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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS**

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The Honorable Brooks P. Goldsmith, Circuit Court Judge
SC Court of Appeals

Case No. (s) 2012-GC-07-2246 & 2012- GS-07-2247

State of South Carolina

Respondent,

v.

Walter Tucker,

Appellant.

**RECORD ON APPEAL
VOLUME 3 OF 5**

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1 a fuss over who ought to be foreperson. I can appoint
2 somebody if y'all can't agree. But I would like for you to
3 try to do that.

4 And I will see you at about 9:30 in the morning, ladies
5 and gentlemen. I will ask you be in the jury room at that
6 time. Thank you. You are excused.

7 (WHEREUPON, jury exits courtroom.)

8 THE BAILIFF: The jury is clear, Your Honor.

9 THE COURT: Anything we need to do today before recess?

10 MR. THORNTON: Nothing from the State, Judge.

11 MR. WRIGHT: Nothing from the defense, Judge.

12 THE COURT: What does it look like, Solicitor, from
13 your standpoint for your presentation?

14 MR. THORNTON: Your Honor, if you will give me not even
15 one minute I can probably answer that question.

16 We will finish tomorrow, Judge. It might -- I might
17 have eight left. Now there is a possibility of one or two
18 obviously depending on how some people testify that I have
19 as backups. But I would say no more than -- no more than
20 ten, but probably eight. And we went through 15 roughly
21 today, so we will definitely be done sometime tomorrow.

22 Again, it is hard for me based on what cross is going
23 to be it is hard for me to judge exactly. But I'm going to
24 have all of my witnesses tomorrow. Let's put it that way.
25 I am assuming I will be done by probably early afternoon,

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1 maybe lunch time. But somewhere between late morning and
2 early afternoon.

3 THE COURT: Still no clue over here?

4 MR. WRIGHT: Well, Judge, I have got one witness that I
5 say that we have under subpoena -- actually two under
6 subpoena. One may not be a big deal.

7 Of course Mr. Jabar right now I plan to call. I don't
8 think I will take too long. So I don't see any reason why
9 we would not both the State and defense finish tomorrow. I
10 just don't know how well into the afternoon it will be if
11 the court wanted to try to push to get closing.

12 THE COURT: What if we -- we probably won't, but what
13 if we finished presentation of all by one o'clock?

14 MR. THORNTON: If we finish by one clock, Judge, I will
15 be ready to close. I mean I will do what I normally do with
16 Your Honor and I will probably ask for a 20- or 30-minute
17 break or something to kind of organize everything.

18 But I can be ready to close tomorrow if we finish that
19 early. I'll go ahead and start making some prep tonight.

20 MR. WRIGHT: Well, Judge, I think one thing is when you
21 make a decision as to the Keamber Bigelow that will greatly
22 affect too I think how quickly we finish.

23 THE COURT: Yeah.

24 MR. WRIGHT: But if that is coming in I have a feeling
25 it is going to be well into the afternoon though.

1 THE COURT: It would probably, yeah.

2 MR. WRIGHT: I would prefer quite honestly with you
3 probably just close it first thing Thursday morning
4 regardless of what time. But, you know, whatever the court
5 instructs.

6 THE COURT: All right. We will be at recess until
7 9:15.

8 (WHEREUPON, recess for the day, April 13, 2015.)

9 (WHEREUPON, resume trial, April 14, 2015.)

10 THE COURT: All right. The first thing I believe we
11 need to take up is the defense motion concerning the
12 admissibility of Ms. Bigelow, the witness Ms. Bigelow's
13 proposed testimony.

14 I have listened to the disk that was given to me
15 yesterday. And I would be glad to hear from counsel.

16 MR. WRIGHT: Your Honor, and I am not trying to belabor
17 the court's time because I know the court had made an
18 initial ruling and it is not my practice to try to dispute a
19 ruling once made; however, when I went back to listen
20 specifically to Ms. Bigelow's testimony and I sort of set
21 forth the facts that I believe the State announced during
22 the hearing and then I cited to timestamp points in the
23 video that Your Honor had now watched and my hope was to
24 show the court that the facts upon which the court should
25 consider her testimony and make a ruling are in fact

1 different than announced.

2 If the court recalls, when we were at that hearing I
3 believe the State essentially said that this witness will
4 provide testimony that my client wanted to harm, do harm,
5 and arranged for the murder of Travis Polite, that
6 ultimately he had arranged for a gentleman named Savage to
7 do that murder, that there was a gun in the car and had even
8 seen -- and I would just say whatever the record showed,
9 there was information as if that car somehow belonged to
10 Savage that describing the rear-end damage was a way of sort
11 of identifying that car but that the gun in that car was to
12 be used to facilitate this murder. And I was also left with
13 the impression that Savage is arrested sort of almost in
14 route or somewhere during the facilitation of this.

15 But when we look at the interview, Judge, she never
16 says the name Travis until after one of the investigators
17 tells her the name Travis. So I don't think -- I think it
18 is important for the court to know this isn't that she was
19 saying this person Travis. It was she was saying a person
20 unknown to her, essentially, and labeled that person Travis
21 only after her second interview with Investigator Eaton.

22 Now she also specifically said in her interview Savage
23 was never going to be the one to do any of this. She had
24 actually talked to Savage and he would never do that; he is
25 not a killer.

1 So her words in her interview specifically said Savage
2 wasn't going to be the, quote, assassin, for lack of a
3 better word.

4 She also said that car was a rental car that they had
5 rented from Atlanta that while she was driving it it was
6 rear-ended in an accident. So the car is not unique to
7 Savage or unique to any person. It is just a rental car
8 that had rear-end damage.

9 The gun, yes, is hidden in the gear shift. That is --
10 that was accurate. But she also specifically said that gun
11 wasn't the gun that was going to be used for any, quote,
12 unquote, alleged murder.

13 So I at least wanted to make sure when the court
14 considers whether this is 404(b) -- and I understand the
15 State has relied on Edwards for the idea that consciousness
16 of guilt can come in under 404(b). I concede as an officer
17 of the court that that is a true statement of law. But then
18 the question then arises, what about any of the alleged
19 statements of my client wanting to do violence to a
20 codefendant rise to the level of a statement of intimidation
21 or calculated to intimidate a person. One, that person
22 wasn't a witness.

23 But when we look at what Keamber is saying, she is
24 basically saying an unknown person with some unknown weapon
25 at some unknown time may at some point do something to this

1 unknown codefendant. Because she at least always did say
2 that; she said codefendant; not witness, but codefendant.

3 So from a reliability standpoint from whether this is
4 truly consciousness of guilt -- and I think, Judge, I may
5 have also cited, his alleged motive wasn't to intimidate but
6 it was because -- or it wasn't demonstrative of guilt, but
7 it was demonstrative that he said I didn't do that. And he
8 is saying that I shot and killed Mr. Greer. That was a lie,
9 which we know happens to be true; it was a lie. But at no
10 point was Travis a witness or signed up.

11 So I at least just ask the court -- and I know I am
12 being somewhat repetitive now from our earlier arguments,
13 but I wanted the court to at least get the facts of the
14 interview and then make the analysis under 404(b) and 403
15 and see if that would change the court's opinion as to
16 whether or not.

17 Now the last concern I put in there -- and I am not
18 suggesting Investigator Eaton had some willful plan to
19 change this witness's testimony in some form or fashion.
20 But at the end when he starts to explain to her who the
21 codefendants are, what the situation is in this case, he is
22 now giving a witness information she clearly didn't have
23 that this witness may now be adopting and using in her
24 testimony as if she heard it and was aware of it from my
25 client.

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1 That was the concern I put sort of at the end that it
2 amounts, albeit maybe not willful, but it amounts to now
3 influencing or tampering with a witness in terms of what her
4 knowledge in her testimony should be.

5 So I didn't want it to be misconstrued by either the
6 solicitor's office or that particular investigator; but the
7 intent doesn't matter, it is the effect that you have now
8 put a name on a person she couldn't name and have you now
9 given her information that flows into her overall testimony
10 that she didn't have before you told her. And that is the
11 further concern we now have with Ms. Bigelow testifying as
12 to this.

13 Because again, none of it goes to this case in terms of
14 what has to be proved in this case. The whole issue here
15 now is it consciousness of guilt. And I just don't think it
16 is, Judge. But I defer to the court.

17 THE COURT: Let me ask a couple questions of you or
18 point out a few things ---

19 MR. WRIGHT: Yes, Judge.

20 THE COURT: --- that I see that are to me seem to be
21 important. First of all Bigelow says that the defendant
22 said that he had a codefendant who was in Beaufort and he
23 was going to have somebody murdered. The codefendant. That
24 there was a trial scheduled October the 20th I think is the
25 date.

1 MR. WRIGHT: Yes, Judge.

2 THE COURT: And I don't know. I am going to assume
3 that there would be some testimony that that -- which a
4 trial date?

5 MR. WRIGHT: Yes, Judge. I'd want to take issue with
6 that as a trial date.

7 THE COURT: And that this person, the codefendant, is
8 the one who is connecting him to the murder and he was in
9 fact going to kill or have killed the codefendant so there
10 would not be a trial.

11 When she is talking to the detective she is trying to
12 remember the name and she says T. And he says Travis, and
13 she says yes. Or something like that. Conversation between
14 the two of them. Something like that.

15 MR. WRIGHT: Judge, and I acknowledge she does do, but
16 that six -- 6:50, 7:53 she says Travis may have been the
17 person. Because on previous occasions she said she just
18 doesn't know the name. But towards that ---

19 THE COURT: Travis or something like that.

20 MR. WRIGHT: Yeah.

21 THE COURT: But then she goes on to say I believe
22 Travis is who you are referring to.

23 MR. WRIGHT: Yes.

24 THE COURT: And then she went on to say that we needed
25 to help him -- that he said we needed to help him get money

1 to help him hire someone, Savage or somebody, to kill the
2 codefendant.

3 MR. WRIGHT: And she does say that, Judge. I concede
4 that.

5 THE COURT: And then again as we have mentioned before,
6 there is discussion about him saying he was involved in the
7 robbery and was -- but not the murder, but he -- but he says
8 he was shooting behind himself without looking at what he
9 was shooting.

10 Solicitor.

11 MR. THORNTON: Thank you, Your Honor. Your Honor, just
12 briefly. First of all I would take note that I had
13 Investigator Heaton go to the interview again and write
14 everything down that he said and go through this with me.
15 And what he -- or go through this. And he presented it to
16 me this morning.

17 One thing I would point out to the court, I believe
18 that Mr. Wright and Your Honor are correct about the six
19 minute or 6:57 mark she does say what the court has
20 indicated. However at 6:53:44 before anything is mentioned
21 by Mr. Heaton she says maybe his name is -- I have heard him
22 say a name Travis or something like that. Which is the
23 first mention of that. Mr. Heaton hadn't said anything
24 about Travis or named any of the codefendants. Now he does
25 do that later. She is clearly the first person that uses

1 the name Travis.

2 As Your Honor has already pointed out, you know, his
3 admission about that he was coming down here to kill the
4 codefendant -- and I don't want us to get confused with
5 semantics, but in Edwards -- just because I have at that
6 time not called a person as a witness doesn't mean they are
7 not a witness to the event.

8 Mr. Wright I think would have to concede his client was
9 well aware that Travis Polite had given a videotaped
10 statement in which he implicates Mr. Tucker.

11 And as I have conceded and will concede in front of
12 this jury, I do not believe all of that statement.
13 Obviously we haven't talked about the statement itself, but
14 I do not believe that Mr. Tucker is the one who went out and
15 fired the first bullet which is most likely frankly the
16 fatal bullet.

17 But that doesn't absolve him. It doesn't mean that
18 everything Mr. Polite said wasn't true. And it doesn't mean
19 everything that Mr. Polite said wasn't true. And it doesn't
20 mean that he wasn't a witness to the events or could have
21 been called as a witness by the State at some point, because
22 he was actually had already given a statement implicating
23 Mr. Tucker.

24 Also, Judge, I would point out that when asked about it
25 this is not about he didn't do it. What he -- what she says

1 is he admits to doing the robbery and admits to shooting
2 during the robbery. He says he didn't do the killing or the
3 murder is what she is referring to. But the way he
4 explained it, he is not sure because he was running away --
5 she physically does it shooting like shooting behind him or
6 to the side of him. And he is not sure.

7 And the other thing I just wanted to put on the record
8 was it was certainly not my intent if I got anything
9 incorrect in what the tape was. I was simply summarizing.

10 I do think it is clear from the tape, Judge, that his
11 intent according to Keamber was that Cedrick was going to
12 be the one or someone else, as the court has already read
13 from it, was going to make the adjustment, meaning kill
14 Travis.

15 Cedric didn't want to do it. And when I said he came
16 across, you know, to do reconnaissance I think that was his
17 story.

18 My point in saying all of that was that my intent was
19 to put up Dylan Hightower if the court allows Keamber to
20 testify to talk about the fact that they did find Cedric in
21 South Carolina. It was in a car with rear-end damage. Not
22 to show that Cedric was the one in the car wreck but to show
23 that that coincided with what she said, that he was in a
24 vehicle and it was a rental and it had rear-end damage and
25 that inside that vehicle was a gun. Which to me lends her

1 credibility. Because when Dylan Hightower went out there
2 that is what he found.

3 We have pictures of that. Obviously the gun has been
4 shared with the defense. So I wasn't trying to say that he
5 was literally on his way over to do the murder. I simply
6 said that it coincided with what Ms. Bigelow I believe said.

7 I do think, Your Honor, with all due respect to Mr.
8 Wright's motion, I do think I was accurate at least as
9 paraphrasing what she would say. I disagree that Mr. Heaton
10 gave her information up front about Travis that she didn't
11 already know. She is the first one -- she is the first
12 person that mentions the word Travis.

13 And without belaboring the point going line by line I
14 can turn this over to Mr. Wright and the court. I think
15 clearly my recitation of the facts at least as far as
16 paraphrasing was accurate. But I was happy to turn it over
17 to the court and let you listen to it as you saw fit.

18 I do think it comes in. I do think the admissions that
19 he made about being a part of the robbery and not sure if he
20 did the murder or not I think all that comes in just as
21 admissions by a defendant. And I think that under Edwards
22 the threats against Travis Polite come in as well. Thank
23 you, Your Honor.

24 MR. WRIGHT: Judge, I don't want to repeat myself. I
25 stand on my prior argument.

1 THE COURT: I have considered the motion. As I said
2 earlier, I have now listened to and viewed the DVD and I
3 find no reason to change the court's -- the ruling -- the
4 prior ruling of the court.

5 Now let's talk about parameters. Let's suppose that --
6 well, what time would you guess that witness will be called?

7 MR. THORNTON: Your Honor, if I could have one moment.
8 (WHEREUPON, counselors confer.)

9 MR. THORNTON: Probably 10:30 to 11:00, Your Honor, is
10 probably what I would guess. We have two witnesses. One
11 I've just been told -- the first witness is going to be
12 Detective Gobel. I have been told by Mr. Wright that may be
13 a while. And then the second is Verizon which should be
14 pretty quick. And then after that I believe is where we
15 have -- then I have a very short witness from North
16 Carolina, Detective Maxwell. And then after that would be
17 Ms. Bigelow.

18 THE COURT: All right.

19 MR. THORNTON: So if the court wants to go ahead and
20 get started and then stop for a morning break and do it
21 then, that is fine with me. I think we will have depending
22 on -- we will at least get through three witnesses before we
23 have got to her.

24 THE COURT: So we are looking at an hour-and-a-half or
25 so before she comes?

1 MR. THORNTON: My part is not going to be anywhere near
2 that long. But Mr. Wright indicated his cross exam of
3 Detective Gobel could be extensive.

4 THE COURT: All right. Let's try and do it during the
5 break then. Jurors have passed a note through the bailiff
6 indicating they have selected Juror 296 to be the
7 foreperson. The court agrees with that. The court notes
8 that that individual has paid particular attention to what
9 has been going on.

10 The State is ready for the jury then?

11 MR. THORNTON: The State is ready, Your Honor.

12 THE COURT: Is the defense ready for the jury?

13 MR. WRIGHT: Oh, I am sorry, Judge.

14 THE COURT: Are you ready for the jury?

15 MR. WRIGHT: Yes, Judge.

16 THE COURT: Okay. Let's bring the jury.

17 (WHEREUPON, jury enters courtroom.)

18 (WHEREUPON, the witness was duly sworn.)

19 THE CLERK: Please have a seat and state your full
20 name.

21 THE WITNESS: John Gobel, G-O-B-E-L.

22 **DIRECT EXAMINATION BY MR. THORNTON OF JOHN GOBEL:**

23 Q. Mr. Gobel, who do you work for, sir?

24 A. Beaufort County Sheriff's Office.

25 Q. And what do you do for the Beaufort County Sheriff's

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1 Office?

2 A. At the time of trial I was a criminal investigator for
3 the Sheriff's Office.

4 Q. And how long have you been in law-enforcement, sir?

5 A. I began my law enforcement career in the military
6 police the end of '79 or the beginning of '80 in the Marine
7 Corps military police. I left the Marine Corps in 1988 and
8 went to work for the Sheriff's Office where I continued
9 through my career. And mostly narcotics. I worked 17 years
10 in narcotics.

11 In 2006 I retired. After being retired for three years
12 my wife told me I needed to go back to work. So in 2009 I
13 came back to work and I have been working criminal
14 investigation since that time.

15 Q. And are you the case officer; for lack of a better
16 phrase, are you the case officer on the case involving the
17 death of Quantez Greer?

18 A. Yes, sir.

19 Q. Let me ask you a question. Did you get notified to go
20 to the scene, or how does that work?

21 A. Yes, the reason I became a case officer is because we
22 have detectives that work northern Beaufort County. And we
23 have a duty roster. And you simply become a case officer
24 when you are on duty and something happens.

25 That was my duty day when the call came out. And I was

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1 actually out and about and heard it on the radio and
2 responded to the scene.

3 Q. We have heard a name. Let me cover this very quickly.
4 We have heard the name Antonio Brewer as the owner of the
5 trailer where this occurred; is that correct?

6 A. That's right.

7 Q. And where is he currently if you know?

8 A. Mr. Brewer is deceased.

9 Q. So he is not able to come and testify at this time?

10 A. No, sir, he is not.

11 Q. Now when you got to the scene did you do anything in
12 particular; where did you go, and did you talk to anybody?

13 A. I was initially met by Sergeant Rodriquez who was the
14 patrol supervisor. The uniformed patrol units had arrived
15 at the scene before I got there. EMS had also already
16 arrived and already transported the victim from the scene
17 before I got there.

18 Sergeant Rodriquez and his men had already taped off
19 the scene. They had already marked off a lot of the things
20 that you have heard as evidence, the cones. And he took me
21 and walked me through that scene showing me what had been
22 located and what had been found and where everything took
23 place.

24 Q. Did you at any time talk to a witness, that obviously
25 you as case officer have been sitting with me, Jessica

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1 Power?

2 A. Yes. While I was talking with Sergeant Rodriguez and
3 walking through the scene another uniformed officer came up
4 and told me that a witness had been located and that that
5 witness was located in the back of the mobile home park at
6 Lot Number 42.

7 I then went back to Lot Number 42 where I met with the
8 owner of the house. I believe his name was Chip Jabar and
9 Ms. Power.

10 Q. And did you at that time conduct an interview of Ms.
11 Power?

12 A. I did.

13 Q. And subsequent to that there is a statement that has
14 been entered into evidence. Did she -- subsequent to your
15 discussion with her did she fill out a statement?

16 A. Yes.

17 Q. Let me ask you this. I hate to add all of that up, but
18 how long have you been doing this?

19 A. My math is probably through the Arkansas educational
20 system, but somewhere around 30 years.

21 Q. All right. So roughly 30 years. Is it unusual for
22 someone to write a statement out and leave details out of a
23 written statement?

24 A. Naturally.

25 Q. And did you talk to her -- talk to Jessica orally as

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1 well as in writing?

2 A. I did. I actually conducted an oral interview.

3 Following that interview she completed a written statement.

4 I then left, came back and interviewed her a second time.

5 Q. I'm going to show you what has been marked as State's

6 Exhibit Number 30 and entered into evidence. Is that a

7 written statement that she gave you that day, she being

8 Jessica Power?

9 A. It is.

10 Q. One of the things I wanted to ask you about -- and let

11 me ask you this: Did you talk to her more than one time

12 during the course of this investigation?

13 A. Yes.

14 Q. Did you talk to her actually on that day on the sixth
15 when Quantez Greer was killed?

16 A. Yes.

17 Q. Let me ask you -- I'm going to show you what has been
18 marked as State's Exhibit 6 and 7. That has been identified
19 as the gun that was located. It is right in front of the
20 tongue of the trailer; is that correct?

21 A. Yes.

22 Q. Now while that is loading up so that the jury can see
23 it, you said to have been a cop for 30 years. Are you
24 familiar with how different type firearms operate?

25 A. I am.

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1 Q. And can you tell the jury. There was some question
2 about it. Can you tell the jury the difference for those of
3 them that may not know the difference between a semi
4 automatic pistol instead of a revolver, can you say what the
5 differences are; for instance, now that that is up on the
6 screen what type of gun is pictured in State's Exhibit 6 and
7 was found at the scene of Quantez Greer's murder?

8 A. That is a semi automatic pistol.

9 Q. And how exactly does that pistol operate?

10 A. Well, a semi automatic pistol the bullets are located
11 into a clip or a magazine. That magazine then inserts into
12 the well of the pistol. But at that point when you pull the
13 trigger the gun still won't fire as there is no round in the
14 chamber. You have to pull the slide back on the weapon,
15 release the slide which chambers a round.

16 At that point when you pull the trigger if the weapon
17 is working properly it will fire that round as it will force
18 the slide back again automatically. That slide will pick up
19 a second bullet, cast out the shell casing and put the new
20 bullet in the chamber.

21 Q. Now I believe it is Corporeal Disbrow when he
22 testified - and again you were present obviously for that
23 testimony - testified that the pistol pictured in State's
24 Exhibit, I believe it is six, State's Exhibit Number 6, was
25 located. The clip has 15 in it which was capacity and there

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1 was not a round in the chamber. Was that correct as far as
2 how that weapon was found?

3 A. That is correct.

4 Q. All right, now if I have a semi automatic pistol that
5 does not have a bullet in the chamber and if it is working
6 properly and I put a full magazine in and pulled the
7 trigger, what happens?

8 A. Nothing.

9 Q. If I had chambered a round and refilled the magazine so
10 that there was now fifteen in the magazine and one in the
11 chamber and I pulled the trigger, what would happen?

12 A. One round would be fired. A shell casing would be
13 expended. The slide would come back, would pick up one of
14 those 15 rounds and would put it in the chamber.

15 Q. So now you would have 14, in this case 14 in the clip
16 and one in the chamber at that point?

17 A. That's correct.

18 Q. So does it tell you anything in particular that you
19 have a full magazine and no round in the chamber?

20 A. Basically it tells me that weapon hasn't been fired.

21 Q. Now that is opposed to a revolver. And can you
22 describe, - because that term has been mentioned - just what
23 a revolver is?

24 A. A revolver is what you may have seen in cowboy movies.
25 They have been around for a long time. They have a cylinder

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1 that opens in the center of the pistol. It either flips out
2 or it pulls out. And you put the bullets in that cylinder.

3 You then put that cylinder back in line with the
4 barrel. When you pull the trigger on that weapon it will
5 fire because it is now loaded and there is a round in the
6 chamber, because the cylinder that you have loaded it to is
7 the chamber for the weapon.

8 And each time you fire it will keep firing until that
9 weapon completely rotates around that cylinder and all of
10 the bullets in that cylinder have been fired.

11 It doesn't kick out the shell casing. The bullet goes
12 out at the end of the barrow but the shell casing stays
13 inside of that cylinder where you loaded it, so there won't
14 be any shell casing on the ground after you have fired that
15 weapon unless you physically open it and empty the shell
16 casings out.

17 Q. Let me ask you this. The pistol that I think we
18 mentioned it but we did not put it in evidence. We have
19 photographs of it in evidence.

20 The pistol pictured in State's Exhibit 6 it has already
21 been testified to that could not have been the gun that
22 fired the bullet by Ms. Cromer from SLED because the
23 ballistics are not right. She indicated I believe it was a
24 40 or a 10 millimeter and that gun is a 9 millimeter; is
25 that correct?

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1 A. That is correct.

2 Q. Well, let me ask you this: Were you able to -- by you
3 I mean if you are aware. Was that gun registered to anyone
4 in particular?

5 A. Yes.

6 Q. And who was it registered to?

7 A. It was registered to the victim in this case, Mr.
8 Greer.

9 Q. And as a matter of fact I know you did not do the
10 analysis; but there was a DNA analysis on that weapon as
11 well, is that correct?

12 A. Yes, there was.

13 Q. And what was the result of that?

14 A. Mr. Greer's DNA was found on it.

15 Q. So clearly all of the evidence indicates that that was
16 Mr. Greer's pistol found at the scene; is that correct?

17 A. That's correct.

18 Q. One of the things I asked Ms. Power yesterday was about
19 two phone numbers in particular. And defense counsel
20 obviously has questioned her about some phone calls. Were
21 you able -- did she give you two phone numbers ---

22 A. She ---

23 Q. --- one being herself and one being Oouwee or Walter
24 Tucker?

25 A. Yes, sir.

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1 Q. And what is Jessica's phone number that she gave you?

2 A. 843-592-1021.

3 Q. And what was Mr. Tucker's phone number that she gave
4 you as far as on the date of that incident?

5 A. 813-394-5194.

6 MR. THORNTON: Court's indulgence please, Your Honor,
7 one moment.

8 Q. Detective Gobel, just one other question at least that
9 I can think of now. You know, I may have to recall you
10 later as I have done in the past.

11 But as a result of this investigation we have also
12 obviously heard testimony about Travis Polite that he has
13 had his trial and been convicted and so forth. But as to
14 this defendant, after talking with Jessica Powers and Mr.
15 Brewer and looking at the evidence did you do anything in
16 relation to Mr. Tucker at that time?

17 A. Yes, I prepared the probable cause on the arrest
18 warrants and presented those to a judge who then issued the
19 arrest warrants for Mr. Tucker.

20 Q. Thank you very much. Please answer any questions that
21 Mr. Wright has.

22 THE COURT: Cross-examination.

23 **CROSS-EXAMINATION BY MR. WRIGHT OF JOHN GOBEL:**

24 Q. Good morning, sir.

25 A. Good morning.

0 0413

1 Q. You first came in contact with Ms. Powers the same day
2 of the shooting, correct?

3 A. That's correct.

4 Q. Okay. And that was, what, 9/6/12; correct?

5 A. Yes.

6 Q. All right. And I think you said when you first got
7 there I guess the scene was secure. Other officers had
8 arrived, secured the scene; is that correct?

9 A. That's correct.

10 Q. When you first got there was Ms. Powers already there
11 for you to be able to talk to her?

12 A. I assume she was, but she -- to the best of my
13 knowledge she was hiding back at Lot 42 which was in the
14 back of the trailer park whereas the incident location was
15 more towards the front of the trailer park.

16 Q. Okay. And I think you said information, that
17 information, came via Chip Debar, correct?

18 A. That's correct.

19 Q. And is it Jabar or Debar? I don't want to mispronounce
20 his name.

21 A. I have Jabar.

22 Q. Jabar. And based on that information you were able to
23 make contact with Ms. Power, correct?

24 A. Yes.

25 Q. Did you make contact with her at that Lot 42 location

1 or did she come over to where you were at?

2 A. Actually went to Lot 42. I believe Mr. Jabar during
3 the 911 calls that we all heard at the beginning of the
4 trial I believe he called into 911 saying that Ms. Powers
5 was at his residence. He wasn't even there at that point.
6 He was coming home. And one of the uniformed officers went
7 back and made contact with Ms. Powers and Ms. Jabar who --
8 or Mr. Jabar who had arrived at that point.

9 Q. Okay.

10 A. They then came to the front of the trailer park and got
11 me.

12 Q. Okay. And so the jury knows, when we listened to those
13 911 calls that was probably the last call, Call Number 6,
14 with a male voice discussing her, ---

15 A. Yes.

16 Q. --- homegirl hiding?

17 A. Yes, sir.

18 Q. And he actually said the name Jessica Powers in his
19 call?

20 A. I believe he did.

21 Q. Okay. Now once you made contact with Ms. Powers you of
22 course began to ask her what happened; is that fair?

23 A. That's correct.

24 Q. Okay. And she told you things about what happened and
25 she executed a written statement?

0 0415

1 A. Yes, sir.

2 Q. Okay. And of course not withstanding her written
3 statement you also wrote things in your report that you
4 recall her telling you; is that ---

5 A. That's right.

6 Q. And you have your report, your supplemental report with
7 you up there?

8 A. I do.

9 Q. Okay. In fact on Page 2 is when you discuss your first
10 interview with Ms. Power, correct?

11 A. Yes.

12 Q. I am going to ask you some questions about that, okay?

13 A. Yes, sir.

14 Q. Isn't it true when she described Mr. Tucker she used
15 the name Oouwee; she said he was wearing a T-shirt and
16 shorts? Line 7 to the right.

17 A. That is correct.

18 Q. Okay. Now you were here in court when Ms. Power
19 testified, correct?

20 A. Yes.

21 Q. Okay. Now what you wrote -- you heard her testify that
22 both her and Mr. Greer got out of the car and approached the
23 trailer when she testified here in court, correct?

24 A. Yes, I did.

25 Q. In your supplemental report you did not denote that she

0 0416

1 ever said that Mr. Greer ever left the car, correct?

2 A. No, I didn't put in there that -- I don't recall that
3 she ever said that he did or didn't.

4 Q. Okay. Well, specifically she talked about being in the
5 car with Mr. Greer and he was giving her money, correct?

6 A. That's correct.

7 Q. And she told you that the money and a gun were located
8 in the center console, correct?

9 A. That's correct.

10 Q. In fact she said a couple of stacks of money were in
11 the console with the pistol, correct?

12 A. That's correct.

13 Q. And she indicated that Mr. Greer counted money off and
14 then gave her the money, correct?

15 A. That's correct.

16 Q. And I am going to go ahead and ask you to turn to the
17 next page, Page 3. She told you she put the money in her
18 purse and she went into the trailer with Oouwee, correct?

19 A. Correct. That's correct.

20 Q. And again, I am not trying to belabor the point. She
21 then indicates that she and Mr. Greer exited the vehicle and
22 were both trying to go into the trailer; she didn't say that
23 and you didn't denote that in your report, did you?

24 A. No, sir.

25 Q. Okay. She did say that the door was locked behind her

0 0417

1 when she got in, correct?

2 A. That's correct.

3 Q. But ultimately she says at the same time -- well, she
4 says Oouwee she says pulled a gun out but at the same time
5 another person jumped in her face; is that correct?

6 A. I believe he jumped from behind her.

7 Q. Okay.

8 A. Being she said that when she first walked in the room
9 there was another black male seated on the couch with
10 something on his head ---

11 Q. Yeah.

12 A. --- that she didn't recognize, and when she turned
13 around she is facing Oouwee now and Oouwee had a gun, they
14 were both standing in front of the door which puts her back
15 to the person that was on the couch, that person jumped on
16 her back and forced her to the ground.

17 Q. Okay. And ultimately she said they put a gun to the
18 back of her head and they were yelling where is the money
19 you stupid bitch?

20 A. Yes.

21 Q. Okay. And that is where you denoted in your report,
22 correct?

23 A. Yes, sir.

24 Q. Then at that point she tells you that Oouwee grabbed
25 the purse from her and took off, correct? Right below the

0 F418

1 quote.

2 A. Yes.

3 Q. Okay. And then she said there was a lot of yelling and
4 screaming and Oouwee says something about where is the rest
5 of the money, words to that effect; correct?

6 A. Yes.

7 Q. Okay. But then she said the other black male went out
8 the front door and she heard a single gunshot.

9 A. That's correct.

10 Q. She never told you that Oouwee gave a gun to this other
11 black male, did she?

12 A. No, she did not mention that.

13 Q. And she never said after giving a gun to this other
14 black male that Oouwee pulls a second gun out of his pants;
15 she never said that, did she?

16 A. No.

17 Q. She does say after hearing that single gunshot she does
18 say Oouwee ran out the front door and she heard more
19 gunshots?

20 A. That's correct.

21 Q. Okay. And at this point she has never said that there
22 are multiple pistols, correct?

23 A. It would imply through her testimony that both people
24 had pistols. She didn't say specifically where those
25 pistols came from, but from what she said to me she was

0 0419

1 implying that the first guy went out the door, he had a
2 pistol, he shot one time, and that Oouwee went out the
3 door after that and he had a pistol and he shot several
4 times.

5 Q. But that is not what you put in your report, is it?

6 A. Well, she just said they went out the door and shot.

7 Q. I understand, sir.

8 A. Yes, sir.

9 Q. But that is not what you put in your report, is it?

10 A. Well, she didn't say specifically where these guns came
11 from. She just said the man went out the door and she heard
12 gunshots.

13 Q. Let's step back a minute.

14 A. Yes, sir.

15 Q. The reason we do police reports clearly is to make sure
16 that we get them as much information as we can and
17 accurately put it down in the report, correct?

18 A. That's correct.

19 Q. Because clearly a lot of times from the time an event
20 happens until the time you may need that report could be a
21 substantial period of time, correct?

22 A. That's correct.

23 Q. And part of your training and your experience is making
24 sure you put all the information you are gathering into that
25 report to make it as accurate and thorough as possible,

0 0420

- 1 correct?
- 2 A. That's correct.
- 3 Q. So segwaying back, I understand what you just said to
- 4 the jury; but you didn't have that in your report anything
- 5 about her saying that Oouwee went outside and was shooting;
- 6 correct, yes or no?
- 7 A. She -- she said he went outside and she heard shots.
- 8 Q. Okay.
- 9 A. She has never said she saw him shoot anywhere.
- 10 Q. Okay.
- 11 A. And the only gun she mentioned, which is the only gun
- 12 that is in my report, is the one he pointed at her during
- 13 the robbery.
- 14 Q. Okay.
- 15 A. That is the only time she has mentioned ---
- 16 Q. A gun?
- 17 A. --- a gun.
- 18 Q. All right. Other than the gun in Mr. Greer's console?
- 19 A. Right.
- 20 Q. Now and then she did go on to say that at some point
- 21 she gets up, grabs her purse, runs and gets out of the back
- 22 door; is that fair to say?
- 23 A. That's correct.
- 24 Q. Now that was on 9/6, your initial interview of Ms.
- 25 Powers; correct?

0 0421

1 A. Yes, sir.

2 Q. Then you go on to interview some other witnesses,
3 correct?

4 A. Yes, sir.

5 Q. Ms. Brewer and Mr. Brewer but just other witnesses.
6 And then later after you finish some of those interviews you
7 come back to Ms. Power, correct?

8 A. That's correct.

9 Q. All right. And I think I am on Page 6.

10 A. Yes, sir.

11 Q. And at that time she actually gives you her cell phone,
12 correct?

13 A. That is correct.

14 Q. At that time did she acknowledge to you that she had
15 already deleted call logs or information off of her phone?

16 A. I know she told me she had deleted the call logs. I am
17 not sure if it was that evening or the following morning --
18 I believe it was that evening when she gave me the phone I
19 believe she told me at that time that she had deleted her
20 call log.

21 Q. Okay. So either -- well, let me ask a couple of ways,
22 broad and then narrow. From the time of the incident until
23 the time of her giving you her phone she had altered or
24 deleted call logs off of her phone, correct?

25 A. Yes, absolutely.

0 0422

1 Q. It could have been from the incident until the first
2 interview or possibly from your first interview until the
3 second interview?

4 A. No, it couldn't have been from the first interview
5 until the second interview because I did leave officers with
6 her when I left. She was never alone after we made contact
7 with her.

8 Q. Absolutely. So we then -- and that is what I was
9 getting at, from the incident until the first interview how
10 much time do you think it was from the time of the shooting
11 until the time that you first interviewed her?

12 A. I don't have the exact time. I am going to estimate 45
13 minutes to an hour-and-a-half.

14 Q. Okay. Now this is all going on in the trailer park.
15 Did you record this first interview with her?

16 A. No, I did not.

17 Q. Okay. Did you record the second interview?

18 A. No, I did not.

19 Q. Okay.

20 A. I just simply took her written statement.

21 Q. I understand. And you -- did you search her ---

22 A. Yes.

23 Q. --- her bag?

24 A. Yes.

25 Q. Okay. And -- strike that.

0 0423

1 MR. WRIGHT: One second, please. Indulgence.

2 Q. Did you happen to find some marijuana in her bag?

3 A. Yes. There was a very small quantity, user level
4 marijuana.

5 Q. Okay. But you didn't charge her with that, did you?

6 A. No.

7 Q. Now I'm going to ask you if we flip a page you saw Ms.
8 Power the following day, by the next morning?

9 A. Yes

10 Q. All right. Now on that occasion you went to a
11 residence?

12 A. That's correct.

13 Q. And that was when you wanted to show her some photo
14 lineups, correct?

15 A. That is correct.

16 Q. And at this point you are just actively investigating
17 your case; is that ---

18 A. Yes.

19 Q. --- a fair statement? Okay. And she made some
20 identifications at that time, correct?

21 A. Yes.

22 Q. Now so the jury understands, she had already told you
23 that she knew Oouwee from before, correct?

24 A. That's correct.

25 Q. She had told you she had met him, was introduced --

1 well introduced, met him, exchanged numbers, met him a
2 couple of times at a hotel; does that ---

3 A. Yes, sir.

4 Q. --- sound right?

5 A. Yes, sir.

6 Q. Okay. So the point is it wasn't -- she knew his face
7 regardless of the incident which occurred on 9/6, correct?

8 A. Yes, sir.

9 Q. Okay. Then also on 9/7 you took custody of her purse;
10 is that correct?

11 A. That's correct.

12 Q. All right. And that was because you wanted to do DNA
13 testing on the purse, correct?

14 A. Yes.

15 Q. And so we are clear, because she had indicated that
16 Oouwee had grabbed the purse, searched in the purse, but
17 handled it, was it your thought to hey let's check that for
18 DNA because his DNA could be on that purse if he has in fact
19 handled it?

20 A. Yes.

21 Q. Okay. But ultimately as lead detective you know that
22 his DNA was not found on that purse?

23 A. That's correct.

24 Q. Now you conducted other interviews as this is going on,
25 for example Mr. Brewer?

0 0425

- 1 A. Yes.
- 2 Q. And I am not going to ask about the interviews
3 themselves; but you recorded, video recorded, what, three
4 interviews with Mr. Brewer?
- 5 A. The first interview was audio ---
- 6 Q. Okay.
- 7 A. --- that was at the scene that day in my car.
- 8 Q. Okay. So let me stop you. So you had the ability to
9 record witnesses at the scene the day of the shooting,
10 correct?
- 11 A. Yes.
- 12 Q. So you did that with Mr. Brewer but you did not do that
13 with Ms. Power?
- 14 A. That's correct.
- 15 Q. Okay. And the next time you interviewed Mr. Brewer?
- 16 A. That was at the office.
- 17 Q. Okay. And that was videotaped?
- 18 A. Yes, sir.
- 19 Q. And you interviewed him again and that was videotaped,
20 correct?
- 21 A. Yes, sir.
- 22 Q. And at some point you interviewed Mr. Singleton,
23 correct?
- 24 A. Yes, sir.
- 25 Q. And that was videotaped, correct?

0 0426

- 1 A. Yes, sir.
- 2 Q. And at some point you interviewed Mr. Polite and that
- 3 was videotaped?
- 4 A. No, sir, I didn't do the interview of Mr. Polite.
- 5 Q. Were you aware of an interview with Mr. Polite?
- 6 A. Yes, sir.
- 7 Q. Okay, as lead detective. And was that videotaped?
- 8 A. Yes, sir.
- 9 Q. And at some point were you involved in the interview --
- 10 I am trying to remember her name, Carnisha -- one moment.
- 11 MR. WRIGHT: Indulgence, Judge.
- 12 A. I believe it is Ms. Jones.
- 13 Q. Carnisha Jones?
- 14 A. Yes, sir.
- 15 Q. Her -- in fact I think there might have been two
- 16 interviews with her; but they were videotaped, correct?
- 17 A. It was an audiotape.
- 18 Q. Okay. But they were recorded, so you have the
- 19 interviews. Okay. Now you met again with Ms. Power on
- 20 9/12, correct?
- 21 A. Yes, sir.
- 22 Q. So this is now six days later, correct?
- 23 A. Yes, sir.
- 24 Q. And this was done at your office, correct?
- 25 A. Yes, sir.

1 Q. Okay. So clearly at your office like you had done with
2 some others you had the ability to videotape this interview,
3 correct?

4 A. Yes, I did.

5 Q. But you didn't videotape it, did you?

6 A. No, I didn't.

7 Q. So at least in regards to all of Ms. Power's interviews
8 there is no videotape or audio recording that the jury can
9 listen to or view, correct?

10 A. No.

11 Q. Now and just so -- Ms. Powers told you she was involved
12 in some sort of drug transaction when you first talked to
13 her, correct?

14 A. Absolutely.

15 Q. Okay. So she may have said things indicating that she
16 may be a victim; but she also said things that she may be a
17 suspect in a crime, correct?

18 A. Not in what I was investigating in as far as the murder
19 but in a drug deal, yes.

20 Q. Okay. But at no point have you ever arrested or
21 charged her with anything that relates to this case,
22 correct?

23 A. No.

24 Q. Nor was she charged with anything else that you
25 discovered from her in this case, drug deal or otherwise?

0 0428

1 A. No.

2 Q. Okay. Now looking to I think -- the page numbers I
3 think start over, but we are now looking at Page 2 of 5 of
4 the 9/12 interview. Do you recall that on this occasion I
5 guess you are asking her again about, you know, what
6 happened. Is that a fair characterization of this
7 interview?

8 A. Yes, sir.

9 Q. And she tells you -- I am about five -- one, two,
10 three, four, five, six -- actually the seventh line down
11 starting towards the right that she said when she entered
12 the trailer. Again let me stop there.

13 Even on 9/12, six days later, she never said anything
14 about Mr. Greer following her to go inside the trailer;
15 correct?

16 A. That's correct.

17 Q. Okay. And of course you did not denote it in your
18 report?

19 A. No, sir.

20 Q. So then she says when she entered the trailer she again
21 says Oouwee pulled a pistol from his pants and the black
22 male on the couch jumped up and forced her to the floor?

23 A. Yes.

24 Q. All right. And then after Oouwee took the money from
25 her purse they started yelling about where is the rest of

0 0429

1 the money and the black male that forced her to the floor
2 went out the front door; that is what you denoted in your
3 report, correct?

4 A. Yes, sir.

5 Q. So again at no time the day of the incident or almost a
6 week later did she ever say that Mr. Tucker handed a gun to
7 this other individual, correct?

8 A. That is correct.

9 Q. Nor did she ever describe there being more than one gun
10 inside the trailer while this is occurring, correct?

11 A. That is correct.

12 Q. She again said she heard one shot from outside and
13 again said well that is when Oouwee ran out the front door,
14 correct?

15 A. Yes, sir.

16 Q. And by this time let me ask you at some point did you
17 subpoena her phone records?

18 A. Actually I didn't do the subpoenas in this case.
19 Several other detectives work on this at the same time
20 actually. You can't do everything. There were multiple
21 subpoenas and
22 searching orders ---

23 Q. Okay.

24 A. --- sent out on this case.

25 Q. Well, let's now ---

0 0430

1 A. Her records and records of everyone involved in this
2 case.

3 Q. Well, let's segway now into phone records. Because of
4 course as a lead detective you certainly you can do
5 everything; say you are delegating, but when this stuff is
6 coming you are able to take those, look at them and review
7 them and see how they may figure things out in your
8 investigation; is that --

9 A. Yes.

10 Q. --- a fair statement?

11 A. Yes, sir.

12 Q. Okay. And in fact at one point you received Antonio
13 Brewers phone records, correct?

14 A. Yes, sir.

15 Q. Based on what you saw in those phone records you
16 interviewed him again and confronted him about this phone
17 records, right?

18 A. Yes.

19 Q. Do you recall reviewing Jessica Power's phone records?

20 A. Yes.

21 Q. Okay. Did you ever have her come back in for an
22 interview to confront her about the phone records?

23 A. Yes.

24 Q. When was that?

25 A. That was on the 12th.

0 0431

1 Q. The 12th. So that was that same last one -- okay. On
2 the 12th did you discuss with her her erasing part of her
3 phone log?

4 A. Yes, sir.

5 Q. Now when we talk about the phone records you e
6 received, she brought you some phone records; correct?

7 A. She went online and printed off a copy of her phone
8 bill which is not actually phone records, but it does show
9 incoming and outgoing calls.

10 Q. Okay. Do you recall when you ever received as part of
11 your investigation the actual phone records from the phone
12 company of Jessica Power's phone?

13 A. No, sir.

14 Q. Because in fact you did not receive them, correct?

15 A. We did not. We received -- we did multiple search
16 warrants. And in fact she had multiple phones. There were
17 two numbers. And we received the records on one of those
18 phones ---

19 Q. Okay.

20 A. --- which turned into evidence. And I believe that
21 that was both. And it is my error that I didn't check that
22 the other one was never received because one of the other
23 detectives did the actual search warrant.

24 Q. Okay.

25 A. But no, we did not ever receive the actual records from

0 0432

1 Verizon on the 1021 number although we did do a search
2 warrant on the phone itself and do an internal search of the
3 phone which did show numbers, incoming calls, text messages,
4 etc.

5 Q. Okay.

6 MR. WRIGHT: May I approach the witness, Judge?

7 THE COURT: Sure.

8 Q. Is this one of the internal reports you may have done
9 on her phone?

10 A. Yes.

11 Q. Okay.

12 MR. WRIGHT: And if I can mark that for identification
13 purposes. I will mark it as I guess Defendant's 1.

14 (WHEREUPON, Defendant's Exhibit Number 1, phone record, was
15 marked for identification.)

16 Q. And you were here when I discussed some of these
17 records with Ms. Power?

18 A. Yes.

19 Q. Okay. Did you review these records? I will let you
20 look at them. Did you as part of your role as lead
21 detective in this investigation review this report?

22 A. I did.

23 Q. Okay. Did you denote that Mr. Tucker's phone number
24 appears as one of her saved contact numbers?

25 A. Yes, sir.

0 0433

1 Q. Okay. And did you know that it is under a DP sort of
2 designation?

3 A. Yes, sir. I didn't know what that meant; but, yes,
4 sir.

5 Q. Okay. Did you ever question her about that?

6 A. On the 12th we talked about Mr. Tucker's phone number.
7 And once again he had multiple phone numbers as well. The
8 original phone number was a 404 number.

9 And we talked about that being in the phone. And we
10 did -- I don't think we ever discussed the designation DP.

11 Q. Okay. Let me ask you this: This report comes from
12 just what you can pull off the phone, correct?

13 A. That's correct.

14 Q. So if she has erased things off the phone certain calls
15 and information may not show itself in this report because
16 it is no longer on the phone?

17 A. That's correct.

18 Q. Okay. Did you ever compare this to either -- well, you
19 didn't get her records but you knew there may have been
20 phone calls between her and Mr. Tucker, correct?

21 A. Yes, sir.

22 Q. Did you ever compare this report to Mr. Tucker's phone
23 records?

24 A. Yes, sir. We compared it not only to Mr. Tucker's but
25 also Mr. Brewer's, Brandon Singleton's; and there were

1 numerous calls back and forth ---

2 Q. Okay.

3 A. --- from Ms. Power to Brandon Singleton, Walter Tucker,
4 and Mr. Greer that were missing ---

5 Q. From ---

6 A. ---- that she had deleted.

7 Q. And that is exactly the point. So based on your
8 investigation it was clear that the report pulled off her
9 phone showed that he had deleted calls and information off
10 her phone before giving it to you?

11 A. Absolutely.

12 Q. Okay.

13 A. We did obtain the records from various phones, which we
14 do have all of those phone calls, but not necessarily from
15 that because she had deleted it from that.

16 (WHEREUPON, Defendant's Exhibit Number 2, phone record, was
17 marked for identification.)

18 Q. Okay. I am going to show you what has been marked as
19 Defendant's 2. Do you recall seeing some of the printouts
20 from Mr. Tucker's phone number?

21 A. Yes, sir.

22 Q. Okay. And I have gone ahead to make it a little easier
23 and highlighted. A little hard for me to see sometimes
24 small print and big columns.

25 A. I feel your pain.

0 0435

1 Q. I am closer to 50 than 20.

2 A. Yes, sir.

3 Q. So when you looked at that you noted that there were
4 calls on September 6 going from Mr. Tucker's phone to Ms.
5 Power, correct?

6 A. Yes, sir.

7 Q. And vice versa?

8 A. Yes, sir.

9 Q. Okay. And that is before the shooting, correct?

10 A. Yes, sir.

11 Q. But even after the shooting it appears that Mr. Tucker
12 was making several -- many calls --

13 A. Yes, sir.

14 Q. --- to Ms. Power, correct?

15 A. Yes.

16 Q. But ultimately, looking at Defendant's 2 you also see
17 where Ms. Power's phone calls Mr. Tucker?

18 A. Yes, sir.

19 Q. Okay. And in fact if you look at all the phone calls
20 that D-2 has the longest lasting calls are from her phone to
21 Mr. Tucker?

22 A. Yes, sir.

23 Q. Now Ms. Power has said that Mr. Tucker has arm robbed
24 her and kidnapped her, but her phone is calling him for a
25 conversation of 366 seconds and 365 seconds; is that ---

0 043E

1 A. Yes, sir.

2 Q. Did you ever ask her why are you calling him and
3 talking to him?

4 A. Yes, sir. And she told me the same thing that she told
5 before. She said after she ran and hid that there were
6 multiple calls from Mr. Tucker, from Brandon, from

7 Q. Mr. Brewer?

8 A. Mr. Brewer. All of them trying to find her. And when
9 I asked her about the call to Mr. Tucker she said that she
10 did not intentionally make that call and she must have hit
11 the button and it dialed the last number.

12 Q. So when you look at a lot of these calls that don't
13 necessarily -- well, let me ask you. Prior to the shooting
14 the different calls seem to have durations that vary, but
15 every so often 183 or 138; but when you see that many you
16 tend to think there is a conversation going on; correct?

17 A. Yes, sir, you assume a contact.

18 Q. Okay. Now when Mr. Tucker after the shooting is
19 calling there is some 39 seconds, 81 seconds, 99 seconds;
20 again, when you start getting to that number, that amount of
21 time, and again you don't know but it seems indicative of
22 conversations; correct?

23 A. It could be. Absolutely. Or it could be the phone
24 going to voicemail and recording a voice mail message.

25 Q. Okay. But ultimately as part of your investigation you

1 don't have any voice mails from Mr. Tucker to Ms. Power,
2 correct?

3 A. Well, those would have been recorded on this phone
4 which of course is what she would have deleted.

5 Q. Okay. Or if you did in fact get the actual records
6 from the phone company you might have had seen maybe text
7 messages or something ---

8 A. Yes, sir.

9 Q. --- more to shed some light on it, correct?

10 A. Yes.

11 Q. But ultimately 365 seconds or 366 seconds you agree
12 that seems to indicate something more than just leaving a
13 voice mail; that is indicative of conversations?

14 A. Absolutely at least an open line.

15 Q. Okay.

16 MR. WRIGHT: My pen malfunctioned. Indulgence, Your
17 Honor?

18 THE COURT: Yes.

19 Q. All right. So I think we have gone over your
20 supplemental report. We have now gone over the phone
21 records. Now you recall were you present when Ms. Power
22 testified at a proceeding in October of last year?

23 A. I am sure I was.

24 Q. Okay. Do you recall hearing after being sworn in and
25 on the stand do you recall hearing her say that, quote, she

0 0438

1 is not a drug dealer?

2 A. Yes.

3 Q. Okay. And she was being questioned about the fact
4 that -- well, you have reviewed her phone record, some of
5 her text messages. Some of her text messages are clearly
6 discussing drug transactions, correct?

7 A. Yes, sir.

8 Q. So you were very aware she is a drug dealer, at the
9 time that this is happening?

10 A. In the laws -- in the eyes of the law, absolutely.

11 Q. Okay. Well, she is buying and selling weed, correct?

12 A. Yes.

13 Q. Okay. And she told you that Mr. Greer is actually her
14 supplier, correct?

15 A. That is correct.

16 Q. Yet when she is meeting Mr. Tucker at the hotel she
17 claims she is selling him weed, correct?

18 A. Yes, but that was because he was allegedly awaiting
19 this large shipment.

20 Q. Understood.

21 A. And subsequently Mr. Greer, her supplier, lost his
22 supplier.

23 Q. So she has basically got her supplier asking her to get
24 some weed and she is having to sell \$50 pieces of weed to
25 someone who is claiming to allegedly have this big shipment

0 0439

1 and is a big-time weed dealer; that is essentially what she
2 is saying?

3 A. Yes.

4 Q. Okay. The crime scene, were there any bullets found
5 embedded in any of the lots, trailers, anything of that
6 nature, that you are aware of as lead detective?

7 A. No. We -- we conducted a thorough search for both
8 bullets and shell casings. I even went back out there the
9 next day with a metal detector.

10 Q. Okay. And again no casings found in the area, correct?

11 A. That's correct.

12 Q. Well, that brought a question to mind. At any of your
13 interviews with Mr. Power you never denote that she
14 described any of the guns she claims she saw, correct?

15 A. That is correct. She told me that she didn't know
16 anything about guns.

17 Q. Okay. But you didn't ask her what color?

18 A. I did. You always ask those questions.

19 Q. Yeah.

20 A. You know, what color was it, was it an automatic.

21 And her answers were very similar to what she gave on the
22 witness stand, she didn't know one gun from the other, she
23 just knew it was a gun.

24 Q. All right. And certainly you would have asked her well
25 do you think it looked more like this kind of gun, a

0 0440

1 revolver, or more like Mr. Greer's gun so you can get an
2 understanding of whether to look for shell casings whether
3 they should be out there; is that a fair statement?

4 A. Yes, sir.

5 Q. Okay. So she claimed to see a gun but could not give
6 any description whatsoever as to what kind or what it looked
7 like or what color; is that correct?

8 A. That is correct. But that is not unusual with victims.

9 Q. Well, victims can't say hey it is a 9 or hey it is a 40
10 or it was a 48 Special; but victims can at least say it is
11 black, chrome; isn't that true, something?

12 A. You know, I have been doing this for a long time. I've
13 had victims that could tell me you know that was a Ruger
14 nine mil. I have had other victims say the hole was that
15 big (motioning) and that is all I can tell you.

16 Q. Okay. Now at any point in any of these interviews she
17 also -- did you ever ask her how many shots she heard?

18 A. Yes, sir.

19 Q. But you never denoted where she said a number of shots
20 in any of your reports, do you?

21 A. I think I say multiple shots ---

22 Q. Okay.

23 A. --- is the word I use in that.

24 Q. Well, as lead detective you are aware that 911 callers
25 said three shots; correct? Mr. Roche said three shots,

0 0441

1 correct? Was yesterday the first time you had ever heard
2 her say six or more?

3 A. No, sir. In fact I am sure you have read my report.
4 There are several witnesses who denote multiple shots.

5 MR. WRIGHT: Judge, I am going to object as it calls
6 for speculation and hearsay as to other witnesses who are
7 out of court declarant and my question did not require such
8 a response.

9 MR. THORNTON: I would just note for the court that
10 normally you can't object to your own questions. I thought
11 that was a fair answer.

12 THE COURT: I will overrule your objection.

13 MR. WRIGHT: Judge, may we approach?

14 THE COURT: Sure.

15 Is it too early to stretch, ladies and gentlemen? You
16 are welcome to.

17 (WHEREUPON, bench conference was had.)

18 MR. WRIGHT: Judge your indulgence, please.

19 Q. Lastly, at the time that this happened in 2012 Ms.
20 Powers didn't look like she does now, does she?

21 A. No.

22 Q. What, had what; braids or was it braids, twists or
23 dreads?

24 A. I would commonly refer to it as dreadlocks.

25 Q. Okay. So she had dreadlocks. She was much lighter in

0 0442

1 terms of her weight?

2 A. That is correct.

3 Q. Okay. Was she wearing glasses back then?

4 A. I don't recall, sir.

5 Q. Okay. You didn't by chance take any pictures?

6 A. No.

7 Q. Okay.

8 MR. WRIGHT: Judge, that is all I have.

9 THE COURT: Redirect?

10 MR. THORNTON: Briefly, Your Honor.

11 THE COURT: Sure.

12 **REDIRECT EXAMINATION BY MR. THORNTON OF JOHN GOBEL:**

13 Q. Detective, there were a lot of questions Mr. Wright had
14 about your interview that you contacted her on the scene,
15 etc. And when I say her I mean obviously Jessica Power is
16 what most of your testimony has been about. To stay away
17 from the inevitable lawyer word of demeanor, how did she
18 appear to you?

19 A. She was extremely stressed out. She was -- she was
20 extremely distraught.

21 Q. Earlier Mr. Wright asked you and actually you were in
22 here obviously as case manager. You heard the testimony
23 about at a previous - and we won't get into the specifics of
24 it - but at a previous hearing that she testified or denied
25 she was a drug dealer.

0.0443

1 Even going all the way back to her first interview did
2 she ever hide from you the fact or deny that this incident
3 was a drug deal that she helped to facilitate?

4 A. No. No, it was she was always honest that she had
5 basically set up this drug deal.

6 Q. And did she admit to you at some point during your
7 interviews selling a quantity of marijuana to Walter Tucker?

8 A. Yes.

9 Q. So whether she at a previous hearing considered herself
10 or admitted that yes I am a drug dealer has she ever denied
11 the buying and selling of marijuana?

12 A. No, she has not

13 Q. I have nothing further. Thank you.

14 MR. WRIGHT: Judge, can I have a few follow-up?

15 THE COURT: Sure.

16 **RECROSS-EXAMINATION BY MR. WRIGHT OF JOHN GOBEL:**

17 Q. At some point when you spoke with Ms. Power did you
18 ever ask her in terms of what she may have said or
19 interacted with Mr. Jabar?

20 A. Yes, sir.

21 Q. Okay. And at some point you interviewed Mr. Jabar or
22 he was interviewed by someone on your team?

23 A. That is correct, I interviewed Mr. Jabar.

24 Q. And he was essentially asked about the 911 tape and her
25 calls and hiding at his residence, correct?

0 0444

- 1 A. I asked him about everything that day.
- 2 Q. Okay.
- 3 A. What he knew about the incident totally.
- 4 Q. Okay. And ---
- 5 A. And ---
- 6 Q. And he didn't know -- he didn't -- he didn't provide
- 7 any information about the deal itself, did he?
- 8 A. He said all he knew was that she called me and said I
- 9 am hiding under your trailer, people are shooting at me,
- 10 come home.
- 11 Q. Okay. At any point did you ever ask him if he saw Ms.)
- 12 Power with a large sum of money; did you ever ask that
- 13 question?
- 14 A. No, I never did.
- 15 Q. Did you ever search his residence or underneath his
- 16 trailer?
- 17 A. I did not.
- 18 Q. Okay. Thank you, sir.
- 19 MR. THORNTON: Nothing further, Judge.
- 20 THE COURT: Thank you. You may step down.
- 21 Call your next witness.
- 22 MR. THORNTON: Jasmine Tell.
- 23 (WHEREUPON, witness was duly sworn.)
- 24 THE CLERK: Please be seated and state your full name.
- 25 THE WITNESS: My name is Jasmine Tell.

0 0445

1 DIRECT EXAMINATION BY MR. THORNTON OF JASMINE TELL:

2 Q. Ms. Tell, let me ask you a quick question. Who do you
3 work for?

4 A. Verizon Wireless.

5 Q. And what is it that you do for Verizon?

6 A. I am the records custodian.

7 Q. And as part of your job as records custodian are you
8 sometimes called to come in and testify as to what cell
9 phone records are, what they show, cell tower locations;
10 things like that?

11 A. Yes.

12 Q. And as to some data pulled in regards to a phone that
13 has already been testified to as associated with Walter
14 Tucker, 813-394-5194, do you have a report or a printout
15 that you can reference ---

16 A. Yes.

17 Q. --- as to calls from that phone?

18 A. Yes.

19 Q. And specifically what I am talking about is from
20 September the 6th of 2012.

21 A. I do have this record, yes.

22 Q. And just a couple of quick questions I wanted to ask
23 you. From first of all are there calls - forgive me if I
24 use the wrong word - pinged from particular cell towers on
25 that day from that phone?

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1 A. We do have the cell site numbers used during the time
2 that the calls were placed.

3 Q. Now are these records that you have are they kept in
4 the normal and ordinary course of your business?

5 A. Yes.

6 Q. And are you the person then that is called upon to come
7 and testify in various jurisdictions as to those records?

8 A. Yes, that is correct.

9 Q. Can you tell me as to phone number it has been
10 referenced by defense counsel and myself already, 813-394-
11 5194, Walter Tucker's, it has been testified to his number,
12 on September the 6th of 2012 can you tell me from slightly
13 before 2:00 p.m. - because I know sometimes this is military
14 time - until after 2:00 p.m. can you tell me what tower if
15 any there were pings or calls from?

16 A. Yes.

17 Q. What tower was that?

18 A. The tower was Tower 213. Two thirteen.

19 Q. And starting at slightly before 2:00 p.m. - and forgive
20 me if -- just make -- I just want to make sure you have got
21 your records in front of you.

22 I don't want to count them all up, but are there
23 numerous calls to a number 843-592-1021. In other words
24 outgoing from what has been testified to Mr. Tucker's phone
25 and ingoing to what has been testified to as Mr. Power -- or

0 0447

1 Ms. Power's phone 10/21.

2 A. Yes, sir, multiple calls between those two numbers.

3 Q. All right. And there actually is an incoming call
4 going the other way, from 10/21 to this particular phone
5 that has been associated with Mr. Tucker; is that accurate?

6 A. Yes.

7 Q. All right. And that one, it has got a three hundred
8 and -- 365. Is that seconds?

9 A. Yes.

10 Q. So that is five minutes. A little over five -- six
11 minutes, somewhere in that timeframe? I won't ask you to do
12 the math, but in other words when you see 365 or 366 that is
13 seconds and not minutes; is that correct?

14 A. That is correct.

15 Q. Now all of the calls that I have referenced - and I am
16 looking here on the sheet that I have prepared -- and
17 obviously if your records differ, please tell me. But it
18 would appear that there are in excess of 20 calls between
19 those two numbers?

20 A. I would say yes.

21 Q. And it would appear that starting at again slightly
22 before -- about 13:57, which would be 1:57, based on my list
23 is it fair to say that there are only two calls that go from
24 1021 to the 813 number? And if I have missed one, please
25 tell me.

0 0448

1 A. What was the time until?

2 Q. Let's say until 2:35, 2:40. I see two on my list. But
3 if your list differs, obviously tell me.

4 A. That is right; there's only two calls.

5 Q. So all of those other phone calls are from the - and I
6 want to make sure I get this right - 813-394-5194 number to
7 the number that ends in 1021 which has been testified to as
8 Jessica Power's; is that correct?

9 A. Yes, that is correct.

10 Q. Now Tower 213 can you tell me -- can you give me an
11 address for Tower 213?

12 A. Tower 213 is located at 522 Parris Island Gateway in
13 Burton, South Carolina.

14 Q. All right. Thank you, ma'am.

15 MR. THORNTON: Court's indulgence please, Your Honor,
16 one moment.

17 THE COURT: All right, sir.

18 MR. THORNTON: Your Honor, I apologize. Just one more
19 minute and I think we can save some time.

20 (WHEREUPON, counselors confer.)

21 (WHEREUPON, State's Exhibit Number 40, map, was marked for
22 identification.)

23 (WHEREUPON, State's Exhibit Number 41, map, was marked for
24 identification.)

25 MR. THORNTON: Your Honor, I have talked to defense

0 0449

1 counsel. I have two maps that obviously a visiting Verizon
2 rep would not know exactly.

3 But I have shown him two maps, defense counsel. And
4 he indicates he has no objection that show Tower 213 at
5 522 Parris Island Gateway in relation to the Taylor's Mobile
6 Home Park.

7 I would ask to introduce those at this time if there is
8 no objection.

9 THE COURT: It's without objection?

10 MR. WRIGHT: No objection, Judge.

11 THE COURT: All right, sir.

12 THE COURT REPORTER: That is State's 40 and 41.

13 MR. THORNTON: I apologize, 40 and 41.

14 (WHEREUPON, State's Exhibit 40 admitted into evidence.)

15 (WHEREUPON, State's Exhibit 41 admitted into evidence.)

16 MR. THORNTON: And just in publishing to the jury, Your
17 Honor, I will point out the first map that is Tower 213
18 which is indicated by this red dot (pointing). And it is
19 actually labeled as Tower 213, 522 Parris Island Gateway,
20 Burton, South Carolina.

21 And State's 41 is actually the cell tower here in
22 question in relation to Taylor's Mobile Home Park.
23 Obviously this is the corner (pointing), and the distance
24 located from Taylor's Mobile Home is .23 miles.

25 And with that I have nothing further.

0 0450

1 Thank you very much, ma'am. Please answer any
2 questions Mr. Wright has.

3 **CROSS-EXAMINATION BY MR. WRIGHT OF JASMINE TELL:**

4 Q. Good morning.

5 A. Good morning.

6 Q. I am going to show you ---

7 MR. WRIGHT: May I approach the witness, Judge?

8 THE COURT: Certainly.

9 Q. I am going to show you what has been marked as
10 Defendant's Exhibit 2. Does that appear to be sort of a
11 couple of pages of reports that you are used to seeing?

12 A. Yes, it is.

13 Q. Okay. And you see I have tried to help out by
14 highlighting different calls?

15 A. Yes.

16 Q. Okay. When we look at the duration of phone calls
17 sometimes short durations may just indicate voicemail or no
18 conversation, but the longer the duration of the call
19 sometimes is that more indicative that there could be a
20 conversation?

21 A. Well, we don't know if it was a conversation or not;
22 but if the call was not answered then it would indicate that
23 it was forwarded to voice mail.

24 Q. Okay. And when you see the numbers talking about
25 duration are those in seconds?

0 0451

1 A. Yes.

2 Q. Okay. So looking at a couple of calls, 366, 365 ---

3 A. Yes.

4 Q. So those are -- I am trying to do my math. About six
5 minutes or so in duration?

6 A. Okay.

7 Q. I mean ---

8 A. Yes.

9 Q. Well, give or take?

10 A. Yes.

11 Q. About six minutes or so?

12 A. Yes.

13 Q. Okay. And the way we would read this is these calls
14 came from the 1021 number calling the 813?

15 A. Yes.

16 Q. Okay. All right. Thank you very much.

17 MR. THORNTON: Just court's indulgence on one thing,
18 Your Honor.

19 The State has nothing further, Your Honor. Thank you
20 very much.

21 THE COURT: Thank you, ma'am. You may step down and
22 you are excused from your subpoena.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 MR. WRIGHT: Your Honor, may we approach briefly?

0 0452

1 (WHEREUPON, bench conference was had.)

2 THE COURT: You may call your next witness.

3 MR. THORNTON: Darryl Maxwell.

4 (WHEREUPON, the witness was duly sworn.)

5 THE CLERK: Please have a seat and state your full
6 name.

7 THE WITNESS: Darrell Maxwell.

8 **DIRECT EXAMINATION BY MR. THORNTON OF DARRELL MAXWELL:**

9 Q. Mr. Maxwell, good morning, sir.

10 A. How are you doing?

11 Q. I wanted to make sure it is still morning. I know you
12 came to us from North Carolina, sir. Can you tell me who
13 you work for?

14 A. I work for Buncombe County Sheriff's Department.

15 Q. And what is it that you do for them, sir?

16 A. I work on the Sheriff's Community Enforcement Team
17 which deals with high-risk warrants, street-level drugs;
18 that sort of thing.

19 Q. So you perform a variety of tasks for the Sheriff's
20 Department?

21 A. Yes, sir.

22 Q. And so would you be -- would it be proper to say that
23 you are a deputy or a deputy sheriff?

24 A. Yes, I am a deputy sheriff.

25 Q. In your capacity, sir, as a deputy sheriff -- in what

0 0453

1 county?

2 A. Buncombe.

3 Q. Buncombe County in North Carolina did you have occasion
4 based on an arrest warrant that has already been testified
5 to issued by South Carolina for Walter Tucker in connection
6 with this case?

7 A. Yes.

8 Q. All right, sir, and once you received that -- and don't
9 tell me what anybody told you or what the information how it
10 came in; but as a result of information you received did you
11 believe that you knew where Mr. Tucker might be in North
12 Carolina?

13 A. Yes.

14 Q. And what did you do, sir, at that time to find out?

15 A. We went to Number 2, Flycatcher Way - it is Apartment
16 2307 - and knocked on the door.

17 Q. Who lived at apartment -- I'm sorry, what was it?

18 A. Number 2, Flycatcher Way.

19 Q. Yes, sir.

20 A. Apartment 2307.

21 Q. All right, sir. And whose apartment was that?

22 A. That was Mr. Tucker's brother, Dana Alexander.

23 Q. And I am sorry. Go ahead. So you went and knocked on
24 the door and what happened next?

25 A. We knocked on the door about three times. We announced

0 0454

1 who we were. One individual went out on the balcony. We
2 had two officers staged outside at the front entry. It is a
3 second floor apartment. They were -- the officers out front
4 were making contact with the individual out on the balcony
5 at that time.

6 Q. At some time did you go into ---

7 A. Yes.

8 Q. --- the apartment?

9 A. Yes.

10 Q. And was Mr. Tucker there upon first glance; did you see
11 him when you first walked in?

12 A. No.

13 Q. Did anyone tell you whether or not he was there?

14 A. They denied him being there.

15 Q. And did you at some point do a search of the apartment?

16 A. Yes, we did.

17 Q. And were you able to locate -- and first of all do you
18 see the person that you eventually located - I will jump
19 ahead for a minute - --

20 A. Yes.

21 Q. --- in the courtroom?

22 A. Yes, he is sitting right there in the middle
23 (pointing).

24 Q. So at some point you did locate him, is that correct?

25 A. Correct.

0 0455

1 Q. And where did you find him?

2 A. I found him hiding underneath the sink. He had like a
3 bunch of like grocery bags like Wal-Mart bags covering him.

4 Q. Was it bathroom sink, kitchen sink?

5 A. Kitchen sink.

6 Q. And at that time did you take him into custody pursuant
7 to the South Carolina warrant?

8 A. I did.

9 Q. And other than that is that your connection to this
10 case?

11 A. That is all.

12 Q. Thank you very much. I have no further questions.
13 Please answer any questions Mr. Wright has.

14 MR. WRIGHT: I have no questions. Thank you, sir.

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

16 THE WITNESS: Thank you so much.

17 THE COURT: You may be excused from your subpoena.

18 MR. THORNTON: Your Honor, at this time it would
19 probably be a good time for a morning break to take up some
20 matters that we had talked about.

21 THE COURT: Ladies and gentlemen, let's take a
22 ten-minute recess. And I will remind you that you are not
23 to begin discussing the case.

24 (WHEREUPON, jury exits courtroom.)

25 THE BAILIFF: The jury is clear, Your Honor.

1 THE COURT: We had a side bar a few moments ago.

2 MR. WRIGHT: Your Honor, if I could perfect the record.
3 When I asked a question of Detective Gobel I objected to his
4 response.

5 The court ruled, but I did approach the court but I
6 didn't want to do it in the presence of the jury and make a
7 motion for a mistrial.

8 My question at the time was simply asking about Jessica
9 Power was that the first time Jessica Power had said
10 anything about six. He then said yes. I said it is nowhere
11 in your report. And then I said isn't it true that there
12 were just three shots and I think I may have named -- but he
13 then went on to elicit a response about a hearsay declarant,
14 some unknown persons have said there are some six or more
15 shots or words to that effect.

16 That was not responsive to my question going into
17 hearsay declarant unknown person. It was not necessary to
18 be responsive to my question.

19 So I did ask the court for a mistrial and wanted to
20 perfect the record.

21 THE COURT: Mr. Thornton.

22 MR. THORNTON: Obviously, Judge, you know, I will just
23 start with the end first. Mistrial is only when it is
24 manifest necessity. I don't think anything that the
25 detective said comes anywhere close to manifest necessity.

1 I don't even think it qualifies for a curative instruction,
2 frankly.

3 What Mr. Wright it is my recollection -- obviously the
4 court's and the court reporter's is far superior than mine,
5 but what Mr. Wright was asking about was and the witnesses
6 on the 911 call said this and the -- this witness said that
7 and David Roche said this. And that was the response that
8 he got was other witnesses. Which is accurate.

9 Granted I will concede that they are not a witness who
10 is going to testify, because I want to say it was Mr. Brewer
11 that said that. And I can't swear to that, Judge. I am
12 just going by my memory. And obviously he is not going to
13 be able to testify.

14 But, you know, I don't think it was a stretch of a
15 response to his question. And he didn't just ask about
16 Jessica. He was asking about it in connection with multiple
17 other witnesses both on the 911 calls and in reference to
18 those who had come and physically testified.

19 I don't -- number one, I don't think it was improper.
20 Even if it was improper I don't even think it qualifies for
21 a curative instruction. Certainly not a mistrial, Judge.

22 MR. WRIGHT: Yes, Judge, I won't continue argument.
23 Anticipating the court's ruling I would just ask to be able
24 to have leave to recall Detective Gobel if the defense puts
25 forward a case.

1 THE COURT: The court agrees with the position of the
2 State on this issue of a mistrial. And I believe Mr. Gobel
3 is going to continue to be available if we need him.

4 MR. THORNTON: Yes, sir, he will be available until the
5 jury has reach a decision, Judge. I am not letting him away
6 from the table.

7 THE COURT: Be available to be recalled.

8 Now then what do we need to take up?

9 MR. THORNTON: I believe it is the issue with the
10 parameters on probably both direct and cross on Ms. Bigelow
11 and her statements.

12 And, you know, for the court's information, my request
13 would be once that is all decided that we be given a few
14 minutes to go and speak to her to make sure she stays within
15 those parameters depending on the questions that may or may
16 not be asked by defense.

17 THE COURT: Well, do you want to start with what is it
18 you wish to elicit from her on direct?

19 MR. THORNTON: Yes, sir. Ms. Swanson will be taking
20 care of that, Judge. But our intent would be to very
21 narrowly tailor her.

22 I don't even think we are going to mention the word
23 Savannah. What we are going to ask her basically is do you
24 know Walter Tucker, have you spent time with him on last
25 year around September, October timeframe.

1 THE COURT: Okay.

2 MR. THORNTON: During those times did he ever make any
3 statements to you about this case. And then let her speak
4 to the, you know, the admissions that he made.

5 And at some point did he make any threats against
6 anyone involved in the case which would cover the thing
7 about Jessica - well, he didn't name Jessica obviously; he
8 said the white girl - and the thing about Travis Polite.
9 That would be what we would elicit from her based on what I
10 believe the court's ruling was yesterday.

11 And if I have gotten that wrong obviously we can tailor
12 that to the court or Mr. Wright's. But I believe that was
13 what was in the bounds of what the court ordered us to be
14 able to do.

15 I would -- and just to -- we can talk about Mr.
16 Hightower right after that, Judge. I just wanted to make
17 sure we are clear on him as well.

18 But that would be what we would seek to elicit from her
19 just as a general -- again just paraphrasing. But that
20 would be it.

21 THE COURT: All right. Let's hear from Mr. Wright.

22 MR. WRIGHT: Well, Judge, on cross I think I would
23 probably want to be able to show that in connection with
24 these alleged statements that he also indicated his
25 innocence. He indicated that the person that of these

1 alleged statements would be the target has lied and
2 untruthfully tried to indicate and implicate him in a
3 murder.

4 THE COURT: Well, now she was -- a witness wouldn't
5 know whether it was untruthful or not. I think just -- you
6 are talking about he was saying that if it was untruthful.

7 MR. WRIGHT: Yeah, but I think part of what she says is
8 that my client says that, you know, he ---

9 THE COURT: It wasn't true.

10 MR. WRIGHT: Yeah, it wasn't true.

11 THE COURT: Right.

12 MR. WRIGHT: And he put the murder on him.

13 THE COURT: I'm sorry. I agree.

14 MR. WRIGHT: So I probably need to talk to my client
15 for a few moments. Like I said, in terms of trying to
16 impugn their credibility I do think it is an issue of
17 credibility as to whether a jury will believe that they are
18 prostituting themselves to earn money to get a gun when he
19 already has a arsenal of guns according to them.

20 THE COURT: I understand it is a slippery slope.

21 MR. WRIGHT: I understand. That is why if I could have
22 leave to maybe speak with my client for a few minutes.

23 THE COURT: Well, let's go ahead and take ten of our
24 own ---

25 MR. WRIGHT: Yes, sir.

1 THE COURT: --- while you do that.

2 MR. THORNTON: Thank you, Your Honor.

3 THE COURT: And well while he is doing that, help me
4 one more moment. You said you wanted to discuss somebody
5 else's testimony?

6 MR. THORNTON: Well, we had Dillon Hightower who would
7 testify that as a result of the conversation he had with --
8 or I could say as a result of the information provided by
9 Keamber that they went into South Carolina, that they
10 located Cedrick who is also known as Savage; he had been
11 driving the car, you know, that she described; they found
12 the gun where she said it would be; the gun matched the
13 description of the gun.

14 I am probably not going to introduce the gun itself,
15 just photographs of the gun. And that they found Cedrick;
16 he was inside. And the picture of the tattoo that says
17 Savage. And they found him and he had been arrested. He
18 was in Hampton County. It was actually a Yemassee charge
19 but -- was it Hampton County or Beaufort?

20 MS. SWANSON: It is a Yemassee charge, but he was in
21 the Hampton County Detention Center.

22 MR. THORNTON: He was in the Hampton County Detention
23 Center when they found him. So that would be what I -- what
24 Mr. Hightower would testify to.

25 MR. WRIGHT: Well, my concern with that, Judge, is the

1 only way that becomes relevant is if she is allowed to say
2 Savage is the person that is supposed to do this.

3 Because if that is not the case -- and remember on the
4 video she clearly says Savage was never going to do this ---

5 THE COURT: But she says that the defendant was -- had
6 asked Savage to do it.

7 MR. WRIGHT: Right. But saying that he may have
8 asked a person to do it; but when you also say but when
9 talking to that person he was never going to do that,
10 which meant where ever Savage was in that car with a gun it
11 wasn't -- the way that comes across is if it is in the
12 furtherance of this plan. When in fact it wasn't in the
13 furtherance of this plan. That is just where the gun was
14 kept. Savage was driving the car. But by the same witness,
15 Keamber, who said Savage was never going to be doing
16 anything like that.

17 So the inference the State in going to draw from
18 bringing that in from Mr. Hightower is the exact opposite,
19 as if he's, he's executing the plan.

20 But by their own witness that never was going to be the
21 case. And it is not like they got a statement from Savage
22 saying yeah I was going to do this.

23 I think that is -- it is speculation, but it is
24 completely against what Keamber says about Savage.

25 THE COURT: Now I got the impression -- and I can't

1 remember exactly where it was on the tape. Y'all both I am
2 sure are more familiar with it than I am. I got the
3 impression that the defendant may not have known ---

4 MR. THORNTON: Yes, sir. And that is my point, Judge.

5 THE COURT: --- that he was not -- that Savage was not
6 going to carry out ---

7 MR. THORNTON: I think that is really a
8 mischaracterization of what we have here. There's two
9 things I want to point out to the court.

10 He never professes his innocence. At best what he says
11 is I didn't do it but I am really not sure if I did it
12 because I was shooting. And that is as to the murder. He
13 clearly -- according to what she says, obviously, admits to
14 the rest of it.

15 And as far as -- quote, this is from Keamber: There
16 was another guy that had come down here with us. He lived
17 with him too. His name was Savage and he was basically
18 homeless too and he took him in. He was going to get him to
19 come down here to make his adjustment for him so he wouldn't
20 have to cross the bridge into South Carolina. I

21 And he asked. Roger Eaten says what do you mean by the
22 adjustment. She made a thing across her neck. To kill
23 somebody.

24 Here is what we were going to do. Me, Leandra, Savage
25 were going to wait until the trial to act like everything

1 was okay, act like the dude was gone or whatnot or
2 something; but he became more and more violent. We couldn't
3 even. You know, but Savage is not a murderer. He is not.
4 He was not going to do it.

5 I mean clearly the impression is that Mr. Tucker
6 brought him down to do it, that he is sending him to go
7 either get reconnaissance or meet with people to do it. So
8 the fact that Cedrick doesn't want to do it or isn't going
9 to do it doesn't -- is not relevant.

10 The relevance of finding him in South Carolina, finding
11 the gun where she says it is, and finding the car with the
12 read-end damage as she says it would be is that it gives her
13 reliability on what she is saying.

14 So I disagree that as to him proclaiming his innocence,
15 number one, or that somehow by Cedrick -- I mean we can see
16 that that is what Keamber says. It is on the tape. And he
17 is free to ask her that. Wait a minute now but he was never
18 going to do it, was he.

19 And I think she would have to say or he could, you
20 know, impeach her with it. I think clearly she would have
21 to say no he wasn't going to do it.

22 But that is not what is relevant. What is relevant is
23 it shows reliability that we found all these things as she
24 said we would. Thank you.

25 MR. WRIGHT: Judge, she also said that gun was never

1 going to be used to do the murder. So the issue is not just
2 well did my client know it or not; but the way they want to
3 present Mr. Hightower, the arrest, the location of the gun,
4 it is one thing if it is -- well, one, it -- I guess they
5 are saying it bolsters Keamber.

6 Okay, but it also is going to make the jury think it
7 was actually in process which is incredibly prejudicial for
8 a jury to hear they were in the process of trying to kill
9 somebody. But there is no evidence it was ever actually in
10 process.

11 MR. THORNTON: Judge, he brought a hit man down that he
12 wanted to make from another state -- you know, from Georgia
13 down. I mean he recruited the guy. They clearly say
14 Cedrick was the one supposed to make the adjustment. I
15 don't know how much in process you need to be.

16 THE COURT: Well, I am not sure I recall in there
17 whether there is a statement about that particular gun not
18 being used.

19 MR. WRIGHT: Judge, it is at ---

20 THE COURT: I just don't recall.

21 MR. WRIGHT: Give me a moment, Judge.

22 THE COURT: I guess it is in conjunction with ---

23 MR. WRIGHT: At seven minutes, twenty-five seconds -- I
24 mean 7:05 and 25 seconds. Bigelow was asked if the gun in
25 the car was going to be used by Savage for the murder. She

1. said that she wasn't sure, I think that they were going to
2. get another gun.

3. And then Bigelow stated, Savage was not going to do any
4. murder and it was always going to be someone else; at 7:06
5. and four seconds.

6. MR. THORNTON: And that is not the same thing as
7. counsel representing that they said it wasn't going to be
8. used. She said she didn't know.

9. So that is the other thing I would ask is when we get
10. into cross-examination, you know, I don't think it is fair
11. for him to get up -- and that is what my fear is that she
12. gets confused because counsel gets up and says but he
13. proclaimed his innocence, didn't he; because he didn't. So
14. I want to be sure we are fair when we are referencing this
15. stuff.

16. MR. WRIGHT: Well ---

17. MR. THORNTON: And ---

18. MR. WRIGHT: I'm sorry.

19. MR. THORNTON: I'm sorry. Go ahead Mr. Wright.

20. MR. WRIGHT: I should be able to ask did he tell you
21. that he was innocent and proclaimed his innocence. Just
22. because they didn't ask in the interview I shouldn't be
23. limited from saying okay well the reason he was upset was he
24. was innocent of this and he was mad this guy was lying on
25. him, didn't you hear him say that. I don't see where there

1 would be ---

2 MR. THORNTON: But ---

3 MR. WRIGHT: --- anything wrong with me saying that or
4 asking that.

5 MR. THORNTON: I think -- I think he can ask if he --
6 if she has ever heard that, yes. But what I don't want them
7 to infer is -- because obviously there is almost no way for
8 me to get the tape in because of all of the ancillary items.

9 What I don't want him to say is well on the tape where
10 you were interviewed you said he said he was innocent, when
11 she didn't say that.

12 I think he is certainly allowed to say, you know,
13 didn't he tell you he was innocent. And if she says no then
14 that is the answer he is stuck with.

15 But I have seen this happen. I am not saying Mr.
16 Wright would do it, but I have seen this happen before where
17 a defense attorney knows I am not going to be permitted to
18 get a tape in and they allege that a witness has said
19 something on a tape and they didn't actually say it or it is
20 construed in such a way as to be different.

21 Based on what he just said I think he clearly has the
22 right to do that. But I don't think he should impute things
23 that are recorded that aren't there ---

24 MR. WRIGHT: Judge, ---

25 MR. THORNTON: --- to the witness.

1 MR. WRIGHT: --- at six minutes, fifty-four seconds --
2 6:54 and twenty seconds I have down that the defendant --
3 she says the defendant stated he didn't do it.

4 Then it is followed by Bigelow stated the defendant
5 admits being there during the shooting. Bigelow stated that
6 the defendant said the white girl is trying to connect him
7 to the murder but he was only connected to the robbery. And
8 I have another timestamp.

9 So in the beginning she does say the defendant said he
10 didn't do it. That is -- and we can play it and listen to
11 it.

12 MR. THORNTON: I don't need to play it. At -- the same
13 thing he is talking about. Unfortunately he leaves off the
14 rest of the sentence.

15 He would say that he didn't do it, but the way he
16 explained it he is not sure if he did it. He is talking
17 like he was running and it was adrenaline: It was like --
18 she sticks her arms straight out, turns her head to the left
19 and makes the sound of multiple gunshots being fired and
20 that he don't know but it possibly could have been him.

21 And that is precisely what I am talking about, taking
22 one part -- not even one sentence out of context, taking
23 half of a sentence out of context.

24 You know, if we are going to do this I just want it to
25 be fair and proper. And when you take -- and when you say

1 well he told you he didn't do it, that is not what he said.
2 He said he didn't do it but the way he was doing it was like
3 he wasn't sure.

4 And that is the kind of thing I'm talking about, Your
5 Honor. That is precisely my point. You shouldn't be able
6 to -- because I can't fix it. I can't put the tape in. So
7 you shouldn't be able to say something is on tape that is
8 not there or to take it out of context.

9 If he is going to ask that question he has got to ask
10 all of it, not just the piece that he likes.

11 MR. WRIGHT: Judge, as it relates to any question that
12 talks about in your interview or, i.e., on the tape, you
13 said "x", I will be sure to make sure that it is accurate
14 whatever I say.

15 But in terms of just asking in general what else he
16 said to her, I think that is proper for me to do.

17 THE COURT: I agree. And I think ---

18 MR. THORNTON: I concede that, yes, sir.

19 THE COURT: --- the solicitor agrees too.

20 MR. WRIGHT: And if we can have a break. Because to be
21 honest, depending on what we decide at the defense table he
22 may want the whole thing to just come in.

23 And then the -- you know, because I am sure the State
24 doesn't want us to just parcel it. And once it is in, it is
25 in. So all the prostitution ---

1 THE COURT: The State might not want it in. I don't
2 know.

3 MR. WRIGHT: Yeah.

4 All right. Let's take five.

5 (WHEREUPON, break was taken.)

6 MR. THORNTON: Your Honor, Mr. Wright and I were
7 speaking, and I don't want to speak out of turn so I will
8 ask him to correct me if I get anything incorrect.

9 He has indicated, and I think it is a good idea too,
10 not to play the tape. There is way too much on there that
11 would be improper in my opinion and his. And from what he
12 has indicated to me he is not going to go into the
13 prostitution aspect of this.

14 But there is one other matter that we need to bring up
15 to the court that he wants to argue, which is there is a
16 necklace. And let me start by saying that necklace is a BMF
17 or Black Mafia Family designation necklace. And it will
18 belong to Tucker -- or belongs to Mr. Tucker.

19 And at some point when they left the hotel, they being
20 the two young ladies, specifically Keamber, they had a bag
21 of clothing and other things. And inside that bag was also
22 apparently Mr. Tucker's chain.

23 And I got confirmation actually yesterday, because the
24 family has been talking about it. Obviously we have been
25 listening to the jail phone calls and the family has been

1 talking about it back-and-forth.

2 So I along with my investigator Roger Heaton confronted
3 her about it, her being Keamber, about it yesterday; and she
4 did admit that she had the necklace when they left Savannah
5 and she did pawn it.

6 Now since that arguably is theft -- I know Mr. Wright I
7 told him about it this morning. I found out yesterday. And
8 I wanted Mr. Wright to be able to argue it to the court as
9 to whether he should be able to go into the theft of the
10 necklace or that she stole his necklace and pawned it or
11 however he wanted to phrase it. But she did admit that she
12 did take it.

13 Now the way that she explained it was it was inside a
14 bag with some other things. But clearly she indicates that
15 she saw it. She knows it wasn't hers and she went and
16 pawned it. So for whatever that is worth to the court.

17 I wanted Mr. Wright to be able to argue as to whether
18 or not he should be allowed to go into that on cross-
19 examination as character of truthfulness.

20 MR. WRIGHT: Well, Judge, I think rule 608(b) does
21 allow when it goes to truthfulness. Clearly it is a theft.
22 It is a theft that occurs in a time for irrelevant to when
23 ultimately these statements are made and what she is going
24 to be testifying to.

25 So I think being able to show that she stole

1 substantial jury at a value of about 15,000 in jewelry I
2 think I should be able to go into it.

3 I am not going to belabor it, but I think it does go to
4 possible bias and credibility issues that the jury can just
5 basically hear, hey, she is -- isn't it true that you helped
6 yourself to Mr. Tucker's jewelry, essentially you stole it,
7 you pawned it, it was worth about 15,000.

8 And she may not know the total value. I don't care
9 what she got at the pawn. But think I should be able to say
10 in my question it was about 15,000 in jewelry.

11 I am not obviously going to say BMF. I am not even
12 going to go into individual jewelry. I'm just going to say
13 jewelry. And I think that would be enough.

14 MR. THORNTON: Judge, I looked at the 608(b); and I
15 think that is right. I will concede that he has a right to
16 ask about that. And I kind of figured that would probably
17 be the court's ruling.

18 So, again, I want five minutes to go back there with
19 Hunter and try to make sure she stays - especially based on
20 what we are talking about now - stays within the parameters.

21 We are not going to mention Savannah. We are not going
22 to talk about any of that other stuff. Mr. Wright is not
23 going to ask you about that. However you are going to be
24 asked about - and I have already told her that and I have
25 already told her think it is proper or likely for him to ask

1 that. But I do need just five minutes or so.

2 THE COURT: All right.

3 MR. THORNTON: But I will concede that point. As long
4 as it is not as he said belabored I think he has a right to
5 ask.

6 MR. WRIGHT: Judge ---

7 THE COURT: Do you have any objection to him talking to
8 the witness ---

9 MR. WRIGHT: No.

10 THE COURT: --- about that?

11 MR. WRIGHT: No. In fact but here is a concern that
12 comes up, because counsel just sort of reminded me that one
13 of our possible witnesses may have a Fifth Amendment issue.
14 The question is does Keamber have a Fifth Amendment issue.
15 Because it is fully within the statute of limitations of
16 theft. I mean she could be prosecuted for it.

17 I am not going to say nothing to her because I am not
18 going to intimidate or threaten or anything. But the
19 question though, as officers of the court, are we obligated
20 to make sure she is aware of that and does she then need an
21 attorney to represent her.

22 And it just popped into my mind because counsel I think
23 rightfully so mentioned about Savage. He has pending
24 charges. And if he is to testify does he have an attorney.
25 So it has sort of rolled out.

1 MR. THORNTON: The difference in this case, Judge,
2 would be that Savage, Cedric, is actually charged currently
3 with the gun I believe is what his current charge is in
4 Hampton County prosecuted by our office. This is not
5 anything that is charged. Don't even know what the
6 jurisdiction would be. It might be Savannah. It might
7 be ---

8 MR. WRIGHT: Chatham.

9 MR. THORNTON: Yeah, I mean the theft obviously would
10 have had to have been Savannah unless you believe that she
11 didn't know it until -- and then where ever she pawned it
12 could be it.

13 And based on all of that and the fact that she has
14 already told me and if somebody called me as a witness I --
15 she is not going to do anything in here that she hasn't
16 already told me as an officer of the court if I was ever
17 called to provide that information obviously I'm going to
18 provide it that she has already given to me so.

19 MR. WRIGHT: My only concern, I don't think the Fifth
20 Amendment is incumbent on whether it is pending charges. I
21 think it is you have the right whether it is a pending
22 charge or not the question is every person has a right not
23 to give testimony against themselves that could be used
24 against them.

25 I will defer to the court. But I just wanted to raise

1 the concern as it relates to her as well as obviously Mr.
2 Savage.

3 THE COURT: You want me to tell the witness that she
4 may be asked on a cross-examination about a theft of some
5 jewelry and that if she is she doesn't have to answer that
6 question?

7 MR. WRIGHT: No, Judge, actually I would say in
8 anticipation that she will be asked about that question do
9 we I guess as officers of the court and the court have an
10 obligation now to make sure she is advised that in part of
11 her examinations some of her responses could ultimately be
12 used against her and other proceedings and whether or not
13 she should be appointed counsel.

14 I am not -- I definitely am not trying to have a
15 conversation with her. I am sure the State is not trying to
16 in any way do something -- the question is if we know that
17 there is a witness that they have a Fifth Amendment right
18 but we know the subject matter of the questioning is proper
19 I think do we simply instruct her or ask her does she want
20 to waive that right and/or does she want the appointment of
21 counsel before she proceeds with her testimony.

22 That -- that is what I am inquiring of the court should
23 we do that to safeguard her. So I will defer to the court.
24 But I am not sure what to do other than say whenever there
25 is a witness that has the potential issue do we have an

1 obligation to at least inform them and say hey I mean you
2 testify, certain things you do have rights but you need an
3 attorney because I am not going to advise you, they are not
4 going to advise you.

5 I am not suggesting the court advised her, per se, of
6 what to do. But it sounds like she is falling just like Mr.
7 Savage would fall squarely into the potential Fifth
8 Amendment issue, do they have counsel.

9 MR. THORNTON: I think it is -- I understand Mr.
10 Wright's concerns. And I am sure Ms. Bigelow appreciates
11 his concerns for her Fifth Amendment rights. I just don't
12 think it is -- I think the two situations with Cedric and
13 with Keamber Bigelow are two entirely different situations.

14 You know, anytime a witness gets up and testifies,
15 Judge, if they were not to tell the truth on testimony they
16 would be subjecting themselves to a perjury charge at some
17 point or could be. I think that would qualify for any
18 witness if they didn't provide truthful testimony.

19 She has already told me this. And as an officer of the
20 court -- and I have already put it on the record. If there
21 was some criminal prosecution she is not going to say
22 anything in here that I wouldn't testify to if called as a
23 witness. I think it is too far removed as far as the
24 possibility of invoking the Fifth Amendment.

25 Clearly I think Mr. -- Cedrick. And forgive me; I

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1 don't know his last name. But clearly he is actively
2 currently charged and a pending charge with our office
3 albeit -- is it Beaufort County charge?

4 MS. SWANSON: Yes, I actually indicted him. So he has
5 two pending charges that he has actually not shown up for
6 his initial appearance for.

7 MR. THORNTON: So I think that that is a little bit of
8 a different story, Judge.

9 MR. WRIGHT: Again, I don't think they are really
10 distinguishable. It is just one person would know that they
11 are going to be asked a question, that their answer could be
12 used against them in a proceeding that that triggers.

13 THE COURT: Y'all help me try to figure out how to get
14 someone from the Public Defender's Office up here. What I
15 intend to do then is to get somebody from the Public
16 Defender's Office to speak with the two attorneys here and
17 then go with the solicitor back to interview the witness.

18 MS. SWANSON: Your Honor, Mr. Hood just entered the
19 building.

20 MR. THORNTON: He has a former codefendant though. I
21 don't ---

22 MS. SWANSON: Oh, I can go make contact with Ms.
23 Campbell.

24 THE COURT: All right.

25 MR. THORNTON: Ms. Tracy is around.

1 THE COURT: She walked in and out just a moment ago.

2 MR. THORNTON: Yes, sir. If the court will just give
3 us one moment. I wouldn't want to ask Mr. Hood to do it,
4 him having just tried the codefendant.

5 (WHEREUPON, break was had.)

6 THE COURT: And for the record, I am appointing Ms.
7 Campbell of the Public Defender's Office to represent Ms.
8 Bigelow. Now we will be in recess until 1:30.

9 MR. THORNTON: Thank you, Your Honor.

10 (WHEREUPON, recess was had for lunch break.)

11 MR. WRIGHT: I believe Keamber is next?

12 MR. THORNTON: Yes.

13 MR. WRIGHT: Judge, I am inquiring of the court. I
14 know in Georgia when there is going to be similar
15 transaction for 404(b) evidence we have an instruction the
16 court usually gives the jury that let's them know this is
17 not evidence of the case itself but it is for the limited
18 purpose it if shows the 404(b).

19 It sounds like -- and I just consulted with Ms.
20 Ferguson. Y'all don't have a limiting instruction that
21 advises them that this may well be 404(b) evidence, not
22 necessarily evidence in the case in chief. Am I correct in
23 that?

24 MR. THORNTON: I am not aware ---

25 MR. WRIGHT: If so I would ask that they be instructed.

1 THE COURT: Tell me -- I don't know what we are getting
2 ready to see, hear.

3 MR. THORNTON: Judge, this would be the testimony of
4 two things that we would limit it based on what we had
5 talked about before.

6 Ms. Swanson is going to be doing the questioning where
7 she -- where Mr. Tucker made admissions about his
8 participation to Keamber Bigelow. And that is what she
9 would testify to. And as to the fact that he had come --
10 that he had brought Cedric or said to come down ---

11 THE COURT: Oh, I'm sorry; I thought we were talking
12 about another witness.

13 MR. THORNTON: No, sir.

14 THE COURT: All right. I don't know how I got off on
15 that. Okay.

16 MR. THORNTON: No, sir. And I am not aware of any such
17 limiting instruction especially since she is going to be
18 talking about admissions that he made about this case.

19 MR. WRIGHT: Well, the first part I understand would
20 not be 404(b), but all the evidence about was he making
21 arrangements to kill or murder a codefendant I thought
22 that was coming in under a 404(b) consciousness of guilt
23 theory ---

24 MR. THORNTON: It is under Edwards, but I am not aware
25 of a limited instruction. I am not saying there isn't one.

1 I am just not aware of it.

2 MR. WRIGHT: And the theory behind it is so that a jury
3 understands some evidence that you may hear isn't
4 necessarily evidence in the case in chief but rather is to
5 be used for the purpose the State is tendering it for. That
6 is I guess their argument is consciousness of guilt is a
7 species of intent.

8 Now I disagree. I think that is what they are
9 basically in saying. And that way they understand just
10 because you may believe he may have in fact made these
11 statements about murdering a codefendant they are only for
12 the limited purpose that they are being introduced for.

13 Now obviously I can argue it. But it is the practice
14 in my home jurisdiction that we give the jury an instruction
15 prior to them receiving it so they already have sort of have
16 an idea about that.

17 THE COURT: I am skimming through Edwards to see if
18 there was any reference to such instruction. I don't see
19 it. It doesn't pop out at me. I thought I had underlined
20 what was in the forward in that case.

21 MR. WRIGHT: And, Judge, if this is essentially a novel
22 request I would still at least for the record make the
23 request that when the State has cleared the first part of
24 the evidence, which I would concede goes to the case, when
25 it is time to introduce this additional information I would

1 ask the jury to be instructed that this essentially is what
2 is called 404(b) evidence and it is for a limited purpose to
3 show if it does the limited purpose the State is introducing
4 it for.

5 MR. THORNTON: Your Honor, all I would ask on behalf of
6 the State is that we follow South Carolina law. And I am
7 aware of no such instruction.

8 And especially in this case because even if I agree it
9 is for the limited purpose, the purpose is to show that he
10 is conscious of his guilt of this crime.

11 So I don't know what the limiting instruction would be.
12 I am not aware of one unless the court has one there in
13 Edwards.

14 THE COURT: I don't. And I am reading from Edwards
15 again, Section B; and it appears that Edwards acknowledged
16 that South Carolina follows the majority of jurisdictions
17 who have addressed the issue and cite the Fourth Circuit
18 case. And I don't see any discussion.

19 But if counsel has a case that you wish me to look at,
20 I would be glad to do it. Otherwise, I am going to deny a
21 motion.

22 MR. WRIGHT: Judge, I do not have a South Carolina
23 case. I am aware of the references Edwards makes to the
24 Fourth Circuit, and I think that just generally supports the
25 general principle that consciousness of guilt can't come

1 under the 404(b).

2 And I specifically enumerated it references the fact
3 that it is -- it can be included. Now as to a limiting
4 instruction to the jury I can't say that there is a
5 precedent in South Carolina law, but I think it is a good
6 practice so that juries receive evidence in the proper
7 context.

8 So I have made my request on the record, Judge. So I
9 understand your ruling.

10 THE COURT: All right. Thank you. Now does that bring
11 us to the jury?

12 MR. THORNTON: Yes, sir.

13 THE COURT: Let's bring the jury.

14 (WHEREUPON, jury enters the courtroom.)

15 THE BAILIFF: The jury has entered the courtroom, Your
16 Honor.

17 THE COURT: Good afternoon and welcome back, ladies and
18 gentlemen. I believe we are still in the presentation of
19 the State's case.

20 Solicitor.

21 MS. SWANSON: Thank you, Your Honor. Keamber Bigelow.

22 THE CLERK: Please be seated and state your full name.

23 THE WITNESS: Keamber Bigelow.

24 **DIRECT EXAMINATION BY MS. SWANSON OF KEAMBER BIGELOW:**

25 Q. Good afternoon, Keamber. And you actually go by Amber.

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1 right?

2 A. Uh-huh.

3 Q. Are you from South Carolina?

4 A. No.

5 Q. Have you ever lived in South Carolina?

6 A. No.

7 Q. Do you know Walter Tucker?

8 A. Yes.

9 Q. About for how long?

10 A. For about a month.

11 Q. About a month.

12 THE COURT REPORTER: If you could speak up just a
13 little bit. Thank you.

14 Q. Now a month prior to this date? How long have you
15 known Walter?

16 A. Only for about seven months.

17 Q. Seven months?

18 A. Yeah.

19 Q. And does he go by a nickname?

20 A. Oou-wee (ph).

21 Q. Oouwee. Do you know any of the parties besides Oouwee
22 that are involved in this trial here today?

23 A. No.

24 Q. And do you see Oouwee in the courtroom?

25 A. Yes.

0 0484

1 Q. Can you identify him for the record, please, ma'am.

2 A. He is right there (pointing).

3 Q. Okay. Did he ever speak to you about his involvement
4 in this trial?

5 A. Yes.

6 Q. And what did he say to you about it?

7 A. He said that he didn't have anything to do with the
8 murder; but the way he explained it, he wasn't sure. He
9 said he was running and that he was shooting and his
10 adrenaline was high.

11 Q. Okay. How did he characterize the incident?

12 A. He said it was a drug deal gone bad.

13 Q. Did he say anything about the white girl?

14 A. He told me that she wasn't testifying because she had
15 moved or she -- that she wasn't testifying.

16 Q. Okay. That she wasn't testifying. And had you ever
17 met Jessica Power?

18 A. No.

19 Q. Did he ever talk to you about a co-defendant of his in
20 this trial?

21 A. Yes.

22 Q. And what did he say about that co-defendant?

23 A. He said that he had to kill the co-defendant because if
24 he did then there wouldn't be the trial.

25 Q. Do you know who that co-defendant was?

0 0485

1 A. His name was Travis.

2 THE COURT: Are jurors having trouble hearing? If you
3 are, please let me know.

4 JUROR: I am. I am having trouble.

5 THE COURT: Could you please answer that question
6 again, Madam Witness.

7 A. His name was Travis.

8 Q. Who had Oouwee gotten -- who did Oouwee want to kill
9 Travis?

10 A. Well, his name was Savage. Real name Cedrick.

11 Q. Savage whose real name was Cedrick?

12 A. Uh-huh.

13 Q. And did you ever give information about a vehicle that
14 Savage was driving?

15 A. It was a black Camry. Yeah, it was a black Camry.

16 Q. And was there anything specific about this vehicle that
17 you can recall?

18 A. It was a firearm under the gearshift.

19 Q. Do you know what kind of gun or what it looked like?

20 A. It was a black pistol. It was silver at the top.

21 MS. SWANSON: Beg the court's indulgence.

22 Q. Did Oouwee specifically tell you anything about the
23 robbery?

24 A. I just know that he was there and he had something in
25 the left hand and he was shooting with the right hand and he

0 0486

1 was running.

2 Q. Okay. Something in the left hand, shooting with the
3 right hand while he was running?

4 A. Yes.

5 Q. Okay. And did -- did he ever mention why the white
6 girl wasn't going to testify?

7 A. He was threatening her.

8 Q. Okay.

9 MS. SWANSON: That's all I have, Amber. Please answer
10 any questions Mr. Wright may have for you.

11 THE COURT: Cross-examination.

12 **CROSS-EXAMINATION BY MR. WRIGHT OF KEAMBER BIGELOW:**

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. At the time you first gave some of the statements
16 you've just made I think at that point in time you had known
17 Mr. Tucker for about a month or so; is that fair?

18 A. Correct.

19 Q. Okay. And in that time period getting to know him Mr.
20 Tucker talks a lot doesn't he?

21 A. A little.

22 Q. Promises but never delivers on his promises; is that a
23 fair statement? He will make a promise and talk like he is
24 going to do things and he doesn't ever actually do them?

25 A. Yes.

0 0487

1 Q. Okay. And so he will beat his chest and brag a lot
2 like he is -- essentially like he is the man; is that a fair
3 characterization?

4 A. Yes.

5 Q. Now would you agree that he was upset that he was being
6 blamed for this murder by somebody; is that correct that he
7 was upset about it?

8 A. Yes, he was upset.

9 Q. And he was worried about being convicted for this
10 murder?

11 A. Yes.

12 Q. Because he felt he's -- didn't do it; is that fair
13 enough?

14 A. Yes.

15 Q. And is it a fair statement he was getting increasingly
16 worried about it ---

17 A. Yes.

18 Q. --- as you spend time with him?

19 A. Yes.

20 Q. Now when you spent time with him he actually had his
21 case file, you know, documents regarding his case, with him;
22 didn't he?

23 A. Yes.

24 Q. Okay. And sometimes y'all might -- ya'll both have
25 access to the same room and essentially you might stay in

0 0488

1 the room where his case file was inside it; is that true?

2 A. I wouldn't read his case.

3 Q. Well, I didn't ask you if you read it, just that it was
4 there; correct?

5 A. Uh-huh.

6 THE COURT REPORTER: I'm sorry, I didn't hear her
7 answer.

8 A. I wouldn't read his case.

9 Q. Okay. In fact at one point -- now you have never seen
10 me before; is that fair; and we've never talked, correct?

11 A. No.

12 Q. All right.

13 Q. But back then weren't you present when he was speaking
14 with his attorney about the case?

15 A. Yes.

16 Q. Now around this same timeframe where you made the
17 statements that you are making now isn't it true that you
18 also came into possession of some of Mr. Tucker's jewelry?

19 A. Yes.

20 Q. And that jewelry was a good amount of jewelry worth
21 maybe about \$15,000?

22 A. No, ---

23 Q. Well, it was ---

24 A. --- it was not worth 15,000.

25 Q. Well, it was worth something; correct?

0 0489

1 A. Yes.

2 Q. And you took the jury and ultimately pawned it for
3 yourself; is that correct?

4 A. Yes.

5 Q. Now isn't it true that you've previously stated Savage
6 was never going to commit any murder or do any kind of
7 murder?

8 A. No, because he is not that type of person.

9 Q. Okay. And in regards to the gun do you recall stating
10 that you weren't sure whether that gun was ever going to be
11 used in any sort of murder that might have been getting
12 another gun; do you remember that?

13 A. Could you repeat the question or could you word it
14 better because I ---

15 Q. Let me simplify it.

16 A. Okay.

17 Q. You talked a little bit about a gun that was in a car
18 driven by Savage.

19 A. Uh-huh.

20 Q. As in regards to that gun do you remember being asked
21 whether that gun was going to be used to do this murder; do
22 you remember being asked that?

23 A. I'm not understanding.

24 Q. Okay.

25 A. And I'm not sure ---

0 0490

1 Q. Do you remember when you were talking to law
2 enforcement?

3 A. Uh-huh.

4 Q. Do you remember that one of them asked you is the gun
5 in that car was that the gun that was going to be used to
6 commit a murder and ---

7 A. I'm pretty sure it probably was. I was --

8 Q. Okay. Well, do you remember telling them you are not
9 sure, you think they were going to get another gun?

10 A. It was discussed that they were going to get another
11 gun.

12 Q. Okay. And you gave information about the car and
13 Savage happened to be pulled over or arrested for something
14 so they were able to impound the car and search the car; is
15 that your understanding?

16 A. Uh-huh.

17 THE COURT REPORTER: I'm sorry, I didn't hear her
18 answer. She said uh-huh.

19 THE COURT: Let me interrupt just a moment. The court
20 reporter needs for the witness to respond yes or no.

21 A. Okay. It is.

22 Q. Okay. But you don't have any information that when he
23 was stopped or arrested that he was on his way to Beaufort
24 to do anything with that gun, just that he was just arrested
25 for whatever reason; is that correct?

0 0491

1 A. I believe that he got arrested for speeding because he
2 didn't want to do it.

3 Q. Okay. So you think he was speeding and got pulled over
4 and that's how he ended up getting arrested?

5 A. I was informed that he was pulled over for speeding.

6 Q. Okay. And I think you said Savage didn't want to and
7 had no intention of ever doing anything regarding a murder,
8 correct?

9 A. (Inaudible.)

10 THE COURT REPORTER: I'm sorry, I didn't hear you.

11 THE COURT: I'm sorry?

12 A. No.

13 Q. No, he had no intention; he wasn't going to do
14 anything?

15 A. No.

16 Q. Okay. And there was some discussion about the
17 co-defendant, Travis. Do you remember when you first
18 started talking to law enforcement? Well, let me ask you
19 this: At the time you say you were hearing these things did
20 you hear the name Travis or did you later come to understand
21 whether the person being talked about may be Travis?

22 A. I was pretty sure, because it started with a TR. And
23 then I figure out that Travis was actually a co-defendant
24 and then I figured out the rest.

25 Q. Okay, so that is how you connected the dots that Travis

0 0492

1 must be the co-defendant?

2 A. Yes.

3 Q. Okay.

4 MR. WRIGHT: One moment judge.

5 THE COURT: All right.

6 Q. Two quick follow-ups. As part of your interactions
7 with Mr. Tucker did you on occasion also meet and know his
8 mother?

9 A. I have never met his mother.

10 Q. You've never met his mother?

11 A. No.

12 Q. How about his father?

13 A. Yeah, I met his father.

14 Q. Okay.

15 MR. WRIGHT: That's all I have judge.

16 MS. SWANSON: Nothing from the State. I ask that this
17 witness be allowed to be excused.

18 THE COURT: Any objection to this witness being
19 excused?

20 MR. WRIGHT: No objection, Your Honor.

21 THE COURT: Okay. Thank you, ma'am. You may step down
22 and you may be excused from your subpoena.

23 (WHEREUPON, the witness was duly sworn.)

24 THE CLERK: Please be seated and state your full name.

25 THE WITNESS: Dillon Hightower, H-I-G-H-T-O-W-E-R.

0 0493

1 DIRECT EXAMINATION BY MS. SWANSON OF DILLON HIGHTOWER:

2 Q. Mr. Hightower, who do you work for?

3 A. I work for the Fourteenth Circuit Solicitor's Office.

4 Q. And what do you do there?

5 A. I am an investigator.

6 Q. All right. And did you assist in the investigation of
7 Mr. Walter Tucker?

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

9 Q. All right. As a result of information provided to you
10 and Investigator Heaton by Keamber Bigelow what did you then
11 go do?

12 A. I traveled to Hampton County Detention Center and
13 attempted to interview and receive some information about a
14 vehicle that was impounded in Beaufort.

15 (WHEREUPON, State's Exhibit 42, photograph, was marked for
16 identification.)

17 Q. Okay. I am going to show you what has been marked as
18 State's Exhibit 42 and ask if you can describe what is
19 contained in this photo.

20 A. This is the black vehicle that was impounded. It is a
21 2014 Toyota Camry bearing a Florida tag. It was a rental
22 vehicle.

23 Q. And is that a fair and accurate depiction of that car?

24 A. Yes, ma'am.

25 Q. All right. State moves 42 into evidence and asks to

0 0494

1 publish.

2 MR. WRIGHT: No objection.

3 THE COURT: Motion granted.

4 (WHEREUPON, State's Exhibit Number 42 admitted into
5 evidence.)

6 BY MS. SWANSON:

7 Q. All right. Mr. Hightower -- Investigator Hightower,
8 this is the car that you located in Hampton County?

9 A. Yes, ma'am.

10 Q. All right. Were you able to determine who was driving
11 it?

12 A. I was.

13 Q. And who was that?

14 A. Cedrick Antonio McDuffy.

15 Q. And were you able to determine whether or not he had a
16 nickname?

17 A. The nickname was Savage.

18 Q. And how were you able to determine that?

19 A. We were given information that he had a tattoo across
20 his chest and stating the name was Savage.

21 Q. Savage. And where was he located?

22 A. In the Hampton County Detention Center.

23 Q. All right. Now did you process that car?

24 A. I did.

25 Q. Did you search that car?

0 0495

1 A. I did.

2 (WHEREUPON, State's Exhibit Number 43, photograph, was
3 marked for identification.)

4 (WHEREUPON, State's Exhibit Number 44, photograph, was
5 marked for identification.)

6 (WHEREUPON, State's Exhibit Number 45, photograph, was
7 marked for identification.)

8 Q. Okay. I am going to show you State's 43, 44, and 45.
9 which I have previously shown to the defense and ask that
10 you identify what is contained in these pictures and tell me
11 whether or not they are a fair and accurate depiction of
12 what -- of how the car and items appeared that day.

13 A. State's Exhibit 43, that was a picture that I took from
14 the outside of the vehicle looking into the sedan. And that
15 is a fair and accurate depiction of what I saw before I
16 entered the vehicle.

17 State's Exhibit 44 was a picture of the gearshift area
18 that I located the firearm in.

19 And State's Exhibit 45 is a picture of the firearm that
20 I pulled out of that gearshift area.

21 Q. Okay.

22 MS. SWANSON: The State moves 43, 44, and 45 into
23 evidence and move to publish.

24 THE COURT: Without objection the motion is granted.

25 MR. WRIGHT: No -- I am sorry, no objection, Judge.

0 049E

1 MS. SWANSON: Thank you.

2 (WHEREUPON, State's Exhibit Number 43 admitted into

3 evidence.)

4 (WHEREUPON, State's Exhibit Number 44 admitted into

5 evidence.)

6 (WHEREUPON, State's Exhibit Number 45 admitted into

7 evidence.)

8 BY MS. SWANSON

9 Q. All right. Investigator, please tell us what we are

10 looking at in State's 43 and ---

11 A. That -- I'm sorry.

12 Q. Go ahead.

13 A. That is a picture from the outside looking in just

14 before we went in and searched the vehicle.

15 Q. And what area in particular did you search in this

16 vehicle?

17 A. The gearshift area right there in the center where the

18 pack of cigarettes is. We had to -- actually had to unscrew

19 the knob on the gearshift area; pull two panels back in the

20 dash, the tan panels.

21 Q. Okay.

22 A. And lifted directly up.

23 Q. Okay. So once you lifted it up -- I am going to show

24 you State's 44. Is this a photo of what you found?

25 A. Yes, ma'am.

0 0497

1 Q. All right. And it is kind of hard to see here, but
2 what is this item?

3 A. That is the handgun I recovered from the vehicle. It
4 was stuffed under kind of the center console area. The open
5 area there is the gearshift, and then where the center
6 console was was actually the gun was placed under there.

7 Q. I am placing State's 45 up. What is that a picture of?

8 A. That is the gun I recovered from the vehicle.

9 Q. What caliber was that firearm?

10 A. That was a 22 caliber.

11 Q. Okay. And is that a semi-automatic?

12 A. Yes, ma'am.

13 Q. I have nothing further at this time. Thank you.

14 THE COURT: Cross-Examination.

15 **CROSS-EXAMINATION BY MR. WRIGHT OF DILLON HIGHTOWER:**

16 Q. Good afternoon, sir.

17 A. Good afternoon.

18 Q. That vehicle was a rental vehicle?

19 A. Correct.

20 Q. Okay. It was not rented in the name of Walter Tucker
21 was it?

22 A. It was not.

23 Q. And at the time it was stopped there was only one
24 person in it, correct?

25 A. That's correct.

0 0498

- 1 Q. And that was Mr. McDuffy, correct?
- 2 A. That's correct.
- 3 Q. And when you retrieved that weapon it took some sort of
- 4 work to open everything up and to get to it, correct?
- 5 A. Yes, sir, it did.
- 6 Q. And when you got to it, it is a 22 caliber; correct?
- 7 A. Correct.
- 8 Q. And a 22 caliber. That 22 caliber weapon is not a 40
- 9 caliber Glock?
- 10 A. It is not.
- 11 Q. And did you do latent prints on it to see if any of Mr.
- 12 Tucker's fingerprints would be on that weapon?
- 13 A. I did not.
- 14 Q. Did you see any plans or sketches or anything like that
- 15 in the car saying that this is going to be a murder up in
- 16 Beaufort, South Carolina?
- 17 A. No, sir, I didn't.
- 18 Q. Did you see anything that had a name on it in there
- 19 saying go find Travis?
- 20 A. No, sir.
- 21 Q. In fact that vehicle had rear-end damage, correct?
- 22 A. Yes, it did.
- 23 Q. As part of your investigation did you come to find out
- 24 how that vehicle had rear-end damage?
- 25 A. Yes, sir, I did.

0 0499

1 Q. Was it involved in an accident?

2 A. Correct.

3 Q. Okay. And at the time, if you know, who was driving
4 the vehicle?

5 A. I can go back to the report.

6 Q. Would it refresh your recollection if I asked you was
7 it Keamber, the driver at the time?

8 A. If I can look at my report I can verify.

9 Q. Yes, please do.

10 A. The report states that she was in the front seat, the
11 left side. So that ---

12 Q. So that would be the driver?

13 A. Correct.

14 Q. Okay. At the time of the accident was it Keamber,
15 another female, Mr. Tucker and Mr. McDuffy; were those the
16 occupants?

17 A. And one other male.

18 Q. But Mr. Tucker and Mr. McDuffy?

19 A. Uh-huh.

20 Q. There was another male or just those two?

21 A. According to the report there were five people in the
22 vehicle.

23 Q. So three males, two females?

24 A. Yes, sir.

25 Q. Okay. And have you ever -- strike that.

0 0500

1 MR. WRIGHT: Judge, indulgence, please.

2 THE COURT: Sure.

3 MR. WRIGHT: Judge, that is all the questions I have.

4 THE COURT: Any redirect?

5 MS. SWANSON: No, sir.

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

7 MS. SWANSON: May Mr. Hightower be excused, please?

8 MR. WRIGHT: Without objection.

9 THE COURT: Certainly.

10 MS. SWANSON: Thank you.

11 MR. THORNTON: Dr. Lee Maris Tormos.

12 (WHEREUPON, the witness was duly sworn.)

13 THE CLERK: Please have a seat and state your full
14 name.

15 THE WITNESS: My name is Lee Marie Tormos. L-E-E,
16 M-A-R-I-E; last name Tormos, T as in Tom; O-R-M-O-S.

17 -----

18 **DIRECT EXAMINATION BY MR. THORNTON OF LEE MARIE TORMOS:**

19 Q. Dr. Tormos, where do you currently work?

20 A. I work at the pathology department of the Medical
21 University of South Carolina in Charleston.

22 Q. And what is it that you do for MUSC?

23 A. My main duty is that I am a forensic pathologist.

24 Q. Tell the jury what a forensic pathologist is and what
25 you do for MUSC.

0 0501

1 A. At MUSC I perform autopsies as part of my forensic
2 pathology duties, which is the examination of the body
3 internally and externally so that we can correlate that with
4 the investigative aspect and come to a conclusion on the
5 cause and the manner of a person's death.

6 Q. And how long have you been performing autopsies?

7 A. At MUSC I have been almost five years. And before that
8 I also worked in Puerto Rico for an additional three years.

9 Q. What kind of training or education do you have that
10 qualifies you to be a forensic pathologist?

11 A. In order to be a forensic pathologist you have to do
12 four years of a bachelor's degree followed by four years of
13 medical school followed by four years of specialty degree in
14 the practice of pathology and an additional year of
15 subspecialty training in forensic pathology. So a total of
16 13 years.

17 Q. Have you ever been qualified as an expert in forensic
18 pathology?

19 A. Yes.

20 Q. And have you testified in court?

21 A. Yes, sir.

22 MR. THORNTON: Your Honor, at this time I would ask
23 that Dr. Lee Marie Tormos be recognized as an expert in the
24 field of forensic pathology.

25 MR. WRIGHT: No objection.

0 0502

1 THE COURT: Motion is granted, and witness is so
2 qualified.

3 MR. THORNTON: Thank you, Your Honor.

4 BY MR. THORNTON:

5 Q. Dr. Tormos, have you reviewed -- well, first of all let
6 me ask you this: Did you perform the autopsy of Quantez
7 Greer that we are talking about today?

8 A. I did not.

9 Q. Have you, however, reviewed all of the records so that
10 you can come and testify and provide the jury the
11 information necessary?

12 A. Yes, sir.

13 Q. And did you in fact testify at the last trial involving
14 this case?

15 A. Yes, sir.

16 Q. Is that unusual to have one pathologist be able to
17 testify to findings of another pathologist?

18 A. It is not unusual. Sometimes personal situations or
19 work duties preclude us from being able to testify in every
20 single case and it is possible for one pathologist to cover
21 another pathologist.

22 Q. Dr. Tormos, let me ask you if you could go through
23 please the autopsy that was performed in this case of
24 Quantez Greer as far as what the findings are in regard to
25 any wounds that were found.

0 0503

1 A. Okay. The autopsy was performed on the morning of
2 September 7th. On that day the external examination showed
3 that he was an adult, black male, 5'11", 182 pounds.

4 And the main finding was a gunshot wound to the chest.
5 But it really is on the posterior lateral chest. So kind of
6 towards the back.

7 Q. And if you wouldn't mind -- I am not going to have you
8 come all the way down, Dr. Tormos; but could you stand up
9 and indicate where the entrance gunshot wound would be?

10 A. Absolutely. Can you hear me? Okay. The entrance
11 gunshot wound was right here (pointing) to the back. So
12 about an inch posterior to the mid axillary line on the left
13 chest.

14 Q. At what was the -- what was the trajectory or path of
15 the bullet as it went through the body; can you tell us
16 that?

17 A. Yes. The projectile perforated the skin and it
18 fractured the fifth rib; after which the projectile core,
19 the lead core, continued its trajectory through the upper
20 lobe of the left lung and right through the heart.

21 It then exited the area where the heart is or the
22 pericardial sac and embedded itself just to the left of the
23 sternum on the anterior chest wall. And that is where the
24 core was recovered.

25 The jacket, however, after perforating the rib

0 0504

1 separated from the core and was recovered loose within the
2 left chest cavity.

3 Q. Thank you, Dr. Tormos. Please be seated. So basically
4 we are talking about one bullet wound, correct?

5 A. One bullet wound, yes.

6 Q. There was testimony earlier regarding State's Exhibit
7 34 which has been introduced into evidence. And I believe
8 this would be Dr. Reaman's envelopes. We noted earlier
9 there was two pieces or fragments in there. But this all
10 came from one wound, one bullet?

11 A. One bullet trajectory. It is just a big core and the
12 jacket separated after entering the body.

13 Q. And I notice you did not talk about an exit wound. So
14 was there an exit wound in this case?

15 A. There was no exit wound.

16 Q. And where did -- and forgive me if I get them wrong,
17 but where did the lead core -- did that travel the farthest
18 through the body?

19 A. The lead core travels the farthest, yes.

20 Q. Where does it end up?

21 A. It ends up on the anterior chest wall on the inside
22 just to the left of the sternum, pretty much at the same
23 level where it enters.

24 Q. Dr. Tormos, as part of -- as part of your duties as
25 pathologist and in your review of this file can you explain

0 0505

1 to the jury what it means to say -- well, first let me ask
2 this: As part of those duties do you determine both the
3 cause and manner of death?

4 A. Yes.

5 Q. And can you explain to the jury what those phrases
6 mean, cause and manner of death?

7 A. The cause of death is the injury or natural event that
8 brings about the death. Whereas the manner of death is
9 based on the circumstances surrounding the death.

10 Q. Dr. Tormos, and I realize you are testifying in regards
11 to Dr. Reamer's findings. But in your review of these
12 findings was there a cause and manner of death given in this
13 case?

14 A. Yes, there was.

15 Q. What is the cause of death?

16 A. The cause of death is a gunshot wound to the chest.

17 Q. And what is the manner of death?

18 A. The manner of death is homicide.

19 Q. Thank you, Doctor. No further questions. Please
20 answer any questions Mr. Wright has.

21 **CROSS-EXAMINATION BY MR. WRIGHT OF DR. LEE MARIE TORMOS:**

22 Q. Good afternoon.

23 A. Hi. Good afternoon.

24 Q. Your work really is just essentially examining the
25 body, the wounds that you find; you don't based on that try

0 0506

1 to figure out how something happened in terms of how the
2 person got shot; is that a fair statement?

3 A. We examine the body and the investigative aspect is the
4 information that is provided to us by the coroner.

5 Q. Okay. And also I think you said the bullet wound, the
6 entry wound, is on this left sort of side of the chest just
7 a little bit past ---

8 A. Past mid line.

9 Q. --- the center line?

10 A. Yes, so it is kind of towards the back. Yes.

11 Q. Okay. To make sure I am getting my left and right.
12 So if I am sitting in a car my left would be facing the
13 window -- if I'm driving my left would be facing the window.
14 It is that side?

15 A. Yes, that is correct.

16 Q. Okay. And did you say the bullet -- well, the path of
17 the bullet is slightly downwards?

18 A. No, sir. It is horizontal.

19 Q. It is horizontal.

20 A. It's ---

21 Q. So it stayed pretty much parallel to a flat ground, I
22 guess?

23 A. Yes, sir.

24 Q. And the path of the bullet can be -- depending on how
25 the body is in relation to when the bullet enters it, it can

0 0507

1 create different paths; meaning if I am perfectly standing
2 and someone completely perpendicular shoots I could possibly
3 have a wound path straight across, correct?

4 A. Yes.

5 Q. Or if I am bent over but the person has also angled
6 their gun so it is still perpendicular to my body what you
7 would see could look like the same kind of wound path, it
8 all depends on positioning; is that fair enough?

9 A. Yes, absolutely.

10 Q. Okay. And I think you said the core ends up sort of in
11 the sternum but it had punctured the lung?

12 A. It went through the lung and the heart. And it ends up
13 just to the left of the sternum.

14 Q. Okay. And in terms of a time that it would take for
15 the person to be deceased is there a range of how long you
16 might expect a person to continue to live until that moment
17 when they have demised?

18 A. Given the perforation through the heart I don't expect
19 that he would have lived more than a minute or two.

20 Q. Okay. So a person could have received the gunshot,
21 within a minute or two functioning would have started to
22 shut down?

23 A. By then the person would have had all functions cease.

24 Q. Okay.

25 A. The heart would stop pumping at the time of the -- of

0 0508

1 the perforation and there would be very little blood flow
2 after that.

3 Q. Okay. So they -- they would deteriorate pretty quickly
4 and then ultimately demise?

5 A. Yes, sir.

6 Q. Okay. That's all I have. Thank you.

7 A. You are welcome.

8 MR. THORNTON: Court's indulgence, Your Honor.

9 THE COURT: All right.

10 MR. THORNTON: The State rests, Your Honor. And I have
11 nothing further for this witness. Thank you.

12 THE COURT: Thank you, ma'am. You may step down. You
13 are excused from your subpoena.

14 DR. TORMOS: Thank you.

15 THE COURT: Ladies and gentlemen, I am going to ask you
16 to step into the jury room for a few moments while I discuss
17 a matter of law with the attorneys. I hope to be back with
18 you shortly and remind you it is too early to begin
19 discussing the case.

20 (WHEREUPON, jury exits courtroom.)

21 THE BAILIFF: The jury is clear, Your Honor.

22 MR. WRIGHT: Your Honor, I think this is the time where
23 we would generally want to make a directed verdict. As the
24 court is aware, my client is charged with three charges; the
25 murder, the armed robbery and the kidnapping. I will start

1 in reversed order if I could.

2 Ultimately the only evidence that has come into the
3 trial is that at some point Ms. Power walks into a trailer
4 of her own volition. She claims that at that point a gun
5 was pointed to her face and that at some point during this
6 exchange she lays down on the floor or is laid down on the
7 floor is probably maybe a better way to say it.

8 I would suggest, Judge, she was not taken anywhere
9 other than from a standing position to a lay position. She
10 was not transported to a back room. She was not moved
11 across the room. She was not bound. Any of the classic
12 ways when we consider a kidnap.

13 But even if we say in a technical way, I would suggest
14 that simply going from a standing position to a laid
15 position would not constitute a kidnapping from a technical
16 interpretation and again in weighing the evidence in favor
17 of the State.

18 So she never gave any affirmative testimony expanding
19 or expounding on that. So that is literally all there is as
20 to this idea of the kidnapping.

21 And it is undisputed she entered the trailer
22 consensually. The issue would be simply I guess as a matter
23 of law if you enter and at that point someone is now trying
24 to rob you and you go from a standing position at some point
25 to a laying position is that enough to constitute a full

1 kidnapping. And I would respectfully submit to the court it
2 does not.

3 Judge, as to the armed robbery it becomes an
4 interesting question. The question is was property taken
5 from the presence of Ms. Powers with the use of a deadly
6 weapon. The only property that is at issue is the money
7 that belonged to someone else.

8 But the other issue is even this: We are talking about
9 money in a drug transaction. The question is, is that even
10 property by which Ms. Powers could make any claim for which
11 to say that it was essentially taken by use of a gun.

12 I think the evidence that came in is a little bit
13 convoluted. I think if we give the State the benefit of the
14 doubt she claims Mr. Tucker is the one that actually took
15 it. But I think it becomes questionable as to whether Mr.
16 Tucker is the one she alleged took it or Mr. Polite.

17 There is a bona fide issue of whether any of this is
18 true. And I understand it is a factual issue and in all
19 likelihood the court's inclination would be to send it to
20 the fact finder province of the jury.

21 As to the murder, Judge, it is undisputed and the State
22 has already said Travis Polite shot and killed Mr. Greer.
23 That is undisputed. And we take this case already coming
24 from that premise.

25 The question then is has there been any evidence by

1 which to create a nexus between Mr. Tucker and Mr. Polite
2 such that anything Mr. Polite has done can be attributed in
3 any way to Mr. Tucker.

4 Well, there is no evidence whatsoever that there was
5 preplanning. No one has said anything about there was a
6 plot, a plan, this was always going to be a lick if you will
7 or armed robbery. So there's nothing in the record that
8 goes to that.

9 So then the question is what is in the record. And
10 ultimately what you have is Mr. Polite going out by himself
11 firing a shot that struck and killed Mr. Greer.

12 You have two competing pieces of evidence. You have
13 Detective Gobel who clearly says in all of his meetings with
14 Jessica Powers she never said anything and there is nowhere
15 in his report about my client handing a gun to Travis
16 Polite.

17 That whole storyline, that albeit she did say, has come
18 up in the last few months. But nowhere in her initial
19 statement, her initial two statements on the 6th, anything
20 she said on the 7th, and then her interview again on the
21 12th did she ever say that my client handed Mr. Polite a
22 gun.

23 I would suggest that in itself should establish that he
24 didn't give a gun to a person who then used it to shot and
25 kill Mr. Greer.

1 Furthermore she never said anything about a second gun.
2 The State's theory seems to be twofold. One, he gave Polite
3 a gun; and two, he had a second gun that he was shooting in
4 the air though there is no indication that he ever hit or
5 did anything. And in fact the indication the State has
6 conceded is he did not ever shoot and kill Mr. Greer. Those
7 are the two theories.

8 One, we immediately say he can only be complicit if you
9 can link him to helping Travis Polite. Which again they
10 can. Secondly, the other way is to show that somehow him
11 even if he did go out the front entrance anything he did
12 somehow contributed to the death of Mr. Greer. There is no
13 evidence of that. It would be pure speculation to say even
14 if he did come out the front that that had anything to do
15 with it.

16 And that is contrary to all the other witnesses. None
17 of them described any suspect in shorts being out there
18 shooting a gun. That is just undisputed.

19 So, Judge, I think this is that case - where I
20 understand there are some factual arguments that can be
21 made - that it would be proper for a directed verdict on
22 murder and armed robbery; but I earnestly ask the court to
23 consider a directed verdict on the kidnapping.

24 THE COURT: All right. Thank you, Mr. Wright.
25 Solicitor.

1 MR. THORNTON: Your Honor, I'm sorry; we must have been
2 watching two different cases. Jessica Powers testified that
3 Walter Tucker pulled a gun on her, locked the door. Excuse
4 me, let me get it right in order. Locked the door on her.

5 That by itself is kidnapping under South Carolina state
6 law. If he did nothing else but turn the lock on the door
7 and not let her leave, that is kidnapping.

8 He then pulls a gun on her. Even if he hadn't forced
9 her to a prone position or that Travis Polite did, that by
10 itself would be enough.

11 It is -- you know, and I am going to read it right from
12 the statute, Judge. I know you already know it. Whoever
13 shall unlawfully seize, confined, inveigle, decoy, kidnap,
14 abduct, carry away.

15 The minute he turns the lock he has confined her. The
16 second he pulls a gun on her he seized her. And luring them
17 there under the pretense that it is a drug deal which it is
18 actually a robbery; which I think certainly is the jury
19 could have an inference from the facts that have been
20 testified would be a decoy. Any of those in and of
21 themselves would be kidnapping.

22 As to armed robbery there is testimony from Jessica
23 Power. And that has been consistent in all of her
24 statements all the way back even the ones we talked about
25 with John Gobel. That Walter Tucker put a gun in her face

1 and he along with Travis Polite took the money.

2 And I think in testifying she actually said he took the
3 money. He couldn't find it and said where is the money.

4 And I won't go into all of the expletives. And because he
5 couldn't find it. And then she helps him find it. He takes
6 it. That is armed robbery.

7 And as to the murder I want to make sure that all of
8 this is straight for the record. I think based on all the
9 evidence that we have available - and when I say the
10 evidence we have available I mean this trial and the other
11 trial, Judge, that the jury doesn't have. But I will take
12 care of that in my closing - that it is most likely that
13 Travis Polite fire the bullet that killed Quantez Greer.

14 He went out first. He was armed. You hear the
15 gunshot. Based on the fact that it is a perpendicular wound
16 to the left side. And I am going to tell the jury that, and
17 I have a told council this, that they should assume that
18 Travis Polite fired the fatal bullet. But under the hand of
19 one is the hand of all, Judge. That is not relevant.

20 Clearly they are working in concert. They are in
21 the trailer together. Both of them according to Jessica
22 Powers are participating in forcing her to the ground,
23 taking the money. And even if you don't believe what she
24 testified to - and again this is any evidence - she
25 testified Walter Tucker hands him a gun. That in and of

1 itself make them acting in concert, even if Travis Polite is
2 the one - and I believe he probably is based on everything
3 that I have available, Judge - who actually fired the fatal
4 bullet.

5 In addition to that, Judge, I find it hard to believe
6 that defense counsel is going to stand here and say that the
7 only witness that says, you know, anybody out there in
8 shorts was shooting is -- what about Walter Tucker who tells
9 Keamber Bigelow I don't think I did it but, you know, I was
10 out there and I was shooting but I don't know that I hit
11 anybody. Out of his own mouth he admits he was there and he
12 was shooting.

13 I think clearly, Judge, there is not just enough but
14 way more than enough on all three charges. I would ask that
15 you respectfully deny the motion and send all three charges
16 to the jury.

17 THE COURT: Mr. Wright, that was a great argument you
18 made; but the solicitor I agree with what the solicitor says
19 as to each of the charges. And for all of those reasons as
20 you might have expected I am compelled to deny your motions
21 as to each charge.

22 Where are we? Do I need to discuss with your client
23 his rights?

24 MR. WRIGHT: Judge, we also have a little other issue
25 that has arisen. Apparently Chip Jabar was here earlier,

1 left to get lunch. And so far he has not returned.

2 So Mr. Ferguson went out to make sure he was here and
3 ready. But apparently it has been confirmed he was here,
4 but so far has not returned. So we may need a minute to try
5 to figure out.

6 THE COURT: Okay.

7 MR. WRIGHT: He is likely to be our only witness. And
8 if I could just have one quick moment to consult with my
9 client regarding ---

10 THE COURT: Absolutely.

11 MR. WRIGHT: --- his testimony.

12 THE COURT: Certainly.

13 MR. WRIGHT: --- I should be ready to put that on the
14 record.

15 MR. THORNTON: With the court's permission unless Mr.
16 Wright objects I am going to go ahead and ask our folks as
17 well as the Sheriff's Office to go ahead and try to locate
18 Mr. Jabar. Because he is under their subpoena as well as
19 mine, Judge. I never released him from my subpoena.

20 MR. WRIGHT: Okay. That is fine, Judge.

21 (WHEREUPON, break was had.)

22 MR. WRIGHT: And, Your Honor, my client is ready to put
23 on the record he does not intend to testify.

24 THE COURT: Let's make sure that he does in fact
25 understand all of his rights. And I realize, Mr. Wright,

1 you have explained it to him; but I feel compelled to go
2 into these matters with him.

3 Mr. Walter Tucker.

4 MR. TUCKER: Yes, sir.

5 THE COURT: At this time I am going to explain to you
6 certain of your rights. And if at any time you don't
7 understand anything I am saying, if I drop my voice, if I
8 don't speak distinctly or you have any questions about
9 anything I am saying, if you would please let me know.

10 We have now reached the stage, or will in a few
11 minutes, in your trial where you have the right to present
12 your defense. As I am sure your lawyer has told you, you
13 also have the right to claim the protection given to you by
14 the Fifth Amendment to the Constitution of the United States
15 of America which states in part as follows:

16 No person should be compelled in any criminal case to
17 be a witness against himself. This means you cannot be
18 required to testify in this case. You have the right to
19 testify but no one can make you testify. And this is a
20 personal right of yours, and only you can waive that right.

21 If you decide to testify you will be subject to the
22 same rules that govern other witnesses. You may be examined
23 and cross-examined on any relevant issue in this case.

24 In addition if you have any convictions involving
25 dishonesty or false statement or for crimes punishable by

1 imprisonment for more than one year and the court determines
2 that the probative value of admitting this evidence
3 outweighs its prejudicial effect to you, the solicitor would
4 be able to attack and introduce your record -- excuse me, to
5 attack your credibility.

6 If you decide to testify this decision on your part
7 must be made freely and voluntarily with the knowledge of
8 the protections given to you by the Constitution.

9 If you decide not to testify I will instruct the jurors
10 that they cannot give that fact, the fact you did not
11 testify, any consideration whatsoever and that there is to
12 be absolutely no prejudice to you if you don't testify.

13 And of course this is left entirely up to you. You may
14 discuss this with your attorney, family, friends or anyone
15 else; but you must make the final decision. Do you
16 understand what I have said so far?

17 MR. TUCKER: Yes, sir.

18 THE COURT: Do you have any questions about what I've
19 said to you?

20 MR. TUCKER: No, sir.

21 THE COURT: Have you had a chance to talk to your
22 attorney about this?

23 MR. TUCKER: Yes, sir.

24 THE COURT: Have you and your attorney made a decision
25 or have you made a decision?

1 MR. TUCKER: Yes, sir.

2 THE COURT: And your decision would be?

3 MR. TUCKER: I am not going to testify.

4 THE COURT: Not to testify?

5 MR. TUCKER: Yes, sir.

6 THE COURT: All right. Thank you, sir.

7 I guess we don't have the witness yet, do we?

8 MR. THORNTON: No, sir. I mean they are probably going

9 to have to go look for him, Judge. I see somebody in the

10 back shaking their head; so I'm assuming they are going to

11 look for him right now, Your Honor. Apparently he is not

12 currently in the courthouse.

13 THE COURT: All right. We will -- well, there is just

14 a moment that we can take preliminary. I don't want to say

15 discuss it too soon but, but we can talk about the

16 possibility this case goes to the jury what charges might be

17 appropriate.

18 MR. THORNTON: The State is happy to do that, Judge, if

19 you would just give me about five minutes to organize it. I

20 think we only -- I know we are doing your standard charge

21 obviously. And the hand of one is the hand of all obviously

22 is going to be the -- you know, something I am going to

23 want. I have a proposed charge on that.

24 MR. WRIGHT: Judge, if I could have the same five

25 minutes. I have brought charges and that way we can ---

1 THE COURT: Sure, we will do that. We will be at ease
2 for five minutes.

3 MR. THORNTON: Thank you, Your Honor.

4 (WHEREUPON, recess was had.)

5 THE COURT: Let me discuss one matter briefly with you
6 that we may have already briefly touched on, and that is
7 finishing up today or in the morning. It looks like the way
8 things are going ---

9 MR. THORNTON: I would imagine in the morning, Judge.
10 Just because I don't know when they are going to be able to
11 get him. But I have asked that they keep at it until they
12 find him.

13 MS. WRIGHT: And, Judge, he will be quick meaning 10,
14 15 minutes probably total. I have got about seven or eight
15 questions, and they will have probably about the same. And
16 that is it.

17 But he is very important because his testimony will, I
18 believe, will impeach their primary witness. And you may
19 have heard me sort of query of it of a couple of witnesses.

20 THE COURT: I saw you had a motion that you were going
21 to file that addressed the issue, didn't you?

22 MS. WRIGHT: Yeah, it became moot because we got it.
23 Once we got him subpoenaed we got him here, but it turns
24 out -- and I am not saying the State agrees with what he
25 says, but based on what he says it is exculpatory.

1 MR. THORNTON: He would certainly provide information
2 that I think the defense would find helpful which is why I
3 have asked them to go ahead and prepare this order so we can
4 arrest him so they can have him.

5 Because if they -- you know, I think they have a right
6 to have him. And he was under subpoena by both myself and
7 the defense.

8 THE COURT: All right. So we are going to conclude
9 this case one way or the other tomorrow?

10 MR. THORNTON: Yes, sir.

11 THE COURT: Let's give it another 15 minutes to see
12 if he pops in here today. I just can't keep the jury hung
13 up ---

14 MR. THORNTON: Yes, sir.

15 THE COURT: --- if they don't get him until tonight.

16 MS. WRIGHT: Judge, I would ask at least 15 minutes to
17 see if we get confirmation that we have got him or he is in
18 route or something but---

19 THE COURT: See what is happening.

20 MR. THORNTON: Yes, sir, I will check back within about
21 15 minutes, Judge; and I will let the court know and Mr.
22 Wright.

23 THE COURT: Somebody will be at his residence within 15
24 minutes I guess.

25 MR. THORNTON: Yes, sir.

1 THE COURT: Five minutes somebody will be there.

2 All right. We are at ease again.

3 (WHEREUPON, break was had.)

4 THE COURT: Based on the conversation we had in
5 chambers a few moments ago it appears we are still missing
6 the witness that was under subpoena; and so due to the hour
7 I am going to bring the jury in, discharge them until 9:30
8 in the morning.

9 The attorneys and I are going to have a conference
10 about what is the appropriate charge. And so everybody
11 should be ready to go in the morning, assuming the case goes
12 to the jury, to argue and charge.

13 Anything else we need to do other than that?

14 MR. THORNTON: That is all the State is aware of, Your
15 Honor.

16 MR. WRIGHT: Judge, that is it. I just wanted to
17 just put on the record that we have requested to sort of
18 wait; but I understand the courts and the court's concerns.
19 But ---

20 THE COURT: I understand. You want to wait on the
21 witness to get here regardless of when it is. Just you want
22 us to wait ---

23 MR. DAVIS: Yes, sir.

24 THE COURT: --- today.

25 MR. DAVIS: Yes, sir. So I just wanted to put that on

1 the record. But ---

2 THE COURT: I understand. The jury has been out now
3 for a good while. No telling when that is going to happen.
4 We are going to be tomorrow regardless. It's my
5 understanding the State is probably going to ask if that
6 witness is located today that he be detained. And ---

7 MR. THORNTON: Yes, sir, there has been a bench warrant
8 issued. I have talked to Lieutenant Avril with the
9 Sheriff's Department. The captain is also here. So if he
10 comes to the courthouse between now and then he is to be
11 brought in here.

12 If they find him after Your Honor is not on the bench
13 then I have instructed them to take him into custody and
14 bring him back over in the morning.

15 And I will put on the record that that is my request to
16 the court because I have no faith that he is going to be
17 here when he is supposed to be.

18 THE COURT: All right. Let me bring -- let's bring the
19 jury in, and I will try to explain what is going on and let
20 them go. Explain what is going on to the extent I can
21 explain what is going on.

22 MR. DAVIS: I was going to -- clearly.

23 THE COURT: Yeah.

24 THE BAILIFF: The jury is entering the courtroom, Your
25 Honor.

1 (WHEREUPON, jury enters courtroom.)

2 THE COURT: Welcome back, ladies and gentlemen. You
3 probably have seen on TV or in a movie or something like
4 that situations arise in jury trials where the jury is sent
5 back to the jury chambers for long periods of time while
6 they are waiting on the judge and the lawyers, tapping their
7 fingers trying to figure out why we are back here.

8 Well, we have got a glitch; and that is why you have
9 been back there. And then we have got another glitch which
10 means we are going to have to recess for the day.

11 We probably weren't going to finish today anyhow, but
12 we do intend -- or anticipate -- excuse me, anticipate. And
13 that's all I can say. I can't promise anything. I can
14 anticipate that we will finish in the morning and you will
15 hopefully have the case in your hands before lunch to begin
16 your deliberations.

17 That is really all I can tell you at the moment. I may
18 tell you later about -- although later you probably won't
19 care. I'm getting ready to let you go with the same
20 admonition I have given you before: Don't let anybody talk
21 to you about the case; you don't talk to anybody about the
22 case.

23 And I apologize for making you wait. And I know it
24 seems like we are wasting your day. Thank you, ladies and
25 gentlemen. We wouldn't do it if there was any way to avoid

1 it. You are excused. 9:30 in the morning, ladies and
2 gentlemen.

3 (WHEREUPON, jury exits the courtroom.)

4 THE BAILIFF: The jury is clear, Your Honor.

5 THE COURT: Let me ask you this: Is there any reason
6 that we shouldn't go ahead and have the exhibits locked away
7 for the evening that y'all are aware of? Is anybody aware
8 of any reason you are going to need an exhibit today?

9 MR. THORNTON: No, sir.

10 MR. DAVIS: No, sir.

11 THE COURT: All right.

12 MR. THORNTON: I don't think the two defense ones
13 though were moved into evidence. So those would not be
14 proper to be locked with the evidence.

15 MR. DAVIS: I agree.

16 THE COURT: All right.

17 MR. DAVIS: They were just marked for identification.

18 THE COURT: Okay. Give me a few more minutes to look
19 at the proposed charges which y'all have submitted. And we
20 may need to go back in chambers because as you may have
21 heard Judge Mullen has someone who needs our court reporter
22 is our understanding.

23 So we will be at ease until I get a chance to look over
24 this stuff for a few more minutes.

25 (WHEREUPON, break was had and notification given to the

1 court that Mr. Jabar had arrived.)

2 THE COURT: I am going to tell the -- this is what I
3 normally do is I normally tell the jury if they recall the
4 State has rested or finished presentation of their case and
5 the defense has a right to present evidence should they
6 desire to do so.

7 Let's bring the jury.

8 (WHEREUPON, break was had.)

9 THE COURT: It will be a few more minutes before the
10 jury is ready.

11 THE BAILIFF: Okay, Judge, are you ready to bring them
12 in?

13 THE COURT: Bring them in.

14 (WHEREUPON, jury enters courtroom 4/16/15, approximately
15 3:31 p.m.)

16 THE COURT: Welcome back. If you recall, the last --
17 excuse me, the State rested perhaps an hour or so ago which
18 means the State has presented their evidence to you. They
19 have presented their case to you.

20 The defense now has the opportunity to submit evidence
21 and testimony and witnesses. Although the defense of course
22 is not required to do that.

23 MR. WRIGHT: Yes, Your Honor. Thank you. On behalf of
24 the defense, Judge, we would like to call Chip Jabar as our
25 first witness.

1 (WHEREUPON, witness was duly sworn.)

2 THE CLERK: Please be seated and state your full name.

3 THE WITNESS: Eugene Jabar.

4 THE COURT REPORTER: If you could speak up.

5 THE WITNESS: James Jabar.

6 -----

7 **DIRECT EXAMINATION BY MR. WRIGHT OF EUGENE JABAR:**

8 Q. Good afternoon, Mr. Jabar.

9 A. Good afternoon.

10 Q. I think we met for the first time yesterday afternoon.

11 A. Yes.

12 Q. And I think I had an opportunity to talk to you along
13 with Mr. Ferguson and Mr. Thornton; do you remember that?

14 A. Correct. Yes.

15 Q. Okay. Now I want to take you back to back in, what,
16 2012. Do you remember receiving a call from Jessica Power
17 regarding a situation going on at the Taylor's Mobile Home
18 Park?

19 A. Yes. I was living out there during that time.

20 Q. Okay.

21 A. And I received like a printed call from her.

22 Q. Okay. And you actually made a 911 call, correct?

23 A. Yes.

24 Q. Okay. And you were letting law enforcement know that
25 Jessica had made it to your trailer and was hiding there,

1 correct?

2 A. Yes, but I was leaving a job; so I didn't like give
3 them like an exact location where I stayed at.

4 Q. Okay.

5 A. Yes.

6 Q. Okay. And then based on receiving that call from
7 Jessica you actually returned home and essentially met
8 Jessica at your trailer, correct?

9 A. Yeah, hiding at -- like at my trailer, yeah.

10 Q. Okay. And at some point you may have talked to the
11 police officers and shared that information?

12 MR. THORNTON: Objection, Your Honor.

13 A. Yes, I made the initial ---

14 MR. THORNTON: Leading ---

15 THE COURT: Hold on just on second. We have got an
16 objection.

17 MR. THORNTON: We are leading pretty heavily, and
18 I would object. I mean the witness needs to be asked
19 non-leading questions.

20 THE COURT: Sustain the objection.

21 A. I made the initial phone call to call the cops. And
22 when he got there after I let her inside the house I went
23 outside to go get the officer to bring him back inside.

24 Q. Okay.

25 A. So, yeah, she -- when I called she was with me. I left

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1 her outside the trailer where -- to go get Officer Campbell.

2 Q. Okay. So you were -- I guess were you around then when
3 she was interacting or interfacing with law enforcement?

4 A. Yes, I was -- it was during the time when I went to go
5 get Mr. Campbell I brought him back to the house along with
6 I think one of the investigators, Mr. Heath, during the
7 time, to speak with her.

8 Q. Okay.

9 A. And I let them all conversate.

10 Q. Okay. Now when Jessica was at your place did -- was
11 there anything that you -- well, let me ask you this: Did
12 you see anything that she brought to your trailer?

13 A. It was the bag that had -- that was underneath my
14 trailer.

15 Q. Okay.

16 A. That she had hidden underneath my trailer.

17 Q. Okay. So you said she hit a bag under your trailer?

18 A. Yeah.

19 Q. What did it look like?

20 A. Once again, like I was telling the investigator,
21 because it was so long I don't remember the exact
22 description of the bag; but the bag was open. I would say
23 it was black. But it was full of money. Because once
24 again, under the trailer it was like sewage and stuff right
25 there.

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1 Q. Okay. But could you tell how much money was in it?

2 A. I just -- I told the investigator it was a large amount
3 of money. Because it was at the top. It was sitting at the
4 top like it was like just smushed in along with like a
5 little like one of those little pocket books that like have
6 a little clip on it with the little lip gloss clip or
7 something on it. Everything was like right there.

8 Q. Okay. And I know this may seem like a weird question,
9 but you didn't put that bag there?

10 A. No, no.

11 Q. Okay.

12 A. I took the bag and I had the bag at the house. I
13 didn't open the bag because the bag was already halfway open
14 because it looked like it didn't have a zip on it.

15 But after the -- after everything was going on the bag
16 was -- she put the bag -- the bag was put back underneath
17 the trailer.

18 During that time I was working like two jobs so I gave
19 her the right away at any time to go back to the house to go
20 get it from underneath the trailer.

21 Q. Okay. But it was your belief that that was Jessica's
22 bag?

23 A. Right.

24 Q. Okay.

25 A. I live by myself, and I don't have a purse or anything.

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1 Q. Okay. And let's help the jury understand. Were you
2 currently involved with Jessica or had you been involved in
3 the past with her?

4 A. In the past, yeah.

5 Q. Okay. And ---

6 A. But we stayed close. We always like conversation
7 and communication, but we wasn't like dating during that
8 time ---

9 Q. Okay.

10 A. --- that it happened. But I was the closest one to her
11 for her to call me.

12 Q. Okay. And even now are you concerned about Jessica?

13 A. Yes.

14 Q. Okay. You don't want to be here, do you?

15 A. No. No.

16 Q. Well, let me ask you: Back then did any of the
17 investigators or officers ask to either search your trailer
18 or ask you questions about what you may or may not have
19 seen?

20 A. No, they just asked me what was my reason for being
21 there. And I told them I was the owner of the trailer
22 everybody is at right now.

23 They asked me to write something. I said to write
24 what. I just came from work. And he said write that. And
25 that is what I wrote. I wrote right then I came from work,

0 0532

1 I made the call, I left her in. And that was all -- that
2 was -- that was all I wrote down.

3 Q. Okay.

4 A. They was in the home, and they had access to the house.
5 They had access to the small trailer. So if they wanted to
6 search it. And no one really asked where she was hidden at.
7 But that was stated several times that she was hidden under
8 the trailer. But no one -- no one searched anything. No
9 one searched my home.

10 Q. Okay. Now in terms of what Jessica told you, what
11 did -- what did she tell you had happened?

12 MR. THORNTON: Objection. It would be hearsay.

13 MR. WRIGHT: Judge, she has already testified -- well,
14 can we approach?

15 THE COURT: All right, sir.

16 (WHEREUPON, bench conference was had.)

17 MR. WRIGHT: Your Honor, I will withdraw the question.

18 THE COURT: All right, sir.

19 BY MR. WRIGHT:

20 Q. In terms of this information you are providing now,
21 when did you first talk to someone about this information?

22 A. When I made the contact to talk to -- or just inquire
23 if -- with Mr. Newman when I went to his office just to
24 speak to him, you know, like off the books just because --
25 you know, to talk to him, you know.

0 0533

1 Q. And is Mr. Newman an attorney?

2 A. Yes.

3 Q. Okay. And about how long ago was that when you spoke
4 with him?

5 A. I want to say about like maybe six -- maybe three, six
6 months. Maybe about six months.

7 Q. Okay.

8 A. Around that time, but I don't recall. But it was
9 earlier this year.

10 Q. Okay. And is everything you have said today the truth?

11 A. Yes.

12 Q. Thank you, sir.

13 THE COURT: Cross-examination.

14 MR. THORNTON: Thank you, sir.

15 **CROSS-EXAMINATION BY MR. THORNTON OF JAMES JABAR:**

16 Q. Mr. Jabar, you did a very short written statement on
17 9/6/12 which would have been September the 6th of 2012;
18 correct?

19 A. Yes.

20 Q. In that statement you don't mention anything about what
21 you just testified to, did you?

22 A. Right.

23 Q. Right, meaning yes ---

24 A. Correct, I ---

25 Q. --- you admit that it is not in here; right?

0 0534

1 A. I admitted that I wasn't trying to write anything.

2 When I got the officers and stuff I was calling them for her
3 safety when I made that call.

4 Q. All right. Well ---

5 A. The officer asked me to write a statement regarding ---

6 Q. Not -- hang on a second, Mr. Jabar. I am not talking
7 about -- I am not talking about the phone call. I realize
8 what you did on the phone call. That is 911. You didn't
9 put any of that in your statement?

10 A. That statement was written way before anything was
11 found, you know, underneath the trailer or inside or around
12 my house.

13 Q. Okay.

14 A. That statement was written like immediately while they
15 was there and while they was talking to me.

16 Q. All right. I am going to wait and I will ask it again.
17 And that's okay, we can keep asking it until you figure it
18 out. Is that in this statement, yes or no?

19 A. No.

20 Q. Fantastic. We are rolling now.

21 MR. WRIGHT: Judge, I would object to this
22 commentary. It is inappropriate.

23 MR. THORNTON: Your Honor, I am just trying to get him
24 to answer the question.

25 THE COURT: I will sustain the objection. Go ahead.

0 0535

1 BY MR. THORNTON:

2 Q. Mr. Jabar, did you talk to Detective Gobel that day.

3 A. I believe so. I believe he was the one -- well, the
4 face -- the eyes look familiar. Yeah, I think he was one of
5 the officers that came in the house with Mr. Campbell.

6 Q. All right. So you identified Mr. Campbell; is that a
7 different officer?

8 A. He was one of the sheriffs that pulled up on the scene.

9 Q. All right. So you were interacting with at least two
10 officers that day; is that right?

11 A. Outside of my trailer, absolutely.

12 Q. And did you tell either one of them any of this
13 information?

14 A. I had just arrived on the scene.

15 Q. Did you tell them about it the next day which would
16 have been September the 7th, 2012?

17 A. No, I was ---

18 Q. What about the 8th?

19 A. I was in a transition about to move and stuff.

20 Q. So you don't have 911 as a phone number?

21 A. To call a personal officer through 911, no, I wasn't
22 aware I could do that.

23 Q. What about September the 10th?

24 A. No.

25 Q. Were you still in that transitional period?

0 0536

1 A. Yes.

2 Q. What about the 11th?

3 A. Negative.

4 Q. What about the 12th?

5 A. I never made any contact to call the officer.

6 Q. Do you recall -- and so in the two years, almost
7 three -- well, two-and-a-half years since this happened you
8 never told any police officer that ever?

9 A. Correct, because I didn't want to have any affiliation
10 with what was going on.

11 Q. Okay. Did you talk to a person with my office named
12 Roger Heaton?

13 A. He was one of the investigators.

14 Q. Yes, sir, with my office an investigator Roger Heaton,
15 you talked to him within the last six to eight months?

16 A. I spoke to Mr. Heaton when I first got served with the
17 subpoena and I informed him that I didn't have anything to
18 do with this or I wasn't aware of the situation. And he
19 stated that I probably wouldn't even have to be here and I
20 was dismissed.

21 Q. Did you give him any of this information when he talked
22 to you about this event?

23 A. No, because I was trying to stay absent from this.

24 Q. So the answer is no you didn't tell him anything. And
25 the first time you and I have talked was what Mr. Wright

0 0537

1 testified -- or Mr. Wright asked you about earlier, right,
2 which was just yesterday?

3 A. Correct.

4 Q. And during that call you told me in front of Mr. Wright
5 that you talked to Mr. Newman. And Mr. Newman is Brandon
6 Singleton, one of the codefendant's lawyers; is that right?

7 A. And I stated to you yesterday that I spoke to him
8 because I am familiar with his son so I had trust in like
9 talking ---

10 Q. Right.

11 A. --- to an actual criminal lawyer ---

12 Q. And didn't you call -- go ahead.

13 A. Versus like -- versus any other type of lawyer I went
14 to him for his advice..

15 Q. And didn't you also say that Brandon Singleton, the
16 codefendant in this case, I believe your words were:
17 Reached out to you through a third person; you said ---

18 A. No, ---

19 Q. --- that too, right?

20 A. --- kept asking me yesterday did he reach out. I said
21 I didn't have any ---

22 Q. No, sir, ---

23 A. --- contact with him.

24 Q. -- that is not ---

25 MR. WRIGHT: I am going to object. Let the witness

0 0538

1 answer.

2 THE COURT: Let the witness finish answering.

3 Q. Did ---

4 MR. WRIGHT: And, Judge, if counsel is about to
5 interject his own opinion on something, I think that could
6 be a problem. So I would ask to either approach or ---

7 MR. THORNTON: Your Honor, we might can take care of
8 this real quick. I will rephrase the question.

9 BY MR. THORNTON:

10 Q. And listen very carefully because we have got two other
11 attorneys that were standing there. Did you say to me
12 yesterday that Brandon Singleton reached out to you through
13 a third person, yes or no?

14 A. Oh, I said yes through a third person, ---

15 Q. Thank you, sir.

16 A. --- third-party.

17 MR. THORNTON: I have no further questions, Your Honor.

18 A. You asked me if he reached out directly to me, which he
19 did not; because I told you I didn't know this guy and
20 through the community ---

21 Q. That is not what I just asked you, sir.

22 A. And through the community -- or someone else reached
23 out to me.

24 Q. You said Brandon Singleton reached out to you
25 through ---

0 0539

1 A. No, ---

2 Q. --- a third person, ---

3 A. --- I never said ---

4 Q. --- yes or no?

5 A. --- the name Brandon Singleton. I never said his name.

6 He asked me did someone else reached out to me. I said yes

7 a third party. But I never stated the name Brandon.

8 Because I didn't know this guy, so I wouldn't say his name.

9 Q. You just happened to know who his lawyer was?

10 A. I know Mr. Newman ---

11 Q. I don't have any further questions, Judge.

12 A. --- through his son.

13 THE COURT: Hold on just a minute. Here's -- we need
14 to get things back under control. The way it is supposed to
15 work and the way we are going to have to make it work, the
16 attorney is going to ask you questions; you are going to
17 answer the question and then we are going to move on to the
18 next question.

19 THE WITNESS: I ---

20 THE COURT: Hold on just one second.

21 MR. WRIGHT: Thank you, Judge.

22 **REDIRECT BY MR. WRIGHT OF MR. JABAR:**

23 Q. You said you spoke with Mr. Newman about three to six
24 months ago give or take?

25 A. Yeah, I was inquiring. I was asking him questions,

1 just asking him questions.

2 Q. Okay. Now had you ever received a subpoena from the
3 State to appear at a proceeding last October?

4 A. I just received just that one subpoena - I don't recall
5 how long ago - by Mr. Heath. One of the gentlemen working
6 with Mr. Heath brought me a subpoena.

7 Q. Was that last year?

8 A. I believe so, yes.

9 Q. Okay. Were you aware you were on the witness list ---

10 A. No.

11 Q. --- for the State for this proceeding?

12 A. No, not until two days ago when I was subpoenaed like
13 at the last minute.

14 Q. Okay.

15 A. And then subpoenaed again at the job after I left
16 talking to you guys.

17 Q. Okay. And you have been subpoenaed by the defense to
18 be here as a defense witness, correct?

19 A. Yes..

20 Q. You don't know my client Mr. Tucker, do you?

21 A. No.

22 Q. Counsel was asking you questions about things you
23 didn't say to the police. Let me ask you a few questions.
24 Jessica is someone you care about?

25 A. Yes.

1 Q. This information do you feel good about sharing it now
2 as it relates to how it may affect Jessica?

3 A. I feel like it is off my chest. Like it is -- you
4 know, yeah, it bothered me a little bit, you know, knowing
5 that I am getting caught up in something due to the fact
6 that how I care about her and I kept her around. I just am
7 trying to look out for her. But, you know, you know.

8 Q. Okay. So you said you are sort of getting it off of
9 your chest?

10 A. Uh-huh.

11 Q. Okay. But is what you are saying to this jury today is
12 it truthful?

13 A. Yes. No matter how long it took to say it, yes.

14 Q. Okay.

15 MR. WRIGHT: That's all I have, Judge.

16 MR. THORNTON: Nothing further, Your Honor.

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

18 MR. WRIGHT: Your Honor, the defense will rest.

19 THE COURT: The defense rests. Does the State have
20 anything in rebuttal?

21 MR. THORNTON: Court's indulgence, Judge.

22 MR. WRIGHT: I'm sorry, Judge; can Mr. Jabar be
23 excused?

24 MR. THORNTON: The State has no objection.

25 THE COURT: Yes, sir, you may be excused from your

0 0542

1 subpoena.

2 MR. THORNTON: Your Honor, the State has one witness in
3 reply which would be Detective Gobel.

4 THE COURT: And I remind you, you are still under oath.

5 THE WITNESS: Yes, Your Honor.

6 **REPLY - DIRECT EXAMINATION BY MR. THORNTON OF DETECTIVE**

7 **GOBEL:**

8 Q. Detective Gobel, I won't go through all of the
9 preliminary questions since you have already been qualified
10 to the jury and they know who you are.

11 To begin, did you see Chip Jabar at the trailer when
12 you interviewed Jessica Powers?

13 A. Yes, I did.

14 Q. Did you talk to him?

15 A. Yes, I interviewed Mr. Jabar also.

16 Q. Did he ever give you any of this information?

17 A. No.

18 Q. And did you just ask him to write a brief statement
19 regarding his phone call or did you ask him anything else?

20 A. I asked him specifically if he had any information
21 about this incident. And he specifically said I don't know
22 nothing about nothing; I was at work, she called me, I come
23 home, that's all I know.

24 Q. In all the time since then has he ever to your
25 knowledge contacted you or any other officer about any of

REPLY - DIRECT EXAMINATION BY MR. THORNTON OF DET. GOBEL:

0 0543

1 the stuff that he just got up and testified to?

2 A. No.

3 Q. When you were at the trailer did you -- was he present
4 when you were talking to Jessica?

5 A. He was present in the room during the entire interview
6 with Jessica. Which it was his house, so naturally I
7 couldn't throw him out. So ---

8 Q. Would that include while she was relaying what the
9 events happened?

10 A. The whole story. She lays out the whole story with him
11 sitting there with her during the interview.

12 Q. And I think this was actually brought up -- it may have
13 been brought up on cross if I didn't ask. But you -- did
14 you -- did she have a purse with her when you got there?

15 A. She did.

16 Q. And did you search it?

17 A. I did.

18 Q. And I believe Mr. Wright pointed out or asked you that
19 there was -- there was a small amount of marijuana located
20 in the purse; is that correct?

21 A. That's correct.

22 MR. THORNTON: I don't have anything further, Judge.

23 THE COURT: Cross-examination.

24 **REPLY - CROSS-EXAMINATION BY MR. WRIGHT OF DETECTIVE GOBEL:**

25 Q. Detective Gobel, on cross before, I asked you did you

0 0544

1 actually search the trailer of Mr. Jabar. Do you remember
2 that?

3 A. Yes, sir.

4 Q. And I think your response was no.

5 A. That is correct.

6 Q. Did you ever look under the trailer?

7 A. No.

8 Q. Did you ever ask Mr. Jabar is -- are you aware of
9 anything that your girlfriend or ex-girlfriend Jessica
10 Powers is saying to me that is a lie and will you expose her
11 to me; did you say anything like that to him?

12 A. I didn't use those exact words, but I asked him
13 specifically if he knew anything at all about this incident;
14 and he claimed he didn't.

15 Q. Okay. Do you know whether or not he had already looked
16 up under the trailer and discovered the purse before or
17 after this conversation you had with him?

18 A. I don't know, sir.

19 Q. Okay.

20 A. And I don't ---

21 Q. If ultimately he didn't see it until after -- because -
22 - well, strike that. Let me back it up for the jury. You
23 spoke with Jessica Powers twice that day; correct?

24 A. That's correct.

25 Q. You spoke to her at one point; you left, did some other

0 0545

1 work; came back, spoke with her again; correct?

2 A. That is correct, sir.

3 Q. And it is when you came back and spoke to her again --
4 let me get -- am my right, that is when you searched the
5 purse?

6 A. I don't have my report with me, ---

7 Q. Well, then let me see ---

8 A. --- but I think you are right. I think it was on the
9 second time.

10 Q. Okay.

11 A. But Mr. Jabar was there that entire time.

12 Q. I understand Mr. Jabar was there the entire time. But
13 you didn't search the purse when you first came in contact
14 with her?

15 A. I would have to check my -- but I think you are right;
16 I think it was the second. But there was an officer present
17 with them when I left.

18 Q. Okay.

19 A. They weren't left alone.

20 Q. Look on Page 6. Read contacts with Jessica ---

21 A. Yes, sir, it was during the second interview.

22 Q. Okay. But your expectation, if I am hearing you
23 correctly, is when you asked that question you expected Mr.
24 Jabar was going to say to his girlfriend -- well, was going
25 to say to you that his girlfriend who has just made this

0 0546

1 claim that she has been shot at or robbed and all of that,
2 happens to have a bunch of money under the trailer, I just
3 thought I should tell you that before you leave here; is
4 that -- is that your expectation of how he was supposed to
5 answer that question?

6 A. I would surely expect him to answer that question that
7 way, yes.

8 Q. Okay. And did you ever ask Ms. Power do you still have
9 the cash; did you ever ask her that question?

10 A. I asked her if they took the cash from her, and she
11 said they took all of the cash from her.

12 Q. Okay. Did you -- after hearing that did you say are
13 you absolutely sure is it -- are you telling me straight
14 that you don't still have this cash?

15 A. Yes, sir, I -- I have done a bunch of interviews. And
16 naturally I was -- I did some fairly tough interviews with
17 my time.

18 Q. But you didn't record it, did you, this tough
19 interview?

20 A. No. But she did make a written statement to the same
21 questions.

22 A. But you heard her say the written statement she was so
23 frazzled and therefore she just didn't mention certain
24 things; you heard her say that, right?

25 A. Yes, she did.

0 0547

1 Q. And then when we went through your report to see what
2 you remember her saying, those things still weren't in
3 there; were they?

4 A. No.

5 Q. And again, none of your interviews even though you
6 recorded Mr. Brewer that day audio and videotaped him later,
7 unfortunately this jury doesn't have any recordings of Ms.
8 Power to be able to ascertain directly what she said to you;
9 correct?

10 A. No, only a written statement that she made.

11 MR. WRIGHT: That's all I have, Judge.

12 MR. THORNTON: Nothing further, Judge.

13 THE COURT: Thank you. You may step down.

14 MR. THORNTON: That is all the State would have in
15 reply, Your Honor.

16 THE COURT: Anything else from the defense, Mr. Wright?

17 MR. WRIGHT: No, Judge.

18 THE COURT: Ladies and gentlemen, you have now heard
19 all of the evidence that is going to be presented to you.
20 There is no going to be any more testimony, documents,
21 videos, no nothing.

22 In the morning the attorneys will make the closing
23 arguments to you. I will tell you about the law and then
24 you will be retired to your jury room and begin your
25 deliberations.

1 One more time, don't let anybody talk to you about the
2 case and you don't talk to anybody about the case. See you
3 at 9:30, ladies and gentlemen.

4 (WHEREUPON, jury exits courtroom.)

5 THE BAILIFF: The jury is clear and the door is closed,
6 Your Honor.

7 THE COURT: All right. Anything before we ---

8 MR. THORNTON: Nothing from the State other than we can
9 retire and talk about the charges; no, sir, nothing else on
10 the record.

11 THE COURT: Okay.

12 MR. WRIGHT: Same announcement.

13 THE COURT: 9:30 tomorrow morning.

14 (WHEREUPON, adjourn for the evening, Wednesday, 4/16/15,
15 approximately 4:05 p.m.)

16 (WHEREUPON, resume trial, Thursday, 4/17/15.)

17 MR. THORNTON: Your Honor, with the court's permission
18 I will hand these up. It's the verdict forms. From my
19 understanding there is no objection from the defense.

20 (WHEREUPON, counselors confer.)

21 MR. THORNTON: Your Honor, Hunter can handle the next
22 matter; so can I step to the back, please, for just a
23 second?

24 THE COURT: Certainly. Thank you.

25 Is there a matter for me to take up?

1 MS. SWANSON: Your Honor, just one item. Wanted to
2 make sure that your standard pattern of charges included one
3 on direct and circumstantial evidence.

4 THE COURT: Sure.

5 MS. SWANSON: I am sure it does. And then I believe
6 Mr. Ferguson was going to request that the hand of one, hand
7 of all, Ralph King Andersen's charge that we submitted is
8 the one that is read out to the jury because it does not
9 include an example besides breaking and entering.

10 MR. FERGUSON: That is correct, Your Honor.

11 THE COURT: I'm not sure I followed that. Go ahead and
12 tell me what it is you are asking for.

13 MR. FERGUSON: And I have it to hand it up, Your Honor.
14 It is a proposed charge by Mr. Thornton. And essentially
15 the only different between that and what was read in
16 chambers is in the first line. And it says if two or more
17 are combined together to commit an unlawful act, comma, such
18 as robbery.

19 Well, his proposed charge excludes that. And it would
20 be the same argument that that is too close to the factual
21 scenarios of this trial.

22 THE COURT: I am still missing something. The one that
23 has been handed up is the one submitted by the State?

24 MR. FERGUSON: Yes, sir, we agree to that one.

25 THE COURT: You agree to that?

0 0550

1 MR. FERGUSON: Yes, sir.

2 THE COURT: But you want to change it?

3 MR. FERGUSON: No, sir. When we were in chambers
4 yesterday you had requested a copy of Ralph King
5 Andersen's ---

6 THE COURT: Right.

7 MR. FERGUSON: --- charge with the updated book.

8 THE COURT: Right.

9 MR. FERGUSON: And it includes language that we do
10 object to, but didn't raise those objections yesterday. And
11 because after further thinking, it says such as a robbery.
12 Well, the allegations in this case are a robbery; and that
13 is the basis for the hand of one, hand of all, in the
14 murder.

15 THE COURT: All right. Let me see how that fits. What
16 I am trying to do is -- if State's request to charge meshes
17 with mine. Other than that is there anything we need to do?

18 MR. THORNTON: Nothing from the State, Judge.

19 MR. WRIGHT: Your Honor, just a quick inquiry. It --
20 as part of my closing I was going to discuss some of the
21 relevant sections of law which the court will be privy.

22 Sometimes I will actually put on display the language
23 that I'm referring to. Before I do that I wanted to make
24 sure that is okay for me to display sections of charge to
25 discuss and make my arguments as to what it should mean or

0 0551

1 how the evidence should be interpreted based on that.

2 I do not want to show anything that purports to be
3 charge language on paper if that is not something the court
4 likes to see done.

5 I can just do it orally, but it is just a little easier
6 when trying to explain it to a lay person some of the legal
7 ease in the charge.

8 MR. THORNTON: I don't object, Judge.

9 THE COURT: I have never -- I have never objected to
10 anybody doing that, but now you are referring to something
11 that we have already agreed to that is going to be ---

12 MR. WRIGHT: Yes. If I can grab them, Judge.

13 THE COURT: Sure.

14 MR. WRIGHT: And I will specifically tell you. I
15 was just going to discuss with them part of the aiding
16 and abetting language which is in the hand in all charge,
17 part of the hand in one charge itself, credibility of
18 witnesses, ---

19 THE COURT: Sure.

20 MR. WRIGHT: --- prior inconsistent statements,
21 spoliation of evidence - which I know is not the charge but
22 I can argue about it in terms of that - presumption of
23 innocence, reasonable doubt, direct and circumstantial
24 evidence, and then mere presence. So

25 MR. THORNTON: The only issue I would have, Judge, and

1 just to inquire. And I am not trying to get an advanced
2 notice of Mr. Wright's strategy as far as his closing goes;
3 but when we were talking about the spoliation charge I don't
4 think it would be a correct for him to say the law in South
5 Carolina says you can hold this against the State when we
6 have already found that doesn't pass the Cheeseboro (ph)
7 test that we talked about yesterday.

8 I think you can argue they should have done this, they
9 should have done that. But I don't think it would be proper
10 for him to say well the law in South Carolina says that, you
11 know, the police spoiled evidence in this case and you hold
12 that against them.

13 Because, you know, that is not a correct Statement of
14 law. There has been nothing in the case, nothing in the
15 evidence, as we discussed yesterday, that would lead to any
16 type of spoliation language or that there was any bad faith
17 or anything else or even frankly destruction on behalf of
18 the State, as we all discussed in chambers.

19 And I don't want to belabor that point, but I don't
20 think that would be a correct Statement of law and I would
21 object to that.

22 MR. WRIGHT: Judge, to conform with the court's ruling
23 yesterday I will cover the topics but I won't present it as
24 South Carolina law that is going to be charged to the jury.
25 If that satisfies ---

1 MR. THORNTON: I think he is fully -- Judge, he has got
2 a right to talk about whatever he wants to in the
3 investigation. I just don't want it tied to well the law
4 says this. Because you are going to tell them what the law
5 says.

6 MR. WRIGHT: And, Judge, I am just covering up
7 defendant's request to charge so it doesn't appear that one
8 way or the other what a party ---

9 MR. THORNTON: Well, Your Honor, if we are going to be
10 showing all of that I need to look at this. Because then
11 there is something I am concerned about then.

12 Are you citing case law?

13 MR. WRIGHT: No.

14 MR. THORNTON: Okay.

15 MR. WRIGHT: Here.

16 (WHEREUPON, document shown to Mr. Thornton.)

17 MR. THORNTON: Let me just look at this then.

18 MR. WRIGHT: Oh, spoliation ---

19 MR. THORNTON: That is all I am worried about.

20 MR. WRIGHT: I think I pulled it out. Just so you
21 know, all I am showing are these on charges (showing
22 document to Mr. Thornton). And then when it comes to the
23 spoliation here I am just going to talk about it. I am not
24 going to show ---

25 MR. THORNTON: Okay. That's fine. And I am not trying

1 to get in your way. You have got a right to post what you
2 want to.

3 Judge, I am satisfied with the way Mr. Wright has
4 presented it. As long as, you know, that is the way it
5 comes out.

6 And just so the record it clear, I certainly think he
7 has the right also to say that the law does say -- you know,
8 and go over all the charges that you have approved. I think
9 we both have a right to do that.

10 I just didn't want something being put in there that
11 the law is when you haven't agreed or we haven't agreed that
12 that is a proper charge in this case.

13 Thank you, Your Honor.

14 THE COURT: And therefore are we ready for the jury?

15 MR. THORNTON: The State is ready, Your Honor.

16 MR. WRIGHT: The defense is ready, Judge.

17 THE COURT: Bring in the jury.

18 (WHEREUPON, break awaiting jury.)

19 (WHEREUPON, jury enters courtroom.)

20 THE COURT: Welcome back and good morning, ladies and
21 gentlemen. All right. As we discussed yesterday we will
22 now hear closing arguments from the attorneys.

23 I probably need to tell you something about the note
24 taking. A number of you have taken notes during the trial.
25 And that is fine. And you may take notes during arguments

1 of the attorneys.

2 But when it is my turn to tell you about the law
3 that applies in the case I would ask you to put those notes
4 down.

5 And further I'm going to tell you now in the event --
6 excuse me, the purpose of being able to take notes is to
7 refresh or help you with each of your individual memories.

8 If it turns out to be a conflict between the collective
9 memory of the group and a note taken by an individual juror,
10 that note should not take precedence over the collective
11 memory of the group.

12 And we will now hear opening -- excuse me, closing
13 arguments. Solicitor.

14 MR. THORNTON: Your Honor, the State will waive first
15 opening.

16 THE COURT: State waives.

17 Mr. Wright.

18 MR. WRIGHT: If it will please the Court, ---

19 THE COURT: Certainly.

20 MR. WRIGHT: --- counsel for the State.

21 **CLOSING BY MR. WRIGHT:**

22 Good morning, ladies and gentlemen. Let me start off
23 in the same way and thank you for the time you have spent
24 these days. It is sort of a strange process where you come
25 here to fulfill your duty to serve and then you hear oh it

1 is a murder case.

2 And you hope that honestly -- you just -- that isn't
3 quite what you imagined coming in here to serve on. And
4 then just the inconvenience of it all starts to really weigh
5 heavy. And it is tough. But it is touch be here, but then
6 now you have tough decisions to make. And it is not easy.
7 And I understand and thank you.

8 And if you remember in the beginning all I asked was be
9 a fact finder, put your emotions aside. Because sometimes
10 it is emotional. Witnesses have been crying. But in the
11 background you know that there is a loss of life. You know,
12 Mr. Greer is not with us.

13 And let me immediately tell you sometimes I have to ask
14 tough questions. By no question did I in any way try to
15 minimize the life of Mr. Greer or the pain his family feels.

16 But we have to ask questions sometimes. We have to get
17 to the truth. But I wanted to at least assure you that is
18 not the point. Whatever Mr. Greer was doing, he didn't
19 deserve to die. No one deserves to die.

20 So the emotion of that we for you to be a fact finder
21 we have got to at least put that aside for now. Because the
22 question here is guilt or innocence. It is what facts do we
23 have as opposed to simple theory or speculation.

24 So I am going to give you first a summary of all of the
25 evidence that came in; basically the witnesses, what you