.

14 Q. What's the date on that one?

15 A. It says May 29th, 2012.

16 Q. Okay. So, when you were sitting there listening,
17 were you typing your report?

18 A. There is a good chance that that was happening,
19 yes.

20 Q. Okay. Now, didn't you tell me before that that was
21 a typo?

22 A. Yes.

23 Q. Okay. So it's either a typo or you were typing it
24 that day. Which one was it?

25 A. I didn't get back home until May 30th, so I

1 obtained audio on May 29th and May 30th. So
2 mathematically it wouldn't be possible for me to be at
3 my computer at work on May 29th typing the incident
4 report or listening to a disk that I'm currently making
5 on May 29th or May 30th.

6 Q. Right.

7 A. So it would have been May 30th when I was typing
8 that incident report and May 30th when I was downloading
9 this disk. I apologize for making a typo.

10 Q. Okay. All right. Now, do you know where this disk
11 was after you gave it to Sloan until you listened to it
12 again on July 23rd of this year?

13 A. I do not.

14 MR. BRANNON: One second, Your Honor?

15 THE COURT: Yes, sir.

16 By Mr. Brannon:

17 Q. Do you know if you can change the date on a
18 computer?

19 A. If you can, I have no clue how to do it.

20 MR. BRANNON: Thanks. Nothing further.

21 THE COURT: Redirect?

22 MS. SIMMONS: Just briefly.

23 Redirect Examination by Ms. Simmons:

24 Q. Officer Gregory, is this an Anderson County
25 Sheriff's Office case or a SLED case?

1 A. This is a SLED case. Anderson County Sheriff's
2 Office along with myself only assisted.

3 Q. But who would be the primary agent, the agent on
4 this case?

5 A. The primary agent was Agent Michael Sloan with the
6 South Carolina Law Enforcement Division.

7 Q. The Defense asked you some questions about policies
8 and procedures for cameras and that sort of thing.

9 A. Yes, ma'am.

10 Q. The policy and procedure he referred you to was for
11 the crime scene unit. Are you a member of the crime
12 scene unit?

13 A. I am not.

14 Q. And the crime scene unit policy you reviewed, what
15 is that policy tailored for?

16 A. It would be tailored for an abundance of SD cards
17 coming in to the evidence locker. What I mean by that
18 is if you have eighty to a hundred deputies all issued a
19 camera and an SD card, and they all turn in these SD
20 cards at the end of the shift, they would have to keep
21 track of the SD card and what photos go to which case.

22 The narcotics division and the gang unit, we keep
23 all audio transactions in our office, we keep all audio,
24 video and photographic transactions on hard drives and
25 keep them with the case file. That is our standard

1 operating practice.

2 Q. And the crime unit policy applies to cameras?

3 A. Yes. I would consider that applies to many
4 different cameras.

5 Q. Okay. And when did this operation begin?

6 A. The operation began May 29th, 2012.

7 Q. When did it end?

8 A. The operation ended on May 30th, 2012.

9 Q. And when did you complete your report and then
10 download it?

11 A. It would have been the next morning at my office on
12 May 30th, 2012.

13 MS. SIMMONS: Thank you.

14 THE WITNESS: You're welcome.

15 Recross-Examination by Mr. Brannon:

16 Q. That policy tells every officer that works for the
17 Anderson County Sheriff's Department how they're
18 supposed to handle certain types of evidence, doesn't
19 it?

20 A. It does.

21 Q. Okay. So that policy is put upon -- according
22 to that policy -- every officer. Right?

23 A. It would.

24 Q. Okay. Earlier you said that you made -- not you
25 but the sheriff's department made about 20,000

1 recordings a year?

2 A. Sir, I just use the numbers that I could fit inside
3 my head and do the math while sitting here on the stand.

4 Q. Do you realize that that would require you to make
5 about 50 recordings a day in a year?

6 A. If I were to use a smaller number, the money that
7 is afforded to each SD card would still be an
8 astronomical amount of money that the sheriff's office
9 would have to spend.

10 Q. I just did this myself. But ---

11 MS. SIMMONS: Objection. It is outside the scope
12 of the redirect.

13 THE COURT: I'll sustain that.

14 MR. BRANNON: Thank you.

15 THE COURT: Yes, sir.

16 MR. BRANNON: Nothing further, Your Honor.

17 THE COURT: May he step down?

18 MS. SIMMONS: Yes, Your Honor.

19 THE WITNESS: Thank you, Your Honor. Thank you.

20 (Whereupon, the witness was excused.)

21 THE COURT: How long is your next witness gonna be?

22 MS. SIMMONS: Roughly the same amount of time as
23 Mr. Gregory.

24 THE COURT: Go ahead and call him, please.

25 MS. SIMMONS: I call Agent Shawn Stallo.

1 straight to an SD card. However, we intermingle, we run
2 joint investigations that are prosecuted federally and
3 State, and we use the exact recorder that we used that
4 night and we also use my recorder. So it would be a
5 fair assessment to say both recorders I use on a
6 consistent basis.

7 Q. Okay.

8 A. The one purchased by the ATF, if that's what you
9 are asking -- is that what you are asking?

10 Q. Yeah. What -- what -- what mechanism retains the
11 data?

12 A. On the item, on the recorder purchased by the ATF
13 it's an internal memory device that is plugged into a
14 computer. There is no SD card on that particular device
15 that we own now.

16 Q. So it's basically got its own little hard drive,
17 correct?

18 A. Yes, sir.

19 Q. Okay. And then you would use it, you would put it
20 into the computer and you would download the memory off
21 of that little hard drive to the hard drive on the
22 computer or some other media, correct?

23 A. Correct.

24 Q. Okay. And when it goes from your little recorder
25 to the computer, it has a hash that goes with it, right,

- 1 some digital DNA, right?
- 2 A. That I don't know.
- 3 Q. Don't know. Okay. All right.
- 4 Why is it so important for the original download to
- 5 go into custody?
- 6 A. I think it's policy that's just transferred over
- 7 from when we had little micro cassettes and I think the
- 8 policy was probably never rewritten.
- 9 Q. Okay.
- 10 A. It's just standard policy transfer.
- 11 Q. It's federal ATF policy, right?
- 12 A. According to my supervisor, yes, sir.
- 13 Q. And you abide by it, correct?
- 14 A. Yeah, I do.
- 15 Q. Do you all have any -- do you have a written
- 16 policy?
- 17 A. I'm sure we do.
- 18 Q. Okay. And then do you have the secret unwritten
- 19 policy?
- 20 A. No. That's the policy.
- 21 Q. Okay. So the policy is the policy, right?
- 22 A. Yes.
- 23 Q. Okay. Cool. There's no unwritten policy?
- 24 A. Not to my knowledge.
- 25 Q. All right. Why were you there?

1 Q. No. Okay. So you heard it as it was being
2 simultaneously made?

3 A. Yes.

4 Q. And then I believe we can tell ---

5 A. There should be a date on there.

6 Q. Yeah. I'm sorry. Which one is you?

7 A. Here.

8 Q. Okay. Yeah. And, now, did you listen to it on
9 7/23 like the other ones did?

10 A. I did.

11 Q. Okay. You agree there's no date written by your
12 name, though, right?

13 A. There is not.

14 Q. All right. So you -- you heard it when it was
15 being recorded and then you listened to it again more
16 than a year later?

17 A. Correct.

18 Q. Like 14 months later?

19 A. Correct.

20 Q. Okay. That night, May 29, at any point before you
21 got involved in this investigation had you met James
22 Richard Bartee, Junior?

23 A. No, sir.

24 Q. Had you ever heard him speak a word?

25 A. No, sir.

1 Q. Had you ever seen him on TV?

2 A. No, sir.

3 Q. So you didn't know who he was?

4 A. No, sir.

5 Q. And you didn't have any idea whose house you were
6 going to other than what this snitch told you, right?

7 A. What the confidential informant told me, yes, sir.

8 Q. Okay. All right. So when you were listening to it
9 simultaneously, all you knew is what the confidential
10 informant told you as to who the other person speaking
11 was. Right?

12 A. Correct.

13 Q. Okay. How many people were in Mr. Bartee's house
14 that night?

15 A. According to the wire recording or according to the
16 CI? There's -- or according to -- according to
17 Mr. Bartee?

18 Q. How many people did you know were in that house?

19 A. I was told that his spouse may be in the house, or
20 was in the house, and then the confidential informant
21 and Mr. Bartee.

22 Q. Okay. So you were told by the CI that his wife was
23 there?

24 A. Or it was on the recording, I can't recall. One of
25 the two.

1 Q. Got you. Okay. All right. Did you -- I know that
2 you -- you came in a little bit late according to
3 Gregory's report. I think he said you got there about
4 ten minutes after he did to the meeting place. My
5 question is, did you see Investigator Gregory hand the
6 CI money?

7 A. No.

8 Q. You didn't see that?

9 A. No.

10 Q. Did you see anybody hand him money?

11 A. No.

12 Q. Okay. All right. Now, jumping around a little
13 bit. Back to the original disk. In your case log, in
14 your policy, when you download an audio or a video image
15 to a disk, the original disk is required to go into
16 custody, right?

17 A. Yes, sir.

18 Q. That's evidence custody, right?

19 MS. SIMMONS: Judge, I'll object. This is a
20 non-fungible item. A chain of custody is not required.

21 THE COURT: Overruled.

22 Go ahead.

23 By Mr. Brannon:

24 Q. Okay. But that's your policy, right?

25 A. Yes, sir.

1 Q. Okay. And then, and then how do you get that out
2 of that custody?

3 A. To be quite honest, I've never -- I've never had
4 to. Every time we go to trial we simply use the
5 recording, the copy that was provided to the U.S.
6 Attorney's Office during the investigation. I've never
7 been asked to produce the original. I would assume that
8 I would have my vault custodian sign it out, but I've
9 never -- I've never done it before.

10 Q. Okay. But -- but there's -- there's a way to
11 confirm that the copy that's been given to the AUSA or
12 the prosecutor, whoever that may be, there's a way to
13 say that digitally this copy meets, matches that copy.
14 Right?

15 A. Can you repeat the question? I apologize.

16 Q. Well, there -- there has to be a way to ensure that
17 the copy that's gonna be used in court is an exact copy
18 of the one that's in evidentiary custody. Correct?

19 A. I've never been asked, I've never been specifically
20 asked if this is the one that's in evidence. It's
21 always ---

22 Q. It's always what?

23 A. Because I said it was.

24 Q. No. I'm not questioning that. What are you asked?

25 A. That if it's a fair and accurate account of the

1 events that occurred on this particular date if I'm the
2 one introducing the recording into evidence, I mean to
3 be entered into evidence.

4 Q. Okay. All right. Do you have any idea how much an
5 SD card costs?

6 A. You know, I don't. I would -- well -- no, I don't.

7 Q. Okay. And just to confirm. You didn't produce a
8 report, correct?

9 A. No, sir.

10 Q. So there was no way that I could have known in
11 preparation for this trial what you were gonna say until
12 I sat here and listened to you today, right?

13 A. Correct.

14 MR. BRANNON: Thanks. Nothing further.

15 THE COURT: Redirect?

16 MS. SIMMONS: Judge, just briefly.

17 Redirect Examination by Ms. Simmons:

18 Q. Agent Stallo, what time did all of this occur on
19 the 29th and 30th?

20 A. If memory serves, I received a telephone call at
21 around 9:30, met with the confidential informant for the
22 first time around 10:00. The time the confidential
23 informant was wired and sent to Mr. Bartee's residence,
24 it was maybe 12:30, 1:00 in the morning.

25 Q. You said part of your purpose in being part of this

1 State of South) In the Court of General
 2 Carolina) Sessions
 3 County of Oconee) Indictment No: 2012GS3700597

4
 5 State of South)
 Carolina)
 6)
 Plaintiff,) Transcript of Record
 7) Trial - Volume 3
 -vs-) (Pages 409 through 652)
 8)
 James Richard Bartee,)
 9 Jr.)
)

10 Defendant.

11 August 28, 2013
 Walhalla, South Carolina

12
 13
 14 B e f o r e:

15 The Honorable R. Lawton McIntosh, Judge; and a Jury.

16
 17 A p p e a r a n c e s:

18 Christina T. Adams, Esq.
 19 10th Circuit Solicitor
 David Rhys Wagner, Esq.
 20 Deputy Assistant 10th Circuit Solicitor
 Lindsey Satterfield Simmons, Esq.
 21 Assistant 10th Circuit Solicitor
 Attorneys for the State

22 N. Douglas Brannon, Esq.
 23 Attorney for the Defendant

24 Robin Sue Hild, FCRR, RPR
 25 Circuit Court Reporter

1 Whereupon,

2 Joe Harden

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Ms. Simmons:

6 Q. Good morning, Mr. Harden.

7 A. Good morning.

8 Q. Could you please state your full name and spell
9 your last name for the record.

10 A. Joe Henry Harden, last name H-a-r-d-e-n.

11 Q. Mr. Harden, tell me about your professional
12 background and experience.

13 A. I was trained in the military as a military police
14 officer. I spent a lot of years at the Greenville
15 Police Department where I retired as a detective, took a
16 job with Canal Insurance Company as the Special
17 Investigations Unit Manager.

18 And while at Canal I was certified an Assistant
19 Municipal judge, which I served for eight years on
20 weekends and holidays, bond hearings and night court.

21 I retired from Canal and became involved in the
22 Pickens County Youth Corps with retired judge, Family
23 Court judge Joe Boyd (phonetic). And judge Boyd retired
24 and I ended up with the program, and I've since turned
25 that program over to someone else, and I'm currently the

1 expulsion hearing officer for Pickens County School
2 District.

3 Q. How do you know the Defendant in this case?

4 A. I, I know James. We go back 10 or 12 years. When
5 he retired from the Secret Service, I learned that he
6 was going to go in business for himself, and he handled
7 my investigations in North and South Carolina and
8 Georgia, and other places he supervised my
9 investigations. We investigated the fire, theft, and
10 fraud involved in the tractor-trailer cargo business.

11 Q. Did you have occasion to become involved in his
12 sheriff's campaign?

13 A. Yes, I did. After I retired from my day job, so to
14 speak, I learned that Rick was going to -- or James was
15 going to run for sheriff. And knowing the type person
16 he was, or is, and the, his investigations were beyond
17 reproach as far as I'm concerned. Many of them that we
18 looked into, we recovered millions of dollars' worth of
19 cargo and equipment and helped prosecutors prosecute a
20 lot of thieves.

21 And I felt that since Sheriff Singleton wasn't
22 running anymore -- he was a friend of mine -- that I'd
23 certainly help James with his campaign.

24 Q. What kind of things would you do?

25 A. I beg your pardon?

1 Q. What kind of things would you do?

2 A. I, I mainly spread the word. I posted some of his
3 signs, went to a couple of his gatherings, and we went
4 to the cruise-ins. I am a car nut, classic cars, and so
5 is James, so we had a mutual involvement there. We
6 would go to the car shows and campaign, of course, at
7 those.

8 Q. Based on your observations how much time and money
9 did the Defendant have in his campaign?

10 A. I, I really don't know. It was a great deal.
11 With, with the amount of paraphernalia, so to speak, or
12 billboards, signs, cards and badges, I would say quite a
13 bit. I'm not -- I wouldn't say how much, but it was
14 quite a bit.

15 Q. During your interactions with him did anything in
16 the campaign particularly stress him?

17 A. Yes. The, the rumors of people saying that he
18 wasn't really an F- -- a Secret Service Agent, that he
19 was going to fire all of the sheriff's deputies if he
20 was elected. He was going to -- another rumor was he
21 was gonna make them take a polygraph.

22 And James expressed to me on occasion that he felt
23 his life was threatened and also that maybe his children
24 were harassed at school.

25 And, of course, these things had an effect on him,

1 THE COURT: Cross-Examination.

2 MR. BRANNON: May it please the Court?

3 Cross-Examination by Mr. Brannon:

4 Q. How are you doing, sir?

5 A. Fine, sir.

6 Q. You didn't, you didn't give a written statement,
7 correct?

8 A. No, sir.

9 Q. What I've got in my hands is just a memorandum of
10 interview.

11 A. That's correct.

12 Q. Have you seen this?

13 A. It was offered to me but I haven't.

14 MR. BRANNON: May I approach the witness?

15 THE COURT: Yes, sir.

16 THE WITNESS: I've seen it but I don't think I've
17 read it.

18 By Mr. Brannon:

19 Q. (Hanging) Okay.

20 A. (Witness reads document.) Okay. That's basically
21 what I testified to.

22 Q. Right. I'm interested in this, in this one line,
23 that while you were working together, you were employed
24 by Canal and he was an investigator, correct?

25 A. That's correct. He, I hired him as an independent

1 investigator for individual cases.

2 Q. Right. And you said that his work was very
3 professional and ethical?

4 A. That's correct.

5 Q. And I think today that you said that his work was
6 beyond reproach?

7 A. It was.

8 Q. Is he a smart guy?

9 A. Sir?

10 Q. Is he a smart guy?

11 A. He appeared to be to me.

12 Q. Okay. And did his work product lead you to believe
13 that he was doing it in an intelligent manner?

14 A. Yes, sir.

15 Q. Okay. Now, I do the same thing. You've called him
16 Rick and then you've corrected yourself and called him
17 James.

18 A. I don't think anybody knows him as Rick.

19 Q. Okay. But apparently his friends do?

20 A. Yes.

21 Q. Okay. All right. Now the type of work that you --
22 you were basically an insurance protector, correct?

23 A. I was the special investigations unit manager. I
24 had to follow the guidelines that are set forth by
25 insurance commissioners nationally to investigate

1 insurance fraud, period.

2 Q. Right. So, if somebody reported that their house
3 burned down and maybe there were some suspicious
4 evidence maybe, that's something that you would
5 investigate, correct?

6 A. Actually, we only insure tractors and trailers,
7 limousines and taxis, so it would be a theft of a
8 tractor-trailer and thousands and thousands of dollars'
9 worth of cargo.

10 Q. Okay. Right. So you would vest whether it was
11 actually a theft of ---

12 A. I would assign, I would assign a case to Rick, he
13 would investigate it, and I could always depend on him
14 to overturn every rock possible. He had a good
15 relationship with the local Police Department and
16 prosecutors, so we were able to get these cases
17 prosecuted throughout the country to try and make a dent
18 in insurance fraud.

19 Q. Okay. Now, you testified earlier, Madam Solicitor
20 asked you if there were some things that seemed to have
21 bothered Rick during the campaign. Do you remember that
22 question?

23 A. Yes, sir.

24 Q. And you said that he told you or led you to believe
25 that he felt like his life was in danger, correct?

1 A. At, at some point he mentioned that, yes, sir.

2 Q. Okay. And he told you that he felt like his
3 children were being maybe bothered or harassed at
4 school, correct?

5 A. That's correct.

6 Q. And didn't you set up a meeting with -- I don't
7 know if you set it up -- but weren't you present during
8 a meeting with Sheriff Singleton and Mr. Bartee?

9 A. Sure.

10 Q. And what was the purpose of that meeting?

11 A. He -- Jim just wanted to straighten out some things
12 with the sheriff, that, the rumors, he wanted to set him
13 straight on what actually he was thinking about doing if
14 he became sheriff.

15 Q. Right. But didn't he also inform the sheriff of
16 his concerns about what he perceived as threats against
17 his body?

18 A. Yes, he did. He mentioned that, but I don't think
19 it was in the form of, You need to do something about
20 this. I mean, I'm reporting this. But he did inform
21 the sheriff of that. He did. Yes, he did.

22 Q. All right. You know, you -- do you vote?

23 A. Yes.

24 Q. Okay. So you at least try to keep up with the
25 elections, both local and federal, right?

1 A. Yes, sir.

2 Q. Okay. And have you known there to be things said
3 publicly about candidates that aren't true?

4 A. Of course, yes.

5 Q. And so, like any other political race, there were
6 some rumors about what Mr. Bartee might do if he were
7 elected, correct?

8 A. That's correct.

9 Q. Did you hear those rumors?

10 A. No, sir, I didn't.

11 Q. You didn't. Okay.

12 A. No, sir.

13 Q. But apparently the sheriff did, right?

14 A. Yes.

15 Q. Yeah, okay. So that's why the meeting was, to
16 clear those things up, right?

17 A. Yes. Well, also this big thing of the money that
18 was, had been taken from the Oconee County Sheriff's ---

19 MS. SIMMONS: Objection, Your Honor.

20 THE COURT: I sustain that objection.

21 MR. BRANNON: I didn't ask that question, Your
22 Honor.

23 THE COURT: All right.

24 I find that this line of questioning concerning
25 anything going on with this campaign is not relevant to

1 I'm gonna excuse you for lunch at this point.

2 (Whereupon, the jury left the courtroom at
3 approximately 11:31 a.m.)

4 THE COURT: All right. Would you bring Mr. Milbert
5 back around, please.

6 Mr. Milbert, you are still under oath. Would you
7 have a seat at the witness stand, please, sir.

8 (Whereupon, the witness, Joseph Milbert, resumed
9 the witness stand, outside jury presence, with his
10 cellular telephone placed on the witness stand.)

11 THE COURT: All right, Ms. Simmons, your witness.

12 Whereupon,

13 Joseph Milbert,

14 having been previously duly sworn, testified further as
15 follows:

16 Direct Examination by Ms. Simmons (Proffer Resuming):

17 Q. Mr. Milbert, picking up where we left off earlier,
18 were you involved in the campaign of James Bartee?

19 A. No, I was not.

20 Q. You were not involved in the campaign?

21 A. I was not involved in the campaign.

22 Q. Do you know Mr. Bartee?

23 A. Yes, I do.

24 Q. Did you have occasion to have conversations with
25 someone named Nicholas Blackwell in May of 2012?

1 A. I spoke with Nick Blackwell, yes.

2 Q. And in May of 2012 how many times did you speak
3 with him? Roughly. I know it's been a long time.

4 A. Approximately 14 times.

5 Q. Did you speak with him on May 29th of 2012?

6 A. Yes.

7 Q. And was that the last time you spoke with him?

8 A. Yes.

9 Q. Do you recall the two, the last two conversations
10 you had with him on May 29th of 2012 were in the
11 nighttime hours?

12 A. In the evening hours, yes.

13 Q. Would it be fair to characterize those in
14 non-military time as around 10:43 and 10:51?

15 A. I'm not sure. But somewhere between eight and ten,
16 approximately; eight and eleven.

17 Q. And were you subsequently been made aware that
18 those phone calls had been recorded?

19 A. Since that time, yes.

20 Q. And do you dispute that it's your voice on those
21 phone calls?

22 A. I'm assuming it's my voice, yes.

23 Q. And anything -- and you were, and you were aware
24 that Mr. Blackwell was the other party you were speaking
25 to?

1 A. I, I assumed it was Nick. I couldn't prove it.

2 Q. And have you listened to those two phone
3 conversations that were recorded prior to court?

4 A. Yes.

5 Q. And is that your voice?

6 A. I'm assuming, yes.

7 Q. And is it Mr. Blackwell's voice?

8 A. I'm assuming.

9 Q. And did, have those phone calls that you listened
10 to been altered or tampered with in any way?

11 A. I can't verify that. I'm not qualified, and I -- I
12 can't verify that.

13 MS. SIMMONS: Beg the Court's indulgence just one
14 moment.

15 THE COURT: Yes, ma'am.

16 MS. SIMMONS: Judge, I need to let the witness
17 review State's Exhibit 1. May I approach?

18 THE COURT: Yes, ma'am.

19 MR. BRANNON: Your Honor, while she's wiring that
20 up, may Mr. Wagner and I approach?

21 THE COURT: Sure.

22 (Discussion at sidebar among the Court, Mr. Brannon
23 and Mr. Wagner.)

24 THE COURT: You ready?

25 MS. SIMMONS: Yes, judge.

1 THE COURT: Okay.

2 MR. BRANNON: Your Honor, if this is a proffer,
3 we've got media in the room. I don't know...

4 THE COURT: Media has total access to the courts.
5 By Ms. Simmons:

6 Q. Mr. Milbert, I'm just gonna ask you to listen
7 briefly to this audio recording and verify if it is
8 indeed your voice on the recording.

9 (Ms. Simmons plays State's Exhibit 1, audio
10 recording, for witness.)

11 By Ms. Simmons:

12 Q. Mr. Milbert, have you heard your voice on this yet?

13 A. I've heard this recording. I'm assuming it's my
14 voice. I'm not used to listening to my voice..

15 Q. Is it a conversation you recall having had?

16 A. I recall having a conversation with Nick.

17 (Ms. Simmons continues playing State's Exhibit 1.)

18 By Ms. Simmons:

19 Q. Is that the last conversation you ever had with
20 Nick Blackwell, to the best of your knowledge?

21 A. There were two conversations, I honestly don't know
22 if that was the second one or the first one. There was
23 one where he contacted me and there was one where I
24 contacted him back.

25 Q. And I'm gonna let you listen to one more, okay?

1 (Continues playing State's Exhibit 1.)

2 By Ms. Simmons:

3 Q. You recognize your voice in stating, "This is Joe"?

4 A. Yes.

5 (Continues playing State's Exhibit 1.)

6 By Ms. Simmons:

7 Q. Mr. Milbert, does that continue to be your voice on
8 the recording?

9 A. Yes.

10 MS. SIMMONS: Beg the Court's indulgence for one
11 moment.

12 (Counsel confer.)

13 By Ms. Simmons:

14 Q. And, Mr. Milbert, I believe I've already asked you
15 this question, but just to follow up. Again, your
16 number back in May of 2009 was (770) 331-3468?

17 A. Yes.

18 MS. SIMMONS: Please answer any questions
19 Mr. Brannon may have.

20 THE COURT: Mr. Brannon, do you wish to
21 Cross-Examine at this time of this proffer?

22 MR. BRANNON: No.

23 THE COURT: Okay. All right. Thank you.
24 Mr. Harden [sic], I'm going to ask you to step down.
25 Again, please don't leave the courthouse.

1 THE WITNESS: Yes. Thank you.

2 (Whereupon, the witness left the witness stand and
3 left the courtroom.)

4 THE COURT: All right. I'm gonna call a recess now
5 until 1:15 and we'll resume testimony at that point.

6 MR. BRANNON: Does the Solicitor intend to re-call
7 this witness when we come back?

8 Will he be your next witness?

9 MS. SIMMONS: Yes, we do.

10 MR. BRANNON: Thank you.

11 THE COURT: All right. Thank you.

12 (A luncheon recess occurred.)

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1 Q. Where do you live, Mr. Milbert?

2 A. I live in Beaufort, Georgia.

3 Q. And are you here under subpoena today?

4 A. Yes, I am here under a subpoena that was improperly
5 served in Georgia apparently.

6 MS. SIMMONS: Judge, I would move to strike that
7 comment for the record.

8 THE COURT: Overruled. Move forward, please.

9 By Ms. Simmons:

10 Q. Do you know the Defendant in this case, James
11 Bartee?

12 A. Yes.

13 Q. Do you know the informant in this case, Nicholas
14 Blackwell?

15 A. I know of him and I have met him.

16 Q. Back in May of 2012 did you have phone calls with
17 Mr. Blackwell?

18 A. Yes, we had 14 phone conversations.

19 Q. And the last phone conversations you had with him,
20 did they occur on May 29th of 2012?

21 A. Yes.

22 Q. And did two of those phone calls occur during the
23 nighttime hours?

24 A. Yes.

25 Q. And would they have been around 10:00 that night?

1 A. Yes.

2 Q. And in military time would those phone calls, do
3 you think they occurred around 2243 and 2251 in the
4 nighttime hours?

5 A. You've got them. I'm guessing, yes.

6 Q. And previously to today were you able to review
7 two, those two phone conversations which have been
8 premarked as State's Exhibit 1, Tracks B and C, in
9 court?

10 A. Yes.

11 Q. And is that your voice on the phone recording?

12 A. It sounds like my voice.

13 Q. And is that the voice that you know as Nick
14 Blackwell on that recording?

15 A. It sounds like Nick Blackwell's voice.

16 Q. And those are a fair and accurate representation of
17 the conversation you had with him to the best of your
18 recollection?

19 A. Of that, those two conversations, yes.

20 MS. SIMMONS: We would move into evidence Tracks B
21 and C of State's Exhibit 1 as has been previously
22 identified by the witness.

23 MR. BRANNON: Other than the objection so noted.

24 THE COURT: So noted.

25 (State's Ex. # 1, Tracks B and C, was received in

1 evidence.)

2 By Ms. Simmons:

3 Q. Mr. Milbert, what was your phone number back in May
4 of 2012?

5 A. (770) 331-3468.

6 MS. SIMMONS: Please answer any questions
7 Mr. Brannon may have.

8 THE COURT: Mr. Brannon.

9 Cross-Examination by Mr. Brannon:

10 Q. Mr. Milbert, how long have you known James Richard
11 Bartee, Junior?

12 A. I have known Rick since the first grade. He and I
13 were in the first grade class with Mrs. Jones in
14 Featherstone Elementary School.

15 Q. All right. Where was that?

16 A. In Woodbridge, Virginia.

17 Q. All right. Now let's be clear here. His name is
18 James Richard Bartee, Junior, but you call him?

19 A. "Rick."

20 Q. Thank you. Okay. So you have known him since
21 first grade?

22 A. Yes, I have.

23 Q. All right. Now, have you guys been neighbors since
24 the sixth grade?

25 A. Yes. Well, not, not entirely through the sixth

1 grade. Up until the time we became adults we were
2 neighbors, we were roommates, we were friends,
3 teammates. Yeah.

4 Q. All right. And then, but when you became adults,
5 is it true that you did not live in the same area?

6 A. Once he began his career and I began my career at
7 the age of about 22, 23 years old, we kind of separated
8 and went in different directions.

9 Q. Got you. Okay. And then when did you move to the
10 State of Georgia?

11 A. I moved to Georgia in 1995.

12 Q. All right. Was Mr. Bartee here in South Carolina
13 at that time?

14 A. I don't remember whether he was in South Carolina
15 at that time or not. He may have been, yes.

16 Q. Okay. But you didn't move to Georgia to be close
17 to your buddy, Rick; is that correct?

18 A. No, no, no, no.

19 Q. It just happened, correct?

20 A. My career took me to Atlanta and Rick was living,
21 actually living in Greenville, Simpsonville.

22 Q. Okay. All right. Were you, were you an active
23 participant in Mr. Bartee's candidacy for sheriff?

24 A. No, I was not.

25 Q. Okay. Did you play any role at all in his campaign

1 for sheriff?

2 A. No, I did not.

3 Q. All right. Did you communicate and were you with
4 him for any periods of time during his campaign?

5 A. The only time I spent with Rick was either helping
6 him work on his boat or just as a friend to stop and say
7 hello and eat a burger.

8 Q. Got you. Okay. So you spent time with him while
9 he was running but it was because you were friends, not
10 because you were a campaign worker?

11 A. It had nothing to do with the campaign.

12 Q. Okay. All right. Now I want to take you to this
13 particular day. And I don't know the date. But did you
14 come to South Carolina to work on somebody's house?

15 A. On this Memorial Day weekend on Sunday I came to a
16 gentleman's house here in South Carolina that's a friend
17 of ours, also, I was helping him remodel his kitchen and
18 do some repairs and things. So I went and visited with
19 him, yes.

20 Q. Okay. All right. So that happened to be the 27th,
21 right?

22 A. That's correct, Sunday.

23 Q. All right. Now, how long were you at this other
24 person's house that has nothing to do with this case?

25 A. Two or three hours.

1 Q. All right. And then after you finished doing
2 whatever it was there, is that when you met up with
3 Rick?

4 A. Yeah. I called Rick. He had had problems with his
5 boat and he asked me if I could come over and help him
6 change a propeller, do some, a repair on it.

7 Q. Okay. So you went to change the prop, right?

8 A. Yes.

9 Q. Okay. All right. How long did that take?

10 A. Probably about two hours.

11 Q. Okay. And after that what did you do?

12 A. After that he said, let's go grab something to eat,
13 I'm going to the Tiki Hut to meet some people over there
14 for dinner, and why don't you come over and I'll buy you
15 dinner for your effort, and I'd kind of like for you to
16 be around, so...

17 Q. Okay. All right. And what was going on at the
18 Tiki Hut?

19 A. I'm assuming it was just a typical weekend night,
20 but I know that he was there doing things for his
21 campaign, or to, you know, go around shaking hands and
22 doing whatever. But I was there to, just to see Rick
23 and say hello, and he was there, you know, probably as a
24 friend of me as well as running for sheriff.

25 Q. Okay. Have you ever heard the term "work the

1 room"?

2 A. Yeah.

3 Q. Was Rick working the room?

4 A. Absolutely.

5 Q. Okay. Did he have any campaign materials with him
6 or anything?

7 A. Yes.

8 Q. Okay. And was he handing them out?

9 A. Yes.

10 Q. Okay. Now, how long were you at the Tiki Hut?

11 A. A couple hours; two, three hours about.

12 Q. Okay. And during that two-or-three-hour period of
13 time, how often or how much of that two-or-three-hour
14 period of time was Rick sitting at the table with you?

15 A. Maybe 15, 20 percent max.

16 Q. Okay. So he was working the room for two hours if
17 you were there three hours, right?

18 A. That's correct.

19 Q. Okay. All right. Did Rick receive any phone
20 calls -- I'm not asking you if you know who they came
21 from -- but while he was there did he receive any phone
22 calls?

23 A. He received multiple phone calls.

24 Q. Okay. Did he answer those phone calls?

25 A. He answered most of the phone calls. As far as I

1 know, yes, he did. I mean, it was hard to hear if he
2 answered every one because I couldn't hear the phone
3 ring, but yes, he was answering phone calls.

4 Q. Okay. All right. That day at the Tiki Hut, did
5 you know who Nick Blackwell was?

6 A. No, I did not.

7 Q. Okay. Had you ever even heard the name?

8 A. I had heard the name mainly reading it through a
9 newspaper article that he had been in a confrontation
10 with one of the other candidates.

11 MS. SIMMONS: Objection.

12 THE COURT: Sustained.

13 By Mr. Brannon:

14 Q. So you knew of the name, correct?

15 A. I had heard of the name, yeah.

16 Q. Okay. Did you hear of the name from Rick Bartee?

17 A. I can't remember. I saw it in a newspaper article.

18 Q. Okay. All right. After you left, or when -- upon
19 leaving the Tiki Hut, was that in the nighttime or dark
20 hours of the evening?

21 A. Yes, it was, it was the nighttime.

22 Q. That would have been Sunday evening, May 27, 2012,
23 correct?

24 A. That's correct.

25 Q. All right. When you left the Tiki Hut, where did

1 you go?

2 A. We went to Rick's house.

3 Q. Okay. And I want to know how long you stayed at
4 Rick's house after you left the Tiki Hut.

5 A. Probably two, two and a half hours.

6 Q. Okay. All right. Now, were you ever in attendance
7 at any other function where Rick may have been
8 campaigning?

9 A. There was one other car rally or some sort of
10 dinner on the Wednesdays or something after -- yeah,
11 sometime after the incident or whatever. But, yeah, I
12 went there one night for dinner with Rick.

13 Q. Okay. All right. Now, were you the only person
14 with Rick at that second function, the car rally or
15 whatever?

16 A. No. He was there, he was there working the room or
17 doing the same thing again.

18 Q. Okay. But I'm talking about being with Rick. When
19 you are working the room, you're not with the people in
20 the room. Was there anybody else with Rick there?

21 A. No.

22 Q. Okay. But you were, correct?

23 A. Yes, yes.

24 Q. All right. Now, how did that come to be? Did Rick
25 ask you to go with him?

1 A. I might have been up in the area and Rick said,
2 Hey, come on and have dinner again. And I was concerned
3 about Rick because you could tell that he was being
4 drained, I mean, he was tired, he was worn out, he was
5 hurting. I mean, I know Rick.

6 Q. Okay. So you could just tell?

7 A. Yeah.

8 Q. Okay. Got you. All right. Now, before you left
9 the Tiki Hut, did Mr. Bartee ask you to do anything?

10 A. He asked me to make a phone call.

11 Q. Okay. When you made the phone call, did you know
12 who you were calling?

13 A. No, I did not.

14 Q. All right. And what were you asked to tell that
15 person?

16 A. Just to tell them that we were on our way home and
17 we would see them there in a few minutes.

18 Q. Okay. And is that what you did?

19 A. That's exactly what I did.

20 Q. Okay. Now, that phone call that you made wasn't
21 recorded, was it?

22 A. No, it wasn't.

23 Q. You have phone records that belong to you, correct?

24 A. Yes.

25 Q. Okay. And how many times did you call Nick

1 Blackwell total?

2 A. I want to say out of 14 phone calls, as a guess,
3 six, eight.

4 Q. That you called him?

5 A. Yes.

6 Q. And there were -- but there were 14 total, correct?

7 A. Yes.

8 Q. So, if you called him six or eight times, he called
9 you eight or six times?

10 A. Nick would initiate the phone call and say, "Hey, I
11 need to talk to Rick." I would turn around, call Rick,
12 then call Nick back, so that would be my phone call back
13 to Nick.

14 Um, for some reason Nick decided to use me as a
15 sounding board or something but every time he called
16 Rick, for whatever reason, he started calling me.

17 Q. All right.

18 A. I don't know why.

19 Q. Okay. All right. Now, I'm just gonna say this
20 straight up. Was there ever a plot to kidnap anybody
21 that involved Rick Bartee?

22 A. No, there was not.

23 Q. Did you ever tell anybody there was?

24 A. No.

25 Q. Okay. Now, of those 14 phone calls, law

1 enforcement only recorded two, correct?

2 A. That's correct.

3 Q. And on one of those phone calls you say to -- one
4 of the two recorded phone calls -- you say to
5 Mr. Blackwell, "Think of your wife, think of your kids,
6 think of your family." Right?

7 A. That's correct.

8 Q. Why did you say that?

9 A. Because Nick had been a strained individual. He
10 was complaining about law enforcement, saying law
11 enforcement was corrupt, they were after him, he had
12 received death threats from law enforcement officers,
13 his family was in trouble and ---

14 MS. SIMMONS: Objection. Hearsay as to what
15 Mr. Blackwell told Mr. Milbert.

16 THE COURT: Sustained.

17 MR. BRANNON: Then, Your Honor, I'm gonna ask the
18 Court -- I'm gonna play the phone calls and I don't know
19 how to do that.

20 THE COURT: All right. Would you mind assisting
21 him?

22 MS. SIMMONS: Sure.

23 THE COURT: Okay.

24 (Discussion off the record.)

25 MR. BRANNON: Your Honor, may we ask the jury to

1 step out while we boot this up?

2 THE COURT: Yeah. Go ahead.

3 Mr. Foreman, would you take your jury for two
4 seconds.

5 (Whereupon, the jury left the courtroom at
6 approximately 1:32 p.m.)

7 (Whereupon, The jury entered the courtroom at
8 approximately 1:35 p.m.)

9 (Whereupon, Mr. Brannon played State's Exhibit 1
10 for the jury.)

11 (Whereupon, Mr. Brannon stopped playing State's
12 Exhibit 1.)

13 (Another portion of State's Exhibit 1 was played
14 for jury.)

15 (Whereupon, Mr. Brannon stopped playing State's
16 Exhibit 1.)

17 By Mr. Brannon:

18 Q. I'd asked you a question earlier that was objected
19 to. Did Mr. Blackwell talk to you about threats ---

20 A. Yes ---

21 Q. Against his person?

22 A. -- Yes. He said that law enforcement had been
23 threatening him. They had threatened to kill him and
24 threatened to harm his family and that they'd been
25 chasing and following him.

1 Q. Okay. And did he have some evidence in the form of
2 CDs or something?

3 A. He had a recording that he actually had mentioned
4 on Sunday night when he came over. And Rick and I
5 encouraged him, told him first thing Monday morning go
6 down to the music store, get that thing copied, get five
7 copies, make sure everybody has them because this is
8 wrong. You shouldn't be being threatened by law
9 enforcement.

10 Q. All right. Now I'm gonna ask you again. Was there
11 ever a plot to kidnap anybody?

12 A. The only person that spoke about kidnapping was
13 Nick Blackwell. Everybody else just had to respond.
14 Nick's a nut. I don't know how else to say it, but
15 Nick's a nut.

16 Q. Okay. All right. Now, I asked you earlier, you
17 told him to think about his family or protect his
18 family. Why did you do that?

19 A. Well, he said his family was being threatened and
20 he needed to get out of town. And actually the earlier
21 phone calls that we have no recording to prove or
22 whatever, on Monday he was calling all day asking to
23 borrow money from Rick so he could get his family out of
24 town. He said he'd been followed, he said some guy
25 named Stevens had been after them.

1 I mean, there was a whole lot, he just kept being
2 scared. And he kept saying, my family is being
3 threatened, I've got to get them out of town, the banks
4 are closed, it's Memorial Day, you know, I've got to
5 move my family and I don't know where else to go, so I
6 needed to talk to Rick, and he kept persistently calling
7 me to get a hold of Rick to borrow money.

8 Q. So you heard him ask to borrow money?

9 A. Yeah. He asked me to call Rick so he could borrow
10 some money. When I called Rick, Rick said, What in the
11 hell does he want money for? I said, he's worried about
12 his family. I mean, you heard him the other night.
13 He's scared to death. He was like he's getting all
14 these death threats and everything.

15 Q. Were you ever present when Mr. Bartee gave money,
16 handed money to Mr. Blackwell?

17 A. No, no.

18 Q. You never saw it?

19 A. I never saw it.

20 Q. Okay. That -- okay, fine. Now, you have a
21 statement in this case, don't you?

22 A. Yes.

23 MR. BRANNON: Okay. Approach the witness, Your
24 Honor?

25 THE COURT: Yes, sir.

1 By Mr. Brannon:

2 Q. What's the date on this statement?

3 A. 5-30-2012.

4 Q. Okay. All right. Now, where were you when this
5 statement was written?

6 A. I was in the back conference room at the Anderson
7 County Courthouse.

8 Q. Okay. Now, what happened on May 30 before you
9 wrote that statement, before -- why were you in the
10 Anderson County Courthouse?

11 A. Rick was going before the hearing, the hearing was
12 going, and I was the one sitting there in the pulpit, I
13 guess, or out with the people just as moral support, as
14 a friend.

15 Q. So you were in the courtroom for the hearing
16 wherein the judge was gonna make a decision presumably
17 about if Mr. Bartee could be on the ballot or not,
18 right?

19 A. Yes, yeah.

20 Q. Now, isn't it true that Mr. Bartee was arrested
21 there in the courthouse?

22 A. Yes, he was.

23 Q. All right. And how long was it before Mr. Bartee
24 was arrested was it before you were contacted by law
25 enforcement?

1 A. Probably five or ten minutes after.. They recessed
2 the court and the next thing two agents came and asked
3 me to go to the back room with them.

4 Q. Okay. So you are in the courtroom. What were you
5 thinking -- before the agents came to you, what were you
6 thinking?

7 A. I just assumed the court recessed, that maybe
8 things were going, because it looked like Rick was
9 winning the case in my opinion and I thought maybe we
10 were gonna go back and have a recess and try to work
11 things out. I didn't know. The people that were
12 sitting around us had no idea what was going on behind
13 the closed doors.

14 Q. All right. And when the SLED -- when the
15 officers -- who was it?

16 A. There was two officers. It was not Sloan. It was
17 two other officers --

18 Q. Okay.

19 A. -- and I can't tell you their names.

20 Q. No problem. When they approached you, did you know
21 where Rick was?

22 A. No, I did not.

23 Q. Did you know at that point he had been arrested?

24 A. No, I did not.

25 Q. Okay. All right. So did they, did they ask you to

1 come with them?

2 A. They asked me to come with them, they needed to
3 talk to me.

4 Q. Okay. And when, where did they take you then?

5 A. They took me into the back conference room behind
6 the courtroom.

7 Q. Okay. All right. And when you got into that room,
8 who else was in there?

9 A. Nobody. Just the two officers at that time.

10 Q. Okay. And how long was it before someone else came
11 into the room?

12 A. Detective Sloan came in probably 20 minutes later
13 or 30 minutes later.

14 Q. Okay. And did those two officers stay with you the
15 whole time?

16 A. Yes, they did.

17 Q. Did they have guns?

18 A. Yes.

19 Q. Did they have badges?

20 A. Yes.

21 Q. Did they have handcuffs?

22 A. Yes.

23 Q. When was the first time you were Mirandized?

24 A. I never was.

25 MS. SIMMONS: Objection, Your Honor, relevancy. He

1 was not under arrest.

2 THE COURT: Overruled.

3 MR. BRANNON: Thank you.

4 THE COURT: You don't need -- neither of the
5 attorneys need to thank me about my rulings. That's the
6 process we go through in every case. Thank you.

7 MR. BRANNON: Yes, sir.

8 By Mr. Brannon:

9 Q. Before Agent Sloan came into the room did you think
10 you could get up and walk away?

11 A. No.

12 Q. Once Sloan came in the room, did you think you
13 could get up and walk away?

14 A. No, he made it clear I could not.

15 Q. Well, then my next question is, were you ever told
16 that you were free to leave?

17 A. No, I was not.

18 Q. In fact, what were you told?

19 A. I was told that if I didn't cooperate, I would be
20 placed under arrest.

21 Q. Did you feel like you were in custody?

22 A. I was scared. I was scared to death. My whole
23 livelihood was now flowing in front of my eyes at that
24 point in time.

25 Q. All right. Well, I'm gonna, I'm gonna say it

1 again. Were you told you couldn't leave?

2 A. I was under the impression that I could not leave.
3 I did not physically get up and try to walk out because
4 I was told to sit there and I was told that I needed to
5 talk to them and I needed to cooperate.

6 Q. Okay. So, if you didn't feel like you could leave,
7 did you feel like you were in custody?

8 A. Yes.

9 Q. All right. Who wrote this statement?

10 A. Detective Sloan.

11 Q. Okay. Did he write down every single thing that
12 you said?

13 A. No, he did not.

14 Q. Now, you are an educated man. Why didn't you write
15 the statement?

16 A. Probably because it would have been about four
17 times longer than what it was. I wasn't asked to. He
18 offered to do it. At that point my mind was fried, I
19 was hurting inside, emotionally, because I'd seen my, I
20 found out my best friend had been arrested, plus told he
21 would serve ten years in jail.

22 MS. SIMMONS: Objection.

23 THE COURT: I sustain that objection. I'm striking
24 that from the record. Any sentence -- I'm not saying
25 that he's correct or incorrect -- any sentence that may

1 be imposed in the event that would be is purely up to
2 this court and you are to disregard any testimony in
3 that regard, and I'm instructing the witness not to go
4 there again.

5 MR. BRANNON: Thank you.

6 By Mr. Brannon:

7 Q. All right. Well, one thing, I mean, he did write
8 down that you said Mr. Bartee was not involved in any
9 plot to kidnap anybody, right?

10 A. Yes.

11 Q. He did write that down, right?

12 A. Yes.

13 Q. You told him that, right?

14 A. Yes. And I tried to explain to them everything
15 else about the law enforcement, about Nick wanting to
16 borrow money, calling one day, and then calling back the
17 next day and wanting to give the money back.

18 MS. SIMMONS: Objection, hearsay.

19 THE COURT: Sustained.

20 By Mr. Brannon:

21 Q. Okay. You told him a lot of things that did not
22 get written down, correct?

23 A. That's correct.

24 Q. Did you ever hear something from Sloan saying "I
25 got what I need"?

1 MS. SIMMONS: Objection, hearsay.

2 THE COURT: Overruled.

3 Go ahead.

4 By Mr. Brannon:

5 Q. Did you ever hear him say that?

6 A. He told me this was all right for now.

7 Q. This is all right for now. Okay. Did he let you
8 read it?

9 A. Yes, he did.

10 Q. Okay. After you read it, did you say, "This isn't
11 everything I said"?

12 A. Yes, I did.

13 Q. And is that probably when you heard "this is enough
14 for now"?

15 A. Yes.

16 Q. Okay. What would have happened -- what were you
17 told would have happened had you not cooperated?

18 A. I was told I wouldn't go home that night.

19 MS. SIMMONS: Objection.

20 THE COURT: I sustain that on speculative grounds,
21 as speculation.

22 Go ahead. You said what was he told?

23 MR. BRANNON: Yes.

24 THE COURT: Okay. Never mind. I'll let you go
25 where you were going.

1 **MR. BRANNON:** Okay.

2 By Mr. Brannon:

3 Q. What were you told would happen if you did not
4 cooperate?

5 A. I was told I wouldn't go home that night.

6 Q. Okay. All right. Now, did you tell Sloan more
7 than is written down?

8 A. Yes.

9 Q. Okay. Did you tell Sloan that Rick Bartee had
10 nothing to do with any plot to kidnap a judge?

11 A. Yes. I said the only person that talked about
12 kidnapping a judge was Nick Blackwell.

13 Q. Okay. Now let me ask you this. Did you have
14 anything to do with a plot to kidnap a judge?

15 A. No, I did not.

16 Q. All right. Did you ever hear Nick talk about other
17 candidates?

18 **MS. SIMMONS:** Objection, hearsay.

19 **THE COURT:** Sustained.

20 **MR. BRANNON:** Thank you.

21 By Mr. Brannon:

22 Q. I'm gonna change the subject completely here. What
23 do you know about Rick, Rick Bartee's training?

24 A. Secret Service training?

25 Q. Uh-huh.

1 A. He had exemplary training. I mean, he was
2 nominated for law enforcement officer of the year by
3 judge ---

4 MS. SIMMONS: Judge, I would object to this unless
5 he has independent knowledge ---

6 THE COURT: Ma'am?

7 MS. SIMMONS: I said, judge, I would object to this
8 unless he has independent knowledge of this.

9 THE COURT: Lay a foundation for his knowledge,
10 please, sir.

11 MR. BRANNON: Okay. May I just rephrase the
12 question?

13 THE COURT: Yes, sir.

14 By Mr. Brannon:

15 Q. Personally, what do you know about Rick's training?

16 A. I would say that Rick took me through the White
17 House under two different Presidents of the United
18 States. He -- I met him while protecting President Bush
19 in Miami. He -- under Jimmy Carter he took me on
20 through the White House, he got me into portions of the
21 White House I'd never even gotten in -- that you don't
22 normally get into through a tour.

23 He got me a job with President Ford's daughter
24 Susan Ford's husband, Chuck Vance, with a company called
25 MVAM (phonetic) Security. There were three retired

1 Secret Service agents who started their own
2 antiterrorism company. I worked for them for two and a
3 half years.

4 Q. Okay. All right. What do you personally know
5 about Rick Bartee's technical skills as far as detecting
6 bugs?

7 A. Rick lived with me part of the time he was in TSD
8 Section as a security specialist --

9 Q. And what is TSD?

10 A. Technical Security Division of the United States
11 Secret Service. Rick had gone through trainings in lock
12 section which he and I actually, he taught me everything
13 I know about locks, locksmithing, putting locks together
14 locks, medical lock systems, and high security locks.
15 He taught me about alarms. He got me hooked up with
16 another security specialist, Doug Wharram (phonetic) who
17 was also with the United States Secret Service, who
18 taught me how to put in alarm systems and video
19 surveillance equipment.

20 Rick, by the time he was about 22 years old, was
21 probably one of the highest trained Secret Service
22 technicians I know.

23 Q. Okay. All right. Now, so you talked a little bit
24 about his experience in getting you in the White House
25 and you talked about his technical training and stuff

1 like that and that TSD stuff. Now, how smart is Rick?

2 A. Rick is very smart.

3 Q. Okay. All right. Now let's flip the coin here.

4 What do you know about Nick Blackwell?

5 A. I know that he was involved in a shooting where a
6 man died ---

7 MS. SIMMONS: Objection.

8 THE WITNESS: I know that he in the paper said ---

9 THE COURT: One moment, sir. When there is an
10 objection, you will stop your testimony immediately.

11 What is your objection?

12 MS. SIMMONS: Your Honor, hearsay to anything he
13 read in the paper.

14 THE COURT: Establish the foundation of his
15 knowledge, please, sir.

16 MR. BRANNON: Okay. Again, I'll rephrase.

17 THE COURT: Yes, sir.

18 By Mr. Brannon:

19 Q. I want to ask you what you know about Rick -- Nick
20 Blackwell based on the time you spent with him and maybe
21 your conversations with him.

22 A. In the conversation with him he admitted he was
23 involved in a shooting where he shot an individual. He
24 was concerned about how that case was being handled. He
25 admitted that he had been in an altercation with Donnie

1 Fricks on the streets somewhere in Walhalla or whatever
2 or in Westminster.

3 Q. Okay. I'm gonna stop you. That's not where I'm
4 going. I want to know about, what's he look like?
5 What's he do for a living? I want to know that stuff.

6 A. I don't know that much -- I mean, he's a tall,
7 skinny guy that I'm assuming cuts down trees. Other
8 than that, I don't know anything about him.

9 Q. Okay. You got a, you got a set of scales and you
10 put intelligence, experience, and, and worldly knowledge
11 on the scale. Where is Rick compared to Blackwell?

12 A. Rick's ten times ---

13 MS. SIMMONS: Objection.

14 THE COURT: Sustained.

15 By Mr. Brannon:

16 Q. Are they in the same socioeconomic class?

17 A. No.

18 Q. Are they in the same intelligence class, I mean by
19 brain power?

20 A. No.

21 Q. Are they in the same class as far as technical
22 training goes?

23 A. No.

24 Q. Okay. If I ask you to describe what you know of
25 Nick Blackwell in one word, what is it?

1 A. "Simple."

2 Q. Do the same thing for Rick Bartee.

3 A. One word is hard. "Honorable."

4 Q. Honorable. Okay. All right. Now, you are not
5 disputing that that's your voice on those recorded phone
6 calls, correct?

7 A. No.

8 Q. How many times on those two independent phone,
9 individual phone calls did you tell Nick Blackwell to go
10 vote?

11 A. Multiple times on just those two and at the prior
12 conversations before that, that's what the conversations
13 were about, him getting people out to vote. We figured
14 the more people we got out to vote, it was harder to
15 kick the, kick Rick off the ballot because you are
16 disenfranchising voters. I mean, you know, this was an
17 election. People were supposed to get a chance to pick
18 the sheriff. He was trying to help the community.

19 Q. Okay. How many times did you tell him you don't
20 need to do anything in relation to the judge?

21 A. I think two or three times on that recording. I
22 mean, he, he brought it up. He was obsessed with, on
23 that phone call. After that phone call I warned Rick.
24 I said, "Rick, this guy's nuts," you know?

25 Q. Okay. All right. And you told him to think about

1 his family, right?

2 A. Yeah. Think about his family. Because the bottom
3 line is Rick would win the case. Rick is gonna do
4 what's right. We, Rick and I have sat down on the
5 phone. I was sitting in Atlanta looking at my computer.
6 We, you know, we figured the law was on our side. You
7 know, let's let the law prevail. Let's let the people
8 have a fair election.

9 Q. Okay. Did you take Blackwell serious about
10 kidnapping a judge?

11 A. I didn't take him serious because he seemed like
12 one of those guys who would spout off things or say
13 things. But when, that night when he just seemed
14 obsessed with this, it's, "What's the deal with this
15 guy?" Because there were some -- in the prior phone
16 calls the judge was never brought up, never discussed,
17 never an issue. It was one on Monday, "Hey, I need to
18 get a hold of Rick, I need to borrow the money" ---

19 MS. SIMMONS: Objection, hearsay.

20 THE COURT: Sustained.

21 By Mr. Brannon:

22 Q. All right. My question was, did you take him
23 serious?

24 A. No.

25 Q. Okay. All right. Did Mr. Bartee ever tell you or

1 show you or say anything to you about how to calm Nick
2 Blackwell down?

3 A. Yes, he did. He said that he was very loyal to his
4 family and he cared about his wife and cared about his
5 kids, and he, he basically described him as a person who
6 was burned out and had been abused. Rick was describing
7 law enforcement had basically burned him as an informant
8 or whatever because he had been used on prior things.
9 And he was just burned out and he just wanted to get
10 even.

11 And he says, when he does it, if he gets nuts, just
12 talk to him about his family and kind of let him know
13 that, Hey, you know, we've got bigger things here, this
14 is gonna be fine, for us to take care of things, and
15 things will get cleaned up and be a better house around
16 here. And so, you know, let's think about the future,
17 not right now.

18 Q. Okay. All right. And so my client actually talked
19 to you about using his family as a method to calm him
20 down?

21 A. Yeah.

22 Q. Okay. I want to talk to you about those other 12
23 phone calls, not the ones they recorded but the ones
24 they didn't record. Did you ever hear Nick Blackwell go
25 on a rant about anything?

1 A. No.

2 Q. You never heard Blackwell talk about Donnie Fricks?

3 A. Yeah. He basically -- he didn't talk ---

4 MS. SIMMONS: Objection.

5 THE COURT: Sustained.

6 MR. BRANNON: I'll move on.

7 THE COURT: Just for the record, conversations with
8 Blackwell with this gentleman is hearsay, okay, unless
9 it fits into a hearsay exception.

10 MR. BRANNON: I understand.

11 By Mr. Brannon:

12 Q. My question is not what he said. My question is,
13 did you ever hear him go on, rant, or talk about anyone
14 else?

15 A. Yes.

16 Q. Okay. All right. And was that during one of those
17 12 phone calls?

18 A. Yes.

19 Q. Did you ever try the "think of your family" thing
20 while he was on one of those discussions?

21 A. I kind of made it a habit. The number one thing
22 is, Hey, Nick, think about your family; number two, make
23 sure you get by a music store, get that recording
24 copied, let's find out what's going on here. You know,
25 'cause none of us had heard the recording and everything

1 else and we felt that that was important that he be
2 protected because that's what he felt he was threatened
3 for.

4 And, number three, you know, yeah, take care of
5 your family. You know, everything is gonna be okay
6 here, guy. You know?

7 Q. All right. At one point, though, on one of those
8 two phone calls, and I don't remember if it was the
9 first one or the second one, you said something about
10 address that other matter. What is that other matter?
11 Do you know?

12 A. I, I honestly don't know. I, I'm trying to think
13 of how I meant that and I really don't know. I don't
14 know.

15 Q. All right. Now I'm changing subjects here
16 completely. Have you ever been in Rick Bartee's garage?

17 A. Yes.

18 Q. Is his garage kind of like you would to expect it
19 to be as a Secret Service Agent?

20 A. I don't know how I would expect it to be as a
21 Secret Service Agent, but I mean it's obviously -- it --
22 (laughs).

23 Q. Well, does everything have a place?

24 A. It tries.

25 Q. Okay.

1 A. It starts out with a place, yes.

2 Q. Is it a well-stocked garage?

3 A. Yes, it is.

4 Q. When you were in the garage, did you see a roll or
5 rolls of duct tape?

6 A. Probably even several.

7 Q. Okay. When you were in his garage -- let me back
8 up. Rick's got a classic car of some kind, doesn't he?

9 A. Yes, he does.

10 Q. Okay. And does he work on that car?

11 A. Yeah, occasionally.

12 Q. Okay. Have you ever seen a zip tie in his garage?

13 A. Rick has a little bit of everything. If I needed
14 to go to a hardware store, I could probably stop by
15 Rick's house first and then go to the hardware store
16 second.

17 Q. Okay. So, if what you needed to kidnap a judge was
18 duct tape and a zip tie, would you give somebody money
19 to go buy something you got?

20 A. No.

21 Q. And it's your testimony that Rick's got zip ties?

22 A. Yes.

23 Q. Okay. All right.

24 MR. BRANNON: I don't have anything further, Your
25 Honor, thank you.

1 THE COURT: Redirect.

2 Redirect Examination by Ms. Simmons:

3 Q. Mr. Milbert, didn't you testify on direct that you
4 were not involved in the campaign of James Bartee?

5 A. No, I was not involved with the campaign.

6 Q. Yet you were attending campaign functions, you went
7 over to his house, you hung out with him, you
8 strategized with him legally, but you don't call that
9 being involved in the campaign?

10 A. No. I was a friend. I've known him since I was
11 six years old. And I was doing what a friend would do.

12 Q. You weren't involved with the campaign, and you're
13 giving Nick Blackwell a lecture, getting people to vote,
14 got to get people out and vote, because Rick has got to
15 win the election. You don't call that being involved?

16 A. Nick Blackwell was calling me up for whatever
17 reasons and I responded. Okay? I was not -- I don't --
18 I live in Georgia. I'm not in the campaign. I'm a
19 friend.

20 Q. And do you recall giving a written statement in
21 this case?

22 A. I recall signing a written statement.

23 Q. And in that written statement did you not include
24 (reading): One time I heard about a broken leg and a
25 kidnapping, but I don't remember who said it. (End of

1 reading)

2 A. That is written in the statement. Detective Sloan
3 wrote the statement. I honestly do not recall what that
4 comment is about.

5 Q. And on the night you went to the Tiki Hut and you
6 called this person to come over on the way back -- do
7 you remember that?

8 A. Yes.

9 Q. And you say (reading): Around 10 or 10:30 I was
10 waiting on Nick. Nick and a girl came over. She said
11 she was an LPN. At that point I didn't hear them
12 discuss judge Williams. They were talking about the
13 election. I stayed inside talking with the girl and
14 Rick and Nick went outside. (End of reading)

15 A. Yes.

16 Q. So you have no idea if, while outside, your friend
17 solicited Nick Blackwell to commit kidnapping. You do
18 not know the content of that conversation?

19 A. No.

20 Q. And you said there's duct tape and zip ties in
21 James Bartee's garage?

22 A. Yes.

23 Q. Wouldn't a smart person not use their own duct tape
24 or zip ties to commit a kidnapping because you run the
25 risk of DNA and fingerprint evidence on your own items?

1 A. A smart person wouldn't kidnap a judge.

2 Q. But you're soliciting another party to do it
3 because you didn't to want get caught.

4 MR. BRANNON: Objection, argumentative, and I don't
5 think that was a question.

6 THE COURT: Overruled.

7 By Ms. Simmons:

8 Q. You testified, I believe, that at age 22 James
9 Bartee was one of the most qualified people in the
10 Secret Service. I don't want to put words in your
11 mouth, but...

12 A. One of the most qualified technical people in the
13 Secret Service.

14 Q. But at age 22 he was a supply clerk, he was not a
15 special agent.

16 A. No, ma'am. He was a security specialist.

17 Q. And he was also a locksmith in his twenties.

18 A. The locksmith, he was a security specialist. That
19 carries a -- you would have to learn a little bit more
20 about the Secret Service for me to explain it to you,
21 but it basically carries a similar position as an agent.
22 He does not carry a gun but it's a whole different
23 program. You might want to get a little bit -- you
24 know, I can't give you all the ins and outs of the
25 Secret Service, but I can tell you that at 22 years old

1 he could get me in the White House.

2 Q. I'm looking at his Secret Service record. And in
3 1976 it says he was a supply clerk.

4 A. In 1976 he was 18, 19 years old.

5 Q. In 1978, in 1979 and in 1980 he was a locksmith.

6 A. I can't tell you what year he became a security
7 specialist in TSD, but I can tell you that he became a
8 security specialist in TSD before he became an agent;
9 and he became that while he was working his way through
10 college, he was working a full-time position with the
11 Secret Service as a TSD, a security specialist. He was
12 going to American University, he had gone to Northern
13 Virginia Community College prior to that. Rick was
14 busting his ass to get ahead and do good in this world.

15 Q. But he didn't become special agent until 1983.

16 A. That's when he became a Special Agent, but a
17 Special Agent is different from a security specialist.
18 A security specialist is a person who goes out and does
19 the field work and checks all the locks and checks all
20 the alarms and checks all of the video equipment because
21 agents cannot function without a security specialist in
22 the field. Again, you know, this is how the Secret
23 Service works.

24 Q. And are you a member of the Secret Service?

25 A. I am not a member of the Secret Service. I was

1 with Rick when he was going through it, I knew Russ
2 Barber (phonetic), who was Rick's boss in the lock
3 section. I knew Rudy. I know a bunch of his friends
4 who were in the Secret Service.

5 He intro- -- again, he introduced me to Susan Ford,
6 President Ford's daughter. He got me a job with Chuck
7 Vance, Dario Marquez, Bill Matten (phonetic). You know,
8 these were retired Secret Service Agents. We were
9 doing, you know, private industry-type antiterrorism
10 work back in the seventies, early eighties. So, yeah,
11 he was, he was very well-connected.

12 Q. And, like I said, I don't want to put words in your
13 mouth, but I believe that you testified that he had --
14 on cross that he had an exemplary record with the Secret
15 Service.

16 A. As far as I know Rick had an exemplary record. He
17 was respected by a lot of people in the Secret Service.
18 I went to his retirement party and the people spoke
19 nothing but good things of him.

20 Q. Okay.

21 A. After he left the Secret Service, he still does
22 their background checks. He was still carrying
23 credentials.

24 Q. Do you have any access to his personnel and
25 disciplinary records while he was at Secret Service?

1 A. No, I do not.

2 Q. Would you be surprised to know that he was
3 disciplined ---

4 MR. BRANNON: Objection, hearsay.

5 THE COURT: He was asked the basis of his
6 knowledge. Y'all opened the door.

7 Go ahead.

8 By Ms. Simmons:

9 Q. Would you be surprised to know that he was
10 suspended while he was a Secret Service Agent for three
11 days for using racial slurs at a gas station?

12 A. I would be very surprised hearing it, but again, I
13 wasn't there and I don't know the circumstance.

14 Q. So you don't know his record of exemplary service?

15 A. I don't know anybody's day-to-day activities
16 through their entire life. I wasn't that close to him.
17 By the time Rick was of age and he worked in Houston, he
18 worked in Washington, he worked in Greenville. I mean,
19 he spent seven years doing counterfeit cases. I know
20 Judge Catoe, who was a Federal Court judge here that was
21 in this area who thought highly of Rick. He thought so
22 highly of Rick, he nominated him for Law Enforcement
23 Officer of the Year. You know, that's what I know about
24 Rick.

25 Q. But you only know the good things about Rick

1 Bartee.

2 A. I know most of the good things because most of what
3 he does is good. We all have issues. I mean, we all
4 make mistakes.

5 Q. And how long has he been your friend again?

6 A. He has been my friend for 51 years.

7 Q. And is he still your friend today?

8 A. Yes, he is.

9 Q. And do you want to see anything bad happen to your
10 friend?

11 A. I don't want to see him railroaded, no.

12 Q. And that's what you believe this is?

13 A. That's what exactly -- everybody that has talked to
14 me, including Nick Blackwell, seems to indicate to me
15 that there's a lot of garbage going on. Yes. I live in
16 Georgia. I'm hearing what people tell me.

17 Q. But in your written statement that you gave to law
18 enforcement on May 30th, 2012, when all these events
19 were fresh in your mind, there's not one single mention
20 of a vast conspiracy against James Bartee.

21 A. That's because Detective Sloan wrote the statement
22 and he didn't put it in there. It wouldn't be
23 convenient. Would it be smart for him to put that
24 information in there?

25 Q. But he gave you multiple opportunities to correct

1 your statement. He even had you initial the beginning
2 and the end of every single page for accuracy and you
3 signed every single page as accurate.

4 A. I wanted, I wanted to get out there without being
5 arrested. I was stuck in a back room. Everybody else
6 left the courthouse. I had nowhere else to go. I had
7 no attorney. Nobody knew where I was. I wanted to get
8 out of that room without being arrested.

9 The statement was incomplete, I told him that. He
10 didn't worry about it.

11 Q. And you had this much room left on your statement
12 form to include all of this information about a vast
13 conspiracy and you chose not to do so.

14 A. I wanted out of that room.

15 MS. SIMMONS: Beg the Court's indulgence for one
16 moment.

17 THE COURT: All right.

18 MS. SIMMONS: Nothing further, Your Honor.

19 THE COURT: Redirect.

20 Redirect Examination by Mr. Brannon:

21 Q. Do you know what year Jimmy Carter got elected to
22 serve as President of the United States?

23 A. 1976.

24 Q. 1976. And, while he was President, that man got
25 you into the White House, correct?

1 A. Yeah. We got the candlelight tour, we sure did.

2 Q. Okay. And Jimmy Carter served four years, right?

3 A. Yes, he did.

4 Q. So that means between '76 and '80 you were in the
5 White House, right?

6 A. Yes, he did.

7 Q. Is a locksmith for the Secret Service the same as
8 like a locksmith like for Pop-A-Lock?

9 A. No, it is not.

10 Q. Okay. Do they have special training?

11 A. Yes, they do.

12 Q. All right.

13 A. They have special trainings, they have special key
14 rings, they have special tools.

15 Q. I brought up your statement and I asked you all
16 kinds of questions about your statement and then she
17 kind of jumped on you a little bit about it. How long
18 were you being detained by law enforcement at the
19 Anderson County Courthouse?

20 A. I guess it was somewhere over three and a half
21 hours.

22 Q. Okay. For three and a half hours you didn't feel
23 like you could leave?

24 A. No, I didn't.

25 Q. But you were never Mirandized?

1 A. No.

2 Q. But you were told if you didn't cooperate, you were
3 gonna be arrested?

4 A. Yes.

5 Q. Did you say something about conspiracy or
6 railroading or something like that?

7 A. I mentioned the fact that Nick's part of the
8 conversations going on was Nick feeling like the
9 detective, that law enforcement was chasing him,
10 threatening him, trying to hurt him. Yes, I mentioned
11 all that stuff in there.

12 And all they wanted to do was try to get me to
13 state that -- two things: That when Rick came out of
14 that outside meeting with Nick Blackwell, I gave the
15 thumbs up and said, Are we good? That never happened, I
16 do not recall that.

17 And they even wanted me to mention something else.
18 I even kept asking them, Play the recordings. I was
19 telling the guy to go take care of his family and I was
20 telling the guy to go vote. Give me some recordings. I
21 mean, you show me the context.

22 But, you know, they didn't want to hear anything
23 other than they wanted information saying that Rick was
24 involved in the judge.

25 Q. Do you know Rick's wife?

1 A. Yes, I do; Liz.

2 Q. Do you know his daughters?

3 A. Yes, I do; Taylor and Jamie.

4 Q. Okay.

5 MS. SIMMONS: Objection. Outside the scope of
6 Re-Cross.

7 MR. BRANNON: I'm gonna get there.

8 THE COURT: Okay.

9 By Mr. Brannon:

10 Q. There was a period of time that Sunday night when
11 Nick and Mr. Bartee went outside, right?

12 A. Yes, there was.

13 Q. And you stayed inside and talked to some woman,
14 correct?

15 A. There's -- whoever it was that brought Nick
16 Blackwell over, I stayed there with her.

17 Q. Okay. All right. Do the Blackwells -- excuse me,
18 do the Barteess smoke?

19 A. No, they do not.

20 Q. Do they allow anybody to smoke in their home?

21 A. No, they do not.

22 Q. Does Nick Blackwell smoke?

23 A. I have not seen him smoke. I don't -- I can't
24 answer that.

25 Q. Okay. But you do know that they don't let anybody

1 smoke at their house?

2 A. They don't.

3 MS. SIMMONS: Objection. Beyond the scope of
4 redirect.

5 MR. BRANNON: She brought up going outside and him
6 not being able to hear what was --

7 THE COURT: What does smoking have anything to do
8 with this response to Cross-Examination?

9 MR. BRANNON: It's, it's tying things together,
10 Your Honor.

11 THE COURT: I'll give you a little leeway, but just
12 make it short.

13 MR. BRANNON: Last question.

14 By Mr. Brannon:

15 Q. Do the Bartees allow anybody to smoke in their
16 home?

17 A. I have a friend named Jennifer, she smokes, and she
18 was not allowed to smoke in their house.

19 MR. BRANNON: Thank you. Nothing further.

20 THE COURT: Anything further of this witness?

21 MS. SIMMONS: No, Your Honor.

22 THE COURT: Sir, you may step down, but please do
23 not leave the courthouse, okay, sir?

24 (Whereupon, the witness left the witness stand and
25 courtroom.)

1 Whereupon,

2 Laurieanne Fletcher

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Ms. Simmons:

6 Q. Ms. Fletcher, please state your full name and your
7 last name and spell your last name for the record.

8 A. It's Laurieanne Fletcher, and it's F-l-e-t-c-h-e-r.

9 THE COURT: Can the jury hear this witness?

10 (Several jurors shook head.)

11 THE COURT: Would you sit up closer to the
12 microphone, please ---

13 THE WITNESS: Okay.

14 THE COURT: And speak louder, please, ma'am.

15 THE WITNESS: Okay. It's Laurieanne Fletcher, and
16 that's F-l-e-t-c-h-e-r.

17 By Ms. Simmons:

18 Q. And, Laurie, I know you are soft-spoken so you're
19 pretty much gonna have to yell so we can all hear you.

20 A. Yes, I am.

21 Q. How old are you?

22 A. 27.

23 Q. And what's your profession?

24 A. I'm a nurse.

25 Q. How do you know Nick Blackwell?

1 A. I've known Nick for over ten or 11 years.

2 Q. Are you -- would you consider him a friend?

3 A. Yes.

4 Q. Do you have an ax to grind with anyone involved in
5 this case?

6 A. No, I do not.

7 Q. Around May 27th, 2012, did Nick Blackwell call you?

8 A. Yes.

9 Q. What did he need?

10 A. Just a ride.

11 Q. And why did he not drive himself?

12 A. He did not have a driver's license.

13 Q. On that evening of May 27th, where did you go?

14 A. We went to several different places. We went to
15 Bartee's house, Wal-Mart, Wendy's, a few, just -- I
16 think that was it.

17 Q. How many times did you go to Bartee's house?

18 A. Twice.

19 Q. Why did you go twice?

20 A. The first time that we went he wasn't there so we
21 left and went a couple other places and then came back.

22 Q. How did you know when to come back?

23 A. I believe Nick had spoke with his wife.

24 Q. Did you know the Defendant before that day?

25 A. No.

1 Q. Tell me about the first time you went to the Bartee
2 house and went inside.

3 A. The first time that we went or --

4 Q. That you went inside --

5 A. -- that we went inside?

6 Q. -- and met the Defendant.

7 A. Um, we went in, myself and Nick, and Mr. Bartee was
8 there as well as another man. They were talking about
9 the campaign and going over papers, looking at stuff on
10 the computer. There for a while, after being there for
11 a while, Nick and Mr. Bartee stepped outside. And they
12 were outside for about 30 or 45 minutes.

13 They came back in. We stayed for an additional
14 probably 15 minutes and then we left.

15 Q. Who was in the house inside -- inside the house
16 with you while they were outside?

17 A. Um, another gentleman. I don't remember his name.

18 Q. Do you have any idea of what they discussed while
19 they were outside?

20 A. No, ma'am.

21 Q. What was the discussion when they came back in?

22 A. It was more just discussing the campaign, going
23 over some stuff that was in the newspaper; there was
24 papers laid out on the table, they were discussing that.
25 And then, like as we got up to leave, it was something

1 along the lines of like self-defense, just normal
2 conversation.

3 Q. Once you exited the home, what was Nick's demeanor
4 like?

5 A. Um, very flat. Nick as a person is very energetic
6 and kind of goofy. When we got back in the car it was
7 very, almost shocked, I guess, just very quiet and not
8 as talkative as he usually is.

9 Q. Different from normal?

10 A. Yes.

11 Q. While he was acting this way, did he make any
12 comments to you?

13 A. Yes, ma'am.

14 Q. What did he tell you?

15 A. It was something along the lines of, You'll never
16 believe what he asked me to do. He wants me to kidnap a
17 judge.

18 Q. And what did you initially think of that comment?

19 A. That was something, I don't want to say it was
20 funny because it's not funny, but it took me by
21 surprise.

22 Q. And subsequent to that did you discuss any, any
23 details of that further with Nick?

24 A. No.

25 Q. And did you take Nick home that night?

1 A. Yes, I did.

2 Q. And have you had any further involvement in this
3 case regarding this Defendant or Nicholas Blackwell?

4 A. No, ma'am.

5 MS. SIMMONS: Please answer any questions

6 Mr. Brannon may have.

7 THE COURT: Cross-Examination.

8 MR. BRANNON: May it please the Court.

9 Cross-Examination by Mr. Brannon:

10 Q. Ma'am, do you smoke?

11 A. Yes.

12 Q. Does Nick Blackwell smoke?

13 A. Yes.

14 Q. Okay. While you were at the Bartee house, did you
15 smoke in the house?

16 A. No, sir.

17 Q. Did you see Nick Blackwell smoke in the house?

18 A. No, sir.

19 Q. Isn't it true that Nick said "I need a cigarette"
20 before they went outside?

21 A. I don't recall whether he said that or not.

22 Q. But he does smoke, right?

23 A. Yes.

24 Q. Okay. Have you ever known Nick to do drugs?

25 A. No.

1 MS. SIMMONS: Objection, relevance.

2 THE COURT: Overruled.

3 Go ahead.

4 THE WITNESS: No, I do not.

5 By Mr. Brannon:

6 Q. Do you remember giving a statement to the police?

7 A. Yes.

8 Q. Okay. Now, how many times have you talked with the
9 Solicitor or an investigator for the solicitor's office
10 or a police officer leading up to this trial?

11 A. Um, probably twice.

12 Q. Have they let you read over your statement?

13 A. Yes, sir.

14 Q. Okay.

15 MR. BRANNON: Approach the witness, Your Honor?

16 THE COURT: Yes, sir.

17 By Mr. Brannon:

18 Q. I've highlighted a little bit. Please don't pay
19 any attention to my highlights.

20 A. That's okay.

21 Q. Find in your statement where you say Nick's
22 attitude or, or personality had changed from before to
23 when you left.

24 A. (Reads statement.) It's not in there.

25 Q. So they prepped you good, right?

1 A. I mean ---

2 MS. SIMMONS: Objection.

3 THE COURT: Overruled.

4 Go ahead.

5 THE WITNESS: We spoke one time in the office, yes.

6 By Mr. Brannon:

7 Q. Okay. Did you talk about his attitude or his, his,
8 his affect during that conversation?

9 A. Yes, sir.

10 Q. So you didn't, didn't mention it two or three days
11 after you gave the statement or two or three days after
12 you had that ride to the Bartees, but you mentioned it
13 after that meeting with the solicitor's office, right?

14 A. Uh-huh.

15 Q. Okay. Now, I do want -- you did see the highlight,
16 though, right?

17 A. I didn't read what was --

18 Q. Okay. I'm gonna let you read it and then we'll
19 talk about it (Handing).

20 A. (Witness reads document.) (Handing).

21 Q. Okay. Now, you are aware that according to the
22 statement that Mr. Bartee, Mr. Bartee teaches Aikido,
23 correct?

24 A. He taught some form.

25 Q. Martial arts, right?

1 A. Yes.

2 Q. Okay. Cool. All right. And so it wouldn't
3 necessarily be uncommon for somebody who teaches martial
4 arts to talk about self-defense or martial arts, right?

5 A. Yes, sir.

6 Q. And I think you would even say just general
7 conversation, right?

8 A. Uh-huh.

9 Q. Okay. And then you said (reading): As I was
10 driving, Nick said something to the effect of, this man
11 wants me to kidnap a judge. (End of reading)

12 Do you remember saying that?

13 A. Yes, sir.

14 Q. And it's even in quotations, right?

15 A. Uh-huh.

16 Q. Okay. And then, and then you said, I thought he
17 was joking or making something up.

18 I got to ask you -- first off, you agree that's
19 what you say?

20 A. Yes, sir.

21 Q. Why would you think that Nick was making that up?

22 A. Just because that's not something that you hear of
23 every day.

24 Q. Well, have you known Nick to make stuff up in the
25 past?

1 A. No, sir.

2 Q. Oh, okay. So he's always just a straight shooter?

3 A. He has been with me, yes, sir.

4 Q. Okay. All right. And then you go on (reading):

5 I've seen Nick since then and never thought that it
6 was anything to take seriously. (End of reading)

7 You thought it was a joke and you didn't take it
8 seriously. Right?

9 A. That's what I said.

10 Q. Okay. Was it true?

11 A. It's not that I believe Nick was telling a joke.
12 That was just something that caught me off guard.

13 Q. Okay. Now I want to ask you something. Who did
14 you, who did you give this statement too? In other
15 words, who asked you to write a statement?

16 A. That's been a long time ago. It was two gentlemen
17 that came to my mother's house.

18 Q. Okay. Were they SLED or who were they?

19 A. I don't remember.

20 Q. Okay. Is that in your handwriting?

21 A. No, sir.

22 Q. Who wrote it?

23 A. The gentleman that asked me what had happened.

24 Q. Okay. But it doesn't say it was written by anyone
25 else, does it?

1 A. No, sir. But I believe that's why I initialed
2 beside it to --

3 Q. Got you.

4 A. -- show that that was what I had said.

5 Q. Okay. All right. So somebody else wrote it for
6 you?

7 A. Uh-huh.

8 Q. Did they write exactly what you said?

9 A. That's why I initialed it, yes, sir.

10 Q. Okay. So they did. So you -- there is no question
11 in your mind you said, I thought he was joking or making
12 something up. Correct?

13 A. Yes, sir.

14 Q. And then later you said, I've seen Nick since then
15 and never thought it was anything to take seriously,
16 correct?

17 A. Yes, sir.

18 Q. Okay. And during the period of time that
19 Mr. Blackwell and Mr. Bartee were outside of the Bartee
20 house, you couldn't hear what they were saying?

21 A. No, sir.

22 Q. So you didn't hear Mr. Bartee say anything about
23 anything outside of the house?

24 A. No, sir.

25 Q. Did he say anything that you felt was at all

1 inappropriate while he was in the house?

2 A. No, sir.

3 Q. Okay. Why didn't you contact the police about what
4 Nick told you?

5 A. Like I said, it had been -- I can't remember
6 exactly how many days I was at work and saw it was on
7 the news. I didn't know how to take something like
8 that. I didn't think it would go any further than just
9 somebody saying something while they were upset outside.

10 Q. Why was he upset?

11 A. Just because it was all over that campaign, which I
12 wasn't following closely so I don't really understand
13 why anybody was upset.

14 Q. Okay. So he -- well, was he upset before you got
15 there?

16 A. They were just, I think something about being able
17 to or not being able to run for the sheriff's position.

18 Q. And that upset Nick?

19 A. No.

20 Q. Okay. I'm sorry. I thought you said Nick was
21 upset.

22 A. No.

23 Q. Okay. All right. I misunderstood you. Okay.

24 How did the police know that you knew anything
25 about all this?

1 A. I'm assuming Nick told them. I don't know.

2 Q. So you never called the police?

3 A. No, sir.

4 Q. Not even when you saw that Mr. Bartee was arrested.
5 You didn't pick up the phone and say, Hey, I might know
6 something?

7 A. I mean, aside from hearing that a conversation took
8 place, I didn't know anything.

9 Q. Okay. But, again, you didn't call the police?

10 A. No, sir.

11 Q. They came to you?

12 A. Uh-huh.

13 MR. BRANNON: Thanks. Nothing further.

14 THE COURT: Any Redirect?

15 MS. SIMMONS: A couple, judge.

16 Redirect Examination by Ms. Simmons:

17 Q. When law enforcement asked you for your statement
18 that you initialed, did they ask you Mr. Bartee's, did
19 they ask you what Nick's demeanor was when, when he left
20 the house? Was that question asked?

21 A. We discussed how Nick said it, what, you know, how
22 his -- I don't know what the word I'm looking for here
23 is -- but just his overall I guess persona when we had
24 that conversation.

25 Q. And you have just spoke with the Defense about

1 someone being upset about the campaign.

2 A. Uh-huh.

3 Q. Who was, based on your perceptions, who was the
4 upset party that night?

5 A. Mr. Bartee.

6 Q. And what was he upset about?

7 A. Whether or not he was going to be able to run for
8 the sheriff's position.

9 Q. And did those comments occur before or after the
10 outside conversation?

11 A. Before.

12 MR. BRANNON: Follow up?

13 THE COURT: Yes, sir.

14 Recross-Examination by Mr. Brannon:

15 Q. So you, before you signed or initialed that
16 statement, you talked to the police about Nick's
17 attitudes or his mental affect?

18 A. Yes, sir.

19 Q. And you didn't put anything in your statement?

20 A. No, sir.

21 Q. But you testified about it today?

22 A. Yes, sir.

23 MR. BRANNON: Thank you.

24 THE COURT: May this witness be excused?

25 MS. SIMMONS: Yes, sir.

1 MR. BRANNON: No objection.

2 THE COURT: Okay. Thank you, ma'am, you may be
3 excused.

4 (Whereupon, the witness left the witness stand and
5 the courtroom.)

6 THE COURT: Call your next witness, please.

7 MR. WAGNER: I call Nick Blackwell.

8 THE COURT: All right. This is probably a good
9 time to take a break for the afternoon. While you are
10 in the back, Mr. Foreman, the attorneys, because of
11 administrative matters during the course of the day, are
12 looking at potentially working a little bit longer this
13 evening. Would you poll your jury and see if that would
14 present a problem to any of your jurors? I'm thinking
15 six or so, maybe a little bit longer. If that's a
16 problem, let me know. Thank you very much.

17 (Whereupon, the jury left the courtroom at
18 approximately 2:32 p.m.)

19 THE COURT: We'll recess 15 minutes.

20 (A recess was taken.)

21 THE COURT: Please be seated.

22 MR. BRANNON: Your Honor, I need to take a little
23 bit more of the court's time. Your Honor, I at this
24 point would move for a mistrial.

25 THE COURT: Based on?

1 **MR. BRANNON:** The State's introduction of the
2 three-day suspension of my client for making a racial
3 stir, a racial slur. Your Honor, I know that I objected
4 and, and you said that I opened the door.

5 **THE COURT:** I think you did open the door.

6 **MR. BRANNON:** And, and, certainly not being
7 argumentative --

8 **THE COURT:** That's fine. I want you to say what
9 you were gonna say, but I still think you opened the
10 door.

11 **MR. BRANNON:** I asked Mr. Milbert what he knew of
12 his qualifications, but I never asked him about his
13 employee file or his position. If he'd ever been
14 written up, I didn't ask that.

15 **THE COURT:** Let me say this. I hear you and I'm
16 gonna let you put what you want to on the record. It
17 became patently obvious that this witness was doing his
18 best because of his relationship with the Defendant to
19 defend the Defendant, and I don't blame him for doing
20 that because of their friendship. But that basically
21 puts him in a hostile mode against the State. He was
22 going overboard in his statements building up the
23 Defendant in the eyes of the jury, which is his right to
24 do so as a witness. But, in doing so, I think he
25 expanded, he gave the State the opening to go into that

1 particular question because he was going into all these
2 other particular attributes that the Defendant had.

3 Further -- go ahead. Say what you want to say on
4 the record.

5 MR. BRANNON: Okay. I don't dispute that, that I
6 or the witness potentially opened the door to talk about
7 a disciplinary action. But, Your Honor, when we have
8 African-American members of the jury, she could have
9 just said, Did you know that he'd been suspended? She
10 didn't have to put in the basis for the suspension. And
11 we do have African-American jurors, and I think that it
12 was, it was, it was significantly overly prejudicial
13 compared to any probative value that what the suspension
14 was for. All she had to do was say he was suspended.
15 She didn't have to go into that and potentially taint
16 the jury.

17 THE COURT: All right. And it may be so. I don't
18 find that there is manifest necessity at this stage
19 because of the introduction of that. I do find the
20 witness opened the door and she had a right to inquire
21 into the record. At this juncture I would disagree with
22 your characterization as to the prejudice. I may be
23 wrong. I will, however, if there is a question, give a
24 curative charge about the basis of the -- what was the
25 term -- disciplinary action by employer if you want me

1 to. Unfortunately, it's like a slander-type matter.
2 Sometimes when you call attention to it, it's like
3 rubbing the scab.

4 MR. BRANNON: Yeah, yeah. Your Honor, I don't know
5 if I want you to do that, so let me think about that.

6 THE COURT: Okay. I will, and you don't have to
7 have it done right now. If you want it at any time
8 during the trial, I will.

9 Are you ready?

10 MR. WAGNER: Yes, sir.

11 THE COURT: If you would bring the jury in, please,
12 sir.

13 (The jury entered the courtroom at approximately
14 2:58 p.m.)

15 THE COURT: Would you call your next witness.

16 MR. WAGNER: I call Nick Blackwell.

17 (Whereupon, the witness, Nicholas Blackwell, was
18 sworn by the clerk of court.)

19 Whereupon,

20 Nicholas Blackwell

21 Having first been duly sworn, was examined and testified
22 as follows:

23 Direct Examination by Mr. Wagner:

24 Q. Mr. Blackwell, would you give us your full name and
25 spell your last name for the record.

1 A. Nicholas Santelli (phonetic) Blackwell,

2 B-l-a-c-k-w-e-l-l.

3 Q. And how old are you, Mr. Blackwell?

4 A. 29.

5 Q. And are you married?

6 A. I am.

7 Q. Do you have any kids?

8 A. Three.

9 Q. Where do you live, where are you from?

10 A. From Westminster. I live in Seneca.

11 Q. How long have you lived here in Oconee County?

12 A. All my life basically.

13 Q. What do you do for a living?

14 A. I'm a sole proprietor, cut trees, contract work.

15 Q. Okay. Is a lot of what you do tree work? I mean,

16 do you like climb up on the top of trees every day,

17 cutting trees and haul them with a crane?

18 A. Correct.

19 Q. Okay. Is your phone number 247-2360?

20 A. It is.

21 Q. Back last year -- excuse me, back in 2011 were you

22 involved in a shooting incident that was ruled

23 self-defense?

24 A. I was.

25 Q. In fact, prior to that in 2006 did you have -- do

1 you currently still have a suspended driver's license?

2 A. I do.

3 Q. Did you plead guilty to failure to stop for a blue
4 light back in 2006?

5 A. I did.

6 Q. Back in 2012, the early part of 2012, did you have
7 an interest in the sheriff's race?

8 A. Yes.

9 Q. And why did you have an interest in the Sheriff's
10 race?

11 A. Well, the election was just coming up. I talked to
12 a couple candidates. I liked James Bartee.

13 Q. Okay. And why did you like Bartee?

14 A. Well, I didn't really like too many, the way things
15 were handled at the sheriff's office on some other
16 occasions. He had promised to get rid of a lot of those
17 people, get some new blood in there.

18 Q. You felt that change was needed?

19 A. Absolutely.

20 Q. When and where did you meet Mr. Bartee?

21 A. I don't recall exactly the first time that I may
22 have spoke to him, but our first meeting was at a
23 barbecue shack in Brasstown.

24 Q. Okay. And what, how did you end up there? Did you
25 just happen to run into him, or did you go to a

1 function?

2 A. No. I believe I had spoken to him on the
3 telephone. He invited me up, myself and another guy I
4 work with. I went up there, sat, ate barbecue with him,
5 talked for a little while, and I decided to support
6 James Bartee and left.

7 Q. What was your perception of Mr. Bartee?

8 A. Well, I thought he was a pretty decent guy. He
9 told me about his years in the Secret Service. You
10 know, he told me that he was wanting to be the next
11 sheriff and he was gonna get rid of a lot of the people
12 up at the sheriff's office. Just things like that. I
13 thought he had some good ideas.

14 Q. Did you agree to help him on his campaign?

15 A. Not immediately, but shortly thereafter, yes.

16 Q. And what exactly did you do on his campaign?

17 A. I put out yard signs. A lot of the yard signs. We
18 would deliver yard signs to other people for him. And
19 ask -- you know, go to forums, ask questions he would
20 want to ask.

21 Q. Would he give you questions to ask?

22 A. Yes, he would.

23 Q. Okay. Would you ask those questions?

24 A. Typically they would want you to write the
25 question, put them in a box. So that's what I would do,

1 write the questions, put them into a box, and the
2 mediator of the forum would ask a question.

3 Q. What were some of the questions that you would be
4 asked to ask?

5 A. The most common was probably, What is your highest
6 level of education? That question would be directed to
7 all of the candidates at the forum. He wanted Terry
8 Wilson questioned specifically about missing drug money
9 from the sheriff's office. He wanted Donnie Fricks
10 specifically questioned about illegitimate children,
11 things of that nature.

12 Q. Okay. And did you always -- were you the one that
13 asked these questions or did other people ask the same
14 questions?

15 A. Typically the moderator or whoever was running the
16 forum would ask the questions. You would write the
17 question on a piece of paper, hand them to one of the
18 people working the events, and those people would then
19 pick questions from a box and ask them.

20 Q. Would you go to his house, to Mr. Bartee's house,
21 had you been up there before during the campaign?

22 A. Yes, multiple times.

23 Q. And what would you do when you went to his house?

24 A. Typically we would talk about his campaign or pick
25 up yard signs, whole boxes of them, 500 at a time, and

1 just talk about the campaign, things that were going on,
2 issues he would be dealing with.

3 Q. Do you, do you remember back May the 12th in
4 particular, and did you attend Mayfest on that day?

5 A. Yes, I recall that day, and I did attend Mayfest.

6 Q. Probably many people know what Mayfest is. But
7 please explain what Mayfest was.

8 A. Mayfest is an event that happens on Main Street in
9 Walhalla, they close the roads off, or the stores all
10 close, some of them close, some don't. It's a public
11 event, an event where people would rent spots to have a
12 booth.

13 I had no awareness of the Mayfest. James Bartee
14 told me about Mayfest, told me Donnie Fricks was gonna
15 be there. He wanted me to pass out fliers, which were
16 an arrest record from SLED pertaining to Donnie Fricks,
17 so I attended that event and I did pass out the fliers
18 that he requested.

19 Q. Where did you get the fliers?

20 A. The fliers were paid for by funds by Bartee. I
21 took the copies to Staples in Seneca and had the copies
22 made with the funds given me by James Bartee.

23 Q. Did he call you on May 12th and ask you to go hand
24 them out?

25 A. He did.

1 Q. You say he provided the fliers for you?

2 A. Yes, he provided the fliers. He provided the funds
3 to, to have the copies of the fliers made.

4 Q. Okay. You went and got the copies made?

5 A. I got the copies made, correct.

6 Q. Were you out there on Mayfest handing them out?

7 A. Yes, for about an hour and a half.

8 Q. How far from the Courthouse here were you?

9 A. Not very far. I was somewhere around the location
10 of the Walhalla Police Department and towards Highway 11
11 a couple blocks back and forth.

12 Q. Okay. Did anything happen at Mayfest?

13 A. Yes. I was confronted by Donnie Fricks. We got
14 into an altercation. He took my fliers from me. I
15 called the police. I called Mr. Bartee, told him what
16 had taken place. He told me not to mention anything to
17 anybody. I went to the police. We handled the
18 situation with Donnie Fricks, and once I was excused
19 from that, I called Mr. Bartee again, told him what had
20 taken place. He was pretty upset that Fricks didn't get
21 arrested. And basically later on that day he decided
22 that he wanted to distance himself from me and the
23 public feud.

24 Q. Prior to the 12th had you all talked off and on for
25 at least the month of May?

1 A. More than that, yes.

2 Q. Okay. And would you call him or would he call you?

3 A. Both.

4 Q. Do you remember approximately what time the
5 incident occurred with Donnie Fricks out here at
6 Mayfest?

7 A. It was in the afternoon hours. I'm not certain
8 about the exact time.

9 Q. There were some other events. There was a Fair
10 Play event and a Stamp Creek event. Were those forums?

11 A. Both of those were forums.

12 Q. Did you attend those?

13 A. Both. Yes, I did.

14 Q. As a supporter of Mr. Bartee?

15 A. Correct. At the Fair Play event, Bartee had
16 requested that we place these same fliers with Fricks'
17 arrest records on it, he had requested that we put these
18 on the windshield of the car once the event had taken,
19 had started. Another one of his supporters from inside
20 through communication on the phone made me aware of when
21 Fricks had arrived ---

22 MR. BRANNON: Objection, hearsay.

23 THE WITNESS: --- so that I took ---

24 THE COURT: Do not respond until after an objection
25 is made.

1 THE WITNESS: Yes, sir.

2 THE COURT: I'm gonna sustain it if he's gonna say
3 what somebody else said.

4 Do not let him do that, please, sir.

5 MR. WAGNER: Yes, sir.

6 By Mr. Wagner:

7 Q. Was there another event, this event you are talking
8 about that you had another run-in with a police officer?

9 A. Not with Fricks, with Steven Jenkins.

10 Q. And who was Steve Jenkins?

11 A. I believe he was the Captain of the sheriff's
12 office at the time. He confronted me, told me I
13 couldn't be --

14 Q. Without saying what he said. But as a result of
15 what he said did you leave?

16 A. I did leave, yes.

17 Q. All right. And were you out there putting fliers
18 again at the request of James Bartee?

19 A. Yes, I was.

20 Q. Let me take you back to May the 12th at Mayfest.
21 Prior to that time I believe you said you had already
22 been talking to Mr. Bartee off and on at least through
23 the whole month of May and I guess prior to that? Had
24 you been talking to him longer than a few weeks? Or how
25 long had you been involved with him?

1 A. At least two months.

2 Q. Okay. You say he tried to distance himself. What
3 did he tell you? Did he call you that day or did he
4 call you another day? What happened?

5 A. I don't recall if I called him or if he called me,
6 but either way we were talking and Bartee said he wanted
7 to distance himself in the public's view between me and
8 him because of the incident with Fricks at Mayfest. He
9 was afraid that people would assume that he had put me
10 up to it, which he, in fact, did, and that might not be
11 good for the campaign.

12 Q. Did you make the papers for this Fricks incident?

13 A. I did.

14 Q. Did they mention you by name?

15 A. They did.

16 Q. When's the next time you talked to James Bartee?

17 A. I believe the next time I spoke to him was at a
18 Mayfest event -- or a Seneca Fest event, excuse me,
19 which is about two weeks after the Mayfest event.

20 Q. Would that have been on the 26th, which was a
21 Saturday?

22 A. It was a Saturday. I believe it was the 26th.
23 Bartee had attended this event. I'm not sure as to what
24 all he was doing there. He was propped up against a
25 flagpole across the street from Cotton County Music next

1 to the Depot Station. I stood and talked to Bartee for
2 quite some time, walking around passing out some more of
3 these fliers, these same fliers, and that is basically
4 when Bartee approached me to kidnap this judge Williams.

5 Q. Now, prior -- between the two weeks between May the
6 12th and May the 26th did you talk with Bartee on the
7 phone?

8 A. I don't believe so.

9 Q. But you saw him on the 26th at Seneca Fest?

10 A. Correct.

11 Q. Okay. And what, if anything, did he say?

12 A. It was mostly small talk, talking about the civil
13 suit that James Williams had filed against Bartee's
14 campaign, and then basically just, he said, I wonder
15 what would happen if the judge didn't show up to the
16 trial.

17 I said, I don't know.

18 He said, Wait right here. He left and walked
19 across the street towards Cotton County Music. And then
20 Ryan Stancil a few minutes later approached me with a
21 card; on the back of it had the judge's name, phone
22 number and address. He said, Are you waiting for
23 Bartee?

24 I said, Yes.

25 He handed me the card and walked off.

1 Q. Let me show you what's been marked State's Exhibit
2 Number 2.

3 MR. BRANNON: No objection.

4 THE COURT: Admitted without objection.

5 (State's Ex. # 2 was received in evidence.)

6 By Mr. Wagner:

7 Q. Do you recognize that, Mr. Blackwell?

8 A. Yes. This is the card that Ryan Stancil give me on
9 the sidewalk of the Seneca Fest.

10 Q. Is this card still in substantially the same
11 condition as it was when he gave it to you?

12 A. Exactly.

13 Q. Was it in your custody until you turned it over to
14 SLED?

15 A. It was.

16 Q. Did you alter it or has it been altered or tampered
17 with in any manner?

18 A. No.

19 MR. WAGNER: Your Honor, I move it into evidence if
20 it's not already been.

21 THE COURT: It's already been admitted into
22 evidence without objection. Thank you.

23 By Mr. Wagner:

24 Q. What's the card say? What is it?

25 A. On the front of the card is a Frankie Pearson card

1 who apparently is a candidate for County Council,
2 District 6, has his phone number, address, just contact
3 information for who I assume to be Frankie Pearson. On
4 the back in red writing, it says: James C. Williams,
5 Junior, has his phone number, has an address of 1703
6 Keowee Lake Shore Drive, Seneca.

7 Q. What was your take when this Stancil guy handed it
8 to you?

9 A. I didn't understand the meaning of the card.

10 Q. Did you know Ryan Stancil?

11 A. I knew of Ryan Stancil.

12 Q. Did you know who he was, what was he doing?

13 A. No, not exactly. I knew that he operated a music
14 store. I knew that he supported Bartee.

15 Q. Okay. Did you see him at any of the functions for
16 Bartee?

17 A. I have.

18 Q. Okay. Do you know a guy they called Joe?

19 A. Yes, Joe. Yes, I know Joe.

20 Q. (770) 331-3468?

21 A. It is.

22 Q. How do you know that?

23 A. That's the number that I would call to get in
24 contact with Bartee, that's the number that Bartee would
25 call me from, that's the number that Joe would call me

1 from with a conversation in regards to Bartee.

2 Q. Prior to Seneca Fest, around the 26th of May or so,
3 had you ever met Joe or talked to Joe?

4 A. Never.

5 Q. When's the first time you did talk to him?

6 A. The day after Ryan Stancil give me the card, Joe
7 called me. Bartee had previously told me he wanted to
8 distance himself, not to make any phone calls to him, no
9 comments on Facebook. Joe called me and informed me
10 that this is how I was to get in touch with James Bartee
11 from now on. They asked me to come over for a meeting
12 to Mr. Bartee's house, they asked me to wait until after
13 dark, asked me not to bring my own vehicle, and asked me
14 to go around to the back door.

15 Q. Okay. And when, when did you go over there?

16 A. That next night I went over there. A friend of
17 mine took me over there. We went in Mr. Bartee's house.

18 Q. Who was your friend?

19 A. LaurieAnne Mathers (phonetic).

20 Q. Did you ask her to drive you?

21 A. I did.

22 Q. Why did she have to drive you?

23 A. I didn't have a driver's license.

24 Q. Okay. Did you go around the back door?

25 A. I did.

1 Q. Was Laurie with you?

2 A. No. I'm sorry. We went to the front door. He had
3 asked me to go to the back door, but when I got there,
4 he greeted me at the front door.

5 Q. Okay. Was anybody else there?

6 A. The only person I seen was Joe.

7 Q. Have you ever found out Joe's last name?

8 A. I've come to find out that Joe's last name was
9 Milbert.

10 Q. All right. What did he look like?

11 A. Just an average size guy, a little husky, a beard,
12 a full, full-face beard.

13 Q. Did you know who he was?

14 A. Never seen him. No idea who he is, still don't
15 know who he is.

16 Q. What exactly did he tell you?

17 A. In relationship to coming in Bartee's house?

18 Q. Yes.

19 A. He told me that this is how I was to get in touch
20 with Bartee through him. He asked me to come over that
21 night in a different vehicle other than mine and to come
22 to the back door.

23 Q. What do you think was going on at this time? Did
24 you understand ---

25 A. I took it that Bartee had previously talked about

1 people were watching his house, people had stolen his
2 mail. He had said that Jerry Edwards had people
3 watching him. I took it that he didn't want me to be
4 seen by the people that he had said was watching him.

5 Q. Did you believe him?

6 A. Yeah, I believed him at that time.

7 Q. Okay. So you went over there sometime around
8 midnight you're saying on the 27th?

9 A. I believe it was right before midnight we went over
10 there. He wasn't home. We left, went to Wal-Mart,
11 picked up some items for my wife. Went back to his
12 house a few minutes later, and that's when he greeted me
13 at the door.

14 I went inside. Joe was inside. They were sitting
15 at a table in this; I guess you would call it his dining
16 area. They had law books out, computers, doing a lot of
17 research preparing for the civil case that James
18 Williams had filed against his candidacy.

19 Q. And was that case coming up?

20 A. Very soon, yes.

21 Q. Had you gone in, or been asked to go through the
22 back door before this?

23 A. Never.

24 Q. What did you all do when you went in the house?

25 What did you see and what did you hear? What did they

1 say to you?

2 A: When I went in they were discussing this case. We
3 talked about that for a few minutes. I introduced
4 Laurieanne to Mr. Bartee. He had never met Laurieanne
5 before. When I first went in, he took his set of car
6 keys, put them up to my neck, told me how he could
7 incapacitate me in just a split second with these keys
8 with a pressure point in my neck. He showed off a sword
9 that he owned, talked about how he could cut me in half
10 with the sword.

11 We went over to the table. They were discussing --
12 Joe and Mr. Bartee were discussing his civil suit. We
13 had some small talk about that for a while and Bartee
14 asked me outside. I went outside with Bartee, we went
15 out on his back deck, and he began to tell me how they
16 wanted me to kidnap the judge.

17 Q. What exactly did he say?

18 A. Well, he said if the judge didn't show up to the
19 Court hearing, that they would have to dismiss the case,
20 and if the case were dismissed, he would win.

21 And I said, I guess so.

22 He said, Well, do you think you can help me out
23 with that? And I didn't know exactly what he meant. I
24 asked him some questions about, you know, What do you
25 mean?

1 And he said, Well, we don't want the judge to show
2 up.

3 And I said, you know, What are you talking about?
4 Making his car not start or something?

5 He said, Well, when I was in the Secret Service,
6 and we would want somebody to miss something, we would
7 just take them on a tour.

8 I asked what a tour was.

9 He said I could go in there, knock him in the head
10 with something, duct tape his mouth, face, use zip ties,
11 tie him up, put him in the trunk of a car and drive him
12 to Asheville, North Carolina. He wanted me to dump him
13 out in Asheville, and make certain that the judge didn't
14 make it back until this case was dismissed.

15 Q. So he called it taking him on the tour?

16 A. That's what he called it.

17 Q. Did he ever tell you to kill the judge?

18 A. No. He specified not to kill him. He said, You
19 can hurt him, but don't kill him.

20 Q. Did he suggest any other ways you might do that?

21 A. Yeah. He told me I could get a ski mask. He, he
22 directed me that I should get new boots, all new clothes
23 that I could throw away after the crime was committed.

24 He told me to go knock on the judge's door, or kick
25 his door in, we would have to get in, just knock him in

1 the head. Then he suggested, because I told him I
2 didn't feel comfortable with that, he said, Get you a
3 white polo shirt. You could take a Sharpie marker with
4 a left chest, with a News 4 logo, and knock on the door
5 and tell him that you are with News 4 and that you
6 wanted an interview in regards to the civil case that
7 was going on between him and Bartee. He said people
8 like him eat that shit up.

9 He said, When you get in the house, just knock him
10 in the head with something, do like I said, put him in
11 the trunk of the car, drive him to Asheville.

12 He threatened my family. He told me that he had
13 people on me. People watching me. He threatened me
14 with prosecution for a crime, as he seen it, if I didn't
15 do this for him.

16 Q. How would he do that? How did ---

17 A. Well, he told me that I, he told me that he could
18 get these people off my back that were on my back,
19 referring to the things that had been showed about me in
20 the newspaper, and referring to the shooting incident.
21 He said he had the power to get the people off my back
22 or he could put them on me. And, if I kidnapped this
23 judge for him, he would get them off my back. He said,
24 if I didn't, he said I would sit in jail.

25 I told him I didn't mind sitting in jail. I knew

1 what happened. I had no problem with that.

2 He said, Well, you'll be in jail for probably two
3 years awaiting trial. Who is gonna protect your family
4 while you're in jail?

5 So at that time, I said, Well, I think I can help
6 you out. He counted me out two hundred dollars.

7 Q. Why did he do that?

8 A. I told him I didn't have money to buy the stuff to
9 pull off the kidnapping. I said, you know, I told him I
10 was a poor boy, I had to work every day. I couldn't
11 afford gas, zip ties, duct tape, new clothes to throw
12 away. He was pretty persistent, so he was willing to
13 give me the money to buy the items that I needed.

14 Q. Did you ever expect to hear that from him?

15 A. Not at all. Not at all.

16 Q. Was anybody else out there with you when all this
17 transpired?

18 A. Laurieanne and Joe; they were inside, though. It
19 was only him and I outside.

20 Q. Did it happen I guess in his backyard, roughly?

21 A. No, not in his backyard. We were on the first
22 floor deck which has a basement below it from the
23 backyard, so we were actually on an elevated deck.

24 Q. Is his house in Oconee County?

25 A. At the time it was. It was at I think Island Point

1 Drive.

2 Q. What did you do next? What happened?

3 A. I left. I got in the car with Laurieanne. I think
4 my exact words was, This crazy son of a bitch wants me
5 to kidnap a judge.

6 And I believe she said, Well, what are you gonna
7 do?

8 I said, I'm not gonna kidnap a judge.

9 She took me home. I stayed up all night. I
10 believe it was the next day I seen David Smith in a
11 parking lot while I was on lunch break.

12 Q. Did you know David?

13 A. I know of him. He lives in my community. I never
14 really had any dealings with him, but I felt like he was
15 somebody that I could possibly talk to.

16 Q. Were you concerned about approaching a law
17 enforcement officer?

18 A. I was. Because Bartee had told me that he was the
19 one that had law enforcement on me. He said that the
20 majority of law enforcement were, in fact, supporting
21 him, but because Terry Wilson would fire anybody that
22 wouldn't support me, that I had to keep my mouth shut
23 about it, and that was how he related to me that he
24 could get these people off my back. So, yeah, I was a
25 little nervous about telling someone. I was afraid he

1 would find out what I was doing and harm me.

2 Q. Why did you take a chance?

3 A. I knew I wasn't gonna kidnap the judge. I think as

4 I sat there eating lunch, David Smith was talking with

5 somebody in the Applewood Shopping Center parking lot.

6 I went in the Subway and got a sub. My wife was in

7 another store conducting some business. As I sat there

8 in my car eating my sandwich, just watching David talk

9 to this guy, this feeling come on me and I said I felt

10 like that I had to at least make an attempt to speak to

11 somebody about it.

12 Q. What did you think would happen if you didn't?

13 A. I felt like the judge would probably get kidnapped.

14 I feel like if Bartee hadn't got me to do it, he would

15 have gotten somebody else to do it.

16 Q. So what did you do?

17 A. I approached David Smith, just kind of talked with

18 him nonchalantly for a few minutes, questioned him

19 about, you know, what do you think about Bartee two or

20 three times. He kept telling me that he wasn't

21 supporting Bartee and Bartee wasn't qualified to be

22 sheriff. So I just basically said, Hey, Bartee is

23 trying to get me to kidnap a judge.

24 And he said, What?

25 I said, Yes, he's trying to get me to kidnap a

1 judge.

2 And he told me, you know, something was gonna have
3 to be done about it. He said he was gonna talk to the
4 Sheriffs and get back to me.

5 Later that day he called me back and told me SLED
6 was gonna be giving me a phone call.

7 Q. Did you hear from anybody else between the time you
8 left him in the Applewood parking lot and the time you
9 talked to anybody else about the case?

10 A. Can you say that again?

11 Q. Did anybody from Bartee's camp call you again that
12 day?

13 A. I know that I talked to some of them that day. I
14 can't recall if it were prior or after speaking to David
15 Smith.

16 Q. Okay. Well, when's the next time something
17 happened with the case? What happened?

18 A. SLED called me.

19 Q. Okay. When SLED called you, who was it?

20 A. It was Agent Michael Sloan.

21 Q. Okay. And what did he tell you? What happened
22 there?

23 A. He basically asked me, Hey, what's going on?

24 I told him James Bartee is trying to get me to
25 kidnap Judge Jimmy Williams.

1 We talked for a few minutes about that. I don't
2 remember the details, other than, after we had the
3 conversation he wanted me to meet him; which I did, I, I
4 met him at Anderson County Detention Center or sheriff's
5 office, one. I believe the Detention Center.

6 Q. Along with that timeframe did Bartee call you?

7 A. He did. Yeah. They told me to hold off on the
8 action of kidnapping the judge.

9 Q. Why was that?

10 A. He was wanting to consult with his attorney because
11 for some reason they had a suspicion that the trial
12 would be proceeding with or without the judge as long as
13 his attorney was present.

14 Q. When you say "they" called, who called you
15 specifically?

16 A. I believe it was Joe.

17 Q. Okay. And what exactly did he tell you?

18 A. He told me to hold off. He said we're gonna talk
19 to Bartee's lawyer, but it seems as if they may have the
20 trial anyway, even if the judge does not show up for
21 court, they won't dismiss it, he said, so let's just
22 wait until we talk to his attorney before we go any
23 further.

24 Q. Was that before or after you talked to Michael
25 Sloan?

1 A. I believe that was before.

2 Q. Okay. What did you tell Sloan, or where did you
3 go, what did you do?

4 A. Basically told Sloan the information that I had.
5 We made a phone call to Joe. He recorded it. Again,
6 Joe recited, Hey, let's hold off on kidnapping the
7 judge.

8 Q. Hang on a second. When you say "called off," were
9 they trying to stop it?

10 A. The way I took it was, no, they weren't calling it
11 off. They were saying before we go too far we need to
12 see if it's even worth doing because the trial still
13 might proceed in his absence anyway.

14 Q. You still may not be needed to kidnap the judge
15 anyway?

16 A. It sounded as if he still wanted to do it, yes.

17 Q. Where did you meet Agent Sloan?

18 A. Where did I meet who?

19 Q. Where did you meet Michael Sloan?

20 A. Okay. I met him at the sheriff's office in
21 Anderson.

22 Q. Okay. And what day was that?

23 A. I believe it was the 28th, 29th.

24 Q. Was it Monday or Tuesday?

25 A. Monday.

1 Q. You met him on Monday?

2 A. I believe it was Monday, yes.

3 Q. Now, you said you went over to his house on the
4 27th or the 28th, the late night of the 27th and the end
5 of the 28th?

6 A. Right.

7 Q. Okay.

8 A. It was the next day when I talked with David Smith,
9 and it was that same day when Agent Sloan contacted me.

10 Q. So when you say the 28th you are talking about the
11 29th?

12 A. Correct.

13 Q. And that was Tuesday?

14 A. Okay.

15 Q. Okay. Did you know when the hearing with Judge
16 Williams was coming up?

17 A. The next day.

18 Q. Okay. And where did you meet Michael Sloan?

19 A. At the Anderson sheriff's office.

20 Q. What happened next? What did he tell you? What
21 did you tell him and what did he tell you?

22 A. I told Michael Sloan basically what I just told you
23 about the way Bartee had approached me to kidnap the
24 judge.

25 The first thing he said was, after I told him what

1 had happened, he felt like I was lying, I believe. He
2 said, If you're lying to me, I'm gonna take your ass to
3 jail. He was very stern. I believe he would admit
4 that.

5 So I told him, No, I'm not lying.

6 He said, Okay, let's call them.

7 So that's what we did. We went, met up with some
8 other law enforcement officers.

9 Q. Did you know any of those guys?

10 A. I don't know any of them.

11 Q. Okay. And what did you decide to do? Who did you
12 decide to call?

13 A. I called number, the 770 number, which is Joe's,
14 which is the number that I was directed to call to
15 contact Mr. Bartee.

16 Q. Okay. Prior to court, have you listened to that
17 phone call?

18 A. I have.

19 Q. Let me show you what's been marked as State's
20 Exhibit Number 1 (handing). Do you recognize that?

21 A. I do.

22 Q. And what is that?

23 A. This is the recordings of the phone call as well as
24 recordings of the conversation between James Bartee and
25 myself.

1 MR. WAGNER: Your Honor, I think it's in testimony
2 and evidence, but if not...

3 THE COURT: It's in evidence..

4 MR. WAGNER: Mr. Blackwell, if you would just
5 listen, please.

6 THE WITNESS: Yes.

7 (Whereupon, State's Exhibit 1, CD, was played for
8 jury -- NOT TRANSCRIBED.)

9 By Mr. Wagner:

10 Q. Was that the first phone call you made?

11 A. It was.

12 Q. Okay. And did you later get a return call from
13 him?

14 A. I did.

15 (Mr. Wagner played second portion of CD of
16 telephone conversations -- NOT TRANSCRIBED.)

17 By Mr. Wagner:

18 Q. So at the end of that call did he tell you to go
19 around back again --

20 A. He did.

21 Q. -- when you went over there?

22 And he said, You know what to do?

23 A. He did.

24 Q. What did that mean?

25 A. He was referring to me going around the back, not

1 bringing my vehicle.

2 Q. Okay. What happened next? What did the officers
3 do?

4 A. At that time I went to, we got prepared to go to,
5 to his house.

6 Q. What did you have to do to prepare?

7 A. They put a wire on me. Counted out the money.
8 They recorded the money. They got the Serial Numbers of
9 the money.

10 Q. Did they give you some money to give back to him?

11 A. They did.

12 Q. Okay. What had happened to the money that Bartee
13 had given you on the night of the 27th or 28th? What
14 did you do with that money?

15 A. I took my wife out to eat.

16 Q. So you had spent it?

17 A. Excuse me?

18 Q. You had spent all the money?

19 A. Most all of it.

20 Q. Okay. What happened to the money -- what did you
21 end up ultimately doing with the money?

22 A. That Bartee had given me?

23 Q. The money that the police officers gave to you.

24 A. When I got to Bartee's house, I gave it to them.

25 Q. Okay. They wired you up?

1 A. They did.

2 Q. Did they tell you things to say or not to say?

3 A. No.

4 Q. Did they give you a story to go in there on?

5 A. Yeah. They played a -- you know, I knew what they
6 were wanting to get Bartee to say. The only thing that
7 they had asked me was possibly to try to get him to give
8 me a gun. That was an ATF agent that did that.

9 Q. Okay. Were they concerned about your safety?

10 A. They were.

11 Q. And who did you ride with?

12 A. I rode with a law enforcement officer, not
13 Mr. Sloan. He's present here today. I don't know the
14 name.

15 Q. Okay. And did you give him directions to go to
16 Bartee's house?

17 A. I did.

18 Q. What time of day or night was this at that point?

19 A. It was real close to midnight, maybe even right
20 after midnight.

21 Q. Were they in a hurry?

22 A. Who is "they"?

23 Q. SLED, the officers.

24 A. Yes.

25 Q. And why was that?

- 1 A. Well, because Bartee was, had a trial the next
2 morning. We had, you know, wanted to hurry up and get
3 over there so we would have time to talk.
- 4 Q. Okay. So did you go to Bartee's house?
- 5 A. I did.
- 6 Q. Did you go around the back door?
- 7 A. I did.
- 8 Q. And what happened next? What happened?
- 9 A. He let me in. He was watching television.
- 10 Q. What was he watching?
- 11 A. The Hatfield and McCoy's, I guess it's a series, it
12 could have been a movie, I believe it was a series, a
13 show that was on television.
- 14 Q. Who was there?
- 15 A. Just Bartee. I assume his wife was there in the
16 bed, but Bartee is the only person I seen.
- 17 Q. Were there any other cars in the driveway?
- 18 A. No.
- 19 Q. All right. What happened next?
- 20 A. I began talking to Bartee, gave him the money back.
21 You know, we talked about why we were not gonna kidnap
22 the judge. He told me his lawyer said it wouldn't
23 matter if the judge didn't show up, the case would go
24 on. He told me the FBI would be here tomorrow blaming
25 him, even though he had previously told me to blame

1 Jerry Edwards for the kidnapping.

2 He was watching a TV show. And I recall he said,
3 This is one of those things you sit on and wait and let
4 the dust settle. Just like on this TV show, the
5 Hatfields and the McCoys, you just let the dust settle.
6 Then you don't need a mask when you sneak up on them.
7 Don't even let them know what hit him.

8 Q. What did he mean by that?

9 MR. BRANNON: Object.

10 THE COURT: Sustained.

11 By Mr. Wagner:

12 Q. What else did he say?

13 A. Uh, you know, he told me the judge was a weasel.
14 He said a lot.

15 Q. Did he tell you not to do it or did he just tell
16 you to wait?

17 A. It seems as if he was saying, Let's don't kidnap
18 the judge, let's wait till the dust settles and we're
19 gonna do some other action. It was implied. You know,
20 he never was very specific.

21 MR. BRANNON: Objection.

22 THE COURT: He's giving his impression. I overrule
23 that.

24 THE WITNESS: He never was very specific. But it
25 implied to me, my perception of it was when he said I

1 didn't need a mask because they were talking about
2 having a mask before because he couldn't identify me, he
3 said I don't need a mask when I sneak up on them because
4 if they were dead, it wouldn't matter if they saw me
5 anyway.

6 MR. BRANNON: Objection. Move to strike.

7 THE COURT: Just one second.

8 Would you go to the jury room, please.

9 (Whereupon, the jury left the courtroom at
10 approximately 3:49 p.m.)

11 THE COURT: Mr. Brannon?

12 MR. BRANNON: Your Honor, in his earlier testimony
13 he said that Mr. Bartee specifically said don't kill
14 him. Now he's talking about the judge being dead. It's
15 not -- I've got three different statements made by this
16 man and nowhere does he say, My impression was I thought
17 this.

18 He is embellishing beyond credibility at this
19 point, Your Honor, and to allow him to taint the jury by
20 using the words "dead" and "murdered" and stuff like
21 that, it's not -- he's now giving an impression that he
22 never had before.

23 THE WITNESS: I never had that impression ---

24 THE COURT: I told you, you do not say a word until
25 you are allowed to. Do you understand me?

1 THE WITNESS: Yes.

2 THE COURT: Do you understand?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. You sit there and you don't say
5 a word.

6 What evidentiary rule are you using other than it's
7 just not right?

8 MR. BRANNON: Well, Your Honor, how does he know
9 what Mr. Bartee was implying, if anything?

10 THE COURT: He is testifying it seems to me based
11 on his, his impression of the conversation, which he is
12 allowed to do. Do you disagree?

13 MR. BRANNON: No, I don't disagree. However, he's
14 not --

15 THE COURT: And I'll hear you. But wouldn't that
16 be a matter of Cross-Examination just like the civil
17 suit and the other matters we brought up at pretrial?

18 MR. BRANNON: It would, Your Honor.

19 THE COURT: Okay.

20 MR. BRANNON: But there's also the possibility for
21 prejudice here.

22 THE COURT: Sure. I mean, that's what trials are
23 about.

24 MR. BRANNON: I understand that. But he's
25 contradicting his own testimony. He said, Bartee said

1 specifically "Don't kill him." Now he's saying that's
2 what he's talking about.

3 THE COURT: Okay. What evidentiary rule should I
4 consider in considering your request? I mean, I'd be
5 glad to. I just don't think it ---

6 MR. BRANNON: Its prejudicial value far outweighs
7 any probative value of this testimony.

8 THE COURT: 403?

9 MR. BRANNON: Yes, sir.

10 THE COURT: I hear you. I think that he has a
11 right to testify to his impression of the conversation.
12 I'm gonna give you wide latitude on Cross-Examination.

13 MR. BRANNON: Thank you.

14 THE COURT: Overruled.

15 MR. BRANNON: I am sorry for the delay.

16 THE COURT: No, no. That's your job. Do you have
17 anything before we bring the jury back?

18 MR. WAGNER: Nothing further, Your Honor.

19 THE COURT: Listen. I'm not trying to fuss at you.

20 THE WITNESS: Yes, sir.

21 THE COURT: I'm speaking for the lawyers. It
22 doesn't involve you. Your testimony is for when the
23 jury is here; otherwise, you don't speak.

24 THE WITNESS: I understand that, sir.

25 THE COURT: That's not to be mean. That's just the

1 rules.

2 THE WITNESS: I didn't understand that. I didn't
3 know that, sir. I apologize.

4 MR. WAGNER: Your Honor, it may be time to bring
5 the transcript. I think I'll go ahead and play the tape
6 with Mr. Blackwell, the wire, which at that point we're
7 gonna need to provide the jury the transcript.

8 THE COURT: And I know there's an objection to the
9 transcript. Any new objections other than previously
10 stated?

11 MR. BRANNON: I simply renew the previous
12 objection.

13 THE COURT: Right. And, as I previously ruled,
14 that transcript will not actually go back to the jury,
15 but it will be present in the courtroom if the jury
16 requests to hear the audio again, and they can see it on
17 a visual-aid basis, okay?

18 MS. SIMMONS: Your Honor, I didn't want to jump in.
19 Did you want to mark the original transcript a court's
20 exhibit?

21 THE COURT: Yeah. I'll tell you what. Why don't
22 you give it to me and that way the better way at a
23 minimum it will be a Court's Exhibit.

24 MS. SIMMONS: And, Judge, we've made exact copies
25 for the jury. Would you like me to put the copies on

1 the end of the jury box?

2 THE COURT: Any objection other than your
3 previously stated objection?

4 MR. BRANNON: Nothing in addition.

5 THE COURT: And I've opened up the original
6 transcript; that will be a Court Exhibit.

7 (Marked for identification was Court's Exhibit 2,
8 transcript; original of State's Exhibit 8.)

9 THE COURT: You are gonna start on Page 6?

10 MR. WAGNER: The Page 16 which is listed as Track D
11 on that.

12 THE COURT: Would you, would you check that,
13 Mr. Brannon, and see if you agree that's the proper
14 starting place.

15 Track D, Mr. Wagner?

16 MR. WAGNER: Yes, Your Honor, I'm sorry. Track D.

17 MR. BRANNON: I agree that's correct. Almost to
18 the bottom of the page ---

19 THE COURT: Do you agree that to be a problem for
20 the State to say, Turn to Page 16, look at Track D, so
21 they can follow along?

22 MR. BRANNON: I would ask the Court to do that.

23 THE COURT: Okay.

24 MR. BRANNON: Yes.

25 THE COURT: Let's take a five-minute break.

1 You cannot speak with anybody about your testimony.

2 Mr. Wagner, I just told him he could not speak to
3 anybody about his testimony.

4 (A recess was taken.)

5 THE COURT: State ready?

6 MR. WAGNER: Yes.

7 THE COURT: Defense ready?

8 MR. BRANNON: The witness, Joe Milbert, wants to
9 know if he can leave.

10 THE COURT: I asked him to stay. Is there any
11 reason from the State's perspective that you need him
12 any further?

13 MS. SIMMONS: Judge, we don't necessarily object to
14 him leaving today, but we would want some sort of
15 reasonable assurance that if we needed him in rebuttal,
16 he would come back, because he has been properly served.

17 THE COURT: I don't know. I haven't seen if it's a
18 South Carolina Subpoena that has not been domesticated.
19 I might disagree with you on that.

20 MS. SIMMONS: He was served in the Courthouse this
21 morning out of an abundance of caution with a South
22 Carolina Subpoena in South Carolina.

23 THE COURT: Again, that may or may not --
24 Where is Mr. Milbert?

25 MR. BRANNON: He's out. He out in the hallway.

1 THE COURT: Would you ask him to come in.

2 (Mr. Milbert enters courtroom at approximately 4:05
3 p.m.)

4 THE COURT: Mr. Milbert, I've asked you to stay
5 because I wasn't sure that the State or the Defense was
6 finished with your proposed testimony in this case. The
7 State has asked that I obtain from you reasonable
8 assurances that if you are needed, which is not
9 determined yet, you will come back to trial in this
10 matter. Otherwise I'm gonna ask you to stay with us.
11 Will you return?

12 MR. MILBERT: I will return.

13 THE COURT: Okay. So you are subjected to --

14 MR. MILBERT: I live in Georgia and it takes me two
15 hours to get up here. How much notice would I have?

16 THE COURT: As much absolute notice as we can give
17 to you. Okay?

18 MR. MILBERT: All right.

19 THE COURT: All right. Anything further from the
20 State?

21 MR. WAGNER: No, sir.

22 THE COURT: Anything from the Defense?

23 MR. BRANNON: No, Your Honor.

24 THE COURT: Okay. Mr. Milbert, thank you. You are
25 excused.

1 MR. MILBERT: Thank you.

2 MS. SIMMONS: We would like to confirm the phone
3 number.

4 MR. MILBERT: (770) 331-3468.

5 MS. SIMMONS: Thank you.

6 MR. BRANNON: Nothing else.

7 THE COURT: Thank you, sir.

8 (Whereupon, Mr. Milbert was excused for the day,
9 but he was not excused from his subpoena.)

10 THE COURT: Would you bring the jury in.

11 (The jury entered the courtroom at approximately
12 4:07 p.m.)

13 MR. WAGNER: Your Honor, the jurors don't have the
14 transcript. Can I give the witness the transcript?

15 THE COURT: Sure.

16 Mr. Foreman, before you start, do you see that
17 stack of transcripts there? Would you pass those out to
18 your jury for me, please, sir.

19 I'm gonna ask the jury to turn to Page 16 and look
20 about three-quarters of the way down or two-thirds of
21 the way down the page for Track D. If everybody has
22 reached there, would you just raise your hand so I can
23 know that you're there.

24 (Whereupon, all jurors raised their hands.)

25 THE COURT: Okay. Everybody is there. All right.

1 MR. WAGNER: Your Honor, just one thing before we
2 get started on that. I would like to hand Mr. Blackwell
3 one exhibit.

4 THE COURT: Okay, sir:

5 By Mr. Wagner:

6 Q. Mr. Blackwell, I show you what's been marked
7 State's Exhibit Number 4. Do you recognize those?

8 A. This is my phone number and account information for
9 my cellular phone.

10 Q. Is your cell phone in the name of Jessica
11 Blackwell?

12 A. It is. She's my wife.

13 Q. Okay. And what is your phone number?

14 A. (864) 247-2360.

15 Q. Okay. Is that a copy of your phone records from
16 May of 2012?

17 A. Yes.

18 Q. Okay. That's it.

19 Your Honor, if we could, we'd want to play the
20 results of the wire, and since we've already heard the
21 taped phone calls, we will be starting on page 16, Track
22 D.

23 THE COURT: Okay. And I believe the jury said they
24 were all at that location. Very good.

25 (Jury is reading original transcript along with

1 listening to the CD from approximately 4:13 p.m.
2 until 4:32 p.m.)

3 By Mr. Wagner:

4 Q. Mr. Blackwell, so far we're at the top of page 35.
5 From what you hear there, who is male number two and who
6 is male number one?

7 A. Male number one is me, male number two is James
8 Bartee.

9 Q. At this point in time have you seen anybody else in
10 the house?

11 A. No.

12 (Mr. Wagner continued playing CD -- NOT
13 TRANSCRIBED -- for the jury from 4:33 p.m. until
14 4:54 p.m.)

15 MR. BRANNON: I don't think there's anything
16 probative beyond this.

17 THE COURT: I don't disagree with that. Any reason
18 we can't cut it off, Mr. Wagner?

19 MR. WAGNER: That would be fine, Your Honor.

20 (At 4:55 p.m. the CD stopped playing.)

21 By Mr. Wagner:

22 Q. Mr. Blackwell, is that a fair and accurate
23 recording of the wire that you wore that night at
24 Mr. Bartee's house, sample of the recording?

25 A. Yes.

1 Q. Going back to page 35, that was the start of when
2 you walked up and knocked on his door. Are you going to
3 his back door like Mr. Milbert told you to?

4 A. Excuse me. Yes.

5 Q. Okay. And you say he was the only one you saw?

6 A. That's correct.

7 Q. You made up the name Rusty to cover for the
8 sheriff's deputy?

9 A. Yes, sir. And I don't, I don't know, I don't know
10 the guy who drove me. I don't know his name. I just
11 said Rusty.

12 Q. The story that you told about going to Greenville
13 and hiring other guys to do the job, how did you come up
14 with that?

15 A. Just right off the top of my head.

16 Q. Did they ask you to come up with a story to the
17 officers?

18 A. No. I, I was trying to lead Bartee into a
19 conversation.

20 Q. Okay. And at any time did he do any hand gestures
21 or anything?

22 A. Yes. As I was leaving, he said, let the dust
23 settle, it's almost the last words he said to me. But
24 he, he did a gesture with his hand like this when he
25 said you just sneak up on someone (hand in the shape of

1 a gun pulling a trigger).

2 Q. On Page 36, down about a third of the page, it says
3 by male number two, which you say is Bartee, (reading):
4 I've asked these boys, "Look," coming in, "Don't let
5 anyone post any -- not even on that Ocone. --- (end of
6 reading):

7 What are y'all talking about there?

8 A. The Ocone Voters Page, which is a Facebook page.

9 Q. What is that and what was going on with the Ocone
10 Voters?

11 A. Ocone Voters was a page on Facebook that was in
12 support of the candidacy of James Bartee and in a major
13 opposition of the candidacy of Donnie Fricks.

14 Q. Did Mr. Bartee view Fricks as his chief
15 competition?

16 A. As many times as he told me, yes.

17 Q. And he's talking about Fricks dressed in battle
18 rattle. What is that?

19 A. There was an article in the Seneca Journal where
20 Donnie Fricks had a campaign picture of him dressed in
21 some type of a battle attire. It, it appeared to be a
22 picture from possibly when he was a contract for the
23 military overseas. He had an AK-47, wearing tactical
24 wear, tactical clothing, and the caption said "battle
25 rattle."

1 Q. When you talk about people staying off of Facebook,
2 what was he talking about?

3 A. He was referring to a lot of the things that were
4 in opposition to Donnie Fricks on the Oconee Voters site
5 mainly because the Oconee Voters site was largely known
6 for being in support of James Bartee's candidacy. He
7 felt like that was hurting his campaign because people
8 were starting to view him as being an aggressor towards
9 his opposition, primarily Donnie Fricks.

10 Q. Flipping over to page 38, approximately not quite
11 halfway down, you say (reading): Here's a hundred and
12 thirty-eight dollars (\$138.00). (End of reading)

13 Is that when you gave him the money back?

14 A. That's correct. And I basically explained to him
15 that he give me \$200. I basically explained to him some
16 of those funds were used in gas that I can't give you
17 back is basically what I was telling. You know, I told
18 him that I spent part of the money on gas and this is
19 what I had left.

20 Q. Is this what the sheriff's office gave you?

21 A. SLED. SLED gave me, yes.

22 Q. Flipping over to Page 40, about halfway down where
23 he starts it off with (reading): Damn right, he knows
24 (end of reading), what is he talking about there?

25 A. I believe he's referring to, he's saying, Damn

1 right, he knows, in reference to saying that the judge
2 knows who I am. I believe that's what's going on here.

3 Q. Well, what does he mean about the Hatfields and the
4 McCoys?

5 A. Well, he was referring -- I don't know if he said
6 Hatfields and the McCoys, but he was referring to, like
7 the Hatfields and the McCoys, you, you just wait a
8 little while and get revenge later.

9 Q. Why would he bring that up at that point in time?

10 A. Well, because at that point in time he had decided
11 through his attorney that kidnapping the judge was gonna
12 do him no favors.

13 Q. What was on TV at the time?

14 A. Hatfields and the McCoys.

15 Q. Okay. Did he point at the TV when he said that?

16 A. He did. I don't know it to be the Hatfield and
17 McCoy show. He said it was the Hatfield and McCoy show.
18 I don't watch TV. I don't know if it was the Hatfield
19 from the McCoy show.

20 Q. Still on Page 40, Line 19.

21 A. Yes.

22 Q. And he says (reading): A Great show. Just let it
23 go for a couple of months. When the dust settles -- I
24 don't care when you sneak up on someone. I don't care
25 if they see it or not, as far as I'm concerned. (End of

1 reading)

2 Is he talking about the judge there?

3 A. Yes, sir. The way I took that was he was referring
4 to, again, saying I wouldn't need a mask. It doesn't
5 matter if the judge seen me. Where he had, you know,
6 earlier some of his suggestions were to wear a ski mask
7 and just go in his house. Then he suggested dressing up
8 as a news reporter. Now he's saying it doesn't matter
9 if the judge sees you or not. He had always explained
10 the need for a ski mask was so there would be no witness
11 that could ID me.

12 Q. Flipping over to Page 41 down, it's in paragraph
13 15, 16, 17 and 18, particularly on 18. What CD are you
14 talking about?

15 A. The first knowledge I had of Ryan Stancil was
16 directed through James Bartee, some CDs that I made of
17 an audio recording from a personal recorder that I use
18 for taking notes for my job. I'd made some recordings
19 of phone calls where people were calling me, introducing
20 themselves on behalf of Fricks and making threats toward
21 me in regards to the Mayfest event.

22 Q. Did that have to do with Jeff Stevens ---

23 A. Yes.

24 Q. --- or the trooper guy you all were talking about,
25 too?

1 A. Yes, it did. So Bartee had directed me to Ryan
2 Stancil at Cotton County Music, who had a recording
3 studio, who was able to get a lot better recording, a
4 more professional recording of those threats than what I
5 was able to capture with my personal recorder.

6 Q. So was it because of your interaction in Mayfest
7 with Fricks that you got these death threats?

8 A. I believe so, yes.

9 Q. Okay. And who was Jeff Stevens?

10 A. I don't know Jeff Stevens. Who I know him to be
11 through statements that were made by Bartee and several
12 other of his supporters off, through the Ocone Voters
13 page, they were retired Highway Patrolmen. I took it he
14 was on disability retirement.

15 Q. Did he threaten you?

16 A. He did. He told me to pick the place I wanted to
17 die.

18 Q. Page 42, starting at Line 11, can you read that and
19 explain that?

20 A. Okay. Line 11. This is me. (Reading):

21 It says, Yeah. He just -- he kept laughing. Man,
22 I tell you, if we, you know, when we decide -- if we
23 decide, like at a later court hearing or whatever, if we
24 decide to get the judge, I'm just gonna take a fire
25 extinguisher. (End of reading)

1 Q. And that was you saying that?

2 A. Correct.

3 Q. Okay. Where did you come up with the idea about a
4 fire extinguisher?

5 A. Again, I was just trying to get him to talk. The
6 fire extinguisher had been mentioned by Bartee before in
7 regards to some of the other people, so I threw it out
8 there about the judge, you know, basically to try to get
9 him to enter a conversation.

10 Q. And down page, down the same page on 23 and 24,
11 when you talked about (reading) ... Greenville and
12 telling these guys just to hold up, (end of reading),
13 that's the guy you told them you would hire?

14 A. Yeah. Just as I'd said, the guy's name was Rusty.
15 No different than that. I never hurt anybody, I never
16 spoke to anybody about hurting anybody. I was just
17 giving Bartee excuses to put him off, basically.

18 Q. Page 43, Line Number 3. Who said that?

19 A. Well, this is Bartee speaking. He said (reading):
20 Man, we just have to save it for a later, a later
21 date. Let the dust settle. Right now you'd have the
22 FBI here in a day. (End of reading)

23 Q. Flipping over to Page 45, Line Number 15, what's he
24 saying there?

25 A. Excuse me. This is Mr. Bartee. (Reading): He's

1 saying: No, you got those wife and kids first. We'll
2 get this figured. We'll get it figured out. That's the
3 way I look at it. (End of reading)

4 Q. What, what did you take him to mean by that?

5 A. Well, initially he had used my wife and kids
6 against me in a threatening manner saying that who was
7 gonna protect them while I was in jail if I didn't
8 kidnap this judge, so every time he mentioned my family
9 or my wife or my kids, I took it as a threat.

10 Q. Number 16 to 17, Line 16 to 17?

11 A. Page 45?

12 Q. 46.

13 A. 46. Yeah. Bartee says (reading): That's what I
14 think. There might be a time, but tomorrow ain't gonna
15 be it.

16 Q. Then flipping over to 47, starting at Line Number
17 4.

18 A. This is Bartee again. And he said (reading): No
19 need. If they would say they were going to drop the
20 case if he wasn't there, it wouldn't matter. Then, like
21 I said, you drive him up the road and drop him off,
22 right? (End of reading)

23 Q. And you said?

24 A. (Reading): Take him to Asheville? I was gonna
25 take him to Table Rock.

1 He said somewhere. I think you need to take him
2 somewhere where it takes a long time to get back. (End
3 of reading)

4 Q. And is that what he had told you on the night of
5 the 27th and the --

6 A. He was pretty specific about Asheville. I don't
7 know why. I just know he kept saying Asheville. But he
8 had said that he wasn't gonna be able to make it back
9 from Asheville to here should he get free from his
10 zip-tied hands or however that was gonna happen. He
11 just wanted to be certain the judge wouldn't make it
12 back before this court hearing was dismissed.

13 Q. Flipping over to Page 48, the bottom line, 25?

14 A. Bartee is speaking and he says (reading): All
15 right. You just got to remember that wife and kids for
16 now.

17 Then I said, I got you, man.

18 He said, I'll let you loose when it's time. (End of
19 reading)

20 Q. Let you loose when it's time?

21 A. When it's time, yeah.

22 Q. What did you take that to mean?

23 A. Well, with the context of the conversation, when
24 the dust settled, whenever that may have been.

25 Q. Now, after you got -- the stuff that happens after

1 this thing, was that when you got back in the car and
2 rode back with Officer Baker?

3 A. It is.

4 Q. And where did you all go to?

5 A. I believe we went to a, we went to a school, and I
6 don't know the name of the school. It was in Pendleton.

7 Q. And what did they do there?

8 A. Whatever it is that they do to finalize a
9 recording. You know, they took the wire off of me, sent
10 me on my way.

11 Q. They stopped it. Did they ever go back to your
12 house with you?

13 A. They took me home, yes.

14 Q. Okay. And when you got home, did you get anything
15 for them?

16 A. Excuse me?

17 Q. Did you go in and get anything for them?

18 A. I don't recall.

19 Q. Where was the card?

20 A. Okay, yes. The card was in my nightstand drawer,
21 yeah. That's when I went and retrieved the, this card
22 right here.

23 Q. Who did you turn that over to?

24 A. Michael Sloan.

25 THE WITNESS: I'm in a desperate need to use the

1 bathroom.

2 THE COURT: Sure. Let's take about a five- or
3 ten-minute break, and we'll be back by 5:20.

4 THE WITNESS: I'm sorry.

5 THE COURT: That's all right.

6 Mr. Foreman, would you take the jury to the jury
7 room first.

8 (Whereupon, the jury started to leave the courtroom
9 at approximately 5:11 p.m.)

10 THE COURT: Actually leave them here in the
11 courtroom. I'm sorry.

12 Mr. Foreman, does your jury need to make any calls
13 or anything at this point?

14 THE FOREMAN: I don't believe so.

15 THE COURT: Thank you very much.

16 All right. Go ahead. You can't talk to anybody.

17 THE WITNESS: Yes, sir.

18 (Witness leaves stand.)

19 THE COURT: We are in recess for ten minutes.

20 (A recess was taken.)

21 THE COURT: Please be seated.

22 Counsel, there's been a request of the clerk that
23 they be allowed to look at the transcripts that the jury
24 just looked at. They couldn't really hear what was
25 going on. Any objection to that being provided to them

1 to look at?

2 MR. WAGNER: Not from the State, Your Honor.

3 MR. BRANNON: I don't have an objection to them
4 looking at it. I would have an objection to them
5 printing parts of it before this trial is over.

6 THE COURT: Well, as you know, the jury has been
7 advised that they cannot look at, listen to or hear
8 anything in the news. I can't order them to do anything
9 about them being able to report it.

10 MR. BRANNON: No objection, Your Honor.

11 THE COURT: Okay. If you will supply the copies of
12 the transcript to them.

13 (Discussion off the record.)

14 MR. BRANNON: Your Honor?

15 THE COURT: Yes, sir.

16 If you would hold the jury for me.

17 MR. BRANNON: My cross might be an hour or more,
18 but --

19 THE COURT: I don't mind staying here till 6:30.

20 MR. BRANNON: I'd rather do it tonight than, you
21 know, have them ---

22 THE COURT: I think this is a pivotal part, so I'll
23 leave it up to your discretion.

24 MR. BRANNON: I'd rather do it tonight.

25 THE COURT: All right. Very good.

1 All right. Bring them in.

2 (The jury entered the courtroom at approximately
3 5:30 p.m.)

4 THE COURT: Mr. Wagner?

5 By Mr. Wagner:

6 Q. Mr. Blackwell, did you have some money -- did the
7 sheriff's office take any of your money? Before they
8 gave you marked money, did they take money from you and
9 then give it back later, or did they take your wallet or
10 anything like that?

11 A. I don't understand. Say that...

12 Q. Did you have any money -- when you went to talk to
13 the sheriff's office, to SLED, on the night that you
14 wore the wire and all this happened, did you have any
15 money, or did they take your money off of you or
16 anything and then give it back to you later?

17 A. It seemed like they may have taken a few dollars
18 from me. I don't really recall. I didn't have much of
19 the money left.

20 Q. Okay. So then they gave you the marked money and
21 that's what you gave to Mr. Bartee?

22 A. Correct. They gave me \$138.

23 Q. Okay. Based on the totality of the conversations,
24 did you believe that the kidnapping was all over
25 altogether or did you believe that it was just

1 temporarily delayed possibly?

2 A. I believe at the point when the, the taped
3 conversation between Bartee and I, at that point I think
4 he had decided through his attorney that the judge not
5 being at the trial would have no effect; therefore, he
6 did want to call off the kidnapping. But as a result he
7 said we would wait till the dust settles. And I guess
8 it's up for speculation what he meant by all that, but I
9 assume he was speaking of doing something later on.

10 MR. WAGNER: Thank you. If you would answer any
11 questions Mr. Brannon may have.

12 THE WITNESS: Yes.

13 THE COURT: Cross-Examination.

14 MR. BRANNON: May it please the court?

15 THE COURT: Yes, sir.

16 Cross-Examination by Mr. Brannon:

17 Q. Mr. Blackwell, how old are you?

18 A. 29.

19 Q. Where did you go to high school?

20 A. West Oak.

21 Q. Did you graduate?

22 A. I did.

23 Q. Okay. What year?

24 A. I graduated in 1998, early.

25 Q. Okay. Did you ever go to college anywhere?

1 A. I did.

2 Q. Where did you go?

3 A. Tri-County Tech.

4 Q. Okay. Did you get any certificates or anything
5 like that?

6 A. No.

7 Q. No? Okay. What did you take at Tech?

8 A. I took welding, I took some university transfer
9 courses.

10 Q. Is that it?

11 A. Correct.

12 Q. And again, your wife's name is -- what's her name?

13 A. My wife's name is Jessica Blackwell.

14 Q. Okay. All right. Now, just a minute ago
15 Mr. Wagner asked you if you believed that the kidnapping
16 was off. Right? Do you remember that?

17 A. Yes.

18 Q. Okay. Do you still have the transcript there?

19 A. I do.

20 Q. Can you look at Page 30?

21 A. Okay.

22 Q. Line 3. It says (reading): Uh, ponder on it,
23 comma. (End of reading)

24 And then if you would read what you were saying
25 there?

1 A. You will have to let me read the context of this.

2 Give me one moment. (Witness reads transcript.)

3 On Line 3 I said (reading): ponder on it, the more
4 I believe that he never wanted this to take place. (End
5 of reading)

6 Q. Okay. I think, I think --

7 A. Do you want me to continue reading?

8 Q. Yeah. Down to the period on the next line.

9 A. Correct. (Reading): I think, I think more than
10 anything, he was wanting to feel me out. Because he
11 spent -- because he ---

12 Q. Okay. That, that's fine.

13 A. I wasn't finished. You told me to read to the
14 period.

15 Q. There's a period after "out," "feel me out."

16 A. Okay.

17 Q. Okay. And obviously the jury has got it so they
18 can read the whole thing. I'm not trying to hide
19 anything from them.

20 But -- (reading): the more I believe that he never
21 wanted this to take place. I think, I think he was just
22 trying to feel me out. (End of reading)

23 That's what it says?

24 A. That's what it says.

25 Q. Okay. So, now, I go back to Mr. Wagner's question.

1 He asked you if you thought it was off. Before the
2 conversation you said it was never on.

3 A. Excuse me. You said to go back to Mr. Wagner's
4 question and then you said what?

5 Q. He asked you, when you left, if you thought the
6 kidnapping was off. Right?

7 A. Correct.

8 Q. Well, my question is, didn't you say before you
9 went in that it was never on?

10 A. No, sir. I think you are misinterpreting that.

11 Q. Well, I'm reading your words, which say, "never
12 wanted this to take place..."

13 A. Talking about the court proceeding.

14 Q. Why would he be feeling you out about a court
15 proceeding?

16 A. You will have to ask him that.

17 Q. Okay. All right. So you weren't talking about the
18 kidnapping?

19 A. No, sir. Like I said, I don't know the whole
20 context for that, and if you will give me a minute to
21 let me read over it, I'll be glad to answer that.

22 Q. Okay, go ahead.

23 A. (Witness reads transcript.)

24 Yes. I was referring to he never wanted to take
25 place the car tampering or anything like that. He

1 always intended to kidnap the judge.

2 Q. Oh, okay. All right. Okay. Now, that, that
3 Sunday you said he called you -- when you were with
4 Laurieanne. I don't know the date, but the date that
5 you were with Laurieanne, do you remember that?

6 A. I do.

7 Q. Okay. You said that he called you and asked you to
8 come over to his house, right?

9 A. Correct.

10 Q. Well, why would somebody call you and say come over
11 to the house when they weren't home?

12 A. Again, you'll have to ask him that. Because he
13 wasn't home. We went to like a Wal-Mart, purchased
14 tampons for my wife, and then we went back to his house
15 and he was there.

16 Q. Okay. Well, isn't it true that you got a phone
17 call from Joe to let you know that they were on their
18 way home?

19 A. Correct. They told me they were at the Tiki Hut.

20 Q. Okay. So --

21 A. They got held up. His explanation was that they
22 got held up talking to people. We left, went to
23 Wal-Mart, come back. Then he explains to me why he
24 wasn't there.

25 Q. All right. How did you find out -- never mind.

1 Withdraw that.

2 Okay. Now -- okay. How many statements have you
3 given in this case?

4 A. Just the one that I'm giving here today and the one
5 that I give to the police.

6 Q. Okay. Well, now, you have said something -- you
7 talked to David Smith, right?

8 A. I did.

9 Q. Okay. Now, you said you knew of him, right?

10 A. Correct.

11 Q. Isn't he the sheriff's deputy that investigated
12 that shooting incident that you were involved in?

13 A. No, sir. I believe that is absolutely false.

14 Q. Okay.

15 A. He may have had a part in it, but that's not my
16 understanding that that's the case.

17 Q. Is that how you came to know him?

18 A. No. I know him because I live in the same
19 community for years where he also lived.

20 Q. Okay. What did you tell David Smith about this
21 alleged incident?

22 A. Not a whole lot. I just basically told him that
23 James Bartee was trying to get me to kidnap the judge.
24 And he basically told me that there wasn't nothing he
25 could do about it, he would have to speak to somebody

1 else about it.

2 Q. Okay, all right.

3 A. He contacted SLED and we went from there.

4 MR. BRANNON: Approach the witness?

5 THE COURT: (Nodded head.)

6 By Mr. Brannon:

7 Q. This is David Smith's incident report. Okay?

8 A. All right.

9 Q. I'll let you look at the whole thing.

10 A. Do you want me to read this?

11 Q. I want you to familiarize yourself with it and then
12 I'm gonna ask you to read a portion of it.

13 A. Okay. (Reading David Smith's incident report.)

14 Okay.

15 Q. Okay. What's the highlighted part say?

16 A. Well, the first highlighted part on the first page
17 says "kidnapping."

18 Q. Right. Got you. Okay.

19 A. The second highlighted part says (reading):

20 Blackwell said Bartee wanted him to go to Judge

21 Williams' house, wear a mask and gloves, rough the judge

22 up and tell the judge Donnie Fricks and Jerry Edwards

23 wanted him to do this.

24 Q. Okay. All right. Can I have that back?

25 A. (Handing).

1 Q. Thank you, sir.

2 All right. Now, this is the statement that you
3 gave to Agent Sloan (handing)?

4 A. Yes, it is.

5 Q. Okay. Tell me in that statement where you say
6 anything about a mask, going to the house, roughing him
7 up, and telling him that Edwards sent you to do it.

8 A. I don't believe I see that in here.

9 Q. Okay. But that is your statement, right?

10 A. This is a statement written for me by Agent Sloan.

11 Q. Okay. Did you sign it?

12 A. I did.

13 Q. Did you read it before you signed it?

14 A. Probably not because he was writing it as I was --
15 I mean, I read most of it, but he was writing it as I
16 was speaking.

17 Q. Okay. So did you -- did he not write something
18 that you said?

19 A. No.

20 Q. Okay. So everything that's on that paper you said?

21 A. Correct.

22 Q. And nothing you said is missing from that. Right?

23 A. Probably not.

24 Q. Okay. And what's the date on that statement there?

25 It should be up there on the top someplace.

1 A. Well, that's what I thought, too, but it's not.

2 Okay. The 30th of May, 2012, down at the bottom.

3 Q. The 30th of May, 2012, okay. Thank you. Can I
4 have that back?

5 A. (Handing.)

6 Q. And just one -- now, you only talked to Officer
7 Smith on the 29th, right? You talked to him early --

8 A. I talked to him only one time, the day.

9 Q. You talked to him the day of, but before you did
10 the wire and stuff, right?

11 A. Correct.

12 Q. Okay. And the wire was done on the 29th, right?

13 A. Correct.

14 Q. Okay. And, now, what date does he say that he
15 talked to you, right there on that first line? It's
16 right there (points).

17 A. The 29th.

18 Q. Okay. So, on the 29th you told Smith, mask, go to
19 his house, rough him up, and tell Edwards that -- tell
20 him that Edwards sent you, right?

21 A. Correct.

22 Q. Okay. I'll take that back again.

23 And then the next day you are talking to SA Sloan,
24 and you don't say anything about mask, go to house,
25 rough him up, and tell him Edwards sent you. Right?

1 A. Well, no, it's not absolutely right. I did
2 mention, even though it may not be on the statement,
3 there was three or four schemes that Bartee had
4 originally done until he finally landed on dressing up
5 like a news reporter. The last thing he wanted me to do
6 when I got the judge out was tell him, This is what you
7 get for fucking with Jerry Edwards.

8 Q. Okay. All right. All right. Well, why, why, why
9 do you have three different statements? And I'm saying
10 three because you mentioned the news reporter.

11 A. I didn't write any of these statements, sir. You
12 are asking me why there's three statements I didn't
13 write. I didn't write any of these statements.

14 Q. So are they all wrong?

15 A. No, they're not all wrong. They're all correct.

16 Q. Okay. But did you tell Sloan about the mask and
17 roughing the judge up?

18 A. That's what the money was for: the mask, shoes, zip
19 ties, duct tape. Yes, I did.

20 Q. Well, if all you're gonna do is go to the judge's
21 house and rough him up, what did you need zip ties for?

22 A. No. He wanted me to rough him up before I put him
23 in the trunk of the car.

24 Q. Oh, okay. But that's not in any -- that's not in
25 that statement to Smith, is it?

1 A. That statement, no. Me and Smith didn't get into a
2 lot of details. I basically told him what was going on.
3 He said, I'll have to make some phone calls. We didn't
4 go into details. It was a five-minute conversation. I
5 left. I didn't want to be seen in the parking lot
6 talking to him.

7 Q. Okay. Do you know who Ryan Beasley is?

8 A. I do.

9 Q. And you gave him a statement, too, didn't you?

10 MR. WAGNER: Objection, Your Honor.

11 THE COURT: Just one second.

12 Mr. Foreman, would you take your jury to the jury
13 room, please.

14 (Whereupon, the jury left the courtroom at
15 approximately 5:47 p.m.)

16 THE COURT: Is this the same objection you had
17 previously?

18 MR. WAGNER: Yes, sir.

19 THE COURT: Okay. You are protected on the record.
20 I'm gonna overrule your objection.

21 MR. WAGNER: Yes, sir.

22 THE COURT: Thank you.

23 Bring the jury back, please.

24 MR. BRANNON: Your Honor, just cautionary. I don't
25 intend to talk about the lawsuit or anything like that,

1 but I felt it was necessary to identify the preparer of
2 the document.

3 THE COURT: Sure.

4 (The jury entered the courtroom at approximately
5 5:48 p.m.)

6 MR. BRANNON: May it please the Court?

7 THE COURT: Yes, sir.

8 By Mr. Brannon:

9 Q. I asked you if you knew who Ryan Beasley was,
10 right?

11 A. I do know who Ryan Beasley is.

12 Q. Okay. And, and now, this is a document that was
13 prepared by him for you; is that correct?

14 A. I haven't seen that document.

15 Q. Okay. I'll let you look at it (handing).

16 A. (Witness reads document.)

17 It appears to be.

18 Q. Okay. What's the date that that was filed?

19 A. The date that it was filed with the clerk of court?

20 Q. Yeah.

21 A. February 8th, 2013.

22 Q. Okay. All right. I'd like to have it back.

23 A. (Handing.)

24 Q. Now, in this document, if you would just read that
25 from there to there. Okay?

1 A. (Witness begins to read document.)

2 MR. WAGNER: I'd kind of like to know what he's
3 looking at, too.

4 THE COURT: Would you show it to him.

5 MR. BRANNON: Certainly.

6 Forgive me, sir. I need to show it to the
7 Solicitor.

8 (Counsel confer.)

9 MR. BRANNON: (Hanging).

10 THE WITNESS: Read that?

11 By Mr. Brannon:

12 Q. Yeah.

13 A. (Reading): The Plaintiff told the Defendant that
14 the Defendant should pretend that the Defendant is a
15 news investigator, that the Defendant should wear a
16 white-collared shirt, with a marker write the logo for
17 News Channel 4 on the label. The Plaintiff said the
18 judge would let the Defendant in to his house to be
19 interviewed. (End of reading)

20 By Mr. Brannon:

21 Q. And again, this is February of this year, right?

22 A. Correct.

23 Q. So on the 29th you tell Smith, mask, rough the
24 judge up. On the 30th you tell Sloan kidnapping. And
25 on February or sometime before February, that date, you

1 tell Ryan Beasley, white shirt, marker, go and act like
2 you were gonna interview him?

3 A. I think it's also notable to say that David Smith
4 also was also told to kidnap him. It was highlighted on
5 the first page.

6 Q. Yeah, right. But you got three different accounts
7 of what was to happen, right?

8 A. No, sir. I already explained to you that David
9 Smith and I spoke briefly.

10 Q. Okay. Now are you telling me that David Smith made
11 that up --

12 A. No, sir. I never said David Smith made up
13 anything. I said we spoke briefly. I didn't tell David
14 Smith many of the details, any of the details, other
15 than James Bartee wanted me to kidnap a judge. He told
16 me that he would have to make a phone call to have
17 something done about it, he couldn't do it, and get back
18 to me. None of that was SLED.

19 Q. Okay, all right. Now ---

20 A. I gave SLED details.

21 Q. But you didn't tell SLED about the white shirt and
22 the marker, did you?

23 A. I'm afraid so, I probably did.

24 Q. Okay. Well, it's not in the statement that SLED
25 wrote for you, is it?

1 A. It doesn't appear to be.

2 Q. Okay. All right. Now, the guys that you hired --

3 A. I didn't hire any guys.

4 Q. Yeah. But you said you did, right?

5 A. Correct.

6 Q. And that's not truthful, is it?

7 A. No, it's not.

8 Q. Okay. Have you ever heard of a guy named
9 Nietzsche?

10 A. Never.

11 Q. He's a German philosopher and poet. Did you know
12 he once said, I'm not mad at you because you lied. I'm
13 mad because I can never --

14 MR. WAGNER: Objection, Your Honor.

15 THE COURT: I sustain the objection.

16 MR. BRANNON: Okay.

17 By Mr. Brannon:

18 Q. You lied about hiring somebody, didn't you?

19 A. To James Bartee, yes.

20 Q. Okay. And you have given at least three different
21 accounts of what the plan was, right?

22 A. No.

23 Q. Okay. But I've got three different writings that
24 have different accounts.

25 A. They're from three different people. Everybody has

1 their own perception.

2 Q. But, now wait a minute. Do you understand that a
3 law enforcement officer is supposed to write down what
4 you say happened or what is supposed to happen, right?

5 A. I do and he did.

6 Q. So you told Smith one thing, Sloan another thing --

7 A. I told Smith a limited amount of necessary
8 information to get me in contact with SLED.

9 Q. Okay. All right. How many times have you been to
10 Mr. Bartee's place of business?

11 A. I couldn't be exact. I would say at least ten
12 would be a fair number.

13 Q. Okay. How many times have you been to his house?

14 A. Probably 20.

15 Q. Okay. How many times has he given you money?

16 A. Just that once.

17 Q. Just that one time?

18 A. His other supporters give me money to purchase
19 fliers.

20 Q. Okay. But Mr. Bartee has given you money one time?

21 A. Money left his hand to my hand only one time.

22 Q. Okay. All right. And, now, did Mr. Bartee know
23 that one of his supporters allegedly gave you money to
24 buy fliers?

25 A. Mr. Bartee is the one who told me to meet up with

1 her to get the money.

2 Q. Oh, okay. All right. And your statement or your
3 testimony is that he gave you \$200 on the, what day?

4 A. It was Sunday.

5 Q. The 27th?

6 A. Whatever the date was.

7 Q. The date that --

8 A. The Sunday following the Seneca Fest event.

9 Q. Okay. And was that when Laurie was there?

10 A. Laurieanne.

11 Q. Laurieanne. Is that when she was there?

12 A. Correct.

13 Q. Okay. All right. Now, you said that when you
14 walked in the door on the 27th when Laurieanne was
15 there, that he held something to your neck and said "I
16 could disable you," or I don't remember exactly what
17 your words were, but he stuck something to your neck?

18 A. Car keys.

19 Q. A car key, right. And then he showed you a sword
20 and said, I could cut you in half with this sword.

21 Right?

22 A. Correct.

23 Q. Now, was Laurieanne there? Did she walk in the
24 house with you at the same time?

25 A. Correct.

1 Q. So she allegedly saw that, right?

2 A. Correct.

3 Q. Okay. And, of course, then would have heard that,
4 right?

5 A. Correct.

6 Q. Okay. You smoke, right?

7 A. I do.

8 Q. Okay. Have you ever been allowed to smoke in
9 Mr. Bartee's house?

10 A. Never.

11 Q. Okay. In fact, when you are there and you want to
12 smoke, he asks you to go outside, right?

13 A. No, typically I wouldn't smoke, but the one time
14 that I did go there with the wire on, as I was going in
15 his house, I thought I'd have a cigarette, and then I
16 mentioned a cigarette. I never smoked in his house.

17 Q. Okay. Did you ever smoke on his back porch or
18 anything like that?

19 A. No.

20 Q. No?

21 A. Not that I recall. The only time I recall being on
22 his back porch, other than going in his back porch door,
23 was the night when him and I were out there talking when
24 Laurieanne took me there.

25 Q. Is it your testimony that Mr. Bartee, you believe

1 Mr. Bartee threatened your family?

2 A. I certainly believe that he intended to threaten my
3 family, yes.

4 Q. Why didn't you tell law enforcement that?

5 A. I did.

6 Q. But that's not in any statement anywhere, is it?

7 A. They're not convicting -- they're not charging him
8 with a crime for threatening my family, they're charging
9 him with soliciting me to kidnap the judge.

10 Q. Okay. But they didn't, they didn't put in any of
11 your statements that there was a threat to your family,
12 did they?

13 A. Not that I'm aware of.

14 Q. Okay. And, in fact, the indictment that charges my
15 client doesn't allege that, does it?

16 A. I don't know what the indictment is.

17 Q. Okay. And you say again also that he had people
18 watching you. Right?

19 A. That was his words.

20 Q. Okay. I mean, right. You said that, you said that
21 my client said that to you. But again, that is not in
22 any of the statements that you've given, is it?

23 A. Well, I didn't tell none of the law enforcement
24 officers that I spoke to, I didn't tell them every
25 single word that was ever said from day one when I met

1 Bartee up until that point, no.

2 Q. Okay. One of the lines that Mr. Wagner asked you
3 about was the fire extinguisher line. Do you remember
4 that?

5 A. I do.

6 Q. You said that you had mentioned that to Bartee
7 about some other people. Do you remember that?

8 A. No. I said Bartee had mentioned that to me about
9 some other people.

10 Q. Okay. All right. What were you potentially going
11 to be doing the next day? You said you might be out of
12 town for a few days.

13 A. No, I wasn't gonna be out of town. That was, there
14 was an urgency with SLED to get to his house. The story
15 was I was gonna be out of town in order to get to his
16 house that night to get the wire.

17 Q. Oh, I understand. So that was a lie, too?

18 A. Correct.

19 Q. Okay. Didn't you have a tree job in Tennessee
20 lined up?

21 A. No.

22 Q. No? Okay. So your testimony is that he solicited
23 you to kidnap a judge on the 27th when Laurieanne is
24 there, and he actually gives you money?

25 A. Correct.

1 Q. And the next time -- now, I don't want to put words
2 in your mouth -- the next time you talked to him is
3 when -- is when?

4 A. The next time I speak to Bartee?

5 Q. Yeah.

6 A. Well, the night that they do the recording. I
7 spoke to Joe in between there.

8 Q. Right. Because you called Joe to get yourself
9 hooked up with Bartee, right?

10 A. Absolutely.

11 Q. Okay. So there was no conversation personally
12 between you and Mr. Bartee from the night of the 27th
13 when you leave the house with Laurieanne until you go in
14 his house with a wire?

15 A. As I recall it, no.

16 Q. Okay. So you say over and over again you're just
17 waiting. I need somebody to tell me what to do, you
18 know. And everybody is saying don't do anything.
19 Right?

20 A. On the recordings, yes.

21 Q. Okay. But you didn't talk to Mr. Bartee between
22 the night of the 27th and late hours of the night of the
23 29th.

24 A. Correct.

25 Q. Okay. So in that intervening period is when you

1 are, you're riding in the car with I think it's Baker of
2 the Anderson County sheriff's department, and you say,
3 the more I think about it, he never intended for this to
4 happen.

5 A. He intended for the judge to show up. As I told
6 you, you misinterpreted that.

7 Q. Okay. I got you. I got you. If there's a plan,
8 if there's a plan, doesn't there have to be a start
9 date?

10 A. Yeah. His plan was to have him kidnapped prior to
11 the day of the election -- the day of the civil
12 proceedings and having gone all that day until court
13 would be dismissed. That was the start date.

14 Q. Well, but your own words were, I just need somebody
15 to tell me when to go. Right?

16 A. I was just trying to get him in a conversation.

17 Q. You were trying to lead him someplace, right?

18 A. No. I was trying to get him to reiterate what he
19 had already said to me.

20 Q. You were trying to lead him down a road that you
21 say he'd already been down once before, correct?

22 A. No. I was trying to get him to reiterate what he
23 had already said to me.

24 Q. He didn't, though, did he?

25 A. Yes, he did.

1 Q. How is that?

2 A. How is what?

3 Q. How did he, how did he, how did he do it? How did
4 he -- he never told you where to go, did he?

5 A. You'll have define "that." I don't know what
6 "that" is.

7 Q. I asked you if you were trying to take him
8 someplace. You said no, I was trying to get him to, to
9 restate a conversation. He didn't restate the
10 conversation, did he?

11 A. I think it's more than fair to say that he restated
12 the conversation and then some.

13 Q. Okay. All right. When were you informed that that
14 shooting incident had been ruled self-defense?

15 A. Never.

16 Q. Never?

17 A. Never.

18 Q. Okay. What was your, what was your beef with
19 Fricks?

20 A. James Bartee put me up to it, passing out his
21 fliers and all that. I don't -- personally I didn't
22 like Fricks, but the things that I did were coordinated
23 by James Bartee.

24 Q. Okay. Let's go back. You said very early on that
25 you didn't like some of the things that were going on in

1 the sheriff's department and you wanted a change.

2 A. Correct.

3 Q. What didn't you like about what was going on in the
4 sheriff's department?

5 A. Well, there have been times that I would need the
6 sheriff's office to do an investigation where I was the
7 victim. That didn't never happen.

8 Q. Why is that?

9 A. You'll have to ask them.

10 Q. Okay. It might be that they didn't believe you?

11 A. No, I don't think that it's hard to believe
12 somebody when they got nine shotgun rounds shot through
13 their house. I don't think that's hard to believe.

14 Q. But they didn't investigate that?

15 A. No, they didn't.

16 Q. Okay. All right. And did Fricks have something to
17 do with the failure to investigate that?

18 A. Fricks wasn't even with the County during that time
19 as I understand it.

20 Q. Okay. Now, if the hearing was the next day -- and
21 there was a hearing on the 30th, right?

22 A. I don't know the date. It was the day that he got
23 arrested.

24 Q. Okay. But, but you said it was the next day
25 after --

- 1 A. The wire.
- 2 Q. -- the wire, right?
- 3 A. Correct.
- 4 Q. Okay. Why would something need to be done to
- 5 anyone after that hearing?
- 6 A. You are misinterpreting again. He was wanting to
- 7 kidnap prior to the hearing, until his attorney then,
- 8 not you, his other attorney, had told him it would do no
- 9 good.
- 10 Q. Okay. But you are putting all kinds of emphasis on
- 11 hold off, let the dust settle, those kinds of things.
- 12 A. Those were his words.
- 13 Q. But -- I agree they're his words. But you are the
- 14 one putting emphasis on them. And the point I'm trying
- 15 to get is this hearing was on the 30th. There was,
- 16 supposed to, anyways, be a decision that day, right?
- 17 A. I'm not the judge.
- 18 Q. Okay. But, after the hearing, why would there be
- 19 any need for anything to happen to anybody?
- 20 A. Because he couldn't kidnap the judge and have an
- 21 effect on the hearing, so in turn, in retaliation, he
- 22 was gonna let the dust settle. He said this, not me.
- 23 He was gonna let the dust settle. Do you want me to
- 24 read the transcript?
- 25 Q. I, I understand that. I just don't understand why

1 anything would need to happen after the 30th.

2 A. That was your client's decision, not mine.

3 Q. Okay. All right. How many times have you been
4 arrested?

5 MR. WAGNER: Objection, Your Honor.

6 THE COURT: Sustained.

7 By Mr. Brannon:

8 Q. The State asked you earlier about -- or the State
9 mentioned some convictions; is that correct?

10 A. They mentioned a conviction.

11 Q. Okay. How long have you been a confidential
12 informant?

13 A. Excuse me. They mentioned a, a crime I pled guilty
14 to.

15 Q. Okay. How long have you been a confidential
16 informant?

17 A. I am not a confidential informant.

18 Q. Okay. So you have never been a confidential
19 informant?

20 A. You call me an informant for setting up your
21 client, and I say I reported a crime.

22 Q. Okay. But, now, what was it that upset you about
23 Mr. Fricks allegedly saying something about you in the
24 newspaper or something?

25 A. I wasn't upset. I actually thought it was funny.

1 Q. Okay. But what was that about? Something about
2 showing your face in the paper. What was that?

3 A. Can you explain what you are asking me?

4 Q. Well, you, you rambled on allegedly in front of
5 some people about your dislike for Fricks, and one of
6 the things that you were allegedly upset about was
7 something he said about you in the newspaper.

8 A. He said I was an informant.

9 Q. Okay. So you got an ex law enforcement officer
10 believes that you are an informant, right?

11 A. His law enforcement officer career in Oconee County
12 ended way before I was an adult --

13 Q. Okay.

14 A. -- so if you are, if you're trying to get to him
15 and I had some beef between us, you're wrong.

16 Q. Well, just a minute ago you said you didn't like
17 him.

18 A. Right. I don't like his attitude, I don't like his
19 character.

20 Q. All right. What do you do for a living?

21 A. I am a sole proprietor. That means that I contract
22 work of all sorts --

23 Q. Okay.

24 A. -- primarily tree work.

25 Q. Okay. Do you ever do any brick or block work

1 anymore?

2 A. I have. I don't, don't generally tend to take
3 those jobs anymore.

4 Q. Okay. All right. Now, your statement was
5 allegedly -- to get the money from Mr. Bartee your
6 statement was allegedly "I'm a poor man, I don't have
7 money to buy gas" and stuff like that.

8 A. Correct.

9 Q. Okay. How much money do you make a week?

10 A. More than enough to buy gas.

11 Q. Okay. Well, how much money do you make a week?

12 A. I'm a sole proprietor. I contract jobs. I don't
13 get paid by the hour. There's no way to determine how
14 much I make in a week on an average.

15 Q. Okay. How much money did you make last week?

16 A. Last week I probably made nine hundred bucks.

17 Q. Okay. All right. Where do you live?

18 A. I live in Seneca.

19 Q. Okay. Do you live at

20 A. I do.

21 Q. Okay. Who did you buy your house from?

22 A. I never bought a house.

23 Q. Who did your wife buy her house from?

24 A. My wife has never bought a house.

25 Q. You didn't buy a house from Patricia Houston?

1 By Mr. Brannon:

2 Q. Mr. Blackwell, I've only got a few more questions.

3 And forgive me for taking the break. But do you have
4 the transcript in front of you?

5 A. I do.

6 Q. If you would turn to Page 29.

7 A. 29.

8 Q. And, and earlier you said that I was taking the
9 language on Page 30 out of context where you said I
10 don't believe he never wanted this to take place.

11 You said that I was taking that out of context --

12 A. Correct.

13 Q. -- right?

14 All right. Okay. You see on Line 14 where you
15 said you spilled a beer on him?

16 A. No. I smelled beer on him. That's a typo.

17 Q. You smelled beer on him?

18 A. Smelled beer on James Bartee; correct.

19 Q. Oh, okay. All right. All right. The next line
20 down, "I'm like" I -- if you would start with "I."

21 A. Start with "I" and read?

22 Q. Start with that word "I," which is the last word on
23 Line 15.

24 A. Correct. And read?

25 Q. Okay. Wait a minute. Okay. Let's start, let's

1 start at Line 11 with, in quotes, it says "I wonder
2 what..." Okay?

3 A. Okay.

4 Q. Start there. Okay?

5 A. And read?

6 Q. Yeah. And I would like you to read all the way to
7 Line 8 on the next page where it says he -- me, he lost
8 about two million dollars (\$2,000,000,000) [sic].

9 So I want you to read from "I wonder what" all the
10 way to "two million dollars."

11 A. Where was "I wonder what"? What line was that
12 again? Okay. I've got it, yes, sir. Line 11.

13 Q. Line 11, yes, sir.

14 A. (Reading): "I wonder what would happen if the judge
15 didn't show up to the court case?" So, I just kind of
16 laughed. I thought he was just, you know, -- I -- and I
17 smelled [sic] beer on him when he did it. I'm
18 like... -- I just kind of laughed and I said, "I don't
19 know."

20 And he said, "Well, they would have to dismiss it,
21 wouldn't they?" I said, "Yeah, probably." He said,
22 "Why don't you take care of that for me."

23 Q. Let me stop you there. What does that mean?

24 A. What does what mean?

25 Q. What do you think it means when he says, "Why don't

1 you take care of that for me"?

2 A. (Laughs). Well, that could mean a lot of things.

3 I don't ---

4 Q. Okay. I asked you ---

5 A. --- at this point ---

6 Q. --- what you thought it meant.

7 A. I don't know. I don't know what it means.

8 Q. Okay. All right. Keep going.

9 A. Okay. (Reading): "Why don't you take care of that
10 for me."

11 Let me back up.

12 I said, "Yeah, probably."

13 He said, "Why don't you take care of that for
14 me."... The next day I called him up and, uh -- that's
15 when I realized he was dead serious. You know, I don't
16 know -- you know, "What are you talking about? You mean
17 you want me to dis-enable [sic] his car where he can't
18 show up?" He said, "Yeah, that'd work."

19 (Page 30) But hypothetically [sic] -- you know, he
20 was very careful about not (inaudible) -- the more that
21 I ponder on it, the more I believe that he never wanted
22 this to take place. (End of reading)

23 Referring to disabling the car.

24 (Reading): I think, I think more than anything, he
25 was wanting to feel me out, because [sic] ... --out of

1 his own mouth--he spent about thirty thousand dollars
2 (\$30,000). He told me he lost about two million dollars
3 (\$2,000,000,000) [sic] on his home. (End of reading)

4 Q. Okay. How am I taking that out of context?

5 A. Well, because you're referring me to saying I don't
6 think he wanted it to take place, referring, in
7 reference to the kidnapping. That's not at all what I
8 meant. What I meant was I never thought he wanted to
9 disable his car. That's what I was talking about in
10 that statement.

11 Q. Okay. Okay. All right. Now --

12 A. He never wanted me to disable his car. He wanted
13 to kidnap him is what I mean.

14 Q. Okay. Okay. All right. Now, you said also
15 earlier that the SLED Agent or ATF or somebody wanted to
16 see if -- wanted you to see if he would give you a gun,
17 if Bartee would give you a gun, right?

18 A. The best recollection of that I have is he said it
19 would be good if you could get him to give you a gun.

20 Q. Where is that on that tape recording?

21 A. That wasn't on the recording. This was prior to us
22 making the phone call.

23 Q. Prior to you making the, the phone call to Joe?

24 A. Correct.

25 Q. Oh, okay.

1 A. Or it may have been after the phone call before we
2 went to his house. Either way it was during the time
3 when the --

4 Q. When it wasn't working.

5 A. -- when we weren't recording, when we weren't
6 talking to Joe, we weren't talking to James Bartee.

7 Q. Okay. All right. On page 55, Line 10 through 13.

8 A. Read it?

9 Q. Yeah. You, you're, you state something to the
10 effect on Line 8 (reading): I'm getting my drive
11 back... though. Maybe I'll get something going. (End of
12 reading)

13 Now there you are talking about yourself, right?

14 A. Correct.

15 Q. Okay. And then, and then I believe you see the
16 follow car, or the other car with law enforcement,
17 right? Is that what you mean --

18 A. Well, now you have to let me read the context of
19 this.

20 Q. Okay.

21 A. (Witness reads transcript.) It appears in this,
22 you know, I said (reading), Hey, that was them.

23 I don't know who "them" is.

24 Q. Okay. But it wasn't Bartee?

25 A. No, absolutely not.

1 Q. Okay. And it wasn't Joe?

2 A. No.

3 Q. Okay. All right. On the next line you say,
4 (reading): Hey, just say if he was to call me up
5 tomorrow and say, All right. I want to... get this son
6 of a bitch," what, what in the world... then? (End of
7 reading)

8 Is that what it says?

9 A. Yeah. I basically asked him, what do I do if he
10 calls me tomorrow, you know, and says, Hey, go ahead and
11 get the judge before the hearing?

12 Q. Okay. Well, under that line of thought, if he
13 never called you, what was gonna happen?

14 A. I guess what did happen.

15 Q. Okay. All right. In other words, he would get
16 arrested?

17 A. That was SLED's call, not mine.

18 Q. Okay. All right.

19 A. I didn't know whether or not --

20 Q. That's what you were, that's what you were talking
21 about?

22 A. I'm asking the SLED officers, if this guy calls me
23 up -- because we're going to park, do you understand?

24 Q. Uh-huh.

25 A. We made this recording. I'm not going home with

1 the SLED agent, I'm going to my own house. So I ask
2 him: If he calls me up and says, "Hey, go ahead and get
3 this son of a bitch," what do I do? That's what I'm
4 asking there.

5 Q. Okay. All right. Now I'm gonna give you your
6 statement back.

7 A. Okay.

8 Q. This is the one, this is the one to SLED.

9 A. Okay.

10 Q. Do you see in there when you said you would call
11 him two or three times a day?

12 A. No, I don't see that.

13 Q. Right there (points).

14 A. Okay, yes, sir. (Reading): Sometimes I'd call him
15 two or three times a day.

16 Q. Keep going.

17 A. Sometimes he would just lay the phone down. I'd
18 give him hell. This --

19 Q. Okay. Sometimes I would call him two or three
20 times a day?

21 A. Yes, sir.

22 Q. I would give him hell, and sometimes he would just
23 lay the phone down?

24 A. It's correct that that's what it says, yes.

25 Q. How would you know?

1 A. No, sir. I was referring to Bartee's statement to
2 the newspaper. He made a statement to the newspaper
3 saying that I've been on his bad side ever since he
4 opened his election bid, that I would call him, give him
5 hell. He would just lay the phone down and come back to
6 the phone and I would still be talking. Which is
7 untrue.

8 Q. Okay. So, in other words, what it says on that
9 paper isn't at all what it means?

10 A. It is, except it seems as if it's not making it
11 clear that I'm saying this is what Bartee is saying.

12 Q. Oh, okay. Okay. All right. I'll take that back.

13 A. (Handing.)

14 Q. Okay. And then in your statement it says
15 (reading): A week before Seneca Fest Bartee kept
16 bitching about Donnie Fricks? (End of reading)

17 Do you remember saying that?

18 A. I certainly do.

19 Q. Okay. At Seneca Fest Bartee spoke to me and then
20 later a White male around 35 or 40 came up and handed me
21 a card, okay, and then on the back it says -- on the
22 back of it it says Judge Jimmy Williams, blah, blah,
23 blah. Okay? I'm not --

24 A. Correct.

25 Q. Okay. I thought he asked you to kidnap the judge

1 at Seneca Fest.

2 A. No, he did not. I never said that he did. I said
3 that he asked me, I wonder what would happen if the
4 judge didn't show up for the court case.

5 Q. Uh-huh.

6 A. That's what I said.

7 Q. Okay. What ---

8 A. Then ---

9 Q. But what else?

10 A. Then I said, I don't know.

11 He said, (Reading): Do you think you could help me
12 out with that? He walked across the street, straight
13 across the street to the left towards Cotton County
14 Music Store. Ryan Stancil brought me a card back. At
15 that time I did not know Ryan Stancil's name. It was
16 later that I found out his name was Ryan Stancil. (End
17 of reading)

18 Q. Okay. But in here, in this statement, again to
19 SLED, you don't say anything about him mentioning the
20 judge; do you?

21 A. Yes, I do.

22 Q. Well, actually, you do back here. Read the part
23 that's green.

24 A. (Reading): I asked about the judge. He said,
25 Well, if he don't show up, the judge will have to

1 dismiss the case. We don't -- we went out back, and he
2 said he wanted me to do something to keep him from
3 coming.

4 Q. Okay. But here's the point I'm trying to make. At
5 Seneca Fest you don't say anything about Bartee and the
6 judge. The first time the judge is mentioned is on his
7 porch, and you brought up the judge --

8 A. Wrong.

9 Q. -- in that statement.

10 A. Wrong.

11 Q. That's, that's what that statement says.

12 A. It is absolutely not what it says.

13 Q. Okay. All right.

14 A. This statement says that Bartee asked me at Seneca
15 Fest, I wonder what would happen if the judge didn't
16 show? This part here is referring to when Laurieanne
17 and I were at his house and we were on the back deck.

18 Q. Okay. All right. I must have just read it wrong.

19 A. I believe you did.

20 Q. (Reads transcript.) Well, no, I didn't read it
21 wrong. No, I didn't read it wrong.

22 (Reading): At Seneca Fest Bartee spoke to me (End
23 of reading).

24 Then later a White male walks up and hands you the
25 card. You state that the back of the card says

1 something about Jimmy Williams. Doesn't say Bartee said
2 Jimmy Williams. You talk about how you knew Jimmy
3 Williams through the newspapers and stuff like that.
4 The first time there's a conversation that you say in
5 this statement between you and Bartee is when you asked
6 him about the judge?

7 A. Show me where it says that.

8 Q. It's highlighted.

9 A. Okay. Let me, let me read this.

10 (Witness reads document.)

11 Well, basically what it's saying here is I'd asked
12 him about the judge, and then he said (reading): Well,
13 if he don't show up, the judge will have to dismiss the
14 case.

15 Q. Right. But let's, let's be real clear here.

16 That's your statement of your account, correct?

17 A. Well, this is a statement that was written for me
18 by Michael Sloan.

19 Q. Okay.

20 A. It is not a hundred percent word for word for the
21 way things went. It is a, pretty mixed up. But
22 basically what I'm telling you is he said on the
23 sidewalk, I wonder what would happen if the judge didn't
24 show up.

25 Q. I thought he was leaning against the flagpole.

1 A. He was, on the sidewalk.

2 Q. All right. But again, did Sloan leave something
3 out?

4 A. Maybe I left something out, maybe he left something
5 out. I was really nervous when I was talking to him
6 because he had already threatened me with jail. He
7 assumed I was lying.

8 Q. Okay. All right. Almost done. You, earlier in
9 your testimony, back on Page 30.

10 A. In my testimony or the transcript?

11 Q. In the transcript. Excuse me. Well, I'm gonna
12 talk about both of them.

13 When I asked you about (reading) the more I believe
14 that he never wanted this to take place, (end of
15 reading) early on in your testimony you said what he
16 didn't want to take place was the civil case.

17 A. No. He didn't want me to disable his car to
18 prevent him from going to the civil case.

19 Q. Oh, okay.

20 A. I done told you that about twice.

21 MR. BRANNON: Okay. Your Honor, I don't have
22 anything further. Thank you.

23 THE COURT: Any Redirect?

24 MR. WAGNER: I don't have anything further, Your
25 Honor.

1 State of South) In the Court of General
 Carolina) Sessions
 2)
 County of Oconee) Indictment No: 2012GS3700597
 3)

4 State of South)
 5 Carolina)
)
 6 Plaintiff,) Transcript of Record
) Trial - Volume 4
 7 -vs-) (Pages 653 through 911)
)
 8 James Richard Bartee,)
 Jr.,)
 9)
 Defendant.)

10 August 29, 2013
 11 Walhalla, South Carolina
 12)

13 B e f o r e:
 14

15 The Honorable R. Lawton McIntosh, Judge; and a Jury.
 16

17 A p p e a r a n c e s:

18 Christina T. Adams, Esq.
 10th Circuit Solicitor
 19 David Rhys Wagner, Esq.
 Deputy Assistant 10th Circuit Solicitor
 20 Lindsey Satterfield Simmons, Esq.
 Assistant 10th Circuit Solicitor
 21 Attorneys for the State

22 N. Douglas Brannon, Esq.
 Attorney for the Defendant
 23

24 Robin Sue Hild, FCRR, RPR
 25 Circuit Court Reporter

1 THE COURT: Would you call your next witness,
2 please.

3 MS. SIMMONS: The State calls Paul Harris.

4 (Whereupon, the witness entered the courtroom and
5 was sworn by the clerk of court.)

6 Whereupon,

7 Paul Harris

8 Having first been duly sworn, was examined and testified
9 as follows:

10 Direct Examination by Ms. Simmons:

11 Q. Would you please state your full name and spell
12 your last for the record.

13 A. It is Paul Harris, H-a-r-r-i-s.

14 Q. Lieutenant Harris, where are you employed?

15 A. The City of Walhalla Police Department.

16 Q. And how long have you been there?

17 A. Approximately 18 years.

18 Q. What's your position and duties?

19 A. I'm Lieutenant, Training Officer, narcotics and
20 gang investigations.

21 Q. Do you maintain incident reports and dispatch logs?

22 A. Yes, ma'am, I do.

23 Q. Do you -- I want to take your attention back to
24 what was known as Mayfest in Walhalla in 2012. Were
25 there any incidents reported on the afternoon of

1 Saturday, May 12th, 2012?

2 A. Yes, ma'am. We were dispatched by the Oconee
3 County Sheriff's Department at 1624 to an assault on
4 Main Street between the victim, Nicholas Blackwell, and
5 the subject that's reported to us as being Donnie
6 Fricks.

7 Q. And you were dispatched at 1624. Would that be the
8 time the call came in?

9 A. No, ma'am. There's gonna be a lag time between the
10 time the sheriff's department gets the call, they are
11 dispatched, and the time they relay the call to us by
12 radio.

13 Q. And why doesn't the sheriff's department take calls
14 on Saturdays?

15 A. On Saturday and Sundays the City does not have
16 dispatchers to cover the weekends, so on weekends they
17 cover for us.

18 Q. And, if someone were calling the Oconee County
19 Sheriff's Department Dispatch, what number would they
20 call?

21 A. They would dial 638-4111.

22 MS. SIMMONS: Beg the Court's indulgence just a
23 minute?

24 THE COURT: Yes, ma'am.

25 MS. SIMMONS: Please answer any questions

1 Mr. Brannon may have.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Cross-Examination.

4 MR. BRANNON: May it please the Court?

5 THE COURT: Yes, sir.

6 Cross-Examination by Mr. Brannon:

7 Q. Lieutenant Harris, did you personally respond?

8 A. No, sir, I did not.

9 Q. Okay. So you don't have any, any personal
10 knowledge of anything that happened that day?

11 A. No, sir. I'm just testifying to the fact that we
12 were dispatched.

13 Q. Got you. What time is 1654 [sic]?

14 A. 1624. That's 4:24.

15 Q. 4:24. Thank you.

16 MR. BRANNON: Nothing further.

17 THE COURT: May the witness be excused?

18 MS. SIMMONS: No objection, Your Honor.

19 THE COURT: Thank you, sir. You are excused.

20 (Whereupon, the witness was excused and left the
21 courtroom.)

22 THE COURT: Call your next witness.

23 MR. WAGNER: I call Agent Michael Sloan.

24 (Whereupon, the witness, Michael Sloan, was sworn
25 by the clerk of court.)

1 Whereupon,

2 Michael Sloan

3 Having first been duly sworn, was examined and testified
4 as follows:

5 Direct Examination by Mr. Wagner:

6 Q. Would you give us your -- say your full name and
7 spell your last name for the record, please.

8 A. Michael Brandon Sloan, S-l-o-a-n.

9 Q. And who do you work for, Mr. Sloan?

10 A. South Carolina Law Enforcement Division, better
11 known as SLED.

12 Q. Can I call you Agent Sloan?

13 A. That would be fine.

14 Q. How long have you worked for SLED?

15 A. Since 2007.

16 Q. Prior to that have you been in law enforcement
17 anywhere else?

18 A. I was. I was a deputy with the Anderson County
19 Sheriff's Office, I worked there for several years. I
20 became an investigator with the Anderson County
21 Sheriff's Office, and then I went to SLED in 2007.

22 Q. Okay. So total law enforcement experience time you
23 have is how long?

24 A. Ten, 11 years, somewhere close to there.

25 Q. Okay. What do you do as a special agent at SLED,

1 what kind of things do you handle?

2 A. We're a criminal investigator, almost like a
3 detective in a local jurisdiction except we work all
4 over the State or we work in the Upstate counties, we
5 have between 10 and 13 counties, and we work criminal
6 investigations.

7 Q. And do you go all over?

8 A. I do for some things, but I mainly work in the
9 Upstate.

10 Q. Okay. I mean, but as far as the Upstate, how many
11 counties?

12 A. I normally work Anderson, Oconee, Pickens,
13 Greenwood, Laurens, Greenville, Spartanburg. I'm sure
14 I'm leaving one out, but this area.

15 Q. Are you from Oconee County, or where are you from?

16 A. I'm from Anderson County.

17 Q. Okay. Do you work out of your car a lot as a SLED
18 Agent?

19 A. I do.

20 Q. And why is that?

21 A. Well, I mean, we -- you know, I may leave my house
22 and go to Marlboro County or I may leave my house and go
23 to Greenville County. I may be in Greenville County and
24 have to go across the State. So, I mean, we just, we
25 live in our car, basically.

1 Q. Did you get assigned to work this case involving
2 the Defendant, James Bartee?

3 A. I did.

4 Q. And how did you become involved, what happened?

5 A. Myself and another agent were in Anderson County
6 working a fugitive case, and Sheriff Singleton called me
7 on my cell phone, told me that he had information that
8 James Bartee was trying to solicit Nick Blackwell to
9 kidnap Retired circuit court Judge Jimmy Williams, and
10 obviously he was in the middle of an election, the
11 sheriff's office didn't want to be involved and they
12 turned it over to SLED.

13 Q. What did you do?

14 A. I contacted Investigator David Smith with Oconee
15 County, who Blackwell had went to to give him this
16 information, and briefly talked with David Smith. We
17 were, we were kind of running around wide open at this
18 time and I told David that I would just have to call
19 Mr. Blackwell when I got a chance.

20 Q. Okay. And what date was this?

21 A. May 29th, 2012.

22 Q. Okay. And, when you got done with the stuff you
23 were doing in Anderson, did you call Blackwell?

24 A. I did. I think I actually called him that
25 afternoon and said, I understand, you know, you went to

1 David Smith. We can't talk to you right now, but as
2 soon as we can, you know, I'll get in touch with you.
3 And later on that evening, it wasn't dark at the time, I
4 did call Blackwell and asked him to meet me at the
5 Anderson County Sheriff's Office just because that's
6 where we were close to.

7 Q. Okay. And how did you, how did you get Blackwell's
8 phone number?

9 A. I believe David Smith provided it. It could have
10 been the sheriff, but I'm pretty sure David Smith
11 provided it to me.

12 Q. Do you know what Blackwell's phone number was off
13 the top of your head?

14 A. (864) 247-2360.

15 Q. Did you know Nick Blackwell?

16 A. No, sir.

17 Q. Did you know James Bartee?

18 A. I would assume that I have heard Mr. Bartee's name
19 at some point, but I did not know Mr. Bartee at all. I
20 wouldn't know him by face or anything.

21 Q. Okay. And when you did meet with Blackwell, what
22 happened next?

23 A. We met that evening at the Anderson County
24 Sheriff's Office. And Jeff Kindley, Agent Jeff Kindley,
25 who is now a supervisor of mine, was with me. We went

1 into the sheriff's office. I sat Nick Blackwell down in
2 a chair and I think I stood up and talked to him at the
3 table and I told Nick Blackwell, I said, If you come in
4 here lying about a retired Secret Service Agent and a
5 candidate running for sheriff, I'm gonna put you in jail
6 tonight. And that was my whole intention at the time.

7 Q. Did you take a statement from him?

8 A. I anticipated taking a statement from him right
9 then. But the more we talked, the more information he
10 gave, and I determined we were on a time frame. And the
11 best way to determine if Nick Blackwell was lying to me
12 was to send him to Mr. Bartee's residence. And I asked
13 him if he was, if he was willing to do that, and he was.

14 Q. Did you talk to him a lot prior to that about what
15 he knew?

16 A. I did. I talked to him extensively before we
17 actually began the process of making some phone calls.
18 And, and he told me that him and Mr. Bartee talked a lot
19 on the phone, in person, he had been in Mr. Bartee's
20 house several times. I said, Draw me a picture of his
21 house. Show me, show me where he lives, what the house
22 looks like. And he did. He showed me the inside of it
23 on a sheet of paper just, just scratching it out. I
24 still didn't know if he was being truthful about that or
25 not.

1 And he gave me several different ways that
2 Mr. Bartee had talked to him about kidnapping Judge
3 Williams. One of them was, in fact, getting a white
4 golf shirt and somehow getting a news logo on it and
5 going to Judge Williams' house because Blackwell was
6 adamant that the judge loved the media. That was one
7 way to get him to talk to him.

8 He mentioned zip ties and duct tape. I don't
9 remember anything about tennis shoes.

10 He also mentioned that he kept bringing up a fire
11 extinguisher. And at this time we did not take a
12 statement because we were on a time frame. It was
13 already -- I guess at this point -- I'm guessing 9:30,
14 10:00 at night. I didn't even know how Mr. Blackwell
15 was gonna go to Mr. Bartee's house this late at night.
16 I didn't think it was gonna happen.

17 Q. Did you hear Mr. Blackwell testify yesterday?

18 A. I did.

19 Q. What he testified to was the same stories that he
20 told you that day?

21 A. Yes, sir.

22 Q. Did he give three different stories to you or did
23 he tell you all that when you talked to him?

24 A. He gave one story that included all the stuff that
25 he testified to.

1 Q. So, to your knowledge, what you heard yesterday,
2 did he give three different statements or was it the
3 same thing he told you?

4 A. No, sir. He gave me one statement. Not everything
5 that Mr. Blackwell told me in the process of this was
6 put in the statement.

7 Q. When you finally took the statement from him, the
8 statement from him, did you put everything in that
9 statement that he told you?

10 A. I did not.

11 Q. We'll get into that a little bit more in a minute.
12 But you said there was a sense of urgency?

13 A. Yes.

14 Q. Why do you feel that? What for?

15 A. Well, my first sense of urgency was James Bartee, a
16 law enforcement officer running for sheriff, is not
17 gonna let Nick Blackwell come to his house at midnight,
18 because that was the time that it was gonna be by the
19 time we got there. I said, This is never gonna happen.
20 He's not gonna let this guy come to his house at
21 midnight.

22 Also, there was a court hearing that I knew nothing
23 about taking place the next day, and by this time I did
24 learn that Judge Jimmy Williams was involved in it and
25 my knowledge was still very limited to actually what was

1 going on at that time.

2 Q. Okay. So what did you decide to do? What did you
3 do?

4 A. Well, I contacted, of course, my immediate
5 supervisor and told him the circumstances. Number one,
6 a retired circuit court judge is involved. Number two,
7 a retired law enforcement officer and a candidate
8 running for sheriff is involved, so he in turn goes up
9 to his boss. From there I contacted the Solicitor.

10 Our technical service people, it would have taken
11 me two and a half hours I would guess by the time
12 somebody came from Columbia, if not longer than that, to
13 get somebody to me to run the wire, the audio. I'm in
14 Anderson, I know Anderson. I can't use Oconee County
15 because the sheriff has already said, We're not gonna be
16 involved. We opted to use Anderson County to run the
17 wire.

18 Q. Did you know some of the guys there?

19 A. I knew every one of them.

20 Q. Okay. And so what did you do?

21 A. I called Lieutenant David Baker, who is the
22 Lieutenant over the division, and told him briefly what
23 the circumstances were, and I needed some help; and he
24 in turn called Investigator Gregory, who I do know, to
25 come meet with me.

1 Q. Okay. Did they show up?

2 A. I don't remember if -- I think -- I don't remember
3 if we met at the sheriff's office first or if we went
4 straight to the old Charlie T's on Clemson Boulevard.
5 But we all ultimately met at the parking lot of the old
6 Charlie T's at 76 and 85.

7 Q. Were those guys in the business of doing things
8 like wiring people up and running wires and running --

9 A. Mark Gregory does them on a daily basis.

10 Q. Is that why you chose them because --

11 A. Right. That's not what I do and I needed somebody
12 who could do it.

13 Q. Did they bring anybody else in to help, or did
14 anybody else show up?

15 A. Um, Agent Jeff Kindley was already with me. Mark,
16 Investigator Mark Gregory arrived, Lieutenant David
17 Baker arrived, and five to ten minutes later ATF Agent
18 Shawn Stallo arrived.

19 Q. Okay. And did you know Shawn?

20 A. I don't know Shawn as good as I know the other
21 ones, but I do know him.

22 Q. And what kind of time frame are you at this point,
23 how late in the night is it?

24 A. By the time we were all up at the parking lot at
25 Charlie -- at old Charlie T's, I'd say 10:30-ish.

1 Q. Okay. When you got there -- meanwhile, had y'all
2 still been talking to Blackwell?

3 A. Yes, we talked to Blackwell the entire time and
4 still trying to pull information out of him and trying
5 to get all the details we could. Number one, I didn't
6 think Mr. Blackwell was ever gonna be able to go over
7 there at this time of night. And, number two, if, in
8 fact, this was gonna happen, I was a little concerned
9 with Mr. Bartee being a retired Secret Service agent and
10 us sending Mr. Blackwell over there. I just really
11 wasn't sure what could happen.

12 Q. How did you propose or how did you think you were
13 gonna get him in there and what kind of story?

14 A. Well, Mr. Blackwell was adamant that he was gonna
15 let me come over there at midnight. He said he'd done
16 it before and he was gonna let him come over there. So
17 what I told Mr. Blackwell is, You need to talk about
18 what y'all have priorly -- prior talked about. Get him
19 to talk about what y'all have talked about. I didn't
20 give him any story to come up with, not one time did I
21 tell him.

22 I did tell him, You need to talk about some money
23 that he gave him and you need to talk about the
24 kidnapping. But what I told Blackwell is, You've got
25 all the information. Y'all talk about what you talked

1 about earlier.

2 Q. Okay. And in your conversations with him did he
3 give you the name of a guy named Joe?

4 A. He did. Joe Milbert is who he was talking about.

5 Q. And Joe's number is (770) 331-3468?

6 A. Yes, it was.

7 Q. Tell me how y'all wired him up. Some of the
8 officers have previously, the officers already testified
9 what they did. What did you see when you were present?

10 A. Um, Mark Gregory had a recording device. Um, Nick
11 Blackwell had his cell phone. Mark Gregory prepared
12 that device, showed him what to do. We got inside my
13 state truck, we shut the doors, and Nick Blackwell
14 dialed that number and called Joe Milbert at about
15 10:30, 10:45 at night.

16 Q. Why did you call Joe and why didn't you call
17 Bartee?

18 A. Joe Milbert had told Nick Blackwell, Do not call
19 Mr. Bartee any more. If you want to call Mr. Bartee,
20 you call me.

21 Q. Okay. So at this time did you do a taped phone
22 call?

23 A. We did.

24 Q. Did you have any equipment to do a taped phone
25 call?

1 A. No, sir.

2 Q. Did you borrow Anderson County's?

3 A. I did.

4 Q. Okay. And did you -- did Nick consent on the tape,
5 did he consent to being a party to the phone call?

6 A. Absolutely.

7 Q. And called on his own phone?

8 A. Called on his cell phone, yes.

9 Q. And approximately what time of --

10 (Loud noise in courtroom.)

11 THE COURT: Just one second. Do we know what that
12 is?

13 THE CLERK: I do not.

14 THE COURT: All right. Go ahead. Let's proceed
15 with the testimony.

16 THE WITNESS: I don't remember what the question
17 was.

18 By Mr. Wagner:

19 Q. What, what time did you, what time did you make the
20 phone call?

21 A. Around about 10:45. I don't know the exact minute
22 or second at this time.

23 (Loud noise again in courtroom.)

24 By Mr. Wagner:

25 Q. Let me show you what we listened to yesterday,

1 State's Exhibit Number 10. Excuse me. It's not number
2 10. Number 1.

3 (Loud noise continues in courtroom.)

4 (Counsel confer.)

5 By Mr. Wagner:

6 Q. That's already been admitted into evidence, but
7 tell us what that is, and do you recognize it?

8 A. This is a disk that Mark Gregory provided to me
9 that contains the recorded phone calls that Nick
10 Blackwell made to Joe Milbert and Joe Milbert called
11 Nick Blackwell back, and also has the audio from where
12 Nick Blackwell went to Mr. Bartee's house that night.

13 Q. Okay. The content on that disk that you listened
14 to yesterday that has been played in court as State's
15 Exhibit 1, did that fairly and accurately depict both
16 the telephone calls and the wire as it was as you
17 listened to both of them that night on the night of the
18 29th?

19 A. Absolutely, 100 percent, I probably listened to it
20 more than anyone.

21 Q. Has it been tampered or altered with in any manner?

22 A. Absolutely not.

23 Q. Do you have any kind of knowledge that you could
24 have tampered or altered anything?

25 A. I couldn't do anything with it.

1 Q. There's been -- I know there's no chain of custody
2 on this, but have you kept track of it ever since and
3 kept custody of it?

4 A. Yes. This disk has been either in my possession in
5 a secured lock box or in SLED's evidence.

6 Q. And is that considered the original under state
7 law --

8 A. Absolutely.

9 Q. -- for y'all's purposes?

10 A. Yes, sir.

11 Q. Okay. So, when you called Joe, what was your take
12 on it?

13 A. Joe Milbert kept telling Nick Blackwell, this
14 action we talked about, don't do it, don't do this
15 action we've talked about. He acknowledged taking the
16 money back to him. Nick Blackwell even talked about
17 Hey, I've already, I've already had to get these guys
18 from Greenville out, I've got to go call them off.

19 MR. BRANNON: Your Honor, objection. The tape is
20 in. It stands for itself. His summary or synopsis
21 isn't necessary.

22 THE COURT: I sustain that.

23 By Mr. Wagner:

24 Q. What was your reaction to what you heard?

25 A. I immediately knew Joe Milbert had told him not to

1 call James Bartee any more and to contact him and that
2 Joe Milbert had knowledge of at that time an action that
3 he was saying which was the kidnapping of Judge Jimmy
4 Williams.

5 MR. BRANNON: Objection. Again, he's summarizing
6 that tape; and, in fact, I think he's putting words into
7 Mr. Milbert's mouth that aren't even on that tape.

8 THE COURT: Overruled.

9 THE WITNESS: Ask me again, please.

10 By Mr. Wagner:

11 Q. What was your reaction to it?

12 A. I was shocked. I still wasn't real sure that we
13 were ever gonna get into Mr. Bartee's house until he
14 called back.

15 Q. Okay. Now, at that point in time did you all have
16 Nick Blackwell wired up yet, or were you fixing to wire
17 him up ---

18 A. No. He was just prepared to make the recorded
19 phone calls.

20 Q. Okay. And did Joe call you back on the second call
21 and tell you all to go on over?

22 A. He did. And he told Nick Blackwell -- and he did
23 call us back and tell Nick Blackwell to come on to
24 Mr. Bartee's house.

25 Q. Okay. Did he tell him how to go about that?

1 A. He did. He told him to come to the back door. You
2 know what to do.

3 Q. When did you give Blackwell the money?

4 A. I didn't have the money on me at that time. I
5 asked the sheriff's office if they could get some marked
6 funds for us to provide Nick Blackwell to return to
7 James Bartee, at which time Mark Gregory did provide
8 documented funds that were photographed, the serial
9 numbers were retained, and we gave to Nick Blackwell to
10 return to Mr. Bartee that night.

11 Q. Did you or Mark Gregory actually hand him the
12 money?

13 A. Me and Mark Gregory were side by side this entire
14 time until about 3:00 in the morning. I don't know if I
15 handed it to him or if Mark Gregory handed it to him,
16 but we handed it to him, one of us handed it to him.

17 Q. How much was it?

18 A. \$138.

19 Q. Did you record the serial numbers on those bills?

20 A. We do, actually photographed them or made
21 photocopies, one of the two.

22 Q. Let me show you what's been marked State's
23 Exhibit ---

24 (Loud noise again in courtroom.)

25 THE COURT: Hang on one second. Let's take about a

1 By Mr. Wagner:

2 Q. Agent Sloan, when we broke off, I was trying to
3 make sure we are at the same place. We were talking
4 about you and Mark Gregory giving Nick Blackwell \$138 in
5 marked money?

6 A. Yes, sir.

7 Q. Okay. Let me show you what's been marked State's
8 Exhibit Number 3.

9 A. (Witness counts money.) Okay.

10 Q. Do you recognize that?

11 A. I do.

12 Q. Is that the same money that you gave Nick Blackwell
13 to take into James Bartee's house that night?

14 A. I don't have those serial numbers in front of me,
15 but it appears to be the same money, the same envelope
16 that we took that from...

17 Q. Where did you get the money back from?

18 A. Upon incident to arrest, after we arrested
19 Mr. Bartee, upon search of his wallet to inventory it we
20 found the money, some of the money.

21 Q. All right. And at that time did you run the serial
22 numbers?

23 A. We did.

24 Q. And did they match?

25 A. They did. There was also other money in there that

1 did not match that was returned to Mr. Bartee that did
2 not have the serial numbers that we had.

3 Q. How much of the actual marked money was still left?

4 A. \$127, I believe.

5 Q. Okay. And has that been in your care and custody
6 since?

7 A. It has. It's either been in my possession or in
8 evidence.

9 MR. WAGNER: Your Honor, I'm not sure if that is
10 in, but we would move that into evidence at this time.

11 THE COURT: Subject to prior rulings?

12 MR. BRANNON: Yes, Your Honor.

13 THE COURT: They will be admitted subject to prior
14 rulings.

15 (State's Ex. # 3 was again received in evidence.)

16 By Mr. Wagner:

17 Q. Whose idea was the money, I'm gonna call it a
18 rouse, but the money thing with Milbert and going to
19 Bartee's house?

20 A. I don't remember exactly whose idea it was, but I
21 do know that myself and Investigator Gregory were
22 putting our heads together and at some point we came up
23 that we needed to give him some money to return to
24 Mr. Bartee because that's why Mr. Blackwell needed to go
25 over there.

1 Q. Okay. So, you met at CVS, you all were at CVS when
2 this was going on?

3 A. No, sir. We were at the Charlie T's parking lot at
4 this time, and I'm pretty sure we gave him the money
5 there. From there we drove to Clemson and met at the
6 Wal-, I believe it's the Walgreens there at the corner.

7 Q. Okay. Right on the main drag right there?

8 A. Yeah. 123 and Tiger Boulevard. Right there on the
9 corner.

10 Q. How did you pick David Baker to drive Blackwell?

11 A. I don't know that we ever really picked him. David
12 Baker just said, Hey, while you all are handling this, I
13 can run and get a cold car from the office and I'll just
14 drive him up there. So that's what he did.

15 Q. Okay. So you assigned David Baker and he took him,
16 he took Blackwell up there?

17 A. Yes, he drove, he drove Blackwell up there.

18 Q. And then what did you all do?

19 A. You're talking about when we met at Walgreens?

20 Q. Yes.

21 A. When we were at Walgreens, we kind of reconvened
22 there. Investigator Gregory and Shawn Stallo prepped
23 Mr. Blackwell to wear the wire, told him what it was,
24 how, how he was gonna do it, where they were gonna put
25 it, and they wired him.

1 Q. And at that point in time did you all give
2 Blackwell any more guidance as to what to say? How to
3 get him ---

4 A. I think I might have told him again, you know, you
5 need to talk about the money, talk about the kidnapping.
6 But he, he knew, he knew everything. I didn't have to
7 give him a story. He had already told him about the
8 guys from Greenville. I didn't have to tell him what to
9 say.

10 Q. Would you expect somebody going in on an undercover
11 informant capacity to embellish a story as to why they
12 are trying to get in and what they are trying to do?

13 A. Oh, absolutely. Nick Blackwell, he had to
14 embellish what, what he was telling Mr. Bartee because
15 it's the furtherance of the investigation. Nick
16 Blackwell had to lead Mr. Bartee to believe that he had
17 taken some of these steps that they had talked about.
18 That's all part of furthering an investigation.

19 Q. Have you heard the recording of when he actually
20 got into Bartee's house yesterday?

21 A. I heard it over and over and yesterday.

22 Q. What was your reaction when you heard that?

23 MR. BRANNON: Objection. Asked and answered.

24 THE COURT: Overruled.

25 A. I was shocked. We were in the car together,

1 several of us. I couldn't believe what I was hearing.

2 By Mr. Wagner:

3 Q. What did you do after Blackwell came out of his
4 house?

5 A. Well, I actually didn't do anything at that time.
6 Lieutenant Baker drove back to the Walgreens where we
7 met there and kind of reconvened. We were about a
8 couple hundred yards from Mr. Bartee's residence. I
9 don't remember how far. We couldn't get close, but we
10 had to be close enough so we could monitor. Which we
11 did. We monitored it the whole time. We heard
12 everything going on. So, as soon as they were leaving,
13 we took off and we got to the Walgreens.

14 Q. On the tape I think the start time that Mark
15 Gregory's voice is 11:54?

16 A. I believe it's 11:54, yes, sir.

17 Q. And then the stop time was 12:44?

18 A. 12:44, yes, sir.

19 Q. So you got a 50-minute time frame there?

20 A. Yes, sir.

21 Q. Have you listened to this tape for court purposes,
22 have you done a stopwatch on that tape to see if it is
23 50 minutes?

24 A. I have.

25 Q. And is it 50 minutes?

1 A. It is.

2 Q. What was your next step? What did you do next?

3 A. Um, from the Walgreens -- I think we were all in a
4 little bit of shock and decided that we just, we needed
5 to get out of this parking lot. There's too many
6 people. You know, even though it's one in the morning
7 it's a busy place, busy part of town. I wanted to get
8 out of there where nobody could -- just get out of
9 there. We all had to go back towards Anderson, so we
10 decided to meet at the parking lot at Pendleton High
11 School.

12 Q. Were you necessarily concerned for the judge's
13 safety at that point?

14 A. Not at that point. I, I had Nick Blackwell with
15 me. That's who Mr. Bartee was gonna use and I had him
16 with me. Nothing could happen.

17 Q. Okay. Did anybody ever go over and check on the
18 judge, to your knowledge?

19 A. To my knowledge now? Yes. I didn't know that
20 prior.

21 Q. And when did you take the statement from Nick?

22 A. Two-ish, 2:00 a.m. the morning of the 30th.
23 Whenever we got back to Pendleton High School which
24 would have been 1:00, 1:30, somewhere around in there.

25 Q. And you wrote the statement for him?

1 A. I did.

2 Q. Did you put everything in that statement that he
3 told you?

4 A. I did not.

5 Q. And why didn't you?

6 A. Well, we had previously talked about a lot of this
7 stuff, I guess we're going on five hours prior to that.
8 After the recording, I thought the recording pretty much
9 spoke for itself. So when I took Blackwell's statement,
10 I did leave several things out of it. Obviously it was
11 not intentional. They just didn't get put in there. It
12 was also two in the morning.

13 Q. Okay. And did you download the substance, the
14 actual conversations between him, Milbert, and the stuff
15 that was on the wire?

16 A. We did. The first thing we did when we got to
17 Pendleton High School, my laptop was inside, you know,
18 on my console where I use it. Mark Gregory,
19 Investigator Mark Gregory got in. He had a thumb drive
20 that was provided by the company that provides the
21 recording devices. He took the SD card, put it in that
22 thumb drive, put the thumb drive in my computer, and
23 downloaded it straight to my computer.

24 Q. And then what happened with the actual wire?

25 A. The recording device itself?

1 Q. Yes.

2 A. Investigator Gregory took possession of that.

3 Q. Okay. It was his stuff?

4 A. Yes, sir.

5 Q. And did you the next day or a couple days later get
6 a copy, which was an original copy for him?

7 A. I did. I did.

8 Q. And that's what you kept?

9 A. That's, that's correct. It's been in my possession
10 the entire time or SLED evidence.

11 Q. Okay. Did you take Nick back to his house?

12 A. Yes, we did. Myself and Investigator Gregory, I
13 believe we took his car and we carried Mr. Blackwell
14 back to Fair Play, I'm not sure what you call the area.
15 And when we got there, I just happened to ask him. He
16 had told me about the business card. I said, Do you
17 have the business card? And he said, Yeah, it's in my
18 house. And I asked him to go get it and he did, he
19 brought that out.

20 Q. Let me show you what's been marked as State's
21 Exhibit Number 2. I believe this is in evidence but see
22 if you recognize that.

23 A. It is the same business card that Mr. Blackwell
24 went in his house at about 2:00 in the morning or 2:30
25 in the morning and brought out to myself and

1 Investigator Gregory.

2 Q. The recording that you have there, when you turned
3 it into evidence, did any of your other SLED Agents
4 check it out of evidence to bring to the Solicitor's
5 Office to get a copy of?

6 A. They did. I kept the recording from when I
7 received it from Mark, which would have been the end of
8 May -- or Investigator Gregory, which would have been
9 the end of May. I kept it in my possession or in my
10 locked secured tool box where I do keep evidence at,
11 where I am allowed to keep evidence at, until around
12 about a week, sometime middle of August when I turned
13 the case file in, which it took, it took a while to turn
14 the case file in, and at that time I put it in evidence.
15 And, yes, we did use it after that.

16 Q. Did you get any sleep that night? Did you go home
17 and go to bed?

18 MR. BRANNON: Objection to relevance.

19 THE COURT: What is the relevance?

20 MR. WAGNER: At this time, Judge, I withdraw that.

21 THE COURT: Overruled.

22 Go ahead.

23 A. I did sleep for a few hours, but, of course, early
24 that morning I had to go to the Solicitor's Office and
25 present some evidence.

1 By Mr. Wagner:

2 Q. Okay. Did you go up there to meet with them?

3 A. I did.

4 Q. All right. Was that in Anderson?

5 A. It was.

6 Q. As a result of your meeting with them, what did you
7 decide to do?

8 A. The Solicitor told me that we did have enough
9 evidence to charge Mr. Bartee with Solicitation to
10 Commit a Felony. I went to Judge Will Derrick in
11 Westminster and informed him of the evidence that I had,
12 and he wanted to listen to the recording, and at that
13 time I let him listen to the recording, and he felt
14 there was sufficient evidence to charge Mr. Bartee and
15 he issued me a warrant.

16 Q. Okay. And did you go arrest Mr. Bartee?

17 A. I first had to have the warrant countersigned,
18 which I did in Anderson County by Judge Whitman, and
19 then yes, I did.

20 Q. Where did you find Mr. Bartee?

21 A. I believe it was a recess during his court hearing
22 that he was having at Anderson County.

23 Q. And was that the court hearing on the case with
24 Judge Williams?

25 A. Yes, it is.

1 Q. Okay. And when you arrested him the money was on
2 his person, the marked money?

3 A. It was. I believe it was in his wallet.

4 Q. Okay. Did you find Joe Milbert there?

5 A. I didn't find Joe Milbert, but two other agents did
6 find Joe Milbert, went and got him, and I did later
7 speak to Joe Milbert.

8 Q. Okay. Who else did you talk to about this case?

9 A. Joe Milbert, Ryan Stancil, who provided the
10 business card; Joe Harden, Sheriff Singleton... I'm
11 sure I'm leaving somebody out.

12 Q. Did you talk to David Smith?

13 A. David Smith.

14 Q. Did you talk to Laurieanne Fletcher?

15 A. I did not. Agents talked to Laurieanne Fletcher.

16 Q. How did you end up talking to Joe Harden?

17 A. I called Joe Harden on his telephone.

18 Q. How did you know to call Joe Harden?

19 A. Solicitor Adams told me to call Sheriff Singleton,
20 at which time I did, and I got Joe's cell phone from
21 Sheriff Singleton.

22 Q. What -- how did the, from Singleton to Adams to --

23 A. Solicitor Adams -- through my investigation
24 Solicitor Adams received information from Sheriff
25 Singleton that Joe Harden contacted Sheriff Singleton

1 and wanted to relay a message to her about the charges
2 in this case.

3 Q. Okay. Did you actually take a written statement
4 from Joe Harden or did you ---

5 A. I prepared what's called a Memorandum of Interview.

6 Q. Had you ever met Joe Harden before?

7 A. I saw Joe Harden during a sheriff's office golf
8 tournament probably five months before that at
9 Brookstone, but it was just a sheriff's office golf
10 tournament that I saw him at. I'd never seen him before
11 that.

12 Q. And pursuant to your investigation did you subpoena
13 Nick Blackwell's phone records?

14 A. I sent a search warrant, yes.

15 Q. Okay. Let me show you what's been marked State's
16 Exhibit Number 4.

17 A. It's Nick Blackwell's phone records from May 1st to
18 May 29th of 2012.

19 Q. Why did you do a search warrant for his phone
20 records?

21 A. Blackwell informed me he had been talking to Bartee
22 for actually over a month, and talking to him a lot, and
23 I wanted to confirm that and I wanted to see how many
24 times Nick Blackwell and James Bartee were talking.

25 MR. WAGNER: Your Honor, if I could ask the witness

1 to step down.

2 THE COURT: Yes, sir.

3 (Witness leaves stand.)

4 THE COURT: Do you want the lights cut down?

5 MR. WAGNER: Yes, sir. It would probably be easier
6 to see.

7 (Discussion off the record.)

8 MR. WAGNER: Your Honor, referring to State's
9 Exhibit 4 here, which is the phone records.

10 By Mr. Wagner:

11 Q. Agent Sloan, do your phone records start on May
12 1st?

13 A. They do.

14 Q. But you got them for the month of May?

15 A. May 1st through May 29th through May 30th.

16 Q. And were you able to in your investigation
17 determine what Nick Blackwell's phone numbers were and
18 they're on, actually on these phone records?

19 A. I was. (864) 247-2360.

20 Q. Were you able to determine in your investigation
21 what James Bartee's phone number was?

22 A. I was. It was (864) 414-7425.

23 Q. What was your first call that you found out that,
24 between Mr. Bartee and Nick Blackwell?

25 A. Well, the first one I have was on May 1st at 1:26

- 1 p.m. from Mr. Bartee to Nick Blackwell.
- 2 Q. Is that 13? If you could go with the military time
- 3 because that's what's on here, please.
- 4 A. 1326, which is 1:26 p.m.
- 5 Q. And how long -- that was from who to who?
- 6 A. That was from James Bartee to Nick Blackwell.
- 7 Q. When did they talk again?
- 8 A. Less than an hour, less than an hour later Nick
- 9 Blackwell called James Bartee back.
- 10 Q. Okay.
- 11 A. And this continued on for a little ways through the
- 12 1st. Mr. Bartee would call Mr. Blackwell and
- 13 Mr. Blackwell would call Mr. Bartee back.
- 14 Q. Okay.
- 15 A. That actually continued on approximately 20; 20, 21
- 16 times until the 12th of May. It's kind of hard for me
- 17 to show you exactly. Well, I was gonna show you the 4th
- 18 just, I mean, just for an example. Let's see here.
- 19 Mr. Bartee calls Blackwell there, Blackwell calls
- 20 Mr. Bartee back there, Mr. Bartee calls Blackwell back
- 21 there. And this occurs 20 to 21 times up until the 12th
- 22 of May.
- 23 Q. Why was the 12th of May significant?
- 24 A. The 12th of May was Mayfest in Walhalla.
- 25 Q. And how do we know that?

1 A. Well, I believe the Lieutenant from Walhalla
2 testified to that.

3 And on the 12th of May Mr. Bartee calls
4 Mr. Blackwell. On the 12th of May at 11:11 a.m.
5 Mr. Bartee calls Mr. Blackwell. They talked for a
6 couple of minutes.

7 Q. Is that phone call what Mr. Blackwell said
8 instigated the incident with Fricks at Mayfest?

9 A. It is.

10 MR. BRANNON: Objection. That would be
11 speculation. They can't know what was said on that
12 phone call.

13 THE COURT: I sustain that objection.

14 MR. BRANNON: Move to strike, please.

15 THE COURT: That will be stricken from the record.
16 Go ahead.

17 By Mr. Wagner:

18 Q. Okay. But it was, that phone call is the first one
19 on the 12th, which was Mayfest?

20 A. Yes, sir.

21 Q. Okay. And who called who first?

22 A. James Bartee called Nick Blackwell.

23 Q. Okay. And they talked for how many seconds?

24 A. 150 seconds, which would be a couple of minutes.

25 Q. Okay. Then what happened? Take us there as far as

1 your phone records that you got.

2 A. After lunchtime at 12:43 Nick Blackwell calls James
3 Bartee, a couple minutes later James Bartee calls Nick
4 Blackwell. Oh, I'm sorry.

5 Q. Show them this.

6 A. Yeah. Nick Blackwell calls Mr. Bartee there. This
7 is just hard to see. Mr. Bartee calls Mr. Blackwell
8 back there, which is a couple minutes later. Nick
9 Blackwell calls Mr. Bartee back.

10 That continued. And then you get down to 4:20.
11 Military time would be at 1620, which would be 4:20
12 p.m., which shows Nick Blackwell calling the Oconee
13 County Sheriff's Office, 638-4111.

14 Q. And what number is that?

15 A. That's dispatch to Oconee County Sheriff's Office.

16 Q. Is that the number you would call if you were
17 reporting an incident?

18 A. It is.

19 Q. And how does that -- is that the same time frame
20 that --

21 A. This is the time frame that Nick Blackwell reported
22 an incident between him and Donnie Fricks.

23 Immediately after that, or four minutes, four
24 minutes to be exact after that, Nick Blackwell calls
25 James Bartee. A couple of minutes or a few minutes

1 after that, James Bartee calls back Nick Blackwell, and
2 then 30 minutes or so Nick Blackwell calls James Bartee
3 back.

4 This continues on the 12th. Mr. Blackwell calls
5 Mr. Bartee. Mr. Blackwell calls Mr. Bartee. Mr. Bartee
6 calls Blackwell. Blackwell calls -- that's where
7 Mr. Bartee calls Mr. Blackwell, and that's the end of
8 the phone calls on the 12th. And there is no more phone
9 calls between Nick Blackwell and James Bartee for
10 approximately two weeks until you get to around about
11 the 27th of May.

12 Q. Nothing at all?

13 A. No. No, sir.

14 All right. Now we're into the 27th of May. On the
15 27th of May James Bartee calls Nick Blackwell one time.

16 Q. And how long will they talk?

17 A. 253 seconds. Five minutes, something close to
18 that.

19 Q. Okay.

20 A. From there they do not talk again -- 27th -- and
21 then Joe Milbert begins calling Nick Blackwell.

22 Q. And what is Joe Milbert's number?

23 A. (770) 331-3468.

24 Q. When does, when do the conversations between
25 Milbert and Blackwell start?

1 A. The 27th of May.

2 Q. And who calls who first?

3 A. Joe Milbert calls Nick Blackwell first, and this
4 was at 2215, which is 10:15 at night. And he calls him
5 again 20 minutes later, Joe Milbert calls Nick Blackwell
6 20 minutes later. Then, at 0031, which would be 12:30
7 in the morning, or in the middle of the night, Nick
8 Blackwell called Joe Milbert back. Ten minutes later
9 Joe Milbert calls Nick Blackwell back at 0041 which is
10 12:41 in the morning in the middle of the night.

11 Then on the 28th ---

12 By Mr. Wagner:

13 Q. What's going on with those calls according to your
14 investigation on the late night of the 27th into the
15 early morning of the 28th?

16 A. That's when Nick Blackwell went to meet with James
17 Bartee at his residence.

18 Q. Is that when the solicitation occurred according to
19 your investigation?

20 A. According to my investigation, that's correct.

21 May 28th, 1:30 in the afternoon, Nick Blackwell
22 calls Joe Milbert, Joe Milbert calls Nick Blackwell,
23 Nick Blackwell calls Joe Milbert, Joe Milbert calls Nick
24 Blackwell.

25 The 28th -- I'm sorry -- 28th, around 8:00, 8:30,

1 Milbert and Blackwell exchange a phone call. Blackwell
2 calls Milbert, Milbert calls Blackwell, Milbert calls
3 Blackwell, Blackwell calls Milbert, Milbert calls
4 Blackwell, Blackwell calls Milbert, Milbert calls
5 Blackwell.

6 Then down to lunchtime they talk two more times.

7 On 5-29 at 6:20, an 803 number, is Nick Blackwell
8 calling myself, calling me at 6:20. Actually, I called
9 him before that at 1737, which is 5:37. A few minutes
10 later Nick Blackwell returns my phone call, and that's
11 on the 29th.

12 Q. What did those phone calls involve?

13 A. That is the first time I got involved with this
14 when I spoke to Nick Blackwell about meeting me at the
15 Anderson County Sheriff's Office.

16 It shows, it shows here on 5-29-2012 at 10:41 p.m.
17 Nick Blackwell calls Michael Sloan. That was a test
18 phone call. At 2243, which is 10:43, Nick Blackwell
19 calls Joe Milbert, talks for 330 seconds. At 10:51 or
20 2251 Joe Milbert calls Nick Blackwell back and talks for
21 162 seconds.

22 Q. And what's the significance of those phone calls?

23 A. Those are the two recorded phone calls.

24 Q. Those are the ones we listened to?

25 A. That's correct.

1 Q. If you could, please step back up there.

2 (Witness resumes stand.)

3 By Mr. Wagner:

4 Q. So, prior to May 12th, how many phone calls do you
5 know were made between Mr. Bartee and Nick Blackwell?

6 A. Approximately 21.

7 Q. On May 12th, before and after the Mayfest and the
8 Fricks incident, how many phone calls were made between
9 Bartee and Nick Blackwell?

10 A. Approximately 12.

11 Q. And was the last time he spoke before the two-week
12 hiatus, was that the last phone call between Bartee and
13 Nick Blackwell, was it on May 13th?

14 A. Yes, the day after Mayfest.

15 Q. Okay. And then you have a two-week layoff?

16 A. Around about two weeks that James Bartee and Nick
17 Blackwell do not speak.

18 Q. Okay. When is the next and I think the last time
19 that they do speak? What date was that?

20 A. I believe it was on the 27th of May.

21 Q. Okay. Then who does Blackwell talk to?

22 A. Joe Milbert.

23 Q. Strictly -- does he ever talk to Bartee again on
24 his phone records?

25 A. No, sir.

1 Q. What do the phone records tell you during the
2 course of your investigation about what Mr. Blackwell
3 told you?

4 MR. BRANNON: Objection. The phone records speak
5 for themselves.

6 THE COURT: Overruled.

7 A. The phone records corroborate what Nick Blackwell
8 told me during the investigation. They spoke 21 times
9 back and forth until Mayfest. During Mayfest they spoke
10 back and forth 12 times. After Nick Blackwell called
11 Oconee County Sheriff's Office they talked three or four
12 times. Talked once more on May 13th and they didn't
13 talk again until May 27th, I believe one time, and Nick
14 Blackwell and Joe Milbert began communicating.

15 By Mr. Wagner:

16 Q. Mr. Bartee's house, I think we've established this,
17 but for jurisdiction purposes, I got to ask you, what
18 county does Mr. Bartee, when he was living in this house
19 that Nick Blackwell went to, is it in what county?

20 A. During that time it was in Oconee County.

21 Q. When this operation took place and the solicitation
22 took place, what county did it occur in?

23 A. Oconee.

24 MR. WAGNER: Thank you. Those are all the
25 questions I have.

1 THE COURT: Cross-Examination.

2 Cross-Examination by Mr. Brannon:

3 Q. Agent Sloan, have you in the course of your duties
4 as a SLED Agent or as an Anderson County Investigator,
5 have you investigated murders?

6 A. I have.

7 Q. Have you investigated drug deals?

8 A. Very few, but I have, yes, sir.

9 Q. How about big drug deals?

10 A. No, sir.

11 Q. No? Bank robberies, maybe?

12 A. Yes, sir.

13 Q. Well, what kind of crimes do you regularly
14 investigate?

15 A. Now?

16 Q. Yeah.

17 A. Any kind of crime.

18 Q. Any kind of crime. Okay.

19 Did, did Mr. Blackwell tell you at any point about
20 threats that he alleged had been made by Mr. Bartee
21 towards him or his family members?

22 A. I do not recall. I recall them talking about,
23 Mr. Blackwell talking about things Mr. Bartee was
24 telling him about his family. I do not recall him
25 talking about being threatened or his family being

1 threatened.

2 Q. Okay. All right. And, I mean, you have already
3 addressed this. But your testimony today is that
4 Mr. Blackwell said something about a white shirt and a
5 Sharpie and Channel 4 and a black mask and roughing the
6 judge up. But you didn't put those things in the
7 statement, right?

8 A. He did tell me all that, and no, I didn't put that
9 in the statement.

10 Q. Okay. All right. And you said earlier when
11 Mr. Wagner was questioning you, that you didn't ask for
12 protection for Judge Williams because you had Blackwell
13 with you, right?

14 A. Well, that's correct. But I would not request
15 protection for Judge Jimmy Williams. That would be up
16 the chain and not my decision.

17 Q. Okay. But let me, let me rephrase.

18 Did you ask anyone higher up the chain to put
19 protection on the judge?

20 A. I didn't have to. When I spoke with my
21 supervisors, they know that he's a retired circuit court
22 judge. If they feel or felt like he needed to be
23 protected at that time, that would be their decision. I
24 would not ask for that. I would let them make that
25 decision.

1 Q. Okay. And based on your investigation or
2 throughout your investigation did you ever learn if
3 Judge Williams was ordered protection?

4 A. Through testimony I did hear that, but I think
5 during the time that Judge Williams didn't want it, I
6 think.

7 Q. Right. And that would have been Director Keel's
8 phone call to the judge on the 30th, right?

9 A. I don't know the date. I know Chief Keel did
10 contact Judge Williams at some point, yes.

11 Q. Okay. All right. And this is completely off
12 subject. Is he Chief Keel or is he Director Keel?

13 A. He's Chief Keel.

14 Q. All right. Did you ever try -- during your
15 preparation, when you were wiring Mr. Blackwell up, or I
16 know Anderson County was doing it but you were there --

17 A. Yes.

18 Q. -- while he was being wired up, did you ever try to
19 get Mr. Blackwell to attempt to get Mr. Bartee to give
20 Mr. Blackwell a gun? I know that's a long question but
21 do you follow it?

22 A. I did not.

23 Q. Okay. Did you hear --

24 A. I did.

25 Q. -- Nick say that yesterday?

1 A. I did. (Pause.) Do you want me to clear that up
2 for you?

3 Q. Well, I think you've answered the question.

4 A. Okay.

5 Q. Now...

6 MR. BRANNON: Approach the witness, Your Honor?

7 THE COURT: Yes, sir.

8 By Mr. Brannon:

9 Q. This was provided to me in discovery, and I believe
10 that's a copy of your notes and forgive me for marking
11 it up, okay?

12 A. That's a copy of Mark Gregory's notes, I believe.

13 Q. Okay. But do you agree that it came from ---

14 MR. WAGNER: Your Honor, I just to want see what
15 we're referring to.

16 THE WITNESS: Can I see it one more time? You made
17 these marks.

18 MR. BRANNON: Yes.

19 THE COURT: Hang on. Just let Mr. Wagner see it,
20 please.

21 MR. BRANNON: (Hands document to Mr. Wagner.)

22 MR. WAGNER: Your Honor, just to go ahead, if it's
23 Mark Gregory's notes, I'm gonna object to it with this
24 witness.

25 THE COURT: Would you take your jury to the jury

1 room, please, sir.

2 (Whereupon, the jury left the courtroom at
3 approximately 10:30 a.m.)

4 THE COURT: Mr. Wagner, what is your objection,
5 please?

6 MR. WAGNER: Your Honor, I just feel he's fixing to
7 go into Mark Gregory's notes with Agent Sloan, who just
8 testified before I interrupted, and I apologize, I
9 didn't mean to interrupt.

10 THE COURT: That's all right. I just want to hear
11 what your objection is.

12 MR. WAGNER: It's just I think he's asking him to
13 testify from somebody else's notes.

14 THE COURT: I'm gonna overrule that. Either he
15 knows it or he doesn't know it. And that's part of the
16 discovery?

17 MR. WAGNER: Yes, sir.

18 THE COURT: Okay. I'm gonna overrule your
19 objection.

20 MR. BRANNON: And may I just for the record, Your
21 Honor, this was, this came in discovery attached or with
22 the SLED report. So I don't want the court to think
23 that I was misleading or anything like that. I got it
24 with the SLED report, so...

25 THE COURT: All right. Are you all ready to

1 proceed?

2 MR. WAGNER: Yes, Your Honor.

3 MR. BRANNON: Yes, Your Honor.

4 THE COURT: Would you bring the jury back, please.

5 (The jury entered the courtroom at approximately

6 10:31 a.m.)

7 (Counsel confer.)

8 MR. BRANNON: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. BRANNON: May I approach the witness again?

11 THE COURT: Yes, sir.

12 By Mr. Brannon:

13 Q. Mr. Sloan, I'm gonna show you the same document.

14 And I believe that you -- and I believe you believed

15 that it was the Anderson County Agent's notes, correct?

16 A. Correct.

17 Q. Okay. I'm gonna ask you to look at it and then I'm

18 gonna show you what came to me through the South

19 Carolina Law Enforcement Division, and it was a list of

20 documents that were numbered. Okay?

21 A. I see it.

22 Q. Number 16 says SA Sloan's notes, and this was tab

23 16. Do you understand that?

24 A. Perfectly.

25 Q. Okay. So I wasn't incorrect for believing it was

1 your notes, was I?

2 A. No, sir. No, sir.

3 Q. Okay. Is it your testimony today that they are not
4 your notes?

5 A. They are Mark Gregory's notes -- Investigator Mark
6 Gregory's notes provided to me.

7 Q. Provided to you. So you had seen them before?

8 A. Yes. I've seen them before.

9 Q. Okay. I want to ask you a question about two
10 points on here.

11 A. Okay.

12 Q. 12:02 and 12:12.

13 A. Okay. Well, you have highlighted 12:02 a.m. left,
14 CI, 12:12 a.m. arrived.

15 Q. Okay. What does arrived mean?

16 A. I'm not sure right now. I don't remember if it
17 was -- you know, Investigator Gregory took the notes.
18 I'm not sure where he is saying he arrived at.

19 Q. Okay. Well, at 12:12 a.m. is when Baker says AVB
20 454 --

21 A. Okay.

22 Q. -- and he used names for the letters, right?

23 A. Yes.

24 Q. Okay. So, at 12:12 a.m. that's when they pulled
25 into Bartee's driveway, right?

1 A. I would assume that, yes.

2 Q. Okay. All right. And at 12:26?

3 A. I see it. Left 12:26.

4 Q. And at 12:26. And I believe that's when Baker may
5 have said we were leaving or some --

6 A. If that's the time he used. I don't, I can't
7 remember the times he used, but ---

8 Q. Okay. But you were sitting in the car where the
9 receiver was and you could hear that, right?

10 A. That's correct.

11 Q. So you heard Baker call out AVB 454?

12 A. Yes.

13 Q. Okay. 454. All right. And, and, so, according to
14 these notes and the tape recording, at 12:12 a.m. they
15 pulled in the driveway and he read the tag, and at 12:26
16 they left the driveway, according to these notes?

17 A. Yes. I mean, if you're getting at times, it
18 depends on what clock. I mean, Lieutenant Baker, if
19 he's looking at the clock on his, on that cold car that
20 he was driving, that may be different from the actual
21 other ---

22 Q. Oh, I understand. I'm just --

23 A. Yes, that's what that says ---

24 Q. -- that's what these notes say?

25 A. Yes. That's what that says, yes, sir.

1 Q. All right. And the Anderson County Investigator
2 handed it to you and you included it with the SLED
3 package; is that correct?

4 A. Yes, sir.

5 Q. Now, earlier Mr. Wagner asked you the length of
6 time for the tape recording and you said it was 50
7 minutes, correct?

8 A. Yes, sir.

9 Q. But that 50 minutes included the car ride, correct?

10 A. It did, yes.

11 Q. And that was the conversation between Baker and
12 Blackwell, correct?

13 A. From the moment we pulled out of the Walgreens in
14 Clemson to the moment they arrived at Mr. Bartee's
15 house, the time he left Mr. Bartee's house back to the
16 Walgreens in Clemson.

17 Q. The Walgreens again. That, that round trip was 50
18 minutes, correct?

19 A. Yes, sir. Yes, sir.

20 Q. Okay. All right. Did, did Mr. Blackwell ever tell
21 you about when he went into Mr. Bartee's house on the
22 27th, when he was there with Laurieanne?

23 A. Yes.

24 Q. Okay. Did he ever tell you that Mr. Bartee placed
25 a set of car keys to his neck, and I believe Blackwell

1 said that Bartee said, I could put you down in a second
2 or something like that? Did he ever say that to you?

3 A. He told me about a sword, not about a car key.

4 Q. Okay. And then -- but now you read Laurieanne's
5 statement, didn't you?

6 A. Of course.

7 Q. And then you have been in for testimony the whole
8 time, correct?

9 A. That's correct.

10 Q. She didn't say anything about anything like that,
11 did she?

12 A. Not at all.

13 Q. Okay. And that, that keys and the sword, that is
14 not in the statement that you wrote --

15 A. It is not --

16 Q. -- for Mr. Blackwell?

17 A. -- no, sir.

18 Q. What is that document?

19 MR. WAGNER: Your Honor, again, I would just like
20 to see --

21 MR. BRANNON: Yeah. (Shows document to
22 Mr. Wagner.)

23 By Mr. Brannon:

24 Q. What, what is that document?

25 A. A technical -- SLED technical services receipt for

1 property.

2 Q. Okay. And what was turned in to SLED at that time?

3 A. Um, this is not mine. But this is three disks that
4 tech services out of Columbia came up and recorded some
5 debate or forum, I don't know what it was.

6 Q. Got you. Right. And I think it was one debate but
7 it took three disks; is that right?

8 A. That's true.

9 Q. Okay. And those three disks were by someone placed
10 into evidence at SLED, correct?

11 A. It appears Danny Klotz.

12 Q. Okay. Is he an agent?

13 A. He's in tech services.

14 Q. All right. But at some point did these three disks
15 come into your possession, right?

16 A. That's correct.

17 Q. All right. And then on August the 15th you give
18 them to Kindley, right?

19 A. Yes. He's our evidence custodian.

20 Q. Right. And so you get them on 6-22 and then on
21 8-15 you give them to evidence storage at the Greenville
22 office, right?

23 A. That's right.

24 Q. Okay. All right. Where were these three disks
25 between June 22nd and August 15th?

1 A. They were in my possession.

2 Q. Okay. But ---

3 MR. WAGNER: Objection, Your Honor.

4 THE COURT: What is your objection?

5 MR. WAGNER: No chain of custody is required on
6 that.

7 MR. BRANNON: I'm not going to chain.

8 THE COURT: Overruled.

9 MR. BRANNON: Okay.

10 By Mr. Brannon:

11 Q. I understand they were in your possession. I want
12 to know where they were physically located.

13 A. Well, it depends on when you want to know. We used
14 these disks, not the three disks, the recording that was
15 placed in with that, on August 15th.

16 Q. Right. I'm gonna go there. So if you want to talk
17 about all four disks, that's fine with me.

18 A. You ask me which one you want to talk about and
19 I'll tell you.

20 Q. Okay. I want to know where these three disks were.

21 A. These three disks would have been in my possession.
22 If I was meeting with the Solicitor, meeting with the
23 informant, whoever I was meeting with, we could have
24 been using them, and did use them, not the three but the
25 other one; and when they were not, they were placed in a

1 Cam-Locker tool box, which is approved, which is what's
2 put in all of SLED's trucks, that's what equipment it's
3 kept in. It is an approved storage secured area. It
4 would have been placed in there.

5 Q. So, if they weren't in your hand so that they could
6 be used or shown to somebody, they were in the back of
7 your pickup truck in the tool box?

8 A. In a SLED-issued bought and approved tool box, yes.

9 Q. In the back of your pickup truck?

10 A. Exactly.

11 Q. Got you. Okay. Now, on the 13th those three disks
12 went to SLED and then you got them on the 22nd, right?

13 A. Yes, sir.

14 Q. On the 15th is when you give those same three disks
15 that we just talked about as well as this disk to SLED?

16 A. Correct.

17 Q. Okay. And, now, this disk, was it in the tool box
18 in the back of your truck?

19 A. When it wasn't in my hands or we were using it,
20 yes.

21 Q. Okay. All right. And then on the 15th it went to
22 SLED and then you got it back for --

23 A. Yes --

24 Q. -- trial prep or something like that?

25 A. -- that's true.

1 Q. Okay. So, how long did that disk ride around in
2 the back of your truck?

3 A. You have the dates. It was approximately two and a
4 half months.

5 Q. And I'm not being a smart aleck here.

6 A. Right.

7 Q. I don't know how much time it spent in the tool box
8 and how much time it spent being used.

9 A. Well, as you've seen, I carry that bag around about
10 everywhere I go. You've seen me here with it. If I'm
11 in and out of the Solicitor's Office, if I'm doing
12 something, it may very well be in my possession. When I
13 get done with it, it will be put in the tool box. So,
14 when I wasn't using it, that's where it would have been
15 stored.

16 The statements, which are evidence; the memorandum
17 of interviews, all of that was kept in my possession,
18 nobody else's, in my possession until I turned it in
19 with the case file or into evidence on the 15th.

20 Q. And that was on the 15th?

21 A. Yes, sir.

22 Q. Okay. All right. But I want to know -- I'll
23 rephrase the question.

24 How much time after May 30th and the date of arrest
25 did you spend devoted to this case?

1 A. I can't tell you how much. A lot.

2 Q. Okay.

3 A. If it was just review. I mean, I listened to that
4 recording more than anybody here.

5 Q. Okay. Well, was that, was that disk in the truck
6 for ten days, was it -- in the tool box, how --

7 A. It would have been stored there.

8 Q. Okay.

9 A. It would have been kept there along with other
10 disks I have on other cases. I pick up disks all the
11 time. If I have those disks and I need to keep them
12 until I turn the case file in, I do. I keep them in my
13 possession, they're my responsibility, and it falls on
14 me. Here it is, it's the same disk that Mark Gregory
15 gave me, it's the same exact recording that I've
16 listened to, and even the same recording that
17 Mr. Brannon's expert listened to.

18 Q. Got you. You signed and initialed that on July,
19 23, 2013 --

20 A. That's correct.

21 Q. -- so a little more than a month ago?

22 A. That's correct.

23 Q. Okay. Why did you sign and initial it on July the
24 13th?

25 A. Just to say I have -- to show you and to show the

1 jury that I have officially listened to the entire
2 thing, even though I've done it over and over and over
3 again, but I put my name, my, or my initials, and the
4 date that I listened to it in its entirety for you and
5 y'all to know.

6 Q. But you didn't initial it each time you listened to
7 it?

8 A. I didn't need to.

9 Q. Got you. Okay. All right. Now I want to -- this
10 is just a civil pleading. Okay? We have been talking a
11 lot about a civil case, right?

12 A. Yes, that's right.

13 Q. Okay. Would you just read --

14 MR. BRANNON: You've seen it.

15 MR. WAGNER: Just, I want to look at it a little
16 longer. (Mr. Wagner reads document.)

17 By Mr. Brannon:

18 Q. Okay. Is this the civil case, is James C.
19 Williams, Junior, the judge that we have been talking
20 about and who testified?

21 A. Yes.

22 Q. And he's the Plaintiff, right?

23 A. That's what it says.

24 Q. Okay. And then there's a whole list of Defendants,
25 correct?

1 A. Yes.

2 Q. Okay. And at the end of that list it said
3 Defendants, right?

4 A. Yeah.

5 Q. Okay. And what date was this filed?

6 A. It appears May 22nd, 2012, at 11:30 a.m.

7 Q. Okay. All right. And then I'm gonna show you a
8 Court Order that is date-stamped at the same time,
9 right? And let me put this back --

10 A. Same date.

11 Q. Same date, right.

12 A. Same date, different time.

13 Q. Same date, but a couple of hours' difference,
14 right?

15 A. That's correct.

16 Q. Okay. All right.

17 A. I don't know what I'm looking at other than what
18 you're showing me.

19 Q. Okay. Well, what's that word right there?

20 MR. WAGNER: Objection. He's already said he
21 doesn't know what he's looking at. And I believe he
22 testified earlier that he doesn't know anything about
23 the civil case.

24 THE COURT: I'm gonna give him some leeway with
25 that.

1 Go ahead.

2 MR. BRANNON: Okay.

3 By Mr. Brannon:

4 Q. What's that word right there?

5 A. "Order."

6 Q. Okay. And if you will read that paragraph right
7 there.

8 A. Starting with "Case Number"?

9 Q. Yeah.

10 A. (Reading): Case Number 2012-CP-37-469 shall be
11 advanced on the calendar and a speedy hearing of an
12 Action for Declaratory Judgment shall be scheduled by
13 Beverly -- well, whatever it said -- Beverly Whitfield,
14 clerk of court of Oconee County. (End of reading)

15 Q. Okay. All right. And then what does it say right
16 there?

17 A. (Reading): A hearing in this matter has been set
18 before the Honorable J. Cordell Maddox, Junior, on the
19 24th day of May, 2012, at 11:30. (End of reading)

20 Q. Okay. All right. And now we are, we are now into
21 the fourth day of this trial, and the only thing this
22 jury has heard about is a hearing on May 30th, right?

23 A. I don't know anything about the trial.

24 Q. Right. But we've been talking about, there's a
25 hearing on May 30, right?

1 A. Yes.

2 Q. Okay. And this would be the first time that this
3 jury has heard anything about a hearing other than May
4 30, right?

5 A. I would assume so.

6 Q. Okay.

7 A. I don't know what they've heard.

8 Q. Okay. Well, you have been ---

9 A. You are talking about in here?

10 Q. Yes.

11 A. Yes, yes.

12 Q. Okay. All right. Now, this is an Order that sets
13 a court date for the 24th of May, correct?

14 A. If I may read that?

15 Q. Okay. And then just one more document. Just read
16 that phrase right there.

17 A. (Reading): Motion to intervene as a Defendant/
18 Respondent by James R. Bartee, Junior.

19 Q. Okay. And is that signed by what appears to be a
20 lawyer?

21 A. I know him to be a lawyer because I spoke with him,
22 yes.

23 Q. Okay. And it also has his South Carolina Bar
24 number written down there, correct?

25 A. Yes, I do see it.

1 Q. Okay. So, there was a -- oh, one other thing.

2 When was that filed?

3 A. May 23rd, 2012.

4 Q. Okay.

5 MR. BRANNON: Approach again, Your Honor?

6 THE COURT: Yes, sir.

7 By Mr. Brannon:

8 Q. Do you know what a court transcript looks like?

9 A. I do.

10 Q. Okay. Does this appear to be a court transcript?

11 A. It appears to be.

12 MR. BRANNON: (To Mr. Wagner): I sent it to you.

13 (Referring to Original Transcript of Hearing dated May
14 24, 2013, requested by Mr. Brannon and prepared by Robin
15 Sue Hild, 10th Circuit court reporter.)

16 By Mr. Brannon:

17 Q. Now, if I need to get that Complaint I showed you a
18 minute ago, I will. But does this appear to be the same
19 caption, in other words, there's the judge's name, the
20 Plaintiff, and the same Defendants?

21 A. It does, yes, sir.

22 Q. Okay. And what date is that?

23 A. The 24th of May --

24 Q. Okay.

25 A. -- 2012.

1 Q. All right. And it's in front of which judge?

2 A. Judge Maddox.

3 Q. Okay. So would -- does this appear -- and you are
4 welcome to look at it -- does this appear to be a
5 transcript of a record -- transcript of a hearing in
6 this civil case?

7 A. It says "Transcript of Record." I only looked at
8 it. I'll take your word for it.

9 Q. Okay. All right. So, Mr. Bartee had already hired
10 a lawyer, filed a Motion to Intervene, and appeared in
11 court three days before Mr. Blackwell alleges that there
12 was some plot derived to kidnap a judge?

13 A. I learned that through the investigation, yes.

14 MR. BRANNON: Your Honor, could I take a
15 five-minute break, please?

16 THE COURT: All right. Mr. Foreman, let's take
17 about a ten-minute break. It's a good time to take one.
18 Go back to your jury room, please.

19 (Whereupon, the jury left the courtroom at
20 approximately 10:52 a.m.)

21 THE COURT: Officer, you may not talk about your
22 testimony.

23 Let me see the lawyers up here right quick.

24 (Discussion at sidebar.)

25 (A recess was taken, during which time counsel

1 conferred with the Court and clerk of court in
2 chambers.)

3 THE COURT: Is the State ready?

4 MR. WAGNER: Yes, Your Honor.

5 MR. BRANNON: Yes, Your Honor. I'm reading the
6 proposed changes to the stipulation.

7 THE COURT: Would you bring the jury in, please.

8 MR. BRANNON: Your Honor, the witness is in the
9 rest room.

10 THE COURT: All right. Never mind. Just one
11 second.

12 (There was a pause in the proceedings, after which
13 the witness returned to the courtroom and resumed
14 the witness stand.)

15 THE COURT: All right. Now would you bring the
16 jury in.

17 (Whereupon, the jury entered the courtroom at
18 approximately 11:19 a.m.)

19 THE COURT: Mr. Brannon, are you ready to proceed?

20 MR. BRANNON: I am, Your Honor, thank you. May it
21 please the Court?

22 THE COURT: Yes.

23 By Mr. Brannon:

24 Q. Agent Sloan, I'm getting close here.

25 Do you regularly threaten people that are making

1 statements with arrest?

2 A. I don't, I don't threaten them with arrest, no,
3 sir.

4 Q. Well, you told Blackwell, If you are lying to me,
5 I'm gonna, I'm gonna put you in jail tonight. Right?

6 A. I wasn't threatening him, I was telling him.

7 Q. That was a promise.

8 A. That's exactly right.

9 Q. Okay. I got you. Now, you went through these,
10 these phone records kind of at length on the TV up
11 there, right?

12 A. I did.

13 Q. And you've got phone calls from Blackwell to Bartee
14 and from Bartee to Blackwell, right?

15 A. Correct.

16 Q. These records don't actually indicate who answered
17 the phone, do they?

18 A. No. But they corroborate Mr. Blackwell's ---

19 Q. No, I'm not disputing that. But it doesn't say who
20 answered the phone, right?

21 A. It shows what number dialed what number ---

22 Q. But you don't know.

23 A. --- and vice versa.

24 Q. All right. Now, you have testified that this disk
25 right here is what you are calling the original audio

1 recording, correct?

2 A. Yes, sir.

3 Q. Okay. Now, there was a motion hearing in this
4 case, an evidentiary hearing in this case, correct?

5 A. Uh-huh.

6 Q. And the judge in that case, who is not this
7 judge ---

8 THE COURT: Just one second. Stop.

9 Take the jury out, please.

10 (Whereupon, the jury left the courtroom at
11 approximately 11:18 a.m.)

12 THE COURT: I'm not gonna let you do that. I have
13 ruled in this case that that is the original, that this
14 disk is the original according to the rules of evidence,
15 and I'm not gonna let you let another ruling pretrial
16 that there was another original confuse this jury. I'm
17 not gonna let you do that. And I'll let you proffer
18 your testimony, or your cross, and I don't think it's
19 appropriate and I think it's too confusing for the jury
20 on this issue. I have ruled that that is, in fact, the
21 original. Okay, sir?

22 MR. BRANNON: I understand your ruling. If you
23 will let me -- I got two questions.

24 THE COURT: Yes, sir. I want you to proffer it so
25 that you have a right to -- and if I'm mistaken, then I

1 will be corrected.

2 By Mr. Brannon (without jury presence):

3 Q. Okay. Do you remember that there was an
4 evidentiary hearing on February 8 of this year in front
5 of Judge Nicholson?

6 A. Yes.

7 Q. Were you present at that hearing?

8 A. I was.

9 Q. And I would ask you to read very short -- in fact,
10 it's highlighted. Okay? So if you would just read the
11 highlighted portion. And you can start with "THE COURT"
12 if you want to.

13 A. (Reading):

14 THE COURT: All right. Is the original recordings
15 on the digital device still available?

16 MS. ADAMS: Yes, sir, we can.

17 THE COURT: Okay. Then make that available for
18 you.

19 MS. ADAMS: Absolutely. (End of reading)

20 Q. Stop. Did you ever produce the device?

21 A. I don't have the device.

22 Q. Okay. Was the device ever produced?

23 A. I think it was offered. But I don't -- I guess I
24 don't, I don't know how to answer that.

25 MR. BRANNON: I had two questions. I expected him

1 to say no. I mean, if it was offered, that opens up
2 another five or six questions.

3 THE COURT: Here is the problem. You are taking
4 the context of original and device and interchanging the
5 two, and those are the not the same things. The device
6 had the SD card, and the SD card was transferred to the
7 computer, which I have held as the original, and that
8 has been made available to you. And you would confuse
9 the jury on that issue. I'm not gonna let you put it up
10 on the proffer, but I'm not gonna let you go through
11 this testimony to the jury because that's too confusing
12 for them. I understand your objection to that ruling,
13 but I'm not gonna let you go there. Okay?

14 MR. BRANNON: Okay. Um, may I -- to close this
15 hole, may I say, Were there evidentiary hearings in this
16 case?

17 THE COURT: Sure.

18 MR. BRANNON: And were you present at those
19 evidentiary hearings?

20 THE COURT: Sure. Absolutely. Okay. Other than
21 that -- and I didn't mean to cut your legs out from
22 under you -- but are you ready to proceed?

23 MR. BRANNON: I understand. Yeah.

24 THE COURT: Is the State ready?

25 THE COURT REPORTER: Excuse me. I'm not.

1 THE COURT: Ma'am?

2 THE COURT REPORTER: I'm not ready.

3 THE COURT: Okay. Just one second.

4 THE COURT REPORTER: I need to take a break.

5 THE COURT: Okay.

6 (Whereupon, the Court Reporter left the courtroom
7 at approximately 11:24 a.m.)

8 (A recess was taken.)

9 THE COURT: Please be seated.

10 All right. Are you ready to proceed, Mr. Brannon?

11 MR. BRANNON: I am. I believe Madam Solicitor
12 wants to deal with the stipulation, the language of the
13 stipulation.

14 THE COURT: Not now. We'll do that later.

15 MR. BRANNON: Yes, sir. I'm ready.

16 THE COURT: Would you bring the jury in.

17 (The jury entered the courtroom at approximately
18 11:55 a.m.)

19 THE COURT: Mr. Brannon, you may continue.

20 By Mr. Brannon (with jury present):

21 Q. Agent Sloan, I had asked you previously if there
22 were evidentiary hearings in this matter and that you
23 attended those hearings; is that correct?

24 A. Yes, sir.

25 Q. Okay. Thank you. During that first recorded phone

1 call, the one where Mr. Blackwell calls Mr. Milbert, do
2 you recall Mr. Milbert saying, and it was when
3 Mr. Blackwell had said, I got that money I want to
4 return to Mr. Bartee. Do you remember that?

5 A. I do remember that.

6 Q. Okay. And do you remember Mr. Milbert saying, I'm
7 pretty sure he's just gonna want you to hang on to it
8 for the weekend?

9 A. I do.

10 Q. The urgency in that portion of the conversation was
11 Mr. Blackwell, correct?

12 A. Yes, sir.

13 MR. BRANNON: Thank you. Nothing further.

14 THE COURT: Redirect.

15 Redirect Examination by Mr. Wagner:

16 Q. Agent Sloan, can you explain the gun and ATF Agent
17 Stallo, the comment he made with the gun?

18 A. I can. While we were discussing wiring up or
19 wiring Mr. Blackwell or the recorded phone calls,
20 between one of the two, or before one, we were obviously
21 talking about the kidnapping of a retired circuit court
22 judge. Shawn Stallo is ATF, he works with firearms. It
23 was his understanding that there was a plot to kidnap
24 the judge. He just simply said, See if he will give you
25 a gun.

1 Q. Okay. In the notes that were Mark Gregory's -- I
2 don't know if you got that there?

3 A. I do not.

4 Q. (Handing) -- they talked about the time frame.
5 Were you looking possibly at numerous clocks, as far as
6 watches, cell phones, and things like that that the
7 times could be a little different because one watch or
8 one clock says something different than the other one?

9 A. We were. And I actually wasn't recording the
10 times. Mark Gregory had recorded -- Investigator Mark
11 Gregory had recorded some times. David Baker, the
12 Lieutenant, was obviously giving times that you heard on
13 the recording. I can't tell you what clock he was
14 looking at, whether it was the clock in the cold
15 vehicle, whether it was his watch, whether it was his
16 cell phone, and I can't tell you if Mark Gregory was
17 looking at his own watch or the clock in his car. I
18 don't remember. I don't know.

19 Q. Are the times that Mark Gregory listed on his notes
20 roughly consistent with where you all were and what you
21 all were doing?

22 A. Very consistent. If one clock said 12:02, his
23 watch could have said 12:03 or 12:04. Very close.

24 Q. When the girl, Laurieanne, testified as far as the
25 keys and the Samurai sword, I believe you testified she

1 didn't mention that in her statement?

2 A. That's correct. She did not and I did not
3 interview her.

4 Q. But did you hear when she testified, she did
5 mention there, something to the effect of there was
6 self-defense talk between Bartee and Nick Blackwell?

7 A. She did.

8 Q. And from what you know of self-defense talk, could
9 that involve keys or a Samurai sword or something like
10 that?

11 A. It could involve anything, absolutely.

12 Q. I believe defense also handed up a transcript of
13 the civil hearing that was due to take place the 24th?

14 A. Yes.

15 Q. Let me hand it up to you and I call your attention
16 to page 108, the highlighted portion of that. It's
17 probably the end of the transcript that you were handed
18 on the civil hearing on the 24th.

19 A. This is the first time I've read it, so if I could
20 just read it to myself first.

21 Q. Please.

22 A. (Reading.) I've read it for the first time.

23 Q. Okay. And what is it?

24 A. I would rather just read it, because I don't want
25 to tell you what it is and --

1 Q. Please read it.

2 A. (Reading): Again, I would just urge you to look at
3 these statutes, and also again it has no precedential
4 value, but after I had written a memo to myself, my law
5 clerk yesterday found an Attorneys [sic] General opinion
6 from September that mirrored it, and it basically said
7 that you have to be qualified to be a sheriff, it was
8 actually a sheriff's race, at the time you filed for the
9 Primary. And again, it doesn't have any precedential
10 value, but it's there.

11 Okay. If you all have a problem, give me a call.
12 See you next Wednesday.

13 Mr. Moore says, in Anderson?

14 The Court said, yes in Anderson. Thank you for
15 your patience. (End of reading)

16 Q. Okay. And is, is that the judge's comments to them
17 at the end of that hearing?

18 A. It has listed "THE COURT." I assume that is the
19 judge.

20 Q. Okay.

21 A. The judge.

22 Q. Putting it off from the 24th until the next
23 Wednesday, which would have been the 30th?

24 A. I think so.

25 Q. Okay. And the substance of those comments, isn't

1 it entirely possible that during the hearing there on
2 the 24th that the Defendant would have realized that he
3 had a problem in that civil case which would have
4 emboldened him to go ahead and push a kidnapping plot
5 forward on the 27th, 28th, 29th and 30th?

6 A. Yes. And I do see the date, and then I didn't see
7 the date, and it is dated May 24th. I do see the date
8 now. Yes, that's possible.

9 Q. And the comments in that is because the judge told
10 them that he had to have the requirements done by the
11 filing date?

12 A. (Reading): You have to be qualified to be the
13 sheriff. It was actually a sheriff's race at the time
14 you filed for the Primary. (End of reading)

15 Yes, I have little, you know, knowledge of this,
16 but I'm just reading it.

17 Q. That's what was said and the hearing was put off?

18 A. Yes, sir.

19 Q. And the kidnapping plot heard the late night of the
20 27th-28th which was roughly three days later?

21 A. Yes.

22 Q. Okay. And the Seneca Fest occurred, when the card
23 was handed by Mr. Brian Stancil to Mr. Blackwell
24 occurred on what day?

25 A. The 25th or the 26th. I don't remember exactly

1 which day. The Seneca Fest was I believe Friday and
2 Saturday, and on one of those two days he provided me
3 this business card.

4 Q. And is that consistent with what Mr. Blackwell told
5 you?

6 A. Absolutely.

7 MR. WAGNER: Thank you. Those are all the
8 questions I have.

9 THE COURT: Any other additional -- any Redirect --
10 any Recross?

11 MR. BRANNON: Yes.

12 Recross-Examination by Mr. Brannon:

13 Q. You were actually in the Courthouse in Anderson on
14 the 30th, right?

15 A. I had to go to the Courthouse to meet with the
16 Solicitor to discuss the evidence.

17 Q. Right. But then you -- your testimony earlier was
18 that during a break, during a period of a civil hearing
19 in that case the transcript you just read from, there
20 was a hearing, right?

21 A. Yes.

22 Q. Okay. So there's no confusion, there was a hearing
23 on the 24th and on the 30th, correct?

24 A. Yes. I do know now there was a hearing on the 24th
25 and the 30th, yes.

1 Q. Okay. Thank you. All right. What does Mr. Bartee
2 do for a living, do you know, or at least a portion of
3 his living?

4 A. Maybe teaches some type of martial arts.

5 Q. Right, okay. And Laurieanne testified that there
6 was talk of self-defense or martial arts, right?

7 A. I don't remember the martial arts, but I remember
8 something about self-defense.

9 Q. Okay. All right. Putting a set of keys to one's
10 neck and saying "I could take you down in a second" or
11 showing a Samurai sword and saying "I could cut you in
12 half with this," those are threats, aren't they?

13 A. Possible.

14 MR. BRANNON: Nothing further. Thank you.

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

16 MR. WAGNER: I have one more.

17 THE COURT: Oh, I'm sorry. I'm sorry.

18 Further Redirect Examination By Mr. Wagner:

19 Q. The transcript that you just read from was from the
20 actual 24th?

21 A. It's dated May 24th, 2012, on the transcript.

22 Q. Okay. So we're talking about the transcript on the
23 24th, not something on the 30th?

24 A. Yes, sir.

25 MR. WAGNER: All right. That's I have, Judge.

1 Afternoon Proceedings

2 August 29, 2013

3 Approximately 1:32 p.m.

4

5 THE COURT: Mr. Brannon, is the Defense ready to
6 proceed?

7 MR. BRANNON: Yes, Your Honor.

8 THE COURT: Is the State ready?

9 MR. WAGNER: Just kind of to avoid objections and I
10 didn't know any way else to do it. I know that they had
11 their expert testify that testified on Monday here all
12 week, and I'm assuming he's gonna testify this
13 afternoon. Most of that on Monday in my opinion had to
14 deal with original and all that, which based on your
15 ruling a little while ago on cross with Agent Sloan, I'm
16 just anticipating that being the bulk of his testimony,
17 I'm just --18 THE COURT: Well, his testimony is a little
19 different than what I was preventing the
20 cross-examination from going into. I was, my concern
21 was that there was a separate original out there that's
22 equated with the original that I made an evidentiary
23 ruling about in the hopes of not confusing the jury.
24 I'm not gonna limit him on his -- on his direct. What
25 he did with his expert Monday --

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Oconee County
Court of General Sessions
R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-37-597
Appellate Case No. 2013-001895

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MAY 01 2015

SC Court of Appeals

The State,

Respondent,

v.

James Richard Bartee,

Appellant

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I certify that I have served the Record on Appeal, by mailing a copy, postage prepaid, to Assistant Attorney General William M. Blitch, Jr., P.O. Box 11549, Columbia, South Carolina 29211, on May 1, 2015.



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