

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Richland County

JUL 09 2016

Honorable D. Craig Brown, Circuit Court Judge
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

Demetrius Derrick Henderson,

APPELLANT

APPELLATE CASE NO. 2015-001075

RECORD ON APPEAL

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)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
 Demetrius Henderson,)
)
 Defendant.)
)
)

May 6 - 8, 2015
Columbia, South Carolina

B e f o r e:

The Honorable D. Craig Brown, Judge

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Circuit Court Reporter

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1 DAY 1

2 (On the record at 10:56 a.m.)

3 THE COURT: Ma'am, tell me your name for the record,
4 please.

5 MS. Eigenbrot: Your Honor, my name is Megan Eigenbrot
6 with the Richland County Public Defender's Office.

7 THE COURT: And you're here with your client,
8 Demetrius Henderson?

9 MS. Eigenbrot: Yes, Your Honor.

10 THE COURT: Tell me your name, sir.

11 MR. SHENKAR: Good morning, Your Honor. My name is
12 Joseph Shenkar. I'm with the solicitor's office. Last
13 name spelled S-h-e-n-k-a-r.

14 THE COURT: And this is -- hold on a second.

15 You got all the warrant numbers? You got any
16 indictment numbers?

17 MR. SHENKAR: Yes, Your Honor. I'll have my ---

18 THE COURT: Can you ---

19 MS. Eigenbrot: I have the warrant numbers, Your
20 Honor..

21 THE COURT: All right. Let me hear from you, Ms.
22 Eigenbrot.

23 MS. Eigenbrot: Thank you, Your Honor. May it please
24 the Court. Your Honor, Mr. Henderson asked me to file this
25 motion on his behalf. Would Your Honor like a procedural

1 background on the case?

2 THE COURT: Yeah, just for the record, please.

3 MS. Eigenbrot: Mr. Henderson was initially arrested
4 for a burglary second nonviolent and a petit larceny in
5 2012, Your Honor. And then shortly thereafter, April 23rd
6 of 2013 -- 14, he was arrested again on a burglary first
7 degree, grand larceny between 2,000 and 10,000 and
8 trafficking cocaine and possession with intent to
9 distribute marijuana.

10 Your Honor, the first charges, the burglary second
11 nonviolent and the petit larceny are under a speedy trial
12 order, which I believe is set to expire fairly soon. I do
13 not have a specific date, but I know it is scheduled to
14 expire soon. On the newer charges, Your Honor, we are set
15 to go to trial this week. We are the second trial on the
16 docket. My understanding there is a murder trial ahead of
17 that is still set to go ---

18 THE COURT REPORTER: I'm sorry. Somebody came in the
19 door so I couldn't hear what you said.

20 MS. Eigenbrot: There is a murder trial set to go
21 before us, but we are on the docket this week, Your Honor.

22 Also, Your Honor, he was represented initially by
23 another attorney in our office who left in January. I took
24 over that case at that point. This case was set for trial
25 either very late December or early January of this year

1 initially. I believe the State at that point had requested
2 a continuance, which was consented to in order to do a
3 little bit more testing, which was then turned over. It
4 was then scheduled again in February.

5 At that point in time, Mr. Shenkar consented to
6 another continuance since I was just appointed to the case.
7 I needed time to catch up. We discussed the trial dates in
8 May, which is now set for May.

9 Mr. Henderson has come before the Court -- this will
10 be his third time asking the Public Defender's Office to be
11 relieved from his case. The last one was actually one with
12 me, which was heard in front of Judge Benjamin on March
13 25th of this year, which was denied at the time.

14 I then filed a motion for bond at my client's behest,
15 which was heard in front of Judge King on April 1st. Judge
16 King ordered that bond remain denied on these new charges;
17 however, the case needed to be tried in 90 days or we could
18 move for a reconsideration.

19 Your Honor, it is scheduled for trial this week. Mr.
20 Henderson again has expressed great displeasure with my
21 representation and asked us to file this motion before the
22 trial.

23 THE COURT: Sir, if you will raise your right hand.

24 DEMETRIUS HENDERSON, having been first
25 duly sworn, testifies as follows:

DIRECT EXAMINATION BY THE COURT - DEMETRIUS HENDERSON 12

1 DIRECT EXAMINATION BY THE COURT:

2 Q You are Demetrius Henderson?

3 A Yes, sir.

4 Q You can put your hand down, sir. You've been here
5 while your attorney, Ms. Eigenbrot, has placed on the
6 record various procedural facts and matters pertaining to a
7 request for you -- or by you, that she be relieved as your
8 lawyer; is that correct?

9 A Yes, sir.

10 Q Now, I want you to clearly understand, I don't want
11 you to say anything that could be used against you at a
12 later time; however, I want to hear from you as to why you
13 want her relieved as your lawyer.

14 A Yes, sir. Thank you for letting me speak. I believed
15 we developed a conflict of interest because I just believe
16 I'm being represented as a guilty conscience, and I believe
17 that's jeopardizing our defense for the prosecution -- for
18 the prosecutor because I want to go to trial, but I do not
19 -- I don't want to be represented like with a guilty
20 conscience, you know.

21 I don't believe that she's putting herself in my shoes
22 and go full fledged with the representation on my behalf of
23 my case. So I believe that it can -- it's my life that's
24 on the line and I believe that I just -- she's just not
25 representing me to her fullest extent, so ---

DIRECT EXAMINATION BY THE COURT - DEMETRIUS HENDERSON 13

1 Q Well, tell me what she's failing to do to represent
2 you that you have a problem with.

3 A She's telling me that I'm going to lose come trial. I
4 mean, I feel as though that she's basically just counting
5 me -- counting me out, you know. So that's the defeated
6 mentality to me, and I believe that that's -- that it can't
7 -- that I won't be represented to the fullest extent.

8 Q Anything else?

9 A My family's supposed to be trying to obtain me a
10 paying attorney, so, I mean, I would like some more time to
11 obtain this attorney come trial.

12 Q All right. Anything else, Mr. Henderson?

13 A No, sir.

14 THE COURT: All right. Let me ask you this, Ms.
15 Eigenbrot, how long have you been working with the Public
16 Defender's Office?

17 MS. Eigenbrot: I started December of 2013, Your
18 Honor.

19 THE COURT: You filed your Rule 5 and *Brady* -- or at
20 least y'all's office -- when he was represented by the
21 prior attorney?

22 MS. Eigenbrot: Yes, Your Honor.

23 THE COURT: You gotten all your discovery in this
24 case?

25 MS. Eigenbrot: I do.

1 THE COURT: You met with your client?

2 MS. Eigenbrot: Yes, Your Honor.

3 THE COURT: Discussed the Rule 5 and *Brady* with him?

4 MS. Eigenbrot: Yes, Your Honor, at length.

5 THE COURT: Have you had adequate time to prepare this
6 case for trial?

7 MS. Eigenbrot: Yes, Your Honor.

8 THE COURT: Anything else you want to tell me, Ms.
9 Eigenbrot?

10 MS. Eigenbrot: No, Your Honor.

11 THE COURT: What's the State's position on this
12 matter?

13 MR. SHENKAR: Your Honor, we're ready to go ahead and
14 get this trial going. I believe the defendant was given
15 ample time to retain a private counsel if he wished to.
16 The case was already set on the trial docket back in
17 January and February. This is the third time we're
18 scheduling it. I see no reason to continue it anymore.
19 It's already been continued.

20 We have our witnesses on standby and pending what's
21 going to happen with the murder trial, we're ready to go
22 this week or as early as next week if necessary.

23 THE COURT: All right. Based upon what I've heard
24 here today, these charges emanate -- correct me if I'm
25 wrong, Mr. Shenkar, from April -- what he's going to be

1 tried on this week is from April of 2013 ---

2 MR. SHENKAR: The incident occurred on December 18 of
3 2013. He's been in the intensive care unit until April
4 2014. Then, when he was discharged from the hospital, he
5 was served with those warrants that ---

6 THE COURT: Okay.

7 MR. SHENKAR: --- happened about four months before
8 then.

9 THE COURT: All right. The case was previously set
10 for trial back in December or January?

11 MR. SHENKAR: Yes, Your Honor.

12 THE COURT: It was continued at that time and I
13 understand at the request of the State, I believe, is what
14 was placed on the record. Continued again in February
15 pursuant to the recent appointment of Ms. Eigenbrot.

16 While the Defendant is entitled to representation, he
17 does have representation in this case. The Court has heard
18 nothing, nothing -- he raised an issue of a conflict of
19 interest and what the Court can gather, no specifics as to
20 a conflict of interest other than her telling him it
21 doesn't look good for him, so to speak.

22 Is that right, Mr. Henderson?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Lawyers are not -- no defense
25 lawyer ---

1 THE DEFENDANT: Sir?

2 THE COURT: No defense lawyer is to paint a picture
3 for you beyond what the facts are. And by that, it is her
4 obligation to convey to you, based upon her experience,
5 based upon her review of discovery, what her opinion is.

6 Doesn't mean you have to like what she tells you.
7 Doesn't mean that you have to want to hear what she tells
8 you. She doesn't make the facts. But it's her job and she
9 has an ethical responsibility to -- to discuss with you --
10 well, one, to make sure they have -- she has the discovery,
11 to discuss and review that discovery with you.

12 And the ultimate decision lies with you as to what you
13 want to do, whether you want to go to trial or plead
14 guilty. It's not her job to make that decision, but it is
15 her job to certainly inform you as to what she believes the
16 outcome's going to be.

17 She can't promise you the outcome. She can't promise
18 you that. Nobody has a crystal ball to tell you what the
19 outcome is, but she has an ethical obligation to inform you
20 of potential consequences, the penalties, et cetera.

21 You're charged with burglary first here. I have
22 absolutely no knowledge whatsoever about the facts, but
23 just on that charge alone, you're looking at life in the
24 penitentiary.

25 So based upon what I've heard here today -- and you do

1 have a right, Mr. Henderson, to obtain counsel or have --
2 have counsel of your choosing if you retain them, if you
3 retain them. You've had adequate time to retain a lawyer
4 in this case and -- and no lawyer has been retained by you
5 or your family and made an appearance on your behalf. And
6 the Court has heard nothing, has heard nothing today to
7 warrant relieving Ms. Eigenbrot as your attorney.

8 Anything further?

9 MS. Eigenbrot: No, Your Honor.

10 THE COURT: From the State?

11 MR. SHENKAR: Nothing from the State.

12 THE COURT: Thank you.

13 MR. SHENKAR: Thank you, Your Honor.

14 MS. Eigenbrot: Actually, Your Honor, Mr. -- Deputy
15 Gravelin has said that it would be okay if his mother and
16 his uncle spoke to him briefly. I just wanted to see if
17 that was okay with Your Honor.

18 THE COURT: I'll leave that up to the Sheriff's
19 Department. They're in control of -- of defendants and how
20 they conduct security in this courthouse. I'll leave that
21 up to them.

22 MS. Eigenbrot: Thank you, Your sHonor.

23 (Off the record at 11:08 a.m.)

24 (On the record at 2:02 p.m.)

25

1 THE COURT: All right. It's my understanding the
2 jury's kind of trickling in. Is that right, Madam Clerk?

3 CLERK OF COURT: Yes, Your Honor.

4 (Brief pause.)

5 THE COURT: All right. State ready to proceed?

6 MR. SHENKAR: Yes, Your Honor.

7 THE COURT: Defense counsel?

8 MS. Eigenbrot: Yes, Your Honor.

9 THE COURT: All right. Pre-trial motions that were
10 given to my law clerk, go ahead and start dealing with
11 these right now.

12 Number 1, "Renew *Brady* and Rule 5." Let me hear from
13 Defense counsel, please.

14 MS. Eigenbrot: Your Honor, at this time we would just
15 renew our *Brady* rules -- our *Brady* motion and Rule 5
16 motions. If anything has come across the State's desk in
17 regards to the discovery in this case that we have not
18 received, we'd just ask it be turned over now.

19 THE COURT: Somebody on the State's -- stand up and
20 speak up.

21 MR. SHENKAR: Yes, Your Honor. I did not hear the
22 last thing that she said. Sorry.

23 MS. Eigenbrot: If there's just anything new, we would
24 ask it be turned over at this time.

25 MR. SHENKAR: There is nothing new in this case, Your

1 Honor.

2 THE COURT: Sir?

3 MR. SHENKAR: There is no -- no new evidence or new --
4 new added materials that were added since the last
5 discovery was turned over to the Defense.

6 THE COURT: All right. Number 2, "Redact PWID
7 indictment."

8 MR. POURNARAS: Yes, Your Honor.

9 THE COURT: Tell me your name for the record.

10 MR. POURANARAS: Constantine Pournaras.

11 THE COURT: Constantine what?

12 MR. POURANARAS: Pournaras.

13 THE COURT: Spell that for me.

14 MR. POURANARAS: P-o-u-r-n-a-r-a-s.

15 THE COURT: Okay. Forgive me if I mispronounce ---

16 MR. POURANARAS: That's ---

17 THE COURT: --- your name as we go through this
18 process. Okay?

19 MR. POURANARAS: No problem, Your Honor.

20 THE COURT: Yes, sir.

21 MR. POURANARAS: This is something that -- the State --
22 -- we have discussed that this was originally indicted as a
23 -- as an enhanced offense due to priors. Per our
24 discussions, that that would be redacted to a first
25 offense. We -- we both agree to that.

1 The underlying issue is we have resolved -- that they
2 were intending to use to enhance it.

3 THE COURT: Okay.

4 MR. POURANARAS: And one other matter, Your Honor, not
5 relating to this one. If -- if at some point in time, Your
6 Honor, we would like to be able to put on the record the
7 prior negotiations.

8 There was a final offer made by the State. We would
9 like to put that on the record and a formal acceptance or
10 rejection by our client, too, at the appropriate time.

11 THE COURT: Okay. Well, certainly would not -- with
12 regard to the PWID third, that would not be something
13 that'd be disclosed to the jury anyway.

14 MR. POURANARAS: Absolutely.

15 THE COURT: If you all have agreed that it will only
16 be a first, is that right?

17 MR. POURANARAS: That's correct.

18 MR. SHENKAR: Yes, Your Honor.

19 THE COURT: Okay. All right. So that -- that's so --
20 so granted.

21 Now, no better time than now than to put the
22 negotiations on the record, and Mr. Henderson can either
23 accept, reject; and if so, we will proceed in picking his
24 jury here as soon as we get the panel downstairs.

25 Tell me what the offer has been from the State,

1 please.

2 MR. SHENKAR: Thank you, Your Honor. If Your Honor
3 permit, I will give you a brief procedural history of what
4 transpired in this case.

5 Back in 2010, this defendant was convicted of a
6 burglary second, non-violent, and received a suspended YOA
7 sentence with five years probation.

8 The new charges that he picked up afterwards, which I
9 still have, those stem from a 2012 incident for which he
10 was charged with burglary second degree, non-violent, and
11 petty larceny.

12 I've communicated with his attorney at the time,
13 Joanna Delaney, with the Public Defender's Office, and I
14 placed an offer for revoking the defendant's YOA suspended
15 sentence and let him go into an active YOA. He rejected
16 that offer and then indicated that he would like to proceed
17 to trial.

18 We were ready to try that case back in January of
19 2014; however, a few weeks prior to the January day, I was
20 informed by Ms. Delaney the defendant was shot.

21 After inquiring into this situation with Investigator
22 McCoy, turned out to be that this incident took place --
23 which was December 18 of 2013. At that time, because the
24 defendant was shot during the commission of a burglary, we
25 had decided to proceed forward with these charges.

1 And I made an offer to Ms. Delaney, who represented
2 him at the time, of a -- let him -- let him plead to the
3 burglary first and a negotiated 15-year sentence, and then
4 to dismiss the prior burglary charge with the petty
5 larceny, as well as all of the drug charges that were
6 associated with the new charge. He rejected that offer and
7 indicated that he would not plea to that.

8 Ms. Delaney requested us to consider other
9 alternatives, and after a few months -- months of back and
10 forth talking about the case, the State was willing to make
11 an offer of reducing the burglary first to a burglary
12 second, violent, and allow him to plea on a negotiated
13 range, between 10 and 15 years, and to plead to the grand
14 larceny that was associated with that.

15 In exchange for that plea, the State offered to
16 dismiss the trafficking cocaine charge and the possession
17 with the intent to distribute marijuana; as well as the
18 prior burglary second and the petty larceny. He rejected
19 that offer, and then Ms. Delaney left the Public Defender's
20 Office and Ms. Eigenbrot received the case.

21 She and I communicated. I reiterated the same offer
22 because I thought that was a fair offer to be put on the
23 table. Over the last few months we've been going back and
24 forth, and the defendant has rejected all of these offers.

25 As of earlier today, the Defense came by my office and

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1 requested another proposal for an offer, for which we
2 agreed to -- to a negotiated 15 years on the burglary
3 second, violent; but he will plead to the grand larceny,
4 trafficking in cocaine, and the PWID marijuana. In
5 exchange for his plea, obviously, he will receive the
6 reduction of the burglary first to burglary second,
7 violent; and we will be dismissing the burglary second,
8 non-violent, the petty larceny, and the prior charge.

9 My understanding that he rejected all these offers,
10 and now it's on the record.

11 THE COURT: Okay. Mr. Henderson, if you'd -- can you
12 stand up?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Raise your right hand.

15 DEMETRIUS HENDERSON, having been
16 first duly sworn, testifies as follows:

17 DIRECT EXAMINATION BY THE COURT:

18 Q All right. You are Demetrius Henderson?

19 A Yes, sir.

20 Q You have been present with your lawyers here as the
21 State has placed on the record, by Mr. Shenkar -- did I
22 pronounce that correctly?

23 MR. SHENKAR: Yes, Your Honor.

24 Q -- the various plea negotiations that have occurred
25 between their office, the State or the Solicitor's Office,

DIRECT EXAMINATION BY THE COURT - DEMETRIUS HENDERSON 24

1 and your lawyers, albeit you have had a change of lawyer --
2 lawyers, since -- in January. But you were present when it
3 was just placed on the record, the various plea
4 negotiations; is that correct?

5 A Yes, sir.

6 Q And you understand those plea negotiations.

7 A Yes, sir.

8 Q Now, you understand --

9 (Brief pause as the Court confers with his law clerk.)

10 THE COURT: Mr. Shenkar, the final offer was the 15
11 years on the burglary second, violent, along with some
12 additional charges, to run concurrent?

13 MR. SHENKAR: Yes, Your Honor.

14 THE COURT: Okay.

15 (Brief pause.)

16 THE COURT: PWID marijuana carry up to five; is that
17 right?

18 MR. SHENKAR: Yes, Your Honor.

19 THE COURT: All right.

20 DIRECT EXAMINATION BY THE COURT:

21 Q Mr. Henderson, you understand that the -- the burglary
22 first charge -- and I know your lawyers have explained this
23 to you -- carries a mandatory minimum, 15 years.

24 A Yes, sir.

25 Q Up to a maximum of life. And you understand if you

DIRECT EXAMINATION BY THE COURT - DEMETRIUS HENDERSON 25

1 get convicted of this charge in this courtroom this week,
2 that I could give you a life sentence.

3 A Yes, sir.

4 Q And "life" would mean life.

5 A Yes, sir.

6 Q In addition, you understand that the PWID marijuana
7 carries 0 to 5.

8 A Yes, sir.

9 Q Grand larceny carries 0 to 5.

10 A Yes, sir.

11 Q And the trafficking cocaine carries a minimum of 3
12 years up to 10 years; you understand that?

13 A Yes, sir.

14 Q And you understand in addition, while the Court can
15 give you life on the burglary first, I could give you each
16 of these subsequent penalties -- or sentence on these
17 additional offenses -- could run all of them consecutive.
18 Means back to back, to ensure that you're never released
19 from the Department of Corrections; you understand that?

20 A Yes, sir.

21 Q And you want to reject their offer of 15 years and go
22 forward with this trial?

23 A Yes, sir.

24 Q All right. You under the influence of any drugs or
25 alcohol?

1 A No, sir.

2 Q Anybody making any threats, putting any pressure on
3 you, intimidating you to go forward with this trial?

4 A No, sir.

5 Q Anybody held out any promises to you to -- to go
6 forward here?

7 A No, sir.

8 Q All right. Do you understand what I've explained to
9 you here today?

10 A Yes, sir.

11 Q And it's your desire to reject what's been offered to
12 you of 15 years, which is a minimum sentence on a burglary
13 first, but it's a maximum sentence on a burglary second.

14 A Yes, sir.

15 Q Even if they were to convict you of lesser included
16 offenses, the Court could still run them back to back to
17 back consecutive. You understand that?

18 A Even if they was to convict me of --

19 Q Of lesser included offenses.

20 A So can you give me like an example?

21 Q Example: If they were to convict you of burglary
22 first -- excuse me -- burglary second degree, if -- if the
23 evidence warrants a lesser included charge of burglary
24 second degree, you'd be looking at 15 years on that --

25 A Uh-huh.

1 Q -- possession of marijuana, I guess that would be a
2 simple possession maybe?

3 MR. SHENKAR: Yes. Lesser included.

4 Q Grand larceny, 2,000 to 10,000 --

5 A Yes, sir. I understand.

6 Q All right. Five years. So an additional five. So I
7 could give you 20 years right there and -- and 30 days.
8 Trafficking cocaine, that carries up to -- up to 10. If
9 they were to convict you on that, I could still give you an
10 additional 10 years up to 30 essentially.

11 A Yes, sir.

12 Q Or somewhere in that range.

13 A I understand, sir.

14 Q Okay. And again, it's your desire to go forward with
15 trial here this -- this week.

16 A Yes, sir.

17 Q Okay.

18 THE COURT: All right. Anything else?

19 MS. Eigenbrot: Not on that matter, Your Honor.

20 THE COURT: Okay. All right. Now, Number 3 on here,
21 "Suppress publication of deceased witness's statement."
22 Can someone elaborate on that?

23 MS. Eigenbrot: I absolutely can, Your Honor. In this
24 -- in this matter, Your Honor, there were two individuals
25 that arrived at the residence after it was alleged to have

1 been burglarized. When they arrived at the residence, they
2 had to shove in the door. And these were the two
3 individuals that grab a weapon -- an assault rifle
4 essentially -- go outside, and end up confronting Mr.
5 Henderson and shooting him several times.

6 One of his witnesses, Mr. Costello Johnson --

7 THE COURT REPORTER: Costello?

8 MS. Eigenbrot: Costello, C-o-s-t-e-l-l-o.

9 Your Honor, he eventually did report -- he gave
10 information on the shooting to police and did give a
11 written statement with a attorney present two days after
12 the shooting or -- in the burglary incident.

13 The -- he has since died of natural causes. He
14 suffered a heart attack and has passed away.

15 It is our contention that it -- that his statements to
16 police at that time are inadmissible as we have never been
17 able to cross-examine him, question him in front of -- in a
18 -- in a courtroom setting, Your Honor, under oath.

19 We have spoken to the State. My understanding is now
20 they are of the same belief and they agree with us. We
21 just wanted to make sure it was placed on the record that
22 we would object to his statements coming in.

23 THE COURT: Okay. You agree with that, Mr. Shenkar?

24 MR. SHENKAR: Yes, Your Honor.

25 THE COURT: Let me ask this question: Have you all

1 discussed your pre-trial motions? Have each of you all
2 talked about these?

3 MS. Eigenbrot: We have discussed the majority of
4 them, Your Honor. There's a -- the motion to suppress
5 testimony regarding prior bad acts I don't believe we've
6 discussed. I think we may have some argument on the motion
7 to suppress the GPS. But I think they also -- we have
8 discussed that, but they have a separate issue for pre-
9 trial with the GPS records. And we would just also like to
10 settle the record, including Mr. -- Mr. Henderson's record
11 especially.

12 THE COURT: All right. What -- okay. So Number 3 is
13 dealt with. Number 4, any additional -- let me hear from
14 you, sir.

15 MR. POURANARAS: Sure. Your Honor, at the time of
16 this incident, Mr. Henderson was on GPS monitoring through
17 the Department of Probation, pursuant to some of the issues
18 you heard Mr. Shenkar mention earlier.

19 THE COURT: Uh-huh.

20 MR. POURANARAS: I believe the State intends to
21 introduce that as evidence to the jury, either as a
22 demonstrative, for the purposes of placing Mr. Henderson at
23 the scene.

24 We are of the belief that that would introduce
25 impermissible character evidence, as there is no possible

1 way for the jury to hear testimony that Mr. Henderson was
2 on GPS monitoring and not associating that with criminal
3 activity.

4 I believe that that is most apt to the scenario that
5 was raised in *State v Tate*, Your Honor -- and I have a case
6 for that -- involving the introduction of mug shots in a
7 trial.

8 Understandably, I -- I don't know if the State wishes
9 to also bring in the reason for the GPS monitoring, but
10 just bringing into the jury's mind the fact that Mr.
11 Henderson was monitored on GPS, there is a -- there is a
12 connection between criminal behavior. I believe there's
13 only three things the jury can -- can only conclude from
14 that inference: That he is either on bond for -- for a
15 serious offense, that he is on probation or parole for a
16 serious offense, or that he's required -- and I think to a
17 lesser extent, I think there's more a legal community would
18 make this inference -- that he is being supervised on GPS
19 due to being on the sex offender registry.

20 Your Honor, I think this is somewhat of a novel issue.
21 I don't believe that it comes up very often. Most of the
22 times we see GPS issues it's using cell phones.

23 But I think that if you read *Tate*, the Court found it
24 impermissible to bring a photograph -- a mug shot of an
25 individual that the jury would readily understand to be a

1 mug shot, and it was clear that it was not a mug shot at
2 the time of the arrest -- Your Honor, I'm sorry.

3 THE COURT: Go ahead. I'm -- I'm listening.

4 MR. POURANARAS: The mug shot in question was from a
5 prior incident. So the Court found that there was no way
6 for the jury to see this mug shot and not connect that with
7 some character evidence on the defendant. And they felt
8 that the mug shot itself being introduced was not so
9 probative to overcome that prejudice to the defendant.

10 So I think in this case, it's -- it's unquestioned
11 that telling the jury that he is being supervised by the
12 State would prejudice him. It would let them know that he
13 has some bad character for being actively supervised.

14 A mug shot alone does not say that he is convicted of
15 a crime, it just says he was accused and arrested for a
16 crime. Our scenario here, there is no way not to connect
17 that to criminal activity; and even further, to say that
18 that is of a serious nature, to -- to require GPS
19 monitoring, I think would put in the jury's mind that there
20 is even a heightened level of criminal behavior associated
21 with that.

22 And just as a demonstrative, Your Honor, not less than
23 a month ago -- if I may approach -- there was a news
24 article here in Columbia (hands document to the Court)
25 regarding violent offenders being tracked on GPS by the

1 Solicitor's Office.

2 Now, this -- he was not on this program, but you know,
3 again, the jury's not going to know exactly what or why he
4 was supervised. But they're going to know that there's
5 some connection to some criminal behavior, and that's
6 nothing more than character evidence.

7 And if -- Your Honor, it's not squarely a *Lysle*
8 analysis, but I think it falls into those same
9 considerations. They're not introducing the GPS as
10 character evidence, but there's no way to separate the two.
11 And I think if you look through the -- the Rule 404
12 factors, it's impermissible to introduce character evidence
13 but for several exceptions.

14 In this case, I think the only reason to introduce the
15 evidence would be to say that he was there. But it's
16 uncontested that he was there because he was shot multiple
17 times, and that is where law enforcement and EMS arrived.
18 So to say he's there by using the GPS evidence is nothing
19 more than cumulative evidence.

20 And I don't think it's so probative to their case to
21 overcome the inherent prejudice that the jury would infer
22 from him being on GPS monitoring at the time.

23 THE COURT: All right. Let me hear from -- anything
24 further?

25 (No audible response.)

1 THE COURT: . Yes, ma'am.

2 MS. ALL: Thank you, Your Honor. Britton All for the
3 State. Regarding the reasons for the presentation of this
4 evidence, we would point to the fact that the defendant has
5 asserted a few different times different explanations, that
6 being a drug deal gone bad or that he had just gotten
7 there. And this evidence would show when he arrived and
8 the length of time that he was there, as we're prepared to
9 submit during testimony -- it's not exact, it's not a
10 zigzag-line that shows him coming in and out of the
11 apartment to the car and back to the apartment. It just
12 shows him there for a certain period of time.

13 It also shows him in the apartment complex, in other
14 parts of the complex, and then leaving and then coming
15 back, which would be consistent with somebody who was
16 scoping to do a burglary.

17 We concede that -- Mr. Pournaras, what he said -- that
18 he was there, and obviously he was shot there. But the
19 reason that we pursued this evidence is to contradict any
20 theory that they might present about how he had just
21 arrived or he was there to visit; these were his friends,
22 or they were there to do drugs together because of the --
23 the patterned behavior that it shows.

24 We're also prepared -- because of these concerns,
25 we've discussed this at length and understand Your Honor's

1 difficult task here with weighing probative versus
2 prejudicial -- that we're fine not using the words
3 "supervisory," "monitoring," "offender," "violent" ---

4 THE COURT: Well, let me -- let me ask this question:
5 Y'all willing to stipulate he was there when they say he
6 was there ---

7 MR. POURANARAS: Your Honor ---

8 THE COURT: --- according to the GPS?

9 MR. POURANARAS: Absolutely we would stipulate that he
10 was there.

11 THE COURT: During the times, etc.?

12 MR. POURANARAS: If -- if they wanted to say through
13 their investigator or investigation determined he was there
14 for this period and leave it at that, we would absolutely
15 stipulate to that.

16 THE COURT: Well --

17 MS. ALL: Your Honor, the issues is that it's not just
18 -- if -- if I may approach, this is in evidence.

19 (Ms. All hands a document to the Court.)

20 MS. ALL: It's not just that it shows that he was
21 there.. It's not like he's in an orb. It actually shows
22 lots of different dots and all of the places within the
23 complex that he went, which would be consistent with
24 scoping.

25 So it's a big apartment complex with lots of different

1 buildings. So you can see it's not just he's at a
2 particular address. It's where he was and how he moved
3 around.

4 We spoke with Agent Mitch Tucker, who would be
5 presented as an expert and that would testify to these as
6 business records. He said that he's done this different
7 ways in different counties, that he's definitely done it
8 before many times.

9 One of the most recent ones was in Charleston County
10 because it was a sex offender. They knew the prejudice
11 there, so they just admitted it as business records. They
12 had to put somebody there at the scene. That was the
13 issue. He had an alibi, and so they just wanted to put him
14 there. So it was sufficient for the jury that they were
15 just willing to state he was there.

16 Then there have been other cases where he said that he
17 gets on the stand and testifies as a GPS expert, and that
18 they only refer to it as "GPS data." So it could be from a
19 cell phone, it could be from a beeper, it could be from a
20 lot of different things besides just an ankle monitor.

21 But it's not just that he was present at the scene.
22 It's when he was there. He was there from, I think, 3 to
23 5; and then he leaves and then he comes back. And it's
24 just very -- as you can see in the different complexes, he
25 ends up at a very remote, rural part, a very removed area

1 of the complex. In fact, the most corner, distant,
2 shielded part of the apartment complex. And that is
3 important because he's around other parts of the apartment
4 complex before that. So if he was there for some
5 legitimate purpose, he wouldn't have just kind of been
6 cruising around for a time and then left and come back.

7 It's also important because it -- it establishes
8 scientifically that it was night time. All our witnesses
9 are prepared to testify that it was dark when they heard
10 the gunshots and when the burglary occurred. It also puts
11 him there during the scientific times for sunset.

12 THE COURT: Okay.

13 MS. ALL: So we're -- we're prepared to exclude any
14 language that could be construed as prejudicial. Agent
15 Tucker has testified before in light of this issue and is
16 prepared to not use any words like that.

17 It's not a novel issue as -- as Mr. Pournaras
18 characterizes it. And it's also not considered prior bad
19 acts as we aren't offering this evidence as proof for
20 innocence or guilt or that he was out on bond or that it
21 was because he was a sex offender or because it was a
22 condition of probation or anything else. It's just that
23 there was GPS tracking on him, and it puts him there during
24 a period of time that they really can't stipulate to
25 without the explanation of Agent Tucker.

1 THE COURT: All right. Anything else?

2 MR. POURANARAS: ***

3

4 (Off the record at 2:40 p.m.)

5 (On the record at 2:54 p.m.)

6 THE COURT: Good afternoon, ladies and gentlemen. I
7 hope you all have had a good week thus far. We are getting
8 ready to select a jury in the next case that is up for
9 trial. I don't think that you all -- any of you all were
10 in here. Before I say -- well, a couple, maybe, that were
11 in here with me earlier.

12 But my name is Craig Brown. I am a circuit judge from
13 Florence. I've been over here -- been assigned over here
14 for one week of General Sessions term of court, also known
15 as "criminal court," and we are going to select a jury this
16 afternoon, as I said, in the next case up for trial. But
17 before we do so, I am going to recognize the Solicitor's
18 Office.

19 (To Mr. Shenkar) If you will call your case, please,
20 for trial.

21 MR. SHENKAR: Thank you, Your Honor. The State calls
22 Demetrius Henderson.

23 THE COURT: Can you approach, please, Mr. Shenkar and
24 Ms. ...

25 (Bench conference.)

1 THE COURT: All right. Ladies and gentlemen, the
2 State of South Carolina has called the case of the *State*
3 *vs. Mr. Demetrius Derrick Henderson*. Mr. Henderson has
4 been charged, by indictment, with the offense of burglary
5 first degree; trafficking in cocaine, 10 to 28 grams; grand
6 larceny, \$2,000 but less than \$10,000; and possession of
7 marijuana with intent to distribute.

8 Now, the burglary first degree indictment reads as
9 follows (as read): "That Demetrius Derrick Henderson did,
10 in Richland County, on or about December 18, 2013, enter
11 the dwelling of April Jenkins, located at

12 , Apartment -- , without consent and with
13 the intent to commit a crime therein; and the entering or
14 remaining occurred in the nighttime, in violation of
15 Section 16-11-311(a) of the Code of Laws of South
16 Carolina."

17 In addition, Mr. Henderson has been charged with
18 trafficking in cocaine, 10 to 28 grams; and that indictment
19 alleges that (as read): "Demetrius Derrick Henderson did -
20 - in Richland County, on or about December 18, 2013, was --
21 was in actual or constructive possession or attempted to
22 become in actual or constructive possession of a quantity
23 of cocaine, in an amount of more than 10 grams but less
24 than 28 grams; the same being a controlled substance, all
25 within the meaning of Section 44-53-370 South Carolina Code

1 of Laws as amended; such -- such possession not having been
2 authorized and being in violation of Section 44-53-
3 370(e)(2)(a) South Carolina Code of laws for the crime of
4 trafficking."

5 The next offense being grand larceny, \$2,000 but less
6 than \$10,000, and that indictment reads (as read): "That
7 Demetrius Derrick Henderson did, in Richland County, on or
8 about December 18, 2013, take and carry away the personal
9 goods of April Jenkins, valued at more than \$2,000 but less
10 than \$10,000, described as follows: Electronics and/or
11 clothing and/or household goods, with the intent to deprive
12 the owner permanently of such property and to convert the
13 goods to his or her own use, in violation of Section 16-3 -
14 - excuse me, Section 16-13-30(b)(1) South Carolina Code of
15 Laws."

16 And finally, ladies and gentlemen, possession of
17 marijuana with intent to distribute, which reads that (as
18 read): "Demetrius Derrick Henderson did, in Richland
19 County, on or about December 18, 2013, possess with the
20 intent to distribute, dispense, or deliver; or did aid,
21 abet, attempt, or conspire to distribute, dispense, or
22 deliver a quantity of marijuana, a controlled substance
23 under provisions of Section 44-53-110 South Carolina Code
24 of Laws as amended. Such possession not having been
25 authorized by law and such being the Defendant's -- excuse

1 me -- and -- and in violation -- excuse me -- and in
2 violation of Section 44-53-370(b)(2) -- (b)(2) of the South
3 Carolina Code of Laws."

4 Now, ladies and gentlemen, before we select the jury,
5 let me tell you all this: The indictments that I just read
6 to you are simply charging documents by which this case is
7 brought into this court; and it is in no way, in no way
8 evidence in this case to these charges.

9 To these charges, Mr. Henderson has pled not guilty;
10 therefore, the State of South Carolina bears the burden of
11 proving his guilt, as to each of these charges, beyond a
12 reasonable doubt.

13 Now, before we move forward in selecting a jury, there
14 are several questions that I must ask of you. Please
15 listen very carefully. First question being: Is there any
16 member of the jury panel that has ever been related by
17 blood, connected by marriage, had a close personal, social,
18 or business relationship with Mr. Demetrius Derrick
19 Henderson or Ms. April Jenkins? If so, please stand.

20 (No response.)

21 THE COURT: All right. The following, ladies and
22 gentlemen, is a list of potential witnesses in this case.
23 The list of potential witnesses is quite lengthy, so I'm
24 going to break it down into categories of approximately 10.

25 First group of potential witnesses include

1 Investigator Matthew McCoy, Columbia Police Department --
2 in fact, these -- this first grouping, each of -- each of
3 these potential witnesses are employed with the Columbia
4 Police Department (as read): "Officer Matthew Baskins,
5 Corporal Antonio Green, George Key, Kyle Kent, Buddy Rose,
6 Lieutenant Chris White, Investigator Tammie Davis-Moore,
7 and Investigator Nicholas Scott; and Investigator Wayne
8 Montgomery."

9 Is there any member of the jury panel that has ever
10 been related by blood, connected by marriage, had a close
11 personal, business, or social relationship with any of
12 those potential witnesses? If so, please stand.

13 (No response.)

14 THE COURT: Next group (as read): Officer Sharon
15 Alexander, Columbia Police Department -- and each of which
16 are to follow are with Columbia Police Department unless I
17 tell you otherwise, okay?

18 (As read) "Investigator George Wise, Investigator
19 Johnny Gaston, Investigator Stephen Narewski." Did I
20 pronounce that correct?

21 (No audible response.)

22 THE COURT: (As read) "Ronald Shayne Phillips, Donna
23 Martin, Paul Mead, Brenda Jenkins Frasier, Tony Everatt,
24 and Officer Bradley Byrd. Officer Byrd is with the
25 Richland County Sheriff's Department."

1 Any member of the jury panel has ever been related by
2 blood, connected by marriage, had a close personal,
3 business, or social relationship with any of those
4 potential witnesses? If so, please stand.

5 (No audible response.)

6 THE COURT: All right. The next group (as read):
7 "Courtney Rice, with EMS; Benjamin McCullem, EMS; Ginger
8 Nunnery, EMS; Timothy Stegner, EMS; Lieutenant Mountjoy,
9 EMS; Doris Yarborough, SLED; Jennifer Aycock with SLED,
10 which is South Carolina Law Enforcement Division; Douglas
11 Robinson, SLED; Lieutenant Tracy Thrower, with SLED; and
12 Mitchell Tucker, PPP" -- could you -- okay. Gotcha.

13 All right. Any member of the jury panel that's ever
14 been related by blood, connected by marriage, had a close
15 personal, business, or social relationship with any of
16 those potential witnesses? If so, please stand.

17 (No audible response.)

18 THE COURT: Arlene Van - next group (as read):
19 "Arlene Vance, Manual Taylor, April Jenkins, Sara Olstrom,
20 Caliph Jay Branham, Daryl Lyn Stallings, Travis Brimfield,
21 and Taylor Branham."

22 Is there any member of the jury panel that has ever
23 been related by blood, connected by marriage, had a close
24 personal, business, or social relationship with any of
25 those potential witnesses? If so, please stand.

1 (No audible response.)

2 THE COURT: Can the lawyers approach just a minute,
3 please?

4 (Bench conference.)

5 THE COURT: All right. Two previous witnesses that I
6 listed or called out, "Arlene Vance" and "Manuel Taylor,"
7 each of which are registered nurses with Palmetto Health
8 Richland, and as it relates to those individuals, I wanted
9 to fully identify them with that employment.

10 Any member of the jury panel that's ever been related
11 by blood, connected by marriage, or had a close personal,
12 business, or social relationship with either of those two?
13 If so, please stand.

14 (No audible response.)

15 THE COURT: All right. If at this time, the attorneys
16 will stand and introduce themselves, first, the State,
17 followed by Defense counsel. Go ahead.

18 MR. SHENKAR: My name is Joseph Shenkar, Assistant
19 Solicitor, Richland County Solicitor's Office.

20 MS. ALL: My name is Britton All, Assistant Solicitor
21 for the Richland County Solicitor's Office.

22 MR. POURNARAS: My name is Constantine Pournaras. I'm
23 an attorney here for Mr. Henderson.

24 MS. Eigenbrot: And I'm Megan Eigenbrot, also Mr.
25 Henderson's attorney.

1 THE COURT: All right. Has any member of the jury
2 panel ever been related by blood, connected by marriage,
3 had a close personal, business, social relationship; or
4 ever been represented by any of the attorneys involved in
5 this case? If so, please stand.

6 (Juror stands.)

7 THE COURT: Tell me -- hold on. Tell me your name and
8 number first, please.

9 PROSPECTIVE JUROR: 15, Michelle Beattie.

10 THE COURT: All right. Whom do you know, Ms. Beattie?

11 PROSPECTIVE JUROR: I taught Megan.

12 THE COURT: All right. Well, how long -- how long ago
13 was that?

14 PROSPECTIVE JUROR: She was in first grade, so --

15 (Laughter.)

16 THE COURT: You nor she look old enough to have been -
17 - taught her that many years ago.

18 (Courtroom laughter.)

19 THE COURT: Engaged in any social activities since
20 then?

21 PROSPECTIVE JUROR: (Shakes head.)

22 THE COURT: I need a verbal response.

23 PROSPECTIVE JUROR: No.

24 THE COURT: All right. If you were selected as a
25 juror in this case, could you be fair and impartial to both

1 the State and the Defense?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Thank you very much. You may be seated.

4 Any further request of voir dire from the State?

5 MS. ALL: No, Your Honor. Thank you.

6 THE COURT: All right. Has any member of the jury
7 panel or their immediate family that's currently or has
8 previously been employed by any local, state, or federal
9 law enforcement agency, such as, but not limited to, the
10 City of Columbia Police Department, Richland County
11 Sheriff's Office, State Law Enforcement Division -- SLED --
12 or the Federal Bureau of Investigation? If so, please
13 stand.

14 (Jurors stand.)

15 THE COURT: Yes, ma'am, your name and number.

16 PROSPECTIVE JUROR: 223, Elizabeth Rich.

17 THE COURT: With whom were they employed?

18 PROSPECTIVE JUROR: I think it's Richland County.

19 THE COURT: Currently?

20 PROSPECTIVE JUROR: Currently.

21 THE COURT: What relation?

22 PROSPECTIVE JUROR: Nephews.

23 THE COURT: Could you approach, please, ma'am?

24 Lawyers approach, too, please.

25 Whereupon the juror comes forward

1 and is privately examined as follows:

2 THE COURT: What is his name? I want you to say it
3 out loud to the court ---

4 THE JUROR: One of them is Michael Windsor and the
5 other is Timothy Windsor.

6 THE COURT: And they're both currently employed there?

7 THE JUROR: And I think it's Richland County.

8 THE COURT: All right. Are either one of those
9 officers involved in this case?

10 MS. ALL: No. And in fact, this doesn't involve the
11 Richland County Sheriff's Department. It's only CPD. It's
12 just we listed ---

13 THE COURT: Okay.

14 THE JUROR: I can't remember if it's Richland County -
15 --

16 THE COURT: All right. The fact that you have nephews
17 employed there, would that affect your ability to be fair
18 and impartial, both to the State and the Defense?

19 THE JUROR: No.

20 THE COURT: All right. Thank you. You may go back.

21 (The juror returns to her seat.)

22 (Another juror approaches.)

23 THE JUROR: I have a nephew that's in jail for robbing
24 a Wal-Mart ---

25 THE COURT REPORTER: I'm sorry?

1 THE COURT: She had -- she had a nephew that was
2 previously -- did eight years in jail for a robbery.

3 THE JUROR: He robbed Wal-Mart the day after
4 Thanksgiving one year.

5 THE COURT: All right. The fact that you -- you
6 brought that up -- I didn't directly ask that question, but
7 I will certainly ask whether or not you -- you know of any
8 reason whatsoever why you couldn't be fair and impartial
9 both to the State and the Defense? Since you brought that
10 up, would that in any way affect -- as a juror, affect your
11 ability to be fair and impartial both to the State and the
12 Defense?

13 THE JUROR: No, sir. I don't think so.

14 THE COURT: Thank you, ma'am.

15 (Juror returns to her seat.)

16 THE COURT: Tell me your name and number, please, sir.

17 JUROR: Steve Sprowls, 255.

18 THE COURT: And whom are they employed by?

19 JUROR: My wife works for Department of Public Safety,
20 Procurement Director for the Highway Patrol Division.

21 THE COURT: All right. The fact that your wife works
22 in that capacity with that particular organization, if you
23 were selected as a juror in this case, do you believe you
24 could be fair and impartial to both the State and the
25 Defense?

1 PROSPECTIVE JUROR: I do.

2 THE COURT: Thank you, sir. You may be seated.

3 (The juror complies.)

4 THE COURT: All right. Is any member of the jury
5 panel a contributor to any group or a member of any group
6 which has as its primary concern the promotion of law
7 enforcement? Those groups might include, but are not
8 limited to: SADD, MADD or CAVE, Citizens Against Violent
9 Crime? If so, please stand.

10 (Juror stands.)

11 JUROR: Your Honor, does that include the NRA?

12 THE COURT: It would not, but let me ask, since you
13 stood in response to that -- I don't think it would, but
14 since you stood in response to that: The fact that you're
15 a member of that group, would that in any way affect your
16 ability to fair and impartial to both the State and the
17 Defense?

18 JUROR: Absolutely not.

19 THE COURT: All right. Tell me your name and number,
20 sir.

21 JUROR: Terry Hicks, 124.

22 THE COURT: Thank you, sir. You may be seated.

23 (The juror complies.)

24 THE COURT: All right. Is any member of the jury
25 panel, or their immediate family, ever been the victim of a

1 burglary? If so, please stand.

2 (Jurors stand.)

3 THE COURT: Tell me your name and number, please.

4 JUROR: Robert Brinkmeyer, Juror No. 32.

5 THE COURT: Was it you or a member of your immediate
6 family?

7 JUROR: Yes.

8 THE COURT: Was it you or --

9 PROSPECTIVE JUROR: Oh. I mean, it was -- it was me.

10 THE COURT: Would that in any -- if you were selected
11 as a juror in this case, would that in any way affect your
12 ability to be fair and impartial to both the State and the
13 Defense?

14 PROSPECTIVE JUROR: I don't think so, no.

15 THE COURT: Okay. Thank you. You may be seated.

16 (The juror complies.)

17 THE COURT: Tell me your name and number, please.

18 JUROR: No. 310, Franciner Riley.

19 THE COURT: All right. Tell me your name and number,
20 please.

21 JUROR: Melissa Martin, 171.

22 THE COURT: Tell me your name and number, please.

23 JUROR: Coleen Strasburger, 258.

24 THE COURT: Your number, please?

25 JUROR: 44, Natalie Carter.

1 JUROR: 173, Thomas McCullough.

2 JUROR: 290, David Williamson.

3 THE COURT: All right. Let me ask this question
4 first: You -- was it you or immediate family?

5 JUROR: Me and my immediate family.

6 THE COURT: Would that in any way affect your ability
7 to be fair and impartial to both the State and the Defense
8 if you were selected in this case?

9 JUROR: No.

10 THE COURT: Thank you, ma'am. You may be seated.

11 (Juror complies.)

12 THE COURT: You or immediate family?

13 JUROR: Aunt and uncle? Is that within the realm of
14 immediate family?

15 THE COURT: No, ma'am, I don't think so, but since you
16 asked that question, let me ask you this: Would that -- if
17 you were selected as a juror in this case, would that in
18 any way affect your ability to be fair and impartial to
19 both the State and the Defense?

20 JUROR: No.

21 THE COURT: Thank you, ma'am.

22 Yes, ma'am?

23 JUROR: My business was broken into three times in
24 Richland County.

25 THE COURT: All right. The fact that you stood in

1 response to that question, I ask: If you were selected as
2 a juror in this case, would that in any way affect your
3 ability to be fair and impartial to both the State and the
4 Defense?

5 JUROR: No.

6 THE COURT: Thank you, ma'am. You may be seated.

7 (The juror complies.)

8 THE COURT: Yes, ma'am. You or your immediate family?

9 JUROR: Me.

10 THE COURT: If you were selected as a juror in this
11 case, would that in any way affect your ability to be fair
12 and impartial to both the State and the Defense?

13 JUROR: No.

14 THE COURT: Thank you. You may be seated.

15 (The juror complies.)

16 JUROR: My mother.

17 THE COURT: All right. The fact that you stood in
18 response to this, if you were selected as a juror in this
19 case, would that in any way affect your ability to be fair
20 and impartial to both the State and the Defense?

21 JUROR: No.

22 THE COURT: Thank you. You may be seated.

23 (The juror complies.)

24 JUROR: Me.

25 THE COURT: All right. If you were selected as a

1 juror in this case, would that in any way affect your
2 ability to be fair and impartial to both the State and the
3 Defense?

4 JUROR: No, sir.

5 THE COURT: Thank you. You may be seated.

6 (The juror complies.)

7 THE COURT: All right. Is any member of the jury
8 panel or their immediate family or close personal friend
9 ever been employed with the Attorney General's Office, the
10 Fifth Circuit Solicitor's Office, any prosecuting office --
11 prosecuting attorney's office, the Richland County Public
12 Defender's Office or any public defender's office, whether
13 it be employment or on a volunteer basis? If so, please
14 stand.

15 (Jurors stand.)

16 THE COURT: Tell me your name and number, please.

17 JUROR: Rikki Harris, 118.

18 THE COURT: With whom?

19 JUROR: I was an attorney at the Fourteenth Circuit
20 Solicitor's Office.

21 THE COURT: How long ago was that?

22 JUROR: Three years ago.

23 THE COURT: All right. The fact that you were
24 previously employed there, if you were selected as a juror
25 in this case, would that affect your ability to be fair and

1 impartial to both the State and the Defense?

2 JUROR: I am not affected.

3 THE COURT: Thank you. You may be seated.

4 (The juror complies.)

5 THE COURT: Your name and number, please?

6 JUROR: Betsy Halloran, 112.

7 THE COURT: With whom?

8 JUROR: My -- my daughter-in-law -- I mean, my
9 stepdaughter, excuse me, my stepdaughter, with a lawyer in
10 town, she was employed.

11 THE COURT: All right. If you were selected as a
12 juror in this case, would that in any way affect your
13 ability to be fair and impartial to both the State and the
14 Defense?

15 JUROR: It wouldn't.

16 THE COURT: Thank you. You may be seated.

17 (The juror complies.)

18 THE COURT: Yes, sir, your name and number, please?

19 JUROR: 69, George Durant.

20 THE COURT: Yes, sir.

21 JUROR: My son was a former -- with the Attorney
22 General's Office and then solicitor in Charleston.

23 THE COURT: All right. If you were selected as a
24 juror in this case, would that in any way affect your
25 ability to be fair and impartial to both the State and the

1 Defense?

2 JUROR: No. No, Your Honor.

3 THE COURT: Other than what I have told you, ladies
4 and gentlemen, as it relates to this case, has any member
5 of the jury panel heard or read anything concerning this
6 case prior to coming into this court today, other than what
7 I've already told you? If so, please stand.

8 (No response.)

9 (Brief pause.)

10 THE COURT: All right. Ladies and gentlemen, during
11 the course of this trial, you are going to hear -- possibly
12 hear testimony concerning the fact that Mr. Henderson was
13 shot during the alleged commission of such offense for
14 which he has been charged. In light of that fact, is there
15 any member of the jury panel that does not believe that
16 they could be fair and impartial to both the State and the
17 Defense? If so, please stand.

18 (No response.)

19 THE COURT: All right. Has any member of the jury
20 panel formed or expressed an opinion about any issue or
21 matter involved in this case? If so, please stand.

22 (No response.)

23 THE COURT: All right. Is any member of the jury
24 panel aware of any bias or prejudice toward either the
25 State or the Defendant in this case? If so, please stand.

1 (No response.)

2 THE COURT: All right. Is there any member of the
3 jury panel aware or know of any reason whatsoever why he or
4 she should not serve as a juror in this case, with
5 particular emphasis being placed upon your ability to be
6 fair and impartial to both the State and the Defense? If
7 so, please stand.

8 (No response.)

9 THE COURT: All right. Any further request of voir
10 dire from the State?

11 MS. ALL: None, Your Honor.

12 THE COURT: Defense counsel?

13 MS. Eigenbrot: None, Your Honor.

14 THE COURT: All right. The lawyers have strike
15 sheets?

16 MS. Eigenbrot: Yes, Your Honor.

17 THE COURT: All right. We will now move forward with
18 selecting a jury. Madam Clerk, I will recognize you.

19 Five and 10 on the strikes.

20 COURT CLERK: Thank you, Your Honor.

21 Ladies and gentlemen of the jury panel, as I call your
22 name, please come down, bring all your belongings, stand
23 here (indicates) facing both the State and the Defense.

24 Number 2 -- 255, Steve Sprowls.

25 (Whereupon a white male comes forward.)

1 COURT CLERK: What says the State?

2 MR. SHENKAR: Seat the juror.

3 THE CLERK: What says the Defense?

4 MS. Eigenbrot: Please seat this juror.

5 COURT CLERK: Have a seat in the jury box, please.

6 (The juror complies.)

7 COURT CLERK: Number 112, Betsy Halloran.

8 (Whereupon a white female comes forward.)

9 COURT CLERK: What says the State?

10 MR. SHENKAR: Please seat this juror.

11 COURT CLERK: What says the Defense?

12 MS. Eigenbrot: Please excuse this juror.

13 THE CLERK: Have a seat in the back of the courtroom,
14 please.

15 (The juror complies.)

16 COURT CLERK: Number 44, Natalie Carter.

17 (Whereupon a black female comes forward.)

18 COURT CLERK: Says the State?

19 MR. SHENKAR: Please seat the juror.

20 COURT CLERK: Says the Defense?

21 MS. Eigenbrot: Please seat this juror.

22 COURT CLERK: Have a seat in the jury box, please.

23 (The juror complies.)

24 COURT CLERK: Number 67, Lisa Drakes.

25 (Whereupon a black female comes forward.)

1 COURT CLERK: What says the State?

2 MR. SHENKAR: Please seat the juror.

3 THE CLERK: What says the Defense?

4 MS. Eigenbrot: Please seat this juror.

5 THE CLERK: Have a seat in the jury box, please.

6 (The juror complies.)

7 COURT CLERK: Number 258, Coleen Strasburger..

8 (Whereupon a white female comes forward.)

9 COURT CLERK: What says the State?

10 MS. SHENKAR: Please seat the juror.

11 COURT CLERK: What says the Defense?

12 MS. Eigenbrot: Please excuse this juror.

13 COURT CLERK: Have a seat in the back of the
14 courtroom, please.

15 (The juror complies.)

16 COURT CLERK: Number 32, Robert Brinkmeyer.

17 (Whereupon a white male comes forward.)

18 COURT CLERK: What says the State?

19 MR. SHENKAR: Please seat the juror.

20 THE CLERK: What says the Defense?

21 MS. Eigenbrot: Please excuse this juror.

22 THE CLERK: Have a seat in the back of the courtroom,
23 please.

24 (The juror complies.)

25 COURT CLERK: Number 118, Rikki Harris --

1 THE COURT: Hold on. Hold on.

2 (Brief pause.)

3 COURT CLERK: Number 118, Rikki Harris.

4 (Whereupon a white female comes forward.)

5 COURT CLERK: What says the State?

6 MR. SHENKAR: Please excuse this juror.

7 COURT CLERK: Have a seat in the back of the
8 courtroom.

9 (The juror complies.)

10 COURT CLERK: Number 188, Terry Morgan.

11 (Whereupon a white male comes forward.)

12 COURT CLERK: What says the State?

13 MR. SHENKAR: Please seat this juror.

14 COURT CLERK: What says the Defense?

15 MS. Eigenbrot: Please seat this juror.

16 COURT CLERK: Have a seat in the jury box, please.

17 (The juror complies.)

18 COURT CLERK: Number 13, Kelly Baine.

19 (Whereupon a white female comes forward.)

20 COURT CLERK: What says the State?

21 MR. SHENKAR: Please excuse this juror.

22 COURT CLERK: Have a seat in the back of the
23 courtroom, please.

24 (The juror complies.)

25 COURT CLERK: Number 171, Melissa Martin.

1 (Whereupon a white female comes forward.)

2 COURT CLERK: What says the State?

3 MR. SHENKAR: Please seat this juror.

4 COURT CLERK: What says the Defense?

5 MS. Eigenbrot: Please excuse this juror.

6 COURT CLERK: Have a seat in the back of the
7 courtroom, please.

8 (The juror complies.)

9 COURT CLERK: Number 206, Rebecca Perryman.

10 (Whereupon a white female comes forward.)

11 COURT CLERK: What says the State?

12 MR. SHENKAR: Please seat this juror.

13 COURT CLERK: What says the Defense?

14 MS. Eigenbrot: Please seat this juror.

15 COURT CLERK: Have a seat in the jury box, please.

16 (The juror complies.)

17 COURT CLERK: Number 172, Renee Mathis.

18 (Whereupon a black female comes forward.)

19 COURT CLERK: What says the State?

20 MR. SHENKAR: Please excuse this juror.

21 COURT CLERK: Have a seat in the back of the
22 courtroom, please.

23 (The juror complies.)

24 COURT CLERK: Number 124, Terry Hicks.

25 (Whereupon a white male comes forward.)

1 COURT CLERK: What says the State?

2 MR. SHENKAR: Please seat this juror.

3 COURT CLERK: What says the Defense?

4 MS. Eigenbrot: Please seat this juror.

5 COURT CLERK: Have a seat in the jury box, please.

6 (The juror complies.)

7 COURT CLERK: Number 14, Kenneth Barr.

8 (Whereupon a white male comes forward.)

9 COURT CLERK: What says the State?

10 MR. SHENKAR: Please seat this juror.

11 COURT CLERK: Says the Defense?

12 MS. Eigenbrot: Please seat this juror.

13 COURT CLERK: Have a seat in the jury box, please.

14 (The juror complies.)

15 THE COURT: Hold on a second. If you've got a phone,
16 you -- you need to cut it off. Let me say this --

17 JUROR: Your Honor, I turned it off. I think my pants
18 just might have just turned it on. I'm sorry.

19 THE COURT: Tell me your name, sir.

20 JUROR: Jonathan Marin, 170.

21 THE COURT: Okay. Make sure they're off. Different
22 courts do it different ways. A lot of them don't even
23 allow electronic devices to be brought into the courtrooms.
24 From here forward, that's kind of the best practice. It
25 can get you in trouble. Okay.

1 Go ahead. I'm sorry, Madam Clerk. Thank you.

2 JUROR: No problem.

3 COURT CLERK: Number 253, Maria Sophocleous.

4 (Whereupon a white female comes forward.)

5 COURT CLERK: What says the State?

6 MS. SHENKAR: Please seat this juror.

7 COURT CLERK: What says the Defense?

8 MS. Eigenbrot: Please seat this juror.

9 COURT CLERK: Have a seat in the jury box, please.

10 (The juror complies.)

11 COURT CLERK: Number 120, Omar Haygood.

12 (Whereupon a black male comes forward.)

13 COURT CLERK: What says the State?

14 MR. SHENKAR: Please seat this juror.

15 COURT CLERK: What says the Defense?

16 MS. Eigenbrot: Please seat this juror.

17 COURT CLERK: Have a seat in the jury box.

18 (The juror complies.)

19 COURT CLERK: Number 69, George Durant.

20 (Whereupon a white male comes forward.)

21 THE COURT: Can the lawyers approach just a minute,
22 please?

23 (Bench conference.)

24 MR. SHENKAR: Please strike this juror.

25 COURT CLERK: Have a seat in the back of the

1 courtroom, please.

2 (The juror complies.)

3 COURT CLERK: Number 173, Thomas McCullough.

4 (Whereupon a black male comes forward.)

5 COURT CLERK: Says the State?

6 MR. SHENKAR: Please seat this juror.

7 COURT CLERK: Says the Defense?

8 MS. Eigenbrot: Please seat this juror.

9 COURT CLERK: Have a seat in the jury box, please.

10 (The juror complies.)

11 COURT CLERK: As I review the strikes, for the State,
12 I have four; and for the Defendant, I have four.

13 Number 310, Franciner Riley.

14 (Whereupon a black female comes forward.)

15 COURT CLERK: What says the State?

16 MR. SHENKAR: Please excuse this juror.

17 COURT CLERK: Have a seat in the back of the
18 courtroom, please.

19 (The juror complies.)

20 COURT CLERK: Number 106, Joseph Guy.

21 (Whereupon a white male comes forward.)

22 COURT CLERK: Does the State challenge for cause?

23 MR. SHENKAR: No.

24 COURT CLERK: Says the Defense?

25 MS. Eigenbrot: Please seat this juror.

1 COURT CLERK: Have a seat in the jury box, please.

2 (The juror complies.)

3 COURT CLERK: Number 180, William McCoy [sic].

4 (Whereupon a white male comes forward.)

5 COURT CLERK: Does the State challenge for cause?

6 MR. SHENKAR: No.

7 COURT CLERK: What says the Defense?

8 MS. Eigenbrot: Please seat this juror.

9 COURT CLERK: Have a seat in the jury box, please.

10 (The juror complies.)

11 COURT CLERK: Number 290, David Williamson.

12 (Whereupon a white male comes forward.)

13 COURT CLERK: What says the State?

14 MR. SHENKAR: Seat this juror.

15 COURT CLERK: What says the Defense?

16 MS. Eigenbrot: Please seat this juror.

17 COURT CLERK: Have a seat in the jury box.

18 (The juror complies.)

19 COURT CLERK: Number 152, Lynn Koehler.

20 (Whereupon a white female comes forward.)

21 COURT CLERK: What says the State?

22 MR. SHENKAR: Please seat this juror.

23 COURT CLERK: What says the Defense?

24 MS. Eigenbrot: Please excuse this juror.

25 COURT CLERK: Have a seat in the back of the

1 courtroom, please.

2 (The juror complies.)

3 COURT CLERK: Number 176, Christina McFadden.

4 (Whereupon a black female comes forward.)

5 COURT CLERK: What says the State?

6 MR. SHENKAR: Please seat this juror.

7 COURT CLERK: Says the Defense?

8 MS. Eigenbrot: Please seat this juror.

9 COURT CLERK: Seat in the jury box, please.

10 (The juror complies.)

11 THE COURT: Two alternates? One or two alternates?

12 COURT CLERK: Two.

13 THE COURT: Two.

14 COURT CLERK: They're in there.

15 THE COURT: Oh, we've got them. Okay. I lost count
16 after we got to 10, I'm sorry.

17 All right. Are there any matters of law we need to
18 take up with regard to the jury selection from the State?

19 MR. SHENKAR: No, Your Honor.

20 THE COURT: Defense counsel?

21 MS. Eigenbrot: No, Your Honor.

22 THE COURT: Can the lawyers approach for just a
23 minute, please?

24 (Bench conference.)

25 THE COURT: All right. Ladies and gentlemen, those of

1 you who are seated in the audience, you all were not
2 selected as jurors in this case; however, that does not
3 mean that you are not going to get selected.

4 What I am going to do is I am going to ask that you
5 all return downstairs to the jury assembly room, and
6 further instructions will be given to you down there with
7 regards to what you are to do for the balance of today and
8 possibly, the remainder of the week.

9 If you all will go back downstairs to the jury
10 assembly room at this time, please. Thank you.

11 (The remaining jury panel exits the courtroom at 3:36
12 p.m.)

13 THE COURT: (To jury panel) While they're exiting,
14 ladies and gentlemen, I'm going to ask you to step to the
15 jury room for a minute before we begin the trial of this
16 case. Do not discuss the case. Do not discuss the case at
17 all until you're instructed to do so.

18 I will get you back out here in just a minute, and we
19 will begin the trial of this case. Okay. You all step in
20 the jury room for just a minute.

21 (The jury exits at 3:36 p.m.)

22 THE COURT: All right. It's my understanding --
23 talking up here at side bar, I just wanted to find out,
24 with regards to the rest of the panel, but there were also
25 a couple of issues that started being brought up. And I

1 just asked the lawyers to step back so we could put -- put
2 on the record what we needed to put on the record before we
3 started the trial of this case.

4 I'll recognize the State: Anything from the State
5 that needs to be addressed?

6 MS. ALL: Yes, Your Honor. In prior conversations
7 with Defense counsel, we understand that they agree to
8 stipulate to the chain for the fungible evidence in this
9 case, which would be cocaine and marijuana. And if there
10 was an argument about the ballistics -- (to Defense
11 counsel) if you'll stipulate to ballistics.

12 THE COURT: Is that correct?

13 MR. POURNARAS: That's correct, Your Honor.

14 MS. ALL: So we won't have any chain witnesses, Your
15 Honor.

16 THE COURT: Okay.

17 MS. ALL: And I understand that we're prepared to go
18 forward on settling the record for any witnesses. And the
19 State's also prepared to go forward settling the record for
20 the Defendant should he wish to have that information now,
21 even though we don't have all the certified convictions at
22 this time.

23 We do have one lay witness, who was the shooter in
24 this case, that does have a record. If I may approach?

25 THE COURT: Okay.

1 (Ms. All hands documents to the Court.)

2 (Brief pause.)

3 THE COURT: Yes, ma'am, Ms. All?

4 MS. ALL: Thank you, Your Honor. We would oppose the
5 admission of any prior conviction being mentioned regarding
6 Mr. Brimfield. It's not relevant to this case. As Your
7 Honor will notice, he has a contributing to the delinquency
8 of a minor charge. As it isn't a crime of dishonesty, it
9 isn't relevant here. It doesn't go toward his credibility.
10 We would ask that it be omitted from any questioning by the
11 Defense.

12 We don't know the underlying facts of this case. We
13 do know that he did receive a relatively minor sentence,
14 and then his probation violation, which Your Honor sees in
15 2014. It was a violation, so obviously, wouldn't be
16 mentioned in his testimony.

17 MR. POURNARAS: Yes, Your Honor. Thank you. This is
18 obviously new information to us today. But I would argue
19 that, if I'm not mistaken, this is a common law offense,
20 contributing to the delinquency of a minor.

21 MS. ALL: It was ---

22 MR. POURNARAS: I don't believe that it is ---

23 MS. ALL: It was codified.

24 MR. POURANARAS: --- a felony.

25 May I ask, Your Honor, if Mr. Brimfield is, in fact,

1 testifying today?

2 MS. ALL: We don't intend to call him today, Your
3 Honor.

4 MS. POURNARAS: Your Honor, may we address this matter
5 after -- possibly in the morning, prior to Mr. Brimfield's
6 testimony, so that I may look into several issues before we
7 argue this matter?

8 THE COURT: Hold on a minute.

9 THE COURT REPORTER: What's the name again?

10 MS. ALL: Mr. Travis Brimfield.

11 THE COURT REPORTER: Will you spell it, please?

12 MS. ALL: B-r-i-m-f-i-e-l-d.

13 THE COURT: Hold on just a minute. Yes, I'll give you
14 overnight to look at that.

15 MR. POURNARAS: Thank you, Your Honor.

16 MS. ALL: Thank you, Your Honor.

17 THE COURT: All right. Any others?

18 MS. ALL: And we could go and settle the record on the
19 Defendant if Your Honor was so inclined, or we're fine to
20 wait until after directed verdict motion.

21 THE COURT: If you'll give me a copy of his record so
22 I can take a look at it.

23 MS. ALL: Yes, Your Honor.

24 (Ms. All hands documents to the Court.)

25 (Brief pause.)

1 MS. ALL: And Your Honor, we'd be glad to take up
2 these matters when we take up Mr. Brimfield's if it would
3 be easier for the Court and Defense counsel. We are
4 waiting on certain certified convictions from magistrate's
5 court still.

6 THE COURT: All right.

7 MR. POURNARAS: Your Honor, I would say, for Mr.
8 Henderson, it may not be relevant until he elects to
9 testify.

10 THE COURT: Okay. All right. We'll -- we'll deal
11 with that later as well. All right. Anything else?

12 MS. ALL: Nothing, Your Honor. Thank you.

13 THE COURT: Anything further from Defense counsel
14 before we begin the trial of the case?

15 MR. POURNARAS: Nothing, Your Honor.

16 THE COURT: Who's going to do opening statements for -
17 --

18 MR. SHENKAR: I will, Your Honor.

19 MR. POURNARAS: And I will, Your Honor.

20 THE COURT: All right. All right. If you will bring
21 me the jury, please, sir.

22 THE BAILIFF: Yes, Your Honor.

23 (The jury enters the courtroom at 3:44 p.m.)

24 THE BAILIFF: Jury's seated, Your Honor.

25 THE COURT: All right. Mr. Williamson? Mr.

1 Williamson.

2 (Juror indicates.)

3 THE COURT: Okay. And Ms. McFadden, Ms. Christina
4 McFadden?

5 (Juror indicates.)

6 THE COURT: I need for you to switch with this young
7 lady who's in the back.

8 (The juror complies.)

9 THE COURT: What's your name, ma'am? Your name?

10 JUROR: Natalie Carter.

11 THE COURT: All right. Let's see, Juror No. 44. Ms.
12 Carter, if you'd come down here, please.

13 Mr. Williamson and Ms. McFadden, you all have been
14 selected as alternates. So as we come in and out -- you
15 all come in and out of the courtroom, if you all -- you two
16 would sit on that back row. It doesn't matter -- well, I
17 think they probably want you sitting in -- bout where you
18 are, but if you all would sit back there.

19 The rest of you all, as you come in and out of the
20 courtroom, you do not have assigned seats, so you can sit
21 wherever you so desire. Some point in time, later in the
22 future, during the course of the trial, a foreperson will
23 be selected; and they will sit in one of these front chairs
24 here, closest to the bailiff. Okay?

25 Now, before we go any further, Madam Clerk, would you

1. swear the jury, please?

2. COURT CLERK: Yes, Your Honor.

3. Ladies and gentlemen of the jury, would you please
4. stand and raise your right hand to be sworn.

5. (The jury is sworn.)

6. COURT CLERK: Thank you.

7. THE COURT: All right. Ladies and gentlemen of the
8. jury, we are about to try the case of the *State of South*
9. *Carolina vs. Demetrius Derrick Henderson*. However, before
10. we begin the trial, I want to tell you that this trial will
11. probably be different from what you might expect.

12. Many people do not have the chance to attend actual
13. court sessions as you're doing now and may think from
14. watching television, reading books, or watching movies that
15. trials are always full of high drama, intense action, and
16. riveting circumstances.

17. Now, while all of these things may be true at time --
18. at -- at times, this trial, ladies and gentlemen, is not,
19. is not for entertainment. It is a fundamental part of our
20. democracy, a search for the truth in an effort to make sure
21. that justice is done between the parties before the Court.

22. Searching for the truth and making sure that justice
23. is done is often slow, deliberate, and repetitive, the
24. opposite of what you may have seen on television or in
25. movies or read in books.

1 This courtroom is a place of honor, dedicated to the
2 protection and preservation of citizens' right through what
3 many have called the "greatest justice system ever
4 created."

5 The attorneys, ladies and gentlemen, that are
6 appearing before you, are advocates for the parties that
7 they represent; but first and foremost, they are officers
8 of the court sworn to uphold the integrity and fairness of
9 our judicial system and to help you in the search for the
10 truth. You should expect them to be professional,
11 competent, and ethical in the representation of their
12 client's interest.

13 Now, what I will now say to you is intended to serve
14 as an introduction to the trial of this case. These
15 remarks are not a charge on the law in this case. I will
16 instruct you on the applicable law at the end of the trial
17 before you retire to consider your verdict. This, ladies
18 and gentlemen, is merely an explanation of the procedure
19 that we will follow in the trial of this case so that you
20 may better understand what may be happening.

21 The Defendant, ladies and gentlemen, in this case is
22 charged by an indictment filed in this court with the
23 crimes of grand larceny, \$2,000 but less than 10,000;
24 possession of marijuana with intent to distribute; burglary
25 first degree; and trafficking in cocaine, 10 to 28 grams.

1 The elements, the elements of each of those offenses will
2 be explained to you later.

3 The indictment, ladies and gentlemen, as I told you
4 from the outset, is simply the charging document by which
5 this case is brought into this court, and it is not in any
6 sense evidence of any of the allegations that it contains.

7 The Defendant has pled not guilty to these charges;
8 therefore, the State of South Carolina has the burden of
9 proving each of the elements as to each charge beyond a
10 reasonable doubt. And it will be your duty, ladies and
11 gentlemen, to decide whether the State has met that burden.

12 Your purpose as jurors is to find and determine the
13 facts. You are the sole judge of the facts. If at any
14 time I make any comment regarding the facts, you must
15 disregard it. You are to determine the facts from the
16 testimony that you hear and the other evidence introduced
17 here in court. It is up to you to determine the inferences
18 which you feel may properly be drawn from the evidence.

19 It is especially important that you perform your duty
20 of determining the facts diligently and conscientiously
21 because ordinarily, there is no way to correct an erroneous
22 determination of the facts by a jury.

23 On the other hand, and with equal emphasis, the same
24 law that makes you the judge of the facts makes me the
25 judge of the law. The law as given by the Court is the

1 only law that you may consider. You must accept and follow
2 it even though you may disagree with it. I cannot, ladies
3 and gentlemen, tell you what the facts are, and you cannot
4 disagree with me about what the law is or should be. Your
5 job is to take the law as I give it to you and apply it to
6 the facts as you find them from the testimony of the
7 witnesses and any other evidence that is introduced.

8 After doing that, you will render your verdict, a true
9 and just verdict under the solemn oath that you just took
10 as jurors.

11 Now, until I tell you to begin your deliberations, you
12 must not, you must not discuss this case with anyone,
13 including your fellow jurors, friends, family members, and
14 anyone involved in this case. The attorneys and parties
15 that are involved in this case have been advised that they
16 are not to talk to you at all. So if you see anyone
17 involved in this case and they do not speak to you, they
18 are not being unfriendly. They are simply following this
19 Court's instructions.

20 Now, during your deliberations, you may only discuss
21 the case in the jury room with your fellow jurors because
22 they have seen and heard the same evidence that you have.
23 You must not discuss the case with anyone other than your
24 fellow jurors until you have returned a verdict and the
25 case is at an end.

1 I remind you that you must decide this case based
2 solely on the evidence presented here in this courtroom.
3 This means that during the trial, you must not conduct any
4 independent research about the case, the facts of the case,
5 the evidence presented in the case, or the people or
6 organizations involved in any way in the case. Please do
7 not try to find out information from any source outside
8 this courtroom. In other words, you must not look at
9 dictionaries or other reference materials, search the
10 internet, websites or blogs, or use any other electronic
11 tools to get information about this case to help you decide
12 the case.

13 You may not use computers, cell phones, telephones,
14 smart phones, tablets, the internet, or other tools of
15 technology with communication capabilities at any time
16 while you are in this courtroom or during your
17 deliberations.

18 Now, during your breaks for meals or overnight, if
19 necessary, you may use those devices; however, you must not
20 use those devices to communicate with anyone about the case
21 until the case is over. This means that you must not use
22 phone calls, emails, text messages, instant messages,
23 Twitter or any blog or chat room or website, including
24 Facebook, Google Plus, MySpace, Linked, YouTube, or any
25 social media websites to send or receive information about

1 this case. This includes information about a party, a
2 witness, an attorney, or a court officer; news counts about
3 the case, research on topics raised, any topics you may
4 think would be helpful in deciding the case, or any
5 testimony presented by any witness.

6 During the trial, do not, do not read, listen to, or
7 watch any news reports about this case. This includes
8 anything that may be in the newspapers, or on the internet,
9 radio, or television. You must not, ladies and gentlemen,
10 consider anything that you may have read or heard about the
11 case outside of this courtroom, whether before or during
12 trial. Information on television, radio, the internet, or
13 from other sources might be wrong or incomplete.

14 In our judicial system, it is important that you are
15 not influenced by anything or anyone outside of this
16 courtroom. If you become aware of another juror's
17 violation of these instructions, please inform the Court
18 immediately.

19 It is important, ladies and gentlemen, that you keep
20 an open mind and not decide any issue in this case until
21 all of the evidence has been presented, the parties have
22 made their closing arguments, and I have instructed you on
23 the applicable law in this case.

24 It is your solemn responsibility to determine the
25 guilt or innocence of the Defendant. And your verdict,

1 your verdict must be based solely on the evidence as it is
2 presented to you in this trial and on the law as I instruct
3 you during and at the close of the trial.

4 Now, in just a moment, the solicitor or prosecutor
5 will make what is called an "opening statement," in which
6 the solicitor will explain to you the issues in this case,
7 or at least what the solicitor thinks the issues are in
8 this case.

9 The attorney for the Defendant may also make an
10 opening statement, although they are not required to do so.

11 What the attorneys tell you all during their opening
12 statements is not evidence in this case. It is only their
13 contention as to what the issues are. The evidence in this
14 case, ladies and gentlemen, will be presented to you by the
15 testimony of sworn witnesses on this witness stand and/or
16 by exhibits that may be introduced into evidence during the
17 trial.

18 Now, from time to time during the course of this
19 trial, ladies and gentlemen, you may hear one of the
20 attorneys say something like, "Your Honor, I believe that
21 we have a matter of law to discuss with you," or "Your
22 Honor, may we approach the bench." Or sometimes, I,
23 myself, might find it necessary to excuse you from the
24 courtroom for a short while so the attorneys and I can
25 discuss a matter of law.

1 The reason for this is because you, you, ladies and
2 gentlemen, are the judge of the facts in this case, and
3 sometimes, when I am discussing matters of law with the
4 attorneys, it may be necessary for me to make some comment
5 as to the facts in connection with ruling whether or not a
6 particular law applies.

7 I am not supposed to tell you all what I think the
8 facts are, so I will excuse you from the courtroom while
9 these discussions take place so that in no way, so that in
10 no way will you be influenced by anything that I might say
11 or do in connection with the facts.

12 Now, in determining the facts, ladies and gentlemen,
13 you must decide whether or not the testimony of the
14 witnesses is believable. It will be my responsibility to
15 rule as a matter of law as to whether certain testimony is
16 admissible or not. But once the testimony is admitted,
17 whether or not you believe it is solely for you to
18 determine.

19 Now, in deciding whether to believe a witness, you
20 have the right to consider the interest of any witness, the
21 bias of any witness, the prejudice of any witness, the
22 opportunity for the witness to have seen the matters and
23 things about which the witness may testify, and the way the
24 witness acts on the witness stand. You have the right to
25 consider anything that is in the record that will help you

1 evaluate the testimony of the witnesses.

2 That means that it is your duty to pay close attention
3 to these witnesses, to observe the witnesses, to listen to
4 the witnesses, and to pay close attention to the attorneys
5 and to the Court.

6 (Cell phone sounds.)

7 THE COURT: (To unknown male audience member) Hand
8 that over to the bailiff, please.

9 (The audience member complies.)

10 THE COURT: Now, during the course of this trial,
11 ladies and gentlemen, please, please do not let your
12 thoughts wander, but give strict attention to the testimony
13 in this case; so that at the end of all the testimony,
14 after the arguments of counsel and this Court's charge on
15 the law, you will then be in a position to determine what
16 the true facts are and to apply the law to those facts and
17 thus render a true and just verdict.

18 Now, later in this case, ladies and gentlemen, a
19 foreperson will be selected to preside over deliberations
20 in the jury room. It will be that jury person's -- or that
21 -- it will be that individual's responsibility to also be
22 the jury's spokesperson here in court. It will further be
23 their responsibility to write the verdict in this case.
24 But I will give further instructions to the foreperson at
25 the conclusion of this case.

1 Now, in order to preserve everyone's rights, I'll give
2 the parties an opportunity to object to anything that I
3 have said to you all, the jury.

4 Any exception or objection to anything that I have
5 said to the jury by the State?

6 MR. SHENKAR: No, Your Honor.

7 THE COURT: Defense counsel?

8 MR. POURNARAS: No, Your Honor.

9 THE COURT: All right. We will now, ladies and
10 gentlemen, begin the trial of this case.

11 The State is so recognized for opening statements.

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

14 Members of the jury, good afternoon. My name is
15 Joseph Shenkar, and I'm assistant solicitor for the Fifth
16 Judicial Circuit. At that table over there (indicates) is
17 Assistant Solicitor Brittan All and Investigator McCoy with
18 the Columbia Police Department. It is our job to
19 investigate and prosecute crimes that occur right here in
20 Richland County.

21 As y'all can tell from my accent, I ain't from around
22 here. I was born and raised in Israel and immigrated to
23 the United States about 14 years ago.

24 Members of the jury, the case before you today is a
25 classic case of a criminal getting caught in the act. That

1 phrase, "getting caught in the act," literally means to be
2 caught during the commission of a crime when the evidence
3 is there for everyone to see.

4 On December 18 of 2013, during the hours of darkness,
5 this Defendant, Demetrius Henderson, broke into the
6 apartment of April Jenkins, stole her TVs, other
7 electronics, and even the presents from underneath the
8 Christmas tree. However, what the Defendant did not count
9 on was that April Jenkins's boyfriend, Costell Johnson, and
10 Costell's cousin, Travis Brimfield, would arrive at the
11 apartment while the burglary was still in progress.

12 As soon as Costell and Travis were able to make their
13 way into that apartment, they noticed the place had been
14 ransacked. As they were standing there, they could hear
15 voices coming from the outside and they realized that the
16 perpetrator was still there. Travis went to the guest
17 bedroom and retrieved a rifle, and then they both went
18 outside.

19 There outside, right near the dumpster area, is where
20 they confront the Defendant. He was standing on a path
21 that was leading from the back bedroom window of April
22 Jenkins's apartment that leads all the way to the parking
23 lot.

24 As Travis was pointing the gun at the Defendant, he
25 asked him, "Were you the person inside my apartment?" And

1 according to Travis, the Defendant answered, "Yes". From
2 this point, it escalated rather quickly.

3 It was dark outside and the Defendant was wearing a
4 hooded sweatshirt with the hood pulled down. He also had a
5 sock that was covering his hand. He was carrying a couple
6 of remote controls and a receiver that he stole from April
7 Jenkins's apartment. And as Travis was holding the gun
8 towards him, the Defendant began to back up and started
9 reaching into his pockets.

10 Travis, terrified that the Defendant was going to pull
11 a gun on him, started firing his rifle until the magazine
12 was empty. The Defendant fell to the ground and began
13 moaning for help.

14 At this point, both Costell and Travis panicked and
15 they both fled the scene. Travis got into his vehicle and
16 drove back to Gaston, and Costell fled the scene on foot.
17 Costell called law enforcement about 20 minutes after the
18 shooting and turned himself in. And Travis turned himself
19 into law enforcement custody, together with the rifle,
20 about a day or so later. They were both questioned by law
21 enforcement extensively, and they were both cleared of any
22 wrongdoing.

23 As soon as the shots were fired, several 911 calls
24 were made and the first responding officer, Tony Everatt,
25 arrived on the scene within a few short minutes. He found

1 the Defendant laying in the wooded path and immediately
2 called EMS.

3 He and other Columbia Police Department officers
4 immediately secured the scene and made sure no one was
5 touching anything.

6 When EMS came to the scene, they treated the Defendant
7 and then they took him to the hospital. Immediately after
8 EMS left, the crime scene investigator arrived on the scene
9 and began collecting her evidence.

10 While EMS was treating the Defendant, they had to
11 remove his pants. And inside one of the pockets on the
12 pants that were left at the scene, the crime scene
13 investigator found a clear plastic bag that contained a
14 white powder substance that was tested positive for
15 cocaine.

16 Right outside of the apartment building, in the
17 parking area, was the vehicle that the Defendant drove with
18 into the apartment complex. Inside that vehicle, in the
19 back seat, in plain view for everyone to see, were the TVs
20 and the presents that the Defendant stole from April
21 Jenkins's apartment. Columbia Police Department officers
22 thoroughly searched the vehicle and that search revealed a
23 container, a jar, that contained some marijuana. They also
24 recovered some digital scales.

25 This, in short, is what transpired on the night of

1 December 18 of 2013, and this is why the Defendant is now
2 charged with four separate charges. And I would like to
3 take a few seconds to explain to you what exactly the
4 Defendant is charged with.

5 First of all, the Defendant is charged with burglary
6 in the first degree. That happens when a defendant breaks
7 into a victim apartment, at nighttime, and the defendant
8 has an intention of stealing the victim's property.

9 The second thing that he is charged with is grand
10 larceny. That happens when a defendant takes the property
11 of the victim without any intention to ever return that
12 property to the victim.

13 He is also charged with two drug charges. The first
14 one is trafficking of cocaine. And I know the word
15 "trafficking" has a pretty strong connotation to it; but
16 all it really means is that the Defendant was in possession
17 of cocaine, and that the amount of that cocaine surpasses a
18 certain threshold that qualifies the Defendant to be
19 charged under the law.

20 We are not here today to determine what the Defendant
21 wanted to do with that cocaine. It doesn't matter if he
22 intended to sell that cocaine to anybody else or to consume
23 the whole thing himself. All that we care is that he had
24 cocaine in his possession, and that it was above a certain
25 amount or threshold that would qualify him to be charged

1 under the law.

2 And lastly, the Defendant is charged with possession
3 with intent to distribute marijuana. As I mentioned to you
4 earlier, after law enforcement searched the vehicle, they
5 found a jar that contained marijuana. The law says that 28
6 grams of marijuana or more may qualify a defendant to be
7 charged with possession with intent to distribute. In this
8 case, the Defendant had 35 grams of marijuana.

9 In addition to that, the law enforcement officers who
10 searched the vehicle also recovered a set of digital
11 scales. Those are commonly used by drug dealers to weigh
12 the marijuana before it is being sold.

13 Now, members of the jury, y'all have a very important
14 task in this case. You are the finders of facts, and you
15 and only you can determine whether these events actually
16 happened. As the Judge already instructed you, you cannot
17 rely on anything that I'm telling you right now as evidence
18 for your determination. I wasn't there.

19 Your determination of the evidence will come from
20 listening to witnesses from this witness stand right here.
21 You will hear witnesses who are eyewitnesses, you will hear
22 testimony from law enforcement officers, from
23 investigators, and from forensic scientists.

24 You will also get a chance to see the tangible
25 evidence, such as the gun and the drugs. And you will see

1 photographs of the crime scene. After you view all of that
2 evidence, you will have a -- you will have a chance to
3 determine whether these events actually transpired and
4 whether we provided you enough information to prove the
5 Defendant has committed these crimes.

6 Let me make this point a little bit clearer: We are
7 not here -- or you are not here today as part of this trial
8 to determine whether or not this Defendant has already been
9 punished enough for what he did. That is what the Judge is
10 here for. Your sole purpose in this trial is just to
11 determine whether we, the State, has provided to you enough
12 evidence to convince you, beyond a reasonable doubt, that
13 he committed the crimes that we say he committed.

14 At the end of this trial, we will come back to you and
15 we will ask for a verdict. And I am confident that after
16 you see all the evidence in this case and after you will go
17 through your deliberations, you will find this Defendant,
18 Demetrius Henderson, guilty as charged for one count of
19 burglary in the first degree, one count of grand larceny,
20 one count of trafficking in cocaine, and one count of
21 possession with the intent to distribute marijuana. Thank
22 you very much.

23 THE COURT: Yes, sir.

24 MR. POURNARAS: May it please the Court, Your Honor.

25 Good afternoon, ladies and gentlemen. I do want to

1 warn you it is late and I tend to be long-winded, but
2 today, I'm actually going to keep it very brief.

3 The State, Mr. Shenkar, wanted to tell you a very
4 simple story. They're going to attempt to frame this
5 entire incident in this same very simple story. A guy goes
6 in a house, takes stuff, gets shot.

7 But I think the more you listen to what actually
8 happened -- and keep in mind, very few people actually know
9 what happened that night. Most of the witnesses you'll
10 hear today were not actually present at the time of the
11 incident, and I want you to keep that in mind.

12 The other thing I want you to keep in mind is that
13 when you hear testimony from these individuals, they want
14 you to focus just on the simple story, but I want you to
15 question what you're hearing. And I think when you hear a
16 lot of what's going on from these witnesses, you're going
17 to have some concerns as to what actually happened that
18 day. And the more you listen to this testimony, you're
19 going to see that the simple story might not be so simple.

20 I'm not about to tell you what that story is myself
21 today, but we'll talk more about it as the evidence is
22 presented in our closing.

23 But I want you to pay a lot of attention to what you
24 hear, and I want you to hold on to some of these concerns
25 you might have from some of the evidence that you're

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1 presented today and tomorrow and the next few days. And
2 when the Judge tells you to discuss it with your fellow
3 jurors, I want you to bring those concerns up because I
4 think a lot of you are going to share the same issues. And
5 I think, as this case unfolds, the simple story is not
6 actually that simple.

7 And I want you, as the Judge said, to pay attention.
8 And that's all we ask you to do today. Thank you.

9 THE COURT: Call your first witness, please.

10 MR. SHENKAR: The State calls Caliph Branham.

11 CALIPH BRANHAM, having been first
12 duly sworn, testifies as follows:

13 COURT CLERK: Thank you. Have a seat in the witness
14 stand, please. State your name for the record.

15 THE WITNESS: My name is Caliph Jay Branham.

16 THE COURT REPORTER: Spell your name, please.

17 THE WITNESS: C-a-l-i-p-h, J-a-y, B-r-a-n-h-a-m.

18 DIRECT EXAMINATION BY MR. SHENKAR:

19 Q Mr. Branham, good afternoon. Where do you currently
20 live?

21 A Right now, I currently live in Bluffton, South
22 Carolina.

23 Q And what do you do over there?

24 A I'm a student at the University of South Carolina
25 Beaufort.

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1 Q And how long have you been there?

2 A I've been there since August of last year, so ...

3 Q And where did you live before that?

4 A I lived at - in Columbia at the
5 Apartment.

6 Q And where did you live on the date of December of
7 2013?

8 A I lived at the

9 Q And which apartment was that?

10 A

11 Q And which floor is it on?

12 A The second floor.

13 Q Okay. And do you remember the incident that took
14 place on December 18 of 2013?

15 A Yes.

16 Q And what do you remember about that incident?

17 A I was sitting on my couch that night watching TV with
18 my sister, and we heard six loud gunshots right outside of
19 our window it sounded like, so we both hit the floor. At
20 that time, I called 911 and told them that I heard six loud
21 gunshots and that -- we had our windows open also that
22 night, so I could hear somebody laying outside on the
23 ground -- well, I don't know if they were on the ground,
24 but they were moaning loudly.

25 Q And did you look outside the window?

1 A I crawled over to the window after I hung up with 911,
2 and I looked out the window.

3 Q And what were the conditions of visibility outside?

4 A It was still pretty light outside, so I could see
5 towards the very back of the apartment complex.

6 Q But had the dark already come down?

7 A No. It was just starting to get dark.

8 Q Okay. And you said you called 911?

9 A I did.

10 Q And do you know the exact time that you called 911?

11 A I do not.

12 Q Mr. Branham, I want to show you the log of the 911
13 call to refresh your memory.

14 A Okay.

15 Q If you'll look at this time here (indicates), does
16 that accurately depict the time that you called?

17 A Yes.

18 Q And what time is that?

19 A Looks about 6:23.

20 Q And did you observe anything looking from the outside
21 of the window?

22 A I saw towards -- running towards the back of the
23 apartment, a big guy in about -- an orangish/reddish-
24 colored t-shirt.

25 Q And did you know that big guy?

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1 A I had seen him in our apartment building before. He
2 lived on the bottom floor.

3 Q And which apartment was that?

4 A I'm not quite sure of the number, but he lived on the
5 bottom and towards the back of our apartment.

6 Q And your apartment is located at the front?

7 A You mean of the complex?

8 Q (No audible response.)

9 A No. It's kind of off near the back of the complex.

10 Q Okay.

11 A Yeah.

12 MR. SHENKAR: I beg the Court's indulgence.

13 THE COURT: Yes.

14 (Brief pause.)

15 Q Mr. Branham, I'm going to show you a picture of that
16 apartment complex. Point to the jury where exactly your
17 apartment was located?

18 A Okay.

19 MR. SHENKAR: Permission for the witness to step down,
20 Your Honor?

21 THE COURT: Yes, sir.

22 (The witness exits the witness stand.)

23 THE WITNESS: (Indicates) We lived in this apartment
24 right there on the second floor.

25 Q (Indicates) And this is the first floor apartments

1 right here?

2 A Yeah. (Indicates) The first floor is right here, and
3 the guy I saw running lives on the bottom of this floor in
4 the back corner of the apartments.

5 Q Okay. You may be seated.

6 (The witness returns to the stand.)

7 Q And let me ask you, the people who live in that
8 apartment complex, are they nice people?

9 A Yes, they are ---

10 THE COURT: Is that marked as an exhibit?

11 MR. SHENKAR: It's just for demonstrative purposes,
12 Your Honor.

13 THE COURT: Okay.

14 Q The people who live in that apartment complex ---

15 MS. Eigenbrot: Objection, Your Honor, relevance.

16 THE COURT: Finish your question, please.

17 Q The people who live in that apartment complex, are
18 they nice people?

19 A Yes, they are ---

20 THE COURT: Hold on a minute. Hold on a minute. Hold
21 on a minute. Now, do you have an objection?

22 MS. Eigenbrot: Yes, Your Honor. I object ---

23 THE COURT: Grounds for your objection.

24 MS. Eigenbrot: Relevance.

25 THE COURT: Sustained. Move on.

CROSS-EXAMINATION BY MS. Eigenbrot - CALIPH BRANHAM

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1 MR. SHENKAR: I have no further questions for this
2 witness. (To the witness) You can answer any questions
3 Defense may have for you.

4 THE COURT: Cross-examination.

5 MS. Eigenbrot: Thank you, Your Honor. May it please
6 the Court.

7 CROSS-EXAMINATION BY MS. Eigenbrot:

8 Q Good afternoon, Mr. Branham. Okay. So you're
9 watching TV.

10 A Uh-huh.

11 Q And you were just hanging out with your sister?

12 A Yes.

13 Q And you hear these six loud -- what you believe to be
14 gunshots?

15 A Uh-huh.

16 Q Now, you didn't see who was shooting?

17 A No.

18 Q You didn't see anyone actually shooting a gun,
19 correct?

20 A No, I did not.

21 Q All right. And you called 911.

22 A I did.

23 Q And you heard moaning afterwards.

24 A Uh-huh.

25 Q And --

1 THE COURT: Is that a "yes?"

2 THE WITNESS: Yes.

3 THE COURT: I need "yes" or "no," please.

4 THE WITNESS: Yes.

5 THE COURT: Thank you.

6 Q And you mentioned it was just getting dark outside?

7 A Yes.

8 Q Can you describe what you mean by "just getting dark
9 outside"?

10 A Yes. So about 6:00 or 6:20-ish, our street lights had
11 just come on in the neighborhood, but it was still bright
12 enough to see that -- I could see all -- clearly all the
13 way to the -- through the whole apartment parking lot and
14 everything, so ...

15 Q And you saw an individual running --

16 A I did.

17 Q -- right? Which direction was he running? Was he
18 running towards the apartment or away from the apartment?

19 A He was running away from the apartment.

20 Q And do you know how approximately long it was before
21 you saw him running away?

22 A I don't understand the question.

23 Q So after you call 911 --

24 A Uh-huh.

25 Q -- and you were looking out the window and you see him

1 running --

2 A Uh-huh.

3 Q -- about how long do you think that was ---

4 A Probably ---

5 Q --- after you called 911?

6 A --- 10 minutes.

7 MS. Eigenbrot: Beg the Court's indulgence.

8 (Brief pause.)

9 MS. Eigenbrot: I have no further questions, Your
10 Honor.

11 THE COURT: Any redirect?

12 MR. SHENKAR: Nothing else from the State, Your Honor.

13 THE COURT: Sir, you may step down. Thank you.

14 (The witness complies.)

15 MR. SHENKAR: May we excuse this witness, Your Honor?

16 THE COURT: Sir?

17 MR. SHENKAR: May we excuse this witness?

18 THE COURT: Any objection?

19 MS. Eigenbrot: No objection.

20 THE COURT: Mr. Branham, you are excused, sir. You're
21 free to go. You have no further responsibilities here.

22 Have a nice day.

23 Call your next witness, please.

24 MR. SHENKAR: The State calls Daryl Stallings.

25 DARYL STALLINGS, having been first

1 duly sworn, testifies as follows:

2 COURT CLERK: Thank you. Have a seat in the witness
3 stand, please. State your name for the record.

4 THE WITNESS: Daryl Stallings.

5 THE COURT REPORTER: Would you spell your name,
6 please.

7 THE WITNESS: D-a-r-y-l, S-t-a-l-l-i-n-g-s.

8 DIRECT EXAMINATION BY MS. ALL:

9 Q Good afternoon, Mr. Stallings. Would you please intro
10 self -- introduce yourself to the jury? Tell us how old
11 you are and what you do and where you live.

12 A I'm -- my name's Daryl Stallings. I'm 25 years old.
13 I'm a -- I'm the service manager at the -- at

14

15 Q And do you have some big news here lately? Didn't you
16 just get married?

17 A Yes, ma'am. I got married, too.

18 Q And you've just been on your honeymoon?

19 A Yeah.

20 Q Where do you and your new wife live?

21 A The

22 Q (Using demonstrative aid) And can you show us on this
23 picture -- actually, I'll just -- it's an exhibit. Do you
24 recognize this?

25 A Yes.

DIRECT EXAMINATION BY MS. ALL - DARYL STALLINGS

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1 Q And what does it depict?

2 A That's the -- Building .

3 Q Is it a true and accurate reflection of the scene --

4 A Uh-huh.

5 Q -- of where you work now?

6 A Yes.

7 Q Is it a true and accurate reflection of that location
8 in December of 2013?

9 A Uh-huh.

10 THE COURT: I need a "yes" or "no," please.

11 THE WITNESS: I'm sorry. Yes.

12 THE COURT: That's okay. Go ahead.

13 MS. ALL: If we may offer State's Exhibit 1 into
14 evidence.

15 THE COURT: Any objection?

16 MR. POURNARAS: No objection.

17 THE COURT: Without objection, State's Exhibit No. 1
18 admitted into evidence.

19 (Whereupon, State's Exhibit No. 1,
20 enlarged photo, was admitted into evidence.)

21 DIRECT EXAMINATION BY MS. ALL (continues):

22 Q And Mr. Stallings, I think you already said that
23 you're a maintenance manager of the apartment complex; is
24 that right?

25 A Yes, ma'am.

1 Q And how long have you been doing that?

2 A I've been at the apartment complex for four years, but
3 I've been working as a service manager for a year.

4 Q Were you the service manager in December of 2013?

5 A No, I was a maintenance technician then.

6 Q Okay. Can you explain to the jury the difference
7 between those two jobs, please?

8 A A technician, he doesn't have to really do much of
9 anything. He doesn't have to do as far as -- he hasn't
10 have to do any of the paperwork. But now I have to do all
11 the paperwork that goes along with that along with I have
12 two employees that I didn't have before. Before I had
13 somebody above me. Now I have two others below me. That's
14 really about it. I mean ---

15 Q Okay.

16 A --- job description-wise it's the same. I still do
17 all maintenance, but I also do -- I also walk all the
18 apartments and make sure everything's in order, making sure
19 everything's running smoothly.

20 Q Okay. So on that note, about how you were involved
21 with the apartments, what were part of your
22 responsibilities as technician? Were you involved and
23 familiar with the lay of the land and all the different
24 apartments?

25 A Yes, ma'am.

1 Q And is that how you make your living?

2 A Yes, ma'am.

3 Q Okay. And I think I can just point to it here.

4 Without -- (indicating) where is your apartment located?

5 A It's in the center one.

6 Q This third one?

7 A Yeah. The center.

8 Q Okay.

9 A And the second floor in the front.

10 Q (Indicates) This one?

11 A Yes, ma'am.

12 Q (Indicates) And is this the balcony?

13 A Yes, ma'am..

14 Q Okay. Can you tell us about the night of December 18,
15 2013, what you were doing and who was at your apartment?

16 A My mother, my wife, my two brothers, and I were -- I
17 was -- me and my wife were in my -- were in our bedroom
18 just sitting there watching -- I think it was "The First
19 48."

20 Q Okay.

21 A And we were sitting there and all of a sudden, I hear
22 "pop, pop, pop, pop." I was like, whoa, what happened. So
23 I walked outside, and I'm sitting out there and I'm looking
24 around. And all of a sudden, you know, I see a Dodge
25 Intrepid sit there and hold out -- or was holding --

1 sitting there that I've seen numerous, numerous times.

2 Never -- never seen the guy that ever drove it, but I've

3 seen it numerous ---

4 Q And how did you come to see that vehicle so many
5 times?

6 A The person that -- the person that lived in -- that
7 lived in the building along with me, I guess that was that
8 person's company..

9 Q (Indicates) In this one over here?

10 A Yes, ma'am, in

11 Q Okay.

12 A That it was there company, and I guess it was -- you
13 know, might have been one of her boyfriend's friends. I'm
14 not sure.

15 Q That stayed there. So ---

16 A Yeah. He's -- he was there numerous times. I seen
17 him multiple, multiple times.

18 Q Okay. So you heard "pop, pop, pop, pop." And do you
19 remember about how many gunshots you heard?

20 A About five to seven -- not five. It was about six or
21 seven.

22 Q Okay. And do you remember what you did right after
23 that?

24 A Walked outside.

25 Q Have you heard gunshots before?

1 A Uh-huh.

2 THE COURT REPORTER: Is that a "yes"?

3 THE WITNESS: Yes, ma'am.

4 Q Is this what you would consider as primary -- do you
5 think that you live in a safe apartment complex?

6 MR. POURNARAS: Objection, Your Honor.

7 A Overall?

8 THE COURT: Hold on. Hold on. Hold on.

9 Restate your question.

10 MS. ALL: I think I said do you -- do you think you
11 live in a safe apartment complex.

12 THE COURT: I'll allow you to answer that.

13 A Overall?

14 Q Do you feel safe living there?

15 A Yes.

16 Q Okay. So was this unexpected?

17 A Yes.

18 Q Okay. Something that you don't hear all the time.

19 A Yes, ma'am.

20 Q Okay. And what -- you said that you walked outside.
21 Did you come out the front door, or when you said you came
22 outside, where was that?

23 A I was -- I was out on my balcony.

24 Q Okay. (Indicates) So that would be you right here,
25 right?

1 A Yes.

2 Q Is your view obstructed up and down the apartment
3 complex at all?

4 A No, ma'am.

5 Q Okay. And what did you see?

6 A I saw the guy -- the car parked going towards the
7 building.

8 MS. ALL: Well, Your Honor, may -- may the witness
9 step down so that he can show where the Dodge Intrepid was?

10 THE COURT: Yes.

11 MS. ALL: Thank you, Your Honor.

12 (The witness exits the stand.)

13 MS. ALL: If you would just speak toward the jury and
14 keep your voice up.

15 THE WITNESS: All right.

16 MS. ALL: You don't have to use the stick. You can
17 use it if you want to.

18 A The car was parked here ---

19 Q The Intrepid?

20 A Yeah, the Dodge Intrepid ---

21 THE COURT: Hold on a minute. Hold on a minute. Can
22 y'all switch positions? I want the witness talking so his
23 voice comes this way towards my court reporter, please, so
24 she can --

25 Be clear on what you say. Okay, young man?

1 THE WITNESS: Yes, sir.

2 A The Dodge Intrepid was sitting about right here
3 (indicates) and I was out on my balcony. And then the guy
4 actually steps out of the -- out of the apartment -- out of
5 the car saying he forgot something.

6 Q And which guy was that? What did he look like?

7 A It was the -- it was a big, hefty guy. He was wearing
8 an orange -- an orange shirt and dark pants.

9 Q Okay.

10 A And he went and he -- and he went and he went back
11 into the - into -- into 51-10. The only reason I knew it
12 was him because I've seen him numerous times.

13 Q Okay. And how soon after the gunshots was this?

14 A Probably about 15 seconds in between. Like, soon as I
15 walk out, he's going out, he's going in here (indicates),
16 and then the other guy was taking off towards building
17 this way (indicates.)

18 Q Okay. And out of what side of the white Dodge
19 Intrepid did you see the big guy remove himself?

20 A The passenger side.

21 Q Okay. And what did you hear him say?

22 A He said -- he said, "We have to go get" -- (makes
23 sound) -- I'm sorry. "We had -- we had forgot some stuff
24 inside the apartment."

25 Q Okay. And then what happened next?

1 A He -- after that guy takes off, this guy probably --
2 probably about 10 seconds later, he starts walking out this
3 way (indicates) down towards building.

4 Q Okay. Did you call the police?

5 A No. One of my residents in did.

6 Q Okay. And so what is this way? When you say that the
7 white Dodge Intrepid went this way, what is that way?

8 A From where I was at in my apartment complex, he went
9 to the right, but if I'm standing in front of the building,
10 it's to the left.

11 Q So was this an exit?

12 A Yes.

13 Q And there's no exit from this way?

14 A No. It just goes this way. It goes to the right and
15 down.

16 Q Okay.

17 A And in the apartment complex, there's one way in and
18 one way out.

19 Q Okay. And what happened next? What did you do next?
20 After you were on the balcony, what did you do next?

21 A I walked outside and I called -- I called my courtesy
22 officers, George and Megan.

23 Q And explain to the jury what the courtesy officers
24 are.

25 A The courtesy officers at that point in time, they were

1 there to make sure all the lights and everything checked.

2 And if we had any problems on the apartment complex, they
3 would draw up and pull reports and stuff for us and give us
4 the report so we can put it in an incident report.

5 Q Where did the courtesy officers live?

6 A Megan actually lived in , and then George lived in

7

8 Q So they lived in the apartment complex?

9 A Yeah.

10 Q Which is why they'd be courtesy officers, right?

11 A Yeah.

12 Q Okay. So once you came outside, about where did you
13 exit the apartment building?

14 A Right through there (indicates.)

15 Q Okay. And what this area between the cars and the
16 bottom of the apartment building, just to give them a
17 better idea?

18 A (Indicates) This right here is -- all it is is like a
19 patch of grass with a tree here and a tree there and a bush
20 in the front of the actual -- in front of the apartment
21 complex.

22 Q Okay. And what did you see when you came out here?

23 A I really didn't see anything. The guy was already
24 gone. This guy had already walked down. And I just called
25 then and I was waiting on -- I was waiting on the cops to

1 get there.

2 Q Okay. Did you hear anything?

3 A Uh-uh.

4 Q Okay.

5 THE COURT REPORTER: Is that a "no"?

6 THE WITNESS: No, ma'am.

7 Q And what time did it get dark about? Was it dark when
8 you came outside?

9 A Yes, ma'am, it was.

10 Q Okay. Was it dark when you came out on the balcony?

11 A Yes, ma'am.

12 Q Okay. Were the street lights on?

13 A Yes, ma'am.

14 Q Okay. And did you hear -- when -- when the police
15 arrived, did you hear sirens or how did you know the police
16 had gotten there?

17 A They had the blue lights on. I was just waiting for
18 them. I had called -- when I called Megan, she told me
19 that somebody was already on the way so just to wait for
20 them. And when I waited for them, Megan told me to hand
21 him -- hand -- hand him the phone so then -- so that they
22 could be able to talk, and have me direct him to where --
23 where to go, because there's some apartment -- apartment
24 complexes further in the back that aren't -- to me, aren't
25 all that great.

1 Q Okay. First of all, tell us who Megan is.

2 A Megan Kowsky, she's the -- she's -- she's the courtesy
3 officer.

4 Q Okay. And when you say there are some apartment
5 complexes further off that aren't all that great, do you
6 mean this apartment complex, like some buildings that
7 aren't that good or ---

8 A No, ma'am. Just a completely different complex.

9 Q Okay. Down the street?

10 A Yes, ma'am.

11 Q Okay. So tell us what happened when the police
12 arrived. What did you do?

13 A I had given -- I'd given the phone to Megan and she
14 had -- she had directed him to ask me to show him where the
15 cut was along side of my building.

16 (Indicates) There's a cut right back here beside the
17 dumpsters because there's dumpsters right about here. And
18 the cut back here, that goes off to where it ends up on
19 Atlantic Drive.

20 Q And describe to the jury a little bit more about what
21 the cut -- why you feel that's important to point out.

22 A Because a lot of -- I have -- like, you know,
23 sometimes I have a lot of people that actually walk through
24 there to try and walk through my apartment complex to go to
25 my pool a lot. So they'll walk through that area thinking

1 I don't know or that nobody in my entire apartment complex
2 knows ---

3 Q Okay.

4 A --- that they don't live there.

5 Q And what borders the cut on either side at this
6 building here?

7 A (Indicates) The woods is here, and the building and
8 woods back here.

9 Q Okay.

10 A It's basically woods.

11 Q You can ---

12 THE COURT REPORTER: It's basically what?

13 THE WITNESS: Basically woods.

14 Q So you can -- this is border the building, and you can
15 see into the building all the way up that side?

16 A Yes.

17 Q Okay. And can you just tell us a little bit about
18 what you observed after police arrived?

19 A I walked over there, and then there was a guy laying
20 down on the ground and I was just freaking out.

21 Q How was he laying?

22 A He was laying face down with his arms up, and he was
23 screaming for help.

24 Q Okay. And when did you notice that?

25 A Whenever -- whenever the officer had showed up.

1 Q Could you see his other arm?

2 A No.

3 Q Okay. And what did you do at that time?

4 A I just sat back. I was in shock.

5 Q Okay.

6 A And I just kind of just stepped back and stood over
7 here (indicates) because after -- after I went here and
8 found that, ambulance and the other cops had showed up.
9 And I was too - too out of my mind to really even think at
10 that point because I have never seen something like that.

11 Q Did anything happen after that?

12 A No. He was just -- he was just asking for help.

13 Q Okay. You can have a seat back in the jury box.

14 (Witness returns to the witness stand.)

15 Q And if you could just reiterate for the jury one more
16 time the amount of time between when you heard those shots
17 and when you came outside.

18 A It was a matter of seconds.

19 Q And then about how long would it have taken between
20 you leaving the outside --

21 A Uh-huh.

22 Q -- and coming down the stairs and actually being
23 outside?

24 A About five -- probably -- about -- somewhere about
25 five minutes at the most.

CROSS-EXAMINATION BY MR. POURANARAS - DARYL STALLINGS 110

1 Q Okay. And had anything on the scene changed between
2 when you came out on your balcony and observed it and when
3 the police arrived?

4 A No.

5 Q Was there anybody tampering with the scene? Was there
6 anything weird going on?

7 A No.

8 Q Okay. And in what county are these apartments
9 located?

10 A Richland County.

11 MS. ALL: Beg the Court's indulgence.

12 Q Did you ever see the Defendant's face?

13 A No.

14 MS. ALL: Please answer any other questions the
15 Defense has for you.

16 THE COURT: Cross-examination?

17 MR. POURNARAS: Thank you, Your Honor. May it please
18 the Court.

19 CROSS-EXAMINATION BY MR. POURNARAS:

20 Q Hello, Daryl.

21 A Hello.

22 Q Congratulations on your marriage.

23 A Thank you, sir.

24 Q I'm just going to go over a couple of things that
25 you've already been over. So you were definitely there

CROSS-EXAMINATION BY MR. POURANARAS - DARYL STALLINGS 111

1 that night, correct?

2 A Yes, sir.

3 Q Okay. And you said you saw someone come out of that
4 white Dodge, correct?

5 A Yes.

6 Q Now, did you actually see him coming out or were --
7 did you just presume ---

8 A No, I saw him come out the car.

9 Q And you have some familiarity with him from -- from
10 the location, correct?

11 A Yes, sir.

12 Q So you didn't actually see anything that happened
13 prior to the shooting; is that right?

14 A No, sir.

15 Q Your -- your family was there.

16 A Yes.

17 Q So you were preoccupied with what was going on until
18 the shooting ---

19 A Yes, sir.

20 Q --- right? Okay. Now, you said that it took about --
21 could have been about five or so minutes after you were on
22 the balcony to when you went out to the scene, is that ---

23 A Yes, sir.

24 Q --- what you said earlier? Okay. Now, when you
25 actually got down there, when -- when was the first time

1 you saw a body lying down there?

2 A After the -- after the -- after the -- the deputy --
3 the -- the police -- the police department showed up.

4 Q Do you recall about how long that was after you
5 originally heard the shooting?

6 A It's within -- it's -- it was actually within that
7 five-minute span.

8 Q Oh, okay. So let me ask you this, Daryl, what else is
9 along that cut?

10 A AC units.

11 Q AC units. Those are along the building, right?

12 A Yes, sir.

13 Q Is there -- is there a dumpster right there?

14 A Yes, sir.

15 Q Okay. Now -- actually, I'm going to bring this back
16 up. I need you to point out for us ...

17 (Using demonstrative aid) So right there, that -- that
18 unit is kind of towards the end of the complex, right?

19 There's not ---

20 A To the front.

21 Q I'm sorry?

22 A It's in the front.

23 Q I mean -- I mean that particular building doesn't have
24 another one to the right of it, does it?

25 A No, sir.

CROSS-EXAMINATION BY MR. POURANARAS - DARYL STALLINGS 113

1 Q Okay. So it's right at the edge of this cluster,
2 wouldn't you say?

3 A Yes, sir.

4 Q So I can't really see here, but --

5 MR. POURNARAS: Your Honor, may he come down here?

6 THE COURT: For the record, he is referring to State's
7 Exhibit No. 1.

8 MR. POURNARAS: I apologize.

9 THE COURT: That's okay.

10 (Witness exits the witness stand.)

11 Q So this is the area you were showing us earlier,
12 right?

13 A Right.

14 Q This cut over here?

15 A Yes, sir.

16 Q Show us where -- where about that dumpster is.

17 A The dumpster is right around this area (indicates.)

18 Q Okay. And -- and where was this body laying?

19 A Up in the cut down here (indicates.) Close -- more
20 closer to the woods.

21 Q How close to the dumpster was it?

22 A I think he was probably three to six feet away from
23 it.

24 Q Okay. All right. Do you remember which way he was
25 facing in relationship to the dumpster?

1 A Towards the dumpster. His head was towards the
2 dumpster.

3 Q His head was towards the dumpster.

4 A Yes, sir.

5 Q All right. Thank you very much. You can sit back
6 down. I just have a couple more questions.

7 (Witness returns to the witness stand.)

8 Q Daryl, when you came up to that body, were you with
9 anybody else?

10 A The -- the deputy.

11 Q The deputy?

12 A Right.

13 Q Okay. And how close would you say you got to ...

14 A No more than five feet.

15 Q Okay. Did you notice what he was wearing?

16 A He was wearing a jacket that had some kind of pattern
17 on it --

18 Q Okay.

19 A -- and some jeans.

20 Q And some jeans. Did ---

21 A And some tennis shoes.

22 Q Oh.

23 A And some tennis shoes.

24 Q And some tennis shoes.

25 A Yes, sir.

CROSS-EXAMINATION BY MR. POURANARAS - DARYL STALLINGS 115

1 Q Did you notice if he was wearing anything on his
2 hands?

3 A No, sir.

4 Q Okay. Did you notice anything in his pockets?

5 A I think he -- I think there was a remote in his back
6 pocket.

7 Q Okay.

8 A Pretty sure.

9 Q Okay. So you -- you saw something there. Did
10 anything strike you as odd about that, what you saw there?

11 A To be honest with you, no.

12 Q Okay.

13 A None of my business.

14 Q Okay. But you said you saw this person face down,
15 head away from the dumpster --

16 A It was going towards the dumpster.

17 Q Head towards the dumpster, I apologize. Jacket,
18 jeans, shoes.

19 A Uh-huh.

20 Q But you didn't notice any gloves or any -- any socks
21 on his hands or anything like that?

22 A No. There was no gloves or socks.

23 Q Okay.

24 A That I saw.

25 MR. POURNARAS: Beg the Court's indulgence, Your

1 Honor.

2 THE COURT: Yes, sir.

3 MR POURNARAS: Thank you, Daryl. I don't have any
4 further questions for you.

5 Thank you, Your Honor.

6 THE COURT: Any redirect?

7 MS. ALL: Yes, Your Honor, just briefly.

8 REDIRECT EXAMINATION BY MS. ALL:

9 Q Mr. Stallings, Mr. Pournaras brings up a really good
10 point when he said that the location of the apartment,
11 where the cut was, was pretty removed; is that right? You
12 corrected him and said it was at the front of the clusters?

13 A Yes, as far as -- yes. As far as, like, where the
14 building is set at, it set on top of a hill where you got
15 Building , and .

16 Q What's around all the other buildings?

17 A Around all the other buildings, like, your AC units.
18 You have -- where Building is, behind it you have
19 Building Like, right beside it is Building and stuff.
20 That's where you have Building . Building is in front
21 of that, and then Building has Building in front; and
22 then kind of off the way, along with some garages.

23 Q So would you say that this area, where this occurred,
24 was the most isolated of the complexes?

25 A Yes.

RE-CROSS-EXAMINATION BY MR. POURANARAS - DARYL STALLINGS117

1 Q Would you say that it's the most surrounded by a
2 wooded area?

3 A Yes.

4 Q And where it's the hardest to be seen?

5 A Yes.

6 Q And I'll also bring up, Mr. Pournaras asked you if you
7 noticed anything on his hands. And I want to ask you one
8 more time: How did you describe the body as laying?

9 A (Indicates) This way, one hand up.

10 Q So could you see his other hand?

11 A No.

12 Q Was he hiding his other hand under his body?

13 A I'm not entirely sure if he was hiding his hand
14 because of that, or if because he'd possibly gotten shot.

15 Q Was his other hand ---

16 A Yes.

17 Q --- under his body?

18 A Yes.

19 Q You couldn't see it.

20 A Yes.

21 MS. ALL: No further questions.

22 THE COURT: Any re-cross?

23 MR. POURNARAS: Very briefly, Your Honor.

24 RE-CROSS-EXAMINATION BY MR. POURNARAS:

25 Q So Daryl, you said you didn't see anything on his

RE-CROSS-EXAMINATION BY MR. POURNARAS - DARYL STALLINGS118

1 hands. Did you see anything like A sock laying next to his
2 body?

3 A No.

4 MR. POURNARAS: Okay. Thank you.

5 THE COURT: Sir, you may step down. Thank you.

6 THE WITNESS: Thank you, sir.

7 (The witness exits the stand.)

8 MS. ALL: Your Honor, may this witness be excused,
9 please?

10 THE COURT: Any objection?

11 MR. POURNARAS: No, Your Honor.

12 THE COURT: Sir, you're excused. You're free to go.
13 Thank you for being here.

14 THE WITNESS: Yes, sir.

15 THE COURT: Call your next witness, please.

16 MS. ALL: The State calls Officer Everatt, Tony
17 Everatt.

18 Your Honor, may we briefly approach?

19 THE COURT: Yes.

20 (Bench conference.)

21 TONY EVERATT, after having been duly
22 sworn, testifies as follows:

23 COURT CLERK: Have a seat in the witness stand,
24 please. State your name for the record.

25 THE WITNESS: Tony Everatt.

DIRECT EXAMINATION BY MS. ALL - TONY EVERATT

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1 THE COURT REPORTER: Spell your last name, please.

2 THE WITNESS: E-v-e-r-a-t-t.

3 DIRECT EXAMINATION BY MS. ALL:

4 Q Mr. Everatt, will you please introduce yourself to the
5 jury? Let us know how old you are and where you're from,
6 what you do now.

7 A I'm Tony Everatt, 27 years of age. I am now a
8 personal trainer at Anytime Fitness and going back to
9 school for nursing. I was a cop with the City of Columbia
10 for two years.

11 Q And where were you employed in December of 2013?

12 A City of Columbia Police.

13 Q And why did you leave the Columbia Police Department?

14 A I got married. I loved being a cop as a single man,
15 but it was not the job or profession I wanted my family
16 involved in, so going back for nursing.

17 Q And can you explain to us a little bit where you are
18 in your education?

19 A I'm starting clinicals in a couple of weeks.

20 Q Okay. And do you remember the night of December 18th,
21 2013?

22 A I do.

23 Q And who were you with that night? What were you
24 doing?

25 A I was on patrol.

1 Q And were you with any other officers?

2 A We have one officer per vehicle. I was on my own, in
3 my vehicle.

4 Q Okay. And how long had you been a police officer at
5 that time?

6 A Roughly six months. For our field training -- field
7 training, we rode with another officer and I had just been
8 cut loose probably six months beforehand.

9 Q And so you mentioned field training. Could you
10 explain that to the jury and a little bit more about the
11 training that you went through to become a police officer.

12 A When I got hired for City of Columbia, we went through
13 a process called "BCS," Basic Cadet School. We had six
14 weeks of training there before we went to South Carolina's
15 academy for a police officer.

16 After graduating that, we were to ride with a veteran
17 officer and be shown the ropes and make sure that we knew
18 what we were doing, we were safe with what we were doing,
19 and we knew how to handle ourselves in order to be cut
20 loose on our own.

21 Q And who was that veteran officer for you?

22 A Officer Grant and Officer Baskins.

23 Q Okay. Were you with either of them that night? Was
24 Officer Baskins on scene?

25 A He was on scene later. As I said, I was the only

1 officer in the vehicle that I was driving at the time.

2 Q Okay. Can you describe to us about what you were
3 doing at 6:30, where you were, and what it means to be on
4 patrol, if you remember specifically where you were.

5 A My area was south of the river, so I was Broad River/
6 Bush River area. I was on patrol. I do not remember
7 exactly where I was at the time that the call came out, but
8 "on patrol" just meaning that we're sweeping our area,
9 looking for anything that might be unusual.

10 Q Are the apartments in your area?

11 A Yes.

12 Q And you were familiar with that location?

13 A Very.

14 Q Okay. Can you describe to the jury kind of the
15 process between when a 911 comes in, about how much time
16 lapses, how it comes to you, and who responds?

17 A A 911 call comes in, goes through our dispatch. Our
18 dispatch gets very brief details. Then they put it out
19 over the radio, which is in our cars, to us. And then we
20 respond as quickly as we can with due diligence to safety
21 of others and safety as well. Because if we don't get
22 there because of an accident before we get there, we might
23 not -- might not as well have even go.

24 Q And do you remember about what time this call came
25 out?

1 A I remember it was early evening. I remember it being
2 dusk to dark. I do not remember exactly what time.

3 Q Okay. I'm going to hand you the incident report to
4 refresh your recollection.

5 (Ms. All hands a document to the witness.)

6 Q And you mentioned earlier that you get a very short
7 description of what was occurring on the scene at the time.
8 Can you give us some examples, I mean, was it as much
9 detail as "white male, domestic violence, estranged wife"
10 or --

11 A This particular call or just generally?

12 Q Just generally.

13 A Usually we'll get a 10 code -- a "1082" is our
14 domestic violence call. We'll get "black female stabbed,"
15 whatever. We'll get a 911 call about shots fired where we
16 go -- we patrol the area and see what we could find, if we
17 can find shell casings, if we can find any indication of a
18 conflict. All kinds of things.

19 Q Do you remember what the 10 code was, what the
20 description was that you got this night?

21 A I got a shots fired call.

22 Q And did you know anything else about it?

23 A No.

24 (Brief pause.)

25 Q And can you use this to refresh your recollection

1 about when the call came out? .

2 A The call came out about 6:34.

3 Q Okay. And when were you assigned?

4 A I was assigned -- I'm sorry. I was assigned at 6:24
5 and I arrived at scene at 6:34.

6 Q Okay. So I think we are a little mixed up. Tell us
7 when the call came to your car, when you found out.

8 A 6:24.

9 Q 6:24.

10 A Yes, ma'am.

11 Q And it's all the way down to the second, isn't it?

12 A Twenty-three seconds.

13 Q Okay. And when did you get in route?

14 A In route was 6:25:01.

15 Q Okay. And when did you arrive?

16 A 6:34:42.

17 Q Okay. So it took you about nine minutes to get there?

18 A Approximately, yes, ma'am.

19 Q And do you press that you've arrived as soon as you
20 turn into the apartment complex, or do you kind of wait
21 until you're actually on the scene?

22 A We usually wait til we're actually at the scene.

23 We'll call that we arrived so that when we are allowing any
24 of our squad mates to know, listen up, in case something
25 happens or anything of that nature.

1 Q And do you remember about where this building was
2 located within the complex?

3 A As soon as you went into the complex, you turned left,
4 you went around a curve, and this building (indicates) was
5 up a hill.

6 Q Okay. So did you have to drive into the complex a
7 little bit?

8 A Yes.

9 Q Okay. And what is the address for where you were
10 responding to? What was the scene?

11 A

12 Q And did you have a specific apartment?

13 A I had an apartment building.

14 Q Okay. I think you should be able to refresh you
15 recollection on this.

16 (Hands a document to the witness.)

17 A All right.

18 Q Or I might have what we ---

19 A I was about to say if we had the actual incident
20 report.

21 Q So you knew it was apartment ? Or you knew it was
22 Building ..

23 A Building , yes, ma'am.

24 Q Okay. And when you got there, when you first arrived
25 on scene, what did you see?

1 A When I first arrived on scene, there was a white male
2 that was out in the front of the apartment building. And
3 that immediately put my antenna up because usually with
4 these type calls, there's nobody present. We're just
5 looking around. But there was actually somebody present.

6 So as soon as I got out of my vehicle, I immediately
7 went to the gentleman who was waving his arms. From there,
8 I was looking around and he said, "Shots were fired right
9 over there. It sounded like they came right over there."

10 I immediately got my flashlight out, told him to go
11 back inside, kind of keep inside in cover.

12 Q And where was he pointing? When you say "right over
13 there," where was he pointing?

14 A (Indicating) The apartment complex, the building, had
15 woods on this side if you're looking at it, and then the
16 office area was --

17 Q That's State's Exhibit 1. Let me hand you this
18 exhibit.

19 (Hands exhibit to the witness.)

20 A (Indicating) I was coming from this area. The
21 gentleman was right about here --

22 Q Uh-huh.

23 A -- pointing towards the wooded area.

24 Q Uh-huh. (Indicating) Like here?

25 A Yes, ma'am.

1 Q Okay. Did you see any cars parked here that were of
2 interest?

3 A At that point in time, no, ma'am. When I heard "shots
4 fired" and a point "that way," I was not interested in any
5 cars, but movement and people.

6 Q Was there anybody standing between where that white
7 male was and where he pointed?

8 A No.

9 Q Who else was out on scene?

10 A The white gentleman was the one that I remember most.
11 I believe there was another person there, but I cannot
12 remember right off top of my head.

13 Q Okay. So ---

14 A I remember him because I spoke to him personally.

15 Q Okay. So how many people were there upright at most?

16 A At most, two.

17 Q Okay. Were there any other officers on scene?

18 A At that point in time, no.

19 Q Okay. And what did you do after you spoke with the
20 white male?

21 A I got my flashlight out. I walked around because at
22 this time, like I said, my suspicions were up. I noticed a
23 gentleman lying face down in the side area, and I
24 immediately called for EMS.

25 I started looking around to see if there was anybody

1 else. I then approached the gentleman, make sure that
2 everything was okay, and everything was definitely not
3 okay. Told EMS to step it up and called for back up.

4 Q Okay. Was he -- was -- the gentleman laying on the
5 ground, do you see him in the courtroom today, and ---

6 A Yes.

7 Q --- could you point him out to the court reporter,
8 please.

9 A The Defendant.

10 MS. ALL: Let the record reflect that he's pointing at
11 Mr. Demetrius Henderson.

12 THE COURT: So noted.

13 Q Did he say anything?

14 A He was unable to really respond. His breathing was
15 very shallow, very rapid, wheezy. Sounded like a punctured
16 lung, but I'm not a medical professional yet. There were
17 several bullet marks, so EMS was called. I was not a
18 medical professional, and I did not attend to his wounds,
19 but told him to just remain still ---

20 Q And what did you ---

21 A --- until EMS got there.

22 Q --- do with the witnesses that were on scene, with the
23 -- the white man who flagged you down and anybody else that
24 was there?

25 A I did not leave the Defendant. I wanted to make sure

1 that I was able to provide him anything that he may need at
2 the time, but I told them to just stay where they were.

3 I was out of shouting distance at them at that time.
4 So I stayed with him and waited till EMS got there. I was
5 calling on my radio to update EMS of every injury that I
6 could see.

7 Q Okay. And was there anybody else there that was
8 tampering with the scene or the area immediately around
9 you?

10 A No, ma'am. That's the first thing we're taught is to
11 secure the scene and to make sure that anybody injured is
12 dealt with.

13 Q Okay. What did Emergency Medical Services -- EMS,
14 about how long do you remember it taking for them to
15 arrive, how many were there, and about what did they do?

16 A A typical EMS unit is a two-person team.

17 Q Uh-huh.

18 A I do remember a typical EMS team there. I also
19 remember a EMS supervisor responding to the scene.

20 Q Uh-huh.

21 A They came, they saw the extent of the injuries, and
22 they got him out of there as quickly as they possibly
23 could.

24 Q And could you break down for us a little bit about
25 what you mean by "they got him out of there"? What steps

1 did they take?

2 A They had to -- they had to make sure that they could
3 see every injury. They had to make sure that there were no
4 spinal injuries, no neck injuries. They then loaded the
5 Defendant onto a gurney and got him into the ambulance and
6 left.

7 Q How did they make sure they could see all the
8 injuries?

9 A They cut up clothing articles to make sure that they
10 can easily get to the surrounding areas.

11 Q And you were around these clothing articles and
12 anything that was in his possession the entire time?

13 A At all times.

14 Q Okay. Did you notice anything about his clothing or
15 was there -- was he just wearing regular clothes? Did you
16 notice anything in his possession or do you remember
17 anything in particular?

18 A I remember that there were TV remotes, which was
19 highly unusual. I remember the ankle bracelet. Other than
20 that, I remember a good bit of ---

21 MS. Eigenbrot: Objection, Your Honor.

22 MR. POURNARAS: Your Honor, we have a matter of law.

23 THE COURT: Ladies and gentlemen, I have to ask you to
24 step to the jury room for just a minute. Do not discuss
25 the case. I'll get you back out here as quickly as

1 possible.

2 (The jury exits the courtroom at 4:54 p.m.)

3 THE COURT: Yes?

4 MR. POURNARAS: Your Honor, I believe pretrial we had
5 discussed -- the discussion particular to the use of the
6 term "ankle bracelet." And I think that ...

7 THE COURT: Well, no question he said "ankle
8 bracelet," right?

9 MS. ALL: And not ankle monitor.

10 MR. POURNARAS: Correct.

11 MS. ALL: And our witnesses have been sequestered,
12 Your Honor. It's our sincerest apologies.

13 THE COURT: Well, I mean -- go ahead.

14 MR. POURNARAS: My issue was that, you know, in light
15 of -- I wasn't aware that this witness would add something
16 -- I understand that the State asked "did you notice
17 anything about what he was wearing or anything like that,"
18 I would just like, one, I believe that that may or may not
19 have made a connection to the jury. But from this point
20 forward, Your Honor, I think that the witnesses need to be
21 instructed to be very sensitive to that issue in
22 particular.

23 I would actually, for the record, make a mistrial
24 motion at this time based on that. But in case Your Honor
25 would deny that, I would ask that there be instructions

1 given to each and every witness not specifically to mention
2 that issue, pursuant to our pretrial issues.

3 THE COURT: All right. Well, certainly was something
4 that was addressed in pretrial. For a mistrial to be
5 granted, one, you've got to show error; two, you gotta show
6 prejudice.

7 What he said was "ankle bracelet." Could be construed
8 in many different fashions, but do not believe that the
9 statement in any way, at this point, prejudices the
10 Defendant. It may have been in context of error, albeit
11 what was said, this Court does not believe it was
12 prejudice.

13 I would instruct the State to advise its witnesses not
14 to talk about that because the next witness, if not
15 advised, could certainly go -- make a different comment
16 beyond "ankle bracelet." So I will instruct the State to
17 make that known to its witnesses.

18 MR. POURNARAS: Thank you, Your Honor.

19 THE COURT: Let me ask this: Is there any curative
20 instruction you want me to give the jury?

21 MR. POURNARAS: Your Honor, I believe the curative
22 instruction would only re -- bring that back to the jury's
23 attention where they may have missed it this time.

24 THE COURT: Well, I don't disagree with you, but
25 certainly you're entitled to that right if you so request

1 it, and I wanted to make sure.

2 All right. This phone -- stand up, sir, if you would.

3 MR. BROWN: Sir, the phone is off ---

4 THE COURT: Hold on. Hold on. Tell -- tell me your
5 name.

6 MR. BROWN: I'm sorry, sir. I'm Bobby Brown. I'm Mr.
7 Henderson's uncle, and the phone has been off the entire
8 time. It's on vibrate, and I was trying to pick it up to
9 gather my stuff together. And it's, like, a touchscreen
10 and it has, like, that speaker-voice thing on it you hit
11 because the nursing home is calling me about my mom. I
12 need to go and sign paperwork because she was in an
13 accident in a transport van. So I -- I wasn't like playing
14 on it or anything or talking.

15 THE COURT: Okay. Well, I'm going to give your phone
16 back.

17 MR. BROWN: Yes, sir.

18 THE COURT: You're not -- individuals are not allowed
19 -- certainly not allowed to record any proceedings going on
20 with the -- in the courtroom unless you receive prior court
21 approval.

22 MR. BROWN: Yes, sir.

23 THE COURT: I don't know if you were recording
24 anything or not.

25 MR. BROWN: No, sir. I won't bring it back in.

1 THE COURT: My advice to individuals is just don't
2 bring them in the courtroom.

3 MR. BROWN: Yeah. I -- I will not, sir.

4 THE COURT: Okay. All right. Thank you, sir.

5 MS. ALL: And Your Honor, as the witness is under
6 oath, might Your Honor instruct Mr. Everatt on the issue
7 that he is not to speak of it any further, or -- or I'll be
8 glad to instruct him.

9 THE COURT: I think he can assume from our discussion
10 here that he ---

11 THE WITNESS: Something ---

12 THE COURT: --- is not to elaborate any further.

13 Is that correct, sir?

14 THE WITNESS: I can make that assumption, yes, sir.

15 THE COURT: All right. If you do, understanding that
16 this Court could hold you in contempt of court --

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: -- in violation of such order or
19 instruction.

20 Anything further?

21 MR. POURNARAS: No, Your Honor.

22 MS. ALL: No, Your Honor..

23 THE COURT: (To the bailiff) If you'll bring me the
24 jury back in, please, sir.

25 (The jury enters the courtroom at 5:00 p.m.)

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1 THE BAILIFF: The jury's seated, Your Honor.

2 THE COURT: Thank you. Ms. All, you may continue.

3 MS. ALL: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MS. ALL (continues):

5 Q Mr. Everatt, you were telling us about what you
6 observed when EMS was carrying the Defendant into the
7 ambulance. Can you tell us what you did next at that
8 point?

9 A At that point, I was instructed to make sure that the
10 -- the scene was secure, and by that, we started putting up
11 crime scene tape, making sure that we had the entire area
12 cordoned and make sure that we started recording who came
13 and -- who came into the scene and who did not come into
14 the scene.

15 Q And how could you determine what areas to tape off,
16 how big of an area to tape off?

17 A We started with -- from where the gentleman flagged me
18 down, all the way to the edge of the woods. We started
19 looking for casings, bullet casings. And we just kept
20 finding different things within the crime scene itself, and
21 eventually we had the full thing marked off because we did
22 not know exactly how many casings were there.

23 Q And at this point, given how the call came out, what
24 was your understanding of what had happened?

25 A At that point, I -- I presumed that the Defendant was

DIRECT EXAMINATION BY MS. ALL - TONY EVERATT

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1 the victim. He was the one that had injuries. He was the
2 one that was still at the scene. So we were -- I was
3 assuming that he was the victim at the time, and my
4 assumption was that he just got shot in the back, maybe a
5 dispute over anything. There was no way of telling.

6 Q And what did you do after EMS left?

7 A After EMS left, I started cataloging who was at the
8 crime scene for approximately 15, 20 more minutes; and then
9 I was told to go to the Defendant at the hospital.

10 Q Okay. And why would that be?

11 A We had to have one person sit with the Defendant at
12 all times, and it was my turn, basically. I was the newest
13 officer on the squad, and the veteran officers knew a lot
14 more about what to do in those situations. So their
15 personnel was better used at the scene.

16 Q And what responsibilities are involved with you
17 staying at the hospital with the Defendant?

18 A Making sure that the Defendant did not leave, making
19 sure we knew where the Defendant was within the hospital
20 should Investigations or Crime Scene need to speak with
21 him; and making sure that safety, above all else, was
22 attained.

23 Q Were you able to speak with him while he was at the
24 hospital?

25 A No.

1 Q Okay. And at what point did you leave the hospital?

2 A It was a long time afterwards. I do not know exactly
3 how long.

4 Q Okay.

5 A Probably -- I -- I don't know.

6 Q Other than the Defendant's presence, was the scene any
7 different when you left than it was when you arrived?

8 A We had a lot more area taped off, as I was leaving to
9 go to the hospital, than when we originally taped it off
10 with the Defendant present.

11 Q Okay. And did this occur -- in what county did this
12 occur?

13 A Richland County, City of Columbia jurisdiction.

14 MS. ALL: Beg the Court's indulgence.

15 (Brief pause.)

16 Q Were you able to see both of the Defendant's hands?
17 About how was he laying?

18 A He was laying face down. I could not see his hands.

19 Q Was it your job to take an inventory of what he was
20 wearing?

21 A An inventory of what he was wearing? Not at the time.

22 Q And what was the position of the body, do you recall?

23 A He was laying face down. His face was to the parking
24 lot, feet towards the back side of the complex.

25 Q Was his head toward the dumpster?

CROSS-EXAMINATION BY MR. POURANARAS - TONY EVERATT 137

1 A Yes.

2 Q Do you remember what time of day it was when you got
3 the call?

4 A It was dark.

5 Q Was it nighttime?

6 A Yes.

7 Q Were street lights on?

8 A Yes.

9 MS. ALL: No further questions.

10 THE COURT: Cross-examination.

11 MR. POURNARAS: Thank you, Your Honor.

12 CROSS-EXAMINATION BY MR. POURNARAS:

13 Q Hey, Mr. Everatt. You just finished up saying when
14 you got the call, it was dark, correct?

15 A Sir?

16 Q When you got the call, it was dark?

17 A I remember specifically arriving on scene and it being
18 dark, yes, sir.

19 Q Earlier, you said it was dusk to dark, is that not
20 correct, when you got the call originally?

21 A Yes, sir, I did say that.

22 Q Okay. Now, you don't know when the actual shooting
23 occurred, correct? You just know ---

24 A I do not. I do not.

25 Q Okay. And you said it took approximately nine minutes

1 from when you got the call til when you arrived?

2 A Correct.

3 Q Okay. Is you -- were you in a CPD cruiser?

4 A I was.

5 Q So it was a marked vehicle.

6 A Yes, sir.

7 Q Would that have been equipped with a camera system?

8 A Yes, sir.

9 Q All right. You mentioned earlier you didn't actually
10 collect or categorize any of the evidence, right? You were
11 just the ---

12 A I -- I did not touch or move any of the articles.

13 Q Okay. But is it safe to say you were one of the first
14 people who observed Mr. Henderson lying there?

15 A I was the first officer on scene, yes, sir.

16 Q Okay. And at that time, you said there were several
17 bullet wounds.

18 A Yes, sir.

19 Q That he seemed to be fairly injured.

20 A Yes.

21 Q He couldn't speak to you, correct?

22 A Yes, sir.

23 Q Okay. I think earlier you said your impression was
24 that he might have been the victim --

25 A Uh-huh.

CROSS-EXAMINATION BY MR. POURANARAS - TONY EVERATT 139

1 Q -- shot in the back after some kind of dispute or
2 something; is that a fair ---

3 A Yes, sir.

4 Q --- way to phrase what you said?

5 A Yes, sir.

6 Q But since then, you went to the hospital and you
7 didn't - did you return to the scene again?

8 A After the hospital?

9 Q Yeah.

10 A I do not recall.

11 Q Okay. But you did go with Mr. Henderson, with EMS, to
12 the hospital to stay with him there; is that correct?

13 A EMS took him. I was still on scene ---

14 Q Right.

15 A --- for just a little bit longer. I do not remember
16 right off top of my head how long. After that, whenever
17 the scene started to settle down, that is when I proceeded
18 to go to the hospital.

19 Q Okay. So you were actually there when EMS transport -
20 - picked him up, moved him, put him in the ambulance; is --
21 -

22 A Yes, sir.

23 Q --- that correct? Okay. Did you notice at any time
24 him wearing any gloves or having socks on his hands?

25 A That was not something that I would have paid

CROSS-EXAMINATION BY MR. POURANARAS - TONY EVERATT 140

1 attention to. So no, I do not remember anything like that.

2 Q But you did not see that, correct?

3 A Not that I can recall.

4 Q All right.

5 MR. POURNARAS: Beg the Court's indulgence, Your
6 Honor.

7 (Brief pause.)

8 MR. POURANARAS: Thank you, Mr. Everatt. I have no
9 further questions, Your Honor.

10 THE COURT: Any re-direct?

11 MS. ALL: Nothing further from the State, Your Honor.

12 THE COURT: Sir, you may step down.

13 (The witness complies.)

14 MS. ALL: Your Honor, may this witness be excused?

15 THE COURT: Any objection?

16 MR. POURNARAS: No objections, Your Honor.

17 THE COURT: Sir, you're free to go. Thank you for
18 being here. Have a nice day.

19 THE WITNESS: Yes, sir.

20 THE COURT: Call your next witness.

21 MR. SHENKAR: The State calls Bradley Byrd.

22 BRADLEY BYRD, after having been first
23 duly sworn, testifies as follows:

24 COURT CLERK: Thank you. Have a seat in the witness
25 stand, please. State your name for the record.

DIRECT EXAMINATION BY MR. SHENKAR - DEPUTY BRADLEY BYRD141

1 THE WITNESS: Deputy Bradley W. S. Bryd, Richland
2 County Sheriff's Department.

3 THE COURT REPORTER: Spell your last name for me,
4 please.

5 THE WITNESS: B-y-r-d.

6 DIRECT EXAMINATION BY MR. SHENKAR:

7 Q Deputy Byrd, would you please introduce yourself to
8 the jury and explain what it is that you do?

9 A What I do, sir?

10 Q Yeah.

11 A Currently I'm a road deputy for Richland County. I
12 guess, the reason I'm here, I was a road -- I was a road
13 officer for the City of Columbia.

14 Q And how long ago was that?

15 A One year and one day.

16 Q Since you transferred to Richland County?

17 A Yes, sir.

18 Q And do you remember an incident that took place on
19 December 18 of 2013?

20 A That was the shooting -- shooting/burglary.

21 Q And who did you work with at the time?

22 A I was with the City of Columbia.

23 Q In what capacity?

24 A I was a road officer in north region.

25 Q And were you riding in a vehicle with anybody else?

DIRECT EXAMINATION BY MR. SHENKAR - DEPUTY BRADLEY BYRD142

1 A No, I was a solo unit.

2 Q And do you recall the time that you were notified
3 about an incident?

4 A From that night, it was fairly early on in shift. I
5 don't remember the exact time frame, but it was before it
6 was really, really dark. Officer Everatt got dispatched in
7 reference to shots heard in the area of . I think
8 , if I remember correctly the address.

9 He went out to investigate. I was en route to back, I
10 was further out just in case something was of it, because
11 normally we get shots fired calls a lot; and normally it
12 turns out to be nothing.

13 Shortly after he arrived on scene is when, I guess,
14 one of the witnesses had directed him to where the
15 Defendant was. And then he had notified us over the radio.

16 Q Just recollect your memory, I will show you the CPD
17 agency incident log under your name.

18 (Hands a document to the witness.)

19 Q Could you tell the jury the time that you received the
20 call, the time that you responded, and the time that you
21 arrived on scene?

22 A I was assigned the call at -- I'll convert it. it's
23 18:27 -- but it's 6:27 in the evening. I was en route.
24 Just a few seconds later, I arrived on scene at 6:38.

25 Q And what were the visible conditions at the time that

DIRECT EXAMINATION BY MR. SHENKAR - DEPUTY BRADLEY BYRD143

1 you received the call?

2 A It was just starting to get dark. It -- it was still
3 a little bit of blue in the sky left, but 6:30, evening
4 time, dusk.

5 Q And the place that you were called to go,
6 , is that within the jurisdiction of Richland County?

7 A Richland County and City of Columbia.

8 Q Okay. And when you arrived on the scene, what did you
9 do?

10 A Upon hearing Officer Everatt stating he was out with a
11 shooting victim at the time, since we didn't know anything
12 else, I got on scene, asked him do we have any information
13 where the shooter was. He just told me a general direction
14 from the witnesses on scene.

15 I started circulating the area while Officer Everatt
16 was still on scene with the Defendant. Once I couldn't
17 find anybody in the nearby area, I came and helped him
18 secure scene until we got Investigations, supervisor, and
19 EMS, et cetera, on scene.

20 Q When you say "secure the scene," can you explain to
21 the jury what that -- what exactly that entails?

22 A Secure scene is any time we have any kind of crime
23 scene, we try to get nonessential people out of the area.
24 If we have witnesses, we separate them and have them in a
25 staging area for Investigations to -- to talk to if there

DIRECT EXAMINATION BY MR. SHENKAR - DEPUTY BRADLEY BYRD144

1 happens to be an investigator needs to come out; or just
2 for us to collect information once everything is -- is
3 secured, meaning "safe" to do so tactically, and -- and
4 safe for everybody in case there is -- because we didn't
5 where the shooter was at the time.

6 So that's pretty much what it was is we got the
7 witnesses off to the side, had them so we knew where they
8 were, or at least the witnesses, I believe, showing us
9 where the gentleman was.

10 And then we pretty much started cordoning the area
11 off, didn't allow any foot traffic through the area until
12 supervisor and Crime Scene got on to start processing. And
13 of course, EMS.

14 Q Was anybody allowed to touch anything on the scene?

15 A No. The only -- only thing that was touched any --
16 any time was the gentlemen once EMS got on scene. When I
17 got on scene with Officer Everatt, we did a quick
18 assessment of Mr. Henderson -- I believe is his name -- to
19 see what the extent of his injuries were because we didn't
20 know anything else other than he was shot and -- so we can
21 notify EMS so they kind of have an idea what to expect when
22 they got on scene.

23 Q And speaking of Mr. Henderson, do you recognize Mr.
24 Henderson in the courtroom today?

25 A Yes, sir. (Indicating) He's right over there.

DIRECT EXAMINATION BY MR. SHENKAR - DEPUTY BRADLEY BYRD145

1 MR. SHENKAR: Let the record reflect that the officer
2 pointed at the Defendant.

3 THE COURT: So noted.

4 Q And what did you do after you secured the scene?

5 A Once the scene was secured, deemed safe -- of course,
6 the entire time we were waiting on EMS. EMS gets on the
7 scene shortly after. They start tending to Mr. Henderson,
8 and once they got him secured onto their stretcher and
9 stuff, they took him to the hospital.

10 From that point on, me and Officer Everatt stayed on
11 scene and waited until Crime Scene Investigations and
12 supervisor and stuff got on. And we, of course, roped off
13 the area with crime scene tape and everything and --

14 Q And how long did you stay over there that night?

15 A It was late because at the time -- at the very
16 beginning, we just thought we had a shooting incident,
17 shooting victim. We didn't realize that there was another
18 crime attached to it, which we found out after the fact and
19 -- which was a burglary. I was there probably -- at least
20 til -- close to 11 or 12 midnight, I believe.

21 Q Did you know anything about that burglary?

22 A The only thing I was -- the only thing I know about it
23 predominantly is that Mr. Henderson was -- was the prime
24 suspect according to the investigator that was
25 investigating the scene.

CROSS-EXAMINATION BY MS. EIGENBROT - DEPUTY BRADLEY BYRD146

1 MR. SHENKAR: Beg the Court's indulgence.

2 (Brief pause.)

3 MR. SHENKAR: I have no further questions for the
4 witness. Please answer any questions the Defense has.

5 THE COURT: Cross-examination.

6 MS. EIGENBROT: Thank you, Your Honor. May it please
7 the Court.

8 CROSS-EXAMINATION BY MS. EIGENBROT:

9 Q Deputy Byrd, how are you doing today?

10 A I'm fine, ma'am.

11 Q So just briefly, you received a call at 6:27, correct?

12 A Yes, ma'am.

13 Q And you described it as being from dusk to dark at
14 that point in time?

15 A Yes, ma'am.

16 Q And -- but you don't actually know what time the
17 shooting itself actually occurred?

18 A All I know is I would have to assume it happened just
19 minutes prior since we were receiving phone calls in
20 reference to the shots heard in the area.

21 Q But at the time you received the call, it was still
22 dusk to dark?

23 A Uh-huh.

24 THE COURT: Is that a "yes"?

25 THE WITNESS: Yes, ma'am. Sorry.

CROSS-EXAMINATION BY MS. EIGENBROT - DEPUTY BRADLEY BYRD147

1 Q And you arrived on scene. You helped secure the scene
2 with Officer Everatt, correct?

3 A Yes, ma'am.

4 Q Do -- do you recall anyone else being on the scene at
5 the time?

6 A Just that there's two males and I believe maybe a
7 female that said that -- they pointed out where Mr.
8 Henderson was. Because where we were from the parking lot
9 area, we would have never saw Mr. Henderson because of all
10 the cars. They pointed it out. That's how Officer Everatt
11 ended up out with him.

12 Q And you said you did a quick assessment of Mr.
13 Henderson?

14 A Yes. For injuries, the extent of it, to see if there
15 was arterial bleeding, et cetera, so EMS knew if they
16 needed to try to get there even faster or what they needed
17 to -- you know, what -- what -- what equipment they would
18 need to start medical treatment.

19 Q And you stayed on scene, unlike Officer Everatt,
20 correct?

21 A Yes. I helped Crime Scene, whatever they needed me to
22 do, hold this or that.

23 Q All right. And so you were just on scene helping at
24 that time?

25 A Yes, ma'am.

1 MS. EIGENBROT: Beg the Court's indulgence.

2 (Brief pause.)

3 MS. EIGENBROT: Thank you, Your Honor. No farther --
4 no further questions.

5 THE COURT: Any re-direct?

6 MR. SHENKAR: Nothing from the State, Your Honor.

7 THE COURT: Sir, you may step down.

8 THE WITNESS: Thank you, Your Honor.

9 (The witness complies.)

10 THE COURT: As he's stepping down, can the lawyers
11 approach, please?

12 (Bench conference.)

13 THE COURT: All right. Ladies and gentlemen, what we
14 are going to do at this point is I am going to let you all
15 go for the balance of the evening. I'm going to ask that
16 you be back here tomorrow morning at nine o'clock, at nine
17 o'clock. And we will resume the trial of this case as
18 promptly at that time as possible.

19 Do not, do not discuss the case with anyone. Do not
20 do any independent investigation on your own. As I told
21 you from the outset, you are to decide this case based
22 solely, based solely upon the testimony and evidence that's
23 presented in this courtroom and nowhere else.

24 Just for your informational purposes, I usually do not
25 let them call -- let the State or anybody call witnesses

1 after five o'clock, but realizing it was going to be a
2 couple of shorter witnesses, we went ahead and had them
3 call those witnesses. And I typically -- and just for your
4 informational purposes, like to run court usually 9 or 9:30
5 is when we start in the mornings typically. Sometimes I
6 start at 8:30, it just depends. Okay.

7 But typically start somewhere in that time frame. We
8 go for about an hour and a half/two hours between breaks,
9 have a mid-morning break, resume and go until about one
10 o'clock. I like to go til about one o'clock if possible
11 before we break for lunch.

12 It will be about an hour and 15 minutes, maybe an hour
13 and a half. It depends on what -- what I may need to
14 handle outside of your presence, if anything. And then
15 resume and try to go until about 5. Okay. If there's a
16 witness on the stand at 5, I'm not going to cut him off at
17 5. And I'm going to try to have them finish that witness
18 for the day. Okay. Very, very rare will I keep you here
19 beyond six o'clock. Okay.

20 Anything else from the State before I release the jury
21 for the day?

22 MR. SHENKAR: Nothing else, Your Honor.

23 THE COURT: Defense counsel?

24 MS. EIGENBROT: Nothing from the Defense.

25 THE COURT: All right. I'm going to let you go.

1 Please be back in the jury room tomorrow morning at nine
2 o'clock, and we will resume the trial at that time. Okay.
3 You're free to go.

4 (The jury exits at 5:20 p.m.)

5 THE COURT: All right. At side bar, we spoke up here.
6 The State had given me a list of about 35/38 potential
7 witnesses. I wanted to know how many of these they
8 actually foresee themselves calling. If they had intended
9 to call all of them, then we would have started maybe at
10 eight o'clock in the morning. But I've been informed that
11 they are not going to call all of these witnesses.

12 I will say we will go til about 4:30 tomorrow
13 afternoon. All right. I've got something back in Florence
14 that I need to be at by 6. And if I don't get out of here
15 before 5, I might as well stay till 6 with traffic. Okay.

16 So have your witnesses here. Depending on how -- how
17 tomorrow morning goes, I may have the Clerk's Office order
18 lunch for the jury. Which means, in turn, that we as a
19 court staff will take a very short lunch break and resume.
20 Okay. So just be -- be aware of that.

21 Anything before we break?

22 MS. ALL: Yes, Your Honor. We have no more than 12
23 more witnesses.

24 THE COURT: Well, that's fine. I mean, we can -- we
25 did 17 yesterday, I believe, or 16 yesterday in that other

1 case. So we ought to be able to do that just fine.

2 MR. SHENKAR: Thank you, Your Honor.

3 THE COURT: Thank you all. Y'all have a good night.

4 (Off the record at 5:23 p.m.)

5 DAY 2

6 (On the record at 9:19 a.m.)

7 (Pre-marked State's Exhibit Nos. 2 through 49, photos,
8 for identification.)

9 THE COURT: All right. It's my understanding that --
10 I saw the lawyers up here having numerous photographs
11 marked. Madam Court Reporter, can you tell me what has
12 been marked?

13 THE COURT REPORTER: Yes, sir. We marked State's 2
14 through 49.

15 THE COURT: 2 through 49?

16 THE COURT REPORTER: They're all photographs, yes,
17 sir.

18 THE COURT: All right. Are they marked as exhibits or
19 for identification purposes?

20 THE COURT REPORTER: Identification purposes at this
21 point.

22 THE COURT: All right. Defense counsel, have you seen
23 State's 2 through 49?

24 MS. EIGENBROT: Yes, Your Honor, I have.

25 THE COURT: Any objection to those photographs?

1 MS. EIGENBROT: I have no objection to those
2 photographs.

3 THE COURT: All right. Is that no objection, pending
4 the proper foundation being ---

5 MS. EIGENBROT: Yes, Your Honor --

6 THE COURT: --- laid ---

7 MS. EIGENBROT: Yes, Your Honor.

8 THE COURT: --- or are you admitting -- or no
9 objection to the admission of them?

10 MS. EIGENBROT: I have no objection to the admission
11 of them if the proper foundation is laid, Your Honor.

12 THE COURT: All right. I just want to make sure
13 that's clear for everybody involved here. Mr. Shenkar, you
14 clear on that?

15 MR. SHENKAR: Yes, Your Honor. I plan to lay the
16 foundation at the appropriate time.

17 THE COURT: And I have asked and told you all before
18 previously, while those photographs are being marked, it is
19 the Court's intention to complete testimony in this case
20 today. That's what I would like to do. The State has
21 informed me that they have approximately 12 witnesses.

22 MS. ALL: That's correct, Your Honor.

23 THE COURT: And I assume -- or I hope that all of
24 those witnesses are here and ready to testify; is that
25 correct?

1 MR. SHENKAR: Your Honor, I believe most of them are.

2 THE COURT: Okay.

3 MR. SHENKAR: There's one or two that's still on the
4 way.

5 THE COURT: I have asked the Clerk's Office to order
6 lunch for the jury to ensure that we can move through this
7 trial as quickly as possible with regards to the testimony,
8 concluding the testimony today, finalizing jury charge so
9 that we can come back in the morning and do arguments and
10 charge at that time. If you have any requests to charge,
11 you need to get them to my law clerk ASAP. Okay?

12 Anything from the State before I bring the jury out?

13 MR. SHENKAR: Beg the Court's indulgence.

14 (Brief pause.)

15 MS. ALL: Your Honor, I believe it still remains an
16 issue to settle the witness's -- the victim in this case --
17 his record, Travis Brimfield.

18 MS. EIGENBROT: I think, Your Honor -- may it please
19 the Court. Your Honor, Mr. Brimfield does have one
20 conviction. It's a contributing to the delinquency of a
21 minor. It is our contention that we would be allowed to
22 impeach Mr. Brimfield with this conviction.

23 As Your Honor is probably aware, the charge itself
24 does carry over a year. And while it is not a crime of
25 dishonesty, Your Honor, we do believe the probative value

1 exceeds that over the prejudicial effect for Mr. Brimfield.

2 Your Honor, at the time of this whole incident, Mr.
3 Brimfield was on probation for this offense. And Your
4 Honor, we think that is probative of his truthfulness and
5 his credibility when he's giving statements to police. He
6 is aware that he's on probation. He's aware that he is --
7 he is admitting to shooting somebody and having possession
8 of an illegal gun he should not have had possession of.

9 I think that goes towards his credibility as to the
10 statement he gave to police. Your Honor, he is facing --
11 he could potentially be facing criminal charges. And
12 again, I think that goes to his credibility, considering
13 that he could be facing time on a probation violation along
14 with more serious offenses, as he's giving statement to the
15 police.

16 THE COURT: All right. Ms. All.

17 MS. ALL: Yes, Your Honor. We have no -- no issue
18 with Ms. Eigenbrot bringing in the contributing to
19 delinquency of a minor charge, but as is standard, her
20 questioning -- and in fact, the State was going to bring it
21 in. She'd just be limited to whether or not there was a
22 conviction.

23 None of the rest of this, whether or not he was on
24 probation, has anything to do with his character or his
25 truthfulness. That -- that rule is just limited to the

1 conviction itself.

2 THE COURT: I'm going to allow you to bring out, if
3 not brought out on direct, the conviction. But as far as
4 the facts, circumstances, et cetera, I'm not going to allow
5 you to go there. Okay.

6 MS. ALL: We would ask that she not be allowed to ask
7 if he was on probation or any of -- any of those things.

8 THE COURT: I'm -- I'm not going to allow you to go
9 into that probation, et cetera.

10 MS. EIGENBROT: Your Honor, just for clarification, if
11 Mr. Brimfield testifies to that without my prompting ---

12 THE COURT: Yeah, if he opens the door, I mean, that's
13 a different ball of wax, so to speak. But -- but as far as
14 the probation, terms of it, et cetera, not going to allow
15 you to go there.

16 MS. EIGENBROT: Yes, Your Honor.

17 THE COURT: Okay.

18 MS. EIGENBROT: Thank you.

19 MS. ALL: Your Honor, we would also ask that they
20 refrain from asking Mr. Brimfield if he was charged in any
21 way as a result of this incident, less it appears that he's
22 testifying in exchange for some kind of cooperation, since
23 he wasn't. It's -- it's fine if they want to question law
24 enforcement or other people that are qualified to
25 understand why he wasn't charged, but as far as questioning

1 Mr. Brimfield, it seems inappropriate.

2 THE COURT: Well, I'm going to -- I'll allow them to
3 ask him whether or not he's got any deal. If he -- or --
4 or if he's testifying in exchange for any favors, I mean,
5 that's -- certainly goes to possible -- I don't know if he
6 is or not, but it certainly goes for -- you know, goes to
7 some kind of possible favoritism to him as to why he may
8 come in here and testify.

9 I think that's certainly within the purview of the
10 Defense counsel in cross-examining. Now, there may not be
11 anything, in fact, there, but I think that's fair game.

12 MS. ALL: Thank you, Your Honor.

13 THE COURT: All right. All right. Anything else?

14 MS. EIGENBROT: Not from the Defense, Your Honor.

15 MR. SHENKAR: Nothing from the State, Your Honor.

16 THE COURT: Bring me the jury, please, ma'am.

17 THE BAILIFF: Yes, sir.

18 (Bench conference.)

19 (The jury enters the courtroom at 9:27 a.m.)

20 THE BAILIFF: The jury panel is present, Your Honor.

21 THE COURT: Very well. Do you -- do you need to set
22 that up now, Mr. Shenkar?

23 MR. SHENKAR: No. We'll set it up in a little bit.

24 THE COURT: Okay. All right. (To the jury) Good
25 morning, ladies and gentlemen. I hope you all had a nice

DIRECT EXAMINATION BY MR. SHENKAR - GINGER NUNNERY 157

1 restful evening yesterday -- or last night and are prepared
2 to go forward and move forward as we continue the trial of
3 this case this morning.

4 At this time I -- and I apologize for you all being
5 back there for approximately 30 minutes before I got you
6 out here, but we were out here having to streamline some
7 issues. I appreciate your patience. At this time, I'm
8 going to recognize the State.

9 If the State would call it's next witness, please.

10 MR. SHENKAR: The State calls Ginger Nunnery.

11 GINGER NUNNERY, after having been first
12 duly sworn, testifies as follows:

13 COURT CLERK: Thank you. Have a seat in the witness
14 stand, please. State your name for the record.

15 THE WITNESS: Ginger Nunnery.

16 THE COURT REPORTER: Spell your last name, please.

17 THE WITNESS: N-u-n-n-e-r-y.

18 DIRECT EXAMINATION BY MR. SHENKAR:

19 Q Good morning, Ms. Nunnery.

20 A Good morning.

21 Q Would you please tell the jury where you currently
22 work and what your duties entail.

23 A I'm a paramedic with Richland County EMS.

24 Q And what exactly it is that you do as a paramedic?

25 A Take care of sick people.

1 Q And do you respond to scenes?

2 A Yes.

3 Q And what do you do in your initial treatment, what is
4 it that you're supposed to do when you arrive on scenes?

5 A Assess the scene, make sure it's safe initially before
6 we go in, and then assess the patient and go from there.

7 Q And were you employed -- where did you get your
8 certification in EMS?

9 A Midlands EMS.

10 Q And how long ago was that?

11 A 2010.

12 Q And you've been continuously working ---

13 A Yes.

14 Q --- as EMS? And do you have any other classes that
15 you've been taking other than that certification?

16 A We have continuous education every month.

17 Q And you take that every year?

18 A It's every month actually.

19 Q Every month.

20 A Uh-huh.

21 Q And were you employed as EMS on the night of December
22 18 of 2013?

23 A Yes.

24 Q And what can you tell us about that night?

25 A About the call?

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1 Q From when the call came in.

2 A Okay. We received the call at 6:35, 18:35 on the
3 report. Dispatch was at 18:36, and we went en route right
4 away. We were already in the truck. So we arrived at the
5 scene at 18:47.

6 Q That was 11 minutes after the call came in?

7 A 10 to 11 minutes, yes.

8 Q Okay.

9 A Yes.

10 Q And where -- where did you go to?

11 A We went to the scene, and it was on -- in the front
12 lawn of an apartment complex.

13 Q Okay. When you got to there, what did you see?

14 A A patient was lying -- well, other than the law
15 enforcement was already there, a patient was lying on the
16 ground.

17 Q And do you remember how the patient was positioned?

18 A He was lying on his stomach.

19 Q And what were you responding as -- the scene for?

20 A Gunshot wound.

21 Q Gunshot wound?

22 A Uh-huh.

23 Q And what did you do -- who was with you at the time?

24 A I had my partner and my lieutenant was with me.

25 Q And y'all were riding in the same vehicle or it was

1 different vehicle?

2 A No. My lieutenant responded separately and my partner
3 and I were together.

4 Q And what did you do as soon as you got to the scene?

5 A Assessed the patient. He was talking, so we were able
6 to talk to him. We removed his clothing, assessed his
7 injuries, and continued his care from there.

8 Q And when you say you "removed his clothing," who
9 removed what; do you remember?

10 A I believe my partner that was riding on the truck with
11 me removed his pants, and my lieutenant and I removed his
12 sweatshirt and T-shirt that he had on.

13 Q And do you remember what color or what exactly is the
14 clothing that he was wearing?

15 A He was wearing khaki pants and a red sweatshirt and a
16 white T-shirt.

17 Q Okay. And what did you do then?

18 A We removed his clothing and I dressed his wounds
19 appropriately with dressings. Then we rolled him over onto
20 a long spine board to secure him on a backboard.

21 Q So -- say you rolled him over, so you treated the
22 wounds first and then you rolled him over?

23 A Yes.

24 Q And what did you do after you rolled him over?

25 A We rolled him over onto the long spine board, pulled

DIRECT EXAMINATION BY MR. SHENKAR - GINGER NUNNERY 161

1 the rest of his clothing off, and then we put it to the
2 side and put -- secured him to a long spine board.

3 Q Okay. And how did you do it with -- with the patient
4 at that time?

5 A Just rolled him over onto his back, onto the long
6 spine board, and loaded him onto our stretcher.

7 Q And did you -- take him to where?

8 A Richland, I do believe. Richland.

9 Q And did you notice anything around the Defendant or
10 underneath the Defendant?

11 A When we rolled him over, there was some electronic
12 equipment underneath him. Unknown as to what it was, but
13 we placed it to the side, along with the sweatshirt and T-
14 shirt.

15 Q And they were underneath his --

16 A Underneath him. Uh-huh.

17 Q And you saw that when you rolled him over?

18 A Right.

19 Q Did any of you touch the inside of the pockets of any
20 of the sweatshirt or the pants?

21 A No.

22 Q And do you see that patient in the courtroom today?

23 A I'm really not sure.

24 Q You're not going to be able to identify him ---

25 A I -- I -- probably not.

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1 Q That's fine.

2 MR. SHENKAR: Beg the Court's indulgence.

3 (Brief pause.)

4 Q And the clothes that were removed from him, those --
5 those were left on the scene, yeah?

6 A Yes.

7 Q And noone else that you know, you or your partner,
8 touched those clothes after they were removed?

9 A No.

10 MR. SHENKAR: I have no further questions. Thank you.
11 Please answer any questions the Defense may have.

12 THE COURT: Cross-examination.

13 MS. EIGENBROT: Thank you, Your Honor. May it please
14 the Court.

15 CROSS-EXAMINATION BY MS. EIGENBROT:

16 Q Good morning, Ms. Nunnery.

17 A Good morning.

18 Q Now, when you arrived, where was Mr. Henderson's body
19 located?

20 A As opposed to what exactly?

21 Q Where -- what was near it? What was near his body?
22 Like, was there a dumpster?

23 A Yeah, there was -- there was something. We had to
24 walk down a sidewalk and there was something to the right.
25 I don't remember what it was, to be honest with you, and

CROSS-EXAMINATION BY MS. EIGENBROT - GINGER NUNNERY 163

1 there was a hill, a mound.

2 Q And you would describe that location as kind of
3 secluded, right? Like there was a hill, there was woods on
4 the other side of it?

5 A Yeah. And the apartment building's right behind him.
6 Pretty close.

7 Q Did you notice any street lamps behind the dumpster or
8 around where his body was located?

9 A There was a few, but I wouldn't be able to tell you
10 how many.

11 Q Do you recall if they were on or not?

12 A No.

13 Q And can you describe some of Mr. Henderson's injuries
14 when you arrived?

15 A He had some open wounds to his back. And then when we
16 rolled him over, there were some on his abdomen area.

17 Q Do you remember approximately how many there were?

18 A According to my report, I've got three on the back and
19 three on the front. I believe so.

20 Q To your recollection, there was three gunshot wounds
21 -- or wounds?

22 A There was wounds, yeah. I don't know whether they're
23 exit or entrance.

24 Q I understand.

25 MS. EIGENBROT: Beg the Court's indulgence, Your

1 Honor.

2 (Brief pause.)

3 MS. EIGENBROT: Nothing further. Thank you, Ms.
4 Nunnery.

5 THE COURT: Re-direct?

6 MR. SHENKAR: Nothing, Your Honor. May the victim --
7 the witness be excused?

8 THE COURT: Ma'am, you may step down. Any objection
9 to her being excused?

10 MS. EIGENBROT: No, Your Honor.

11 THE COURT: You're free to go. Thank you for being
12 here. Have a nice day.

13 THE WITNESS: Thank you.

14 (The witness exits the stand.)

15 MS. ALL: The State calls Travis Brimfield.

16 TRAVIS BRIMFIELD, after having been
17 first duly sworn, testifies as follows:

18 COURT CLERK: Thank you. Have a seat in the witness
19 stand, please.

20 THE COURT REPORTER: And spell your last name for me,
21 please.

22 THE WITNESS: B-r-i-m-f-i-e-l-d.

23 COURT CLERK: State your name for the record.

24 THE WITNESS: Ma'am?

25 COURT CLERK: Will you state your name for the record.

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1 THE WITNESS: My name Travis Brimfield.

2 COURT CLERK: Thank you.

3 DIRECT EXAMINATION BY MS. ALL:

4 Q Good morning, Mr. Brimfield.

5 A Good morning.

6 Q Can you please introduce yourself to the jury, and
7 tell us what you do now and where you lived in December of
8 2013?

9 A You want me to stand up or stay down?

10 Q You just stay seated.

11 A All right.

12 Q Just direct your -- make sure they can hear you and
13 she can hear you.

14 A All right. Travis Brimfield. I work at Holiday Inn
15 Express, and I a kitchen manager in housekeeping. And I
16 live in , Gaston, South Carolina.

17 Q Where did you live in December of 2013?

18 A 2013, I lived in the same spot.

19 Q Okay. Tell us a little bit about where you're from,
20 where you went to high school, and how old you are.

21 A I went to Airport High School, and I'm 24 years old.

22 Q And did you stay with your cousin in December of 2013?

23 A Yes, ma'am.

24 Q And what was his name?

25 A Costell Johnson.

1 Q And where did Costell stay?

2 A It was -- it was --

3 (The witness collides with the microphone.)

4 THE COURT: Back up just a little.

5 THE COURT: Yeah. Back up just a hair.

6 (The witness complies.)

7 THE COURT: Thank you.

8 A It was - it was -something. I don't know what it
9 is. I don't really know the address because I ain't ever
10 had no mail going there.

11 Q Well, what apartment complex did they stay at?

12 A It was -- never know the name of it, but it was --
13 never know the name of it.

14 Q Okay. Did Costell Johnson's girlfriend live at

15 ---

16 A Ma'am?

17 Q --- ?

18 A Yes, ma'am.

19 Q In the Apartments?

20 A Yes, ma'am.

21 Q I have trouble remembering the name of it myself. Can
22 you go over with us what you were doing on the day of
23 December 18, 2013, maybe in the afternoon.

24 A Well, in the afternoon, I was just running around,
25 getting stuff together because I was fixing to get ready to

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 167

1 go out. So we went to the barber shop, and then we been at
2 the barber shop because my cousin have a barber shop. So
3 we been there all day. Once we left, that's when we went
4 to the house.

5 Q Okay. And when you say "we," who were you with?

6 A Costell Johnson.

7 Q Can you tell the jury a little bit more about your
8 relationship with Mr. Johnson and what's come of Mr.
9 Johnson now?

10 A Well, that's my cousin. He owns C.J. Tree Service. I
11 was working with him back then, and now he deceased.

12 Q Was he your employer?

13 A Yes. Yes, ma'am.

14 Q Okay. And when did he pass away?

15 A I want to say September -- I want to say around
16 September. I know it almost a year, going on a year.

17 Q Okay. Can you describe for the jury what he was like,
18 what he looked like, and -- and what his general demeanor
19 was?

20 A Well, he was a big fellow. He was like 400-something
21 pounds. He was real -- athlete, he played football and --

22 (Brief pause.)

23 Q And who did Costell date?

24 A Her name is April Jenkins.

25 Q Okay. So when you and Costell, it sounds like, went

1 to the barber shop you were saying --

2 A Yes, ma'am.

3 Q -- and y'all were getting ready to go out --

4 A Yes, ma'am.

5 Q -- trying to look good --

6 A Yes, ma'am.

7 Q -- what happened after that?

8 A Left the barber shop, pull up to the house, and then
9 we sat in the car. Then when I got out the car, we heard
10 some noise like clunking in the woods. And then once we
11 got out the car, we went to the house.

12 I took the key out my pocket, tried to open the door.
13 When I opened the door, it wouldn't budge. So I looked at
14 him, he looked at me. He like, "Try it again, Cuz."

15 So I tried again and it wouldn't so it, so he tried
16 it. And then once he tried it, he -- he pushed the door
17 out the way. And then once he got the door open, there was
18 a chair behind the door. And then once the chair behind --
19 got moved from behind the door, first thing you gonna see
20 was a TV on the wall and that was gone. So we walked
21 around the house.

22 So we went to his -- him and his girlfriend room. All
23 this -- all -- everything was just -- just spreaded [sic]
24 out all over the place. The window was up. So we walked -
25 --

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1 Q Let's -- let's stop right there. Hang on. Let me
2 flesh that out with you.

3 A Yes, ma'am.

4 Q What kind of car were you driving that day?

5 A It was a white -- it was a white Intrepid.

6 Q And whose car is that?

7 A It's his.

8 Q Okay. And when you say that y'all "pulled up" -- I'm
9 going to hold up this big map right here.

10 (Using demonstrative aid.)

11 Q I'm going to show you what's been entered into
12 evidence as State's Exhibit 1.

13 A Yes, ma'am.

14 Q So do you recognize this complex?

15 A Yes, ma'am.

16 Q Okay. Where did Ms. Jenkins live?

17 A (Indicating) Right up -- up in -- that's the stair --
18 that's the breezeway go to her house right there.

19 Q Okay. (Indicating) So in this building?

20 A Yes, ma'am.

21 Q Okay. Where did y'all park?

22 A (Indicating) We parked right between up in these two
23 right here.

24 Q And did you notice anything when you drove up? What
25 were y'all thinking when you drove up?

1 A Nothing. Never expected that.

2 Q Well, why were y'all going to Ms. Jenkins's house?

3 A We were going to put on some clothes and get ready to
4 go out.

5 Q And so you kept your clothes at Ms. Jenkins's house?

6 A Yes, ma'am.

7 Q And where did Costell keep his clothes?

8 A Over there.

9 Q Tell us what kind of a house Ms. Jenkins kept.

10 A What you mean?

11 Q Like, what -- did she keep house -- like, how did she
12 keep her ---

13 A Oh ---

14 Q How did she keep her place?

15 A She keep her house -- it was clean and neat. It was
16 clean and neat..

17 Q Okay. When you pulled up, did you notice any other
18 cars? Were you even paying attention?

19 A No, ma'am.

20 Q (Indicating) And can you describe this area back here
21 for the jury and maybe a little bit about how the apartment
22 is laid out?

23 A All right. You talking about like how -- how -- how
24 everything's set up?

25 Q Yeah.

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 171

1 A Well, how everything's set up it's -- it's two trash
2 dumps, and then it's like -- I want to say a little pathway
3 that come -- come around the building go to the back. And
4 then that's it.

5 Q Did y'all use that pathway?

6 A No, ma'am. Never did.

7 Q Who used to use it? Why was it there?

8 A Nobody. I guess the people that just walk through to
9 go to the cut, walk through the cut, but we never used it.

10 Q Okay. So you said earlier that y'all pulled up, and
11 when you got to the door, you used your key?

12 A Yes, ma'am. My key.

13 Q Did you have a key to her apartment?

14 A Yes, ma'am.

15 Q Did Costell also have a key?

16 A Yes, ma'am.

17 Q Okay. And what did you feel when you tried to open
18 the door?

19 A I felt like -- when I tried to open the door, like the
20 door was still locked. So as I kept trying the door, the
21 door wouldn't budge for me. So when he did it, it budged
22 and moved -- and moved the chair out the way. And once the
23 chair move out the way, that's when we seen the chair,
24 like, propped up against the door.

25 Q Okay. And before that, you mentioned that when y'all

1 pulled up, you heard something?

2 A Yes, ma'am.

3 Q What did you think about that noise? What did you
4 think it was? How did you feel about it?

5 A We -- we didn't think nothing about it. Just thought
6 it was like some kind of like an animal or a possum,
7 anything like that, just kind of going cross the woods. So
8 we wasn't thinking anything like that. Like I say, that
9 never happens. So we just thought it was a little animal.

10 Q And what time of day was it when y'all got home?

11 A It was dark.

12 Q Was it nighttime?

13 A Yes, ma'am.

14 Q Okay. So when you said you heard something, did you
15 look over there?

16 A We looked towards that way, but we wasn't expecting
17 nothing. So we just kept moving, we just kept moving.

18 Q When you looked, did you see anything?

19 A No, I ain't see nothing.

20 Q Okay. You described how Costell pushed the door open
21 and that the chair was propped open the door ---

22 A Yes, ma'am.

23 Q Propped up under the door.

24 A Right. Up under the door handle, yes, ma'am.

25 Q And what did you think at that point when you realized

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 173

1 that a chair had been blocking the door?

2 A What I realized at that point was like, okay, like
3 what's really going on. So once we got the door open, like
4 I said, the TV, all that's gone. That's the only thing you
5 gonna see -- first thing you walk in, you going to see the
6 TV gone.

7 Q How big of a TV is that?

8 A It was like, I want to say -- I want to say like -- I
9 want to say between like a 50 to 63 inch.

10 Q Oh, so it's ---

11 A Yeah, it was a big.

12 Q Okay.

13 A Yeah.

14 Q And was it hanging on the wall?

15 A No, it wasn't hanging. It was on a stand, but it was
16 against the wall.

17 Q Okay.

18 A Yes, ma'am.

19 Q Okay. And maybe describe, if you don't mind, to the
20 jury just generally how the apartment is laid out. Is it
21 -- how many bedrooms did it have?

22 A It was a three bedroom.

23 Q Okay. And when you walk in, what room are you in?

24 A Once you walk in, you going to go -- turn to your
25 right to your left.

1 Q And what room would that be?

2 A That's my room.

3 Q Okay. When you enter the front door, what room were
4 you in?

5 A When we in -- when you enter the front door, I was in
6 the living room.

7 Q Okay.

8 A That's -- that's the living room. And then you got
9 the dining room, then you got the kitchen.

10 Q Okay. Was the kitchen open to the living room?

11 A It is in a way, but -- but it's got like a little
12 island, like a little bar.

13 Q Okay.

14 A So you can't just walk straight through. You going to
15 have to -- once you go in my apartment, go inside the door,
16 take a right; then you gonna take a left. Then that's the
17 kitchen and all right there.

18 Q Did you recognize the chair that you saw in the foyer
19 when you got in? Had you seen the chair before?

20 A Yeah. It was -- it was -- it was -- it was our chair
21 to our bar.

22 Q Okay.

23 A Yes, ma'am.

24 Q You said, when you came in, that you noticed that the
25 window was open?

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 175

1 A Yes, ma'am.

2 Q How was the weather that day?

3 A It was kind of cool, cold. I think it was cold. I
4 can't remember. I think it was cold.

5 Q It was December 18th.

6 A Yeah, it was cold.

7 Q So did y'all's heat and air work?

8 A Yes, ma'am.

9 Q Were you inclined -- did anybody open the windows ---

10 A No, ma'am.

11 Q --- use the windows?

12 A No, ma'am.

13 Q Okay. Was it unusual to you the window was open?

14 A No, ma'am. Never -- that window never been open.

15 Q What was that?

16 A Window never been open.

17 Q Okay. You never noticed her opening the window?

18 A No, ma'am.

19 Q And when did you notice that the window was open?

20 A When -- when we entered the house that day.

21 Q Okay. So what was your instinct when you came in and
22 realized that a chair from y'all's house was under the
23 door? You said that you went around and looked around the
24 apartment. Why was that?

25 A Because when I -- we was missing stuff. Everything

1 was gone. It was a breaking and entering, so that's when I
2 realized that everything was gone.

3 Q In what condition was the house?

4 A Well, they -- when -- when we left the house, it was
5 in good condition, everything was in place. But when we
6 came back to the house, everything just was gone and
7 spattered out.

8 Q When had you left the house? When had you last been
9 in the house?

10 A Last been in the house about two days ago.

11 Q Okay. And Ms. Jenkins, had she been at work all day?

12 A Yes, ma'am.

13 Q Okay. When you say everything was scattered about,
14 are we talking about just one room or lots of rooms or what
15 did it look like?

16 A Her room -- her room was just stuff -- had stuff just
17 everywhere. All the dresser drawers, all that was all on -
18 - on the floor and the bed. All that was just out of
19 place.

20 Q Okay.

21 A Closet was wide open.

22 Q Okay. So what did you do next upon entering the
23 apartment and realizing, as you said, there had been a
24 breaking and entering? What did you do?

25 A I went in there, I grabbed the gun, then I asked him -

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 177

1 - I had -- I had cocked it. So I went out the door and
2 then I seen him.

3 And then when I went out the door and I seen him, I
4 asked him -- I asked him three times -- what made me ask
5 him because I seen he had a hood on and some gloves.

6 Q Well, hang on. Hang on. You said you had a gun?

7 A Yes, ma'am.

8 Q Was that your gun?

9 A Yes, ma'am.

10 Q Did you keep stuff at the apartment?

11 A Yes, ma'am.

12 Q And why did you have a gun at the apartment?

13 A I just had it because I be going hunting and just
14 bought it just to buy it.

15 Q Okay. And once you had the gun, what did Costell do?

16 A Well, when I had the gun, he came out the door behind
17 me. And then that's when I seen the guy and I approached
18 him. I asked him three times had he been -- I was cursing,
19 if y'all don't mind me cursing, I said, "Have you been in
20 my shit?" He didn't say nothing. So I asked him again, I
21 said, "Have you been in my shit?" He didn't say nothing.
22 So the third time, when I asked him, that's when he start
23 like reaching -- walking back slowly, reaching with the
24 hand with the sock. So that's when I had started shooting.
25 Q Well, I'm going to show you State's Exhibit 1 again.

1 Can you show us where you walked out -- when you say you
2 walked out of the apartment --

3 A Yes, ma'am.

4 Q -- where did you come out?

5 A (Indicating) Came out through the breezeway -- came
6 out through the breezeway right there, and then when I seen
7 him --

8 Q Where was he standing?

9 A He was over there by the -- between the dumpster and
10 the green box.

11 Q Okay. And why was your instinct to go outside?

12 A Because -- my instinct was to go out the door because
13 I feel like -- like we been robbed, and so I was going to
14 see like what -- what's going on and --

15 Q Okay. Were you able to see the person's face?

16 A No, ma'am.

17 Q Why couldn't you see his face?

18 A He had -- it was dark time -- well, it was nighttime
19 and he had a hoodie on.

20 Q Was it too dark for you to discern his facial
21 features?

22 A Yes, ma'am.

23 Q Okay. You described briefly for us what happened and
24 what you thought was going on. Can you flesh that out a
25 little bit and just slow it down for us? When you saw him,

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 179

1 what did you see him doing; and then what did you say; and
2 then why did you react the way that you did?

3 A When I walked out the door, walked through the
4 breezeway and I seen him, I -- I stopped him. What made me
5 -- just like I say, what made me stop him because I seen
6 him with socks on his hands, gloves. So I stopped him and
7 confronted him and ask him, "Have you been in my shit?"
8 And then that's when I asked him three times and ---

9 Q What did he say when you asked him the first time?

10 A The first time he didn't say nothing. The second time
11 he didn't say nothing. The third time ---

12 Q Was he holding anything or did he make any gestures or
13 ---

14 A Well, he had anything -- well, the first two times
15 when he asked me -- when I was telling him, "Have you been
16 in my shit," he wasn't moving, he didn't say nothing. But
17 the third time, he was like, yeah; and started, like, kind
18 of like moving back real slow and reaching.

19 So that's when -- when it came in my head I was
20 terrified and I was scared. So I just started shooting
21 because either I was going to get shot or he was going to
22 get shot.

23 Q And when you say "reaching," can you stand up and show
24 the jury what -- what he was doing?

25 A Yes, ma'am. (Indicates) Like he was stepping back and

1 going in his pants with the hand with the sock. So once
2 that happened, that's when I started shooting.

3 Q Okay. You said the hand with the sock. Did he ---

4 A Yes, ma'am.

5 Q --- only have a sock on one hand?

6 A On one hand, yes, ma'am.

7 Q Okay.

8 A From what I seen, yes, ma'am.

9 Q What color was the sock?

10 A White.

11 Q Okay. Is that why you were able to see the sock?

12 A Yes, ma'am.

13 Q Okay. And I know you said you hunt, but do you
14 consider yourself a very good shot?

15 A No, ma'am.

16 Q Okay. So when you started shooting, describe what
17 happened.

18 A When I started shooting, how -- how -- how I shot, you
19 know, I aimed down, then it came up, and then that's when
20 it hit him.

21 Q Okay.

22 (Marked State's Exhibit No. 50, box containing a gun,
23 for identification.)

24 Q Okay, Mr. Brimfield, I'm going to show you what's been
25 pre-marked State's Exhibit 50. Do you recognize this item?

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 181

1 A Yes, ma'am.

2 Q Okay. Have you seen it before?

3 A Yes, ma'am.

4 Q Okay. What is it?

5 A A SK.

6 Q And who does it belong to?

7 A Me.

8 Q And when was the last time you saw it?

9 A When the -- when the incident happened.

10 Q Okay. Is this the gun you used on December 18th?

11 A Yes, ma'am.

12 MS. ALL: The State moves State's Exhibit 50 into
13 evidence, Your Honor.

14 THE COURT: Any objection?

15 MS. EIGENBROT: No objection.

16 THE COURT: Without objection, so admitted.

17 (State's Exhibit No. 50 admitted into evidence.)

18 THE COURT REPORTER: An "SK"?

19 THE WITNESS: SKS.

20 THE COURT REPORTER: SKS.

21 Q So what happened -- did you -- what did you see when
22 you were shooting the gun?

23 A When I -- when I was shooting the gun, I just was --
24 blanked out, and then I realized I shot a man, that's when
25 I jumped in the car -- that's when I jumped in the car and

1 then he got out. And then once he got out, he told me,
2 "Go, go, go." So I left ---

3 Q When you say "he" ...

4 A Costell Johnson.

5 Q Okay. And let's reiterate one more time, when you
6 said to the Defendant, "Have you been up in my shit," what
7 did he say?

8 MS. EIGENBROT: Objection, asked and answered.

9 THE COURT: Overruled. Go ahead.

10 THE WITNESS: When I asked him, "Have you been in my
11 shit," the first two times, he didn't say anything. The
12 third time, he said "yeah" and as he's saying yeah, he --
13 he step back and reaching.

14 Q Okay. And then you mentioned that you went to the
15 car. And what was Costell doing this whole time?

16 A He was standing right behind me.

17 Q Okay. And so why did you go to the car?

18 A Because I was scared and I ain't -- I was nervous. I
19 ain't know what to do, so I jumped in the car and left.

20 Q Okay. Why were you scared?

21 A I was terrified and I was scared that -- that I was
22 gonna get in trouble and -- and just --

23 Q When you chose to fire the gun, why were you scared at
24 that time based on the Defendant's actions?

25 A I felt like I was going to be -- be the one that got

1 shot.

2 Q And when you fled from the scene, why were you scared
3 at that time?

4 A Because I shot the boy ---

5 Q Okay.

6 A --- and I was scared and nervous.

7 Q Were you convicted of contributing to the delinquency
8 of a minor in 2012?

9 A Yes, ma'am.

10 Q Might that have been why you were scared?

11 A I don't feel like I can answer that question.

12 Q That's okay. Have you been in trouble with the law
13 any other time before?

14 A No, ma'am.

15 Q And when you got in the car, you mentioned that -- you
16 were saying that "he got out" and "he said," can you use --
17 use the names and tell us what that conversation was and
18 where you were in the car.

19 A Okay. Well, when the -- when -- when that happened,
20 we jumped in the car, Costell Johnson hops out the car; and
21 then once he got out the car he told me to "go, go, go."
22 So once he told me to go, I left; and then once I left, I
23 went to his -- his other house.

24 And then once I went to his other house, that's when
25 -- I don't even talk to anybody. I didn't want to talk to

1 nobody, won't call nobody. And then -- and then once I
2 came to realize that -- that -- how can I put it? How can
3 I put it? When I came back to reality and -- and realize
4 that I shot the boy, that's when every -- that's when I
5 feel like I had needed to talk to somebody; and that's when
6 y'all called and asked me can I bring the gun. And so
7 that's when I came up there and brought the gun.

8 Q Okay. And do you remember how many days/day later
9 that was?

10 A I want to say three, between two or three.

11 Q Okay. Why do you think Costell told you to just go
12 ahead without him?

13 A I don't know.

14 Q And when you say you went to his other house --

15 A Yes, ma'am.

16 Q -- that was Costell Johnson's other house?

17 A Yes, ma'am.

18 Q And where is that?

19 A That -- that was -- that's the address -- I want to
20 say it -- it's right -- it's right up

21 THE COURT REPORTER: I'm sorry?

22 THE WITNESS: Right up

23 Q And Costell is your kin, right?

24 A Yes, ma'am.

25 Q So that's your family's house.

DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 185

1 A Yes, ma'am.

2 Q Is that where you feel safe?

3 A That's -- that's where I feel safe? Yes, ma'am.

4 Q And so what did you do while you were at that other
5 address?

6 A I ain't do nothing. I had left, and then I went to my
7 girlfriend house for three days there. I was -- I ain't
8 wanting to talk to nobody.

9 Q I just need to go back one more time to -- to the
10 scene. And I'm -- I'm sorry to jump on you, but do you
11 remember there being -- I show you State's Exhibit 1 -- a
12 big electrical box on the slope right here?

13 A Yeah. The green box, yes, ma'am.

14 Q About how high was it?

15 A I say maybe about -- how can I put it? I want to say
16 about the size of this (indicates) right -- right up in
17 here.

18 Q Okay.

19 A I don't -- don't really know how high it is, but it's
20 not too high.

21 Q And where is it located on this big grassy slope?

22 A (Indicates) Right in the -- in the middle, in the
23 middle right up in here.

24 Q Can you describe where you were in relationship to the
25 green box?

1 A I was on the -- I was on this side of the box, and he
2 was on the other side of the box.

3 Q Okay. So that looks like a pretty long distance,
4 right?

5 A Yes, ma'am.

6 Q Were you even looking at where you were shooting?

7 A Yes, ma'am.

8 Q Okay. Okay. So you said the police called you and
9 asked you to turn the gun in.

10 A Yes, ma'am.

11 Q And what was your reaction at that time?

12 A Like, my reaction at that time, I was scared. So they
13 just like, "Bring the gun in. You're not in trouble or
14 anything. We just wanted to ask you questions, this and
15 that."

16 So I went up -- went to the investigator room, turned
17 myself in -- turned the gun in, and then I wasn't -- that
18 was it.

19 Q And what did you tell the police at that time?

20 A I told the police at the time I was scared, I was
21 terrified. I felt like I was gonna get shot.

22 Q We talked about your conviction earlier. Does that
23 affect you, your honesty, in any way?

24 A No, ma'am.

25 Q Does that have anything to do with what you're telling

1 the jury today?

2 A No, ma'am.

3 Q In what county did that conviction occur?

4 A I don't know how y'all did this. I think it was City
5 of Columbia. That's where -- that's where it was at, the
6 City of Columbia.

7 Q Okay. I'm going to hand you something to refresh your
8 recollection.

9 (Ms. All hands a document to the witness.)

10 Q Mr. Brimfield, did I prosecute for -- prosecute you
11 for contributing to the delinquency of a minor?

12 A Yes, ma'am.

13 Q Did I personally prosecute ---

14 A Oh, no, no, no, no. No, ma'am.

15 Q Okay. Was that old? Had you pled and everything was
16 resolved before this happened?

17 A Yes, ma'am.

18 Q So is your testimony here in exchange for any kind of
19 deal or any negotiations?

20 A Say it again.

21 Q Is your testimony today, are you here in exchange for
22 anything? Is there anything in it for you?

23 A I ain't -- what you mean by that?

24 Q Do you have any criminal charges hanging over your
25 head ---

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 188

1 A Oh, no.

2 Q --- that you're testifying today ---

3 A No, ma'am, no other charges. No, ma'am.

4 Q Okay. So you're saying "no."

5 A No.

6 Q So why are you here?

7 A Because of this -- this incident right here.

8 Q So you're under no pressure or any obligation.

9 A No, ma'am.

10 Q Okay. Did you know the Defendant when you saw him?

11 A No, ma'am.

12 Q Could you recognize him today?

13 A No, ma'am.

14 Q Okay.

15 MS. ALL: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 MS. ALL: Mr. Brimfield, if you could answer any
18 questions the Defense has for you, okay?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Cross-examination.

21 MS. EIGENBROT: Thank you, Your Honor. May it please
22 the Court.

23 CROSS-EXAMINATION BY MS. EIGENBROT:

24 Q Hey, Mr. Brimfield.

25 A Hey, how you doing?

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 189

1 Q How are you doing?

2 A I'm all right.

3 Q All right. So I just want to take you back through
4 some of your testimony.

5 A Yes, ma'am.

6 Q So you testified that you'd gone to the barber shop.

7 A Yes, ma'am.

8 Q Where is that barber shop located?

9 A Right there on Beltline.

10 Q On Beltline?

11 A Yes, ma'am.

12 Q And you say you spent most of the day up there?

13 A Yes, ma'am.

14 Q Do you remember what time you actually left the barber
15 shop?

16 A I don't remember. It was daytime.

17 Q About how far away is the barber shop from Mr. Johnson
18 and Ms. Jenkins's apartment?

19 A I'd say about not even 5/10 minutes.

20 Q And you said that when you got there, you heard some
21 noises, correct?

22 A Correct.

23 Q Okay. And I want -- let's make something clear, when
24 you say stay there --

25 A Yes, ma'am.

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 190

1 Q -- you don't stay there regularly, right?

2 A No, ma'am.

3 Q It's just a couple nights here and there ---

4 A Yeah. Yes, ma'am.

5 Q --- every now and then, correct?

6 A Yes, ma'am. When I -- when I have another girl that I
7 can't take to my house, so, yeah.

8 Q How often do you think you stayed there, let's say,
9 per week?

10 A Yeah, per week, yes, ma'am.

11 Q Like once a week, maybe?

12 A I'd say more than that. It be about -- I go every
13 three days and I would stay for bout a week.

14 Q And so you -- all right. Let's go back. So you said
15 when you got there, you heard some noises in the woods,
16 right?

17 A Correct.

18 Q But you didn't go check it out at that point.

19 A Correct.

20 Q And you tried to get in the apartment --

21 A Yes, ma'am.

22 Q -- with your key.

23 A Yes, ma'am.

24 Q And you can't because there's a chair in front of the
25 door.

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 191

1 A You're right.

2 Q Now, at this point in time, you're probably -- you're
3 probably thinking something's wrong, right?

4 A Right.

5 Q I mean, clearly, you didn't leave a chair in front of
6 the door --

7 A No.

8 Q -- right?

9 A Right.

10 Q But you guys -- and you had cell phones, right?

11 A Yes.

12 Q You and Mr. Johnson?

13 A Right.

14 Q And you didn't take time to call the police at that
15 point, right?

16 A Right.

17 Q And then once you got in the house, you realize that
18 the big TV's gone?

19 A The TV, that's the first thing I see, when you open
20 the door, the TV, that's gone.

21 Q And you said it's a really big TV?

22 A Yes, ma'am.

23 Q Were you there when Ms. Jenkins or Mr. Johnson
24 purchased that TV?

25 A No, ma'am.

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 192

1 Q Did you help install it?

2 A No, ma'am.

3 Q Would you say one person could carry that TV?

4 MS. ALL: Objection, Your Honor, speculation.

5 THE COURT: Overruled. I'll allow you to answer it if
6 you know the answer.

7 THE WITNESS: Ask me again.

8 Q Would more than one person need to carry that TV?

9 A Depends on how -- how big it is and -- maybe you can,
10 but most likely you can't. It's really heavy.

11 Q All right. And then -- so once you realize the TV's
12 gone, you still don't call the police, right?

13 A Yes, ma'am.

14 Q So you continue into the apartment.

15 A Yes, ma'am.

16 Q And you kind of look through the apartment.

17 A Yes, ma'am.

18 Q And you realize something's wrong in the bedroom.

19 A Yes, ma'am.

20 Q Now, this is not your bedroom, right?

21 A Right.

22 Q It's Ms. Jenkins's bedroom.

23 A Right.

24 Q You don't go in there all the time, right?

25 A No. I don't go in there at all.

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 193

1 Q So she could -- without -- and you can say "yes" or
2 "no," depending whether you know or not.

3 A Uh-huh.

4 Q But you don't know for sure whether she opens her
5 window or not ---

6 A Right.

7 Q --- right?

8 A Right.

9 Q And granted, it's December, correct?

10 A Correct.

11 Q So it's cold.

12 A It's cold.

13 Q But you have no idea if she opened her window or not?

14 A Right.

15 Q But the room is in disarray --

16 A Yes, ma'am.

17 Q -- right? And you -- I think you said on direct, it
18 had been about two days since you'd been in the apartment
19 at that time.

20 A Yes, ma'am.

21 Q And so you said the window is open when you get there,
22 right?

23 A Yes, ma'am.

24 Q And you immediately go to your -- the room that you
25 used, correct?

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 194

1 A Yes, ma'am.

2 Q And retrieve your gun ---

3 A After -- after we walked around and seen everything
4 was gone, that's when I went to my room and got it. Yes,
5 ma'am.

6 Q So you still didn't call police, right?

7 A No, ma'am. No, ma'am.

8 Q You grabbed the gun instead.

9 A Yes, ma'am.

10 Q And this is a pretty big gun.

11 A Yes, ma'am.

12 Q It's -- it's an assault rifle, right?

13 A Yes, ma'am.

14 Q Okay. And -- and you said you have it for hunting?

15 A Yes, ma'am.

16 Q Do you go hunting often?

17 A Every -- every -- every -- every blue moon. Not
18 often, but every blue moon, yes, ma'am.

19 Q And you use an assault rifle to do this hunting.

20 A Yes, ma'am.

21 Q And you got this gun off the street, right?

22 A Yes, ma'am.

23 Q And you told police.

24 A Yes, ma'am.

25 Q You didn't go to a gun show, right?

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 195

1 A No, ma'am.

2 Q And again, you grabbed the assault rifle at this point
3 and you still did not call the police.

4 A Correct.

5 Q You go outside and do your own investigation.

6 A Correct.

7 Q And that's when you see an individual, right?

8 A Right.

9 Q And you see him kind of on that path by the house,
10 right?

11 A Yes, ma'am.

12 Q By the apartment. And you don't know who this person
13 is.

14 A (No audible response.)

15 Q Now, you mentioned you see something on his hand.

16 A Yes, ma'am.

17 Q You think it's a sock, right?

18 A Yes, ma'am.

19 Q But at some point, you told police it may even have
20 been a glove.

21 A Yes, ma'am.

22 Q And this is December, right?

23 A Right.

24 Q Okay. And he had a hoodie on.

25 A Yes, ma'am.

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 196

1 Q And at this point, you are pointing the gun at him,
2 right?

3 A Yes, ma'am.

4 Q And you are questioning him.

5 A Yes, ma'am.

6 Q And you still don't call the police.

7 A No, ma'am.

8 Q And now you testified that you think he's reaching for
9 something, right?

10 A Yes, ma'am.

11 Q But you've also testified that you really can't see,
12 correct?

13 A Yes, ma'am.

14 Q And so you just kind of opened fire.

15 A No. You could see the white sock, like, moving in --
16 in a -- like, in the -- the way that he was going like he
17 was reaching.

18 Q Uh-huh.

19 A So that's when I started firing.

20 Q But you -- but, I mean, you -- you fire a lot,
21 correct?

22 A Yes, ma'am.

23 Q It was more than once.

24 A Yes, ma'am.

25 Q And you immediately just leave the scene.

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 197

1 A Yes, ma'am.

2 Q And I know you testified that it was because you were
3 scared, right?

4 A Right.

5 Q But at that time, you still don't call the police.

6 A Right.

7 Q And as a matter -- you don't ever call the police,
8 right?

9 A Right.

10 Q They call you.

11 A Yes, ma'am.

12 Q And you don't go speak with the police until they
13 called you, right?

14 A Right.

15 Q And you gave a statement to the police.

16 A Yes, ma'am.

17 Q You had an attorney present.

18 A Yes, ma'am.

19 Q So you did it voluntarily, right?

20 A Right.

21 Q And you have an attorney there to advise you, correct?

22 A Correct.

23 Q Now, you -- you claim you've never seen my client
24 before, right?

25 A Never.

CROSS-EXAMINATION BY MS. EIGENBROT - TRAVIS BRIMFIELD 198

1 Q Never any -- ever had any involvement.

2 A No, ma'am. Never seen him.

3 Q Did you leave cash in the apartment?

4 A Cash? No, ma'am.

5 Q But you kept a gun there.

6 A Yes, ma'am.

7 Q And you kept clothes there?

8 A Yes, ma'am.

9 Q Now, you also testified that you fled immediately,
10 right?

11 A What's "fled"?

12 Q You got in a car and drove off.

13 A Oh. Yes, ma'am.

14 Q Okay. Mr. Johnson stayed behind.

15 A Yes, ma'am.

16 Q And to your knowledge, he went back in the apartment.

17 A Yes, ma'am.

18 Q Okay. And you -- you have no idea how long he was
19 there.

20 A No, ma'am.

21 Q And you don't know what he did afterwards ---

22 A No, ma'am.

23 Q --- right?

24 A (No audible response.)

25 MS. EIGENBROT: Beg the Court's indulgence.

RE-DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 199

1 (Brief pause.)

2 Q So, Mr. Brimfield, let me ask you this: Mr. Henderson
3 wasn't there to sell you guys some drugs that day?

4 MS. ALL: Objection, Your Honor. The Defense attorney
5 is trying to tell a story through her testimony.

6 THE COURT: Hold on. Hold on. State the grounds for
7 your objection.

8 MS. ALL: Relevance.

9 THE COURT: Re-state your question.

10 MS. EIGENBROT: Your Honor, I asked the defend -- or
11 the witness if my client was there to sell him drugs that
12 day.

13 THE COURT: Overruled. You can answer the question if
14 you can answer it.

15 A No. No, ma'am.

16 Q You have never had any contact with anybody else about
17 buying marijuana?

18 A No, ma'am.

19 MS. EIGENBROT: Thank you, Your Honor. I have no
20 further questions.

21 THE COURT: Any re-direct?

22 MS. ALL: Yes, Your Honor, just briefly.

23 RE-DIRECT EXAMINATION BY MS. ALL:

24 Q Mr. Brimfield, where are you from again?

25 A I'm from South Carolina.

1 THE COURT REPORTER: I'm sorry.

2 Q What city are you from?

3 THE COURT REPORTER: Excuse me.

4 A South Carolina. Gadsden, I'm from Gadsden.

5 Q You're home's in Gadsden?

6 A Yes, ma'am.

7 Q How much time passed between when you came home and
8 then you saw the Defendant?

9 A It been -- like I say, I left, like, around evening
10 time, it was still daytime. And by the time I got back, it
11 was dark.

12 Q Right. So when you went in the apartment and realized
13 what was happening and this all played out, how long did
14 all of that take?

15 A I want to say it happened very -- it happened real
16 quick. It happened like -- out -- out of nowhere.

17 Q Did you have a time to sit down and make a list of the
18 pros and cons of the next decision ---

19 A I ain't had time to do nothing.

20 Q --- you were about to make?

21 A All that I had time to do was walk around the house,
22 grab the gun, and walk out the door; see him, look like he
23 fixing to go back and I stop and ask him three times, "Have
24 you been ..." And then, that's when everything just took
25 place.

RE-DIRECT EXAMINATION BY MS. ALL - TRAVIS BRIMFIELD 201

1 Q And she also talked to you about that you couldn't
2 tell if it was a glove or a sock.

3 A Right.

4 Q Why were you not able to discern whether it was a
5 glove or a sock?

6 A Because it was dark, and the distance that he was from
7 me; because down -- down by the hill, it's kind of like
8 it's a dark -- darkest area. So all I seen was something
9 white. So that's why I said either -- either a sock or a
10 glove. It was -- all I know there was something on his
11 hands because I ---

12 Q Was he wearing anything else that was white?

13 A No, ma'am.

14 Q So it was so dark that you couldn't even tell if it
15 was a sock a glove.

16 A It wasn't so dark, but it was dark, but I know it was
17 either -- it -- it was long. It was something long and he
18 had a hoodie on over his head.

19 Q Okay. And isn't it true that you never actually spoke
20 to the police yourself when you decided to turn yourself
21 in?

22 A Never called the police until they called me, ask me
23 can I come bring the gun in, and that's when I went to turn
24 the gun in.

25 Q And you communicated with the police through your

1 attorney.

2 A Yes, ma'am.

3 Q Okay. And was Mr. Johnson involved?

4 A Yes, ma'am.

5 Q And how was Mr. Johnson involved?

6 A He was -- he had got -- the same day that I had to go
7 turn the gun in, he had come out there with me.

8 Q Okay.

9 MS. ALL: No further questions, Your Honor.

10 THE COURT: Any re-cross?

11 MS. EIGENBROT: I have no further questions, Your
12 Honor.

13 THE COURT: Sir, you may step down. Thank you.

14 THE WITNESS: Thank you, sir.

15 (The witness exits the stand.)

16 THE COURT: Call your next witness.

17 MS. ALL: Your Honor, the State calls Lieutenant Tracy
18 Thrower.

19 (Brief pause.)

20 MS. SHENKAR: Your Honor, the State will call April
21 Jenkins. Agent Thrower is not here yet.

22 APRIL JENKINS, after having been first
23 duly sworn, testifies as follows:

24 COURT CLERK: Thank you. Have a seat in the witness
25 stand, please. State your name for the record.

DIRECT EXAMINATION BY MR. SHENKAR - APRIL JENKINS 203

1 THE WITNESS: April Jenkins.

2 DIRECT EXAMINATION BY MR. SHENKAR:

3 Q Good morning, Ms. Jenkins. Thank you very much for
4 being here. Would you introduce yourself to the jury, tell
5 them how old you are, what you do for a living, and where
6 you currently live?

7 A I'm 30 years old. I work as a sales manager, and I
8 currently live in Florence, South Carolina.

9 Q What kind of education do you have?

10 A I have a Bachelors of Science degree from the
11 University of South Carolina. I'm currently working on my
12 Master's Degree.

13 Q And you say you're living in Florence now?

14 A Correct.

15 Q And on December of 2013, where did you live?

16 A I lived in Columbia, South Carolina.

17 Q In which apartment complex?

18 A The .

19 Q What apartment number, do you remember?

20 A It was apartment number -- my memory's not the best.

21 Q (Using exhibit) If I show you what was marked as
22 Exhibit No. 1, do you recognize this building?

23 A Yes.

24 Q Is that the apartment complex that you lived at?

25 A Yes, it is.

1 Q Would you point for the jury approximately which
2 apartment it was in this picture?

3 A (Indicates) It would be on the side, in the back, over
4 there.

5 Q So the one that's closer to the wooded area?

6 A Correct.

7 Q And how long did you live over there, do you remember?

8 A In that particular unit, I was there for maybe a year
9 and a half.

10 Q And the lease on that apartment was under your name?

11 A Correct.

12 Q And who else lived there with you?

13 A I was the primary resident there by myself, but
14 occasionally my boyfriend.

15 Q And your boyfriend's name was what?

16 A Costell Johnson.

17 Q And I know this is difficult, but what happened to
18 Costell?

19 A He passed this last September.

20 Q What did he pass away from?

21 A A blood clot in the lungs.

22 Q And do you remember the events that took place on
23 December 18 of 2013?

24 A I do.

25 Q Where you working that day?

DIRECT EXAMINATION BY MR. SHENKAR - APRIL JENKINS

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1 A I was.

2 Q Where did you work that time, that -- that day?

3 A I was working in Lexington.

4 Q What -- what were you doing over there?

5 A I worked for Verizon.

6 Q In what capacity?

7 A At that time I was in sales.

8 Q And what time did you leave work?

9 A I got off of work at night, it was dark. I closed, so
10 it's maybe about 8:30/9:00-ish.

11 Q And did you have any communication with anybody prior
12 to leaving work?

13 A I did not.

14 Q So you were leaving work just like you would everyday?

15 A Correct.

16 Q And you drove directly straight from work to your
17 house?

18 A I did.

19 Q And what time approximately did you arrive at your
20 house?

21 A May about 9:15/9:20-ish, give or take. Usual commute.

22 Q Please tell the jury what did you see when you arrived
23 at the apartment complex.

24 A I saw a lot of lights and I saw ---

25 Q When you say "a lot of lights," you mean ---

1 A Police lights from ---

2 Q Blue lights?

3 A Blue lights. I saw a lot of, you know, caution/police
4 line tape taped around the building ---

5 Q Okay. And ---

6 A --- when I pulled up in the parking lot.

7 Q And what did you do then?

8 A At that time, I got out of my car. I proceeded to
9 walk towards my apartment. And at that time I was asked
10 was I a resident there.

11 Q Who asked you that question?

12 A One of the investigators.

13 Q Okay. And what did you say?

14 A I informed him that I was a resident. I gave him my
15 unit number.

16 Q And then what happened?

17 A At that time I proceeded to go inside of my apartment.

18 Q And what did you see when you walked into that
19 apartment?

20 A I noticed that there was several items missing.

21 Q Items like what?

22 A Flat screen TVs out of my apartment were missing.
23 Christmas presents were missing.

24 Q Where were the Christmas presents located at?

25 A In my living room, under my Christmas tree.

DIRECT EXAMINATION BY MR. SHENKAR - APRIL JENKINS 207

1 Q Okay...And what else was missing other -- other than
2 that from the living room?

3 A We had -- well, there were items removed as far as
4 just little miscellaneous items that I had in there, like
5 remote controls to the TVs; stereo, radio was missing out
6 of there.

7 Q And when you said that presents from under the
8 Christmas tree, do you remember specifically what was in
9 those presents?

10 A I do. They were gifts that I had purchased for my
11 boyfriend for Christmas.

12 Q And what were they?

13 A I had a purchased a Polo sweater, a few Polo shirts,
14 just regular active shirts. There were stocking stuffers
15 that I had there as well, some toiletries.

16 Q Okay. And did you notice if anything else in the
17 house was in disarray?

18 A When I proceeded to go inside of my bedroom, that's
19 where I noticed that there was some items out of place in
20 the bedroom.

21 Q How did the bedroom look like?

22 A For one, my bedroom window was ajar, and when I went
23 inside of my room, I could tell that my drawers -- my
24 dresser drawers had been open.

25 Q How could you tell that?

1 A Because they were -- few of them were open and I could
2 see where some items had been tossed around.

3 Q Okay. And the window you said was ajar, do you
4 usually keep the window open?

5 A No, I do not.

6 Q Do you ever?

7 A Maybe once or twice I've opened the window, but not on
8 a constant basis.

9 Q This was unusual that it was open.

10 A Correct.

11 Q And what did you do then?

12 A At that point I was -- proceeded to walk back out of
13 the apartment when the officers knocked on the door and
14 they came in.

15 THE COURT REPORTER: You need to speak up, please.

16 THE WITNESS: Okay. I'm sorry.

17 Q Okay. Was there anybody else in the apartment with
18 you when you first walked in?

19 A No, there was not.

20 Q Okay. So you first time walked in by yourself and
21 then you say you came back outside?

22 A Correct.

23 Q And then you met with a police officer?

24 A I came to the front door, and the officer was at the
25 front door.

DIRECT EXAMINATION BY MR. SHENKAR - APRIL JENKINS 209

1 Q And then what happened?

2 A Then they came in and we did a walk through of the
3 unit.

4 Q Okay. And what -- did you have a total value for the
5 items that were taken?

6 A I did have a total value. It was between 8 and
7 \$10,000.

8 Q Okay. And do you remember talking to law enforcement
9 about that value?

10 A Correct.

11 Q And did you ever receive any of those items back?

12 A I did.

13 Q Okay. The Defendant in the courtroom today, Mr.
14 Henderson, did you ever see him before?

15 A No, I have not.

16 Q Did you ever socialize with him on any kind of
17 occasion?

18 A No, I have not.

19 Q Did you ever give him any permission to be in your
20 house?

21 A No, I did not.

22 Q Did you ever give him any permission to take any of
23 your items?

24 A No, I did not.

25 Q Did you have any dealings through a third person that

1 you know about giving away your TVs to anybody?

2 A No, I did not.

3 Q Ms. Jenkins, about the -- the presents that you bought
4 for Mr. Johnson, what size shirt does he wear?

5 A 6-X.

6 Q He was a big guy, wasn't he?

7 A Yes.

8 Q Okay. I am going to show you what's been pre-marked
9 as State Exhibit 14 and 15. Do you recognize these
10 pictures?

11 A I do.

12 Q And what are they of?

13 A Exhibit 14 is of the remote control that went to my
14 bedroom TV. Exhibit 15 is of the remote that went to my
15 Blue Ray disc player.

16 MR. SHENKAR: At this point, the State would ask to
17 enter these photographs into evidence.

18 THE COURT: Any objection?

19 MS. EIGENBROT: No objection.

20 THE COURT: Without objection, so admitted.

21 (State's Exhibit Nos. 14 and 15, photos, in evidence.)

22 MR. SHENKAR: And permission to publish to the jury?

23 THE COURT: Yes, sir.

24 Q And were those remote controls given back to you?

25 A They were.

DIRECT EXAMINATION BY MR. SHENKAR - APRIL JENKINS 211

1 Q Okay. And these remote controls -- I'm going to show
2 you some additional pictures. I show you what has been
3 pre-marked as State Exhibit No. 35. Do you recognize this
4 picture?

5 A I do.

6 Q And what is in the picture?

7 A Two of my flat screen TVs that went in the bedroom.

8 Q That's your TVs -- those are the TVs that you
9 purchased?

10 A Correct.

11 MR. SKENKAR: Ask to admit photograph No. 35 into
12 evidence, Your Honor.

13 THE COURT: Any objection?

14 MR. POURNARAS: No, Your Honor.

15 THE COURT: Without objection, so admitted.

16 (State's Exhibit No. 35, photo, in evidence.)

17 MR. SHENKAR: Permission to publish to the jury?

18 THE COURT: Yes, sir.

19 Q Do you remember approximately when you purchased those
20 items?

21 A One was purchased day after Thanksgiving, year before.
22 The other about three or four years prior.

23 Q And this is part of your estimation of the total loss
24 that was taken from the apartment?

25 A Correct.

1 Q I'm also going to show you what was marked as -- pre-
2 marked as State Exhibit No. 32. Do you recognize any of
3 that?

4 A I do.

5 Q What's in that picture?

6 A These were the stocking stuffers, the toiletries I
7 had: Crest toothpaste, toothbrushes, cologne, and some
8 deodorant.

9 MR. SHENKAR: And permission to admit as State
10 evidence -- photograph No. 33 as State evidence.

11 THE COURT: 33?

12 MR. SHENKAR: It's 32, Your Honor.

13 THE COURT: Any objection?

14 MR. POURNARAS: No objection.

15 THE COURT: Without objection, so admitted.

16 (State's Exhibit No. 32, photo, in evidence.)

17 MR. SHENKAR: Permission to publish to the jury?

18 THE COURT: Yes, sir.

19 Q And I'm going to show you what has been pre-marked as
20 State Exhibit 38 and 39. Do you recognize these?

21 A I do.

22 Q What's in the picture?

23 A One photo is of a gift box for one of the shirts I had
24 purchased for my boyfriend for Christmas. The other is a
25 picture of one of the actual shirts that I had purchased

1 for Christmas.

2 MR. SHENKAR: The State would ask to admit photographs
3 No. 38 and 39 into evidence, Your Honor.

4 THE COURT: Any objection?

5 MR. POURNARAS: No objection.

6 MR. SHENKAR: Permission to publish to the jury?

7 THE COURT: Without objection, so admitted.

8 Permission granted to publish.

9 (State's Exhibit Nos. 38 and 39, photos, in evidence.)

10 Q Now, you did mention that you noticed the window was
11 broken when you entered the apartment, yes?

12 A Correct.

13 MR. SHENKAR: Beg the Court's indulgence.

14 (Brief pause.)

15 Q Ms. Jenkins, that morning, you were at the house
16 before you left, yeah?

17 A Yes.

18 Q And you were the last person to leave the house that
19 morning?

20 A Correct.

21 Q And was everything at that house -- let me ask you:
22 How do you keep your house? Is it usually neat and clean?

23 A As neat and clean as I can be. I try to keep it
24 pretty orderly.

25 Q When you went into that apartment, it was not?

1 A It was not in the condition that I had left it.

2 MR. SHENKAR: Beg the Court's indulgence.

3 (Brief pause.)

4 Q Did you notice, when the window was open, if the lock
5 on the window was broken?

6 A At the very top of the window, where the lock is,
7 there was some sort of break in the actual pane itself.

8 Q And when you left for work that morning, was the latch
9 broken?

10 A No, it was not.

11 Q I'm going to show you what has been marked as -- pre-
12 marked as State Exhibit No. 40 and No. 41. Do you
13 recognize these photographs?

14 A I do.

15 Q What are they of?

16 A These are photographs of my bedroom window.

17 MR. SHENKAR: Permission to admit State evidence No.
18 40 and 41 into evidence, Your Honor.

19 THE COURT: Any objection?

20 MR. POURNARAS: No objection, Your Honor.

21 THE COURT: Without objection, so admitted.

22 (State's Exhibit Nos. 40 and 41, photos, in evidence.)

23 MR. SHENKAR: Permission to publish to the jury?

24 THE COURT: Yes, sir.

25 MR. SHENKAR: Ms. Jenkins, that's all the questions I

CROSS-EXAMINATION BY MR. POURANARAS - APRIL JENKINS 215

1 have for you. Please answer any questions the Defense may
2 have.

3 THE COURT: Cross-examination.

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

6 CROSS-EXAMINATION BY MR. POURNARAS:

7 Q Good morning, Ms. Jenkins. How are you?

8 A Doing well.

9 Q Now, you said you were the primary resident of this
10 location?

11 A That is correct.

12 Q But that from time to time, Mr. Brimfield would stay
13 with you?

14 A On very rare occasions, he may have spent a night or
15 two.

16 Q So he stayed there very rarely?

17 A Very rare.

18 Q Okay. And did you allow him to keep an assault rifle
19 in your home?

20 A I was unaware that there was one there.

21 Q Okay. And what time did you leave the house that
22 morning?

23 A Maybe around ten o'clock.

24 Q So about ten o'clock in the morning? Okay. Now, Mr.
25 Shenkar asked you earlier if that window latch -- you know

1 -- you noticed that that was broken that day?

2 A Correct. That night when I arrived home from work.

3 Q Okay. Now, your bedroom is on the first floor; is
4 that correct?

5 A That is correct.

6 Q Do -- how do you normally have your blinds?

7 A Closed.

8 Q Closed. And you said also earlier that you don't
9 normally open that window.

10 A Not on a normal, day-to-day basis.

11 Q Okay. So would you have noticed that latch being not
12 broken earlier that morning?

13 A From a day-to-day basis, I'm really not in the window.
14 But I know from, you know, living there that I --
15 generally, I do a walk-through of my apartment, like once
16 or twice a week, just to make sure my windows and
17 everything are locked.

18 Q Okay.

19 A Yeah.

20 Q All right.

21 MR. POURNARAS: Court's indulgence, Your Honor.

22 (Brief pause.)

23 Q Now, Ms. Jenkins, back to you being the primary
24 resident here, did Mr. Johnson have another residence that
25 he stayed at?

CROSS-EXAMINATION BY MR. POURANARAS - APRIL JENKINS 217

- 1 A I believe he did.
- 2 Q Okay. So your apartment wasn't his primary residence?
- 3 A Not primary.
- 4 Q Okay.
- 5 A More secondary.
- 6 Q But Mr. Brimfield definitely was not there other than
7 rare occasions.
- 8 A Correct.
- 9 Q And you said earlier that you weren't aware that Mr.
10 Brimfield kept that rifle in your home, correct?
- 11 A I was unaware.
- 12 Q Okay. Were there any other items you were not aware
13 of until afterwards that they kept in this home?
- 14 A Nothing else that I'm aware of.
- 15 Q But they had free access to come and go from your
16 apartment?
- 17 A My boyfriend did have a key to my apartment.
- 18 Q Just Mr. Johnson had a key?
- 19 A My boyfriend was the one in possession of the key.
- 20 Q Did -- did you give Mr. Brimfield a key to your
21 apartment?
- 22 A I did not give Mr. Brimfield a key.
- 23 Q Okay. So you were unaware of whether or not he had a
24 key to your apartment?
- 25 A I was unaware.

CROSS-EXAMINATION BY MR. POURANARAS - APRIL JENKINS 218

1 Q Okay. And did you specifically give Mr. Brimfield
2 permission to come and go?

3 A He had permission if he needed to, yeah.

4 Q Thank you very much, Ms. Jenkins.

5 A Uh-huh.

6 MR. POURNARAS: I have no further questions, Your
7 Honor.

8 THE COURT: Any re-direct?

9 MR. SHENKAR: Nothing, Your Honor, from this witness.

10 THE COURT: Ma'am, you may step down.. Thank you.

11 (The witness complies.)

12 MR. SHENKAR: Your Honor, may we excuse this witness?

13 THE COURT: Any objection?

14 MR. POURNARAS: No, Your Honor.

15 THE COURT: Ma'am, you are free to go. You have
16 fulfilled your responsibility. Thank you for being here.

17 Ladies and gentlemen of the jury, I'm going to ask you
18 to step to the jury room for just a minute. I'll get you
19 back out here as quickly as possible. Do not, do not
20 discuss the case. I'll get you back out here in just a
21 minute.

22 (Jury exits the courtroom at 10:33 a.m.)

23 THE COURT: All right. We'll stand down for just a
24 few minutes.

25 MS. ALL: Thank you, Your Honor.

1 (Off the record at 10:33 a.m.)

2 (Back on the record at 10:48 a.m.)

3 THE COURT: All right. Anything from the State?

4 MS. ALL: Yes, Your Honor. If we could take up a
5 matter of scheduling. Our drug analyst for the marijuana,
6 from the Columbia Police Department, that tested these
7 drugs is closing on a house today. He's under subpoena.
8 We've required him to be here, but he begs Your Honor to
9 let him go first thing in the morning at 9 a.m. And I told
10 him that I would ask. He asks you since he physically
11 cannot be here.

12 THE COURT: Where is he closing?

13 MS. ALL: On a house.

14 THE COURT: Where?

15 MS. ALL: I don't know, Your Honor.

16 THE COURT: In Richland County?

17 MS. ALL: I don't know, Your Honor.

18 THE COURT: Well, how bout find that out for me,
19 please.

20 MS. ALL: I certainly will.

21 THE COURT: All right. Anything else from the State
22 before we bring the jury back?

23 MS. SHENKAR: Nothing else from the State, Your Honor.

24 THE COURT: Defense counsel?

25 MS. EIGENBROTT: Nothing from the Defense.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 220

1 THE COURT: All right. Bring me the jury, please.

2 THE BAILIFF: Yes, sir.

3 (Bench conference.)

4 (The jury enters the courtroom at 10:49 a.m.)

5 THE BAILIFF: The jury panel's present, Your Honor.

6 THE COURT: Thank you. Call your next witness,
7 please, sir.

8 MR. SHENKAR: May it please the Court. The State
9 calls Officer Moore..

10 TAMMIE L. DAVIS-MOORE, after having
11 been first duly sworn, testifies as follows:

12 THE CLERK: Have a seat in the witness stand, please.
13 State your name for the record.

14 THE WITNESS: Master Patrol Officer Tammie L. Davis-
15 Moore.

16 THE COURT REPORTER: Would you spell your first and
17 your last name for me?

18 THE WITNESS: First name is Tammie, T-a-m-m-i-e. Last
19 name is hyphenated, D-a-v-i -- hyphen, D-a-v-i-s, hyphen,
20 M-o-o-r-e.

21 DIRECT EXAMINATION BY MR. SHENKAR:

22 Q Good morning, Officer Moore.

23 A Good morning.

24 Q Would you state for jury where you currently work and
25 what -- in what capacity are you employed?

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 221

1 A I'm employed with the City of Columbia Police
2 Department, and I'm in crime scene investigation.

3 Q And how long you been working with Columbia Police
4 Department?

5 A I started in 2000 and -- I'm sorry, 1984 for five and
6 a half years. And I -- my second time, I'm here starting
7 in 2002 til -- to the present moment. So I've been two
8 terms there.

9 Q What did you do between the times that you worked with
10 the Columbia Police Department?

11 A I started my career in law enforcement in 1983. I got
12 out in -- I stayed five and a half years. At that time, I
13 got out, I went to Columbia College. I obtained a
14 chemistry major, math minor.

15 I got back into law enforcement where I worked with
16 Richland County for two years. And I left there and came
17 back to City of Columbia. So I've been in law enforcement
18 for -- I have total of twenty-four and a half years in law
19 enforcement.

20 Q And what kind of education do you have?

21 A I have a chemistry major, math minor.

22 Q And what type of training do you have in the field of
23 crime scene investigation?

24 A Crime scene investigation? Basic fingerprints; I have
25 traffic collision at scene; traffic collision technology;

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 222

1 traffic collision reconstruction. I'm in -- I was NCIC
2 certified, which is national criminal database. I
3 certified twice in marijuana analysis, crime scene
4 photography, crime scene investigation, forensic science
5 training, evidence detection. I'm an AFIS -- certified in
6 AFIS, which is automated fingerprint identification, which
7 is a known database of fingerprints. I have behavioral,
8 investigative, cold case ident [sic], blood stain pattern,
9 basic crime scene management, courtroom presentation and
10 testimony, trace evidence, drug ident [sic], CSI tech
11 evidence collection. And I'm also a specific skills
12 instructor.

13 Q And when we're talking about crime scene
14 investigation, can you give the jury an overall idea what
15 does that entail?

16 A Generally -- basically, our job is to go to the scene,
17 collect, document, and notate anything pertaining to that
18 crime. And we collect evidence. We collect it, we package
19 it. Some of it we analyze, some of it we send off for
20 analysis. It all depends on exactly what our department
21 does with it.

22 Q And in what capacity were you employed back in
23 December 18 of 2013?

24 A Crime scene investigator -- crime scene investigation.

25 Q And do you remember responding to a call that evening?

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 223

1 A Yes, I do.

2 Q And can you tell the jury what exactly happened or
3 what exactly it is that you did?

4 A Well, when I received the call, I first went to the
5 hospital to where the victim was located -- well, at that
6 time, we thought it was the victim, the person that was
7 injured. I went to the hospital and I tried to capture as
8 much of the fresh injury as -- as I'm allowed to capture.

9 While I was there, I collected clothing -- I collected
10 clothing and I left the hospital and I went to the scene,
11 which was at the incident location --

12 Q Before we go to the scene, at the hospital, where you
13 say you collected --

14 A Clothing?

15 Q -- clothing, I'm going to hand you what has been
16 marked as State Exhibit No. 2. Do you recognize this
17 photograph?

18 A The pair of black boots that I collected.

19 Q And how are you able to recognize this photograph?
20 How are you able to recognize this particular photograph?

21 A Because this is a photo that I took.

22 Q And that photograph, does -- does it accurately and
23 fairly depict the subject matter of what you -- the picture
24 that you took?

25 A Yes, it does.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 224

1 Q And can you tell if there's been any changes to the
2 photograph since you took it?

3 A No. It doesn't look like any changes has been made to
4 the photo.

5 THE COURT REPORTER: I'm sorry?

6 MR. SHENKAR: The State would admit ---

7 THE WITNESS: No. It doesn't look like any changes
8 have been made to the photo.

9 MR. SHENKAR: I ask to admit State Exhibit No. 2 into
10 evidence.

11 THE COURT: Any objection?

12 MR. POURNARAS: No objection.

13 (State's Exhibit No. 2, photo, in evidence.)

14 THE COURT: Can you all on the top row of the jury see
15 this screen okay?

16 JURORS: Yes, sir.

17 THE COURT: Okay. Thank you.

18 MR. SHENKAR: Permission to publish to the jury.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION BY MR. SHENKAR (continues):

21 Q So what is this in this picture?

22 A That's a pair of black boots.

23 Q And what are they put in? What is that plastic bag?

24 A That's the bag that the hospital places items in from
25 the person that they're treating. That's a hospital

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 225

1 plastic bag.

2 Q And did the hospital provide you any additional items
3 that belonged to the Defendant?

4 A Yes.

5 Q And can -- did you kept -- did you keep a list of
6 those particular items?

7 A Yes.

8 Q And can you tell the jury what exactly you collected
9 from the hospital?

10 A From the hospital, I collected one pair of black
11 boots, which are those, one white sock, a pair of black
12 shorts, and a gray -- and gray underwear.

13 Q So there was one sock ---

14 A One sock.

15 Q --- at the hospital? Okay. And after you left the
16 hospital -- and I can't recall if you already mentioned to
17 the jury, why did you go to the hospital first?

18 A I always go to the hospital first to try to capture
19 photos of the fresh injury without it having the bandages
20 and things on it.

21 Q That's for the preservation?

22 A Yes.

23 Q Okay. And after you left the hospital, where did you
24 go?

25 A I went to the incident location.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 226

1 Q And what did you do when you got there?

2 A When I got there, I was met by several other officers.
3 And I was getting from them what -- what happened, what
4 took place, and basically where things were located until I
5 was called off.

6 Q And when you say you got "called off," where did you
7 get called off to?

8 A I got called off to a different location where a Mr.
9 Johnson -- I think that was his name -- Mr. Johnson was
10 located. And I conducted a GSR kit -- I administered a GSR
11 kit to him, which is short for "gunshot residue kit."

12 That's something that we administer to a lot of people
13 whether they been -- anybody that's been involved in a
14 shooting incident, be they a victim or witness or a
15 suspect.

16 Q So when you say that you were called out of the scene,
17 how long after you got to the scene do you remember you got
18 -- you had to depart to go somewhere else?

19 A Maybe 5, maybe 10 minutes. I wasn't there long.

20 Q And how far from the location of the incident did you
21 meet with the other officers and Mr. Johnson?

22 A A few blocks. Less than a half mile. A few blocks.
23 I would say a few blocks.

24 Q And do you remember what Mr. Johnson was wearing that
25 day?

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 227

1 A Mr. Johnson was wearing a reddish-orange top -- shirt
2 and dark-colored jeans.

3 Q And could you describe Mr. Johnson?

4 A Oh, Mr. Johnson was a really tall man, well over six
5 feet. Maybe six, six-one. I'm not sure, but he was
6 definitely taller than I was. He was really, really big,
7 somewhere between 3 and 400 pounds. He was a really big
8 guy.

9 Q All right. You said that you took a GSR?

10 A I administered a GSR kit to him.

11 Q And what else did you do?

12 A Took photos of him.

13 Q Okay. And then what did you do after you were done
14 with him?

15 A I went back to the scene.

16 Q And when you went back to the scene, what did you do?

17 A I looked over the scene, see where everything was
18 located. I have the officer -- what I -- when I get to the
19 scene, I find the officer that first responded to the
20 scene. I try to locate him; and I have him to walk with me
21 through the scene, showing me where items are located.

22 Then I visually look and see how I'm going to process
23 the scene and items that I need to pay a lot of attention
24 to. And once I get that map down in my head, then I start
25 working my scene.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 228

1 Q And when you say start breaking down the scene, what
2 does that entail as far as physically doing it?

3 A I -- I look and see where everything's located. Then
4 after I know where everything's located and I have in my
5 mind exactly what I'm going to do, then I start taking
6 photographs. And sometimes I label the items before the --
7 I take -- before I take the photographs, sometimes I go
8 back and label the things after I take the photographs. So
9 it all depends on which way I want to do it, whichever
10 works best for what I'm doing.

11 And after I take my photographs, everything is
12 numbered, I go back and I collect everything individually.

13 Q And Officer Moore, I'm going to hand you what has been
14 pre-marked as State Exhibits 3 through 23. If you would
15 please look them and let me know if you recognize these.

16 A Exhibit No. 3 is ---

17 Q Tell us the question in general, if you recognize all
18 of these photographs.

19 A Oh. Okay. Yes.

20 Q We'll get to the details later.

21 A Okay. Yes, these are photographs that I took.

22 Q So this is why you recognize them, yeah?

23 A Yes.

24 Q And do those photographs fairly and accurately depict
25 what the scene looked like on that day?

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 229

1 A Yes, it does.

2 Q And to your knowledge, since the time that you took
3 the photographs, have -- have they been altered or changed
4 in any shape, way, or form?

5 A No.

6 Q If you would hand them back to me.

7 A (The witness complies.)

8 Q Thank you.

9 MR. SHENKAR: Your Honor, the State would ask to admit
10 State Exhibits 3 through 23 into evidence.

11 THE COURT: Any objection?

12 MR. POURNARAS: No, Your Honor.

13 THE COURT: Without objection so admitted.

14 (State's Exhibit Nos. 3 through 23, photos, in
15 evidence.)

16 DIRECT EXAMINATION BY MR. SHENKAR (continues):

17 Q Let's go through these very quick then. If you could
18 explain to the jury what it is that they're looking at in
19 every photograph. (Holds up photo) What are we looking at
20 here?

21 A When you come into the apartment complex, that
22 particular building is to the back of it. So when you come
23 in, it kind of like deads, and you have to hook a -- a
24 left. Well, when you make that left, you run straight into
25 that trash container right there (indicates.)

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 230

1 Q So would it help you if you would be able to point at
2 it on the screen?

3 A Yes.

4 MR. SHENKAR: Your Honor, with your permission, allow
5 the witness to step down?

6 THE COURT: Yes, sir.

7 THE COURT REPORTER: Just keep your voice up for me,
8 please, ma'am.

9 THE WITNESS: Okay.

10 (The witness exits the stand.)

11 Q If you could please speak up so the court reporter can
12 hear you.

13 A (Indicating) Like I said, this particular building is
14 in the back of the apartment complex. This is when you
15 come in -- come into the roadway and it curves back around
16 this way. So this -- this dumpster is right on the -- the
17 borderline of where this apartment complex is. And this is
18 -- this is the -- the vehicle in question, the suspect
19 vehicle, and everything else happened behind the dumpster.

20 Q (Indicating) So this is the vehicle --

21 A This is the -- this is the vehicle. And notice ---

22 Q That's the vehicle that what ---

23 A And notice the officers had everything already roped
24 off with crime scene tape.

25 THE COURT REPORTER: And what exhibit number is that?

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 231

1 MR. SHENKAR: That is Exhibit No. 4.

2 Q When you say that's the vehicle, what vehicle is that?

3 A That's the potential suspect vehicle.

4 Q Okay. I'm going to put Exhibit No. 5 up. What are we
5 looking at here?

6 A That's the rear of the -- see, when I said -- when I
7 said "come in," this is the entrance right here and you
8 have to come to the -- to the left to enter. Now you see -
9 - okay. (Indicating) This is the back of his car. His car
10 was facing going out. .

11 Q And those yellow cones, what are they?

12 A These are numbers. These are numbers where I indicate
13 shell casings.

14 Q So were you collecting shell casings that day?

15 A I collected shell cases that day.

16 Q Okay. I'm going to put up Exhibit No. 6.

17 A (Indicating) This is a different -- this is on the
18 passenger side of the vehicle and these are shell casings.
19 And these are other items. These might be shell casings
20 right here, but these are -- these are not shell casings.

21 Q I'm putting Exhibit No. 7.

22 A (Indicating) These are the same from there, just a
23 different angle. Let's see, this is an embankment. This
24 is one of the shell casings that's behind the car. This is
25 just all the things that are behind the -- the dumpster,

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 232

1 the fencing for the dumpster.

2 THE COURT REPORTER: I'm sorry, the dumpster what?

3 THE WITNESS: It's the items behind the fencing for
4 the dumpster.

5 Q And Exhibit No. 8 shows what?

6 A (Indicating) This is a pair of pants here. This is a
7 sock and this is some clothing. I can't really see what
8 this one is at the moment, but this -- this is pants and
9 sock and some clothing.

10 Q And this -- this Exhibit No. 9?

11 A That's the one pair of socks.

12 Q Is that the other pair of socks from the one that you
13 picked up at the hospital?

14 A That's similar to the sock that I picked up from the
15 hospital.

16 Q I'm putting up Exhibit No. 10.

17 A That's a piece of electronic that -- that's a piece of
18 electronic. That's basically all I can say.

19 Q And was that in the vicinity of everything else?

20 A That was in that little cluster that was behind the
21 fencing for the trash dumpster.

22 Q Okay. And Exhibit No. 11.

23 A That looks like a remote control. That was in that
24 cluster behind the trash dumpster.

25 Q And Exhibit No. 12, what are we looking at?

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 233

1 A That's a close-up of the pants as I found them. And I
2 could see that was some money, and I forgot what that red
3 thing is. But you could see those items inside of the
4 pants as I found them.

5 Q And when you say you "found them," whose job is it to
6 go through the items and sort them out?

7 A Me or the investigator.

8 Q So as the crime scene ---

9 A Usually it's me.

10 Q --- investigator, it's your job ---

11 A Usually it's me.

12 Q --- to process all of the items?

13 A Yes.

14 Q Does that give you the authority to go into the
15 pockets of the pants?

16 A Yes.

17 Q And to pull out all of the items from it?

18 A Yes. Because -- because I -- first I document it
19 exactly like I found it.

20 Q So this photograph is how it was when you arrived on
21 the scene?

22 A When I arrived on the scene.

23 Q Now, when you pulled it out -- I'm going to place
24 Exhibit No. 13 on. What are we looking at here?

25 A A watch, pair of keys, money, white powder in a

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 234

1 plastic bag, and that -- that -- I forgot what that red
2 thing was.

3 Q That photograph is not very clear, but --

4 A No.

5 Q -- we got other pictures. And where was this
6 photograph was taken No. 16, Exhibit No. 16?

7 A No. 16, whenever -- whenever we inventory items that
8 come out of your pockets, we take pictures of it
9 collectively. So this was -- this photo was taken on top
10 of our lab table where we process all -- everything that
11 we're going to package. So this is just an up-close photo
12 of those items.

13 Q And what are we looking at here?

14 A This is -- this is actually a test kit that an officer
15 tested to -- got a positive test ---

16 Q And ---

17 A Field -- it's called a field test.

18 Q And what color is it?

19 A Blue.

20 Q And why is it blue?

21 A The field -- when it turns positive, it turns blue.

22 Q So when it interacts with chemicals?

23 A Yes.

24 Q Okay. And is blue -- what blue indicates?

25 A Positive. I think it was for cocaine. I don't do

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 235

1 those fields.

2 Q Okay. And I'm going to place Exhibit No. 17.

3 A That's an overall of everything that -- an overall of
4 the other items that came out of his pocket.

5 THE COURT REPORTER: I'm sorry?

6 THE WITNESS: An overall -- I -- the other items that
7 came out of his pocket -- came out of the pants pocket.

8 Q And this Exhibit No. 18?

9 A And that's the red item.

10 Q And that's the item that we saw in the pocket?

11 A Yes.

12 Q The red item?

13 A That's the red item.

14 Q And was that the content of that red item?

15 A And that's the contents of the red item.

16 Q And what's in -- what's the content?

17 A Miscellaneous cards. Miscellaneous cards.

18 Q And when you say "miscellaneous cards," Exhibit No.
19 20, does that reflect what was exactly inside the pocket?

20 A It's inside of the red container.

21 Q And what -- what do we have here?

22 A The driver's license, social security card, bank card,
23 Discover Platinum, Macy's, just ---

24 Q And can you read the name that appears on these cards?

25 A This screen is too blurry.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 236

1 Q If I give you the photograph, will you be able to read
2 it?

3 A Yes. (As read) Demetrius Henderson.

4 Q And I'm placing Exhibit No. 21?

5 A Yes.

6 Q Was that one of those cards?

7 A That's one of the cards. Demetrius Henderson is on
8 the South Carolina DL, clearly on the Wells Fargo, on the
9 social security card, on the Allstate, on the University of
10 Phoenix, and the Macy's card.

11 Q And all this was in the red box, yeah?

12 A In that red container.

13 Q In the red container. And finally, I'm going to place
14 Exhibit No. 23.

15 A Again, this photo was taken on our lab table. And
16 that's the sock that was collected from the scene.

17 Q So you collected all of these items from the scene.
18 And after you were done collecting, what did you do then?

19 A I submitted the white powder to SLED for analysis.

20 Q Did you explore the Defendant's vehicle?

21 A Yes. That was from a search warrant later on.

22 Q And did you take any photographs that were associated
23 with Defendant's vehicle?

24 A Yes, I did.

25 Q I'm going to hand you what's been pre-marked as State

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 237

1 Exhibits 24 through 37. Would you please look at them and
2 tell me if you recognize these items?

3 A (The witness complies.) Yes, I do.

4 Q And how do you recognize them?

5 A These are photos that I took from the search of the
6 vehicle.

7 Q And do these photos fairly and accurately depict the
8 situation, the scenarios that you were taking a picture of?

9 A Yes, it does.

10 Q And to your knowledge, were these pictures -- have
11 been altered or changed ---

12 A No.

13 Q --- since you -- since you took them?

14 A Not to my knowledge.

15 MR. SHENKAR: Your Honor, at this point, the State
16 would ask to submit State Exhibits 24 through 37 into
17 evidence.

18 MR. POURNARAS: Briefly view them, Your Honor.

19 THE COURT: Can he see them, please?

20 (Mr. Shenkar shows photos to Mr. Pournaras.)

21 MR. POURANARAS: No objection, Your Honor.

22 THE COURT: Without objection, so admitted.

23 (State's Exhibit Nos. 24 through 37, photos, in
24 evidence.)

25 MR. SHENKAR: Permission to publish to the jury, Your

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 238

1 Honor.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION BY MR. SHENKAR (continues):

4 Q (Puts up a photo) I know the quality is a little bit
5 dark, but if you could, just explain what we're looking at
6 here.

7 A This is a book container. This is a milk crate with
8 various items in it.

9 Q And that's Exhibit No. 24. This is Exhibit No. 25.
10 What are we looking at?

11 A You can't tell it, but it's a TV. It's ---

12 THE COURT REPORTER: I'm sorry, you can't tell ...?

13 THE WITNESS: You can't tell, but this is a TV.

14 A Yeah. The -- the -- the television is dark, the seats
15 are dark, so things come out dark.

16 Q I put Exhibit 26. Where is that taken from?

17 A That's from -- taken from the inside of the car. It's
18 a TV.

19 Q And I'm going to place Exhibit No. 27. Tell us what
20 we're looking at here.

21 A That's the trunk of the car.

22 Q (Indicating) And what do we have over there?

23 A It's a TV. This is a TV -- I'm sorry, it's a TV at
24 this corner.

25 Q And

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 239

1 A (Indicates) TV right there.

2 Q So the TV's in the trunk?

3 A Uh-huh.

4 THE COURT REPORTER: Is that a "yes"?

5 THE WITNESS: Yes. I'm sorry, yes.

6 Q And I'm placing Exhibit No. 28. What is that?

7 A That was a Columbia Farms ID that was found in the car
8 with Demetrius name on it.

9 Q And is that a closer -- a close-up of that same card?

10 A That's a close-up of that same card.

11 Q You say it was found in the car. Where exactly in the
12 car? Can you tell?

13 A In the vehicle, I -- I don't remember where it was
14 found in the vehicle.

15 Q I'm going to place Exhibit No. 30. Can you tell the
16 jury what this is?

17 A That's a bottle of green plant-like substance that was
18 found underneath the car seat.

19 Q And what is this, Exhibit No. 31?

20 A It's a digital scale that was also found underneath
21 the car seat.

22 Q I'm placing Exhibit No. 33. What are we looking at
23 here?

24 A That's the county tax receipt.

25 Q And this is a close-up, Exhibit No. 34, of the same

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 240

1 piece of paper?

2 A Yes, it is.

3 Q And who's the vehicle registered to?

4 A (As read) Registered to Demetrius Henderson.

5 Q (Indicating) And what are we looking at here?

6 A That's just an individual picture that I took showing
7 that I processed -- processed it with latent powder, trying
8 to locate a fingerprint. But it -- it was smudged, and I
9 wasn't able to get a good print off of it.

10 Q And that's Exhibit 36. Now, I'm going to place
11 Exhibit 37. And what is that?

12 A That's some type of electronic. I don't know exactly
13 what it is. But I processed it also, and I wasn't able to
14 get a good fingerprint off of it because it was smudged.
15 The prints were smudged.

16 Q So all of these items were recovered from the vehicle.

17 A From the vehicle.

18 Q And you mentioned that you -- you performed a
19 fingerprint analysis on the TV and other -- other
20 electronic items. Were you able to lift any fingerprints
21 from --

22 A No. It smudged.

23 Q Is that unusual?

24 A No, that's not unusual at all.

25 Q What -- what would cause a fingerprint not to stay in

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 241

1 -- on a particular item?

2 A There are different variables and different factors.
3 One is with them handling it, sometimes the prints can be
4 smudged. If they don't exactly pick it up and place it
5 down without moving their hands, it'll -- it'll be a pretty
6 good print. But if their hands move, it'll tend to smear.

7 And in order to leave a print, you have to secrete
8 oil. That's what we get our prints from. Not everybody
9 -- a lot of people's hands are dry. Mine are dry. So if
10 your hands are not dry, you're not secreting the oil that I
11 need in order to lift that latent print.

12 Temperature is a factor. Weather condition is a
13 factor. Extremely cold weather, we can't -- it makes it
14 extremely difficult for us to lift a print because cold,
15 again, affects that -- that moisture that you leave behind.
16 Extreme heat, heat almost dissipates that oil. So that's a
17 factor that comes into play.

18 So we looking at temperature, we're looking at
19 weather, and we're looking at how the person handled that
20 item as to whether a print is there or not.

21 Q And so we talked about you processing the scene,
22 processing the vehicle, going to the hospital. Did you
23 also process or take any photographs inside the apartment?

24 A Yes.

25 Q And I'm going to hand you what's been pre-marked as

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 242

1 State Exhibits 42 through 49. And would you please look
2 through there and tell me if you recognize these
3 photographs?

4 A (The witness complies) Yes, I do.

5 Q And how do you recognize them?

6 A They're photographs that I took of the apartment.

7 Q And do these photographs fairly and accurately depict
8 the situation or the scenario that you were trying to take
9 a picture of?

10 A Yes, they do.

11 Q And to your best knowledge, did these pictures -- were
12 these pictures altered or changed since the time that you
13 took them?

14 A No, they weren't.

15 MR. SHENKAR: Your Honor, at this point, the State
16 would ask to submit State Exhibits 42 through 49 into
17 evidence.

18 THE COURT: Any objection?

19 MR. POURNARAS: No, Your Honor.

20 THE COURT: So admitted.

21 (State's Exhibit Nos. 42 through 49, photos, in
22 evidence.)

23 MR. SHENKAR: Permission to publish to the jury?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION BY MR. SHENKAR (continues):

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 243

1 Q (Indicates) Would you tell the jury what we're looking
2 at here?

3 A (Indicates) This is a picture of the living room.
4 This is a sliding glass door. Over on this side is the
5 kitchen area, but right here is where the TV was that was
6 taken.

7 Q And right next to the TV on the left, what is that?
8 Can you tell?

9 A Not -- not from there. (Indicates) This Christmas
10 tree? Oh, the window.

11 Q It's a -- was a Christmas tree.

12 A There's a Christmas tree.

13 Q Okay. And ---

14 A A Christmas tree and window.

15 Q Are there any presents underneath the Christmas tree?

16 A Lots of presents underneath the Christmas tree.

17 Q All right. And this was State Exhibit No. 42. I'm
18 going to place Exhibit No. 43. What are we looking at
19 here?

20 A Just a different area of the room -- of the living
21 room with the Christmas tree and the gifts underneath the
22 Christmas tree.

23 Q And I'm going to place Exhibit No. 44.

24 A That is of ---

25 Q Quality's a little bit bad.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 244

1 A Yeah. A little dark. That looks like a bathroom or a
2 utility closet.

3 Q And you took this picture because ...? Why did you
4 take this picture?

5 A It because it's been -- it looks like it's been
6 disheveled or ransacked.

7 Q And I'm going to place Exhibit No. 45. Can you tell
8 us what we're looking at?

9 A This is the bedroom. The dresser drawers have been
10 pulled out.

11 Q And I'm going to place Exhibit No. 46.

12 A That's the bed, and this is the same room with drawers
13 that were pulled out. And this is a television that's
14 laying on top of the bed.

15 Q And Exhibit No. 47.

16 A And this is the dresser with all the drawers pulled
17 out.

18 Q And that's how you found them when you came to that
19 apartment, yeah?

20 A That's how I found it.

21 Q Did you allow anyone to touch anything before you got
22 in there?

23 A No.

24 Q And I'm going to place No. 48.

25 A (Indicating) This looks like the cable box that was

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 245

1 disconnected from the television that was here.

2 Q And No. 49?

3 A Those are -- that's a clothing box.

4 Q And that's the bed?

5 A Yes, that's the bed.

6 Q These are all the pictures. You can go back and sit
7 down.

8 (The witness returns to the stand.)

9 Q So after you collected all the evidence, what did you
10 do with them?

11 A I turn them in to our evidence room.

12 Q How does that process work exactly? Can you explain
13 how do you -- what do you do with the items specifically?

14 A I package each item individually, according to its
15 size what I put it in; and I just labeled it with the
16 information that's requested. And I submit everything to
17 the evidence room, and they document everything that's --
18 we turned in. It's like a chain of custody thing.

19 Q And what do you do with those items after you
20 physically bag them? What do you do with them?

21 A I turn them in to the evidence room and -- and they --
22 they house them there.

23 Q And do you have to sign off on them or ...

24 A No, I just turn them in.

25 Q Let's go back to the hospital for one second. When --

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 246

1 you said that the hospital gave you the bag. To your
2 knowledge, those were the items that were taken off of his
3 body?

4 A Yes.

5 Q Okay. And the shoes that were in the bag, they were
6 taken off of his legs -- of his feet before they were given
7 to you, yeah?

8 A Yes.

9 Q And whatever was left at the scene was -- was taken
10 off of at the scene, yeah?

11 A At the scene, yes.

12 MR. SHENKAR: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Brief pause.)

15 Q Officer Moore, I'm going to show you --

16 (Marked State's Exhibit No. 51, cocaine.)

17 (Marked State's Exhibit No. 52, marijuana in a glass
18 jar.)

19 (Marked State's Exhibit No. 53, digital scale.)

20 Q Officer Moore, I'm going to show you what's been
21 marked as State Exhibit No. 51. Do you recognize this?

22 A Yes.

23 Q And is it in substantially the same condition that you
24 have last seen it?

25 A It's not in the same package. It's not in the same

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 247

1 package, but it looks the same.

2 Q And to your knowledge, it's been -- this particular
3 item been altered ---

4 A Not to my knowledge ---

5 Q --- or changed?

6 A Not to my knowledge.

7 MR. SHENKAR: At this point, Your Honor, the State
8 would ask Exhibit No. 51 to be admitted into evidence.

9 THE COURT: Any objection?

10 MR. POURNARAS: No, Your Honor.

11 THE COURT: Without ---

12 Q Officer Moore ---

13 THE COURT: --- objection, so admitted.

14 MR. SHENKAR: Thank you, Your Honor.

15 (State's Exhibit No. 51, cocaine, in evidence.)

16 DIRECT EXAMINATION BY MR. SHENKAR (continues):

17 Q Would you please tell the jury what exactly this is?

18 A I had it submitted for analysis as a white powder.

19 (Brief pause as the witness examines the exhibit.)

20 A I had it submitted as a white powder, and it field
21 tested positive for cocaine.

22 Q Okay. And I'm going to hand you what has been marked
23 as State Exhibit No. 52 and 53. Do you recognize these?

24 A Yes. These were the items that came out of the -- out
25 of the car during the search warrant of the car.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 248

1 Q And how do you recognize these?

2 A Because it's in the container that we found it in and
3 it's the -- the green leafy substance.

4 Q And when did you obtain these specifically?

5 A During the search warrant.

6 Q During the search warrant?

7 A Of the vehicle.

8 Q Of the vehicle. And what did you do with them?

9 A I turned -- packaged them and turned them into
10 Evidence.

11 Q And are these items substantially in the same
12 condition that they were at the time that you ---

13 A Yes.

14 Q --- discovered them?

15 A Yes.

16 MR. SHENKAR: Your Honor, at this point, the State
17 would move to introduce Exhibits No. 52 and 53 into
18 evidence.

19 MR. POURNARAS: No objection.

20 THE COURT: So admitted.

21 (State's Exhibit No. 52, marijuana in a glass jar, in
22 evidence.)

23 (State's Exhibit No. 53, digital scale, in evidence.)

24 Q Would you please tell the jury what these items
25 exactly are?

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 249

1 A This one is -- this is marijuana, and this is the
2 digital scale ---

3 MR. POURNARAS: Objection.

4 THE COURT: Hold on. Hold on.

5 MR. POURNARAS: That's not been established at this
6 time, Your Honor.

7 THE COURT: Go ahead.

8 Q I will ask the question differently. Would you please
9 explain in general terms ---

10 THE COURT REPORTER: I need him to stop moving that
11 stuff around.

12 (Brief pause.)

13 A This is ---

14 Q Without getting into the actually ---

15 A --- green leafy substance ---

16 THE COURT: Hold on a minute, please.

17 THE WITNESS: Oh, I'm sorry.

18 THE COURT: Hold on a minute. I sustain your
19 objection because it has not been established yet.

20 Rephrase your question to identify what she knows it
21 to be at this time.

22 DIRECT EXAMINATION BY MR. SHENKAR (continues):

23 Q Would you please tell the jury what you know it is to
24 be?

25 A A green leafy substance.

DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE 250

1 Q And it is contained in what?

2 A In a mason jar.

3 Q And is that the same item that you took out of the
4 vehicle?

5 A Yes.

6 Q And which vehicle was that?

7 A The vehicle belonging to Demetrius.

8 Q And that item, Item No. 53, I believe, what is that?

9 A A digital scale.

10 Q And are these the digital scales that were taken that
11 night from the vehicle?

12 A Yes.

13 Q The vehicle that belonged to whom?

14 A Demetrius.

15 Q Thank you.

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

17 THE COURT: Yes, sir.

18 (Brief pause.)

19 Q Officer Moore, when you went out on the call to the
20 crime scene, was it already dark?

21 A Yes.

22 Q And do you -- you went to the hospital, yes?

23 A Yes.

24 Q And you saw the Defendant at the hospital?

25 A Yes, I did.

CROSS-EXAMINATION BY MR. POURANARAS -- TAMMIE DAVIS-MOORE251

1 Q And do you recognize the Defendant in the courtroom
2 today?

3 A Yes.

4 Q Are you able to point him out to the jury?

5 A Yes.

6 Q What is he wearing?

7 A Plaid red -- maroon and black shirt.

8 MR. SHENKAR: Let the record reflect that Officer
9 Moore pointed the Defendant out to the jury.

10 THE COURT: So noted.

11 MR. SHENKAR: Officer Moore, I have no more questions
12 for you. Please answer any questions that the Defense
13 would have for you.

14 THE WITNESS: Okay.

15 THE COURT: Cross-examination?

16 MR. POURNARAS: Yes, Your Honor. May it please the
17 Court.

18 CROSS-EXAMINATION BY MR. POURNARAS:

19 Q Officer Moore, just to -- just to clarify, you said
20 that you first went to the hospital, correct?

21 A Yes.

22 Q And you weren't there with Mr. Henderson -- you didn't
23 arrive with him, you arrived after he had already gotten
24 there, correct? You didn't ride in the ambulance with him?

25 A No, I didn't ride in the ambulance with him, no.

CROSS-EXAMINATION BY MR. POURANARAS - TAMMIE DAVIS-MOORE 252

1 Q So the items you had were already bagged by the
2 hospital staff, the clothing items that you were referred
3 to earlier.

4 A I don't remember whether they were already bagged or
5 they bagged them while I was there and gave them to me.

6 Q You didn't personally remove any of them?

7 A Oh, no. I didn't personally remove anything from him.

8 Q Okay. And you weren't present when any of those
9 things were being removed.

10 A I may have and I may have not. I don't -- I don't
11 exactly remember.

12 Q And that was where you first arrived, correct?

13 A That's where I first arrived.

14 Q You later responded to the scene after you -- you did
15 your job at the hospital, right?

16 A Yes.

17 Q Okay. So you weren't also there as one of the first
18 responders.

19 A No.

20 Q Okay. So prior to you getting there, there were other
21 officers there.

22 A Yes.

23 Q There were EMTs there and Mr. ---

24 A Yes.

25 Q --- Henderson's body had been moved from there before

CROSS-EXAMINATION BY MR. POURANARAS - TAMMIE DAVIS-MOORE 253

1 you even collected any of this evidence.

2 A Yes.

3 Q So you wouldn't know -- you only know what the scene
4 was like when you arrived.

5 A Yes.

6 Q Okay. So you have -- you can't really tell us what
7 happened until you got there, other than ---

8 A Other than what I saw ---

9 Q -- been secured ---

10 A --- at the scene.

11 Q Okay. So if we can review a couple of things we
12 previously discussed. Let's see. I'm going to show you
13 again I believe what's marked as State's No. 3, right?

14 A Yes, sir.

15 Q So you testified earlier that this is looking right at
16 the scene of the incident, right?

17 A Yes.

18 Q And you mentioned everything was going on behind this
19 area.

20 A Yes.

21 Q That's where the body was found. Now, you didn't see
22 the body there, but you saw -- you were told the body was
23 there, correct, by the investigators?

24 A Yes.

25 Q Okay. And -- and that's where all those items you

CROSS-EXAMINATION BY MR. POURANARAS - TAMMIE DAVIS-MOORE 254

1 photographed individually, still on the ground, the
2 clothing that had ---

3 A Yes.

4 Q --- been removed and some other things, correct?

5 A Yes.

6 Q Like the pants. Okay. So around what time was it
7 when you took this picture?

8 A I ---

9 Q Late?

10 A It was -- it was dark. It was late in the evening.

11 Q So can I correctly assume that y'all brought in a lot
12 of this lighting to -- to process the scene?

13 A A lot of that lighting comes from the surrounding --
14 the lighting and -- and then that's car headlights on that
15 also because I'm standing in front of my vehicle and
16 another vehicle.

17 Q So if I went there tonight, it wouldn't be like this.

18 A It may not be as bright.

19 Q Okay.

20 A Because the camera -- the camera doesn't need a whole
21 lot of light to pick. It'll pick up -- pick up on
22 lighting.

23 Q Okay.

24 A But my vehicle is definitely behind me.

25 Q Okay. And you didn't use a flash, did you?

CROSS-EXAMINATION BY MR. POURANARAS - TAMMIE DAVIS-MOORE 255

1 A Yes. It's a flash.

2 Q You did use a flash.

3 A Yes.

4 Q So let me bring your attention to No. 9, State's
5 Exhibit No. 9. That is a close-up, correct?

6 A You got it upside down, but yes. It's No. 10.

7 Q No. 10? Oh, I'm sorry, that's your No. 10, but ---

8 A My No. 10.

9 Q --- I'm referring to State's No. 9?

10 A Yes.

11 Q Okay. So that's fairly dark there, isn't it?

12 A Yes.

13 Q Okay. Let me also refer you to similarly No. --
14 State's No. 11. Also, fairly dark back there, right?

15 A Yeah.

16 Q And State's No. 12. Now, you're illuminating that
17 with some other ---

18 A Yes.

19 Q --- light source, like a flashlight or something?

20 A Yes.

21 Q Okay. So this actual part behind the dumpster,
22 despite all those lights outside, is still pretty dark ---

23 A Uh-huh, yes.

24 Q --- from your recollection?

25 A Yes.

CROSS-EXAMINATION BY MR. POURANARAS - TAMMIE DAVIS-MOORE 256

1 Q Okay.

2 MR. POURNARAS: Beg the Court's indulgence, Your
3 Honor.

4 (Brief pause.)

5 Q Just to -- also to clarify, Officer Moore, when you
6 collected this evidence, you merely collected it from the
7 scene. You didn't process, did you?

8 A No, I didn't process it.

9 Q Did you take -- did you collect any of the fingerprint
10 evidence that you mentioned earlier? You said you took
11 some pictures of some items that looked like -- you --
12 there was an attempt to remove prints. Did you ---

13 A Now, which ---

14 Q --- do that, or ---

15 A Are you ---

16 Q --- did you ---

17 THE COURT: Hold on a minute. Hold on a minute.
18 Please let him finish his question, okay?

19 THE WITNESS: Oh. I'm sorry.

20 Q Earlier you mentioned that there were some attempts to
21 recover fingerprints off the items. Did you make those
22 attempts or was that another technician?

23 A That was me.

24 Q That was you. Okay. Did you process inside the home
25 as well?

RE-DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE257

1 A Yes, I did.

2 Q Okay. Did you process for anything like DNA inside
3 anywhere at all?

4 A No, sir.

5 Q And there is such a concept that's -- what is called
6 touch DNA, correct?

7 A Correct.

8 Q Okay. But y'all didn't do any of that --

9 A No.

10 Q -- type of analysis? Okay.

11 A No.

12 Q You didn't actually recover any useful prints
13 whatsoever during the scene.

14 A No, sir.

15 Q Okay. Thank you, Officer Moore.

16 MR. POURNARAS: I have no further questions, Your
17 Honor.

18 THE COURT: Any redirect?

19 MR. SHENKAR: Quick re-direct, Your Honor.

20 RE-DIRECT EXAMINATION BY MR. SHENKAR:

21 Q Officer Moore, is it your job to investigate the crime
22 or just to collect items?

23 A Collect the items.

24 Q So you don't -- you don't have any involvement with
25 actually theorizing what exactly happened?

RE-DIRECT EXAMINATION BY MR. SHENKAR - TAMMIE DAVIS-MOORE258

1 A Not -- not -- not really.

2 Q As far as the fingerprints, is it unusual not to
3 recover prints?

4 A No, that's not unusual at all.

5 Q So it happens plenty when you come on the scene and
6 there are no fingerprints to remove?

7 A Exactly.

8 MR. SHENKAR: Thank you. I have no further questions.

9 MR. POURNARAS: Thank you, Your Honor. Nothing
10 further.

11 THE COURT: Ma'am, you may step down. Thank you.

12 MR. SHENKAR: We ask the witness to be excused.

13 THE COURT: Any objection?

14 MR. POURNARAS: No, Your Honor.

15 THE COURT: Ma'am, you're excused. You're free to go.
16 Thank you for being here.

17 THE WITNESS: Thank you.

18 (The witness exits the stand.)

19 THE COURT: Call your next witness.

20 MR. ALL: Thank you, Your Honor. The State calls
21 Lieutenant Tracy Thrower of the South Carolina Law
22 Enforcement Division.

23 (Pre-marked State's Exhibit 54 for ID, 6 cartridge
24 cases.)

25 TRACY THROWER, after having been first

DIRECT EXAMINATION BY MS. ALL - TRACY THROWER

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1 duly sworn, testifies as follows:

2 THE CLERK: Thank you. Have a seat in the witness
3 stand, please. State your name for the record.

4 THE WITNESS: Tracy J. Thrower, T-h-r-o-w-e-r.

5 DIRECT EXAMINATION BY MS. ALL:

6 Q Lieutenant Thrower, please state your name and your
7 occupation.

8 A Tracy J. Thrower, T-h-r-o-w-e-r. I am the supervisor
9 of the Forensic Firearms Department for the State Law
10 Enforcement Division.

11 Q And how long have you been employed with the State Law
12 Enforcement Division, SLED?

13 A Approximately 17 years.

14 Q What training and educational background did you
15 receive to get to the point that you're at today?

16 A I have a Bachelor of Science degree, with emphasis in
17 biology, from Winthrop University. All my formal firearm
18 and tool mark training was performed at SLED. It was
19 approximately a three-and-a-half-year mentor-style training
20 where I -- I trained underneath the other firearm examiners
21 that were there.

22 Q What is involved in being a ballistics -- in -- in
23 your line of work, what do you do?

24 A In firearm identification, any type of crime in the
25 State of South Carolina that involves a firearm, any type

1 of shooting, they submit the evidence to SLED. And
2 depending on what the evidence is, I analyze it.

3 Basically, if it's a bullet and a gun, I will try to
4 match microscopically the bullet back to the firearm and --
5 that fired it or was submitted. Same thing with cartridge
6 cases, match a cartridge case to the gun.

7 I also do tool mark identification. If somebody
8 breaks into something, pry bars, bolt cutters, I can -- we
9 can examine that evidence and try to match it back to the
10 tool that was used.

11 Q How much of your working time is devoted to the duties
12 you described?

13 A Currently -- the majority of my -- my time currently
14 is in supervision of the department. I still do about 10
15 to 15 percent time -- of my time working firearms cases.

16 Q And how many examinations from ballistics have you
17 performed in your career?

18 A Tens of thousands.

19 Q And how many times have you testified in court?

20 A I believe around 55.

21 MS. ALL: Your Honor, at this time, the State moves
22 that Lieutenant Thrower be moved as an expert in
23 ballistics.

24 MR. POURANARAS: Without objection.

25 THE COURT: Ladies and gentlemen, let me give you a

DIRECT EXAMINATION BY MS. ALL - TRACY THROWER

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1 short instruction here. Normally, a person cannot give
2 opinion testimony. Normally, when a person testifies, they
3 must testify as to what they either saw, heard, or sensed
4 by smell or something of that nature.

5 However, there is an exception when someone is
6 qualified because of education or experience. They are
7 permitted to give opinion in certain areas if the Court
8 qualifies them that way. This witness is going to be -- is
9 being qualified as an expert in the field of ballistics to
10 give opinion testimony in that area.

11 That does not mean that you must accept the opinion,
12 but it is evidence for you to use in any way that you see
13 fit and give it the weight and credibility that you believe
14 is appropriate.

15 Madam Solicitor, you may continue.

16 MS. ALL: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MS. ALL (continues):

18 Q Lieutenant Thrower, in the course of your work as a
19 ballistics expert, did you have occasion to receive from
20 the Columbia Police Department, from Investigator Davis-
21 Moore, certain exhibits relative to this case?

22 A Yes, ma'am.

23 Q And what were those exhibits?

24 A I believe it was six cartridge cases and a rifle.

25 Q I'm going to hand you what's been pre-marked State's

1 Exhibit 54, which has been sealed for security. Do you
2 recognize these items?

3 (Brief pause as witness examines the exhibit.)

4 A Yes, I do.

5 Q On what day did you receive them?

6 A I do not have a chain of custody with me; however, I
7 started my analysis on January 8th of 2015.

8 Q I'm going to hand you your -- your report to refresh
9 your recollection on that date of the submission.

10 A The submission was January 2nd of 2014.

11 Q And from whom did you receive them?

12 A They were submitted by (as read) "T. L. Moore."

13 Q From Investigator Tammie Moore?

14 A I would assume so. I don't know her name.

15 Q Thank you. And what did you do with -- well, let me
16 show you what's been entered into evidence as State's
17 Exhibit 50. Do you recognize this item?

18 A I recognize my markings on the box and that does
19 appear -- that is consistent with the firearm that I
20 tested.

21 Q Okay. So when you say you tested that firearm ---

22 MS. ALL: Your Honor, if we could move State's Exhibit
23 marked 54 into evidence.

24 THE COURT: Any objection?

25 MR. POURANARAS: The casings, right?

DIRECT EXAMINATION BY MS. ALL - TRACY THROWER

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1 MS. ALL: Yes.

2 MR. POURANARAS: No objection, Your Honor.

3 THE COURT: Without objection, so admitted.

4 MS. ALL: Thank you.

5 (State's Exhibit No. 54, 6 cartridge casings, in
6 evidence.)

7 DIRECT EXAMINATION BY MS. ALL (continues):

8 Q And what did you do with those six casings that were
9 collected by Investigator Moore and the weapon?

10 A The first thing I did was review the submission
11 request to see what they were asking to be -- what was
12 asking to be done with the evidence. Opened the evidence,
13 making sure that all the evidence still bore proper seals.
14 Visually examined each cartridge case.

15 I then photographed the evidence, photographing the
16 packaging, photographing the general overall -- the -- the
17 way the evidence appeared.

18 Then used my departmental worksheets to document many
19 characteristics of the -- of the cartridge cases, such as
20 caliber, firing pin shape, breach face type markings, those
21 sorts of things.

22 I then used a comparison microscopic to actually
23 visually microscopically compare each of the cartridge
24 cases to each other.

25 Q And can you describe those test procedures? Do you --

1 do you fire the weapons and do you have a control?

2 A Yes. Once I started the analysis on the -- of the
3 firearm, I would have then done the -- gone through the
4 same steps of photography, visual examination, documenting
5 the firearm using departmental worksheets.

6 I then take the -- the firearm to our bullet recovery
7 tank, which is about a three foot diameter stainless steel
8 pipe, that goes -- stands two stories tall. And we're up
9 on the second story. And have a big lid that we put down.
10 And this tank is full of water.

11 So we aim the firearm down into the water tank and
12 fire it. The bullet strikes the water. The water slows
13 the bullet to a safe speed. And then the bottom of the
14 tank is shaped like a funnel and has a little cup that sits
15 in the bottom of it attached to a chain.

16 The bullet, once it is slow, kind of bounces along the
17 -- the -- the funnel, drops in the cup. We can pull it up
18 using the chain, dump the bullets in our hand. Therefore,
19 we have test specimens fired by that gun. We now have a
20 representative sample of how that gun marks bullets.

21 I can then take those bullets, place them on one side
22 of the comparison microscope, or in this case, cartridge
23 cases that were also captured. I can place the cartridge
24 case on one side of the microscope, the evidence cartridge
25 case on the other, and then I can visually microscopically

CROSS-EXAMINATION BY MR. POURANARAS - TRACY THROWER 265

1 place these two objects side by side and see if the same
2 markings are on both objects.

3 Q And did you perform this comparison with each of the
4 six bullets that were submitted?

5 A I -- I performed it with each of these six cartridge
6 cases that were submitted, yes, ma'am.

7 Q And what, just to be completely clear, was the purpose
8 of the Columbia Police Department submitting those six
9 cartridges with that rifle for you to test? What were you
10 looking to find out?

11 A They were looking to see if that rifle fired these
12 cartridge cases.

13 Q And what was your conclusion?

14 A My conclusion was that the submitted rifle did, in
15 fact, fire these six cartridge cases.

16 MS. ALL: Beg the Court's indulgence.

17 (Brief pause.)

18 MS. ALL: Please answer any questions for the Defense.

19 THE COURT: Cross-examination?

20 MR. POURNARAS: Thank you, Your Honor. May it please
21 the Court.

22 CROSS-EXAMINATION BY MR. POURNARAS:

23 Q Officer Thrower, may I see those shell casings?

24 A Bullet casings.

25 Q Bullet casings. I'm sorry.

1 So you said part of your analysis was to determine
2 whether these were, in fact, in your opinion, are from this
3 (indicates) right here, correct?

4 A That is correct, yes, sir.

5 Q And one of the things you determine is caliber. What
6 -- what exact caliber is something like this?

7 A That rifle is an 7.62 by 39 millimeter Russian short.

8 Q Okay. Give me some context. You -- you see all kinds
9 of guns through your employment, correct?

10 A Yes, sir.

11 Q So you have like -- part of your expertise is a
12 familiarity with different types of weapons, calibers,
13 things like that?

14 A Yes, sir.

15 Q What -- what -- what is that size-wise to me? How
16 bout -- can you relate that to something?

17 A Diameter-wise?

18 Q Yeah.

19 A 7.62 is -- it's roughly a 30 caliber, which is roughly
20 point 3-0 inches in diameter.

21 Q Okay. Would you -- where on the scale -- is that --
22 would you hunt with something like that?

23 A You could absolutely hunt with that.

24 Q All right. So this item right here, you say that
25 matches those six casings you have, correct?

CROSS-EXAMINATION BY MR. POURANARAS - TRACY THROWER 267

1 A Yes, sir.

2 Q Okay. Why is there not a stock on that rifle, that a
3 normal hunting rifle would have?

4 A It was missing.

5 Q It was missing.

6 A It could have either been taken off deliberately, or
7 it could have been broken off.

8 Q Okay. But when you received it, it was in that
9 condition right there?

10 A Correct. It did not have a butt stock on it as I
11 received it.

12 Q All right. And what is the stock used for?

13 A It is -- the stock -- during one style of -- of
14 shooting, you would place the stock into your shoulder to
15 give a rest, so that you can hold the firearm more stable
16 and look down the sights to better aim.

17 Q Okay. So for stability and aiming?

18 A Correct.

19 Q Okay. And those are important for hunting purposes.
20 Now, the missing stock would make that significantly
21 smaller and easier to carry, would it not?

22 A That would.

23 Q Okay.

24 MR. POURNARAS: Beg the Court's indulgence.

25 (Brief pause.)

1 MR. POURANARAS: I have no further questions, Your
2 Honor. Thank you.

3 THE COURT: Any re-direct?

4 MS. ALL: Nothing further, Your Honor.

5 THE COURT: Sir, you may step down. Thank you.

6 THE WITNESS: Thank you.

7 MS. ALL: May this witness be excused?

8 THE COURT: Any objection?

9 MR. POURNARAS: No, Your Honor.

10 THE COURT: Sir, you're excused. You're free to go.
11 Thank you for being here today.

12 THE WITNESS: Thank you.

13 (The witness exits the stand.)

14 THE COURT: Call your next witness, please.

15 MS. ALL: Thank you, Your Honor. The State calls Wes
16 Tyler.

17 MR. POURNARAS: Your Honor, we have a matter of law
18 regarding this witness.

19 MS. ALL: We can call another witness, Your Honor.

20 THE COURT: Can y'all approach a minute, please?

21 (Bench conference.)

22 MS. ALL: The State calls Doug Robinson.

23 (Brief pause.)

24 DOUGLAS ROBINSON, after having first
25 been first duly sworn, testifies as follows:

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1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please. State your name for the record.

3 THE WITNESS: Douglas Robinson.

4 THE COURT REPORTER: Douglas with one or two S's?

5 THE WITNESS: One.

6 DIRECT EXAMINATION BY MS. ALL:

7 Q Agent Robinson, can you please state your rank and
8 where you work?

9 A I'm a senior forensic chemist with the South Carolina
10 Law Enforcement Division, commonly known as SLED. I'm
11 assigned to the Drug Analysis Department.

12 Q Okay. And can you briefly describe the nature of your
13 work?

14 A My primary duty is the analysis and identification of
15 controlled substances, from submitted evidence, from
16 various agencies throughout the state.

17 Q And what kind of training have you received?

18 A I received my Bachelor of Science in chemistry from
19 University of South Carolina. After graduating, I spent
20 approximately three years performing chemical analysis in
21 the environmental chemistry field.

22 Upon coming to SLED, I received law and legal training
23 through the South Carolina Criminal Justice Academy, as
24 well as in-house training on the analysis of controlled
25 substances through the Drug Analysis Department.

1 I've also attended the Drug Enforcement
2 Administration's forensic chemist seminar.

3 Q And how many hours would you say that you've spent in
4 training?

5 A The -- the training generally takes about six months
6 initially. And you know, we stay proficient through
7 proficiency tests yearly.

8 Q How many examinations have you performed over the
9 course of your career?

10 A Hundreds if not thousands.

11 Q And how many times have you testified in court as an
12 expert on drug analysis?

13 A Seventeen.

14 MS. ALL: Your Honor, at this time, the State moves
15 Agent Doug Robinson as an expert in drug analysis.

16 MR. POURNARAS: No objection, Your Honor.

17 THE COURT: Without objection.

18 (To the jury) Ladies and gentlemen, this individual
19 has been qualified as an expert in the field of drug
20 analysis. My prior charge to you concerning expert opinion
21 or expert testimony remains the same. Just because they're
22 being qualified or have been qualified as an expert does
23 not mean that you have to accept the opinion, but it is
24 evidence for you to use in any way that you see fit, and
25 give it the weight and credibility that you believe is

1 appropriate.

2 Madam Solicitor, you may continue.

3 MS. ALL: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MS. ALL (continues):

5 Q What is drug analysis?

6 A Again, it's -- to be redundant, it's the analysis of
7 drugs. It's the analysis of controlled substances. When -
8 - when a law enforcement agency seizes something or finds
9 something they suspect to have a controlled substance in
10 it, they would send it to us to either confirm or exclude
11 the presence of controlled substances.

12 Q And there was testimony earlier about field tests
13 being performed and -- and coming back as positive. Can
14 you describe for the jury what that means and the
15 difference between that and why those are performed and --
16 and what you do?

17 A Sure. Oftentimes officers in the field will perform
18 what's called a field test. It's a presumptive test. It
19 can give the officer an idea of what may be present. For
20 example, there are field tests that test for the possible
21 presence of cocaine. So there's an expected color result.

22 At that point, it doesn't tell the officer necessarily
23 there is cocaine present, but it gives them reasonable
24 belief that there may be, and then they would submit it to
25 the lab.

1 What we do is actually confirm the presence of a
2 controlled substance, with the exclusivity to any other
3 controlled substances in fact. We do a preliminary test,
4 also independent of what the officer may or may not have
5 done, but we follow that with a confirmatory test to prove
6 the existence of that compound beyond any other compound
7 that may be present.

8 Q And in the case of cocaine specifically, how is the
9 test conducted, and what are you looking for in addition to
10 identification?

11 A May I refer to my notes in this case?

12 Q Yes, please. I have a copy for you to refresh your
13 recollection or do you have what you need?

14 A Is that the report?

15 Q Yes.

16 A I'm actually looking at my case notes.

17 Q Okay.

18 A It's a little different than that.

19 Q Okay.

20 A In this particular case, the -- the indicative or
21 presumptive test that I performed is what's known as
22 "cobalt thiocyanate stannous chloride test." This is a
23 two-part chemical reagent test that has color change
24 reactions.

25 In this particular case, the initial addition of

1 cobalt thiocyanate gave a blue color. The addition of the
2 stannous chloride did not result in any color change, the
3 blue remained. This is indicative or presumptive for
4 cocaine.

5 That was followed by an extraction for instrumentation
6 for confirmation on GCMS, which is short for "gas
7 chromatography mass spectrometry." This is an instrument
8 that, as I said, confirms, so it allows us to identify
9 specifically what it is. It's very similar to a
10 fingerprint in that it's unique to that compound and -- and
11 no other compound. So we're quite sure of what the result
12 is. That's what was performed in this case as far as
13 indicative and confirmatory testing.

14 Q Okay. I'm going to hand you what's been entered into
15 evidence as State's Exhibit 51. Do you recognize this
16 item?

17 A Yes, I do.

18 Q And in what context have you seen it?

19 A This is the packaging and substance inside that was
20 tested -- that I tested in this case.

21 Q And how did you come upon this item? How and when was
22 it submitted?

23 A It was initially submitted to our lab on 09/18/14. It
24 would be submitted to the evidence control department, so
25 it's not submitted directly to me, but it's to our evidence

1 control department. It goes into secure storage within the
2 evidence control department until the time that I go to
3 pick it up.

4 I pick up all my evidence from evidence control in
5 person. We do not have technicians that do that, so I
6 would pick it up in person from that department.

7 Once it's upstairs and I perform my analysis, the very
8 first thing I would do is ensure that all of the seals
9 within this container are intact. That ensures the
10 integrity of the evidence through the entire chain of
11 custody from the time it was sealed til the time it comes
12 to me.

13 Q Okay. And what did you do with that item once you got
14 it, and what were your conclusions about it?

15 A Okay. The -- as I said, the very first thing I would
16 do is -- is ensure the seals are intact. If -- if you can
17 look at the packaging that I have in my hand, we have an
18 outer container that's referred to as a "K pack." This is
19 a heat-sealed plastic bag. This is the packaging that I
20 put the evidence in once I was done with my analysis. So
21 there is a heat seal across the bottom with the initials
22 "DR" and "10/03/14." So October 3rd was the date that I
23 actually did the analysis.

24 Within that you have a bag with blue swirl patterns
25 and -- and a red strip across the top. This is what's

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1 referred to as a "BEST kit." This stands for "best
2 evidence sample testing." This is the bag that's designed
3 so that we can ensure that integrity throughout the chain
4 of custody. It's a tamper-evident bag, so if it was cut,
5 it would obviously be noticeable. But also, if someone
6 attempted to stretch it or open it, the -- the swirl
7 pattern would actually distort. So it would be readily
8 available and obvious.

9 Across the top is a blue strip -- that's the red strip
10 -- that's also tamper evident. It would be noticeable had
11 it been stretched.

12 Once I ensure that the BEST kit is sealed -- which in
13 this case, I denoted as sealed intact with my initials.
14 And again, 10/03/14 is the analysis date -- I removed
15 evidence from the packaging. I removed all packaging from
16 the actual controlled substance and took an initial weight.
17 Once I did that, at that point, took my initial indicative
18 test, followed it up with the -- took a sample for the
19 confirmation. And at that point, took a final weight and
20 then resealed the evidence.

21 After the evidence was sealed, at -- at a little later
22 time was when I did the actual extraction and
23 instrumentation for confirmation.

24 My results from this analysis are (as read): Item
25 1.1, Ziplock bag containing plastic sandwich bag,

1 containing compressed powder substance. Results, cocaine
2 C2 found in the sample tested. One tested. Net weight
3 20.87, plus or minus 0.01 grams; 322.06, plus or minus 0.15
4 grains. Confidence level for the weight is 99.7 percent."

5 Q And I actually misspoke earlier when we discussed
6 Investigator Moore who seized the drugs. But in your
7 report, it says that you received them from Donna Martin of
8 the Columbia Police Department. Is that normal for drugs
9 to be handed in from one secure area to the next?

10 A As I understand it, Ms. Martin is the evidence
11 technician for Columbia Police Department, and she would be
12 the one who routinely brings evidence from all -- from all
13 of Columbia Police Department, from various officers that
14 would submit it to a central evidence location. And then
15 she would bring it to SLED, much as our Evidence Control
16 Department would receive it.

17 Q And thanks to your explanation of BEST kit, and your
18 review and denotation that the BEST kit was sealed, the
19 implication there is that the drugs had not been tampered
20 with since they were seized; is that right?

21 A I feel confident in saying that once they were sealed
22 within the BEST kit, there was no way for anyone to tamper
23 with that or contaminate that evidence without me being
24 aware of it.

25 Q Okay. And if you could talk about the weight again.

1 Could you state the weight?

2 A Sure. The -- the net weight, which is excluding all
3 packaging -- this is substance only -- is 20.87, plus or
4 minus 0.01 grams.

5 Q And what is that plus or minus for?

6 A This is our measurement of uncertainty. With all
7 balances and -- and people, there's always some associated
8 uncertainty there. This is how we accommodate and identify
9 that uncertainty.

10 Q So the lowest amount of drugs that could be there
11 would be 20.86.

12 A Yes.

13 Q Okay. And in your experience with drug analysis, is
14 this a high weight?

15 A It's -- it's relative. It's large compared to many
16 submitted, but also small compared to some that I've tested
17 before.

18 Q Would this be considered a single-use amount?

19 A That's really not my area of specialty. I -- I
20 analyze the substance. I'm not out in the field doing
21 narcotics work, so I really couldn't answer that with any
22 confidence.

23 Q Thank you. And can you describe for us what is
24 controlled substance and what is the percentage of accuracy
25 you said the confidence level for the weight is?

1 A Sure. Well, a controlled substance is simply a
2 substance listed in the South Carolina law code as a
3 controlled substance. There's five levels, C5 up through
4 C1. This is a C2, which would be -- it actually has a
5 known medical use or medical use with severe restrictions
6 within the state and the United States. But it does have a
7 high potential for abuse and a high potential for physical
8 or mental dependency.

9 As far as the confidence level goes, 99.7 is -- is a
10 very high number. That's essentially if I took this weight
11 a thousand times, 997 times I would expect it to fall
12 within the range of uncertainty.

13 Q And following your examination, what did you do with
14 the evidence?

15 A Again, once I -- were taken, once samples were taken,
16 the evidence was immediately sealed in this outer packaging
17 called a "K pack." As you see, the seal across the bottom
18 is still intact, with my initials, and the date that I made
19 the seal. It has not been broken since and there has been
20 no resealing. So it would be my assumption that -- that no
21 one has been able to get to the evidence since I tested it.

22 Q I'm going to hand you what's been pre-marked for
23 identification purposes State's Exhibit 55. Do you
24 recognize this item?

25 A This would be a copy of the report I issued on this

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1 case.

2 Q And what does it say?

3 A Well, it has all the custody information and the
4 results. Essentially, as far as the results go, it's
5 identical to what I just read. I was reading a copy of my
6 results. So cocaine, C2, found in the sample tested with a
7 net weight of 20.87 grams.

8 MS. ALL: Your Honor, the State moves Exhibit 55 into
9 evidence.

10 THE COURT: Any objection?

11 MR. POURNARAS: No objections, Your Honor.

12 THE COURT: Without objection, so admitted.

13 (State's Exhibit No. 55, forensic lab report document,
14 2 pages, in evidence.)

15 MS. ALL: Thank you. Answer any questions for the
16 Defense.

17 THE COURT: Cross-examination?

18 MR. POURNARAS: Thank you, Your Honor. May it please
19 the Court.

20 CROSS-EXAMINATION BY MR. POURNARAS:

21 Q Mr. Robinson, now, you did briefly talk about the
22 methods of your analysis. And the primary method your --
23 in your results was GCMS, correct?

24 A That's correct.

25 Q Okay. Now, this confidence level you give, 99.7, that

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1 is for the -- the actual weight itself, correct?

2 A That's correct.

3 Q And -- and as an expert, could you explain the
4 difference between a qualitative and a quantitative
5 analysis?

6 A Sure. A qualitative analysis essentially says what is
7 there. A quantitative analysis says how much is there.

8 Q So the weight we know is 99.7, correct?

9 A The weight is ---

10 Q I'm sorry ---

11 A --- 20.87, plus or minus 0.01, plus or minus 0.01,
12 yes.

13 Q So -- so your GCMS analysis in -- in all drug analyses
14 are qualitative, correct? You're just looking for what is
15 it?

16 A That's correct. We identify what is in there. The
17 weight refers to the submission, yes.

18 Q So even though a GCMS, the same data you use to
19 determine what it is, could also be used to determine its
20 purity, that is not part of y'all's analysis as far as ---

21 A Correct. We -- we are not required by law to do
22 quantitative analysis for controlled substances.

23 Q Right. So you know the total weight, but you don't
24 know how much of it is actually cocaine.

25 A That's fair, yes.

1 Q Just that there is some cocaine present.

2 A Correct.

3 Q All right. And again, even though you have the
4 capability with this instrument and this same data, that is
5 not part of what y'all do in the forensic lab -- lab.

6 A Correct.

7 Q All right. Thank you very much.

8 MR. POURANARAS: I have no further questions, Your
9 Honor.

10 MS. ALL: Nothing on re-direct, Your Honor. We'd ask
11 he be excused.

12 THE COURT: Any objection?

13 MR. POURNARAS: No objections, Your Honor.

14 THE COURT: Sir, you may step down. You're free to
15 go. Thank you for being here.

16 (The witness exits the stand.)

17 THE COURT: Call your next witness, please.

18 MS. ALL: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Bench conference.)

21 THE COURT: Ladies and gentlemen, I've been advised
22 that your lunch is here. I am going to allow you all to
23 step to the jury room and eat lunch. Do I have any smokers
24 on the jury?

25 (No audible response.)

1 THE COURT: Okay. Very good. I'm going to allow you
2 to step to the jury room and eat lunch. If you all would
3 let the bailiff know, simply by knocking on the door and --
4 and letting them know once you all have finished.

5 Also, during your break for lunch, if you all would
6 select a foreperson for this jury. I would tell you all
7 that Mr. Williamson nor Ms. McFadden can serve as the
8 foreperson. Okay. So if you all would select a
9 foreperson, write it on a piece of paper, and let -- give
10 it to the bailiff when you all get ready to come back into
11 the courtroom, I would greatly appreciate that.

12 I hope you all have a nice lunch. Do not, do not
13 discuss the case until you're instructed to do so. I'll
14 get you back out here shortly.

15 (Jury exits the courtroom at 12:17 p.m.)

16 THE COURT: All right. At sidebar, the State was
17 going to call -- what was the individual's name from
18 Climatology -- the climatologist's name?

19 MS. ALL: His name is Wes Tyler, Your Honor. And I
20 did fail to enter that into the witness list.

21 THE COURT: That can be certainly cleared up by simply
22 asking the jury the very questions that I asked with the
23 witness list: Whether or not they ever been related by
24 blood; connected by marriage; had a close personal,
25 business, or social relationship with this witness. Can --

1 can certainly ask those questions. Done so in the past.
2 Do not believe that that would, in any way, prejudice the
3 Defendant in this case.

4 Now, I'll allow him to testify and there's some -- or
5 someone indicates that they do know him, etc., you know,
6 that could create a different issue. Let me hear from
7 Defense counsel.

8 MR. POURNARAS: Yes, Your Honor. Our issue with this
9 person being qualified as an expert is that my
10 understanding, when we first spoke with the State last
11 week, was that he would be here merely to introduce the
12 data that we gave you earlier, which would be the hours of
13 sunset on this particular day.

14 And the standard -- and the State mentioned earlier
15 that they wanted the Court to stipulate that this did occur
16 in the nighttime. But nighttime is actually a matter of
17 fact for the jury to find.

18 Nighttime is defined in South Carolina, at least, by
19 the old common law definition of burglary -- as set by
20 Blackstone in his treatises many, many years ago -- as
21 essentially a period after sunset, at which time a man's
22 face is indiscernible without the aid of additional light -
23 -

24 THE COURT: Artificial.

25 MR. POURNARAS: Artificial light, correct. But -- but

1 my point is that has nothing to do with -- I understand
2 that they need to possibly introduce when sunset is. But I
3 don't understand the -- the benefit to the jury of an
4 expert to tell them is it light or is it dark based on what
5 people who actually were there testified to.

6 This individual would not have any first-hand
7 knowledge of that night. The factors for which he would be
8 opining upon are based on estimates that have a multitude
9 of conditions that could of -- that change that: the
10 weather conditions, atmospheric conditions, shadows cast by
11 the building, the tree lines -- a number of factors that he
12 has no first-hand knowledge of. He would be telling the
13 jury, essentially, in my opinion -- I'm presuming -- it
14 must have been too dark to see at this time.

15 And I don't think that's appropriate, for someone who
16 we've deemed an expert, to opine upon those issues when
17 we've got a multitude of witnesses who were there and who
18 have previously testified to their present impressions,
19 Your Honor.

20 I think that what that testimony would do, when we put
21 this label of expert on him, would impermissibly bolster
22 certain witnesses and discredit other ones on their own
23 perceptions of the visibility conditions that night.

24 So Your Honor, I would not be opposed to the Court
25 taking judicial notice of when the sunset conditions were,

1 according to the U. S. Navel Observatory, but I don't think
2 it would be proper or helpful to the jury in any way to
3 have an expert say I think it was dark or I don't think it
4 was dark because he has no first-hand knowledge of the
5 scene or the conditions or that particular location.

6 THE COURT: All right. Ms. All?

7 MS. ALL: Thank you, Your Honor. We have struggled
8 with how to address this nighttime issue because there was
9 artificial light present. As Your Honor can see in the
10 certified copies, there was a full moon, and so there was
11 some light; and it is very difficult to define nighttime.

12 We've looked through the rest of the South Carolina
13 code, and from what we've been able to find, every other
14 reference by Congress to define nighttime is found in the
15 use of headlights and specifically codified in the use of
16 headlights for ATVs, which says it's unlawful to operate an
17 all terrain vehicle between one-half hour after sunset and
18 one-half hour before sunrise unless operated with the
19 headlights on. And that's -- that's as close as we could
20 get. That's based off of the statement that Mr. Pournaras
21 -- which is completely correct -- that common law is the
22 period between sunrise and sunset when it's not possible to
23 discern a man's face.

24 And some states, including some in the Fourth Circuit,
25 I believe, have construed this to be from one-half hour

1 after sunset until one-half hour before sunrise; hence, you
2 know, where we started looking into the -- the driving
3 code.

4 We have done our best to assess this. We're fine with
5 you taking judicial notice of the report. Mr. Pournaras is
6 correct that he can't -- there's no way that Mr. Tyler can
7 testify, but he can testify as to my only concern is
8 interpreting this document for the jury, which I'll leave
9 in Your Honor's discretion. I think we all know what
10 sunrise and sunset is. And it's got moon rise on there,
11 and the second page shows that it was a full moon. There's
12 been some discussion of the street lights.

13 So we're fine with taking judicial notice of that
14 document. We would ask Your Honor to take judicial notice
15 that it was nighttime, if at all possible, given that there
16 is either daytime or nighttime, and this clearly occurred
17 after sunset by a certified document from the South
18 Carolina State Climatology Office.

19 Mr. Tyler is -- works at the South Carolina Department
20 of Natural Resources, South Carolina State Climate office,
21 Assistant State Climatologist for service and is the
22 custodian of records. So we called him because this has
23 become an issue. People were saying they could still see
24 this far, they could still see that far. And so just to
25 give the jury those facts. But those are certainly

1 provided by this document, so we concede that point.

2 But if possible, we would ask Your Honor to take
3 judicial notice, which is defined as one not subject to
4 reasonable dispute; and that it is either generally known,
5 or capable of accurate and ready determination, by resort
6 to sources whose accuracy cannot be reasonably questioned.

7 There's a recent North Carolina case where age --
8 where the Judge was not allowed to take the age of the
9 defendant in judicial notice, which is completely separate
10 and different from this because the age is going to depend
11 on when the parents registered the child, when they got the
12 social security card, maybe a day off. But with this --
13 and coming from the U. S. Navy Observatory Astronomical
14 Applications Department, this is what is used to determine
15 moon phases and what NASA uses.

16 And so with it being so far after sunset that it
17 clearly falls within -- and also that the entering or
18 remaining must occur at nighttime. And the State has
19 offered to provide -- or is prepared to offer testimony
20 that, according to the inside of the apartment, it doesn't
21 appear that Mr. Henderson was done with his burglary.
22 Clearly he was in the act when he was shot as he had
23 remotes on him that matched the televisions in his car.
24 And so that is the remaining.

25 And with it being substantially after sunset, that

1 being 5:18, we would ask that you take judicial notice as
2 it is undisputable, according to the U. S. Naval
3 Observatory, that that would be after sunset. More than a
4 half hour after sunset, substantially more.

5 THE COURT: Anything else?

6 MR. POURNARAS: Yes, Your Honor, many, many things.

7 THE COURT: Well, now, hold on a minute. Let me ask
8 this ---

9 MR. POURNARAS: I -- I ---

10 THE COURT: Well, hold on a minute. There were two
11 separate documents that were handed up to me at sidebar.

12 MR. POURANARAS: Correct.

13 THE COURT: One of which includes -- the first
14 documents are paper clipped together, one of which is a U.
15 S. Naval Observatory Astronomical Application Department,
16 sun, moon, date -- data for one day. Is there any
17 objection to this two-page document, Mr. Pournaras?

18 MR. POURNARAS: Your Honor, is the second page --

19 THE COURT: The moon.

20 MR. POURNARAS: That, I believe, the Court is well
21 within its discretion to take judicial notice of.

22 THE COURT: Of this document?

23 MR. POURNARAS: Yes, sir.

24 THE COURT: How about the second one?

25 MR. POURNARAS: I would contest that.

1 THE COURT: All right. This is what I'm going to do.
2 I will take judicial notice as to the -- as to this
3 document, which I hold in my hand, which is a two-page
4 document, the U. S. Naval Observatory Astronomical
5 Application Department, which sets out sunrise, sunset,
6 that the Defense counsel does not object to. It's a two-
7 page document. And I will instruct the jury of such
8 judicial notice.

9 What I will not take judicial notice of is that it be
10 nighttime. Your argument to me sounds like a good argument
11 to that jury, the artificial lighting, et cetera.

12 My charge on burglary first reads as follows with
13 regards to nighttime (as read): "Nighttime being that
14 period between sunset and sunrise, during which there is
15 not enough daylight to recognize a person's face except by
16 artificial light or moonlight." That is what the law in
17 this state is and that is what I am going to charge them.

18 This second document, of which Mr. Pournaras objected
19 to, I am not going to allow that to go in because I believe
20 that that is possibly -- quite confident that it is not
21 South Carolina law and will not allow that to go back to
22 this jury.

23 MS. ALL: Thank you, Your Honor. We actually just --
24 we saw that for the first time today. We just got these
25 documents today. So that's fine.

1 THE COURT: Okay.

2 MS. ALL: We would ask that Your Honor consider adding
3 to the instructions this language that some states have
4 construed this to be from one-half hour after sunset until
5 ---

6 THE COURT: I'm not doing that. That's not South
7 Carolina, that's other states. And I understand your
8 position. If you want to read it into the record so it's
9 noted, but I'm not going to go any further than what the
10 current South Carolina law is on that issue.

11 MS. ALL: Thank you, Your Honor.

12 THE COURT: Okay. All right. Anything else?

13 MR. POURNARAS: Not on that issue, Your Honor.

14 THE COURT: Any need for him to testify?

15 MS. ALL: No, Your Honor.

16 THE COURT: All right. Anything before we break for
17 lunch from the State?

18 MS. ALL: No, Your Honor.

19 THE COURT: Defense counsel?

20 MR. POURNARAS: No, Your Honor.

21 THE COURT: 45 minutes, 1:15.

22 MS. ALL: Thank you, Your Honor.

23 THE COURT: During your lunch break -- there was an
24 issue -- and this is on the record, Ms. Bonnie --
25 concerning, I think, Mr. Tucker, from Probation, about his

1 testimony.

2 I don't know exactly what your objection was, Mr.
3 Pournaras, about tailoring his testimony, I think, kind of
4 to paraphrase what you said up here at sidebar. You all
5 talk about that over lunch, and see if y'all can't come to
6 some kind of agreement on that. And let me know when we
7 return.

8 MR. POURNARAS: Thank you, Your Honor.

9 (Off the record at 12:29 p.m.)

10 (On the record at 1:18 p.m.)

11 THE COURT: All right. The State ready to proceed?

12 MS. ALL: Yes, Your Honor. We had a request from
13 Defense for an offer, and we made an offer for dismissal of
14 the PWID marijuana so that we would not inconvenience the
15 analyst any further. And that offer has been declined. So
16 that's what we were doing outside.

17 I'm going to have my investigator here should Your
18 Honor have any questions about service of the subpoena on -
19 - on Mr. Mead. As to his closing, the marijuana analyst --

20 THE COURT: Yes.

21 MS. ALL: His closing is at one o'clock in Lexington.

22 I'll be happy to tell you about the subpoenas and how
23 we -- there's some concern there that -- we initially were
24 going to try this case in January, and so we served
25 subpoenas in December on Mr. Mead at the Columbia Police

1 Department when he still worked there. It -- it said until
2 called to court. It specifically said January or until
3 called to court. And then when we looked, decided to wait
4 until the ballistics and DNA results were back, we
5 contacted everybody and told them they'd be called later.

6 And then in May -- April, when we served subpoenas for
7 this trial, they were again sent to CPD; and through some
8 fluke, they didn't email us back and say Paul Mead doesn't
9 work here anymore. But I knew he didn't work there
10 anymore.

11 So I called him on his cell phone last week and told
12 him on Friday. I said this is what we need. He said okay,
13 great, I don't have any conflicts. And I emailed him, per
14 his request, a copy of the drug analysis and subpoena. He
15 did not email back confirming that he received it, but he
16 did give me his email address and tell me that that's where
17 we should send it.

18 So he is closing on a house at one o'clock in
19 Lexington. He is -- I have told him he has to be here.
20 But I'm just relaying all that to you so that you have your
21 discretion in the enforcibility of that subpoena. That is
22 the practice by our office. Ideally, I would have ---

23 THE COURT: Is he coming -- did he say he was coming
24 after the closing?

25 MS. ALL: We have not talked to him because he's in a

1 closing. Nobody could get him on the phone, he was in the
2 closing at 1.

3 THE COURT: What closing -- who's closing it, do you
4 know?

5 MS. ALL: I don't know the lawyer's name. I tried to
6 get it that. I don't know.

7 THE COURT: Okay.

8 MS. ALL: We both -- everybody's texted him. I told
9 him that Your Honor requires his presence, and that we
10 don't care what he's wearing or anything like that. But
11 there is not a current marijuana analyst at CPD since Mr.
12 Mead left in January. And we all have a really good
13 relationship with Mr. Mead is the other thing.

14 THE COURT: Okay.

15 MS. ALL: Would you like to have Investigator Streeter
16 tell you about the emails and the process by which we
17 served law enforcement entities?

18 THE COURT: Well, just keep me abreast of what's --
19 any contact with him. Y'all sent him text and told him
20 that he needs to come. And I'll address it, if he doesn't
21 come, at the appropriate time.

22 MS. ALL: Okay. Thank you, Your Honor.

23 THE COURT: Having said that, let me ask you all: Did
24 you have an opportunity to talk over the break concerning
25 testimony of Officer Tucker -- Mr. Tucker?

1 MR. POURNARAS: Yes, Your Honor. My understanding is
2 that they intend to have Mr. Tucker discuss certain things
3 about the GPS data, including the number of satellites that
4 are connected to and that connection with being in or
5 outside of a residence.

6 My position is that I don't know that the current
7 state of the science would allow him to say that. So I
8 would ask that I have an opportunity to do my own voir
9 dire. I'm sure they have asked him, and that I would --
10 may have an objection to his qualification, possibly in
11 whole or on certain topics.

12 MS. ALL: Your Honor, if I can just submit a copy of
13 -- because this was new for us and we learned a lot about
14 Excel spreadsheets and information -- GPS information. But
15 I can provide you with a copy of what we received. It's
16 his GPS coordinates from three o'clock all the way to, I
17 think, 7:30. What Mr. -- and if I may approach?

18 THE COURT: Yes.

19 MS. ALL: And then we also had them do as close as
20 interpretation as they could to where the dots begin. The
21 issue is that they can't tell exactly -- where's that Excel
22 spread sheet -- which dot goes with which row of the Excel
23 spreadsheet and we are aware of that. The importance is
24 that the dots are all over the place and each of the dots
25 were more than 10 to 20 feet apart.

1 satellites on this list, as Your Honor can see on the whole
2 part, it's like -- it's at nine -- like nine satellites can
3 see him. It says "number of satellites" in the fourth
4 column. It's like nine satellites can see him and then it
5 goes down to five and then it goes up to nine.

6 One interpretation is that that would be indicative of
7 someone going in and out of satellite accessibility. One
8 such satellite accessibility thing would be inside.

9 So we aren't saying -- he's not going to testify that
10 that is what happened here. There's cloud cover, maybe the
11 clouds are moving, maybe a UFO flew by. We don't know.
12 It's one thing that he can use to explain the change.

13 The other thing is the speed, which is a much stronger
14 thing to -- to talk about than the number of satellites,
15 which seems to be Mr. Pournaras's main concern, the number
16 of satellites going "inside, outside, inside, outside" as
17 he took loads. The speed zero, one, and two is when you're
18 walking, slash, running. And, obviously, it's miles per
19 hour, so you can see when he got into the ambulance.

20 So his interpretation will be three-fold. These are
21 the statistics. This is where the dot falls. And then --
22 that this is what can change the number of satellites and
23 then the speed.

24 THE COURT: All right.

25 MR. POURNARAS: Your Honor, I have no idea of what

1 body of knowledge he's basing that on, so I would have to
2 ask for that. But my contention is if you also look at the
3 spreadsheet, that number of satellites goes up and down
4 between 5 and 10 throughout the entire day. When we know
5 he was in the ambulance, when we know he was shot and lying
6 on the ground in move -- motionless for up to 20 minutes,
7 motionless at the same location, yet those number of
8 satellites still bounce between 5 and 10. So ---

9 THE COURT: I'm going to allow you to ask him that on
10 cross-examination. That goes to the weight, to the weight,
11 not the admissibility.

12 MR. POURNARAS: Correct.

13 THE COURT: Okay. So you can ask him that on cross-
14 examination.

15 Now, my other -- my -- my question is: How does the
16 State intend to bring out this GPS tracking, so to speak?

17 MS. ALL: To qualify him as a -- and I'll be glad ---

18 THE COURT: No. I'm talking about to qualify the GPS
19 that's tracking Mr. Henderson.

20 MS. ALL: As to ---

21 THE COURT: How is that going -- I mean, without
22 stating that he had a GPS device on him, or on his ankle --

23 MS. ALL: Right.

24 THE COURT: -- how are you going to bring that out?

25 MS. ALL: As delicately as possible. I personally

1 have not dealt with this before. Agent Tucker has multiple
2 times and --

3 THE COURT: Have you talked with him before he's
4 coming in here to testify?

5 MS. ALL: Oh, yes, sir, on the phone several times,
6 yes.

7 THE COURT: Well, you ought to know then how he's
8 going -- how you intend to do that.

9 MS. ALL: Right ---

10 THE COURT: That's what I'm asking.

11 MS. ALL: Okay. It's language such as, "We have
12 access to the GPS data concerning his whereabouts."

13 THE COURT: Okay. And -- which is -- can you
14 elaborate a little bit?

15 MS. ALL: I would not be asking him to elaborate. Our
16 -- our point is to be as vague as possible.

17 THE COURT: Mr. Pournaras?

18 MR. POURNARAS: And -- and I -- from what Ms. All told
19 me previously, he has testified before, but in cases that
20 involved things where it's readily apparent, in cases where
21 ---

22 THE COURT: Hold on a minute.

23 (Addresses an unknown audience member) Young man in
24 the blue shirt, don't come back in this courtroom with them
25 pants baggy around your rear end. You understand?

1 YOUNG MAN: Yes, sir.

2 THE COURT: If you do, you run the risk of this Court
3 holding you in contempt. That is inappropriate wear for
4 this Court. You understand?

5 YOUNG MAN: Yes, sir.

6 THE COURT: Thank you. I'm sorry, Mr. Pournaras, go
7 ahead.

8 MR. POURNARAS: That's okay, Your Honor. You know, I
9 am assuming that the Court's concern is how do you have a
10 chain of this data to this Defendant without ---

11 THE COURT: Well, here's -- he -- I'm going to allow
12 it in. Now, I think it's highly, highly probative, okay?
13 Now, Defense counsel can stipulate that it's applicable to
14 him or they got to have some leeway to make that
15 connection.

16 MR. POURNARAS: And Your Honor, I think that if this
17 were to be presented in court, from what we've testified, I
18 believe that they would be able to establish a chain based
19 on -- and we would -- what I'm saying is we would stipulate
20 to that because the evidence we've been presented in the
21 past --

22 THE COURT: Okay.

23 MR. POURNARAS: I have reasonable assurance that this
24 data --

25 THE COURT: Okay.

1 MR. POURANARAS: -- from Probation, is linked to the
2 serial number on the tracking device that was removed by
3 Mr. -- so we're not contesting that. We would stipulate
4 that in order to ease this.

5 THE COURT: Well, I mean, I think they have to make
6 that connection for this jury.

7 MR. POURNARAS: Correct.

8 THE COURT: And there's a fine line there of -- of
9 certainly wanting to protect the prejudicial effect to your
10 client, but by the same token -- token, allowing them to
11 make that connection. You understand what I'm saying?

12 MR. POURNARAS: Yes, Your Honor.

13 THE COURT: And if you all can agree on it -- I mean,
14 I have to allow them to make that connection to -- to some
15 extent. So if you stipulate to -- to the fact that -- that
16 this GPS, whatever -- however you want to term it, is
17 connected to your client for purposes of this, I mean, I --
18 I think there needs to be something there to that without
19 getting over or having a substantial concern about
20 prejudice to your client.

21 MR. POURNARAS: I think that is the only way I can do
22 it without extra information that would be inferential --

23 THE COURT: Okay.

24 MR. POURANARAS: -- inferences that I'm seeking to
25 avoid.

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1 THE COURT: All right.

2 MS. ALL: Your Honor, if I may, we've come so far in
3 this trial, we -- we do understand the concerns of Defense.
4 And we ask if Your Honor would be willing to let Agent
5 Tucker -- and I believe -- wanting to call Agent Tucker --
6 proffer this testimony so that Your Honor and Defense
7 counsel will be sure that everybody's on the same page
8 about the language that's to be used. Once we get past
9 that initial part, we'll just be interpreting the data for
10 the jury.

11 THE COURT: All right. Get him in here, please.

12 (Brief pause.)

13 MITCHELL TUCKER, after having been
14 first duly sworn, testifies as follows:

15 THE CLERK: Thank you. Have a seat in the witness
16 stand, please. State your name for the record.

17 THE WITNESS: Mitchell Tucker.

18 VOIR DIRE BY MS. ALL:

19 Q Good morning, Mr. Tucker. I'm Brittan All. We've
20 spoken on the phone several times. And one of the things
21 that you and I discussed was the ability to testify about
22 this information without any prejudice to the Defendant.

23 The State has been allowed to present this evidence.
24 We are asking you to proffer so that everybody can feel
25 confident that there won't be any mistrial, there won't be

1 any slip in language, and we're all comfortable with the
2 language.

3 A Not a problem.

4 Q Have you testified about this before without the use
5 of the words "monitor" or "supervisory" or --

6 A Not exactly. I have briefed counsel before, both for
7 prosecution and defense, on how GPS works. Generally, when
8 I get to court, it's most of the time associated with a
9 probation/parole violation.

10 Q Okay. And as you and I discussed on the phone, you
11 were the one that introduced to me the idea that it could
12 be discussed very generally?

13 A Yes, ma'am.

14 Q And what experience did you have there?

15 A Basically to exclude any reference to, you know, him
16 actually being on a GPS device or monitor.

17 Q Right.

18 A It's just we're presenting GPS data.

19 Q Right. So we've agreed to exclude the use of the
20 terms such as "monitor," "supervise," "ankle monitor,"
21 "ankle bracelet," "ankle," anything like that when we put
22 those pictures in.

23 So when you take the stand, I would say can you
24 introduce yourself to the jury; and then I would be loosely
25 qualifying you as an expert and -- and relying heavily on

VOIR DIRE EXAMINATION BY MS. ALL - MITCHELL TUCKER 303

1 you to provide that information and your training. We're
2 going to exclude anything about Probation, Pardon and
3 Parole.

4 So could you tell us how you would introduce you --
5 yourself to the jury and provide your qualifications as an
6 expert.

7 A I -- being -- I've worked with GPS devices, GPS
8 information, for over eight years. I've been trained by
9 several different GPS vendors on the use of different
10 devices, data, how to interpret them.

11 Q And how many hours worth of training and what sort of
12 classes?

13 A Each vendor provides their own training. We've worked
14 with, since I've been employed, probably five different
15 vendors.

16 Q And where are you employed?

17 A State Probation and Parole.

18 Q Okay. So we'll leave that part out.

19 A We would leave it out, yes.

20 Q So we won't use the word "employed."

21 A Right.

22 Q Okay. So you would just be here testifying as an
23 expert. Okay. And in what capacity did you come to be
24 involved with this case?

25 MS. ALL: And then would that be enough for you to

1 qualify as an expert? Or do you want ...

2 MR. POURNARAS: Again, my -- my qualification for the
3 expert would be on what he's going to testify on, then I'd
4 have to go through the ---

5 MS. ALL: He's going to interpret the data and, we
6 would be using the map for demonstrative purposes.

7 MR. POURNARAS: I understand that, but I would have to
8 be able to ask him questions about: "Is it peer reviewed?
9 Does he -- does this particular data that he's
10 interpreting, is that something that has been subject to
11 scientific review and repeatability?"

12 Your Honor, and I apologize, it's not -- it's not as -
13 - as brief as "he was here and he was there." I believe
14 they're going ---

15 MS. ALL: Mr. Tucker, can you answer those questions?

16 THE WITNESS: Yes. But can -- can you repeat what you
17 would -- how -- how you would phrase that to me and I'll
18 see how I would ---

19 MR. POURNARAS: Sure.

20 Your Honor, is it -- I'm sorry, is this my ---

21 THE COURT: Go ahead.

22 MR. POURNARAS: --- voir dire? Yes. Thank you.

23 VOIR DIRE BY MR. POURNARAS:

24 Q Mr. Tucker, you mentioned you've been through several
25 hours of training, correct?

VOIR DIRE BY MR. POURANARAS - MITCHELL TUCKER

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1 A That is correct.

2 Q Now, specifically, on the issue of satellite
3 connectivity, is that something you've received specific
4 training on?

5 A Yes.

6 Q Okay. On the issue of satellite connectivity, is
7 there a body of work that discusses the conditions that
8 impact connectivity?

9 A There are several studies and bodies of work that
10 pertain to that.

11 Q And have you yourself read or reviewed those?

12 A Yes, I have reviewed several of them.

13 Q Okay. Now, specifically, could you tell me some of
14 those factors?

15 A Well, there's atmospheric conditions, of course; the
16 number of cell towers in an area; the -- whether someone is
17 inside or outside greatly impacts if the -- if they have
18 satellite.

19 Q Okay. Have you previously analyzed this type of data,
20 specifically with satellite connectivity, and what that
21 means?

22 A Yes, I have. Basically, part of my duties, I look at
23 and analyze and troubleshoot that on an almost daily basis.

24 Q Have you participated in any actual studies that
25 control certain situations that would see if it's inside,

1 if it's outside, would it have logical connections to the
2 number of satellites?

3 A Not specific studies, but general experience on what
4 to look for.

5 Q Okay. All right. And on that basis, is there any way
6 for you to tell specifically one condition or another as to
7 connectivity?

8 A The major factor that I look at for the accuracy of a
9 GPS points is the number of satellites that the GPS-enabled
10 device has access to. And that's on -- actually listed on
11 the reports that I'll be referring to that I believe you
12 also have in your possession.

13 Q This is just in brief, there have been studies done
14 specifically on connectivity issues and the factors that
15 relate to that?

16 A Yes, sir.

17 Q Okay.

18 MR. POURNARAS: Thank you, Your Honor.

19 MS. ALL: Thank you, Your Honor. And we would also
20 need to qualify him as a custodian of records for the basis
21 of the admission ---

22 THE COURT: Well, before we go there, is there any
23 objection, pursuant to your voir dire, of him being
24 qualified as an expert to testify concerning GPS tracking?

25 MR. POURNARAS: Your Honor, I -- I would agree that he

VOIR DIRE BY MS. ALL - MITCHELL TUCKER

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1 can testify to some of these factors, but I do not believe
2 that he can opine as one particular circumstance over the
3 other.

4 THE COURT: I think he testified to that, did he not?

5 MR. POURNARAS: Pardon me?

6 THE COURT: Did he not just say that --

7 MR. POURNARAS: Yes, sir ---

8 THE COURT: -- that he can't testify to one
9 circumstance over the other. Didn't you say that, Mr.
10 Tucker?

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

12 THE COURT: I would agree with you on that.

13 MR. POURNARAS: Thank you, Your Honor.

14 THE COURT: All right. Now, any other issues
15 pertaining to his qualifications as an expert to testify
16 concerning that issue?

17 MR. POURNARAS: No, Your Honor.

18 THE COURT: Now, Ms. All, next.

19 MS. ALL: Thank you, Your Honor.

20 VOIR DIRE BY MS. ALL (continues):

21 Q Mr. Tucker, in your course of work, is one of your
22 responsibilities the regular maintenance of records of GPS
23 coordinates?

24 A Yes. Yes, it is.

25 Q Do you have custody and control over those records?

1 A I -- I do, yes.

2 Q And what are your duties -- can you access those
3 records at any time?

4 A Yes, I can. Basically, one -- one email or short
5 phone call I can be in possession of records within minutes
6 to less than an hour.

7 Q And do you recognize --

8 MS. ALL: I'm sorry, Your Honor, I believe I handed
9 you my copy of the Excel spreadsheet.

10 THE COURT: (Indicates) This?

11 MS. ALL: Yes, sir. Thank you, Your Honor.

12 Q Do you recognize these records?

13 A Yes, I do.

14 Q Do you have custody over those records?

15 A Yes, I do.

16 MS. ALL: Your Honor, we would ask that he be
17 considered a custodian of records for the purposes of these
18 -- of these GPS coordinates.

19 THE COURT: Any objection?

20 MR. POURNARAS: No, Your Honor.

21 THE COURT: All right.

22 MS. ALL: And the spreadsheet in discovery includes
23 the Defendant's name, his tracking number, and the closest
24 address, which is -- actually, it's the one I gave you as
25 well.

VOIR DIRE BY MS. ALL - MITCHELL TUCKER

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1 THE COURT: It's what? I'm sorry. Say it again.

2 MS. ALL: The -- the -- it actually had columns for
3 the address and the Defendant's name and the tracking
4 number.

5 And we printed a copy somewhere, Mr. Shenkar, that did
6 not have address or Defendant's name or the tracking number
7 to avoid any prejudice.

8 And -- because the address is also an estimate based
9 on the closest actual physical address that the postman
10 goes to. So ...

11 THE COURT: Well, I want to see what you actually
12 intend to introduce. Is it what's on the screen or what
13 you hold in your hand there?

14 MS. ALL: It's that -- what's on the screen minus this
15 address, only because we were concerned that that might
16 seem prejudicial. Might -- the jury might interpret that
17 as ---

18 THE COURT: Mr. Pournaras?

19 MR. POURNARAS: So long as they will assure me that
20 this is the exact same, minus those columns redacted, Your
21 Honor, I have no objection.

22 THE COURT: Well, that's what she just said. At
23 least, that's what I understood her to say.

24 MS. ALL: That's correct, Your Honor.

25 Okay. And then we also have photographs to help

1 explain ---

2 THE COURT: Here are the photographs that you gave me.

3 MS. ALL: I actually need to give you your own -- oh,
4 here they are.

5 So we have -- those are for you, Your Honor, so you
6 can follow along.

7 VOIR DIRE BY MS. ALL (continues):

8 Q Mr. Tucker, you also provided several maps, one of
9 which was this one. And can you describe the limitations
10 in interpreting the GPS data and what the map represents?

11 A The map -- the map represents an hour point in time
12 from December 30 -- December 18, 2013, from 5:30 to 6:30.
13 Each one of those green spots on the map correspond to a
14 collected GPS point.

15 Q Did you generate this map?

16 A I had it generated.

17 Q You had it generated.

18 A Yes.

19 Q Would you consider these records over which you have
20 custody?

21 A Yes, I do.

22 Q Okay. And the same questions for these other maps
23 that you provided, which also include explanations at the
24 top.

25 A Yes. I -- I had -- I requested those maps from the

1 service provider and they present -- they provided them to
2 me.

3 Q Okay.

4 MS. ALL: So in that way, Your Honor, we would be
5 entering evidence as business records. All of these maps,
6 with the language that he's provided, as well as the Excel
7 spreadsheet; and enter him as an expert qualified to
8 interpret this --

9 (Brief pause.)

10 MS. ALL: And then he just talk about it. The idea is
11 that from 3 p.m. until -- you know, until like 4:20, he's
12 bouncing around one similar spot. And then by 4:23, he's
13 at another spot, and then he's down the road. And so he
14 can tell -- and that's -- that's on the spreadsheet with
15 the addresses, which again, we're not going to submit.

16 So Mr. Tucker can tell that at this point, he was
17 driving because the addresses are changing. The speeds,
18 he's going 26 miles an hour, 28 miles an hour. And so he
19 would be interpreting that for the jury. And then Mr.
20 Pournaras would have the opportunity to question his
21 interpretation.

22 THE COURT: Mr. Pournaras?

23 MR. POURNARAS: Your Honor, I can't say that this
24 plotting would be a business record. I think it would more
25 be a demonstrative record -- or demonstrative created by

1 Mr. Tucker here. But my ---

2 THE COURT: Hold on a minute now.

3 MR. POURNARAS: Pardon me?

4 THE COURT: It's created pursuant to the tracking of
5 Mr. Henderson.

6 THE WITNESS: Correct.

7 THE COURT: Let me ask you -- I mean, that's something
8 that you simply print out pursuant to the tracking; is that
9 right?

10 THE WITNESS: That's correct, Your Honor.

11 THE COURT: So and it's not specifically created by
12 him, it's created by the tracking of the GPS, right?

13 MR. POURANARAS: This ---

14 THE WITNESS: That is correct. The -- the GPS
15 collects the points and plots them on the map. I -- I
16 simply request that the map be retrieved and printed out
17 demonstrating where the points lie -- lie.

18 MR. POURNARAS: I -- I misunderstood that, Your Honor.
19 I thought ---

20 THE COURT: I mean, you don't, Mr. Tucker, adjust
21 these dots on the map.

22 THE WITNESS: No, Your Honor. It -- it is a -- a
23 program that basically plots the GPS coordinates onto a
24 spot on the map that corresponds with the coordinates.

25 THE COURT: All right. Mr. Pournaras?

VOIR DIRE BY MR. POURANARAS - MITCHELL TUCKER

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1 MR. POURNARAS: Yes.

2 VOIR DIRE BY MR. POURNARAS:

3 Q These plot points, you can't tell individually which
4 points is at which time, could you?

5 A Unfortunately, after a period of six months, if a GPS
6 point's over six months old, it's -- because of the amount
7 of data that would have to be retained to do an animated
8 playback, we're only able to retrieve the points on the map
9 --

10 MR. POURANARAS: Sure.

11 A -- not being able to determine which order those
12 points occur.

13 Q So if I ask you -- if I identified a particular point
14 in this data sheet that had a low number of satellite
15 connectivity, you would not be able to associate it with a
16 particular position on the map.

17 A I actually don't see any real low numbers of
18 satellites on -- on any of my -- the lowest number I see on
19 satellites is five, and that's -- that's actually a very
20 accurate point. To ---

21 Q And again, to the issue where you said that the
22 increase or decrease of connectivity to satellites is
23 indicative or suggestive of certain things, looking at
24 these two records, is there any way for me to correlate a
25 low number of satellites with a particular position on the

1 map is my -- my question specifically.

2 A Not the way it's currently presented, that's correct.

3 Q So the way it's currently presented, I can see a
4 change in the satellite numbers up and down, but I have no
5 way to visually correlate that with the position either
6 near or far from a house.

7 A Correct, yes, sir.

8 MR. POURNARAS: Thank you.

9 THE COURT: All right.

10 VOIR DIRE BY MS. ALL:

11 Q And just -- just so -- I'm sorry, just that I
12 understand, you said that after six months, the thing is
13 limited?

14 A Right. It's -- it ceases to become interactive. We
15 cannot cover over a point like that's captured on the
16 screen and actually do each point like that.

17 Q Would it still have the 10 to 20 feet variance?

18 A Yes, or less. If it's got -- yeah, we've got several
19 that has, yeah, 10 -- 9/10 satellites. It could be --
20 yeah.

21 Q And if you were to plot each point one at a time, one
22 per piece of paper, and overlay them, then would you be
23 able to tell what order they went in?

24 A Yes. It would be extremely labor intensive, but, yes
25 ---

VOIR DIRE BY MR. POURANARAS - MITCHELL TUCKER

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1 Q Which is why we didn't ask you to do it.

2 A --- you could -- you could -- you could recreate it.

3 I'm not an expert at doing that.

4 Q Right. So this is limited to saying that between 5:30

5 -- what is this on this? Is it between, like, 5:30 and

6 6:30 or something?

7 A I ---

8 MR. POURNARAS: I believe that's the one before.

9 THE WITNESS: I believe so. The green -- the green
10 flag is a starting point, and I don't see a red flag on
11 there, but that would be the ending point.

12 Q It's in the ---

13 A It's probably behind there.

14 (Brief pause.)

15 Q Okay. So this is -- the green flag is the first one
16 at 1730, and then that -- this is the last point, where the
17 hand is, at 1740, right? So it's everything -- everything
18 between 1730 and 1740?

19 A That's correct. And the -- inside the green -- green
20 circles are directional arrows which roughly calculate the
21 direction of travel.

22 Q (Using demonstrative aid) Oh. So if we were to show
23 -- show this one, which is right by the incident location,
24 all these areas would be showing him going back and forth?

25 A That is correct.

1 Q Right.

2 A Yeah. The green -- green flag would be the starting
3 point, a lot of movement back and forth, and then the red
4 flag is the last GPS point collected.

5 Q Okay.

6 MS. ALL: Would Your Honor prefer us to qualify him as
7 an expert in these as records before the jury or ---

8 THE COURT: As an expert in what?

9 MS. ALL: GPS data.

10 THE COURT: Okay.

11 MS. ALL: Interpretation GPS data.

12 MR. POURNARAS: Your Honor, if I may raise one final -
13 --

14 THE COURT: Yes.

15 MR. POURNARAS: --- objection to this?

16 VOIR DIRE BY MR. POURNARAS:

17 Q Again, if I may ask you one -- one final question: If
18 I ask -- if -- there is no way for me to know whether this
19 point here has five or 10 satellites connected, correct?

20 A That's correct.

21 Q And from this, I cannot tell any movement other than a
22 cluster? And ---

23 MS. ALL: You can tell by the arrows.

24 Q That's ---

25 A I -- I -- I see your point.

VOIR DIRE BY MR. POURANARAS - MITCHELL TUCKER

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1 Q And -- and what you previously testified to was that
2 these could have anywhere between 10 to 20 feet margin of
3 error.

4 A Correct.

5 Q And is there a margin of error in the directional
6 travel as well?

7 A It -- there can be.

8 Q And how often are these data points collected?

9 A Once a minute.

10 Q Once a minute. Okay. So if I asked -- if I asked you
11 to look at this data where there seems to be an up or down
12 trend in connectivity of satellite and tell me is this
13 here, is this here, or is this here, there would be no way
14 to tell from your written data or this plot point any
15 association between satellite connectivity and a visual
16 placement here.

17 A I'm not sure I'm following you.

18 MS. ALL: Do you just want us to leave out the
19 satellite numbers thing? I mean, he can't -- he explained
20 to us that ---

21 THE COURT: Hold on a minute. Hold on a minute. Hold
22 on a minute. Hold on a minute.

23 Clarify your question to see if he can answer that.

24 MR. POURNARAS: Okay.

25 Q If I look at this -- in -- in the target time frame

1 here, where the State believes that entry may or may not
2 have been made, I -- you identify certain points that go
3 from eight to five back to eight. You would not in any way
4 be able to tell me which visual representation on this map
5 that occurred.

6 A Not without replotting the -- the latitude and
7 longitude.

8 Q Correct, with this current demonstrative.

9 A Correct.

10 Q (Indicating) It could be here, it could be here, it
11 could be here, or it could be here.

12 A That -- that ---

13 Q And there's also no way to tell if five points in a
14 row all had a wild change in the satellite connectivity,
15 but appear to be at the exact same place with no movement.
16 There would be no way for this demonstrative to visualize
17 that day.

18 MS. ALL: Unless he was swaying?

19 A Not necessarily swaying. There's -- there's going to
20 be fluctuation just based on the travel of satellites
21 through space.

22 Q Correct.

23 A The rule that is -- that is used most often is
24 anything above four satellites is an extremely accurate
25 point.

1 Q Thank you.

2 MR. POURNARAS: And Your Honor, my issue is -- is not
3 the scatter plot, but -- but any discussion of satellite
4 points -- and he mentioned four or above is very accurate
5 and -- and nothing here is under five that appears. But if
6 he offers testimony that says the jury -- it is possible
7 that you may infer an up and down change in the satellite
8 connectivity could correlate to the entry and the exit of a
9 building, there's no way to connect the two together.

10 On one hand, they'll attempt to say this means he's
11 walking to the house and back from the house, even though
12 this is such a cluster it's hard to tell any type of
13 movement whatsoever. So then couple that with the
14 suggestion that if the jury looks at the raw data, a
15 fluctuation up and down of satellites is indicative of
16 entering and exiting a home, when there's absolutely no
17 way, with the way this information is presented and looking
18 at the data of satellites going up and down, for that
19 connection to be even relevant to the jury. I think what
20 it is is it's highly confusing ---

21 MS. ALL: Your Honor ---

22 MR. POURNARAS: --- because a person can look at this
23 and hear an expert, a scientist, who we've said is
24 qualified to give you advice to help you understand this,
25 who says if you see it go from 10 down to 5 ---

1 THE COURT: Hold on a minute. Touch the computer --

2 MR. SHENKAR: Touch the computer.

3 THE COURT: -- Ms. --

4 MS. ALL: Oh.

5 THE COURT: -- All.

6 (Ms. All complies.)

7 THE COURT: Thank you.

8 MR. POURNARAS: If you see here this number go from
9 eight to five, that could be explained by him entering a
10 building. However, there's no way to show whether he's
11 anywhere near the building at those times.

12 So -- so it's very confusing in that we've got a
13 demonstrative that doesn't -- that's just merely a cluster
14 of data; and a separate set of data that in no way we can
15 connect together, but we're also telling them these little
16 arrows mean he went over this and these means he comes
17 back.

18 THE COURT: He's already testified that those arrows
19 could be -- I mean, based upon what he said, it could be
20 some error in there as to the direction of those arrows.

21 The testimony's coming in. You make some very good
22 points of which you will be allowed to make to this jury on
23 cross-examination. But to simply make that argument to me
24 at this stage -- it's coming in. Okay.

25 MR. POURNARAS: All right. Thank you, Your Honor.

1 THE COURT: I think the probative value far outweighs
2 any prejudicial effect to your client. It is highly,
3 highly probative in this case.

4 My concern at this point is still how are you, Mr.
5 Tucker, going to connect --

6 And -- and I think you all stipulated to it, but I
7 need to know what your stipulation is as to this GPS being
8 connected to him in some way, shape, or form without Mr.
9 Tucker stating to this jury that it's a result of a GPS
10 ankle monitor or whatever.

11 There are numerous types of electronic devices from
12 which GPS data can be gathered, whether it be by phones or
13 whatever. And if the Defense is -- is going to stipulate
14 to the fact that an electronic device -- the Defendant was
15 in -- in possession of some type of electronic device
16 connecting him to this GPS and that there's a stipulation
17 to that, I think that that is the best and appropriate
18 manner to alleviate any concerns that you all have as his
19 lawyer about drawing inappropriate, prejudicial conclusions
20 as to why he was being -- or why he had a GPS.

21 MR. POURNARAS: Yes, sir. Again, you know, for the
22 record, we have been objecting to this altogether ---

23 THE COURT: I understand. And if I were you, I'd be
24 objecting, too. I mean, that's -- you're doing your job.

25 MR. POURNARAS: But in light of Your Honor's ruling

1 that it is coming in, I feel that the only way we can do
2 what you're asking is to stipulate, and I'm assuming,
3 before the jury, that the data he's discussing is in fact
4 reliably associated with our client. I'm not sure what
5 exactly how -- what Your Honor is asking and -- and how you
6 want us to do that.

7 THE COURT: Well, let me ask you, Ms. All, what -- how
8 was your intention to connect this GPS to Mr. Henderson?

9 MS. ALL: I was relying ---

10 THE COURT: What was your question going to be to him
11 as to how he connected it to Mr. Henderson?

12 MS. ALL: Right. And again, we were just going to say
13 we have GPS data regarding the Defendant and be very
14 general with it. And Your Honor ---

15 THE COURT: Is that sufficient for you?

16 MR. POURNARAS: That is sufficient for us, Your Honor.

17 THE COURT: Okay. Very good. That's easy enough.

18 MR. POURNARAS: And I would not ask follow questions -
19 --

20 THE COURT: And the jury's going to probably presume
21 that we're all under GPS monitoring based upon that
22 question. And I guess if you have a cell phone, we are to
23 some extent.

24 Any way, sufficient?

25 MR. POURNARAS: Yes, Your Honor.

1 THE COURT: All right. Anything else we need to hash
2 out, proffer out, or whatever before I bring the jury back?

3 MS. ALL: No, Your Honor. Just -- just to be clear,
4 do you want me to qualify him as an expert in front of the
5 jury and get them in as records in front of the jury, or do
6 you just want to have that limited here?

7 THE COURT: No, I think you need to qualify him in
8 front of the jury. And I'm going to tell them the same
9 thing I told them on every other expert, the other two
10 experts that you all have qualified, that they don't have
11 to except what he has to say. They can believe it or
12 utilize it in any way, shape, or form that they deem
13 appropriate and give it the weight they deem appropriate.

14 MR. POURNARAS: And just for Your Honor, I will be
15 vaguely objecting on prior grounds on the record.

16 THE COURT: I want you to make whatever objections you
17 need to make to protect your client's interest.

18 MR. POURNARAS: Yes, Your Honor.

19 THE COURT: And be as -- if you -- and again, your
20 objections are so noted for the record.

21 MR. POURNARAS: Thank you.

22 THE COURT: Are so noted for the record. And if you
23 want to get up and just say, Judge, I have -- I renew my
24 same previous objections for the record, I'll note them and
25 we'll move on.

1 MR. POURNARAS: Thank you, Your Honor.

2 THE COURT: But you do whatever you feel like you need
3 to do to protect this young man's interest, okay?

4 MS. ALL: Thank you, Your Honor.

5 THE COURT: Now --

6 (Brief pause.)

7 THE COURT: All right. I'm going to stand down for
8 just a second before I bring the jury back out.

9 Mr. Tucker, you can step down if you want to. When
10 the jury comes back in -- you -- you can just go ahead and
11 be seated on the front row here. When the jury comes back,
12 we'll re-swear you. Okay.

13 MR. TUCKER: Yes, Your Honor.

14 THE COURT: Do not -- we kind of hashed and rehashed
15 and hashed again what your testimony's going to be, but do
16 not discuss your testimony any further, okay?

17 MR. TUCKER: Yes, Your Honor.

18 THE COURT: Thank you.

19 (Briefly off the record.)

20 (Pre-marked State's Exhibit No. 56, 5-page document.)

21 (Pre-marked State's Exhibit Nos. 57 - 61, photos.)

22 THE COURT: Anything else before I bring the jury back
23 out from the State?

24 MS. ALL: No, Your Honor.

25 THE COURT: Defense counsel?

1 MR. POURNARAS: No, Your Honor.

2 THE COURT: Bring me the jury, please, ma'am.

3 THE BAILIFF: Yes, sir.

4 (Jury enters the courtroom at 2:01 p.m.)

5 THE BAILIFF: The jury panel's present, Judge.

6 THE COURT: Thank you, ladies and gentlemen, for your
7 patience. I apologize. You still about had about a two-
8 hour lunch break. And I apologize for keeping you back
9 there as long as you were, but there were some matters we
10 needed to deal with here in the courtroom outside of your
11 presence. We got through them as quickly as possible, and
12 we are not ready to resume the trial of this case.

13 The State's recognized. Call your next witness,
14 please.

15 MS. ALL: Thank you, Your Honor.. The State calls
16 Mitch Tucker.

17 MR. POURNARAS: Your Honor, I renew my previous
18 objections as stated before.

19 THE COURT: So noted for the record. The Court's
20 rulings remain the same.

21 MR. POURNARAS: Thank you, Your Honor.

22 MITCHELL TUCKER, after having been
23 first duly sworn, testifies as follows:

24 (Marked for identification State's Exhibits 58 through
25 61, photographs.)

1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please. State your name for the record.

3 THE WITNESS: Mitchell Tucker.

4 DIRECT EXAMINATION BY MS. ALL:

5 Q Mr. Tucker, will you please introduce yourself to the
6 jury?

7 A I'm Mitchell Tucker. I've worked in the field of GPS
8 for over eight years.

9 Q And what do you do with GPS data?

10 A I review, monitor, maintain, and hold records; am able
11 to retrieve records when requested.

12 Q What kind of training do you have?

13 A I've been trained by at least five GPS providers on
14 the use of -- use and interpreting GPS data.

15 Q And can you talk to us a little bit about peer review?

16 A Basically, the GPS data has been studied, found to be
17 valid. It's -- there's been uncountable, you know,
18 research on GPS. I've made myself very familiar with that;
19 been retrained several times as the technology develops.

20 Q And do you have any specialized training?

21 A Yes. Yes, I do.

22 Q Okay. And how many different kinds of specialities
23 within GPS data?

24 A Interpreting different data as the technology
25 advances, ensure that I keep abreast of the most current

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1: technology and how to interpret what's going on.

2 Q Are you a member of professional organizations where
3 you, as you said, stay abreast of developments?

4 A Not officially, no.

5 Q Are you considered an expert in this field?

6 A I have testified several times in court before and
7 have provided assistance to defense and prosecution before
8 on how GPS works and how to interpret some of the data.

9 MS. ALL: Your Honor, at this time, we move Mr. Mitch
10 Tucker as an expert in GPS data and GPS data
11 interpretation.

12 THE COURT: Mr. Pournaras?

13 MR. POURNARAS: Your Honor, no objection to his
14 qualifications.

15 THE COURT: All right. Ladies and gentlemen, I
16 previously give -- I've given you a charge with regards to
17 expert testimony. The same charge that I've previously
18 given you remains in force and effect as it relates to this
19 individual who is being qualified as an expert in the field
20 of GPS data and GPS data interpretation. It is evidence
21 for you to use in any way that you deem appropriate; and
22 give it the weight and credibility, again, that you deem
23 appropriate.

24 Madam Solicitor, you may continue.

25 MS. ALL: Thank you, Your Honor.

1 Q Mr. Tucker, how did you come to be involved in this
2 case?

3 A I was contacted by -- by the Solicitor's Office, being
4 as a custodian of some -- of some GPS data as it related to
5 Demetrius Henderson, to access and assist with the
6 obtaining and testifying as to the -- what the data meant.

7 Q And can you discuss your qualifications as a custodian
8 of these records?

9 A Yes. I -- I can personally access a good deal of
10 records myself. Records I cannot access I can contact
11 information technology to run more detailed reports,
12 mapping data that is not readily accessible on the surface.

13 Q Okay. Let me hand you what's been pre-marked State's
14 Exhibits 55 -- I mean, 56, 57, 58, 59, 60 and 61. Do you
15 recognize these items?

16 A Yes. This is data I requested and forwarded to the
17 solicitor's office.

18 Q Are those records that are in your custody?

19 A Yes.

20 Q Were you able to access those records at the time and
21 did you generate those records?

22 A Some of them I were -- I was able to generate myself.
23 Others I had to contact the technology department to get
24 them to access and retrieve -- retrieve some of the
25 records. Some of that being because the -- the data

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1 requested was a little bit older and it was in an archive
2 state.

3 Q And could you explain to the jury, please, the
4 difference between the records that you were able to
5 provide directly as opposed to the records through which
6 you had to work with somebody else?

7 A I was able to retrieve some of the latitude/longitude
8 address data; and because the mapping contains a large
9 amount of data, especially if it's -- involves playback,
10 that data becomes archived and we lose the ability to play
11 the data back.

12 Q And what do you mean by "large amount of data"?

13 A It -- just to maintain a -- basically, a movie of GPS
14 points, as you can imagine, would just eat up a whole lot
15 of storage capacity. So with GPS -- GPS data, it is
16 converted to just raw data, points on a map, and that's
17 what we -- we can retrieve at a future date, not the actual
18 playback capability.

19 Q As a GPS data expert, do you also have custody over
20 these representations of the data?

21 A Yes.

22 MS. ALL: Okay. Your Honor, at this time, the State
23 moves Exhibits 55, 56 -- I'm sorry, Your Honor, through 61
24 into evidence.

25 THE COURT: Mr. Pournaras?

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1 MR. POURNARAS: Your Honor, no objection as to their
2 authenticity, but we renew the prior objections.

3 THE COURT: Objection so noted for the record -- prior
4 objections so noted for the record. The Court's rulings
5 remain the same.

6 MS. ALL: Thank you, Your Honor.

7 THE COURT: So ---

8 MS. ALL: Thank you, Your Honor.

9 THE COURT: So admitted.

10 MS. ALL: Thank you, Your Honor.

11 (State's Exhibit Nos. 56, 5-page report document, in
12 evidence.)

13 (State's Exhibits No. 57 through 61, photos, in
14 evidence.)

15 DIRECT EXAMINATION BY MS. ALL (continues):

16 Q With the formalities out of the way, if you could
17 explain to us some of the -- what I think is the fun part.
18 What is the science behind this?

19 A The science behind GPS -- I'll break it down to simple
20 terms so we can all explain -- understand. Basically,
21 there are 24 GPS satellites circling the -- the United
22 States and the world, basically, that the military actually
23 has put up there, but they have allowed civilians to access
24 the use for the benefit of all.

25 For GPS to work, a GPS-enabled device has to acquire

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1 three or more satellites in the sky. The more satellites a
2 GPS device has access to, the more accurate that -- that
3 point on the map will be.

4 Q What's the most number of satellites you can have
5 access -- can all of them be on the same?

6 A No, you can never get -- in -- in any one hemisphere,
7 there can never be more than 12 satellites because just
8 basically 12 can be on one side of the world and 12 could
9 be on the other side of the world. So you can never have
10 more than 12 satellites at any given time.

11 And then just basically, because of the earth's
12 curvature, if -- if you have more than four -- you have to
13 have three to get a point -- point on the map, and as they
14 go -- number of satellites go up from there, the more
15 accurate that point gets.

16 (Indicating) If you have four, it's very reliable, I'd
17 say within me to -- me to Joe. If you have nine, it would
18 be maybe me to you.

19 Q Okay. And how -- and how reliable is GPS data?

20 A I've found it to be very reliable. Some of you might
21 have different experiences with the Garmins in your car.
22 Those are -- you know, most of the time, they're very
23 reliable, but every once in a while, they can throw you for
24 a loop.

25 Q How much information -- can -- oh, will -- I guess

1 will you first explain the interaction between the
2 satellites and the -- the receiver.

3 A Basically, the -- I'm not sure exactly --

4 Q Is it too scientific?

5 A No. I'm not sure exactly your question. Could you
6 just ---

7 Q Well, I think -- I think we'll just -- we'll just rely
8 on you. What kind of data can be provided by GPS data
9 tracking?

10 A We can get -- the coordinates that you see there are
11 just latitude and longitude. From basic high school
12 geography classes, we might remember a little bit of our
13 latitude and longitude.

14 The points to the right of the decimal, if you get
15 more -- the more points you have to the right of the
16 decimal, the more accurate it will be.

17 Q Okay. So is -- are these two numbers together, is
18 that like the width of my two footprints or is it the width
19 of my stand now or ---

20 A Those two numbers with a -- the top number with a --
21 yeah, it would be -- that point itself would be -- I could
22 probably reach out and touch someone from that point.

23 Q Okay. So what is your margin of error with how exact
24 these -- these points are? You just mentioned the number
25 of decimals to the right, so obviously it could go on and

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1 on like -- but what is the accuracy of these?

2 A Those -- those points would be within 10 meters.

3 Q 10 meters. So it's 30 feet?

4 A Yes.

5 Q Okay. So what is the range of accuracy here? Like
6 how -- about -- what variance should we look for?

7 A The variance, especially if you have a large -- a high
8 number of satellites, the more reliable it's going to be.
9 If you get some of those 10/11 satellites, if you -- if you
10 gave me those coordinates and I plotted it out on a map --

11 Q Uh-huh.

12 A -- I would be able to go to that point and at least
13 see the person, if not be able to touch the person, from
14 that -- from that information.

15 Q (Using demonstrative aid) You mean like this? Is that
16 what you mean by point?

17 A Yes.

18 Q Okay.

19 A And I -- I can interpret that -- the one highlighted
20 information. During real live playback, you can actually
21 hover over a point on a map and get where -- how many --
22 how -- the speed that the person was traveling when that
23 point was obtained, the direction of travel, and how many
24 satellites that -- that point was in contact with at the --
25 at any given time -- at the given time.

1 Q So maybe we could say in these -- the other exhibits
2 that you discussed were ones that representations, that the
3 size of the dot was about representative of he's somewhere
4 within that dot, maybe a little bit outside of the bold --
5 if the line was bolder?

6 A Well, the dot is basically just a visual
7 representation of the -- of the point on the map. The --
8 the size of the dot doesn't necessarily correlate as to the
9 proximity of where that person would be.

10 Q And how often is the data collected?

11 A The -- a GPS point is retrieved every minute.

12 Q Okay. So can you take a look at what's been entered
13 as State's Exhibit 56 and tell us how this is applicable in
14 this case? What does it reflect?

15 A Each -- each point, on -- on the left column, it's
16 broken down per minute. And each point has a corresponding
17 latitude and longitude. Also has how many satellites were
18 retrieved at that point and the speed that the person in
19 possession of the device was -- was traveling.

20 Q Okay. So who does this relate to? Why is this
21 relevant here?

22 A This particular -- particular information is
23 associated with Demetrius Henderson's device.

24 Q Okay. So let's take a look, if you could go over with
25 us the times that this covers, with this being the first

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1. page and just looking back at event date and time, what --
2. what did that first line mean?

3. A Excuse me while I find that time on my -- that was the
4. -- 15 ---

5. Q Let me rephrase it another way. What time span is
6. reflected in Exhibit 56? What time period does this
7. concern and cover?

8. A This covers 1500, which is three o'clock local time,
9. to four o'clock on one page, five o'clock to the next page,
10. six o'clock, seven o'clock, all the way up to 1959, which
11. is a minute before eight o'clock p.m.

12. Q Okay. And then if I can direct your attention to
13. these ones in bold here. What do the ones in bold reflect?

14. A The time period from 1730, which is 5:30 p.m., till
15. 6:30 p.m., 1830 p.m.

16. Q Okay. Would it be accurate to say that this document
17. -- or just to confirm what you're testifying to, is that
18. this document represents the minute-by-minute movements of
19. Demetrius Henderson between the hours of 3 p.m. and 7:59
20. p.m., to include 5:30 to 6:30?

21. A That is correct, yes.

22. Q Okay. So now, let's go to the next column, the number
23. of satellites. Could you explain why this column is
24. important and what the information can represent?

25. A Well, it -- it basically makes the whole thing valid.

1 If you -- as stated before, if you have a very low number
2 of satellites, a point may not be very valid. Four or
3 more, you know that that is a valid GPS point and you can
4 actually plot it on a map.

5 Q Okay. And what makes a point valid?

6 A Basically, the number of satellites that -- and it
7 will have a corresponding latitude and longitude.

8 Q Okay. So of all of the data on this list, anything
9 that has less than four satellites, we should ignore.

10 A Not necessarily ignore, but it will not be quite as
11 accurate. A satellite -- a point with three satellites I'm
12 not going to trust nearly as much as something with 10, 11
13 -- 9, 10, 11.

14 Q And in your review of this document that reflects
15 every single moment of his whereabouts between 3 p.m. and
16 7:59, how many of those points have less than four
17 satellites?

18 A I believe I've only seen one point that has a three
19 satellite. Let me review it one more time and verify that.
20 Actually, I can't even find the one with three.

21 Q I believe it's on the last page.

22 A Yeah. I have -- yeah, one -- one point that has three
23 satellites. Everything else -- most of them are 5, 6, 7,
24 all the way up to 10 and 11.

25 Q Okay. So tell us what might cause a change -- now

1 that we know that the whole thing is reliable, what might
2 cause a change in the number of satellites?

3 A Those satellites are moving through, you know, the
4 heavens at a great deal of speed. As the earth rotates,
5 the satellites move. And just in the normal course of the
6 GPS tracking, you're going to lose certain satellites and
7 reacquire other satellites.

8 Most of the time, you'll have a good deal of
9 satellites and be able to plot a point. If you go inside a
10 building, a lot of times you'll lose some satellites. If
11 you -- if the satellites are basically refracting through a
12 -- either a windshield or a window of a building, it might
13 cause loss of some satellites. If you're in a courtroom
14 like this, you probably would not get any satellites.

15 Q Okay. So the best data is going to be the data
16 outside?

17 A That is correct.

18 Q Okay. And as the number drops, it means they might
19 have gone inside.

20 A It's a reasonable inference, yes.

21 Q Or that they were in a car or that the clouds moved or
22 -- okay. So if you could go down to the speed. What does
23 it mean when it's zero? Why do y'all document this?

24 A Zero, it means somebody is stationary or not moving
25 very fast.

1 Q Well, what if they're just walking, like I just walked
2 to the podium?

3 A Most of the time, walking, you'll get a two to three,
4 four miles an hour, depending on the pace of the walking.

5 Q Okay. I think I would get a three. So when it is
6 much higher, say here (indicating), what would that be an
7 example of?

8 A Because we're basically physically impossible to go 26
9 miles an hour on foot -- I know I am -- they would have to
10 be in a car, moped, some -- some other device like that ---

11 Q Okay.

12 A --- that was capable of traveling at those speeds.

13 Q Okay. Can you describe to the jury the whereabouts,
14 based on your copy of this, of Demetrius Henderson from 3
15 p.m., the date of the incident, until his arrival at The
16 apartments, which is

17 ?

18 A Okay. Pardon me. I -- I actually put these out of
19 order.

20 Q You want mine?

21 A Yes. That might -- might be better.

22 (Ms. All hands documents to the witness.)

23 A He's remaining at -- starting at 3 o'clock all the way
24 up to 4:23 -- or 4:22, he is at a -- stationary at

25 , which is the closest logical address that

1 corresponds with those latitudes and longitudes.

2 Q Okay. And how do you know that?

3 A We -- the mapping that the software uses actually
4 plots those latitudes and longitudes onto the -- onto a
5 map.

6 Q And how is that supported by the last column?

7 A The last column -- which last column are you ---

8 Q By the speed. Is that supported by the speed?

9 A Yes. If -- if somebody is not going, you know, at any
10 speed, they're at -- you know, they're remaining
11 stationary.

12 Q Okay. So we're here. So what happened next?

13 A Then looks like somebody gets into a car, starts
14 traveling down onto , onto

15
16 Q And how can you tell that? Because we don't have the
17 addresses on the one that we have. Can you explain how you
18 know a little bit more?

19 A It -- it -- it will plot the closest corresponding
20 address from a latitude and longitude to a known address on
21 a map.

22 Q Does every plot have a known address?

23 A Not necessarily. If you were in the middle of a
24 vacate lot, there's not an address assigned to that. So
25 the address that will come up on the plot map would --

1 it's most likely the closest road to that location.

2 Q Or say you were -- oh. Everything is backwards. So
3 if you were like here, if this represents a road, right?

4 A Yes.

5 Q This represents a road, so these dots --

6 A They -- they could come up with that corresponding
7 road address instead of the housing area to the right of
8 it.

9 Q Fight. So since we don't have the address on this
10 form, is the address more accurate or the GPS coordinates
11 more accurate?

12 A The -- the G -- the actual latitude and longitude are
13 much more accurate.

14 Q Okay. So why do you have the addresses?

15 A The addresses -- you know, because most people can't
16 look at latitude and longitude and know where that place is
17 in the world, it -- it makes it more logical for -- to
18 correspond with a known address ---

19 Q Loose interpretation.

20 A --- and then once -- once you have a known address,
21 you can plot that on a map.

22 Q Okay. So we're going down at 4:22 and
23 4:23, and then what happens?

24 A The person's on Rushmore Road for a while. They get
25 on Broad River Road. It looks like at that time of day

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1 they encounter a lot of traffic and slow down again. And
2 then go down Garner Lane, Longcreek Drive --

3 Q Now, what time are you at now?

4 A All the way up to 4:34.

5 Q Okay.

6 A Got some points on Longcreek Drive, back on Broad
7 River. They could have been right there at that
8 intersection.

9 Q Okay.

10 A Proceed -- they proceed along Broad River Road until
11 they get to

12 Q Okay.

13 A And on that four -- right at 4:50, looks like that
14 device is stayed at for -- from 4:46 to
15 about -- bout five o'clock, right at five o'clock.. And
16 then it starts moving again. And at --

17 Q Now, how close are we to The at
18 this point?

19 A Right -- right next to it.

20 Q And when you say "right next to it," is there ---

21 A Yeah. Within three minutes, he's at -- at

22 .

23 Q At Apartments?

24 A Yes.

25 Q The neighboring complex. Okay.

1 A And then we have addresses on from --
2 about from 5:10 all the way to 5:39, within a few numbers
3 of each other and basically moving very slow, between zero
4 and one mile an hour.

5 Q As if he were walking?

6 A Yes.

7 Q In your expert opinion, is that him walking from --

8 A Yes. I mean, one point will have zero, and one -- you
9 know, couple next points will be one mile an hour. So it's
10 very, very slow walking.

11 Q Okay. And how close are those two addresses? You
12 said about three minutes apart?

13 A Between which -- which ones were you referring to?

14 Q The one that he was at before he came to ,
15 the incident location, The apartments.

16 A Okay. He's -- he's at the adjoining complex, at the
17 , at 5:11; and then he's at the
18 address starting 5:12 forward, all the way through
19 5:39.

20 Q And just to be clear, when you say "adjoining
21 complex," you don't mean one of the buildings within The
22 , where the incident location occurred.
23 You mean an entirely separate complex that's nearby?

24 A With -- with looking at just the addresses, I'm unable
25 to determine that. I'd have to see the address on the map

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1 to actually ---

2 Q Right.

3

4 A Yeah.

5 Q Right. Are those two places within walking distance,
6 in your legal opinion -- I mean, in your expert opinion,
7 according to if he was at the location and ---

8 A I -- I would have to see the points on a map to -- to
9 provide expert opinion.

10 Q Okay.

11 A I'm not hugely familiar with that -- that
12 neighborhood.

13 Q I think I can do that. So ...

14 THE COURT: What exhibit is that?

15 MS. ALL: This is State's Exhibit 57, Your Honor. I'm
16 sorry. If I can ...

17 (Using demonstrative aid) This is State's Exhibit No.
18 57. And Your Honor, permission to publish the raw data to
19 the jury.

20 THE COURT: All right.

21 MS. ALL: Well, actually, I'll hold onto it, because
22 we need to keep going.

23 DIRECT EXAMINATION BY MS. ALL (continues):

24 Q What time period does this reflect? And whose notes
25 are these at the top here?

1 A Those would be my notes.

2 Q Okay. And so what does this reflect?

3 A This -- yeah, have to get -- get my reading glasses
4 on.

5 The green flag is where the -- the points actually
6 start, and the points on that map start at 5:30 or 1730 and
7 go -- it collects 10 points and goes to 1740. So 5:30 to
8 5:40 on that map. There should be 10 -- 10 corresponding
9 points to that.

10 Q And why are there going to be 10 points?

11 A Because it's basically 10 minutes. They got the --
12 the one point per minute.

13 Q Okay. What are the limitations of these dots and what
14 can these dots show us?

15 A They can -- most of the time, they can show us --
16 there's an arrow within the dot. I don't know if everybody
17 can see that, but there's an arrow within the dot. That is
18 to indicate direction of travel. We kind of take that with
19 a grain of salt. Sometimes it is accurate, sometimes it's
20 not. Without actually seeing the person, being there, it's
21 -- it's kind of hard to know.

22 But you can infer from the green arrow and the
23 direction of travel that he's gone across

24 or , and then up to the corner
25 apartment and then maybe back.

1 Q Okay. So in your review of the raw data, since this
2 is 5:30 to 5:40 in the raw data, what address is reflected
3 here? Is this , the incident location?

4 A Okay. Yeah. At 1730, 5:30, we have
5 is the closest corresponding address.

6 Q Okay. Okay. That being the address of
7 , the nearby complex?

8 A I -- I -- I can just tell you the address that came
9 up. Again, I'm not familiar with the apartment complex
10 itself.

11 Q So it's ---

12 A I would have to be there to tell you if that was the
13 actual, you know, street address.

14 Q Right. Explain to the jury -- because you said there
15 are 10 dots here and there were 10 minutes. But what are
16 the limitations? What can you not tell from these dots?
17 Can you tell what order these dots happened in ---

18 A No.

19 Q --- which one of those was 5:31 and which one was ---

20 A Only that the -- the green flag was where the -- the
21 first dot was collected during that time frame and that --
22 I believe there should be a red flag, but I don't -- I
23 don't see it. It might be actually behind the information
24 box. That should be the last point.

25 Q Okay. So you did highlight this one point, right? So

1 we know this is the first point, 5:30?

2 A Yes.

3 Q And then what -- what point is this?

4 A It's the point -- the point collected at 1740.

5 Q Okay.

6 A Most of the time, it's a red flag. This time, it's --
7 it's not a red flag.

8 Q Okay.

9 A I don't know exactly why, but ...

10 Q So what does this map represent? What can you tell
11 about his actions and where he was between 5:30 and 5:40
12 for sure?

13 A For sure, I would -- I would know that he started
14 behind the one building at, you know, the corresponding
15 address at, what's that, -- at the . That's
16 probably where -- it looks like he stayed there for a
17 couple minutes. It looks like there's several dots
18 actually contained in that spot.

19 And then from the speed of travel, it looks like he
20 went across -- one mile an hour, basically, across the
21 street to .

22 Q (Indicates) Here?

23 A Yes.

24 Q Okay.

25 A And then we have a non-corresponding address that just

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1 has and where he was actually
2 going seven miles an hour at 1740/1741, which is close to a
3 run. Yeah. Seven miles an hour is a pretty brisk pace.

4 With just that information, it would be hard to tell
5 if he got into a vehicle for a short distance or was just
6 moving at a very brisk pace or running. And then ---

7 Q Okay. So despite ---

8 A --- that -- that covers that period.

9 Q Despite the limitations of the -- the dots not being
10 in order, you can interpret from this map that he started
11 here and then could figure out he went there. And then by
12 5:40, he's here ---

13 A That's correct.

14 Q --- right? Okay. Okay. Now, I'm going to show you
15 State's Exhibit 58. Okay.

16 MS. ALL: So, Your Honor, may I publish this to the
17 jury, the first map?

18 THE COURT: Ma'am?

19 MS. ALL: May I publish this to the jury?

20 THE COURT: Yes.

21 Q So at the time, the only travel points between the two
22 stop locations were from 1738 to 1741, right?

23 A Yes.

24 Q Okay. So can you explain -- because we just went
25 through 5:30 to 5:40, so this is 5:38 to 5:41. We just

1 left off going seven miles an hour, so what happened here?

2 A He went a good little distance in that little --

3 little spurt and traveled from the area down

4 -- down close to -- looks like the next corresponding

5 address is , which, you know, basically, looks

6 like a field. There's no exact corresponding address

7 because there's no -- no buildings to correspond with that

8 location.

9 But when you're -- when you're moving seven miles an
10 hour, you're actually -- you can cover a pretty good

11 distance in a minute or two minutes, which looks like he

12 traveled for two minutes at seven miles an hour.

13 Q So we discussed the limitations of not being able to
14 tell what dots go in what order, right?

15 A Yes.

16 Q So why would that be different from one like this?

17 Why are you able to tell that -- what order these dots
18 happened in?

19 A Basically, because when you compare it with your --
20 your -- you mapping and your satellites and speed, you can
21 actually, you know, see just in those three minutes that he
22 has traveled that -- a larger distance.

23 Q Okay. So because there's different address --

24 A Yes.

25 Q -- you can tell. Okay. So now he is at what address

1 at 1741?

2 A At 1741, we just have a address ---

3 Q Okay.

4 A --- basically, as you see there on the map. It
5 doesn't look like there's any dwelling or corresponding
6 address to go with that point.

7 Q Okay. So now we'll look at a map that reflects 5:42
8 on, and publishing to the jury 5:38 to 5:41, State's
9 Exhibit 58. What does this reflect and how is this
10 different -- why does this map have so many more dots and
11 what is different in what you can tell from these dots than
12 those dots? Why can't you tell where these dots happened?

13 A These -- these dots are -- there's movement and -- and
14 it's hard to interpret if it's back and forth movement,
15 just slight variations. There's no corresponding street
16 address to -- to most of these dots. All I -- all I have
17 is the corresponding address, , because those dots
18 are off to the right of the house, which makes -- you know,
19 there's no logical address to correspond to a point in an
20 open field.

21 So it's just giving me the address, and it
22 makes those dots harder to plot. If you -- basically,
23 those dots correspond with the latitude and longitude on
24 the sheets. And just looking at those, it's hard -- you
25 know, without having the playback capacity because it's

1 archived data --

2 Q Uh-huh.

3 A -- it's hard to tell exactly what order those dots
4 came -- took place in because it's -- it's basically a
5 cluster of dots.

6 Q At what point does he get to , does he get to the
7 incident location?

8 A At , I -- what's the -- the ...

9 Q Okay. Let me ask it this way: is the
10 incident location. Why might it not show that he went
11 through since it's all based on actual street
12 addresses?

13 A Street addresses are basically like -- I'll use an
14 example, it's my own Garmin. It does -- it tells me I'm
15 home when I'm about a block from the house because that's
16 where the satellites think that street location is.

17 Same thing with here. The -- the corresponding
18 address of -- I'm not even sure of the address, again,
19 remind me.

20 Q .

21 A . It's probably associated with the street in
22 front of that apartment complex, not the actual front door
23 of that place or the parking spot associated with that
24 place.

25 Q So if he did not walk -- if he did not arrive along

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1 this street, but instead by another route, it wouldn't show
2 this ?

3 A Correct. It would have just the closest logical
4 address that is associated with that latitude and
5 longitude.

6 Q Which you said was, in this case, for this time
7 period, coming up as .

8 A Yes.

9 Q And this is a shot of -- overall from 5:30 to 6:30,
10 State's Exhibit 61. Might that be because this -- what is
11 this street name?

12 A That is there.

13 Q Okay. So why might this ping as being there?

14 A Because it -- it was closer to that actual street as a
15 logical address than -- than the actual apartment complex.

16 Q Okay. So what can you tell us about what he's doing
17 from this map? Just tell us everything you can tell about
18 what he did between 5:42 and 6:30 according to this map.

19 A Without trying to draw any inferences, the green point
20 is where he started. There was movement around there with
21 the direction of travel. It's -- it's very confusing to
22 look at, and without a playback, I would just be able to
23 make a generalization that he was around that area for --
24 for that period of time. From basically 1742 to the 1759,
25 he was in that area.

1 Q What does the green flag mean?

2 A The green flag was the starting point for this data.

3 Q At 5:42?

4 A Yes.

5 Q And what does the red point mean?

6 A It is the ending point, where the last collected point
7 in that -- in that map.

8 Q Okay. Is it possible that the degree of error is as
9 big as this to this (indicates)? Is it possible he was in
10 the same place this whole time, given the degree of error
11 that you discussed earlier?

12 A Referring back to the satellites, I don't see any low
13 numbers. I -- I do see some numbers that are in the five,
14 which is a little bit lower, but still high enough to -- to
15 make me trust those points.

16 Q Okay. (Indicates) And discussing the context of this
17 photograph, in your expert opinion, what do these arrows
18 reflect, with this being Building and that's the parking
19 lot?

20 A Those arrows are intended to reflect direction of
21 travel.

22 Q And what do those arrows show?

23 A A lot of movement back and forth.

24 Q In which two directions?

25 A Looks like out to -- towards , around that

1 corner, maybe around the parking lot.

2 Q Okay. Can you say that between 5:42 and 6:30 you can
3 track his movements, but are we sure that he did not travel
4 outside of this -- all of Building , between those time
5 and points?

6 A Yes. I -- I would reliably, yeah, say that, that he -
7 - he was in that area in time that frame.

8 Q Can you say that he was not seated -- was -- he was
9 not staying still?

10 A No. You know, the -- as we saw in one of the earlier
11 maps, if you're seated still, you'll almost have a stacking
12 of those green circles. Where he stayed in the one place
13 for, you know, five minutes or so, there was almost like a
14 stack of circles, one upon each other, is what you see when
15 somebody is in one place for an extended period of time,
16 where they are going to overlap each other.

17 Q And what kind of speeds does the raw data reflect
18 between the times of 5:42 and 6:30?

19 A We -- we see speeds ranging from, you know, two miles
20 an hour, stationary for a period of time, one, two miles an
21 hour, back to one mile an hour.

22 Q And interpret that for the jury.

23 A Basically when -- when someone -- you know, just a
24 slow walk.

25 Q Okay. Okay. I'm going to show you State's Exhibit

1 60, with this being here on the left. As you can
2 see at the caption at the top, it says this is all the
3 movement -- it's just another view of State's Exhibit 59 --
4 all the movement, and can you interpret these dots? Why
5 don't these have arrows?

6 A This is just -- it -- it was drawn from a different
7 set of records.

8 Q Okay.

9 A It was actually an earlier attempt. And the later map
10 -- the map with an arrow was requested later to see if we
11 could determine what -- you know, if there was a direction
12 of travel back and forth that we could associate with these
13 spots -- or plots ---

14 Q Okay. What does ---

15 A --- on the map.

16 Q --- the red flag mean?

17 A The red flag is the ending point.

18 Q Okay. Which is the same ending point in the exhibit
19 before?

20 A Correct.

21 Q And are they at the same location but different views?

22 A That is right.

23 Q Okay. So even though you don't know what order these
24 dots happened in, these are all of his movements, minute by
25 minute, between 5:30 and 6:30?

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1 A That's -- that's correct.

2 Q For almost an hour?

3 A Right.

4 Q Okay. And now State's Exhibit 61, which is an
5 overview -- and I guess I should have shown this one to you
6 first, my apologies, when I kept asking you about addresses
7 in a different apartment complexes.

8 This is an overview of 5:30 to 6:30. And can you
9 explain to us the flags again?

10 A The green flag is -- is where he started out at 5:30.

11 Q Okay.

12 A We can see that he started off at that apartment
13 complex there and then traveled down and
14 ended up at the -- the second apartment complex.

15 Q (Indicates) Down this way?

16 A Yes.

17 Q And then went off the road.

18 A Yes.

19 Q (Indicates) And came back this way.

20 A That's what I would interpret, yes.

21 Q Came back around the back of Building ?

22 A With that cluster, it would be hard for me to infer
23 that, that he -- because of the cluster, it would be hard
24 for me to infer that -- yeah, his direction of travel
25 because those points are all -- all on top of each other.

1 Q Okay. So if this is , can you compare this to the
2 raw data to confirm the address and that's it is different
3 from this address? You can see the one we were referring
4 to as Apartments.

5 A Yes. We -- we get -- when he moves from 1471, 72 up
6 to 1492, then we have the two faster points, the seven-
7 mile-an-hour points, down and then

8 And then he ends up at the -- the -- the
9 corresponding , which the dead-end road that comes
10 out there at the -- abutting those apartments.

11 Q Okay. And lastly, if you could take a look at 6:30 or
12 so, and then if you could go to about seven o'clock. What
13 happened at seven o'clock or right around there, in between
14 6:30 and 7:00?

15 A Did I supply you with that --

16 Q Yeah.

17 A -- that -- the corresponding maps for that? Between
18 6:30 --

19 Q Well, here. I'll show you State's Exhibit ---

20 A Oh. Here we go.

21 Q So you said up to 6:30 he was walking, right? Given
22 the speed?

23 A Okay. We're looking at --

24 Q 6:30.

25 A --- 1830. I don't have that sheet.

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1 Q If you could interpret what happens about seven
2 o'clock. The speeds increase ...

3 A Oh, yes. At -- looks like, 16 -- or 1858, the speed
4 goes from -- looks like he's back into a vehicle, eight
5 miles an hour, six, five and then all the way up to 20,
6 two, three. The next point is 37, 29, and then 32 at the
7 7:06. 37, 10, and then the final point at 7:59, almost
8 eight o'clock, is 28 miles an hour.

9 Q Which would be consistent with him leaving the
10 apartment complex in some kind of motor vehicle?

11 A That's correct.

12 Q Okay.

13 MS. ALL: Publish the raw data to the jury, Your
14 Honor?

15 THE COURT: Okay.

16 MS. ALL: And beg the Court's indulgence.

17 (Ms. All confers with Mr. Shenkar..)

18 MS. ALL: Okay. Please answer any questions that the
19 Defense has for you, please.

20 THE WITNESS: Yes.

21 MS. ALL: Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Cross-examination?

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

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 358

1 CROSS-EXAMINATION BY MR. POURNARAS:

2 Q All right. A lot of confusing stuff, so I apologize.
3 I'm going to ask you a lot of the same questions, and I've
4 heard a lot of the same things. If I can take a look at
5 some of these State's Exhibits, the marked ones.

6 A Oh. I don't know -- I think some of the marked ones
7 are on the corner of the jury.

8 Q So let's -- a little bit again about reliability of
9 this. You said earlier about 10 meters is what it can
10 actually be from the actual longitude and latitude; is that
11 correct?

12 A Within 10 meters.

13 Q Within 10 meters.

14 A Yes.

15 Q And you know, for those of us not familiar with
16 metric, about 30 feet?

17 A Correct.

18 Q So that's not an insignificant distance.

19 A No, it's -- it's not insignificant. But as stated,
20 with the lower number of satellites, you're going to
21 probably get within the 10 meters. The high -- higher
22 number of satellites, it would be probably between me and
23 you if I -- if I had a point within -- a point with 9 or 10
24 satellites, I would be able to reach out and touch or at
25 least take a couple of steps and be ---

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 359

1 Q Sure.

2 A --- be -- be on the person.

3 Q Now, that's looking just at the raw data, the exact
4 longitude or latitude, correct?

5 A That's correct.

6 Q Now, earlier you were asked some of the things that
7 could affect the number of satellites that this document
8 going around the jury is connected to, correct?

9 A Yes.

10 Q You said it's a number of things. Does that account
11 -- are some of those things weather conditions?

12 A It can be.

13 Q Movement of the satellites themselves?

14 A That's correct.

15 Q Is it possible for an individual -- so, for example,
16 if you're collecting data off my cell phone right now and I
17 stand perfectly still, is it possible that over a 10-minute
18 period that number of satellites may go up, may go down
19 with me doing nothing whatsoever or changing any of my
20 circumstances?

21 A Yes, that is -- that is a possibility. Yes.

22 Q So that is also an equally plausible explanation --

23 A Yes.

24 Q -- as to me coming in or coming out.

25 A That could be. That could be.

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 360

1 Q So there is no way of looking at the number of
2 satellites and coming to any kind of conclusive explanation
3 for those numbers changing.

4 A As stated, the higher the number, the greater
5 reliability.

6 Q Correct.

7 A I -- I will trust a satellite point to be very
8 accurate as to speed and direction of travel if it has a
9 higher number.

10 Q Now, I'm -- I'm glad you brought up the speed or the
11 direction of travel more specifically. I'm going to refer
12 you to -- to this, State's Exhibit 59, where you discussed
13 these little arrows inside these dots, direction of travel,
14 correct?

15 A (No audible response.)

16 Q Now, you said this is for a time frame between 5:42
17 and 6:30, correct?

18 A That's correct.

19 Q All right. Each and every one of those dots appears
20 to have a arrow pointing in a certain direction, right?

21 A That is correct.

22 Q Does that necessarily mean that that person is, in
23 fact, moving?

24 A Most of the time, yes.

25 Q Now, if I told you that prior witnesses testified that

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 361

1 this shooting -- 911 was called at 6:22. Those dots
2 between 911 calling and this map would also be on this
3 document, correct?

4 A What -- what was the time frame again, I'm sorry?

5 Q 6:22. So --

6 A Yes. It -- it would be the last few points on that
7 map. Basically the last eight points, which is right
8 around that cluster, that last cluster where the red flag
9 is.

10 Q So we heard testimony also that Mr. Henderson laid
11 there motionless until he was physically moved by EMS.
12 According to your explanation, sometime closer to -- I
13 believe you said 7:30 perhaps? So how is it that each and
14 every one of these dots has an arrow?

15 A They are close to each other. But I -- I, at times,
16 discount the arrow as -- it's not as accurate on foot
17 travel as it is if somebody's in a car going a specific
18 direction.

19 Q Okay. So the way you're telling me is that I really
20 can't make any reasonable assurance that this arrow
21 actually means something.

22 A That is correct.

23 Q It's a guess?

24 A As far as -- it's not as intended for somebody on foot
25 because on foot or even stationary, yeah, you'll get, you

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 362

1 know, almost -- if you've got five arrows on top of each
2 other, it'll almost -- you know, you won't be able to
3 reliable -- reliably tell which direction of travel because
4 there's basically no direction of travel.

5 Q So if somebody is on foot, these arrows are even less
6 reliable than ---

7 A If -- if they're further away from each other, if
8 there's distance -- more distance between the -- the
9 different points, I would trust that arrow a little bit
10 more.

11 Q Okay. And now, let me ask you a question. I
12 understand that these plot points are generated from the
13 data you have. Where is the satellite image coming from?

14 A The satellite image is -- is actually aerial
15 photography. It's not real life or real-time photography.
16 Basically, it's -- it's aerial photography, and then the --
17 the computer program plots those latitude and longitude
18 coordinates onto a map.

19 Q Okay. Now, this is about as close as we can get
20 because of the limitations of the aerial photography that
21 the plotting the program is using, correct?

22 A That's correct.

23 Q Okay. I want to direct your attention -- there's no
24 way to tell from the data that the jury -- the raw data the
25 jury has in their possession now and these plot points, you

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 363

1 can't tell me which specifically time point this
2 represents, can you?

3 A No. Because of the nature of the data, it being
4 archived, we -- we don't have the playback capability
5 anymore.

6 Q Right. But what we can tell from this general scatter
7 block is this seems to be the data point furthest away from
8 this building, correct?

9 A There ---

10 Q Whatever direction this is, this one seems to be the
11 outlier, correct?

12 A There's one in the upper right corner that is ---

13 Q (Indicates) This one here?

14 A --- a ways off.

15 Q I'm speaking specifically to in front of ---

16 A Oh. In front of the specific apartment?

17 Q This appears to be the furthest away in that
18 direction, correct?

19 A Yes.

20 Q Okay. And that looks like it's right at the second --
21 the parking space, not in front of the building, but the
22 ones across, right?

23 A Right, yeah.

24 Q All right. I want to also now direct your attention
25 to State's 60, which you earlier testified to is the exact

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 364

1 same time frame, but a different map, correct?

2 A Yes.

3 Q And I'm trying to get them on here at the same time.

4 Let's see, there we go. Okay. Now, different angle, same
5 data points, correct?

6 A Yes.

7 Q (Indicates) Which of these -- this point is the one I
8 referred you to, the one furthest in front of the building.
9 It looks like one, two, and then three. I see the same
10 pattern here: one, two, three. Is that a reasonable
11 assumption that those are the same points?

12 A Reasonable. And it's, you know, just a matter of a
13 different perspective from the ---

14 Q Correct.

15 A --- from the photography.

16 Q But now it appears that this point is directly in
17 front of the building, whereas in this image, it's across
18 the parking lot; is that correct?

19 A Yes.

20 Q So the reliability of the data between each other may
21 be significant, but we're looking at the same data here.
22 And -- and how do you explain why, looking at it
23 graphically, this one seems so much farther away than this
24 one?

25 A It's -- it's plotting the points on two different sets

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 365

1 of maps.

2 Q Sure. So in this one, it may appear someone would be
3 standing. Even assuming there was no 10-meter range of
4 error, right? If we're assuming that this is 100 percent
5 where they are, within your same data set, because of these
6 maps, that's pretty different in visually representing that
7 data; wouldn't you say?

8 A Yes.. There are anomalies when you use different sets
9 of maps.

10 Q Right.

11 A Yes.

12 Q (Indicates) So again, you know, we wrote this as the -
13 - the ending point, correct --

14 A That's correct.

15 Q -- on this -- this cluster. And we said that that
16 data point was 6:30, correct?

17 A I believe so.

18 Q All right. And again, from our prior testimony, first
19 responders arrive right at 6:34, having dispatched around
20 6:24. So it would be reasonable to assume then that this
21 end point is where Mr. Henderson's body lay motionless.

22 A That would have been the first place I would have
23 looked if I was actually ---

24 MS. ALL: Your Honor, that's -- that's not in evidence
25 and it is inaccurate.

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1 THE COURT: Restate your question.

2 MS. ALL: When the first responders arrived --

3 MR. POURNARAS: First responders --

4 THE COURT: Restate your question, I said.

5 MR. POURNARAS: Your Honor, me?

6 THE COURT: You, yes.

7 MR. POURNARAS: Yes. I said previous witnesses
8 testified the first responder -- that they were dispatched
9 at 6:24 and arrived at 6:34.

10 THE COURT: Go ahead.

11 MR. POURANARAS: So ---

12 THE COURT: That is in evidence.

13 MR. POURNARAS: Yes.

14 MS. ALL: I'm sorry, Your Honor. I thought he meant
15 EMS. I didn't realize that we were -- that he meant
16 police. My apologies.

17 MR. POURNARAS: The first person responding from an
18 agency.

19 THE COURT: Thank you.

20 MS. ALL: I'm sorry, Your Honor.

21 THE COURT: Continue, Mr. Pournaras.

22 MR. POURNARAS: Thank you.

23 CROSS-EXAMINATION BY MR. POURNARAS (continues):

24 Q So if this data set includes that period where we know
25 he would have been shot, we can assume that 6:30, this last

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 367

1 data point, which you've indicated with the red flag, is
2 very likely to be his motionless body, correct?

3 A That's correct.

4 Q And on this map, that looks like it's towards -- it
5 actually looks like it's inside the building, doesn't it?

6 A To the corner of that building, to the back corner.

7 Q But the back corner of the building --

8 A Right.

9 Q -- right? But those first responders testified that
10 his body was actually right over here (indicates) behind a
11 dumpster.

12 A If I were to send somebody to look for someone, I
13 would send them to the last known location, the last
14 retrieved point. If I had sent somebody to that last
15 retrieved point, they definitely would have found him.

16 Q Right. Well, that's my what I -- that's what I'm
17 getting at. You can generally say, as Madam All said
18 earlier, he was somewhere here in a time frame. But if I
19 said can you guarantee me this is in the house, that's out
20 the house, you really can't tell ---

21 A I can't make those kind of generalizations without
22 physically being there.

23 Q Correct.

24 A I -- I trust the data, but I know the data and when
25 you lay the data on a map, even though you might have the

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 368

1 right latitude and longitude, when you plot those points on
2 a map, it's going to look different. And then when you
3 actually go to that point, it -- it may be different, also.

4 What GPS doesn't take into account is the curvature of
5 the earth, so ---

6 Q Correct.

7 A --- you know, it's -- it's -- that's where that 10
8 meter, you know, variation can come to play.

9 Q Right. So -- so what I'm getting at is that there's
10 really not -- for the jury to understand, this could be a
11 number of different places, even between your two maps.
12 Too much to say with any reliability inside or outside,
13 correct?

14 A Right. I would not -- other than, you know, if I had
15 an absence of satellites altogether, I would infer that
16 somebody's inside.

17 Q Correct.

18 A But you know, without actually being there and
19 witnessing something, I -- I trust the information, but I
20 know that it -- it does have limitations.

21 Q Okay. Now, I want to get back to -- this is a rather
22 large set of data points compared to some of the other
23 State's Exhibits you referred to earlier, correct?

24 A Yes.

25 Q And you said that at the time you retrieved the data,

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 369

1 you were unable to make, I guess, a visual movement
2 representation, like a movie or ---

3 A Right. Because of the nature of the data being over
4 six months old, I was not -- you can't do a playback on it
5 anymore.

6 Q Okay. But you could have plotted individual raw data
7 in a smaller set than -- than the one here, correct?

8 A (No audible response.)

9 Q For example, in State's 58, this one is about three
10 minutes.

11 A Yes.

12 Q And so ---

13 A Yeah. You -- you can pick a shorter period of time.

14 Q You could also -- would there be any way to connect
15 the dots?

16 A It would -- especially since some -- most of those
17 dots are really, really close to each other --

18 Q Right.

19 A -- most of them would be a jumble.

20 Q Okay. So -- so what you're telling me is that I can't
21 really say this means somebody going here and back and here
22 and back with any -- any kind of conclusion?

23 A Not with a high degree of confidence.

24 Q Okay. (Indicates) Or any different than this is one,
25 two.

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1 A I'm not sure I'm following you.

2 Q Let me ask you this: Is it possible for this cluster
3 to be not very much movement at all?

4 A It could be possible there's no movement at all in
5 that cluster.

6 Q So this cluster can actually be one person standing
7 motionless for the entire period of time.

8 A It -- it's a possibility, yes.

9 Q Okay. And -- and --

10 A There could be some variation like that, but ...

11 Q And a change in the number of satellites this cluster
12 is connected to could have nothing to do with being inside
13 or outside.

14 A Correct.

15 MR. POURNARAS: Beg the Court's indulgence, Your
16 Honor.

17 THE COURT: Yes, sir.

18 (Mr. Pournaras confers with Ms. Eigenbrot briefly.)

19 Q So just to -- just to conclude, all this really tells
20 us is that Mr. Henderson was in this general vicinity for
21 this time with any -- any degree of certainty.

22 A With -- without me physically being there, you can
23 infer that. He -- I could put him -- or -- yeah, put that
24 GPS-enabled device in that area, if you were to ask me to -
25 - if I was to go on a search mission to try to find him, I

CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER 371

1 probably could.

2 Q Sure. So if EMS was looking for someone in danger,
3 this would be a pretty good general place to start looking?

4 A Most definitely.

5 Q (Indicates) But for the jury here, this and this
6 clearly don't represent the same thing. That doesn't mean
7 the data's inaccurate, this representation ---

8 A The rep ---

9 Q --- doesn't really tell me inside or outside.

10 A When -- when plotted on two different maps.

11 Q Correct.

12 A Right.

13 Q And if there was a third view, it's quite possible
14 we'd have an altogether different --

15 A It's all -- you know, the different mapping providers,
16 the different view points, whether it's -- it's aerial
17 photography, roadside photography, road viewpoint, the
18 perspectives can be somewhat different. But the -- the
19 actual points as you see are the same, the arrows and the
20 mapping, not necessarily the -- the points.

21 MR. POURNARAS: All right. Well, thank you. I have
22 no further questions for you today.

23 THE COURT: Re-direct?

24 MS. ALL: Thank you, Your Honor.

25 RE-DIRECT EXAMINATION BY MS. ALL:

1 Q Mr. Tucker, Mr. Pournaras asked you if it was possible
2 that these dots in the cluster were from standing still,
3 correct?

4 A That's correct.

5 Q It appears as though, I think we can all agree, there
6 was a lot of movement and that he was in this area for a
7 long time -- or we'll just say he was in that area for a
8 long time ---

9 A He was in that area a long time, and from my history
10 of looking at this data, I would infer some movement. It's
11 a small area, but I -- I would infer there was some
12 movement occurring.

13 Q The area -- this area was small or your area --

14 A This area, not necessarily around the ending point,
15 but between the beginning point and the ending point, I
16 would definitely say there was some movement occurring.

17 Q Okay. And there also seemed to be some confusion
18 about how could these dots have an arrow in them if that's
19 where he fell. Isn't it also possible that these dots are
20 from before when he fell since we don't know what order
21 they happened in?

22 A That -- that is possible also, yes.

23 Q So we aren't discounting that -- it doesn't mean that
24 after he fell, he was still moving around.

25 A Right.

RE-DIRECT EXAMINATION BY MS. ALL - MITCHELL TUCKER 373

1 Q Right. Couldn't it also mean that he went back and
2 forth, across the same area, every minute, over and over,
3 until he was shot?

4 A That ---

5 Q Isn't that just as likely?

6 A That would be an inference, yeah. And ...

7 Q And I also want you to -- if you don't mind directing
8 your attention back to the raw data here. There was some
9 confusion about when first responders came, which was
10 testified to to be 6:24. And we've also had previous
11 testimony that the 911 call came in at 6:23. It was made
12 within seconds of the shooting.

13 I'm going to show you State's Exhibit 56. If you
14 could tell us about the movement in the moments prior to,
15 let's say around 6:20, and then what happens from 6:22 on.

16 A From 6:22, all the way through, looks like, you know,
17 6:54, I have, you know, no -- no motion, no miles per hour.

18 Q No motion. When's the last time you had motion?

19 A 6:21.

20 Q Mere seconds ---

21 A 1821.

22 Q --- before the 911 call was made. And then when does
23 motion start again?

24 A It looks like 6 -- 6:54.

25 Q Okay. So just so there's no confusion, there's not,

RE-CROSS-EXAMINATION BY MR. POURANARAS - MITCHELL TUCKER374

1 in fact, an issue that the body was in motion ---

2 A Right.

3 Q --- after ---

4 A Yes.

5 Q --- 6:24.

6 A No. It -- I would infer from just that information
7 that no -- he was not moving at all.

8 Q Okay.

9 MS. ALL: Okay. No further questions. Thank you.

10 THE COURT: Mr. Pournaras?

11 MR. POURNARAS: Briefly, Your Honor.

12 RE-CROSS-EXAMINATION BY MR. POURNARAS:

13 Q So there's even less confusion, I direct you to that
14 same set of data Ms. All just referred you to. 6:21, there
15 was one data point that shows a suggestion of movement,
16 correct?

17 A Yes, two mile ---

18 Q All right.

19 A --- two miles an hour.

20 Q Okay. So one -- merely one second -- one minute prior
21 to that, at 6:20, was there any movement?

22 A No.

23 Q When was the last time there was movement before 6:21?

24 A Looks like 5:56 was a one mile an hour spot.

25 Q So between 5:56 and 6:21 it also appears that there

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1 may have been no movement whatsoever at all.

2 A That's correct.

3 Q All right. And finally, again, Ms. All suggested it's
4 possible those data points when we know Mr. Henderson was
5 motionless or covered up by data points where there was
6 motion, can you tell me, from your experience in this
7 program, is the bottom data point earlier in time or later
8 in time if we're looking at a stacked cluster?

9 A In a stacked cluster, the lower -- lower points -- the
10 covered-up points are the older points.

11 Q Okay. So it's reasonable to assume that anything on
12 the top is towards the end of the chronological spectrum.

13 A Correct.

14 Q Okay. And it's also possible for this entire plot to
15 have made in much shorter time frames so there wouldn't be
16 such a confusing cluster of numbers; is that not also
17 correct?

18 A It will plot a point a minute.

19 Q Sure.

20 A So ---

21 Q But this -- this could have been generated five
22 minutes at a time rather than 45 minutes to avoid any
23 confusion Ms. All referred to as well.

24 A I'm not sure I'm following you.

25 Q Well, I'm asking, was this 45-minute cluster the only

1 way to create this map. or could it have been done in five-
2 minute increments?

3 A It -- it -- it could have been condensed, yes.

4 Q Okay. Could have been condensed to other ones, but it
5 wasn't. And the top ones are probably later in time from
6 the way this program actually works.

7 A That's correct.

8 MR. POURNARAS: Okay. Thank you.

9 THE COURT: Sir, you may step down.

10 THE WITNESS: Thank you, Your Honor.

11 MS. ALL: May this witness be excused, Your Honor?

12 THE COURT: Any objection?

13 MR. POURNARAS: No objection, Your Honor.

14 (The witness exits the stand.)

15 THE COURT: Ladies and gentlemen, we are going to take
16 a break at this stage. I'd ask you to step to the jury
17 room. Do not discuss the case. I'll get you back out here
18 as quickly as possible.

19 (Jury exits the courtroom at 3:13 p.m.)

20 THE COURT: We'll stand down for a few.

21 (Off the record at 3:13 p.m.)

22 (Back on the record at 3:28 p.m.)

23 THE COURT: All right. Anything from the State before
24 we bring the jury back?

25 MS. ALL: No, Your Honor, except just a scheduling

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1 matter. We haven't been able to get in touch with Mr. Mead
2 yet. It appears as though, I'm assuming, he's still in his
3 closing.

4 THE COURT: Who are you calling next?

5 MS. ALL: The investigator, Investigator McCoy.

6 THE COURT: All right. Anything else?

7 MS. ALL: No, Your Honor.

8 MS. EIGENBROT: Nothing from the Defense.

9 THE COURT: Bring me the jury, please, ma'am.

10 THE BAILIFF: Yes, sir.

11 (Jury enters the courtroom at 3:29 p.m.)

12 THE BAILIFF: The jury panel's present, Your Honor.

13 THE COURT: All right. The State's recognized. Call
14 your next witness, please.

15 MS. ALL: Thank you, Your Honor. The State calls lead
16 investigator Matt McCoy.

17 MATTHEW MCCOY, after having been first
18 duly sworn, testifies as follows:

19 THE CLERK: Thank you. Have a seat in the witness
20 stand, please. State your name for the record.

21 THE WITNESS: Investigator Matthew McCoy.

22 DIRECT EXAMINATION BY MS. ALL:

23 Q Investigator McCoy, please introduce yourself to the
24 jury, where you're from, where you went to school, what you
25 do now, and how you're involved in this case.

1 A My name's Investigator Matthew McCoy. I'm currently
2 employed with the City of Columbia Police Department as an
3 investigator in the Criminal Investigations Division.

4 I'm originally from Hilton Head Island, South
5 Carolina. I went to high school there. I moved to
6 Columbia and went to the University of South Carolina. I
7 became involved in this case because I -- I was the on-call
8 investigator that weekend.

9 Q Okay. And can you give us subjectiveome background on
10 your training, how you became an investigator, and how you
11 moved up at the Columbia Police Department?

12 A Sure. I originally was hired in August of 2008 at the
13 Columbia Police Department. I was certified as a basic
14 police officer. It's a class-one certification at the
15 State Criminal Justice Academy. From there, I've had
16 training in advanced homicide investigation; had training
17 in interview and interrogation tactics, as well as advanced
18 training in interview and interrogation tactics, including
19 statement analysis, written statement analysis; as well as
20 deception identification in oral statements.

21 I was promoted in May of 2012 to investigator and
22 moved up to the property crimes and burglary unit. I
23 stayed there for approximately six months, which I was
24 promoted again and sent over to the violent crimes against
25 persons unit where we investigate homicides, major assaults

1 with aggravating circumstances, kidnappings, and such as
2 those crimes.

3 Q Okay. And how did you become to be involved -- or
4 what were you doing on December 18, 2013, and how did you
5 come to be involved in this case?

6 A I was ---

7 Q I'm sorry, real quick. What does a lead investigator
8 do? I'm sorry.

9 A That's all right. The lead investigator on a case is
10 basically responsible for bringing the charges, appearing
11 in court appearances, testifying in those court
12 appearances. We're basically the head investigator. We
13 may have other investigators help us in the case. Crime
14 scene investigators or other people who work in our unit
15 assist in collecting evidence and talking with individuals;
16 however, we're responsible for actually investigating the
17 crime and bringing any charges if applicable.

18 Q Okay. Now, you can tell us how you came to be
19 involved in this case.

20 A I was at home eating dinner and I got a phone call. I
21 was on call that weekend -- or that week for evening shift
22 call outs. I got a phone call that we had an individual
23 who was shot at at The
24 apartments. So I responded out there.

25 Q Okay. And what is -- can you explain the relationship

1 between -- and as I'm sure the jury has noticed, you've
2 been present with us throughout this trial. So if you
3 could explain to us the relationship between the address
4 where the Defendant was previously to this address, the
5 proximity --

6 MS. EIGENGROTT: Objection.

7 THE COURT: What's the grounds for your objection?

8 MS. EIGENBROTT: Relevance, Your Honor.

9 THE COURT: Overruled. You may answer the question if
10 you know the answer.

11 THE WITNESS: Can you repeat that one more time?
12 Sorry.

13 Q The distance between Apartments and
14 Apartments, Apartments
15 being that address where the Defendant was immediately
16 prior?

17 A I got it. Apartments is behind The
18 . Via the road, it takes a few --
19 about a minute to two minutes to get there. But if you
20 walked from the actual buildings through a path, there's a
21 little cut there, it's pretty close. I mean, it's just
22 about a minute.

23

24 (Pre-marked State's Exhibit Nos. 62 - 69, photos, for
25 ID.)

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1 Q Okay. And when you arrived on scene, what -- what
2 happened? How did you begin your investigation?

3 A Well, I arrived on scene, that was at 7:10 in the
4 p.m., 1910 military time. Upon my arrival, I made contact
5 with the supervisor who was on the scene that evening. His
6 name's Corporal Green, with the Columbia Police Department.
7 Basically, asked him what happened. Lieutenant White, who
8 was a lieutenant at the time, was also there. He was the
9 staff duty officer, I believe, which is a supervisor
10 position. He controls the city after the Chief goes home.

11 Q And what time did you arrive on scene?

12 A I arrived at 7:10 p.m.

13 Q And what were the conditions outside?

14 A It was dark outside when I arrived.

15 Q And can you expound a little bit on the darkness? As
16 -- as you are the one that makes the charges --

17 A Uh-huh.

18 Q -- in criminal cases, and nighttime is an element
19 here, do you pay attention to the nighttime?

20 A I do. I pay attention to what time the sun set, what
21 time I got the call, what time I arrived, and try -- and
22 also by talking with the witnesses and looking at evidence
23 such as when the EMS arrived and when they were dispatched,
24 when the first officer was on scene. We determine what
25 time a particular incident took place as to what the -- the

1 sun was doing.

2 Q And I'm glad you mentioned that. We know that the
3 first responder arrived on scene, from prior testimony, at
4 6:24. Do you remember what time EMS arrived on scene?

5 A Let me look at my notes here. According to the EMS
6 report, it was at -- 6:47 p.m. is the time they arrived.

7 Q And do you remember what time they had loaded the
8 Defendant up in the car and left the scene?

9 A According to the EMS report, it was 6:55 in the p.m.

10 Q So all of this happened before you arrived at 7:20.

11 A 7:10.

12 Q 7:10.

13 A Yes, ma'am. Yeah. Before -- by when -- by the time I
14 arrived, the Defendant had been transported to the
15 hospital.

16 Q So what did the scene look like when you got there?

17 A When I got there, the officers -- they had a couple of
18 witnesses, you heard from them earlier, off to the side and
19 were kind of holding them in a staging area. There was
20 crime scene tape around the immediate shooting scene --
21 yellow tape just says "caution, do not enter crime scene" -
22 - around. It looked like it was by a big trash compacter
23 or trash can that the residents used to dump their trash
24 in. And it encompassed that area, part of the parking lot,
25 as well as a hill.

1 And then there was some clothing lying there with some
2 -- appeared to be human blood. I'd been told it was a
3 shooting, so I was pretty prepared that was going to be
4 human blood around and around the clothing area where the,
5 my understanding, the body had been laying.

6 Q So what did you learn? You said that you knew that it
7 was a shooting. So talk to us about how you approached
8 this case and how you investigated it.

9 A Well, initially, the only information we had was that
10 an individual had been shot several times by a high powered
11 rifle due to the shell casings that we had found; and we
12 believed to be an attempted murder of some sort or some
13 type of shooting. So that's how we investigated it.

14 That's why I was called out to the scene because
15 that's what I investigate is -- is aggravated assaults,
16 with weapons and such, and homicides. We knew the victim
17 was in very bad condition. I was actually told this was
18 probably going to be a murder investigation when I
19 initially got the call. So that's why I rolled out with
20 several other investigators, notified them. And that's how
21 we investigated it.

22 (Pre-marked State's Exhibit Nos. 62 through 69,
23 photographs, for ID.)

24 Q Okay. I'm going to show you what's been pre-marked
25 State's Exhibits 64, 62 and 66. Are these a true and

1 accurate depiction of the scene when you arrived?

2 A These were -- I had arrived prior to the crime scene
3 investigator arriving.

4 Q Okay.

5 A So these photographs were taken by the crime scene
6 investigator. The only thing that's different in the
7 photographs and what I saw when I got there are the -- the
8 numbering indicators that the crime scene investigator put
9 up to indicate the shell casings. Other than that,
10 everything is represented the way I saw it when I got
11 there.

12 Q Okay. So everything was the same except the Defendant
13 was not present, there were just clothes.

14 A And he wasn't there when I got there.

15 Q He wasn't there. And -- and things weren't numbered.

16 And so now I'm going to hand you 63, 65, 67, 68, and
17 69. Do you recognize these photographs, and are they a
18 true and accurate depiction of the scene as you remember it
19 at the time?

20 A Yes, that's correct.

21 MS. ALL: Beg the Court's indulgence.

22 (Brief pause.)

23 MS. ALL: Your Honor, at this time, the State moves so
24 referenced exhibits into evidence.

25 THE COURT: What numbers again?

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1 MS. ALL: 62, 63, 64, 65, 66, 67, 68, and 69.

2 THE COURT: Any objection?

3 MS. EIGENBROT: No objection, Your Honor.

4 THE COURT: Without objection, so admitted.

5 (State's Exhibit Nos. 62 through 69, photos, in
6 evidence.)

7 MS. ALL: And permission to publish to the jury.

8 THE COURT: Yes, ma'am.

9 MS. ALL: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MS. ALL (continues):

11 Q Investigator McCoy, I'm going to show you what's
12 entered in State's evidence -- Exhibit 65. Can you
13 describe this item and where it was located on the scene?

14 A That was a remote control that Investigator Moore
15 located near the vic -- excuse me, the Defendant's clothing
16 at the scene.

17 Q Okay. And had been left behind by EMS?

18 A That's correct.

19 Q And through your investigation, did you figure out
20 where this remote -- what electronic device it belonged to?

21 A We did, yeah. We determined through the investigation
22 -- we're skipping over some stuff, but yes, it was
23 determined to be April Jenkins's remote control, belonged
24 to a TV that was inside her apartment, at one point, before
25 all this happened.

1 Q And where was the TV when you eventually investigated
2 it?

3 A It was in the -- the rear of Mr. Demetrius Henderson's
4 vehicle when we did the search warrant on it.

5 Q So where was the remote?

6 A The remote was on his person or was near his clothing
7 is where Investigator Moore located it -- or we located it.

8 Q And the TV it belonged to was where?

9 A It was in the -- the back of Mr. Henderson's motor
10 vehicle.

11 Q Okay. I'm going to show you State's Exhibits 67 and
12 68. Recognize these items?

13 A That appears to be a cell phone, yes, that was located
14 at the scene.

15 Q And in your investigation, did you learn to whom this
16 cell phone belonged?

17 A I believe it was Mr. Henderson's, but I'll have to
18 look back.

19 Q It was found with the remotes --

20 A It was.

21 Q -- and the other items.

22 And Exhibit 69, can you talk about what this is, which
23 isn't showing up so good here, but what this is and what
24 ended up happening to it?

25 A You mind if I take a closer look at it real quick,

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1 just to make sure. It appears to be a shell casing.

2 Q Okay. And what happened to those shell casings?

3 A They were collected by Investigator Tammie Moore, and
4 tagged into evidence after she took them to the lab.

5 Q Those being the same shell casings that Lieutenant
6 Tracy Thrower testified to?

7 A That's correct.

8 Q Okay. And Exhibit 67 -- or 66 depicts ...

9 A It looks like a pair of pants -- tell in the picture
10 it's a pair of khaki pants with a belt.

11 Q Right. And Exhibit 64 depicts what?

12 A That's clothing. It was indicated to me that's the
13 clothing that was left behind by EMS that they cut off of
14 Mr. Henderson.

15 Q Okay. And so where was -- can you describe for them
16 -- you've arrived on the scene now --

17 A Uh-huh.

18 Q -- and you observed this clothing and some of the
19 items that we've discussed around it, and some of the items
20 that Investigator Moore has discussed around it. And --
21 and what, at this point, conclusions are you drawing?

22 A Well, we know an individual's been shot. From what we
23 can tell by -- and through my training, homicide
24 investigation, we only had one set of shell casings.

25 Now, normally, that indicates one weapon was fired,

1 unless it was a revolver. We didn't find any other impact
2 marks heading in the opposite direction. We found --
3 Investigator Moore and myself found impacts from
4 projectiles -- which are basically bullets, fired from a
5 cartridge casing -- striking the direction where Mr.
6 Henderson had been standing, such as this, as well as by
7 the trash bin. It -- it hit the trash bin a few times. We
8 didn't find any coming in the opposite direction. So we
9 were assuming Mr. Henderson - what we could extrapolate
10 from that information was that Mr. Henderson was shot, that
11 he had not returned fire, or anything like that. And there
12 was just only one firearm discharged.

13 Q In your experience as an investigator in assessing the
14 scene with these projectiles, was it consistent with the
15 statement which Mr. Brimfield later provided you?

16 A It was.

17 Q Okay. Now take us through what happened after you
18 arrived at the scene and assessed it.

19 A When I arrived at the scene, I began speaking with the
20 witnesses. I had been given a description of an
21 individual, large black male, possibly around 400 pounds,
22 maybe wearing an orange shirt. And he became the prime
23 suspect, so to speak, in this shooting.

24 Q And who gave you that description and why was he the
25 suspect?

1 A That was given by witnesses. Daryl Stallings and, I
2 believe, Caliph Branham gave me that description as well.
3 And he was a suspect because he was observed, as -- as
4 heard earlier, near the location and speaking with an
5 individual in a white-in-color Dodge Intrepid just after
6 the shots had rung out.

7 Q Okay.

8 A In that general area.

9 Q And what happened next?

10 A At that point, a white-in-color Honda, I believe it
11 was an Accord, pulled into the parking lot and a young lady
12 stepped out, later identified as April Jenkins. I had been
13 advised that she was the girlfriend of this large
14 individual, who I didn't know is name at the time, and that
15 she lived in this apartment that he was near.

16 When she arrived, I approached her and questioned her.
17 I was trying to get the name of this large individual so we
18 could start looking for him.

19 While I was speaking with her and doing that, Mr.
20 Costell Johnson, we heard it over the radio -- come over,
21 had called 911 and asked to speak with investigations; at
22 which point, I sent an officer over -- it was a Chinese
23 restaurant off of Broad River Road, over to that location
24 to detain him so a gunshot residue kit could be collected
25 as well as he could be photographed and -- and we could

1 later question him.

2 He agreed to come to headquarters, which he was
3 transported to headquarters in the back of a police car and
4 detained there. I continued the investigation at the -- at
5 the scene.

6 April Jenkins had gone into her apartment and I had
7 stepped out to speak with someone; and I wanted to continue
8 questioning her and get a look inside the apartment while I
9 talked to her. When I knocked on the door and she opened
10 it and I went in, the first thing I noticed was there was a
11 TV stand up against the wall, but no TV and looked like
12 some kind of cord was hanging from that area or near that
13 area. I kind of looked around the house and it looked like
14 it had been ransacked.

15 I inquired as to the condition of the apartment, if
16 that was normal. From there ---

17 Q I show you State's Exhibit 42. Is that what you saw?

18 A That -- that's what I saw. That's an accurate
19 depiction of what I saw when I -- when I went through the
20 front door, yes, ma'am.

21 Q Okay. And did you later discover what TV had been
22 hanging there?

23 A It was one of her flat screen TVs that she identified
24 as the larger one. It was a -- I believe it was the
25 Samsung 50-inch TV that we recovered from Mr. Henderson's

1 motor vehicle.

2 Q Okay. And if we can just back track a little bit.

3 You said Costell Johnson was -- he contacted police?

4 A He did. He -- he called Richland County -- Richland
5 County/Columbia Communications Center and notified them
6 that he wanted to speak with us.

7 Q And where was he when that happened?

8 A It was nearby. It was at some kind of Chinese
9 restaurant right down the road, within walking distance of
10 the location.

11 Q And was the timing of his call consistent with the
12 amount of time it would take to walk there?

13 A It was, yeah.

14 Q Okay.

15 A It -- it was shortly after I got there and began
16 speaking with individuals that this came out. It all
17 happened very fast.

18 Q Okay. You said that you wanted to go into April
19 Jenkins's apartment and that it had been ransacked, right?

20 A From what I could tell, the way it looked to me, it
21 had been gone through and ransacked. I used to work on the
22 burglary unit, so I've worked many burglaries in that unit.
23 This is a typical scene of a burglary: Drawers pulled out,
24 things turned over, items missing you could tell were
25 there. You could look at the dust patterns. You could

1 tell if there's something sitting somewhere it's now gone
2 just by the dust on a -- on a certain cabinet or -- or
3 dresser.

4 Q I'm going to hand you 45, 46, and 47 already in
5 evidence. Could you explain to us what those pictures
6 show?

7 A I can. This is -- this is Ms. Jenkins's bedroom as
8 she identified it. The drawers are pulled out and a couple
9 of them on the ground, the clothing strewn about. There
10 was a cable going to a cable box. It was just laying on
11 the ground. Looks like there was some type of TV and/or
12 monitor and it's laying on top of the bed, on her bed. It
13 looks to be out of place to me.

14 Also, when I entered her room, the window was open in
15 her bedroom. This was the window that faced -- there was a
16 little cut or path that was right behind her -- her
17 apartment because her apartment backed up to the tree line.
18 There was a little fence and a tree line, and there was a
19 path between that and the window.

20 Q Okay. So handing what's been pre-marked State's
21 Exhibit 70, 71, 72, and 73. Do you recognize these items
22 and are they a true and accurate depiction?

23 A I do recognize these items and they are, yes.

24 MS. ALL: Okay. Your Honor, so I move 70, 71, 72, and
25 73 into evidence, please.

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1 THE COURT: Any objection?

2 MS. EIGENBROT: No objection, Your Honor.

3 THE COURT: Without objection, so admitted.

4 (State's Exhibit Nos. 70 through 73, photos, in
5 evidence.)

6 Q Okay. And Investigator McCoy, as you went through the
7 apartment and noticed -- you said you noticed that things
8 were undone, were there any valuables still left in the
9 apartment?

10 A There were, yes, ma'am.

11 Q And what were some of those? (Indicating) Is this an
12 example of one?

13 A That -- that's an example of one. That's actually a
14 laptop. I believe we seized that laptop. We did a search
15 warrant on the apartment ---

16 THE COURT: What number ---

17 A --- because we weren't sure ---

18 THE COURT: Hold on. What number is that?

19 MS. ALL: Exhibit No. 70, Your Honor.

20 THE COURT: Thank you. Go ahead.

21 A We had done a search warrant on the apartment due to
22 the fact we weren't sure what we had. It was obvious a
23 burglary had occurred inside the apartment just based on
24 April Jenkins's statement as well as what we were looking
25 at.

1 We still didn't know why Mr. Henderson had been shot.
2 We weren't sure if he was a suspect in that, a victim, we
3 didn't know. So we did a search warrant on the apartment
4 just in case we found projectile to show anything leading
5 to the shooting investigation. You wanted to be able to
6 enter that into evidence later on if the charges are
7 brought against the shooter.

8 So that laptop was recovered during that search of the
9 apartment and processing of it.

10 Q Okay. And so take us through what happened as you're
11 in the apartment and what did Ms. Jenkins's tell you.

12 A We went in -- we were in the -- the kitchen area and
13 we were just speaking about the incident, about what the
14 apartment looked like. I was able to obtain Mr. Costell
15 Johnson's information, as well as his ID from Ms. Jenkins,
16 as we wanted to identify him.

17 Of course, while I was doing that, he was -- he had
18 already been detained by officers. He was at the Chinese
19 restaurant there. We wanted to confirm that was him, that
20 he resided there.

21 And that's basically the extent of what we got from
22 her besides the fact that this is -- the house was out of
23 order what -- from what it should have been when she left
24 for work that morning.

25 Q And tell us more about the window and when you noticed

1 it and what happened.

2 A Well, it was very -- it was cold. To me, it's very
3 cold. I don't do good in cold weather. But it was very
4 cold, so you could feel the draft coming in through the
5 bedroom. Because there was heater on -- the heat was on
6 inside the apartment, but of course, it was cold outside,
7 you noticed the window was wide open. I noticed the lock
8 appeared to be broken on the window. It was still locked,
9 in locked position. It looked like somebody had just
10 forced it open and were able to break the -- the top -- I
11 don't know what you call it, but there's just a little top
12 part where the lock connects to. It appeared that had been
13 broken and forced open.

14 Q And what did Ms. Jenkins say about that?

15 A She advised that that was unusual.

16 Q Did she provide you with a list of items that were
17 missing?

18 A She did. She gave the best she could -- gave it to
19 the officer, actually, who did the incident report. Some
20 TVs, there were some Christmas presents that were missing.
21 There were still some presents under the tree, but she was
22 missing some other Christmas presents, some "stocking
23 stuffers," as she called them, that she was going to give
24 to family members. I think toothpaste and deodorant.

25 There were also Ralph Lauren Polo shirts that were

1 large, like 6X or something like that, and they were
2 supposed to be a gift for Mr. Johnson. They were missing.

3 Q And how many TVs were missing?

4 A She was missing three TVs: A 50-inch Samsung, 39-inch
5 Emerson, and another 32-inch Emerson. Also a silver in
6 color Apple external hard drive and HP netbook, like a
7 little laptop type deal. And three tubes of Colgate
8 toothpaste, one tube of another brand of toothpaste -
9 Sensodyne - toothbrushes, deodorant. Like I said, products
10 and then the Polo shirts.

11 Q In your investigation, did you find that those items
12 were valued at more than \$2,000?

13 A I did.

14 Q What happened next?

15 A Well, from there, I left Ms. Jenkins with an officer,
16 and Investigator Nick Scott -- he was the burglary
17 investigator that evening -- he responded and aided Ms.
18 Moore in -- in processing the actual burglary scene after
19 she'd finished with the shooting scene as well as serving
20 the search warrant that Investigator Narewski had drafted.

21 From there, I went to Columbia Police headquarters and
22 wanted to interview Mr. Johnson, Costell Johnson.

23 (Pre-marked State's Exhibit No. 74, diagram, for ID)

24 Q Okay. And before we leave the scene, if we could
25 explain it in a little bit more depth in retrospect?

DIRECT EXAMINATION BY MS. ALL - MATTHEW MCCOY

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1 A Sure. Any particular --

2 Q Let me hand you what's been pre-marked State's Exhibit
3 74. This is a -- and have you seen this before?

4 A Yes, I have. It's a sketch of the crime scene.

5 Q And is it to scale?

6 A It appears so, yes, ma'am.

7 Q Is it a true depiction?

8 A I -- I -- I would say it's a -- it's a good depiction.
9 I won't say it's 100 percent, but it's a good depiction,
10 yes, ma'am.

11 Q So it's a true depiction --

12 A Yes.

13 Q -- but not necessarily an accurate depiction.

14 A That's correct.

15 Q And can you describe how these are made and the
16 reasons behind them and by whom?

17 A Well, Investigator Tammie Moore did this. Normally,
18 our crime scene investigators will handle that since they
19 do all the collection of the evidence as well as the
20 photographing. They're the best to do these crime scene
21 sketches.

22 They're done so that way when we come to court or we
23 come to another hearing, that we -- we're able to
24 accurately tell you where things are so you can visualize
25 because you weren't there when this occurred. So you can

1 kind of tell where we found items, where we found, say,
2 shell casings or other items of evidence, you'll know where
3 they were in relation to where we were and where the actual
4 scene was.

5 MS. ALL: Your Honor, if we move what's been pre-
6 marked State's Exhibit 74 into evidence.

7 THE COURT: Any objection?

8 MS. EIGENBROT: No objection, Your Honor.

9 THE COURT: So admitted.

10 (State's Exhibit No. 74, diagram, in evidence.)

11 DIRECT EXAMINATION BY MS. ALL (continues):

12 Q Investigator McCoy, we have the physical items of some
13 things, but not other things that were recovered from the
14 scene?

15 A That's correct.

16 Q Why might that be?

17 A If you're referring to the items that April Jenkins
18 identified as hers, they were returned to her following our
19 procedures. After they were photographed and identified,
20 she signed for them, and then they were put in the record
21 and she was going to pick them up.

22 Q Okay.

23 A There were also some items that belonged to Mr.
24 Johnson that he never retrieved, and of course, he's no
25 longer with us.

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1 Q Okay.

2 A So he never came to retrieve them.

3 (Pre-marked State's Exhibit Nos. 75, white sock; and
4 76, gold watch, for ID.)

5 Q So handing you what's been pre-marked State's Exhibit
6 76 and 75. Do you recognize these items?

7 A 75 is a white-in-color sock that was recovered at the
8 incident location by Investigation Moore.

9 Q And the items in 76?

10 A It was a -- it is a gold watch. This was recovered
11 from the clothing of Mr. Demetrius Henderson at the time,
12 at the scene ---

13 Q Okay.

14 A --- by Investigator Moore.

15 MS. ALL: Your Honor, the State moves 75 and 76 into
16 evidence.

17 MS. EIGENBROT: No objection.

18 THE COURT: Without objection, so admitted.

19 (State's Exhibit Nos. 75, bag containing sock; and 76,
20 gold watch, in evidence.)

21 MS. ALL: Okay. Your Honor, beg the Court's
22 indulgence.

23 (Brief pause.)

24 MS. ALL: Your Honor, permission for Investigator
25 McCoy to step down, Your Honor, and to interact with the

1 crime scene depiction?

2 THE COURT: Yes, ma'am.

3 MS. ALL: Thank you, Your Honor.

4 (The witness exits the stand.)

5 Q (Indicating) Investigator McCoy, where was this item
6 recovered?

7 A (Indicating) This sock was recovered in this area here
8 with the clothing, 6 and 13, white sock would have been
9 here.

10 Q Okay. And in your investigation -- during the course
11 of your investigation, did you determine where the other
12 sock was?

13 A Yes, that was with Mr. Henderson at the hospital. It
14 was recovered there by CSI Moore.

15 Q Okay. Along with both pairs of shoes; is that right?

16 A That's correct.

17 Q Were his shoes on his feet, according to your
18 investigation, when he left the crime scene?

19 A My understanding, that's what happened, is they were
20 still on his feet by the time he got to the ---

21 Q And where was this watch recovered?

22 A That was in one of the pockets inside his khaki pants.

23 Q The pants that were depicted in the photographs we
24 just entered into evidence?

25 A Yes, ma'am.

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1 Q That were cut off by EMS?

2 A That's correct.

3 Q And in your investigation, did you deduce to whom this
4 watch belonged?

5 A It belonged to Costell Johnson.

6 Q So why was it not returned?

7 A He never came to get it. He's, of course, since
8 deceased and never came and signed for it.

9 Q Okay.

10 A We can't return anything that's not his. We don't
11 have an order from the probate court about who would get
12 his property.

13 Q So all the items that were recovered, if you could
14 just take us through the crime scene and what -- what you
15 noticed --

16 A Sure.

17 Q -- as we -- to -- to the best, I believe, that we
18 might have skipped that.

19 A There was a vehicle parked within the crime scene. It
20 was an Oldsmobile, green in color. This turned out to be
21 Demetrius Henderson's motor vehicle. The car keys to the
22 vehicle were in his pocket. It had been registered to him.
23 We also found tax receipts inside the car indicating he was
24 paying taxes on it to Richland County.

25 It was inside the crime scene. (Indicating) It was

1 parked in the first spot right here. I believe the back
2 door was ajar on it where the TVs were. From there, we
3 could extrapolate that his body was here (indicating) based
4 on the clothing and what the responding officers observed.

5 Q When did you notice this? Was this before or after
6 Ms. Jenkins came home and you went in her apartment?

7 A We noticed the car after Ms. Jenkins had come home.
8 We determined there was a burglary.

9 Q What did you see inside the car?

10 A Well, I happened to be by the car, I just looked in
11 the windows to see if it had been hit or anything. And I
12 noticed there were TVs in plain view sitting on the back
13 seat, which is odd for a car to be sitting there.

14 We ran the tag and the DMV history and determined that
15 it was the individual that had been shot, he had owned the
16 car. So we went ahead and towed it to headquarters to
17 preserve the evidence inside.

18 Q And what did you find inside of the car? I'm going to
19 hand you State's Exhibits 24, 27, 30, and 32. Can you
20 describe what this pictures show?

21 A I can. These are -- these are interior photographs
22 taken by Investigator Moore. It was the following evening
23 after this happened at our headquarters, at lockup impound,
24 after I obtained a search warrant. So these are interior
25 shots of the car.

1 Q And do those reflect what you had seen through the
2 windows?

3 A That's correct, yeah. The -- except for the one of
4 the trunk. That was -- it was closed, of course. And No.
5 30, that was after we had -- we were searching it and it
6 was under the seat. But yes, yes. Other than that you
7 have the -- the box and the TVs in the rear. You could see
8 that.

9 Q Did you later deduce in your investigation to whom the
10 items in the back seat, with the Christmas bows still on,
11 them belonged?

12 A That belonged to April Jenkins. They were going to be
13 a present for Costell Johnson.

14 Q And did you look at the shirt size in the presents
15 inside the car?

16 A I did. They were like a 6X. So a very large
17 individual would need to wear this.

18 Q Do you see Demetrius Henderson in the courtroom today?

19 A I do.

20 Q Could you point him out?

21 A He's over here. Black male, in the glasses and the
22 black shirt -- I'm sorry, the flannel shirt.

23 MS. ALL: Let the record reflect that he pointed out
24 the Defendant.

25 Q Does he wear a 6X?

1 A I don't know what clothes he wears, size per se, but
2 doesn't appear to be wearing 6X, no.

3 Q And at this point, what time of day was it?

4 A During the car search or we talking about the -- while
5 we're here?

6 Q While we're still on scene.

7 A Okay. While we're still on scene, at this point -- by
8 this point, it's probably after 9:00, probably closer to
9 10:00 p.m. by the time we noticed that. It took quite a
10 while to process everything.

11 Q And in your investigation, and in your experience
12 living on this earth, was it dark during the entering or
13 remaining of this burglary?

14 A It was dark at the time of this burglary ---

15 MS. EIGENBROT: Objection, Your Honor.

16 THE COURT: You need to lay the foundation for that,
17 for him to testify concerning such. I don't think you've
18 done so yet. Sustained.

19 Q What time did it get dark that night?

20 A From my recollection, about 5:45/5:50 was the time it
21 would have gotten dark.

22 Q And what time was the shooting?

23 A The shooting was approximately 1818, which would be
24 6:18 in the p.m. I got that from records. from when 911
25 was called and test -- excuse me, after speaking with the

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1 witnesses as to what -- what occurred, we extrapolated the
2 time was within that 6:18 to 6:20 p.m. range.

3 Q Now, you testified earlier about some of these
4 photographs in the apartment where belongings were still
5 located. There were expensive things still in the
6 apartment; is that correct?

7 A That's correct.

8 Q Okay. And I also want to show you State's Exhibit 72
9 and 73 and have you describe those to the jury. We've --
10 we've already talked about the window, the latch was
11 broken. What's shown in those photographs?

12 A In these photographs, No. 72, that's a far away shot
13 from where Mr. Henderson was found, discovered. She put
14 her camera there, collecting the evidence, and then took a
15 photograph down the cut or the path that was right next to
16 the apartment building that had been broken into.

17 Q And can you show us where the cut is on this diagram?

18 A Yeah. (Indicating) The cut would be right in here.
19 You got the tree line and the fence. Her apartment is on -
20 - on the bottom floor in the back. There's two AC units.
21 And then she would have been taking the photograph from
22 here down this direction, down the cut towards the -- the
23 window that was broken.

24 Q Okay. And what was found -- did you notice anything
25 that was next to the AC units?

1 A Yeah. (Indicates) This -- this was a screen, a window
2 screen that goes over the window so when you open the
3 window, you don't get flies and stuff flying into your
4 home. That had been broken off of the window and removed
5 and placed next to the -- the AC unit, actually kind of
6 behind it.

7 Q And was this done by police?

8 A No. This was -- this was there when we arrived,
9 that's how it was.

10 Q Okay.

11 A So that -- that was done at some other time.

12 Q Okay. And can you describe the scene any further or
13 have we covered ---

14 A I think we've covered everything. You know, we got
15 the shell casings in here. When -- when a firearm
16 discharges, depending on what side that the -- the ejector
17 is on -- you have the ejector and the extractor. The
18 extractor pulls the round out of the chamber and the
19 ejector -- the ejector will eject it out of the -- out of
20 the breach area. And that's why you have the shell casings
21 in this area here by the car.

22 We -- we could determine that the shooter was standing
23 somewhere in here by the utility box. He had to be
24 standing behind it because of the -- the damage to the
25 utility box. (Indicating) We knew if the shooter was

1 standing here, the -- Mr. Henderson was standing here when
2 he was hit, based upon the impacts of the projectiles which
3 are over here, and the shell casings at that robbery --

4 Q Okay. Did it appear as though the burglary had been
5 completed?

6 A In my opinion, no.

7 Q And why is that?

8 A There were still items of value inside.

9 (The witness returns to the stand.)

10 A There were still items of value inside the home, that
11 had not been moved. That -- that TV had been taken off --
12 that was on the bed, that was in the photograph -- had been
13 taken off the -- where it normally sits and was laying on
14 the bed.

15 A lot of times in burglaries, through my experience in
16 working other burglaries when I was in the burglary unit,
17 that's a pretty typical thing. They'll move things closer
18 to the point of exit to get to it quicker in case somebody
19 does happen to come home. So no, I don't believe so.

20 Q Of the three TVs, was the one on the bed -- what size
21 was it? Was it the biggest or the smallest?

22 A It -- it was one of the smallest. It was probably a
23 32-inch if I had to -- 27 or 32, but it was small.

24 Q So whoever put the TVs in the Defendant's car started
25 out with the biggest TV?

1 A That's correct.

2 Q Okay. And what happened next? You said that you were
3 going back to headquarters.

4 A Yes. I went back to headquarters to try to speak with
5 Mr. Costell Johnson. I did speak with him briefly, but did
6 not get a full statement from him because he wished to have
7 an attorney present. He was -- he was in custody,
8 Mirandized, so it's his right to have an attorney present,
9 if he would like, before questioning by the police.

10 Q Okay. And I'm sorry, I have to -- I have to go back.
11 There's a lot here. We talked about the watch and the sock
12 and the other things that were around the Defendant's
13 person.. What other items were left behind in the pants
14 that would help -- that helped y'all figure out who he was?

15 A I believe there was some type of red, hard case or
16 something, a wallet, with an ID in it, some money. I think
17 there was a bank card in there somewhere, as well as --
18 well, I think the student ID was in the car. But
19 everything else was -- he had things with his name on it
20 inside this little wallet item.

21 Q Okay. And he had car keys with him?

22 A That's correct. He had key -- car keys. That was to
23 the car that we had towed. That was the keys we used to
24 open the door to search the car.

25 Q Okay. And there were identifying documents in the

1 car?

2 A That's correct.

3 Q And to whom did those belong?

4 A Demetrius Henderson.

5 Q And so what happened next? You go back to
6 headquarters, what happens?

7 A I went back to headquarters. Mr. Costell Johnson
8 wanted an attorney, so he was allowed to leave. We didn't
9 have enough probable cause to charge him with anything at
10 that particular time. However, I did make contact with his
11 attorney, a Mr. Chaplin, and he promised to have his client
12 back the next morning so he could be there and he would
13 answer any questions I had regarding what occurred. He did
14 make a comment that he wasn't the shooter and he knew who
15 was. From there, he was allowed to go.

16 We had finished at the scene. Mr. Henderson was in a
17 medically induced coma, so he couldn't talk. He was pretty
18 bad. So we couldn't speak with him.

19 So we had nothing else we could do that evening, so we
20 broke for the day -- the night and came back the following
21 day and continued on.

22 Q So at this point, did the track of your investigation
23 change from just being a shooting into something else?

24 A Yes. It became a -- it turned into a burglary
25 investigation in addition to the shooting.

1 Q And how early on in the process did that happen?

2 A Once we located the home that was burglarized, the --
3 the apartment, , as well as the items inside of the
4 vehicle that belonged to Mr. Henderson, we had a pretty
5 good idea the two were related. So that's when that began
6 was that evening.

7 Q Okay. And when did y'all conduct the search warrant
8 of the Defendant's car?

9 A Let's see here. On --

10 Q Or I guess ---

11 A Yeah. It was the 19 -- it was the next day. It was
12 December 19th, and we started at 5:40 in the p.m. was when
13 I served -- I was on night shift that week. That's why
14 everything's done in the evening. That's when we served
15 the search warrant on the Buick LeSabre that we had towed
16 to headquarters.

17 Q Okay. Well, just at the risk that I may have jumped
18 ahead, what was the first thing y'all did after you
19 reconvened the investigation, after a little sleep?

20 A First thing I did was, at 2:10, I faxed a letter to
21 Verizon Wireless to preserve the phone records for Mr.
22 Costell Johnson. In case he decided not to cooperate
23 anymore, we'd have records of who he had been talking to.

24 Q Okay.

25 A From there, I spoke with Mr. Chaplin on the phone.

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1 That was at 4:00 p.m., on the 19th. He identified who the
2 shooter was in the case and said he would have him turn
3 himself in as well and would -- and would be cooperating
4 with the investigation. And then I served the search
5 warrant at 5:40 ---

6 Q On the car.

7 A --- on the 19th.

8 Q Okay. And tell us about the service of the search
9 warrant on the Defendant's car.

10 A It was done at our -- our impound lockup. We had
11 towed it the night before. An officer had followed the car
12 to preserve the evidence. A tow truck had towed to our
13 lockup. It's in secure facility behind headquarters.

14 From there, I obtained a search warrant. It was
15 served, again, at 5:40 p.m., on the 19th, which was the
16 following day. And we -- we searched the car.
17 Investigator Tammie Moore would photograph the interior of
18 the car so that way we -- we would have an idea of what it
19 looked like prior to us digging through it. And then we --
20 then we began our search and located the items that we
21 found.

22 Q Okay. And did you process the car for forensics?

23 A I did not. Tammie Moore processed the items located
24 -- certain items located inside the car for forensics.

25 Q And did she recover any forensics? Was she able to

1 recover ---

2 A To ---

3 Q --- any fingerprints?

4 A To my knowledge, no. She found no useable prints on
5 anything.

6 Q Is there a reason why y'all didn't pursue further
7 forensics to identify who had been in the car?

8 A We had a pretty good idea who had been in the car just
9 from the documentation we found; as well as the fact the
10 car keys were in Mr. Henderson's pants; as -- as well as,
11 like I said, the documentation we found inside the car
12 showing whose car it was; as well as the car, the proximity
13 of the car to his body, when he was located, would indicate
14 that Mr. Henderson had control of that vehicle.

15 Q And those identifiers were documented by photograph?

16 A That's correct.

17 Q And have been entered into evidence.

18 A That's correct.

19 Q And speaking of processing things for forensics, there
20 was a question earlier about whether anybody processed the
21 apartment, Ms. Jenkins's apartment.

22 A Uh-huh.

23 Q What was behind your decision not to do that?

24 A Well, Investigator Moore -- she -- she's more the
25 expert as far as investigating a crime scene or collecting

1 that type of forensic evidence. A lot of times we'll do a,
2 you know, either/or: Are we better off trying to get
3 fingerprints, trying to get D -- touch DNA. The use of
4 trying to get touch DNA can -- can hurt fingerprints
5 because if you're dragging a swab across a surface, you're
6 going to ruin the print.

7 We weren't sure if he'd been wearing gloves or not at
8 the time, so we -- we had to go ahead and look for prints
9 and do it that way; as well as he had had a lot of clothing
10 on and it was cold out, so no one would be sweating or
11 anything like that, would usually leave a DNA drip --
12 dripping from sweat or whatnot.

13 Q If you had found -- did you find any blood in the
14 home?

15 A No. To my knowledge, no one found no blood.

16 Q If you had found some blood, would you have processed
17 it?

18 A Absolutely. We would have swabbed it and collected
19 it, yes.

20 Q Okay. So what did you learn from the search warrant
21 that was conducted on the Defendant's car?

22 A What we learned from the search warrant of the car
23 was, when we -- we began searching, we found several items.
24 And I'll refer to my notes here.

25 We found -- we found all the items that Ms. Jenkins

1 was missing, besides the ones we found in his pockets and
2 near his body, we found those inside that vehicle. We also
3 found a large glass container of a green leafy plant-like
4 substance and a digital scale. That was under the front
5 driver's seat, kind of a bench area, kind of the middle
6 where the center console would go.

7 And that was where we found the TVs, the Apple hard
8 drive, the HP notebook. There was also a speaker, like an
9 external speaker. We found -- that was found at the scene,
10 with the clothing. That also belonged there ---

11 Q And the -- the ---

12 A --- with Ms. Jenkins.

13 Q --- the -- the speaker was found at the scene with the
14 remotes?

15 A That's correct.

16 Q Okay.

17 A Yeah.

18 Q And to whom did you deduce that the items in the car
19 belonged?

20 A April Jenkins.

21 Q To whom did you deduce the speaker belonged?

22 A April Jenkins.

23 Q To whom did you deduce that the items in the
24 Defendant's pants, that were cut off of him by EMS,
25 belonged?'

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1 A That belonged to April Jenkins.

2 Q And what did you do after you conducted the search
3 warrant on the Defendant's car?

4 A After conducting the search warrant on the Defendant's
5 car, let's see, we -- we stopped for the day, that was all
6 we could do.

7 Mr. Chaplin had advised me they'd be in the following
8 day, at nine o'clock in the morning, which they did do.

9 So the following day I met with Mr. Brimfield, Mr.
10 Costell Johnson, and -- and their attorney Mr. Chaplin.
11 They arrived at headquarters.

12 Mr. Brimfield was driving the Dodge Intrepid, white in
13 color; and he, at that point, gave us consent to go into
14 the vehicle. He -- he had the weapon that he'd used inside
15 the car, wrapped up in a shirt, or a large towel or a large
16 shirt. So we retrieved the weapon.

17 Investigator - crime scene Investigator Wise
18 photographed that search. And from there, they were
19 interviewed at headquarters.

20 Q And what did you learn in that interview?

21 A We got a basic idea of what happened. They both were
22 interviewed extensively, Mirandized, and they had their
23 attorney present. But they were interviewed regarding the
24 -- the facts of what happened, and the information given to
25 us was what matched the physical evidence at the scene.

1 Q Was his statement to you consistent with what he said
2 in court today?

3 A Yes, it was.

4 Q Was there anything inconsistent about his statement
5 with the evidence at the scene?

6 A Not to my recollection, no.

7 Q And what happened next?

8 A Well, from there, we -- we finished the interviews.
9 They left. Mr. Brimfield consented to a buccal swab, a DNA
10 swab of his mouth. We got that just to determine if he was
11 the one that actually handled the firearm, to make sure it
12 wasn't Costell or someone else. So we sent those items off
13 to SLED for analysis.

14 Q And speaking of what you sent off to SLED to analysis,
15 in your investigation, what other items -- were there
16 illegal substances found in the Defendant's clothing when
17 you were on scene?

18 A Yes. Investigator Moore located a baggy containing a
19 white powdery substance that we -- we field tested. The
20 field test was positive for cocaine, at which time we sent
21 it off to SLED for analysis.

22 Q And was that found right around -- what else was
23 around the baggy of cocaine?

24 A My understanding it was in the pocket of the pants Mr.
25 Henderson had on.

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1 Q Okay. And I don't think we covered how many remotes
2 were in his pants.

3 A I believe it was a total of two that we had, both
4 belonging to Ms. Jenkins.

5 Q Okay.

6 A And they belonged to the TVs that were in the back of
7 the car.

8 Q Okay.

9 A And there were other items inside the car we located
10 that we don't have an owner to. Don't know who they belong
11 to. There were another -- there was another item. It was
12 a camera. It could have been Mr. Henderson's, but Ms.
13 Jenkins didn't identify them as hers. She didn't report
14 them as stolen, so we still have them in our evidence.

15 Q And what -- in what jurisdiction did this incident
16 occur?

17 A This occurred in the city limits of Columbia and in
18 the County of Richland.

19 Q Okay. And why did you not -- I guess, how long did
20 you say your investigation lasted?

21 A Well, the last thing was in January 14th of 2014, so
22 it lasted til about then.

23 Q Okay. And did you interview Mr. Henderson during that
24 time?

25 A No, we did not. He was in a medically induced coma

1 for quite some time. He was unable to speak with us for
2 longer after that.

3 Q Okay.

4 MS. ALL: Beg the Court's indulgence.

5 THE COURT: Yes.

6 (Brief pause.)

7 Q Investigator McCoy, do you remember -- well, I guess,
8 since we've learned during this trial that the actual
9 scientific weight that's presented to the jury as evidence
10 for drugs is presented by a forensic scientist.

11 A Uh-huh.

12 Q Is there a preliminary weighing that y'all do in the
13 field?

14 A We do. We call it a "field weight." The crime scene
15 investigator will do it. There's a visual scale in the lab
16 that they have, and they'll -- they'll check that once the
17 items are located just to get an idea of how much is there.
18 And we'll compare it to the actual scientific weight that
19 the lab will handle.

20 Q Okay. And why did you choose to charge the Defendant
21 with trafficking cocaine?

22 A Well, there's a -- there's a statutory amount that
23 equals -- different level, different charges: You've got
24 personal use, small amount; you've got PWID, which is
25 possession with intent to distribute; and then you have

1 trafficking.

2 Trafficking, I believe, is over 10 grams of an item.
3 That means statutorily it's -- it's over the limit that a
4 person would just use. Your -- you can infer that from the
5 statute that they're intending to traffic that amount if
6 they have that amount.

7 Q For the cocaine for trafficking, did you have to look
8 for any other indicators or is it just based on the weight?

9 A No, it's just based on the weight.

10 Q Okay. And -- and differently you charged the
11 marijuana as possession with intent to distribute. And do
12 you recall the weight of the marijuana?

13 A It was -- I believe it was 37, somewhere around that.

14 MS. EIGENBROT: Objection, Your Honor.

15 THE COURT: Overruled. Go ahead.

16 A Somewhere around 37 grams, give or take.

17 Q And that is not your conclusion as a forensic
18 scientist but the field weight?

19 A That's correct. That's from the field weight that I
20 saw on the scale, yeah.

21 Q Okay. And why did you charge him with possession with
22 intent to distribute?

23 A Same with the -- same with the cocaine. It's over 28
24 grams, it's over an amount for personal use. It -- it go -
25 - rises to the level of PWID, possession with intent to

1 distribute, but not trafficking. Trafficking is much more.

2 We also found a digital scale next to the jar of the
3 green leafy plant substance. From that we can indicate
4 that's a pretty common thing that -- that drug --
5 traffickers -- drugs -- individuals who distribute
6 narcotics, they'll measure it out to put into little
7 baggies or whatever they use to sell it in. That way
8 people aren't being cheated and they know how much they're
9 giving out and they keep track of it. It's like a business
10 deal. And that's very common to have those scales when
11 you're -- you're distributing drugs.

12 (Ms. All confers with Mr. Shenkar briefly.)

13 Q Okay. And so based on your experience with law
14 enforcement -- you said you've been in law enforcement how
15 many years?

16 A It will be seven this year.

17 Q And a -- as a violent crimes investigator?

18 A I've been an investigator -- a violent crimes
19 investigator since late 2012.

20 Q Right. Were you able to infer, based on the evidence
21 present, that the appropriate charges were not just mere
22 possession, but trafficking for cocaine and possession with
23 intent to distribute the marijuana?

24 A That's correct. Based upon the statutory amount
25 that's in the law, that's what we charged him with the

1 appropriate charge. It met the elements, yes, ma'am.

2 Q Okay.

3 MS. ALL: No further questions. Please answer any
4 questions for Defense.

5 THE COURT: Ladies and gentlemen, what I am going to
6 do right now is I am going to stop for the balance of the
7 day. I'm going to let you go home right now. I'm going to
8 ask that you be back here at nine o'clock in the morning.
9 We will resume the trial at that time.

10 Do not discuss the case during your overnight break.
11 Do not discuss the case. Please be back here at nine
12 o'clock in the morning.

13 (Jury exits the courtroom at 4:21 p.m.)

14 THE COURT: (To the witness) All right. We will
15 resume at nine o'clock in the morning. Officer, you can
16 step down, but you are not allowed, not allowed to discuss
17 your testimony at all. Do you understand?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Okay. You can step down.

20 (The witness complies.)

21 THE COURT: All right. Anything from the State before
22 we break for the balance of the day?

23 MS. ALL: No, Your Honor.

24 THE COURT: Defense counsel?

25 MR. POURNARAS: No, Your Honor.

1 THE COURT: Nine o'clock in the morning.

2 MR. SHENKAR: Thank you, Your Honor.

3 (Off the record at 4:23 p.m.)

4 Day 3

5 (On the record at 8:58 a.m.)

6 THE COURT: All right. State have an opportunity to
7 review the proposed charge, Mr. Shenkar?

8 MR. SHENKAR: Yes, Your Honor. We would like to --
9 there was a request by Defense to add some language to the
10 charge, specifically related to the definition of nighttime
11 to which we objected in reply email ---

12 THE COURT: I saw that.

13 MR. SHENKAR: --- to your clerk. I underlined the
14 reasons for the objections. I can repeat them if Your
15 Honor would like me to.

16 THE COURT: Well, I saw the email. My law clerk
17 forwarded -- forwarded the email from you to her concerning
18 your objection to that language.

19 Mr. Pournaras?

20 MR. POURNARAS: Yes, Your Honor.

21 THE COURT: I -- I'm not going to add that additional
22 language, but you can make your objection and put on the
23 record what you wanted to add in there.

24 MR. POURNARAS: Yes, Your Honor. Thank you.

25 The language I wanted to add was from Judge Anderson's

1 proposed orders, published by the Bar's CLE Division. But
2 specifically, the language in your charge is substantially
3 similar in defining nighttime as the aggravating factor,
4 which means the period between sunset and sunrise during
5 which there is not daylight enough to discern a person's
6 face, except by artificial light or moonlight. The
7 additional language I sought to add, which was proposed in
8 Judge Anderson's model is (as read): "Thus, the term
9 nighttime is not confined to the exact period between
10 sunrise and sunset."

11 And the reason I would like that additional language
12 is I believe it's still an accurate reflection of South
13 Carolina law. I don't believe that it changes anything,
14 but it clarifies to the jury that sunrise and sunset are
15 not equivalent to nighttime; that sunrise and sunset are
16 the outer bounds, but there's still that additional period.
17 And -- and by saying that it is not confined to that exact
18 period makes the jury fully aware that there is more to
19 their consideration other than just sunrise and sunset.

20 And -- and I don't think it adds anything. I don't
21 think it confuses anything. I just think it eliminates the
22 natural tendency to -- to conflate those two issues.

23 THE COURT: Well, I think that -- that -- and
24 respectfully noting your argument, I think that the charge
25 as it is actually elaborates more on sunset and sunrise

1 stating it is that period during which there is not enough
2 daylight to recognize a person's face except by artificial
3 light or moonlight.

4 MR. POURNARAS: Thank you, Your Honor.

5 THE COURT: And -- and just to say that again, I don't
6 think would be necessary --

7 MR. POURNARAS: Thank you, Your Honor.

8 THE COURT: -- what you -- what you've requested. But
9 your request is noted. Your objection, if it's one, is so
10 noted for the record as well.

11 Anything else with regard -- any other exceptions or
12 objections to the charge by the State or Defense?

13 MR. SHENKAR: Nothing else from the State, Your Honor.

14 MR. POURNARAS: Nothing, Your Honor.

15 THE COURT: And certainly, I understand once the
16 charge is given, will give you all an opportunity again to
17 make any exceptions or objections as -- as deemed
18 necessary.

19 All right. Anything from the State or Defense counsel
20 before I bring the jury out?

21 MS. ALL: Your Honor, if we could just buy a few
22 minutes. Investigator McCoy was called to a traffic
23 accident and is parking the car right now.

24 THE COURT: Okay.

25 MS. ALL: May have already parked.

1 THE COURT: All right. Is he your last witness other
2 than the drug?

3 MS. ALL: Yes, Your Honor.

4 THE COURT: Okay. All right. Just let me know when
5 he gets here.

6 MS. ALL: Thank you, Your Honor..

7 (Briefly off the record.)

8 THE COURT: Yes, ma'am.

9 MS. ALL: Your Honor, one more question just because
10 of -- and forgive me if I'm being ignorant, I'm just not
11 familiar. With the judicial notice of this document, do
12 you want us to mark it -- may we mark it as an exhibit?
13 Can Investigator McCoy discuss it with the jury? Can I
14 publish it to the jury?

15 THE COURT: Well, you can publish it to the jury and
16 make it an -- an -- an exhibit, a State's Exhibit. And
17 I've written up here kind of a little short statement to
18 the jury that (as read): "The Court has taken judicial
19 notice of the fact that on December 18, 2013, sunrise was
20 at 7:24 a.m. and sunset was at 5:18 p.m. You're to accept
21 this fact as conclusive since this Court has taken judicial
22 notice of such." It's pretty short and sweet.

23 MS. ALL: And so should we also include the second
24 page that shows a full moon, shows what the moon would have
25 looked like?

1 THE COURT: Defense counsel had no objection to it
2 earlier.

3 MR. POURNARAS: Yes, Your Honor. But I -- it is part
4 and parcel of it, but at this point -- I do have problems
5 with that, Your Honor, but I understand that the Court's
6 judicial notice is of the sunset times.

7 THE COURT: Well, what's your objection? You didn't
8 object yesterday, what's your objection now?

9 MR. POURNARAS: Well, Your Honor, that -- my objection
10 is that despite the -- that is the proposed -- that is the
11 expected condition of the moon. It doesn't have any
12 bearing on the visibility of the moon that night, the cloud
13 cover, or anything that would actually affect the moon
14 being visible. It doesn't tell us what time the moon was
15 on the horizon ---

16 MS. ALL: Actually, it says all of that. It says moon
17 rise.

18 MR. POURNARAS: Ms. All, may I please finish what I
19 was saying?

20 MS. ALL: And it says ---

21 THE COURT: Hold on a minute, Ms. All. Let him finish
22 and then I'll be happy to hear from you.

23 Go ahead.

24 MR. POURNARAS: The exact conditions of whether
25 moonlight was visible at this scene is a matter of fact for

1 the jury to find. I do not believe it is proper for the
2 Court to say the moon was out and it was full because that
3 does not accurately reflect the conditions of the scene at
4 the time, Your Honor.

5 THE COURT: Agreed. I will not allow page 2 of that
6 document to go back, will not allow it. We'll take
7 judicial notice of the first page. All right.

8 MS. ALL: Thank you, Your Honor.

9 (Marked State's Exhibit No. 77, one-page document.)

10 THE COURT: All right. Anything else before I bring
11 the jury out from the State? Anything else from the State?

12 MS. ALL: No, Your Honor.

13 THE COURT: Ms. All, I'm sorry, did you have any
14 additional argument before I made my decision?

15 MS. ALL: No, Your Honor. I think that's a perfect
16 solution because the information is on the first page.

17 THE COURT: Okay.

18 MS. ALL: And so it says that the day before it was a
19 full moon and what time it came up and everything. So I
20 think we're -- that's more than sufficient. Thank you.

21 THE COURT: Okay. All right. Anything else?

22 Mr. Investigator, I will -- will remind you that
23 you're still under oath, okay?

24 INVESTIGATOR MCCOY: Yes, Your Honor.

25 THE COURT: Did you abide by this Court's instruction

1 yesterday not to discuss your testimony?

2 INVESTIGATOR MCCOY: I did, Your Honor.

3 THE COURT: Thank you very much.

4 Bring me the jury, please, sir.

5 THE COURT: At what point, Ms. All, do you want to put
6 that sunrise and sunset? I'll let you make that decision
7 as to when you want to do that.

8 MS. ALL: As I've closed questioning with the
9 investigator, I was hoping to put it in on redirect, but
10 I'm limited by Mr. Pournaras's cross unless Your Honor
11 makes an exception.

12 MS. EIGENBROT: Actually, my cross. I think that one
13 will also depend on what Mr. McCoy says.

14 THE COURT REPORTER: I'm sorry, what?

15 MS. EIGENBROT: I think it will depend on what
16 Investigator McCoy testifies to. I don't know ...

17 THE COURT: Well, I'm going to allow her to do it on
18 redirect. I mean, if y'all want to object to it, you can
19 object, but I'm going to let her -- let her get it in
20 there.

21 (The jury enters the courtroom at 9:10 a.m.)

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

23 THE COURT: Thank you. Madam Forelady, ladies and
24 gentlemen of the jury, I hope you all had a nice restful
25 evening yesterday and are ready to continue with the trial

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1 of this case this morning.

2 When we concluded or broke for the evening yesterday,
3 the State had concluded its direct examination of this
4 witness. At this time, I am going to recognize Defense
5 counsel for cross-examination.

6 Defense counsel, you're so recognized.

7 MS. EIGENBROT: Thank you, Your Honor. May it please
8 the Court.

9 CROSS-EXAMINATION BY MS. EIGENBROT:

10 Q Good morning, Investigator McCoy.

11 A Morning, ma'am.

12 Q How you doing?

13 A Doing well, how are you?

14 Q Good. All right. So back to your testimony from
15 yesterday.

16 A Yes, ma'am.

17 Q You stated that you arrived on the scene around 7:10
18 p.m. --

19 A That's correct, that's what my notes said.

20 Q -- correct?

21 A Yes, ma'am.

22 Q And you were there to initially investigate a shooting
23 ---

24 A That's correct.

25 Q --- was your knowledge at that point an attempted

1 murder shooting.

2 A That's correct. I was a violent crimes investigator,
3 so that's why they called me. Yes, ma'am.

4 Q But you were also under the impression that it could
5 -- eventually turn into a murder investigation, right?

6 A Correct.

7 Q Due to the injuries.

8 A That's correct.

9 Q You -- you knew about them.

10 A Yes, ma'am.

11 Q Now, let's -- you've been with the Columbia Police
12 Department since 2008, right?

13 A Yes, ma'am, August, 2008.

14 Q And you started as an officer?

15 A Yes. Street officer. Yes, ma'am.

16 Q And you have lots of training when you become -- first
17 become an officer.

18 A You're correct. Yes, ma'am.

19 Q You go to the Academy --

20 A Yes.

21 Q -- where they teach you to write reports --

22 A Yes, ma'am.

23 Q -- take notes --

24 A You're correct.

25 Q -- speaking to witnesses --

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1 A Yes, ma'am.

2 Q -- taking their statements?

3 A You're correct.

4 Q Speaking to possible suspects --

5 A You're correct.

6 Q -- how to take their statements.

7 A Yes, ma'am.

8 Q All that stuff. So then you get promoted just years
9 later to investigator, correct?

10 A Yes, ma'am, 2012.

11 Q And that was initially for burglary --

12 A Property crimes and burglary, yes, ma'am.

13 Q So you -- property crimes and burglaries?

14 A That's correct.

15 Q And then you became a violent crime scene
16 investigator.

17 A Yes, ma'am.

18 Q And through becoming an investigator, you had even
19 more training, right?

20 A That's correct. We were sent to training during our
21 time there. Yes, ma'am.

22 Q And -- and now you've been an investigator for how
23 long?

24 A Since May of 2012, so we're going on three years.

25 Q So you have lots of first-hand experience --

1 experience at this point.

2 A Yes, ma'am.

3 Q And because of that first-hand knowledge and
4 experience, you know it's very important to write
5 everything down.

6 A You're correct. Yes, ma'am.

7 Q And a lot of times that is because it can take a year,
8 two years, even three years sometimes to go to trial if it
9 becomes necessary.

10 A That's correct.

11 Q And in those years, you will -- you will investigate
12 several other crimes.

13 A Yes, ma'am.

14 Q So you have to make sure you keep them all straight --

15 A You're correct.

16 Q -- so you can testify in front of a jury what -- you
17 can use -- you can use those notes and handwritten
18 information to help you testify in front of a jury,
19 correct?

20 A You're correct.

21 Q It's also important to record a lot of these things
22 because you also, as the lead investigator, have to
23 determine how to charge an individual?

24 A You're correct.

25 Q And -- because there's different elements and

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1 different crimes and different elements being different
2 crimes, including lesser included charges --

3 A Yes, ma'am.

4 Q -- right? And this also -- basically, just helps you
5 not rely solely on your memory, correct?

6 A You're correct.

7 Q And in this particular case, you took all of these
8 notes, right?

9 A Talking about case notes ---

10 Q Yes.

11 A --- yes, ma'am. Besides the reports that were written
12 by the other officers. Yeah.

13 Q You -- you took notes regarding the scene?

14 A Yes, ma'am.

15 Q You took notes regarding people who were possibly
16 involved?

17 A Correct.

18 Q Including speaking to all the witnesses?

19 A You're correct.

20 Q Which included Daryl Stallings?

21 A Yes, ma'am.

22 Q Caliph Branham?

23 A Yes, ma'am.

24 Q I believe Mr. Stallings's girlfriend, who did not
25 testify, also gave a statement at some point, Ms. Sara

1 Olstrom?

2 A You're correct.

3 Q You spoke to her. You spoke to, I think, Mr.
4 Branham's sister as well.

5 A Taylor Branham?

6 Q Yes.

7 A Yes, ma'am.

8 Q You eventually did speak to Costell Johnson and --

9 A I did.

10 Q -- and Travis Brimfield.

11 A I did.

12 Q You also spoke to April Jenkins.

13 A I did.

14 Q And you got written statements from the majority of
15 those people.

16 A Yes, ma'am.

17 Q And I believe some verbal statements that you
18 recorded, correct?

19 A Correct. I believe at the same time the written
20 statements were done, there ---

21 Q Right. For Costell ---

22 A You're talking about Costell Johnson ---

23 Q --- and ---

24 (Ms. Eigenbrot and the witness talk simulataneously.)

25 THE COURT: Hold on a minute. Hold on a minute. I

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1 need both of you to let the other finish your respective
2 question and answer before the other speaks, please.

3 MS. EIGENBROT: Yes, Your Honor.

4 THE COURT: You may continue.

5 Q Now, you also spoke to responding officers, right?
6 Responding Officer Everatt and Byrd.

7 A Yes.

8 Q They were first on the scene.

9 A Yes, ma'am.

10 Q So they were the ones that first initially secured the
11 scene for you.

12 A You're correct, yes, ma'am.

13 Q So their initial impressions would have been important

14 --

15 A Yes, ma'am.

16 Q -- because they arrived first. And through the course
17 of your investigation, you end up preparing a case summary

18 --

19 A Correct.

20 Q -- which includes how you got from point A to point B

21 --

22 A Yes, ma'am.

23 Q -- and how you ended up arresting Mr. Henderson,
24 correct?

25 A That's correct, yes, ma'am.

1 Q And this is basically a summary of your entire
2 investigation.

3 A Correct.

4 Q All right. And part of the summary includes incident
5 report-ish language?

6 A Yes, ma'am.

7 Q Your -- the statements you took from all the
8 witnesses?

9 A Correct.

10 Q And Investigator McCoy, I have here the -- some of the
11 incident reports, your case summary, supplemental incident
12 reports.

13 MS. EIGENBROT: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes.

16 Q Investigator McCoy, can you please look through all of
17 that, all those documents right now. Do you recognize
18 those documents?

19 (Brief pause as witness looks through documents.)

20 A I do. These are -- first several pages are reports
21 that I prepared, there's code of laws in there, some
22 handwritten notes that I made, and then some additional
23 reports that were done by other officers ---

24 Q Do those ---

25 A --- incident reports from our department.

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1 Q I'm sorry.

2 A I'm sorry.

3 Q So those were reports and notes that you took and
4 prepared in the course of this investigation.

5 A The first few pages are. The -- the ones toward the
6 back are prepared by other officers. After my handwritten
7 notes, there are reports from Officer Baskins and Officer
8 Tammie Davis-Moore ---

9 Q And as lead investigator, you've reviewed those
10 documents, correct?

11 A I -- I -- I read them after they were approved by
12 their supervisor, yeah.

13 Q Can you tell me, in any of those notes, anywhere,
14 where you made note that it was dark at the time of the
15 shooting itself.

16 A I don't see any in the notes. No, ma'am.

17 Q And again, you arrived on scene approximately an hour
18 after the shooting.

19 A You're correct. 7:10 p.m., yes, ma'am.

20 Q All right. Now, again, this started as an attempted
21 murder investigation.

22 A You're correct.

23 Q And you testified there was only one type of shell
24 casing --

25 A Yes, ma'am.

1 Q -- which indicated to you that Mr. Henderson had not
2 returned fire at any point in time.

3 A Correct. We found no physical evidence that Mr.
4 Henderson ever opened fire or returned fire or fired a
5 weapon at all.

6 Q As a matter of fact, there was never a second gun
7 recovered, correct?

8 A Correct. The only -- one -- one weapon and that was
9 Travis Brimfield two days later.

10 Q And so this -- this scene, the shooting scene itself
11 was what was processed initially by Tammie Moore, correct?

12 A Yes, ma'am.

13 Q And at that point, she would have located the baggie
14 of white powder that's now been identified as cocaine ---

15 A You're correct.

16 Q --- correct?

17 A She did.

18 Q And in your experience, when there are drugs and
19 there's a shooting involved, that -- your initial theory
20 would have probably centered around a drug deal gone wrong,
21 correct?

22 A Well, we don't like to assume anything from the scene.
23 I can tell you that there were drugs in his pants. I can
24 tell you there was -- he was shot. So we -- we'd hate to
25 assume anything from that determination.

CROSS-EXAMINATION BY MS. EIGENBROT - MATTHEW MCCOY 439

1 But I have worked a lot of cases, yes, where drugs are
2 involved and there's a shooting. That -- that would be a
3 possible assumption. We don't like to assume anything in
4 the case.

5 Q Sure. And but that was one of the theories that
6 possibly jumped into your mind initially, correct?

7 A That would be one of the theories, yes, ma'am.

8 Q And the shooter did not remain on scene, and so your
9 initial reaction is Demetrius is the only victim ---

10 A You're correct.

11 Q --- at the time.

12 A The information we received is everyone fled the
13 scene. We, of course, determined that later as well
14 through the investigation.

15 Q Now, you also mentioned that the investigation shifted
16 around 9/10 p.m. when Ms. Jenkins came home.

17 A That's correct. It was somewhere around -- she
18 actually came home probably closer to 8 p.m..

19 Q Okay.

20 A It was shortly after I got there. Yes, ma'am, when
21 she got there is when it shifted. When I entered the
22 apartment and saw what had happened.

23 Q Now, I think she testified she got home around 9 or
24 10, but you're saying it was more closer to 8?

25 A I think it was closer to 8, maybe 8:45. But it -- it

1 wasn't long after I was there because I was speaking with
2 some of the witnesses still. They hadn't even started
3 processing the scene yet by the time she arrived.

4 Q But that's still well after the shooting itself took
5 place?

6 A You're correct. Like I said, we determined the
7 shooting happened about 6:18. So yes, ma'am, that's well
8 over an hour.

9 Q Okay. And you initially started questioning Ms.
10 Jenkins outside of her apartment, correct?

11 A You're correct.

12 Q And followed her inside?

13 A I did. She actually went inside initially, and I
14 stayed behind to talk to another officer just briefly. I
15 can't even remember what it was about. And then I went and
16 knocked on her door and that's when she opened the door.

17 Q But she was alone for a minute -- moment or two?

18 A It was a -- I would say a moment, yes, ma'am.

19 Q I also you believe that you testified that Costell, at
20 some point, called Dispatch after walk -- walking to the
21 Chinese restaurant?

22 A You're correct.

23 Q And that was the China Hut on Broad River and
24 Greystone?

25 A I believe it was. I'm not 100 percent sure what

CROSS-EXAMINATION BY MS. EIGENBROT - MATTHEW MCCOY 441

1 exactly -- restuarant. But it was this restaurant nearby
2 that he walked to.

3 Q I believe you said he called about 20 minutes after
4 the incident?

5 A It was somewhere in that time frame, yes, ma'am.

6 Q And you're aware that Mr. Johnson's a pretty big
7 individual, correct?

8 A Yes.

9 Q Based on descriptions ---

10 A He's almost 400 pounds, yes, ma'am.

11 Q And he walked all the way there from the shooting
12 incident.

13 A That's my understanding, yes, ma'am.

14 Q And let's see, now, we've also talked a little bit
15 about burglaries because of some your experience. I think
16 Ms. All questioned you in regards to a continuing burglary.

17 A Uh-huh.

18 Q In your experience, generally when someone's breaking
19 into somebody's house; they don't collect every single
20 valuable item in there, correct?

21 A You're correct. It -- it -- it would depend on what
22 kind of valuable items. Some go for different types of
23 valuable items. It just depends on who the person is.

24 Q But a lot of times it's usually get in/get out because
25 you never know who's going to something.

1 A Typically, someone -- especially if there was a
2 burglar alarm involved, which it wasn't in this case -- but
3 yes, typically they're in pretty quickly, in and out.

4 Q And this -- this is occurring between approximately
5 5:00, 5:30 p.m./6:00 to 6:30 p.m., correct?

6 A Yeah. We're not sure when it started. We don't have
7 any information or any testimony from anyone or any
8 statements from anyone that could tell us when it started.
9 We just know when the shooting happened. So we figured
10 that's when it was over.

11 Q But that's around the time that a lot of people are
12 usually coming home from work, maybe going to a later
13 shift, that kind of thing, correct?

14 A Sure. Sure.

15 Q And again, Mr. Johnson did eventually come give --
16 come in and give a statement, but you -- and you spoke to
17 him that night, on the 18th, correct?

18 A I did briefly, yes, ma'am.

19 Q But then he requested an attorney, which he has a
20 right to do.

21 A He did. And the only thing he said -- said was that
22 he wanted to come talk to me.

23 Q Okay. And so he -- but he did not give you his side
24 of the story that evening.

25 A You're correct, yes, ma'am.

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1 Q And at that time, he was still a suspect in the
2 shooting portion of -- of this incident.

3 A Correct. I didn't believe he was the shooter, but he
4 was -- he was still a good witness or some type of
5 misprison, something like that as I was looking at him.

6 Q Which is why you asked to preserve his phone records
7 the very next day --

8 A You're correct.

9 Q -- correct? Now, you never actually got the phone
10 records, right?

11 A You're correct.

12 Q But that could have told you who he spoke to that
13 evening?

14 A Yes.

15 Q Or was calling that evening?

16 A Yes.

17 Q Including if it was Mr. Brimfield ---

18 A Uh-huh.

19 Q --- or Ms. Jenkins? Could have seen if he was texting
20 either of those individuals.

21 A You're correct.

22 Q So at this point, we don't know for sure whether he
23 called April or not that night before you -- before she
24 arrived on scene, correct?

25 A If he had called her prior? Just what they told me,

1 with her and -- Ms. -- Ms. Jenkins and Mr. Costell Johnson
2 told me.

3 Q And we don't know if he spoke to Travis afterwards,
4 correct?

5 A I believe in his statement he did say that they --
6 they talked on the phone, yes, ma'am. He told me they did.

7 Q But we can't confirm for sure that these two
8 individuals, Mr. Johnson and Mr. Brimfield, who are cousins
9 who worked together, didn't have time to talk extensively
10 regarding this incident before they came to see you, which
11 was two days later.

12 A Well, my understanding they did speak about it on the
13 phone from their statements they gave me, as well as spoke
14 with their attorney. His attorney was called that evening
15 that he was at police headquarters the night it happened.
16 And they had met together before coming to headquarters.

17 Q With the same attorney, correct?

18 A You're correct.

19 Q Same attorney for both individuals.

20 A That's correct. And as far as them being cousins, I -
21 - that's what he told me. I ---

22 Q Right.

23 A --- I -- I don't have any records to tell you if
24 they're cousins or not.

25 Q Now, in -- in -- in your interview with Travis, Mr.

CROSS-EXAMINATION BY MS. EIGENBROT - MATTHEW MCCOY 445

1 Brimfield, you have several questions for him, right?

2 A Yes.

3 Q Because you wanted a thorough description of what he
4 believed the events to be.

5 A You're correct.

6 Q And that's because he shot somebody.

7 A Yes, ma'am.

8 Q And you needed to know whether or not you needed to
9 charge him criminally.

10 A You're correct. Depending upon what occurred that
11 evening. Yes, ma'am.

12 Q And during that interview, you specifically asked him
13 whether or not the drugs found were his and Mr. Johnson's;
14 did you not?

15 A I believe I -- I don't know if that was the exact
16 words. I don't have them in front of me, but I believe I
17 did make questions about the -- the narcotics found on Mr.
18 Henderson if they were theirs, yes.

19 Q Because even in your mind, it was strange for an
20 individual to be breaking in somebody's house with 21 grams
21 of cocaine, correct?

22 A From my experience, it'd be very weird for someone to
23 have that amount of cocaine on them and be committing
24 another violent crime like a burglary, yes, ma'am.

25 Q And Mr. Brimfield also turned in the assault rifle,

1 right?

2 A He did. He brought it with him to headquarters on the
3 20th.

4 Q And you -- you saw the weapon itself.

5 A I did. I got the consent to search.

6 Q And you see it here in the courtroom.

7 A Yes, ma'am, we saw it here. Yes, ma'am.

8 Q And it is missing the stock portion.

9 A You're correct, it is.

10 Q And you're aware that in South Carolina, that certain
11 modifications to certain types of weapons, including
12 assault rifles and shotguns, are illegal.

13 A Certain modifications -- are you referring to, like the
14 -- whether it's shorter the -- depending on the length,
15 yes, ma'am.

16 Q And did you measure the assault rifle when it was
17 confiscated?

18 A I did not measure it. No, ma'am.

19 Q Now, we've also talked a lot about what was found
20 either at the scene or in Mr. Henderson's car.

21 A Yes, ma'am.

22 Q I want to talk a little bit about what was not found.
23 Now, there was -- there was no fingerprints --

24 A You're correct, yes, ma'am.

25 Q -- which we have discussed as to why that would be ---

1 A Yes, ma'am.

2 Q --- that there were no fingerprints.

3 A You're correct.

4 Q Same with DNA.

5 A Yes, ma'am.

6 Q Now, we found a lot of stuff in Mr. Henderson's car.
7 But a burglary tool, like a crow bar or something used to
8 pry open a window, was not present.

9 A I don't recall finding any kind of screwdriver or
10 nothing like that. No, ma'am.

11 Q And as you stated earlier, there was not a single
12 person that viewed Mr. Henderson carrying three flat screen
13 TVs, including a 50-inch ---

14 A You're correct.

15 Q -- TV.

16 A There's no witnesses saw, yes, ma'am.

17 Q No one saw him carrying the presents.

18 A You're correct.

19 Q No one saw him going in and out.

20 A You're correct.

21 Q And granted, that's a -- it's kind of a path over
22 there.

23 A Yes, ma'am. I -- I believe ---

24 Q Kinda private.

25 A --- the cut leads all the way back to the apartment

1 complexes behind it. Yes, ma'am.

2 Q But at the same time, again, it is around that time
3 people are kind of coming and going from home, right?

4 A If -- if it started that early in the evening. We got
5 -- we don't know what time it started, but yeah, sure.

6 Q And I think I also want to go back to one other thing
7 you were -- in one of -- in your interviews with Mr.
8 Brimfield or Mr. Johnson, I think you also mentioned that
9 you thought it was odd that a single person could carry all
10 that stuff from the residence to a single vehicle.

11 A I don't recall saying that, but it's very possible I
12 did, yes, ma'am.

13 Q And there was no evidence another individual was
14 involved.

15 A None that I could find, no, ma'am. We -- I did speak
16 with his mother that indicated a certain individual who was
17 -- he was friends with. But nothing indicating that guy
18 was anywhere near the scene or involved at all.

19 MS. EIGENBROT: Beg the Court's indulgence.

20 (Brief pause.)

21 MS. EIGENBROT: I have no further questions, Your
22 Honor.

23 THE COURT: Any re-direct?

24 MS. ALL: Thank you, Your Honor.

25 RE-DIRECT EXAMINATION BY MS. ALL:

RE-DIRECT EXAMINATION BY MS. ALL - MATTHEW MCCOY

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1 Q Investigator McCoy, Ms. Eigenbrot brought up your
2 thorough investigation on the other people that you
3 interviewed. Having sat with us throughout this trial, did
4 any of the other witnesses that gave statements have
5 anything different or additional to add that wouldn't have
6 been repetitive with the testimony that's been provided?

7 A None that I heard.

8 Q She also brought out that you never made note that it
9 was dark in your notes. Can you explain to the jury why
10 you didn't note that?

11 A I didn't note that because the -- the time frame that
12 it occurred, I thought it was an obvious -- in December, it
13 was going to be dark. I wouldn't need to refer to that,
14 that I would already know it'd be dark in December at that
15 time.

16 Q Is nighttime relevant for an assault investigation?

17 A It's not, no, ma'am.

18 Q I'm going to hand you what's been marked State's
19 Exhibit 77 of which Your Honor has taken judicial notice.

20 THE COURT: Ladies and gentlemen, let me tell you this
21 before we go any further. You just heard Ms. All mention
22 the term "judicial notice." Let me give you this charge.

23 This Court is hereby taking judicial notice of that
24 document. And judicial notice -- in taking judicial
25 notice, the Court is accepting as conclusive the fact that

1 on December the 18, 2013, sunrise was at 7:24 a.m.,
2 according to that document, and sunset was at 5:18 p.m.

3 You are, ladies and gentlemen, to accept this fact as
4 conclusive since this Court has taken judicial notice of
5 such.

6 Ms. All, you may continue.

7 MS. ALL: Thank you.

8 Q Investigator McCoy, there's been so many questions
9 about nighttime. What made it obvious? Why was it obvious
10 to you?

11 A Well, the sunset -- it was at 5:18 that evening and
12 twilight was just before -- it was before 6:00 and it was
13 5:40 something. When I talked to the officers, when they
14 arrived on scene, they said it was dark when they got
15 there. So I was going upon that that it was dark when --
16 when it happened.

17 Q Twilight being that time between the sun setting
18 behind the horizon, so that artificial light would be
19 required to see terrestrial objects?

20 A You'd be correct.

21 Q And if you could read from Exhibit 77. Is that ---

22 A This is from the U. S. Navel Observatory Astronomical
23 Applications Department, certified by South Carolina
24 Department of Natural Resources State Climatology office.
25 According to this document, sunset was at 5:18 p.m. on

1 December the 18th. This is when this incident occurred,
2 2013. End of civil twilight was at 5:45 p.m., and the moon
3 rise was at 5:53 p.m.

4 Q And what phase of the moon?

5 A I believe it was a full moon according to this
6 document.

7 Q Just to refresh your recollection, it was I think the
8 day before.

9 A I'm sorry, the day before was on the 17th. It was a
10 full -- the phase of the moon on December 18th was a waning
11 gibbous, 98 percent of the moon is visible, dark
12 illuminated -- disk illuminated, excuse me.

13 Q In your experience requiring nighttime, in the
14 hundreds of burglaries that you've charged, is it required
15 to be pitch black dark?

16 A No, ma'am.

17 Q Did you have a reason, other than the elements, why
18 you would have wanted to charge burglary during nighttime
19 as opposed to not during nighttime?

20 A Other than the elements, no. Other -- other than it
21 met the elements of burglary first is why he was charged
22 with burglary first.

23 Q Okay. Why did you eliminate the theory of -- as Ms.
24 Eigenbrot brought up, this theory of a drug deal gone
25 wrong? Would you like to flush that out for the jury and

1 ...

2 A Sure. Sure. When we -- when we take a case, we
3 never try to assume anything because you never know.
4 Sometimes things aren't as they appear initially. Upon
5 completing the investigation, talking to everyone that we
6 could that was involved, we determined that there was no
7 drug deal that had happened. It was -- we were pretty
8 confident that Mr. Johnson, Mr. Brimfield arrived at the
9 home like they had said, just before the shooting happened.
10 Wouldn't have been time to complete a drug deal, and we
11 never got that information from the defendant.

12 Q And what is -- just for those of us that don't work in
13 your field, what is considered a drug deal gone wrong?
14 What do we mean when we say that?

15 A A drug deal gone wrong is basically a robbery that
16 occurs during a drug transaction. They'll meet up, attempt
17 to -- one party will attempt to sell an illegal narcotic to
18 another. And instead of purchasing that narcotic with
19 money, he'll pull out a weapon and -- and rob the
20 individual. And then someone usually will get shot.
21 That's why -- that's how we know about it, because somebody
22 ends up getting shot.

23 Q And why are they so common? Why are drug dealers
24 appealing to rob?

25 A They're very appealing to rob because drug dealers --

RE-DIRECT EXAMINATION BY MS. ALL - MATTHEW MCCOY

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1 they don't normally call the police nor do they usually
2 cooperate with the police when they are robbed. Very often
3 it will happen and they'll claim it was some random person
4 just driving by that shot them. So they very rarely will
5 give statements to police, they very rarely cooperate.
6 Statements beyond the initial, "This is what happened. I
7 don't want to cooperate."

8 Q Okay. You spoke with Ms. Eigenbrot about what Costell
9 Johnson told you.

10 A Yes, ma'am.

11 Q And obviously, Costell Johnson can't be here.

12 A You're correct.

13 Q But as she has brought out his testimony, can you
14 advise the jury on the content of his statement that he
15 provided when Travis Brimfield also reported to
16 headquarters?

17 MS. EIGENBROT: Your Honor, I have a matter of law.

18 THE COURT: Can y'all come up here a minute?

19 (Bench conference.)

20 THE COURT: Objection sustained.

21 RE-DIRECT EXAMINATION BY MS. ALL:

22 Q Investigator McCoy, one more thing, are you here to
23 testify in the trial of *State v. Travis Brimfield*?

24 A No, ma'am.

25 Q Are you here to testify in the trial of *State v.*

RE-CROSS-EXAMINATION BY MS. EIGENBROT - MATTHEW MCCOY 454

1 *Costell Johnson?*

2 A No, ma'am.

3 Q To what is your testimony limited?

4 A To Demetrius Henderson and the burglary investigation.

5 MS. ALL: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. ALL: No further questions.

8 THE COURT: Any re-cross?

9 MS. EIGENBROT: Yes, Your Honor.

10 RE-CROSS-EXAMINATION BY MS. EIGENBROT:

11 Q Investigator McCoy, now you just testified that you
12 made an assumption at the start, based on your personal
13 knowledge, correct?

14 A Assumption at the start as far as ...?

15 Q When Ms. All asked you about not taking note of the
16 darkness --

17 A Yes, ma'am.

18 Q -- you said you made an assumption of dark because of
19 the time of year it was.

20 A Correct. Well, I knew what time I got called and what
21 time the officers said they first arrived on scene and when
22 the witnesses said what time the shooting happened, I knew
23 it was dark at that time just from working that day.

24 So yes, that -- that was the assumption; as well as --
25 as she pointed out, it was -- it was an assault

DIRECT EXAMINATION BY MR. SHENKAR - PAUL MEAD

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1 investigation, attempted murder investigation. So ...

2 Q But you also testified prior to now that during an
3 investigation, you don't like to make assumptions.

4 A You're correct.

5 MS. EIGENBROT: Beg the Court's indulgence, Your
6 Honor.

7 (Brief pause.)

8 MS. EIGENBROT: No further questions.

9 THE COURT: Sir, you may step down.

10 THE WITNESS: Yes, Your Honor.

11 (The witness exits the stand.)

12 THE COURT: Call your next witness.

13 MR. SHENKAR: Thank you, Your Honor. The State calls
14 Paul Mead.

15 (Pre-marked State's Exhibit No. 78, lab analysis, one
16 page document, ID.)

17 PAUL MEAD, having first been duly
18 sworn, testifies as follows:

19 COURT CLERK: Thank you. Have a seat in the witness
20 stand, please. State your name for the record.

21 THE WITNESS: Paul James Mead.

22 THE COURT REPORTER: Would you spell your last name?

23 THE WITNESS: M-e-a-d.

24 DIRECT EXAMINATION BY MR. SHENKAR:

25 Q Mr. Mead, please introduce yourself to the jury, and

1 tell the jury what kind of occupation you had and what
2 period of time you had that occupation.

3 A I worked for the City of Columbia Police Department
4 for approximately -- almost 27 years, the last three of
5 which were as a marijuana analyst. Prior to that I was a
6 major crime investigator for the city police department,
7 probably for the majority of my other time there. I have -
8 - I've done the marijuana analyst for the last -- well, I
9 did it from July of 2011 until I left the police department
10 in November of last year.

11 I'm certified by the State Law Enforcement Division as
12 a marijuana analyst. I was re-certified in May of this
13 past year. I've -- I've probably conducted 30,000 cases,
14 maybe a little more, and probably many times that number of
15 samples that I've actually tested.

16 Q And would you say how many times, on a weekly basis,
17 working as a Columbia Police Department chemical analyst,
18 would you have a chance to analyze substances?

19 A I analyzed evidence at least three days a week,
20 probably 30 cases a week, 25 to 30 cases.

21 Q And were those -- did those encompass the majority of
22 your work at the Columbia Police Department as an analyst?

23 A Yes, that was my entire ...

24 Q And have you had any chance to be qualified as an
25 expert, in this court or any other court, for the purpose

DIRECT EXAMINATION BY MR. SHENKAR - PAUL MEAD

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1 of being a marijuana analyst?

2 A Yes, in two separate occasions.

3 Q Okay. And did you actually testify on those
4 occasions?

5 A I did.

6 MR. SHENKAR: At this point, Your Honor, the State
7 would be moving to introduce Investigator Paul Mead as an
8 expert in the field of chemistry and in the analysis of
9 marijuana.

10 THE COURT: Anything from Defense counsel?

11 MR. POURNARAS: No objection, Your Honor.

12 THE COURT: Ladies and gentlemen, I've previously
13 given you a charge with regards to expert testimony. That
14 charge remains the same. This individual is being
15 qualified -- or has been qualified as an expert in the
16 field of chemistry and marijuana analysis.

17 That does not mean that you must accept his opinion,
18 but it is evidence for you to use in any way that you see
19 fit and give it the weight and credibility that you deem is
20 appropriate.

21 Sir, you may continue.

22 MR. SHENKAR: Thank you, Your Honor.

23 DIRECT EXAMINATION BY MR. SHENKAR (continues):

24 Q Investigator Mead, I want to show you what's been
25 marked as State Exhibit No. 52. Do you recognize this

1 item?

2 A Yes, I do.

3 Q And do you have any opinion as to what the substance
4 is?

5 A I analyzed the -- the evidence inside the glass
6 container and found it to be positive for marijuana.

7 Q And how can you identify this exhibit?

8 A It's been vacuumed sealed by myself. I placed the
9 evidence number as well as my initials and the date on the
10 seal, and then it's sealed.

11 Q And do you know when -- when exactly you received that
12 item?

13 A I received it December 30th of 2013.

14 Q And where did you receive it at?

15 A The evidence locker at Columbia Police Department.

16 Q And how did this exhibit come to your possession, by
17 whom?

18 A I signed it out from one of the evidence clerks at the
19 police department. They would have had it in their
20 possession prior to that, and then I took possession of it.

21 Q And to the best of your knowledge, this exhibit has
22 been continuously under the care or custody and control of
23 the evidence room at the Columbia Police Department?

24 A That's correct, sir.

25 Q Is this exhibit now in the same condition as it was

DIRECT EXAMINATION BY MR. SHENKAR - PAUL MEAD

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1 when you examined it?

2 A When I finished my examination, this is -- this is how
3 it was packaged, yes, sir.

4 Q And I'm going to give you what has been marked as --
5 pre-marked as State Exhibit No. 78. Do you recognize this
6 piece of paper?

7 A Yes, sir. This is my laboratory analysis report, one
8 that I completed at the completion of testing the evidence.

9 MR. SHENKAR: Your Honor, at this point, the State
10 would ask to introduce Exhibit No. 78 into evidence.

11 THE COURT: Any objections?

12 MR. POURNARAS: No, Your Honor.

13 THE COURT: Without objection, so admitted into
14 evidence.

15 (State's Exhibit No. 78, one-page laboratory analysis
16 report in evidence.)

17 DIRECT EXAMINATION BY MR. SHENKAR (continues):

18 Q And would you please tell the jury the content of --
19 the content of the analysis -- your analysis of this
20 particular substance?

21 A The -- the evidence was tested and found to be
22 marijuana, a total of 34.99 grams or 1.23 ounces of
23 marijuana.

24 Q And when was the analysis performed?

25 A The analysis was performed on December 30th of 2013.

1 Report was ---

2 Q And was the analysis performed by you?

3 A Yes, it was completed by me.

4 Q And what kind of test did you administer on the
5 substance?

6 A I complete what they call a "Duquenois-Levin Test,"
7 and it consist of two tests. One is a microscopic test.
8 The evidence is placed under a microscope. There's three
9 different types of what they consider "hairs" that have to
10 be found on the microscopic tests: a cystolithic hair, a
11 simple hair, and glandular hair. A glandular hair is the
12 one that produces the THC, which is -- which is in
13 marijuana.

14 Once I completed that test and found those three
15 hairs, a chemical test is completed on the same sample.
16 The sample is placed in a spot plate, Duquenois is placed
17 on it with some hydrochloric acid. It will turn a purplish
18 color if it's positive for marijuana. And then some
19 chloroform is placed in it, a pink eye will develop.
20 That's the presumptive test that it is in fact marijuana.

21 Q And are -- all of these three tests, that you just
22 testified to, are all scientifically recognized as the
23 proper test to administer to marijuana?

24 A That's correct.

25 Q And ---

CROSS-EXAMINATION BY MR. POURANARAS - PAUL MEAD

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1 A That's as I was trained by the State Law Enforcement
2 Division.

3 Q And did those -- did these tests allow you to form
4 your expert opinion as to what the substance was?

5 A That's correct.

6 Q And what is your expert opinion as to what this
7 substance is?

8 A It is marijuana, 1.23 ounces.

9 Q Which amounts to how many grams?

10 A It's 34.99 grams, equivalent of 1.23 ounces.

11 MR. SHENKAR: Your Honor, permission to publish the
12 document to the jury.

13 THE COURT: So granted.

14 MR. SHENKAR: Thank you. I have no further questions
15 for you. Please answer any questions the Defense has.

16 THE WITNESS: Sure.

17 THE COURT: Cross-examination.

18 MR. POURNARAS: Thank you, Your Honor. May it please
19 the Court.

20 CROSS-EXAMINATION BY MR. POURNARAS:

21 Q Hello, Mr. Mead. How are you?

22 A Just fine, sir.

23 Q Now, when did you -- where do you currently work? I
24 apologize.

25 A I do not.

1 Q You do not.

2 A I'm retired.

3 Q When did you leave the CPD lab?

4 A I left November 26th of 2014.

5 Q Okay. Now, you're familiar with some of the
6 controversy that occurred at the City of Columbia's drug
7 analysis lab, correct?

8 A I am.

9 MR. SHENKAR: Objection, Your Honor.

10 THE COURT: Can y'all approach, please?

11 (Bench conference.)

12 THE COURT: Ladies and gentlemen, can y'all step to
13 the jury room for just a minute? I'll get you right back
14 out here. Do not discuss the case. Do not discuss the
15 case.

16 (Jury exits the courtroom at 9:47 a.m.)

17 THE COURT: Yes. Your objection, Mr. -- grounds for
18 your objection.

19 MR. SHENKAR: Your Honor, various grounds. First of
20 all, the Defense stipulated to the chain in this case. By
21 stipulating to the chain, they effectively kind of like
22 forego any kind qualms with any kind of issues with who
23 turned -- the marijuana to whom.

24 There was a particular person employed by the Columbia
25 Police Department who was since fired. She wasn't in the

1 general custody in this particular drug.

2 But they -- they -- specific to the chain, they should
3 not have any issue with who handled what.

4 THE COURT: I don't think that's what his issue is.

5 MR. POURANARAS: That's not ---

6 THE COURT: His issue's not with whom handled -- who
7 handled it. I assume the issue is as to the weight.

8 MR. POURNARAS: Yes, Your Honor.

9 THE COURT: All right. Now, stipulation of the chain
10 does not stipulate as to what the amount or weight was of
11 such drugs being analyzed.

12 MR. SHENKAR: I understand that, Your Honor. I was
13 just doing that as just an opener to the argument just in
14 case he was going there with those lines of questioning.

15 Furthermore, Your Honor, not throughout the discovery
16 process or throughout any kind of information that we had
17 there weren't any issues related to a possibility of -- of
18 inappropriate storage practices related to this particular
19 drugs that have been introduced in the trial today. There
20 were never any kind of issue as to the drug analysis. It
21 was never contested. They had ample opportunity to also
22 drug test the substance themselves if they wish to.

23 Because of that, Your Honor, I feel that this --
24 introducing that to the jury, putting it out to them as if
25 there could have been a possibility of error with the

1 storage of the drugs or with the weighing of the drugs, is
2 completely confusing to the jury. It is completely not
3 relative to this case, and will result in the jury getting
4 some information that's not related directly to this case
5 in no shape, way, or form.

6 THE COURT: Mr. Pournaras?

7 MR. POURNARAS: Yes, Your Honor. So that we can be
8 clear on what my actual intentions are, he is an expert.
9 And I am allowed to ask him as to his policies and
10 procedures in how he obtained these results.

11 THE COURT: Well, that's fine, but what's that got to
12 do with any issues they had over there as it relates to
13 Columbia Laboratory and their analysis of these drugs?

14 MR. POURNARAS: Yes, Your Honor. It's not the actual
15 identification of the drug. But one of the issues that the
16 investigation found happening in this drug lab at this time
17 ---

18 THE COURT: In this case?

19 MR. POURNARAS: Not in this case, but in general, that
20 there were standard operating procedures that were
21 deficient in maintaining the calibration and the accuracy
22 of those balances.

23 THE COURT: Well --

24 MR. POURNARAS: And I would just ---

25 THE COURT: -- you can ask him about the policies and

1 procedures and what he did ---

2 MR. POURNARAS: Sure.

3 THE COURT: --- as it relates to his weight of these
4 drugs and whether or not he followed those policies and
5 whether or not he calibrated the machine to weigh these
6 drugs. But to throw out there or throw into the mix here
7 about all these issues that may or may not have been with
8 the laboratory when there is no direct evidence whatsoever
9 that it in any way played a part with regards to this or
10 that he had anything to do with such or that he was
11 terminated for possibly not following those policies and
12 procedures or not doing his job.

13 Now, if that were the case, that's open game, but
14 that's -- and -- and I hadn't heard anything to the
15 contrary on that.

16 MR. POURNARAS: And -- and I want to apologize. I did
17 not mean to intend to imply that. My questioning was going
18 to be that there were found deficiencies in the overall
19 policies. I did not mean to imply that this individual was
20 terminated for any reason whatsoever.

21 THE COURT: Well, I understand that.

22 And did those deficiencies in the policies and
23 procedures have anything to do with his analysis?

24 MR. POURNARAS: But Your Honor, my -- my issue is that
25 during this entire time frame, the investigation concluded

1 that there were deficiencies in the standard policies such
2 that they did not meet the actual standards for scientific
3 reliability; and as a result, the entire lab was decided to
4 shut down until they could restart.

5 And I did not mean to imply that he was doing anything
6 wrong, just that, at that time frame, the policies and
7 procedures for maintaining scientific accountability were
8 deemed by another state agency to be deficient. Not that
9 his performance or that specific analysis, but as it
10 applies to the balance.

11 THE COURT: Well, did -- did such deficiency in
12 policies and procedures result in an inappropriate analysis
13 of these drugs and an inappropriate or incorrect weight of
14 such drugs?

15 MR. POURNARAS: Your Honor --

16 THE COURT: What were the -- what were the
17 inefficiencies or inadequacies of such procedures?

18 MR. POURNARAS: The inadequacies of the procedures
19 were in order to have any guarantee of accuracy -- and I
20 apologize, I was a chemist for some time myself.

21 THE COURT: Well, not me because I hated chemistry and
22 biology.

23 MR. POURNARAS: That in order to maintain the
24 reliability of a balance, there are certain procedures.
25 They require frequent calibration by a professional, and

1 they require frequent testing by known standards on
2 preferably a daily basis.

3 In my lab, we were required to maintain a log that we
4 checked the calibration of that balance every four hours so
5 that we know that between these two time points, this
6 device gave a result that was accurate compared to a known
7 standard.

8 THE COURT: Well, you can ask him those questions ---

9 MR. POURNARAS: Sure.

10 THE COURT: --- without getting into all of this other
11 stuff.

12 MR. POURNARAS: I understand.

13 THE COURT: I mean, I think that's fair game because
14 your knowledge of such is well beyond, certainly mine and
15 probably 99 percent of the people in this courtroom on that
16 issue.

17 But -- but to just throw out there about, you know,
18 whatever issues or problems they had within this particular
19 lab, to insinuate or infer that something was
20 inappropriately done in this case in the analysis and
21 weighing without more, I think is inappropriate.

22 MR. POURNARAS: Okay.

23 THE COURT: Okay.

24 MR. SHENKAR: Your Honor, if I may, if Your Honor is
25 inclined to limit Mr. Pournaras's questioning -- what I

1 want to make sure is that when asked, Investigator Mead --
2 about the scientific methods that -- that have been used,
3 he specified three different methods. If Mr. Pournaras
4 wants to ask about the ins and outs of those three specific
5 scientific methods, about whether or not they followed A to
6 Z with each and everyone of those methods, that's fine.

7 But I -- I'm afraid it's going to come out as some
8 kind of procedure that Mr. Pournaras was exposed to by his
9 own personal experience, but has not actually been
10 practiced by a particular lab. And obviously, Mr.
11 Pournaras is here today as an attorney not as a chemist.
12 And to insinuate that there is an extra-curricula test that
13 can be performed that has not been performed, you know,
14 will give the jury an erroneous mind set as to what exactly
15 the lab was supposed to do.

16 THE COURT: Well, to -- in addition, in addition, I
17 mean, by your knowledge, you can certainly cross-examine
18 him.

19 MR. POURANARAS: Sure.

20 THE COURT: But -- but if there is no indication that
21 this witness did not follow the policies and procedures
22 that were in place at this lab when he conducted his
23 analysis, the fact that there other policies out there that
24 he could have followed or maybe should have followed is not
25 appropriate.

1 MR. POURNARAS: Okay.

2 THE COURT: Okay. Now, certainly -- and I -- I'm sure
3 that any and all judges, had you found a -- a viable or a -
4 - I don't know if I want to use this word or not -- but a
5 legitimate, viable concern about the weight, the method,
6 and policies and procedures that they followed, the method
7 and manner of such could have retained an expert to
8 challenge that.

9 MR. POURNARAS: Yes, Your Honor.

10 THE COURT: Any judge would have signed an order
11 authorizing you doing that.

12 MR. POURNARAS: I understand.

13 THE COURT: But -- but to throw out there other
14 policies and procedures that -- that -- that may or may not
15 -- that he should have followed -- if -- now, if -- if --
16 you can attack him on the policies and procedures that were
17 in place if he didn't follow those, but just to throw out
18 stuff, I'm not going to let you do that.

19 MR. POURNARAS: I -- I'm not quite sure I -- I -- I
20 understand because Mr. Shenkar is asking me to limit my
21 questioning to what he questioned. I -- and I understand
22 that's inappropriate.

23 THE COURT: Well, no, cross-examination is very broad.

24 MR. POURNARAS: Right.

25 THE COURT: But --

1 MR. POURNARAS: So -- so let me ask this, Your Honor,
2 my intention is to ask him the method that they used to
3 obtain the weight.

4 THE COURT: Right.

5 MR. POURNARAS: And what their procedures are on
6 safeguarding the reliability and the accuracy of those
7 questions.

8 THE COURT: Yeah.

9 MR. POURNARAS: Okay. All right.

10 THE COURT: Any problems with that?

11 MR. POURNARAS: That was my intention the whole time,
12 Your Honor ---

13 THE COURT: Well, I mean, I understand that's your
14 intention, but you threw this in -- and -- and -- and I'm
15 not saying it was intentional, but to infer the problems
16 that they had in this lab without more, without more is
17 improper.

18 MR. POURNARAS: Okay.

19 THE COURT: You understand what I'm saying?

20 MR. POURNARAS: I understand.

21 THE COURT: All right.

22 MR. SHENKAR: Thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. SHENKAR: Nothing else from the State, Your Honor.

25 THE COURT: All right. Bring me the jury, please,

CROSS-EXAMINATION BY MR. POURANARAS - PAUL MEAD

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1 sir.

2 (The jury enters the courtroom at 9:58 a.m.)

3 THE BAILIFF: The jury's seated, Your Honor.

4 THE COURT: The State's objection is sustained. You
5 may continue, Mr. Pournaras.

6 MR. POURNARAS: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. POURNARAS (continues):

8 Q Hey, again, Mr. Mead. Now, you spoke to Mr. Shenkar
9 earlier about the methods you use to determine if this was
10 marijuana, correct?

11 A Yes, sir.

12 Q Okay. And in this case, you know, we've also heard
13 testimony earlier about cocaine testing. Now, these two
14 methods are not the same, correct?

15 A The testing of ---

16 Q Right. This isn't a chromatographic or spectroscopic?

17 A No, sir, it's not.

18 Q A presumptive test using indicators.

19 A That's correct.

20 Q So from your microscopic analysis and your presumptive
21 chemical test, you -- you -- you feel confident this is, in
22 fact, marijuana.

23 A It is, sir.

24 Q Okay. Now, you've given us -- and I believe I'm
25 referring to your report, State's Exhibit 78, that you

1 weighed this as being approximately 1.23 ounces; is that
2 correct?

3 A That's correct.

4 Q Okay. And this happened -- this report is dated
5 December 31, 2013. So soon after you received it, correct?

6 A I -- I'm sorry. Soon after I received the evidence?

7 Q Yes, sir.

8 A Yes.

9 Q Okay. Can you tell us a little bit about how you get
10 these measurements and weights?

11 A In this particular case, the evidence came in a glass
12 kind of mason jar. There was two baggies, tied baggies,
13 inside the glass jar. The baggies are taken out. They're
14 cut open by myself.

15 I use a weigh boat, which is simply a plastic
16 measuring -- or a holder that I place on a balance. At
17 that point, the balance is tarred out or zeroed out so we
18 don't get a weight of the boat as well as the marijuana.

19 The -- the evidence itself is then -- I take the seeds
20 and the stems out of the evidence. It's placed on the
21 boat. The boat is then placed back on the balance and a
22 weight is obtained.

23 It was done twice because there was two separate bags.
24 So I did the same thing twice, and then used the combined
25 weight.

1 Q Okay. So -- so this is a result of two different
2 measurements, is that what you just said?

3 A That's correct.

4 Q Okay.

5 A Both bags were weighed independently and then combined
6 -- the weight was combined.

7 Q Okay. And can you tell me a little bit about what --
8 this is -- this is not just like a -- like the small
9 digital scales they can buy in a store. This is ---
10

11 A No. It's ---

12 Q --- scientific professional equipment, correct?

13 A That's correct.

14 Q Can you tell me what you do to ensure that that result
15 is coming back as an accurate reliable result?

16 A The balances are calibrated or tested by me each --
17 each week. Every -- every Monday morning, when I came into
18 work, I used certified calibrated weight which I placed on
19 the balance. Each one of the weights had a specific amount
20 to it, and it was compared to what the -- the balance
21 actually said.

22 The balance had to read what was on each one of those
23 weights; and if it was, then I signed a logbook indicating
24 that it was working.

25 Q So you guys kept a log book of these -- I guess these

1 are -- what -- what would you call that procedure, that --
2 that check procedure? I mean, is it like a calibration
3 check?

4 A Essentially, that's what we kept, a calibration log
5 book.

6 Q Okay. So that is to ensure that this -- this device
7 is reading what it should be reading.

8 A That's correct.

9 Q Okay. And you guys say you did that once per week?

10 A I did it once a week, yes.

11 Q Okay. Did you -- do you also have a policy to -- to
12 have it professionally tested?

13 A It is.

14 Q Okay. And how often -- or if -- from your memory,
15 would that be professionally calibrated?

16 A My understanding it was done either quarterly or every
17 six months. I don't know for sure.

18 Q So at this point, you don't recall?

19 A I -- I -- it wasn't done by me.

20 Q All right. So -- so this weight of marijuana, just
21 over an ounce, is stems, seeds, and all, everything.

22 A No.

23 Q Pardon?

24 A Stems and seeds were removed before ---

25 Q So ---

CROSS-EXAMINATION BY MR. POURANARAS - PAUL MEAD

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1 A --- the weight was calibrated.

2 Q --- removed the stems.

3 A That's correct.

4 Q Okay. But it doesn't include the weight of the boat
5 or the baggies or anything like that.

6 A That's correct.

7 Q Okay. Now, let me ask you: On some prior chemical
8 analyses, an expert will say some degree of confidence in
9 their -- in their resulted weight, as we saw earlier with --
10 - with the chemical analysis. Is there a reason that there
11 is no degree of accuracy provided with -- with the weight
12 of the marijuana?

13 (No audible response.)

14 Q Or can you, in your professional opinion, tell us any
15 degree of certainty that this weight is the actual weight?

16 A I can tell you that's the weight that I obtained in
17 doing the testing, yes, sir.

18 Q Okay.

19 MR. POURNARAS: Beg the Court's indulgence, Your
20 Honor.

21 (Brief pause.)

22 MR. POURANARAS: Thank you, sir. I have no further
23 questions.

24 THE COURT: Can the lawyers approach over here for
25 just a minute, please?

RE-DIRECT EXAMINATION BY MR. SHENKAR - PAUL MEAD

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1 (Bench conference.)

2 THE COURT: All right. Mr. Shenkar?

3 MR. SHENKAR: Thank you, Your Honor. Very briefly.

4 RE-DIRECT EXAMINATION BY MR. SHENKAR:

5 Q Investigator Mead, do you set the calibration policies
6 for Columbia Police Department?

7 A No, I did not.

8 Q So you aren't in charge of setting them out or
9 deciding how frequently that weights need to be calibrated?

10 A No.

11 Q And did you follow, in your analysis in this case, all
12 of the procedures that were instructed to you by the
13 Columbia Police Department and by your training?

14 A Yes, I did.

15 MR. SHENKAR: Thank you. I have no further questions.

16 THE COURT: Mr. Pournaras?

17 RE-CROSS-EXAMINATION BY MR. POURNARAS:

18 Q Just -- just one clarification earlier. You said that
19 weekly you -- you performed a test. That -- when you check
20 in your log a week, that doesn't actually calibrate the
21 instrument, it just checks to make sure it's still reading
22 a particular result, correct?

23 A Right. A known -- a known weight is placed on the --
24 the scale, and that is checked against what it -- the scale
25 reads.

1 Q Okay. And there are certain plus or minuses that are
2 within acceptable limits.

3 A We -- we didn't have a plus or minus. It read what
4 the weight said.

5 Q Okay.

6 A Otherwise we had to get the scale fixed or changed or
7 whatever.

8 MR. POURNARAS: Okay. Thank you.

9 THE COURT: All right. Sir, you may step down.

10 (The witness complies.)

11 THE COURT: Call your next witness, please.

12 MR. SHENKAR: Your Honor, the State will rest at this
13 point.

14 THE COURT: All right. Ladies and gentlemen, I'm
15 going to have to ask you to step to the jury room. There
16 are some matters of law we need to take up with regards to
17 this case. And I will get you back out here as quickly as
18 possible. Do not discuss the case. Do not discuss the
19 case.

20 Mr. Mead, I need you to remain here for just a minute,
21 please, sir.

22 (The jury exits the courtroom at 10:07 a.m.)

23 THE COURT: Mr. Mead, let me ask you a couple
24 questions real quick. If you'll come around here.

25 (Mr. Mead comes forward.)

1 THE COURT: Were you under subpoena to be here this
2 week?

3 INVESTIGATOR MEAD: No, sir.

4 THE COURT: You were not?

5 INVESTIGATOR MEAD: No.

6 THE COURT: Okay. Mr. Shenkar.

7 MR. SHENKAR: Yes, Your Honor. The subpoenas were
8 sent originally back in February, already were after the
9 time that Investigator Mead retired. We were not notified
10 that that particular subpoena was not served on him. We
11 were under the impression that he was still there.

12 I don't usually do Columbia Police Department cases,
13 so I was not aware that he already retired. When we sent
14 the usual subpoenas for this date, he still did not -- to
15 subpoenas. I inquired yesterday as to exactly the date he
16 retired, and it became apparent late in the afternoon
17 yesterday that he retired before the first set of subpoenas
18 were sent out.

19 THE COURT: All right. Well, thank you for being here
20 on your own volition since you were certainly not under
21 subpoena. I appreciate you being here.

22 INVESTIGATOR MEAD: Thank you.

23 THE COURT: Have a good afternoon.

24 INVESTIGATOR MEAD: Thank you.

25 THE COURT: All right. The State has rested. Any

1 motions at this time?

2 MR. POURNARAS: Yes, Your Honor. We would, of course,
3 renew all prior motions, both raised pretrial and in the
4 duration of the trial, including our initial trial --
5 mistrial motion, Your Honor, regarding the discussion of an
6 ankle bracelet after that matter was addressed pretrial by
7 Officer Everatt. I apologize.

8 We also would renew our objections to the introduction
9 of the GPS analyst testimony in whole, the introduction
10 specifically of the demonstrative scatter plots and maps as
11 being confusing and without any benefit to the jury under
12 401 and -- well, I'll leave it at that.

13 I would also, Your Honor, renew our objection to being
14 prohibited from getting into the analysis done on the CP
15 Crime Lab just passed, as well as we, at the appropriate
16 time, have directed verdict motions.

17 THE COURT: You want to argue any further on those or
18 do you ---

19 MR. POURNARAS: Your Honor?

20 THE COURT: Do you wish to argue any further on your
21 directed verdict motions?

22 MR. POURNARAS: Yes, Your Honor, I would.

23 THE COURT: Let me hear from you.

24 MR. POURNARAS: As it relates to the first ---

25 THE COURT: Just you -- your prior objections are so

1 noted for the record and this Court's rulings remain the
2 same on such. Now, I will hear from you with regards to
3 your directed verdict motions.

4 MR. POURNARAS: Thank you, Your Honor. As in regards
5 to the burglary in the first degree, we do not believe that
6 there is sufficient evidence to sustain and specifically as
7 it relates to the issue of nighttime. Your Honor, the
8 investigator testified that his decision to charge as night
9 -- as a first degree based on nighttime was based on an
10 assumption. He testified that nowhere in his notes was
11 anyone questioned or does he have any indication that that
12 was, in fact, investigated. I don't believe that there is
13 sufficient evidence for the jury to consider it. There is
14 nothing more than speculation.

15 In addition to that, several witnesses have testified,
16 witnesses who are not related to the case, but present at
17 the actual time, said things such as, "It was so bright, I
18 could see across the parking lot." The officers who
19 arrived said, when they got the call -- which we know was
20 after the shooting -- was that it was dusk or getting dark.
21 The testimony of darkness by the witnesses was from
22 Investigator McCoy, something that occurred much later.
23 And for those reasons, we do not believe that there is
24 sufficient evidence on that particular element, Your Honor.
25 And I do believe that it should go forward to the jury as a

1 burglary second nonviolent.

2 THE COURT: Is that the only motion for directed
3 verdict you have?

4 MR. POURNARAS: No, Your Honor.

5 THE COURT: Let me hear all of them.

6 MR. POURNARAS: All right. As it relates to the
7 marijuana, as I previously mentioned, Your Honor, my
8 objection regarding the admission of the testimony, which
9 would cast into doubt the reliability of the balance
10 evidence. This is an inferential possession with intent to
11 distribute case.

12 I believe that the testimony is that it was inside a
13 vehicle associated with him, Your Honor. He did not
14 mention that he knew it was there. He did not mention
15 anything whatsoever. He made no testimony. It was merely
16 present under the seat. And the only reason it is being
17 brought forward as a possession with intent to distribute
18 are based on inferences with no accompanying testimony,
19 Your Honor.

20 And those are my two directed verdict motions, Your
21 Honor.

22 THE COURT: How bout the trafficking and grand
23 larceny?

24 MR. POURNARAS: The trafficking and the grand larceny,
25 Your Honor, I do not believe, again, there is any evidence

1 -- sufficient evidence brought to the jury's attention so
2 that they may find that. It was found in his pants, that
3 had been removed by other parties at a later time, Your
4 Honor.

5 Additionally, on the grand larceny charge, the items
6 were recovered in his car. There are no witnesses who have
7 testified to observing him place those in that car
8 associated with him.

9 Additionally, there's no evidence that the value is,
10 in fact, in excess of \$2,000. I believe there was
11 testimony that it is an estimate, but we have not give --
12 been given any actual accounting or any reasonable reliable
13 testimony that the value does, in fact, exceed \$2,000.

14 THE COURT: All right. Anything else?

15 MR. POURNARAS: No, Your Honor.

16 THE COURT: Mr. Shenkar, Ms. All --

17 MS. ALL: Yes, Your Honor.

18 THE COURT: -- happy to hear from you.

19 MS. ALL: I'll deal with the directed verdict motions.
20 Regarding the trafficking in his argument about the pants
21 being removed, there's been sufficient testimony that he
22 was in actual custody. There was somebody that arrived on
23 scene, Officer Everatt, while he was still wearing the
24 pants, and we followed that testimony through to show that
25 those were the same pants. Presented the pictures to the

1 jury and then the pictures where the pocket contents were
2 within the pants. And so clearly, there was not any
3 disturbance to the pants and he was in actual custody, was
4 physically impossible for him not to know there was a bag
5 of cocaine in his pocket.

6 Regarding the grand larceny, he was in constructive
7 possession. His identifying documents were found on his
8 person. They matched the identifying documents found in
9 the car. He also had the keys to the car in his pocket,
10 which Investigator McCoy later used to open the car when he
11 conducted the search warrant. All of those items -- there,
12 in fact, weren't any items belonging to anybody else in the
13 car except for the Defendant and the victim.

14 Regarding the marijuana, the charge of PWID is -- is
15 not based solely on the inferential weight, though that
16 weight does far exceed the inference weight. It was also
17 located directly next to some digital scales in the car as
18 Investigator McCoy testified.

19 Also, as Your Honor knows, and your charges will
20 state, the constructive possession for purposes of PWID,
21 that that possession or knowledge can be inferred from, the
22 presence of the drugs on the person themselves or on
23 property over which the Defendant has custody and control.

24 And by the same argument with the grand larceny, he
25 clearly had custody and control over that car. He had

1 arrived in it as is validated by the GPS tracking and
2 clearly intended to leave in it and couldn't because he
3 left in an ambulance, which is why it remained on scene.

4 Regarding the nighttime argument, as Your Honor knows,
5 the common law definition is that it be that period between
6 sunset and sunrise during which there is not enough
7 daylight to discern a man's face.

8 The fact that -- I think, referencing Deputy Byrd,
9 said that there was still blue in the sky. It doesn't
10 require that there be no daylight.

11 And if you'll recall that sunset was at 5:18. This
12 was past civil twilight. Twilight is the period when the
13 sun sinks below the horizon and it's no longer light, but
14 has -- you require artificial light to see terrestrial
15 objects. That is the very definition of not being able to
16 discern a man's face without artificial light.

17 Also, there's been testimony directly from Travis
18 Brimfield, the witness in this case, that he could not see
19 the Defendant's face. As he knew somebody had just
20 burglarized the home, he put it together that somebody was
21 outside. He came outside, was holding a gun he arguably
22 had never fired. With all that adrenaline rushing, where
23 your senses are so heightened, and he couldn't recognize
24 the Defendant's face; in fact, couldn't describe him at all
25 to say that he had long braids, that he was black. He

1 couldn't see anything except the white of his glove and
2 couldn't even discern whether it was a glove or a sock;
3 which obviously, you know, would be easy because the glove
4 has fingers on it.

5 Also, Stallings and Brimfield, the first two witnesses
6 we had that called 911, it was so dark that they weren't
7 able to see the Defendant lying on the ground. They saw,
8 as Mr. Pournaras pointed out, Costell Johnson running away.
9 That being said, he is an enormous man in a highlighter-
10 orange shirt. They were not able to see the Defendant
11 lying on the ground until they heard his moaning.

12 With civil twilight being over at 5:45, that was the
13 time when you would have needed artificial light to see.
14 As this shooting occurred at 6:22, was definitely well
15 beyond not only sunset, or the 30 minutes after sunset when
16 headlights are required by the DMV, but also beyond the end
17 of civil twilight by at least half an hour.

18 The burglary was also still in progress. There was no
19 argument that the entering or remaining did not occur
20 during that time because he waited. When everybody else
21 went inside, he could have left. But he waited and banked
22 on the fact that they weren't going to be done yet and
23 stood there so that he could go back and get one more
24 thing. He left the window open. He didn't get in the car
25 and leave. The burglary was still in progress.

1 There were also still items inside that he had moved.
2 He picked up a TV from the chest of drawers and put it on
3 the bed. There was a computer still inside. He hadn't
4 gotten everything he wanted yet. And if he had been done
5 with the burglary, he would have gotten in the car and
6 gone.

7 So it's the State's argument, supported by lots of
8 evidence, that the burglary was still in progress. He was
9 interrupted and foolish enough to stay on scene and try to
10 continue it.

11 MR. POURNARAS: If I may briefly respond to some of
12 those ---

13 THE COURT: Yes.

14 MR. POURNARAS: --- highly speculative opinions, Your
15 Honor. The burglary, being in progress while someone lay
16 in repose, having been shot multiple times, I -- I would
17 question that. Also, everything she testified to as the
18 Defendant's mental state as to what he intended to do in
19 the house is highly speculative and a matter for the jury
20 as well. I think -- I believe, unquestionably, if there
21 was a burglary, it terminated at the time of the shooting.

22 She mentioned that civil twilight, civil twilight,
23 sundown. I think Your Honor is well aware those have no
24 direct relationship to whether at that scene, under those
25 specific conditions, there was enough light, not by

1 artificial sources, for a person to distinguish a face.

2 I want to remind you, the people who initially heard
3 the gunshots, that would be Caliph Branham, said he ran --
4 after he jumped on the ground, went to the window, it was
5 getting dark, the lights had just come on (as read): "...
6 but it was still light enough where I could see clear
7 across the parking lot."

8 All right. Now, the fact that Mr. Stallings said, "I
9 couldn't see his face," he also said he had his hood down.
10 That's part of the reason why he could not see his face,
11 Your Honor.

12 The fact that it is past civil twilight, we've also
13 got nautical twilight and astronomical twilight. And Ms.
14 All's interpretation of what civil twilight means is,
15 again, her opinion and speculative. What the jury must
16 consider is do they believe, based on the eyewitness
17 testimony of the persons there, was there sufficient light
18 in the sky, whether or not the sun had set or not, for a
19 person's face to be discerned. Not whether a person did
20 discern a face, whether the conditions were such that a
21 person's face could be discerned, Your Honor.

22 That is a question for the jury based on what they've
23 heard. And I think there's been ample evidence that they
24 could infer it was light enough outside. And if I may ---

25 THE COURT: Well, is that not a jury question then on

1 the burglary first? I mean, you just made a good argument
2 as to why -- in this Court's opinion, as to why it should
3 go to them on the burglary first?

4 MR. POURNARAS: Pardon me?

5 THE COURT: You just made a good argument as to why it
6 should go to the jury on the burglary first.

7 MR. POURNARAS: Your Honor, I believe I made a good
8 argument as to why it should go as a burglary second.

9 THE COURT: And I'm going to charge them on burglary
10 second as a lesser included offense.

11 MR. POURNARAS: All right, Your Honor.

12 THE COURT: That -- wasn't that in the charge that my
13 clerk sent you over?

14 MR. POURNARAS: Yes, Your Honor.

15 THE COURT: No objection by either party on that,
16 correct?

17 MS. ALL: No, Your Honor.

18 MR. POURNARAS: No, Your Honor.

19 THE COURT: All right. With -- and I'm sorry. I
20 didn't mean to cut you off, Mr. Pournaras. Anything else
21 you wish to argue?

22 MR. POURNARAS: No, Your Honor.

23 THE COURT: All right. Well, with regards to Defense
24 counsel's directed verdict motion as to each of these
25 offenses, the Court is respectfully denying such,

1 respectfully denying such. Viewing the evidence as
2 required by the law, the law requires that this Court view
3 the evidence in the light most favorable to the non-moving
4 party, which is the -- which is the State, which is the
5 State.

6 But the law further states if there is any direct or
7 substantial circumstantial evidence, reasonably tending to
8 prove the guilt of the accused, the case must be submitted
9 to the jury. Therefore, based upon testimony that's been
10 elicited from this stand throughout the last day and a
11 half, the Court does believe that there is adequate -- more
12 than adequate direct and substantial circumstantial
13 evidence for each of these charges to be submitted to the
14 jury.

15 But your directed verdict motions, as well as all --
16 any and all prior previous objections and motions are noted
17 for the record, and the Court's rulings remain the same.

18 All right. Now, at this time, I am going to advise
19 Mr. Henderson as to his rights.

20 Mr. Henderson, can you stand, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you'd raise your right hand, please.

23 DEMETRIUS DERRICK HENDERSON, after
24 having been first duly sworn, testifies as follows:

25 THE COURT: All right. You are Demetrius Derrick

1 Henderson?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. At this time, I'm going to
4 explain to you certain of your rights. If you do not -- if
5 you do not understand anything that I say, please let me
6 know. If you want me to explain anything in more detail as
7 we go through this process, please let me know as well. Do
8 you understand that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We have now reached the stage
11 of the trial where you may present your defense. You have
12 the right, however, to claim the protections given to you
13 by the United States Constitution.

14 The Fifth Amendment to the United States Constitution
15 states in part that no person -- no person shall be
16 compelled in any criminal case to be a witness against
17 himself. This means that you cannot be required to testify
18 in this case. You have the right to testify on your own
19 behalf; however, no one can make you testify. This is a
20 personal right and no one can waive this right except you.

21 If you decide to testify, you will be subject to the
22 same rules that govern other witnesses; and you may be
23 examined and cross-examined on any relevant issue in this
24 case. In addition, if you have any convictions involving
25 dishonesty or false statement or for crimes punishable by

1 imprisonment for more than a year and this Court determines
2 that the probative value of admitting this evidence
3 outweighs the prejudicial effect to you, the solicitor will
4 be able to introduce your record to attack your
5 credibility.

6 If you decide to testify, this decision on your part
7 must be freely, voluntarily, knowingly, and intelligently
8 made, with the knowledge of the protections given to you by
9 the Fifth Amendment and the consequences of your decision
10 to testify.

11 On the other hand, if you decide not to testify, I
12 will instruct the jurors that they cannot, that they cannot
13 give the fact that you did not testify any consideration
14 whatsoever and that there is to be absolutely no prejudice
15 to you because you did not testify.

16 Now, it is left entirely up to you whether or not you
17 testify. You may talk with your attorney, your family,
18 friends, or anyone else; but the ultimate decision, the
19 final decision as to whether or not you testify is left
20 entirely up to you. Do you understand? Do you understand
21 what I have explained to you, Mr. Henderson?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions about what I
24 have explained to you?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you discussed with your attorneys
2 whether or not you should testify?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to talk with your attorneys
5 any more at this time?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you wish to testify in the trial of
8 your case?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. You may be seated, sir.

11 All right. And what I intend to do, ladies and
12 gentlemen, is when we bring the jury back out, I will
13 recognize Defense counsel --

14 Do -- do you all intend to call any other witnesses?

15 MS. EIGENBROT: No, Your Honor.

16 THE COURT: All right. I assume then that you all
17 will rest when I bring the jury back out. And I would
18 instruct you or encourage you at that time to just state
19 for the record the renewal of all prior objections, et
20 cetera, and then we're going to move right into closing
21 arguments.

22 MS. EIGENBROT: Your Honor, can we have a short
23 bathroom break?

24 THE COURT: I'm going to take a break. I'm just
25 telling you what the plan is when we come back.

1 MR. EIGENBROT: Yes, sir.

2 THE COURT: All right. Does the State intend to open
3 on the law? I mean, the Defense is going to get last
4 argument here, so you -- you will not just be opening on
5 the law. When you open -- when you're closing, that's
6 going to be all the way through.

7 MS. ALL: That's what we're prepared for, Your Honor.

8 THE COURT: Followed by Defense counsel.

9 I will remind you all that your arguments are to be
10 contained to that which is in evidence and the reasonable,
11 reasonable inferences to be drawn therefrom. That is what
12 the law requires and I will reemphasize that to you all.

13 Certainly, having said that, understand that if you
14 deem it as though you need to object to protect your
15 client's interest as to anything, certainly, you need to do
16 that. But I instruct you all on that to hopefully remind
17 you all, so that it will not be a necessity of -- of
18 objecting during the course of closing arguments. All
19 right.

20 All right. Anything from -- we gone -- we are going
21 to stand down for a few minutes. Anything from the State?

22 MR. SHENKAR: Nothing else, Your Honor.

23 THE COURT: Defense counsel?

24 MS. EIGENBROT: Nothing, Your Honor.

25 THE COURT: All right. We'll stand down for just a

1 few minutes.

2 (Briefly off the record.)

3 Whereupon the following sidebar
4 conference takes place as follows:

5 THE COURT: I'm looking back -- I was looking back at
6 my notes as well as Exhibit -- State's Exhibit 55. It was
7 just a drug testing or SLED's analysis of this cocaine. In
8 that charge that was sent to you all it had a charge for
9 trafficking cocaine as well as possession with intent. I
10 don't think possession with intent to distribute needs to
11 be in there.

12 MS. ALL: It doesn't.

13 THE COURT: Because there's no testimony whatsoever
14 that brings it below the threshold.

15 MS. ALL: And it's not an inference weight.

16 THE COURT: Well, and even more -- I mean, the only
17 thing that he brought out in cross-examination is -- or
18 during the testimony was, you know, plus or minus .01,
19 which still keeps it well above that threshold.

20 MR. POURANARAS: Yes, Your Honor.

21 THE COURT: Y'all -- y'all disagree or agree with
22 that?

23 MR. POURANARAS: I wish I could disagree.

24 THE COURT: I know. I understand, but I -- I'm going
25 to pull that part of the charge out. It'll be burglary

1 first and burglary second, trafficking, possession with
2 intent to distribute marijuana, and the grand larceny.
3 Okay.

4 MR. POURANARAS: So there's no lesser included or
5 simple possession marijuana? I think that the fact that
6 those are inferential would leave -- would allow that for
7 the jury to decide.

8 THE COURT: What is y'all's position on ---

9 MS. ALL: We're fine with that.

10 THE COURT: Simple possession.

11 MS. ALL: It's different from the trafficking.

12 THE COURT: Okay.

13 MS. ALL: The trafficking is an inference weight.
14 It's strict.

15 THE COURT: I'll add that.

16 (Ms. All and the Court speak simulataneously.)

17 MR. POURANARAS: Thank you, Your Honor.

18 THE COURT: Did y'all get a verdict and I don't know
19 why ---

20 MR. POURANARAS: We did ---

21 MS. ALL: We did get one.

22 MR. POURANARAS: --- get a verdict form, and we didn't
23 have any problems with the verdict form. Obviously, you'll
24 have to amend --

25 THE COURT: I'll have to amend it. Okay.

1 MR. POURANARAS: Thank you, Judge.

2 THE COURT: Thank you.

3 Whereupon the sidebar conference
4 ends and the trial continues as follows:

5 THE BAILIFF: If you have cell phone, electronic
6 device, if you'd please turn them off.

7 THE COURT: Thank you. Be seated. His request to
8 turn those devices off is -- well, it is not a request.
9 It's an order of this Court if they're in this courtroom.

10 All right. The lawyers -- well -- the attorneys have
11 had an opportunity to review the verdict form -- proposed
12 verdict form here at side bar. Any objection by the State?

13 MR. SHENKAR: None from the State, Your Honor.

14 THE COURT: Defense counsel?

15 MS. EIGENBROT: None from Defense.

16 THE COURT: Now, pursuant to a discussion that was on
17 the record at side bar, outside the presence of the jury,
18 simply talked with the lawyers concerning my charge.

19 And the charge that was initially sent to them
20 included the charge of trafficking cocaine, as well as a
21 lesser included offense of possession with intent to
22 distribute cocaine.

23 Based upon the Court's review of its records and notes
24 throughout the trial of this case, as well as -- and that
25 pertaining to the testimony of the drug analyst from SLED,

1 along with the drug report which has been introduced into
2 evidence, the amount of cocaine was approximately 20 grams
3 of cocaine; and there'd been no testimony that would -- or
4 any challenge to the amount of such that would take it
5 anywhere close to the level below the 10 gram threshold.

6 Therefore, I advised the lawyers that I was taking out
7 of the charge possession with intent to distribute cocaine
8 pursuant to the testimony that's been elicited from this
9 stand, as well as evidence admitted into -- into evidence
10 during the course of this trial.

11 Furthermore, the Court has, at the request of Defense
12 counsel, added in to the charge, in addition to possession
13 with intent to distribute marijuana, the charge of simple
14 possession of marijuana. And my charge on simple
15 possession -- and let me say this, going back to my charge
16 on possession with intent to distribute marijuana, I added
17 this language in there, which was in -- is in the third
18 paragraph. I added (as read): "Intent may be shown by
19 acts and conduct of the Defendant and other circumstances
20 from which you may naturally and reasonably infer intent."
21 I mean, that's part of the -- my charge. Why it was not in
22 there, I'm not sure.

23 With regards to simple possession of marijuana -- and
24 this is the second paragraph of this simple possession of
25 marijuana charge, says (as read): "To prove simple

1 possession of marijuana, the State must prove, beyond a
2 reasonable doubt, that the Defendant knowingly or
3 intentionally possessed marijuana. 'Knowingly' means with
4 knowledge, consciously, not accidentally. 'Intentionally'
5 means willfully, intending the result which actually
6 occurs, not accidentally or involuntary."

7 All right. Any exceptions or objections by the State?

8 MR. SHENKAR: Your Honor, just with regards to the
9 simple possession of marijuana, if Your Honor could also
10 add the constructive language, that is with possession with
11 intent to distribute, that would apply to same simple
12 possession of marijuana.

13 THE COURT: Mr. Pournaras?

14 MR. POURNARAS: Your Honor, I think if you've already
15 defined constructive possession, I -- I believe you could
16 just merely amend the simple possession to say "actual or
17 constructive possession," as the definition of constructive
18 is already proceeding that.

19 (Brief pause.)

20 THE COURT: All right. What I will say is -- at the
21 conclusion or -- or nearing the end of my simple possession
22 charge, I'm going to say, again, possession, actual or
23 constructive possession, as previously charged, of
24 marijuana is a crime, unless marijuana was obtained
25 directly from or through a valid prescription or order, et

1 cetera, et cetera. And then I will get it further
2 corrected before everything goes back.

3 My general practice is to send a copy of the charge
4 back to the jury. Any exception or objection by the State?

5 MR. SHENKAR: No, Your Honor.

6 THE COURT: Defense counsel?

7 MR. POURNARAS: No, Your Honor.

8 THE COURT: All right. All right. Anything further
9 before I bring the jury out from the State?

10 MR. SHENKAR: Nothing else from the State, Your Honor.

11 THE COURT: Defense counsel?

12 MR. POURNARAS: No, Your Honor.

13 THE COURT: All right. I will -- will make this
14 comment to those who are in the court. Once I bring this
15 jury out and we start closing arguments and then my charge
16 on the law, the courtroom will be locked. You will not be
17 allowed to leave -- go in and out of this courtroom while
18 arguments of counsel are being made nor while this Court is
19 giving its charge on the respective law.

20 So therefore, if you do not believe that you're going
21 to be able to stay in here for, at least, probably I'd say
22 about an hour and a half, then you -- you need to leave the
23 courtroom at this time.

24 (To the bailiff) All right. Bring me the jury,
25 please, sir.

1 Defense counsel, please make sure -- be reminded to --
2 I'm going to recognize you and rest your case, and then we
3 will go from there.

4 (The jury enters the courtroom at 11:09 a.m.)

5 THE BAILIFF: The jury's seated, Your Honor.

6 THE COURT: Thank you. Thank you, ladies and
7 gentlemen, for your patience as we handled some matters out
8 here in court. The State -- prior to you all exiting the
9 courtroom, the State rested. At this time, I am going to
10 recognize Defense counsel.

11 Defense counsel, you're so recognized.

12 MS. EIGENBROT: Thank you, Your Honor. May it please
13 the Court. At this time, the Defense rests, Your Honor.

14 THE COURT: Ladies and gentlemen, the Defense has
15 rested, and therefore, you have heard all the testimony
16 that you are going to hear in this case. Now, before we go
17 any further, that which remains -- closing arguments by
18 counsel and then my charge on the law to you; and then the
19 case will be given to you for you all to decide.

20 Before we go any further, I will note for the record
21 Defense counsel's prior motions, objections, exceptions are
22 renewed at this time. The Court's rulings remain the same
23 as to each as previously ruled upon by this Court.

24 MS. EIGENBROT: Thank you, Your Honor.

25 THE COURT: Now, ladies and gentlemen, during --