

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Laurens County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DESHANNDON MARKELLE FRANKS,

APPELLANT

APPELLATE CASE NO. 2016-002244

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT NO. 6 (PHOTOGRAPH)**

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 DESHANNDON MARKELLE)
 FRANKS,)
)
 DEFENDANT.)
 _____)

CASE NO.: 2014-GS-30-0499
2014-GS-30-0500
2014-GS-30-0501

TRANSCRIPT OF RECORD

AUGUST 24, 25, 26, 27, 28 2016
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., JUDGE, AND A JURY

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

ATTORNEY FOR PLAINTIFF:

WARREN MOWRY, ASSISTANT SOLICITOR
LANCE SHEEK, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

J. FALKNER WILKES, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

1 and you all need to communicate with me, I think I've given
2 everybody my cell number. So feel free to contact me that
3 way, or my Clerk or myself by email.

4 MR. MOWRY: And, Your Honor, just purely for
5 informational purposes.

6 THE COURT: Yes, sir.

7 MR. MOWRY: Jeff and Lance and I are going to get with
8 Tara as soon as we concluded and hopefully pre-mark exhibits
9 -

10 THE COURT: That's a good idea.

11 MR. MOWRY: -- so we'll get that out of the way and be
12 able to streamline things a bit for trial.

13 THE COURT: Very good. If there's anything that you're
14 not objecting to, Mr. Wilkes, not objecting to coming into
15 evidence, just let her know and we'll go ahead and let that
16 come into evidence without having to make them move, et
17 cetera.

18 We'll be at east until 9:00.

19 MR. MOWRY: Thank you, Your Honor.

20 THE COURT: You all have a good day. Thank you.

21 (Whereupon, the proceeding was concluded at 12:17 p.m.)

22 TRIAL DAY 2-10/25/16

23 THE COURT: We'll go back on the record. The record
24 should reflect that Mr. Franks is present with counsel. I
25 am told the jury is here. Just a few housekeeping matters

1 though. Solicitor, you indicated that you had a few things,
2 or you told my Clerk that you had a few things that you
3 needed to put on the record, sir?

4 MR. MOWRY: Yes, sir. There are a couple of things.
5 One is the propriety of the search warrant and the search
6 that yielded the brown coveralls the State alleges the
7 Defendant was wearing the night of the incident, as well as
8 a backpack that contained an extended magazine for a 9
9 millimeter pistol that the State alleges is either the same
10 or identical to one that is pictured in a photograph on the
11 Defendant's cell phone. And Mr. Wilkes had asked that we
12 just simply go through the -- I guess you could call it a
13 suppression hearing for that. And also the Defendant made a
14 statement -- an initial statement during the outset of the
15 investigation to Investigator Cheek -- Cheeks with the -- or
16 Cheek, I'm sorry, with the Sheriff's Office and indicated
17 that he was in Greenville at the time the shooting took
18 place. The evidence that -- or the initial information that
19 the officers had gathered had indicated that he had been
20 present at the scene. And that was just simply part of the
21 investigation. He was released afterwards. So the State
22 would contend that this is not an in-custodial
23 interrogation. This is merely evidence -- or information
24 gathering. But at any rate, he is available also and we
25 will go through that litany as well.

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 THE COURT: Okay.

2 MR. MOWRY: Is there anything else?

3 MR. WILKES: I think also, Your Honor, there was the
4 question of the cell phone. And I'm not sure about the
5 information on his cell phone as far as whether it was
6 obtained by a search warrant, whether the search warrant is
7 valid. And we might need to just address the search
8 warrant. The search warrant on the cell phone as well. I
9 think that's the bulk of the evidence.

10 MR. MOWRY: Just a second, Your Honor.

11 MR. WILKES: I should have told him that a few minutes
12 earlier and I didn't. I apologize.

13 MR. MOWRY: At any rate, we can get started on the
14 first one if you like.

15 THE COURT: Go ahead and call your first witness then
16 if you need to, please.

17 MR. MOWRY: Ben Blackmon. If you can get Ben.

18 BEN BLACKMON, having been first
19 duly sworn, testified as follows:

20 MR. WILKES: Before we get started with that, may I ask
21 to have the witnesses sequestered? I know that the
22 Solicitor has taken efforts to make sure nobody's in here.
23 But if the Court could just issue an order.

24 THE COURT: Certainly. I don't -- I'm assuming that
25 with regard to the other hearings that we're going to

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 address the other witnesses are not present. Is that
2 correct?

3 MR. MOWRY: No, sir. None of -- all of them are in my
4 office right now, so that's not an issue.

5 THE COURT: Very good.

6 MR. MOWRY: We've kind of anticipated that. Mr. Wilkes
7 had not addressed it with me, but we had taken steps on that
8 to start with.

9 Also, Your Honor, before we go forward I just wanted to
10 say this before I forget. For the record, Mr. Wilkes and
11 Mr. Sheek and I had got together yesterday and we've
12 discussed all the various items that the State intends to
13 offer for evidence, and there are 46 total items. Most of
14 these are photographs. There are some tangible pieces of
15 evidence beyond photographs. But at any rate, we have
16 created a log. An exhibit list. We have given a copy to
17 the Court, to the court reporter, and to Mr. Wilkes.

18 THE COURT: All right. Very good. While we're on that
19 subject, are these in evidence at this point in time by
20 agreement? Are there any that are not being contested, or
21 do we just need to go through the usual procedure?

22 MR. WILKES: Your Honor, just to be safe, we'll
23 probably have to follow the usual procedure. But I'll
24 hopefully be able to make decisions on that very quickly.

25 THE COURT: Very good. If there are any that you

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 ultimately agree to or have no objection to just let us know
2 at a break and we'll have the court reporter mark those as
3 in evidence. But at this point in time nothing is in
4 evidence.

5 All right. Mr. Mowry, go ahead, please.

6 MR. MOWRY: Thank you, Your Honor.

7 IN-CAMERA

8 DIRECT EXAMINATION

9 BY MR. MOWRY:

10 Q You are Ben Blackmon?

11 A That's correct.

12 Q Mr. Blackmon, I believe you are an investigator with
13 the Laurens County Sheriff's Office; is that right?

14 A That is correct.

15 Q In fact, a Lieutenant; is that correct?

16 A Yes, sir.

17 Q What is your specific function as an investigator?
18 What -- especially the job that you do. What special
19 function do you have with the Sheriff's Office?

20 A I typically prepare search warrants, assist other
21 investigators in major crimes. Also take statements,
22 prepare paperwork for other officers, as well as investigate
23 cases.

24 Q And you are a supervisor; is that right?

25 A Yes, sir.

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 Q Were you employed in that capacity back on the 31st of
2 January, 2014?

3 A Yes, sir.

4 Q And were you involved in that capacity with the
5 investigation of the murders of Sammie Leake and Nikesha
6 James?

7 A That's correct.

8 MR. MOWRY: Let me just ask that the Court reporter
9 mark this as a Court's Exhibit for right now, Your Honor.
10 Should have done that beforehand. My apologies.

11 (Whereupon, Court's Exhibit No. 1 was marked for
12 identification.)

13 Q I'm handing you now what has been marked as State's
14 Exhibit No. 1 -- Court's Exhibit No. 1. I'm sorry. I ask
15 you can you identify that.

16 A Yes, sir. This is a search warrant that I prepared on
17 the 4th of February, 2014 with the control number of 520.
18 It was for a residence located at the corner of Shealy
19 Circle and Leaman Street where the Defendant had a room at
20 his grandparents' house.

21 Q Had you previously done a search of the Defendant's
22 mother's house?

23 A That's correct.

24 Q On what basis did you search there?

25 A The same basis as this, based on the statements that we

1 had obtained through witnesses in the case that indicated
2 that the Defendant was located at the crime scene the night
3 of the incident.

4 Q Well, did you have an initial indication that the
5 Defendant was -- would have been residing at his mother's
6 house?

7 A Yes, sir. We had information where the Defendant had
8 actually provided a statement to law enforcement on the 31st
9 of January prior to being a suspect or a person of concern
10 at that time where he listed his mother's residence on a
11 statement.

12 Q Okay. Did it, in fact, turn out that he was residing
13 at his mother's place?

14 A He resided there, from my understanding, on a part-time
15 basis, but also had a room at his grandmother's house that
16 was just as functional as a personal space.

17 Q And on that basis you obtained a search warrant for
18 that residence; is that right?

19 A That's correct.

20 Q On what basis did you obtain the search warrant in
21 general?

22 A Generally speaking because -- if I may refer to the
23 probable cause section of the search warrant. "That on
24 January 31st, 2014 the Laurens County Sheriff's Office
25 responded to Havendale Drive in Cross Hill in the County

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 of Laurens where two individuals were found deceased, and
2 upon further investigation of this matter it was found that
3 both victims were shot in the -- with a firearm which led to
4 their demise. And also further investigation witnesses were
5 located and interviewed who stated that Deshanndon Markelle
6 Franks was at the incident location on the morning of the
7 incident wearing brown or tan coveralls or overalls and a
8 red sweater or sweatshirt and has been making a residence at
9 the above listed location which is located at the corner of
10 Shealy Circle and Leaman Street."

11 Q So you were looking for tan coveralls; is that right?

12 A That's correct.

13 Q And the victims had been shot; is that correct?

14 A That's correct.

15 Q So you were looking for any firearms or related
16 materials; is that right?

17 A That's correct. We were looking for any and all items
18 of evidentiary value to include, but not limited to,
19 clothing, firearms and parts of such, ammunition, bullets,
20 casings, magazine, footwear, impressions, electronic
21 communication devices, swabs, hair, fiber, blood, and any
22 and all other items of physical or serological or trace
23 evidence.

24 Q So basically anything that might have been related to
25 the solution of who had killed Nikesha James and Sammie

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 Leake; is that right?

2 A That's correct, sir.

3 Q Did you go to a magistrate to obtain this warrant?

4 A Yes, sir. I went to Magistrate Thomas Copeland.

5 Q All right. And you had talked about witness statements
6 and tan coveralls. Can you go into -- did you advise the
7 magistrate, Magistrate Copeland, about the tan coveralls and
8 how you had gotten information about that?

9 A Yes, sir. I provided oral testimony to him and listed
10 in the affidavit of the search warrant witnesses, because I
11 knew I would have to leave a copy of the search warrant at
12 this location and at the time the Defendant was not in
13 custody, and for the safety of the witnesses I did not list
14 them by name.

15 Q Did you have written statements from these individuals
16 that you provided to Judge Copeland?

17 A Yes, sir. I have five statements from witnesses, and
18 also one from Mr. Franks who was at the time not in custody
19 or not considered a suspect.

20 Q Tell us what Mr. Franks told you.

21 A Yes, sir. This statement was taken by Lieutenant
22 Cheek. It was on the 31st of January, which was the date in
23 which the Sheriff's Office was at the incident location.
24 Mr. Franks stated that he had left Wash about 12:30. Got to
25 Keisha's house. It was Keisha, Tamia, her baby and Darryl,

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 and chilled.

2 Q And Darryl is Sammie Leake; is that right? That's his
3 middle name?

4 A Yes, sir. That's what -- what I'm familiar with him
5 as. "We chilled for about 15 minutes and Tamia asked Tevin
6 to take her home. He left to do so. I was talking to
7 Keisha and Darryl and then called Tevin and told him, "Hold
8 on. I'm going up the road", and met him at the top of the
9 driveway. And we left and went to Greenville. Called the
10 girl I was going to see. She didn't answer, so I called
11 Scurry and spent the night up the road at his house in
12 Fountain Inn.

13 Q So he admitted that he had been there. He just denied
14 that he was there at the shooting. That he had left and
15 gone to Greenville. Is that right?

16 A At that particular time during the -- the time in which
17 this statement was obtained Mr. Franks wasn't under
18 investigation as far as having been there during the time of
19 the shooting, and this was obtained of his voluntariness to
20 the officer that provided him with the form.

21 Q So that was -- that statement was just simply part of
22 information gathering? Not a -- not focused on him as a
23 suspect; is that right?

24 A That's correct, sir.

25 Q What other statements did you have?

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 A I had one from Tevin Oneil Hill.

2 Q If you can just summarize what that said. The thing
3 that would have been interesting as far as the search
4 warrant was concerned, or of interest to the magistrate.

5 A Okay. That he was at that same location. That Mr.
6 Franks was at that location as well. And that they departed
7 and went to ride to Greenville, which refers to the Fountain
8 Inn location in the other statement. And that he took one
9 of the other parties in the residence home, and that he come
10 back and picked up Mr. Franks.

11 Q Do you also have a statement from that other party,
12 Tamia Kinard?

13 A That's correct, sir. I have a typed statement that I
14 took from Ms. Kinard on the 1st of February, 2014 at about
15 approximately 12:26 in the afternoon. And she stated that
16 she had been there and saw both of those individuals at the
17 house.

18 Q Both Mr. Franks and Mr. Hill?

19 A That's correct. And that she obtained a ride home from
20 Mr. Hill, and that she saw Mr. Franks wearing coveralls or
21 overalls. The brown thick heavy overalls, as she described
22 them. And a red sweatshirt.

23 Q Okay. Did you also obtain a statement some time after
24 that from Milton Grant?

25 A That's correct, sir.

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 Q Who is Milton Grant?

2 A Mr. Grant is a neighbor to the incident location. It's
3 a very small neighborhood, if you will, where you can see
4 the other residences fairly clearly. Mr. Grant was awakened
5 by headlights and provided a statement to Lieutenant Plaxico
6 who met with him on the 3rd of February in the afternoon
7 hours.

8 Q So that would have been the day before the search
9 warrant was served; is that right, or obtained?

10 A Obtained, yes.

11 Q So you had that statement and related that information
12 to Judge Copeland?

13 A Yes, sir.

14 Q What was that information, please, sir?

15 A That at about 1:30 a.m. Mr. Grant was asleep and he was
16 awakened up by car lights shining in his window. He looked
17 out and saw it was a brown Ford. He called his nephew and
18 told him to look out because somebody was trying to take
19 something. The car left in a little while, as he described
20 it. He couldn't go back to sleep, and about 3:00 in the
21 morning he heard three gunshots. He went and looked out the
22 kitchen window, down to Nikesha's house, which was the
23 incident location. There were a lot of lights on and the
24 front door was open. He saw someone come out the door on
25 the porch. He walked in the yard and then went back on the

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 porch and grabbed the door handle and slammed the door and
2 the porch light went off.

3 Q This is the person coming out of Ms. James and Mr.
4 Leake's residence; is that right?

5 A That's correct.

6 Q That was the source of the gunshots; is that right?

7 A To Mr. Grant's perception.

8 Q Yes.

9 A Yes, sir. He then walked back and forth shaking his
10 head. The person that came out. And he did not see him
11 when he left, but he was wearing a brown coat or jumpsuit.
12 Which when compared to the other statements obtained by the
13 other witnesses, and even a fifth one from Ms. Pulley,
14 Vashia Pulley, stated she had seen Shannon -- or Deshanndon
15 earlier the night at the club.

16 Q And what date was that obtained?

17 A That statement was obtained on the 31st of January as
18 well in the evening hours.

19 Q And what did Ms. Pulley have to say?

20 A That she saw Mr. Franks wearing brown thick cover
21 overall type clothing with straps on them, and that he has
22 showed her a firearm that was in his -- concealed in his
23 coveralls, or overalls I should say.

24 Q Prior to Mr. Grant telling the information about
25 hearing the shots and then seeing a person wearing brown

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 coveralls come out of the residence, was Mr. Franks a
2 suspect?

3 A Not prior to Mr. Grant's statement and potentially Ms.
4 Kinard's statement which was taken on the 1st. But going
5 back to Mr. Franks' statement that was obtained January 31st
6 he was not a suspect at the time he provided a statement.

7 Q Let me ask you this then specifically. Was he a
8 suspect when Mr. Hill and Mr. Franks' statements were
9 obtained?

10 A No. They were not suspects.

11 Q Was he a suspect when Tamia Kinard gave you the
12 statement on --

13 A The 1st.

14 Q -- the 1st?

15 A Ms. Kinard provided information and very detailed that
16 also fell in line with what Mr. Franks and Mr. Hill had
17 stated to us. At that point they were becoming persons of
18 interest that we would like to have maybe spoken with
19 further. At that point it became evident that they were
20 there in the residence as well comparative to their
21 statements to us.

22 Q But their statements were that they were there sometime
23 prior to the shooting; is that right?

24 A That's correct.

25 Q Did Ms. Pulley's statement -- which was taken on what

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 date?

2 A The 31st of January. The same date in which Mr. Franks
3 and Mr. Hill gave statements.

4 Q Now, she had seen him several hours before; is that
5 right?

6 A That's correct.

7 Q Did that give rise to any suspicions about Mr. Franks?

8 A She had given this statement several hours after the
9 statements that Mr. Franks and Mr. Hill had given us at
10 about quarter to 5:00 in the p.m. She gave this statement
11 about 9:40 or 20 until 10:00.

12 Q In the evening?

13 A Yes, sir.

14 Q So the fact that Mr. Franks, according to Ms. Pulley,
15 had a gun was interesting to you, but did it make him a
16 suspect in the case?

17 A No, sir. Not at that time. Just the mere possession
18 of the firearm is not necessarily an indication that they're
19 a suspect.

20 Q How about Mr. Grant's?

21 A Mr. Grant's statement was very interesting to officers
22 in the sense that it did provide a fitting description of
23 Mr. Franks being at the residence, and that he had had heard
24 gunshots. He had saw what he described as a brown car
25 leaving prior to the gunshots. And Mr. Hill stating that he

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 was there in a brown vehicle and departing matched up with
2 what Mr. Grant explained to us. And also given the
3 statements of Mr. Hill and Mr. Franks saying that Hill
4 picked Franks up down the road later, in comparison with
5 what Mr. Grant had written, did make, in my opinion, Mr.
6 Franks a suspect.

7 Q And the fact that he -- that Mr. Grant stated that he
8 saw an individual wearing brown coveralls coming out right
9 after the shooting. That he heard the shots. Was that of
10 interest to you?

11 A Yes, sir. He heard the shots at approximately 3:00
12 a.m. and then saw an individual in a brown coat or a brown
13 jumpsuit, in his words, come out of the house, slam the door
14 pretty hard and made the porch light go off, and then walked
15 away. In comparison with Ms. Pulley stating that she had
16 seen him with a gun earlier in the night, and then the
17 statement from Ms. Kinard saying that he had been at the
18 incident location after Ms. Pulley had saw him earlier, and
19 then also Mr. Grant hearing the shots in comparison to the
20 statements obtained by Mr. Hill -- or obtained from Mr. Hill
21 and Mr. Franks.

22 Q Taken in its totality did you believe that you had
23 probable cause to search for evidence of the crime at Mr.
24 Franks' residence?

25 A That's correct. I believe that any reasonable person

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 after comparing the statements would find probable cause to
2 search Mr. Franks' rooms.

3 Q And once you presented that information to the
4 magistrate what was his conclusion?

5 A His conclusion was the same and signed the search
6 warrant.

7 Q And as a result, let me show you what's been marked as
8 State's Exhibit No. 38. Can you identify the contents of
9 this package?

10 A That's correct. Those are the brown coveralls that we
11 recovered from the residence.

12 Q And that was as a result of this search warrant; is
13 that right?

14 A That's correct, sir.

15 Q Let me show you what's been marked as State's Exhibit
16 No. 28, this photograph, and ask you if you can identify
17 that.

18 A Yes, sir. Those are the same overalls that -- before
19 they were collected in that residence.

20 Q Okay. Were you present when this was taken?

21 A Yes, sir.

22 Q Let me show you also State's Exhibit No. 36. The item
23 on the wall there. What is that?

24 A That is a red backpack.

25 Q And was that also collected as a product of this

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 search?

2 A That's correct, sir.

3 Q Why was this taken into evidence?

4 A After examining the backpack and looking into it we
5 found a magazine from a firearm that we needed to collect as
6 well.

7 Q Let me show you State's Exhibit No. 37. Do you
8 recognize that?

9 A Yes, sir. That is the inside of the backpack, and you
10 can see the -- what appears to be the magazine. It's kind
11 of blurry, but it's the magazine.

12 Q Was there anything unusual about that magazine?

13 A It was long.

14 Q Let me show you State's Exhibit No. 39 in this brown
15 paper bag and ask you if you can identify this content of
16 that bag. The bag -- I mean -- sorry. The content of the
17 paper bag.

18 A Yes, sir. This is the red backpack collected that was
19 hanging on the wall.

20 Q And that is the bag that is depicted in State's Exhibit
21 36; is that right?

22 A That's correct, sir.

23 Q What was it about that -- the contents of the red bag,
24 the knapsack there that particularly interested you?

25 A The magazine that was inside of it.

BEN BLACKMON-DIRECT EXAMINATION (IN CAMERA)

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1 Q And you pull that out?

2 A Yes, sir.

3 Q Is this the magazine? I believe it's marked as State's
4 Exhibit 40.

5 A Yes, sir.

6 Q And what -- describe that magazine. You're pretty
7 knowledgeable about firearms. Is there anything unusual
8 about this magazine?

9 A It is an extended magazine, high capacity. It appears
10 to be double stack.

11 Q Meaning what?

12 A The bullets are staggered when they load it and holds a
13 particularly interesting amount of rounds considering that
14 it would fit in a handgun or potentially a carbine. And
15 then when compared to the statement of Ms. Pulley, you know,
16 she described him as having a Ruger. It appears to fit a
17 Ruger pistol.

18 Q And did you take that into evidence as part of that?

19 A Yes, sir.

20 Q Did that later become of more interest to you after --
21 well, no. Scratch that.

22 MR. MOWRY: Your Honor, I believe that's all I would,
23 cover with Lieutenant Blackmon at this point. I think we
24 have established probable cause. I'll turn it over to Mr.
25 Wilkes.

BEN BLACKMON-CROSS-EXAMINATION (IN CAMERA)

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1 THE COURT: Mr. Wilkes, any questions?

2 MR. WILKES: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WILKES:

5 Q Where is your office at, Lieutenant Blackmon?

6 A It's located on Main Street in Laurens.

7 Q And where is the magistrate's office?

8 A It's here in the courthouse.

9 Q And who prints out -- do you type up the affidavit for
10 the search warrant?

11 A Yes, sir. We type it up with the computer system we
12 have that has the integrated form into it. And once we
13 print it out we approach the magistrate with it. He looks
14 over it, approves it and signs it.

15 Q And in this case you printed out the affidavit and the
16 search warrant which is, I guess, one form, right?

17 A Yes, sir. It prints out the entire document at once.

18 Q And you do that at your office on Main Street. Since
19 I'm not from Laurens, tell me where that would be from here.

20 A From here it's roughly probably less than a mile away.

21 Q And so, you print it out. And when you type the
22 affidavit there's a section that says reason for affiant's
23 belief that the property sought is on the subject premises,
24 right?

25 A That's correct.

BEN BLACKMON-CROSS-EXAMINATION (IN CAMERA)

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1 Q And you type in what you believed to be the reason for
2 your belief that there was any property that you were
3 searching for located at that premises, right?

4 A In essence that is as we would refer to as the probable
5 cause section of the warrant, I believe.

6 Q And you believe there is probable cause on your
7 warrant?

8 A That's correct.

9 Q You believe that's probable cause?

10 A Yes.

11 Q And so, you presented this to the magistrate?

12 A That's correct.

13 Q Now, tell me exactly what you told the magistrate.

14 A That we had obtained five statements leading up to the
15 witnesses that were interviewed and stated that Mr. Franks
16 was at the incident location on the morning of the incident
17 wearing brown or tan overalls or coveralls and a red sweater
18 or sweatshirt and had been making a residence at the above
19 listed location.

20 Q So you went into the magistrate's office. And tell me
21 what happened when you went in the magistrate's office.

22 A I sat down. I had copies, or the originals of these
23 statements. Spoke with Magistrate Copeland about it.

24 Presented him with the document. He read over it. And then
25 I also explained what the statements read.

BEN BLACKMON- EXAMINATION BY THE COURT

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1 Q Did you read the statements to him verbatim?

2 A I had them with me. I explained to him that each of
3 them stated that Mr. Franks was at that location. Told him
4 who they were. And also that each of them indicated there
5 were brown coveralls, a red sweater or sweatshirt. That he
6 had been seen with a gun earlier in the evening. Yes.

7 Q So you -- that's what you told the magistrate?

8 A That is correct.

9 Q Very good.

10 MR. WILKES: No further questions, Your Honor: If I
11 may have just a brief moment to argue.

12 THE COURT: Sure. I need a few -- I need clarification
13 on a few things myself though. May I see the actual
14 warrant?

15 THE WITNESS: Yes, sir.

16 EXAMINATION

17 BY THE COURT:

18 Q You indicated that you supplemented the material in the
19 affidavit with testimony before the magistrate. They did
20 swear you in; is that correct, or he -- Mr. Copeland --
21 Magistrate Copeland, rather, did he swear you in?

22 A Yes, sir.

23 Q And you informed him of the information that Mr. Grant
24 had given to you, the neighbor that was next to the
25 location, correct?

1 A That's correct. As well as Ms. Kinard, Ms. Pulley, Mr.
2 Hill and Mr. Franks.

3 THE COURT: Give me one second, if I could, please.
4 All right. Mr. Wilkes, I'll hear from you, sir.

5 MR. WILKES: Thank you. Your Honor, clearly the
6 affidavit under *Baccus* is insufficient. I don't think
7 there's any question that the affidavit itself is
8 insufficient to support probable cause. The question
9 becomes one of supplement oral testimony. And I asked him
10 specifically to say what is it exactly he told the judge and
11 he summarizes it for me, and he summarizes it in a way that
12 if that's what he told the judge that is insufficient,
13 because you don't get to voracity or reliability, which is
14 the whole point of *Baccus*, which has to be in the affidavit.
15 It has to be clear in the affidavit. It has to be clear in
16 oral supplemental testimony. And the Solicitor can ask
17 leading questions and he can tell everything about the case.
18 But when asked the question, exactly what did you tell the
19 magistrate, he summarizes it in a way that if he summarizes
20 it in that way to the magistrate it will not establish
21 reliability, it will not establish voracity, and it won't
22 establish probable cause. And that's why I asked the
23 questions. It's easy for an officer to come in any time
24 after it's happened and a year later, two years later just
25 read everything about the case. But I asked specifically,

1 "What did you tell the magistrate?" And that's -- the
2 answer I got is insufficient to establish probable cause, in
3 particular voracity and reliability under *Baccus*. It is --
4 it is not sufficient as far as the facts the magistrate
5 needs to have probable cause.

6 THE COURT: Mr. Mowry.

7 MR. MOWRY: Your Honor, I believe he said that he
8 either read or summarized each of these statements. I would
9 be glad to make them a part of the Court record if you would
10 like. But he provided the magistrate with the information
11 in those statements, and those statements certainly, taken
12 in the totality of the circumstances, give rise to probable
13 cause that would allow a search. And it would allow a
14 search of this particular location, because as Lieutenant
15 Blackmon said, this was part of the investigation and they
16 had determined that the Defendant was living there.

17 THE COURT: Do you have a cite on *Baccus* by any chance?

18 MR. WILKES: Yes, sir. I do. It would be 625 S.E. 2nd
19 2016.

20 THE COURT: I'm assuming, Solicitor, that those
21 statements from the other individuals don't come in at some
22 future point in time I'll let you make those State's
23 exhibits not in evidence assuming --

24 MR. MOWRY: The individuals are going to testify, Your
25 Honor. The written materials probably will not come in.

1 And each of these, including the ones that the Defendant
2 wrote, have a certification at the bottom that the statement
3 is true and correct. Certified that the facts contained
4 herein are true and correct. You know, just the same --
5 same theme all the way through.

6 THE COURT: Certainly.

7 MR. WILKES: But if I may, Your Honor. That's jumping
8 ahead, because that's not the point. The point is what did
9 the magistrate know. And I asked the question what did you
10 do and he said I told the judge this. And that's it. And
11 so, then the question becomes -- it doesn't matter what's
12 written down on these statements. It then becomes what did
13 you tell the judge. And the way he answered the question
14 was a summary that does not support probable cause. There's
15 got to be probable cause to believe that some evidence is going
16 to be at that location at that time. And there's nothing
17 that he said that would indicate that.

18 MR. MOWRY: *Baccus* is not applicable in this case,
19 because in *Baccus* you had a third party who was obtaining
20 the search warrant for the investigator himself. Didn't
21 know anything else about the case. Said she didn't know
22 anything else about the case. Lieutenant Blackmon had been
23 intimately involved in each step along the way and was able
24 to provide all this information to the magistrate.

25 THE COURT: And that was kind of my recollection what

1 *Baccus* held, but I'm verifying that right now. I asked my
2 Clerk to --

3 MR. WILKES: That is correct, Your Honor. *Baccus* deals
4 with the rule as far as an insufficient affidavit, which is
5 what we have. Now, coming into Court it's always a surprise
6 when there's no documentation. There's no recollection in
7 the record. There's no indication whatsoever of
8 supplemental testimony. The judge didn't note it on the
9 affidavit. The officer doesn't have it in his report,
10 doesn't have it in the affidavit itself. There's just no
11 documentation. So he comes into Court and says, oh, I told
12 the judge everything about the case. That leaves me in a
13 position of saying, well, tell me what you told the judge.
14 He did. It doesn't support probable cause.

15 MR. MOWRY: Well, he responded to my questioning with a
16 great deal more information. I think he was simply trying
17 to summarize for Mr. Wilkes. And that is why I would like
18 to include this packet of statements. The five statements
19 from Mr. Grant, Mr. Hill, Mr. Franks, Ms. Pulley, and Ms.
20 Kinard as part of the Court's exhibit, Your Honor. He did
21 relate information from these that made the firearms,
22 obviously, and the clothing particularly interesting, or
23 particularly applicable in this case.

24 THE COURT: Very good. We'll make those an exhibit.
25 You all hold on for just two seconds. Let me finish reading

1 this a little bit, please.

2 (Whereupon, Court's Exhibit No. 2 was marked for
3 identification.)

4 THE COURT: Mr. Wilkes, you want to say something
5 further, sir?

6 MR. WILKES: Yes, sir. Above *Baccus* this is an
7 *Illinois v. Gates* situation. There has to be probability
8 that the evidence is located where they think it's going to
9 be. Now testimony or information that goes to the
10 magistrate has to support that. The best that I can do is
11 ask clear question and get an answer, and the answer I got,
12 Your Honor, does not establish probable cause.

13 THE COURT: I understand your position and I do
14 appreciate it. Of course, the Court -- the Court's
15 obligation at this stage is to judge the sufficiency of the
16 probable cause based on the totality of the circumstances.
17 The Court has had an opportunity to review the affidavit,
18 coupled with the sworn testimony of Mr. Blackmon, as well as
19 the other information related to the magistrate, the
20 circumstances as a whole, including what Mr. Grant told Mr.
21 Blackmon.

22 The Court does conclude that there is a substantial
23 basis for which the magistrate could have issued the
24 warrant. Obviously people typically change their clothes at
25 their residence where they reside. It is only logical, it's

1 only rational, that if they're looking for brown coveralls,
2 et cetera, that those brown coveralls would more likely than
3 not be at one's abode. Be at one's home. That follows
4 logically and within the confines of just commonsense and
5 human experience. So based upon the supplemental sworn
6 testimony that was offered, coupled with the five statements
7 related to the magistrate by Mr. Blackmon, the Court would
8 find that there was sufficient probable cause supporting the
9 issuance of the search warrant. Of course, the magistrate's
10 determination is also entitled to substantial deference, and
11 the Court would conclude, as the magistrate did, that had I
12 been in Mr. Copeland's -- or Magistrate Copeland's position,
13 I would have concluded there was sufficient probable cause
14 for issuance of the warrant. So your motion and objection
15 are noted, but I do believe that the warrant was properly
16 issued.

17 Do you need time for the next issue?

18 MR. MOWRY: No, sir.

19 THE COURT: You can step down and go back there if you
20 want to.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 MR. MOWRY: If you would tell Frank to come on out.

25 THE WITNESS: Yes, sir.

1 THE COURT: I have -- the jury's out there. I'm toying
2 with the idea of letting them do some light shopping or just
3 letting them go until 11:00, because I'm assuming we still
4 have --

5 MR. MOWRY: A couple of other matters. Yes, sir.

6 THE COURT: -- a few other matters. I do know that you
7 have a number of witnesses that absolutely must be gotten to
8 today.

9 MR. MOWRY: I don't think that's going to be a time
10 issue, Your Honor. I believe we can make it without too
11 much problem.

12 THE COURT: Very good. If you would, just ask the jury
13 -- tell them that we're still engaged in a few housekeeping
14 matters. Just tell them that we're engaged in a few
15 housekeeping matters and let them go until 11:00. Ask them
16 to be back around 11:00. So if they want to run to the
17 hardware store, the grocery store, or just get a breath of
18 fresh air.

19 THE BAILIFF: 11:00?

20 THE COURT: Yes, sir. Let me take a brief break, too,
21 while you're getting the next witness out here. All right?

22 MR. MOWRY: Yes, sir.

23 THE COURT: We'll be at ease for just a few moments.

24 (Whereupon, a recess was held from 10:10 a.m. to 10:19
25 a.m.)

BRYANT CHEEK-DIRECT EXAMINATION (IN CAMERA)

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1 THE COURT: We'll go back on the record, if we may. At
2 this point, Solicitor, call your next witness. I assume
3 this is going to be in the *Jackson v. Denno*?

4 MR. MOWRY: Yes, sir.

5 THE COURT: Go ahead.

6 MR. MOWRY: This is Bryant Cheek.

7 BRYANT CHEEK, having been first
8 duly sworn, testified as follows:

9 IN-CAMERA

10 DIRECT EXAMINATION

11 BY MR. MOWRY:

12 Q You are Bryant Cheek?

13 A Yes, sir.

14 Q And I believe you, like Ben Blackmon, are a Lieutenant
15 with the Lauren's County Sheriff's Office; is that right?

16 A Yes, sir.

17 Q Are you an investigator as well?

18 A Yes, sir.

19 Q Were you involved in the investigation of the deaths of
20 Sammie Leake and Nikesha James back on the 31st of January
21 of 2014?

22 A Yes, sir.

23 Q Describe how you became involved in that case.

24 A We received a call from Captain Williams at the time.

25 We were --

BRYANT CHEEK-DIRECT EXAMINATION (IN CAMERA)

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1 Q Stephane Williams?

2 A Stephane Williams was our Captain supervising over the
3 criminal investigation division. He called us and told us
4 we had a situation in Cross Hill. That we needed to go to
5 Cross Hill.

6 Q And did you, in fact, do that?

7 A Yes, sir.

8 Q Did you drive yourself?

9 A Yes, sir.

10 Q Was anybody with you?

11 A Lieutenant Keith McIntosh.

12 Q Okay. And as you were coming to Cross Hill did you see
13 anybody you knew?

14 A Yes, sir.

15 Q Who did you see?

16 A I saw Mr. Tevin Hill.

17 Q Tevin Hill?

18 A Yes, sir.

19 Q The co-defendant in the case?

20 A Yes, sir.

21 Q How did you know Mr. Hill?

22 A I've had previous experience with Mr. Hill. And we had
23 a -- I also coach AAU basketball and he played up under me
24 for AAU basketball.

25 Q So when you talk about previous experience you're not

BRYANT CHEEK-DIRECT EXAMINATION (IN CAMERA)

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- 1 talking about in your capacity as a --
- 2 A No, sir.
- 3 Q -- law enforcement officer?
- 4 A No, sir.
- 5 Q As a basketball coach --
- 6 A Yes, sir.
- 7 Q -- and a basketball player; is that right?
- 8 A Yes, sir.
- 9 Q When you saw Mr. Hill what did you do?
- 10 A I just spoke with him. He was at the top of the hill,
- 11 and that's about it.
- 12 Q Did you, in fact, say something to him right at the
- 13 start?
- 14 A Yes, sir.
- 15 Q What did you say? Go ahead and tell the Court what you
- 16 said.
- 17 A I asked him, I said, "I hope you didn't have anything
- 18 to do with what's going on out here."
- 19 Q And what was his response at that time?
- 20 A He said that I didn't.
- 21 Q Okay. As evidence was gathered did you determine
- 22 whether or not Tevin Hill and the Defendant in this case
- 23 might be of interest to talk to?
- 24 A Yes, sir.
- 25 Q Why was that?

BRYANT CHEEK-DIRECT EXAMINATION (IN CAMERA)

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1 A When we arrived on the scene we started talking to
2 various people and we was gathering information, putting
3 together statements, trying to figure out what was going on
4 and what had happened, and his name came up along with Mr.
5 Franks.

6 Q Specifically did that come from Tamia Kinard?

7 A I think so.

8 Q That they had been at the scene; is that right?

9 A That they had been there. Yes, sir.

10 Q Were they suspects?

11 A No, sir.

12 Q How did you bring this up to Mr. Hill and to Mr. Franks
13 that you wanted to talk to them?

14 A We just asked them that -- Someone called someone and
15 we asked them to come back down. Let's get a statement from
16 them. That their name came up that they were here and we
17 were just trying to gather information from all the persons
18 that were there and were in the process of gathering
19 statements from everyone.

20 Q So specifically with Mr. Franks, did law enforcement
21 call him or did a civilian call him?

22 A I think a civilian called him, I think.

23 Q And did he return to the scene?

24 A Yes, sir. He came back down.

25 Q Again, was he a suspect?

BRYANT CHEEK-DIRECT EXAMINATION (IN CAMERA)

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1 A No, sir.

2 Q You were just trying to gather information; is that
3 right?

4 A Yes, sir.

5 Q To figure out who had done it?

6 A Yes, sir.

7 Q Let me show you -- this is part of Court's Exhibit No.

8 2. This is listed as a Lauren's County Sheriff's Office
9 voluntary statement, and then directly under that "not under
10 arrest." And whose name is that?

11 A Mr. Franks.

12 Q And whose signature is down at the bottom?

13 A Mr. Franks.

14 Q Whose signature is below that?

15 A Mine.

16 Q Is this a statement that you took from Mr. Franks?

17 A Yes, it is.

18 Q Was Mr. Franks -- well, let me do it this way. Well,
19 no. I'll ask you this. Was he in custody?

20 A No, sir.

21 Q Matter of fact, when this statement was concluded what
22 was done with Mr. Franks, or where did he go?

23 A He left. He was free to go.

24 Q You did not hold him; is that right?

25 A No, sir.

BRYANT CHEEK-CROSS-EXAMINATION (IN CAMERA)

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1 Q Was this, in your view, an interrogation focused on him
2 as a suspect?

3 A No, sir.

4 Q What was this?

5 A We was just gathering information from everyone. All
6 of the names that came up at the scene as it relates to the
7 situation.

8 Q So at that time you viewed him as a witness, not as a
9 suspect --

10 A Yes, sir.

11 Q -- is that right?

12 A Yes, sir.

13 Q What did Mr. -- well, I won't ask you what he said.

14 MR. MOWRY: Your Honor, I would submit that this
15 information that was gathered from Mr. Franks was not a
16 product of -- let me ask one more question.

17 Q Were Miranda warnings ever given?

18 A No, sir.

19 Q And why was that?

20 A He wasn't in custody and he wasn't a suspect at the
21 time.

22 MR. MOWRY: Your Honor, based on this testimony, I
23 would submit that the statement from Mr. Franks is not a
24 product of any situation where a Miranda warning is required
25 and should be admissible. But I will allow Mr. Wilkes to

BRYANT CHEEK-CROSS-EXAMINATION (IN CAMERA)

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1 examine at this point.

2 THE COURT: Mr. Wilkes, any questions of Mr. Cheek?

3 MR. WILKES: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. WILKES:

6 Q Can you tell me how it is you came to talk to Mr.

7 Franks. Describe the scene where you talked to him, when

8 you first saw him.

9 A Mr. Franks came back down to the scene. We all were

10 kind of gathered -- gathering statements at the back of a

11 patrol car. Several people out there. Of course, we had

12 the crime scene tape. A lot of people were out there behind

13 the crime scene tape and we asked them for a statement.

14 Q And who was with you when you talked to Mr. Franks?

15 A I think he and Mr. Hill were there, Keith McIntosh,

16 Rakeisha Hill, and some other police were there.

17 Q Was everybody standing right there in a group? All

18 those people you just mentioned?

19 A We were kind of standing there. Yes, sir.

20 Q And so there's -- tell me, these -- you're going to

21 have -- how do you come to have a written statement? How do

22 you do that?

23 A We just asked them to give us a statement for some

24 information because we were gathering information as it

25 relates to the case.

BRYANT CHEEK-CROSS-EXAMINATION (IN CAMERA)

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1 Q And did he have this form in his pocket or is this
2 something you have in your patrol car?

3 A Something we have in our car.

4 Q So you went and got a form for him?

5 A Yes, sir.

6 Q Was there a female officer there?

7 A Yes, sir.

8 Q Who was that?

9 A Rakeisha Hill.

10 Q And who actually asked questions of Mr. Franks?

11 A When you say ask questions --

12 Q You just handed a form and said fill this out or did
13 somebody ask him some questions, tell him what you wanted
14 him to do?

15 A Well, to the best of my memory, some of the -- I think
16 some other person said that he was there at the scene. Some
17 of the other girls that had given statements that gave us
18 several names, and we just asked them for some information.

19 Q Who asked Mr. Franks to fill out this form?

20 A I'm sure I did.

21 Q And in filling out the form he was standing behind the
22 police car?

23 A I think we all were standing out there. It was at the
24 trunk of the car. I think that's right.

25 Q And when you say we, that would be other officers as

BRYANT CHEEK-EXAMINATION BY THE COURT

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1 well?

2 A And Mr. Hill.

3 Q And did you or the female officer at that time take his
4 cell phone from him?

5 A I'm not sure. I didn't take the cell phone.

6 Q When he filled out the form you signed it?

7 A Yes, sir.

8 Q And you didn't Mirandize him?

9 A No, sir.

10 Q And at any point during filling out this form did you
11 and the female officer standing there tell him stay right
12 here, we'll be back in a minute?

13 A I don't remember that.

14 Q Possible?

15 A I don't remember that.

16 Q Are you saying it's not possible?

17 MR. MOWRY: Your Honor, I think he's asked and answered
18 the question.

19 THE COURT: All right. I'll take his answer as meaning
20 he does not recall somebody saying that, but it also is
21 possible maybe that the other officer said exactly those
22 words.

23 Q How many statements had you taken before you took Mr.
24 Franks' statement?

25 A Im not sure. I had taken some statements from some

BRYANT CHEEK-EXAMINATION BY THE COURT

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1 females.

2 Q And you then knew at that time that he was the last
3 known person, according to those statements, to be at that
4 location the night before, correct?

5 A Yes, sir.

6 Q And you say that does not make him a suspect?

7 A No, sir.

8 Q Why is that?

9 A It was at the beginning stages of the investigation.

10 MR. WILKES: No further questions.

11 MR. MOWRY: May I see the statement?

12 THE COURT: Do you have some additional questions, Mr.
13 Mowry?

14 MR. MOWRY: No, sir.

15 THE COURT: One moment then, please.

16 EXAMINATION

17 BY THE COURT:

18 Q Mr. Cheek, this is Mr. Franks' handwriting, correct?
19 It's not yours?

20 A No, sir. It's not mine. It's his.

21 Q So he filled this out himself, right?

22 A Yes, sir.

23 THE COURT: Any additional questions of him?

24 MR. MOWRY: No, sir.

25 MR. WILKES: No questions. I'd just like to say -

1 THE COURT: Sure, go ahead.

2 MR. WILKES: Your Honor, the point being, obviously
3 they've just talked at length in the prior suppression
4 hearing about the five statements and how that created
5 probable cause. Obviously some of those will apply here.
6 And they had the suspicion and he was at that time suspect,
7 and I think being told to come back to the scene and asked
8 to give a statement subjects the police department to give
9 Miranda at that point. It's not whether or not they say
10 he's a suspect. It's whether or not he subjectively would
11 believe he was in custody or required to give a statement.

12 THE COURT: Mr. Mowry?

13 MR. MOWRY: Your Honor, it says "not under arrest". It
14 also says in there that I realize that -- if I could just
15 quote it real quickly. As part of this, "Nor am I being
16 detained for any criminal offenses. I understand I'm free
17 to walk away without saying anything and I volunteer the
18 following information of my own free will for whatever
19 purpose it may serve." The whole idea with this was
20 information gathering. They were -- I mean, this was the
21 outset of a very serious crime. Obviously they were going
22 to talk to all the people that they had information, had
23 seen the victims that night. But that's just simply
24 information gathering. And the Court's have been fairly
25 consistent that giving somebody the Miranda warnings when

1 it's just for information gathering puts a chilling affect
2 on law enforcement's ability to be able to solve cases.
3 This is all that was.

4 The search warrant that Mr. Wilkes referred to was
5 obtained about five days later, once they had gotten the
6 statement from Mr. Grant. And --

7 THE COURT: That's what I was actually confirming,
8 because apparently the statement that Mr. Franks gave was
9 given on the 31st of January at 4:45 in the afternoon. The
10 statement from Mr. Grant was obtained February 3rd at 3:44
11 in the afternoon. The search warrant was signed by Judge
12 Copeland on February 4th at 4:42 p.m., and apparently was
13 executed at 5:40 p.m. also on the 4th of February.

14 The Court does conclude that Mr. Franks, at the time
15 that the statement was given, was not the subject of
16 custodial interrogation necessitating Miranda rights at that
17 point in time. This was taking place about -- at the time
18 Mr. Franks gave this statement it was given about 12 hours
19 after the shooting. And obviously, based upon the testimony
20 and the evidence that's been presented, law enforcement was
21 in an evidence gathering phase at this point in time. And
22 perhaps the best indication that Mr. Franks was not a
23 suspect is the fact that he was allowed to leave the area.
24 If anything, the statement from Mr. Grant, the one that
25 really tied Mr. Franks in as a potential suspect, the one --

RAKEISHA HILL-DIRECT EXAMINATION (IN CAMERA)

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1 the statement from Mr. Grant that also helped support the
2 search warrant, that wasn't given wasn't given until several
3 days later, and it wasn't until the items were discovered at
4 Mr. Grant's house that I think Mr. -- or, sorry, Mr. Franks'
5 house that Mr. Franks became a suspect. So the Court, based
6 on the testimony and the other evidence, does conclude that
7 Miranda was not necessary at the time that law enforcement
8 spoke to Mr. Franks. It was not something where he was the
9 subject of focused custodial interrogation.

10 All right. Moving on to the cell phone?

11 MR. MOWRY: Yes, sir.

12 THE COURT: Is Mr. Cheek involved in that one, too?

13 MR. MOWRY: No, sir. He is not. I'd ask that he be
14 allowed to stop down.

15 THE COURT: Certainly.

16 (Whereupon, the witness stepped down from the witness
17 stand.)

18 MR. MOWRY: We'll call Rakeisha Hill Mobley.

19 THE COURT: Do we need to sequester Mr. Cheek still or
20 --

21 MR. MOWRY: That would be the extent of his testimony
22 at trial, Your Honor.

23 THE COURT: I didn't know for purposes of this
24 testimony.

25 MR. MOWRY: Sorry about that. I did not realize that

RAKEISHA HILL-DIRECT EXAMINATION (IN CAMERA)

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1 he was in here.

2 RAKEISHA HILL, having been first

3 duly sworn, testified as follows:

4 IN-CAMERA

5 DIRECT EXAMINATION

6 BY MR. MOWRY:

7 Q You are Rakeisha Hill Mobley; is that right?

8 A No, sir. It's now Rakeisha Hill.

9 Q Okay. Sorry about that. At the time you were Rakeisha
10 Hill Mobley; is that right?

11 A Yes, sir.

12 Q Back on January 31st, 2014?

13 A Yes, sir.

14 Q Where were you employed at that time?

15 A Laurens County Sheriff's Office.

16 Q And what were your duties with the Sheriff's Office at
17 that point?

18 A At that time I was a patrol officer on the road working
19 12 hours patrolling the area of Cross Hill.

20 Q And is Cross Hill your home?

21 A Yes, sir.

22 Q Were you born and raised there?

23 A Yes, sir.

24 Q Did you know the Defendant in this case prior to this,
25 Deshanndon Franks?

RAKEISHA HILL-DIRECT EXAMINATION (IN CAMERA)

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1 A Yes, sir.

2 Q Did you know the co-defendant Tevin Hill?

3 A Yes, sir.

4 Q How did you know them?

5 A We are both related. They are my cousins.

6 Q So you knew both of them?

7 A Yes, sir.

8 Q Did you -- were you working on the 31st of January,
9 2014?

10 A No, sir. That was my day off.

11 Q As a matter of fact, where were you when you received a
12 phone call?

13 A I was actually at the hair salon.

14 Q Getting your hair done?

15 A Yes, sir.

16 Q What was the gist of the call? What were you requested
17 to do?

18 A Lieutenant Plaxico called me and basically informed me
19 what had taken place, and he asked me if I could come in and
20 assist with controlling the crowd and just to see what was
21 going on and what had happened.

22 Q And did you, in fact, do that?

23 A Yes, sir.

24 Q What did you -- you left the hair salon and did what?

25 A I left the hair salon. Went home, changed clothes and

RAKEISHA HILL-DIRECT EXAMINATION (IN CAMERA)

76

1 I drove straight to the scene.

2 Q Were you in uniform?

3 A Yes, sir.

4 Q What did you see when you got there?

5 A Once I arrived on the scene it was a big crowd. A lot
6 of people standing around. Investigators, officers, and
7 just a lot of people there when I got there.

8 Q What were you asked to do?

9 A Once I got there I spoke with Lieutenant McIntosh and
10 briefly spoke with Lieutenant Cheek, and they had pretty
11 much investigated and spoke with some witnesses or people
12 that were there. And basically it was told to me by
13 Lieutenant McIntosh that Deshanndon Franks and Tevin Hill
14 were pretty much the last people, or were there with the
15 victims that night.

16 Q So they had been with the victims that night?

17 A Yes, sir.

18 Q They were not suspects at that time though?

19 A No, sir. Not at that time.

20 Q Were you asked to perform any tasks at that point?

21 A Yes, sir. I was asked by Lieutenant McIntosh to see if
22 I could get a hold of Tevin Hill and Deshanndon Franks just
23 to speak -- they wanted to speak with them briefly to see
24 what took place that night before they left. I was able to
25 get a hold of Tevin Hill. He was standing in the crowd. He

RAKEISHA HILL-DIRECT EXAMINATION (IN CAMERA)

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1 came. I spoke with him briefly. And then later I ended up
2 calling Deshanndon and speaking to him over the phone.

3 Q So Mr. Hill was there. Mr. Franks was requested to
4 come to the scene; is that right?

5 A Yes, sir.

6 Q Any kind of force, any kind of intimidation?

7 A No, sir.

8 Q Any kind of threats?

9 A No, sir.

10 Q So they both were there voluntarily; is that right?

11 A Yes, sir.

12 Q Anything else with regard to these Defendants?

13 A I spoke to Shanndon. He -- like I said, he came a few
14 minutes later after I spoke to him. We had a brief
15 conversation. I explained to him the procedures in
16 investigation any type of crime with them being the last two
17 there. They --

18 Q Last two known?

19 A The last two known that were there. They didn't seem,
20 you know, hesitant about any of my questions or anything.
21 Lieutenant McIntosh basically wanted -- gave me consent to
22 ask them if they would voluntarily hand over their cell
23 phones.

24 Q So he asked you to ask them to hand over the cell
25 phones?

RAKEISHA HILL-CROSS-EXAMINATION (IN CAMERA)

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1 A Yes, sir.

2 Q Why didn't he ask them himself?

3 A Being a police officer usually we have to utilize
4 whichever, you know, deputy we can in certain situations.
5 Nine times out of 10 you'll have suspects who are more
6 comfortable -- or people who are more comfortable talking to
7 a familiar face.

8 Q Again, they were not suspects at that time?

9 A They were not suspects at that time. But usually any
10 type of investigation, people are just more comfortable
11 talking to familiar faces. Usually if I talk to someone who
12 knows me, I may get more information quickly, you know,
13 voluntarily out of them versus an investigator talking to
14 them.

15 Q And you've known them pretty much all your life; is
16 that right?

17 A Yes, sir.

18 Q So what did you do? What did you ask them?

19 A It was very brief. Just I explained to them, you know,
20 we're trying to investigate to see what pretty much took
21 place. I asked them if they had any problem with handing
22 over their cell phones just so the investigators can go
23 through the phones to see where there any evidence, or just
24 to clear their names so we can pretty much get to the bottom
25 of what took place. And they both voluntarily just gave me

RAKEISHA HILL-CROSS-EXAMINATION (IN CAMERA)

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1 the phones.

2 Q Any kind of threat or promise or hope of reward or
3 anything?

4 A No, sir.

5 Q Any kind of coercion?

6 A No, sir..

7 Q Did they both voluntarily turn over their phones to
8 you?

9 A Yes, sir.

10 Q Let me hand you what's been marked as State's Exhibit
11 No. 41. Is this the phone that you received from Tevin --
12 from Deshanndon Franks?

13 A Yes, sir.

14 MR. MOWRY: Your Honor, I believe that's all I have of
15 this witness.

16 THE COURT: Any questions?

17 MR. WILKES: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WILKES:

20 Q Lieutenant McIntosh asked you to get their cell phones?

21 A Yes, sir.

22 Q Where were they when you got their cell phones? Where
23 were they?

24 A They were actually at the crime scene standing in the
25 yard.

KEITH MCINTOSH-DIRECT EXAMINATION

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1 Q Behind the police car?

2 A Yes, sir.

3 Q And you say that Lieutenant McIntosh asked you because
4 you know them? You're their cousin, right?

5 A Yes, sir.

6 Q And you all figured that that would be the best way to
7 get them to give you the cell phones since you know them and
8 you're their cousin?

9 A Yes, sir.

10 Q And you gave them the opportunity to do that so you all
11 could see if there's any evidence to give them a chance to
12 clear their name is what you said?

13 A Yes, sir.

14 Q And you took their cell phones. You didn't give them
15 back?

16 A No, sir.

17 Q Did you tell them they could have them back?

18 A No, sir.

19 MR. WILKES: No further questions.

20 THE COURT: All right, ma'am. You can -- anything
21 else?

22 MR. MOWRY: No, sir.

23 THE COURT: Thank you, ma'am. You can step down. And
24 anybody else? You can call your next witness.

25 (Whereupon, the witness stepped down from the witness

KEITH MCINTOSH-DIRECT EXAMINATION

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1 stand.)

2 MR. MOWRY: Keith McIntosh.

3 KEITH MCINTOSH, having been first
4 duly sworn, testified as follows:

5 IN-CAMERA

6 DIRECT EXAMINATION

7 BY MR. MOWRY:

8 Q You are Keith McIntosh?

9 A Yes, sir.

10 Q And I believe you, like Mr. Cheek and Mr. Blackmon, are
11 a Lieutenant with the Lauren's County Sheriff's Office; is
12 that correct?

13 A Yes, sir.

14 Q And you are an investigator?

15 A Yes, sir.

16 Q As part of your duties were you involved on the team
17 that was investigating the murders of Sammie Leake and
18 Nikesha James back on January 31st of 2014?

19 A Yes, sir. I was.

20 Q Did you respond to the scene as part of that team?

21 A Yes, sir. Myself and Lieutenant Cheek was together.

22 Q Were there quite a few officers down there?

23 A There was already many officers there.

24 Q Were there a lot of people there?

25 A Yes, sir.

KEITH MCINTOSH-DIRECT EXAMINATION

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1 Q Were you particularly interested in talking with or
2 getting information from Deshanndon Franks and Tevin Hill?

3 A Yes, sir.

4 Q Why was that?

5 A We had been told that they were possibly some of the
6 last ones that was at that residence during the night and
7 early morning.

8 Q So you wanted to gather information from them as part
9 of your investigation; is that right?

10 A Yes, sir.

11 Q Were they suspects at this time?

12 A No, sir.

13 Q Only later did they become suspects; is that right?

14 A Yes, sir.

15 Q Because they had been at the scene were you interested
16 in seeing what might have been on their cell phones, call
17 logs, that sort of thing? Any information that you might
18 derive from them?

19 A Yes, sir.

20 Q Why were you interested in that?

21 A Just see what was on the phone. The location. Because
22 you can gather enough information you can tell cell phone
23 texts or calls that were made or GPS coordinates of where
24 the phones was at. If they made a phone call any time
25 during that evening hours, morning hours.

KEITH MCINTOSH-DIRECT EXAMINATION

83

1 Q Had you already gathered a cell phone that belonged to
2 the victim, Nikesha James?

3 A Yes, sir. We had.

4 Q Did you think that information on those cell phones
5 might have led you perhaps to a killer that had been
6 contacted by one of the individuals that had been there?

7 A Yes, sir.

8 Q Was that the reason that you were wanting to get a hold
9 of Mr. Franks and Mr. Hill's cell phones?

10 A Yes, sir. It was.

11 Q I'm going to hand you what's been marked as State's
12 Exhibit No. 41. Is that Deshanndon Franks' cell phone?

13 A Yes, sir.

14 Q How did you -- how did that come into law enforcement
15 possession?

16 A Deputy Keisha Hill was part of the -- investigator at
17 that time. She was on scene, and speaking with her. She
18 was already speaking with Tevin Hill and Deshanndon Franks.
19 And we asked about the phones and she agreed to see if they
20 were willing to give them up.

21 Q Again, were they suspects?

22 A No, sir.

23 Q How were you going to go about gathering information
24 from those cell phones?

25 A I was going to obtain a search warrant to have their

KEITH MCINTOSH-DIRECT EXAMINATION

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1 phones -- what we in technical terms call dump the cell
2 phone to obtain that information from the cell phone.

3 Q And again, this was just part of the routine
4 investigation not focused on them as a suspect?

5 A Yes, sir. It's part of the routine investigation.

6 Q Did you, in fact, go about getting a search warrant?

7 A Yes, sir. I did.

8 Q How did you do that?

9 A We got it typed up on the 31st, which is the day of the
10 incident. The murder. And then February 1st I obtained a
11 signature from Judge Tucker at her house. This was Saturday
12 morning.

13 Q So this was after you had obtained the phones from
14 them?

15 A Yes, sir.

16 Q About what time of day do you think that was that you
17 had gotten the phones?

18 A It would have -- had to be over in late in the day,
19 4:00 or 5:00 I would assume. You know, it was probably
20 somewhere around there. I can't remember exactly.

21 Q So late afternoon?

22 A Yes, sir.

23 MR. MOWRY: If I could get this marked as a Court's
24 Exhibit, Your Honor.

25 (Whereupon, Court's Exhibit No. 3 was marked for

KEITH MCINTOSH-DIRECT EXAMINATION

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1 identification.)

2 Q I'm going to hand you what's been marked as Court's
3 Exhibit No. 3. Do you recognize that?

4 A Yes, sir. I do.

5 Q What is that, please, sir?

6 A It's a search warrant signed by Judge Tucker giving a
7 description of what we wanted to search and probable cause
8 of what we wanted to search.

9 Q You had gathered a grand total of three cell phones; is
10 that right?

11 A Yes, sir.

12 Q A cell phone that was found at the scene from the
13 victim, Nikesha James, and then the cell phone for Mr.
14 Franks, and the cell phone for Mr. Hill; is that right?

15 A Yes, sir.

16 Q How -- describe how you obtained that signed search
17 warrant from Judge Tucker. What process did you go through
18 with that?

19 A The process we went through. We just met with her and
20 went over the case with her and why we was there to get a
21 search warrant. We believe it's a possible -- they were
22 possible suspects and we were doing an investigation on the
23 two individuals that we obtained the cell phones from.

24 Q Did you believe they were possible suspects at that
25 time?

KEITH MCINTOSH-DIRECT EXAMINATION

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- 1 A Well, we did know that they were -- according to the
2 testimony, the witnesses we had, that they had been there at
3 the scene that night.
- 4 Q Right. But were they suspects at that time?
- 5 A No, sir.
- 6 Q You were trying to eliminate them --
- 7 A Right. Trying to eliminate them or -- yeah.
- 8 Q From any suspicion?
- 9 A Yes, sir.
- 10 Q What -- were you sworn in before you began talking with
11 Judge Tucker?
- 12 A Yes, sir. I was.
- 13 Q What sort of information did you provide to her?
- 14 A I provided the incident that took place, where it took
15 place at. Just told her about the two victims that we had
16 that was shot and that was murdered. And that we had
17 obtained some cell phones from two individuals that we
18 wanted to look into a little bit closer.
- 19 Q Did you tell her why you wanted to look into those
20 particular cell phones?
- 21 A Only that we needed them to either -- we needed to
22 eliminate them or move on to somebody else or --
- 23 Q Did you tell her why they were of interest?
- 24 A Yes, sir. Because they had been there at the residence
25 during the evening hours and morning hours.

KEITH MCINTOSH-DIRECT EXAMINATION

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1 Q Did you go over statements from individuals that --
2 that individuals had made, including the Defendants'
3 statements --

4 A Yes, sir. I believe we did.

5 Q -- to establish that fact?

6 A Yes, sir.

7 Q And did you, in fact -- did she, in fact, sign the
8 search warrant?

9 A Yes, sir. She did.

10 Q After -- I'm not going to ask you the whole process.
11 But after that did you proceed to have the cell phones
12 dumped?

13 A Yes, sir.

14 Q And did you receive information from that?

15 A Yes, sir.

16 Q How did you go about doing that?

17 A I met with -- I had already talked to Investigator
18 Rainey from Greenville County Sheriff's Office.

19 Q That would be Mike Rainey?

20 A Mike Rainey. Previously worked some cases back and
21 forth from Greenville to us on cell phones. And I told him
22 what I wanted to have done and he agreed to meet me Saturday
23 morning in the Princeton area. He would have his equipment
24 with him, that he would be able to dump the cell phones for
25 me.

KEITH MCINTOSH-DIRECT EXAMINATION

88

1 Q And even though the obtaining of the cell phones had
2 been done with consent, do you know the Defendants knew why
3 they were turning the cell phones over? You got the search
4 warrant out of an abundance of caution; is that right?

5 A Yes, sir. For legal reasons.

6 Q Did you also get cell tower information?

7 A Yes, sir. I had to take it directly from the cell
8 phone carrier itself. When you dump phones you can't get
9 GPS coordinates from that. You have to go through the cell
10 phone carrier. Whichever one it is.

11 Q And I'm going to hand you -- well, let's see here.

12 (Whereupon, Court's Exhibit No. 4 was marked for
13 identification.)

14 Q I'm going to hand you what's been marked as Court's
15 Exhibit No. 4. What is that, please, sir?

16 A This is a cover sheet where I faxed a emergency
17 situation disclosure form to Verizon Wireless to obtain GPS
18 coordinates, or cell phone tower locations, for this
19 particular phone.

20 Q You believed that it was necessary to get this
21 information fairly quickly as opposed to having to get Court
22 orders and have that dealt with?

23 A Yes, sir. In my experiences when you send the search
24 warrants off to get cell phone information for whatever
25 you're getting sometimes can take up to two, three weeks.

KEITH MCINTOSH-CROSS-EXAMINATION (IN CAMERA)

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1 Depends on the carrier. By doing this emergency situation
2 disclosure form, based on information that we received that
3 people was scared, fearful for their lives in the Cross Hill
4 area, and by doing that I was able to get this situation --
5 emergency situation disclosure form sent to them and they
6 agreed to send me GPS coordinates on the cell phone.

7 Q So these GPS coordinates, to your knowledge, were kept
8 as business records; is that right?

9 A Yes, sir.

10 Q And were maintained by them; is that right?

11 A Yes, sir.

12 Q And that was sufficient for them to turn over their
13 business records --

14 A Yes, sir.

15 Q -- is that right?

16 A Yes, sir.

17 Q That was all the coverage they wanted; is that right?

18 A Yes, sir. At that time. Yes, sir.

19 MR. MOWRY: Beg the Court's indulgence for just one
20 moment.

21 THE COURT: Yes, sir.

22 Q So you ended up receiving quite a bit of information
23 from Verizon; is that correct?

24 A Yes, sir..

25 Q All kinds of call data, incoming, outgoing, all sorts

KEITH MCINTOSH-CROSS-EXAMINATION (IN CAMERA)

90

1 of stuff; is that right?

2 A Yes, sir.

3 Q As well as the tower data?

4 A Yes, sir.

5 Q But that was all that Verizon requested of you before
6 they turned over their business records?

7 A Yes, sir. It was.

8 MR. MOWRY: Your Honor, I believe that's all I have.

9 If you'd answer any of Mr. Wilkes' questions, please, sir.

10 THE COURT: Mr. Wilkes.

11 CROSS-EXAMINATION

12 BY MR. WILKES:

13 Q And you say you took the phones from Officer Hill?

14 A Keisha. Deputy Keisha Hill.

15 Q Deputy Hill. What did you do with the phones?

16 A They stayed in my presence until I obtained the search
17 warrant. Went with the cell phones the next morning to have
18 Investigator Mike Rainey. And then I turned everything back
19 over to evidence.

20 Q And why did you keep those phones with you?

21 A Because I was going the next morning. It was on Friday
22 evening. It was late when we left there Friday evening, so
23 I just kept them overnight.

24 Q And did you tell Mr. Franks, Mr. Hill that you had
25 their cell phones?

KEITH MCINTOSH-CROSS-EXAMINATION (IN CAMERA)

91

1 A They were present when they -- they were present when
2 we took receipt of the cell phones.

3 Q And could he have called you and gotten that cell phone
4 back?

5 A It's a possibility. I mean, I --

6 Q How would he have done that?

7 A I guess he could have made a call or whatever. They
8 were freely given.

9 Q Would you have given them back at that point? You were
10 taking them to the magistrate the next day to get the search
11 warrant, right?

12 A Yes, sir. I probably would have. But they never asked
13 for them.

14 Q Excuse me?

15 A They never asked for the cell phones back.

16 Q And that's because -- I mean, you had the cell phones
17 in your personal possession?

18 A Yes, sir.

19 Q Didn't put them in PD, anything like that? You just
20 had them with you?

21 A To my knowledge I did. It's a possibility, but it's
22 been so long. I know it was late when we left and it was
23 early when I got up and went to see the judge.

24 Q Now, you also were involved in the investigation. You
25 said you took the statements from other people?

KEITH MCINTOSH-CROSS-EXAMINATION (IN CAMERA)

92

1 A No, sir. I didn't take any written statements. I was
2 there when statements were given and heard the
3 conversations.

4 Q Did you take a written statement from Mr. Franks?

5 A No, sir.

6 Q So you didn't take a written statement from anybody?

7 A No, sir. I didn't handle that part of the
8 investigation. I was not involved in that part of the
9 investigation.

10 Q Were you aware of any of the statements people had
11 given?

12 A I was aware that they had given statements. Franks and
13 Mr. Hill and some other witnesses.

14 Q And were you aware of the content of those statements?

15 A Somewhat. I wasn't present when some of the statements
16 were given.

17 Q Is it fair to say that you didn't really know the
18 content of some of the statements given, or you did know the
19 contents?

20 A No, sir. I was not aware of the total content. Only
21 what I had been told by the other investigators. I was not
22 present when the statements were given.

23 Q What are the contents of the other statements that you
24 were aware of?

25 A It would be hard for me to say exactly what the

KEITH MCINTOSH-CROSS-EXAMINATION (IN CAMERA)

93

1 contents were other than that they -- between the two
2 suspects, two people there, they said that they had been
3 there. Another person said that they had been there and
4 they left with one of the individuals.

5 Q And there were other people there about the same time,
6 correct?

7 A While we were there?

8 Q No. I mean that evening.

9 A No. I couldn't tell you, sir.

10 Q So you can't tell me what any of the other witnesses
11 said?

12 A I can tell you what the investigators told me --

13 Q Well, tell me.

14 A -- and that they -- when they talked to Mr. Hill and
15 they talked to Mr. Franks that they said that they had been
16 there at the residence late or early morning hours.

17 Q Is that it? There are other witnesses?

18 A There's other witnesses but I'm not -- I can't testify
19 to what they said.

20 Q Okay. Very good. Did you take anybody else's cell
21 phone?

22 A No, sir. Nobody but the victim's. The victim that was
23 in the trailer.

24 Q And Mr. Franks and Mr. Hill's?

25 A Mr. Hill and Mr. Franks.

KEITH MCINTOSH-CROSS-EXAMINATION (IN CAMERA)

94

1 Q And you said the basis of your application for records
2 from Verizon was what?

3 A The basis of what we wanted was an emergency situation
4 disclosure form that is -- they call it exigent situation to
5 where you can obtain records quicker and sometimes more
6 efficient. But like I stated earlier, that sometimes with a
7 search warrant, if you obtain certain information it takes a
8 long time to get it. And due to the fact we was working a
9 double homicide we felt like we needed to move on as quick
10 as we could.

11 Q And what was the date that you sent that to Verizon?

12 A On the 3rd.

13 Q Of?

14 A Of February.

15 Q What time?

16 A I don't see a time on here, sir.

17 Q What was the condition? There's four -- three or four,
18 if I recall, conditions that they indicated you may base
19 your request on. What was the one that you based your
20 request on?

21 A I'm not exactly sure I understand what you're asking.

22 Q If you'll look at their form, does their form list four
23 or so conditions to request? The bases to request?

24 A It says, "Does this request potential bodily danger,
25 death, serious physical injury to a person, necessary

KEITH MCINTOSH-CROSS-EXAMINATION (IN CAMERA)

95

1 immediate release of information related to the emergency."

2 Q Injury to person? Is that the basis on which you --

3 A Based on the information that we -- calls that we had
4 been getting concerning the fear of the local residents.

5 Q And is that one of the conditions to request from
6 Verizon their records?

7 A Yes, sir. That's what it says here, and that's why I
8 was able to obtain it.

9 Q And the reason you did not obtain a search warrant for
10 those records was what?

11 A Well, I did obtain a search warrant to dump the phone.

12 Q Right.

13 A But Verizon had that on the GPS coordinates I had to
14 get Verizon to send those to me. You can't get that
15 information when you dump the cell phone.

16 Q Right.

17 A You can only get the -- you have to go through that.
18 So I had to get Verizon to send me that information. And
19 then it would still -- it would have took some period of
20 time.

21 Q To get a search warrant?

22 A No, sir. To get the records back from the search
23 warrant to give us cell phone tower locations.

24 Q But you could have gotten the search warrant?

25 A Yes, sir. I did get one.

KEITH MCINTOSH-REDIRECT EXAMINATION (IN CAMERA)

96

1 Q Did you serve Verizon with a search warrant?

2 A No, sir. I did the exigent situation for them. I did
3 the search warrant to dump the phone on the Saturday
4 morning.

5 Q So, in other words, you simply made a request -- no
6 search warrant, but just made a request from Verizon --

7 A Yes, sir.

8 Q -- and they gave it to you?

9 A Yes, sir.

10 MR. WILKES: No further questions, Your Honor.

11 MR. MOWRY: Just a couple, Your Honor.

12 THE COURT: Go ahead.

13 REDIRECT EXAMINATION

14 BY MR. MOWRY:

15 Q Mr. -- or Lieutenant McIntosh, did the Defendant have
16 any expectation of privacy in these business records that
17 was held by Verizon?

18 MR. WILKES: Your Honor, I'm going to object. That's a
19 legal question.

20 THE COURT: I'll sustain the objection. That's a call
21 for me to make.

22 Q Then let me ask this. Did Verizon turn over all the
23 records simply based on the exigent circumstances request --

24 A Yes.

25 Q -- by you?

KEITH MCINTOSH-RECROSS-EXAMINATION (IN CAMERA)

97

1 A They did.

2 Q Mr. Wilkes also asked you about the fact that you had
3 kept the cell phone in your possession. Did you keep it
4 secure?

5 A Yes, sir.

6 Q How did you do that?

7 A I kept it secure in my office with the doors locked.

8 Q Okay. This was a Friday evening --

9 A Yes, sir.

10 Q -- by the time you'd gotten a hold of the item; is that
11 right?

12 A Yes, sir.

13 Q What are the work hours of the evidence custodian?

14 A He usually leaves at 5:00, and I don't believe he was
15 on scene with us.

16 Q Does he work over the weekend?

17 A No, sir.

18 Q So if you had put it in the evidence locker would you
19 have been able to get it back until Monday?

20 A No, sir. He's the only one that can retrieve the items
21 for us.

22 MR. MOWRY: I believe that's all I have, Your Honor.

23 RECROSS-EXAMINATION

24 BY MR. WILKES:

25 Q Is it fair to say that the evidence -- if this had been

KEITH MCINTOSH-EXAMINATION BY THE COURT (IN CAMERA)

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1 a Tuesday then you could have checked it into evidence?

2 A Yes, sir.

3 Q And would have?

4 A Probably. Yes, sir.

5 THE COURT: Just a few points of clarification, if you
6 don't mind, Lieutenant.

7 EXAMINATION

8 BY THE COURT:

9 Q The cell phones -- you received three cell phones.
10 Were any of those cell phones pass code protected or
11 anything like that with, you know, a four digit pin that you
12 had to plug in before you could access the main menu?

13 A Your Honor, to the best of my knowledge, the victim's
14 cell phone was pass code protected. It took some time to
15 get into that one. I don't believe the other two were, but
16 I'm almost positive hers was.

17 THE COURT: May I see the documents that you were
18 referring to? The statement to Verizon and all that other?
19 Thank you.

20 Just for purposes of my clarification. The hearing
21 that we're addressing now, is it limited solely to the
22 question of the propriety of the Verizon location data being
23 provided, or does it also -- are we also dealing with an
24 issue of the search warrant of the Defendant's phone?
25 Because I haven't heard that they retrieved anything

1 incriminating from his telephone. In the way of text
2 messages, they did receive something incriminating in the
3 way of text messages?

4 MR. WILKES: All they say, that there's incriminating
5 evidence obtained that they will be introducing.

6 MR. MOWRY: There is a photograph, Your Honor. We were
7 going through the process, not the result.

8 THE COURT: Got you.

9 MR. MOWRY: And there is a photograph of what our
10 expert will say is a Ruger 9 millimeter handgun.

11 THE COURT: That's right. You told me that yesterday.

12 MR. MOWRY: With an extended magazine.

13 THE COURT: Right. We did address that pretrial. I'm
14 sorry. I'd forgotten it was the phone that you got that
15 from.

16 MR. WILKES: And if we're done with questions, I'll
17 state my basis if you'd like me to.

18 THE COURT: Sure. Go ahead, please.

19 MR. WILKES: Your Honor, it addresses two things.
20 Addressing, of course, the search warrant issue. The
21 seizure of the phone -- the big question is the seizure of
22 the phone preceding the search warrant. In this case, we
23 had testimony a minute ago about magistrate's -- going to
24 the magistrate's office at home, I think, on the weekend to
25 get the search warrant. There's no reason they couldn't

1 have retrieved the search warrant to get the search
2 warrants. But what they did instead was take the cell
3 phones from them. And at that time they've said that
4 they're not suspects. You know, they just asked them nicely
5 for it. But the testimony was that the cousin of the
6 Defendant was asked to do it because it's more likely that
7 he would give her the cell phone if she asked for it.

8 Now, the important testimony though is their purpose in
9 getting the cell phone was to get evidence from it. And
10 that was the testimony from the witness stand. They were
11 specifically -- they intended to deny it. But there was
12 clear evidence that from which they wanted to see if there
13 was any evidence on the phone and use it, as she said, to
14 clear their name. So they are suspects. If you're clearing
15 your name you're not a witness. You're a suspect. There's
16 no question about that. And they are trying to get those
17 cell phones in a way that they can avoid the search warrant,
18 which they did by having the cousin ask for them.

19 Now, the important part is he couldn't get that cell
20 phone back if he wanted, and he wasn't told he could get
21 that cell phone back. And that cell phone would have gone
22 into B&E had it been Monday, Tuesday, Wednesday. But
23 instead it was locked in a drawer here at the -- or over
24 there at the police department. So that is a seizure. They
25 are attempting to say that it's a voluntary thing, but it is

1 not. They asked for it specifically to obtain the evidence
2 from it that would be incriminating. She said to clear
3 their names. Even the Lieutenant, I believe, said they
4 needed to eliminate them apparently as suspects. The
5 Lieutenant even said the word suspects, referring to Mr.
6 Franks and Hill.

7 In this case there's a seizure of a cell phone. The
8 subsequent search warrant doesn't cure unlawful seizure.
9 And especially if a subsequent search warrant is invalid.
10 They haven't established that there was probable cause for
11 the search warrant. The Lieutenant testified that he did
12 not know the facts given by the other people. So there's no
13 question as far as the supplementing of the search warrant.
14 The search warrant obviously has to stand on its face and we
15 would submit that there's insufficient probable cause on
16 those.

17 Also, I would say that they haven't obtained the
18 records from Verizon which is essentially what would be the
19 basis of their expert testimony. It won't be from the cell
20 phone. Only -- as I understand it, only the photograph from
21 the cell phone is going to be an issue. The expert
22 testimony, if I'm not mistaken, comes from Verizon records.
23 Those records were obtained without a search warrant. They
24 were obtained just by asking for them. And I would submit
25 to the Court that a search warrant could have been obtained.

1 Obviously it could have been obtained if they had probable
2 cause. But they got around the search warrant and obtained
3 records which Mr. Franks arguably has a privacy interest in.
4 I will disclose to the Court, contrary to that position,
5 there has been an unpublished case to the contrary in South
6 Carolina referring to Fourth Circuit cases. But the issue
7 of the privacy interest in cell phones stored data has not
8 been resolved by the Supreme Court. So we'll maintain that
9 he did have a privacy interest and they should have obtained
10 a search warrant and that they failed to do so.

11 THE COURT: I thought you mentioned unpublished
12 opinions, *State v. Drayton* when it came out last year.

13 MR. WILKES: That is published. It is published.
14 *Drayton* is the correct one. And I understand where we stand
15 with that. But I'll submit that since that has not been
16 finally decided, we'll maintain that that is a violation of
17 his privacy.

18 THE COURT: I did have a chance to review *Drayton* and
19 *Drayton* relies more on the explicit right to privacy
20 contained in the South Carolina constitution than it does
21 federal search and seizure law. But I understand your
22 position with regard to federal protections relating to
23 search and seizure.

24 Any additional argument from the State on this
25 question?

1 MR. MOWRY: Your Honor, I would simply say that it is
2 uncontroverted that the -- if you want to call it seizure.
3 The fact that the Defendants turned the cell phones over to
4 law enforcement, that was voluntary. It was simply
5 requested. There was no force, no coercion, no threat, no
6 promise, no nothing. They simply did. The explanation was
7 to get the information and to help with the investigation.
8 You know, clearing their names and that sort of thing.
9 Quite frankly I think that was probably a slip by Deputy
10 Hill, because she then clarified that they were not suspects
11 at the time. But at any rate, that part was done
12 voluntarily. And then the purpose of it was to get the
13 information. They understood that when they turned their
14 cell phones over. But out of an abundance of caution, as
15 Lieutenant McIntosh said, he went ahead and obtained a
16 search warrant to go ahead and dump the information.

17 The cell tower information that came from Verizon that
18 Lieutenant McIntosh referred to was not part of the cell
19 phone. This was -- these were business records kept in the
20 normal course of business by Verizon. This was the -- I
21 mean, they get probably millions of requests like this from
22 law enforcement on an annual basis. And if they had to deal
23 with these individually, the court orders and everything
24 else, it would -- that would be the only thing that they
25 would be doing rather than providing cell service. So this

1 is the means by which they have determined we will turn over
2 our business records. And that was, in fact, done.

3 So, in other words, no expectation or privacy by the
4 Defendant in those business records, and the law enforcement
5 attempted to follow as closely as they could, or protect as
6 much as they could the Defendant's Fourth Amendment rights.

7 MR. WILKES: May I respond?

8 THE COURT: Go ahead, please.

9 MR. WILKES: Business records is not a magical term.
10 Hospital records are business records. You have privacy
11 interest in those. An affidavit of the custodian doesn't
12 make those necessarily admissible or waive the privacy.

13 But if I may at this moment, I would like to renew my
14 prior objection on Mr. Franks' statement and incorporate the
15 testimony that we have just heard, because I think the
16 testimony before was they're not a suspect, he's not a
17 suspect, it's all voluntary. I think that this testimony
18 that we've just heard at this motion would show to the
19 contrary they were, in fact, suspects. They were looking
20 for evidence to clear them. And so, the testimony here
21 would contradict what Lieutenant Cheek said -- or Deputy
22 Cheek or Lieutenant Cheek?

23 THE COURT: Lieutenant.

24 MR. WILKES: Lieutenant Cheek had just testified to
25 about they weren't suspects.

1 THE COURT: I do understand your position. In light of
2 *Drayton* and existing precedent, as it relates to the cell
3 phone location data obtained from Verizon the Court will
4 deny the Defendant's motion to suppress that. With regard
5 to the actual cell phones themselves and the photograph
6 obtained off the Defendant's cell phone the Court will also
7 deny the Defendant's motion. The only evidence that has
8 been presented here is that the Defendant voluntarily
9 relinquished a cell phone which apparently was not pass word
10 or pass code protected to law enforcement. This is most
11 analogous to a consent search where the police simply asked
12 permission to search one's residence, one's car, what have
13 you. I think that that's probably the closest analogy. It
14 stands to reason that if you hand the police -- instead of
15 it being a telephone it had been a file folder with a bunch
16 of pictures in them that the police had requested and he
17 voluntarily handed over that file folder, it stands to
18 reason that the police would be interested in seeing what's
19 inside the file folder and that they would be looking inside
20 the file folder, just like they looked inside the phone. I
21 think it was probably appropriate, at least out of an
22 abundance of caution did obtain a search warrant for the
23 phone's contents. I'm not entirely sure that that search
24 warrant was necessary. But to the extent that that search
25 warrant may have been necessary, the Court would conclude

1 that it is supported by sufficient probably cause to give
2 the magistrate enough information to grant the search of
3 that cell phone. So as an additional sustaining ground the
4 Court would conclude that the warrant was valid to be
5 issued, even though the Court characterizes this or really
6 sees this more as a consent search type of a situation for
7 the reasons I have explained. But your objection is noted.

8 MR. WILKES: Thank you, Your Honor. Will you also,
9 please, in light of the testimony that we have heard, give a
10 ruling on record.

11 THE COURT: The same ruling stands. The timing of the
12 interviews has not changed, and obviously you know you're
13 dealing with different officers investigating different
14 aspects of this case. And I do not believe that Mr. Franks,
15 up until such time as -- I think it was quite honestly Mr.
16 Grant's statement, if I understand this case correctly, at
17 most Mr. Franks and Mr. Hill were people of interest. To
18 say that they were suspects at this point in time when the
19 statement from Mr. Franks was obtained, I think that's
20 leaning too far. They clearly were not suspects until such
21 time as Mr. Grant gave his statement about what he observed.
22 The person wearing clothing that matched Mr. Franks'
23 clothing, the shaking of the head on the front porch after
24 he heard the three shots, et cetera. So I'll restate and
25 reaffirm the Court's prior ruling on the *Jackson v. Denno* as

1 it relates to Mr. Franks' statement.

2 Sir, you can step down. Sorry to keep you waiting.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 THE COURT: Do we have the jury yet? I'm assuming so.
7 Let's confirm that we have them.

8 Anything else?

9 MR. MOWRY: No, sir. Not from the State, I don't
10 believe.

11 THE COURT: Mr. Wilkes?

12 MR. WILKES: No, sir.

13 THE COURT: Very good. Let's take five minutes for
14 ourselves, and that way we can launch straight into the
15 instructions, opening argument, and maybe get a witness in.

16 MR. MOWRY: That would be great. Thank you, Your
17 Honor.

18 (Whereupon, a recess was held from 11:54 a.m. to 11:59
19 a.m.)

20 THE COURT: I do know the jury is here. My intention
21 is to go ahead and proceed with the initial instructions and
22 opening arguments, and then hopefully at least one witness
23 before a lunch break.

24 MR. MOWRY: I don't think that's going to be a problem,
25 Your Honor. Our first witness would be just simply the

1 witness who discovered the bodies and that was all.

2 THE COURT: Mr. Wilkes?

3 MR. WILKES: May we approach? I have one issue.

4 THE COURT: Sure. Come on up.

5 (Whereupon, a sidebar was held.)

6 THE COURT: Let's go ahead and have the jury, please.

7 Mr. Bentley, if you want to just let him borrow your

8 computer so he can sit next to his client and flip through

9 it while I'm doing the initial instructions to the jury, the

10 boilerplate that I do, unless there's --

11 MR. WILKES: I can already say what --

12 THE COURT: You already see something?

13 MR. WILKES: I can say it right quick.

14 THE COURT: All right. Go ahead.

15 (Whereupon, a sidebar was held.)

16 THE COURT: Mr. Wilkes -- for the record, Mr. Wilkes

17 had made an objection. We'll put the grounds to that on the

18 record later. And I overruled the objection based on

19 initial conversations with the attorneys at the bench.

20 (Whereupon, the jury entered the courtroom at 12:00

21 p.m.)

22 THE BAILIFF: All jurors are present, Your Honor.

23 THE COURT: We'll let the record reflect that the jury

24 is back and seated. Ladies and gentlemen of the jury, I

25 know that you were here at 9:00. I was also here at 9:00.

1 trial you'll be in as best a position as possible to
2 conclude or to find what the true facts are and thus apply
3 the law to those facts.

4 Now, in order to give the parties an opportunity to
5 object to anything -- or I'm going to give the parties an
6 opportunity to object to anything I said during these
7 opening remarks and then we will proceed with opening
8 arguments.

9 Any objections from the State?

10 MR. MOWRY: No exceptions, no objections, Your Honor.

11 THE COURT: From the Defense?

12 MR. WILKES: None, Your Honor.

13 THE COURT: Very good. We'll now begin the trial. Mr.
14 Mowry, you're recognized for your opening, sir.

15 MR. MOWRY: Thank you, very much, Your Honor.

16 OPENING STATEMENT

17 BY MR. MOWRY: Good morning, ladies and gentlemen. My
18 name, again, if you will allow me to reintroduce myself, is
19 Warren Mowry. I am Deputy Solicitor for the Eighth Judicial
20 Circuit in South Carolina. Now, the Eighth Circuit is made
21 up of four counties. It's Newberry, Abbeville, Greenwood
22 and Laurens. And Solicitor Stumbo, your elected Circuit
23 Solicitor, has appointed me as the supervisor -- supervising
24 attorney here in Laurens County. I've worked exclusively
25 here.

1 Again, at the table with me are Lance Sheek. Lance is
2 a Senior Assistant who will be trying the case with me. And
3 our Investigator Walter Bentley will be with us as well.

4 As His Honor told you, we are here to try that
5 Defendant, Deshanndon Markell Franks. Mr. Franks is charged
6 with the most serious offenses a human being can commit. He
7 is charged with two counts of murder. He is also charged
8 with possession of a pistol during a violent crime, the
9 murders.

10 What are the State's duties in this case? Every
11 criminal case that comes up in South Carolina, whether it's
12 a Magistrate Court or here in the Court of General Sessions,
13 is brought in the name of the people of the State of South
14 Carolina. And that's why every case you see is entitled the
15 State versus whomever. Now, the State always has the burden
16 of proving the case. That's the way our Constitution is
17 devised, or the laws of this country are devised. The State
18 has the burden of proving the case, and we must do so beyond
19 a reasonable doubt.

20 Now, a reasonable doubt is not a whimsical doubt. It's
21 not a fanciful doubt. It's a substantial doubt. It's a
22 doubt which fails to leave you firmly convinced of
23 somebody's guilt. So if we prove this case beyond a
24 reasonable doubt we have left you firmly convinced of the
25 Defendant's guilt. Now, that doesn't mean that it's 100

1 percent proof. There's almost nothing that we can be 100
2 percent sure of. I mean, I was a history major in college.
3 I studied -- I studied European history. I've seen maps of
4 Russia. I've read textbooks about Russia. But I've never
5 been there. So I can't be 100 percent sure that Russia
6 exists. But to disbelieve that, to think that Russia
7 somehow didn't exist I'd have to think that all the authors
8 of these textbooks and all the map makers throughout all the
9 centuries were trying to fool me. That's just not
10 reasonable. That's just not credible. So I am convinced
11 beyond a reasonable doubt, in other words, that Russia
12 exists even though I haven't been there.

13 Now, let's talk a little bit about the two charges.
14 The two different charges that we have in this case. The
15 Defendant is charged with murdering Sammie Leake, and you'll
16 also here him called Darryl, that's his middle name, and
17 Nikesha James back on the 31st of January of 2014. This
18 occurred in the Cross Hill area of Laurens County. And what
19 we submit, ladies and gentlemen, is that the Defendant was
20 at the victims' mobile home. Nikesha James was the niece of
21 Sammie Leake and they both were residing at the mobile home.
22 The Defendant was there. And for whatever reason, a reason
23 we don't know, he ended up shooting them to death.

24 Now, I said we don't know. The reason that a person
25 commits a crime is called motive. Motive is not something

1 that the State needs to prove. I wish we could. I wish we
2 could define exactly why Mr. Franks did what he did. But I
3 think you will be left with no reasonable doubt by the time
4 we have concluded that, in fact, he did shoot them to death.
5 For whatever reason, he is the one that brought about their
6 deaths.

7 Now, this is the legal definition of murder. "An
8 unlawful killing of a human being with malice aforethought
9 either expressed or implied." An unlawful killing. Any
10 time you have a killing of one person by another it is a
11 homicide, but not every -- I apologize. Excuse me. I feel
12 like I swallowed a feather. Not every killing of one human
13 being by another is a criminal homicide. Sometimes it is
14 legal to be able to do that. Sometimes you have
15 justification. If you're being attacked by somebody who's
16 wielding a knife and you happen to have a gun and you haven't
17 done anything to bring that attack on and you take that gun
18 and shoot that individual, you're acting in self-defense,
19 and that's a justified homicide. You have killed that
20 person but you have done it within the bounds of the law.
21 If you're a soldier in wartime and you kill the enemy during
22 a battle, there's nothing criminal about that. Again, our
23 law allows that kind of thing to occur. Legally you are
24 allowed to kill the enemy in wartime. You're an
25 executioner. I don't mean to get into this too much. But

1 the State can actually execute convicted murders in certain
2 circumstances, and the person that carries out the execution
3 is killing a human being, but there is a justification for
4 it. Or if you're driving along and somebody -- you're
5 obeying all the traffic laws but somebody comes running out
6 in front of me, you couldn't have seen it, no reasonable
7 person could have stopped in time and that person is struck
8 and killed, that's an accident. There's no criminal
9 sanction that's going to come from it. That is called an
10 excusable homicide. But that's not what we have here.
11 That's not what we have here. What we have here is a
12 criminal homicide. And we will prove that Deshanndon
13 Franks shot and killed Sammie Leake and Nikesha James. No
14 justification. No excuse.

15 We will also, ladies and gentlemen, prove malice.
16 Malice is a wickedness or an evil intent. And then we'll
17 also prove that that malice existed aforethought. That it
18 wasn't an accident. That it wasn't in the heat of the
19 moment. And we will also prove expressed or inferred
20 malice. And I will submit to you that you will have reason
21 to believe at the close of this trial that the use of the
22 deadly weapon by the Defendant, the pistol which killed
23 them, was malice. Was with malice..

24 Possession of a pistol during the commission of a
25 violent crime is another charge that is against the

1 Defendant. There are two types of possession that a person
2 might have. Actual possession and constructive possession.
3 I possess this pen right now. It is in my hand. It's in my
4 control. But I've got a car out in the parking lot. I
5 don't even have my keys with me. But I constructively
6 possess that car. This distinction though we're not all
7 that concerned with. We will submit to you the testimony we
8 submit will show that the Defendant was in actual possession
9 of a 9 millimeter pistol. Not only earlier in the night,
10 but the time the victims were killed. And that you will be
11 able to believe beyond a reasonable doubt that the Defendant
12 is guilty of this crime as well.

13 Now, there are two types of evidence that we will give
14 to you. One of them is called direct evidence. That's
15 testimony from somebody that has gathered the information
16 through the use of one of the five senses, either from
17 hearing or taste or smell or touch or sight. For example,
18 an eyewitness would have direct evidence that would be
19 offered to you. But we also have what is called
20 circumstantial evidence. And you can imagine the
21 circumstances in a case being each individually a piece of a
22 puzzle. And as that puzzle is assembled each piece adds to
23 it. No one piece gives you the clue of what that picture
24 is. But all of those pieces taken together and assembled
25 will show you exactly what the picture is. What the result

1 is.

2 Couple of ways understanding circumstantial evidence.
3 I've got animals up there, the turtle and the cat and the
4 mouse. Imagine if you're walking along and you see a turtle
5 on top of a fence post. Now, turtles don't climb, so how
6 did the turtle get up there? They're heavy enough that a
7 gust of wind is not going to lift them up there and put them
8 up there. Somebody must have come along, picked up the
9 turtle and put him up there. That's the only reasonable
10 conclusion that you can get from that evidence. That's
11 circumstantial evidence. You didn't see hit happening. But
12 there's no other reasonable conclusion except for that
13 person, or some person, took the turtle and put him up
14 there. Or imagine, if you would, a cat and a mouse being
15 placed into a box and the top put on the box. No other way
16 out. And then when the lid is lifted only the cat is left.
17 What's happened to the mouse? No hole for him to escape.
18 No other way for him to get out. Sadly the mouse is now
19 gone. No other reasonable explanation except for that. You
20 didn't see it happen, but there's no other reasonable
21 explanation. But on the other hand, if there's a little
22 hole about like that (indicating) in the box, do you know
23 whether or not the cat ate the mouse or whether the cat --
24 or whether the mouse escaped? That would not be evidence
25 that would lead you to a solid conclusion. You would have

1 competing hypothesis, or competing end results. But I will
2 submit to you, ladies and gentlemen, there is no hole in the
3 box that we will present to you and you will be left firmly
4 convinced of the Defendant's guilt by the time we finish.

5 Let me talk a little bit about the evidence that we
6 intend to present. This is what we expect to be able to
7 present to you during the course of the trial. The victim's
8 were found about midday on January 31st of 2014. But about
9 3:00 in the morning that same morning a neighbor named
10 Milton Grant, who you will hear from, gave information to
11 law enforcement later on that he heard three shots, or what
12 sounded like three shots to him about 3:00 that morning. He
13 had been awakened about 1:00, couldn't go back to sleep, so
14 he was up doing things and he hears three shots. He lived
15 in a mobile home very nearby. He looked out the window and
16 he saw an individual coming out of the victims' residence.
17 That individual was wearing tan coveralls. I will tell you,
18 ladies and gentlemen, the tan coveralls is going to be a
19 recurring theme in this trial, because several people will
20 testify that the Defendant himself was wearing tan coveralls
21 that night. The Defendant, according to a couple of
22 different witnesses, was the last person known to be with
23 the victims that night.

24 As I said earlier, the victims were both killed by
25 three shots from a 9 millimeter pistol. We will have

1 forensic evidence. We will have the pathologist that
2 recovered the projectiles, the bullets that killed the
3 victims. We will have a firearms expert that can testify,
4 yes, these came from 9 millimeter pistols -- or --
5 millimeter weapons, and that a Ruger 9 millimeter was one of
6 the ones that could have fired this. We have no gun that we
7 can compare this to. One was never recovered. But the
8 firearms expert can tell us it's a 9 millimeter and one of
9 the types that it could be is a Ruger. The Defendant showed
10 a witness a 9 millimeter Ruger that he had in his possession
11 while wearing tan coveralls at a pool hall earlier that
12 night. There is a photo of a 9 millimeter pistol that you
13 will see that was on the Defendant's cell phone when
14 officers retrieved information from that cell phone. You
15 will also hear the Defendant's own words. He will claim, by
16 his statement, that he was in Greenville that night. Yes,
17 he had been at the victims' trailer earlier on, but he had
18 gone to Greenville and was drinking in Greenville. He
19 enlisted the cooperation of another individual named Tevin
20 Hill, who is also charged in this case. Mr. Hill will
21 testify that the Defendant tried to set up an alibi.
22 Something that he was elsewhere with another individual
23 named Rodrigus Scurry. He made a phone call to Mr. Scurry
24 about 3:00 in the morning right after the shooting claiming
25 to be in Greenville. Mr. Scurry will testify to this.

1 Claiming to be in Greenville, but he'd been drinking and
2 wanted a place to spend the night so he didn't have to drive
3 all the way back to Cross Hill. Mr. Hill will also testify
4 as to the falsity of that attempted alibi. He will tell
5 you, yes, he first joined with Mr. Franks in trying to pull
6 the wool over peoples' eyes as to their whereabouts, but
7 it's untrue. Information that we will explain to you from
8 Mr. Franks' own cell phone and from records kept by Verizon
9 will show him never to have left Cross Hill until he went to
10 Rodrigus Scurry's house in Fountain Inn.

11 Ladies and gentlemen, as I said, the State has the
12 burden of proving this case, and we gladly except that
13 burden. During a trial I always ask jurors to do three
14 things for us. The first thing is to listen very closely to
15 the information that's going to come off this witness stand.
16 These are the witnesses in this case. This is where you
17 determine what the truth is in this case. What these people
18 tell you. So listen very carefully to what they say. The
19 second thing, at the close of the trial His Honor is going
20 to explain to you what the law is in the case. He'll talk
21 about some of the things that I've discussed here. The
22 elements of murder. The elements of the pistol charge.
23 Reasonable doubt. That sort of thing. Make sure you listen
24 very closely to him. Because while you determine what the
25 truth is in his case, he is the one that gives you the law

1 in the case. So you determine the truth from the facts that
2 you heard, but you have to apply those facts to the law that
3 His Honor would instruct you on in order to determine
4 whether or not this Defendant is guilty. Those are calls
5 that you have to make. So you need to pay attention during
6 all of that time. But once you have done those two things I
7 ask you to do one last thing. Everyone of you all comes
8 from a different lifestyle, different background, you know,
9 different hometown perhaps. Different education maybe. But
10 each and every one of you all has at least one thing in
11 common, and that's commonsense. We ask you to use your
12 commonsense when you're considering the testimony that's
13 being made off the witness stand. We ask you to use your
14 commonsense when you're applying that evidence to the law
15 that His Honor gives you. And if you continue to do that
16 back in your jury room or when you're deliberating, ladies
17 and gentlemen, I'm confident you're going to come back with
18 a just, a fair and a true verdict. That's all any of us
19 ask. Thank you very much.

20 THE COURT: Thank you, Mr. Mowry. Mr. Wilkes, you're
21 recognized for your opening, sir.

22 MR. WILKES: Thank you, Your Honor.

23 OPENING STATEMENT

24 BY MR. WILKES: In 1940 or '50, sometime around there,
25 everybody thought that we were being invaded by Martians.

1 They heard on the radio H.G. Wells' story War Of The Worlds.
2 In technology radio was the technology. Everybody believed
3 in it. It was important. They sat around and they listened
4 to it. When they played that story over the radio everybody
5 -- not everybody, but most people, many people believed
6 Martians were invading the world. Technology is a good
7 thing but it can be a dangerous thing because we put a lot
8 of faith in it. This is a big screen. This is today's
9 technology. And so, you're going to see things on the
10 screen that may or may not be evidence. Evidence comes from
11 the witness stand. And there may be pieces of evidence that
12 are on the screen. But when the Solicitor puts up something
13 on the screen as he just did and he says evidence and he
14 puts all these things under it, that didn't make it
15 evidence. It's not evidence. It may become evidence, it
16 may not become evidence. But that didn't make it evidence.
17 Solicitor put on the big screen the cat and the mouse and
18 says, well, if the mouse is gone, well, the cat ate it,
19 because right there on the screen it says so. Well, that's
20 not true because his son went and got the mouse and is
21 playing with it in the bathtub. There's other explanations
22 to a lot of stuff. What you must do is be very careful to
23 listen to the evidence. At the end of the case the
24 Solicitor is going to ask you to make a leap of faith, or
25 jump to a conclusion. And that's not your job. Your job is

1 to determine if the Solicitor proved it. Not to jump to a
2 conclusion or make a leap of faith just because the
3 Solicitor may say so.

4 Now, unlike Russia, we have the most fantastic and fair
5 judicial system that has ever existed in the course of human
6 history. It's as good as it can be. I can't imagine it
7 being any better. Now, at the same time that's like saying
8 the judicial system is the worlds safest car. We have the
9 worlds safest car. It's got air bags. It's got seatbelts.
10 It's got whistles. It's got alarms and buzzers and it's got
11 things that will sense will you go off the road. We have
12 the worlds safest car right here in our judicial system.
13 Unfortunately, if you go tearing down the road not paying
14 attention, I don't care how safe your car is, there's going
15 to be a disaster. Okay? So the judicial system is the
16 same. If the driver of the car is not paying attention
17 there will likely be a calamity. The worlds' greatest
18 judicial system. You, as the jury, are the driver of the
19 judicial system. And as long as you pay attention it works.
20 But you have to pay attention, and you have to pay very
21 close attention. And at the end of the case the Judge is
22 going to instruct you on the law. And the law is very clear
23 and he will give it to you in detail, and you have to follow
24 that law carefully. It is the State's burden to prove the
25 facts. If they cannot prove the facts then you're duty will

ATRAYEL WILLIAMS-DIRECT EXAMINATION

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1 be to find Mr. Franks not guilty. Their duty to prove the
2 facts. Not to ask you to make a leap of faith or jump to a
3 conclusion. They have to prove it for you.

4 The Judge said one thing that's very important, and
5 I'll repeat it. There's no way to fix a wrong verdict.
6 Make a mistake on the facts they can't be corrected. You're
7 the final say, so be very careful, listen very carefully,
8 and follow the law the Judge gives you at the end of the
9 case. Thank you.

10 THE COURT: Thank you, Mr. Wilkes. Solicitor, if
11 you'll call your first witness before lunch, please.

12 MR. SHEEK: Thank you, Your Honor. The State calls
13 Atrayel Williams.

14 ATRAYEL WILLIAMS, after having been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SHEEK:

18 Q Ms. Williams, like the Bailiff just told you,
19 everything that you say is being taken down by this lady
20 over here who's our court reporter. So I'll need to answer
21 out loud, if you would, and not nod your head --

22 A Okay.

23 Q -- and speak slowly enough that she can record
24 everything that you say. All right?

25 A Okay.

ATRAYEL WILLIAMS-DIRECT EXAMINATION

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1 Q Thank you, ma'am. If you would, state your name and
2 spell your name for the court reporter.

3 A Atrayel Williams. A-t-r-a-y-el, Williams.

4 Q And, ma'am, where do you live?

5 A I stay in Mountville, South Carolina.

6 Q And how long have you lived in the Mountville area?

7 A All my life.

8 Q And do you happen to know a person by the name of
9 Nikesha James?

10 A I do.

11 Q And how did you know Nikesha?

12 A She was one of my best friends.

13 Q And how long have you been friends with her?

14 A Maybe like the last three -- the three years prior to
15 the incident.

16 Q And did you call her Nikesha or Kesha?

17 A Kesha.

18 Q Okay. And did you also know Sammie Darryl Leake?

19 A I did.

20 Q And what did you call Mr. Leake?

21 A Dab.

22 Q Dab. Did you have a -- during the last three years let
23 me ask you this. Did you have the kind of friendship with
24 Nikesha that you would talk to her frequently?

25 A Every day.

1 Q And how would you communicate with her?

2 A By phone, go to her house. We was always together
3 basically.

4 Q And when you would talk to her would you call her on
5 the phone sometimes, text her sometimes?

6 A Yes, sir.

7 Q So according to what you said, then you would speak to
8 her in one form or another daily?

9 A Yes, sir.

10 Q And was that the status of your relationship with her
11 in January of 2014?

12 A Yes, sir.

13 Q Did you have an opportunity to talk to her on the 30th
14 of January, 2014?

15 A Yes, sir. And the last conversation I had with her was
16 maybe, I would say, about 9:00 p.m. that night.

17 Q And that was on the 30th?

18 A Uh-huh.

19 THE COURT: That's a yes.

20 Q And is that a yes?

21 A Yes, sir.

22 Q And the reason I say that is so that she's clear on her
23 record. We all do it. Did you have as close of a
24 relationship with Dab?

25 A Yeah, I mean, I knew him all my life too. But no, he

ATRAYEL WILLIAMS-DIRECT EXAMINATION

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1 was older than us, so -- but I knew him all my life though.

2 Q Knew him but weren't as close with him as you were with

3 --

4 A Yeah, we was pretty close, all of us.

5 Q And did you ever visit Nikesha at her home?

6 A All the time.

7 Q And where did she live in January 2014?

8 A She stayed in Cross Hill.

9 Q Did she have a house or --

10 A She had a trailer.

11 Q Trailer.

12 A Uh-huh.

13 Q Did anybody live there with her?

14 A Well, at the time just her and the kids.

15 Q And is that in Laurens County?

16 A Yes, sir.

17 Q Now, you said you talked to her about 8:00 or 9:00 on
18 January 30th?

19 A Yes, sir.

20 Q On the next day, January 31st, did you try to get a
21 hold of her?

22 A Yes, sir. I got up around 10:30, somewhere in there,
23 and tried to call her and, no, I didn't get an answer from
24 them.

25 Q And just for clarity, when you say 10:30 you're talking

ATRAYEL WILLIAMS-DIRECT EXAMINATION

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1 about 10:30 a.m.?

2 A A.m. Yes, sir.

3 Q So you began to call her and didn't get an answer?

4 A Yes, sir.

5 Q What did you do?

6 A Laquesha picked me up and, like I said, we was going to
7 head over to her house anyway. So she picked me up because

8 --

9 Q Now, who is Laquesha?

10 A The other -- our other friend, Laquesha Currenton.

11 Q And she picked you up --

12 A Yes.

13 Q -- at your home?

14 A Yes.

15 Q And where did you all go?

16 A We went to Cross Hill. We ended up at the barber shop
17 at Cross Hill at first to get our eyebrows arched, and then,
18 you know, we were in the process steady calling her while we
19 was there, you know. So we eventually just went to her
20 house after we got finished.

21 Q About what time do you recall getting to her house?

22 When you say her, you're referring to Nikesha?

23 A Kesha, yes.

24 Q About what time did you get to her house?

25 A It was maybe 1:00, a little bit after 1:00 p.m. that

ATRAYEL WILLIAMS-DIRECT EXAMINATION

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1 day.

2 Q And what did you do?

3 A Well, I got out of the car. Laquesha got out first.

4 She went to the door, you know, knocked on the door or

5 whatever. But the door was unlocked so she opened -- you

6 know, tried to open it. To push it in. But Darryl's body

7 was right there, you know. She couldn't -- I don't think

8 she could open enough to get in. So, you know, that's when

9 she hollered out to me that, you know, Darryl was in there

10 dead. But she was thinking that he'd had an asthma attack

11 or something, you know, because there wasn't a whole bunch

12 of blood on the scene or nothing, so we didn't see it at

13 first or whatever. So she proceeded to run off the porch

14 and knocks on Nikesha's window or something, if Nikesha was,

15 you know, maybe was in there and didn't know he was up there

16 -- laying up there dead or whatever. So I proceeded to get

17 out the car. I'm on the phone with 911 by this time. I

18 proceeded to get out the car. And I'm small enough to get

19 in the door, so I --

20 Q Let me interrupt you one second. You said you called

21 911?

22 A Uh-huh.

23 Q And is that before or after Laquesha had said --

24 A No, it was after.

25 Q So when she tells you he's dead, is that when you

1 called 911?

2 A Yeah. I went out the car, get my phone and proceeded
3 to dial 911 as I'm going in the house.

4 Q And what did you find when you went into the house?

5 A I walked in the house. I say oh there's a body. Like
6 I said, you could tell he was dead already. But, you know,
7 I still just checked for a pulse.

8 Q I'm going to slow you down again because none of these
9 people are aware of any of the facts. They're learning it
10 from the witnesses. So when you said you went in the house,
11 was this in the front door?

12 A Yes, sir.

13 Q And what room of the house would you have been going
14 into?

15 A This would be the livingroom area and the kitchen.

16 Q When you stepped into that livingroom, or you opened
17 the door to try to step in, what do you see?

18 A I see Darryl's body laying right there.

19 Q Was he laying on a bed, a couch or the floor?

20 A The floor.

21 Q What did you observe when you saw him laying on the
22 floor?

23 A He was just laying there. He was laying there. Eyes
24 was open. Like I said, you could tell he was dead. But
25 like I said, it wasn't a lot of blood, so I didn't know he

ATRAYEL WILLIAMS-DIRECT EXAMINATION

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1 got shot or anything. I couldn't see no -- the bullet
2 wounds and everything.

3 Q Did you do anything to check and see if he was
4 breathing --

5 A Uh-huh.

6 Q -- or maybe just asleep? What did --

7 A I think I just touched his wrist trying to see if I
8 could get a pulse, but I didn't. And I just stood up. When
9 I stood up I looked dead at Nikesha. She was just sitting
10 on her chair. I just looked dead at her once I stood up.

11 Q In what condition was she?

12 A She was already dead. She was just sitting up. You
13 know, she was slouched over to the side a little bit, but
14 she was sitting on the chair fully clothed and everything.
15 But she was already dead.

16 Q What did you do when you saw Kesha and saw that she was
17 also deceased?

18 A I just immediately ran out of the house and I was
19 calling Laquesha's name letting her know that Kesha was in
20 there, too. And, like I said, I just threw the phone down
21 and I fell down with it.

22 Q Were you upset?

23 A Very.

24 Q And had you expressed during this time while you were
25 on the phone with 911 that there was at least one dead body

ATRAYEL WILLIAMS-DIRECT EXAMINATION

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1 in the house?

2 A Yes, sir.

3 Q And did you stay there when law enforcement responded?

4 A Yes, sir. I was still there.

5 Q And about how long did it take them to get there?

6 A I really don't know. I really don't know. It wasn't
7 long that eventually the yard got full of people. So it
8 wasn't long at all.

9 Q Did you go back in the house between the time that you
10 came out upset --

11 A No, sir.

12 Q While you were in the house, other than checking, you
13 said you touched Dab's wrist to see if he had a pulse.

14 A Yes.

15 Q Other than that, did you move or do anything inside the
16 house, move any objects?

17 A No, sir. No, sir.

18 Q How long total do you think you were inside the house?

19 A Maybe -- I don't know. Three to five minutes. It
20 wasn't long at all. It was -- I'm going to say like three
21 to five minutes. It wasn't long.

22 MR. SHEEK: Beg the Court's indulgence one moment.

23 THE COURT: Yes, sir.

24 MR. SHEEK: Thank you, ma'am. Please answer anything
25 that Defense counsel may want to ask.

ATRAYEL WILLIAMS-CROSS-EXAMINATION

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1 THE COURT: Mr. Wilkes.

2 MR. WILKES: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WILKES:

5 Q Ma'am, you said you knew Nikesha pretty well.

6 A Yes, sir.

7 Q For about three years?

8 A Yes, sir.

9 Q Saw her a lot?

10 A Yes, sir.

11 Q Talked to her everyday?

12 A Yes, sir.

13 Q Do you know who her boyfriend was at the time?

14 A No, sir. She didn't have a boyfriend.

15 Q Didn't have any boyfriend?

16 A No. She didn't have a boyfriend.

17 Q And you would know if she did?

18 A Yes, sir.

19 MR. WILKES: Okay. No further questions.

20 THE COURT: Ma'am, thank you. You can step down.

21 (Whereupon, the witness stepped down from the witness
22 stand.)

23 MR. SHEEK: Your Honor, if you wish, we have one more
24 short witness that we could probably get before lunch.

25 THE COURT: All right. Very good. Go ahead, please,

LAQUESHA CURRENTON-DIRECT EXAMINATION

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1 then.

2 MR. SHEEK: We call Laquesha Currenton.

3 LAQUESHA CURRENTON, having first
4 been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SHEEK:

7 Q Ms. Currenton, where do you live?

8 A Cross Hill.

9 Q Did you know Nikesha James?

10 A Yes.

11 Q Did you know Sammie Leake?

12 A Yes.

13 Q What was their relationship?

14 A Sammie was my cousin and Nikesha was like my best
15 friend.

16 Q Did they have a family relationship as well?

17 A No, not really.

18 Q If I said that some people call Sammie Leake her uncle
19 and her his niece would that be accurate?

20 A Uh-huh.

21 THE COURT: That's a yes.

22 Q And you got to make sure that you answer verbally so
23 this lady can hear what you say. Okay? We all do it. It's
24 kind of difficult not to. How good friends -- you said you
25 were her best friend, or she was your best friend, is that

LAQUESHA CURRENTON-DIRECT EXAMINATION

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1 right?

2 A Yes.

3 Q With Nikesha James. How often would you talk with her?

4 A Everyday. I was staying with her at the time.

5 Q So you were staying there at the time?

6 A Uh-huh.

7 Q Did you spend the night there on the night of January
8 30th into January 31st?

9 A No.

10 Q You were staying somewhere else that day?

11 A Yes.

12 Q Were you supposed to meet with her for anything on the
13 morning of the 31st?

14 A Yeah. She was supposed to do my hair.

15 Q What kind of arrangement had you made with her to get
16 in touch with her about doing that?

17 A I had talked to her the night before. Me and her, we
18 spoke on the phone a couple of times while I was gone, and
19 we texted. And I tried to call her that next morning, but I
20 didn't spoke to her.

21 Q What time had you spoken with her the night before?

22 A I think the last time was maybe around 11:00 or 12:00
23 maybe.

24 Q And was this by telephone?

25 A Yes.

LAQUESHA CURRENTON-DIRECT EXAMINATION

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1 Q So you were supposed to meet with her on the 31st, is
2 that right, to do your hair?

3 A Yes.

4 Q And you say you could not get in touch with her?

5 A No.

6 Q What did you do after not being able to get in touch
7 with her?

8 A She went -- she was going to hair school at the time.

9 So when I wasn't able to get in touch with her I went by the
10 barber shop first and got my eyebrows arched, and I just
11 continued to try to call her. But she never answered, so
12 that's when I went down there.

13 Q Were you with anybody when you went to the barber shop?

14 A Yes. Atrayel Williams.

15 Q Atrayel Williams. Were you getting concerned at all
16 when you couldn't get her to respond to you?

17 A Not really, because she was in hair school. So the
18 days that she went to school it was normal for her to not
19 answer her phone if she was at school.

20 Q What did you -- what did you and Ms. Williams decide to
21 do after you left the barber shop?

22 A We hadn't seen Nikesha or Sammie, so we decided to just
23 go down there and check on them to kind of see. Because she
24 usually left her door unlocked, so we just wanting to go
25 down there to make sure that she wasn't, you know, just in

LAQUESHA CURRENTON-DIRECT EXAMINATION

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1 home in the bed or just anything like that.

2 Q And who was driving?

3 A I was.

4 Q When you got there who went to the door?

5 A I did.

6 Q How did you try to alert people that you were there?

7 A I didn't. I just turned the handle.

8 Q This was -- I mean, this was your friend, right?

9 A Yes.

10 Q Was the door locked or unlocked?

11 A It was unlocked.

12 Q What did you do?

13 A I tried to open the door and it felt like it was
14 getting hung on something. And so, that's when I looked
15 down and I seen Sammie's body.

16 Q Describe what you saw.

17 A I didn't really see blood at first, but I just saw him
18 just laying there in front of the door, so...

19 Q What did you at first thing?

20 A He had asthma. So I was thinking that -- I knew he was
21 dead just by looking at him. But I was thinking he might
22 have had an asthma attack or something.

23 Q Could you get the door open enough for you to get
24 inside?

25 A Not at first.

LAQUESHA CURRENTON-DIRECT EXAMINATION

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1 Q Who went inside?

2 A Atrayel. She did first.

3 Q And were you able to eventually get the door open?

4 A Well, no. We eventually ended up -- because we was
5 trying to avoid it at first. But we eventually ended up
6 just having to step across his body to get into the house.

7 Q Did you actually go inside yourself?

8 A Yes.

9 Q Was Mr. Leake the only other person in the house?

10 A No. Nikesha was in there.

11 Q Where did you see her?

12 A She was sitting on the chair.

13 Q And what was her condition?

14 A She just kind of looked slumped over and -- but you
15 could look at her and tell that she was dead as well.

16 Q Did you see any sign of life?

17 A No. I touched her.

18 Q Was she cold to the touch?

19 A No. She had on a jacket, so I couldn't really feel her
20 skin. But I knew she was dead just by looking at her.

21 Q When you saw that what did you all do next?

22 A I don't even really remember. We went back outside.

23 We didn't just stay in there. We just went back outside and
24 waited on 911 then.

25 Q What was your state of mind during that time?

LAQUESHA CURRENTON-CROSS-EXAMINATION

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1 A Kind of discombobulated.

2 Q Who made the phone call? Do you recall?

3 A Atrayel.

4 Q And did you stay there until law enforcement and first
5 responders arrived?

6 A Yes.

7 Q How long did it take? Do you have any memory of that?

8 A I don't think it was long. Like no more than like 10
9 or 15 minutes.

10 Q Did you all stay outside the trailer while you were
11 waiting?

12 A Yes.

13 Q Did anybody else go inside or out while you all were
14 there before law enforcement go there?

15 A No, not that I can remember.

16 MR. SHEEK: Thank you, ma'am. That's all I have. If
17 you'd answer any of Mr. Wilkes' questions. Hang on. If
18 you'd answer Mr. Wilkes' questions.

19 CROSS-EXAMINATION

20 BY MR. WILKES:

21 Q Did you tell me that -- did you say she was your best
22 friend or --

23 A Yes, sir.

24 Q You saw her often?

25 A Yes.

LAQUESHA CURRENTON-CROSS-EXAMINATION

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1 Q Knew all about her personal life?

2 A Yes.

3 Q Did she have any boyfriends?

4 A She was seeing -- she was talking to someone. She
5 didn't really have a boyfriend.

6 Q Who was she talking to?

7 A I don't even remember his name.

8 Q But she was talking to somebody?

9 A Yes. She was talking to a guy from Laurens.

10 Q Just one?

11 A As far as I know.

12 Q Was she talking to somebody else before the guy from
13 Laurens?

14 A I mean, we had several friends, so I can't say who she
15 was having a relationship -- an intimate relationship, so...

16 Q Would you believe that she was?

17 A Yes.

18 Q But you don't know who?

19 A No.

20 MR. WILKES: That's all I have, Your Honor.

21 THE COURT: Ma'am, thank you very much. You may step
22 down. You are free to leave.

23 (Whereupon, the witness stepped down from the witness
24 stand.)

25 THE COURT: Ladies and gentlemen, we're going to go

ROBBIE HAUPFEAR-DIRECT EXAMINATION

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1 (Whereupon, the jury entered the courtroom at 2:25
2 p.m.)

3 THE BAILIFF: All jurors present, Your Honor.

4 THE COURT: All right. The record will reflect that
5 the jury is back. Defendant is present with counsel. Of
6 course, ladies and gentlemen, we're still in the State's
7 case in chief at this point. So, Mr. Sheek, if you'll call
8 your next witness, please.

9 MR. SHEEK: Thank you. The State calls Robbie Haupfear
10 to the stand.

11 ROBBIE HAUPFEAR, having first been
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SHEEK:

15 Q Good afternoon, sir. Obviously you're employed with
16 the Laurens County Sheriff's Department?

17 A Yes, sir.

18 Q And what is your rank with the Sheriff's Department?

19 A I'm a Lieutenant.

20 Q And what are your duties and responsibilities?

21 A Currently I'm the Lieutenant over the courthouse, which
22 includes court security and the warrants division.

23 Q In January 2014 what was your duties and
24 responsibilities?

25 A I was a Lieutenant in uniform patrol in charge of a

ROBBIE HAUPFEAR-DIRECT EXAMINATION

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1 shift.

2 Q And tell the jury what the difference is in uniform
3 patrol and, say, the criminal investigation division.

4 A The easiest way to put it is when you call 911 we're
5 one of the uniform officers that show up. The investigators
6 are the ones that investigate the crimes after we make an
7 initial report.

8 Q So a uniform patrol would be what we call first
9 responders?

10 A Yes, sir.

11 Q And on January 31st of 2014 were you on duty that day?

12 A Yes, sir.

13 Q Did you receive a call to respond to the Cross Hill
14 area in regards to possible dead bodies?

15 A Yes, sir.

16 Q Can you tell the jury where you were told to respond?

17 A I can't remember the exact road name, but it was in the
18 Cross Hill area.

19 Q And what was the type of residence that you responded
20 to?

21 A It was a mobile home. Single wide mobile home.

22 Q And what did you discover when you got there? Now, let
23 me backup one second. You were dispatched in what manner?
24 What way did you receive information to go out there?

25 A We receive calls from our dispatchers will take 911

ROBBIE HAUPFEAR-DIRECT EXAMINATION

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1 calls.

2 Q So somebody would call 911 --

3 A Yes, sir.

4 Q -- and you in turn were dispatched?

5 A Yes, sir.

6 Q When you got to that residence was it in Laurens
7 County?

8 A Yes, sir.

9 Q And what did you discover when you got there?

10 A When I got there I already had another officer that
11 arrived shortly before I did. We made entry into the
12 residence and located two victims that apparently had been
13 shot.

14 Q And were these people deceased?

15 A We had EMS come in and check and they were both
16 deceased.

17 Q And were there any people on the scene that were alive
18 when you got there?

19 A Yes, sir. There were several people outside.

20 Q What did you do once you went in and discovered the
21 scene -- let me ask you this. In which way did you enter
22 the residence? What door did you go in?

23 A I guess it would have been considered the back door,
24 which would have been, I think, the right side of the house
25 if you're facing the end of it.

ROBBIE HAUPFEAR-DIRECT EXAMINATION

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1 Q And in what room did you find the bodies?

2 A The livingroom area.

3 Q And what did you do, if anything, to determine that
4 they were, in fact, dead?

5 A Like I said, we -- once we went in and cleared the
6 residence and made sure those were the only two victims, we
7 had EMS come in to check.

8 Q After they had confirmed that they were, in fact,
9 deceased what did you do?

10 A We went back outside then to secure the crime scene and
11 notified our investigators and waited on them to arrive.

12 Q When you say you secured the scene what exactly do you
13 do?

14 A We rope it off with crime scene tape and then place
15 officers at each corner basically to watch to make sure no
16 one comes on the crime scene.

17 Q And what's the purpose of securing it?

18 A To make sure the evidence is not contaminated and
19 nobody takes anything off, nobody moves anything.

20 Q And did you call for investigators from the criminal
21 investigation division?

22 A Yes, sir.

23 Q And did they respond to the scene?

24 A Yes, sir. They did.

25 Q Did you have an opportunity to take some statements

ROBBIE HAUPFEAR-CROSS-EXAMINATION

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1 from people that were at the residence when you arrived?

2 A Yes. After the investigators got there normally our
3 road officers will assist them and I was tasked to get some
4 statements from some of the people that were there.

5 Q Other than taking those statements did you have any
6 other part in the investigation of this matter?

7 A No, sir.

8 Q So you would have turned it over then to the criminal
9 investigation division at that point?

10 A Yes, sir.

11 MR. SHEEK: Thank you, Lieutenant Haupfear. Please
12 answer anything Mr. Wilkes may ask.

13 THE COURT: Any questions?

14 MR. WILKES: I do, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. WILKES:

17 Q Lieutenant, whose statements did you assist in taking?

18 A There were two females. I'm not sure I remember the
19 names. But I assisted getting some statements.

20 Q And did you -- you say you put up the crime scene tape?

21 A I had it. Yes, sir. One of the road officers put it
22 up. Yes, sir.

23 Q Can I ask you to take a look at a pile of pictures for
24 me and tell me if you recognize those pictures?

25 A Yes, sir. That's the --

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1 Q Is that the scene?

2 A Yes, sir.

3 Q And do those pictures -- take a second to look through
4 each one of those and tell me if those pictures accurately
5 represent the scene as you recall.

6 A Yes, sir.

7 Q And in one of those pictures, or actually several of
8 those pictures you see yellow crime scene tape, correct?

9 A Yes, sir.

10 Q And you assisted or you directed or you actually put
11 that crime scene tape up?

12 A Yes, sir. I had it done. Yes, sir.

13 Q And one of those photographs, or more of those
14 photographs show crime scene tape draped over a white -- it
15 looks like maybe a Crown Victoria or some kind of white car.
16 Do you see that photo in one of those?

17 A Yes, sir.

18 Q And the way that that crime scene tape is laid over
19 that car and the fact that I believe there's a -- the car is
20 actually on a concrete block, isn't it?

21 A I can't -- yeah, I think it is in one of the pictures.

22 Q In one of the pictures. So would that appear to be a
23 car that was there at the time that you placed the crime
24 scene tape?

25 A It was there when we put the crime scene tape up. Yes,

ROBBIE HAUPFEAR-CROSS-EXAMINATION

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1 sir.

2 Q Very good.

3 MR. WILKES: Your Honor, I would ask that these be
4 marked for Defendant's -- for identification only.

5 THE COURT: Have we marked those yet? Or I guess those
6 have not been marked then, Solicitor?

7 MR. MOWRY: These have not. No, sir.

8 THE COURT: Very good. We'll take a moment and Madam
9 Court Reporter can mark them.

10 Any objection to Defendant's 1 through 25 from the
11 State?

12 MR. MOWRY: No, sir. Your Honor, at this time I ask
13 that they just be moved as identification purposes.

14 (Whereupon, Defendant's Exhibits No. 1 through 25 were
15 marked for identification.)

16 THE COURT: Very good. Been marked as ID. They're not
17 in evidence then. Go ahead, please.

18 Q Lieutenant, to the best of your recollection that
19 building had both a front door and a back door, correct?

20 A Yes, sir.

21 Q And if you come out of the front door -- and I assume
22 would the front door be the one where the number is to the
23 right of the door where it says the address?

24 A I would assume.

25 Q Did you go in the door that had the long window or the

ROBBIE HAUPFEAR-CROSS-EXAMINATION

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1 triangular window?

2 A No, sir. We went in the door that's open, which is the
3 back door.

4 Q So that would be -- looking at -- that would not be the
5 door with the number on the right-hand side?

6 A No, sir. That's the -- I believe that's the front
7 door.

8 Q So the car is parked in front of -- or beside the front
9 door or back door?

10 A In the pictures, the front door. Yes, sir.

11 MR. SHEEK: Your Honor, if he's going to testify as to
12 the content of the pictures I would ask that the Court
13 accept them into evidence. We have an objection.

14 THE COURT: He doesn't want them, for whatever reason,
15 moved into evidence at this point, so I'm not going to
16 insist that he go along with that. But he's on cross, so
17 objection's overruled. Go ahead.

18 Q To your recollection, if you were walking out of that
19 front door down the steps, would that white car had been
20 over here on the right?

21 A I never went out the front door. So I -- just going by
22 the pictures I would -- I mean, I can't tell. We never went
23 out the front door.

24 Q So at any time during this investigation I thought you
25 said you had that police tape put around the house and it's

ROBBIE HAUPFEAR-CROSS-EXAMINATION

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1 over that car.

2 A Yes, sir. I said I had an officer do it.

3 Q So you don't know? During the whole time you were
4 there you didn't walk around the front of the house?

5 A No, sir. I stayed at the back and secured the rear
6 part where we went in.

7 Q And why did you go in the back and not the front?

8 A That was the door that was open when we arrived.

9 MR. WILKES: Very good. No further questions.

10 THE COURT: Nothing on redirect?

11 REDIRECT EXAMINATION

12 BY MR. SHEEK:

13 Q Lieutenant, I'm going to hand you these two documents
14 and ask you if you can identify those.

15 A Yes, sir. That's the two statements I took from the
16 people that were on the scene.

17 Q Is that your signature at the bottom?

18 A Yes, sir.

19 Q And can you tell me just who gave you those statements?

20 A Laquesha Currenton and Atrayel Williams.

21 Q Do you recall how many onlookers showed up by the time
22 this investigation was ongoing?

23 A No, sir. There was quite a few.

24 MR. SHEEK: Thank you. I have no further questions,
25 Judge.

MINDY WORLEY-DIRECT EXAMINATION

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1 THE COURT: All right. You can step down. Thank you,
2 sir.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: Call your next witness.

6 MR. MOWRY: We call Mindy Worley.

7 MINDY WORLEY, having been duly
8 sworn, testified as follows:

9 THE COURT: Is this one of the witnesses we're taking
10 out of order that we discussed?

11 MR. MOWRY: Yes, sir.

12 THE COURT: Okay. Ladies and gentlemen, just to let
13 you know. Due to scheduling concerns and obligations that
14 other witnesses have for the rest of the week we're going to
15 take a few of them out of order today, okay, because they're
16 only available today. And Ms. Worley is one of those
17 witnesses, but her testimony will be offered not as
18 sequentially as we would otherwise prefer. Go ahead,
19 Solicitor.

20 MR. MOWRY: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. MOWRY:

23 Q You're Melinda Worley?

24 A Yes.

25 Q And I believe you are an agent for the State Law

MINDY WORLEY-DIRECT EXAMINATION

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1 Enforcement Division commonly known as SLED; is that right?

2 A Yes, that's right.

3 Q What is your position with SLED?

4 A I work in the crime scene unit.

5 Q And what in the crime scene unit do you do?

6 A We respond to crime scenes when requested to do so
7 anywhere in the state. Any law enforcement agency,
8 sheriff's offices usually, police departments around the
9 state request us to come process crime scenes.

10 Q Do you know of your knowledge whether Laurens County
11 has its own crime scene unit?

12 A No, they don't.

13 Q And do they often request that you all come on a major
14 case to work the crime scene?

15 A They do.

16 Q What is your job working a crime scene? What exactly
17 do you do?

18 A We document and collect evidence and preserve it for
19 Court basically. Just document the scene the way we found
20 it and collect whatever evidence we find at the scene.

21 Q How long have you been employed in that capacity?

22 A Five years.

23 Q What kind of specialized training do you have to do the
24 job you do?

25 A I have a Bachelor's degree in anthropology from the

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1 University of Tennessee at Chattanooga, and a Bachelor's
2 degree in forensic science from Mercyhurst College, and a
3 Master's in science in forensic science from University of
4 Florida.

5 Q Have you been declared an expert witness in court's of
6 law in the past?

7 A I have.

8 Q And on what subjects, or what areas?

9 A In crime scene.

10 MR. MOWRY: Your Honor, I would offer Ms. Worley as an
11 expert in crime scene identification and investigation.

12 THE COURT: Any voir dire, objection?

13 MR. WILKES: No, Your Honor.

14 THE COURT: Ladies and gentlemen, normally when a
15 witness testifies they are not allowed to testify about
16 opinions or conclusions, but an exception to this rule
17 exists for expert witnesses. Someone who by education or
18 training has become an expert in some calling or science or
19 field is allowed to give opinion testimony and they can also
20 give reasons for their opinions. So you should take any
21 expert's opinion and give it the weight you feel it
22 deserves. In this case the State and the Defense agree that
23 Ms. Worley is an expert in the field of crime scene
24 investigations. Accordingly she's allowed to give opinion
25 testimony in that area. All right? Solicitor.

MINDY WORLEY-DIRECT EXAMINATION

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1 MR. MOWRY: Thank you, Your Honor.

2 Q Ms. Worley, did you receive a call to come to Laurens
3 County back on the 31st of January, 2014?

4 A I did.

5 Q About what time of day did you receive the call?

6 A It was a little after 1:00 in the afternoon maybe.

7 Q Specifically was it -- could it be 1:48?

8 A That's right.

9 Q Where did you receive that call?

10 A How do you mean?

11 Q Where were you when you received that call? Do you
12 remember?

13 A In Columbia, for sure.

14 Q That's where you're based; is that right?

15 A Yes, sir.

16 Q In response to that call what did you do?

17 A Myself and two of my coworkers responded to the scene
18 in Laurens County?

19 Q About what time did you arrive?

20 A It was 3:24 in the afternoon.

21 Q Were you the supervisor on scene?

22 A I was.

23 Q What did you all do when you got to the crime scene?

24 Where did -- let me ask you this first. Where did you come?

25 Where did you go to?

MINDY WORLEY-DIRECT EXAMINATION

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1 A The address?

2 Q Yes.

3 A It's --

4 Q Havendale?

5 A Havendale, yes.

6 Q Yes. And that's in what town?

7 A In Cross Hill.

8 Q And that's in Laurens County?

9 A Yes.

10 Q What did you do when you got there?

11 A I met with the local investigators to find out what

12 exactly the scene entailed. Conducted a walkthrough --

13 initial walkthrough of the scene to see what exactly was

14 inside the house before we started documenting the scene and

15 collecting the evidence.

16 Q And matter of fact, did you make a chart of what you
17 saw?

18 A I did.

19 Q Let me show you --

20 MR. MOWRY: Has that been marked?

21 THE COURT: Yes, it has been.

22 Q -- what has been marked for identification as State's
23 Exhibit No. 33. Do you recognize that?

24 A I do.

25 Q What is that, please, ma'am?

MINDY WORLEY-DIRECT EXAMINATION

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1 A It's the crime scene diagram that I created.

2 Q And this is your creation; is that right?

3 A That's right.

4 MR. MOWRY: Your Honor, I would offer State's Exhibit

5 No. 33 as -- or for identification as an Exhibit?

6 THE COURT: Any objection?

7 MR. WILKES: None.

8 THE COURT: 33 is in evidence. Go ahead.

9 (Whereupon, State's Exhibit No. 33 was marked for
10 identification.)

11 MR. MOWRY: Technology is sometimes not our friend.

12 This is one of those times.

13 Q Ms. Worley, I'm going to ask you, if you don't mind, to
14 refer to State's Exhibit No. 33 and tell the jury what you
15 found at 42 Havendale.

16 THE COURT: If you need to step down to make it easier,
17 ma'am, feel free.

18 THE WITNESS: Thank you.

19 A You mean in general when we walked in what we saw?

20 Q Yes. What did you see?

21 A We saw the two victims. Ms. James was on the loveseat
22 in the livingroom.

23 Q That's down here at the bottom of the chart?

24 A That's right. And Mr. Leake was in the floor.

25 Q And that's right here in the middle?

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1 A Yes. There were signs of struggle, I guess, in the
2 livingroom. The rug was folded over on itself, coffee mugs
3 in the floor, picture frame knocked on the floor. There was
4 blood, especially around him, on the floor.

5 Q Around --

6 A Mr. Leake.

7 Q Here in the middle?

8 A Yes.

9 Q And did you talk about the couch cushions?

10 A Yeah. And the two -- two of the couch cushions were
11 off the couch. One was on top of a third one, and the
12 other was propped in front of the couch.

13 Q Let me hand you what's been marked as State's Exhibit
14 No. 1 for identification. Do you recognize that?

15 A I do.

16 Q What is that, please, ma'am?

17 A It is the outside of the house.

18 Q And did you all take the picture?

19 A Yes.

20 Q And number three?

21 A This is also from the outside of the house.

22 Q And number four?

23 A And this is a picture of, I believe, the front door of
24 the residence.

25 Q All right. And let me show you number five, that

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1 aerial view. Does that -- can you recognize that?

2 A I'm not sure which -- which one it is.

3 Q I'll come back to that one later on.

4 MR. MOWRY: Your Honor, I would offer those pictures
5 that I have referred to, numbers one, three and four, as
6 State's Exhibits.

7 THE COURT: Without objection? Without objection, one,
8 three and four are in evidence.

9 (Whereupon, State's Exhibit Nos. 1, 3 and 4 were
10 admitted into evidence.)

11 Q You talked about the disheveled nature. Let me show
12 you State's Exhibit No. 8. Do you recognize that?

13 A This is the couch with the cushions that are out of
14 place.

15 MR. MOWRY: I would offer this into evidence at this
16 time, Your Honor.

17 MR. WILKES: No objection.

18 THE COURT: Without objection. Which Exhibit is that?

19 MR. MOWRY: This is No. 8.

20 THE COURT: In evidence.

21 (Whereupon, State's Exhibit No. 8 was admitted into
22 evidence.)

23 Q. What did you all do to -- let me, before we go any
24 further -- give me just a second here. Let me hand you
25 collectively State's Exhibits, for identification, 7, 16 and

MINDY WORLEY-DIRECT EXAMINATION

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1 21. These photographs, and ask you if you can identify
2 those.

3 A This one is a picture of the floor to the right of the
4 couch.

5 Q Which one is that? Which number?

6 A 21. 16 is --

7 BAILIFF: Your Honor, the jury can't see the pictures.

8 MR. MOWRY: That's a good point.

9 THE COURT: Thank you.

10 MR. WILKES: The jurors probably shouldn't see the
11 pictures until they're in evidence.

12 THE COURT: Right.

13 MR. MOWRY: And we're about to do that.

14 Q Okay.

15 A 16 is a picture of the couch showing the couch cushions
16 out of place. And number 7 is a picture from down the
17 hallway looking toward the livingroom.

18 Q So all of those you all took again?

19 A Yes.

20 MR. MOWRY: And again, Your Honor, I would offer
21 State's Exhibits 21, 16 and 7 into evidence at this time.

22 MR. WILKES: Without objection.

23 THE COURT: Without objection they're in evidence.

24 (Whereupon, State's Exhibit Nos. 7, 16 and 21 were
25 admitted into evidence.)

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1 THE COURT: Go ahead and publish, if you wish.

2 Q So that's how it looked down the hallway; is that
3 correct?

4 A That's correct.

5 Q What else did you do at the crime scene? You said you
6 had photographed -- you did a walkthrough and photographed.
7 What else did you do?

8 A We also documented the scene using our 360 degree
9 camera. Just kind of a walkthrough of what the scene looked
10 like. I did my web sketch diagram. I drew it by hand at
11 the scene. The one on the board is a later computer
12 generated diagram that I created from my web sketch.

13 Q I notice on State's Exhibit No. 33 that there are a
14 number of distances. For example, there's a line all the
15 way across that says 24 feet, 11 and three-eighths inches.
16 How did you arrive at those figures?

17 A Using a laser measuring device to do our measurements.

18 Q So all those are -- were taken with a measuring device.
19 Everything that's on there you all did, is that right?

20 A That's right.

21 Q I noticed there are a number of marks here with
22 letters. These yellow squares. What do these indicate?

23 A Those are items of evidence we documented and
24 collected.

25 Q Specifically what are you looking for at a crime scene?

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1 A Sort of seeing anything related. It appeared that the
2 victims had been shot. So we're looking for any kind of
3 firearms evidence, bullets or cartridge cases mainly.
4 Things like that.

5 Q Can you go down the list and tell what these various
6 markers are.

7 A Markers A, B and C were all projectiles or fragments of
8 projectiles from bullets.

9 MR. MOWRY: Give me just a second.

10 Q Let me hand you what have been marked as State's
11 Exhibits 42 and 45 for identification and ask you if you can
12 identify those.

13 A These are all three of the items from markers A, B and
14 C.

15 Q And you collected those?

16 A I didn't personally, but yes.

17 Q You supervised the collection?

18 A Yes, sir.

19 Q Did you actually take these into your possession --

20 A Yes.

21 Q -- once they were collected?

22 A I did.

23 Q What did you do with these items once they were
24 collected?

25 A We transport the evidence back to Columbia to the lab

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1 at SLED and I logged in the evidence into our database and
2 package it and transfer it to whatever departments they need
3 to go to.

4 Q Now, I want to refer for a moment -- let's see. Just a
5 moment. I'm sorry. Let me hand you what have been marked
6 as State's Exhibits 11, 12 and 13 for identification. Do
7 you recognize those?

8 A Yes.

9 Q What are those, please?

10 A These are photographs of markers A, B and C and the
11 projectile, or fragment of a projectile at each marker.

12 Q And that's the -- these are the items that we have just
13 discussed; is that right?

14 A That's right.

15 Q These were photographed before they were collected; is
16 that right?

17 A Yes, sir.

18 MR. MOWRY: Your Honor, I would offer these as State's
19 Exhibits at this time.

20 MR. WILKES: No objection to the photographs.

21 THE COURT: Without objection they are in evidence.

22 (Whereupon, State's Exhibit Nos. 11, 12 and 13 were
23 admitted into evidence.)

24 Q So this is A; is that right?

25 A That's right.

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1 Q Do you have information as to where you found that
2 particular item?

3 A If I can refer to --

4 Q Refer to your report.

5 A They were all by the -- near the front door. A was
6 right next to the front door.

7 Q And then how about B?

8 A B was located close to Mr. Leake.

9 Q And how about C?

10 A C was also next to Mr. Leake.

11 Q You said that since there were -- it was apparent that
12 they had been shot, was there anything else that you were
13 looking besides projectiles or fragments?

14 A Anything that could have been related to the incident.
15 Not necessarily all the firearm stuff. Just anything that
16 appeared to be possible as evidence.

17 Q I got you. Let me refer back to the crime scene that
18 you created. I believe that's State's Exhibit No. 33, if
19 I'm not mistaken. You were talking about A, B and C. This
20 is them right here; is that right?

21 A That's right.

22 Q Let's talk about D. What is that?

23 A D was drug paraphernalia.

24 Q What did you believe that was? What did it appear to
25 be to you?

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1 A If I remember correctly, I think it was a pipe.

2 Q What about E? This item up here at the top?

3 A E was a cartridge case.

4 Q Let me show you what's been marked as State's Exhibit
5 No. 43 and ask you if you can identify that.

6 A Yes. This is the cartridge case.

7 Q Let me refer then to -- this is State's Exhibit No. 15
8 for identification. Is that your photograph?

9 A Yes, it is.

10 Q And what does that represent?

11 A This is a picture of marker E with the cartridge case
12 on that kitchen counter.

13 MR. MOWRY: And I would offer this into evidence at
14 this time, Your Honor.

15 THE COURT: Which number is that?

16 MR. MOWRY: This is number 15.

17 THE COURT: No objection to 15?

18 MR. WILKES: No, sir.

19 THE COURT: State's 15 is in evidence.

20 (Whereupon, State's Exhibit No. 15 was admitted into
21 evidence.)

22 Q What is the purpose of the little marker, just for
23 clarification for explanation for the jury? What do you put
24 the markers out for?

25 A Those are items of evidence that are -- have

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1 evidentiary value for the scene. Things that we want to
2 collect from the scene.

3 Q And makes it easier to refer to later on?

4 A Right.

5 Q And are these accurate little measurements around the
6 side?

7 A They are.

8 Q So that would show it scale?

9 A Yes, sir.

10 Q But this was part of State's Exhibit No. 43; is that
11 right?

12 A Right.

13 Q For identification. Did you look elsewhere for any
14 evidence of firearms or shell casings or anything like that?

15 A You mean in general. We searched the whole livingroom.
16 Yeah.

17 Q Did you have any other success?

18 A We found another one under the couch cushion.

19 Q Let me hand you State's Exhibit No. 9 for
20 identification. Do you recognize that?

21 A Yes.

22 Q And what is that, please?

23 A Out of focus, but it's a cartridge case that's
24 underneath the -- it's on top of the couch cushion that's
25 where it's supposed to be and underneath the couch cushion

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1 that's been moved out of place.

2 Q Though it's out of focus, that is the shell casing; is
3 that right?

4 A Yes.

5 MR. MOWRY: I would offer this into evidence at this
6 time, Your Honor.

7 MR. WILKES: Without objection.

8 THE COURT: It's in evidence.

9 (Whereupon, State's Exhibit No. 9 was admitted into
10 evidence.)

11 Q And let me hand you State's Exhibit No. 17. What is
12 that?

13 A This is the same cartridge case with marker G marking
14 it.

15 MR. MOWRY: And I'd offer this into evidence at this
16 time.

17 THE COURT: That's No. 17.

18 MR. WILKES: Without objection.

19 THE COURT: 17 is in evidence.

20 (Whereupon, State's Exhibit No. 17 was admitted into
21 evidence.)

22 Q So this was under the overturned couch cushion; is that
23 right?

24 A That's right.

25 Q Where else did you look for evidence?

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1 A We did a general search throughout the entire house.
2 In the kitchen, down the hallway, in the bedrooms. It was
3 mainly in the livingroom, but we also searched the rest of
4 the house.

5 Q Let me show you a few photographs here. Numbers 10, 14
6 and 18. What do those depict?

7 A 10 is one of the bedrooms, 14 is in the livingroom
8 looking toward the kitchen, and 18 is another bedroom.

9 Q Do those fairly and accurately depict the condition you
10 found them in?

11 A They do.

12 MR. MOWRY: Your Honor, I would offer these as State's
13 Exhibits at this time.

14 MR. WILKES: Without objection.

15 THE COURT: 10, 14 and 18 are in evidence.

16 (Whereupon, State's Exhibit Nos. 10, 14 and 18 were
17 admitted into evidence.)

18 Q So this was the condition around which you were having
19 to do your examination; is that right?

20 A That's right.

21 Q What else did you do at the scene?

22 A We documented the blood that we saw on scene. We also
23 collected swabs of some of the blood and swabs from the door
24 -- interior door handle and exterior door handles for touch
25 DNA.

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1 Q Did you do anything outside the residence?

2 A We searched some outside the front door. But we also
3 swabbed the doorknob on the outside of the house, and also
4 the interior storm door on the front door.

5 Q And what was the purpose for that?

6 A For touch DNA.

7 Q Explain what touch DNA is.

8 A It's just -- you have like sweat built up on your skin,
9 on your fingers, and when you touch items you can transfer
10 your own DNA to other items.

11 Q Now, if we believe NCIS or CSI you can always find
12 touch DNA on every item. Is that, in fact, true?

13 A No.

14 Q I know you're not testifying as an expert in that area.
15 But what is -- what is the truth as far as that's concerned?

16 A It's my understanding that it's not -- not always very
17 likely to find the touch DNA.

18 Q Did you do any other search around the premises?

19 A The out -- beside the house, behind the house. There
20 were tire tracks outside that we took a look at.

21 Q Did you know whether or not those were associated with
22 anything involving the homicides you were investigating?

23 A No, we did not.

24 Q What is your philosophy on collection of evidence as
25 far as that's concerned?

MINDY WORLEY-DIRECT EXAMINATION

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1 A Document everything.

2 Q And have it if you need it, and then if you don't, all
3 the better; is that right?

4 A That's right.

5 Q But you cannot collect it afterwards, can you?

6 A No. That's right.

7 Q About how long did this whole process take you?

8 A I believe it as roughly five hours from the time we got
9 there until when we left the scene.

10 Q So it was walking through painstakingly looking,
11 photographing, documenting, all of that?

12 A Right.

13 Q And so, it took about five hours?

14 A Yes, sir.

15 Q Was that the only involvement that you had with this
16 case?

17 A No.

18 Q What else did you have involvement with?

19 A I returned to that initial scene after autopsy. I
20 returned back to that scene at the request of Lieutenant
21 Plaxico to connect a more thorough search for firearms
22 evidence.

23 Q And on what date did you return?

24 A That was February 3rd.

25 Q After the autopsy what did you find out about the

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1 number of -- number of times the -- or number of wounds on
2 the victims?

3 A Mr. Leake had been shot two times and Ms. James had
4 been shot one time. So there should have been three --
5 three cartridge casings at the scene and we only collected
6 two when we were there the first time.

7 Q What process did you go through to try to find the
8 third?

9 A We just did a visual search. Everything -- everything
10 including the livingroom and the hallway. Looked in the
11 vent in the floor in the hallway. Just -- we didn't use any
12 kind of equipment or anything like that. Just a visual
13 search.

14 Q Given your experience, are you always going to find the
15 same number of shell casings as shots? Are there reasons
16 why a shell casing might not have been there?

17 A Yes, sir.

18 Q Can you tell the jury what some of those reasons might
19 be?

20 A It's possible the shooter took it with him, or it got
21 stuck in one of our first responder's boots and tracked out
22 of the house, or kicked out of the house, or -- I mean,
23 there's any number of possibilities for -- it could have
24 gone behind the oven or under the oven or something. But it
25 just -- there's any number of things.

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1 Q So this was the second trip that you had made to the
2 crime scene, is that right, looking for the third shell
3 casing?

4 A That's right.

5 Q And what was the result?

6 A Negative.

7 Q Did -- you talked about the autopsy. Did you attend
8 the autopsy?

9 A No, I did not.

10 Q Who attended from your office?

11 A Special agent Tiffany Hazel.

12 Q And did she receive certain evidence that she then
13 passed on to you?

14 A She did.

15 Q What did she receive?

16 A There was clothing from both victims, fingernail
17 clippings from both victims --

18 THE COURT: Hold on one second, please.

19 MR. WILKES: I would object to the -- we're getting
20 into hearsay and we're getting out of order. Obviously a
21 chain problem. I know that she's out of order and it's
22 probably going to be filled in. But at least I should make
23 the objection now, because if I don't I've waived it.

24 THE COURT: All right. You want to speak to that,
25 Solicitor?

MINDY WORLEY-DIRECT EXAMINATION

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1 MR. MOWRY: Well, Your Honor, we're going to tie this
2 in with the pathologist. This is just -- she is part of the
3 chain on projectiles. I'll just tell Your Honor that.

4 THE COURT: All right. Subject to the chain being tied
5 together, objection is noted and overruled. Proceed.

6 MR. MOWRY: And this is strictly for identification
7 purposes at this point, Your Honor.

8 THE COURT: Right.

9 Q I'm going to hand you State's Exhibits 46 and 44. Do
10 you recognize those?

11 A Yes.

12 Q What are those, please, ma'am?

13 A These are the projectiles that were recovered at
14 autopsy.

15 Q And those went to Ms. Hazel and then to you; is that
16 right?

17 A That's right.

18 Q And what did you do with those items?

19 A I logged them in as evidence and packaged them and
20 transferred them to the firearms department.

21 Q Are these in substantially the same condition as you
22 received them?

23 A They appear to be, yes.

24 Q So that's the autopsy to that crime scene twice.

25 That's three. What else did you do?

MINDY WORLEY-DIRECT EXAMINATION

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1 A After -- after the second trip to the initial scene I
2 also went to an apartment in Fountain Inn to document.

3 Q Do you have an address of that place?

4 A It was Fairview Street, Apartment .

5 Q And I believe that was the residence of Rodrigus
6 Scurry; is that right?

7 A That's right.

8 Q What was your purpose in going there?

9 A We'd been told that the two suspects had spent the
10 night there that night after the incident, so we went -- or
11 I went myself to document the apartment and process it for
12 any kind of blood evidence.

13 Q What process did you use? When you say you processed
14 it for blood evidence what did you do specifically?

15 A I used an alternate light source on the couch and
16 loveseat where one of the suspects had supposedly slept that
17 night, and also on the bed in the spare bedroom I used the
18 alternate light source. And then I also used Leucocrystal
19 Violet. It's a chemical that we use to look for blood.

20 Q Any result?

21 A No.

22 Q Was there another trip that you took to Laurens County?

23 A Yes, sir.

24 Q And what was that, please, ma'am?

25 A I went to the Sheriff's Office impound lot to process a

MINDY WORLEY-DIRECT EXAMINATION

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1 vehicle.

2 Q Let me show you State's Exhibits 30 and 31. What do
3 those appear to be?

4 A These are the vehicle that we processed.

5 MR. MOWRY: Your Honor, I would offer these as State's
6 Exhibits at this time.

7 MR. WILKES: Without objection.

8 THE COURT: 30 and 31?

9 MR. MOWRY: Yes, sir.

10 THE COURT: They are in evidence.

11 (Whereupon, State's Exhibit No. 30 and 31 were admitted
12 into evidence.)

13 Q What was your purpose in going to exam this vehicle?

14 A It was registered to one of the suspects.

15 Q And did you go elsewhere on that same day?

16 A I don't believe so.

17 Q Was that about the extent of it as far as your
18 involvement was concerned?

19 A I also took custody of some clothing before we left the
20 impound lot.

21 Q From whom?

22 A Deputy Crockett.

23 Q What kind of clothing was that?

24 A It was a pair of brown overalls, a pair of Nike shoes,
25 hoodie sweatshirt and blue jeans, tank top.

MINDY WORLEY-CROSS-EXAMINATION

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1 Q Let me show you what has been marked as State's Exhibit
2 No. 38 for identification. Do you recognize that?

3 A Yes, sir.

4 Q What is that, please, ma'am?

5 A These are the brown overalls.

6 Q Now, Ms. Worley, you had talked about your search at
7 the crime scene for anything that was firearms related, and
8 you talked about the shell casings and the projectile
9 fragments that you found there. Did you find any firearms
10 at the scene?

11 A No, we did not.

12 Q Anything outside?

13 A No.

14 Q Anything related to the case that involved a firearm --

15 A No.

16 Q -- beyond the items that you've already described?

17 A Nothing.

18 MR. MOWRY: Thank you, ma'am. I believe that's all I
19 have. If you'd answer any of Mr. Wilkes' questions, please.

20 MR. WILKES: Thank you.

21 CROSS-EXAMINATION

22 BY MR. WILKES:

23 Q Did you say you took pictures of the scene?

24 A Yes, sir.

25 Q Will you look at what's marked for identification as

MINDY WORLEY-CROSS-EXAMINATION

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1 Defendant's 1 through 25 and tell me if those look familiar?

2 A These appear to all be from the crime scene.

3 Q The ones you took?

4 A I think so. Yes, sir.

5 Q The crime scene tape I see is draped over a vehicle?

6 A Yes, sir.

7 Q And that's how it would have appeared when you were
8 there?

9 A Yes.

10 Q And you arrived at what time and took those pictures?

11 A At 3:24.

12 Q So at 3:24 you recall taking photographs of the car on
13 block with the crime scene tape over it outside the front
14 door?

15 A I didn't personally take them myself, but yes. They
16 would have been taken at the time.

17 Q Do you recall that?

18 A Yes, sir.

19 Q Very good. You said you took possession of these?

20 A Yes, sir.

21 Q Brown coveralls. How do you know that these are the
22 brown coveralls you took possession of? If I could get you
23 to take a look at them. How do you know that those are the
24 same ones? Do you mark it? Do you put it in anything?
25 What do you do?

MINDY WORLEY-CROSS-EXAMINATION

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1 A I don't mark the actual item myself since I didn't do
2 anything to process them. But --

3 Q When you say you took custody of them, what does that
4 mean?

5 A They were transferred to me physically and I
6 transported them to SLED.

7 Q How were they given to you?

8 A Let's see. I believe they were in a bag.

9 Q So you wouldn't have actually seen them?

10 A I don't recall if I actually saw them before I
11 transferred them.

12 Q How can you tell me that you took custody of something
13 that you didn't see? How do you know that?

14 A It's said to be what they tell me it is and -- I can't
15 remember for sure if it was sealed when they gave it to me
16 or not.

17 Q But you can't say that you actually saw it? They could
18 have been wrapped up in a bag?

19 A They could have been. But I most likely would have
20 taken them out of the bag, I guess, to package them to
21 transfer them to another department.

22 Q So you would have repackaged them?

23 A Yes.

24 Q And is that the packaging that you repackaged them in?

25 A It does not look like the same packaging that I used.

MINDY WORLEY-REDIRECT EXAMINATION

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1 Q And is your initials, name or any identification that
2 you put on there personally, can you find anything that
3 would help us with that?

4 A No. This is not my initials.

5 MR. WILKES: Nothing further.

6 MR. MOWRY: Your Honor, if we could. Just one moment.
7 I did not know this was going to be an issue, so Mr. Bentley
8 is going to get another item.

9 THE COURT: Okay. Do we need a break or does he know
10 exactly where it is?

11 MR. MOWRY: He knows exactly where it is, Your Honor.
12 If you could bear with us for about 30 seconds, I believe
13 he'll be back.

14 REDIRECT EXAMINATION

15 BY MR. MOWRY:

16 Q Ms. Worley, let me hand you this item then and ask you
17 if you recognize that.

18 A Yes.

19 Q Do you recognize the item inside there?

20 A Yes, I do.

21 Q And what is that, please, ma'am?

22 A The pair of shoes that I took custody of.

23 Q So if those shoes came along with this, then these were
24 the items that you received; is that right?

25 A Yes, sir.

MINDY WORLEY-RECROSS-EXAMINATION

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1 MR. MOWRY: Thank you.

2 RECROSS-EXAMINATION

3 BY MR. WILKES:

4 Q So you're saying that because there's a pair of shoes
5 in the box that means that -- what does that mean in
6 relation to this item?

7 A All of the items were together when I took custody of
8 them.

9 Q And did you put them in that box?

10 A No.

11 Q You didn't put them in that box?

12 A That's not my box.

13 Q Okay. Then just so I understand. You received
14 something which the Solicitor says is this, but there's
15 nothing identifying, that you can say for sure, that's what
16 you received from an officer in Laurens County?

17 A I did log them in as evidence and I wouldn't have
18 logged them in as that item if I hadn't actually put eyes on
19 them.

20 Q I understand. But that in particular. That bag that
21 -- the item in that bag -- I know you logged stuff in. But
22 can you say that that is the same exact thing that you were
23 given by Laurens County?

24 A I would like to say yes. I'm not sure though.

25 Q Well, how? How can you do that? Don't normally you

MINDY WORLEY-REDIRECT EXAMINATION

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1 place your initials and document with your case number on
2 something that you take into possession?

3 A Yes.

4 Q And that's not on there?

5 A No.

6 Q So my question is how -- you can't say that that item
7 one is the same for sure, or two, that it's even in the same
8 condition?

9 A It's not in the same packaging that I packaged it in.

10 MR. WILKES: Nothing further.

11 REDIRECT EXAMINATION

12 BY MR. MOWRY:

13 Q If it were tested by the trace department would it
14 possibly be in different packaging from there?

15 A It's possible, yes.

16 Q And is Jennifer Nates an analyst in the trace
17 department?

18 A She's the lieutenant over the unit.

19 MR. MOWRY: Thank you. That's all I have.

20 MR. WILKES: If I may ask one more question.

21 THE COURT: I think the horse is dead, but go ahead.

22 MR. WILKES: Well, I just --

23 RECROSS-EXAMINATION

24 BY MR. WILKES:

25 Q You said Ms. Nates is coming to testify that she tested

MINDY WORLEY-REDIRECT EXAMINATION

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1 something. Would Ms. Nates have the original package that
2 you put it in?

3 A I don't know if she would or not.

4 MR. WILKES: Nothing further.

5 THE COURT: Ma'am, thank you. You're excused. Have a
6 good day. You're free to go.

7 (Whereupon, the witness stepped down from the witness
8 stand.)

9 THE COURT: We've been at it for about an hour, ladies
10 and gentlemen, and I promised you we would take a break
11 about once an hour. So we're going to take about a 10
12 minute break. Don't discuss the case. If you need a
13 cigarette let the Bailiff know and he'll get you outside to
14 have a smoke.

15 We'll be at ease for about 10 minutes.

16 (Whereupon, the jury exited the courtroom at 3:24 p.m.)

17 (Whereupon, a recess was held from 3:24 p.m. to 3:35
18 p.m.)

19 (Whereupon, the jury entered the courtroom at 3:35
20 p.m.)

21 THE COURT: Your next witness is in here?

22 MR. SHEEK: Yes, Your Honor.

23 THE COURT: Call your next witness, please.

24 MR. SHEEK: The State calls Dr. James Fulcher to the
25 stand.

DR. JAMES WILLIAM FULCHER-DIRECT EXAMINATION

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1 DR. JAMES WILLIAM FULCHER, having
2 first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SHEEK:

5 Q Good afternoon, Dr. Fulcher.

6 A Hello.

7 Q Give us, if you would, your name and your occupation,
8 please.

9 A My name is James William Fulcher.

10 Q And for those of us not familiar with the terminology,
11 tell us what a forensic pathologist is.

12 A A forensic pathologist is a medical doctor who does a
13 residency in anatomic and clinical pathology, a fellowship
14 in forensic pathology, and their job is largely to do
15 autopsies on people that meet untimely ends for the purpose
16 of the State's investigation.

17 Q So tell us a little bit about the education required to
18 do what you do?

19 A Sure. I'm from Virginia, so I went to college at the
20 University of Virginia. I went to medical school at the
21 Medical College of Virginia. I did my anatomic and clinical
22 residency, which is an additional four years, so we're eight
23 years after college now, into -- in Richmond, Virginia and
24 then a one year fellowship after that. All in Richmond,
25 Virginia.

1 Q So you have your medical degree and then those years of
2 speciality on top of that?

3 A Yes. It's a total of five years speciality training
4 outside of the medical degree.

5 Q How long have you been practicing as a medical
6 pathologist?

7 A Eight years.

8 Q And where do you work?

9 A I work at GS Hospital. I'm not an employee. I'm an
10 affiliated physician. I do hospital autopsies in the area.
11 I do Laurens County autopsies, Greenville County
12 medical/legal autopsies, Pickens County medical/legal
13 autopsies, and we fill in for other counties as their
14 pathologists need us to.

15 Q And have you ever been qualified as an expert in the
16 field of medical pathology?

17 A Yes, I have, approximately 25 to 30 times.

18 MR. SHEEK: Your Honor, I would offer Dr. Fulcher as an
19 expert in the field of medical pathology.

20 THE COURT: Any objection?

21 MR. WILKES: No.

22 THE COURT: Again, ladies and gentlemen, as I explained
23 with the previous witness, Ms. Worley, an expert witness is
24 allowed to give opinion testimony. In this case the parties
25 agree that Dr. Fulcher is an expert in the field of medical

DR. JAMES WILLIAM FULCHER-DIRECT EXAMINATION

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1 pathology. Accordingly, he can give expert opinion or
2 opinion testimony in that area and you may use it as you see
3 appropriate.

4 Solicitor, go ahead.

5 Q Doctor, when someone is brought to you for the purposes
6 of an autopsy do you have any part in investigating the
7 crime beyond the medical aspects of examining that body?

8 A I am -- I have discussions with the police. They
9 usually attend the autopsy, the coroner. But I have no
10 direct participation in the investigation at the scene.

11 Q Did you have an opportunity to perform an autopsy on a
12 Nikesha James?

13 A I did. Yes, sir.

14 Q And can you tell us when you performed that autopsy?

15 A That autopsy was done February 1st of 2014.

16 Q And if you would, tell the jury a little bit about what
17 you do when you perform an autopsy?

18 A An autopsy is actually as you would think if you think
19 of your crime scene shows and such. You take the body.
20 Take pictures of the outside of the body. And then take a
21 lot of sharp knives, scalpels and stuff and remove all the
22 organs out of the body. Look at them all, touch them, feel
23 them, weigh them. And then not only that, you take
24 microscopic sections and actually look at each organ
25 microscopically. You also perform toxicology as protocol

1 for a forensic autopsy, which would mean taking specimens
2 and sending them to an outside lab for testing for drugs,
3 abuse, alcohol, stimulants. Stuff like that.

4 Q And I know this sounds ridiculous to ask. But
5 obviously when you do an autopsy, Ms. James was deceased?

6 A Yes, absolutely. She died January 31st. The day
7 before.

8 Q And when you perform the autopsy were you able to
9 determine a cause of death?

10 A I was, yes. Ms. James suffered a gunshot wound to the
11 chest.

12 Q And during the autopsy were you able to determine what
13 kind of injuries that gunshot wound caused Ms. James?

14 A Yes, I did. The gunshot wound enters her body, and I
15 will show the jury, right clavicle. Collarbone. Penetrates
16 deeply into the chest to make some very large holes in the
17 heart which, of course, is fatal. And then it proceeds to
18 significantly damage the left lung before embedding in the
19 fat of her back on the left side.

20 Q Dr. Fulcher, if you wouldn't mind -- if you wouldn't
21 mind stepping down here. On the anatomical drawing up here
22 --

23 A Sure.

24 (Whereupon, the witness stepped down from the witness
25 stand.)

DR. JAMES WILLIAM FULCHER-DIRECT EXAMINATION

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1 Q -- if you would, sir, take one of the red stars and
2 place it on there at the point of entry to that gunshot
3 wound.

4 A Her entry wound is approximately -- let me see. I'll
5 get this more or less exact. The right clavicle right --
6 kind of near the sternal notch. So it actually -- the
7 bullet doesn't break the collarbone. It goes under it to
8 get into the chest cavity. And it's important to note that
9 this gunshot wound is angled sharply downward. So it comes
10 in and angles down rather significantly, goes from right to
11 left to end up in the soft tissue of the left flank in that
12 area there.

13 Q And as you testified, the damage that that bullet
14 caused the heart and lungs, it was fatal?

15 A Yes. There was a significant amount of blood in the
16 chest cavity and in the sack that surrounds the heart.

17 Q Do you have any opinion on how quickly death would have
18 occurred?

19 A Minutes without emergent medical surgery, or
20 cardiothoracic surgery.

21 Q And that was the cause of death. Were you able to
22 determine a manner of death?

23 A Yes. Given that this is a distant range wound, this is
24 a homicide. Meaning she did not cause this wound on her
25 own.

1 Q Now, tell the jury what you mean by distant wound and
2 how you came to that conclusion.

3 A There is no skin surface soot stipple debris on the
4 wound, therefore the distance is at least a couple feet
5 away.

6 Q And what causes that soot and stippling when you do
7 find it?

8 A It leaves the end of the barrel. And you can imagine
9 if the barrel is right up against your skin, that is
10 deposited on the skin surface. In this case none was
11 deposited on the surface.

12 Q Now, did you also have an opportunity to perform an
13 autopsy on a Sammie Darryl Leake?

14 A I did, yes.

15 Q And on what day did you perform that autopsy?

16 A The same day, February 1st, 2014.

17 Q And were you able to determine a cause of death for Mr.
18 Leake?

19 A I was.

20 Q And what was that cause of death?

21 A Mr. Leake had two gunshot wounds to the head, entrances
22 in the right neck. Both of the wounds angled upward causing
23 significant damage to his brain. Either one would have been
24 fatal almost instantly.

25 Q And if you would, doctor, if you don't mind stepping

DR. JAMES WILLIAM FULCHER-DIRECT EXAMINATION

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1 back down here.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 Q On the male anatomical drawing, with the same items, if
5 you would place where the entrance wounds were and the
6 approximate angle of the path of the bullet.

7 A Right angle of the neck, jaw there's two. And the
8 directionality in this case is upward crossing midline. And
9 quite significantly upward. These projectiles don't
10 actually hit the great vessels in the neck. They're angled
11 so far upward they pass lateral to the carotid artery.

12 Lateral to the jugular vein, pierce the muscles at the floor
13 of the mouth and go up into the brain. So even though these
14 gunshot wounds are on the neck, the fatal damage they cause
15 is in the brain because they're directed upward so severely.

16 (Whereupon, the witness returned to the witness stand.)

17 Q And were you likewise able to determine a manner of
18 death on Mr. Leake?

19 A Yes. This one is even easier, because with two
20 instantaneously fatal wounds it's really hard to shoot
21 yourself twice and die instantly.

22 Q And so, what was the manner of death you were able to
23 determine?

24 A In this case the manner will be -- the manner will be
25 homicide. I left my report down there. Thank you.

DR. JAMES WILLIAM FULCHER-DIRECT EXAMINATION

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1 Q Now, on Ms. James' body there was -- was there an exit
2 wound?

3 A There was not. I recovered a projectile in the fat of
4 her flank, or back.

5 Q I'm going to hand you that, Doctor, and ask you if you
6 recognize that.

7 A Yes. This is my handwriting labeling this with her
8 autopsy number and bullet from flank, and here is a deformed
9 projectile.

10 Q And what did you do after you recovered this
11 projectile?

12 A I handed it to the -- let's see. It would have been
13 probably given to SLED in this case. There were several
14 Laurens County Coroner officers present, but I believe SLED
15 would have taken this. I'm sure I have a form. It appears
16 this was given to the SLED agent, yes. Hazel.

17 MR. SHEEK: Your Honor, we would offer what's been
18 previously marked as State's Exhibit 46 as evidence.

19 THE COURT: Any objection?

20 MR. WILKES: Well, I'll object to the chain. We
21 haven't had testimony on the complete chain.

22 THE COURT: All right. Subject to linking up the chain
23 we'll move it in as soon as any other members who handled
24 that item have testified.

25 Q And did you ever locate any projectiles in regards to

DR. JAMES WILLIAM FULCHER-DIRECT EXAMINATION

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1 Mr. Leake?

2 A I did, yes. We found a deformed projectile loose in
3 his clothing in the body bag.

4 Q And is that something that's uncommon, to find a loose
5 projectile within clothing?

6 A It is not. As a projectile passes through it's target
7 it loses speed. So oftentimes we'll find projectiles that
8 just have enough speed to exit the body and then get trapped
9 in jackets or tee shirts or clothing. So it's not uncommon
10 to have them present in the clothing.

11 Q I hand you what's been previously marked for
12 identification as State's Exhibit 44. Do you recognize that
13 item?

14 A Yes. This is a bullet from the body bag of Mr. Sammie
15 Leake.

16 Q And are there some fragments also in that bag?

17 A There are. There's a few small fragments. Those were
18 present at or near that site. Let me see if I recovered any
19 fragments from the gunshot wounds themselves. I don't
20 believe I did. No.

21 Q And did you likewise turn these over to SLED?

22 A Yes. Same thing. Same reports.

23 Q Now, on Mr. Leake were there two distinctive entrance
24 wounds, or what did the wound look like?

25 A Sure. On him there are two distinct entrance wounds.

1 Both of them on the neck. My actual body diagram shows them
2 pretty well. One on the right side of the neck is almost
3 directly below the ear, and the other is lower and a little
4 more anterior. Those wounds are overlaid with their long
5 axes oriented vertically, so they're longer than they are
6 wide, or taller than they are wide. And that corresponds
7 with their upward mobility -- or their upward orientation.
8 You can imagine then if a bullet hits straight down on
9 something it makes a circle, whereas if it comes in at an
10 angle it makes an oval just as it penetrates the skin.

11 Q And did you find any soot or stippling on those wounds?

12 A No. Those had no skin surface soot or stippling. They
13 had minimal edges. But outside of that there is no evidence
14 that they are a close range or a contact wound.

15 MR. SHEEK: And, Your Honor, the State would offer
16 Exhibit 44, I believe subject to the same objection.

17 THE COURT: Correct. We'll wait for the rest of the
18 chain testimony.

19 MR. SHEEK: Yes, sir. Beg the Court's indulgence one
20 moment. I believe, Your Honor, for the State we would offer
21 this diagram into evidence as Dr. Fulcher has modified it.

22 MR. WILKES: No objection.

23 THE COURT: Without objection. Do we have a number?
24 We don't have a number on that yet, so let's go ahead and
25 give it one.

IRA PARNELL-DIRECT EXAMINATION

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1 MR. SHEEK: Yes, we do, Your Honor.

2 THE COURT: Oh, we do. Okay.

3 MR. SHEEK: It's already been numbered as State's
4 Exhibit 35.

5 THE COURT: State's 35 is in evidence.

6 (Whereupon, State's Exhibit 35 was admitted into
7 evidence.)

8 MR. SHEEK: Thank you, Dr. Fulcher. Please answer
9 anything Mr. Wilkes may have.

10 THE WITNESS: Very good.

11 MR. WILKES: No questions, Your Honor.

12 THE COURT: Doctor, thank you. Good to see you again.

13 THE WITNESS: Thank you very much, sir. I appreciate
14 it.

15 (Whereupon, the witness stepped down from the witness
16 stand.)

17 THE COURT: All your next witness.

18 MR. MOWRY: We call Ira Parnell.

19 IRA PARNELL, having first been duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MOWRY:

23 Q You are Ira Parnell?

24 A Yes, sir. I am.

25 Q Mr. Parnell, what is your current employment status?

IRA PARNELL-DIRECT EXAMINATION

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1 A I am currently retired.

2 Q Prior to your retirement what did you do?

3 A I was a firearm and tool mark examiner with SLED for 42
4 years.

5 Q Forty-two years?

6 A Yes, sir.

7 Q What do you do as a firearm and tool mark examiner?

8 A Generally when evidence is brought into the laboratory
9 it is to determine caliber, whether or not a particular
10 fired component, be it a cartridge case or a bullet, was
11 fired in any particular gun, whether the gun that was
12 submitted or not submitted was functional. And then in
13 regards to tool marks we examined marks left at crime scenes
14 by various tools on doors, chains, locks and that sort of
15 thing. It's all done microscopically. And we make
16 determinations based on the microscopic markings left on the
17 evidence that's submitted to us.

18 Q So as a firearms examiner what kind of -- and tool mark
19 examiner, what kind of specialized training do you have in
20 these areas?

21 A Well, the -- at the time that I was trained in the
22 early '70s there was no school that you could go to to learn
23 this skill or this discipline. So it was basically an
24 apprenticeship type training process where you studied under
25 one or more already court qualified firearm and tool mark

IRA PARNELL-DIRECT EXAMINATION

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1 examiners for a period of up to two years. And when that
2 examiner was willing to say that you were qualified to do
3 the work then you were signed off on and you started
4 receiving your cases. During that time you assisted that
5 examiner by test firing firearms, microscopically comparing
6 things, and under their exact tutelage they were actually
7 looking through those out of the microscope while you were
8 working, and they explained to you what to look for, what to
9 not pay any attention to that was damage caused by something
10 other than the inside of the gun barrel. And they showed
11 you what to do and were sure that you were qualified before
12 they signed off on you.

13 Q At some point were you kind of high up in the
14 hierarchy, I guess you could say, of your section?

15 A Yes, sir. I was supervisor for 20 years.

16 Q And were you supervisor basically when you retired?

17 A Yes, sir.

18 Q Have you been declared an expert in Court before?

19 A Yes, sir. I have.

20 Q And how many times would you estimate that you've been
21 declared an expert? Just roughly.

22 A Several thousand I would think. I don't have an idea
23 at this point.

24 Q And in what Court's have you been declared an expert?

25 A South Carolina State Court, North Carolina State Court,

IRA PARNELL-DIRECT EXAMINATION

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1 Federal District Court of Virginia, Federal District Court
2 here in South Carolina.

3 Q And multiple times you've been declared an expert?

4 A Yes, sir. I have.

5 Q In what areas have you been -- have you been declared
6 an expert?

7 A Well, again, in the early part of our career the
8 firearms department was responsible for crime scene
9 processing, fingerprints, tire wear, footwear, in addition
10 to firearm and tool mark examinations. So all those
11 disciplines. But in the latter part my career was mainly
12 firearm and tool marks.

13 MR. MOWRY: Your Honor, I would offer Mr. Parnell as an
14 expert in firearms and tool mark identification.

15 MR. WILKES: No objection.

16 THE COURT: Again, ladies and gentlemen, the parties
17 agree that Mr. Parnell is an expert in the field of firearm
18 and tool mark identification, so he can give opinion
19 testimony in that area that you can use as you deem
20 appropriate. Go ahead, Mr. Mowry.

21 Q Mr. Parnell, let me hand you State's Exhibits 44 and 46
22 and ask you if you can identify those, please.

23 MR. WILKES: Your Honor, if I may make an objection
24 which is renewing my earlier objection to relevance to
25 testimony of something not in evidence yet because of the

IRA PARNELL-DIRECT EXAMINATION

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1 chain.

2 THE COURT: I understand. But I think he's part of the
3 chain, so -

4 MR. MOWRY: Yes, sir. He's the last link in the chain,
5 as a matter of fact.

6 THE COURT: I understand your position, but go ahead.

7 A Yes, sir. I recognize the objects in State's Exhibits
8 44 and 46. They each bear my case number, specimen number,
9 and initials and I have examined these items.

10 Q And how did you go about examining those items?

11 A In this particular case I only received fired bullets,
12 fragments and cartridge cases. So there was no firearm
13 submitted for comparison. So the request was to know what
14 the caliber of these items were. Were they suitable for
15 possible comparison with a firearm should one be submitted,
16 and were they or not fired by the same firearm. In this
17 case with these two items, State's Exhibits 44 and 46, by
18 examining them visually and microscopically I was able to
19 determine that the main parts of these bullets as fragments
20 also in State's Exhibit 44. But they were most consistent
21 with a 9 millimeter caliber projectiles in each case and
22 they were both fired by one firearm based on the microscopic
23 markings left on them by the gun that did fire them.
24 Q So each of those items fired -- was fired by the same
25 weapon; is that right?

IRA PARNELL-DIRECT EXAMINATION

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1 A Yes, sir. State's Exhibits 44 and 46 were fired by one
2 firearm.

3 Q If you were brought a firearm to compare could you tell
4 whether that specific firearm fired those specific
5 projectiles?

6 A Potentially. And I say that because depending on the
7 condition of the gun. If the gun was in reasonably good
8 condition then I think I could probably determine that it
9 was or was not fired in a particular firearm.

10 Q Okay. Let me hand you these items also, these are
11 State's Exhibits 45 and 42, and ask you if you can identify
12 those.

13 A I'm going to have to open these up. The outer
14 packaging also has my case number, specimen number and
15 initials. I can see them on the outside here. Yes, the
16 packaging as well as the -- most of the bullet that's in
17 State's Exhibit 42 -- are we saying the whole package as 42?
18 Both of these that's containing -- are we saying that?

19 Q Well, no, actually -- yes. Yes. All that is 42.

20 A In State's Exhibit 42 there are two fired projectiles.
21 Most of them. Some of the jacket has been peeled away. But
22 they still have my case number, specimen number and initials
23 on both of these, and I have examined these items.

24 Q And what was the result of your examination?

25 A Based on the microscopic comparisons I conducted on

IRA PARNELL-DIRECT EXAMINATION

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1 these items from State's Exhibit 42, which contains two
2 fired projectiles, my items 14 and 15, they were also fired
3 by the same firearm based on the comparisons that I made and
4 my opinion. The fired -- the projectile in State's Exhibit
5 44, as well as the projectile in State's Exhibit 46.
6 State's Exhibit 45, which is my item 16. It's a small
7 bullet fragment which was unsuitable for identification
8 based on the small size and the limited amount of markings
9 that were left on it.

10 Q What would -- what are you looking for in these kinds
11 of cases? What markings are you looking for? Can you
12 explain that for the jury?

13 A Yes. You're looking for markings that are individual
14 to a particular firearm. When a firearm barrel is made
15 metal is removed from a certain area inside the barrel.
16 It's what we call lands and grooves. Lands are the raised
17 area in the barrel and is actually the original diameter of
18 the barrel. A groove is the area between the lands and it
19 is where metal has been removed from the inside of the
20 barrel. The purpose of the rifling, or the lands and
21 grooves, is to make the bullet spin. Just like a
22 quarterback throwing the football. When he puts a tight
23 spiral on the football and it goes farther straighter and is
24 more accurate. Then if he threw it sideways it would float
25 then and not go where he wanted it to go. The markings that

IRA PARNELL-DIRECT EXAMINATION

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1 are left inside the barrel are totally unique and individual
2 to every firearm barrel. They're microscopic in nature.
3 And you may not always see them with your naked eye, but
4 under a microscope they're very evident. And by comparing
5 these individual markings, and in this case on the fired
6 bullets that were submitted and fragments, I could compare
7 to see if the same gun barrel contacted each of these
8 bullets on the cooper jacket. And it did in the case where
9 the bullets were of good enough quality to microscopically
10 compare. The small fragments did not have enough markings
11 on them to make a determination. But the major bullets from
12 State's Exhibits 42, 44, 46 -- yeah, 42, 44 and 46, these
13 four fired bullets were, in my opinion, fired through the
14 same gun barrel.

15 Q All right. What kind of -- were you able to make a
16 determination as to what caliber weapon we're talking about
17 here?

18 A Yes, sir. The overall physical appearance
19 characteristics that were left there, in my opinion they
20 were 9 millimeter Ruger caliber bullets.

21 Q And were you able to narrow down the number of
22 manufacturers that might have made weapons that could have
23 fired those bullets?

24 A Yes, sir. These bullets that were submitted exhibited
25 six lands and grooves with a right direction of twist.

IRA PARNELL-DIRECT EXAMINATION

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1 They're a pretty good lengthy list of firearms that have
2 those same rifling characteristics. It's not something
3 that's proprietary to a particular brand. But we're able to
4 limit it to a certain degree.

5 Q About how many do you think that you were able to come
6 up with? Just a ballpark figure?

7 A Let me see if I made a list of them here. I didn't
8 include them in the report because it was kind of lengthy.
9 Here it is. I'm going to say about close to 80 different
10 brands.

11 Q So 80 different brands. Would Ruger fall into that
12 category?

13 A Yes, sir. It's right in the middle.

14 Q Were you able to examine the items for State's Exhibit
15 43 as well?

16 A Yes, sir. State's Exhibit 43 contains two fired 9
17 millimeter Ruger caliber cartridge cases. The empty casing.

18 Q And what process did you go through for examining
19 those?

20 A Exactly the same microscopic procedure and process.
21 Comparing the -- what we call the breechface, or the back
22 end of the cartridge case where the firing pin strikes.
23 Microscopically comparing those with each other, and they
24 were, in fact, marked the same and in my opinion fired by
25 one firearm.

IRA PARNELL-DIRECT EXAMINATION

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1 Q Now, are those the same ammunition manufacturer? Did
2 the same manufacturer make those same cartridges?

3 A The two brands on the cartridge cases?

4 Q Yeah.

5 A Let's see. I'm referring back to my notes here just
6 for a moment. No, sir. They were two different brands.

7 Q Which brands do we have there?

8 A We have Federal Cartridge -- Federal Cartridge Company
9 and Hornaday.

10 Q Is it unusual to have more than one type of -- or one
11 manufacturer's product in the same weapon?

12 A Not at all.

13 Q Okay. Same caliber though; is that right?

14 A Same caliber. Yes, sir.

15 Q What was the result of your examination?

16 A That both of these cartridge cases contained in State's
17 Exhibit 43 were fired by the same firearm and may be
18 suitable for identification with a particular gun.

19 Q Now, you had talked about the marking on the breechface
20 of the gun struck by the firing pin; is that right?

21 A Yes, sir.

22 Q Are there other markings on there that you could look
23 to?

24 A There are five areas on the fire cartridge case that
25 can be reliably microscopically compared and identified with

IRA PARNELL-DIRECT EXAMINATION

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1 a firearm. It's the strike or the firing pin, the
2 breachface, which is the area around where the firing pin
3 hits, and when it recalls back it impresses the individual
4 markings from the breechface into the cartridge case itself,
5 the extractor, which pulls it out of the gun after being
6 fired, and the ejector which kicks it out of the gun. And
7 then we have chamber markings, which is where when the
8 cartridge fires it expands and when it's pulled backwards
9 it's marked by the inside of the chamber in the gun.

10 Q Now, all of these are created by what particular type
11 of weapon?

12 A Semiauto.

13 Q Semiautomatic. What's the difference between that and
14 a revolver?

15 A A revolver has a cylinder with up to nine individual
16 unfired cartridges inserted in it. A revolver turns. When
17 you pull the trigger on a double action revolver, each time
18 you cock it or pull the trigger the cylinder rotates and
19 puts a fresh unfired round under the hammer. A semiauto is
20 just that. You pull the trigger once, it fires, it
21 extracts, ejects, picks up another one out of the top of the
22 magazine, loads it in the chamber, and does that, assuming
23 it's functioning properly, until the gun is empty.

24 Q And how quickly in between the rounds does it do all
25 those processes you were talking about?

IRA PARNELL-DIRECT EXAMINATION

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1 A A lot quicker than you think. I mean, it can empty a
2 magazine in just a matter of seconds.

3 Q The items that you were looking at there, the
4 projectiles and the shell casings, what type of weapon did
5 those come from?

6 A A semiautomatic firearm.

7 Q And you said they were all 9 millimeter?

8 A Yes, sir.

9 Q And the cartridge cases came from the same weapon?
10 Were fired by the same weapon; is that right?

11 A They came from one weapon.

12 Q One weapon?

13 A I can't say that the bullets in the cartridges cases
14 were fired by the same gun since I don't have a gun to
15 compare it.

16 Q Right. And likewise the projectiles?

17 A Correct. The bullets in one gun. The cartridge cases
18 from -- could be the same gun, could be another gun. I
19 don't have a gun to look at.

20 Q Right. I understand. But what you're saying is all
21 these projectiles came from the same weapon, or were fired
22 by the same weapon?

23 A All of the -- the complete bullets or mostly complete
24 bullets. The small fragments I couldn't tell. But the main
25 bullets were definitely fired in one gun based on my

IRA PARNELL-DIRECT EXAMINATION

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1 testing, in my opinion.

2 Q And all of the shell casings came from what?

3 A Potentially another gun, but the same gun.

4 Q But the shell casings were fired by the same weapon is
5 what I'm getting at?

6 A Yes.

7 Q We don't know if the projectiles and the shell casings
8 go together, but the shell casings came from one gun?

9 A Correct.

10 Q And there's no doubt in your mind -- in your expert
11 opinion that the projectiles came from one gun?

12 A Correct.

13 Q Potentially the same gun?

14 A Potentially.

15 Q Mr. Parnell, I'm going to hand you what has been marked
16 for State's -- for identification as State's Exhibit No. 40.
17 Can you tell us what that is?

18 A This is an extended high capacity magazine which
19 appeared to be consistent with a 9 millimeter caliber.

20 Q What is the significance of a high capacity magazine?

21 A It allows you to shoot probably double the amount that
22 the standard magazine that comes with the firearm allows you
23 to shoot.

24 Q Probably how many rounds would this hold?

25 A Could hold up to 30.

IRA PARNELL-DIRECT EXAMINATION

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1 Q And would that be compatible with a Ruger 9 millimeter?

2 A Very possibly. Yes, sir.

3 MR. MOWRY: Judge?

4 THE COURT: Yes, sir.

5 MR. MOWRY: Would you like to approach or just --

6 MR. WILKES: Yes.

7 MR. MOWRY: Your Honor, may we approach for a second?

8 THE COURT: Please.

9 (Whereupon, a sidebar was held.)

10 THE COURT: The record will reflect the bench
11 conference. Maybe just for purposes -- we'll call that
12 bench conference B. Okay? Solicitor, you may continue,
13 sir.

14 MR. WILKES: Your Honor, do I need to make that
15 objection now or --

16 THE COURT: No. We can put that on the record at a
17 later point in time.

18 MR. WILKES: Fair enough.

19 THE COURT: I didn't want to send the jury out. So
20 your objection is noted. We'll bring up bench conference B
21 at a later point in time just so the record is clear.

22 Q Mr. Parnell, I want to hand you what has been marked as
23 State's Exhibit No. 6. Do you -- have you seen that picture
24 before?

25 A I have seen what's represented on this picture.

IRA PARNELL-DIRECT EXAMINATION

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1 Q You've seen an electronic version of it --

2 A Yes.

3 Q -- is that right?

4 A Yes, sir. I have.

5 Q You were sent a digital file of that picture; is that
6 right?

7 A Of this picture. That's correct. It appears to be the
8 same picture.

9 Q When you received the file what did you do with it?
10 The digital file? The photograph?

11 A I enlarged it on my computer screen and looked at the
12 cutouts. Looked at the various characteristics of the
13 firearm that's represented in the photo and concluded that
14 it was most consistent with being a Ruger pistol.

15 Q And were you able to determine the caliber?

16 A Yes, sir. Based on the writing on the chamber
17 represented in the picture. It was 9 by 19 millimeter,
18 which is the designation for a 9 millimeter Ruger.

19 Q I'm going to hand you what has been marked as State's
20 Exhibit No. 29 for identification. Have you seen that
21 photograph as well?

22 A Yes, I have.

23 Q And what does that represent, sir?

24 A This represents a photo that was also sent to me
25 electronically for examination and comparison with the one

IRA PARNELL-DIRECT EXAMINATION

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1 represented in State's Exhibit 6.

2 Q Was the one, State's Exhibit No. 29, was that a known
3 basically?

4 A Yes, sir. It was.

5 Q And what does that represent? What does that show?

6 A It represents a Ruger 9 by 19 millimeter -- 9
7 millimeter Ruger caliber pistol. On this side I can't tell
8 whether it's a model P89 or a P85, but it's definitely a
9 Ruger pistol.

10 Q How does that compare with the photograph that we have
11 there, State's Exhibit No. 6?

12 A Visually the only difference I see is potentially the
13 color, or the metallic finish on the hammer and the trigger,
14 and the length of the magazine. The -- an extended magazine
15 as in the one in State's Exhibit No. 6.

16 Q Let me hand you again State's Exhibit No. 40 for
17 identification and ask you how that compares to the magazine
18 that you see in State's Exhibit No. 6.

19 A What you can see of the magazine sticking out of the
20 firearm in State's Exhibit No. 6, they're basically visually
21 identical. But there's not much there to look at other than
22 the lower part of the magazine here.

23 Q Right. Are you able to tell whether that's the same
24 magazine as the State's Exhibit No. 40?

25 A No, sir.

IRA PARNELL-CROSS-EXAMINATION

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1 Q Are you able to determine whether or not that is
2 similar to the one in State's Exhibit No. 6?

3 A Yes, sir. It would be my opinion that they're similar
4 if not the same. I can't tell.

5 Q Yes, sir.

6 MR. MOWRY: Thank you, Mr. Parnell. I believe that's
7 all I have. If you'd answer any of Mr. Wilkes' questions,
8 please, sir.

9 THE WITNESS: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WILKES:

12 Q Mr. Parnell, I believe you characterized that as most
13 consistent bullets, or the projectiles as we call them?
14 Most consistent with the 9 millimeter?

15 A Yes, sir.

16 Q Does that mean that it is impossible for it to be any
17 other caliber?

18 A Well, the 9 millimeter bullets are close enough in
19 diameter to have potentially been fired in another type of
20 cartridge case. But basically they're -- if they're going
21 to be 9 millimeter, they're the same weight, same
22 construction, same appearance, in my opinion. But I can't
23 rule out everything else totally.

24 Q So essentially diameter-wise 380, 38, 9 millimeter are
25 all very close, correct?

IRA PARNELL-REDIRECT EXAMINATION

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1 A Very close. Yes, sir.

2 Q Thus the reason you can't say conclusively it had to be
3 a 9 millimeter?

4 A Well, 380 is generally visibly different. A 38 special
5 is a little closer. But the 9 millimeter weighs X. And
6 based on the weight and the physical characteristics they're
7 most likely 9 millimeter, but I can't rule out everything.

8 Q The magazine, would you say the magazine is consistent
9 with a Ruger?

10 A The cutouts in the magazine up at the top in the
11 latching mechanisms are consistent with Ruger type
12 magazines.

13 Q But again, consistent doesn't rule out that it would
14 fit -- it could fit a Glock 9 millimeter as well, could it?

15 A No.

16 Q When you say consistent with, could it fit any other
17 gun?

18 A Potentially. There may be something that I'm not aware
19 of.

20 MR. WILKES: No further questions.

21 REDIRECT EXAMINATION

22 BY MR. MOWRY:

23 Q Referring once again to State's Exhibit No. 6. What
24 manufacturer made that firearm?

25 A Ruger.

1 MR. MOWRY: Thank you.

2 THE COURT: Mr. Parnell, thank you very much. You are
3 free to go, sir.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Good seeing you again.

6 THE WITNESS: Yes, sir.

7 (Whereupon, the witness stepped down from the witness
8 stand.)

9 THE COURT: Call your next witness.

10 MR. MOWRY: Your Honor, this may be a good time to
11 break for the day. We have -- we can get back on track
12 tomorrow.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, hold up for just a second. I want to talk logistics
15 with them over here and then I'm going to give you report
16 back. So just be comfortable for a moment.

17 (Whereupon, a sidebar was held.)

18 THE COURT: Ladies and gentlemen, we're actually pretty
19 much on schedule after talking to the attorneys. So -- and
20 there's a few other things that the Court needs to address
21 in the morning. So I'm going to ask that you be in the jury
22 room at 9:30. We're not going to do a repeat of this
23 morning. Okay? We're going to start at 9:30. So I again
24 apologize for keeping you back there and everything that
25 transpired, but I hope you appreciate things are moving

1 much, much more smoothly by getting that stuff out of the
2 way this morning as opposed to taking breaks every 15 or 20
3 minutes and then addressing those issues. So have a lovely
4 evening. Again, please don't discuss the case with anyone.
5 Don't do any research about the case. I do know that there
6 was a reporter present from Laurens Advertiser this
7 afternoon. If your normal habit is to read the paper in the
8 morning, you get it delivered to your house or whatever the
9 case may be, I'm going to have to ask you -- and I'm a
10 creature of habit, too. But I'm going to have to ask you to
11 kind of skip that habit tomorrow, okay, because there may be
12 something in the Advertiser about that or about this case
13 and I just don't want you all to be exposed to that. So
14 hopefully you'll stay up late watching the World Series and
15 you won't need to wake up and read the paper. Okay?

16 With that, have a lovely evening. Don't talk about the
17 case. Be back here at 9:30. Wear the badges back, and see
18 you in the morning. Thank you.

19 (Whereupon, the jury was released at 4:23 p.m.)

20 THE COURT: The jury is out. And just for purposes of
21 the record. Mr. Wilkes, when I referenced a few moments ago
22 the bench conference that we had up here, I think I called
23 it bench conference B as in boy, the objection that Mr.
24 Wilkes interposed was to the photographs, State's 29 and
25 State's 6, based upon, at this point in time, of course, the

1 search of the cell phone and the chain. That's my
2 understanding of the nature of the objection. Am I correct?
3 That's what you objected at the bench?

4 MR. WILKES: Yes, sir.

5 THE COURT: I told him he was protected. That we would
6 put the grounds on the record at a later point in time,
7 which I have just done. And obviously the State, or at
8 least according to my records, have not moved State's 6 or
9 29 into evidence at this point in time. So we'll --

10 MR. MOWRY: We will do that when we get into the
11 evidence about the phone dump.

12 THE COURT: Right. I assumed as much. So just when
13 that happens you can just interpose your objection for the
14 record. And if there are any additional grounds when they
15 move State's 6 and 29 into evidence -- 29 is just a stock
16 photo; is that correct?

17 MR. MOWRY: Yes, sir.

18 THE COURT: It's just like off the Internet. Just --

19 MR. MOWRY: That's absolutely correct, Your Honor.

20 THE COURT: All right. So I don't know that 29 is so
21 objectionable as 6. But if there are any additional grounds
22 that you can think of, Mr. Wilkes, obviously just apprise me
23 of those at the time they move 6 into evidence.

24 MR. WILKES: Thank you, Your Honor. I'll just say now
25 I think relevance obviously for 29. If 6 doesn't come in,

LAVASHTIA PULLEY-DIRECT EXAMINATION

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1 then 29 is irrelevant, so...

2 THE COURT: Fair enough. Good point. Very well. I'll
3 see you all in the morning and I hope you all have a
4 pleasant evening.

5 MR. MOWRY: Thank you, Your Honor.

6 TRIAL DAY 3-10/26/16

7 (Whereupon, the jury entered the courtroom at 9:53
8 a.m.)

9 THE BAILIFF: All jurors present, Your Honor.

10 THE COURT: The record should reflect that the jury is
11 back and is seated. The Defendant is present with counsel.
12 Ladies and gentlemen of the jury, I trust you all had a
13 pleasant evening last night and we are, of course, still in
14 the State's case in chief at this point in time. So,
15 Solicitor, if you'll call your next witness.

16 MR. MOWRY: Thank you, Your Honor. We call Lavashtia
17 Pulley.

18 LAVASHTIA PULLEY, having first been
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MOWRY:

22 Q You are Lavashtia Pulley?

23 A Yes, sir.

24 Q Would you spell your first name for the benefit of the
25 court reporter, please.

LAVASHTIA PULLEY-DIRECT EXAMINATION

225

- 1 A L-a-v-a-s-h-t-i-a.
- 2 Q But you pronounce it Lavasha; is that right?
- 3 A Uh-huh.
- 4 Q And what do you go by?
- 5 A Vasha.
- 6 Q Vasha, where do you live?
- 7 A Now I live in Laurens.
- 8 Q In the city of Laurens?
- 9 A Uh-huh.
- 10 Q Back on -- back in January of 2014 where did you live?
- 11 A Mountville.
- 12 Q Do you know the Defendant in this case, Deshanndon
- 13 Franks?
- 14 A Yes.
- 15 Q How long have you known him?
- 16 A Since school.
- 17 Q So how long would you say, just roughly?
- 18 A A lot of years.
- 19 Q Did you grow up with him?
- 20 A Around him.
- 21 Q Are you originally from Cross Hill?
- 22 A Huh-uh.
- 23 Q How did you get to know him?
- 24 A I knew him through school coming up.
- 25 Q You went to the same school as he did?

LAVASHTIA PULLEY-DIRECT EXAMINATION

226

- 1 A Uh-huh.
- 2 Q Let me ask you to think forward to January 30th of
- 3 2014. Okay? Where did you go that night?
- 4 A I had went to Wash.
- 5 Q And what is that, for the benefit of the folks who
- 6 don't know?
- 7 A It's like a little hangout spot.
- 8 Q What does it got in it?
- 9 A Alcohol.
- 10 Q Yeah. It's got a pool table?
- 11 A Pool tables, yeah. Stuff like that.
- 12 Q And this is just where people would go to hang out; is
- 13 that right?
- 14 A Uh-huh.
- 15 Q And it's called Wash, W-a-s-h; is that right?
- 16 A (Nonverbal response.)
- 17 Q Who did you go there with?
- 18 A I was with my aunt and uncle.
- 19 Q Your aunt and uncle, okay. How many folks were there
- 20 that night?
- 21 A It wasn't that many. Probably about 10 at the most.
- 22 Q Was Deshanndon Franks among them?
- 23 A Yes.
- 24 Q Was Tevin Hill among them?
- 25 A Yes.

LAVASHTIA PULLEY-DIRECT EXAMINATION

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1 Q Did you see him?

2 A Uh-huh.

3 Q What did you do when you got to washes?

4 A I had went in. I sat down and Shanndon had came over
5 there.

6 Q About what time of the day was this, or the night?

7 A About 11:00 at night.

8 Q 11:00 at night. You've known Deshanndon Franks.
9 Describe what he was acting like that night.

10 A He was just hyped.

11 Q Hyped?

12 A Like -- yeah. Pumped, amped, whatever.

13 Q Pumped, amped? Those are the terms you used?

14 A Uh-huh..

15 Q Was that unusual for him?

16 A Well, I ain't never seen him like that.

17 Q And you've known him for a long time; is that right?

18 A Uh-huh.

19 Q When he came over to you what happened then?

20 A He was just talking. He was pulling a couple of things
21 out his coat. He pulled out the gun and I was like get the
22 gun away from me, you know. I don't mess with guns. And he
23 was like you ain't got to worry. It's a Ruger. It's on
24 safety, so...

25 Q Let me ask you this. Did he talk to you at the table

LAVASHTIA PULLEY-DIRECT EXAMINATION

228

1 or did you all go somewhere else?

2 A We was at the bar still.

3 Q Okay. You were still at the bar. What was he wearing?

4 A He had on like a body overall suit.

5 Q What color was it?

6 A It was tan. Like a hunting suit.

7 Q All right. Let me show you this item which was -- the
8 packaging for which was marked as 38. Yes. State's Exhibit

9 No. 38. Does this appear to be the item you're talking
10 about?

11 A Yes.

12 Q So he was wearing these; is that right?

13 A Uh-huh.

14 THE COURT: If you could, ma'am, to the extent that you
15 remember to, say yes or no because it's easier for her to
16 take that down.

17 THE WITNESS: Okay.

18 Q Now, you said that he showed you a gun. How did that
19 come about?

20 A He was pulling stuff out of his coat.

21 Q Looking for stuff, or did it appear?

22 A Yeah, I guess. He was getting money out to buy a
23 drink. So he was just...

24 Q And you say he pulled out a gun?

25 A Yes, sir.

LAVASHTIA PULLEY-DIRECT EXAMINATION

229

1 Q What did you say or think when he pulled out the gun?

2 A I mean, I didn't think nothing of it. I'm just saying
3 I don't deal with guns. So, you know, don't pull that
4 around me.

5 Q Did that make you nervous?

6 A Kind of, but I wasn't scared, I mean.

7 Q And what did he tell you at that point?

8 A He was like you ain't got to worry. It's a Ruger.
9 It's on safety, so...

10 Q Did you still not want to touch it?

11 A I wouldn't.

12 Q Can you describe the gun? How do you remember it
13 looking?

14 A It was black ashy kind of like.

15 Q Do you know the difference between a revolver and a
16 semiautomatic?

17 A No.

18 Q The revolver with the cylinder that you pull, you know,
19 like an old six-shooter in the Western. Was that -- was
20 that what it looked like?

21 A No.

22 Q Let me show you what's been marked as State's Exhibit
23 No. 29. How similar was the gun you saw to that? Was it
24 generally like that or did it look different?

25 A It was closer to that than the other one.

LAVASHTIA PULLEY-DIRECT EXAMINATION

230

1 Q What did he do with the gun after he had offered it to
2 you?

3 A He just placed it -- sat it down on the counter.

4 Q What did you all do after that?

5 A Well, we just sat there for a while, then we got ready
6 to go. So we was going outside and he had came outside
7 talking.

8 Q Who was he with when he came outside?

9 A He was by himself.

10 Q Did you ever see him and -- or he -- did you ever see
11 him with Tevin Hill?

12 A Tevin was at the back.

13 Q But they were both at the same place, you just didn't
14 see them together?

15 A Uh-huh.

16 Q All right. What did you do after that?

17 A I done went home.

18 Q When did you find out about Nikesha James and Sammie
19 Leake?

20 A I found out the next -- well, that next morning. It
21 was probably like kind of in the evening. But he had text
22 my phone that morning.

23 Q Who had?

24 A Shanndon. And he had said hey, beautiful, so...

25 Q Did he tell you about it?

LAVASHTIA PULLEY-DIRECT EXAMINATION

231

1 A No.

2 Q Who told you about it? How did you find out about it?

3 A It was all over Facebook.

4 Q So you were -- you were going on social media?

5 A Yeah. But I had talked to -- I started returning phone
6 calls and a couple of my friends had called me. And they
7 was like talking about it.

8 Q What did you do when you found out about this?

9 A Once I found out I was dramatic. I was shocked. I
10 couldn't believe it. And then once I started getting pieces
11 of the story and who was supposed to be on the scene, you
12 know, it all came together.

13 Q Did you approach law enforcement?

14 A I didn't approach law enforcement, but they approached
15 me.

16 Q And did you make a statement to the effect that you've
17 testified to?

18 A Yes.

19 Q Do you recall when you made that statement?

20 A January, February.

21 Q So the day after you saw Tevin Hill at Washes? I mean,
22 excuse me, Deshanndon Franks and Tevin Hill at Washes?

23 A Uh-huh. Yes.

24 Q About what time of day? Do you recall?

25 A When I seen them?

LAVASHTIA PULLEY-CROSS-EXAMINATION

232

1 Q No. When you made the statement.

2 A It was that -- they had came out that night.

3 Q So that night -

4 A Yeah.

5 Q -- you made the statement?

6 A Uh-huh.

7 MR. MOWRY: Thank you, ma'am. That's all I have. If
8 you'd answer any of Mr. Wilkes' question.

9 CROSS-EXAMINATION

10 BY MR. WILKES:

11 Q Ms. Pulley, when you gave your statement, your
12 statement talks all about Mr. Franks, doesn't it?

13 A Yes.

14 Q So when you gave that statement to the police did the
15 police ask you to give a statement and tell them all about
16 Mr. Franks?

17 A No.

18 Q When you gave your statement it starts out, "Me and my
19 aunt went to the club. Shanndon was at the door." How did
20 you -- how did that become the beginning of your statement?

21 A Because they asked me what happened when I got out the
22 car, when I went in and -- he was the only person I talked
23 to when I was there.

24 Q So the police mentioned Mr. Franks to you to start
25 with, did they not?

LAVASHTIA PULLEY-CROSS-EXAMINATION

233

1 A No.

2 Q So they didn't say anything about Mr. Franks. They
3 said just tell me where you were?

4 A What happened that night.

5 Q What happened that night with you?

6 A Uh-huh. What did I do.

7 Q What did you do. And how many times -- I mean, Mr.

8 Franks' name is in this statement almost on every sentence.

9 Did you talk to anybody else while you were there?

10 A Huh-uh.

11 Q Nobody? Didn't talk to a single person? You didn't do
12 a single thing other than talk to Mr. Franks the whole time?

13 A I stayed in one spot.

14 Q The whole time?

15 A Uh-huh.

16 Q And so, the only thing you did that night was talk to
17 Mr. Franks; is that right?

18 A Yeah.

19 Q What time did you leave Washes?

20 A I didn't stay long, so I would say probably about
21 11:30.

22 Q It doesn't say anything about you leaving or where you
23 went in your statement.

24 A No. I know I went home.

25 Q So the last statement is talking about you and Mr.

LAVASHTIA PULLEY-REDIRECT EXAMINATION

234

1 Franks, right? The first sentence is -- second sentence is
2 talking about Mr. Franks in your statement, right?

3 A Uh-huh.

4 Q And almost every sentence in your statement talks about
5 Mr. Franks, right?..

6 A Yes.

7 Q Tevin Hill was there?

8 A Yes.

9 Q Did your Facebook media mention Tevin Hill?

10 A No.

11 Q Nobody? You just talked about Mr. Franks in your
12 statement and nobody else?

13 A Yes.

14 Q And you're telling me that the police never asked you
15 specifically about Mr. Franks?

16 A Yes.

17 Q Now, Ms. Pulley, do you know James Hill?

18 A Yes.

19 Q How do you know James Hill?

20 A Because that's my child's father.

21 MR. WILKES: Very good. No further questions.

22 MR. MOWRY: Just one or two.

23 REDIRECT EXAMINATION

24 BY MR. MOWRY:

25 Q I wanted to ask you. You said you had heard about the

LAVASHTIA PULLEY-REDIRECT EXAMINATION

235

1 shooting. What -- what did you hear that made you want to
2 tell law enforcement about Deshanndon Franks?

3 A Because I heard that he was down there and they was
4 basically -- once I heard he was down there I was like,
5 well, what did he have on. And basically they described him
6 the same way I had just seen him, so...

7 Q And you don't know whether that was true? That's just
8 what you heard and you believed that law enforcement needed
9 to hear what you knew?

10 MR. WILKES: Objection. That's leading, Your Honor.

11 THE COURT: Sustained.

12 A Yes.

13 Q Once you had heard that what did you think?

14 A Once I heard that and once I -- I asked the police was
15 it a Ruger because, you know, that's the gun that I had
16 seen, so...

17 MR. MOWRY: Thank you, ma'am. That's all I have.

18 THE COURT: Ma'am, you can step down. Thank you.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 THE COURT: Call your next witness.

22 MR. SHEEK: The State calls Tamia Kinard.

23 TAMIA KINARD, having been first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

TAMIA KINARD-DIRECT EXAMINATION

236

1 BY MR. SHEEK:

2 Q Ma'am, if you would, state your name and spell your
3 name for the court reporter.

4 A Tamia Kinard. T-a-m-i-a, K-i-n-a-r-d.

5 Q And, Ms. Kinard, while I talk to you, and we tell this
6 to everybody, try to say yes or no as opposed to a nod of
7 the head or an uh-huh, because this lady is going to take
8 down everything you say. Okay?

9 A Yes, sir.

10 Q Ma'am, where do you live?

11 A Oakland Heights. Oakland Heights, Laurens, South
12 Carolina.

13 Q And how long have you lived in the Laurens area?

14 A Three months.

15 Q And do you know the Defendant in this case, Mr. Franks?

16 A Yes, sir.

17 Q And how do you know him?

18 A I been knowing him all my life. Went to the same
19 school, and we also share family members.

20 Q So do you think you know him well?

21 A No.

22 Q I want to take you to the day of January 30th, 2014.

23 A Yes, sir.

24 Q Did you have an opportunity to see Mr. Franks that
25 evening?

TAMIA KINARD-DIRECT EXAMINATION

237

1 A Yes, sir.

2 Q And do you recall where you saw him?

3 A At Nikesha's house.

4 Q And that would be Nikesha James' house?

5 A Yes, sir.

6 Q Over in Cross Hill?

7 A Yes, sir.

8 Q Did you know Ms. James?

9 A Yes, sir.

10 Q And how did you know Ms. James?

11 A She was my classmate. We went to school together.

12 Q Would you consider her a friend of yours?

13 A Yes, sir. A very close friend.

14 Q When you saw her that evening was it at her house?

15 A Yes, sir. Earlier that day she came to my house first,

16 and then we went on to her house.

17 Q What was the purpose of you going over to her house?

18 A She came to my house because we was cooking, and then

19 we went to her house. She said her kids was gone and she

20 was going to be bored. Me and my daughter walked down to

21 her house. Went down there with her. I wasn't the first

22 time. I used to always be down there.

23 Q So she was somebody you'd spent a lot of time with?

24 A Yes, sir.

25 Q About what time did you get over to her house that

TAMIA KINARD-DIRECT EXAMINATION

238

1 evening?

2 A Probably about 8:00.

3 Q And who else was there when you got there?

4 A When me and her got there, just me and her. And when
5 it came for me to do her hair it was me, her and aunt, and
6 my baby.

7 Q Did anybody else come to the house that evening while
8 you were there?

9 A Darryl Leake came to the door.

10 Q Darryl Leake. Is that who some people call Dab?

11 A Yes, sir.

12 Q Anybody else?

13 A Later on Shanndon and Tevin came through.

14 Q And when you say Shanndon are you referring to the
15 Defendant?

16 A Yes, sir.

17 Q And do you see the person that came over? Do you know
18 if Shanndon is sitting in the courtroom?

19 A Yes, sir.

20 Q And can you point him out to us?

21 (Whereupon, the witness identifies the Defendant.)

22 Q And you're referring to the man here smiling with the
23 tie on?

24 A Yes, sir.

25 THE COURT: The record will reflect that the witness

TAMIA KINARD-DIRECT EXAMINATION

239

1 has identified the Defendant.

2 Q Do you recall how he was dressed that evening?

3 A He had on like a jump suit. A brown jump suit, like a
4 hunting suit.

5 Q And do you think if you saw that hunting suit again you
6 would recognize it?

7 A Yes, sir.

8 Q I'm going to show you what's been marked for
9 identification as State's Exhibit No. 38. Do you recognize
10 these?

11 A Yes, sir.

12 Q And does that look like the suit that the Defendant had
13 on that night when you were at Nikesha James' house?

14 A Yes, sir.

15 Q Did you say somebody was with him?

16 A Tevin Hill.

17 Q And did you also know Mr. Hill before that night?

18 A Yes, sir.

19 Q So after they got there what happened at the house?

20 A He came in. Him and Nikesha was talking about
21 something that she put on Facebook and he was talking about
22 Facebook. Talk to me about it like a man -- I mean, like a
23 woman. And he asked her to come back in the bedroom to talk
24 with him. And she was like, well, if you want me to come,
25 then I'm coming. She went in the room and they was back

TAMIA KINARD-DIRECT EXAMINATION

240

1 there. They was talking for a minute. Tevin tried to get
2 -- go back to the bedroom to get Franks, because he said he
3 was ready to go. Franks told him I don't got to -

4 MR. WILKES: Objection. Hearsay.

5 MR. SHEEK: Well, if it's a statement by the Defendant
6 I don't believe it would be hearsay.

7 THE COURT: Overruled. Go ahead.

8 A Shanndon made a statement; I have got you drunk. Now
9 you want to go home. And Tevin was like, yeah, I'm ready to
10 go home. I'm tired.

11 MR. WILKES: Objection. Hearsay.

12 THE COURT: Whose making that statement at this point
13 in time? I missed it.

14 MR. SHEEK: She was referring to something Tevin had
15 said. I'm would assert it not for the truth of the matter
16 asserted. However, I'll move on.

17 THE COURT: I'll sustain that objection. Go ahead.

18 Q Don't talk about what Tevin said. They had a
19 discussion?

20 A Okay, yeah. They was in that room. They had a
21 discussion. They was back there about maybe 10, 15 minutes.

22 Q Now, when you say they, are you referring to Tevin and
23 Shanndon or Shanndon and Nikesha?

24 A Shanndon and Nikesha. Then they came out. Once they
25 came out, I mean, they was talking like it wasn't a problem.

TAMIA KINARD-DIRECT EXAMINATION

241

1 They was laughing and talking normal, like it wasn't a
2 problem. Shanndon went through her kitchen to get a soda
3 out of the refrigerator, and I remember her saying don't get
4 my sodas. My last soda. And he was chasing the soda with a
5 bottle of gin, and he was just sitting there drinking when I
6 left out the door.

7 Q Now, had your aunt left at this time?

8 A Yes, sir. My aunt left. It was probably about 9:30.

9 Q So when your aunt left was it -- who was left there at
10 the house after your aunt left?

11 A After my aunt left Darryl -- it was me, Darryl Leake,
12 and Nikesha and my baby.

13 Q And Tevin and Shanndon?

14 A Tevin and Shanndon came through, yeah, after she left.

15 Q So now, when you left did anybody leave with you?

16 A When I left Tevin -- me, Tevin and my baby left. I
17 asked him would he take me home because Shanndon was being
18 loud and my baby was asleep. So I asked Bull would he take
19 me home. And he went and crunk his car up and let it warm
20 up, and a few seconds later he was like, Sister, are you
21 ready. I said yes, and he took me home.

22 Q Do you recall about what time Tevin and Shanndon got to
23 Nikesha's house?

24 A I say around 12:15.

25 Q And do you recall what time it was that Tevin took you

TAMIA KINARD-DIRECT EXAMINATION

242

1 home?

2 A It was like a little bit after 1:00. Like maybe 1:00,
3 1:05.

4 Q And which way -- do you recall which way you drove out
5 when you left?

6 A The way the driveway is, the way that he pulled in, he
7 didn't back up or turn around or nothing. He went straight
8 through the path. He went behind my uncle Milton's trailer
9 to go around to my trailer and parked in the front yard to
10 let me out.

11 Q So that being Milton Grant?

12 A Yes, sir.

13 Q And obviously when you left did you take your baby with
14 you?

15 A Yes, sir.

16 Q So who was left in the residence when you and Tevin
17 left at about, you said, 1:00 or so?

18 A Yes, sir. It was Nikesha, Shanndon, and Dab.

19 Q Anybody else?

20 A No, sir.

21 Q And after Tevin took you home did you ever go back to
22 the residence that evening?

23 A No, sir.

24 Q What was Tevin driving when he took you home?

25 A A Crown -- I can't remember the name of the car. I

TAMIA KINARD-CROSS-EXAMINATION

243

1 just know a Crown vehicle, or something in that nature.

2 Q Do you remember what color it was?

3 A Like a light greyish color. Blueish grey. Something
4 in that nature.

5 Q How was Shanndon acting that evening while he was at
6 the residence? At Nikesha's residence?

7 A He was hyper. Like amp, you could say. He was just
8 wild. Like he was talking loud. He was jumping around
9 like. He just wasn't acting normal.

10 Q Well, that was going to be my question. Is that normal
11 behavior for Shanndon based on what you know of him?

12 A No, sir.

13 Q And you said you've known him for quite a while?

14 A Yes, sir.

15 MR. SHEEK: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 MR. SHEEK: Thank you, ma'am. Ms. Kinard, please
18 answer anything Mr. Wilkes may have.

19 THE COURT: Cross?

20 MR. WILKES: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. WILKES:

23 Q I believe you said that Mr. Franks and Nikesha came out
24 of the back room and they were laughing like it was no big
25 problem?

TAMIA KINARD-CROSS-EXAMINATION

244

1 A Yes, sir.

2 Q What was Mr. Franks wearing that night? What do you
3 remember?

4 A He had on the overall jumpsuit. a hunting suit.

5 Q Anything else?

6 A I remember walking out the door. It was like maybe --
7 I want to say like a red sweater. It was some type of
8 sweater. I'm thinking it was red that he put over his
9 jumpsuit.

10 Q And you say you knew Nikesha for how long?

11 A We went to school together. She graduated with me. So
12 basically all my life.

13 Q Good friends?

14 A Yes, sir.

15 Q Did you see her a lot?

16 A Yes, sir.

17 Q Do you know who she was dating?

18 A Somewhat.

19 Q Excuse me?

20 A Somewhat. She didn't tell me all her business. I knew
21 some. So no, I can't say that I could -- I don't know who
22 she was dating.

23 Q Do you know who James Hill is?

24 A I know of him. But no, I don't know him.

25 Q You don't know anything about her dating James Hill?

MILTON GRANT-DIRECT EXAMINATION

245

1 A No, sir.

2 Q Were you there the night before?

3 A No, sir.

4 Q So you're good friends, you see her a lot, and you have
5 no idea who she dates?

6 A Yes, sir.

7 MR. WILKES: Nothing further.

8 THE COURT: Ma'am, you can step down.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 THE COURT: Solicitor, call your next witness, please.

12 MR. MOWRY: I call Milton Grant. Your Honor, some of
13 the witnesses that have now testified were asking if they
14 could stay in the courtroom. If the sequestration is
15 complete.

16 THE COURT: Assuming that they're not intended to be
17 recalled by the State, I'm assuming that that'll be fine.

18 MR. MOWRY: We have no intention at this time, Your
19 Honor.

20 THE COURT: Any -- you all approach.

21 (Whereupon, a sidebar was held.)

22 THE COURT: The witnesses who have already testified,
23 if they could leave the courtroom. But if they could stay
24 in touch with the Solicitor obviously if need be for any
25 recall.

MILTON GRANT-DIRECT EXAMINATION

246

1 MILTON GRANT, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MOWRY:

5 Q You are Milton Grant?

6 A Yes.

7 Q Mr. Grant, how old are you?

8 A Sixty-one.

9 Q Where do you live now?

10 A I stay at John Grant Street in Cross Hill.

11 Q In Cross Hill. Did you live at that same address back
12 in January of 2014?

13 A No.

14 Q Where did you live then?

15 A I lived around the road.

16 Q And what was your address at that time?

17 A I think it was I believe.

18 Q And what was the road you lived on?

19 A John Grant.

20 Q So you lived just around the road?

21 A Yes.

22 Q Who was your next door neighbor at that point?

23 A On one side my nephew. Both my nephews stayed on one
24 side. One stayed on the right and one stayed on the left
25 and my niece stayed in the middle over there in that other

MILTON GRANT-DIRECT EXAMINATION

247

1 trailer that was down below.

2 Q And who was your niece?

3 A Which one, next door to me?

4 Q Yes, sir.

5 A Danette Jackson.

6 Q Did you know Nikesha James?

7 A Yes.

8 Q How close to you did she live?

9 A She stayed about three houses down. Three trailers
10 down from where I was.

11 Q How close were these trailers? Were they pretty close
12 together?

13 A Not really.

14 Q Did you know Sammie Leake?

15 A Yes.

16 Q Darryl Leake?

17 A Yes, sir.

18 Q What did you know him by?

19 A Darryl.

20 Q You knew him by Darryl?

21 A Yes, sir.

22 Q Did you know the Defendant in this case, Deshanndon
23 Franks?

24 A Yes.

25 Q How long had you known him?

MILTON GRANT-DIRECT EXAMINATION

248

1 A I'd say since he was born.

2 Q So you've known him a long time?

3 A Yes.

4 Q Have you lived in Cross Hill all your life?

5 A Yes.

6 Q And how tight would you say the community is?

7 A Everybody tight around there.

8 Q All right. I want to have you think back to the very
9 early morning hours of January 31st of 2014. Prior to about
10 1:00 in the morning what were you doing?

11 A I was asleep.

12 Q And where were you asleep?

13 A In my bedroom.

14 Q In your trailer; is that right?

15 A Yes.

16 Q Did anything happen that woke you up?

17 A There was a car coming around the back of my house.

18 Q There was a car coming around the back of your house.

19 Did you see what kind of car it was?

20 A Yeah. It was -- I think it was a Ford.

21 Q And did you see what color it was?

22 A It was brown or something. I don't know.

23 Q Let me hand you State's Exhibits 30 and 31 and ask you
24 if you can identify those. Does that look like the car you
25 saw? I'm not saying is it, but does it look like it?

MILTON GRANT-DIRECT EXAMINATION

249

1 A It look like -- it was a Ford.

2 THE COURT: I'm sorry, sir. What did you say? It was

3 -

4 THE WITNESS: It was Ford.

5 Q Was that about the color you saw?

6 A I don't think so.

7 Q At any rate, what about the car woke you up?

8 A It was running lights.

9 Q So you had lights coming in through your window; is
10 that right?

11 A That's when it came around the back. It come around
12 the front of my nephew's trailer next door and his lights
13 was shining through my bedroom window. That woke me up.

14 Q Was it unusual for somebody to drive a car in that
15 direction?

16 A It might, yes.

17 Q What did you think when you woke up to see the car
18 lights coming around in that direction?

19 A I got up and looked out the window.

20 Q What were you concerned about?

21 A To see who it was.

22 Q And why were you concerned?

23 A Because my niece was staying over there with my nephew.

24 Q Were you able to go back to sleep after that?

25 A No.

MILTON GRANT-DIRECT EXAMINATION

250

1 Q So what did you do after that?

2 A I turned the TV on and was looking at the TV.

3 Q About 3:00 in the morning did you hear anything
4 unusual?

5 A I heard some gunshots.

6 Q Do you occasionally hear gunshots around there?

7 A Not -- you may hear some but they be way off.

8 Q Okay. How close were those gunshots?

9 A They were right after each other.

10 Q I mean, how close to your trailer did you hear them?

11 A I heard them in my bedroom. It sounded like it was out
12 there in my front yard. That's why I jumped up and went to
13 the kitchen window.

14 Q What did you see after you heard the gunshots?

15 A I went down the hall to the kitchen window. I stood
16 there a few minutes. Somebody came out the door.

17 Q And where are you talking about out the door? Who's
18 place was it?

19 A Down there at Kesha -- down there at Kesha's house.

20 Q How well lighted was that area?

21 A It was pretty well lighted down there. The night light
22 was on. The porch light was on. The door was open and the
23 light on it was coming out of the house.

24 Q Let me show you this photograph State's Exhibit No. 4.

25 Does that look like the front of their -- of the trailer

MILTON GRANT-DIRECT EXAMINATION

251

1 you're talking about?

2 A Front of it.

3 Q That's the front of it?

4 A No, I don't think that's the front of it. Because --

5 Q What did you see coming out the front door?

6 A Somebody came out the front door. They went down the
7 steps. They went back up. They turned the porch light off
8 and they pulled the door closed. And they kept walking back
9 and forth, up and down steps, and then they had disappeared
10 to the left side in the dark.

11 Q And were you able to see them after that?

12 A No.

13 Q What -- were you able to see what the person was
14 wearing?

15 A It was some -- I just seen from the top of the handrail
16 up. They had something brown on.

17 Q Do you think you could recognize the clothing if you
18 saw it again?

19 A They was too far off.

20 Q But you saw something brown; is that right?

21 A Yes. Yes.

22 Q And whose house was this that we're talking about?

23 A Kesha.

24 Q Kesha? Nikesha James?

25 A Yes.

MILTON GRANT-CROSS-EXAMINATION

252

1 Q Mr. James, how many gunshots did you hear?

2 A It was about three.

3 Q And how close together were they?

4 A They were real close.

5 Q One right after the other?

6 A Yes.

7 MR. MOWRY: Thank you, sir. That's all I have. If you
8 would answer any of Mr. Wilkes' questions, please.

9 THE COURT: Mr. Wilkes.

10 CROSS-EXAMINATION

11 BY MR. WILKES:

12 Q Mr. Grant, you said when you heard the shots you went
13 to the kitchen window?

14 A Yes.

15 Q And when you looked out the kitchen window you said the
16 door was open?

17 A Yeah. The door down there was open.

18 Q So the door was open and there's lights on inside?

19 A Yes.

20 Q There's lights on outside?

21 A Yes.

22 Q And then I think you said after a few minutes you saw
23 somebody come out?

24 A Yes.

25 MR. WILKES: Nothing further.

TEVIN HILL-DIRECT EXAMINATION

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1 he'd heard. He has been redirected since then. Mr.
2 Scurry's testimony doesn't have anything to do with what Mr.
3 Grant said, or vice versa. And we have let Mr. Wilkes know.
4 Frankly the State would contend that that is a non-issue,
5 and I think Mr. Wilkes would agree. But I'll let him speak
6 to that.

7 MR. WILKES: I believe that's correct. I don't think
8 they have any overlapping testimony. So I don't see any
9 prejudice in it. I had one other quick matter if we could
10 approach?

11 THE COURT: Sure. Some on up.

12 (Whereupon, a sidebar was held.)

13 THE COURT: Who's your next witness?

14 MR. MOWRY: Tevin Hill.

15 THE COURT: Go ahead and bring Mr. Hill in and let's
16 have the jury, please.

17 (Whereupon, the jury entered the courtroom at 10:49
18 a.m.)

19 THE BAILIFF: All jurors are present, Your Honor.

20 THE COURT: The record will reflect the jury is back
21 and seated. Mr. Mowry, if you'll call your next witness,
22 please.

23 MR. MOWRY: I call Tevin Hill.

24 TEVIN HILL, having been first duly
25 sworn, testified as follows:

TEVIN HILL-DIRECT EXAMINATION

255

1 DIRECT EXAMINATION

2 BY MR. MOWRY:

3 Q You are Tevin Hill?

4 A Yes, sir.

5 Q Mr. Hill, I believe you are actually a co-defendant in
6 this case; is that right?

7 A Yes, sir.

8 Q You were charged with murder as well; is that right?

9 A Yes, sir.

10 Q Do you know the Defendant, Mr. Deshanndon Franks?

11 A Yes, sir.

12 Q How long have you known him?

13 A All my life.

14 THE COURT: Mr. Hill, we're able to hear you fine.

15 Maybe you can push that a little bit further back. You're
16 the first witness I've had to ask to do that actually here.
17 There we go. Very good.

18 Q So how long have you known him?

19 A All my life.

20 Q And if you would point him out, please.

21 (Whereupon, the witness identifies the Defendant.)

22 MR. MOWRY: Your Honor, for the record, he is
23 indicating the Defendant in this case.

24 THE COURT: The record shall so reflect.

25 Q Did you go to school with Mr. Franks?

TEVIN HILL-DIRECT EXAMINATION

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1 A No.

2 Q How close would you say you were?

3 A He raised me. He taught me how to play basketball and
4 all that stuff like that.

5 Q Deshanndon Franks did?

6 A Yeah.

7 Q Let me just ask you this. Do you know Rodrigus Scurry?

8 A Yeah.

9 Q And did you know Nikesha James and Sammie Leake?

10 A Yes. I mean, because I want -- I just want to let the
11 family know I'm sorry for their loss.

12 Q That's okay.

13 MR. WILKES: Your Honor, can we have a moment off the
14 record?

15 THE COURT: Sure. Pull the microphone a little bit
16 closer to you, and off the record.

17 (Whereupon, a sidebar was held.)

18 Q Let me ask you to think back to January 30th of 2014.

19 Where were you living then?

20 A With my grandma.

21 Q Your grandmother? Where did she live?

22 A Cross Hill.

23 Q What street did she live on in Cross Hill?

24 A John Grant Street.

25 Q Did you know Milton Grant?

TEVIN HILL-DIRECT EXAMINATION

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- 1 A Yeah. Yes, sir.
- 2 Q Go ahead. I'm sorry.
- 3 A Yes, sir.
- 4 Q Did he live off John Grant Street?
- 5 A Yes, sir.
- 6 Q So you knew all these people; is that right?
- 7 A (Nonverbal response.)
- 8 Q On the evening of the 30th did you catch up with
- 9 Deshanndon Franks?
- 10 A Yeah.
- 11 Q About what time did you all get together?
- 12 A Probably around about 7:00 or 8:00. Something like
- 13 that.
- 14 Q Where did you all end up going?
- 15 A To the Wash.
- 16 Q Washes?
- 17 A Washes.
- 18 Q And what town is that in?
- 19 A Mountville.
- 20 Q Mountville? We've heard some description about it.
- 21 What kind of establishment is that?
- 22 A It's a liquor house.
- 23 Q Does it have a pool table in it?
- 24 A Yeah.
- 25 Q But you can get liquor there?

TEVIN HILL-DIRECT EXAMINATION

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- 1 A Yeah.
- 2 Q Were you drinking that night?
- 3 A Yes.
- 4 Q Was Deshanndon Franks?
- 5 A Yes.
- 6 Q How did you all get to Washes?
- 7 A I drove my car.
- 8 Q You drove? What kind of car did you have?
- 9 A Crown Victoria.
- 10 Q Let me show you State's Exhibits 30 and 31. Does that
- 11 appear to be your car?
- 12 A Yeah. Yeah, that's my car.
- 13 Q How long did you all stay at Washes?
- 14 A Probably like three hours. Around like three houses.
- 15 Somewhere around there. Yeah.
- 16 Q Were you wearing a watch?
- 17 A No.
- 18 Q Did you look at a clock that night?
- 19 A Yeah, I had my phone but I wasn't paying attention to
- 20 the time. I mean -- yeah, I had my phone with me.
- 21 Q Who did you see at Washes? Who all was there? Do you
- 22 recall?
- 23 A I mean, no. I mean, I remember seeing Vasha Pulley
- 24 there. I knew her.
- 25 Q You saw Lavashtia Pulley?

TEVIN HILL-DIRECT EXAMINATION

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1 A Yeah.

2 Q How did you see her?

3 A What you mean?

4 Q Where did you see her? Who was she with?

5 A I'm not sure who she was with though. I seen her
6 sitting at the bar inside the place.

7 Q Who did she talk to that you saw?

8 A She -- I mean -- I mean, we was in there -- I mean,
9 chilling and whatnot. Frank walked outside. I mean, she
10 walked outside and he walked behind her. That's the only
11 person -- I mean, as far as anything goes I ain't really --
12 I wasn't really paying attention to it like that. So I'm not
13 sure if she talked to anybody else or not. But I know she
14 talked -- pretty sure she talked to him.

15 Q Did you see -- did you hear what they were talking
16 about, or have any idea what they were talking about?

17 A No. They was outside. They walked outside.

18 Q But you saw him with her that evening; is that right?

19 A Yeah. I mean, she walked out and like he kind of like
20 followed behind her.

21 Q Do you recall what Mr. Franks was wearing that night?

22 A Yeah. He was wearing a brown jumpsuit, overalls.

23 Q If I showed them to you do you think you'd recognize
24 them?

25 A Yeah.

TEVIN HILL-DIRECT EXAMINATION

260

1 Q I show you what's been marked as State's Exhibit No.

2 38. Does this look like them?

3 A Uh-huh.

4 Q It does?

5 A Yeah. Yes, sir.

6 Q So how long did you say you were at Washes just
7 roughly?

8 A Roughly about three hours.

9 Q So that puts you at around midnight; is that right?

10 A Yeah.

11 Q What did you do after that?

12 A We went back to Cross Hill.

13 Q Who went with you? When you say we, who was with you?

14 A Me and Franks.

15 Q You and Franks. And how did you all get to Cross Hill?

16 A My car. I drove back.

17 Q Did you decide to go someplace?

18 A Yeah. I mean, I asked him -- I asked him did he want
19 to ride to Nikesha's house.

20 Q Why did you decide -- ask him if he wanted to go to
21 Nikesha's house?

22 A Because that where everybody used to hangout at. It's
23 just a hangout place where people be at.

24 Q When -- and did you all, in fact, go there?

25 A Yeah, we went there.

TEVIN HILL-DIRECT EXAMINATION

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- 1 Q Who all was there when you arrived?
- 2 A Kesha, Darryl, Mia, you know, the baby.
- 3 Q Tamia Kinard?
- 4 A Yeah.
- 5 Q And her baby. So four people?
- 6 A Yes, sir.
- 7 Q And you all two made six; is that right?
- 8 A Yes, sir.
- 9 Q How was the Defendant acting when you got there?
- 10 A Like -- he was kind of like loud. Kind of amp like,
- 11 you know what I'm saying? You know, the baby was sleeping,
- 12 so she -- she wouldn't like -- she didn't like that. You
- 13 know what I'm saying?
- 14 Q You're talking about Tamia Kinard --
- 15 A Tamia, yes.
- 16 Q -- didn't like that?
- 17 A No.
- 18 Q Did the Defendant have any conversation with Nikesha
- 19 James that night?
- 20 A Yeah.
- 21 Q How did that happen?
- 22 A They went to the back of the house. Like we was in
- 23 there chilling in the front room watching TV and they just
- 24 went to the back. Walked to the back to her room. You
- 25 know, was talking back there.

TEVIN HILL-DIRECT EXAMINATION

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1 Q Could you hear what was being said?

2 A No, sir.

3 Q Could you hear the tone of what was being said?

4 A No, sir.

5 Q Do you understand what I mean?

6 A No. I mean, I know I didn't hear them. You know what
7 I'm saying? I didn't hear. Because it's like -- it's a
8 ways between her room and the front.

9 Q Right.

10 A You know, with the TV on and like that. So I couldn't
11 hear it. And the door was closed.

12 Q How were you feeling about that time?

13 A How was I feeling?

14 Q How were you feeling?

15 A What you mean, like -- I mean, like -- talking about --
16 what you mean?

17 Q Were you wide awake? Were you tired? What -- how
18 were you feeling?

19 A Oh, yeah. I was wide awake. I mean, but I had been
20 drinking a little bit, so -- and I had been up all day. So
21 I was kind of tired a little bit, you know.

22 Q What did you want to do at that point?

23 A I mean, once Mia had told me she wanted me to take her
24 home I already -- I was already like ready to go, because I
25 haven't ate. I was wanting to go home and eat. And Tamia

TEVIN HILL-DIRECT EXAMINATION

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1 had told me she wanted to leave, too. So I just

2 -- I mean, I was really ready go to then after she told me

3 she needed me to take her home.

4 Q So Mia had asked you for a ride?

5 A Uh-huh.

6 Q Did you, in fact, give her a ride?

7 A Yes, sir.

8 Q When you left how did you take her home? What did you

9 use to take her home?

10 A What did I use?

11 Q Yeah.

12 A My car.

13 Q Your car? The car we -- this car right here?

14 A Yeah.

15 Q On that -- in that photograph. What route did you take

16 to take her home?

17 A Through like -- it's like through like what -- it's not

18 no road really. Just like yards where other people stay.

19 It's kind of a road but it's like a bunch of dirt. So I

20 just went through there and went by Milton's house, and went

21 by his house and came up behind her house and parked in the

22 front and let her out right there.

23 Q Was Milton's house close by?

24 A Uh-huh. Right there. It's the next house, two houses

25 down.

TEVIN HILL-DIRECT EXAMINATION

264

1 Q When you went by Milton's house what setting did you
2 have your headlights on?

3 A Bright.

4 Q And were they shining on his -- on his house?

5 A Yeah, they had to because like the direction I was
6 going his house -- his house sit like this and the window's
7 on the front side. You see what I'm saying? So as I was
8 riding by the lights went in there.

9 Q And what did you do with Mia?

10 A I took her home and dropped her off.

11 Q Where did you go after you dropped off Mia?

12 A To my grandma's house.

13 Q You didn't go back to Nikesha James and Sammie Leake's
14 house?

15 A No.

16 Q When you left -- when you left Nikesha James and Sammie
17 Leake who all was there?

18 A Kesha -- Kesha, Darryl, Franks. Kesha, Darryl and
19 Franks.

20 Q Just those three?

21 A Yeah.

22 Q And Kesha James, Sammie Leake -- or Sammie Darryl
23 Leake, and Deshanndon Franks?

24 A Yes, sir.

25 Q What did you do after you went back to your

TEVIN HILL-DIRECT EXAMINATION

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1 grandmother's house?

2 A I just went in and like turned the TV on and like went
3 to the kitchen and tried to find me something to eat.

4 Q Was your grandmother awake when you go home, or was
5 anybody else awake?

6 A I'm not sure. Because like my grandma, if it get late
7 she close the door, and it's another door to get to like
8 where her room is. So like you can't see it. You can't --
9 I didn't know if she was awake or not.

10 Q But did you see anybody else in the house?

11 A No.

12 Q Anybody else live there with you?

13 A No. She's the only one that stays there.

14 Q What did you do after you. You said you turned on the
15 TV. What else? What did you do next?

16 A I went to the kitchen. Tried to find -- trying to look
17 for me something to eat.

18 Q Did you get anything?

19 A Yeah.

20 Q Do you remember what it was?

21 A Yeah. Yes.

22 Q What was it?

23 A It was like -- I cooked me some red links. Like
24 sausage. You know what I'm talking about? Cooked me some.
25 Put me some in the microwave and ate them. And she had some

TEVIN HILL-DIRECT EXAMINATION

266

1 -- I think she had some -- maybe she had some chicken in the
2 refrigerator or something. Warmed that up.

3 Q Roughly how long were you there?

4 A Probably about 30, 40 minutes.

5 Q And this would have been roughly what time?

6 A Around like 2:00 or 3:00, somewhere around there
7 probably.

8 Q Late though; is that right?

9 A Yeah.

10 Q And again, you weren't wearing a watch? You didn't
11 have a clock or anything?

12 A No, sir.

13 Q Did you hear from anybody else that night?

14 A Yeah. I mean, Franks. He called me. He told -- he
15 said come out -- he wanted me to come outside.

16 Q You got a call from Deshanndon Franks?

17 A Yeah.

18 Q And in response to that call what did you do?

19 A I went outside.

20 Q What did you see?

21 A He was coming up the road. He was walking up the road.

22 Q Where was Nikesha James' trailer in relation to where
23 Deshanndon Franks was coming?

24 A What you mean like?

25 Q Was he coming towards it, away from it?

TEVIN HILL-DIRECT EXAMINATION

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1 A Away from it.

2 Q Away from it. How did he appear?

3 A Like -- I don't know. Like he was just like shaky a
4 little bit, you know. Not normal though.

5 Q What did he say?

6 A He was like -- he was just like stuff went bad -- it
7 went bad. He said like it went bad.

8 Q What did you think when you heard that?

9 A I mean, I ain't -- I mean, I thought maybe him and
10 Darryl had got into something. I didn't know. Like, I
11 mean, I didn't think he would -- I mean, did something like
12 that. You feel what I'm saying? So I kept asking him but
13 he would never tell me. I kept asking him what he talking
14 about and then said he was going home. But he wouldn't
15 never tell me what -- I mean, what was going on. So I just
16 stopped -- I mean, I just stopped asking him. And we got in
17 the car and left.

18 Q Why did you get in the car and leave?

19 A He said he wanted -- he needed a ride up the road.

20 Q Where did he want to go?

21 A Well, first he was like he had some females up the road
22 like in Greenville.

23 Q Going to Greenville?

24 A Yeah. But once we got like almost to Fountain Inn he
25 said we're going to Dreek Scurry house.

TEVIN HILL-DIRECT EXAMINATION

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1 THE COURT: Whose house?

2 THE WITNESS: Dreek Scurry. Rodrigus.

3 Q Is that Rodrigus Scurry?

4 A Yeah, Rodrigus. My bad.

5 Q Is that Rodrigus Scurry you're talking about?

6 A Yeah. Yeah. Yeah.

7 Q Do you know him?

8 A Yeah.

9 Q How long have you known him?

10 A I been knowing him all my life, too.

11 Q Do you consider him a friend?

12 A A cousin.

13 Q He is a cousin. So he's family?

14 A Yeah.

15 Q Did you, in fact, go there?

16 A Yeah.

17 Q Was there anything unusual about the route you took?

18 A Yeah.

19 Q Tell me about that.

20 A We went like -- we went around. We went around like --

21 we took the back roads instead of like going straight --

22 straight up -- straight up 39 and all that. 39 straight up

23 through Gray Court and all that. We went around. We went

24 through like Mountville, 560, and then like came out about

25 where Joanna at, got on the interstate right there and then

TEVIN HILL-DIRECT EXAMINATION

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1 we went up the road.

2 Q So you came out on I-26 to come up to Fountain Inn?

3 A Yeah.

4 Q Why did you do that?

5 A I don't know. He -- I guess he didn't want -- he told
6 me to go that way. He didn't want to go the regular way or
7 something he said.

8 Q But you didn't do that of your own accord; is that
9 right?

10 A No.

11 Q That wasn't the route you would have chosen?

12 A Huh-uh.

13 Q Who told you to do that?

14 A Franks.

15 Q Did you know anything about going up to see Rodrigus
16 Scurry? Did you hear any phone conversations or anything
17 about that?

18 A No. I ain't -- he was trying to call somebody. But I
19 ain't -- I'm not sure who he was trying to call. I think
20 was trying to call Dreek Scurry.

21 Q But you don't know?

22 A No, I'm not sure.

23 Q You said you'd been drinking that night. How were you
24 at that point?

25 A I was -- I was straight. I was really like ready to go

TEVIN HILL-DIRECT EXAMINATION

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1 to sleep. It was late.

2 Q When you got to Fountain Inn did you go to Mr. Scurry's
3 house, or his place, his apartment?

4 A Yes, sir.

5 Q What happened when you got there?

6 A We just went in the house and he told us where we could
7 sleep at. And we sat down on the couch and watched TV.
8 Frank went upstairs and went to the bathroom, I guess. I
9 was still down there watching TV. And then he came back.
10 Like came back downstairs.

11 Q When you say he, who are you talking about?

12 A Franks. He came downstairs like 30 minutes later. And
13 we just fell asleep. Woke up at 8:00 in the morning. About
14 8:00 in the morning. About 8:00 in the morning.

15 Q Was Mr. Scurry still there?

16 A No. He was gone to work by then.

17 Q So he worked?

18 A Yeah.

19 Q What did you all do at -- when you all woke up at 8:00
20 in the morning?

21 A We went back to Cross Hill.

22 Q What did you do at that point? When you all got back
23 to Cross Hill what did you do?

24 A I took him to his grandma's and I went to my grandma's
25 house.

TEVIN HILL-DIRECT EXAMINATION

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1 Q What were you going to do when you got back to your
2 grandmother's house?

3 A Go to sleep. I was still was sleepy. I mean, still
4 probably didn't get but like four hours sleep. So I tried
5 to lay down and take a nap. I wasn't asleep long though.

6 Q What woke you up or what alerted you at that point?

7 A Police cars.

8 Q You heard police cars?

9 A I heard sirens.

10 Q You heard sirens. Where did they end up going to?

11 A Down John Grant Street.

12 Q Down John Grant Street.

13 A Uh-huh.

14 Q Whose house did they end up going to?

15 A Kesha's.

16 Q Nikesha James?

17 A Yes, sir.

18 Q What did you do when you heard the sirens go by towards
19 Nikesha James' house?

20 A I went outside to see what's going on.

21 Q What did you see when you got outside?

22 A It was just a bunch of people standing outside. So I
23 asked a couple people what going on and they went and told
24 me.

25 Q What did they tell you?

TEVIN HILL-DIRECT EXAMINATION

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1 MR. WILKES: Objection. Hearsay.

2 MR. MOWRY: Present sense impression, Your Honor. It's
3 not for the truth of the matter asserted.

4 THE COURT: All right. These are people just standing
5 outside the --

6 MR. MOWRY: Yes, sir.

7 THE COURT: Sustained. Go ahead.

8 Q After you had the conversation with the people what did
9 you do?

10 A I called my brother.

11 Q Who is your brother?

12 A Jerrell.

13 Q What was your purpose in calling him?

14 A Because I had found out they were dead and I was down
15 there the night before, and I called him and asked him like
16 what I -- what I need to do, because I ain't even -- know
17 what I'm saying. So he told me I needed to just tell the
18 police that I was down there that night and when I left they
19 was well and healthy.

20 Q Did you, in fact, go down and tell the police at that
21 point?

22 A Yeah. I mean, not at -- I mean, not as soon as I got
23 off the phone. I just walked on down the road a little bit.
24 And that's when Cheek pulled up.

25 Q And when you're talking about Cheek, you're talking

TEVIN HILL-DIRECT EXAMINATION

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1 about Bryant Cheek?

2 A Yeah.

3 Q Who is he?

4 A A SLED agent, right?

5 Q He's law enforcement; is that right?

6 A Yeah. Yeah.

7 Q How did you know him?

8 A I been knowing -- I mean, he been knowing me since I

9 been like -- because I used to play basketball. He been

10 knowing me since I was little.

11 Q Was he your coach?

12 A Yeah.

13 Q Did you talk with Bryant Cheek at that point?

14 A Yeah. I got in the truck with him.

15 Q Did you ride down to the scene?

16 A Not at first. We rode like up the road a little bit.

17 But that's when he was talking to me. And then we went back

18 down there. Matter of fact, no. We didn't go back down

19 there. He let me out. And that's when my cousin called me.

20 Q Who is your cousin?

21 A Keisha.

22 Q Keisha Hill?

23 A Yeah.

24 Q And I believe she's a deputy sheriff as well; is that

25 right?

TEVIN HILL-DIRECT EXAMINATION

274

- 1 A Yes, sir.
- 2 Q And in response to her telephone call what did you do?
- 3 A That's when I go down there then to the scene.
- 4 Q Did you contact Deshanndon Franks? Did you call him?
- 5 A Yeah, because she told me to call him and tell him he
- 6 needed to come down here. We need to -- they need to talk
- 7 to us. But she was saying like he didn't really want to
- 8 come or something. Something she was saying. He wouldn't
- 9 answer the phone or something.
- 10 Q So you were supposed to call him; is that right?
- 11 A Yeah, she told me to call him.
- 12 Q And did you do that?
- 13 A Yeah.
- 14 Q Did you talk with Mr. Franks?
- 15 A Yeah.
- 16 Q What did you tell him?
- 17 A I was like Keisha just called me and she tell me you
- 18 need to come down here. No. At first he asked me -- he
- 19 asked me have I heard about what happened.
- 20 Q What was he referring to?
- 21 A Kesha and Darryl. And I was like yeah. And then I
- 22 told him like Keisha and they -- they want us to come down
- 23 there. You know what I'm saying? They want to talk to us.
- 24 And then he was like kind of hesitating a little bit. You
- 25 know what I'm saying? He was like, well -- like I don't

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1 really know. Like he still act like he didn't want to go,
2 but he was like -- then he was like, well, you already -- he
3 told me what to tell -- he was like you already know what to
4 tell them then. You know what I'm saying?

5 Q What did he want you to tell them?

6 A The story that he wanted me to -- the story that he
7 wanted me to tell them.

8 Q What was that story?

9 A That when I came up the road after I dropped Mia off he
10 flagged me down and got in the car with me.

11 Q And where did y'all, according to this story, go?

12 A I mean, still -- the story saying -- he still saying we
13 went to -- I mean, we went up the road. But he saying that
14 we had -- supposed to had some females up there and that
15 once we got up there they didn't answer the phone or
16 something.

17 Q So he's wanting you to tell the police that you had
18 dropped Mia off. He stopped you. Y'all went directly to
19 Greenville and stayed up there until you came back to
20 Rodrigus Scurry's house. Is that right?

21 A No. He want to tell when we got to -- we went to Dreek
22 Scurry's house, stayed up there, and came back down to Cross
23 Hill in the morning.

24 Q But he wanted you to tell the police that you had gone
25 to Greenville; is that correct?

TEVIN HILL-DIRECT EXAMINATION

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1 A Yeah.

2 Q Was that true?

3 A No. No, sir.

4 Q Did you end up seeing Deshanndon Franks down at the
5 scene later on that day?

6 A Yeah, we went down there. We went down there. He came
7 down there.

8 Q Did you meet with Bryant Cheek, the deputy?

9 A You talking about -- yeah, I met with -- I don't think
10 it was right there on the scene. But I met with him like
11 afterwards.

12 Q Right. Did you write a statement?

13 A Uh-huh. Yes, sir.

14 Q What did you write?

15 A I wrote that I dropped Mia off. When I came back up
16 the road he flagged me down. Got in the car with me.

17 Q So what you told Bryant Cheek initially was what
18 Deshanndon Franks had told you to say; is that right? Is
19 that what you're -- is that what you're testifying to?

20 A Yes, sir.

21 Q Was that true?

22 A No, sir.

23 Q Did you lie to Detective Cheek?

24 A Well, I told Detective Cheek -- yeah, I lied, because
25 he told me to tell him that. You know what I'm saying? I

TEVIN HILL-DIRECT EXAMINATION

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1 -- I felt threatened for my life. That how I feel. So I
2 told him that.

3 Q Let me ask you one other question about your trip back.
4 Something I neglected to ask you. Did Mr. Hill say anything
5 unusual --

6 A No. Mr. Franks.

7 Q Excuse me. Mr. Franks say anything -- thank you. Say
8 anything unusual on your trip back from Fountain Inn to
9 Cross Hill?

10 A Yeah.

11 Q What did he say?

12 A He was like we got to get the guns out the house, or
13 something he said.

14 Q Got to get the guns out of the house?

15 A Yes.

16 Q Was that connected to anything you all had been talking
17 about?

18 A I mean, not really, because, I mean, I didn't know what
19 he was talking about, about getting guns out the house. But
20 it still didn't dawn on me like. You know what I'm saying?
21 Like two people done got killed or something -- feel what
22 I'm saying -- you done killed some people.

23 Q You didn't know that at the time, did you?

24 A No. I ain't -- because I ain't think he'll do anything
25 like that. You feel what I'm saying?

TEVIN HILL-DIRECT EXAMINATION

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1 Q Mr. Hill, you say that you had seen Deshanndon Franks
2 wearing these tan coveralls that night; is that right?

3 A Yes, sir.

4 Q Was he still wearing them when you went up to Fountain
5 Inn?

6 A Yeah.

7 Q Was he still wearing them when you came back to Cross
8 Hill?

9 A Yeah.

10 Q That night did you see him with a gun?

11 A Not that night. Like when it happened I didn't see him
12 with a gun that night.

13 Q Had you seen him with a gun before?

14 A Yes, sir.

15 Q Mr. Hill, let me show you State's Exhibit No. 6. Can
16 you identify that?

17 A Yeah.

18 Q What is that?

19 A That's a gun right there.

20 Q Yeah. Had you ever seen Deshanndon Franks with
21 anything that looked like that?

22 A Yeah. I seen a gun like that.

23 Q But you didn't see him with a gun that evening; is that
24 right?

25 A No. I ain't see it that evening.

TEVIN HILL-CROSS-EXAMINATION

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1 MR. MOWRY: Thank you, sir. That's all I have. If
2 you'd answer any of Mr. Wilkes' question, please, sir.

3 THE COURT: Cross?

4 MR. WILKES: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. WILKES:

7 Q Mr. Hill, you were arrested shortly after your first
8 statement to the police, correct?

9 A Yeah. It was like -- probably like three or four days
10 after.

11 Q And what were you arrested for?

12 A For -- you talking about what they charged me with?

13 Q Yes, sir.

14 A Murder.

15 Q Two counts?

16 A Counts of murder, attempted armed robbery or something.

17 Q And as of right now you still have two murder charges
18 pending, correct?

19 A Yes, sir.

20 Q And you have a deal with the State, right?

21 A Yes, sir.

22 Q And the deal is if you fully cooperate with the State
23 in the disposition of Mr. Franks' case what happens to your
24 murder charges?

25 A They come off my record.

TEVIN HILL-CROSS-EXAMINATION

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1 Q What was Mr. Franks wearing when you left?

2 A Left when?

3 Q Nikesha's and Dab's?

4 A He was wearing that right there. That's what he had
5 on. That's what he had on that day.

6 Q And did he have anything else on?

7 A I mean, he probably had a shirt. I mean, I'm not sure
8 he had -- I mean, I'm pretty sure he had long-sleeves and a
9 shirt or something probably. A hoodie or something. I
10 think he maybe had a hoodie on.

11 Q What color was that hoodie?

12 A I think he had a red coat on that night, I think.

13 Q Red coat.

14 A I think he had a red coat on that night.

15 Q Was it a coat or a hoodie? It's a real coat?

16 A Yeah, it had -- it had like a zipper.

17 Q Zipped all the way up kind of?

18 A Yeah, uh-huh.

19 Q Did you have your cell phone with you all night?

20 A Yeah. Yes, sir.

21 Q Make phone calls from your cell phone that night while
22 you were at Dab and Nikesha's?

23 A No, I didn't make no phone call while I was there.

24 Q None at all?

25 A Huh-uh.

TEVIN HILL-CROSS-EXAMINATION

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1 Q Did you make any phone calls after you left Dab and
2 Nikesha's?

3 A No, I don't think so. Frank called me. That's the
4 only phone call. I mean, really that's the only phone call
5 I remember getting that night when he called me.

6 Q Just one phone call that night that you got?

7 A Yeah. Ain't nobody else --

8 Q And that was about what time you think?

9 A Maybe around like -- maybe around like 3:00. 3:00 or
10 4:00. Somewhere around there. I'm not sure.

11 Q And that would be all the phone calls you remember that
12 night? Any text messages?

13 A (Nonverbal responses.)

14 Q So you showed up the next day and you talked to
15 Lieutenant Cheeks, right?

16 A Yes, sir.

17 Q And what did he tell you the first thing when he saw
18 you?

19 A He was like he be heard my name. He heard me and
20 Franks' name.

21 Q What did he tell you? What's the first thing he said
22 to you?

23 A I can't remember the first thing he said. I just know
24 he said that he needed -- he said he heard my name. He said
25 he heard our name. He said he need to talk to me. That's

TEVIN HILL-CROSS-EXAMINATION

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1 when I got in the truck.

2 Q Now, you took your phone with you down back when you
3 talked to the police, right?

4 A Talking about when I went down there and wrote the
5 statement?

6 Q You carried your cell phone with you when you were
7 talking to Lieutenant Cheeks and Officer Hill?

8 A No. I had it when I was talking to Cheek. But when I
9 went down there and talked to him on the scene they took my
10 phone from me.

11 Q Who took your phone?

12 A The police got it. The police took it.

13 Q How did they get your phone?

14 A I gave it to them.

15 Q And what was your phone number at that time?

16 A I can't remember what it was.

17 Q What kind of phone did you have?

18 A I think it was a Samsung or something like that.

19 Q Who provided your mobile service? Who did you pay the
20 bill to?

21 A T-mobile.

22 Q And you gave that to a police officer?

23 A Yeah. Yes, sir.

24 Q Have they given it back?

25 A No, sir.

TEVIN HILL-REDIRECT EXAMINATION

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1 Q So they still have it, as far as you know?

2 A Yes, sir.

3 MR. WILKES: That's all I have.

4 MR. MOWRY: Just a few questions.

5 REDIRECT EXAMINATION

6 BY MR. MOWRY:

7 Q Mr. Wilkes ask you about the negotiation, I guess,
8 between you and us. You and the State. It wasn't just to
9 cooperate, was it?

10 A No, it was for me to get up -- I mean, it was for me to
11 get up here. But I was going to do that anyway though. You
12 know what I mean?

13 Q But not only get on the stand but to do what? To
14 testify truthfully. Isn't that right?

15 A Yeah. Yes.

16 Q Isn't that the arrangement that we -- that we entered
17 into?

18 A Yes, sir.

19 Q The -- and it wasn't just a complete dismissal of the
20 charges, was it?

21 A No.

22 Q You were going to pled guilty to lying to the police
23 initially; is that right?

24 A Yeah. I mean, yes, sir.

25 Q Once those charges were made against you did you then

TEVIN HILL-REDIRECT EXAMINATION

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1 make another statement to the police?

2 A Yes, sir.

3 Q And that statement was made -- I think it was on the --

4 A I was thinking like three days later. After I had got

5 locked up. Maybe like three or four days after I had got

6 locked up. Maybe like three or four days after I had got

7 locked up.

8 Q This would have been on the 6th of February; is that

9 right?

10 A Yeah, and they locked us up on like the 4th, matter of

11 fact. So it was two days later.

12 Q And what you've testified to day is consistent with

13 that statement; is that right?

14 A Yes, sir.

15 Q And was that statement, that second statement that you

16 made to law enforcement, the truth?

17 A Yes, sir.

18 Q Who told you what to say the first time?

19 A Mr. Franks.

20 Q Was that the truth?

21 A No, sir.

22 MR. MOWRY: Thank you, sir. That's all I have.

23 MR. WILKES: Nothing further.

24 THE COURT: All right, sir. Thank you. You may step

25 down.

RODRIGUS SCURRY-DIRECT EXAMINATION

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1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 THE COURT: You can call your next witness.

4 MR. MOWRY: We would call Rodrigus Scurry.

5 RODRIGUS SCURRY, having first been
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MOWRY:

9 Q You are Rodrigus Scurry?

10 A I am.

11 Q And I believe you go by the nickname of Dreek; is that
12 right?

13 A Yes, sir.

14 MR. MOWRY: Let me put this down so -- you don't need
15 to get too close, but wanted the jury to be able to hear
16 you. And whatever you say you need to say it so this lady
17 over here can hear you so she can put down exactly what it
18 is you said.

19 THE WITNESS: Okay.

20 Q Do you know the Defendant in this case, Deshanndon
21 Franks?

22 A Yes, sir.

23 Q How long have you known him?

24 A Since elementary.

25 Q So a long time?

RODRIGUS SCURRY-DIRECT EXAMINATION

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- 1 A Yes, sir.
- 2 Q Do you consider him a friend?
- 3 A Yes, sir.
- 4 Q Did you grow up in the same area as Mr. Franks' did?
- 5 A Yes, sir.
- 6 Q Do you know Tevin Hill?
- 7 A Yes, sir.
- 8 Q Do you know him pretty well?
- 9 A Yes, sir.
- 10 Q Did you also grow up with him?
- 11 A Yes, sir.
- 12 Q And when we're talking about growing up together, where
- 13 was it you were growing up together?
- 14 A Cross Hill.
- 15 Q Okay. Do you consider that a pretty tight community?
- 16 A Yeah.
- 17 Q Most everybody knows everybody else?
- 18 A Yes, sir.
- 19 Q Where do you live now?
- 20 A Simpsonville.
- 21 Q Simpsonville.
- 22 A Uh-huh.
- 23 Q When did you move up into the golden stip area?
- 24 A I've been at the place I'm at now for about two years.
- 25 Q And prior to that in January of 2014 where did you

RODRIGUS SCURRY-DIRECT EXAMINATION

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1 live?

2 A Fountain Inn.

3 Q How long had you lived up in Fountain Inn? Just
4 roughly. It doesn't have to be exact.

5 A Two years.

6 Q What took you up to that area from Cross Hill?

7 A Me and my mom, we were just moving. Trying to get
8 close to my job.

9 Q And where did you work?

10 A Piedmont.

11 Q What did you do there?

12 A I was a technician.

13 Q Are you still working for the same company you were
14 working for when you moved up there?

15 A No, sir.

16 Q Where do you work now?

17 A I'm a chemical operator at Sierra.

18 Q And what do you do there?

19 A I run reactors.

20 Q You all mix chemicals for various purposes; is that
21 right?

22 A Yes, sir.

23 Q Back in January of 2014 were you working for that
24 company?

25 A No, sir.

RODRIGUS SCURRY-DIRECT EXAMINATION

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1 Q Who were you working for them?

2 A A company called SciTech.

3 Q What were your hours of work?

4 A 7:00 to 7:00 swinging.

5 Q So to get up and go to work, if you're working the
6 morning shift, or the day shift, what time would you have to
7 get up to go, to get ready?

8 A I used to be late all the time. But to make it there
9 at 7:00 I usually would have to leave the house at least by
10 -- no later than 6:30.

11 Q And you'd have to get up and get ready to go before
12 that; is that right?

13 A Yeah, of course.

14 Q What time in the morning would you normally get up?

15 A About 6:10.

16 Q Were you working weekends as well?

17 A Yeah. Yes, sir.

18 Q I want you to think back to the early morning hours of
19 January 31st of 2014.

20 A Uh-huh.

21 Q Where were you during the early part of that morning?

22 A What day that is?

23 Q Where were you during the early part of January 31st of
24 2014? Were you home in bed? Let me put it that way.

25 A Yes, sir.

RODRIGUS SCURRY-DIRECT EXAMINATION

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1 Q About 3:00 or so that morning did you get a phone call?

2 A I did.

3 Q Was that unusual?

4 A Yeah, it was.

5 Q What did you do when you got the phone call?

6 A I was struggling. I answered it.

7 Q Were you thinking about not picking up?

8 A Yeah, most definitely.

9 Q Did you have to get up the next morning to go to work?

10 A I did.

11 Q Who was on the other end of the line?

12 A Shanndon.

13 Q Shanndon Franks?

14 A Yes, sir.

15 Q What did he want?

16 A They was in need of help. They was coming from
17 Greenville. Said they was intoxicated, drunk or whatever,
18 and the females that they were going to see was -- wasn't
19 answering the phone. So they wasn't going to make it down
20 the road.

21 Q Did you know whether that was true?

22 A No, sir.

23 Q But that was the story you were told; is that right?

24 A Yes, sir.

25 Q What did you think when you heard that story?

RODRIGUS SCURRY-DIRECT EXAMINATION

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1 A The first thing came to my head was me being in that
2 situation. At the same time I was kind of sleepy, and other
3 things as well.

4 Q And had to get up in the morning?

5 A Yes, sir.

6 Q But did you say -- what did you tell him?

7 A I told him they could come to the house. Yeah.

8 Q When you told him that was that pretty much the end of
9 the phone call?

10 A See, from what I recall, I think -- it's so long ago.
11 Because I had got like a few phone calls before I answered
12 that one. So like when I did answer it, it was -- yeah,
13 that was pretty much it that I can remember.

14 Q What did you do after you got that phone call?

15 A I went back to sleep.

16 Q So you told them to come on and then went back to
17 sleep?

18 A Yes, sir.

19 Q About 4:00 in the morning did you get another phone
20 call?

21 A Yes, sir.

22 Q Who was that from?

23 A Shanndon.

24 Q What did he ask you or tell you?

25 A They was outside.

RODRIGUS SCURRY-DIRECT EXAMINATION

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1 Q What did you do after he told you they were outside?

2 A Laid there for a minute. I think I dozed back off
3 again. I think I ended up getting another phone call, or
4 maybe I got up that first phone call.

5 Q In any event, where did you go?

6 A I got up and ran to the door.

7 Q Who was at the door?

8 A The first one I seen was Tevin.

9 Q Tevin Hill?

10 A Yeah. And I think Shanndon was behind him.

11 Q Were you able to see anything about what Deshanndon
12 Franks was wearing that night?

13 A Not completely. I think I just seen a strap.

14 Q What color was the strap?

15 A Brown.

16 Q Did the straps look anything like this?

17 A Yeah, I guess.

18 Q Something along those lines?

19 A Uh-huh.

20 Q Referring to State's Exhibit No. 38. What kind of
21 condition were you in? Were you still kind of groggy, kind
22 of sleepy?

23 A Yeah, because I had -- I was a little tipsy as well,
24 because I had a few drinks before I laid down. I had some
25 friends over prior to before I even laid down to get ready

RODRIGUS SCURRY-DIRECT EXAMINATION

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1 for work. So, yeah, I was. I was a little weary.

2 Q What did you tell Tevin Hill and Deshanndon Franks?

3 A Well, I ran to the door. I unlocked it. I ran back to
4 the steps and kind of hid behind a wall because I ain't
5 really -- I really wasn't dressed. I wasn't dressed like
6 this. So I told them that the couch was available and there
7 was a room upstairs.

8 Q Do you know who went where?

9 A No, sir.

10 Q Where did you go?

11 A Back to bed.

12 Q All right. Did you have any more conversations with
13 Tevin Hill or Deshanndon Franks that night?

14 A No, sir. I had one with Tevin that morning.

15 Q Did you have any more call or conversations with
16 Deshanndon Franks in the next couple of days?

17 A Yes. I talked to -- I talked to him later on that day.

18 Q Later on that day?

19 A Uh-huh.

20 Q What was the gist of the conversation between you and
21 Deshanndon Franks?

22 A Making sure they had left the left house properly.

23 Q Did you speak to him then later on?

24 A Yes, sir.

25 Q And what did he want to know at that point?

1 A If I talked to the police, I think.

2 MR. MOWRY: Thank you, sir. That's all I have. You
3 can answer any of Mr. Wilkes' questions.

4 MR. WILKES: May I have just a second, Your Honor?

5 THE COURT: Certainly.

6 MR. WILKES: No questions, Your Honor.

7 THE COURT: Sir, you can step down. Thank you.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 THE COURT: Call your next witness.

11 MR. SHEEK: The State calls Bryant Cheek to the stand.

12 THE COURT: Mr. Sheek, how long do you expect your
13 direct to take with Mr. Cheek? Similar to what we -- or
14 longer probably?

15 MR. SHEEK: I don't think it'll be much longer.

16 THE COURT: I'm just trying to think we need to take a
17 break before so we don't have to break it up.

18 MR. SHEEK: That'll be fine.

19 THE COURT: We're going to take about five minutes to
20 let you all use the facilities if need be, because I need
21 to. Okay? So adjourn to the back and we'll be back on the
22 record in about 10 minutes and we'll proceed with Mr.
23 Cheek's testimony. All right? Don't talk about the case,
24 of course.

25 (Whereupon, the jury exited the courtroom at 11:38

BRYANT CHEEK-DIRECT EXAMINATION

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1 a.m.)

2 (Whereupon, a recess was held from 11:38 a.m. to 11:52

3 a.m.)

4 THE COURT: Let's have the jury.

5 (Whereupon, the jury entered the courtroom at 11:52

6 a.m.)

7 THE BAILIFF: All jurors present, Your Honor.

8 THE COURT: All right. The record will reflect that
9 the jury is back and is seated. I believe the next witness
10 is the Lieutenant. So if you'll come forward and be sworn,
11 please, sir.

12 BRYANT CHEEK, having first been
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SHEEK:

16 Q All right, sir. If you would, state your name for us.

17 A Bryant Cheek.

18 Q And where are you employed?

19 A I am employed at the Laurens County Sheriff's Office.

20 I currently work in the criminal investigation unit.

21 Q And what's your rank with the Sheriff's Office?

22 A Lieutenant with the Laurens County Sheriff's Office.

23 Q Lieutenant Cheek, how long have you been with the
24 Laurens County Sheriff's Department?

25 A I've been with the Sheriff's Office since 2003.

BRYANT CHEEK-DIRECT EXAMINATION

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1 Q Now, when you say you are currently in the criminal
2 investigations division just briefly explain to the jury
3 what your job responsibilities entail.

4 A I primarily work the Gray Court area. Left side of
5 highway 14 from the city limits of Laurens all the way up to
6 the Greenville County line. My responsibility to do
7 property crime, violent crime, and everything in between.
8 We also work a rotating on-call shift where every eight,
9 nine weeks we're on-call after 5:00 from Monday to Monday.

10 Q And did you have an opportunity to be involved in an
11 investigation regarding the deaths of Nikesha James and
12 Darryl --

13 A Yes, sir.

14 Q I'm sorry. My mind froze up there. Leake.

15 A Yes, sir.

16 Q And how did you get involved with that investigation?

17 A At the time we were -- Lieutenant McIntosh and I, we
18 were in Abbeville. We were tracking another person. We
19 received a call from Captain Stephane Williams, which is our
20 supervisor of criminal investigation division, and he told
21 us that we needed to go to Cross Hill.

22 Q And did you respond?

23 A Yes.

24 Q Tell the jury what you did when you got to the scene
25 that day.

BRYANT CHEEK-DIRECT EXAMINATION

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1 A When we got to the scene, of course, we started talking
2 to various people trying to figure out what happened. Speak
3 with people out there in the crowd. Anybody knew anything
4 pertinent to the investigation. What's going on. Trying to
5 gather some information to figure out what happened.

6 Q Now, when you get there is the scene already secured?

7 A I think so.

8 Q Okay. So you began to do your investigation?

9 A Yes, sir. When I got there I think the road officers
10 -- I'm really not sure who was the first responder. I think
11 one of the road officers, I think Lieutenant Haupfear, had
12 already kind of secured things.

13 Q And were there bystanders standing around watching --

14 A Yes, sir.

15 Q -- the officers?

16 A Yes, sir.

17 Q Do you recall roughly how many there might have been?

18 A No. It was a lot of people though.

19 Q Okay. So at this point you're beginning just to try to
20 find out basic information?

21 A Yes, sir.

22 Q Who did you speak to on the scene that day regarding
23 possible witnesses that you might need to interview?

24 A I would have to look back at the statement folder. We
25 spoke to several different people as relates to some of the

BRYANT CHEEK-DIRECT EXAMINATION

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1 information that we were trying to gain to -- you know,
2 through the course of the investigation.

3 Q Do you recall seeing Tevin Hill on the scene that day?

4 A Yes, sir.

5 Q And where did you see him?

6 A My first encounter with Mr. Hill was when we were
7 responding. He was at the top of the hill. He was not
8 quite where the crime scene was. When we pulled up I
9 spotted him, rolled the window down and talked to him.

10 Q Did you know him prior to this incident?

11 A Yes, sir.

12 Q Okay. And so, you rolled down the window and had a
13 conversation with him?

14 A Yes, sir. I knew him prior to this. I also coach AAU
15 basketball and he played on our basketball team, and I
16 recognized him when we were pulling up. So I rolled down
17 the window and I spoke with him.

18 Q And what was the nature of your conversation with him
19 at that time?

20 A I just spoke to him and I kind of joked with him and
21 told him it was good to see him. And I said I hope you
22 didn't have anything to do with this situation down here,
23 and I remember that. But we went on down the hill and began
24 the investigation.

25 Q So were there other investigators working with you?

BRYANT CHEEK-DIRECT EXAMINATION

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1 You said Lieutenant McIntosh was with you.

2 A Yes, sir.

3 Q Did any other investigators come and assist in this
4 investigation?

5 A Yes, sir. It was several investigators. I think
6 Lieutenant Blackmon, Lieutenant Plaxico. I think Lieutenant
7 Shelton was there. I'm not sure.

8 Q When you do an investigation of this nature, something
9 this serious, is it common that more than one investigator
10 will work on the case?

11 A Yes, sir.

12 Q When you were interviewing various witnesses in this
13 case would you work in tandem with another investigator?

14 A Yes, sir.

15 Q Do you recall which investigator you worked with the
16 majority when you were interviewing witnesses?

17 A The majority of time when we were interviewing
18 witnesses I think it was Lieutenant Blackmon and I working
19 together. Usually I kind of ask the questions and he's
20 better at typing. He types quicker than I do when we're
21 doing statements and things like that, if the individual is
22 not writing their own statement.

23 Q During your conversations with other witnesses were you
24 able to get a list of names of people that had been at the
25 scene --

BRYANT CHEEK-DIRECT EXAMINATION

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1 A Yes, sir.

2 Q -- the day before?

3 A Yes, sir.

4 Q And did the Defendant's name come up as somebody that
5 had been there?

6 A Yes, sir.

7 Q Did you attempt to speak with the Defendant, Mr.
8 Franks, regarding --

9 A Yes, sir.

10 Q And how did you get in touch with him?

11 A I think someone else called him and he came back down
12 to the scene and we started talking to him, asking him some
13 questions.

14 Q Did you ask him to give a written statement regarding
15 his involvement with the deceased?

16 A Yes, sir. We asked him, and we explained to him a
17 voluntary statement, which is part of our investigation.
18 Just gathering information from everyone. Of any things
19 that may have come up we ask them to give us a written
20 statement. Voluntary statement.

21 Q And had you taken the same type of written statements
22 from other people?

23 A Yes. Yes, sir.

24 Q So at this point were you focused in on just him?

25 A No, sir.

BRYANT CHEEK-DIRECT EXAMINATION

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1 Q And did he give you a written statement?

2 A Yes, sir.

3 THE COURT: Subject to the earlier objection and, of
4 course, ruling you are protected, Mr. Wilkes.

5 MR. WILKES: Thank you.

6 THE COURT: You may proceed.

7 Q I'm going to hand you this document, sir, and ask you
8 if you recognize that.

9 A Yes, sir.

10 Q And is that a copy of your written statement that you
11 obtained from Deshanndon Franks?

12 A Yes, sir.

13 Q And whose handwriting is that?

14 A It's Mr. Franks' handwriting.

15 Q So you didn't write that for him and then ask him to
16 sign it?

17 A No, sir.

18 Q And did you ask him after he had written out that
19 statement to sign it?

20 A Yes, sir. And then we signed it as a witness.

21 MR. SHEEK: Your Honor, at this point I would ask that
22 it be marked and entered into evidence. I'm sorry. Do you
23 need to see this one?

24 MR. WILKES: Yes.

25 THE COURT: There are a couple of redactions. We're

BRYANT CHEEK-DIRECT EXAMINATION

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1 going to submit a copy for the original. And that will
2 ultimately be State's 47 in evidence subject to the earlier
3 objection.

4 (Whereupon, State's Exhibit No. 47 was admitted into
5 evidence.)

6 MR. SHEEK: Beg the Court's indulgence one moment --

7 THE COURT: Yes, sir.

8 MR. SHEEK: -- while I find that clean copy. With the
9 Court's permission, Your Honor, I'm going to ask the witness
10 to publish the statement.

11 THE COURT: You may.

12 Q If you wouldn't mind, Lieutenant, if you would just
13 read the statement given to you by the Defendant.

14 A It's the Laurens County Sheriff's Office voluntary
15 statement form. Not under arrest. "I --" I can't
16 pronounce it "-- Deshanndon Franks am not under arrest for,
17 nor am I being detained for any criminal offense concerning
18 the events I'm about to make known. I understand I am free
19 to walk away without saying anything, and I volunteer the
20 following information of my own free will for whatever
21 purpose it may serve. I am 26 years of age and I live at
22 , Cross Hill, South Carolina. I can read
23 and write and I completed the twelfth grade in school. My
24 date of birth is /87. Left Wash about 12:30. Got to
25 Kesha's house. It was Kesha --" I don't know if I "--

BRYANT CHEEK-DIRECT EXAMINATION

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1 Tamia, her baby and Darryl. We chilled about -- chilled
2 about --" I can't read "-- chilled about 15 to 20 minutes.
3 Tamia asked Tevin to take her home. He left to do so, and I
4 was talking to Kesha and Darryl -- I was talking to Kesha
5 and Darryl and called Tevin and told him hold on. I'm going
6 up the road. I met him at the top of the driveway and we
7 left and went to Greenville -- left, went to Greenville.
8 Called a girl I was going to see." I can't make out the "--
9 she didn't answer, so I called Scurry and spent the night up
10 the road at the house in Fountain Inn." And then it's
11 initialed by him and a line is marked through. And at the
12 bottom of the page it says, "I have read each page of this
13 statement consisting of one page. Each page of which bears
14 my signature and corrections if any bear my initials and I
15 certify that the facts contained herein are true and
16 correct." The statement was completed at 4:45 p.m. on the
17 31st day of January, 2014. And it has the signature of the
18 person giving the voluntary statement and then my signature
19 as a witness.

20 Q Okay. I notice after the written part there are lines
21 drawn through the remaining blank space. What are those
22 for?

23 A Those lines, we ask each person that gives a statement
24 to mark that line and put their initials. That shows where
25 they end their statement at.

BRYANT CHEEK-CROSS-EXAMINATION

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1 Q And is the purpose of that so that nobody can come in
2 later and add something else to their statement after
3 they've signed it?

4 A Yes, sir. The purpose of that is so that -- they put
5 their initials there and draw the line so no one can come in
6 and add anything to it.

7 Q Now, in part of your all's investigation into the
8 depths of Mr. Leake and Ms. James did law enforcement seek
9 and ask for possession of the cell phones of Tevin Hill and
10 the Defendant?

11 A Yes, sir.

12 Q And did you personally take possession of those?

13 A I didn't take possession of it. Someone else did.

14 MR. SHEEK: Beg the Court's indulgence one moment.

15 THE COURT: Yes, sir.

16 MR. SHEEK: Thank you very much, Lieutenant Cheek.
17 Please answer anything Mr. Wilkes may have.

18 THE COURT: Mr. Wilkes.

19 MR. WILKES: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. WILKES:

22 Q Lieutenant, you took several statements, witnessed
23 several statements or talked to several people during the
24 course of the investigation, correct?

25 A Yes, sir.

BRYANT CHEEK-CROSS-EXAMINATION

304

1 Q When you're conducting an investigation do you attempt
2 to followup on all possible leads while you're doing your
3 investigation?

4 A Yes, sir.

5 Q Is it possible that sometimes you get tunnel vision
6 once you -- you might get fixated on one person and just
7 start ignoring other possible leads?

8 A No, sir.

9 Q During the investigation did you have information that
10 Nikesha was having a relationship with a fellow named James
11 Hill?

12 A I mean, we --

13 MR. SHEEK: Your Honor, I have an objection. May we
14 approach?

15 THE COURT: Come on up.

16 (Whereupon, a sidebar was held.)

17 THE COURT: Ladies and gentlemen, I apologize for
18 having to do this. There is an issue that I need to take up
19 with the attorneys concerning this witness. So if you
20 would, adjourn to the back and don't discuss the case yet.
21 I'm hoping this won't take too long and I'll be able to get
22 you back out here as soon as possible. Okay? So if you
23 would adjourn to the back and not talk about the case.

24 (Whereupon, the jury exited the courtroom at 12:08
25 p.m.)

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1 THE COURT: The jury is out. The State requested a
2 proffer on testimony from Mr. Cheek concerning -- the State
3 is concerned we might be getting into third party guilt type
4 issues. So I'm more than happy to afford that proffer with
5 the consent of Mr. Wilkes. So Mr. Wilkes.

6 MR. WILKES: Thank you, Your Honor.

7 IN-CAMERA

8 Q Lieutenant Cheeks, you witnessed a statement from Sonny
9 Demarco Hill on 7 February 2014. Do you recall that
10 statement?

11 A Yes, sir.

12 Q And in that statement did you witness him giving -- you
13 learned that Nikesha was having a relationship with James
14 Hill, correct?

15 A Yes, sir.

16 Q And she had apparently said that Mr. Hill was crazy.
17 Remember that?

18 A Yes, sir.

19 Q And that Mr. Hill showed up unannounced and uninvited?

20 A Uh-huh. Yes, sir.

21 Q And just the day before she died he had showed up at
22 the house and had been shining his bright lights on people
23 as they came out of the house. Do you remember that?

24 A Yes, sir.

25 Q Now, what did you do in response to that? Did you go

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1 back and talk to James Hill?

2 A Yes, we did.

3 Q You talked to him afterwards, or had you already talked
4 to him?

5 A After the statement or before the statement? I'm not
6 sure if --

7 Q After you learned this did you talk -- did anyone go
8 back and talk and take another statement from Mr. James
9 Morgan Hill?

10 A I know we talked with him. I don't know if it was
11 before or after. I know that we did talk with him.

12 Q Well, I can show you the --

13 A Okay.

14 Q -- James Morgan Hill says 10:20 a.m. February 7th. And
15 then I think Sonny Hill's was 2:33 p.m. on February 7th. So
16 it looks like Sonny Hill's was after James Morgan, right?

17 A Yes, sir.

18 Q So if -- the way that that sounds from Sonny Hill is
19 that James Morgan thinks she's having a relationship.
20 Thinks she's his girlfriend, right?

21 A I'm not quite sure if I'm following you.

22 Q Well, it implies some sort of relationship. At least
23 James Hill thinks he has a relationship, correct?

24 A Yes, sir.

25 Q And it says he shows up unannounced and uninvited,

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1 right?

2 A Uh-huh. Yes, sir.

3 Q So isn't that somewhat -- sound like a stalker sort of
4 thing? In its roughest form, doesn't that sound somewhat
5 like stalking?

6 A Yes, sir. In its roughest form.

7 Q In its roughest form.

8 A Yes, sir.

9 Q So knowing this, and then he had showed up the night
10 before. And you've got a statement by Sonny saying he's
11 shining his bright lights on people. Okay?

12 A Uh-huh.

13 Q Doesn't that sound somewhat potentially aggressive? In
14 its roughest form, doesn't that -- wouldn't that be a bit
15 concerning?

16 A Yes, sir. Okay.

17 Q Okay. So then my point being at that point would there
18 be some concern as far as ruling out Mr. James Morgan Hill
19 as a suspect? If you're covering all your basis?

20 A Yes, sir.

21 Q Now, to your knowledge did anybody go back and talk to
22 Mr. Hill or ask him for his cell phone and go through his
23 cell phone records to do a location like they did Tevin Hill
24 or Mr. Franks?

25 A I can't recall.

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1 Q As far as you know --

2 A I'm not sure.

3 MR. WILKES: Very good. Your Honor, that's our
4 proffer.

5 MR. SHEEK: Your Honor, we've got a couple issues with
6 it. I think one, and a very fundamental issue is obviously
7 that the information is hearsay. But if we move beyond
8 that, if this information is not offered for third party
9 guilt then it becomes irrelevant. If it is offered for
10 third party guilt it certainly doesn't meet the criteria
11 that our courts have said you have to meet to even get in
12 evidence of third party guilt. And so, for all those
13 reasons we object to this line of questioning. I believe it
14 is a casting of a mere aspersion on this phantom person that
15 perhaps he did it. Like I said, if that's not we're
16 insinuating then it becomes irrelevant whether or not this
17 guy was stalking. Assuming that was happening.

18 MR. WILKES: Two things, Your Honor. One, this is a --
19 will boil down to circumstantial evidence. There is direct
20 evidence, of course. But the bulk of the case will boil
21 down to one of circumstantial evidence. Circumstantial
22 evidence generally requires the exclusion of all other
23 reasonable possibilities. And in addition to that, it is
24 certainly relevant to the case as to whether or not there is
25 a potential suspect. Somebody that raises concern that

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1 should be ruled out and is not, or may not have been, or may
2 have been. We may find out that they did, in fact, take his
3 cell phone to determine where he was that night. Perhaps
4 they did not. But to the extent that it's a circumstantial
5 evidence case, and I'm entitled to argue that circumstantial
6 evidence has to rule out all other possibilities, reasonable
7 possibilities, I think I'm entitled to show that the police
8 have not done that when there is ample concern or evidence
9 that there's cause to do that. And, in particular, I will
10 say that my client still, of course, has his determination
11 as far as his testimony. Generally the question of third
12 party guilt comes in with the issue of a Defendant
13 testifying with no other evidence or possibility of
14 corroboration. This is evidence of potential corroboration.
15 It allows the Defendant to testify. So to that extent I
16 think it's relevant on several levels, and I think it's
17 admissible on several levels, because the remaining
18 testimony is going to be that they took my client's cell
19 phone and they say he was here. They took someone else's,
20 Tevin Hill's cell phone. He was there. There were other
21 people that would legitimately be of concern that they
22 either did or did not take their cell phones, which we don't
23 know that.

24 THE COURT: What additional evidence, or what
25 additional testimony, Mr. Wilkes, do you anticipate

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1 eliciting concerning whether -- obviously the central issue
2 in this case is identity of the perpetrator. And the Holmes
3 case in the U.S. Supreme Court -- we're all familiar with
4 it. It's the seminal case in South Carolina on the question
5 of third-party guilt. And basically the holding in that
6 case is that if there's only very -- a very weak logical
7 connection to the ultimate issue or the primary issue in the
8 case, if it's only a weak connection then the evidence
9 should be -- or should not be allowed.

10 Is there any additional evidence or testimony that you
11 anticipate eliciting that would tie Mr. Hill as being the
12 shooter in this case?

13 MR. WILKES: Well, here's the dilemma. My client still
14 has the ability to testify. He's got the right to testify.
15 And at this point the question is if we have somebody that,
16 in its rough terms, is described as a potential stalker of
17 the deceased who was there the night before acting rather --
18 potentially aggressively toward people coming out --

19 THE COURT: Go ahead.

20 MR. WILKES: I guess I need to proffer -- let me just
21 proffer that for the record so the Court will have it with
22 the testimony.

23 THE COURT: Sure. Sure.

24 MR. WILKES: What the question becomes, if there is
25 somebody fairly characterized as a stalker that is fairly

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1 characterized as a person of interest that reasonably should
2 be ruled out, I think we're entitled at that point to
3 question the police on whether they did that. For all I
4 know, they're going to testify later on in the case that
5 yes, they did. Maybe he does have cell phone records. I
6 don't know. I would -- I haven't seen anything yet, so I'm
7 assuming not.

8 THE COURT: Give me two seconds here if I may. Do you
9 want to say something else?

10 MR. SHEEK: Yes. If we could approach.

11 THE COURT: Yes.

12 MR. SHEEK: I'd like to try that first off the record.

13 (Whereupon, a sidebar was held.)

14 MR. WILKES: Can we somehow proffer this in my proffer,
15 in case we go --

16 THE COURT: Sure. We'll make that a --

17 MR. SHEEK: I'll make a copy of right now, if you like.
18 We can make it a Court's exhibit.

19 THE COURT: Here's where I am concerning this witness.
20 Holmes basically -- the Supreme Court case involving Holmes,
21 basically what it was critical of is the Court engaging in a
22 weighing of the evidence. Taking the position of the Court,
23 looking at the State's case and saying, well, the State's
24 case looks so strong that we're going to prevent evidence of
25 third party guilt. I always found the rule against third

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1 party guilt a little bit peculiar, because it is perfectly
2 within the providence of a Defendant to maintain that I
3 agree that a crime was committed. I did not commit the
4 crime. And I believe that perhaps someone else did. If a
5 person is of an innocent mind because he is not guilty of
6 the underlying offense but he agrees that an underlying
7 offense occurred, it's illogical or it's irrational under
8 the old rule concerning third-party guilt to prevent that
9 individual from being able to present evidence indicating
10 that perhaps someone else is reasonably the culprit. Now,
11 the problem that we have here on a very basic level is, of
12 course, we have kind of a hearsay within hearsay situation
13 that the Defense wants to question Mr. Cheek about. And I
14 understand that, of course, the Defendant still has not
15 elected, or the Defense still has not elected whether they
16 want to present a case or not. And certainly if they
17 present a case, if Mr. Franks testifies, if there's
18 additional evidence put forward indicating that Mr. Hill
19 could reasonably have been the perpetrator, then I think
20 under my reading of Holmes I have to allow that.

21 I cannot restrain the Defense from taking the position
22 I've just described. We agree that a crime was committed.
23 I just didn't do it. Somebody else must have, and here's
24 who we think did it. That's fair. Under the -- under the
25 explicit language of Holmes the Court has to allow that.

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1 But the question is how far they can get into it in the
2 State's case and chief. As I indicated earlier, I have no
3 problem with you asking this witness whether Mr. Hill's name
4 came up during the course of this investigation. I have no
5 issue with you questioning the witness about whether -- or
6 how he was excluded, or how this witness went about
7 excluding Mr. Hill as a possible suspect, or ruling him out,
8 or however you characterized the question. At this point in
9 time though I have not heard enough evidence to allow you to
10 go into -- or at least I haven't heard enough in the way of
11 here's why we think Hill's the killer. I haven't heard
12 enough of proffer or representation from the Defense to
13 allow you, Mr. Wilkes, to go into a full blown recitation of
14 everything that's contained in whatever I'm going to mark
15 now as Court's -- whatever we're up to.

16 MR. SHEEK: I've given a copy to the Court Reporter as
17 well, Your Honor.

18 THE COURT: Very good. So whatever she just marked it
19 as -- Court's what? They'll be 5 and 6.

20 (Whereupon, Court's Exhibit Nos. 5 and 6 were marked
21 for identification.)

22 THE COURT: I don't think enough of a showing has been
23 made at this point in time for you to question the witness
24 fully about the stalking, as you characterized it, and the
25 other aspects of these statements. This person testifies

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1 they gave these statements, additional evidence put forward
2 indicating third party guilt we might be in a different
3 position entirely. Okay? So I'm not restraining you from
4 offering evidence of third-party guilt in your case in
5 chief. I am happy to allow you to question this witness
6 though about how he excluded Mr. Hill as a possible suspect
7 in the case.

8 Is my ruling clear?

9 MR. WILKES: No, not at all.

10 THE COURT: All right, then.

11 MR. WILKES: Here's my question.

12 THE COURT: What would you like to ask this witness?

13 MR. WILKES: In other words, at this point in
14 cross-examination am I foreclosed from asking him any
15 questions?

16 THE COURT: No. You may certainly ask him about Mr.
17 Hill. Did he receive information about Mr. Hill having a
18 relationship with the decedent. You can ask him that.
19 Okay? That's non-hearsay. You can ask him whether he ever
20 considered Mr. Hill a suspect and, if so, how he excluded
21 Mr. Hill as -- or how he went about -- if you want to even
22 go there. Did you ever consider Mr. Hill as a suspect.
23 That's fine. How did you go about excluding him. I'm sure
24 if you don't ask that, they're going to ask it, so you may
25 as well ask it yourself. You can ask that. But at this

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1 point in time the witness can certainly be recalled if you
2 lay a sufficient foundation warranting evidence of third
3 party guilt. At this point in time there's not enough in
4 here under Holmes, under my reading of Holmes, to indicate
5 anything other than just a very weak connection to the
6 central issue. I've not been given enough in the way of
7 proffer evidence or proffer testimony to conclude that this
8 is, you know, just a weak -- weak connection. So that's
9 what you can ask this witness. And if more evidence is
10 presented, more testimony is presented at some point later
11 in the case, either from you or from other witnesses, or
12 either from your case in chief or from other witnesses, then
13 Mr. Cheek can be recalled and we can get into the full --
14 everything that's in here and you can talk to him again
15 about the specifics of the stalking and being there the
16 night before and all that other information. I'm dealing
17 with a hearsay issue at this point in time. You've got to
18 understand that.

19 MR. WILKES: I do understand that. My dilemma is one
20 of following their investigation and failure to followup up
21 on a potential suspect that there would be reason to
22 investigate. And so, I'm limited to asking him if Mr. Hill
23 was a suspect. Am I prevented from asking him if there was
24 any reason to consider Mr. Hill?

25 THE COURT: You can ask him that. Because your

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1 question is really going -- I can -- I see -- I see part of
2 your position here, because part of -- you've got two
3 purposes really in this. Perhaps third party guilt. But
4 you also have the right to question this witness about the
5 extent and competency of his investigation. So obviously if
6 this witness overlooked somebody who should have been a
7 suspect, that someone reasonably would have assumed was a
8 suspect, that goes to the underlying extensiveness of the
9 investigation.

10 MR. WILKES: That is a huge part of what I aim to do,
11 but I can't do that without asking him those questions as
12 far as the basis or -- because he can now just say no, he
13 wasn't a suspect.

14 THE COURT: I understand.

15 MR. WILKES: And then, you know, after having testified
16 here that, yes, legitimately he could be considered a
17 stalker and, yes, that would be a reason for a concern. So
18 if I can't ask those basic questions --

19 THE COURT: You can, but it's going to have to be after
20 Sonny Demario Hill and James Morgan Hill testify.

21 MR. WILKES: So on cross I can ask -- I'm limited to
22 asking was there a reason -- special reason to consider him
23 a suspect at the time --

24 THE COURT: Right.

25 MR. WILKES: -- and if so, did he followup any step

BRYANT CHEEK-CROSS-EXAMINATION

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1 after that.

2 THE COURT: And if you want to go so far as to say -- I
3 think you may have already done so, but I don't know that
4 you did in front of the jury. If you want to go so far as
5 to say did you interview Sonny Demario Hill and James Morgan
6 Hill in this investigation, you can ask him that. Did you
7 receive statements from those individuals. Yes. Based upon
8 those statements did you consider Mr. Hill a suspect. I'm
9 trying not to limit you unnecessarily, but there's a lot of
10 hearsay in here. These people haven't testified. And just
11 like I limited the State on hearsay grounds with certain
12 witnesses until they testify, I've got to do the same for
13 you. And then obviously if additional information comes
14 forward later, if you -- if Sonny Hill or James Hill testify
15 and there's firmer more -- if there's something more than
16 just a weak logical connection on the question of identity
17 then I think we're in a position where certainly you get to
18 offer evidence that perhaps someone else was the person
19 responsible for this. But we just haven't gotten there yet.
20 You understand my ruling?

21 MR. WILKES: I think I do. If there's any way -- I'm
22 going to do my best to ask questions and confine it to what
23 your intent is. If I overstep that just --

24 THE COURT: You'll be fine. I think you understand
25 where I am. Let's have the jury back, please.

BRYANT CHEEK-CROSS-EXAMINATION

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1 The statement, Solicitor, for Sonny Hill, at the very
2 top it says page one of two.

3 MR. MOWRY: Yes, sir. That was personal contact -- oh,
4 I see. That's what Mr. Wilkes --

5 MR. WILKES: She's saying that the back of it has
6 three lines.

7 MR. MOWRY: I'll get it. I'll take care of that right
8 now.

9 (Whereupon, a short recess was held.)

10 (Whereupon, the jury entered the courtroom at 12:39
11 p.m.)

12 THE BAILIFF: All jurors are present.

13 THE COURT: The jury is back and seated. Mr. Wilkes,
14 you were questioning this witness. You may continue, sir.

15 Q Lieutenant Cheek, did you witness a statement given by
16 Sonny Demarco Hill?

17 A Yes, sir.

18 Q And were you also aware of the statement given by James
19 Morgan Hill?

20 A Yes, sir.

21 Q And from those statements was there any reason for
22 concern that you might consider either one or -- as a
23 suspect? Potential suspect in this case?

24 A No, sir. From the statement?

25 Q Yes, sir.

BRYANT CHEEK-CROSS-EXAMINATION

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1 A I'm sorry.

2 Q Did either of these statements that you're aware of
3 give you any concern that you needed to rule one of these
4 people out as a suspect?

5 A No, sir.

6 MR. WILKES: Your Honor, I believe that's as far as I
7 can go with this.

8 THE COURT: Solicitor?

9 MR. SHEEK: No redirect, Your Honor.

10 THE COURT: Sir, you can step down. Do you have
11 another witness that we can get to before lunch?

12 MR. MOWRY: This may be a good time to break, Your
13 Honor.

14 (Whereupon, a brief sidebar was held.)

15 THE COURT: Ladies and gentlemen of the jury, we're
16 going to go ahead and take a lunch break at this point in
17 time. And again, we are probably a little bit ahead of
18 schedule at this point. So if you would, go ahead and take
19 your lunch break. Be back in the jury room, please, at 2:00
20 and at that point we'll resume with the trial of this case.
21 And as I've been saying every time we take a break, don't
22 talk about the case while we're on break. Hope you enjoy
23 your lunch. Okay? See you all at 2:00.

24 (Whereupon, the jury exited the courtroom at 12:42
25 p.m.)

RAKEISHA HILL-DIRECT EXAMINATION

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1 2:06 p.m.)

2 (Whereupon, State's Exhibit No. 49 was marked for
3 identification.)

4 THE COURT: Let's have the jury, please.

5 (Whereupon, the jury entered the courtroom at 2:06
6 p.m.)

7 THE BAILIFF: All jurors present, Your Honor.

8 THE COURT: Very good. All right. Ladies and
9 gentlemen, of course we're still in the State's case in
10 chief. So at this point, Solicitor, call your next witness.

11 MR. SHEEK: The State calls Deputy Keisha Hill to the
12 stand, Your Honor.

13 RAKEISHA HILL, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHEEK:

17 Q Deputy Hill, how long have you been employed with the
18 Laurens County Sheriff's Department?

19 A Six years.

20 Q And what is it that you do with the Laurens County
21 Sheriff's Department now?

22 A I am a child support server and work in warrants
23 division part-time.

24 Q So you typically work in the courthouse or you're out
25 serving warrant?

RAKEISHA HILL-DIRECT EXAMINATION

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1 A Yes, sir. And child support papers.

2 Q And were you employed -- well, tell me this. How long
3 have you been employed, did you say?

4 A Six years.

5 Q So you were working here in January 2014?

6 A Yes, sir.

7 Q Did you have an opportunity to go to a residence in
8 Cross Hill January 31st, 2014 regarding a murder
9 investigation?

10 A Yes, sir.

11 Q And who called you to come to the scene that day?

12 A Lieutenant Plaxico.

13 Q And why was it that you were brought out to that scene?

14 A I was brought out because there had been a murder that
15 had taken place and Lieutenant Plaxico wanted me to come in
16 and see could I help out with controlling the crowd and just
17 the investigation itself.

18 Q While you were out there did you see anybody that you
19 knew?

20 A Yes, sir.

21 Q And was Tevin Hill there?

22 A Yes, sir.

23 Q And was the Defendant in this case, Deshanndon Franks,
24 there?

25 A No, sir.

RAKEISHA HILL-DIRECT EXAMINATION

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1 Q Do you know Tevin?

2 A Yes, sir.

3 Q And how do you know him?

4 A He's my first cousin.

5 Q And did you speak to him out there that day?

6 A Yes, sir.

7 Q And at some point did Mr. Franks show up at the scene?

8 A Yes, sir.

9 Q Now, I'm talking about the scene. I want to hand you
10 what's been marked for identification as State's Exhibit No.
11 5 and ask you, ma'am, if you can identify what's depicted in
12 that photograph.

13 A This is a picture of the trailer that Nikesha James
14 lived in, and also it's a picture of Mr. Milton Grant. His
15 trailer.

16 MR. SHEEK: Your Honor, I would offer State's Exhibit 5
17 to be entered into evidence.

18 MR. WILKES: No objection.

19 THE COURT: Without objection, State's 5 is in
20 evidence.

21 (Whereupon, State's Exhibit No. 5 was admitted into
22 evidence.)

23 Q I hand you back that photograph, a copy of which we now
24 have up here on the screen. Can you tell me which of the
25 residences depicted in here is Nikesha James' residence?

RAKEISHA HILL-DIRECT EXAMINATION

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1 A If you start over from the left of the screen --

2 Q Yes, ma'am.

3 A -- there is a storage building.

4 Q Here?

5 A Right there. And that residence would be Nikesha
6 James.

7 Q So Nikesha James is right there?

8 A Yes, sir.

9 Q And where would Milton Grant's residence be in this
10 photograph?

11 A Milton Grant is the trailer that's kind of turned
12 sideways.

13 Q Here?

14 A Right there. Yes, sir.

15 Q Now, when you were out there that day working this
16 scene did you have an opportunity to ask anybody to turn
17 over their cell phones to you?

18 A Yes, sir.

19 Q And do you recall who you asked to turn over their cell
20 phones to you?

21 A Yes, sir.

22 Q Who was that?

23 A Tevin Hill and Deshanndon Franks.

24 Q I'll hand you what's been marked for identification as
25 State's Exhibits 49 and 41. Do those look like the cell

RAKEISHA HILL-DIRECT EXAMINATION

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1 phones that were provided to you by Mr. Hill and Mr. Franks?

2 A Yes, sir.

3 Q Do you know which one was given to you by Mr. Hill?

4 A This one.

5 Q And that is State's No. --

6 A Exhibit 49.

7 Q 49.

8 A Yes, sir.

9 Q And 41 was provided to you by who?

10 A Deshanndon Franks.

11 Q And what did you do with those phones after you took
12 possession of them?

13 A Gave them to Lieutenant McIntosh. I'm sorry.

14 Q Did you do anything with the phones as far as
15 activating them, going through information?

16 A No, sir.

17 Q In any way manipulating the data that was on this
18 phone?

19 A No, sir.

20 Q Now, ma'am. When you asked the Defendant's to provide
21 you these phones, how did you do that?

22 A I simply asked them if they had any problem with
23 turning over their cell phones.

24 Q And did they indicate they had any problem with that?

25 A No, sir.

RAKEISHA HILL-CROSS-EXAMINATION

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1 Q Was there in any way any threats made to make them give
2 you the phone?

3 A No, sir.

4 Q If they didn't give you the phone something bad was
5 going to happen to them?

6 A No, sir.

7 Q Was it completely voluntary on their part as far as you
8 could see?

9 A Yes, sir.

10 Q And how far away was Lieutenant McIntosh from you when
11 you took the phone?

12 A Probably from here to where Warren is sitting. Within
13 like maybe 10 feet.

14 Q And did you just -- did you keep the phones for a while
15 or did you immediately turn them over to Lieutenant
16 McIntosh?

17 A I immediately turned them over to him.

18 MR. SHEEK: Thank you, Deputy. Please answer anything
19 Mr. Wilkes may have.

20 THE COURT: Mr. Wilkes?

21 CROSS-EXAMINATION

22 BY MR. WILKES:

23 Q You were on the scene pretty quickly?

24 A I wouldn't say quickly. No, sir. I was off that day.

25 Q So what?

RAKEISHA HILL-CROSS-EXAMINATION

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1 A Maybe approximately three hours or so.

2 Q Was there crime scene tape up?

3 A Yes, sir.

4 Q Do you remember there being a -- I'll show you what's
5 been marked as Defendant's Exhibit for identification No.

6 17. Do you remember the crime scene tape -- the yellow tape
7 being over a white car?

8 A Yes, sir.

9 Q And would that white car be on which side of this
10 trailer, here or here where this black car is?

11 A There where the black car is.

12 Q So the white car was over here on this side of the
13 trailer where this black car is now?

14 A Yes, sir.

15 Q So this isn't a picture from the day of the incident,
16 is it?

17 A I'm not sure.

18 Q It doesn't look like it?

19 A It doesn't look like it. No, sir.

20 Q So the white car and the crime scene tape would be on
21 this side of the trailer, and this being Mr. Grant's over
22 here, correct?

23 A Yes, sir.

24 Q And if I'm seeing this right, the stairs out the door
25 on this side would be on -- let's see. The car would be

BEN BLACKMON-DIRECT EXAMINATION

328

1 between Mr. Grant's and that front porch?

2 A Yes, sir.

3 Q And then do you recall what's on this side of the
4 trailer? That looks like -- is there another -- there's
5 another door right here, correct?

6 A Yes, sir. It's the back door.

7 Q So there's doors on both sides?

8 A Yes, sir.

9 Q And is there a reason that you asked for the cell
10 phones from Mr. Franks and Mr. Hill? In particular you as
11 opposed to any other officer?

12 A Yes, sir.

13 Q And why would that be?

14 A Basically it would -- I'm familiar with them. Pretty
15 much we're related. So just me asking them would probably
16 be easy to obtain information or anything I needed from them
17 versus an investigator.

18 MR. WILKES: Very good. No further questions.

19 THE COURT: Ma'am, thank you. You can step down.

20 (Whereupon, the witness stepped down from the witness
21 stand.)

22 THE COURT: Call your next witness.

23 MR. MOWRY: I call Ben Blackmon.

24 BEN BLACKMON, having first been
25 duly sworn, testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. MOWRY:

3 Q You are Ben Blackmon?

4 A Yes, sir.

5 Q By whom are you employed?

6 A The Laurens County Sheriff's Office.

7 Q And what is your position with the Laurens County
8 Sheriff's Office?

9 A Lieutenant of the criminal investigations division.

10 Q As a lieutenant what are your responsibilities?

11 A To oversee case files and assist other officers in the
12 investigations.

13 Q And were you employed in that capacity back on the 31st
14 of January 2014?

15 A Yes, sir.

16 Q Around midday that day did a call come in to your
17 section about an incident in Cross Hill?

18 A That's correct.

19 Q And as a response -- in response to that call what did
20 you specifically do?

21 A Specifically I believe I obtained a search warrant for
22 the location.

23 Q Once the call came in where did you go? Let me put it
24 that way.

25 A I went to the incident location in Cross Hill.

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1 Q When you got there what did you see?

2 A There at the scene were two individuals that had been
3 deceased.

4 Q Now, I want to bring your attention to what is already
5 in evidence as State's Exhibit No. 5. Do you recognize
6 this?

7 A Yes, sir.

8 Q What is that, please, sir?

9 A That's the overview of the incident location, sir.

10 Q And I believe this is the incident location here in the
11 middle of the picture; is that right?

12 A That's correct.

13 Q And it's been testified that this was Milton Grant's
14 house. Is that right?

15 A Yes, sir. That seems proximate.

16 Q Let me ask you this. Were you on Mr. Grant's doorstep
17 or at his trailer at all?

18 A Yes, sir. We had stopped by there.

19 MR. MOWRY: Sorry about that, Walter. I touched the
20 screen. As I said, technology, not my friend.

21 Q Were you able to see clearly -- how clear was the view
22 back to the incident location?

23 A From where everything was located you could see the
24 incident location. The front of the house.

25 Q And was there a car up on blocks up in front of the

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1 house?

2 A If I recall. Yes, sir.

3 Q Did that interfere with the view that you had from Mr.
4 Grant's house?

5 A Not for me.

6 Q Okay. Now, this picture, obviously there are a lot of
7 leaves on the trees. This was January 31st. What was the
8 condition at that time?

9 A It was clear. There were no leaves on the trees.
10 Winter.

11 Q Now, when you got to the scene what did -- what was
12 going on? What had happened at the scene before you got
13 there?

14 A On the day of the -- the call came in the Sheriff's
15 Office. Officers responded. I obtained a search warrant
16 for the crime scene. SLED forensic officers responded as
17 well to collect evidence, as well as other investigators.

18 Q And let me ask you this. You say you got a search
19 warrant for the incident location.

20 A Yes, sir.

21 Q Why did you do that?

22 A To legally look for evidence within the crime scene.

23 Q You've been doing this a long time; is that right?

24 A I've been doing this for 12 years. Been at the
25 Sheriff's Office 17.

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1 Q And you've been to a lot of crime scenes with SLED
2 investigators; is that right?

3 A That's correct.

4 Q Is that part of their policy?

5 A Yes, sir.

6 Q Is that part of their policy?

7 A Yes, sir.

8 Q So you just automatically went and got it; is that
9 right?

10 A That's correct.

11 Q What did you and the SLED folks do after that?

12 A At that point I allowed them obviously to collect
13 evidence and keep the majority of our officers out of that
14 area for contamination purposes and such. Other officers
15 spoke with potential witnesses in the area that had gathered
16 to inquire what was going on.

17 Q And statements were taken from those individuals?

18 A Yes, sir. Other officers did take some statements that
19 day.

20 Q Does that include State's Exhibit No. 47? The
21 statement from Deshanndon Franks?

22 A Yes, sir. That's correct.

23 Q What else was going on there that day?

24 A On that day the witnesses were interviewed. Another
25 statement was taken from Mr. Tevin Hill, as well as another

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1 individual. I believe a Ms. Curry.

2 Q Did you have any suspects at that time?

3 A No, sir. We did not.

4 Q How did the investigation continue from there?

5 A From there officers spoke with members of the
6 community. And after gaining the statements from Mr. Franks
7 and Mr. Hill we spoke the next day to a Ms. Kinard who had
8 been at the residence with Mr. Franks and Mr. Hill the night
9 before the incident took place. She stated that Mr. Hill
10 took her home and that Mr. Franks was still there when they
11 left.

12 Q Did that create a little bit of interest for you all
13 with Mr. Franks?

14 A That's correct.

15 Q Was there anything from what the witnesses had told you
16 that you were interested in seeking?

17 A Yes, sir. We had also within the next -- there are two
18 days. I believe on the 1st we spoke to Ms. Kinard, and by
19 the 3rd we had talked to Mr. Grant.

20 Q Milton Grant?

21 A Milton Grant. Yes, sir. And Milton had explained to
22 us that he had seen an individual come out with brown
23 clothing. Coveralls or overalls I believe his statement
24 depicted. We had also spoke with Ms. Kinard who stated that
25 Mr. Franks had on brown coveralls or overalls or a red

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1 sweatshirt as well at the residence the night before. And
2 Mr. Hill and Mr. Franks' own statements at that point stated
3 that they had been there as well. Earlier in the evening we
4 had taken -- or on the 31st we had taken a statement that
5 also placed Mr. Franks at a club where he had on the brown
6 coveralls as well as a firearm. At that point on the 4th we
7 executed a search warrant on Mr. Franks' grandmother's home
8 where he has a room.

9 Q Now, had you searched anything, or had you gotten a
10 search warrant for any other location that you believe you
11 would find Mr. Franks' residence?

12 A Yes, sir. At the residence he listed on the statement,
13 which is his mother's home, and found that he really didn't
14 have any belongings there. No more than he would at the
15 other residence where his grandparents owned the house.

16 Q So when you found out he had the room where he stayed
17 at his grandparents house what did you do?

18 A Well, we executed a search warrant at that -- at that
19 residence and we recovered several items.

20 MR. WILKES: Objection.

21 THE COURT: Subject to the earlier --

22 MR. WILKES: Thank you, Your Honor.

23 THE COURT: Go ahead, sir. I'm sorry.

24 A There we recovered several items that's listed on the
25 return of the search warrant.

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- 1 Q Okay. Let me show you these items, State's Exhibit No.
2 38. Is this one of the items that you located?
3 A Yes, sir.
4 Q And was this item then turned over to SLED --
5 A Yes, sir.
6 Q -- for examination?
7 A That's correct, sir.
8 Q Let me show you a couple of pictures and ask you if you
9 can identify them. These are specifically State's Exhibits
10 28, 36 and 37.
11 MR. WILKES: Do I need to continue to object?
12 THE COURT: Oh, I understand what you're saying. No,
13 you do not need to continue to object. You are covered
14 from the previous ruling and you do not need to make a
15 contemporaneous objection for these other items that will be
16 introduced.
17 MR. WILKES: Thank you.
18 MR. MOWRY: Thank you, Your Honor.
19 Q Do you recognize those items?
20 A Yes, sir.
21 Q What are those?
22 A This is a red backpack that was hanging on the wall.
23 Q Was that found at the --
24 A Grandmother's.
25 Q -- a product of the search warrant?

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1 A That is correct. And inside the knapsack was a double
2 stacked elongated magazine for a firearm. And also the
3 brown coveralls.

4 MR. MOWRY: Your Honor, if there is no further
5 objection, I would offer these as State's Exhibits at this
6 time.

7 THE COURT: Subject to the earlier objection they are
8 in evidence.

9 MR. MOWRY: Thank you, Your Honor.

10 (Whereupon, State's Exhibit Nos. 38, 36, and 37 were
11 admitted into evidence.)

12 Q Let's go to State's Exhibit No. 28. Where was this
13 photo taken?

14 A That was inside the residence of Mr. Franks where he
15 had a room at his grandmother's.

16 Q This was inside his room; is that right?

17 A That's correct.

18 Q And what is this right here?

19 A Those are the coveralls.

20 Q State's Exhibit No. 38?

21 A Yes.

22 Q Those -- those are them?

23 A Yes, sir.

24 MR. MOWRY: Your Honor, I would offer these as a
25 State's Exhibit at this time.

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1 THE COURT: Subject to the previous objection.

2 Anything in addition to that, sir?

3 MR. WILKES: Chain, Your Honor.

4 THE COURT: Are there any other chain witnesses that we
5 need to cover?

6 MR. MOWRY: Your Honor, I would submit these are not
7 fungible. That we did submit them for -- for testing at
8 SLED, but that should not keep them from coming in at this
9 time.

10 THE COURT: Subject to the objection concerning the
11 chain, I find that the chain has been sufficiently -- to the
12 extent the chain is even necessary -- because again, I don't
13 know that these are necessarily fungible items. But to the
14 extent that a chain would be considered necessary, the chain
15 of custody, I'll overrule the objection. They will be in
16 evidence.

17 MR. MOWRY: Thank you, Your Honor.

18 THE COURT: They were 38?

19 MR. MOWRY: 38. Yes, sir.

20 (Whereupon, State's Exhibit No. 38 was admitted into
21 evidence.)

22 Q Let me switch over to No. 36. Tell us what that is.

23 A That is the photograph of the red knapsack that was
24 hanging on the wall in the same room.

25 Q Is that the one that's being shown on the screen right

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1 there?

2 A That's correct, sir.

3 Q And let's switch over to 37.

4 A And that is the interior of the backpack revealing the
5 firearm magazine there.

6 Q Let me show you what has been marked as State's Exhibit
7 No. 40. Does this appear to be the magazine that you all
8 found?

9 A Yes, sir. It appears to be the same -- same magazine.

10 Q Finally let me show you State's Exhibit No. 39 that's
11 in this bag. Do you recognize that?

12 A Yes, sir. That's the red backpack.

13 MR. MOWRY: And, Your Honor, at this time I would offer
14 State's Exhibit No. 39 into evidence.

15 THE COURT: Subject to the prior objection 39 is in
16 evidence.

17 MR. WILKES: Is 40 in?

18 MR. MOWRY: No, sir.

19 (Whereupon, State's Exhibit No. 39 was admitted into
20 evidence.)

21 MR. MOWRY: And at this time I would move 40 in, as a
22 matter of fact.

23 THE COURT: No additional objections. Subject to the
24 same rulings as before. 40 is in evidence.

25 (Whereupon, State's Exhibit No. 40 was admitted into

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1 evidence.)

2 Q As part of your investigation did you also go to
3 Fountain Inn --

4 A Yes, sir.

5 Q -- to the residence of Rodrigus Scurry?

6 A Yes, sir. We went to Fountain Inn to Mr. Scurry's home
7 to also look for forensic evidence, and we also obtained a
8 statement from Mr. Scurry.

9 Q Did you obtain a search warrant to search his house, or
10 did you rely on his consent?

11 A If I recall correctly, Mr. Scurry was cooperative with
12 us.

13 Q And he allowed you to do it? He gave you his consent;
14 is that right?

15 A That's correct. He was home and present.

16 Q And you were with whom?

17 A With other officers from the Sheriff's Office as well
18 as the State Law Enforcement Division.

19 Q And was Mindy Worley there?

20 A Agent Worley was with me.

21 Q To your knowledge, was anything of any evidentiary
22 value found in Mr. Scurry's residence?

23 A Not to my recollection. No, sir.

24 Q But you all did take a statement from him at that time;
25 is that correct?

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1 A That's correct.

2 Q Did you also obtain a search warrant for Mr. Hill's
3 car?

4 A The Mercury?

5 Q Or the Crown Vic.

6 A Crown Vic.

7 Q Let me hand you State's Exhibits 30 and 31 and ask you
8 if you can identify that.

9 A Yes, sir. That's the brown vehicle. And I believe we
10 did execute a search warrant on it as well.

11 Q And again, Ms. Worley was with you?

12 A That's correct.

13 MR. MOWRY: Let me get this marked as a -- for
14 identification purposes, please. Oh, excuse me. I already
15 got it in. Thank you.

16 Q State's Exhibit No. 48 for identification. Do you
17 recognize that?

18 A Yes, sir. That's -- it looks to be a satellite view of
19 the Cross Hill area of where we were. The crime scene being
20 in this area and the Main Street area being up there.

21 Q This is kind of a Google Map or Google Earth type
22 thing?

23 A That's correct.

24 MR. MOWRY: I would offer it as a State's Exhibit at
25 this time, Your Honor.

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1 THE COURT: 48 is in evidence without objection.

2 (Whereupon, State's Exhibit No. 48 was admitted into
3 evidence.)

4 Q So this is the map basically of the area; is that
5 right?

6 A That's correct.

7 Q And the area we're talking about is right here --

8 A Yes, sir.

9 Q -- in the lower left-hand corner?

10 A Yes, sir.

11 MR. MOWRY: Thank you, sir. That's all I have. If
12 you'd answer any of Mr. Wilkes' questions.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Wilkes.

15 CROSS-EXAMINATION

16 BY MR. WILKES:

17 Q You said that you had taken a statement that created a
18 little bit of interest in Mr. Franks, correct?

19 A From Mr. Franks?

20 Q You had taken a statement from somebody that created a
21 little bit of interest in Mr. Franks and from that you ended
22 up, I think, taking -- obtaining his cell phone. Is that
23 the --

24 A I did not obtain the statement. I have knowledge of it
25 after it was taken. And also knew that Mr. Franks had

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1 turned over his cell phone to a police officer.

2 Q All right. Did you take a statement from Sonny Hill?

3 A I don't recall, unless you have a copy.

4 Q I do.

5 A Okay.

6 Q Take a look at that statement for a second.

7 A All right. Do you recall taking that statement?

8 A Yes, sir.

9 Q And in that statement did you learn that Nikesha had --

10 MR. MOWRY: Your Honor, I would object to anything that
11 is of hearsay nature that would have been related to the
12 officer.

13 THE COURT: Okay. Would you all approach real quick.

14 (Whereupon, a sidebar was held.)

15 THE COURT: Please proceed, Mr. Wilkes.

16 Q Now, it's your understanding that Tevin Hill and Mr.

17 Franks were at Kesha's house late at night, correct?

18 A Yes, sir. In the early morning hours.

19 Q Now, in the course of your investigation, through your
20 statement, did you come to learn that Nikesha had a
21 boyfriend, or a relationship -- physical relationship with
22 somebody?

23 A If you're relating to the information in Sonny Hill's
24 statement that we have here, he indicated that Nikesha may
25 have had a relationship with another individual.

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1 MR. MOWRY: Your Honor, again I'm going to object.

2 THE COURT: Overruled.

3 MR. MOWRY: Thank you.

4 THE COURT: Go ahead.

5 Q Was there an indication that that potential boyfriend
6 showed up the day before about midnight?

7 A You mean the day before the incident?

8 Q Correct.

9 A According to this statement he was -- the day before,
10 that's correct, according to what he was explaining to us.
11 The day before she died he was at her house and coming to
12 pick up his two cousins.

13 Q And now, did you or anybody else, to your knowledge,
14 obtain his cell phone?

15 A I don't recall if -- I don't think I collected anyone's
16 electronic device myself.

17 Q But as far as you know, nobody did?

18 A You would have to check the file, sir.

19 Q Were you the --

20 A I was transcribing that statement for Lieutenant Cheek.

21 Q To your knowledge did anybody collect his cell phone?

22 A I don't recall.

23 Q No, not if you remember. To your knowledge did anyone?

24 A To my knowledge I don't recall.

25 Q Let's handle it this way.

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1 THE COURT: Solicitor, are you willing to stipulate
2 that nobody collected his cell phone?

3 MR. SHEEK: Whose cell phone, Judge?

4 MR. MOWRY: James Morgan Hill?

5 THE COURT: Yes.

6 MR. SHEEK: Didn't have one.

7 MR. MOWRY: He did not have a cell phone to collect,
8 Your Honor.

9 THE COURT: Then that would -- Go ahead. Will you
10 accept that stipulation?

11 MR. WILKES: May I approach?

12 THE COURT: Come on up.

13 (Whereupon, a sidebar was held.)

14 THE COURT: Please continue, Mr. Wilkes.

15 MR. WILKES: Just for the record --

16 THE COURT: Right.

17 MR. WILKES: -- I do have an objection for the record
18 later, and a motion.

19 THE COURT: Yes, sir.

20 Q Now, Officer Blackmon -- Lieutenant, you say that these
21 are cover -- of course, these are coveralls or, I think --
22 coveralls; is that right?

23 A Some refer to them as overalls --

24 Q Overalls.

25 A -- coveralls.

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1 Q That's it. Overalls. I'm sorry. So these are the
2 same overalls that were found at the house. You've
3 identified them as being the same?

4 A Yes.

5 Q And how do you know that?

6 A Because those are the ones that were collected in the
7 photograph.

8 Q Are they -- they were in this, right?

9 A They were in this in here.

10 Q Okay. Who picked up the coveralls and put them into
11 custody?

12 A If Mr. Mowry would allow me to have the evidentiary
13 paper it'll explain that I believe they were collected by
14 our evidence technician at the time, Michael Crockett, who
15 turned it over to Agent Worley. Yes. These were actually
16 handed from Lieutenant Shelton to Deputy Crockett to SLED,
17 which would have been Agent Worley.

18 Q Very good. And the point of my questions, they're
19 wrapped up in this nice clean white paper, right? And
20 there's initials all over this clean white paper. Tell me
21 what that usually --

22 A Typically that indicates that that would be the
23 evidence packaging from the State Police.

24 Q Would you all -- can you tell me if these are in the
25 same condition that they were when they were picked up out

1 of Mr. Franks' --

2 A Those are the same coveralls.

3 Q Are they in the same condition? Is there any way to
4 know? You can't say that they're in the same condition?

5 A They're the same coveralls that were photographed and
6 collected.

7 MR. WILKES: Give me just a second, Your Honor.

8 THE COURT: Yes, sir.

9 MR. WILKES: No further questions.

10 MR. MOWRY: Just a couple of issues.

11 REDIRECT EXAMINATION

12 BY MR. MOWRY:

13 Q You said they're the same coveralls. Mr. Wilkes asked
14 you if they were in the same condition. Are there -- is
15 there writing on these things now?

16 A Yes, sir. There's writing on them from, I assume,
17 testing.

18 Q Was that on there when you all collected them?

19 A I don't -- I think so. Those are the same -- same
20 garments. I just didn't understand Mr. Wilkes' --

21 Q Right.

22 A -- question.

23 Q But you said from testing. So these had gone to the
24 State Law Enforcement Division; is that right?

25 A Yes, sir.

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1 Q And there was testing conducted on them there?

2 A Yes, sir.

3 Q Mr. Wilkes asked you about portions of a statement from
4 Sonny Hill; is that right?

5 A That's correct.

6 Q And the item that he was asking you about specifically
7 occurred the night before, did I understand your testimony?

8 A According to the statement that I was looking at from
9 Mr. Hill, that individual had been at the residence a whole
10 -- from my understanding of the statement, the whole day
11 before.

12 Q But specifically, after midnight on the 31st who was at
13 the residence according to your investigation?

14 A The Defendant.

15 Q And who else?

16 A Mr. Tevin Hill and the two victims, and Ms. Kinard who
17 we obtained a statement from that placed all of them in the
18 incident location together.

19 Q And if we are to believe Ms. Kinard and Mr. Hill's
20 statements and his testimony, who would have been left at
21 the residence after Tevin Hill and Mia Kinard left?

22 A The Defendant and the two victims.

23 Q Thank you.

24 THE COURT: All right, sir. Thank you.. You can step
25 down and you're, of course, still under Subpoena. Okay?

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1 THE WITNESS: Thank you, sir.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 THE COURT: Call your next witness.

5 MR. SHEEK: Call Lieutenant Keith McIntosh.

6 KEITH MCINTOSH, having first been
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SHEEK:

10 Q Mr. McIntosh, with whom are you employed?

11 A Laurens County Sheriff's Office.

12 Q And how long have you been working there?

13 A Fifteen years.

14 Q And what is your current rank and job responsibility?

15 A I'm a Lieutenant with the CID, criminal investigation
16 division.

17 Q And did you have an opportunity to assist or be part of
18 the investigation into the slaying of Nikesha James and Mr.
19 Leake? Sammie Darryl Leake?

20 A Yes, sir. I did.

21 Q And in that investigation did you have an opportunity
22 to receive some cell phones?

23 A Yes, sir. I did. Two -- three.

24 Q And who did you get them from?

25 A Rakeisha Hill Mobley.

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1 Q I'm going to hand you what's been marked as State's
2 Exhibit No. 41 and ask you if you recognize that.

3 A Yes, sir.

4 Q What is that?

5 A It's an iPhone. I believe it belonged to Mr. Franks.

6 Q Okay. And I'm going to hand you what's been marked as
7 State's Exhibit No. 49 and ask you if you recognize that.

8 A Yes, sir. This one belonged to Tevin Hill, because
9 it's T-Mobile.

10 Q And are those the two phones you received from Deputy
11 Hill?

12 A Yes, sir. It is.

13 Q And how do you know those are the same two phones?

14 A Well, they was -- after we completed our investigation
15 we turned them over to the evidence custodian and he put
16 them into evidence.

17 MR. SHEEK: Your Honor, at this point we would move
18 these items into evidence, 41 and 49.

19 MR. WILKES: I believe I objected.

20 THE COURT: Subject to the objection by -- with regard
21 to one of them, I think the objection related to the
22 Defendant's cell phone, so they are in evidence subject to
23 that.

24 (Whereupon, State's Exhibit Nos. 41 and 49 were
25 admitted into evidence.)

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1 Q After you took possession of these phones what did you
2 do with them?

3 A The next thing we obtained a search warrant and the
4 next morning, which would have been Saturday morning,
5 February 1st, I had obtained a signature from Judge Tucker
6 to have the phones -- what we call dump the phones.

7 Q Now, tell the jury what a phone dump is?

8 A That's where we -- certain agents at SLED, they have
9 equipment, where they can take the cell phone and they can
10 plug it up into their equipment and they can extract all the
11 information from that cell phone. Whether it's been deleted
12 or not been deleted. All incoming and outgoing calls, text
13 messages, images, even videos or things like that. All of
14 that.

15 Q And where did you take it to have that done?

16 A I met with Investigator Michael Rainey. It was in the
17 Princeton -- this was during the time we joined forces. We
18 were searching for a missing person. Greenville County had
19 brought their command center down, which was a big motor
20 home. It was set up where they had all their equipment in
21 there. And Investigator Rainey was able to download, or
22 extract all the information from the cell phones.

23 Q I hand you what's been marked for identification as
24 State's Exhibit No. 6 and ask if you recognize that.

25 A Yes, sir. I do.

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1 Q And where was that photo obtained?

2 A This photo was obtained from the Defendant, Mr. Franks'
3 phone, when they extracted it.

4 MR. SHEEK: Your Honor, at this time we would move
5 Exhibit No. 6 into evidence.

6 MR. WILKES: Same objection.

7 THE COURT: Same objection. It's in evidence. That's
8 6, right?

9 MR. SHEEK: That's correct. Yes, sir, 6.

10 (Whereupon, State's Exhibit No. 6 was admitted into
11 evidence.)

12 Q Now, Investigator McIntosh, did you ever contact
13 Verizon -- well, let me back up. I'm getting ahead of
14 myself. Did you determine who the cell service provider for
15 the Defendant's cell phone was?

16 A Yes, sir. I did.

17 Q And who was that?

18 A It was Verizon.

19 Q And did you ever contact them regarding obtaining any
20 information related to the phone of the Defendant?

21 A Yes, sir. I did.

22 Q What kind of information were you looking for from
23 them?

24 A I was looking for cell phone tower locations. When
25 call is made, of course, the call hits off of a cell phone

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1 tower, and I was -- that's what I was looking for at the
2 time. Because during the search warrant when you extract
3 information from a phone you cannot get cell phone tower
4 locations. You can only get that from the carrier itself
5 like Verizon or T-Mobile.

6 Q And did they send you copies of records related to the
7 Defendant's cell phone?

8 A Yes, sir. They did.

9 Q And in what form did you receive those records?

10 A Electronic through email.

11 Q Did you transfer those onto a CD ROM disc?

12 A Yes, sir. We did.

13 Q And is that the disc that has the records you obtained
14 from Verizon Wireless?

15 A Yes, sir.

16 MR. SHEEK: Your Honor, the State would move what's
17 been previously marked for identification as Exhibit 34 into
18 evidence.

19 MR. WILKES: I believe I made a prior objection, Your
20 Honor.

21 THE COURT: All right. What's in that?

22 MR. SHEEK: These are the Verizon records of the
23 Defendant's cell phone.

24 THE COURT: Subject to the earlier objection concerning
25 the search those are in evidence.

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1 (Whereupon, State's Exhibits No. 34 was admitted into
2 evidence.)

3 MR. SHEEK: Beg the Court's indulgence, please.

4 Q When you contacted Verizon wireless, do you recall when
5 you contacted them?

6 A I believe it was the 2nd or either the 3rd of February.

7 Q When you told them you needed that information did you
8 serve them with a search warrant, or how did you get that?

9 A I got an exigent circumstance from them -- for them.
10 That's just to document why you need the information
11 quickly. An emergent situation, which we were in, I was
12 able to obtain an exigent circumstance to get them to send
13 me the information.

14 Q Exigent circumstance means you need to move quickly?

15 A Need to move quickly.

16 Q These electronic records aren't maintained forever?

17 A No, sir. Well, plus, if you -- when you send them a
18 search warrant you may be looking at two to three weeks down
19 the road to get that information.

20 Q And why was it important for you to get that
21 information quickly?

22 A Well, we had -- still had people that were concerned
23 about their safety in the community.

24 Q Had any arrests at this time been made regarding the
25 murder of these two individuals?

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1 A No, sir.

2 Q Was it important to the Laurens County Sheriff's
3 Department to move as quickly as possible?

4 A Yes, sir. It was.

5 Q When you obtained this information with Verizon you
6 said you want to plot locations of cell phones?

7 A Yes, sir.

8 Q Who do you take that information to in order to do that
9 plotting?

10 A Well, to start with, I could plot some of it. But then
11 to get more technical, we don't have equipment to do that.
12 So we would have had to send it somewhere else, which would
13 have been Greenville County Sheriff's Office.

14 MR. SHEEK: Beg the Court's indulgence.

15 Q And are you familiar with Dan Kelley from the
16 Greenville County Sheriff's Office?

17 A Yes, sir. I worked with him on another case.

18 Q And is this the individual that has the equipment and
19 expertise to do this tracking?

20 A Yes, sir. It is.

21 MR. SHEEK: Thank you, Lieutenant McIntosh. Please
22 answer anything Mr. Wilkes may have.

23 THE WITNESS: Yes, sir.

24 THE COURT: Cross?

25 MR. WILKES: No questions.

1 (Whereupon, the jury was released at 3:00 p.m.)

2 THE COURT: The jury is out. For purposes of the
3 record the bench conferences which we had related to Mr.
4 Blackmon, who testified a few moments ago, also concern
5 statements which have been marked as Court's Exhibits. The
6 statements from Sonny Hill, as well as James Hill. When Mr.
7 Wilkes approached the bench with the State, simply the State
8 was renewing their objection on both hearsay grounds and
9 third party guilt grounds. Mr. Wilkes explained that the
10 purpose of him trying to get into some of the specifics of
11 Mr. Hill's statement did not relate to third party guilt.
12 It wasn't for the truth of the matter asserted. In the
13 statement it was to demonstrate the law enforcement, or Mr.
14 Blackmon, didn't conduct a thorough investigation. The next
15 series of questions asked by Mr. Wilkes were actually
16 questions authored by the Court which I thought would be
17 fair in light of the statements that were presented. The
18 statements of Mr. Hill. So basically what the Court was
19 trying to do was to allow Mr. Wilkes to get the meat of the
20 question of whether the officer properly investigated the
21 case, looked at other possible suspects, et cetera, without
22 getting into the substance of Mr. Hill's -- Mr. Sonny Hill's
23 actual statement to him, because I did find that that would
24 be problematic hearsay. Mr. Wilkes did ask the question
25 about the cell phone but it was not one of the questions I

1 had asked. But I think you wanted to make a motion
2 concerning that, Mr. Wilkes, in light of the fact that the
3 State represented that Mr. Hill did not have a cell phone or
4 something or Mr. --- not Mr. Hill, Mr. --

5 MR. WILKES: They're all Hill.

6 MR. MOWRY: James Hill.

7 THE COURT: James Hill. Mr. James Hill did not have a
8 cell phone, or something to that effect, so...

9 MR. WILKES: Correct, Your Honor. The -- and I did my
10 best to ask questions to the extent that I was instructed
11 that I was allowed to by the Court. But I still contend, of
12 course, that absent being able to inquire to the extent that
13 we did with Lieutenant Cheek in the proffer renders -- what
14 the Court allowed me to do essentially -- because it doesn't
15 show the jury why the police had bias in their
16 investigation. Why they were not focusing on all the
17 possible leads and why they were just focused completely on
18 Mr. Franks. And then also, obviously, from our standpoint
19 is valid evidence of third party guilt as well. So there's
20 two parts of that. As I understand the third party guilt
21 rule, it is something that could raise reasonable inference
22 of innocence. And I think that, according to Mr. Cheek's
23 testimony, we're moving in that direction.

24 But I would like on the -- in particular to proffer
25 either the witness list -- the State's witness list, or to

1 simply have for the record -- have the record reflect that
2 Sonny Hill, James Hill are both on the State's witness list.
3 And as I understood and have been told that they are here
4 and available. And I believe that that would get us over
5 the hearsay rule. The State wants to say that they have to
6 testify first and I don't think that -- that's not my
7 understanding of the hearsay exception.. I think that their
8 being in court and available is the rule. And that allows
9 the State to call them as a witness to rebut anything that
10 comes up from their statement through Officer Blackmon and
11 Officer Cheek. As far as hearsay in hearsay, 804(a)(4) I
12 think takes care of the fact that there is double hearsay,
13 but it's not to the extent that part of that is Nikesha's
14 statement. She is deceased. So I think that is therefore
15 not a problem. So I think -- even under the hearsay rules I
16 think that we're covered on that because they are here in
17 Court available to testify, and I don't think the hearsay
18 rule requires me to call them.

19 So the harm to me in this case is this is now forcing
20 me to put up evidence. I think the burden is on the State
21 to put up evidence. But I don't think that prevents me from
22 cross-examining them on the evidence that they have in their
23 possession. And it's shifting the burden to Mr. Franks to
24 now call a witness to prove what that officer took down in
25 his statement from the witness. And it just -- it puts me

1 in the position of having to put up evidence which I should
2 not have to do. That shifts the burden for me to have to do
3 that. So I think from the hearsay standpoint we should be
4 allowed to question those witnesses about those statements,
5 and I would ask the Court to allow us to have them recalled
6 in the case in chief of the State so I can continue my
7 cross-examination.

8 The other motion would be a motion for mistrial.
9 Obviously -- and I know the Solicitor didn't do it
10 intentionally. I'm sure it came out just spontaneously.
11 But still the whole point being that they have not focused
12 their investigation on anyone by my client in a
13 circumstantial case. And now the Solicitor has told the
14 jury that he didn't have a cell phone to a Court and I don't
15 know that. That may or may not be true.. But now I'm forced
16 again to put up evidence, and it shifts the burden for me
17 now to have to prove or disapprove that fact. If it is
18 true, they can put him up in their case in chief. He's
19 here. But either way, I think this has shifted the burden
20 unnecessarily and I think that that is a -- that is a fatal
21 blow to the theory of the case and my strategy and we would
22 move for a mistrial.

23 THE COURT: Do you want to speak to that, Mr. Mowry?

24 MR. MOWRY: Your Honor, quite frankly, I had no
25 intention whatsoever of bringing that out until I was asked

1 the question by the Court, would I stipulate to certain
2 information. And -- or that one was not collected, and I
3 wanted to let the Court know that there was none to collect.

4 We had already discussed the possibility of putting
5 Bryant Cheek back on the stand. He and Ben Blackmon were
6 involved in taking the statement. Mr. Cheek can testify
7 that he was told by James Hill that he did not have a cell
8 phone. So there was not one to collect. And we can do that
9 first thing in the morning, if you like. If that will cure
10 that problem. But Mr. Cheek is going to essentially testify
11 to what I stated in Court. I've been doing this long
12 enough, Your Honor, that I know what's permissible and
13 what's not. But I'm answering a direct question, and that
14 was the only answer I could -- I could think to give.

15 THE COURT: Well, quite candidly, in this day and age
16 it seems somewhat unusual that anybody would not have a cell
17 phone.

18 MR. MOWRY: He had just gotten out of prison, Your
19 Honor. That's why.

20 THE COURT: I understand. We keep we're dancing around
21 this. Mr. Wilkes, in terms of the third party guilt
22 evidence, I've essentially telegraphed and explained that if
23 these individuals testify, Mr. Hill -- James Hill, Sonny
24 Hill testify, I'm going to let them testify as to what is
25 reflected in this -- in these statements, because I do feel

1 like that is fair game. And I've already explained that
2 Officer Cheek and Blackmon will be subject to recall at any
3 point in time once the substance of what the Hills say is
4 presented by the Hills. They're clearly present. They're
5 clearly available to testify. And I understand the
6 predicament that the Court is putting you in. What this is
7 really about, I do understand, is that you want final
8 argument and that's a very, very valuable thing for the
9 Defense to have. But there's no affirmative -- so far as
10 I'm aware there's no affirmative obligation on behalf of the
11 State to present the Defense for you is kind of what I'm
12 saying. And, Mr. Sheek, you wanted to chime in something,
13 sir?

14 MR. SHEEK: Just so everybody's on the same page.
15 Sammie Hill --

16 MR. MOWRY: Sonny.

17 MR. SHEEK: -- Sonny Hill we did not serve. So I'm not
18 saying he's available. We served James Morgan Hill, but I
19 think the statement was made that it was asserted he was
20 here and available. We've never asserted he was here. We
21 served him with a subpoena and we had a way to contact him.
22 The officers involved, we asserted to the Defense, would
23 remain available and he would not have to subpoena them.
24 But that was the officers.

25 THE COURT: Okay. Well, at the very least I want, as a

1 courtesy to Mr. Wilkes, since he's the one practicing out of
2 town, as a courtesy to him I would very much like for the
3 State to prepare, at least, to make James Hill available if
4 Mr. Wilkes requests it since you all did have him under
5 subpoena. We had a conference yesterday and y'all indicated
6 everybody on the list would be under subpoena and remain
7 under subpoena and he wouldn't have to do that. So --

8 MR. MOWRY: We will take care of that, Your Honor.

9 MR. WILKES: Well, Sonny Hill was the same. I was told
10 that he was here. That both of those were here, but that
11 they probably would not call them, and I understood it that
12 way.

13 MR. MOWRY: I don't know who told him that, Your Honor.
14 Mr. Sheek did not and I did not.

15 THE COURT: Yesterday when we had -- when we huddled up
16 over here yesterday at the end of the day Mr. Wilkes
17 specifically asked if these other individuals on the witness
18 list, and you do have James Hill and Sonny Hill listed on
19 the witness list. That they were under subpoena or he would
20 need to subpoena them.

21 MR. MOWRY: He asked about the officers, Judge.

22 THE COURT: Well, anyway. Y'all have got a way to get
23 in touch with Sonny Hill, too. Afford them that opportunity
24 as well, please, as a courtesy.

25 MR. SHEEK: I don't think we can get Sonny served,

1 Judge. He's not cooperative. That's the reason we didn't
2 get him served. It wasn't that we didn't try. All we can
3 assert to the Court is we will make our best efforts.

4 THE COURT: We, I assume, have an address. If he lives
5 in Cross Hill it ain't that big. You could probably drive
6 down the street and ask him to come out and he'll hear you.
7 So let's try again for Mr. Hill, please.

8 MR. MOWRY: I will put on the record, Your Honor, that
9 for the last month Mr. Bentley has been attempting to find
10 him to serve him and he has not cooperated. Let's put it
11 that way.

12 THE COURT: Interesting, okay. Very good. We'll try
13 one more time and see. That's the best we can do.

14 MR. MOWRY: We'll get -- what we will do, Your Honor,
15 is get Laurens County Deputies to go out there and attempt
16 to round him up.

17 THE COURT: Very good.

18 MR. WILKES: Thank you, Your Honor.

19 THE COURT: And I do -- Mr. Wilkes, I understand your
20 position. There's a lot of these statements, if I were in
21 your position, that I would want in. There's perhaps a good
22 bit as well that I would want out. My concern is that, you
23 know, no party is allowed to have their cake and eat it,
24 too. You know, the best way to handle this situation with
25 these statements is if these individuals are going to

1 testify, be subject to cross-examination, I believe that it
2 is fair game. I don't think that the rules concerning third
3 party guilt prohibit the testimony that is reflected in
4 these two statements from James and Sonny Hill. So I'm
5 basically saying that, yes, you have valid evidence of third
6 party guilty that you may present at some point in time and
7 then we can recall Cheek, and we can recall the other
8 officer and address how they dealt with those statements
9 professionally. What they did, et cetera. But again, it's
10 not necessarily the State's obligation in their case in
11 chief to present evidence of third party guilt. That --

12 MR. WILKES: Well, if I may.

13 THE COURT: Yes, sir.

14 MR. WILKES: I'm not asking them to. I'm attempting to
15 elicit that through the officer. I'm not asking them to put
16 up anything. I'm just -- and it was my understanding, and I
17 can tell you that I can be wrong, but I had a clear
18 understanding that both of the Hills were here and would be
19 available, although not expected to be called. And so, I
20 can tell you that that was my understanding from what I was
21 told.

22 Now, I get things wrong all the time. But I can tell
23 the Court that was my understanding, and that's why I've
24 said this throughout my argument. But I'm not asking them
25 to put up any witnesses in my behalf. Certainly not. But I

1 still think that to the extent that some of that is proper
2 for me to get into, it is the evidence of third party guilt
3 that may open the door for my client to testify. So if I
4 don't get into any of this other evidence that's out there,
5 and we heard Lieutenant Cheek testify basically and he said
6 stalker. Fair game.

7 MR. MOWRY: Actually, I think that was a word that Mr.
8 Wilkes put into his mouth.

9 MR. WILKES: He agreed to that. He said that was a
10 fair representation. And we can read that one back. But he
11 said that and he agreed with me. And in light of that, you
12 know, that's the evidence that you have to put up for a
13 Defendant to be able to testify. If I don't put that up and
14 the Defendant wants to testify then they'll object and say
15 he's put no evidence up for third party guilt for him to be
16 able to testify. So that's what I have to do in this case.
17 I'm not saying that he is going to, but he has that -- it is
18 his choice to testify. So if his testimony were consistent
19 --

20 THE COURT: I'm not fully understanding you, because I
21 think that you could get into this evidence concerning the
22 boyfriend without necessarily even putting your client up to
23 testify, if I'm not mistaken.

24 MR. WILKES: Well, that is true. I could call, and may
25 well call both of them.

1 THE COURT: And if Sonny Hill is no longer available
2 because he tried to dodge a subpoena or something like that,
3 I mean, that opens additional interesting questions that we
4 can -- you know, maybe we can deal with those at a later
5 point in time. I don't know. But a long story short, Mr.
6 Wilkes, I understand where you're coming from. I tried to
7 give you as much leeway as possible within the confines of
8 the rules of evidence to question those officers about the
9 thoroughness of their investigation. It was represented to
10 me at the bench that that's the reason you were wanting to
11 get into this information about James Hill. We are still
12 dealing with hearsay. I understand it's hearsay within
13 hearsay and find an exception for both rules. I don't see
14 an exception. I respectfully disagree with you on that
15 point. That's just where we are.

16 MR. WILKES: And you have to officially rule on this.

17 THE COURT: Yes. I don't -- I don't think that that
18 was so egregious as to warrant a mistrial. And it may very
19 well be that at some point during the course of the trial
20 James Hill testifies, and if it turns out that he testifies
21 that he did, in fact, had a cell phone and that nobody ever
22 asked it from him I'm sure that's something that you will
23 hammer home in your closing argument, especially in light of
24 the State's representation that he didn't have one.

25 MR. WILKES: May I also ask for a curative instruction

1 in the morning that the Solicitor's statements aren't to be
2 considered as evidence?

3 THE COURT: I'm more than happy to do that. But we'll
4 cross that bridge when we start in the morning. I'll try to
5 think of something appropriate.

6 MR. WILKES: Thank you, Your Honor.

7 THE COURT: All right, everyone. I hope you have a
8 lovely evening. I'll see you all in the morning --

9 MR. MOWRY: Thank you, Your Honor.

10 THE COURT: -- about 9:30.

11 (Whereupon, Court adjourned for the day.)

12 TRIAL DAY 4-10/27/16

13 THE COURT: We'll go back on the record. The Defendant
14 is present with Mr. Wilkes. Mr. Mowry, you had something
15 you wanted to put on the record?

16 MR. MOWRY: Yes, sir. Just for records keeping and for
17 future reference, Your Honor, Mr. Wilkes had brought up the
18 fact that Sonny Hill and James Morgan Hill were on our
19 potential witness list. They were. We are compelled at the
20 start of every trial to try to think through every
21 conceivable line of attack that the Defense might use. So
22 we put just about every conceivable witness, whether chain
23 or otherwise, on the witness list. And then Mr. Sheek, Mr.
24 Bentley and I conferred primarily for division of labor
25 figuring out who was going to examine which witness directly

1 and we created our expected real witness list and their
2 names are not on it. I would offer this as a Court's
3 exhibit.

4 THE COURT: Very good. I understand your position. Of
5 course, we discussed this briefly in chambers. You have
6 your next witness available?

7 MR. MOWRY: Yes, sir.

8 THE COURT: Let's have the jury then, please.

9 (Whereupon, the jury entered the courtroom at 10:00
10 a.m.)

11 THE BAILIFF: All jurors are present, Your Honor.

12 THE COURT: All right. The jury is present and seated.
13 Ladies and gentlemen of the jury, I apologize for the
14 delayed start this morning. I'll tell you I got here about
15 9:45. I'd totally forgotten that I had a matter that I
16 needed to -- a meeting in Greenwood that I had to deal with.
17 I live in Coronaca which is, as you know, right on the
18 Laurens/Greenville County line, so I'm only about 30 minutes
19 from this courthouse. But I had to run into Greenwood and
20 then double back this way and that put me here at 9:45, and
21 then I needed to meet briefly with Judge Griffith who's
22 holding court next door. So I apologize for keeping you all
23 waiting. That was my fault entirely and I am sorry. We
24 are, of course, in the State's -- still in the State's case
25 and chief at this point. So, Mr. Mowry, if you'd call your

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1 next witness, please.

2 MR. MOWRY: Your Honor, we would recall Lieutenant
3 Bryant Cheek to the stand.

4 THE COURT: Mr. Cheek, if you'd come forward. I remind
5 you you're still under oath.

6 DIRECT EXAMINATION

7 BY MR. MOWRY:

8 Q Mr. Cheek, first of all I wanted to show you what has
9 been marked -- or which is in evidence as State's Exhibit
10 No. 48. This Google Earth photograph. Can you point out on
11 that exactly where the incident location was?

12 A It's right here.

13 Q And put this red star, if you would, right there.

14 A (Witness complies.)

15 Q Thank you. Now, I wanted to walk through the timeline
16 with you and make sure that we have that squared away. The
17 bodies were discovered on what date?

18 A 31st.

19 Q 1/31. When was the cell phone search warrant on Mr.
20 Franks' phone obtained?

21 A On February 1st. 2/1.

22 Q When was the dump actually conducted?

23 A 2/1.

24 Q That same day?

25 A Yes, sir.

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1 Q And that is the process by which State's Exhibit No. 6
2 was discovered; is that right?

3 A Yes, sir.

4 Q Okay. When did the Defendants give -- when did the
5 Defendant give his statement?

6 A On 1/31. I mean -- yeah, 1/31. Yes, sir.

7 Q The statement in which he claimed he was in Greenville?

8 A Yes, sir.

9 Q And he turned over his cell phone that same day?

10 A Yes, sir.

11 Q And then the next day we got the search warrant and the
12 dump --

13 A Yes, sir.

14 Q -- is that right?

15 A Yes, sir.

16 Q When did the statement from Milton Grant, the neighbor,
17 get obtained?

18 A On February 3rd.

19 Q And that was the statement in which the brown coveralls
20 became an issue; is that right?

21 A Yes, sir.

22 Q What date did you get the search warrant for the
23 Defendant's room as his grandmother's house?

24 A The next day on 2/4.

25 Q And that was the date when these coveralls were --.

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- 1 A Yes, sir.
- 2 Q -- seized; is that right?
- 3 A Yes, sir.
- 4 Q What was the date of the arrest warrants?
- 5 A The next day -- I mean, the arrest warrant was obtained
- 6 on February 5th and they were arrested on February 5th.
- 7 Q Sorry about my writing here. Did Tevin Hill
- 8 subsequently make a second statement?
- 9 A Yes, sir.
- 10 Q What date was that obtained?
- 11 A On February 6th, the following day.
- 12 Q And Mr. Wilkes had asked questions about James Morgan
- 13 Hill and Sonny Hill. When were they spoken to?
- 14 A On February 7th.
- 15 Q So that was the day after -- or two days after the
- 16 arrest; is that right?
- 17 A Yes, sir.
- 18 Q You all were continuing your investigation; is that
- 19 correct?
- 20 A Yes, sir.
- 21 Q Was anything asked of these gentlemen about cell
- 22 phones?
- 23 A Yes, sir.
- 24 Q Which one did you ask about a cell phone?
- 25 A We asked Mr. Hill.

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1 Q Which Hill?

2 A James.

3 Q James Hill about a cell phone?

4 A Yes.

5 Q Did he have a cell phone to turn over?

6 A No, sir.

7 MR. MOWRY: All right. Thank you, sir. That's all.

8 THE COURT: Cross?

9 MR. WILKES: Your Honor, I have one issue I need to
10 address before I start my --

11 THE COURT: Do you want to approach or --

12 MR. WILKES: Yeah, I can approach right quick.

13 (Whereupon, a sidebar was held.)

14 THE COURT: Ladies and gentlemen of the jury, I need to
15 take up an issue of law with the attorneys again. I'm very,
16 very sorry. You've only been there 10 minutes. Adjourn to
17 the back. Don't discuss the case. I'll have you back soon.

18 (Whereupon, the jury exited the courtroom at 10:12
19 a.m.)

20 THE COURT: The jury is out. At the bench Mr. Wilkes
21 had told me that he had some questions. He feels like the
22 State has opened the door by the statements, or the
23 testimony about the statements of the cell phone, et cetera.
24 Let me hear from you, Mr. Wilkes.

25 MR. WILKES: Your Honor, if it please the Court. I

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1 again would contend that this would allow me to ask Officer
2 Cheek about the content of the statement. I understand the
3 Solicitor's position. But I think that by asking the
4 questions about having taken a statement, asking if he asked
5 about the cell phone, I think that opens the door for me to
6 ask the other contents of the statement. And this is the
7 exact same argument that we addressed, I guess, in saying
8 that I attempted to get into them before and then I would
9 run the risk of having -- if I do that, of course, the rest
10 of the statement could come in. Well, they just asked
11 clearly a portion of the content of the statement, and I'm
12 doing the same thing by saying I think I'm entitled at this
13 point to continue that and to ask specifics on the content
14 of the statement that's important to my case.

15 THE COURT: Which specific aspects -- I've got two
16 statements. Which specific information would you seek to
17 elicit on cross?

18 MR. WILKES: It would be the same information before
19 that we had discussed on the proffer. The content of Sonny
20 Hill's statement concerning information that he gave to
21 Lieutenant Cheek concerning James Hill being a -- well,
22 given in broad terms, a stalker in a sense. And that's my
23 characterization. But that those facts would not be open
24 for questioning based on the State's questions to Lieutenant
25 Cheek now.

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1 MR. MOWRY: We asked nothing about a statement from
2 Sonny Hill except was one obtained. I don't think that was
3 ever a question that we opened the door on this morning.
4 The only issue that we brought up was James Morgan Hill and
5 the fact that they had asked about a search warrant, and
6 that was in response to what Mr. Wilkes had brought up about
7 being tunnel visioned on witnesses. Your Honor, I was very
8 careful not to ask anything about the content of the
9 statements, just the fact that they were -- they were made.
10 Not only did I not open the door, I attempted to keep it
11 locked.

12 THE COURT: Let me try and do it this way then.
13 Lieutenant Cheek, this is all, of course, so the record is
14 reflecting, that this is taking place outside the presence
15 of the jury. Once you got these two statements, Mr. Cheek,
16 as a result of these two statements and the information that
17 was conveyed to you, what did you do in terms of
18 investigating what was told to you in these statements? How
19 did you use this information, did you use this information,
20 what happened after you -- after you spoke to these folks?

21 THE WITNESS: We just added the information to the case
22 file. I'm trying to make sure I'm understanding what you're
23 asking me.

24 THE COURT: Do you want to ask him some questions, Mr.
25 Mowry? I think you may know what I'm getting at.

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1 MR. MOWRY: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. MOWRY:

4 Q Investigator, based on Sonny Hill's statement to you,
5 did you then go and talk to James Morgan Hill?

6 A Yes.

7 Q So there were some interesting things from Sonny Hill's
8 statement, as far as you were concerned, that led you to
9 want to perhaps talk to James Morgan Hill; is that correct?

10 A Yes.

11 Q Was there any information in Sonny Hill's statement
12 that James Morgan Hill had been at the scene on 1/31/14?

13 A No, sir.

14 Q In fact, in Sonny Hill's statement did he ever himself
15 see James Morgan Hill even the day before on 1/30?

16 A No, sir.

17 Q Since we are outside the presence of the jury I want
18 you to read part of his statement, starting out with "James
19 pulled up" down at the bottom.

20 A "James pulled up in a black Chrysler and kept his
21 lights on high beam pointed at me. Sammie Leake got out the
22 car and I asked him who was driving and he told me it was
23 James Hill. James never said anything to me and I never
24 said anything to him. Me, Bubba (PHONETIC) and Leake got in
25 my car and went to my cousin's house for Sammie Leake to cut

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1 my hair."

2 Q So even in Sonny Hill's own statement, even the day
3 before he had not seen himself James Morgan Hill at the
4 scene; is that correct?

5 A Yes, sir.

6 Q He was relying on the statement from Sammie Leake
7 according to that written statement --

8 A Yes, sir.

9 Q -- is that correct?

10 A Yes, sir.

11 Q Sammie Leake is deceased; is that right?

12 A Yes, sir.

13 Q He is one of the victims in this case?

14 A Yes, sir.

15 Q Based on what he told you though, what did you do? Did
16 you then go talk to James Morgan Hill?

17 A Yes.

18 Q And did you speak with him about it?

19 A Yes, sir.

20 Q Get a written statement from him?

21 A Yes, sir. We obtained a written statement from him.

22 Q Was there anything from that witness statement from
23 James Morgan Hill that gave you another avenue of
24 investigation to follow?

25 A No, sir.

BRYANT CHEEK-CROSS-EXAMINATION (IN CAMERA)

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1 MR. MOWRY: Thank you.

2 CROSS-EXAMINATION

3 BY MR. WILKES:

4 Q You asked him if he had a cell phone, correct?

5 A Yes, sir.

6 Q What was the purpose of that? If he had a cell phone
7 what would you have done next? If he said, sure, I have a
8 cell phone, here it is, what would you have done?

9 A We would've asked him for it and obtained a search
10 warrant and searched the phone. Checked the phone.

11 Q And why would that be?

12 A Just to cover our bases.

13 Q Because there's enough suspicion at that point to at
14 least do that to rule him out as a suspect, correct?

15 A I'm sorry. Say it again.

16 Q There was enough suspicion at that point to rule him
17 out as a suspect? That's why you asked, correct?

18 A Yes, sir.

19 MR. WILKES: Thank you. That's my point, Your Honor.

20 THE COURT: All right.

21 MR. MOWRY: But that doesn't -- that does not open the
22 door to go into the content of the statement, Your Honor.
23 Neither of these statement puts James Morgan Hill at the
24 scene on the 30th or the 31st.

25 MR. WILKES: I don't think the rule says they have to

1 be there on the day. The rule is -- if I can find it. It's
2 an inference. I mean, it's not that I have to prove
3 conclusively. It's enough that there is suspicion that it
4 could be, and that is established by the Officer's
5 testimony. It's enough concern for them to want to ask for
6 the cell phone and to rule him out as a suspect. So that is
7 sufficient, I think, at that point to meet that criteria.

8 MR. MOWRY: Your Honor, this is bootstrap, upon
9 bootstrap, upon bootstrap. It is hearsay upon hearsay, upon
10 hearsay. It is a statement by a deceased individual to
11 another individual related to this Officer who Mr. Wilkes is
12 asking to then relay that information in Court. The
13 inherent unreliability of those steps in translation is
14 incomprehensible.

15 MR. WILKES: I think 804 covers the deceased's
16 statement, so it's not double layered hearsay in that
17 regard.

18 MR. MOWRY: It's the deceased's statement to another
19 individual related to this Office which he -- Mr. Wilkes is
20 asking to be related into Court. I mean, this -- this opens
21 the door for any kind of rumor or innuendo to come in. We
22 cannot test the reliability of this information.

23 Your Honor, we have statements from the various
24 witnesses also that the Defendant was on cocaine at the
25 time. I have instructed all the witnesses to describe his

1 appearance, to describe the way he was behaving, but to
2 avoid any mention of drug use. If this is allowed, then I
3 submit that I should be allowed to recall those witnesses
4 and explain why the Defendant was acting that way.

5 MR. WILKES: That's an entirely different rule, Your
6 Honor.

7 MR. MOWRY: I don't understand how, Your Honor. It is
8 the same method that Mr. Wilkes is trying to get that in.

9 MR. WILKES: If I could talk a little bit..

10 THE COURT: Go ahead.

11 MR. WILKES: Thank you. Now, I believe that would be a
12 different rule. That's a prejudicial issue, Your Honor.
13 Not what we're dealing with.

14 THE COURT: Right. I would tend to agree with you on
15 that point, Mr. Wilkes. Here's what the Court is really
16 struggling with. Okay? Let's assume that I'm trying a
17 homicide and the officer is asked did you have a
18 conversation with Mr. Smith. The officer replies, yes. I
19 had a conversation with Mr. Smith. The State then asks, or
20 a party then asks, as a result of that conversation what did
21 you do. And the officer replies, well, I immediately went
22 and arrested Mr. Jones for the murder of Mr. Thomas. Okay?
23 The way that is played out, the way that is presented, the
24 argument would be made, or could be made that the question
25 is being asked for purposes of demonstrating what the

1 officer did next. Honestly, that's bull. It's a backdoor
2 way to get in hearsay. If you're going to -- if the officer
3 is relying upon a statement made by somebody else that
4 behooves the State to produce that witness who initially
5 gave the information to the officer that it was Jones that
6 was the shooter for purposes of cross-examination. Hearsay
7 is not just a rule of evidence. It's rooted in the
8 confrontation of laws. And so, the State's point that this
9 information needs to be tested in some way is a fair one.
10 My understanding is we do have one of those witnesses
11 available. I'm not precluding that witness from being
12 called in these proceedings. I do believe that at this
13 point in time Mr. Wilkes, as a result of the question about
14 the cell phone, you can explore to a degree. You can
15 question this Officer that, okay, as a result of your
16 conversation with Sonny Hill and what he told you as it
17 relates to James Morgan Hill what did you do next. Well, I
18 went and talked to James Morgan Hill. And you asked him for
19 his cell phone. Yes, I did. And I know you're not supposed
20 to ask why questions, but at this point in time you've
21 already gotten an answer. You know, why did you ask him for
22 the cell phone. And that proves the point that you were
23 just making a few moments ago. I believe that door has been
24 open. As far as the actual underlying contents of the
25 statements though, for the reasons I've expressed, I don't

1 feel like it's appropriate to get into those at this point
2 in time with this witness. So that would be my ruling on
3 that. As far as the hey, we were in a relationship and I
4 just got out of prison and he was -- you know, this person
5 was stalking Ms. -- so I don't think that that's appropriate
6 from this witness for the reasons I've expressed, and I do
7 not believe that the State has opened the door to the
8 substance of the statement. You can get where you're going
9 though if your purpose is to indicate that this Officer, a
10 couple days after the arrest, thought that maybe James Hill
11 had something to do with this, or at least it warranted
12 followup. That door has been opened.

13 MR. WILKES: And if I'm understanding the Court
14 correctly, that allows me to ask him what did you do after
15 you talked to Sonny Hill --

16 THE COURT: Right.

17 MR. WILKES: -- and he talked to James Hill.

18 THE COURT: And as a result of that conversation did
19 you ask him for his cell phone.

20 MR. WILKES: Cell phone. And did you obtain one. He,
21 of course, I'm assuming, will say no for whatever reason.
22 He didn't have one or whatever. The big question is why
23 would you ask him for a cell phone.

24 THE COURT: Correct.

25 MR. WILKES: And that's a legitimate question, I

1 understand -

2 THE COURT: Correct.

3 MR. WILKES: -- but not the substance. And the other
4 -- as I understand it, even the witness that would have been
5 available, I think he's in the hospital. James Hill.

6 THE COURT: Oh, he is.

7 MR. WILKES: So I don't think we -- I don't think we
8 have either one of them, so...

9 THE COURT: All right.

10 MR. WILKES: But I think I understand the Court's
11 ruling and I'm good with that.

12 MR. MOWRY: But I will state also Mr. Bentley has
13 looked into it. Apparently went to the hospital with chest
14 pains this morning. Mr. Bentley has checked. He was, in
15 fact, in the hospital. But apparently might be available
16 this afternoon. So if Mr. Wilkes wants to call him he
17 should be available.

18 THE COURT: Very good. Let's take a quick five
19 minutes. I'm sorry. You can step down when we take a
20 break, if you need to, Lieutenant, and we'll be back. Don't
21 talk about your testimony with anyone while we're on break.

22 THE BAILIFF: Your Honor, I'm going to take the jury on
23 break, too, because they asked for one but I didn't know how
24 long you were going to be.

25 THE COURT: That's fine. Go ahead and take them

BRYANT CHEEK-CROSS-EXAMINATION

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1 outside. Five minutes, guys.

2 (Whereupon, a recess was held from 10:30 a.m. to 10:39
3 a.m.)

4 (Whereupon, the jury entered the courtroom at 10:39
5 a.m.)

6 THE BAILIFF: All jurors present.

7 THE COURT: The jury is back. Ladies and gentlemen,
8 thank you for your continued patience.

9 At this point, Mr. Wilkes, your cross.

10 MR. WILKES: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. WILKES:

13 Q Lieutenant Cheek, when you -- you were a witness on the
14 two statements for Mr. Hill and Mr. Hill?

15 A Yes, sir.

16 Q And it would be Lieutenant Blackmon that actually took
17 the statements?

18 A He was typing the statement while I was talking to Mr.
19 Hill.

20 Q And you say that you took two statements, one from
21 Sonny Demario Hill and one from James Morgan Hill. Tell me
22 how you remember that happening. In other words, where were
23 you, who did you do first. Tell me how that happened, as
24 best you can recall.

25 A We talked to Mr. Hill that morning and Mr. Hill -- Mr.

BRYANT CHEEK-CROSS-EXAMINATION

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1 Sonny Hill that afternoon at 2:33 on February 7th.

2 Q And in the course of your conversations or your -- I
3 guess you'd call them conversations with them and then you
4 transcribed that into a statement, right?

5 A Yes, sir.

6 Q So through the course of the conversations with Mr.
7 Sonny Hill and Mr. James Hill did that leave you to request
8 Mr. James Morgan Hill's cell phone from him?

9 A Yes.

10 Q And why would you request that cell phone from him?

11 A It's just part of the investigation.

12 Q Did you have some suspicion and need to rule him out as
13 a potential suspect?

14 A Say that again, now?

15 Q Did you have some suspicion and feel like you needed to
16 rule him out as a potential suspect?

17 A It's just part of the investigation that we follow all
18 the leads.

19 Q Did you ask Sonny Demario Hill for his cell phone?

20 A I can't recall.

21 Q But you do recall asking James Morgan Hill for his cell
22 phone?

23 A Yes, sir.

24 Q Did you ask Tamia - I can't remember her last name.

25 The girl that was there that night. Did you ask her for her

JENNIFER CLAYTON-DIRECT EXAMINATION

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1 cell phone?

2 A I can't recall.

3 Q But you recall asking James Morgan Hill for his?

4 A Yes, sir.

5 Q And did he give you his cell phone?

6 A He didn't have one.

7 Q And did you do anything to verify that he didn't have
8 one or did you just accept him telling you he didn't have
9 one?

10 A I just accepted him telling me he didn't have a cell
11 phone.

12 MR. WILKES: Very good. No further questions, Your
13 Honor.

14 THE COURT: Anything?

15 MR. MOWRY: I'll leave that alone, Your Honor. That's
16 all we have.

17 THE COURT: Sir, thank you very much. You can step
18 down.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 THE COURT: Solicitor, call your next witness.

22 MR. SHEEK: We call Jennifer Clayton to the stand, Your
23 Honor.

24 JENNIFER CLAYTON, having first been
25 duly sworn, testified as follows:

JENNIFER CLAYTON-DIRECT EXAMINATION

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1 DIRECT EXAMINATION

2 BY MR. SHEEK:

3 Q Ma'am, if you would, state your name and tell us with
4 whom you're employed.

5 A My name is Jennifer Clayton, C-l-a-y-t-o-n, and I'm
6 currently employed by the South Carolina Law Enforcement
7 Division, also known as SLED.

8 Q And what is your job with SLED?

9 A I am a forensic DNA analyst.

10 Q Did you have an opportunity to perform some DNA
11 analysis in regards to a murder here in Laurens County that
12 occurred on January 31st, 2014?

13 A Yes, I did.

14 Q And how did you receive the items that you tested.

15 A When evidence comes into SLED various requests are put
16 on it depending on what they're looking for, whether it's
17 gunshot residue or a DNA analyst. So they'll put a request
18 on that evidence and log it in in our evidence control
19 department. That's where all our evidence is stored. Then
20 once the case is assigned to me I will go down to evidence
21 control and retrieve the evidence that I need for analysis.

22 Q So do you actually go to the scene and decide what
23 items to check or what standards to take, anything of that
24 nature?

25 A No, I do not.

JENNIFER CLAYTON-DIRECT EXAMINATION

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1 Q So items are submitted to you there at SLED and you
2 test what's submitted to you?

3 A Correct.

4 Q And how many items did you receive in regards to the
5 murder of Nikesha James and Darryl Leake?

6 A May I refer to my notes?

7 Q Absolutely.

8 A I received 10 items of evidence and two known
9 standards.

10 Q Now, when you say I received two known standards,
11 explain to the jury what that is.

12 A A known standard is a sample that's taken directly from
13 an individual, and in this case it was a blood standard.
14 And the advantage of a blood standard, or any known
15 standard, is that any DNA profile that I developed from that
16 item I know came from that particular individual, and then I
17 can compare DNA profiles developed from standards to DNA
18 profiles that are developed from evidence to determine if
19 the individual could have contributed DNA to the item of
20 evidence.

21 Q So you took your known standards and then you develop a
22 DNA standard from those?

23 A I develop a DNA profile from the known standards,
24 correct.

25 Q And you said you were submitted 10 items to compare DNA

JENNIFER CLAYTON-DIRECT EXAMINATION

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1 against?

2 A That's correct.

3 Q And do you have a list of what those items were?

4 A Yes, I do.

5 Q Would you mind reading those to the jury?

6 A Yes. I received two swabs from a stain on the wall,
7 two swabs from stains on a couch, two swabs from an interior
8 doorknob of a front door, two swabs from an exterior
9 doorknob of a front door, two swabs from an interior front
10 screen door handle, fingernail clippings from the right and
11 left hand of Samuel Leake, and fingernail clippings from the
12 right and left hand of Nikia James -- Nikesha. Sorry. Yes,
13 Nikesha James. And a swab from a hat, or cap.

14 Q And were you able to develop any DNA profiles from the
15 items that were submitted to you?

16 A Yes, I was.

17 Q And did you compare those against the known standards,
18 the two standards you've already testified about?

19 A Yes, I did.

20 Q Were you able to identify any DNA profiles that did not
21 match the two known standards?

22 A For some of the items they weren't -- the profiles
23 developed were not suitable for comparison. But for the
24 items where the DNA profile was developed and it was
25 suitable for comparison, those items were found to match

JENNIFER NATES-DIRECT EXAMINATION

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1 Samuel Leake or Nikesha James.

2 Q So is it fair to say then you were not able to develop
3 any DNA profiles suitable for comparison that did not match
4 one of the two victims?

5 A That's correct.

6 MR. SHEEK: Thank you. I have no further questions.
7 Please answer anything Mr. Wilkes might have.

8 MR. WILKES: No questions.

9 THE COURT: Ma'am, thank you. You're free to go.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 THE COURT: Call your next witness.

13 MR. SHEEK: The State calls Jennifer Nates.

14 JENNIFER NATES, having first been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SHEEK:

18 Q Ma'am, if you would, give us your name and tell us with
19 whom you're employed.

20 A My name is Jennifer Nates and I'm employed with the
21 South Carolina Law Enforcement Division in the trace
22 evidence section.

23 Q Okay. So for the benefit of those of us who don't
24 know, what is trace evidence?

25 A Trace evidence is one of the sections of the forensic

JENNIFER NATES-DIRECT EXAMINATION

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1 laboratory where we perform different types of analysis. We
2 perform gunshot residue analysis, paint, fiber, glass,
3 explosives, tape, fire debris, and general chemical unknown
4 identifications and comparisons.

5 Q Now, you mentioned gunshot residue. Can you tell the
6 jury what gunshot residue is?

7 A Gunshot residue is the residue that is produced when a
8 firearm is discharged, and we perform a test in order to
9 detect this residue.

10 Q So a lot of times I hear people talk about gun powder.
11 Gunshot residue, is it actually gun powder?

12 A Gun powder is a part of the cartridge. That is
13 considered a smokeless powder which can be double base or
14 single base. It is the propellant that actually produces --
15 that causes the bullet to come out of the cartridge.

16 Gunshot residue can include some components from that. But
17 the majority of what we're talking about with gunshot
18 residue is components from the prior composition in the
19 cartridge which is composed of lead styphnate, antimony
20 sulfite, and barium nitrate.

21 Q And did you receive any items from Laurens County
22 Sheriff's Department in regards to the investigation into
23 the deaths of Nikesha James and Sammie Darryl Leake?

24 A We did receive items of evidence in this case.

25 Q And were you asked to perform any gunshot residue tests

JENNIFER NATES-DIRECT EXAMINATION

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1 on those items?

2 A I was. .

3 Q And on what item were you requested to perform gunshot
4 residue testing?

5 A There were several items submitted. But the item that
6 I was requested to perform the analysis on was item number
7 30, which was a pair of brown bib overalls said to be from
8 Deshanndon Franks.

9 Q I'm going to show you what's been marked and entered as
10 State's Exhibit No. 38 and ask you if you can tell if these
11 are the overalls that you tested.

12 A Do you have the packaging?

13 Q What?

14 A Do you have the packaging as well?

15 Q I believe I do. Does this help?

16 A Yeah. They came out of this, correct?

17 Q That is correct.

18 A And then if you look on the inside near the tag there
19 should be initials on that as well. This is -- whenever we
20 receive evidence, sometimes it'll come in paper, sometimes
21 it'll just be in a bag. But normally what we do is we will
22 put the lab number, item number, and initial and the date on
23 each item that we are able to write on so that we can
24 identify it. And then when we package the evidence back up
25 we will also put our seal and initials, lab number and item

JENNIFER NATES-DIRECT EXAMINATION

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1 number. The lab number is the number that's assigned to
2 each case that comes into SLED. It's given a sequential lab
3 number so that there are no two cases that come in with the
4 same number. Then each item is given an item number. And
5 that's the labels that we generate. And if we could -- we
6 write on the clothing because we can't keep the label on the
7 clothing.

8 Q Were you able to identify any gunshot residue on these
9 item -- what item number was it for you?

10 A Item 30 was the pair of brown bib overalls. And then a
11 collection was performed which was item 30.1. Those were
12 particle lifts that were collected from the overalls to try
13 to pick up any gunshot residue that might have been present
14 on them. They were collected from the chest area of the
15 overalls and then the top of the legs. And then there was
16 also particles collected from inside the pockets of the
17 overalls. And in this case I did not find any gunshot
18 residue on any of the samples that we collected from the
19 overalls.

20 Q If you have an item that does have gunshot residue on
21 it, what type of things might remove it from the item?

22 A If we're talking about items of clothing, or just
23 general items, anything that touches it can remove it. If
24 you wash clothing it will remove it. Just from general
25 wear, getting in and out of the car, anything that comes up

JENNIFER NATES-CROSS-EXAMINATION

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1 microscopically small, correct?

2 A It is microscopic.

3 Q Okay. It's very small. And it can become embedded or
4 contact -- when it contacts something like a cloth it can
5 become embedded, stuck on it or remain on it for a long
6 time?

7 A It can, yes.

8 Q Okay. Now, you said that these are -- you can say that
9 these are Mr. Franks' -- you tested these, because your --

10 A I can only say what they were submitted as. I have no
11 knowledge of whose they were collected from. But I did test
12 those, yes.

13 Q Right. That's why mean. You tested these coveralls?

14 A Yes.

15 Q Now, you were specifically asked a question was it in a
16 package.

17 A Yes.

18 Q And that's for obvious reasons. It keeps it in
19 whatever condition it's in, you protect it?

20 A Well, it just shows that we had a seal on it and then
21 we had the item and lab number on it.

22 Q And why would you put it in this as opposed to a burlap
23 bag or potato sack that you had around the office, or the
24 back of your car? Why would you wrap it up in clean white
25 paper?

1 A We use what's called butcher paper. We use the butcher
2 paper to preserve the evidence. And if this case would have
3 come back later and they said, oh, we need to find fibers,
4 we can open that up and then it may still be preserved.
5 Since it came at a later date usually you do that analysis
6 first, but you have preserved it.

7 Q Very good. And when it comes in to you do you maintain
8 any kind of notes of the condition or the packaging, or does
9 -- do you expect it to come in in any particular packaging,
10 or what?

11 A Normally clothing comes in paper bags, or Manila
12 envelopes if they're small items of clothing. We will just
13 document whether the item was bloody, or if it was wet,
14 because then you could have mold and mildew on the item. We
15 notate if it was sealed and if it was initialed.

16 Q Would you be able to tell me from your records today or
17 if anything here -- whether it came in and it was sealed and
18 packaged, how it arrived?

19 A Yes. We actually receive -- we have a worksheet that
20 we fill out with each item of clothing that we process. And
21 in this case there are no notes stating that it was not.

22 Q Very good. So we can assume that the forensics team,
23 which may have been part of SLED at the time, took these
24 into evidence, properly packaged them up. You received
25 them. You tested them. You properly packaged them up in

JENNIFER NATES-CROSS-EXAMINATION

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1 case you have to test them again.

2 A Yes. When I received them they were properly packaged.

3 Q Very good. And you indicated that there are things
4 that could remove gunshot residue, just like flour or
5 anything else, from clothing?

6 A Yes.

7 Q So washing would be one of them?

8 A Yes, definitely.

9 Q But if these clothes are dirty, we can pretty assume
10 that you didn't get them dirty, and the SLED technician at
11 the scene didn't get them dirty. They would be more than
12 likely dirty when they got packaged at the scene, correct?

13 A Can you rephrase that so I'm sure --

14 Q I can. I can. If these -- if these coveralls are now
15 dirty, it's not because you got them dirty or the SLED
16 technicians got them dirty in your custody, right?

17 A Right. If they were dirty that is how we would have
18 received them.

19 Q Very good. Now, can you read to me the language you
20 used as far as -- or just tell me. Am I correct that your
21 opinion is that there's no gunshot residue on those
22 coveralls, correct?

23 A The result of my analysis were I did not find any
24 gunshot residue.

25 Q And is that consistent with a gun not having been fired

JENNIFER NATES-CROSS-EXAMINATION

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1 or them being in the presence of a gun that was fired?

2 A Depending on timeframe, yes, it is.

3 Q And you have some language in your report to that
4 effect. What -- how do you characterize that?

5 A Would you like me to read it? Is that --

6 Q I would like for you to read the part about it being
7 consistent because I'm not phrasing it right, I know.

8 A Right. The results were -- all the particle was
9 collected from the coveralls were no primer, and in
10 parenthesis, gunshot residue found. The absence of gunshot
11 residue on this item is consistent with it not having been
12 in the vicinity of a firearm when it was discharged. A
13 negative result could also occur from circumstances --
14 excuse me, circumstances such as cleaning of the item,
15 environment factors including wind and rain, and intervening
16 object that prevented the deposition of gunshot residue, or
17 excessive debris on the item or sample. The reason we have
18 intervening object is if someone fires a weapon through,
19 say, a pillow, all the residue would be on the pillow and
20 won't deposit on anything else in that area.

21 Q Understand. Now, did you receive for testing any other
22 items that were purported to be from Mr. Franks?

23 A I did receive numerous other items.

24 Q Okay. And would they include a sweatshirt, blue jeans,
25 any -- did it include those things?

DAN KELLEY-DIRECT EXAMINATION

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1 A Specifically the items from Franks or all the items?

2 Q From Mr. Franks in particular. If you could identify
3 those.

4 A Items 28 was a grey hooded sweatshirt with a front
5 zipper, said to be from Deshanndon Franks. Item 29 was a
6 pair of blue jeans said to be from Deshanndon Franks. And
7 then item 30 was the brown big overalls.

8 Q Very good. And did any of those items have gunshot
9 residue -- or did you find gunshot residue on any of those
10 items?

11 A I did not test the other items.

12 Q Why?

13 A I was told to test the bid overalls only.

14 MR. WILKES: Okay. No further questions.

15 THE COURT: Ma'am, you can step down. Thank you. You
16 are free to go.

17 (Whereupon, the witness stepped down from the witness
18 stand.)

19 THE COURT: Call your next witness.

20 MR. MOWRY: Call Dan Kelley.

21 MR. WILKES: Can we approach for a second, Judge?

22 THE COURT: Sure.

23 (Whereupon, a sidebar was held.)

24 DAN KELLEY, having first been duly
25 sworn, testified as follows:

DAN KELLEY-DIRECT EXAMINATION

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1 DIRECT EXAMINATION

2 BY MR. MOWRY:

3 Q You are Dan Kelley?

4 A That's correct.

5 Q And, Mr. Kelley, by whom are you employed?

6 A I work for the Greenville County Sheriff's Office.

7 Q And what is your rank currently with the Greenville
8 County Sheriff's Office?

9 A I'm a Sergeant in administration.

10 Q How long have you been employed as a law enforcement
11 officer?

12 A For 27 years.

13 Q Can you kind of walk -- walk us through your experience
14 as a law enforcement officer?

15 A I started out in Missouri, in Webster County, as a
16 deputy, and then became an investigator there investigating
17 everything from rapes, robberies to murders. It was a
18 smaller agency, so we did everything. And then I moved here
19 to South Carolina and went to work for the Greenville County
20 Sheriff's Office. And I worked the road for years. Rose up
21 through the ranks and become Sergeant. And then went into
22 administration and worked in investigative support for
23 homicides, robberies, drug cases and so forth.

24 Q When you say administrative support, what did you do?

25 A Any major case we worked on we go over the evidence.

DAN KELLEY-DIRECT EXAMINATION

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1 We looked at the information. We get the phone records. I
2 worked with a lot of phone records through the investigative
3 analysis of those records.

4 Q And what kind of specialized training have you got in
5 the area of phone records and investigation to those
6 matters?

7 A Over the years when you originally get the phone
8 records it is a huge voluminous amount of data that you get
9 and it takes weeks and months to sort through. So we
10 constantly try to speed things up so that we can get to the
11 data that we need to get to. So we ended up going through a
12 company called GeoTime in order to help speed things up.
13 And that's the training where I've received for this -- in
14 this instance.

15 Q And what is GeoTime? Can you -- can you explain to the
16 jury what that is. What sort of -- I don't want to call it
17 service necessarily. But what sort of process that is.

18 A GeoTime is a software. It is a program and it works in
19 conjunction with a program called the CRT, which is a Crime
20 Records Tool, or the Call Records Tool. And GeoTime is
21 basically, the easiest way to explain it is it's like a big
22 coin sorter. When you have a huge amount of coins and you
23 want to sort it fast you dump it into a coin sorter and it
24 sorts everything out to where you have everything out to
25 where you have everything that you can get to nice and easy.

1 It does the same thing with phone records, so it makes it
2 nice, neat and easy for us to see the data that we need to
3 see.

4 Q And you have been working with cell phones and cell
5 phone technology and records that come from them for how
6 long?

7 A I've been working with them probably for about 15 years
8 with those records, but recently been working with GeoTime
9 for about the last three to four years.

10 Q And that is your full-time occupation, is that right,
11 or a substantial part of your occupation?

12 A That's a substantial portion of it. Yes, sir.

13 Q How many cases do you think that you have been involved
14 with in using the GeoTime?

15 A I would have to say it's probably around 50.

16 Q And have you ever been declared an expert witness in
17 the use of GeoTime technology and call records translation
18 tools in a court of law before?

19 A Yes, sir. In the Eighth Circuit.

20 Q In this courtroom --

21 A Yes, sir.

22 Q -- as a matter of fact; is that right?

23 A That's correct.

24 MR. MOWRY: Your Honor, I would offer Sergeant Kelley
25 as an expert witness in the use of GeoTime software and call

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1 records translation tools.

2 THE COURT: You may voir dire.

3 MR. WILKES: Thank you, Your Honor.

4 VOIR DIRE

5 BY MR. WILKES:

6 Q Officer Kelley, can you -- you say you've used GeoTime
7 before. Tell me the platform that you use GeoTime on. Is
8 this a Macintosh, Lennox, Microsoft? What platform are you
9 running GeoTime on?

10 A It's PC based.

11 Q PC, which would be?

12 A Microsoft.

13 Q Microsoft. Do you know if GeoTime is certified by
14 Microsoft?

15 A I believe they are a partner. They do have -- use
16 Excel as the most common form that they receive records in
17 for GeoTime.

18 Q But can you tell me if they are, in fact, certified by
19 Microsoft?

20 A I'm not sure.

21 Q Okay. Can you tell me, your use of GeoTime, does that
22 allow you or have you done any kind of analysis as far as
23 the algorithms or the logic used by GeoTime? Are you
24 familiar with how it works or just how to work it?

25 A It's a basic function that when you bring the data in

1 it sorts it so that you can see it. It brings it in and
2 converts the timeframe. Most of the phone companies,
3 whenever they send you phone records, they're all in
4 Greenwich Mean Time, or GMT, and it converts it to our local
5 time so that we can look at the dates and times in the order
6 that we need to see for the investigations. Those
7 algorithms are in the background of the software, just like
8 Microsoft Word is. When you type in a word, it puts it up
9 on the screen for you.

10 Q Okay. But my question is specifically is your working
11 with GeoTime -- and I will assume you're very good at the
12 use of GeoTime. But my question is, are you able to testify
13 as to the algorithms, the functioning, how it works as far
14 as the reliability of the software?

15 A I can testify to the use of the software and the data
16 that it translates. It's an analysis of the data. But not
17 the algorithms that it actually uses.

18 Q Have you ever done any kind of extensive testing to
19 manually calculate and verify GeoTime data?

20 A Yeah, we did. We actually, when we get the data, a lot
21 of the data that consists when you get from phone companies,
22 it's all about the phone records, about their billing. So
23 it has latitude and longitude. And so, that is the main
24 focus of most records, where those points are. And we've
25 used their mapping system, and we've used Esri's mapping

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1 system which has a lot of -- they're the recognized industry
2 leader. We use their mapping system as well. And we also
3 use Google to see where the points would line up with the
4 data that we got and the points were accurate.

5 Q So you're saying that you have -- how many times have
6 you done a cross-check of the GeoTime or the Geo -- yeah,
7 GeoTime results?

8 A Just about on every case, due to the fact that usually
9 the investigators will look at that information first and
10 put it into Google, or one of those other programs and then
11 bring it to us.

12 Q And so, in this case did you do that? Have you done a
13 verification of the GeoTime to kind of cross-check it
14 against other methods?

15 A We did use Google to verify that the points were the
16 same.

17 Q The same Google that we type on from any computer?

18 A Any computer.

19 Q Okay. Now, how long do you say -- you said three to
20 four years working with GeoTime?

21 A Yes, sir.

22 Q And tell me a little bit about what you do as far as
23 you -- from receiving data, you then use GeoTime to give you
24 an end result, right? What does that entail?

25 A It puts it in a visual format. It takes that huge

1. amount of data, which is -- if anybody's familiar with
2. Microsoft Excel, when we get the information from the phone
3. companies -- Microsoft Excel is a spreadsheet that goes from
4. A to Z. When you have more data than is there it goes AA
5. after the Z, all the way to ZZ, and then it begins with B
6. and it goes -- it just goes on and on from there. Well,
7. sometimes this data goes all the way past that. GeoTime
8. helps consolidate that information to look at the fields
9. that we deem necessary to look at the data we need. So we
10. use that mainly for that so we can speed up our analysis.
11. And our -- our analysis is strictly on the data that is in
12. the phone records.

13. MR. MOWRY: Your Honor, at this point I think we're
14. going well beyond voir dire on his expertise. I think we
15. are getting into the substance of his testimony. I would
16. again offer him as an expert in this area.

17. THE COURT: I understand your position. I think he's
18. focusing on the reliability of the underlying methodology,
19. if I'm not mistaken, for purposes of 702. Go ahead.

20. MR. WILKES: And, Your Honor, at this point I think
21. I've done that. But now he's going to undoubtedly testify.
22. So I would move into -- the other part of 702 is the
23. reliability of the information from which he receives and
24. how that moves into what he does.

25. THE COURT: Okay. Go ahead.

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1 Q Deputy Kelley, tell me, now. You're receiving data,
2 correct?

3 A Yes, sir.

4 Q How do you get the data?

5 A From an electronic medium, whether it's a CD, a DVD, or
6 through email.

7 Q And where does that data come from?

8 A It comes from the phone company.

9 Q Do you have any contact with the phone company other
10 than sending them a basic request for data?

11 A No. The investigators do a search warrant. The
12 investigators do a search warrant for the records. They
13 send the records to me.

14 Q Explain if you can the data that you requested in this
15 case.

16 A I didn't request any data in this case.

17 Q What data do you believe that you received in this
18 case?

19 A I received the phone records from Verizon for a
20 specific phone number.

21 Q Okay. And how do you know that?

22 A It was given to me by the Solicitor's Office.

23 Q Okay. And what format did that come in?

24 A It was on a CD and it came in as an Excel document.
25 The standard format from the phone company.

1 Q And what kind of data do you believe was contained on
2 that?

3 A All the data that is normally sent for the that we
4 receive on those. It has the latitude and longitude of each
5 call. The caller number. The calling party. It has text
6 numbers, phone numbers. All that information is all
7 included in that.

8 Q And specifically I'll just ask, is this RTT data we're
9 talking about?

10 A Some of it is RTT data. Would you like me to explain
11 what that is?

12 Q Well, I would just like to find out what data you're
13 relying on that you're going to put into GeoTime.

14 A It comes in several different formats. They have the
15 call detail record, and we use a translation tool to make it
16 easier to get that information into the format we need.

17 There is RTT data which is realtime transmission. And RTT
18 data is what they call -- you probably heard it on TV. It's
19 called ping data. And that is when the handset is talking
20 to the tower. RTT data stands for when your handset is
21 ready to go and you make a call, from the time it hits the
22 tower and it comes back to the handset, that signal, that's
23 RTT. So the ping is showing basically their best estimate
24 of where that handset is at the time that phone was talking
25 in communication with the tower.

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1 Q And when you say best estimate -- I'm assuming that
2 you're not testifying on behalf of the phone company or
3 Verizon?

4 A No, sir.

5 Q How do you know what accuracy that data represents?

6 A It's up to the phone company. They're the ones that --
7 the engineers can testify to that. But they have that
8 information in a high confidence, a medium confidence or a
9 low confidence. That's one of the columns that they give
10 you.

11 Q But as you say, that's -- the reliability of that data
12 as far as how accurately it's retrieved, stored, translated,
13 maintained, sent to you, that's something for an expert from
14 Verizon to testify to, correct?

15 A Only to the accuracy of the tower and the data there.
16 The data is from their billing, and then anybody that has a
17 cell phone knows they're very accurate about their billing.

18 Q Well, you agree that RTT data that you're relying on in
19 part here is not specifically location data according to
20 Verizon? It's billing data?

21 A But it does have location data in there as far as where
22 the handset is at the time the call was made.

23 Q But you can't testify to the accuracy of it?

24 A No, sir.

25 MR. WILKES: That's all I have, Your Honor. I have a

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1 motion that I would -

2 THE COURT: Let me let the Solicitor -- I assume you
3 have some additional questions of this witness in the voir
4 dire issue?

5 MR. MOWRY: Your Honor, can we approach?

6 THE COURT: Come on up.

7 (Whereupon, a sidebar was held.)

8 VOIR DIRE

9 BY MR. MOWRY:

10 Q Mr. Kelley, you talked that you have used the GeoTime
11 software yourself for about three or four years; is that
12 right?

13 A Yes, sir.

14 Q You're familiar with how much this is used in the law
15 enforcement field; is that right?

16 A That's correct. It's widely used.

17 Q Can you go into a little bit more depth than that?

18 A A lot of the larger agencies in the nation are using
19 this software. I'm not sure the exact number. But it is
20 becoming industry standard.

21 MR. MOWRY: Thank you, sir.

22 THE COURT: All right.

23 VOIR DIRE

24 BY THE COURT:

25 Q How did you come to be connected with this particular

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1 software? Was it part of like mandatory training that you
2 have to do every couple of years? Did they ask you in
3 Greenville to go and become an expert and become educated in
4 this particular field, or how did you come to come across
5 GeoTime specifically?

6 A Your Honor, I was on a trip to San Diego for the
7 Greenville County Sheriff's Office for mapping, working with
8 Esri. It was the Esri User Conference. And they actually
9 had a booth there where they were showing what this did and
10 how the -- they actually had law enforcement officers in San
11 Diego and in LA that had used this in actual cases. And so,
12 it peaked my interest, so I contacted them. Talked to them
13 about it. Watched some of their seminars. And then came
14 back and asked them if we could get a demo for it, and
15 that's how our information began on it.

16 Q All right. But I think you said a few moments ago that
17 this particular software is kind of the industry standard
18 for not only state agencies but also federal agencies to try
19 and tease this data out of the -- or tease -- the data out
20 of the data dump that you get from the phone companies?

21 A It's becoming the industry standard. It is becoming
22 rapidly the industry standard.

23 THE COURT: Additional questions based on my questions
24 of the witness?

25 MR. WILKES: No questions, but I have a point.

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1 THE COURT: Go ahead, sir.

2 MR. WILKES: Your Honor, my argument is not as much
3 with GeoTime. It is with the data in which we feed into
4 GeoTime. The expert -- I think his testimony was the
5 accuracy of the information, the data that they receive from
6 the phone company, is subject to the testimony of Verizon's
7 expert as to how accurate it is. The question of scientific
8 evidence would be that RTT data, for instance, is accepted
9 in the scientific community to be accurate, that it has the
10 sufficient testing, the sufficient -- what would be peer
11 review type of analysis and the examinations to say that
12 this information, this type of data, when it is collected
13 properly, stored under the proper method and then
14 transferred to the Solicitor's Office under proper methods,
15 becomes credible and accurate for them then to testify as an
16 expert in using GeoTime; that it's reliable. So the
17 objection --

18 THE COURT: Your argument is essentially garbage in,
19 garbage out --

20 MR. WILKES: It is precisely that. And then the burden
21 is on the State to establish the reliability, the scientific
22 acceptance of this data that he relies on. It's not -- it's
23 not a question that he's not very proficient with what he
24 does and that he knows how to use GeoTime. But the question
25 is, if Verizon cannot testify and will not send an expert to

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1 testify to the accuracy of it, then how can we say that no
2 matter what happens after that, that that scientific -- you
3 know, because there's several steps in it. And the
4 verification to say, well, we just checked it on Google.
5 But they're checking the same data that has not been
6 established as reliable.

7 MR. MOWRY: Your Honor, this objection is not made
8 contemporaneous to the admission of the evidence already.
9 The Verizon information is already in evidence.

10 THE COURT: Let me take it from here. You're correct
11 that the Verizon information is already in evidence. For
12 purposes of a 702 expert, reliability analysis, what the
13 Court's gate keeping function is basically to determine
14 whether the methodology, in this case GeoTime, is a reliable
15 trusted method of obtaining relevant data. Relevant
16 information. And I'm hearing from Mr. Wilkes that he does
17 not have so much of a problem with the underlying
18 reliability of GeoTime. So the Court would be inclined to
19 go ahead and qualify this witness as an expert in the field
20 of using this technology, as well as call records and
21 translation tools. So I will qualify him as an expert in
22 that particular field.

23 Mr. Wilkes, if you have any -- if you have any issues
24 with the underlying data, that's a completely separate
25 matter. It goes to the weight as opposed to the

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1 admissibility of testimony. But your objection is noted.

2 MR. WILKES: Very good, Your Honor. If that's the
3 ruling I won't point out any case law.

4 THE COURT: Did you want to point out some case law?
5 If I'm mistaken, go right ahead.

6 MR. WILKES: And I'll find the case. But it's my
7 understanding that that -- the weight versus admissibility
8 has been held not to be the standard, because that gate
9 keeping function has to be applied first to this data from
10 Verizon to say that -- because this is data that is
11 collected, manipulated or calculated, and it's scientific
12 data. So the gate keeping function not only applies to the
13 GeoTime, which I understand that part, but it -- the gate
14 keeping function also applies to the scientific data and
15 testimony on that data.

16 THE COURT: You're citing the White case that sort of
17 altered the 702 analysis. The Court's function as gate
18 keeper is to determine whether the scientific testimony is
19 reliable, peer reviewed or whether it's trusted, and
20 essentially can be used or is appropriately admitted under
21 702 for expert testimony. Your issue is with the data
22 provided. Your issue is from the data provided from the
23 phone company. From Verizon Wireless. That's something
24 completely separate. I agree with you if that information
25 is -- if for some reason Verizon provided inaccurate data

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1 then perhaps you would have an inaccurate result. But there
2 was no objection to the admission of the underlying data on
3 reliability grounds, only under search grounds was my
4 understanding -- or, sorry, under the issue of the warrant
5 grounds. The search warrant grounds. So I understand your
6 point. I am familiar with that. I think it is the White
7 case, if I'm not mistaken. It's either White or Cap
8 (PHONETIC) I'm not sure.

9 MR. WILKES: Your Honor has stated the law as I
10 understand it. But my point is, is that regardless of
11 whether a CV is introduced, that does not waive my objection
12 to the testimony as far as the expert testimony, to be able
13 to rely on it, and the burden to establish it as scientific
14 evidence. Any more than admitting the coveralls. And then
15 having an expert testify that --

16 THE COURT: I understand your position. Your objection
17 is noted.

18 MR. WILKES: Thank you.

19 THE COURT: I stand by my earlier ruling. My earlier
20 comments. And for purposes of 702 I'm not hearing there's
21 any issue of liability of technology -- the GeoTime
22 technology. So he can testify to that. You are free on
23 cross to challenge the underlying assumptions inherent in
24 the data provided to him from the GeoTime software.

25 So again, ladies and gentlemen, I've found this

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1 gentlemen to be an expert -- Mr. Kelley to be an expert in
2 the use of GeoTime and also call record -- other call record
3 translations. So he can give opinion testimony in that
4 regard that you can use as you deem appropriate.

5 All right. Mr. Mowry, go a head.

6 Q Sergeant Kelley, are you familiar with Verizon's status
7 among -- in the hierarchy of cell phone -- the cell phone
8 providers and service providers?

9 A Yes, sir.

10 Q Where does it stand?

11 A They're the largest.

12 Q Have you ever worked with their information in previous
13 cases that you've investigated?

14 A Yes, sir.

15 Q And how have you found the reliability of their
16 information to be in these cases that you have investigated?

17 A It's reliable and it's overwhelming sometimes with the
18 amount of data that they supply.

19 Q And did they provide you with a rather overwhelming
20 amount of data in this particular case?

21 A Yes, sir.

22 Q How do you go about boiling that down? You talked
23 about -- you used the term coin sorter. Explain what you
24 mean about that and how that applies in this case.

25 A There are really -- there are very few fields that we

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1 actually need in order to do the analysis that we're looking
2 for for the call records, especially for the Geo location of
3 where the handset is. And that's the latitude and
4 longitude. You need the number of the handset, and that's
5 in one column. You have the number that it called in
6 another column. And then you have the date and time the
7 call was made, and those are usually in Greenwich Mean Time.
8 So when you travel across the country you know you change
9 time zones. This automatically -- we used to have to go
10 through them and sort it out by hand, what time the call was
11 made, whether it's daylight savings time we've got to move
12 the call back five hours or four hours. So we have to go
13 through that. Well, GeoTime takes care of all that for you.
14 It does that for us. It takes a huge amount of data and
15 puts it in a nice easy package for us to look at so that we
16 can get to the data that we need.

17 Q And did you do that in this case?

18 A Yes, sir.

19 Q Did you do that with regard to phone data from Verizon
20 regarding a cell phone provided by Deshanndon Franks?

21 A Yes.

22 Q Physically how do you go about doing that? What format
23 do you receive the information on?

24 A It came in on -- it's either a CD or a DVD, and it is
25 placed into a CD drive or DVD drive that reads it. And it

1 comes up as typical files. There's Excel files. There are
2 PDF files that are in there. And they are -- they're CSV,
3 comma-separated value files. And GeoTime reads all of those
4 files.

5 Q I'm going to show you State's Exhibit No. 34. Would
6 this be the format on which you received Deshaun Don Franks
7 Verizon phone records?

8 A Yes, sir.

9 Q And then what do you do with that information? How do
10 you go about extracting exactly what you need?

11 A Once that data comes in and it's recognized we open up
12 the CRT tool. The CRT tool has recognized of all the phone
13 companies. So they'll have Sprint, and they have nice easy
14 graphic user interface. So it's little buttons that says
15 Sprint, one that says Sprint -- L Sprint. One that says
16 Cèllebrite. One that says -- you know, all the -- AT&T. It
17 has all of them. They have a Verizon button. If it
18 recognizes it as a Verizon file it'll allow it to come in.
19 And then you have to have a tower file. The tower file is
20 the cell tower file that we get from Verizon, or any other
21 phone company, are specific to the dates and times requested
22 in the search warrant, and they are the cell towers that
23 were used, or in the area that were in play whenever that
24 cell phone was used. So if it's between a certain date and
25 time, those cell towers are the ones they're going to give

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1 you in that area. And even the phone calls that were made.
2 If it made a phone call and it was Las Vegas, it's going to
3 hit that tower in Las Vegas. So that's where it -- it is
4 geocentric. It's geolocation. Once we get -- and it
5 matches up. Once it matches the call detail record with all
6 of the phone call data and the cell tower data, then it can
7 merge those two together and put it out in a map form. Then
8 we bring it in to the GeoTime mapping system where it plots
9 those exact points straight from the data onto the map. In
10 date and time order. Sorry.

11 Q So the end result of this whole process is what?

12 A It's a map. It's a visualization. So you can see
13 where the handset is in relation to space and time.

14 Q So you're not tracking a person then; is that right?

15 A No.

16 Q What are you tracking?

17 A We're tracking the device.

18 Q And if the device was in that person's pocket then by
19 that result you are tracking the person; is that right?

20 A Correct.

21 Q Mr. Wilkes used the term manipulating the data. Do you
22 manipulate or massage data at all?

23 A We don't manipulate data. Data is as data is. We
24 don't care one way or another when we put it into the
25 system. If it's there, it's there. If it's not, it's not.

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1 We've had numerous cases where they've had suspects and the
2 cell phone data came in and it showed that they weren't
3 anywhere near that location. That cell phone was not near
4 that location when it happened.

5 Q The records that you receive, is that the information
6 that you were using?

7 A Strictly the information we were using.

8 Q Is there any change that you make to that record at
9 all?

10 A No.

11 Q Were you able to conduct an examination as you have
12 described on the information that you received via Verizon
13 on Deshanndon Franks phone records?

14 A Yes, sir.

15 Q Did you end up reducing that to an animated version?
16 Can you describe what you did?

17 A Yeah. I took some screen shots of pertinent areas that
18 were required in the investigation, requested in the
19 investigation, and also created a WMV, a Windows movie file,
20 so that you can see the track of the handset.

21 Q Let me hand you what's now been marked as State's
22 Exhibit No. 50 for identification. Is this a -- well, tell
23 us what that is, please, sir.

24 A This is a portion of the cell phone record that was
25 received from Verizon and in it it has the date and times,

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1 as well as the phone numbers, and also the cell phone
2 locations, and a confidence level that we spoke about
3 earlier.

4 Q Describe in a little bit more detail what this
5 competence level is all about. What makes the difference
6 between high, medium, and low confidence?

7 A That's Verizon in their estimation, whether or not that
8 handset -- the location of that handset is more reliable,
9 the higher, medium or low. If they have a low confidence,
10 they don't believe that that handset was close to where it
11 was saying. If they have a high confidence, they believe it
12 was very, very near where they were saying.

13 MR. MOWRY: Your Honor, I would offer State's Exhibit
14 No. 50 as -- for identification into evidence at this time.

15 MR. WILKES: No objection.

16 THE COURT: Without objection, it is in.

17 (Whereupon, State's Exhibit No. 50 was admitted into
18 evidence.)

19 Q Mr. Kelley, I'm going to show you these two items that
20 have been marked as State's Exhibits 24 and 25 for
21 identification and ask you if you can identify those.

22 A Yes. I created these evidence from the screen shots
23 that GeoTime put out.

24 MR. MOWRY: Your Honor, I would offer 24 and 24 into
25 evidence at this time.

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1 MR. WILKES: No objection.

2 THE COURT: Without objection, they're in evidence.

3 (Whereupon, State's Exhibit Nos. 24 and 25 were
4 admitted into evidence.)

5 Q Mr. Kelley, is this State's Exhibit No. 24 that's now
6 up on the screen?

7 A Yes, sir. It is.

8 Q What does that indicate?

9 A It shows three different phone calls at three different
10 times in three different locations.

11 Q Down here is which town?

12 A That's Cross Hill.

13 Q Up here is what?

14 A That is Fountain Inn.

15 Q And Greenville is right here; is that right?

16 A Correct, sir.

17 Q Based on this information, was there any indication to
18 you that that handset was ever in Greenville during this
19 period?

20 A No, sir.

21 Q And let me show you State's Exhibit No. 25. What time
22 of day or night does that indicate?

23 A Where it says start date, time, local, that is the
24 local time. It is January 31st, 2014 at 2:53:52 a.m.

25 Q So seven minutes before 3:00 in the morning on January

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1 31st, 2014?

2 A Yes, sir. On John Grant Street there.

3 Q On John Grant Street in Cross Hill, South Carolina; is
4 that right?

5 A That's correct.

6 Q Did you also do an animation?

7 A Yes, sir.

8 Q To show all of these and the times that they ran?

9 A Yeah. This is based on a -- the movement of the
10 handset. So all it does it create a movement in
11 chronological order of where the handset is. So actually
12 you can see the handset moving around as it -- as it goes
13 through time.

14 Q Let me stop you right there. 2:53:52 where is
15 Deshanndon Franks' phone?

16 A It's in Cross Hill.

17 Q Specifically it's on what street, or right at what
18 street?

19 A Right at John Grant Street.

20 Q Thank you, sir. Let me stop it there. We have another
21 phone call here. What time is this?

22 A That's at 3:06:28 a.m.

23 Q And that is also where?

24 A In Cross Hill.

25 Q And we'll stop it there. We have another phone call

1 here. Where is that?

2 A That is on the same date at -- in Fountain Inn at
3 4:04:43 a.m.

4 Q And does this tracking that you've got here generally
5 show the route, or accurately show the route, or what --

6 A The lines have to be straight unless there is phone
7 activity on it, because then you will see the phone
8 activity. That's where you see when you see the close dots.
9 They're right there. But as it -- if it moves further and
10 there are no towers in between for it to hit, it will draw a
11 straight line between the next tower that it hits. So
12 that's where you see some of the long straight lines. It's
13 connecting from tower to tower.

14 Q Let me refer you then to State's Exhibit No. 24. Once
15 again, this call right here, 2:53 a.m., where did that come
16 back to? What was the information that you had received
17 where the handset was?

18 A That was on John Grant Street.

19 Q Okay. This next one that's listed January 24th, 2014,
20 3:06 a.m. That was listed as where?

21 A In Cross Hill. I didn't -- I'd have to look at the
22 other one to see exactly where it was located.

23 Q And this one up here at 4:04 a.m. is where?

24 A That looks like it's in Fountain Inn, South Carolina.

25 Q Did any phone -- or RTT information come back from

DAN KELLEY-CROSS-EXAMINATION

424

1 Highway 14, for example, or is it all west -- or, excuse me,
2 east of Laurens?

3 A It's all east of Laurens.

4 Q Until it gets onto 385?

5 A Until it gets north on 385, correct.

6 MR. MOWRY: Thank you, sir. I believe that's all I
7 have.

8 THE WITNESS: Thank you.

9 CROSS-EXAMINATION

10 BY MR. WILKES:

11 Q Do you have a blowup of that?

12 A Of what, sir?

13 Q Can you blow that up? Make that larger?

14 A Which -- which one?

15 Q The map we just saw.

16 A The video? The WMV? Not here. Not without the
17 software.

18 Q Tell me what would happen if you blew up what we see on
19 the screen? If you begin to zoom in on it, looked like all
20 them little dots from where we were looking at from the
21 side, or however far up we're looking, they're real close
22 together, right?

23 A Yes, sir.

24 Q If we get closer down to it, if you zoomed in on it --

25 A It shows movement.

1 Q And all of a sudden those dots start to spread out,
2 and it looks like it's moving all around during that
3 timeframe, right?

4 A Right.

5 Q Why is that? Does that mean that the person's not
6 somewhere? Does it mean that he's moving around all these
7 places during that timeframe?

8 A It means that that handset in that area is connecting
9 wherever it's connecting to which tower. There's towers all
10 over and it may kick off of each one. And it will show you
11 where that handset is based on that location.

12 Q But even from the very pulled away aspect that we were
13 looking at it from, you could see they're not all in the
14 same place.

15 A It doesn't always stay in one location, no.

16 Q Now, tell me the accuracy. What do you believe the
17 accuracy of a point on the map is? You've got a point on
18 the map. Is that a guarantee that that is exactly where
19 that handset is?

20 A No, sir.

21 Q What is the radius or confidence area of a point on the
22 map? If you have a point on the map, that's an estimation,
23 right?

24 A Correct.

25 Q Okay. An estimation within how big of an area?

DAN KELLEY-CROSS-EXAMINATION

426

1 A It depends on the tower.

2 Q The tower in particular that we're talking about. Pick
3 one of the ones he just asked you about.

4 A You would have to get a Verizon engineer to talk about
5 how far and what wattage that tower is. I can give you an
6 example of what I spoke with the Verizon rep and what they
7 told me how that relates to the strength of a tower. A
8 tower in Greenville, South Carolina on top of a big tall
9 building doesn't have to have very many watts or very strong
10 power to get out and reach a lot of people, because there's
11 a lot of people right there. But if you move further out in
12 a more rural area and you have a larger area to cover, the
13 tower has to have more power, so the phone can hit further
14 away.

15 Q So as you said, we would need a Verizon expert to tell
16 us about the particular tower to give us a better feel for
17 the exact accuracy of your pinpoint, right? In other words,
18 your pinpoint is an estimation?

19 A Correct. That's Verizon's best estimate.

20 Q Okay. And so, can you tell me what you believe, when
21 you put a pinpoint somewhere, what you think the radius is?

22 A I couldn't tell you.

23 Q So by putting a pinpoint, you can't tell me the
24 accuracy of that pinpoint?

25 A Down to the foot, no.

DAN KELLEY-REDIRECT EXAMINATION

427

1 Q Down to the yard? Down to the -- how -- I mean, how
2 far? What's the radius?

3 A There is no -- I can't tell you the exact radius.

4 You'll have to get a Verizon expert or an engineer to speak
5 to that matter. But what I can tell you is, is that those
6 -- it is hitting a tower in that area and it showing the
7 best estimate of where that handset is at the time that call
8 was made or that time it was talking to the tower. That's
9 all that it will speak to..

10 Q So, in other words, the phone was pinging in Cross
11 Hill. We know that?

12 A Yeah, that's correct. It's not pinging in Greenville
13 until 4:04.

14 MR. WILKES: Very good. No further questions.

15 REDIRECT EXAMINATION

16 BY MR. MOWRY:

17 Q Actually, it's not ever pinging in Greenville, is it?

18 A Not anywhere in the city. No, sir.

19 Q It's pinging in Fountain Inn --

20 A Correct.

21 Q -- is that right, which straddles Greenville and
22 Laurens Counties?

23 A Correct.

24 Q Let me refer you to State's Exhibit No. 50, or if you
25 have your records there. Can you tell us what the

DAN KELLEY-RECROSS-EXAMINATION

428

1 confidence level is on the 2:53 call?

2 A Verizon has the confidence level at high.

3 Q Okay. How about the 3:06 call?

4 A It's not on this. It's not on this one. But there's a
5 2:46 call.

6 Q But the one for 2:53 is what confidence level?

7 A High confidence level.

8 MR. MOWRY: Thank you, sir.

9 RECROSS-EXAMINATION

10 BY MR. WILKES:

11 Q What does that mean? What radius does that put it in?

12 A That shows that Verizon has a higher confidence that
13 that cell phone was where it was when the call was made as
14 opposed to a low confidence level.

15 Q That does -- so that does not change your earlier
16 answer that you can't tell -- you can't tell us what radius
17 or accuracy?

18 A Correct.

19 MR. WILKES: Okay, thank you.

20 REDIRECT EXAMINATION

21 BY MR. MOWRY:

22 Q Based on your training and your expertise in this area,
23 would that phone have hit on a Greenville cell tower?

24 A No, it would not.

25 THE COURT: All right. Mr. Kelley, thank you very much

1 for coming. You are free to go.

2 THE WITNESS: Thank you, Your Honor.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: Solicitor, call your next witness.

6 MR. MOWRY: Your Honor, that is the State's case and we
7 rest at this time.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, I'm going to let you take a brief break. I'm going to
10 huddle up with the attorneys and sort of see where we stand
11 and we may -- I may very well just bring you back out here
12 and cut you all loose for lunch or something like that.

13 Adjourn to the back for a few moments while I talk to
14 them, and don't discuss the case. If you need a cigarette,
15 go ahead and get one.

16 (Whereupon, the jury exited the courtroom at 11:46
17 a.m.)

18 THE COURT: At this point in time, Mr. Wilkes, of
19 course you renew all prior motions and all prior objections
20 and the Court will make the same ruling as before. You
21 also, of course, move for a directed verdict in this case.
22 Is that correct, sir?

23 MR. WILKES: That is correct.

24 THE COURT: And I assume that your argument would
25 center around the circumstantial nature of the case and

1 limited direct evidence, although there is some direct
2 evidence, but primarily circumstantial nature of this under
3 Logan, correct?

4 MR. WILKES: That is absolutely correct.

5 THE COURT: All right. The Court understands your
6 position. The Court would conclude that there is sufficient
7 direct and circumstantial evidence to warrant submitting
8 this case, or at least allowing the case to go forward at
9 this point in time. So I would deny your motion for a
10 directed verdict.

11 Has a decision been made at this point on whether you
12 intend to offer a case, Mr. Wilkes?

13 MR. WILKES: It has not. Of course, my -- I try to
14 make it a practice to take as much time with my client
15 before he has to make his decision and help in my decisions.

16 THE COURT: Certainly.

17 MR. WILKES: And as it is lunchtime, if we can make
18 that decision when we return it would be very helpful.

19 THE COURT: Very good. I know that you've probably
20 already reviewed with Mr. Franks the implications of his
21 testifying or not testifying. I assume you've gone over
22 that with him at length?

23 MR. WILKES: I have in detail. But if Your Honor would
24 give him the short version now we'll move very quickly when
25 we come back.

1 testify, your decision to testify has to be made freely, has
2 to be made voluntarily, and you have to understand the
3 implications of what you're doing and the rights that you're
4 giving up. Do you understand that, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Wilkes had requested some additional
7 time to consult with you on whether or not you chose to
8 testify. So what I'm inclined to do is just let you all
9 make that decision over the lunch break, and then when we
10 resume, when I call on Mr. Wilkes for your case, if he calls
11 you as a witness I'll assume that you're automatically
12 waiving your Fifth Amendment right against
13 self-incrimination. If he doesn't call you as a witness,
14 I'll assume that you're asserting your Fifth Amendment
15 rights. Is that acceptable to you, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Very good.

18 MR. MOWRY: Your Honor, can I just add one thing?

19 THE COURT: Go ahead.

20 MR. MOWRY: Though he has no prior criminal record,
21 there is a second statement that the Defendant made that the
22 State declined to try to offer because of Miranda problems.
23 It's noted in the law enforcement file. But law enforcement
24 has told us that they believe that they advised him of his
25 Miranda rights. Sadly, there is no form in the file, nor is

1 MR. MOWRY: Thank you, Your Honor.

2 (Whereupon, a lunch recess was held from 11:56 a.m. to
3 1:08 p.m.)

4 THE COURT: We're going to go back on the record. The
5 record should reflect that the Defendant is present with
6 counsel. Mr. Wilkes, has a decision been made on whether
7 you all intend to present a case?

8 MR. WILKES: It is my understanding at this time that
9 my client will testify, unless he tells me differently
10 between now and then. He will testify.

11 THE COURT: Very good. Do you expect any other
12 witnesses from your side?

13 MR. WILKES: I do not.

14 THE COURT: Along those lines, just so that we can
15 perhaps cover some ground. Have you all had a chance to
16 review the proposed jury instructions at this stage? If you
17 haven't, Mr. Wilkes, that's fine. I can give you more time.

18 MR. WILKES: Well, I've read over as much as I could
19 quickly. The -- I'm not sure if we would be entitled to a
20 mere presence charge. I think we might. As -- under the
21 facts of the case as they are so far I think we might, and I
22 would ask for that.

23 THE COURT: I might have to find out what your client
24 intends to testify to first before I --

25 MR. WILKES: I understand.

1 THE COURT: -- before I instruct on mere presence.

2 MR. WILKES: I understand.

3 THE COURT: But I'll put that in the back in my mind
4 and give it some consideration.

5 MR. WILKES: Thank you.

6 THE COURT: How about you, Solicitor? Have you have a
7 chance to review the many additions that your --

8 MR. MOWRY: Yes, sir. Both Solicitor Sheek and I have
9 looked at them and we have no exceptions, no objections, no
10 additions or amendments at all.

11 THE COURT: Okay.

12 MR. MOWRY: Your Honor, I would also -- before we go
13 forward, Mr. Wilkes and I have had an opportunity to go over
14 some items that were marked for admission but we have
15 chosen, for whatever reason, not to admit. And that would
16 include State's Exhibit 49, which is Tevin Hill's cell
17 phone. Some photographs, which would be State's Exhibit 26,
18 State's 19, State's 27, State's 23, State's 20, State's 21,
19 State's 22. And then obviously the Court's exhibits we have
20 submitted for Court but not for anything else. And then the
21 Defendant's Exhibits, it's my understanding that these are
22 -- these are not admitted either. Everything else we -- if
23 they are not already in evidence, we move into evidence at
24 this time.

25 THE COURT: All right. You're comfortable with that,

1 because I hear he's on the fence and I want to make sure
2 that you two are able to make, or he's able to make an
3 informed decision about this and tactically how it might
4 affect your side of things. So what we'll do, I saw one of
5 the bailiff's come in and apparently we have all the jurors
6 now; is that right?

7 THE BAILIFF: Yeah.

8 THE COURT: Okay. We've got the jury. So let me give
9 you about five or 10 minutes, and if you need some
10 additional time just let me know. But we'll go off the
11 record for -- until at least 1:25 and that will give you
12 some more time. And you can adjourn to the back or a
13 conference room, wherever is comfortable.

14 MR. WILKES: Thank you, Your Honor.

15 THE COURT: We've off the record.

16 (Whereupon, State's Exhibit Nos. 49, 26, 19, 27, 23,
17 20, 21 and 22 were marked for identification only.)

18 (Whereupon, Defendant's Exhibit Nos 1 through 25 were
19 marked for identification only.)

20 (Whereupon, a recess was held from 1:13 p.m. to 1:26
21 p.m.)

22 THE COURT: We're back on the record. Mr. Wilkes or
23 Mr. Franks, have you all made a firm decision?

24 MR. WILKES: I believe we have, Your Honor. My client
25 having weighed the gravity of the moment has decided that he

1 will exercise his Fifth Amendment right not to testify, and
2 if you would confirm that with him I would appreciate it.

3 THE COURT: Is that accurate, Mr. Franks?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. So you're choosing not to
6 testify, correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. In that case the State will
9 open fully, of course, and you'll get closing argument.
10 Final rather. Final closing argument, Mr. Wilkes. When I
11 bring the jury in just rest in front of them and I'll
12 explain and we'll go straight into it. Okay?

13 MR. MOWRY: Okay.

14 THE COURT: Let's have the jury, please.

15 MR. MOWRY: And, Your Honor, Mr. Sheek will be doing
16 the closing argument for the State.

17 THE COURT: Very good.

18 MR. MOWRY: Your Honor, I assume all sequestration is
19 now terminated?

20 THE COURT: Anyone that wants to come in they're more
21 than welcome to join us.

22 And, Mr. Wilkes, it goes without saying, that in light
23 of that I'm not going to instruct on mere presence. Okay?

24 MR. WILKES: Understand.

25 (Whereupon, the jury entered the courtroom at 1:28

1 finders of fact. You are the judges of the facts. So at
2 any point in time they say something about what a witness
3 said and it differs from -- and what they say differs from
4 your recollection, of course go with your recollection.
5 Okay? The way that we'll proceed is Mr. Sheek will go first
6 on behalf of the State with his closing argument to be
7 followed by Mr. Wilkes on behalf of Mr. Franks. So with
8 that, Mr. Sheek, you're recognized for your closing.

9 MR. SHEEK: Thank you.

10 CLOSING ARGUMENT

11 BY MR. SHEEK: Good afternoon, ladies and gentlemen of
12 the jury. This will be the last time the State will talk to
13 you regarding the testimony and evidence you've heard from
14 this case. Mr. Wilkes, on behalf of the Defendant, will be
15 given an opportunity to address you. And then you're going
16 to have to go back to that room that you've been brought in
17 and out of and you're going to have to deliberate. You're
18 going to have to try to reach a verdict and decide what
19 happened on January 31st of 2014. And I want to go ahead
20 and start off by again thanking you for the time that you've
21 been here.

22 You've come in and out of the courthouse all week long
23 to serve as a jury in this community because this is how we
24 administer justice. Mr. Wilkes said you're the driver's of
25 the justice system. I'm not sure I quite agree with that.

1 But you are the engine that makes it run. Because we can
2 come into court, police can make arrests, the State can
3 prosecute, Mr. Wilkes can represent a client, His Honor can
4 do his job, but without you, the jury, nothing actually goes
5 forward. This is how we administer justice. And that's the
6 reason it's chosen from people in this community. It's your
7 community and this is how you serve to serve justice in your
8 communities. And I do thank you for being here because I
9 know you all have other things that you need to be doing.

10 You've got lives outside this courthouse and families to
11 attend to, jobs to take care of, other things that you need
12 to be doing. And so, I appreciate your time. But you know
13 who doesn't have other things to be doing anymore? Nikesha
14 James, Sammie Leake. Because on January 31st of 2014 the
15 Defendant here made the decision to end their lives right
16 there in that trailer in Cross Hill with three gunshots and
17 their lives were over like that. Done. There was a movie
18 once and the quote out of it has always stayed with me. And
19 you'll excuse one of the words but it's part of the quote.
20 It's a hell of a thing killing a man. Take everything that
21 he ever had and everything he's ever going to have. Because
22 I was thinking last night of things I needed to do and stuff
23 I wanted to go take care of. I got a kid that's playing in
24 a concert with his church group on the guitar that I want to
25 try to make it to this evening if possible, and all those

1 things, and then it hit me. Those are things that are taken
2 away from you in an instant because of the decision of
3 someone else. And it's not okay. Never will be. And I'm
4 going to ask you at the end of my closing argument to
5 convict this man right here of that double murder and ending
6 those two peoples' lives right there. And now I'm going to
7 tell you why I believe you have the evidence to do it with.
8 How you get from where you are now to where I'm going to ask
9 you to be at the end of this case. Because everybody's
10 going to tell you, you come into this courtroom and this
11 Defendant has a presumption of innocence. And he does, when
12 he comes into the courtroom. But do not be mistaken, you
13 are the people that can look under that presumption and see
14 him for what he is and for what he had done and speak
15 justice. And we can argue all day long. And I submit to
16 you that when Mr. Wilkes gets up here I think he will argue,
17 because he represents the Defendant. That's where his
18 obligation lies. That's where his duty as a defense
19 attorney lies. And he is going to argue to you all the
20 reasons that he thinks you're going to have reasonable
21 doubt. That's his job. I don't begrudge him that. Our
22 system is built on adversaries and people representing their
23 positions. And you've heard a lot in this trial. As we go
24 along, the Defense has made issues of things like, well, did
25 you ask for James Morgan Hill's cell phone. How do you know

1 when all our evidence is gone. How do you know that the
2 package that these overalls were in is the same package when
3 it came back. And how do you know that this was exactly in
4 the same condition as when it was sent. Why are those
5 questions being asked? Why are we talking about Sonny Hill
6 and James Morgan Hill? Because all the evidence that you
7 have to base your verdict on came to you from this stand,
8 these witnesses. I can get up here and say all kinds of
9 things to you. I can't give you evidence. That's not my
10 job, and I'm not allowed to do that. And I submit to you if
11 I tried to do that then I'm probably going to be objected to
12 and that judge is probably going to sustain it because that
13 would be the correct thing to do. Evidence comes from this
14 stand.

15 So why are we talking about James Morgan Hill? Why are
16 we talking about Sonny Hill? Why are we talking about the
17 condition of a box or a piece of paper or tape it's written
18 one? An old lawyer told me years go -- and I'm now the old
19 lawyer. But the old lawyer told me when I was young, that
20 when you go in there, son, the law's on your side. Argue
21 the law. The facts are on your side, you argue the facts.
22 And if neither one of them are on your side, just argue.
23 Try to create issues that aren't really issues. Try to
24 create confusion where none exists. Because if you can make
25 somebody think there's reasonable doubt then that jury is

1 going to come back not guilty, because the Judge is going to
2 charge you that if you have a reasonable doubt that should
3 be your verdict. And a guilty man clings to reasonable
4 doubt like a life preserver, because he tries to create it
5 where it doesn't exist. It's like if I had this nickle and
6 my job was to prove to you people that there's a nickle
7 here. And I lay it there and I say there's a nickle. You
8 call can see it. It's right in front of you. Now, that's a
9 fact. The Defense can't change that fact. They can't move
10 that nickle. They can't make it something else. So what do
11 they do? Well, they'll come in with something else. Like
12 this person that nobody in this case ever testified was over
13 there at that house on January 30th or January 31st.
14 Nobody. And they bring up his name for what? Well, guess
15 who else wasn't over there? Everybody else in the world
16 except for the people that you heard about. Don't run down
17 a rabbit trail that doesn't exist, and that's what they want
18 you to do. And so, they put that cup there and they say,
19 well, are you sure there's a nickle there. If you look,
20 yeah. There's a nickle there. And they come up and, well,
21 how about James -- Sonny Hill. What about him? Did you ask
22 for his phone? Are you sure there's a nickle there? What
23 about the packaging? What about the -- is there dirt left
24 on the coveralls. The GSR from the coveralls. And they
25 stack these other issues up hoping that when enough get on

1 there I can't see anything. But the nickle never moved.
2 The nickle was there the whole time. Why do I want you to
3 focus on what happened? Because the only thing that matters
4 is what happened in that trailer over there in Cross Hill on
5 January 31st when those two people were gunned down. The
6 only thing that matters in this case. We've got two dead
7 people. We've got a man on trial for killing them. What
8 happened with anybody else a day before, two days before,
9 two weeks before doesn't matter. So that's where I want you
10 to keep your focus. Don't be distracted by waiving over
11 here things that don't matter.

12 The same as if you watch a basketball game. If
13 somebody goes to the free throw line, when they go to throw
14 it up everybody back there behind it is waving and doing
15 everything else trying to draw their attention away from
16 that goal, because they know if that guy gets distracted
17 he'll miss that goal. Don't get distracted. The goal is
18 whether or not this man right here gunned those two people
19 down in that house that night.

20 Now, why do I say when you go back to that jury room
21 you should convict him of it beyond a reasonable doubt?
22 Well, let's talk about it. What did the witnesses say?
23 What does the evidence show? Well, we know that there was a
24 group of people over there at that house that night. Right?
25 We know that from whose statements? Well, we know that from

1 a variety of people. We know that from Lavashtia Pulley.

2 She saw the Defendant at Washes on January 30th around 2014

3 around 11:00 --

4 BAILIFF: Lance, can you move that to the side so the
5 jury can see the screen?

6 MR. SHEEK: I'm sorry. Better? She's at Washes around
7 11:00 p.m. What does she see? The Defendant was at Washes
8 wearing brown overalls. The same brown overalls that have
9 been entered into evidence as State's Exhibit No. 38. The
10 same brown overalls that were seen at the Defendant's house
11 that the one witness said made him look so big. And you can
12 look at them. They're these big heavy work type overalls:
13 Fairly distinctive. And what else did she say he had? He
14 was showing her a gun. He had an ashy colored pistol that
15 he told her was a Ruger. State's Exhibit No. 6, gotten off
16 the Defendant's own phone. It's a picture of a Ruger 9
17 millimeter handgun with, again, an extended magazine. Now,
18 that's not something you see much, is it? This 30 round
19 magazine stuck in it. Fairly distinctive. But low and
20 behold what does the Defendant have in his possession in
21 that book bag in his room? That same extended magazine.
22 You're going to have it back there to look at them. Not a
23 common item to find stuck in a handgun because it sticks out
24 like this. Why he needed 30 rounds for his handgun I don't
25 know. But here it is, out of his book bag in his room. It

1 matches the picture of the gun off of his phone. It matches
2 the gun and the style that she said he showed her at Washes
3 before he went over to Nikesha James' house. So we know he
4 was there wearing this, with a gun matching that, that he's
5 got a picture of with that on his phone. What else do we
6 know? Did you hear any evidence contrary to the fact that
7 that's what happened at Washes on that night? Why is that
8 important when I say contrary? When you go back to your
9 jury room at the end of this and you deliberate, as you look
10 at evidence it's not a system where you look at one piece of
11 evidence and you say, well, that doesn't prove it beyond a
12 reasonable doubt, so I'm going to throw it away. This next
13 piece of evidence. Well, that doesn't prove beyond a
14 reasonable doubt, so I'm going to throw it away. The
15 evidence makes a picture much like a jigsaw puzzle one puts
16 together forms the whole pictures. So you take all the
17 evidence and you look at it together. Does it weave
18 together. Does it weave together correctly. Is it
19 consistent, and does it show me a picture.

20 Tamia Kinard. She saw the Defendant at Nikesha James'
21 house a little after midnight. He's over there. The same
22 thing that Tevin Hill tells you. And what is he wearing
23 when he gets there, a little after midnight? He's wearing
24 the brown jumpsuit. And they're all there. He has some
25 conversation about Facebook, I think she said, and something

1 about if you're going to talk to me, talk to me like a
2 woman, and she stands up and says, well, then I will if you
3 want to talk to me. And back to the room they go and they
4 have this conversation. Don't know what that was about.
5 But that's what happens. Does the Defendant say he was over
6 there? You've got the written statement that he gave law
7 enforcement. Left Wash about 12:30 he says and got to Kesha
8 house. It was Kesha, Tamia, her baby and Darryl. So even
9 he agrees with this. It all fits together. This is where
10 he was a little after midnight wearing this. He was acting
11 hyper. Not acting normal. Don't know what that was about.
12 He asked -- she asked Tevin to take her home. She said the
13 Defendant was being loud. She had her baby there, so she
14 asked Tevin to take her home. And so, she says they drove
15 out and instead of going back out on the road they went out
16 around her uncle's house. You remember that? In his Ford.
17 And Milton Grant is that uncle. Milton Grant says he's
18 awoken at around 1:00 a.m. by headlights going around his
19 trailer. What does Tevin say, what does Tamia say? That
20 they left that way right around his trailer. What does the
21 Defendant say? Tamia asks Tevin to take her home. He
22 agrees up to this point. So even by his own statement Tevin
23 and Tamia and her baby now leave. Who's at the trailer? By
24 everybody's statement, which is consistent, him, Nikesha,
25 Darryl Leake. He wakes up because he sees this car coming

1 around that startles him. He doesn't go back to sleep, so
2 he's watching TV at around 3:00 roughly and he hears what?
3 Three gunshots. Bam, bam, bam. Fairly quickly he says.
4 Well, we know when we talk to Dr. Fulcher, three gunshots
5 are what killed those two people. Two right here, one to
6 the head of Darryl Leake, and one through the heart and lung
7 of that young lady. And it was ugly. Right then there are
8 no more dreams, aspirations. There's no finishing school.
9 There's no raising kids. It's done. Because that's what he
10 decided for whatever reason. Even by his own statement he
11 was the only one there at that time. He hears the three
12 gunshots, gets up and looks out the window to see what this
13 is, sees someone come out. Can't make out who it is but
14 sees he's wearing what? Brown. Now, what he doesn't say he
15 saw, Milton Grant, was this person get into a car and leave,
16 does he? The person apparently left on foot. Well, isn't
17 that interesting. Because when Tevin left that's how he got
18 there. He didn't have a car to leave in. And what does
19 Tevin tell us later? He comes walking up the road, doesn't
20 he? It's all consistent. It all leaves together. It all
21 fits, and it makes a very clear picture.

22 Tevin Hill. Now, this is an interesting one because
23 Tevin initially lied to the police, and he tells you that.
24 He says we went to Washes on January 30th. He saw Ms.
25 Pulley there. The Defendant was what, wearing the brown

1 jumpsuit he calls it. Overalls, right here. Went to the
2 victims' house with the Defendant. This man right here. He
3 was, again, acting amped up. Kesha and the Defendant went
4 to the bedroom to talk just like Tamia said. Nothing
5 inconsistent with anything you've heard from this witness
6 stand. Then he went to give Tamia a ride home. And it's
7 late. He's hungry. He goes to his grandmother's house to
8 get something to eat. The only people left at that
9 residence is Mr. Franks, that man right there, Sammie Leake
10 and Nikesha James. They're the only ones there. And you
11 remember Mr. Mowry telling you at the beginning of this case
12 about the cat in the box, when you're talking about
13 circumstantial evidence? Because a lot of people think
14 circumstantial evidence isn't as good as direct evidence.
15 The Judge is going to tell you they're both equally good.
16 But circumstantial evidence has to prove it beyond a
17 reasonable doubt and to the exclusion of other reasonable --
18 listen to that word, reasonable hypothesis or theories.
19 There's only three of them there. The cat and the mouse are
20 alone in the box. Franks called and said he was coming to
21 the house, on foot. No car leaving. Milton Grant didn't
22 see anybody get in a car and leave. Told him it went bad.
23 Stuff went bad. So here we are around 3:00 in the morning.
24 He's walking up. Stuff went bad, after Milton Grant heard
25 the gunshots. He's the only one there other than the two

1 deceased people. He leaves on foot, consistent with the
2 fact that he didn't have a car. Tells him stuff went bad.
3 And then what's he say? He says he asked me to take him to
4 Greenville and then on the way changed it to Rodrigus
5 Scurry's house. Now, this gets interesting, because here we
6 are creating an alibi. And I'm going to tell you this, and
7 I want you to remember this when you go back to deliberate.
8 To an innocent man, the truth is his alibi. If there was a
9 store robbed down the street and somebody wanted to blame it
10 on me today, the truth of where I am and what I'm doing is
11 my alibi. I don't have to make up a story about it. Only
12 the guilty make up a lie to alibi. Nothing else would make
13 any sense, would it? Why are you making up an alibi if you
14 had nothing to do with it? Look at his own written
15 statement. Because here is where he's going to go off track
16 of what happened. We went to Greenville. Called a girl up
17 there that we were going to see. She didn't answer. So
18 then we called Scurry and spent the night up the road at his
19 house. That is not what Tevin Hill says. And now you got
20 to ask yourself is Tevin Hill telling us the truth. He lied
21 to the police when he gave his first statement.. He got
22 charged, too. Is he in here lying trying to save his own
23 neck. And that's a question you should ask yourselves. But
24 as Mr. Mowry pointed out, he's not walking away Scott free.
25 And the investigation doesn't indicate he was in that house

1 when those shots were fired. But he will have to plead to
2 the crime of lying to the police. Yes, he will, because
3 that's what he did. But when you're testing his story, is
4 he telling me the truth, I want you to think about this.
5 When you look at the timeline of when these events happened,
6 the witnesses have talked to, and it's written down on this
7 piece of paper up here, but remember this. Tevin Hill comes
8 back and he gives the second statement. The truthful
9 statement. The one that's the same as his testimony in this
10 courtroom when? Before any information comes back from the
11 phone. They don't know what information they're going to
12 get off the phone. They don't know anything about this
13 program up in Greenville to get the locations from a
14 handset. But what does his story on this stand and the
15 second story he told the police before that was gotten
16 consistent with? Look at the maps of where this phone went
17 and when it was where it was. Tevin Hill says in that
18 second statement, before any of this information comes back
19 from the phone, he told me to go around east and not go
20 through Laurens. The normal way that you would go from
21 Cross Hill. Right through Laurens, right up 14 and right up
22 to Fountain Inn. No. They circle around. That's his
23 story. But isn't it amazing it's exactly consistent with
24 where this phone goes when they track it, and the times it
25 goes there. And where does that phone number go? Into

1 Greenville. And look at the times when it gets up to
2 Fountain Inn. It got there around 4:00 a.m. They weren't
3 up in Greenville calling some girl and couldn't get a hold
4 of her so then they called Rodrigus Scurry. Never happened.
5 So when you're testing that, Tevin Hill's story, you look at
6 the map of this phone. And ladies and gentlemen, Tevin
7 didn't have that information and the police didn't even have
8 that information when Tevin gave that second statement.
9 You've got the gun. We've got the picture off the
10 phone of the gun. We don't have the physical gun. Don't
11 know where it went. Don't know if it went out the window
12 going up the road. Don't know if it was disposed of. Don't
13 know if it was given away. Love to have the gun. So then
14 we could have tested it against those projectiles. What we
15 do know from the expert are the bullets were both fired from
16 the same gun. These shell casings were ejected from the
17 same gun. But we don't have a gun to test it against. But
18 off his own phone he's got a picture of a gun. And isn't it
19 coincidental, because if you believe what I believe the
20 Defense is going to try to get you to believe, this man is
21 the recipient of a colossal set of bad coincidences that he
22 just happened to have a picture of the type of gun that
23 killed these people on his phone, and that two people
24 described him having that kind of gun in his possession, and
25 that the magazine that matches that picture was there in the

1 room where these coveralls were obtained. And that's the
2 caliber of gun and the make. Now, it could have been a
3 number of makes. But the right-hand twist of lands and
4 grooves was consistent with a Ruger, and that's what that is.
5 But it's just a coincidence. It's a bad coincidence.

6 I'll tell you what the worst coincidence of all that
7 hit him was. This. Because I listened to Mr. Wilkes
8 question the officer from Greenville on the stand and he
9 said, but how do you know that information from Verizon was
10 reliable. I mean, all you do, officer, is take the
11 information they give you and you put it in this program and
12 it gives us locations. How do we know it's reliable. What
13 if the information from Verizon was bad. Okay. Legitimate
14 question. What if the information was bad. Well, isn't it
15 terrible that if the information was bad, wrong, corrupted,
16 wrong form, or anything else in the known universe, that
17 that bad information, out of all the spots on this big globe
18 we live on, that bad information happened to pinpoint the
19 area where these two people were killed at the time these
20 two people were killed. That would be the colossal bad
21 coincidence of all history. Because that bad information
22 could have put him anywhere. If it's bad information he
23 could have showed him in Nova Scotia. It could have showed
24 him in South Africa. It could have showed him in Siberia.
25 But low and behold, with all bad luck, it showed him on John

1 Grant Street at the time these gunshots are heard, and
2 somebody wearing the same type of clothes he's wearing comes
3 out of that house. And Tevin Hill says he came up saying
4 the stuff went bad. Colossal bad luck of all colossal bad
5 luck. And then where's the phone go? Well, to get on top
6 of that colossal bad luck and harmful coincidences, the bad
7 information has the phone the same route Tevin Hill said
8 they went before we ever had this information back. And it
9 takes them to Fountain Inn where even he says they went in
10 his alibi, supposedly after they've been to Greenville
11 looking for this girl. Same place Rodrigus Scurry said they
12 were. Same place Tevin Hill said they were. This bad
13 information took him right up there 4:04 a.m., about the
14 time that Rodrigus Scurry says they arrive. My goodness.
15 Apparently then the only information in this phone that's
16 truly bad surely is the phone that put him at the death
17 scene at 3:00 in the morning. And you and I both know
18 that's not reasonable. And that's what the Judge is going
19 to tell you about. Reasonable doubt. If I pointed to that
20 clock up there and said, folks, it is now almost 2:00 in the
21 afternoon. Well, maybe it's not. Maybe somebody got into
22 Colorado Springs where the atomic clock really sets all the
23 official time and changed it. Maybe it's not really 2:00.
24 Can you prove it's 2:00? Can you prove nobody changed that
25 while you all were out? It's not reasonable. You know why?

1 The clock says it's 2:00, too. My watch says it's 2:00. My
2 phone says it's 2:00. It's consistent. It's consistent.
3 And it's not reasonable to believe that that one's wrong.
4 That's the same way it is with this evidence we got. When
5 you look at each of these pieces of evidence and include it
6 with the other pieces of evidence, it fits together like a
7 tapestry. It weaves together. It doesn't waiver. It
8 doesn't contradict. You don't have this piece of evidence
9 kind of going that way and this one going that way and you
10 have to overlook this and don't think about that. Think
11 about every piece of it, because this is what it does.

12 What do we know? What do we know? We know those two
13 people were murdered. It wasn't a murder suicide. There
14 wasn't a gun there in the house. It wasn't one of them shot
15 the other one and then shot himself. They were murdered.
16 What do we know? We know this is what that man had on that
17 night. We know that from a majority of witnesses and it's
18 uncontradicted. What do we know? We know he had a 9
19 millimeter Ruger. He took a picture of it on his own phone.
20 We know he has this magazine that fits it that was pictured
21 in that gun on his phone. What do we know? We know his
22 Smartphone was at the house when those people were murdered.
23 Now, he may try to convince you that he went on up to
24 Greenville looking for this girl and his phone caught up
25 with him later, because he had his phone with him the next

1 day when he comes back and the police get it at 1:00 the
2 very next day. But I don't believe that you all think that
3 phone stayed behind and then caught up with him later. I
4 don't think anybody thinks that. Now, if he had shown up
5 and didn't have his phone any longer that would be a
6 different story. But he showed up the next day with it.
7 What do we know? We know that Tevin Hill's story about the
8 route they took, which is not the direct route, was
9 corroborated by phone information that Tevin Hill didn't
10 even know they were going to get. What do we know from
11 everybody's statements including his own statement? When
12 Tevin and Tamia left it was just him and Nikesha James and
13 Darryl Leake. And we know from that point until 3:00 in the
14 morning his phone stayed there. We know that there were
15 three gunshots around 3:00 in the morning heard by Milton
16 Grant and somebody wearing brown coveralls came -- or brown
17 clothes came out. And we know those people are dead. And
18 we know he met Tevin Hill shortly thereafter saying it went
19 bad. We know he made up a lie for his alibi. I don't know
20 why he killed them. I don't. I'd love to know why. I
21 don't know. But he did it. He left that -- met Tevin and
22 left those two people laying there to be found by their
23 friends the next day.

24 Murder. The worst thing one human can do to another.
25 Murder. Unlawful killing without justification or excuse.

1 This was not self-defense. This was not defense of others.
2 He wasn't defending his home, his castle doctrine. There
3 was no excuse. No justification for taking the lives of
4 those two people. Of another human being. Darryl Leake.
5 Dab. Kesha James. People with lives. Entitled to their
6 life like everybody else. He had no right, no justification
7 to shoot them down like animals. With malice, evil harm,
8 evil intent ended their lives. You shoot somebody in the
9 head and you shoot the other one through the heart, that's
10 malice, folks. Walked off and left them. Aforethought.
11 Don't ever confuse this with preplanning or what you hear on
12 TV as premeditated murder. It is not the same.
13 Premeditated people think of a plan. Murder in this state
14 can be without any plan. It can be with malice formed just
15 a mere few seconds before I reach for my gun and I pull it
16 out and I shoot you down. Expressed or implied, inferred.
17 You can infer from the use of that weapon that he had malice
18 on his heart. Two shots. Murder. Possession of a weapon
19 during the commission of a violent crime. Fairly
20 self-explanatory. You commit a violent crime you commit it
21 with a weapon in your possession and I submit to you that
22 clearly a pistol is a weapon. A firearm. That you are
23 guilty of possession of a weapon during the commission of a
24 violent crime. Malice, ill-will, hatred. Use of a firearm
25 can be inferred.

1 Now, the Judge touched on this and I want to talk about
2 it for just a few seconds. Direct and circumstantial
3 evidence. You have both in this case. You have direct
4 evidence of people that saw and testified he was here. This
5 is what he doing. This is what he was wearing. This is what
6 I heard. It's direct evidence. Circumstantial. Proof of
7 the murder that he committed while he was down there based
8 on the facts that there were only three of them left at the
9 residence by all the testimony you heard, uncontradicted.
10 By the gunshots and the consistent clothes coming out. By
11 him coming back up to Tevin's and saying it went bad. The
12 gun he had. The picture on his phone. The magazine in his
13 room. The lying about the alibi.

14 Mr. Wilkes told you at the beginning about the cat and
15 the box. He said, well, he can say that. That cat must
16 have ate that mouse. But you know what, his son came and
17 took that mouse out. That's what it was. He doesn't have a
18 son. Well, his daughter probably came and got that mouse
19 out of there. Doesn't have a daughter. Well, maybe, maybe,
20 maybe aliens came and got it. Closed that box back up. And
21 folks, you can find a reason to ascribe to anything. But
22 the Judge is going to define reasonable doubt. Proof beyond
23 a reasonable doubt is that kind of proof that leaves you
24 firmly convinced of a fact. It is not beyond any fanciful
25 doubt. It is just that. Reasonable doubt. And a good

1 lawyer, and I submit to you this man is, a good lawyer is
2 always going to have some other explanation. That's why
3 just like that he was able to get up and say, well, his son
4 got it out of the box. That's what good lawyers do. But it
5 cannot change what it is. Cannot move that nickle. All he
6 can do is set cups over it.

7 Ladies and gentlemen of the jury, you're going to have
8 a chance to go back and deliberate. I don't know what Mr.
9 Wilkes is going to say to you, and I know you're happy I
10 won't get up to respond to it. It'll be the last you hear.
11 But I want you to do this. I want you to listen to him
12 carefully, because that's what your oath is and that's what
13 I want. When we do something as serious as what we're doing
14 in this courtroom I want it done right.. I do. Because I
15 don't ever deal with anything more serious than one of our
16 community members being killed. And the last person to
17 stand up somewhere and speak for Nikesha and speak for
18 Darryl is going to be me. They didn't even know me. I
19 would love to be anywhere else doing something else but
20 speak in the last chapters of their lives, because they
21 should be somewhere else doing something else. But they're
22 not. And the person that made that decision, the person
23 that made that happen, the person that killed them and left
24 them there and lied about where he was, is him. And that's
25 where all the evidence points. It consistently points

1 there. It will not change no matter what is told to you.
2 That nickle's not going anywhere. Put all the cups over it
3 you want to. But it's all smoke and mirrors because the
4 evidence is clear.

5 Thank you for your time. I ask for justice. Justice
6 for us, the community. Justice for Darryl and justice for
7 Kesha. Thank you.

8 THE COURT: Thank you, Mr. Sheek. Before -- Mr.
9 Wilkes, before you give your closing may I speak with
10 counsel briefly up here at the side?

11 (Whereupon, a sidebar was held.)

12 THE COURT: Ladies and gentlemen of the jury, I
13 apologize for having to do this. There was something that I
14 need to add in terms of the instructions before Mr. Wilkes
15 gives his closing argument and I need to do that just real,
16 real quick. So we're going to take a very brief five minute
17 break. Some of the people need to use the restroom anyway.
18 Adjourn to the back. Don't talk about the case. We'll have
19 you back here in about five minutes. Okay? Thank you for
20 your attention and your continued patience.

21 (Whereupon, the jury exited the courtroom at 2:09 p.m.)

22 THE COURT: The reason I decided to call a brief break,
23 when the State delivered its closing it occurred to the
24 Court that the Court had not included the inference of
25 malice language from use of a deadly weapon in the

1 construction concerning malice and I did not want to sandbag
2 Mr. Wilkes or anyone, because under my reading of Belcher, a
3 case that's actually out of Laurens County, that instruction
4 would be appropriate in this case because there's no
5 evidence tending to reduce the homicide to a voluntary or an
6 involuntary homicide. Accordingly I have included the
7 inference of malice language, as well as a definition of
8 what constitutes a deadly weapon under South Carolina law.
9 I have included those in my new instructions and I wanted
10 Mr. Wilkes to be able to deal with that in his closing if he
11 chose to, to try to deal with that or address that in his
12 closing argument, hence the Court taking a brief break. The
13 Court has now, of course, included that language, and I do
14 understand Mr. Wilkes' objection to that that he made at
15 sidebar. Despite that objection, the Court has included
16 that language.

17 Are you ready to proceed, Mr. Wilkes?

18 MR. WILKES: I am, Your Honor.

19 THE COURT: Let's have the jury in, please.

20 (Whereupon, the jury entered the courtroom at 2:22
21 p.m.)

22 THE BAILIFF: All jurors are present, Your Honor.

23 THE COURT: Ladies and gentlemen of the jury, thank you
24 for your continued attention. I apologize for that
25 interruption. It's completely my fault.

1 At this point, Mr. Wilkes, you are recognized for your
2 closing, sir.

3 MR. WILKES: Thank you, Your Honor. May it please the
4 jury.

5 THE COURT: Yes, sir.

6 MR. WILKES: And the Court.

7 CLOSING ARGUMENT

8 BY MR. WILKES: I would disagree, the analogy to the
9 engine. The engine in a car does what it's told to do.
10 When you turn on the key you tell it to start and it starts.
11 You turn off the key it stops. You're not an engine in the
12 car. You're the driver of the car that's the justice
13 system. You have to be the driver. You're in control and
14 you have to pay attention and you have to make decisions,
15 because it's your decision that determines whether the car
16 goes off the road or stays on the road. The importance of
17 you applying the law in the case is critical. You've paid
18 attention to the facts today. And closing arguments lawyers
19 give you their version. I tell you what I think the facts
20 that I heard were when I'm arguing, as does the State.
21 Sometimes we misstate those facts. It's not intentional.
22 If we do, it's what you remember the facts to be. But we do
23 our best to explain to you what we believe the case shows
24 and what the facts are.

25 Now, just as -- by way of the example of the nickle.

1 The State puts the nickle on the table and say I'm trying to
2 cover it up and starts putting cups on top of it. And I
3 like that. That's nice. But he says I'm trying to cover
4 the nickle up, right? And every time I say something I'm
5 putting another cup on that nickle. That's not really the
6 way this works. The way it works is I'm trying -- and
7 that's assuming. They say assume that somebody is guilty.
8 There it is, and now I'm trying to cover it up. That's not
9 right. What I'm saying is, is there a nickle under this
10 book? Well, you didn't see whether or not somebody put the
11 nickle under the book. And that's where we are. Not
12 putting stuff on it. I'm trying to lift the book up to show
13 you if there is a nickle. Somebody guilty. Is it under the
14 book? And so, we simply try to get to the book. There's
15 problems and roadblocks getting toward that book. But we
16 get to that book to lift the book to say is there a nickle
17 under the book, but there's not. But the point is, the
18 Defense is not trying to cover the nickle. The Defense is
19 trying to find out if the nickle is under the book. The
20 Defense wants to lift the book so you can see, as a jury,
21 whether that nickle is under that book.

22 Now, I have what I believe the Judge will charge you,
23 and some of this I have to look at to try to be very careful
24 with it so I don't misstate it. But I believe what the
25 Judge is going to instruct you at the end of the case says,

1 when the State relies on circumstantial evidence, all of the
2 circumstances must be consistent with each other. And when
3 taken together point conclusively to the guilt of the
4 accused beyond a reasonable doubt.

5 Now, there's a lot of things that you have heard today.
6 And simply being at that residence that night does not make
7 Mr. Franks guilty. There's a lot of things that can go on.
8 It does not make Mr. Franks guilty. Now, first, there's a
9 lot of talk about coveralls, and you heard -- there were a
10 lot of questions that I've asked about what the coveralls
11 were in. There was a reason for it. It's not trying to put
12 the cup over the nickle to hide it. It's trying to make
13 sure that we know what it means when the expert testifies.
14 The expert testified that they have done all of these tests
15 on these coveralls and there is no gunshot residue on these
16 coveralls that Mr. Franks is wearing. Now, the State says,
17 well, maybe they washed the clothes. Well, that's why I
18 wanted to know what the coveralls in. And finally we got to
19 the bottom of it. Finally they said yes, that SLED would
20 take them and put them in a bag very carefully, and then
21 that bag goes to SLED and they test it and they put it in
22 this nice clean wrapper. So you will see the coveralls
23 exactly like they were found. And that's the point of this.
24 Because you can take these coveralls back with you. I
25 believe they go back to the jury room with you. And you can

1 look at them. Those coveralls have not been washed. And
2 that was my point, because absent proving that they've been
3 taken care of very properly, then it's like saying, well,
4 maybe they're dirty because they've been in the back of
5 SLED's car, or they've been sitting on a desk at SLED for a
6 long time. They haven't. They got packaged up. Treated
7 exactly like they were when they were found on that bed, and
8 they are dirty. So they haven't been washed. There is no
9 gunshot residue on those coveralls. They also took gunshot
10 residue, the swabs, from other articles of clothing from Mr.
11 Franks' house. And you'll notice that there was no
12 testimony of any gunshot residue. Somebody's alleged to
13 have fired a gun three times. As you heard the SLED officer
14 testify, when you fire a gun it makes a huge cloud. It's
15 invisible to the naked eye, but it leaves this cloud of
16 gunshot residue that is blown into the air. There is not a
17 single trace of gunshot residue on anything they tested.

18 Now, there's no testimony about Tevin Hill's clothes.
19 There's no testimony of anything from Tevin Hill. But
20 there's certainly no gunshot residue on Mr. Franks'
21 clothing.

22 Now, there is obviously a lot of testimony from the
23 cell phone expert talking about the cell phones. And they
24 put it up on the screen and they pointed to it and said here
25 it is, and they've got this time and this dot right here.

1 But they have not explained what time this dot is, what time
2 this dot is. They haven't explained any of these other
3 pings and cell phone calls, because if they do they're going
4 to show that they're all over the place. They're all over
5 the place that evening. And yet, they only label for you
6 the three they want. If you take all of these dots from
7 that evening and you blow them up, they're all over the
8 place. They look real close when you're looking at them,
9 you know, from this distance. But as you get closer, if you
10 think about it, it's going to be spread out. The reason is,
11 the cell phone technology is not such that they can say with
12 any certainty that that dot is correct. That's a
13 guesstimate. And why -- why are they all over the place in
14 this area? Because it is not precise. As I asked the
15 expert from -- well, it's actually Greenville County
16 Sheriff's Office, Deputy Kelley. As I asked Deputy Kelley,
17 he -- he knows out to use the program and he punches it in
18 and it spits some things out. But I asked him how accurate
19 is it. He can't tell me. He is unable to tell me how
20 accurate this stuff is. Not within feet, a mile, quarter
21 mile, 10 miles. It's just on a map. And as he said, you
22 have to have the Verizon expert to tell you if it's
23 accurate. He can't do that. And they don't have a Verizon
24 expert. The reason that it's important when you start
25 looking at a case, as the Judge said, there's no way to

1 correct a wrong verdict. So, and for that reason, we have
2 the presumption of innocence. And that's important, because
3 circumstances -- circumstantial evidence can make a person
4 look guilty when they are not. Circumstantial evidence is
5 something that can be very difficult to deal with, and you
6 have to think about it very carefully. Circumstances
7 indicate that he's there that night. Well, that's true.
8 That's not even a circumstance. We know he was there. He
9 was visiting. He was there, and Mr. Hill was there. Mr.
10 Hill's testimony -- Mr. Hill's testimony where he gave an
11 initial statement and then came back and changed his
12 statement. He changed his statement after he was charged
13 with murder. He's charged with the same murder today. That
14 was three years ago. He's still charged with the same
15 murder today. But what's going to happen because he
16 testified is, as he said, as I recall him saying, his
17 charges are going to go away. Lying to the police charge.
18 The murder charges go away. You've got to consider
19 somebody's motivation when they testify. When -- and the
20 Judge will probably tell you that you can believe part of
21 what someone says and disbelieve part of what someone says.
22 But the biggest thing you have to do when you evaluate
23 testimony is ask yourself do they have anything to gain or
24 loose. Tevin Hill does. His testimony makes his charges go
25 away. You have to take that into consideration when you

1 start considering Tevin Hill saying stuff that makes it
2 sound like Mr. Franks is guilty, because Tevin Hill has got
3 a lot to gain.

4 Now, the testimony of the SLED agent, because they
5 waived the picture around of the pistol. The testimony of
6 the SLED agent was that ballistically speaking,
7 microscopically speaking, that the projectiles would be
8 consistent with this type of gun. But he testified it's
9 also consistent with about 80 brands. And he said that this
10 one was about halfway down the list. So circumstantially
11 it's a possibility, but is it a probability. One out of 80
12 and 40 down on the list. He was very clear he couldn't say
13 it came from any particular gun. He couldn't even say for
14 sure that it's a 9 millimeter projectile. It's consistent
15 with it, but he can't say that for sure. So what happens is
16 -- the State's case is built on a lot of things that they
17 want you to take and then make a leap of faith and jump to a
18 conclusion. The purpose of reasonable doubt standard is to
19 keep you from jumping to conclusions, or making a leap of
20 faith over the absence of evidence that convinces you beyond
21 that reasonable doubt of guilt. And that is exceedingly
22 important. What the State does is they pick and choose.
23 And they can pick and choose the evidence they introduce.
24 There's evidence you don't hear about. There's questions
25 that you may have. Those questions may be an indication of

1 reasonable doubt. In their investigation, if you look at
2 the photos they introduce, they introduce several photos. I
3 did not see where they introduced the photo of a back door
4 to the trailer. The fact that there are two doors to the
5 trailer could be important. They also didn't explain how
6 Mr. Grant's testimony, as I recall it, was that he heard
7 shots and he was, I think he said, in his bedroom watching
8 TV maybe, or something to that effect. But he heard it and
9 he got up and he went around and he looked out. By the time
10 he looked out the front door was open. He said he watched
11 for a few minutes and somebody came out the front door. The
12 front door was already open. Somebody opened the front door
13 at 3:00 in the morning. If somebody went out the front door
14 that Mr. Grant didn't see, but they opened the door, it was
15 a few minutes later that he saw somebody come out. He says
16 he saw somebody come out and he could only see from the
17 waist up because I think you can see the railing. So he
18 could only see from the waist up. And he said he saw
19 something brown. He couldn't identify specifically that it
20 was coveralls, overalls. But just he said something brown.
21 But that's all he could tell. But he could tell that
22 somebody walked down the steps, shook their head, went back
23 up, slammed the door, came back down and eventually walked
24 off. It was not somebody ran out of the building as though
25 something -- they had just done something that they were

1 trying to get away. So the question as far as the door
2 already being opened and who opened the door is unknown.
3 The only thing Mr. Grant said was a few minutes later he saw
4 someone come out the already open door.

5 Now, when you consider testimony again you have to take
6 it in light of whether people have something to gain. You
7 can put with that questions that remain unanswered.
8 Lieutenant Cheek testified that they were looking and
9 speaking with Mr. James Morgan Hill. He's a possible
10 suspect. Wanted to rule him out. Wanted his cell phone.
11 There's no evidence offered as far as his cell phone.
12 There's no evidence offered as where he was. James Morgan
13 Hill happens to be the father of Ms. Pulley's child. Ms.
14 Pulley is the one that says she saw a pistol earlier that
15 evening. You have to take testimony of witnesses --

16 MR. SHEEK: Your Honor, I have an objection. I'm very
17 sorry. Can we approach?

18 THE COURT: I don't think he stepped over any lines, so
19 --

20 MR. MOWRY: Your Honor, he presented facts that are not
21 in evidence.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, as I mentioned earlier, if you have any difference or
24 -- of what they say about the facts differs from what you
25 recall the facts being, you go with your recollection.

1 Okay?

2 You may continue, Mr. Wilkes. Sorry for the
3 interruption, sir.

4 MR. WILKES: Thank you, Your Honor. You have to take
5 into consideration the motivation of the people that
6 testified. Do they have something to gain. Is there some
7 benefit in their view of the testimony. Whether they're
8 lying, telling the truth, or whether they're remembering it
9 in the way that may be screwed by some bias that they have,
10 or some reason that they may have to be in place,
11 consciously or unconsciously. But you have to weigh
12 testimony in light of peoples' motivations in a case.

13 Now, I will submit to you that you have to consider
14 that circumstantial evidence is something that should
15 conclusively point to guilt beyond a reasonable doubt. If
16 you look at all the evidence in the case there's numerous
17 things that create a question and doubt. How could the
18 State not find gunshot residue on a single piece of clothing
19 that Mr. Franks was wearing if there's three shots fired.
20 The fact that they've introduced a photograph of a gun
21 consistent with the bullet, but 80 other brands are
22 consistent as well.

23 The State's argument, of course, raises passion. And
24 you're not here to punish. You're not here to be embroiled
25 in passion. You have to be here as the judge of the facts

1 and to make a ruling, a verdict based on hard facts and be
2 convinced there are no holes. There are holes in the
3 State's case that create reasonable doubt. Your duty is to
4 find Mr. Franks not guilty. If you fail to do that when
5 there is reasonable doubt, then you failed in your job. The
6 verdict of guilty ends the case. It ends all inquiry
7 forever into the case. If there are holes, if there is
8 doubt, then your job is to say so, and you would say so
9 through a verdict of not guilty.

10 I take exception, of course, to the characterization
11 that the Defense is covering something. We're not trying to
12 cover it. We're trying to uncover the question of what has
13 been proven what happened. But the burden remains on the
14 State, and if the State has not proved it to your
15 satisfaction beyond all reasonable doubt then you should
16 find him not guilty. Thank you.

17 THE COURT: Mr. Wilkes, thank you very much, sir.

18 Now, ladies and gentlemen, now it becomes my obligation
19 to instruct you on the law that applies. And I will tell
20 you that, ladies and gentlemen, the way that this was
21 traditionally done when I first started practicing law in
22 '93, I guess 23 years ago, that the Judge would basically
23 sit up here and read you roughly 19, 20 pages taken from
24 various parts of the law and the Judge would read it one
25 time and the jury was supposed to sit there and kind of get

1 it all at first reading. I always found this a little
2 unreasonable, because like most people I went to law school
3 for three years. It took me three years to learn what I'm
4 going to tell you in about 15 minutes. So long story short,
5 I'm letting you know that I'm going to give you a copy of
6 these instructions that you can refer to if you need to
7 during the course of your deliberations. Okay? If you have
8 any questions about the instructions, or you have any
9 questions about the law, I'm more than happy to try and help
10 you with any sort of legal question that you're struggling
11 with. At this point in time, however, the record is closed,
12 so it's not possible to reopen the record, take additional
13 testimony or anything like that. And so, if you have a
14 factual question odds are I'm not going to be able to assist
15 you with any question concerning the facts. You'll have to
16 judge the case based solely on the record as presented thus
17 far. But again, if you have any questions about these
18 instructions, just let me know by way of writing me a note
19 and I'll try and help you with anything that you all are
20 struggling with. Okay? Of course, do follow these
21 instructions to the whole and don't follow simply some of
22 the instructions to the detriment of other portions. And,
23 of course, do return them to me when you're done with your
24 deliberations.

25 Now, ladies and gentlemen, the indictments in this case

1 charge the Defendant, Mr. Franks, with two counts of murder
2 and one count of possession of a weapon during the
3 commission of a violent crime. I remind you that the fact
4 that Mr. Franks was arrested, charged and indicted in this
5 case is not evidence in this case and cannot be considered
6 by you as evidence of guilt. Nor do the indictments create
7 any presumption or inference of guilt. These documents are
8 merely the formal written instruments which contain the
9 charges made against Mr. Franks. They're the formal
10 documents by which this case is brought to the Court.

11 Now, ladies and gentlemen, the indictments in this case
12 allege, again, the charges of murder of Ms. James, murder of
13 Mr. Leake, and possession of a weapon during the commission
14 of a violent crime. Each indictment charges a separate and
15 distinct offense, so you have to decide each indictment
16 separately on the evidence and the law applicable to it
17 uninfluenced by your decision as to any other indictment.
18 The Defendant can be convicted or acquitted on any or all of
19 the offenses charged and you're going to be asked to write a
20 separate verdict of guilt -- guilty or not guilty for each
21 indictment.

22 Now, ladies and gentlemen, again, the Defendant, Mr.
23 Franks, has pled not guilty to these indictments and that
24 plea puts the burden of proof on the State to prove the
25 Defendant's guilt. Again, a person charged with committing

1 a criminal offense in this State is never required to prove
2 himself innocent. I instruct you that it's an important
3 rule of law that the Defendant in criminal trial, no matter
4 what the seriousness of the charge may be, will always be
5 presumed to be innocent of the crime for which the
6 indictment was issued unless guilt has been proven by
7 evidence satisfying you of his guilt beyond a reasonable
8 doubt. This presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the Defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of his guilt beyond a
12 reasonable doubt.

13 Ladies and gentlemen, the presumption of innocence is
14 not merely a legal theory, it's not just a legal phrase.
15 It's a substantial right to which everyone is entitled
16 unless you, the jury, are satisfied from the evidence of his
17 guilt beyond a reasonable doubt. Well, what is a reasonable
18 doubt of law? A reasonable doubt is the kind of doubt that
19 would cause a reasonable person to hesitate to act. The
20 State has the burden of proving the Defendant guilty beyond
21 a reasonable doubt, and some of you may have served as
22 jurors in civil cases where you were told that it's only
23 necessary to prove that a fact is more likely true than not
24 true, such as by the greater weight or the preponderance of
25 the evidence. In criminal cases the State's proof must be

1 more powerful than that. It has to be proof beyond a
2 reasonable doubt. Proof beyond a reasonable doubt is proof
3 that leaves you firmly convinced of the Defendant's guilt.
4 Now, there are very few things in this world that we know
5 with absolute certainty, and in criminal cases the law does
6 not require proof that overcomes every possible doubt. If
7 based on your consideration of the evidence you're firmly
8 convinced that the Defendant is guilty of the crimes as
9 charged, you must find the Defendant guilty. If on the
10 other hand you think there's a reasonable possibility that the
11 Defendant is not guilty, you must give him the benefit of
12 the doubt and find him not guilty.

13 Now, ladies and gentlemen, I remind you that during
14 this trial you and I have certain duties to perform. As the
15 trial judge it's my responsibility to preside over the trial
16 of this case, and I also have the duty to rule on the
17 admissibility of the evidence offered during the trial. You
18 are to consider only the competent evidence before you. So
19 if any testimony was ordered stricken, you have to disregard
20 that testimony because you are to consider only the
21 testimony in evidence which has been presented from the
22 witness stand, any exhibits which have been made a part of
23 the record in this case and any stipulations of the
24 attorneys.

25 I have the additional duty to charge the law, and as

1 the presiding Judge I am the sole Judge of the law. It's
2 your duty to accept and apply the law as I state it to you
3 now. So if you already have any ideas of what the law is or
4 what it should be, and if that disagrees with what I now
5 tell you the law is, you have to abandon that idea because
6 you're sworn to accept and apply the law as I state it to
7 you now.

8 Again, ladies and gentlemen, in every case tried in
9 this Court before a jury, the jury becomes the sole and
10 exclusive judge of the facts. A trial judge cannot
11 intimate, state, comment on or make any statement to a trial
12 jury about the facts. Since you, the jury, are the sole
13 judges of the facts you are to infer from what I said during
14 the progress of this trial in ruling upon the admissibility
15 of evidence or otherwise, or anything that I say to you now,
16 that I have any opinion about the facts in this case.

17 Ladies and gentlemen, the law does not permit me to have any
18 opinion about the facts. This is a matter solely for you to
19 determine. It's your duty to determine the effect, value,
20 weight and truth of the evidence presented during this
21 trial.

22 Now, typically there are two types of evidence
23 presented during a trial, direct evidence and circumstantial
24 evidence. Direct evidence directly proves the existence of
25 a fact and does not require deduction, such as testimony by

1 an eyewitness. Circumstantial evidence is proof of a chain
2 of facts and circumstances indicating the existence of a
3 fact. I instruct you that crimes may be proven by
4 circumstantial evidence. The law makes no distinction
5 between the weight or value to be given to either direct or
6 circumstantial evidence. However, to the extent the State
7 relies upon circumstantial evidence, all the circumstances
8 must be consistent with each other, and when taken together
9 point conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely portray the
11 Defendant's behavior as suspicious, the proof has failed.
12 The State has the burden of proving the Defendant's guilt
13 beyond a reasonable doubt and this burden rests with the
14 State regardless of whether the State relies upon direct
15 evidence, circumstantial evidence, or a combination of the
16 two.

17 Now, ladies and gentlemen, necessarily you have to
18 determine the credibility of witnesses who have testified,
19 and credibility simply means believability. It becomes your
20 duty as jurors to analyze and to evaluate the evidence and
21 determine which evidence convinces you of its truth. In
22 determining the believability of witnesses who have
23 testified in this case, you may believe one witness over
24 several witnesses or several witnesses over one witness.
25 You may believe a part of the testimony of a witness and

1 reject the remaining part of the testimony of that same
2 witness. You may believe the testimony of a witness in its
3 entirety or reject the testimony of a witness in its
4 entirety. You may consider whether any witness has
5 exhibited to you any interest, bias, prejudice or other
6 motive in this case, and you can also consider the
7 appearance and manner of a witness while on the witness
8 stand.

9 Now, ladies and gentlemen, I instruct you and emphasize
10 the fact the Defendant did not testify is not a factor to be
11 considered by you in any way in your deliberation and in
12 your consideration on the question of his guilt or
13 innocence. It must not be considered by you in any manner
14 whatsoever. The Defendant has the constitutional right to
15 remain silent, and the assertion of this right must not be
16 considered by you in your deliberations. I repeat, under
17 your oath, you're to draw no conclusion whatsoever from the
18 fact that the Defendant in this case did not testify. The
19 fact that he did not testify should not even be discussed in
20 the jury room. The burden of proof, as I said, is on the
21 State. The Defendant is not required to prove his
22 innocence. The burden of proof remains on the State to
23 prove the Defendant's guilt beyond a reasonable doubt.

24 Now, ladies and gentlemen, in his case a statement
25 alleged to have been made by the Defendant has been admitted

1 into evidence. While the Court has determined that the
2 statement is admissible, I instruct you that you make the
3 ultimate decision of whether or not the Defendant made the
4 statement. If the Defendant did make the statement you must
5 determine whether the statement was made by the Defendant
6 voluntarily and of his own free will. This means that the
7 statement was not caused by pressure, force, fear of threat,
8 coercion or intimidation, or by hope or promise of leniency
9 or a reward of any kind.

10 In determining whether the statement was voluntary you
11 should consider both the characteristics of the Defendant
12 and the details of the questioning. Some of the factors
13 that you must consider are, first, the age of the Defendant,
14 second, the Defendant's educational background or lack
15 thereof, third, the Defendant's mental ability or capacity,
16 fourth, the Defendant's IQ or intelligence, fifth, the
17 Defendant's background and environment, sixth the place and
18 length of detention. Seven, the nature of the questioning,
19 and eight, the advice or lack thereof, to the Defendant of
20 his rights including, but not limited to, his right to
21 remain silent, the statement could be used against him, the
22 right to have a lawyer present and if he couldn't afford a
23 lawyer a lawyer would be appointed at no cost, and that he
24 could stop making statements. You must carefully consider
25 all the surrounding circumstances before you give any weight

1 to an alleged statement.

2 Now, ladies and gentlemen, the State has the burden of
3 proving a statement -- proving beyond a reasonable doubt
4 that the alleged statement was voluntary. If you determine
5 it was, you can give the statement any further consideration
6 that you think is proper. You must decide what weight, if
7 any, should be given to the statement allegedly made by the
8 Defendant. If you determine that the statement was not the
9 free and voluntary statement of the Defendant, you should
10 not consider it a statement at all.

11 Now, as I've mentioned a few times during the course of
12 the trial concerning expert witnesses, normally the rules of
13 evidence don't permit a witness to testify as to opinions or
14 conclusions. An exception to this rule exists for expert
15 witnesses. A witness who by education and experience has
16 become an expert in some art, science, profession or calling
17 may state an opinion as to relevant and material matters in
18 which the witness claims to be an expert, and they can also
19 state the reasons for their opinion. You should consider
20 any expert opinion received in evidence in this case, and
21 like any other evidence, give it the weight you think it
22 deserves. If you decide that the opinion of an expert is
23 not based on sufficient education and experience, or if you
24 conclude that the reasons given in support of the opinion
25 are not sound, or that the opinions are outweighed by their

1 evidence, you may disregard the opinion entirely. Again,
2 an expert witness' testimony is to be given no greater
3 weight than that of any other witness simply because the
4 witness is an expert. Furthermore, you're not required to
5 accept an expert's opinion even though it's not
6 contradicted.

7 Now, ladies and gentlemen, in this case, again the
8 Defendant is charged with two counts of murder. The State
9 must prove beyond a reasonable doubt that the Defendant
10 killed another person with malice aforethought. If facts
11 are proven beyond a reasonable doubt sufficient to raise an
12 inference of malice and to your satisfaction, this inference
13 would simply be an evidentiary fact to be considered by you
14 along with the other evidence in this case and you may give
15 it the weight you think it should receive.

16 I instruct you, ladies and gentlemen, that malice is
17 defined as hatred, ill-will or hostility toward another
18 person. It's the intentional doing of a wrongful act
19 without just cause or excuse, and with an intent to inflict
20 an injury, or under circumstances the law will infer an evil
21 intent. Malice aforethought does not require that malice
22 exists for any particular time before the act is committed,
23 but malice must exist in the mind of the Defendant just
24 before and at the time the act is committed. Therefore,
25 there must be a combination of the previous evil intent and

1 the act.

2 I instruct you that malice aforethought may be
3 expressed or inferred. These terms expressed and inferred
4 do not mean different kinds of malice, but merely the manner
5 by which malice may be shown to exist. That's either by
6 direct evidence or by inference from the facts and
7 circumstances -- circumstances which are proven. Expressed
8 malice is shown when a person speaks words which express
9 hated or ill-will to another person, or when the person
10 prepare beforehand to do the act that was later
11 accomplished. For example, laying in weight for a person or
12 any other acts in preparation going to show that the deed
13 was within the Defendant's mind with the expressed malice.

14 Malice may also be inferred from conduct showing a total
15 disregard for human life. Inferred malice may also arise
16 when the deed is done with a deadly weapon. A deadly weapon
17 is defined under our law as any article, instrument or
18 substance which is likely to cause death or great bodily
19 harm. Whether an instrument has been used as a deadly
20 weapon depends on the facts and circumstances of each case.
21 The following are examples of instruments recognized under
22 our law which may be deadly weapons. A pistol, shotgun,
23 rifle, dirk, dagger, knife, slingshot, metal knuckles,
24 razor, gasoline, firebomb or Molotov cocktail, or lighter
25 fluid.

1 Ladies and gentlemen, the Defendant is also charged
2 with the offense of possession of a weapon during the
3 commission of a violent -- or attempt to commit a violent
4 crime. The State must prove beyond a reasonable doubt that
5 the Defendant was in possession of a firearm during the
6 commission of a violent crime. I instruct you that a
7 firearm means any machine gun -- again, means any machine
8 gun, automatic rifle, revolver, pistol, or any weapon which
9 will, is designed to, or may be readily converted to expel a
10 projectile. If you were to find the Defendant guilty of
11 possession of a weapon during the commission of a violent
12 crime you must first find him guilty of committing a violent
13 crime. I instruct you under the laws of our State murder is
14 defined as a violent crime. The State must prove beyond a
15 reasonable doubt that the weapon furthered, advanced or
16 helped in the commission of that underlying violent crime.

17 Now, ladies and gentlemen, there are three possible
18 verdicts which you may find in this case and, Mr. Foreman,
19 I've developed this verdict form to kind of guide your
20 deliberations. It's self-explanatory, but I'm still
21 required by law to explain it to you. Okay? It basically
22 has each of the three charges against the Defendant. And,
23 for example, the first statement, or the first paragraph
24 makes the following statement. "We, the jury, in the
25 above-captioned case, on the charge of murder of Nikesha

1 James unanimously find the Defendant Deshanndon Markelle
2 Franks, and then there are two options for you. Not guilty
3 or guilty. Okay? There's no significance whatsoever in the
4 order that I state these possible verdicts. It's just that
5 one has to be said first. If all 12 members of the jury
6 find that the State has failed to meet its burden of proof
7 beyond a reasonable doubt and all 12 of you agree would
8 initial next to not guilty and then proceed to the second
9 and the third question. Okay? If on the other hand you
10 find that the State has met its burden of proofing the
11 Defendant's guilt beyond a reasonable doubt, you would
12 initial next to guilty and do as I said. Go to the next one
13 and then the next one. Okay? The exact same questions are
14 asked concerning the charge of murder as it relates to Sammy
15 Leake as well as the possession of a weapon during the
16 commission of a violent crime. The exact same questions.
17 And again, the jury -- all 12 members of the jury must agree
18 on all verdicts that are rendered.

19 Again, as I have emphasized, the verdict of the jury
20 has to be unanimous. All 12 of you must agree. We do not
21 have majority verdicts in South Carolina. Other states do
22 have majority verdicts. Those states are doing it wrong.
23 Okay? I hope that we never have majority verdicts in South
24 Carolina. So all 12 of you must agree on the ultimate
25 outcome in this case. When you have agreed on the verdict

1 simply knock on the door. Let the bailiff know. I'll get
2 everybody assembled in here and we'll receive you back in
3 the courtroom to receive your verdict.

4 Now, again, ladies and gentlemen, if any member of the
5 jury panel has any issue or any question about the law
6 simply bring it to the Court's attention by way of writing a
7 note. If at any point in time, however, you send me a note,
8 please do not indicate -- never indicate to me what the
9 split is if there's some sort of division. For example,
10 five to seven for one way, six-six, 11 to one. I don't need
11 to ever know about any kind of numerical division. So feel
12 free just to leave that information out. Okay? So never
13 communicate that kind of information to me.

14 Now, ladies and gentlemen, I remind you that you've
15 been chosen as fair and impartial individuals. In other
16 words, you have no enemies to punish. You have no friends
17 to reward. Your job is to render a verdict based solely
18 upon the evidence presented and on the law as I've
19 instructed you.

20 Now, before I let you return to the jury room, just a
21 few other housekeeping matters. From time to time I've been
22 asked by a jury, or a jury has sent out a note asking how
23 long they're supposed to deliberate. Okay? Under our law
24 there is no set time. A jury can return a verdict in 15
25 minutes, in 50 minutes, in five hours, in five days. I'm

1 hoping you're not going to return it in five days or five
2 weeks. But there is no limit, minimum or maximum in terms
3 of your deliberations.

4 Additionally, it's a running rule of mine that once a
5 case is submitted to the jury we are 100 percent on your
6 time. So at any point in time you all want to take a break
7 for the evening or what have you, simply let me know. We'll
8 take a break for the night and you can come back sometime
9 tomorrow morning and resume your deliberations. Okay? So
10 we are now 100 percent on your schedule. All right? That's
11 what I'm trying to get across to you.

12 Additionally, I've also had juries request transcripts
13 of testimony. It's not possible to prepare an actual
14 transcript of the testimony. That actually takes a court
15 reporter several weeks to do because she has to go back
16 through what she's transcribed. What she's said into that
17 mouthpiece. And then she has to verify it against the
18 microphones and prepare what's known as an official
19 transcript. So we don't have the capacity to give you an
20 instantaneous transcript of any of the testimony. But if
21 you do have questions about the testimony that was offered,
22 we can very often replay that information back. You just
23 need to be kind of specific on which witness you are
24 concerned with and what you're looking at or what you're
25 looking at getting them -- or getting at.

1 Now, with that, ladies and gentlemen, I'll let you
2 adjourn to the back, but don't begin your deliberations yet.
3 Okay? Your cue to begin your deliberations will be receipt
4 of these instructions, the evidence, and my asking the two
5 alternate jurors to step out.

6 Ladies, I used to release alternate jurors once the
7 jury started their deliberations. I then wound up in a
8 very, very unfortunate situation where I tried a case for
9 about a week, and during the course of the deliberations one
10 of the jurors got ill, and because we dropped below 12
11 jurors I had to declare a mistrial because I had already
12 released the two alternates, and I couldn't get them back
13 once I released them. I'm not going to do that again.
14 Okay? Because that was a painful trial to try and I had to
15 try it a second time because I -- and I could have kept the
16 jurors -- the alternates around. So I'm going to have to
17 inconvenience you and ask you to stay with us and -- just in
18 the event that something were to happen or one of the other
19 jurors were to get ill or something like that. Okay? So
20 please understand why I'm doing that to you guys. All
21 right?

22 With that, adjourn to the back. The alternates will
23 stay with you until such time as I pull you guys out.
24 They'll give you a magazine or a book or something to read
25 while the rest of the jury is deliberating. Okay? But

1 don't start talking yet. You know what your cue is to begin
2 your deliberations. Adjourn to the back, please. Thank
3 you.

4 (Whereupon, the jury exited the courtroom to begin
5 deliberations at 3:05 p.m.)

6 THE COURT: No exceptions or additions from the State?

7 MR. MOWRY: No, sir.

8 THE COURT: All right. With the exception of mere
9 presence, anything else from the Defense?

10 MR. WILKES: In my otherwise well articulated objection
11 to the malice.

12 THE COURT: Very good. Yes, of course. That
13 objection, of course, is noted. Same rulings as before.
14 And, of course, all prior motions are renewed. Same rulings
15 as before --

16 MR. WILKES: Thank you.

17 THE COURT: -- as it relates to Mr. Franks. You all
18 verify that we are correct on the evidence and we'll get
19 them back to the jury.

20 (Whereupon, deliberations began. Court was in recess
21 from 3:05 p.m. to 4:20 p.m.)

22 (Whereupon, two jury notes were received and marked
23 Court's Exhibits No. 8 and No. 9 for identification.)

24 THE COURT: We're going to go back on the record. The
25 jury has sent two communications. They have been marked as

1 Court's Exhibits. The second communication -- as a result
2 of the first it appeared they wanted the statement of Mr.
3 Hill and so I went back and explained to the foreperson that
4 that was not introduced into evidence, but if they wanted to
5 rehear some testimony to let us know. They sent back a
6 second note that simply stated -- I can't remember exactly
7 what it said.

8 MR. MOWRY: It just said the Tevin Hill police
9 statement.

10 THE COURT: Tevin Hill's police statement. So after
11 meeting with the attorneys in chambers, what I'm going to do
12 is I've asked the court reporter to boot back up just the
13 very beginning of Mr. Hill's testimony. I'll ask her to
14 play that and I'll tell the jury to simply tell us when to
15 stop, raise their hand when we get to the part that answers
16 their question about his testimony. Just for the record, I
17 think that the statement they are referring to are marked as
18 Court's 8 and 9 is what my court reporter informs me.

19 Let's have the jury out, please.

20 (Whereupon, the jury entered the courtroom at 4:44
21 p.m.)

22 THE COURT: The jury is back and seated. Ladies and
23 gentlemen, I received the communication from the foreman
24 about Tevin Hill's statement. What I've asked the court
25 reporter to do is to basically start playing where his

1 testimony began. Once we've reached the point where you
2 feel like you've heard enough or your question is answered,
3 because I really don't know specifically. I don't know and
4 I don't want to know specifically what it is you're
5 grappling with factually, so as soon as you've gotten the
6 information you feel like you need, just raise your hand or
7 indicate to me that's enough and we'll let you continue your
8 deliberations.

9 We'll go off the record now and the court reporter will
10 find that area of Mr. Hill's testimony and play it for them.
11 Go ahead.

12 (Whereupon, audio was published to the jury from 4:45
13 p.m. until 5:02 p.m.)

14 THE COURT: Hands went up. I assume y'all heard what
15 you needed to hear. Return to the deliberations and let us
16 know when you've reached a verdict. Thank you very much.

17 (Whereupon, the jury exited the courtroom at 5:02 p.m.
18 to resume deliberations.)

19 THE COURT: We're back on the record. Of course, the
20 Defendant is present with counsel. I did receive
21 communication from the jury. Apparently they want to take a
22 break for the evening, and as I told them we are on their
23 time. So I'll be discharging them for the evening. And
24 I'll ask what time they want to start, but I'll suggest
25 9:30. Let's have the jury in, please.

1 (Whereupon, the jury entered the courtroom at 8:08
2 p.m.)

3 THE COURT: Ladies and gentlemen of the jury, I
4 received your communication and in the for what it's worth
5 category I agree, because I'm a little bit tired, too.
6 Okay? I do appreciate you all's hard work over these last
7 four days. And so, we'll reconvene tomorrow morning. Is
8 9:30 okay, or would you all -- or sooner? 10:00?

9 JURORS: 9:00.

10 THE COURT: 9:00 it is. We are on your schedule, as I
11 said. Once everyone is -- once all 12 jurors are present in
12 the jury room I'll instruct the Bailiff and the Clerk to
13 bring in the other -- the evidence. Okay? That will be
14 secured overnight, as well as your tablets. And so, as soon
15 as all 12 of you are here in the morning at 9:00 that will
16 be brought in and you can simply resume your deliberations
17 at that point in time without any sort of further prompting.
18 Okay? So when you've got 12 back there, that's when you can
19 begin again.

20 I would love, ladies, to say that you all don't need to
21 come back, but people become ill overnight. Things happen
22 overnight. I've done this for a while. So I need you all
23 back. Okay? I know that one of you is relying upon a
24 family member for a ride. I'm more than happy to have a
25 deputy come and get you or take you back, whatever the case

1 may be, because I feel like I'm inconveniencing you as well
2 as your spouse, ma'am. But if you want that, just let the
3 Bailiff know and we will make those arrangements. All he
4 needs is your home address and we will have a car there in
5 plenty of time to get you hear tomorrow. Okay? So mull
6 over that.

7 Same admonition goes for tonight. Please don't talk
8 about the case with anyone. But do enjoy your evening and I
9 will see you all tomorrow morning at 9:00.

10 (Whereupon, the jury note was marked as Court's Exhibit
11 No. 10 and the jury was released for the evening at 8:10
12 p.m.)

13 TRIAL DAY 5-10/28/16

14 (Whereupon, at 9:04 a.m. the jury resumed
15 deliberations. A jury note was received and marked Court's
16 Exhibit No. 11. At 10:00 a.m. a jury note was received and
17 marked Court's No. 12.)

18 THE COURT: We're going to go back on the record if we
19 may. I've received a note from the jury that they want to
20 hear Mr. Grant's testimony again. I think it's only about
21 12 minutes, according to my notes. The jury is ready to
22 hear it. We'll bring them on in if we could, please.

23 (Whereupon, the jury entered the courtroom at 10:00
24 a.m.)

25 THE COURT: Ladies and gentlemen, welcome back. Thank

1 you for being here and thank you for your continued work on
2 this case. I appreciate it. I received the note that you
3 want to hear the testimony of Mr. Grant again. The court
4 reporter has that cued up and will play that in just a
5 moment. It's about 12 minutes. My intention is just to
6 play it all the way through, but if at any time you want me
7 just to stop I'll stop, okay? It's only about 12 minutes by
8 my count. Go ahead and play that testimony, please.

9 (Whereupon, audio was published to the jury from 10:00
10 a.m. until 10:10 a.m.)

11 THE COURT: Ladies and gentlemen of the jury, please
12 return to your deliberations. Let us know if we can do
13 anything else to assist you and thank you for your efforts.

14 (Whereupon, the jury exited the courtroom at 10:10 a.m.
15 to resume deliberations.)

16 THE COURT: We'll go back on the record. I am told
17 that the jury has reached a verdict in this case. Anything
18 before they're received back in the courtroom from the
19 State?

20 MR. MOWRY: We have some matters that we've discussed
21 in chambers, but we'll put those on the record after the
22 fact, Your Honor.

23 THE COURT: Very good. Anything from the Defense?

24 MR. WILKES: No, sir.

25 THE COURT: All right. I want to caution everyone who

1 is here in attendance. I've been very impressed with the
2 way that everyone's been able to maintain their composure
3 this week and keep their heads about them. Please
4 understand, I don't know what the verdict is. No one knows
5 what the verdict is. This jury has been here for five days.
6 They have worked very hard. They have been inconvenienced.
7 And the meager compensation that the County of Laurens
8 affords them in no way compensates them sufficiently for
9 what we have put them through. So I say that by way of
10 explanation that I don't want -- when the verdict is read, I
11 do not want, please, any kind of outburst, any kind of
12 expression of approval, disapproval, what have you. We have
13 to respect what they have decided. If you find yourself
14 unable to contain yourself, unable to contain your emotions
15 and control yourself, just feel free to stand up quietly and
16 exit through the back of the courtroom. Okay? But again,
17 no whooping, no hollering, no shouting, no applause,
18 regardless of what the verdict is. All right? And let me
19 have a -- somebody go get the Bailiff to tell them to bring
20 the jury in. Okay?

21 (Whereupon, the jury entered the courtroom at 12:49
22 p.m.)

23 THE COURT: The two alternates, if you all would, you
24 all just come this way, and we've got you a seat over here.
25 Okay? So you all can sit over there. Mr. Cheek will show

1 you.

2 THE BAILIFF: All jurors present, Your Honor.

3 THE COURT: Mr. Foreman, I'm told that the jury has
4 reached a verdict; is that correct, sir?

5 THE FOREMAN: Yes, sir.

6 THE COURT: And all 12 members of the jury agree on
7 that verdict?

8 THE FOREMAN: Yes, sir.

9 THE COURT: If you would, hand the verdict form,
10 please, to the Bailiff. Madam Clerk, if you'll publish,
11 please.

12 MADAM CLERK: Your Honor, in the case of the *State of*
13 *South Carolina v Deshanndon Markelle Franks*, we the jury in
14 the above-captioned case, on the charge of murder of Nikesha
15 James, unanimously find Deshanndon Markelle Franks guilty.
16 We the jury in the above-captioned case, on the charge of
17 murder of Sammie Leake, unanimously find Deshanndon Markelle
18 Franks guilty. We the jury in the above-captioned case, on
19 the charge of possession of a weapon during the commission
20 of a violent crime, unanimously find Deshanndon Markelle
21 Franks guilty. Signed by the Foreperson, Hugh A. Riley.
22 Dated October 28, 2016, Laurens, South Carolina."

23 Ladies and gentlemen, if that be your verdict, please
24 indicate by raising your right hands.

25 (Whereupon, the jury raised their right hands.)

1 MADAM CLERK: Thank you.

2 THE COURT: Let the record reflect that all 12 jurors
3 did, in fact, raise their right hand. Anything for the jury
4 prior to their discharge from the State?

5 MR. MOWRY: No, sir, Your Honor. Thank you.

6 THE COURT: From the Defense?

7 MR. WILKES: Your Honor, I'd like an individual polling
8 of the jury.

9 THE COURT: All right. Madam Clerk, if you'll poll the
10 jury, please.

11 Ladies and gentlemen of the jury, the Clerk is going to
12 go through and basically call you one by one. She'll then
13 ask you a question if this is your verdict and is it still
14 your verdict. Okay? And just reply appropriately. All
15 right? Madam Clerk.

16 MADAM CLERK: Ladies and gentlemen, the verdict that I
17 have just published was the verdict you reached in the jury
18 room, I ask you was it your verdict then and is it your
19 verdict now. As I call your name, please answer yes or no.
20 Hugh A. Riley?

21 THE FOREMAN: Yes, ma'am.

22 MADAM CLERK: You don't have to stand. You can just
23 answer. Thank you. Jason K. Dunaway?

24 THE JUROR: Yes, ma'am.

25 MADAM CLERK: Christine D. Judd?

1 THE JUROR: Yes, ma'am.

2 MADAM CLERK: David L. Rhodes?

3 THE JUROR: Yes, ma'am.

4 MADAM CLERK: Ashley Graham Mathison?

5 THE JUROR: Yes, ma'am.

6 MADAM CLERK: Sharon R. Keith?

7 THE JUROR: Yes, ma'am.

8 MADAM CLERK: Cynthia M. Brown?

9 THE JUROR: Yes, ma'am.

10 MADAM CLERK: Melissa A. Myer?

11 THE JUROR: Yes, ma'am.

12 MADAM CLERK: Deborah L. Culbertson?

13 THE JUROR: Yes, ma'am.

14 MADAM CLERK: Joyce E. Arnold?

15 THE JUROR: Yes, ma'am.

16 MADAM CLERK: Carrie V. McDowell?

17 THE JUROR: Yes, ma'am.

18 MADAM CLERK: And Joseph D. Kelly.

19 THE JUROR: Yes, ma'am.

20 THE COURT: Anything further from the Defense?

21 MR. WILKES: Nothing, Your Honor.

22 THE COURT: Ladies and gentlemen of the jury, I want to
23 thank you for your service here this week. And please
24 understand that I do this day in and day out and sometimes
25 it's easy for me and even the attorneys and the other

1 through. And I truly wish that there was something more
2 that the Court could do than what I have done here to help
3 with the pain that you all still feel and the issues that
4 you're still dealing with. And I'm truly sorry to have to
5 meet you all under these circumstances. I truly am. I'm
6 hoping that you're able to move through this and at least
7 remember your loved ones and honor their memory by taking
8 care of those that they left behind. And maybe that's the
9 only thing that you all really can do at this point in time
10 to try and make the situation better. I know that you'll
11 continue to do that.

12 Mr. Franks, I've taken a number of things under
13 consideration in this sentence, sir. First of all, I hear
14 that the State desires or wants a life sentence for this
15 offense, and certainly that's not an unreasonable request.
16 In my experience though, the Court's philosophy on that is
17 that typically a life sentence is better reserved for
18 individuals who repeatedly demonstrate an inability to
19 conform their conduct to the requirements of the law.
20 People who have prior criminal histories who have been in
21 trouble with the law repeatedly and then they commit the
22 ultimate crime. And so, Mr. Franks, I have -- I have not
23 given you the ultimate sentence in this particular case.
24 That doesn't lessen, of course, the severity and the
25 horrible nature of what you did on that night. And quite

1 truthfully I'm at a loss to explain how this crime ever
2 happened. That's a question I'm probably going to have and
3 maybe one that only you can answer. And I wish I could make
4 some sense of this. I cannot. And so, I echo Mr. Mowry's
5 comments and Mr. Leake's comments that this is nothing more
6 than a senseless act that has no rational reason, had no
7 purpose. It served no purpose whatsoever. Two people are
8 dead. And because of your actions, Mr. Franks, I've
9 determined that an appropriate sentence on both of the
10 murder indictments is -- and I also know that these crimes
11 you have to serve this day for day. So I've sentenced you
12 on each of the charges for murder to a sentence of 45 years.
13 On the possession of a weapon charge the sentence is five
14 years. All sentences will run concurrently. And assuming
15 you don't die in prison, Mr. Franks, you'll be approximately
16 74 years of age when you are released. I do however wish
17 you luck, and I will tell you that you have 10 days to file
18 notice of intent to appeal this matter. Instruct your
19 attorney accordingly and he will take care of filing that
20 notice for you. Mr. Franks, good luck. The record is
21 closed.

22 (END OF REQUESTED TRANSCRIPT OF RECORD.)

23

24

25

WITNESSES

Robert Plaxico
Laurens County Sheriff

WARRANT NUMBER

2014A3010100:88

Issue Bill

Willie E. Dethitt

Foreman of the Grand Jury

Date: *5/2/14*

VERDICT

Guilty

Hugh L. By

Foreman

10-28-16

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2014

Indictment # 14GS30-0499

THE STATE

vs.

Deshanndon Markelle Franks

INDICTMENT FOR

Murder

CDR: 0116

SCANNED

RECEIVED

NOV 04 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF LAURENS

Murder

At a Court of General Sessions, convened on the 2nd day of May, 2014, the Grand Jurors of Laurens County present upon their oath:

That Deshanndon Markelle Franks, on or about January 31, 2014, in Laurens County, willfully, feloniously, and with malice aforethought kill one Sammie Leake by means of shooting him with a firearm and that the said Sammie Leake did die in Laurens County as a proximate result thereof on or about January 31, 2014, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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


Deputy Solicitor

WITNESSES

Robert Plaxico
Laurens County Sheriff

WARRANT NUMBER

2014A3010100189

Jane Bille
Willie E. D. D. D. D.
Foreman of the Grand Jury
Date 5/2/14

VERDICT

Guilty
Hugh A. R. R.
Foreman 10-28-16

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2014
Indictment # 14GS30-0500

THE STATE

vs.
Deshanndon Markelle Franks

INDICTMENT FOR

Murder

CDR: 0116

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

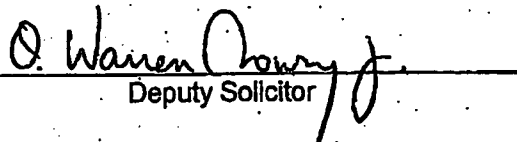
COUNTY OF LAURENS

Murder

At a Court of General Sessions, convened on the 2nd day of May, 2014, the Grand Jurors of Laurens County present upon their oath:

That Deshanndon Markelle Franks, on or about January 31, 2014, in Laurens County, willfully, feloniously, and with malice aforethought kill one Nikesha James by means of shooting her with a firearm and that the said Nikesha James did die in Laurens County as a proximate result thereof on or about January 31, 2014, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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


Deputy Solicitor

WITNESSES

Robert Plaxico
Laurens County Sheriff

WARRANT NUMBER

2014A3010100192

Irue Bille

Walter L. Dean III

Foreman of the Grand Jury

Date: 5/2/14

VERDICT

Guilty

Mag. A. Riley

Foreman 10-28-16

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2014

Indictment # 14CS30-0501

THE STATE

vs.

Deshanndon Markelle Franks

INDICTMENT FOR

Possession of a Pistol
during a Violent Crime

CDR: 0549

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

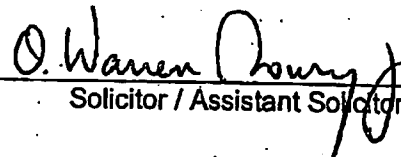
COUNTY OF LAURENS

Possession of a Pistol during a Violent Crime

At a Court of General Sessions, convened on the 2nd day of May, 2014, the Grand Jurors of Laurens County present upon their oath:

That Deshanndon Markelle Franks, in Laurens County, on or about January 31, 2014 possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor / Assistant Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

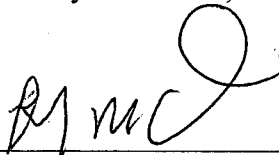
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED

MAR 01 2018

SC Court of Appeals

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of March, 2018.