

ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Donald B. Hocker, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNY OCTAVIOUS RUFF,

APPELLANT

APPELLATE CASE NO. 2017-000136

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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State of South Carolina)
) Court of General Sessions:
County of Newberry)
 2015-GS-36-594, 595, 596

State of South Carolina)
) vs.) Transcript of Record
)
)
Kenny Octavis Ruff)
) Defendant)

January 9-13, 2017
Newberry, South Carolina

B E F O R E:

Honorable Donald B. Hocker, Judge

A P P E A R A N C E S:

Attorneys for the State

David Stumbo, Solicitor
Dale Scott, Deputy Solicitor
Taylor Daniel, Assistant Solicitor
Attorneys for the Defendant

Charles Verner, Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

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1 THE COURT: Is the State ready?

2 MR. STUMBO: We are, Judge. Judge, we do have a
3 Jackson v. Denno. Of course, we will call the case for
4 purposes of this.

5 THE COURT: Let's do that. Do you need the
6 indictments?

7 MR. STUMBO: I have the numbers right here.

8 THE COURT: Okay.

9 MR. STUMBO: Judge, this is State versus Kenny
10 Octavis Ruff. We intend to call this case with the jury
11 this afternoon. It is three charges, murder, armed
12 robbery and possession of a weapon during the commission
13 of a violent crime. It is indictments, for the record,
14 Judge, the indictment numbers are 2015-GS-36-0594, 0595
15 and 0596, are the three indictment numbers. Your Honor, I
16 think based on our conversations with Mr. Verner,, we do
17 have Jackson v. Denno we need to put in on one written
18 statement of the Defendant and an oral statement. We are
19 going to call some witnesses on that. The other thing
20 that I would like to handle at this time, put on the
21 record, we have served this Defendant with notice of the
22 intention to seek life without parole.

23 THE COURT: Okay.

24 MR. STUMBO: Judge, we have the Court's exhibit 1, we
25 premarked here and I can pass this up to Your Honor. It

1 is the notice of intention to seek life without parole
2 with an attached affidavit of service which our
3 Investigator, Investigator Walter Bentley served on
4 February the 25th, 2016 to the Defendant, Kenny Ruff, over
5 at the jail, actually it was down at Richland County, at
6 Alvin S. Glenn where Mr. Ruff, excuse me, Mr. Ruff has
7 been detained for the last several months. But he was
8 served with that February 25th, 2016. Judge, the
9 underlying offense that qualifies Mr. Ruff for life
10 without parole, if he were to be convicted at this trial,
11 is an accessory before the fact to an armed robbery
12 conviction. This was convicted on August the 8th, 2006
13 here in Newberry County. And that indictment number on
14 the 2006 conviction was 2005-GS-36-0083. He was sentenced
15 to a determined number of years on that armed robbery
16 incident, Your Honor, which, I don't want to say
17 ironically, it was not related directly to this case but
18 we have a, ironically the armed robbery occurred right
19 next door to where this incident occurred here in the town
20 of Newberry, Hispanic grocery store. Judge, but he was
21 sentenced on 2006 conviction of ten years in the State
22 Department of Corrections. According to what we, not that
23 this is directly relevant, Judge, but he was released, I
24 believe, on that sentence in August of 2014. About a year
25 later, August of 2015, this Defendant allegedly committed

1 the incident that we are here on trial for this week.
2 Judge, this is Court's exhibit 1, if I can pass it up to
3 Your Honor.

4 THE COURT: If you will get the Court Reporter to
5 mark it first, please.

6 (Whereupon, Court's Exhibit 1 was marked for
7 identification only.)

8 THE COURT: Mr. Verner, do you acknowledge the fact
9 that the State has properly served Mr., and the Solicitor
10 pronounced the last name as Ruff.

11 MR. VERNER: Ruff, Your Honor. Ruff is conditionally
12 how Newberry pronounces, R-U-F-F.

13 THE COURT: I just want to make sure, throughout this
14 proceeding, pronounce his last name correctly. But
15 nonetheless you would acknowledge that a notice of intent
16 to seek life without parole was served on your client back
17 in February 25 of last year, 2016, is that correct?

18 MR. VERNER: Your Honor, I was served many, many
19 months ago with the notice. Mr. Ruff, I believe, was
20 served at Alvin S. Glenn and I would defer to the State.
21 But we certainly discussed it for many months. My
22 understanding is that Mr. Bentley and my client has
23 acknowledged to me that, I think he refused to sign the
24 notice.

25 MR. STUMBO: That is correct, Judge, that is why we

1 attached Mr. Bentley's affidavit.

2 THE COURT: Right.

3 MR. VERNER: But we have discussed this for several
4 months and I certainly was served with it and I wasn't
5 there at Alvin S. Glenn.

6 THE COURT: Okay. Very good, suffice it to say you
7 have nothing to dispute the fact that Mr. Bentley, prior
8 to today, did serve your client with the notice.

9 MR. VERNER: We don't challenge the affidavit.

10 THE COURT: Thank you.

11 MR. STUMBO: Your Honor, I believe at this time we
12 are ready to proceed with the Jackson v. Denno.

13 THE COURT: Very good. Let me hear from you.

14 MR. SCOTT: Your Honor, the State is going to proffer
15 some testimony from Kevin Goodman from the Newberry Police
16 Department.

17 THE COURT: Okay.

18 KEVIN GOODMAN, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Scott:

22 Q Captain Goodman, you work at the Newberry Police
23 Department?

24 A Yes, sir.

25 Q Were you a Lieutenant or a Captain in August 26th of

1 2015?

2 A I was a Lieutenant.

3 Q Okay. Did you have an occasion to get involved with
4 a murder scene, a homicide scene that took place on Main
5 Street right here in front of the Courthouse?

6 A Yes sir, I did.

7 Q What was the address of the incident location?

8 A It is 2509 Main Street which is Leslie's Hair Salon.

9 Q Tell me what, what was the crime scene that you all
10 were investigating, I have already called it a homicide
11 crime scene. But what was the call about?

12 A A homicide armed robbery scene.

13 Q Okay. The victim was who?

14 A Roberto Fazio D'lonze, something, to that effect.

15 Q Just one victim in this case?

16 A Yes.

17 Q Moving things along though, it was apparently a
18 gunshot wound to the head?

19 A Yes, sir.

20 Q And at some point that day, August 26th, were you
21 able to develop a person of interest, I guess, as a
22 suspect?

23 A Yes sir, we were.

24 Q And who was the person you had developed as a
25 suspect?

1 A Kenny Octavis Ruff.

2 Q Okay. And we are going to hear about it later, but
3 there was some surveillance video from various businesses
4 along Main Street?

5 A That's right.

6 Q And at some point that day, August 26th, did you
7 catch up or were you able to bring Mr. Ruff in for
8 questioning?

9 A Later on that afternoon, sometime around 8:00 or a
10 little bit later, he was located by Officers with the City
11 and the County police department and he was transported to
12 my office at the police department.

13 THE COURT: What day was this, I missed the date.

14 MR. SCOTT: August 26th, Your Honor, so this was, a
15 call came in about 2:02, a homicide. And Mr. Ruff was
16 developed as a person of interest sometime after 8:00 p.m.
17 that same day they brought him in for questioning.

18 THE COURT: Thank you, you may proceed.

19 Q Where was the questioning whenever you were able to
20 speak with Mr. Ruff?

21 A It was at 1507 Nance Street which is the police
22 department in my office.

23 Q At that point was he under arrest?

24 A Yes, sir.

25 Q Okay. When you brought him in where did you take him

1 in the police department?

2 A He would have gone to the Captain's office at the
3 time which was the office that I was using to, we didn't
4 have a Captain at the time so it was vacant. So I was
5 using it as an office to interview.

6 Q So just the standard office?

7 A Yes sir, just the standard office.

8 Q Was he handcuffed at the time, do you recall?

9 A Yes, sir.

10 Q Did he have anybody with him?

11 A No, sir.

12 Q Did he, what was the first thing you did before you
13 began questioning him?

14 A Read him his rights.

15 Q What rights?

16 A His Miranda rights.

17 Q And does your office employ a waiver of rights form?

18 A We do.

19 Q Let me show you, Joy has already marked this, Court's
20 number 2. The first page here, what is that?

21 A That is the adults rights waiver form that we use at
22 the police department.

23 Q And what does it, what does it list out, the top
24 portion at least, what is that, informational?

25 A This information is going to have his name, age, his

1 address, what grade he completed, his highest level of
2 education, whether he can or cannot read, the people that
3 are present at the time of the rights being read to him
4 and the crime that we are talking about.

5 Q And what level of education did he attain?

6 A He said he finished the 11th grade and got his GED.

7 Q Did he indicate that he was able to read and write?

8 A Yes, sir.

9 Q At the time when you are reading him his Miranda
10 rights did he appear to understand them?

11 A Yes sir, he did.

12 Q Did he appear to be under the influence of any
13 substance that would impair his ability to understand
14 those rights?

15 A No sir, he gave us no indication of that.

16 Q Didn't seem drunk or high?

17 A Didn't seem drunk or high.

18 Q Okay. What are the rights. Read the Miranda rights
19 that you would have read to him?

20 A We start, we list them, it is listed one through six.
21 The first one being I have the right to remain silent.
22 That means I don't, I do not say anything or answer any
23 questions. We stop there, do you understand that. And
24 they signify they understand by putting their initials and
25 he put his initials. Anything I say can be used against

1 me. I have the right to talk to a lawyer and have a
2 lawyer here with me to help me and advise me during
3 questioning. If I want a lawyer here with me during
4 questioning but cannot afford to pay a lawyer one will be
5 provided to me, no cost before I am questioned. If I
6 decide to answer questions now without a lawyer here I
7 still have the right to stop answering questions whenever
8 I want to. And the sixth item is, I also have the right
9 to stop answering questions until I have talked to my
10 lawyer.

11 Q And, Captain, you just read six and I guess they are
12 broke up into six individual rights?

13 A Right.

14 Q And he initialed each one of those that he understood
15 them?

16 A Yes sir, he did.

17 Q Then he signed the bottom of the form, is that
18 correct?

19 A That's right.

20 Q Okay. And then he agreed to answer questions, is
21 that correct?

22 A That's right.

23 Q We will take a break, we lost our Public Defender.

24 THE COURT: You need a break, Mr. Verner?

25 MR. VERNER: No, Your Honor, I saw a witness for this

1 motion, I just wanted to make sure he was going to stay.
2 I caught him leaving and I just wanted to make sure he
3 wasn't leaving the building. I am sorry.

4 THE COURT: You may proceed.

5 Q Captain, does the adult waiver of rights that we were
6 just referring to, does indicate, I guess when the
7 interview ended or when the instructions of Miranda ended?

8 A The time that is on here is when we actually sit down
9 and start talking.

10 Q And what time is that?

11 A It is at 8:27 p.m.

12 Q Okay. That is when the interview began?

13 A Yes.

14 Q All right. Well, essentially what was it that Mr.
15 Ruff told you when you questioned him about the incident.

16 MR. VERNER: Your Honor, can I step out for just one
17 more second. The witness that I told not to leave, I just
18 want to make sure he didn't misunderstand.

19 THE COURT: Sure.

20 (Whereupon, a short break was taken.)

21 MR. VERNER: I am back, I apologize. The witness
22 that I said was going to be called as a witness, I just
23 didn't want him to misunderstand.

24 THE COURT: Very good. Solicitor, you may proceed.

25 CONTINUE DIRECT EXAMINATION

1 By Mr. Scott:

2 Q So, after 8:27 p.m., you stated that the interview
3 began and did Mr. Ruff agree to answer the questions you
4 had for him?

5 A Yes sir, he did.

6 Q Okay. Essentially did he provide a written
7 statement?

8 A He did.

9 Q And is that also incorporated into Court's ID number
10 2?

11 A Yes sir, it is.

12 Q Essentially what did he say, what was his information
13 that he gave you regarding the incident.

14 A He informed me in his written statement and verbally
15 that he did go to the BP Station just up the street, some
16 time that day or earlier that day on August 26th of 2015
17 to purchase a pack of Newport short cigarettes in the box
18 for his father, James Sanders. He used a ten dollar bill,
19 got change for a five dollar bill. Then he walked back
20 down Main Street and decided to go into the Hair Salon to
21 see the inside of it, it wasn't a hair salon when he left
22 the last time. And since he has been back he wanted to go
23 in, he hadn't seen it. He went in briefly, told the guy
24 that it was nice looking, looked at a couple of designs
25 and left.

1 Q So he did admit to going into the, Leslie's Hair
2 Salon at our incident location?

3 A Yes, sir.

4 Q At any time during this interview did he ask to stop
5 questioning?

6 A No, sir.

7 Q Did he indicate at any time that he wished to speak
8 with a lawyer?

9 A No, sir.

10 Q Aside from that written statement was there some
11 other information that he would have provided you that he
12 didn't incorporate with his written statement? I am
13 looking at the information at the bottom of page one of
14 your supplemental. Did he describe the owner of the store
15 or did he describe seeing anybody once he went to the
16 store?

17 A No sir, he just talked about a Hispanic Male that was
18 sitting in one of the salon chairs when he walked in.

19 Q He did say he met with a Hispanic Male inside the
20 store?

21 A Yes, sir.

22 Q Did he say whether or not he took anything from
23 inside the store?

24 A He indicated that when he went in he had nothing in
25 his hand and when he came out he had nothing in his hand.

1 Q Did he describe why he wanted to go into the store?

2 A Again, he said that the last time he was in Newberry
3 it was a fish mart, a place that sold fish. And he was
4 just curious on how it looked on the inside.

5 Q Okay. Were you aware where Mr. Ruff resided?

6 A Yes, sir.

7 Q In relation to the incident location where was his
8 home?

9 A You would walk out of the incident location and kind
10 of, to your right a little bit there is a road called
11 Turner Street just across the street from the hair salon.
12 And he lived a couple of houses down on Turner Street
13 which is within walking distance.

14 Q You have an estimate about how far that his home is
15 from the incident location?

16 A I would guess probably a football length or less.

17 Q A football length or less?

18 A Yes.

19 Q Did he describe where he went after he left the
20 incident location?

21 A He said once he left he came out of the hair salon,
22 instead of going toward his home he went left back toward
23 the BP Station where he said he had bought this pack of
24 cigarettes earlier that day and went up Main Street and
25 turned and went on Copeland Street and through some path

1 over by Tremont Apartments in order to get back home.

2 Q Was that, I guess, that route compelling to you in
3 any way as far as how you would get to his house from the
4 incident location?

5 A No, sir.

6 Q It was not of any interest to you at all?

7 A I mean, well, I did question why would he go almost
8 around the block to get to a place that was diagonally
9 right across the street from where he was.

10 Q Okay. Was he able to give an explanation for that?

11 A He never gave a legitimate explanation as to why he
12 took the long route to get home.

13 Q Did he describe his whereabouts later that day after
14 he visited the hair salon?

15 A Well, he talked about going to the BP again, the BP
16 Station again to buy some more cigarettes. He talked
17 about going to Walmart here in town and he also talked
18 about going to the Mall in Columbia.

19 Q Did he state how he got to the Mall in Columbia?

20 A I want to say his nephew, D'lonze, I don't know
21 D'lonze's last name, but D'lonze is his nephew's name that
22 drove him to Columbia.

23 Q D'lonze Ruff?

24 A D'lonze, let me make sure. Yes, sir.

25 Q Okay. Did he describe what he did when D'lonze Ruff,

1 once they got to the Mall in Columbia?

2 A Well, he went to and when I say he, I am talking of
3 Kenny Ruff said that he went to DTLR to shop.

4 Q A clothing store?

5 A It is a clothing store, yes sir. And at some point
6 D'lonze Ruff went to the bathroom and he went shopping, he
7 came out and at some point and time they met back up.

8 Q What, if any, did he describe anything that D'lonze
9 did for him once they were at the Columbia Mall?

10 A He said that D'lonze bought him a new outfit, the
11 outfit that he was actually wearing when he got to the
12 police department.

13 Q Okay. He said that D'lonze bought him an outfit at
14 the store?

15 A Right.

16 Q And what did you say, that he changed into his new
17 outfit at the Mall?

18 A Yes, sir.

19 Q Did he describe to you what he did with his other
20 cloths that he had worn to the Mall?

21 A To the best of my knowledge, they were thrown away,
22 they were left at the Mall, thrown away in a trash can
23 somewhere at the Mall.

24 Q He threw his clothes away?

25 A Yes, sir.

1 MR. VERNER: Your Honor, I would object to that, that
2 is not part of the State's, how does the State know what
3 he--

4 THE COURT: I think that the Solicitor just asked the
5 officer how he acquired that information, whether it came
6 allegedly from the Defendant or from some other source, it
7 is not in that written statement.

8 Q Let me ask you, did Mr. Kenny Ruff describe what he
9 had done with the clothes he had worn to the Mall?

10 A He said he had thrown them away.

11 Q Okay. He told you he had thrown them away at the
12 Mall?

13 A At the Mall.

14 Q Okay. Is there something that he asked you during
15 this interview and I am looking at page two of your
16 supplemental here. Was there something, some kind of test
17 or something he was asking you about?

18 A You said page two. What on page two, Solicitor?

19 Q What is a GSR kit, what is that?

20 A It is a gunshot residue kit. And, yes, he did
21 request that at the police department, to give him a
22 gunshot residue kit to prove his innocence.

23 Q Was there a reason that you opted not to give him one
24 at that time?

25 A Well, this is--

1 MR. VERNER: Your Honor, this is not relevant, not
2 part of my, the gunshot residue.

3 MR. SCOTT: That's fine.

4 THE COURT: Can you move on.

5 Q Essentially that was the statement given on August
6 26th, is there anything else he mentioned to you on that
7 first interview?

8 A No, sir.

9 THE COURT: All right, Solicitor, just so I can
10 understand. Whatever statements were allegedly made by
11 the Defendant on August 26th, some of them were in written
12 form, others were orally given to this officer. Is that
13 correct.

14 MR. SCOTT: That's correct. And also in Court's
15 number 2 there, I have got the Miranda form as well as his
16 written statement. But Captain Goodman has kind of gone
17 and it is documented in his supplemental but there are
18 some other things that Mr. Kenny Ruff failed to document
19 in his written statement. So just additional information.

20 THE COURT: I understand.

21 MR. SCOTT: Given under oath.

22 THE COURT: I understand. You may proceed.

23 Q Okay. At the end of his, after he gave his written
24 statement, did that kind of conclude that initial
25 interview?

1 A Yes, sir.

2 Q And did he sign it and date it?

3 A He did.

4 Q I have got, let me submit this to the Judge too.

5 MR. SCOTT: This is again, Your Honor, Court's number
6 2, ID.

7 (Whereupon, Court's Exhibit 2 was marked for
8 identification only.)

9 Q So that is the date of the incident, the date of
10 arrest. At some point were you summoned to speak with Mr.
11 Kenny Ruff again?

12 A Yes, sir. On August the 28th of 2015 I was contacted
13 by Sergeant Curly who works at the Newberry County
14 Detention Center. And he was saying that Kenny Ruff had
15 requested to speak to me again. So I asked him to put
16 that in writing and we had him transported to the police
17 department on the 28th of August.

18 Q Okay. And what happened when he gets to the police
19 department on August 28th?

20 A On the 28th he had somewhat a different version of
21 the incident on August the 26th on Main Street but he
22 really wouldn't talk about it. And he said he wouldn't
23 talk about it and it was a, he kind of pointed to his hand
24 referencing gang relation. And he wanted, he requested
25 that I call his sister, he had explained all of this to

1 his sister and he gave me a phone number for his sister.
2 And I contacted her and she actually on speaker phone told
3 me about this conversation that she had had with him while
4 he was incarcerated at the police, at the Newberry County
5 Sherrifs Department.

6 Q Is this a fair summarization of what he said. You
7 brought him in on the 28th and he pretty much indicated
8 that you, his sister might have some information that she
9 could share with you.

10 A He indicated that he had told the story to his
11 sister, what happened. And he didn't want to tell me
12 because of the gang affiliation so he gave me her cell
13 phone number and asked that I call her so she could tell
14 me what he told her on their phone conversation while he
15 was incarcerated.

16 Q I see an adult waiver of rights form from that August
17 28th day, it is not initialed or signed.

18 A Right.

19 Q Was he given his Miranda warnings before that
20 interview?

21 A He was not given his rights that day because he did
22 not want to tell me anything, he did not want to talk to
23 me, he wanted me to call his sister.

24 Q Okay.

25 A So therefore I didn't read him his rights and have

1 him sign this form because he wasn't giving me a
2 statement, he was having me call someone. And so he was
3 never questioned that day, he didn't want to talk because
4 it was a gang affiliation. So we, I called his sister and
5 let his sister speak.

6 Q But you did fill out this--

7 A I did.

8 Q Did you orally read him his rights?

9 A I orally read him but he is not going to sign or
10 anything because he didn't want to speak himself. So that
11 is why it is blank in all six items and he didn't sign it.
12 I just signed it saying that I went over this stuff with
13 him.

14 Q But that meeting you said was a request by him to
15 voluntarily come over and speak with him?

16 A Yes, sir.

17 Q Okay. Your testimony under oath is that you did read
18 him his Miranda warnings?

19 A Right, I would have gone over the entire portion,
20 filling out the personal information up top, read him his
21 rights, signed it and date it. And, you know, he wanted
22 me to talk to his sister so he was never questioned.

23 Q Okay. Just that you need to go speak to my sister
24 about some things I have told her?

25 A Better yet, call her now. So and that is what I did.

1 Q Okay. Captain, answer any questions Mr. Verner has
2 for you.

3 CROSS-EXAMINATION

4 By Mr. Verner:

5 Q I think the last time I spoke to you you were a
6 Lieutenant. Have you been, you are a Captain now?

7 A Yes, sir.

8 Q Congratulations.

9 A Thank you.

10 Q At the time, on August 26th of '15 you were an
11 investigator for the City Police Department?

12 A I was a Lieutenant over investigations, yes sir.

13 Q Were you involved at all in the apprehension of Kenny
14 Ruff?

15 A No, sir.

16 Q But you had been part of the investigation at the
17 crime scene?

18 A I was at the crime scene, yes sir.

19 Q But when Mr. Ruff was arrested where were you, or you
20 had learned he had been arrested?

21 A When I learned he had been arrested I was still on
22 Main Street.

23 Q Now my understanding of Officer Mercer's report is
24 that Officer Mercer is in an unmarked vehicle that located
25 Kenny Ruff's vehicle and was following him until other

1 units arrived?

2 A That is my understanding, yes sir.

3 Q Were you aware, I assume to do that they would be
4 talking to each other on the radio saying this unit is
5 over to--

6 A -- yes sir, he came over the radio and indicated that
7 he--

8 Q -- do you remember that chatter on the radio?

9 A Mr. Verner, to be honest, not verbatim. Again, I was
10 working a crime scene so listening to the radio, I knew
11 that he had spotted the vehicle and was behind the vehicle
12 and waiting on backup before he stopped the vehicle.

13 Q So you were aware, that even before Mr. Ruff was
14 arrested, that they were getting units to arrest him?

15 A Yes, sir.

16 Q But you weren't involved in setting it up, you were
17 at the crime scene?

18 A That's right.

19 Q Do you recall roughly what time of day that was that
20 they were setting up to arrest?

21 A Well, he got to the police department at 8:27.

22 Q That is what time he signed the rights form?

23 A Yes.

24 MR. VERNER: Your Honor, have these rights form been
25 marked as Court's exhibits?

1 THE COURT: The Miranda waiver and the same are one
2 Court's exhibit number 2.

3 MR. VERNER: What about the August 28th?

4 THE COURT: That is on the last page of 2 as well.

5 Q What is your understanding, when Mr. Ruff was
6 arrested, according to Officer Mercer, the Pioneer Frozen
7 Food parking lot?

8 A That's right.

9 Q And just for the record, how far away would that be
10 from the Nance Street Complex?

11 A It is in Prosperity right before you get into town,
12 so fifteen minutes maybe.

13 Q So Pioneer is in Prosperity?

14 A That's right.

15 Q And you would have traveled from Main Street knowing
16 Kenny was coming in or Mr. Ruff was coming in, you would
17 have traveled from Main Street crime scene to the office?

18 A To the office, yes sir.

19 Q And Mr. Ruff, by your testimony, signs the rights
20 forms at 8:27 p.m.

21 A That's right.

22 Q But he wouldn't have signed the rights form he came
23 to Nance Street, would he?

24 A No sir, that would have been after I read them to him
25 and signed at the bottom.

1 Q And before that, because this is a murder charge I am
2 sure that, it was at the top of the events to do, that he
3 just didn't go into a holding room?

4 A No sir, he came straight to my office.

5 Q But how long would it have taken to get him into the
6 facility and to the location where you interviewed?

7 A You mean once you get to the police department?

8 Q Yes, sir.

9 A You walk down the hallway.

10 Q Just my general question, how long would he had been
11 in the police department building prior to you--

12 A Before he signed this?

13 Q Yes.

14 A Five minutes, it would take a few.

15 Q Do you recall any conversation with him before
16 speaking to him about anything like using the bathroom or
17 anything like that?

18 A No, sir.

19 Q Did you know Mr. Ruff prior to?

20 A I did.

21 Q You did?

22 A Yes.

23 Q He signed the advisement of rights forms at 8:27 p.m.
24 and the actual, he gave a written statement in your office
25 too?

1 A Right.

2 Q And that is signed at 8:36 p.m., is that right?

3 A That's right.

4 Q At the top of the form it would be 8:36?

5 A That's right.

6 Q It was roughly nine minutes between giving the
7 advisement of rights and writing, did he write his
8 statement before the time stamp, is that when he finished
9 writing his statement or is that when he started writing
10 his statement?

11 A That would have been when I started filling out the
12 top portion. That top portion is filled out by me, his
13 name, the date and that is filled out then. And then I
14 hand him the form and let him start writing. So a minute
15 it takes me to write his name and date and he starts
16 writing.

17 Q So that would be at the time, that you handed him the
18 form that you filled out?

19 A Yes, sir.

20 Q Do you recall who the officer was who brought Kenny,
21 Mr. Ruff from his arrest scene at Pioneer Frozen Foods to
22 the City Police Department?

23 A To the best of my knowledge, I think he was
24 transported by an Officer Maybin because he would have had
25 a cage unit and Mercer is driving an unmarked car without

1 a cage so he is not able to transport.

2 Q But you don't remember who specifically brought him
3 in?

4 A I would have to read through all of the supplements
5 but I am thinking it was Officer Shane Maybin.

6 Q Now, is there a policy, when road officers apprehend
7 a suspect in a crime and they are going to be interviewed,
8 was it specifically told to them not to speak to the
9 suspect, do they have a policy not to speak with a suspect
10 when he is coming in for questioning?

11 A When you say speak to, are you talking about
12 interviewing him?

13 Q Interview him at the scene or on the road coming in?

14 A Typically if I am going to interview them, if they
15 start talking and then we allow them to talk.

16 Q Okay. But is there a policy not to?

17 A No, there is not a policy on that, no sir.

18 Q You know if Mr. Ruff was informed of why he was being
19 brought to the police station?

20 A I don't know what all was told to him at the scene.

21 Q Do you recall if he revoked his rights for an
22 attorney, lawyer at the scene?

23 A I don't know anything at the scene, no sir.

24 Q And you had known Mr. Ruff before, right?

25 A That's right.

1 Q And in fact he has been involved in the criminal
2 justice system?

3 A That's right.

4 Q You don't know him personally, socially so much but
5 you know him as a prior suspect?

6 A Not socially, no sir.

7 Q And he has been in court before, right?

8 A That's right.

9 Q Fairly intelligent?

10 A Yes, sir.

11 Q In fact he invoked his right to a lawyer when you
12 first spoke to him, didn't he?

13 A No, sir.

14 Q You don't recall saying anything to him like we can
15 go ahead and clear this up tonight without a lawyer?

16 A I gave him an opportunity to talk, to encourage him
17 to speak without an attorney, I would not have done that,
18 no sir.

19 Q And in fact he spoke fairly extensively, by your
20 testimony, prior to giving a written statement?

21 A Yes sir, he talked.

22 Q But that all would have had to been less than nine
23 minutes, everything he told you would have had to just
24 been maybe five minutes or so because you had to do all of
25 the written reports, paperwork. And part of that time

1 would be explaining to him his Miranda rights?

2 A That's right.

3 Q The time of his waiver of the Miranda rights, is that
4 also the 8:27 p.m., is that also the time you started
5 initiating those rights to him?

6 A Say that again, I am sorry.

7 Q At the bottom of the adult waiver of rights, there is
8 a time?

9 A Right.

10 Q And it is dated 8/26/15 and the time is 8:27 p.m.

11 A That's right.

12 Q That appears to be from the same pen that you filled
13 out from the top part?

14 A That's right.

15 Q Is that fair?

16 A That's right.

17 Q My question is and you are indicating that is his
18 signature to the left?

19 A That's right.

20 Q The date, the time stamp, is that when you finished
21 reading his rights or is that when you started and you
22 filled out the form?

23 A No sir, that would have been after he signed it.

24 Q Okay. So you are indicating that, how long would it
25 have taken you to, do you go by individual rights, do you

1 read him like number one and then have him initial it or
2 you go one to six?

3 A I go over each one, one and let him initial and then
4 to two and then to three.

5 Q And how long do you think it took for you to go over
6 those rights with him?

7 A I read them a lot, I read through them pretty fast.
8 It wouldn't take any time to go through his rights and for
9 him to indicate that he understood them.

10 Q And when you got to number four, and asked him if he
11 wanted a lawyer, are you sure he didn't say that he wanted
12 to speak to somebody first?

13 A He did not indicate that.

14 Q In your report I think you indicate that Chief
15 McClurkin was with you?

16 A That's right.

17 Q Why didn't anybody else sign the adult waiver of
18 rights as a witness?

19 A I mean we don't always do that. I signed it, he was
20 there, he is listed on the form.

21 Q Who were you testifying that was with you during the
22 recitation of his rights and interview?

23 A Chief McClurkin.

24 Q Was anybody else with you?

25 A There were officers standing outside of the door that

1 had transported him.

2 Q Okay. In his written statement he doesn't talk at
3 all or address, I am going to Columbia, does he?

4 A In his written statement, no sir.

5 Q Have you had a chance to go back over his written
6 statement prior to this hearing?

7 A I kind, while I am sitting up here I ran through it,
8 yes sir.

9 Q In his written report he doesn't mention going to
10 Columbia, does he?

11 A No, sir.

12 Q He doesn't talk about Walmart, going to Walmart, does
13 he, in his written report?

14 A No, sir.

15 Q In his written statement. So there are facts that
16 you are testifying from your memory that he would have
17 told you that he didn't write in his written statement?

18 A That's right.

19 Q Now, after he writes a written statement do you go
20 over, would you have read back to him what he told you?

21 A Well, I would have read over his statement, yes sir.

22 Q To him out loud. If I were a suspect in a crime and
23 I had given you a written statement in your office--

24 A --right.

25 Q Do you read it back to me out loud?

1 A Not necessarily all the time read it back to you
2 because, I will read it but there is questions in there
3 that I would ask, if there are times when there are
4 injuries or someone say they can't write or can't spell
5 well that I will write as they dictate it. And I will
6 read that back to them so they know what is on there and
7 confirm it. I would have read over his statement to make
8 sure that is all he wanted to say, yes.

9 Q Do you recall asking him or indicating to him that he
10 hadn't put in his written report anything that, that he
11 had omitted some stuff in the report such as the trip to
12 Columbia or the trip to Walmart?

13 A I don't remember saying that to him. But even if he
14 had not done that, I can't force him to put that in there
15 if that is not what he wants to put in there. It is his
16 statement and I allow him to write until they finish. I
17 cannot force him to put in there.

18 Q But where he would have written some stuff or said
19 some stuff that was inconsistent or omitted from your,
20 what you recall him telling you orally, you didn't ask him
21 if he wanted to clear that up or put that in writing?

22 A No.

23 Q You don't recall, did he not smell like alcohol?

24 A No, sir.

25 Q Are you aware if alcohol was found at the scene?

1 A I am not sure.

2 Q What about the smell of marijuana?

3 A I didn't smell any marijuana. If there would have
4 been any indication that he was under the influence of
5 alcohol or drugs I would have waited to talk to him.

6 Q And how long after Mr. Ruff had given the written
7 statement did you remain at the police department?

8 A When we were finishing up.

9 Q Almost immediately?

10 A Almost immediately.

11 Q Was he handcuffed at the time you spoke to him?

12 A Yes, sir.

13 Q What about leg shackles?

14 A More than likely not because we don't carry leg
15 shackles, I cannot remember but we don't have leg shackles
16 with the City that we normally carry around. So, if there
17 was some on him and I don't remember them being on him, it
18 would have been put on by the County.

19 Q But he had on handcuffs?

20 A He definitely had handcuffs on.

21 Q And he certainly would not have been free to leave
22 the interview?

23 A That's right.

24 Q And you believe a reasonable person would have known
25 he wasn't free to leave, he was clearly in custody at that

1 point?

2 A That's right.

3 Q And it was clear that he wasn't going home after this
4 day?

5 A That's right.

6 Q Now, are you aware there were attempts to try to
7 contact him via person or through his family to get him,
8 to turn himself in prior to him being arrested?

9 A I do know that at some point his sister had contacted
10 either him by his cell phone or her son's cell phone, he
11 was driving Kenny around and trying to get him to come
12 back to the, Turner Street, come back to the house.

13 Q Are you aware there is also an officer whose first
14 name is DB?

15 A That would be Officer Detrick Bishop.

16 Q That would be Detrick Bishop?

17 A That's right.

18 Q But and he would be through the sheriffs department?

19 A That's right.

20 Q Are you aware of whether the sheriff deputy was also
21 called, called Mr. Ruff?

22 A I am not sure who actually called him. When I
23 actually got to Turner Street his sister, D'lonze's mother
24 was on the phone with either Kenny or D'lonze. Again, I
25 was at the scene which is a football field or so away. I

1 don't know that Officer Bishop talked to either one of
2 them, D'lonze or Kenny. I don't know that.

3 Q Did any other City police officer interview him prior
4 or after the interview of August 26th, that night?

5 A No, sir.

6 Q You would have been the only person, were you the
7 only officer asking questions?

8 A That's right.

9 Q The Chief or a Lieutenant, nobody else was offering,
10 kind of questions in between your questions?

11 A No, sir.

12 Q And then I think you indicated on the 28th he was
13 brought back to Nance Street?

14 A That's right.

15 Q And at that time, you had filled out an adult waiver
16 of rights form for him?

17 A That's right.

18 Q Do you recall whether you filled this out in his
19 presence or before he would have come to the interview?

20 A I filled all the top part prior to him getting there.

21 Q For some reason he declined to sign that, the August
22 28th form?

23 A That's right. Again, as I explained earlier he said
24 he didn't want to talk to me. He pointed to a symbol or
25 some type of text on his hand indicating some crime, some

1 gang activity.

2 Q Did he say gang activity or is that a short
3 interpretation of it?

4 A He said he couldn't talk and he pointed to his hand.

5 Q So your interpretation of that was--

6 A My interpretation of that was pointing to a gang
7 symbol sign or whatever was on his hand, that is what that
8 was. He wanted me to call and talk to his sister.

9 Q Okay. Did he ask to speak to a lawyer at that point?

10 A No, sir.

11 Q So all that happened on the meeting on the 28th was
12 that he asked for you to contact his sister?

13 A That's right.

14 Q And he pointed towards his hand?

15 A That's right.

16 Q And you took that as an inference that it was gang
17 related that he had a tattoo, that is how you--

18 A I interpreted it that he didn't want to talk.

19 Q But he didn't specifically say there is gang, there
20 is a gang issue or anything like that. He just indicated?

21 A He just indicated by pointing to his hand, yes sir.

22 Q And you would agree that that would involve you
23 having to interpret?

24 A That's right.

25 Q Do you recall a specific tattoo he was pointing to or

1 just in general?

2 A He pointed to his hand, I can't remember what--

3 Q But it wasn't a distinctive gang mark or something?

4 A I would have to see his hands again but I can't
5 remember what was on there.

6 Q But that is typically, when people do that, talk
7 about tattoos, that is sometimes talk about gang marks?

8 A It is not like he would have his name, it would have
9 to be something affiliated with the gang, with a gang.

10 Q Did you have any belief that Mr. Ruff was involved in
11 a gang prior to that interview?

12 A From dealing with him in the past, yes, it has been
13 some indication that he--

14 Q --so from also, from prior, either investigations or
15 meetings with him or just hearing words about the street
16 you already believed he had some gang affiliation?

17 A Yes.

18 Q Okay. So when he pointed to his hand that would also
19 confirm what--

20 A --whatever is on his hand, I can't remember exactly
21 what is on the hand, but whatever was on his hand is some
22 relation to gangs.

23 Q Did you call his sister?

24 A I did.

25 Q While he was in the room?

1 A I did.

2 Q Did he take part in any kind of three-way
3 conversation between you and he or was it entirely his
4 sister?

5 A I put her on speaker phone and I let him, I told her
6 that I was there with Kenny and he wanted to talk to her
7 and just to make sure that she felt certain that I wasn't
8 trying to trip anything. I let him acknowledge that he
9 was there and that to tell me whatever they talked about
10 on the phone while he was incarcerated.

11 Q Did you also speak to D'lonze Ruff?

12 A I have not talked to D'lonze Ruff.

13 Q They weren't drinking in the car or anything like
14 that, you didn't speak to anybody in the car with him?

15 A No, sir.

16 Q Do you recall, is it Lieutenant Kennedy, Officer
17 Kennedy being present during the interview?

18 A I don't recall him being in the room with us, no.

19 Q But again there would be several other officers that,
20 for security purposes or, but as far as an interrogator it
21 was you?

22 A I questioned him, yes sir.

23 Q And the Chief was sitting next to you, but he was
24 deferring to you?

25 A Right.

1 Q To the best of your knowledge nobody else was
2 participating?

3 A No.

4 Q Okay. Thank you.

5 THE COURT: Any redirect?

6 MR. SCOTT: I guess briefly, just one.

7 REDIRECT EXAMINATION

8 By Mr. Scott:

9 Q Captain Goodman, how many interviews do you think you
10 have done over the years?

11 A 20 something years, a lot.

12 Q Thousands?

13 A Thousands probably.

14 Q Is it uncommon when a suspect is interviewed, is it
15 uncommon for them to leave certain details out when they
16 give a written statement?

17 A Almost every time people write, they are, they talk
18 more than they write for whatever reason. So they are
19 always times that there will be, the written statement is
20 not as detailed as what they say. I just have never been
21 comfortable as an investigator, as a police officer,
22 demanding or encouraging them to continue write, let them
23 write what they want to write and then I just document
24 what was left out.

25 Q Okay. But is it your testimony that prior to him

1 giving his oral account of what happened and prior to him
2 giving his written account of what happened, he was
3 thoroughly Mirandized and you were thoroughly confident
4 that he understood his rights?

5 A Yes, sir.

6 Q And at that time, do you know how long, you know what
7 time he was arrested?

8 A To give a time, no, I don't.

9 Q But had he already been booked in and processed at
10 the jail?

11 A He came straight from the Pioneer scene, straight to
12 my office.

13 Q But did you have any concerns that he was able to
14 understand the rights that you were giving him?

15 A No concerns.

16 Q And based on your observations he did not appear to
17 be under the influence of anything?

18 A No, sir.

19 Q Thank you.

20 RECROSS-EXAMINATION

21 By Mr. Verner:

22 Q Did you provide Mr. Ruff a written copy or a
23 photocopy of this written statement?

24 A Yes, sir.

25 Q Would that have been in his possession at the time he

1 was brought back to the jail?

2 A He would have been given that when he was taken to
3 the jail, yes sir. When he left my office he would have
4 had a copy of it.

5 Q So there is no way he would not have had it by the
6 time he got to the jail when he was booked in?

7 A Shouldn't have been a reason.

8 Q And your testimony, your memory that you did allow
9 him to, did you allow him to reread his written statement?

10 A Reread, yes. He has an opportunity, you will see at
11 the end of his statement.

12 Q And you gave it to him to take back to the jail with
13 him?

14 A Say that again.

15 Q You gave a copy for him to take back?

16 A I gave him a copy to take, yes. He signed for a
17 copy, that would be the second signature on his written
18 statement, the first signature is saying everything is
19 freely and true. The second signature is for him, he
20 signed for a copy of it. So he would have gotten a copy
21 of the waiver of rights and his statement.

22 Q I see where he signed it but you are saying, that he
23 definitely also took one?

24 A Yes, sir.

25 Q Thank you.

1 THE COURT: You may step down. Solicitor Scott,
2 anything further of this Jackson v. Denno?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: I just want to make sure, the only
5 statements that are subject to this Jackson v. Denno
6 hearing would be the written and oral statements of August
7 26th, 2015, correct?

8 MR. SCOTT: That's correct. And we would, as far as
9 the August 28th, we would have testimony probably from
10 Captain Goodman of that exchange where he directs Captain
11 Goodman to get into contact with Angela Ruff who is his
12 sister. We plan on having her testify and then she can
13 testify to the contents of that conversation.

14 THE COURT: Right. That which would be an issue
15 potentially for another day as far as the August 28th?

16 MR. SCOTT: Yes, sir.

17 THE COURT: Okay.

18 MR. VERNER: I respectfully disagree that it would be
19 an issue for another, that would be part of the Jackson v.
20 Denno. I do take, even though it was a brief statement I
21 do think that a jury could see that as an inculpatory
22 statement that points my hand and, you know, talks to
23 somebody else to find out what was going, I think a jury
24 could reasonably take that as an inculpatory statement.
25 So I do think that that would be part of my Jackson v.

1 Denno.

2 THE COURT: What we would need to do then is, Officer
3 Goodman, I need you back on the stand because I have a
4 couple of questions related to the August 28th.

5 MR. SCOTT: And, Your Honor, just for the record,
6 looking forward, we don't really plan on getting into the
7 inference of the gang activity. The gist of that
8 testimony would be that he directed Goodman to get in
9 touch with his sister and then we will go from there. But
10 I will stay away from whatever gang implication unless the
11 door is open, of course.

12 THE COURT: Okay.

13 EXAMINATION BY THE COURT

14 By the Court:

15 Q Officer Goodman, I want to make sure I understand
16 exactly what took place as it relates to the August 28th,
17 the contact that you had with the Defendant. You were
18 instructed by someone with the detention center that the
19 Defendant wanted you to come over there, correct?

20 A He wanted to speak to me.

21 Q He wanted to speak to you?

22 A Right.

23 Q And when you got over there he verbally said, I am
24 not going to tell you and I am paraphrasing what I
25 understood you to say, he was not going to tell you

1 anything but that he wanted you to call his sister because
2 he had talked with his sister. And then he points to his
3 hand which you interpret to mean some gang involvement,
4 correct?

5 A Well, he was actually transported, I didn't go to the
6 jail, I had him transported to the police department.

7 And, right, he said he didn't want to talk to me.

8 Obviously, I asked him why not, why did I have to call his
9 sister to talk to him, to get his side of the story. And
10 he pointed to his hand.

11 Q So then you called the sister, put the sister on
12 speaker phone. Mr. Ruff acknowledges to the sister that
13 he is there with you?

14 A Right.

15 Q And does he verbally instruct the sister to tell you
16 what their conversation consisted of?

17 A That's right.

18 Q And did then the sister convey to you what that
19 conversation consisted of?

20 A She did.

21 Q And after the conversation you had with the sister
22 did the Defendant make any indication to you verbally or
23 otherwise concerning what the sister had just told you on
24 the phone?

25 A Other than him supporting what she said, that was the

1 truth. That was the conversation he had.

2 Q Did he tell you, that yes, that is what I told her?

3 A Yes, he indicated what she said was true.

4 Q Okay.

5 THE COURT: With that said, Solicitor Scott. is there
6 any examination of Officer Goodman in response to the
7 Court's questions?

8 MR. SCOTT: Just to reiterate prior testimony.

9 REDIRECT EXAMINATION

10 By Mr. Scott:

11 Q Before that conversation began was it your testimony
12 that you did Mirandize him?

13 A I did.

14 Q Orally?

15 A Orally, yes.

16 Q Okay. But the testimony was that you did not have
17 him sign and initial the waiver form?

18 A That's right.

19 Q But it is your testimony that you orally Mirandized
20 him?

21 A Yes.

22 Q And did he seem to understand them again?

23 A Yes, sir.

24 Q Okay.

25 THE COURT: Anything further from you, Mr. Verner?

RECROSS-EXAMINATION

By Mr. Verner:

Q You didn't write in your report that Mr. Ruff confirmed what she told you?

A Without going back to my supplement I wouldn't.

MR. VERNER: May I approach?

THE COURT: You sure can.

Q Starts at page three.

A It starts on the bottom of that page.

Q So you understand my system. Orange is what I have written, what I have highlighted as what you indicating he is saying to you. And yellow would be anything else, I guess, but you don't put in your report that he confirmed or he participated in your discussion with his sister?

A No, I do not indicate that.

Q But your testimony is you do remember his saying, what are you testifying that you remember him saying?

A After speaking with her and letting her tell the story and she gave the story on the speaker phone. And he was listening and myself and the Chief, and he is indicating that that is the story, that is what he wants her to tell me. He had every opportunity, if that wasn't what they talked about, he is listening to her tell the story as I am listening to it, he had every opportunity at that point to say, no, that is not what I said. He gave

1 no indication that she was telling me anything that was
2 different.

3 Q He didn't step up and contradict her?

4 A Right.

5 Q But my specific question is, he didn't, did he say
6 something to the best of your knowledge, yes, that is what
7 happened or that is true.

8 A I don't remember his saying, yeah, that's, because he
9 wasn't talking much at all. But he didn't say anything to
10 contradict, he didn't say, no, that is not true, I didn't
11 tell her that. Again, she was on the speaker phone so he
12 heard everything she said.

13 Q He didn't make any statement after she started
14 talking other than he didn't contradict anything she said?

15 A He didn't contradict anything she said.

16 Q Okay. Thank you.

17 THE COURT: You can step down. Solicitor Scott, do
18 you have any other witnesses or any other evidence from
19 the State that relates to this Jackson v. Denno hearing?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: Mr. Verner, you had mentioned earlier--

22 MR. VERNER: Robert Dennis, can I step out and get
23 him.

24 THE COURT: Sure.

25 MR. VERNER: Your Honor, the Investigator is

1 presenting to the Grand Jury. I am going to go ahead and
2 call Mr. Ruff and I have instructed them to send Captain
3 Dennis as soon as he is through with the Grand Jury.

4 THE COURT: Okay. Before we do that my question as
5 it relates to August 28th and at least I took it where the
6 State did not believe that what transpired on the 28th
7 would be subject to this Jackson v. Denno. However, Mr.
8 Verner, you had a different opinion. Now, here is kind of
9 my initial thoughts on it and I will hear from both sides.
10 I think I am able to make a finding or at least take a
11 look at Mr. Ruff's additional statement to Officer
12 Goodman, to call my sister, whether or not that was
13 voluntarily made and in accordance with Miranda. But
14 insofar as his failure to contradict or object after the
15 phone call with his sister was made, I mean that would be
16 touching on his right to remain silent. So I don't think
17 that would be a part of this Jackson v. Denno. I can't
18 make a finding that that was voluntarily made because, and
19 that would violate his constitutional right to remain
20 silent. So, I want to make sure that we are all clear as
21 far as what is a part of and what my ruling should touch
22 on as it relates to this Jackson v. Denno. Just kind of
23 carry this one step further, I am assuming that the
24 State's position with respect what the sister says is as
25 if he can talk to anybody outside of law enforcement and

1 if that person comes in and says, yeah, the Defendant told
2 me such and such and consequently you don't need to get
3 into voluntariness, well you do, but as far as Miranda and
4 that sort of thing. But now Mr. Verner is wanting me to
5 add this part of the Jackson v. Denno matter. So, I
6 probably was not very artful in stating what I think the
7 issues are here but, Mr. Verner.

8 MR. VERNER: Yes, sir. I agree with the Court in the
9 sense that if they just had the sister testify, Officer
10 Goodman called me up and this is what I told him. That
11 would not be a part of the ruling, that they could get
12 that independent, I think probably over the Jackson v.
13 Denno statement.

14 THE COURT: Right.

15 MR. VERNER: Now, they still got a hearsay issue if
16 they present through Mr. Goodman.

17 THE COURT: Right, I understand that.

18 MR. VERNER: But his statement, I think, certainly
19 pointing to my hand indicating that these are sinister
20 matters I can't talk about. And that somebody else knows
21 what happened. I think a jury, if you were a suspect in a
22 crime and you indicated you knew somebody who knew the
23 details a jury could infer guilty knowledge or knowledge
24 of the crime. So it would be an inculpatory statement,
25 you are indicating talked to somebody, so you are

1 indicating knowledge of the crime. I think it is clearly
2 that the inference is inculpatory. I guess the only,
3 either the Court has to find that the prior waiver of
4 rights from the 26th carried on through that, the 28th, or
5 that he instigated communication with the officer. But
6 clearly he declined to, at that time, waived his rights or
7 waived for a lawyer. I guess the issue for the Court
8 would be whether the 26th waiver of rights would have
9 carried on or whether this was an, indicating a request to
10 speak to the police. But I think the State can finalize
11 that issue entirely if they just said I independently
12 called the sister up and this is what she told me.

13 THE COURT: Right.

14 MR. VERNER: I think the Court is right, that it
15 wouldn't necessarily be a Fifth Amendment issue.

16 THE COURT: All right. Solicitor Scott.

17 MR. SCOTT: And, Your Honor, just briefly, just to
18 reiterate. He is, the Jackson v. Denno, was he
19 interrogated, was he subject to interrogation while he was
20 detained. He was on the 28th, he was Mirandized. He made
21 the voluntarily request to come speak with officers.
22 Again, I don't want to get into the tattoo, I think that
23 is just really distracting if anything. The voluntariness
24 of the statement made to Captain Goodman, that you need to
25 talk with my sister, I think that has been demonstrated

1 through this Denno hearing. And the problem, just
2 outright, we intend to call Angela Ruff as well, not to
3 give anything away that we don't all know about. I intend
4 to introduce jail calls made between Mr. Ruff and his
5 sister where he kind of demonstrates the information that
6 she will later testify to that he is telling Captain
7 Goodman to get with Angela, I hope that made sense. So
8 the voluntariness of the statement, Captain Goodman, you
9 need to speak with my sister, that has been demonstrated.
10 I don't even think, he is subject to interrogation but
11 that is not the resortment of the interrogation, that is
12 him requesting voluntarily come up there and speak with
13 the officer to provide that information and again he was
14 Mirandized according to testimony from Captain Goodman.
15 So that limited statement, I think that does pass the
16 question that is involved in the Jackson v. Denno hearing.
17 And I think the voluntariness of it is evident. So that
18 is the sole reason.

19 THE COURT: Okay, Mr. Verner, you want to call your
20 client to testify?

21 MR. VERNER: Yes, sir.

22 THE COURT: What I need to do, even though this is
23 not testimony as it relates to the trial, it is still
24 testimony that could potentially be used against him if he
25 were to testify at trial. So I am going to go ahead and

1 advise him of those standard rights that we routinely do
2 when the State has rested and we get to the, the defense
3 opportunity to put a defense. You can stay right there.
4 Madam Clerk, will you swear Mr. Ruff in please.

5 KENNY RUFF, being
6 first duly sworn, testified as follows:

7 THE COURT: Mr. Verner, what I am going to do, I am
8 going to do a modified instruction to Mr. Ruff concerning
9 his rights, it is not going to be identical to what we
10 normally do concerning testifying at trial. Mr. Ruff, at
11 this time I am going to explain to you certain of your
12 rights and if you don't understand anything I say please
13 let me know that and if you want me to explain anything in
14 more detail please let me know that as well. Do you
15 understand, sir?

16 MR. RUFF: Yes, sir.

17 THE COURT: Now, Mr. Verner indicates that for
18 purposes of this hearing which as you certainly are aware
19 of is being done prior to trial, being done outside of the
20 presence of any jurors for purposes of me making certain
21 legal rulings as it relates to any statements that you
22 allegedly made. And you have the right to claim the
23 protections given to you by the Fifth Amendment to the
24 Constitution of this, of the United States. And this
25 Amendment states in part, no person shall be compelled in

1 any criminal case to be a witness against himself. In
2 other words, you have the right, even at this stage to
3 remain silent, from the moment that you were arrested on
4 these charges all the way up until today right now, you
5 have the constitutional right to remain silent. And no
6 one can force you, even me, can force you to say anything
7 or to testify in this case regardless of the fact that
8 this is a matter outside of the presence of a jury before
9 we start a trial. Do you understand that, sir?

10 MR. RUFF: Yes, sir.

11 THE COURT: The decision for you to testify at this
12 hearing is a personal decision and only you can make. Do
13 you understand that, sir?

14 MR. RUFF: Yes, sir.

15 THE COURT: Certainly you have every right to solicit
16 the advise of Mr. Verner and talk with any family members
17 or friends or anybody else. But the bottom line decision
18 is for you to make and for you to make alone. Do you
19 understand that, sir?

20 MR. RUFF: Yes, sir.

21 THE COURT: Do you understand that if you do testify
22 at this Jackson v. Denno hearing and then to testify at
23 trial and that if you testify to something different or
24 contradict yourself or something of that nature, but I am
25 not saying it would happen but if you did then you could

1 possibly be impeached on the differences or the
2 contradiction in testimony. Do you understand that, sir?

3 MR. RUFF: Yes, sir.

4 THE COURT: This decision to testify at this Jackson
5 v. Denno hearing is a decision that you must make and I
6 must so find that you must make a freely, voluntarily and
7 intelligently and made with the knowledge of protections
8 given to you by the Fifth Amendment concerning your right
9 to remain silent. Have you understood what I have
10 explained to you, sir?

11 MR. RUFF: Yes, sir.

12 THE COURT: Do you have any questions whatsoever
13 about what I have explained to you?

14 MR. RUFF: No, sir.

15 THE COURT: Are you prepared to tell me that you are
16 willing and wanting to testify at this Jackson v. Denno
17 hearing?

18 MR. RUFF: Yes, sir.

19 THE COURT: And has that decision been made, having
20 the full opportunity to discuss that with Mr. Verner and
21 anybody else that you wanted to talk to?

22 MR. RUFF: Yes, sir.

23 THE COURT: Is that decision been made freely,
24 voluntarily and intelligently?

25 MR. RUFF: Yes, sir.

1 THE COURT: Thank you very much. Come on around and
2 be sworn.

3 MR. VERNER: Actually, Your Honor, I would rather,
4 since he is available now, he has been admonished his
5 rights. But I would rather call Investigator Dennis
6 first.

7 THE COURT: Okay.

8 MR. VERNER: He has been admonished. Investigator
9 Dennis.

10 Robert Dennis, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Verner:

14 Q For the Court's record, identify yourself one more
15 time.

16 A Captain Robert Dennis, Newberry County Sheriffs
17 Office.

18 Q What is your position at the sheriffs department?

19 A I am Captain at the sheriffs office, I receive
20 investigations as well as the victims advocacy unit and a
21 dog team.

22 Q On August 26th of 2015, what was your role, your
23 position at the sheriffs department?

24 A Still Captain at the sheriffs office, yes.

25 Q As an investigator?

1 A As an investigator, yes.

2 Q Did you have any involvement in the apprehension of
3 Kenny Ruff?

4 A Yes, sir. We received the information that Mr. Ruff
5 was traveling with his cousin on 76, he was being followed
6 by City unit. And so began to shift our focus on getting
7 to that City unit who was traveling on 76 toward
8 Prosperity.

9 Q Did you participate in the stop of the vehicle?

10 A I did, yes.

11 Q Do you recall about, approximately what time of day
12 that he was stopped?

13 A It was probably getting later in the afternoon,
14 probably right before 5:00 o'clock. And the traffic stop
15 was made in the parking lot of Pioneer Foods.

16 Q To the best of your memory it was in the late
17 afternoon around 5:00 o'clock?

18 A Yes sir, the sun hadn't gone down but it was, I would
19 say it was getting close to shift change for us which is
20 at 6:00, so long before that.

21 Q And how many vehicles do you recall participating in
22 the stop?

23 A I would probably, there was at least 10 to 15 law
24 enforcement responding.

25 Q And this was, what they characterize in the report as

1 a felony stop?

2 A That is correct.

3 Q Just briefly what does that mean?

4 A A felony stop is where officers position themselves
5 in a vehicle, that is what we classify as a felony
6 offender because we are investigating a homicide. We
7 didn't know what potential or what was going through the
8 suspect's mind. So we position our cars behind the
9 offender so that we would not have any crossfire with
10 other officers if that took place. We also designate one
11 person to give instructions to either the passenger or the
12 driver, to exit the vehicle so that we can take them into
13 custody one at a time.

14 Q Do you recall who would have been, I guess the
15 highest ranking or in charge of the stop. This was
16 multiple agents, this would be City units and sheriff
17 department units?

18 A That is correct.

19 Q Did any other vehicles, highway patrol or SLED, do
20 you recall?

21 A I am not aware of any highway patrol.

22 Q Do you recall who would have been ultimately in
23 charge of the on scene stop?

24 A The ultimate person they charged was the officer that
25 initiated the traffic stop which would have been the City

1 officer. And I cannot tell you who that was right now. I
2 want to think it was Rick Mercer, that is just, I don't
3 have my notes in front of me, you know just remembering.
4 But I do remember being at the backside of the City car
5 and giving them instructions that only one person talks
6 and giving instructions to the offenders to step out of
7 the vehicle.

8 Q Okay. So you were treating this primarily as a City
9 case, and you were doing backup?

10 A That is correct.

11 Q But I would take it that the City and the County has
12 pretty regular cross coordination and works together?

13 A Great working relationship.

14 Q Not uncommon to have the two units working as one
15 agency essentially, the two agents working as one?

16 A That's correct.

17 Q Describe what happened at the stop just briefly, as
18 you recall?

19 A Once there was enough folks there they began calling
20 Mr. Ruff and the driver out. Mr. Ruff was taken into
21 custody and then the driver was taken into custody and
22 detained. I can't think of his name right now but he was
23 a cousin to Mr. Ruff. I do remember my main focus was
24 with the driver and talking with him because his family
25 was more worried about his safety than anything.

1 Q So you were on the driver's side of the vehicle?

2 A Yes, that would be the left side of where we were at.
3 So I maintained the left side position of my vehicle, the
4 officer that made the stop for the City and then the
5 suspect vehicle.

6 Q Did you reach the actual vehicle, and what do you
7 recall the vehicle at the stop was. You can just describe
8 it?

9 A Mr. Verner, I will be honest with you, I cannot
10 remember the vehicle.

11 Q Was it a car, pickup truck, SUV?

12 A I want to think it was a SUV but I cannot, I am not
13 going to even say, I don't know.

14 Q Do you recall getting in close proximity to the
15 vehicle?

16 A Once we, once I went to the driver's side, well I
17 said, we, I was there. Once I went to the driver's side
18 and took the driver in he was moved back away from his
19 vehicle to where my vehicle was at, behind the initiating
20 officer stopping the car. So I was a good probably 50
21 feet behind where the offender vehicle was at.

22 Q You never approached the vehicle, the white SUV that
23 was stopped?

24 A I said I went to the driver's side.

25 Q So you went all the way up to the driver's side, that

1 is my question.

2 A Yes.

3 Q Were you able to look inside the vehicle?

4 A Yes.

5 Q Did you smell any odor of marijuana coming from the
6 vehicle?

7 A No.

8 Q Did you see any signs of alcohol or drink?

9 A None that I can recollect, no.

10 Q Did you also speak or interact with Kenny Ruff at the
11 scene?

12 A No, Kenny was on the right side, he had been taken
13 into custody and was, I wouldn't say he was belligerent
14 but he was more or less asking, what's going on, why is
15 all of this happening. And he was taken to the right side
16 of the vehicle and placed in a City patrol car that had a
17 cage.

18 Q Did you have any interaction with him prior to him
19 being taken from that scene?

20 A No.

21 Q How close would you say you got to Mr. Ruff?

22 A I would say probably 20 feet at the most.

23 Q He was on the other side of the vehicle?

24 A That's correct.

25 Q Was he still in the car at the time that you pulled

1 out D'lonze Ruff?

2 A No, I believe they had already extracted Mr. Ruff
3 from the vehicle and was bringing him back whenever we
4 made the driver step out.

5 Q And you indicated he was being argumentative?

6 A I wouldn't say argumentative but more or less, you
7 know, I want to know what was going on, why are y'all
8 stopping, you know, why are you hassling me type.

9 Q Did he appear to be intoxicated to you?

10 A I didn't get close enough to interact with him to
11 see. I mean his words were very straightforward and
12 understandable.

13 Q Did you see him after he was interviewed, from the
14 scene to Nance Street, did you have anything further to do
15 with that stop?

16 A No, once he left that was the last time I saw Mr.
17 Ruff.

18 Q You didn't see him at the detention center later that
19 night?

20 A No, sir. I went home.

21 Q It is my understanding about a year and a half ago,
22 and you have been involved with several other incidents
23 since then?

24 A That's correct.

25 Q Are you sure that you don't recall that you

1 approached the passenger side that Kenny was on?

2 A No, sir. I remember distinctly going to the driver
3 because Angela, which is Kenny's sister was very worried
4 about the cousin.

5 Q You don't recall Kenny holding or there being a cup
6 of urine in the car?

7 A No, sir. You are talking about human urine?

8 Q You don't recall Kenny asking, finding a cup of urine
9 and Kenny saying they had been drinking and he was peeing
10 in a cup and then throwing it out of the window?

11 A No, sir.

12 Q But you do remember him being loud at the scene?

13 A I mean, yes.

14 Q Did you speak to D'lonze and ask what they were
15 doing?

16 A Is D'lonze the driver, the cousin?

17 Q The driver.

18 A Yes, we took D'lonze or the driver back to the
19 sheriffs office and interviewed him and got a written
20 statement for the City.

21 Q But he was not a suspect in this crime, he was just
22 kind of being debriefed as a witness or was he a suspect?

23 A No, he was being held and talked to as a witness.

24 Q He didn't indicate that they had been drinking,
25 marijuana in the car?

1 A No, no. And he was of sound mind in talking.

2 Q Did he provide a written statement?

3 A He did, that has been turned over to the Solicitor's
4 office and the city.

5 Q Thank you, Investigator.

6 THE COURT: Mr. Scott, anything?

7 MR. SCOTT: No, Your Honor.

8 THE COURT: Thank you, Captain Dennis, you can step
9 down. Let's do this, it is getting close to twenty till.
10 We need a few minutes to try to grab some lunch. So what
11 we will do is qualify the panel, pick a jury and decide
12 after that how we will start with the case. But then we
13 can finish up this Jackson v. Denno and any other pretrial
14 matters.

15 MR. VERNER: I would just note, Your Honor, we
16 haven't seen a written statement from D'lonze Ruff. So I
17 am not sure, I know he is testifying from memory. But if
18 there is one, Your Honor, we would certainly like to see
19 it.

20 THE COURT: Okay. I would ask the State to check
21 into that. If there is one in existence you need to get a
22 copy over to Mr. Verner.

23 MR. STUMBO: We will do that, Your Honor.

24 THE COURT: If for some reason there is not one in
25 existence please relay that.

1 MR. VERNER: I know he is testifying from memory but
2 if he gave a statement I would like to see it.

3 (Whereupon, a lunch break was taken.)

4 THE COURT: All members of the panel are present.
5 All right, ladies and gentlemen of the jury panel, we are
6 about to begin the trial, the case of the State of South
7 Carolina versus Kenny Octavis Ruff, R-U-F-F. And it has
8 been told today that some people pronounce the last name
9 Ruff, but Mr. Ruff has indicated that he pronounces his
10 Ruff, R-U-F-F. You may hear Ruff throughout this
11 proceeding but the preferred pronunciation of it is Ruff.
12 Mr. Ruff, if you would, please, stand up and just face
13 this side and this side so they can see you.

14 (Whereupon, Mr. Ruff stood up and faced the jury
15 panel.)

16 THE COURT: Thank you. Let me explain to you, ladies
17 and gentlemen, Mr. Ruff has been indicted with three
18 criminal offenses, charged with three criminal offenses.
19 And I am going to explain those to you in just a moment
20 but let me first preface that by telling you that the fact
21 that Mr. Ruff has been charged and indicted with a
22 criminal offense or in this case three offenses, is not,
23 is absolutely not proof of any kind whatsoever on the
24 issue of guilt of Mr. Ruff. The indictments serve solely
25 as the charging documents, the mechanism to get the case

1 where it is today. So, it serves as information, it
2 provides the Defendant and the Defendant's attorney with
3 notice of the charges that the State intends to proceed
4 on. But you are to give it no other consideration, again,
5 the fact that he has been indicted is not proof of any
6 kind on the issue of guilt or innocence on his part. But
7 I am going to publish the indictments for you so you will
8 have a little idea of what this case is about. The first
9 indictment, indictment 15-GS-36-594 indicts the Defendant
10 with the offense of murder. And it states as follows,
11 merely allegations in the indictments. That Kenny Octavis
12 Ruff did on or about August 26th, 2015 in Newberry County
13 willfully, feloniously and with malice aforethought kill
14 one Robert Fazio, I am going to need some help with this
15 last name, it is spelled, L-E-D-E-S-M-A, Ledesma,
16 L-E-D-E-S-M-A, by means of shooting and that said Robert
17 Fazio Ledesma did die in Newberry County as a proximate
18 result thereof on or about August 26th, 2015 in violation
19 of 16-3-10, code of laws for South Carolina.

20 The second indictment indicts the Defendant with the
21 offense of armed robbery. And it says as follows, that
22 Kenny Octavis Ruff did on or about August 26, 2015 in
23 Newberry County willfully and unlawfully while armed with
24 a deadly weapon or while alleging either by action or
25 words, that he was armed by using a representation of a

1 deadly weapon or any object which a person presents during
2 the commission of the robbery reasonably believed to be a
3 deadly weapon, feloniously did take from the person or
4 presence of Robert Fazio Ledesma by means of force or
5 intimidation, goods or monies described as follows, U.S.
6 Currency and or electronic goods with the intent to
7 deprive the owner permanently of such property in
8 violation of section 16-11-330, subsection (a), code of
9 laws for South Carolina. And that is indictment 595.

10 And the third indictment is 15-GS-36-596 which
11 indicts Mr. Ruff with the offense of possession of a
12 weapon during the commission of a violent crime. And it
13 states and alleges as follows, that Kenny Octavis Ruff did
14 on or about August 26th, 2015 in Newberry County possess a
15 firearm or visibly displayed what appeared to be a firearm
16 or visibly displayed a knife during the commission of a
17 violent crime as defined by section 16-1-60 to wit: armed
18 robbery and/or murder or any lessor included violent crime
19 in violation of section 16-23-490 code of laws for South
20 Carolina.

21 Any member of the jury panel related by blood or
22 marriage either now or formerly to either Kenny Octavis
23 Ruff or Robert Fazio Ledesma. If so please stand. Yes
24 Ma'am, your name and number.

25 JUROR: Margie Austin, I don't know my number.

1 THE COURT: Your name is what?

2 JUROR: Margie Austin.

3 THE COURT: Okay. Yes, Ma'am.

4 JUROR: That is my cousin, first cousin.

5 THE COURT: You are related to Mr. Ruff?

6 JUROR: Yes, sir.

7 THE COURT: First cousin?

8 JUROR: First cousin.

9 THE COURT: I will excuse you from the trial of this
10 case but please stay with us.

11 MR. VERNER: And just for the record, this is number
12 9 on the list.

13 THE COURT: Thank you, Mr. Verner. Number 9. Let me
14 explain to you, the panel as well, if any of these
15 questions I ask you like we did earlier today, if you want
16 to speak with me privately about any of the questions I
17 ask you or any particular issue you need to discuss with
18 me privately or there are times when I tell you, I am not
19 sure if that is going to be the case here but I may tell
20 you there is a question that I don't want you to respond
21 to in front of everybody but speak with me privately. So
22 we are going to follow that same format, give you that
23 same opportunity. Any member of the jury panel have or
24 have had in the past a close personal or social
25 relationship with either Kenny Octavis Ruff or Robert

1 Fazio Ledesma. If so please stand.

2 (No response.)

3 THE COURT: I am going to now publish a list of
4 possible witnesses in this case. Listen very carefully, I
5 will try to pronounce their names to the best that I can,
6 if I cannot I will spell it for you and they may testify
7 in this case, they may not. But listen very carefully
8 then I will ask you a question or two about that.
9 Elitania Lopez Martinez; Michael Kennedy with the Newberry
10 Police Department; Tiffany Hezel, that is H-E-Z-E-L, with
11 SLED; Richard Mercer with Newberry Police Department;
12 Kevin Goodman with the Newberry Police Department; Angela
13 Ruff; Jose Neptaly Rodriguez, aka Jose Galvez; Shewarrior
14 Simms, Shewarrior is S-H-E-W-A-R-R-I-O-R Simms; Emmanuel
15 Richardson; Matthew Womack with the Newberry County
16 Sherrifs Office; Walter Bentley with the Eight Circuit
17 Solicitor's Office; Aaryon Dowdy; Dr. Janice Ross;
18 Jennifer Nates; Stephanie Stanley; Robert Dennis with the
19 Newberry County Sheriffs Office; Chief Roy McClurkin with
20 the Newberry Police Department; Isaiah Burns; D'lonze
21 Ruff; James Sanders; Teresa Sanders; Sharon Scurry;
22 J'amonte Sanders and Detrick Bishop with the Newberry
23 County Sherrifs Office. Any member of the jury panel
24 related by blood or marriage either now or formerly to any
25 of those people that I have just listed, any member of the

1 jury panel have or have had in the past a close personal
2 or social relationship with any of those individuals. If
3 so please stand. Yes, sir. Your name and number, sir.

4 JUROR: Andy Sidden, number 125.

5 THE COURT: Yes, sir.

6 JUROR: Officer Goodman is my next door neighbor.

7 THE COURT: Officer Goodman is your next door
8 neighbor?

9 JUROR: Yes.

10 THE COURT: The fact that you are next door neighbors
11 with Officer Goodman can you still be fair and impartial
12 to both the State and the defense in this case?

13 JUROR: Oh, yeah.

14 THE COURT: Thank you, sir. Yes ma'am, your name and
15 number?

16 JUROR: I don't know the number. Dorothy Gladney.
17 Teresa Sanders is my husband's second cousin.

18 THE COURT: Teresa Sanders is your second cousin.

19 JUROR: My husband's second cousin.

20 THE COURT: Your husband's second cousin. The fact
21 that a potential witness is your husband's second cousin,
22 can you still be fair and impartial to both sides in this
23 case?

24 JUROR: Yes.

25 THE COURT: Thank you, ma'am, have a seat. Yes

1 ma'am, your name and number.

2 JUROR: My name is Murriel Shealy, I am number 123.

3 Sharon Scurry, she used to work with me.

4 THE COURT: She is no longer an employee?

5 JUROR: No.

6 THE COURT: The fact that Sharon Scurry, used to work
7 at the same place where you work at currently, would that
8 prevent you from being fair and impartial to both sides?

9 JUROR: No.

10 THE COURT: Can you still be fair and impartial to
11 both sides?

12 JUROR: Yes.

13 THE COURT: Very good. Yes, ma'am.

14 JUROR: I am number 112, Patricia Richardson.

15 Officer Goodman is in my husband's family.

16 THE COURT: Officer Goodman is in your husband's
17 family.

18 JUROR: Yes.

19 THE COURT: What is the relationship.

20 JUROR: First or second cousin.

21 THE COURT: First or second cousin to your husband?

22 JUROR: My ex, well he is deceased now.

23 THE COURT: Okay, your deceased husband.

24 JUROR: Yes, sir.

25 THE COURT: The fact that Officer Goodman is related

1 to your deceased husband, is either a first or second
2 cousin, would that prevent you from being fair and
3 impartial to both sides?

4 JUROR: I can be partial.

5 THE COURT: I want you impartial, can you be
6 impartial to both sides?

7 JUROR: Yes, sir.

8 THE COURT: Can you be fair to both sides.

9 JUROR: Yes, sir.

10 MR. VERNER: What is her name or number, Your Honor.
11 Ms. Richardson.

12 THE COURT: Ma'am, you have already been excused from
13 the trial of this case so you don't need to respond to any
14 other questions.

15 JUROR: Oh, okay.

16 THE COURT: I just want you to stay with us, okay.

17 JUROR: Okay.

18 THE COURT: Now, I want to let, at this time, the
19 attorneys introduce themselves and I can tell you all of
20 these attorneys have tried cases in my courts before and
21 they are excellent attorneys. And so I will let the State
22 make their introduction first.

23 MR. STUMBO: Thank you, Your Honor. My name is David
24 Stumbo, I am your elected Solicitor for the Eighth
25 Judicial Circuit. My office is responsible for

1 prosecuting criminal cases in Newberry and also Laurens,
2 Greenwood and Abbeville. So we have a number of
3 prosecutors working in our office. Some of the ones that
4 are involved in this case would be Deputy Solicitor Dale
5 Scott, he is the lead prosecutor here in Newberry County,
6 lives down in the Chapin area. And seated here who is
7 also a Solicitor in our office, Taylor Daniel.
8 Investigator Walter Bentley works cases here in Newberry
9 and in Laurens and family worked for Laurens Police
10 Department and now an investigator for our office. Also
11 from the Newberry Police Department, you have already
12 heard his name on the witness list, Roy McClurkin and
13 Captain Goodman who was the investigator on this case with
14 the City. Thank you.

15 THE COURT: Mr. Verner.

16 MR. VERNER: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. VERNER: I am Charles Verner, I am from Newberry,
19 I am a lawyer, I practice with my father, we are across
20 the Street on Boyce Street next to the Cabana Cafe. Jay
21 Verner is my father, I am Charles Verner.

22 THE COURT: Any member of the jury panel ever been
23 represented by any of the lawyers involved in this case or
24 anyone in their respective law firms or offices. If so
25 please stand. Yes sir, your name and number.

1 JUROR: Jason Gursky, number 62. Charles Verner
2 represented me.

3 THE COURT: Previously, not an active case?

4 JUROR: No, no, this was about six years ago.

5 THE COURT: The fact that Mr. Verner represented you
6 previously can you still be fair and impartial to both
7 sides?

8 JUROR: Yes, sir.

9 THE COURT: Thank you, sir. Yes, ma'am.

10 JUROR: Gloria Ashley, I don't know my number. I
11 think Mr. Verner represented my son when he was a
12 juvenile, when he had problems in Greenwood County.

13 THE COURT: Can you still be fair and impartial to
14 both sides?

15 JUROR: Yes, sir.

16 THE COURT: Thank you. Any member of the jury panel
17 related by blood or marriage either now or formerly or
18 have or had in the past a close personal or social
19 relationship with any of the attorneys involved in this
20 case or anyone in their respective offices or law firms.
21 If so please stand.

22 (No response.)

23 THE COURT: Any member of the jury panel formed any
24 opinion or expressed opinion about any issue or matter
25 involved in this case. I understand that you know very

1 little about the case. But have you already formed any
2 opining or expressed any opinion about any issue or matter
3 involved in this case.

4 (No response.)

5 THE COURT: Is there any member of the jury panel
6 aware of any biased or prejudiced towards either the State
7 or the Defendant in this case.

8 (No response.)

9 THE COURT: The next question I am almost certain I
10 know the answer but I am going to ask it anyways. Is
11 there any member of the jury panel that was a member of
12 the Grand Jury which issued the three indictments involved
13 in this case. If so please stand.

14 (No response.)

15 THE COURT: Any member of the jury panel who is a
16 member of or a contributor to any group which has as its
17 primary concern the promotion of law enforcement or
18 victims rights and these groups would include, certainly
19 not limted to and I will give you the acronyms, MADD, SADD
20 OR CAVE. If so please stand.

21 (No response.)

22 THE COURT: Any member of the jury panel is a member
23 of or a contributor to any group which opposes law
24 enforcement or any law enforcement polices, issues or
25 procedures. If so please stand.

1 (No response.)

2 THE COURT: Any member of the jury panel know of any
3 reason whatsoever why he or she should not serve as a
4 juror in this case with particular emphasis being placed
5 on your ability to be fair and impartial to both the State
6 and the Defendant. And that is the key, ladies and
7 gentlemen, we want jurors, twelve plus any alternates that
8 we select to be fair and impartial to both the State and
9 also to the Defendant. That is the key. If you believe
10 for some reason that you cannot be fair and impartial to
11 both sides please stand at this time.

12 (No response.)

13 THE COURT: Now is there any member of the jury panel
14 who would like to talk to me privately about any question
15 that I have asked or any particular issue or concern that
16 you may have as it relates to serving on this trial jury.
17 If so please stand.

18 (No response.)

19 THE COURT: All right. Now, does the State have any
20 additions to the Court's voir dire or any objections or
21 exceptions.

22 MR. STUMBO: Nothing, Your Honor.

23 THE COURT: And to the defense.

24 MR. VERNER: Respectfully, may we be heard on one,
25 Your Honor.

1 THE COURT: Okay.

2 MR. VERNER: I apologize.

3 THE COURT: Let's have a sidebar and see what you
4 have got.

5 (Whereupon, a bench conference was held in the
6 presence of the jury panel but out of the hearing of
7 the jury panel.)

8 THE COURT: I will ask again, does anybody need to
9 speak with me privately about any of the questions, any
10 particular issue involved in this case.

11 (No response.)

12 THE COURT: I am seeing none. Now, here is what is
13 going to happen next. The manner in which we select a
14 jury is that if your name is called out, those on this
15 side can come around this way, those on this side come
16 around this way and I want you to stand facing the doors
17 right in the middle of this table. And then each side
18 will determine whether or not they want to accept you or
19 not. You will hear words like, swear this juror or we
20 accept this juror or excuse this juror from this case,
21 words of that nature. If you are not selected, your name
22 is called out, you come down front and everybody is
23 looking at you and you are not selected, don't take it
24 personally. Okay. And I tell you that because these
25 lawyers and they are good lawyer as I told you and they

1 have tried a lot of cases. They just have certain types
2 of individuals that they feel like they want on a jury or
3 they don't want on a jury, it is nothing personally so
4 don't take offense to that. Okay. If your name is called
5 out, especially ladies, bring your pocket books with you
6 because if you are selected then you are going to go
7 straight to the jury box. But everybody, if you have any
8 personal items be sure to have those with you. So, be
9 just a few minutes and we will compile a necessary list
10 and proceed forward here, everybody be at ease.

11 (Whereupon, a short break was taken while the Clerk
12 of Court compiles a list of jurors.)

13 THE COURT: You may proceed.

14 CLERK OF COURT: Number 27, Travis Capron. What says
15 the State.

16 MR. STUMBO: Please present Mr. Capron.

17 THE COURT: The defense.

18 MR. VERNER: Seat Mr. Capron.

19 CLERK OF COURT: Have a seat in the jury box. Number
20 109, Terricka Quiller. What says the State.

21 MR. STUMBO: Please excuse Ms. Quiller.

22 CLERK OF COURT: You can have a seat back. Number
23 100, Benjamin Morris. What says the State.

24 MR. STUMBO: Please present Mr. Morris.

25 CLERK OF COURT: The defense.

1 MR. VERNER: I am going to excuse Mr. Morris from
2 this case.

3 CLERK OF COURT: You can have a seat back out there.
4 Number 21, Ronnie Bundrick. What says the State.

5 MR. STUMBO: Please present Mr. Bundrick.

6 CLERK OF COURT: The defense.

7 MR. VERNER: From today's case I am going to excuse.

8 CLERK OF COURT: Number 6, Brandie Amick. What says
9 the State.

10 MR. STUMBO: Please present Ms. Amick.

11 CLERK OF COURT: The defense.

12 MR. VERNER: Please seat Ms. Amick in the jury box.

13 CLERK OF COURT: Number 18, Tracy Boyd. What says
14 the State.

15 MR. STUMBO: Please present Ms. Boyd.

16 CLERK OF COURT: The defense.

17 MR. VERNER: Please seat Ms. Boyd in the jury box.

18 CLERK OF COURT: Number 31, Erin Connor. What says
19 the State.

20 MR. STUMBO: Please present Ms. Connor.

21 CLERK OF COURT: The defense.

22 MR. VERNER: Seat Ms. Connor in the jury box.

23 CLERK OF COURT: Number 36, Claudia Davenport-Clark.
24 What says the State.

25 MR. STUMBO: Please present Ms. Davenport.

1 CLERK OF COURT: The defense.

2 MR. VERNER: Please seat Ms. Davenport in the jury
3 box.

4 CLERK OF COURT: Number 34, Perry P. Covington. What
5 says the State.

6 MR. STUMBO: Please present Ms. Covington.

7 CLERK OF COURT: The defense.

8 MR. VERNER: From today's case I am going to excuse
9 Ms. Covington.

10 CLERK OF COURT: Number 147, Francis T. Wessinger.
11 What says the State.

12 MR. STUMBO: Please present Mr. Wessinger.

13 CLERK OF COURT: The defense.

14 MR. VERNER: From this week's case I am going to
15 excuse Mr. Wessinger.

16 CLERK OF COURT: Number 16, Cathy Boland. What says
17 the State.

18 MR. STUMBO: Please present Ms. Boland.

19 CLERK OF COURT: The defense.

20 MR. VERNER: We are going to put Ms. Boland on the
21 jury.

22 CLERK OF COURT: Number 125, Andy Sidden. What says
23 the State.

24 MR. STUMBO: Please present Mr. Sidden.

25 CLERK OF COURT: The defense.

1 MR. VERNER: From today's case I am going to excuse
2 Mr. Sidden.

3 CLERK OF COURT: Number 84, Phyllis Knight. What
4 says the State.

5 MR. STUMBO: Please present Ms. Knight.

6 CLERK OF COURT: The defense.

7 MR. VERNER: Put Ms. Knight on the jury box.

8 CLERK OF COURT: Number 7, Ashley Anderson. What
9 says the State.

10 MR. STUMBO: Please present Ms. Anderson.

11 CLERK OF COURT: The defense.

12 MR. VERNER: Please seat Ms. Anderson.

13 CLERK OF COURT: Number 123, Murriel Shealy. What
14 says the State.

15 MR. STUMBO: Please present Ms. Shealy.

16 CLERK OF COURT: The defense.

17 MR. VERNER: From today's case I am going to excuse
18 Ms. Shealy.

19 CLERK OF COURT: Number 77, Frances C. Howard. What
20 says the State.

21 MR. STUMBO: Please present Ms. Howard.

22 JUROR: The defense.

23 MR. VERNER: From today's case I am going to excuse
24 you.

25 CLERK OF COURT: Number 66, Sarah Harvey. What says

1 the State.

2 MR. STUMBO: Please present Ms. Harvey.

3 CLERK OF COURT: The defense.

4 MR. VERNER: From today's case I am going to excuse
5 Ms. Harvey.

6 CLERK OF COURT: Number 153, Paula Wise. What says
7 the State.

8 MR. STUMBO: Please present Ms. Wise.

9 CLERK OF COURT: The defense.

10 MR. VERNER: Seat Ms. Wise.

11 CLERK OF COURT: Number 11 Richard Banach. What says
12 the State.

13 MR. STUMBO: Please present Mr. Banach.

14 CLERK OF COURT: The defense.

15 MR. VERNER: Seat Mr. Banach.

16 CLERK OF COURT: Number 151, Mary Wilson. What says
17 the State.

18 MR. STUMBO: Please present Ms. Wilson.

19 CLERK OF COURT: The defense.

20 MR. VERNER: Please seat Ms. Wilson.

21 CLERK OF COURT: Number 62, Jason Gursky. What says
22 the State.

23 MR. STUMBO: Please excuse Mr. Gursky.

24 CLERK OF COURT: Number 47, Ashton Floyd. What says
25 the State.

1 MR. STUMBO: Please present Ms. Floyd.

2 CLERK OF COURT: The defense.

3 MR. VERNER: From today's case I am going to excuse
4 Ms. Floyd. I have got nine, is that what you have.

5 CLERK OF COURT: Yes.

6 THE COURT: I have got nine. Before we go any
7 further we can double check.

8 CLERK OF COURT: We have nine.

9 MR. STUMBO: Okay, we are good.

10 MR. VERNER: That is my count.

11 CLERK OF COURT: Number 61, Terry Gunter. What says
12 the State.

13 MR. STUMBO: Please excuse Mr. Gunter.

14 CLERK OF COURT: Number 144, Andrea Vaughan. What
15 says the State.

16 MR. STUMBO: Please excuse Ms. Vaughan.

17 CLERK OF COURT: Number 145, Amanda Vaughn. What
18 says the State.

19 MR. STUMBO: Please present Ms. Vaughn.

20 CLERK OF COURT: The defense.

21 MR. VERNER: From today's case I will excuse Ms.
22 Vaughn.

23 CLERK OF COURT: Number 20, William Buchanan. What
24 says the State.

25 MR. STUMBO: Please present Mr. Buchanan.

1 CLERK OF COURT: Any challenge for cause?

2 MR. VERNER: Seat Mr. Buchanan in the jury box.

3 THE COURT: We have our twelve and let's go with
4 three alternates.

5 CLERK OF COURT: First alternate, number 45, Thomas
6 Eustace. What says the State.

7 MR. STUMBO: Please present Mr. Eustace.

8 CLERK OF COURT: The defense.

9 MR. VERNER: From today's case I am going to excuse
10 Mr. Eustace.

11 CLERK OF COURT: Number 115, Travis Robinson. What
12 says the State.

13 MR. STUMBO: Please excuse Mr. Robinson.

14 CLERK OF COURT: Number 122, Frankie Shealy. Any
15 challenge for cause by the State?

16 MR. STUMBO: None, please present him.

17 CLERK OF COURT: What says the defense.

18 MR. VERNER: From today's case I am going to excuse
19 Mr. Shealy.

20 CLERK OF COURT: Number 83, Terry Klutz. Any
21 challenge for cause by the State?

22 MR. STUMBO: None, please present the juror.

23 CLERK OF COURT: Any challenge for cause by the
24 defense?

25 MR. VERNER: Please seat Mr. Klutz.

1 CLERK OF COURT: Second alternate, number 57, Dorothy
2 Gladney. What says the State.

3 MR. STUMBO: Please present Ms. Gladney.

4 CLERK OF COURT: The defense.

5 MR. VERNER: Seat Ms. Gladney.

6 CLERK OF COURT: Number 108, Mary Jo Piester. What
7 says the State.

8 MR. STUMBO: Please present Ms. Piester.

9 CLERK OF COURT: The defense.

10 MR. VERNER: Please sit in the jury box.

11 THE COURT: Congratulations, ladies and gentlemen,
12 you are now selected on this trial jury. What I will need
13 for you to do, the jury room is right there and I am going
14 to ask you to go to your jury room for just a few moments
15 and I will talk with the lawyers and dismiss the remaining
16 members of the jury panel. You can get familiar where we
17 will be spending some time this week. Also it will give
18 you an opportunity to kind of get to know one another a
19 little bit. One thing that I will tell you now and you
20 will hear me tell you this all the way through this trial,
21 do not begin any discussions among yourselves about the
22 facts in this case which you know very little to be.
23 Anything related to this case, no discussion about this
24 case among yourselves. And the reason for that is that we
25 don't want those discussions to start until you have heard

1 all of the evidence in this case and I have instructed you
2 on the applicable law and so we don't want any premature
3 discussions of any kind. So do not do that. And we will
4 get you back out shortly, I am almost pretty certain we
5 will not start this trial today but we will start it in
6 the morning, we still have a few more pretrial matters
7 that I will need to take up with the lawyers. Go back in
8 the jury room for a few moments.

9 (Whereupon, the jury was excused from open court.)

10 THE COURT: Does the State have any exceptions or
11 objections to jury selection?

12 MR. STUMBO: Nothing from the State.

13 THE COURT: And from the defense?

14 MR. VERNER: No, Your Honor.

15 THE COURT: Thank you very much. Ladies and
16 gentlemen of the remaining jury panel, I know that some of
17 you are probably glad that you were not selected but
18 surely that some of you are probably disappointed. What
19 we will need to do, even though we anticipate that this
20 case will take the vast majority of the week if not the
21 entire week, we don't know that for sure and we may need
22 to get you back to pick another jury in another case,
23 possibly, we just never know. On your cards, on the
24 backside you will see a number. Call that number after
25 6:00 tomorrow evening, not this evening but tomorrow

1 evening call in that number and there will be a recording
2 and it will tell you what to do. It will tell you to call
3 back after 6:00 on Wednesday or it may tell you a day and
4 time to be back in this courthouse. But do not forget to
5 call the number after 6:00 tomorrow. You are excused.

6 Thank you.

7 (Whereupon, the remaining jury panel was excused from
8 open court.)

9 THE COURT: Let's bring the trial jury back out and
10 excuse them until 10:00 o'clock in the morning. I have
11 got drug court in Laurens at 8:30. Once we excuse them
12 let's go ahead and finish up, is there anything else
13 pretrial other than taking the testimony of the Jackson v.
14 Denno from the Defendant?

15 MR. VERNER: I am moving to suppress the search of
16 the vehicle.

17 THE COURT: Okay.

18 MR. STUMBO: Judge, we are not offering any evidence
19 that was taken out--

20 MR. VERNER: I can wait until they offer any
21 evidence. But if they did I would want to be heard before
22 they do that.

23 THE COURT: Just, we will just hold on that and see
24 what arises and see if you need to make an issue of it.
25 Bring the jury out, please.

1 (Whereupon, the jury came into open court at
2 approximately 4:35 p.m.)

3 THE COURT: Ladies and gentlemen, here is our plan.
4 We are not going to start the trial today, we will start
5 back at 10:00 in the morning. I would probably start a
6 little bit earlier but I run our drug court program in
7 Laurens and I have that in the morning at 8:30. So we
8 will start back at 10:00 o'clock in the morning in the
9 case. A couple of instructions, I have already instructed
10 you about not getting into any discussions about this case
11 among yourselves. That also applies to whoever you come
12 into contact with this afternoon and this evening, family,
13 friends, coworkers, whoever, you can certainly tell them I
14 have been selected on a jury but leave it at that. If
15 they insist on trying to pick out of you what little bit
16 that you know just tell them that the Judge has instructed
17 us that we cannot talk about it. So that rule is going to
18 follow you throughout this week as well when you go on
19 breaks. And one more rule and I will talk about this more
20 tomorrow, we have a ready access to a wealth of
21 information via the internet, social media and the like.
22 And it may be tempting to try to go on the internet or
23 social media to try to do some research about this case or
24 anything related to this case or just the charges in
25 general. Do not do that. And the reason for not doing

1 that is that the verdict that you reach at the end of this
2 case has to be based one-hundred percent on what is
3 brought out in this courtroom. And if you go out on your
4 own and try to get information that is not brought out in
5 this courtroom then your decision may be tainted by
6 something that is not in the record, it is not evidence
7 that has been presented, that everybody has not had the
8 opportunity to hear or see, whatever may be the case. So
9 it is tempting as that is and maybe as easy as it may be,
10 please, please do not do it. And get some good nights
11 rest, and we will see you back here at 10:00 in the
12 morning, be prompt. Allow yourself enough time so if
13 anything unexpected comes up you won't be late because if
14 you are late getting here then we can't get started
15 because we need all of you, we need twelve plus the three
16 alternates. Have a good evening, see you in the morning.

17 (Whereupon, the jury was excused from open court for
18 the day.)

19 MR. VERNER: No, no, Judge, I have an objection to
20 this, he has got a constitutional right to appear at
21 trial. I understand there is concerns, I understand it is
22 a murder charge, I think the Judge has to make some kind
23 of finding on the record.

24 THE COURT: Let's go back to your statement that he
25 has the constitutional right to be unshackled, not in the

1 presence of the jury.

2 MR. VERNER: Well, that would be, I guess, the
3 ultimate issue, Your Honor. But there is a due process
4 for the right to participate in a trial unshackled unless
5 the Court makes some kind of finding.

6 THE COURT: Well, the factor that the three charges
7 that he has been indicted on are serious charges, even
8 though he is certain entitled to his constitutional right,
9 the presumption of innocence. I think out of security
10 measures and we are outside of the presence of the jury I
11 am going to require that he remain shackled.

12 MR. VERNER: His legs shackled only?

13 THE COURT: Yes, leg shackles only. If you want to
14 go ahead and put on the record that one voir dire request,
15 we had a sidebar, let's get that on the record.

16 MR. VERNER: I had forgotten, Your Honor, for the
17 record I had asked the Court to charge the jury, if any
18 members of the jury by nature of the charge being murder
19 would have a moral or emotional or would otherwise make
20 them reluctant to serve or affect their ability to serve
21 as fair and impartial. Now, I believe the Court told me
22 at sidebar and the State objected, the Court agreed with
23 the State that the Court had already charged in general
24 that the Court has published the indictment for murder.
25 And that none of the jurors had excluded during any of the

1 charges. So I think the Court indicated at sidebar that
2 because it was published in general by publishing the
3 indictment.

4 THE COURT: By virtue of the fact that they were
5 apprized of the charges way of publication of the three
6 indictments and the fact that they all indicated that they
7 could be fair and impartial. I felt like that would be
8 sufficient and the basis for my decision not to charge or
9 voir dire, not charge, voir dire that additional question.

10 MR. STUMBO: And, Judge, just to supplement the
11 record, why we objected to it, I think it is almost a tar
12 baby type question that implicates sentencing. You ask
13 jurors in death penalty cases about their position on
14 sentencing on a murder case and to me that, even though is
15 not a death penalty case we are trying here, we just ask
16 that question, morally opposed to sitting on a jury in a
17 murder case. We can end up with types of concerns with
18 the jury being properly, making the sentencing which is
19 not the jury's job and not a Capital case. So that is
20 another reason why we objected to that.

21 THE COURT: Now, we are back in the Jackson v. Denno
22 matter and Mr. Ruff, is it still your desire to testify in
23 this Jackson v. Denno hearing?

24 MR. RUFF: Yes, sir.

25 THE COURT: Do you have any questions whatsoever as

1 it relates to, my apprizing you of your rights concerning
2 you testifying in this case, any questions? Mr. Ruff, do
3 you have any questions about what I explained to you
4 earlier about your rights related to testify?

5 MR. RUFF: No, sir.

6 THE COURT: You understand everything?

7 MR. RUFF: Yes, sir.

8 THE COURT: Very good.

9 KENNY RUFF, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Verner:

13 Q Mr. Ruff, how old are you?

14 A 33.

15 Q How far did you go through school?

16 A 11th grade.

17 Q 11th grade?

18 A Yes, sir.

19 Q Did you ever go back and get your GED?

20 A Yes, sir.

21 Q Do you remember being arrested on August 26th, 2015?

22 A Yes, sir.

23 Q Where were you when you were arrested?

24 A Prosperity Pioneer Food Service.

25 Q Were you in a vehicle?

1 A White SUV Ford Explorer.

2 Q Whose truck or SUV was that?

3 A My sister's, Angela Ruff.

4 Q Okay. Had you been drinking that day?

5 A Yes sir, I had.

6 Q What had you been drinking?

7 A I had six Budlights platinums.

8 THE COURT: Had what?

9 MR. VERNER: Six Budlights.

10 Q So you recall having a six pack?

11 A Yes, sir.

12 Q Budlight?

13 A Budlight platinums.

14 Q Budlight platinum?

15 A Yes, sir.

16 Q Had you had anything else to drink that evening?

17 A No, sir.

18 Q Had you had any kind of pill or drug on that day?

19 A Marijuana.

20 Q What do you mean by marijuana?

21 A I smoked a blunt of marijuana.

22 Q In fact, I think in one of the, you seen the
23 surveillance tapes in these cases?

24 A Yes, sir.

25 Q I think you were observed buying a cigar?

- 1 A Yes, sir.
- 2 Q Is that what you smoke marijuana with?
- 3 A Sometimes.
- 4 Q Okay. About what time was your vehicle you were in
5 stopped?
- 6 A It was midevening.
- 7 Q About evening?
- 8 A About midevening. It wasn't dark yet.
- 9 Q It was daytime?
- 10 A Yes, sir.
- 11 Q So we are talking about in August so sometime after
12 work at sunset?
- 13 A It was around, close to 6:00, close to 6:00.
- 14 Q Were you in a clear state of mind or consider
15 yourself sort of inebriated from drinking?
- 16 A I was lit.
- 17 Q You said lit?
- 18 A I wasn't really, I was drunk.
- 19 Q You were arrested at the Pioneer Frozen Food parking
20 lot?
- 21 A Yes, sir.
- 22 Q Were you handcuffed?
- 23 A Upon them getting me out of the vehicle, yes sir,
24 they handcuffed me.
- 25 Q Were your legs shackled?

1 A No, sir.

2 Q Where did you go from Pioneer Frozen Food?

3 A Nance Street to the City Police Department.

4 Q What happened after you got to the City Police
5 Department?

6 A Set in a small room for about thirty minutes before I
7 was questioned by Lieutenant Goodman.

8 Q Was anybody sitting with you in the room?

9 A It was about five or six officers.

10 Q Was anybody talking to you while you were sitting?

11 A No, they was just standing all around.

12 Q Just standing?

13 A Yes.

14 Q So you waited for about thirty minutes and then what
15 happened?

16 A Well, they took me to the bathroom and after that I
17 came back out for about ten more minutes and then I spoke
18 to Goodman. I know they brought Shannon Scurry in, they
19 questioned her first and then they took me in.

20 Q Was that while they were waiting to interview you
21 because they were speaking to Ms. Scurry?

22 A Yes, sir.

23 Q And Shannon was your girlfriend at the time?

24 A Yes, sir.

25 Q You didn't speak to Shannon Scurry though, did you?

1 A No, sir.

2 Q So you, so they move you to a new room to speak to
3 you or you stayed where you are?

4 A They took me out of the room I was in and I went to
5 the office that he was using.

6 Q By he, you mean Captain Goodman?

7 A Yes, sir.

8 Q Investigator?

9 A Yes, sir.

10 Q Did you know Captain Goodman by name then?

11 A He was Lieutenant Goodman.

12 Q But you knew him?

13 A Yes, sir.

14 Q Knew he was a police officer?

15 A Yes, sir.

16 Q When you were apprehended, did the officers have
17 their guns drawn on you at the scene?

18 A Yes, sir.

19 Q Multiple officers?

20 A Which Mercer was the first one.

21 Q It was an arrest where guns were drawn type arrest?

22 A Yes, sir.

23 Q Did anybody interview you at the scene, talk to you
24 about what you were charged with?

25 A No, they didn't say what I was charged with. But,

1 Captain Dennis, Newberry County Sherrifs Department was
2 the one that got me out of the vehicle.

3 Q Okay.

4 A And he put the cuffs on, and that was then Lee
5 Foster, he stepped up and told them to put me in the back
6 of the patrol car, it was a city car.

7 Q Lee Foster, the elected sheriff?

8 A Yes, sir. And they put me in the back of the city
9 police car and I asked that officer what was going on. He
10 said he couldn't talk about it and they took me to Nance
11 Street.

12 Q Do you remember having urine in your car?

13 A When they got me I was actually throwing urine out of
14 the window, the passenger window, that is when I realized
15 the cops were behind us. And I actually had a cup in my
16 hand when Robert Dennis got me, Captain Robert Dennis got
17 me out of the vehicle. That is why when they told me to
18 roll the window down I was telling them I had a cup of
19 urine in my hand and he told me to drop the cup and I
20 dropped it on the outside of the vehicle, on the right
21 hand passenger side in front.

22 Q What is the purpose of the cup of urine?

23 A I was drinking, couldn't get to the bathroom.

24 Q And you told that to the officers at the scene?

25 A Yes, sir.

1 Q You were drinking?

2 A Yes sir, as well as when I got to the City Police
3 Department.

4 Q Okay. What happened when Officer Goodman put you
5 into the interview room?

6 A He asked me what happened at the crime scene. And I
7 told him I didn't know what was going on at that crime
8 scene. And he said, he went out there and he never seen
9 nothing like that in his life. And he was asking me--

10 Q At the crime scene?

11 A Crime scene. And he was asking me to help them clear
12 it up, that is what he said, do I know anything about it
13 so we can get this squared away.

14 Q Did he explain to you you were under arrest for
15 murder?

16 A Not at that time he didn't say I was under arrest. I
17 asked him about ten to fifteen minutes into him talking to
18 me was I being detained or arrested. And then that is
19 when he said you are being arrested.

20 Q Do you know what Miranda rights are?

21 A Yes, sir.

22 Q What are your Miranda rights?

23 A Well, you can, your Miranda rights, you can
24 basically, you can have an attorney present, you can--

25 Q You are aware in general what your Miranda rights

1. are, you have got a right not to speak to officers?

2 A Right.

3 Q When you were arrested at the scene did you tell
4 anybody that you wanted to speak to a lawyer?

5 A I asked for a lawyer several times. I told Kevin
6 Goodman, Lieutenant Goodman--

7 Q Systemically who did you tell?

8 A It wasn't long we was in there when he started
9 questioning me I asked for a lawyer. And Lieutenant
10 Goodman at that time told me that only a guilty person
11 would ask for a lawyer.

12 Q How long were you interviewed by Lieutenant Goodman?

13 A For about 45 minutes at the most.

14 Q Do you recall signing the wavier of rights form?

15 A That was the reason that I went back the next day to
16 find out what was, you know, because I wasn't in a clear
17 state of mind then. And he asked me when I went back did
18 I remember what I had done when I went back down there
19 that next day.

20 Q You indicated ten to fifteen minutes into the
21 conversation, this was before a written statement was
22 given?

23 A Yes, sir.

24 Q And you wanted to speak to an attorney?

25 A Yes, sir.

1 Q I thought you indicated to me that you asked for an
2 attorney more than once?

3 A Yeah.

4 Q To who?

5 A Lieutenant Goodman.

6 Q All of these requests were made to Lieutenant
7 Goodman?

8 A Yes sir, along with Chief McClurkin, he was in there.

9 Q The Chief was also in there?

10 A Yes sir, he was sitting on the right side of me.

11 Q Was anybody else present during the interview that
12 you recall?

13 A That officer, the Lieutenant sitting right here.

14 Q Officer Kennedy?

15 A That is his name.. Yes, sir.

16 Q You recall Lieutenant Kennedy being present?

17 A Yes, sir.

18 Q Was anybody participating in the interview other than
19 Investigator Goodman?

20 A He said Lieutenant, Lieutenant Kennedy said a few
21 words to me, that Lieutenant Goodman was the one who
22 trained him.

23 Q Did he ask you questions?

24 A He asked me brief questions, he asked me brief
25 questions about who was killed at the crime scene. And I

1 made the statement I didn't kill that man. And that is
2 when he was like, well, who said there was a man that was
3 killed. And I tried to explain that I was on the corner
4 with my parents at that time, right across the street from
5 the crime scene. And there was a Mexican lady standing
6 right there with me and she was telling us at first that
7 it was a man and then she said she heard it was a woman.
8 And we was trying to figure out who it was.

9 Q All right. You indicated to me, at one point did you
10 indicate that you wanted to speak to a lawyer to
11 Lieutenant Goodman, Captain Goodman, at that time
12 Lieutenant Goodman?

13 A It was at least fifteen minutes later into that
14 interview.

15 Q What had y'all discussed prior to?

16 A We really hadn't gotten no where because I kept
17 telling him I knew nothing about and he kept pressing the
18 issue that I was on video going into the crime scene and
19 coming out, they had me at another location. And I kept
20 telling them I knew nothing about that. And he was asking
21 me to help them piece the puzzle together so that they can
22 clear the matter up. And I asked them was I under arrest,
23 was I being detained. And he said that I was under arrest
24 and I asked again for a lawyer.

25 Q You seen the waiver of rights form where they are

1 saying that you initialed the six individual rights?

2 A Yes sir, I saw that.

3 Q And then signed it on the bottom?

4 A Yes, sir.

5 Q Is that your signature?

6 A Yes, sir.

7 Q Are those your initials?

8 A Yes, sir.

9 Q You initialed?

10 A Yes, sir.

11 Q How was this form explained to you, your wavier of
12 rights?

13 A I really don't remember. When I wrote the statement
14 that is when I signed that paper. I signed that paper,
15 right, not long, right after I wrote my statement.

16 Q And it indicates you would have started your
17 statement about 8:36 p.m., Lieutenant Goodman's timing on
18 that or is that a correct time?

19 A I can't, I don't remember.

20 Q Were there clocks on the wall or anything?

21 A I don't know exactly.

22 Q Was it dark when you left the station and went back
23 to Nance?

24 A It was dark.

25 Q Okay. Can you tell me how long you think you were in

1 the police station for when you got there?

2 A I had left back out and went outside, I was being
3 taken to the County jail then and I asked to speak back to
4 Goodman and that is when Lieutenant Kennedy took me back
5 inside.

6 Q That is the next day?

7 A The same night. He took me back inside, that is when
8 he was present.

9 Q Okay. So you were still, you hadn't been brought
10 from Nance back to the jail at that point?

11 A No, sir.

12 Q So after you had written this statement you went back
13 in to talk to Lieutenant Goodman at that time again?

14 A Yes, sir.

15 Q And what was the sum and substance of that?

16 A We didn't get no where.

17 Q You didn't add any kind of statement?

18 A No, sir.

19 Q Were you prevented from contacting an attorney at the
20 jail?

21 A Yes sir, I was.

22 Q Or was you able to contact an attorney from the jail?

23 A I never had a chance to use the phone.

24 Q Why is that?

25 A When I got to the County jail they dressed me out

1 after they booked me in and took my photo, and they told
2 me I was on suicide watch due to the nature of my charge.
3 And I kept asking for a phone and they said that I
4 couldn't get a phone due to being on suicide watch. They
5 wouldn't let me have nothing to write with, reframed from
6 using the phone. And the one that was in the holding cell
7 had no head on it, it didn't even work.

8 Q Okay. How long were you on the, in the observation,
9 suicide watch?

10 A I stayed in there eight days.

11 Q Eight days?

12 A Yes, sir.

13 Q Did you have phone access?

14 A At all, none. That was the restrictions on suicide
15 watch. You can't use the phone, no mail, nothing to write
16 with, no clothing.

17 Q But that wasn't because of your behavior, that was
18 because of the charge?

19 A They said due to the nature of the charge.

20 Q You believe you were clearheaded when you were
21 interviewed by Investigator Goodman and the Chief?

22 A I know I wasn't.

23 Q Now there is some indication, we heard testimony that
24 you asked to revisit Officer Goodman about a day or two
25 later?

1 A It was the next day.

2 Q As you recall it was the very following day?

3 A Yes, sir.

4 Q How did that come about?

5 A I wanted to know what was going on within this case,
6 like what made you arrest me on it. And I mean--

7 Q Did he read you the Miranda rights before you, that
8 second time?

9 A No, sir.

10 Q Did he offer you the Miranda form after it was
11 signed?

12 A No, sir.

13 Q What happened?

14 A When I got down there I asked him what was going on
15 in the case and this is what he stated to me. I know you
16 are not wasting my time coming down here asking me about
17 this case. I am going to tell you the same thing, what
18 are you looking for, what is it that you want to know.

19 Q Do you recall whether you revoked your right to have
20 an attorney at the second visit?

21 A I asked for an attorney on all visits. On that
22 second visit I was told, when you get an attorney, he
23 said, when you get an attorney, it was something about
24 getting another statement from me, if I remember
25 correctly. It was another statement being involved. But

1 he wouldn't take it because I had asked for an attorney.

2 Q You have been arrested before?

3 A Yes, sir.

4 Q So you are somewhat, you are certainly not a lawyer
5 but you somewhat know your rights to ask for an attorney?

6 A Yes, sir.

7 Q You have been through the system before. Were you
8 particularly trusted of the police to take your side over
9 this situation or you were suspicious of them?

10 A I was suspicious due to the phone call that D Bishop
11 had made prior to me being arrested.

12 Q And D Bishop is a deputy?

13 A Yes, sir.

14 Q And an officer had called you and spoken to you
15 earlier is my understanding?

16 A I talked to D Bishop way before.

17 Q And what did he indicate to you?

18 A He told me that they was going to lock me up and I
19 had told them, I said, well, I am not going to come to the
20 house for y'all to lock me up for something I didn't do.
21 And he said it is not me, it is them. He said, I am not
22 going to blow smoke up your behind but they are going to
23 lock you up.

24 Q The Deputy who tried to contact your family to turn
25 yourself in earlier?

1 A He said he wanted to talk at first.

2 Q But it was clearly about murder?

3 A Yeah, he was telling me it was due to the incident
4 that happened on Main Street. And I had told him flat
5 out, I said, I ain't got nothing to do with that. He was
6 like, well, they got you on a video. And I was like a
7 video. And he was, telling me yeah. And that is when we
8 came back down the road.

9 Q And the long short of, he was trying to arrange to
10 meet you?

11 A Yes, sir. He was on, when they got to Pioneer Food
12 he was on the scene.

13 Q But you were already aware that they were looking for
14 you?

15 A Yes, sir.

16 Q Okay. I am going to sum it up. Who did you tell you
17 wanted to speak with an attorney?

18 A Lieutenant Goodman.

19 Q Lieutenant Goodman at that time?

20 A Yes, sir.

21 Q And he was in the presence of the Chief?

22 A Yes, sir.

23 Q Anybody else or any other time?

24 A The second time the Chief wasn't even present, it was
25 just Lieutenant Goodman and Richard Mercer. It was just,

1 and Rodney Green.

2 Q Were you in a clearheaded state when you gave the
3 first statement?

4 A No, sir.

5 Q You believe you were under the influence at that
6 time?

7 A I know I was.

8 Q Would you have been under the influence, were you
9 have been more clearheaded if they had waited a day to
10 interview you?

11 A Yes sir, I would have.

12 Q Do you believe you gave a statement freely and
13 voluntarily?

14 A No, sir. I felt like I was pressured and pushed due
15 to--

16 Q What do you mean by being pressured or pushed?

17 A Due to my state of mind because I had made it known
18 that I had been drinking.

19 Q And in fact I believe there is a dash cam video where
20 you indicated Officer Mercer that you had been drinking
21 earlier. Didn't you indicate to Officer Mercer that you
22 had been drinking earlier?

23 A I had indicated that to Lieutenant Goodman at that
24 time.

25 Q Okay. Possibly Officer Mercer as well?

1 A Could be.

2 Q Do you recall whether your interview with Officer
3 Goodman was recorded or not?

4 A I really don't know.

5 Q You didn't see anything?

6 A I haven't heard or seen any recordings.

7 Q When you were interviewed by Lieutenant Goodman were
8 you in cuffs, either handcuffs or leg irons?

9 A I was in handcuffs, I was handcuffed to the chair.

10 Q Both hands or just one hand?

11 A Just one hand.

12 Q Was your right hand free?

13 A It was my left hand that was cuffed. My right hand
14 was free.

15 Q So they left your right hand--

16 A Yes, sir.

17 Q But you are in chains as far as your left hand?

18 A Yes, sir.

19 Q Again, how long do you believe you were in the police
20 station the night you were arrested at Nance Street?

21 A At least 45 minutes.

22 Q Answer any questions for the Solicitor or Judge
23 Hocker has any for you.

24 THE COURT: Solicitor Scott.

25 CROSS-EXAMINATION

1 By Mr. Scott:

2 Q Mr. Ruff, do you remember having six beers?

3 A Yes, sir.

4 Q Do you remember specifically they were Budlight
5 Platinums?

6 A Yes, sir.

7 Q And you remember smoking one blunt?

8 A Yes, sir.

9 Q And you remember being arrested about 6:00 p.m.

10 A It was close to 6:00, yes sir.

11 Q And you remember all of that pretty clearly?

12 A Yes, sir.

13 Q You remember when they took you into the police
14 station, they took you to the bathroom?

15 A No, not right off hand.

16 Q When was that?

17 A I sat in there for at least fifteen minutes before
18 they took me to the restroom.

19 Q Fifteen minutes, you remember that?

20 A Uh-huh.

21 Q And then they took you to the restroom?

22 A They had to wait until they get some more officers in
23 before they took me to the bathroom.

24 Q You remember they had to wait for more officers?

25 A Yes.

1 Q And then they took you to the bathroom?

2 A Yes, sir.

3 Q What did you do in there?

4 A I urinated in there.

5 Q Urinated. Anything else?

6 A No, sir.

7 Q Okay. After fifteen minutes them waiting for
8 officers, then going to the restroom to urinate what did
9 you do next?

10 A They took me back to the same little conference room
11 and they was waiting to finish talking to Shannon Scurry.

12 Q They had to speak to Shannon?

13 A Sharon Scurry.

14 Q You remember what room she was in?

15 A I couldn't see which room she was in due to it was
16 around the corner from where I was at.

17 Q Do you remember what she was wearing?

18 A No, sir. I didn't even see her when she came in.

19 Q Do you remember what you were wearing?

20 A What I was wearing, yes sir.

21 Q What were you wearing?

22 A I had on some black pants and a black shirt.

23 Q What color shoes?

24 A Black shoes.

25 Q And you remember when you started drinking the six

1 Budlight Platinums?

2 A Yes, sir.

3 Q When?

4 A Oh, I was in Columbia.

5 Q So you were down in Columbia when you bought them?

6 A Yes, sir.

7 Q What were you doing down there?

8 A I had went to the mall and I had went to Palmetto
9 Health.

10 Q And did you buy the beer before you went to the mall?

11 A That was after the mall.

12 Q After the mall?

13 A Yes.

14 Q And so, and then were you drinking them on the ride
15 back up to Newberry?

16 A Yes, sir.

17 Q You don't know about what time that was?

18 A Not right off hand.

19 Q When you left the mall isn't it true that you drove
20 back up to Newberry and then down to Prosperity?

21 A I drove?

22 Q Well, you rode?

23 A Naw, I didn't go straight to Prosperity, I came to
24 Newberry.

25 Q You went to Newberry?

1 A We came to Newberry, I went to Grant's. I left
2 Grant's and I was going to go home until D Bishop called
3 again and said that they was going to lock me up. And
4 that is what really scared me because I wasn't going to
5 just get locked up for something I didn't do. And I was
6 trying to explain myself on the phone and he didn't want
7 to listen. So, I didn't know what to do.

8 Q But then you left Grant's and went to Prosperity?

9 A Yes, sir.

10 Q Okay. How long had you been drinking at that point,
11 is what I am curious of?

12 A I killed six beers coming down the interstate.

13 Q And then at some point you went to buy the blunt, do
14 you remember what time that was?

15 A I had already smoked that blunt.

16 Q But you are drunk is what you are saying, that is the
17 bottom line, you are drunk when you get to the interview.
18 But you don't dispute that the interview was at 8:27?

19 A I don't remember, I can't say that that interview was
20 exactly at 8:27.

21 MR. SCOTT: Is the Court's exhibit, Court's ID
22 rather.

23 THE COURT: The Court Reporter has it.

24 Q Kenny, have you seen this piece of paper before?

25 A Yes.

1 Q And you spoke with your attorney, you don't dispute
2 those are your initials by those rights, do you?

3 A No, sir.

4 Q And you don't dispute that your signature is there at
5 the bottom?

6 A No, sir.

7 Q And you don't dispute that the time is 8:27 p.m. on
8 August 26th?

9 A I know the actual time on August 26th, so I couldn't
10 say that it was 8:27 p.m.

11 Q But you don't dispute signing right next to that, do
12 you?

13 A I don't.

14 MR. VERNER: Asked and answered, I think he has
15 testified--

16 THE COURT: Well, this is outside of the presence of
17 the jury. I will allow it.

18 Q Eleventh grade, you marked that you can read and
19 write?

20 A Yes, sir.

21 Q And read number three on down, can you read those
22 what you initialed?

23 A I had a right to talk to a lawyer and to have a
24 lawyer here with me to help me and advise me during
25 questioning. If I want to have a lawyer with me during

1 questioning but cannot afford to pay a lawyer one will be
2 provided to me at no cost before I am questioned. If I
3 decide to answer questions now without a lawyer here I
4 still got a right to stop answering questions whenever I
5 want to. I also have the right to stop answering
6 questions until I have talked to my lawyer.

7 Q And you initialed those rights after they were read
8 to you or rather after you read them, correct?

9 A Okay, correct.

10 Q And then have you read your statement, it is a
11 two-page statement, is that your handwriting?

12 A Yes, sir.

13 Q Do you know how many words you misspelled?

14 A No, I never counted how many words I misspelled.

15 Q Would it surprise you if I told you you didn't
16 misspell one word?

17 A It is not a problem.

18 Q It wouldn't?

19 A No.

20 Q Okay. That is your signature?

21 A That is my signature.

22 Q And you gave this two-page statement where you
23 outlined what you had been doing that day to the officer
24 after receiving those rights about the lawyer and your
25 rights to a lawyer, did you not?

1 A I gave a statement.

2 Q You were clearheaded enough to write a two-page
3 statement where you didn't misspell one word, weren't you?

4 A I don't know if a word is misspelled on there.

5 Q You want to look at it?

6 A Is it going to prove anything?

7 Q I am just asking you a question, I don't know what it
8 proves.

9 A I am answering it. I wrote a statement being
10 pressured by Lieutenant Goodman under the influence.

11 Q Tell me more about you being under the influence
12 because what you just told me is that you remember that
13 you were arrested about 6:00 p.m., you remember being
14 taken to the office and having to wait fifteen minutes, do
15 you remember that specifically. And then you remember
16 they had to wait for more officers before they could take
17 you to the bathroom. And then you remember that you were
18 taken back to the same room you initially were in. And
19 then you remember they interviewed Shannon Scurry. You
20 remember wearing a black shirt, blacks shoes, black pants.
21 You remember all of that very clearly. You remember
22 drinking six Budlight Platinums. You remember smoking a
23 blunt. You remember going down to Columbia mall. You
24 remember that, right?

25 A I remember exactly all of that.

1 Q You remember going to Grant's and then you remember
2 receiving a phone call from Detrick Bishop, you remember
3 that, right?

4 A Of course.

5 Q How do you remember all of these details?

6 A You wouldn't remember all of those details.

7 Q Okay. But you are saying that you were so drunk that
8 you were basically giving these statements against your
9 will? Is that what your testimony is today?

10 A That is, who would take advantage of somebody under
11 the influence, regardless of how drunk they are.

12 Q But you don't dispute that at least two and a half
13 hours passed between the time you were arrested and the
14 time of the interview, do you?

15 A I am trying to get a matter cleared up, I don't want
16 to be sitting up there being interviewed by a cop, I am
17 trying to go home.

18 Q Okay. Then you testify that they put you in some
19 cell where you couldn't have any phone calls, correct?

20 A Well, Newberry County Detention Center officers can
21 testify that there was no phone in the cell.

22 Q Well, do you, would you be surprised if I have a
23 phone call between your sister that happened the very next
24 day after your arrest?

25 A You can bring what you want to bring, that don't mean

1 that I made a phone call because the fact of the matter
2 is, there was no phone for me to use.

3 Q You don't recall speaking to, with an Angela Ruff?

4 A No, I don't.

5 Q Who is Angela Ruff?

6 A That is my sister.

7 Q So you would dispute the fact that you talked to her
8 on August the 26th?

9 A Yes, I would.

10 Q The second meeting, do you dispute that you ask for a
11 second meeting with Kevin Goodman?

12 A That is the meeting of the next day.

13 Q Do you dispute--

14 A It wasn't 8:28, it was 8:27.

15 Q Okay, that is the next day after the incident,
16 correct, 8:27?

17 A Yes, sir.

18 Q You don't dispute that you asked for that meeting, do
19 you?

20 A I asked the officer at the county jail to speak to
21 him about what was going on.

22 Q Okay. Then you dispute that you told the officer
23 they might want to speak to Angela?

24 A No, I never told them that.

25 Q Do you know that they did speak with her?

1 A No, I don't.

2 Q You don't know that?

3 A No.

4 Q Have you not read your discovery?

5 A Yeah, I read my discovery.

6 Q You don't know about a meeting they had with Angela
7 Ruff?

8 A I read all of that but I don't know about a meeting
9 that I was present on when they had a so called meeting
10 with Angela Ruff. She never told me they had a meeting
11 with the cops. That is what a supplemental report says.

12 Q Who is Adolphus Koon?

13 A That is my uncle, he passed away last March.

14 Q Okay. That first meeting with Kevin Goodman, do you
15 dispute that you mentioned to him you were riding around
16 with your Uncle Adolphus Koon?

17 A My uncle took me to Walmart.

18 Q Do you remember that. Who is Mr. Sanders?

19 A That is my father.

20 Q You recall about going to buy him a pack of Newport
21 cigarettes?

22 A Yes, I do.

23 Q Do you recall giving your grandfather's phone number.

24 MR. VERNER: Your Honor, I do object to specifically
25 asking him about what he, his statements during the

1 Jackson v. Denno that could be used at trial. I guess the
2 issue is the voluntariness of the statement but I do
3 object to the Solicitor getting into factual questions.

4 MR. SCOTT: Your Honor, what I am trying to do is, he
5 has given very detailed information, now for him to come
6 back and say he was just, I guess, incapacitated where he
7 couldn't remember things, he goes into great detail.

8 THE COURT: You can certainly explore areas of
9 matters that he claims he remembers or does not remember,
10 all of that on the issue of voluntariness. So I will
11 overrule the objection at this time.

12 Q Walmart, why did you go to Walmart that day?

13 A I went to go buy a phone because my phone was lost on
14 a work band that morning.

15 Q And were you intoxicated when you were in the
16 Walmart?

17 A No, no sir.

18 Q But that came after you were at Columbia Mall, didn't
19 it?

20 A No, I went to Columbia Mall after Walmart.

21 MR. VERNER: Again, Your Honor, I don't know if that
22 would be, he is asking factual questions that I think is
23 going beyond the Jackson v. Denno issue.

24 THE COURT: I think what the Solicitor is doing, as
25 it relates to that day, Solicitor?

1 MR. SCOTT: Yes, sir.

2 THE COURT: What he remembers. I am still going to
3 overrule the objection.

4 MR. VERNER: But the facts are outside of the,
5 details that are outside--

6 THE COURT: Well, if it is being asked on the issue
7 of what he remembers or does not remember, as it relates
8 to the voluntariness of the statement that very same day,
9 how does that prejudice you by asking those questions at
10 this hearing. Maybe I don't have a good grasp, probably
11 my fault, of the nature of your objection.

12 MR. VERNER: My concern, Your Honor, is that at the
13 Jackson v. Denno, which is limited to the voluntariness of
14 the statement, when the Solicitor asked about details
15 outside of the statement, we are getting into my client's
16 Fifth Amendment right, not to testify at trial by
17 eliciting statements beyond this hearing. He is going
18 outside the statements and the facts, he is not asking, he
19 is asking what time he went to Walmart and what time he
20 went to Columbia. Those are outside of the statement, we
21 haven't decided if we want to put up a defense at this
22 point.

23 THE COURT: Any of this information, Solicitor Scott,
24 that you are eliciting from him, does the State intend to
25 use this in any way against him other on this limited

1 issue of what he remembers and whether or not he was
2 intoxicated, whether or not the statement made on the 26th
3 was voluntary or not.

4 MR. SCOTT: I am getting his voluntariness, I am
5 getting to his level of understanding his Miranda
6 warnings, Your Honor. And everything that I have asked
7 him so far are things that Kevin Goodman says he mentioned
8 in the initial interview with him.

9 THE COURT: I am going to overrule the objection.

10 Q I am getting close to being done here. But do you
11 dispute telling Mr. Goodman that you recall walking into
12 the, Leslie's Hair Salon?

13 A Excuse me?

14 Q Do you dispute telling Kevin Goodman that you walked
15 into Leslie's Hair Salon to take a look around?

16 A My statement says that I went to Leslie's Hair Salon.

17 Q Do you remember that?

18 A I saw exactly what I wrote.

19 Q So, my question is how do you remember all of these
20 details throughout the day but then you are saying you are
21 so drunk that your statement was involuntary, you didn't
22 understand your Miranda warnings?

23 A You got people drink every day and still remember
24 what happened yesterday. You got some people who don't.
25 If it is being pressured on you about something that is

1 going on right then and there, who is not going to
2 remember that.

3 Q Why did you initial beside them?

4 A Because the man kept pressuring, the man kept
5 pressuring me about a crime that happened and he kept
6 saying he wanted to clear something up. At that timeframe
7 I wasn't thinking, I wasn't thinking clearly. All I was
8 thinking about was going back home.

9 Q But you understood that you could get a lawyer at any
10 time?

11 A And I asked for one. And I was told that only the
12 guilty needs a lawyer. I asked for a lawyer several
13 times, I asked that man right there, Lieutenant Kevin
14 Goodman at the time for a lawyer several times.

15 Q And the Chief?

16 A He was present.

17 Q The Chief of Police?

18 A The first time, he was present, he wasn't present the
19 second time.

20 Q But help us understand, how do you proceed to write a
21 two-page statement then?

22 A He told me to write the statement. He said help them
23 clear it up. I had nothing to hide.

24 Q You said I want a lawyer before I speak anymore but
25 then you wrote a two-page statement?

1 A I asked for a lawyer after that as well.

2 Q What happened after you wrote the statement?

3 A That is when things really went left field, that is
4 when I left out, there was nothing to tell him. It was
5 nothing to tell him before.

6 Q So after you wrote the statement then you asked for a
7 lawyer?

8 A Before and after.

9 Q Help me understand, when you say, I want a lawyer
10 before I speak anymore. Why did you put pen to paper and
11 write two pages worth of notes that you are not disputing
12 now?

13 A This man says help me clear this up. If you ain't
14 had nothing to do with it, tell us what happened that day.
15 If I had something to hide I wouldn't have wrote that,
16 there was nothing to hide. So whether I was under the
17 influence or not, had nothing to hide.

18 Q Okay.

19 A And I asked for a lawyer should have been respected,
20 it shouldn't have went no farther, I shouldn't have been
21 pressured to write anything. My rights then should have
22 been respected. They shouldn't have went no further when
23 you took me out of the precinct, regardless if I asked to
24 speak to you again, you should have Mirandized me then but
25 you didn't, you didn't. So that is twice that you don't

1 have me inside, twice in one night and you got no where.
2 I asked for a lawyer several times but you still was
3 pressuring me. So you took the advantage of my state and
4 for them to say that they don't remember being intoxicated
5 that is a lie because I stated that. On the second visit,
6 Mercer was present as well as Rodney Gray and Kevin
7 Goodman at the time, Lieutenant Goodman at the time, he
8 stated, do you remember what you said yesterday.

9 Q Okay. How many times have you been Mirandized
10 before, Kenny?

11 A I don't know, I don't know.

12 Q More than once?

13 A Probably.

14 Q More than twice?

15 A Could be. I can't give an exact number.

16 Q You know your Miranda warnings, right, you are not
17 dumb?

18 A No, no sir, I am not dumb.

19 Q I mean, you have got a high school diploma, you can
20 read and write, your handwriting is better than mine. And
21 you understand what it means to have a right to have a
22 lawyer. They can't force you to talk, you understand
23 that?

24 A Yes, sir.

25 Q But then you initialed those rights and then you gave

1 a two-page statement, right?

2 A I wrote my statement first.

3 Q And then you asked for a lawyer, right?

4 A The signing came after that statement, not before.

5 Q What came before?

6 A Signing that Miranda paper you are talking about came
7 after that statement. That should have been done before
8 that statement. That Miranda paper you are talking about
9 wasn't given to me first.

10 Q But they read you your rights?

11 A Regardless of the fact, I still told you I was
12 intoxicated.

13 Q But you remember now that they gave you--

14 A I done drunk plenty of times on the street and
15 remember what happened the day before.

16 Q Okay. Thank you, Mr. Ruff.

17 THE COURT: Mr. Verner.

18 MR. VERNER: Briefly I call D'lonze Ruff to the
19 stand.

20 D'lonze Ruff, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Verner:

24 Q Mr. Ruff, are you related to Kenny Ruff?

25 A I am.

1 Q What is your relationship?

2 A His nephew.

3 Q Do you remember the evening of August 26th, 2015 when
4 Kenny was arrested at the Pioneer Frozen Foods parking
5 lot?

6 A Yes, I do.

7 Q Were y'all present together?

8 A We was.

9 Q How long had you been with him on that day?

10 A A good amount of time, I don't remember how much
11 exactly so I can't lie.

12 Q More than an hour?

13 A More than an hour.

14 Q Couple of hours, without getting into exactly, a
15 couple of hours?

16 A Yes.

17 Q Do you recall your uncle had been drinking that day?

18 A He had been drinking so much he don't even remember
19 passing out several times.

20 Q What do you remember him drinking?

21 A Budlight, beer.

22 Q Where was he drinking Budlight?

23 A In the truck.

24 Q In the truck. Who was driving?

25 A I was.

1 Q Were you drinking?

2 A No.

3 Q How much do you recall your uncle drinking that
4 night?

5 A How much?

6 Q Do you have any idea, a ballpark figure how much he
7 had drink?

8 A Like a six pack.

9 Q Like the regular twelve ounce size cans, these larger
10 cans or do you recall?

11 A I think it was bottles.

12 Q At lease the normal six pack size bottles?

13 A Yeah.

14 Q Twelve ounce bottles. Okay. And other than the few
15 hours you were with him, he had finished about six I
16 believe you testified?

17 A Yeah.

18 Q Did you see him buy or take any other substance?

19 A No, I didn't.

20 Q You indicated that you had seen him passed out, what
21 do you mean by that?

22 A Like when I looked his eyes just closed, his head
23 back.

24 Q You are talking about nodding off while you are
25 driving on the interstate?

1 A Yes.

2 Q But drinking to the extent where you are driving he
3 is asleep?

4 A Yes, he was asleep.

5 Q And that would be alcohol induced?

6 A Yes. I didn't see nothing other.

7 Q And that, was that in the time he was arrested or had
8 he--

9 A Way that one more time.

10 Q Tell me what time, to the best of your knowledge,
11 your car was stopped by the police?

12 A I have on idea what time we were stopped.

13 Q Was it still daylight?

14 A It was still daylight.

15 Q Had Mr. Ruff, your Uncle Kenny been drinking up until
16 shortly before that time?

17 A Yeah.

18 Q Or had he stopped?

19 A No, it hadn't been that long.

20 Q Okay. What happened to the beer bottles?

21 A I don't remember.

22 Q How you disposed of them you don't remember?

23 A I don't remember.

24 Q Okay. If the prosecutor has some questions or Judge
25 Hocker.

1 THE COURT: Mr. Scott?

2 MR. SCOTT: No, Your Honor.

3 THE COURT: You can step down. Anything further, Mr.
4 Verner, as it relates to this Jackson v. Denno hearing?

5 MR. VERNER: Your Honor, for the grounds that we
6 submit he raised his right to an attorney, legal counsel,
7 we would ask that the Jackson v. Denno be granted on the
8 issue of not, is not being freely and voluntarily given,
9 because of his mental state we would ask that it be
10 suppressed. And particularly as to any statement alleged
11 had been made on the second visit where he had clearly
12 denied the client to sign the rights form, we would ask
13 that that be suppressed as well.

14 THE COURT: All right. Solicitor Scott or Stumbo.

15 MR. STUMBO: Judge, just based on what we heard, I
16 would like to briefly call Chief McClurkin. Just to make
17 a clean record, Judge, Chief McClurkin was there during
18 these interviews.

19 THE COURT: Sure, go ahead. Come on around, please.

20 ROY MCCLURKIN, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Stumbo:

24 Q Chief, you are the Chief for Newberry Police
25 Department?

1 A Yes, I am.

2 Q And would it be fair to say, how many years have you
3 been in law enforcement?

4 A 33 years.

5 Q Is it fair to say you have done thousands of
6 interviews?

7 A Yes, sir.

8 Q And you Mirandize defendants, you are very familiar
9 with the Miranda process, Miranda warnings, correct?

10 A That is correct.

11 Q What, during those 33 years, have you been trained to
12 do when a Defendant says I want a lawyer during an
13 interview?

14 A Stop all questioning.

15 Q That is a very firm rule, correct?

16 A That's correct.

17 Q And you participated with, now Captain Goodman, in
18 the interview of the Defendant, Kenny Ruff, correct?

19 A Yes, I did.

20 Q Were you there for both of them or just the first
21 one?

22 A The first one.

23 Q You were there for the first one at the police
24 department?

25 A That's correct.

1 Q Kenny Ruff, he is sitting in this courtroom beside
2 Mr. Verner, correct?

3 A That's correct.

4 Q Did this man sitting in the courtroom ever ask for a
5 lawyer during this interview?

6 A Never, no sir, he did not.

7 Q Ever exercise his right to an attorney during the
8 time that y'all interviewed him on August 26th, 2015?

9 A He did not ask for an attorney while I was in the
10 room with him.

11 Q You were there when he was read his Miranda rights
12 and waived those in Court's exhibit 2, correct?

13 A That's correct. Captain Goodman filled out the top
14 portion of it, gave Kenny Ruff a copy of it and read each
15 individual rights and asked him if he understood each
16 individual right. And when he indicated that he
17 understood each individual right and told him to put his
18 initial beside the one he was reading, all the way down
19 the page.

20 Q And he waived those rights, correct?

21 A That is correct.

22 Q At any time did you have any concerns that he didn't
23 understand the things y'all were asking him?

24 A No sir, I had no concerns.

25 Q Did you at any time have concerns that he was

1 incapacitated by drugs or alcohol?

2 A No, sir.

3 Q Did you ever pressure him or threaten him to give you
4 a statement?

5 A No sir, I did not.

6 Q It is your observation that he was giving y'all these
7 statements freely and voluntarily?

8 A Yes, sir.

9 Q If he had asked for a lawyer what would you have
10 done?

11 A We would have stopped all questioning and stopped all
12 questioning, we would have not asked any more questions.

13 Q Okay. At any time did Captain Goodman say the only
14 people that ask for lawyers are guilty people?

15 A I never heard that statement while we were in the
16 room.

17 Q No further questions.

18 THE COURT: Mr. Verner, any examination of this
19 witness.

20 CROSS-EXAMINATION

21 By Mr. Verner:

22 Q Chief, the adult waiver of rights form seems to have
23 a place for two witnesses on the bottom?

24 A Yes, sir.

25 Q And in this case it is clear that Kevin Goodman had

1 signed as one witness?

2 A Yes sir, he did.

3 Q And as you recall, he was the primary investigator,
4 or interrogator?

5 A That's correct.

6 Q Why didn't you sign or anybody else sign the second?

7 A I can't answer that, Mr. Verner, as to why I didn't
8 sign. But if you look at the top up there it does state
9 that Lieutenant Goodman and myself were in the room.

10 Q That is my question. You are listed as a witness,
11 why didn't you sign?

12 A It is not pertinent that I do sign, I can't say why I
13 didn't sign that particular form.

14 Q But you do recall being there?

15 A Yes sir, I was there.

16 Q Were you present at the scene where Mr. Ruff was
17 apprehended?

18 A No sir, I was not.

19 Q And you don't recall him indicating he had been
20 drinking?

21 A No, sir.

22 Q The conversation between them would be primarily from
23 now Captain Goodman to Mr. Ruff?

24 A In terms of what?

25 Q You were just there basically to also witness the

1 conversation and listen in but the interaction was between
2 the investigator and the suspect?

3 A Most of the interaction was, I had interaction with
4 him also.

5 Q I am sorry, you what?

6 A I had interaction with him also.

7 Q What do you mean by that?

8 A Inside of the room, Captain Goodman and me.

9 Q By interaction, you mean like asking him questions or
10 just--

11 A Yes, sir. Most of the interaction was, the questions
12 was done by Captain Goodman.

13 Q So you recall asking a question here or there?

14 A Yes, sir.

15 Q But it was primarily Captain Goodman?

16 A Yes, sir.

17 Q As best you recall, we have heard that Mr. Ruff was
18 probably shackled to the chair?

19 A He wasn't shackled, he was handcuffed to it, yes sir.

20 Q But whether you call it shackles or handcuffs, he was
21 chained to a chair?

22 A He was handcuffed to the chair, yes sir.

23 Q And a handcuff is a chain with two prongs on it, I
24 guess, with a locking mechanism?

25 A That's correct, if you want to put it like that.

1 Q We are quibbling about little stuff, but he was
2 handcuffed to a chair?

3 A He was.

4 Q Okay. Thank you.

5 MR. STUMBO: No further witnesses.

6 THE COURT: I will put my ruling on the record in the
7 morning, it is getting late. We will reconvene in the
8 morning and I will put my ruling on the record. Anything
9 further before we adjourn for the night?

10 MR. STUMBO: Nothing, Your Honor.

11 (Whereupon, the trial will resume the next morning at
12 10:00 a.m.)

13 January 10, 2017

14 THE COURT: Okay. We are on the record this morning
15 in the State of South Carolina vs. Kenny Octavius Ruff.
16 Let me go ahead and put on the record my ruling with
17 respect to the Jackson v. Denno matter that we dealt with
18 extensively yesterday. As it relates to the Jackson v.
19 Denno, we have a written statement August 26th, some oral
20 statements made in conjunction with the written statement
21 August 26th. And then we have some oral statements made
22 either August 27th as noted by the Defendant. I know the
23 State says August 28th, but it's that second meeting with
24 Officer Goodman that we're dealing with. So that's what
25 we're dealing with. And as you guys know, it's a

1 preponderance of the evidence standard insofar as the
2 Court's determination as to admissibility of any
3 statements. Certainly, the jury, if they are admitted
4 into evidence then the jury has to make a determination
5 beyond a reasonable doubt. So we are only dealing with a
6 preponderance of the evidence, more likely than not. So
7 based upon the totality of the circumstances, I am going
8 to find that the August 26th statements, written and oral,
9 were voluntarily made and in compliance with Miranda and
10 therefore admitted into evidence. Concerning the August,
11 I'm just going to say August 28th, even though there is a
12 dispute as to the day, I'm going to say August 28th. I'm
13 going to admit into evidence the Defendant's statement to
14 Officer Goodman, for Officer Goodman to call the
15 Defendant's sister because the Defendant could not give
16 the statement. I find that that was voluntarily made and
17 in compliance with Miranda. Insofar as anything related
18 to gang activity, gang involvement, pointing to the hand,
19 Officer Goodman's impression that there was some gang
20 connection, I think the State has indicated they're not
21 going to even get into that and I'm not going to allow it.
22 But I think the State pretty much indicated that they are
23 not going to get into that. Lastly, as it relates to
24 August 28th, Officer Goodman's testimony that the
25 Defendant, after the conversation on the speaker phone

1 with the sister was completed, Defendant did not offer any
2 contradiction to what the sister said. He, in effect,
3 exercised his right to remain silent. So I'm not going to
4 allow any testimony from Officer Goodman that, in fact,
5 the Defendant remained silent and did not offer any
6 contradiction to what the sister said over the phone
7 unless the Defendant elects to testify at trial. And then
8 the State would have the option of using that for
9 impeachment purposes. But if the Defendant elects not to
10 testify, then Officer Goodman cannot get into that. Okay.
11 Now, let me address three other points that were brought
12 out in connection with the Jackson v. Denno hearing.
13 Number one, the issue of intoxication. I realize that
14 certainly there is a difference of opinion between the
15 State and the Defendant as far as the condition of the
16 Defendant at the time that the statements on August 26th
17 were made. I don't find that there is enough evidence for
18 me to make any sort of finding as to intoxication. And
19 I'll tell you why. But then if there was ample evidence
20 of intoxication, why that would not prohibit any statement
21 from coming in. The Defendant testified that he drank six
22 Budlight Platinum beers and smoked one blunt. However,
23 there was devoid of any timeframe evidence as it relates
24 to when the statements were made. I think the Defendant
25 testified that he drank the beers on his way back from

1 Columbia. But again, I don't know when that was. So I
2 can't put a timeframe of when this drinking and smoking
3 took place as it relates to when the statements were made
4 on the 26th at about 8:30. So the Defendant's fair
5 assertion in and of itself that he was drunk and not
6 clearheaded would not be enough for me to make any sort of
7 finding that he was intoxicated at the time the statements
8 were made. And coupled with that, in fact, I realize the
9 State kind of barked on this over the objection of the
10 Defense, but the Defendant did display a fairly good
11 recollection of what took place that day and that evening
12 and in reviewing the written statement, it appears that
13 someone had to be somewhat coherent in actually writing
14 out that statement. But even if I make a finding that the
15 Defendant was intoxicated at the time, based upon State
16 vs. Saxon, that cite, if you want it I'll give it to you,
17 261 S.C. 423. Proof of intoxication typically just goes
18 to the weight and credibility of the statement in and of
19 itself, short of a person being unconscious at the time.
20 So the Defendant's position as it relates to him being
21 intoxicated would not in any way prevent his statements on
22 August 26th from being admitted into evidence. All right.
23 Second, the Defendant's position that he invoked his right
24 to have a lawyer present. I'm not making a finding that
25 he did. But under State vs. Johnson and that's 413 S.C.

1 458, if the Defendant invoked his right, then he waived,
2 and that he did participate in giving statements written
3 and oral on August the 26th. And secondly, and I realize
4 I'm rambling and I hope that I'm making some sense, but
5 the fact that we spent a lot of time in this Jackson v.
6 Denno hearing I felt like it justified me going to lengths
7 in issuing this ruling and my basis for it. And I do find
8 that the Miranda waiver did carry over until the 27th or
9 28th when there was that second meeting between the
10 Defendant and Officer Goodman based upon State vs.
11 Samuels, State vs. Goodwin, State vs. Moultrie. Those
12 cases lower the proposition that even the previous waiver
13 of rights carries over to any subsequent interrogation
14 unless there is proof of an expressed revocation and
15 nothing on the 28th indicates that he revoked what he did
16 previously on the 26th. So with all that said, those
17 statements will be admitted into evidence with the
18 exception of nothing about pointing to his hand and gang
19 activity and his silence as to the lack of contradiction
20 of whatever the sister may have said over the
21 speakerphone. That will not be, cannot get into that
22 unless the Defendant elects to testify. All right.
23 Anything further for the record before we bring the jury
24 in?

25 MR. STUMBO: Nothing from the State, Your Honor,

1 other than we will have a translator needed in this case.
2 We can handle that before we put those witnesses up or
3 now.

4 THE COURT: Let's wait until we put those witnesses
5 up, so we can go ahead and get the jury out.

6 MR. STUMBO: Yes, sir.

7 THE COURT: Mr. Verner, anything from you, sir?

8 MR. VERNER: Yes, sir. Before I, if I could clarify,
9 Your Honor. My understanding is the victim would consider
10 his name Roberto Facio or Facio, I'm not sure. Maybe we
11 can clear up the, because he's Hispanic, I think he would
12 use Facio as his last name or Facio, not the Ledesma.

13 THE COURT: Okay.

14 MR. VERNER: That would probably be his mother's last
15 name. But just, I think it would be helpful if we could
16 just agree from the family what the pronunciation is.
17 We'll be calling him Facio.

18 MR. STUMBO: Facio.

19 THE COURT: Facio. Okay.

20 MR. VERNER: Roberto or Robert.

21 THE COURT: Well, during jury qualification, voir
22 dire and selection, I just read the name as it was written
23 in the indictment. And I do recognize that oftentimes
24 Hispanics do use a reverse of how the names are.

25 MR. VERNER: Right. But just so we're speaking about

1 the same man, I think it's Roberto Facio is the, how he
2 would identify himself.

3 THE COURT: All right. Very good. Thank you.

4 REPORTER: Judge, can I get the spelling.

5 MR. VERNER: F-A-C-I-O. I've seen it spelled also
6 F-A-C-I-A, but I've seen it more often F-A-C-I-O.

7 THE COURT: F-A-C-I-O, is that correct?

8 MR. STUMBO: It is and it's the first word in the
9 indictment or should be, correct, Facio Ledesma?

10 THE COURT: It's F-A-C-I-O in the indictment.

11 MR. STUMBO: Right. That's correct.

12 THE COURT: Right.

13 MR. VERNER: And then Ledesma, but that's probably
14 his mother's name but they don't really, I think the
15 victim would call himself Facio.

16 THE COURT: And I think probably the best thing to
17 do, just when you guys are making your openings, maybe
18 just note that that, the last name is going to be Facio.

19 MR. STUMBO: Facio. Right. Okay.

20 THE COURT: Okay. Anything else for the record?

21 MR. VERNER: No, Your Honor.

22 THE COURT: Okay. All right. Bring the jury out,
23 Madam Bailiff. And in light of the recent case that came
24 out, there will be some modification to my preliminary
25 instruction to the jury. I'm going to streamline it

1 pretty considerably.

2 (Whereupon, the jury came into open court at
3 approximately 10:42 a.m.)

4 THE COURT: Okay. Let the record reflect the jury is
5 back in and good morning, ladies and gentlemen. Hope
6 everyone is doing well, had a good night's rest, and ready
7 to get to work this morning. A couple of housekeeping
8 matters. First of all, you need to be sworn in as the
9 trial jury in this case. So if you would stand. Madam
10 Clerk, if you would take care of that, please.

11 (Whereupon, the jury was sworn at approximately 10:45
12 a.m.)

13 THE COURT: Okay. The second housekeeping matter is
14 I need to appoint a foreperson of the jury. Now, if it is
15 a male, you call them a foreman. Makes sense. If it is a
16 female, we call it forelady. And let me explain to you
17 what a foreperson does. A foreperson wears several hats.
18 One, I need a person who will be the spokesperson for the
19 jury. If there needs to be some communication during the
20 course of this trial with the Court, then I need someone
21 to serve as that spokesperson. Two, I need someone to
22 ensure that all of my instructions are followed even
23 though that's really everybody's responsibility such as
24 the prohibition against early deliberations and early
25 discussion among yourselves about anything related to this

1 case. But, primarily, I need the foreperson to ensure
2 that my instructions are followed. And, thirdly, when the
3 case ends insofar as all of the evidence in, I have given
4 you the instruction on the law, the lawyers have given
5 their closing arguments and I then tell you to begin your
6 deliberations, I need someone to organize that and get the
7 deliberations started. But let me emphasize that the vote
8 of the foreperson carries no greater weight than the vote
9 of the other members of the jury. And I just need someone
10 to serve in that capacity. And I'm confident that all
11 fifteen of you would make excellent forepersons of this
12 jury, but I can only have one, so I have Tracy Boyd. Ms.
13 Boyd, I am selecting you as the foreperson of this jury,
14 the forelady of this jury. When you come back in after or
15 next break, you will always maintain that first seat right
16 to your left, okay? Then, the alternates, I'm assuming
17 these are the three alternates right here. No. Raise
18 your hand if you're an alternate.

19 (Whereupon, the alternates raised their hand.)

20 THE COURT: Okay. Three alternates will maintain in
21 those three seats there. So, sir, you'll just switch with
22 this gentleman. Not now. Not now. Just next break.
23 Okay. Everybody else, you can sit wherever you like.
24 Now, it's been my experience over the years that a lot of
25 jurors like to sit in the same seat and you can do that if

1 you like, but you don't have to. But it's kind of, and
2 kind of approach it like, you know, at church, you sit in
3 the same pew every Sunday and that's just where, that's
4 just what you do. And but that's up to you whether or not
5 you want to keep your same seat or not. Okay. All right.
6 Now, I want to give you a big brief preliminary
7 instruction and just kind of give you some ideas about
8 what to expect during this trial. And then after I do
9 that, the lawyers are going to give their opening
10 arguments to you. First of all, it is extremely important
11 that you be very attentive throughout this entire
12 proceeding. I do not permit note taking. So, therefore,
13 you have to be attentive to listen and to see everything
14 that goes on because your memory is going to need to be
15 good about the facts in this case, the evidence in this
16 case when you start your deliberations. So if you allow
17 your mind to start wandering or you kind of, you haven't
18 gotten a good night's rest and you feel kind of sleepy and
19 you're not alert, then it's going to be difficult for you
20 to fully engage in your deliberations when you're back in
21 that jury room. So be very attentive, okay, throughout
22 this whole proceeding. Once again, I don't allow note
23 taking. Secondly, you are the sole finders of the facts.
24 You are the judge of the facts in this case and the same
25 law that makes you the sole judge of the facts in this

1 case, makes me the sole Judge of the law. So if at any
2 time during the course of this proceeding I was to make
3 some comment on the facts when I have to rule on a
4 particular issue that one of the lawyer's raise and I make
5 a comment on the facts, just disregard that because it is
6 you and you alone to determine what the facts are in this
7 case, okay, based on the evidence presented to you. But
8 as I said I'm the sole Judge of the law. So when I give
9 you the law at the end of this case, if you think the law
10 should be something else or you disagree with what I tell
11 you the law is then you have to abandon your idea and
12 follow exactly what I tell you the law is. And that's
13 just the simple truth of our roles, your role and my role
14 in this case. As I told you yesterday, and I'll remind
15 you again that it is extremely important that you do not
16 engage in any independent research into anything related
17 to this case. As I told you, I didn't have to tell you,
18 but as I told you that we have ready access, available
19 access, easy access to a wealth of information because of
20 the Internet, and social media, and the like and it may be
21 very tempting while you're at home to, you know, start
22 looking into things about this case and anything related
23 to this case. Please don't do it because as I told you
24 yesterday, your verdict, whatever your verdict that you
25 reach in this case has to be based upon one-hundred

1 percent on what is brought out in this courtroom and if
2 you have information that's not brought out in this
3 courtroom, then you are not doing your job as jurors. So
4 please refrain that, along with having any early
5 discussion among yourselves about anything related to this
6 case or anybody, any discussions with anybody that you may
7 come into contact to during a break. Also, there may be
8 times during the course of this trial that one of the
9 lawyers may say, Judge, I object or, Judge, I have a
10 matter of law to take up with the Court. And it may
11 require me to say, okay, ladies and gentlemen of the jury,
12 I need you to go back to the jury room. And the reason
13 for that is that in discussing with the lawyers the
14 particular issues or the objection, it may require me to
15 discuss some of the facts in the case. And I don't want
16 to do that in your presence because, again, you and you
17 alone are the sole judge of the facts in this case. So a
18 lot of times what we do is we have, and I think we've
19 already done this. We'll have a little conference down
20 here. It's called a sidebar conference. I'll meet with
21 the lawyers about the particular issue involved, and we'll
22 try to do that as much as we can so we don't have you
23 going in and out and we keep the flow of this case going.
24 But sometimes, it's just necessary that we have to send
25 you out, so we'll do that as sparingly as possible, but

1 we'll do it when, you know, when necessary. Lastly, keep
2 an open mind in this case. Don't make any decisions on
3 your own until all of the evidence has been presented to
4 you, whether by testimony from a witness or documents, or
5 I see the TV screen. There may be videos. I don't know.
6 But keep an open mind until all of the evidence is in, the
7 lawyers have made their closing arguments to you, and I
8 have instructed you on the law. Does the State have any
9 objection to the Court's preliminary charge?

10 MR. STUMBO: No objection, Your Honor.

11 THE COURT: And from the Defense?

12 MR. VERNER: No objection, Your Honor.

13 THE COURT: Okay. Thank you very much. Ladies and
14 gentlemen, the lawyers now will make their opening
15 arguments to you, and these opening statements are not
16 evidence in this case. It's just what each side, the
17 State and the Defense, believes what this case is about,
18 what they believe that the evidence will show. So be very
19 attentive while they make their opening arguments. Is the
20 State ready?

21 MR. SCOTT: Yes, Your Honor.

22 THE COURT: Okay. You may proceed, Solicitor Scott.

23 MR. SCOTT: If it please the Court. Ladies and
24 gentlemen of the jury, Madam Forelady. August 26th, 2015,
25 a typical balmy, late summer/early fall South Carolina

1 day. Children are beginning about the second week of the
2 school year. It was a workday for most here in Newberry,
3 and it certainly was for Robert Facio Ledesma. That is
4 his full name. I'll be referring to him as Mr. Facio from
5 now on because that's how he was referred to. Robert
6 Facio was forty-one years old on August 26, 2015. I'm
7 going to label some things here, but some of you would
8 recognize the place he worked. If you go up here, take
9 Main Street like you going up towards Wilson Road, on your
10 left you'll see a hair salon, and some of you may be
11 familiar with it. It's called Leslie's. Robert Facio,
12 along with his wife Maria, ran that salon, and they had
13 lived here in Newberry with their daughter who turned 17
14 yesterday. They lived here in Newberry running that salon
15 for fifteen years, and August 26th was a workday for Mr.
16 Facio. He opened up the salon at 10:00 a.m. as he did on
17 Wednesdays, and he began working. I'm going to label just
18 so you can have a little bit of reference. Right here,
19 the red building is Leslie's hair salon. And again, this
20 is looking up Main Street right here going towards 26.
21 Kenny Smurf Ruff, that's the man's nickname is Smurf. I
22 don't know how he got the name, but you'll hear him
23 referred to that. But it's Kenny Ruff. He was up early
24 that day, too, August the 26th. He lived right up here on
25 Turner Street, just off of this, the view you see here.

1 About 7:00 a.m. he calls a cab and you'll hear from the
2 cab driver. She's going to tell you about going over
3 there on Turner Street downtown here in Newberry to pick
4 him up. And she's going to tell you about how he wanted
5 to go to his estranged girlfriend's house and he was angry
6 and he was upset during the ride. He said some things
7 that really concerned this cabdriver. He got on a phone
8 and called this girlfriend he was going to see and they
9 began arguing and hung up. He told that cabdriver I'm
10 going to kill her and if I don't kill her, I'm killing
11 somebody today. He woke up that day with mayhem on his
12 mind. He was angry when he got in that car, that cab. He
13 was angry when he talked to his girlfriend. He was
14 careless when he let that pistol slide out of his pocket
15 and onto the seat of that cab. I don't know if you'll
16 hear from him, but I can't even imagine what was going
17 through the cabdriver's mind. But when she let Kenny Ruff
18 out to go to his girlfriend's door and he knocked on that
19 door and she didn't answer. Thank goodness. But that did
20 leave Kenny Ruff wandering around Main Street with mayhem
21 still on his mind and that pistol still in his pocket.
22 Cameras that day captured Mr. Ruff as he walked in and out
23 of the Brothers BP. Are y'all familiar with that? That's
24 also on Main Street. But Leslie's that we're going up
25 towards 26, on the left, it's going to be on the right a

1 little bit farther up and here it is right here. I'm
2 going to label it for you. Cameras would capture Ruff at
3 Brothers BP wearing layers of clothes despite the South
4 Carolina August heat. His movements were captured as he
5 left that Brothers BP at 1:33 p.m. I'm telling you these
6 times, but we're going to illustrate them so it will be
7 all clear to you what I'm going to describe. But 1:33
8 p.m. is when they captured him leaving Brothers BP.
9 Suddenly, he appears in front of Kunkle Oil. Are y'all
10 familiar with that? That's right across the street from
11 Leslie's. At 1:33 surveillance, Brothers, he's leaving.
12 Kunkle Oil has surveillance, too, and their cameras pick
13 him up about 1:36 p.m., and then they record as he walks
14 through the front door of Leslie's at 1:37 p.m. He was in
15 there four minutes. He exited that Salon at 1:41 p.m.
16 Now, Roberto Facio, my victim in this case, you're not
17 going to hear him, because y'all understand this is a
18 murder case. He's no longer with us. Roberto Facio's
19 niece, who's sitting right here, the second from the end,
20 she's going to be our first witness, Elitania Martinez.
21 She had told the victim, Roberto, she was going to bring
22 him lunch and that was customary. Every Wednesday about
23 1:30, she would show up at the salon and bring him lunch,
24 bring him something to eat. On this particular day, you
25 know how fate works? You know how a twist of fate works?

1 That particular day, coincidentally, that same day Kenny
2 Ruff was walking around with mayhem on the mind, Elitania
3 got held up. So instead of showing up at 1:30, she got
4 there at 1:55. She walked through the Salon, Uncle.
5 Uncle. There is no answer. Goes to the back and goes to
6 the back room. He's on the floor face down. She panics.
7 She can't wake him up. He's unresponsive. Then, she sees
8 the blood. She sees the blood coming from her uncle's
9 head. Runs next door for help. 911 was called. The
10 police show up at 2:02. Do you hear what I'm saying? He
11 exits, Kenny Ruff exits Leslie's after killing a man at
12 1:41 and police are there fourteen minutes later. They
13 show up. They find Roberto unresponsive and discover he's
14 dead. They discover he had a bullet wound in the back
15 left side of his head. They see the cash registers. The
16 drawers are open, but there's no money in there. They run
17 through the salon searching, is anybody else in here.
18 They got to clear the place. There's nobody else in
19 there, and there's only one door. I want you to remember
20 that. I'm going to show you a picture. But there's only
21 one way in and one way out of Leslie's. You know, they
22 know that Kunkle's has that surveillance video, so they go
23 across the street and they pull the surveillance and they
24 watch as Mr. Ruff walks down Main Street, and they watch
25 as he walks in that Leslie's hair salon. He's

1 empty-handed. But then four minutes later at 1:41 when he
2 reappears, when he comes out, he's got a white bag. They
3 watch as he takes that white bag and he runs back, I think
4 that's Pike Circle is the name of this little road right
5 here. They watch as he runs back behind Leslie's and what
6 they do is they follow this trail and there's a little
7 cut-through right here you can see. They walk along that
8 path, and then there is an apartment complex back here
9 called Heritage Square. So they go walking along that
10 trail towards Heritage Square. They're familiar with
11 Leslie's hair salon having cameras, because you hear about
12 all these cameras everywhere. Everybody has got
13 surveillance nowadays. You can't hardly move without
14 somebody filming you, you know, and Leslie's hair salon
15 had cameras as well. The problem was when officers are
16 clearing the place and seeing that all of the money is out
17 of the cash register, and they're looking for people and
18 they're looking for evidence, they see the cameras, but
19 the hard drive, the guts to the video system that holds
20 all the recordings is missing. It's just a bunch of loose
21 wires and the box that holds all the videos is gone.
22 Well, they do what any good police officer would do, they
23 try to follow a trail they think the suspect went down.
24 They walk along Pike Circle here and they're walking
25 through these woods. They go down this path and,

1 eventually, somewhere along this path, they find one of
2 the first clues and it's a faceplate. It's somewhere in
3 here and it's the faceplate of the hard drive that was
4 taken out of Leslie's. Y'all following me? They find the
5 faceplate, so they know they're on the right track. They
6 continue along the path and they're here at Heritage
7 Square. There's a dumpster there. Y'all going to see a
8 better picture for this. I'm just giving you kind of a
9 general look at things. There's another camera, guys, at
10 Heritage Square and it's aimed right at that dumpster.
11 They watch that video and they see a man matching the
12 description of the same one who ran out of Leslie's appear
13 on the screen, I think it's at 1:46. So about five
14 minutes after that he left Leslie's, he shows up over here
15 by the dumpster. And they watch, there's a white bag in
16 the dumpster. So now officers know, and this is crazy.
17 They got to search that dumpster. It happens to be the
18 same day the trash is being collected. They have to call
19 off the dump trucks emptying the trash cans and everything
20 because they know they got to find that white bag in there
21 and they do. They find that white bag. What was in that
22 white bag? Well, there was a phone that had been taken
23 from Leslie's, a landline-type phone, a cordless phone.
24 They found that. They found an iPad belonging to Roberto
25 Facio. You know what else was in that bag? Well, there

1 was a shirt in there, in that same white bag that had the
2 iPad and had that phone, and the shirt had Kenny Ruff's
3 DNA on it. And you know what else was on that shirt,
4 gunshot residue, and you'll hear what that is. When you
5 fire a gun, certain residue is expelled and that was on
6 that shirt, as well. But guess what else was in the bag,
7 the hard drive. The hard drive that was taken from
8 Leslie's, but you know what? It had been beaten up. It
9 had been stomped and smashed, and officers were kind of
10 heartbroken, because they didn't think they were going to
11 be able to pull anything off of it. They found Kenny Ruff
12 later that day. He was riding with his nephew. He was
13 back there with D'lonze Ruff and they were riding around.
14 They had gone down to Columbia Mall and bought new
15 clothes. Ruff changed clothes multiple time. In fact, he
16 had dumped some clothes at Columbia Mall in a trash can
17 and left them there. He bought new clothes. They stopped
18 him in Prosperity. He was interviewed by Captain Goodman,
19 who's sitting right here. Kenny admitted to going in the
20 store when he was confronted. He said, okay, yeah, I went
21 in there, but I just wanted to check the place out. I was
22 curious to see the inside of the place. That was his
23 explanation. He said he told the owner he liked the place
24 and then he left. He took him to jail and he made some
25 calls to his sister. Those were recorded. I hope to

1 present those to you. We got some other versions of the
2 story of what happened. But you remember that damaged
3 hard drive I was telling you about? Do you remember that?
4 Well, guess what officers did? They sent it to Quantico.
5 That's the FBI Headquarters. And FBI agents are able to
6 rebuild the system. They rebuilt the hard drive and we
7 got the video from inside of Leslie's and you going to see
8 it. You going to see as Kenny Smurf Ruff comes from
9 across the street, he comes from Kunkle, opens that front
10 door and just as easy as you can imagine he pulls that
11 pistol out of his right back pocket and aims it. You'll
12 watch as Kenny Ruff marches Roberto Facio to that back
13 room. The last that Facio would ever see, a little room
14 in the back of the salon he helped remodel and, basically,
15 build from the ground up. The last room he'll ever see,
16 the room he will die in. You'll see Kenny Ruff hold the
17 pistol to his head. You'll see the sheer terror on
18 Roberto's face as Kenny Ruff makes him unplug that hard
19 drive, and you'll see as Roberto Facio pulls that last
20 cord out of the hard drive with the pistol aimed at his
21 head, everything goes black. The hard drive is unplugged.
22 The cameras are disabled. A criminal case, especially one
23 like this, it's like a puzzle with different pieces of
24 evidence act like the pieces of a puzzle. And law
25 enforcement, they collect these pieces of evidence and

1 then they leave it for us, the State, the prosecutors for
2 the State, to piece them together and put them together in
3 such a way you can digest it and understand what happened
4 that day. The State is alleging, and I think it's clear,
5 Kenny Ruff walked in that store August 26th, 2015 with a
6 couple of ideas in mind, to get as much money as he can
7 and he wasn't going to leave any witnesses. And we got to
8 prove that beyond a reasonable doubt, and that's a
9 standard. Anytime anybody from here to California is
10 tried in a criminal case, they must be proven guilty
11 beyond a reasonable doubt. That doesn't mean every doubt.
12 It doesn't mean all the doubts you may have. It means
13 beyond a reasonable doubt. Think about the analogy I was
14 thinking about with the puzzle. I got a puzzle of an
15 American flag and it's a one-hundred piece puzzle. But
16 I'm missing, you know, 75 pieces of the puzzle, you might
17 have some doubts as to what it is. You might say, well,
18 it kind of looks like the American flag, but there's so
19 many pieces missing, it could be some other flag. I don't
20 know. Beyond a reasonable doubt means you can have some
21 doubt. I can't answer, I can't possibly, I've never had a
22 trial, I've never had a criminal case where I could answer
23 beyond every doubt one-hundred percent of any questions
24 that arise, because I wasn't there. I wasn't with Kenny
25 Ruff that day. That same analogy, I've gotten that flag

1 puzzle. There's three or four pieces missing. You can
2 look at it and say I know that that's a puzzle. I know
3 that's an American flag. I don't need those four or five
4 pieces to understand what the picture tells me. Beyond a
5 reasonable doubt, you guys. Evidence I have just gone
6 over with you. I submit to you we're going to show you
7 every piece of that evidence and it conclusively points to
8 the one conclusion, that Mr. Ruff walked in there August
9 the 26th, 2015 and killed Mr. Facio. You will hear firmly
10 convinced. That's what the Judge will tell you is our
11 standard. Beyond a reasonable doubt means I must firmly
12 convince you of his guilt. I'm here to tell you you'll
13 have enough evidence to find Mr. Ruff guilty beyond a
14 reasonable doubt. You'll see as we present the Brothers
15 BP video of Kenny Ruff, and then we show you the Kunkle
16 Oil videos after he left Brothers. You'll see the
17 surveillance from Leslie's showing Ruff committing this
18 evil deed. You'll see Ruff dumping the evidence of his
19 crimes in that dumpster. And like a puzzle, all the times
20 of these link together to form one picture. Times are
21 important, and I'm going to show you that. You're going
22 to see what they found in that dumpster. You're going to
23 hear about his DNA on that shirt, along with that gunshot
24 residue. So I thank you now for your attention. I thank
25 you for your willingness to sit on this jury. At the end

1 of this trial, be assured we're going to ask you to find
2 Mr. Ruff guilty of these three crimes, armed robbery,
3 possession of a weapon during the commission of a violent
4 crime and murder. Thank you.

5 THE COURT: Mr. Verner, you ready, sir?

6 MR. VERNER: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 MR. VERNER: Solicitor Stumbo and Madam Forelady,
9 it's a horrible crime, and we believe it's a horrible
10 misidentification. Kenny Ruff grew up in Newberry like I
11 did. He went to Spear Street like I did. He graduated
12 from Newberry high school like I did. He's entitled to a
13 fair trial. Everything the Solicitor told you is, the
14 Deputy Solicitor told you presupposes that they have
15 identified Kenny Ruff as the suspect and everything he
16 tells you is based on the identification, and they've got
17 the videos which you will see. We believe it's a horrible
18 misidentification. Everything about this case, it all
19 boils down to have they identified the right person. What
20 he did, this person did is not in dispute. If it's Kenny
21 Ruff, is in dispute, and this is a murder trial. But we
22 know the consequences of murder trials. No one after you
23 today goes back and changes your verdict. What your
24 verdict is cannot be changed. What you find the facts to
25 be cannot be changed. We understand the consequences.

1 That there's nobody who comes after you and rides to the
2 rescue if you get it wrong, so you need to make sure you
3 make the right decision. I submit to you that this is how
4 we have got to this situation. Mr. Facio gets killed at
5 Leslie's salon and part of the problem is there are
6 multiple different timestamps. It's like your car or your
7 VCR and your watch, everything's got a different timestamp
8 on it. And so they're kind of guessing and making
9 educated guesses to kind of put everything at the right,
10 at the right time and place. But it really doesn't
11 matter. Time really doesn't matter. Identification
12 matters. What happens is Mr. Facio is killed and his
13 niece finds him. The police come and they immediately
14 start searching the area for videos or witnesses. Kenny
15 Ruff lives on this street. He lives about a block away.
16 Of course, he's in that neighborhood. What happens is
17 when the police are canvassing side-by-side, one of the
18 people out there in the neighborhood says, well, I saw
19 Kenny Ruff in there and that gets, that's what puts Kenny
20 Ruff as a suspect in the police mind. Okay, is somebody
21 just walking the street and I don't know if y'all see it,
22 but Brothers Fast Stop is a fairly constantly flowing
23 place that a lot of people come in, make a quick
24 transaction, leave. Kenny lives about a block away from
25 there. Somebody in the neighborhood between Brothers and

1 the place that we'll see Kenny Ruff and that's what puts
2 Kenny Ruff's name in the police mind. The police get the
3 video from Kunkle and I'll submit to you, you're going to
4 see the video. You're going to see blowups of the video.
5 You're going to see stills of it. That is an absolutely
6 unidentifiable person in the video. You can vaguely tell
7 out that it might be a black man but that's about it, and
8 I'm a pretty good judge of what people look like and
9 you're going to see the video. It's not an identifiable
10 video other than it's a single man, and you will have that
11 to play it back in your room as much as you want to. But
12 what it shows is there's a black man who's kind of walking
13 by at about the area of Kunkle's walk to the Leslie's and
14 leave. The police go to Brothers. They've got Kenny Ruff
15 in their mind. They see on video about an hour beforehand
16 Kenny Ruff's at the Brothers gas station. And so then law
17 enforcement says, well, we got him in the neighborhood.
18 And you will see from the videos, they've got a clear
19 picture of a killer, of Kenny Ruff in Brothers Fast Stop
20 making a purchase wearing a blue shirt, bald-headed, light
21 blue jeans, black sneakers with white bottoms. So the
22 police say, well, we got him. There's Kenny across the
23 street so to speak from the killing and even though Kenny
24 lives only a block away. Then, later on, they have other
25 videos of what looks more like the killer in different

1 shoes, darker pants, long sleeve shirt, doo-rags, appears
2 to be an older black fellow. This is the person they
3 think killed Mr. Facio. But they don't know that, but
4 this is the one, because he's also a suspicious black man
5 and their timestamp is about an hour later after Kenny has
6 left the store. This is more similar to the man who
7 killed Kenny Ruff. Police are saying that, but none of
8 these clothes that they're talking about they can ever put
9 on Kenny Ruff. None of the shoes. None of the doo-rags.
10 The video that you're going to see from the crime scene
11 from Leslie's, that's the best, it's a silhouette of a guy
12 coming in that he's clearly got a gun, and it's
13 interesting to note what color that gun appears to be. It
14 appears to be a black gun which I will get to in a second.
15 They can match up this man more to the man at Brother's
16 Fast Stop, because he's got a dark green or black long
17 sleeve shirt and a doo-rag. That's about the best
18 identification of the killer you're going to get in this
19 case, and the police are confident that that is Kenny Ruff
20 based on the, they are going to be, you going to have the
21 videos. This is just another still shot to convict a guy
22 of murder and you've got, basically, a black silhouette of
23 an identification. Back of a guys head, back of a guys
24 head. I am not challenging what the Solicitor said what
25 the man did is true, but I'm challenging who did it. They

1 don't have anything to identify. The amazing thing is
2 that the one video they have that's clear that you can see
3 Kenny Ruff is the one where Kenny Ruff, and you can look
4 at that and that's clearly him, fairly light-skinned black
5 guy, bald-headed that he can see clearly what he's dressed
6 in. Again, Kenny tells them where he's been. They've got
7 a picture of him at Wal-Mart at 2:00 o'clock dressed
8 entirely differently. They've got a picture of him at
9 3:00 o'clock when he's back in the neighborhood, again, a
10 blue shirt, walking back and entirely different, but
11 they're still satisfied that their theory now is that
12 Kenny must be changing clothes. He's savvy enough to
13 realize that there are videos and that the only way they
14 can get that to work is that Kenny is changing clothes
15 without any proof on that. After Kenny's in jail and he's
16 already been arrested, he's already in jail, already
17 charged with murder, then they got a lady named Shawarror
18 Simms, I believe, comes up to them. She's been in
19 trouble, criminal trouble. She's got some incentive to
20 work with the police. After the police have already
21 arrested Kenny and everybody in the neighborhood knows
22 Kenny is arrested, this lady comes forward and says, well,
23 I saw Kenny and he had a gun and he made these threats in
24 a completely implausible way where she says, basically,
25 he's in my taxi and he says he's going to kill somebody,

1 he's going to kill his girlfriend or he's going to kill
2 somebody. And just, you know, it was strange, but he
3 just, then he said, you know, my name is Kenny Ruff. They
4 call me Smurf. I'm going to kill somebody. And I just, I
5 have never been in a taxi where I've left and said, by the
6 way my name is Charles Verner, you know, I want to kill
7 somebody. And just a completely implausible that he pulls
8 out a gun which interesting what color she says it's, she
9 says he has a silver gun. Then, he says, you know, I'm
10 going to kill somebody. You don't know me, do you? Well,
11 my name is Kenny Ruff. They call me Smurf. And that is
12 her story, and it comes from a, it comes from after the
13 police have already arrested somebody and everybody knows
14 they've arrested him. It comes from a lady who's got some
15 incentive to work with police, but because she's got a
16 little bit of a checkered past. The two scientific bits
17 of evidence the State has is this gunshot residue.
18 They're saying, on this black shirt they find, there is
19 this gunshot residue. When they have Kenny just a few
20 hours after Mr. Facio is killed with this gunshot, Kenny
21 is at the police station and he says swipe my arm. Take
22 gunshot residue of my arms. You're not going to find any
23 powder on my arms and the damnest thing happens, the
24 police say no. We don't want that evidence, but that is
25 just almost incredible. You got a suspect in a murder who

1 comes forth and he says, if y'all think I shot somebody,
2 swab my arms for gunshot residue. And the police say no,
3 we don't, you know, you could have washed. Well, it's
4 possible, that's true. I mean, it could have come out
5 completely zero and not changed who was the killer. But
6 you've got a man offering evidence to the police, if you
7 think I'm the shooter, here are my arms, swab them and
8 they say no, no thank you. It's just incredulous. And
9 then here's why I've got some reasonable doubt about the
10 DNA testing. This wasn't a clean hit of DNA. First of
11 all, they're saying they've got a mixture of DNA of
12 multiple people. Kenny Ruff being one of them they say
13 and the problem is almost a year, Kenny has been sitting
14 in jail almost a year on this charge and the police decide
15 to send the DNA and maybe not quite, maybe like nine
16 months. But he's in jail for murder the better part of a
17 year. They say, well, we'll go ahead and send DNA in to
18 test against the shirt which they had the same day. It's
19 not a clean kit where they send the shirt away, and then
20 on the system it pops up this is the DNA, these are the
21 people it matches with. No, they sent Kenny's DNA with
22 the package. This is who we've got in jail for murder.
23 Here's his DNA. Here's what we want you to find his DNA
24 on. And it's comes back a positive hit with other people
25 and we submit to you that is at least suspicious. It's

1 not a clean DNA hit where you just find fingerprints and
2 you send them in and they say these belong to Kenny Ruff.
3 They send in the fingerprints of who've they've got in
4 jail, and then they say find these fingerprints, on the
5 evidence and they do. I submit to you that's somewhat
6 incredulous. I understand it is a murder case and but you
7 are not in the business, I am not in the business of
8 forgiving murder cases. But we are, your role as the
9 jury, we don't work with prosecutors office, we are not a
10 team. There is no way we, there's no right answer for
11 you. The burden isn't, the State has the burden to prove
12 the case. The role of the jury isn't to work with the
13 State to reach an answer. The role of the jury is to
14 protect a citizen from the State. Before they can take
15 your life, your liberty, or your property, the State has
16 to get over twelve members of the community who live with
17 Kenny Ruff here in Newberry County. We're not here to
18 find an answer. We don't know what the answer is that far
19 back. I swear I don't. There's no way we can do it. We
20 only have to go by the evidence that the State has to
21 convict somebody. It's not your role to find the truth of
22 what happened. The truth you have to find is whether the
23 State has enough evidence to put somebody in prison for
24 murder, and for armed robbery, and for using a weapon
25 during the violent crime of murder. I submit to you that

1 all of their evidence boils down to these videos, whether
2 these clearly show that Kenny Ruff is the shooter. And I
3 submit to you that you can look at the videos of the two
4 different people, of the still shots, and you can
5 reasonably say that is probably a different black man and
6 that is our defense. Thank you.

7 THE COURT: Thank you, Mr. Verner. Now, ladies and
8 gentlemen of the jury, let's take a short morning break
9 before we start in with the State's case. So if you'll go
10 back to the jury room again. I'll remind you no
11 discussion among yourselves about this case. Get you back
12 in and we'll start with the State's case.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: And we'll take about a ten-minute break.
16 Let me see the lawyers for just a second.

17 (Whereupon, a bench conference was held in the
18 presence of the jury but out of the hearing of the
19 jury.)

20 (Whereupon, a short break was taken.)

21 THE COURT: Okay. Gentlemen, are we ready to bring
22 the jury out and start with the State's case?

23 MR. VERNER: Judge, we are just agreeing to some
24 premarked exhibits. Without objection and looking at the
25 Exhibits 1 through 29, my understanding is the State is

1 introducing them without objection.

2 THE COURT: All right. So 1 through 29, it is agreed
3 now that those are, will be into evidence.

4 (Whereupon, State's Exhibits 1 through 29 were
5 admitted into evidence.)

6 MR. VERNER: Also, on the second page, I guess, I
7 should have maybe said 1 through 32. 30, 31, and 32
8 without objection.

9 THE COURT: All right.

10 MR. VERNER: 42, 45 through 56, 63 through 68, which
11 is basically all of the photographs, Judge with the
12 exception of possibly the autopsy photograph are in.

13 THE COURT: Okay.

14 MR. VERNER: But the stuff that's not in is,
15 basically, the tangible items such as the --

16 THE COURT: All right. So, again, let me reiterate 1
17 through 32, 42, 45 to 56, 63 to 68. It's been agreed to
18 by the Defense that those will go into evidence on behalf
19 of the State and the other premarked exhibits, we will
20 just deal with them as they come up.

21 MR. VERNER: And all of those items are essentially
22 the photographs, Judge, or aerial plats, and essentially
23 would be basically tangible items.

24 THE COURT: Okay. All right. Very good. Thank you.
25 All right. Anything further.

1 MR. SCOTT: Just we got those surveillance discs from
2 Kunkle and Leslie's. You didn't say 57 that would be,
3 just agree on 57 in. That's Brothers surveillance video.

4 MR. VERNER: Oh, okay.

5 THE COURT: All right. 57. So we'll, 45 to 57 then
6 is into evidence.

7 (Whereupon, State's Exhibit 30, 31, 32, 42, 45
8 through 57; and 63 through 68 were admitted into
9 evidence.)

10 THE COURT: Let's bring the jury in.

11 (Whereupon, the jury came into open court at
12 approximately 11:46 a.m.)

13 THE COURT: Okay. Let the record reflect the jury is
14 back out. Is the State ready to call it's first witness?

15 MR. SCOTT: We are, Your Honor.

16 THE COURT: Okay.

17 MR. SCOTT: The State calls Elitania Martinez.

18 THE COURT: Solicitor Scott, do we have an
19 interpreter for this first witness?

20 MR. SCOTT: We do, Your Honor. Ms. Rivera.

21 THE COURT: Go ahead and do the interpreter's oath
22 first, and then we will then swear in the witness.

23 Elizabeth Rivera, being
24 first duly sworn, testified as follows:

25 ELITANIA LOPEZ, being

1 first duly sworn, testified as follows:

2 THE COURT: Madam Interpreter, just make sure you're
3 at a spot to when you are repeating in English what the
4 witness has said that the jury can hear you. And if
5 anybody on the jury is not hearing, just raise your hand
6 and we'll make sure. She does a good job. She's done
7 this before, but I just want to make sure everybody can
8 hear her, okay? All right. Solicitor Scott, you may
9 proceed, sir.

10 DIRECT EXAMINATION

11 By Mr. Scott:

12 Q Ms. Martinez: How are you related to Roberto Facio?

13 A He is husband of my aunt.

14 Q What was the name of the business that Mr. Facio ran?

15 A Leslie's Hair Salon.

16 Q Okay. And did you ever work there?

17 A I would help out there occasionally on Wednesday's to
18 clean.

19 Q Okay.

20 A And I would take him some food.

21 Q And my understanding is Roberto and Maria own the
22 salon?

23 A Yes.

24 Q And would they both cut hair?

25 A Yes.

1 Q Okay. Tell me about the, now, you mentioned that you
2 would take lunch to him. Tell me about that?

3 A Every Wednesday, he was doing a lot of work in the
4 salon because they were still fixing it up. And there's
5 sometimes that I would have to go and pick up his daughter
6 at school. So every Wednesday that he was there, I would
7 take him food, so I could eat with him and take care of
8 the salon while he had things to do outside.

9 Q Okay. On Wednesday when you would take him lunch,
10 what time would you normally arrive?

11 A Around 1:30 more or less, between 1:30 and 2:00.

12 Q Do you remember August 26th of 2015?

13 A Yes.

14 Q Okay.

15 A Yes, I remember.

16 Q Were you taking Roberto lunch that day?

17 A Yes.

18 Q Okay. How did you get to Leslie's that day?

19 A My father-in-law would pick me up at my house, and he
20 took me with all my things I had, with the food and other
21 personal belongings.

22 Q Okay. Who is this?

23 A He is my father-in-law.

24 Q Okay. He drove you to Leslie's that day?

25 A Yes, he took me.

1 Q On August 26th of 2015, do you remember about what
2 time you got to Leslie's?

3 A Around 1:55, 1:50, 1:55, more or less.

4 Q Okay. Tell us what happened when you went inside?

5 A I got out of my father-in-law's car and I got my
6 things and I told him bye and he left. I went into the
7 salon and since I always kidded around with my uncle, and
8 I went in yelling at him, now, where have you been. And I
9 left my bags in the waiting area on the chairs. I looked
10 there at the salon looking for him. When I didn't see
11 him, I kept yelling for him. And I went into the backroom
12 where I saw him on the floor with his face down. I left
13 one of the bags that I had with food on the couch. And I
14 moved his feet and I said, what are you doing there. Then
15 I got closer and I touched him right here on his back and
16 that's when I saw the blood in the area of his head on the
17 floor. I got scared and I got hysterical and I called
18 911. I asked for an ambulance. And since I don't speak a
19 lot of English I didn't understand everything they were
20 saying to me. And they didn't, there wasn't good
21 communication. And I ran, running out to the store. I
22 called my father-in-law and while I was telling him that
23 he had to go for my Aunt in Saluda and I told the people
24 there at the store if they would do me a favor in calling
25 911 because my Uncle was on the floor and I didn't know

1 what had happened. And the man, they ran into the salon
2 and I went with them, and then my father-in-law came. He
3 asked me what had happened because he, I sounded bad on
4 the phone and he couldn't understand what I was saying.
5 And I said, well, I don't know what happened to my Uncle
6 Roberto. And he went in with the people from the store
7 and he saw the body on the floor. And then I called my
8 Uncle Reuben and then shortly the police and the ambulance
9 got there..

10 Q Okay. Did the police get there pretty quickly?

11 A Yes. Well, actually, I felt like it was a long time
12 but it really wasn't a lot of time.

13 Q Okay. Did you notice anything about the store when
14 you entered into it?

15 A No.

16 Q Okay. Answer any questions Mr. Verner has for you,
17 okay?

18 THE COURT: Mr. Verner, any cross-examination?

19 MR. VERNER: No. Thank you, Ms. Martinez.

20 THE COURT: All right. Thank you, ma'am. You can
21 step down. All right, Solicitor.

22 MR. STUMBO: Thank you, Your Honor. The State will
23 call Lieutenant Michael Kennedy.

24 MICHAEL KENNEDY, being
25 first duly sworn, testified as follows:

DIRECT EXAMINATION

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By Mr. Stumbo:

Q Lieutenant Kennedy, you work for the Newberry Police Department?

A I do, sir.

Q And how long have you been with Newberry County?

A I've been with the Newberry County Police Department since 1997.

Q Okay. So about twenty years?

A Going on twenty years; yes, sir.

Q And your rank there is lieutenant?

A Yes, sir. Current rank is lieutenant.

Q Okay. As a lieutenant there at the Newberry Police Department, what is your current, I see you're in your uniform today. Do you wear your uniform when you go to work?

A Yes, sir. I am a road lieutenant. I governorship with patrol officers below me, sergeant, corporals and patrolmen. I oversee basically day-to-day calls, primary investigations.

Q So supervisor on the shift with road officers?

A Correct.

Q With the City. About how many guys are on your shift?

A Currently six.

1 Q And at the time you've spent at the Police
2 Department, have you done any other role other than
3 working the road or working patrol?

4 A I train officers obviously. I have several
5 instructorships. Basically, I might teach firearms,
6 tactics, as well as for the Department to all of our
7 officers.

8 Q Okay. On the day of August 26th, 2015, were you
9 supervising a shift that day?

10 A Yes sir, I was.

11 Q And that would have been the dayshift?

12 A Yes, sir.

13 Q Did you have occasion to respond to a call out at
14 Leslie's Hair Salon out here on Main Street?

15 A Yes, sir. Approximately, a little bit before 14:00
16 hours or 2:00 p.m. that day, we received a call, it was,
17 basically, assisting an EMS call. We believe it was just
18 a person unresponsive lying on the floor. And I
19 dispatched two of my officers to that location. I was on
20 the other side of town. Being that it's kind of an
21 unusual location, we don't normally get calls there, I
22 started to head that way myself.

23 Q Okay. Now, what time did the dispatch call come out,
24 do you have that time?

25 A I do, if you wouldn't mind?

1 Q To refresh your recollection.

2 A We received the call exactly at 13:57 hours, which
3 will be 1:57 p.m.

4 Q Okay. And your two officers that you just, that
5 you'd sent over there were able to get there fairly
6 quickly after 1:57?

7 A Yes, sir. They went on the scene at exactly 14:02 or
8 2:02 p.m.

9 Q Okay. So after the initial dispatch call went out,
10 they arrived about five minutes later. Is that when you
11 arrived or when your officers arrived?

12 A No, sir. That would be the arrival time of the first
13 officer on scene.

14 Q So 2:02 p.m. is the time that your officers arrived.
15 Who were those officers on the shift that got there first?

16 A At the time, it was Patrolman Mendenhall and Corporal
17 Robert Chase.

18 Q Okay. And were you able to get there, how long did
19 it take you to get there?

20 A I wish I had brought my glasses and my apologies.

21 Q That's okay.

22 A 14:04, I was there two minutes later at 2:04.

23 Q What did you do when you got out of your car from the
24 time your boots hit the ground?

25 A Just prior to me getting there, I was notified by

1 Corporal Chase that the subject was on the ground, our
2 victim, Mr. Facio, that he suspected foul play. That
3 there was a large amount of blood on the ground beside
4 him. And there was a little bit of blood spatter on the
5 wall near his head. So I sped up. I got there on the
6 scene. Just as I was getting on the scene, my sergeant
7 was arriving. I cleared him up to help with the road
8 while I went in to see what was going on. On my arrival,
9 I saw Ms. Martinez, I believe that's her father-in-law,
10 and another gentleman sitting there. Ms. Martinez was,
11 obviously, extremely upset, crying. I walked in and
12 Corporal Chase was near a room on the right just as you
13 come through. It's up the hall a little bit. There's a
14 row of chairs. He was standing there at that doorway. He
15 motioned for me to come in. I walked over to him. He
16 said our victim was on the ground, Mr. Facio. I walked
17 over to him. I looked. Obviously, there was a decent
18 amount of blood there and on the wall. He was rolled into
19 a position where EMS run their strips and was checking on
20 him, a pulse to which he informed me that there was none.
21 I kind of maneuvered Mr. Facio's head a little bit and
22 located a gunshot wound to the back of the head. At that
23 point, I placed him back, immediately stepped out, called
24 Captain Goodman, let him know what we had. I spoke to
25 Corporal Chase, and I asked did anybody clear the building

1 yet. And he said no, we just got here. So he and I
2 proceeded to ask Ms. Martinez and the others to step
3 outside.. We drew our guns and cleared the establishment
4 to make sure no one else was in there.

5 Q And was anyone else in the building?

6 A No, sir.

7 Q I want to show you a set of pictures here, Lieutenant
8 Kennedy.

9 MR. STUMBO: If I may approach the witness, Your
10 Honor..

11 THE COURT: You sure can.

12 Q Okay. This is the State's 7 through 28. Briefly,
13 flip through those.

14 A All right.

15 Q I believe you previously had an opportunity to.--

16 A Yes, sir.

17 Q -- review these pictures?

18 A Would you like me to call them out as I see them?

19 Q No. Just quietly if you can look at them and make
20 sure those are the same ones you previously reviewed.

21 A Sir, these appear to be all the pictures.

22 Q Okay. Those are fair and accurate representations of
23 the scene and other places that you were part of the
24 investigation that you observed?

25 A That is correct, sir.

1 Q Okay.

2 MR. STUMBO: Your Honor, we, I believe, have moved
3 these in but just to make it official in front of the
4 jury. State's 7 through 28 we would admit.

5 THE COURT: 7 through 28 is into evidence on behalf
6 of the State.

7 Q Now, could you see this screen or do I need to maybe
8 move?

9 A May I step down, sir.

10 THE COURT: Step down. And, officer, while you're
11 off the witness stand just be sure you speak loud enough
12 so the jury can hear you.

13 MR. KENNEDY: Yes, sir.

14 THE COURT: I think you can handle that.

15 MR. KENNEDY: Not a problem.

16 Q Okay. Now, before I get you to identify this, when
17 you cleared the building, Leslie's Hair Salon, were there
18 any other doors other than the front door?

19 A No, sir. We didn't find any other door, just the
20 main entrance.

21 Q Okay. Now, I'm going to refer you to State's 7.
22 What building is this?

23 A This is 2509 Main Street, Leslie's Hair Salon. That
24 is the back of the building.

25 Q Okay. That is the rear?

1 A Yes, sir.

2 Q State's 8?

3 A That would be Leslie's Hair Salon. Pike Circle, this
4 is Pike Circle. There's another store right on the other
5 side of the road. So if you're facing it from Main Street
6 to the left side.

7 Q Okay. State's 9?

8 A That would be the opposite on, if you were standing
9 on Main Street looking at Leslie's Hair Salon, this would
10 be the right side.

11 Q The right side of the street?

12 A The right side.

13 Q And the white truck in the picture that was parked
14 there when you arrived?

15 A Yes, sir.

16 Q State's 10?

17 A That would be the main, if you walk through the front
18 door, I believe this photo was actually taken at the front
19 door looking into Leslie's Hair Salon. We have the cash
20 register right here near the salon chairs is what you
21 would call them and the small room right here to the right
22 is where Mr. Facio was located.

23 Q Okay. And this State's 10, you're looking kind of
24 like you're looking from the front door?

25 A Correct. This would almost be standing in the front

1 door looking straight into the building.

2 Q Okay. All right. State's 11.

3 A This is, the front door is right over here. This is
4 kind of, I guess, what you would call the cash register
5 desk or this is the drawer to the cash register. And the
6 cash register is here and, obviously, Mr. Facio, he was
7 laying there.

8 Q Okay. On the desk there, it looks like a cash
9 register. Was it in that position when you came in?

10 A Correct. It was exactly that way when we found it.

11 Q Okay. Was there any significance of that, for your
12 investigation, the way it was found open?

13 A Typically, people don't leave cash registers sitting
14 on the, I guess you call it desktop, countertop. There
15 was, you notice, you can see the cash, I don't know
16 exactly the terminology, it's the little arms that hold
17 the cash in the, into those. You can see they are lifted
18 up in certain spots. It would indicate that somebody
19 pulled that out and took the cash out of it. There was
20 change. However, there's some change. You can barely see
21 it right in here along the side where they apparently just
22 took the bills and left the change sitting in the drawer.
23 Now, being the business was open, you don't normally see
24 that happening. I mean, it's very rare to see an owner or
25 a cashier or employee to actually pull the drawer out and

1 take it unless it's some kind of shift change.

2 Q State's 12, I think, depicts a closer-up shot of the
3 cash register.

4 A Correct.

5 Q It's the same, just a different angle of what you
6 just described?

7 A Correct. And there you can see the change that's
8 still left. You can see the arms for these three had been
9 lifted. This one is in the down position. The
10 significance of that, I'm not sure, but you don't normally
11 see this anywhere in town. And I've been working here
12 twenty years. The only time I've ever seen cash drawers
13 come out is at the shift change. It just doesn't happen
14 during the middle of the day.

15 Q Would that be indicative to you that the store may
16 have been robbed?

17 A Exactly.

18 Q State's 13.

19 A This would be Leslie's Hair Salon from the walking
20 in, the left wall. If you turn your back to the left wall
21 and face the main room where Mr. Facio was located, you
22 can see the chairs up through here on both sides. This
23 is, I guess, you'd call it the side room to the building
24 and that's where he kept his security cameras, kind of
25 like a break room. They had a little table and

1 refrigerator set up in there and that's where our victim
2 was ultimately located.

3 Q Okay. And there were cell phones on the chair?

4 A Correct. And I didn't know whose they were, but I'd
5 later found out that they were Mr. Facio's.

6 Q All right. Before we move onto the next picture,
7 when you say you cleared the building. And that's for
8 safety purposes, correct, to make sure no one's there?

9 A You're looking for suspects and/or additional
10 victims. I mean, we have to make the scene safe before
11 our investigative staff or anybody else can get in there.

12 Q Okay.

13 A I mean, the last thing we want is for somebody to
14 walk in and our perpetrator be hiding in the back room
15 because he run to hide when you showed up, and then have
16 additional victims.

17 Q So after you cleared the scene you secure the scene,
18 correct?

19 A Correct.

20 Q And to secure it means to not let anybody else in?

21 A Exactly. We control the scene and once we learned
22 what we had, we actually, we had Ms. Martinez exit the
23 building. We cleared it, and then we sealed it off and no
24 one was allowed in, obviously, except law enforcement.

25 Q Okay. And you try not to disturb the evidence at the

1 scene?

2 A Exactly. We don't touch anything. Like I said, the
3 only thing that was touched by us was Mr. Facio, himself.
4 I tried to figure out what had happened. Did he fall and
5 he hit his head or was there actual foul play. And that's
6 how I determined that he, there was actually foul play is
7 I had to manipulate his head and that's when I located the
8 bullet.

9 Q Okay. A gunshot wound, well, we'll get to that in a
10 moment. But at that point, you were confident, because
11 the EMS had indicated there was no, he was unresponsive
12 and he wasn't breathing, correct?

13 A Correct.

14 Q You found that a, what appeared to be a gunshot, a
15 single gunshot wound to the head, correct?

16 A Correct.

17 Q And you informed the Chief and the other, your other
18 supervisors that you believed we had a deceased person?

19 A A robbery and, yes sir.

20 Q All right. And we're going to go to State's 14.
21 Eventually, you found Mr. Facio. I believe you described
22 a moment ago EMS had to turn, this is the position that
23 you first saw him, correct?

24 A This is the exact position I saw him.

25 Q Okay.

1 A EMS had arrived before me. Once again, we thought he
2 was just an individual maybe had fallen and hurt himself.
3 And we had later determined that he wasn't, per their
4 policy, just to make sure there is no possibility that he
5 could be transported and saved, they hook up a heart
6 monitor. And you can see the little tabs right here, one
7 on each side, just to check and see if there's a pulse.
8 If there's a pulse, obviously, they run them straight to
9 the hospital.

10 Q Okay. And so this is the position that EMS left him
11 in after they determined that he was not alive?

12 A Exactly. He was in this position. They just rolled
13 him a little bit to make their check because they can't do
14 it if the subject is on his belly. They have to roll them
15 over.

16 Q All right. Now, this is not in the room. We just
17 saw a series of pictures where there were salon chairs and
18 the chairs where the phones were aligned. This is a
19 different room in the back, correct?

20 A Correct. This is the side room. If you're standing
21 at the front door, you have the main, the main room, I
22 guess where they do the hair cutting. This is the side
23 room I indicated on the right. This is the back wall.
24 This shot would have been taken from the entry to that
25 room standing in the door looking.

1 Q Okay. State's 15. This is, Lieutenant Kennedy, just
2 a closer shot and the other side of Mr. Facio?

3 A Correct. This is an up-close shot of Mr. Facio the
4 way I found him. What led me to believe it was obvious it
5 was foul play, once again, I manipulated Mr. Facio's head
6 in order to locate the source of the blood is when I found
7 the gunshot wound, the entry point. You can also see the
8 blood spatter on the wall. It's on, if I am not mistaken,
9 that was some sort of blind laying there, I could be
10 wrong. And just the spatter right there on the wall which
11 is kind of suspicious in and of itself. If you fell and
12 hit your head on the wall, there should be some sort of
13 mark, not spatter. So he originally was kind of rolled
14 this way. He was more in a downward-facing position right
15 here with his knees facing that wall.

16 Q And State's 16 is just a different angle of that, is
17 that correct?

18 A Correct. That's, basically, just standing above Mr.
19 Facio taking a downward shot.

20 MR. STUMBO: Walter, if we could go to State's 26?

21 Q Okay. Now, just to orient ourselves, is this picture
22 taken from the room where Mr. Facio's body was found?

23 A Correct. This is the main lobby right here when you
24 come through the main doors. This is that side room I'm
25 speaking about. This would actually, the wall should be

1 right over here. This would be the photographs indicating
2 where Mr. Facio was facing out into the main, I guess,
3 work area of the salon where they cut the hair.

4 Q And you can see the barber chair over there in the
5 other room?

6 A Correct.

7 Q All right. State's 27. Now, this is the same room,
8 is that correct?

9 A It is.

10 Q And looking back towards these, it looks like two
11 TV's or flat screen TV's on the wall?

12 A Yes, sir. This is the same shot, if you're looking
13 down the hall, if you just turn sideways and take a long
14 view, this is the same side room if you come in to the
15 left that Mr. Facio was. This is the back wall. To
16 relate yourself to where he was laying, he's standing
17 right above him looking the other direction.

18 Q Okay. Was there any significance to those flat
19 screen TV's and the cords?

20 A Yes, there was. When we noticed, apparently, there
21 was electrical equipment missing. There was cords hanging
22 down where there had been a DVD/DVR or something that had
23 been hooked up to these monitors. And you can see the
24 monitor, they are all twisted out and the wires are
25 hanging down. So I mean, also right here, I can't

1 remember exactly that something had been knocked off the
2 shelf right here, possibly the sugar I believe it was, and
3 laying on the ground. It appeared that somebody had
4 yanked some electrical equipment out of there and took it
5 with them.

6 MR. STUMBO: We'll go to State's 28, Walter.

7 Q Now, just to, this in evidence as State's 28. If I
8 could refer you, this is, it's like an overhead satellite
9 shot of Main Street?

10 A Yes, sir.

11 Q Okay. And just to orient to the jury. This is going
12 back towards. It says Wilson Road which is that
13 intersection where the Shell station is, correct, up here?

14 A Yes, sir. That's a Shell station right here.

15 Q Right. Just past the Shell on the right would be
16 Wal-Mart going out --

17 A Correct.

18 Q -- towards the Interstate? Coming back, Leslie's
19 Hair Salon is here, is that correct?

20 A Yes, sir. That's Leslie's Hair Salon, Kunkle Oil.

21 You got Pike Drive that comes back through here. This is
22 where it says back, is actually a dirt trail where it cuts
23 back to Heritage Square.

24 Q Heritage Square would be an apartment complex?

25 A Correct. Heritage Square is the small apartment

1 complex right here. You got Tremont Apartments on
2 Copeland Street right here.

3 Q And, of course, if you would go back this direction
4 towards the left of the screen on Main Street and coming
5 back to where we are now here.

6 A Correct. Yes, you have the, most everybody is
7 familiar with the carwash on Main Street. That's going to
8 be right here. You have got Newberry Glass right here.
9 The power lines that come, Sherwood Trailer Park.
10 Princessa, a little grocery store right here. It'd be
11 right beside it.

12 Q Okay. Now, there's a street that cuts off across the
13 street back this way and what's the name of that road?

14 A That's Turner Street.

15 Q Okay. And just mark Turner Street. This area we're
16 looking at is in the City of Newberry, correct?

17 A It is. It's well within my jurisdiction. It's in
18 Newberry.

19 Q In the County of Newberry as well.

20 A The County of Newberry.

21 Q And at this time, you called your supervisors and
22 there were a contingent of City officers working, correct?

23 A Yes, sir. Once I made the call to Captain Goodman,
24 the ball started rolling real fast. He notified, I
25 believe, the Chief, the Chief notified SLED. The County

1 started showing up. I mean, it all happened really fast
2 at that point.

3 Q Okay. So the Sheriff's Department, the County guys
4 were assisting?

5 A And once it was determined that it was foul play,
6 yeah, everybody comes together. And we ended up having to
7 shut down Main Street due to the amount of police cars and
8 emergency vehicles that were on-scene.

9 Q You can return to the stand.

10 A Thank you.

11 Q How long did it take SLED to arrive at the scene?
12 And you don't have to give me an exact time.

13 A Maybe forty-five minutes. I'm not a hundred percent
14 sure. I mean, it wasn't very long.

15 Q And they were primarily there to assist in working
16 the crime scene?

17 A That's correct.

18 Q All right. And y'all had crime scene investigators
19 and evidence technicians within your department, as well,
20 correct?

21 A That is correct.

22 Q Okay. Who from the City, at that point, I think the
23 term is crime scene investigator?

24 A Initially, it was turned over to Captain Goodman and
25 other investigators arrived as well.

1 Q Okay. And then SLED arrived about forty-five minutes
2 later, and they started processing the scene?

3 A And, roughly, yes, around forty-five without looking,
4 I'm guessing it's forty-five minutes to an hour.

5 Q Okay. At that time, there were just law enforcement
6 in and out of the scene?

7 A That's correct. We established a, I had taped off
8 Leslie's Hair Salon to keep everybody out. I appointed
9 Patrolman Mendenhall as a, I guess, you'd call a crime
10 scene log technician that, basically, stand there and
11 anybody that walks in, you write their name down and the
12 time they come in. When they exit, you write the time
13 they leave to keep track who goes in and out of our crime
14 scenes. And that position changes throughout the course
15 of the investigation to get, a break to be able to go get
16 something to drink and things like that. It was followed
17 up, I believe, Officer Ballenger was the second one.

18 Q Okay. The other investigators involved, I mean, were
19 y'all able to brief each other during this afternoon as to
20 what evidence was coming in at that point?

21 A Yes, sir. I mean, we try to keep everybody in the
22 loop. No one is out.

23 Q And were there surveillance videos that were found or
24 viewed very quickly thereafter by you?

25 A That is correct. I learned through the investigators

1 that almost immediately upon getting there, they pretty
2 much went across the street to Kunkle Oil. Through past
3 experiences of incidents in that area, we know that Kunkle
4 Oil has video surveillance along with Koon's Liquor Store
5 and Brothers Fast Stop. I believe Princessa has some.

6 Q Okay. So Kunkle Oil was the first place y'all went
7 to look for surveillance?

8 A Not me. The investigators, that's the first place I
9 observed them going to was directly across the street.

10 Q Okay. And through investigation, through that
11 afternoon, there was a search warrant conducted I think
12 you were part of, correct?

13 A There were two search warrants conducted.

14 Q Okay. So you were working throughout the afternoon
15 on other items that had come up, correct?

16 A Correct.

17 Q The next morning when you got back on your shift,
18 what did you do on the next day on August 27th?

19 A Well, it was daylight savings, so it was light enough
20 to see, I went back to the incident location. The SLED
21 bloodhounds had been there the day before and attempting
22 to track the suspect. From the video surveillance, I was
23 told he went down Pike Street. That's the information I
24 was given. I know they kind of searched to the right
25 some, so I decided to come into the left. And Pike and

1 the carwash and Princesa. Back through there I worked all
2 the way to the power lines to the Sherwood Trailer Park.
3 Cut back around to Heritage Square and just looking
4 through the brush.

5 Q Okay. And here, what area you're describing with
6 State's 28, this area of trees and brush, power lines here
7 all the way back here to Heritage Square.

8 A Correct. On that date or the very next morning, as
9 soon as it was light out to see, I came in and I just kind
10 of, basically zigzagged in a grid pattern all the way
11 through here and enlisted the help of Sergeant Alvarado.
12 He came in and helped me out for a while. I had to leave
13 for a few minutes. I went back to the Police Department.
14 Chief McClurkin advised me that the Sheriff's Department
15 was going back over there. I advised him I'd just left
16 and I would go back and assist them.

17 Q Okay. So you and some investigators from the
18 Sheriff's Office, after you had been scouring the area of
19 the brush went back and what area did y'all look at, you
20 and the Sheriff's Department?

21 A Yes, sir. Well, I had advised them that I had been
22 all over on this side. So we went back up here or, I
23 guess, it's actually the dirt trail. You can actually see
24 the trail coming through right here. It goes into the
25 back court of Heritage Square apartment complex. So we

1 came up to here and started searching both sides of this.
2 I, personally, came up into this wooded area right here
3 and when I was notified, I can't be specific which deputy
4 called me on the radio, but one of them said they had
5 located an item of interest laying just off to the side of
6 the trail by the end of a metal fence. So I proceeded
7 back over to it and located, I guess, the faceplate to the
8 security system DVD.

9 Q And that was the faceplate of kind of a DVR?

10 A Yeah. I mean, I'm not an electronics expert, but
11 it's electronic, I guess, DVD security system, something
12 along those lines. It obviously didn't belong laying on
13 the side of a trail like that.

14 MR. STUMBO: And what's been marked for ID., Your
15 Honor, is State's 33 at this point. If I can approach the
16 witness?

17 THE COURT: Sure.

18 Q And what's in the envelope is State's Exhibit 33. I
19 believe your name, Kennedy, is on this envelope.

20 A Yes, sir.

21 Q This faceplate?

22 A That's it. That's what we found on the side of the
23 trail by the end of that fence by a fence post.

24 Q Okay.

25 A And it was actually rolled over and the back side was

1 leaned up. The front was on, it was facing on the ground.

2 Q Okay. And y'all collected this piece of evidence at
3 that time?

4 A Yes, sir. We photographed it and collected it for
5 evidence since it was obviously, it didn't belong there
6 where it was. And it looked like it had been freshly laid
7 there. Now like sometimes you find items on the side,
8 covered leaves and things like, this was laying right on
9 top.

10 MR. VERNER: Your Honor, just, respectfully, the
11 officer needs to testify from the stand unless he's got a
12 reason that he's demonstrating to the jury.

13 MR. STUMBO: Your Honor, I'm about to show some more
14 pictures, so I'd hate for him to have to--

15 MR. VERNER: Okay.

16 THE COURT: Okay. That's fine. Just so long as he
17 speaks up if he's away from the stand.

18 Q If we could look at State's 17.

19 A Yes, sir. This is that faceplate you just pulled out
20 of the bag. That's it, and that's the end of that fence,
21 kind of catty corner. I mean, it's only a few feet off of
22 the trail, that little trail that cuts through. And it's
23 like somebody just tossed it up alongside of it.

24 MR. STUMBO: Okay. And State's 18, Walter, if we
25 could pull that up.

1 Q Is this the dirt path that you were referring to
2 earlier?

3 A Yes, sir. That's the dirt trail that cuts from Pike
4 Circle to the back of Heritage Square.

5 Q And we're looking at the back of one of the apartment
6 buildings that are Heritage Square?

7 A If you come in, correct. If you come into Heritage
8 Square, the first entrance closest to the Little Cricket,
9 McIntosh, and the oil company is right over here. This
10 building right here, if you drive in that first drive,
11 it's the building on the left all the way at the end.
12 This is actually the back corner of that.

13 Q Okay. This area was significant because y'all had
14 seen some surveillance video the day before of someone
15 coming out of Leslie's Hair Salon around the time?

16 A Correct. That's what we were informed. That's the
17 information I passed on to the SLED bloodhounds and that's
18 the direction they went.

19 Q Okay. You saw an individual run back behind Leslie's
20 Hair Salon towards Heritage Square?

21 A That is the information I relayed to the SLED
22 bloodhounds.

23 Q Now, the suspect in the Kunkle Oil video which was
24 viewed, there's something in the hands of a person coming
25 out of the door. What was that?

1 A A white bag.

2 Q Okay. A white bag in the hands of someone coming out
3 the door. So was that something at that point y'all were
4 looking for?

5 A Yes, sir. We, obviously, whoever went in and came
6 out, they went in with something, or with nothing and came
7 out with something. So they took something from the
8 scene. We were looking for anything that might have been
9 dropped when somebody was running, somebody might have
10 discarded because they didn't want it. Typically, on
11 crime scenes when individuals are trying to get a quick
12 getaway, they will drop something. So it's standard
13 procedure to try and go and walk the area that they left
14 to try to find something.

15 Q Okay. And did you have occasion to get back to
16 Heritage Square and investigate the location?

17 A Yes, sir. We went all the way through there. We
18 noticed surveillance cameras up on the side of the
19 building aiming right at where that trail comes out. I
20 can't, I believe it was Deputy Womack that went to the
21 apartment manager to speak to him and see the footage. He
22 came back and indicated that whoever came out of there
23 with a white bag went to the dumpster. So we immediately
24 stopped and if I'm not mistaken, the trash company was on
25 the way to get the dumpster. So we let them know you

1 can't touch it and made sure nobody else went to the
2 dumpster and made sure nobody else threw anything into the
3 dumpster. And a warrant was obtained to search the
4 dumpster.

5 Q Okay. And after the warrant was obtained, did you
6 take part in executing that warrant and searching the
7 dumpster?

8 A Yes, sir. I got in the dumpster along with, I
9 believe, it was Captain Dennis, if I'm mistaken. And I
10 located a white small trash bag in the corner that had a
11 few things on top of it. I opened it up and it was items
12 from Leslie's Hair Salon inside.

13 Q Okay. I'm going to refer you to State's 19. This is
14 the dumpster that you and Captain Dennis were inside of?

15 A That's the one we were in.

16 Q So Captain Dennis is the one in the coveralls there
17 and he's --

18 A He's got the nice coveralls.

19 Q Okay. You're in the uniform with the shiny shoes.

20 A Shiny shoes.

21 Q The bag that Captain Dennis is holding up, that's the
22 bag that y'all found with the items of interest?

23 A Correct. That is the bag that we located and kind of
24 opened it up and saw what it was. Immediately called for,
25 I can't remember who took the photograph. They came over

1 and started snapping pictures of it as we removed it from
2 the dumpster.

3 Q Okay. State's 24, and this is y'all opening the bag
4 up, correct?

5 A Correct. And we found a black shirt and, like I
6 said, an iPod, a telephone, and I believe there was
7 something else.

8 Q And State's 21.

9 A Yes, sir.

10 Q The is the electronic equipment and black shirt and
11 some other items, correct?

12 A That is correct.

13 Q State's 22?

14 A That was inside the plastic bag that we found. We
15 determined that to be, this is part of the faceplate that
16 was just shown. This is a part of that same unit. It
17 appeared that somebody had been attempting to destroy it.
18 I mean, it was all bent out of shape, banged on. They
19 left it in a white bag and threw it in the dumpster.

20 Q So the casing is all bent up on the inside of that?

21 A Oh, yes. It looked like somebody had pried these
22 pieces out of here in a recent attempt to destroy it or
23 I'm assuming that since it was part of the surveillance,
24 they were on it.

25 Q State's 23... You said an iPad was also in that bag,

1 an iPad?

2 A Correct. That is, the iPad we located in the bag,
3 the one that was indicated, I believe, by Ms. Martinez as
4 missing from Leslie's Hair Salon. And the cordless phone
5 was also missing from Leslie's Hair Salon was in there as
6 well.

7 Q Okay. State's 24, and this is just hitting the
8 button and it's coming on?

9 A Touching the button. It shows up as, this was on the
10 screen. And, obviously, at that point, we knew this was
11 all the items that were, had been taken from Leslie's Hair
12 Salon during the robbery.

13 Q Okay. That's the same bag. This is in the bag with
14 the hard drive and that black shirt?

15 A One bag; everything was in one bag.

16 Q And State's 25, and this is just a kind of location
17 picture of the dumpster you were just in?

18 A This is the dumpster that we located the items and
19 you can, obviously, see a little security camera right up
20 here on that part of the building. And that is the camera
21 that indicated that he, it's pointing right here at the
22 trail. I believe if you're, this is a shot that's taken
23 from where the trail comes out. If you're looking to
24 your, walked out to your left, it faces that apartment
25 building. That's that shot here with that camera aimed

1 right at the dumpster and where that trail walked out,
2 into Heritage Apartment Complex.

3 Q Okay. And all of these items that we were just
4 looking at, the evidence guys, that's their
5 responsibility?

6 A That's their job. Yes, sir.

7 Q They take that from the scene and take it for
8 processing?

9 A That's correct.

10 Q Okay. All right. You can return to the stand. And,
11 Lieutenant Kennedy, did you take part in the apprehension
12 of the suspect in this case, Mr. Kenny Ruff?

13 A Mr. Ruff; no, sir. I did not take part in that
14 apprehension. I was on the scene at a, conducting a
15 search warrant at his residence on Turner Street when the
16 call came out that he had been spotted and subsequently
17 stopped in the County. The first time I had seen Mr. Ruff
18 was at the Police Department.

19 Q And after he had been brought in to be interviewed by
20 Lieutenant Goodman?

21 A By the time I got there, he was already done with Mr.
22 Goodman and the Chief. He was on his way out to the car.
23 I exited my vehicle as he was getting into the Patrolman's
24 vehicle. And he started saying that he wanted to talk to
25 Goodman again. He says, I want to talk to him. I want to

1 talk him.. I talked to the Captain advising him that he's
2 now saying he wants, he wishes to speak with you. And
3 that's how I got in the part of that.

4 Q Okay.

5 A I brought him back in.

6 Q You brought him back in.

7 A Yes.

8 Q Now, at this point and your responsibility at the
9 Police Department is you are not one of the investigators?
10 You help them, but at that point, you're responding to
11 calls --

12 A That's correct.

13 Q And your guys are on shift? You're very busy with
14 other--

15 A -- at that time, we were already two hours over. We
16 were supposed to get off at 6:00 p.m. This was roughly
17 8:00 something and, obviously, on a call like this, nobody
18 goes home. They stay until the job is done.

19 Q Okay. So it's a very full two days for you then.

20 A Extremely full two days; yes, sir.

21 MR. STUMBO: I beg the Court's indulgence.

22 THE COURT: Sure. Take your time.

23 MR. STUBMO: Thank you, Lieutenant Kennedy. No
24 further questions at this time. If you'd answer any
25 questions Mr. Verner may have for you.

1 MR. KENNEDY: Yes, sir.

2 THE COURT: Mr. Verner, any cross-examination?

3 MR. VERNER: May it please the Court, Your Honor?

4 THE COURT: Sure. You may proceed.

5 CROSS-EXAMINATION

6 By Mr. Verner:

7 Q Officer Kennedy, the timestamps that the City police
8 uses in your report --

9 A Yes, sir.

10 Q -- how do you get those times?

11 A Obtained through dispatch.

12 Q Okay. And do you know how dispatch keeps the time
13 log?

14 A As the calls come in, as we sign out, as we move
15 around, they have a computer. They timestamp it when they
16 come in. Now, is it absolutely perfect? No. They might
17 be busy handling a call. It might be a minute or so off.
18 But it's close enough. It's within the ballpark.

19 Q But a lot of the timestamps come from dispatch which
20 are computer-generated?

21 A Well, it's entered by the dispatcher.

22 Q Okay.

23 A But yes, it's computer-generated.

24 Q Okay. And so you got a fairly high degree of
25 certainty when it comes to timestamps that the City police

1 uses when you've got to certain locations and got calls,
2 maybe not to the second, but reasonably good?

3 A They are, yes sir. They are pretty close.

4 Q Okay.

5 A Within a few minutes.

6 Q Okay. Now, just the, when we are talking about the
7 open cash drawer?

8 A Yes, sir.

9 Q Your reasonable belief is that some, it would be
10 unusual for it to be out there on the counter, right?

11 A Through my professional experience in twenty years of
12 law enforcement, it is highly unusual that the cash drawer
13 is out. Also, family members indicated that's not how it
14 would be.

15 Q That wouldn't be a habit or routine practice?

16 A Right. Exactly.

17 Q Okay. And it would be inconsistent with your
18 professional experience to leave it open?

19 A I did, like I said, I asked the question would this
20 normally be out here and I can't exactly say which one
21 informed me. But they said, no, it would never have been
22 sitting on the counter like that.

23 Q Okay.

24 A And through my experience in law enforcement, it is a
25 red flag.

1 Q Now the -- how does the City police take
2 fingerprints? Is there a, do they use a particular method
3 or are there several different types?

4 A Well, once again, that's not my specialty. I haven't
5 been here long enough to do fingerprinting. There is
6 different ways to take different types of prints. It all
7 depends on the situation.

8 Q Okay. So are you aware of whether fingerprints were
9 used or taken from the cash drawer?

10 A No, sir; I am not.

11 Q But you're not, and you're not saying they weren't,
12 you just, you didn't see anybody take fingerprints?

13 A Well, yes, sir. I don't know what happened with that
14 cash drawer.

15 Q Okay.

16 A I mean, if it was printed, if it wasn't printed; I
17 don't know.

18 Q Okay. But just, now, I'm a little bit confused, so
19 I'm just trying to, do you know if fingerprints were taken
20 or tried to take from the register?

21 A No, sir; I don't know if they did any prints of the
22 cash register.

23 Q Okay. What about other locations in the store, do
24 you know if fingerprints such as where the wires were in
25 the backroom or the other locations where fingerprints

1 could have been taken?

2 A I can only assume that it was, but that's an
3 assumption.

4 Q Okay.

5 A Once again, I'm a road lieutenant. My job is
6 security--

7 Q -- but you didn't see anybody while you were there
8 taking fingerprints?

9 A Once we exited the building, sir, and blocked it off,
10 none of my people went back in because only investigators
11 went back into that building.

12 Q Do you remember when you left Lindsay's, or Leslie's
13 Salon that day?

14 A I left I think a couple of times, obviously, I got to
15 use the restroom. I was pretty much there on-scene the
16 whole time with the --

17 Q Okay.

18 A -- exception of once I received information that Mr.
19 Ruff was a possible suspect and to secure his residence on
20 Turner Street, I left then to assist officers with
21 securing that residence.

22 Q Okay. And how far, did you have to drive to Turner
23 Street or was that a walking distance?

24 A I did drive.

25 Q Okay.

1 A It's 150 yards.

2 Q Okay. So you could have as easily walked over to his
3 house as driven?

4 A Yes, sir.

5 Q I guess you drove, I guess, one to have a squad car
6 there in case you needed to put somebody in it. And two,
7 where your equipment would go with you and radio.

8 A Correct.

9 Q Okay. But it, just, I guess, the point is he lives a
10 very short distance.

11 A That's correct. 150 yards--

12 Q Okay.

13 A -- is my guess.

14 Q And, in fact, Turner Street dead-ends or opens up not
15 directly across from the little buildings that are
16 side-by-side but almost directly across the street?

17 A It ends up almost directly across from La Princesa.

18 Q Okay.

19 A Which is two doors down from Leslie's Hair Salon.

20 Q And remind us again that time you believe, I believe
21 you testified law enforcement arrived on the scene of
22 Leslie's at 1:57, according to your logs?

23 A No, sir. According to the report, dispatch time is
24 13:57 or 1:57 p.m.

25 Q Okay.

1 A The first arriving officers was logged in by dispatch
2 at 14:02 or 2:02 p.m.

3 Q Okay. So police were called at 1:57 by the
4 Dispatcher?

5 A That is the time they indicated that they --

6 Q Okay.

7 A -- dispatched.

8 Q The first unit arrives at 2:02?

9 A Correct.

10 Q And it's possible an EMS unit arrived at about the
11 same time or before?

12 A Give me one second.

13 Q Okay.

14 A I didn't get my glasses. It was about the same time.

15 Q Okay. And, in fact, there's a video that the jury is
16 going to see showing up?

17 A Yes.

18 Q Okay.

19 A It's got to be right around that exact same time.

20 Q I guess, the point of my question was, so the police
21 get there at 2:02. And how long are the police
22 continuously, whether they're coming kind of in and out,
23 how long is that place continuously occupied by the
24 police, and then investigators and the SLED units?

25 A The rest of that day.

1 Q Okay.

2 A I couldn't tell you the exact time they left, but
3 it's pretty much the rest of that day, yes sir.

4 Q All right. And, in fact, one of the City officers,
5 his sole job is to mark people who go in and out of the
6 building?

7 A Correct.

8 Q And they might switch off depending on his shift, but
9 there's somebody constantly keeping a tally of who goes
10 in?

11 A Correct.

12 Q Okay.

13 A They're supposed to, yes sir.

14 Q And the only question is who's gone in and out of the
15 building before the police arrived and the crime
16 happening?

17 A I would assume; yes, sir.

18 Q Okay.

19 A That'd be correct.

20 Q Is it fair to say from the crime scene, you would
21 have left about 3:38, and I understand that you saying
22 that you kind of went in and out.

23 A No, sir. This is entry and exit into the building.

24 Q Okay. So that is just that building. You could have
25 stayed on the scene longer?

1 A Correct.

2 Q Right.

3 A Not the crime scene. This is actually walking
4 through the front door of Leslie's Hair Salon.

5 Q Okay. So you last walked in that building about
6 3:38, give or take, in the afternoon?

7 A That is possible; yes, sir.

8 Q And, in fact, we know that the police are, the City
9 police are constantly there because the Chief leaves about
10 6:35 in the evening, and I know he's not there the full
11 time.

12 A Once again, this is entry and exit into the building.

13 Q Just into the building itself?

14 A That doesn't mean he's not on-scene.

15 Q Okay.

16 A As far as I know, I don't believe the Chief left.

17 Q The scene, in general.

18 A The scene, in general.

19 Q Okay.

20 A The scene, if you look at this. What we had blocked
21 out was from Turner to Copeland.

22 Q All right.

23 A Okay. We had that entire section of Main Street
24 blocked off.

25 Q Okay.

1 A There was police cars, SLED. I mean, there was
2 everybody.

3 Q So what you're saying is even after officers left the
4 building, they were still either controlling traffic or
5 walking around the building on the outside.

6 A Yes.

7 Q And there were a lot of officers at different parts
8 of the day in that location?

9 A Yes, sir.

10 Q And, in fact, SLED was there going in and out of the
11 building until late in the evening that same day?

12 A I believe we kept track.

13 Q Yeah, here's the third. I guess, but I don't really,
14 my question is not so much about the exact time.

15 A Yes, sir.

16 Q It's just that there was a constant police presence
17 in that general area --

18 A Absolutely.

19 Q -- and pretty much until the evening?

20 A Yes, sir. Absolutely.

21 Q Okay. And the building itself, I'm sure, it's got
22 the yellow tape around it?

23 A Yes, sir. We established a no-cross barrier.

24 Q And does that generate a fair amount of interest in
25 the people going by either rubbernecking and I understand

1 the road was blocked, but that place generates a lot of
2 pedestrians in the area?

3 A That place is, does have pedestrian traffic that
4 moves through it; yes, sir.

5 Q And you're familiar with Roberts Gas Station or Fast
6 Stop?

7 A You mean Brothers?

8 Q Brothers Fast Stop?

9 A Yes, sir.

10 Q Okay. Is it fair to say that store generates a
11 pretty regular presence of customers walking through?

12 A Yes, sir. I would say it has consistent traffic.

13 Q Okay. And, in fact, there's an apartment complex
14 just almost across the street?

15 A And just behind it; yes, sir.

16 Q Just behind it.

17 A The Treeline, Tremont Apartments. If you're looking
18 on Main Street, Brothers is on the corner right there
19 pretty much just behind you on Copeland Street.

20 Q Okay. And, in fact, the people would come from the
21 Wise Street area into the Brothers Fast Stop?

22 A Those who want, yes sir.

23 Q Okay.

24 A To go to Brothers Fast Stop.

25 Q And, in fact, people would be coming from the other

1 side, too, from the Heritage?

2 A Those apartments?

3 Q The apartments.

4 A Well, they do go there; yes, sir. And they also went
5 to Little Crickets which is, actually, a little bit closer
6 for them, I think.

7 Q Okay. But, just in general, there is a lot of
8 traffic walking in and out of Brothers Fast Stop on a
9 pretty regular basis?

10 A Relative, I guess, to who lives there.

11 Q Okay. Would it strike you as unusual, if someone
12 lived on Turner Street, would it strike you unusual that
13 they would buy goods at Brothers Fast Stop?

14 A No, sir.

15 Q And you know where Mr. Kenny Ruff's house is, don't
16 you?

17 A Yes, sir; I do.

18 Q Okay. Is it fair to say that's a fairly short walk
19 from Brothers?

20 A It's a very short walk; yes, sir.

21 Q Okay. Now, when you're in Leslie's Salon, there's
22 really no door to the back room. There is just a curtain
23 that draws closed or is there a door too?

24 A I believe it's a curtain, sir. I don't recall. I'd
25 have to look at the photograph.

1 Q Okay.

2 A I'm sure it's documented in that.

3 Q Have you seen the video of the suspect entering

4 Leslie's?

5 A I have, yes.

6 Q Okay. When he leaves Leslie's Salon, he walks

7 towards Heritage Apartments?

8 A That video is from Kunkle.

9 Q Oh, from Kunkle. But the video of it showing the

10 suspect leaving the salon, he leaves and exits in a way

11 going towards Heritage?

12 A I don't, it's been a long time since I seen that

13 video, sir.

14 Q But if you leave, Heritage would be behind the salon,

15 right?

16 A That is correct.

17 Q Okay. And that's where you found the white trash

18 bag?

19 A Well, we found the white trash bag in Heritage.

20 Q Right. Which is behind --

21 A Correct.

22 Q -- through the woods and behind --

23 A Correct.

24 Q -- the salon? And that would be in the opposite way

25 that Kenny Ruff would live?

1 A Correct.

2 Q And just to clear up. My understanding is when you
3 were testifying for the jury that you were told by other
4 officers or investigators that Kenny Ruff had been
5 identified as a suspect?

6 A Yes, sir.

7 Q Okay. That wasn't you making that identification,
8 that was, do you recall who told you that or just through
9 all the chatter?

10 A Through all the chatter, we had developed a suspect.
11 I should say they had developed a suspect. Once again,
12 that is not my forte.

13 Q Right.

14 A That's not what I do.

15 Q And that's an identification that somebody else must
16 have made and just conveyed to you?

17 A It was conveyed to me. That's how I knew to go set
18 up a perimeter on his residence on Turner Street.

19 Q Now, Lieutenant, you did not take, when Kenny was
20 arrested by the City police, you did not take part in his
21 arrest?

22 A No, sir. I was present in a search warrant of his
23 residence on Turner Street when he was arrested.

24 Q And do you, was there, I would assume there would be
25 chatter on the radio?

1 A Oh, yes; there was chatter.

2 Q And the unit that you wear on your shoulder, are you
3 able to hear the, what other officers are talking about on
4 the radio?

5 A Yes, sir.

6 Q Okay. Do you recall what time of day Kenny Ruff was
7 arrested? If you don't, that's fine.

8 A It was approaching dark. It was late, I guess, you
9 could call it late afternoon, early evening.

10 Q Okay.

11 A I know it was still daylight, because we were at
12 Turner Street waiting for the search warrant to come.

13 Q And this would be in August?

14 A This is August; yes, sir.

15 Q Okay.

16 A Late August.

17 Q You personally searched the dumpster?

18 A Yes, sir. I was inside.

19 Q But were there any, latex gloves or any kind of
20 rubber gloves or anything of that sort found in the
21 dumpster?

22 A I don't recall seeing any, sir.

23 Q If there had been gloves laying about in that
24 dumpster, such as latex gloves, would you have at least
25 examined them or taken them as possible?

1 A Had I seen latex gloves in the dumpster, yes, sir,
2 that would have been of interest to us, and we would have
3 seized those.

4 Q Okay. But you didn't have anything like that in
5 there?

6 A I did not see any gloves, sir.

7 Q What about any other kind of articles of clothing?

8 A It's a dumpster to an apartment complex.

9 Q Yes, sir.

10 A There is a hundred people that are throwing stuff
11 away. We pulled everything out of that dumpster. When we
12 were done, we were on metal bottom.

13 Q Other than the black shirt, did you find any other
14 articles of clothing that you felt were relevant to this
15 investigation?

16 A No, sir. Being that, what was observed on the
17 security footage from Kunkle Oil was an individual leaving
18 with a white bag. We were interested in that one white
19 bag.

20 Q Okay.

21 A We located the bag and, obviously, it had items from
22 Leslie's Hair Salon in it. So we knew we had found our
23 one bag that we were looking for and just in case anything
24 had fallen out, we continued to search to see if there was
25 anything else of relevance inside that dumpster.

1 Q Okay. What the State has marked but not entered is
2 33, and this is the faceplate that you're saying somebody
3 else found but that you retrieved or put into evidence?

4 A That is correct, sir. Yes, sir.

5 Q Okay. Did you test it for fingerprints or screen it?

6 A Once again, that's beyond my scope.

7 Q Okay. Do you know if it was tested by another
8 officer or investigator?

9 A No.

10 Q What about the piece that you were talking about with
11 Solicitor Stumbo that you were testifying that it appeared
12 somebody was trying to bend or pull it apart? You recall
13 what I'm talking about, the piece you found in the bag and
14 you testified that it looked like somebody was trying to
15 beat it up or pull it apart, break it?

16 A Yes, sir.

17 Q Okay. Do you know if that was tested for DNA or
18 fingerprints?

19 A I know it was tested for fingerprints.

20 Q Okay. So you did observe that one being tested for
21 fingerprints?

22 A I recall that one being, sir.

23 Q Okay.

24 A Because, I believe, I was taking the photographs
25 while it was happening for the Sheriff's Department. This

1 information, when we located these items, Chief McClurkin
2 requested that it go to the Sheriff's Office and their
3 facility to, I guess be processed.

4 Q And it's not uncommon for the City and the Sheriff's
5 Department to work together in these type cases?

6 A No, sir.

7 Q Do you know if the iPad was tested for fingerprints
8 or DNA?

9 A And, once again, going off of memory, I believe it
10 was. I can't speak to it.

11 Q If it was, somebody else did it and you're not sure?

12 A Correct.

13 Q And what were the other items found? It was the
14 shirt, the iPad, and was there a cell phone possibly
15 found?

16 A There, it wasn't a cell phone, but it was a wireless,
17 I guess, rechargeable phone that we determined came from
18 Leslie's Hair Salon.

19 Q Okay. Do you, like the same question. Do you know
20 if that was tested for fingerprints or DNA? You would
21 assume it was, but you're not sure?

22 A I would assume it was, but I don't remember. I
23 remember actually the security thing.

24 Q Okay.

25 A I guess, the security DVD being tested, because I

1 remember them looking at stuff on the TV screen.

2 Q And when you talk about the security DVD, in your
3 opinion, it looked like somebody had been trying to pull
4 it apart?

5 A There is no doubt.

6 Q Okay.

7 A Somebody was attempting to gain entry into the
8 inside.

9 Q So they would have had their hands on it pulling it
10 apart?

11 A I would, I would imagine, yes sir.

12 MR. VERNER: Just the Court's indulgence.

13 THE COURT: Sure. Take your time.

14 Q Okay. Just to clarify, Officer Kennedy. When you
15 initially arrived and took the photographs of Leslie's
16 Salon, it was clear --

17 A I didn't photograph.

18 Q Oh, you didn't photograph?

19 A I didn't do a photograph. I'm sorry.

20 Q Okay. I'm sorry. But when you went into the salon
21 and found the body of Mr. Facio on the floor, both EMS and
22 other family members and people had said they had moved
23 his body prior to the photographs being taken or you
24 examining the body?

25 A Today is the first time I heard of Ms. Martinez

1 touching the body. I know EMS touched the body. My
2 officers relayed that information to me.

3 Q Okay.

4 A When I got there, he was telling me what had happened
5 and they did roll him, I guess, moved him to the right.

6 Q I guess, the point of it is he still had electro
7 leads on his body where they had tried to test him for his
8 heart?

9 A The connection. The connection.

10 Q Okay. So, I guess, the point of that question is
11 does he, the body from the photograph, he was no longer in
12 the same position necessarily as he was originally found?

13 A Correct.

14 Q Okay.

15 MR. VERNER: Thank you, Officer. If the Solicitor
16 has any follow-up.

17 THE COURT: Any redirect?

18 MR. STUMBO: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 By Mr. Stumbo:

21 Q When Mr. Verner said his body was moved, essentially,
22 he was found face-down by the family, correct?

23 A That is what I'm being told is that he was found
24 face-down by the family and my first --

25 MR. VERNER: Your Honor, I have to object. I know

1 he's responding to my question, but that would involve
2 either hearsay or speculation of facts.

3 MR. STUMBO: I think he opened the door to that.

4 MR. VERNER: Well, I, just my question was he was
5 told that the body was not in its original position. What
6 the position was, I think goes beyond both my questions,
7 and it involves speculation.

8 THE COURT: Well, I think the, Ms. Martinez had
9 testified that she'd found him face-down. Certainly, he
10 can testify as to the position of the body that he found
11 when he arrived on the scene. Don't answer the question,
12 but repeat your question again, Solicitor, so I can make a
13 ruling on Mr. Verner's objection.

14 MR. STUMBO: I can move on from this, Judge.

15 THE COURT: Okay. All right.

16 MR. STUMBO: I mean, the jury has already seen the
17 pictures.

18 THE COURT: Okay.

19 MR. STUMBO: I'll move on.

20 THE COURT: Very good. Thank you.

21 Q Lieutenant Kennedy?

22 A Yes, sir.

23 Q You're not a crime scene investigator, are you?

24 A I've had some training but no, I am not a crime scene
25 investigator.

1 Q It's not your role at the Newberry Police Department,
2 currently?

3 A It's not my primary role; no, sir.

4 Q And there are crime scene investigators from SLED
5 that came in and worked this case, correct?

6 A Correct.

7 Q There are crime scene investigators that assisted
8 from the County, correct?

9 A That is correct.

10 Q And it wouldn't be your role to take DNA swabs of the
11 evidence that you collected in this case, would it?

12 A On a case like this, no, it is not my job. Lesser
13 cases, yes, we would process. On other crime scenes,
14 we'll let the professionals handle that.

15 Q It wouldn't be your job that, all these items that
16 you were pulling out of the dumpster, somebody else is
17 going to try to lift the prints to see if there are any on
18 there, correct?

19 A Once again, a major crime scene, we allow the
20 professionals, the guys that have the extensive training
21 and experience to do it so we don't make any mistakes.

22 Q Okay.

23 MR. STUMBO: No further questions.

24 THE COURT: Recross?

25 MR. VERNER: No further questions, Your Honor.

1 THE COURT: Thank you, sir. You can step down.

2 MR. KENNEDY: Thank you.

3 THE COURT: Okay. Madam Forelady and ladies and
4 gentlemen of the jury, I think this would be a good time
5 now for us to break for lunch. I failed to mention one
6 thing concerning the role of the alternates, and let me
7 address that for just a second. I want you to understand,
8 three alternates, your role is very, very important. It's
9 not unusual as we go through a trial that one of the
10 twelve has to be excused for illness maybe, emergency at
11 home, and things of that nature. So we, therefore, need
12 someone who has sat through the trial, has heard all the
13 evidence to step into the shoes of that excused juror. So
14 your presence here is very important, and I don't want you
15 to think just because you are an alternate that you're not
16 important. You are. You're just as important as the
17 other twelve members, okay? Now, if you all will break
18 for lunch until 2:30. What I would ask that you do if
19 you're out in public, say if you go to a local restaurant
20 and I want you to have your juror, little sticker visible.
21 The reason for that is let's say one of the lawyers or
22 some of the witnesses, whatever, may be at that same
23 restaurant. They may not recognize you facially that you
24 are on the jury and they may be talking about the case and
25 you may overhear. We don't want that to happen. But if

1 your sticker is visible, then they can say oh, we better
2 be careful, we got a juror in the same restaurant. So if
3 you're out in public, just keep that visible. Do that for
4 me. Again, I remind you no discussion among yourselves
5 about anything related to this case, anybody that you come
6 into contact with over lunch break. And we'll see you
7 back at 2:30. Have a good lunch.

8 (Whereupon, the jury was excused from open court for
9 a lunch break.)

10 THE COURT: See y'all at 2:30.

11 (Whereupon, a lunch break was taken.)

12 THE COURT: Gentlemen, we ready for the jury?

13 MR. VERNER: Yes, sir.

14 MR. STUMBO: We are, Judge.

15 THE COURT: Okay. All right. Madam Bailiff, if you
16 will bring the jury out.

17 (Whereupon, the jury came into open court at
18 approximately 2:41 p.m.)

19 THE COURT: Now, let the record reflect the jury is
20 back in. Solicitor, are you ready?

21 MR. SCOTT: We are, Your Honor. The State calls
22 Tiffany Hezel, H-E-Z-E-L, but she's been married this
23 summer, so she's now Tiffany Hezel Edwards.

24 THE COURT: Ms. Edwards, come around, please.

25 TIFFANY HEZEL EDWARDS, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Scott:

4 Q All right. Tiffany, where are you employed?

5 A I am employed with the South Carolina Law Enforcement
6 Division, which is commonly referred to as SLED.

7 Q Okay. What department are you in?

8 A I am currently assigned to the Latent Print Unit,
9 however, at the time of this case, I was assigned to the
10 Crime Scene Handling Print Department.

11 Q Okay. How long had you been working in the Crime
12 Scene Department of SLED?

13 A I've been employed at SLED for five-and-a-half years,
14 and I've just transferred to Latent Prints within the last
15 month. So we're looking at about five-and-a-half years.

16 Q Okay. And tell us what your primary duties when you
17 were for Latent Prints, but when you were in Crime Scene
18 Investigations?

19 A My primary duties were to respond at the request of
20 any local or state or Federal jurisdiction to assist them
21 in processing a crime scene. And in doing so, we would
22 document, take photographs, collect evidence and transport
23 it back to the State laboratory in Columbia for further
24 processing in various other forensic units.

25 Q All right. What kind of training did you have to

1 undergo to keep that job?

2 A I have a Bachelor's Degree from the University of
3 Wisconsin at Platteville in Criminal Justice. I have a
4 Masters Degree in Forensic Science from the University of
5 Central Oklahoma. I am a certified Medical Legal Death
6 Investigator with four years of experience in Memphis,
7 Tennessee. I'm a certified Crime Scene Analyst with the
8 International Association of Identification. I've also
9 completed both in-house training at SLED under a
10 court-qualified senior agent for crime scene. And I've
11 attended and successfully completed various external
12 training in areas such as crime scene photography, scene
13 reconstruction, basic and advanced blood stain pattern
14 analysis and various courses in death investigation.

15 Q Okay. Where did you say you were employed in
16 Memphis?

17 A I was employed at Shelby County Medical Examiner's
18 Office.

19 Q I don't need the exact number but, approximately, how
20 many crime scene investigations have you been called out
21 to?

22 A Within my time at Memphis, I worked the evening
23 shift, and I worked about 2,000 death scenes within four
24 years there. And I have worked several hundred since,
25 crime scenes being employed at SLED.

1 Q Okay. And five-and-a-half years you said with SLED
2 so far?

3 A Correct.

4 MR. SCOTT: Your Honor, we would offer Ms. Edwards as
5 an expert in crime scene investigations.

6 THE COURT: Okay. And what says the Defense.

7 MR. VERNER: Your Honor, I've never had this
8 particular expertise offered in a case that I've been in,
9 and I'm not sure why you need an expert witness in crime
10 scene. But what opinion is she going to offer about crime
11 scene? I would kind of prefer to wait until they offer a
12 question that required a hypothetical answer before I
13 would even know how to cross-examine her expertise. Is
14 she fingerprints? Is she trace evidence? Is she blood
15 spatter? Judge, maybe if they could --

16 THE COURT: Okay. Let's do this before we make a
17 determination on this issue, without her actually giving
18 any opinions can you kind of cover with her in general
19 terms for purposes of the qualification or not of her
20 being an expert, cover what basically she did and what
21 areas if you intend to ask her for some opinion. So let's
22 lay a little bit more foundation.

23 MR. VERNER: Thank you, Your Honor.

24 THE COURT: See where we go. Okay.

25 Q All right. Ms. Edwards, did you have an occasion to

1 respond to a location here in Newberry County on Main
2 Street here on August 26th of 2015?

3 A Yes, I did.

4 Q And who called you out there?

5 A We were requested to respond by the Newberry Police
6 Department. My point of contact that was provided was
7 Lieutenant Kennedy.

8 Q Okay. And do you know about what time you arrived in
9 Newberry?

10 A We were called at 2:24 p.m. and we arrived on-scene
11 at 3:16.

12 Q Okay. What is the, what do you initially do when you
13 respond to a crime scene like this?

14 A When we initially receive the request, we make
15 contact with the point of contact to get further
16 information on what type of scene it is that we're
17 responding to to verify that we have the proper equipment
18 and we have enough personnel to complete the task that's
19 being required for us to come and assist with. At this
20 particular time, we were requested to respond to a scene
21 in which there was a single individual that had sustained
22 a gunshot wound to the head. I then got with my partner
23 at the time, who was Special Agent Todd Shane, and we took
24 along a trainee, Special Agent Ryan Matthews, and we
25 responded to the scene with all of the equipment that we

1 deeded necessary to process this scene.

2 Q Okay. Did you document the layout of the crime
3 scene?

4 A Yes, we did. It's standard protocol for us to not
5 only document the scene with written notes but also with
6 still photographs. We also use a 3D scanner to create a
7 3D dimensional outline of the scene and the situations and
8 this case was that particular piece of equipment was used,
9 as well.

10 Q Describe that piece of equipment for us?

11 A It's called the FARO and what it is, it's a 3D
12 scanner. It's basically a box that contains a camera that
13 sets upon a tripod. And lasers will exude from the
14 machine and it will circle in a 360 degrees in a complete
15 circle. And what happens is, those lasers go out until
16 they touch an item within the scene and then relay that
17 information back to the camera in the machine and it goes
18 around in the circle and it captures the entire 3D image
19 of the scene.

20 Q Okay. So it kind of gives you a virtual, I guess,
21 tour of the inside of the crime scene?

22 A Yes, it does. It allows someone who was not there to
23 be put in the situation of viewing a scene.

24 Q Okay. And it's called FARO?

25 A Yes.

1 Q F-A-R-O?

2 A Yes.

3 Q Let me show you State's number 32.

4 A And it's already been agreed upon --

5 MR. SCOTT: Your Honor, we're going to publish
6 State's number 32, and we are offering it for admission.
7 But I think that one's already been agreed upon.

8 THE COURT: Right. And 32 is into evidence.

9 Q Okay. Tiffany, I don't know, but can you see the
10 screen from there?

11 A No, I cannot.

12 Q With the Judge's permission, I'd like for you to step
13 down and kind of help me as I walk through this.

14 THE COURT: Yes. Agent Edwards, you can step down
15 and just make sure that when you're talking since you're
16 away from the microphone that you speak up loud so we all
17 can hear you, okay?

18 MS. EDWARDS: Yes, sir.

19 THE COURT: Okay. Thank you.

20 Q All right. In this initial scene, and we can kind of
21 be showing it, but you can kind of manipulate it and turn
22 the camera this way and that and like you described did
23 really a 360 degree visual of the inside of the hair
24 salon. So what are we looking at here?

25 A Right here is a view of this is a front door, the

1 only door to the establishment. This is the front
2 countertop, and then this is going to be kind of the first
3 shelving unit along the left-hand side as you enter
4 through the front door.

5 Q And what, if anything, did you do in regards to
6 collecting evidence from that front door there?

7 A Within the capacity of processing the scene, I
8 swabbed the front door handle and I also processed both
9 the interior and the exterior glass of the door for latent
10 fingerprint evidence. I did collect latent fingerprints
11 from the door.

12 Q Okay. Any of them conclusive?

13 A No. All of the ones that were collected from the
14 door were inconclusive with all persons involved in this
15 scene, not only the victim, the suspect, but everyone else
16 that was known to have entered the establishment.

17 Inconclusive means simply that the known fingerprint cards
18 that I had to work with were not complete and perhaps the
19 ridge detail that had been left on the door was not
20 reproduced on the cards that I was comparing it to. So it
21 was just inconclusive. I can't say whether the prints on
22 the door belonged or did not belong to any person that I
23 compared them to.

24 Q Okay. Could that be a result of so many people
25 touching the same surface?

1 A It could, yes.

2 Q Okay. But you did attempt to collect latent prints,
3 fingerprint evidence, but you were just unable to collect
4 any conclusive samples?

5 A I collected the samples. The evidence was collected,
6 but I was not able to identify the ridge detail from the
7 door back to anyone conclusively.

8 Q Okay. All right. This, I guess, the wooden
9 structure right there just to the right of the glass door.
10 What is that?

11 A That served what I believe to be the front desk, sort
12 of checkout area on the other side of this tall portion
13 here, kind of drops down to more of a desktop and the cash
14 register drawer. And the cash register were there and
15 kind of a workspace for taking appointments and such, I
16 suppose.

17 Q Okay.

18 MR. SCOTT: Walter, can you scan to the back of the,
19 look back at that front desk there.

20 Q Okay. And what are we looking at, just the back of
21 the rear of the store?

22 A This is the main alleyway from the front door. It's
23 really kind of just a straight hallway with waiting area
24 on the right side, salon stations on your left. And this
25 door here, doorway that has a curtain, if you turn right

1 into that, that's that back room for like the employees to
2 go. The restroom is back there. And in this case, this
3 is where the victim was located.

4 Q Okay. Before we go to the back room, can we walk
5 towards marker B there, and what is marker B?

6 A Marker B was a cellphone that was located and rested
7 upon that chair.

8 Q Okay. And were you able to determine whose cellphone
9 that was?

10 A I did not collect the cellphone. The cellphone was
11 collected directly by Newberry Police Department
12 personnel.

13 Q Okay. And it was just sitting on that chair right
14 there, the second to the last chair on the, beside the
15 wall?

16 A That is correct.

17 MR. SCOTT: Walter, can we go advance to the back
18 room?

19 Q I'm going to pan over to the, okay. So that, what we
20 were just looking at, that is the door we were looking
21 into from the last angle, is that correct?

22 A That is correct. This is the main hallway from the
23 front door and this is that side room that would have been
24 to your right as you actually walk in the door.

25 Q Okay. Did you notice any, were there any

1 surveillance cameras in this back room here?

2 A I noticed there was a camera up in the top corner
3 that appeared to be in place.

4 MR. SCOTT: Can you scan up, Walter?

5 Q Okay. Is that what you--

6 A -- yes.

7 Q Okay. What, if anything, were you able to determine
8 was missing from that room?

9 A We had been told prior to us completing our initial
10 walk through that there had been some wires that were
11 exposed that were believed to have been connected to some
12 sort of electronic recording device. So we knew that
13 there were exposed wires, that something obviously had
14 been connected to it that was now missing. We also had
15 been told that there had been some movement of materials
16 such as at the doors, there was a bag of sugar that was
17 knocked over while police were making sure that the scene
18 was secure prior to our initial entry.

19 Q Okay. Now, he is scanning, I guess, further into the
20 room. Whereabouts was the, were the wires that you were
21 discussing that were hanging loose?

22 A All of the wires were kind of up in this general
23 area.

24 Q Okay. Did you at this time collect any video
25 surveillance footage?

1 A I did not, no.

2 Q Okay. And then what did you observe as far as the
3 victim in this case?

4 A We observed that the victim was located on the floor
5 in the corner of that back room and positioned in a manner
6 where he was partially on his back and slightly rolled to
7 his right side. There was bloodstain evidence not only on
8 the floor beside where his head was placed but also on the
9 wall just above, up from his head.

10 Q Okay.

11 MR. SCOTT: Walter, can you zoom in on that ruler
12 there on the wall.

13 Q Okay. And that yellow, I guess, ruler, who would
14 have put that there?

15 A I did.

16 Q Okay. And what is the purpose of that?

17 A The purpose of that is just to give you an overall
18 understanding of the height of which we're looking at
19 where the bloodstain evidence was present. So each of
20 those numbers represents an inch. So from the baseboard
21 up to where you can see the bloodstain evidence just gives
22 you an idea of the height ratio to the floor where we're
23 looking at the evidence being present.

24 Q Okay. Can you tell from that picture what the
25 highest evidence or, I guess, the highest height of blood

1 is on that wall?

2 A Maybe a little over a foot from the baseboard.

3 Q Okay. Were you able to draw any conclusions from the
4 height that blood was located on the wall?

5 A Based upon where the blood is located on the wall,
6 it's evident that the bloodletting source, meaning the
7 person shedding the blood, was also at a very low position
8 at that time. The blood did not rise above where that
9 cross in the scale tape is nor did it go to any other
10 wall, meaning like the wall that would have been back here
11 or the wall from which we entered this room. But so all
12 of the blood evidence is contained right there on that
13 wall at a very low concentration to the ground.
14 Therefore, it's consistent with the victim, the
15 bloodletting source, being at a low position at the time
16 that the bloodletting occurred.

17 Q Okay. And did you observe where the wound was on Mr.
18 Facio?

19 A Yes. The wound to Mr. Facio was on the rear of the
20 left side of his head.

21 Q Okay. So what you're saying is your observation
22 would be that his head would be low to the ground when
23 that wound occurred?

24 A That is correct. And there is also additional blood
25 evidence on the ground beside his head which created a

1 pooling effect meaning like the, the blood had come out of
2 this, of the bloodletting source for a period of time in
3 higher concentrate and creating a pool before it began to
4 congeal.

5 Q Okay. What, if any, evidence was collected, as far
6 as latent evidence was collected in this back room?

7 A There was no latent evidence collected in this back
8 room.

9 Q Okay. Did you collect anything from the cords that
10 were hanging from the missing electronics you described?

11 A Yes, I did. I swabbed the cords for potential touch
12 DNA.

13 Q Okay. And then sent it to SLED to be tested?

14 A That is correct.

15 Q Okay. All right. What, if anything, did you do with
16 Mr. Facio?

17 A We documented Mr. Facio in the condition in which he
18 presented, and we documented his wound. And as the
19 coroner manipulated him so we could make sure there were
20 no other wounds that we needed to account for, we
21 inventoried personal effects that were on his person,
22 meaning items that were in his pockets and the coroner
23 took possession of all of those items.

24 Q Okay. I think you can take the stand again. You
25 talked about diagrams. The inside, let me show you

1 State's number 42.

2 A This is a computer-generated sketch based upon the
3 rough sketch I completed on-scene just to give a visual
4 layout of the scene. So had we not had the three
5 dimensional option, this would serve to show the layout of
6 the scene in its entirety as well.

7 Q Okay. And so again this FARO showed if you look at,
8 the front doors are depicted, the left, and then marker A
9 is depicted, as well as marker B. And then C would be Mr.
10 Facio in the position that you located him in?

11 A That is correct.

12 Q Okay.

13 MR. SCOTT: Your Honor, I think it's already
14 admitted, but the State would offer 42 for admission.

15 THE COURT: 42 has been admitted on behalf of the
16 State.

17 Q Let me show you State's 44. What is that?

18 A This is a crime scene photograph taken showing the
19 scaled area on the wall where the bloodstain evidence was
20 observed and also has within the photograph Mr. Facio's
21 face. And you can see to the right of his face as you
22 view the photograph, a portion of that blood pool that I
23 discussed earlier that was formed on the floor.

24 Q Okay. Now, you were talking about it forming a pool
25 and congealing. Were there any smearing of that blood

1 pool?

2 A No, there was no movement through the blood pool.

3 Q All right. And what is that indicative of?

4 A That the individual themselves who was bleeding did
5 not move, nor did anything else in motion go through that
6 blood present on the floor.

7 Q Okay.

8 MR. SCOTT: Your Honor, the State offers 44 for
9 admission into evidence.

10 THE COURT: All right. What says the Defense?

11 MR. VERNER: Without objection, Your Honor.

12 THE COURT: All right. Without objection, 44 into
13 evidence for the State.

14 (Whereupon, State's Exhibit number 44 was admitted
15 into evidence.)

16 MR. SCOTT: Your Honor, I'm sorry?

17 THE COURT: I just said 44 into evidence.

18 MR. SCOTT: Thank you, Your Honor. Ms. Edwards,
19 thank you and answer any questions Mr. Verner has for you.

20 THE COURT: Before we start any cross, let's talk for
21 just a minute.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 THE COURT: Cross-examination, Mr. Verner?

1 MR. VERNER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 By Mr. Verner:

4 Q Okay. Just so I'm clear, Agent Edwards. You
5 personally took latent fingerprint lists from several
6 sources?

7 A Yes, I did.

8 Q Okay. Just how do you do that? I don't need the
9 technical, but just in a simple way. Is there like a
10 strip of tape or how would you draw fingerprints from
11 sources?

12 A In order to process a surface on a scene, for
13 example, this one with the glass door. It's a non-porous
14 surface, meaning it's not going to hold water. So the
15 easiest way to process that is to apply black powder with
16 a brush and that black powder is going to adhere to any
17 moisture left behind from a fingerprint on the door. In
18 this case, there were several impressions that were
19 developed with the black powder. We then take a piece of
20 clear packing tape for layman's terms. Apply that over
21 the powder impression, pull that tape off, apply it to a
22 white backer card, and then we record the information of
23 date, time, location and the collecting agent's
24 information.

25 Q Okay. So you fingerprinted the door?

1 A That is correct.

2 Q And did you say you fingerprinted the register?

3 A I collected the cash register drawer and took that
4 back to the laboratory at SLED, and I then further
5 processed that for latent print evidence.

6 Q And were you able to find any fingerprints from
7 anyone?

8 A I'm sorry?

9 Q Were you able to identify any fingerprints from the
10 cash drawer?

11 A Yes, I did. I identified Mr. Facio's fingerprints on
12 multiple places upon the cash drawer.

13 Q On the flat plate or on the parts that you lift up
14 like the money clips, or do you remember?

15 A I believe it was more of the bottom surface of the
16 drawer like as you're pulling it, pulling it in and out of
17 the actual holder of the drawer.

18 Q Okay.

19 A I did swab the money clip portions that turned up for
20 touch DNA.

21 Q By swab, you're saying like with a cotton swab, and
22 then you send it for testing?

23 A That is correct.

24 Q Okay. What else could you test for fingerprints that
25 you recall?

1 A The front desk area in the front of the cash register
2 and the top portion of the cash register itself were
3 processed with black powder with negative findings for
4 latent print evidence. The interior of the front door was
5 processed and four latent lifts were collected. The
6 exterior of the front door was processed with black
7 powder, and three latent lifts were collected and that was
8 all that I personally processed for latent print evidence.

9 Q Okay. Anything in the back room where Mr. Facio was
10 killed?

11 A No.

12 Q Okay. What about outside of the building?

13 A No.

14 Q Okay. So, essentially, you photographed the scene
15 with the FARO device, the 360 device?

16 A That is correct.

17 Q Okay. And you did take fingerprints and lift for
18 latent DNA?

19 A Within the confines of the structure itself, yes.

20 Q Okay. Are you aware of any fingerprints that were
21 identified that belonged to Kenny Ruff?

22 A No, I am not.

23 Q Okay. Are you aware of any DNA that was lifted and
24 identified as Kenny Ruff's?

25 A I am not aware of DNA results..

1 Q Okay. That would be done by the specialist that you
2 send them to?

3 A It would be done within the DNA Department and that's
4 outside of my immediate department. So without going in
5 and actually seeking out the results, I am not privileged
6 to that information.

7 Q Okay. But you weren't given anything or provided
8 anything identifying DNA to Kenny Ruff?

9 A No.

10 Q And did you do anything else, well, now let me ask
11 you. How long do you think you were in Newberry?

12 A We arrived on-scene at 3:16 p.m., and we cleared to
13 return back to Columbia at 7:00 that evening.

14 Q And you would have been in the general vicinity of
15 Leslie's Hair Salon that whole time?

16 A Yes.

17 Q Okay. And there would have been several other
18 officers, too?

19 A Yes.

20 Q Do you recall, are you familiar with Newberry?

21 A No.

22 Q Well, what about the traffic, non-police traffic in
23 the area, were there like onlookers and people interested
24 in what everybody was doing at the location?

25 A I honestly don't recall. I was there to do a

1 specific job and that's what had my attention.

2 Q But when you left the store, you don't recall seeing
3 people across the street kind of watching at the street
4 corners or the other businesses?

5 A I don't recall. There were a lot of police present.
6 My crime scene vehicle was parked very close to the
7 storefront door. So I didn't have need to kind of
8 gallivant around the street to get to my supplies and back
9 within the store to process the scene.

10 Q Okay. Thank you, agent.

11 THE COURT: Any redirect?

12 MR. SCOTT: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 By Mr. Scott:

15 Q Is it uncommon to find some of these fingerprint
16 evidence that ultimately is inconclusive as far as
17 results?

18 A No, it's not. It's, also, you don't always leave a
19 fingerprint.

20 Q Explain that.

21 A Upon your hand, you have ridges that kind of make a
22 fun little shape and formation and everyone's are
23 different. In order to leave a latent fingerprint, you
24 are going to sweat on your hands, and you're going to
25 touch your hair and face and you're going to touch other

1 things. Well, when you touch those other things, there is
2 a chance that you're going to leave a stamp-like
3 impression of those ridges on that item. Now, if you're
4 sweating a lot, if you're not sweating enough, if you
5 don't have enough buildup on those ridges, if you're
6 touching a surface that's rough or untextured or dirty,
7 that transfer of that moisture isn't always going to be
8 complete. So think about when you stamp a Christmas card.
9 If you don't have enough ink, you don't get the whole
10 stamp. If you have too much ink, it's a big blob.
11 Fingerprints work a lot like stamps. So some people sweat
12 a lot. They don't always leave fingerprints. If your
13 hands are really dry, again, less ink, less transfer, less
14 chance you're going to get that design. So it's not
15 uncommon to actually watch someone touch something and not
16 be able to recover the fingerprint. Fingerprint evidence
17 is really an item of evidence left by chance. All the
18 circumstances have to line up for you to be able to have
19 that perfect impression. I wish it was like television
20 where you could get just a clipping and it does a little
21 dance on the computer screen and it matches with somebody.
22 But, unfortunately, that's not the real-world scenario of
23 latent prints.

24 Q Okay. And even though I been sitting at this desk
25 all day, it's got a glass top and it's possible that I

1 haven't left a fingerprint on it?

2 A It's possible.

3 Q What about and, I guess, different surfaces. Do some
4 surfaces lend themselves better to picking up
5 fingerprints?

6 A They do. Textured surfaces don't work real well. If
7 you think about touching sandpaper, it has all the little
8 bumps and grooves. So your finger isn't touching that all
9 in the same level. Glass usually works. Not always.
10 When was the last time the glass was cleaned. Is the
11 glass dirty. What else is on the glass. So then you have
12 to take all of those factors into consideration. In this
13 particular scene, we did recover prints. However I can't
14 timestamp a finger print. It doesn't come with the date
15 and time it was placed there. If the front door to this
16 business hasn't been cleaned in a month, you have a
17 month-worth of people touching this glass on top of each
18 other, smearing, moving, little kid hands all on the
19 bottom, so it's going to hold it until it's washed.

20 Q Okay. Is it fair to say that the length of time
21 somebody spent in one area would dictate whether the
22 likelihood of them leaving fingerprints. In other words,
23 if I've been in here touching things all day as compared
24 to only being in here only four minutes, the likelihood
25 and the longer I'm in here that it's probably more likely

1 that I'd leave a fingerprint?

2 A The longer you're in a place, there is a more
3 likelihood of the more things you're going to touch. But
4 it doesn't necessarily mean that there is a higher chance
5 of you leaving your fingerprints more than if you were --

6 Q Now, if --

7 A -- in there for a shorter period of time.

8 Q And I think you articulated that better than I did.
9 Now, the longer you would be in somewhere, the more
10 chances you'd have of touching things. You mentioned you
11 did not collect any or did you say you didn't collect any
12 DNA evidence?

13 A I did. I collected swabs. I collected two swabs
14 from the interior push bar of the front door of the
15 establishment. And the reason I swabbed that was due to
16 the fact that it was grooved. It was an uneven surface.
17 So the chances of giving that even stamp perhaps from a
18 hand was less likely. So I have to do those for touch DNA
19 but it's per my training and experience. I also swabbed
20 the exposed wires from the video system in the back room.
21 Again, the wires are thin. They're small. How much is it
22 really going to touch and leave that stamp on the wires.
23 So, again, based on my training and experience, I opted to
24 swab it, cover more surface area, potentially pull onto
25 more evidence that way.

1 Q Okay. And I don't know if you're qualified to
2 testify to this or not. The more different contributors,
3 the more people who touch any given object, it occurs to
4 me the less likely it'd be that you'd identify one source
5 of DNA. Is that fair to say?

6 A In my limited experience with DNA that it's, they
7 train us to swab as large of a surface area as possible
8 because that's going to give you kind of the biggest bang
9 for your buck, so to speak. If you swab just the corner
10 of this kind of desk here, you're missing all the other
11 places someone might have touched. So the more surface
12 area you swab, the more DNA you're going to collect. You
13 might get a mixture, but you're getting more information
14 and that's what we are out to collect is the information.

15 Q Okay. But as far as if there was testimony, your
16 crime scene investigation is limited to Leslie's, is that
17 correct?

18 A That is correct. We only processed the interior of
19 the salon and we documented Mr. Facio's vehicle outside.

20 Q Okay. You didn't go to Heritage Square or the
21 dumpster there?

22 A We did not. We were not requested to assist on that.

23 Q Did buckle swab, did you do any buckle swabs while on
24 the scene at Leslie's?

25 A I did not collect any buckle swabs. I did receive

1 buckle swabs via chain-of-custody that had been collected
2 by other law enforcement personnel.

3 Q Okay. And a buckle swab is just swabbing the inside
4 of somebody's cheek to get a known sample of DNA?

5 A That is correct.

6 MR. SCOTT: Okay. Thank you, Ms. Edwards.

7 THE COURT: Any recross?

8 MR. VERNER: Briefly, Your Honor.

9 RECROSS-EXAMINATION

10 By Mr. Verner:

11 Q The point of the testimony, though, and I'm sure you
12 did a very good job. But did you find any direct evidence
13 at Leslie's connecting Kenny Ruff as being there?

14 A I cannot speak to the outcome of what the DNA
15 evidence was, but as far as the latent prints that I
16 collected and compared, there was no conclusive
17 identification to Mr. Ruff.

18 Q Okay. Thank you.

19 THE COURT: Thank you, Agent Edwards. You can step
20 down and you are certainly free to leave the courthouse or
21 you're welcome to remain with us. Next, Solicitor?

22 MR. SCOTT: Your Honor, the State calls Richard
23 Mercer.

24 RICHARD MERCER, being
25 first duly sworn, testified as follows:

DIRECT EXAMINATION

1

2 By Mr. Scott:

3

Q What is your rank, Mr. Mercer?

4

A Currently, I'm a sergeant.

5

Q Okay. How long have you been a sergeant with the

6

City Police Department?

7

A I've been a sergeant just for a few months. I really

8

moved into sergeant investigation. Previously, I was the

9

juvenile investigator.

10

Q Okay. August of 2015, what were you doing?

11

A August of 2015, I was acting as a corporal in the

12

Investigative Unit.

13

Q Okay. How did you become involved with the case

14

we're talking about here today, and that's the homicide

15

that happened at Leslie's Salon on Main Street?

16

A Yes, sir. Myself and Sergeant Alvarado were out at

17

lunch when we got the call. We left our lunch area and

18

went to the scene. From the scene, I actually had to go

19

to, back to the Police Department to get my car with all

20

of my processing gear. When I returned, I had my

21

photographic equipment, I took full photos of the scene

22

starting with the exterior and working into the interior.

23

Once I did that, Sergeant, Captain Goodman was also there,

24

I took photographs with his camera as well. By that time

25

I think SLED was arriving. I checked back in with Captain

1 Goodman and learned that there was video evidence across
2 the street at, not Exxon.

3 Q Okay. Kunkle Oil is what we've been calling it.

4 A Kunkle. Yes sir, over at Kunkle. So I'm pretty tech
5 savvy, so I went over to Kunkle to collect the evidence
6 that was there. DVR's are hit and miss sometimes, most of
7 them are pretty universal. I've gotten a pretty feel of
8 them so I went there to collect the evidence. Once I
9 collected that evidence I went back and checked on Captain
10 Goodman again. Captain Goodman said that there was a
11 video from Brothers Fast Stop. So I left that location
12 and went up to Brothers Fast Stop to go collect that
13 video. Upon reviewing that video, I looked at it and I
14 positively identified Mr. Ruff in that video two times.
15 One time he was wearing different clothing and than the
16 other time. And once I collected that, I contacted
17 Sergeant or Captain Goodman, and Captain Goodman
18 responded. I didn't tell Captain Goodman who I thought it
19 was. I said you can look at this and tell me who you
20 think this is. He came in. He looked at it.

21 MR. VERNER: Your Honor, I object to any hearsay.

22 THE COURT: Right. Don't repeat what --

23 MR. MERCER: Yes, sir.

24 THE COURT: -- Captain Goodman may have said about
25 that. I think he's going to testify here shortly.

1 MR. MERCER: Yes, sir.

2 Q Did you share the footage with Captain Goodman?

3 A Yes sir, I did.

4 Q Let me show you something real quick. This is
5 State's 64. Do you recognize what it is?

6 A Yes, sir. That's a photograph from the area that we
7 were operating in.

8 Q Okay.

9 A Of the incident location, Kunkle's, Brothers Fast
10 Stop.

11 Q Okay. That fairly depicts that stretch of Main
12 Street here in Newberry?

13 A Yes, sir.

14 Q Okay.

15 MR. SCOTT: Your Honor, the State offers 64 for
16 admission.

17 THE COURT: Okay. 64 is into evidence on behalf of
18 the State.

19 Q All right. So let me try to do this where the jury
20 can see and you can see. All right. Does this fairly
21 depict where Leslie's Hair Salon is?

22 A Yes, sir.

23 Q And you mentioned Kunkle's and that's directly across
24 the street from --

25 A -- yes, sir. It's straight across the street.

1 Q Okay. So you went to Kunkle's first to collect the
2 video, is that what you said?

3 A Yes, sir.

4 Q And did you review it before you downloaded it?

5 A Yes, sir. And when I looked at it, I wanted to make
6 sure I get the entire span of what I'm doing. So even
7 though those officers were there, I looked back through
8 it, reviewed it and saw a suspect going into Leslie's Hair
9 Salon. The suspect was wearing a dark-colored shirt,
10 doo-rag, jeans, and he was coming from the area of
11 Brothers Fast Stop.

12 Q Okay. He's walking in this direction?

13 A Yes, sir. And he is actually on this side of the
14 street.

15 Q On the Kunkle's side of the street?

16 A On the Kunkle's side of the street.

17 Q Okay.

18 A The suspect headed down the road. You can pick him
19 up somewhere in this area. He comes down. He comes
20 across. He goes into the store. He is there
21 approximately four minutes. He comes with nothing in his
22 hands. Leaves. You can see him leaving on the video, he
23 runs back here and disappears for a while. You can see
24 him running back up the road and go back down the road.

25 Q Okay. All right. So you collected that video?

1 A Yes, sir.

2 Q Have you seen it since then?

3 A Yes, sir.

4 Q Okay. And did the video, that would be State's
5 number 2, the video you watched. Did it fairly and
6 accurately represent the video that you pulled from Kunkle
7 Oil on August 26th, 2015?

8 A Yes, I did.

9 MR. SCOTT: Your Honor, State would offer State's
10 number 2 for admission into evidence.

11 THE COURT: Number 2 is into evidence on behalf of
12 the State.

13 MR. SCOTT: And we're going to publish that now, Your
14 Honor.

15 THE COURT: Okay.

16 (Whereupon, State's Exhibit number 2, a video, was
17 published for the jury.)

18 MR. SCOTT: Now, can you pause it, Walter?

19 Q What, if anything, did you observe about this figure?

20 A Well, we can see that he's wearing, like I said, dark
21 clothes, jeans are a different color, shoes are still a
22 different color. He's been walking from this direction,
23 which is up near the Brothers' store. He comes down and
24 pulled up his pants. I watched this and you can see he
25 pulled up his pants. He doesn't have anything in his

1 hands.

2 Q Okay.

3 MR. SCOTT: Okay. And you can play it now, Walter.

4 Q Do you know who that man is, Richard?

5 A Yes, sir. The only name I've ever known is Womp.

6 And that's Mr. Womp walking down the street. He lives
7 over on Turner Street, as well.

8 Q Okay. Do you see Womp in the courthouse today?

9 A Yes, sir; I do. He's seated right behind Mr. Verner.

10 Q That's Womp here. Okay. And that's who you
11 identified in that video?

12 A Yes, sir.

13 Q Okay.

14 MR. SCOTT: Press play. Walter, can you pause that?

15 Q And what is it that's noteworthy when he exits
16 Leslie's?

17 A Well, we know when he went in he didn't have anything
18 in his hands. Now, he's coming out, you can see that he's
19 got a white bag in his right hand.

20 Q Okay.

21 MR. SCOTT: And now you can press play, so we can see
22 where he goes.

23 Q Okay. Is that the same figure to the left of the
24 building?

25 A I'm sorry?

1 Q Is that the same figure to the left of the building?

2 A Yes, sir. That's the same. There is nobody in this
3 area this entire time and now he's going down, down the
4 road and he'll come back in a minute.

5 Q Now, again who is this?

6 A This is Mr. Womp coming back.

7 Q Okay. This is Mr. Womp walking back towards Turner
8 Street?

9 A Yes, sir.

10 Q Okay.

11 MR. SCOTT: Walter, could you please just real quick
12 rewind it to when the figure is leaving Leslie's?

13 Q Okay. And I want you to describe to us what you're
14 describing and talking about on the left? Just watch it
15 from there.

16 MR. SCOTT: Okay. You can stop it now.

17 Q Can you see the path that that figure was taking when
18 he goes back behind Leslie's?

19 A Yes, sir. This road right here is exactly where it
20 is and that'd lead to, again, to that footpath that goes
21 back to Heritage Square.

22 Q Okay. And were you involved with going down that
23 footpath?

24 A No sir, I was not.

25 Q Okay. Now, you talked about, I believe, earlier

1 going up to Brothers?

2 A Yes, sir.

3 Q All right. Was that after you watched the Kunkle Oil
4 video?

5 A Yes, sir. After I'd watched this video, I knew what
6 my timeframe was. Other, I think, sheriff's deputies had
7 been to Brothers and looked at their surveillance and knew
8 that they also had video of possible suspects.

9 Q Okay.

10 A So I went there and looked at their video as well.

11 Q Have you reviewed it since then?

12 A Yes sir, I have.

13 Q Okay.

14 MR. SCOTT: That's already been admitted into
15 evidence. Walter, can you play State's number 57?

16 (Whereupon, State's number 57, a video, was played
17 for the jury.)

18 MR. SCOTT: All right. Walter, pause it one more
19 frame maybe. Okay.

20 Q And was this the video at Brothers you were able to--

21 A -- yes, this is the video. One that I got from
22 Brothers Fast Stop.

23 Q Okay. And was this one where you were able to make
24 an identification?

25 A Yes, sir.

1 Q All right. It is, did you know Kenny Ruff before
2 this?

3 A Yes, sir. I've known Kenny for many years.

4 Q Okay. And when you saw this, what did you say?

5 A Like I said, a positive identification as soon as,
6 said that is Kenny Ruff.

7 Q Okay. All right. And what is this hanging out of
8 his pocket? Can you tell what that is?

9 A From this angle it's hard to tell. It appears to me
10 to be like a doo-rag, the doo-rag that you can, where it
11 strings back and forth a couple of times and that appears
12 to be a doo-rag hanging out of his pocket.

13 Q Okay. All right.

14 MR. SCOTT: Press play.

15 (Whereupon, the video continued to be played for the
16 jury.)

17 MR. SCOTT: You can pause it.

18 Q Is that the same guy that you saw?

19 A That's the same subject.

20 Q Okay. But he's put on a different shirt now?

21 A Put on a different shirt, now you can see there's
22 nothing hanging down from the pockets, same shoes, same
23 jeans. That is the same suspect.

24 Q Okay.

25 MR. SCOTT: You can press play. Pause it, Walter.

1 Q Okay. Were you able to make an identification from
2 that frame?

3 A Yes, sir. That's Kenny Ruff. That's the same,
4 again, it's the same shoes, the same pants, the same
5 stride. That's Kenny Ruff.

6 Q And then the lanyard or whatever it is out of his,
7 back of his pocket?

8 A That was back of his back pocket.

9 Q Okay. And this video, does it have multiple camera
10 angles?

11 A Yes sir, it does. There are cameras inside the
12 store, as well.

13 Q Okay. So does it show him inside the store?

14 A Yes sir, it does.

15 Q 29, 30 and 31, do you recognize these? You can sit
16 back down.

17 A Yes, sir.

18 Q What are those?

19 A These are still-shots, photographs of the video from
20 outside and from inside the store.

21 Q Okay. And we might watch footage from inside later,
22 but let me see 29. That's the, that's from the video we
23 just saw?

24 A Yes, sir.

25 Q And this clip, that's the earlier one, he's got the

1 light blue shirt with the darker shirt around the
2 shoulders?

3 A Yes, sir.

4 Q And then a little bit later, we see him with dark
5 shirt over that light blue shirt?

6 A Yes, sir.

7 Q Okay. And State's number 30. Were you able to make
8 an identification from this picture?

9 A Yes, sir. That's Kenny Ruff inside the store.

10 Q Okay. And then State's 31?

11 A Yes, sir. That's Kenny Ruff inside the store, as
12 well.

13 Q All right. So you collected these and reviewed them.
14 So that, after that, had you guys pretty much developed
15 Kenny Ruff as somebody you wanted to talk to?

16 A Yes, sir. Kenny Ruff was our prime suspect. In fact
17 we felt there was a good enough probable cause to go ahead
18 and receive, get, obtain warrants for him. So once I left
19 from that location, I went down to the Police Department
20 to go type up those warrants. After we got done typing up
21 the warrants, I went to call Judge Koon to go get the
22 warrants signed. Judge Koon's office is out on 76,
23 Highway 76 going towards Prosperity as you leave Newberry.
24 As I was leaving, I was getting on Highway 76 right in
25 front of Ringer Enterprise. I saw a white SUV, I believe

1 it was a white SUV, that we had already been looking for
2 that we had known that Kenny was riding in. Belonged to
3 one of his family members. I called dispatch and
4 confirmed the tag and confirmed that was the vehicle that
5 we were looking for. They advised it was. So I was in an
6 unmarked unit. So I didn't want to stop him by myself. I
7 called out and advised the units I was behind that vehicle
8 and it was heading towards Prosperity. I told other units
9 to start heading towards me, never activated the blue
10 lights or anything, followed him all the way down to
11 Pioneer Foods in Prosperity. Once we got into Pioneer,
12 they determined the location because I still had not
13 turned on the blue lights. They pulled into Pioneer and--

14 Q -- who's they?

15 A Kenny was the passenger in the vehicle. And once I
16 saw the vehicle, I saw there were two occupants in it. I
17 didn't know who the driver was, but I knew that was the
18 vehicle we were looking for and I could see two occupants
19 inside of it. Once we got to that location, I think it
20 was another family member of his that was driving the
21 vehicle.

22 Q And what was the vehicle? What, did you describe
23 what vehicle?

24 A I think it was a white SUV.

25 Q Okay. And did you have any knowledge who the SUV

1 belonged to?

2 A We did. I remember there was a family member. I
3 don't remember what the relationship was. It could have
4 been a cousin. It could have been a sister. I don't
5 remember. I do remember after all of this, the vehicle
6 was searched. Inside the vehicle was a package of--

7 MR. VERNER: -- your Honor, I object. Can we have a
8 sidebar or I would have an objection to that.

9 MR. SCOTT: That's not responsive to my question.

10 THE COURT: All right. Strike that answer from the
11 record and he'll repeat the question and give your best
12 response to the question.

13 MR. MERCER: Yes, sir.

14 THE COURT: Thank you.

15 Q Well, I'm not interested in what's in the car. Right
16 now, I'm trying to ask you about who's car it was and
17 describe the car for me.

18 A It was a white SUV. I believe it was a four-door
19 SUV.

20 Q Okay. Do you know who Angela Ruff is?

21 A I know the name. I know that they're related, but I
22 couldn't tell you the family history.

23 Q Do you know who D'lonze Ruff is?

24 A Again, I know they're related, but I don't know the
25 family history.

1 Q Do you know who was driving the vehicle was when you
2 stopped them at Pioneer Foods?

3 A No, sir.

4 Q Do you have your notes with you?

5 A Yes, sir. All I've got into my notes would be driver
6 complied and the passenger refused to do so.

7 Q Okay. All right. And Kenny Ruff was the passenger?

8 A Yes. Once the vehicle stopped I positively
9 identified Kenny as the passenger in the vehicle.

10 Q Okay.

11 A I knew Kenny, and so my focus was on him.

12 Q Okay. And what did you observe, if anything, about
13 Kenny Ruff's demeanor?

14 A Well, he didn't respond to the commands that he was
15 being given to put out his hands and do all the things
16 that we were telling him to do for several minutes. He
17 finally did comply with them and he was taken into
18 custody. He was his normal, normal demeanor.

19 Q Okay. Just what you recognize as normal?

20 A Yes, sir.

21 Q Did he appear intoxicated or anything?

22 A No, sir.

23 Q Did you see, observe any open containers or anything?

24 A No, sir.

25 Q Okay. So you took him into custody at that point?

1 A Yes, sir. He was taken into custody and handcuffed
2 and placed into one of the patrol units vehicle's and
3 transported.

4 Q Okay. What time was that?

5 A When he was taken into custody it was 7:15 p.m.

6 Q And do you know who transported him?

7 A That was Shane Maye, Corporal Maye.

8 Q Okay. What, any other involvement on your behalf
9 that day?

10 A Once I left there, Sergeant Gray had a search warrant
11 done for the house. And I went and assisted him with
12 executing that search warrant.

13 Q Now, where does, where is Kenny Ruff's house?

14 A It's at, actually I have got it written out,
15 Turner Street.

16 Q Turner?

17 A Yes, sir.

18 Q All right. Thank you. Please answer any questions
19 Mr. Verner has for you.

20 THE COURT: Cross-examination, Mr. Verner.

21 CROSS-EXAMINATION

22 By Mr. Verner:

23 Q You know, I'm just curious, Officer Mercer, at what
24 time do you recall, you're in your unmarked patrol unit?

25 A Yes, sir.

1 Q Do you recall how long you would have trailed Mr.
2 Ruff's vehicle?

3 A It would have been several minutes going all the way
4 from Newberry, all the way down to Prosperity to Pioneer
5 Foods.

6 Q And I don't need your exact location, but where do
7 you recall yourself being when you first saw the white
8 SUV?

9 A On 76 in front of Ringer Auto Glass which is over
10 near the Country Peddler.

11 Q That would be in Newberry, the County of Newberry?

12 A Yes, sir. Well within the city limits of Newberry.

13 Q Okay. And they were traveling to Prosperity?

14 A Yes, sir.

15 Q Okay. And that's about ten or fifteen minutes?

16 A Probably about ten or fifteen minutes, yes sir.

17 Q Was it erratic kind of driving or anything?

18 A No, sir. They stayed, I believe, in the outside lane
19 most of the way down there. Then they did get into the
20 middle lane and then into the median going into Pioneer.

21 Q If I characterize it as fairly casual driving, would
22 you agree that'd be at least fair?

23 A Yes, sir.

24 Q Not an attempt to evade?

25 A No, sir.

1 Q And then, certainly, you didn't, you were in an
2 unmarked unit at that time too?

3 A Yes, sir.

4 Q You said Mr. Ruff was taken into custody at 7:15?

5 A Yes, sir. That's what time the transport started
6 from that facility.

7 Q Okay. But that time is what time he would have been
8 placed in a patrol unit and taken to Nance Street?

9 A Yes, sir.

10 Q And, I'm assuming, typically, that how it is if
11 you're transporting someone to Nance Street, I doubt it's
12 lights flashing?

13 A No, sir. No, it's not. No, sir.

14 Q And you weren't the officer who did it, but how long
15 would you estimate, ten to fifteen minutes?

16 A Yeah, another ten to fifteen minutes.

17 Q Okay. So he should have been at the Nance Street,
18 City Police about 7:30, maybe a little bit later or maybe
19 a little bit earlier but in that ballpark?

20 A Yeah, somewhere in that area.

21 Q Okay. Do you recall what Mr. Ruff was wearing when
22 you arrested him?

23 A No sir, I do not.

24 Q Okay. Now, you've seen the, but the timestamps seem
25 to indicate when you make the first identification, I

1 believe in State's 57 --

2 MR. VERNER: May I have number 57, Mr. Bentley, or
3 that might be the video. Whatever the photograph was from
4 that.

5 Q What's the timestamp on that?

6 A 1:41 p.m.

7 Q Okay. Do you recall, when you watched the video from
8 Kunkle's, the timestamp was 1:33 when the suspect entered
9 the salon?

10 A Yes, sir. When I looked at the videos, I understood
11 even then that there was a discrepancy of the timestamp.

12 Q So you would agree that if assuming that is Kenny
13 Ruff, that that man would have been nine minutes after
14 before this, a time problem between the VCR is not
15 correlating?

16 A : Right.

17 Q Okay.

18 A I don't know what the exact time difference because I
19 did not note, I just did note that there was a time
20 difference.

21 Q How far back did you watch the Brothers Fast Stop
22 video?

23 MR. VERNER: May I approach, Your Honor.

24 THE COURT: Sure.

25 Q And I'm just going to have to speed it up, Officer.

1 I'm just going to, do you recognize what this is?

2 A Yes, sir. That's another photo from inside the
3 facility at 11:15 or 11:51 of Mr. Ruff.

4 Q This is in Brothers Fast Stop?

5 A Yes, sir.

6 Q Had you scanned back as far enough to see this image
7 of Kenny in the store?

8 A No, sir. I don't believe so.

9 Q Okay.

10 THE COURT: Would you refer to the exhibit number,
11 Mr. Verner, please, sir?

12 MR. VERNER: Your Honor, I don't know if the State
13 has it marked.

14 THE COURT: Okay.

15 MR. VERNER: These would be on 57, though. Just to
16 speed it up, Your Honor, I'm going to offer Defendant's 1.

17 MR. SCOTT: Without objection.

18 THE COURT: All right. Without objection, number 1
19 for the Defense.

20 (Whereupon, Defendant's Exhibit number 1 was admitted
21 into evidence.)

22 Q Officer Mercer, are you able to identify who this is
23 in, and these are the State's, I am going to take those
24 off of you.

25 A Without seeing the full video, no sir, I wouldn't be

1 able to say that one.

2 Q But you can't identify who that is from the video?

3 A I wouldn't feel comfortable saying that it was Kenny,
4 I don't know that for a fact, no sir.

5 Q It generally looks like Kenny but--

6 A -- it fits his description.

7 Q Okay.

8 A Part of identifying Mr. Ruff in the video is that
9 he's in motion. He's got a certain gait and things of
10 that nature.

11 Q And that's Kenny, assuming that man is Kenny, that's
12 at 11:51:40 on 8/26.

13 MR. VERNER: Defendant's 2, Your Honor.

14 MR. SCOTT: Without objection.

15 THE COURT: Okay. Without objection, 2 for the
16 Defense.

17 (Whereupon, Defendant's Exhibit number 2 was admitted
18 into evidence.)

19 Q Do you recall at that time, do you recall whether
20 Kenny had a full head of hair at that time or
21 close-cropped or a shaved head?

22 A Well, all I remember is seeing that it was covered.

23 Q Okay. And, likewise, this is just a second picture
24 similar to the first one you just identified?

25 A Yes, sir.

1 Q I'm sorry.

2 MR. VERNER: I haven't shown them to the Court.

3 THE COURT: That's fine.

4 MR. VERNER: Okay.

5 Q Officer, it's fair to say that, assuming that man is
6 Kenny, that he appears to be wearing a blue shirt, blue
7 jeans, and black shoes with white bottoms?

8 A Yes, without looking at it again, yes.

9 Q Okay. The man with the doo-rag that you believe that
10 you've identified as Kenny Ruff has white Adidas, is that
11 fair?

12 A Black and white shoes; yes, sir.

13 Q But primarily white with black-striped Adidas?

14 A Yes.

15 Q Which would be different than what Kenny was wearing
16 earlier?

17 A Again, like I said, that's, the shoes that you showed
18 me were covered up by a timestamp.

19 Q Okay. Have you reviewed the video of the murder
20 scene of Leslie's?

21 A No, sir.

22 Q So you don't know what shoes the man was wearing?

23 A No, sir.

24 Q Do you know what color of the sweater the man was
25 wearing then?

1 A Inside Leslie's?

2 Q Yes, sir.

3 A Other than from the exterior shot, it was a dark
4 color.

5 Q Okay. It was a dark color, are we talking black or
6 dark green?

7 A Very dark, very dark green or black. It appears
8 black in the Kunkle video.

9 Q I believe you identified this --

10 A Yes, sir.

11 Q -- as Kenny Ruff?

12 A Yes, sir.

13 Q And what color does it appear that you're saying the
14 sweatshirt that man is wearing is?

15 A It appeared green in this one.

16 Q Okay. Is there anything distinct about the shoes on
17 that man?

18 A Those shoes appear to be red, black, and white.

19 Q Okay. They clearly appear that at least there's a
20 bright red streak on the shoes that the man in the green
21 sweater is wearing?

22 A Yes, sir.

23 Q And unless the camera is showing the colors wrong, it
24 appears to be that's kind of a military green, olive
25 green?

1 A Yes, sir.

2 Q Okay. Did you have anything to do with the retrieval
3 of the video of the dumpster?

4 A No, sir.

5 Q Okay. What about of the video of Kenny Ruff at
6 Wal-Mart earlier that day?

7 A I don't think I had anything to do with the Walmart
8 video; I am not sure.

9 Q What about a video of Kenny Ruff back at Brothers
10 around 3:00 o'clock that afternoon?

11 A I picked up a bunch of videos and when I get videos,
12 I just tend to get it and then review it later. I'm not
13 sure.

14 Q Does that appear to be the same --

15 A Yes, sir.

16 Q -- man from the earlier photographs I showed you?

17 A Yes, sir.

18 MR. VERNER: Your Honor, Defendant's 3.

19 THE COURT: Mr. Scott?

20 MR. SCOTT: Without objection, Your Honor.

21 THE COURT: Without objection, and 3 for Defense.

22 (Whereupon, Defendant's Exhibit number 3 was admitted
23 into evidence.)

24 MR. VERNER: May I, if I can publish, Your Honor?

25 THE COURT: Sure.

1 (Whereupon, Defendant's Exhibit number 3 was
2 published to the jury.)

3 Q This is timestamped about 3:00 in the afternoon on
4 August 26th. You went to Kunkle's and retrieved the
5 video?

6 A Yes, sir.

7 Q How did you retrieve it, was it a CD or--

8 A -- flash drive.

9 Q It was a flash drive?

10 A Yes, sir.

11 Q So that is a little device about maybe a, a little
12 black device two inches long give or take?

13 A Yes, sir.

14 Q That you just plug into the USB?

15 A Yes, sir.

16 Q And so that's how you took it from Kunkle's?

17 A Yes, sir.

18 Q Do you know how many cameras Kunkle's had?

19 A Off the top of my head, no sir, I do not. They have
20 several.

21 Q Just a single?

22 A They have several.

23 Q Did you get any other camera angles of other than the
24 one?

25 A No, sir. I don't believe so.

1 Q Okay. What about, how does Brothers Fast Stop record
2 their--

3 A -- they do it the same way. On a flash drive.

4 Q Do you have to like turn on a computer and then?

5 A Yes. There's a computer in the rear. It's the same
6 as Kunkle. You have got a monitor and a DVR audio
7 recorder in the rear.

8 Q Okay. But for you to take it from their system, you
9 basically just take it by USB, flash drive?

10 A Yes, sir.

11 Q Do you know how many camera angles Brothers Fast
12 Stop?

13 A No, sir. I don't know how many they had.

14 Q Was it multiple?

15 A Yes sir, they have multiple.

16 Q Okay. Are you familiar, Officer Mercer, with
17 Brothers Fast Stop?

18 A I am familiar with it; yes, sir.

19 Q But they're fairly busy, don't they get plenty of
20 traffic in and out of that?

21 A I would, they haven't closed by now.

22 Q I didn't hear you?

23 A They haven't closed.

24 Q Okay.

25 A They are evidently doing okay in their business.

1 They're not, they haven't closed.

2 Q But it's not uncommon to see people come and go from
3 Brothers Fast Stop all day?

4 A Yes, sir.

5 Q And it's not just gasoline, it's a convenience store?

6 A Yes, sir.

7 Q And cigars and cigarettes. Do you recall playing for
8 the jury the video from Kunkle showing the man enter
9 Leslie's about 1:30:29 from the tape?

10 A Yes, sir.

11 MR. VERNER: Mr. Bentley, what's the State's exhibit
12 for Kunkle video?

13 THE COURT: Number 2.

14 MR. VERNER: Number 2.

15 Q Is it fair to say that State's number 2 starts about
16 1:00 o'clock even?

17 A I think that's right; yes, sir.

18 Q And then you have to run it about thirty minutes to
19 get to the --

20 A -- yes, sir.

21 Q Now, it appears to me and we can play the video, but
22 that you see the man who goes into Leslie's comes into the
23 screen about 1:28:38 on the timestamp.

24 A Yes, sir.

25 Q And he pretty much immediately crosses the street and

1 enters Leslie's. And would you take my word for it that
2 when he walks in the door, it's about 1:29:18 on the
3 timestamp?

4 A Yes, sir; somewhere in that area.

5 MR. VERNER: We can, can we go ahead and turn it on,
6 number 2 let's go on to 1:29:18. And, Your Honor, I think
7 it's fair to tell the jury that they're going to have
8 these exhibits back in the jury room. Okay. Right there,
9 please, Mr. Bentley. Okay.

10 Q And it's fair to say that man walks in about 1:29:18
11 by the timestamp?

12 A Yes, sir.

13 Q Okay.

14 MR. VERNER: Stop that for a second, Mr. Bentley, and
15 can you back it up until he's just past the signs on this
16 side of the road? All right. Just maybe a step, yeah.
17 I'll tell you when to stop it in just a second. All
18 right. Stop it, please, Mr. Bentley.

19 Q From the Kunkle's video, is it possible to identify
20 that man at all?

21 A No, sir. No, sir.

22 Q Okay. All right. He enters the store at 1:29:18,
23 and then he exits the store.

24 MR. VERNER: Can we have, is it possible to play it
25 forward in a quicker speed, Mr. Bentley? Right there.

1 Right there.

2 Q That is the gentleman you identified as Womp?

3 A Yes, sir.

4 Q W-O-M-P?

5 A Yes, sir.

6 Q Okay. He doesn't come onto the screen until that
7 man's been in, this is what, 13:30. So he doesn't even
8 walk on that part for about 45 seconds after the man who
9 goes in the store.

10 MR. VERNER: If we can go, Mr. Bentley, to 13:33:46.

11 Q All right. That is when we see the man leave
12 Leslie's, and Mr. Womp is not in that location at that
13 time, is he?

14 A No, sir.

15 Q Okay. Do you recall how many more minutes it is
16 before, at some point we'll see that man go down that
17 little path. And then a couple of minutes later, we'll
18 see the gentleman you've identified as Womp come back down
19 the road?

20 A Yes, sir.

21 Q Okay. So he wouldn't have been in any close
22 proximity to the man who entered the Leslie's store, would
23 he?

24 A When he come in, Womp, he's got to come down the road
25 this direction.

1 Q Correct.

2 A Just by the fence. You can see through a wire fence.

3 Q You talking about Main Street or Turner Street?

4 A Turner Street.

5 Q Okay.

6 A In the area of Turner Street, there's nothing but
7 high fence very similar to this on that side of Kunkle.
8 He had been walking and he, so yeah, he would be able to
9 eventually see over there at some point before he's on
10 video.

11 Q But that, that's over a hundred yards away, though,
12 isn't it?

13 A Give or take; yes, sir.

14 Q It's some distance, but it is visible?

15 A Yes, sir.

16 Q Okay. But if we watch this, eventually, we will see,
17 it's just clear that by the time Womp returns, that there
18 is nobody for him to see on the Leslie's side of the
19 store?

20 A There's a long line of sight between--

21 Q -- assuming this is the gentleman named Womp coming
22 back.

23 A Yes.

24 Q The man who went into Leslie's would have been long
25 gone on the return trip at least?

1 A Yes, sir.

2 Q Okay. Are you sure that was, the gentleman named
3 Womp coming back?

4 A From this direction?

5 Q Back, right there?

6 A No, sir.

7 Q Okay. But that's who you believed--

8 A -- that's who we believed it was and we went and
9 talked to him.

10 Q And did you speak to the man named Womp?

11 A / No, sir.

12 Q Okay. And it's fair to say at 1:36:04 on that video

13 --

14 MR. VERNER: All right. Stop. Back it up just a few
15 seconds, please. That's plenty.

16 Q Okay. We're looking at it at 13:35:20, the gentleman
17 you've identified as Womp is coming back on this side of
18 the road?

19 A Yes, sir.

20 Q And what is that on the opposite side of the street?

21 A And that's a man on a bicycle.

22 Q -- and he's going to enter Leslie's, isn't he?

23 A Yes sir, he is.

24 MR. VERNER: Okay. We can go to 13:38:08. That's
25 good.

1 Q Okay. Then, we can see the man exit Leslie's at
2 13:38:08?

3 A Yes, sir.

4 Q Okay. And it appeared he came on a bicycle to the
5 store?

6 A Yes, sir.

7 Q And he walks away on foot?

8 A At 13:44:12, he comes back and gets back on the bike.

9 Q Right.

10 MR. VERNER: Okay. Back up a little bit before
11 13:44:12.

12 Q Okay. He appears, the man comes back into the frame
13 about 13:44:08.

14 A Yes, sir.

15 Q And he's going to go back into Leslie's again.

16 A Yes, sir.

17 Q 13:46:21. And at this time he's going to exit? This
18 is the man across the street --

19 A Yes, sir.

20 Q -- he's going to exit Leslie's?

21 A Yes, sir.

22 Q And at this point, he's going to leave?

23 A Yes.

24 Q And then, well, we'll just stay on this for a second,
25 and then you can just tell us, you can narrate what

1 happens next. Okay. 13:46:51 is the van driven by his
2 niece. So that's what time we know the niece drives up,
3 right?

4 A Yes, sir.

5 Q Okay. Officer, you can sit, take a seat.

6 MR. VERNER: Your Honor, I just want to double-check
7 my notes real quick.

8 THE COURT: Sure. Take your time.

9 Q And, Officer Mercer, did you, I think you indicated
10 to me that you were familiar already with the gentleman
11 named Womp or nicknamed Womp?

12 A Yes, sir.

13 Q Again, I think you said you didn't recognize his
14 name, but you don't remember his name, is that correct?

15 A No, sir. I've never known his name. He's a fixture
16 around town.

17 Q Did you speak to him that day?

18 A No, sir.

19 Q Did you and I, just to refresh my recollection, did
20 you ever, what time do you think you arrived at the --

21 A -- it was shortly after the call got out. Several
22 officers were already on-scene. Myself and Sergeant
23 Alvarado arrived in the same vehicle.

24 Q Okay. But were you one of the first officers to
25 respond?

1 A Probably be, I knew Lieutenant Kennedy was already on
2 the scene by the time I got there.

3 Q Okay. And then how long did you stay?

4 A I almost immediately left right then to go get in my
5 car with my equipment in it and then came back.

6 Q Okay. So you arrived, initially, you arrived with
7 the other officer. And then you left to get your vehicle.
8 Did you come back to the scene?

9 A Yes, sir. I came back to the scene.

10 Q Okay. How long, ballpark, do you think either in the
11 building itself or just doing traffic detail or going
12 around the building were you there?

13 A I was there until, that specific building?

14 Q Well, I don't need an exact time. I mean, were you
15 there for just another hour or were you --

16 A Yes.

17 Q -- there for several hours?

18 A I was there and probably at least another hour
19 collecting video and everything.

20 Q Okay. And at that time you were an investigator?

21 A Yes, sir.

22 Q So if you weren't doing the road patrol, you were
23 doing the actual, were you lead investigator?

24 A No, sir.

25 Q Who was the lead investigator?

- 1 A That'd be Captain Goodman.
- 2 Q Okay. Were there a lot of officers who responded and
3 by a lot, I'm just, several more than normal?
- 4 A Yes, sir.
- 5 Q And, in fact, it was enough traffic there where y'all
6 had to block that part of Nance Street, I mean, Main
7 Street?
- 8 A Main Street, yes sir.
- 9 Q Do you recall, it's not uncommon to get a pretty good
10 bit of foot traffic in the liquor store, Brothers Fast
11 Stop, that part of Main Street, is it?
- 12 A No, sir.
- 13 Q Okay. Is it fair to say that there was general
14 interest from the people in that area kind of watching
15 from across the street to see what was going on?
- 16 A I couldn't tell you how many people were there. I
17 assume that it would be a normal amount of people that
18 would be there that would be interested in a lot of blue
19 lights.
- 20 Q But the fact that there were that many units there
21 would be some interest of people just walking by. In
22 fact, you had the SLED dog team out?
- 23 A Yes, sir.
- 24 Q You had a helicopter, I believe, that was on the top
25 of the scene at some point?

1 A It may have been. I'm not aware of it.

2 Q Okay. But it would be enough activity going on where
3 the people passing by would have some interest and watch a
4 little bit and talked about it.

5 A Yes.

6 Q Did you go to Heritage Square?

7 A No, sir.

8 Q So you took the video from Kunkle and Brothers Fast
9 Stop, but you didn't have anything to do with the
10 investigation going behind the building to Heritage
11 Square?

12 A No, sir.

13 Q Okay. And then you made the stop where you arrested
14 or at least the lead officer when Mr. Ruff was arrested?

15 A Yes, sir.

16 Q Did you have any further involvement in this case?

17 A Well, after the completion of the arrest, I searched
18 the vehicle. And then I went to Turner Street,
19 Turner Street and helped execute the search warrant at
20 that residence.

21 Q Okay. Now, I'm not questioning. I understand you
22 feel confident about your identification of the man as
23 Kenny Ruff, right?

24 A Yes, sir.

25 Q Is it fair to say that the man you've identified as

1 Kenny Ruff has at least half of his face covered with a
2 doo-rag?

3 A He was holding up, yes, he was holding something.

4 Q And they have the pictures in evidence but just, the
5 identification that you've made of Kenny Ruff is based on
6 a man wearing the doo-rag?

7 A Yes, sir.

8 Q Wearing a green sweatshirt?

9 A Yes, sir.

10 Q I understand you're testifying that you feel
11 confident about it. But is it fair to at least
12 acknowledge that it's not a crystal clear?

13 A Yes, sir. It's not a crystal clear picture; no, sir.

14 Q Okay. And I was handing up State's 31.

15 MR. VERNER: I want to double, I think that's it,
16 Your Honor, but I just want to double check.

17 THE COURT: Sure, take your time. Let's do this.
18 Let's go ahead. You go through your notes and make sure
19 you got everything covered. And let's go ahead and take a
20 short break and then the State may have some redirect
21 questions. I don't know.

22 MR. SCOTT: Probably.

23 THE COURT: Madam Forelady and ladies and gentlemen
24 of the jury, we're going to take an afternoon break,
25 around ten minutes or so. So if you'll go back to the

1 jury room again. I remind you no discussion among
2 yourselves about anything related to this case. And we'll
3 get you back out and continue forward.

4 (Whereupon, the jury was excused from open court for
5 a break.)

6 THE COURT: We will be in recess for about ten
7 minutes. Officer Mercer, you can go down but you just
8 can't talk to anyone about your testimony.

9 (Whereupon, a short break was taken.)

10 THE COURT: Okay. Before we bring the jury back out,
11 Solicitor Scott, Stumbo, we had a sidebar conference as it
12 relates to Agent Edwards and you initially had offered her
13 as an expert in the area of crime scene investigation and
14 had a little dialogue about that. And I think now, it's
15 been, even though we finished her testimony, you decided
16 to withdraw her as an expert, is that correct?

17 MR. SCOTT: That's correct, Your Honor.

18 THE COURT: Okay. Mr. Verner, you got any other
19 cross?

20 MR. VERNER: Your Honor, I have one final question.

21 THE COURT: That's fine. Bring the jury out, Madam
22 Bailiff.

23 (Whereupon, the jury came into open court at
24 approximately 4:30 p.m.)

25 THE COURT: Okay. Let the record reflect the jury is

1 back in. Mr. Verner, I think you have some more cross?

2 MR. VERNER: Briefly, Your Honor.

3 CONTINUE CROSS-EXAMINATION

4 By Mr. Verner:

5 Q Officer Mercer, now, doo-rags are the head, the tight
6 head coverings you are talking about?

7 A Yes, sir.

8 Q Okay. Have you often heard them called wave caps?

9 A Yes, sir.

10 Q Okay. Do you know why people typically wear those?

11 A No, sir.

12 Q Okay. But you've heard of the wave hair pattern,
13 though, that some people have?

14 A Yes, sir.

15 Q Okay. Looking at State's 31.

16 MR. VERNER: If I may approach, Your Honor?

17 THE COURT: Sure.

18 Q Does it not appear possible, this is the man you've
19 identified as Kenny Ruff?

20 A Yes.

21 Q Does it not appear possible that he has, you can see
22 dark hair, short hair under the wave cap?

23 A You can see, are you talking from that one line
24 there?

25 Q Well, I'm talking about on top of his head.

1 A Right there? I'd say that's nearly impossible with
2 that photograph. I just don't know.

3 Q Okay. So this photograph's nearly impossible to
4 determine whether he has hair under the wave cap?

5 A Yes, sir.

6 Q And that's one of the photographs/videos that you've
7 used to identify Kenny Ruff?

8 A Yes.

9 Q But it doesn't appear that, the top of his head
10 appears that that man has hair on his head or darker?

11 A I don't, I don't know, sir.

12 MR. VERNER: Thank you, Officer. If the State has
13 any follow-up questions.

14 THE COURT: Redirect, Solicitor.

15 REDIRECT EXAMINATION

16 By Mr. Scott:

17 Q Have you ever heard of a bald man wearing a wave cap?

18 A Yes, sir.

19 Q All right. Okay. Main Street just again, and I'm
20 going to try to be pretty quick here. We talked about
21 Womp walking up, would you agree that this stretch of Main
22 Street is pretty much a straight shot?

23 A Yes, sir.

24 Q Okay. And that's Turner?

25 A Yes, sir. This is Turner Street, and Womp lives

1 right back here behind this building.

2 Q Okay. So if he came down Turner onto Main, he would
3 be able to see clear up Main Street?

4 A Yes, sir.

5 Q Especially, to Leslie's at least?

6 A Yes, sir.

7 Q And Kunkle? So it'd be an unobstructed view?

8 A Yes, sir.

9 Q Likewise, if he is coming from Brothers this way --

10 A -- from Brothers all the way down, it's pretty much a
11 clear line of sight almost the entire way down.

12 Q Okay. So if we went to Main Street and just looked
13 up the road, it would just be a straight shot?

14 A Yes, sir.

15 Q The guy on the bicycle you watched --

16 A Yes, sir.

17 Q -- what color shirt is he wearing?

18 A I'd have to look back at it, sir. I don't remember.

19 Q Did you speak with him?

20 A No sir, I did not.

21 Q All right. Did you have any information on whether
22 he was spoken to?

23 A I know that he was spoken to. I'm not sure who spoke
24 to him. I don't know how they identified him, but I do
25 know that he was spoken to.

1 Q Okay.

2 MR. SCOTT: Okay. I think Walter's going to
3 fast-forward really quickly. I'm going to try to hurry
4 through this. Right there. Could you back up, Walter.

5 Q All right. What color shirt is the man wearing?

6 A Red.

7 Q Is he wearing a red shirt?

8 A Yes, sir.

9 Q All right. Lastly, there was some questions or
10 rather Mr. Verner was asking you a lot about times. Were
11 you able to determine that the times depicted on here were
12 not the true times; in other words, they hadn't been
13 reset?

14 A Yes, sir. I remember looking at it and saying right
15 then one of these is not up-to-date.

16 Q Okay. Well, you know dispatch time. Do you know
17 when officers arrived?

18 A Yes, sir. I know what's recorded. We actually have
19 the teletype, the actual recording of it. I think,
20 advised it was 13:57 when we were, 1:57 when we were
21 called in and 2:02.

22 Q 2:02. Okay. So I just want to show, and we're going
23 to have somebody later who can reconcile all those times.

24 MR. VERNER: Your Honor, that's not a question.

25 THE COURT: It's not a question. Jury, disregard

1 that statement made by Solicitor Scott.

2 MR. SCOTT: What I want to do really quick, Walter,
3 if you could, showing like law enforcement is there.

4 Okay. Pause it.

5 Q And we know law enforcement got there at what time?

6 A 2:02.

7 Q Okay. And we're saying 1:53. Okay. And about 1:54.

8 So we can determine it's about eight minutes off, is that
9 correct?

10 A Yes, sir.

11 Q Okay. It's real easy to reconcile?

12 A Yes, sir.

13 Q Okay. So let's not get confused when we talk about
14 the times. We understand that that's not the correct
15 time.

16 A That's correct.

17 MR. VERNER: Now, that's an improper, improperly
18 phrased.

19 MR. SCOTT: Nothing further.

20 THE COURT: Okay. Well, it was leading, but we'll
21 move on. Anything in recross.

22 MR. VERNER: No, Your Honor.

23 THE COURT: Okay. Thank you, sir. You can step
24 down. All right, Solicitor Stumbo, you got another
25 witness?

1 MR. STUMBO: Yes, sir. Emmanuel Richardson.

2 EMMANUEL RICHARDSON, being

3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Stumbo:

6 Q Good afternoon, Mr. Richardson. You go by a
7 nickname, don't you?

8 A Yes, sir.

9 Q Is that, Womp?

10 A Right.

11 Q And, Mr. Richardson, you live here in Newberry, is
12 that correct?

13 A Right.

14 Q What street do you live on?

15 A Turner.

16 Q Okay. So Turner Street is a street that's very close
17 to, it's right off Main Street, correct?

18 A Right.

19 Q All right. And Turner Street is the same street that
20 the Ruff's live on?

21 A Yeah.

22 Q What do you call him, Kenny Ruff or Kenny Ruff?

23 A Well, we call him, I call him Smurf.

24 Q Smurf's his nickname?

25 A Right.

1 Q Okay. How do you pronounce their last name, is it
2 Ruff or Ruff, we've heard both in this trial?

3 A I think it's Ruff.

4 Q Ruff; you go by Ruff. Okay. And you've known,
5 you've known Kenny Ruff, the Defendant, how long?

6 A Ever since he was born.

7 Q Ever since he was born?

8 A Right.

9 Q Okay. And his mama's house is right there across the
10 street from yours on Turner Street, right?

11 A Right.

12 Q Okay. Now, do you remember the day that there was an
13 incident there at the Mexican hair salon, there at
14 Leslie's?

15 A Yes, sir.

16 Q Okay. You know that area real well, don't you?

17 A Oh, yeah.

18 Q Okay. Now, if I could just have you briefly and keep
19 your voice if --

20 MR. STUMBO: Your Honor, if I may have him just look
21 at the screen here.

22 THE COURT: Yeah. Just be sure and speak up loud
23 when he ask you some questions since you're away from the
24 microphone, okay?

25 MR. RICHARDSON: Yeah.

1 MR. STUMBO: Just stay on right there is fine.

2 MR. RICHARDSON: Yes, sir.

3 Q Can you see the screen pretty well?

4 A Yeah.

5 Q Now, where is this? What's this building here?

6 A Leslie's hair place.

7 Q Okay. That's Leslie's Hair Salon.

8 MR. STUMBO: All right. And, if you could, just play
9 it through a couple of seconds, Walter? All right. And
10 pause it.

11 Q All right. Now, who is that walking in that
12 direction?

13 A That's me.

14 Q That's you?

15 A Yeah.

16 Q And you've had a chance to review this before and
17 you've seen this video of you walking by, right?

18 A Yes, sir.

19 Q Okay. Now, you're coming from, if you, off the
20 screen to the left would be back towards your house
21 towards Turner Street, right?

22 A Yes.

23 Q And you're walking down towards, where are you
24 walking to?

25 A I was walking to the store.

1 Q Okay. And by the store, you mean the BP?

2 A The BP, yeah.

3 Q Okay. You go to the BP station to buy stuff at the
4 convenience store or something?

5 A Yeah.

6 Q Do you remember what you were going to buy that day?

7 A I was going to get a little soda.

8 Q Okay. And you walked from your house and you turn
9 off of Turner Street and start walking down the sidewalk
10 on Main Street and from the corner at Turner. It'd take
11 more than five minutes, less than five minutes to walk
12 down to the BP; about how long would it take you?

13 A I say about five minutes.

14 Q Five at the most, but probably less, though?

15 A Yeah.

16 Q Okay. Now, this is you walking by and it says on
17 this screen here, it says if I'm correct, 13:30:01,
18 according to this, 1:30. All right. And this is just for
19 the record, we're referring to the video which is State's
20 number 2 is what we're looking at on the screen.

21 A Well, I was going to the store, and I saw Mr. Ruff
22 going in Mr. Leslie's store.

23 Q Okay. And we're going to fast-forward and I'll ask
24 you about that in a second.

25 MR. STUMBO: If you could, go to 13:35 about, Walter.

1 Okay. If you could just run it from there. Okay. If you
2 could pause it, Walter.

3 Q All right. And this says 13:35:25, at the point
4 we're looking at this. And this is you walking back
5 towards your house again?

6 A Yeah.

7 Q Okay. So you pass by and this driveway, you know
8 what business this is, right?

9 A Yeah.

10 Q And what's this business here?

11 A It's Kunkle's.

12 Q Kunkle Oil Company?

13 A Yeah.

14 Q It took you about five minutes from the time you
15 walked by Kunkle to go to the store and get your soda and
16 get back to about in front of it, right?

17 A Yeah.

18 Q Now, during this time you're making your trip to get
19 your soda at the BP, did you see the Defendant, Kenny
20 Ruff, any during that time?

21 A I seen him, he was standing in the door, he was going
22 in the door in Mr. --

23 THE COURT: All right. I'm having a hard time
24 hearing him, so can you put him back up there on the
25 stand.

1 MR. STUMBO: That's fine. We can put him back on the
2 stand.

3 THE COURT: And then if needs to get back up, that's
4 fine.

5 MR. STUMBO: That'll be fine.

6 THE COURT: Re-ask the question, Solicitor.

7 Q Mr. Richardson, did you see the Defendant, Kenny
8 Ruff, at any time during your trip to get your soda that
9 day?

10 A Yes, I seen him. He was at Mr. Leslie's door, going
11 into Mr. Leslie's shop.

12 Q Okay. And what kind of clothes was he wearing?

13 A He had a black shirt and a doo-rag on his head.

14 Q Okay. And have you known Smurf or Kenny Ruff all his
15 life, right?

16 A Yes.

17 Q Okay. And you're confident that was him in the dark
18 shirt and the doo-rag?

19 A Yes, sir.

20 Q Okay.

21 MR. STUMBO: Now, if we could, Walter, let's, and if
22 I could have Mr. Richardson step back down.

23 THE COURT: You can get back up, sir.

24 MR. STUMBO: Okay. Let's go, Walter, to 13:29.

25 Okay. Keep rolling it back.

1 Q Can you see that individual walking across the street
2 going towards the store?

3 A Yes.

4 Q Was that the clothing that Mr. Ruff was wearing that
5 day or Mr. Ruff?

6 A Yes, sir.

7 MR. STUMBO: Okay. All right. You can pause it now,
8 Walter. All right. And if you can go to 13:34. Yeah.
9 I'm sorry. 13:30, okay. Pause it there.

10 Q And that individual that's walking out of the store
11 towards there with the black shirt on, that's the same
12 person you saw that day?

13 A Yes, sir.

14 Q Okay. If you could take the stand again. Was that
15 unusual for you to see Smurf right there at, I mean, is
16 that the place where you knew him to get his hair cut?

17 A No, sir.

18 Q Okay. Did you think that was odd that he was around
19 the store?

20 A I've come through there that way, I ain't never see
21 him at, I ain't never seen him. I always see a Mexican
22 going in there.

23 Q Okay. So that caught your eye to see Smurf, you've
24 known his whole life, right here around the Leslie's Hair
25 Salon?

- 1 A Yes, sir.
- 2 Q Okay. Did you talk to any law enforcement later that
3 day about this?
- 4 A No.
- 5 Q Did you ever talk to Chief McClurkin, to Roy?
- 6 A Well, I talked to him, not that day, but I talked to
7 him.
- 8 Q Okay. You talked to him later on sometime?
- 9 A Yes.
- 10 Q The next day or the day after that, I mean, how long?
- 11 A Probably the next day. Well, I talked to him that
12 day because he came, I was at work, and he came down to
13 the school.
- 14 Q Okay. You work at the school?
- 15 A Yes, sir.
- 16 Q All right. He came down to the school to talk to
17 you?
- 18 A Yes, sir.
- 19 Q Okay. And you told him what you saw?
- 20 A Right. Yes, sir.
- 21 Q Just one more question. One more question, Mr.
22 Richardson. Is the person you know as Smurf, Kenny Ruff,
23 in the courtroom today?
- 24 A Yes, sir.
- 25 Q Okay. Is he sitting over at that table?

1 A Yes, sir.

2 MR. STUMBO: Let the record reflect, Your Honor, that
3 the witness has identified the Defendant.

4 THE COURT: So noted for the record.

5 MR. STUMBO: Thank you, Mr. Richardson. Please
6 answer any questions Mr. Verner may have.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 By Mr. Verner:

10 Q Mr. Richardson, you actually live on Norris Street,
11 don't you?

12 A Turner Street.

13 Q You live on Turner?

14 A Yes.

15 Q You live on the corner of Norris, facing Norris?

16 A Facing --

17 Q Facing Norris Street?

18 A Well, that's, well, that's not the same. It's, my
19 address is Turner Street.

20 Q Okay. Your address is Turner Street?

21 A Yes, sir.

22 Q Your house doesn't front on Norris, though?

23 A Well, I don't know. I just seen this and I don't
24 know. I couldn't tell you.

25 Q Well, I mean, what do you mean you don't know what

1 street your house is on?

2 A My street, my house is on Turner Street.

3 Q Okay. It's not, it doesn't front on Norris Street,
4 though?

5 A I didn't see a sign say Norris, I got my address
6 right here.

7 Q I trust you, but the Norris Street cuts into Turner
8 Street?

9 A Right.

10 Q And that's the vicinity you live in kind of where
11 Norris and Turner come together?

12 A Right.

13 Q Okay. Now, if I was walking from your house towards
14 Main Street, how far is it from, when you get on Turner
15 Street, how far is it to Main Street?

16 A From my house to Main Street?

17 Q Yes, sir. If you estimated a distance, can you give
18 me an rough-estimate distance?

19 A About a hundred feet.

20 Q A hundred feet?

21 A Well, my house is to the corner, right?

22 Q Right.

23 A Yeah.

24 Q Okay. So it's in front. Do you know where that
25 bamboo, you know where all that bamboo is on the side of

1 the road on Turner?

2 A Yes, sir.

3 Q You're, you're closer to Main Street than that bamboo
4 or you're on the other side of the bamboo?

5 A Maybe the other side. I'm kind of confused. Well,
6 it ain't that far from there.

7 Q Well, I mean a hundred feet?

8 A Okay.

9 Q And less than the distance of that wall over there,
10 isn't it?

11 A I'd say about 125, then.

12 Q Okay. Are you confusing feet with yards?

13 A No, sir.

14 Q Or it's just not a very long walk?

15 A No, not a long walk.

16 Q Okay. What's on your right-hand side as you walk
17 down Turner Street?

18 A Kunkle Oil.

19 Q Kunkle Oil.

20 A The tanks.

21 Q Right. Now, what we're looking at, you've seen this,
22 what's on the TV screen, that's not Turner Street is it?
23 Well, look at the TV screen.

24 A No, that's --

25 Q That's the driveway into Kunkle, right?

1 A Right. That's Main Street.

2 Q Okay. And there's a fence that runs along that, the
3 side of the Kunkle Street property?

4 A Right.

5 Q And then when we look at the, and here, step down for
6 a second, please, Mr. Richardson.

7 THE COURT: Be sure and speak up loud.

8 Q Okay. The building across the street that I'm
9 looking at is, what is that?

10 A Leslie Hair Salon.

11 Q Okay. Isn't there a building on the left-hand side
12 of Leslie's?

13 A There's a little store.

14 Q Okay. There's another building. Is it bigger than
15 Leslie's or smaller?

16 A It is a little bigger than Leslie's.

17 Q Okay. And then there's another building on the
18 left-hand side of that one, right?

19 A Yes, sir.

20 Q Do you know what that building is?

21 A It's a liquor store.

22 Q Okay. Now, all three of those buildings across the
23 street are primarily Hispanic or Mexican businesses?

24 A Right.

25 Q And that's generally who you see in there, but there

1 are three buildings across the street from where I'm
2 looking at. The one on the far right would be the hair
3 salon?

4 A Yeah.

5 Q And then a little bit further past those is where
6 Turner Street would turn into the Main Street, right?

7 A Right.

8 Q Okay. Can you recognize this as Turner Street?

9 A Yeah.

10 Q Now, let me, there might be a better.

11 MR. VERNER: Did you have an aerial that you put in?

12 MR. STUMBO: I have an aerial.

13 MR. VERNER: Oh, okay. Yeah. But, I mean, there's
14 one?

15 MR. SCOTT: We have an exhibit that's similar.

16 MR. VERNER: All right.

17 Q Mr. Richardson, so we can just step down so you're
18 following me for just a second. I'll be just helping you.

19 THE COURT: And, Mr. Richardson, you going to need to
20 speak up loud because you're away from that microphone and
21 you're away, you're not facing the court reporter. So
22 speak up as loud as you can when you answer Mr. Verner's
23 questions, okay?

24 MR. RICHARDSON: Yes, sir.

25 THE COURT: Thank you.

1 Q And just so the Judge hears you too. But let's just,
2 dealing with the red roof.

3 A That's Leslie's.

4 Q And, I apologize, and since I'm close to you Mr.
5 Richardson. Your eye is real red, your right eye. Is
6 that just something recent or do you have an eye
7 condition?

8 A I just busted a vein.

9 Q And so that's just something that happened recently?

10 A Yeah.

11 Q But that wasn't the condition of your eyes then?

12 A No.

13 MR. STUMBO: Judge, relevance?

14 MR. VERNER: Well, Judge, he's got a solid red eye
15 and he's making an observation from a hundred yards away.

16 THE COURT: He can, I'll overrule the objection.
17 I'll allow Mr. Verner to continue.

18 Q Can you tell me what the prescription of the glasses
19 you're wearing right now? Do you know, are they primarily
20 for reading or are those for distant glasses?

21 A Distance.

22 Q More for distance?

23 A Yes, sir.

24 Q Do you recall if you were wearing those?

25 A Yeah.

1 Q You usually, do you normally wear those?

2 A Right.

3 Q All right. Leslie's has a red roof, and then there
4 is another building with a white roof?

5 A Right.

6 Q Then, there is another building with kind of a
7 grayish roof with yellow sides?

8 A Right.

9 Q And then you go, and pretty much that's where
10 Kunkle's, is this Kunkle's across the street?

11 A Yes, sir.

12 Q And then the driveway to Kunkle's, in that picture
13 earlier is right here?

14 A Right.

15 Q Now, you're sure this is not Turner's Street, this is
16 the driveway into Kunkle's right?

17 A Right.

18 Q Okay. So Turner Street would have to be further
19 down, is Turner Street directly across, but this is the
20 carwash?

21 A Right.

22 Q Okay. And just to make sure we're correct now. Does
23 Turner Street dead-end directly across from the carwash or
24 you have to turn right a little bit to get to the carwash
25 from Turner's?

1 A Well, you get to Turner's before you get to the
2 carwash.

3 Q Okay. So this would be Turner Street right here?

4 A Right.

5 Q Okay. And you kind of see the fence line that runs
6 down it?

7 A Right.

8 Q And then there are cars and buildings on the other
9 side of the fence line?

10 A Yeah.

11 Q Okay. So just so we're clear, this would be Turner
12 Street that dead-ends almost across from the car wash?

13 A Yeah.

14 Q Okay. So the driveway we saw earlier would be
15 probably that driveway there?

16 A Yeah.

17 Q Okay. Thank you, you can sit down.

18 THE COURT: Now, you can come back up to the witness
19 stand.

20 Q So when you, just so I'm clear. When you identified
21 Kenny Ruff on August, when you said to the police officers
22 you saw, and just a second ago, that you saw Kenny Ruff at
23 Leslie's.

24 A Yeah.

25 Q That was when he went in you're saying or that's when

1 the man left, you saw him before he went in or before he
2 came out?

3 A I saw him go in.

4 Q Okay. And that's the man we saw in the video go in
5 that you're saying that you saw?

6 A Yes, sir.

7 Q Okay. And it's fair to say you would have made that
8 identification while you were on Turner Street or had you
9 already reached Main Street?

10 A I was on Main Street.

11 Q So you had already reached Main Street when you saw
12 him?

13 A Yes, sir.

14 Q And you saw past the first yellow building, past the
15 white building, and then you, to the red building. You
16 would have had to look from across the street from
17 somewhere over here. When you were walking, you stayed on
18 the right-hand side of Main Street?

19 A I was right, yes sir, I was right in front of
20 Kunkle's when I saw him.

21 Q Okay.

22 A I was right here when I saw him.

23 Q So you're saying now that when you saw Kenny Ruff
24 you were in the Kunkle parking lot area?

25 A I was right here, and then I was, I turned around two

1 times.

2 Q Okay. Did you change how fast you were walking for
3 some reason?

4 A No, sir.

5 Q You saw the video with the jury just a few minutes
6 ago and that man on the video from Kunkle's entered the
7 store about fifty seconds before you even reached the
8 Kunkle video, right?

9 A I don't--

10 Q -- are you saying it took you about fifty seconds to
11 walk from just one side of Kunkle's to the other?

12 A No, sir. I didn't, I wasn't timing it.

13 Q Yes, sir. But, I mean, you saw what time the
14 timestamp that you appear on the video from Kunkle's,
15 don't you?

16 A Yes, sir.

17 Q And you saw a video of the time the man entered the
18 store, didn't you?

19 A Yes, sir.

20 Q And that's about 45 or 50 seconds, okay, right here.
21 Sorry.

22 MR. VERNER: Can we have, Mr. Bentley, number 2,
23 13:30; right there. 13:30, even or maybe a second or two
24 before that. Okay.

25 Q Now, were you walking steady up the street or were

1 you just kind of--

2 MR. VERNER: All right. Stop, please, Mr. Bentley.

3 Q All right. At about 13:30 even, zero, zero, is when
4 you enter the frame. Is that you?

5 THE COURT: You'll need to step down so you can look
6 at the video. Be sure to speak up loud.

7 A Yes, sir.

8 Q And were you walking fairly steady?

9 A I was taking my time; yes, sir.

10 Q Okay. But you weren't, you were walking steady to
11 the Brothers Fast Stop?

12 A Yes, sir.

13 Q Okay. And that's 13:30 when you get to that driveway
14 at Kunkle's?

15 A I never counted. I don't know.

16 Q Well, we can see it from the clock, can't we? And
17 the man, we said that the man who entered Leslie's entered
18 at 13:29:18, so that's about 42 seconds later? If we
19 could go, did you see, you can sit down, Mr. Richardson.

20 When you're saying you saw Kenny Ruff go into the
21 Leslie's, did he hang around the entranceway? Did he turn
22 his head backwards or any way where you could identify
23 him?

24 A Oh, he was going, he went in straight.

25 Q Yeah. But the man we saw on the video went in

1 straight, so his back would have been towards you?

2 A I seen him.

3 Q Okay. And his back would have been towards you from
4 the moment that that man walked in that location into
5 Leslie's, he didn't turn around and look back towards this
6 side of the camera, did he? Did he seem to walk straight
7 into Leslie's?

8 A Yes, sir.

9 Q Okay. And you were, however long it took you to walk
10 forty-two seconds away, but you would have had to be, you
11 would have had to identify him from the distance that it
12 took you to walk for forty-two seconds?

13 A I know, well, I know I see how he walked. I see him
14 when he left. I see, I know how he walked.

15 Q And that's past two buildings that would have been on
16 that side between you and Leslie's?

17 A Okay.

18 Q And it's a man who would have been wearing a doo-rag
19 on his head?

20 A Yes, sir.

21 Q And a large sweater?

22 A He had a black shirt on.

23 Q Okay. And that's while Kunkle's has the vehicles and
24 buildings on that side of the road? And like we can see
25 the back of the truck on this one, is that fair to say?

1 A Sir, I --

2 Q And there would be traffic going through there, too,
3 on Main Street?

4 A There wasn't that much traffic that day.

5 Q And Main Street doesn't have cars going past it?

6 A Not at that time.

7 Q Okay.

8 A It could have had cars, but when I was walking, there
9 wasn't no cars coming.

10 Q I take it that you feel pretty strong about your
11 identification of Kenny Ruff, don't you?

12 A Yes, sir.

13 Q My only point is, in fairness, that is it possible
14 you were mistaken, because you wouldn't have had made that
15 identification from a distance of forty seconds of walk
16 away from him?

17 A No.

18 Q Well, why am I wrong then, if that's where you, if
19 that's who you say is on the video, right?

20 A Yes, sir.

21 Q Okay. And did you see him exit the store?

22 A No, I see him went in.

23 Q Okay. How did you see Kenny Ruff's face if his back
24 was turned towards you?

25 A I seen him on the side.

1 Q Oh, you saw him on the side. Okay. And the man had
2 a doo-rag on?

3 A Well, I seen him when he left home because that's
4 what he had on when he left walking up the Main Street,
5 walking home from Turner Street.

6 Q When was that?

7 A The same day about something after 1:00.

8 Q Well, tell me about that one more time, then,
9 because, where did you say? This is a different
10 identification of Kenny?

11 A No.

12 Q And this is the same time you saw him at that time?

13 A At the store, yeah.

14 Q Okay. All right.

15 MR. VERNER: And thank you, Mr. Richardson, if the
16 State has any follow-up.

17 THE COURT: Any re-direct?

18 MR. STUMBO: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 By Mr. Stumbo:

21 Q Mr. Richardson, you didn't have a stopwatch at the
22 time of your trip from your house to the BP that day?

23 A No.

24 Q You were just going to get a soda, right?

25 A Yeah.

1 Q So this forty seconds we've heard of, you don't know
2 if that was forty seconds or two minutes or the time it
3 took you to make that trip to get the soda and come back,
4 right?

5 A No, sir; I don't.

6 Q But you've known Kenny Ruff, Smurf, all his life
7 since he was born, right?

8 A Yes.

9 Q And you had a good view, a clear view of Leslie's
10 store and you saw that, right?

11 A Yes, sir.

12 Q And he was, he was right there at Leslie's store,
13 right?

14 A Yeah. Yes, sir.

15 Q In his doo-rag and a dark-colored shirt?

16 A Dark, black shirt.

17 MR. STUMBO: No further questions.

18 THE COURT: Any recross?

19 MR. VERNER: No further questions.

20 THE COURT: Thank you, sir. You can step down. Let
21 me see the lawyers for just a minute to see what else we
22 can do.

23 (Whereupon, a bench conference was held in the
24 presence of the jury but out of the hearing of the
25 jury.)

1 THE COURT: Madam Forelady and ladies and gentlemen
2 of the jury, we're going to go a little while longer,
3 maybe two more, one more witness and maybe two more
4 witnesses. Does anybody need to make a call home to make
5 arrangements for anybody? I see one. Anybody else?
6 Okay. Just to make arrangements, not to talk about what's
7 going on, but if you've got children or whatever, I'm
8 going to give you that opportunity. If you need some
9 privacy to make the call, I'll ask that you do it one at a
10 time and just the bailiff will escort you maybe in the
11 hallway or somewhere if you need a little privacy as
12 opposed to doing it in the jury room. If you want to do
13 it in the jury room, that's fine. Do you have your cell
14 phones? You got them in the car? Okay. Ms. Bailiff,
15 what sort of help can we provide them to make their calls?
16 Take them downstairs to the Clerk's office? Okay. Let's
17 do this. Going to take about a really short break. If
18 those two jurors will stay in your seat, then the Clerk
19 will walk you downstairs and you can use their phone,
20 okay, and the rest of you can just go back in the jury
21 room. Just as soon as you've made the call, we'll get you
22 back in and we'll proceed forward, okay?

23 (Whereupon, the jury is excused from open court for a
24 break.)

25 (Whereupon, a short break was taken.)

1 THE COURT: Okay. Madam Bailiff, if you will bring
2 the jury out, please?

3 (Whereupon, the jury came into open court at
4 approximately 5:22 p.m.)

5 THE COURT: All right. Let the record reflect the
6 jury is back in. Everybody good now? Okay. Good. Thank
7 you, very much. The State ready to call its next witness?

8 MR. SCOTT: Yes, sir, Your Honor. The State calls
9 José Galvez.

10 (Whereupon, Interpreter Elizabeth Rivera interpreted
11 the testimony of Jose Galvez.)

12 JOSE GALVEZ, being
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Scott:

16 Q Mr. Galvez, are you familiar with Leslie's Hair
17 Salon?

18 A Yes. I would go and have my hair cut there every
19 fifteen days or every month.

20 Q Okay. And did you know Roberto Facio?

21 A Yes. Sometimes, he would cut my hair and sometimes
22 his wife would cut my hair.

23 Q Okay. Do you remember August 26th of 2015, do you
24 remember riding your bike to Leslie's?

25 A Yes. I left my job, and I went to get my hair cut.

1 I went in.

2 Q Okay. And you work at El Poblano?

3 A Yes.

4 Q Okay. When you got there, what happened when you

5 went inside?

6 A I went in and I said, hello. And then I went out and

7 I went to the Princesa.

8 Q Okay. Did you see anybody inside?

9 A No.

10 Q Okay. What did you do at La Princesa?

11 A I bought some cards for my family in Honduras.

12 Q Okay. Did you go back to Leslie's after that?

13 A Yes.

14 Q Okay. What happened when you went in that time?

15 A It was the same, so I left.

16 Q Okay. Did you go into the backroom of the salon?

17 A No.

18 Q Okay.

19 MR. SCOTT: Walter, would you cue up State's 2.

20 Okay. Right there.

21 Q Do you see the man on the bicycle?

22 A Yes.

23 Q Who is that?

24 A It's me.

25 Q Okay. And what color shirt were you wearing that

1 day?

2 A I had a red shirt.

3 Q Okay. All right. Is that you?

4 A Yes. I went out.

5 Q And is that you walking to La Princesa?

6 A Yes, to La Princesa.

7 MR. SCOTT: Walter, just so we can get, can you
8 fast-forward?

9 Q Okay. And who is that?

10 A That's me again returning.

11 Q All right. Are you trying one more time to find
12 somebody to cut your hair?

13 A Yes.

14 Q Okay. And is that you, Mr. Galvez?

15 A Yes.

16 Q And where did you ride your bike after that?

17 A Back to my job.

18 Q Okay. And just one last time, did you see anybody in
19 Leslie's when you went in?

20 A No, I didn't see anyone. I didn't know anything.

21 Q Okay.

22 MR. SCOTT: All right. Thank you, Mr. Galvez.

23 Answer any questions Mr. Verner has for you.

24 THE COURT: Have a seat back. Mr. Verner?

25 MR. VERNER: May it please the court, Your Honor?

CROSS-EXAMINATION

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By Mr. Verner:

Q Mr. Galvez, now have you had a chance to watch that video before?

A No.

Q Okay. Today is the first day you've seen it?

A Yes, first time.

Q Okay. Just when did the police come to you, when do you believe you were identified in that video, did the police come and find you?

A Yes. They went to my job.

Q Okay. So but the police came and talked to you and it wasn't that you would have gone to speak with the police?

A No. The police went for me and they brought me and they took my fingerprints.

Q And was that the same day Mr. Facio was killed?

A Yes.

Q That was the same day that you had gone to the barber shop?

A Yes.

Q Did they tell you who had identified you on the video?

A No.

Q And that's when you learned that Mr. Facio was

1 killed?

2 A Yes.

3 Q Okay. It appears from the timestamps when you first
4 entered the barber shop, you stayed about two minutes?

5 A Yes. I just sat there and waited for somebody to
6 come and get me.

7 Q Okay. Have you ever been, how many times before then
8 had you had your hair cut at that salon?

9 A Very few.

10 Q Like a couple of times?

11 A No. Since that happened, I've only been there four
12 or six times since then.

13 Q Okay. But I'm asking prior to August 26th, 2015?

14 A Before he died?

15 Q Yes.

16 A I don't remember.

17 Q Okay. Had you ever been in the little side room of
18 the salon before?

19 A Never.

20 Q Do you remember if the curtain was drawn closed when
21 you went in for two minutes on August 26th, or was it
22 partially opened, or you don't remember it at all?

23 A I don't remember.

24 Q Did you think it was possible that Mr. Facio was
25 using the bathroom when you went in and that was the

1 reason he wasn't up front?

2 A Yes.

3 Q Okay. Did you call out for him? Did you know him by
4 first name or name?

5 A I didn't know him by his name.

6 Q But did you call out for Mister, or Señor, or hello?

7 A No, and I said buenos --

8 Q Okay.

9 A -- which is hello.

10 Q Good day?

11 A Good day.

12 Q Okay. But nobody came to you?

13 A No.

14 Q And after two minutes you left?

15 A Yes.

16 Q And then you came back and according to the timestamp
17 stayed another two minutes inside?

18 A I don't know how many minutes I was in there.

19 Q But you don't dispute if whatever the timestamps are
20 on the videotape you would agree would be, that there's no
21 other place to, way to leave other than that front door,
22 right?

23 A Yes.

24 Q Okay. So anybody could look at the videotape and see
25 where you walk in and out?

1 A Yes, correct.

2 Q Okay.

3 MR. VERNER: Thank you, sir. The prosecutor might
4 have follow-up questions.

5 THE COURT: All right. Solicitor, any redirect?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Thank you. You can step down. All
8 right. The witness can leave. I know that the
9 interpreter will have some paperwork for me to sign, so
10 she'll probably want to stay a few minutes. That's fine.

11 MR. SCOTT: Your Honor, the State calls Shawarror
12 Simms.

13 THE COURT: Okay.

14 SHAWARROR SIMMS, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Scott:

18 Q Ms. Simms, what do you do for a living?

19 A I'm a commute driver with Trinity Taxi.

20 Q Okay. And you've been doing that for a few years
21 now?

22 A Yeah, since 2005.

23 Q Okay. So definitely August 26th of 2015, you would
24 have been working for Trinity?

25 A Yeah. It was that morning.

- 1 Q Okay.
- 2 A I picked him up in the morning time, in the a.m. He
- 3 was my last trip that I picked up before I got off.
- 4 Q Okay. So what, how does that shift work; when did
- 5 you go on?
- 6 A I went in at 12:00 midnight.
- 7 Q Okay. And then worked till when?
- 8 A 8:00 in the morning.
- 9 Q And you went ahead and said, he. Who is he that you
- 10 are talking about.
- 11 A I really didn't, I don't, it's him, Kenny. It was
- 12 Kenny.
- 13 Q And who are you pointing at?
- 14 A (Witness pointed at Defendant, Kenny Ruff.)
- 15 Q Okay. You know him as Kenny?
- 16 A I just met him that morning.
- 17 THE COURT: And let the record reflect she's pointed
- 18 at the Defendant.
- 19 Q Okay. And then you said what?
- 20 A I just had met him that morning. I never, ever saw
- 21 him before.
- 22 Q Okay. Now, I noticed you talking with his mother or
- 23 was that his sister over there you were talking with?
- 24 A Yeah, I know his sister.
- 25 Q Okay.

1 A But I didn't know that they was related.

2 Q I got you. So what time did you pick him up?

3 A I picked him up I want to say somewhere, it was
4 before 7:00.

5 Q 7:00 a.m.?

6 A In the morning.

7 Q And you, where did you pick him up from?

8 A I guess at Turner Street. It was a white house on
9 Turner Street. I think it's That's where the
10 address was called in from.

11 Q Okay. Turner Street. Okay. And where was he
12 requesting that you take him?

13 A To Chick Drive in Grant.

14 Q Okay. Do you remember what he was wearing when he
15 got in the cab that morning?

16 A Yeah.

17 Q What was he wearing that morning?

18 A Well, I had a little brain surgery back in 2012, so
19 sometimes my memory goes and stuff. But that morning, he
20 had on a white shirt with a red stripe on it.

21 Q Okay.

22 A With some khaki pants.

23 Q Anything on his head?

24 A No, sir.

25 Q And did he say why he wanted to go to Grant's?

1 A The whole time from Turner Street to Grant's, he was
2 on the phone with his girlfriend. He never, ever talked
3 to me. He was talking to her the whole time on the phone,
4 whoever his girlfriend was.

5 Q Did you know his girlfriend?

6 A After he told me what her name, well, he asked me did
7 I know her name and did I know her, and I told him no.

8 Q What did he say her name was?

9 A Sharon Scurry.

10 Q Sharon Scurry?

11 A They call her Shell or something.

12 Q But you didn't know who she was?

13 A Not by that name, I didn't, but when I saw her face,
14 I knew who she was.

15 Q Okay. Well, tell me, I guess, you got to overhear
16 his conversation with her on the phone?

17 A Yes.

18 Q And then what was the conversation; what was he
19 saying?

20 A What was he saying?

21 Q Yes.

22 A Well, I don't know what she was saying, but he was
23 saying to her that, bless his heart because I never did
24 this before. But he was saying to her that he was going
25 to beat her ass and kill her. He said if she opened the

1 door that was what he was going to do.

2 Q If she didn't open the door?

3 A Yeah. But I talked to him, you know. He got back in
4 the cab. He didn't, he went to the door.

5 Q Okay.

6 A But he got back in the cab and when I got to the end
7 of the road to come out of Chick Drive, he got out the car
8 and walked across. He said that is where he worked at, so
9 he went onto work.

10 Q Where was that; what was the business?

11 A It was something the City was doing. They was
12 building, right across the street, they was building
13 something. I seen a lot of City vehicles out there so.

14 Q Okay. Let me back you up, though. When you got to
15 Chick Drive, he got out of the cab?

16 A Yeah. He went and knocked on the door.

17 Q Okay.

18 A He was still on the phone talking to her, though.

19 Q Okay.

20 A I guess he was talking to her. He still had the
21 phone up to his ear.

22 Q Okay. Did anybody come to the door?

23 A Not at all. He didn't even stay there a minute. He
24 got back in the cab.

25 Q Okay.

1 A He knocked on the door. He opened the screen door.
2 Nobody came to the door. He said, I know you're in there.
3 And he got right back in the cab.

4 Q Okay.

5 A He didn't stay there at all.

6 Q Tell me what happened when he got, when he slid
7 across the seat to get out of the cab?

8 A When he got up to get out the cab, a gun fell out his
9 pocket.

10 Q Okay.

11 A And I just happened to quick look back and he said,
12 I'm going to get it. But he didn't go to the, no door or
13 nothing. I didn't see nothing in his hand that he went to
14 the door with, because like I say, he got right back in.

15 Q And what happened to the pistol?

16 A I guess he put it in his pocket. I don't know. It
17 wasn't in the cab.

18 Q Okay. Okay. Did he tell you his name during the car
19 ride?

20 A Yeah. He told me what his name was when I asked him
21 what his name because I just wanted to know who he was,
22 out of curiosity because I never saw him before.

23 Q Okay.

24 A I was going to try to, you know, just talk to him,
25 you know, to talk to him about, you know, not getting in

1 trouble or whatever. But he told me what his name was,
2 but I don't know him by no Smurf. I know, I just know the
3 name that he told me that day.

4 Q Smurf is what he said?

5 A He didn't tell me that. That's what I'm saying. I
6 don't know him by that.

7 Q You can't say I don't know him, and then start
8 throwing out names. Did he tell you what his name was?

9 A Yeah, I said that. I said he told me that his name
10 was Kenny but the name Smurf, I don't know. Like being on
11 the street and as to him saying he, his name was Smurf, I
12 don't know that.

13 Q Okay. Well, do you remember giving a statement to
14 the Police Department?

15 A No. I gave it to my probation officer. I told, I
16 talked to him about it. I asked him what should I do
17 after that and that's when he told me to go talk to, I
18 think I went and talked to Mr. Goodman. I think I talked
19 to him.

20 Q Okay. Well, do you remember that?

21 A Yeah, I remember that.

22 Q Do you, do you remember writing a statement?

23 A Yeah, I remember that.

24 Q All right. I just want to show you this, but don't
25 read it out loud but just kind of read it to yourself.

1 I'm going to see if it'll refresh your memory on a couple
2 of things.

3 A Okay.

4 Q Did you read all three pages?

5 A No, but I, basically, it's the same stuff.

6 Q Okay. Well, he, what did he tell you his nickname
7 was?

8 A Huh?

9 Q What did he tell you his nickname was?

10 A He didn't tell me the nickname. She told me. After
11 I talked to her, when I found out who she was, she told me
12 what his nickname was.

13 Q Read the bottom page of your first page there. Read
14 the bottom part there.

15 A Okay.

16 Q Okay. What did he tell you his name was?

17 A You talking about?

18 Q What did this man right here, when he was in your cab
19 at 7:00 a.m., August 26th, what did he tell you his name
20 was?

21 A Yeah. He told me his name was Kenny, but they called
22 him Smurf.

23 Q Okay.

24 A But still, I don't know, you know what I'm saying, I
25 just don't know him like that.

1 Q I didn't ask you that.

2 A Okay.

3 Q Are you scared about being here today?

4 A Yeah, I'm very nervous.

5 Q All right. All you got to do is answer questions.

6 A Okay.

7 Q You don't have to be scared. Just answer questions.

8 A Okay.

9 Q You said his nickname was Smurf. Nobody came to the
10 door. What was his demeanor? Do you understand what I
11 mean by demeanor? How was he acting, was he happy, was he
12 sad, was he angry?

13 A I just, he just looked normal, I mean, you know, like
14 the way he was talking to her, I felt like he was angry.

15 Q Okay.

16 A But I never really watched him because he got in --
17 he sat behind my head. And I normally don't let nobody
18 sit behind my head.

19 Q Did you ask him to move to the --

20 A -- to the other side.

21 Q And what did he say?

22 A He was still on the phone with her so he, I don't
23 know if he didn't heard me or he just didn't do it. But
24 he never really ever conversated with me. He was the
25 whole time conversating with her.

1 Q And what was he telling her?

2 A He was telling her that if, he was tired of her and,
3 yeah, bitch, if you don't come to the door then I'm going
4 to kill you. And he said something about the son. I
5 think she got a son that was sick or whatever or not.

6 Q What did he say he was going to do to the son?

7 A He told her that he was going to kill them. That's
8 all he said.

9 Q That's all he said?

10 A I'm saying, you know, he said that to her. About him
11 killing something, now, I don't know that. I'm saying he,
12 I'm saying what he said to her. I wasn't really trying to
13 be in his conversation, but when I heard that, it kind of
14 scared me.

15 Q Okay. What were you scared about?

16 A Huh?

17 Q What were you scared about?

18 A Because he was in the cab with me. I mean, I didn't
19 know if he will take it out on me because he didn't know
20 me or what. You know, you never can judge a person, so I
21 didn't know.

22 Q Okay. What did he say, if anything, that he was
23 going to do if he couldn't kill his girlfriend that day?

24 A He said, I don't know. Okay. He said that, okay.
25 This is what he said. He said, somebody's going to get

1 killed. But I was, I didn't think about nobody else. I
2 just know that he was talking to her, so I was assuming
3 that it was her, that he was, you know, because like I
4 said, he was on the phone the whole time with her. I'm
5 not assuming nobody out on the street. I'm just knowing
6 what he told her.

7 Q Okay.

8 A So that's how I took it. I didn't take it as, you
9 know, and him doing nothing to nobody else since he was on
10 the phone with her.

11 Q Okay. But you don't disagree you wrote, Kenny said
12 he was going to kill his girlfriend; if he didn't kill
13 her, he was going to kill somebody that day.

14 A That day. Yeah. That's what I just, I said that.

15 Q Okay.

16 A But I wasn't thinking about, you know, no individual
17 out here since he was talking to her.

18 Q Okay.

19 A So I was thinking it was just her.

20 Q Has anybody talked to you about your testimony today?

21 A No, sir.

22 Q Okay.

23 A Nobody but y'all when y'all, you know, that day y'all
24 came and got me or either called. Well, came to my job or
25 whatever, that's the only time. I didn't even think that

1 I had to do this.

2 Q Well, I mean, I want everybody to know I subpoenaed
3 you to be here.

4 A Yeah.

5 Q You didn't come here because you want to be here, did
6 you?

7 A No, I didn't want to be here.

8 Q Okay. And why are you nervous?

9 A Huh?

10 Q Why are you nervous?

11 A I am nervous because I never did this before.

12 Q Okay. Did you see Smurf later that day?

13 A Yeah. I saw him later that day. I was going to the
14 dentist around about 12:30-ish. I had appointment at
15 1:00. I was coming off of Turner Street to turn to go to
16 Dr. Williams and he was walking onto the street.

17 Q Which Street?

18 A He was walking off of Main onto Turner.

19 Q About 12:30 you said?

20 A Yeah. It was about 12:35. Somewhere in there. It
21 was before 1:00 o'clock.

22 Q Okay. And do you remember what he was wearing?

23 A Yes.

24 Q What was that?

25 A He had on like a, he had a doo-rag on his head, and a

1 black, I guess, a fleece or something. I don't know what
2 it was.

3 Q Okay.

4 A I don't know if it's a shirt or whatever. I just
5 glanced at him.

6 Q Okay.

7 A When I looked up, and I thought, well, I met him this
8 morning because my mom was in the car. I'm like, oh, I
9 met him this morning.

10 Q Okay.

11 A But nothing other than that.

12 Q And you saw this on the news, I guess, or something?

13 A Yeah, later on, I saw it, yeah. And I said, oh, my
14 God, I rode him in the cab this morning.

15 Q And then you said you reported it to your probation
16 agent?

17 A Yeah. I talked to him about it after I talked with
18 my job. And I asked him when I went to report because I
19 was on probation at the time. And I was telling him what
20 he told me, you know. He was asking me something about
21 it. I said, yeah, I saw that on the news. And I said, I
22 had him in the cab with me. And I asked him what should
23 you know, he asked me, he was like could you go and tell
24 Kevin and them what happened. I said, I don't know what
25 happened. I just know, you know, the stuff and what he

1 said that morning.

2 Q Well, tell me this, you had already pled to some
3 criminal activity, that's why you're on probation?

4 A I'm not on probation anymore, but yes.

5 Q At this time you talked to your probation agent.

6 A I was.

7 Q Okay. Were you hoping that he would help you out
8 somehow with your probation if you told him anything?

9 A No, that wasn't a issue. I wasn't on no serious
10 probation, nothing seriously.

11 Q All right. Well, I recall it was a bank card fraud?

12 A Yeah. I took somebody to Wal-Mart, and they used
13 somebody's credit card.

14 Q Okay.

15 A She told that I was with her.

16 Q Okay. But you had already pled guilty to that?

17 A Yeah.

18 Q So the time to get help had long passed, hadn't it?

19 A Yeah. I just had to pay back restitution, so it
20 wasn't no problem with none of that.

21 Q I just want to clear it up in case somebody says the
22 only reason you talked about this story is because you
23 wanted to help yourself --

24 A Oh, no.

25 MR. VERNER: Your Honor, that's really an improper

1 question.

2 Q Okay. Well, if somebody ask you that, did you expect
3 to get help from asking about that or telling?

4 A No. Because Mr. Verner was my lawyer, well, my
5 public defender or whatever. I already had talked to him
6 prior to this plenty of times. I already knew what the
7 situation was.

8 Q Okay.

9 A This was my first time ever being in trouble, you
10 know, with someone else. So I wasn't, that wasn't right.
11 That wasn't nothing to, you know, try to get no help on,
12 because I had already been on probation way before that.

13 Q Can you describe the pistol that fell out of his
14 pocket?

15 A I don't know because I quick-glanced it, and it just
16 looked like a silver handle. And that's all, it just
17 looked silver.

18 Q Okay.

19 A I don't know if was I had the light on up and I seen
20 the glare, but that's all. I ain't take no, I ain't study
21 nothing.

22 Q Okay. But that second time when you saw him and he
23 was wearing the black fleece you said and black doo-rag
24 did you see what direction he was walking in on Main
25 Street?

1 A No, he was just, okay. I was turning off of where
2 he, on Turner Street. He was just walking and he turned
3 down and he had a black bag in his hand like he had came
4 from the BP or something because I know they give out
5 black bags.

6 Q Okay.

7 A I will say I thought maybe he was coming from the
8 store.

9 Q All right.

10 A That's all I know.

11 MR. SCOTT: Thank you, Ms. Simms. Answer any
12 questions, Mr. Verner has for you.

13 THE COURT: Okay. Cross-examination, Mr. Verner.

14 MR. VERNER: Thank you. May it please the Court,
15 Your Honor.

16 CROSS-EXAMINATION

17 By Mr. Verner:

18 Q Ms. Simms, I believe you came to the, your probation
19 agent a couple of days after this incident?

20 A I came the next day after I saw, you know, yeah, we
21 talked. Yeah, it's, it was for me to report, and I talked
22 to him about it.

23 Q And then a day or two after that, you went to speak
24 to the police?

25 A Yeah. He sent me. Since I was on probation, he

1 asked me to go talk to Mr. Goodman.

2 Q And by, he, you're talking about your probation
3 agent?

4 A Mr. Simmons.

5 Q Okay. Now, you testified to the Solicitor a second
6 ago that you remember seeing a silver handgun?

7 A Yeah. I quick-glanced it because I had the light on
8 and I just looked back and I don't, I don't know what
9 color it was. But I was, I seen a little silver so.

10 Q Now, you drive for Trinity?

11 A Yes, sir.

12 Q When you get call logs, do you have to record on a
13 notebook or something where you get dispatched to?

14 A They do.

15 Q Okay. So there should be some kind of call logs or
16 something?

17 A Yeah, they should have it if they ain't threw it away
18 because so many months they disregard all that stuff.

19 Q Okay. And you told the police you were working for
20 Trinity, right?

21 A Yeah.

22 Q Do they record who the fare is, who the person is
23 that you're picking up?

24 A No, because we never know who we picking up. We just
25 pick them up as they call.

1 Q That's right, because it's not usual that somebody
2 would tell you their name giving them a ride, is it?

3 A No.

4 Q Now, that was really kind, that's kind of weird that
5 somebody would do that, isn't it?

6 A Yeah, I guess.

7 Q Okay.

8 A But I asked him his name because I never, I didn't
9 know who he was.

10 Q Now, I want to be clear. You're saying, you
11 testified for Mr. Scott that you didn't find out his
12 nickname until you spoke to some lady, I assume, you're
13 talking about Ms. Shell Scurry?

14 A Yeah.

15 Q But then he had you read your statement, and then
16 you're saying that you learned his, his nickname from
17 Kenny?

18 A No, I knew his name, no, he told me his name was
19 Kenny, but he also told me his name was Smurf.

20 Q Okay.

21 A But I followed it up with her. After I talked to
22 her, after I found out who she, Ms. Scurry.

23 Q When would you have gone back to speak to Ms. Scurry?

24 A I found out who she was because I picked her up, she
25 was working at the college.

1 Q Okay.

2 A And I asked her, I said, what's your name. And she
3 told me and we talked about it.

4 Q This is later on?

5 A Yeah.

6 Q Okay.

7 A He was already locked up then but, yeah.

8 Q Okay. When you made the fare to Turner Street was it
9 dark still at 7:00 o'clock?

10 A Yeah. It was kind of dark when I picked him up.

11 Q Okay. And then and tell me again what you're saying
12 that he was wearing?

13 A When I picked him up that morning because I don't
14 know nothing about the afternoon, what happened.

15 Q I'm just talking that morning right now.

16 A That morning, he had a white shirt with a red stripe
17 with some khaki pants.

18 Q Okay. White shirt, red strip on it, and khaki pants?

19 A Yes.

20 Q Do you remember what kind of shoes he had on?

21 A No, sir. I ain't look at him like that.

22 Q Was it a short sleeve shirt or a long sleeve shirt?

23 A It was short.

24 Q Okay. Did he have a doo-rag on?

25 A No sir, not then.

- 1 Q Do you remember whether he had hair or was he bald?
- 2 A His hair looked the same.
- 3 Q Okay. About like it is now?
- 4 A Yes.
- 5 Q So he did have some hair at that time?
- 6 A Yes, sir.
- 7 Q Okay. And you testified that the person you picked
- 8 up was arguing with his girlfriend and you indicated from
- 9 what you heard that she had a sick son at home?
- 10 A Yes.
- 11 Q And he said, if you don't let me in, I'll kill you.
- 12 A Yes.
- 13 Q But do you know if he meant that literally?
- 14 A I was thinking that he said it out of anger.
- 15 Q It sounded at the time, he just said it out of anger.
- 16 A Yeah. It had done been told to me by a boy, so.
- 17 Q Okay. And it might be confusing, so I just want to
- 18 clear it. The Solicitor was asking and you indicated that
- 19 he threatened to kill the son.
- 20 A He was talking about them in the house. That's what
- 21 he told her.
- 22 Q That he'd kill the son?
- 23 A Yeah, he said --
- 24 Q Okay.
- 25 A I guess, he was talking to her about her and them.

1 He said, if you don't let me in. I was taking it as them.

2 Q Well, you didn't say that in your written statement,
3 did you?

4 A No, but I was telling him.

5 Q Are you confusing that he said someone or son?

6 A Like I said, I had a brain surgery in 2012 and
7 sometimes, I forget stuff and it'll come back to me. But
8 I was taking it as someone in the house, but I know he was
9 talking to her, so I can't say he was talking to anybody
10 else.

11 Q Okay. You never indicated to the police that he said
12 he'd kill the son?

13 A I told it to the probation officer. I might have not
14 told it to the police, but I told it to the probation
15 officer.

16 Q Why didn't you put it in your written statement?

17 A I don't know. I didn't write down everything, I
18 guess. I was just trying to say the main things.

19 Q And you wrote about a three-page statement?

20 A Yes. Basically, about the same thing if you read it.

21 Q Okay. And then he got to, did Ms. Scurry live in
22 Grant's Apartments on Chick Drive?

23 A Uh-huh.

24 Q Is that a yes?

25 A Yes. I'm sorry.

1 Q Okay. And the reason, she's not being mean. The
2 reason when she writes down the transcript is when you
3 don't say yes or no, it doesn't appear clear on the
4 record.

5 A Okay.

6 Q When you got him to Grant's, what happened?

7 A He went and knocked on the door. He was still on the
8 phone with her.

9 Q Okay.

10 A And he went and knocked on the door. Opened the
11 screen door and knocked on the door. She didn't come to
12 the door, so he got back in the cab.

13 Q Okay. He didn't force his way in or --

14 A No, he didn't.

15 Q -- didn't threaten any violence?

16 A No, he didn't.

17 Q Didn't brandish a gun?

18 A Huh?

19 Q Didn't brandish a gun at anybody?

20 A No, sir; he didn't.

21 Q And I want to be clear. He was in the back seat or
22 the front seat?

23 A He was in the back seat sitting behind me.

24 Q And you had never met him before?

25 A Never.

1 Q Okay. Had you kind of recognized, was he some of
2 these people that maybe you kind of recognize their face
3 but don't really know?

4 A No, I never seen him. I know faces.

5 Q Okay.

6 A And I been driving the cab long enough to know that I
7 haven't saw him till that day.

8 Q Okay. And you wouldn't have made any prior pickups
9 from Turner Street?

10 A No, sir.

11 Q Okay.

12 A He was my last fare.

13 Q Okay. Were you familiar with that house on Turner
14 Street?

15 A Yes. Well, other people stayed in there before him.

16 Q Okay.

17 A We used to always pick up, there was another family
18 staying there before he stayed there. But that was, you
19 know and like I say, that was my first time seeing him at
20 that address.

21 Q And then after, did it appear he was concerned that
22 she had a sick child and wasn't letting him see the child,
23 do you think that's what he was angry about?

24 A No. I don't think it had nothing to do with the
25 child. Mainly, I think it was just her.

1 Q And why do you think?

2 A It was something that happened between him and her,
3 because every time he was talking to her, he was talking
4 to her, you know, he never said nothing about the son to
5 her.

6 Q And then where did you take him?

7 A He got out at the end of the road at, when we came
8 back off of Chick Drive, he said, I work over there. So
9 he got out of the cab at the end of the road.

10 Q Was that near where the Louis Rich Kraft plant is?

11 A Yes, sir. It was right there where the City vehicle
12 be parked. They was a building or something on, I guess,
13 he was working with, I thought he said West Electric.

14 Q Okay.

15 A Or something. He was working like, he walked across
16 the street.

17 Q And that's where you left him?

18 A Yeah, I left him at there, yeah.

19 Q Okay. Did he pay your fare?

20 A Yeah, he paid me when he got, yeah, he paid me. He
21 paid me when he got in.

22 Q But you don't recall turning over the taxi dispatch
23 logs to the police?

24 A No.

25 Q All right. And then you just testified that you were

1 going to the dentist later that day?

2 A Yes.

3 Q Do you remember, who's your dentist?

4 A Dr. Williams.

5 Q Where is his office?

6 A On Main Street.

7 Q On Main. Near what on Main Street?

8 A Keros Avenue. It's on the corner of Main and Keros
9 Avenue.

10 Q Okay. Which one is Keros?

11 A It's up above the Jiffy Lube.

12 Q Okay. That's near the Jiffy Lube?

13 A Jiffy Lube, the oil place.

14 Q Okay. And there's like an insurance company?

15 A Uh-huh.

16 Q Yes?

17 A Yes.

18 Q Okay. So that would be, and where do you live,
19 Shawarror?

20 A I stay in Prosperity.

21 Q In Prosperity?

22 A Yeah. But that particular day, I stayed at my
23 boyfriend's house on Coates Street.

24 Q Okay. Where is Coates Street in relationship?

25 A It's the street that Boundary Street Elementary is

1 on.

2 Q Okay. Coates is near Boundary?

3 A Yes.

4 Q So that would be on the other side of downtown; you
5 would have to pass through downtown Newberry going towards
6 Wilson Road?

7 A Yeah. But I ain't, that's not the way I came.

8 Q Well, what's the way you came?

9 A I came up Johnstone and turned onto Turner.

10 Q Okay. Johnstone and you would be coming towards
11 Wilson Road?

12 A Yes.

13 Q Okay. Why would you turn on Turner?

14 A Because I'm just used to using that road. Instead of
15 going all the way up Johnston, I just turned on Turner.

16 Q Keros doesn't go all the way to Johnstone?

17 A Yeah, but I didn't turn on Keros.

18 Q Do you have a clear recollection of what time that
19 was?

20 A It was about 12:35, because I had a dentist
21 appointment at 1:00 o'clock.

22 Q Could it have been a little bit earlier than that?

23 A No, because when I looked at my time, on my watch to
24 see, I was going to go somewhere else. But I just told my
25 daughter to drop me on off at the dentist, so I know that

1 is what time I saw him.

2 Q I'm going to hand you Defendant's 1. Can you
3 identify Mr. Ruff from that photograph?

4 A Yes. I mean, I don't know. I mean, this not him.

5 Q That's not Kenny Ruff?

6 A No, it don't look like him.

7 Q Okay. I'm going to hand you Defendant's 2. Does
8 that look like Kenny Ruff?

9 A No.

10 Q Okay. And tell me, again, what you said Kenny was
11 wearing?

12 A He had on a white shirt with a stripe on it with some
13 khaki pants.

14 Q No. That's when you first picked him up at 7:00
15 o'clock in the morning?

16 A Yeah. When I saw him when I went to the dentist?

17 Q Yes, ma'am.

18 A He had on something black. I don't know if it was a
19 black shirt or not, but I know he had a doo-rag on and the
20 black. That's all I know.

21 Q And where did you say you saw him?

22 A I was turning off of Turner Street. He was walking
23 onto Turner Street.

24 Q From Main Street?

25 A From Main Street.

1 Q Okay. Well, that's not particularly near the, was he
2 on your side of the street? Was he, which side of the
3 street was he on?

4 A He wasn't on the side where Leslie's was. He was on
5 the opposite side walking around.

6 Q Where Kunkle Oil would be?

7 A Yes, where Kunkle Oil would be. He walking down the
8 sidewalk.

9 Q Okay. Tell me what you remember him wearing when you
10 saw him the second time?

11 A That evening?

12 Q Around lunchtime when you were, when you saw him
13 again?

14 A He had on something black. I don't know was it a
15 fleece or what. It was something black with a doo-rag on
16 his head.

17 Q Well, you tell the police on August 28th that he had
18 a white striped shirt on, didn't you?

19 A Yeah. That was that morning.

20 Q No.

21 MR. VERNER: May I approach, Your Honor?

22 A Well, if I put it on there, it was that morning.
23 That's when I saw him.

24 Q Okay.

25 A What he had on in the cab that morning.

1 Q We are talking about 12:45 that evening. So this is
2 the second time. This is the second time you would have
3 said you saw him, right?

4 A Yeah. That's wrong then if I put that. It was that
5 morning when I saw him. I thought that was, it was the
6 morning when I saw him with the stripe one on.

7 Q Okay. What was your injury to your head, Ms. Simms?

8 A I had a hairline fracture coming from a aneurysm.

9 Q You had a brain aneurysm?

10 A Yes.

11 Q Okay. And how does that affect you?

12 A Sometime, it make my memory go, and but I been doing
13 better, you know, for the last couple of years.

14 Q Okay.

15 A Since I had the surgery.

16 Q Okay. When he was in the cab did he have a wave cap
17 on?

18 A No, he didn't.

19 Q He had a white shirt and blue jeans?

20 A No.

21 Q Okay. Tell me again what he had?

22 A I think he had khaki's on.

23 Q Khaki's.

24 A I don't remember seeing the blue jeans.

25 Q Okay. Would you have remembered on August 28th that

1 he had Khaki's on?

2 A That morning, he had khaki's on, yes.

3 Q But then when you said you saw him at 12:45, you said
4 he had jeans on?

5 A Yeah, he had jeans on with a black shirt.

6 Q Well, you wrote white striped shirt and black
7 doo-rag?

8 A With a black shirt?

9 Q No. Read what you wrote.

10 A Okay. I probably ain't just put all on there but
11 that's what he had on.

12 Q Start reading where it says, he was looking all
13 around.

14 A And that's what he was doing was looking around
15 because I don't know, and he looked dead at the car I was
16 in, but I wasn't thinking nothing else.

17 Q And I don't want to be argumentative, but at that
18 time on August 28th, you wrote he had jeans and a black
19 doo-rag and a white shirt on?

20 A Well, if I put that on there, it was a mistake.

21 Well, I told them that he had a black, you know, I told
22 them that he had the black shirt on.

23 Q They weren't questioning you about what his clothes,
24 I would think that they would be interested.

25 A They asked me and like I said, I had memory loss and

1 I still do sometimes. But if I reworded it on there, I
2 didn't mean to, you know, write it no different.

3 Q The officer didn't go over it with you at the time
4 you wrote it?

5 A No, sir. Like I say, I was nervous when I did that,
6 too, because I never did it before but, you know.

7 Q At the time that you spoke to the police, you were
8 aware that Kenny Ruff had already been arrested, hadn't
9 you?

10 A Yeah.

11 Q Okay. Did he give you, have you ever had a cab fare
12 just tell you his name before?

13 A Yeah. I had people just get in and tell what their
14 name is before.

15 Q Okay. Is that usually when you kind of recognize
16 them?

17 A Well, sometime, I be want to know people, so I ask
18 myself.

19 Q Okay. But that's not unusual for a cab fare will do
20 that, is it?

21 A No.

22 Q Okay. You don't remember him having a light blue
23 shirt on?

24 A No.

25 Q The black shirt that you're saying he was wearing,

1 was that a long-sleeve or a short-sleeve shirt?

2 A I just glanced the shirt this way. I didn't look at
3 the sleeves or nothing. I just saw the black.

4 Q Okay. So you don't remember whether it was
5 long-sleeve or short-sleeve?

6 A No, sir.

7 Q Was it an over-shirt or like a hoodie?

8 A It was a shirt made like that, but I don't know if it
9 was long-sleeve or not. It was a over-shirt. It wasn't
10 no hoodie.

11 Q Do you recognize this shirt?

12 A No.

13 Q Okay. Ms. Simms have you ever worn a wave cap
14 before?

15 A No. No, sir.

16 Q Okay. Men do or is that sometimes women do?

17 A I guess it's for men.

18 Q Do you know why men where it?

19 A I guess to get waves in their hair. That's the only
20 thing I know.

21 Q Okay.

22 A My son wears them.

23 Q Okay. And why does your son wear a wave cap?

24 A To get waves.

25 Q Okay. And what you can look at my hair and tell I

1 don't have waves. Tell me what waves are?

2 A Mainly, it's for black peoples I think.

3 Q Right.

4 A They get their low haircut and put the cream in.

5 Well, I never saw no, you know, with your hair.

6 Q You have to have slightly longer hair?

7 A No, you got to have short hair.

8 Q Oh, short hair to do it?

9 A Yeah.

10 Q What about you sometimes see people with corn rows
11 wearing the wave caps?

12 A Yes.

13 Q And it keeps their hair in place?

14 A Yes, sir.

15 Q Okay. And the wave cap is sometimes called a
16 doo-rag?

17 A Uh-huh.

18 Q Okay. Yes?

19 A Yes.

20 Q Are you sure you saw him with a black shirt? Could
21 it have been a green shirt?

22 A No, it was black. I know my colors. It were black.

23 Q Okay.

24 A I didn't try to study him like that. I just saw the
25 black.

1 Q But you had never seen him before that day either?

2 A No. But when he got out, I looked at him.

3 Q Were you with anyone at that time?

4 A No.

5 Q Did you see the man wearing a green shirt?

6 A No.

7 Q Okay. Can you identify that man?

8 A No.

9 Q Okay. Does that appear to be Kenny Ruff?

10 A No.

11 Q Okay.

12 MR. VERNER: Your Honor, I'm going to mark this one
13 as Defendant's 4 and if it's redundant, it's just
14 redundant.

15 THE COURT: Okay. Four into evidence for the
16 Defense.

17 (Whereupon, Defendant's Exhibit number 4 was admitted
18 into evidence.)

19 Q I'm going to ask you this one more time and look at
20 it very closely. You can hold it up you want to, Ms.
21 Simms. Does that appear to be Kenny Ruff?

22 A No.

23 MR. VERNER: No more questions, Your Honor.

24 THE COURT: All right. Redirect, Solicitor?

25 MR. SCOTT: None, Your Honor.

1 THE COURT: Okay. Thank you, ma'am. You can step
2 down.

3 MS. SIMMS: Thank you.

4 THE COURT: Okay. Madam Forelady and ladies and
5 gentlemen of the jury, it's already a little bit past
6 6:15, so I think it's a good time to go ahead and break
7 for the evening. I'll give you just a moment to look at
8 that last exhibit before we go any further. Okay. Ladies
9 and gentlemen, we're going to go ahead and break for the
10 evening. Again, I remind you to have no discussion among
11 yourselves or with anybody that you come into contact with
12 and, once again, I remind you don't do any independent
13 research in anything related to this case. We'll start
14 back in the morning at 9:45, and I'll go ahead and tell
15 you because of some scheduling matters, we will probably
16 break for the day around 1:00-1:30, somewhere in that
17 timeframe, so we will not go a full day tomorrow. Okay.
18 So you can plan whatever you need to plan, accordingly.
19 Okay. All right. So with that said, have a great
20 evening, get some rest, and we'll see you in the morning
21 at 9:45.

22 (Whereupon, the jury was excused from open court for
23 the day.)

24 THE COURT: Everyone have a good evening, we will be
25 in recess until 9:45 in the morning.

1 (Whereupon, the trial will resume the next day at
2 9:45 a.m.)

3 January 11, 2017

4 THE COURT: We are on the record in the State versus
5 Ruff case. There is one, I want to get a clarification if
6 you guys would help me with this. Yesterday I thought on
7 direct Officer Mercer had said that he identified the
8 Defendant on the number two video, Kunkle's Oil, going in
9 and going out, he identified the Defendant on the video.
10 But then in cross-examination I thought he said that he
11 could not identify that person going in and coming out as
12 the Defendant. So I need that clarification. Solicitor,
13 I will give you a shot at it first.

14 MR. STUMBO: Right. My recollection, Judge, is that
15 he positively identified him at the Brothers BP.

16 THE COURT: No question about that.

17 MR. STUMBO: It showed his face. He said that's him.
18 On the other one, he said, I think his testimony was
19 something to the effect that the way he was walking, it
20 may have been consistent. I don't know that he, in
21 particularly, said that was him. I know Mr. Richardson or
22 Womp said yeah, that's him.

23 THE COURT: No question about that.

24 MR. STUMBO: But I think that I, that was my
25 recollection of the testimony and just from my notes that.

1 all I have written down is he could positively identify
2 him at Brothers BP still.

3 THE COURT: Right.

4 MR. STUMBO: But I don't have anything to the effect
5 that --

6 THE COURT: -- that he identified the Defendant on
7 the Kunkle's Oil video.

8 MR. STUMBO: Correct.

9 THE COURT: Okay. And is that your understanding?

10 MR. VERNER: And, perhaps, I should have been more
11 clear on the numbers of the exhibits I was using. It's my
12 recollection on the Kunkle video--

13 THE COURT: Right. Number, State's Exhibit 2.

14 MR. VERNER: He clearly said that would not be
15 adequate to identify the man. Now, on the Brothers --

16 THE COURT: -- we don't need to talk about Brothers.

17 MR. VERNER: Okay.

18 THE COURT: I'm clear on Brothers. I just wanted to,
19 so I must have then misunderstood on direct his testimony
20 as it relates to Defendant identification on Exhibit 2.

21 MR. STUMBO: Judge, he may have, you know, and here
22 again I, Mr. Scott put him up. I want to say that maybe
23 he said it was consistent with his walk or something like
24 that. But didn't, I don't know that he said, yeah, that's
25 him.

1 THE COURT: Right.

2 MR. STUMBO: But maybe, there again, we can run it
3 back. I can't quite remember exactly what he said.

4 THE COURT: Well, you know, if it becomes crucial
5 then yeah, we'll have to run it back. But I just wanted
6 to make sure. My notes are pretty clear.

7 MR. VERNER: But my take of it is that he's testified
8 that he used the Brothers Fast Stop video to make that
9 identification of Kenny Ruff.

10 THE COURT: Right.

11 MR. VERNER: And the ones when he's wearing the wave
12 cap were the ones where he identified Kenny Ruff but the
13 ones where Kenny Ruff is without a wave cap and in the
14 blue shirt, the officer said he couldn't identify him from
15 those.

16 THE COURT: Right.

17 MR. STUMBO: It could have been he did identify Womp
18 at Kunkle video.

19 THE COURT: Yeah. I don't think there is any
20 question about that. I think he identified Womp. Okay.
21 All right. Anything else before we bring the jury out?

22 MR. STUMBO: Nothing from the State, Your Honor.

23 THE COURT: Okay. Defense?

24 MR. VERNER: Your Honor, I would kind of like to know
25 the order. They've handed me some Facebook photographs, I

1 guess, the State's intending to introduce that I'll have
2 objections to.

3 THE COURT: Okay.

4 MR. VERNER: And my understanding is they have a
5 jailhouse informant as a proposed witness, and I'll have
6 an objection.

7 THE COURT: Okay. All right, sir. Well, let's just
8 do this, unless the State intends to call a witness
9 related to either the jailhouse person or the Facebook
10 postings, then let's just wait until we get to that
11 witness or witnesses, and then deal with whatever
12 objections you have.

13 MR. VERNER: Thank you, Your Honor. The other
14 photographs I think that they just tendered today as new
15 exhibits, the ones I don't have objections to would be 77,
16 76, 77, 78, let me add 75 to that. That's 75, 76, 77, 78
17 are all just video stills it appears from Brothers Fast
18 Stop.

19 THE COURT: Okay.

20 MR. VERNER: Without objection on those. 79 and 80
21 are also Brothers Fast Stop stills without objection.

22 THE COURT: Okay.

23 MR. VERNER: And those, 71, I take it, is a
24 photograph of the crime scene. I would ask that they lay
25 a foundation for it.

1 THE COURT: Okay.

2 MR. VERNER: And then the Fast Stop's I would have, I
3 would want to be heard, basically 403.

4 THE COURT: Okay.

5 MR. VERNER: And those would be, what I've been given
6 are 70, 73, 74, 72 are the Facebook exhibits. I'll have
7 specific 403 objections.

8 (Whereupon, State's Exhibit 69, 70, 72, 73 and 74
9 were marked for identification only.)

10 THE COURT: Okay. All right. Well, when we get to
11 that point, we can certainly deal with that. Okay. All
12 right. All right, 75 through 80 are into evidence on
13 behalf of the State. Okay. Now, Madam Bailiff, if you
14 will bring the jury out, please.

15 MR. VERNER: Through 79, I have an objection to 80.

16 THE COURT: You have an objection 80, but not 79?

17 MR. VERNER: 79 should be where it ends.

18 THE COURT: Okay. 79 and 80 objections?

19 MR. VERNER: No sir, 75 through 79 are in.

20 THE COURT: Okay.

21 (Whereupon, State's Exhibits 75 through 79 were
22 admitted into evidence.)

23 (Whereupon, the jury came into open court at
24 approximately 10:18 a.m.)

25 THE COURT: Let the record reflect the jury is back

1 in. Good morning, ladies and gentlemen. I hope you had a
2 good restful evening and ready to get to work today, even
3 though as I told you yesterday we will have a somewhat of
4 a short day today. Solicitor, you ready to call your next
5 witness?

6 MR. STUMBO: We are, Your Honor. The State calls
7 Sergeant Matt Womack.

8 MR. VERNER: 80 is in. I apologize, Judge.

9 (Whereupon, State's Exhibit 80 was admitted into
10 evidence.)

11 MATTHEW WOMACK, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Stumbo:

15 Q Good morning, Sergeant.

16 A Good morning.

17 Q You do work with the Sheriff's Department?

18 A I do.

19 Q How long have you been there?

20 A It'll be six years in May.

21 Q And, currently, you're a sergeant is your rank, but
22 you are an investigator?

23 A That's correct.

24 Q Okay. As an investigator, you follow up on crimes
25 that are responded to by the uniformed patrol?

1 A That's correct.

2 Q And you assist with and you follow up investigations,
3 correct?

4 A Yes, sir; that's correct.

5 Q Does the County Sheriff's Office work closely with
6 Newberry City Police on cases?

7 A Yes sir, very close.

8 Q So any case that's within the City's jurisdiction,
9 the County also very often assists with those?

10 A Yes sir, that's correct.

11 Q Did you have occasion to work one of those joint
12 investigations with the City on the death of Roberto
13 Facio?

14 A Yes.

15 Q Okay. And where did that homicide occur?

16 A It occurred on Main Street in Newberry.

17 Q Okay. And that was, that's the Leslie's Hair Salon?

18 A That's correct.

19 Q And that first day when the report came in, what's
20 the first thing you did in this case?

21 A Myself and Captain Dennis responded to Main Street.
22 We were notified by dispatch of the City responding to
23 that incident. We responded to assist in any way, shape
24 or form that the City needed. I arrived on-scene with
25 Captain Dennis as I rode with him. And then we spoke with

1 Lieutenant Kennedy, I believe, who was on-scene and we
2 were standing by for SLED at that time.

3 Q Okay. And that first day, was there any potential
4 witness that you interviewed that first day?

5 A Yes, sir. I had interviewed José Rodriguez. During
6 the investigation, several investigators throughout the
7 Sheriff's Office, as well as the City Police Department,
8 were reviewing several videos around the incident
9 location. We had identified a male subject who appeared
10 to be Hispanic enter and leave the salon on several
11 occasions. We spoke with, I believe it was, I believe it
12 was Chief McClurkin who spoke with the owner of the store
13 next to the hair salon, and we identified that male
14 subject as José Rodriguez as working at the El Poblano
15 restaurant on Main Street in the City of Newberry.

16 Q Okay. And I want to stop you there. The store owner
17 owns the little market or grocery store right beside the
18 salon?

19 A Yes.

20 Q And the surveillance video y'all had already gathered
21 showed an individual on a bike who comes up around and
22 goes into the store and goes in the salon?

23 A That's correct.

24 Q And that individual, y'all were able to find, found
25 out through the investigation that was this José fellow?

1 A That's correct. Jose Rodriguez yes, sir.

2 Q A young man and he works at El Poblano restaurant?

3 A Yes, sir; that's correct.

4 Q So you went and found him?

5 A I went to the restaurant. I spoke with some of the
6 management there. They did advise that José did not speak
7 any English. I didn't give them specific details, but I
8 told them that there was an active investigation; I needed
9 to speak with him. They brought him from the kitchen
10 area. I don't know, he was a cook or what, but they
11 brought him from the kitchen area. And they, I had him
12 translate for me if he would come and speak with us and
13 they advised yes. He got in the vehicle with me. We
14 drove back to the incident location where I knew Officer
15 Alvarado with the City Police Department was working the
16 barricade. He speaks both English and Spanish. I spoke
17 with him with José and José gave an account of events
18 that, from what he saw.

19 Q Okay. And, ultimately, he gave even a written
20 statement?

21 A That's correct.

22 Q Okay. And did you collect any physical evidence from
23 his person?

24 A Yes, sir. After he gave the statement, we asked if
25 he would consent to give fingerprints, DNA swab, were our

1 normal standard, as well as submit to a gunshot residue
2 kit. He agreed. I took him to the Sheriff's Office. I
3 collected the gunshot residue kit and then his known
4 standard by way of buccal swab. And then we collected his
5 fingerprints on the fingerprint machine.

6 Q Okay. And I'm going to hand you what's been marked
7 for ID.

8 MR. STUMBO: If I may approach the witness, Your
9 Honor?

10 THE COURT: Sure.

11 Q It's State's number 61. The two or the little
12 cardboard box inside the bag, does it have your name on
13 it?

14 A It does.

15 Q And your initials?

16 A It has my name.

17 Q Okay. And you collected the buckle swab and put it
18 in this box --

19 A That's correct.

20 Q -- to submit to SLED for DNA comparison?

21 A That's correct.

22 Q Okay. And it fairly and accurately represents, other
23 than the SLED bag that's on the outside, but inside of
24 this?

25 A That is my handwriting, yes sir.

1 Q Okay. Thank you. And you did take his GSR kit. Is
2 that when you put brown bags on their hands to just
3 preserve that?

4 A Yeah. It all depends on the situation. Usually, on
5 deceased subjects we do that. And then on living
6 subjects, we just take a kit that SLED already puts
7 together. It's sticky and obviously, I'm gloved, and I'm
8 just testing the, both hands, the inside and outside of
9 the palms with a sticky substance that SLED provides us.

10 Q Okay. So if that individual has fired a gun and they
11 hadn't washed their hands since then, you may pick up some
12 particles off of them?

13 A That's correct.

14 Q And then that's submitted to a gunshot residue expert
15 down at SLED --

16 A To SLED; yes, sir.

17 Q -- to do a comparison? All right. And so you did
18 fingerprinting of José?

19 A Yes, sir. We do the gunshot residue first, the DNA
20 swab second, and then he was fingerprinted last.

21 Q Okay. The reason you do the, you want to do the DNA
22 kind of early on so that it doesn't compromise?

23 A That's correct. Well, we would do the GSR before we
24 would do the fingerprinting just because, you know, there
25 is a machine that everybody uses. So I would want to

1 collect the GSR before he uses the machine in case of
2 cross-contamination.

3 Q Okay. Got you. Sergeant Womack, fast-forward to the
4 next day. And let me, before we wrap up with José. Based
5 on you were obviously taking this physical evidence
6 because you had seen him in a video going into the salon?

7 A That's correct.

8 Q And so what's the purpose of taking the physical
9 items?

10 A Well, the GSR has, well, all three when you take
11 them, number one, as elimination purposes. And, number
12 two, we're not sure if there are suspects or not. The DNA
13 will help you as much as it could hurt you. Those would
14 be, SLED requires a known standard. They required me to
15 be able to take that from José and say that this is his
16 buckle swab, his DNA. And they can't just pull that from
17 a computer. They actually have to have it physically
18 taken and that's what that's for is for elimination
19 purposes.

20 Q To see if one of the individual's going into the
21 salon?

22 A That's correct. That's correct. And he had given
23 the written statement that he was there.

24 Q Right. Okay. And so fast-forward to the next
25 morning. You were working August 27th, the next day?

1 A Yes, sir.

2 Q Tell me about that morning. What, what are y'all
3 doing that morning?

4 A That morning, myself, Captain Dennis, several
5 investigators with the Sheriff's Office, we met with the
6 investigators with the City Police Department, as well as
7 Lieutenant Kennedy. I believe he was working the shift
8 that day and he met us at the location behind the hair
9 salon. We searched for evidence. The investigators that
10 observed the video saw an individual running behind there,
11 so we were searching for evidence at that time.

12 Q Okay. And just, the jury has seen this poster board
13 already but just for reference purposes here, Sergeant
14 Womack.

15 MR. STUMBO: Your Honor, may he step down just for a
16 brief moment.

17 THE COURT: Sure. Just be sure to speak up loud
18 since you're away from the microphone.

19 Q Okay. Are you familiar with this area here?

20 A Yes, sir; I am. This is the hair salon here. The
21 trail that we were searching, we observed the individual
22 run this way back behind and none of this was here. This
23 was trees.

24 Q And this is a more current picture and this is new
25 construction?

1 A That's correct. At the time this was all trees.
2 They observed the subject run this way. So we searched
3 this area and there is a dirt path that runs between,
4 behind Coon's liquor store to Heritage Square. And we
5 were searching this area.

6 Q Okay. And all in kind of these woods here?

7 A Yeah, that's correct. We searched the roadway. I
8 mean, we're, it's over a course of a few hours we're
9 searching this area and we just work our way back.

10 Q Okay. All right. You can take your seat. Did you
11 find anything, Sergeant Womack, during that search?

12 A Yes, sir. During the search, the first item of
13 evidence that we found was a, what appeared to be a
14 faceplate to a DVD player or some sort of recording
15 mechanism or device.

16 Q Okay. And you actually found that?

17 A That is correct; yes, sir.

18 MR. STUMBO: Mr. Bentley, if we could pull up State's
19 18.

20 Q Okay. If you could just, I don't know, you may just
21 be able to peek around. And I'll hand you 18 and 17 here
22 if I may approach. Okay. We'll refer to State's 18
23 first. You got that in front of you.

24 A Yes, sir.

25 Q Is this that path that we see?

1 A Yes, sir. This will be the dirt path that goes from
2 that roadway behind Koon's liquor store to Heritage
3 Square.

4 Q Okay. As we're facing it, is that Heritage Square,
5 the buildings at the end of the trail?

6 A That is the apartments at the end of the path.

7 Q Okay. Let's go to State's 17. All right. This is
8 the DVR?

9 A Yes, sir. That is it.

10 Q And that's the right side of the screen as you are
11 facing Heritage Square?

12 A If you go back to Exhibit 18, you're looking at the
13 path. This would be to the immediate right. You can see
14 it through there. There's a number of debris and woods,
15 but you can see the posts and the fence that go back to
16 the back of the other property. And it would be right
17 there to the right. So if I was standing there taking a
18 picture like I was, like what you see in 18, would be to
19 the immediate right.

20 Q Okay. So it's right there in that brush to the right
21 side?

22 A Yes, sir.

23 Q Thank you. I'm going to hand you now State's 33.
24 Pull that out of that bag.

25 A Yes, sir.

1 Q Is that the same faceplate?

2 A Yes, sir. This is the item that I found.

3 Q Okay. All right. At that point after you find this
4 faceplate, y'all have a number of people out there
5 looking, right?

6 A Yes, sir.

7 Q All right. Where does the focus at that point turn
8 to?

9 A Well, as soon as we found this, we knew that the rest
10 of that couldn't be far. We were searching the area,
11 especially the wood line where this was found thinking it
12 may have been tossed or broken apart and tossed in that
13 immediate area. We started in a little small parameter
14 looking for it. We searched and searched and searched and
15 was not able to find it. And that's when we went to
16 Heritage Square, immediately at the end of that dirt path
17 starts the parking lot of Heritage Square. Right at the
18 parking lot is a dumpster.

19 Q And let me show you State's 25.

20 MR. STUMBO: If we could pull that up, Walter.

21 Q What's the significance of State's 25, Sergeant
22 Womack?

23 A When you walk out to this path, you'll see the wooden
24 terrace. I guess, it's to more or less conceal the
25 dumpster and make it look a little nice. But what I

1 observed was on the corner of the building. If you'll
2 look at the top left corner of the building you'll see a
3 small, what appears to be a camera and I walked over and
4 confirmed it was a surveillance camera.

5 Q Okay. What'd you do next in response to that?

6 A I notified the other investigators that was on-scene
7 that there was a camera there. I went to the office to
8 see if it would be available for me to see the
9 surveillance and it was. I looked at a timeframe. We
10 didn't know a specific time, but I looked at the timeframe
11 between, I believe, noon and 3:00 o'clock on the date of
12 the incident which I believe was the 26th. And then I did
13 observe an individual, who we can't identify on video,
14 approach the dumpster and put a white bag into the
15 dumpster. At that time, I asked, I notified the
16 investigators and asked had the trash been dumped and they
17 said no, it had not. About that time is when the trash
18 truck pulled in, and they were stopped before it was
19 dumped.

20 Q Okay. The white bag was significant observing that,
21 because you'd seen somebody come out of Leslie's with a
22 white bag, correct?

23 A That's correct.

24 Q Okay. The description of the person who throws the
25 white bag in the dumpster dressed similarly and similar

1 build to who you had seen come out of Leslie's Hair Salon?

2 A Yes. Yes, sir. He did match the description.

3 Q Okay. What we've just, I hand you State's number 6
4 and State's number 45. You've had an opportunity to
5 review both State's 6 and State's 45?

6 A I have. I retrieved the video from the system at
7 Heritage Square. I used a USB flash drive and pulled
8 that. I took it to the Sheriff's Office and burned a
9 copy. I moved it from flash drive to a DVD so it could be
10 viewed, and then turned this over to the Newberry Police
11 Department. This still shot is what I observed on video
12 with the individual matching the description with the
13 white bag.

14 Q Okay.

15 MR. STUMBO: Permission to publish, Your Honor. We'd
16 move State's 6 and State's 45 into evidence. I don't think
17 they, well, actually, they already are in, I believe,
18 Judge.

19 THE COURT: All right, 6 is in and 45. Both are
20 already into evidence on behalf of the State.

21 MR. STUMBO: Okay. We're going to publish State's 6.
22 If Sergeant Womack will step down to watch.

23 (Whereupon, State's exhibit number 6 was published to
24 the jury.)

25 MR. STUMBO: Okay. You can pause it.

1 A This is where the path ends. And you can't see it
2 because of the trees because there's a fence here. And
3 there is a break in the fence and that's where the path
4 comes into. I guess the individual is cutting between
5 Main Street through Heritage Square. So this individual
6 would be coming from that path. Okay. Go ahead.

7 Q I believe you can pause it here. We can pause it.
8 Okay. Clothing description. Here is somebody with a blue
9 shirt and white writing?

10 A Yes sir, that's correct.

11 Q Okay. And their hand, and in his hand looks like
12 what? I wasn't real sure of what it was.

13 A If you can go about two or three frames, right there.
14 You can almost tell that it's like a garbage bag.

15 Q Okay.

16 A And he exits and goes back to the path.

17 Q Okay. He appears to be wearing blue jeans. This
18 might be difficult to tell exactly what he's wearing?

19 A That's correct. That's correct.

20 Q And it appears there's something on his head, as
21 well.

22 MR. VERNER: Your Honor, I object.

23 Q Is there anything on his head?

24 THE COURT: Okay.

25 A I can't testify that there is.

1 Q Okay.

2 A I can that the clothing matches the description of
3 that that left the salon.

4 Q Okay. Thank you.

5 MR. STUMBO: If we can go, I believe, was that
6 State's 45, Walter, if we could pull that back up.

7 Q Okay. This is the still frame, as well, correct.
8 Was there a time that y'all were able to ascertain when
9 this occurred?

10 A The timeframe, I don't remember specifically the
11 exact time of this. However, I do recall that it was, we
12 had looked at several different videos and there were
13 several different times. A lot of times you'll have
14 surveillance systems where the owners won't change the
15 time from the daylight savings and things of that nature,
16 so it could be off. But I do not recall this time,
17 specifically, of when it was on video.

18 Q Okay. And you're referring to the Kunkle video and
19 the Brothers? You had several surveillance videos?

20 A That's correct. And that's why I looked at a broad,
21 like a three-hour span of video.

22 Q Okay. But you can't specifically recall this--

23 A No, sir; I cannot.

24 Q -- little minute or thirty-second moment when he
25 comes and puts in the trash?

1 A No, sir.

2 Q I'm not saying we can't, we can't figure that out.

3 You just don't recall.

4 A Yes, sir. I cannot recall.

5 Q All right. State's 19 through 24, I was going to
6 look at those.

7 THE COURT: They are into evidence on behalf of the
8 State.

9 MR. STUMBO: Yes, sir. Thank you.

10 Q And we'll look at those one at a time. 19 is?

11 A Now, this would be the inside of the garbage can
12 after I had observed a individual dropped a, what appears
13 to be a white bag in there. I notified them, them as in
14 the other investigators, Lieutenant Kennedy, Captain
15 Dennis, that an item was dropped and the trash had not
16 been taken off yet so that it should be in the can. And
17 then that's really when they went dumpster diving for it,
18 sorting through the evidence. This would be a earlier
19 picture before they started removing items.

20 Q Who was that inside the dumpster?

21 A Lieutenant Kennedy would be, if you looked to the
22 left, you could see the navy blue pants leg. That'd be
23 Lieutenant Kennedy. And then in the white Tyvex suit,
24 that would be Captain Dennis.

25 Q Okay. Captain Dennis was one of the supervisors at

1 the Sheriff's Office?

2 A Yes, sir. He was my supervisor at the Sheriff's
3 Office.

4 Q And the bag that he is holding is the one of
5 interest, correct?

6 A That's correct.

7 Q All right. If you can go to State's 20?

8 A He opened the bag and observed the clothing, as well
9 as the, what appeared to be the DVD or the recording
10 device.

11 Q Okay. What was on top there? As he opened the bag,
12 what's the, that black or dark thing on top?

13 A It was a coat, I believe.

14 Q Okay.

15 A It was clothing of some type.

16 Q Okay. And y'all were able to collect that out of the
17 bag, correct?

18 A Yes, sir. It was in this bag and we collected it,
19 photographed and collected it.

20 Q All right. I want to show you what's been marked for
21 ID at this point as State's 37. Could you check out the
22 contents of that bag?

23 A Yes. This is the shirt that was in the bag or the
24 coat that was in the bag.

25 Q Okay. And y'all, basically, at that point, you try

1 to wrap it up, preserve and tape the bag. That's this bag
2 that it's in has this evidence tape on top?

3 A Yes, sir.

4 Q And the purpose of the evidence tape is what?

5 A To, number one, not having it be tampered with. But
6 to preserve the evidence inside and we put it in paper
7 bags because if you put it in plastic, if there's any
8 moisture, it would ruin DNA evidence, glove evidence,
9 anything of that nature. So that's why it's put in paper
10 bags.

11 Q Okay. And this is what appears to be a long-sleeved
12 black and kind of a thermal shirt?

13 A That's correct.

14 Q Okay. And that's what we see in the picture that's,
15 as you open it, as they first opened the bag, that was
16 what was on top, correct?

17 A Yes sir, that's correct.

18 Q All right. We're going to look now at State's
19 Exhibit 21.

20 A Captain Dennis is further pulling the bag open and
21 looking to see what's in there. And you can see what
22 appears to be the, on the handle of the bag, which is
23 believed to be the recording device.

24 Q Okay. And it's, it's kind of like a, kind of like an
25 aluminum case and a hard drive inside.

1 A That's correct.

2 Q Okay. State's 22 and this further demonstrates after
3 it was pulled out of the bag?

4 A Yes, sir. It was pulled out of the bag. The first
5 thing we observed was the faceplate was missing from this
6 device. And we were pretty sure that it was, it belonged
7 to this device.

8 Q Okay.

9 A The faceplate that was filmed earlier.

10 Q It was missing a faceplate and this faceplate
11 appeared to be the same size consistent with that?

12 A It was; yes, sir.

13 Q All right. State's 23.

14 A This was, there was a cordless phone, like a landline
15 phone, but it was cordless, as well as an iPad, an Apple
16 iPad.

17 Q Okay. Number 24 and this, this was just an activated
18 picture of that iPad?

19 A Yes, sir. I pressed the on button. If I remember
20 correctly, it was locked, but I pressed the home button
21 and the lock screen page was that of the victim.

22 Q Okay. So able to identify that as the victim's iPad?

23 A Yes, sir.

24 Q Okay. All right. Thank you. I'm going to hand you,
25 at this time, just a few more items. This is State's,

1 what's been marked for ID as State's 34. I don't know.

2 That's kind of awkward the way it's clamped together.

3 A Yeah. This is the, contained in this pink bag would
4 be the brown paper bag that we placed this, this recorder
5 in. And this is the recorder that was recovered that's
6 shown in the photographs. And this would be the hard
7 drive to that, as well.

8 Q Okay. Ultimately, I believe the Sheriff's Department
9 was able to arrange to have this sent to the FBI to see if
10 it could be recovered?

11 A Yes, sir. We attempted to try to review it and were
12 unsuccessful. We sent it to the State Law Enforcement
13 Division to their Computer Crimes. I believe they were
14 unable to recover it. We then sent it to the Federal
15 Bureau of Investigations, and they were able to recover
16 some data from it.

17 Q Okay. And that's just the hard drive portion, not
18 all of this?

19 A Yes, sir. It would just be the hard drive. That is
20 correct.

21 Q Just that was what was sent?

22 A That's correct. The case, if you will, the metal
23 case that the hard drive is in which is where all the
24 plugs go and where you retrieve, that's what you would see
25 if you bought it out of the box. And the hard drive is

1 what we tried to retrieve the data off of, that's where
2 all the memory would be.

3 Q Okay. State's 35 and 36 inside of this bag, if you
4 could just take a look inside of there?

5 A This would be the phone, the cordless phone that we
6 found inside the bag. This would be the bag that it was
7 in, as well as the cord that went to it.

8 Q Okay. So that's the, the white bag is the actual
9 trash bag that was seen?

10 A Yes, sir. This is the white bag that these items
11 were in, that's correct.

12 Q All right. State's 58.

13 THE COURT: Did you say 58?

14 MR. STUMBO: 58, correct.

15 A This would be the Apple iPad that was found inside
16 the bag and it was heat-sealed in this bag by the
17 Sheriff's Office.

18 Q Okay. And that's the one we see in the picture?

19 A That's correct.

20 Q I believe there was another item, State's 59 that
21 has, it looks like, it says M. Womack?

22 A Yes, sir.

23 Q What's in this bag in State's 59?

24 A I believe, I believe that this would be the cord.
25 This was a cord that we located on the trail. Yes.

1 That's what this is. This is a white cord that we located
2 on the trail. It would be on that trail before you get to
3 Heritage Square and Koon's Liquor Store.

4 Q Do you remember where it was in proximity to the
5 faceplate?

6 A It was, again, if you were looking at Heritage Square
7 on the trail on the right where I said that the faceplate
8 was located, it was in between the trail and in that
9 location of where the faceplate was located.

10 Q Okay. All these items that we just went over, you
11 were able to collect those, package them up and enter them
12 into the evidence log?

13 A That's correct.

14 Q Okay. And they weren't tampered with in any way,
15 were they?

16 A No, sir. They were sealed.

17 Q Okay. Everybody have on kind of latex gloves during
18 the search?

19 A Yes, sir. Absolutely.

20 Q Okay. And so when they were sealed up maybe for the
21 purpose of ultimately being transported, the list of items
22 the police department had was the lead investigation on
23 this case, right?

24 A That's correct. That's correct.

25 Q So you put them into the City evidence?

1 A At the Sheriff's Office.

2 Q At the Sheriff's Office?

3 A Yes, sir.

4 Q Okay.

5 A It was taken to the Sheriff's Office to begin with,
6 that's correct.

7 Q All right. And, ultimately, were these items tested
8 by anybody?

9 A Yes, sir. Lieutenant Kennedy came with us to the
10 Sheriff's Office and that's where we conducted the tests
11 such as dusting for fingerprints on the faceplate, as well
12 as the box itself. Finger, all the fingerprinting was
13 done at the Sheriff's Office, and Lieutenant Kennedy was
14 there as a representative of the City Police Department.

15 Q Okay. Were any of the finger, well, you know, were
16 you able to develop any latent fingerprints on those
17 items?

18 A No, sir. Nothing, nothing was located during those
19 analyses of the items.

20 Q Okay. And that's not uncommon not to get a clean
21 print?

22 A No, sir. It's, it's not uncommon. Actually, it's
23 more common not to find anything than it is to find
24 something.

25 Q Now, but you did the testing --

1 A That's correct.

2 Q -- dusted it and attempted to lift fingerprints
3 anyway?

4 A Yes, sir. That's correct.

5 Q Now, y'all don't do DNA testing at the Sheriff's
6 Office?

7 A No, sir. That's done by the State Law Enforcement
8 Division.

9 Q Okay. And the gunshot residue testing, y'all don't
10 have anybody in-house that does that?

11 A No, sir. That's also done by SLED.

12 Q Okay. So the items that we see, ultimately, there's
13 some items that need to be taken down to SLED for testing,
14 you didn't do any of that?

15 A No, sir. The items were turned over to SLED, that's
16 correct.

17 Q Okay.

18 MR. STUMBO: All right. Your Honor, at this time, we
19 would go ahead and offer into evidence State's 33 through
20 37; and State's 58 and 59. All of those are just physical
21 evidence items that were collected at the scene.

22 THE COURT: All right. What says the Defense?

23 MR. VERNER: Your Honor, my understanding is, and
24 I'll ask for a chain-of-custody for, specifically, for 34
25 and 37, which would be the shirt and the--

1 MR. STUMBO: -- and, Judge, if those two items in
2 particular we need to have a sidebar on those, we can put
3 the others in.

4 THE COURT: Okay. Well, let's do this. Other than
5 34 and 37, we will put in 33, 35, 36, 58, 59 into
6 evidence. And then just during a break or when the
7 opportunity lends itself, we can discuss 34 and 37?

8 MR. STUMBO: Yes, sir. We can do that, and we have
9 further witnesses testifying to those items, Judge.

10 THE COURT: Okay.

11 MR. STUMBO: And we can always put, you know, have
12 that discussion and hear those witnesses.

13 MR. VERNER: Judge, actually, 37 and probably the
14 shirt, itself, is probably 39. That would be the chain of
15 that I would want to, see the chain-of-custody.

16 MR. STUMBO: And I'm not offering that at this time,
17 Judge.

18 THE COURT: 39 has not been dealt with, at least
19 according to my notes.

20 MR. STUMBO: It's not.

21 MR. VERNER: But the shirt, itself, I don't have the
22 objection or the problem to. Any cuttings that were sent
23 to other agencies, I would want to see a chain-of-custody
24 report.

25 THE COURT: All right.

1 MR. VERNER: So I'll just put it on 34, Your Honor,
2 the objection.

3 THE COURT: All right.

4 MR. STUMBO: And 34 would be the hard drive, the DVR.

5 THE COURT: Okay. All right. So 34 is, will need to
6 be discussed. Now, the Defense is agreeing for 37 to go
7 into evidence, the shirt?

8 MR. VERNER: Yes, sir. The shirt, itself, can come
9 in.

10 MR. STUMBO: And we'll offer 39, I believe, through a
11 witness subsequent to now, Judge.

12 THE COURT: All right. So just once again for the
13 record, 33, 35, 36, 37, 58 and 59 are into evidence.

14 MR. STUMBO: Yes, sir.

15 THE COURT: Are into evidence, that's correct. So
16 out of this batch that's just been offered, the only one
17 that's not into evidence yet with which we'll need to deal
18 with a little further is 34?

19 MR. VERNER: Correct. Thank you.

20 MR. STUMBO: Thank you, Your Honor.

21 THE COURT: All right.

22 (Whereupon, State's Exhibits 33, 35, 36, 37, 58 and
23 59 were admitted into evidence.)

24 Q Just one last question, Sergeant Womack. Earlier,
25 you testified that the individual that works at El Poblano

1 that you interviewed and took the samples of is a José
2 Rodriguez. I believe the name also that's written in the
3 reports is José Galvez.

4 A Yes.

5 Q Is that the same individual?

6 A Yes. It was very difficult to get information from
7 him. Obviously, he was nervous. The information, if I
8 can see the DNA box.

9 Q State's 61.

10 A Remember, this was before this. He says José Neptaly
11 Rodriguez Galvez. Remember, he gave me that name, it was
12 with Mr. Alvarado, the officer from the city. Obviously I
13 said Rodriguez, that was part of his name but Galvez would
14 be his name as well. Yes sir, that is correct.

15 Q Galvez is the last name?

16 A Yes, sir. That's correct. That's correct. I
17 apologize.

18 Q No, that's fine.

19 MR. STUMBO: I beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Sure. Take your time.

22 MR. STUMBO: Thank you, Sergeant Womack. No further
23 questions.

24 THE COURT: Cross-examination?

25 MR. VERNER: May it please the Court? May I

1 approach, Your Honor?

2 THE COURT: You sure can.

3 CROSS-EXAMINATION

4 By Mr. Verner:

5 Q Identify this document for me, Investigator?

6 A This is a chain-of-custody, South Carolina Law
7 Enforcement Division, Forensics Lab.

8 Q Okay. And that indicates that you took a gunshot
9 residue kit from Mr. Galvez?

10 A That's correct. As well as, buckle swab.

11 Q Okay. Buckle swab is, basically, you took a Q-tip
12 and kind of, well, how do you do a buckle swab?

13 A Yeah. It's in a secure package. Obviously, gloved,
14 I would take it out of the package and swab both sides of
15 his cheek, the inside of either side. And then place it
16 into the box and then on the box as, obviously, standard
17 policy is to do, his name, his address, his birthday,
18 social. And then I collected it, and the time and date
19 that I collected it.

20 Q Okay. And how do you take the gunshot residue
21 evidence from a suspect?

22 A It's a white package. On the front of it, it has an
23 officer's information, the agency collecting the
24 information. It has the chain-of-custody at the bottom.
25 Inside the package is tape that you can seal it, a swab

1 that you can do, we usually do it on the leg. It is like
2 a, it would be a standard type swab, as well as there
3 would be four, let's see. They changed them. I don't
4 remember specifically if it would have been the new
5 version or old. But it's little, little vials and it has
6 a plastic top on it. And you'll take that vile off. One
7 says, left palm. So you'll take that vile off, and then
8 you'll do the left palm between the thumb and the index
9 finger and then along the ridge of the hand. And then it
10 will say, left back. We go along the backside of the left
11 thumb, as well as the index finger and across the
12 knuckles. And then, obviously, there would be two others
13 for the right palm, and then back.

14 Q Okay. And that's kind of a self-contained kit?

15 A Yes, sir.

16 Q And it's really, fairly much as simple as just
17 rubbing --

18 A A swab.

19 Q -- a Q-tip on somebody's hands and then putting it in
20 the package?

21 A Well, that would be, it has a small Q-tip which is
22 the control. It's labeled as the control and that's what
23 you would swab like an area where you would typically fire
24 a firearm and typical practice is to use it on their calf
25 of a leg.

1 Q Okay. Is it a fairly simple process?

2 A Yes, it's very simple.

3 Q And the gunshot residue kit would be a pretty
4 standard part of a police agencies investigation room?

5 A It would not be available to all officers but to
6 myself as an investigator, it would be.

7 Q Pretty much any investigator in the City or the
8 County would have access to gunshot residue kits?

9 A Yes, sir.

10 Q And what time did you hand over the or did you take
11 the gunshot residue kit from?

12 A It would be, without seeing it, I couldn't tell you
13 specifically. Oh, what time did I hand it over, is that
14 what you are asking?

15 Q Well, is that different than what time you took it?

16 A Yes, sir. That's correct.

17 Q Okay. What time did you turn it over to SLED.

18 A This says 18:47 which would be 6:47 p.m.

19 Q On the 26th?

20 A Yes, sir.

21 Q Okay. Had you taken it shortly before then or?

22 A Yes, sir. I collected it from José and transferred
23 him back to his employment, which would be the Hispanic
24 restaurant on Main Street. And then I went straight back
25 to the crime scene, turned it over to SLED right then.

1 Q Okay. So is it fair to say roughly within thirty
2 minutes of taking it from Mr. Galvez, you turned it over
3 or an hour, I guess, to be safer?

4 A If I look at the DNA box, I would be able to tell
5 you, specifically.

6 Q And do you know which one?

7 A It would be that one right there on top. That one
8 right there on top, that one there, yes sir. It should
9 have a time and date on it underneath my name.

10 Q Okay.

11 A And it says that I collected this at 16:55 on the
12 26th. That would have been 4:55.

13 Q Okay. So about 5:00 o'clock in the evening?

14 A Yes, sir. Around 5:00.

15 Q And that would be about three-and-a-half hours after
16 the, what you believe the time of the shooting would be?

17 A A round-about time. I don't know specifically what
18 time the shooting was.

19 Q Okay. If the shooting was alleged to have occurred
20 between 1:30 and 2:00 o'clock, that would be within three
21 hours or so?

22 A Yes, sir.

23 Q Maybe three-and-a-half hours?

24 A Yes, sir.

25 Q Is there any reason for you not to take a gunshot

1 residue if somebody were involved in a shooting?

2 A No, sir.

3 Q So if you believed I was involved in a shooting and I
4 was meeting with you and I said, well, go ahead and take
5 my swipes of my hands for gunshot residue. Is there any
6 reason that you would decline my offer to give you
7 potential evidence?

8 A I would not decline you, no.

9 Q Even if you thought that it'd been three or four
10 hours and I would have had the opportunity to wash, would
11 you have declined?

12 A Me, specifically, no, I would not.

13 Q Okay. Do you think it would have been, you think
14 it's helpful to take gunshot residue?

15 A Yes, sir.

16 Q Okay.

17 A We typically take gunshot residue kits even on
18 potential suicides.

19 Q Okay. Even if it's been several hours after?

20 A Yes, sir. That's the Sheriff's Office standard
21 practice.

22 Q And you never know what you'll find?

23 A You never know.

24 Q If you don't find any evidence, then that doesn't
25 really, necessarily hurt your case, does it?

1 A That's correct. SLED provides the kits. SLED
2 processes the kits. It is only time-consuming to the
3 Sheriff's Office to take it.

4 Q Okay. And even time-consuming is simply a matter of
5 taking some swabs?

6 A It's a matter of minutes.

7 Q Ten minutes at most, maybe?

8 A At the most.

9 Q Okay. Do you know what the AFIS system is?

10 A Yes, I'm familiar.

11 Q And just in a layman kind of way, what's the AFIS
12 system?

13 A AFIS is a --

14 THE COURT: Is that an acronym?

15 MR. VERNER: It is an, AFIS, A-F-I-S, or perhaps I
16 can let the deputy.

17 A Automatic Fingerprinting Identification System.

18 Q Okay.

19 A It is, in a nutshell, it is the database that's used
20 when someone's fingerprints are taken whether it be for an
21 arrest, gaining concealed weapon, anything of that nature,
22 it would be taken and put into the system.

23 Q Okay. What's the purpose of the AFIS system?

24 A I'm not an expert on that. It's mainly used to
25 identify fingerprints, latent fingerprints.

1 Q Okay. And there's a database of fingerprints in the
2 system?

3 A That's correct.

4 Q What about for DNA, is there also a separate DNA
5 database?

6 A Yes, sir. That's named CODIS.

7 Q Okay.

8 A It's all acronyms.

9 Q So law enforcement, if you have fingerprints, unknown
10 or known, that you can submit them for testing and if
11 there are fingerprints, you can submit them against the
12 AFIS database?

13 A That's correct. It will be run against AFIS.

14 Q Okay. And if you have DNA known or unknown you can
15 test it against the CODIS system?

16 A CODIS is a little different. Again, I'm not an
17 expert in CODIS, but the knowledge that I have for CODIS
18 is that CODIS is only collected for offenders whether
19 you're in the Department of Corrections. It is now taken
20 at jails for specific offenses. There is not a database
21 of everybody in the United States of their DNA and that's
22 why known standard are taken.

23 Q Right. But there's not a database of everybody in
24 the United States fingerprints either?

25 A That's correct.

1 Q Okay.

2 A You'd have to go through specific things.

3 Q You might not be in jail, but you would have been
4 arrested to submit your fingerprint?

5 A That's correct. You could get your fingerprints, it
6 is easier for those than it would be DNA.

7 MR. VERNER: Beg the Court's patience, Your Honor.
8 Investigator, thank you.

9 THE COURT: All right. Any redirect?

10 MR. STUMBO: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 By Mr. Stumbo:

13 Q Sergeant Womack, did you participate in any way in
14 the arrest of this Defendant, Kenny Ruff?

15 A I was present; yes, sir.

16 Q Okay. Did you interview him.

17 MR. VERNER: Actually, Your Honor, I think that's
18 beyond my cross.

19 THE COURT: Well, it probably is, but he said his is
20 very limited, so I'm going to allow it. Go ahead.

21 MR. STUMBO: Judge, I think it opens the door talking
22 about GSR is what I'm kind of getting at.

23 Q So you wouldn't have had an opportunity to take a GSR
24 kit of this Defendant, would you?

25 A No, sir.

1 Q Okay. That wasn't your role?

2 A No, because he was never in my specific custody.

3 That's correct.

4 Q Okay. You were there at the scene when his car was
5 pulled over near Pioneer Foods?

6 A That's correct. As was multiple law enforcement.

7 Q Okay. And he was taken to the Police Department
8 after that?

9 A That's correct. Newberry City Police Department.

10 Q You would have never had an opportunity to take a
11 swab or a GSR of this Defendant?

12 A No, sir. I never even spoke to the Defendant.

13 MR. STUMBO: Okay. Thank you.

14 THE COURT: Anything in recross?

15 MR. VERNER: Nothing further, Your Honor.

16 THE COURT: Thank you, you may step down. Mr. Scott?

17 MR. SCOTT: Thank you, Your Honor.

18 THE COURT: Your next witness?

19 MR. SCOTT: The State calls Angela Ruff.

20 THE COURT: Okay. I've got a phone conference at
21 11:30, so if we're not finished with the witness, we'll
22 just have to take a little short recess so I can handle
23 that.

24 ANGELA RUFF, being
25 first duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 By Mr. Scott:

3 Q Angela, good morning.

4 A Good morning.

5 Q Angela, where do you live?

6 A Turner Street.

7 Q Okay. And you are Kenny's sister, older sister, is
8 that right?

9 A Yes.

10 THE COURT: You need to speak up, Angela, okay.

11 MS. RUFF: Yes.

12 Q How do you refer to him? What do you call him?

13 A Smurf.

14 Q Has he just always gone by that name?

15 A Yes.

16 Q Okay. You know why we're here. Do you remember
17 August 26th of 2015?

18 A Yes.

19 Q Were you familiar with Leslie's Hair Salon?

20 A Well, I do hair, too, so I know it was a hair salon.

21 Q Okay. And if you go down Turner, the street you live
22 on, onto Main Street, it's just right there, isn't it?

23 A Yes.

24 Q Is that, do you know, is that something you can see
25 from the stop sign right at Turner Street?

1 A Yeah, you can see it from the stop sign.

2 Q Let me show you, this is what's been premarked --

3 MR. SCOTT: -- don't publish it yet, Walter.

4 Q -- but it's 71. What is that?

5 A That's a stop sign at Turner Street.

6 Q A stop sign, and then can you see Leslie's right
7 there?

8 A Yes.

9 Q Okay. How would you describe it in that picture?

10 A A frame building with a flat roof.

11 Q Does that fairly and accurately represent if you're
12 pulling up to the stop sign on Turner what you would see
13 looking on Main Street?

14 A I guess, if you're paying attention.

15 Q Okay.

16 MR. SCOTT: Your Honor, the State offers 71 for
17 admission into evidence.

18 THE COURT: And what's says the Defense?

19 MR. VERNER: And just, I believe, she testified that
20 it was a fair and accurate but I think the State asked her
21 was it a fair and accurate depiction?

22 THE COURT: I believe that was asked.

23 MR. VERNER: And she said yes, then without
24 objection, Your Honor.

25 THE COURT: Okay. And without objection, 71 is in

1 evidence.

2 (Whereupon, State's Exhibit No. 71 admitted into
3 evidence.)

4 Q Okay. So, again, if you're coming off of Turner, you
5 can see it. I'll give you a copy of it, so you can look
6 at it. If you're pulling off Turner Street onto Main
7 Street and you just kind of look to the right, that would
8 be the view you would have?

9 A Is La Princesa's..

10 Q Ma'am?

11 A La Princesa store.

12 Q Okay. And then you said Leslie's is the one with the
13 reddish roof there?

14 A Yes.

15 Q Okay. And you can see it from the stop sign area of
16 Turner Street?

17 A Yes.

18 Q Okay. All right. After, you know, Kenny, I think
19 it's been testified to, he got picked up around the 26th
20 of August, 2015. Do you remember when he got picked up by
21 the police?

22 A Yes.

23 Q Did he call you from the jail; did you have a chance
24 to talk with him when he called from the jail?

25 A Yes, we did.

1 Q Do you remember--

2 THE COURT: What was the answer? I couldn't hear the
3 answer?

4 A Yes.

5 Q Okay. Do you remember, Angela, just talk loud
6 enough. She's only five feet from you, but you got to
7 make sure the court reporter hears you and really want the
8 jury to hear your answers, as well. Are you a little bit
9 nervous being here?

10 A Yes, I am.

11 Q Okay. That's understandable. And when did you talk
12 with Kenny; when did he call you from the jail?

13 A Well, I can't tell you exactly what day it was, but
14 it was when he went in.

15 Q Okay. What happens when somebody from the jail calls
16 you, did you know it was being recorded?

17 A Yes.

18 Q And it gave you a little warning up front about it
19 being recorded?

20 A Yes.

21 Q Tell me, well, tell me what he said? Did you ask him
22 about this thing?

23 MR. VERNER: Your Honor, I do object to this. If I
24 could put the grounds on sidebar?

25 THE COURT: Okay.

1 MR. VERNER: But, well, I'll just object on--

2 THE COURT: Let's have, let's have a sidebar. Then,
3 we can determine whether or not we need to excuse the jury
4 right now.

5 (Whereupon, a bench conference was held in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 MR. VERNER: Thank you, Judge.

9 THE COURT: All right. Okay. Let me see the lawyers
10 for just a second again.

11 (Whereupon, a bench conference was held in the
12 presence of the jury but out of the hearing of the
13 jury.)

14 THE COURT: Okay. We're going to go ahead and take a
15 morning break now, ladies and gentlemen. You just heard
16 me tell the lawyers I have a phone conference with some
17 lawyers in another case that I'll have at 11:30 that,
18 hopefully, won't take too long. But we're going to go
19 ahead and take a morning break and how's your candy
20 holding out, do you need to be restocked? Okay. So I got
21 a thumb's up. It's all sugar-free, so you'll be good
22 there, and we're going to take a morning break. Again, I
23 remind you, no discussion among yourselves about anything
24 related to this case, and we'll get you back out shortly.
25 Okay. Have a good break.

1 (Whereupon, the jury is excused from open court for a
2 break.)

3 THE COURT: Okay. Ms. Ruff, I understand that, and I
4 realize this is a difficult situation for you and that,
5 you know, you're upset. I'm going to give you a few
6 minutes. That's why we're taking a break, just to get
7 your composure. If you would remain on the witness stand
8 just to avoid any discussion with any of your family
9 people that you're with about your testimony. But just
10 take your time, get your composure. If you need any more
11 water, any more Kleenex, anything that will help you, if
12 you'll just ask one of the clerk's. Okay?

13 MS. RUFF: Yes, sir.

14 THE COURT: Okay. All right. Very good. All right.
15 We'll be in recess probably for about twenty minutes.

16 (Whereupon, a short break was taken.)

17 THE COURT: Okay. Mr. Verner, you expressed at a
18 sidebar right before we took a break or sent the jury out
19 for a break an objection concerning what the witness was
20 asked about a conversation initiated by the Defendant
21 while he was at the Detention Center. So, I'll be glad to
22 hear from you.

23 MR. VERNER: Your Honor, we do object on the Fifth
24 Amendment grounds of using statements of an inmate. The
25 eavesdrop jail, I'm not sure if they're intending to play

1 conversations or not or just illicit. But I'd object to
2 getting into conversations of the jailhouse on recorded
3 lines and family members under the Fifth Amendment and
4 also under Fourth Amendment, seizure or searches type
5 issues.

6 THE COURT: Okay. All right. Solicitor Scott, you
7 want to put your position on the record?

8 MR. SCOTT: Well, I don't think the objection is
9 right, Judge, because my question to Angela is to what he
10 told her. And I have not introduced the jail call, but I
11 will introduce it eventually, and I don't see the
12 expectation of privacy. I'll publish the warning that
13 every warning gets before they place a call out that it is
14 being recorded and you are subject to your whole
15 conversation being recorded. So I don't see it as a
16 Fourth or a Fifth Amendment issue, Your Honor.

17 THE COURT: Well, and I don't think it's a Fourth or
18 Fifth Amendment issue, as well. But the fact that right
19 now we're at the stage of her stating what the
20 conversation consisted of, that in and of itself would not
21 constitute any sort of Fourth Amendment or Fifth Amendment
22 violation. Coupled with that is the fact that and I'm
23 taking judicial notice of the fact that there is a warning
24 at or close proximity to the phone, a written warning
25 indicating that it's, that all phone calls are recorded.

1 At least that's what is standard practice throughout the
2 State as I understand it. But the Solicitor acknowledged
3 that to be true as far as Newberry County Detention
4 Center. And then it was stated, I think, in a question of
5 Ms. Ruff that there's some recording at the outset of the
6 phone conversation that the phone call is being recorded
7 as well. So, based upon all that, I will deny your
8 objection or overrule your objection at this time.
9 Certainly, when the State offers the actual recording you
10 have every right to renew your objection and add any
11 additional grounds that you may have. And I'll make a
12 separate ruling on that.

13 MR. VERNER: The only problem I have with that and it
14 might just be, I think, the Court might not have meant as
15 strictly as the Court said it. But I would object to the
16 Court that that's not the type of fact the Court can take
17 judicial notice of. It has to be a fact that's
18 universally agreed upon whether a jail has a policy to do
19 a certain thing. It might be generally true. But I think
20 if a fact that a Court can take judicial notice of it has
21 to be a universally-accepted fact such as what time the
22 sun rose, the diameter of the earth, and whether an inmate
23 or whether a particular jail system had--

24 THE COURT: Are you saying that Newberry County
25 Detention Center does not have a written sign at the phone

1 indicating that phone calls are subject to being recorded?

2 MR. VERNER: In all honesty, I don't know, Your
3 Honor, and I don't know that the general public would
4 know.

5 THE COURT: I will not take judicial notice of that.
6 Solicitor, at some point in time in this case, if you
7 could have someone from the Detention Center over here to
8 confirm that.

9 MR. SCOTT: I've got Walter Bentley testifying, and I
10 think he can testify to that.

11 THE COURT: Okay. All right. What we will do is
12 when we come off the break, let's go ahead and put Mr.
13 Bentley on the stand for that limited purpose to confirm
14 that Newberry County Detention Center does, in fact, have
15 that warning on the phone and based upon that testimony,
16 then, I will, I think it's proper to take judicial notice
17 of that. So, but we'll just do that when I finish with
18 the break.

19 MR. VERNER: Thank you for hearing this, Your Honor.

20 MR. SCOTT: Thank you.

21 THE COURT: Thank you.

22 (Whereupon, a break was taken.)

23 MR. VERNER: Judge, just to make sure the Court and I
24 aren't arguing apples and oranges. When I am talking
25 about judicial notice I am quite correct, I believe, but

1 my concern is judicial notice is, as I see it, is when the
2 Court makes a finding of fact and informs the jury that
3 the Court has made a finding of fact. I think the Court
4 is actually just saying, in making my ruling on the
5 admissibility of the evidence, the totality of the
6 circumstances is I am aware of the notices.

7 THE COURT: That was the intent of me making the
8 comment that it was my understanding that, in fact, the
9 Newberry County Detention Center, as other detention
10 centers, do have that written notice on a sign close to
11 the phone. So, it was not where I was going to, even
12 though I think the Solicitor asked the sister, you know,
13 did the notice, the warning come up on the phone call
14 itself.

15 MR. VERNER: He did, he did. But the, my concern was
16 more of a judicial notice that the Court making a finding
17 of fact, finding of fact and publishing it to the jury.
18 Such as on such and such a day the sun rose and I think
19 the Court meant it more of a spirit of that that is the
20 basis, that is one of the grounds that I am relying on to
21 admit the evidence.

22 THE COURT: Exactly. So with that said--

23 MR. VERNER: If the Court wants to take the proffer.

24 THE COURT: Since I am on the record outside the
25 presence of the jury have Mr. Bentley--

1 MR. SCOTT: I changed it for convenience, I sent for
2 Mr. Womack, we have got a picture and everything so I am
3 going to recall Matthew Womack to testify to this.

4 THE COURT: Okay. All right. You want to do that
5 now?

6 MR. SCOTT: Yes, sir. The State calls Matthew Womack
7 to the stand.

8 THE COURT: All right. Come around and mind you --

9 MR. WOMACK: Still under oath, Your Honor?

10 THE COURT: Still under oath.

11 MR. WOMACK: Yes, sir.

12 DIRECT EXAMINATION

13 By Mr. Scott:

14 Q Okay. Deputy Womack, just at my direction, you just
15 went to the Newberry County Jail?

16 A That's correct.

17 Q And did you seek out the specific cell that Kenny
18 Ruff was housed in?

19 A I did, Max number 7.

20 Q Okay. And did you get to observe the phones that
21 were assigned to that unit?

22 A I did.

23 Q Okay.

24 A It is a specific phone in the unit itself.

25 Q Okay. And did you take pictures?

1 A I did, of the phone.

2 MR. SCOTT: Okay. And we're going to mark these,
3 Your Honor, I guess, the Court's Exhibit.

4 THE COURT: A Court's Exhibit.

5 MR. SCOTT: I don't have them printed yet, but we
6 have them that we can publish.

7 THE COURT: Well, once they get printed, mark them as
8 Court's Exhibit, well, the next number in line is 3.

9 (Whereupon, Court's Exhibit 3 was marked for
10 identification only.)

11 MR. SCOTT: Yeah. Let me see, Walter.

12 Q Okay. Is that the phone?

13 A Yes, sir. That's the phone in Cell 7.

14 Q And I'm looking at kind of a white rectangle directly
15 over the headset there?

16 A That's correct, and that is the disclaimer.

17 Q It's a disclaimer. And, essentially, what does it
18 say?

19 A The Reader's Digest version is it, essentially, says
20 that you, this phone can be monitored and recorded.

21 Q Okay. State's number 4. You need to turn around.
22 Can you see that?

23 A Yes.

24 Q And just I'll read it really quickly, and tell me if
25 this is what you observed. Notice Newberry County Jail or

1 their agents reserve the authority to monitor and record
2 conversations on this telephone. Your use of this
3 telephone constitutes consent to monitoring.

4 Additionally, calls may be subject to time limitations
5 established by this institution. A properly placed call
6 to an attorney will not be monitored or recorded.

7 A That's correct.

8 Q So it does distinguish between calls to the public,
9 and then calls to the attorneys?

10 A In both English and Spanish.

11 Q Okay. Thank you.

12 MR. SCOTT: That's all.

13 THE COURT: All right. Very good. Did you want to
14 examine him?

15 MR. VERNER: Very briefly, Your Honor.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 By Mr. Verner:

19 Q Are you sure that's, Cell 7 is where Kenny Ruff would
20 have been in August 27th of 2015?

21 A On that date, no. However, I did go to the booking
22 area soon as I left this cell. He would have had to go
23 through the booking area. That is standard practice, and
24 I also observed those cell phones which is, I'm sorry,
25 those phones which is exactly of those pictures that you

1 see, as well as the disclaimer.

2 Q Okay. On all the phones that you saw?

3 A Yes, sir.

4 Q Do you know when those phones or disclaimers were put
5 into?

6 A I have no idea.

7 Q Okay. Thank you.

8 THE COURT: Thank you, sir. You can step down.

9 Okay. Ms. Ruff, you ready to come back to the witness
10 stand?

11 (Whereupon, witness complies).

12 THE COURT: Anything further before we bring the jury
13 out?

14 MR. SCOTT: Nothing from the State, Your Honor.

15 THE COURT: All right. Madam Bailiff, if you will
16 bring the jury out.

17 (Whereupon, the jury came into open court at
18 approximately 11:50 a.m.)

19 THE COURT: Let the record reflect the jury is back
20 in. Solicitor, you may proceed.

21 MR. SCOTT: Thank you.

22 CONTINUE DIRECT EXAMINATION OF ANGELA RUFF

23 By Mr. Scott:

24 Q Angela, we were discussing a phone call that you and
25 Kenny had August 27th of 2016. I had asked you did you

1 understand that you were being recorded and your answer
2 was?

3 A Yes.

4 Q Okay. Okay. And, then so what was it that Kenny was
5 talk, were you talking about the thing that he had been
6 accused of doing?

7 A Yes.

8 Q Okay. What were you asking him?

9 A Well, I wasn't asking no questions.

10 Q Well, then, what was he saying to you?

11 A He was just saying he didn't kill anyone.

12 Q Okay. Did he say whether or not he had been to the
13 salon?

14 A I can't recall that.

15 Q Well, you did listen to some of this jail call
16 earlier today in my office, didn't you?

17 A Yes.

18 Q Okay. And did you recognize your voice?

19 A Yes.

20 Q And did you recognize Kenny's voice?

21 A Yes.

22 Q Okay. What was he saying? Well, did he have an
23 explanation for what happened to Mr. Facio?

24 A I can't recall that.

25 Q Do you recall having a conversation with me about an

1 hour ago?

2 A Yes.

3 Q Okay. I want to ask you one more time. What did he
4 tell you happened inside that salon? What was his
5 explanation? You're under oath.

6 A He didn't tell me what happened inside the salon. He
7 just say he didn't have anything to do with it.

8 Q All right. Who is Dale Bailey?

9 A I know Dale from dealings with my son and on the
10 street.

11 Q All right. What did Kenny Ruff, your brother, say
12 about Dale Bailey?

13 A (No response.)

14 Q Are you having difficulty answering my questions?

15 A Yes.

16 Q Why?

17 A (No response.)

18 Q Angela, why are you having difficulty answering my
19 questions?

20 A (No response.)

21 Q Can you answer my questions?

22 A (No response.)

23 Q I need a yes or no?

24 A No.

25 Q No, you can't answer my questions?

1 A (No response.)

2 Q Angela, why can't you answer my questions today?

3 A I don't want any involvement.

4 Q You don't want to be involved?

5 A (No audible response.)

6 Q Why? He's your brother?

7 A Yes.

8 Q Okay. Do you want to hear the jail call?

9 A No.

10 Q You don't?

11 A (No response.)

12 Q But you don't deny that was your voice on the jail
13 call that we heard earlier today and that was Kenny's
14 voice on the jail call you heard earlier today?

15 A (No response.)

16 Q Was that your voice?

17 A Yes.

18 Q You got to say yes or no?

19 A Yes, it was.

20 Q Okay. Well, let's listen to the jail call.

21 MR. SCOTT: Your Honor, she has identified it and
22 identified her voice and her brother's voice. I've got it
23 listed as State's number 41. We're going to offer it for
24 admission into evidence right now.

25 MR. VERNER: The same objection, Your Honor. I think

1 they need to, which specific, what date or the, but they
2 haven't said, specifically--

3 THE COURT: -- let's have a little sidebar.

4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the
6 jury.)

7 THE COURT: Okay. Ladies and gentlemen of the jury,
8 we got a legal issue that I'm going to have to deal with,
9 and I'm going to have to deal with it outside of your
10 presence. So I appreciate your understanding and patience
11 with us, but you'll need to go back to the jury room for
12 some period of time. Okay. Thank you.

13 (Whereupon, the jury was excused from open court.)

14 THE COURT: Okay. I had a sidebar conference with
15 the lawyers and how we're going to handle this. It was
16 the State, as I understand it, the State's plan to offer
17 the actual recording into evidence sometime later in their
18 case-in-chief, possibly with the use of some other
19 witnesses. So what I've instructed Solicitor Scott to do
20 is play, I think, play a portion of the recording for this
21 witness and, Ms. Ruff, I can understand and appreciate the
22 difficulties of you being here to testify. However, you
23 are here. You have, evidently, been subpoenaed to
24 testify. So you are required to testify. You're required
25 to answer the questions asked of you and you're also

1 required to answer truthfully. I don't know what your
2 truthful testimony is, okay, but nonetheless, I can tell
3 you that you must answer the questions and you must
4 testify truthfully. What we're doing is we're, the
5 Solicitor is going to play a portion of this recording
6 that you've, evidently, listened to in the past. And then
7 we'll bring the jury back out and allow the State and as
8 well as Mr. Verner to ask you questions. But you must
9 answer the questions, and you must do so truthfully.

10 MS. RUFF: Okay.

11 THE COURT: You understand, ma'am?

12 MS. RUFF: Yes, sir.

13 THE COURT: All right.

14 MR. SCOTT: Now, it's been ID'd as State's 41,
15 premarked.

16 THE COURT: Did you say about ten minutes worth of
17 this?

18 MR. SCOTT: Yeah. I think it goes about 16 minutes.
19 We'll just start at about the six-minute mark, so about 10
20 minutes.

21 THE COURT: Okay.

22 (Whereupon, State's number 41 was published.)

23 THE COURT: Okay. Let's bring the jury out, Madam
24 Bailiff.

25 (Whereupon, the jury came into open court at

1 approximately 12:10 p.m.)

2 MR. SCOTT: Judge, can we approach while they are
3 filing in?

4 THE COURT: Sure.

5 (Whereupon, a bench conference was held in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 THE COURT: Okay, Solicitor.

9 CONTINUE DIRECT EXAMINATION

10 By Mr. Scott:

11 Q All right. Angela, are we talking about the jail
12 call, do you remember having that conversation the day
13 after Kenny was arrested?

14 A Yes.

15 Q Okay. And I got to say, I got to ask you what did he
16 say about being at Leslie's Hair Salon?

17 MR. VERNER: Again, Judge, got the same objections as
18 earlier. But the only thing I would add to the objection
19 for the Court as far as Miranda that we talked about would
20 be because Goodman, apparently, is a party to the
21 conversation.

22 THE COURT: Not this conversation.

23 MR. VERNER: Yes, sir.

24 THE COURT: What you're thinking about is Officer
25 Goodman sometime later on, maybe that same day or the next

1 day called the sister?

2 MR. VERNER: Well, no. This was a call and correct
3 me if I'm wrong, but it was a call from what they're
4 alleging is Kenny Ruff to his sister in Mr. Goodman's
5 office with Officer Goodman participating.

6 THE COURT: I think what the, what he's asking about
7 is the call from the Defendant to the sister that you
8 listened to and recorded by the Detention Center.

9 MR. VERNER: Right. But my understanding was Mr.
10 Goodman is sitting with the sister during the call, is
11 that right?

12 MR. SCOTT: I'll be happy to proffer a little bit
13 more testimony.

14 MR. VERNER: And we can address that later. But my
15 understanding, this is a call where Mr. Goodman is sitting
16 with the sister.

17 THE COURT: Now, let's have a sidebar. We can clear
18 it up.

19 (Whereupon, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 MR. VERNER: Okay. Judge, just to clarify my
23 understanding is the phone call I'm talking about is the
24 second or a different conversation.

25 THE COURT: That's correct. That's correct.

1 Q Angela, let me, let's back up. Who's Barry?

2 A My boyfriend.

3 Q Was he living with you on Turner Street at the time?

4 A Yes.

5 Q Okay. Do you remember getting this specific call I'm
6 talking with you about, and that's State's number 41. Do
7 you remember when you received that call kind of telling
8 Barry what Kenny was telling you over the phone?

9 A Yes.

10 Q Okay. So and, I'm just trying to clarify what we're
11 about to hear. If we hear your voice and you're repeating
12 something Kenny's saying, is that you relaying the
13 information to Barry?

14 A Yes.

15 Q Okay. Do you remember where you were when you
16 received this call?

17 A At home.

18 Q Okay. Well, let me just ask you and we'll listen to
19 it, but what did Kenny say about being in Leslie's Hair
20 Salon on the 26th?

21 A About being in there?

22 Q Who was he with when he went to the salon?

23 A Well, you just heard he said he didn't have anything
24 to do with it. Dale snatched the footage out.

25 Q Okay. So to answer my question, did he say he was

1 with Dale?

2 A Yes, according to what you just heard.

3 Q They're easy questions. I'm not trying to ask any
4 hard questions. And we're going to listen to it, but I
5 got to ask you first. Who else did he say he was with in
6 the store?

7 A I don't know. It's Machiavelli or Machiavelli. I
8 don't know.

9 Q Machiavelli?

10 A A Velli all I know.

11 Q Say again?

12 A A Velli dude all I know. It's a street name.

13 Q Velli?

14 A Machiavelli.

15 Q Okay. And, all right. So he said he was with Dale
16 Bailey and Machiavelli?

17 A Uh-huh.

18 THE COURT: You need to answer yes or no.

19 A Yes.

20 Q Okay. And did he say which one of those three did
21 the shooting?

22 A No.

23 Q No. When he talked about being with Dale Bailey and
24 Machiavelli, what did you tell him?

25 A He need to turn them over.

- 1 Q He said what?
- 2 A You asked what did I tell him?
- 3 Q Yeah.
- 4 A Tell on them.
- 5 Q Tell on them. Okay. In fact, you said if you don't
- 6 want to tell it, I'll tell it?
- 7 A That's right.
- 8 Q That's right?
- 9 A Yes.
- 10 Q And, in fact, I'm going to get this later, but at
- 11 some point, Kevin Goodman did call you to ask what the
- 12 story was Kenny was giving you, didn't he?
- 13 A I can't recall.
- 14 Q Okay. Did you ever tell Kevin Goodman that Kenny was
- 15 saying Dale Bailey and Machiavelli were with him in the
- 16 store?
- 17 A Me and Kenny only talked about that over the phone.
- 18 Q Okay. But then you said if you can't tell it to
- 19 Kevin Goodman, I'll tell it. Did you eventually get to
- 20 tell Kevin Goodman about that?
- 21 A No.
- 22 Q You never spoke with Kevin Goodman?
- 23 A Not that I can recall.
- 24 Q And do you know who Kevin Goodman is?
- 25 A Yes.

1 Q Do you see him?

2 A Yes.

3 Q Is it your testimony under oath you never talked to
4 him?

5 A I could have, but I can't recall.

6 Q Okay. Well, do you recall telling him that Kenny
7 said he was in the store with Dale Baily and Machiavelli?

8 A Uh-uh.

9 Q You got to say yes or no.

10 A No.

11 Q You don't recall?

12 A No.

13 Q Do you know whose car Kenny was in when he was
14 arrested?

15 A Mine's.

16 Q Do you know who he was with when he was arrested?

17 A My son.

18 Q Okay. And you've been sitting back there with your
19 son and your mother?

20 A Yes.

21 Q And this is very uncomfortable for you to answer my
22 questions?

23 A It is.

24 Q Okay. But you are under oath, though?

25 A Yeah.

1 Q Well, would you just rather me play it in the jail
2 call instead of answering my questions?

3 A (No audible response.)

4 MR. SCOTT: Your Honor, the State would introduce
5 State's 41 for admission.

6 MR. VERNER: Same objection.

7 THE COURT: All right. 41 will be into evidence on
8 behalf of the State.

9 (Whereupon, State's number 41 was marked for
10 identification only.)

11 MR. SCOTT: And, I think, I'm going to ask Walter,
12 and the jury will have the whole tape, they can listen to
13 the greetings and the preamble where they kind of talked.
14 But I'm going to just kind of fast-forward for the sake of
15 time and go to the six-minute mark and play from there.

16 THE COURT: Let's do this. Let's offer after it's
17 played and ask her to identify that was the conversation
18 or not. So let's keep it for identification purposes
19 only, but after it's played and then ask her that.

20 Q Have you listened to this call recently, Angela?

21 A The call?

22 Q Yes, ma'am.

23 A Yes.

24 Q Okay. And did you recognize your voice?

25 A Yes.

1 Q And did you recognize Kenny's voice?

2 A Yes.

3 Q Okay. And was that on August 27th?

4 A I can't tell you exactly what date.

5 Q Okay.

6 A I don't know.

7 Q All right. That's fine. But you recognize the call
8 and you don't deny that was the call he made from the
9 jail?

10 A No, sir.

11 Q Okay. And do you recall, who's Sharon Scurry?

12 A His ex-girlfriend.

13 Q Okay. And you recall where he said something about
14 she knows where I was yesterday?

15 A Yeah.

16 Q She was with me yesterday or something like that?

17 A Yes.

18 Q So this would have been the day after he was arrested
19 if he was with Sharon the day before, correct?

20 A I--

21 Q -- well, he could not have been walking around with
22 Sharon if he was in jail, could he?

23 A No.

24 Q Okay. So it's August 27th, then, if he was arrested
25 on the 26th?

1 A Yes.

2 Q Is that correct?

3 A Yes.

4 Q Okay.

5 MR. SCOTT: Your Honor, the State offers 41 for
6 admission.

7 THE COURT: Okay. All right. It'll be into evidence
8 for the State, number 41.

9 (Whereupon, State's Exhibit 41 was admitted into
10 evidence.)

11 MR. SCOTT: All right. Hit the six-minute mark,
12 Walter, please.

13 (Whereupon, State's number 41 was published to the
14 jury starting at 12:21 p.m. and ended at 12:31 p.m.)

15 Q Okay. So that was the conversation you guys had on
16 the 27th?

17 A Yes.

18 Q And, again, and just he's saying he's with Dale and
19 somebody named Machiavelli?

20 A Yes.

21 Q Okay. And then I understand your voice, and you're
22 repeating what he's saying to your boyfriend, Barry?

23 A Yes.

24 Q Okay. And you say Dale snatched the footage while it
25 was pointed at Kenny, is that what he was telling you?

- 1 A No. He said Dale snatched the footage --
- 2 Q -- while it was point --
- 3 A -- while it was pointed at him.
- 4 Q Who's him?
- 5 A Dale his, hisself I guess.
- 6 Q Okay. And he says Dale was the one who pulled the
- 7 trigger?
- 8 A No. He did not say anything about a trigger.
- 9 Remember, it got quiet.
- 10 Q Okay. So he didn't answer who pulled the trigger?
- 11 A No.
- 12 Q Okay. And then you talked a lot about the videos.
- 13 Who is Jay Money?
- 14 A My little brother.
- 15 Q Your what now?
- 16 A My little brother.
- 17 Q And he gave Kenny some Adidas?
- 18 A Yes.
- 19 Q Okay. And you saw this video because you were
- 20 talking about different pictures in it?
- 21 A Yes..
- 22 Q Do you remember you talked about seeing every detail
- 23 in the red and white Adidas that Jay Money had given him?
- 24 A Yes.
- 25 Q Okay. You talked about one time when he had a blue

1 shirt and what looked like a towel over his shoulder or a
2 doo-rag?

3 A Yes.

4 Q Okay. And you said that was a picture of him?

5 A Yes.

6 Q Okay. So you were able to look at these videos and
7 see that it was your brother?

8 A Yes.

9 Q Does he wear doo-rags from time-to-time?

10 A Well, off-and-on, yes.

11 Q Okay. It's not uncommon.

12 MR. SCOTT: Angela, I think that's all the questions
13 I have. Just one second. Okay. Angela, answer any
14 questions Mr. Verner has for you. Thank you.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 By Mr. Verner:

18 Q Just to clarify. I heard something about a gun in
19 your vehicle. What kind of gun are you talking about that
20 the police had found?

21 A I don't know nothing about a gun being in my vehicle.

22 Q Was it a gun or a stun gun?

23 A Oh, my stun gun.

24 Q Okay.

25 A Yeah.

1 Q So in the tape when you're talking about the police
2 finding a gun, they had found a stun gun that you own?

3 A Yeah.

4 Q Did they return it to you?

5 A Yeah. I got it.

6 Q Okay. And your brother had a pair of gray Jordan's?

7 A Yes.

8 Q Okay. Now, was there a lot of talk in the
9 neighborhood about the events of August 26th?

10 A No, not that I can recall.

11 Q Well, on the tape Kenny Ruff says that Dale shot him,
12 didn't he?

13 A No, he didn't.

14 Q Okay. You don't recall that. It was on the tape.
15 You don't recall it?

16 A No.

17 Q Okay.

18 MR. VERNER: The Court's indulgence.

19 THE COURT: Sure. Take your time.

20 Q Okay. I just want you to hear one part of the
21 conversation.

22 (Whereupon, the video was published to the jury.)

23 Q So he did indicate to you that he had heard or he
24 said that Dale shot the man?

25 A Yes.

1 Q Okay. If the prosecutor or the Judge has any more
2 questions.

3 THE COURT: All right. Any redirect, Solicitor?

4 MR. SCOTT: Nothing further, Your Honor.

5 THE COURT: You can step down, ma'am. Thank you.

6 MS. RUFF: I go back to my seat?

7 THE COURT: Yes. You can go back to your seat.

8 Okay. The next witness, Solicitor.

9 MR. SCOTT: The State calls Aaryon Dowdy.

10 AARYON DOWDY, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Scott:

14 Q Aaryon, you're at Alvin S. Glenn Detention Center
15 right now?

16 A Yes, sir.

17 Q And that's the jail in Columbia?

18 A Yes, sir.

19 Q What are the current charges you have pending?

20 A Attempted murder.

21 Q Okay. But do you also have some Federal charges?

22 A Yes, sir.

23 Q What are those?

24 A A weapons possession charge.

25 Q Okay. I got your rap sheet here. I just want to go

1 over prior convictions, and you don't deny these, do you,
2 that you have--

3 A No, sir.

4 Q -- trespass in 2000; possession of stolen vehicle in
5 2001, as well as a contraband charge. There is an
6 accessory before the fact to a felony in 2006. Do you
7 deny that, those charges?

8 A No, sir.

9 Q I got an arson, third from 2006 and a CDV from 2014.
10 You got those convictions?

11 A Yes, sir.

12 Q I mean, you've been in and out of jails before?

13 A Yes, sir.

14 Q Tell me what, at Alvin S. Glenn, what is it that they
15 refer to as the SHU.

16 A Lockup.

17 Q Lockup; what's that mean?

18 A Where you go whenever you get in trouble.

19 Q Okay. But isn't there, is there a specific part of
20 Alvin S. Glenn that's the SHU or is the whole jail called
21 the SHU?

22 A It's a specific side of the jail.

23 Q All right. And who is housed in the SHU?

24 A Me.

25 Q I mean what inmates?

- 1 A Guys that get in trouble in their dorm.
- 2 Q Okay. So general population ones who get in trouble,
- 3 they are housed in the SHU?
- 4 A Yes, sir.
- 5 Q SHU is an acronym. I think it's S-H-U, is that
- 6 right?
- 7 A Yes, sir.
- 8 Q Okay.
- 9 A Special Housing Unit.
- 10 Q Oh. September 12th were you in the Special Housing
- 11 Unit and I'm talking about 2015?
- 12 A Yes, sir.
- 13 Q Did you have a chance to meet a guy named Kenny Ruff?
- 14 A Yes, sir.
- 15 Q And were you housed with him?
- 16 A Not in the same room.
- 17 Q Not in the same room. Well, tell us about that
- 18 because, y'all got the mic, what is the mic?
- 19 A The mic is a, it's placed in your wall in your room
- 20 and it can be turned on, essentially, where we can talk to
- 21 different inmates.
- 22 Q And why do they allow you to do that, is it just if
- 23 you're on good behavior, you get to use the mic or is it
- 24 always on?
- 25 A It's always on.

1 Q Okay. So is it kind of like an intercom system where
2 you mash a button and speak into it?

3 A Yes, sir.

4 Q And can you pick which cell you're talking to or does
5 it just go through all the cells?

6 A Some of the mics are hooked up to certain rooms.

7 Q Okay. Were you able, well, is that how you
8 communicated with Kenny?

9 A Yes, sir.

10 Q By the way, how did you know him? Did he have any
11 kind of name, nickname he gave himself or?

12 A Yes, sir.

13 Q What was it?

14 A Knowledge.

15 Q Okay. He called himself, Knowledge, while he was at
16 Alvin S. Glenn?

17 A Yes, sir.

18 Q Okay. Not Smurf?

19 A No, sir.

20 Q Okay. Knowledge. Did he tell you that was his
21 nickname?

22 A Yes, sir.

23 Q And, well, how did you form a relationship where you
24 were talking with him over the mic; how did that first
25 start?

1 A I knew him from a previous yard at Evans.

2 Q Oh, you had known him before?

3 A Yes, sir.

4 Q And when you found out he was at Alvin S. Glenn, you

5 started speaking with him over the mic?

6 A Yes, sir.

7 Q Okay. So this isn't like a face-to-face conversation

8 like I'm having with you?

9 A No, sir.

10 Q Okay. But you recognized his voice?

11 A When I came in the SHU, he acknowledged me.

12 Q Okay. Oh, he called you over the mic?

13 A Yes. Yes, sir.

14 Q And what did he say; how did he introduce himself.

15 A He said boy, Reason, what's up? You remember me from

16 Evans. And I was like, yeah, I remember you.

17 Q Okay. And did you know his name was Kenny Ruff?

18 A Yes, sir.

19 Q Did he kind of, did y'all start talking about the

20 charges y'all were in on?

21 A Yeah. He asked me what I was down there for, and I

22 had told him and we got to exchanging information about

23 each others case.

24 Q Is that common when you're locked up just to talk

25 about your case with somebody?

1 A Yes, sir.

2 Q Okay. Well, what did he tell you he had done? I
3 mean, did he say here's what I'm accused of or did he tell
4 you his side of the story?

5 A He told me his side of the story.

6 Q And what was his side?

7 A He told me that he entered a hair salon to, with
8 intentions to rob. And he told me that he took a Spanish
9 guy in the back and the guy was begging for his life. He
10 shot him in the side of his head. He told me that when
11 the police arrived, that he, the guy was blue in the face.
12 He said that the police didn't know how he died until the
13 autopsy because the caliber of the gun, because his hole
14 had closed up on him. He also stated that he left the
15 salon with a white bag. He also told me that he took at
16 least \$1,200.00 and a black monitor.

17 Q He took \$1,200.00 dollars and a black monitor?

18 A Yeah.

19 Q Did he talk about what that black monitor was?

20 A He said he believed that it consist of the memory.

21 Q The memory?

22 A Yes, sir. Of the camera.

23 Q Okay. And what else, and I know you got off memory.
24 What else was it?

25 A He said that the weapon he used was a 1867 antique

1 .22 revolver.

2 Q A .22 revolver. Okay. And let me back up. He said
3 that the hole closed up on itself. You talking about the
4 bullet wound had closed up?

5 A Yes, sir.

6 Q Okay. Okay. But what did he say, let me get back,
7 the guy was begging and so he shot him --

8 A Yes, sir.

9 Q -- is that what he said? Did he say what, if
10 anything, he made the victim do before he shot him?

11 A He put him on his knees.

12 Q He made him get on his knees?

13 A Yes, sir.

14 Q Did he say why he killed him?

15 A Because he kept begging for his life, I guess.

16 Q And that --

17 A He said he wasn't going to kill him at first.

18 Q But then what happened?

19 A He kept begging for his life. He said he turned his
20 head and he shot him.

21 Q Did he talk about, in your recollection, what he did
22 after he left with the white bag and the black monitor?

23 A He said that he went to the BP, and then Wal-Mart to
24 get some Newport's with his uncle and his uncle was his
25 alibi.

1 Q Okay. He went to BP and Wal-Mart?

2 A Yes, sir. And he said he told that to investigators
3 and he said that everything he told the investigators and
4 the investigator say it checked out. He also say he went
5 to the mall to change clothes and the clothes he did have,
6 he left them in the fitting room in the mall. And he said
7 the police went there too.

8 Q Okay. You don't have any charges in Newberry, do
9 you?

10 A No, sir.

11 Q Have you been offered anything or any, made any, has
12 anybody made any promises for your testimony today?

13 A No, sir.

14 Q Okay. As a matter of fact, you understand I don't
15 have any jurisdiction over any Richland charges, don't
16 you?

17 A Yes, sir.

18 Q Okay. Are you being truthful today?

19 A Yes, sir.

20 MR. VERNER: Your Honor, that's an improper question.

21 THE COURT: Yeah. Okay. I'll sustain the objection.
22 Strike it from the record.

23 Q What is, you know, what's discovery? What is a
24 discovery motion?

25 A A motion for discovery?

1 Q Yeah.

2 A Dealing with your case?

3 Q Right.

4 A That's it.

5 Q Well, let me, do you have yours in your jail cell?

6 A Yes, sir.

7 Q And that's kind of the, I guess what the State has

8 that, the charges they have against you and the evidence

9 they have against you?

10 A Yes, sir.

11 Q Did you get your hands on a copy of Kenny's

12 discovery?

13 A No, sir.

14 Q Okay. And, I think, you've testified, were y'all

15 ever in the same cell?

16 A No, sir.

17 Q Okay.

18 MR. SCOTT: That is all I have.

19 THE COURT: Sure.

20 Q Did he mention what he did with the pistol, that .22

21 revolver?

22 A Yes, sir.

23 Q What did he say he did?

24 A He said he gave it to his sister's son, his nephew.

25 Q His sister, his nephew?

1 A Yes, sir.

2 Q Okay. Aayron, this is Charles Verner, his lawyer. I
3 want to ask you this. Can you identify Kenny Ruff?

4 A Yes, sir.

5 Q Where is he?

6 A Sitting next to his lawyer.

7 THE COURT: Let the record reflect the witness has
8 identified the Defendant.

9 MR. SCOTT: Mr. Dowdy, thank you and answer any
10 questions Mr. Verner has for you.

11 MR. DOWDY: Yes, sir.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 By Mr. Verner:

15 Q Mr. Dowdy, do you know who Isaiah Burns is?

16 A I believe so; yes, sir.

17 Q Okay. He's also an inmate?

18 A Yes, sir.

19 Q And you and he have been kind of going around
20 offering to testify in various cases to help law
21 enforcement on different cases?

22 A On his behalf, I don't know.

23 Q What about your behalf?

24 A Yes.

25 Q Anybody else?

1 A No, sir.

2 Q Okay. Well, let me, I believe in 2008, you also got
3 a burglary, violent, second degree, is that correct?

4 A Yes, sir.

5 Q And in 2011, you got a second burglary, second
6 degree?

7 A Yes, sir.

8 Q Okay. And then you seemed to have picked up Federal
9 ATF charges for gun violations?

10 A Yes, sir.

11 Q Can you tell us how much attempted murder carries in
12 prison?

13 A Zero to thirty.

14 Q Thirty years. Can you be released early from those
15 thirty years?

16 A I don't know, but this is my first time catching that
17 charge.

18 Q So you're facing, just on the State portion of
19 charges, thirty years?

20 A Not really.

21 Q What?

22 A It was self-defense.

23 Q Well, I understand you got all kinds of defenses,
24 too. But you understand if you get convicted, you getting
25 thirty, up to thirty years in prison?

1 A Yes, sir.

2 Q On a violent crime?

3 A Yes, sir.

4 Q Did that involve a gun?

5 A Yes, sir.

6 Q Okay. And then you've got the Federal gun charges on
7 top of it?

8 A Yes, sir.

9 Q So you probably got some problems there, too, don't
10 you?

11 A Not really.

12 Q Not really?

13 A No, sir.

14 Q And you've got a pretty lengthy criminal record on
15 top of all that, too, right?

16 A Yes, sir.

17 Q So you're really a candidate to get some lengthy
18 prison time, aren't you, provided that you're found
19 guilty?

20 A Yes, sir.

21 Q You don't think it would benefit to try to get you to
22 help out on some other people's charges, cases that maybe
23 that they will take that into consideration and help you
24 out?

25 A I mean, I guess so, but I ain't doing it for that.

1 Q Are you here, because you're just being a good
2 citizen or are you here trying to help Mr. Dowdy's self
3 out?

4 A I'm here to be a good citizen.

5 Q And it appears you have some tattoos on your cheeks?

6 A Yes, sir.

7 Q What kind of tattoos are those?

8 A I got my baby mama name, money signs, and a
9 five-point star.

10 Q And do I not see teardrop tattoos?

11 A No, sir.

12 Q Okay. So what's tattooed on your cheeks?

13 A That's money signs.

14 Q Money symbols?

15 A Yes, sir.

16 Q Okay. Is this that you're willing to work for money
17 or what does that mean?

18 A I love money.

19 Q You know what discovery is, don't you?

20 A Yes, sir.

21 Q Discovery is when people, just like you are, do you
22 have any discovery at jail?

23 A Yes, sir.

24 Q Okay. When you've got criminal charges, the lawyer
25 or somebody at the State gives you the package of what the

1 evidence is against you, and you can go over it in the, in
2 your cell?

3 A Yes, sir.

4 Q And when your lawyer comes, you can go over it with
5 him, right?

6 A Yes, sir.

7 Q Is it possible you got your hands on Kenny's
8 discovery while y'all were locked up together and are
9 reciting stuff?

10 A No, sir.

11 Q And you're not just reciting stuff that you've heard

12 --

13 A No, sir.

14 Q -- or read in his discovery package?

15 A No, sir.

16 Q Well, let me ask you about these microphones. You're
17 telling the jury that in individual cells in a lockup that
18 Richland lets you buzz other inmates on microphones in
19 your cell like a telephone system?

20 A No, you don't buzz them. You just put your ear to
21 them and you can conversate with like thirty inmates at
22 the same time. I was the only person he knew.

23 Q Well, how many cells down from him were you?

24 A I was across from his cell.

25 Q The microphone, you've got individual cells in the

1 SHU, right?

2 A Yes, sir.

3 Q And then you've got a guard station in the middle?

4 A Yes, sir.

5 Q And the microphone is so that the guard station can

6 buzz inmates out and say you got to come out?

7 A Yes, sir.

8 Q It's not so inmates can communicate with inmates, is

9 it?

10 A I mean, you can, but you can talk to the--

11 Q And how do you do that without the guards?

12 A It's just how rigged up it is.

13 Q Well, I mean, how many of these people are in the

14 SHU?

15 A Fifty-six.

16 Q Fifty-six.

17 A And some rooms are double.

18 Q How many buttons are on the microphone?

19 A One.

20 Q One.

21 A Yes, sir.

22 Q And you figured a way where you can find of these

23 fifty-six inmates by pressing one button, you can figure

24 out what cell you want to go to? That's amazing, isn't

25 it?

1 A I mean, it is.

2 Q It is. It is a fact that the one button goes to the
3 jailers, right? When you buzz it, you, you can, it's an
4 intercom? It's not a phone system; it's an intercom to
5 the jail guards, right?

6 A Yes, sir.

7 Q Okay. And so when the jail guards call people out
8 for lunch or recess or you got mail or they need to speak
9 to you, they buzz your cell, your individual cell --

10 A Yes, sir.

11 Q -- and the jail guards have a bunch of buttons on
12 theirs because they can buzz each individual cell?

13 A Yes, sir.

14 Q But the individual cells can only buzz back through
15 the jail, right, to the jailers, to the main unit?

16 A I can't really explain how they got it rigged up.

17 Q Well, I mean, I'm amazed, I'd like to get a system
18 like that..

19 MR. SCOTT: That's not a question, Your Honor.

20 THE COURT: Okay.

21 Q And explain how with one button that you can
22 communicate with fifty-six individual people locked up?

23 A That's how it's rigged up.

24 Q But you can look through people's discovery and tell
25 the CO using that one button that you want to talk to

1 somebody that can help them out on their--

2 A -- no, you don't ask the CO to talk to anybody.

3 Q The CO's is the correctional officer?

4 A Yes, sir.

5 Q Okay. Because they don't let you talk to other
6 inmates?

7 A I mean, you can. You could pop your door if you got
8 it rigged up or you can talk on the mic.

9 Q That's right. You've got the little window in your
10 door where you can stick your head out and talk to the
11 inmate on the left or right?

12 A Yeah. And we done talked like that before, and we
13 also done talked about his case on the rec yard.

14 Q So you also get the rec privileges while you're in
15 the SHU?

16 A Yes, sir.

17 Q Are you sure you just didn't get your hand on, while
18 he was in there with you, his discovery and read it?

19 A No, sir.

20 Q Are you sure you and Isaiah Burgess haven't started a
21 little cottage industry of trying to agree to testify
22 against people?

23 A I'm positive.

24 Q You're not offering this testimony for other people
25 to take it into consideration with you, essentially,

1 facing the rest of your life in prison?

2 A No, I'm not facing no life in prison.

3 Q While you were locked up with Kenny, you don't
4 remember reporting him for spitting on you?

5 A That was old.

6 Q That was an old?

7 A That was on the yard.

8 Q But that's bygone's right? That wouldn't be some old
9 bad blood between you and might give you incentive to want
10 to testify against him today?

11 A No, sir. Me and him was cool. We was about to move
12 in the same room together.

13 Q But you can get spit on in jail or at least reporting
14 you been spit on and that doesn't hurt your stature in
15 jail or your pride?

16 A No.

17 Q And you'd just put that in the past and agreed to, so
18 you're here to kind of help Kenny out today, right, to
19 make up?

20 A I spit back on him.

21 Q So you settled the score?

22 A Yeah.

23 Q Okay. And today's testimony doesn't help settle the
24 score?

25 A No.

1 Q And one way you can get in the SHU is not just
2 discipline; they can put you in the SHU for just
3 safekeeping, can't they, to keep you away from other
4 inmates, right?

5 A Yes, sir.

6 Q And that's one reason that many inmates are in the
7 SHU is to keep them from talking to other inmates or for
8 protective custody?

9 A Yes, sir.

10 MR. VERNER: If the prosecutor has any more
11 questions.

12 THE COURT: Any redirect, Solicitor?

13 MR. SCOTT: Yes, just briefly.

14 REDIRECT EXAMINATION

15 By Mr. Scott:

16 Q September 12th, 2015 is when you were locked up with
17 Kenny?

18 A Yes, sir.

19 Q And he was arrested August 26th and that's kind of
20 come out. So 17 days later, you're locked up with him in
21 Columbia?

22 A Yes, sir.

23 Q All right. Have you ever gotten your discovery
24 within 17 days of being arrested?

25 A Mine?

1 Q Yeah.

2 A No.

3 Q Does it takes longer than that?

4 A Yeah, it take longer than that.

5 Q So he had only been --

6 MR. VERNER: Your Honor, I object on the, I think
7 we're talking about facts that aren't in evidence. I
8 haven't heard any testimony about when conversations
9 occurred.

10 A I had them jot it down.

11 THE COURT: I think it was brought out in direct when
12 they first had a conversation. I don't know of any other
13 dates of any other conversations, but I think it was
14 brought out when they had the first conversation.

15 MR. SCOTT: Yes, sir.

16 MR. VERNER: Okay. But what, just I didn't record
17 that, Your Honor. So if the Solicitor doesn't go back
18 into it, I intend to just ask him. I missed it for
19 myself.

20 THE COURT: That's fine. That's fine.

21 Q But you know from memory when y'all got locked up?
22 Let me just show you something to refresh your memory.
23 You recognize that?

24 A Yes, sir.

25 Q Okay. What is it?

- 1 A This is a letter I had wrote to my lawyer.
- 2 Q Okay. And did you jot down when you were locked up
- 3 with Kenny?
- 4 A Yes, sir.
- 5 Q And when was it, again?
- 6 A 9/12/15.
- 7 Q Okay. The 9th month of September?
- 8 A Yes, sir.
- 9 Q Okay. And so 17 days after he was arrested, he's
- 10 locked up with you. I'm trying to answer things that he
- 11 asked you about. And, again, I, and have you ever met me
- 12 before today?
- 13 A No, sir.
- 14 Q You ever even seen my face?
- 15 A No, sir.
- 16 Q Have we ever even talked?
- 17 A No, sir.
- 18 Q Okay. But you understand I'm a Newberry prosecutor?
- 19 A Yes, sir.
- 20 Q And I have no jurisdiction over Richland County
- 21 charges?
- 22 A Yes, sir.
- 23 Q I'm a State prosecutor, and I have no jurisdiction
- 24 over Federal charges?
- 25 A No, sir.

1 Q And so I made no promises, because I can't make any
2 promises to you. Do you agree?

3 A Yes, sir.

4 Q And is it your testimony that Kenny telling you these
5 things is what he did or is he saying, is he reading
6 something? How do you understand?

7 A He was telling me. Like, we was going over both of
8 our cases. I told him about my case, and he told me about
9 his. I guess, he felt that comfortable telling me about
10 his case and every time he'll tell me on different dates,
11 I'll be jotting it down with the date.

12 MR. SCOTT: Thank you, Mr. Dowdy.

13 THE COURT: Mr. Verner, any recross?

14 MR. VERNER: Just a couple.

15 RECROSS-EXAMINATION

16 By Mr. Verner:

17 Q And maybe I'm missing something. Were you not sent
18 to Kirkland on August 7th of 2014?

19 A Yes, sir.

20 Q Okay. On a three-year prison term?

21 A Yeah. I had violated. I had to max out my YOA
22 sentence.

23 Q Okay. So how long were you in Columbia when you
24 maxed out that three-year sentence?

25 A In 2014. I went to prison in 2014 for three months,

1 and I came back to Alvin S. Glenn December of 2014.

2 Q Yeah, but how do you max out a three-year sentence in
3 three months?

4 A That's wrong.

5 Q And then you got arrested in '15 and am I mistaken,
6 you didn't get arrested on the gun charges until October
7 of 2015?

8 A No. That's when I got indicted by the Feds.

9 Q Okay. Well, doesn't it say arrest date?

10 A It say arrest date but I been at Alvin S. Glenn ever
11 since 2014 of January.

12 Q Well, I mean, Alvin S. Glenn is a county holding
13 jail, right?

14 A Yes, sir.

15 Q And your records indicate that you got sent to the
16 Department of Corrections in 2014, August 2014 on a
17 three-year prison term?

18 A That's wrong. I maxed out YOA, and I have three
19 months left.

20 Q Well, that's not talking about a Youthful Offender
21 sentence, that's talking about a straight three-year
22 prison term, isn't it?

23 A No, I went to Turbeville on a Y.

24 Q That's right. When you do a Y, they send you from
25 Columbia down to Turbeville--

1 A Yes, sir.

2 Q -- in Sumter County? So my only question is when did
3 you get out of the SCDC?

4 A In December, 2014. December 1st, 2014.

5 Q Well, and then you apparently didn't leave SCDC
6 because you said you've been in Alvin S. Glenn since 2014?

7 A I got arrested for this charge in January 14th, 2014.

8 Q Okay.

9 A And I went to SCDC on that date you talking about,
10 and I came back to Alvin S. Glenn December 1st, 2014. But
11 I had to max out the remainder of my time.

12 Q Well, you don't max out prison sentences in local
13 jails, though, do you?

14 A No.

15 MR. VERNER: All right. You can step down.

16 THE COURT: All right. Thank you, sir.

17 MR. STUMBO: Well, Judge, I texted Dr. Ross earlier
18 because I didn't think we would be able to get to her
19 today.

20 THE COURT: Well, it's getting close. It's a little
21 after 1:00, and we need to go ahead and stop about 1:30
22 anyway, so we'll go ahead and recess for the remainder of
23 the day.

24 MR. STUMBO: Yes, sir. We'll have five in the
25 morning.

1 THE COURT: All right. Madam Forelady and ladies and
2 gentlemen of the jury, we're going to go ahead and recess
3 for the day. We'll start back at 9:30 in the morning and,
4 again, I remind you and caution you not to have any
5 discussions about this case among yourselves or anybody
6 that you're going to come into contact with and have a
7 good afternoon and evening. And we'll see you back here
8 in the morning at 9:30.

9 (Whereupon, the jury was excused from open court for
10 the day.)

11 THE COURT: Okay. We'll be in recess till 9:30 in
12 the morning.

13 (Whereupon, the trial will resume the next day at
14 9:30 a.m.)

15 JANUARY 12, 2017

16 THE COURT: Do you want this on the record?

17 MR. STUMBO: Yeah. Could we put this on the record?

18 THE COURT: Okay.

19 MR. STUMBO: Judge, as we start back, I intended lead
20 investigator, Investigator Goodman, Captain Goodman this
21 morning. Upon further review based on something that was
22 testified to yesterday, we're going to ask to recall
23 Sergeant Mercer. He did the search warrant of the house,
24 of Defendant's mother's house where there's a .22 shell
25 casing that was found in the house. And that's been part

1 of discovery. We're marking it here later on and just
2 we're not going to put that in. Based on the testimony
3 yesterday that the Defendant used a .22 pistol, we're
4 going to introduce this casing.

5 THE COURT: Okay.

6 MR. STUMBO: So Mr. Scott is going to call as the
7 first witness Sergeant Mercer just for that limited
8 purpose. And then we will go into the rest of the case.
9 Dr. Ross is going to be here shortly. I'll probably call
10 her first. She has to get down to Lexington to testify on
11 another case.

12 THE COURT: Okay.

13 MR. STUMBO: So we're going to, we're trying to
14 shuffle to accommodate people's schedules.

15 THE COURT: Right. We'll get it done and concerning
16 our discussion yesterday related to Officer Mercer's
17 identification or lack thereof of the Defendant as it
18 relates to the Kunkle Oil video, your recollection and Mr.
19 Verner's recollection was correct. I had our very capable
20 court reporter yesterday afternoon was so gracious to do a
21 transcript of that. And I reviewed that this morning.
22 And even though he felt like based upon body motion, I
23 think he used the word motion that, you know, maybe was
24 the Defendant, he could not positively ID him. So
25 everybody's recollection was correct on that, just for

1 clarification purposes. Okay. All right. Mr. Verner,
2 you ready to get started back?

3 MR. VERNER: We are, Your Honor.

4 THE COURT: Okay. Very good. Madam Bailiff, if
5 you'll bring in the jury.

6 (Whereupon, the jury came into open court at
7 approximately 9:55 a.m.)

8 THE COURT: And let the record reflect the jury is
9 back in. Good morning, ladies and gentlemen. I hope you
10 had a good afternoon break and a restful evening and ready
11 to get back to work. We're going to work a pretty solid
12 day today, as I understand it. Solicitor Scott, you
13 ready?

14 MR. SCOTT: I am, Your Honor. Thank you. I'm going
15 to switch now and briefly call Officer Richard Mercer with
16 the Police Department.

17 THE COURT: All right. Come around, please, sir.

18 RICHARD MERCER, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Scott:

22 Q Officer Mercer, we've already heard from you, but I
23 wanted to ask you briefly, do you know was there a search
24 warrant that was conducted at the residence located at
25 Turner Street in Newberry?

1 A Yes, sir; there was.

2 Q Okay. Whose home was that; why were you interested
3 in searching that home?

4 A That was the residence of the Defendant.

5 Q Okay. Do you remember the date that it was searched?

6 A It was August the 26th.

7 Q August, so the day of the incident?

8 A The day of, yes.

9 Q And do you recall the time?

10 A It would have been after 7:15 or shortly after, but I
11 think close.

12 Q Is that p.m.?

13 A P.M.

14 Q Were you able to search the room where Mr. Ruff
15 slept?

16 A Yes, sir. We not only talked with the family
17 members, we identified the first room in the house as Mr.
18 Ruff's room. We searched it and I found documents inside
19 the room, signed by Mr. Ruff, as well as mail addressed to
20 him.

21 Q Okay. Let me show you State's number 84. Do you
22 recognize that?

23 A Yes, sir. That is a picture of a receipt that's
24 found inside the room with Mr. Ruff's name.

25 Q Okay. So you were confident that was Mr. Ruff's

1 bedroom?

2 A Yes, sir. That was in the top dresser drawer that I
3 found that.

4 MR. SCOTT: Okay. Your Honor, the State offers
5 number 84 for admission.

6 THE COURT: And what says the Defense?

7 MR. VERNER: No objection, Your Honor.

8 THE COURT: All right. Without objection, 84 into
9 evidence for the State.

10 MR. VERNER: I would ask, as a Court's Exhibit, that
11 the State would introduce the search warrant to justify
12 the search.

13 THE COURT: Okay. All right. Do you have a copy of
14 the search warrant?

15 MR. STUMBO: We can do that, Judge.

16 MR. SCOTT: We do, Your Honor.

17 THE COURT: Okay. Maybe during a break we can do
18 that and make sure you get it marked.

19 MR. SCOTT: Yes, sir.

20 THE COURT: And let Mr. Verner know that when that
21 gets done.

22 (Whereupon, State's Exhibit number 84 was admitted
23 into evidence.)

24 (Whereupon, Court's Exhibit number 4 was marked for
25 identification only.)

1 Q But you said this is a report where you were able to
2 read Mr. Ruff's name?

3 A Yes, sir. Mr. Ruff's name, Kenny Ruff, R-U-F-F,
4 K-E-N-N-Y R-U-F-F.

5 Q Okay. Thank you. And what else did you find in that
6 same drawer where the receipt was?

7 A In the same drawer with the receipt was a small
8 caliber shell casing. It was not actually a bullet. It
9 was a bullet that had been fired. When you fire a bullet,
10 you get a metal canister. And inside that drawer, as
11 well, is a metal canister, a spent shell casing.

12 Q Okay. I want to walk through that with you.

13 A This is the top dresser drawer as it was opened, just
14 as I found it.

15 Q Okay. That's just another picture of the drawer that
16 had the receipt and --

17 A Yes, sir.

18 Q -- the casing?

19 MR. SCOTT: All right. The State offers 83 for
20 admission, Your Honor.

21 THE COURT: Okay. And what says the Defense?

22 MR. VERNER: No objection.

23 THE COURT: Without objection, 83 into evidence for
24 the State.

25 (Whereupon, State's Exhibit number 83 was admitted

1 into evidence.)

2 Q And there to the, you can look at this if you want
3 to. But back to the right of the, is that the receipt
4 that you were just referring to --

5 A Yes.

6 Q -- on the right side of the dresser?

7 A Yes, sir. That's the top corner of the receipt.

8 Q Okay. State's number 82, just another picture of the
9 contents of the drawer?

10 A Yes, sir.

11 Q Okay. Just a different angle of the same?

12 A Just a different angle and the fact that now you can
13 actually see the shell casing.

14 MR. SCOTT: Okay. State offers 82 for admission into
15 evidence.

16 THE COURT: And what says the Defense.

17 MR. VERNER: No objection.

18 THE COURT: Without objection, 82 for the State.

19 (Whereupon, State's Exhibit No. 82 was admitted into
20 evidence.)

21 Q All right. You described that this right here by the
22 shirt with the red stripe in it?

23 A Yes, sir.

24 Q That's the shell casing?

25 A That is the shell casing.

1 Q Okay. You were kind of describing. What is a
2 casing? You fire a bullet from a gun, what is the casing?

3 A The casing is the pieces left behind. You have
4 projectile that shoots out, which is the bullet, and then
5 you have a shell casing which stays with the gun.

6 Revolvers, the shell casing stays within the wheelhouse.
7 With a semi-automatic, the shell casing is ejected out of
8 the gun.

9 Q Okay. State's number 81, do you recognize what this
10 is?

11 A Yes, sir.

12 Q What is that?

13 A That's a admin's log form where the shell casing was
14 retrieved. And you've got this envelope with the shell
15 casing.

16 Q Okay. That's the actual casing that we're looking at
17 in State's number 82. that was found in the drawer?

18 A Yes, sir.

19 Q All right.

20 MR. SCOTT: Your Honor, the State offers 81 for
21 admission into evidence.

22 THE COURT: What says the Defense?

23 MR. VERNER: Without objection, Your Honor.

24 THE COURT: Without objection, 81 for the State.

25 (Whereupon, State's Exhibit No. 81 was admitted into

1 evidence.)

2 Q The casing itself, are you able to determine what
3 caliber weapon the casing was fired from or found?

4 A Some of them are marked by themselves on the rear of
5 the casing, a .22 is not, .22's are kind of unique. Many
6 bullets now, large calibers have a striking place on them
7 which is silver on the inside. .22's are called rimfire.
8 So this would be a rimfire gun. It doesn't have a center
9 piece. And the strike is on the outside to start the
10 primer on the inside. This is a .22 caliber shell casing.

11 Q That is a .22 caliber shell casing. Okay. And so if
12 you look at it, it's hollow I guess, that's what the
13 gunpowder was and the projectile would be located, the gun
14 powder was and the projectile would be located on the end?

15 A Yes, sir.

16 Q And that's what's fired from the casing that's left
17 behind?

18 A Yes, sir.

19 Q And you didn't find a gun in there, though, did you?

20 A No, sir. They didn't locate any weapons in there, we
21 located, we have located the shell casing, even located a
22 small wire brush that looked like it would be for cleaning
23 a gun.

24 Q Okay. But, essentially, this was the only piece of
25 evidence that you found?

1 A To link directly to a weapon, yes sir.

2 MR. SCOTT: Okay. Thank you. Answer any questions
3 Mr. Verner has for you, please.

4 THE COURT: Mr. Verner, any cross-examination?

5 MR. VERNER: Please, Your Honor.

6 THE COURT: Sure.

7 CROSS-EXAMINATION

8 By Mr. Verner:

9 Q Investigator, I would think that a bullet casing
10 would be a fairly important piece of evidence in a murder
11 or any kind of good shooting?

12 A Yes.

13 Q This is what I would call a spent cartridge, is that
14 just fair?

15 A Yes, sir.

16 Q Okay. Again, in a murder trial would be a fairly
17 important piece of evidence?

18 A It can be, yes.

19 Q Okay. Possible to match bullets to the casings?

20 A Sometimes.

21 Q Okay. Was it sent for testing?

22 A We didn't have anything to compare it to.

23 Q Okay. So there's, there, you cannot connect the
24 casing you found to the killing on Main Street?

25 A I can't; no, sir.

1 Q Okay. Are you aware of any reports or studies where
2 FBI or SLED has done any kind of forensics on it?

3 A No, sir; I'm not aware of any.

4 Q Okay. Is it possible to take fingerprints from a
5 casing?

6 A It's possible.

7 Q Okay. And do you know how many people lived in the
8 house on Turner?

9 A No, sir. I know there's several people lived there.

10 Q Okay. Males and females?

11 A Yes.

12 MR. VERNER: Okay. Thank you, Investigator.

13 THE COURT: Any redirect?

14 MR. SCOTT: No, Your Honor.

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

17 MR. STUMBO: We're ready to proceed, Your Honor.

18 THE COURT: Yes, sir.

19 MR. SCOTT: Thank you. The States calls Captain
20 Kevin Goodman.

21 KEVIN GOODMAN, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Stumbo:

25 Q Good morning, Captain Goodman.

1 A Good morning.

2 Q You been with Newberry Police Department for how many
3 years?

4 A And, roughly, twenty-two.

5 Q And you are currently the rank of captain?

6 A Currently; yes, sir.

7 Q All right. At the time of this incident, you were a
8 lieutenant, is that correct?

9 A Lieutenant over Investigations.

10 Q Now, Captain Goodman, how many cases have you
11 investigated, just ballpark, in the twenty-something years
12 you've been in law enforcement?

13 A Probably well over a thousand I would imagine.

14 Q And because of your training, your experience, you've
15 been promoted supervisor over the department. Now, you
16 supervise the investigators at the police department?

17 A Yes sir, I do.

18 Q August 26th of 2015 there was an incident that we're
19 here for today here in the City of Newberry, correct?

20 A That's right.

21 Q And were you the lead assigned by the chief, the
22 chief clerk and to take the lead on that case?

23 A Yes, sir.

24 Q Okay. Did your lead investigator on a homicide
25 investigation, explain to the jury what that means?

1 A Basically, with our department, would lead, meaning
2 we call in SLED, crime scenes to do the actual processing
3 of a crime scene. So really I'm there to be at the
4 disposable of SLED. If they need anything, if they have
5 any questions. So I kind of stay there and I kind of
6 delegate different things to do. In this particular case,
7 delegating to different investigators that's there to
8 assist to go find videos, to go interview people, that
9 kind of thing. So I could stay close to the crime scene
10 and in the event SLED may need something.

11 Q Okay. Kind of a coordinator of all the investigators

12 --

13 A Correct.

14 Q -- that are working, is that fair to say?

15 A That's right.

16 Q So a lot of witnesses we've heard from law
17 enforcement, you were working with them as they were going
18 to interview witnesses and pulling tape and that sort of
19 thing?

20 A That's right.

21 Q And you physically have been testifying you were
22 there at the hair salon?

23 A I stayed at the hair salon, not inside the hair
24 salon, but just outside the door to be available for SLED.

25 Q Okay. What were some of the early things that were

1 gathered by the investigators working on the case?

2 A I know that they obtained a video from Kunkle Oil,
3 video from the BP station just up the street. They were
4 able to talk to, at least I know one witness that I
5 actually, saw and identified Mr. Ruff going into the hair
6 salon, but those are some of the things that was found by
7 the other investigators.

8 Q Okay. After the video was pulled, how many people
9 were observed in that Kunkle video going into the hair
10 salon during this time?

11 A One person.

12 Q Okay. And you say one?

13 A Well, there was one person that went in earlier, then
14 a little bit later, if you look at the entire video, then
15 you'll see the niece go in. You see, as they are calling
16 EMS and that kind of thing I think that some other people
17 went in. And you would also see a male dressed in black,
18 looks like blue jeans and possibly white tennis shoes that
19 went in. You see a male also on a bicycle with a red
20 shirt on, I believe, that also went in.

21 Q Okay. I believe we've already heard testimony that
22 in the investigation, you were able to identify the guy in
23 the red shirt on the bike was Mr. Rodriguez Galvez?

24 A That's right.

25 Q Okay. And he very quickly, I think, Investigator

1 Womack with the County went and found him?

2 A That's right.

3 Q The individual with the black shirt and the black
4 doo-rag, jeans, the second one that you see go in, and
5 this is two that come in before the niece gets there --

6 A That's right.

7 Q -- of those two. At that point is the Defendant,
8 Kenny Ruff, a suspect or person of interest?

9 A At that point looking at that video; no, sir. He was
10 not because you couldn't really in that Kunkle video, you
11 couldn't, you saw the image of a male in a black shirt and
12 doo-rag, but you really couldn't tell who that was from
13 that video.

14 Q Now, was the Brothers BP video pulled shortly
15 thereafter after Kunkle?

16 A It was pulled sometime either after or, again, the
17 County was out there, so I'm not sure if they were
18 investigators at the BP along with the other investigators
19 at the Kunkle's. I went to Kunkle first and then I
20 learned that there was a video at the BP. So it could
21 have very well been some investigators at Kunkle's and
22 some investigators at the BP. But I learned about the BP
23 shortly thereafter and went there.

24 Q Okay. And, I believe, Sergeant Mercer, who worked
25 for the City, he's testified again this morning, was able

1 to look at the BP video and see an individual with a dark
2 shirt and dark skull cap. He identified that person. He
3 believed that was Kenny Ruff --

4 A That's right.

5 Q -- Kenny Ruff? During the afternoon, were you able
6 to talk to the victim's wife, Ms. Facio, did she ever come
7 back to the salon?

8 A Yes, sir. Shortly, sometime after we arrived, she
9 did come. I got word that she was headed back in town
10 from Saluda and shortly after she did arrive and we did
11 speak briefly.

12 Q Okay. And you were able to talk to her and gather
13 some information about the store and the salon?

14 A Yes, sir.

15 Q I believe you were able to, and was there anything
16 done as far as, I know we've seen pictures, and I believe
17 the State's exhibits have already been published to the
18 jury show a cash drawer that's out with the cash arms
19 flipped up on it. Were you able to ever determine how
20 much money was taken out of that cash drawer?

21 A Again, everybody is delegating to some things. At
22 the end and it would have had to, we normally get with the
23 victims and say, okay, do you have an idea of what you
24 would have had in the cash drawer. Is there anything in
25 there now. And there was an amount that we came up with

1 or that was given to us by the victim.

2 Q And what was that amount on the, did y'all document
3 on the report?

4 A Without looking at the report, it is like \$660.00
5 some odd dollars. How she came to that amount, I'm not
6 real sure but that was the amount she told me, \$660.00 and
7 some odd dollars.

8 Q All right. And throughout that afternoon, you have
9 investigators out interviewing people and doing search
10 warrants and looking for folks, right?

11 A Yes.

12 Q At what point did you first make contact with the
13 Defendant that day, Kenny Ruff?

14 A My first time speaking or laying eyes on Kenny Ruff
15 would have been around 8:20-something, 8:30 that night.

16 Q So it was after he was, it was sometime that evening,
17 I believe we've had testimony, about him being stopped out
18 there at Pioneer Foods--

19 A That's right.

20 Q -- in Prosperity?

21 A That's right.

22 Q That was around after 8:00 o'clock is when you first
23 were able to sit down, was this in your office when you
24 first talked to him?

25 A It was in the office at the police department. At

1 the time we didn't have a captain, that office was vacant.
2 So I utilized that office which is next door, was next
3 door to my office, yes.

4 Q Okay. That's currently the office--

5 A -- that I'm in now, yes.

6 Q And you were the one conducting the interview of the
7 Defendant?

8 A Yes, sir.

9 Q Did you read him what's known as Miranda rights, the
10 right to remain silent, and those sorts of things?

11 A Yes, sir.

12 Q And sometime during this interview, Mr. Ruff filled
13 out a written form where he waived those rights?

14 A Yes, sir.

15 Q Okay.

16 MR. VERNER: Now, Your Honor, and subject to my
17 earlier objection.

18 THE COURT: Yes, sir. So noted on the record, Mr.
19 Verner.

20 MR. SCOTT: If I may approach the witness, Your
21 Honor?

22 THE COURT: You may.

23 MR. SCOTT: And, Your Honor, I believe this was and
24 it has been marked as Court's 2 for ID. We're introducing
25 it or offering for ID and admission as State's 43.

1 (Whereupon, State's Exhibit 43 was admitted into
2 evidence.)

3 THE COURT: Okay.

4 Q Okay. The first page of State's 43 is what, Captain
5 Goodman?

6 A This is an adult waiver of rights.

7 Q Okay. And does that have the rights listed out on
8 them?

9 A Yes, sir; it did.

10 Q And can you read those Miranda rights as they were
11 presented to the Defendant?

12 A Item number one says, I have the right to remain
13 silent. That means I do not have to say anything or
14 answer any questions. Item number two says, anything I
15 say can be used against me. Item number three says, I
16 have a right to talk to a lawyer and have a lawyer here
17 with me to help me and advise me during questioning. Item
18 four, if I wanted to have a lawyer here with me while
19 questioning and cannot afford a lawyer, one will be
20 provided to me at no cost before I am questioned. Item
21 five says, if I decide to answer questions without a
22 lawyer here, I still have the right to stop answering
23 questions whenever I want to. And Item six says, I also
24 have the right to stop answering questions until I talk to
25 my lawyer.

1 Q Okay. And did the Defendant, Kenny Ruff, appear to
2 understand these rights that you gave him?

3 A Yes, sir. Almost like I just read them is how I
4 would read them to a Defendant such that I would read Item
5 one and then ask if he or she understand. They will
6 signify that by putting their initials. Now, I would go
7 to Item two, the same things. Item three, all the way
8 through item six. And I would stop after reading each one
9 and allow them to initial indicating that they understand
10 before we got to the next.

11 Q Okay. And did he appear to understand this and want
12 to talk to you anyway?

13 A Yes, sir.

14 Q Okay. Even though he understood he had the right to
15 remain silent, he continued to engage with you, right?

16 A That's right. Before we went further though, the
17 bottom portion of this is the actual waiver part of it.
18 This part here just indicates that he understands his
19 rights. And then at the bottom it says, I understand my
20 rights, if I may read it.

21 Q Absolutely.

22 A I understand my rights as explained by Officer
23 Goodman. I now state that I do wish to answer questions
24 at this time and that I do not wish to have a lawyer here
25 during questioning. My decision to answer questions now

1 without a lawyer is made free and is my choice. No one
2 has threatened me in any way or promised me any special
3 treatment. To show my decision I am signing my name in
4 the space below. Okay. So we don't actually get into
5 talking until that part of it is actually signed.

6 Q Okay. And he did sign that --

7 A Yes, sir.

8 Q -- just waiving those rights?

9 A Yes, sir.

10 Q Did you sign that form, as well?

11 A Yes, sir. I signed it and put the date and time.

12 Q And at that point, you engage in an oral, you're
13 having an oral conversation with the Defendant, correct?

14 A Right.

15 Q What kind of things is he telling you, Captain
16 Goodman?

17 A Well, to start off he would say, I made sure he
18 understood that he has a right to know what we got against
19 him. So I informed him that we had video from Kunkle Oil,
20 we had video from the BP station. And we had at least one
21 witness that had positively identified him as the person
22 going into the hair salon. At this point, he indicated
23 that he did go into the hair salon but he went in because
24 he was curious. And I'm not, this is not verbatim, this
25 would be paraphrasing, that he didn't know it was a hair

1 salon. It used to be a fish market at one point in time,
2 which it was back some time ago it was a fish market, and
3 he had never seen the inside of it so he walked in to see
4 the inside. He walked in and a male, Hispanic male was
5 sitting in one of the barber chairs, it was his place. He
6 talked about, he said it was nice inside, kind of looked
7 at the designs and he turned and left.

8 Q Okay. Did he indicate that he had been to the BP
9 station to buy a pack of cigarettes before he went to
10 visit the hair salon?

11 A Yes, sir. He said that he had gone to the BP
12 station, walked down Main Street and that's when he
13 decided to go into the hair salon.

14 Q Okay. Just out of interest to see what it looked
15 like?

16 A Just out of interest to see what it looked like
17 inside because he had never been in there.

18 Q Okay. Did he say had he talked to anybody when he
19 was there?

20 A He said he talked to a Hispanic male that was sitting
21 in the barber chair.

22 Q Okay.

23 A If I can refer to my notes.

24 Q Yes, you can refer to them.

25 A He said he told the guy it was a nice store. He was

1 sitting in a salon, one of the salon barber chairs. And,
2 basically, at that point that was, he said he wasn't in
3 there more than three minutes and he left.

4 Q Okay. And did he say where he went after he left the
5 store or what, sorry, not the store, the salon?

6 A The salon. He says he left out of the salon and came
7 back out and walked up the sidewalk back towards the BP
8 station, went across the street on Copeland Street. And
9 foot traffic has a path that cuts through behind Tremont
10 Apartments to Johnstone Street. So he said he cut through
11 that path, went over to Johnstone Street, went down
12 Johnstone to Turner and back home.

13 Q While we're discussing it, I'm going to refer you to
14 State's 64, which I believe is in evidence already. If
15 you could take a look at this. This is here marked as the
16 hair salon, if he comes down, you're talking about
17 Copeland Street and taking some other route, where did he
18 go?

19 A He said he came out of the hair salon, which is here,
20 walked up the sidewalk here, the same side of the hair
21 salon. Copeland Street runs right here beside the BP,
22 Brothers BP. So you would take this up. The apartment
23 complex is right in here and right behind there is a path
24 that cuts through over to Johnstone Street back over here.

25 Q Okay. So he said he, basically, did a loop around

1 the BP and he came way back this way to Turner Street
2 which is right down here.

3 A Right. And then he would, yes. He would come back
4 out of the path, come down Johnstone Street and Turner
5 Street is right here.

6 Q Okay.

7 A Yeah. That's Kunkle Oil. So he will come out, come
8 up to Copeland and through that little path down Johnstone
9 to his house that's down here somewhere on Turner Street.

10 Q Thank you. Did he say what he did? He went back to
11 his residence on Turner Street?

12 A Yes, sir.

13 Q Okay. Did he tell you anything else he did after he
14 went back to his house that day?

15 A Yes, sir. At some point after that, he talked about
16 his Uncle Adolphus Koon who took him to Wal-Mart, brought
17 him back to the BP station, Brothers BP to get some more
18 cigarettes for his dad, Mr. James Sanders. And then it
19 was sometime after that he said that his nephew, D'lonze
20 Ruff, drove him to Columbia, first to Palmetto Richland's
21 Children's Hospital to see his girlfriend who apparently
22 had a child that was there, but she wasn't there. I don't
23 know if the child was there or not, but he's indicating
24 they wasn't there, so he went to the Columbia Mall and
25 came back here.

1 Q Okay. What did he do at the Columbia Mall?

2 A He said he bought some, he said his nephew bought him
3 a new outfit from the DTLR, he changed clothes at the
4 DTLR, left the clothes he had on there. And they left and
5 that's when he came back towards Newberry.

6 Q Okay. Anything else after he tells you and,
7 basically, did he say after he came back from Columbia
8 that's when he's with his nephew, D'lonze, in the car when
9 he was pulled over?

10 A At some point in time, he was stopped. Yes, sir.

11 Q And did he indicate, is there anything else in this
12 conversation at this point that he wanted to tell you
13 about or that he asked for you to do any tests on him or
14 anything like that?

15 A Yes, when we started talking, he continuously asked
16 us to do a GSR kit on him of which I made a judgment call
17 not to do that.

18 Q Okay. And you have reasons for not doing that? Can
19 you explain those to the jury?

20 A Well, several reasons. First of all, we're talking
21 about this incident took place somewhere around 1:30 or so
22 in the afternoon. This is somewhere around 8:30 or so at
23 night. So you're talking seven hours later. First things
24 first is after doing this job for so long and spending
25 time talking with SLED stuff and I know what their

1 protocol--

2 MR. VERNER: Your Honor, I object to out-of-court
3 statements to him.

4 MR. STUMBO: And I think he can testify to protocol
5 because it's why he did what he did next, Your Honor,
6 explains his actions.

7 THE COURT: Okay. Repeat the question that he asked
8 and let me hear the answer again before I can rule on Mr.
9 Verner's objection. Would you repeat the question,
10 Solicitor?

11 MR. STUMBO: Okay.

12 Q Why, you made a strategic decision not to conduct the
13 GSR kit, though, he was insistent and what were those
14 reasons?

15 A In my, from my experience, I know that SLED will not
16 test a GSR kit after six hours, six hours after the
17 shooting.

18 THE COURT: Okay. All right. Stop right there. I'm
19 going to overrule the objection. I think it goes to
20 state-of-mind more so than offering for the truth of the
21 matter. So I will overrule the objection. You may
22 proceed.

23 MR. STUMBO: Thank you, Your Honor.

24 A All right. Again, we're talking about seven hours
25 later and Mr. Ruff had talked about all these places that

1 he went and some of that can be very significant. He
2 could transfer that gun powder. It could have come in
3 contact with someone while he was at the mall or come in
4 contact with something that would show that he had
5 gunpowder. I'm just saying, you know, hypothetically,
6 that he had fired the gun or he came across it somewhere
7 after the fact and it may make it look like he did it and
8 he didn't. So there is all kind of things that factor in
9 that GSR residue kit. So many things with that time
10 lapse. If it's controlled and his movement is controlled
11 that is different.

12 Q But based on your training and experience, a GSR can
13 be washed off or knocked off or fall off very easily?

14 A Yes. It's just gunshot powder so, yes.

15 Q And that's why the timeframe is critical?

16 A Correct.

17 Q Now, you could also just not test somebody's hands
18 and arms for GSR but clothing?

19 A Yes, sir.

20 Q Mr. Ruff indicated he had changed his clothes?

21 A He changed clothes.

22 Q Now, so at that time, you made the decision during
23 this interview process, and let me ask this. The fact
24 that he was insistent on you giving him a GSR kit, does
25 that concern you?

1 A In my experience, you know, when someone is like give
2 me a GSR kit, give me a GSR kit seven hours later. Then
3 chances are they know I'm not going to get anything off of
4 them anyway and that is why they want it done.

5 Q So you made the call as an investigator not to do the
6 GSR at that time, correct?

7 A Yes, sir. And with him even referring to it as a GSR
8 kit tells me that he's familiar with the GSR kit.

9 MR. VERNER: Your Honor, I object to he's--

10 THE COURT: Okay.

11 MR. VERNER: -- speculating what --

12 THE COURT: Right. That requires, I think, some
13 speculation on Officer Goodman's part and I'll sustain the
14 objection and strike that from the record.

15 MR. STUMBO: Thank you, Judge. I'll move on to the
16 next question.

17 Q Now, as part of your investigation, that night Kenny
18 Ruff was detained and charged with these crimes, correct?

19 A Right.

20 Q Now, investigation doesn't stop that night when he's
21 charged, right?

22 A No, sir.

23 Q Okay. The next morning, what was the focus of the
24 investigation the next morning on the 27th?

25 A Well, there's a old saying that the real work starts

1 after the arrest is made. You still have to, that puzzle
2 that has been talked about, it is not complete, there is
3 still a lot of pieces that you have to put together. And
4 that comes afterwards. That next day for me, I did, when
5 he told me about going to Columbia Mall and those places,
6 he wanted me to verify that that's what he had done, so I
7 did. I actually went to the Columbia Mall to DTLR to
8 confirm whether or not he had been there and he had. So I
9 spent the next morning, several hours in Columbia at the
10 Columbia Mall talking to, I mean, obviously, I got there
11 kind of early so I had to wait on people at DTLR to get
12 there, the lady that was working the day before, that kind
13 of thing. So I was there for a while looking for videos
14 and talking to people at the store and that kind of thing.
15 And also that night, later that night, during this
16 incident, it was passed onto Richland County that Kenny
17 Ruff had come down, the suspect had come down and changed
18 clothes.

19 MR. VERNER: Your Honor, I object, he's testifying
20 about what other people are talking about.

21 THE COURT: Okay. All right. If he's testifying as
22 to what Richland County --

23 MR. STUMBO: That's correct.

24 THE COURT: -- told him, then I will sustain the
25 objection.

1 MR. STUMBO: Thank you, Your Honor.

2 Q Investigator Goodman, we have the jury here, let's
3 hear what Mr. Ruff had to write. He ultimately wrote a
4 statement after you talked about the stuff he said.

5 A Right.

6 Q Then he wrote a statement that night before he was
7 taken to jail, as well, correct?

8 A Yes, sir.

9 Q All right. This is the second and third pages of
10 State's 43. Is this the two-page statement, if you'll
11 look at that and verify it?

12 A It is the statement; yes, sir.

13 Q And that's a fair and accurate copy and
14 representation of the statement that he gave to y'all that
15 night?

16 A Yes, sir.

17 Q And you signed that form?

18 A Yes, sir.

19 Q And you saw Kenny Ruff write this with his own hand
20 and sign it?

21 A Yes, sir.

22 Q Okay.

23 MR. STUMBO: Your Honor, we'd offer 43 into evidence.
24 I don't think it's entered yet.

25 THE COURT: And subject --

1 MR. VERNER: I object to my prior request.

2 THE COURT: -- subject to the prior objections on the
3 record, I will allow 43 to come into evidence on behalf of
4 the State.

5 MR. STUMBO: Thank you.

6 (Whereupon, State's Exhibit number 43 was admitted
7 into evidence.)

8 MR. STUMBO: Thank you.

9 Q And if we could publish at this time Captain Goodman
10 reading the statement. I have to look, pull it up on the
11 screen, but you can read it from the actual exhibit that's
12 in your hand. Is that the second page, if you could, just
13 for the jury read the written part of the statement?

14 A It says, I went into the BP store earlier today on
15 8/26/2015 to purchase a pack of Newport short in the box
16 for my father, James Sanders, with a ten dollar bill and
17 got change in return for \$5.00. I then walked down Main
18 Street and decided to see how the store across was since a
19 lot of new stores were built and I haven't been in them.
20 I only said once upon entering and looking at the salon,
21 you have a nice store. And continued to see how the
22 designs were, and then left to go home, back up Main
23 Street and took Copeland Street across the field down and
24 jumped on Turner, the same way we walk our dogs. It's the
25 same way we walk our dogs.

1 Q Okay. And you didn't ask him to write anything, you
2 just said here's the paper, you write a statement on what
3 we talked about?

4 A Yes, sir.

5 Q Okay. And this is all he gave you?

6 A This is all he gave me.

7 Q All right. And while we have the State's 43, I want
8 to jump ahead on this. The next day or on the, I believe
9 on the 28th, were you asked to come over and talk to the
10 Defendant again?

11 A On the 28th --

12 MR. VERNER: Your Honor, subject to my same
13 objections.

14 THE COURT: So noted for the record, Mr. Verner.

15 A On the 28th, I was contacted by Sergeant Gurley, I
16 think that is how you pronounce his name, of the Newberry
17 County Detention Center. He said that I learned that
18 Kenny was requesting to speak to me. So when I had time,
19 I had Kenny transported to the Police Department to see
20 what he wanted to talk about.

21 Q Okay. And at that point, he indicated, did you go
22 and speak with him?

23 A Well, I had him transported to my office.

24 Q Okay. So he was brought back to your office?

25 A He was brought back to the Police Department; yes,

1 sir.

2 Q And you went, I believe, the last page of State's 43
3 is another waiver of rights form?

4 A That's right.

5 Q Okay. And Mr. Ruff did not sign this one, correct?

6 A No, sir; he didn't.

7 Q Okay. But he was advised again of his rights?

8 A He was advised of his rights. The only thing he said
9 was that he, it was so much more to the story than we knew
10 but he didn't want to talk. He didn't sign that. He
11 didn't initial that. He wanted me to call his sister,
12 Angela Ruff and provided me with a phone number. And so I
13 did that. He said that he had told her the story and she
14 would tell me.

15 Q Okay. And Angela is the one who testified yesterday
16 and there was a jail call before that at some point
17 between the Defendant?

18 A Right.

19 Q And the substance of that conversation, we heard a
20 jail call that talks about some of these other people that
21 he claims may have participated, Avelli?

22 A Machiavelli.

23 Q And a Dale, and those names were part of this
24 conversation that you had on the phone with Angela the
25 next day?

1 A That's right.

2 Q On the 28th?

3 A That's right.

4 Q This would have been two days after the incident?

5 A It would have been two days after the incident.

6 Q Now, based on your observations of the Kunkle Oil
7 surveillance video, during the time of the, well, believed
8 the time of this homicide, we talked about two people
9 going in and out, is that correct? Well, that's what was
10 on that video?

11 A Right.

12 Q Okay. You have an individual with a black skull cap
13 go in and come out a few minutes later, correct?

14 A That's right.

15 Q With a white bag in his hand?

16 A He came out with a white bag in his hand.

17 Q And then shortly right after that, you have a fellow
18 pull up on a bike and we've heard from Mr. Galvez this
19 week that that was him going in to get a haircut but
20 nobody came out so he left?

21 A That's right.

22 Q Is there anyone else that you could observe at this
23 time so, were there any multiple parties going into the
24 salon together at any time?

25 A After you see Mr. Galvez leave?

1 Q Right.

2 A No, sir.

3 Q Okay. And the next person that pulls up and goes in
4 is the niece?

5 A That's right.

6 Q And she's the one that finds Mr. Facio deceased,
7 correct?

8 A That's right.

9 Q So at that point, did you believe these other
10 individuals, Villie or Dale, that there was another person
11 that went in as a group that, to maybe do this crime?

12 A No, sir.

13 Q Okay. In other words, you already had physical
14 evidence that said I don't need to look for multiple
15 parties, that only one person went in?

16 A That's right.

17 Q That's a decision y'all made as a team?

18 A That's right.

19 Q Now, before you had received this information on the
20 28th, let's go back to what happened the morning of the
21 27th, which was right after the incident. You were in
22 Columbia at Columbia Mall, correct?

23 A That's right.

24 Q What were the other investigators doing back here in
25 Newberry?

1 A I learned that they were walking the path behind Pike
2 Circle behind the hair salon, that they were walking the
3 path and searching the wooded area over into Heritage
4 Square.

5 Q Okay. And we've already heard from your colleague,
6 Lieutenant Kennedy, who is a uniformed patrol and he was
7 part of that search?

8 A That's right.

9 Q And you've seen pictures of the, what they found in
10 that dumpster, correct?

11 A That's right.

12 Q And at that point in the investigation, you had a
13 person with a white bag putting this in the dumpster, you
14 had stuff out of the salon that was found in that white
15 bag, correct?

16 A That's right.

17 Q So the person that the investigation believed or was,
18 or the description of the person that y'all believed was
19 the perpetrator of this crime was the one in the videos
20 wearing the black shirt and the skull cap, correct?

21 A That's right.

22 Q Now, ultimately, you didn't collect the physical
23 pieces of evidence, the black shirt, and the iPad, and the
24 DVR. That was collected by the guys that were on the
25 scene?