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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County
Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON J. BERRY,

APPELLANT

APPELLATE CASE NO. 2015-002557

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State of South Carolina
County of Richland

Court of General Sessions

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vs.	)	2015-GS-40-00015
	)	2015-GS-40-00017
Brandon Joseph Berry,	)	2015-GS-40-00018
	)	2015-GS-40-00020
<u>Defendant.</u>	)	2015-GS-40-05062

November 30 - December 4, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Howard P. King, Judge; and a jury.

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Circuit Court Reporter

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1 (Whereupon, the following proceedings were held on
2 November 30, 2015, beginning at 12:31 PM.)

3 **BAILIFF:** Court come to order. All rise, please.

4 **THE COURT:** Thank you. Please be seated..

5 All right. Ms. Campbell, what's the first matter?

6 **MS. CAMPBELL:** May it please the Court, Your Honor,
7 the State calls the State versus Brandon Berry. Your
8 Honor, after discussing matters with my co-counsel, at this
9 point we will be going forward on the charges of attempted
10 murder, attempted armed robbery, resisting arrest, unlawful
11 conduct towards a child, and those would be the extent,
12 Your Honor. The only one -- there were some direct
13 presentments in this case. The only direct presentment
14 we'll be going forward on at this point would be the
15 attempted armed robbery, which was actually direct --
16 directly presented because the original charge was armed
17 robbery, so I don't think there would be a notice problem
18 on that charge.

19 **MS. ZMROCZEK:** That's correct, Your Honor.

20 **THE COURT:** Say again. You don't --

21 **MS. ZMROCZEK:** I don't have a problem.

22 **THE COURT:** You don't have a problem?

23 **MS. ZMROCZEK:** I don't have a problem with that.

24 **THE COURT:** Okay. All right.

25 **MS. ZMROCZEK:** And then -- so there were several gun

1 charges, Your Honor. I needed to -- are they --

2 **MS. CAMPBELL:** We will not be going forward on those.

3 **THE COURT:** Go ahead with the rest of the charges,
4 Ms. Campbell.

5 **MS. CAMPBELL:** The rest of the charges, Your Honor, I
6 believe were a gun charge, possession of a crime of
7 violence, and a gun charge involving having been convicted
8 of a violent crime.

9 **THE COURT:** Failure to stop?

10 **MS. CAMPBELL:** Failure to stop we're not proceeding
11 on.

12 **THE COURT:** Not proceeding on?

13 **MS. CAMPBELL:** Yes, sir.

14 **THE COURT:** All right. But you are on the unlawful
15 carrying of a pistol?

16 **MS. CAMPBELL:** Yes.

17 **THE COURT:** We've got unlawful carrying of a pistol,
18 plus the possession by certain people, unlawful -- I'm just
19 trying -- I'm just gonna keep the indictments that we're
20 going on. And then you've got -- you've actually got three
21 weapons charges.

22 **MS. CAMPBELL:** Yes, sir. If I could just look at
23 those, I'm sorry, I don't have a copy of them, to make sure
24 I'm not informing the Court incorrectly. We will only be
25 going forward on the unlawful carrying of a pistol. We

1 will not be going forward on the possession of a crime of
2 violence and the threat of violence. So these two we will
3 not go forward on, Judge, and --

4 **THE COURT:** Just give those back to the clerk. And
5 also this failure to stop, give that back to the clerk.
6 And then we've got attempted murder, the unlawful carrying
7 of a pistol, and I'll put the numbers on the record in just
8 a moment, and then apparently two attempted robbery
9 charges?

10 **MS. CAMPBELL:** There's one armed robbery and one
11 attempted armed robbery and we'd go forward on the
12 attempted armed robbery because when we spoke to the victim
13 at a later time, he found the phone, it was not missing.

14 **THE COURT:** So the other robbery charge --

15 **MS. CAMPBELL:** We would not be going forward on.

16 **THE COURT:** That's --

17 **MS. CAMPBELL:** 2015-0019.

18 **THE COURT:** Okay.

19 **MS. CAMPBELL:** Does that comply, Amy?

20 **MS. ZMROCZEK:** Right. So it's --

21 **THE COURT:** All right. And what did you say about the
22 resisting arrest and the unlawful neglect?

23 **MS. CAMPBELL:** We're going forward on those two
24 charges.

25 **THE COURT:** Okay. So the ones that I have -- I have

1 **THE COURT:** All right. So the matter that we do need
2 to address then is the motion to suppress the search
3 warrant -- or not the search warrant, but the search of the
4 vehicle and of the home, the warrantless search. So the
5 motion having been made, Ms. Campbell, you may present
6 whatever testimony you wish to present regarding those
7 issues.

8 **MS. CAMPBELL:** Thank you, Your Honor.

9 (State's Exhibit Number 1 and 2 were marked for
10 identification.)

11 **MS. CAMPBELL:** Your Honor, the State would call
12 Sergeant Carwell.

13 **THE COURT:** All right. Come around, please.

14 JOHN CARWELL,

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Thank you. Please have a seat on the
17 witness stand and state your full name for the record.

18 **THE WITNESS:** It's John Carwell.

19 DIRECT EXAMINATION (In-Camera)

20 BY MS. CAMPBELL:

21 Q. Sergeant Carwell, where are you employed?

22 A. Richland County Sheriff's Department.

23 Q. What do you do there, sir?

24 A. I am a sergeant over the burglary unit at this time.

25 Q. I want to turn your attention back to July of last

1 year. Were you also working at the sheriff's department
2 then?

3 A. I was.

4 Q. What did your duties include?

5 A. I was assigned to the robbery unit and also was a
6 primary homicide investigator.

7 Q. During the early morning hours of July the 29th, I
8 believe it was, did you become aware of an attempted murder
9 and robbery that had taken place?

10 A. I learned of this case when I arrived that morning at
11 8:30 when we are assigned our cases for that morning.

12 Q. And you were actually assigned to this case to be the
13 lead investigator, I guess, is the way to put it?

14 A. I was.

15 Q. And subsequent to that, did you become aware of
16 circumstances that ended up being relevant in this case?

17 A. I did.

18 Q. And what were those circumstances that you found out
19 about later that morning?

20 A. I was contacted by Investigator -- Deputy Owens and
21 Pennington a couple of hours after this, say around
22 11:30-ish. They stated they were on a traffic stop and
23 they had two bags; one bag contained items that would be
24 related to armed robberies. And, like I said, I worked
25 armed robberies at the time. And there was also a separate

1 bag, a diaper bag, with a Glock pistol in the bottom of it.

2 Q. And the traffic stop that they were referring to where
3 they found the mask and the gun, what area of town was this
4 in?

5 A. This was actually Broad River Road at .

6 Q. And was that close in the area to where this robbery
7 and attempted murder had happened the night before?

8 A. No, it's a little ways down I-20.

9 Q. Down I-20?

10 A. Correct.

11 Q. But at that point you were aware of what had happened
12 the night before?

13 A. I was.

14 Q. And how did you proceed, sir?

15 A. I responded to the scene of the traffic stop, spoke to
16 both deputies. They kind of explained to me how they got
17 to the point they were at and from there it was basically
18 -- I just needed to put the pieces together.

19 Q. And that day did you become aware that there was a
20 small child that had been found in the car?

21 A. Yes.

22 Q. And were steps taken to locate the actual mother of
23 the child?

24 A. The mother was already on-scene once I arrived.

25 Q. So that had been done prior to you getting there?

1 A. Yes.

2 Q. And when you got there, did you make contact with her?

3 A. Yes.

4 Q. What was her name, do you remember?

5 A. Ms. -- Katio was last name.

6 Q. Katio?

7 A. K-A-T-I-O.

8 Q. And approximately how old was the child that was there
9 at the scene?

10 A. She was two.

11 Q. And once you made contact with Ms. Katio, did you get
12 certain information from her?

13 A. Yes.

14 Q. And specifically did you ask her for her permission to
15 do anything?

16 A. She actually volunteered for me to come back to her
17 apartment. She stated that Brandon Berry had been to her
18 house around 5 AM that same morning after being out with a
19 friend of his, Nickilous Wallace.

20 Q. After being out with a friend, Nickilous Wallace?

21 A. Yes.

22 Q. And was Nickilous Wallace the other young man that was
23 detained there at the scene of the traffic stop?

24 A. Yes, he was the owner of the -- the car that was
25 stopped during the traffic stop.

1 Q. And when you said she actually volunteered for you to
2 go -- that he had been there the night before at her house,
3 what, if anything, were you looking for at that point?

4 A. Anything to help me connect this shooting to the two
5 guys that were in this car.

6 Q. And did you memorialize Ms. Katio's giving you
7 permission to do that?

8 A. Yes. She gave me a consent to search on a written
9 form from the sheriff's department that we use. She stated
10 that she lived there with her daughter, her two-year-old
11 daughter, but the apartment was actually in her
12 grandmother's name and her grandmother was actually
13 on-scene as well when I first arrived at the apartment.

14 Q. But she was the one that actually lived there?

15 A. Yes.

16 Q. And I want to show you what's been marked as State's
17 Exhibit Number 2. Do you recognize that?

18 A. Yes, this is the consent to search form.

19 Q. And is that the form that you actually filled that out
20 that day?

21 A. It is.

22 Q. And who's signature is that on the bottom?

23 A. L. Katio.

24 Q. At any time did you threaten her or her grandmother,
25 who's also on the lease?

1 A. No.

2 Q. Was Brandon Berry as far as you knew on the lease to
3 that apartment?

4 A. He was not.

5 Q. And, in fact, did he -- he did not live there, it was
6 just the child's mother?

7 A. No. I did ask just to clarify that.

8 Q. Okay.

9 **MS. CAMPBELL:** Your Honor, may I approach?

10 BY MS. CAMPBELL:

11 Q. At any point did you threaten her to get her consent?

12 A. No.

13 Q. Did you promise her anything to make her consent?

14 A. No, I didn't.

15 Q. And, in fact, did she go with you when you went back
16 to the house to actually look?

17 A. Yes, and she provided a written statement.

18 Q. And how did you actually get inside the residence?

19 A. She actually drove her own car and I followed her to
20 her apartment and she allowed us in. She was there with us
21 the whole time.

22 Q. And once you got there, did you actually search for
23 any items that may have to do with your armed robbery
24 shooting from the night before?

25 A. Yes.

1 Q. And what, if anything, did you find that was
2 significant?

3 A. I found a pair of black Levi jeans and pair of Nike
4 shoes that were gray and black.

5 Q. And, in fact, was she able to identify whose jeans
6 those were and whose shoes those were?

7 A. Yes, she did.

8 Q. And who did she identify those belonging to?

9 A. Brandon Berry.

10 Q. There's also -- there was a car involved in the car
11 stop as well?

12 A. Yes, there was.

13 Q. And at some point did you get permission to actually
14 look in that car as well?

15 A. I did.

16 Q. And I want to show you what's been marked as State's
17 Exhibit Number 1. Do you recognize that?

18 A. Again, it's a consent to search form.

19 Q. And what's the date on the top of that one?

20 A. August 5th of 2014.

21 Q. So that took place at a later time?

22 A. Yes.

23 Q. And, specifically, who did the car belong to?

24 A. Nickilous Wallace.

25 Q. Did it belong in any way to the Defendant here?

1 A. No, it didn't.

2 Q. And, in fact, did he give you permission?

3 A. He did.

4 Q. And when you searched that vehicle, did you even come
5 up with anything of significance?

6 A. The lab, I believe, went out and processed it and
7 photographed it, but nothing was found.

8 Q. As far as any items of evidence?

9 A. Correct.

10 Q. But it was processed pursuant to a lawful consent?

11 A. Correct.

12 **MS. CAMPBELL:** Your Honor, may I approach?

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

14 BY MS. CAMPBELL:

15 Q. Finally, I want to show you -- Your Honor, I haven't
16 marked this yet, but just a document which is a three-page
17 written statement. Do you recognize that?

18 A. Yes, ma'am.

19 Q. And who does that written statement belong to?

20 A. Lourisa Katio.

21 Q. And, in fact, is that your handwriting?

22 A. That is.

23 Q. And whose signature is on the bottom of every page of
24 that?

25 A. Hers, Lourisa Katio.

1 Q. And in the course of that, does she identify the
2 clothing, as who it belongs to?

3 A. Yes.

4 Q. And when her, I guess, boyfriend had shown up the
5 night before around 5:00?

6 A. It does.

7 Q. And that statement was taken on what date?

8 A. January -- or, I'm sorry, July 29th.

9 Q. That same day that --

10 A. That's correct.

11 **MS. CAMPBELL:** Your Honor, may I approach?

12 **THE COURT:** Yes.

13 **MS. CAMPBELL:** Do you have a copy of this?

14 **THE COURT:** Ms. Zmroczek, have you seen this
15 statement?

16 **MS. ZMROCZEK:** I have.

17 **THE COURT:** Do you object to it?

18 **MS. ZMROCZEK:** Not for purposes of this hearing, Your
19 Honor.

20 **THE COURT:** All right. We'll give it to the court
21 reporter to mark it.

22 **MS. CAMPBELL:** I think I'll mark this as a Court's
23 exhibit so it won't get mixed in.

24 **THE COURT:** That will be State's -- actually we had
25 one State's 1 already.

1 **MS. CAMPBELL:** I had 1 and 2 already. Do you want to
2 do it as State's 3? Or I was gonna do this as a Court's
3 exhibit because it wouldn't be admissible.

4 **THE COURT:** Okay. That will be fine. It's not
5 admissible. Make it Court's 2.

6 **MS. CAMPBELL:** Thank you, Your Honor.

7 (Court's Exhibit Number 2, Statement of Lourisa Katio,
8 was marked for identification.)

9 BY MS. CAMPBELL:

10 Q. So based on the information you were able to get from
11 Ms. Katio, the Defendant did not live there, he was not on
12 the lease, and she was the one that gave you permission?

13 A. That's correct.

14 **MS. CAMPBELL:** Thank you. That's all I have, Your
15 Honor.

16 **THE COURT:** Cross-examination.

17 **MS. ZMROCZEK:** Thank you.

18 CROSS-EXAMINATION (In-Camera)

19 BY MS. ZMROCZEK:

20 Q. Investigator Carwell, you stated that you arrived at
21 1:30?

22 A. I don't recall saying that.

23 Q. Okay. What time do you recall -- what time do you
24 recall arriving at the traffic stop?

25 A. I believe I said 11:30.

1 Q. 11:30?

2 A. My follow-up. Let's see. I arrived at -- I'm sorry,
3 it's 12:55. I was notified around 12:15-ish.

4 Q. Okay. And it's your testimony that when you arrived
5 the mother of the infant said come search my house?

6 A. Yes. She was on-scene.

7 Q. Okay. Investigator Carwell, didn't you tell her that
8 if she didn't allow y'all in her house that she could pick
9 her baby up from DSS?

10 A. No.

11 Q. Did you meet with her this week in preparation for --
12 or last week in preparation for this testimony?

13 A. I did not.

14 Q. You took several other statements from her that day?

15 A. I took one.

16 Q. Okay. She described the shoes that Mr. Berry was
17 wearing?

18 A. She described a pair of white and black Air Force Ones
19 as what she saw when he left the day -- the night before to
20 go out.

21 Q. And, in fact, those were the same ones that he had
22 on --

23 A. During the traffic stop, but she also confirmed that
24 the gray and black shoes that were in the bedroom beside
25 the black pants also belonged to Brandon Berry.

1 Q. Didn't you tell her that you were searching to make
2 that the house was safe because the child was found with a
3 gun?

4 A. No.

5 Q. Who else was present when you spoke with her?

6 A. Jamie Owens.

7 Q. Okay. And her sister, Destiny Katio?

8 A. I remember her grandmother being there.

9 Q. And her grandmother?

10 A. Right.

11 Q. You don't remember her sister being there?

12 A. No.

13 Q. So it's your testimony that you received consent,
14 never mentioned anything about DSS or the child?

15 A. That's correct.

16 Q. And never said you were doing a search to make sure
17 that the property was safe because of a gun?

18 A. No.

19 Q. Okay. You searched the car pursuant to consent five
20 days later?

21 A. Yes. Nickilous Wallace came to my office with his
22 attorney and I was provided written consent.

23 Q. And you're aware that the mask and the zip ties were
24 found in the car?

25 A. No, those were found in the two bags that Brandon

1 Wallace {sic} grabbed when he jumped out of the vehicle and
2 threw them when he was being chased.

3 Q. And there are pictures of the locations of those bags?

4 A. The bags were picked up by the two deputies I spoke of
5 and brought back to the scene of the traffic stop and
6 that's when where I observed them.

7 Q. So where were the bags when you observed them?

8 A. In the parking lot of the apartment complex where the
9 traffic stop ended.

10 Q. Had pictures already been taken of them?

11 A. Not, I don't believe, where they were found.

12 Q. Were pictures taken after you had stopped them?

13 A. But, yes -- yeah, I took pictures of them and I took
14 custody of both of the bags.

15 Q. So you took pictures -- you were the one who took the
16 photographs?

17 A. Yes.

18 Q. Okay. And you -- it's your testimony that you took
19 photographs of the diaper bag with the gun?

20 A. Yes.

21 Q. And the other bag with the other items in it?

22 A. Yes.

23 Q. And you provided all those pictures to the solicitor's
24 office?

25 A. Yes.

1 Q. Okay.

2 MS. ZMROCZEK: Your Honor, for the purposes of this
3 hearing, that's all I have for this witness.

4 MS. CAMPBELL: I don't have anything further.

5 THE COURT: Anything further, Ms. Campbell?

6 MS. CAMPBELL: No, sir.

7 THE COURT: All right, sir. You may step down.

8 (Witness excused.)

9 THE COURT: All right. Ms. Campbell, you may call
10 your next witness. Do you have any other witnesses on this
11 issue?

12 MS. CAMPBELL: Not on this issue, Your Honor.

13 THE COURT: Okay. All right. Ms. Zmroczek, you have
14 the right to present any testimony or evidence that you
15 wish to present, including the testimony of the Defendant,
16 without waving his Fifth Amendment rights if you would like
17 to present anything.

18 MS. ZMROCZEK: Your Honor, I have actually advised
19 Ms. Katio that she needed to be here at 2:30 and she
20 responded back that the State told her she didn't have to
21 come.

22 THE COURT: Did you subpoena her?

23 MS. CAMPBELL: Your Honor, she's under subpoena for
24 us. We didn't know about this hearing until -- at 10:26
25 last night, the defense counsel contacted through text

1 Ms. Walker, who was not here at the office at the time last
2 night, and requested that we have her here. We had told
3 her originally if we were gonna use her -- because she
4 works, she actually has a job, that we wouldn't need her
5 until Wednesday, and that was just us not knowing that she
6 wanted her at that point. That was information we gave her
7 last week. So I don't -- I don't want to say that we were
8 trying to hide her or anything. I can contact her and see
9 if she can be here in the morning.

10 **MS. ZMROCZEK:** Your Honor, I would ask --

11 **MS. CAMPBELL:** I had a conversation with her last week
12 and we turned over the content of that conversation. She
13 is the mother of his child and has remained in contact with
14 him.

15 **THE COURT:** And the mother of the child that was
16 involved in this incident?

17 **MS. CAMPBELL:** Involved in this.

18 **THE COURT:** All right. Okay.

19 **MS. ZMROCZEK:** The information that they turned over
20 to me, Your Honor, verbally was that the -- Officer Carwell
21 told her that they would not give her child back.

22 **THE COURT:** Well, we'll find out when we hear from
23 her. I'll give you an opportunity -- we will -- I will not
24 make a decision on this -- since we're not bringing the
25 jury in until 11:00 tomorrow, I won't make a decision on

1 this until in the morning, but if you want to make sure
2 that she's here to testify -- while Ms. Campbell, she
3 doesn't have any duty to --

4 **MS. ZMROCZEK:** No, I have her under subpoena as well,
5 Your Honor.. She just did not respond.

6 **THE COURT:** Okay. You better have her under subpoena
7 for 9:30 in the morning because that's when we're going
8 forward on this matter and if she's not here then, then
9 we're going to take action against her, okay?

10 **MS. ZMROCZEK:** Thank you, Your Honor.

11 **THE COURT:** All right. So with regard to the motion
12 to suppress, let me see if I understand what you wish to
13 suppress as a result of the search warrant or lack of a
14 search warrant.. Do you -- the first thing I noticed was
15 two bags that were taken from the car. One was the items
16 that the State contends are related to the armed robbery
17 or attempted murder that was associated with an armed
18 robbery or -- or attempted murder and the other was a Glock
19 pistol in the diaper bag. Are those --

20 **MS. CAMPBELL:** But they were not in the car when they
21 were recovered because when he jumped out of the car and
22 ran from the police, he took both those items with him and
23 then discarded them before --

24 **MS. ZMROCZEK:** Your Honor, I think we need testimony
25 on that, not just from Ms. Campbell, because Mr. --

1 Investigator Carwell said that they -- that had already
2 happened by the time --

3 **THE COURT:** All right. So we've still got the -- you
4 still object to -- tell me what item --

5 **MS. ZMROCZEK:** I don't object to the gun, Your Honor,
6 and the diaper bag. We object to the masks and the other
7 bag.

8 **THE COURT:** All right. Okay. All right. So there's
9 no objection to the Glock pistol found in the diaper bag?

10 **MS. ZMROCZEK:** Correct.

11 **THE COURT:** What are the other items, Ms. Campbell,
12 that were found?

13 **MS. CAMPBELL:** The only other items that were found
14 was a separate bag with the masks in it.

15 **THE COURT:** What are they?

16 **MS. CAMPBELL:** What are the items?

17 **THE COURT:** Yeah.

18 **MS. CAMPBELL:** There was a bag with masks in it --

19 **THE COURT:** A bag with what?

20 **MS. CAMPBELL:** -- and zip ties. It has masks, zip
21 ties and gloves.

22 **THE COURT:** Oh, okay. Okay. And that's what you
23 object to?

24 **MS. ZMROCZEK:** Correct, Your Honor.

25 **THE COURT:** All right.

1 **MS. ZMROCZEK:** And I think that we need testimony from
2 whoever recovered --

3 **THE COURT:** Do you have those witnesses present,
4 Ms. Campbell, or can you produce them?

5 **MS. CAMPBELL:** They're here.

6 **THE COURT:** All right. So we've got that. She
7 doesn't object to the pistol, that's not anything. She's
8 objecting to the items; the mask and all that sort of
9 stuff. And then we will hear -- I assume that you are
10 objecting to the items that were seized in the house based
11 upon lack of consent of the owner. Is that basically where
12 we are?

13 **MS. ZMROCZEK:** That is correct, Your Honor.

14 **THE COURT:** We'll hear from the owner tomorrow. Okay.

15 **MS. CAMPBELL:** And, Your Honor, to be clear, too, we
16 may try to go get the lease. This is a common issue. We
17 weren't aware of this until today because our position is
18 he doesn't have standing to even contest it regardless.

19 **THE COURT:** I'm sorry?

20 **MS. CAMPBELL:** He didn't live there, it's not his
21 house --

22 **THE COURT:** Right.

23 **MS. CAMPBELL:** -- so he doesn't even have standing to
24 contest it, but we'll bring up that issue later. We can
25 argue that.

1 **THE COURT:** Okay. So there was -- your position is
2 that in addition to having consent that she has no standing
3 to object to it because he had no ownership interest in it
4 or no -- no expectation of privacy really is what he had.

5 **MS. CAMPBELL:** Correct.

6 **THE COURT:** What about that matter? What about that,
7 whether -- regardless of what this lady says, why does he
8 have any expectation of privacy of something in her house?

9 **MS. ZMROCZEK:** Well, because, Your Honor, I think that
10 what her testimony will show then, and obviously it will
11 come from her, but it's our position that she will testify
12 that they had a child in common, that he -- not only did he
13 stay there, his friends stayed there, he had a multitude of
14 his personal items there, that's where he stayed. In
15 addition, Your Honor, there are -- the Government provided
16 numerous text messages and telephone calls that talk about
17 the bills that they paid there, the -- you know, you need
18 to buy the food, you need to -- you know, you left me with
19 the light bill. Obviously, it's our position that he did
20 live there.

21 **THE COURT:** Well, that may all be true from the
22 standpoint -- from a factual standpoint, but from a legal
23 standpoint he has no -- except for the child together, he
24 has no legal connection to her.

25 **MS. ZMROCZEK:** Well, they do have a child --

1 **THE COURT:** They're not married.

2 **MS. ZMROCZEK:** Correct. Right, they were not married,
3 Your Honor; however, he was -- he did stay there more than
4 -- more than half the time of the year, so we would -- we
5 would --

6 **MS. CAMPBELL:** I'm just basing this --

7 **MS. ZMROCZEK:** And I'll -- and I'll find the case law,
8 Your Honor, that would --

9 **MS. CAMPBELL:** And I'm basing this on the information
10 she gave me last week in addition to saying that she was
11 told that she would -- the child would go to DSS. And
12 she doesn't say that Investigator Carwell said that. She
13 didn't say specifically who said that, to clarify that
14 point.

15 **THE COURT:** Well, I don't have to approach this and
16 make the decision about the expectation of privacy or the
17 standing to make this decision if she testifies that she
18 gave consent. That takes care of that.

19 **MS. CAMPBELL:** And that's what she told us. She did
20 give consent.

21 **THE COURT:** All right. We'll take care of that in the
22 morning.

23 **MS. CAMPBELL:** Okay.

24 **THE COURT:** So that matter is --

25 **MS. ZMROCZEK:** Were they gonna -- I believe they were

1 gonna present testimony from --

2 **THE COURT:** Pardon?

3 **MS. ZMROCZEK:** I thought they were gonna present
4 testimony from the officer who located the second bag.

5 **THE COURT:** Yes, that's right. We've already got the
6 -- we'll come back to that tomorrow, but with regard to the
7 first -- the items that were seized, the items that were
8 seized related to the armed robbery, have you got that
9 witness here, Ms. Campbell?

10 **MS. CAMPBELL:** Yes, sir.

11 **THE COURT:** Okay. Go ahead.

12 **MR. STEADMAN:** The State calls Deputy Brendon
13 Pennington.

14 **BRENDON PENNINGTON,**

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Thank you. Please have a seat on the
17 witness stand and state your full name for the record.

18 **THE WITNESS:** Brendon Pennington.

19 **DIRECT EXAMINATION (In-Camera)**

20 **BY MR. STEADMAN:**

21 **Q.** Sir, where are you employed?

22 **A.** Richland County Sheriff's Department.

23 **Q.** How long have you been working for the Richland County
24 Sheriff's Department?

25 **A.** It will be nine years in January.

1 Q. And in what capacity do you work for the Richland
2 County Sheriff's Department?

3 A. Right now I'm with Special Teams.

4 Q. And what capacity were you working for the Richland
5 County Sheriff's Department back on July 29, 2015?

6 A. I was on the Community Action Team.

7 Q. And what were your duties and responsibilities for the
8 Community Action Team?

9 A. With the Community Action Team we're responsible for
10 going to basically all of the community meetings in our
11 designated area identifying crime trends and other ways to
12 combat crime.

13 Q. And does that also require you to patrol the Broad
14 River Road area and make routine traffic stops?

15 A. Yes. My area of responsibility was Broad River.

16 Q. And were you patrolling the Broad River area the day
17 of July 29, 2014?

18 A. Yes, I was.

19 Q. And at some point did you stop Nickilous Wallace and
20 Brandon Berry for a traffic violation?

21 A. I did.

22 Q. Can you, please, describe that?

23 A. I observed a vehicle with two occupants about to take
24 a left onto and Broad River. When they noticed
25 me, they both put their seatbelts on and proceeded down

1 and that's when I initiated a traffic stop.

2 Q. And how did you initiate the traffic stop?

3 A. I got behind the vehicle and turned on my blue lights.

4 Q. And did they eventually pull over?

5 A. They pulled over into

6 Q. And who was the driver of that vehicle?

7 A. The driver was Nickilous Wallace.

8 Q. And where was Brandon Berry located?

9 A. He was in the passenger seat.

10 Q. So once you pulled over the vehicle, what did you do
11 next?

12 A. I pulled over the vehicle and I made contact with
13 Mr. Wallace and requested his driver's license,
14 registration and insurance.

15 Q. Did you also request Brandon Berry's information?

16 A. As I recall, I did.

17 Q. And after you requested their information, what was
18 the next step on the traffic stop?

19 A. Both of them had their ID's on them, so I returned to
20 my vehicle and began to check them through our DMV system
21 and also run them for warrants.

22 Q. And how long does that process usually take?

23 A. Depending on how fast the warrant division is,
24 anywhere between -- it could take five to ten minutes.

25 Q. Did any other officers assist you that day?

1 A. Deputy Owens.

2 Q. When did he show you up?

3 A. He showed up a few minutes after I returned to my car
4 when I was running their information.

5 Q. And did you speak with Deputy Owens at all?

6 A. I did.

7 Q. And what is the normal interaction with you and Deputy
8 Owens on a traffic stop like that?

9 A. Just basically whoever gets there second usually is
10 the primary backup officer, you know. So normally if I
11 were to respond to his traffic stop, I would go up to the
12 vehicle and just observe activity inside the car.

13 Q. And once you ran their information, what did you do
14 next?

15 A. After I ran their information and they were clear with
16 warrants, I went and made contact back with Mr. Wallace.

17 Q. And at this point what did you observe, possible
18 violations?

19 A. Violation-wise, Mr. Wallace was not able to offer his
20 insurance information. He did not have -- he was not in
21 possession of the insurance card from what I recall and
22 also there was a -- I guess I would say a toddler in the
23 back seat not secured either in a seatbelt or a car seat.

24 Q. So lack of insurance, a toddler, no seatbelt. Any
25 other possible violations that you observed?

1 A. Not as I recall violations. I recall their -- some of
2 their actions.

3 Q. Describe their actions.

4 A. Both of them were extremely nervous. Mr. Wallace was
5 visibly shaking, as well as Mr. Berry. Mr. Berry also was
6 doing the majority of the talking when I was -- when I
7 first made initial contact with them, he was doing most of
8 the talking, and being a passenger I found that as odd.

9 Q. The Defendant was doing most of the talking over
10 Nickilous Wallace, the driver?

11 A. Yes.

12 Q. And, quickly, are you familiar with Brandon Berry or
13 Nickilous Wallace?

14 A. I was not familiar with Nickilous Wallace, but,
15 however, I was familiar with Brandon Berry.

16 Q. How were you familiar with Brandon Berry?

17 A. At the time of this traffic stop, we were basically
18 given several people to, I guess, look out for around the
19 area, they were a person of interest in a shooting trend
20 that was going on on Broad River Road, and Mr. Berry was
21 one of them.

22 Q. And who were you given that information by?

23 A. From what I recall, it was the gang task force.
24 Richland County Gang Task Force.

25 Q. And this was based on a series of shootings going back

1 and forth in that area?

2 A. Yes, in the , area. Basically
3 we were told they were gang-related shootings.

4 Q. And based on their behavior, the nervousness, him
5 doing all of the talking, did you have any suspicion that
6 there may be other crimes afoot?

7 A. Yes. I mean, it did raise my suspicions. I also
8 informed my partner that Mr. Berry was in the car. We were
9 both familiar with Mr. Brandon Berry at that time.

10 Q. Deputy Owens was also familiar with Brandon Berry?

11 A. Yes.

12 Q. So going back to the traffic stop, you ran their --
13 Nickilous Wallace and Brandon Berry's information through
14 the system, you then go back to the driver's side. Did you
15 at some point before that speak with Deputy Owens?

16 A. Yes, I did.

17 Q. What was the nature of that discussion?

18 A. I spoke to him at the rear of the vehicle and
19 basically -- a lot of times the backup officer can observe
20 things that maybe I didn't observe, so we take a quick a
21 five or ten seconds to talk about if he saw anything and
22 that's what we talked about at the back of the car or the
23 rear of the vehicle.

24 Q. And did he relay to you what he observed?

25 A. Yes, he did.

1 Q. And what did he observe?

2 A. He told me he observed the same nervousness from both
3 of them and also he said that he -- there was possibly
4 maybe marijuana shavings in the center console -- on the
5 center console in plain view, as well as a pair of tweezers
6 as sometimes is commonly used when you use marijuana. And
7 he also told me he believed there was a gun in the car as
8 well.

9 Q. Did you or -- I'll just focus on you. Did you observe
10 any signs of impairment by the driver?

11 A. I did. Once I had Mr. Wallace -- once I told him to
12 get out of the car.

13 Q. What were the signs of impairment that you observed?

14 A. I guess he had just really bloodshot eyes, just
15 talking very slow. Nothing, you know, as far as -- I
16 didn't get to go into too much depth.

17 Q. Now I want to go to the two-year-old child in the back
18 seat. Did you observe a car seat in the back seat?

19 A. I did not.

20 Q. How was the child sitting in the back seat?

21 A. From what I recall, the child was not sitting in the
22 back seat at all. When I walked up, it was kind of in the
23 back seat just moving back and forth. You know, it wasn't
24 buckled in from what I recall or anything.

25 Q. Not restrained in any way?

1 A. No.

2 Q. So at some point you got Nickilous Wallace outside of
3 the vehicle. Can you describe what happened then?

4 A. I asked Mr. Wallace if he minded talking to me outside
5 the car and he said he didn't and he stepped out.

6 Q. Let me real quick -- you asked him rather than
7 ordering him out?

8 A. Yes, I asked him to step out.

9 Q. Once you asked him out of the vehicle, what was the --
10 what did you talk to him about?

11 A. I asked him about his bloodshot eyes, you know, and
12 asked him is there a reason they were so nervous -- or he
13 was so nervous. I did question him about if he maybe used
14 marijuana or smoked marijuana in the vehicle or in the
15 past, stuff like that.

16 Q. And once you asked him about the impairment, the
17 insurance, did you ever get his insurance or figure out
18 whether he was insured?

19 A. I did not.

20 Q. And after you asked him that series of questions, what
21 did you talk to him about next?

22 A. I asked him if he had anything illegal inside of his
23 car, which he replied no, he did not. I asked him if he
24 had anything illegal on his person and he said he did not,
25 and then I requested if he minded if I made sure, and he

1 said he did not mind.

2 Q. He provided -- did he provide consent to search his
3 vehicle?

4 A. Yes, himself and his vehicle.

5 Q. And at that point what happened?

6 A. When I went to search Mr. Wallace, I could see my
7 partner kind of yell my name and I observed Mr. Brandon
8 Wallace -- or, excuse me, Brandon Berry get from the
9 passenger side of the vehicle into the driver's side of the
10 vehicle and he took off.

11 Q. How fast would you say he took off?

12 A. It took me a second to catch up with him. It wasn't
13 slow. I'd say he got up to thirty-five, forty miles per
14 hour inside the apartment complex.

15 Q. And did you lose sight of him at any point during
16 this?

17 A. I could -- not really. I could see the turns he made
18 and then once I got up with the car, I could see him
19 running.

20 Q. Once you got up to the car and you could see him
21 running out of the vehicle, could you see him carrying
22 anything?

23 A. It seemed like he had his hands in front of him as he
24 was -- as if he was carrying something, but I don't --

25 Q. Once you observed him running, what did you do next?

1 A. I got out of the vehicle and chased after him.

2 Q. How far a behind were you when you were chasing him?

3 A. Probably anywhere between -- I would say between ten
4 and thirty yards, you know, during the whole entire foot
5 chase.

6 Q. And you had eyes on him the whole time?

7 A. Yes.

8 Q. And what did you observe during the foot chase?

9 A. I observed him discard a black object, you know, maybe
10 a -- I don't know what it was. It was just a big, black
11 object. It looked like a bag. He threw it over a fence
12 behind the

13 Q. So you saw him toss a black bag. Did you see where it
14 landed?

15 A. I didn't see where it landed. I just saw it go over
16 the fence.

17 Q. Okay. And once you saw him toss that bag, what did
18 you do next?

19 A. I continued chasing him. We went around several
20 buildings. I attempted to deploy my TASER and it was
21 ineffective and he jumped over -- tried to jump over a
22 fence and I was able to get on top of the fence with him
23 and basically I just grabbed his lower body. We were
24 struggling on top of the fence for a little while until
25 backup arrived.

1 Q. Okay. Were you able to place him under arrest?

2 A. Yes.

3 Q. Did Deputy Owens assist you with that arrest?

4 A. He didn't assist me with the chase. He stayed with --
5 stayed with Wallace.

6 Q. Once you placed him under arrest, what did you do
7 next?

8 A. After I placed him under arrest, I went back to
9 retrieve -- I went back to the area where I saw him throw
10 the object. I observed, from what I recall, a black bag on
11 the ground that I recovered.

12 Q. And that was in the same area in which you saw him
13 toss the bag?

14 A. Yes.

15 Q. Did you secure that bag?

16 A. I did.

17 Q. Did you take any pictures of it at that time?

18 A. I did not. I don't believe so.

19 Q. What was inside that bag?

20 A. Inside of that bag was, from what I recall, two masks,
21 zip cuffs, like, I guess, zip ties, gloves and shirts.

22 Q. And did you recover any other bag?

23 A. There was another bag that was on top of the balcony
24 that me and Owens recovered later on.

25 Q. Y'all recovered that together?

1 A. Yes.

2 Q. And you said you recovered that later on. How later
3 on was that?

4 A. Within a few minutes. Well, not a few minutes. I'd
5 say like ten minutes or so.

6 Q. And what led you to believe there was another -- a
7 second bag?

8 A. Well, I brought that bag back and Deputy Owens
9 informed me that that wasn't the same bag he saw him with
10 on the traffic stop. He said that there's another bag
11 somewhere and I knew there was another bag on top of the
12 balcony.

13 Q. So you learned from Deputy Owens there was a second
14 bag?

15 A. Yes..

16 Q. And then you recovered that bag. What was inside of
17 that bag?

18 A. Inside of that bag there was a handgun, a pistol.

19 Q. And what did you do once you recovered that bag and
20 the pistol?

21 A. We basically secured the weapon and returned to our
22 vehicles.

23 Q. And you turned it over to investigators?

24 A. Yes, it was turned over to investigations.

25 Q. And at that point did that kind of conclude what your

1 role in this was?

2 A. Yes.

3 Q. Anything else you did?

4 A. No, just notifying the investigators and once they
5 responded just turned everything over to them at that
6 point.

7 Q. Did you at any point search the vehicle?

8 A. We, I guess, inventoried the vehicle. We did search
9 it and I inventoried it prior to it being towed to our
10 compound.

11 Q. Did you recover anything relevant inside the vehicle?

12 A. Not that I recall. Nothing else was located.

13 **MR. STEADMAN:** Thank you. No further questions.

14 **THE COURT:** Cross-examination?

15 **MS. ZMROCZEK:** Thank you.

16 CROSS-EXAMINATION (In-Camera)

17 BY MS. ZMROCZEK:

18 Q. Investigator Pennington, you stopped that car because
19 you saw Brandon Berry?

20 A. No, I did not know Brandon Berry was in the car.

21 Q. You did not know he was in the car?

22 A. Not until I made contact with the car and I got his
23 ID.

24 Q. You went to the academy?

25 A. Yes.

1 Q. Graduated?

2 A. Yes.

3 Q. Learned how to write reports?

4 A. Yes.

5 Q. Put everything that's important in your report?

6 A. Yes.

7 Q. Okay. You're a member of the team that parols the
8 streets?.

9 A. Yes.

10 Q. When you turn your blue lights on, your cameras come
11 on?

12 A. Yes.

13 Q. Your body mic is on?

14 A. Yes.

15 Q. They were on at this time?

16 A. Yes.

17 Q. You provided the complete stop that's supposed to --
18 that camera is supposed to run from the time that you
19 initiate your blue lights until the time you drop someone
20 in the sally port or -- or get rid of the victim -- or
21 defendant, correct?

22 A. No, after the traffic stop or whatever I turned off
23 the camera.

24 Q. When did you turn that off?

25 A. I don't recall.

1 Q. Didn't you bring Mr. Berry back to your car after you
2 caught him?

3 A. I don't recall.

4 Q. You don't recall?

5 A. My car was down at the bottom. I mean, it was a while
6 before we brought him back up there.

7 Q. Okay. So whose car was he in? You don't remember?

8 A. I wouldn't have put him in my car because I had the
9 Challenger.

10 Q. Okay. You had the child in it?

11 A. The Challenger. It wasn't a caged unit.

12 Q. Okay. Who had the caged unit?

13 A. One of the other deputies on-scene, I imagine.

14 Q. Okay. So let's go back to this traffic stop. Where
15 were they coming out of on ?

16 A. They weren't coming out of anywhere. They were on
17 Broad River Road.

18 Q. Okay. Were they on or Broad River?

19 A. I observed him on Broad River take a left on
20

21 Q. You didn't see them leave McDonald's?

22 A. No.

23 Q. And when you stopped them, you told them that you saw
24 them put their seatbelts on in the street -- when they got
25 to the street?

1 A. Yes.

2 Q. You asked for their ID's?

3 A. I did.

4 Q. You went back to the vehicle?

5 A. Yes.

6 Q. Your vehicle?

7 A. Yes.

8 Q. And ran them and they both came back clear?

9 A. Yes.

10 Q. Meanwhile, your cell phone is steady ringing?

11 A. No, it wasn't my cell phone I don't believe. I think
12 it was the computer in my car making loud noises.

13 Q. So the computer wasn't ringing, it was just making
14 loud noises?

15 A. It was ringing? I don't --

16 Q. Deputy Owens was calling you, wasn't he?

17 A. No.

18 Q. Okay.

19 **MS. ZMROCZEK:** Your Honor, at this time I'd like to go
20 ahead and play the video for the Court, the entire video,
21 so I can continue down this line of questioning.

22 **THE COURT:** Video of?

23 **MS. ZMROCZEK:** His in-car stop.

24 **THE COURT:** Okay. I don't mind you playing the
25 relevant part. How long is the whole thing?

1 **MS. ZMROCZEK:** It's twenty-two minutes.

2 **THE COURT:** Okay. Fine.

3 **MS. ZMROCZEK:** But let me -- I'll ask a few more
4 questions and then we can play it at the end because
5 maybe --

6 BY MS. ZMROCZEK:

7 Q. Deputy Owens came -- got into your vehicle?

8 A. I don't think he got inside of my vehicle. He came
9 and talked to me. He was my backup officer.

10 Q. Okay. And you told him that you had Brandon Berry in
11 the car?

12 A. I said Brandon Berry's in the car.

13 Q. And all I have is seatbelt?

14 A. Yes.

15 Q. Go see if you can see or smell something?

16 A. Yes.

17 Q. Twice?

18 A. Once, from what I recall.

19 Q. Okay. You were trying to figure out a way to get into
20 that vehicle?

21 A. Yes.

22 Q. You're familiar with the Fourth Amendment?

23 A. Yes.

24 Q. Okay. You didn't see or smell any drugs?

25 A. Not initially.

1 Q. Are you saying that you did later?

2 A. No.

3 Q. Okay. But you never put that in your report, right?

4 A. Unh-unh.

5 Q. Where is it that you said you found the second bag?

6 A. It was on the same back area, like behind the
7 apartment, behind the fence. It was on top of a balcony.

8 Q. On top of a what?

9 A. A balcony.

10 Q. Okay. And you've read your report in this case,
11 right?

12 A. I did.

13 Q. And you included that detail in your report?

14 A. I don't know if it was to that detail.

15 Q. You would agree with me that details help establish
16 what happened that day?

17 A. I would agree with you.

18 Q. Okay. So it's your testimony that it was on a
19 balcony?

20 A. Yes.

21 Q. You estimated his speed got up to what in the
22 apartment complex?

23 A. I estimated he got up to maybe thirty-five or forty.

24 Q. You would agree with me that it was less than half a
25 mile that he travelled?

1 A. Yes.

2 Q. And you never lost sight of him?

3 A. No.

4 Q. And you only saw one bag?

5 A. I only saw him throw one bag. I saw him throw a -- I
6 don't even want to say it was a bag. I saw him throw
7 something, an object.

8 Q. One object?

9 A. I don't know how many. I just saw him throw
10 something.

11 Q. Okay. You would agree with me that the objects
12 weren't found --

13 A. I saw Brandon Berry throw go something.

14 Q. You saw him throw an object is what you testified to
15 several times?

16 A. Yes.

17 Q. Okay. How far away from your vehicle were you when
18 you apprehended him?

19 A. Estimation of three to four hundred yards probably.

20 Q. How far does your cameras and mic work?

21 A. Not far.

22 Q. Are you familiar with how far?

23 A. I don't know how far, no.

24 Q. Okay. At what point did you turn off your mic? Did
25 you come back to your vehicle?

1 A. I don't recall.

2 Q. You don't recall if you ever came back to your
3 vehicle?

4 A. I mean, I know I eventually came back to my car, but
5 I don't know when I actually turned my camera off.

6 Q. Okay. You would agree with me that the camera stops
7 as soon as you start chasing him?

8 A. I would agree that the audio stops when I start
9 chasing him.

10 Q. Okay. And then the camera just continues to roll?

11 A. Yes.

12 Q. Okay. But you were the one who turned it off
13 eventually?

14 A. Eventually.

15 Q. Okay. Do you recall standing -- you testified that
16 you had a discussion with Deputy Owens at the back of the
17 car?

18 A. Yes.

19 Q. You recall saying let's just pull the driver out and
20 scare him?

21 A. I didn't say scare him.

22 Q. Okay.

23 A. Maybe I said pull him out, but I didn't talk to him.

24 Q. You didn't say scare him?

25 A. No, I wouldn't say scare him, no.

1 Q. Okay.

2 MS. ZMROCZEK: Your Honor, those are all the questions
3 I have at this time; however, I would ask that we publish
4 the video to the Court at this time.

5 THE COURT: Go ahead.

6 MS. ZMROCZEK: Okay.

7 THE COURT: For purposes of this hearing, we'll call
8 this Court's Exhibit Number 3.

9 MS. ZMROCZEK: Thank you.

10 (Court's Exhibit Number 3, In-Car Video, was marked
11 for identification.)

12 (Whereupon, the in-car video was played for the
13 Court.)

14 MS. ZMROCZEK: Your Honor, if we may stop it for a
15 minute.

16 THE COURT: Wait just a minute.

17 MS. ZMROCZEK: The issue is, Your Honor, this is not
18 the correct -- this is not the video they turned over to
19 me.

20 THE COURT: Stop it a minute. What was that?

21 MS. ZMROCZEK: This is not the video that they turned
22 over to me, Your Honor.

23 MR. STEADMAN: Judge, I think what she's saying is
24 there -- there was some audio that you were able to hear.
25 For some reason, and I don't understand why, but we can't

1 hear exactly what he's saying. You are able to hear it on
2 the laptop when you play it on the laptop, but for some
3 reason you can't hear it on the television. We can try to
4 play it with a different player so maybe you can hear it.

5 **THE COURT:** So there's some audio at this point on the
6 video -- it's the same video, but there's some audio that
7 you can't hear on the --

8 **MR. STEADMAN:** It's really hard to hear, it's faint in
9 the background because the mic isn't turned up real loud,
10 but you can hear him -- the officer talking with the
11 Defendant and you can hear the Defendant talking and you
12 can also hear the driver talking.

13 **THE COURT:** But you can hear it on the computer if you
14 put it on a computer?

15 **MR. STEADMAN:** Yes, Your Honor.

16 **THE COURT:** All right. All right. I'll review that
17 then. Do you want to stop this at this point and I'll
18 review the computer video?

19 **MS. ZMROCZEK:** That's fine, Your Honor. And if I may
20 submit my video just to make sure that you can -- because I
21 can hear it just fine.

22 **THE COURT:** Ma'am?

23 **MS. ZMROCZEK:** I can hear it just fine. If I could
24 submit the video that I -- as long as I -- I just need to
25 listen to it on the computer before they give it to you to

1 make sure it's the same one that I have.

2 **THE COURT:** Well, I assume it's the same one. It's
3 the same one that's on the computer now, isn't it?

4 **MR. STEADMAN:** Yes, Your Honor. I've watched this one
5 before and on my computer it can play just fine.

6 **THE COURT:** Okay. All right. We'll get to that in a
7 few minutes.

8 All right. Any further questions of this witness?

9 **MS. ZMROCZEK:** No, Your Honor.

10 **THE COURT:** Redirect?

11 REDIRECT EXAMINATION (In-Camera)

12 BY MR. STEADMAN:

13 Q. Deputy Pennington, what is that ringing sound you hear
14 on the tape?

15 A. The ringing is my computer, my in-car computer.

16 Q. So it's not a cell phone?

17 A. No.

18 Q. And why does it ring?

19 A. If we call out on a traffic stop or if we run a person
20 or something like that, it will ring. It's just to notify
21 us that we have a message. So probably what it was, was
22 when I called out on the traffic stop that was dispatch
23 putting me out on the traffic stop and it was ringing in
24 the background.

25 Q. So it was basically messages from dispatch?

1 A. It wasn't a message. It was just -- it was just them
2 assigning me to a call on that traffic stop, so when it
3 does that it makes a ringing noise for some reason.

4 **MR. STEADMAN:** Thank you.

5 **MS. ZMROCZEK:** I have nothing further for this
6 witness, Your Honor.

7 **THE COURT:** All right. All right. Thank you, sir.
8 You may step down.

9 (Witness excused.)

10 **THE COURT:** All right. Any other witnesses on this
11 particular subject with regard to the Defendant's motion to
12 suppress the evidence of the vehicle? The home, we'll wait
13 until in the morning until we hear from the homeowner, but
14 with regard to the -- from the State with regard to the
15 vehicle?

16 **MR. STEADMAN:** No, Your Honor.

17 **THE COURT:** All right. I will review the video that
18 has the audio on it. But, again, Ms. Zmroczek, the defense
19 has the right to present any evidence or testify himself
20 regarding this matter if he wishes to do so.

21 **MS. ZMROCZEK:** It's my understanding, Your Honor,
22 that they said that Deputy Owens was also here today and
23 available, and if he is, I would like to call him.

24 **THE COURT:** All right. Is the deputy available?

25 **MR. STEADMAN:** Yes, Your Honor.

1 **THE COURT:** All right. Call him.

2 **MS. ZMROCZEK:** Thank you, Your Honor.

3 Your Honor, we call Deputy Owens.

4 HENRY OWENS,

5 having been duly sworn, testified as follows:

6 **THE CLERK:** Thank you. Please have a seat on the
7 witness stand and state your full name for the record.

8 **THE WITNESS:** Henry Owens.

9 DIRECT EXAMINATION (In-Camera)

10 BY MS. ZMROCZEK:

11 Q. Mr. Owens, with whom are you employed? With whom are
12 you employed?

13 A. Richland County Sheriff's Department.

14 Q. How long have you been with Richland County?

15 A. Ten years.

16 Q. What's your current job assignment?

17 A. Narcotics investigator.

18 Q. What was your job assignment in -- July 29, 2014?

19 A. Community Action Team.

20 Q. Do you recall the morning of July 29, 2014?

21 A. Yes, ma'am.

22 Q. How did you become involved in this case?

23 A. As the backup officer to Deputy Pennington.

24 Q. Describe your role as a backup officer.

25 A. Being an extra pair of eyes, watch his back, safety,

1 backup officer.

2 Q. How far were you -- how far behind him were you
3 backing him up?

4 A. How long did it take me to get to him?

5 Q. Yes.

6 A. I was just down the street. We were on

7

8 Q. Where had y'all been prior?

9 A. Ma'am?

10 Q. Where had y'all been prior.

11 A. On . . . I think I was down towards

12 Apartments, which is probably, I don't know, two

13 hundred yards down the road.

14 Q. And where was Deputy Pennington?

15 A. I'm not sure. I was on that end of and he
16 was checking apartments on the other end of

17 Q. Okay. And at what point did you know that you needed
18 to go back him up?

19 A. He called out a -- dispatch called out a traffic stop
20 and we try to back up on all traffic stops if we're close
21 to it.

22 Q. At that point did you call him?

23 A. No, I just went to him.

24 Q. Okay. And so you didn't ring his computer?

25 A. Did I ring his computer?

1 Q. Uh-huh.

2 A. I don't know. I could have send him an MDT earlier.

3 Q. Okay. Do you recall when you got into his vehicle and
4 you said it rang twenty times?

5 A. Oh, that might have been either me -- we stay in close
6 contact because we're actually -- we're coworkers, we're
7 both responsible for that side of town, and if he's working
8 one side, I might send him a message or something or call
9 him or something like that and he'll call me back.

10 Q. So if you called twenty times -- if you said it rang
11 twenty times, that would be in reference to you calling him
12 twenty times, right?

13 A. I doubt I actually called him twenty times. I might
14 have been giving him a hard time.

15 Q. Okay. And I certainly -- but you were trying to make
16 contact with him?

17 A. Right.

18 Q. Okay. And what did you do once you got to his
19 location?

20 A. Walked up to him and checked with him at the vehicle.

21 Q. At that point, who did you learn was in the vehicle?

22 A. He informed me that Brandon Berry was a passenger in
23 the vehicle.

24 Q. Brandon Berry was someone y'all were looking for?

25 A. It's somebody we were very familiar with. I'd worked

1 Broad River Road for over eight years at this point in
2 time. We get to know a lot of people on Broad River Road.
3 I mean, I'm not sure how in-depth you want me to tell you
4 about Brandon Berry. That's up to you.

5 Q. I'll ask the question this way. Did you receive the
6 memo that said that he was involved in a bunch of
7 shootings?

8 A. I was actually involved with a lot of that
9 investigation. It was actually in the neighborhood right
10 across from where we were patrolling that day, but, yes, I
11 was -- had knowledge of all of that, him and several other
12 people, involved with those shootings that took place.

13 Q. Is that written down somewhere?

14 A. I believe there was arrests made from those shootings
15 at some point in time.

16 Q. Okay. But he was a suspect?

17 A. He was just involved. It was a large group. If you
18 want me to get into it -- you don't?

19 Q. That's fine.

20 A. Okay.

21 Q. As a result of the conversation that you had with
22 Officer Pennington, what did you do next?

23 A. Next is when I approached the passenger side of
24 Mr. Wallace's car and I spoke with Mr. Berry and
25 Mr. Wallace.

1 Q. What were you looking for?

2 A. I was reading body language. Like I said, I'm
3 familiar with Mr. Berry. I was also familiar with
4 Mr. Wallace. After I made contact with him, I recognized
5 him from a previous traffic stop. So at that point in time
6 from my training and my experience I just try to have
7 small-talk with them, read body language, you know, trying
8 to watch out for myself and my partner. Any clues that I
9 can pick up on is gonna help -- you know, might notify me
10 that something was going wrong, if something was unusual.

11 Q. Okay. And the previous traffic stop with Mr. Wallace,
12 he'd actually had to -- he'd written his insurance
13 information down on an envelope, hadn't he?

14 A. No, I think we were trying to call the insurance
15 company on a previous traffic stop. That was a couple of
16 months prior.

17 Q. And you knew he had insurance. He just didn't have
18 his card?

19 A. No, not necessarily because I don't know that we ever
20 confirmed it.

21 Q. Okay. But you would agree with me that if y'all were
22 talking about it on the video, that's --

23 A. We were talking about it. I never confirmed it. I
24 informed, I believe, during the traffic stop that he needs
25 to make sure he gets his paperwork to verify that he has

1 insurance. I'm not sure that we ever confirmed it on that
2 traffic stop because I believe there were some other issues
3 that came up about -- during that traffic stop that led to
4 different stuff.

5 Q. When did you locate the narcotics in the vehicle?

6 A. Which traffic stop?

7 Q. This -- I'm talking about July 29th.

8 A. Okay. On the July 29th, I saw what I believed to be
9 residue up in front of the gear stick; however, we never
10 really confirmed it due to all of the excitement with the
11 car fleeing from the scene.

12 Q. Did you ever do a report?

13 A. No, I did not do a follow-up to Pennington's report.

14 Q. In fact, did you ever find narcotics in the vehicle?

15 A. We never got to that with everything else that came
16 about.

17 Q. Okay. And when you were talking to Mr. Berry, you
18 were asking -- what kind of things were you asking him?

19 A. Just small-talk; how you doing, what you've been up
20 to, just trying to read body language just so I can tell
21 what his reactions are, whether he's being hostile or
22 whether he's being nice or --

23 Q. And he was compliant?

24 A. Yeah. He seemed to be a little frustrated at the
25 time.

1 Q. And where did you notice his child was?

2 A. She was in the back seat.

3 Q. What was she doing in the back seat?

4 A. Just sitting, moving around, whatever she wanted to
5 because she wasn't strapped in.

6 Q. Okay. And what did you do next?

7 A. I continued to talk to him. I think Deputy Pennington
8 approached back to the car, backed up, keeping view of the
9 vehicle. I talked with Deputy Pennington. He asked me
10 if anything was odd about the situation. I told him that
11 they appeared to be nervous. Mr. Berry had been talking a
12 lot. I told him there might be some residue in front of
13 his gear stick, I told him I saw some tweezers in the car,
14 and due to their body language, heavy breathing and the way
15 they were acting, I thought that there might be more to
16 that traffic stop than just the car seatbelt and child
17 restraints.

18 Q. And at some point tell -- at some point you went
19 around to the driver's side?

20 A. This is after we re-approached the vehicle. Deputy
21 Pennington had asked Mr. Wallace to step out of the vehicle
22 at that point. They had walked towards the back of the
23 vehicle; however, when he stepped out of the vehicle he
24 left the driver's side door open.

25 Q. And what did you notice next?

1 A. I was continuing to actually have a conversation with
2 Mr. Berry, some more small-talk. Mr. Berry kept fidgeting
3 in the back seat with his four-year-old daughter. He also
4 had a black bag that he kept fidgeting with, which I
5 observed him going into. I saw there were some baby items
6 in there while he was going into it. About that time
7 another vehicle was coming around and that's when I
8 back-stepped around the car and shut the drivers's side
9 door.

10 Q. And -- so you saw the black bag in the vehicle?

11 A. Yes, ma'am.

12 Q. And what happened next?

13 A. I backed around to go to the back side of the door,
14 then shut the door so that the vehicle could get back, the
15 oncoming traffic. When I was doing that, that's when
16 Mr. Berry hopped from the passenger seat into the driver's
17 seat and took off. At that point, I hollered back at
18 Deputy Pennington. I said go. You know, I walked back to
19 where Mr. Wallace was standing. Due to officer safety, I
20 detained Mr. Wallace. I could hear Deputy Pennington and
21 Mr. Berry as they were making their way to the back of the
22 complex with tires squealing until they got to the stopping
23 point.

24 Q. I'm sorry, you said you heard their tires squealing?

25 A. I heard them cutting the corners because it's like a

1 Z-turn almost in there. You could hear the tires turning
2 as they were turning through there. I monitored on the
3 radio with Mr. Wallace and I stayed with him while Deputy
4 Pennington pursued Mr. Berry.

5 Q. And when did you see Mr. Berry next?

6 A. The next time I saw him I believe was at
7 after he had been detained.

8 Q. Who detained him?

9 A. I wasn't there. He was already detained by the time I
10 got there. I can tell you who I know detained him, but --

11 Q. Yeah.

12 A. Okay. I believe it took three officers to detain
13 Mr. Berry.

14 Q. You recall do who else -- who else was there?

15 A. I think Deputy Pennington had stopped him on the fence
16 and then I believe that there was a Deputy Gilbert that was
17 in the area and a Corporal Tapler, I believe.

18 Q. Corporal who?

19 A. Tapler.

20 Q. Okay. And whose vehicle did Mr. Berry get detained
21 in?

22 A. I'm not sure because we had a long walk --

23 Q. I'm sorry?

24 A. It was about a two hundred yard run because he
25 actually ran to the apartment complex that I was at

1 previously before the traffic stop, but we had a long walk
2 back to the car.

3 Q. So he ran -- okay. He ran through --

4 A. He ran -- he parked in the back of

5 complex and he ran from that apartment complex
6 through the woods, which is a cut that goes from

7 and goes behind -- I think it's

8 There's a neighborhood, a subdivision, in between,

9 and . He ran behind that and then to
10 the back side of and he actually
11 -- I think he ran around some buildings inside of

12 and they detained him along a fence line
13 at

14 Q. Okay. And you don't know whose car he ended up in?

15 A. No, I have no idea.

16 Q. As a backup officer, you learned in the academy to
17 document what happened that day?

18 A. Do I go to the academy to learn how to document what
19 happens?

20 Q. When you go to the academy, you learn how to write
21 reports?

22 A. Right. They teach us how to write reports.

23 Q. Okay. And you just didn't write one on this day?

24 A. No, not as backup officer. What I had done at the
25 scene was all pretty much following Deputy Pennington's

1 lead.

2 **MS. ZMROCZEK:** Thank you. Please answer any questions
3 Mr. Steadman has.

4 **THE COURT:** Anything further?

5 **MR. STEADMAN:** No, Your Honor.

6 **THE COURT:** No cross-examination?

7 **MR. STEADMAN:** No, Your Honor.

8 **THE COURT:** Okay. All right. Thank you, sir. You
9 may step down.

10 (Witness excused.)

11 **THE COURT:** All right. Ms. Zmroczek, do you want to
12 -- any other testimony on this issue from the defense
13 standpoint?

14 **MS. ZMROCZEK:** No, Your Honor. We would just ask that
15 you reserve -- watch the video before we get to it.

16 **THE COURT:** I'll do so.

17 **MS. ZMROCZEK:** Thank you.

18 **THE COURT:** All right. So the matters that we've been
19 considering, the motion to suppress the evidence received
20 out of the vehicle and the motion to suppress the evidence
21 received from the home, I'm gonna hold off on a ruling on
22 the home matter until we've heard from the witness
23 tomorrow. Also, until I've had a chance to review the
24 video on the computer, which I will do. So we'll move on
25 to the next matter. Do you have a motion to suppress the

1 video? That's what you said in the e-mail. What's that
2 about?

3 **MS. ZMROCZEK:** Yes, but it appears, Your Honor, that
4 I'm going to have to use it to impeach, so I would withdraw
5 that motion at this time.

6 **THE COURT:** All right.

7 **MS. ZMROCZEK:** I do have one more motion, Your Honor,
8 based on the testimony of Officer Pennington. Your Honor,
9 at this time we would move to -- in limine to prohibit,
10 unless and until Mr. Berry gets on the stand, any reference
11 to any gang activity. Also I've never been provided --
12 these officers testified that there's either some memo or
13 that Mr. Berry was a suspect in some other shootings. I've
14 never been provided any of that information. The first I
15 heard that was in your office this morning and now there's
16 been some -- some conflicting testimony as to what his
17 involvement was, so, Your Honor, at this time we would move
18 in limine to prohibit any mention of him being suspected in
19 any robberies or burglaries or shootings or whatever they
20 call them, as well as any gang activity, unless and until
21 he takes the stand.

22 **THE COURT:** Well, you're not -- is the State
23 contending any prior bad acts or anything of that nature?

24 **MS. CAMPBELL:** No, sir, unless she opens the door --

25 **THE COURT:** Right.

1 **MS. CAMPBELL:** -- then we would go into it. However,
2 we do not intend to go into it.

3 **THE COURT:** All right. Well, caution your witnesses
4 against that.

5 **MS. CAMPBELL:** We'll caution our witnesses, but if
6 she's going to -- depending on what she does in front of
7 the jury.

8 **THE COURT:** Sure. Depending on what the testimony is,
9 but caution your witnesses that it would be error that
10 could cause a mistrial if they refer to gang activities or
11 prior bad acts or evidence by this Defendant until either
12 he testifies or the door has been opened.

13 **MS. CAMPBELL:** Yes, sir. We did elicit it for
14 purposes of this hearing so you could understand why they
15 were doing what they did.

16 **THE COURT:** Okay. All right. And while we're -- so
17 that's where we stand on that, Ms. Zmroczek, but let me ask
18 you about this. You had a motion to exclude the firearm
19 testimony and a motion to exclude the footwear comparisons.
20 I assume that is challenging the evidence of the expert
21 testimony; is that correct?

22 **MS. ZMROCZEK:** Correct, Your Honor.

23 **THE COURT:** All right. Is that under State versus
24 Council and are you challenging the qualifications or the
25 testimony itself?

1 **MS. ZMROCZEK:** Well, to this point I've not been
2 provided any qualifications, so, one, I would ask that they
3 provide that information to me so that I could then address
4 that issue. I think that it could be probably done in a
5 very brief pre-trial -- I mean, a hearing --- in-camera
6 hearing. Sorry.

7 **THE COURT:** What's the status of the experts at this
8 point as far as attendance is concerned, Ms. Campbell?

9 **MS. CAMPBELL:** Your Honor, we can have them here in
10 the morning.

11 **THE COURT:** Okay.

12 **MS. ZMROCZEK:** It's gonna be a busy morning, Your
13 Honor.

14 **THE COURT:** Well, that's why I told the jury not
15 to come back until 11:00 so that we could take care of
16 everything. Let's have them here in the morning and we'll
17 find out if you challenge -- under State versus Council
18 whether or not you're challenging the testimony or the
19 qualifications or both and then, if necessary, we'll have
20 an in-camera hearing to determine that.

21 **MS. CAMPBELL:** And that's just to the firearm and the
22 footwear?

23 **MS. ZMROCZEK:** And the DNA.

24 **THE COURT:** Oh, and the DNA? I thought --

25 **MS. ZMROCZEK:** They told me that he would be here in

1 the morning as well to testify, but he couldn't be here
2 today.

3 **MS. CAMPBELL:** I told him he could be available if she
4 needed him, but then you ruled on that matter so I didn't
5 think it was necessary.

6 **THE COURT:** Yeah, and I thought that -- well, I ruled
7 on the question of her motion to suppress the DNA evidence
8 based on Brady and Rule 5. I didn't rule on it with regard
9 to the expert.

10 **MS. CAMPBELL:** We'll have him here, too.

11 **THE COURT:** Okay. So we'll have to -- we're gonna
12 have to decided on all the -- you've got three separate
13 expert witnesses; one for the DNA, one for the firearm and
14 one for the footwear comparisons. And be sure to keep the
15 testimony succinct to the issues under Brady and State
16 versus Council.

17 All right. So it seems -- and y'all tell me if
18 there's anything else. The things that we need to be ready
19 -- to prepare to address in the morning are the vehicle,
20 the items seized as a result of the vehicle stop, and
21 that's dependent upon my viewing the video, the items
22 seized as a result of the home search; and that, in your
23 view, Counsel, is dependent upon the homeowner's testimony?

24 **MS. ZMROCZEK:** That's correct, Your Honor.

25 **THE COURT:** Okay. And then the other three matters

1 all have to do with qualifications of or the content of the
2 experts' testimony on firearm, footwear and DNA.

3 **MS. ZMROCZEK:** That's correct.

4 **THE COURT:** And anything else that you know of?

5 **MS. ZMROCZEK:** Not that -- no, Your Honor. I did
6 provide them with a witness list. They're familiar with
7 all of the witnesses. Maybe they're not familiar with
8 Ms. Destiny Katio, who's the sister of the homeowner, and
9 I will provide them a date of birth if they need to run a
10 rap sheet. I have not to this point been provided any
11 information regarding -- under Lyle for any of their
12 witnesses. I would just ask if they had any rap sheets or
13 -- they would just provide me that they have clear rap
14 sheets.

15 **THE COURT:** Will you take care of that, Ms. Campbell?

16 **MS. CAMPBELL:** Yes, sir.

17 **THE COURT:** Okay. All right. Anything else that we
18 need to address this afternoon?

19 **MS. CAMPBELL:** Your Honor, one other matter. Before
20 she puts up the -- Ms. Katio tomorrow on the one issue,
21 our victim witness person was present when I talked to her
22 last week. She's in the courtroom. Does she need to be
23 sequestered for her testimony? She's here in an official
24 capacity.

25 **THE COURT:** What's your position?

1 **MS. ZMROCZEK:** Well, Your Honor, they -- here's my
2 problem; is that Ms. Walker was the one who relayed that
3 information to me, it wasn't written down, it wasn't in an
4 e-mail, and I wasn't told that anyone else was present at
5 the time. I would request just for that that -- I know
6 that they have several victim advocates upstairs. That
7 just for the duration of Ms. Katio's testimony regarding
8 this issue tomorrow, and what the victim advocate heard or
9 didn't hear, that she just be sequestered for that portion
10 and that's it.

11 **THE COURT:** Okay. We'll take care of that.

12 **MS. CAMPBELL:** That's fine.

13 **THE COURT:** All right. The other thing is I would
14 like for you to both to be in a position to give me some
15 authority on the standing question in the morning.

16 **MS. CAMPBELL:** Yes, sir.

17 **THE COURT:** As far as the -- as far as the home is
18 concerned and it seems like to me also maybe you've got
19 that same question on the vehicle. The vehicle is not
20 owned by the Defendant; is that right?

21 **MS. ZMROCZEK:** It's my -- and, Your Honor, it's my
22 understanding -- and I'll have Mr. Wallace here tomorrow.

23 **MS. CAMPBELL:** At this point nothing was found in the
24 vehicle.

25 **THE COURT:** Ma'am?

1 **MS. CAMPBELL:** Nothing was found in the vehicle.

2 **THE COURT:** I was gonna say nothing was found in the
3 vehicle, so there's really nothing --

4 **MS. ZMROCZEK:** Right, right.

5 **THE COURT:** So there's no search issue there. The two
6 things that were found there were over the fence --

7 **MS. CAMPBELL:** Over the fence and on the balcony.

8 **THE COURT:** Okay. All right. We've got a jury coming
9 in at 11:00. Let's try to be ready to convene at 9:30 in
10 the morning and get those taken care of in that hour and a
11 half before the jury gets here. I don't want to keep -- I
12 don't want to keep the jury waiting any longer than we
13 absolutely have to. I try to make it a point never to keep
14 juries waiting in that little room back there, so we'll try
15 to do that as best we can.

16 Anything else before we adjourn for the afternoon?

17 All right. We'll be in recess until 9:30 tomorrow morning.

18 (Whereupon, the proceedings were concluded for
19 November 30, 2015, at 4:21 PM.)

20 (The following proceedings were held on December 1,
21 2015, beginning at 9:43 AM.)

22 **BAILIFF:** All rise. Court come to order, please.

23 **THE COURT:** Thank you. Please be seated.

24 (State's Exhibit Number 3 through 126 were marked for
25 identification.)

1 **THE COURT:** All right. We are back on the record with
2 regard to the matter of the State versus Brandon Berry.
3 Mr. Berry is present with his counsel. The State is
4 present and represented by the Fifth Circuit Solicitor's
5 Office. This morning the object, until 11:00 when the jury
6 comes in, is to clear up the remainder of the matters that
7 we had not finished yesterday afternoon and the first one
8 that I have is with regard to the motion to suppress the
9 evidence in reference to the vehicle and the home.

10 I don't remember -- were there other witnesses that
11 were going to be presented in that connection? I believe
12 there was or did you wish to eliminate that?

13 **MS. ZMROCZEK:** There was and they are here, Your
14 Honor. They are here to testify.

15 **THE COURT:** All right. Proceed.

16 **MS. ZMROCZEK:** Thank you. Your Honor, at this time
17 we would call Lourisa Katio. Are they calling her? Have
18 they rested? I'm not sure, so -- I apologize.

19 **THE COURT:** I thought that you had already
20 presented --

21 **MS. ZMROCZEK:** Yes. It's Lourisa Katio. And, Your
22 Honor, I'm a one-man show, so I have to go out and get my
23 own witnesses. I apologize.

24 **THE COURT:** Okay.

25 LOURISA KATIO,

1 having been duly sworn, testified as follows:

2 **THE CLERK:** Thank you. Please have a seat on the
3 witness stand and state your full name for the record.

4 **THE WITNESS:** Lourisa Katio.

5 DIRECT EXAMINATION (In-Camera)

6 BY MS. ZMROCZEK:

7 Q. Good morning, Ms. Katio.

8 A. Good morning.

9 Q. Have we spoken before?

10 A. Yes.

11 Q. When did we first speak?

12 A. Saturday.

13 Q. Okay. And how are you involved in this case?

14 A. I'm the baby's mother.

15 Q. Okay. So you're the mother of B.K. ?

16 A. Yes.

17 Q. Okay. And do you recall Tuesday, July 29th?

18 A. Somewhat, yes, ma'am.

19 Q. Okay. Were you -- how were you brought to the --
20 were you ever brought to where -- the location where your
21 daughter was?

22 A. Yes.

23 Q. How did you get there?

24 A. I was at work that morning and I received a phone call
25 saying that my daughter and Brandon was with the police.

1 Q. Okay. How long did it take you to get down there?

2 A. Like twenty minutes.

3 Q. Who did you ride with?

4 A. Myself.

5 Q. And who did you see when you got there?

6 A. Just the police officers at first.

7 Q. Do you recognize any of the police officers that you
8 saw?

9 A. Yes.

10 Q. Who do you recognize?

11 A. (Indicating.)

12 Q. This gentleman sitting right here?

13 A. Yes.

14 **MS. ZMROCZEK:** For the record, Your Honor, she's
15 pointing to Investigator --

16 **THE COURT:** All right. The record will so reflect.

17 **MS. ZMROCZEK:** The name just left my mind.

18 **INVESTIGATOR CARWELL:** Carwell.

19 **MS. ZMROCZEK:** Carwell. Thank you.

20 BY MS. ZMROCZEK:

21 Q. Did you speak to Investigator Carwell?

22 A. Yes.

23 Q. What did you tell him?

24 A. When I first got there, I told him -- he was like,
25 you know, is this your child? I said yes, it's my child,

1 and he was letting me know that they were in a serious
2 situation, and then I said okay. I tried to get my
3 daughter and when I tried to get my daughter, he was like
4 that he would call -- he would have to get DSS involved if
5 I couldn't provide a place -- you know, a safe place for
6 her.

7 Q. So then what did you say?

8 A. So when he said that, I said so I can't get my
9 daughter? Then my sister came and my stepfather met me
10 down there at the site and I was like so I can't get my
11 daughter without DSS, and he said no.

12 Q. Did you eventually -- so he said you can't get your
13 daughter without DSS?

14 A. Uh-huh.

15 Q. Did that change?

16 A. Yes. Because he asked me where did I live, I said
17 . He said is Brandon's stuff there, I said yes,
18 and then he said well, if I can prove that it's a safe
19 place, I'll -- you know, I can let the baby go. He said --
20 I said sure, you know, there's nothing here, and that's
21 what I said, there's nothing here. And so we went to the
22 house and that's when my sister, my step-daddy -- actually
23 my step-daddy was talking to him, too. It was my sister,
24 my step-daddy and me. Me and my sister rode together, my
25 step-daddy rode in different car, and him and another guy

1 rode together.

2 Q. And where was your daughter at that point?

3 A. At that point he said that she could ride with us.

4 Q. So once you gave them permission to check out your
5 house --

6 A. Uh-huh.

7 Q. -- then they gave your daughter back?

8 A. To -- yeah, once -- yeah, we got there and --

9 Q. Let me talk to you a little bit about Brandon. They
10 asked if his stuff was there?

11 A. Uh-huh.

12 Q. Did he live there?

13 A. On occasion. Just like I told them, sometimes.

14 Q. Okay. Sometimes. More than half the year or not?

15 A. Yeah. If we were in a relationship, yes, ma'am.

16 Q. And at that time y'all were in a relationship?

17 A. In and out, yeah.

18 Q. Did he have a key?

19 A. Sometimes, yeah.

20 Q. Did he have a key -- did he spend the night that
21 night?

22 A. Yes.

23 Q. Okay. And he had stuff -- his personal items in your
24 house?

25 A. Yes.

1 Q. Okay. How many times that month did he spend the
2 night?

3 A. Probably he may -- he was there more than he wasn't
4 there.

5 Q. Okay. That's fine. Have I told you how to answer
6 these questions?

7 A. No. You said tell the truth.

8 Q. All right. When you got to the location, when you got
9 back to your house --

10 A. Uh-huh.

11 Q. -- then what happened?

12 A. Then that's when like me, my sister and my grandmother
13 and -- and my step-dad was there. My grandmother met us
14 there because she was on the lease. I discussed that me
15 and my grandmother was on the lease --

16 Q. Okay.

17 A. -- so my grandmother met us there. I did tell
18 Mr. Carwell that my grandmother did not live there.

19 Q. Okay.

20 A. And then he asked -- he even told my grandmother, he
21 said I'm just -- because she said may I ask why you're
22 here. He said I'm just making sure this is a safe place
23 for B.K. I'm just looking for another weapon.

24 Q. Just looking for another weapon, just making sure it's
25 a safe place?

1 A. For B.K. , right.

2 Q. Did you want to let them search?

3 A. I was willing to, yes, ma'am.

4 Q. Okay. Were you willing to if they were gonna call
5 DSS?

6 A. Yes, I was willing to do anything to get my child
7 back.

8 Q. Okay. That's my question.

9 A. Anything to --

10 Q. You were willing to do anything to get your child
11 back?

12 A. Yes.

13 **THE COURT:** All right. It's your witness.

14 **MS. ZMROCZEK:** Okay.

15 BY MS. ZMROCZEK:

16 Q. Okay. How long did they search?

17 A. Maybe fifteen, twenty minutes. Not that long.

18 Q. Okay. Did they find any weapons?

19 A. No.

20 Q. Where did they look?

21 A. On top of the refrigerator, in my room, in the living
22 room, on the balcony.

23 Q. And they -- they were in your room?

24 A. Uh-huh.

25 Q. Whose stuff was in that room?

1 A. Half of Brandon's -- a little bit of Brandon's stuff
2 was in that room, but mainly Brandon's stuff was in the
3 living room.

4 Q. Okay. When he stayed there, where did he stay?

5 A. He would sleep with me sometimes.

6 Q. In your room?

7 A. Uh-huh.

8 Q. And the night before had he done that?

9 A. Yes.

10 Q. Okay.

11 **MS. ZMROCZEK:** Those are all the questions I have at
12 this time for this matter.

13 **THE COURT:** Cross-examination?

14 CROSS-EXAMINATION (In-Camera)

15 BY MS. WALKER:

16 Q. Good morning.

17 A. Good morning.

18 Q. My name's Meghan. I'm sorry. You and I haven't met
19 before?

20 A. No, ma'am.

21 Q. When was the last time you spoke to Brandon?

22 A. Around our child support date. It was around -- it
23 maybe was a month ago.

24 Q. So you've spoke to him sometime in early November and
25 you haven't spoken to him since then?

1 A. Yeah, and I let him know -- and I also just let him
2 know that they placed child support on him.

3 Q. And that was in early November?

4 A. Yeah, this month.

5 Q. Uh-huh. Okay.

6 A. Not December, but November. Sorry.

7 Q. I understand. I think you said on direct examination
8 that he spent the night with you that night?

9 A. Uh-huh.

10 Q. Do you remember giving a statement to law enforcement?

11 A. Yes.

12 Q. Okay. Do you remember telling law enforcement that
13 he did not spend the night there and that he showed up
14 sometime in the early morning hours around 5:00 in the
15 morning?

16 A. Yes, but we was trying to -- I thought that was she
17 asking -- because if he was out, then he couldn't have -- I
18 guess -- can I explain what I was saying?

19 **THE COURT:** Yes, ma'am. She asked you a question.
20 You've got to answer her question and it's got to be
21 responsive to the question. Ask your question again.

22 **BY MS. WALKER:**

23 Q. Do you remember telling law enforcement that he got to
24 your house around 5:00 in the morning?

25 A. Yes, I did tell law enforcement, but Brandon had left

1 like, I'd say, at nine, ten. I did let Mr. Carwell know
2 that I did not know exactly what time because I was asleep.

3 Q. You didn't know exactly what time he left or what --

4 A. He got back. I just told you what time he came --
5 like, left, nine or ten, but I didn't know exactly, like,
6 precise what time he got in.

7 Q. But do you remember saying it was 5 AM?

8 A. Yes, but when he asked me that question -- when he
9 asked me what time -- about what time, I did say 5 AM, 6:00
10 to make sure that he was there to get my child before I
11 left for work.

12 Q. Okay. And on the -- you got a phone call saying you
13 need to come get your child?

14 A. Uh-huh.

15 Q. There's been an accident or there's an issue?

16 A. Uh-huh.

17 Q. Okay. Who called you?

18 A. Kayla.

19 Q. Who's Kayla?

20 A. Maybe his girlfriend, baby momma.

21 Q. This is another woman?

22 A. Uh-huh.

23 Q. Okay. Calls you, you need to come get your child?

24 A. (Nods head.)

25 Q. At that point in time, were you aware that your child

1 had been in a dangerous situation? Once you got there.

2 A. I found out for detail once I got there, but she --
3 she told me to come and get my child.

4 Q. And at that point did you realize that the child had
5 been in a police pursuit, unbuckled in the back seat of a
6 car?

7 A. No.

8 Q. Did you learn that while you were on the scene?

9 A. Yes.

10 Q. Okay. Did you learn that there had been a gun in the
11 back seat with the child in a diaper bag?

12 A. When I got to the scene, yeah.

13 Q. And at that point in time law enforcement told you
14 that they needed to make sure that the child is going to a
15 protective home from this environment?

16 A. Correct.

17 Q. And that they wanted to make sure that wherever the
18 child was going was going to be a safe place?

19 A. Yes.

20 Q. And, if not, that they would have to call DSS?

21 A. He didn't say if not because I asked can I get my baby
22 back.

23 Q. Right.

24 A. But I'm assuming that, yeah, that's maybe why he said
25 that, but he did not say that. He said DSS first.

1 Q. I'm sorry. I don't understand what you're saying.

2 A. He said -- he said where do you stay. I said

3 . He said -- and then I said can I get my baby
4 back. He said I have to call DSS. I may have to call DSS.

5 Q. He said I may have to call DSS?

6 A. Uh-huh.

7 Q. And then he asked you where you lived?

8 A. Yes, and was Brandon's stuff there, and then that's
9 when he went off and said that I needed to make sure that
10 this is a safe place, can I come, sure.

11 Q. And you told him he could?

12 A. Yes.

13 Q. And you signed consent?

14 A. I did sign, yes.

15 Q. Okay.

16 A. I signed.

17 Q. And in your statement, do you remember talking to them
18 about giving consent in the statement you gave police?

19 A. Yes, I told them I'd do anything to get my baby back.
20 That's basically it.

21 Q. And you didn't have anything to hide at that point?

22 A. No.

23 Q. And in terms of where Brandon lived, was his name on
24 the lease?

25 A. No.

1 Q. When law enforcement asked you who lived at the house,
2 who did you tell them lived at the house?

3 A. Me and B.K. , and my grandmother is on the lease.

4 Q. But you didn't mention Brandon living at the house
5 because he didn't live there?

6 A. No. I mean, he's not --

7 Q. He would on occasion --

8 **THE COURT:** Wait a minute. One at a time. Don't talk
9 over each other.

10 **MS. WALKER:** I'm sorry, Your Honor.

11 **THE COURT:** Go ahead and ask the question.

12 BY MS. WALKER:

13 Q. He would on occasion spend the night?

14 A. Yes.

15 Q. But his name wasn't on the lease?

16 A. (Shakes head.)

17 Q. Whose name was on the lease?

18 A. Mine and my grandmother's.

19 Q. Okay. Do you remember meeting recently with people
20 who work in my office, Ms. Campbell and some other people?

21 A. Yes, ma'am, I do.

22 Q. Okay. And do you remember telling them that you had
23 no problem giving consent to search your apartment?

24 A. Yes, I had no problem.

25 **MS. WALKER:** Thank you. I don't have any further

1 questions.

2 **THE COURT:** Before I call on her for redirect, let me
3 get in the exhibits and the consent form over there.

4 **MS. ZMROCZEK:** Do you have the statement as well, Your
5 Honor?

6 **THE COURT:** The statement has not been offered. Oh,
7 you're talking about the statement -- yes, I have in the
8 statement. Do you want it?

9 **MS. ZMROCZEK:** Yes. May I borrow that?

10 **THE COURT:** Court's Exhibit Number 2. (Hanging.)

11 **MS. ZMROCZEK:** Thank you.

12 Do you want me to proceed or did you want to keep
13 reading?

14 **THE COURT:** Go ahead.

15 **MS. ZMROCZEK:** Okay. I just didn't want to interrupt
16 you, Your Honor.

17 **THE COURT:** Redirect?

18 **MS. ZMROCZEK:** All right. Thank you.

19 REDIRECT EXAMINATION (In-Camera)

20 BY MS. ZMROCZEK:

21 Q. Ms. Katio, I'm showing you Court's Exhibit Number 2.
22 Do you recognize that statement?

23 A. Uh-huh.

24 Q. And -- I'm sorry to tell you because I know you
25 haven't testified in court before, you have to say "yes" or

1 "no" --

2 A. Yes.

3 Q. -- just so the court reporter can take it down.

4 A. Yes, ma'am.

5 Q. Okay. And you don't have to call me "ma'am". Don't
6 worry about that. You -- is that -- that statement written
7 in your handwriting?

8 A. No, this is not written in my handwriting.

9 Q. Who wrote that statement?

10 A. Mr. Carwell.

11 Q. And then you signed it?

12 A. Yes, I did sign it.

13 Q. Okay. I'm just gonna ask you a couple of follow-up
14 questions to what she asked -- about what Ms. Walker asked
15 you about. So he was at -- he, Brandon, was at your house
16 until nine or 10:00 on Monday?

17 A. Yes.

18 Q. Had he spent the night Sunday night?

19 A. Well, he was -- Sunday night?

20 Q. Uh-huh. The night before.

21 A. The day -- yes, we went to church. Yes, ma'am, we
22 did.

23 Q. Okay. Did he have friends stay there sometimes?

24 A. Occasionally. Not -- not -- rarely.

25 Q. Not regularly?

1 A. Yeah, not regularly.

2 Q. But sometimes?

3 A. Sometimes.

4 Q. Did he entertain? Did he have people over?

5 A. Sometimes, not --

6 Q. Are you friends with some of his friends?

7 A. Sometimes.

8 Q. All right. Y'all were in a tumultuous relationship,
9 right? I know that --

10 **THE COURT:** Your witness, ma'am.

11 **MS. ZMROCZEK:** Thank you. Let me ask it this way.

12 BY MS. ZMROCZEK:

13 Q. What kind of relationship did you have with him?

14 A. Very off and on. For the last year like it hasn't
15 been really at all.

16 Q. Okay. Off and on?

17 A. Yeah.

18 Q. Okay. When he was there, when he was at your house,
19 did he have the ability to tell people that they couldn't
20 come over or that they had to leave?

21 A. Yes.

22 Q. Okay. How long did you know him?

23 A. For a total of five years today.

24 Q. And you said y'all went to church that Sunday?

25 A. Yeah, uh-huh. He would always go to church with me.

1 Q. Did you eat meals together?

2 A. Yes, ma'am.

3 Q. Okay. I know these sound like silly questions, but I
4 have to ask them. And I just -- when Ms. Walker was asking
5 you about if you signed all these consent forms and let the
6 police in your house, I want to make sure I heard your
7 answer correctly. Was your answer "I would do anything to
8 get my baby back"?

9 **THE COURT:** Now I heard the testimony. I'm not gonna
10 let her -- I'm not gonna let you lead her into repeating
11 it.

12 **MS. ZMROCZEK:** Okay. Let me ask the question this
13 way.

14 BY MS. ZMROCZEK:

15 Q. Why did you sign the consent form?

16 A. To get my baby back.

17 **MS. ZMROCZEK:** Okay. Thank you. I have no further
18 questions, Your Honor.

19 **THE COURT:** Recross?

20 **MS. WALKER:** No, Your Honor.

21 **THE COURT:** All right. Let me have that statement,
22 please.

23 (Witness excused.)

24 **THE COURT:** All right. Anything further, Counsel, on
25 this issue?

1 MS. ZMROCEK: I have one more witness, Your Honor.

1 Q. Okay. Have you ever lived there?

2 A. I moved in after.

3 Q. After what?

4 A. After Brandon went to jail.

5 Q. Okay. After Brandon went to jail. What do you know

6 -- what, if anything, do you know about who stayed there

7 before Brandon went to jail?

8 A. He stayed there like off and on sometimes depending on

9 the relationship.

10 Q. What, if any, personal items did he keep there?

11 A. Besides --

12 Q. If you don't know, you don't know.

13 A. I don't know.

14 Q. Okay. That's fine. Do you know whether or not he had

15 a key to the house?

16 A. I'm not sure.

17 Q. Okay. How long had they been in a relationship?

18 A. For about like four years, I think. Four or

19 five years.

20 Q. Do you know whether or not he helped pay the bills?

21 A. When he could.

22 Q. When he could? Okay. How did you become involved in

23 this case?

24 A. Well, my sister had called my mother and she was

25 upset, so me and my step-dad went over to the apartments

1 where it had took place and we were just there to basically
2 be with my sister and see what was going on and to make
3 sure that B.K. was okay.

4 Q. And she was upset?

5 A. Yes.

6 Q. And -- how well do you know your sister?

7 A. I know her very well.

8 Q. Okay. Were you able to tell her state of mind when
9 you got there?

10 A. She was very frantic because the only thing -- she was
11 just worried about her child. She was very frantic.

12 Q. What was your understanding about how the police got
13 to the apartment that day? Her apartment.

14 A. From my understanding, she was told -- well, I was
15 there and so she was told that if she wasn't gonna let them
16 search the apartment, then DSS would get involved and
17 everything.

18 Q. And you were there?

19 A. Yes, ma'am.

20 Q. And who said that?

21 A. The police.

22 Q. The police?

23 A. Yes.

24 Q. Do you know which police it was? Did he have a
25 uniform on that day?

1 A. Yes, ma'am.

2 Q. Okay. Do you recognize any of the police sitting over
3 at this table?

4 A. No.

5 Q. Okay. So you don't know who it was, but he had a
6 uniform on?

7 A. I don't remember exactly.

8 Q. Do you remember what color hair he had? I can assure
9 it wasn't either one of them.

10 **MS. WALKER:** Objection, Your Honor.

11 **THE COURT:** Sustained.

12 **MS. ZMROCZEK:** Okay. I'll ask the question
13 differently.

14 BY MS. ZMROCZEK:

15 Q. Do you have any independent recollection of what he
16 looked like?

17 A. I don't know.

18 Q. He had a uniform on?

19 A. Yes, ma'am.

20 Q. Okay. The person that said this to you had a uniform
21 on?

22 A. Yes, ma'am.

23 Q. Okay. Was it -- how many police officers were there?

24 A. There were a lot because during this time it was just
25 a lot -- like a lot of police there.

1 Q. Okay. Do you remember how many police cars?

2 A. Not exactly. I remember like Brandon was in one and
3 then Nick was in one and then the people that came over
4 to search the house weren't in police cars, they were in
5 trucks.

6 Q. They were in what?

7 A. Trucks. I remember that.

8 Q. Did they have uniforms on?

9 A. I'm not sure. I don't really remember.

10 Q. Okay. Were you in the house or were you waiting
11 outside?

12 A. I went -- I went in the house.

13 Q. Okay.

14 **MS. ZMROCZEK:** Thank you. Please answer any questions
15 the State may have.

16 **THE COURT:** Cross-examination?

17 **MS. WALKER:** Thank you, Your Honor.

18 CROSS-EXAMINATION (In-Camera)

19 BY MS. WALKER:

20 Q. Good morning.

21 A. Good morning.

22 Q. Hi, my name's Meghan. I'm one the prosecutors in this
23 case. I just have a few quick questions for you.

24 A. (Nods head.)

25 Q. There was a man in a uniform that you saw tell your

1 sister if you don't let me search the house, then I'm gonna
2 have to call DSS?

3 A. Yes, I'm gonna -- I don't remember if he had on a
4 uniform or not. I really don't. I'm not --

5 Q. There was a police officer?

6 A. Yes, ma'am.

7 Q. Okay. Who said iff you don't let us search the house,
8 we're gonna have to call DSS?

9 A. Yes, ma'am.

10 Q. Okay. And you said that your sister was upset when
11 you spoke to her?

12 A. On the phone before I got there she was upset and she
13 was upset when -- you know, but she kind of calmed down
14 once we got there, to the place.

15 Q. Okay. And your sister at that point in time could
16 have been upset for a number of reasons, right?

17 A. No, I think she was upset because she got a call that
18 something had happened and her child was involved.

19 Q. Okay. And she was concerned for her child's safety?

20 A. Yes, ma'am. Yes. Well, not concerned --

21 Q. I'm sorry. Go ahead. I'm not trying to cut you off.
22 Say whatever you need to say.

23 A. Not exactly for the safety, but she wanted to know
24 what was going on because she didn't really get a clear
25 understanding of exactly what was going on from the phone

1 call. That's why I said she calmed down once she got
2 there.

3 Q. Okay. Do you know who called your sister?

4 A. I'm not sure.

5 Q. Okay.

6 A. I know she called my mom.

7 Q. That your sister called your mom?

8 A. Yes, ma'am.

9 **MS. WALKER:** I beg the Court's indulgence, Your Honor.

10 **THE COURT:** Yes, ma'am.

11 BY MS. WALKER:

12 Q. Did you know at that point in time that your sister
13 and Brandon were in the process of breaking up?

14 A. Yes, I knew they were going through some things.

15 Q. I'm sorry, I can't hear you.

16 A. I said yes, I knew they were going through some
17 things.

18 Q. Okay. And did you know -- or did you ever learn that
19 the person that called your sister was Brandon's other
20 girlfriend?

21 A. I had -- no, I didn't know that, but I knew about that
22 situation.

23 Q. Okay.

24 **MS. WALKER:** I don't have any other questions.

25 **THE COURT:** Recross -- I mean, redirect?

1 **MS. ZMROCZEK:** Briefly, Your Honor.

2 REDIRECT EXAMINATION (In-Camera)

3 BY MS. ZMROCZEK:

4 Q. Ms. Walker asked you if you knew they were in the
5 process of breaking up, your sister and Brandon?

6 A. Yes.

7 Q. What, if anything, do you know about the Sunday before
8 this incident? Do you know if they were together or if
9 they weren't together? If you know.

10 A. The Sunday, I do know they were together because he
11 had came to church.

12 Q. Because he had --

13 A. Came to church.

14 Q. Okay. Do you know whether or not he was there the
15 night before this happened?

16 A. I'm pretty sure he was.

17 **MS. WALKER:** I'm sorry. I can't hear.

18 **THE WITNESS:** I said I'm pretty sure he was.

19 BY MS. ZMROCZEK:

20 Q. Thank you. And then she asked you about her -- your
21 sister being upset and you said it was -- what did you say
22 it was focussed around?

23 A. It was focussed around the child, her child. Like
24 when she called my mom, she just kept saying I have to go
25 get my baby. Like it was all about B.K. . That's why

1 we came, too.

2 **MS. ZMROCZEK:** Thank you.

3 **THE COURT:** Ms. Walker?

4 **RECROSS EXAMINATION (In-Camera)**

5 **BY MS. WALKER:**

6 Q. You said that you -- how do you know where Brandon was
7 the night before, I guess, on Sunday?

8 A. I said I'm pretty sure he was. I don't know about
9 that night. I know that he went to church with us.

10 Q. Okay. So you don't know where he was that night?

11 A. No.

12 **MS. WALKER:** Thank you. I don't have anything else.

13 **THE COURT:** All right. Thank you. You may step down.
14 (Witness excused.)

15 **MS. ZMROCZEK:** And I know these witnesses have things
16 to do today, Your Honor. May they be excused?

17 **THE COURT:** Are you gonna need them for anything else
18 today, Ms. Luck -- Ms. Campbell?

19 **MS. CAMPBELL:** I'm sorry. I was talking to
20 Ms. Walker.

21 **THE COURT:** She wanted to see if the witnesses could
22 be excused for the day.

23 **MS. ZMROCZEK:** Just for today.

24 **MS. CAMPBELL:** Oh, yes.

25 **THE COURT:** I don't know who's got them under subpoena

1 or what the situation is.

2 **MS. CAMPBELL:** This isn't my witness. She can be
3 excused.

4 **MS. ZMROCZEK:** Okay. Thank you.

5 **THE COURT:** Okay. All right.

6 **MS. CAMPBELL:** And as far as the last witness as well.

7 **MS. ZMROCZEK:** Your Honor, we would ask that she just
8 remain under our subpoena. We're not excusing her.

9 **THE COURT:** All right. She's still under subpoena,
10 but subject to being called. So if you get called, you've
11 got to come back.

12 **MS. ZMROCZEK:** Thank you.

13 **THE COURT:** All right. Any other witnesses on this
14 issue, Ms. Zmroczek?

15 **MS. ZMROCZEK:** No other witnesses, Your Honor. I do
16 have that case if I can hand it up.

17 **THE COURT:** We'll get to that in just a minute.

18 **MS. ZMROCZEK:** Okay.

19 **THE COURT:** All right. So anything in reply to
20 the witnesses presented by the defense on the motion to
21 suppress the warrantless search of the house, Ms. Campbell?

22 **MS. CAMPBELL:** No, sir.

23 **THE COURT:** Okay. All right. So, first of all, give
24 me just a little bit of background, then I'm gonna ask
25 for y'all to give me some arguments on why you think the

1 evidence received from the house from was admissible, but,
2 first off, what evidence was actually seized from the home
3 that you intend to use in the trial, Ms. Campbell?

4 **MS. CAMPBELL:** Your Honor, the evidence received from
5 the home was some of the clothing of the Defendant's,
6 specifically there was a pair of jeans and some shoes, as
7 well as, I believe, a red polo shirt. Those were all
8 seized from the house. DNA testing was on done on those.
9 The jeans and shoes came back positive for blood; the blood
10 came back matching the victim in the case. This was the
11 same clothing that was identified by Ms. Katio in her
12 statement as belonging to Brandon and the clothing also --
13 ownership came back to him as well.

14 **THE COURT:** All right. I'll hear from you,
15 Ms. Campbell, with regard to the reasons you think the
16 search was lawful. Yeah, go ahead.

17 **MS. CAMPBELL:** Your Honor, in reviewing the case law
18 and everything, I haven't had a chance to see the case
19 she just handed up, but even if you assume that he has
20 standing, the testimony is that he -- there was no
21 testimony that he had a key at the time, there was no
22 testimony that he was on the lease, there was no testimony
23 that he stayed there on a regular basis, just that he
24 stayed there sometimes. The testimony as by the witness
25 himself -- herself is that he got in -- she now clarified

1 to say sometime after she went to sleep. In her statement
2 she said it was around 5 AM that morning at best. He had
3 been there for a short amount of time prior to all of these
4 events occurring involving the child.

5 In addition, Your Honor, she freely admitted that it
6 was her grandmother's name and her name on the lease and
7 when she asked who lived there the only thing she mentioned
8 were her baby and herself actually lived in the apartment.
9 Even assuming that the Defendant had standing to -- the
10 cases that I have, Your Honor, State versus Flowers and
11 State versus L-A-U-X, I can't pronounce it, the homeowner
12 herself would have the right to give permission. Even
13 though the defense has tried to twist it into the -- it was
14 DSS or not, by the witness's own testimony until she was
15 lead right there at the end that he mentioned that they
16 needed to make sure that it was a safe place, Your Honor,
17 which is something I hope the police would do before they
18 would leave a child back at the home and maybe exposing the
19 child to guns. And at that point she said -- the testimony
20 was that they said they may have to call DSS. This is her
21 own testimony which contradicts what Investigator Carwell
22 testified to, which I'll get back to in a minute, but even
23 if she had perceived that in her mind, her testimony was
24 she had nothing to hide and she was more than happy for
25 them to search her area. She was the primary homeowner,

1 Your Honor, she was the one that actually had the right
2 according to the case law to give permission and that she
3 gave that permission freely and voluntarily, and she
4 testified to that.

5 In addition, Your Honor, her testimony does contradict
6 some of Investigator Carwell's and her sister said that she
7 heard a policeman, she thought he was in uniform and she
8 changed back, she contradicted herself, when she looked
9 around perhaps in the courtroom, and said that she heard
10 this. The victim -- the witness in the case, the
11 homeowner, is the Defendant's girlfriend, the mother of --
12 they share a child in common. She mentioned that she's
13 been in touch with him over the course of his -- he was
14 incarcerated a period of time, then out and back
15 incarcerated, Your Honor; that her last contact with him
16 was maybe a month ago and we haven't had an opportunity to
17 check to see, in fact, if she had any calls more recently
18 than that, which we can.

19 But regardless, Your Honor, I mean, even if she had --
20 even in her testimony taken in entirety, she said that she
21 freely and voluntarily told the police they could come in
22 because she had nothing to hide, that she gave permission,
23 which when she was asked, that was the same information she
24 gave us last week as well.

25 Additionally, Your Honor, Investigator Carwell never

1 said he threatened her with DSS or anything of that nature.
2 Was DSS mentioned at the scene? No doubt, Your Honor,
3 because the police have a duty to ensure the safety of the
4 child before it's returned to an environment that may cause
5 it harm. And, in addition, Your Honor, they make sure that
6 the person that gets the child back is the proper person.
7 It's somewhat ironic that they're trying to use the fact
8 that the police were doing their job against them in saying
9 that it was oh, this big threat. And how she perceived
10 that is one thing, Your Honor, but as far as what the
11 testimony was, even by her own testimony there was never a
12 "if you don't give me permission to go in your house, I
13 will turn your child over to DSS". Her testimony does not
14 support that contention.

15 **THE COURT:** Okay. And you have some authority on the
16 question of the standing of -- of this Defendant to --

17 **MS. CAMPBELL:** I've got, Your Honor, four cases that
18 I would hand up. I'm handing up McKnight, Flowers, State
19 versus Laux, L-A-U-X, and State versus Herring --

20 **THE COURT:** All right.

21 **MS. CAMPBELL:** -- which address the standing issues
22 and, more importantly, the right of the actual homeowner to
23 give permission to search.

24 **THE COURT:** Okay. All right, Ms. Zmroczek.

25 **MS. ZMROCZEK:** Thank you, Your Honor. I'm handing up,

1 and I've already given the State a copy, State versus
2 Robinson, a Supreme Court case -- a Supreme Court case,
3 Your Honor, from this state.

4 Your Honor, in this case it lists several factors that
5 they consider in determining whether a criminal defendant
6 has standing. They, in fact, list them, Your Honor.
7 Whether the defendant owned the residence or had property
8 rights in it. We know that he was not on the lease, we
9 know that he did not own it. Whether he was an overnight
10 guest at the home. We know that he was an overnight guest
11 at the home. The testimony was off and on and he had been
12 there that Sunday, had clothes there, and had been there at
13 some point before she woke up. It seems to be a play on
14 words with the overnight, Your Honor. We're not trying to
15 accuse or blame. We're just trying to make sure that the
16 Fourth Amendment is being followed. Whether he had a key.
17 Sometimes he had a key, sometimes he didn't. Whether he
18 had dominion and control over the home and could exclude
19 others. My question to her was he had the right when he
20 was there to tell people not to come in or, you know, to
21 leave, and her answer was "yes". How long had he known the
22 owner. They had known each other for five years and had a
23 child in common for at least two years. Whether he
24 attempted to keep his activities in home private. I don't
25 know whether or not there was testimony on that, but

1 clearly his belongings -- she said he stayed in her room,
2 he had his stuff in her room, his property in her room.
3 Whether he -- her testimony was that he kept some of it in
4 another room, too. Whether he engaged in typical domestic
5 activities at the home or treated it as a commercial
6 establishment. Your Honor, there was testimony that they
7 ate meals together, they even went to church together.
8 Clearly --

9 **THE COURT:** Let me ask you this question. Let's
10 assume everything you're saying is true and -- let's assume
11 that you're saying that everything is true and take this
12 hypothetical. If the police are investigating me and they
13 go to my house where I live every day of the year and that
14 house is in my wife's name, she can't consent to search?

15 **MS. ZMROCZEK:** Absolutely she can.

16 **THE COURT:** Okay. Well, what's the difference?

17 **MS. ZMROCZEK:** The difference, Your Honor, is the
18 child. Her testimony --

19 **THE COURT:** Well, that's not what you -- that's not
20 what you were arguing. You were arguing dominion and
21 control and all those sorts of things. Now you're
22 contending that the consent was not voluntarily given.

23 **MS. ZMROCZEK:** Your Honor, I've never argued dominion
24 and control. Yesterday you told me that I had to provide
25 -- the State raised the standing issue.

1 **THE COURT:** Well, I misunderstood your argument
2 because you were discussing about how he had the right to
3 tell people to leave and he had the right to invite guests
4 and he had -- you know, I thought that was the dominion and
5 control argument you were making.

6 **MS. ZMROCZEK:** That's why I was asking the questions
7 because yesterday I was told that -- or the State indicated
8 yesterday he didn't have standing, so that's why I
9 addressed the standing issue.

10 **THE COURT:** What is your position exactly? That she
11 did not voluntarily give consent?

12 **MS. ZMROCZEK:** That's exactly my --

13 **THE COURT:** Okay. It's not the dominion and control
14 issue at all. It's her voluntariness to give consent --

15 **MS. ZMROCZEK:** Absolutely.

16 **THE COURT:** -- in the face of her statement and in the
17 face of the written statement she gave you're saying that
18 she felt compelled to give consent because the police told
19 her that if she didn't give consent that they were gonna
20 take the child or call DSS?

21 **MS. ZMROCZEK:** Your Honor, yes. And it was her
22 testimony, and I did not lead her in this testimony. She
23 said this on cross, "I would do anything to get my baby
24 back", and that's, Your Honor, our --

25 **THE COURT:** She said that wasn't -- after some other

1 statements, yeah, but -- but let me ask you this. So -- so
2 what you're saying is that the consent was not voluntarily
3 given?

4 **MS. ZMROCZEK:** Right.

5 **THE COURT:** All right.

6 **MS. ZMROCZEK:** And that's always been my position,
7 but yesterday I was told that the State raised a standing
8 issue, that I didn't have standing to raise that issue,
9 and I believe that we do have standing to raise the issue
10 and I think that we've met that he had standing because I
11 think that -- you know, he qualified as someone who had a
12 property interest or a right to privacy interest in that
13 property. And the first question --

14 **THE COURT:** Again, that's a different issue. That's
15 not whether -- we're talking about apples and oranges
16 here. There's a question of whether he had a right to
17 privacy, whether -- you know, the question of whether or
18 not he had the right to Fourth Amendment protections is one
19 question. The second -- the primary question, it seems
20 like to me, the one that you're relying on, is not so much
21 that he had a right to rely on the Fourth Amendment
22 protections, but the fact that she did not -- that she was
23 compelled or intimidated into giving consent. Those are
24 two different issues.

25 **MS. ZMROCZEK:** Right, right. And that's the issue I'm

1 focussing on, Your Honor.

2 **THE COURT:** Okay.

3 **MS. ZMROCZEK:** The first -- I can't remember if I
4 asked her the question or if Ms. Walker asked the question,
5 what was the first thing that the police spoke to her -- or
6 you know, that she remembered, and the first question --

7 **THE COURT:** So the issue then becomes one of
8 credibility as to whether the police were talking to her
9 about DSS from the standpoint of ensuring the safety of the
10 child as opposed to the reasons for wanting to search the
11 house.

12 **MS. ZMROCZEK:** Correct. And her first question --
13 and I believe I asked the question, "What was the first
14 thing Investigator Carwell said to you?" Or what's the
15 first thing you remember, "Does Brandon Berry live there or
16 does Brandon Berry have stuff at -- is his stuff at your
17 house?" That was the first question and that was her
18 testimony. I didn't lead her; I didn't --

19 **THE COURT:** But isn't his testimony that he did not
20 -- and she said this, or one of them said this, that his
21 purpose in asking her about where she lived and who lived
22 there and all that sort of stuff was to ensure the safety
23 of the child?

24 **MS. ZMROCZEK:** Exactly, and that's exactly what she
25 testified to, Your Honor, and that's where credibility

1 comes in because yesterday I said -- this is what I recall.

2 **THE COURT:** But what she was trying to do was convince
3 the police that the house was safe and that the child could
4 be taken back there without calling DSS. It had nothing to
5 do with whether or not they could come in and search the
6 house and see what they could find of the Defendant's
7 there.

8 **MS. ZMROCZEK:** Right. Right, Your Honor, but my
9 concern is this. That the first question that they asked
10 her was, "Is Brandon Berry's stuff there?", and yesterday
11 all Investigator Carwell -- all he had to do was say -- all
12 he had to do was say we were just going to go see if the
13 house was safe. What his testimony was, Your Honor, was
14 that she walked up and said "Come on in", and that's just
15 not what happened, Your Honor..

16 **THE COURT:** Well, it's not what you remember as the
17 testimony, but -- and my thinking on it is that we've got
18 two different issues here. We've got the issue as to
19 whether or not he had the right to prohibit the search of
20 the house, the warrantless search of the house, or she had
21 the right to give permission when she did or -- because she
22 was the -- on the lease, it was her house, and the question
23 is whether her will was overcome by intimidation that she
24 was gonna lose her child if she didn't let them search.
25 That's the issue we're talking about.

1 **MS. ZMROCZEK:** Correct. Correct.

2 **THE COURT:** Okay.

3 **MS. ZMROCZEK:** Thank you, Your Honor. I'm sorry I
4 wasn't more clear on that, but, yes, coercion has always
5 been the issue with this.

6 **THE COURT:** Okay.

7 **MS. ZMROCZEK:** And the only reason I went into that
8 whole standing issue is because it was raised.

9 **THE COURT:** I got you. All right. I'll read these
10 cases and before we break for the day, I will give you my
11 ruling on that.

12 All right. Now with regard -- let's talk about --
13 are there any other issues with regard to the search -- no
14 other issues -- or are there any other issues with regard
15 to the search of the vehicle? I don't think there was
16 anything found in the vehicle, but there were items found
17 allegedly that the Defendant put one of them -- put one on
18 the porch and one over the fence.

19 **MS. ZMROCZEK:** Right. And if that's the testimony
20 that they're sticking with, Your Honor, then obviously we
21 don't have a search issue with the car.

22 **THE COURT:** So there's nothing that came of the
23 vehicle. Okay.

24 **MS. ZMROCZEK:** We would, I think -- there was
25 testimony that they searched the car. It's never been

1 the matter of the State versus Brandon Berry. Mr. Berry
2 is present in the courtroom with his counsel. The State
3 is represented by the Fifth Circuit Solicitor's Office.

4 The only thing to be resolved, I believe, in pre-trial
5 is a determination on the Defendant's motion to quash the
6 evidence obtained as a result of the warrantless search
7 of the apartment. First of all, the Defendant does not
8 challenge the warrantless search of the home on the basis
9 that law enforcement could have obtained the search
10 warrant; that was basically the issue in State versus
11 Herring, 387 South Carolina 201.

12 The challenge to the warrantless search is made on the
13 basis of the Fourth Amendment and not on the basis of
14 South Carolina Code Section 17-13-140, dealing with
15 search warrants. As was said in State versus McKnight,
16 281 South Carolina 110, the defendant who seeks to suppress
17 evidence on Fourth Amendment grounds must demonstrate a
18 reasonable expectation of privacy. Unless he has a
19 reasonable expectation of privacy, he has no standing to
20 challenge the search. The Defendant cites State versus
21 Robinson, 410 South Carolina 519, a 2014 case, and the
22 factors set forth therein to justify -- or to assert that
23 the Defendant in this case had a reasonable expectation of
24 privacy.

25 It is clear that the lease or rental agreement was not

1 in his name. He did spend some nights there, but much of
2 his property was left in the front room. He may have had
3 some dominion and control to exclude others, but clearly
4 from the testimony the primary person in control was
5 Lourisa Katio. At best he was the father of a child they
6 had in common, but at the time he was a sometime or
7 part-time boyfriend who spent some nights on the premises.
8 There was no other legal relationship between the parties,
9 they were not married legally or even a common law
10 marriage. There's no evidence he paid rent, participated
11 in domestic activities or claimed a proprietary or
12 possessory interest in the property or to attempt to keep
13 his activities in the home private.

14 Based on this, I find that the Defendant has no
15 reasonable expectation of privacy in the property search
16 as required to prove a violation of his Fourth Amendment
17 rights. The Defendant basically concedes this issue and
18 relies on the contention that the will of the tenant,
19 Ms. Katio, was overcome when she gave her consent to
20 search as shown in State's Exhibit Number 2. This is
21 based on the Defendant's contention that she was told that
22 DSS would be called to take her child if she did not
23 consent. I find that the testimony of Ms. Katio and of
24 her sister on this issue is not credible. The law
25 enforcement officers were simply trying to determine if

1 the residence was safe to return the child to. They were
2 not using this fact as a threat to intimidate her into
3 giving her consent.

4 As was said in State versus Flowers, 360 South
5 Carolina 1, a homeowner or tenant may give consent to
6 search the premises in which a criminal defendant resides
7 if the homeowner or tenant possesses common authority to
8 the premises. Common authority to consent involves a
9 mutual use of the property and so at the very least
10 Ms. Katio had mutual use or common authority of the
11 property. I also find that her consent was freely and
12 voluntarily given and not as a result of any attempts to
13 intimidate her by threatening the use of DSS to take her
14 child. Based on the above, the motion to suppress the
15 evidence seized from the Defendant's apartment is denied.

16 All right. Ms. Campbell, is there anything that has
17 -- the State has that would preclude us or we'd need to
18 address to preclude us from going forward in the morning
19 at 9:30?

20 **MS. CAMPBELL:** No, sir.

21 **THE COURT:** Defense?

22 **MS. ZMROCZEK:** No, we're ready, Your Honor.

23 **THE COURT:** All right. We'll be in recess then until
24 tomorrow morning at 9:30. Be ready to go forward at that
25 time with opening statements. Thank you.

1 (Whereupon, the jury was duly sworn by the Clerk of
2 Court at 9:40 AM.)

3 **THE CLERK:** Thank you. You may be seated.

4 **THE COURT:** All right. Before we begin the actual
5 trial of this case, I thought it might be helpful if I
6 explained to you basically how a trial proceeds. I know
7 all of you have seen trials on television, but I think that
8 you will find that it is a great deal different in real
9 life.

10 First of all, the State will make an opening
11 statement. An opening statement is not evidence. It is
12 simply an outline to help you understand what the State
13 expects the evidence will show. The Defendant may, if he
14 wishes to, through his lawyer, present an opening
15 statement, but he doesn't have to for reasons that I will
16 explain later.

17 Following the opening statements, you will hear the
18 testimony and evidence in this case. This will consist
19 of testimony from the State's witnesses, as well as any
20 physical exhibits which may be introduced into evidence.
21 And I will tell you that if there are physical exhibits
22 that are introduced into evidence, it's very likely that
23 the attorneys will ask for permission to publish those
24 exhibits to the jury. That simply means to show the jury
25 the exhibits. They may even hand them to you to be passed

1 around while you're sitting there in the jury box or they
2 may be shown electronically. Do not be concerned if you do
3 not have as long to look at an exhibit as you would like to
4 when it's being passed around. Anything that is admitted
5 into evidence will go with you to the jury room when you
6 retire to deliberate your verdict in this case.

7 Following the completion of the testimony, the
8 attorneys will, again, have an opportunity to make what is
9 called a closing statement or a summation to you. This is
10 an opportunity for the attorneys to summarize the case from
11 their respective points of view. Again, these arguments
12 are not evidence.

13 Following the closing statements by the attorneys, I
14 will instruct you on the law of South Carolina as it
15 pertains to the issues that have arisen in this case and
16 when I have completed my instructions to you, you will be
17 permitted to begin your deliberations in order to reach a
18 verdict.

19 Now, ladies and gentlemen, you're now the jury in
20 this case and I want to take a few minutes to tell you
21 something about your duty as jurors and to give you basic
22 instructions. At the end of the trial, I will give you
23 more detailed instructions and those instructions will
24 control your deliberations. It will be your duty to decide
25 from the evidence what the facts are. You and you alone

1 are the judges of the facts. You will hear the evidence,
2 decide what the facts are and then apply those facts to
3 the law that I will give to you. That is how you reach a
4 verdict.. In doing so, you must follow the law whether you
5 agree with it or not. The evidence will consist of the
6 testimony of witnesses, documents and other things received
7 into evidence as exhibits and any facts on which the
8 lawyers agree or which I may instruct you to accept.

9 Now you should not take anything that I may say or
10 do during this trial as indicating what I think of the
11 evidence or what your verdict should be. The law does not
12 permit me to have an opinion about the facts. The same
13 law that makes you the judge of the facts makes me the
14 judge of the law. You must take the law as I give it to
15 you regardless of what you think the law is or what the
16 law ought to be. If I'm wrong on the law, there's another
17 time and place for that error to be corrected, but for this
18 case you must accept the law as I charge it to you.

19 Now this is a criminal case brought by the State of
20 South Carolina. The State charges the Defendant with five
21 separate grounds; unlawful conduct toward a child, unlawful
22 carrying of a pistol, resisting arrest, attempted murder
23 and attempted armed robbery. The charges against the
24 Defendant are contained in the five indictments. The
25 indictments are not evidence of anything. They are simply

1 the description of the charges made by the State against
2 the Defendant. The Defendant has pled not guilty to these
3 charges and is presumed innocent unless and until proven
4 guilty beyond a reasonable doubt. A reasonable doubt is
5 the kind of doubt that would cause a reasonable person to
6 hesitate to act. A defendant has the right not to testify
7 and never has to prove his innocence or present any
8 evidence.. The burden of proof is always on the State of
9 South Carolina.

10 Now there are certain things that are not evidence
11 and you must not consider them as evidence in deciding the
12 facts of this case. Statements and arguments of the
13 attorneys are not evidence, questions and objections of the
14 attorneys are not evidence, and testimony that I instruct
15 you to disregard is not evidence. Evidence may be direct
16 or circumstantial evidence. Direct evidence is testimony
17 by a witness about what that witness personally saw or
18 heard or did. Circumstantial evidence is indirect
19 evidence. The law permits you to give equal weight to
20 both, but it is for you to decide how much weight to give
21 to any of the evidence.

22 Now there are rules of evidence which control what can
23 be received in court. When a lawyer makes -- or when a
24 lawyer asks a question or offers an exhibit into evidence
25 and the lawyer on the other side thinks that it is not

1 permitted by the rules, that lawyer may object. If I
2 overrule the objection, the question may be answered or
3 the exhibit may be received. If I sustain the objection,
4 the question cannot be answered and the exhibit cannot be
5 received. Whenever I sustain an objection to a question or
6 deny a motion to admit an exhibit into evidence, you must
7 ignore the question or the existence of the exhibit and you
8 must not guess what the answer would have been or what the
9 exhibit would have shown.

10 Sometimes it may be necessary for me to request that
11 you leave the courtroom when I -- while I discuss with
12 the attorneys legal questions that come up during the
13 trial. If this occurs, you should not speculate about
14 our discussions or the reasons that you were asked to
15 leave the courtroom. This is simply a procedure that the
16 law requires when certain legal issues arise. There also
17 may be occasions when I ask the attorneys to approach the
18 bench so that I can discuss a legal issue with them in
19 private. I will do this as often as possible so that you
20 will not be required to leave the courtroom more than is
21 absolutely necessary. Again, if I ask the attorneys to
22 step up to the bench or if I ask you to leave the
23 courtroom, please don't think that anybody is trying to
24 hide anything or keep any evidence from you. This is
25 simply a procedure used by all lawyers and by all courts

1 to determine and decide legal questions.

2 Now in determining the facts of this case, you may
3 have to decide which witnesses to believe and which
4 witnesses not to believe. You may believe everything a
5 witness says or only part of it or none of it. In deciding
6 what to believe, you may consider a number of factors,
7 including the witness's ability to see or hear or know
8 the things the witness testified to, the quality of the
9 witness's memory, the witness's manner or demeanor while
10 testifying, whether the witness has an interest in the
11 outcome of the case or any motive, bias or prejudice,
12 whether the witness was contradicted by anything the
13 witness said or knew before the trial or by any other
14 evidence and how reasonable was the witness's testimony
15 when considered in the light of other evidence which you
16 do believe.

17 Now just a few words to you about your conduct as
18 jurors, some of which I have already mentioned to you, but
19 they're important enough that they bear repeating. First
20 of all, do not talk to each other about this case or about
21 anyone who has anything to do with it until the end of
22 the case when you go to your jury room to decide on your
23 verdict. Do not talk with anyone else about the case until
24 the trial has ended following your verdict and you have
25 been discharged as jurors. This means do not discuss the

1 case with members of your family or your friends or with
2 anyone else. You may tell them that you are a juror, but
3 don't tell them anything about the case until you have been
4 discharged by me.

5 Do not let anyone talk to you about the case. If
6 anyone should try to talk to you about the matter, please
7 get their name and their description, report it to the
8 bailiffs and they will report it to me. And in that
9 connection, I will tell you that in coming and going from
10 the courthouse you may encounter certain people who are
11 participating in this case, lawyers, witnesses or
12 individuals who may have something to do with the case,
13 and I will tell you that they are not even permitted to
14 speak to you in a friendly manner and greet you and tell
15 you good morning or anything else if -- during the course
16 of this case. So they're not being rude if they ignore
17 you. Just remember that they have been instructed by the
18 Court not to have any contact, which means even a social
19 greeting with the jurors during the course of the trial.
20 So do not think that anybody is being rude to you if they
21 refuse to speak to you in connection with this matter or
22 decline to speak you.

23 Do not read any news stories or articles or listen to
24 any radio or television reports about the case and do not
25 do any research or anything on the Internet in connection

1 with this matter. You are not to consider as evidence
2 anything that you may see or hear when court is not in
3 session. So don't do any research such as consulting
4 dictionaries or other reference materials or anything on
5 the computer.

6 And, finally, do not make up your mind about what
7 your verdict should be until you have heard all of the
8 evidence in this case and the instructions -- the arguments
9 of counsel and the instructions on the law by the Court.
10 You will be instructed when to begin your deliberations by
11 either me or the bailiff.

12 Anything with regard to my opening remarks on behalf
13 of the State, Ms. Campbell?

14 **MS. CAMPBELL:** No, sir.

15 **THE COURT:** On behalf of the defense?

16 **MS. ZMROCZEK:** No, sir.

17 **THE COURT:** All right. The first order of business
18 then, ladies and gentlemen, is the matter of opening
19 statements and for that purpose the State will -- the
20 Court will recognize the solicitor.

21 **MR. STEADMAN:** A routine traffic stop is what solved
22 this case. The morning of the robbery, Brandon Berry, the
23 Defendant in this case, was pulled over for no seatbelt,
24 and during the course of that traffic stop -- it started
25 as just the no seatbelt, but during that traffic stop it

1 quickly turned into an armed robbery investigation and a
2 shooting investigation which happened six hours prior.

3 The victim in this case, Michael Keith, got home to
4 his apartment complex around 4 AM the morning of the
5 robbery. He's a club promoter. He does several events
6 around town. He got back home that night about 4 AM,
7 pulled into his apartment complex, pulled into his parking
8 spot -- he backed into his spot, and as he was getting out
9 of his car he was approached by the Defendant with a mask
10 covering his face, armed with a pistol. And he approached
11 Michael Keith. He demanded his money, he demanded his
12 keys. Michael Keith resisted, which he had a right to do.
13 He ran around his vehicle to get the vehicle in between
14 him and the Defendant. The Defendant then ran around to
15 chase Michael Keith and at some point during that the
16 Defendant jumped up on top of his car. He came over the
17 top of Michael Keith's car, Michael ran back toward his
18 apartment complex, and as the Defendant was coming down off
19 the top of his car he fired a shot missing Michael Keith,
20 striking a tire of the car next to the other car.

21 Michael Keith pretended to be shot and he fell down
22 in the grassy spot right before his apartment complex. The
23 Defendant then get on top of Michael Keith, still demanding
24 his money and demanding the keys to his car. Michael Keith
25 didn't give him his money, he didn't give him his keys, and

1 he paid for it. The Defendant then aimed the pistol at
2 Michael's leg and shot him in the right leg. The shots
3 were fired. That prompted a neighbor to come out, that
4 prompted Michael's girlfriend, Sidara Allen, to come out,
5 and as she came out on the porch, she observed the
6 Defendant put the pistol against Michael's head. She
7 yelled from the balcony and the Defendant was spooked by
8 that and he ran off. He got into an awaiting vehicle right
9 near the scene and he drove off.

10 Michael Keith was then rushed to the hospital.
11 Officers got a description of the suspect. It was a person
12 in a black mask, a person with a pistol and dark clothing.
13 At that point the officers didn't have anything to go on.
14 There weren't really any leads. Michael Keith was treated
15 at the hospital.

16 And then six hours later, the morning of the robbery
17 -- this happened at 4 AM, so six hours later Brandon Berry
18 and his friend, Nickilous Wallace, just happened to be
19 travelling down Broad River Road. Deputy Pennington with
20 the Richland County Sheriff's Department sees that both of
21 them aren't wearing their seatbelts, so he pulls them over.
22 He pulls them over into an apartment complex right off of
23 Broad River Road and area.

24 During that traffic stop, the officer gets Nickilous
25 Wallace, who was the driver, he gets him out of the vehicle

1 and he speaks with him about his insurance and all of a
2 sudden Brandon Berry hops in the driver's seat of that
3 vehicle and speeds off. And keep in mind there was another
4 passenger in that vehicle. In the back seat there was a
5 two-year-old girl named B.K. , who was the Defendant's
6 daughter. She was unrestrained in a child seat as the
7 Defendant sped off at a high rate of speed.

8 He sped through the apartment complex. Deputy
9 Pennington gave chase. He sped through the apartment
10 complex and then he got out on foot. Deputy Pennington
11 did not lose sight, he was right behind Brandon Berry,
12 and during the foot pursuit he saw Brandon Berry grab
13 something and toss it. He apprehends Brandon Berry shortly
14 thereafter with the help of a few other officers. They
15 then go back to where he saw Brandon Berry toss something.
16 What he tossed was two bags. Inside that bags that he
17 tossed was a pistol, a black mask, zip ties and gloves.
18 The black mask and the gloves has his DNA on them. The gun
19 that was found matched the shell casings at the scene of
20 the shooting.

21 At this point it's an armed robbery investigation and
22 Investigator Carwell is called out to the scene. He was
23 assigned the case, he's the lead investigator. He then
24 began his investigation. One of the first things he did
25 was go to the girlfriend's house, Brandon Berry's

1 girlfriend's house, where he stayed the night of the
2 robbery. Once he gets to the girlfriend's house, he gets
3 consent to search her apartment and inside her apartment
4 he recovers Brandon's black jeans and the shoes. Those
5 black jeans have Michael Keith's blood DNA on them. Those
6 shoes have Michael Keith's blood DNA on them. Those shoes
7 are consistent with a footwear impression that was left on
8 the top of Michael Keith's car when he stood on top of it.
9 Those shoes were Brandon Berry's.

10 He was charged with armed robbery -- attempted armed
11 robbery, attempted murder, unlawful conduct toward a child,
12 and resisting arrest. You will hear from multiple experts
13 in this case and you will get presented with all of the
14 scientific evidence and we're gonna ask you to rely upon
15 this scientific evidence and we're gonna ask you to return
16 a verdict of guilty on all charges. Thank you.

17 **THE COURT:** Does the Defendant wish to make an opening
18 statement, Ms. Zmroczek?

19 **MS. ZMROCZEK:** Yes, Your Honor.

20 **THE COURT:** All right. You may.

21 **MS. ZMROCZEK:** Thank you. May it please the Court?

22 **THE COURT:** Yes, ma'am.

23 **MS. ZMROCZEK:** Good morning. The truth is what you
24 know and not what you believe. Mr. Steadman in his opening
25 said that he asked you to rely on the scientific evidence.

1 Ladies and gentlemen, I would also ask you to rely on all
2 of the scientific evidence because what you will hear in
3 this case is that the shoes that they found that were
4 Brandon's that had the victim's blood on them, Cadillac, a
5 big promoter around town, lots of people know him, also had
6 other -- someone else's DNA, and the reason is, ladies and
7 gentlemen, is because he loaned his shoes. You think
8 that's just ludicrous, but then you ask, and I would ask
9 that you ask while the evidence is being presented, he said
10 scientific evidence. And he jumped on the car. Surely
11 there's fingerprints and palm prints, and I assure you
12 we'll hear testimony about that. Not from the State.
13 They're going to make us present it.

14 Also cell phones. Cell phone technology. They can
15 track us anywhere. And the Richland County Sheriff's
16 Department did a great job of investigating in this case,
17 such a great job that the evidence that they started to
18 produce started to make them realize that Brandon Berry was
19 nowhere near the scene when it happened. He couldn't be,
20 he wasn't, but they don't want to present that evidence to
21 you. We'll be presenting it. And I submit it's because
22 the truth they want you to believe is not the truth that
23 they know.

24 There was discussion from the judge and there will be
25 discussion throughout about the burden of proof. And the

1 best part of our country is you guys, you guys, y'all, get
2 to decide the facts of the case. Y'all and only y'all.
3 It's not what I think or they think or any of the officers
4 think. Only y'all. But I think -- and I submit in order
5 to be able to decide those facts, you have to be presented
6 with all of the information. In order to be presented with
7 all of that information, you're gonna have to listen to the
8 questions and the answers and judge the credibility and ask
9 why wasn't this done?

10 If this is an open and shut case, why are we here?
11 Well, we're here, ladies and gentlemen, because it's not an
12 open and shut case and there are serious questions of fact.
13 And the Government has a duty and their burden to present
14 those facts to you. I have to ask some tough questions,
15 that's part of my job, and I have to ask some tough
16 questions of the officers. That doesn't mean I don't
17 like them, it doesn't mean I don't think they did a good
18 job. I think they did an excellent job. Could have
19 they done more? Sure. Easy little things, ladies and
20 gentlemen. And there are things that are not subject
21 to interpretation; video, audio. These things are not
22 subject to interpretation. They are what they are. They
23 show you what happened.

24 This -- this evening, July 28th, the night before,
25 started at a club where Cadillac was promoting at Sound

1 Stage, right there on 1800 Blanding Street, right down the
2 road. There's video inside, there's video outside. It
3 goes on to Blue, a club down in The Vista. There's video
4 inside, there's video outside. The police know and were
5 informed what Brandon Berry was wearing that evening from
6 his shoes to his clothes and that video could have shown
7 you. You'll hear testimony about what shoes he was
8 wearing.

9 Ladies and gentlemen, reasonable doubt gives someone a
10 reason to doubt. I submit after hearing all the evidence
11 that's presented to you by the State, and not presented to
12 you by the State, that you will have more than one reason
13 to doubt and find Brandon Berry not guilty. Thank you.

14 **THE COURT:** All right. You may call your first
15 witness for the State.

16 **MR. STEADMAN:** The State calls Clay Short.

17 CLAY SHORT,

18 having been duly sworn, testified as follows:

19 **THE CLERK:** Please have a seat on the witness stand
20 and state your full name for the record.

21 **THE WITNESS:** Clay Short.

22 **MS. WALKER:** May it please the Court, Your Honor?

23 **THE COURT:** Yes, Ms. Walker.

24 DIRECT EXAMINATION

25 BY MS. WALKER:

1 Q. Good morning.

2 A. Good morning.

3 Q. Sir, can you tell me where you're currently employed?

4 A. Richland County Sheriff's Department.

5 Q. And what do you do at the sheriff's department?

6 A. I am a burglary investigator.

7 Q. And I want to turn your attention back to last year.

8 What were you doing for the sheriff's department then?

9 A. I worked uniformed patrol for Region 2.

10 Q. And where is Region 2?

11 A. Region 2 is -- the main part of Region 2 is 2 Notch

12 Road between Decker Boulevard and Sparkleberry Road.

13 Q. Decker Boulevard and what road?

14 A. Sparkleberry Road.

15 Q. And when you say uniformed patrol, can you explain to

16 the jurors what the duties of a uniformed patrol deputy

17 are?

18 A. To respond to 9-1-1 calls.

19 Q. And on July 29th of 2014, in those early morning

20 hours, did you have the occasion to respond to a 9-1-1

21 call?

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

23 Q. And where did you go?

24 A. I went to , which is

25

1 Q. Is that located here in Richland County?

2 A. Yes, it is.

3 Q. And was your purpose -- and will you pull that mic a
4 little bit closer to you? There we go. What was the
5 reason for responding to that address?

6 A. We responded to a -- what's called a confirmed
7 shooting.

8 Q. Okay. And what is a confirmed shooting?

9 A. That's when dispatch has confirmed that it's not just
10 shots fired in the air, it's confirmed that somebody has
11 been hit by a bullet.

12 Q. And what, if anything, did you do once you arrived on
13 the scene?

14 A. I arrive on the scene at and I saw some
15 what looked like blood on the sidewalk and then ran to the
16 victim's apartment where he was laying inside.

17 Q. Okay. And what did you observe once you reached the
18 victim in this case?

19 A. He was holding his leg. He said that he had been
20 shot. He said a guy tried to rob him and that there was a
21 struggle. He ended up trying to get away from the guy. He
22 said the guy tackled them and he ran around his own car to
23 try to get away and that the guy jumped on top of his car
24 and jumped -- you know, chased him across the car basically
25 and they struggled for the gun, I believe, and the guy

1 ended up shooting him in the leg. I made -- I made sure
2 that he wasn't in danger of bleeding out or dying or
3 anything and I made sure that EMS was on the way and made
4 sure that a crime scene was established.

5 Q. It was important for you to get medical attention to
6 him at that point?

7 A. Yes, of course.

8 Q. At that point did he tell you what, if anything, was
9 stolen from him during this robbery?

10 A. He said his cell phone was taken and he said it was
11 a --

12 Q. A cell phone is fine.

13 A. Okay. A cell phone, yeah.

14 Q. Were you able at that point to get a description of
15 the robber from the man who was shot?

16 A. He described him as a -- a guy in a black mask and he
17 had black clothing on. He couldn't remember a whole lot.
18 Most -- most people don't because they focus on the gun
19 when they see a gun put in their face.

20 Q. Did he describe the handgun?

21 A. I believe he described it as a black gun.

22 Q. And what -- what other involvement did you have in
23 this case besides that?

24 A. Other than responding to the victim and making sure
25 that there was a crime scene established, that was -- that

1 was it.

2 **MS. WALKER:** Thank you, sir. I don't have any further
3 questions for you at this time.

4 **THE COURT:** Cross-examination, Ms. Zmroczek?

5 **MS. ZMROCZEK:** Thank you. Just briefly.

6 CROSS-EXAMINATION

7 BY MS. ZMROCZEK:

8 Q. Good morning.

9 A. Good morning.

10 Q. You responded to the call at -- what time were you
11 dispatched?

12 A. I was dispatched at 0438 in the morning.

13 Q. At 4:38?

14 A. Uh-huh.

15 Q. And at that time had you -- you had been aware that
16 there were seven calls to 9-1-1, correct?

17 A. At that time, no, I did not know that.

18 Q. Did you learn that when you got there?

19 A. I don't see that I was aware that there were seven
20 calls.

21 Q. Okay. Were there other officers that arrived on the
22 scene that would have interviewed witnesses?

23 A. Yes.

24 Q. Okay. That wasn't a part of your job?

25 A. No, I'm -- since I was the first person there, my main

1 concern was the victim.

2 Q. Okay. And you stated that you got the best
3 description you could?

4 A. (Nods head.)

5 Q. And he was inside his apartment when you arrived?

6 A. Uh-huh. Yes, inside his apartment laying on the
7 floor.

8 Q. Laying on the floor?

9 A. Uh-huh.

10 Q. Okay. And you established the crime scene?

11 A. Yes.

12 Q. Okay. You did speak to some witnesses, yes?

13 A. The only other person I believe I spoke with was his
14 girlfriend, which was inside with him.

15 Q. Did you write a report in this case?

16 A. I did.

17 Q. And did anybody assist you with that report?

18 A. No.

19 Q. All right. So -- do you have that report in front of
20 you?

21 A. I do.

22 Q. Do you recall speaking with a witness who was not the
23 girlfriend?

24 A. I did not speak to them. That might have been another
25 deputy that spoke with them.

1 Q. If you could turn to Page 2 of your report.

2 A. Uh-huh. My report may look -- what I have may look a
3 little different from yours. Which page are you talking
4 about?

5 MS. ZMROCZEK: May I approach, Your Honor?

6 THE COURT: Yes.

7 MS. ZMROCZEK: Thank you.

8 BY MS. ZMROCZEK:

9 Q. May I see the report that you have?

10 A. Yeah.

11 Q. I'll show you the handwritten report that I have.

12 That may refresh your recollection. Is that the report you
13 wrote?

14 A. Yes, it is.

15 Q. Okay. Were you able with speak to a different witness
16 as well?

17 A. I believe there was another witness, a neighbor, I
18 think, that lived in the apartment complex.

19 Q. What time did you leave the scene?

20 A. I think about 6:00 or a little after 6:00 that
21 morning.

22 Q. And the reason that you -- you handwrite a report and
23 then you type one later; is that -- is that accurate?

24 A. Normally we type reports on computers in our car. At
25 that time the computer system was down, so we had to

1 handwrite them.

2 Q. And you do that that night so that the information is
3 fresh in your mind?

4 A. You do it before the leave the scene.

5 Q. Before you leave the scene?

6 A. Uh-huh.

7 Q. And that it's as accurate as possible?

8 A. (Nods head.)

9 Q. Correct?

10 A. Yes, ma'am.

11 Q. I saw you. The court reporter has to take down yes
12 or no. I'm sorry. And you said that the suspect's
13 description was a black male?

14 A. Yes.

15 Q. Black handgun?

16 A. Yes.

17 Q. Black clothing?

18 A. Yes, ma'am.

19 Q. Black face mask?

20 A. Yes, ma'am.

21 Q. Unknown height or weight?

22 A. Yes, ma'am.

23 Q. And that the only item stolen was a cell phone?

24 A. Correct.

25 **MS. ZMROCZEK:** Thank you.

1 **THE WITNESS:** Uh-huh.

2 **THE COURT:** Redirect?

3 **MS. WALKER:** None, Your Honor.

4 **THE COURT:** All right. Thank you. You may step down.
5 (Witness excused.)

6 **THE COURT:** All right. Call your next witness.

7 **MS. WALKER:** Your Honor, the State calls Sidara Allen.

8 **THE COURT:** Come around, please, ma'am.

9 SIDARA ALLEN,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Thank you. Please have a seat on the
12 witness stand and state your full name for the record and,
13 please, spell your first name.

14 **THE WITNESS:** It's Sidara Allen, and it's S-I-D-A-R-A.

15 **MS. WALKER:** May it please the Court, Your Honor?

16 **THE COURT:** Yes, ma'am.

17 DIRECT EXAMINATION

18 BY MS. WALKER:

19 Q. Ms. Allen, can you tell me where you currently live?
20 You don't have to give me an address, just the city.

21 A. Columbia.

22 Q. And how long have you lived here?

23 A. Probably thirteen, fourteen years now.

24 Q. Okay. Do you work?

25 A. I do.

1 Q. What do you do for a living?

2 A. I'm a pharmacy technician.

3 Q. Do you know Michael Keith?

4 A. I do. Yes, ma'am.

5 Q. And how do you know Michael?

6 A. He's my boyfriend of eight and a half years.

7 Q. And do you guys currently live together?

8 A. Yes, ma'am.

9 Q. And back last year did y'all live together?

10 A. Yes, ma'am.

11 Q. What is it that Michael does for a living?

12 A. He -- excuse me.

13 Q. Do you need some water?

14 A. No. I'm okay.

15 Q. Okay.

16 A. He is a bus monitor for Richland School District 2 and
17 he also hosts different events.

18 Q. Can you describe what you mean when you say hosts
19 different events?

20 A. It can be anything from clubs, parties, church events.
21 He -- like if you have a wedding, he can MC it, like
22 introduce people to come out. Just different events like
23 that.

24 Q. And does he do that all around town?

25 A. Yes, ma'am.

1 Q. I want to take your attention back to July 29th of
2 last year.

3 A. Yes, ma'am.

4 Q. Does that night stand out to you?

5 A. Definitely.

6 Q. And do you remember what Michael was doing that night?

7 A. Yes, ma'am.

8 Q. And what was that?

9 A. He had to host at a fight night called Knuckle Up
10 Mondays and then he had -- after he left that he had
11 another event he had to go to at a lounge called Blue in
12 The Vista.

13 Q. And Knuckle Up -- did you say Knuckle Up Mondays?

14 A. Yes, ma'am.

15 Q. And where is that held?

16 A. It can be held at different places, but I think that
17 night it was on the corner of Blanding and Barnwell.

18 Q. And at some point, I guess, that night did he return
19 to y'all's home?

20 A. Yes, ma'am.

21 Q. And how were you alerted that he was home?

22 A. I heard a bam, like a big bang. Like it could be
23 referred to as either a firework or a gunshot.

24 Q. And when you heard that noise, what were you doing?

25 A. I was asleep. It woke me up out of my sleep.

1 Q. And once you heard the bang, what did you do?

2 A. Well, I sat up for a minute because I was unsure of
3 what it was because I also had my TV on, and I have a
4 little dog, so she also woke me up. And so I sat up and
5 just kind of sat there and then I heard some really loud
6 talking, like it sounded familiar, like it was Michael
7 talking, and I was kind of getting out of the bed to kind
8 of see what it was and as I was walking to go to the
9 window, I heard -- heard it again, the noise, and that's
10 when I looked out the window and I saw that Michael -- in
11 relevance to my bedroom window, he was probably closer to
12 me than you're standing.

13 Q. Well, tell me -- tell me where he was.

14 A. Probably about right there.

15 Q. Okay.

16 A. Maybe a little this way. Yeah, there you go. About
17 right there. And so when I looked out the window, I could
18 see a gentleman standing over him with a gun to his head.
19 So that's when I looked out the window and I ran to the
20 balcony and walked outside and I screamed. In so many
21 words, I was like "What are you doing?", and that's when
22 Michael yelled at me and told me to go back in the house
23 because I was trying -- I was on my way over the balcony
24 until he yelled at me.

25 Q. And what floor are you guys on?

1 A. On the first floor.

2 Q. The first floor?

3 A. Yes, ma'am.

4 Q. And, I'm sorry, I didn't mean to interrupt you. You
5 were saying that Michael yelled at you to go back inside?

6 A. Yes, ma'am. And I went back inside and I threw on
7 some pants and ran out the front door. So when I out the
8 front door, he yelled at me to go back in the house. I
9 didn't listen. I --

10 Q. When you ran back outside, who -- what was going on?

11 A. As he -- he was by himself at that moment and all I
12 saw was blood and I could tell -- at that point I knew
13 because I had seen blood when I had looked out the window
14 before I had run onto the balcony and when I went outside,
15 he had been shot and there was blood everywhere, and he
16 told me well, since you're out here, go find my keys
17 because he had kicked them up under the car. So I ran and
18 tried to find his keys. He told me did I see his phone and
19 I didn't see his phone.

20 Q. Okay. Let me slow you down a little bit, okay?

21 A. Yes, ma'am.

22 Q. Going back to -- you said you saw someone standing
23 over Michael?

24 A. Yes, ma'am.

25 Q. Could you see their face?

1 A. No, ma'am.

2 Q. Could you see anything about them at that point?

3 A. Just that they were wearing all black and a black
4 mask.

5 Q. Okay. And once you got outside, where was that
6 person?

7 A. They had -- they were gone.

8 Q. Okay. So then you try to find the keys. What's going
9 on while you're trying to find the keys?

10 A. Michael was directing me to find them. He was still
11 laying on the sidewalk and so I found the keys, I couldn't
12 find his phone and then I walked -- well, I wasn't walking,
13 I was running in panic, and I ran back to him and he was
14 like "Well, I don't know if he's still out here, so help me
15 get in the house". So we stood up and I tried some
16 hopping. I helped him hop in the house and got him in the
17 doorway and then that's when I called 9-1-1.

18 Q. And did police arrive on the scene that night?

19 A. Yes, ma'am.

20 Q. And an ambulance?

21 A. Yes, ma'am.

22 Q. And did you speak with law enforcement about this?

23 A. Are you talking about at that moment?

24 Q. At any point from -- after that shooting, did you
25 speak with law enforcement?

1 A. Briefly. I don't remember who I spoke to, but at that
2 moment the only thing I was concerned about was Michael, so
3 I got in the ambulance. I remember them trying to stop and
4 talk to me and get telephone numbers and stuff, but other
5 than that I don't remember the conversation. I got in the
6 ambulance and went with Michael.

7 **MS. WALKER:** I beg the Court's indulgence, Your Honor.

8 **THE COURT:** Yes, ma'am.

9 BY MS. WALKER:

10 Q. And once y'all got to the hospital, what happened?

11 A. We got to the emergency room and then they -- of
12 course, because he was a gunshot victim, they put him in
13 immediately and they -- I don't know exactly what they did
14 because I couldn't go in there with him immediately because
15 of the nurses and doctors and whoever was in there with
16 him. I know they cut his pants and did whatever they had
17 to do. I know he went down for x-rays, but I was making
18 phone calls and stuff, so I don't know exactly where he
19 went at that moment and what they did until I got in the
20 room with him.

21 **MS. WALKER:** Okay. Thank you. I don't have any
22 further questions.

23 **THE WITNESS:** Yes, ma'am.

24 **THE COURT:** Cross-examination?

25 **MS. ZMROCZEK:** I have no questions. Thank you.

1 **THE COURT:** All right.

2 (Witness excused.)

3 **THE COURT:** All right. You may call your next
4 witness.

5 **MR. STEADMAN:** The State calls Michael Keith.

6 MICHAEL KEITH,

7 having been duly sworn, testified as follows:

8 **THE CLERK:** Thank you. Please have a seat on the
9 witness stand and state your full name for the record.

10 **THE WITNESS:** Michael Keith.

11 DIRECT EXAMINATION

12 BY MR. STEADMAN:

13 Q. How old are you, sir?

14 A. Thirty-seven.

15 Q. Do you live here in Columbia?

16 A. I do.

17 Q. How long have you lived here in Columbia?

18 A. All my life.

19 Q. Are you employed?

20 A. Yes, I am.

21 Q. Where are you employed?

22 A. Richland District 2, S & D Shoe Store at Columbia
23 Mall, a radio station, and nightclubs -- different
24 nightclubs. A total of six jobs.

25 Q. Tell me a little about the nightclubs. What exactly

1 do you do for them?

2 A. I'm the guy that gets the party started, get them
3 hyped, turned up, make announcements about what's gone on
4 previous nights, let them know if we've got special guests
5 or artists or any performance. I'm the go-to guy.

6 Q. And does that require you to be out late --

7 A. Yes.

8 Q. -- at certain nightclubs around town?

9 A. Yes.

10 Q. Okay. Were you doing that job on the evening of
11 July 28, 2014, and the early mornings hours of July 29th?

12 A. Yes, sir.

13 Q. Where were you working that night?

14 A. I had two gigs that night. I had to host Knuckle Up,
15 a boxing -- a legal boxing match at Sound Stage, and then
16 after that I had to host the official after-party for that.
17 So at some nights I can host up to three to four parties in
18 one night.

19 Q. And so tell me about that night. Approximately what
20 times were you at these clubs?

21 A. Knuckle Up, I started at ten, got out of there around
22 about one-ish, about one, 1:30. The official after-party
23 started at 2:30 and I was there from 2:30 to about -- about
24 three. They didn't really have a good turnout, so it was
25 kind of short.

1 Q. At what point did you finish your evening that night?

2 A. Me and a friend of mine went to I-Hop to get something
3 to eat, took him home around like three, 3:30 maybe. I'm
4 kind of iffy on the times or whatever.

5 Q. Okay. So around 3:30, where were you headed?

6 A. Back home.

7 Q. And when did you get home?

8 A. Four, 4:30, one of those. I wasn't too sure of the
9 time, what time I got there.

10 Q. Can you describe what happened once you got to your
11 apartment complex?

12 A. Where I stayed at, it's two other apartments in front
13 of mine, so what I normally do -- my routine is once I get
14 back to the apartments if there's any headlights behind me,
15 I go all the way down, but that night there was nothing, so
16 I got to my apartment complex to wait for the privacy gate
17 to open up, and that takes a little while. So once the
18 gate came all the way up, I came in and just backed into my
19 parking lot..

20 Q. And so why do you look for headlights behind you?

21 A. Due to the fact I host different events, I get paid
22 cash and -- and sometimes it could be a large amount,
23 sometimes it can be little. A lot of people who know me
24 know that there could be cash, no checks or whatever, you
25 know.

1 Q. So once you pulled into your apartment complex, you
2 parked in your space, what happened then?

3 A. I -- once I got out, I went to get me -- so I had some
4 doughnuts sticks in my mini bag, so I grabbed that. As I
5 shut the door, I looked up, I saw this individual standing
6 behind me. He looked like death because he had on black
7 everything; black mask, black shoes, just black everything.
8 So once I got out and shut the door the person that had the
9 gun pointed it out at me and I looked at them like nobody
10 I'm kicking with plays dress-up like this. I'm trying to
11 think -- it wasn't near Halloween, I'm confused, and the
12 guy was like "Give me the keys and give me the money". I'm
13 still trying to figure out like what's going on and then
14 that's when I heard the uni -- universal language,
15 (demonstrating); okay, I understand what's going on now.
16 So he was like "Give me the keys and give me the money".
17 I'm sitting there trying to use my comedic skills and my --
18 my personal skills like trying to communicate with the
19 person, like chill out, let's try to work something out.
20 He said "I'm gonna count down. If you don't give me the
21 money by the time I count down, I'm gonna kill you".

22 Q. This is what the --

23 A. The person that was in all black. He started counting
24 down and then once they got down to zero, I was like, you
25 know what, I might try to run. So I was by my door, which

1 was the driver's, and the individual that was in the black
2 was behind -- was in the back of the car where the license
3 plate area was at. So once they count down, we're running
4 around the car, duck, duck, goose, and he's telling me
5 "Look, stop running before I shoot you". So due to the
6 fact that I'm in the neighborhood, I figured if -- I can't
7 scream that loud, so I said well, if I yell out "shoot"
8 maybe it might wake up somebody. So I'm telling him to
9 shoot. "If you're gonna shoot, shoot". We're still
10 running around the car, running around the car. So I
11 ducked down and he ducked down and I'm like "Jeez, this
12 guy's good". So the next thing I know I get to the back
13 of the car, he jumps on the car. Me, not thinking, I was
14 upset because he jumped on my car because my car was just
15 washed the day before, but he walks across my car and when
16 he did that I took my Minute Maid and threw it at him.

17 Once I threw the Minute Maid at him, I ran because my
18 -- the apartment is now right behind me. So I figured I
19 could just run into the apartment or just keep running to
20 where the lake is at and maybe I can, you know, get away.
21 As I ran, pow. Well, I dropped down to the ground. Once I
22 dropped down to the ground and tried to get up, then the
23 guy in all black came over me, like "Give me the money,
24 give me the keys". At that time he's pulling on -- pulling
25 on my pants trying to get my pants off. I was like -- I

1 ain't never had a man try to take my pants off, but I'm
2 trying to -- trying to hold them up. I didn't know what
3 they were gonna do. Instead of trying just to let me --
4 I'm putting my hands to keep him from trying to mess with
5 me, I've got my hands up, and he was getting frustrated
6 because I'm not -- I apologize if I told you this already,
7 but I'm not giving you nothing. I worked hard for this.
8 I'm not giving you nothing. Whatever -- whatever you've
9 got to do to get it, get it how you get it.

10 As of this time, he's still trying -- still trying to
11 hit me with -- hit me with the gun. He got frustrated. I
12 could imagine he's gonna get frustrated. He pointed the
13 gun at me, I put my hands up like this, he aimed it at my
14 leg, pow, shot me in my leg. I'm sorry, mom. I went "Oh,
15 shit, you shot me. What the hell?". I'm mad now because
16 -- it's not that serious, but you try to kill me for this
17 little bit of money or the money that you think I have? So
18 once he did that, I was like, "Yo, all right, chill, chill,
19 chill, chill." "Give me the money, give me the keys.
20 Something inside of me wouldn't give it to him. He put
21 the gun towards my head. I felt the heat from the barrel
22 of -- of the gun. I thought that was it. I laid back and
23 whatever was gonna happen was gonna happen. I laid back,
24 waited to whatever my end result was gonna be.

25 As I -- as I seen him getting ready to squeeze the

1 trigger, my girl came to the balcony and I'm like golly,
2 yo, just go inside because I think this due might kill me,
3 so I don't -- I don't want you to see this, so just -- just
4 go inside. She would listen. She's trying to be Wonder
5 Woman and jump over the balcony and I'm like yo, go inside,
6 don't -- I don't want you to see this. Because he already
7 done shot me. Just go inside. So she went inside and so
8 I'm like okay. I laid down. Hopefully he can -- whatever
9 he's gonna do he can get it over with and done by the time
10 she gets outside, but due to the fact she didn't listen,
11 she's running outside towards me anyhow, I'm like hell, he
12 done shot me, no telling what he's gonna do with my girl.
13 So I -- I swung at him. I don't know if I hit him in the
14 belt buckle, stomach or whatever, he takes off. So at the
15 time he was asking for my keys and my money, I already had
16 my money and my keys -- I yelled just go get the keys for
17 the car, you know what I'm saying, in case the person tried
18 -- whoever it is tries to backtrack and get the keys.
19 She's like -- I don't know if she got the keys or whatever,
20 so I'm like you know what, don't even worry about it, just
21 -- just help me get in the house.

22 As I stood up, I heard this snap, which I believe --
23 well, come to find out later on that was my fibula when it
24 broke. So we're hopping and blood's trailing all the way
25 back to the house. And once I -- once I felt myself, you

1 know, to see if I was shot anywhere else, it was just my
2 leg, I was like okay, you know, in my mind I'm good. My
3 girl didn't get hurt, he got no money, he got no car, he
4 got nothing, so I was -- I was all right from there.

5 Q. How bad were you bleeding?

6 A. Pretty bad. It left a nice little trail on the
7 sidewalk.

8 Q. I want to go back to when he was on top of you.

9 A. Uh-huh.

10 Q. He was directly on top of you. Were you looking at
11 his face, were you looking at his shoes or were you looking
12 at anything? Did you pay attention to any article of
13 clothing?

14 A. I -- I -- I did. I'm a shoe junky. I work at a shoe
15 store. I -- I know -- I noticed the shoes. I know it
16 might sound like crazy or whatever, but I'm -- I'm a shoe
17 guy and I know that the shoes was black, the black shoes,
18 and we actually sell -- used to sell those shoes in my
19 store.

20 Q. Did you recognize the brand of shoes?

21 A. Yeah.

22 Q. How do you -- how did you single out those shoes?

23 A. It's like -- it was like -- in my culture, all we
24 notice -- all we notice is shoes. Tennis shoes -- I notice
25 tennis shoes before I even notice you, you know, and those

1 Nike -- those black Nikes, I noticed them with the -- with
2 the strap, you know.

3 Q. I want to go back to -- what happened once you got
4 inside and Sidara called 9-1-1?

5 A. Once we got inside, just waited. Just waited. She
6 was trying to do a lot of stuff she seen on CSI, tie my leg
7 up and all this other stuff, you know.

8 Q. And then once you -- the ambulance showed up?

9 A. Right.

10 Q. And what happened once you got drove off in the
11 ambulance?

12 A. They got me in the ambulance, took me to the emergency
13 room. I don't know what officer came and took my -- took
14 my statement or whatever.

15 Q. So did you give a statement in the hospital?

16 A. Right.

17 Q. And what treatment did you receive at the hospital?

18 A. I don't -- I'm not sure.

19 Q. Okay. What kind of permanent effects do you have from
20 the gunshot wound?

21 A. Oh, man. Any -- any loud -- you know, any loud noises
22 kind of -- kind of throw me off and now -- now that this
23 happened to me I cannot stand people being around me close,
24 even to where I'm at the gas station, anybody around me, I
25 have to -- I have to stand off to the side. Trust issues

1 is kind of out the window now, you know, and nighttime kind
2 of -- kind of rocks with me a little bit, kind of throws me
3 off a little bit. So I'm not as -- as approachable as I
4 used to be before the situation because if you would have
5 met me before then, I don't you know, but I'll get up, give
6 you a hug, show you love, but now it's like I don't know
7 you.

8 Q. As far as your physical injury to your leg, do you
9 have any permanent effects from the incident?

10 A. Not quite running just yet. No -- no limping or
11 anything, but in the morning time aches -- aches and pains
12 in the morning time and like -- like the older people say,
13 I can tell when it's about to rain or whatever because my
14 leg kind of -- kind of hurts a little bit more than it did
15 before the situation happened.

16 Q. And so during this -- the attack, during the shooting,
17 you were really close to the Defendant?

18 A. Yes.

19 Q. Please describe what exactly from head to toe what he
20 was wearing.

21 A. He had on a black mask. I don't know if you're
22 familiar with the show So You Think You Can Dance? It was
23 labeled like a jabberwocky's mask. It's an all black mask
24 with black clothes, black jeans and black -- black shoes.
25 Just black everything.

1 Q. You also at some point described his physical build to
2 officers. Describe his physical build.

3 A. He was like kind of taller than me because once I --
4 once I -- once we got on the sidewalk I was -- I stood up,
5 you know what I'm saying, as we were tussling back and
6 forth, you know, so I know he was just a little -- little
7 taller -- just slightly taller than me or a little shorter
8 than me, but, you know --

9 Q. How tall are you?

10 A. Six-one.

11 Q. So you were standing at some point next to him?

12 A. Right, right. Yeah, once I -- once I got up.

13 Q. And so how tall would you say he was?

14 A. He had -- he had to be six-one. Six-one or six foot.

15 Q. I'm gonna show you what's been marked for
16 identification purposes as State's 149.

17 **MS. ZMROCZEK:** Without objection.

18 A. Yes.

19 Q. Do you recognize that?

20 A. I surely do.

21 Q. Is that the mask that he was wearing?

22 A. That's the mask that was that night. I saw it that
23 night.

24 **THE COURT:** What number?

25 **MR. STEADMAN:** State's 149, Your Honor. Your Honor,

1 at this point we would move to enter State's 149 into
2 evidence.

3 **THE COURT:** Any objection?

4 **MS. ZMROCZEK:** Just subject to my previous.

5 **THE COURT:** Come up, guys. I don't recall the
6 previous objection. Come up.

7 (Proceedings held at the bench; not reported.)

8 **THE COURT:** All right. The objection is overruled.
9 The State's Exhibit Number 149 for identification is
10 admitted into evidence subject to the objection previously
11 made.

12 (State's Exhibit Number 149, a mask, was admitted into
13 evidence.)

14 **MR. STEADMAN:** Thank you, sir. No further questions.

15 **THE COURT:** Cross-examination?

16 **MS. ZMROCZEK:** Thank you.

17 CROSS-EXAMINATION

18 BY MS. ZMROCZEK:

19 Q. Good morning.

20 A. Good morning...

21 Q. Do you go by Cadillac?

22 A. On weekends I do.

23 Q. On weekends?

24 A. Yeah.

25 Q. Is that your promotion name?

1 A. It is.

2 Q. Are you on the -- you're on the radio?

3 A. Now I am.

4 Q. And you let people know where you're gonna be?

5 A. Right.

6 Q. How long -- excuse me. How long have you been doing
7 this?

8 A. Twelve years.

9 Q. And you said you have five other jobs as well?

10 A. Correct.

11 Q. Quite ambitious. What -- how much cash did you have
12 that evening?

13 A. Roughly about -- I don't know. About seven hundred.

14 Q. About seven hundred?

15 A. Yeah.

16 Q. And you always get paid in cash?

17 A. Sometimes, right.

18 Q. Okay. Just sometimes or do they pay you in checks as
19 well?

20 A. It depends on the event. If it's a wedding, they're
21 not gonna pay me in cash, I'm paid a check.

22 Q. Okay. I want to talk about Knuckle Up Mondays for
23 just a moment.

24 A. Sure.

25 Q. Tell the jurors a little bit about what Knuckle Up

1 Monday is.

2 A. Knuckle Up Monday is -- you know, it's a boxing event
3 for young people who have -- they want to box a friend or
4 whatever and they do it the legal way, you know, with a
5 referee, a judge, an ambulance, the whole -- the whole nine
6 yards, and so you come to this event and just box for fun.

7 Q. Okay. And it's located on Blanding Street?

8 A. That particular night it was. It hosts -- it's at
9 different events.

10 Q. Okay. This night it was the Sound Stage, correct?

11 A. Right.

12 Q. Which is at 1800 Blanding?

13 A. Right.

14 Q. And how far is 1800 Blanding from your home?

15 A. Downtown. Quite -- quite far.

16 Q. And, let's say, if I'm at downtown and Lexington and
17 West Columbia are this side, which side do you live on?

18 A. At the time it was towards Columbia Mall.

19 Q. Towards where?

20 A. Columbia Mall.

21 Q. Close to Dentsville?

22 A. I don't know where Dentsville is.

23 Q. Okay. But up in that area off of 77 --

24 A. Right.

25 Q. -- and 20?

1 A. Right.

2 Q. Okay. So off of 77 and 20?

3 A. Uh-huh.

4 Q. And then after -- so going back to Knuckle Up Monday,
5 are there cameras?

6 A. I don't know. I -- I host.

7 Q. Okay. So do you walk in the front door?

8 A. No, I have to use the side door.

9 Q. Okay. And you're familiar that -- in fact, I think
10 you posted on your Facebook they have some pictures that
11 are taken from aerial views inside.

12 A. My managers take care of my Facebook. I have nothing
13 to do with Facebook.

14 Q. Okay. Are you familiar with the rules of Sound Stage
15 and Knuckle Up Mondays?

16 A. The rules of boxing, correct...

17 Q. Okay. And the people who -- who come in -- who come
18 to watch the boxing. --

19 A. Uh-huh.

20 Q. -- they can't wear plain colored shirts, right?

21 A. And, again, I host. I'm not security or the promoter.
22 I'm just the host of the event.

23 Q. Are you familiar with the rules though?

24 A. It don't apply to me because I'm the host.

25 Q. Okay. One of your jobs as the host you said was to

1 kind of get the crowd fired up, right?

2 A. Along with other things. That's one of them, right.

3 Q. Okay. So some of the things that you do to get the
4 crowd fired up is that you talk to them, right?

5 A. Correct.

6 Q. And you single out certain people sometimes?

7 A. Single out?

8 Q. Like make fun of what they're wearing or comment on
9 what they're wearing.

10 A. Right.

11 Q. Okay. So you comment on what people are wearing
12 sometimes?

13 A. Right.

14 Q. Or you say hey, scrub in the corner, pay my waitress
15 or get out?

16 A. That's correct.

17 Q. Tip the bartenders or leave?

18 A. Right, so they can make more money. It's -- it's
19 reverse psychology, yes.

20 Q. Right, right, right.

21 A. Correct.

22 Q. And it's comprised of a bunch of young people?

23 A. Correct.

24 Q. How many people do you think were there that night?

25 A. Quite a few.

1 Q. Quite a few. You were actually shown a picture of
2 Mr. Berry, correct?

3 A. I was.

4 Q. And did you recognize him?

5 A. Not -- not from -- from where when you ask did I
6 recognize him?

7 Q. When you were shown the pictures, they asked you did
8 you recognize him?

9 A. All right.

10 Q. And what was your response?

11 A. No.

12 Q. You haven't seen him before?

13 A. I have seen him before, yes. Yes, I have seen him
14 before.

15 Q. Okay. Do you know him?

16 A. Personally, no.

17 Q. Okay. You said on direct that your culture notices
18 shoes?

19 A. Pretty familiar with shoes, right.

20 Q. And that these were absolutely Nike Air Raids no
21 doubt, right?

22 A. I didn't say Air Raids. I know they was Nikes with --
23 with the strap, yes.

24 Q. Okay. And they were black?

25 A. Right.

1 Q. So the person jumped on your car?

2 A. Yeah, from the hood to the windshield all the way to
3 the top of the car and then -- right.

4 Q. And prior to that they were going around it, they were
5 touching your car and you were touching your car to try to
6 move around the car as well, right?

7 A. That's correct.

8 Q. And they were as well?

9 A. Correct.

10 Q. And when -- and they put their hands on it and jumped
11 up?

12 A. No, they didn't jump. I don't know if they used their
13 hands. They jumped..

14 Q. A standing jump?

15 A. It can happen, yes.

16 Q. Okay. But you'll admit that they did touch your car?

17 A. No, I'm not gonna admit. I don't know if they did. I
18 -- I wasn't worried about if they did touch my car. I was
19 trying to get away.

20 Q. Okay. And you believed at that time that your cell
21 phone had been stolen?

22 A. That's correct because it wasn't nowhere near me.

23 Q. Okay. But that's changed recently that -- because it
24 was not stolen, correct?

25 A. Right.

1 Q. Okay. In fact, it was just laying right there on the
2 hood of your car?

3 A. I didn't know where it was at. It wasn't with me.

4 Q. Okay. The description -- do you recall right when the
5 police officer responded to your house that evening?

6 A. Say that again.

7 Q. Do you recall right when the police officer responded
8 to your house that evening?

9 A. Yeah.

10 Q. And did you speak with that officer?

11 A. Did I do what?

12 Q. Did you speak with the officer?

13 A. It was a lot of officers. I was -- I don't -- I don't
14 remember who I was talking to. I know I was shot. I know
15 it happened in front of my girlfriend and, yeah, I wasn't
16 -- I don't remember what officer I talked to, what fire
17 department or EMS person I talked to.

18 Q. Okay. I'm not trying to trick you. I'm just trying
19 to --

20 A. No, you're making me upset because I --

21 Q. Would you like some water?

22 A. No, I'm good. Go ahead.

23 Q. I know that this is upsetting and --

24 A. Yeah, because I almost got killed and you're sitting
25 here asking me these -- go ahead. I know you've got a job

1 to do. Go ahead. I'm listening.

2 Q. That's okay. We can take some time if you need it.

3 A. No, I'm good.

4 **THE COURT:** Speak up, please.

5 BY MS. ZMROCZEK:

6 Q. That evening when you were shot and you were concerned
7 about your girl, you did the very best you could to give
8 the most accurate description, right?

9 A. Correct.

10 Q. And you described the clothes?

11 A. Right. All black everything.

12 Q. And you told the officer at that time that you didn't
13 know what height or weight or build; is that right?

14 A. The height or build at that -- at the time I didn't --
15 I wasn't concerned. Once I got to the hospital in a safe
16 area, you know what I'm saying, then that's what I did,
17 yes.

18 Q. And you described the gun as a black gun?

19 A. Right.

20 Q. Do you own a gun?

21 A. Do I own a gun?

22 Q. Yes.

23 A. At the time I didn't, but I do -- I'm a registered
24 concealed weapon owner.

25 Q. You said -- just a few more questions. You got to

1 Blue at around 2:30. Did I hear that correctly?

2 A. Around -- around about. I'm not sure about time.

3 Q. Okay. And you're familiar with Blue, you've been
4 there before?

5 A. Correct.

6 Q. And they have cameras on the inside?

7 A. I don't know.

8 Q. Okay. When you got there at 2:30, how did you get
9 into Blue?

10 A. How did I get -- through the door.

11 Q. Through the -- the side entrance and then the normal
12 way?

13 A. No, I go -- I went through -- every club I go to that
14 has a side door, I go through the side door because I'm
15 like the master of ceremonies. I don't -- it's kind of
16 hard to explain to you. I don't know if you'll probably
17 understand it, but when it comes to these parties I am that
18 guy, okay? They make a big deal when I'm coming, you feel
19 me?

20 Q. Uh-huh.

21 A. So when they -- when I get ready to come in, Cadillac
22 is on his way, Cadillac is coming, turn it up, all right?
23 So we're gonna bring you through the side door so you can
24 make a grand entrance. That's what I do, right.

25 Q. Okay. So you're a big -- you're a big personality?

1 A. I like to think so.

2 Q. Yeah. When did you -- were you aware that there were
3 fights going on that night at Blue?

4 A. No, I'm not concerned with that. I don't pay
5 attention to that.

6 Q. There weren't a lot of people? You were inside,
7 right?

8 A. Right.

9 Q. And there weren't a lot of people inside. I think you
10 said they had a bad turnout?

11 A. Right.

12 Q. Okay. How -- and then you went to I-Hop?

13 A. That's correct.

14 Q. And dropped your friend off?

15 A. Correct.

16 Q. Where does your friend live?

17 A. Down by First Nazareth Baptist Church. I don't know
18 the exact address or whatever, but down --

19 Q. In West Columbia?

20 A. No, it's not West Columbia.

21 Q. Oh, off of ?

22 A. (Indicating.)

23 Q. Okay. And then from there you went home?

24 A. That's correct.

25 Q. And what -- how did you get home?

1 A. Two Notch all the way up.

2 Q. Two Notch the whole way?

3 A. Correct.

4 Q. Approximately how long did that take?

5 A. Fifteen, twenty.

6 Q. Fifteen to twenty minutes?

7 A. (Nods head.)

8 Q. And you have a private -- a privacy gate?

9 A. Yeah.

10 Q. Explain how that works.

11 A. You can use a card to get in, but what I had at the
12 time was a button. You mash the button and the gate comes
13 up.

14 Q. Like a garage door?

15 A. Yeah. It's supposed to prevent people who don't live
16 there to come in and rob us or whatever and come in.
17 Unwanted guests.

18 Q. And so it opens up only for you and then it closes
19 behind you?

20 A. It opens up for whoever has a button or a key or
21 whoever will buzz you in. So, no, it don't just open up
22 for me.

23 Q. And so did you see what direction the person who
24 attacked you fled?

25 A. Away from me and my girl. That's the only thing that

1 I was concerned with at the time.

2 Q. And then when you stood up is when you heard the snap
3 you said?

4 A. Right, which was my fibula that broke because I was
5 shot.

6 Q. And then you went inside?

7 A. Hopped inside, right.

8 Q. Hopped inside?

9 A. Right.

10 **MS. ZMROCZEK:** Thank you, Mr. Keith.

11 **THE COURT:** Redirect?

12 REDIRECT EXAMINATION

13 BY MR. STEADMAN:

14 Q. That night you thought your cell phone had been taken?

15 A. I thought it was because my girl wasn't able to find
16 it and I didn't have it. Instead of letting her stay out
17 there looking for a cell phone not knowing if whoever just
18 shot me was still out there, I told her not worry about it.
19 So at that time I didn't have it and I was under the
20 assumption that it was stolen or misplaced.

21 Q. And did you later find out that your cell phone had
22 actually not been taken?

23 A. Right. They told me that the cell phone was around my
24 car or on my car, something like that.

25 **MR. STEADMAN:** Thank you.

1 **THE COURT:** Recross?

2 **MS. ZMROCZEK:** I have no further questions. Thank
3 you.

4 **THE COURT:** All right. Thank you. You may step down.
5 (Witness excused.)

6 **THE COURT:** All right. You may call your next
7 witness.

8 **MS. CAMPBELL:** May it please the Court? The State
9 calls David Sassaman.

10 **THE COURT:** All right.

11 DAVID SASSAMAN,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Thank you. Please have a seat on the
14 witness stand and state your full name for the record and
15 please spell your last name.

16 **THE WITNESS:** David Sassaman, S-A-S-S-A-M-A-N.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q. Mr. Sassaman, where are you employed?

20 A. Richland County EMS.

21 Q. Can you talk a little louder? It's hard to hear in
22 here, okay?

23 A. Richland County EMS.

24 Q. How long have you been working there?

25 A. Four years.

1 Q. And what are your duties at the Richland County EMS?

2 A. I'm an EMT.

3 Q. And as an EMT, are you the person that responds if
4 someone calls 9-1-1 and they're in distress?

5 A. Yes, ma'am.

6 Q. I want to turn your attention back to July the 29th in
7 the early morning hours. Did you respond to a gunshot
8 wound that morning?

9 A. Yes.

10 Q. Where did you go?

11 A. Out in the northeast area.

12 Q. The northeast area?

13 A. Yes, ma'am.

14 Q. Do you remember the -- was it an apartment complex
15 or --

16 A. Yes, it was an apartment complex.

17 Q. And do you remember about what time you were
18 dispatched that morning?

19 A. After 4 AM.

20 Q. And if I show you a copy of your report, would that
21 help refresh your memory?

22 A. Yes, ma'am.

23 Q. Okay. And approximately what time was it that you
24 were dispatched that morning?

25 A. We were dispatched at 4:37 AM.

1 Q. 4:37 AM?

2 A. Yes, ma'am.

3 Q. And approximately how long did it take you to actually
4 get to the apartment complex where the person had been
5 shot?

6 A. Eight minutes.

7 Q. Eight minutes. Once you got there, can you tell the
8 jury what you found?

9 A. Once we arrived on the scene, we went to the apartment
10 number that was given to us. We opened the door to find a
11 patient laying on the entryway floor. He stated that he
12 had been shot in the leg. We exposed the wound, wrapped it
13 and bandaged it and placed him in full spinal precautions,
14 took him to our stretcher and loaded him into the truck.

15 Q. Let me stop you for a second. When you say "we were
16 there", was somebody else there with you?

17 A. Yes. My paramedic partner was there with me.

18 Q. But were you the primary on this call?

19 A. Yes, ma'am.

20 Q. And you say -- you had mentioned that you exposed the
21 wound. Where was the wound located that you observed?

22 A. In the patient's right ankle.

23 Q. And specifically what type of wound was it that you
24 observed?

25 A. There were two holes noted. It looked like possibly a

1 through and through gunshot wound.

2 Q. Consistent with a through and through gunshot wound?

3 A. Yes, ma'am.

4 Q. Did you take any effort to help stop the bleeding at
5 that point?

6 A. Yes, ma'am. It was bandaged and wrapped with cling
7 and the bleeding was controlled. It had pretty much
8 stopped bleeding prior to us arriving.

9 Q. Once you had bandaged the ankle, did you make any
10 efforts to transport the victim anywhere?

11 A. Yes. He was transported to Richland.

12 Q. Why was he transported to Richland?

13 A. Richland is a trauma center and they're pretty good at
14 dealing with that.

15 Q. Based on your observation of the wound, he needed
16 additional care?

17 A. Yes, ma'am.

18 Q. And once you transported him to Richland County, about
19 what time was it when you got there?

20 A. We arrived at 5:11 AM.

21 Q. And was that the extent of your involvement in this
22 case?

23 A. Yes, ma'am.

24 **MS. CAMPBELL:** Thank you. I don't have anything
25 further.

1 **THE COURT:** Cross-examination?

2 **MS. ZMROCZEK:** Just briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. ZMROCZEK:

5 Q. What's a trauma score?

6 A. A trauma score?

7 Q. Yes.

8 A. That takes the Glasgow coma score and the patient's
9 blood pressure and respiratory rate and adds them together.

10 Q. Is it done on a scale?

11 A. Yes, ma'am.

12 Q. What is the highest Glasgow score?

13 A. The highest Glasgow is fifteen.

14 Q. Okay. And what's the lowest? Is it zero?

15 A. Three.

16 Q. A three?

17 A. Three, yeah.

18 Q. Do you recall what the score was in his case?

19 A. The trauma score was a twelve and the Glasgow coma
20 score was a fifteen.

21 Q. Was a fifteen?

22 A. Yes, ma'am.

23 **MS. ZMROCZEK:** Thank you. I have further no further
24 questions.

25 **THE COURT:** Redirect, Ms. Campbell?

1 **MS. CAMPBELL:** No, sir.

2 **THE COURT:** All right. Thank you. You may step down.

3 (Witness excused.)

4 **THE COURT:** You may call your next witness.

5 **MS. WALKER:** Your Honor, the State calls Kristin
6 Settles.

7 **THE COURT:** All right, ma'am. Come on around and come
8 on up to the front.

9 KRISTIN SETTLES,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Thank you. Please have a seat on the
12 witness stand and state your full name for the record.

13 **THE WITNESS:** I'm Kristen Settles.

14 DIRECT EXAMINATION

15 BY MS. WALKER:

16 Q. Good morning.

17 A. Good morning.

18 Q. Can you tell me what city you currently live in?

19 A. Columbia.

20 Q. How long have you lived here?

21 A. It's about three years now.

22 Q. And what do you do for a living?

23 A. I'm an occupational therapist.

24 Q. Back in July of last year, where were you living?

25 A. At

1 Q. I want to take your attention back to July 29th, the
2 early morning hours. What were you doing or where were
3 you?

4 A. I was in my apartment.

5 Q. Okay. And what were you doing?

6 A. I was asleep when I heard everything.

7 Q. Can you tell me what awakened you that night?

8 A. Well, I had fallen asleep on the couch and I was
9 getting up to go back to bed and I heard like a yelling
10 outside.

11 Q. Could you tell -- did you recognize the voices?

12 A. No.

13 Q. And when you heard the yelling, what, if anything, did
14 you do?

15 A. Well, I was on my way to my bedroom and then I went to
16 look out the window to see what was going on.

17 Q. And what did you see out your window?

18 A. I saw two guys like in the grassy area downstairs and
19 then I heard they were arguing. I heard one person say no,
20 no, no and then --

21 Q. I'm sorry, you heard one person say what?

22 A. No. I heard them say no over and over again and then
23 I saw one guy down on the ground and I don't know if they
24 were arguing or what, but then I saw the gunshot -- or
25 heard and then saw it and whoever was on the ground had his

1 hands on his face, I don't know if he was being hit or
2 what, and then the other guy ran off and jumped the fence
3 and then, I guess, a car was waiting for him because then
4 the lights come on, but there was a sign there, so I
5 couldn't see like the whole car. I saw the lights come on
6 and it drove off.

7 Q. Before, I guess, the running started, did you see
8 lights from a car before this?

9 A. No.

10 Q. So the lights were off and then they came on?

11 A. Uh-huh.

12 Q. How many gunshots did you hear that night?

13 A. Just one.

14 Q. Do you remember giving a statement to law enforcement
15 about this case?

16 A. Uh-huh.

17 Q. And do you think seeing your statement could refresh
18 your memory about certain things?

19 A. Sure.

20 Q. Okay.

21 **MS. WALKER:** Your Honor, may I approach the witness?

22 **THE COURT:** Yes, ma'am.

23 BY MS. WALKER:

24 Q. Just in terms of the number of gunshots, do you
25 remember how many you -- you told law enforcement you heard

1 at that point?

2 A. Yes. I think there were two, but I only saw one.

3 Q. You saw him fire one, but you heard two shots?

4 A. I think I heard two.

5 Q. Okay. I'm not trying to confuse you.

6 A. Uh-huh.

7 Q. Just trying to get it straight. The person that shot
8 the victim in this case, could you describe that person to
9 me?

10 A. All I remember -- it was dark. All I remember was
11 like black clothing. It could have been a black guy, but I
12 don't remember specifics of anything.

13 Q. Do you remember if he was tall or short or fat or
14 skinny?

15 A. No.

16 Q. Let me approach you with that statement again. If it
17 pleases the Court.

18 A. Okay.

19 Q. Do you remember back in -- back on July 29th of 2014
20 the description you gave to law enforcement?

21 A. I said black, skinny, all black clothing.

22 Q. I'm sorry. Will you repeat that one more time?

23 A. Black, skinny, all black clothing.

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

25 A. Uh-huh.

1 **THE COURT:** Yes?

2 **THE WITNESS:** Yes.

3 **THE COURT:** It's hard for her to take "uh-huh" and
4 "unh-unh".

5 **THE WITNESS:** Sorry.

6 **MS. WALKER:** Thank you.

7 BY MS. WALKER:

8 Q. The car that the shooter ran to, did you get a look at
9 that at all?

10 A. I think I said it was white or it could have been a
11 white car, but I only saw like the back of it.

12 Q. Was it like an SUV or a four-door, a sports car?

13 A. I said it was a four-door. It could have been kind of
14 square looking.

15 Q. You said square looking?

16 A. Uh-huh.

17 **MS. WALKER:** Thank you. I don't have any further
18 questions.

19 **THE COURT:** Cross-examination?

20 **MS. ZMROCZEK:** Thank you.

21 CROSS-EXAMINATION

22 BY MS. ZMROCZEK:

23 Q. Ms. Settles, when you saw the car, was it in a light
24 or was it -- you said that he jumped the fence?

25 A. Yes.

1 Q. Okay. And how -- how great were you able to see this
2 car?

3 A. How what?

4 Q. How good -- how clearly were you able to see the car?

5 A. I saw it when the lights came on. I didn't see it
6 before.

7 Q. But when the lights came on, you got a good look?

8 A. No, I just saw the back of the car.

9 Q. It was a white or a light colored car?

10 A. Uh-huh. Yes.

11 Q. Okay. And you described it as square?

12 A. I think it could have been, uh-huh.

13 Q. Could you -- did you describe it as an older or a
14 newer?

15 A. I didn't know if it was old or new.

16 Q. You thought it looked older?

17 A. Probably.

18 **MS. ZMROCZEK:** Thank you.

19 **THE COURT:** Redirect, Ms. Walker?

20 **MS. WALKER:** No, Your Honor.

21 **THE COURT:** All right. Thank you. You may step down.

22 (Witness excused.)

23 **MS. WALKER:** Your Honor, may this witness be released
24 -- or excused?

25 **THE COURT:** Go ahead and call your next witness. You

1 want her excused?

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

3 **THE COURT:** Any objection?

4 **MS. ZMROCZEK:** No objection.

5 **THE COURT:** All right. You are excused. You're free
6 to go. Thank you for coming.

7 **MS. CAMPBELL:** The State would call Investigator
8 Trevor Holt.

9 **THE COURT:** Counsel, come up just a moment, please,
10 while the witness is being sworn.

11 (Proceedings held at the bench; not reported.)

12 **TREVOR HOLT,**

13 having been duly sworn, testified as follows:

14 **THE CLERK:** Thank you. Have a seat on the witness
15 stand, please.

16 **DIRECT EXAMINATION.**

17 **BY MS. CAMPBELL:**

18 **Q.** Investigator Holt, where are you employed?

19 **A.** Richland County Sheriff's Department.

20 **Q.** What do you do there, sir?

21 **A.** I'm a crime scene investigator.

22 **Q.** As a crime scene investigator, what do your duties
23 include?

24 **A.** Collection, preservation, documentation and
25 reconstruction of crime scenes or evidence related to crime

1 scenes.

2 Q. And how long have you been working in the crime scene
3 investigative unit at the Richland County Sheriff's
4 Department?

5 A. Since 2008.

6 Q. And how long have you actually been in law
7 enforcement?

8 A. Since '95.

9 **THE COURT:** Excuse me, Ms. Campbell. I didn't get his
10 name.

11 **MS. CAMPBELL:** Trevor Holt. Thank you, Your Honor.

12 **BY MS. CAMPBELL:**

13 Q. Can you tell the jury a little bit about your
14 education and your training in the field of crime scene
15 investigation?

16 A. Yes, ma'am. In addition to in-house competency and
17 proficiency testing yearly, I've received the continuing
18 educational workshops and formal training in these certain
19 areas; ethics, crime scene investigation, blood pattern
20 analysis, DNA, overview of forensic pathology, advanced
21 crime scene photography, advanced blood pattern analysis,
22 crime scene processing, fingerprint recognition and
23 comparison, forensic anthropology and archeology, shooting
24 incident documentation and reconstruction, blood pattern
25 analysis, crime scene reconstruction, ethics in forensic

1 science, advance blood pattern analysis, shooting analysis
2 and reconstruction. I'm also certified as a crime scene
3 investigator with the International Association of
4 Identification, which I've been a member of since 2009.
5 I'm also a member of the South Carolina Division of the
6 International Association of Identification since 2010.

7 Q. And when you respond to a crime scene, is it important
8 to basically try to memorialize the crime scene as it is
9 when you get there?

10 A. Yes, ma'am. Through photography we try to document
11 the scene as is when we get there to show -- be able to
12 show what it was like when we arrived.

13 Q. And then once you document it by photographing it,
14 then do you also go back and kind of highlight certain
15 pieces of evidence that may or may not be important in the
16 case?

17 A. Yes, ma'am.

18 Q. And do you do that by putting markers with like
19 numbers or letters on them?

20 A. Yes, ma'am. ID markers.

21 Q. I want to turn your attention to the early morning
22 hours of July the 29th of last year. Did you respond to a
23 shooting incident?

24 A. Yes, ma'am. At approximately 4:50 AM.

25 Q. And 4:50 was when you were actually notified?

1 A. Yes, ma'am. I actually heard the call dispatched over
2 the radio and responded.

3 Q. Okay. Where were you when you first heard the call?

4 A. I was out patrolling the Region 2, Two Notch Road,
5 Decker Boulevard, Parklane Road area.

6 Q. And is headquarters actually in Region 2?

7 A. Yes, ma'am.

8 Q. Right there on Two Notch Road?

9 A. Two Notch by Fontaine, yes, ma'am.

10 Q. So were you in pretty close proximity to this crime
11 scene?

12 A. Yes, ma'am.

13 Q. And when you got there, what, if anything, did you
14 observe?

15 A. Upon arrival, I observed uniformed patrol officers
16 who arrived on the scene prior -- prior to me establishing
17 scene security by putting up crime scene tape and starting
18 a crime scene log.

19 Q. And is it important that the deputies do that before
20 you get there or before other people are allowed to wander
21 near it?

22 A. Correct. This was in front of an apartment building
23 at an apartment complex. It was a very large outdoor area
24 between the parking lot and the front of the building that
25 had to be secured. Individuals that were living in the

1 complex, of course, I guess, heard some type of disturbance
2 and were coming out looking, being noisy, that kind of
3 stuff.

4 Q. Once you got there, did you make contact with a Deputy
5 Short, who was one of the first officers on the scene?

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

7 Q. And at that point -- you can't say what he said to
8 you, but do you get a history from officers at the scene in
9 order to help you --

10 A. Yes, ma'am.

11 Q. -- figure out what you need to memorialize?

12 A. I knew what had been put out over the radio, which
13 was the reason I responded, and then I received a brief
14 statement from Deputy Short at that time upon my arrival
15 at the scene.

16 Q. And once you got there, what areas were you
17 specifically focussed on memorializing that morning?

18 A. It was the parking lot area around a 2012 Chrysler 300
19 in front of , the walkway in front of the
20 and the front door of .

21 Q. And when you got there -- was it still dark when you
22 first got there?

23 A. Yes, ma'am.

24 Q. Did you then photograph these different areas
25 including the car that you mentioned, which was a Chrysler

1 what?

2 A. 300. 2012 Chrysler 300.

3 Q. I want to show you photographs that are 3 through 39,
4 Your Honor, I believe without objection. Do you recognize
5 those photographs?

6 A. Yes, ma'am.

7 Q. Are those the photographs that you took that evening
8 both at the scene as you originally found it and then once
9 you put markers out?

10 A. Correct.

11 **MS. CAMPBELL:** Your Honor, may the witness step down
12 in front of the jury?

13 **THE COURT:** Yes.

14 (Whereupon, the witness steps down from the witness
15 stand.)

16 **THE COURT:** Let's get the numbers on the record.
17 Numbers.

18 **MS. CAMPBELL:** 3 through 39.

19 **THE COURT:** Photographs, Numbers 3 through 39,
20 admitted without objection?

21 **MS. ZMROCZEK:** That's correct, Your Honor.

22 **THE COURT:** All right. Admitted without objection.

23 **MS. CAMPBELL:** Thank you.

24 (State's Exhibit Numbers 3 through 39, photographs,
25 were admitted into evidence.)

1 **THE COURT:** All right. The State's counsel wishes to
2 publish or show these exhibits to you and they may do so
3 at this time. I will, again, tell you that do not be
4 concerned if you are not able to see them as closely as
5 you might like to. You will be able to take everything to
6 the jury room -- or all exhibits that are admitted into
7 evidence to the jury room with you when you retire to
8 deliberate your verdict.

9 All right, Ms. Campbell.

10 **MS. CAMPBELL:** Thank you, Your Honor.

11 BY MS. CAMPBELL:

12 Q. If you can stand on this side so the court reporter
13 can hear you better and I'll get over here. The first one
14 I want to show you is State's Exhibit Number 3. What area
15 -- this is a dark photograph. What area does this show?

16 A. This is the parking lot area showing the placement of
17 the burgundy colored 2012 Chrysler 300.

18 Q. And I'll show you State's Exhibit Number 5. Does that
19 show kind of the area where the car was parked?

20 A. Yes, ma'am.

21 Q. What's the color of the car we're talking about?

22 A. Burgundy. It's the red burgundy color with the red
23 burgundy rims.

24 Q. And State's Exhibit 4 shows it again?

25 A. Yes, ma'am.

1 Q. And how was it parked in the parking lot when you got
2 there?

3 A. It was backed in.

4 Q. I'll show you State's Exhibit Number 6, which is
5 another photograph of that car. What's the item here
6 that's on the hood?

7 A. A cell phone.

8 Q. And is that how it was when you found it --

9 A. Yes, ma'am.

10 Q. -- when you got out there?

11 A. Yes, ma'am.

12 Q. And, of course, at this point you don't know what, if
13 any, significance that has?

14 A. Correct.

15 Q. In order to memorialize how the car was parked, I'll
16 show you State's Exhibit 7 and 8. Do those show different
17 areas on that same car?

18 A. Yes, ma'am..

19 Q. And State's Exhibit Number 9 and 10?

20 A. This is the white line dividing the two parking spaces
21 between the burgundy Chrysler and the car next to it and an
22 overall of the indication of where a shell casing was found
23 and then a midrange photograph of where the shell casing
24 was found.

25 Q. When we're talking about a shell casing, can you tell

1 the jury what's a shell casing and why are shell casings
2 left at the scene significant?

3 A. Shell casings when fired out of a semiautomatic
4 weapon or an automatic weapon the projectile is actually
5 fired through the barrel of the weapon. The casing is
6 then ejected from the side of the weapon; whereas in a
7 revolver they're all contained within a cylinder. On a
8 semiautomatic or a fully automatic weapon they're
9 discharged out to the side.

10 Q. So in cases where a shooting though has occurred, you
11 look for evidence such as any projectiles or casings?

12 A. Correct.

13 Q. Is it more usual to find the casing or a projectile?

14 A. More prevalent would be the casing itself.

15 Q. Why is that? What happens to the projectile?

16 A. The projectile at the velocity it's travelling when it
17 hits things, there's no telling where it's gonna go. It's
18 gonna deflect, it's gonna ricochet, it may impact and go
19 through, it may lodge, it may perforate the surface. It's
20 a guess as to where a projectile actually ends up after
21 it's been fired.

22 Q. But you look for them nonetheless?

23 A. Correct. We look for them and any indications of
24 where they may have gone or the flight path they may have
25 taken. In this case, there was no impact points or

1 anything that would lead us in a certain direction of which
2 way that weapon was fired or the direction a projectile
3 would have travelled.

4 Q. That you were able to observe in the dark?

5 A. Correct.

6 Q. And State's Exhibit Number 11 is a close-up of the
7 area between the cars?

8 A. Correct.

9 Q. And that shows one of the shell casings?

10 A. One of the shell casings, yes.

11 Q. That you later collected?

12 A. Yes.

13 Q. And State's Exhibit Number 12, what does this show?

14 A. This is the front side of and the walk
15 path going up to

16 Q. And specifically this is the walk path we're talking
17 about here?

18 A. Yes.

19 Q. And that was significant also in your investigation?

20 A. Yes, ma'am.

21 Q. I want to show you State's Exhibit Number 13 and then
22 further up the path on State's Exhibit Number 14. Again,
23 what area does this show?

24 A. Correct. This is the indication of by
25 the marker on the building. This is a closer view of the

1 front of the building showing a location of a stain on the
2 sidewalk.

3 Q. A stain on the sidewalk?

4 A. Yes, ma'am.

5 Q. I want to show you State's Exhibit Number 15, which
6 shows some crime scene tape, as well as the actual roll the
7 crime scene tape came off of.

8 A. Right. Yes.

9 Q. Was that there before you got there?

10 A. Yes, ma'am.

11 Q. And is that unusual for a deputy to mark evidence
12 before you get there just to make sure it doesn't get
13 moved?

14 A. It's not unusual. Usually if they find something they
15 consider to have evidentiary value, they will place some
16 type of marker or indicator there, especially when it's
17 dark outside, just so when we go back they can say hey, at
18 this area I put this here to mark the location of this that
19 I found.

20 Q. And State's Exhibit Number 16 and 17, actually what's
21 located next to that with a marker?

22 A. That is a second fired shell casing.

23 Q. And where is this located on the sidewalk?

24 A. Right where the crime scene tape roll is located where
25 the two sidewalks merge together.

1 Q. And State's Exhibit 17, again, is a close-up of that?

2 A. Yes, ma'am.

3 Q. And you mentioned some stains on the sidewalk. I'll
4 show you State's Exhibit Number 18 and 19.

5 A. Yes, ma'am. Reddish-brown stains located on the
6 sidewalk in front of .

7 Q. I'm sorry. I keep walking in front of you.

8 A. That's okay.

9 Q. And, again, when you're observing all this, you don't
10 have any details as to what happened?

11 A. Correct.

12 Q. These are your observations?

13 A. Correct.

14 Q. State's Exhibit Number 20, is that a close-up of that
15 stain?

16 A. Close-up view of the same stain.

17 Q. State's Exhibit Number 21 and 22 is from a different
18 angle?

19 A. Right. This is looking from the walkway -- the
20 interior walkway of back out towards the
21 parking lot.

22 Q. So that's just you want to include every viewpoint?

23 A. Right.

24 Q. And State's Exhibit Number 23 and 24 show what
25 apartment number?

1 A. , door , and the location of
2 two additional stains that were located by door .

3 Q. And , was -- that apartment on what floor?

4 A. .

5 Q. On the ground floor?

6 A. Yes, ma'am.

7 Q. You mentioned stains and I'll show you State's Exhibit
8 Number 25. Where were those stains exactly?

9 A. They were right here by the crease or the corner of
10 the building going towards door , so they would be
11 right here in this photograph and this would be your white
12 trim to door .

13 Q. And then, of course, a closer view in State's Exhibit
14 Number 26?

15 A. Yes, ma'am.

16 Q. And, again, what type of stain was that?

17 A. A reddish-brown stain.

18 Q. And you're calling it a reddish-brown stain, not
19 blood. Why do you do that?

20 A. At this time, I didn't see the source of any blood
21 being let by anyone. I had information that there was an
22 injury involved in this case. Until it's determined
23 through processing that it's blood, we refer to it as a
24 reddish-brown stain.

25 Q. Once you've taken your overall pictures, did you then

1 go back and take some close-ups?

2 A. Yes, ma'am. Items that I feel -- felt had evidentiary
3 value they were marked with ID markers.

4 Q. I'm showing you State's Exhibit Number 27 and 28.
5 Again, what's that?

6 A. A cell phone located on the hood of the vehicle.

7 Q. And then, again, between the cars in State's Exhibit
8 29 and 30 and 31?

9 A. It's the fired cartridge casing between the two
10 vehicles in the parking lot.

11 Q. The first one?

12 A. Yes, ma'am.

13 Q. Which is in State's Exhibit Number 31?

14 A. Yes, ma'am.

15 Q. And then you also put a marker, I believe, next to the
16 tape in State's 32?

17 A. Yes, ma'am. The second fired cartridge casing that
18 was found at the scene.

19 Q. And then another marker, which is D -- and you don't
20 do them in any order that have significance, you just do
21 them in any order?

22 A. Right. Yes, ma'am. They're just placed there.

23 Q. State's Exhibit 34 and 35?

24 A. Yes, ma'am. This is Marker D indicating the
25 reddish-brown stain on the walkway in front of

1

2 Q. 36 and 37. And when you got there, the reddish-brown
3 stain that you didn't call blood though, what was its
4 condition? Was it dry or wet?

5 A. It was wet.

6 Q. State's Exhibit 38 and 39 show what?

7 A. The location of the reddish-brown stain located by
8 door . . .

9 Q. Thank you.

10 (Whereupon, the witness returns to the witness stand.)

11 BY MS. CAMPBELL:

12 Q. Okay. Once you had photographed things, first overall
13 as you found them and then went back and put the markers,
14 did you then collect any type of evidence there at the
15 scene?

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

17 Q. What did you collect that day?

18 A. I collected the cell phone, which was marked as A. I
19 collected the fired cartridge casing that was marked as B,
20 I collected the second fired cartridge casing that was
21 marked as C. I collected a swab from Marker D, which was
22 the reddish-brown stain on the walkway, and I collected a
23 swab from Marker E, which was the reddish-brown stain
24 located in front of the door .

25 Q. I'm gonna show you what's been marked as State's

1 Exhibit 139, 141 and 138. Do you recognize those?

2 A. Yes, ma'am.

3 Q. And are those the actual items of evidence you
4 collected that night?

5 A. Yes, ma'am.

6 **MS. CAMPBELL:** Your Honor, at this time we'd offer
7 these in to evidence; 138, 139 and 141.

8 **MS. ZMROCZEK:** Without objection.

9 **THE COURT:** Admitted without objection.

10 (State's Exhibit Number 138, a swab; Number 139, a
11 cell phone; and Number 141, cartridge casings, were
12 admitted into evidence.)

13 BY MS. CAMPBELL:

14 Q. So this is the cell phone and then in State's Exhibit
15 141, those were the actual cartridge casings?

16 A. Yes, a fired cartridge casing, .9 millimeter Luger,
17 found on the ground on the passenger side of the vehicle,
18 and the walkway in front of .

19 Q. And any further testing other than collection of
20 possible DNA evidence on these would be done by someone
21 else in your department?

22 A. Processing-wise as far as latent prints I would do
23 myself, but in this case these were collected at the scene,
24 they were taken back to the forensic laboratory, they were
25 processed using black powder or ground graphite with

1 negative results for latent prints. A swab was then
2 collected off of each shell casing for DNA processing.

3 Q. I'll get back to that. Okay. While you were still at
4 the scene, did you make arrangements for the car -- the red
5 car -- burgundy car to be towed?

6 A. Yes.

7 Q. What was the purpose of that?

8 A. The information I received was that this -- this
9 incident took place around this vehicle. Not knowing if
10 there was any type of evidentiary value on the vehicle
11 itself, on the exterior of the vehicle, if anybody may
12 have touched it during a scuffle, I just knew it took
13 place around this vehicle, I wanted to be able to take
14 this vehicle to a controlled environment where I could
15 process it.

16 Q. And was that actually towed that night?

17 A. Yes, ma'am.

18 Q. And it was towed to where?

19 A. The forensic garage at the sheriff's department.

20 Q. And were steps made to make sure that no one altered
21 or tampered with it in any way?

22 A. Correct. Once it's placed in the forensic garage,
23 nobody has access to the garage except for crime scene
24 personnel.

25 Q. And was that car later processed by a different crime

1 scene investigator?

2 A. Yes, ma'am.

3 Q. And you also mentioned that once you had collected the
4 two cartridge casings you took those back to headquarters
5 and processed them?

6 A. Yes, ma'am.

7 Q. And tell the jury how you go about processing
8 something?

9 A. The cartridge casings are processed with a camelhair
10 fingerprint bush and black powder, which is just ground
11 graphite. It's applied gently to the surface of the item
12 of evidence that we're trying to process to see if there's
13 any enhancement of a latent print, which is just a relative
14 term for invisible print, fingerprint. And, if so, that
15 print is then lifted and it's submitted for latent print
16 analysis, which in this case it was not. It was negative
17 results on it.

18 Q. And when you say negative results, does that mean that
19 no one ever handled those cartridge casings?

20 A. No, ma'am.

21 Q. And the cartridge casings especially, is it unusual
22 for you to have negative results?

23 A. No, ma'am.

24 Q. Why?

25 A. Due to the heat that's generated during the firing

1 of a cartridge casing. A fingerprint is moisture, is
2 basically what a fingerprint is, and that heat dries that
3 moisture. That's not to say that you will never find a
4 fingerprint on shell casings, which is why we always
5 process the shell casings just in case, and in this case
6 there was negative reaction.

7 Q. Well, say, even with surfaces other than shell
8 casings, if I walk up and put my finger down on this and
9 then carefully pull it up, am I gonna necessarily leave a
10 fingerprint there?

11 A. No, ma'am, not necessarily. Just because you touch
12 something doesn't mean you will actually leave a
13 fingerprint on it. It's a large misconception. Some
14 individuals have very dry hands and with a fingerprint
15 being 98 percent moisture, if you have very dry skin or
16 very dry hands, you are less likely to leave a fingerprint.
17 In addition to that, you may be wearing gloves when you
18 touch something. There are -- you know, it may be the
19 type of surface that you touch that you're just not going
20 to be able to leave a print on.

21 Q. And even if I touch this and had the ability to leave
22 a fingerprint, how I touch it on the surface does that
23 affect in any way my ability to leave one?

24 A. Correct. If the surface is -- is textured, a very
25 rough surface or a wet surface, you are less likely to be

1 able to leave a print.

2 Q. And specifically are you familiar with the term
3 "smudge"?

4 A. Yes.

5 Q. What does that mean in the case of latent prints?

6 A. It basically means that once a finger is placed on a
7 surface it's not just lifted away, it's -- there's actually
8 movement in the finger itself which distorts any ridge
9 detail, which is what we look for for identification
10 purposes, and it's just considered a smudge at that point.

11 Q. But in this case when you processed the two cartridge
12 casings you recovered at the scene, you weren't able to get
13 anything?

14 A. Correct.

15 Q. Which is what's pretty normal in your experience?

16 A. Yes, ma'am.

17 Q. You mentioned that you did collect, however, a DNA
18 swab?

19 A. Yes, ma'am.

20 Q. And what -- how do you do that? What are we talking
21 about when you say you collected a DNA swab?

22 A. When we collect a DNA swab, we take a sterile cotton
23 tipped applicator and we apply a drop of distilled water on
24 it. It is then rubbed across the surface of the evidence,
25 then -- which we're trying to find out if there may be any

1 type of DNA on it. If somebody's touched something and
2 they didn't leave a print, they may have left their DNA on
3 it, so we swab the surface of that item that's considered
4 evidence and then it's submitted into our DNA laboratory
5 for testing.

6 Q. And I show you State's Exhibit Number 140. Do you
7 recognize that?

8 A. Yes, ma'am.

9 Q. And are those the two swabs that you collected?

10 A. Yes, ma'am.

11 **MS. CAMPBELL:** And, Your Honor, at this time we'd
12 offer State's Exhibit 140 into evidence.

13 **THE COURT:** Any objection?

14 **MS. ZMROCZEK:** Without objection.

15 **THE COURT:** Admitted without objection.

16 (State's Exhibit Number 140, DNA swabs, was admitted
17 into evidence.)

18 BY MS. CAMPBELL:

19 Q. And you took these two swabs from the two separate
20 ones?

21 A. Yes.

22 Q. And do you take any steps, whenever you collect
23 evidence, to make sure that its integrity is protected and
24 that there's no cross-contamination?

25 A. Correct. Yes, ma'am. When they're collected at the

1 scene, they are packaged separately from each other so that
2 they do not have contact with each other. They are then
3 processed one at a time. They are then swabbed separately.

4 Q. Was that the extent of your involvement in this case?

5 A. Yes, ma'am.

6 **MS. CAMPBELL:** Thank you. I don't have anything
7 further.

8 **THE COURT:** Cross-examination?

9 **MS. ZMROCZEK:** Thank you.

10 CROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 Q. Investigator Holt, I want to make sure that I heard
13 you correctly. Did you say you're currently a member of
14 the International Association of Identification?

15 A. Yes, ma'am.

16 Q. And you're certified as a crime scene -- you have a
17 crime scene certification with them?

18 A. Yes, ma'am.

19 Q. When did you get that?

20 A. That was received in 2012.

21 Q. And you have to take proficiency tests to keep that
22 updated, correct?

23 A. We take proficiency tests in-house departmental-wise
24 and the re-cert on the certification with the International
25 Association is every five years, three years on some

1 certifications.

2 Q. And you're aware that they have a website?

3 A. Yes.

4 Q. And they list all of their persons who are certified?

5 A. Yes.

6 Q. Can you explain why your name is not on that list?

7 A. I cannot.

8 Q. Would you like to have -- to look at the list? Would
9 it help for you to see it?

10 A. Sure.

11 Q. Okay. Here's the front page of it.

12 A. It has Holt, Trevor, crime scene investigator, and my
13 certification expires September 27, 2017.

14 Q. Perfect. Thank you. Thank you for finding it for me.
15 The certification is important because when you collect
16 evidence you -- you have ethical responsibilities when you
17 collect evidence, right?

18 A. Yes, ma'am.

19 Q. Because you want to make sure that the evidence when
20 you find it is in the exact location when it happened?

21 A. The evidence -- I have no control over the evidence
22 prior to my arrival at the scene. The evidence I collect
23 is documented where I find it.

24 Q. Where you find it?

25 A. Meaning not where it was when the incident occurred.

1 Q. Right, but when you find it?

2 A. Correct.

3 Q. But in this case, the responding officer did exactly
4 what he was trained -- and all officers are trained to do,
5 and that was file off the crime scene, right?

6 A. Correct.

7 Q. And any evidence of any evidentiary value he left --
8 he didn't have a little cone or a number or a sticky, so
9 he put the crime scene tape to identify, for example, the
10 shell casing on the sidewalk?

11 A. Correct.

12 Q. So even if -- even if inadvertently that shell casing
13 had been moved, that -- that marker still would have let us
14 know where it was located before it got touched, right?

15 A. General location, yes.

16 Q. So, for example, if there were other items of
17 evidentiary value at different crime scenes that had to
18 be moved; the best practice would be to place something
19 there to mark -- locate where it was found and then -- so
20 when the crime scene people come to evaluate the scene
21 they know at least where an item is located, right? For
22 example, if -- if there was a backpack -- if there was a
23 backpack --

24 A. Okay.

25 Q. -- and they took the backpack for whatever reason,

1 but they wanted it -- to know where it was found, the best
2 practice would have been not to take it until it was
3 photographed, right?

4 A. Correct.

5 Q. And then the second best practice would have been to
6 leave something where it was located so that we could have
7 an understanding of where it was found?

8 A. If an item in evidence at a scene, say it's an active
9 scene, and say there may be a loaded weapon that's just
10 laying out on the ground and there are people around, the
11 responding officers have the duty to still protect the
12 public. They will collect that weapon, place it in the
13 trunk of their vehicle, someplace secure, they will then
14 notify us upon our arrival this is what I found, this is
15 where I found it, this is why I collected it. As far as
16 placing something there to mark the actual location, if
17 it's possible, it's been done; if not, it's not a
18 requirement as long as they document why.

19 Q. In detail where they found it?

20 A. Correct.

21 Q. And that's why they write those reports?

22 A. Yes, ma'am.

23 Q. And that is standard procedure for all of -- all of
24 Richland County, correct?

25 A. The documentation?

1 Q. Right.

2 A. Yes.

3 Q. Because what we want the jury to have is -- is the
4 most accurate information?

5 A. Correct.

6 Q. And did you go inside the home where the -- where
7 Mr. Keith was found?

8 A. Is that apartment ?

9 Q. Correct.

10 A. I did not.

11 Q. Okay. Would you have gone in there if there was blood
12 located in there? Would that have been important?

13 A. If I had a search warrant or a consent or someone to
14 verbally allow me into that premise, yes.

15 Q. Okay. Would you have needed to if there were items of
16 evidence or reddish-brown stains at that time?

17 A. I would have liked to have gotten in to document to
18 see what was in there, yes, ma'am.

19 Q. Okay. When you arrived, did you speak with the
20 responding officer --

21 A. Yes, ma'am.

22 Q. -- to try to get the details of what to look for at
23 the crime scene?

24 A. Yes, ma'am.

25 Q. Do you speak with any medical personnel or --

1 A. No, ma'am. I'm sorry. Go ahead.

2 Q. For example, you found two shell casings?

3 A. Right.

4 Q. Did you look for bullets?

5 A. Yes, ma'am.

6 Q. I mean, are they called cartridges?

7 A. Projectiles.

8 Q. Projectiles?

9 A. Yes.

10 Q. Did you look for those?

11 A. Yes, ma'am.

12 Q. Did you find any?

13 A. No, ma'am.

14 Q. When you -- you said that part of your recognized
15 training is blood spatter?

16 A. Blood, yes, ma'am.

17 Q. And you had an advanced class in blood spatter?

18 A. Yes, ma'am.

19 Q. What does blood spatter help tell you?

20 A. Blood spatter -- different types of stains tell us
21 different things. It tells us if there's directionality
22 in the movement of blood. We can take the measurements
23 of stains and be able to string -- do a calculation and
24 string those stains back to an area of convergence to
25 where maybe blood was let in a scene. Different stains

1 can tell us different things about what took place inside
2 of a scene.

3 Q. Okay. So -- and that's where I was going. So the --
4 the reddish-brown stains, which we now know to be blood,
5 were on the sidewalk. It left spatter, right?

6 A. It left stain.

7 Q. It left stain?

8 A. Yes, ma'am.

9 Q. Was there any directionality to it?

10 A. The large stain on the sidewalk in front of
11 is what I would refer to as just gravitational
12 droplets. There's no indication of movement in the stain.
13 It's just blood and the blood dripping.

14 Q. Okay. So that -- but you weren't asked to do any
15 studies to see where the person was standing?

16 A. No. No, ma'am.

17 Q. Okay.

18 A. In addition, the sidewalk being textured, that's gonna
19 change the shape and size and -- and it's gonna change the
20 shape and size of the stain once it impacts that textured
21 surface.

22 Q. Okay. And you said there's no way to tell from a
23 projectile where someone was standing?

24 A. Without knowing which direction the projectile was
25 actually fired, an overall search of the area was done.

1 There were no obvious signs of impact points in the front
2 of the building or the vehicle in the parking lot. If it
3 was just fired off somewhere, into the bushes or something,
4 there was no indicator as to the direction that the shot
5 was fired.

6 Q. Okay. Are you -- do you have a radio on? Can you
7 hear the chatter while you're --

8 A. When I am processing a scene, no, I do not have my
9 radio. My mind is on what I'm doing.

10 Q. Okay. When -- and you got there at 4:50
11 approximately?

12 A. Yes, ma'am.

13 Q. How many officers were on the scene at that time?

14 A. I do not recall.

15 Q. Okay. Do you recall being told that the shooter or
16 suspect jumped a fence?

17 A. I don't recall that.

18 Q. You don't recall it?

19 A. No, ma'am.

20 Q. And do you recall one of the officers locating where
21 they jumped the fence?

22 A. I don't recall that.

23 Q. Had you been able to -- had you been given that
24 information, is that something you would have photographed
25 as well?

1 A. Yes, ma'am.

2 Q. Okay. And 3 through 39 are several pictures. The
3 way that you properly document a crime scene is you kind
4 of take an overall picture?

5 A. Yes, ma'am.

6 Q. And then you maybe step a little bit closer and then
7 step a little bit closer?

8 A. Yes, ma'am.

9 Q. Okay. And those are done so that all of the evidence
10 is preserved, as you said, the way you see it, right?

11 A. It's -- it's done so that when they're presented to
12 the jury the jury has an idea of where in the scene
13 something is located. If I just saw a picture of a hole in
14 the wall, you're not gonna know on what wall that hole is
15 located if that's the only picture I'm showing you. If I
16 could show you different angles of that same hole, you can
17 then relate that hole to where it's at in relation to the
18 scene.

19 Q. And that can give us the best -- the best view instead
20 of trying to rely on your memory, right?

21 A. Correct.

22 **MS. ZMROCZEK:** Thank you.

23 **THE COURT:** Redirect?

24 **MS. CAMPBELL:** Yes, sir. Just a couple of questions.

25 **THE COURT:** Yes, ma'am.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q. She asked you about the bloodstains on the sidewalk.

A. Yes, ma'am.

Q. And, again, you explained to the jury why you weren't able to make any further assessment other than they appeared to be gravitational?

A. Correct.

Q. And as far as bloodstains being transferred during a struggle, if the person's left the scene with the blood on their clothing, you can't make any determinations about that?

A. If there's a victim's transfer blood onto our suspect, through a DNA analysis.

Q. That would be possible?

A. Right. But actually looking at a stain, stains are absorbed. Blood is wet, fabric is absorbent, it's gonna absorb that stain and change the look of whatever the stain was originally.

Q. And what time was it when you completed and left the scene?

A. A quarter to six in the morning.

Q. A quarter to six, so 5:45?

A. Yes, ma'am.

Q. And at that point do you know whether or not all the

1 witnesses had been interviewed or was that part of your
2 purview or someone else's?

3 A. Somebody else's.

4 **MS. CAMPBELL:** Thank you, Your Honor. I don't have
5 any further questions.

6 **THE COURT:** Any recross?

7 **MS. ZMROCZEK:** Yes, just briefly.

8 **RE CROSS EXAMINATION**

9 **BY MS. ZMROCZEK:**

10 Q. Ms. Campbell asked you about locating spatter on
11 clothes or clothing items.

12 A. Correct.

13 Q. And are you saying that you can't tell anything from
14 reviewing those?

15 A. I'm not saying you can't tell anything from looking at
16 those, no, ma'am. I'm saying that fabric is --

17 **BAILIFF:** Your Honor, we need a break.

18 **THE COURT:** Sir?

19 **BAILIFF:** We need a break.

20 **THE COURT:** I can't hear you.

21 **BAILIFF:** One of the jurors need a break.

22 **THE COURT:** We're gonna take one in just a second.

23 **BY MS. ZMROCZEK:**

24 Q. I'm sorry, they were talking. Go ahead.

25 A. There may be like a transfer stain and I can tell you

1 that's a transfer stain. I may have a bloody hand and grab
2 your shirt or your pants and I can be able to tell you
3 that's a transfer stain on a hand, but I would not be able
4 to see the ridge detail in it to be able to tell you that
5 is the fingerprint of this person.

6 Q. Were you ever asked to analyze or even see if you
7 could analyze any bloodstains on shoes or pants in this
8 case?

9 A. No, ma'am.

10 **MS. ZMROCZEK:** Thank you.

11 **THE COURT:** All right. Thank you. You may step down.

12 (Witness excused.)

13 **THE COURT:** All right, ladies and gentlemen. We had
14 planned to take our midmorning break at this time and we
15 are going to do that. I'm going to allow you to go to your
16 jury room for about fifteen minutes. We'll start back
17 around ten -- five or ten minutes until twelve. Please
18 relax for a few minutes and do not discuss the case among
19 yourselves. We'll return you to the courtroom in about
20 fifteen minutes.

21 Thank you. You may go to your jury room.

22 (Whereupon, the jury retires to the jury room at
23 11:38 AM.)

24 **THE COURT:** All right. We'll be in recess. Let's be
25 prepared to go forward at 11:55.

1 **MS. CAMPBELL:** Thank you, Your Honor.

2 **MS. ZMROCZEK:** Thank you.

3 (Recess taken.)

4 **BAILIFF:** All rise. Court come to order.

5 **THE COURT:** Thank you. Please be seated.

6 All right. Back on the record with regard to the
7 matter of the State versus Brandon Berry. Mr. Berry is
8 present with his counsel. The State is present and
9 represented by the Fifth Circuit Solicitor's Office.

10 Yes, Ms. Campbell.

11 **MS. CAMPBELL:** Your Honor, just one housekeeping
12 matter. As far as the co-defendant, he is here and his
13 lawyer is here. We would take that matter up at some other
14 time. We're in no rush. I just didn't know whether his
15 lawyer should maybe leave and then come back or what you
16 wanted to do.

17 **THE COURT:** What is the issue?

18 **MS. CAMPBELL:** The issue, Your Honor, is during the
19 traffic stop that you've observed, he was the driver in
20 that. He was charged with, I believe, a pistol charge. He
21 has indicated to us he wants to take the Fifth Amendment
22 and not testify in this case and we just need to proffer
23 his testimony and get a ruling from the Court, I believe,
24 at some point.

25 **THE COURT:** All right. What I'd like to do rather

1 than keep the jury waiting --

2 **MS. CAMPBELL:** I didn't want to do it now. I just
3 thought we could --

4 **THE COURT:** Let's try to break for lunch at one.
5 We'll come back at two, bring the jury back at 2:30, and
6 between two and 2:30 we'll take care of this proffer.

7 **MS. CAMPBELL:** Thank you, Your Honor.

8 **THE COURT:** All right.. Bring the jury in, please.
9 (Whereupon, the jury returns to the courtroom at
10 12:00 PM.)

11 **BAILIFF:** Jurors seated, Your Honor.

12 **THE COURT:** All right. Thank you, ladies and
13 gentlemen, and we are now ready to proceed. You may call
14 your next witness.

15 **MR. STEADMAN:** The State a calls Deputy Brendon
16 Pennington.

17 BRENDON PENNINGTON,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** Thank you.. Have a seat on the witness
20 stand. State your name for the record.

21 **THE WITNESS:** Brendon Pennington.

22 DIRECT EXAMINATION

23 BY MR. STEADMAN:

24 Q. Deputy Pennington, where are you employed?

25 A. I'm employed with the Richland County Sheriff's

1 Department.

2 Q. And what do you do for the Richland County Sheriff's
3 Department?

4 A. Right now I'm assigned to Special Teams.

5 Q. How long have you been with the Richland County
6 Sheriff's Department?

7 A. It will be nine years in January.

8 Q. And what capacities have you worked with them in?

9 A. I started out in patrol in the Two Notch Road area. I
10 was then assigned to patrol in the Broad River Road area
11 before I was moved to the Community Action Team, then to
12 the Drug Suppression Team, and now with Special Teams.

13 Q. Tell me a little bit about the training that you've
14 received while working.

15 A. I've had a good bit of training as far as on patrol,
16 you know, taking reports, responding to calls, stuff like
17 that. On the Community Action Team, we dealt a lot with --
18 one-on-one with the communities, the community leaders and
19 whatnot, and establishing good working relationships with
20 them. The Drug Suppression Team is obviously working
21 street level narcotics cases. And then with Special Teams
22 I'm currently assigned to the special responses.

23 Q. What area in particular are you assigned to?

24 A. Right now?

25 Q. Right now, yes.

1 A. I'm county-wide right now.

2 Q. Okay. And where were you patrolling -- where were you
3 assigned back on July 29, 2014?

4 A. I was currently in -- July 29th I was with the
5 Community Action Team.

6 Q. And did you -- and as part of your duties back on
7 July 29th, would you patrol the Broad River area?

8 A. Yes.

9 Q. And at some point on July 29th, did you observe the
10 Defendant and Nickilous Wallace driving without seatbelts?

11 A. I did.

12 Q. Tell me what you did once you saw that.

13 A. I was sitting stationary on , which
14 runs off of Broad River Road. I observed them on Broad
15 River about to take a left onto . I observed two
16 occupants putting their seatbelts on when they were in the
17 intersection. When they drove past me, I then pulled
18 behind them and I initiated the traffic stop into
19 , which is off of .

20 Q. And once you initiated the traffic stop, what are your
21 next steps?

22 A. My next step was to notify dispatch of my location,
23 which I did over the radio, and then I made contact with
24 the driver and requested identification. Neither one of
25 them had seatbelts on, so I requested identification from

1 both of the occupants.

2 Q. Once you got their identification, what did you do
3 next?

4 A. At that point I returned to my vehicle to run a
5 standard Department of Motor Vehicles check on them to
6 check the statuses of their licenses and NCIC and also
7 ran an in-house warrant check with our in-house warrant
8 division.

9 Q. And is that standard procedure on every traffic stop?

10 A. Yes.

11 Q. So after you ran them through warrants and NCIC, what
12 did you do next?

13 A. At that point my backup officer arrive, Deputy Owens.
14 When I was at the car initially, I noticed nervous behavior
15 from both the driver Wallace and the passenger Berry. I
16 noticed that Berry was doing a lot of the talking for the
17 driver, which I found strange, and they both were visibly
18 shaking and visibly nervous. I informed Owens that Brandon
19 Berry was in the car and to check and see if he could smell
20 or see anything because I felt like with their nervous
21 behavior there was something up with the stop, so I had him
22 go to the car. After I checked for warrants, I went back
23 and talked to Nickilous Wallace.

24 Q. And you said you talked to Nickilous Wallace. Did you
25 order him out of the vehicle or did you ask him out of the

1 vehicle? How did you start talking to Nickilous Wallace?

2 A. I asked him to step out of the vehicle. I said can I
3 speak with you at the rear of the vehicle.

4 Q. Was he willing to speak with you?

5 A. Yes.

6 **MS. ZMROCZEK:** Objection.

7 **THE COURT:** Pardon?

8 **MS. ZMROCZEK:** I just was -- I was objecting to the
9 hearsay before it comes out. Thank you.

10 **THE COURT:** Go ahead.

11 BY MR. STEADMAN:

12 Q. So at some point you did talk to Nickilous Wallace?

13 A. Yes.

14 Q. Don't tell me what he said, but while you were talking
15 to Nickilous Wallace what happened next?

16 A. I requested consent to search the vehicle. I was
17 granted that consent and I was granted consent to search
18 Mr. Wallace. As I was searching Wallace, Berry, who was in
19 the passenger seat, moved over to the driver's seat and
20 fled in the vehicle. At that point Deputy Owens stayed
21 with Wallace, I returned to my car. I was right at --
22 beside my car, which was behind the vehicle, so I pursued
23 Mr. Berry through the apartment complex. He made a quick
24 left and then a quick right and then a quick left again to
25 the rear of the complex and that's where he got out and

1 fled on foot.

2 Q. And let me go back to the traffic stop just briefly.
3 Who else was inside the vehicle beside Brandon Berry and
4 Nickilous Wallace?

5 A. There was a two-year -- I don't know how old they
6 were, but a toddler in the vehicle who was not secured in
7 the car or -- and not in a car seat in the back seat.

8 Q. Did you inquire who had custody of that toddler?

9 A. Yes. Mr. Berry.

10 Q. Did he admit it was his daughter?

11 A. Yes.

12 Q. Now let's go back to the pursuit. He speeds off, you
13 give chase and then what happens?

14 A. He gets out. I didn't find out until actually later
15 that actually when he fled with the child in the car he
16 forgot to, I guess, put the vehicle all the way in park.
17 I didn't notice that until later when I returned. The
18 vehicle was all the way across the parking lot because I
19 think it was in reverse or something. But I pursued him
20 through a cut or a wood line that runs between

21 and goes all the way over to

22 , a few hundred yards. I pursued him
23 around a building, observed him throw an object over a
24 fence that backed up to one of the apartments, like a
25 privacy fence. I pursued him around the building through

1 another parking lot around another building where Mr. Berry
2 attempted to jump over a fence and that was where I was
3 able to apprehend him. I basically jumped up on the fence
4 with him. Half his body was over the fence and his legs
5 were on the other side and I grabbed his legs -- onto his
6 legs and I couldn't get him back over the fence. I waited
7 for responding units and once they arrived we effected the
8 arrest.

9 Q. And the traffic stop, this foot pursuit, did all this
10 occur in Richland County?

11 A. Yes, it did.

12 Q. I'm showing you now what's been marked as State's
13 Exhibit 147. Have you had a chance to look over this map?

14 A. I have.

15 Q. And does this encompass the area of the foot pursuit
16 as well as the traffic stop?

17 A. It does.

18 Q. I'm gonna ask you to step down and demonstrate where
19 everybody --

20 **MS. ZMROCZEK:** Your Honor, we would ask that it be
21 moved into evidence prior to being shown to the jury, and
22 we have no objection.

23 **THE COURT:** All right. Do you offer it into evidence?

24 **MR. STEADMAN:** Your Honor, we would offer State's
25 Exhibit 147 into evidence.

10 A. I was sitting right here in my patrol vehicle. I
11 observed them pull to right here about to take a left onto
12 . This is , this is Broad River
13 Road. When they were right here, I observed them look at
14 me and they both put their seatbelts on, both the driver
15 and the passenger. They came past me, I pulled out behind
16 them. They took a right into here and I initiated blue
17 lights and they stopped right here. When the pursuit
18 began, when Berry moved over into the driver's seat, he
19 turned -- he quickly sped off, took a left right here and
20 then a quick right onto this and then another left right
21 here, and this is where his car actually came to -- rested
22 initially when the foot pursuit began. He ran around this
23 building, back through here, okay? And there's a little --
24 this is a pond. There was a little cut right here, this
25 little dirt path, and it goes around this pond and this is

1 a fence line that separates these two apartment complexes.
2 He ran along this fence line. There's a little wooden gate
3 right here. We ran through that. When he got to right
4 here, this is where I observed him throw an object. We
5 continued around this building, through this parking lot,
6 back around this building, and there's another privacy
7 fence here that backs up to these like little town homes.
8 This is where he tried to jump the fence and I was able to
9 get on top of the fence with him and prevent him from doing
10 that. The other officers, who I told which direction he
11 was running, came into here with their patrol vehicles and
12 they were able to run over here and help me get him back
13 over the fence.

14 Q. About how many other officers assisted you?

15 A. From what I recall, there was two or three.

16 Q. And they came from a different -- they came from the
17 other direction?

18 A. Yes, they came from -- as soon as the chase began, I
19 actually told them on the radio to get to the

20 because I'm very familiar with this cut and I know it
21 leads to right here, so it took them a few minutes. They
22 weren't there when I initially ran through this parking
23 lot, so they didn't get there until we were on this fence.

24 Q. I'm now showing you what's been marked as State's
25 Exhibit 150. Do you also recognize this?

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25 | this is another -- this is the entrance to the path to
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1 leads into . So when we came through here,
2 in this area is where I observed him discard the object
3 over the -- over the little privacy fence that backs
4 up into these apartments -- that's attached to these
5 apartments. So, again, I ran down this path right here --

6 Q. Let me go back to that. How did you observe him
7 discard the object?

8 A. I observed him make a motion, I guess, like that
9 (demonstrating).

10 Q. All right, sir. And could you tell me where that
11 happened again exactly?

12 A. Yes. Right in here. Right here.

13 Q. But at that point your main objective was apprehending
14 him?

15 A. Apprehending him.

16 Q. Okay. Continue.

17 A. So, again, we continued around the rear of this back
18 into the parking lot, okay, all the way across the parking
19 lot to here and to in here where there's a privacy fence.
20 That's where he attempted to jump the fence and I jumped on
21 top of him and basically apprehended him there.

22 Q. Was he successful in jumping the fence?

23 A. He got on top of it. Half of his body was over it.

24 Q. And is that when you grabbed him?

25 A. Yes, I grabbed by his legs.

1 Q. And once you grabbed him, how -- how did you get him
2 into custody?

3 A. Well, first I attempted to tell him to come back over
4 and he wouldn't. I basically held them there because I was
5 pretty tired at this point and I held him there. I knew my
6 backup was coming, I could hear them coming, so I just kind
7 of held him there and, you know, waited for them to get
8 there and one of the deputies was able to get him back over
9 the fence.

10 Q. So another deputy was able -- while you held him
11 there, another deputy came and assisted you?

12 A. Yes, the deputy came over and, you know, we had to
13 grab his body to get him over the fence at this point.

14 Q. Did you use your TASER at any point?

15 A. I attempted to use my TASER initially. It didn't make
16 contact with him. One of the other deputies on the scene
17 -- after he came over the fence, he was still on the -- he
18 was still up, you know, he wasn't on the ground at that
19 point and he was tased.

20 Q. Thank you. And so where was Deputy Owens at this
21 point, the one -- your backup officer?

22 A. The other map might be better. He was -- he was still
23 in

24 Q. Okay. So that's the adjacent apartment building?

25 A. That's not this place. It's further up.

1 Q. Through the woods?

2 A. Yes.

3 Q. Thank you.

4 (Whereupon, the witness returns to the stand.)

5 BY MR. STEADMAN:

6 Q. I'm showing you now what's been marked as State's
7 Exhibit 135. Can you please take a look at that?

8 A. Yes. This is a Glock 19 handgun.

9 Q. What else is in there?

10 A. This is a Glock 19 .9 millimeter magazine and this
11 looks to be approximately four .9 millimeter rounds.

12 Q. And is that what you recovered once you went back to
13 the fence line?

14 A. Yes, eventually.

15 Q. When did you recover that?

16 A. This was recovered after the masks and everything was
17 recovered. This was on top of the balcony.

18 Q. So once you -- so once you took Brandon Berry back
19 into custody, you went back to the spot where he tossed the
20 masks. What did you do then?

21 A. We went back to the spot where I saw him throw objects
22 or throw an object, okay? I noticed there was a bag on the
23 ground, okay, and a bag on the balcony, okay? I retrieved
24 the bag on the ground at that point, all right? We did
25 this because we don't know what was discarded, okay,

1 whether it be weapons or drugs or something, we don't want
2 to leave that out in the public for very long, so we
3 retrieved that stuff. Inside the bag I retrieved was, from
4 what I recall, two masks, zip ties, gloves, and I believe
5 some clothing items, like some shirts.

6 Q. And which bag was this recovered in?

7 A. This was recovered in the Gamecock -- a black Gamecock
8 bag that was on the balcony.

9 Q. I'm showing you now what's been marked as State's
10 Exhibit 136. Do you recognize that?

11 A. Yes, I do.

12 Q. And where was that bag when you recovered it?

13 A. This was on top of the balcony.

14 Q. What was inside that bag?

15 A. Inside this bag were diapers and the gun was at the
16 bottom of the bag.

17 Q. All right. I'm now showing you what's been marked as
18 State's Exhibit 137. Can you, please, take a look at that?

19 A. This is the bag that I recovered off the ground that
20 was on the other side of the fence.

21 Q. Okay. What was inside that bag when you recovered it?

22 A. Masks, zip -- zip ties, gloves, and I believe some
23 shirts.

24 Q. Is this the black mask that was recovered inside that
25 bag?

1 A. Yes.

2 MS. ZMROCZEK: Your Honor, none of these items have
3 been introduced into evidence.

4 THE COURT: Ma'am?

5 MS. ZMROCZEK: None of these items have been
6 introduced.

7 THE COURT: I understand that.

8 MR. STEADMAN: Your Honor, at this point we would move
9 to introduce State's 137, 136 --

10 THE COURT: All right. Let's take them one at a time.
11 137 would be the bag from the ground containing,
12 according to the officer's testimony, with the masks
13 inside, as well as the shirts. Any objection?

14 MS. ZMROCZEK: Subject to my previous objection,
15 Your Honor.

16 THE COURT: All right. Come up a minute, counsel.
17 (Proceedings held at the bench; not reported.)

18 THE COURT: All right. Based on pre-trial motions,
19 the Exhibit Number 137 is admitted without objection
20 because I don't believe there was any pre-trial motion, I
21 think it was resolved at that time, and the record would so
22 reflect. Exhibit 137 is admitted.

23 (State's Exhibit Number 137, a bag, was admitted into
24 evidence.)

25 MR. STEADMAN: Your Honor, we would also move to enter

1 into evidence State's Exhibit 135 and 136.

2 **THE COURT:** All right. With regard to 135, I want the
3 court reporter to -- first of all, I want the officer to
4 check the weapon to make sure that it is safe.

5 **THE WITNESS:** It is safe, Your Honor.

6 **THE COURT:** All right. Then I want the box with the
7 weapon in it marked as 135A, the magazine 135B and then the
8 four .9 millimeter rounds marked as 135C. I want them all
9 marked separately. So label those 135A, B and C.

10 (State's Exhibit Numbers 135A, a handgun; 135B, a
11 magazine; and 135C .9 millimeter bullets, were marked for
12 identification and admitted into evidence.)

13 **THE COURT:** All right. 135A, B and C have been moved
14 into evidence. And, again -- Ms. Zmroczek, again, it's my
15 view that the -- this issue was resolved in pre-trial and
16 the record would reflect whatever the situation was, but it
17 is admitted into evidence.

18 **MS. ZMROCZEK:** Thank you.

19 **MR. STEADMAN:** And, Your Honor, we would also move to
20 enter State's 136 into evidence.

21 **THE COURT:** All right. The same ruling on 136, which
22 is the bag that was found on the balcony according to the
23 witness. The same ruling. I believe that was resolved
24 pre-trial and the black -- that bag, State's Number 136, is
25 admitted into evidence.

1 (State's Exhibit Number 136, a bag, was admitted into
2 evidence.)

3 **THE COURT:** All right. Counsel come up just a minute
4 and let me tell you -- we'll go back in just a minute --
5 and tell you what my ruling is on 135.

6 (Proceedings held at the bench; not reported.)

7 **THE COURT:** All right. Go ahead.

8 BY MR. STEADMAN:

9 Q. Deputy Pennington, I'm gonna go back to the traffic
10 stop. You got Nickilous Wallace out of the car. What did
11 you talk to him specifically about?

12 A. I talked to him about if he used marijuana because I
13 was informed by Owens that he possibly saw marijuana in the
14 vehicle. I asked him if he used marijuana, if he'd been
15 using marijuana today, if anyone inside the car had been
16 using marijuana, and then I asked him why he -- why he and
17 Berry were so nervous, and I also -- excuse me. I asked
18 him why they were, you know, so nervous and I also asked
19 him why his eyes were so bloodshot. It looked like he was
20 possibly under the influence of something.

21 Q. And what other violations were you investigating with
22 Mr. Wallace?

23 A. Mr. Wallace did not have insurance -- or, excuse me,
24 he didn't have proof of insurance and also the unsecured
25 toddler in the back seat with no seatbelt or child seat or

1 anything.

2 Q. So there was no child seat?

3 A. Not that I recall.

4 Q. Was the child restrained?

5 A. No.

6 Q. And where was the child sitting in the back seat?

7 A. He wasn't really sitting. He was kind of just moving
8 back and forth in the back seat. That actually grabbed my
9 attention. You know, I didn't see the child initially.
10 When I walked up to the car, it grabbed my attention, and
11 I told him that the child needed to be in a car seat.

12 Q. And once he fled in the car, you said it came to a
13 stop, but it was placed in reverse. Can you, please,
14 describe that?

15 A. Yes, sir. When he fled and he was running, the car
16 was -- it was -- it appeared stopped to me, so I continued
17 on foot. After everything subsided, when I returned back
18 to my vehicle the car was actually backed all the way
19 across the parking lot, and apparently it was in reverse
20 or something and I think a random person jumped in the car
21 and basically put it in park to prevent it from causing an
22 accident.

23 Q. Was the child in the vehicle at that time?

24 A. No, the child had been retrieved by a person in the
25 parking lot.

1 Q. And during the -- during the foot pursuit, did you
2 tell him you were attempting to place him under arrest?

3 A. I told Berry to stop very loudly. Also on the fence
4 I told him to stop resisting, you know.

5 Q. I'm showing you what's been marked as State's 151.

6 A. Yes.

7 Q. Do you know what that is?

8 A. It looks like my dash cam footage.

9 Q. Yes. And you had your dash cam rolling that day?

10 A. Yes.

11 Q. And have you had a chance to watch this footage?

12 A. I have.

13 Q. Is this a fair and accurate description of the events
14 that day?

15 A. Yes, sir.

16 **MR. STEADMAN:** Your Honor, at this point we would
17 move State's 151 into evidence.

18 **THE COURT:** Any objection?

19 **MS. ZMROCZEK:** As long as it's entered in its
20 entirety, Your Honor, no objection.

21 **THE COURT:** All right. He's going to run the entire
22 thing.

23 **MR. STEADMAN:** Your Honor, permission to publish?

24 **THE COURT:** Yes, sir. Permission granted. Number 151
25 is admitted into evidence without objection and it now will

1 be published to the jury.

2 (State's Exhibit Number 151, in-car video, was
3 admitted into evidence.)

4 **THE COURT:** Again, ladies and gentlemen, this is
5 electronic evidence and you can watch it now and if you
6 want to see it further at the time you're back in the jury
7 room, we can make arrangements for it to be played for you.

8 Can everyone on the jury see or does it need to be
9 tilted or turned a little bit?

10 **MR. STEADMAN.** I'll bring it around.

11 **MS. CAMPBELL:** He's going to bring it around.

12 **THE COURT:** You may proceed.

13 (Whereupon, State's Exhibit Number 151 was played for
14 the Court and jury.)

15 BY MR. STEADMAN:

16 Q. Deputy Pennington, who was that talking?

17 **THE COURT:** Wait a -- wait just a moment. If you're
18 going to answer questions, you will have to stop it.

19 (State's Exhibit Number 151 was played in its
20 entirety.)

21 **MS. ZMROCZEK:** Your Honor, we don't object to this
22 copy.

23 **THE COURT:** Okay.

24 BY MR. STEADMAN:

25 Q. So once you recovered the bags that he threw and you

1 apprehended Brandon Berry, what was the next step in your
2 duties?

3 A. Well, as far as the bags go, I recovered one bag, the
4 one with the masks and the clothing items, and I returned
5 to my vehicle. I was told that wasn't the right bag, that
6 wasn't the bag that my partner saw.

7 Q. Okay. So there were two bags?

8 A. Yes, sir. Two bags in -- in the same privacy fence.

9 Q. And when did you find out about the second bag?

10 A. When I returned to Owens basically. When I returned
11 to Deputy Owens, he said that's not the bag I saw him with
12 in the car.

13 Q. And that is what prompted you guys to go back and look
14 for a second bag?

15 A. To go back and look for a second bag and that's when
16 we saw another bag on the top of the balcony.

17 Q. And was that in the same location where the first bag
18 was found?

19 A. Yes, same -- same exact apartment, same enclosed
20 little area. It was a vacant apartment. No one lived
21 there.

22 Q. And at that point your traffic stop turned into a
23 robbery or an armed robbery investigation?

24 A. Yes.

25 Q. What was the next step then?

1 A. Basically when I saw there was a gun and a mask and
2 zip ties, I knew that this was something that was little
3 more to it, so I called Investigator Carwell, who I knew
4 was in, I guess, major crimes at that point, investigated
5 robberies. He told me he was gonna look into it and he,
6 you know, called me back and responded to the scene and
7 informed me about a shooting that occurred the night before
8 and Investigator Carwell at that time kind of took over --
9 took lead on the investigation.

10 Q. So at that point when Investigator Carwell took over,
11 your job was pretty much done?

12 A. Yes, except for, you know, getting the car, you know,
13 towed and everything like that it was pretty much done.
14 Doing the paperwork on -- on both Berry and Wallace.

15 Q. Do you recognize the person in the courtroom who you
16 chased that day and tossed the two bags?

17 A. I do.

18 Q. Can you, please, point him out?

19 A. Sitting right there in the white shirt and tie.
20 That's Brandon Berry.

21 Q. We heard some ringing on the video. What was that?

22 A. Some what?

23 Q. Some ringing.

24 A. That was my MDT or mobile data terminal. Every --
25 I won't say every, but most cars are outfitted with a

1 computer that we can basically run information, run tags,
2 type reports. That constant ringing was my computer in my
3 car ringing constantly.

4 Q. And that's basically like unchecked messages?

5 A. Yeah. When you run tags, it makes noise. When
6 dispatch assigns you to a call, it makes noise. When you
7 get a message, it makes a noise. So that was basically
8 unchecked messages on the -- it could have been an alert
9 from the State files or it could have been a alert from
10 the DMV files or it could have been an in-house message.

11 **MR. STEADMAN:** No further questions.

12 **THE COURT:** Cross-examination, Ms. Zmroczek?

13 **MS. ZMROCZEK:** Thank you.

14 CROSS-EXAMINATION.

15 BY MS. ZMROCZEK:

16 Q. Deputy -- is it deputy or investigator?

17 A. It's deputy.

18 Q. Deputy Pennington, you graduated from the academy?

19 A. Yes, ma'am.

20 Q. You learned how to write reports?

21 A. Yes, ma'am.

22 Q. You learned how to follow the laws of the State?

23 A. Yes.

24 Q. And execute the laws of the State?

25 A. Yes.

1 Q. And learned about the amendments?

2 A. Yes.

3 Q. And about the Fourth Amendment?

4 A. Yes.

5 Q. And about when you have the right to search and seize
6 people?

7 A. Yes.

8 Q. You learned report writing?

9 A. I did.

10 Q. You learned that the reports are supposed to be
11 complete?

12 A. Yes.

13 Q. Accurate?

14 A. Yes.

15 Q. Have all of the information?

16 A. Yes. Pertinent information.

17 Q. Pertinent information?

18 A. Yes.

19 Q. Would you consider location of evidence pertinent
20 information?

21 A. Yes.

22 Q. You prepared a report in this case?

23 A. I did.

24 Q. Investigator Pennington, where in your report does it
25 say that you found a bag on the balcony?

1 A. It says that two bags were recovered. I don't -- I
2 don't remember the exact wording.

3 Q. Would you like to look at your report?

4 A. Yes, I would.

5 **MS. ZMROCZEK:** May I approach, Your Honor?

6 **THE COURT:** Yes, ma'am.

7 **MS. ZMROCZEK:** Thank you.

8 **THE WITNESS:** Do you me want to read it or just --

9 **MS. ZMROCZEK:** Nope, no reading.

10 **THE COURT:** Just read it to yourself to refresh your
11 memory. You can't read from the report.

12 BY MS. ZMROCZEK:

13 Q. Does that refresh your recollection?

14 A. Yes.

15 Q. Where does it say on that report that you located a
16 bag on the balcony?

17 A. It doesn't. It says two bags were recovered.

18 Q. Okay. Does it say -- in fact, it doesn't say where
19 either of the two bags were recovered, does it?

20 A. No.

21 Q. You indicated that the ringing that we heard, the
22 constant ringing, were those different from the quick beeps
23 that we heard?

24 A. Everything that you heard was from the computer.

25 Q. So when your partner gets in the vehicle with you and

1 says it rang ten times, he meant the computer?

2 A. I don't know what he was talking about.

3 Q. Okay. You took Mr. Wallace out of the car?

4 A. I asked him to step out of the car.

5 Q. You asked Mr. Wallace to step out of the car?

6 A. Yes. Right.

7 Q. At that point he could have said no?

8 A. Yes.

9 Q. Sent your backup to see or smell anything?

10 A. And to watch the occupants of the vehicle. To serve
11 as a backup.

12 Q. You've written tickets for no child in a passenger --
13 or in a restraining seat, right?

14 A. I don't recall how many. I don't.

15 Q. It's a blue ticket.

16 A. Yeah, I know what it is. It's a blue ticket.

17 Q. And a fine?

18 A. Yes.

19 Q. Okay. Mr. Berry slides over, takes a left, a right
20 and a left and parks the vehicle, correct?

21 A. Well, he didn't park it because it -- it backed up all
22 the way across the parking lot.

23 Q. I want to talk about that for a minute. Were there
24 any problems with the vehicle's lights?

25 A. My lights?

1 Q. No, no. With the vehicle. Were the brake lights
2 working?

3 A. From what I recall they were.

4 Q. And the reverse lights were working?

5 A. From what I recall.

6 Q. When you put a car in reverse, the lights are on for
7 reverse, correct?

8 A. Yes. Typically.

9 Q. If that car was in reverse, we would have seen that on
10 the lights, right?

11 A. On the video, yes. I don't know if I would have seen
12 it because I was focussed on him.

13 Q. But we would have seen it. It would be on the video.
14 The reverse lights would be on if the car were in reverse?

15 A. If the car was in operating order it would, I assume.

16 Q. All right. The first time you touched Mr. Berry was
17 when?

18 A. On top of the fence.

19 Q. On top of the fence. And that's when you grabbed him
20 down?

21 A. I wasn't able to grab him down.

22 Q. Oh, you just held him?

23 A. I had to hold him there, yes.

24 Q. Okay. And at that point -- it was after that point
25 the other people came and assisted you to get him back over

1 the fence?

2 A. Yes.

3 Q. Okay. How far did he travel in the community with the
4 car?

5 A. In the car?

6 Q. Yes.

7 A. I mean, he -- a couple of hundred yards, I guess.

8 Q. You had an in-car camera that records what happens?

9 A. Yes, ma'am.

10 Q. And that's done so we can get a realtime view of what
11 happens, correct?

12 A. Yes. Uh-huh.

13 Q. You have a body mic?

14 A. Uh-huh.

15 **THE COURT:** Yes?

16 A. Yes. Sorry.

17 Q. And that only works -- it's tethered to your car?

18 A. No, the body mic was on my belt.

19 Q. Okay. But the sound is tethered to your -- it only --
20 it only works from so many feet away?

21 A. I don't know how many feet it works.

22 Q. Okay.

23 A. I have a mic -- a mic on my person, a little black
24 box, that -- at that time when I was doing patrol, I had a
25 mic always on me. Inside the car it also had, I guess,

1 microphones.

2 Q. Okay. So the mic box that you had on your body, we
3 could have heard all of what happened during the chase?

4 A. No, because they're -- they're wireless. And this is
5 old technology. It's VCR.

6 Q. Okay. And then on -- someday soon we'll have body
7 cams, so we could have watched the race, too, right?

8 A. Maybe.

9 Q. Okay. And we do that so that we can see exactly
10 what's happening realtime, right?

11 A. Yes.

12 Q. So when -- your testimony is now that he throws an
13 item. That wasn't in your report, though, was it?

14 A. I can't recall. I thought I wrote in there he threw
15 an item.

16 Q. Would you like to see it again?

17 A. I would. I stand corrected.

18 Q. When Mr. Berry was apprehended, what happened next?

19 A. After he was placed in handcuffs?

20 Q. Correct, after.

21 A. I returned and retrieved what I saw him throw.

22 Q. And who -- who had custody of Mr. Berry at that time?

23 A. One of the deputies that arrived on the scene. I
24 can't recall which one it was.

25 Q. And they would have taken control and put him in the

1 car?

2 A. They would have probably put him in a caged unit.

3 Q. A caged unit?

4 A. Yes.

5 Q. And those caged units have cameras?

6 A. They have cameras like that, but we don't have
7 interior cameras.

8 Q. The caged unit is -- for example, when someone gets a
9 DUI, they get put in a caged unit?

10 A. I don't -- I don't know.

11 Q. Okay. When did you start -- when did you look in the
12 -- the first bag that you say you retrieved, now can you
13 show us on one of these maps exactly where you -- if you
14 don't mind stepping down.

15 A. Yes, sir.

16 (Whereupon, the witness steps down from the stand.)

17 BY MS. ZMROCZEK:

18 Q. Which map do we need to look at?

19 A. We can use the same -- that one.

20 **THE COURT:** Speak up. You're just chatting now. This
21 lady's got to take it down and everybody's got to hear
22 everything.

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** What exhibit are you referring to?

25 **MS. ZMROCZEK:** This is Government's 150.

1 **THE COURT:** All right.

2 **MS. ZMROCZEK:** Thank you.

3 **THE WITNESS:** This is where Berry discarded the item,
4 made a throwing motion. You can't see it, but behind here
5 are privacy fences that belong to each one of these
6 separate apartments. Both of those items were over the
7 privacy fence.

8 **MS. ZMROCZEK:** Okay. Thank you. Have a seat.

9 (Whereupon, the witness returns to the witness stand.)

10 BY MS. ZMROCZEK:

11 Q. Do you have department-issued cameras?

12 A. Patrol does. I do have one.

13 Q. Is it your testimony that not one of the people there
14 on the scene that day had a camera?

15 A. I don't know if they had cameras.

16 Q. Okay. When Investigator Carwell got there, did you
17 tell him where you located the items?

18 A. I'm sure I did.

19 Q. Okay. You said that initially when you ran the tag
20 and then you took their identifications and you ran them
21 through all of your checks that they -- both subjects came
22 back clear?

23 A. Clear, yes.

24 Q. No warrants?

25 A. No, ma'am.

1 Q. No holds?

2 A. No, ma'am.

3 Q. No drugs?

4 A. Deputy Owens said he thought he may have seen
5 marijuana in plain view in the car.

6 Q. And then I believe you testified on direct that part
7 of your duties after all this was to seize the car or tow
8 the car?

9 A. After it was all said and done --

10 Q. Right.

11 A. -- we towed it to the compound.

12 Q. And there were no drugs in the car?

13 A. No.

14 Q. When he was -- he, Brandon Berry, was running away
15 from you, you yelled hey, stop, correct?

16 A. I think I said Berry, stop.

17 Q. Okay. And then when you caught up with him, he stayed
18 on the fence and there was no incidents after that?

19 A. He continued to struggle with me, but there was no,
20 you know, violence.

21 Q. Well, struggling because he was on top of the fence?

22 A. Struggled trying to get away from me.

23 Q. Okay. And -- but at what point was he tased?

24 A. He was tased after he got back on the other side of
25 the fence.

1 Q. Okay. In handcuffs?

2 A. No, he was not in handcuffs at that point.

3 Q. Okay. And how high was this fence?

4 A. I had to jump to get to the top of it. It was
5 probably between six feet, eight feet high. At least six
6 feet high.

7 Q. Okay. And he was -- he was up at the top six feet?

8 A. Uh-huh. Yes.

9 Q. Okay. And so you grabbed him, you held on?

10 A. Yeah, I held on.

11 Q. And at that point you can't say whether he was
12 struggling to get away or struggling to not fall?

13 A. Half his body was on one side, his legs were on the
14 other. He was moving his legs in what I perceived as -- he
15 had already ran for a couple hundred yards. I thought he
16 was still continuing to try to flee.

17 **MS. ZMROCZEK:** Thank you.

18 **THE COURT:** Redirect?

19 REDIRECT EXAMINATION

20 BY MR. STEADMAN:

21 Q. She made mention of you not putting "throwing the bag"
22 in your report.

23 A. Yes.

24 Q. Do you have a copy of your report in front of you?

25 A. I do not.

1 Q. I'm showing you your report. Can you, please, take a
2 look at that and tell us whether you did put that in your
3 report?

4 A. Yes, I -- not the exact word "throw". I said
5 discarded.

6 Q. You said discarded?

7 A. I said he discarded two bags inside in
8 my report.

9 Q. Also, what is the purpose of retrieving those bags
10 immediately once he -- once he was arrested?

11 A. Public safety. We didn't know if there were weapons
12 or drugs. You know, there's a big population in these
13 apartment complexes on , so we wanted to go ahead
14 and retrieve them for public safety in case they contained
15 weapons or, you know, dangerous items.

16 **MR. STEADMAN:** Thank you.

17 **THE COURT:** Recross?

18 **MS. ZMROCZEK:** Yes, briefly, Your Honor.

19 **RE CROSS EXAMINATION**

20 **BY MS. ZMROCZEK:**

21 Q. You used the word "discarded" in reference to not
22 seeing him discard them, but retrieving the items that --

23 A. I used the word "discarded" as I observed him discard
24 the bag -- or discard an object.

25 Q. Okay. You said public safety was the interest. You

1 did not know what was in the bag?

2 A. No, I did not.

3 Q. You went through training at the academy?

4 A. Yes.

5 Q. You went through and you received policies from
6 Richland County?

7 A. Yes.

8 Q. You understand the importance of the preservation and
9 the location of evidence?

10 A. Yes.

11 Q. You understood that the best practice would have been
12 to check the items where they were located?

13 A. Yes.

14 Q. And if there were a gun, then you could remove the gun
15 and secure that?

16 A. We secured the weapon.

17 Q. Right.

18 A. Yes. And we checked the bag because of the reason of
19 exigent circumstances.

20 Q. Right. And you agree with me, as you just did, that
21 the best practice would have been to check the items where
22 they were located?

23 A. Yes, which I --

24 Q. We have no pictures of where these items were located,
25 do we?

1 A. No, ma'am.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: All right. Thank you, Mr. Pennington.

4 You may step down.

5 (Witness excused.)

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, we have reached the lunch hour and we are going to
8 recess at this time. I will allow you to go and get your
9 lunch and I will tell you that I have been advised there
10 are some matters that we need to tend to at 2:00 and so I'm
11 going to ask you to be back in the jury room at 2:30. That
12 will give you an hour and a half to get your lunch and come
13 on back to your jury room at 2:30, and we'll be back at
14 2:00 to tend to the matters that we need to tend to outside
15 of your presence.

16 Again, I will remind you over the lunch recess do not
17 discuss the case with anyone, do not allow anyone to
18 discuss it with you and do not discuss the case among
19 yourselves when you're reassembling in the jury room. It's
20 still premature for you to give any discussion whatsoever,
21 but have a nice lunch and be back at 2:30 and we'll be
22 prepared to go forward at that time.

23 Thank you and see you this afternoon.

24 (Whereupon, the jury retires to the jury room at
25 1:02 PM.)

1. here. And the State -- when we adjourned for lunch, the
2. State was presenting their case and will continue to
3. do so at this time. You may call your next witness.

4. **MR. STEADMAN:** The State calls Dr. Thomas Jones.

5. THOMAS MOSS JONES,

6. having been duly sworn, testified as follows:

7. **THE CLERK:** Please have a seat on the witness stand
8. and state your name for the record.

9. **THE WITNESS:** Thomas Moss Jones.

10. DIRECT EXAMINATION

11. BY MR. STEADMAN:

12. Q. Dr. Jones, where are you employed?

13. A. Palmetto Health Richland Hospital.

14. Q. And what do you for them?

15. A. I'm an orthopedic trauma surgeon.

16. Q. And are you licensed to practice medicine in this
17. state?

18. A. Yes, sir.

19. Q. And how long have you been licensed?

20. A. Since 2011.

21. Q. And where did you go to medical school?

22. A. The Medical College of Georgia.

23. Q. And after graduation from medical school, what have
24. you done since then?

25. A. Five years of orthopedic surgery residency at the

1 University of Wisconsin and then one year of orthopedic
2 trauma fellowship at the University of California-Davis.

3 Q. And can you describe the field of orthopedic trauma?

4 A. It's a subspecialty in the field of orthopedic
5 surgery. My specialty is essentially taking care of
6 traumatized extremities; arms, legs, that are damaged in
7 car wrecks, motorcycle crashes, people falling from
8 heights, those types of things.

9 Q. And, once again, where do you practice currently?

10 A. At Richland Hospital.

11 Q. And during your practice throughout your career, how
12 many -- approximately how many personal injury cases have
13 you worked?

14 A. Specifically in which I've testified? You mean
15 personal injury like how many patients I've taken care of?

16 Q. Yes.

17 A. I probably do three hundred operations a year.

18 **MS. ZMROCZEK:** Your Honor, we have no objection and
19 we stipulate to his expertise as a trauma surgeon.

20 **THE COURT:** All right. You can give further
21 qualifications if you want to, but the defense does not
22 object to the qualifications.

23 **MR. STEADMAN:** Okay. Then, Your Honor, we'd ask --

24 **THE COURT:** You're offering him as an expert in what
25 field?

1 **MR. STEADMAN:** In orthopedic trauma.

2 **THE COURT:** Orthopedic trauma. Any objection to the
3 witness testifying as an expert in the field of orthopedic
4 trauma?

5 **MS. ZMROCZEK:** None whatsoever, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen of the
7 jury, let me tell you what that means. Ordinarily a
8 witness is not testifying as an expert. The witness's
9 testimony in the form of opinions or inferences is
10 limited to those opinions or inferences which are
11 rationally based on the perception of the witness or
12 helpful to a clear understanding of the witness's
13 testimony or to the determination of facts in issue and
14 do not require special knowledge, skill, experience or
15 training; however, if scientific, technical or other
16 specialized knowledge will assist the trier of fact,
17 and that's you in this case, to understand the evidence
18 or to determine a fact in issue, a witness qualified as
19 an expert by knowledge, skill, experience or training or
20 education may testify in the form of an opinion.

21 So basically the difference between a non-expert
22 witness and an expert witness is that an expert witness
23 is allowed to give an opinion, whereas a non-expert witness
24 is not allowed to give an opinion, and I have a qualified
25 this witness as an expert in the field of orthopedic

1 trauma.

2 All right.

3 BY MR. STEADMAN:

4 Q. Sir, on July 29th, the early morning hours, were you
5 the attending physician for patient Michael Keith?

6 A. Yes.

7 Q. Can you, please, describe his condition when you first
8 made contact with him?

9 A. So as a little background as to how it works at
10 Richland Hospital, our emergency room is staffed by
11 resident physicians that are part of the University of
12 South Carolina Orthopedic Residency Program. They are
13 essentially the triage physicians that assess the patients
14 when they come into the operating room -- I mean, when
15 they come into the emergency room. Me, as the attending
16 physician, receives that phone call, I have Patient X that
17 has this particular injury, okay, that sounds good, and
18 then we will set -- typically if it's something that
19 requires surgery, we will have surgery the following
20 morning and I'll meet the patient that morning when I come
21 in in the morning to make rounds. As I recall from this
22 particular situation, that was when I met this particular
23 individual was the morning of.

24 Q. Okay. Once you met him, how did you assess his
25 condition?

1 A. So we do what is a typical physical exam. You take
2 a look at the injured extremity. In this particular case,
3 it appeared to have been a gunshot wound in this particular
4 individual's leg. We do what's called a neurovascular
5 check, which is you evaluate for the blood flow to the
6 foot -- or, in this particular case the foot, the
7 extremity, and then you also assess for the neurologic
8 function; is the patient able to wiggle their toes, is the
9 patient able to move their hand or sense, you know, if
10 you're touching the foot or that kind of thing, so we went
11 through that process. We then assessed his radiographs or
12 x-rays of his injured extremity and from what I recall he
13 had an injury to his tibia that was fractured.

14 Q. And once you assessed the fracture to the tibia, what
15 type of treatment did you provide?

16 A. So in this particular this case, given the
17 displacement or, I guess, how much the fracture had moved,
18 the patient needed an operation to stabilize the fracture
19 so that his ankle and knee remain in the space where
20 they're supposed to be to allow the fracture to heal so
21 that he would eventually be able to weight bear after the
22 bone has healed.

23 Q. And based on the location of the gunshot, how severe
24 a wound was there for bleeding out?

25 A. I guess that's relative. I mean, you know, it depends

1 on where an individual is shot on probably what their risk
2 is for, you know, exsanguinating or bleeding to death, if
3 you will. If someone's shot immediately adjacent to their
4 aorta or an organ in their abdomen or one of the large
5 blood vessels in their thighs, that is a significantly
6 higher rate of blood flow per unit of time that, yes,
7 someone can exsanguinate. That distal or that far down in
8 the leg, the blood vessel caliber is significantly smaller,
9 it's a smaller amount of blood that would be flowing
10 through there over a unit of time, so less likely to do so.

11 Also, in this particular case, given that location,
12 that would be a limb that would be amenable to having a
13 tourniquet placed, essentially like a belt or a T-shirt,
14 something to constrict the blood flow to prevent that from
15 happening where you would not be able to do that in the
16 chest, the abdomen or the upper thigh.

17 Q. So would you say there's a significant risk of
18 bleeding out?

19 A. I'd say low risk.

20 Q. Was this injury -- the treatment, is that -- is it
21 going to cause permanent disfigurement?

22 A. In this particular case, likely not. The particular
23 -- this patient's injury did not involve the articular
24 structures or the joint structures. That's where the
25 cartilage is that allows the ankle to move up and down.

1 The bone in the fashion it was broken was able to be put
2 back together kind of like a puzzle perfectly like it was
3 before. It was broken and from what I remember of this
4 particular individual's fracture it healed successfully and
5 he is now weightbearing.

6 Q. And how did you put this fracture back together?

7 A. With plates and screws. You know, we have metallic
8 implants that serve as internal splints, if you will, to
9 hold the pieces in place while the body heals the fracture
10 and then that way the patient doesn't have to wear a cast
11 or a splint on the outside and they can begin moving their
12 ankle or moving their knee, in this particular case, sooner
13 than later.

14 Q. Will -- those metal implants, will they stay in his
15 leg forever?

16 A. They will.

17 Q. After the treatment, after the surgery that you
18 provided, what were the next steps for Michael Keith's
19 recovery?

20 A. So he gets a post-operative check immediately to make
21 sure that his neurovascular status has not changed, the
22 blood is still flowing to his foot, the nerves are still
23 working, and then we see him, you know, two or three times
24 in the hospital until he is discharged and then he comes
25 back and sees me in my clinic just like you would go to a

1 regular doctor's office and take out stitches, we'd get
2 some updated x-rays, and then I typically see patients
3 like this individual at usually the two-week, six-week,
4 three-month and sometimes six-month followup depending on
5 how their clinical course is progressing. If the fracture
6 is healing and they're making good progress with physical
7 therapy, often times we will, you know, not see them after
8 three or six months.

9 **MR. STEADMAN:** Thank you. No further questions.

10 **THE COURT:** All right. Cross-examination?

11 **MS. ZMROCZEK:** No questions.

12 **THE COURT:** No questions?

13 **MS. ZMROCZEK:** (Shakes head.)

14 **THE COURT:** All right. Thank you, Doctor. You may
15 step down. Would you like to have the witness excused?

16 **MR. STEADMAN:** Yes, Your Honor.

17 **THE COURT:** Any objection?

18 **MS. ZMROCZEK:** No.

19 **THE COURT:** All right. Thank you for coming.

20 (Witness excused.)

21 **THE COURT:** Counsel come up.

22 (Proceedings held at the bench; not reported.)

23 **THE COURT:** All right. Thank you.

24 All right. Proceed. You may call your next witness,
25 Ms. Campbell.

1 **MR. STEADMAN:** The State calls Investigator Kerri
2 McClary.

3 KERRI McCLARY,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Please have a seat on the witness stand
6 and state your full name for the record and, please, spell
7 your first name.

8 **THE WITNESS:** Kerri, K-E-R-R-I. McClary,
9 M-C-C-L-A-R-Y.

10 DIRECT EXAMINATION

11 BY MR. STEADMAN:

12 Q. Investigator McClary, where are you employed?

13 A. I'm employed with the Richland County Sheriff's
14 Department.

15 Q. And what do you do for the Richland County Sheriff's
16 Department?

17 A. I am an investigator assigned to the crime scene and
18 latent fingerprint unit.

19 Q. And what are your duties for the latent fingerprint
20 department?

21 A. For latent fingerprints, my duties are to process
22 evidence using various powders or chemicals to see if I can
23 develop fingerprints on particular items of evidence and
24 then I do comparisons as well.

25 Q. And how did you get involved in this case?

1 A. I received a request for processing from Investigator
2 Carwell on a particular item of evidence, Item 11. It was
3 two black plastic masks. He had submitted a request form
4 to have them processed for fingerprints, latent prints, and
5 for DNA.

6 Q. I'm gonna show you what's marked as State's
7 Exhibit 155. Do you recognize that?

8 A. I do.

9 Q. Is this the mask that you were asked to swab?

10 A. It appears to be one of them, yes. There was two.

11 **MR. STEADMAN:** Your Honor, at this point we'd moved to
12 introduce State's Exhibit 155 into evidence.

13 **THE COURT:** What's the number?

14 **MR. STEADMAN:** 155.

15 **THE COURT:** Any objection?

16 **MS. ZMROCZEK:** Without objection.

17 **THE COURT:** All right. Admitted into evidence
18 Number 155 without objection.

19 (State's Exhibit Number 155, a mask, was admitted into
20 evidence.)

21 BY MR. STEADMAN:

22 Q. So you were asked by Investigator Carwell to do swabs
23 of the mask. Can you describe the process?

24 A. Well, I was actually asked to process them for
25 fingerprints and then once I get done with that the

1 technique that we use to swab something is to take a
2 sterile swab, cotton swab, and we apply sterile water to
3 the tip of that swab and then we rub the swab over the
4 surface of whatever the item is and concentrate everything
5 on the tip of the swab. Once we've done the collection,
6 we place it into a box, a very small carton that's for
7 submission to our evidence and property section.

8 Q. Let me show you what's been marked as State's Exhibit
9 127. Do you recognize that?

10 A. Yes.

11 Q. And are those the swabs that you took of the two black
12 masks?

13 A. Yes, it is.

14 **MR. STEADMAN:** Your Honor, at this point we'd moved to
15 introduce State's Exhibit 127 into evidence.

16 **MS. ZMROCZEK:** Without objection.

17 **THE COURT:** All right. State's Exhibit 127 is
18 admitted into evidence without objection.

19 (State's Exhibit Number 127, a swab, was admitted into
20 evidence.)

21 BY MR. STEADMAN:

22 Q. Now besides the swab -- let me back up. This is for
23 DNA purposes, the swab?

24 A. The collection of the swab is to be submitted to our
25 DNA section for analysis, yes.

1 Q. And once you've swabbed them, how does the process
2 work at that point?

3 A. Once I've swabbed -- collected a swab?

4 Q. Yes.

5 A. They are secured in the swab box and then I secure
6 them in the envelope that you just showed me and submit it
7 to our evidence and property section and then it waits
8 there until DNA picks them up for their analysis.

9 Q. And what else -- besides the swabbing of the two
10 plastic masks for DNA, were you asked to proces anything
11 else in this case?

12 A. No, that was the only thing I was to process.

13 Q. And is this the other mask that you were asked to
14 swab?

15 A. Yes.

16 Q. And that's State's Exhibit 149?

17 A. (Nods head.)

18 **MR. STEADMAN:** No further questions.

19 **THE COURT:** Cross-examination?

20 **MS. ZMROCZEK:** Briefly.

21 CROSS-EXAMINATION

22 BY MS. ZMROCZEK:

23 Q. Can you tell me which swab came from which mask?

24 A. Which swab came from which mask?

25 Q. Yes.

1 A. Can I see the envelope, please?

2 Q. Sure.

3 A. It was just one swab where I swabbed both masks.

4 They were packaged together in the same container and so
5 I went ahead and swabbed both of them with the same swab.

6 Q. Okay. So if one -- they were packaged together,
7 meaning when they were collected and brought to you they
8 were together?

9 A. They were in the same container.

10 Q. Okay.

11 A. Yes.

12 Q. Could then DNA transfer from one to the other?

13 A. I guess it could be possible. I'm not a DNA expert.

14 Q. Okay.

15 **MS. ZMROCZEK:** Thank you.

16 **THE COURT:** Anything further of this witness?

17 **MR. STEADMAN:** No, Your Honor.

18 **THE COURT:** All right. Thank you. You may step down.
19 (Witness excused.)

20 **THE COURT:** All right. You may call the next witness.

21 **MS. WALKER:** Thank you, Your Honor. The State calls
22 Lourisa Katio.

23 **MS. WALKER:** She's sequestered, Your Honor. Let me
24 step outside and make sure they're getting her.

25 **THE COURT:** All right.

1 LOURISA KATIO,
2 having been duly sworn, testified as follows:

3 **THE CLERK:** Thank you. Have a seat on the witness
4 stand and state your full name for the record. State your
5 full name.

6 **THE WITNESS:** Lourisa Katio.

7 DIRECT EXAMINATION

8 BY MS. WALKER:

9 Q. Good afternoon. Where do you currently live? Just --
10 you don't have to give me an address, just like the city.

11 A. Columbia, South Carolina.

12 Q. And how long have you lived here in Columbia?

13 A. All my life. Twenty-three years.

14 Q. Did you go to high school here?

15 A. Yes, ma'am.

16 Q. Where did you go to high school?

17 A. Keenan. W.J. Keenan.

18 Q. And where do you work now?

19 A. Blue Cross Blue Shield.

20 Q. Do you know the Defendant in this case?

21 A. Yes.

22 Q. How do you know him?

23 A. That's my baby's father.

24 Q. He's the father of your child?

25 A. Yes.

1 Q. How old is your child?

2 A. Three.

3 Q. A little boy or a little girl?

4 A. A girl.

5 Q. I want to take your attention back to July of last
6 year.

7 A. Uh-huh.

8 Q. Were you and the Defendant in a relationship at that
9 point in time?

10 A. Off and on, ma'am.

11 Q. I'm sorry?

12 A. Off and on.

13 Q. When y'all were on, would y'all spend the night
14 together?

15 A. Yes.

16 Q. And where would y'all stay during your on times?

17 A. At my house.

18 Q. Okay. And where was that?

19 A.

20 Q. Okay. Did he have clothing and other things like that
21 at your house?

22 A. Yes.

23 Q. And in July were you guys off or on? In July of 2014.

24 A. For the most part -- I'd say, yes, for the most part.

25 Q. Okay. Let's say late July. Were y'all getting along

1 then?

2 A. Sometimes.

3 Q. I want to take your attention back to July 29th.

4 A. Okay.

5 Q. Did you receive a phone call that day that caused you
6 to leave work?

7 A. Yes.

8 Q. Okay. Tell me about that.

9 A. I received a phone call from Kayla and she stated that
10 I --

11 **MS. ZMROCZEK:** Objection, Your Honor. Hearsay.

12 **THE COURT:** All right. Don't testify as to -- I'm
13 not -- I didn't hear the whole question. Ask it again.

14 **MS. WALKER:** I just wanted her to tell me about the
15 phone call she received. I can narrow the question down.

16 **THE COURT:** All right. Don't tell us about any
17 contents of the telephone call, but you can tell what you
18 did as a result of the telephone conversation. Ask the
19 question again.

20 BY MS. WALKER:

21 Q. Who called you?

22 A. Kayla.

23 Q. Kayla?

24 A. Uh-huh.

25 Q. And who is Kayla?

1 A. I'm assuming his girlfriend or baby momma.

2 Q. With a different child? A woman with a different
3 child?

4 A. Yes.

5 Q. Okay. And as a result of talking to Kayla, what did
6 you do?

7 A. I left work.

8 Q. And when you left work, where did you go?

9 A. To the scene where my child was.

10 Q. And do you remember exactly where that was?

11 A. A neighborhood off of Broad River. I not sure the --
12 I don't remember the name of the neighborhood.

13 Q. But it was in the Broad River Road area?

14 A. Yes.

15 Q. And once you got -- how long did it take you to get
16 there?

17 A. About twenty minutes.

18 Q. Okay. And at that point while you were driving to
19 Broad River Road, were you concerned about your child?

20 A. Yes.

21 Q. And once you got to the scene where your child was
22 located, what did you see?

23 A. Just several police officers and my baby.

24 Q. And at that point who had your baby, if you remember?
25 If you don't, that's fine.

1 A. I don't recall.

2 Q. Was Kayla still there?

3 A. I'm thinking that she was.

4 Q. And who else besides your child and Kayla was on the
5 scene?

6 A. When I got there -- when I got there, I called my
7 mother and step-dad and my sister.

8 Q. Okay.

9 A. My mother had just had surgery, so she wasn't able to
10 come, so it was my step-dad, me and my sister.

11 Q. Was anyone else -- was Mr. Berry there at that point?

12 A. I'm assuming -- as I recall, he was in a police
13 officer's car. I didn't really see him.

14 Q. And did you speak with law enforcement officers?

15 A. Yes.

16 Q. That night before you had to rush to the scene, where
17 did you understand Brandon Berry to be?

18 A. I don't recall. I'm sorry.

19 Q. Okay. Was he with you?

20 A. Until 9:00 or 10:00.

21 Q. So 9:00 PM and then what time did you see him again?

22 A. I was asleep, so when I woke up I saw him. I wake up
23 around six, 6:30, so he was there then.

24 Q. Okay.

25 A. He may have got home earlier, but I was asleep.

1 Q. You were asleep and then at 6:00 you woke up?

2 A. By the time it was for me to go back to work, Brandon
3 was there.

4 Q. Okay. Do you remember giving a statement to law
5 enforcement --

6 A. Yes.

7 Q. -- in this case? Do you remember signing your
8 statement?

9 A. Yes, I did sign it.

10 Q. Okay.

11 **MS. WALKER:** Your Honor, may I approach the witness?

12 **THE COURT:** Yes, ma'am.

13 BY MS. WALKER:

14 Q. Do you remember telling them what time he came home?
15 I know it was a long time ago.

16 A. Yes.

17 Q. And what time did you tell law enforcement Brandon
18 came home that morning?

19 A. That -- I did say five something.

20 Q. Okay. I'm not trying to confuse you. You do think
21 your memory was better then than it is now as to what
22 happened that -- that morning?

23 A. Again, I was asleep, but, yes, ma'am.

24 Q. Okay. And when was the last time you spoke with
25 Brandon Berry before today?

1 A. November, early November, during child support when we
2 were going through our court case.

3 Q. Don't tell me what you talked about. I'm just asking
4 when was the last time you spoke with him.

5 A. November.

6 Q. Of 2015?

7 A. Yes.

8 Q. Going back to July 29th, when you made contact with --
9 or, I guess, when law enforcement made contact with you,
10 did you give them consent to search your apartment where
11 you were and where Brandon returned that morning?

12 A. After I was told -- you're saying after the officer --
13 after we already left the scene?

14 Q. Yeah, at some point did you sign a consent form for
15 them to search your apartment?

16 A. Yes.

17 **THE COURT:** Isn't it in evidence?

18 **MS. WALKER:** It's already in evidence. I'm sorry,
19 Your Honor.

20 BY MS. WALKER:

21 Q. So you signed that search -- that consent form and did
22 they make entry into your apartment?

23 A. Yes.

24 Q. Okay. And did they take with them -- did they take
25 anything with them when they left or do you know?

1 A. Yes, they took items with them.

2 Q. Do you remember what, if anything, they took?

3 A. They took pants and shoes.

4 Q. And whose pants and shoes were those they took?

5 A. Brandon's.

6 Q. You don't want to be here today, do you?

7 A. No, ma'am.

8 **MS. WALKER:** I beg the Court's indulgence.

9 **THE COURT:** Okay.

10 BY MS. WALKER:

11 Q. I want to show you what's been marked as State's
12 Exhibit 134 and ask you if you recognize those -- these
13 shoes?

14 A. Yes, ma'am.

15 Q. And how do you recognize these shoes?

16 A. Because those were his shoes.

17 **THE COURT:** Speak up, please. Speak up.

18 A. Those were shoes that he had. I'm not sure though.

19 Q. When you say "he", who are you talking about?

20 A. Brandon.

21 **MS. WALKER:** At this point, Your Honor, the State
22 seeks to admit Number 134 into evidence.

23 **THE COURT:** Subject to previous objections items --

24 **MS. ZMROCZEK:** I appreciate that.

25 **THE COURT:** -- the Item Number 134 is admitted into

1 evidence. State's Number 134.

2 (State's Exhibit Number 134, shoes, was admitted into
3 evidence.)

4 BY MS. WALKER:

5 Q. And these are the shoes?

6 A. Yes.

7 Q. And you said they also took a pair of pants. I want
8 to show you State's Exhibit Number 138.

9 **THE COURT:** 133?

10 **MS. WALKER:** Yes, Your Honor. I'm sorry, 133.

11 **THE COURT:** Okay.

12 BY MS. WALKER:

13 Q. Do you recognize these pants?

14 A. Yes.

15 Q. How do you recognize these?

16 A. They came out of my house.

17 Q. Okay. They came out of where?

18 A. Of my house.

19 Q. Whose pants are these?

20 A. Brandon's.

21 **MS. WALKER:** At this point, Your Honor, the State
22 seeks to move Exhibit Number 133 into evidence.

23 **THE COURT:** Again, subject to previous objections
24 already ruled on by the Court, the exhibit is -- the item
25 is admitted into evidence. State's Number 133.

1 **MS. WALKER:** Thank you.

2 (State's Exhibit Number 133, pants, was admitted into
3 evidence.)

4 BY MS. WALKER:

5 Q. These are the items removed from your home?

6 A. Yes.

7 Q. Ma'am, do you remember which officers -- which law
8 enforcement officers you spoke with that day?

9 A. I do remember one.

10 Q. And who was that?

11 A. (Indicating.)

12 Q. Sitting here at this table?

13 A. Yes.

14 Q. Was he one of the officers involved in the search of
15 your home?

16 A. He's the officer that gave me the statement. I'm not
17 sure that's the one that searched my home.

18 Q. Okay. He's the one you talked to?

19 A. Yes.

20 **MS. WALKER:** I beg the Court's indulgence, Your Honor.

21 **THE COURT:** Yes, ma'am.

22 BY MS. WALKER:

23 Q. In terms of -- when they asked you to -- to consent
24 to search your home, at that point what did you tell law
25 enforcement officers?

1 A. At the scene or at my house?

2 Q. Either -- either time.

3 A. At the scene, he said that he would contact DSS if I
4 didn't -- you know, if I couldn't provide a safe place for
5 my baby to stay and so when we came back -- when we got --
6 of course, I consented because I can provide a safe place
7 for my daughter.

8 Q. You said because you could provide a safe place?

9 A. Yes, a safe place, and so DSS didn't have to get
10 involved. So to get my baby back, I consented. I also let
11 him know that Brandon was not on the lease and that my
12 grandmother was. My grandma came to the house and she was
13 on the lease and she also asked him what he was there for.
14 There wasn't any wrongdoing to me or to my baby, so we
15 allowed him to come in because he said he was looking for
16 a weapon just to make sure that it was a safe place for
17 B.K. to come home to. We had no problems with that.

18 Q. I understand. And at that point -- and don't tell me
19 what the officer said, but were you aware of why the
20 officer was concerned for the child's safety?

21 A. Once he said he was looking for a weapon, yes.

22 Q. And did you know of a weapon to be in your home?

23 A. No.

24 Q. Did you know of a weapon to be in the -- in your
25 child's diaper bag?

1 A. No.

2 MS. WALKER: Thank you. I don't have any further
3 questions.

4 THE WITNESS: Thank you.

5 THE COURT: Cross-examination?

6 MS. ZMROCZEK: Thank you.

7 CROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q. Good afternoon, Ms. Katio.

10 A. Good afternoon.

11 Q. You don't want to be here for Mr. Berry either, do
12 you?

13 A. No.

14 Q. You just don't want to be here and that's okay.

15 A. Uh-huh.

16 Q. I'll try and make this painless. You -- how long have
17 you known Brandon Berry?

18 A. Five years.

19 Q. Your child was two at the time?

20 A. When I had my child?

21 Q. No, not when you had her. At the time of --

22 A. Yes.

23 Q. Okay. And when you got to the scene that day, they
24 were using words like DSS?

25 A. They did.

- 1 Q. Okay. What was your main concern at that time?
- 2 A. I just wanted my baby.
- 3 Q. Did you get to see your baby?
- 4 A. I did get to see her.
- 5 Q. Was she hurt?
- 6 A. No.
- 7 Q. Was she crying?
- 8 A. No.
- 9 Q. Was she happy?
- 10 A. Yes.
- 11 Q. Okay. And in any pain?
- 12 A. No.
- 13 Q. Okay. Did you pack her diaper bag that morning?
- 14 A. No.
- 15 Q. When was the last time you had her diaper bag?
- 16 A. Well, it's always, let's say, packed, but you do have
- 17 to add stuff to it. But, no, I didn't.
- 18 Q. Okay. Do you know Nickilous Wallace?
- 19 A. Somewhat, yes, ma'am.
- 20 Q. Has he spent the night at your house before?
- 21 A. Maybe.
- 22 Q. Okay. Has he been over to your house before?
- 23 A. Yes.
- 24 Q. Has he borrowed clothes from Brandon before?
- 25 A. Yes.

1 Q. Has he borrowed shoes from Brandon before?

2 A. Yes.

3 Q. Has any other of Brandon's friends borrowed clothes
4 before?

5 A. Yes.

6 Q. Have they borrowed shoes before?

7 A. Yes.

8 Q. Does that make you angry? Are those items you
9 purchased?

10 A. Not the shoes. I -- never mind. I can't recall. I'm
11 sorry.

12 Q. That's all right. Did you have to do the laundry in
13 the house?

14 A. Sometimes.

15 Q. All right. Let me ask you this. When was the last
16 time you saw Brandon Berry the night of Monday, July 28th?

17 A. I hadn't seen Brandon from nine until -- I don't --

18 Q. From -- at 9:00?

19 A. Yes.

20 Q. So before 9:00 he was there?

21 A. Yes.

22 Q. And you saw him leave?

23 A. Uh-huh.

24 Q. Yes?

25 A. Yes. Sorry.

1 Q. And you told the officers what he was wearing that
2 night when you left -- when you saw him leave?

3 A. Yes, that I recall.

4 Q. And what -- and what did you tell them?

5 A. I was assuming that he had on -- what he got arrested
6 in is what he had on, but I told him that he did have on
7 black pants and a white shirt.

8 Q. And a white shirt?

9 A. Yes.

10 Q. And what kind of shoes? Didn't you specifically tell
11 the officer what kind of shoes he had on?

12 A. Yeah, I did say black and white Air Force Ones.

13 Q. Black and white Air Force Ones?

14 A. Yes, I did.

15 Q. And that's something that you noticed, right?

16 A. Yes.

17 Q. And you specifically told the officer when he left --
18 he, Brandon Berry, left the house that night he was wearing
19 those white shoes?

20 A. Black pants and a white --

21 Q. White shoes with a black strap? Oh, you mean black
22 pants and a white shirt?

23 A. Uh-huh.

24 Q. Okay. And that's what you told the officers. Did
25 Brandon have a license?

1 A. No.

2 Q. He can't drive?

3 A. No.

4 Q. Did he rely -- did he rely on transportation?

5 A. Yes.

6 Q. From friends?

7 A. Yes.

8 Q. From you?

9 A. Yes.

10 Q. Did he go out with his friends that evening?

11 A. Yes.

12 Q. Did y'all have -- were you in contact via text
13 messages?

14 A. Yes, ma'am.

15 Q. What was your telephone number at the time, if you
16 recall?

17 A.

18 Q. And do you recall what his was? It's okay if you
19 don't.

20 A. I'm sorry. I don't recall.

21 Q. That's fine. So you -- you texted him several times
22 throughout the evening?

23 A. Yes.

24 Q. In addition to letting friends, including Nickilous,
25 borrow his clothes and shoes, how -- what kind of

1 relationship, if you know, did he have with Nickilous
2 Wallace? Were they close?

3 A. Yes..

4 Q. Like brothers close?

5 A. He did a lot for him.

6 Q. He did a lot for him?

7 A. Yes.

8 Q. Is Nickilous taller or shorter than Brandon?

9 A. Shorter.

10 Q. About two inches shorter?

11 A. With hair, I don't know.

12 Q. Okay.

13 A. Two inches, I guess.

14 Q. Okay. But he's just shorter?

15 A. He's shorter.

16 Q. Not a whole lot, but a little bit?

17 A. Uh-huh.

18 Q. A whole lot or just --

19 A. Just a little bit.

20 Q. Just a little bit. Okay. Ms. Walker asked you about
21 your statement and she refreshed your recollection. Was
22 that statement written in your handwriting?

23 A. No.

24 Q. Whose handwriting was that written in? Who did you
25 give the statement to?

1 A. Mr. -- what's his name?

2 Q. Investigator Carwell?

3 A. Yes.

4 Q. Okay. And so he was the one -- was he the same one
5 who had mentioned DSS back at the -- the original site?

6 A. Yes.

7 Q. Okay. And he took your statement down and in there it
8 says 5:00 Brandon came home. Why does it say 5:00? What
9 did you originally tell him?

10 A. I said -- I mean, at first I was asleep, I let him
11 know that, and he understands the fact that I was asleep,
12 but he said around what time and I can admit that I said
13 five or six. Like I say, I'm just leaving it at he was
14 home before I went to work.

15 Q. Could he have been home at 3:30?

16 A. Yes, ma'am, I think.

17 Q. Could he have been home at four?

18 A. Yes, ma'am.

19 Q. Could he have been home at 4:30?

20 A. Yes, ma'am.

21 Q. You were asleep, so -- so you know for sure when you
22 woke up between six and 6:30 he was there?

23 A. Yes.

24 Q. Okay. Was there anyone else there when you woke up?

25 A. Not when I woke up.

1 Q. Okay. And what time did you leave for work that day?

2 A. It was about 7:30 at the latest. I don't recall.

3 Q. And you live -- what was your address at the time?

4 A. At the time in July?

5 Q. Yes.

6 A.

7 Q. And that's off of ?

8 A. Yes.

9 Q. And she asked you about Kayla and Kayla who made the
10 call. Were you aware of where -- what apartment she lived
11 in in July?

12 A. No.

13 Q. You didn't know?

14 A. No.

15 **MS. ZMROCZEK:** Okay. Thank you, Ms. Katio.

16 **THE WITNESS:** Thank you.

17 **THE COURT:** Redirect?

18 **MS. WALKER:** Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. WALKER:

21 Q. She asked you about the relationship between Nickilous
22 Wallace and Brandon Berry.

23 A. Yes.

24 Q. You said that he did a lot for him?

25 A. Uh-huh.

1 Q. Who was the "he" that did a lot for him? When you
2 said "he" did a lot for him, who did a lot for who?

3 A. Well, Nick helped Brandon get a job and Brandon just
4 treats him like a brother, would do anything for him.

5 Q. Where was Nickilous Wallace working at the time?

6 A. Applebee's.

7 Q. And was Brandon working at Applebee's at that point in
8 time?

9 A. I don't -- I'm gonna say I don't recall because he was
10 working at Applebee's, but at -- during that time I'm not
11 sure.

12 Q. And during that -- that July of 2014 time period, were
13 you and Brandon arguing about money?

14 A. Yes.

15 Q. Was he able to financially contribute to the household
16 at that point in time?

17 A. No.

18 Q. But Nickilous had a job?

19 A. Uh-huh. Yes, ma'am.

20 **MS. WALKER:** Thank you. I don't have any other
21 questions.

22 **THE COURT:** Recross examination?

23 **MS. ZMROCZEK:** Just briefly.

24 **RE CROSS EXAMINATION.**

25 **BY MS. ZMROCZEK:**

1 Q. When Brandon did work at Applebee's, what uniform, if
2 you know, that they had to wear?

3 A. Black and white. He was a dishwasher.

4 Q. Okay. White shirt, black pants?

5 A. Yes.

6 **MS. ZMROCZEK:** Thank you.

7 **THE COURT:** All right. Thank you. You may step down.
8 (Witness excused.)

9 **THE COURT:** All right. The State may call its next
10 witness.

11 **MR. STEADMAN:** The State would call Investigator Henry
12 Owens.

13 HENRY OWENS,

14 having been duly sworn, testified as follows:

15 **THE CLERK:** Thank you. Please have a seat on the
16 witness stand and state your full name for the record.

17 **THE WITNESS:** Henry Owens.

18 DIRECT EXAMINATION

19 BY MR. STEADMAN:

20 Q. Investigator Owens, where are you employed?

21 A. Richland County Sheriff's Department.

22 Q. What do you do for them?

23 A. I'm a narcotics agent.

24 Q. And how long have you been a narcotics agent?

25 A. Since June.

1 Q. How long have you been with the sheriff's department?

2 A. Since 2005.

3 Q. What did you do before being a narcotics agent?

4 A. I was a burglary investigator and then I was on the
5 Community Action Team.

6 Q. And were you on the Community Action Team back on
7 July 29, 2014?

8 A. Yes, sir.

9 Q. What were your duties and responsibilities for the
10 Community Action Team?

11 A. My area of responsibility was Inbound Region 4, which
12 is Piney Grove into Sunset Boulevard. I shared those
13 duties with Deputy Pennington.

14 Q. And at some point did you receive a call from Deputy
15 Pennington about a traffic stop on Brandon Berry and
16 Nickilous Wallace?

17 A. Yes, sir.

18 Q. And tell me how you got involved with that.

19 A. I responded as a backup unit to Deputy Pennington.
20 I heard him call out the traffic stop and I went to his
21 location.

22 Q. What's your role as a backup unit?

23 A. Officer safety. Be an extra pair of eyes and ears for
24 the lead officer. He has a lot of stuff going on, so it's
25 always good to have an extra pair of eyes and ears at the

1 scene.

2 Q. And how long did it take you to get there?

3 A. Seconds because I was just down the road from
4 where Deputy Pennington was. Less than probably two
5 hundred yards probably.

6 Q. Once you got there, what did you do?

7 A. Made contact with Deputy Pennington at his passenger
8 window.

9 Q. And what did you learn from Deputy Pennington?

10 A. He informed me that he had stopped this vehicle and
11 that the occupant or the front seat passenger was Brandon
12 Berry.

13 Q. And once you learned that, what did you do?

14 A. After he informed me of that, I walked to the
15 passenger side of the vehicle, of Mr. Berry's vehicle --
16 or Mr. Wallace's vehicle, and made contact with both of
17 them.

18 Q. And what do you mean by made contact?

19 A. Talk to them, keep an eye, made sure there's nothing
20 going on, you know, they're not trying to grab a weapon,
21 something like that. Also, you know, try to read people.
22 You read body language, you know, how nervous somebody is,
23 how they're talking to you. So usually I'll just have
24 small-talk with them; hey, how you doing, how's your day
25 going, just hold a conversation to keep their mind off of,

1 you know, something that they could be doing or thinking
2 that could be bad.

3 Q. So what did you observe?

4 A. That both occupants were extremely nervous. Mr. Berry
5 was doing most of the talking. And I just spoke with them
6 as Deputy Pennington ran their information.

7 Q. Did you observe the two-year-old girl in the back
8 seat?

9 A. Yes, there was a two-year-old girl in the back seat,
10 unrestrained. I didn't see any car seats or anything like
11 that. I also saw what at the time looked like green plant
12 material in front of the gear stick on the center console
13 that was what appeared to be trace marijuana.

14 Q. Is that what you mean by green plantlike material?

15 A. Yes, marijuana.

16 Q. And besides that, what else did you observe?

17 A. I also observed some tweezers in the vehicle. And,
18 like I said, both Mr. Wallace and Mr. Berry had extremely
19 nervous body language, heavy breathing, shaking.

20 Q. At some point Deputy Pennington got to Nickilous
21 Wallace, asked him if he would mind stepping to the rear
22 of the vehicle. What did you do next?

23 A. I stayed at the vehicle with Defendant Berry.

24 Q. And when you stayed there with Brandon Berry while
25 he was talking to Mr. Wallace, what else did you observe

1 about Brandon Berry?

2 A. I noticed that he had gotten a little bit more
3 nervous once Mr. Wallace had gotten out of the vehicle.
4 I continued to try to have small talk with him. I believe
5 he was also dealing with his child that was in the back
6 seat. While talking with him, I observed him obtain an
7 object out of a black bag that was in the back seat for his
8 child. I had noticed when he was doing that some baby --
9 or children's belongings like -- possibly like diapers or
10 wipes that were in the bag. I think he either grabbed out
11 like a bottle or some little snacks for the child.

12 Q. And do you remember -- what was the description of the
13 black bag?

14 A. It was a black bag and I remember that it had an
15 emblem on it. Some type of emblem.

16 Q. You don't remember what kind of emblem that was?

17 A. After the incident, when we relocated the bag, I
18 recognized the emblem and it struck me at that point.

19 Q. Is -- State's Exhibit 136, is this the black bag you
20 saw him reaching for?

21 A. Yes.

22 Q. So once he was reaching for that bag, Deputy
23 Pennington starts talking with Nickilous Wallace, what
24 happened next?

25 A. He was reaching in for the bag, he had gotten

1 something out for the kid. When Mr. Wallace got out of
2 the vehicle, he had left his driver's side door open.
3 Where the vehicles were parked there was traffic coming
4 and going and having a difficult time making it around the
5 door. There was also another vehicle that pulled out and
6 had somewhat made contact with us and I had gotten them to
7 move over to the side. The door was still open. I had
8 walked around to the other side of the vehicle to try to
9 shut the door so traffic would have an easier route in and
10 out and upon doing that and walking back around the car
11 back to the passenger side, that's when I saw the movement
12 inside the car as Mr. Berry was jumping into the driver's
13 seat.

14 Q. And when he jumped into the driver's seat, what did he
15 do?

16 A. Fled.

17 Q. And once he fled, what was your role?

18 A. At that point, Deputy Pennington's vehicle was in
19 front of mine and directly behind Mr. Wallace's car, so I
20 hollered at Deputy Pennington "go" and at which time I took
21 control over the driver, Mr. Wallace.

22 Q. So your job was to stay there with Wallace while
23 Deputy Pennington went after Brandon Berry?

24 A. Correct.

25 Q. And at one point did you meet back up with Pennington?

1 A. I monitored what I could on the radio. I could hear
2 the vehicle as it was fleeing from Deputy Pennington to the
3 back of the complex and I was able to listen on the radio
4 during the foot chase part. I then at that time decided
5 that I would move Mr. Wallace from this location down to
6 the vehicle so that I could make sure everything was
7 properly secured and also be there, you know, in case
8 anything was messed with. Myself and Mr. Wallace arrived
9 down there at which time the vehicle was stopped further
10 back into the parking lot and I could see Deputy .

11 Pennington's vehicle at the other end of the parking lot.

12 Q. So the vehicle that Brandon Berry fled in, you said it
13 was stopped further back. How much further back in the
14 parking lot was it?

15 A. A good hundred, two hundred feet.

16 Q. And once you observed that, what happened next?

17 A. I kept monitoring the radio. I was kind of stuck with
18 my hands tied because I had the driver of the vehicle in my
19 vehicle with me. I could hear as other officers were being
20 directed in the area where to go. I heard that they had
21 detained Mr. Berry at a neighboring apartment complex.
22 Deputy Pennington -- I checked in the vehicle to see if
23 anything was in the vehicle, cleared the vehicle because
24 I knew the two-year-old was in the vehicle. I noticed
25 that the bag that was in the vehicle was gone. Deputy

1 Pennington arrived back saying he had located the black
2 bag. Upon his arrival back, he showed me the black bag
3 that he had located, told me there was some stuff in the
4 bag, like a mask and some zip ties and stuff. When I
5 approached to see the black bag, however, I noticed that
6 it wasn't the same black bag because there were no baby
7 belongings in the bag and I distinctly remembered seeing
8 the baby belongings while he was going through it in the
9 back seat.

10 Q. So the black bag that Deputy Pennington showed you
11 that he had recovered, that wasn't the same bag that you
12 saw Brandon Berry reaching for in the car?

13 A. No, sir.

14 Q. So is that what prompted you guys to go back to where
15 the first bag was found and look for another bag?

16 A. Yes, sir. At this point the scene was pretty much
17 under control. We got other officers on the scene, so
18 myself and Deputy Pennington decided we were gonna
19 backtrack through the cut that Mr. Berry ran through and
20 into the adjacent apartment complex and that's when we made
21 our way back locating what I knew to be the other black bag
22 that was in the back seat.

23 Q. So, once again, State's 136, this is the second bag
24 that you guys found?

25 A. Yes, sir.

1 Q. And where was this one found?

2 A. That one was located not far from where Deputy
3 Pennington advised me that he had located the first black
4 bag. It was on a balcony at the apartment complex. The
5 neighboring apartment complex.

6 Q. Let me go back to when Deputy Pennington ran off,
7 you took Nickilous Wallace in your vehicle and then you
8 saw the vehicle had rolled back approximately two hundred
9 yards. Was the two-year-old girl still inside the car?

10 A. I believe a concerned citizen from what I understand
11 came out and stopped the vehicle from rolling. We had
12 secured the two-year-old child and I believe the --
13 Mr. Berry's girlfriend arrived on the scene to take -- you
14 know, she was able to comfort the child who was all -- if
15 you could imagine was pretty, you know, traumaticized at
16 that point in time.

17 Q. So you did check on the welfare of that child?

18 A. Yes, sir.

19 Q. And once y'all secured the second bag, what was the
20 next step?

21 A. We secured the second bag. Like I said, myself and
22 Deputy Pennington work on the Community Action Team. We
23 suppress crime in that area. The way we do that is we have
24 to keep up on what crime is going on in Richland County, so
25 we monitor the reports that come in every night. We keep

1 up with the crime trends in other areas, so we had knew
2 that there had been an altercation the night before, a
3 possible robbery. That's when we contacted the robbery
4 investigator, which was Investigator Carwell, at the time.
5 We informed him of what we had because once we found the
6 zip ties, masks, handgun, that kind of relates to a
7 robbery. We contacted Investigator Carwell. He responded
8 to the scene at which time we relinquished the scene to
9 him.

10 Q. And so at that point -- your job is over at that
11 point?

12 A. Pretty much that's it. He's obviously a senior
13 officer to us, so at that point we follow his rules. We
14 do what he wants us to do pretty much.. If he needs any
15 help with anything, we try to help him. Other than, you
16 know, Deputy Pennington has to complete his part of the
17 paperwork and all that stuff.

18 Q. And can you, please, identify the person you saw
19 grabbing that bag here in the courtroom.

20 A. Brandon Berry.

21 Q. Can you describe what he's wearing?

22 A. Right now he's wearing a white shirt and a tie.

23 **MR. STEADMAN:** Thank you.

24 **THE COURT:** Cross-examination?

25 **MS. ZMROCZEK:** Thank you.

1 CROSS-EXAMINATION,

2 BY MS. ZMROCZEK:

3 Q. Deputy Owens, you didn't do a report in this case,
4 did you?

5 A. No, ma'am.

6 Q. Before today on this witness stand there's been no
7 mention of a concerned citizen getting the child out of the
8 car; has there been?

9 A. What do you mean?

10 Q. Has it been written in any report?

11 A. The vehicle was stopped by a concerned citizen, at
12 which time when we got there the child was relinquished
13 back to her -- his girlfriend or baby's mother.

14 Q. Do you consider that a pertinent fact in this case?

15 A. That a concerned citizen stopped the vehicle?

16 Q. Yes.

17 A. I think it's very important that they did that.

18 Q. Very important?

19 A. I think it was a very good job they did it because it
20 could have been very bad if they didn't.

21 Q. And that would be a very important -- that would be a
22 very important person for me to be able to talk to to know
23 who that was, right?

24 A. That they had stopped the car?

25 Q. Right.

1 A. There was a lot going on at the time.

2 Q. I understand that.

3 A. Yes, ma'am.

4 Q. Was the name of that person ever given?

5 A. I don't believe we ever got the name of that person
6 that I can remember.

7 Q. Can you step down for a moment and make sure you keep
8 your voice up for the court reporter.

9 (Whereupon, the witness steps down from the witness
10 stand.)

11 BY MS. ZMROCZEK:

12 Q. And I'm showing you what's been admitted into evidence
13 at Government's 147. What time did this -- and make sure
14 the jury can see. What time did the traffic stop occur?

15 A. Approximately around ten, 10:30.

16 Q. And where were you located?

17 A. I was on this end of prior to the traffic
18 stop.

19 Q. Okay. And where did you hear the call come over the
20 radio?

21 A. I was in this area when I heard the traffic stop.

22 Q. Okay. And you went to where?

23 A. I went to the traffic stop and located Deputy
24 Pennington and the Defendant in Mr. Wallace's vehicle right
25 here.

1 Q. Right here? And this is around

2 ?

3 A. Yes, ma'am. That is the main entrance to

4

5 Q. And that's where -- the girlfriend who you gave the
6 child to, that's where she lived, right?

7 A. According to what Mr. Berry then, I believe, said at
8 the car she lived somewhere around the back side of the
9 apartments.

10 Q. Okay. And can you see it on this exhibit where you
11 located the items -- the bag, the Gamecock bag?

12 A. I'm not sure where the -- the first one was located by
13 Deputy Pennington.

14 Q. Right, right. I mean the Gamecock bag.

15 A. The Gamecock bag would have been located on the back
16 side of this apartment building right here.

17 Q. Thank you. You can have a seat.

18 (Whereupon, the witness returns to the witness stand.)

19 BY MS. ZMROCZEK:

20 Q. When you heard the call come over the radio and you
21 went to go backup Investigator Pennington, did you call him
22 on your phone?

23 A. I'm not sure.

24 Q. When you got in the car and you said it rang ten
25 times. What would you be referring to?

1 A. It could be anything. It could have been -- I
2 probably could have called him that morning or that night.
3 I believe we started our shift at around ten or so, so that
4 was probably our first contact. I'm not sure. I call him
5 a lot. We work close together.

6 Q. Okay. But when you sat down -- the jury has seen the
7 video.. That was you speaking on the other -- the other
8 voice in the car is Deputy Pennington and then you come in
9 and have a conversation with him, right?

10 A. Uh-huh. That's correct.

11 Q. Okay. And you said -- you said that you noticed a
12 green plant material. There was never any marijuana found
13 in this vehicle, was there?

14 A. We did not do -- or look for the trace of marijuana
15 that I believe I observed. We had a lot of stuff going on
16 at the time, so I never went to that --

17 Q. I'll ask the question again. Was there any marijuana
18 ever found in the vehicle?

19 A. No, we never located any marijuana.

20 Q. Thank you. While Mr. Wallace was having a
21 conversation with Officer Pennington, you stated that
22 Mr. Berry grabs the Gamecock bag. This bag, right?

23 A. No.

24 Q. He didn't grab the Gamecock bag?

25 A. He reached into the back seat for the Gamecock bag. I

1 don't believe he ever grabbed --

2 Q. Okay. But he reached into the back seat?

3 A. Yes, ma'am.

4 Q. So you were able to see what was inside of it?

5 A. Right. He bent over and was digging in and around the
6 diapers.

7 Q. And he's doing all of this in front of you so you can
8 see it?

9 A. In the back seat.

10 Q. Right. But you could still see what -- the bag was
11 open?

12 A. I could see his hands and what was in the top of the
13 bag, yes, ma'am.

14 Q. Okay. So he's doing it like this with no concern
15 that you're standing there? He didn't try to hide it from
16 you?

17 A. He seemed to have some concerns. His chest was
18 beating pretty hard.

19 Q. Okay. But, I mean, he had no problem opening the bag
20 so you could see what was inside?

21 A. He didn't open the bag and say this is what's inside
22 of the bag. He was reaching for stuff in there. I could
23 only see what was at the top of the bag, so I can't say
24 that he had no problem with me looking at what was inside
25 there.

1 Q. Okay. But you looked, right?

2 A. I looked as hard as I could.

3 Q. And you saw baby clothes?

4 A. I saw the diapers on top and stuff like that.

5 Q. Okay. And then he scooted over and left and then the
6 next time you saw the bag it had a gun in it?

7 A. Right.

8 Q. But he was -- after Mr. Wallace was talking to
9 Mr. Pennington, they're back here off camera, right?

10 A. (Nods head.)

11 Q. And you had been talking to Mr. Berry at the passenger
12 side window, right?

13 A. Right.

14 Q. And then y'all -- you and Officer Pennington meet at
15 the back of the car and have a conversation?

16 A. Incorrect.

17 Q. Okay.

18 A. Me and Deputy Pennington had the conversation at the
19 back of the car prior to him having Mr. Wallace step out of
20 the vehicle.

21 Q. Okay. All right. And then you go up to the -- then
22 you go up there and talk with him after he's taken out?
23 After Wallace is taken out you go talk to Berry?

24 A. Right.

25 Q. Okay. And then when Berry leaves, he's out of sight

1 for how long?

2 A. When he fled?

3 Q. (Nods head.)

4 A. Well, it might only have been thirty seconds, it might
5 seem like five minutes to me because I'm listening to my
6 partner chase somebody over the radio, so I can't really
7 tell you exactly how long it was because in situations
8 like that time makes it feel like it could be an hour, but
9 really it's only like seconds.

10 Q. Certainly. But my point is this. There was some
11 period of time when he was in the vehicle with this bag and
12 nobody had eyes on him.

13 A. Wait. You're saying that was he ever in the vehicle
14 where somebody did not have eyes on him?

15 Q. Correct.

16 A. I could not really answer that because I didn't chase
17 him.

18 Q. Okay. So you didn't have eyes on him the whole time?

19 A. Right. The only person -- you'd have to ask Deputy
20 Pennington that question.

21 Q. Okay. So you don't know -- you can't testify as to
22 what he was or wasn't doing in the car besides driving
23 after he left?

24 A. That's right.

25 Q. Okay.

1 A. Yes, ma'am.

2 Q. You keep mentioning these zip ties. When you had
3 heard about the robbery or attempted robbery or altercation
4 the night before, were there any mention of zip ties?

5 A. No, ma'am, but when we find stuff like that we just
6 think of it being with a possible robbery.

7 Q. Okay. Were you aware of where that attempted robbery
8 had taken place?

9 A. No, ma'am.

10 Q. Was that in Region 2?

11 A. Deputy Pennington actually had more knowledge on the
12 actual robbery than I did. We usually took turns reading
13 the daily reports and we would brief each other, so as far
14 as on the tidbits he probably had more information on that.

15 Q. And you went to the academy, right?

16 A. To the police academy?

17 Q. Yes.

18 A. Yes, ma'am.

19 Q. And they taught you how to do investigations? Just
20 generally. How to preserve evidence?

21 A. Somewhat, yes, ma'am.

22 Q. And in-house policy training on how to do that?

23 A. In-house FTO training is about sixteen weeks, the
24 academy is about nine weeks, so I probably learned most of
25 that through FTO training.

1 Q. Okay. When y'all advised what you had found and you
2 invited Investigator Carwell to come and join you, did you
3 take him to the location where all these items were found?

4 A. I believe we recovered the items and then when he was
5 on-scene we advised him of what we had recovered because
6 the items were removed from the location -- from the
7 vehicle.

8 Q. Right. So the only way that we know where these items
9 were located is from your recollection?

10 A. Where we located them, yes, ma'am.

11 Q. Right. But that was never written down anywhere?

12 A. No, ma'am.

13 Q. Okay.

14 A. Well, yes, Deputy Pennington should have done a report
15 where he mentioned where the items were tossed to.

16 Q. He should have done that?

17 A. Yes.

18 Q. Was there a camera on-scene that day when Investigator
19 Carwell got there? Was anybody taking pictures?

20 A. I'm not sure.

21 Q. Okay. Do you know where Mr. Berry stopped the vehicle
22 before he opened the door and ran?

23 A. From watching the video, yes.

24 Q. That wasn't my question. Do you know prior to
25 watching the video where Mr. Berry left the vehicle?

1 A. I would have no idea because I was with Mr. Wallace.

2 **MS. ZMROCZEK:** Okay. Thank you.

3 **MR. STEADMAN:** Nothing further, Your Honor.

4 **THE COURT:** All right. Thank you, sir. You may step
5 down.

6 (Witness excused.)

7 **THE COURT:** Counsel approach a moment.

8 (Proceedings held at the bench; not reported.)

9 **THE COURT:** All right. Ladies and gentlemen, we've
10 been in the courtroom now for a little over an hour. It is
11 appropriate that we take our afternoon recess at this time.
12 We're going to take about fifteen minutes, so if you'll go
13 to your jury room and relax for a few minutes. Do not
14 discuss the case among yourselves. Any deliberations or
15 discussion of this matter at this time is still premature.
16 We'll send for you in about fifteen minutes. Thank you.

17 (Whereupon, the jury retires to the jury room at
18 3:35 PM.)

19 **THE COURT:** All right, counsel. We'll be in recess
20 until ten minutes till four.

21 (Recess taken.)

22 **BAILIFF:** Court come to order. Remain seated, please.

23 **THE COURT:** Thank you. All right. We're back on
24 the record with regard to the matter of the State versus
25 Brandon Berry. Mr. Berry is present with his counsel.

1 The State is present and represented by the Fifth Circuit
2 Solicitor's Office.

3 Anything before we bring the jury in?

4 **MS. CAMPBELL:** I didn't know if you wanted to take up
5 the juror issue at this point.

6 **THE COURT:** Yes. I'm glad you reminded me of that,
7 Ms. Campbell. One of the jurors at the conclusion of
8 Dr. --

9 **MS. CAMPBELL:** Jones.

10 **THE COURT:** -- Jones' testimony the juror indicated
11 to the bailiff, called him over, and he related to me that
12 she said that she knew the last witness. That was all
13 that was said. I called counsel up to the bench and we
14 went ahead until we took a break and we need to address
15 that now.

16 What's the State's position or the Defendant's
17 position? What's your position?

18 **MS. ZMROCZEK:** Your Honor, I spoke with my client and
19 we didn't even cross-examine that witness. His testimony
20 I don't think was hurtful to us, so I asked him if he
21 wanted her to be questioned and he has advised that that
22 is a matter for trial theory and we're fine with not
23 even drawing attention to it.

24 **THE COURT:** So as long as you're fine, we don't need
25 to inquire into it any further. Is that right?

1 **MS. ZMROCZEK:** Correct.

2 **THE COURT:** And the State is --

3 **MS. CAMPBELL:** Yes, I just wanted it out because she
4 had said that she wanted you to inquire about it.

5 **MS. ZMROCZEK:** Right, right. And then -- and then I
6 hadn't had at that time an opportunity to speak with my
7 client.

8 **THE COURT:** All right. Then having disclosed that
9 information, all counsel -- neither counsel thinks that
10 further inquiry of the juror is necessary.

11 All right. Thank you..

12 **MS. CAMPBELL:** Thank you.

13 **THE COURT:** All right. Anything else?

14 **MS. CAMPBELL:** No, sir.

15 **THE COURT:** All right. Bring the jury in.

16 (Whereupon, the jury enters the courtroom at 3:36 PM.)

17 **BAILIFF:** Jurors seated, Your Honor.

18 **THE COURT:** All right. Thank you very much.

19 All right. Ladies and gentlemen, when we took our
20 recess, the State was presenting their case and they are
21 still presenting their case and so they have a right to
22 continue. You may call your next witness.

23 **MS. CAMPBELL:** May it please the Court?

24 **THE COURT:** Yes, ma'am.

25 **MS. CAMPBELL:** The State calls Sergeant Stan Richards.

1 STAN RICHARDS,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Please state your name for the record.

4 **THE COURT:** The witness's name is what, Ms. Campbell?
5 What's the witness's name?

6 **MS. CAMPBELL:** Stan Richards with the sheriff's
7 department.

8 **THE COURT:** All right.

9 **THE WITNESS:** Stan Richards, R-I-C-H-A-R-D-S.
10 Richland County Sheriff's Department.

11 **THE COURT:** Thank you.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q. Sergeant Richards, what do you do at the Richland
15 County Sheriff's Department?

16 A. I am the operations sergeant for the crime scene and
17 latent prints section.

18 Q. And as the operations sergeant of the crime scene and
19 latent prints, what do your duties involve?

20 A. My duties are to supervise approximately fourteen
21 individuals that work in this unit particularly and to
22 also respond when necessary to crime scenes and help to
23 process and anything else that I need to do in directing
24 what needs to be done on a crime scene.

25 Q. Okay. And if you could speak up just a little bit.

1 For some reason the acoustics in the courtroom aren't that
2 great.

3 A. Yes, ma'am.

4 Q. So you actually are a supervisor as well as you
5 participate in processing crime scenes and/or evidence. Is
6 that fair?

7 A. That's correct.

8 Q. And did you become involved -- well, first let me ask
9 you this. Can you tell this jury a little bit about your
10 education and your training in the field of crime scene
11 investigation?

12 A. Well, my educational background, again, it was a long,
13 long time ago. It was in the military for over twenty
14 years and while I was doing that I went to a variety of
15 universities and colleges trying to get my undergraduate
16 degree, and I finally did that in criminal justice with
17 St. Leo University. I attended Officer Candidate School
18 until I did that. I had the -- was fortunate to be able
19 to attend the U.S. Army Command and General Staff College
20 for combined services, which I was certified at that point
21 in quantitative analysis. When I got out in 1994 and
22 retired, I came to work for the Richland County Sheriff's
23 Department and I've been working with the crime scene and
24 latent print section for fifteen years.

25 Q. And do you have any specialized training as far as

1 collecting and preserving evidence as far as comparison of
2 shoe impressions, things of that nature?

3 A. Yes, ma'am. Over fifteen years I've been through a
4 lot of the courses, a lot of training, you have a lot of
5 studying, you read, and we do that all the time. Everyone
6 that's in my charge that works at the unit is constantly
7 doing training and studying. Over those years I've had
8 courses in virtually every discipline that we are involved
9 in which encompasses photography, crime scene photography,
10 latent print development, latent print comparison, that's
11 shoe wear development and collection and shoe wear
12 comparison. It involves crime scene reconstruction, crime
13 scene investigation, and I've had multiple courses in those
14 disciplines, either basic or advanced courses. I also am
15 certified as a crime scene investigator through the IAI,
16 which is the International Association for Identification,
17 and I'm also certified as a bloodstain pattern analyst and
18 also certified as a crime scene investigator and footwear
19 analyst.

20 Q. So you're certified as well as a footwear analyst?

21 A. Yes, I am.

22 Q. As well as the other areas you mentioned?

23 A. That's correct.

24 Q. And have you been qualified before in court as an
25 expert in those areas?

1 A. I have.

2 Q. And approximately how many times have you been
3 qualified?

4 A. In which one?

5 Q. In general crime scene investigation.

6 A. Crime scene investigation, I've been qualified
7 approximately thirty-five times.

8 Q. And for purposes of this case, specifically as to
9 footwear comparison?

10 A. In shoe wear comparison, six times.

11 **MS. CAMPBELL:** Your Honor, at this point we'd offer
12 him as an expert in crime scene investigation, specifically
13 as to footwear comparison.

14 **THE COURT:** Voir dire with regard to qualification,
15 Ms. Zmroczek?

16 **MS. ZMROCZEK:** No, Your Honor.

17 **THE COURT:** All right. The Court would find this
18 witness as an expert in the field of footprint
19 identification. Again, ladies and gentlemen, I will tell
20 you once a witness has been qualified as an expert that
21 witness may give an opinion, whereas normally a witness
22 who has not been qualified as an expert cannot give an
23 opinion, and I have qualified this witness as an expert in
24 the field that he is going to testify in.

25 All right, Ms. Campbell.

1 **MS. CAMPBELL:** May it please the Court? Thank you.

2 BY MS. CAMPBELL:

3 Q. Sergeant Richards, were you the person that actually
4 responded to the crime scene or did you become involved at
5 a later time?

6 A. No, I become involved later. One of my investigators
7 responded to the crime scene at the time.

8 Q. And specifically on the morning of July the 29th of
9 2014, was there certain evidence that was towed to your
10 forensic garage, I guess you'd call it?

11 A. Yes, ma'am, there was. There was a 2012 Chrysler 300,
12 burgundy in color. It was towed to our forensic garage, a
13 secured place and climate controlled, so we do most of our
14 processing of vehicles in that area.

15 Q. And were there any requests as far as specifically
16 processing on this vehicle?

17 A. Yes, I received a request from Investigator Carwell
18 and Investigator White furnishing me a consent form in
19 order to process the vehicle itself. I also had a chain
20 of custody from when the car was towed to the garage,
21 entered into the garage, and I signed for it from the
22 garage.

23 Q. And, in fact, the consent form that was signed, would
24 it have been signed by the owner of the vehicle?

25 A. That's correct.

1 Q. And is that customary to get that before you do any
2 processing?

3 A. Absolutely.

4 Q. Also did you -- you mentioned that the car was
5 actually towed. Is that unusual for y'all to tow a vehicle
6 in order to do extensive processing?

7 A. We always tow the vehicle.

8 Q. And the fact that it was towed, does that impair your
9 ability to process it any way?

10 A. No, it enhances it. As a matter of fact, if we allow
11 it to be driven, there could be some evidence of any kind
12 to be disturbed or even destroyed.

13 Q. Specifically in this case was it the exterior or the
14 interior of the vehicle that you were focussed on?

15 A. I was requested to process the exterior of the vehicle
16 only.

17 Q. Tell the jury just what steps you went through as far
18 as processing this vehicle to try to find any evidence on
19 it.

20 A. Well, I was asked by request to process for latent
21 prints on the exterior of the vehicle, as well as any
22 footwear impressions that I might have seen on the vehicle
23 itself. The process involves first photography. We
24 photograph everything that we do. So I photographed the
25 vehicle first and then went around the vehicle looking with

1 a light source, an alternate light source, which in this
2 case for latent prints was just a very bright white light.
3 You do that so you can hopefully see some indication of
4 latent prints on the vehicle itself. A latent print by the
5 name alone means invisible or hard to see. Then the next
6 step would be to try to enhance any prints that are
7 possibly on the vehicle by using black powder. We use
8 black powder that's a carbon based powder and it enhances
9 the print itself and we're able to see it. Once we can see
10 it, we can photograph it and we can lift it.

11 Q. And in this case, specifically before lifting any shoe
12 prints, did you first process it to see if you could find
13 any possible fingerprints?

14 A. I did.

15 Q. And when you're processing for fingerprints and you
16 find something that may or may not have enough ridge detail
17 to compare, can you tell how long it's been there?

18 A. No.

19 Q. Are you familiar with the term "smudge"?

20 A. Yes.

21 Q. And what does that mean, sir?

22 A. Smudge is what happens to a fingerprint sometimes when
23 a person puts their finger down. What you have on the end
24 of your fingers are -- are ridges. When you look at your
25 fingers, you'll see those little squiggly lines. They're

1 called ridges. On those ridges are pores. Sweat comes
2 out of those pores just like the rest of your body so that
3 when you touch it, what that will do when a person touches
4 an item, the impression itself of the fingerprint may be
5 transferred to that item. And I say may because you can
6 rub your hands, smooth over an area, you may not have
7 enough sweat in your pores, you may have too much. There's
8 all kind of things in the environment that can enable you
9 to get the print itself with enough ridge detail to do any
10 type of comparison with. So smudges mean someone probably
11 or possibly touched the vehicle, run their hand across it,
12 and you just get a smudge of the residue that comes off the
13 fingers and you don't get any ridge detail so you can't do
14 any comparison work with.

15 Q. Okay. And were there approximately five different
16 areas where you found some -- at least some ridge detail
17 that may or may not be useable?

18 A. Yes. I lifted five prints from the vehicle -- the
19 exterior of the vehicle, which I thought was possibly good
20 enough to do comparison work.

21 Q. And after you had done your initial dusting for the
22 fingerprint evidence, did you also take measures to collect
23 certain footwear pattern evidence?

24 A. While looking at the vehicle when I went around trying
25 to search for latent prints, I also noticed that there were

1 some footwear impressions also on the top of the vehicle
2 and down on the hood area of the vehicle. I could see that
3 also with the lighting that I was using. It's like when
4 you get down on floor for a dime, you can't see it, but if
5 you get down like this and maybe shine a light you can see
6 it. It's the same way with footwear impressions. So I saw
7 those and so I had to enhance those in order to collect
8 those also.

9 Q. And you actually enhanced them in what way?

10 A. I enhanced them with the same fingerprint powder that
11 we use for latent prints.

12 Q. And I believe there were at least seven different
13 what's called gel lifts that were taken in this case?

14 A. That's correct.

15 Q. What's a gel lift?

16 A. A gel lift is an item that we use in order to lift.
17 If you're lifting a latent print, it's just a simple piece
18 of tape. You put the tape down, lift the print and put the
19 print on a card. It's little bit more troublesome, I
20 guess, in order to try to get the shoe wear impression.
21 The shoe wear impression could be any type of residue
22 that's from the bottom of the sole or the foot and it's
23 left when you raise your foot up, you put your foot down,
24 you raise it up. It's what's left. Usually certain types
25 of footwear use rubber for the soles, the outsoles and the

1 bottom, and those soles contain some type of residue by the
2 nature of how they're made at the manufacturer, so that
3 residue is also lifted.

4 In order to get that lift from the vehicle so I can
5 take them into the lab and try to do some type of
6 comparison, we use what we call a gel lift. It's a
7 rubberized piece of rubber with adhesive on one side. You
8 lay it down, you smooth it out, you pull it up and you've
9 got your lift. Particularly if the lift has been enhanced
10 with black powder. Then you put an overlay on the top or a
11 transparency on the top of that so you don't destroy it and
12 then you take it back to the lab.

13 Q. Okay. I want to show you State's Exhibit Number 146
14 and first ask you if you recognize this box?

15 A. Yes, I do.

16 Q. And what's in that box, sir?

17 A. That's the gel lifts that I took from the vehicle.

18 Q. And those gel lifts wouldn't have been of the
19 fingerprints, but of the shoe impressions you observed?

20 A. Of the shoe wear impressions, correct.

21 **MS. CAMPBELL:** Your Honor, at this time we'd offer
22 State's Exhibit 146.

23 **MS. ZMROCZEK:** Without objection.

24 **THE COURT:** All right. Number 146 admitted without
25 objection.

1 (State's Exhibit Number 146, gel lifts, were admitted
2 into evidence.)

3 BY MS. CAMPBELL:

4 Q. And you also, I believe, lifted the areas where you
5 thought there may be prints that might be suitable for
6 comparison?

7 A. I did.

8 Q. And then you mentioned that with the gel lifts and, I
9 assume, with the fingerprints, were those then later done,
10 the comparisons, at a later date?

11 A. The fingerprints or the latent prints that I collected
12 were turned into evidence and they were, in turn, picked up
13 by our latent print analyst for comparison. The gel lifts
14 were turned into evidence by myself also and later picked
15 up by me for comparison.

16 Q. I want to turn your attention to some photographs,
17 State's Exhibit 40 through 85, and first ask if you
18 recognize those?

19 A. Yes, this is from the vehicle that I processed and the
20 markers that you will see on the vehicle itself are one
21 through seven for the shoe wear impressions and A through E
22 were the latent print impressions.

23 **MS. CAMPBELL:** Your Honor, at this time I'd offer
24 State's Exhibits 40 through 85.

25 **MS. ZMROCZEK:** I believe without objection, Your

1 Honor.

2 THE COURT: No objection?

3 MS. ZMROCZEK: No objection.

4 THE COURT: And that's 40 through 85?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: All right. 40 through 85 admitted without
7 objection.

8 (State's Exhibit Numbers 40 through 85, photographs,
9 were admitted into evidence.)

10 BY MS. CAMPBELL:

11 Q. And the first series of these photographs, do you go
12 around and just photograph the entire exterior of the car
13 as it appears when you first come in contact with it?

14 A. Yes, all of it.

15 Q. And I believe State's 40 through 54 just show the
16 exterior of the car as it appeared in the garage when you
17 were doing your examination?

18 A. Correct.

19 Q. From different angles?

20 A. Yes.

21 Q. And then after you were able to determine certain
22 areas had something that might be significant, did you then
23 go back and photograph those after they had been dusted
24 prior to collection?

25 A. Yes. After I processed for prints, then if something

1 was enhanced enough I could tell there could possibly be a
2 fingerprint there, I marked those areas and went back and
3 photographed them again.

4 Q. And I'll show you State's Exhibit 55 and 56. Those
5 are marked with letter markers; is that correct?

6 A. Correct.

7 Q. For as far as possible prints, right?

8 A. Correct.

9 Q. And in this -- these two different areas which you
10 have marked on the car was A and B?

11 A. Yes, ma'am.

12 Q. So those were two different areas?

13 A. Yes, ma'am.

14 Q. And after photographing them, then you went back and
15 actually collected the prints?

16 A.. That's correct.

17 Q. And that continued through marker -- I believe it was
18 -- the last marker would be State's Exhibit 64, which is E?

19 A. E, correct.

20 Q. Which was located where?

21 A. E was located at the rear center of the vehicle.

22 Q. And then once that had been done, you went through on
23 the areas where you noticed footwear?

24 A. Footwear impressions.

25 Q. And what were the symbols you used to notate those on

1 the car?

2 A. Numerical.

3 Q. In State's Exhibit 67 and 66, do you see some of
4 those?

5 A. Yes.

6 Q. And where were those located primarily as far as any
7 footwear impressions?

8 A. The numerical markers came across the top of the
9 vehicle itself and down the front windshield onto the hood.

10 Q. I believe there were some side shots. I'll show you
11 State's Exhibit 68 and 70. Do those show the general areas
12 as well?

13 A. They do.

14 Q. And, in fact, as shown in 71, one's actually on the
15 windshield itself?

16 A. Correct.

17 Q. I'm showing on State's Exhibit 72 and then 74, the
18 markers that the jury's already seen from 1 and 2. Are
19 these close-ups of the actual prints once it's been
20 enhanced but before you collect it?

21 A. That's correct, ma'am.

22 Q. And in your opinion, is there a fairly distinct
23 pattern?

24 A. Yes.

25 Q. Moving on to State's Exhibit 76 and 79, again, is that

1 before it was collected?

2 A. Yes.

3 Q. And, again, a different area?

4 A. Correct.

5 Q. And it goes on through -- I believe your last one was
6 number -- as shown in State's Exhibit 85, Number 7; is that
7 correct?

8 A. Number 7, that's correct.

9 Q. So there were seven different lifts?

10 A. There were.

11 Q. Which were the ones that have just been put in
12 evidence. And that day all you did, again, was collect
13 the fingerprint evidence as well as the gel lifts; is that
14 correct?

15 A. That's all I did that day, yes.

16 Q. And photographed them?

17 A. Yes, ma'am.

18 Q. I want to turn your attention to, I believe, the next
19 day. Did you receive some additional evidence in this
20 case?

21 A. Yes, I received a forensic request form on July the
22 30th from Investigator Carwell and I retrieved three
23 property boxes, sealed boxes, from the evidence at about
24 8:53 that morning for processing.

25 Q. And I'll show you what's been marked as State's

1 Exhibit Number 135A, and this has got other parts, B and C,
2 I think, which would have been packaged together when you
3 received them?

4 A. Yes.

5 Q. Was that one of the items of evidence that you -- you
6 reviewed?

7 A. It is.

8 Q. Okay. Are you checking for your initials?

9 A. My initials would have been on the sealing tape after
10 I finished, yes.

11 Q. And in addition to that, did you also receive two
12 boxes of clothing, clothing for --

13 A. I received a second box which contained a pair of
14 black Levi jean pants, right.

15 Q. Where did I put them? I'll show you State's Exhibit
16 -- here we go -- 133.

17 A. Yes, that's it.

18 Q. And then the final item you received was what?

19 A. The third box contained a pair of gray and black Nike
20 tennis shoes.

21 Q. I'll show you State's Exhibit Number 134.

22 A. Yes, that's the one.

23 Q. And starting with the actual gun and the ammunition
24 that was provided to you, what were the actual items in
25 that box involving the weapon?

1 A. In the box itself it was a Glock Model 19, a black
2 magazine and four .9 millimeter bullets.

3 Q. Okay. And what, if any, processing did you do to
4 those items?

5 A. I processed all of those items for possible latent
6 prints and as well as swabbed all of it for possible DNA.

7 Q. And prior to doing that, did you memorialize as you
8 were processing?

9 A. Yes, I photographed --

10 Q. Photographs?

11 A. I photographed all of them.

12 Q. I'm gonna show you State's 122 through 126 and ask if
13 you recognize those?

14 A. Yes, that is the Glock, the magazine and the unfired
15 cartridges.

16 MS. CAMPBELL: And, Your Honor, at this time we'd
17 offer 122 through 126 in evidence.

18 MS. ZMROCZEK: Without objection.

19 THE COURT: Admitted without objection.

20 (State's Exhibit Numbers 122 through 126, photographs,
21 were admitted into evidence.)

22 BY MS. CAMPBELL:

23 Q. Let's take State's Exhibit 124 and then 125, I
24 believe, shows the serial number.

25 A. Yes.

1 Q. This is the gun that you actually processed?

2 A. It is.

3 Q. Which is the same gun we referred to in State's
4 Exhibit 135A?

5 A. Yes.

6 Q. And you said you processed for fingerprints again.
7 What process did you put them through?

8 A. This process was a little bit different from the car
9 itself. What we're able to do in the lab is use what we
10 call cyanoacrylate, which is a fuming process in order to
11 enhance latent prints. Actually what it is is just
12 superglue. We heat it up, we put some moisture into a tank
13 and the heat along with the super glue and moisture will
14 allow it to -- not evaporate, but it turns into a mist and
15 kind of settles back down onto whatever items you have in
16 the tank with it and it will settle on the fingerprint
17 itself to allow us to see it a lot better. Enhance it, in
18 other words. There's a second step to that after that is
19 finished. Of course we'll still have to process with black
20 powder because that gives us the opportunity to see it in
21 black in order to lift it the same way we would lift a
22 fingerprint or a latent print on your car.

23 Q. Okay. And when you processed this gun, the magazine
24 and the four cartridges that were left in it with the
25 procedure you just explained, what were your results?

1 A. I had negative results on any latent prints.

2 Q. When you say negative results, what does that mean?

3 A. That would mean that there were no prints on the gun
4 or any of the items in the box that were submitted.

5 Q. Is that unusual in your experience?

6 A. No.

7 Q. And why is that, sir?

8 A. Latent prints, along with lot of other things in my
9 profession, are very fragile pieces of evidence. What that
10 means is, as I explained what latent prints was before,
11 those residues or that sweat that comes off of your fingers
12 can be destroyed or disturbed a lot of different ways;
13 just by rolling around in the box, being taken from one
14 place to another. General environmental issues can destroy
15 that type of thing, so it's very, very common. Even if
16 someone's just touched something, you cannot lift an
17 identifiable print. And I mean identifiable by there's
18 not enough ridge detail in the print itself for us to use
19 for identification.

20 Q. Once you had processed it for fingerprints and the
21 results were negative, did you then take any swabs?

22 A. Yes, I swabbed the items also for possible DNA.

23 Q. And I show you State's Exhibit Number 144. Do you
24 recognize that?

25 A. Yes, that's my package and my handwriting for the

1 swabs for those items.

2 Q. And what different areas did you swab and submit
3 separate swabs for DNA?

4 A. From the gun, from the magazine, from the four
5 cartridges.

6 Q. And then those were packaged separately and submitted
7 into evidence?

8 A. They're always packaged separately, yes.

9 Q. Okay. But you didn't do any further testing on those
10 items as far as you don't do the DNA?

11 A. No, I do not.

12 **MS. CAMPBELL:** Okay. Your Honor, at this time I'd
13 offer State's Exhibit 144 into evidence.

14 **MS. ZMROCZEK:** Without objection.

15 **THE COURT:** Admitted without objection.

16 (State's Exhibit Number 144, swabs, were admitted into
17 evidence.)

18 BY MS. CAMPBELL:

19 Q. You also mentioned that you recovered a pair of jeans
20 or pants that you were doing some processing on. You
21 weren't trying to process those for fingerprints, were you?

22 A. No.

23 Q. Would they have been suitable for any kind of
24 processing like that?

25 A. No.

1 Q. And what kind of processing were you doing on the
2 actual black pants or black jeans that we're referring to
3 in State's Exhibit 133?

4 A. I processed those looking for possible areas of blood.

5 Q. And tell the jury exactly what process you went
6 through in trying to locate areas of blood on those jeans.

7 A. The thing we use trying to locate blood, particularly
8 on clothing, is we use a UV light. The UV light is about
9 390, 395 nanometers, which probably doesn't mean anything
10 to you, it didn't mean anything to me when I first started
11 either, but it's a very, very strong light. And what it
12 does when it shines on blood itself it constitutes a very
13 dark, even darker than black, that you can see and if that
14 -- if it shows up like that, you can swab that and then you
15 turn it into DNA and serology and they can identify it as
16 either blood or not blood. I don't identify it as blood at
17 that time. If it appears to be possible blood, we circle
18 it, photograph it, and I swab it and turn it into DNA.

19 Q. And how many different areas on the jeans did you
20 actually swab that your light indicated that could be
21 blood?

22 A. Ten.

23 Q. Ten different areas?

24 A. Yes.

25 Q. I'm gonna show you what's been marked as State's

1 Exhibit 109 through 117 and first ask you if recognize
2 those?

3 A. Yes, ma'am. These are the areas that I circled,
4 photographed and swabbed from the dark pants.

5 Q. So at this point you identify the area, mark it, then
6 you photograph it and then swab it?

7 A. Yes.

8 **MS. CAMPBELL:** Your Honor, at this time I'd offer
9 State's Exhibits 109 through 117.

10 **THE COURT:** Any objection?

11 **MS. ZMROCZEK:** Without objection.

12 **THE COURT:** Admitted without objection.

13 (State's Exhibit Numbers 109 through 117, photographs,
14 were admitted into evidence.)

15 BY MS. CAMPBELL:

16 Q. And I'm gonna show you what's been marked as State's
17 Exhibit Number 110. There's an insignia on top of that.

18 A. So the left outside leg.

19 Q. The left outside leg. And in examining these pants,
20 did you do it in different areas separately?

21 A. Yes.

22 Q. The examination?

23 A. Yes.

24 Q. I see in State's Exhibit Number 111, that shows the --

25 A. Left inside.

1 Q. -- before it was marked and then after. And then
2 State Exhibit 112?

3 A. Left inside leg.

4 Q. And does this show different areas on the left leg?

5 A. Right, the inside and outside. All the exterior. The
6 pants were processed on the exterior only, but the inside
7 and outside of each leg.

8 Q. Exterior of pants only, but inside both sides of each
9 leg?

10 A. Yes.

11 Q. And on this one I see nine are located on the left leg
12 according to these photographs? The swabs.

13 A. That's correct.

14 Q. And then finally on State's Exhibit 115, the right
15 outside leg shows nothing, but then in 116 your final swab
16 was where?

17 A. Right inside the leg, Number 10.

18 Q. And, again, in this examination you're familiar with
19 blood spatter and all that, are you able to tell exactly
20 how the blood got there?

21 A. No.

22 Q. But those were the ten different areas that
23 illuminated so that you collected swabs from those areas?

24 A. That turned dark and I swabbed it, yes.

25 Q. Once you collected those swabs, what, if anything, did

1 you do with them?

2 A. The swabs themselves were then introduced into
3 evidence in order for DNA or serology analysis.

4 Q. Okay. Once you had examined those items and collected
5 those ten swabs, did you then also examine the shoes in
6 State's Exhibit 134?

7 A. For comparison purposes you mean?

8 Q. For the presence of blood.

9 A. Yes, I examined the shoes also.

10 Q. Okay. And, again, did you use the same process that
11 you used when examining the pants?

12 A. I did.

13 Q. And was that because of the nature of how -- you
14 didn't try to process again for fingerprints, did you?

15 A. No, ma'am.

16 Q. Would that have been appropriate?

17 A. No, ma'am.

18 Q. I'll show you what's been marked as State's
19 Exhibits 86 through 108.

20 **MS. ZMROCZEK:** Without objection, Your Honor.

21 **MS. CAMPBELL:** Thank you.

22 **THE COURT:** Okay. 86 through 108 admitted without
23 objection.

24 (State's Exhibits 86 through 108, photographs, were
25 admitted into evidence.)

1 BY MS. CAMPBELL:

2 Q. I believe you photographed the shoes first without any
3 markers?

4 A. Yes. Correct.

5 Q. As in State's Exhibit 86 and 87?

6 A. That's correct.

7 Q. But then once you were able to find -- I notice that
8 in State's Exhibit 92 that you had lined the shoes up, the
9 right shoe and the left shoe, and assigned a certain number
10 to them?

11 A. Yes, that's K-1 for the right and K-2 for the left.

12 Q. And that's just so that you can identify them later?

13 A. Correct.

14 Q. And then once you do that, did you go through and note
15 certain areas where there were stains that were -- again,
16 did you use the same light?

17 A. I used the same light.

18 Q. And then you swabbed certain areas?

19 A. Yes, I did.

20 Q. In the shoes, however, it was even easier to see in
21 certain areas?

22 A. On certain areas of the shoes, yes, because certain
23 areas were white, they weren't that dark, so you could see
24 what we thought -- what I thought was possible blood and I
25 was able to photograph and mark those and, again, swab them

1 without much help from the light source.

2 Q. I see on top of the shoe in State's Exhibit 98 and
3 then left shoe itself in 99.

4 A. Correct.

5 Q. And where I'm pointing, the reddish substance --

6 A. Yes.

7 Q. -- is that what you were referring to?

8 A. Yes, the reddish-brown substance, which is possibly
9 blood.

10 Q. And then once you had photographed them and marked
11 them, did you then collect that evidence as well --

12 A. I did.

13 Q. -- for DNA?

14 A. Through swabbing again and the swabs were packaged and
15 submitted to evidence for DNA and serology examination.

16 Q. And then as far as the right shoe, I note there's a
17 place here marked 4 and then 5 on the right shoe --

18 A. Yes, you can see reddish-brown stains.

19 Q. -- again, what I'm pointing out to you. And, finally,
20 in State's Exhibit 108, that's a 6?

21 A. Yes, it is.

22 Q. An additional place. And when we're saying these are
23 illuminated for possibly blood or it illuminates meaning
24 what?

25 A. It would not illuminate with the UV light. It

1 darkens.

2 Q. Darkens. Excuse me. Okay. And once you collected
3 all those swabs, were those then properly packaged and
4 submitted into evidence?

5 A. They were.

6 Q. At any time when you had any evidence in this case in
7 your custody, did anyone alter or tamper with it in any
8 way?

9 A. No.

10 Q. I'll show you State's Exhibit Number 145. Do you
11 recognize that?

12 A. Yes, these are swabs from the jeans and the swabs from
13 the Nike shoes with my signature.

14 **MS. CAMPBELL:** Your Honor, at this time we offer
15 State's Exhibit 145 into evidence.

16 **MS. ZMROCZEK:** Without objection.

17 **THE COURT:** Admitted without objection.

18 (State's Exhibit Number 145, swabs, was admitted into
19 evidence.)

20 BY MS. CAMPBELL:

21 Q. That day -- that was the extent of what you did on the
22 case that day; is that correct?

23 A. That's correct.

24 Q. And, finally, moving on to the testing you did later
25 on that year, I believe in December, did you do some

1 comparisons as far as the footwear that's involved in this
2 case?

3 A. I did. December 17th, as a matter of fact. I
4 received a request also -- or prior to that from
5 Investigator Carwell asking me to take a look at the shoes
6 and compare to them to the impressions that I took off the
7 car and see if there was any comparison there at all.

8 Q. And, once again, did you use the actual shoes in 134
9 and make certain impressions from those?

10 A. I did. I took those -- or requested those from the
11 evidence, which is where they were kept. I got both shoes,
12 which was Item Number 8 from evidence, and all seven gel
13 lifts from evidence, which was Item Number 1.

14 Q. Which were the gel lifts we referred to earlier?

15 A. That's correct.

16 Q. And before you're able to do a comparison of the shoe
17 itself, you actually kind of do a known print of the shoe I
18 guess it's called?

19 A. Well, before I -- I start by -- there is a way that
20 you do a comparison, of course, and the methodology is the
21 same for latent prints, and that's the analysis begins with
22 looking at the outsoles, which is the bottom of the shoe.
23 So I already have the impressions themselves and I'll look
24 over the gel lifts, I turn the shoe over. If the outsoles
25 don't match and they're just way out of whack, there's no

1 need going any further, so actually the comparison you
2 examine.

3 Q. Okay. And you did that in this case?

4 A. I did.

5 Q. And did you proceed with your comparison or were they
6 eliminated off the bat?

7 A. No, the outsoles looked to be at that time the same
8 pattern as the impressions, so I proceeded.

9 Q. And what did you do next, sir?

10 A. Okay. There's two things you need to do. Number one,
11 I've got now the gel lifts, which is the impressions from
12 the top of the vehicle. I have to look at those to see
13 which one of those I deem fit or I can use in order to do a
14 comparison with. I looked at those and I found two that I
15 thought were the best and so that's the two I used. One
16 happened to be the right and one happened to be the left.
17 So those two impressions from the top of the car is the gel
18 lifts that I used. And I used, of course, the right and
19 left shoe, Nike shoe, that we had in evidence.

20 In order to do that we go through several processes
21 and the analysis process itself is, of course, looking,
22 again, at the outsoles or the bottom of the shoes to see
23 if they matched or if they looked like they would match.
24 Then we're looking for the size of the shoe to see if that
25 matches the size of the impression itself. Those things

1 you go through and the size, the outsole or design of it,
2 and the shape of it. If those three things match, then
3 you can continue on. Those three things are called class
4 characteristics. I need to point out if you can't use
5 those three things and say okay, that shoe made that
6 impression, the class characteristics at that time in those
7 three areas -- because that's the way they're made by the
8 manufacturer because there's many, many pairs of shoes that
9 come out with that same outsole, that same size and that
10 same design. So at that point, those three things, we're
11 still dealing with class characteristics. If they're the
12 same, you continue on.

13 Q. And were they the same in this case?

14 A. They were.

15 Q. And did you continue to try to look for any more
16 significant findings?

17 A. Yes, I did. I looked also -- then the next step is
18 looking for the wear characteristics. On your shoes after
19 you've worn them a while, they start wearing on the bottom,
20 everybody does, but you have to understand that a person
21 walks -- that everybody walks differently and so you wear
22 -- the bottoms of your shoes wear differently. However,
23 that's still a class characteristic. You can't use that
24 as an actual identification of the shoe to the impression.
25 There's some instances when you can, but generally you

1 cannot. In these shoes, I had some general wear patterns
2 on one of the shoes; however, it definitely was not
3 enough to say that you could use that as an individual
4 characteristic in order to make the identification, so that
5 had to be classified also as a class characteristic, and I
6 did that, and then proceeded.

7 Q. But the wear characteristics you observed were
8 consistent with your findings?

9 A. They were generally in the same area on one shoe.

10 Q. And then were you able to make any further
11 determinations based on these shoes and their
12 characteristics?

13 A. On a shoe comparison when you start looking at
14 individual characteristics -- I don't know if you've been
15 told about the individual characteristics on latent prints,
16 but latent prints are developed before you're born and they
17 stay with you for the rest of your life, so they never
18 change. It's a little different for shoe wear, of course.
19 They're manufactured. The individual characteristics that
20 you have to use for identification are made throughout the
21 period that you wear the shoe itself. Those have to be
22 random. They are random. So you have to have the same
23 random characteristics on the shoe as well as on the
24 impression itself. The random characteristics for the
25 bottom of a shoe can be a cut made in the rubber portion

1 of the sole underneath, it can be a rock, a small pebble or
2 something, stuck in the bottom of it that transfers from
3 the shoe to the impression. And you can tell if it's in
4 the exact same place, if the cut is exactly in the same
5 place, it's exactly the right size. All those things have
6 to come into play. If you have those things, then you can
7 make a positive identification. If you don't have those,
8 you can't use class characteristics for a positive
9 identification.

10 Q. And in this case, were there any random areas that
11 showed any specific, unique --

12 A. From the shoe wear impressions that I got and the
13 areas that I was able to see, there were none on the
14 impressions that compared to the shoe itself. If I found
15 some on the shoe and I had a real good impression, I could
16 eliminate the shoe as being the shoe. I didn't have that
17 either, so it was inconclusive my comparison for the shoes
18 and the impressions that I compared to.

19 Q. And when you say inconclusive, were all your findings
20 consent with the shoes you observed?

21 A. My findings were consistent with the size, the shape
22 and the design, that's the tread wear on the bottom of the
23 shoe, yes.

24 Q. So there were no differences that would allow you to
25 eliminate these shoes as having made these?

1 A. No.

2 Q. And, in fact, they were consistent with having made
3 these?

4 A. They were consistent with the size, shape and the
5 design.

6 Q. And I'll show you State's Exhibit 118 through 121. Do
7 you recognize those photographs?

8 **MS. ZMROCZEK:** Without objection.

9 **THE COURT:** Admitted without objection.

10 (State's Exhibit Number 118 through 121, photographs,
11 were admitted into evidence.)

12 A. Yes, ma'am. These are photographs that I took of the
13 bottom of the shoes and the gel lifts.

14 Q. And are -- these photographs of the bottom of the
15 shoe, is that over there on this side?

16 A. It is.

17 Q. And the white part, is that the gel lift?

18 A. It is.

19 Q. So that's basically how you made your comparison or
20 did it just visually; is that correct?

21 A. Well, laying them side by side is not really the way
22 it was done, but that's a very easy way of comparing a shoe
23 to an impression. We may use a transparency. We roll ink
24 on the bottom of the shoe, put the shoe on, take a step and
25 then you've got the transparency of the shoe itself and

1 then all you have to do is superimpose that transparency
2 over the gel lift and you're gonna be able to tell if they
3 match the outsole, if they match the side or the bottom.

4 Q. And that was done?

5 A. Yes.

6 Q. And they matched in all the areas you just mentioned?

7 A. Yes.

8 Q. And, in fact, did you -- I think this is the exhibit
9 showing basically your comparisons.

10 A. Yes, ma'am.

11 Q. In State's Exhibit 143 and 142, are those yours?

12 A. Yes, sir.

13 **MS. ZMROCZEK:** Without objection, Your Honor.

14 **THE COURT:** Number 142 and 143 are admitted without
15 objection.

16 **MS. CAMPBELL:** Thank you.

17 (State's Exhibit Number 142 and 143, photograph
18 blow-ups, are admitted into evidence.)

19 **MS. CAMPBELL:** And, Your Honor, may the witness step
20 down for just a minute? May he step down?

21 **THE COURT:** Yes. I'm sorry.

22 **MS. CAMPBELL:** Thank you.

23 (Whereupon, the witness steps down from the witness
24 stand.)

25 BY MS. CAMPBELL:

1 Q. I want to show you -- is this the right or the left
2 shoe?

3 A. That's the left shoe.

4 Q. And this is the actual shoe itself?

5 A. That's the left shoe, yes.

6 Q. And were you able to make -- come over on this side.
7 What were you able to show?

8 A. First of all, I don't want to get caught up in this --

9 **MS. ZMROCZEK:** I'm sorry. I can't hear, Your Honor.

10 A. I don't want to get too caught up in this being the
11 left shoe and looking at that, but anybody that steps on
12 something and when you pull your foot up you can tell
13 whether that's your left foot or right foot, correct, just
14 by the way it curves around. You see this? You would
15 think that was probably the right foot by the way it curves
16 and I want to tell you why this is the way we have to do
17 it. This is a gel lift, right, and I told you what we do
18 with the gel lift. We put the rubberized adhesive down
19 and pull it up. When you're looking at that impression
20 down on the substrate or on the surface, you can tell it's
21 somebody's left foot. If you put the gel lift on it, you
22 raise it up. You can't see through the gel lift, it's
23 rubber, and you pull it up and turn it over, it's reversed.
24 So now when you make the overlay you have to do the same
25 thing. You make the overlay like I said. You put the

1 ink on the bottom of the shoe, you put it on the overlay,
2 you take it away, now you have to reverse it. You're
3 looking at something that looks like the right, but this
4 is the left shoe. And then you place the overlay on the
5 impression itself, then you can tell if it's the same
6 design and the same size and the same shape.

7 Q. And was there anything inconsistent with these two?

8 A. No.

9 Q. So they were concluded as being consistent with this
10 pattern?

11 A. In those areas.

12 Q. It's the same pattern?

13 A. (Nods head.)

14 Q. I want to take an additional one, which is State's
15 Exhibit Number 143, I think.

16 A. Now this is the right shoe. Now as you can see, it
17 looks like the left shoe. It's the same thing. You have
18 to reverse the both of them. That's the way that you have
19 to do it, the way we pull them up and collect them.

20 Now what we have here is in this area here and
21 slightly over here is a general wear pattern going on and
22 they are in the same area; however, like I told you,
23 without some very significant wear going on, you can't use
24 that as an identifying characteristic. So it's a general
25 wear pattern, but they are in the same area.

1 Q. Okay. And the pattern itself of the shoe is also
2 consistent in the other three areas?

3 A. They are consistent with what we had talked about.

4 Q. Thank you.

5 (Whereupon, the witness returns to witness stand.)

6 BY MS. CAMPBELL:

7 Q. So basically what you found was consistent with the
8 shoes you had as far as the evidence you collected from the
9 car, the footwear?

10 A. I'm sorry. Say again.

11 Q. The shoes that you had, the impressions of those, were
12 consistent with what you found on top of the car?

13 A. In those areas.

14 Q. In those areas?

15 A. Yes, ma'am.

16 Q. And had you found anything that was inconsistent, that
17 would be eliminated?

18 A. Yes, absolutely.

19 **MS. CAMPBELL:** I have nothing further, Your Honor.

20 **THE COURT:** Cross-examination?

21 **MS. ZMROCZEK:** Thank you. Just briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q. Do you have the property report in front of you?

25 A. I do not.

1 Q. Okay. Would it help if I gave you a copy before I ask
2 you a question?

3 A. If you'd like.

4 Q. I've highlighted Item 8 and then 21 through 20
5 something.

6 A. Okay.

7 Q. Are they the same items?

8 A. The same -- the same items as what?

9 Q. As in -- did you do all of the swabs of the shoes?

10 A. For the possible bloodstains?

11 Q. Correct.

12 A. I did.

13 Q. You did all the swabs?

14 A. As far as I know I did unless they were taken out
15 after me by DNA or serology and they had to do some
16 additional testing.

17 Q. Okay. So you would have done -- the shoes that are
18 identified as Nike shoes -- or gray and black Nike shoes,
19 those are these right here that we're talking about, right?

20 A. Yes, ma'am.

21 Q. Okay. You did all the swabs?

22 A. I did the swabs that I -- let me go to my -- the swabs
23 from those shoes I did six.

24 Q. Did you give them items numbers?

25 A. I do not give them item numbers. That's done by the

1 evidence and property section, ma'am.

2 Q. Okay. Perfect. And you did six swabs of the shoes?

3 A. I did.

4 Q. Okay. I want to talk a little bit about the --
5 quickly and briefly about these shoes. Were you ever
6 provided any other shoes?

7 A. I was only --

8 Q. For example, like Air Force Ones?

9 A. I was only asked to pull those from the evidence and
10 property section, compare those with the shoe wear
11 impressions that I did myself, and that's what I did.

12 Q. Okay. And you talked about they have the general --
13 same characteristics and then you talk about there are some
14 differences in wear pattern maybe? Is that -- that's why
15 you couldn't find the identifying characteristics?

16 A. In wear pattern. If you want to talk about the wear
17 pattern, it gets missed. Usually with shoes that's been
18 worn for a period of time it's gonna have on wear patterns
19 on them. What you can't do with the wear pattern unless
20 they are very, very worn and can give us some kind of
21 identifying -- maybe they're worn all the way through and
22 we can identify that hole with the hole that we got on the
23 impression; otherwise, a wear pattern is consistent with
24 where it is only.

25 Q. Okay. And when different people wear the same shoe,

1 can it alter or change the wear pattern a little bit?

2 A. I couldn't tell you. I don't know.

3 Q. Okay. And then, lastly, I just want to ask you a
4 couple of questions about the prints, the latent prints,
5 that you collected off of the vehicle.

6 A. Yes, ma'am.

7 Q. There were five separate prints, I think, that you
8 identified?

9 A. I believe.

10 Q. Or areas.

11 A. I believe that's correct. Yes, ma'am. A through E.

12 Q. A through E?

13 A. Yes.

14 Q. And so A -- tell the jury where A is located.

15 A. Rear windshield is marked Number A.

16 Q. Rear windshield?

17 A. Yes, ma'am.

18 Q. And then C was located where?

19 A. It was the right rear passenger door.

20 Q. Right rear passenger door?

21 A. Yes, ma'am.

22 Q. And B?

23 A. B is right rear trunk.

24 Q. Right rear trunk?

25 A. Correct.

1 Q. And then E?

2 A. Is the roof and -- the rear of the roof and the
3 center.

4 Q. The rear of the roof and the center?

5 A. Correct.

6 Q. Did I get all the letters? Did I get them all? And D
7 maybe? Did I forget that one?

8 A. Rear passenger door. I think I --

9 Q. Okay. I got them. So you said that fingerprints,
10 you're born with them, they don't change?

11 A. That's correct.

12 Q. And no two people, not even identical twins, have the
13 same fingerprints; isn't that right?

14 A. That's correct.

15 Q. And you've been doing -- and I know you didn't do the
16 fingerprint analysis. That was done by someone else?

17 A. Yes, ma'am.

18 Q. But you collected five areas and even if there were
19 smudges you considered the five lifts that you took to have
20 possibly some identification ridge area?

21 A. Yes, or I wouldn't have taken them.

22 Q. Or you wouldn't have taken them?

23 A. That's correct.

24 Q. And no two people can have the same fingerprints?

25 A. No.

1 **MS. ZMROCZEK:** Thank you.

2 **THE COURT:** Redirect, Ms. Campbell?

3 **MS. CAMPBELL:** No, sir.

4 **THE COURT:** All right. Thank you. You may step down.

5 (Witness excused.)

6 **THE COURT:** Counsel approach just a moment.

7 (Proceedings held at the bench; not reported.)

8 **THE COURT:** All right. Ladies and gentlemen of the
9 jury, after discussing scheduling with counsel, we've
10 agreed that this is a good time for us to stop for the
11 afternoon. With it getting dark so early and everything,
12 I think it is a good time for us to stop for the afternoon
13 here, and we are going to do that.

14 I will caution you again against -- about discussing
15 this case with anyone while you are away from the
16 courthouse and do not discuss it with your family or your
17 friends and don't read any news stories or listen to any
18 broadcast media about this matter. Do not allow anyone to
19 discuss it with you. If anyone should approach you, find
20 out who they are or get their description and report it to
21 the bailiffs and they will report it to me. And, again, do
22 not begin any discussion about this matter among yourselves
23 in the morning when you return.

24 In that correction, let me see counsel for just one
25 more minute, please.

1 (Proceedings held at the bench; not reported.)

2 **THE COURT:** We have a matter of law that we've got to
3 take up in the morning, and I'm not sure exactly how long
4 that's going to take. I don't want to bring you in too
5 early to sit in the jury room while we are working on those
6 things, so I'm gonna ask you to report back to your jury
7 room tomorrow morning at 10 AM. Please be in the jury room
8 at 10 AM tomorrow morning and we will be ready to begin.

9 Thank you. You may go with the bailiff.

10 (Whereupon, the jury is excused for the day at
11 4:50 PM.)

12 **THE COURT:** All right. Let's talk just a moment, and
13 we may want to do it in chambers or we may want to go off
14 the record to see where we are exactly with regard to the
15 proffer of the co-defendant in this case.

16 Let me see if I correctly state it or have in my mind
17 what the offer is and under what conditions you want to
18 get this testimony, but if I -- in a very brief sentence,
19 the Defendant in this case is on trial, of course, for
20 attempted armed robbery and attempted murder that occurred
21 sometime between, say, between 3 and 6 AM. He was not
22 apprehended at that time. Some four to six or seven hours
23 later a vehicle in which he was a passenger was stopped in
24 an unrelated traffic stop. As a result of that stop, the
25 Defendant was charged with unlawful conduct toward a child,

1 **THE COURT:** All right. Good morning, ladies and
2 gentlemen, and thank you for your promptness in being back
3 here. And we are now ready to proceed. However, before
4 we do that, I do need to ask you if anyone has tried to
5 talk with you or contact you about this case in any manner
6 over the evening recess, I would need to know about it now.
7 Negative response and that's good.

8 Also, if anyone has read any news stories or seen
9 anything on television or other broadcast media about
10 this case over the evening recess, I would also need to
11 know about that now. Again, negative response, and that's
12 good.

13 Thank you very much. Before the recess yesterday the
14 State was presenting their case and they may continue to do
15 so. Ms. Campbell.

16 **MS. CAMPBELL:** May it please the Court? The State
17 calls Gray Amick.

18 GRAY AMICK,
19 having been duly sworn, testified as follows:

20 **THE CLERK:** Thank you. Please have a seat on the
21 witness stand and state your full name for the record.

22 **THE WITNESS:** My name is Gray Amick.

23 **MS. CAMPBELL:** Can you pull that down?

24 **THE WITNESS:** Gray Amick.

25 **MS. CAMPBELL:** Thank you.

1 DIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q. Sir, where are you employed?

4 A. At the Richland County Sheriff's Department.

5 Q. And what do you do there?

6 A. I'm the technical leader of the DNA department.

7 Q. Of the DNA department?

8 A. Correct.

9 Q. And as technical leader of the DNA department, what
10 do your duties include?11 A. Basically the supervisor of the DNA department. I
12 also analyze the casework there. I'm also involved in
13 method development and authoring protocols.

14 Q. And what?

15 A. Authoring protocols.

16 Q. Authoring protocols?

17 A. (Nods head.)

18 Q. Can you tell the jury a little bit about your
19 education and training?20 A. Yeah, I have a bachelor of science, 1989, and a Ph.D.
21 in biochemistry from USC in 1993. In '93, I was hired by
22 the State Law Enforcement Division, commonly known as SLED,
23 where I worked for eleven years in forensics. In 2004, I
24 was hired by Leon Lott with the Richland County Sheriff's
25 Department to start their DNA lab. I'm involved in

1 continuing education in the field annually in forensic DNA
2 and cutting edge technologies in DNA.

3 Q. And over the years you have kept up and -- has DNA
4 progressed over the years as far as testing that y'all do?

5 A. Yeah, we pretty much evolved with the testing as it's
6 evolved, yes.

7 Q. And do you keep up with all of the training and the
8 education and safety protocols?

9 A. Yes.

10 Q. And have you been qualified before as an expert in
11 DNA analysis?

12 A. I have.

13 Q. And specifically how many times have you been
14 qualified as an expert in court for DNA analysis?

15 A. Approximately ninety times.

16 Q. And specifically is there a newer technology that's
17 come up recently called rapid something?

18 A. Yes, there's rapid DNA technology, which we at the
19 sheriff's department have instrumentation for. We put
20 that online in 2014 and have been using that with selected
21 cases.

22 Q. And have you also been trained and educated as far as
23 doing that analysis?

24 A. I have.

25 : **MS. CAMPBELL:** Your Honor, at this time we offer him

1 as expert in DNA analysis, including rapid DNA analysis.

2 **THE COURT:** All right. Voir dire with regard to
3 qualifications, Ms. Zmroczek?

4 **MS. ZMROCZEK:** Not at this moment, Your Honor.

5 **THE COURT:** All right.

6 **MS. ZMROCZEK:** We'll stipulate.

7 **THE COURT:** The Court will qualify this witness as
8 an expert in the field of DNA analysis and rapid DNA
9 technology. Again, ladies and gentlemen, you will recall
10 that I told you that a witness who is not an expert is
11 generally not allowed to give an opinion; however, if
12 scientific or other technology knowledge will assist you
13 in making a decision in this case a witness qualified as
14 an expert by experience, training, education or otherwise
15 can give an opinion. So the basic difference between a
16 non-expert and an expert witness is the expert witness
17 is allowed to give an opinion and I have qualified this
18 witness as an expert in the field of DNA analysis and
19 rapid DNA technology.

20 **MS. CAMPBELL:** Thank you, Your Honor.

21 BY MS. CAMPBELL:

22 Q. Dr. Amick, can you explain to the jury generally how
23 evidence comes to you and what kind of comparison you're
24 able to do?

25 A. Sure. The evidence is generally collected by crime

1 scene technicians or deputies or investigators. They bring
2 that to the sheriff's department and they log it into
3 the evidence log in the department where it's given unique
4 identifiers and packaged properly to reduce contamination
5 and then it is requested by the investigator in the case
6 for DNA analysis if they need it. So at that point we
7 would retrieve it from the evidence department, run our
8 analysis on it to try to develop a DNA profile from the
9 evidence and from the standards that are submitted in a
10 case and compare the two to see if they're included or
11 excluded.

12 Q. Okay. And in this case, were there multiple requests
13 for DNA analysis?

14 A. I believe there was, yes.

15 Q. And this was done over a period of time? I believe
16 over about a year?

17 A. That's correct.

18 Q. Does the amount of time if something is properly
19 stored and preserved, does that affect your ability to do
20 DNA analysis?

21 A. It does not.

22 Q. So time won't make someone's DNA change to look like
23 somebody else's or anything like that?

24 A. No.

25 Q. And when you get evidence, say, from a crime scene

1 such as blood or saliva, or in rape cases semen, things of
2 that nature, can you tell how long that DNA may have been
3 there?

4 A. No, you cannot tell how long the stain has been there.

5 Q. And typically DNA, you can do an analysis testing for
6 a body fluid such as I just mentioned?

7 A. You can, yes.

8 Q. But is there also something known as touch DNA?

9 A. There is.

10 Q. And what is touch DNA? Is it different?

11 A. It's still DNA. It's just the source is different.
12 So instead of you get cut and you bleed on an item and that
13 gets collected at a crime scene as the evidence, as the
14 source of the DNA, it is simply where I would touch
15 something and that gets swabbed and collected for DNA. So
16 there's usually less DNA in that type sample than there is
17 in blood or semen or saliva, things of that sort, but it's
18 still DNA.

19 Q. And the DNA in touch DNA typically comes from, I
20 believe, sloughing off of skin cells, stuff of that nature?

21 A. Yes.

22 Q. And does everyone kind of slough skin cells -- that's
23 a horrible word -- the same amount as everyone else?

24 A. No, ma'am. It's independent and depending on the
25 individual, so you may or may not. And it's also depending

1 on the substrate or what you're touching, so whether or not
2 you may or may not leave DNA there by touching it.

3 Q. So if I reach up and, say, I touch this right in front
4 of you, am I going to necessarily leave any DNA there?

5 A. You may or you may not.

6 Q. Are you familiar with the term "buccal swab"?

7 A. Yes.

8 Q. What is that, sir?

9 A. That's simply a term used for a swab of an
10 individual's mouth, which is called a buccal cavity. So
11 when we request a standard from an individual, we ask for
12 a buccal swab, which is basically a Q-tip placed in an
13 individual's mouth, and submit it to the lab.

14 Q. And in collecting that buccal swab, that's what we
15 know as a known standard?

16 A. That's correct.

17 Q. And do you typically have known standards when doing
18 comparisons?

19 A. Yes, you have to be able to say someone's included
20 or not.

21 **MS. CAMPBELL:** Your Honor, may we approach on a
22 matter?

23 **THE COURT:** Yes.

24 (Proceedings held at the bench; not reported.)

25 BY MS. CAMPBELL:

1 Q. In addition to collecting buccal swabs from
2 individuals, is there also a database available that has
3 known DNA standards in it?

4 A. Yes.

5 Q. And can you also use that database with known DNA
6 standards to compare?

7 A. Yes, you can.

8 Q. I want to turn your attention to this case. Did
9 you receive some buccal swabs or known standards from
10 individuals that may or may not have been involved in this
11 case?

12 A. Yes, I did.

13 Q. And who did you receive known standards from or buccal
14 swabs from?

15 A. I got a buccal swab from Nickilous Wallace and Michael
16 Keith, which I believe -- I have listed as the victim.
17 That's the two that were submitted under this case.

18 Q. And was there an additional standard that you used for
19 comparison in this case?

20 A. Yes, Brandon Berry's buccal swab was also used in this
21 case.

22 Q. So you have one from Nickilous Wallace, Brandon Berry
23 and from the victim, Michael Keith?

24 A. Yes, that's correct.

25 Q. And prior to -- let me back up for a minute. How did

1 you initially become involved in this case? Were there
2 certain things that were asked of you to test?

3 A. Yes, there was.

4 Q. And can you explain to the jury what you did and why
5 it's a little different from what you did in a standard
6 case?

7 A. Yeah, this case was -- I was contacted by Investigator
8 Carwell about this case basically right after it happened
9 as being a good candidate for rapid DNA analysis, and
10 that's the technology that I mentioned before that we have
11 available. It's a technology that you can run your samples
12 and get a profile within two hours, so it's -- it's good to
13 use for cases that, as the investigator sees fit, they need
14 an answer right away that could affect the outcome of the
15 investigation or the direction of the investigation. So
16 Investigator Carwell came to me and said I've, you know, a
17 case that's potentially good evidence for this technology,
18 so we looked at it and we ran, I think, items from the
19 shoes, items from the pants that were collected, and also
20 the -- also some -- the victim's standard in the case.

21 Q. The victim's standard is what you had at the time?

22 A. That's correct.

23 Q. And you mentioned that you ran some shoes -- something
24 from the shoes and something from the what, the pants?

25 A. The pants, correct. Let me just look at my sheet now.

1 I don't want to misspeak. So we ran left side leg pants,
2 left inside leg pants, a Nike shoe and a Nike shoe. So
3 it's two swabs from the pants, two swabs from the shoes.
4 And then we also ran Michael Keith and Nickilous Wallace on
5 that same run, a two-hour test.

6 Q. And in this case you said that you were able to
7 actually do testing of -- the rapid DNA testing. In a
8 two-hour period the testing can be completed?

9 A. That's correct.

10 Q. Typically how long does testing take if it's not
11 rapid?

12 A. Our regular turnaround probably averages a month or
13 two.

14 Q. A month or two?

15 A. (Nods head.) Uh-huh.

16 Q. So in this case you ran these swabs and compared it to
17 the victim and Nickilous Wallace?

18 A. That's correct.

19 Q. And what were you able to get as a result of that?

20 A. What we get from this -- what we get from this test
21 is basically investigative information that we can provide
22 to the investigator. So what we were able to tell
23 Investigator Carwell was the item -- the cutting from the
24 -- the pants leg and the shoes, the blood on that matched
25 the victim in this case, which was the Michael Keith

1 individual. So that information is given right away to
2 the investigator and he uses that for his investigation,
3 whether it's search warrants or whatever, but we pass that
4 on and he does what he needs to do with it.

5 Q. And in this case when did that take place? When was
6 that testing done?

7 A. I did that on July 30th of 2014.

8 Q. So the day after this occurred?

9 A. I don't -- I don't know when it occurred, but that's
10 when I did it.

11 Q. Okay. That's when you did it and completed it on the
12 30th?

13 A. That's correct.

14 Q. And once you got that information, did you immediately
15 turn it over to Investigator Carwell?

16 A. Yes, I did.

17 Q. But you didn't stop your testing there, did you?

18 A. No. Because its primarily use right now is for
19 investigative information, what we do is go back and
20 basically test all the other evidence with our conventional
21 method and issue our findings and our report, and that's
22 what we have in court today. So that -- that rapid DNA
23 test is used, like I said, for investigative information,
24 then we basically work the case as we would a normal,
25 conventional case beyond that.

1 Q. Okay. And I believe initially you had Mr. Wallace's
2 and the victim's standard. At a later date were you also
3 provided the known standard from the Defendant in this
4 case?

5 A. I was.

6 Q. And I want to show you what's been marked as State's
7 Exhibit 161 and 162. Do you recognize those?

8 **MS. ZMROCZEK:** No objection, Your Honor.

9 **THE COURT:** All right. You can proceed.

10 **MS. CAMPBELL:** Thank you, Your Honor.

11 **THE COURT:** If you offer them into evidence, they will
12 be admitted into evidence without objection.

13 (State's Exhibit Number 161 and 162, DNA summary
14 blow-ups, were admitted into evidence.)

15 BY MS. CAMPBELL:

16 Q. And I was gonna ask you are these a summary of your
17 findings in this case?

18 A. Let me see.

19 Q. (Handing.)

20 A. Yes, it appears to be a summary.

21 Q. And you've seen these before. They weren't blown up,
22 but you saw them?

23 A. Yes, I saw a smaller version.

24 Q. Okay. And do accurately reflect some of your findings
25 in this case?

1 A. I looked over the smaller version and it seemed to
2 accurately reflect, yes.

3 **MS. CAMPBELL:** Your Honor, may the witness step down?

4 **THE COURT:** Yes, ma'am. You may step down.

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 BY MS. CAMPBELL:

8 Q. And if you'd come over here.

9 A. (Witness complies.)

10 Q. The first three items that are -- the items that were
11 received in evidence in this case, are what items?

12 A. These are the three buccal swabs; a buccal swab from
13 Michael Keith, Brand Berry and Nickilous Wallace, and then
14 these indicate victim, suspect, suspect.

15 Q. And in this case the items have numbers out here
16 beside them and then there's, I guess, sub numbers?

17 A. Sub items.

18 Q. Sub items. And explain to the jury why that's
19 represented here?

20 A. So what we do is we'll get an item, for example, these
21 jeans, and in log-in they gave them an Item Number 7. So
22 when we get those and we process them and we find a stain,
23 we'll label that 7.1, 7.2, that kind of naming depiction,
24 so that's what these numbers underneath here mean.

25 Q. And items 7 and 8 on here, the jeans and the pair of

1 Nike shoes, these two items, those were the jeans and shoes
2 that are in evidence, y'all did additional testing than
3 what had been done before?

4 A. Right.

5 Q. And is that standard in the laboratory?

6 A. Yes.

7 Q. And in this case, even though the clothes had been
8 tested and DNA evidence had been collected before, y'all
9 went ahead and collected additional evidence just to make
10 sure?

11 A. That's right.

12 Q. And those items -- on Item Number 7, what was that?

13 A. The jeans.

14 Q. Those were the black jeans?

15 A. Correct.

16 Q. And you were able to, once entered into your
17 laboratory, test three different areas?

18 A. That's right. We tested the waistband and two stains
19 from those jeans.

20 Q. Okay. And the middle column there, the first of the
21 items received, the middle column indicates blood. What's
22 the purpose in that? Do y'all do any testing to see
23 whether or not an item's, in fact, positive for blood and
24 is that different from a DNA sample?

25 A. Yes, it is. It's a different test. It just tests

1 for the presence or an indication of blood. It's not a
2 confirmatory test. It just tells us whether or not that
3 red stain you see is blood or not.

4 Q. Okay. So if there's nothing in that column next to
5 the item, like in the first one, 7.1, is blank next to it.
6 That means that it is not positive for blood?

7 A. That means -- it probably means we didn't test that
8 for blood, which we wouldn't do on a scraping from a
9 waistband. We do that type of item for ownership. So if
10 somebody submits pants or a shirt and we want to find
11 out who may be wearing it, we'll do the collar or the
12 waistband.

13 Q. And when you say ownership, that's just to show --
14 again, that would be --

15 A. Who might have been wearing it.

16 Q. And why do you pick the scraping of the inside of the
17 waistband?

18 A. That's -- for pants that's about one of the best
19 places to possibly get a profile of the person wearing it
20 because it's probably where it touched their skin.

21 Q. And on a shirt it would be what area?

22 A. Either the collar or the cuffs of the sleeves.

23 Q. And in this case, the testing for ownership on
24 Item 7.1, what were your results?

25 A. The results were that it was a mixture of DNA, so it

1 means there was more than one individual, and the major
2 contributor matched Brandon Berry and the other
3 contributor, the minor ones, were just too weak to tell
4 who they were.

5 Q. When you're talking about major versus minor
6 contributor, what are you talking about?

7 A. When you do a DNA profile, it can be one person there,
8 it could be multiple people there. So if there are
9 multiple people there, you can sometimes distinguish
10 somebody who's there in high quantity versus somebody
11 there in low quantity, and that's what we call a major
12 contributor and a minor contributor. It's just based on
13 how much DNA of that individual is there.

14 Q. And in this case on Item 7.1, you were able to
15 indicate the major contributor was Brandon Berry?

16 A. That's correct.

17 Q. And in this case -- and I didn't put these numbers on
18 there, but in these cases typically do you then attach a
19 number of the probability of that being any unrelated
20 person or, I guess, only -- does everyone have different
21 DNA?

22 A. Yes, except for identical twins. So everybody's DNA
23 is unique.

24 Q. Even brother/sister?

25 A. Yes.

1 Q. Parent/child?

2 A. Yes.

3 Q. They're all different?

4 A. They're all different.

5 Q. Unless you're an identical twin?

6 A. Correct.

7 Q. And in this case, the major contributor matched
8 Brandon Berry. Were you able to put a statistical number
9 to that?

10 A. Yes.

11 Q. What was that number?

12 A. That number for 7.1 was that the major contributor
13 matched Brandon Berry and based on the most recent
14 population data available at 13 and 22 loci, which I'll
15 explain in a second, the frequency of seeing this
16 profile in the African American population is one in
17 106 quadrillion.

18 Q. One in a 106 quadrillion?

19 A. Right.

20 Q. I'm familiar with million or billion. How many zeros
21 in quadrillion?

22 A. That would be fifteen zeros. So it goes million,
23 billion, trillion, quadrillion.

24 Q. And how many people on Earth?

25 A. I think around seven billion now.

1 Q. So in your opinion, who's the major contributor in
2 this case?

3 A. So for Item 7.1, my opinion is Brandon Berry was the
4 source of the DNA on that waistband.

5 Q. And when you say the minor contributor is too weak,
6 what does that mean?

7 A. That means there was other indications of DNA on that
8 item, but it was just not enough there to say it matched
9 somebody or didn't match somebody.

10 Q. So too weak?

11 A. Uh-huh.

12 Q. And when we're talking about amounts of DNA you're
13 testing here, what kind of amounts are we talking about?

14 A. Well, it depends on a stain. On a bloodstain, that's
15 a good question. You're gonna have a ton of DNA. You're
16 gonna have so much DNA that you have to dilute it to get a
17 good result. On this type of sample you're gonna have a
18 lot less because it's not a body -- it's not a body fluid,
19 it's not like blood or something, so it's kind of like a
20 touch DNA sample. Your waist is touching that waistband,
21 so it's less DNA there. I think the actual quantity is --
22 is probably, you know, in a number about half a nanogram,
23 which probably doesn't mean anything to anybody. It's like
24 -- let's see if I can quantitate this. Half a nanogram is
25 about .5 micrograms, which is .00005 milligrams. You might

1 have heard the term milligrams, but it's a very small
2 amount.

3 Q. And that's what you're able to test --

4 A. Yes, that's what we're able to test.

5 Q. -- with the current technology?

6 A. Correct.

7 Q. But the major contributor is Brandon Berry?

8 A. It is for 7.1, yes.

9 Q. And 7.2, it indicates that that's a stain from the
10 jeans?

11 A. That's correct.

12 Q. And was that tested for the presence of blood?

13 A. Yes, it was.

14 Q. And were you able to get a result from that?

15 A. Yes. 7.2 and 7.3 the DNA result matched Michael
16 Keith.

17 Q. And, again, did you run the numbers on that?

18 A. I did. Based on the most recent population data
19 available, 22 loci, the frequency of seeing this profile
20 in the African American population is one in 2.2 octillion.
21 That's twenty-seven zeros.

22 Q. So in your opinion, who's the contributor of that
23 blood?

24 A. In my opinion, Michael Keith is the donor of that
25 particular stain.

1 Q. And that's for Item 7.2 and 7.3?

2 A. Correct.

3 Q. And, again, we won't go through all the numbers, but
4 basically the ones you say they were matched, you put a
5 number to them and can say whether or not they were
6 contributors?

7 A. (Nods head.)

8 Q. Okay. Moving on to 8.1, which was a pair of Nike
9 shoes, which was processed in your department?

10 A. Yes.

11 Q. And the left shoe had two -- this one has -- this item
12 has the sub and then the sub sub?

13 A. That's correct.

14 Q. Okay. And so when there's nothing by 8.1, being the
15 left shoe, that's because it was delineated down to two
16 different areas, right?

17 A. That's right.

18 Q. And, again, when you're receiving all these items for
19 your testing, y'all make sure that the chain of custody's
20 correct?

21 A. Yes.

22 Q. That nothing's been tampered or altered?

23 A. That's correct.

24 Q. And while it's in your custody you make sure there's
25 no cross-contamination or anything? There's protocols?

1 A. There's controls in place for all of that, yes.

2 Q. And, in fact, is your lab accredited?

3 A. Yes, it is.

4 Q. And how are y'all accredited?

5 A. It's an international accreditation by a group called,
6 ASCLD, so we adhere to International -- ISO accreditation
7 standards.

8 Q. And y'all have to do testing and keep up with certain
9 standards to make sure?

10 A. That's correct. It's annual -- or actually twice a
11 year we do testing, as well as audits every year, and other
12 -- many other quality components every year.

13 Q. Prior to you issuing a report, is your work also peer
14 reviewed?

15 A. Yes. So a hundred percent of our work is then handed
16 over to a second qualified analyst for technical review and
17 so another qualified analyst looks at all my results and
18 agrees -- has to agree before I can issue a report.

19 Q. Okay. And moving on to 8.1.1, the stains from the
20 left shoe, from the Nike, were you able to test for blood?

21 A. I was.

22 Q. And what were your results?

23 A. For 8.1.1 and 1.2 it was too weak. There was not
24 enough DNA there.

25 Q. And is that unusual?

1 A. No, it's -- it could have been sampled before, it
2 could have been degraded, it could have been many other
3 things. It's just sometimes you don't have enough DNA for
4 a profile.

5 Q. Okay. Moving on to the right shoe, were there two
6 stains that were swabbed there?

7 A. Yes.

8 Q. And were they tested for the presence of blood?

9 A. Yes, both indicated blood.

10 Q. And, finally, what were the results on the pair of
11 shoes that y'all tested in-house?

12 A. Again, the first stain was too weak and the second one
13 I got no result at all. So when I get to a certain point,
14 I got no DNA. These meant I got some DNA indicated, but
15 when I ran the profile it was way too weak.

16 Q. And moving on to Item 9 and 10, those were two items
17 that were not requested for any type of DNA?

18 A. That's correct.

19 Q. But Item Number 11 was a blue bag with masks, gloves,
20 shirt, skull cap and zip ties?

21 A. Yes.

22 Q. Did y'all do certain testing of items in there?

23 A. Yes. So we did brown gloves with the grips, another
24 pair of brown gloves, a black stocking cap and a red polo
25 shirt.

1 Q. And, again, how was the DNA collected in this case for
2 you to do the testing?

3 A. How was it collected?

4 Q. Uh-huh.

5 A. I think the crime scene unit basically collected all
6 of this evidence. I'd have to look and see specifically.

7 Q. Okay. But it is proper to use a swab and sterile
8 solution to collect DNA?

9 A. Yes. So they would either collect the item itself,
10 like a pair of pants or a pair of gloves, or they may
11 actually swab something at the scene, so we get it in
12 different forms.

13 Q. Okay. So typically you're cutting from some clothing
14 or a swab from clothing or a swab from the scene?

15 A. Or the entire item.

16 Q. Okay. And taking these apart and testing Items 11.1,
17 which is brown gloves with grips, what were your results?

18 A. The result is here there was a mixture and the major
19 contributor matched Brandon Berry. Again, the minor was
20 too weak.

21 Q. So the major contributor matched Brandon Berry.
22 Moving on to Item 11.2, which was brown gloves.

23 A. Same result. It was a mixture. The major contributor
24 was, again, matching Brandon Berry. The minor contributor
25 was too weak.

1 Q. And in these -- when we're talking about who it
2 matches or who the mixture may match and the minor's too
3 weak, in each of these cases are you comparing it to all
4 three of these buccal swabs?

5 A. I am. And if there was enough DNA here to make a
6 conclusion about those, it would say these people are
7 excluded, but because it says it's too weak I can't say
8 whether or not anybody else is included or excluded, so
9 that's what that weak means.

10 Q. But you definitely did the comparison and the major
11 contributor would not be Michael Keith or Nickilous
12 Wallace?

13 A. No, if it's matching -- if it matches, it's only gonna
14 match one individual because our DNA is unique. So once
15 it says it matches this person, that means it excludes
16 everybody else.

17 Q. Okay. Moving on to the black stocking cap. Again --

18 A. Again, a mixture of this item, and the major
19 contributor matched Brandon Berry. The minor contributor
20 was too weak.

21 Q. So on all those three items your opinion is the person
22 who is the major contributor is Brandon Berry?

23 A. That's correct.

24 Q. And, finally, 11.4 was a red polo shirt?

25 A. Yeah, and that one was too weak for match purposes.

1 Q. And, again, these weren't tested for blood because
2 there was no indication?

3 A. That's correct. So we do a visual examination of the
4 item. If we see what looks like blood, then we test it for
5 blood.

6 Q. Moving on to State's Exhibit Number 162, does this
7 show more of your results?

8 A. It does.

9 Q. And can you walk us through starting with Item 12?
10 What does that indicate Item 12 was that was submitted to
11 y'all?

12 A. Item 12, a swab from the left outside leg, Marker
13 Number 1. That was -- indicated blood when we tested it
14 and it matched Michael Keith.

15 Q. So, again, when it matches Michael Keith, it would
16 exclude anyone else?

17 A. That's correct.

18 Q. Item Number 13, swab from left outside leg, Marker
19 Number 2.

20 A. That was not tested for blood evidently and matched
21 Brandon Berry.

22 Q. And, again, if you don't see an indicator of blood,
23 you wouldn't test for it?

24 A. That's correct.

25 Q. Number 14, swab from left outside leg, Marker

1 Number 3.

2 A. That was a mixture of Brandon Berry. Mr. Wallace and
3 Mr. Keith are excluded from that particular item.

4 Q. From that particular one. And, again, there was no
5 testing for blood, so it didn't indicate any blood on that?

6 A. That's correct. And these items I can tell by the way
7 they're named came from crime scene collection, so they
8 would put markers out when they're collecting items or at a
9 crime scene -- or I'm not sure how they did it, but that's
10 what it means to me, that these items were swabs that we
11 received from the crime scene unit versus the other ones
12 were the items that we were swabbing and processing. So
13 that's -- when it says Marker 1, 2, 3, that I know came
14 from the crime scene.

15 Q. Okay. But it doesn't affect your testimony?

16 A. No, it doesn't.

17 Q. Moving on to the Item Number 15, the swab from left
18 outside leg, Marker Number 4.

19 A. Too weak for match purposes.

20 Q. And, again, there was a visual done of the swab and
21 then if it was appropriate it would be tested for blood and
22 in this case it wasn't?

23 A. That's correct.

24 Q. And it was too weak for match purposes?

25 A. Correct.

1 Q. And I want to move on to Item 16, swab from left
2 inside leg, Marker Number 5. Was that one of the items you
3 initially used?

4 A. It was.

5 Q. And, again, you've already told them what your results
6 were from that?

7 A. Right.

8 Q. Which was?

9 A. That those items that are marked rapid, I think
10 there's at least three of them here -- four -- three,
11 those were items that matched the victim in the case when
12 we did the investigative information.

13 Q. Okay. Moving on to Swab Number 17 from left inside
14 leg, Marker Number 6, was that tested for blood?

15 A. Yes, blood was indicated on that item.

16 Q. Moving on to Item Number 18 from the same pants leg,
17 Marker Number 7?

18 A. Blood indicated there.

19 Q. Number 19?

20 A. Also blood indicated.

21 Q. And it matches who?

22 A. That matched Michael Keith.

23 Q. And the one before that was no result?

24 A. Right.

25 Q. And Number 20?

1 A. Again, blood indicated, and that matched Michael
2 Keith.

3 Q. And, finally, on the jeans, Number 21?

4 A. The item was too weak for match purposes.

5 Q. And it did not get tested for blood?

6 A. That's correct.

7 Q. The next item starting with Item Number 22, that was
8 a swab from the left Nike shoe, Marker Number 1?

9 A. That's correct.

10 Q. And was it tested for blood?

11 A. No.

12 Q. And that was also one used in what?

13 A. That was also done with the rapid.

14 Q. And that was the one that come back matching?

15 A. The victim.

16 Q. Item Number 23, which was the next swab from the left
17 shoe, was that tested for blood?

18 A. Yes, that one indicates blood and matched Michael
19 Keith.

20 Q. Item Number 24, the swab from the left Nike shoe,
21 Marker Number 3.

22 A. Again, indicated blood and matched Michael Keith.

23 Q. Number 25, another swab from the Nike -- from the
24 right Nike shoe.

25 A. That was another one we did with the rapid instrument

1 that was given to the investigator that matched the victim
2 in the case.

3 Q. Number 26 on the right shoe. Again, Number 5.

4 A. Again, blood was indicated matching Michael Keith.

5 Q. Number 27?

6 A. 27, blood was indicated, and that also matched Michael
7 Keith.

8 Q. And Number 28 was a swab from the Glock Model 19
9 .9 millimeter?

10 A. Yes.

11 Q. It was not tested for blood?

12 A. No.

13 Q. And none of these items that we're getting ready to
14 talk to weren't?

15 A. Correct.

16 Q. But what were your results?

17 A. Results from that swab were that they were too weak
18 for match purposes.

19 Q. Item Number 29, a swab from the black magazine?

20 A. Same result. Too weak for match purposes.

21 Q. And then Item Number 30, the swab from the four
22 unfired bullets?

23 A. Those I got no results on.

24 Q. And is that unusual in a case with guns?

25 A. No, not for -- not for bullets and shell casings.

1 It's very difficult to get a profile from those.

2 Q. And, finally, Item Number 31, which is a swab from
3 the two plastic masks.

4 A. Okay. That one, Item 31, was a mixture. The major
5 contributor matched Brandon Berry and then the minor --
6 it doesn't say too weak. There was enough there for me to
7 do a comparison, like I said before, so I could exclude
8 Michael Keith and Nickilous Wallace as being a match of
9 the minor contributor, so I don't know who that minor
10 contributor is.

11 Q. So it was not a complete standard submitted to you?

12 A. Correct.

13 Q. And was that -- in your opinion, on Item Number 31,
14 what were your results as far as numerically on that?

15 A. 31, again, was a mixture; the major contributor
16 matching Brandon Berry. And based on the most recent
17 population data, the frequency of seeing this profile in
18 the African American population is one in 546 quadrillion.

19 Q. So in your opinion, who was the major contributor?

20 A. So in my opinion, Brandon Berry was the source of that
21 particular DNA stain on that item.

22 Q. And it excludes everyone else in the world?

23 A. On the major contributor, yes.

24 (Whereupon, the witness returns to the witness stand.)

25 BY MS. CAMPBELL:

1 Q. And your role in this case was just to do the rapid
2 DNA and then subsequently the rest of the DNA testing?

3 A. That's correct.

4 MS. CAMPBELL: Thank you. I don't have anything
5 further.

6 THE COURT: Cross-examination?

7 MS. ZMROCZEK: Thank you.

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Good morning, Dr. Amick.

11 A. Good morning.

12 Q. I want to talk to you a little bit about what you --
13 I want to focus on the pants first, Item 7, 7.1.

14 A. Okay.

15 Q. You talked about -- sorry. You talked about the
16 waistband and the -- for jeans, for pants, where's the best
17 place to swab for DNA?

18 A. For ownership if we're asked maybe who was wearing it,
19 we usually swab -- scrape and swab the waistband.

20 Q. Waistband. And you don't do that on the outside, you
21 do it on the inside, right?

22 A. That's correct.

23 Q. Okay. And in this case, there was at least one other
24 person that was in those pants or in that waistband, right?

25 A. Tell me specifically what item.

1 Q. 7.1.

2 A. Okay. 7.1, that's correct. It was a mixture and
3 Brandon Berry matched the major contributor and, yeah, the
4 minor contributor was too weak to determine who it was. So
5 there was another DNA -- there was other DNA there.

6 Q. There was other DNA on the inside of the waistband?

7 A. That's correct.

8 Q. Okay. In your scientific studies, can that happen
9 when people wear other people's clothes?

10 A. Sure. It can happen that way.

11 Q. Okay. The -- now explain to me with the -- so there
12 was no DNA that you could get from the shoes. Explain that
13 a little bit on Item 8 and all of the --

14 A. Item 8?

15 Q. Item 8 and their subparts, yes.

16 A. So 8.11, 8.12, 8.21 where I have too weak, sometimes
17 there's not enough DNA there. I think that's answering
18 your question. And I believe those were previously swabbed
19 by the crime scene, so I would probably explain that by
20 saying they probably collected most of that sample when
21 they previously swabbed it and when we reprocessed those we
22 didn't get enough to get a profile.

23 Q. Okay. All right. So there's no way to tell who was
24 in those shoes? No way to match DNA to who was in those
25 shoes?

1 A. I think you need to give me a specific item number
2 and maybe I can testify to the --

3 Q. Sure. 8.1, the left shoe.

4 A. So 8.1 is -- the sub items were 1.1 and 1.2, and I did
5 not get any DNA from that particular item.

6 Q. Okay. And then 8.2 -- yeah, 8.2.

7 A. So 8.21 and 8.22, basically I did not get a DNA
8 profile on these either.

9 Q. Okay. So we can't say -- we can't make any
10 identification completely?

11 A. That's correct. For those items.

12 Q. Okay. And then the same with items 11.1, 11.2, 11.3,
13 these were all mixtures, again, just like the inside of the
14 waistband, right?

15 A. (Nods head.)

16 Q. Meaning that there was someone else's DNA that was
17 attached to these items?

18 A. That's correct. Those were all three mixtures.

19 Q. Okay. And then I wanted to talk about the items on
20 your next page, Item 14, swab from the left outside leg.

21 It was a mixture, but you said that the victim, Mr. Michael
22 Keith, and Brandon Berry and Nickilous Wallace were all
23 excluded?

24 A. That's correct.

25 Q. Okay. So that was just somebody else's DNA on the

1 pants?

2 A. That's correct.

3 Q. Okay. And then 31, there was another mixture, and it
4 was -- the major contributor, again, was Brandon, but that
5 means that there was somebody else, but we know it wasn't
6 Nickilous Wallace or Michael Keith on the mask, right?

7 A. That's correct.

8 Q. Were you familiar with how those masks were packaged?

9 A. No, I was not.

10 Q. Okay. You talked about cross-contamination and DNA.
11 Explain a little bit how that happens.

12 A. How cross-contamination happens? Well, there's a
13 bunch of ways it can help and there's a bunch of
14 definitions of cross-contamination.

15 Q. Let me narrow it down then. If you have an item
16 that's touching another item, can you get
17 cross-contamination?

18 A. It possible.

19 Q. Okay. If you have items all thrown in a bag together,
20 can you get cross-contamination?

21 A. It's possible.

22 Q. Okay.

23 A. Usually liquid, but -- like if they're wet, it's more
24 probable.

25 Q. Okay.

1 A. If they're dry, it less probable.

2 Q. All right. Ms. Campbell asked you -- you can't tell
3 when a person left this DNA, right?

4 A. That's right.

5 Q. So if I am very full of DNA and I leave it a lot, if I
6 touch this table, in three years or -- say it doesn't ever
7 get cleaned, which I hope it does, but let's just say in
8 three weeks, if I haven't been here in three weeks, my DNA
9 could still be on that table?

10 A. That's correct.

11 Q. Okay. And so I think -- and I think Ms. Campbell even
12 touched this spot, too. So could that be a mixture of both
13 of our DNA still in three weeks?

14 A. Yes, it could.

15 Q. Or even tomorrow?

16 A. Yes. There's no way to date a DNA stain or profile.

17 Q. Okay. So all the DNA results they're -- they're very
18 scientific, correct?

19 A. They're very scientific?

20 Q. Meaning y'all -- the industry has spent a long time
21 focussing and doing the -- getting the best results they
22 can?

23 A. Yeah, there's a lot of work and quality parameters
24 that go into obtaining a DNA profile.

25 Q. Right. And so you wouldn't come in and say there's

1 a mixture if you weren't sure that there was some other
2 person's DNA in there, right?

3 A. That's correct.

4 **MS. ZMROCZEK:** Okay. Thank you.

5 **THE COURT:** Redirect, Ms. Campbell?

6 **MS. CAMPBELL:** Just a couple of questions, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q. And with touch DNA, it can also mix with, say, a -- I
10 mean, it's easily transferred?

11 A. What's that, touch DNA?

12 Q. (Nods head.)

13 A. It can be transferred, yes.

14 Q. So if I come up and, say, I shake your hand and then I
15 put on my pants?

16 A. That's possible.

17 Q. It's possible it could be a minor contributor?

18 A. It's possible, yes.

19 Q. But things such as body fluids and blood you mentioned
20 are more likely to leave DNA?

21 A. It's -- it's more likely you're gonna have a stronger
22 signal in those.

23 Q. A stronger signal, more DNA?

24 A. (Nods head.)

25 Q. Such as saliva if you wore a mask?

1 A. Yes.

2 MS. CAMPBELL: I beg the Court's indulgence.

3 BY MS. CAMPBELL:

4 Q. And if a person is living with another person and,
5 say, they wash their clothes, they could have their DNA on
6 that item as well?

7 A. If they touched the clothes, that's a possibility,
8 yes.

9 Q. Okay. And what effect does washing clothes have, say,
10 on the jeans?

11 A. It's going to decrease the chance of getting a DNA
12 profile if there's DNA on there.

13 MS. CAMPBELL: Thank you.

14 THE COURT: Recross?

15 MS. ZMROCZEK: Just briefly.

16 RECROSS EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. She asked you about the washing of clothes and the
19 decreased possibility of getting, excuse me, a DNA profile.
20 What about if you wear an item more than one other person.
21 Let's say I have a sister -- well, I have six, but let's
22 say my sister and I share clothes, but -- it's my sweater,
23 but I let her borrow it on a special occasion or because
24 she asked to borrow it, are you more likely to find my DNA
25 on it or her DNA?

1 A. That's a hard one to answer. I could answer it by
2 saying -- let me use this example. We've found that when
3 you swab a steering wheel from a car that has been stolen,
4 you'd usually get the person who last touched or drove it
5 versus the owner.

6 Q. Right.

7 A. So I would probably answer it's maybe the same way for
8 clothes, but I'm just not sure.

9 Q. No way to know?

10 A. I can't say for sure.

11 Q. Okay. And when you do the outside -- or the inside
12 of a waistband, that also could mean that there are items
13 of clothing underneath, undergarments, as well that are
14 changing that matter of transfer, right?

15 A. Say that again.

16 Q. If I have -- if I have boxers on under my pants, could
17 that limit the amount of DNA that's transferred to the
18 waistband?

19 A. Yes.

20 **MS. ZMROCZEK:** Okay. Thank you.

21 **THE COURT:** All right. Thank you. You may step down.

22 (Witness excused.)

23 **THE COURT:** Would you like to have the witness
24 excused, Ms. Campbell?

25 **MS. CAMPBELL:** Thank you, Your Honor.

1 **THE COURT:** Any objection?

2 **MS. ZMROCZEK:** No objection.

3 **THE COURT:** The witness is excused. Thank you for
4 coming.

5 All right. Ms. Campbell or -- the State may call
6 their next witness.

7 **MR. STEADMAN:** The State calls Thomas Stetson.

8 **THE COURT:** All right.

9 THOMAS STETSON,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Thank you. Please have a seat on the
12 witness stand and state your full name for the record.

13 **THE WITNESS:** Thomas Stetson.

14 DIRECT EXAMINATION

15 BY MR. STEADMAN:

16 Q. Good morning, Mr. Stetson. Where do you live here in
17 Columbia?

18 A.

19 Q. And how long have you lived in Columbia?

20 A. A little over five years.

21 Q. Okay. Where are you employed here in Columbia?

22 A. I own a chiropractic office.

23 Q. And where did you live back on July 29, 2014?

24 A. at

25 Q. And how long did you live there?

1 A. I lived there for three and a half, four years.

2 Q. And I want to approach you with what's been marked as
3 State's Exhibit 148.

4 A. Sure.

5 Q. Do you recognize that?

6 A. Yes.

7 Q. What is that?

8 A. That is the apartment building I lived in.

9 Q. Is that an accurate depiction of what it looked like
10 then?

11 A. Yes.

12 **MR. STEADMAN:** Your Honor, at this point we would
13 introduce State's Exhibit 148 into evidence.

14 **THE COURT:** Any objection?

15 **MS. ZMROCZEK:** No objection.

16 **THE COURT:** Admitted into evidence without objection.

17 (State's Exhibit Number 148, a blow-up photograph, was
18 admitted into evidence.)

19 BY MR. STEADMAN:

20 Q. I want to go back to July 29, 2014. Do you remember
21 anything that stands out that night or the early morning
22 hours of July 29, 2014?

23 A. Yes, I was woken up by gunshots.

24 Q. Describe -- what were you doing when you first heard
25 the gunshots?

1 A. Sleeping.

2 Q. And once you heard the gunshots, what did you do next?

3 A. The first -- first thing I did was grab my wife and
4 little baby and we went into the bathroom and called 9-1-1.

5 Q. And after you did that, you called 9-1-1, what did you
6 do next?

7 A. We waited until we saw or heard sirens and saw the
8 lights outside and then we just stayed inside.

9 Q. So before that you didn't look out the window and see
10 what was going on?

11 A. Unfortunately, no.

12 Q. And once you saw the blue lights and police arrive,
13 what did you do?

14 A. We were just peeking out the window making sure
15 everything was fine and I believe we laid back down and
16 just went to sleep because I was exhausted from my infant.

17 Q. And besides calling 9-1-1, did you speak with anybody
18 that night?

19 A. Not that night.

20 Q. Then once you went back to sleep or -- if you don't
21 remember, that's fine. What happened the next morning?
22 What did you do?

23 A. I went outside and I saw that my front driver's side
24 tire was flat, so I just looked around and saw that there
25 was a bullet hole in the front panel and assumed that it

1 got shot from the gunshots.

2 Q. Do you mind stepping down for a second?

3 A. Sure.

4 (Whereupon, the witness steps down from the witness
5 stand.)

6 BY MR. STEADMAN:

7 Q. Show me -- show the jury where were you parked the
8 night before.

9 A. Right in here.

10 Q. And when you came out the next morning, where was your
11 car parked then?

12 A. The same spot.

13 Q. And point to what side of the parking space where you
14 saw the flat tire.

15 A. It would be on the left side, the driver's side, of
16 the car.

17 Q. And where was your apartment complex?

18 A. I'm on the parking lot side, floor. Or was.

19 Q. Thank you.

20 (Whereupon, the witness returns to the witness stand.)

21 BY MR. STEADMAN:

22 Q. So once you saw the bullet hole, what did you do?

23 A. I took pictures and there happened to be a police car
24 still out in the lot and I spoke to someone just to get the
25 investigator's card that -- to just contact and he gave me

1 the Case Number and I believe I called the -- my insurance
2 to see if -- where to take my car to get it fixed.

3 Q. And at some point did you get your car fixed?

4 A. Yes.

5 Q. And at some point did you speak with the investigator?

6 A. Yes.

7 Q. Did the person who fixed your car remove a bullet?

8 A. Yes.

9 Q. And did you turn that over to the investigator?

10 A. Yes.

11 **MR. STEADMAN:** Thank you. No furthest questions.

12 **THE COURT:** Cross-examination?

13 **MS. ZMROCZEK:** Just briefly.

14 CROSS-EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. Good morning.

17 A. Good morning.

18 Q. What color is your car?

19 A. Black.

20 Q. Okay. And you said you took photographs?

21 A. Yes.

22 Q. Did the police ever request a copy of those?

23 A. I believe I e-mailed them to the investigator.

24 **MS. ZMROCZEK:** Thank you. No further questions.

25 **THE COURT:** Anything further?

25 | A. Richland County Sheriff's Department in the forensic

1 sciences laboratory.

2 Q. And how long have you been with the sheriff's
3 department?

4 A. I've been with the sheriff's department for
5 approximately five years, three of which were in the
6 forensic sciences laboratory.

7 Q. And what exactly do you do in the forensic sciences
8 laboratory?

9 A. I'm a firearm and tool mark identification examiner.

10 Q. And can you explain to the jury, I guess, a little bit
11 of your background and education in firearm and tool mark
12 examination?

13 A. I was hired with Richland County Sheriff's Department
14 in February of 2010. I worked a year and a half on the
15 road. After that, I was moved up to the forensic sciences
16 division. At that point I underwent a very extensive
17 three-year training program in firearm and tool mark
18 identification. I went to the ATF National Firearms
19 Examiner Academy and during that time completed training in
20 firearm and tool mark identification. I came back, did
21 in-house training for a couple of more months with Richland
22 County Sheriff's Department. Actually, sorry, it was more
23 than a couple of months. Probably like a year and a half
24 more. And during that time I completed competency in
25 firearm and tool mark identification, along with serial

1 number restoration and muzzle to target distance
2 determination.

3 Q. And have you been qualified as an expert before in the
4 area of firearm and tool mark examination?

5 A. Yes, I have.

6 **MS. WALKER:** Your Honor, at this point in time we'd
7 offer this witness as an expert in firearm and tool mark
8 examination.

9 **THE COURT:** Voir dire with regard to qualification?

10 **MS. ZMROCZEK:** Not with regard to qualifications,
11 Your Honor.

12 **THE COURT:** All right. The Court will qualify this
13 witness as an expert in the field of firearm and tool mark
14 identification.

15 And, ladies and gentlemen, you heard me tell you
16 before the difference between a lay witness and an expert
17 witness and I have qualified this witness as an expert in
18 the field that has been submitted and she may give an
19 opinion.

20 All right. Go ahead.

21 **MS. WALKER:** Thank you, Your Honor.

22 BY MS. WALKER:

23 Q. Can you tell the jury what exactly firearm and tool
24 mark examination means?

25 A. Yes. Firearm identification is a forensic discipline

1 or forensic science that primarily focuses on determining
2 whether a bullet, a cartridge case or other ammunition
3 component was fired by a particular firearm. We also look
4 at serial number restoration and distance determination or
5 muzzle to target distance determination. Some of our
6 examinations, the majority of them, are bullet to bullet
7 examination, cartridge case to cartridge case examination
8 and bullet to firearm examination and cartridge case to
9 firearm examination.

10 Q. Okay. Can you explain what you mean, I guess in lay
11 terms, when you talk about cartridge casings and bullets
12 and things like that?

13 A. Sure. So one single piece of ammunition is called a
14 cartridge. That's composed of the cartridge case and in
15 that cartridge case, the head of it is the primer, which
16 holds the primer, and inside the cartridge case it houses
17 the gunpowder. Kind of seated on top and inside is the
18 bullet and that single piece is called a cartridge.

19 Q. Okay. And how -- I guess the different types of
20 firearms that you usually examine, what are the two
21 different types?

22 A. We generally see handguns in the vast majority of our
23 cases. There are two different types of handguns. One
24 is a revolver, another one is a pistol. A revolver is
25 comprised of one barrel and then multiple chambers housed

1 in a cylinder that revolves. This is the type firearm that
2 you would normally see in your old western movies, cowboy
3 shoot 'em up movies. Pistols are generally what you see
4 now in your crime shows and video games. It is where it's
5 a single chamber and barrel that are attached to one
6 another and the difference between the revolver and the
7 pistol is that the pistol will eject and extract its
8 cartridge cases, whereas -- fired cartridge cases, whereas
9 the revolver it will stay inside the cylinder unless you
10 manually extract it, so we see generally pistol cartridge
11 cases a lot because they're left behind at a scene.

12 Q. So if I'm committing a crime and I use a pistol,
13 unless I pick them up will the shell casings remain at the
14 scene?

15 A. Yes.

16 Q. And how are you able to determine -- to match a shell
17 casing to a certain firearm?

18 A. So the premise behind firearm and tool mark
19 identification is that a harder object will impress its
20 mark onto a softer object, so this is the overall lapping
21 tool mark identification. We focus mostly on firearms,
22 which a firearm is just generally a tool, and so it
23 impresses its mark onto the softer objects that are the
24 cartridge cases and the bullets. When -- during firing
25 when the bullet is expelled down and out the barrel and

1 the cartridge case is pressed against the rear of the
2 firearm, the marks during manufacturing that are unique,
3 individual marks, along with manufacturing, kind of class
4 characteristic marks, are impressed or striations are
5 made on those bullets that are kind of unique, like a
6 fingerprint, for that particular firearm.

7 Q. You mentioned -- let me show you what's been marked as
8 State's Exhibit Number 141. Is this what you're talking
9 about?

10 A. Yes. That's a cartridge case, yes.

11 Q. And individual cartridge casings can be matched to an
12 individual gun?

13 A. If we have a particular firearm, we have a known
14 firearm, we take that firearm and create known standards or
15 test fires. So we have a water tank at our facility in
16 which we test fire that firearm into which gives us our
17 standards of cartridge cases and bullets and then we put
18 those test fires up on a comparison microscope, which is
19 just essentially two microscopes combined by an ocular
20 bridge, that allows me to view both of them at the same
21 time under the same magnification and lighting and then
22 I look at the class characteristics and individual
23 characteristics and see if the marks that are -- that the
24 firearm might be making are reproducing and look at those
25 and then once I determine that the firearm is reproducing

1 marks, I then will compare it to our evidence cartridge
2 cases and come to my conclusion, whether it be an
3 identification or not.

4 Q. And were you given a number of items to examine for
5 the case that we are here for today?

6 A. I was given two cartridge cases. I believe there's
7 two separate cases.

8 Q. Right.

9 A. Yes.

10 Q. But you received two cartridge cases?

11 A. Correct, yes.

12 Q. Did you also receive the gun to make a comparison?

13 A. In a separate case, yes, I did.

14 Q. Right. And can you walk the jury through the process
15 you went through --

16 A. Sure.

17 Q. -- in order to compare the gun from one case to the
18 shell casings in another?

19 A. Yes. So it's pretty much exactly what I just
20 described. So I received a firearm in this case and I
21 first mechanically examined it to make sure it functioned
22 properly.

23 Q. Well, let me show you State's Exhibit Number 135A. Is
24 this the firearm that you received in this case?

25 A. Yes.

1 Q. I'm sorry I interrupted you. You said you wanted to
2 make sure that it was working properly?

3 A. Yes.

4 MS. WALKER: And, Your Honor, for the record the gun
5 is locked --

6 THE COURT: All right.

7 MS. WALKER: -- and unable to fire.

8 A. Yes. So when we receive a firearm, we first make
9 sure that it's safe to fire -- for us to fire. So we do
10 a mechanical examination where we make sure that it
11 functions properly and that all of the safeties and
12 everything are functioning properly. At that time we'll
13 take it into our -- our water tank area and I -- we do
14 three test fires generally. Sometimes we have to do more
15 if there's a difference in ammunition type. And from that
16 point, once I get my known standard or test fires, I,
17 again, take it back to my comparison microscope, place
18 those test fires underneath the comparison microscope and
19 do a comparison to make sure that the individual markings
20 of that firearm are reproducing and then I'll use those
21 test fires and compare them to our evidence cartridge cases
22 and do the same thing and come to a conclusion.

23 BY MS. WALKER:

24 Q. And was this firearm working properly?

25 A. Yes.

1 Q. And the shell casings that you received from the other
2 case?

3 A. Yes.

4 Q. What, if any, conclusions were you able to -- let me
5 back up. Do you know where the shell casings -- where they
6 originate from once you start your testing?

7 A. I do not, no. I don't -- I mean, I could access that
8 information, but it's not pertinent to my examination.

9 Q. Right. The shell casings that you received, were you
10 able to determine whether or not they matched this weapon?

11 A. Yes, they were identified to that firearm.

12 Q. And was there any other evidence that you were asked
13 to test in conjunction with this case?

14 A. I -- I just -- I also received the magazine that goes
15 with that particular firearm and some unfired cartridges,
16 but that's all. And the two fired cartridge cases.

17 Q. And did you say -- I just wanted to make sure I
18 understood. It's like a fingerprint comparison?

19 A. Yes. So when a firearm goes through manufacturing
20 processes, each manufacturing process leaves individual
21 unique markings in the form of nicks, burrs and cuts, and
22 then those are what make the marks on our fired evidence.

23 Q. And if the -- if two guns are manufactured by the same
24 company, are they going to have the same nicks or --

25 A. No. So the nicks, burrs and cuts are what we call

1 individual characteristics. They're just randomly
2 occurring and they happen through the manufacturing
3 process, wear and tear, anything like that, normal just
4 use and abuse, and that's what we look at as far as making
5 it unique. Firearm manufacturers also have what's known as
6 class characteristics and so they come up with a certain,
7 you know, shape of a firing pin that they want, shape of a
8 firing aperture that they want, how they're gonna finish
9 their breech face, whether it's grinding or sanding, so
10 they all have kind of their same, you know, what they --
11 how they know they're gonna make their firearm, which
12 replicates from firearm to firearm, but the individual
13 markings we look at are totally random and are unique to
14 that particular firearm.

15 Q. And you said that you received -- that the cases had
16 two different case numbers?

17 A. Yes.

18 Q. Is that common when you test evidence?

19 A. It's neither common or uncommon. It happens. I mean,
20 sometimes there's just different cases. Like they might
21 confiscate the gun on one day or at another time or -- it's
22 not uncommon. I just recently had a case that had eight
23 different case numbers, so.

24 Q. But you were able to link that gun to those shell
25 casings?

1 A. Correct.

2 MS. WALKER: Thank you. I don't have any further
3 questions.

4 THE COURT: Cross-examination.

5 MS. ZMROCZEK: Thank you.

6 CROSS-EXAMINATION

7 BY MS. ZMROCZEK:

8 Q. Ms. Metz, are you familiar with the National Academy
9 of Science?

10 A. I am, yes.

11 Q. Are you familiar with their view of firearms and tool
12 mark identification?

13 A. I'm familiar with both their 2008 and 2009 report,
14 which are recommendations and comments on science, yes.

15 Q. And the comments include that it lacks evidentiary
16 validity, doesn't it?

17 A. Are you talking about the 2008 report?

18 Q. Yes.

19 A. It mentions it; however, there have been since then
20 both my professional organization, AFTE -- or the American
21 Firearm -- or I'm sorry, Association of Firearm Examiners
22 -- Firearm and Tool Mark Examiners, has made a rebuttal
23 since that and also one of the members of that 2008
24 National Academy of Sciences committee came back to say
25 that that report -- and in the report it actually states

1 that their report was in no way a comment on the validity
2 or the admissibility or firearm and tool mark
3 identification.

4 Q. You would agree that you can't give a statistical
5 analysis?

6 A. No, that's correct. Yes. We cannot give -- we cannot
7 give a statistic. I cannot be -- you know, there's no way
8 for us to give a statistic on our science that every
9 identification is like DNA. The reason for that is because
10 there's no possible way for us to know how many firearms
11 there are in the world unlike we know approximately how
12 many human beings are in the world. The reason for that
13 is because you can make a firearm out of a pen or a super
14 soaker or anything else. So it's kind of difficult for
15 us to be able to come up with a statistic, but because we
16 know manufacturing processes and we know that everything
17 leaves its own unique mark, we're still able to come to
18 our conclusions of an identification.

19 Q. So it's not like fingerprints because fingerprints are
20 able to look in a database, but you're not, right?

21 A. No, that's incorrect. We actually -- we sort of have
22 a database. It's called NIBIN or the National Imaging --
23 excuse me -- National Integrated Ballistic Information
24 Network. What that does is with our cartridge cases
25 especially we can sort of do the same thing that AFIS does

1 where they take a picture of the head of the cartridge
2 case, which is what we generally look at, and it can sort
3 of make -- sort of like what AFIS does where it can make
4 correlations, but much like fingerprints we still have to
5 get those two actual cartridge cases and do the comparison
6 just like fingerprints actually have to get those
7 fingerprints and do the comparison. They don't rely on
8 AFIS to say that it is for sure that person.

9 Q. So you sort of have one?

10 A. Oh, we do have one. It's just not exactly -- I mean,
11 it's not for people, it's for firearms.

12 Q. Tell me about the proficiency testing that you do.

13 A. Yes. So we have proficiency tests and I do
14 proficiency tests in all my subdisciplines, which include
15 firearm identification, tool mark identification, serial
16 number identification, and muzzle to target distance
17 determination, and they're provided to us by an outside
18 agency who kind of gives them to just about everybody.

19 Q. All right. And so when you -- you're very proficient
20 and then you run these tests. Tell the jury about what
21 your error rates are in these cases.

22 A. Well, error rates are, again, a little difficult for
23 our science to come up with. The reason for that is
24 because in our science we don't just have yes and no. We
25 don't just have identification and elimination. We also

1 have this large gray area that's called an inconclusive.
2 It means that I can't say that it's not, but neither can
3 I say that it is this firearm, and so because of that an
4 error rate is very difficult to come up with because it's
5 not wrong to come up with an inconclusive, so it's a
6 little difficult to come up with that error rate. But
7 the most recent error rate taking into account false
8 positives and false negatives, that means someone came to
9 an identification when it wasn't that firearm and then,
10 vice versa, someone eliminated that cartridge case when
11 it was that firearm, and right now for firearm and tool
12 mark identification it's around somewhere between one to
13 three percent because in firearm identification you have
14 multiple examinations. So you have bullet to bullet, you
15 have cartridge case to cartridge case, and then tool marks
16 you have a wide range, so it's somewhere between one to
17 four percent for both false and -- false positive and false
18 negative.

19 Q. And which -- who's publishing that error rate?

20 A. SWGGUN, our working group.

21 Q. And you would agree with me that it's a subjective
22 science?

23 A. Yes, it is very -- I mean, it's based on science,
24 but my conclusion is -- my conclusion is very subjective.

25 Q. It's very subjective.

1 **MS. ZMROCZEK:** Thank you.

2 **THE COURT:** Redirect?

3 **MS. WALKER:** Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. WALKER:

6 Q. She asked you questions about error rates and
7 subjectivity. Are there things that your department
8 specifically does to account for error rates and the
9 subjective nature of the science? Do y'all have people
10 check your results?

11 A. Yes. So in our department everything that I do is
12 one hundred percent peer reviewed; meaning that it's not
13 just me looking at it, another qualified tool mark --
14 firearm and tool mark examiner comes and they look at that
15 evidence and come to their very own conclusion, and so it
16 -- they do a verification which just means whether or not
17 they agree with my conclusion or not.

18 Q. And was that done in this case?

19 A. Yes, one hundred percent of the time. It's always
20 done.

21 Q. How many people reviewed that?

22 A. Well, in this particular case, there were actually
23 multiple because at this time I was in training, so it
24 wasn't -- I did my work, then my training supervisor went
25 back behind me, did it, made sure she agreed, then we also

1 had our verifier come in, which is our third qualified
2 firearm and tool mark examiner, who did the exact same
3 thing, looked at the evidence and came to the same
4 conclusions.

5 Q. And all three of you matched those shell casings to
6 that gun?

7 A. Correct.

8 MS. WALKER: Thank you. I don't have any other
9 questions.

10 THE COURT: Recross?

11 MS. ZMROCZEK: Briefly, Your Honor.

12 RECROSS EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. How many times has one of your peer reviews not agreed
15 with you?

16 A. So far, none that I can recall.

17 Q. A hundred percent perfect?

18 A. I mean, at this time, yes.

19 MS. ZMROCZEK: Thank you.

20 THE COURT: All right. Thank you. You may step down.

21 (Witness excused.)

22 THE COURT: Ms. Walker, would you like to have the
23 witness excused?

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

25 THE COURT: All right. You are excused. Thank you

1 for coming.

2 All right. Ladies and gentlemen, you've been in the
3 courtroom now for about an hour and fifteen or twenty
4 minutes and I think it is appropriate that we take our
5 morning recess at this time, so I'm gonna allow you to go
6 to your jury room for about fifteen minutes and we'll be
7 ready to resume at that time.

8 Again, it's still premature for you to begin any
9 discussion about this case. You still have not heard all
10 of the evidence that you will hear in this case and any
11 discussion of the case among yourselves would be premature.
12 So just go to your jury room and relax for a few minutes
13 and the bailiffs will get you some refreshments if you need
14 it and we'll send for you in about fifteen minutes. Thank
15 you.

16 (Whereupon, the jury retires to the jury room
17 at 11:18 AM.)

18 **THE COURT:** All right. Counsel, we'll be in recess
19 until 11:35. That's about sixteen, seventeen minutes.

20 (Recess taken.)

21 **BAILIFF:** Come to order, please.

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

23 **BAILIFF:** Make sure your electronics are cut off.

24 **THE COURT:** All right. Ms. Campbell, anything before
25 the jury is brought back in?

1 **MS. CAMPBELL:** No, Your Honor.

2 **THE COURT:** Anything from the defense?

3 **MS. ZMROCZEK:** No.

4 **THE COURT:** All right. Bring the jury in please.

5 (Whereupon, the jury returns to the courtroom at
6 11:41 PM.)

7 **BAILIFF:** Jurors all seated, Your Honor.

8 **THE COURT:** Thank you, ladies and gentlemen, and we
9 are now ready to proceed. The State is continuing to
10 present their case. Ms. Campbell.

11 **MS. CAMPBELL:** May it please the Court? The State
12 calls Investigator Odom.

13 TRICIA COLLINS ODOM,
14 having been duly sworn, testified as follows:

15 **THE CLERK:** Have a seat on the witness stand and state
16 your full name for the record. Trisha Collins Odom. The
17 spelling of my last name is O-D-O-M.

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q. Investigator Odom, where are you employed?

21 A. At the Richland County Sheriff's Department.

22 Q. And what do you do there, ma'am?

23 A. I'm the latent print analyst.

24 Q. And as the latent print analyst what do your duties
25 include?

1 A. My primary duty is to look at all of the latent prints
2 that are submitted by the line unit and by our crime scene
3 units and try to determine the source that made those
4 latent prints.

5 Q. Can you tell this jury a little bit about your
6 education and training?

7 A. Sure. I have a degree in criminal justice from the
8 University of South Carolina and I am a certified Class
9 One officer through the South Carolina Criminal Justice
10 Academy. And as soon as I was promoted to the crime scene
11 latent print section, I attended a number of classes
12 outside our office, and also we have an extensive inside
13 training program. Some of the classes that I have been to
14 are the complex latent prints examination, recovery of
15 latent print evidence from human skin, forensic ridgeology,
16 ID technician school, basic fingerprint training, advanced
17 palmprint identification, chemical development of latent
18 prints. And also in May of 2014 I was certified as a
19 latent print analyst through the International Association
20 for Identification.

21 Q. And have you been qualified before as an expert in
22 latent print examination?

23 A. I have.

24 Q. And approximately how many times have you been
25 qualified?

1 A. Thirty.

2 MS. CAMPBELL: Your Honor, at this time we'd offer
3 her as an expert in latent print examination.

4 MS. ZMROCZEK: No objection, Your Honor.

5 THE COURT: All right. The witness will be qualified
6 as an expert in the field the latent fingerprint analysis.
7 Again, ladies and gentlemen, this is an expert witness and
8 I have told you before about the difference between a lay
9 and an expert witness.

10 You may proceed, Ms. Luck -- or Ms. Campbell.

11 MS. CAMPBELL: Thank you.

12 BY MS. CAMPBELL:

13 Q. Investigator, in doing latent print examination,
14 typically how do you receive your evidence and what
15 evidence is necessary for you to do a comparison?

16 A. Well, typically I'll receive the latent prints. The
17 latents are the crime scene prints that we receive. I will
18 get them from our evidence room and then we will either get
19 a suspect from our AFIS system or we'll get a request to
20 compare from an investigator.

21 Q. And there's been mention about a database y'all have
22 that has known prints in it called AFIS, correct?

23 A. Yes, ma'am.

24 Q. But in order to come to court and testify and
25 everything, do you have to do your own personal

1 confirmation before as far as comparing known prints to
2 evidence taken from a crime scene?

3 A. Right. The AFIS itself is just a jumping off point.
4 It's an investigative tool to give us a place to start, but
5 every examination that we do, every comparison that we do
6 we actually take the evidence with a known print card and
7 do a comparison that way.

8 Q. And are fingerprints, in doing that, are they unique
9 to each individual?

10 A. Yes, ma'am.

11 Q. No matter if they're related or whatever?

12 A. Right. Each -- each individual finger on each
13 individual person is different.

14 Q. And if I walk up and, say, I touch this surface like
15 that, am I necessarily going to leave a fingerprint?

16 A. Not necessarily. It depends upon a lot of factors;
17 the surface type, the cleanliness of your hands, if the
18 item has been touched before, the temperature, things like
19 that.

20 Q. And can you tell when, say, someone is processing a
21 crime scene how long a fingerprint may have been there?

22 A. No, ma'am.

23 Q. I want to turn your attention to this case. Did you
24 receive some known fingerprints from certain people
25 involved in this case?

1 A. I did.

2 Q. And who were the known fingerprints that you received?

3 A. I received fingerprints of Michael Dewan Keith,
4 Brandon Joseph Berry and Nickilous O'Neal Wallace.

5 Q. And when we say known prints, is that typically how
6 prints are rolled with the black ink and then put on a
7 piece of paper?

8 A. That's right.

9 Q. And those three sets of prints were provided to you in
10 this case?

11 A. Yes.

12 Q. And did you also receive evidence that had been taken
13 by Sergeant Richards in this case from a car?

14 A. Yes, ma'am.

15 Q. And were you able to do any comparisons?

16 A. I was.

17 Q. And taking them in order, do you assign numbers to
18 your comparisons just in order to keep them differentiated?

19 A. What we actually do is each of the individual latent
20 print cards, which are just the little cards that the
21 latent prints are adhered to, we give those an L number.
22 L, for latent, and then if there's -- the prints that are
23 on the card, we number each of those, we sub number them,
24 so if we have two latent print cards we'll have an L-1 and
25 an L-2 and if each of those have two prints on them we'll

1 have and L-1.1, L-1.2, L-2.1 and L-2.2, and so forth.

2 Q. In taking them in the order that you received them --
3 and when the areas of fingerprints are lifted, can there be
4 more than one area that you make a comparison within that
5 same lift?

6 A. I'm sorry, could you say that again, please?

7 Q. When an area, let's say, of the exterior of a car is
8 lifted --

9 A. Yes, ma'am.

10 Q. -- and there's an area where there may be some
11 fingerprint impression, can there be more than one?

12 A. Fingerprint impression?

13 Q. Yes, in the same lift is all I'm saying.

14 A. Yes, ma'am.

15 Q. And in this case, when you looked at the first lift
16 that was submitted to you, were there different areas you
17 looked at?

18 A. On the first lift, there were four individual
19 fingerprints that I looked at.

20 Q. Okay. And that was a card from the exterior rear
21 windshield; is that correct?

22 A. That's correct.

23 Q. And what were your conclusions when looking at those?

24 A. L-1.1 was made by the right middle finger of
25 Mr. Keith. On L-1.2, it wasn't made by Mr. Berry or

1 Mr. Wallace, but I couldn't tell if it was made by
2 Mr. Keith due to the incomplete known prints. The same
3 with L-1.3. And L-1.4 was made by Mr. Keith's right little
4 finger.

5 Q. Okay. And do you have those prints with you, the
6 lifts?

7 A. No, ma'am.

8 Q. When you do that comparison, you said that you were
9 able to determine that two out of those four in that same
10 area were from Mr. Keith; is that correct?

11 A. Yes, ma'am.

12 Q. And the other two you said you were inconclusive. You
13 excluded Mr. Berry and Mr. Wallace, but you weren't able to
14 make a conclusion as to Mr. Keith, and why is that?

15 A. Due to the lack of individual minutia points in the
16 fingerprint.

17 Q. In the fingerprint itself?

18 A. Yes, ma'am.

19 Q. And how were those --

20 A. No, I'm sorry. Let me correct myself. Due to the
21 incomplete known fingerprint. I apologize.

22 Q. And what was missing in your known fingerprints of
23 Mr. Keith?

24 A. I don't recall specifically.

25 Q. But there was a part missing?

1 A. I don't recall specifically. Just that they're
2 incomplete.

3 Q. And those fingerprints were all grouped together; is
4 that correct?

5 A. Yes, ma'am.

6 Q. And I want to move to the next lift, Item Number 2, on
7 your thing.

8 A. Yes, ma'am.

9 Q. Two partial prints developed from the right rear
10 exterior trunk?

11 A. That's correct.

12 Q. And were you able to make any determination as far as
13 those two?

14 A. I was able to exclude all three subjects from having
15 deposited those fingerprints.

16 Q. And, again, when you're doing your fingerprint
17 comparisons, are you able to determine how long that
18 fingerprint may or may not have been on that trunk?

19 A. No, ma'am.

20 Q. And looking at Item Number 3, were you able to -- that
21 was from the right rear passenger door. Were you able to
22 make any conclusions there?

23 A. That was inconclusive to all three subjects.

24 Q. And what does that mean?

25 A. It just means that I can't tell one way or the other.

1 Q. There just weren't enough points?

2 A. Right, there's not enough information in the prints.

3 Q. And when you say there's not enough information in the
4 print, there just simply isn't enough of a print there?

5 A. Correct.

6 Q. Is that an easier way to put it?

7 A. Well, when we look at the fingerprints, we're looking
8 for the individual points that are on the fingerprints. It
9 could be that there just wasn't a good enough quantity or
10 enough -- excuse me, enough quality or enough quantity to
11 be able to make a determination one way or the other.

12 Q. So are you including or excluding? You can't do
13 either one?

14 A. That's correct.

15 Q. Moving on to Item Number 4, which were prints
16 developed from the rear center exterior top of the vehicle,
17 what information were you able to come up with there?

18 A. I was able to exclude Mr. Wallace and Mr. Berry. It
19 was inconclusive to Mr. Keith. It was a palmprint and we
20 didn't have any known palmprints on Mr. Keith.

21 Q. Okay. And that was what was missing in Mr. Keith's?

22 A. Yes.

23 Q. Okay. And so this was -- and is there a difference
24 between a palmprint versus a fingerprint?

25 A. Yes.

1 Q. But both can have identifying information?

2 A. Yes.

3 Q. So at that point you were able to identify both
4 Mr. Wallace and Mr. Berry, but you didn't have Mr. Keith's
5 palmprint?

6 A. I was able to exclude Mr. Wallace and Mr. Berry, but
7 not Mr. Keith because I didn't have his palmprints to look
8 at.

9 Q. And, finally, the last item, I believe, was this
10 Number 5 on your report from the top exterior roof at the
11 right rear passenger door?

12 A. That's right.

13 Q. And were you able to find any individual prints in
14 that lift?

15 A. Yes, there were six individual prints marked on L-5.

16 Q. And specifically on those, what conclusions were you
17 able to make?

18 A. L-5.1 was made by Mr. Keith's left ring finger,
19 L-5.2 was made by Mr. Keith's left middle finger. L-5.3
20 was made by Mr. Keith's left index finger. L-5.4 was
21 made by Mr. Keith's left ring finger. L-5.5 was made
22 by Mr. Keith's left middle finger. And L-5.6 was
23 inconclusive. And we were able to exclude Mr. Berry and
24 Mr. Wallace.

25 Q. And whenever you're matching it to someone, that

1 automatically excludes everyone else, doesn't it?

2 A. Yes.

3 Q. Okay. And, again, they were inconclusive on L-5.6
4 because of the palmprint being missing?

5 A. I believe that's correct.

6 Q. Because you were able to exclude the palmprints from
7 Berry and Wallace on that?

8 A. That's correct. And it was inconclusive to Mr. Keith
9 because we didn't have any palmprints to compare.

10 Q. And so during the course of your investigation, you
11 were able to match some of the prints to the victim in the
12 case, Mr. Keith?

13 A. Yes.

14 Q. And some of your results were just inconclusive
15 because of either the quality of the print or you didn't
16 have the palmprints?

17 A. Right.

18 Q. And then both Wallace and Berry were excluded --

19 A. Yes.

20 Q. -- on the ones you weren't able to do anything?

21 A. (Nods head.)

22 Q. And there was only one print where you actually
23 excluded all three and that was L-2?

24 A. That's correct. Well, yes. There were two prints on
25 that and they were excluded to all three of the subjects.

1 Q. All three of the subjects. And that was on the trunk
2 area; is that correct?

3 A. Yes.

4 MS. CAMPBELL: Thank you, ma'am. I don't have
5 anything further.

6 THE COURT: Cross-examination?

7 MS. ZMROCZEK: Thank you.

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Good morning.

11 A. Good morning.

12 Q. Were you provided pictures of the vehicles?

13 A. No, ma'am.

14 Q. Or of the locations?

15 A. No, ma'am.

16 Q. Okay. Let me pull those out for you real quick. I'm
17 handing you Government's 55 through 59 and 60. Those
18 correspond with letters, but -- and 27.

19 A. Thank you.

20 Q. Those correspond with letters, but when you received
21 the information were you aware that Mr. Richards had marked
22 the fingerprints with letters and the footprints with
23 numbers?

24 A. No.

25 Q. Okay. So when you received it, it was 1 through 5?

1 A. Right. Well, when we get them, we -- they're not
2 numbered until we receive them and all of the latents are
3 individually numbered completely separate from any of the
4 other evidence.

5 Q. Okay. And so I wanted to talk to you -- here's the
6 other one. I'm sorry. Government's -- what number was
7 that?

8 A. That one is 65.

9 Q. Okay. 65. So does that represent A through E? Do
10 those pictures?

11 A. I'm sorry. I've got two A's, two C's and an E.

12 Q. Okay. And A is the one that was on the exterior
13 windshield -- or your latent print Number 1, right?

14 A. That's what I -- all I got were the latent print
15 cards, so I'm not familiar with these.

16 Q. Okay. So the exterior print of the windshield is --
17 you just got the lift, right?

18 A. That's correct.

19 Q. Okay. And then -- and those all matched to Mr. Keith
20 and excluded Mr. Berry, correct? Except for one that was
21 you couldn't -- was inconclusive?

22 A. Right, the two on L-2. That's correct.

23 Q. And then the one L-2, which was not made by any of
24 these, you said was located on which -- on the rear?

25 A. According to -- what I do when I write my report is I

1 quote what they write on the back of the latent print card,
2 so that's all of the information I have. But on the card
3 I've written in my report was right rear exterior trunk,
4 Marker B.

5 Q. Okay. And that handprint or fingerprint was excluded
6 to everybody?

7 A. Yes.

8 Q. And it could have matched somebody, but it didn't
9 match any of the ones that you had?

10 A. That's correct.

11 Q. Okay. And which one was the one from the roof?
12 Number 4?

13 A. Yes.

14 Q. Okay. And that one was not made by Berry or Wallace,
15 correct?

16 A. That's right.

17 Q. And your indication is that that print was taken from
18 the top of the -- of the roof?

19 A. That was what was written by Sergeant Richards on the
20 latent print card.

21 Q. Okay. Did you ever -- did you run any and all of
22 these prints through AFIS?

23 A. No, ma'am.

24 Q. Okay. Were you ever asked to do that?

25 A. They were submitted through AFIS -- excuse me. The

1 reason I got them to begin with was there was an AFIS hit,
2 which one of our other analysts ran it through AFIS and got
3 the hit and gave it to me for comparison, and then I was
4 subsequently asked to compare Mr. Berry and then, I think,
5 the day after that Mr. Wallace.

6 Q. Okay. But so never -- AFIS when they generate a hit
7 they have like twenty possible markers or something?

8 A. Well, you can actually set it for as many as you would
9 like to receive. I think ours is thirty.

10 Q. Okay. So you specifically compared it against
11 Mr. Berry and Mr. Wallace and they were excluded. Did
12 Investigator Carwell or anybody ever ask you to go back
13 and check any of those other AFIS hits?

14 A. Well, I have -- I have the AFIS worksheet which shows
15 where they were submitted.

16 Q. Okay. We just never got the results back with it?

17 A. Right. Well, there wasn't a hit and so then I was
18 subsequently asked to compare them.

19 Q. Perfect.

20 **MS. ZMROCZEK:** Thank you.

21 **THE COURT:** Redirect?

22 **MS. CAMPBELL:** Just one question.

23 **REDIRECT EXAMINATION**

24 **BY MS. CAMPBELL:**

25 Q. She asked you about the print from the top of the car;

1 that it excluded Mr. Wallace and Mr. Berry?

2 A. That's correct.

3 Q. But you weren't able to make a conclusion as to the
4 victim because you didn't have his palmprint?

5 A. That's right.

6 Q. And what effect does wearing gloves have on leaving
7 prints on a car?

8 A. You're not gonna leave them.

9 **MS. CAMPBELL:** Thank you.

10 **THE COURT:** Recross?

11 **MS. ZMROCZEK:** No, thank you.

12 **THE COURT:** Thank you, ma'am. You may step down.

13 (Witness excused.)

14 **THE COURT:** Would you like to have her excused,
15 Ms. Campbell?

16 **MS. CAMPBELL:** Yes, sir.

17 **MS. ZMROCZEK:** No objection.

18 **THE COURT:** All right. You are excused. Thank you
19 for coming.

20 **THE WITNESS:** Thank you, sir.

21 **THE COURT:** All right.

22 **MR. STEADMAN:** Your Honor, may we approach?

23 **THE COURT:** Yes.

24 (Proceedings held at the bench; not reported.)

25 **THE COURT:** All right. Ladies and gentlemen of the

1 jury, we have an evidentiary matter that I have got to
2 address and so I'm going to ask you to go to your jury
3 room while I take care of this matter. It will probably
4 take us about ten minutes, but do not discuss this case
5 among yourselves while we address this matter and hear
6 this legal issue.

7 You may go with the bailiff.

8 (Whereupon, the jury retires to the jury room at
9 12:03 PM.)

10 (State's Exhibit Number 163 was marked for
11 identification.)

12 **THE COURT:** All right. From the bench conference it
13 is my understanding that the next witness the State wishes
14 to call is a representative from the detention center who
15 wishes to introduce certain phone calls, video -- audio
16 recordings, I guess, of the phone calls, three phone calls
17 from the Defendant to different -- are they all to the same
18 person?

19 **MR. STEADMAN:** No, Your Honor. Two of them are to
20 his girlfriend, Kayla, and the other one is to Nickilous
21 Wallace.

22 **THE COURT:** Okay. And it's my understanding and,
23 again, from the bench conference that the defense does not
24 object to two of those, but does object to one of them; is
25 that right?

1 **MS. ZMROCZEK:** Well, I have objections, but I
2 understand what the Court's previous discussion was about
3 -- one of my objections was to hearsay and it's the Court's
4 position that they're gonna say that they're not offering
5 these --

6 **THE COURT:** Well, wait a minute. How are they hearsay
7 if he made the calls?

8 **MS. ZMROCZEK:** Well, I mean what the other people say
9 on them.

10 **THE COURT:** Pardon?

11 **MS. ZMROCZEK:** What the other person says on them.
12 One of them I understand is unavailable, and that's
13 Mr. Wallace, so I don't have an issue with that. They had
14 Kayla Geiger here this morning.

15 **THE COURT:** Well, I'm going to allow them in, but I
16 want to -- let's go ahead and get the record straight as
17 to what your position is. Let's identify the calls,
18 Mr. Solicitor, so we can see what we've got. The first
19 one is a -- how long of a call and who is it to?

20 **MR. STEADMAN:** Your Honor, I believe the first one,
21 the one to Nickilous Wallace, and we'll pull it up here
22 shortly, I believe that one was about ten minutes. I can't
23 remember the exact time.

24 **THE COURT:** That's from Mr. Wallace?

25 **MR. STEADMAN:** Yes, Your Honor.

1 **THE COURT:** All right. What's your position on that?

2 **MS. ZMROCZEK:** Your Honor, I understand that he's
3 unavailable. That's the co-defendant who's not testifying.

4 **THE COURT:** All right. Unavailable and so -- you have
5 no other objection than based on that?

6 **MS. ZMROCZEK:** Correct.

7 **THE COURT:** All right. So the audio telephone
8 conversation between the Defendant and Wallace is
9 admissible because he -- at least the hearsay objection
10 is not applicable because Mr. Wallace is unavailable.

11 All right. What's the next one?

12 **MR. STEADMAN:** Your Honor, the next one would be
13 Brandon Berry to his girlfriend Kayla and we can click on
14 that one.

15 **MS. ZMROCZEK:** I believe that's the one that I have
16 the issue with the relevance after the first couple of
17 minutes, Your Honor.

18 **THE COURT:** All right. So the objection is to
19 relevance and it's about how long, Mr. Solicitor?

20 **MR. STEADMAN:** Your Honor, this one is about four
21 minutes and nine seconds and this is the one, I believe --

22 **THE COURT:** And that's one. All right. And what's
23 the third call?

24 **MS. ZMROCZEK:** I mean, there are two to her, so I
25 don't know which order.

1 **MR. STEADMAN:** And the third one --

2 **MS. ZMROCZEK:** It's probably the third one.

3 **MR. STEADMAN:** The third one to her is about
4 fifteen minutes or approximately sixteen minutes long
5 and I believe that's the one she has --

6 **MS. ZMROCZEK:** Yes, the third one is my issue with
7 relevance, Your Honor.

8 **THE COURT:** All right. So you don't have a relevance
9 objection on Number 2?

10 **MS. ZMROCZEK:** No.

11 **THE COURT:** And the relevance objection as to
12 Number 3 is after a certain point?

13 **MS. ZMROCZEK:** After a certain point.

14 **THE COURT:** All right. I'll listen to it and you tell
15 me at what point you think it becomes irrelevant.

16 **MS. ZMROCZEK:** Okay.

17 **THE COURT:** Turn that volume down a little bit.
18 (Whereupon, jail phone call Number 3 was played.)

19 **THE COURT:** Is that the point?

20 **MS. ZMROCZEK:** Yes.

21 **THE COURT:** All right. Let me make a note of that
22 point. Where is it on the audio?

23 **MS. WALKER:** Four minutes and thirty-nine seconds,
24 Your Honor.

25 **THE COURT:** All right 4:39. All right. Go ahead with

1 it.

2 (Whereupon, jail phone call Number 3 was played in its
3 entirety.)

4 **THE COURT:** All right. Yes, ma'am, Ms. Zmroczek.

5 **MS. ZMROCZEK:** Thank you. Your Honor, after 4:39 I
6 fail to see any relevance.

7 **THE COURT:** Okay. That's what I -- I understand
8 that, Ms. Zmroczek. Let me hear from the State as to
9 what parts after 4:39 that they contend are relevant to
10 the issues here.

11 **MS. WALKER:** I'm going to quote the relevance --

12 **THE COURT:** Yes, ma'am.

13 **MS. WALKER:** -- so excuse my language. But at the
14 eight minute ten -- at the eight minute ten second mark, he
15 goes back to "I'm fucked." And she says, "Yeah, you're a
16 stupid ass". He says, "I know I'm stupid. I know I'm
17 stupid." And she says, "Nick's face was priceless". He
18 says, "Yeah, I know. I know I'm fucked. If I don't get a
19 lawyer, I'm fucked."

20 I think at that point, Your Honor, the reason he knows
21 or feels as though he is in a bad position at that point is
22 because he knows he didn't get rid of the gun.

23 **THE COURT:** All right. So you say those statements
24 are relevant to an admission on his part?

25 **MS. WALKER:** Yes, Your Honor.

1 **THE COURT:** All right. Anything else?

2 **MS. WALKER:** No, Your Honor.

3 **THE COURT:** Okay. How about that, Ms. Zmroczek?

4 **MS. ZMROCZEK:** Your Honor, I would object on two
5 grounds. One, I believe it's impermissible under Doyle v.
6 Ohio that he talk about why he needs a lawyer. They're
7 assuming that it's because he didn't get rid of the gun,
8 but he doesn't say it's because he didn't get rid of the
9 gun. Your Honor, I think that any of that testimony is
10 more prejudicial -- it's highly prejudicial -- more
11 prejudicial than probative.

12 **THE COURT:** Whoa, whoa, whoa. Your initial objection
13 was relevance.

14 **MS. ZMROCZEK:** Right. I don't think it has any
15 relevance, I mean, to --

16 **THE COURT:** Well, she just explained what she thought
17 the relevance was and so now you're changing horses as far
18 as what you think the reason it's not admissible is.
19 You're saying it's not -- it's not relevant, but not
20 admissible because it's -- the prejudicial effect outweighs
21 the probative value under 403.

22 **MS. ZMROCZEK:** No. And I'm sorry, Your Honor. I've
23 maintained that I don't think that it has any relevance.
24 I think they believe that that sentence at eight minutes
25 and ten seconds has the relevance. As to that sentence,

1 Your Honor, I would first object that it's not relevant.
2 If the Court were to find that it were relevant, then I
3 would go to the second test of that, which would be that it
4 be more highly prejudicial than probative..

5 **THE COURT:** And why is it more prejudicial than
6 probative?

7 **MS. ZMROCZEK:** Well, because, Your Honor, it's a
8 statement that is full of -- of cuss words and he's saying
9 "I'm F'd".

10 **THE COURT:** The whole tape is.

11 **MS. ZMROCZEK:** Well, of course, the whole tape is,
12 which is, I believe, why they would --

13 **THE COURT:** Okay. So just the fact that it's got
14 profanity doesn't make any more prejudicial.

15 **MS. ZMROCZEK:** No, no. No, Your Honor, but because
16 we don't know what he's talking about in that, I think it
17 almost forces him to give up his Fifth Amendment right to
18 get up and explain that. They -- they want to say oh, it's
19 because we think it's because he didn't get rid of the gun,
20 but we don't know, and I don't think he can be forced to
21 give up his right to have to explain one sentence in a
22 phone call.

23 **THE COURT:** Well, he made the statements and -- and,
24 you know, he chose to make those statements and he was not
25 talking to law enforcement, so it's not anything protected

1 by any kind of a constitutional right. So when he makes a
2 statement to a friend, that's not protected by any kind of
3 constitutional right.

4 **MS. ZMROCZEK:** I understand, Your Honor. If the
5 Court thinks that that sentence is admissible, then I
6 would ask that the stuff around it be redacted. And I
7 know that they can do that, Your Honor, because it's been
8 done in all the cases that I've had here.

9 **THE COURT:** All right. The Court's ruling would be
10 that from the point of 4:39 on there is great deal of
11 whatever -- all through the whole tape there's a great deal
12 of profanity and language, but that does not make it
13 irrelevant or inadmissible. There is I think relevant
14 testimony after the 4:39, and that is his statements at
15 the 8:10 mark, and that for the jury to understand the
16 entire conversation, why they need to hear the whole thing.
17 I think it is relevant to the overall situation. He called
18 his friend and was discussing it and went on up until the
19 8:10 mark at least of discussing matters that he felt like
20 that he was in a bad position because of something that he
21 had done, and I think the jury has the right to hear that.
22 And I think it is relevant. I do not think that the
23 evidence -- that the probative value is substantially
24 outweighed by the -- by the danger of unfair prejudice or
25 confusion of the issues or misleading the jury or by

1 consideration of undue delay, wasted time or needless
2 presentation of evidence. I think that the objection
3 would be overruled on the grounds of 401, relevance, and
4 also it would be overruled on the fact that the probative
5 value is not substantially outweighed by the prejudicial
6 effect. The entire tape will be admitted.

7 All right. Are you going to call a witness to
8 authenticate these or do you have any question about the
9 authentication?

10 **MS. ZMROCZEK:** Yes, Your Honor, we would. I do
11 believe the witness is here, so we would authenticate.

12 **THE COURT:** All right. And then do you want to go
13 forward -- are you ready to go forward? The witness is
14 here to authenticate it?

15 **MR. STEADMAN:** Yes, Your Honor.

16 **THE COURT:** All right. Bring the jury in.

17 **MR. STEADMAN:** And, Your Honor, one more quick thing.
18 Lieutenant Friedley from Alvin S. Glenn Detention Center
19 is here and it was originally supposed to be Sergeant --

20 **MS. ZMROCZEK:** I'm fine with --

21 **MR. STEADMAN:** She is his supervisor.

22 **MS. ZMROCZEK:** I have no problem with that.

23 **THE COURT:** All right.

24 (Whereupon, the jury returns to the courtroom at
25 12:30 PM.)

1 **THE COURT:** All right. Thank you, ladies and
2 gentlemen. Excuse the delay, but we have taken care of
3 the matter that we needed to take care of and are ready to
4 go forward.

5 Mr. Solicitor, you may call your next witness.

6 **MR. STEADMAN:** The State calls Lieutenant Friedley.

7 MARGITA FRIEDLEY,

8 having been duly sworn, testified as follows:

9 **THE CLERK:** Thank you. Please have a seat on the
10 witness stand and state your full name for the record.
11 And, please, spell your last name.

12 **THE WITNESS:** Margita Friedley. It's F-R-I-E-D-L-E-Y.

13 DIRECT EXAMINATION

14 BY MR. STEADMAN:

15 Q. Ma'am, where are you employed?

16 A. Alvin S. Glenn Detention Center.

17 Q. What do you do for the Alvin S. Glenn Detention
18 Center?

19 A. I'm part of Internal Affairs. We monitor the daily
20 activities.

21 Q. And how many people do you oversee at Alvin S. Glenn
22 Detention Center?

23 A. One. One person.

24 Q. And what are your daily duties?

25 A. We monitor the phone calls, video surveillance, review

1 incident reports.

2 Q. And does Alvin S. Glenn monitor inmate phone calls?

3 A. Yes.

4 Q. Do they record these phone calls?

5 A. Yes.

6 Q. What system is used to record these phone calls?

7 A. Am-Tel.

8 Q. And does Alvin S. Glenn Detention Center have a
9 contract with Am-Tel?

10 A. Yes.

11 Q. Can you briefly describe the process once an inmate's
12 booked in, how do they set up an Am-Tel account?

13 A. Well, they set up their own PIN number. Their inmate
14 number is their account and then they have a PIN number
15 that's just used by them that only they know to access the
16 phone. Then their family or whoever they want to call they
17 access Am-Tel and set up an account..

18 Q. So they're given a specific PIN number assigned to
19 each inmate?

20 A. Their inmate number and then their PIN number they
21 create themselves.

22 Q. And have you seen inmates use other inmates' PIN
23 numbers to disguise their phone calls?

24 A. Yes.

25 Q. Are the inmates on these phone calls clearly advised

1 that they are being recorded?

2 A. Yes.

3 Q. And is the person on the other line advised that this
4 phone call is from the Alvin S. Glenn Detention Center?

5 A. Yes.

6 Q. I'm gonna show you what's been marked as State's 163.
7 Have you had a chance to listen to these three phone calls?

8 A. Yes.

9 Q. Are these three phone calls made from the Alvin S.
10 Glenn Detention Center?

11 A. Yes.

12 Q. And are these three phone calls kept in the regular
13 course of business for Alvin S. Glenn?

14 A. Yes.

15 **MR. STEADMAN:** Your Honor, at this point we would
16 introduce State's 163 into evidence.

17 **THE COURT:** Subject to the objections previously made,
18 Exhibit Number 163 is admitted into evidence.

19 (State's Exhibit Number 163, three jail phone calls,
20 was admitted into evidence.)

21 **MR. STEADMAN:** Permission to publish, Your Honor?

22 **THE COURT:** Permission granted.

23 I will tell you, ladies and gentlemen, it's not gonna
24 be anything to see, but he's just bringing it around so the
25 speakers will be facing toward you, so don't worry about

1 watching the screen.

2 (State's Exhibit Number 163, Call Number 1, was played
3 for the Court and jury beginning at 12:35 PM.)

4 (State's Exhibit Number 163, Call Number 2, was played
5 for the Court and jury beginning at 12:39 PM.)

6 **THE COURT:** Let's just stop it right there a minute.
7 Counsel come up.

8 (Proceedings held at the bench; not reported.)

9 **THE COURT:** All right. Ladies and gentlemen, this
10 does not conclude the matters that the State wishes to
11 present by way of audio tape, but to go ahead would run
12 well into the lunch hour. So I'm going to go ahead and
13 take a break at this time and allow you to go and get your
14 lunch and I'm gonna ask you -- it's five minutes till one.
15 I'm gonna ask you to be back in the jury room, please, at
16 2:15 and we'll be ready to start at that time.

17 So, if you would, go and get your lunch and return to
18 your jury room about 2:15. Do not discuss the case among
19 yourselves, don't discuss it with anyone else and don't
20 allow anyone to discuss it with you, and I will see you
21 after lunch. Have a pleasant lunch.

22 (Whereupon, the jury retires to the jury room at
23 12:56 PM.)

24 **THE COURT:** All right. Counsel, the reason for having
25 it that way was -- I didn't tell you, but I knew from the

1 last part of the in-camera hearing that the last tape was
2 around at least fifteen minutes, maybe closer to twenty,
3 and I thought it would be better to go ahead and let the
4 jury take their break at this time and we'll play it for
5 them first thing after lunch.

6 How many more witnesses do you anticipate having,
7 Ms. Campbell?

8 **MS. CAMPBELL:** (Indicating.)

9 **THE COURT:** One more? All right.

10 Okay. We'll take a break then until 2:15. We'll be
11 ready to go forward with the remainder of this tape and let
12 the State continue with their case.

13 Thank you.

14 **MR. STEADMAN:** Your Honor?

15 **THE COURT:** Oh, I'm sorry. Yes, the witness is
16 excused. You're to be back at 2:15, please.

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Thank you.

19 (Whereupon, a luncheon recess was taken.)

20 **BAILIFF:** Court come to order, please.

21 **THE COURT:** Thank you. You may be seated.

22 All right. We are back on the record with regard to
23 the matter of the State versus Berry a little bit early.
24 Is everybody here? Ms. Walker, are we still waiting for
25 the witness?

1 **MS. WALKER:** The witness is outside, Your Honor.
2 Mr. Steadman should be coming. It's his witness that's
3 on the stand. I'll step outside and get him.

4 **THE COURT:** Okay. Here she comes.

5 **MS. CAMPBELL:** We have the witness.

6 **MS. WALKER:** We have the witness, Your Honor.

7 **MS. ZMROCZEK:** We just need the Solicitor.

8 (Whereupon, the witness resumes the stand.)

9 **MS. CAMPBELL:** Judge, as a housekeeping matter,
10 State's Exhibit Number 164 is the actual prints that
11 were taken that have been referred to in testimony. She
12 just didn't have them in her file when she was on the
13 stand, which I thought she'd brought with her, but the
14 defense doesn't have a problem with me offering them at
15 this point.

16 **THE COURT:** 164?

17 **MS. ZMROCZEK:** No objection, Your Honor.

18 **THE COURT:** All right. 164 admitted into evidence
19 without objection.

20 (State's Exhibit Number 164, latent prints, was marked
21 for identification and admitted into evidence.)

22 **THE COURT:** We are back on the record with regard to
23 the State versus Berry. The State is represented by the
24 Fifth Circuit Solicitor's Office. The Defendant is present
25 with his counsel. I've been advised that the jurors have

1 returned from lunch. Do you need some technicians to
2 finish playing the tape, Ms. --

3 **MS. CAMPBELL:** It's beyond me.

4 **THE COURT:** Okay.

5 **MS. CAMPBELL:** I'm sorry.

6 **THE COURT:** We better bring him back in. Maybe
7 Ms. Walker -- here he comes.

8 **MR. STEADMAN:** Sorry, Your Honor.

9 **THE COURT:** All right. Bring the jury in, please.

10 **BAILIFF:** Yes, Your Honor.

11 (Whereupon, the jury returns to the courtroom at
12 2:15 PM.)

13 **BAILIFF:** Jurors all seated, Your Honor.

14 **THE COURT:** All right. Thank you, ladies and
15 gentlemen, for your promptness in getting back here.
16 Again, I will ask you if while you were away from the
17 courthouse if anyone has approached you or tried to talk
18 to you about this case, I need to know about it now.
19 Negative response, and that's good.

20 All right. At the time that we recessed for lunch,
21 the State was presenting an audio tape to you and they're
22 going to continue with that audio tape. You may proceed.

23 (Whereupon State's Exhibit Number 163, Call Number 3,
24 was played for the Court and jury beginning at 2:16 PM.)

25 **MR. STEADMAN:** No further questions.

1 CROSS-EXAMINATION

2 BY MS. ZMROCZEK:

3 Q. Hi. How are you?

4 A. Good. How are you?

5 Q. Okay now. You maintain your records at the jail?

6 A. The phone records?

7 Q. Yes, ma'am.

8 A. Do I?

9 Q. Or --

10 A. Yes, we've got -- they're on recordings.

11 Q. Okay. And so sometimes people -- Mr. Steadman earlier
12 asked you if sometimes people use other people's PIN
13 numbers to hide phone conversations?

14 A. That's correct.

15 Q. Sometimes they use it because different people have
16 money on their accounts, right?

17 A. I don't know what the reason is as to why they're
18 using it.

19 Q. There are lots of reasons, right? There could be,
20 right?

21 A. Yes.

22 Q. And how much does an Am-Tel -- how much does it cost
23 for somebody in the jail to talk to a loved one?

24 A. I don't know the exact amount. I want to say like
25 \$1.65.

1 Q. For how long?

2 A. Fifteen minutes.

3 Q. But they have to put a certain amount down on their
4 phone?

5 A. Yes, they have to have a phone account activated with
6 funds on there.

7 Q. Are you aware in this case that there were 697 phone
8 calls made?

9 A. No.

10 **MS. ZMROCZEK:** Thank you.

11 **THE COURT:** Redirect?

12 **MR. STEADMAN:** I beg the Court's indulgence, Your
13 Honor. Nothing further, Your Honor.

14 **THE COURT:** All right. Thank you. You may step down.

15 (Witness excused.)

16 **THE COURT:** All right. You may call your next
17 witness.

18 **MS. CAMPBELL:** May it please the Court? The State
19 calls Sergeant Carwell.

20 **THE COURT:** All right. Come around, please.

21 JOHN CARWELL,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** Thank you. Please have a seat on the
24 witness stand and state your full name for the record.

25 **THE WITNESS:** I'm John Carwell, C-A-R-W-E-L-L.

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Sergeant Carwell, where are you employed?

A. The Richland County Sheriff's Department.

Q. What do you do there, sir?

A. I'm currently the sergeant over the burglary unit.

Q. Prior to becoming sergeant over the burglary unit, what were your duties?

A. I was assigned to major crimes and the robbery unit.

I was also a primary homicide investigator.

Q. And can you tell this jury a little bit -- well, how long have you been in law enforcement?

A. Since October of 2003, so I'm on my thirteenth year.

Q. And where did you start out and what department?

A. I started out on patrol down in what we call Region 1, you've heard us talking about regions, which is the Leesburg Road, Garners Ferry Road, Bluff Road area. I started out there and worked down there for about five years. I became a master deputy during that time, which is a first line supervisor. Then I was promoted to a field training officer through the training division where I trained new hires to answer calls for service, policy and procedures. Then I would take the test to become an investigator. I was promoted to become an investigator where I first started back in 2009 with the burglary unit.

1 Then I would go to the major crimes and worked robbery and
2 then I was promoted about six months ago to the sergeant
3 over the burglary unit.

4 Q. I want to turn your attention back to July the 29th of
5 2014. How did you become involved in this case?

6 A. Again, we come in at 8:30 in the morning when we're
7 assigned our reports that we're to work. So that morning I
8 was assigned to a shooting that occurred at
9 that involved Michael Keith.

10 Q. And when you're assigned the case, do you actually get
11 a copy of the actual incident report that was generated?

12 A. I do.

13 Q. From the initial crime in this case?

14 A. That's correct.

15 Q. And were you able to review it that morning?

16 A. I was.

17 Q. And after reviewing the incident report, is it common
18 for you to then follow up and start interviewing possible
19 witnesses that may have information?

20 A. Yes, there was a witness listed on the incident
21 report, Kristin Settles, who we've heard from during this
22 trial. She was in my office -- or I spoke to her about
23 10 AM that same morning, so about an hour and half later
24 I was on the phone with her. She was able to come to my
25 office. She was there about 10:37 when I began my

1 statement with her, talking to her about what she observed.

2 Q. And were you able to confirm that she was actually the
3 witness that called 9-1-1?

4 A. Yes, she was one of them.

5 Q. Later on that morning and into the early afternoon,
6 what happened next on this case as far as your involvement?

7 A. Once I finished up with her interview and statement, I
8 would receive a call from Deputy Pennington stating that
9 they were --

10 Q. About what time was that?

11 A. About 12:15-ish I received a call from him.

12 Q. Okay. And without saying -- you can't say what he
13 said to you, but was he able to give you information that
14 became of interest to you?

15 A. Yes. When he called me he provided me with some
16 details that I felt were important to my job and what I
17 did at the time, so I responded to that location.

18 Q. And, in fact, when you responded to that location,
19 where did you go?

20 A. I went to the apartment complex off of

21 Q. And specifically which apartment complex was that?

22 A. -- I'm sorry off of

23 . It's and the

24 .

25 Q. And when you got to the

1 complex, about what time was it?

2 A. I got there about 12:55.

3 Q. When you got there, were there several people there
4 at the scene that were of interest to you?

5 A. Yes, there was a lot of people at the scene as you
6 can imagine in an apartment complex and what had gone on.
7 There was a lot of people there.

8 Q. And when you first got there, who did you first make
9 contact with?

10 A. I first spoke with Deputy Pennington and Deputy Owens.

11 Q. And after speaking to them, did you make contact with
12 any other young men out there that day?

13 A. Yes, I did.

14 Q. And who was that?

15 A. Nickilous Wallace.

16 Q. And where was he when you made contact with him?

17 A. He was with -- he was in a patrol car sitting in the
18 back seat waiting for me to get there.

19 Q. Okay. And did you become aware of whether or not he
20 had been advised of his rights?

21 A. I was. He was advised of them.

22 Q. And at that point did you have a conversation with
23 him?

24 A. I did.

25 Q. You can't say what he said.

1 A. I did.

2 Q. And during the course of that conversation, did you
3 get permission to collect certain evidence from him?

4 A. I did.

5 Q. And who gave you that permission?

6 A. He did.

7 Q. Nickilous Wallace himself?

8 A. Yes.

9 Q. What type of evidence were you attempting to get from
10 Nickilous Wallace at that point?

11 A. I wanted to get a buccal swab from his mouth for DNA
12 and he gave written consent for that.

13 Q. Was Brandon Berry also there at the scene that day?

14 A. He was.

15 Q. And while you were there, did you also make contact
16 with -- did you become aware that there was a small child
17 that was in the car?

18 A. Yes.

19 Q. And did you make contact with the child's mother there
20 at the scene?

21 A. I did.

22 Q. And tell the jury how that came about and what was
23 discussed.

24 A. It was brought to my attention that she was there and
25 she was upset. We've heard Lourisa Katio had a job at

1 Blue Cross Blue Shield, which is a pretty good job, I
2 think. She was upset. She had gone to work that morning
3 and left her child at her apartment to be kept there and
4 she's having to leave work to go pick up her two-year-old
5 child and she knew a little of the details of what
6 happened. She was upset.

7 Q. Was there another young woman also there that day when
8 you got there?

9 A. I didn't speak with her that day.

10 Q. But did you become aware from the video?

11 A. I did.

12 Q. And specifically in the video, do you see the second
13 young lady we're talking about? And what was her name?

14 A. Ms. Geiger.

15 Q. Kayla?

16 A. Kayla Geiger.

17 Q. And do you actually see her in the video, the dash cam
18 from the car, drive up?

19 A. Yes, she's the one that pulls up in the green car and
20 stops right beside Nickilous Wallace's Camry and backs in
21 front of them.

22 Q. And actually parks?

23 A. Parks and stays there.

24 Q. She parks and stays there kind of over to the right?

25 A. Yes.

1 Q. And then shortly thereafter she gets there is when he
2 changes seats and takes off?

3 A. Yes.

4 Q. And when you were having a conversation with,
5 Ms. Katio, Lourisa Katio, the mother of the child -- of
6 that child of his, she was upset about the circumstances
7 involving Ms. Geiger?

8 A. Yes, and her child.

9 Q. And her child. Did you ask her permission to do
10 anything that day?

11 A. Yes.

12 Q. Can you explain how that happened to the jury?

13 A. She was more than willing to help us out because her
14 child was involved. She was upset she had to leave work.
15 She -- she told me that the father of her child came to her
16 apartment that morning, so I allowed her to drive herself
17 back to her apartment with her child and we met again at
18 her apartment because I also wanted to check and make sure
19 everything was all right with the living conditions for
20 this child and to see if her -- the father of her child
21 had anything in the apartment, and she was willing to give
22 consent. I didn't force her. She was more than willing
23 is all I can say.

24 Q. Okay. And once you got to where she -- where did she
25 live?

1 A.

2 Q. And is that near -- what's a major thoroughfare near
3 there?

4 A.

5 Q. And at that point did you ask her to sign a consent to
6 search?

7 A. I did.

8 Q. I'm gonna show you State's Exhibit Number 2. Do you
9 recognize that?

10 A. Yes, ma'am.

11 Q. And is that the consent to search that you filled out
12 and used and that Ms. Katio signed that day indicating you
13 could search her apartment?

14 A. It is.

15 Q. And you actually witnessed her signature, I believe?

16 A. I did.

17 **MS. CAMPBELL:** Your Honor, at this we'd offer State's
18 Exhibit Number 2 into evidence.

19 **THE COURT:** Any objection?

20 **MS. ZMROCZEK:** No objection.

21 **THE COURT:** All right. Admitted into evidence without
22 objection.

23 (State's Exhibit Number 2, consent to search, was
24 admitted into evidence.)

25 **BY MS. CAMPBELL:**

1 Q. And at that point were you also given information
2 about whether or not Brandon Berry actually lived in that
3 house or whether it was Ms. Katio's house?

4 A. I asked her who lived there with her and she explained
5 that it was -- the apartment was in her grandmother's name,
6 but her grandmother did not live there, it was just her and
7 her two-year-old daughter that lived in the apartment.

8 Q. You mentioned though that she had mentioned that she
9 had made contact with the Defendant at that apartment the
10 night before?

11 A. Yes, she did say he was there.

12 Q. On the early morning hours actually?

13 A. Yes.

14 Q. Prior to going to her house, I skipped one thing, did
15 you look at any of the evidence involved in this case that
16 had been recovered after the Defendant fled from the scene
17 and threw some bags?

18 A. I did. Two backpacks that were recovered by Deputy
19 Owens and Pennington. They showed them to me, I
20 photographed them and I actually took custody of them
21 myself, placed them in my truck, and I would have entered
22 them into evidence.

23 Q. And at that point did you become aware there was a
24 gun?

25 A. I did.

1 Q. And what caliber gun was it?

2 A. It was a .9 millimeter.

3 Q. And at that point did you know what caliber shell
4 casings had been recovered from the crime scene the night
5 before?

6 A. I wasn't sure, so I called Sergeant Stan Richards, who
7 was over the crime scene that we heard from earlier, and he
8 was able to tell me that it was a .9 millimeter casing that
9 was recovered from the shooting incident location.

10 Q. But do all .9 millimeter shell casings match every
11 .9 millimeter gun?

12 A. No.

13 Q. So did you eventually request that certain testing be
14 done in this case?

15 A. Yes, there's a form, a forensic request form, that we
16 fill out and I asked for those be compared to each other.

17 Q. Around 1:50 that afternoon I believe you arrived at
18 Ms. Katio's house off ?

19 A. Yes, ma'am.

20 Q. And once you went inside, just tell the jury what you
21 observed and what you were looking for, if anything.

22 A. Like I said, her grandmother was there, she was there
23 her with her two-year-old child. She kind of directed me
24 around the house, where the living room was, the bedroom
25 was. I asked her what belongings may have belonged to her

1 child's father. She pointed out some black jeans and there
2 was gray and black -- mostly black shoes that were right
3 outside the closet door, but they were probably a foot away
4 from each other, like somebody had just taken them off, and
5 they were right there together. I asked her who those
6 belonged to and she said Brandon Berry. I would also see a
7 cable tie in the bedroom as well that was similar to the
8 ones that were found in the backpack.

9 Q. I want to show you what's been marked as State's
10 Exhibits 156, 157 and 158, and ask you if you recognize
11 these photographs?

12 A. Yes.

13 Q. And are those the photographs you took that day during
14 the search warrant?

15 A. It is.

16 Q. And what do those photographs show?

17 A. Two pictures are of the black jeans that were in the
18 closet and one picture is of a cable or a zip tie. It's on
19 a DVD case.

20 **MS. CAMPBELL:** Your Honor, at this time we'd offer
21 these into evidence.

22 **THE COURT:** Any objection?

23 **MS. ZMROCZEK:** May I see them.

24 **MS. CAMPBELL:** (Handing.)

25 **MS. ZMROCZEK:** No objection.

1 **THE COURT:** Admitted into evidence without objection.

2 (State's Exhibit Number 156 through 158, photographs,
3 were admitted into evidence.)

4 BY MS. CAMPBELL:

5 Q. You mentioned that you saw jeans. I'm gonna show you
6 what's been marked as State's Exhibit 133. Are these the
7 jeans you collected that day --

8 A. Yes.

9 Q. -- that are shown in the picture from inside the house
10 in 156?

11 A. Yes, ma'am.

12 Q. And you collected them from what area of the house?

13 A. The bedroom -- master bedroom. Or the closet of the
14 master. Excuse me.

15 Q. In addition to that, you also mentioned that you
16 collected some shoes in this case?

17 A. I did.

18 Q. And I'm gonna show you what's been marked as State's
19 Exhibit Number 134. Do you recognize those?

20 A. Yes.

21 Q. And are those the shoes that you collected that day?

22 A. Yes. They were in the bedroom as well just outside
23 the closet on the floor.

24 Q. And at that point did you know whether or not either
25 of these items had any relevant evidence on them?

1 A. I could see there was dirt on the shoes, which I knew
2 there was a scuffle outside of the apartment building, and
3 I also could see what's been described as the reddish-brown
4 stain that was visible to me that they were on the shoes
5 and the jeans, so I collected those as well.

6 Q. Was there other male clothing there as well?

7 A. Not that I can recall. Nothing else stood out.

8 Q. And you also mentioned a zip tie similar to the ones
9 -- when you were back at the scene where the Defendant was
10 apprehended after the chase, in that one bag were the masks
11 and what other items?

12 A. Masks, gloves, toboggan, a hat, zip ties.

13 Q. Similar to this?

14 A. Yes.

15 Q. I don't know where that one went. Like this?

16 A. Yes.

17 Q. And at the scene where Brandon Berry's child lived,
18 you actually observed this and this?

19 A. Yes. That was in the same bedroom on the dresser.

20 Q. On the dresser?

21 A. (Nods head.)

22 Q. So that was significant to you as well?

23 A. It was.

24 Q. When you did a search of the house, were you also
25 concerned about the safety of the child still at this

1 point?

2 A. I was, but everything -- there was no weapons --
3 additional weapons that I found. Ms. Katio, she was
4 well-spoken, and I knew she was a good mother.

5 Q. So was her child turned back over to her that day?

6 A. Yes.

7 Q. Did you ever call DSS or any other agency to
8 interfere?

9 A. No, I never made a phone call to DSS.

10 Q. That day -- was that pretty much what happened on that
11 day as far as evidence collection and things of that sort?

12 A. Yeah. That was a lot at that point.

13 Q. So at that point did you go back to the sheriff's
14 department and turn in all the evidence so that future
15 processing could be requested and completed?

16 A. I did.

17 Q. And, specifically, were you focussed at that point on
18 the jeans where you observed blood and the shoes?

19 A. Yes.

20 Q. And the other items that were collected by the
21 deputies, those were also turned over to you as well?

22 A. That's correct.

23 Q. And you also entered those into evidence for
24 processing?

25 A. Yes.

1 Q. The next morning did you collect -- or did you request
2 that certain items be tested?

3 A. I believe later that night I also asked an on-call
4 investigator to go get a swab from Mr. Keith at the
5 hospital and then the next day I would request that items
6 be tested.

7 Q. And was that swab from the victim? And you'd already
8 collected the one from Nickilous Wallace prior?

9 A. Yes.

10 Q. And I'm gonna show you State's Exhibit -- and that was
11 only after he gave consent?

12 A. Right.

13 Q. I'll show you State's Exhibit 131 and 128. Do you
14 recognize those two swabs?

15 A. Yes, this first one is the buccal swab from Nickilous
16 Wallace. The second one is the buccal swab of Michael
17 Keith, the victim.

18 **MS. CAMPBELL:** Your Honor, at this time we'd offer
19 these into evidence, 128 and 131.

20 **MS. ZMROCZEK:** Without objection.

21 **THE COURT:** Admitted without objection.

22 (State's Exhibit Number 128 and 131, buccal swabs,
23 were admitted into evidence.)

24 BY MS. CAMPBELL:

25 Q. And next after entering those into evidence as well

1 that next morning, did you request certain items be tested?

2 A. Yes. I knew a little bit about the rapid DNA hit
3 machine just from them talking about it in meetings and
4 from knowledge -- my limited knowledge of it I knew -- or
5 I felt this was a good case to use this instrument, so I
6 went and spoke to Dr. Gray Amick about it and he agreed.

7 Q. And, additionally, did you request that testing be
8 done between the gun and the shell casings?

9 A. I did do that as well.

10 Q. That next day also did you make contact with another
11 witness in the case, Ms. Sidara Allen?

12 A. Yes.

13 Q. And was she able to come to your office and provide
14 you with a statement?

15 A. She was.

16 Q. Later that day did you get the results from the rapid
17 DNA testing?

18 A. That same day I got the DNA rapid hit and I got the
19 firearms report.

20 Q. And at that point with that information, what did you
21 do?

22 A. I put a hold on Brandon Berry at the jail because he
23 was just in on the blue tickets as they were described
24 earlier for the child endangerment and the traffic
25 offenses, so I put a hold on him at the jail.

1 Q. And then the next day, on the 31st, did you get arrest
2 warrants for Mr. Berry?

3 A. I did.

4 Q. And that's for the attempted murder and robbery in
5 this case?

6 A. Correct.

7 Q. And at that point did you actually serve an armed
8 robbery warrant on him?

9 A. Yes, at the time I just missed it. We thought his
10 phone was taken during the robbery, but it was actually
11 recovered by Investigator Holt during the processing of
12 the scene.

13 Q. So it was really an attempted armed robbery?

14 A. Yes, we changed it to attempted.

15 Q. And then on the 31st did you also have an opportunity
16 to just serve him with those warrants?

17 A. I did. I went down to the jail and personally served
18 Brandon Berry with those two warrants.

19 Q. And you served those on July 31st around what time?

20 A. Let's see. It was about 2:46, 1446 hours.

21 Q. On the 31st to be clear?

22 A. Yes.

23 Q. So that's the first time he was served with those
24 warrants?

25 A. That's correct.

1 Q. On August the 4th, did you make contact with the
2 victim in this case?

3 A. I did.

4 Q. And where did you make contact with him?

5 A. He was able to come to my office.

6 Q. And at that point was he out of the hospital?

7 A. Yes.

8 Q. And in meeting with him, did you show him -- or did
9 you get him to try to explain to you the type of mask that
10 was involved in this?

11 A. Yes.

12 Q. And did he have a certain way of explaining it?

13 A. Yeah, he -- he described it as like a backup dancer
14 would wear on a television show. We actually looked on
15 Google. We used Google because I didn't know what he was
16 talking about at first, but we ended up finding it. It was
17 -- we found one that was white in color and he described it
18 as being a black mask.

19 Q. Okay. And I'm gonna show you State's Exhibit Number
20 159, which is the one that he actually -- and he's the one
21 that pointed this mask out to you and not vise versa?

22 A. Yes. Right.

23 Q. That he actually said it was the type of mask used,
24 but it was black?

25 A. That's correct.

1 Q. I'll show you State's Exhibit -- was is that?

2 A. 159.

3 Q. And that's the one he actually picked out without you
4 showing him any of these other masks?

5 A. Right.

6 **MS. CAMPBELL:** Your Honor, at this time we'd offer
7 State's Exhibit Number 159 into evidence.

8 **MS. ZMROCZEK:** No objection.

9 **THE COURT:** Admitted into evidence without objection.

10 (State's Exhibit Number 159, a photograph, was
11 admitted into evidence.)

12 BY MS. CAMPBELL:

13 Q. And, again, he never wavered from the fact that the
14 mask was black?

15 A. Never.

16 Q. But that this was the type of mask?

17 A. That's correct.

18 Q. Did you also become aware in the course of your
19 investigation that there had been some footprint
20 impressions lifted from the car?

21 A. Yes, I was.

22 Q. And did you request anything be done with those?

23 A. Yes, I asked for the gel lifts to be compared with the
24 shoes that were collected from the apartment.

25 Q. Turning your attention to August the 5th of 2014, did

1 you, again, make contact with Nickilous Wallace? You can't
2 say what he said. Just you made contact with him?

3 A. Yes.

4 Q. And did he actually -- where did that meeting take
5 place?

6 A. Again, it took place in my office.

7 Q. And who was he accompanied with?

8 A. His attorney.

9 Q. At that point did you ask him for permission for
10 anything?

11 A. I asked for consent to search his vehicle and he --
12 he gave written consent to search the Camry.

13 Q. And, in fact, turning your attention back again to
14 that dash cam, on the video, in fact, right around --
15 before the Defendant got in the driver's seat and took off,
16 what was Nickilous Wallace asked to do and what was his
17 answer?

18 A. He was asked for consent verbally to search his
19 vehicle and he gave it and that's at the same time that
20 Brandon Berry jumped over into the driver's seat.

21 Q. And, in fact, did you confirm that he was in control
22 or that was his car?

23 A. Yes.

24 Q. I show you State's Exhibit Number 1. Do you recognize
25 that?

1 A. Yes, I do.

2 Q. And this was on August the 5th, I believe, when you
3 actually asked for his consent again since everything got
4 kind of out of control?

5 A. Yes, that's correct.

6 Q. And at that point did he give you consent?

7 A. Yes.

8 Q. Thank you.

9 A. And his attorney witnessed it.

10 Q. And his attorney actually witnessed it?

11 A. Yes.

12 **MS. ZMROCZEK:** Without objection.

13 **THE COURT:** Admitted without objection.

14 (State's Exhibit Number 1, consent to search, was
15 admitted into evidence.)

16 BY MS. CAMPBELL:

17 Q. In the course of this investigation, did you receive
18 -- request any kind of video in this case?

19 A. I requested a video from the guy that runs the
20 Statewide Security business. He has the cameras in The
21 Vista, Five Points, pretty much all over Columbia. I deal
22 with him on a regular basis. I called him up. I wanted to
23 request video from Two Notch, which is -- I wanted to see
24 if I could find the victim's car going down Two Notch and
25 see if anybody was following him. I requested video from

1 there, I requested video through him from Mr. Lucky's,
2 which is a club off of Broad River Road. I also asked
3 him to look for the victim's vehicle in the downtown area
4 near Club Blue or the Blanding Street club, which is -- I
5 can't remember the name of it -- where Knuckle Up Monday
6 was that same night. I asked him to look for videos that
7 would have the victim's vehicle in it and he couldn't find
8 the victim's vehicle on either of those, but he did drop
9 off video from Two Notch and the club -- from Mr. Lucky's.

10 Q. And did you review those videos?

11 A. Yes, I reviewed both of those videos.

12 Q. Was there anything relevant or helpful one way or the
13 other in this case on those videos?

14 A. No, there wasn't.

15 Q. Did you ever request video from the interior of those
16 bars?

17 A. I did not.

18 Q. Okay. Did you also during the course of this
19 investigation make contact with a witness in this case
20 whose car had been damaged that night?

21 A. Yes, he would call me.

22 Q. And did he ever provide you with a photograph of the
23 actual damage to his car?

24 A. He did.

25 Q. And I show you State's Exhibit Number 154. Does that

1 look like the photo he provided to you?

2 A. Yes.

3 **MS. CAMPBELL:** Your Honor, at this time we'd offer it
4 into evidence.

5 **MS. ZMROCZEK:** Your Honor, I had not originally
6 received that, I saw it today, so without objection.

7 **THE COURT:** Pardon me?

8 **MS. ZMROCZEK:** This is the first time I've seen it,
9 but without objection.

10 **THE COURT:** Okay. Without objection admitted into
11 evidence.

12 (State's Exhibit Number 154, a photograph, was
13 admitted into evidence.)

14 BY MS. CAMPBELL:

15 Q. At some point did you also look into the cell phones
16 and cell phone records of the Defendant, Brandon Berry, as
17 well as Nickilous Wallace?

18 A. Yes. The afternoon of the traffic stop we collected
19 two phones, one from each. They were placed into evidence
20 and I would do search warrants on them looking for cell
21 phone tower information and once I received that data back
22 I would ask our intel supervisor to look into those more
23 closely to see if we could get their phones being used in
24 the area of the shooting that morning.

25 Q. Did you also request that certain testing be done on

1 the two masks that were recovered in that one bag?

2 A. I requested for the buccal swab that was taken -- or
3 not the buccal swab, excuse me, the DNA swab that was taken
4 from both masks to be tested further for DNA to see if
5 there was a profile.

6 Q. Also did you end up getting some medical records
7 involving the victim in this case?

8 A. Yes. There's a form that I fill out the top portion
9 and he signs allowing me to go down to the hospital to
10 request his medical records.

11 Q. The victim in this case, you've kind of kept up with
12 him as well through the year since all this happened?

13 A. Yes.

14 Q. And, in fact, did he change his residence sometime
15 shortly after this happened?

16 A. He did.

17 Q. And in addition to that, did you become aware of
18 whether or not he got a concealed weapons permit?

19 A. After this incident he did get his concealed weapons
20 permit.

21 Q. I'll show you what's marked as State's Exhibit Number
22 160. Does that indicate that he got his concealed weapons
23 permit?

24 A. Yes.

25 Q. And this is with the pertinent information, like

1 Social Security number, blacked out?

2 A. Right.

3 **MS. ZMROCZEK:** Your Honor, I object to the relevance.

4 **THE COURT:** What's the exhibit number?

5 **MS. CAMPBELL:** It's Exhibit Number 160. I can just
6 have him testify from it. I don't have to offer it if she
7 objects.

8 **THE COURT:** Okay.

9 BY MS. CAMPBELL:

10 Q. But he did get the concealed weapons permit and was
11 approved for that?

12 A. Yes.

13 Q. After this happened?

14 A. After, yes.

15 Q. In the video, as well as the dash cam video, when the
16 car kind of starts to roll to a stop and Mr. Berry exits
17 quickly, can you see certain lights in the taillights?

18 A. Yes, you can see the reverse lights. The white
19 lights.

20 Q. Was Nickilous Wallace charged in this case as well?

21 A. Not in the shooting.

22 Q. Not in the shooting?

23 A. That's correct.

24 Q. But was he charged with a violation of the gun laws?

25 A. Yes, by the deputies --

1 Q. By the deputies?

2 A. -- that stopped him.

3 Q. And you're aware that more than one person can be
4 charged with one gun?

5 A. Yes.

6 Q. And are his charges still pending?

7 A. Yes, they are.

8 Q. And he will have his day in court?

9 A. Yes.

10 Q. The people -- I want to talk a little bit about the
11 phone calls that we just heard. On those phone calls
12 there's certain numbers that go along the front end. Does
13 that indicate anything of significance on those numbers
14 that are assigned to each phone call?

15 A. The time and date -- or date, year and month.

16 Q. And the two phone calls we heard first to the young
17 woman, are you aware of what young woman that was?

18 A. Yes.

19 Q. And who was it?

20 A. It was Kayla Geiger.

21 Q. And that's the mother of his other child?

22 A. I don't know if they have a child. I just know she's
23 another girlfriend.

24 Q. And she was the one that actually pulls up in the car
25 in the video?

1 A. Yes.

2 Q. What are the dates of those two calls and can you tell
3 that from the numbers that have already been put into
4 evidence beside each of those calls?

5 A. I'm sorry, what was the last part?

6 Q. What are the numbers? The numbers are assigned to the
7 call, right?

8 A. Yes.

9 Q. And, specifically, are those significant as to the
10 date they were made?

11 A. Yes.

12 Q. Can you explain that to the jury?

13 A. One of them was made on July 31st, which is the day I
14 served the warrants.

15 Q. That's July 31st of 2014?

16 A. Yes.

17 Q. Okay.

18 A. And the second one was August 1st of 2014 as well.

19 Q. And the final call made to the young man, do you know
20 who that was he was talking to?

21 A. It was Nickilous Wallace.

22 Q. And the first two calls, were those made with his --
23 so you're familiar with the system at the jail?

24 A. Yes.

25 Q. And the first two calls, were those made with the PIN

1 number that was assigned to this Defendant?

2 A. No, he used the PIN number of another inmate trying to
3 disguise his phone call.

4 Q. On that last phone call?

5 A. Yes.

6 Q. And when was that last call made to Nickilous Wallace?

7 A. That was November 29, 2015.

8 Q. And that would have been the day before Thanksgiving,
9 which was last week?

10 A. Yes.

11 Q. I'll be corrected. Obviously this trial started on
12 the 28th -- 30th.

13 A. The day before the trial started.

14 Q. The day before the trial started. What day was the
15 phone call made? Let's go back to that.

16 A. The day before the trial started.

17 Q. And what date was that?

18 A. The 29th.

19 Q. I apologize. So now that I've got that straight, it
20 was made this Sunday?

21 A. Yes.

22 Q. Prior to all the testing being done in this case, did
23 you also have occasion to get a buccal swab from Mr. Berry?
24 I believe that was last summer.

25 A. I did.

1 Q. And I'll show you State's Exhibit Number 129. Do you
2 recognize that?

3 A. I do.

4 Q. And is that the buccal swab you got from Mr. Berry?

5 A. Yes, but it wasn't last summer.

6 Q. When was it?

7 A. It was August 13th of this year.

8 Q. Of this --

9 A. Well, that is last summer. It still feels like
10 summer.

11 **MS. CAMPBELL:** Your Honor, at this time I'd offer
12 State's Exhibit 129.

13 **MS. ZMROCZEK:** Without objection.

14 **THE COURT:** Admitted without objection.

15 (State's Exhibit Number 129, a buccal swab, was
16 admitted into evidence.)

17 BY MS. CAMPBELL:

18 Q. When you met with Mr. Stetson, in addition to the
19 photographic damage to his car, did he also provide you
20 with other evidence that he said was recovered from his
21 car?

22 A. Yes, he provided me with a projectile that was taken
23 out of his car during the repairs.

24 Q. And this is State's Exhibit Number 130?

25 A. Yes.

1 Q. And that's what he provided to you?

2 A. That is.

3 MS. CAMPBELL: Your Honor, at this time we'd offer
4 State's Exhibit Number 130 into evidence.

5 MS. ZMROCZEK: Without objection.

6 THE COURT: Admitted with objection.

7 (State's Exhibit Number 130, a bullet fragment, was
8 admitted into evidence.)

9 BY MS. CAMPBELL:

10 Q. And nobody from the sheriff's department actually
11 collected that, it was collected by Mr. Stetson from the
12 body shop?

13 A. He provided it to me.

14 Q. And the person that you made contact with there at the
15 scene today -- that day when you were shown the masks and
16 the diaper bag with the gun in it, the person that's
17 Brandon Berry, do you see him here in the courtroom?

18 A. Yes, he's sitting at the table with the white shirt
19 and blackish tie.

20 MS. CAMPBELL: Your Honor, may the record reflect that
21 he's identified the Defendant?

22 THE COURT: Yes.

23 MS. CAMPBELL: I don't have anything further.

24 THE COURT: Cross-examination?

25 MS. ZMROCZEK: Thank you.

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CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Good afternoon.

A. How are you doing?

Q. Great. You are the lead investigator?

A. Yes.

Q. You're in charge of reviewing all the evidence in the case?

A. Yes.

Q. You are in charge of putting the case together?

A. Yes.

Q. You are in charge of presenting all of the evidence to this jury?

A. Not presenting all of it.

Q. Collecting all of the evidence to be presented to the jury?

A. Like I said --

Q. You agree you're familiar with all of the evidence in the case?

A. Not the final reports. We had our experts and people in those field testify to those.

Q. But do you review them?

A. I can't testify to them, so sometimes I may not look at them fully, but I know the gist of what's going on.

Q. You request search warrants?

1 A. Yes.

2 Q. You requested search warrants in this case?

3 A. Yes.

4 Q. For two telephones?

5 A. Yes.

6 Q. You received those records?

7 A. Yes.

8 Q. You reviewed those records?

9 A. I gave them to Linda Houck from our intel.

10 Q. Right. But prior to -- prior to that you looked at
11 the reports, for example, the Cellebrite, where the text
12 messages --

13 A. That was from a cell phone download.

14 Q. Right. You look at those?

15 A. Yes.

16 Q. You're familiar with those?

17 A. Yes.

18 Q. Okay. Part of your job is to interview witnesses?

19 A. Yes.

20 Q. You interviewed Mr. Keith?

21 A. I did.

22 Q. And you interviewed his girlfriend?

23 A. I did.

24 Q. And you interviewed one of the 9-1-1 callers, right?

25 A. Three actually.

1 Q. Three? But you only provided a report for one.

2 A. No, Ms. Allen, the girlfriend. Mr. Stetson, he said
3 he called 9-1-1, I interviewed him.

4 Q. And Ms. Settles?

5 A. Ms. Settles. Kristin Settles.

6 Q. How many -- you requested all the 9-1-1 calls?

7 A. Yes.

8 Q. You listened to them?

9 A. I don't have the CDs.

10 Q. So you knew that -- didn't know that there were seven?

11 A. I have the printout of what calls were made and how
12 many 9-1-1 calls.

13 Q. Did you listen to them or no?

14 A. No.

15 Q. You didn't listen to them?

16 A. (Shakes head.)

17 Q. Okay. So you weren't aware that other people might
18 have saw different things?

19 A. Well, I talked to three callers and the victim.

20 Q. But there were four other people who called 9-1-1 that
21 you didn't speak with?

22 A. No.

23 Q. Okay. It's important to get the full story?

24 A. Yes.

25 Q. To get everyone's perspective?

1 A. Not all the time.

2 Q. Okay. People can make mistakes?

3 A. I guess.

4 Q. In this case, there was a mistake that they thought
5 the cell phone was stolen, right?

6 A. Correct.

7 Q. But that was just a mistake?

8 A. It was found on the car.

9 Q. It was found on the hood of the car, right?

10 A. (Nods head.)

11 Q. So maybe some perspectives can be different than
12 others?

13 A. Uh-huh.

14 Q. Right?

15 A. Okay.

16 Q. The items that connected the car stop to the robbery
17 were found in whose car?

18 A. Nickilous Wallace's. Actually they weren't found in
19 the car. They were found on the path that Brandon Berry
20 ran down and threw them after he left the car.

21 Q. Right. After he left the car?

22 A. Correct.

23 Q. Right, correct?

24 A. After he ran from the car, yes.

25 Q. Right. So he was in the car with those items?

- 1 A. Correct.
- 2 Q. Right?
- 3 A. Yeah.
- 4 Q. And that car belonged to?
- 5 A. Nickilous Wallace.
- 6 Q. Okay. Describe his car.
- 7 A. It's a silver Toyota Camry.
- 8 Q. Light color?
- 9 A. Yes.
- 10 Q. Square back?
- 11 A. Right.
- 12 Q. Okay. You've been -- I want to talk a little bit
- 13 about -- you talked with Mr. Keith about where he worked
- 14 that evening, right?
- 15 A. I spoke to his girlfriend first about it.
- 16 Q. To his girlfriend. Okay. And I'm just gonna -- so we
- 17 can kind of orient ourselves, draw a little -- a terrible
- 18 map, but -- all right. If this is Main Street, right?
- 19 A. Yeah.
- 20 Q. And we're here. The club that -- that Mr. Keith was
- 21 working at was on Blanding, right?
- 22 A. One of them.
- 23 Q. One of them. The first one. 1800 Blanding Street?
- 24 A. (Nods head.)
- 25 Q. Correct?

1 A. Yeah.

2 Q. For Knuckle Up Monday?

3 A. Correct.

4 Q. And you've been there to that club, haven't you?

5 A. No.

6 Q. You didn't go and check it out?

7 A. No.

8 Q. You didn't see the security camera right above the
9 front door?

10 A. No.

11 Q. You didn't see the security cameras inside, all seven
12 of them?

13 A. No.

14 Q. Okay. You would agree if we had those that we could
15 see what people were wearing that night, correct?

16 A. No.

17 Q. Possibly? You don't know because you didn't look.
18 Do you know what kind of shoes Mr. Berry was wearing that
19 evening?

20 A. I knew the shoes that I collected.

21 Q. Did you know -- were you told what kind of shoes
22 Mr. Berry was wearing that evening?

23 A. No.

24 Q. You weren't? Did you take a statement in this case
25 from Ms. Katio?

1 A. Yes.

2 Q. And did she tell you what kind of shoes he was wearing
3 that evening?

4 A. She said that when he left the house she thought he
5 had on white Air Force Ones with a black check.

6 Q. Why are those significant?

7 A. That's what he had on during the time of the traffic
8 stop.

9 Q. Okay. The next place that you learned that Mr. Keith
10 worked at or went to was Blue. Obviously this map is not
11 drawn to scale, but you would agree with me --

12 MS. CAMPBELL: Your Honor?

13 MS. ZMROCZEK: This is just demonstrative, Your Honor,
14 so we can get a look at where everything is.

15 THE COURT: Pardon me?

16 MS. CAMPBELL: It's just not right.

17 THE COURT: Well, you'll have a chance to clarify it.

18 MS. ZMROCZEK: Right. I mean, I understand it's
19 not --

20 THE COURT: All right. No comments.

21 MS. ZMROCZEK: Thank you.

22 BY MS. ZMROCZEK:

23 Q. This is not drawn to scale. Blue is located in The
24 Vista?

25 A. Yes.

1 Q. It has indoor security cameras?

2 A. I don't know.

3 Q. It has outdoor security cameras?

4 A. Other than what I've told you about -- or what I
5 testified to about Statewide Security, that's the only
6 cameras I know of.

7 Q. Okay. You testified that Mr. Wallace gave you
8 permission to search his vehicle, State's Exhibit 1?

9 A. Yes.

10 Q. And you searched his vehicle?

11 A. At the compound on a later date, not the date of the
12 incident.

13 Q. You never found any drugs?

14 A. No.

15 Q. Never found any sand?

16 A. No.

17 Q. Never found any blood?

18 A. Unh-unh.

19 **THE COURT:** Answer out, please.

20 A. Oh, I'm sorry. Sorry about that.

21 Q. You never found any blood?

22 A. No.

23 Q. You know -- you met with Mr. Wallace several times,
24 right?

25 A. Yes.

1 Q. You know him to be shorter than Mr. Berry?

2 A. Yes, he is shorter.

3 Q. A couple of inches?

4 A. He's five-eight and Brandon Berry is about six-one.

5 Q. Okay. You collected Government's Number 138? Yes?

6 A. Yes.

7 Q. Did you alter Government's 133 in any way or is this
8 how they were collected? Minus the circles.

9 A. Yes, this is how they were collected.

10 Q. You didn't cuff the pants at the bottom?

11 A. I don't know what DNA did during their testing, but
12 I'm sure they did roll them up to get the scrapings from
13 underneath.

14 Q. You're sure they are? You can testify to that?

15 A. Yeah, I'm pretty sure that DNA had to scape the
16 inside. They testified the cuffs or the bottom are the
17 best places that they're gonna have contact with the skin.

18 Q. Actually he said waistband.

19 A. He said cuff, too. Shirts and collars as well.

20 Q. Right, right. Shirts and collars and waistband for
21 jeans?

22 A. Right.

23 Q. Right. And you took pictures of those jeans where you
24 found them?

25 A. Yes.

1 Q. And you didn't see any other men's clothing there. Is
2 that what you testified to?

3 A. I said I don't recall seeing anything that stood out
4 to me as far as being men's clothing.

5 Q. Okay. So these dark jeans here, you --

6 A. I don't know.

7 Q. You don't know?

8 A. No.

9 Q. The white shirt?

10 A. (Shakes head.)

11 Q. You don't know?

12 A. I don't know.

13 Q. Okay. You met with Mr. Keith. He gave you a
14 description?

15 A. Yes.

16 Q. A black T-shirt?

17 A. Correct.

18 Q. He never described any tattoos?

19 A. It was dark.

20 Q. I'm sorry. It's a yes or no question. He never
21 described any tattoos?

22 A. No.

23 Q. Okay. You never interviewed Kayla?

24 A. No, I didn't.

25 Q. I'm sorry?

1 A. No.

2 Q. Okay. You investigated the distance between the
3 locations?

4 A. As far as what?

5 Q. As far as knowing how long it takes to get from
6 Ms. Katio's house to (sic) -- or ?

7 A. I never drove it and timed it.

8 Q. Okay. I want to finish up briefly. You talked that
9 you -- that there was a Cellebrite examination done of the
10 phones, right?

11 A. Yes, there was.

12 Q. And you reviewed it?

13 A. Yes.

14 Q. So you're familiar that there are three different text
15 messages in the relevant time period from Nick --

16 **MS. CAMPBELL:** Objection, Your Honor. If she wants
17 to talk about those, I'll be happy to provide them and she
18 can put them in evidence.

19 **THE COURT:** All right. Come up a minute.

20 (Proceedings held at the bench; not reported.)

21 BY MS. ZMROCZEK:

22 Q. You knew there were text messages between Brandon and
23 Nick?

24 A. Yes.

25 Q. Lastly, Investigator Carwell, you subpoenaed cell

1 phone records and cell towers you said, right?

2 A. Yes.

3 Q. And you received that subpoena?

4 A. Yes.

5 Q. You received the return?

6 A. Right. Yes.

7 Q. And then you turned that information over to an
8 investigator in your office?

9 A. Linda Houck. She's the supervisor over the intel
10 unit.

11 Q. Okay. And because we can use cell phone records to
12 help locate where phones are at a certain time, right?

13 A. Right.

14 Q. And there were two phone calls --

15 **THE COURT:** Wait just a minute. Now you can't
16 testify.

17 **MS. CAMPBELL:** Objection, Your Honor. I mean, if she
18 wants --

19 **THE COURT:** Objection's sustained.

20 **MS. CAMPBELL:** Thank you.

21 BY MS. ZMROCZEK:

22 Q. You were aware that it provided you an out -- an
23 output of times for the phone calls?

24 A. She believed -- or she told me that --

25 **MS. CAMPBELL:** Objection.

1 **MS. ZMROCZEK:** Don't tell me what she said.

2 **THE COURT:** You can't testify to what she said.

3 BY MS. ZMROCZEK:

4 Q. My question is you were aware that you received
5 records with cell phone sites?

6 A. Yes.

7 Q. During the exact relevant time of this incident?

8 **MS. CAMPBELL:** Objection, Your Honor.

9 **THE COURT:** All right. He's answered the question.
10 You're trying to do indirectly what you can't do directly
11 by getting the point across. He said he's aware that there
12 were records to that effect and that's as far as it can go.

13 **MS. ZMROCZEK:** Thank you.

14 BY MS. ZMROCZEK:

15 Q. When you give -- when you collect that kind of
16 evidence you said you turn it over to the experts?

17 A. Sometimes. Sometimes I'll -- I'll look at them myself
18 or we'll both look at them.

19 Q. Okay. But what did you do in this case?

20 A. I let her look at them.

21 Q. And you let her draw maps?

22 A. Yes.

23 Q. Okay. Because she's the expert that can tell you
24 where the phones were located during these times, right?

25 A. Yes, she can tell me where the phones are.

1 **MS. ZMROCZEK:** Thank you.

2 **THE COURT:** Redirect, Ms. Campbell?

3 **MS. CAMPBELL:** Your Honor, just a couple of questions.

4 REDIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q. She asked you about the physical description between
7 the two. Is there a significant physical disparity between
8 Nickilous Wallace and this young man?

9 A. Yes.

10 Q. And who is the one that's taller?

11 A. Brandon Berry.

12 Q. And how much shorter is Nickilous Wallace than Brandon
13 Berry?

14 A. Five-eight -- it's about four inches, I'd say, five
15 inches.

16 Q. Four to five inches?

17 A. Yes.

18 Q. Shorter?

19 A. Yes.

20 Q. And Brandon Berry is, again, what height
21 approximately?

22 A. Six-one.

23 Q. Who's the older of the two?

24 A. Brandon Berry is.

25 Q. By how much?

1 A. About two years.

2 Q. She asked you about video from Knuckle Up and the
3 other bar. Where did this robbery take place?

4 A. Off Trenholm Road, that area.

5 Q. Was there any video you could get from that area?

6 A. No.

7 Q. And didn't you, in fact, attempt to get video?

8 A. I did.

9 Q. From both bar areas as well?

10 A. Yes.

11 Q. And who -- she asked you about interviewing Kayla.
12 Who -- why was Kayla even there at the scene that day when
13 he was stopped?

14 A. That's who they were going to visit..

15 Q. So she had a relationship with the Defendant?

16 A. That's correct, Brandon Berry.

17 Q. As does Nickilous Wallace?

18 A. Yes.

19 **MS. CAMPBELL:** I beg the Court's indulgence.

20 BY MS. CAMPBELL:

21 Q. And you listened to the phone call between Brandon
22 Berry and Nickilous Wallace that's just been published to
23 the jury?

24 A. I did.

25 Q. And the case they were referencing was this case here?

1 A. Yes.

2 MS. CAMPBELL: Thank you.

3 THE COURT: Recross?

4 MS. ZMROCZEK: Thank you.

5 RECROSS EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. You didn't arrest Nickilous Wallace -- you didn't
8 arrest anybody else besides Brandon Berry for this?

9 A. Right. I only charged Brandon Berry.

10 Q. You would agree with me that video and telephone
11 records can't be altered or subject to interpretation, they
12 are what they are?

13 A. Right.

14 MS. ZMROCZEK: Thank you.

15 THE COURT: All right. Thank you, sir. You may step
16 down.

17 (Witness excused.)

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

20 MS. CAMPBELL: May I just check the exhibits real
21 quick?

22 THE COURT: Yes, ma'am.

23 MS. CAMPBELL: Thank you.

24 MS. WALKER: Your Honor, at this time the State rests.

25 THE COURT: All right.

1 All right. Ladies and gentlemen, you have heard the
2 State announce that they have rested. That means that you
3 have heard all of the testimony that you will hear from the
4 State at this time. There are now matters of the law that
5 I need to take up with the lawyers. I have to do that on
6 the record and outside of your presence.

7 You've been in the courtroom about hour and ten or
8 fifteen minutes, so it's probably appropriate that we take
9 our afternoon recess at this time as well. So we will
10 take up these matters of law and take a short recess for
11 court personnel and then be able to resume very shortly.
12 We'll try to get you back in the courtroom in the next
13 fifteen minutes or so.

14 Thank you. You can go to your jury room and do not
15 discuss the case among yourselves.

16 (Whereupon, the jury retires to the jury room at
17 3:27 PM.)

18 **THE COURT:** All right. Now, Ms. Zmroczek, are there
19 motions on behalf of the Defendant?

20 **MS. ZMROCZEK:** Your Honor, at this time we would move
21 for a directed verdict specifically on the child neglect
22 charge. We think that the evidence that's been proven
23 shows that there was failure to restrain the child, which
24 is a blue ticket, and we would ask that that charge be
25 nol-prosed specifically. And the rest, Your Honor --

1 **THE COURT:** Whoa, whoa, whoa. Why? I don't
2 understand. I know you're asking for it to be dismissed,
3 but for what reason?

4 **MS. ZMROCZEK:** For -- excuse me. For a directed
5 verdict, not for nol-pros, Your Honor.

6 **THE COURT:** Well, I mean on what basis?

7 **MS. ZMROCZEK:** The basis, Your Honor, would be that
8 the evidence testified to would show that -- that Mr. Berry
9 didn't have the child restrained, which is -- under the
10 case law, Your Honor, for -- to be guilty of child neglect,
11 you have to have -- and I'm reading from State v. Jenkins.
12 Unlawful neglect, Your Honor, lists elements specifically
13 to do with health and welfare so that the life, health or
14 comfort is in danger or likely to be in danger. Your
15 Honor, we would say that -- at this time that the elements
16 have not been proved in that case.

17 **THE COURT:** Well, you agree with me the law of this
18 state -- the statute of this state is that the child must
19 -- a child under a certain age must be restrained in a
20 proper child restraint seat?

21 **MS. ZMROCZEK:** I agree.

22 **THE COURT:** And failure to do so is a violation of
23 that law?

24 **MS. ZMROCZEK:** It is, Your Honor, and I agree with
25 that and there is a specific law for that.

1 **THE COURT:** All right. Then why is that not -- the
2 failure of an adult to take that precaution, why is that
3 not unlawful neglect of the child?

4 **MS. ZMROCZEK:** Because there are two separate -- there
5 are two separate elements. I agree that he is guilty of
6 not restraining his child, which is a blue ticket, Your
7 Honor, which is what Officer Pennington testified to. It's
8 a blue ticket to not restrain your child. I do not believe
9 that that rises to the level of neglect.

10 **THE COURT:** Okay. Ms. Walker?

11 **MS. WALKER:** Your Honor, I -- I understand that point,
12 but not only does he fail to restrain the child, he then
13 speeds off with the child unrestrained fleeing from the
14 police. And one of the elements of the unlawful neglect
15 charge, Your Honor, is abandonment and then he, by his own
16 words, looks at the child in the back seat of the car and
17 then flees and leaves the child unattended in the car. So
18 not only has he put the child at an unreasonable risk of
19 harm to the child's safety by fleeing police officers with
20 the child unrestrained in a moving car, he then leaves the
21 car in reverse, exits the car and abandons his own child in
22 a moving vehicle, Your Honor.

23 **THE COURT:** What about that, Ms. Zmroczek? How about
24 this leaving the child in the car and taking off running,
25 aside from the restraint provision?

1 **MS. ZMROCZEK:** Again, Your Honor, the testimony from
2 the stand was that when the mother came she was not in
3 fear, she was not affect --

4 **THE COURT:** Yeah, but that doesn't -- I mean, that --
5 why wouldn't it? It doesn't have to -- it has to place her
6 in fear, she doesn't have to be in fear. Just has to be
7 placed in any danger. Why wouldn't running from the police
8 and then abandoning the car with a two-year-old child in it
9 be unlawful neglect?

10 **MS. ZMROCZEK:** Your Honor, it's simply our position
11 that those -- those facts do not rise to that.

12 **THE COURT:** All right. That motion will be
13 respectfully denied.

14 **MS. ZMROCZEK:** And as far as the others, Your Honor,
15 we would just ask for a directed verdict just due to the
16 insufficiency of the evidence.

17 **THE COURT:** Directed verdict what?

18 **MS. ZMROCZEK:** Due to the insufficiency of evidence.

19 **THE COURT:** All right. The way it's worded, that
20 makes it very easy, Ms. Zmroczek. The Rule 19 provides
21 that the -- on motion of the Defendant or on it's own
22 motion, the Court may direct a verdict in the defendant's
23 favor on any offense charged in the indictment after the
24 evidence on either side is closed if there's a failure of
25 competent evidence tending to prove the charge in the

1 indictment.

2 I've always thought that the word "competent" is an
3 unfortunate word used in that rule because it implies a
4 weighing of the evidence to determine the sufficiency. I
5 was appointed a number of years ago to chair a task force
6 for revision of the criminal rules. We worked on those
7 diligently for a couple of years, submitted them to the
8 Supreme Court, and there they sit. One of the things that
9 we wanted to change was the word "competent" when you have
10 a motion for directed verdict because it does imply a
11 weighing of the testimony. But the rule goes on to say in
12 ruling on this motion the trial judge can consider only the
13 existence or nonexistence of the evidence and not its
14 weight.

15 And so based upon the fact that the motion's made on
16 the insufficiency of the evidence, not on the nonexistence
17 of the evidence, the motion would be respectfully denied.

18 **MS. ZMROCZEK:** Thank you.

19 **THE COURT:** All right. Ms. Zmroczek, is your client
20 prepared to address the Fifth Amendment situation?

21 **MS. ZMROCZEK:** He is, Your Honor.

22 **THE COURT:** All right. Would you stand, please, sir?

23 Mr. Berry, yesterday I advised you of your rights
24 under the Fifth Amendment to the Constitution and your
25 right to remain silent. At that time I asked you if you

1 understood what I had explained to you about your privilege
2 against self-incrimination and you indicated you did; is
3 that correct?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Do you have any questions that you want to
6 ask me about your Fifth Amendment rights?

7 **THE DEFENDANT:** No, sir.

8 **THE COURT:** Have you had an opportunity to consult
9 with your lawyers about whether you should or should not
10 testify?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Have you understood your discussions with
13 your lawyer about your Fifth Amendment rights?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Do you have any questions of her or me
16 that you would like to ask us about your Fifth Amendment
17 rights?

18 **THE DEFENDANT:** No, sir.

19 **THE COURT:** Have you made a decision as to whether you
20 do or do not wish to testify in this case?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** And what is that decision?

23 **THE DEFENDANT:** I wish not to.

24 **THE COURT:** You wish not to. All right. And is that
25 decision on your part made freely and voluntarily?

1 **THE DEFENDANT:** Voluntarily.

2 **THE COURT:** All right. The Court would find,
3 therefore, that the Defendant has chosen to exercise his
4 rights under the Fifth Amendment to the Constitution of
5 the United States and the similar counterpart provision of
6 the Constitution of the State of South Carolina; has made
7 a free, voluntary, intelligent and knowing decision to
8 exercise that right and not testify, and has had those
9 rights explained to him both by the Court and by his
10 attorney.

11 All right, sir. Thank you. You may be seated.

12 All right. Ms. Zmroczek, with the Defendant not
13 testifying, will the Defendant be presenting any further
14 testimony or any evidence?

15 **MS. ZMROCZEK:** Will not, Your Honor. The defense will
16 rest.

17 **THE COURT:** Okay. So you will rest at this time?

18 **MS. ZMROCZEK:** Yes, sir.

19 **THE COURT:** All right. We'll have to do that on the
20 record.

21 All right. Counsel, come up, please.

22 (Proceedings held at the bench; not reported.)

23 **THE COURT:** All right. Let the record reflect that a
24 note has been handed to me by the clerk that was handed to
25 her by the bailiff who got it from a juror who indicated

1 that he had worked on the Statewide camera system in the
2 Five Points area around Yesterdays and some of The Vista.

3 After sharing this with counsel, both parties agree
4 that no action needs to be taken in response to that, and
5 we will make the note a part of the record as a Court's
6 exhibit so the record will be complete, but that no
7 instruction or action needs to be taken.

8 Do you agree with that, Ms. Walker?

9 **MS. WALKER:** Yes, Your Honor.

10 **THE COURT:** Do you agree with that?

11 **MS. ZMROCZEK:** I do.

12 **THE COURT:** All let. The record reflect.

13 (Court's Exhibit Number 6, Juror Number 54 Note, was
14 marked for identification.)

15 **THE COURT:** All right. I'm gonna bring the jury back
16 in and when I do I'm going to ask the defense if they wish
17 to present any evidence and you can rest on the record at
18 that time and then I am going to excuse the jury because it
19 is about 3:35. By the time we hear arguments, it will be
20 4:30 at least and the charge will run us past 5:00 and it
21 would really be too late to send the matter to the jury
22 this afternoon. So I'm going to bring the jury back, if it
23 suits them, at 9:00 in the morning since it is a Friday in
24 an attempt to get the arguments in the morning and go to
25 the jury by mid morning tomorrow morning.

1 Any objection to that procedure on behalf of the
2 State, Ms. Campbell or Ms. Walker?

3 **MS. WALKER:** No, Your Honor.

4 **THE COURT:** On behalf of defense?

5 **MS. ZMROCZEK:** No objection.

6 **THE COURT:** All right. Bring the jury in, please.

7 (Whereupon, the jury returns to the courtroom at
8 3:39 PM.)

9 **BAILIFF:** Jurors seated, Your Honor.

10 **THE COURT:** All right. Thank you. As I said, ladies
11 and gentlemen, you've now heard the testimony from the
12 State and now the Defendant will have the opportunity to
13 present any evidence or testimony to you that he wishes to
14 present.

15 Ms. Zmroczek?

16 **MS. ZMROCZEK:** The defense rests, Your Honor.

17 **THE COURT:** All right. The Defendant has announced
18 through his attorney that the defense has rested, so that
19 means that you have heard all of the testimony that you
20 will hear in this case. There are only two things that
21 remain to be done; those are the arguments of counsel and
22 the instructions on the law by the Court. However, it is
23 now twenty minutes till four and if we were to go into
24 closing arguments this afternoon -- or summations this
25 afternoon and instructions, it would mean that this case --

1 you would not be able to get this case for deliberation
2 until after 5:00, maybe closer to 5:30, and -- you know, I
3 tell lawyers this all the time. I don't mind making the
4 lawyers work, but I know that jurors have lives outside of
5 this courtroom and so I try to be considerate of their
6 time. I think the better thing for us to do is to adjourn
7 for the afternoon and do arguments and charge first thing
8 in the morning, so that's what we're going to do.

9 I am going to allow you to go to your homes and
10 families. I'm gonna ask, and I'll ask if it suits
11 everybody, if it doesn't suit you, tell me, but I'd like
12 to ask everybody to be back at 9:00 tomorrow morning. Does
13 that suit everyone? 9:00? Okay. I see a lot of nods,
14 affirmatives, no negatives, so we will allow them -- we
15 will plan to be ready to convene tomorrow morning at 9:00.

16 Over the evening recess, do not discuss the case with
17 anyone, do not allow anyone to discuss it with you, and do
18 not discuss it in the jury room until you have heard the
19 arguments of counsel and the instructions on the law by the
20 Court.

21 With those admonitions, I'm going to excuse you for
22 the afternoon and ask that you be back, please, tomorrow
23 morning at 9:00 and I will see you at that time. Thank you
24 very much.

25 (Whereupon, the jury is excused for the day at